DEC Request for Adjudicatory Hearing Form pursuant to 18 AAC 15.200

A request for adjudicatory hearing must be submitted using this form and timely served upon the Commissioner by e-mail or U.S. mail (see 18 AAC 15.200(a), (c) and (e)), as well as on the division that issued the decision and the permittee.

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Requestor Contact Information

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Date*	10/17/2024

Please provide the name(s), mailing address(es), e-mail address(es), and telephone number(s) for the individual(s) or organization(s) bringing forward this request for adjudicatory hearing (see 18 AAC 15.200(c) and 18 AAC 15.920(13)).
***Required**

Identification of Represented Parties

For each requester named above that is a member organization, please provide the names and addresses of members who are adversely affected by the decision who are being represented by the organization in this matter (see 18 AAC 15.200(c)(3)).

See Attachment A.

Decision and Issues to be Reviewed

Please identify the permit or other decision you are seeking to have reviewed. Please include information such as the date of the decision, who made the decision, the title of the document within which the decision is contained or the permit number. The requester bears the burden of presenting evidence in the hearing request. **Please provide a copy of the decision document at issue.** If the Department provided an opportunity for public comment on the permit, approval, or decision, please provide a copy of submitted comments. If you did not comment during the applicable comment period, please so indicate.

See Attachment A.

Issues to be Decided

Please provide the following information for each question of material fact or law (collectively referred to as "contested issues") you are asking to be reviewed as part of the adjudicatory hearing request. Attach additional pages as needed if you are seeking to raise more than three issues or if you need more space for your response.

See Attachment A.

Contested Issue 1:

Contested Issue and Location of the Issue

See Attachment A.

Explanation and reasons the contested issue is relevant to the decision

See Attachment A.

How are requesters directly and substantively affected?

See Attachment A.

Any suggested terms or conditions?

See Attachment A.

Why should your request be granted?

See Attachment A.

Contested Issue 1

a) A concise statement of the contested issue proposed for hearing (see 18 AAC 15.200(c)(4)(C))

b) The location(s) in the permit, or other decision where the specific terms or conditions appear, that you are contesting (e.g. page, paragraph or other identifying description)

c) An explanation of how the decision was in error with respect to the contested issue

d) The reason(s) you believe the contested issue you are raising is relevant to the Division's decision (why you believe resolving the contested issue in your favor will materially change the Division's decision)

e) How each requester (including represented parties if the requester is a member organization representing them in this matter) is directly and substantively affected by the contested decision to justify review; more specifically, please include a discussion of:

1) the nature of the interest of the requester or represented party who is impacted by the contested decision(s);

2) whether that interest is one that the department's applicable statutes and regulations intend to protect; and

3) the extent to which the Division's decision relating to this contested issue directly and substantively impairs the interest described in (2) above.

(f) Identify when and where you raised this issue in testimony or comments you provided to DEC. if your comments or testimony were submitted to DEC in writing, please provide a reference to the page and paragraph where they appear. (see 18 AAC 15.200(a) and 18 AAC 15.245)**

(g) Suggested alternative terms and conditions that in your judgement are required for the Division's decision to be in accord with the facts or law applicable to the issue you are raising.

(h) A discussion of any other reasons you believe your request for an adjudicatory hearing should be granted. Please include a concise summary of the facts and laws that you believe support your request.

(i) If you believe a provision of the final decision or permit you are challenging was not in the draft decision or permit that was subject to the public notice or comment process, please explain the basis of your claim (see 18 AAC 15.200(a)).

** this requirement does not apply to a person challenging an Air Quality Division Stationary Source Emission Control permit under AS 46.15.2200 either (1) on the basis of a private, substantive legally protective interest under state law that may be adversely affected by the permit action, or (2) as the owner or operator of the stationary air source

NOTE: If you did not raise your issue before the Division's issuance of the permit or contested decision, 18 AAC 15.245 requires you to show "good cause" for the failure to raise the issue for it to be considered. You should include this information in your response to (h) above.

Contested Issue 2

Contested Issue and location of the Issue

Explanation and reasons the contested issue is relevant to the decision

How are requesters directly and substantively affected?

Any suggested terms or conditions?

Why should your request be granted?

Contested Issue 2

a) A concise statement of the contested issue proposed for hearing (see 18 AAC 15.200(c)(4)(C))

b) The location(s) in the permit, or other decision where the specific terms or conditions appear, that you are contesting (e.g. page, paragraph or other identifying description)

c) An explanation of how the decision was in error with respect to the contested issue

d) The reason(s) you believe the contested issue you are raising is relevant to the Division's decision (why you believe resolving the contested issue in your favor will materially change the Division's decision)

e) How each requester (including represented parties if the requester is a member organization representing them in this matter) is directly and substantively affected by the contested decision to justify review; more specifically, please include a discussion of:

1) the nature of the interest of the requester or represented party who is impacted by the contested decision(s);

2) whether that interest is one that the department's applicable statutes and regulations intend to protect; and

3) the extent to which the Division's decision relating to this contested issue directly and substantively impairs the interest described in (2) above.

(f) Identify when and where you raised this issue in testimony or comments you provided to DEC. if your comments or testimony were submitted to DEC in writing, please provide a reference to the page and paragraph where they appear. (see 18 AAC 15.200(a) and 18 AAC 15.245)**

(g) Suggested alternative terms and conditions that in your judgement are required for the Division's decision to be in accord with the facts or law applicable to the issue you are raising.

(h) A discussion of any other reasons you believe your request for an adjudicatory hearing should be granted. Please include a concise summary of the facts and laws that you believe support your request.

(i) If you believe a provision of the final decision or permit you are challenging was not in the draft decision or permit that was subject to the public notice or comment process, please explain the basis of your claim (see 18 AAC 15.200(a)).

** this requirement does not apply to a person challenging an Air Quality Division Stationary Source Emission Control permit under AS 46.15.2200 either (1) on the basis of a private, substantive legally protective interest under state law that may be adversely affected by the permit action, or (2) as the owner or operator of the stationary air source

NOTE: If you did not raise your issue before the Division's issuance of the permit or contested decision, 18 AAC 15.245 requires you to show "good cause" for the failure to raise the issue for it to be considered. You should include this information in your response to (h) above.

Contested Issue 3

Contested issue and location of the issue

Explanation and reasons the contested issue is relevant to the decision

How are requesters directly and substantively affected?

Any suggested terms or conditions?

Why should your request be granted?

