

# THE ALASKA FORUM

*The Newsletter of the Alaska Forum for Environmental Responsibility*

Summer 2001

## TAPS Right-of-Way Reauthorization Process Begins

### Environmental Impact Statement to be Cornerstone of Permit Renewal

The Trans-Alaska Pipeline System (TAPS), the 800-mile transportation conduit from the North Slope oil fields to the terminal at Valdez, crosses either state or federal land for nearly its entire length. The permission to cross that land was granted in 1974 by both the State of Alaska and the United States government in documents known as the Grant and Lease. These permits allowed a 30-year renewal which is set to expire in 2004. The reauthorization of those permits is of utmost importance to the oil industry – it is the very franchise that keeps them in business – and will result in quite possibly the most comprehensive examination of the pipeline since its design and construction.

The reauthorization will, in practical terms, revolve around the preparation of an Environmental Impact Statement (EIS). Argonne National Laboratory has been contracted to write the EIS and will hold scoping meetings this September. The draft EIS is scheduled for release in summer 2002 with the final coming out at the end of that year.

The owners of TAPS – principally BP, Phillips, and Exxon – submitted an “environmental report” as part of their permit application. The Alaska Forum has found that the 600-page behemoth is long on tables, photos, and lists of wildlife; but dramatically short on details for how the oil companies intend to guarantee the system’s integrity for the next 30 years. Look for more on this issue in the next edition of ‘*The Alaska Forum.*’ ❖



### ACCESS DENIED!



#### Alyeska Security Escorts AFER From Spill Drill Site

What is the difference between an “evaluator” and an “observer” when it comes to testing Alyeska’s oil spill readiness? For one member of the Alaska Forum, the difference is being allowed access to a spill drill and being escorted off the premises by Alyeska security.

Tim Jones, a Valdez resident and longtime consultant for the Prince William Sound RCAC,

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## ABOUT THIS PUBLICATION

**The Alaska Forum** is the newsletter of the Alaska Forum for Environmental Responsibility, a nonprofit advocacy and education organization.

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### **Our mission:**

The Alaska Forum is dedicated to holding industry and government accountable to the laws designed to safeguard the environment, provide a safe and retaliation-free workplace, and achieve a sustainable economy in Alaska.

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## A Message from the Executive Director by Ross Coen

**F**irst things first.

You may have noticed that this issue of *'The Alaska Forum'* is the first you've seen in awhile. Since the Fall 2000 issue to be precise. Well...you would be correct. It seems we've missed a couple issues, though certainly not for lack of content to write about.

One of the challenges of a small organization such as ours is allocating our resources – both people and time – where they are needed most. Unfortunately, this means that the writing, editing, and publishing of a quarterly newsletter all too often gets the boot. First it's delayed a couple weeks. Then another week. And then a new environmental crisis arises to occupy our front burner.

In any event, you are indeed holding the most recent issue of *'The Alaska Forum.'* And you have our word that despite not hearing from us in awhile, we haven't been on vacation.

Tops on our to-do list has been (and will continue to be) the Right-of-Way renewal for the Trans-Alaska Pipeline. You can read more in our cover story. And expect to be hearing much more about this issue in the *next* issue of "The Alaska Forum" once we have published our status report on TAPS, due in the coming weeks.

We've also been tracking the oil spill contingency plan (C-plan) for TAPS and monitoring the various schemes to bring Alaska North Slope natural gas reserves to market.

**J**ust before we went to press with this issue, I noticed that three of the articles herein are somewhat negative and confrontational in tone. First, we took Governor Knowles to task for his shoddy public policy; then the Alaska Department of Environmental Conservation took it on the chin for their proposed changes to oil spill C-plan regulations; and finally we criticized Alyeska for hindering our efforts to observe and evaluate a spill drill.

I was actually tempted to soften the language in each article so as to not seem so combative. Then I remembered that the Alaska Forum for Environmental Responsibility is a watchdog group. We're in this line of work to protect Alaska's people and environment – not to make friends and not to pull punches. If either government or industry deserve a stern word for their action, inaction, arrogance, ignorance, or any combination of the above...we would be doing our membership a disservice to remain quiet. ❖

## Who's Way? Which Way?

by Ross Coen

### *Opinion*

The Alaska Highway Natural Gas Policy Council has held a number of hearings this summer throughout Alaska. The Council was formed in January by Governor Knowles and is comprised of 30 community leaders and representatives from around the state. They have been charged with facilitating public involvement in bringing Alaska's gas reserves to market via a pipeline along the Alaska Highway. But a closer look at the Council and its operation reveals that it has little to do with actual public process and more to do with a slick sales job.

