Chapter Two

Compliance

JPO examines grant, lease sections of TAPS right of way

Between 1997 and April 2002, the Joint Pipeline Office completed 1,269 surveillance reports, 141 technical reports and 65 assessment reports.

This chapter examines compliance information pertaining to the Federal Grant of Right of Way for the Trans-Alaska Pipeline, followed by the State Right-of-Way Lease for TAPS. Chapter 4 looks at Grant and Lease stipulations.

There are many similarities between the two documents. Some section numbering and titles are the same, but each is still unique. One obvious difference, Section 29, Training of Alaska Natives, is absent from the Lease.

The federal Grant was entered into with the "Permittees" or owner oil companies that built TAPS; while the state Lease was entered into with the same owners, called "Lessees."

JPO monitoring incorporates Grant/Lease requirements as well as applicable laws and regulations into the JPO Comprehensive Monitoring Program. To ensure appropriate historical and compliance tracking, this pertinent information is prominently listed in surveillances to credit and trend coverage for both.

The scope of most provisions applies to all phases of TAPS (i.e. construction, operations, maintenance and termination), and, with few exceptions, all are for the duration of the Grant. Some provisions require specific activities to be completed before and during constructing the pipeline. Others are contingencies for actions that have not yet occurred or will not occur until the right of way is terminated. Still other provisions are actions the Authorized Officer and State Pipeline Coordinator may take under certain circumstances, or the Permittees must take under certain circumstances.

Grant Legal Provisions

In 2000 and 2001, JPO conducted an in-depth review of the sections of the Federal Agreement and Grant of Right of Way. After reviewing each section containing legal provisions, the AO determined some sections do not require continuous monitoring for compliance. However, these provisions require that Permittees comply with the legal terms and conditions of the Grant. They were still assessed to ensure Permittees met their legal obligations. Other provisions require active monitoring for compliance, and surveillance reports were prepared for those sections or subsections.

In 2002, JPO completed 21 surveillance reports and two assessment reports to verify compliance for Grant legal and administrative sections and stipulations that require passive monitoring.

TAPS Assessment Report No. ANC-02-A-005 (March 2002) details the requirement, scope, and statement of compliance for each section of the Grant. Background is included where explanation is necessary. The following sections provide a representative sampling of Grant section compliance.

Examples of grant legal and administrative provisions:

Section 1: Grant of Right of Way

Section 2: Purpose of Grant; Limitations of Use to Permittees

Section 3: Transportation of Oil

Section 5: Width of Right of Way

Section 10: Compliance With Notices to Proceed

Section 12: Reimbursement of Department Expenses

Section 15: Guaranty

Section 21: Breach; Extent of Liability of Permittees

Section 25: Temporary Suspension Orders of Authorized Officer

Section 26: Appeal Procedure

Section 31: Termination or Suspension of Right of Way

Section 8 – Use Charge for Right of Way

Introduction/Requirement: This section establishes the annual rent for use of the right of way, to be paid by the Permittees to the Department of the Interior. Permittees shall pay their use charge of fair market value as determined by the Secretary of the Interior to the United States annually and in advance. All subsections apply to the entire federal right of way through all phases of TAPS.

Methodology: JPO conducted a surveillance (ANC-02-S-006) to determine if Permittees paid rentals in advance from January 1, 1997 through January 1, 2002.

Discussion/Results: All rentals were paid in advance to the Department of the Interior for this period, therefore the Permittees are not out of compliance with this provision.

Conclusion: There are no outstanding issues to be resolved.

Grant Section 9 and Lease Section 16, Construction Plans and Quality Assurance Program

Introduction/Requirements: The AO (Grant Section 9A) and SPC (Lease Section 16A) approve the Quality Assurance (QA) program. Sections 9 and 16B state that the QA program shall be comprehensive and assure compliance with the environmental and technical stipulations. Section 9C lists several criteria that will be included in the program.

Methodology: JPO approved Alyeska's updated and revised QA program (JPO Letter 01-187-DG). Alyeska sought approval of Revision 10 of its QA program (called Manual QA-36). JPO previously wrote a letter (JPO letter 99-055-JS, June 15, 1999) that addressed JPO's position on Alyeska's plans to develop a revised quality program manual. This letter stated that JPO's quality assurance objectives would ensure: Grant/Lease compliance, sound management of change and effective corrective action. These objectives evolved from JPO's prior emphasis of monitoring Alyeska for procedural or manual compliance. The new focus was in keeping with Grant/Lease requirements and was based on effectiveness rather than procedural adherence.

Additionally, JPO focused on specific requirements in Section 9/16. JPO planned surveillances and assessments over the past two JPO work cycles to identify specific and additional programmatic deficiencies relating to evaluation of contractors (Section 9/16 Civ&v).

Discussion/Results: JPO conducted a series of surveillances leading to Assessment JPO-00-A-006 in September 2000 that revealed deficiencies in Alyeska's programmatic controls over "supplier qualification" and implementation thereof (criteria in 9/16C). This resulted in JPO issuing three specific findings reported in the 1999-2000 TAPS Construction Program CMP Report, January 2001 (pages 33-34). In the CMP process, open findings become priorities for the upcoming work plan.

In 2001, JPO conducted additional surveillances leading to Assessment No. ANC-01-A-003, October 2001. This assessment found that:

- Alyeska consistently either conducts surveys and field inspections of its contractors and subcontractors or it accepts, as a "proxy," audits of supplier

facilities performed by accrediting organizations (e.g., ISO).

• Quality program controls established by Alyeska (under Revision 9 of QA-36) to determine supplier's capability to provide items and services that assure the integrity, maintenance, and operation of TAPS do not incorporate Grant/Lease requirements of Grant Section 9C(5) and Lease Section 16c(v) regarding surveys and field inspections of all of the facilities of its contractors and subcontractors. Alyeska is required to perform field inspections of the contractors and subcontractors' facilities.

• The previous controls that Alyeska established to approve suppliers were based on maintaining a registration, license, or certification issued by an accrediting organization (e.g., ISO). These did not fully satisfy the Grant/Lease. The particular accrediting organization did not assure that suppliers can meet specific and applicable requirements of Alyeska's quality program but rather assesses suppliers only against the accrediting organization's standards.

These programmatic findings were resolved and closed with the submission and approval of Revision 10 in December 2001. One finding, related to supplier qualification program effectiveness, remains open pending results of a review by June 2002.

In addition to programmatic reviews, JPO monitoring and Alyeska quality assurance activities frequently found areas where corrective actions took too long to complete. These delayed and deferred fixes are not typically high risk or high consequence items; rather, they are items that fall into a multi-year plan, budget and fix cycle. However, a *reasonable* three-year cycle can grow to a five- or six-year cycle that is not reasonable.

Concern over delayed projects were annotated in the CMP Construction Report (January 2001, page 33). Det Norske Veritas (DNV) reported in its March 2001 *Progress Review Report* that "Actions are open for long periods of time."

Alyeska added additional provisions in its Revision 10 QA program and entered into a Memorandum of Agreement (MOA) with JPO (February. 28, 2002). The MOA outlines interim and longer-term strengthening of Alyeska's corrective actions. This framework, coupled with general confidence in the scope and direction of Alyeska's systemic improvements (based upon numerous briefings and audits of and observations by JPO staff), provide the basis to approve Alyeska's new QA program.