Contested Issue 3

a) A concise statement of the contested issue proposed for hearing (see 18 AAC 15.200(c)(4)(C))

b) The location(s) in the permit, or other decision where the specific terms or conditions appear, that you are contesting (e.g. page, paragraph or other identifying description)

c) An explanation of how the decision was in error with respect to the contested issue

d) The reason(s) you believe the contested issue you are raising is relevant to the Division's decision (why you believe resolving the contested issue in your favor will materially change the Division's decision)

e) How each requester (including represented parties if the requester is a member organization representing them in this matter) is directly and substantively affected by the contested decision to justify review; more specifically, please include a discussion of:

1) the nature of the interest of the requester or represented party who is impacted by the contested decision(s);

2) whether that interest is one that the department's applicable statutes and regulations intend to protect; and

3) the extent to which the Division's decision relating to this contested issue directly and substantively impairs the interest described in (2) above.

(f) Identify when and where you raised this issue in testimony or comments you provided to DEC. if your comments or testimony were submitted to DEC in writing, please provide a reference to the page and paragraph where they appear. (see 18 AAC 15.200(a) and 18 AAC 15.245)**

(g) Suggested alternative terms and conditions that in your judgement are required for the Division's decision to be in accord with the facts or law applicable to the issue you are raising.

(h) A discussion of any other reasons you believe your request for an adjudicatory hearing should be granted. Please include a concise summary of the facts and laws that you believe support your request.

(i) If you believe a provision of the final decision or permit you are challenging was not in the draft decision or permit that was subject to the public notice or comment process, please explain the basis of your claim (see 18 AAC 15.200(a)).

** this requirement does not apply to a person challenging an Air Quality Division Stationary Source Emission Control permit under AS 46.15.2200 either (1) on the basis of a private, substantive legally protective interest under state law that may be adversely affected by the permit action, or (2) as the owner or operator of the stationary air source

NOTE: If you did not raise your issue before the Division's issuance of the permit or contested decision, 18 AAC 15.245 requires you to show "good cause" for the failure to raise the issue for it to be considered. You should include this information in your response to (h) above.

Request for Evidentiary Hearing

With reference to the number of issues listed in your response to "Issues to be Decided" above, please list the number of the issues for which you are requesting an evidentiary hearing that may involve the testimony of factual witnesses, expert witnesses or the offering of additional documents or other evidence not already in the existing agency record.

See Attachment A.

Description of Question of Fact to be Raised at an Evidentiary Hearing

With reference to the number of issues listed in your response to "Request for Evidentiary Hearing" above, please describe each of the factual issues you want considered in an evidentiary hearing. You may reference your answers in your response above if they describe all the questions of fact that you want considered at an evidentiary hearing

Estimated Time for an Evidentiary Hearing

Please provide your estimate of the time you think will be needed to conduct the evidentiary hearing you are requesting.

IF YOU HAVE QUESTIONS

If you have questions regarding what information needs to be included in this form or questions about the process for requesting an adjudicatory hearing, you may find help by:

1) Reviewing the department's regulations, many of which are referenced in this form. The Administrative Procedures regulations at 18 AAC 15 are available on the Internet at https://dec.alaska.gov/commish/regulations/ . The definitions of key terms may be found at 18 AAC 15.920;
2) Reviewing the guidance documents posted by the department at https://dec.alaska.gov/commish/review-guidance/; or
3) Contacting the department's adjudicatory hearing liaison, Gary Mendivil, in the Commissioner's Office at (907) 465-5061 or at Gary.Mendivil@alaska.gov

Please be aware that failing to comply with the requirements for filing and serving a request for adjudicatory hearing could result in all or a portion of your request being denied.

APPLICABLE DEADLINES

Requests for an adjudicatory hearing must be made not later than 30 days after the issuance of the department's decision or permit, or not later than 30 days after the issuance of a decision on a request for informal review under 18 AAC 15.185, whichever is later (see 18 AAC 15.200(a)).

ATTACHMENT A

1. Identification of Represented Parties

Mustang Holding, LLC ("Mustang Holding") is directly and adversely affected by the Division of Spill Prevention and Response's ("Division") decision to classify a small, six-inch tie-in as a "pipeline". As a result of the Division's decision, Mustang Holding is now required to have insurance in the amount of $111,450,000 per incident for a small tie-in that traverses 1,150 feet, which is the equivalent amount of insurance required under state law for the Trans Alaska Pipeline System ("TAPS").[1] Requiring Mustang Holdings' six-inch tie-in, which has a worst case discharge scenario of 984 barrels of oil,[2] to carry the same amount of insurance as TAPS defies common sense, is contrary to the plain text of the statute, and defeats the intent of the legislature.

2. Decision and Issues to be Reviewed

The untitled decision we are seeking to have reviewed is the October 8, 2024, letter from Graham Wood to Mustang Holding's attorney, Jon Katchen. (Attachment B). This letter sets forth the Division's explanation for why the Division believes the Mustang tie-in meets the statutory definition of a pipeline set forth in AS 46.04.900(18). Also attached is Mustang Holding's August 14, 2024 letter from Mr. Katchen explaining Mustang Holding's position for why the Mustang tie-in qualifies as part of a production facility under AS 46.04.900(19). (Attachment C).

3. Issues to be Decided

a. Contested Issue 1: Whether the Mustang tie-in satisfies the definition of a production facility set out in AS 46.04.900(19).

i. Summary of the contested issue

The contested issue is whether the Mustang tie-in, which transports crude oil 1,150 feet in a six-inch diameter line from the Mustang Pad to the Alpine Pipeline System, is part of the Mustang "production facility" or, as the Division believes, qualifies as a separate "pipeline" under AS 46.04.040(b). The answer to this question turns on the definitions of "production facility" and "pipeline" found in AS 46.04.900(18) and (19).

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[1] *See* AS 46.04.040(b)(1). 18 AAC 75.235(a)(8) provides the insurance amounts required for pipelines is $111,450,000 and the regulations do not differentiate between pipelines transporting crude. In contrast, 18 AAC 75.235(a)(11)-(14), differentiates the insurance amounts based on the size on the onshore production facility.

