BP-HILCORP TRANSACTION
STATE AUTHORITY AND REGULATORY PROCESS

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INTRODUCTION

Starting with the discovery of commercial quantities of oil in the Swanson River field on the Kenai Peninsula in 1957, major oil and gas corporations were the main players developing the state's largest oil and gas fields while independent companies developed smaller fields. This began changing as, over the years, the Alaska subsidiaries of major corporations transferred some of their long-held state oil and gas leases and assets to various independent companies. Now, in 2020, a major corporation is divesting itself of all its oil and gas interests in Alaska. In August 2019, BP agreed to sell its entire Alaska business to the nation's largest independent oil and gas company, Texas-based Hilcorp Energy Company (Hilcorp). The transfer of all of a major corporation's North Slope interests and assets to an independent company is significant and is a first for Alaska.

Due to multiple mergers over the past few decades, BP's exit leaves just two remaining major corporations operating on Alaska's North Slope – ConocoPhillips and ExxonMobil. Major oil and gas corporations are typically vertically integrated with operations in upstream exploration and production, midstream transportation of the resource, and downstream refining and marketing. Major corporations are large with a deep pool of experienced employees and financial resources; and they often focus on large-scale, long-term projects. Independent companies usually are non-integrated with a smaller resource base than the major corporations, and generally focus on smaller-scale projects, including reviving declining mature oil and gas fields. The divestiture of a major corporation of its mature assets to an independent company with expertise in enhancing production from declining reservoirs is a common occurrence as large fields enter their decline phase, as is happening on the North Slope.

Through legislative hearings held to date and public comments, several issues of particular concern about the BP-Hilcorp Transaction (Transaction) emerged. Among the concerns expressed by legislators, individuals and public interest organizations were reservations about Hilcorp's financial capability to take on BP's assets and fulfill its obligations to the state, including: (1) its capacity to fulfill oil and gas lease obligations; (2) its ability to respond to and cover costs should there be a major accident or oil spill; and (3) the company's ability to fund future dismantlement, removal and restoration (DR&R) at the end of North Slope production. In addition to questions about Hilcorp's financial capability, concerns were raised about Hilcorp's past record of regulatory violations in Alaska and their ability to operate the newly acquired assets safely. Due to these and other concerns, some legislators and members of the public called for the public disclosure of Hilcorp's financial information and other data that is held confidential by regulatory entities under various confidentiality provisions in state law.

Multiple state agencies and other state regulatory bodies considered these and other issues through their procedures for the transfer of BP's state oil and gas leases, permits and other authorizations to Hilcorp subsidiaries operating in Alaska. In December 2019, Governor Dunleavy established a "Governor's Oversight Committee" (GOC) on the BP-Hilcorp Transaction to provide general oversight and information to the Governor on the Transaction. The GOC consists of commissioners or their designees from the departments of Natural Resources (Chair), Environmental Conservation, Fish and Game, Labor and Workforce Development, Commerce, Community, and Economic Development, and Revenue; the state Attorney General or designee; and the Governor's Office of Policy & Communications.[1]

On June 29, 2020, the commissioners of the Department of Natural Resources and Department of Environmental Conservation announced the approval of the transfer of BP's state

oil and gas leases to Hilcorp. As of August 2020, other state entities with jurisdiction over the Transaction are continuing their review.[2]

I. Content of Report

This report provides an explanation of each state entity's authority and regulatory process for transfers of Alaska oil and gas assets and how each was applied to the BP-Hilcorp Transaction. In the course of drafting the report, questions regarding agency procedures were submitted to the agencies and the information provided was incorporated into the applicable sections.

The final section of this report identifies state laws that may be amended or added as a way to address changing North Slope oil and gas operations, particularly in relation to future large-scale asset transfers. In the future it is likely that Alaska oil and gas assets will be subject to more transfers similar to the Transaction as well as transfers among independents of varying sizes. Issues identified in the current Transaction offer an opportunity to consider possible legislation that could provide an improved process for future asset transfers.

II. Legislature's Role

The Alaska State Legislature has no statutorily established approval authority over the BP-Hilcorp Transaction or other such transfers of Alaska oil and gas assets. However, legislators can provide oversight to ensure that Alaskans' best interests are protected. Legislators can assess the potential impacts of a transfer, hear the concerns of Alaska residents, ask questions of the companies and state agencies, request information, and help ensure that all state authorities are being implemented in a way that protects the public interest. Legislative oversight of oil and gas

asset transfers is particularly important as very few of the state authorities governing transfers have requirements for public involvement.

Should the Legislature find it necessary, there may be the option to introduce a resolution identifying legislators' concerns with a proposed transfer and possible agency actions to address those concerns. There could also be the option to introduce legislation to deal with significant issues or to mitigate significant adverse impacts to the public interest that cannot be resolved through existing law.

BIO

Lisa Weissler is an attorney with almost 40 years public service experience in Alaska. Her experience includes working as legislative staff for fourteen years, with her first session in 1981 and her last in 2017. Most of her legislative work concerned natural resource and oil and gas issues. She also served as an Assistant Attorney General for the Department of Law Oil and Gas section and for the Alaska Coastal Management Program (ACMP), and as a Policy Analyst for the Office of the Governor during the Walker administration. In the 90s, Weissler served as a Special Assistant for the Alaska Department of Natural Resources primarily adjudicating administrative appeals to the commissioner and was an ACMP Project Analyst and Coastal Program Coordinator.

BP-HILCORP TRANSACTION

On August 27, 2019, BP announced an agreement to sell its entire business in Alaska to Hilcorp for a total of $5.6 billion. The main reason cited was that the sale supported BP's $10 billion divestment program and advanced the corporation's strategic agenda.[3]

Even with the pandemic and plummeting oil prices, the Transaction continued moving forward, albeit with some adjustments. According to an April 2020 announcement by BP, while the price remained the same, sale terms were renegotiated to modify the phasing of payments.[4]

The BP-Hilcorp Transaction involves the sale of BP upstream and midstream companies' stocks and assets to Hilcorp subsidiaries. In oil parlance, the North Slope field wells and production facilities are referred to as "upstream" assets. "Midstream" assets are transportation pipelines that move oil and gas from the fields through Alaska to market. The tanker transportation system from Valdez is not part of the Transaction.

Hilcorp's assumption of all of BP's North Slope assets is a massive undertaking. The upstream interests that will be sold to Hilcorp are BP Exploration (Alaska) (BPXA) interests in the state Prudhoe Bay, Point Thomson and Milne Point units; the federally leased Liberty unit; and nineteen ANWR leases issued by the Arctic Slope Regional Corporation. Hilcorp will purchase 100 percent of BPXA stock, and so acquire the company outright; the name will be changed from BPXA to Hilcorp North Slope, LLC. At the conclusion of the Transaction, Hilcorp will have two operating companies in Alaska, the existing Hilcorp Alaska, LLC and Hilcorp North Slope. Hilcorp Alaska will operate its existing and acquired North Slope Milne Point and Liberty holdings along with its existing Northstar and Endicott holdings and its interests in Cook Inlet. Hilcorp North Slope will operate the Prudhoe Bay Unit holdings.

BP's midstream interests are being sold to Hilcorp's midstream subsidiary, Harvest Alaska. BP Pipelines Alaska Inc. (BPPA) is selling its interests in the Trans-Alaska Pipeline System (TAPS); the Alyeska Pipeline Service Company; the TAPS terminal tankage in Valdez; and the Prince William Sound Oil Response Corporation. BP Transportation Alaska Inc. (BPTA) is selling its share in the Milne Point Pipeline and membership interest in the Point Thomson Export Pipeline (PTE). BP Alaska LNG LLC (BPALL) will transfer its one-third interest in the Alaska Liquefied Natural Gas Project for the potential transport of Alaska's North Slope natural gas resources to market.

BP-Hilcorp Transaction Summary

BP Subsidiaries and Interests		Hilcorp Subsidiaries
BP Exploration (Alaska) Inc. (BPXA) - Prudhoe Bay (26.36%) – state oil & gas leases (Hilcorp will acquire all of BPXA)	to	Name change from BPXA to Hilcorp North Slope, LLC
BP Exploration (Alaska) - Point Thomson (~32%) – state oil & gas leases - Milne Point (50%) – state oil & gas leases - Liberty Unit (50%) – federal oil & gas leases - 19 ANWR exploration leases (50%) – issued by Arctic Slope Regional Corporation	to	Hilcorp Alaska, LLC
BP Pipelines (Alaska) Inc. (BPPA) - TAPS interest (48.4%) - Alyeska Pipeline Service Company (~49.1%) - TAPS Valdez terminal tankage (47.6%) - Prince William Sound Response Corporation (25%)	to	Harvest Alaska, LLC
BP Transportation (Alaska) Inc. (BPTA) - PTE [Pt. Thomson] Pipeline, LLC (32%) - Milne Point Pipeline, LLC (50%)	to	Harvest Alaska, LLC
BP Alaska LNG LLC (BPALL) - One-third interest in Alaska LNG Project LLC (Proposed Alaska Liquified Natural Gas Project for transporting North Slope gas to market)	to	Hilcorp Alaska, LLC

STATE AUTHORITIES SUMMARY

STATE ENTITY	GENERAL JURISDICTION	AUTHORITY	Public Notice Required
Department of Natural Resources (DNR)	Surface land use	Oil and Gas Lease Assignments	No
		Change of Unit Operator	No
		Transfer of Pipeline Right-of-Way Leases	No
		Transfer of land use permits	No
		Authorization for Plan of Operations	No
Alaska Oil and Gas Conservation Commission (AOGCC)	Subsurface use	Designation of Operator	No
		Bonding	No
Regulatory Commission of Alaska (RCA)	Intrastate oil and gas transportation pipelines	Certificate of Public Convenience and Necessity	Yes
Department of Environmental Conservation (DEC)	Pollution control	Oil Discharge and Contingency Plan	Yes
		Proof of Financial Responsibility	No
		Contaminated Sites Liability Responsibility	No
Alaska Gasline Development Corporation (AGDC)	Development of North Slope natural gas pipeline projects	Represent State of Alaska in North Slope natural gas pipeline projects negotiations.	No

- The Department of Revenue and the Department of Labor and Workforce Development participated in oversight of the Transaction but were not involved in any authorization transfers.

- For the Department of Fish and Game, approximately 62 Fish Habitat permits may be transferred from BP to Hilcorp. Since the upstream portion of the Transaction is a stock sale, DFG will reissue BPXA's existing permits under the new name, Hilcorp North Slope, after the Transaction closes.[5]

DEPARTMENT OF NATURAL RESOURCES

The Alaska Department of Natural Resources (DNR) is the agency responsible for managing surface land use, including implementing state oil and gas leasing laws. Under the Statehood Act of 1958, state mineral rights cannot be sold, only leased. To that end, Article VIII, Section 12 of the Alaska Constitution requires the state legislature to establish a system for leasing oil and gas, coal and other minerals. The first oil and gas leasing laws were enacted in the 1957 Alaska Land Act when Alaska was still a territory. In 1959, the new state amended the Alaska Land Act and adopted oil and gas leasing regulations and the state's first oil and gas lease form known as the DL-1 lease. Today's version of the Alaska Land Act vests the DNR commissioner with broad authority to establish the procedures and regulations necessary to carry out the Act, including implementing the laws governing the leasing and development of the state's oil and gas lands and resources.

As a general matter, oil and gas leases grant private companies the right to explore for, develop, and produce the state's publicly owned oil and gas resources. The companies use their own financial resources for costly exploration and development activities, take the financial risks of a dry hole and development cost overruns, and produce, transport and market the oil or gas if commercial quantities are found. In exchange for their efforts, companies retain a portion of the profit from the sale of the produced oil or gas. In exchange for giving a company the right to develop and profit from the state's resources, the state accrues revenue for the benefit of Alaskans through bonus bids in competitive lease sales; taxes established by law; and rent and royalty established in statute and set in contract through oil and gas leases.

While statutes and regulations can be changed through the legislative and administrative process as needed, oil and gas leases constitute a contract between the state and oil companies

that can be changed only with the agreement of all the parties. This means that the lease terms control once a lease is signed by the state as lessor and an oil company as lessee, subject to applicable statutes and regulations as specified by the lease.

I. Oil and Gas Lease Assignments

One of DNR's primary responsibilities in the BP-Hilcorp Transaction was deciding whether to approve the assignment of BP's 176 North Slope oil and gas leases to Hilcorp. The process for this decision is largely established by DNR's oil and gas leasing regulations. Under the Alaska Land Act, there is only a very general statute addressing lease assignments from one party to another. AS 38.05.920 provides that "all contracts of purchase or lease of land or interest in land may be, on the affirmative approval of the director, assigned or subleased in whole or in part in writing by the contract holder or lessee..." This language is essentially unchanged since it was first introduced in the 1957 territorial version of the Alaska Land Act. Based on the general authority granted by the statute, DNR has adopted oil and gas lease assignment regulations in 11 AAC 82.605 to 82.630. The regulations and relevant lease terms govern the department's process and requirements for assigning BP's North Slope oil and gas leases to Hilcorp.

Decision-making Process

11 AAC 82.605 grants the DNR commissioner the sole authority to approve or disapprove an oil and gas lease assignment. The regulation requires that the commissioner approve a transfer of an undivided interest in a lease "unless the commissioner makes a written finding that the transfer would adversely affect the interests of the state or the application does not comply with applicable regulations." The written finding denying an application must include the reasons for the denial. For a divided interest in a lease, the commissioner will

disapprove a transfer unless the transfer would not adversely affect the interests of the state, and it complies with applicable regulations. The regulations include additional criteria that a divided transfer must meet and requires a written finding stating the reasons for disapproving a transfer of a divided interest. According to DNR, examples of previous assignment disapprovals include when a lease is overburdened by overriding royalty interests, a working interest owner does not meet qualification requirements established in law, or a party attempts to assign an interest not recognized by DNR.

Based on the governing regulation, the commissioner's decision-making is an internal process with no public notice requirements, and no written finding is required should the commissioner decide to approve the assignments. A written finding is provided and made public only if the commissioner disapproves the assignment.

Assignment Information and Confidentiality

To initiate an oil and gas lease assignment from one company to another, 11 AAC 82.615 requires that an applicant file an application with DNR within 90 days of the final signing of the transfer by the assignor. The DNR application form specifies the information to be submitted with the application. In addition to the information required by the application, 11 AAC 88.115 authorizes the Division of Oil and Gas director to request additional information as necessary to consider an applicant's "compliance with the statutes and regulations, including financial information, qualifications, business structure, and other information the director determines necessary."