While the Grant/Lease under Section 9/16 refer to the AO/SPC's approval of Alyeska's QA program, the CMP database highlighted situations where Alyeska did not identify risk before an incident**.** For example, the spark incident at the VMT (JPO-01-E-001, December 2000), the death of an Alyeska employee (JPO-00-E-031, November 2000) and the blocked fish passage at low water crossings (1999-2000 TAPS Maintenance Program CMP Report, page 12). JPO followed up on each of these and other deficiencies. The deficiencies were resolved, often with subprogram or location-specific preventive actions (for example, JPO Assessment ANC-01-011, November 2001) compared to the earlier JPO Assessment 00-A-001, describing the fish passage issues cited in the 1999-2000 TAPS Maintenance Program CMP Report. The recent approval reflects AO/SPC's confidence in

The TAPS owners retained Det Norske Veritas (DNV) to independently evaluate TAPS compliance. They found in March 2001 similar systematically concerns to those reported in prior JPO CMP reports.

Alyeska initiated a systems renewal project to overhaul Alyeska's management systems. The JPO-Alyeska Memorandum of Agreement (MOA) links to this initiative.

DNV reviewed Alyeska's interim results and reported in March 2002 that "substantial progress has been made regarding regulatory and other compliances requirements, commitments to regulatory agencies. . . documented control, management of corrective actions, and direction/policy" (page 6 Progress Review, System Findings Report, March 2002).

Revision 10 of Alyeska's QA program, especially with the systemic improvements currently underway.

Conclusion: One finding remains open pending JPO review.

Section 10 – Compliance With Notices to Proceed (NTP)

Section 10: There have been a total of 4,056 federal and state notices to proceed.

Introduction/Requirements*:* All construction of the pipeline system undertaken by Permittees shall comply in all respects with the provisions of Notices to Proceed that are issued by the AO. This section applies during all phases of TAPS.

Methodology: JPO reviewed the recent construction history of TAPS. For instance, there has been no NTP issued at the Valdez Marine Terminal (VMT) since construction nor has there been any construction or uses identified that would require an NTP.

Discussion/Results: By JPO Letter No. 97-074-JS (October. 7, 1997) to Alyeska, the JPO clarified what actions qualified as construction requiring an NTP. The AO currently requires an NTP when construction requires new right of way or when a construction project directly affects a design basis change to a critical TAPS component. JPO Technical Report FBU-02-E-001 reviewed compliance for both Grant Section 10 and the similar Lease Section 23. One instance of noncompliance with Section 10 was documented in JPO Assessment No. 00-A-004 involving a restoration plan. This issue was remedied and the corresponding action was closed.

JPO Technical Report # FBU-02-E-001 did not uncover any new deficiencies with Section 10.

Conclusion: There are no outstanding issues to be resolved.

Section 12 – Reimbursement of Department Expenses

Introduction/Requirements: Section 12 describes the Permittees' obligation to reimburse the federal government in a timely manner for all government activities. This includes employment of independent consultants, contractors, and subcontractors, associated with processing applications by the Permittees relating to the Trans-Alaska Pipeline and monitoring the Trans-Alaska Pipeline. All subsections of Section 12 apply during all phases of TAPS. This means that Alyeska reimburses the federal government for all expenses incurred by JPO's BLM operations.

Methodology: BLM verifies quarterly that proper, timely reimbursement was received from Permittees. Examination and review of government billing and Permittees' payment records from January 1997 through January 2002 indicate the Permittees timely reimbursed the federal government in for all expenses incurred by the government**.**

Discussion/Results: JPO Surveillance Report ANC-02-S-008 formally documented that United States compliance monitoring and oversight costs are properly billed and reimbursed in a timely manner.

Conclusion: There are no outstanding issues to be resolved.

Section 13 – Damage to U. S. Property; Repair, Replacement or Claim for Damages

Introduction/Requirements:

• Subsection A – Subject to the provisions of Subsection 204 (a) (2) of the Trans-Alaska Pipeline Authorization Act,

at the written demand of the AO, Permittees:

(1) shall repair or replace promptly, to the written satisfaction of the AO, all improved or tangible property of the United States, whether real, personal or mixed, that has been seriously damaged or destroyed ..., and

(2) shall rehabilitate (including, but not limited to, revegetation, restocking fish or other wildlife populations and reestablishing their habitats), to the written satisfaction of the AO any natural resource that shall be seriously damaged or destroyed, if the immediate cause of the damage or destruction arises out of, is connected with, or results from, the construction, operation, maintenance or termination of all or any part of the pipeline system; *provided, however,* that Permittees shall not be obligated to repair or replace any property or to rehabilitate any natural resource that was damaged or destroyed: (a) by an act of war or (b) solely by (i) the negligence of the United States and/or (ii) the negligence or willful misconduct of persons who are authorized to enter upon, use or occupy the damaged property or areas pursuant to any federal lease, permit, or other ... authorization.

• Subsection B – The repair or replacement by the Permittees of any improved or tangible property of the United States...shall operate to preclude the United States from asserting any claim for direct ... money damages with respect to the damage or destruction that was so repaired or replaced.

• Subsection C – Except to the extent that a claim by the United States for money damages against any one or more of the Permittees shall be barred in accordance with the provisions of Subsections A and B of this section, Permittees shall be liable to the United States, with respect to improved or tangible property of the United States...that is damaged or destroyed in connection with or resulting from activities along or in the vicinity of the right of way...

• Subsection D – In the event that a Permittee shall be liable to the United States for any damage, destruction or loss of improved or tangible property of the United States whether real, personal or mixed, the collection by the United States of money damages on account of the particular loss, damage or destruction, shall to the extent collected operate to preclude the United States from enforcing the provisions of Subsection A of this section with respect to such loss, damage or destruction.

Methodology: Failure to repair or replace improved or tangible property of the United States as required by Section 13A may make the Permittees liable to the United States as stated in Section 13C Subsections B, C, and D are legal and administrative provisions of the Grant that do not require compliance monitoring and surveillance.

Conclusion: There are no outstanding issues to be resolved.

Section 15 – Guaranty

Introduction/Requirement:

• Subsection A – Upon being notified by the Secretary, each Permittee shall cause to be delivered to the Secretary a valid and unconditional guaranty of the full and timely payment of all liabilities and obligations of the Permittee to the United States under or in connection with this Agreement or any other agreement, permit or authorization to be issued or granted to the Permittees by the Secretary

Section 13

JPO Surveillance Report No. ANC-02-S-009 noted that from 1997 through 2002, the AO has not issued any orders to Permittees to rehabilitate natural resources seriously damaged or destroyed by actions resulting from the construction, operation, or maintenance of TAPS.

that relates in whole or in part to all or any part of the pipeline system.

• Subsection B discusses the type of entity that may be a guarantor.

• Subsection C – Each guaranty shall be satisfactory to the Secretary in all respects ...

• Subsection D – The Secretary shall have the right at any time, and from time to time, to require the substitution and delivery of a new form of guaranty in the event that an outstanding guaranty is held to be invalid or unenforceable...

• Subsection E – Each guaranty shall be accompanied by such certificates and opinions of legal counsel as the Secretary may require to establish its validity.

Methodology: JPO Surveillance Report No. ANC-02-S-010 verified guaranties were accepted by DOI for each current TAPS Permittee. The BLM Corporate Qualifications Case File Record, AA-5722, was reviewed to verify Permittee compliance.

1) The guaranties submitted by each current Permittee meet all DOI requirements.

2) The DOI verified that guarantors are any one of the following: a corporation, a partnership, an association or a joint stock company authorized to sue and be sued and hold title to property in its own name or a business trust.

3) Guaranties were signed by either the Secretary of the Interior or the Authorized Officer for the Secretary of the Interior, as delegated. The Secretary delegated responsibility to the AO for all matters concerning TAPS, including those relevant to Section 15.

4) There have been no challenges to the guaranties in a court of law. No JPO records indicated any guaranty filed with the DOI was found invalid or unenforceable by a court of law.