[2] ODPCP Chapter 1, DOT Section, p. DOT-5.

ii. Explanation of the reasons the contested issue is relevant to the decision

The reason the contested issue is relevant to the decision is because whether the six-inch tie-in qualifies as a "pipeline" or is considered part of the "production facility" under state law will determine the amount of financial responsibility Mustang Holding will have to provide. Mustang Holding believes that under state law, the Mustang Pad's production facility includes the Mustang tie-in and, therefore, Mustang Holding will have to provide $11,450,000 in insurance. The Division, however, believes that the Mustang tie-in is not part of the production facility and constitutes a stand-alone pipeline. Consequently, the Division is requiring Mustang Holding to not only have insurance in place for the Mustang Production facility, but it also must have a wholly-disproportionate $111,450,000 in insurance coverage to separately insure a six-inch tie-in that transports a small amount of crude oil 1,150 feet.

iii. How are requesters directly and substantively affected?

The requester Mustang Holding is directly and substantively affected because the Division's October 8, 2024 decision would require Mustang Holding to provide an additional $111,450,000 in insurance. Mustang Holding raised this issue in meetings with the Division and explained its position in the letter included as Attachment C, submitted August 14, 2024.

iv. Any suggested terms or conditions?

N/A.

v. Why should your request be granted?

The Mustang tie-in transports crude oil from the Mustang Pad to the Alpine Pipeline System *via* a 1,150-foot long, six-inch diameter line. The response planning standard volume (adjusted) spill for the tie-in outlined in Mustang Holding's contingency plan ("C-Plan") is 201 barrels with a worst-case discharge scenario of 984 barrels of oil.[3]

A careful review of DEC's financial responsibility statutes demonstrates that the tie-in is part of the Mustang production facility and is not a separate pipeline. The relatively minor spill risk of 201 barrels is more than adequately covered by the $11,450,000 financial responsibility required to insure the Mustang production facility, and it defies common sense that the legislature intended to require an *additional* $111,450,000 financial responsibility, which is ten times the amount to insure the Mustang production facility. And it borders on the absurd to assume the legislature intended for a small, ~1,000 foot pipeline to carry the same insurance policy limits required of TAPS.

To explain why, the following background and analysis demonstrates that the Division's interpretation is founded on an incorrect interpretation of the statutory text, is at odds with

[3] Mustang Holding C-Plan, Part 1.6.12.4; ODPCP Chapter 1, DOT Section, p. DOT-5.

the relevant legislative history, defies common sense, and is contrary to the purpose of AS 46.04's financial responsibility requirements.

Statutory Framework

Alaska's oil pollution control statutes are codified in AS 46.04. The primary purpose of these statutes was to develop a comprehensive scheme to regulate facilities that process, store, and transport crude oil and to ensure that the operator had adequate funds to respond to an oil spill. But the legislature did not take a one-size-fits all approach to financial responsibility. Instead, the legislature took great effort to differentiate risks associated with certain facilities and required corresponding levels of insurance to address that risk. For instance, the statutory scheme requires onshore production facilities to carry more insurance depending on the amount of crude oil the facility can process.[4] Similarly, the amount of insurance for tank vessels or barges transporting crude is pegged to storage capacity of the tank vessel or barge.[5]

However, the legislature never imposed different insurance requirements based on pipeline capacity.[6] Instead, the legislature defined "pipeline" narrowly to ensure that only oil pipelines transporting crude oil over a large distance qualify as "pipelines" under AS 46.04.040(b)(1). Specifically, AS 46.04.900 provides that a "pipeline" means facilities that transport crude oil *from* production facilities *to* marine vessels or other production facilities.[7] In contrast, the definition of a "production facility" includes a number of facilities, including "gathering and flow lines used to transport crude oil and associated hydrocarbons to the inlet of a pipeline system for delivery to a marine facility . . . ."[8]

At first glance, there is overlap between the definitions of "pipeline" and "production facility": Both include pipelines that transport crude oil. Nonetheless, the legislature made clear that it wanted to include within the definition of a production facility certain pipelines, like the Mustang tie-in, that transport crude oil from a production facility to a pipeline system that then moves the oil to a marine vessel, while it only wanted the definition of a pipeline to apply to facilities like TAPS that are *outside* of the "production facility" and transport crude oil to a marine vessel. Thus, the best way to harmonize the statutory definitions, and to give meaning to the words used by the legislature as the Alaska Supreme

[4] AS 46.04.040(b)(2).

[5] AS 46.04.040(c).

[6] AS 46.04.040(b)(1).

[7] AS 46.04.900(18) ("'pipeline' means the facilities, including piping, compressors, pump stations, and storage tanks, used to transport crude oil and associated hydrocarbons between production facilities or from one or more production facilities to marine vessels") (emphasis added).

[8] AS 46.04.900(19) ("'production facility' means a drilling rig, drill site, flow station, gathering center, pump station, storage tank, well, and related appurtenances on other facilities to produce, gather, clean, dehydrate, condition, or store crude oil and associated hydrocarbons in or on the water of the state or on land in the state, and gathering and flow lines used to transport crude oil and associated hydrocarbons to the inlet of a pipeline system for delivery to a marine facility, refinery, or other production facility").

Court requires,[9] is to follow the plain text: a "pipeline" begins where a "production facility" ends, and a production facility includes all pipe "used to transport crude oil and associated hydrocarbons to the inlet of a pipeline system." In other words, a "pipeline" does not include these "production facility" pipelines.

Legislative history confirms Mustang Holding's argument the legislature intended that some short pipelines,[10] like the Mustang tie-in, would be considered part of the production facility and would be covered under the financial responsibility for the production facility. Legislative history also confirms that the legislature never intended for such tie-ins to secure additional insurance and be treated as a separate "pipeline" requiring their own C-Plan. In hearings during the 1990 legislative session when the current definition of "pipeline" was adopted, Golden Valley Electric Association expressed concern that a pipeline taking crude oil to and then from its refinery to a common carrier pipeline would be subject to the financial responsibility for pipelines.[11] In response, the governor's special assistant testified that such "spur" lines were not intended to be included under the definition of "pipeline." Rather, the financial responsibility for the spur line is "covered under the financial responsibility for the refinery."[12]

This testimony confirms that the legislature intended that spur lines (or tie-ins) carrying crude oil to or from a refinery – an oil terminal facility under AS 46.04.040(a) – would be covered by the financial responsibility of the facility and would not be characterized as separate "pipelines" subject to the financial assurance requirement for pipelines. Given this, it makes no sense that the legislature intended different treatment for similar spur lines or tie-ins carrying crude oil for a short distance from a production facility to a common carrier pipeline. At a minimum, it is abundantly clear that the legislature did not intend that all pipelines carrying sales-ready crude oil would be classified as "pipelines" under AS 46.04.040(b)(1).