Public process, in its purest form, should work basically like this: An issue of communal importance is brought into the arena of public debate where information is readily available to those who seek it, and, after much scrutiny, consideration, and proposals by experts and average citizens alike, our public officials determine an appropriate course of action.

But Governor Knowles, once again, has it backwards. He first announces that "my way is the highway" and later schedules public hearings to solicit input from Alaskans. Shouldn't it be the other way around? Just like with Northstar and the BP-Arco merger, Knowles made a decision based on a political calculation and is using the "public process" not to actually gauge public input, but to convince everyone that he is right.

And on what exactly did Knowles base his Highway decision? We don't know, because, at the time of his decision and at the start of the Council's hearings, his administration had yet to cite a single study or piece of data that support the Highway route. Sure, we heard vague rhetoric about energy and revenue and the working end of a shovel, but

**Knowles made a decision based on a political calculation and is using the "public process" not to actually gauge public input, but to convince everyone that he is right.**

we could get all that with a pipeline to Bethel. Show us evidence that the Highway is best.

Take the hearing in Fairbanks on April 18. The hearing began with a recitation of the heavyweights that have endorsed the highway route – the National Governor's Association and our Congressional delegation. This was followed by Fairbanks Borough Mayor Rhonda Boyles who, while introducing Knowles, absolutely gushed about his strong and sure leadership. Well, golly...who was going to be brave enough after all that to sit at the microphone and suggest that the Governor just might be wrong?

Then Cabinet member Deborah Sedwick gave a presentation on the state's mission and means for carrying our gas to market. Jobs, energy, revenue can all be ours with a pipeline along the Alaska Highway! Slides of happy kids and healthy wildlife flashed on the screen. Again, who could possibly be brave enough to sit at the microphone and question the wisdom of it all?

Of course, only a few souls that night were brave enough to do so. And that was exactly the point. This hearing – indeed the entire Gas Policy Council, through no fault of the Council's members themselves – is not about public input. It's about selling an idea to an ill-informed public.

More recently, the Governor's office issued a press release announcing that North Slope citizens voiced "overwhelming support" for the Highway route at the Barrow hearing of the Council. Sure makes for good news copy – but then why didn't the Governor tout the Council's hearing in Kenai? Was it

because there was only one person there who explicitly supported the Highway route, while the majority voiced "overwhelming support" for a gasline to South Central? Or what about the Anchorage hearing? Did that not merit a Knowles press release because public support for the Highway route was lacking there too?

One last thing for your consideration: the Governor's "Talking Points," bulletins that are

*(continued on page 5)*

## Public Participation Halted By Proposed DEC Regulations

Oil Spill C-plans Would No Longer Be Subject to Public Appeal

Nancy Wainwright, an Anchorage attorney, recalls the process of administrative appeal surrounding the 1995 Prince William Sound Tanker Contingency Plan (C-plan) as “three years of bureaucratic hell.” Wainwright represented several individuals in an appeal of the procedure for handling oil spills by tankers in Alaska’s waters. “The Shippers had four lawyers and DEC had two Assistant Attorneys General,” says Wainwright. “They were on the same side, so there were six lawyers (and numerous paralegals) opposing one lawyer for the citizens (me).”

Thus Wainwright should take it as a compliment that the Alaska Department of Environmental Conservation so fears her legal expertise that they are seeking to amend their regulations to restrict the public’s involvement in such oil spill C-plans.

Under current state law, any person who offers public comments on an oil spill C-plan may request an adjudicatory hearing with the Commissioner following the plan’s approval. Wainwright exercised this right when the 1995 Tanker C-plan proved deficient in several areas. But this summer, the DEC proposed to amend Title 18, Chapter 75 of the Alaska Administrative Code to eliminate that right and completely exclude the public from such adjudicatory hearings.

