BRENA, BELL & WALKER, P.C.

ROBIN O. BRENA, MANAGING ATTORNEY
JESSE C. BELL
WILLIAM M. WALKER
ANTHONY S. GUERRIERO
DAVID W. WENSEL
JON S. WAKELAND
KELLY M. MOGHADAM
JAKE W. STASER
ERIK A. FOSSUM

ATTORNEYS AT LAW

810 N STREET, SUITE 100
ANCHORAGE, ALASKA 99501
TELEPHONE: (907) 258-2000
FACSIMILE: (907) 258-2001
WEB SITE: BRENALAW.COM

Jake W. Staser
jstaser@brenalaw.com

March 26, 2025

Christina Carpenter, Acting Commissioner
Alaska Department of Environmental Conservation
555 Cordova Street
Anchorage, AK 99501

Via Email:
dec.commissioner@alaska.gov

Re: Request for Adjudicatory Hearing Pursuant to 18 AAC 15.200 Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #23-CP-4057

Dear Commissioner Carpenter:

Enclosed is a Request for Adjudicatory Hearing from the City of Valdez pertaining to Alyeska Pipeline Service Company's Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan ADEC Plan, #23-CP-4057, Plan Approval issued by Graham Wood, ADEC Program Manager on November 6, 2024.

Sincerely,

BRENA, BELL & WALKER, P.C.

By: _____
Jake W. Staser

Enclosures: Adjudicatory Hearing Request Form
Additional Pages to the Request Form and Attachments

cc: Teresa Melville, SPAR Director
Cam Jimmo, Alaska Department of Law
John Kurz, APSC (via U.S. Mail)
Andrea Morales, APSC

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.

Commissioner's Office
Dept. of Env. Conservation
P.O. Box 111800
Juneau, AK 99811-1800
Fax: (907) 465-5070
DEC.Commissioner@alaska.gov

Air Quality
Jason Olds, Director
Dept. of Env. Conservation
P.O. Box 111800
Juneau, AK 99811-1800
Fax: (907) 465-5129
Jason.Olds@alaska.gov

Spill Prevention & Response
Teresa Melville, Director
Dept. of Env. Conservation
555 Cordova Street
Anchorage, AK 99501
Fax: (907) 269-7654
Teresa.Melville@alaska.gov

Environmental Health
Shaundy Perry, Director
Dept. of Env. Conservation
555 Cordova Street
Anchorage, AK 99501
Fax: (907) 269-7509
Shaundy.Perry@alaska.gov

Water
Gene McCabe, Director
Dept. of Env. Conservation
555 Cordova Street
Anchorage, AK 99501
Fax: (907) 269-7509
Gene.McCabe@alaska.gov

Requestor Contact Information

Name*	Jake Staser, City of Valdez
Address*	Brena, Bell & Walker, P.C. 810 N. Street, Suite 100 Anchorage, AK 99501
Telephone*	907-258-2000
Fax	907-258-2001
Email Address*	jstaser@brenalaw.com
Date*	March 26, 2025

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)).

The City of Valdez, Alaska ("City" or "Valdez") is a home rule municipality. The Valdez Marine Terminal ("VMT") is located within the City's jurisdiction. Spill prevention and response at the VMT is of critical importance to the City of Valdez and its citizens. The City is fully committed to ensuring the VMT is regulated and operated in a manner that protects the economic and environmental well-being of Valdez citizens and all Alaskans.

Brena Bell & Walker, P.C. represents the City of Valdez in this matter. All communications on this matter should be addressed to the City of Valdez Mayor Dennis Fleming at 212 Chenega Ave, Valdez, Alaska 99686 and Jake Staser, Brena Bell & Walker, P.C. at 810 N. Street, Suite 100, Anchorage, Alaska 99501.

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.

The Alaska Department of Environmental Conservation's (ADEC's) November 6, 2024 approval of the Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan (ADEC Plan No. 23-CP-4057).

A copy of ADEC's November 6, 2024 decision is attached (Attachment A).

A copy of the City of Valdez's comments submitted during public review on December 15, 2023 (Attachment AC) and October 11, 2024 (Attachment G) are attached.

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 attached Adjudicatory Review Request Additional Pages document that sets forth each question of material fact or law ("contested issues") to be reviewed as part of the adjudicatory hearing request. The City of Valdez has more than three contested issues and each contested issue requires more space than provided for in this form to meet the state's adjudicatory hearing request criteria; therefore, all contested issues are contained in the attached Adjudicatory Review Request Additional Pages document.

Contested Issue 1:

Contested Issue and Location of the Issue

See attached additional pages.

Explanation and reasons the contested issue is relevant to the decision

See attached additional pages.

How are requesters directly and substantively affected?

See Attached additional pages.

Any suggested terms or conditions?

See attached additional pages.

Why should your request be granted?

See attached additional pages.

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

See attached additional pages.

Explanation and reasons the contested issue is relevant to the decision

See attached additional pages.

How are requesters directly and substantively affected?

See attached additional pages.

Any suggested terms or conditions?

See attached additional pages.

Why should your request be granted?

See attached additional pages.

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

See attached additional pages.

Explanation and reasons the contested issue is relevant to the decision

See attached additional pages.

How are requesters directly and substantively affected?

See attached additional pages.

Any suggested terms or conditions?

See attached additional pages.

Why should your request be granted?

See attached additional pages.

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.

All contested issues raised in the attached Adjudicatory Review Request Additional Pages document.

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

Each factual issue the City of Valdez wants considered in an evidentiary hearing is explained in the attached Adjudicatory Review Request Additional Pages document.

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.

See attached additional pages.

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, Jessalynn Rintala, in the Commissioner's Office at (907) 465-6097 or at Jessalynn.Rintala@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)).

BEFORE THE COMMISSIONER OF THE ALASKA DEPARTMENT

OF ENVIRONMENTAL CONSERVATION

CITY OF VALDEZ, an Alaska municipal corporation, Requester, v. ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION, DIVISION OF SPILL PREVENTION AND RESPONSE, Respondent.	OAH No. _____ **REQUEST FOR ADJUDICATORY HEARING, STAY, AND ALTERNATIVE DISPUTE RESOLUTION** Alyeska Pipeline Service Company, Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan No. 23-CP-4057, Approved November 6, 2024.

REQUEST FOR ADJUDICATORY HEARING, STAY, AND ALTERNATIVE DISPUTE RESOLUTION

City of Valdez ("Valdez" or "City"), submit the following statement of contested issues pertaining to the November 6, 2024 Plan Approval issued by Alaska Department of Environmental Conservation ("ADEC") for the Alyeska Pipeline Service Company's ("APSC") Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan ("VMT C-Plan") #23-CP-4057 ("2024 VMT C-Plan renewal"),[1] requests a stay, and requests alternative dispute resolution.

[1] Attachment A: November 6, 2024, Alaska Department of Environmental Conservation Oil Discharge Prevention and Contingency Plan Approval of Alyeska Pipeline Service Company Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan # 23-CP-4057.

Contested Issue No. 1

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

In 1976, the 52.5-acre Valdez Marine Terminal ("VMT") East Tank Farm ("ETF") Secondary Containment System was installed to contain Crude Oil Storage Tanks 1-14. Catalytically Blown Asphalt liner ("CBA liner") technology was installed at the base of the containment area; this technology would not be approved for use by any state or federal agency for a secondary containment system for large crude oil storage tanks today because asphalt liners are not chemically resistant to hydrocarbons and are not the best available secondary containment system liner material for crude oil storage facilities. The ETF Secondary Containment System using this antiquated liner system is now 48 years old (1976-2025).

As far back as the 1990s, Alyeska Pipeline Service Company ("APSC") has documented numerous spills and leaks in the ETF Secondary Containment System that have resulted in hydrocarbon contamination above and below the CBA liner. These spills and leaks resulted in contaminated sites so serious that groundwater monitoring wells and pumping systems were required to recover the contamination below the liner, and bioremediation methods were used to clean up pollution.

Since the 52.5-acre ETF Secondary Containment System was installed in 1976, APSC has inspected and repaired less than 1% of the liner; approximately 99% of the ETF liner has never been inspected in 48 years. Of the 1% of the liner that has been inspected, APSC has found pre-existing holes, cracks, and tears confirming the liner did not meet State of Alaska ("State") or federal impermeable or impervious liner standards in the inspected area. Statistically, similar results are expected in the remaining 99% of the liner.

APSC, as the VMT operator, has the burden to provide evidence and prove that APSC meets State and federal standards. APSC has not done this work for the ETF Secondary Containment System; hence, the Alaska Department of Environmental Conservation ("ADEC") imposed a ten-year study of the crude oil storage secondary containment liners (2019-2028) and included this requirement as a 2024 VMT C-Plan Condition of Approval and in the 2024 VMT C-Plan, Volume 1, Section 2.6 Waiver Section. Conditions of approval are imposed by an agency to bridge non-compliance or inability to verify compliance. If the liner were indisputably compliant as ADEC asserts, there would be no need for a condition of approval to be placed in the Waiver Section of the VMT C-Plan or a 10-year period needed for APSC to collect evidence to prove compliance.

Incongruously, ADEC's decision to issue a waiver and condition of approval to verify the liner's compliance, is contradicted by ADEC's decision to simultaneously find, without evidence, the ETF Secondary Containment System to be in compliance. The system cannot be in compliance and also operating under a condition of approval to determine compliance.

Inspections completed on the CBA liner in 2014-2017 proved that the liner does not meet a sufficiently impermeable standard. Thus, ADEC already has sufficient evidence to determine non-compliance. Additional inspections are not required to support a finding of non-compliance.

The 2014-2017 CBA Liner Investigations found 17 penetrations all the way through the liner in eight of 30 excavation areas. Therefore, 27% of the excavations found pre-existing damage not caused by the inspection. Holes, cracks, and tears all the way through the CBA liner render it entirely permeable rather than sufficiently impermeable. APSC has provided no evidence that this problem does not also exist in the remaining 99% of the liner it has never inspected. The evidence presently available strongly suggests that the liner needs to be replaced with new, improved technology, or, at a minimum, fully inspected and repaired to meet State and federal standards.

ADEC's 2024 VMT C-Plan decision is also inconsistent with Alaska's laws and regulations and the State's obligations to cooperate with federal agencies under the Trans Alaska Pipeline System ("TAPS") Grant and Lease.

The State takes the lead role in working with applicants to develop and renew C-Plans for regulated facilities in Alaska that must meet State and federal laws and regulations. As the lead agency under AS 46.04 and cooperating agency under the TAPS Grant and Lease, ADEC cannot unilaterally make changes to the C-Plan that are not in compliance with state and federal laws and regulations. State statute at AS 46.04.020(e) requires ADEC to enter into agreements with federal agencies to provide for a cooperative state and federal C-plan review and to coordinate effective oil discharge prevention and response in the State of Alaska. In fulfilling its responsibility under AS 46.04.020(e), ADEC is required to consult with the City of Valdez in accordance with AS 46.04.020(f).

The TAPS Grant and Lease Exhibit E established a "Cooperative Agreement between the United States Department of the Interior and State of Alaska," which requires the State and federal agencies to engage in a "regular exchange of information" regarding "compliance in the field" and "to provide maximum protection of the environment" and that "the Parties will make every reasonable effort to ensure that construction and operation methods and activities will be planned and executed so as to minimize environmental degradation."[2]

APSC has not met its burden of providing evidence to prove the ETF Secondary Containment System meets State and federal standards and ADEC wrongly decided this matter in its 2024 VMT C-Plan approval. Further, the State has not met its obligations under Alaska Statute and the TAPS Grant and Lease to cooperate with federal agencies to jointly protect the environment

[2] Attachment B: Renewal of the Agreement and Grant of Right-of-Way for the Trans-Alaska Pipeline and Related Facilities, 2003, Part 2, at 52.

and minimize environmental degradation that has resulted from non-compliant ETF secondary containment and the accompanying prevention credit.

As clearly stated in City's response to Contested Issue No. 5, the logical and expeditious method to resolve the non-compliance is for the agency to order the 48-year-old ETF Liner to be replaced on an expedited schedule, no later than 2027.

Alternatively, if this Adjudicatory Hearing or subsequent litigation on the matter determines that more study of the ETF liner is necessary, VMT C-Plan, Volume 1, Section 2.1.6 should be revised to include an ETF Secondary Containment System visual inspection program that includes visual inspection of at least 10% of the CBA and XR-5 Liner in 2025-2026. If holes, tears, or cracks are found in the liner, ASPC will be required to replace the liner by 2027. Visual inspections in the ETF Liner are the most reliable way to locate existing damage. Repairs to the liner must be made in a timely manner. If holes, cracks, or tears are found in the liner, it should be replaced in 2027. Liner replacement is a reasonable requirement for a facility that will be 50 years old by then with known compliance issues. It's time for the agency to take action and stop "kicking this can down the road."

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).

November 6, 2024, Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057; Plan Approval, Page 1. "The department has determined your plan is consistent with the applicable requirements of the referenced regulations."[3]

November 6, 2024, Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057; Plan Approval, Page 2. Condition of Approval No. 1.[4]

November 6, 2024, Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057; Plan Approval, Page 4, Term No. 10. Failure to Perform.[5]

November 6, 2024, Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057; Plan Approval, Basis of Decision, Issue No. 7, Pages 12-17.[6]

[3] Attachment A at 1.
[4] *Id.* at 2.
[5] *Id.* at 4.
[6] Attachment C: Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057; Basis of Decision, November 6, 2024, at 12-17.

February 24, 2025, Final Decision on Request for Informal Review of Renewal of Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057, Appeal Issue 7, Pages 6-7.[7]

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

1. November 6, 2024, Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057; Plan Approval, Page 1. "The department has determined your plan is consistent with the applicable requirements of the referenced regulations."[8] Inspections of less than 1% of the ETF Secondary Containment System have consistently shown the system does not meet the 18 AAC 75.075 requirement for sufficiently impermeable secondary containment, and APSC has provided no evidence that the remaining 99% of the ETF Secondary Containment System meets the standard. Further, ADEC did not explain how it reached its consistency conclusion with no evidence.

2. November 6, 2024, Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057; Plan Approval, Page 2. Condition of Approval No. 1.[9] ADEC required further analysis of the liner condition (Condition of Approval No. 1), in the 2024 VMT C-Plan, Volume 1, Section 2.6 as a waiver of compliance while Condition of Approval No. 1 is underway.

   ADEC's November 6, 2024, VMT C-Plan approval Page 1 states, "The department has determined your plan is consistent with the applicable requirements of the referenced regulations."[10] This determination directly conflicts with ADEC's Condition of Approval No. 1 which orders APSC to conduct a 10-year investigation of the ETF Secondary Containment System liner to determine compliance. The system cannot be in compliance and also operating under a condition of approval to determine compliance. Both cannot be true, violating the principle of non-contradiction.[11]

   APSC's visual liner inspections over more than a decade (2006-2017) have consistently shown a pattern of pre-existing liner damage, where holes, cracks, and tears were found all the way through the liner and other damage that compromised the liner integrity, requiring repair.

   More specifically, APSC's ETF inspection data provided to ADEC for 2014-2017 confirmed pre-existing holes, cracks, and tears were found in 27% of excavations where

[7] Attachment D: Final Decision on Request for Informal Review of Renewal of Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057, Appeal Issue 7, February 24, 2025, at 7.
[8] *Id.* at 1.
[9] *Id.* at 2.
[10] *Id.* at 1.
[11] This principle states that it is impossible for a thing to be and not to be at the same time and in the same respect.

the CBA liner was inspected, and prior inspection data from 2006-2013 showed a similar defect history.

ADEC's 2024 VMT C-Plan decision lacks technical and scientific bases for concluding that the remaining 99% of the uninspected ETF liner would produce results any different than the less than 1% of liner that APSC has inspected in the last 48 years (1976-2024).

Neither APSC nor ADEC has provided technical and scientific data to support ADEC's incorrect conclusion that the entire ETF Secondary Containment System meets the 18 AAC 75.075 *sufficiently impermeable* standard. Condition of Approval No. 1 is proof that ADEC lacked sufficient information to verify that 99% of the ETF liner's condition is in compliance. If the ETF liner undeniably met the 18 AAC 75.075 requirement for sufficiently impermeable secondary containment, there would be no reason for ADEC to have required an extensive 10-year study of the liner to verify its compliance.

Condition of Approval No. 1 (B) requires the liner study to be completed in 2028; therefore, ADEC lacked sufficient information to confirm compliance in 2024 when it wrongly decided the 2024 VMT C-Plan decision.

While the 10-year study (that started in 2019 and continues to 2028) lingers on, the public and environment are at risk of a spill in the containment area not being contained if one were to occur. The appropriate solution is to upgrade this containment system with a new liner or, at a minimum, order inspection and repair of the remaining 99% of the liner that has never been inspected.

Additionally (*see* Contested Issue No. 2), ADEC has incorrectly awarded a prevention credit to this known defective and antiquated secondary containment system; that award reduces the amount of oil spill response equipment required at the terminal to respond to the 72-hour Response Planning Standard ("72-hour RPS") for a single ETF Crude Oil Tank Spill of 548,281 barrels to a response of only 204,180 barrels. As further explained in Contested Issue No. 2, APSC should not be awarded a prevention credit to reduce the amount of oil spill response equipment to respond to the 72-hour RPS when APSC has not met the burden of proof to show that the entire ETF Secondary Containment System meets the State's *sufficiently impermeable* standard, and the credit is certainly not deserved while APSC is operating under a Condition of Approval that requires APSC to collect missing evidence to confirm compliance.

3. November 6, 2024, Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057; Plan Approval, Page 4, Term No. 10. Failure to Perform, states "the department has determined that the plan, as represented to the department by the applicant in the application package for approval, satisfies the minimum planning

standards and other requirements established by applicable statutes and regulations, taking as true all information provided by the applicant."[12]

Information provided by the applicant (APSC) to the agency (ADEC) has clearly showed the ETF Secondary Containment System consistently failed to meet the 18 AAC 75.075 requirement for sufficiently impermeable secondary containment. If ADEC takes all information provided by the applicant to be "true," then ADEC must irrefutably agree that APSC's liner inspections from 2006 to 2017 have consistently shown pre-existing holes, cracks, and tears in the CBA and XR-5 liner material that do not meet the State's sufficiently impermeable standard. ADEC cannot both agree that pre-existing holes, cracks, and tears in the 1% of the liner reported by APSC (as a true statement), while simultaneously concluding a liner with a verifiable history of pre-existing holes, cracks, and tears meets State standards. Common sense, logic, and statistics applied to the remaining 99% of the liner that has never been inspected in 48 years would expect similar defects.

APSC's 2016 inspection data proved that thin sections of the CBA liner (0.1875 inches thick) exist in the ETF Secondary Containment System that is substantially thinner than the design construction thickness of 5/16 inch (0.31 inch), meaning the liner was either not installed to design, or these areas have thinned over 48 years of use. Golder Associates Inc. ("Golder") conducted laboratory testing on these thin CBA liner sections and found oil leaked through the liner in eight days.

If, by some impossible statistical anomaly, inspection of the remaining 99% of the liner doesn't find even one existing penetration through the liner, ADEC has provided no evidence that APSC has the capability to clean up in less than eight days all the hydrocarbons in the ETF Secondary Containment System during a one-tank, or multiple-tank spill up to and including the greatest possible discharge. Nothing in the approved 2024 VMT C-Plan plans contemplates a complete and thorough cleanup in less than eight days of oil spilled in the secondary containment system.

Nor has APSC provided any evidence to confirm that pre-existing holes, cracks, and tears found in the 1% of the liner visually inspected in 48 years would not be similarly present in the other 99% of the same 48-year-old ETF liner.

Moreover, Term No. 10 contradicts Condition of Approval No. 1. ADEC cannot conclude the plan satisfies the minimum planning standards and other requirements established by applicable statutes and regulations when it clearly does not because ADEC required a 10-year liner study to determine ETF liner compliance. ADEC's 2024 VMT C-Plan approval is internally inconsistent, contradictory, and lacks technical and scientific evidence to support ADEC's findings.

[12] Attachment A at 4.

Term No. 10 also limits the State's liability for this improper decision: "The department does not warrant to the applicant, the plan holder, or any other person or entity: (1) the accuracy or validity of the information or assurances relied upon; (2) that the plan is or will be implemented; or (3) that even full compliance and implementation with the plan will result in complete containment, control or clean-up of any given oil spill, including a spill specifically described in the planning standards."[13]

The citizens of Valdez and the environment of Alaska should not be subject to inconsistent, contradictory decisions made by the agency that could result in oil spills not being contained, while the agency waives liability for improper decision-making.