AS 38.05.035(a)(8) provides that certain information submitted by the applicant must be kept confidential upon the request of the person supplying the information. AS 38.05.035(a)(8)(C)

establishes confidentiality for "all geological, geophysical, and engineering data supplied, whether or not concerned with the extraction of development of natural resources." And AS 38.05.035(a)(8)(D) establishes confidentiality for "cost data and financial information submitted in support of applications, bonds, leases, and similar items."

Required information in the assignment application includes:

- Financial standing documentation such as audited financial statements for both the assignor (if the assignor is cosigning on a DR&R agreement) and assignee for the last three years (annual report, balance sheet, income statement, cash flow statement).
- Corporate structure chart for intercompany assignments.
- Unit operator resignation and unit operator successor, and/or request to transfer plans of operation.
- Easement assignment applications, and letters and applications to transfer authorizations issued by other DNR agencies.
- Purchase and sale agreement (the agreement may be held confidential under AS 38.05.035(a)(8) if applicable and requested by the applicant).
- Estimates of abandonment costs generated by the lessee or a third party, and updated production forecasts (including estimates of when abandonment may occur), if there are any improvements on the surface or subsurface.
- Reserves report if determined that additional bonding or financial assurances are required.
- Information about the transaction.
- All DNR leases, permits, and other authorizations subject to the transfer.
- Any authorized or pending applications for plans of operations, units and unit agreements.
- Current bonds and/or financial assurances posted by the current lessee to DNR.

BP-Hilcorp Transaction – Lease Assignments

The BP-Hilcorp Transaction involved assigning BP's undivided interests in oil and gas leases for Prudhoe Bay (115 leases), Milne Point (24) and Point Thomson (37) to Hilcorp. Working with the Department of Law, DNR developed a "Transaction-specific Change of Control Application." According to DNR, the purpose of the Transaction-specific application was "to capture the proposed sale stock sale of BP entity BPXA from The Standard Oil Company to Hilcorp Alaska, LLC." The application integrated standards from the existing working interest ownership transfer application with added provisions and guarantees of protection specific to the Transaction. DNR requested accounting information from the applicants related to Net Profit Share Leases being transferred, and geological, geophysical, and engineering data. BP provided DNR with an inventory of all facilities and pipelines associated with the Prudhoe Bay Unit assets. DNR confirmed the company's inventory against DNR's permit and facilities inventory list. Pursuant to AS 38.05.035(a)(8)(C) and (D), DNR will maintain confidentiality for cost data and financial information and all geological, geophysical, and engineering data supplied by the applicants.[6]

On June 29, 2020, the DNR commissioner announced the department's approval of the transfer of BP's oil and gas leases to Hilcorp. In the announcement's press release, DNR Commissioner Corri Feige stated, "After ten months of in-depth analysis, stress-testing Hilcorp's financial capacity to hold and operate these assets, and successfully securing secondary liability guaranties from BP, I am confident that the transfer of these leases and facilities both protects and advances Alaska's interests."[7]

No official written finding regarding the decision was provided because the commissioner approved the lease assignments; lease assignment regulations require a written

finding only if the commissioner disapproves an assignment. The Governor's Oversight Committee on the BP-Hilcorp Transaction included a public memorandum to the Governor in conjunction with the June 29 approval announcement that provided a summary of the due diligence undertaken by the department. DNR stated that they have a statutory obligation to protect confidential information and so the financial, modeling, and insurance data used by DNR in its due diligence review is unavailable for public and legislative review.[8]

II. Financial Assurances Agreement

In determining whether to approve the transfer of BP's leases to Hilcorp, the June 29 GOC memorandum stated that DNR "undertook a thorough due diligence review to ensure a proper Financial Assurances Agreement (FAA) is in place with the parties that adequately protects the State of Alaska from risks associated with the leases and dismantlement, removal and restoration (DR&R) obligations."

Under current lease terms, the DNR commissioner may require financial assurances as the commissioner determines necessary to ensure the lessee's ability to meet its lease obligations and DR&R obligations when a lease is terminated. During the course of legislative oversight of the Transaction, DNR provided legislators with a primer on financial assurances agreements associated with state oil and gas leases. According to DNR, FAAs are negotiated between DNR and the lessee "to satisfy the policy and risk management goals of DNR while also meeting the needs of the specific lessee." The policy objectives DNR seeks to balance are the return of state lands in good condition and maximizing the benefit "of Alaska's natural resources by preventing the inefficient deployment of capital" that could reduce "the probability of maximum recovery of the oil and gas resource."[9]

Using information provided by the lessee, DNR evaluates the magnitude of the lease and DR&R obligations and the financial strength of the lessee. Based on that evaluation, a security instrument is established in the FAA that is suitable to the identified risk to the state. Examples of security instruments include a dedicated sinking fund to secure against the risk or a guarantee from a financially capable corporate parent of a lessee. DNR said that in many cases, the department requires the lessee to obtain a third-party surety bond from a "large, well-capitalized financial institution acceptable to DNR."

In the FAA primer, DNR explained that many FAAs require the lessee to submit updated financial information on a regular basis that can be assessed against metrics and standards established in the FAA as a way to measure the lessee's financial strength throughout the life of the lease. Either through the mutual agreement of the parties or established triggers, the level of security can be changed as needed to mitigate the risk to the state. An important point in DNR's primer is that, regardless of the FAA, the lessee is still obligated to pay the full cost of DR&R.

FAAs are not public documents because they contain sensitive financial information. The lessee may request and DNR will honor confidentiality pursuant to AS 38.05.035(a)(8).

BP-Hilcorp Transaction – Financial Assurances Agreement

The main responsibility for conducting the due diligence review to assess Hilcorp's financial capacity to fulfill its lease and unit obligations rests with the DNR Division of Oil and Gas Commercial section. To assist in the financial analysis, the department contracted with the consulting firm National Economic Research Associates (NERA) and international law firm Morrison & Foerster. According to the June 29 memorandum, the analysis included "assessments of the assignee's current and reasonably foreseeable financial position as well as assurances from

the assignor to backstop risks in the future should the transferee become unable to satisfy its legal and contractual obligations under the lease."[10]

DNR currently has financial assurance agreements with Hilcorp that were first entered when Hilcorp began doing business in Alaska in 2011. The "Sixth Amended and Restated Financial Assurances Agreement" between DNR and Hilcorp was executed in December 2019. The agreement covers the interests Hilcorp entities currently hold in upstream Alaska assets, including, but not limited to, oil and gas leases, permits and easements.

DNR also has an FAA with Harvest Alaska and Harvest Midstream that covers the midstream assets including, but not limited to, right-of-way leases, permits and easements. The agreements require Hilcorp to provide annual audited financial information to DNR and quarterly unaudited financials from Hilcorp. In addition to the financial statements, DNR receives proprietary oil and gas information from Hilcorp, including about their oil and gas reserves inside the state. DNR also can request and evaluate the insurance coverages that are in place to cover any assets in Alaska that are on state land.[11]

According to DNR, a condition of approving the Transaction lease transfers was that Hilcorp execute an updated, seventh iteration of its upstream FAA. Under the Seventh FAA, Hilcorp entities Hilcorp Energy, Hilcorp Alaska, and Hilcorp North Slope will be the obligors. The FAA will cover all upstream assets held by Hilcorp in Alaska, including assets acquired in previous Alaska acquisitions, assets developed by Hilcorp on state oil and gas leases acquired in a lease sale, and the assets acquired from BP in the Transaction.[12]

Key features of the FAA include: a formula based financial assurance amount that will be refreshed every third year, submission of third-party estimates of the cost to fulfill the DR&R

liabilities, quarterly and yearly submission of financial data, opportunity to review insurance coverages, and pre-defined financial metrics to periodically reassess Hilcorp's financial strength.

The FAA also requires Hilcorp to regularly provide the state with additional information regarding its operations; particularly reports on its reserves and operational activities. Hilcorp is also required to maintain insurance coverage "at the level commonly held by oil and gas producers" and to provide notice to the state if it intends to modify its insurance protections. DNR said they reviewed Hilcorp's insurance coverages and finds them adequate to protect the state. This information was provided in the June 29 memorandum – the FAA itself is held as confidential.

III. Lease Obligations

Alaska's oil and gas regulations and lease terms impose multiple obligations on a leaseholder, including paying rent and royalties, development of the resource, preventing waste of the resource, maintaining records, and providing for damages and bonds. Pursuant to 11 AAC 82.605(b) and 11 AAC 82.630, the assignor is liable for and responsible for the performance of all lease obligations up until a lease assignment is approved and in effect. After the effective date of the assignment, the assignee is responsible and liable for all lease obligations. Lease terms mirror these requirements.

If a lessee surrenders a lease, 11 AAC 82.635 requires the lessee to "place the surrendered lands in condition satisfactory to the commissioner for abandonment." Lease terms call for the lessee to leave the surrendered lands in a condition satisfactory for "suspension or abandonment."

Upon termination of a lease at the end of its productive life, lease terms require a lessee to deliver up the leased area "in good condition." This obligation is often referred to as DR&R – the dismantlement, removal and restoration of leased lands. A lessee's DR&R termination obligation generally involves removing infrastructure such as roads, surface facilities and pipelines, plugging and abandoning wells, and restoration of the land. The leaseholder at the time of termination carries the primary obligation for performing DR&R. If they are unable to satisfactorily meet this obligation, prior leaseholders up the chain remain liable for meeting DR&R obligations.

BP-Hilcorp Transaction – Lease Obligations

In the case of the BP-Hilcorp Transaction, BP agreed to remain secondarily liable for DR&R on all North Slope assets in place at the time of the Transaction and provided a guaranty to that effect. DNR completed extensive mapping and an asset inventory cataloguing BP's North Slope assets. BP and Hilcorp agreed to the "footprint" as it existed at the time the Transaction closed; and Hilcorp has a mapping team in place to account for additions to the infrastructure footprint after the close of the Transaction.[13]

DNR concluded that BP Corporation North America (BPCNA) was the BP entity "sufficiently capitalized to provide the initial guaranty for secondary DR&R liability." According to DNR, under the terms of the guaranty, BPCNA's corporate parent, BP PLC, or another qualified entity with the state's approval, automatically becomes the guarantor in the event BPCNA's credit rating diminishes or BPCNA's assets decrease below levels specified in the guaranty. DNR notes that DR&R obligations associated with the Prudhoe Bay Unit are shared with the other working interest owners – ExxonMobil and ConocoPhillips Alaska.[14]

Lease Obligations – Bonds

11 AAC 82.600 provides DNR with the authority to require a bond in mineral leases, including oil and gas leases. The regulation states, "The amount of the bond is the amount determined by the commissioner to be justified by the nature of the surface, its uses and improvements in the vicinity of the lands, and the degree of the risks involved in the types of operations to be carried on under the lease or permit." 11 AAC 82.615(a)(4) provides that an application for a lease assignment must be accompanied by a bond, if required by the commissioner, that "clearly binds the assignee and the assignee's surety to any unperformed obligations of the assignor." 11 AAC 83.160 and lease terms allow for a bond in a greater amount than specified in the regulation or lease when a greater amount is justified by the nature of the surface and the uses and improvements on or in the vicinity of the leased land, and the degree of risk involved in the types of operations proposed or being conducted on the lease.

Bonds are used to help ensure that a lessee fulfills their lease obligations – if a lessee fails to meet their obligations, the bond is forfeited to the state. If an entity with a DR&R liability goes bankrupt or dissolves through some other mechanism, bonds filed with DNR for oil and gas leases and the Alaska Oil and Gas Conservation Commission for well sites can be used to cover at least some of the DR&R costs associated with a lease. These bonds are generally less than the total cost of DR&R, potentially leaving the state on the hook for the remaining expenses, particularly if none of the prior leaseholders are still in business and able to make good on their obligation.

A Financial Assurances Agreement that requires bonding typically calls for a surety bond that is an agreement between DNR, a well-capitalized financial institution vetted by DNR, and

the lessee. The surety bond backstops some of the risk exposure to the state should the lessee fail to satisfy its obligations as specified in the FAA.

BP-Hilcorp Transaction – Bonds

According to DNR, Hilcorp Alaska and Hilcorp North Slope will be required to maintain separate bonds with DNR as they are two separate entities. The FAA process was used to develop bonding requirements as part of DNR's lease transfer due diligence, including the proper level of bonding.[15]

IV. Change of Unit Operator

When multiple companies hold leases over a single pool or field, the separate leaseholders may voluntarily or be required to combine their leases into a single unit to coordinate oil and gas development, prevent waste of the resource, and protect the rights of the leaseholders. Known collectively as working interest owners, the leaseholders enter a Unit Operating Agreement that defines the rights and responsibilities of each of the owners. The working interest owners also enter a Unit Agreement with the state that defines the terms of unitization.

Unitization usually requires that the working interest owners agree on a single party to operate the field under the supervision of all the owners. The Unit Operating Agreement lays out the process by which the working interest owners in the unit will appoint and agree upon the new unit operator and the Unit Agreement commits that company as the operator.

Among other things, unit operators are responsible for submitting unit plans of development and operations to DNR for the commissioner's approval and conducting the operations in an approved plan. All working interest owners must have the capability to pay their

share of unit operating costs, including cash calls to deal with any unexpected events such as a pipeline leak or other infrastructure problem.

Under 11 AAC 83.331, the DNR commissioner must approve the designation or change of a unit operator. Pursuant to the regulation, the analysis for approval includes, but is not limited to, assessing whether the unit operator is qualified to hold a lease under Alaska law, and whether the operator is qualified to "fulfill the duties and obligations prescribed in the unit agreement."

The commissioner's decision to approve or disapprove a proposed change of a unit operator must be made within 30 days after the receipt of the change request. If disapproved, the basis for disapproval must be in writing. The commissioner's decision-making is an internal process with no public notice requirements, and no written finding is required should the commissioner decide to approve the change of unit operator. A written finding is provided and made public only if the commissioner disapproves the change. If disapproved, the Unit Operating Agreement would dictate the process by which a new unit operator would be selected and DNR would review the new proposed operator for their qualifications.

BP-Hilcorp Transaction – Change of Unit Operator

In 1977, Prudhoe Bay became the first North Slope field to be unitized. Partly because the field was so large, it was decided that the field would be operated by two companies – BP Alaska Inc. was designated as the unit operator for half the leases in the unit area and the Atlantic Richfield Company was designated as operator for the other half. In the year 2000, BP became sole operator for the entire field. ExxonMobil and ConocoPhillips are the other majority working interest owners in the Prudhoe Bay Unit.

