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**RECEIVED**

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**DIVISION OF  
OIL AND GAS**

Department of Natural Resources  
Division of Oil and Gas  
Attn: Bob Pawlowski  
550 West 7<sup>th</sup> Avenue, Suite 1100  
Anchorage, Alaska 99501-3560

Re: Comment on Proposed Changes to Title 11, Chapter 83 of the Alaska  
Administrative Code

Dear Mr. Pawlowski:

ConocoPhillips Alaska, Inc., ("ConocoPhillips") appreciates the extended opportunity to comment on the proposed changes to 11 AAC 83, which would adopt a new process for approving oil and gas exploration and development activities. Representatives of ConocoPhillips attended the workshop that the Department of Natural Resources ("DNR") held on September 6, 2013, and we have considered these proposed regulatory changes from a variety of perspectives. We recognize and support the DNR's effort to streamline the permitting process, and to achieve the optimal balance of public engagement, on one hand, and permitting certainty and efficiency on the other hand.

While we see some good potential in the proposal, we are concerned that the regulations, if adopted in their current form, may create more problems than they solve. We believe that with additional work to address the questions raised at the workshop, and the issues set forth in detail below, the regulations could be written in a way that more clearly articulates their intended scope and application. In that case, the regulations could be a beneficial addition to options that DNR has available for the consideration and approval, subject to conditions, of oil and gas exploration and development activities on state land.

In concept, ConocoPhillips supports the goal of having a regulatory process available by which DNR could approve exploration and development activities categorically for specified geographic areas, without engaging in redundant and time-consuming public notice and comment periods for each particular exploration or development operation as

it is proposed. An option for categorical approval could promote consistency and predictability in permitting, for the benefit of all stakeholders and the Alaska public at large. To the extent the proposed regulations can be clarified to implement a program that serves this goal, without causing unintended consequences that undermine consistency and predictability, we are supportive.

The proposed regulations, however, would create a new process for approving exploration and development activities, without explaining how that process would fit into existing processes. For example, under existing processes, unit plans of operation are approved for an oil and gas unit generally, and project-specific plans of operation are submitted and approved as additional surface activities are planned within the unit. The proposed regulations could be interpreted to supersede this existing process, potentially infringing on contracts in the form of unit agreements. Assuming that DNR does not intend to supersede the existing process for unit plans of operation, ConocoPhillips submits that it is important to clarify this intent in the proposed regulatory language. As currently phrased, the proposed regulations actually would delete existing regulations that help provide clarity on the relation between "lease" plans of operation, and "unit" plans of operation. This issue is discussed in more detail below.

ConocoPhillips questions whether the proposed process for implementing AS 38.05.035(o) is the best option available for receiving public comment and considering the potential impacts of both exploration and development phases of oil and gas activities. The proposed process may make more sense for exploration activities on unleased land than for development activities on leased land. In any case, we recommend that the DNR take additional time to consider how this process would apply to a variety of different circumstances, including the potential impacts on existing units. We also recommend that DNR propose a second draft of regulations for additional public comment. We would hope to see, in that second draft, explanation of how the geographic area approach would be applied – if at all - with respect to existing oil and gas units.

ConocoPhillips' section-specific comments are set forth below:

**11 AAC 83.158.**

DNR proposes to amend this existing regulation in a variety of ways. ConocoPhillips is concerned about the proposal to delete the language in section 158(b)(2) that specifies that a plan of operations ("POO") is not required for operations undertaken under an approved unit POO. Arguably, the current language is superfluous because an

approved unit plan of operations is a plan of operations. Yet, the current language has been in effect for a long time, and has provided clarity that operations approved in connection with a unit plan of operations are not subject to additional permitting requirements as lease operations. ConocoPhillips encourages DNR to clarify that this change is not intended to impose an additional permitting requirement for unit operations, or to affect unit agreements, which typically incorporate approved plans of operations by reference in the unit agreement contract.

DNR proposes to impose a 120-day requirement for submission of a plan of operation in section 158(b). This change is proposed for section 158, but no similar change is proposed for section 346 governing unit plans of operation. We support the exclusion of a 120-day requirement in existing units, where greater levels of activity occur and a 120-day advance submission requirement would impede necessary surface activities to maintain and improve existing production. But we are concerned that DNR may interpret section 158 to apply to amendments or supplements to unit plans of operation, and we further believe the 120-day requirement is unduly burdensome even for lease plans of operation under section 158. We recognize that DNR needs a reasonable time for consideration of plan submittals, but not all necessary POO approvals require 120 days. We believe a much shorter time period would be appropriate, and that the regulation should expressly allow for flexibility for cases where circumstances reasonably require expedited approval for a POO submitted on short notice, and especially complicated POO that might require longer for agency consideration. We believe there is a significant difference between exploration projects and development projects and recommend you separate the two. Since exploration is temporary or seasonal we don't think a 120-day timeline is justified and suggest using 45 days.