4. November 6, 2024, Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057; Plan Approval, Basis of Decision, Issue No. 7, Page 12.[14] "Does the process identified to evaluate the integrity of secondary containment areas for the VMT East Tank Farm meet department requirements?" ADEC's determination that the ETF Secondary Containment System consistently meets the 18 AAC 75.075 requirement for sufficiently impermeable secondary containment directly contradicts its conclusion in Basis of Decision, Issue No. 7 that a 10-year liner inspection program is required to determine the liners compliance with 18 AAC 75.075.

> *18 AAC 75.075. Secondary containment requirements for aboveground oil storage tanks requires:*
> *(a) Onshore aboveground oil storage tanks must be located within a secondary containment area that has the capacity to hold the volume of the largest tank within the containment area, plus enough additional capacity to allow for local precipitation. Minimum secondary containment system requirements include:*
> *(1) berms, dikes, or retaining walls that are constructed to prevent the release of spilled oil from within the containment area; and*
> *(2) with the exception of the area under a tank, components constructed of, or lined with materials that are*
> *(A) adequately resistant to damage by the products stored to maintain sufficient impermeability;*
> *(B) resistant to damage from prevailing weather conditions*
> *(C) sufficiently impermeable; and*
> *(D) resistant to operational damage.*

APSC inspection data from 2006-2017 has consistently shown pre-existing damage in the ETF Secondary Containment System that would not meet 18 AAC 75.075(a)(1). Through holes, cracks, and tears in the liner would not "prevent the release of spilled oil within the containment area."

[13] Attachment A at 4.
[14] Attachment C at 12.

The CBA liner does not meet the 18 AAC 75.075(a)(2)(A) standard of being adequately resistant to damage by the products stored in the containment area. Crude oil is stored in the containment area. Crude oil can and has spilled into the containment area. Inspection, maintenance, and repair equipment used in the containment area has spilled gasoline and diesel into the containment. CBA liners are not chemically resistant to hydrocarbons and degrade in prolonged contact; for this reason, asphalt liners are not the best available technology for large crude oil storage tank secondary containment liners anywhere in the United States today.

APSC's consultant Golder states the CBA liner "can deteriorate when exposed to ultra violate (UV) light and can also be damaged under prolonged exposure to petroleum products."[15] Golder specifically recommended that APSC remove the CBA liner exposed to hydrocarbon contamination and replace it with a more durable and chemically resistant liner such as XR-5. Golder wrote: "[w]e recommend removing the CBA liner exposed to crude oil and replacing with a more durable geomembrane, such as the XR-5 geomembrane liner currently used for repairs."[16] To date, the CBA liner in the known previously contaminated areas (as documented by the ADEC Contaminated Sites Program) has not been fully replaced by XR-5.

Historic contamination, including gasoline, diesel, oily water, and crude oil, has occurred in the ETF Secondary Containment area. ETF contamination is well known to ADEC and managed by ADEC's Contaminated Sites Program. ADEC is well aware that hydrocarbon spills and leaks have occurred above and below the liner and that the liner has been in prolonged contact with hydrocarbons for decades. Even APSC's own contractor, Golder, recommends replacing the liner that has been exposed to prolonged hydrocarbon damage, yet ADEC has not required all the areas of known hydrocarbon contamination to be inspected and the liner to be replaced. Most of those contaminated sites have never been visually inspected, and the liner condition is unknown. However, based on common sense and science the liner is expected to have been subject to damage due to prolonged hydrocarbon contamination as evidenced by Golder laboratory testing in 2014-2017 (further explained below) that showed serious damage to the CBA liner in days, weeks, and months of hydrocarbon exposure. Contaminated sites resulting in hydrocarbons above and below the liner have exposed the CBA liner to hydrocarbons for years and decades. Prolonged contact of spilled and leaked crude oil in contact with the liner for decades would clearly not meet 18 AAC 75.075(a)(2)(A).

Despite repeated requests from the Prince William Sound Regional Citizens Advisory Council ("PWSRCAC") (of which the City of Valdez is a member) to inspect and test the liner in the known ETF Secondary Containment System contaminated site locations where the liner is most likely to have damage, APSC has not done this work, and ADEC has not

[15] Attachment E: Field Inspection and Liner Evaluation for Catalytically Blown Asphalt (CBA) Liner at the Valdez Marine Terminal, APSC Project Z691, Golder Associates, April 1, 2015, at 9.
[16] *Id.* at 6.

required it. Failure to inspect the most likely damage does not constitute compliance with 18 AAC 75.075. It is APSC's burden to prove these contaminated areas are compliant under 18 AAC 75.075, and APSC has not met this burden.

APSC has not provided ADEC with technical or scientific proof that 99% of the ETF Secondary Containment System meets 18 AAC 75.075(a)(2)(B) or (C). Data provided by APSC to ADEC for 1% of the liner proved it does not meet this standard. Common sense, logic, and statistics would expect a similar result in the 99% of the ETF liner that has been in place and not inspected for 48 years.

The facts show that APSC has consistently provided ADEC with data to prove the ETF Secondary Containment System does not meet 18 AAC 75.075(a)(2)(D). APSC's inspection data consistently shows the liner materials (CBA Liner and XR-5) are both easily damaged when the gravel covering the liner is removed or during snow removal operations or other maintenance. Not only does APSC find pre-existing holes, cracks, and tears in the liner material that were not caused by mechanical equipment used during the inspection, APSC consistently reports that holes, tears, and other damage often occurs during the inspection process, snow removal, and other maintenance activities in the containment area, meaning the liner is "easily damaged."

The data cited in this complaint documents only pre-existing liner damage (not caused by mechanical equipment used during the inspection). Pre-existing damage is sufficient to show that holes, cracks, and tears in the liners were in place long before the inspection and were not a result of uncovering the liner for the inspection. However, because the liner does not meet the 18 AAC 75.075(a)(2)(D) standard of being "resistant to operational damage," there have been numerous other holes and tears in the liner that have had to be patched and repaired in addition to the pre-existing damage.

"Impermeable" and "sufficiently impermeable" are currently defined in 18 AAC 75.990 as follows:

> *(51) "impermeable" means using a layer of material that is of sufficient thickness, density, and composition to produce a maximum permeability for the substance being contained of 1 x 10-7 centimeters per second at the maximum anticipated hydrostatic pressure, and that is sufficient to contain a discharge or release until it is detected and cleaned up;*
>
> *(124) "sufficiently impermeable" means for a secondary containment system, that its design and construction has the impermeability necessary to protect groundwater from contamination and to contain a discharge or release until it can be detected and cleaned up; for design purposes for tanks constructed after May 1992, "sufficiently impermeable" means using a layer of natural or manufactured material of sufficient thickness, density and composition to produce a maximum permeability for the substance being contained of 1 x 10-6 cm per second at a*

maximum anticipated hydrostatic pressure, unless the department determines that an alternate design standard protects groundwater from contamination and contains a discharge or release until detection and clean-up. [Emphasis added].

From 1992 to 2018, the regulations at 18 AAC 75.990 stated that the sufficiently impermeable secondary containment permeability standard of 1 x 10^{-6} cm per second applied to all secondary containment systems in Alaska (*see*, for example, the April 8, 2012, version of 18 AAC 75).[17] At some time on or before 2018, ADEC revised 18 AAC 75.990 to add a clause to the sufficiently impermeable definition at 18 AAC 75.990(124) that attempted to limit the quantitative permeability standard of 1 x 10^{-6} cm per second to secondary containment systems used for tanks constructed after May 1992. However, as revised in 2018, the 18 AAC 75.990(124) definition of "sufficiently impermeable" for tanks constructed before May 1992 still included the term "impermeability," which is defined in 18 AAC 75.990(51).

Therefore, the current regulation at 18 AAC 75.990(124) defines "sufficiently impermeable" secondary containment systems for tanks installed prior to May 1992 to be "*design and construction has the impermeability necessary to protect groundwater from contamination and to contain a discharge or release until it can be detected and cleaned up" [Emphasis added]*. The term "impermeable" is defined at 18 AAC 75.990(51) to a permeability standard of 1 x 10^{-7} cm per second,[18] which is more stringent than the standard of 1 x10^{-6} cm per second, which was previously required. Holes, cracks, and tears found by APSC in the 1% of the ETF Secondary Containment System inspected in the past 48 years do not meet either standard. Holes, cracks, and tears through the liner and seal failures between equipment (such as the Industrial Waste Water System, cathodic protection system, sumps, etc.) that penetrate the liner are 100% permeable and would not protect groundwater from contamination, while a spill is being cleaned up. APSC has provided no evidence that the remaining 99% of the ETF Secondary Containment System that has not been inspected in the past 48 years would meet either standard.

Groundwater has not been protected from contamination in the ETF Secondary Containment System. Hydrocarbon contamination has existed both above and below the liner, requiring ADEC enforcement to monitor and clean up this contamination, including decades-long groundwater monitoring programs, bioremediation, and other cleanup activities. ADEC's Contaminated Sites Program records on these contaminated sites clearly provide sufficient evidence that hydrocarbons have been spilled and leaked above and below the liner and that the ETF Secondary Containment System has not met the impermeability necessary to protect groundwater from contamination, because groundwater contamination has occurred. Several of the contaminated sites still have

[17] Attachment AE: 18 AAC 75 April 2012, at 224.
[18] A permeability standard of 1 x 10^{-7} cm is 0.0000001 or one ten millionth of a centimeter.

hydrocarbon contamination that the State will require to be cleaned up when the facility is dismantled.

5. November 6, 2024, Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057; Plan Approval, Basis of Decision, Issue No. 7, Pages 13-14.[19] "As part of the November 15, 2019, VMT plan renewal approval letter, ADEC required as Condition of Approval (COA) #2 APSC to continue exploring the condition of the secondary containment liner. These conditions were issued because anomalies had been previously discovered in the secondary containment liner of the East Tank Farm (*see* 2019 VMT plan renewal basis of decision document); these anomalies were repaired when found, and the current state of the secondary containment system is not known to have any specific liner integrity issues. The conditions required APSC to continue to evaluate the integrity of the secondary containment liner in the East Tank Farm and for APSC to demonstrate the ability to respond to a large-scale oil discharge from a major tank failure in the East Tank Farm, if needed, to clean out the liner before potential impacts to groundwater.

   Foremost, ADEC's conclusion that APSC is required to "continue exploring the condition of the secondary containment liner . . . to evaluate the integrity of the secondary containment liner in the East Tank Farm . . . to demonstrate the ability to respond to a large scale oil discharge from a major tank failure in the East Tank Farm, if needed, to clean out the liner before potential impacts to groundwater" is clear evidence that ADEC does not have sufficient technical and scientific evidence from APSC to confirm the ETF Secondary Containment System meets 18 AAC 75.075 or the definition of sufficiently impermeable at 18 AAC 75.990.

   Second, ADEC's Basis of Decision, Issue No. 7, Page 17, states the department is interested in ensuring the secondary containment liner integrity through the required ETF ten-year inspection program (2019-2028).[20] ADEC wrote, "the continued work required as COAs [Conditions of Approvals] is to further confirm the integrity of the liner." ADEC also wrote: "[t]he department is requiring SCA [Secondary Containment Area] liner integrity evaluations because of the previous history of discovering anomalies that were uncovered." ADEC cannot conclude the liner meets standards, and then decide it must collect evidence to ensure the liner meets standards through a future, yet-to-be-completed inspection program. Either ADEC has evidence to confirm the liner meets the requisite standards, or it lacks such evidence and must collect evidence to reach the conclusion the liner is compliant.

   ADEC's conditions of approval requiring evidence to be collected proves it does not have sufficient evidence to confirm that 18 AAC 75 standards are met for the entire ETF Secondary Containment System. Furthermore, ADEC's use of the term "anomalies" in the

[19] Attachment C at 12.
[20] *Id.* at 17.

liner is a poor choice of words. Inspection data clearly showed holes, cracks, and tears all the way through the liner in 27% of the CBA liner excavations in 2014-2017. This is solid evidence that the liner was completely permeable in 27% of the CBA liner excavations, where the liner indisputably did not meet the sufficiently impermeable standard. While APSC repaired the damage, that does not prove similar holes, cracks, and tears do not exist in the remaining 99% of the liner that has not been inspected. It is illogical to conclude the remaining 99% of the 48-year-old liner would not suffer from similar damage.

6. February 24, 2025, Final Decision on Request for Informal Review of Renewal of Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057, Appeal Issue 7, Page 6-7.[21] ADEC's Informal Review incorrectly concluded that "[t]he comments submitted by Valdez were appropriately considered and addressed by the Division as required by law;" as explained above, they were not.

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).

ADEC incorrectly determined the ETF Secondary Containment System meets the State's standards at 18 AAC 75, without evidence to support this position for 99% of the liner. Evidence provided by APSC for less than 1% of the liner has proven pre-existing holes, tears, and cracks exist. ADEC's incorrect compliance finding is contrary to its Condition of Approval requiring extensive testing of the liner to confirm compliance and ADEC's Waiver of ETF Secondary Containment System compliance by approving 2024 VMT C-Plan Section 2.6[22] that waives compliance under 18 AAC 75.450(b)(6). A condition of approval to secure compliance information on the liner would not be necessary if ADEC had sufficient evidence to confirm compliance. The City's appeal will resolve this wrongly decided issue and result in a logical, consistent, and technically supported agency decision. The City makes specific recommendations in section (g) below for correcting the agency's wrongly decided approval.

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.

[21] Attachment D at 7.
[22] Attachment F: 2024 VMT C-Plan, Volume 1, at 7.

The City is a home-rule municipality. The VMT is located within the City's jurisdiction. Spill prevention and response at the VMT are of critical importance to the City and its citizens. The City is fully committed to ensuring the VMT is regulated and operated in a manner that protects the economic and environmental well-being of Valdez citizens and all Alaskans.

Evidence provided by APSC to ADEC clearly shows that the ETF liner has consistently been found to have holes, cracks, and tears, and that the antiquated asphalt liner technology installed in 1976 (which is not chemically resistant to hydrocarbons) has been in contact with hydrocarbons for prolonged periods. APSC has not met its burden of proof to demonstrate that a spill in the ETF Secondary Containment System would protect the soil and groundwater beneath the liner from the spill. Known contamination in the ETF, already documented by ADEC's Contaminated Sites Program, has proven that hydrocarbon contamination has occurred above and below the liner and has persisted for decades. Leaks have occurred through this liner. Spills have occurred in the lined areas contaminating soil and groundwater below the liner. The ETF Secondary Containment System has not protected the soil and groundwater beneath the liner from pollution. State laws and regulations, and federal laws and regulations, are designed to protect the public and environment from soil and groundwater contamination. The ETF Secondary Containment System has not met these standards.

ADEC's 2024 VMT C-Plan approval extend the liner study for another five years, without action to repair or replace the defective liner, is not protective of the City's residents or the environment. Spills that leak into the soil and groundwater can have adverse impacts on human health, the environment, and local water quality. Nothing in ADEC's 2024 VMT C-Plan decision takes action to actually inspect, repair, or replace the known defective, antiquated CBA liner.

Furthermore, ADEC's 2024 VMT C-Plan incorrectly decided to award APSC prevention credits under 18 AAC 75.432(d)(4) based on the erroneous and factually unsupported position that the secondary containment liner meets the 18 AAC 75.075 Secondary Containment System Standards (*see* Contested Issue No. 2). In response to the City's Informal Decision appeal, ADEC doubled down on this incorrect finding concluding that the "liner was determined and affirmed to be sufficiently impermeable by the agency in 2019 and 2022" and that "work to be complete as described in the 2019 and 2024 conditions of approval is to further confirm the integrity of the liner." If ADEC had sufficient information to confirm the integrity of the ETF Secondary Containment System, a 10-year condition of approval study of the liner would not be required. As a result of this erroneous and factually unsupported position, ADEC incorrectly awarded APSC a 60% prevention credit reducing the amount of oil spill response equipment required under State law and regulation to meet the State's 72-hour Response Planning Standard. This adverse impact is further explained in Contested Issue No. 2.

Valdez citizens were gravely and adversely impacted by the *Exxon Valdez* oil spill, and fought hard to have new State and federal laws and regulations implemented after the spill to prevent spills (*e.g.*, effective secondary containment systems for the crude oil tanks) and sufficient oil spill response equipment.

Valdez citizens are adversely impacted by ADEC's decision that wrongly determined the ETF Secondary Containment System was effective when APSC has not met its burden of proof to confirm that 99% of the liner system is actually sufficiently impermeable.

Valdez citizens are also adversely impacted by ADEC's decision to grant undeserved prevention credits for a 48-year-old asphalt liner that would not meet any state or federal best technology standard for large crude oil secondary containment today. Awarding APSC with an oil spill prevention credit for a liner with a history of known defects and exposure to hydrocarbon contamination, and 99% of which has not been inspected in its 48-year history, defies logic. What "prevention" is afforded by this 48-year-old antiquated asphalt CBA liner, which is not chemically resistant to hydrocarbon spills and would not be installed today as a preventive measure?

Removal of this waiver will increase the 72-hour Response Planning Standard (Scenario 5) from 204,180 barrels to 510,450 (*see* 2024 VMT C-Plan, Volume 1, Part 5 computations).[23] Valdez citizens and all Alaskans will benefit from increased oil spill response equipment at the terminal and an improved 72-hour Response Planning Standard (Scenario 5) plan during the period that the ETF Secondary Containment System is under evaluation while agencies develop a reasoned plan for replacing this antiquated liner with a new liner that is chemically compatible with spilled hydrocarbon and resistant to operational damage.

Additionally, if by some impossible statistical anomaly, inspection of the remaining 99% of the liner doesn't find even one existing penetration through the liner, ADEC has provided no evidence that APSC has the capability to clean up in less than eight days all the hydrocarbons in the ETF Secondary Containment System during a one-tank, or multiple-tank spill up to and including the greatest possible discharge before the spill polluted the soil, ground water and marine waters of Valdez. Nothing in the approved 2024 VMT C-Plan plans contemplates a complete and thorough cleanup in less than eight days of oil spilled in the secondary containment system.

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).

The City submitted comments to ADEC on December 15, 2023, and October 11, 2024, on the 2024 VMT C-Plan renewal. The City opposed APSC's obtaining an oil spill prevention credit for a secondary containment liner known to have through holes and repeatedly proven not to meet the impermeable standard. [24]

[23] Attachment F at 271.

[24] Attachment G: Comments Regarding Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan Renewal, State Contingency Plan Number 23-CP-4057, City of Valdez submitted to ADEC, BLM, USCG, EPPA, DOT, October 11, 2024, at 40-46, 48.

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.

Valdez requests ADEC's 2024 VMT C-Plan decision and the 2024 VMT C-Plan be revised as follows:

1. VMT C-Plan, Volume 1, Section 2.1.6 be revised to explicitly state that secondary containment for the crude oil storage tanks does not meet the State's sufficiently impermeability standard, nor does it meet the impervious standard of Exhibit D Stipulations for the Agreement and Grant of Right-of-Way for the Trans Alaska Pipeline, Section 3.11, or EPA's liner standards at 40 CFR 112. The State, as the lead coordinator on the joint state and federal C-Plan review for each C-Plan in Alaska, should be required to coordinate with BLM and EPA to revise Section 2.1.6 to accurately document the current status of compliance for both State and federal standards.

2. VMT C-Plan, Volume 1, Section 2.6, Waivers be revised to explicitly state the CBA liner does not meet the State's sufficiently impermeable standard. APSC is operating under a condition of approval that is a Waiver of Compliance. If compliance were achieved, the condition of approval to collect evidence to verify the condition of the liner would not be needed. The terms, conditions, timeline, and obligations for bringing the facility back into compliance should be clearly laid out.

3. Throughout the entire VMT C-Plan, remove all incorrect claims that the ETF Secondary Containment System meets a sufficiently impermeable standard. APSC has not met the burden of proving that the standard has been met for 99% of the system. For the 1% of the system that has been inspected, APSC's evidence has proven that there were pre-existing holes, cracks, and tears in the liner.

   For example, the 2014 VMT C-Plan, Volume 1, Table 4.3-2 Best Available Technology Source Control Procedures for a Leaking Crude Oil tank claims the "dikes are sufficiently impermeable, preventing the migration of spilled oil." This claim is false in four regards.

   First, APSC has provided no evidence that this is true for 99% of the system.

