

August 18, 1997

Steven Daugherty
Assistant Attorney General
Natural Resources Section
P.O. Box 110300
Juneau, AK 99811-0300

via facsimile 907-465-6735

Re: Your ethics investigation of my position on the Board of Directors of the Alaska Forum for Environmental Responsibility.

Dear Mr. Daugherty,

During our phone conversation of August 11, 1997, you informed me that I was the subject of an ethics investigation because of my position on the Board of Directors of the Alaska Forum for Environmental Responsibility (Alaska Forum). You told me that the investigation was prompted by a request by Al Ewing, deputy commissioner of the Department of Environmental Conservation.

In response, I told you that this seemed to me to just another chapter in the continued harassment, intimidation and retaliation that DEC has subjected me to over the past several years. I believe DEC's treatment of me has had a "chilling effect" on my fellow employees, other state government and public employees. I asked you if you were aware of my pending Department of Labor whistleblower complaint related to the reprisals I experienced late last year. You replied you were not aware of the complaint and requested a copy of it, which I faxed to you on August 12, 1997.

During that conversation you also requested any additional information that I felt was relevant to your making a determination as to whether there was a potential ethical conflict between my job as a state employee and my association with the Alaska Forum for Environmental Responsibility. To that end I offer the following:

My history as a whistleblower, and the retaliation, harassment and intimidation I have experienced, are well known at DEC and JPO, and among the public and the media. I won't bore you with all the gory details here; my story is a matter of public record. I assume you intend to conduct a thorough investigation and thus also assume you will consider the relevance of my whistleblowing activities to your investigation.

I am, along with Riki Ott and Stan Stephens, one of the founders of the Alaska Forum. I currently serve as the Secretary/Treasurer. We launched the organization in September 1995 as a special project of the Government Accountability Project, a national whistleblower defense organization. Walt Parker is the fourth and newest member of the Board.

The Alaska Forum's mission is to hold industry and government accountable to the laws designed to safeguard Alaska's environment, worker safety, and public health. It does so by: 1) protecting the rights of conscientious government and industry workers to speak the truth without fear of harassment and retaliation; 2) ensuring that the problems identified by whistleblowers are addressed by industry and/or government monitors; 3) linking concerned workers with concerned citizens and citizen organizations; and 4) promoting sensible, sustainable natural resource management.

The Declaration of Policy of the Department of Environmental Conservation under Title 46 Chapter 3 Article 1 states:

(a) It is the policy of the state to conserve, improve, and protect its natural resources and environment and control water, land, and air pollution, in order to enhance the health, safety, and welfare of the people of the state and their overall economic and social well-being.

(b) It is the policy of the state to improve and coordinate the environmental plans, functions, powers, and programs of the state, in cooperation with the federal government, regions, local governments, other public and private organizations, and concerned individuals, and to develop and manage the basic resources of water, land, and air to the end that the state may fulfill its responsibility as trustee of the environment for the present and future generations.

Article 2, in part states:

(3) consult with and cooperate with

(A) officials and representatives of any nonprofit corporation or organization in the state;

(B) persons, organizations, and groups, public and private, using, served by, interested in, or concerned with the environment of the state; ...

When I read both the Alaska Forum mission statement and the Declaration of Policy of the Department, I see no ethical conflict at all. Indeed, I believe my association with the Alaska Forum is complementary to DEC's mission, even if sometimes the organizations are at odds on a specific issue.

As you may know, I have been involved with the Trans-Alaska Pipeline System for over 24 years. First, I worked for the industry during the design and construction of the Valdez Marine Terminal (VMT). Once the oil began to flow, I joined DEC as an

inspector of the tankers that carry the oil south and later on VMT issues. Throughout my career, I have diligently tried to help make the transportation of Alaska's oil as safe and environmentally friendly as possible, regardless of who my employer was. After all, that was the commitment we all—industry, government, employees and private citizens—made when Congress granted permission to build the pipeline in 1974.

I believe I have done my job well, perhaps too well. I have always carefully investigated issues to determine the facts—the real story—and then communicated my findings to my superiors at DEC. I have given advance warning to DEC and federal officials of real and potential problems with worker safety and environmental issues at the VMT and Alyeska's oil spill response capabilities. The historical record is replete with this information.

Indeed, I wrote many of the documents relied on by the Alaska Oil Spill Commission, the Alaska Legislature, the U.S. Congress and the media to investigate and expose the root causes of the Exxon Valdez oil spill.

Since the late 1970s, I have been assigned difficult tasks, particularly when the public was demanding DEC take action. These tasks have included detailed investigations which resulted in criminal and civil prosecutions, changes to permits and other remedies necessary to protect the environment. I was also delegated enforcement authority and exercised that responsibility when appropriate. In addition, I have worked extensively with the Attorney General's and District Attorney's offices in investigation of environmental laws.

During the term of my employment with DEC I have never given any confidential or enforcement sensitive information to anyone outside the Department other than the AG's office, who may have been working on the issue with me. In addition, I have not shared the results of any that information with others inside DEC that were not involved in the issue unless directed to do so by my superiors.