DNR has proposed two additional requirements in section 158(e)(5) and (6). We see each of these proposals as vague and unnecessary. Paragraph (5) would require an operator to submit surface ownership of "the area directly associated" with proposed operations along with names and addresses for record owners. DNR is the record keeper for this information, so it seems unnecessary to require the operator to provide the information to DNR. In most cases, the surface ownership will be well-known and will have little or no bearing on the POO, so it would be pointless to require the information in every submittal. Also, the phrase "the area directly associated" is vague. We submit that surface ownership be addressed only on a case-by-case basis as it may be significant to particular plans. If the proposed change in paragraph (e)(5) is rejected, as ConocoPhillips recommends, then the proposed definition of "surface" in subsection (j) would be unnecessary.

Similarly, proposed paragraph (6) would require information on “specific” leases or licenses issued by state, federal, or private entities “directly associated” with the proposed operations, “including well bore trajectories.” In most cases, the operations will be proposed to occur on oil and gas leases issued by the State. Requiring the submittal of the lease for each POO would unnecessarily burden both the applicant and DNR. Only rarely would the underlying lease or license be an issue with respect to a proposed surface activity for which POO approval is sought. In those cases where the terms of a lease or license is at issue for a POO, DNR could work with the applicant to address the issue and examine leases or licenses as may be necessary. And again, the phrase “directly associated” is vague. In addition, the reference to wellbore trajectories is unclear because it does not specify what information DNR would require. In most cases, a wellbore trajectory will have nothing to do with an activity for which POO approval is sought.

ConocoPhillips has no objection to the inclusion of wastewater treatment and disposal sites in section 158(e)(2), and no objection to the administrative changes proposed for section 158, such as changing references to “the commissioner” to “the department.”

#### **11 AAC 83.650.**

This section would describe the scope of the new Article 7 on “Exploration and Development by Geographical Area.” As presently drafted, this section simply states that the regulations “establish procedures for authorizing exploration and development in a geographical area[.]” If these regulations are carried forward to adoption, then ConocoPhillips recommends that Section 650 be expanded to clarify the intent and limits of Article 7. We suggest that it expressly state that Article 7 is limited in the following ways:

- It applies only to the extent DNR elects to define a geographic area and approves of categories of activities in that area, but otherwise has no bearing on the process for securing approval for a POO.
- It does not purport to allow activities that require a lease or license, and does not in any way impair the exclusive rights that oil and gas lessees have to explore and develop oil and gas and associated substances found within their lease.
- It does not affect an existing unit plan of operation or plan of development.
- It does not require a unit operator to seek approval for new operations under Article 7 rather than under 11 AAC 83.346.

**11 AAC 83.660.**

ConocoPhillips has no comments that are specific to this section.

**11 AAC 83.665.**

ConocoPhillips is unclear about the value of defining a geographic area other than an oil and gas unit for development activities as proposed in Section 665. Most, if not all, development that applies to an area more extensive than one lease will be development within a unit. The purpose of AS 38.05.035(o) could best be served, we believe, by approving development activities categorically by unit. In any case, ConocoPhillips recommends that the DNR consider carefully the intended relation between geographical areas defined under this section, on one hand, and existing or future units on the other hand. DNR should expressly describe that relation in the words of the regulation to avoid unintended consequences.

More specifically, subsection (c) is vague. Does DNR intend that a development area will include "only" leased acreage? If so, the wording of (c) should be clarified accordingly.

**11 AAC 83.370.**

Section 370 sets forth criteria to guide DNR in authorizing exploration or development categorically, but it also includes a catch-all "other relevant factors" criterion that effectively undermines predictability because it could allow the introduction of unanticipated and even arguably inappropriate criteria. We urge regulatory restraint if such a broad set of criteria is ultimately adopted. We also note that authorizing activities by type, rather than by particular projects, could create a new set of permitting complexities arising from the fact that the specific nature of future activities will be less well-known than project-specific plans that currently are the subject of most SOO submittals. Even so, ConocoPhillips supports the underlying premise that in many instances, sufficient information exists to adequately describe foreseeable exploration and development activities so that meaningful public comments can be received, meaningful analysis of impacts including cumulative impacts can be conducted, and well-considered approvals can be given for a reasonable period of time. ConocoPhillips is cautiously optimistic that these criteria can be applied by DNR in a way that actually does streamline permitting. However, we urge DNR to take the time to carefully work through the proposed regulations, including another round of public comment, to ensure that a solid foundation is laid for the new process.

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More specifically, we recommend that subsection (c) specify that conditions will not be inconsistent with unit agreements or approved unit plans of development.

**11 AAC 83.695.**

We recommend that the proposed definitions of "development" and "exploration" be fleshed out with non-exclusive examples of the types of activities intended. We recommend that the definition of "geographic area" specify that it refers to an area that DNR defines under Section 365.

**Conclusion**

ConocoPhillips appreciates the extended opportunity to comment, the effort to clarify issues at the September 6 workshop, and the work that DNR has put into a process for implementing AS 38.05.035(o) and streamlining permit approvals. We see the proposed regulations as a good start, but we recommend further refinement and clarification, along with a second round of public comment, before the regulations are adopted as final.

Sincerely,



Wes J. Heinold  
Vice President Health Environmental and Safety  
ConocoPhillips Alaska

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