   Second, contaminated sites in the ETF have confirmed that hydrocarbons have actually spilled and leaked oil below the liner. Spilled oil pollution still exists below the liner today, which APSC's contractors have recommended be postponed for clean-up when the facility is dismantled in the future.

   Third, APSC's contractor Golder's work in 2015-2018 confirmed that even undamaged samples of the CBA liner (thicker than the CBA liner construction design standard of 5/16 inch thick (0.31 inches) will leak hydrocarbons as soon as 25 days when a crude oil tank fails resulting in 5 pounds per square inch ("psi") of crude oil head pressure (11 feet of oil) over the liner). Golder also found that the ETF has a CBA liner that was applied or

has degraded to substantially less than the CBA liner construction design standard (0.1875 inches thick). Tests on undamaged, thin CBA samples proved that oil would leak through in eight days, as further documented below in section (h).

Fourth, Golder did not test the damaged CBA liner sections that were found in the 2014-2017 inspection, which were 100% permeable and would immediately leak oil through the liner.[25] Golder made it clear in its report that its finding of sufficient impermeability for the liner applied **only** to undamaged liner samples that were tested and did not apply to the entire CBA liner, where perforations through the liner were found.

4. VMT C-Plan, Volume 1, Section 2.1.6, be revised to update the actions APSC has taken to inspect and repair the ETF Secondary Containment System since 2018. According to the current plan, there has been no action taken to inspect or repair the liner in the ETF. If accurate, that should be stated. If the plan is not accurate, it should include specific information on inspections completed in the ETF Secondary Containment System, findings, and repairs required.

5. VMT C-Plan, Volume 1, Section 2.1.6, be revised to include a plan to replace the ETF Secondary Containment System by 2027. While the City does not agree more inspection is necessary to make this decision, if this appeal determined more inspection is necessary, any inspection completed must be done in the ETF Secondary Containment System that includes visual inspection of at least 10% of the CBA and XR-5 Liner in 2025-2026. If holes, tears, or cracks through the liner are found (as expected), APSC must replace the liner by 2027.

6. VMT C-Plan, Volume 1, Section 2.1.6, be revised to clearly document the amount, if any, of Hypalon liner (which is not chemically compatible with hydrocarbons) still exists in the ETF Secondary Containment System or confirmation that 100% has been replaced by XR-5.

7. VMT C-Plan, Volume 1, Section 2.3.2.2, be revised to remove the line, "the quantities that could be released outside secondary containment are minimal," as APSC has provided no evidence that this is true. Known contamination below the ETF liner has been confirmed by ADEC's Contaminated Sites Program.

8. VMT C-Plan, Volume 1, Section 2.4, be revised to correct the inaccurate statement that the CBA liner has prevented the migration of contaminants. Seal failures and leaks in the CBA liner have resulted in known hydrocarbon contamination below the ETF liner and have been confirmed by ADEC's Contaminated Sites Program.

9. VMT C-Plan, Volume 1, Section 2.1.6, be revised to include the history of hydrocarbon contamination, groundwater monitoring, bioremediation, and other cleanup required by

[25] Attachment F at 249.

ADEC's Contaminated Sites Program in the ETF Secondary Containment System and the known adverse impacts of prolonged hydrocarbon exposure to asphalt liner integrity.

10. VMT C-Plan, Volume 1, Sections 5.1 and 5.2, be revised to remove the State's 60% secondary containment credit prevention credit for secondary containment since APSC has provided no evidence that the prevention credit is deserved. *See* also Contested Issue No. 2.

11. VMT C-Plan, Volume 2, Scenario 5, be revised for personnel and equipment to meet the higher 72-hour Response Planning Standard volume of 510,450 barrels when the 60% credit is removed, and a revision to the volume of oil that will reach Port Valdez.

12. VMT C-Plan, Volume 2, Scenario 6, should include a scenario that demonstrates APSC can clean up the greatest possible discharge spill into the ETF Secondary Containment System in eight days.

13. VMT C-Plan, Volume 1, Appendix C.3, Table C.3-2, be revised by ADEC in coordination with U.S. Department of Transportation to remove the secondary containment credit of 50% applied to the DOT Worst Case Discharge volume, increasing the DOT volume by 273,444 barrels to a total of 410,166 barrels.

14. ADEC's November 6, 2024, VMT C-Plan approval be corrected to clearly state that:

a. The ETF Secondary Containment System does not meet the State's standards at 18 AAC 75, as evidenced by APSC's 2014-2017 inspection records that confirmed 27% of the excavated CBA liner areas had holes, cracks, or tears all the way through the liner and that ADEC's Contaminated Site Program records have proven hydrocarbon contamination has existed both above and below the liner for decades.

b. APSC was required to conduct a 10-year inspection program (2019-2028) to collect the missing evidence to verify if the ETF Secondary Containment System meets the State's standards at 18 AAC 75; because absent that data, the State lacks evidence to verify compliance.

c. APSC is operating under a VMT C-Plan, Section 2.6 Waiver of Compliance (Condition of Approval).

d. APSC has the burden to provide evidence that the ETF Secondary Containment System meets State and federal standards, and, to date, APSC has not provided that evidence for 99% of the system.

e. ADEC as the lead agency that coordinates the joint State and federal C-Plan review in the Alaska will identify all the changes required to the VMT C-Plan to accurately document and reflect the known condition of the ETF Secondary Containment System, the historic contamination, and defects found and, in coordination with all federal agencies that are also signatories to the VMT C-Plan, require APSC to make the changes to the VMT C-Plan to meet State and federal laws and regulations.

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.

APSC liner inspections have confirmed numerous existing holes and seal failures in the CBA liner that serve as the base of the ETF Secondary Containment System and seal failures connecting the CBA liner to the XR-5 geomembrane liner that serves as the ETF Secondary Containment System berm liner. In addition to the existing holes found, the liner is routinely damaged during other maintenance work in the ETF Secondary Containment System requiring repairs.

Holes, cracks, and tears all the way through the liner and seal failures between the two liner materials do not meet the State's "sufficiently impermeable" secondary containment standard at 18 AAC 75, nor does it meet the meet the impervious standard of Exhibit D Stipulations for the Agreement and Grant of Right-of-Way for the Trans Alaska Pipeline, Section 3.11, or EPA's liner standards at 40 CFR 112. Where holes and seal failures exist, the liner is 100% permeable, allowing spilled hydrocarbons to enter the soil and groundwater below the liner.

ADEC, as the lead agency, coordinates joint C-Plan reviews in Alaska with federal agencies that are also signatories to the VMT C-Plan. Compliance issues that affect State and federal standards should be properly coordinated by ADEC with the federal agencies. The VMT C-Plan should be revised to accurately reflect the evidence APSC has provided regarding the non-compliant condition of the ETF Secondary Containment System. In leading the 2024 VMT C-Plan joint State and federal renewal, ADEC did not effectively coordinate with federal agencies to address this known compliance issue or ensure the 2024 VMT C-Plan accurately reflected the ETF Secondary Containment System compliance status.

A summary of the facts and law that support the City's request follows:

1. The VMT originally had 18 crude oil storage tanks in service: 14 tanks in the ETF Secondary Containment System and four tanks in the West Tank Farm (WTF) Secondary Containment System. All four WTF tanks are out of service. The 14 ETF tanks are still in service.

2. The ETF Secondary Containment System includes seven containment cells. Two crude oil tanks are located in each containment cell, and each cell covers approximately 7.5 acres, totaling 52.5 acres of CBA liner in the entire ETF Secondary Containment System. Each crude oil tank bottom covers about one acre of the secondary containment cell. Therefore, there are approximately 14 acres of CBA liner located below the 14 tanks and approximately 38.5 acres of CBA liner that is not covered by the tanks.

3. The ETF liner below the tanks has never been inspected. In fact, less than 1% of the ETF liner not covered by the tanks has been inspected in 48 years.

4. The CBA liner and portions of the XR-5 liner are covered by gravel. Historically, with the exception of ADEC-required inspections of 0.62% of the CBA liner required in 2014-2017, APSC opportunistically inspected the CBA liner when it uncovered gravel overlaying the liner for other maintenance or repair work. In total, less than 1% of the CBA liner has been examined over the past 48 years.

5. APSC's program of opportunistic CBA liner inspections resulted in limited investigation of small portions of the liner at or adjacent to other maintenance or repair work that might be ongoing in the containment area. The location of the other maintenance or repair work in a containment area is not guaranteed to coincide with the highest priority liner inspection location. Historically, APSC has had no proactive, comprehensive, systematic, risk-based, and statistically significant liner inspection and testing program that targeted known areas of potential liner damage (*e.g.*, prior contaminated areas) or other high-risk areas. Instead, opportunities for liner inspection and testing merely arise as a secondary benefit of the liner being exposed for another reason. If no other maintenance or repair reason ever occurs, no liner inspection or testing occurs (except as required in the ETF by ADEC in 2014-2017). This method has resulted in a very small portion of the liner actually being inspected over its 48-year life, and a substantial cost savings to the operator, as repairs to the liner are only made if, by happenstance, issues are found as a result of other work in that same area.

6. In 1976, a CBA liner was installed under the crude oil storage tanks at the VMT prior to the start-up of TAPS in 1977. The CBA liner is located below grade and serves as the base of the crude oil storage tank containment system. Asphalt liners are not chemically resistant to hydrocarbons. CBA liners are not the best available secondary containment system technology and would not be used or approved by state or federal agencies as an effective secondary containment system today.

7. In 1976, the walls of the containment system were made of soil covered with Hypalon, which also has poor chemical resistance to crude oil.[26] Some Hypalon berm liners were replaced in the 1990s with XR-5 material, which is resistant to crude oil, although the VMT C-Plan is unclear on how much of the Hypalon liner was replaced or if all of the Hypalon was replaced.

8. The CBA liner was attached to the Hypalon material (and later to the XR-5 geomembrane material when it replaced the Hypalon) or concrete at the base of the wall. Inspections completed by APSC have shown seal failures where the CBA liner attachment was not properly sealed to the geomembrane material or cement. The entire CBA liner attachment and seal has not been inspected; however, areas that have been inspected have often shown seal failure.

[26] Attachment H: Evaluation of Methods for Establishing the Integrity of the Secondary Containment Liners at the Valdez Marine Terminal, Golder Associates, August 21, 2013.

9. The CBA liner has a poor chemical resistance to crude oil and is particularly susceptible to damage when in contact with gasoline or diesel.

10. In 1976, the CBA liner was sprayed on the floor of the crude oil tank farm secondary containment system. The minimum specified CBA liner thickness for the original construction design was 5/16 inch (0.31 inches thick).[27] APSC inspections during 2014-2017 verified the asphalt was actually applied at varying thicknesses ranging from 0.1875 to 1.675 inches thick. Golder did not conduct any laboratory permeability testing on the thinnest samples (0.1875 inches thick) and did not produce a quantitative permeability assessment for those samples. Instead, Golder only conducted laboratory tests on CBA liner samples where the asphalt was applied at the original construction design thickness (5/16 inch) or substantially thicker, concluding that those samples met or exceeded the State's impermeable definition of 1×10^{-7} cm per second. Thus, APSC provided no quantitative permeability assessment of the weakest sections of the liner, which was 0.1875 inches thick.

11. Golder conducted crude oil testing (as further documented below), which proved that crude oil leaked through the 0.1875-inch-thick liner in eight days.

12. Golder did not conduct laboratory tests on CBA liner samples that were found to have holes, cracks, and tears that penetrated the entire liner. If Golder had conducted lab tests on these samples, oil would have leaked through those samples immediately.

13. The CBA liner is 48 years old. The XR-5 berm liner is over 30 years old, having been installed in the early 1990s. To date, less than 1% of the CBA liner, a statistically insignificant amount has been uncovered at the ETF to verify the liner condition. Of the 1% of the liner that has been inspected, holes, cracks, and tears in the liner have been found that penetrate all the way through the liner. Over 99% of the ETF liner has not been inspected.

14. While APSC has repaired the damage found in 1% of the liner that has been inspected, APSC has not inspected or repaired the damage in the remaining 99% of the ETF liner system. Common sense, logic, and statistical analysis would lead one to expect similar damage to be found throughout the remaining 99%. It is not reasonable for ADEC to assume that no penetrations through the CBA liner are likely in the remaining 99% of the liner. There is no assurance that a spill would actually be contained within the lined area if one or more of the crude oil tanks were to fail.

15. ADEC's VMT C-Plan approval in 2019, reaffirmed in 2022, and again in 2024, incorrectly concluded the ETF secondary containment liner system meets the State's "sufficiently impermeable" standard. ADEC's decisions were incompatible with the actual field data that proves the liner (when rarely inspected) is typically damaged, requiring repair.

[27] Attachment E at 9.

ADEC's decisions are also inconsistent with the fact that ADEC is aware there have been decades of prolonged hydrocarbon contamination in the ETF secondary containment area above and below the liner, requiring groundwater monitoring, bioremediation, and other actions that have been directed by ADEC's Contaminated Sites Program.

16. It is unreasoned and unscientific for ADEC to conclude the ETF Secondary Containment System meets the State's *sufficiently impermeable* standard, when ADEC lacks technical and scientific data to support its decision. The fact that ADEC has set forth a 10-year inspection and verification in the 2024 VMT C-Plan approval (starting in 2019 and now extending to 2028) requiring APSC to obtain technical and scientific data to prove the liner's actual condition is proof-positive evidence that neither ADEC nor APSC has sufficient information to verify the liner's actual condition.

17. ADEC's 2019, 2022, and 2024 decisions on the liner contain contradictory conclusions. ADEC's conclusion that the liner meets the State standard directly contradicts ADEC's demand for more inspection data to verify the liner's actual condition to "determine compliance." A decision is contradictory when the conclusion contradicts the premises from which it is drawn, or when a statement asserts and denies the same thing.

18. CBA liners are not the best available secondary containment system technology and would not be used or approved by state or federal agencies as an effective secondary containment system today. Both ADEC and APSC have used Golder as their technical liner expert for decades. A 1988 report prepared by Golder for ADEC recommended against using asphalt liners in Alaska:

> *Caution should be used in considering the acceptability of an asphalt or coal tar liner for secondary containment system applications in Alaska for two reasons. First, although coal tar is reportedly more fuel resistant than asphalt,* ***asphalt is known to be adversely affected by hydrocarbon compounds****, and the impacts of chemical degradation on the permeability of either substance should be carefully considered. Second* ***both compounds are susceptible to cracking at temperatures common the Arctic environments."*** *[Emphasis added.]* [28]
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> *Section 1.1.2 Chemical Resistance "****asphalt is subject to dissolution when exposed to hydrocarbons****."[Emphasis added.]*[29]

[28] Attachment I: Golder Associates, Final Report to State of Alaska Department of Environmental Conservation Division of Spill Prevention and Response, Technical Review of Secondary Containment System Technology for Alaska, May 1, 1998, at 26. Of note ADEC has removed the complete 1998 Golder report from its website (accessed Mar. 16, 2025). https://dec.alaska.gov/spar/ppr/response-resources/publications-conferences/research/.
[29] *Id.* at 170.

19. Other states have concluded that asphalt liners are not acceptable containment systems.[30] For example, a 2008 New York State (NYS) Guideline for Inspecting and Certifying Secondary Containment Systems of Aboveground Petroleum Storage Tanks at Major Oil Storage Facilities does not recommend asphalt liners under tanks that store petroleum. NYS concludes:

> ***An asphalt liner by itself is not an acceptable secondary containment system because it is not chemically compatible with petroleum.*** *[Emphasis added.]*[31]

20. In 1996, almost 30 years ago, EPA completed a liner study for Congress that concluded steel and coated concrete liners provide the best protection, coupled with double tank bottoms (if the liner was not installed under the tank). EPA also studied geomembrane liners which had less protection. Asphalt liners were not recommended by EPA at all.[32] Asphalt liners installed in the 1970s are antiquated technology and are not best available or best practical technology today for large crude oil storage tank containment systems.

21. Laboratory testing performed on the CBA liner by Golder in 1992-1993 and 2015-2018 confirmed the liner degrades in contact with hydrocarbons.

22. The VMT is located in Valdez, a sub-arctic location. Ambient temperature commonly ranges from 0°F to 70°F. Soils freeze in winter, and the CBA liner is subject to freeze thaw cycles. Asphalt in a sub-arctic location is prone to frost heaving and cracking. Liner inspections have revealed holes as large as 20 inches by 60 inches, tears extending up to 15 feet, and cracks measuring 40 inches by 100 feet, as well as leaks between equipment that penetrates the liner and the liner itself, and failed seals between the CBA liner and the XR-5 material covering the berm. Based on the amount of damage (holes, tears, cracks, and failed seals) found in past inspections, and applying that statistical rate to the rest of the liner that has not been inspected, the liner would not meet an impermeable standard.

23. In 1992-1993, Golder (working on a contract for APSC) conducted laboratory testing on undamaged CBA liner samples with oil to determine how long the CBA liner could be in contact with crude oil before the oil leaked through it. Golder did not test any damaged liner sections that had holes, cracks, or tears through the liner that were found during the 1992-1993 inspections. The tested samples were 100% permeable. Damaged liners would have immediately leaked. No liner permeability testing was conducted using gasoline or diesel; yet, both gasoline and diesel spills have occurred in the lined area, and asphalt liners

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[30] Attachment J: New York State, DER-17: Guidelines for Inspecting and Certifying Secondary Containment Systems of Aboveground Petroleum Storage Tanks at Major Oil Storage Facilities, 2008, at 22. "Asphalt more typically has a permeability of 1 x 10^{-4} cm per second."

[31] *Id.* at 15. The ETF liner is made of asphalt that was not sealed with any additional sealant that would make the asphalt compatible with hydrocarbons.

[32] Attachment K: EPA Liner Study, Report to Congress, Section 4113(a) of the Oil Pollution Act of 1990, May 1996.

from equipment working in that area. CBA liners are particularly susceptible to damage when in contact with gasoline or diesel.

24. Golder 1992-1993 laboratory testing of less than 10 square feet of undamaged CBA liner samples (less than 0.00044% of the entire lined area) was completed using a maximum head pressure of 3 feet 9 inches of crude oil (less than would occur during a full tank spill). Golder's tests confirmed crude oil leaked through thick, undamaged sections of the CBA liner in 89 days and 22 hours.[33] APSC reported: [t]he CBA was completely softened by the crude oil in the form of a paste-like material. The softened materials had signs of leakage."[34] Golder's 2015-2018 lab studies were conducted at a substantially higher head pressure of 11 feet of crude oil to more accurately represent the head pressure that the liner would experience if the contents of one tank spilled. Using the higher head pressure, Golder's 2015-2018 laboratory studies show oil leaked through the liner as fast as eight days even if no damage is present.

25. On March 23, 1993, APSC provided ADEC with a technical analysis of the time required to clean out the secondary containment area in the event of a tank failure and subsequent spill of its contents. APSC concluded:

> *After a tank failure, it would take 85 hours to drain outstanding oil and another 30 days to remove 40,000 cubic years of oil soaked gravel. In the event of a tank failure in winter, it would take longer than 30 days to remove the gravel. However, it could still be removed within the 90 day window.*[35]

Golder's 2015-2018 reports still rely on this 85-hour, 30-day estimate; yet, the 2024 VMT C-Plan does not contain any plan to remove the contents of one failed tank in 30 days, nor does the plan include a strategy or time estimate to remove the contents of multiple failed tanks (greatest possible discharge). A plan to remove spilled oil in 30 days (if possible) would not be sufficient to prevent soil and groundwater contamination below a liner that has through-hole penetrations or thin sections of CBA liner that have been proven by Golder to leak through in eight days.

26. Importantly, the 1992-1993 Golder CBA liner permeability testing was completed only on undamaged CBA liner samples. Damaged CBA liner samples with penetrations that extended all the way through the liner, as found during inspections, were not tested. Crude oil would immediately leak through a hole in the CBA liner, and Golder provided no evidence to the contrary.

[33] Attachment L: APSC letter to ADEC, March 23, 1993 transmitting CBA liner test results, Letter No. 93-1223-G, at 3.
[34] *Id.* at 5. *See* Test Mold #102 Results.
[35] *Id.* at 2.