According to the June 29 lease transfer approval announcement, Hilcorp will take over BP's responsibilities as operator for the entire Prudhoe Bay Unit. This is a significant change as,

for the first time, the operatorship will shift from a major subsidiary backed by an international parent corporation to an independent company, with potentially less financial capability and fewer resources to fulfill both operator and leaseholder/unit obligations. Because the Transaction involves a fundamental change in control, the due diligence that occurred as part of the Transaction's lease assignment decisions also included much of DNR's analysis regarding the approval of change of operator for the Prudhoe Bay Unit.

V. Pipeline Right-of-Way Lease Transfers

The Right-of-Way Leasing Act at AS 38.35 provides for the leasing of state land for pipelines to transport Alaska's oil and natural gas resources. Within the Division of Oil and Gas, the State Pipeline Coordinator's Section oversees implementation of the Right-of-Way Act.

Right-of-way (ROW) leases require that the lessee submit either an unconditional or parental guaranty to DNR promising that all lease conditions will be upheld. Each lease further states that additional or new forms of guaranty may be required from the lessee under a variety of conditions as established by the lease. And ROW leases require that the lessee submit a plan for rehabilitating the leasehold to a condition the DNR commissioner finds acceptable, including information pertaining to DR&R of the pipeline.

Under AS 38.35.120(a)(9), a transfer of a right-of-way (ROW) lease for a pipeline valued at one million dollars or more is subject to the authorization of the DNR commissioner, unless the transfer is to another owner of the pipeline. In approving a transfer, the commissioner is charged with considering the protection of the public interest – including whether the proposed transferee is fit, willing and able to perform transportation "in a manner that will reasonably

protect the lives, property, and general welfare of the people of Alaska." The commissioner may not unreasonably withhold consent to a transfer or assignment.

While there are detailed public notice and public hearing requirements for an initial ROW lease application, the requirements do not apply to a lease transfer. Financial information and geological, geophysical and engineering data submitted by the applicant is subject to confidentiality under AS 38.05.035(a)(8).[16]

BP-Hilcorp Transaction – ROW Lease Transfers

BP's interests in three pipelines will transfer to Harvest Alaska, LLC as part of the BP-Hilcorp Transaction: the Milne Point Pipeline, 50 percent; the Point Thomson Export Pipeline, 32 percent; and BP's approximate 48.4 percent interest in TAPS. Harvest will assume all ROW lease obligations following the transfer. A BP entity will remain secondarily liable for pipeline ROW lease DR&R obligations. In a filing with the Regulatory Commission of Alaska, Harvest Alaska and BP Pipelines (BPPA) provided the following explanation in response to an RCA question regarding whether any of BPPA's ROW lease obligations survive the transfer or expiration of the lease:

> [T]o the extent that the Commissioner of the DNR determines that BPPA must remain obligated on certain lease obligations in order for the transferee (Harvest Alaska) to be deemed "fit, willing and able to perform the transportation or other acts proposed in a manner that will reasonably protect the lives, property and general welfare of the people of Alaska," those lease obligations will remain. In BPPA's applications for transfer of its interest in the State TAPS Lease filed with the DNR on October 11, 2019 and in the Federal TAPS Grant filed with the United States Bureau of Land Management on December 13, 2019, BPPA has offered to retain its share of responsibility for DR&R of TAPS as it exists as of the closing date of the transaction and to continue to maintain the guaranty provided by BPCNA [BP Corporation North America] of that obligation in order to allow the Commissioner to make a positive determination about Harvest Alaska's fitness, willingness and ability to perform under the State TAPS Lease after it is transferred. BPPA expects that the Commissioner will require BPPA and BPCNA to continue to be responsible under the State TAPS Lease and associated guaranty to that

> extent. BPPA further believes that to the extent such retained obligations would extend beyond the expiration of the State TAPS Lease before the transfer to Harvest Alaska, they would continue to extend beyond the expiration of the State TAPS Lease after the transfer.[17]

The transfer of TAPS and two other pipeline interests from BP to Harvest Alaska is a significant component of the Transaction. DNR is undertaking a fit, willing and able analysis as part of its due diligence, including retaining the assistance of outside experts through the Department of Law. If DNR is satisfied that Harvest Alaska is fit, willing and able to operate its share of the transferred pipelines, the ROW transfers will be approved. No public written finding or public notice is required as part of the approval process and financial information and geological, geophysical and engineering data considered as part of the approval determination will remain confidential.

VI. PERMITS AND AUTHORIZATIONS

Permits

AS 38.05.850 gives DNR the authority to issue permits for surface use of state land. 11 AAC 96.010 lists the activities for which a DNR land use permit is required, several of which apply to activities taken by oil and gas lessees and includes any activity that is not specified in regulation as a generally allowed use.

11 AAC 96.040(c) provides that DNR may modify existing permit provisions or require additional provisions in the approval of an extension of a lease term or a modification proposed by the permit holder. Modifications may be done to assure compliance with law, to minimize conflicts with other uses, to minimize environmental impacts, or otherwise to be in the state's interests.

DNR compiled a list of approximately 256 permits that will be transferred from BP to Hilcorp as part of the Transaction. The only action taken will be to update permit records to reflect the new name and effective date of the change. DNR will review the permit stipulations for accuracy and completeness and amend the stipulations where necessary. No public notice is required for these administrative changes.

Authorization for Plan of Operations

An oil and gas lease grants the lessee the right to conduct surface exploration, development and production activities. However, the lease does not authorize operations or activities to take place on the leased land. Prior to any lease activities taking place, the DNR commissioner must approve a plan of operations. Once a lease becomes part of a unit, a unit plan of operations substitutes for a lease plan of operations.

11 AAC 83.158 provides the process for approval of a lease plan of operations and 11 AAC 83.346 provides the process for a unit plan of operations. Under both procedures, an applicant must submit sufficient information to determine the surface use requirements and impacts directly associated with the proposed operations on the lease, including:

- The schedule of the operations.
- Proposed operations, including the location and design of well sites, material sites, water supplies, solid waste sites, buildings, roads, utilities, airstrips, and all other facilities and equipment necessary for the proposed operations.
- Plans for rehabilitation of the affected lease upon completion of operations.
- Operating procedures designed to prevent or minimize adverse effects on other natural resources and other uses of the leased area, including fish and wildlife habitats, historic and archeological sites, and public use areas.

In approving a plan of operations or an amendment of a plan, the commissioner has the authority to require amendments the commissioner determines are necessary to protect the state's

interest. However, any amendments cannot be inconsistent with the terms of sale when a lease was first obtained or with the terms of a lease. Nor can amendments deprive a lessee of reasonable use of the leasehold. The lessee or unit operator may amend an approved plan of operations subject to the approval of the commissioner.

Most plans of operations do not contain confidential information and are available to the public. Some plans may contain confidential information such as geological, geophysical or engineering data. Those portions can be held confidential under AS 38.05035(a)(8).

For the BP-Hilcorp Transaction, transferring a plan of operation involves only a name change and does not require approval from the DNR commissioner. No amendments are required for a change in operatorship.

ALASKA OIL AND GAS CONSERVATION COMMISSION

The Alaska Oil and Gas Conservation Commission (AOGCC) is an independent quasi-judicial agency with jurisdiction over subsurface oil and gas operations on all public and private lands and waters throughout the state except in the Denali National Park and Preserve. To prevent waste of the resource and maximize oil and gas recovery, the commission regulates the drilling, production and plugging of wells; involuntary unitization; well spacing; the disposal of oil field wastes; and the prevention of blowouts and other accidents at well sites. The commission's responsibilities also include protecting the property rights among owners of oil and gas interests; protecting underground freshwater resources in oil and gas operations; and maintaining confidentiality of well data and information that companies are required to file with the commission.

Creation of the AOGCC has the distinction of being the first law specifically written to deal with oil and gas development and production in Alaska. In 1955, two years before the discovery of oil in commercial quantities, Territorial Representative Irene Ryan was convinced of Alaska's oil potential. Ryan grew up around the booming oil fields of Texas and Oklahoma. As a reporter for the oil section of a small-town Texas newspaper, she saw firsthand the Texas Railroad Commission's efforts to establish the laws that put an end to the drilling chaos and waste that plagued the country's first big oil rush.[18]

Representative Ryan recognized that Alaska would soon face the same challenges as other oil producing states. Working with the commissioner of the Territorial Department of Mines, Ryan drafted the original legislation that established the Alaska Oil and Gas Conservation Commission. The three-member commission consisted of the governor, the territorial highway engineer and the Department of Mines commissioner and was charged with preventing waste of

the resource and providing for the orderly development of Alaska's oil and gas fields. The bill passed unanimously in both the House and the Senate with what could be considered lightning speed in the legislative process, taking just 34 days from introduction to Governor Frank Heintzleman's signature in March 1955.[19]

Ryan's 1955 legislation had staying power. Though many provisions have been modified and added to over the years, elements of the original law remain. Today's commission consists of three commissioners appointed by the governor and confirmed by the legislature. One commissioner must be a certified petroleum engineer and another a certified geologist, or someone that meets certain education requirements in the respective fields. The third member must have some relevant oil and gas experience but is not required to meet any specific educational requirements. The AOGCC is currently located for administrative purposes in the Department of Commerce, Community and Economic Development (DCCED).[20]

There are two main AOGCC authorities that require Commission approval in the course of the transfer of well operations from one company to another – (1) the designation of a new operator and (2) bonding. A Notice of Ownership form that identifies a new owner when a leased property is assigned or transferred must be filed with the Commission; however, AOGCC approval of this change is not required. All existing valid permits, orders and other authorizations automatically transfer to a new operator when a property is sold.[21]

I. DESIGNATION OF OPERATOR

A "Permit to Drill" must be approved by the AOGCC before any oil or gas well can be drilled or re-drilled anywhere in the state. The permit application requires submission of extensive technical information for the proposed well and must include the identity of the

designated well operator. A well operator is the designated person "who is responsible for drilling, development, production, injection, disposal, storage, abandonment, and location clearance." An operator can be the owner of a property or a person authorized by the owner. "Owner" means the person who has the right to drill and produce oil and gas from an oil or gas pool.[22]

20 AAC 25.020 requires the owner of a property to submit a Designation of Operator form for AOGCC approval when a new operator is designated for a property. A new operator must furnish a bond and, if required, a security. The Commission ensures that the new operator has bonding in place based on the number of permitted wells, and that the current owners submit designation of new operator forms with appropriate signatures and contact information. As stated in the regulation, "By signing the Designation of Operator form, the newly designated operator agrees to accept the obligations of an operator." The Commission's acceptance of the new operator's bond releases the former operator's bonding obligation. According to AOGCC, past performance is not a factor in approving a new operator designation; conditions other than bonding may not be included as part of the designation approval; and an approval has never been denied. AOGCC decision-making is an internal process with no public notice requirements.

BP-Hilcorp Transaction – Designation of Operator

BP Exploration (Alaska) (BPXA) is currently the operator of record for 1,776 wells in the Prudhoe Bay Unit. In the BP-Hilcorp Transaction, ownership of BPXA is changing from BP to Hilcorp. After the Transaction is complete, BPXA will be renamed Hilcorp North Slope, LLC.

AOGCC is not requiring a Designation of Operator form subject to approval under 20 AAC 25.020 for Hilcorp North Slope's assumption as well operator in the Prudhoe Bay Unit. AOGCC explained that the Commission's regulatory authority deals with the company that is

operating the field, not who owns the company; and that since Hilcorp is buying BPXA outright, Hilcorp North Slope will be the same legal corporate entity that exists today, just with a different name, different people and a different way of operating.

In response to questions regarding how a significant change in the makeup of the company that will be operating Prudhoe Bay wells does not warrant submission of a designation of new operator form, AOGCC provided the following additional explanation:

> When BPXA was required to divest of Arco Alaska to complete their purchase of Arco the deal was structured in such a way that Phillips Petroleum Company was purchasing Arco Alaska, the company, from Arco and then renamed it Phillips Alaska. When Conoco and Phillips merged a few years later Phillips Alaska was renamed to ConocoPhillips Alaska. Looking at incorporation records from the State of Delaware they still indicate the company was incorporated as Arco Alaska and has since been renamed twice, but the same original corporate entity still exists. The AOGCC did not require a designation of operator form to be submitted for either of these transactions since the same legal entity, albeit with a new name and new parent company, was still the owner/operator. We did require them to submit proof (in the form of documentation from Delaware and the DCCED's corporations and business licensing section) of the name change so that we could then update our records system. Since the BPXA/Hilcorp transaction is being structured the same way, in that the legal entity that is currently BPXA will still be the legal entity that owns and operates Prudhoe Bay after the Hilcorp/BP transaction is complete, and that they're then going to change the name of the company we feel following the precedent (to not require submittal of a designation of operator form) that was set with the Arco Alaska/Phillips Alaska/ConocoPhillips Alaska chain of transactions should be followed here.
>
> The owner and operator of the property will not be entirely new, it will just have a new name. Our regulatory authority only extends to the level of the company that is operating the field, not up the corporate structure to whoever may own the company that we deal with. For example, Glacier Oil & Gas owns both Cook Inlet Energy and Savant Alaska, but we treat these two operating companies as two completely independent entities and require them to have their own bonds in place and bill them for the regulatory cost charge separately even though there's a lot of overlapping and intertwining of staff between the three companies. Similarly, since Furie Operating Alaska is being bought out of bankruptcy as a corporate entity instead of Furie's assets being sold off as far as we're going to be considered from a regulatory point of view Furie was and will continue to be the operator even though everything about the company is changing.
>
> Will Hilcorp North Slope operate differently than BPXA did? Obviously yes, but when you get right down to it they'll be the same legal corporate entity that exists today, just with different people steering the ship and a different name.[23]

Hilcorp North Slope will be required to furnish a bond in its name and the Commission will need to process new bonding forms for that change. Hilcorp North Slope must provide proof of the name change to AOGCC so that well records may be updated with the proper name of the operator. For the Milne Point Unit, Hilcorp Alaska and BPXA each own just under 49 percent of the unit with Hilcorp Alaska serving as operator for the entire unit. AOGCC will require submission of a notice of sale and designation of operator for the Milne Point part of the Transaction because the unit leases and facilities owned by BPXA will be transferring from one corporate entity – BPXA renamed Hilcorp North Slope – to Hilcorp Alaska, a separate corporate entity.

