IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

CHEVRON U.S.A., INC., CONOCOPHILLIPS ALASKA, INC., EXXONMOBIL ALASKA PRODUCTION INC., and FOREST OIL CORPORATION,	)	
Appellants,	)	
v.	)	
STATE OF ALASKA, DEPARTMENT OF REVENUE,	)	
Appellee.	)	
	)	Case No. 3AN-13-04430 CI

OPINION

I. INTRODUCTION

The Department of Revenue (the Department) issued a Tax Division administrative decision (the Decision) dated January 12, 2005, which aggregated certain participating areas in Prudhoe Bay for oil and gas production tax purposes. Chevron U.S.A., Inc., ConocoPhillips Alaska, Inc., ExxonMobil Alaska Production Inc., and Forest Oil Corporation (Taxpayers)[1] appealed the Decision through the informal conference process. The parties then appealed to the Office of Administrative Hearings (OAH). The Taxpayers argued that the Decision to aggregate was a regulation adopted in violation of the Alaska Administrative Procedure Act (APA); that, if the Decision to aggregate was not a regulation, the Department abused its discretion by acting without adopting a regulation; and, that the Decision to aggregate without adopting a regulation

[1] BP Exploration (Alaska), Inc. is no longer a party to this appeal.

violated the Taxpayers' right to due process. The OAH ruled that the Decision was not a regulation and was an acceptable means of addressing the tax treatment of the participating areas. Because the Decision was not a regulation under the APA and was appropriately issued, this court affirms the OAH order in all respects.

II. FACTS AND PROCEEDINGS

A. Prudhoe Bay and the Participating Areas

In 1977, prior to the start of oil production in Prudhoe Bay, the working interest owners of the Prudhoe Bay oil and gas leases, with the approval of the Alaska Department of Natural Resources (DNR), agreed to combine the leases into one unit—the Prudhoe Bay Unit (PBU)—so that it may be operated as if the area had been included in a single lease. Two participating areas[2] (PAs) initially were formed for the PBU—one for the reservoir oil rim and one for the reservoir gas cap. These are known as the Initial Participating Areas (IPAs) and are treated as a single unit for tax purposes.

By 2005, the working interest owners, including the Taxpayers, formed twelve PAs, ten of which were contributing to production from the PBU.[3] With the exception of the IPAs and the Lisburne PA[4], the PAs in the PBU did not have their own production facilities. Rather, the fluids from the PA wells were commingled, separated, and processed at common production processing centers that were operated in coordination.

[2] A "participating area" encompasses land "capable of producing or contributing to production of hydrocarbons in paying quantities." 11 AAC 83.351(a).
[3] The producing PAs were the following: the two IPAs; Aurora; Borealis; Lisburne; Midnight Sun; Niakuk; Orion; Polaris; and Pt. McIntyre.
[4] The Lisburne PA was established and began production in 1986 to cover the Lisburne Oil Pool in the PBU. At the same time, a new and separate set of production facilities, collectively called the Lisburne Production Center, were installed to handle production for the Lisburne PA.

B. The Oil and Gas Production Tax

From February 1, 2005 to March 31, 2006,[5] the Oil and Gas Production Tax (Production Tax) rate for a lease or property was calculated by multiplying the nominal statutory rate by the economic limit factor (ELF).[6] The ELF was computed according to a formula based on the per-well productivity and total production of the lease or property.[7] Because the ELF is always a coefficient between zero and one, a higher ELF would result in a higher tax rate and a lower ELF would result in a lower tax rate.

The ELF formula included a field size factor which caused the ELF to increase when the total oil production of a lease or property exceeded 150,000 barrels per day and caused the ELF to decrease when the total oil production fell below 150,000 barrels per day. Because the production rate per property had such an influence on the ELF, which in turn directly affected the Production Tax rate, the determination of what constituted a "lease or property" was critical.[8] Assuming comparable production rates, a larger oil producing field always results in a higher ELF than a smaller oil producing field. Between fields in the PBU the difference in tax rates was as much as 12.5%.

