

The TAPS Legal Framework: Strengths and Weaknesses

Trans-Alaska Pipeline Citizens Oversight Stakeholder
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TAPS Oversight Authorities

1. Trans-Alaska Pipeline Authorization Act (TAPAA, 1973) and Federal Right-of-Way Grant

2. Alaska Lands Act and State Right-of-Way Grant
 - Alaska Statutes 38.05
 - State ROW grant at <http://www.jpo.doi.gov/SPCO/SPCO.htm>
 - Similar requirements and enforcement methods to federal lease

The Trans-Alaska Pipeline Authorization Act

- 43 USC §§1651-1656
- Authorized ROW through federal lands
- ROW renewed in 2002 for 30 more years without significant changes

The Trans-Alaska Pipeline Authorization Act, continued

- Mandates federal oversight of all TAPS activities
- May modify the ROW grant at any time to protect the public interest

Comparing TAPS Authority to Permitting Authority

TAPS

- Allows modifications of requirements at any time
- Changes in requirements not always known by the public
- ROW public process completed for 30 years
- Not enforceable by third parties

Permits

- Regular, required review (e.g., every 5 years) of requirements
- Mandatory public input
- Some ability for third party enforcement

Joint Pipeline Office

- BLM and DNR co-manage pipeline
 - Alaska BLM Director appoints Authorized Officer
 - Commissioner of DNR appoints State Pipeline Coordinator
- MOA between agencies of the JPO
[http://www.jpo.doi.gov/Index Page files/
Memorandum of Agreement.pdf](http://www.jpo.doi.gov/Index Page files/Memorandum of Agreement.pdf)

Right-of-Way Grant

- Contains requirements and stipulations
- Stipulations are part of the Grant (§4.a.4)
 - 59 Environmental Stipulations
 - Pollution control
 - Buffer strips
 - Erosion
 - Fish passage
 - Fish and wildlife protection
 - Material sites
 - Clearing, restoration
 - Contingency planning

Enforcing the ROW Grant

JPO (Authorized Officer) has largely unfettered, unreviewable discretion to determine whether the pipeline owner is in compliance with the terms of the Right of Way Grant. Examples:

- AO decides if suspension of activities is required (§25A)
- AO decides amount of rehabilitation necessary (§13)
- AO can exempt the pipeline owner from stream crossing and fish passage requirements (2.4.3)
- AO decides if control and clean-up efforts will be taken over (2.14.4)
- AO decides whether to allow and mitigation required for dredging, draining, disturbing stream beds (2.8.1)
- AO approves devices and materials used for oil spill control (2.14.2)

Types of Oversight Exercised

- Notices and orders
 - Less formal notification that Alyeska needs to improve response or take further action to correct “serious deficiencies”
- Findings
 - Require corrective action
- Special Requirements
 - Formal addition of requirements to terms of lease
 - 12 special requirements have become part of lease stipulations (e.g., restoration performance requirements added)

Prevention and Response Planning

- Oil Pollution Act of 1990 does not preempt state regulation of oil spills
 - 33 USC §1321(j)
- Alaska C-plan requirements:
 - AS 46.04.030
 - 18 AAC 75
 - C-plans must incorporate spill prevention
 - DEC must approve C-plans
 - Must use “Best Available Technology”

SPCO Required Reporting

SPCO Annual Reporting Requirements for Pipeline Owners (in addition to lease-specific requirements)

- Results of the pipeline owners' surveillance & monitoring during past year.
- Pipeline owners' performance under the right-of-way lease, including stipulations.
- A summary of all events, incidents and issues which might or did adversely impact pipeline system integrity, the environment, or worker or public safety, and a summary of the lessee's response.
- A summary of all oil and hazardous substance discharges including date, substance, quantity, location, cause, and cleanup actions undertaken. Minor discharges below agreed upon thresholds may be grouped into monthly total amounts, provided the number of separate incidents is reported.
- Any additional information requested by the State Pipeline Coordinator.

Enforcement

PHMSA's Pipeline Safety Enforcement Program is a key component of our oversight mission.

The Pipeline Safety Enforcement Program is designed to monitor and enforce compliance with pipeline safety regulations and confirm operators are meeting PHMSA expectations for safe, reliable, and environmentally sound operation of their facilities.

On this website PHMSA offers a variety of reports detailing its enforcement activity. These reports are offered on both nationwide and operator-specific bases.

Nationwide Enforcement Activity

A high-level summary of PHMSA's overall enforcement activity.

Enforcement Actions

A summary of the various enforcement actions that have been undertaken by PHMSA.

Enforcement Case Status

The status of various types of enforcement cases by the year they were initiated.

Civil Penalty Case Status

The status of enforcement cases involving civil penalties.

Enforcement Information for Specific Operators

The national-level reports above are also provided on an operator-specific basis.

See the menu in the left-hand sidebar for other enforcement reports.



Rights of Third-Parties

ROW Grant ¶35

The parties hereto do not intend to create any rights under this Agreement that may be enforced by third parties for their own benefit or for the benefit of others.

Items for Discussion

- Are stipulations reviewed and revised appropriately?
- Are important concerns addressed in a timely manner by the agencies?
- Should third-parties have a role in review and enforcement?
- Should JPO provide more information to the public on its activities and actions?
- How can JPO and the public ensure the use of technological advances?
- Would decision-making and public participation be improved by independent oversight?