Indeed, one Senator expressed confusion over whether pipelines that transported sales quality crude from a drill site to a common carrier pipeline would be required to have a separate spill plan. The testimony makes clear that in this situation there is only one spill plan for the unitized operations and that the spill plan would encompass the production facility and lines transporting sales quality crude from the production facility to the common carrier pipeline:

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[9] *Johnson v. State,* 380 P.3d 653, 656 (Alaska 2016) ("We presume that the legislature intended every word, sentence, or provision of a statute to have some purpose, force, and effect, and that no words or provisions are superfluous.") (quotations omitted).

[10] Industry, state law, and regulators, use a variety of terms for shorter pipelines, such as spur line, gathering line, feeder line, line, tie-in.

[11] *Meeting on H.B. 567 Before the Senate Special Committee on Oil and Gas*, 1990 Leg., 16th Sess. (Alaska May 3, 1990) (statement of Mike Kelly, General Manager of Golden Valley Electric Association) (recording on file).

[12] *Id.* (statement of Denby Lloyd, Special Assistant to the Governor) (recording on file).

> Senator Fahrenkamp: I still don't quite picture. If this is, say you've got a drill site over there [unintelligible]. Now, is it one contingency plan for the drill site and another for going to the pipeline, is the whole pipeline a contingency plan, or is it separate?
>
> Mr. Lloyd: Okay, in the case of the . . . the way its broken out by definition right now, **its proposed that the lines up to the common carrier line or pump station one would be part of the producing unit** and **that pump station one, down to the entrance at the Valdez marine terminal is defined as the pipeline** which is consistent with the way Alyeska has constructed their contingency plans and the North Slope plans.
>
> Senator Fahrenkamp: So the [unintelligible] is one contingency plan. [unintelligible]
>
> Mr. Lloyd: Correct.
>
> ***
>
> Unidentified Senator: **I believe that's what your definition of production facility gets to because it's the unit that takes hydrocarbons to the inlet of a pipeline system for delivery. And each of those units has a separate pipeline to pump station one.**[13]

In sum, the plain text, purpose, and legislative history confirm that not all pipelines that transport sales quality crude from a facility to a pipeline system qualify as "pipelines" under AS 46.04.040. Instead, the legislature intended to exclude from the definition of pipelines spur lines, gathering lines, flow lines, and tie-ins that transport crude a short distance from a facility to a pipeline that transports the crude to market.

The Mustang Tie-in is Part of the Mustang Production Facility

As mentioned above, state law defines a "production facility" as including "gathering and flow lines used to transport crude oil and associated hydrocarbons to the inlet of a pipeline system for delivery to a marine facility, refinery, or other production facility."[14] Under this definition the Mustang tie-in is either a flow line or a gathering line, since it transports crude oil to the inlet of a common-carrier pipeline system, the Alpine Pipeline System.

1. The Mustang tie-in qualifies as a flowline under DEC's regulation.

The Mustang-tie can be considered a "flowline" because it satisfies DEC's definition of a flowline. DEC's regulations define "flowline" as:

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[13] *Meeting on H.B. 567 Before the Senate Special Committee on Oil and Gas*, 1990 Leg., 16th Sess. (Alaska April 30, 1990) (recording on file).

[14] Alaska Statute 46.04.900(19).

> (A) piping and associated fittings, including all valves, elbows, joints, flanges, pumps and flexible connectors,
>
> (i) containing liquid oil;
>
> (ii) located at a production facility; and
>
> (iii) that is installed or used for the purpose of **transporting oil between a well pad or marine structure used for oil production and the interconnection point with a transmission pipeline**. . .[15]

Here, it is undisputed that the Mustang tie-in transports liquid oil between a well pad (the Mustang Pad) and a transmission pipeline (the Alpine Pipeline System). Consequently, the Mustang tie-in is a "flowline" because it satisfies the criteria listed DEC's regulation: (1) piping (2) that contains liquid oil (3) and is located at a production facility (4) that is used for the purpose of transporting oil between a well pad used for oil production and the interconnection point with a transmission line.

2. The Mustang tie-in qualifies as a gathering line under state law.

Although "gathering line" is undefined in AS 46.04, and DEC has not adopted a regulation defining the term, the Mustang tie-in also qualifies as a gathering line. When neither the legislature nor an agency have defined a technical term, Alaska courts look to industry usage to help in deciding its meaning.[16]

Classifying the Mustang tie-in as a "gathering line" is consistent with industry definitions of this term. For example, the Pipeline and Hazardous Materials Safety Administration ("PHMSA") defines "gathering line", in the context of hazardous liquids, as "a pipeline 219.1 mm (8⅝ in) or less nominal outside diameter that transports petroleum from a production facility."[17] The Mustang tie-in, at 6.5 inches in diameter, is therefore a gathering line under PHMSA's definition.

Similarly, the Alaska Department of Natural Resources defines "Field gathering lines" as:

> pipe and associated facilities, including separators, test equipment, pumps, treaters and tanks, used in the transfer of gas or oil from a well or other facility used in the production of gas or oil to a point where there is either a custody transfer of the gas or oil or where the gas or oil enters a common carrier pipeline, whichever first occurs.[18]

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[15] 18 AAC 75.990 (emphasis added).

[16] *See HDI-Gerling Am. Ins. Co. v. Carlile Transp. Sys.*, 426 P.3d 881, 888 (Alaska 2018) (utilizing the trucking industry's understanding of the term "necessary traffic stop" when interpreting text).

[17] 49 CFR 195.2.

[18] 11 AAC 80.055.

This definition perfectly describes the Mustang tie-in, which takes oil from a facility to the point of both custody transfer and where the oil enters a common carrier pipeline, the Alpine Pipeline System.

Finally, William & Myers Manual of Oil and Gas Terms defines "gathering line" as "[p]ipes used to transport oil or gas from the lease to the main pipeline in the area."[19] The Mustang tie-in thus qualifies as a gathering line under the William & Meyers definition.

3. *Because the Mustang tie-in is a gathering line or flowline, it is necessarily part of the Mustang production facility.*

Based on the foregoing, the Mustang tie-in qualifies as "gathering line" or "flowline" and comfortably meets the definition of a "production facility" set forth in AS 46.04.900(19). Indeed, after considering the plain meaning of the statute's language, its legislative history, its purpose, and applying common sense, the Mustang tie-in cannot be a "pipeline" under AS 46.04.900(18).