The ELF was designed to reflect the economics of oil and gas production and to prevent fields from becoming uneconomic due to excessive tax rates as oil and gas production costs

[5] The decision under appeal purported to become effective on February 1, 2005. Aggregation under AS 43.55.013(j) became moot effective April 1, 2006 with the repeal of the ELF statute.
[6] *See* AS 43.55.011(a) (2005) ("The tax is equal to either the percentage-of-value amount calculated under (b) of this section or the cents-per-barrel amount calculated under (c) of this section, whichever is greater, multiplied by the economic limit factor determined for the oil production of the lease or property under AS 43.55.013.")
[7] *See* AS 43.55.013(b) (2005).
[8] For the purposes of the production tax, the term "lease or property" is defined as "any right, title, or interest in or the right to produce or recover oil or gas." AS 43.55.900(15) (2005).

increased over the fields' lifespans. Accordingly, the ELF attempted to scale the tax rate downward as the field approached its economic limit.[9]

The Production Tax also contained a provision that authorized the Department to aggregate leases or properties "when economically interdependent oil or gas production operations are not confined to a single lease or property."[10] Aggregating several fields as a single field would yield a higher total production figure, making each field larger for ELF purposes. Accordingly, the aggregated fields would have a higher ELF, and thus, a higher tax rate than any one field would have individually. However, to encourage the development of new wells, the Department adopted a regulation allowing the Department, upon application of a producer, to issue an advance ruling that the Department would not aggregate specified leases or properties for purposes of determining ELFs.[11]

C. Facts

From February 1, 2005 to March 31, 2006, the Taxpayers owned working interests in the PBU, including the IPAs and the Aurora, Borealis, Lisburne, Midnight Sun, Niakuk, Orion, and Polaris PAs. Production from each of these PAs was processed through common production processing centers that were originally constructed to serve the IPA. The Taxpayers also owned working interests in the Pt. McIntyre PA. Production from Pt. McIntyre initially was processed through facilities originally constructed to serve the Lisburne PA; however, by 2005, a portion of Pt. McIntyre production was processed through IPA production processing centers.

[9] An oil and gas field reaches its economic limit when the revenue generated from that field is less than the cost of its operation and production, including production taxes. At this point the field is no longer financially viable and is a liability to the producer.
[10] AS 43.55.013(j) (2005).
[11] 15 AAC 55.027(b) (2005).

In addition to sharing support costs, this integrated system enabled a production-shifting technique informally known as "backout." Because PBU production facilities are not able to process all production from all wells, some production is "backed out." The decision of which production is subject to backout is made according to the "best well produces" principle. Because the IPA wells are older, they generally produce more gas and water per barrel than the newer wells in the satellite PAs. Therefore, under the "best well produces" principle, it is generally IPA oil that is backed out in favor of satellite oil production. The practical effect of this production-shifting was the replacement of high-tax IPA oil with low-tax oil from the satellite PAs.

The Taxpayers generally treated the PAs as separate leases or properties for oil and gas production tax purposes. By the end of 2004, the PA tax rates were significantly lower than the IPA tax rates. While the state was taxing IPA production at an effective rate of about twelve and a half percent, the state was taxing PA production at an average effective rate of less than one-half of one percent. This occurred despite the fact that the PAs were not economically marginal and were, as a result of rising market prices, moving further away from their economic limit.

Prior to the Decision, the Department issued several advance rulings that specified groups of PAs, for which the use of common production facilities was proposed, would not be aggregated under AS 43.55.013(j). Taxpayers applied for and received an advance ruling under 15 AAC 55.027(b) that the Department would not aggregate several fields developed by using the production facilities in the Lisburne PA. Taxpayers also applied for advance rulings for several other PAs developed using production facilities in the IPA. However, as early as 2000, in response to applications for assurance under 15 AAC 55.027(b), the Department notified the

Taxpayers that the issue of separate tax treatment for fields sharing existing production facilities was under reexamination.