27. ADEC's Contaminated Sites Program documented leaks and contamination in the ETF Secondary Containment System. The containment system includes an industrial wastewater collection system that includes piping and catch basins that penetrate the CBA liner. Leaks in the liner, piping, and catchment system have resulted in crude oil and oil contaminated water being in contact with the secondary containment system liner materials for decades. ADEC reported:

> *This record is being used to track subsurface investigations, bioventing (Tanks 1, 5, 7, 9, 11, & 13), product recovery (Tanks 10 and 14), and monitoring related to several source areas/spills within the East Tank Farm (ETF). The ETF consists of: fourteen 510,000 barrel crude above ground storage tanks (ASTs) within seven catalytically-blown asphalt (CBA) lined containment cells; aboveground pipes that transfer crude to and between the ASTs; 28 catch basins which collect and transport surface water from the containment cells to the onsite oily-water sewer system; and 14 oily water sewer system manholes (two per cell). Flow through groundwater beneath the CBA cells is transported by subdrains to the outlets along the along the slope to north and the north east of the ETF. Prior to 1991 when joints in the SBS liner were repaired, crude oil escaped into piping and catchment basins during routine operation of the water drawdown system. Some of the sumps and catchment basins leaked oily water into soil beneath the liner. Three large hydrocarbon contamination zones were established in 1991 and 1992. The largest of which includes Tanks 5 and 7 and is estimated to include up to 5,500 cubic yards of impacted soil. Another system/zone was created to treat impacted soil north of Tank 1. A third system was installed to treat impacted soil in area north of Tanks 11 and 13. A Bioventing system was installed in 1993 and expanded in 1995 to include the Tank 1 and Tanks 11/13 areas. It operated until 2000 when it was closed with ADEC approval. ETF groundwater and surface water monitoring began in 1995 and 1998, respectively.*[36]

In 2002, APSC shut down the bioventing system; yet, soil samples beneath the liner showed gasoline and diesel range organics and benzene concentrations that exceeded ADEC Method Two soil cleanup levels. Despite the known hydrocarbon contamination in contact with the liner, APSC recommended no further cleanup until the tank farm is retired, and the contamination below the liner is accessible for cleanup. Therefore, hydrocarbons still exist below the liner today, and ADEC has required APSC to continue monitoring it.[37]

From 2002 to 2007, four groundwater monitoring wells operated. Two of the four wells found diesel range organics greater than the ADEC groundwater cleanup levels, and crude

[36] https://dec.alaska.gov/Applications/SPAR/PublicMVC/CSP/SiteReport/1435.
[37] https://dec.alaska.gov/Applications/SPAR/PublicMVC/CSP/SiteReport/1435.

oil was also detected.[38] There has been no statistically valid or complete assessment of the damage to the liner due to this known and prolonged hydrocarbon contact with the liner.

28. In June 2012 Harvey Consulting, LLC, ("Harvey Consulting") provided a report to PWSRCAC summarizing the VMT Contaminated Sites history, which included numerous contaminated sites in the ETF.[39] That report summarized where hydrocarbons have been spilled at the VMT in the past, where spills may have damaged the secondary containment liners, and where hydrocarbons persist today that may continue to deteriorate the liner or present ongoing environmental impacts. Hydrocarbon pollution was found above and below the ETF liner at these contaminated sites and persisted for years and decades. Hydrocarbon pollution was in contact with the liner for substantially longer than the 90 days that Golder concluded in its 1992-1993 studies and longer than the eight days Golder found in its 2015-2018 lab studies where undamaged sections of the CBA liner in contact with crude oil leaked. Harvey Consulting recommended additional CBA liner inspection be conducted in the ETF Secondary Containment System and other VMT containment systems where petroleum contaminated soil and groundwater above and below the CBA liner was evidence that the liner had failed, or did, or would fail due to prolong exposure to hydrocarbons.

29. Despite repeated requests by PWSRCAC to the agencies and APSC since the 2012 Harvey Consulting report, there has been no comprehensive visual inspection of the liner in these known contaminated site areas of the ETF Secondary Containment System.

30. In 2012, PWSRCAC wrote to APSC, ADEC, and BLM identifying concerns with the CBA liner integrity and requesting inspection and testing in the ETF contamination areas, including specific inspection and permeability sample testing of the liner in known hydrocarbon contaminated zones.[40] PWSRCAC attached a report prepared by Harvey Consulting that summarized information from ADEC's Contaminated Sites Database that documented the history of known hydrocarbon contamination above, below, and in contact with the CBA liner in the ETF.[41] Harvey's report showed ADEC's Contaminated Sites Database documented the following contaminated sites within the ETF Secondary Containment System:

    a. **Tank 7 oily water leaks in the ETF Secondary Containment System**. Sometime in 1991 or earlier, damage to a sump vault near Tank 7 allowed oily water to contaminate the soil beneath the liner. A 1991 subsurface investigation and soil testing revealed significant levels of hydrocarbon contamination. Subsurface testing in 1993 found

[38] https://dec.alaska.gov/Applications/SPAR/PublicMVC/CSP/SiteReport/1435.
[39] Attachment M: Status of Contaminated Sites at Valdez Marine Terminal, Harvey Consulting, LLC report to PWSRCAC, June 13, 2012.
[40] Attachment N: Valdez Marine Terminal Tank Secondary Containment System Catalytically Blown Asphalt (CBA) Liner Integrity Review, Prince William Sound Regional Citizens' Advisory Council letter to Alyeska Pipeline Service Company, copied to ADEC and BLM, August 29, 2012.
[41] Attachment M.

contamination around Tanks 5 and 7. A report titled "ETF Tank #5 and Tank #7 Subsurface Soil Investigation" was produced, documenting testing at the Tank 5 and Tank 7 contaminated sites. Bioventing was conducted. There was no record of the CBA liner being excavated, tested, repaired, or replaced after it was subject to prolonged hydrocarbon exposure and contact.

b. **Tanks 1, 5, 7, 9, 11 and 13 oily water leaks in the ETF Secondary Containment System**. At some point prior to 1991, sumps and catch basins in the ETF leaked oily water into soil below the secondary containment liner, contaminating soil beneath the tank farm's secondary containment under Tanks 1, 5, 7, 9, 11, and 13. Three large hydrocarbon contamination zones were delineated in 1991 and 1992. The largest of the contaminated areas under the liner was found in the area of Tank 5 and 7 (estimated up to 5,500 cubic yards). Additional contamination was found under the liners of Tanks 1, 9, 11, and 13. A 1993 subsurface investigation identified additional suspected contamination under Tanks 2, 3, 10, 12, and 14. From 1992 to 1995, five (5) groundwater monitoring wells and four (4) groundwater recovery wells were installed in the ETF to assess the extent of the petroleum contamination. Recovery pumps were installed in August 1995 and appear to still be operating today. From 1993 to 2000, some of the contaminated sites were treated with bioventing. It appears that bioventing was mostly targeted in Tanks 5.7. and 9 areas. The bioventing system was decommissioned in 2001. In 2008, a plan was developed to re-install recovery pumps in two monitoring wells where crude oil droplets were found. Installation of the recovery pumps was deferred for three years. They were finally installed in late 2011 and operated for a short time. Reinstallation of the pumps and more sampling was planned for 2012. There was no record of the CBA liner being excavated, tested, repaired, or replaced after it was subject to prolonged hydrocarbon exposure and contact.

c. **Tank 3 oily water leaks in the ETF Secondary Containment System**. At some point prior to 1993, cracks in a sump vault allowed oily water to contaminate soils beneath the liner in the Tank 3 sump area. In 1993, five borings were completed, and one monitoring well was installed. Groundwater was found to be contaminated in 1993, and some groundwater treatment occurred in 1993 and 1994. Groundwater tests taken in 1995 showed that contamination was within the regulatory limits, and monitoring was discontinued after 1996. There was no record of the CBA liner being excavated, tested, repaired or replaced after it was subject to prolonged hydrocarbon exposure and contact.

d. **Tank 14 crude oil contamination in the ETF Secondary Containment System**. At some point prior to late 1992, the Tank 14 site was contaminated by crude oil. Contaminated soils were discovered (presumably in 1992) under and above the liner in the Tank 14 containment area. In 1992, the liner was repaired. In 1992 or 1993, soil was excavated above and below the liner to the extent possible, considering the stability of the dike slope. The area was biovented. Groundwater and surface water monitoring began in 1995 and 1998, respectively. In 2007, oil droplets were observed in a monitoring well. In 2008, APSC indicated to ADEC that it planned to reinstall a recovery well pump. There was no record of the CBA liner being excavated, tested,

repaired, or replaced after it was subject to prolonged hydrocarbon exposure and contact.

e. **Tank 15 crude oil contamination in the ETF Secondary Containment System**. At some point prior to 1993, crude-contaminated soils from an unknown source were discovered above the liner. There was no record of the CBA liner being excavated, tested, repaired, or replaced after it was subject to prolonged hydrocarbon exposure and contact.

31. An August 21, 2013, report produced by Golder for APSC, concluded the 1992-1993 CBA liner testing had leaked in 100 days, which was inconsistent with the March 1993 letter from APSC to ADEC which reported approximately 90 days.[42] The 2013 Golder report advised APSC that:

> ***CBA may deteriorate when exposed to petroleum products*** *and when subject to UV radiation.*[43]
>
> *Section 3.2.1. Golder estimates each containment area to be 7.5 acres, and each tank covers about 1 acre, leaving approximately 5.5 acres of liner per containment area that would need to be tested or replaced.*[44]
>
> *Section 5.2.* ***"It has been established that if a piece of CBA liner were placed in gasoline it would dissolve. If the same piece of material were placed in crude oil it would again begin to dissolve, but slower****. . . . In the 1992/1993 studies by Alyeska, after 100 days the CBA in direct contract with crude oil was just beginning to leak slowly possibly indicated from deterioration of the CBA after 100 days of direct exposure to crude oil."*[45] *[Emphasis added].*

32. On May 20, 2014, ADEC issued a Compliance Order by Consent ("COBC") that had been reached between ADEC and APSC to resolve a Notice of Violation ("NOV") involving APSC's failure to meet the State's sufficiently impermeable secondary containment standards at the ETF Secondary Containment System. The Industrial Waste Water System (IWWS), which is an integral part of the ETF Secondary Containment System, was found to be leaking oily water above and below the CBA liner. ADEC's NOV and COBC confirmed that oily water had leaked above and below the CBA liner which put the liner in prolonged contact with hydrocarbons, well exceeding the eight-day period proven in Golder's 2014-2018 laboratory testing where crude oil in contact with thin undamaged CBA liner (0.01875 thickness) leaked through it, and well exceeding the 46-95 day period of leakage shown in tests of thicker, undamaged liner (0.31-1.0 inch thick).

[42] Attachment H at 20.
[43] *Id.* at 8. (Emphasis added).
[44] *Id.* at 14.
[45] *Id.* at 20.

33. The May 20, 2014, COBC required APSC to "implement deliberate visual inspections for at least five sites with a minimum of 100 square feet of liner exposed in each cell in the ETF concurrent with the IWWS repair project."[46] Each cell in the ETF contains approximately 7.5 acres of CBA liner. Inspection of 100 square feet of liner in each 7.5-acre containment cell equated to inspection of .00223 acres of liner (0.03%) of the lined area.

34. ADEC's May 20, 2014, letter also documented the fact the 1998 VMT C-Plan Condition of Approval (No. 3a) required APSC to conduct opportunistic inspections of the CBA liner in conjunction with other maintenance and repair work associated with the tank cells, and that Alyeska agreed to provide all available documentation of those inspections to ADEC by April 30, 2014. ADEC's letter stated that APSC's April 29, 2014, submittal to ADEC did not provide the majority of the CBA liner inspection data for the period from 1998 to 2014 because APSC told the agency that the majority of the inspections were not documented. Therefore, the records available to the City at this time indicate ADEC has no records of CBA liner inspection data for the period of 1977 to 1998.

35. In 1998, ADEC's VMT C-Plan approval required the CBA liner to be opportunistically inspected; however, APSC did not document and keep records of inspections completed for the period 1998 to 2013 unless a repair was required. APSC only provided ADEC with CBA and XR-5 liner repair records for the years 2006-2013, indicating that the liner was found to be damaged during some opportunistic inspections, which required repair. APSC was silent on repair records for 1998-2005.

36. ADEC's May 20, 2014 letter required APSC to document all future CBA liner inspections and repairs (beginning May 2014), including GPS coordinates, and to collect CBA liner samples from all containment areas for permeability testing.[47] ADEC's permeability testing did not direct APSC to only conduct permeability testing on undamaged CBA liner samples. Permeability testing on damaged liners found during inspection would have tested the weakest areas of the liner. However, that is not what was done. Instead, APSC directed its contractor (Golder Associates Inc.) to conduct only permeability testing and crude oil contact testing on undamaged liner samples.

37. A damaged liner with penetrations all the way through the liner is 100% permeable at the penetration. While Golder may have deemed it unnecessary to conduct laboratory testing on liner samples that were known to be 100% permeable by visual inspection because these samples were obviously 100% permeable, Golder did not unequivocally document this simple fact in any of its reports. Instead, Golder reported that the liner met the State's sufficiently impermeable standard if it didn't have holes in it. ADEC's 2019, 2022, and 2024 decisions have relied on Golder's finding that the liner was sufficiently impermeable

[46] Attachment O: Valdez Marine Terminal Catalytically Blown Asphalt Liner Commitments, ADEC letter to APSC, May 20, 2014, at 1.
[47] Attachment O at 2.

for undamaged liner samples, while overlooking Golder's more nuanced conclusion that this was only true if the liner didn't have holes. But, the liner *did have* holes. ADEC's 2019, 2022, and 2024 decisions wrongly ignored the plain fact that holes, cracks, and tears that penetrate all the way through the liner (consistently found in 2011-2017 inspections) are 100% permeable and do not meet the State's sufficiently impermeable standard. ADEC had no evidence in 2024 to prove that through-hole penetrations found in the 2011-2017 inspection of less than 1% of the liner would not occur in the remaining 99% of the liner that has not been inspected.

38. APSC Government Letter No. 30149 submitted to ADEC on April 29, 2014,[48] at Attachment 2[49] documented VMT ETF Secondary Containment System repair records for the period of 2006-2013. APSC's records documented ETF CBA liner damage found and repaired. APSC did not maintain records to prove how much of the CBA liner was opportunistically inspected between 2006 and 2013 when the liner was uncovered for other maintenance or repair activities, nor did APSC provide the agency with any inspection or repair records for the period 1977-2005. APSC Government Letter No. 30149 provided only records of CBA liner damage found and repair records from 2006-2013 (28 years of data from 1977-2005 was missing). The list below summarizes the CBA Liner damage found by APSC in the ETF Secondary Containment System during the 2006 through 2013 inspections and the repairs made:

    a. **Tank 7 ETF CBA Liner Repair 2011**. Penetrations in the CBA liner were discovered when the gravel covering the liner was excavated during the installation of a concrete foundation for a stairway improvement. Areas were found where the CBA liner, serving as the base of the secondary containment system, was not sealed to the XR-5 liner that covers the berm walls. Holes in the CBA liner and areas where the CBA liner was not sealed to the XR-5 liner over the beam were repaired. This inspection confirmed the existence of existing holes and leaks in the liner that were opportunistically discovered during a construction project, which would have otherwise gone undetected.[50] Through holes in the CBA liner and areas where the CBA liner was not sealed to the XR-5 liner does not meet a sufficiently impermeable or impervious standard.

    b. **Tank 12 ETF CBA Liner Repair 2011**. Penetrations in the CBA liner were discovered when the gravel covering the liner was excavated during deep well anode work near Tank 12. Holes in the CBA liner as large as 8 inches in diameter were found requiring repair. Leaks were confirmed and repaired where the deep well anode penetrated the CBA liner. This inspection confirmed the presence of existing holes and leaks in the liner at points where other equipment penetrated the liner and was leaking at the penetration point that were opportunistically found during a construction project

[48] Attachment P: APSC Government Letter No. 30149, APSC submitted to ADEC on April 29, 2014.
[49] Attachment Q: APSC Government Letter No. 30149, APSC submitted to ADEC on April 29, 2014.
[50] *Id.* at 18.

that would have otherwise gone undetected.[51] Through holes in the CBA liner as large as 8 inches in diameter and areas where the CBA liner was not sealed to equipment that penetrated the liner do not meet a sufficiently impermeable or impervious standard.

c. **Tanks 13 and 14 ETF XR-5 Liner Repair 2012**. A 15-foot tear in the XR-5 liner material covering the secondary containment berm in the Tanks 13 and 14 dike area was discovered during snow removal operations. The tear was 1 inch wide at the base of the containment cell and approximately 4 inches wide at the top of the 15-foot-long tear.[52] New XR-5 material was used to repair the large tear in the secondary containment system. APSC did not know how long this tear had been in place. A 15-foot tear in the secondary containment liner that is 1inche to 4 inches wide does not meet a sufficiently impermeable or impervious standard.

d. **Tanks 11 and 12 ETF XR-5 Liner Repair 2013**. In 2013, numerous XR-5 liner repairs were made to fix torn and damaged liner material in the secondary containment berm liner in the Tank 11 and 12 dike area, discovered during routine operations.[53] APSC did not know how long this damage had been in place. Tears and holes in the secondary containment liner do not meet the standard of being sufficiently impermeable or impervious.

39. On April 1, 2015, Golder produced a report for APSC documenting the 2014 ETF CBA liner inspections required by ADEC in Tanks 5 and 6 containment cell #3. Golder's report stated that two CBA liner excavations exposed the CBA liner for a combined area of approximately 4,400 square feet (0.101 acres), which equates to only 0.19% of the 52.5-acre ETF Secondary Containment System.[54] Four areas of the XR-5 liner were also examined. Golder found damage to the CBA liner that occurred when the gravel overlaying the liner was removed for inspection. Damage caused by the inspection included a 12-inch crack that perforated the liner, a 6 inch by 8-inch perforation, and a 2 inch by 4-inch perforation. Golder also found holes through the liner that pre-existed and were not caused by the inspection that included:

a. "A penetration measuring 3 by 8 inches from an angular cobble that was likely pushed through the bedding layer during initial construction"[55] in Excavation Area 54-CB-4-10.

b. "A square perforation measuring 5 by 5 inches . . . the penetration edges imply it might have been where a sample of the CBA liner was likely cut out during the initial construction, but was not patched"[56] in Excavation Area 54-CB-4-10.

[51] *Id.* at 22-24.
[52] Attachment Q at 42-43.
[53] *Id.* at 45-49.
[54] Attachment E at 4.
[55] *Id.* at 14.
[56] *Id*.

The ETF liner was 100% permeable, where perforations measuring 3 inches by 8 inches and 5 inches by 5 inches were found. Holes in the secondary containment liner do not meet the standard of being sufficiently impermeable or impervious. Golder did not measure the permeability of these through liner perforations; it is obvious that those penetrations did not meet the State's sufficiently impermeable standard. Instead, Golder only tested the permeability of thick, undamaged CBA liner samples, which ranged in thickness from 0.31 to 1.14 inches. Golder made it clear in its report that its finding of sufficient impermeability for the liner only applied to the undamaged liner, and not to the entire CBA liner, where perforations through the liner were found. Golder wrote:

> *[T]he CBA lined SCS [secondary containment system] meets the 'sufficiently impermeable' criteria as defined in the State of Alaska Administrative Code 18 AAC 75.990(124)* ***if there are no perforations in the SCS****.*[57] *[Emphasis added].*
>
> *Therefore, a CBA liner* ***without open perforations*** *has a permeability that is less than the 1 x 10^{-6} cm/sec permeability criteria for a 'sufficiently impermeable' liner.*[58] *[Emphasis added.]*

Two perforations, measuring 3 inches by 8 inches and 5 inches by 5 inches, were found in the liner; therefore, the liner as a whole did not meet the State's sufficiently impermeable standard during the 2014 liner inspection.