Hilcorp Alaska's Past Performance

Hilcorp Alaska has a history of non-compliance with AOGCC regulations. According to AOGCC, through May 31, 2020, the Commission has taken 43 total enforcement actions against Hilcorp Alaska. Thirty-four of these were notices of violation and nine were civil penalties. The violations broadly fall into the categories of failing to test equipment as required, failure to provide the AOGCC notice to witness tests that were conducted, defeated safety valve and blowout prevention equipment, using equipment ill-suited for the job, using unapproved custody transfer metering equipment, failure to get AOGCC approval to change permitted work, failure to submit required reports, and injection of fluids not approved for injection. In a 2015 "Notice of Proposed Enforcement" to the company regarding well workover compliance violations, AOGCC wrote, "The disregard for regulatory compliance is endemic to Hilcorp's approach to its Alaska operations and virtually assured the occurrence of the incident at MPU J-08A. Hilcorp's conduct is inexcusable."[24]

Under current law, AOGCC has no authority to consider Hilcorp's past performance as part of the designation of operator approval process – authority is limited to considering the adequacy of bonding. Nor can any conditions besides bonding be included as part of the designation of operator approval. Moving forward, when deciding whether to approve or deny an application for a Permit to Drill, the Commission must consider whether an applicant is in violation of AOGCC statutes or regulations and the magnitude of such a violation.[25]

II. BONDING

AS 31.05.030(d)(4) authorizes AOGCC to require a "reasonable bond with sufficient surety conditions for the performance of the duty to plug each dry or abandoned well or the repair of wells causing waste." The Commission recently replaced 20 AAC 20.025, the bonding regulation originally adopted in 1980 and last amended in 1999. Unchanged is that bonds must be either a surety bond issued in favor of the AOGCC; or a personal bond of the operator accompanied by a security guaranteeing the operator's performance.

The level of bonding is the major change to the regulation. The old regulation required a bond and if required, a security, in the amount of $100,000 for one well and a minimum of $200,000 for a "blanket bond" covering all of the operator's wells in the state. In developing the new regulations, AOGCC determined that the average cost to plug and abandon a well in the state is approximately $400,000. According to AOGCC, the cost for a North Slope well varies widely based on type of well, location, whether extra work like casing removal is involved, and access.

The new regulation adopted in May 2019 establishes a five-tier schedule for bonds and securities guaranteeing the operator's performance. Operators with up to ten wells must post

$400,000 per well; for 11 to 40 wells, $6 million total; 41 to 100 wells, $10 million; 101 to 1000 wells, $20 million; and for over 1,000 wells, a $30 million bond is required.

For operators with a bond in place with AOGCC on May 18, 2019, the regulations provide for an installment plan with four payments due in August of each year. The first installment was due on August 16, 2019; the second installment is due on August 16, 2020; the third August 16, 2021; and the final payment is due August 16, 2022. Each of the first three installment payments must be a specified portion of the difference between the operator's existing level of bonding and, if required, the level of security, or $500,000, whichever is greater. The final installment must be the full amount of difference between the operator's existing level of bonding and security if required.

Another addition to the revised regulations is that the Commission will not approve a permit to drill application from an operator that is out of compliance with the bonding requirements.

BP-Hilcorp Transaction – Bonding

In a letter dated March 2, 2020, the Commission informed legislators that both BP and Hilcorp Alaska are compliant with the updated bonding regulation. According to the letter, BPXA operates approximately 1,776 wells and Hilcorp Alaska operates approximately 1,042. Currently, AOGCC has a surety bond from BPXA and a surety bond from Hilcorp for their separate operations. Both bonds are in the amount of $7.65 million with the next installment of $7.45 million due August 16, 2020. With the Transaction, bonding furnished by BPXA will need to be converted to a bond in the name of Hilcorp North Slope, LLC. Hilcorp Alaska and Hilcorp North Slope will be considered separate operators. Each company will have to comply with the

bonding regulations and have $30 million of bonding in place by August 2022 – provided neither company drops below 1,000 wells in the interim.

BPXA will plug wells before the Transaction is complete. Wells plugged after the Transaction will be plugged by Hilcorp North Slope. BP remains liable if any of the wells plugged by BPXA fail in the future; 20 AAC 25.026 provides that AOGCC approval of abandonment of a well does not relieve an operator of further claim by the Commission after abandonment.

Should Hilcorp or a subsequent operator lack the financial resources to plug and properly abandon wells in the future, and the bonds are insufficient to cover the costs, other working interest owners are responsible for these costs. However, it is possible that the State of Alaska could ultimately be responsible for plugging and abandonment costs as the landowner. According to AOGCC, the Commission does not have the authority to hold a prior operator responsible for plugging liability if the current operator lacks the financial resources.

III. Permits and Other Authorizations

All existing valid permits, orders and other authorizations automatically transfer to a new well operator when a property is sold, although AOGCC may revisit an authorization if deemed necessary.

For the BP-Hilcorp Transaction, permits are any currently active (not expired, withdrawn or cancelled) drilling permits or sundry activity permits that the AOGCC has issued to BPXA that have not been completed as of the time the sale is closed. BPXA currently has about ten permits to drill and around 20 to 30 sundry activity permits that are in this category. Additionally, any conservation order or injection order that the AOGCC has issued to BPXA will remain in

effect after the sale closes. These include pool rules and area/disposal injection orders for all of the pools in Prudhoe Bay. It also includes downhole commingling authorizations and spacing exceptions. Additionally, other authorizations that the AOGCC has granted to BPXA, such as GOR (gas-to-oil ratio) waivers for reservoir data collection purposes and modifications to custody transfer metering systems will also remain in effect after the sale closes.

According to AOGCC, if during the course of its oversight duties, the Commission sees something that Hilcorp was doing that is in accordance with any of the orders/authorizations issued to BPXA that the Commission think needs to be changed based on differences between how Hilcorp and BPXA operate, AOGCC will reopen that order/authorization on their own initiative and make any necessary changes. Likewise, if Hilcorp finds anything they want to change about the any of the existing orders/authorizations, they can apply to the AOGCC to have the pertinent orders/authorizations – for example, Hilcorp has already begun discussions with AOGCC, DNR and DOR about the possibility of changing the well testing and allocation requirements for Prudhoe Bay and a formal application will likely be submitted shortly after the sale closes.

Pursuant to AS 31.05.040(b), all orders issued by the Commission shall be in writing, and are public records open for inspection at all times during reasonable office hours.

REGULATORY COMMISSION OF ALASKA

The Regulatory Commission of Alaska (RCA) is a quasi-judicial body established to regulate public utilities and pipelines throughout Alaska, including their rates, classifications, rules, regulations, practices, services and facilities. The RCA has a long history in the state, beginning with establishment of the Alaska Public Service Commission in 1959; evolving to the Alaska Public Utilities Commission in 1970; and then reenacted in 1999 as the Regulatory Commission of Alaska.[26]

Regulatory authority over oil and gas transportation pipelines was first instituted in 1972, four years after the discovery of a major oil field on the North Slope. The Alaska Pipeline Commission Act established a three-member commission to regulate pipeline facilities and pipeline carriers in the state, to regulate access to information concerning pipeline facilities and carriers, and to represent the interests of the state in any pipeline related proceedings affecting the interests of the state. In conjunction with the Alaska Public Utilities Commission, the Legislature sought to promote and ensure "nondiscriminatory, efficient, and economical oil and gas pipeline transportation at reasonable rates." The Alaska Pipeline Commission received wide-ranging authority to regulate intrastate pipelines, including the soon-to-be-built Trans Alaska Pipeline.[27]

In 1981, the Alaska Pipeline Commission merged with the Alaska Public Utilities Commission, creating one regulatory body to oversee both public utilities and pipelines and pipeline carriers in the state. Those duties now reside with the RCA under the Pipeline Act at AS 42.06.055 to AS 42.06.640. The Act defines regulated pipelines or pipeline facilities to mean all the facilities of a total system of pipe "in this state used by a pipeline carrier for

transportation, for hire and as a common carrier, of oil, gas, coal, or other mineral slurry for delivery, storage, or further transportation..."[28]

The RCA is housed within the Department of Commerce, Community, and Economic Development for administrative purposes and consists of five commissioners appointed by the governor and confirmed by the Legislature. Commissioners must meet specific education or experience criteria to qualify for an appointment. The Commission has the authority to conduct investigations and hearings, to issue subpoenas and to compel the attendance of witnesses and production of testimony, records and other documents. The Commission's decision-making process resembles a court proceeding with regulations governing motions, pleadings, discovery and the hearing procedure. Unlike a court proceeding, the public often has an opportunity to comment on pending commission decisions.[29]

NOTE: The RCA's quasi-judicial status and deliberative process requirements prevent the RCA from appearing before the Legislature and responding to questions. The Department of Law Oil and Gas section chief provided responses to questions for this section of the report; he did not correspond with the RCA in preparing the responses.

I. Certificate of Public Convenience and Necessity

A key element of the RCA's regulatory authority is the Certificate of Public Convenience and Necessity (CPCN). No transportation of oil or gas by pipeline, or construction or extension of pipeline facilities, or acquisition or operation of any pipeline facility may take place without the RCA issuing a CPCN. A certificate will be issued if it is found that the service is required by present or future public convenience and the carrier is found to be able and willing to properly do the acts and perform the service proposed and to conform with RCA regulations. A CPCN describes the authority granted, including the services involved, and includes a description of the authorized service area and the scope of operations of the pipeline facility. The RCA may attach

terms and conditions to a CPCN and require the issuance of securities it considers necessary for the protection of the environment and for the best interest of the oil or gas pipeline facility and the general public.[30]

RCA approval is required for the transfer of a CPCN to a new owner. The transfer process begins with an application from the companies seeking a transfer. The Commission analyzes a transfer application using the same criteria as an original application – that an applicant is able and willing, will conform with legal requirements, and the service is required. In addition, the Commission must find that the transfer is in the best interest of the public.[31]

BP-Hilcorp Transaction – CPCN Transfer Applications

On September 27, 2019, BP Pipelines (Alaska) Inc. (BPPA) and Hilcorp Alaska's midstream subsidiary, Harvest Alaska, LLC (Harvest Alaska), jointly filed with the RCA three separate applications for approval of the transfer of the Certificate of Public Convenience and Necessity for the following pipeline interests:

- BPPA's entire interest in the Trans-Alaska Pipeline System (TAPS), and all operating authority. The ownership interest consists of 48.4% in TAPS and 47.58% of the Valdez Marine Terminal tankage. CPCN No. 311. (Docket No. P-19-017).

- BPPA's 100% stock ownership interest in BP Transportation (Alaska) Inc. that owns 50% membership interest in Milne Point Pipeline, LLC; CPCN Nos. 329 and 638. (Docket No. P-19-016.).

- BPPA's 100% stock owner interest in BP Transportation (Alaska) Inc. that owns 32% membership interest in PTE Pipeline, LLC (Point Thomson); CPCN No. 746. (Docket No. P-19-015).

In making the case for why Harvest Alaska is qualified and that the proposed transfers are in the best interest of the public, the applications each make the same following points:

- Harvest Alaska is a willing owner. In explaining the import of Harvest Alaska being a willing owner, the applicants reference a previous RCA holding regarding the transfer of an owner's interest in TAPS. In that holding, the Commission stated that in addition to it being in the best interest of the public that financially responsible and technically

proficient entities operate TAPS, it "is also in the best interest of the public that TAPS be operated by entities willing to do so."[32]

- Harvest Alaska is fit and able to own BPPA's pipeline interests because:
    - In addition to their own experience operating and managing several Cook Inlet and North Slope oil and gas pipeline systems, Harvest Alaska's parent company Hilcorp Alaska provides operational support to Harvest Alaska. In turn, Hilcorp Alaska is backed by its parent company Hilcorp Energy I, LP which is a general partner of Hilcorp Energy Company based in Houston, Texas. Two other experienced Hilcorp pipeline entities in Alaska provide additional support – Harvest Midstream and Harvest Midstream Company.
    - The Commission has previously determined that Harvest Alaska is financially and operationally capable of owning and operating the several Cook Inlet and North Slope pipelines that Harvest currently operates and owns through subsidiaries.
    - Harvest Alaska's recent two years of unaudited financial statements together with Hilcorp Alaska's and Harvest Midstream's most recent two years of audited financial statements demonstrate that the three companies have substantial assets and are financially strong enough to support Harvest Alaska's ownership of BPPA's pipeline interests.
- There is no expected change to the day-to-day operations of any of the three pipelines as a result of the proposed transfer. The pipeline interests will continue to be operated safely, reliably, efficiently, and in compliance with all legal requirements.
- There is an ongoing need for the continued operation of each of the three pipelines; and the continued operation of each "is in the best interest of its shippers and Alaska."

The applications concluded that approving each application will ensure that the specified pipeline interest "will continue to be owned and operated by a qualified company that is able and willing to operate the system efficiently and compliantly over the long term at no added cost to ratepayers" and that each proposed transfer is "consistent with and promotes the best interest of the public interest and should be approved."

Commission's Decision

As part of its decision-making process, on April 2, 2020, the RCA issued an order requiring a response from the applicants to a number of questions. Having determined the joint

CPCN transfer applications complete, the Commission's questions related to the determination of whether the applicant is able and willing to properly perform the proposed service and whether the proposed service is required by the present or future public convenience and necessity, and consideration of the best interest of the public.[33]

In its April order, the Commission put forward questions regarding the TAPS, Milne Point and Point Thomson pipeline operations including work plans and budgeting, insurance to cover unanticipated incidents, and a request for pipeline operating agreements and a history of past incidents such as reportable spills or material pipeline damage. The Commission asked how Hilcorp entities will fund any large or unusual amounts requested by Alyeska Pipeline Service Company for TAPS expenses.

Several questions reflected the current pandemic crisis including whether recent changes in the financial markets have impacted the Hilcorp entities' access to the capital necessary to fund the BP-Hilcorp Transaction, and if so, how Hilcorp entities plan to address the issue. If not, the Commission sought an explanation of the sources of capital for the acquisition. Other questions related to the companies' ability to fund Alaska operations.

The Commission sought information about the Financial Assurances Agreements Hilcorp entities have with the Department of Natural Resources and any insurance bonding or security DNR has required under its right-of-way leases. The Commission asked whether any BP right-of-way lease obligations survive the transfer or expiration of the lease; and the applicants' view on their lease obligations regarding indemnity requirements for damage on state, federal or private land.