On January 12, 2005, the Department issued the Decision which aggregated the IPAs and the Aurora, Borealis, Lisburne, Midnight Sun, Niakuk, Orion, Polaris, and Pt. McIntyre PAs for Production Tax purposes; It also determined that these properties were "economically interdependent" within the meaning of the aggregation provision[12] of the Production Tax. In the next reporting month, the Department applied a higher Production Tax rate based on aggregation of these properties. The higher Production Tax rate lasted from February 1, 2005 to March 31, 2006, when the legislature repealed the ELF-based Production Tax structure.

The Department concluded in the Decision that even though administrative guidance on the applicability of "economic interdependence" was sparse, past precedent inferred that the PBU properties came within this meaning because they were run as an integrated operation. The Department also noted that judicial precedent, while not addressing directly the meaning of the term, supported this conclusion. Summing up relevant case law nationwide, the Department found that there were two possible meanings of the term "economic interdependence:" a "weak version and a "strong" version. The "weak" version recognized that "economic interdependence" existed when the economic activity of one thing had a material effect on another and vice versa. By contrast, the "strong" version recognized the term when two formally separate entities were sufficiently integrated to reasonably be viewed as comprising one unitary economic activity. Applying the "strong" version, the Department found that economic interdependence existed both factually and legally between the PBU properties.

[12] AS 43.55.013(j) (2005).

D. Proceedings

In March 2005, the Taxpayers appealed the Decision and requested an informal conference. On November 14, 2008, the Department's Director of the Tax Division issued an Informal Conference Decision (ICD) affirming the Decision. Specifically, the ICD determined that aggregation was proper because: (1) the properties at issue were economically interdependent;[13] (2) the Decision's interpretation of the term "economically interdependent" in the applicable statute and regulation was consistent with prior administrative decisions; (3) the Decision was not a regulation and, therefore, was not made in violation of the APA; and, (4) the Taxpayers were afforded due process.

Thereafter, the Taxpayers filed an appeal requesting an adjudicatory hearing before the OAH. On October 13, 2012, the OAH granted the Department's motion for summary adjudication and denied the Taxpayers' motion for summary adjudication, holding that the Decision was not a regulation and was an acceptable means of addressing the tax treatment of the affected PAs. The OAH noted that over the years, the Department had come to regard the PBU tax structure as inconsistent with the purpose behind ELF and that the Taxpayers had been notified[14] that the current system of treating each field separately for tax purposes was being reexamined. The OAH also noted that the Decision was a step that triggered an opportunity for adjudication and did not come within the meaning of "regulation" under the APA because it did

[13] In determining that the properties at issue were economically interdependent, the Department rejected the Taxpayer's argument that economic interdependence could only mean mutual dependence which would require each field to share the same relationship to one another. Instead, the Department reasoned that since the term was ambiguous and open to more than one interpretation, it was reasonable that the Department attempt to discern the legislative intent and purpose behind the statute. The Department concluded that the Decision reasonably concluded economic interdependence to mean so integrated as to be reasonably treated as an economically unitary activity.

[14] This notification was given in response to Taxpayer applications for advance rulings under 15 AAC 55.027(b).

not announce a standard of general applicability or make the term "economic interdependence" specific.

The Taxpayers appeal.

III. STANDARD OF REVIEW

There are four standards of review for appeals of administrative decisions. For questions of law not involving agency expertise, the court applies the "substitution of judgment" test. "These cases usually concern statutory interpretation or other analysis of legal relationships about which courts have specialized knowledge and expertise."[15] For questions of law involving agency expertise, the court applies the "reasonable basis" test. "The reasonable basis standard permits the court to consider factors of agency expertise, policy, and efficiency in reviewing discretionary decisions"[16] and is appropriate for "determining whether the agency decision has been undertaken in the manner required by law."[17] For questions of fact, the court applies the "substantial evidence" test. For review of administrative regulations, the court applies the "reasonable and not arbitrary" standard.