40. Golder's 2015 report summarized laboratory testing that was conducted on only undamaged thick samples of the CBA liner ranging, from 0.31 inches (the construction design standard thickness) to 1.14 inches.

    a. Test # 202 on a 0.32-inch-thick CBA liner sample leaked 0.5 gallons of crude oil through a thin spot that became a pinhole leak in the liner in 68 days upon prolonged contact with crude oil.[59]

    b. Test # 203 on a 0.32-inch-thick (5/16-inch-thick) CBA liner exposed to crude oil for 90 days when the liner failed. Golder reported the liner sample deteriorated to a "2 inch diameter puddle of liquefied liner" and the remaining portion of the liner that had not melted into a puddle was only 0.06 inch thick (1/16-inch thick).[60]

    c. Test # 205 on a 0.31-inch-thick (5/16-inch-thick) CBA liner exposed to crude oil for 93 days leaked 0.25 gallons of crude oil through the liner. Golder reported that "the liner was in poor condition with the cohesive portion of the liner down to roughly 1/16

[57] Attachment E at 5.
[58] *Id.* at 6.
[59] *Id.* at 20, 31.
[60] *Id.* at 21, 31.

inch thick," and there was "evidence of the failure/leak as a small (about 1/8-inch diameter spot)" in the test sample.[61]

41. On June 27, 2016, Golder produced a report for APSC documenting the 2015 ETF CBA liner inspections required by ADEC in 2014 for the Tank 13 and 14 containment cell #7 and the Tank 3 and 4 containment cell #2. Golder's report stated that three CBA liner excavations examined approximately 1,700 square feet (0.039 acres) or 0.07% of the 52.5-acre ETF Secondary Containment System.[62] Nine areas of the XR-5 liner were also examined. Damage caused by the inspection included an 8-inch perforation. Golder's report stated a civil inspector from Team Industrial Services (APSC's Contractor) was present for all excavations and liner inspections. The Team Industrial Services Civil Inspector found:

    a. A 1-inch diameter existing perforation in the CBA liner[63] in Excavation Area 54-CB-4-6.

    b. A 20 inch by 60-inch existing perforation in the CBA liner at the bonding zone connecting the CBA liner to the XR-5[64] in Excavation Area 54-CB-4-6.

    c. "Three existing perforations (measuring 12 inches by 14 inches, 18 inches by 18 inches, and 30 inches by 18 inches) were observed" [65] in Excavation Area 54-CB-4-7.

    d. A 4-inch diameter perforation in the CBA liner[66] 54-CB-4-5.

    e. "Four circular perforations were observed in the excavation areas (approximately 10 to 12 inches in diameter)"[67] in Excavation Area 54-CB-4-25.[68]

    f. Holes in the secondary containment liner do not meet the standard of being sufficiently impermeable or impervious.

42. Golder's 2016 report summarized laboratory testing that was conducted on only undamaged samples of the CBA liner, ranging from 0.38 inches (slightly thicker than the 5/16th inch construction thickness standard of 0.31 inches) to 0.5 inches. Test # 302 on a 0.5-inch thick CBA liner sample was run with crude oil with a test pressure head of 5 psi to simulate 11 feet of crude oil (the height of oil estimated by Golder that fills the

[61] *Id*.
[62] Attachment R: Additional Liner Testing and Evaluation for Catalytically Blown Asphalt (CBA) Liner at the Valdez Marine Terminal, APSC Project Z691, Golder Associates, June 27, 2016, at 2 .
[63] Attachment R at 3. Additional Liner Testing and Evaluation for Catalytically Blown Asphalt (CBA) Liner at the Valdez Marine Terminal, APSC Project Z691, Golder Associates, June 27, 2016.
[64] *Id.* at 11.
[65] *Id.* at 12.
[66] *Id.* at 3.
[67] *Id.* at 12
[68] Golder theorized that bentonite patches in these holes may have washed away during the inspection excavation, but could not conclusively rule out that these may have been unpatched holes from ground monitoring work in 1993.

containment area if one tank leaked). In 26 days, the liner was so degraded that it extruded from the drain holes. Golder reported that the "liner sample was removed and inspected at 46 days and appeared to be almost completely degraded and softened to a grease-like consistency."[69]

Golder's report emphasized that while it conducted permeability tests measuring permeability less than 1 x 10^{-6} cm per second in undamaged CBA liner samples, the test results for undamaged samples are not indicative of how the liner will actually perform during a spill. Golder's report makes it clear that "**the permeability of the CBA liner SCS [Secondary Containment System] will be controlled through the defects and perforations in the CBA liner**," [70] meaning crude oil will find the path of least resistance and will leak through holes and defects that are 100% permeable.

Golder concluded that "[b]ased upon all the laboratory permeability test results, the CBA lined Secondary Containment System will meet the 'sufficiently impermeable' criteria as defined in the State of Alaska Administrative Code 18 AAC 75.990(124) '**if there are no open perforations in the SCS**.'"[71] Golder's conclusion needs to be read very carefully. The State standard is met only *if* there are "no open perforations." There were open perforations found in the 2015 CBA liner investigation, so the State's sufficiently impermeable standard was not met. Further, laboratory tests conducted on small samples of undamaged liner cannot negate the fact that holes in the liner of 100% permeability are consistently found.

43. Golder's 2016 report, Section 4.3, also highlighted the 1993 subsurface investigation of hydrocarbon contamination in the ETF Secondary Containment System conducted by EMCON for APSC. Golder wrote:

> In 1993, EMCON performed a subsurface investigation within the East Tank Farm (EMCON 1993). The investigation was performed to determine the presence and extent of subsurface petroleum hydrocarbon impact in fill soils and groundwater beneath the CBA liner, and targeted the inlet areas (catch basins, sumps, and manholes) of the IWWS [industrial wastewater system]. A field investigation was conducted during the summer of 1993, when 139 test holes were drilled (which included Test Holes T14-7/93-13, T14-7/93-14 and T14-7/93-16 in the excavation area at Catch Basin 54-CB-4-25) and four groundwater monitoring wells were installed.[72]

44. On July 18, 2017, Golder produced a report for APSC documenting the 2016 ETF CBA liner inspections required by ADEC in 2014 for Tank 11 and 12 containment cell #6 and

[69] Attachment R at 14.
[70] *Id.* at 17.
[71] *Id.* at 19
[72] *Id.* at 18.

Tank 7 and 8 containment cell #4. Golder's report stated that 13 CBA liner excavations either partially or fully exposed the CBA liner for a combined area of approximately 3,400 square feet (0.078 acres) or 0.15% of the 52.5-acre ETF Secondary Containment System.[73] Areas of the XR-5 liner were also examined. Golder's report documents that a civil inspector from Team Industrial Services (APSC's Contractor) was present for all excavations and liner inspections. The Team Industrial Services Civil Inspector found two areas of CBA liner perforations in Excavation Area 54-CB-4-15, with a total size less than one square foot, and a 40-foot by 100-foot-long crack in the CBA liner in Excavation Area 54-MH-2-7.[74]

Two holes in the CBA liner, approximately one square foot and a 40-foot by 100-foot-long crack in the CBA liner that ranged from 1 inch to 4 inches wide that penetrated all the way through the liner at points do not meet the State's sufficiently impermeable standard.

45. In 2016, Golder collected undamaged CBA liner samples ranging from 0.1875 inches to 1.625 inches thick; it did not conduct permeability tests on the thinnest sample (0.1875 inches thick). Golder only conducted permeability tests on undamaged CBA liner samples that were 0.47 inches to 1.32 inches thick.[75] This is problematic for two reasons. First, the thinnest section of the undamaged liner (0.1875-inch-thick) should have been tested as the weakest, thinnest section of the liner found. Second, the 0.1875-inch-thick sections of CBA liner found in the 2016 inspection were substantially thinner than the original CBA liner design basis of 5/16 inches (0.31 inches), confirming that some sections of the liner were not installed to meet design criteria or have thinned below design criteria over the 48 years of use. This is an important finding that was not discussed anywhere in ADEC's 2024 VMT C-Plan decision.

46. Golder's 2017 report summarized laboratory testing that was conducted with crude oil contact on an undamaged CBA liner.

    a. Test # 401A was run on the thinnest (0.1875-inch-thick) CBA liner sample with crude oil in contact at a 5 psi head pressure to simulate 11 feet of oil. In eight days, all the crude oil leaked through the liner sample. Golder reported that "[t]he liner sample was removed and inspected, and appeared to be almost completely degraded and softened to a grease-like consistency."[76]

[73] Attachment S: 2016 Liner Testing and Evaluation for Catalytically Blown Asphalt (CBA) Liner at the Valdez Marine Terminal, APSC Project Z734, Golder Associates, July 18, 2017, at 2.
[74] *Id.* at 5.
[75] Attachment S at 5.
[76] *Id.* at 19.

b. Test # 401B was run on the thinnest (0.1875 inch thick) CBA liner sample with crude oil in contact at a lower head pressure of 2 psi to simulate 6 feet of spilled oil. In 18 days, all the crude oil leaked through the liner sample.[77]

c. Test # 405 was run on a 0.375-inch-thick CBA liner sample with crude oil in contact at a 5 psi head pressure to simulate 11 feet of spilled oil. In 25 days, all the crude oil leaked through the liner sample. Golder reported that "the liner sample was removed and inspected, and appeared to be almost completely degraded and softened to a grease-like consistency." [78]

Tests #401A and #401B demonstrated that when the CBA liner was installed incorrectly (i.e., thinner than the 0.31 CBA liner construction design standard) or the liner had thinned or degraded due to decades of use or possible contact with spilled or leaked hydrocarbons, the liner leaked within 8-18 days.

47. In June 2018, Golder produced a report for APSC documenting the 2017 ETF CBA liner inspections required by ADEC in 2014 for the Tank 1 and 2 containment cell #1 and Tank 9 and 10 containment cell #5. Golder's report stated that 12 CBA liner excavations either partially or fully exposed the CBA liner for a combined area of approximately 4,700 square feet (0.108 acres) or 0.21% of the 52.5-acre ETF Secondary Containment System.[79] Four areas of the XR-5 liner were also examined. Golder's report documents that a civil inspector from Team Industrial Services (APSC's Contractor) was present for all excavations and liner inspections. The Team Industrial Services Civil Inspector found two areas of CBA liner perforations. One was a 5-inch by 6-inch hole, and the other was a 12-inch by 14-inch hole all the way through the liner in Excavation Area 54-CB-4-18.[80]

48. Golder's 2018 report summarized laboratory testing that was conducted with crude oil contact on an undamaged CBA liner.

a. Test # 501 was run on 1-inch-thick CBA liner sample with crude oil in contact at a 5 psi head pressure to simulate 11 feet of spilled oil. In 40 days, all the crude oil leaked through the liner sample. Golder reported that "the liner observed to be softened to a grease-like consistency."[81]

b. Test # 414 was run on 0.5-inch-thick CBA liner sample with crude oil in contact at a psi head pressure to simulate 3 feet of spilled oil. In 61 days, all the crude oil leaked through the liner sample. Golder reported that "the liner observed to be softened to a grease-like consistency."[82]

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[77] Attachment S at 20.
[78] *Id.*
[79] Attachment T: 2017 Liner Testing and Evaluation for Catalytically Blown Asphalt (CBA) Liner at the Valdez Marine Terminal, APSC Project Z734, Golder Associates, June 2018, at 2.
[80] *Id.* at 13.
[81] Attachment S at 19, 26.
[82] *Id.* at 26.

49. On February 4, 2025, the City submitted a public records request to obtain records for this appeal. Requests No. 1-8 sought information on the ETF Secondary Containment System compliance. Requests No. 12-14 sought information regarding the State's policy documents and staff instructions for awarding a 60% credit.[83] On March 19, 2025, ADEC wrote the City that it did not have these records compiled as part of the agency's 2024 VMT C-Plan renewal record of decision and that it would take the agency 145 hours and cost $14,650 to collect critical records pertinent to this matter.[84]

    The fact that ADEC never collected or reviewed these critical records relevant to its decision is further evidence of a flawed review process. Agency files on this matter should be complete and include the records requested by the City. An additional 145 hours should not be required to collect records that should have been compiled and reviewed during the review process.

50. Although the City submitted a public records request for additional information on the ETF Secondary Containment System condition in February 2025, ADEC has provided minimal data as of the date of this filing. Therefore, the City will amend this adjudicatory hearing request at a future time to include additional records supporting the City's request. ADEC's denial of additional time confirmed the City has this right.

51. In sum, ETF Secondary Containment System inspections since 2011 (for which the City has records at this time) have revealed numerous holes, cracks, and tears all the way through the CBA and XR-5 liners that were 100% permeable. The City requested a complete set of records from ADEC which have not been received. The data currently available to the City includes:

    - **2011:** Holes in the CBA liner as large as 8 inches diameter and areas where the CBA liner was not sealed to the XR-5 liner.

    - **2012:** A 15-foot tear in the XR-5 liner material covering the secondary containment berm in the Tanks 13 and 14 dike area; 1 inch wide at the base of the containment cell and approximately 4" wide at the top of the 15-foot-long tear.

    - **2013:** Numerous XR-5 liner repairs were made to fix torn and damaged liner material in the secondary containment berm liner in the Tanks 11 and 12 dike area discovered during routine operations.

    - **2014:** Numerous XR-5 liner repairs were made to fix torn and damaged liner material in the secondary containment berm liner in the containment cell for Tanks 11 and 12.

[83] Attachment U: Public Records Request Pursuant to AS 4.025.110, City of Valdez letter to ADEC, February 4, 2025.
[84] Attachment V: Public Records Request, ADEC letter to City of Valdez, March 19, 2025.

A penetration measuring 3 inches by 8 inches and a square perforation measuring 5 inches by 5 inches.

- **2015:** A 4-inch diameter perforation in the CBA liner.[85] A 20-inch by 60-inch existing perforation in the CBA liner at the bonding zone connecting the CBA liner to the XR-5. Three existing perforations (measuring 12 inches by 14 inches, 18 inches by 18 inches, and 30 inches by 18 inches). Four circular perforations (approximately 10 inches to 12 inches in diameter).

- **2016:** Two holes in the CBA liner, approximately one square foot, and a 40-foot by 100-foot-long crack in the CBA liner that ranged from 1 inch to 4 inches wide that penetrated all the way through the liner at points.

- **2017:** Two areas of CBA liner perforations, including a 5-inch by 6-inch hole and a 12-inch by 14-inch hole, and areas of the CBA liner that had thinned to (0.1875 inches thick), which is significantly thinner than the CBA liner design standard of 0.31 inches thick. The liner was either degraded in situ over the past four decades or was incorrectly applied too thin during original construction. In either case, this thin CBA liner is a weak point in the containment area, which Golder confirmed would allow hydrocarbons to leak through in eight days.

- **2018-2024:** No inspection data is available or has been provided by ADEC to the City's public record request. Additional information is needed to verify that no ETF Secondary Containment System inspections of the liner were conducted in the past six years; however, the 2024 VMT C-Plan does not document any, so it is presumed there were none.

52. During the 2014-2017 ETF Secondary Containment System inspections, a total of 47 areas were inspected; 30 of those areas primarily examined the CBA liner, and the remaining 17 primarily examined the XR-5 liner. In the 30 areas inspected, 17 holes and cracks were found in eight of the CBA liner excavations (meaning 27% (8 of 30)) of the CBA excavation areas found damage through the liner). CBA liner damage was documented in the Golder reports that focused primarily on the CBA liner. The City does not currently have access to a complete set of records on the XR-5 liner excavation areas; additional damage may have been found there. The City does not currently have access to the Team civil engineering reports that documented all the secondary containment liner damage found during the 2014-2017 inspections, because ADEC has not responded to the City's public information request.

53. On March 4, 2019, PWSRCAC transmitted an analysis of the 2014-2017 secondary containment liner testing to APSC. PWSRCAC wrote: "[e]ight out of the 43 total excavations (18.6 percent) revealed unquestionable existing holes, cracks, or gaps that went all the way through the CBA liner . . . The holes and gaps ranged in size from as small

[85] Attachment R at 3.

as 0.09 square feet (4-inch diameter hole) to as large as 8.33 square feet (20 by 60-inch rectangle). One of those eight excavations exposed a cracked area of CBA liner covering at least 4,000 square feet and potentially as large as approximately 9,000 square feet. Some of that extensive cracking was superficial and some penetrated completely through the liner." The PWSRCAC also concluded: "Given that a relatively small percentage of the CBA liner has been inspected to date and at least 18.6 percent of the 2014-2017 IWWS excavations in the East Tank Farm visually revealed existing through holes, cracks, and/or gaps, the Council concludes that similar damage likely exists in yet to be inspected regions of the liner. The Council also believes that such damage does not meet applicable federal or state standards. Whenever Alyeska finds existing damage to the asphalt liner, they repair it, but that does not mean all existing damage has been found and repaired. The 2014-2017 visual and durability testing results of the liner indicate that more undiscovered, unrepaired, existing CBA liner damage likely exists in the East Tank Farm."[86]

54. In sum, Golder's laboratory testing of CBA liners in contact with crude oil revealed that crude oil leaks through the liner as fast as eight days. The 2024 VMT C-Plan does not contain a cleanup plan that proves crude oil tank failures, spilling oil into the ETF Secondary Containment System, could be cleaned up in eight days. In fact, APSC employees have repeatedly testified under oath that large single or multi-tank spills at the VMT would take months, if not years, to clean up and require the use of equipment from outside Alaska.

55. APSC has the burden to provide evidence that the remaining 99% of the liner does not have holes, tears, and cracks that would allow spilled oil to readily escape secondary containment. APSC has not met this burden.

56. APSC has the burden of proof to provide evidence that it can clean up a spill from one or more tanks in eight days before oil leaks through thin sections of the liner that have been proven to exist. APSC has not met this burden of proof.

57. APSC has the burden to prove that the ETF Secondary Containment System prevents surface or groundwater contamination. APSC has not met this burden of proof. To the contrary, ADEC's Contaminated Sites program has ample evidence that hydrocarbon contamination has existed both above and below the liner. The CBA liner affected by this contamination has not been fully inspected, repaired, or replaced, despite the fact that asphalt liners are known to degrade when in prolonged contact with hydrocarbons.

58. Secondary containment rules in 18 AAC 75.075 for aboveground oil storage require the CBA liner to be "adequately resistant to damage by the products stored to maintain sufficient impermeability." A liner in prolonged contact with hydrocarbons, such as the CBA liner in the ETF that has been in contact with hydrocarbon contamination above,

[86] Attachment W: Geosyntec Consultants Secondary Containment Liner Final Report Transmittal and Associated PWSRCAC Recommendation, PWSRCAC letter to APSC, March 4, 2019, at 7.

below, and in contact with the liner for decades (as documented by ADEC's Contaminated Site Program), does not meet this State standard.

59. ADEC asserts the liner might hold spilled hydrocarbons if a new spill were to occur for a period long enough before the hydrocarbon would leak though the liner; however, ADEC has not considered the liner damage that has already occurred and exists from historic and prolonged hydrocarbon contamination above, below, and contact with the liner as well documented by ADEC's Contaminated Sites Program.

60. ADEC's 2024 VMT C-Plan decision provided no evidence to prove the uninspected portion of the ETF liner (99% of the liner) would hold spilled hydrocarbons for even minutes or hours if holes, cracks, and tears existed as they did in the 1% that was inspected.

61. If by some impossible statistical anomaly inspection of the remaining 99% of the liner doesn't find even one existing penetration through the liner, ADEC has provided no evidence that APSC has the capability to clean up all the hydrocarbons in the ETF Secondary Containment System during a one-tank or multiple- tank spill up to and including the greatest possible discharge in less than eight days. Nothing in the approved 2024 VMT C-Plan plans contemplates a complete and thorough cleanup in less than eight days of oil spilled in the secondary containment system.

62. The TAPS Grant and Lease was renewed for another 30 years in 2003. The 2003 Renewal of the Agreement and Grant of Right-of-Way for the Trans-Alaska Pipeline and Related Facilities, Exhibit D, Section 3.11.1 sets for secondary containment requirements that apply to the ETF.[87] Exhibit D, Section 3.11.1 requires:

> *3.11.1 Permittees shall provide oil spill containment dikes or other structures around storage tanks at pump stations and at the Valdez terminal . . . Such structures shall be constructed to withstand failure from earthquakes in accordance with Stipulation 3.4 and shall be impervious so as to provide seepage-free storage until disposal of their contents can be effected safely without contamination of the surrounding area.*[88]

Section 3.4 requires the ETF containment system to be designed to withstand an 8.5-Richter Scale magnitude earthquake.[89] The 2024 VMT C-Plan does not contain evidence that the ETF Secondary Containment System in its current condition would withstand an 8.5-Richter magnitude earthquake.

[87] Attachment X: Renewal of the Agreement and Grant of Right-of-Way for the Trans-Alaska Pipeline and Related Facilities, 2003; Attachment B.
[88] Attachment B at 46.
[89] *Id.* at 44.