5) All required documents were submitted as requested, and an appointment of an agent for service of process was included with each guaranty. Guaranties of all current Permittees were accepted by the DOI and are on file in BLM Corporate Case File AA-5722.

Conclusion: There are no outstanding issues to be resolved.

Section 16– Laws and Regulations

Requirement:

Subsection A – Permittees, and each of them, shall comply with all applicable federal laws and regulations, existing or hereafter enacted or promulgated.

Subsection B – In any event, Permittees, and each of them, shall comply with: (1) all regulations hereafter promulgated to implement the Trans-Alaska Pipeline Authorization Act, and (2) all applicable regulations hereafter promulgated to implement Section 28 of the Mineral Leasing Act of 1920, as amended.

Background: Permittees must comply with applicable requirements of federal agencies. As set forth in federal laws and regulations Permittees must comply with laws and regulations administered by the following agencies.

A U.S. Coast Guard (USCG) letter to the AO (June 14, 2001) contained a report of a comprehensive safety assessment of the portions of TAPS under Coast Guard jurisdiction. The report stated Alyeska's marine operations are in compliance with applicable federal regulations and existing Coast Guard policy. JPO is working with

BLM Authorized Officer Jerry Brossia, Bruce Hansen, Office of Pipeline Safety, and former BLM AO John Santora examine a section of the pipe for corrosion using a grid pattern for ultrasonic testing. At the time this picture was taken, Brossia was the state pipeline coordinator (JPO image).

the Coast Guard to obtain a statement about compliance concerning bridges over navigable waters.

The Environmental Protection Agency (EPA) administers several environmental programs originating from federal statutes and regulations which apply to TAPS. These programs cover air quality, water quality, hazardous and solid waste, control and use of certain hazardous chemicals and oil spill prevention preparedness and response.

In a letter to the AO (August. 29, 2001) EPA stated the agency had no outstanding notices of violation or compliance orders relative to Alyeska. Many of EPA's regulatory programs are administered in close coordination with ADEC.

The Alaska Department of Environmental Conservation (ADEC) administers the air quality program and solid waste program for the state. In a report (January. 28, 2002) ADEC stated they had no active enforcement related corrective action plans and no investigations involving Alyeska. Alyeska had corrected all violations that occurred between 1999-2001.

The U.S. Department of Transportation, Office of Pipeline Safety (U. S. DOT OPS) works closely with JPO and is currently working on a compliance report in anticipation of TAPS renewal. The OPS administers the department's national pipeline safety regulatory program, pursuant to Chapter 601 of 49 United States Code to assure the safe transportation of natural gas, petroleum, and other hazardous materials by pipeline.

U.S. DOT verified Alyeska's compliance with pipeline system standards, Stipulation 3.2 of the Grant/Lease (which incorporates federal regulations administered by OPS) and found no outstanding pipeline integrity issues. They determined that all previous regulatory noncompliances had been corrected.

The U.S. Department of the Interior, Bureau of Land Management (BLM) administers the Federal Agreement and Grant of Right of Way for TAPS. Regulations for public lands that pertain to mineral materials sales and disposal are: 43 CFR Parts 3600, 3610, and 3620. These regulations establish procedures for the exploration, development and disposal of mineral material resources as well as the protection of the environment of the public lands under permit or contract for sale or free use.

JPO Assessment Report No. ANC-01-A-009 evaluated Alyeska compliance with Stipulation 2.6, Material Sites, compliance with federal and state material sale contracts, and the mining and reclamation plans for each site. The assessment concluded Alyeska was in compliance with BLM and DNR regulations. BLM is currently verifying Permittees' compliance with the Mineral Leasing Act of 1920 and the Trans-Alaska Pipeline Authorization Act.

The U.S. Army Corps of Engineers (COE) administers the Federal Water Pollution Control Act, issues Section 404 permits under the Clean Water Act, and issues Section 10 permits under the Rivers and Harbors Act. Alyeska must obtain permits for placing dredged or fill material into waters of the United States, including wetlands, and for any construction or activity that alters navigable waters. The COE attempts to conduct compliance inspections of 25% of individual permits issued per year. Although there are no

Section 16

Over the past few years a number of incidents that occurred at the VMT raised concerns about the safety of its operations. A series of events and fracture-related pollution incidents, coupled with the age of the facility infrastructure and tanker fleet, escalated Coast Guard concern. Consequently, the USCG assessed the safety of the marine portion of TAPS, including cargo and ballast water systems, vapor control system, tanker transits and escorts, vessel traffic service, vessel operations and tanker structural integrity, the marine terminal quality assurance program, and personnel qualifications and training. The Coast Guard determined that its jurisdictional portions of TAPS are operated in a safe and consistent manner and in compliance with applicable federal regulations.

Federal Grant Section 16: Federal Laws and Regulations		
Agency	**Requirement**	**Compliance Status**
U.S. Bureau of Land Management	1) Federal Agreement and Grant of Right-of-Way 2) Mineral Leasing Act of 1920, as amended 3) Trans-Alaska Pipeline Authorization Act 4) Federal Land Policy and Management Act of 1976, Sections 302 and 304 5) 43 Code of Federal Regulations, Public Lands, Interior, Parts 3600, Mineral Materials Disposal, under authority of the Materials Act of July 31, 1947 6) 43 CFR, Part 2880, Right-of-Way 7) 43 CFR, Part 2t 27, EEO	• BLM is conducting a rigorous compliance verification process with each provision of the Federal Agreement and Grant of Right of Way. • It will complete a report in May 2002 for compliance with the Trans-Alaska Pipeline Authorization Act and the Mineral Leasing Act of 1920. • In 2001, JPO evaluated Alyeska compliance with Grant Stipulation 2.6, Material Sites and concluded Alyeska is in compliance with both BLM and ADNR regulations.
U.S. Department of Transportation, Office of Pipeline Safety	1) Pipeline Safety Act 2) 49 CFR, Part 191 - Annual Reporting 3) 49 CFR Part 192 - Hazardous Gas Pipelines 4) 49 CFR, Part 193 - Liquefied Natural Gas Facilities 5) 49 CFR, Part 194 - Response Plans Onshore Pipelines 6) 49 CFR, Part 195 - Hazardous Liquid Pipelines 7) 49 CFR, Part 198 - Grants for Pipeline Safety 8) 49 CFR, Part 199 - Drug and Alcohol Testing	USDOT letter of April 15, 2002 to the BLM AO contains an enforcement summary for 2000 and 2001 that addresses Stipulation 3.2, Pipeline Safety Standards. Several enforcement cases remain open and some future actions are pending.
U.S. Environmental Protection Agency	1) The Clean Water Act 2) The Clean Air Act 3) Resource Conservation and Recovery Act 4) Toxic Substances Control Act 5) Clean Water Act as amended by Oil Pollution Act of 1990 6) Oil Spill Prevention Act 7) CFR 40, Protection of Environment, Part 112, Oil Pollution Prevention	EPA letter of August 29, 2001 to the BLM AO stated EPA has no outstanding compliance issues concerning Alyeska.
U.S. Coast Guard	1) 33 USC, Rivers and Harbors Act, Section 9 General Bridge Act of 1946 2) 33 CFR, Navigation and Navigable Waters, Part 114-115 3) 33CFR, Part 154 – Transferring Oil or Hazardous Materials in Bulk 4) 33 CFR, Part 156 – Oil and Hazardous Material Transfer Operations from Vessels 5) 33 CFR, Part 158 – Reception Facilities for Oil, Noxious Liquid Substances and Garbage	USCG report and letter of June 14, 2001 to the BLM Authorized Officer stated Alyeska's marine operations are in compliance with applicable federal regulations and existing Coast Guard policy.
U.S. Army Corps of Engineers	1) Federal Water Pollution Control Act 2) Clean Water Act, Section 404 3) Rivers and Harbors Act, Section 10	Corps of Engineers will provide a compliance report in anticipation of TAPS renewal.