Whether the Department's decision to aggregate certain PAs for Production Tax purposes constituted a regulation under the APA is a question of law which does not involve agency expertise. Therefore, this court will apply its own judgment under the substitution of judgment test. "This standard is appropriate where the knowledge and experience of the agency is of little

[15] *Kelly v. Zamarello*, 486 P.2d 906, 916 (Alaska 1971).
[16] *Jager v. State*, 537 P.2d 1100, 1107 (Alaska 1975) (citing *Kelly*, 486 P.2d at 916).
[17] *Id*. at 1107–08 (quoting AS 44.62.570(b)).

guidance to the court or where the case concerns statutory interpretation or other analysis of legal relationships about which courts have specialized knowledge."[18]

Whether the Department abused its discretion by aggregating without adopting a regulation is a question of law involving agency expertise which this court will review under the reasonable basis standard. Accordingly, this court will give deference to the administrative interpretation since the expertise of the agency is of material assistance to this court.[19]

Determining whether a party's procedural due process rights have been violated is a constitutional issue which this court reviews *de novo* and to which this court applies its independent judgment.[20]

IV. DISCUSSION

A. The Decision was not a regulation under the APA

"Administrative agencies must comply with the APA guidelines when issuing regulations pursuant to delegated statutory authority."[21] The guidelines require agencies to give notice of proposed actions,[22] hold a public hearing and allow interested persons to submit comments,[23] and file adopted regulations with the lieutenant governor.[24] "The APA is meant to reduce the risk of arbitrary application and to inform the public of regulations."[25] "An agency's failure to satisfy

[18] *Jerrel v. State, Dep't. of Natural Res.*, 999 P.2d 138, 141 (Alaska 2000) (citing *Madison v. State, Dep't of Fish & Game*, 696 P.2d 168, 173 (Alaska 1985)).
[19] *Kelly*, 486 P.2d at 916.
[20] *Walker v. Walker*, 960 P.2d 620, 622 (Alaska 1998).
[21] *Jerrel*, 999 P.2d at 143 (citing AS 44.62.640).
[22] AS 44.62.190; *see also* AS 44.62.200 (establishing content requirements for the notice given).
[23] AS 44.62.210.
[24] AS 44.62.040.
[25] *Friends of Willow Lake, Inc. v. State, Dep't of Transp. & Pub. Facilities, Div. of Aviation & Airports*, 280 P.3d 542, 548 (Alaska 2012) (citing *Squires v. Alaska Bd. Of Architects, Eng'rs & Land Surveyors*, 205 P.3d 326, 335 (Alaska 2009)).

the APA's procedural requirements renders its action invalid."[26] However, APA compliance is not required if an agency's action does not constitute a regulation.[27] The label an agency places on a policy or practice does not determine whether that rule falls under the APA;[28] rather, the court looks to the character and use of the policy or rule to determine whether it is a regulation.[29]

The APA defines a "regulation" as "every rule, regulation, order, or standard of general application or the amendment, supplement, or revision . . . [issued] by a state agency to implement, interpret, or make specific the law enforced or administered by it." The APA's definition of regulation is broad;[30] however, not every agency action or decision constitutes a regulation.[31] To determine whether agency action is a regulation, the court must look to two indicia: (1) whether the action implements, interprets, or makes specific the law enforced or administered by the agency and (2) whether the action affects the public or is used by the agency in dealing with the public.[32] Both indicia of a regulation must be satisfied in order for the procedural requirements of the APA to attach to the action.

As previously stated, AS 43.55.013(j) provided the Department with discretion to aggregate oil fields for tax purposes if two or more fields were "economically interdependent." Aggregation would yield a higher total production figure than either one of the fields standing alone, which would always result in higher taxes. However, no statute or regulation defined the term "economically interdependent."