The TAPS Grant and Lease, Exhibit E, established a "Cooperative Agreement between United States Department of the Interior and State of Alaska," which requires:

> *II. Surveillance. 1. While the Parties will establish and maintain separate organizations to assure compliance with the terms and stipulations of their respective statutes and regulations, they will seek to coordinate the activities of these organizations as fully as possible.* ***In the execution of their respective responsibilities the Parties will seek to provide maximum protection of the environment***[90] *[Emphasis added].*
>
> *II. Surveillance. 1.b. The State and the Federal organizations will have complete and immediate access to the information of the other, on request, and there will be regular exchange of information regarding . . .* ***reports on compliance in the field*** *. . . The timing, location, method and type of information exchanged shall be governed by the objective of the fullest possible access to information practical in order to maximize the decision-making capability of the Parties.*[91] *[Emphasis added].*
>
> *II. Surveillance. 5. The Parties recognize that the unique characteristics of the arctic and subarctic environment require special efforts to provide it with optimum protection.* ***The Parties will make every reasonable effort to ensure that construction and operation methods and activities will be planned and executed so as to minimize environmental degradation****.*[92] *[Emphasis added].*
>
> *IV. 1. The Federal Authorized Officer and the State Pipeline Coordinator will develop procedure to implement the provisions of this agreement.*[93]

63. On May 11, 2022, ADEC's Spill Prevention and Response (SPAR) Division Director Tiffany Larson issued a Final Decision on Requests for Informal Review following the Remand of ADEC's 2019 VMT C-Plan Decision and matters relating to the CBA liner that were appealed by both PWSRCAC and APSC. The Office of Administrative Hearings recommended ADEC's 2021 Informal Review Decision on ADEC's 2019 VMT C-Plan Decision to be vacated, and the ADEC Commissioner agreed. Furthermore, the ADEC Commissioner found that ADEC staff had not articulated the reasons for their 2019 decision and remanded it back to ADEC staff to fix.[94] Director Larson's May 11, 2022, remanded decision stated: "the Commission remanded the matter back to me with directions to articulate the missing rationale" and that the Commissioner "found that the

[90] *Id.* at 51.
[91] Attachment B at 52.
[92] Attachment B at 52.
[93] *Id*.
[94] Attachment Y: Final Decision on Requests for Informal Review following Remand, re Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, DEC Plan 18-CP-4057, ADEC SPAR Division Director Tiffany Larson letter to PWSRCAC and APSC, May 11, 2022, at 2.

reasons for the requirements were not articulated in the decision document."[95] In sum, both the Office of Administrative Hearings ("OAH") and the ADEC Commissioner found ADEC staff's 2019 VMT C-Plan Decision regarding the CBA liner to be defective. Therefore, it is not logical for ADEC SPAR Director Teresa Melville to refer the City back to a flawed and defective 2019 decision in her February 24, 2025, Final Decision on Request for Informal Review of the 2024 VMT C-Plan Decision.[96]

64. ADEC SPAR Director Teresa Melville also referred the City of Valdez back to a flawed and defective 2022 decision in her February 24, 2025, Final Decision on Request for Informal Review of the 2024 VMT C-Plan Decision.[97] ADEC's SPAR Director Tiffany Larson's May 11, 2022,VMT Remanded Informal Review Decision illogically and contradictorily concluded that the CBA liner "both complies with regulatory requirements and raised substantial concerns that require continued evaluations"[98] Either the liner is compliant, or it is not. The fact that the agency had such substantial concerns that required APSC to embark on a multi-year liner study is clear and compelling evidence that neither APSC nor the agency had sufficient technical or scientific data in 2019 or 2022 to verify CBA liner condition.

65. Neither ADEC's May 11, 2022 decision nor ADEC's 2019 VMT C-Plan decision relied on independent technical or scientific analysis of the CBA liner completed by ADEC's engineering staff. Instead, ADEC merely pointed to a five-year-old study completed in 2017 by APSC's contractor, Golder Associates Inc., that concluded the CBA liner met regulatory standards, but *only* if there are no open perforations in the liner.[99] There were two critical flaws in ADEC's reliance on Golder's conclusion that the CBA liner met regulatory standards. Foremost, Golder is not a regulatory agency, and ADEC provided the public with no technical or scientific analysis completed by its own staff to verify Golder's findings were correct. Second, Golder's opinion was only valid if (as clearly stated in Golder's 2017 Report) <u>there are no open perforations in the liner</u>. Yet, each of APSC's inspections performed from 2014-2017, in which the CBA liner was uncovered and inspected, found liner damage, including open perforations. Therefore, ADEC had all the evidence it needed to confirm the CBA liner did not meet regulatory standards, since each time the liner was inspected, damage including open perforations in the liner was found. ADEC's 2022 decision provided no evidence that this type of damage would not be found in the remaining 99% of the liner that has not been inspected. While ADEC's May 11, 2022 decision acknowledges this obvious contradiction where it states that further technical and scientific work is needed to verify the condition of the CBA Liner because liner inspections consistently find damage that requires repair: "the fact that the inspections consistently found pre-existing damage in the liner raises substantial concern that the unexamined

[95] Attachment Y at 2.
[96] Attachment D at 6.
[97] Attachment D.
[98] Attachment Y at 2.
[99] *Id.* at 3-4.

portions of the 45-year old liner [45 years in 2022; now 48 years old in 2025] are also damaged and according to APSC's own assessment, may fall below the regulatory standards. Additional evaluation is necessary."[100] Once more, the CBA liner cannot meet regulatory standards *and* raise "substantial concerns" about its integrity to such an extent that a multi-year inspection program is required to verify the actual liner condition.

66. ADEC's May 11, 2022 decision goes on to state that the Conditions of Approval placed on the 2019 VMT C-Plan approval for liner inspection are necessary "to ensure the method APSC uses to evaluate the liner in the ETF [East Tank Farm] will produce results that DEC can rely on to make a determination about the integrity of the entire liner." [101] Therefore, it is entirely unreasoned and incongruous for ADEC to conclude that the liner meets the State's standards when ADEC's own 2022 decision concludes that it has insufficient information to "make a determination about the integrity of the entire liner."[102] If ADEC were confident that the liner actually meets State standards, a multi-year study would not be required. APSC argued this exact same point in its 2019 VMT C-Plan appeal, where it argued it was entirely inconsistent and illogical for ADEC to both conclude the CBA liner met regulatory standards and also require extensive work to verify compliance via a multi-year inspection program.[103] Even APSC agreed that ADEC's decision was illogical and inconsistent.

67. In sum, ADEC SPAR Director Teresa Melville referred the City back to flawed and defective 2019 and 2022 ADEC decisions in her February 24, 2025, Final Decision on Request for Informal Review of the 2024 VMT C-Plan Decision.[104] Neither the 2019 nor the 2022 ADEC decisions affirmed "the integrity of the liner was determined and affirmed to be sufficiently impermeable." Instead, both the 2019 and 2022 ADEC decisions clearly demonstrated that ADEC lacked technical and scientific information to "make a determination about the integrity of the entire liner"[105]and that APSC's own consultant, Golder, confirmed that the liner could only meet the State standards if holes in the liner were not found (*but they were consistently found* in the 2014-2017 inspections). Therefore, neither the State nor APSC had any evidence to confirm that the **entire** CBA liner met the State's standards in 2019 or 2022, nor in 2024. Furthermore, Director Melville's February 24, 2025, decision pointed to no new technical or scientific information collected since 2022 that would support her decision. While ADEC required APSC to study the CBA liner since 2019 (2019-2025, over five years), Ms. Melville points to absolutely no new data collected between 2019 and 2025 to confirm the condition of the CBA liner in 2025. Instead, Ms. Melville, without any evidence to support her decision, concluded "the VMT

[100] Attachment Y at 3-4.
[101] *Id.* at 4.
[102] *Id.*
[103] *Id.* at 1-2.
[104] Attachment D at 6.
[105] Attachment Y at 4.

secondary containment system is regulatory compliant."[106] If the system were "regulatory compliant," ADEC would not be requiring an extensive inspection program to verify compliance, which it has now granted additional time for completion until 2028 (ten years from when the original Condition of Approval was assigned in the 2019 VMT C-Plan approval).

68. ADEC did not met its obligations under Alaska Statute and the TAPS Grant and Lease to cooperate with federal agencies to jointly protect the environment and minimize environmental degradation that has resulted from non-compliant ETF secondary containment and the accompanying prevention credit. ADEC's February 19, 2025 response to the City's public records request, confirmed that ADEC did not have standard operating procedures or instructions for staff on how to conduct a C-Plan review with federal agency involvement to ensure that changes directed by the State of Alaska do not adversely affect compliance with federal requirements, and ADEC had no evidence of the State of Alaska coordinated changes made to the VMT C-Plan with the host of federal agencies that also require the VMT C-Plan to comply with federal requirements. To both public record requests (#16 and #17), ADEC responded that "DEC has no records responsive to this request."[107]

(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)).

N/A

Contested Issue No. 2

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

ADEC's 2024 VMT C-Plan decision improperly awarded a 60% secondary containment oil spill prevention credit to a 48-year-old liner installed in 1976 using antiquated Catalytically Blown Asphalt (CBA) liner technology that would not be approved by any state or federal agency today for large crude oil storage tank secondary containment and does not meet the statutory (AS 46.04) or regulatory (18 AAC 75) requirements for award of the credit.

AS 46.04.030(m) authorizes the department to consider oil discharge prevention measures such as secondary containment and make exceptions to the planning volume established by AS 46.04.030(k)(1) "to reflect the reduced risk of oil discharges from the facility."

AS 46.04.030 clearly requires secondary containment "to reflect the reduced risk of oil discharges from the facility." As the City explained in Contested Issue No. 1, the ETF

[106] Attachment Y at 4.
[107] Attachment AF: Public Records Response (February. 19, 2025), at 2-3.

Secondary Containment System has a long history of contamination below the liner and has not reduced the risk of oil discharges from the facility. Inspection data on 1% of the CBA liner found penetrations all the way through the CBA liner in 27% of the sites excavated; 99% of the liner has not been inspected or repaired and, in all likelihood, suffers similar defects. Further, laboratory data proved that oil leaked through fully intact segments of the existing liner as early as 8 days. These known defects do not reduce the risk of oil discharges from the facility.

The provisions of 18 AAC 75.432(d)(4) clearly state the containment dike must be capable of holding the contents of the largest tank (or all tanks in the case of increased risk). Nothing in 18 AAC 75.432(d)(4) grants a 60% prevention credit for a containment system that is likely to immediately release oil through penetrations in the liner, only temporarily hold spilled oil (for 8 days), or have known contamination below the liner.

Requirements for secondary containment systems for aboveground oil storage tanks are established in 18 AAC 75.075. 18 AAC 75.075(a)(1) requires the containment area to "prevent the release of spilled oil from the containment area. Nothing in 18 AAC 75.075 states that an acceptable containment area under 18 AAC 75.075(a)(1) can immediately release oil through penetrations in the liner or only temporarily hold spilled oil, for up to eight days.

The provisions of 18 AAC 75.075(a)(2)(A) require the containment system to be "adequately resistant to damage by the products stored," "sufficiently impermeable," and "resistant to operational damage." As the City explained in Contested Issue No. 1, these standards have not been met for the ETF Secondary Containment System. ADEC's 2024 VMT C-Plan decision did not consider the fact that the ETF Secondary Containment System does not meet the basic standards for secondary containment. Those standards are not limited to sufficient impermeability; the containment must meet <u>all</u> standards of 18 AAC 75.075.

"Sufficiently impermeable" for tanks installed prior to 1992 is defined by 18 AAC 75.990(124) as "a secondary containment system, that its design and construction have the impermeability necessary to protect groundwater from contamination and to contain a discharge or release until it can be detected and cleaned up."

"Impermeable" is defined at 18 AAC 75.990(51) to mean "a layer of material that is of sufficient thickness, density, and composition to produce a maximum permeability for the substance being contained of 1×10^{-7} centimeters per second at the maximum anticipated hydrostatic pressure, and that is sufficient to contain a discharge or release until it is detected and cleaned up."

As the City explained in Contested Issue No. 1, the 18 AAC 75.990 sufficiently impermeable standard has not been met for the ETF Secondary Containment System. Further, ADEC had abundant evidence at its disposal to prove the ETF Secondary Containment System does not meet a sufficiently impermeable standard.

ADEC erred by improperly awarding a prevention credit to this known defective and antiquated secondary containment system. In doing so, ADEC has reduced the volume applicable for the 72-hour Response Planning Standard ("72-hour RPS") from 548,281 barrels to only 204,180 barrels. The result of this decision is fewer available and dedicated spill response resources.

APSC should not be awarded a prevention credit to reduce the amount of oil spill response equipment to respond to the 72-hour RPS when APSC inspection data on less than 1% of the ETF Secondary Containment System CBA liner has consistently located holes, cracks, and tears through the liner (*see* evidence cited in Contested Issue No. 1). Further, APSC utterly failed to meet its burden to show that the entire ETF Secondary Containment System meets the State's sufficiently impermeable standard, as 99% of the liner has never been inspected.

An oil spill prevention credit cannot be properly granted under these circumstances. The liner is known to have defects that render it ineffective in containing a spill, and the liner material is proven to be chemically incompatible with hydrocarbons, degrading on prolonged contact. Further, it is improper to grant an oil spill prevention credit while APSC operates under a condition of approval that requires APSC to collect missing evidence to confirm liner compliance.

Removal of the 60% secondary containment prevention credit will increase the 72-hour RPS (Scenario 5) from 204,180 barrels to 510,450 (*see* 2024 VMT C-Plan, Volume 1, Part 5 computations).[108] Valdez citizens and all Alaskans will benefit from increased oil spill response equipment at the terminal and an improved plan during the period that the ETF Secondary Containment System is under evaluation to determine its compliance situation and while agencies develop a reasoned plan for replacing this antiquated liner with a new liner that is chemically compatible with spilled hydrocarbon and resistant to operational damage.

Additionally, if by some impossible statistical anomaly, an inspection of the remaining 99% of the liner doesn't find even one existing penetration through the liner (which is an unreasonable theory), ADEC has provided no evidence that ASPC has the capability to clean up all the hydrocarbons in the ETF Secondary Containment System from a one tank spill in less than 8 days before the spill pollutes the soil, groundwater, and marine waters of Valdez. (*See* evidence cited in Contested Issue No. 1 regarding the laboratory work completed by Golder Associates on the ETF CBA liner that proved oil would leak through the thinnest area of the liner found in the 2014-2017 inspections in 8 days even if no other holes were found). More importantly, other holes were found in the 2014-2017 inspections with 100% permeability meaning oil would immediately leak through those penetrations.

Nothing in the approved 2024 VMT C-Plan plans contemplates a complete and thorough cleanup of oil spilled in the secondary containment system in less than 8 days.

[108] Attachment F at 271.

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).

November 6, 2024, Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057; Plan Approval, Page 1. "The department has determined your plan is consistent with the applicable requirements of the referenced regulations."[109]

November 6, 2024, Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057; Plan Approval, Page 2. Condition of Approval No. 1.[110]

November 6, 2024, Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057; Plan Approval, Page 4, Term No. 10. Failure to Perform.[111]

November 6, 2024, Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057; Plan Approval, Basis of Decision, Issue No. 7, Pages 12-17.[112]

February 24, 2025, Final Decision on Request for Informal Review of Renewal of Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057, Appeal Issue 5, Pages 6-7.[113]

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

1. November 6, 2024, Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057; Plan Approval, Page 1. "The department has determined your plan is consistent with the applicable requirements of the referenced regulations."[114] *See* Contested Issue No. 1 for an explanation of how ADEC's decision was in error. Additionally, because Contested Issue No. 1 was wrongly decided, and ADEC incorrectly determined the ETF Secondary Containment System was in compliance with the State's sufficiently impermeable standard and did not consider all applicable statutes and regulations that must be met to obtain a credit, ADEC awarded APSC an undeserved oil spill prevention credit, which can only be granted to systems in full compliance with all statutes and regulations.

2. November 6, 2024, Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057; Plan Approval, Page 2. Condition of Approval No. 1.[115] *See* Contested Issue No. 1 for an explanation of how ADEC's decision was in error. In 2024, ADEC's Condition of Approval No. 1 extended the study of the ETF Secondary Containment System compliance (initiated in 2019) until 2028. To qualify for an 18 AAC

[109] Attachment A at 1.
[110] *Id.* at 2.
[111] *Id.* at 4.
[112] Attachment C at 12-17.
[113] Attachment D at 6-7.
[114] Attachment A at 1.
[115] *Id.* at 2.

75.432(d)(4) prevention credit of up to 60% of the 72-hour RPS, the applicant (APSC) has the burden of proof to show that the ETF Secondary Containment System meets "a sufficiently impermeable secondary containment area with a dike capable of holding the contents of the largest tank, or all potentially affected tanks in the case of increased risk, and precipitation." APSC has not met this burden of proof; hence, the reason ADEC has required a 10-year ETF liner investigation. As documented in Contested Issue No. 1, there exists sufficient information to verify that the ETF CBA liner does not meet the sufficiently impermeable standard in 1% of the liner that has been inspected. Future inspections that continue to verify the existence of liner damage, prompting more repairs, only delay the inescapable conclusion that the liner needs to be replaced. ADEC had sufficient evidence to disqualify APSC from receiving an oil spill prevention credit when ADEC made its 2024 decision. APSC should not be awarded a prevention credit to reduce the amount of oil spill response equipment to respond to the 72-hour RPS when APSC has not met the burden of proof to show the entire ETF Secondary Containment System complies with all applicable statutes and regulations that must be met to obtain credit. It is illogical and inconsistent with statute and regulation to grant an oil spill prevention credit for a containment system that is operating under a condition of approval that requires APSC to collect more evidence to confirm compliance in 99% of the liner that has never been inspected.

3. November 6, 2024, Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057; Plan Approval, Page 4, Term No. 10 Failure to Perform.[116] *See* Contested Issue No. 1 for an explanation of how the decision was in error. Additionally, APSC's liner inspections from 2006 to 2017 have consistently shown pre-existing holes, cracks, and tears in the CBA and XR-5 liner material that do not meet the State's sufficiently impermeable standard. ADEC cannot agree that pre-existing holes, cracks, and tears in 1% of the liner reported by APSC (as a true statement) while simultaneously concluding that a liner with a verifiable history of pre-existing holes, cracks, and tears meets State standards. Statistically, inspection of the remaining 99% of the liner that has never been inspected in 48 years would reveal similar defects. A secondary containment system that has leaked oil under the liner (evidenced by numerous contaminated sites in the ETF containment system), that consistently has through liner holes, cracks, and tears when inspected, and has been proven to have thin CBA liner sections that are substantially thinner than the original design thickness are all evidence that the liner does not meet the State standard for *sufficiently impermeable*. If, by some impossible statistical anomaly, inspection of the remaining 99% of the liner does not find even one existing penetration through the liner, ADEC has provided no evidence that ASPC has the capability to clean up a spill of one crude oil tank in the ETF Secondary Containment System in less than 8 days. Nothing in the approved 2024 VMT C-Plan contemplates a complete and thorough cleanup in less than 8 days of oil spilled in the

[116] Attachment A at 4.

secondary containment system. Yet, Golder's laboratory work completed between 2015 and 2018 provides irrefutable evidence that it would.

4. November 6, 2024, Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057; Plan Approval, Basis of Decision, Issue No. 7, Pages 12-17.[117] *See* Contested Issue No. 1 for an explanation of how the decision was in error. Additionally, because Contested Issue No. 1 was wrongly decided, and ADEC incorrectly determined that the ETF Secondary Containment System was in compliance with the State's sufficiently impermeable standard, ADEC awarded APSC an undeserved oil spill prevention credit, which can only be granted to systems in compliance.

5. November 6, 2024, Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan ADEC Plan #: 23-CP-4057; Plan Approval, Basis of Decision, Issue No. 7, Page 17.[118] In its decision, ADEC wrongly decided that:

> *The department is not reducing or removing the prevention credit because the secondary containment areas in the East Tank Farm continue to meet the definition of sufficiently impermeable (as described in the 2019 VMT renewal basis of decision document); the continued work required as COAs is to further confirm the integrity of the liner.*

ADEC did not consider <u>all</u> applicable statutes and regulations that must be met to obtain credit. ADEC's decision focused on compliance with only one portion of the applicable statutes and regulations required to obtain a credit ("sufficient impermeability'). ADEC failed to show how the ETF Secondary Containment System was in full compliance with <u>all</u> applicable statutes and regulations, as further explained in the City's response to (h) below. Furthermore, the ETF Secondary Containment System does not meet a sufficiently impermeable standard (*see* evidence cited in Contested Issue No. 1).

ADEC's Condition of Approval No. 1, requiring a 10-year study (2019-2028) to verify ETF Secondary Containment System compliance, is further proof that ADEC's contradictory conclusion that the system *"meets the definition of sufficiently impermeable"* was wrongly decided. Both cannot be true.