The Commission presented multiple questions regarding the dismantlement, removal, and restoration of the three pipelines. Of particular interest were issues related to TAPS DR&R,

including: DR&R costs and funding; whether there is a BP "backstop" for Harvest Alaska's DR&R liability and if so, who can enforce the backstop; and whether it is BP's position that the RCA will have jurisdiction over BPPA's affiliate BP Corporation North America (BPCNA). The Commission asked the applicants to provide "a schedule showing the extent to which BP or its affiliates have assumed responsibility for DR&R liabilities associated with former TAPS carriers that no longer own a share of TAPS (e.g., Unocal Pipeline Company)."

On May 4, 2020, Harvest Alaska and BP submitted responses to the RCA questions along with a petition for confidential treatment of certain information. The response to questions included both a confidential version and a public version with redactions. Among the redactions were the applicants' responses regarding: how Hilcorp midstream companies will fund any large or unusual amounts for expenses requested by Alyeska; Hilcorp companies' financial fitness, including the impact of recent changes in the financial market; the level of financial reserves set aside to fund Alaskan operations; and detailed information related to the Financial Assurance Agreements Hilcorp has with the Department of Natural Resources.[34]

The applicants also asked to keep confidential the amended Purchase and Sales Agreement (PSA) that was changed in response to changing fiscal conditions related to falling oil prices and the pandemic. Other documents that Harvest and BP requested be held confidential included: Operational Risk Assets for TAPS, Milne Point and Point Thomson pipelines and owner committee meeting minutes; Pipeline Repairs, Replacements and Improvements; 2020 Budget and LRP (long-range plan); Harvest Alaska and BPPA Insurance Coverage; DR&R Studies (a Fluor DR&R 2005 Cost Estimate Report and material is public).

The RCA granted the entirety of the petitioners' request for confidentiality on July 2, 2020.[35]

On June 12, 2020, the RCA issued another order requesting additional information related to the amended Purchase and Sales Agreement. According to the order, the amendment replaced certain sections of the original PSA and included over 400 pages of new exhibits. The amendment added 429 pages to the 395-page original PSA. The RCA also requested additional information regarding corporate guaranties to ensure performance and the existing organization and anticipated reorganization of both applicants. In addition, the RCA requested clarification regarding the TAPS Carriers' joint liability; a conditional security agreement referenced in the applicants' May 4, 2020 response; and previous and current versions of the Financial Assurances Agreement entered into with DNR by Harvest Alaska, Hilcorp Alaska or any other affiliate.[36]

BP and Harvest filed the requested additional information on July 7, 2020. They requested confidentiality for the Second Amendment to the Purchase and Sale Agreement dated June 30, 2020 and associated documents; and for copies of the Financial Assurances Agreements entered into between DNR and Harvest and Hilcorp entities. As of August 6, 2020, the RCA's decision regarding confidentiality is pending.[37]

II. Waiver of Audited Financial Statements

Regulations adopted by the RCA specify the information required to be submitted with pipeline carrier applications, including the transfer of a CPCN. For existing businesses, 3 AAC 48.625(a)(7) requires an applicant to provide their "most recent audited financial statements for the two most recent fiscal years preceding the date of the application." If the required audited statements are not available, the applicant can request a waiver of the requirement. A waiver request must include (1) a certification that independent audits are not performed; (2) financial statements consisting of, at a minimum, comparative balance sheets, income, and cash flow

statements for the two most recent fiscal years preceding the date of the application, verified and certified for accuracy; and (3) a description of how the public convenience and necessity requires the service.[38]

BP-Hilcorp Transaction – Waiver Requests

On September 27, 2019, as part of their CPCN transfer applications, Harvest Alaska filed its 2017 and 2018 unaudited financial statements and the 2017 and 2018 audited financial statements of its current parent, Hilcorp Alaska, and expected future parent, Harvest Midstream. In conjunction with the applications, Harvest Alaska filed motions requesting a waiver of the regulatory requirement regarding submission of audited financial statements and that the RCA accept Harvest's unaudited financial statements and its parent companies audited statements. The motions argued that waiver requirements were met because:

- Harvest Alaska certified it does not perform independent audits.
- The unaudited and audited financial statements each include comparative balance sheets, income, and cash flow statements, and other information.
- Harvest Alaska's unaudited financial statements have been verified and certified for accuracy.
- The continued operation of each of the pipelines is required for the current and future public convenience and necessity.

Commission's Decision

On March 12, 2020, the RCA granted Harvest Alaska's motions for waiver. The Commission found that Harvest Alaska satisfied the regulatory requirements for a waiver and accepted Harvest's unaudited financial statements along with the audited financial statements of their parent companies.[39]

III. CONFIDENTIAL TREATMENT OF INFORMATION

Under AS 42.06.445(a), information submitted to the RCA is "open to public inspection at reasonable times." Subsection (d) of the statute provides the opportunity for a person to file a written objection to public disclosure of information obtained by the Commission as part of its proceedings. The Commission is required to withhold the information from public disclosure "if the information adversely affects the interest of the person making written objection and disclosure is not required in the interest of the public."

A petition to treat records as confidential must meet the requirements of 3 AAC 48.045. Under subsection (a) of the regulation, the petition must identify the record to be protected and set out "good cause, including facts, reasons, or other grounds, for the commission to classify that record as confidential." Subsection (b) provides that a showing of good cause includes (1) disclosure of the record to the public might competitively or financially disadvantage or harm the person with a confidentiality interest or might reveal a trade secret; and (2) the need for confidentiality outweighs the public interest in disclosure.

AS 42.06.445(c) provides another exception to public disclosure. The statute addresses documents filed with the RCA that relate to the finances or operations of a pipeline subject to federal jurisdiction and that are not required to be filed with the appropriate federal agency. Documents that meet these criteria are "open to inspection only by an appropriate officer or official of the state for relevant purposes of the state."

BP-Hilcorp Transaction – Petitions for Confidential Treatment of Information

A. Purchase and Sale Agreement

In a filing dated December 23, 2019, Harvest Alaska and BP Pipelines (Alaska) (BPPA) petitioned for confidential treatment of the Purchase and Sale Agreement dated August 26, 2019.

According to the petitioners, the reasons that good cause exists to protect the PSA as confidential include the following:

- The PSA reflects a negotiated transaction containing information and terms of agreement on a variety of subjects that each party desires and have agreed to keep confidential.
- The information in the PSA goes far beyond information related to the regulated pipeline infrastructure at issue in the transfer applications, including the terms and conditions of the entire transaction under which BP is exiting Alaska.
- Companies like the petitioners regularly engage in acquisitions and divestitures. For these companies, the terms of any given transaction are considered and treated as confidential and proprietary, including confidentiality provisions in the agreements.
- There is concern that if the terms of any given transaction are disclosed, parties with whom the petitioners engage in subsequent negotiations will take selected portions of the agreement and expect the same treatment or use the terms of a prior agreement to demand the same economic value; and so weaken the disclosing party's bargaining position.
- Disclosure of even a redacted version of the PSA would harm the petitioners and their affiliates' competitive and financial interests and undermine competition.
- The petitioners view the information in the PSA as confidential and proprietary information that constitutes trade secrets.
- The BP-Hilcorp Transaction is primarily focused on upstream production interests not subject to commission regulation. The PSA reflects consideration and terms appropriate to these upstream interests, disclosure of which would adversely affect the petitioners' and their affiliates' financial and competitive interests.
- The PSA contains competitively sensitive financial and other information for largely nonregulated operations.[40]

In reference to a 2012 order, the petitioners pointed out that the RCA ruled under analogous circumstances that the need to maintain the confidentiality of a purchase and sale agreement outweighed the public interest in disclosure and should be protected.[41]

Commission's Decision

On February 11, 2020, the RCA granted the petition for confidential treatment of the PSA based on the regulatory balancing test provided in 3 AAC 48.045. The Commission determined

that disclosure of the PSA might competitively harm the applicants; that the need for confidentiality outweighed the public interest in disclosure; and that there could be competitive harm in disclosing the agreement "due to the negotiated nature of these agreements in a climate where multiple entities seek to acquire and relinquish oil and gas assets under the most favorable terms available." The Commission agreed with the applicants that disclosure of the terms of one transaction might weaken the disclosing party's position in regard to other unrelated transactions. Though there were a large number of public comments calling for disclosure of financial documents submitted as part of the RCA's decision-making process, the Commission noted that no entity had requested access to the PSA or otherwise articulated a public interest in its disclosure.[42]

B. Financial Statements

On September 27, 2019, in conjunction with the CPCN transfer applications, Harvest Alaska, Hilcorp Alaska and Harvest Midstream petitioned for confidential treatment of:

- Harvest Alaska's 2016-2017 and 2017-2018 unaudited financial statements;
- Hilcorp Alaska's 2016-2017 and 2017-2018 audited financial statements; and
- Harvest Midstream's 2016-2017 and 2017-2018 audited financial statements.[43]

On December 23, 2019, Hilcorp Energy I and Hilcorp Energy Company petitioned for confidential treatment of:

- Hilcorp Energy I 2016-2017 and 2017-2018 audited financial statements; and
- Hilcorp Energy Company's 2016-2017 and 2017-2018 audited financial statements.[44]

Also on December 23, BPPA petitioned for confidential treatment of BP Corporation North America's (BPCNA) 2016-2017 and 2017-2018 audited financial statements.[45]

The petitioners explained that the Hilcorp entities are privately held and do not disclose their financial information to the public. They argued that good cause exists to protect their

financial statements as confidential because disclosure of the companies' financial position, resources, revenues and costs could place them at a competitive disadvantage. The petitioners stated that competitors and potential contractors could use the currently private information in the financial statements to develop pricing and bidding strategies that would damage their business, give competitors an unfair advantage, and unfairly advantage potential contractors, especially where competitors or contractors do not make their own financial information public.

For Harvest Midstream and BPCNA, the petitioners explained that much of the oil and gas business they participate in is unregulated and highly competitive. They argued that making the companies' financial information public would damage their ability to be competitive in their unregulated businesses and would potentially be anti-competitive.

The petitioners pointed out that the Commission previously ruled that the audited financial statements of Hilcorp Alaska and its parent Hilcorp Energy I should be protected under the regulations. They identified five previous RCA orders finding that the potential competitive harm to Hilcorp companies by disclosure of their financial information outweighed the public interest in disclosure of the financial statements; and that good cause existed to classify the information as confidential.

Commission's Decision

In an order issued on February 11, 2020, the RCA required the petitioners to supplement their petitions for confidential treatment of financial statements with more information about the statements and an explanation of the specific harm that would result from their disclosure. The Commission stated, "While we understand the applicants' belief that the petitions for confidential treatment presented an adequate showing of competitive harm based on our recent precedent, we believe the magnitude of the current acquisitions and the public's stated interest in disclosure

warrant additional explanation regarding the competitive harm that could result from disclosure of financial information."[46]

In regard to the petitioners' argument that prior RCA decisions granted confidential treatment for Hilcorp financial statements, the order noted that the prior petitions were not opposed, while in the current proceedings "numerous members of the public have expressed interest in disclosure of the financial statements to assess the ability of the applicants to operate TAPS and the Valdez marine terminal and tankage." The Commission also distinguished the prior cases as having involved specific pipelines while the current case involves the "acquisition of assets on a much larger scale and that carries with it both greater performance expectations and increased potential financial risk should a catastrophic event occur."

The RCA also sought information regarding the applicability of AS 42.06.445(c) – the statute that precludes the Commission from disclosure of documents related to the financing or operations of a pipeline subject to federal jurisdiction if the document is not required to be filed with a federal agency with jurisdiction. The Commission asked that the petitioners provide an explanation regarding whether any of the financial statements were required to be filed with a federal agency, and how and whether they related to the finances or operations of the pipelines subject to the transaction.

The petitioners fulfilled the RCA's request for the requested information on February 18, 2020. In their response, the petitioners explained their financial statements should be kept confidential as mandated by AS 42.06.445(c) because the pipelines at issue are subject to federal jurisdiction and the appropriate federal agency, the Federal Energy Regulatory Commission, had not required any of the financial information submitted as part of the state RCA proceedings.[47]

In the consolidated order issued on March 12, 2020, the Commission found the requirements of AS 42.06.445(c) to be applicable. The Commission ruled that "the financial statements are documents related to the finances and operations of pipelines subject to federal jurisdiction," and that the documents were not required by the appropriate federal agency. With that finding, the RCA determined they were required to treat the financial statements for all Hilcorp entities and BP Corporation North America as confidential as a matter of law.[48]

Commissioner Stephen McAlpine dissented from the decision. In his written dissent, McAlpine referenced an April 2000 Commission order addressing documents qualifying for confidential treatment pursuant to AS 42.06.445(c). In that order, the Commission said that a petition did not need to be filed under 3 AAC 48.045, stating, "The only requirement for classifying pipeline carrier information confidential under AS 42.06.445(c) is that it be filed with a legend stating 'Confidential Pursuant to AS 42.06.445(c).'" The Commission further stated, "If a pipeline carrier does not affix the legend, the protections of AS 42.06.445(c) are deemed waived."[49]

Commissioner McAlpine argued that in the filings made for the BP-Hilcorp Transaction, the petitioners failed to note on the application that they sought the protection of AS 46.02.445(c). McAlpine stated:

> I take the former Commission's guidance at its word and would have deemed the protection to have been waived. At Petitioners' own request, I would have applied a balancing test. With this in mind, I believe that airing these documents publicly and subjecting the entire transaction to intense debate far outweighs the petitioners' interest in keeping them confidential. Instead, Hilcorp has invited an unnecessary public relations nightmare over what may come of the lifeblood of our state. Now public scrutiny may well be based on speculation as to what the documents may or may not say rather than a complete airing of the facts as they exist.

The March 12 order granting confidentiality included a discussion of the filing requirement as part of a response to comments submitted by the City of Valdez relating to the

same issue. The Commission explained that the requirement to file documents with a legend stating, "Confidential Pursuant to AS 42.06.445(c)" was to avoid an applicant having to file a petition requesting confidential treatment under 3 AAC 48.045 "when the requirements of AS 42.06.445(c) are straightforward and need no detailed explanation." The order states, "This accommodation was never intended to prevent filing a petition for confidential treatment under 3 AAC 48.045 or to place a pipeline carrier in the position of losing the protection of AS 42.06.445(c) if it chooses to file a petition." A majority of the Commission ruled that the petitioners did not waive the protection of AS 42.06.445(c) by failing to include the legend on its filings. The order stands and the financial statements remain confidential.