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[26] *Id*.
[27] *Friends of Willow Lake, Inc.*, 280 P.3d at 549.
[28] *Jerrel*, 999 P.2d at 143 (citing *Gilbert v. State, Dep't of Fish & Game*, 803 P.2d 391, 396–97 (Alaska 1990)).
[29] *Id*.
[30] *State v. Northern Bus Co., Inc.*, 693 P.2d 319, 322 (Alaska 1984).
[31] *State, Dept. of Natural Res. v. Nondalton Tribal Council*, 268 P.3d 293, 300 (Alaska 2012).
[32] *Id*. at 301.

The Taxpayers argue that the Decision, including its interpretation of "economically interdependent," is invalid because it was issued in violation of the APA's procedural requirements. Specifically, the Taxpayers argue that: (1) the Department's interpretation of "economically interdependent" adopts a generally applicable standard that both interprets and makes specific the authorizing statute;[33] (2) the meaning the agency gave "economically interdependent" was not a common sense interpretation; (3) Alaska case law confirms that the Decision directly altered the Taxpayer's rights and interests; and, (4) the Decision was generally applicable to the public, not an administrative adjudication of an issue affecting a specific taxpayer.

In turn, the Department argues that its actions do not constitute a regulation. The Department maintains that the Decision was part of an adjudicatory proceeding and while every adjudication affects the public to some degree, if the Taxpayers' reasoning was taken as true, then virtually every agency action would be subject to the APA's procedural guidelines. Instead, the Department contends that it made a common sense interpretation of the term "economically interdependent," which it had the statutory authority to do without promulgating a regulation. The Department also argues that the Decision was not public in nature because it only applied to certain lease properties owned by the Taxpayers under a very particularized set of facts.

The Department concedes that it did not issue the aggregation Decision in accordance with the APA's procedural requirements and instead claims that the action was not a regulation. This court finds that the Decision does not include both characteristics of a regulation. The Decision necessarily interpreted a statutory term—"economically interdependent"—which was

[33] AS 43.55.013(j) (2005).

vague and without a test of determination, satisfying the first indicia of a regulation. However, the Decision does not establish a standard of general applicability and it is not sufficiently public in nature to constitute a regulation.

The Decision's effect on several oil producers across several oil fields suggests that this agency action is public in nature. However, the number of private individuals or entities impacted by the agency action is not dispositive. In *Jerrel v. State, Department of Natural Resources*,[34] the Supreme Court noted that even if only one individual is actually impacted, the action can still constitute a regulation if it announces a more generally applicable rule.

Presently, the dispositive issue is not the number of owners affected but whether the Decision itself does enough to meaningfully affect the public. The Decision did not create a sweeping change for all gas and oil leases in the state. Further, an aggregation decision necessarily involves multiple leases or properties, and if the properties have more than one owner, a decision will also involve multiple taxpayers. This suggests that the Decision was as narrow and situation-specific as it could have been. Yet, the exhaustive explanation of the "economic interdependence" determination and the fact that Governor Frank Murkowski highlighted the Decision immediately after its issue in his State of the State Address suggested that it would guide future Department decisions affecting other parties. However, this

[34] 999 P.2d at 143–44. (In *Jerrel*, the Jerrel's owned horses ranched on state leased land. DNR informed the Jerrel's that they needed to distinctly and visibly mark their horses pursuant to an agency regulation which provided that animals be properly identified. The regulation did not specify that the marking be permanent or visible from a minimum distance. The regulation had also never before been enforced. Nevertheless, DNR informed the Jerrel's that they had to permanently brand their horses with marks that were visible from twenty feet. The Jerrel's did not comply, their leases were terminated, and they appealed. The court rejected DNR's argument that the policy was not truly public in nature because it had only been applied to the Jerrel's. The Court reasoned that the twenty foot branding requirement was not an internal guideline but rather a tool in dealing with the public.)