ADEC's decision wrongly asserted that "there are no known defects in the current state of the secondary containment liner."[119] As explained in the evidence presented in Contested Issue No. 1, **<u>there are known defects in the current state of the liner</u>**, specifically:

- The CBA liner is made of asphalt. Asphalt is not chemically compatible with gasoline, diesel, crude oil, or other hydrocarbons. It has been proven to degrade and leak in

[117] Attachment C at 12-17.
[118] *Id.* at 17.
[119] Attachment C at 17.

contact with spilled/leaked hydrocarbons. The existing liner, by definition, is a defective liner type that would not be approved by any state or federal agency for use as a secondary containment system liner for large crude oil storage tanks today.

- Hydrocarbon contamination has existed above and below the CBA liner for decades, and contamination still exists in the groundwater and soil beneath the ETF Secondary Containment System today. A comprehensive assessment, repair, and replacement of ETF CBA liner areas that have been subject to prolonged hydrocarbon exposure has not occurred. Golder Associates has conducted laboratory analysis on prolonged contact between crude oil and the CBA liner and has proven the liner degrades and leaks. Golder recommended that APSC replace the CBA liner with XR-5 in the areas where prolonged hydrocarbon exposure has occurred (*see* Contested Issue No. 1); however, that has not been done.

- The 2014-2017 ETF CBA liner inspections found sections of the liner that were thinner (0.1875 inches) than the construction design standard of 5/16 inch thick (0.31 inches). CBA liner applied thinner than the construction design standard is defective. Thin, defective sections of CBA liner found in the 2014-2017 excavations were not replaced with XR-5 and still exist today. Laboratory testing on crude oil compatibility with 0.1875-inch-thick CBA liner sections proved oil leaked through in 8 days. Golder Associates did not conduct permeability testing in the lab on these thin CBA liner samples.

- Evidence collected in the 2014-2017 ETF CBA liner inspections proved that 8 of the 30 excavated areas had holes, cracks, and tears all the way through the liner (27% of the excavations); a total of 17 through-liner penetrations were documented by APSC's contractors. Application of the evidence on the 1% of the liner that has been inspected (0.525 acres of the 52.5-acre containment area) to the remaining 99% of the liner (51.975 acres) that has not been tested, using statistical principles and basic common sense, results in an obvious conclusion that there are known defects in the current state of the liner. To conclude otherwise, ADEC would have to rely on a highly improbable statistical anomaly where not one hole, crack, or tear through the liner is found in the remaining 51.975 acres (an unreasonable proposition). ADEC's decision to ignore scientific evidence puts human health and the environment at unnecessary risk and awards the operator with an undeserved oil spill prevention credit.

6. February 24, 2025, Final Decision on Request for Informal Review of Renewal of Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057, Appeal Issue 5, Pages 6-7.[120] In its decision, ADEC wrongly decided that:

   APSC is appropriately receiving prevention credits under 18 AAC 75.432(d)(4) based on the status of the secondary containment liner. APSC may receive prevention credits, up to 60%, if its secondary containment areas meet applicable regulatory requirements. Specifically, secondary containment areas for

[120] Attachment D at 6-7.

aboveground oil storage tanks meet requirements for 18 AAC 75.075 and the liner materials are sufficiently impermeable as described in 18 AAC 75.990(124). The secondary containment system at the VMT meets these requirements.

See Contested Issue No. 1 for evidence verifying that ADEC's decision was wrongly decided. The ETF Secondary Containment System does not meet all elements of 18 AAC 75.

ADEC's February 24, 2025, Informal Review Decision contradicts itself by concluding the liner meets standards but requires inspection to verify such standards are actually met:

*The **secondary containment system at the VMT meets these requirements**. As explained in the 2019 VMT renewal and the Director's May 11, 2022 informal review decision, the integrity of the liner was determined and affirmed to be sufficiently impermeable. **Work to be completed as described in the 2019 and 2024 conditions of approval is to further confirm the integrity of the liner**, but that does not preemptively rescind the Division's prior findings. Because the VMT secondary containment system is regulatory compliant, APSC is eligible for the corresponding prevention credits in 18 AAC 75.432(d)(4). [Emphasis added].*

Requiring a 10-year liner study to determine whether the liner's condition is regulatory compliant, while simultaneously insisting that the liner is compliant defies logic. Both cannot be true. Where there is technical or scientific uncertainty, the agency should err on the side of protecting human health and the environment and not award prevention credits or make unsupported assumptions about the condition of secondary containment. Here, APSC has failed to provide any evidence regarding the 51.975 acres of the liner (99%) that has never been inspected and the data that has been provided on 1% of the liner (0.525 acres) found penetrations through the liner in 27% of the sites excavated.

Additionally, the City submitted a public records request for additional information on the ETF Secondary Containment System condition in February 2025, but ADEC has provided minimal data as of the date of this filing. Therefore, the City will amend this adjudicatory hearing request at a future time to include additional records supporting the City's request. ADEC's denial of additional time confirmed the City has this right.

7. February 24, 2025, Final Decision on Request for Informal Review of Renewal of Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057, Appeal Issue 7, Page 6-7.[121] ADEC's Informal Review incorrectly concluded that "[t]he comments submitted by Valdez were appropriately considered and addressed by the Division as required by law;" as explained above, they were not.

[121] Attachment D at 7.

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).

ADEC incorrectly decided the 2024 VMT C-Plan without considering all applicable statutory and regulatory requirements that must be met to grant a 60% prevention credit. The agency's decision must be revised to meet all applicable statutes and regulations and provide the public with evidence to support that decision.

ADEC's compliance finding is contrary to the condition of approval requiring extensive testing of the liner to confirm compliance. Moreover, ADEC's 2024 VMT C-Plan approval contains a waiver of compliance under 18 AAC 75.450(b)(6) (VMT C-Plan, Volume 1, Section 2.6).[122]

A condition of approval to secure compliance information on the liner would not be necessary if ADEC had sufficient evidence to confirm compliance. Both cannot be true.

The City's appeal will resolve this wrongly decided issue and result in a logical, consistent, and technically supported agency decision and removal of the undeserved 60% secondary containment system oil spill prevention credit.

Removal of the undeserved prevention credit will result in a revision to Scenario 5 to improve APSC's ability to respond to a 510,450-barrel spill in the ETF Secondary Containment System instead of the artificially lowered and undeserved 72-hour RPS of 204,180 currently set for Scenario 5. APSC will be required to allocate more personnel and equipment to meet a higher 72-hour planning standard. APSC should also be required to prove it has the capability to clean up multi-tank crude oil spills of all volumes up to and including the greatest possible discharge (Scenario 6) within the 8-day period which Golder's lab work showed crude oil would leak through the thinnest known section of the liner.

The City makes specific recommendations for correcting the agency's wrongly decided approval in section (g) below.

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.**

[122] Attachment F at 137.

See the City's response to Contested Issue No. 1 (e) for the City's response to Contested Issue No. 2 (e). The response is the same.

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)

The City submitted comments to ADEC on December 15, 2023, on the 2024 VMT C-Plan renewal. The City opposed APSC's obtaining an oil spill prevention credit for a secondary containment liner that is known to have through holes and has repeatedly been proven not to meet an impermeable standard. *See* pages 39 through 45 and 47.[123]

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

The City requests ADEC's 2024 VMT C-Plan decision and the 2024 VMT C-Plan be revised to meet all the suggested alternative terms and conditions listed in the City's response to Contested Issue No. 1 (g) for the City's response to Contested Issue No. 2 (g). Additionally:

1. VMT C-Plan, Volume 1, Sections 5.1 and 5.2 be revised to remove the State's 60% secondary containment credit prevention credit since APSC has provided no evidence that the prevention credit is deserved.

2. VMT C-Plan, Volume 2, Scenario 5 be revised to add personnel and equipment to meet the higher 72-hour RPS volume of 510,450 barrels when the 60% credit is removed and a revision to the volume of oil that will reach Port Valdez.

3. VMT C-Plan, Volume 2, Scenarios 5 and 6 include information that demonstrates APSC can clean the corresponding scenario spill volume into the ETF Secondary Containment System in 8 days (before the oil has been proven to leak through the thin sections of the CBA liner by Golder Associates 2015-2018 laboratory testing).

4. VMT C-Plan, Volume 1, Appendix C.3, Table C.3-2 be revised by ADEC in coordination with U.S. DOT to remove the secondary containment credit of 50% applied to the DOT Worst Case Discharge volume, increasing the DOT volume by 273,444 barrels to a total of 410,166 barrels.

5. VMT C-Plan, Volume 3, be revised to include tactics and equipment necessary to meet the revised Scenarios 5 and 6 described above.

[123] Attachment G at 40-46.

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.

See the City's response to Contested Issue No. 1 (h) for the City's response to Contested Issue No. 2 (h). The response is the same. Additionally, other applicable facts and laws are listed below:

AS 46.04.030(k)(1) requires oil terminal facilities such as the VMT to contain or control, and cleanup a discharge equal to the capacity of the largest oil storage tank at the facility within 72 hours, and the department may increase the volume requirement to a volume greater than a single tank based on natural or man-made risk factors affecting the facility.

AS 46.04.030(m) authorizes the department to consider oil discharge prevention measures such as secondary containment to make exceptions to the planning volume established by AS 46.04.030(k)(1) "to reflect the reduced risk of oil discharges from the facility."

The statute (AS 46.04.030) clearly requires the secondary containment "to reflect the reduced risk of oil discharges from the facility." As the City explained in Contested Issue No. 1, the ETF Secondary Containment System has a long history of contamination below the liner and has not reduced the risk of oil discharges from the facility. Inspection data on 1% of the CBA liner found penetrations all the way through the CBA liner in 27% of the sites excavated; 99% of the liner has not been inspected or repaired and commonsensically suffers from similar defects; and laboratory data proved that oil leaked through the existing liner as early as 8 days. These known defects do not reduce the risk of oil discharges from the facility.

Under 18 AAC 75.432(d)(4), a plan holder may receive a prevention credit of up to 60% of the 72-hour RPS for "a sufficiently impermeable secondary containment area with a dike capable of holding the contents of the largest tank, or all potentially affected tanks in the case of increased risk, and precipitation."

The provisions of 18 AAC 75.432(d)(4) clearly state that the containment dike must be capable of holding the contents of the largest tank (or all tanks in the case of increased risk). Nothing in 18 AAC 75.432(d)(4) grants a 60% prevention credit for a containment system that might only temporarily hold spilled oil (for 8 days) or immediately release oil through penetrations in the liner. Further, 18 AAC 75.432(d)(4) does not include a time factor; the paragraph plainly states that the containment dike must be capable of holding the contents of the largest tank period. The ETF Secondary Containment System does not meet this standard.

The requirements for secondary containment systems for aboveground oil storage tanks are set out in 18 AAC 75.075. Paragraph(a)(1) of that section requires the containment area to "prevent the release of spilled oil from the containment area" *period*; again, there is no time limit. Nothing states that an acceptable containment area under 18 AAC 75.075(a)(1) only needs to temporarily hold spilled oil (for eight days). Nothing in 18 AAC 75.075(a)(1) states that an acceptable containment area involves a liner that has been shown to be defective .

Under 18 AAC 75.075(a)(2)(A), the containment system is required to be "adequately resistant to damage by the products stored," be "sufficiently impermeable;" and "resistant to operational damage." The City explained in Contested Issue No. 1 how these standards have not been met for the ETF Secondary Containment System.

An existing prevention credit for secondary containment under 18 AAC 75.430(d) may be revoked "if the department finds that the plan holder has failed to execute or has not effectively implemented the prevention measure used to determine that credit."

"Sufficiently impermeable" for tanks installed prior to 1992 is defined at 18 AAC 75.990(124) as "a secondary containment system, that its design and construction have the impermeability necessary to protect groundwater from contamination and to contain a discharge or release until it can be detected and cleaned up."

While ADEC asserts that APSC has proven the capability to clean a spill of the largest crude oil tank in the ETF Secondary Containment Area before it leaks through the CBA liner, the approved 2024 VMT C-Plan does not include any plan that meets these criteria. ADEC's conclusion is nothing more than a bald assertion. APSC has long asserted that if a tank failed and all the oil spilled, APSC could remove that oil from the containment area in 85 days and all the contaminated soil in 30 days. On March 23, 1993, APSC provided ADEC with a technical analysis of how long it would take to clean out the secondary containment area if a tank failed and spilled its contents. APSC concluded:

> *After a tank failure, it would take 85 hours to drain outstanding oil and another 30 days to remove 40,000 cubic years of oil soaked gravel. In the event of a tank failure in winter, it would take longer than 30 days to remove the gravel. However, it could still be removed within the 90 day window.*[124]

Nothing in the 2024 VMT C-Plan includes a plan to meet this 85-day/30-day cleanup or 85-day/90-day cleanup (in the winter months), and such a clean-up timeline is completely irrelevant based on Golder's laboratory testing showing the oil would leak through thin sections of the CBA liner in 8 days. The thin sections of the CBA liner found during the 2014-2017 inspections were not repaired or replaced and remain as defects in the liner today.

"Impermeable" is defined at 18 AAC 75.990(51) to mean "a layer of material that is of sufficient thickness, density, and composition to produce a maximum permeability for the substance being contained of 1 x 10^{-7} centimeters per second at the maximum anticipated hydrostatic pressure, and that is sufficient to contain a discharge or release until it is detected and cleaned up."

[124] Attachment L at 2.

The City explained in Contested Issue No. 1 how 18 AAC 75.990 standards have not been met for the ETF Secondary Containment System.

On February 4, 2025, the City submitted a public records request to obtain records for this appeal. Requests No. 12-14 sought information regarding the State's policy documents and staff instructions for awarding a 60% credit. Requests No. 1-8 sought information on the ETF Secondary Containment System compliance.[125] On March 19, 2025, ADEC wrote the City that it did not have these records compiled as part of the agency's 2024 VMT C-Plan renewal record of decision and that it would take the agency 145 hours and cost $14,650 to collect critical records pertinent to this matter.[126]

The fact that the agency charged with reviewing pertinent records related to its 2024 VMT C-Plan decision never collected or reviewed those records is further evidence of a flawed agency decision. Agency files on this matter should be complete with the type of records requested by the City. It should not require an additional 145 hours to collect records that the staff should have already compiled and analyzed to make the agency decision.

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)).

N/A

Contested Issue No. 3

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

ADEC improperly decided to remove APSC's Primary Response Action Contract ("PRAC") Certificate from Volume 3, Section 12.11 of the 2024 VMT C-Plan. ADEC has required APSC's PRAC Certificate to be part of the VMT C-Plan for decades to comply with State statutes (AS 46) and regulations (18 AAC 75). ADEC's decision to remove the certificate conflicts with decades of prior ADEC VMT C-Plan decisions and ADEC's longstanding implementation of PRAC requirements.

APSC's request to remove the PRAC Certificate occurred in 2024 during litigation with the City and a two-month Superior Court trial over property taxes involving tax on oil spill response equipment listed in APSC's approved PRAC Certificate. APSC removed the PRAC Certificate in an attempt to reduce the TAPS Owners' tax liability to State and local governments.

[125] Attachment U: Public Records Request Pursuant to AS 4.025.110, City of Valdez letter to ADEC, February 4, 2025.
[126] Attachment V: Public Records Request, ADEC letter to City of Valdez, March 19, 2025.

ADEC's Basis for Decision and subsequent response to the City's Informal Review Request misconstrued and misinterpreted the requirements of AS 46 and 18 AAC 75 for facility owners, contractors, and PRACs. ADEC misconstrued and misinterpreted TAPS ownership, APSC's role as a contractor for the TAPS Owners[127] (APSC does not own TAPS), and APSC's roles and responsibilities as a PRAC. APSC serves as a contractor to the TAPS Owners and as a PRAC. The VMT C-Plan must include evidence of a contractual commitment between the TAPS Owners and their contractors to provide oil spill response equipment that the TAPS Owners do not own.

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).

November 6, 2024, Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057; Plan Approval, Page 1. "The department has determined your plan is consistent with the applicable requirements of the referenced regulations."[128]

November 6, 2024, Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057; Plan Approval, Basis of Decision, Issue No. 14, Page 33.[129]

February 24, 2025, Final Decision on Request for Informal Review of Renewal of Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057, Appeal Issue 4, Page 5.[130]

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

1. November 6, 2024, Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057; Plan Approval, Page 1. "The department has determined your plan is consistent with the applicable requirements of the referenced regulations."[131] ADEC incorrectly decided to remove APSC's PRAC Certificate from the 2024 VMT C-Plan. The PRAC Certificate has been an approved and required part of the VMT C-Plan for decades, and is necessary to comply with State statutes (AS 46) and regulations (18 AAC 75). ADEC's Basis for Decision misconstrued and misinterpreted the requirements of AS 46 and 18 AAC 75 for facility owners, contractors, and PRACs.

[127] The TAPS Owners are currently Harvest Alaska LLC ("Harvest"); ConocoPhillips Transportation Alaska, Inc. ("CPTAI"); and ExxonMobil Pipeline Company ("EMPCo").
[128] Attachment A at 1.
[129] Attachment C at 33.
[130] Attachment D at 5.
[131] Attachment A at 1.

2. November 6, 2024, Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057; Plan Approval, Basis of Decision, Issue No. 14, Page 33.[132] ADEC's Basis of Decision stated it approved the removal of the APSC PRAC Certificate from Volume 3 of the 2024 VMT C-Plan for the following reasons:

> *In Section 12.11 APSC updated the plan to remove the APSC Primary Response Action Contractor (PRAC) registration confirmation letter. The City of Valdez requested for APSC's PRAC letter to remain in the plan. APSC is their own PRAC and is not required to be registered as a PRAC in 18 AAC 75.500 for the VMT plan. 18 AAC 75.451(i) requires registration when a plan holder uses the services of another PRAC. Other contractors that APSC uses to meet plan commitments are currently not required to be PRACs under 18 AAC 75.500 to carry-out work for APSC to meet plan requirements and commitments in the plan.*[133] *[Emphasis added].*

APSC serves as the common operating agent (contractor) for the TAPS Owners who own the Trans-Alaska Pipeline System, which includes the VMT. APSC serves as a PRAC for the TAPS Owners to carry out the duties required of the TAPS Owners related to the VMT C-Plan.

The PRAC Certificate must be in the VMT C-Plan because the plan does not state that the TAPS Owners will actually carry out the spill response at the terminal. Instead, the VMT C-Plan clearly states that the TAP Owners have APSC and a series of subcontractors to APSC who carry out this obligation. The TAPS Owners pay APSC for this work on their behalf.

As noted above, TAPS is owned by Harvest, CPTAI, and EMPCo.[134] APSC does not own TAPS. The 1977 Agreement Between Owners and Alyeska Appointing Alyeska as Operator of TAPS (1997 Operator's Agreement) puts APSC in place as the operating agent for TAPS. APSC serves as a contractor to the TAPS Owners. APSC was originally put in place as a contractor for a 10-year term. TAPS Owners re-evaluate whether to keep APSC as a contractor every five years.

APSC acting as an agent for TAPS prepares and applies for VMT C-Plan approval on behalf of the TAPS Owners. While APSC acts as an agent to complete this administrative function, as a contractor to the TAPS Owners, APSC can be replaced at the Owners' discretion. Therefore, the TAPS Owners are the ultimate legal plan holders. TAPS Owners are financially and legally responsible for meeting the State and federal requirements, not APSC.

[132] Attachment C at 33.
[133] *Id*. at 33.
[134] Attachment F at 39.

"Plan holder" is defined at 18 AAC 75.990(90) as:

> *an applicant who has received department approval for an oil discharge prevention and contingency plan or streamlined plan and who is responsible for compliance with the plan as approved. [Emphasis added].*

APSC, as an agent for the TAPS Owners, applied for and received approval for the VMT C-Plan and administers the plan **on behalf** of the TAPS Owners. The TAPS Owners are ultimately responsible for compliance with the approved plan and are the ultimate "plan holder."

The 2024 VMT C-Plan Volume 1, Document Owner, Plan Approval, and Certification states:

> *APSC management endorses this Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan (VMT ODPCP) and commits the resources of APSC, **on behalf of its owner companies**, to carry out the spill prevention and response measures described herein."*[135] *[Emphasis added].*

The tugs, barges, skimming vessels, and other spill response equipment not owned by the TAPS Owners are subcontracted to APSC. For example, APSC subcontracts with companies such as Alaska Ventures, LLC ("AK Ventures"), and Prince William Oil Spill Sound Response Corporation ("PWSOSRC"), TCC, LLC ("TCC"), and ASRC Energy Services ("ASRC") to carry out the obligations of the VMT C-Plan for the TAPS Owners.