Because I have been very good at ferreting out the truth, I have gained the respect and confidence of fellow employees, workers in the oil industry and the public. When they had nowhere else to go, many concerned employees have come to me with their concerns about threats to worker safety and the environment. I have tried to funnel that information to DEC and other agencies who rebuffed me and ask me why I was involved.

Some DEC administrators have not been supportive of me over the years, especially in situations where it appeared that DEC has not lived up to its public mandate to ensure that the oil industry complied with all state laws and approved permits. Given this lack of support, I felt that the only avenue available to me was to exercise my constitutional rights

as a private citizen. I have done so in three ways. First, I have personally passed on information given to me by concerned individuals to federal regulators and other public agencies, including the federal-state Joint Pipeline Office (JPO). Second, for the past several years I have talked with Alyeska management and tried to help them understand the concerns their employees and the public were expressing to me. Finally, in September 1994 I helped found the Alaska Forum. Riki Ott, Stan Stephens and I believed there was a need in Alaska for a formal organization that could play the role we had been playing as individual citizens for several years—confidential conduits of whistleblower information to government officials and the public—and to defend the rights of whistleblowers to speak the truth.

It has been my practice when speaking in public as well as private, to carefully convey to the people with whom I may be speaking, who I may be representing at the time of the conversations. In almost all instances when speaking in public, I am say I am speaking as a "private citizen", not as representative of my employer or any group I may be affiliated with. This is particularly true if what I say may be of a minority opinion or at odds with the public pronouncements of my employer.

What I find particularly disturbing about your investigation is that DEC and, apparently, JPO, are using me to their advantage at the same time that they are once again trying to silence me. DEC and JPO have used my public reputation as a trusted public servant to help quiet public outrage about government's failure to hold industry accountable on the pipeline. They have said that they are glad I am back because it helps them look better to the public. Yet at the same time, they are trying to limit who I associate with and what I say as a private citizen. Sadly, it appears to me that your investigation is nothing less than a continuation of the pattern of harassment, intimidation and retaliation of the last several years. It is also in conflict with the First and Fourteenth Amendments, not to mention one or more of the following: the Alaska Whistleblower Act (AS 39.90.100), the Federal Clean Water Act (33 U.S.C. 1367), the Clean Air Act (42 U.S.C. 7622), the Toxic Substance Control Act (15 U.S.C. 2622), and the Solid Waste Disposal Act (42 U.S.C. 6971).

As far as the use of government resources, i.e.: phones, copiers, computers, other equipment or my time, I simply do not use them. If someone contacts me as a private citizen when I am at work, I advise that individual I can not talk to them at that time and that I will return their call when possible. It is also noteworthy that I get paid for 37.5 hours per week and consistently work between 50 and 70 per week. For most of my 20 years with the state this has been my work practice. I find it interesting that someone may be concerned with squandering my time at work. The state got a good deal when they hired me.

You should also note that 20% of my present job description includes meeting with local communities, local industry representatives, and public interest groups as necessary.

In closing, I will reiterate what I told you on the phone on August 11. It has been my practice since I was assigned to JPO in March of this year, not to discuss any details of my work assignments with anyone outside JPO. Also, it should be noted that none of my work assignments have any direct enforcement involvement and I have been delegated no enforcement authority in my present job description. In this job, I must "refer possible violations ..to the appropriate DEC program or JPO agency for action". As stated earlier, this was not the case in my previous job description before I was demoted in 1989. It is also not the case in the job descriptions of my DEC counterparts who deal with similar issues. Additionally I have no confidential materials in my possession nor do I have access to confidential materials.

I look forward to the outcome of your investigation. Please feel free to call me at 835-4808 (home) or 835-6138 (work) if you need additional information. Be advised, that I will request my union representative be present during any and all future discussions of this investigation.

Sincerely,



Daniel Lawn
P.O. Box 1483
Valdez, AK 99686

cc: Billie Garde, Garde Law Office
Bob Watts, APEA
Richard Backer, US Dept. of Labor
Alaska Forum Board of Directors
Jeff Ruch, Public Employees for Environmental Responsibility

MEMORANDUM**State of Alaska**Department of Environmental Conservation
Office of the CommissionerTO: Chrystal Smith
Legal Administrator

DATE: July 17, 1997

FILE NO: • (11:310MDCMILLERMEMOETHICSMEM)

PHONE NO: 465-5066

FROM: 
Al Ewing
Deputy Commissioner

SUBJECT: Dan Lawn ethics question

As required, Dan Lawn recently submitted an ethics disclosure form which indicates that he is the Secretary/Treasurer of the Alaska Forum for Environmental Responsibility (AFER). AFER is an environmental "watch dog" group which focuses on the Alyeska pipeline, terminal and tanker transport system. Dan's employment with the State of Alaska is in the Joint Pipeline Office which has regulatory responsibility for the Alyeska pipeline system.

I am forwarding this matter to you for legal review. Specifically, I wish to have the opinion of the Department of Law as to whether this situation represents a conflict of interest from a legal perspective.

Thank you for your attention to this matter.

RECEIVED

JUL 24 1997

Attorney General's Office
Juneau