C. Additional Requests for Confidentiality

Harvest Alaska and BPPA cited AS 42.06.445(c) and (d) and applicable federal law as support for confidential treatment of certain information submitted with their May 4, 2020 response to the RCA's April 2 order requesting additional information regarding the transfer of the Certificate of Public Convenience and Necessity. The applicants sought confidentiality for the amended Purchase and Sale Agreement and the following information:

(1) operational risk assessments for TAPS, Milne Point, and Point Thompson pipelines;

(2) minutes of TAPS owners committee meetings;

(3) known pipeline repairs, replacements, and improvements;

(4) long-range plans for improvements or modifications to TAPS;

(5) procured insurance policies intended to cover liabilities arising from operation of the pipeline, along with certain details provided in the narrative explaining those policies;

(6) operating agreements and related amendments between the owners and operators of the Milne Point and Point Thompson pipelines, along with certain narrative information regarding those agreements;

> (7) certain references to terms of the purchase and sale agreement included in the response to a question regarding whether BP agreed to provide a backstop to any interested entity for Harvest Alaska's operational liability;
>
> (8) responses to questions regarding Harvest Alaska and its affiliates access to the capital necessary to fund the BPPA acquisition after the recent downturn of financial markets;
>
> (9) Financial Assurance Agreements Harvest Alaska or its affiliates have entered into with DNR to ensure Harvest Alaska and its affiliates have the financial resources necessary to meet obligations related to Alaskan pipeline operations;
>
> (10) studies and narrative information related to the anticipated expense of the dismantlement, removal, and restoration of TAPS at the end of its useful life.[50]
>
> The RCA granted the applicants' May 4 confidentiality request in full on July 2, 2020.

The Commission found the amended Purchase and Sale Agreement to be confidential based on its prior rationale for keeping the original PSA confidential – that the balancing test for confidentiality under 3 AAC 48.045 was met. The other information was found confidential as a matter of law under AS 42.05.445(c) that precludes public disclosure of documents related to the finances or operations of a pipeline carrier subject to federal jurisdiction if the document is not required to be filed with the appropriate federal agency. The RCA decision noted that the documents for which confidentiality was sought all bore the legend "Confidential Pursuant to AS 42.06.445(c), AS 42.06.445(d), and 3 AAC 48.045."[51]

IV. Public Notice and Public Comments

The Commission issued public notices of the joint CPCN transfer applications, petitions for confidential treatment of information, and the waiver motions on October 4, 2019, October 23, 2019, and November 15, 2019. Comments were initially due October 25, 2019, but because of public requests, the Commission extended the comment period twice – first until November 8, 2019, and then to December 13, 2019. According to an RCA order issued February 11, 2020, the

Commission received over 200 public comments before the close of the comment period with many of the commenters opposing either the waiver requests, the petitions for confidential treatment of information or both.[52]

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

The Alaska Department of Environmental Conservation (DEC) is broadly charged with implementing the laws and promulgating and enforcing the regulations that address environmental quality issues throughout the state, including air and water quality, land and subsurface land pollution, oil spill prevention, solid waste management, pesticides and hazardous substances control, pollution prevention, public health, and food safety.

The department was created in 1971, in part because of the need to balance increasing oil and gas activities in the state with protection of Alaska's other natural resources. In his transmittal letter for the original legislation creating the department, Governor Bill Egan highlighted the environmental challenge of the construction of the Trans-Alaska Pipeline System, stating, "By authorizing the department to set the environmental standards for the construction and operation of the pipeline, this legislation enables the government of the State to promote the most rapid development of our rich petroleum resources while assuring the protection and conservation of the Alaskan environment."[53]

With the first flow of oil from the North Slope to Valdez in June 1977 came increased concerns about the risk of spills from oil transportation, exploration and production operations. 1979 saw the enactment of comprehensive legislation giving DEC the authorities necessary to prevent and mitigate the discharge of oil and other hazardous substances on land and in the state's waters. A key component of the legislation was making the discharger responsible for having sufficient resources and the capability to contain and cleanup discharges of oil and to cover the cost of damages for those injured by a discharge.

Under current law, DEC's primary authorities involved in the BP-Hilcorp Transaction are requirements for companies engaged in oil and gas operations in the state to prepare oil discharge

prevention and contingency plans and to provide proof of financial responsibility. The department is also overseeing liability for clean-up of sites that were contaminated prior to the Transaction.

I. Oil Discharge Prevention and Contingency Plans

Among other things, AS 46.04.030 requires a DEC approved oil discharge prevention and contingency plan prior to the operation of oil terminal facilities, pipelines, exploration or production facilities, and tankers and barges in the state or within the waters of the state. Contingency plans detail how a company will prevent and respond to oil spills for which the company is responsible. Pursuant to DEC regulation, a contingency plan is prepared by the responsible company and must contain a Response Action Plan that provides "sufficient detail to clearly guide responders in an emergency event" for discharges of any size. A contingency plan must also contain a Prevention Plan that is a "detailed description of all oil discharge prevention measures and policies employed at the facility, vessel, or operation, with reference to the specific oil discharge risks involved." A supplemental information section provides background and verification information; another section addresses the use of best available technology; and a section requires a "calculation of the applicable response planning standards" – state established spill volumes and timeframes applicable to response planning for each regulated operation.[54]

18 AAC 75.425(c)(3) requires that the contingency plan contain a statement signed by an individual with appropriate authority committing the oil discharge prevention and response resources necessary to implement the plan. Pursuant to 18 AAC 75.445, DEC will not approve a plan unless it contains sufficient personnel, equipment and procedures to respond to a spill. If

DEC determines that a plan does not include those resources, DEC will not approve the plan, and the applicant may not lawfully operate the facility.

To change the owner or operator of a facility or operation with an approved contingency plan, 18 AAC 75.414 requires the new owner or operator to submit an application as a plan amendment. Alternatively, an owner or operator with an existing plan that is taking on new facilities may apply for a plan amendment to add new physical locations to its existing plan. Pursuant to 18 AAC 75.415, when a plan amendment is submitted, DEC determines whether the change will be reviewed as a major or minor amendment.

The process for minor amendments is minimal – the applicant must provide all copies of the amendment to DEC, and provide copies of the final version of the plan to DNR, the Department of Fish and Game, regional citizens' advisory councils, and other persons designated by DEC.[55]

The process for a major amendment includes a public comment period from 30 to 45 days depending on the complexity of the application package or whether DEC determines a longer comment period is in the public interest. Public and agency comments may include requests for additional information. If the department determines additional information is needed to review the plan, DEC will notify the applicant no later than 90-days after the end of the initial public comment period and may set a deadline for submittal of the information. Once the applicant fulfills the original additional information request and any subsequent requests by the department, a minimum 10-day public comment period is opened for review of the additional information. A public hearing will be held if the department determines good cause exists. The department has seven working days from the end of the public comment period to determine

whether the application package is complete; and then 65 days to approve, approve with conditions or disapprove an application package.[56]

If aggrieved by DEC's decision, the applicant or any person who submitted timely comments on the application may request an informal review or adjudicatory hearing. When the process is complete, a DEC contingency plan approval is valid for a term of five years from the date it is issued unless the department specifies a shorter term in the approval letter and certificate of approval.[57]

BP-Hilcorp Transaction – Contingency Plan Approval

With completion of the BP-Hilcorp Transaction, Hilcorp will assume responsibility for the Greater Prudhoe Bay facilities. The facilities consist of over 1,000 production wells, more than 40 gravel pads, seven processing centers, a crude oil topping refinery unit, numerous oil storage tanks, and associated oil piping, including crude oil transmission pipelines. Hilcorp has an existing approved regional Oil Discharge Prevention and Contingency Plan for their current North Slope operations and opted to amend that plan to add the Greater Prudhoe Bay facilities.[58]

On January 21, 2020, Hilcorp Alaska submitted to DEC the major amendment application for their North Slope contingency plan. The first public comment period for the amendment application commenced on February 7, 2020 and closed on March 23. A request for additional information was issued May 8, 2020 and the response received on May 29. On June 10, DEC began a ten-day public period on the additional information received from Hilcorp. That comment period closed on June 19. Only one comment was received in the first comment period. The commenter requested additional time to research the amendment regarding its environmental consequences. No comments were received during the second comment period.

DEC issued its approval of Hilcorp's major amendment application on June 29, 2020. The approval covers operation of production facilities at Greater Prudhoe Bay, Milne Point, Northstar and Endicott. Covered facilities include oil production wells, pads and associated flow lines; crude oil transmission pipelines; oil storage tanks and facility piping; and general production operations.[59]

II. Proof of Financial Responsibility

AS 46.04.040 requires the owner or operator of an oil terminal facility, a pipeline or an exploration or production facility, or a tanker or barge in the state to have a DEC approved proof of financial responsibility to ensure the company has the financial resources to respond to an oil discharge. The amount is based on the company's facility with the highest financial responsibility requirement – each facility is not required to have a separate proof of financial responsibility. The maximum proof required for any facility except tankers is $93.5 million. Proof of financial responsibility may be by self-insurance, insurance, surety, guarantee, letter of credit approved by the department or other proof approved by the department. Proof of financial responsibility requires annual DEC approval.

Losses that may be compensated through the proof of financial responsibility statute include the full amount of actual damages caused to the state by oil discharges, reckless or negligent operation of a tank vessel, and ballast water discharge; liability for the release of hazardous substances; civil penalties for discharges of oil or crude oil; liability in a civil action for violations of DEC laws and regulations; or civil penalties for a failure to comply with an approved or modified contingency plan, failure to have access to the resources identified in the plan, or failure to respond to a spill with those resources in the shortest possible time.[60]

To add facilities to its proof of financial responsibility, an owner or operator must submit a letter to DEC requesting an amendment to the application. The letter must include documents that verify to the department's satisfaction that the additional operation is covered by the current approved proof of financial responsibility. A person may not operate a facility unless DEC has approved the person's proof of financial responsibility. If DEC, in applying the regulations in Article 2 of 18 AAC 75, determines an entity has insufficient financial responsibility for the associated response planning standard, it may not lawfully operate the facility.

Records received by DEC related to proof of financial responsibility, including financial responsibility applications, operations files, and proof of financial ability to respond to a spill are subject to the Public Record Disclosures Act that opens public records of all public agencies to the public unless exempted.[61]

BP-Hilcorp Transaction – Proof of Financial Responsibility

BP's proof of financial responsibility cannot be transferred as part of the Transaction. Hilcorp has demonstrated proof of financial responsibility for the maximum $93.5 million for its current assets, primarily using commercial insurance policies. On June 16, 2020, Hilcorp submitted paperwork to include their acquisition of the BPXA facilities under its existing proof of financial responsibility. DEC finalized its review of the submission on June 30, 2020.[62]

There is no public review or public comment structure regarding the financial responsibility review and approval process. As provided in 18 AAC 75.237, any person may request the application and supporting documents through a public record request under AS 40.25.120.

III. CONTAMINATED SITES LIABILITY

Alaska law imposes strict liability for the release of hazardous substances. Strict liability means that a person who owns or operates a facility at which a spill occurs must contain and clean up the spill and compensate for damages caused by the spill, even if the person did not intentionally cause the spill or act negligently when the spill occurred. The reason for strict liability is the high risk of harm that results from a release of hazardous substances such as oil, which creates a heightened duty to exercise extreme caution.

Alaska law also imposes joint and several liability on owners and shippers of oil or other hazardous substances for the costs of response, containment, removal or remedial action incurred by the state, a municipality or a village associated with an unpermitted release of oil or hazardous substances. The combination of strict liability and joint and several liability means that each owner or operator of a facility or vessel can be held independently liable for the full amount of damages from a spill, regardless of their respective degrees of fault.

BP-Hilcorp Transaction – Responsibility for Contaminated Sites and Clean-up

On the Greater Prudhoe Bay Unit, BPXA is responsible for both active contaminated sites and cleanup that is complete and subject to institutional controls. Cleanup complete with institutional controls are sites with contamination that remains in place for natural diminution over time. This is used when there is potential to cause more environmental harm from removal of the contamination or where complete cleanup is not feasible at the site due to the presence of buildings or infrastructure. Cleanup with institutional controls means getting to a level of cleanup and site characterization such that the release no longer causes significant risk to human health or the environment as long as the contamination is managed appropriately. There are 20 contaminated sites in active status and 30 sites with institutional controls that may require long-

term management. It is possible that after the Transaction is completed, DEC could identify additional contaminated sites that existed before the Transaction, and so may also be the responsibility of BPXA.

DEC's understanding is that the Transaction will involve Hilcorp purchasing BPXA stock and so acquiring BPXA – the entity will be renamed Hilcorp North Slope, LLC. Consequently, DEC does not expect that BPXA will exist as a separate entity post-transaction. Hilcorp will assume ongoing obligations for cleanup of contaminated sites existing prior to the Transaction as part of acquiring BPXA.

AS 46.04.040(i) provides that the proof of financial responsibility that Hilcorp must provide to DEC could be used to address contaminated sites. If Hilcorp is unable to clean up a release for which they are liable, that cleanup may fall to the landowner or other responsible parties. According to the June 29, GOC memorandum, "DEC expects there will be adequate assurances in place to protect the state and has worked to ensure the contaminated sites are covered under an enforceable secondary guaranty with BP."

IV. Other Permits and Authorizations

In anticipation of Hilcorp's reorganization after acquiring BPXA, DEC's Water Division is working with the companies to submit a single transfer request that covers all Alaska Pollutant Discharge Elimination System (APDES) authorizations as well as issuance of dredge and fill certificates of reasonable assurance (CRAs) that assess whether operations permitted through the Army Corps of Engineers dredge and fill permits comply with state requirements. The Division plans to provide a spreadsheet with each of the transfer items and request the necessary updates to responsible parties, facility contacts and billing contacts to be submitted with the single

request. Because this is a requested transfer, it can be expedited (transferred in less than 30 days without a public notice).

The process for updates will be similarly minor for air permits. To change the company name or responsible official for specific permits, Hilcorp/BPXA will submit a form that DEC will process administratively. According to DEC, this does not take significant staff time and is generally turned around in a few days depending on staff workload. These types of administrative actions do not require public notice or comment.

Drilling waste sites include permitted and active drilling waste treatment facilities and long-term storage sites, as well as inactive and closed facilities. These facilities have financial assurance responsibilities. Solid waste facilities require permitting under AS 46.03.100-120 and 18 AAC 60. Financial assurance for closure and post-closure care and monitoring is required under 18 AAC 60.265.