The Division's October 8, 2024 Decision Determining that the Mustang Tie-In is a "Pipeline" Conflicts with the Statutory Text and Legislative History

To rebut Mustang Holding's argument that the Mustang tie-in satisfies the definition for a production facility, the Division in its October 8 letter violated cardinal rules of statutory interpretation by contorting the statutory language, blotting out terms, and then adding language to the statute that does not exist.[20] The Division's decision begins from the premise that:

> [T]he distinction between the statutory definitions of "pipeline" and "production facility" lies in the stages of oil handling each facility governs. The definition of "production facility" at AS 46.04.900(19) describes structures and equipment used to extract, process, and store crude oil. . . The definition of "pipeline" at AS 46.04.900(18) focuses on the transportation of crude oil. . .[21]

This distinction is entirely made up and ignores the plain language of AS 46.04.900(19). Contrary to the Division's statement, the definition of "production facility" *includes the transportation of oil*:

> (19) "production facility" means a drilling rig, drill site, flow station, gathering center, pump station, storage tank, well, and related appurtenances on other facilities to produce, gather, clean, dehydrate,

[19] William & Myers Oil and Gas Law, Volume 8, G Terms.

[20] *Johnson v. State,* 380 P.3d 653, 656 (Alaska 2016) ("We 'presume that the legislature intended every word, sentence, or provision of a statute to have some purpose, force, and effect, and that no words or provisions are superfluous.'") (quoting *Nelson v. Municipality of Anchorage*, 267 P.3d 636, 642 (Alaska 2011)).

[21] Attachment B, page 1.

> condition, or store crude oil and associated hydrocarbons in or on the water of the state or on land in the state, and gathering and flow lines **used to transport crude oil and associated hydrocarbons** to the inlet of a pipeline system for delivery to a marine facility, refinery, or other production facility;[22]

Thus, the definition of "production facility" explicitly includes infrastructure, like the Mustang tie-in, used to transport oil to a pipeline system. Indeed, the legislative history discussed above confirms that legislature enacted this definition to include pipelines that transported crude to ensure that only a limited number of pipelines would be subject to the highest insurance requirements and to ensure that an operator would only need to operate under one C-Plan.[23] The Division's decision therefore inexplicably ignores the legislature's intent of broadly defining production facility to include pipelines that transport sales quality crude oil to a common carrier pipeline.

The Division's decision builds on this incorrect premise and violates a second cardinal rule of statutory interpretation: adding terms to the statutes.[24] In particular, the Division determined that the flow lines and gathering lines included in the definition of production facility are only those lines used in processing crude oil *before* it becomes "transport- and sales-ready." According to the Division, once crude oil is "transport- and sales-ready," any line that transports such oil is converted into a "pipeline."[25]

But the term "transport- and sales-ready [oil]" appears nowhere in the relevant law. To reach this conclusion, the Division is not only forced to add words to the statutory definition of "pipeline," but also violates a third cardinal rule of statutory construction[26] by applying a different meaning to the *exact same language* used in the statute to describe the oil being transported by a "pipeline" versus the oil being transported by a "flowline" or "gathering line":

> (18) "pipeline" means the facilities, including piping, compressors, pump stations, and storage tanks, **used to transport crude oil and associated**

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[22] AS 46.04.900(19) (emphasis added).

[23] *Meeting on H.B. 567 Before the Senate Special Committee on Oil and Gas*, 1990 Leg., 16th Sess. (Alaska April 30, 1990) (recording on file).

[24] Proper statutory interpretation does not "add missing terms [to a statute] or hypothesize differently worded provisions in order to reach a particular result." *Pruitt v. State*, 498 P.3d 591, 603 (Alaska 2021) (brackets in original).

[25] Attachment B, page 1 ("DEC therefore interprets the scope of "production facility" to end where production ends and crude oil is transport- and sales-ready").

[26] *Benner v. Wichman*, 874 P.2d 949, 947 (Alaska 1994) ("It is a general principle of statutory construction that 'the same words used twice in the same act have the same meaning.'") (quoting 2A Norman J. Singer, Sutherland's Statutes and Statutory Construction § 46.06 (5th ed. 1992)).

> **hydrocarbons** between production facilities or from one or more production facilities to marine vessels;
>
> (19) "production facility" means a drilling rig, drill site, flow station, gathering center, pump station, storage tank, well, and related appurtenances on other facilities to produce, gather, clean, dehydrate, condition, or store crude oil and associated hydrocarbons in or on the water of the state or on land in the state, and gathering and flow lines **used to transport crude oil and associated hydrocarbons** to the inlet of a pipeline system for delivery to a marine facility, refinery, or other production facility;[27]

The Division's argument that the piping in a "production facility" is used to transport one kind of crude oil (unprocessed and not "sales-ready") whereas a "pipeline" is used transport "sales-ready" oil, is unsupported by the language set forth in the statute. It also makes no sense. The Division would have you believe that the legislature chose *the exact same language* in adjacent statutes but expected the reader to apply very different meanings to them. That is not how statutes are to be read.[28]

In short, the plain meaning of the statute and legislative history establish that the quality of oil transported by a flow line / gathering line versus a pipeline has no bearing on whether the infrastructure in question is a "production facility" or "pipeline" because the definitions for each use exactly the same description of the substance being transported: "crude oil and associated hydrocarbons." The Division is therefore reading a distinction into the statute that simply does not exist in order to justify its preferred outcome.

The Division's Statutory Interpretation Conflicts with the Purpose of the Statute and Common Sense

As discussed above, the statutory scheme evidences a clear purpose that the financial responsibility requirement is proportionate to the risk that the facility imposes. The Division ignores this purpose and believes that the legislature intended a small, ~1,000 foot pipeline should have the same insurance requirements as TAPS.

In the Division's telling, the legislature carefully designed the statutory scheme to make financial responsibility proportionate for different sized onshore production facilities and tank vessels or barges, but deliberately did not for different kinds of pipelines.[29] Not so. Instead, the Legislature used a different textual approach for pipelines to maintain proportionality. For pipelines, the smaller gathering lines and flow lines which take crude oil to a pipeline system would be covered under the production facility's financial

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[27] AS 46.04.900(18) & (19) (emphasis added).

[28] *Benner v. Wichman*, 874 P.2d 949, 947 (Alaska 1994) ("It is a general principle of statutory construction that 'the same words used twice in the same act have the same meaning.'").

[29] *See* Attachment B, page 2.

responsibility, while the much larger "pipelines" would hold the substantially larger financial responsibility. This logical, common-sense view captures the legislature's clear purpose, as reflected in the statute's text, structure, and legislative history discussed above.