COE resources co-located with the Joint Pipeline Office, JPO field staff sometimes conducts surveillances of projects covered by COE permits.

JPO is working with the Corps of Engineers to obtain a compliance report in anticipation of TAPS renewal.

Conclusion: As documented in JPO Surveillance Report No. ANC-02-S-011, there are no outstanding issues to be resolved other than obtaining the aforementioned compliance statement from the U.S. Coast Guard and the compliance report from the COE.

Section 22 – Transfer

Requirement: This section provides all the requirements and provisions for Secretarial approval of transfers in whole or in part of any right, title or interest in the Grant.

Discussion/Review: When a transfer of interest occurs the permittees must request approval from the AO in advance of all transfers of interest. Currently the U.S. Department of the Interior Regional Solicitor's Office Alaska Region, reviews all transfers of interest in TAPS submitted to the Department of the Interior. If any deficiencies are noted, the solicitor's office notifies the AO, who monitors compliance with Section 22 requirements. The BLM Corporate Qualifications Case File Record, AA-5722, was reviewed to verify compliance with Section 22. Only transfers of interest that occurred from 1996 through 2001 were reviewed. JPO Surveillance Report ANC-02-S-014 documented the following transfers of interest were requested for approval and approved by the Department of the Interior Secretary:

1) Atlantic Richfield Company (ARCO) to Phillips Petroleum Company, July 24, 2000

2) Mobil Alaska Pipeline Company to ARCO, December 31, 1996

3) British Petroleum to Phillips Petroleum Company, February 14, 2001

4) Mobil Alaska Pipeline Company to Williams Alaska Pipeline Company, June 17, 2000

Review and examination of transfer documents found:

- no voluntary passage of titles occurred without the prior written consent of the Secretary,
- all transfers of interest were approved in advance by the AO, and
- no audits occurred in connection with any transfers of interest.

Conclusion: There are no outstanding issues to be resolved.

Section 24 – Duty of Permittees to Abate

Introduction/Requirements:

A. Permittees promptly shall abate, either completely or, as the case may be, as completely as possible using their best efforts, any physical or mechanical procedure, activity, event or condition, existing or occurring at any time: (1) that is susceptible abatement by Permittees, (2) which arises out of, or could affect adversely, the construction, operation, maintenance or termination of all or any part of the pipeline system, and (3) that causes or threatens to cause: (a) a hazard to the safety of workers or public health or safety (including but not limited to personal injury or loss of life with respect to any person or persons), or (b) serious and irreparable harm or damage to the environment (including but not limited to

ABATEMENT according to *Webster's Dictionary*, means to put an end to, to nullify, or to reduce in degree or intensity. The language used in Section 24A is parallel to the language in Section 9C(1).

Undetected Threats

Section 24A talks about "abating…as completely as possible using their best efforts… any mechanical… condition… that threatens to cause…serious and irreparable harm to the environment."

The JPO views Alyeska's written agreement to use the Reliability Centered Maintenance (RCM) protocol and the completed studies to date as evidence of compliance with this aspect of Section 24 as well as best efforts to completely abate hidden threats.

areas of vegetation or timber, fish or other wildlife populations, or their habitats, or any other natural resource).

B. Permittees shall cause their respective agents, employees, contractors and subcontractors (at any tier) to observe and comply with the foregoing provisions of this Section.

Section 24(3)(a) is worker and public health and safety oriented. It overlaps and reinforces Stipulation 1.20. Section 24(3)(b) overlaps many stipulations but with the language of "serious and irreparable harm" is focused at consequential issues.

Methodology: JPO conducts extensive monitoring of the integrity, safety and environmental issues that could rise to the threats, harm, damage or loss discussed in this requirement. Compliance findings, orders and notices will often cite the overlapping stipulations.

JPO's evaluation of this section was therefore a review of issues related to the duty to abate.

Discussion/Results:

Compliance findings, orders and notices: Two notices that were open at the start of the 2001 work plan cycle were compulsory redesign of Valdez Marine Terminal's Vapor Control System and Audit Action Items (AAI).

VMT's Vapor Control System: The CMP Report, TAPS Maintenance Program 1999/2000 (January 2001) describes this issue and notice on pages 21 and 34-35. JPO monitored many of the required improvements and documented the results of this monitoring in 29 surveillance reports. JPO's Valdez Office built on these reports, reviewed Alyeska progress reports and coordinated with the U.S Coast Guard Marine Safety Office Valdez. The documented conclusions are in JPO Technical Report No. VMT-02-E-001. JPO closed the notice in Letter No. 02-004-DG.

Audit Action Items are discussed in TAPS Maintenance Program CMP Report 1999/2000 (pages 37-38). The key issue is AAI # 1955 that covers drawings update and change management. Documentation update deficiencies and AAI 1955 were reviewed in several prior CMP reports. JPO and Alyeska recently entered into a MOA and completed an internal field audit facilitating closure of the AAI.

The JPO findings (report JPO-00-E-031) related to the investigation of the death of a technician at the Valdez Marine Terminal, while not citing this requirement, could have implicated the duty to abate. The closure of this finding was discussed in JPO Assessment No. ANC-02-A-001.

The finding related to the year 2000 incidents at the Valdez Marine Terminal also could have cited this stipulation. In the assessment and subordinate engineering reports, JPO found that preventive actions and demonstrated performance during the recent project year supported closing the finding.

Further, the USCG completed a safety assessment to ensure that the portions of the TAPS over which the Coast Guard has jurisdiction were being maintained and operated to prevent incidents from occurring that could prove harmful to life, property, or the environment. The report discussed the berth spark and cavitation incidents and mentioned that these incidents prompted the assessment.

"The results of this on site review…conclude that all operations under Coast Guard jurisdiction are being conducted in a safe, consistent, and environmentally responsible

manner….Alyeska marine operations are in compliance with applicable federal regulations and existing Coast Guard policy," (*Final Report, Safety Assessment, Marine Portion of the Trans-Alaska Pipeline System, Conducted December 2000,* page 43).

Authorizations: AO approval of currency quality assurance plan and oil spill contingency plan are closely related with abatement to be deemed necessary for compliance. Both authorizations are current (Section 9 and Stipulation 2.14).

Other assessments and technical reports: Four reports (ANC-01-A-015, ANC-01-A-011, FBU-01-E-006 and ANC-02-A-003) cover restoration; fish and wildlife protection; clearing and pollution control, respectfully. Each covered issues that, if deficient, could rise to findings that this requirement was not violated. None revealed new or open deficiencies. JPO Report ANC 02-A-001 examined compliance with that broadly worded health and safety requirement and found no findings.

The after action report (released in March 2002) for the 2001 Milepost 400 spill caused by a bullet hole documented an interagency/Alyeska review of the incident. While lessons were learned and contingencies could be strengthened, Alyeska's response was consistent with the Permittees' duty to abate.

Corrective Action: The AO and SPC recently entered into an MOA addressing compliance, corrective action and change management. A major purpose of the MOA was to assure timely corrective action. This MOA and the related DNV report were previously discussed in Grant Section 9.

Contractors and Subcontractors (Section 24B): JPO monitoring looked at TAPS activities, whether performed by Alyeska employees, contractors or subcontractors. The issues discussed above included all tiers of employee and contractor performed activity. Further monitoring of this requirement will link closely to the RCM studies and Stipulation 1.18.1.