Solid waste items that will be transferred to Hilcorp's control include:

- Three active permits and one inactive facility, with financial assurance for each.
- Two previously permitted facilities in post-closure monitoring that may require corrective action.

DEC staff will work with Hilcorp on transferring the solid waste permits and has already been working with Hilcorp on the financial assurance requirements. There is no public notice or comment process associated with these changes.

Inactive Reserve Pits (IRPs) are legacy drilling waste disposal sites that were in use during the earlier years of oil and gas development. These sites were primarily in use prior to DEC requiring permitting for such facilities. Solid Waste regulations require closure of IRPs under 18 AAC 60.440.

IRP items that BP (BP Remediation Management) will retain include long-term liability for closed exploration IRPs. IRP items that will be transferred to Hilcorp's control include:

- 17 working pads in the Western Operating Area of the Prudhoe Bay Unit that include reserve pits that remain to be excavated and closed. At the end of pad life, DEC and Hilcorp will enter into an agreement for the closure of these facilities, including financial assurance for each.

- 93 closed production and exploration IRP sites will become Hilcorp's responsibility for long term liability and corrective action, if required.

An Environmental Protection Agency Resource Conservation and Recovery Act Order covers a number of solid waste sites and contaminated sites. Responsibilities for compliance with the RCRA Order will be transferred to Hilcorp with its acquisition of BPXA. EPA primarily administers this order; however, DEC participates in the process.

ALASKA GASLINE DEVELOPMENT CORPORATION

The Alaska Gasline Development Corporation (AGDC) is an independent, public corporation primarily responsible for leading the state's efforts in developing the transportation infrastructure needed to move North Slope natural gas to local and international markets. AGDC is governed by a board of directors consisting of five public members appointed by the governor and confirmed by the Legislature, and two people designated by the governor that are the head of a principal department of the state, except not the commissioners of the Departments of Natural Resources or Revenue. The Corporation is housed in the Department of Commerce, Community, and Economic Development solely for administrative purposes and is a separate entity distinct from Alaska state government.

AGDC is the latest in a long series of attempts, starting in the 1970s, by private sector developers and the State of Alaska to construct a natural gas pipeline and associated infrastructure for transporting North Slope gas to market. For a variety of reasons, each effort faded, failed or merged into the next strategy.

In 2002, Alaska voters passed a ballot initiative that established the Alaska Natural Gas Development Authority (ANGDA) to build a gas pipeline from Prudhoe Bay to tidewater on Prince William Sound. In 2006, the administration negotiated a contract under the 1998 Stranded Gas Development Act (SGDA) that authorized the Department of Revenue commissioner to negotiate tax and royalty rates and other fiscal terms with a gas pipeline project sponsor. The 2006 SGDA contract mostly focused on establishing acceptable fiscal terms for pipeline construction by the three major North Slope producers – BP, ConocoPhillips and ExxonMobil. The Legislature did not authorize the contract. The SGDA was followed by the 2007 Alaska Gasline Inducement Act (AGIA). AGIA offered state financial subsidies to induce an

independent pipeline company to perform certain pipeline pre-development and authorization work in advance of gas sales and shipping commitments from the major producers.

Under the auspices of AGIA, the independent pipeline company TransCanada Alaska began taking steps to construct an overland gas pipeline through Canada to North American markets. In 2010, the Alaska Housing Finance Corporation (AHFC) was authorized to study a pipeline for transporting gas from the North Slope to Fairbanks and Southcentral Alaska.[63]

In 2013, AGDC was created to advance the Alaska Stand Alone Pipeline Project (ASAP) – a state-sponsored project to construct a pipeline to transport North Slope natural gas for instate use. Meanwhile, the economic feasibility of the overland pipeline project under AGIA was diminishing due to the fracking boom that was glutting the North American market with gas. Along with BP, ConocoPhillips and ExxonMobil, the state and TransCanada Alaska began shifting from the overland project to consideration of a liquefied natural gas (LNG) export project. LNG projects are more complex than natural gas transportation projects and entail significant additional upfront costs and coordination among all parties.[64]

In early 2014, the State of Alaska, AGDC, TransCanada Alaska and the three major North Slope gas producers entered into a "Heads of Agreement" (HOA) that established the guiding principles and potential terms for a joint venture to pursue a new project titled "Alaska Liquefied Natural Gas Project (AKLNG)." The proposed project included a gas treatment plant on the North Slope, a pipeline to a tidewater LNG facility, a marine terminal for transport to Asian markets and up to five offtake points along the pipeline for distribution of gas instate.[65]

The state, through a complicated arrangement with TransCanada Alaska, would own 25 percent of AKLNG pipeline and gas treatment facilities, and through AGDC would own

25 percent of the liquefaction facility, with ExxonMobil, BP and ConocoPhillips owning the rest. Following up on the HOA, the Legislature in 2014 passed legislation sanctioning the state administration moving forward with taking an ownership interest in the AKLNG project and authorizing AGDC to enter a Pre-Front End Engineering and Design Joint Venture Agreement (Pre-FEED JVA) and other commercial agreements related to the state's role as a pipeline owner.[66]

In 2015, the Legislature authorized AGDC to buy out TransCanada's share of the AKLNG project. The next year, falling LNG prices in the Asian market led the three North Slope producers to complete their obligations under the Pre-FEED Joint Venture Agreement of AKLNG and provide AGDC unencumbered rights to advance the project. Transition of the project to AGDC leadership was completed in late 2016, and AGDC filed an application with the Federal Energy Regulatory Commission (FERC) pursuant to Section 3 of the Natural Gas Act on April 17, 2017, for authorization to construct and operate the project.

The state continued commercial development efforts to advance the project and in 2017, AGDC entered a nonbinding agreement with three Chinese firms that included purchase of up to 75 percent of the project's liquified natural gas and provided 75 percent of the project financing. The agreement expired in 2019.

In March 2020, FERC published the final Environmental Impact Statement for the project and on May 21, 2020, issued its formal Section 3 Order authorizing the project.[67]

AGDC's Current Activities

Under its broad authority to develop natural gas pipelines for the benefit of the people of the state, AGDC is continuing to look for ways to develop transportation infrastructure for North Slope gas. In April 2020, the AGDC's Board of Directors approved a Strategic Plan that

recognized AGDC formed key strategic relationships in 2019, collectively referred to as the "Strategic Parties" – parties who have expressed interest in the project and with whom AGDC is collaborating with closely. AGDC's current focus is on moving AKLNG forward by de-risking the project through regulatory approvals and cost reduction, and extension of Strategic Party agreements.

The Strategic Plan assumed AGDC and the Strategic Parties will continue to identify Alaska LNG Project interest from others, develop the optimal project structure, and identify a designated new Project Sponsor by December 31, 2020. AGDC is currently the sole owner and leading the development of the AKLNG project; State of Alaska participation in equity or other aspects of the project has not been defined to date. The AGDC Board of Directors and key State of Alaska stakeholders (executive and legislative) will define an acceptable role, if any, in the project during this process.

AGDC has completed a Class 4 Cost Estimate update with support from Fluor Corporation and the approved project cost estimate has been provided to the joint commercial modeling team with Strategic Parties for economic evaluation. If the project cost projections are favorable, AGDC believes that third parties will become equity investors and participate in the project and AGDC's role would be relatively limited with the third parties taking the lead and most of the risk of project construction and operations.

In March 2019, AGDC signed an Alaska LNG Cost Sharing Agreement with BP and ExxonMobil to work together on finding ways to advance the Alaska LNG project. The agreement was in effect through June 30, 2020. BP and ExxonMobil agreed to provide up to $10 million each to fund AGDC's ongoing efforts to de-risk the project through regulatory approval

and cost reduction. They also agreed to provide technical assistance with regulatory and technical review and analysis and assist with evaluation of potential cost reduction opportunities.

BP-Hilcorp Transaction – North Slope Natural Gas Projects

The success of any North Slope gas project requires the cooperation and participation of the major oil and gas producers because they hold the rights to develop and produce the gas that would come mainly from the Point Thomson and Prudhoe Bay fields. With the BP-Hilcorp Transaction, Hilcorp will be stepping into BP's shoes and joining ExxonMobil and ConocoPhillips as a major gas producer from these fields.

BP Alaska LNG, LLC (BPALL) owns one-third interest in Alaska LNG, LLC. ExxonMobil and ConocoPhillips are the other participants in the LLC, each holding one-third interest. The LLC was formed by the three companies in the initial stages of the AKLNG project to purchase and maintain real property in Nikiski for the LNG facility, and to conduct select regulatory filings outside of the 2014 Pre-FEED Joint Venture Agreement. AGDC is not a member of the LLC but is progressing a purchase option agreement that will consolidate real property required for construction of the project and be part of an overall venture structure.

As part of the BP-Hilcorp Transaction, BPALL's interest in Alaska LNG, LLC will transfer to Hilcorp Alaska. Venture participation beyond June 30, 2020, has not been defined for any participant, including Hilcorp though Hilcorp has publicly stated that it intends to sell natural gas to the AKLNG project. According to DNR, in their conversations with Hilcorp principals, Hilcorp has consistently maintained their openness to explore a project that is economically viable.

POTENTIAL LEGISLATION FOR FUTURE TRANSFERS

Recognizing the changing nature of North Slope operations offers an opportunity to adjust the state's laws to better address future development of the State of Alaska's oil and gas fields. Moving forward, it is possible that one or both of the remaining North Slope major companies will make a similar transfer as BP to Hilcorp, or that Hilcorp will transfer some or all of its assets to smaller or similarly sized independent companies. Most certainly, there will be continuing transfers among independents of all sizes.

Many of Alaska's oil and gas laws were first enacted in the 1950s and '60s shortly before and during the ramp up to major commercial oil production. It may be time to consider statutory and regulatory changes to improve the process for the transfer of Alaska oil and gas interests in the future, including providing for more public disclosure and legislative oversight – especially in the case of large-scale transfers such as the BP-Hilcorp Transaction.

Potential changes to state law include:

- **DNR – Oil and Gas Lease Assignments**
    - Establish a metric for defining a large-scale versus small-scale transfer such as the number of wells or leases being transferred. For a large-scale transfer, establish (1) a public review process for lease assignments that includes public notice about the transfer and an opportunity to comment; (2) a written finding for both an approval or disapproval of a transfer that includes how the transfer is or is not in the public interest; and (3) an appeal process for interested parties. Currently there is no public process for oil and gas lease assignments, and a written finding is required only when the commissioner disapproves an assignment.
    - Establish in regulation criteria for consideration by the commissioner in determining whether to approve a lease assignment. For example, specifically require consideration of a company's financial capacity, technical expertise and operations capability for fulfilling lease obligations; and establish how a past record of lease and regulatory violations, including delinquent royalty filings and AOGCC and environmental law violations, are factored into and addressed by the commissioner's decision. Under current law, the DNR commissioner may consider these criteria

under the broad rubric of whether a transfer is in the public interest; however, the definition of public interest is left to the individual commissioner. Including specific criteria – without limitation for consideration of other factors – will ensure that future lease assignments consistently receive at least the established level of review.

- Strengthen the requirement that an assignor retains secondary liability for DR&R lease obligations, and make it clear such liability extends all the way up the chain of title. Require that an assignor identify the entity that will hold the liability through the life of the lease. In the current Transaction, BP committed to holding their secondary liability through an identified entity. This commitment was established through a negotiated agreement between the state and BP as part of the lease assignment approval. Requiring in law the commitment and identification of a secondary liability holder will better protect the state from the risk of having to pay the costs of DR&R.

- Establish a process for permitting public disclosure of at least some of an oil and gas lease assignment applicant's financial information. Under DNR's generally applicable statute, AS 38.05.035(a)(8), an applicant need only ask that cost data and financial information be kept confidential; there is no process or limitations for such a request. When applied to oil and gas lease assignments, this broad-based statute means the public and legislators must rely on the administration to ensure the new leaseholder has the financial capacity to fulfill lease obligations. There are examples in other statutes that could be used to allow for more transparency in oil and gas lease assignments and better protect the public interest. Examples include:

    - The Regulatory Commission of Alaska public records statute, AS 42.06.445(d), requires that when there is an objection to making information public, the commission must find that the objector's interests are adversely affected by disclosure and that disclosure is not required in the interest of the public. Regulations expand on the statute and require an applicant to identify the record to be protected and show good cause for classifying the record as confidential (3 AAC 48.045).

    - Under the Stranded Gas Development Act, AS 43.82.310 requires an applicant to clearly identify the information to be kept confidential and the reasons supporting the request for confidential treatment. The DNR or Department of Revenue commissioner must then determine whether certain requirements for maintaining confidentiality are met. There are also criteria for how long information may be held confidential.

  - Establish legislative approval for large-scale transfers to help ensure the transfer is in the public interest. There is precedent for legislative approval in other statutes. Examples include AS 38.06.055 that requires legislative approval for the sale of state royalty oil or gas and AS 38.05.142 that requires legislative approval for certain large-scale mines. Under AS 43.82.435, the Stranded Gas Development Act required legislative authorization prior to the governor executing a gas pipeline contact under the Act.

- **DNR – Financial Assurances Agreements**

  - Establish financial assurances agreements and their terms in statute. Under current lease terms, the DNR commissioner may require financial assurances as the commissioner determines necessary to ensure the lessee's ability to meet its lease obligations and DR&R obligations when a lease is terminated. A statutory provision for financial assurances agreements would ensure that FAAs are negotiated consistently with all lessees. The statute might include requirements for the submission of updated financial information by the lessee on a regular basis, require a periodic study to determine future DR&R costs, and establish in law security instrument options such as dedicated sinking funds or guarantees from a financially capable corporate parent of a lessee. There could also be provision for making as much of the agreement public as possible. Currently, FAAs are held confidential under the broad authority granted by AS 38.05.035(a)(8).

- **DNR – Right-of-Way Lease**

  - Require public notice and comment for a Right-of-Way (ROW) lease transfer. While there are detailed public notice and public hearing requirements for an initial ROW lease application, the requirements do not apply to a lease transfer. As is occurring with the BP-Hilcorp Transaction, a ROW lease transfer may be a significant change that warrants the same level of public scrutiny as the initial lease application. AS 38.35.070 (notice of application) and AS 38.05.080 (analysis and public hearing) could be amended to apply to ROW lease transfers.