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To summarize, the Division's interpretation is unsupported by the text of the statute because the Division ignores words in the definition of "production facility", adds words to the definition of "pipeline" and then interprets the exact same phrase used in both definitions ("transport crude oil") to have very different meanings. The Division's interpretation conflicts with the purpose of the statute because the Division expressly disavows that the legislature intended to retain a sense of proportionality between the risk posed by the facility and the amount of insurance that is required by state law. The Division's interpretation directly conflicts with legislative history because the bill sponsors made clear that not all pipelines transporting sales quality crude would be considered "pipelines" under state law. And the Division's interpretation is irrational and defies common sense because it is mandating that an operator of a ~1000-foot, six-inch pipeline carry the same amount of insurance as TAPS.

The Division's Interpretation Violates the APA

The Division's decision largely rests on an interpretation of the statute that any pipeline that transports sales quality crude qualifies as a "pipeline" under AS 46.04.900(18) whereas pipelines that transports unprocessed crude can qualify as a gathering line or flow line under AS 46.04.900(19). Because the Division did not promulgate a regulation under the Alaska's Administrative Procedures Act ("APA")[30] before adopting this peculiar interpretation of the AS 46.04.900(18) and .900(19), the Division is relying on an unpromulgated regulation in violation of the APA.

The APA defines "regulation" broadly to include "every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of a rule, regulation, order, or standard adopted by a state agency *to implement, interpret, or make specific the law enforced or administered by* [the agency]."[31] The APA makes clear that an agency cannot simply advance novel interpretation of a statute that implement or make more specific the statutory text on a whim. Instead, the APA requires state agencies to adopt a regulation through the formal rulemaking process.[32] The failure to follow the process set out in the APA renders agency action invalid.[33]

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[30] AS 44.62.010-950.

[31] AS 44.62.640(a)(3) (emphasis added).

[32] AS 44.62.180 – 44.62.290.

[33] *Jerrel v. State*, 999 P.2d 138, 144 (Alaska 2000) (invalidating a regulation because it "did not satisfy the procedural standards of the APA").

The question here is whether the Division's interpretation qualifies as a regulation. It does. While an agency does not run afoul of the APA whenever it adopts a commonsense interpretation of a statute, the APA does require agencies to go through rulemaking whenever it (i) implements, interprets, or makes specific a statutory directive that (ii) impacts the agency's dealings with the public.[34]

Here, the Division's interpretation of AS 46.04.900(18) and .900(19) qualifies as a regulation because it announced a statutory interpretation that defies common sense, is contrary to the text of the statute, and made specific a directive that impacts the public. In particular, the Division interpreted two statutory definitions that used the exact same language, but then adopted a specific and categorical distinction between unprocessed and sales-ready crude oil that does not exist in either statute or regulation, and conflicts with legislative history. Thus, the Division has unlawfully adopted a regulation without going through the rulemaking process.

To be clear, Mustang Holding believes that the Division's distinction is foreclosed by the statutory definitions of "pipeline" and "production facility," since both use precisely the same phrase to describe the substance being transported. However, to the extent that these definitions allow for categorizing infrastructure as "pipelines" or "production facilities" based on the quality of the substance being transported, DEC was obligated to follow the APA's rulemaking process before relying on this distinction for two reasons: First, the Division's interpretation is not a commonsense interpretation. Second, the Division interpretated the statute and imposed specific and unforeseen requirements that govern whether a line transporting crude oil from a production facility is part of the production facility or qualifies as a pipeline.[35]

Mustang Holding's C-Plan Is Irrelevant

The Division's October 8 decision also relies on the fact that Mustang Holding refers to the Mustang tie-in as "transmission pipeline" in its C-Plan. Mustang Holding agrees that this was not correct and a mischaracterization of the tie-in. However, DEC's determination of financial responsibility is not governed by how Mustang Holding characterized the line in its C-Plan. Rather, it is dictated by the statutory language and legislative intent.

Conclusion

The Mustang tie-in falls under the definition of "production facility" rather than the definition of "pipeline." It simply does not make sense for the Division to classify the tie-in as a "pipeline" and impose a completely disproportionate financial responsibility of $111,450,000 for a gathering line/flowline that is less than a quarter mile in length with a response planning standard volume (adjusted) spill risk volume of 201 barrels and a worst-case discharge scenario of 984 barrels of oil. It is unreasonable to believe that the

[34] *AVCG, LLC v. State*, 527 P.3d 272, 280 (Alaska 2023).

[35] Attachment B, page 2.

legislature intended to impose such a massive insurance requirement on small lines that could never create a liability justifying that amount of insurance, especially when the legislative history establishes that the legislature did not want most lines transporting crude oil to fall under the definition of a pipeline that was required to have its own C-Plan and be subject to the highest levels of insurance. In any event, the Division cannot adopt the Division's definitions of a pipeline, production facilities, flowline, and gathering line, because it would violate the APA to create a new regulation without going through the rulemaking process.

For the foregoing reasons, we ask that you reverse the decision in the Division's October 8, 2024 letter and find that the Mustang tie-in is part of the Mustang production facility under AS 46.04.040(b)(2) and AS 46.04.900(19).

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THE STATE of ALASKA
GOVERNOR MIKE DUNLEAVY

Department of Environmental Conservation

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October 8, 2024,

Jonathan W. Katchen
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Mr. Katchen,

The Alaska Department of Environmental Conservation (DEC), Spill Prevention and Response Division (SPAR), has reviewed your August 14, 2024, letter on behalf of Mustang Holding LLC (Mustang) concerning the crude oil transmission pipeline that connects the Mustang Pad production facility to the Alpine Transportation Company pipeline. As explained below, DEC disagrees with Mustang and continues to find that Mustang's crude oil transmission pipeline is subject to the financial responsibility required for a "pipeline," set out at 18 AAC 75.235(a)(8).

Mustang asserts its crude oil transmission pipeline is a "flowline" (18 AAC 75.990(173)) or "gathering line" (undefined in DEC statute and regulation), and the pipeline would fall within the definition of "production facility" and be subject to the financial responsibility requirements at 18 AAC 75.235(a)(10). However, DEC's applicable statutes and regulations, as well as Mustang's own approved oil discharge prevention and contingency plan (C-Plan), demonstrate that the crude oil transmission pipeline is a "pipeline."