Conclusion: There are no outstanding issues to be resolved.

Section 28 – Nondiscrimination and Equal Employment Opportunity

Introduction/Requirements: These requirements require the Permittee to assure that no person shall be excluded from any activity, including employment based upon race, creed, color, natural origin or sex. Section 28B—E was superseded by 43 CFR Part 27 (September 22, 1977, letter from Secretary Cecil Andrus). The regulation requires the approval of EEO/Affirmative Action Plans, designating a minority business liaison, and establishing a Department of the Interior EEO complaint process.

Methodology: With the retirement of the long term DOI EEO Compliance Officer, the AO obtained the services of BLM Alaska Personnel Officer to assess compliance with Section 28.

Discussion/Results: The AO approved Alyeska's EEO/Affirmative Action program (ANC-01-A-004 February 4, 2002). This assessment also documented Alyeska's appointment of a minority business liaison. Many issues were informally resolved, either in conjunction with Alyeska's EEO complaint program or through direct involvement with Alyeska managers. No compliance findings were identified.

Section 28 vs. Section 29

Section 28—an equal employment opportunity and nondiscrimination provision—should be distinguished from Section 29, which recognizes the Permittee's pre-construction agreement to provide for Alaska Native employment and training in exchange for foregoing Native land selections in the pipeline corridor.

It is noted that the post construction to 1995, TAPS employment record of Alaska Natives was not good. A 1998 JPO audit of Alyeska's compliance to the ANUA discussed this and documented a compliance review of the first ANUA as well as recommended improvement of the second ANUA.

Alyeska Contracts			
Year	Total Contracts (in $s)	Native Contracts (in $s)	Percentage
1998	322,881,000	116,500,000	35
1999	316,498,000	123,434,000	39
2000	310,250,000	145,817,000	47
2001	354,993,000	170,862,000	48
Total	$1,314,622,000	$556,621,000	
Average	$328,655,500	$139,155,000	42%

Section 29 requirements focus on Alaska Native utilization and training. In addition, Alyeska's record of contracting with Alaska Natives requirement has been strong.

Conclusion: There are no outstanding issues to be resolved.

Section 29 – Training of Alaska Natives

Introduction/Requirement: The Permittees are required to enter into an agreement with the Secretary regarding recruitment, testing, training, placement, employment, and job counseling of Alaska Natives.

Methodology: The third Alaska Native Utilization Agreement (ANUA) — negotiated pursuant to Section 29 — was executed on October 15, 2001. The two prior ANUAs were executed in 1995 and 1998. Other JPO activities included follow up on an outstanding finding relating to prior notification of Native discharge actions (Section 29C) and following requirements of the ANUA. No assessment was completed this work plan cycle.

Discussion/Results: The 1995 to 2002 ANUA process is fulfilling the purpose of Section 29. Today there are more than 500 Natives working on TAPS (Alyeska Letter No. 02-18154, January 31, 2002), including employees of Alyeska and contractors. In 1993, 50 Alaska Natives worked for Alyeska, today that number is 150 — three-fold increase in Alaska Native employment at Alyeska. The requirements for training and pre-employment (Section 29B) are contained in the ANUA.

Advance notification when terminating Alaska Native employees was not consistently provided. Surveillance Report JPO-00-S-033 resulted in a finding on this issue which remains open. JPO Letter No. 02-002-CHC (January 15, 2002) reinforced this finding and called for corrective action. JPO Letter 02-014-DG (March 6, 2002) responded to Alyeska's initial corrective action plan and made additional requests.

Alyeska must submit regular reports to the AO under Section 29D and provisions of the ANUA. Alyeska Letter No. 02-18154 is one example as well as the submission of the Implementation Plan for Alaska Native Utilization Agreement, Alyeska Letter No. 02-18153 (January. 31, 2002). No findings or orders exist regarding Section 29D.

Conclusion: Alyeska is in compliance with Section 29A, B, D, and the employment aspects of C. After completing the corrective and preventive actions regarding advance notice of Alaska Native termination, there will be no outstanding issues to be resolved with Section 29.

Section 30 – Native and Other Subsistence

Introduction/Requirements: This section has three components:

1) To the extent practicable, Permittees shall not damage any fish, wildlife or biotic resources in the general area of the right of way upon which persons living in the area rely for subsistence purposes (Section 30A);

2) Permittees shall comply promptly with all requirements and orders of the Secretary to protect the interests of persons living in the general area of the

right of way who rely on the fish, wildlife and biotic resources of the area for subsistence purposes (Section 30A); and

3) Upon order of the Secretary, Permittees shall provide emergency subsistence and other aid as required by the Secretary… (Section 30B)

Methodology: Since no Secretarial orders have been issued, no assessment of requirements 2 and 3 was necessary. The review of the general duty to protect resources in the general area of the right of way relates to other Grant/Lease requirements and JPO monitoring reports. Compliance with resource related environmental stipulations and the environmental aspects of Section 24 are indicative of permittees' performance in not damaging subsistence resources while conducting TAPS activities.

Discussion/Results: See Section 24 and Stipulations 1.18.1 (Surveillance and Maintenance), 1.21 (Conduct of Operations) 2.2 (Pollution Control), 2.4 (Erosion Control), 2.5 (Fish and Wildlife Protection), 2.7 (Clearing), 2.8 (Disturbance of Natural Waters). 2.9 (Off right of way Traffic), 2.12 (Restoration), and 2.14 (Contingency Plans) for discussion of key related stipulations. No orders, notices or findings have arisen from these stipulations to question Alyeska's compliance with Section 30. The AO has not issued any order, notice or finding citing Section 30 since the inception of the CMP (1994 to date).

Section 30B provides a compensation mechanism available to the Secretary. The Secretary has not issued such a demand.

Conclusion: There are no outstanding issues to be resolved.

Faces of the Joint Pipeline Office

Marietta Houston works with the CMP database tracking information for JPO (JPO image).

Former Department of Interior officials and JPO's Ray Elleven (second from left), Alaska Department of Labor safety liaison, receive instructions from the ship's captain on running an escort response vehicle. Elleven monitors safety related issues for JPO (JPO image).

Alaska Right-of-Way Lease Sections

This report overviews Lessees' obligations to meet the legal and administrative requirements, terms, and conditions of the state right-of-way lease. JPO documented state lease monitoring in 22 surveillance reports and two assessment reports. The following pages highlight a sample of sections while Assessment Report JPO No. ANC-02-A-006 (March 2002) assesses compliance for all sections in the lease, except Section 16 (evaluated for compliance in a separate report).

The State Pipeline Coordinator (SPC) determined some of these legal provisions are administrative in nature and do not require continuous active monitoring or surveillance for compliance.

Section 3 – Rental

This section specifies the annual rent for the use of the state right of way. The lease established the initial charge for the first year's rent, and then provided that future rent would be adjusted based on a formal appraisal. Thereafter, the rental rate is subject to adjustment at five-year intervals with the next one due in 2002.

Requirement:

• Subsection A – Lessees shall pay to the state, annually and in advance, the fair market retail value of the right of way based on the appraised fair market value of the land.

• Subsection B – The initial charge for the first year's rental shall be $141,225;

Rental

Following discussions on December 4, 2001, ADNR executed an *Appraisal Review Statement* establishing the annual rent for 1997 to 2002 at $260,000. This resulted in an annual rental increase of $90,012 from 1997–2001, with a total rental difference for the five years of $450,060.

however, this amount shall be adjusted based on a formal appraisal conducted before January 1, 1975.

• Subsection C – The annual rental payment is subject to adjustment at five-year intervals and charges or adjustments shall be the reappraised fair market rental value of the land.