nonspecific, downstream effect alone is insufficient to demonstrate meaningful impact on the public to satisfy the second indicium of a regulation.[35]

Further, in *Alyeska Pipeline Service Co. v. State, Department of Environmental Conservation* the Alaska Supreme Court held that "obvious, commonsense interpretations of statutes do not require rulemaking,"[36] but APA compliance is required for "cases in which an agency's interpretation of a statute is expansive or unforeseeable, or in cases in which an agency alters its previous interpretation of a statute."[37] The Supreme Court explained that "nearly every agency action is based, implicitly or explicitly, on an interpretation of a statute or regulation authorizing it to act. A requirement that each such interpretation be preceded by rulemaking would result in complete ossification of the regulatory state."[38]

The Taxpayers argue that the Decision altered the Department's interpretation of the aggregation statute and was not routine or commonsense, as the Decision involved a "concerted effort by [the Department] to avoid the straightforward meaning of 'economically interdependent.'"[39] This court disagrees.

The term "economically interdependent" was vague and without a test of determination. Given the ambiguity, the Department necessarily had to determine in what circumstances the aggregation statute was applicable. The Decision's interpretation of "economically interdependent" was based on the specific facts of the production facilities and operations in the PBU. It was an interpretation that did not create additional requirements nor make the

[35] *Nondalton Tribal Council*, 268 P.3d at 303.
[36] 145 P.3d 561, 573 (Alaska 2006).
[37] *Id*.
[38] *Id*.
[39] Brief of Appellant at 25, *Chevron U.S.A., Inc. v. State, Dep't of Revenue*, No. 3AN-13-04430 CI (Alaska Superior Court Oct. 15, 2013).

authorizing statute more specific. It was therefore a common-sense interpretation as that standard has been applied by the Alaska Supreme Court.[40]

Accordingly, the Decision is not a regulation under the APA.[41]

B. The Department did not abuse its discretion by acting without adopting a regulation

The mainstream American view in administrative law is that an agency has, at its election, broad discretion to fill in the details and gaps left by a statute through either broad regulations or case-by-case adjudication, so long as the legislature has not mandated issuance of regulations or the absence of regulations does not create a due process violation.[42] As stated previously, the statute authorizing aggregation did not define the term "economically interdependent," nor did the Legislature direct the Department to utilize a particular method in determining economic interdependence. In doing so, the Legislature clearly expressed that the Department had the knowledge, expertise, and discretion to make a proper determination of economic interdependence. Because it appears that the Department was particularly well suited to draw the necessary factual and legal conclusions, this court gives a considerable amount of deference to the Department.

The Decision detailed the Department's determination that the PBU properties at issue were economically interdependent and that the Department, pursuant to its statutory authority, was aggregating the properties. The Decision itself is a twenty-nine page letter to the Taxpayers which describes the background of the PBU; the background of the Production Tax and ELF; the

[40] *See*, *Alaska Ctr. for the Env't v. State*, 80 P.3d 231 (Alaska 2003); *Smart v. State, Dep't of Health & Social Servs.*, 237 P.3d 1010 (2012).
[41] Determining whether the Decision was an adjudicative administrative proceeding is not dispositive of whether an agency action is a regulation under the APA. Because the Decision is not a regulation, this court does not need to address whether the Decision was an adjudicative administrative proceeding.
[42] 1 Richard J. Pierce, Jr., *Administrative Law Treatise* § 6.9 (5th ed. 2009).

statutory basis, administrative basis, and judicial authority for a finding of economic interdependence; the application of those bases and authorities to the PBU; and an explanation for the exercise of discretion to aggregate. The Department informed the Taxpayers that the Decision could be challenged by requesting an informal conference. Following the informal conference and issuance of the ICD, the Department informed the Taxpayers that they had the right to a formal appellate hearing with the OAH. Finally, the OAH order informed the Taxpayers that they had the right to appeal the order to the Superior Court. Although it was afforded after the Department issued the Decision, this procession of appeals can only be described as a full and fair opportunity to challenge agency action.