At the outset, the distinction between the statutory definitions of "pipeline" and "production facility" lies in the stages of oil handling each facility governs. The definition of "production facility" at AS 46.04.900(19) describes structures and equipment used to extract, process, and store crude oil. DEC therefore interprets the scope of "production facility" to end where production ends and crude oil is transport- and sales-ready. The definition of "pipeline" at AS 46.04.900(18) focuses on the transportation of crude oil after the production process has been completed and encompasses the physical infrastructure used to transport sales-ready product. The context of these definitions informs the delineation of "flow line" or "gathering line" and "pipeline" – flow lines and gathering lines are piping used as part of the production process at a production facility, and a pipeline is used as part of the subsequent transportation process, delivering sales-ready crude oil.

A review of Mustang's approved C-Plan makes clear that its self-characterized "crude oil transmission pipeline" is a "pipeline"; specifically, a "transmission pipeline" per 18 AAC 75.990(134). A "transmission pipeline" is defined as:

> [A] **pipeline** through which crude oil moves in transportation, including line pipe, values, and other appurtenances connected to line pipe, pumping units, and fabricated assemblies associated with pumping units; **"transmission pipeline" does not include gathering lines, flow lines, or facility piping.**

18 AAC 75.990(134) (emphasis added). Throughout its C-Plan, Mustang describes the pipeline as a "crude oil transmission pipeline." The C-Plan discuss the purpose of the pipeline, which is to transport sales-ready crude oil to the Alpine Transportation Company pipeline. This purpose aligns with DEC's understanding of "pipeline," which pertains to infrastructure delivering crude oil after the production process is complete. The C-Plan even demonstrates how its crude oil transmission pipeline meets Article 1 and Article 4 requirements applicable to a "transmission pipeline."

The fact that Mustang's C-Plan identifies the pipeline as a "transmission pipeline" should settle this issue, given the definition excludes "flow line" and "gathering line." However, DEC finds it helpful to delineate flow lines at the Mustang Pad production facility from Mustang's crude oil transmission pipeline. As referenced in Mustang's letter, the definition of "flow line" means piping, including "multi-phase lines" and "process piping," located at a production facility for the purpose of transporting "liquid oil" between "a well pad or marine structure used for oil production and the interconnection point with a transmission pipeline." 18 AAC 75.990(173). The definition's references to phasing and processing, and its use of the phrase "liquid oil" instead of "crude oil," reflects the role these lines play at a production facility – they carry commingled, unrefined oil through the facility's phasing, conditioning, and processing to produce a crude oil product stream that meets TAPS specifications. Mustang's C-Plan describes lines that run from Mustang's wells through its process facilities to crude oil holding tanks ; the plan acknowledges that the holding tanks are for "sales oil storage." Mustang's crude oil transmission pipeline carries this sales-ready oil from the holding tanks, through the LACT meter for sales measurement, to the Alpine Transportation Company pipeline. Thus the C-Plan identifies (1) piping accurately characterized as "flow lines," which run through Mustang's process facility, (2) the "interconnection point" between the "flow lines" and "transmission pipeline," which would be the holding tanks that store sales-ready crude oil following the production process, and (3) the "transmission pipeline," Mustang's crude oil transmission pipeline that serves to transport Mustang's final sales product. Despite Mustang's arguments to the contrary, this delineation does not render any of the applicable definitions superfluous. Instead, the characterization gives effect to each while taking into context the nature of a "production facility" versus a "pipeline" as described in statute.

DEC finds Mustang's remaining support for its position unpersuasive. The Alaska Department of Natural Resources' (DNR's) regulatory definition of "field gathering lines" at 18 AAC 80.055 was developed by DNR for right-of-way leasing requirements, not for DEC oil spill prevention and response requirements. Finally, while DEC acknowledges that the financial responsibility requirement for a pipeline is substantial, the value was established by the Alaska legislature and is fixed in statute, and DEC does not have the discretion to deviate from these requirements.

DEC continues to consider Mustang's crude oil transmission pipeline a "transmission pipeline" and therefore a "pipeline" under AS 46.04.900(18). The financial responsibility requirements for a "pipeline" at 18 AAC 75.235(a)(8) remain applicable to Mustang's crude oil transmission pipeline. DEC reminds Mustang that, per 18 AAC 75.220, an application for any amended financial responsibility coverage needs to be submitted to SPAR at least 30 days prior placing changed operations into service, and the application must be accompanied by appropriate proof of financial responsibility under 18 AAC 75.231 – 18 AAC 75.271.

Sincerely,

Signed by:
Graham Wood
227D2CE858CF4DB...

Graham Wood
Program Manager

Holland & Hart

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August 14, 2024

Shauna McMahon
Environmental Program Specialist 3
Alaska Department of Environmental Conservation
PO Box 111800
Juneau, AK

Re: Financial Responsibility for the Mustang Pad Tie-In to the Alpine Pipeline System

Dear Ms. McMahon,

The purpose of this letter is to explain Mustang Holding, LLC's ("MHLLC") position regarding its financial responsibility obligation under 18 AAC 75.235, and why the tie-in line bringing crude oil from the Mustang Pad to the Alpine transmission line is a "gathering line" or "flow line" under DEC's authorities. The applicable regulations and statutes demonstrate that the tie-in is part of Mustang's production facility and is therefore not subject to the financial responsibility required for "pipelines."

I. The Definitions of "Pipeline" and "Production Facility" Demonstrate that the Tie-In is a Gathering Line or Flow Line

The Mustang tie-in transports crude oil from the Mustang Pad to the Alpine transmission pipeline via a 1,150-foot long, six-inch diameter line. DEC's regulations define "pipeline" and "production facility" by reference to AS 46.04.900:

> (18) "pipeline" means the facilities, including piping, compressors, pump stations, and storage tanks, used to transport crude oil and associated hydrocarbons between production facilities or from one or more production facilities to marine vessels;
>
> (19) "production facility" means a drilling rig, drill site, flow station, gathering center, pump station, storage tank, well, and related appurtenances on other facilities to produce, gather, clean, dehydrate, condition, or store crude oil and associated hydrocarbons in or on the water of the state or on land in the state, **and gathering and flow lines used to transport crude oil and associated hydrocarbons to the inlet of a pipeline system for delivery to a marine facility, refinery, or other production facility**;[1]

[1] Alaska Statute 46.04.900(18) & (19) (emphasis added).

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The Mustang tie-in does not meet the definition of "pipeline" because it does not transport crude oil between production facilities, nor from production facility to marine vessel. Rather, the tie-in transports oil between a production facility, the Mustang Pad, and the Alpine Pipeline System.[2]

Instead of a "pipeline," the tie-in meets the definition of a flow line or gathering line in AS 46.04.900(19) – a line used to transport crude oil from a production facility to the inlet of a pipeline system. This is precisely what the Mustang tie-in does: transport crude from a production facility (the Mustang Pad) to a pipeline system (Alpine).