The DEC is clearly hoping to avoid a repeat of the 1995 Tanker C-plan appeal. But rather than encourage public involvement in order to address all legitimate concerns, the DEC has chosen instead to restrict public involvement, thereby absolving themselves of the responsibility to be held accountable. Yet a closer examination of the 1995 C-plan appeal reveals not an obstructionist public, but an arrogant and irresponsible agency.

Immediately after the appeals were filed (by a total of 17 appellants), the Shippers met with Governor Knowles and Michele Brown, the designated administrative hearing officer, in an attempt to prematurely end the appeals (these illegal

### 18 AAC 75.460(b)(3)

#### **CURRENT LAW:**

“...if aggrieved by the department's decision, the applicant or any person who submitted timely comments on the application under 18 AAC 75.455 may request an adjudicatory hearing...”

#### **PROPOSED CHANGE:**

“...if aggrieved by the department's decision, the applicant may request an adjudicatory hearing...”

and *ex parte* meetings by the hearing officer Brown are on appeal to the Alaska Superior Court). After a year’s delay, the appellants asked the Court to compel the DEC to hire a replacement hearing officer in lieu of Brown. The person hired by the DEC was a lawyer working for BP – who was ultimately forced to recuse herself. Back to square one (and another year delay).

Only one citizen appellant, Tom Copeland from Cordova, completed the entire process and was eligible to appeal to Superior Court, where his case has languished since 1998 (the other appellants either settled or withdrew in protest). Copeland withstood the Byzantine appeal, until the hearing officer dismissed Copeland for failing to cover the \$5000 cost of the Shippers’ own court reporter.

In the end, the DEC spent \$600,000 on the appeal while the Shippers’ intimated that they spent considerably more, possibly \$1 million. If it is these costs that the DEC wishes to avoid in future C-plan appeals, perhaps they should actually force the oil industry to produce an adequate C-plan, thereby eliminating the need for appeals at all.

(continued on next page)

*(DEC Regulations, continued from previous page)*

Apart from the regulation changes themselves, the Alaska Forum has serious concerns about the manner in which the DEC provided public notice. The Alaska Forum received no direct communication from the DEC on the proposed regulations – despite the fact that our involvement in the pipeline C-plans is well-known to DEC personnel; *and* despite the fact that the DEC website claims that “the agency seeks out persons it believes will be interested in the proposal and notifies them directly by mail.” In fact, we learned of this issue only days before the comment period ended on July 17.

The Alaska Forum filed a public records request to learn who exactly the DEC *did* notify. To their credit, the DEC sent letters announcing the proposed regulations to an even 100 different groups and individuals, including several representatives of the Alaska environmental community. So why was the Alaska Forum not on that list? Surely the DEC C-plan folks knew we would be interested.

Amazingly, those DEC personnel in charge of the Spill Prevention and Response division were not even aware of the proposed regulations! Let us say that again – the very people at DEC who are responsible for oil spill contingency plans were not made aware of proposed changes to the very regulations that give them authority to do their jobs. It was the Division of Environmental Health that promulgated these regulations and they didn’t even bother to pick up the phone and let their own departmental colleagues know that the rules were being changed. If the Alaska Forum has a right to be peeved about not being informed, imagine how the Division of Spill Prevention and Response feels.

This entire affair seems all the more specious when one considers DEC Commissioner’s Michele Brown’s words in an April 2000 speech: “It is important to bring the public into the process. Involving the public can be time consuming and sometimes frustrating, but it does help make better decisions and often avoids substantial project delays and ill will.” ❖

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**A Birthday Celebration for long-time activist Richard Fineberg.**

*Join us at the home of Merritt Helfferich and April Crosby for an early evening of Alaska Copper River salmon, hors d’oeuvres, and music by Pat Fitzgerald and Robin Dale Ford.*

**Saturday, September 8, 2001, 4-7p.m.**

Bring stories to share about Richard (it’s his 60<sup>th</sup>!). No gifts please. Contributions of any size to the Alaska Forum are appreciated but not required. Call Ross at 479-6946 for directions.

*(Alaska Highway, continued from page 3)*

emailed weekly to constituents. Knowles announced his “my way is the highway” plan on November 17 of last year. As we go to press (August 2001) his office has released 42 editions of the “Talking Points.” Twenty-seven of those, or 64 percent, have plugged the Highway route for the gasline. While Knowles probably deserves points for staying on message, these statistics reveal that when it comes to the gasline, Knowles would rather sell Alaskans on the Highway than he would hear what people really have to say.