Although the Taxpayers did not have advance notice of or an opportunity to preemptively challenge the Decision, this lack of notice did not prejudice the Taxpayers. The Taxpayers were necessarily aware that their leases or properties were sharing production facilities and integrating operations. The Taxpayers were aware that the issue of separate-ELF treatment for fields sharing existing production facilities was under reexamination. Any internal Department evaluations of alternative interpretations and regulations were not public statements of intent upon which the Taxpayers relied. This court agrees with the OAH that far from showing prejudice, the record actually suggests that the Taxpayers received, for a considerable time, a windfall, enjoying the benefits of segregated tax treatment for PAs that were or had become economically interdependent.

The Department abundantly explained the bases and authority on which the Decision was based. Moreover, the Decision's detail and clarity of reasoning provide an ample record for judicial review. The OAH noted that it would be hard to point to an administrative decision in

Alaska that has been more exhaustively explained or for which a more extensive opportunity for post-decision challenge has been afforded.

Accordingly, the Department did not abuse its discretion by acting without adopting a regulation.

C. The Decision to aggregate without adopting a regulation did not violate the Taxpayers' right to due process

"Generally speaking, the notice requirement in due process is associated with the requirement that there be a meaningful opportunity to be heard."[43] "The crux of due process is opportunity to be heard and the right to adequately represent one's interests."[44]

This court evaluates procedural due process claims under the balancing test established in *Matthews v. Eldridge*,[45] considering several factors: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the state's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.[46]

The Taxpayers contend that the Department's decision to aggregate without adopting a regulation violated their right to due process as guaranteed under both the United States and Alaska constitutions.[47] They argue that had the Department undertaken the proper procedures for the adoption of a regulation, the Taxpayers would have had an opportunity to campaign for their

[43] *Alyeska Pipeline Serv. Co.*, 145 P.3d at 570–71.
[44] *Matanuska Maid, Inc. v. State*, 620 P.2d 182, 192 (Alaska 1980).
[45] 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976).
[46] *Squires*, 205 P.3d at 337.
[47] U.S. Const. amend. XIV; Alaska Const. art. I, § 1.

interest in the interpretation of "economically interdependent," or they would have had an opportunity to reduce or eliminate the justification for aggregation.

At stake here is the Taxpayers' interest in influencing the administrative action or mitigating the damages of an adverse administrative action in order to lessen their tax obligations. Although not insignificant, especially considering the value of the Production Tax obligations, this interest is by no means "fundamental." Notwithstanding that the Taxpayers did not have the option to challenge the aggregation or interpretation of "economically interdependent" prior to the Decision, the Department afforded that Taxpayers ample post-determination process. The Taxpayers were able to challenge the Decision at an informal conference and at a formal hearing before the OAH prior to their appeal to this court. At each level of appeal the Taxpayers have been given a meaningful opportunity to brief and argue for their interests. Further, because administrative action often requires some level of statutory interpretation, the Taxpayer's interpretation of procedural due process would unnecessarily subject a significant number of routine agency actions to the procedural requirements of the APA.

Accordingly, the Decision to aggregate without adopting a regulation did not violate the Taxpayers' right to due process.

V. CONCLUSION

For the reasons set forth above, this court AFFIRMS the decision of the Office of Administrative Hearings.

ORDERED this 9th day of March, 2015 at Anchorage, Alaska.

Signed
Hon. Michael D. Corey, Superior Court Judge

I certify that on March 9, 2015
a copy of the above was mailed to each
of the following at their addresses of record:
K. Diemer
L. Vance

Signed
M. Wilson, Judicial Assistant

[This document has been modified to conform to the technical standards for publication.]