II. DEC's Definition of "Flowline" Confirms that the Tie-In is not a "Pipeline"

DEC's regulations define "flowline" in 18 AAC 75.990 as follows:

> (173) "flowline" means
>
> (A) piping and associated fittings, including all valves, elbows, joints, flanges, pumps and flexible connectors,
> (i) containing liquid oil;
> (ii) located at a production facility; and
> (iii) **that is installed or used for the purpose of transporting oil between a well pad or marine structure used for oil production and the interconnection point with a transmission pipeline**; and
>
> (B) includes all piping between interconnections, including multi-phase lines and process piping, except
> (i) facility oil piping; and
> (ii) transmission pipelines;[3]

A "flowline" transports oil ***between*** a well pad and a transmission pipeline. This is exactly what the Mustang tie-in does: it transports oil between the Mustang Pad and the Alpine transmission pipeline. The plain language of this regulation requires the conclusion that the Mustang tie-in is a flowline.

Moreover, to characterize the small-diameter tie-in taking crude oil a short distance from the Mustang Pad to the Alpine Pipeline System as a "pipeline" would render superfluous the language in the definition of "production facility" regarding flowlines and gathering lines, as well as the definition of "flowline" in 18 AAC 75.990. A basic principle of statutory construction is that laws

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[2] The approved ConocoPhillips C-Plan for the Alpine Field includes the Alpine pipeline, refers to the pipeline as the "Alpine Pipeline System" and also as a "transmission pipeline." This is consistent with the endpoint that a flowline or gathering line brings oil to pursuant to the statutory definition of "production facility."

[3] 18 AAC 75.790(173)(emphasis added).

and regulations are interpreted to give every word and provision effect.[4] The drafters of these statutes and regulations intended to make distinctions between flow lines and gathering lines, on the one hand, and pipelines. To give these distinctions effect, the Mustang Pad's connection to the Alpine transmission pipeline must be characterized as a flow line or gathering line.

III. Characterizing the Mustang Pad Tie-In as a "Pipeline" Would Lead to an Absurd Result

Another bedrock principle of statutory construction is that statutes and regulations should not be interpreted in a way that leads to absurd results.[5]

Characterizing the Mustang Pad gathering line as a "pipeline" would result in a financial responsibility of $111,450,000 for the tie-in, ten times the amount required for the Mustang Pad.[6] Requiring such an amount is absurd on its face, as the security for the tie-in would bear no proportion to the spill risk. The approved C-Plan for the Mustang Pad considers four oil spill scenarios, including summer and winter blowouts at the Mustang Pad (scenarios 1 and 2) and a potential rupture of the tie-in (scenario 4). Both the summer and winter blowout scenarios result in 82,500 barrels of spilled oil, while the tie-in rupture scenario results in 201 barrels spilled. The tie-in scenario is therefore over 400 times *less destructive* than a potential Pad blowout, yet interpreting tie-in to be a "pipeline" would result in 10 times the required financial responsibility. This is the definition of an absurd result.

This result was never intended by the Alaska Legislature. The definitions of "pipeline" and "production facility" in AS 46.04.900(18) and (19) were adopted in 1990. The Governor's Special Assistant, testifying at the time about these definitions, emphasized that "the definition of Pipeline deals with crude Pipelines taking oil from production facilities to marine vessels. They do not intend to include the trunk lines in the Financial Responsibility requirements."[7] Furthermore, he explained that the "definition of Pipeline #1 deals only with crude oil and Pipelines that only go between production facilities to marine vessels (the 48-inch line from Prudhoe to Valdez)."

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[4] *E.g. Johnson v. State*, 380 P.3d 653, 656 (Alaska 2016)("We presume that the legislature intended every word, sentence, or provision of a statute to have some purpose, force, and effect, and that no words or provisions are superfluous")(internal citations omitted).

[5] *E.g. Gillis v. Aleutians E. Borough*, 258 P.3d 118, 124 (Alaska 2011)("[i]n ascertaining the legislature's intent, we are obliged to avoid construing a statute in a way that leads to a glaringly absurd result")(internal citations omitted).

[6] Section 3.1.3 of the approved C-Plan for the Mustang Pad provides that its processing facility is designed to handle peak rates up to 5,000 barrels of oil per day. Under 18 AAC 75.235(a)(12), a production facility producing not more than 5,000 barrels per day requires $11,450,000 in financial responsibility.

[7] Summary of testimony of Denby Lloyd, Special Assistant to the Office of the Governor, Senate Special Committee on Oil and Gas, April 30, 1990.

Thus, characterizing the Mustang Pad tie-in as a "pipeline" would not only violate the plain language of the applicable regulations, it would also expand the definition of "pipeline" beyond the Legislature's intent.

IV. DNR's Definition of "Field Gathering Line" is Further Confirmation that the Tie-in is Not a Pipeline

While not dispositive, it would make sense that state agencies with overlapping jurisdiction have similar definitions for regulated infrastructure. The Department of Natural Resources regulations define "field gathering lines" as in 11 AAC 80.055 as follows:

> "Field gathering lines" means pipe and associated facilities, including separators, test equipment, pumps, treaters and tanks, used in the transfer of gas or oil from a well or other facility used in the production of gas or oil to a point where there is either a custody transfer of the gas or oil or where the gas or oil enters a common carrier pipeline, whichever first occurs.

Under this definition the Mustang Pad tie-in is clearly a gathering line. It brings oil from the facility used in the production of oil to the point where the oil enters a common carrier pipeline, the Alpine transmission pipeline, and where custody transfer also occurs. DNR's definition should serve as further confirmation that the only reasonable interpretation of DEC's authorities is that the Mustang tie-in is a gathering line or flow line.

V. Conclusion

The Mustang tie-in is a small-diameter line used to transport crude oil a short distance from the Mustang Pad to the Alpine Pipeline System. The tie-in falls squarely within the definition of a flow line or gathering line as part of a production facility, and is simply not a "pipeline" under DEC's authorities. An interpretation to the contrary would lead to the absurd result of requiring financial responsibility that bears no relation to the spill risk associated with the tie-in. Such an interpretation would contravene the Legislature's intended definition of "pipeline" and would be at odds with how DEC's sister agency defines gathering lines. For these reasons, the financial responsibility requirement in 18 AAC 75.235(a)(8) does not apply to the Mustang tie-in.

Very truly yours,

Jonathan W. Katchen
Partner
of Holland & Hart LLP