- **AOGCC – Designation of New Operator**

  - Establish more stringent requirements for AOGCC approval of a designation of new operator. Currently, even when a large number of wells are assumed by a new operator, AOGCC has no authority to consider a new operator's capability to operate the wells. Under 20 AAC 25.020, the only requirements for Commission approval of a new operator are the signature of the newly designated operator on the appropriate form and the Commission's acceptance of the designated operator's bond. Additional factors could include the new operator's financial capacity and past

performance such as an operator's history of non-compliance with AOGCC regulations. If the operator lacks sufficient financial capacity or has a history of non-compliance, the Commission could be given authority to deny approval or include additional bonding or performance conditions as part of an approval.

- In conjunction with the more stringent requirements suggested above, require submission of a Designation of Operator form and AOGCC approval when there is a change in the ownership of a company. According to AOGCC, since Hilcorp is buying BPXA outright, BPXA remains the same corporate entity, renamed Hilcorp North Slope, and there is no change of operator or ownership of the property and no change of operator approval is required. Given that there can be a significant change in well operations when a company changes ownership as is occurring in the BP-Hilcorp Transaction, AOGCC should have substantive authority over these types of transactions. If necessary, a similar amendment could be made for DNR lease assignments and DEC authorizations to require the application of their regulatory procedures when one company buys another.

- **AOGCC – Liability**

  - Authorize AOGCC to hold a prior operator responsible for plugging and abandonment costs for wells drilled by the prior operator if the current operator lacks the financial resources to pay the costs. Currently, AOGCC says they do not have this authority; this increases the risk that the state, as landowner, will end up paying the costs.

- **Regulatory Commission of Alaska – Certificate of Public Convenience and Necessity – Confidentiality**

  - Repeal AS 42.06.445(c). While the RCA has a detailed process regarding maintaining confidentiality of otherwise public records, none of that process applies to documents filed with the Commission that relate to the finances or operations of a pipeline subject to federal jurisdiction and that are not required to be filed with the appropriate federal agency. Documents that meet these criteria are "open to inspection only by an appropriate officer or official of the state for relevant purposes of the state." In the BP-Hilcorp Transaction, this statute has been applied to prevent the disclosure of Hilcorp's financial statements and may apply to other financial and operational information. The statute was first enacted in 1972 and related to pipelines subject to the Interstate Commerce Act or the Natural Gas Act (Chapter 139 SLA 1972). The current language was enacted in 1981 (Chapter 110 SLA 1981). It is unclear what is the purpose or need of this exception to disclosure. Unless a compelling need is shown, it may be time for its repeal.

- **TAPS DR&R**
    - Require that the TAPS owners put DR&R funds collected in the past and into the future into an external trust or escrow account. TAPS owners are responsible for the dismantlement, removal and restoration of the pipeline when it is no longer in service. Over $5.1 billion for future DR&R costs have been collected in tariffs by the TAPS owners. The owner companies are not required to retain these funds in a separate account, leaving the state in the position of trusting that owner companies will have the resources necessary when the time comes to put TAPS to rest. While BP will retain its DR&R liability for TAPS, the transfer to Hilcorp creates uncertainty; and potential future transfers by other companies could further complicate the situation as time goes on.

ENDNOTES

[1] "Memorandum - Establishing the Governor's Oversight Committee on the BP-Hilcorp Transaction," Governor Mike Dunleavy to Commissioner Corri Feige, DNR; Commissioner Jason Brune, DEC; Attorney General Kevin Clarkson, LAW; Commissioner Doug Vincent-Lang, ADF&G; Commissioner Tamika Ledbetter DOL&WD; Commissioner Julie Anderson, DCCED; Acting Commissioner Mike Barnhill, DOR; Brett Huber, Sr., Governor's Office Director of Policy & Communications; December 27, 2019.
[2] "State agencies approve transfer of BP's upstream assets to Hilcorp," Department of Environmental Conservation, Department of Natural Resources, State of Alaska, Joint Press Release, June 29, 2020.
[3] https://www.bp.com/en_us/united-states/home/news/press-releases/bp-to-sell-alaska-business-to-hilcorp.html
[4] https://www.bp.com/en/global/corporate/news-and-insights/press-releases/bp-confirms-commitment-to-completing-sale-of-its-alaska-business.html
[5] "Governor's Oversight Committee Due Diligence Memorandum to Governor Dunleavey; BP/Hilcorp Transaction – Upstream Assets," June 29, 2020.
[6] "Governor's Oversight Committee on BP-Hilcorp Transaction; Status Update on DNR's Review," Presented June 19, 2020; Governor's Oversight Committee Due Diligence Memorandum to Governor Dunleavey; BP/Hilcorp Transaction – Upstream Assets," June 29, 2020.
[7] "State agencies approve transfer of BP's upstream assets to Hilcorp," State of Alaska; Joint Press Release; Jason Brune, Commissioner, Department of Environmental Conservation; Corri A. Feige, Commissioner, Department of Natural Resources, June 29, 2020.
[8] "Governor's Oversight Committee Due Diligence Memorandum to Governor Dunleavey; BP/Hilcorp Transaction – Upstream Assets," June 29, 2020.
[9] Letter from Corri A. Feige, Commissioner, Department of Natural Resources to Senator Micciche and Representatives Lincoln and Tarr, March 11, 2020.
[10] "Governor's Oversight Committee Due Diligence Memorandum to Governor Dunleavey; BP/Hilcorp Transaction – Upstream Assets," June 29, 2020.
[11] House and Senate Resources Joint Committee Meeting Minutes, December 16, 2020, 18-19.
[12] "Governor's Oversight Committee Due Diligence Memorandum to Governor Dunleavey; BP/Hilcorp Transaction – Upstream Assets," June 29, 2020.
[13] Id.
[14] Id.
[15] "Governor's Oversight Committee on BP-Hilcorp Transaction; Status Update on DNR's Review," Presented June 19, 2020.
[16] AS 38.35.070; AS 38.35.080.
[17] "Applicants' Compliance Filing in Response to Order No. 7 (Public Version)," Docket Nos. P-19-015, 016, 017, May 4, 2020.
[18] Irene Ryan, Unpublished Autobiography (Archives, University of Alaska, Fairbanks).
[19] Chapter 40 SLA 1955.
[20] Effective February 13, 2019, AOGCC was transferred from the Department of Administration to the Department of Commerce, Community, and Economic Development for the purpose of "efficient administration" that would "provide for appropriate and effective performance of administrative functions." Office of Governor Mike Dunleavy, Administrative Order No. 307, February 13, 2019.
[21] 20 AAC 25.020; 20 AAC 25.025; 20 AAC 25.022.
[22] AS 31.05.090; 20 AAC 25.005; 20 AAC 25.990(46); 20 AAC 25.990(52); AS 31.05.170(10).
[23] Email: Peter Caltagirone, Senior Legal & Policy Advisor, DNR to Lisa Weissler; June 18, 2020.
[24] "Notice of Proposed Enforcement, Alaska Oil and Gas Conservation Commission, Cathy P. Foerster, Chair, Commissioner to David Wilkins, Senior Vice President, Hilcorp Alaska, LLC, November 12, 2015.
[25] AS 31.05.090(d)(2).
[26] Chapter 199 SLA 1959; Chapter 156 SLA 1960; Chapter 113 SLA 1970; Chapter 25 SLA 1999.
[27] Chapter 139 SLA 1972.
[28] Chapter 110 SLA 1981.
[29] AS 42.04.010, AS 42.04.020, AS 42.05.141, 3 AAC 48.151-160; AS 42.06.140.
[30] AS 42.06.240; AS 42.06.270.

[31] AS 42.06.305.
[32] Order P-03-014(1), February 27, 2004, 12-13.
[33] "Order Requiring Filing," Docket Nos. P-19-015, 016, 017, Order No. 7, April 2, 2020.
[34] "Applicants' Compliance Filing in Response to Order No. 7 (Public Version), Docket Nos. P-19-015, 016, 017, May 4, 2020; "Harvest Alaska, LLC and BP Pipelines (Alaska) Inc.'s Petition for Confidential Treatment of Certain Compliance Filings Submitted Pursuant to Order 7," Docket Nos. P-19-015, 016, 017, May 4, 2020.
[35] "Order Addressing Confidentiality of Responses to Commission Questions," Docket Nos. P-19-015, 016, 017, July 2, 2020.
[36] "Order Requiring Filing," Docket Nos. P-19-015, 016, 017, June 12, 2020; "Errata Notice to Order P-19-015(9)/ P-19-016(9)/P-19-017(9)," June 16, 2020.
[37] "Applicants' Compliance Filing in Response to Order No. 9," Docket Nos. P-19-015, 016, 017, July 7, 2020; "Harvest Alaska, LLC and BP Pipelines (Alaska) Inc.'s Petition for Confidential Treatment of Certain Compliance Filings Submitted Pursuant to Order 9," Docket Nos. P-19-015, 016, 017, July 7, 2020.
[38] 3 AAC 48.625(a)(7)(C) and (D).
[39] "Order Granting Motions for Waiver; Denying Motion to Strike and Motion for Expedited Consideration; Declaring Financial Statements Confidential Under AS 42.06.445(c); Finding Request for Confidential Treatment of Financial Statements Under 3 AAC 48.045 Moot; and Addressing Timeline for Decision," Docket Nos. P-19-015, 016, 017, 019, March 12, 2020. In addition to the TAPS, Milne Point and PTE transfers, the order also applies to a transfer from ExxonMobil Pipeline Company to BP Transportation (Alaska), a 100% subsidiary of BPPA, of a 5% portion of Exxon's 68% interest in the Point Thomson pipeline (Docket No. P-19-019)).
[40] "Harvest Alaska LLC and BP Pipelines (Alaska) Inc.'s Petition for Confidential Treatment of Purchase and Sale Agreement," Docket Nos. P-19-015, 016, 017, December 23, 2019.
[41] The petitioners cite to Order U-16-012(14), April 21, 2016, p.2, regarding a joint request for Municipal Light & Power and Chugach Electric to acquire ConocoPhillips Alaska's interest in the Beluga River Unit.
[42] "Order Granting Petition for Confidential Treatment of Purchase and Sale Agreement, Extending Deadline to Rule on Petitions for Confidential Treatment of Financial Statements and Motions for Waiver, and Requiring Filing," Docket Nos. P-19-015, 016, 017, February 11, 2020, 8-9.
[43] "Harvest Alaska, LLC, Hilcorp Alaska, LLC, and Harvest Midstream I, LP's Petition for Confidential Treatment of Financial Statements," Docket No. P-19-017, September 27, 2019; "Harvest Alaska, LLC, Hilcorp Alaska, LLC, and Harvest Midstream I, LP's Petition for Confidential Treatment of Financial Statements," Docket No. P-19-016, September 27, 2019.
[44] "Hilcorp Energy I, LP and Hilcorp Energy Company's Petition for Confidential Treatment of Financial Statements," Docket Nos. P-19-015, 016, 017, December 23, 2019.
[45] "BPPA's Petition for Confidential Treatment of Financial Statements," Docket Nos. P-19-015, 016, 017, December 23, 2019.
[46] "Order Granting Petition for Confidential Treatment of Purchase and Sale Agreement, Extending Deadline to Rule on Petitions for Confidential Treatment of Financial Statements and Motions for Waiver, and Requiring Filing," Docket Nos. P-19-015, 016, 017, February 11, 2020.
[47] "Applicants' Joint Response to Order No. 5," Docket Nos. P-19-015, 016, 017, February 18, 2020.
[48] "Order Granting Motions for Waiver; Denying Motion to Strike and Motion for Expedited Consideration; Declaring Financial Statements Confidential Under AS 42.06.445(c); Finding Request for Confidential Treatment of Financial Statements Under 3 AAC 48.045 Moot; and Addressing Timeline for Decision," Docket Nos. P-19-015, 016, 017, 019, March 12, 2020.
[49] "Dissenting Statement of Commissioner McAlpine," Docket Nos. P-19-015, 016, 017, 019, March 12, 2020; "Order Finding that Information Contained in TAPS Settlement Methodology Disks or Derived from them is Confidential and Denying Request for Nonconfidential Treatment," Docket No. P-97-4, Order No. 76, April 7,2000, 12-13.
[50] "Harvest Alaska, LLC and BP Pipelines (Alaska) Inc.'s Petition for Confidential Treatment of Certain Compliance Filings Submitted Pursuant to Order 7," May 4, 2020.
[51] "Order Addressing Confidentiality of Responses to Commission Questions," Docket Nos. P-19-015, 016, 017, July 2, 2020.
[52] "Order Granting Petition for Confidential Treatment of Purchase and Sale Agreement, Extending Deadline to Rule on Petitions for Confidential Treatment of Financial Statements and Motions for Waiver, and Requiring Filing," Docket Nos. P-19-015, 016, 017, February 11, 2020, 3.
[53] Senate Journal, January 27, 1971, 73.
[54] 18 AAC 75.425.

[55] 18 AAC 75.415(h); 18 AAC 75.408(c)(5).
[56] 18 AAC 75.455.
[57] 18 AAC 75.460; 18 AAC 15.185; 18 AAC 15.200.
[58] Notice of an Application for an Oil Discharge Prevention and Contingency Plan Amendment, Hilcorp Alaska LLC, Department of Environmental Conservation, Publish Date: February 7, 2020.
[59] "Oil Discharge Prevention and Contingency Plan; Basis of Decision," Alaska Department of Environmental Conservation, Division of Spill Prevention and Response; Prevention, Preparedness, and Response Program, June 29, 2020.
[60] AS 46.04.040(i); AS 46.03.760(d); AS 46.03.740 to .750; AS 46.03.822; AS 46.03.58-.760(a); AS 46.04.030(g).
[61] 18 AAC 75.205 to .290.
[62] "Governor's Oversight Committee Due Diligence Memorandum to Governor Dunleavey; BP/Hilcorp Transaction – Upstream Assets," June 29, 2020.
[63] Chapter 104 SLA 1998; Chapter 22 SLA 2007; 2002 Ballot Measure No. 3; Chapter 7 SLA 2010.
[64] Chapter 11 SLA 2013.
[65] "Heads of Agreement" by and Among the Administration of the State of Alaska, Alaska Gasline Development Corporation, TransCanada Alaska Development Inc., ExxonMobil Alaska Production Inc, ConocoPhillips Alaska, Inc, BP Exploration (Alaska) Inc. For the Alaska LNG Project, January 14, 2014.
[66] "Memorandum of Understanding," between TransCanada Alaska Company LLC, Foothills Pipe Lines LTD, TransCanada Alaska Development Inc., and the State of Alaska, December 12, 2013; Chapter 14 SLA 14.
[67] House Resources Committee Minutes, January 22, 2020.