• Subsection D – Rental shall not be charged for any land acquired under AS 38.35.130 and conveyed-without cost to the state.

• Subsection E – For the year in which portions of the right of way are released to the state pursuant to Section 1, Subsection "d paragraph (ii) hereof, the state shall credit Lessees against the payment of future rental for a portion of the rental paid to the state for that year, the amount of the credit to be the portion of rental paid for that year attributable to the lands so reconveyed to the state reduced pro rata by the portion of the lease year which elapsed before the reconveyance.

Background: Annual advance payments are required. A review of ADNR Revenue and Billing records documented the Lessees' timely payment of the annual rental. The annual rent, due by May 3, has been received every year. The most recent five-year reappraisal was conducted in 1997. The annual rental amount was adjusted to $288,900 based on the 1997 reappraisal. This rental readjustment was the subject of an administrative, and then judicial appeal. The parties agreed to retain the rental amount of $169,998 (the annual rental amount for years 1992–1997), as the annual rental payment, until resolution of the reappraisal amount. Upon resolution, any necessary adjustments for back rent would be made.

ADNR formally corresponded (December 21, 2001) the requirement for the Lessees to pay the additional $450,060 within 30 days of signature of a conformed agreement. In addition, the Lessees seek to work with ADNR and the BLM in developing a common appraisal methodology for future TAPS right-of-way appraisals, to minimize or avoid the potential for conflicts.

Discussion/Results: JPO Surveillance Report No. ANC-02-S-024 concluded that Lessees are not out of compliance with Section 3.

Conclusion: There are no outstanding issues to be resolved.

Section 9 – Compliance with State Laws and with Regulations and Orders of the Alaska Pipeline Commission

Requirement: Lessees shall construct and operate the pipeline according to applicable state laws and lawful regulations and orders of the Alaska Pipeline Commission.

Discussion/Results: JPO Surveillance Report No. ANC-02-S-030 verified compliance from other agencies and concluded there is no evidence of Permittee noncompliance with Section 9.

• The Regulatory Commission of Alaska (RCA) administers Alaska Statute 42.06, the Pipeline Act, and regulates intrastate oil pipeline carriers under Alaska Statute 42.06. An entity may not construct or operate an intrastate oil pipeline until it has obtained a certificate of public convenience and necessity from the RCA. The RCA may attach conditions to a certificate and may revoke the certificate if the conditions are not met. An interest in an intrastate oil pipeline may not be transferred without RCA

approval. A connection to an intrastate oil pipeline may not be made without RCA permission. Under AS 42.06, an oil pipeline carrier is required to furnish and maintain adequate, efficient and safe service and facilities, and is prohibited from discriminating among its customers. It must file a tariff of rules and rates and run its operations strictly in accordance with its tariff. The rates of service must be just and reasonable. The RCA has continuing oversight and may investigate violations upon complaint or on its own motion.

Discussion/Results: In RCA's TAPS Compliance Report (November 19, 2001) RCA stated from 1999 to the date of the report, there were no findings of any violation of AS 42.06 by the Lessees.

• The Alaska Department of Environmental Conservation (ADEC) administers the air quality program and solid waste program for the state. Alyeska's TAPS operations and support activities must meet environmental regulatory requirements in several ADEC program areas, including air quality, water quality, drinking water, wastewater disposal, oil and hazardous substance pollution prevention and response, and solid waste management. Alyeska employs a sufficient staff of qualified professional environmental scientists and engineers, who are supplemented by written guidance and procedures and personal training, to guide and carry out the company's environmental compliance efforts. ADEC's regulatory programs use an electronic database to track enforcement actions. ADEC queried its database for all records involving Alyeska.

Discussion/Results: As of January 2002, ADEC had no active enforcement related corrective action plans or investigations involving Alyeska. Alyeska corrected all violations that occurred between 1999 — 2001.

• The Environmental Protection Agency (EPA) administers several environmental programs originating from federal statutes and regulations that apply to TAPS. Many of EPA's regulatory programs are administered in close coordination with the ADEC, providing a comprehensive picture for evaluating compliance with applicable environmental pollution control regulations. EPA programs cover air quality, water quality, hazardous and solid waste, control and use of certain hazardous chemicals and oil spill prevention preparedness and response.

Discussion/Results: In a letter to the BLM AO (August 29, 2001), EPA stated the agency had no outstanding compliance issues, i.e. notices of violation or compliance orders relative to Alyeska.

•The Alaska Department of Public Safety, Division of Fire Prevention (ADPS, DFP) statutes, regulations, standards, codes, and policies that apply to TAPS are 1) Alaska Statute 18.70 that provides the function and duties of the DPS with respect to fire prevention and protection, and 2) 13.AAC 50-55 that adopts the building, fire and mechanical codes and their associated standards. 13.AAC 50-55 also adopts various National Fire Prevention Association (NFPA) standards by exception and as referenced by the three building codes.

Discussion/Results: JPO is acquiring a new agency liaison to monitor compliance with ADPS-DFP regulations concerning TAPS. JPO is coordinating with ADPS-DFP to obtain a compliance report prior to Lease renewal.

• The Alaska Department of Fish and Game (ADF&G) administers Alaska

Regulatory Commission of Alaska

The Alaska Pipeline Commission was renamed the Alaska Public Utilities Commission in 1980 and renamed again in 1999 as the Regulatory Commission of Alaska.

Alaska Department of Public Safety, Division of Fire Prevention

The areas of overlap between the Department of Fire Prevention authorities and the State right-of-way lease for TAPS are:

1) Section 16A – Construction Plans

2) Section 18 – Reimbursement of State Expenses to the extent that under AS 18.70 the Department of Public Safety can order the abatement of fire hazards.

3) Section 23 – Compliance With Notice to Proceed

4) Section 24 – Temporary Suspension Orders of the Pipeline Coordinator

5) Stipulation 1.3.1, Pipeline Coordinator; Stipulation 1.7.1.1, Notices to Proceed; Stipulation 1.17, Fire Prevention and Suppression; Stipulation 1.18, Surveillance and Maintenance

Statute (AS) 16 and 5 AAC 95, that require certain activities in rivers and streams supporting resident or anadromous fish receive prior written approval by the ADF&G. Approval is in the form of a fish habitat permit, administered by the department's Habitat and Restoration Division. The approval authorities — AS 16.05.840 or AS 16.05.870— ensure that all fish are provided free and efficient upstream and downstream movement in freshwater systems and protect anadromous fish and their freshwater habitats. Fish habitat permits typically contain stipulations designed to avoid or minimize impacts to fish resources and habitats within specified time frames. The ADF&G also reviews project proposals under various state and federal laws including the Alaska Coastal Management Program and the Fish and Wildlife Coordination Act and reviews oil spill contingency plans pursuant to AS 46.04.030(j).

Discussion/Results: ADF&G issued its compliance report (JPO Assessment Report No. ANC-01-A-011) that documented its record review of Alyeska's compliance with ADF&G requirements from January 1998 to September 2001. The review included fish habitat permits and notices of violation. ADF&G concluded that as of November 2001, there were no outstanding issues related to the State Lease, and that Alyeska is not out of compliance with Stipulation 2.5. Through a proactive TAPS environmental, surveillance and maintenance program by Alyeska, and the continued diligent surveillance program by JPO, managers can help ensure this present level of compliance will continue.

• The Alaska Department of Labor and Work Place Development (ADLWD) completed a compliance report (January 7, 2002) that stated Alyeska had no outstanding compliance issues. The report did identify that in 1999, 426 Notices of Violations of the National Electric Code were issued. The violations, though, were all corrected. The ADLWD report documented the following:

1) *Administrative Services Division* provides management information and support services to the department, develops and distributes labor market and population information, and conducts labor force research. There are no compliance issues.

