



DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, DC 20310-0103



REPLY TO  
ATTENTION OF

20 SEP 1990

MEMORANDUM FOR THE DIRECTOR OF CIVIL WORKS

SUBJECT: Request for Permit Elevation

The Environmental Protection Agency (EPA) has been notified by the attached letter that I declined to elevate the decision of the Alaska District Engineer to issue a permit to ARCO Alaska to construct a production well pad (Drill Site 3-L) and associated road within the Kuparuk Field on the North Slope of Alaska.

While EPA raised some very valid issues, we believe they can be properly addressed by the district at this time without elevating the permit case. The District Engineer should be instructed to proceed in accordance with the terms articulated in my letter to EPA.

Robert W. Page  
Assistant Secretary of the Army  
(Civil Works)

Attachment

*Encl.*



## DEPARTMENT OF THE ARMY

U.S. Army Corps of Engineers  
WASHINGTON, D.C. 20314-1000REPLY TO  
ATTENTION OF:

25 OCT 1990

CECW-OR

## MEMORANDUM FOR COMMANDER, NORTH PACIFIC DIVISION

**SUBJECT:** Elevation Request from the United States Environmental Protection Agency (EPA) Regarding an Application for an Army Corps of Engineers Permit Filed by ARCO Alaska, Inc.

1. By letter dated 20 September 1990, Assistant Secretary of the Army (Civil Works) (ASA(CW)) Mr. Robert W. Page responded to the 29 August 1990 request from Ms. LaJuana S. Wilcher, Assistant Administrator for Water, EPA, that the decision of the Alaska District Engineer in the subject case be elevated based on two issues raised by her under the Memorandum of Agreement's (MOA) elevation criteria at sections 5.b.1. and 5.b.3. A copy of Mr. Page's letter is enclosed.

2. ASA(CW) did not agree that the EPA request meets the MOA criteria for elevation under sections 5.b.1 and 5.b.3. and therefore declined to elevate the decision. However, ASA(CW) determined that EPA did raise some valid issues that should be properly addressed by the Alaska District (NPA) without elevating the permit case. In accordance with the enclosed memorandum of 20 September 1990 from ASA(CW), the Alaska District Engineer is instructed to proceed as discussed below:

a. Section 5.b.1. Compliance with Section 404(b)(1) Guidelines. As stated in ASA(CW)'s letter, NPA did not fail to coordinate sufficiently at the district or division level regarding the issue of the availability of less environmentally damaging practicable alternatives. However, the NPA Evaluation and Decision Document does not sufficiently discuss the hydrological assessment and evaluation of hydrology impacts of the easternmost north-south alternative alignment. As a result of telephone conversations between HQUSACE (CECW-OR) and NPA, we learned that the initial, westernmost north-south alignment was recommended by the various resource agencies. Subsequently, the hydrological analysis prepared by the applicant's consultant was completed prior to the resource agencies' recommendation of the easternmost north-south alignment and thus did not consider this alignment of the easternmost north-south route. However, we understand that the recommended easternmost north-south alignment was conveyed to NPA-EN-H-HY who considered it as they evaluated the hydrological analysis as it related to those alignments. However, NPA-EN-H-HY's opinion, based on its review is not included in the documentation. With hydrology being such a key issue in determining the least environmentally damaging practicable alternative in this case, it is important to include

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this in the documentation. The events leading to the recommendation of the two north-south alignments, development of the hydrological analysis, and eventual inclusion of the easternmost north-south alignment in the hydrological evaluation should be fully, yet briefly included in the documentation.

In addition, NPA will consider the information submitted by the Fish and Wildlife Service (FWS) regarding the habitat values of the various alignments. The district has noted that the resource information developed by FWS was submitted very late in the permit evaluation process. Our guidance is not intended to set a precedent which would allow agencies to continuously submit new information, however, we believe that in this case the information should be considered. The district will apply the relative habitat values identified by the FWS or clearly develop its own position based on other information in determining the potential impacts of construction of the access road on the proposed and alternate alignments. If the district does not find the FWS information sufficient to address all of the various alignments, the district should use its professional expertise and experience to extrapolate the FWS information without conducting new habitat studies.

b. Section 5.b.3. Environmental Issues of National Importance. NPA's handling of the issue of mitigation in the subject permit case was appropriate. However, we agree with EPA that cumulative impacts need to be addressed and a system-wide approach to mitigation requirements needs to be developed. Therefore, NPA will initiate discussions with all appropriate agencies and the applicant(s) and develop a system-wide mitigation plan for the North Slope considering input from these appropriate agencies and applicant(s). The plan should consider managing the positive and negative attributes of rehabilitation of hydrocarbon sites and other mitigation sources such as former hydrocarbon exploration and production sites that are now inactive. This would involve identifying which sites may be available for mitigation and a reasonable plan for integrating these sites into future regulatory decisions. We are aware that efforts have been made in the recent past to develop a mitigation plan encompassing the accelerated rehabilitation of inactive hydrocarbon exploration or production sites with input from the hydrocarbon industry. We are also aware that the hydrocarbon industry is not currently participating in this effort due to

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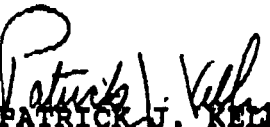
pending legal actions regarding the Memorandum of Agreement Between the Environmental Protection Agency and the Department of the Army Concerning the Determination of Mitigation Under the Clean Water Act Section 404(b)(1) Guidelines. It is important for the Corps to take an active role in the development of a system-wide mitigation plan with or without input from the hydrocarbon industry. However, we feel that it would be in the industry's best interest to continue to have input into the plan. After a plan has been developed, it will remain the Corps responsibility to determine when and how it should be used. Request you provide me a progress report within six months. Generally, permit decisions on the North Slope should not be delayed at this time pending development of a system-wide mitigation plan.

c. The district will include the information discussed in paragraph a. above in a revised decision document and after fully considering the information in light of the overall proposal shall reach a final permit decision. If the district engineer's final decision is to issue the permit, he will notify the Regional Administrator (RA) by such means as identified in the MOA and will provide a copy of the Statement of Findings/Record of Decision prepared in support of the permit decision. Also, please provide a copy of the decision documents to HQUSACE (CECW-OR) within the same time frame. The district engineer will not take final action for 10 working days from the time he notifies the RA to provide time for EPA to reach a decision on whether to exercise its section 404(c) authority.

3. If the district has questions regarding the above directive or the scope of the mitigation plan for the rehabilitation of inactive hydrocarbon exploration and production sites, they should contact my regulatory staff (CECW-OR).

FOR THE COMMANDER:

Encl

  
PATRICK J. KELLY  
Major General, USA  
Director of Civil Works