



"The mission of the Council is to represent the citizens of Cook Inlet in promoting environmentally safe marine transportation and oil facility operations in Cook Inlet."

Members

Alaska State Chamber of Commerce

Alaska Native Groups

Environmental Groups

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Aquaculture Associations

Fishing Organizations

City of Kodiak

City of Kenai

City of Seldovia

City of Homer

Kodiak Island Borough

Kenai Peninsula Borough

Municipality of Anchorage

Bob Pawlowski
550 West 7th Avenue, Suite 1100
Anchorage, Alaska 99501-3560

August 12, 2013

Re: Proposed changes to Regulations 11 AAC 83, Oil and Gas Exploration and Development by Geographical Area; and Lease Plans of Operations

Dear Mr. Pawlowski

Cook Inlet Regional Citizens Advisory Council (RCAC) is a nonprofit corporation organized exclusively for the oversight, monitoring, assessing and evaluation of oil spill prevention, safety and response plans, terminal and oil tanker operations, and environmental impacts of oil tanker and oil terminal operations in Cook Inlet under the provisions of Section 5002 of the Oil Pollution Act of 1990. Our mission is to represent the citizens of Cook Inlet in promoting environmentally safe marine transportation and oil facility operations in Cook Inlet. Cook Inlet RCAC consists of 13 members from Cook Inlet communities, as well as Alaska Native groups, commercial fishing and aquaculture, tourism, recreational and environmental interest groups that have a significant stake in the environment and resources at risk from oil production and transportation in the region.

The Department of Natural Resources (DNR) is proposing new regulations dealing with oil and gas exploration and development by geographical area to implement legislation enacted in 2013, and to amend the existing regulation for oil and gas plans of operations for leases and exploration licenses. Cook Inlet RCAC believes that, on the whole, these proposed regulations will accomplish the stated goal of providing an opportunity for the state to review proposed oil and gas exploration or development across a geographic area, rather than by project, thus providing a more holistic approach to land management and oil and gas operations. Our primary concern is that this streamlined approach will limit the opportunity for public review and comment. These comments address the contents of the proposed regulations, and also include some recommendations for ensuring a strong and thorough public review process under the new regulations.

Summary of Proposed Changes

As Cook Inlet RCAC understands the proposed revisions to 11 AAC 83.158, they will provide DNR with new powers to authorize exploration and development of oil and gas activities on leased lands by geographical area. Currently, DNR has the authority to approve exploration and development by project, with subsequent review/approvals triggered for each phase of a project. In 2013, the Alaska legislature enacted a law that allows DNR to review and authorize oil and gas exploration and development across a geographical area rather than by individual project. This means that DNR could approve oil and gas exploration or development across a portion of a lease sale area by

the appropriate lessees. If the proposed regulations are implemented, DNR may authorize exploration and development activities for geographical areas for up to ten years. No additional DNR approvals would be required, unless the project moved to a transportation phase, in which case existing laws and regulations would still apply. All other requirements in place by other local, state, and federal agencies related to exploration or development, including ADEC requirements for preparation of oil spill contingency plans, would apply. The proposed regulatory changes also clarify when plans of operations are required, specify additional information required to be submitted with an application, and define terms used in the regulation.

The statutory language that underlies these new regulations is:

AS 38.05.035(o). The director may approve exploration or development for all or part of an area previously approved for oil and gas or gas only leasing under (e) of this section. An approval applies to exploration or development commencing during a period for up to 10 years, as specified by the director in the approval. When authorizing exploration or development under this subsection, the department shall provide public notice and the opportunity to comment using the methods described in AS 38.05.945(b) and (c). The approval authorizes a lessee to begin exploration or development during the period specified in the approval, subject to the lessee receiving other authorizations required from the department or other state, local, or federal agencies. Once a lessee begins exploration or development on a lease or group of leases, the approval for exploration under this subsection or the approval for development under this subsection remains valid for the term of the lease. This subsection does not relieve lessees of any statutory, regulatory, or lease obligations, including any obligations to submit for approval plans of operation, of exploration, or of development.

Cook Inlet RCAC Comments

Cook Inlet RCAC has organized our comments by regulatory section.

General Changes

Throughout the regulations, the word “Commissioner” has been replaced by department. This is primarily an administrative change, and Cook Inlet RCAC believes that it does not have any material impact on the regulations.

11 AAC. 18.158. Plan of operations

The amended regulations clarifies the exemption for submitting a plan of operations, by removing the two exemptions that were previously specified in the regulation (activities that would not require a land use permit and operations undertaken under an approved unit plan of operations) and replaces them with a regulatory reference to 11 AAC 96.020, which specifies generally allowed uses for state lands that do not require a land use permit. This is a good clarification.

The amended regulations are also amended to include a 120-day timeframe for submission of an application to DNR for a plan of operations. The requirement to provide the plan 120 days in advance of proposed commencement of operations is sound and makes good sense.

The amended regulations add requirements that the plan of operations address wastewater treatment and disposal sites, identify surface owners of the area directly associated with the proposed operations, and provide copies of specific oil and gas leases or exploration licenses issued by other permitting authorities, including well bore trajectories. Cook Inlet RCAC believes that adding these components to the required plan of operations contents will enhance the information that DNR has available to review and approve or deny the proposed operations. Cook Inlet RCAC suggests that DNR consider adding to this section a provision for public notice that would provide an opportunity for members of the public to view and comment on the contents of a plan of operations.

Article 7 (11 AAC 83.650-695). Exploration and Development by Geographical Area

As we understand it, Article 7 adds several new sections to the regulations at 11 AAC 83, in order to establish procedures for authorizing exploration and development in a geographical area as specified in the new statutory language at AS 38.05.035(o). These new regulations give DNR the following powers:

- DNR may define a geographical area for exploration. An exploration area must:
 - Be contiguous and described by legal subdivision,
 - Be prospective for oil and gas exploration activities within the next ten years,
 - Include leased or unleased acreage,
 - Not exceed 35% of a lease sale area, and
 - Exclude communities listed in the Alaska Community Database Online which are incorporated or unincorporated with a population greater than 200, except Prudhoe Bay.
- DNR may define a geographical area for development. A development area must:
 - Be contiguous and described by legal subdivision,
 - Be prospective for oil and gas exploration activities within the next five years,
 - Include leased acreage,
 - Not exceed 300,000 acres, and

- Exclude communities listed in the Alaska Community Database Online which are incorporated or unincorporated with a population greater than 200, except Prudhoe Bay.

The criteria that DNR must use to authorize exploration or development within a geographical area are established in the proposed regulations and appear to be consistent with other, similar approval processes, including a requirement that the most recent best interest findings be consulted. The approval of exploration or development of a geographical area will be granted in writing, and DNR may impose conditions that are consistent with the terms of the lease sale. Cook Inlet finds these criteria to be reasonable and prudent.

Finally, the new regulations provide an opportunity for public review and comment on the authorization for exploration or production within a geographical area. Cook Inlet RCAC supports this requirement; however, we are concerned that the shift from project-specific approval to geographical area approval could have the unintended consequence of abbreviating the opportunities for public review of specific oil and gas exploration or development projects. We suggest that DNR consider adding a public review or comment opportunity to the plan of operations process.

Thank you for the opportunity to comment on these proposed regulatory changes. If you have any questions, please contact me at (907) 283-7222 or munger@circac.org.

Sincerely;



Michael L. Munger
Executive Director