2) *Labor Standards and Safety Division*

a. The Mechanical Inspection Section provides protection by inspecting and certifying amusement rides, boiler and pressure vessels, and elevators. The section also inspects electrical and plumbing installations and issues certificates of fitness to persons performing electrical and plumbing work to ensure the competency of persons performing the work.

Compliance Issues: There were 821 electrical inspections of Alyeska and its contractors since January 1999 that resulted in 426 notices of violations. Alyeska or its contractor had 30 days to correct the NOVs. The violations were corrected and there are currently no outstanding compliance issues.

b. Occupational Safety and Health Section protects Alaska workers from industrial accidents and job-related illness. Alyeska was cited for seven violations, mostly non-serious, that have all been corrected. Two of the violations were the result of a fatal vehicle accident on August 16, 2000. Those issues were resolved.

c. Wage and Hour Section enforces and administers Alaska labor laws to ensure workers are justly compensated for labors and safeguarded from unfair practices. There are no compliance issues.

3) Vocational Rehabilitation Division assists individuals with disabilities to overcome barriers to employment, independence, and community life. There are no compliance issues.

4) Workers Compensations Division ensures that Alaska workers who suffer injury or disease from their employment receive medical care and cash wage benefits. There are no compliance issues.

• Alaska Department of Natural Resources (ADNR) – manages all state-owned land, water, and natural resources, except fish and game, for Alaska. The State Pipeline Coordinator's Office oversees the Trans-Alaska Pipeline System and other oil and gas pipelines in the state. ADNR administers the following for TAPS:

1) The State Right-of-Way Lease – ADNR is systematically reviewing and examining all sections and stipulations in the right-of-way Lease to determine compliance.

2) Alaska Statute 41.35 and implementing regulations 11 AAC (Alaska Administrative Code) contain state legislation governing historic preservation and management of historical, prehistoric and archaeological sites, as set forth in the Alaska Historic Preservation Act of 1971. An ADNR, Office of History and Archaeology, report was completed in December 2001 addressing how the state determines the cultural resources monitoring along the pipeline, according to the statutes and regulations. JPO is coordinating with SHPO to obtain a compliance report prior to Lease renewal.

3) Title 27.19, Reclamation and Mining – JPO Assessment Report No. ANC-01-A-009 evaluated Alyeska's compliance with federal Grant Stipulation 2.6, compliance with federal and state material sale contracts, and the mining and reclamation plan for each site. The assessment concluded Alyeska is not out of compliance with BLM and ADNR regulations.

4) Title 38, Issuance of Land Use Authorizations– There is no evidence of noncompliance with this Alaska Statute.

5) Title 46 Water, Air, Energy and Environmental Conservation – ADNR, ADEC, and DGC all have administrative responsibilities under Title 46. None of the agencies currently have outstanding compliance issues.

6) 11 AAC Natural Resources – Implementing regulations for AS 41.35, the Alaska Historic Preservation Act of 1971. There is no evidence of noncompliance.

• The Division of Governmental Coordination (DGC) implements the Alaska Coastal Management Program for the State of Alaska coordinating coastal projects. DGC will complete a report during the second quarter of 2002. The ACMP coastal consistency review for TAPS renewal will coincide with the Draft Environmental Impact Statement release.

• Alaska Department of Transportation and Public Facilities provides ongoing services for provision for air, water, and highway transportation, operation and maintenance of two of Alaska's major international airports, operation and maintenance of state buildings and related facilities. JPO is coordinating with the ADOTPF to obtain a compliance report prior to Lease renewal.

Alaska Department of Fish & Game

Fish passage problems at drainage structures along TAPS are typically identified through surveillance and then scheduled for remedial action to correct any deficiency. Before working in fish-bearing waters, Alyeska applies to ADF&G for a Fish Habitat Permit.

Between 1997 and 1999, ADF&G issued a mean average of 19 fish habitat permits annually to Alyeska for its activities in fish-bearing waters. Very few permits issued between 1997 and 1999 were for repairing or maintaining cross-channel structures. Minor maintenance of culverts and low water crossings, however, was accomplished under the conditions and stipulations of a line-wide fish habitat permit (FG 94-SPO-005, issued by ADF&G).

Alaska Coastal Management Program

The ACMP applies to projects within or affecting Alaska's coastal zone. The statewide standards (6 AAC 80) and coastal district enforceable policies of the ACMP provide direction for coastal resources and uses, such as:

- *Coastal development – whether a project is water dependent or water related,*
- *Habitats – such as wetlands, tide flats, or streams,*
- *Air, land, and water quality,*
- *Transportation and utility routes and facilities,*
- *Timber harvest,*
- *Mining and mineral processing,*
- *Subsistence opportunities,*
- *Recreation designations,*
- *Geophysical hazard areas,*
- *Historical and archaeological resources,*
- *Energy facilities, and*
- *Fish and seafood processing.*

Section 11 – Transfer, Assignment, or Other Disposition

Requirements:

• Subsection A – Lessees shall not transfer, assign, or dispose of in any manner, directly or indirectly, or by transfer of control of the carrier corporation, their interest in this Lease, any rights under this Lease or the pipeline subject to this Lease to any person other than another owner of the pipeline (including subsidiaries, parents and affiliates of the owners), except to the extent that the Commissioner, after consideration of the protection of the public interest (including whether the proposed transferee is fit, willing and able to perform the transportation or other acts proposed in a manner that will reasonably protect the lives proper and general welfare of the people of Alaska), authorizes. The Commissioner shall not unreasonably withhold his consent to the transfer, assignment or disposal.

• Subsection B – Lessee transferring in whole or in part its right, title and interest in the right of way and this Lease shall be released from its liabilities and obligations (accrued, contingent or otherwise) to the state under this Lease to the extent and limit that the transferee assumes unconditionally the performance and observance of each such liability and obligation; provided, that if such transferee is any person other than another owner of the pipeline, a Lessee and/or its guarantor or guarantors shall be released from its and/or their liabilities and obligations to the state under this lease to the extent and limit assumed by the transferee in a transfer authorized by the Commissioner under Subsection A of this section.

Background: The State's ADNR Commissioner delegated the authority to review and approve transfers, assignments, and dispositions of interest in the right-of-way Lease for the TAPS to the State Pipeline Coordinator. The SPC reviewed and approved the transfer of interest from Mobil Alaska Pipeline Company to Williams Alaska Pipeline Company, L.L.C. on July 6, 2000 with a corrected assignment executed January 8, 2001. The other transfers were between existing owners and did not require approval by the state under Section 11.

Discussion/Results: Lessees must acquire prior consent and authorization from the Commissioner to transfer, assign, or dispose any interest or rights in the Lease other than to another owner of the pipeline. JPO Surveillance Report No. ANC-02-S-031 concluded the JPO verified all Lessees are in full compliance with both subsection requirements of Section 11.

Conclusion: There are no outstanding issues to be resolved.

Section 18 – Reimbursement of State Expenses

This provision requires Lessees to reimburse the state for all reasonable costs incurred by the state in monitoring the pipeline system.

Requirement:

• Subsection A – Lessees shall reimburse the state for all reasonable costs incurred by the state in monitoring construction (including but not limited to design review) and termination of all or any part of the pipeline system. The Commissioner shall administer this Lease to reasonably assure that unnecessary

employment of personnel and needless expenditure of funds are avoided.

• Subsection B through F provides details and specifics relating to this requirement.

Discussion/Results: JPO Surveillance Report No. ANC-02-S-036 examined and reviewed government billing and Lessees' payment records from the first quarter of fiscal year 1999 through the first quarter of fiscal year 2002. The Lessees reimbursed Alaska for all expenses incurred and billed by the state.