Now, I do not wish to imply that I am opposed to the development of Alaska’s gas or that I am even opposed to the Highway route. This route may indeed prove the best fit for Alaska. But I am not willing to simply accept that premise without hard numbers to back it up, even if it does come from the lips of this state’s most powerful public official. One is reminded not to assume conspiracy or malfeasance when simple arrogance and ignorance will suffice; but when it comes to Governor Knowles and the public process...anything goes. ❖

*(Access Denied, continued from page 1)*

agreed to act as an agent for AFER in evaluating a spill drill that was held on the Lowe River this June. In that drill, Alyeska responded to a simulated oil spill at Brown's Creek, which flows into the Lowe River near Valdez. Jones' role as the AFER representative was simple: attend the drill itself, take copious notes, and evaluate Alyeska's performance.

If only it was that easy.

The day before the drill, June 26, Jones went to the SERVS building (Ship Escort Response Vessels System) in Valdez for a controllers and evaluators meeting to learn the plans for the drill. He was asked to leave however by Larry Shier, head of Alyeska's Oil Spill Response team in Fairbanks. Later, after trading phone messages with other Alyeska personnel, Jones learned that he was being regarded as an "observer," not an "evaluator" – the difference being that evaluators are allowed full access to the drill site, while observers are quite literally herded around and allowed to see only what Alyeska wants them to see. For example, Department of Environmental Conservation personnel are evaluators; members of the media are observers.

Jones was also informed that security personnel would be stationed at all access roads and that unauthorized persons would not be allowed to the sites. It bears mentioning that Jones is an exceptionally well-qualified spill evaluator and served in that capacity several times in past drills.

The morning of the drill itself, Jones went to the Lowe River where he found security personnel in place. His Alyeska badge earned him admission to the drill site despite his name not being on the guard's list. Jones remained until that afternoon, when Mark Delozier, a SERVS employee, approached and asked how he got there, where his vehicle was located, whom he was working for, and how he had gained access. Shortly thereafter, Jones was escorted from the site by security.

Alyeska often claims that their spill response capabilities are state-of-the-art, that they can act quickly and effectively in the face of an oil spill. So why wouldn't they want to prove it? Why not throw open the doors and invite everyone to witness their amazing spill response acumen?

Yet the "observer" bus – the one with those unlucky souls also denied full access – arrived on-scene around 1:30 that afternoon, well after the boom had been placed in the water and other equipment delivered to the site. This late arrival rendered the observers completely unable to assess Alyeska's spill response capability – perhaps exactly the point.

Alyeska also was successful in denying the Prince William Sound RCAC access to the drill. A recent arbitration found in favor of Alyeska's claim that the RCAC's jurisdiction ended at water's edge and did not extend up the pipeline. One wonders at this claim since a spill at the Lowe River would eventually find its way to Port Valdez. That the RCAC is expected to wait patiently until oil actually flows into their "jurisdiction" is ludicrous.

The Alaska Forum finds it appalling that Alyeska would spend time on word games and clever hair-splitting in order to control what gets seen and what goes unseen by those interested in oil spill prevention and response. One gets the sense that they would exclude the Departments of Environmental Conservation and Fish & Game if they could. We would love for Alyeska to prove to us, unequivocally, that they can adequately respond to an oil spill. But as long as we are kept at arm's length and denied access to such drills, our skepticism remains intact.

So how did Alyeska rate on this drill? Did they prove their ability to stop and collect oil, to protect Alaska's environment? Based on Jones' limited access...probably not. Jones noted that with the river moving at more than 5 knots, "it is doubtful [that] much if any oil was stopped." Should Alyeska express incredulity at this statement and claim that the drill was an unqualified success, we can only remind them that they should have let us see it. ❖



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## We'd like to hear from you!



As a member of the Alaska Forum, you have a say in how the organization operates, which issues we work on (or don't), and every other aspect of our activities on behalf of Alaska's people and environment. We'd love to hear your feedback, so please feel free to call, write, or email about anything that interests you and we promise to address your concerns.

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