

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
FROM THE ALASKA PUBLIC OFFICES COMMISSION**

ARTHUR J. HACKNEY,)
)
 Complainant,)
)
 v.)
)
 ALASKANS AGAINST THE MINING)
 SHUTDOWN, COUNCIL OF ALASKA)
 PRODUCERS, and NANA REGIONAL)
 CORPORATION,)
)
 Respondents.)
 _____)

OAH No. 09-0338-APO
Agency Case No. 09-07-CD

ORDER ON PROCEDURE FOR REVIEWING PROPOSED CONSENT AGREEMENT

The two active respondents, Council of Alaska Producers (CAP) and Alaskans Against the Mining Shutdown (AAMS), have reached a proposed settlement with the staff memorialized in a proposed consent agreement. The complainant has not yet expressed an opinion on the proposed consent agreement. Even if all parties and the complainant favor the proposal, the Commission is not obliged to accept it.

A. Request for Written Submissions

The Commission has identified the six concerns listed below. This is a preliminary list of concerns that the Commission has identified to date, and should not be construed as an exhaustive list of the issues to be evaluated:

1. In general, the proposed agreement and the accompanying motion do not explain how each of the seven outstanding allegations detailed in Part IV of the ALJ’s summary adjudication order has been addressed.

2. There is no indication of how the proposed fine of \$17,500 relates to any particular violation or violations.

3. The proposed agreement recites that “AAMS has dissolved, has no assets, and no longer exists.” It provides that “a representative of the former group may seek to raise the money necessary to pay the fine.” There appears to be no commitment that the fine will be paid, nor any discussion of what would occur if it is not.

4. The proposed agreement contains only one specific admission, involving a reporting omission by CAP. No fine is assigned to this omission. There is no explanation for the decision to allocate all of the proposed fine to AAMS and none to CAP's admitted violation.

5. The proposed agreement recites that CAP relied on "informal advice from APOC staff." In connection with the summary adjudication motion, evidence was received that indicated some informal advice may have been given to AAMS, but there was no evidence of informal advice to CAP. The proposed agreement suggests that informal advice was separately provided to CAP on or about January 14, 2008. The Commission would like to have a more detailed understanding of this informal advice.

6. The proposed agreement recites that with the exception of one admitted violation, "CAP complied with APOC reporting requirements . . . based in part on informal advice." The Commission would like to understand whether a determination has been or should be made that CAP's reporting was fully in compliance with legal requirements, or whether the determination is that CAP's reporting was in compliance with staff advice but that the advice may have been erroneous.

By 4:00 p.m. on Tuesday, January 26, 2010, the parties and the complainant are invited to make written filings addressing these matters as well as any other matters that might assist the Commission in evaluating whether to approve the proposed consent agreement. The written filings may include copies of relevant documents or may refer to such documents if they are already found in the record.

B. Oral Argument

An oral argument on the proposal to accept the consent agreement will be held on Friday, January 29, 2010 at 9:00 a.m. at the Commission's offices. Argument time is allocated as follows: Complainants, 15 minutes; CAP and AAMS (collectively), 15 minutes; Staff, 15 minutes.

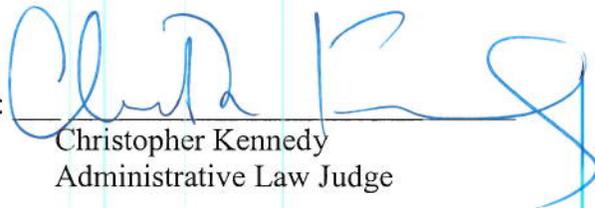
C. Hearing Vacated

The evidentiary hearing previously scheduled for January 28-29, 2010 is vacated. All participants should tentatively reserve March 18-19, 2010 as a possible future hearing date should the proposed consent agreement be rejected.

D. Pre-Hearing Deadlines

All pre-hearing deadlines falling on or after January 15, 2010 are vacated. If the consent agreement is rejected, a new schedule will be established according to a pattern similar to the one used in the Third Scheduling Order.

DATED this 19th day of January, 2010.

By: 
Christopher Kennedy
Administrative Law Judge

The undersigned certifies that on January 19, 2010 at 3:45 p.m, this order was distributed by **e-mail attachment** to the following: Thomas Amodio counsel for respondents Alaskans Against the Mining Shutdown and Council of Alaska Producers; James Torgerson, counsel for respondent NANA Regional Corporation; Timothy McKeever and Scott Kendall, counsel for Arthur Hackney, complainant; and Thomas Dosik and John Ptacin, Assistant Attorneys General, counsel for the APOC. Courtesy copies of this order were provided to Holly Hill, APOC Executive Director, and Elizabeth Hickerson, APOC Chair.


Kimberly DeMoss