Conclusion: There are no outstanding issues to be resolved.

Section 22 – Duty of Lessees to Prevent or Abate

Requirement:

• Subsection A – Lessees shall prevent or, if the procedure, activity, event or condition already exists or has occurred, shall abate, as completely as practicable, using the best practicable technology available, any physical or mechanical procedure, activity, event or condition, existing or occurring at any time (1) that is susceptible to prevention or abatement; (2) that arises out of, or could affect adversely, the construction, operation, maintenance or termination of all or any part of the pipeline; and (3) that causes or threatens to cause (a) a hazard to the safety of workers or to the public health or safety (including but not limited to personal injury or loss of life with respect to any person or persons) or (b) serious harm or damage to the environment (including but not limited to water and air quality, areas of vegetation or timber, fish or other wildlife populations, or their habitats, or any other natural resource).

• Subsection B – Lessees shall cause their respective agents, employees, contractors and subcontractors (at any tier) to observe and comply with the foregoing provisions of this section.

Background: The duty to prevent is a requirement expressed in multiple provisions of the Lease including most significantly Section 16, Section 22, and Stipulation 1.18.1, Surveillance and Maintenance. Based on the plain language of these provisions, the SPC interprets the Lease to require that Lessees conduct all construction, operation, maintenance, and termination activities in a manner that protects public and worker health and safety, or the environment by preventing any procedure, activity, event, or condition which could or does result in serious or significant harm to these values and amenities. If a condition cannot be prevented, it must be abated as completely as practicable using the best practicable technology available. Although not specifically mentioned under related requirements in the provision descriptions, the duty to prevent and abate noncompliances applies to all Lease sections and stipulations whose express or implicit purpose is to protect health, safety, or the environment, including provisions relating to pipeline integrity. Preventing all serious or significant harm to public and worker health and safety and the environment is the goal of the SPC, even though it may not always be practicable. However, by working toward prevention with a commitment to continually improving performance, a high degree of success is achievable.

This section is oriented towards worker and public health and safety and clearly overlaps and reinforces Stipulation 1.20.

Section 11 Transfers

The state record reflects the following transfer activities among TAPS owners.

• November 13, 1987 notification of a name change from SOHIO Pipe Line Company to Sohio Alaska Pipeline Company.

• December 23, 1987 notification of a planned merger of BP Pipelines, Inc. with Sohio Alaska Pipeline Company.

• Notification on August 8, 2000 of the name change of ARCO Transportation Alaska, Inc. to Phillips Transportation Alaska, Inc.

• October 25, 2001: BP Pipelines (Alaska) Inc. sold a 3.0845% undivided interest in TAPS to Phillips Transportation Alaska, Inc.

• Transfer from Exxon Pipeline Company to Exxon-Mobil Pipeline Company recently.

Undetected Threats

Section 22A talks about "abating…as completely as possible using their best efforts…any mechanical…condition …that threatens to cause…serious and irreparable harm to the environment." The JPO views Alyeska's agreement to use the Reliability Centered Maintenance (RCM) protocol and the completed studies to date as evidence of compliance to this aspect of Section 22 as well as best efforts to completely abate hidden threats.

The SPC does not actively monitor Section 22 since it is mainly a legal provision of the Lease. JPO conducts extensive monitoring and field audits of the integrity, safety and environmental issues that could rise to the threats, harm, damage or loss discussed in this requirement.

Orders/Notices: None of the orders or notices issued by the SPC in 1999-2000 cited Section 22. Two notices were open at the start of the 2001 work plan cycle:

- Compulsory redesign of Valdez Marine Terminal's Vapor Control System, and
- VMT's Vapor Control System is discussed in JPO's CMP Report, TAPS Maintenance Program 1999/2000 (January 2001, pages 21, 34 – 35). JPO monitored many of the required improvements and documented the results of this monitoring in 29 surveillance reports. JPO built on these reports, reviewed Alyeska progress reports and coordinated with the U.S Coast Guard) Marine Safety Office Valdez. Conclusions were documented in JPO Technical Report No. VMT-02-E-001. JPO closed the notice with JPO Letter No. 02-004-DG.

Audit Action Items: The issue is AAI 1955 covering drawings update and change management which has been covered by several prior CMP reports (i.e., TAPS Maintenance Program CMP Report 1999/2000, pages 37-38). JPO and Alyeska recently entered into an MOA and completed an internal audit, closing this item. See federal Section 24 for information about various Valdez Marine Terminal incidents.

Authorizations: Two authorizations, quality assurance plan approval and oil spill contingency plan approval, cross-related sufficiently with abatement to be deemed necessary for compliance. Both authorizations are current.

Other assessments and technical reports: JPO reports (ANC-01-A-015, ANC-01-A-011, and FBU-01-E-006) cover restoration, fish and wildlife protection, clearing and pollution control respectfully. Each covered issues that, if deficient, could rise to findings against this requirement. None revealed new or open compliance findings. JPO Assessment Report ANC 02-A-001, looked at compliance with that broadly worded health and safety requirement and found no compliance findings. The after action report for the 2001 Milepost 400 oil spill caused by a bullet hole documented an interagency/Alyeska review of this incident. While lessons were learned and contingencies can be strengthened, nothing about Alyeska's response could be construed as inconsistent with the Permittees' duty to abate.

Contractors and subcontractors (Section 22B) – JPO monitoring looked at TAPS activities, whether performed by Alyeska employees, contractors or subcontractors. The issues discussed above include all tiers of employee and contractor performed activity.

Conclusion: There are no outstanding issues to be resolved.

Section 23 – Compliance With Notices to Proceed

Requirement: All construction of the pipeline on state land undertaken by Lessees shall comply in all respects with the provisions of NTPs issued by the State Pipeline Coordinator.

Background: This section applies during all phases of TAPS and to all TAPS construction on state land requiring new right of way, a design basis change to a critical system component in any part of the pipeline system, or when directed by the SPC. Lessees shall comply in all aspects with provisions of notices to proceed issued by the SPC, unless the SPC has given written notice of an alteration as contemplated in Stipulation 1.7.1.3. The SPC currently requires an NTP submission only for facilities requiring new right of way and for critical system modifications which require a change in the approved design basis (DB-180), however, this document does not limit the SPC's broad authority under Stipulation 1.7.1.1 and Stipulation 3.9 to require NTP submittals for pipeline construction on state land.

By JPO Letter No. 97-074-JS to Alyeska (October 7, 1997) the JPO clarified what actions qualified as construction requiring a notice to proceed. The SPC currently requires an NTP when construction requires new right of way or when a construction project directly affects a design basis change to a TAPS critical system. Stipulation 1.7.1.1 forbids Lessees from initiating any construction of the pipeline system without receiving approval of the pipeline coordinator through an NTP.

JPO Technical Report No. FBU-02-E-001 (January 2002) documented the research of past records involving compliance with issued notices to proceed. The CMP Report on the TAPS Construction Program 1999/2000, measured sections and stipulations of the Lease, including Section 23. All instances of noncompliance with notices to proceed have been corrected and the findings closed.

JPO also reviewed the recent construction history of the Valdez Marine Terminal. There were no notices issued at the terminal since construction nor has there been any construction or uses identified that would require an NTP. Therefore, Alyeska is in compliance with Section 23 of the state Lease for the TAPS at VMT.

Conclusion: There are no outstanding issues to be resolved.

Notices to proceed

Historical records were researched to determine Alyeska's compliance with Section 23. The NTP index shows that 4,056 notices were issued from start of construction to present. Records revealed only four instances of noncompliance with NTP special requirements.