AK Ventures provides tugs and barges on contract to APSC and operates that equipment. APSC administers the subcontract with AK Ventures as the common operating agent for TAPS and ensures AK Ventures is paid for its work. TAPS Owners reimburse APSC (its contractor) or otherwise pay for the costs associated with that contract.

PWSOSRC provides barges and skimming vessels on contract to APSC. AK Ventures has a bareboat charter contract with PWSOSRC to operate its barges and skimming vessels. AK Ventures pays PWSOSRC to bareboat charter the vessels and bills APSC for PWSOSRC's vessels under its AK Ventures/APSC contract.

APSC has a bareboat charter contract with PWSOSRC to provide 48 mini-barges. APSC pays PWSOSRC a bareboat charter fee. TAPS Owners reimburse APSC (its contractor) or otherwise pay for the costs associated with this contract.

TCC and ASRC provide personnel and other equipment on contract to APSC. APSC administers these subcontracts as the common operating agent for TAPS and ensures TCC

[135] *Id.* at 3.

and APSC are paid for their work. TAPS Owners reimburse APSC (its contractor) or otherwise pay for the costs associated with these contracts.

In sum, TAPS Owners pay APSC to serve as the Owners' operating agent (contractor). TAPS Owners also pay for subcontractors that work on contract for the Owners' operating agent, APSC. Therefore, APSC is a PRAC for the TAPS Owners, who are the ultimate plan holders and responsible party for all costs and liability associated with spills at the terminal.

For decades, APSC has applied to be a PRAC and has been approved by the State of Alaska as a registered PRAC. The equipment necessary to respond to terminal spills is listed in APSC's PRAC Certificate. APSC's PRAC Certificate has been included in the VMT C-Plan for decades in accordance with a facility owner's obligation to show evidence of contractual terms with a registered PRAC that supplies the required resources to carry out the commitments made in the VMT C-Plan. Absent this certification, there is no evidence in the VMT C-Plan to demonstrate contractual commitments to provide required oil spill response equipment for APSC, AK Ventures, or PWSOSRC, which are all included in that certification.

3. February 24, 2025, Final Decision on Request for Informal Review of Renewal of Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057, Appeal Issue 4, Page 5.[136] ADEC's Informal Review Decision reaffirmed ADEC staff's removal of the APSC PRAC Certificate from Volume 3 of the 2024 VMT C-Plan for the following reason:

> *The Division finds that the PRAC requirements under 18 AAC 75.451(i) are not applicable to APSC when they are operating as their own response contractor.*[137] *[Emphasis added].*

This was wrongly decided. APSC is the agent (contractor) <u>for the TAPS Owners</u>. APSC is not "operating as their own response contractor." APSC is a response contractor and common operating agent (contractor) for the TAPS Owners.

APSC subcontracts with AK Ventures and PWSOSRC to procure equipment and personnel to meet the VMT C-Plan. APSC applied to the State to obtain a PRAC Certificate that lists the AK Ventures and PWSOSRC subcontracted equipment and a complete inventory of equipment available to respond to a catastrophic spill.

[136] Attachment D at 5.
[137] *Id.* at 6-7.

Absent the APSC PRAC Certificate in the VMT C-Plan, there is no evidence of a contractual commitment required between the TAPS Owners and APSC, as well as its subcontractors, AK Ventures and PWSOSRC.

Additionally, ADEC's Informal Review Decision reaffirmed ADEC staff's removal of the APSC PRAC Certificate from Volume 3 of the 2024 VMT C-Plan for the following reason:

> *Under 18 AAC 75.451(i), If a plan holder enters into contract to use a PRAC, then a statement of contractual terms signed by the plan holder and the PRAC must be included in the plan. This is not required where a plan holder does not rely on a PRAC to meet plan requirements. Because APSC has not entered contract with the intent to use a PRAC to meet applicable requirements, no contractual terms exist that would trigger the need for them to be included in the plan.*[138] *[Emphasis added].*

This was wrongly decided. ADEC's decision incorrectly concludes that APSC, not the TAPS Owners, is the ultimate "plan holder." APSC is a contractor for the TAPS Owners, applying for and administering the VMT C-Plan on behalf of the TAPS Owners. APSC is merely a plan/permit administrator. The plan holder (TAPS Owners) hires APSC as a contractor to carry out the oil spill prevention and response duties required under the VMT C-Plan, and APSC subcontracts with other companies (*e.g.,* AK Ventures, PWSOSRC, and others) to provide the necessary personnel and equipment to implement the plan. The provisions of 18 AAC 75.451 require evidence of these contractual commitments in the VMT C-Plan. For this reason, APSC's PRAC Certificate has been required and part of the VMT C-Plan for decades. ADEC's decision to change this after decades is inconsistent with past precedent and Alaska law. If the TAPS Owners decide to terminate APSC as their operating agent, the TAPS Owners are <u>still</u> responsible for oil spill prevention and response obligations in Alaska. While the "plan holder" might be listed as APSC, it is held on behalf of the TAPS Owners.

This proposed deletion does not comply with the evidence of contractual commitments required by 18 AAC 75.451. If this PRAC certificate is removed, the C-Plan will include no evidence that APSC has contracts in place with AK Ventures for the tugs and barges required or with PWSOSRC for the barges, mini-barges, or skimming vessels required. This proposed revision is driven exclusively by a desire to avoid taxation, which is an entirely inappropriate driver for revision to the VMT C-Plan.

4. February 24, 2025, Final Decision on Request for Informal Review of Renewal of Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057, Appeal Issue 7, Page 6-7.[139] ADEC's Informal Review incorrectly concluded that

[138] Attachment D at 5.
[139] *Id.* at 7.

"[t]he comments submitted by Valdez were appropriately considered and addressed by the Division as required by law;" as explained above, they were not.

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).

ADEC incorrectly decided to remove the APSC PRAC Certificate from the 2024 VMT C-Plan.

After the *Exxon Valdez* oil spill had a devastating impact on the City and Alaska, the State and the federal government enacted laws and regulations that require the TAPS Owners to prove that they have a rigorous oil spill prevention and response plan to prevent and clean up spills at the VMT. The TAPS Owners must also show evidence that they either own or have under contract personnel and equipment necessary to carry out the plan. The APSC PRAC Certificate lists the equipment subcontracted to APSC to carry out the plan. TAPS Owners are required to show evidence that they have a contract with APSC and any subcontractors do this work. That requirement is satisfied by the inclusion of the PRAC certificate in the VMT C-Plan.

Furthermore, the City makes specific recommendations in section (g) below for correcting the agency's wrongly decided approval.

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.

Valdez citizens were adversely impacted by the *Exxon Valdez* spill. The laws enacted after the spill require facility owners to provide evidence of contractual commitments in their C-Plans. Absent an APSC PRAC Certificate in the VMT C-Plan, the TAPS Owners do not meet this requirement.

A crude oil spill at the VMT poses catastrophic environmental and economic repercussions for Valdez, its citizens, and all Alaskans. Valdez seeks to ensure that the VMT C-Plan includes requirements and planning standards that protect the City and its citizens from the harm caused by oil spills. As evidenced by the *Exxon Valdez* oil spill, the implications of oil spills from facilities and tankers involved in transporting crude oil through TAPS are dire. The *Exxon Valdez* oil spill demonstrated the inability of the oil industry to regulate itself and the need for robust State laws to provide adequate protection against oil spills and ensure that adequate response capabilities are maintained to minimize the harm of oil spills when they do occur. The VMT C-Plan must retain the APSC PRAC Certificate and all information related to the

PRAC. The VMT C-Plan must contain a complete inventory of equipment available to APSC in Prince William Sound in the case of a catastrophic spill.

ADEC is charged with ensuring that all applicable regulatory requirements governing the VMT C-Plan are satisfied. To the extent that such regulatory requirements are not satisfied, Valdez and its citizens are unreasonably exposed to the harm of oil spills at the VMT.

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)

The City submitted comments to ADEC on December 15, 2023, on the 2024 VMT C-Plan renewal. The VMT C-Plan renewal application originally submitted to the agency for review and approval contained the APSC PRAC Certificate as it has for decades. The City's comments submitted on December 13, 2023, did not comment on this problem, because it did not exist at that time. During the lengthy C-Plan review process, APSC buried its request to remove the PRAC Certificate in hundreds of pages of plan revisions that occurred after December 2023. The City's objection was filed in October 2024.[140]

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.

Valdez requests that ADEC's 2024 VMT C-Plan decision and the 2024 VMT C-Plan be revised to include APSC's PRAC Certificate.

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.

AS 46.04.035(h) requires oil spill response action contractors to register with the State.

Registration of Oil Spill Response Action Contractors. AS 46.04.035(h)(2):

> *"primary response action contractor" means a person who enters into a response action contract with respect to a release or threatened release of oil and who is carrying out the contract, including a cooperative organization formed to maintain and supply response equipment and materials that enters into a response action contract relating to a release or threatened release of oil . . . .*

APSC is a PRAC for TAPS with respect to a release or threatened release of oil from the VMT; APSC works on contract for the TAPS Owners. AK Ventures and PWSOSRC are

[140] Attachment G at 45-46.

subcontractors to APSC, and their equipment and services are included in APSC's approved PRAC Certificate. If APSC's PRAC Certificate is not included in the VMT C-Plan, then neither is all the equipment provided by AK Ventures and PWSOSRC. The VMT C-Plan cannot comply with State and federal law without APSC, AK Ventures, and PWSOSRC as contractors and subcontractors to the TAPS Owners.

APSC required TCC and ASRC (subcontractors to APSC) to both register as PRACs and to include each of their PRAC Certificates in the 2024 VMT C-Plan.[141] TCC and ASRC provide personnel and some equipment used in oil spill response. However, incongruously, ADEC did not require either AK Ventures or PWSOSRC (subcontractors to APSC) to register as PRACs and to include their PRAC Certificates in the 2024 VMT C-Plan.

ADEC's decision to require PRAC certificates for some TAPS Owner contractors and not others is inconsistent with state law.

On January 6, 2023, the City wrote to ADEC to inquire about why Crowley was required to be a registered PRAC for decades and why the new tug and barge operator (AK Ventures) was not. ADEC responded that AK Ventures' tugs and barges are included in APSC's PRAC Certificate and that is sufficient. Additionally, ADEC stated that it wrongly issued Crowley PRAC certificates for decades. ADEC did not explain why TCC and ASRC (subcontractors to APSC) are required to be PRACs, and AK Ventures was not.

ADEC staff's response to the City's January 6, 2023, inquiry stated:

> *Crowley operated vessels worked under the Alyeska SERVS contract until mid-2018. Following that Alaska Ventures, LLC, under the Edison Chouest Offshore trade name, took over the Alyeska SERVS contract.*
>
> *A PRAC is defined in 18 AAC 75.500(a) as "a person who is or intends to be obligated under contract to the holder of an approved oil discharge prevention and contingency plan issued under AS 46.04.030 to provide resources or equipment to contain, control, or clean up an oil discharge."*
>
> ***Alaska Ventures, LLC is not under contract to a plan holder*** *and therefore is not required to register as a PRAC for their current services.* ***Alaska Ventures, LLC are under contract with Alyeska SERVS****;* ***Alyeska Pipeline Service Company is a registered PRAC****. Alaska Ventures, LLC is not listed as a PRAC in any Plans. The PRAC registration for Alyeska Pipeline Service Company includes equipment supplied to them by subcontractors, including Alaska Venture, LLC owned equipment. [Emphasis added].*

[141] Attachment F at 242-243.

Similarly, Crowley did not need to register as a PRAC. Crowley chose to pursue PRAC registration due to business decisions. Under 18 AAC 75.500(d) any person may apply as a PRAC.[142]

The provisions of 18 AAC 75.425(e)(3)(H) require C-Plans that utilize the services of a PRAC to be registered with the State, and evidence of an approved PRAC registration be included in the C-Plan. The State's website has a PRAC application form that must be filled out and provides a current list of approved PRACs.

C-Plan Contents. 18 AAC 75.451(i):
"If a plan holder proposes to use the services of an oil spill primary response action contractor to meet a requirement of AS 46.04.030 or 18 AAC 75.432 – 18 AAC 75.442, the contractor must be registered under 18 AAC 75.500 – 18 AAC 75.580. The use of an oil spill primary response action contractor does not relieve the plan holder of its responsibility to provide the information required by this subsection and to meet all other applicable requirements of 18 AAC 75.400 – 18 AAC 75.495. The plan must include a correct and complete list of each oil spill primary response action contractor, with name, address, telephone number, and affiliation by company, and a description of the response equipment and services provided. For each primary response action contract, the plan must also include a statement of contractual terms signed by the plan holder and the primary response action contractor . . . .

The TAP Owners contract with APSC to serve as the administrative agent for the VMT C-Plan and the PRAC to meet all VMT C-Plan requirements. APSC, as a response contractor to the TAPS Owners, must be registered as a PRAC.

Oil Discharge Prevention and Contingency Plans. AS 46.04.030(a):
A person may not cause or permit the operation of an oil terminal facility in the state unless an oil discharge prevention and contingency plan for the facility has been approved by the department and the person is in compliance with the plan.

Oil Discharge Prevention and Contingency Plans. AS 46.04.030(e):
If a contingency plan submitted to the department for approval relies on the services of an oil spill primary response action contractor, the department may not approve the contingency plan unless the primary response action contractor is registered and approved under AS 46.04.035. . . .

Oil Discharge Prevention and Contingency Plans. AS 46.04.030(g):
Failure of a holder of an approved or modified contingency plan to comply with the plan, or to have access to the quality or quantity of resources identified in the plan or to respond with

[142] Attachment Z: Email from ADEC (Gary Mendivil) to BB&W (Mary Hodsdon), regarding AK Ventures Public Record Request for PRAC registration applications, Jan. 6, 2023.

those resources within the shortest possible time in the event of a spill is a violation of this chapter. . . .

C-Plan Contents. 18 AAC 75.451(l):
(l) The plan must include a list of resources, in addition to those maintained by the plan holder or available under contract to meet the applicable response planning standard for that facility or operation, that may be used in responding to the greatest possible discharge.

The provisions of 40 CFR 112.20(h)(3)(iii) require "[e]vidence of contracts or other approved means for ensuring the availability of such personnel and equipment." Volume 3, Section 12, VMT-LP-11 is required to meet this federal regulation. VMT-LP-11 has for decades included APSC's PRAC Certificate, which ADEC has unilaterally and wrongly decided to eliminate without consideration of federal requirements. *See* Contested Issue No. 5 for a detailed explanation of the State's obligation to coordinate the joint state and federal C-Plan review.

(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)).

N/A

Contested Issue No. 4

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

ADEC improperly awarded a 2% oil spill prevention credit for crude oil tank on-line leak detection, reducing the 72-hour Response Planning Standard volume (Scenario 5) by an undeserved 10,417 barrels (437,514 gallons).[143] Neither the approved plan nor the Basis of Decision provides a technical and regulatory basis for awarding the 2% oil spill prevention credit to a gauging system that is unable to detect a leak until 3,000 barrels per hour are leaked. Nothing in the approved plan explains the basis for the 2% credit at all.

ADEC incorrectly concluded, without evidence, that the existing crude oil gauging system meets the 18 AAC 75.990(112) "sensitive gauging system" standard. That regulation requires: "the best demonstrated available gauging technology at the time of the tank construction or substantial reconstruction, or initial gauging system installation." Nothing in the approved plan states that the 18 AAC 75.990(112) "sensitive gauging system" standard is met for crude oil

[143] Attachment F: VMT C-Plan, Volume 1, Part 5, Section 5.1, 72-hour RPS volume calculation reduced the volume from 520,867 barrels to 510,450 barrels by applying an undeserved 2% credit, equating to 10,417 barrels.

storage tanks. The only reference found to "sensitive gauging" relates to fuel tanks, not the crude oil storage tanks.

ADEC incorrectly concluded that sensitive gauging systems do not have to meet a best technology standard; yet, 18 AAC 75.990(112) clearly requires "best demonstrated available gauging technology." Emphasis added.

ADEC allowed APSC to delete longstanding tank leak alarm language that explained leaks would be detected while crude oil tanks were in operation, using a mass balance computation method capable of detecting a 3,000-barrel leak over an hour period. ADEC approved the replacement of that language with new language that states the mass balance system is only effective when the tanks operate in a static mode, which rarely occurs. ADEC claimed it was a technical improvement that leaks are now detected in static mode, with a capability of detecting a leak of 2,400 barrels per hour. ADEC ignored the fact that the tanks rarely operate in static mode, and rare opportunities to detect a leak do not constitute an improved system. Furthermore, a leak detection capability of 2,400 barrels per hour is nowhere stated in the approved plan.

ADEC's 2024 VMT C-Plan decision ignored the testimony provided by APSC Management (Mr. Morales) at the 2024 Property Tax Trial (included in the City's comments) that estimated hundreds of thousands of barrels could go undetected through a tank floor leak without APSC's knowing it is happening or having a method to rapidly identify the leak location. This grave admission from APSC Senior Management was completely unaddressed by ADEC.

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).

November 6, 2024, Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057; Plan Approval, Basis of Decision, Issue No. 5, Pages 8-10.[144]

February 24, 2025, Final Decision on Request for Informal Review of Renewal of Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057, Appeal Issue 6, Page 6.[145]

February 24, 2025, Final Decision on Request for Informal Review of Renewal of Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057, Appeal Issue 7, Page 6-7.[146]

[144] Attachment C at 8-10.
[145] Attachment D at 6.
[146] *Id.* at 6-7.

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

1. November 6, 2024, Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057; Plan Approval, Basis of Decision, Issue No. 5. ADEC responded to the City's comments on the plan in an incomplete way. The City raised three issues:

   (1) Is a 2% oil spill prevention credit warranted for an antiquated leak detection system installed on the crude oil storage tanks, that does not meet a best technology standard?[147]

   (2) Why was the longstanding language in the C-Plan deleted that requires a crude oil leak mass balance system (gauging system) to measure incoming and outgoing crude oil every 30 minutes (while the tanks were in operation) to detect a leak of 3,000 barrels over one hour?[148] The City was concerned that this longstanding commitment to a 3,000 barrel in one-hour leak detection threshold was abandoned and replaced with language that applied to leak measurements when the tanks are in static condition, which rarely occurs.

   (3) Testimony provided by APSC Management (Mr. Morales) at the 2024 Property Tax Trial provided compelling evidence that crude oil tank leaks may go undetected through the tank floor bottom are a grave concern to APSC Management.[149] Mr. Morales testified it was a "nightmare scenario" for him, where oil is leaking, and he doesn't have the ability to locate the leak. Morales testified: "That is a terrifying event to me. That is something I could see going over 500,000 barrels. I mean, and that idea terrified me. And I would not be able to control it. I would not know where on the terminal it's happening. It would be spilling out into Prince William Sound. . . [T]hat is my nightmare scenario because pinhole leaks, corrosion, definitely happens in our industry."[150]

   ADEC's 2024 VMT C-Plan Approval and Basis of Decision, Issue No. 5 (Leak Detection) sidestepped the City's comments and reframed the "Statement of Issue" to be "[d]oes the prevention plan include sufficient information to meet the regulatory requirements for leak detection?" ADEC did not address whether the 2% prevention credit was deserved for this antiquated system. ADEC did not address the fact that APSC management had raised grave concerns about the inability to detect leaks from the crude oil tanks, which could result in catastrophic spills. Nor did ADEC explain why longstanding C-Plan language was deleted.

   Instead, ADEC's Basis for Decision narrowly answered the question of whether APSC was required to have a leak detection system <u>at all</u> for the 48-year-old crude oil tanks. APSC concluded 18 AAC 75.065(h)(1) requires only one prevention measure, which can be a

[147] Attachment G at 39.
[148] *Id.* at 35.
[149] *Id.* at 38-39.
[150] Attachment AA: 2024 Property Tax Trial Transcript at 2927-2930 (Morales).

leak detection system, a cathodic protection system, or a thick film liner. ADEC concluded that because the tanks have a cathodic protection system, 18 AAC 75.065(h)(1) was satisfied with that single measure. ADEC stated that the crude oil tanks also had a "sensitive gauging system" that met 18 AAC 75.065(h)(1) as a second measure.

The crude oil tanks are not equipped with a "sensitive gauging system" that meets the 18 AAC 75.990(112) definition for a "sensitive gauging system." The gauging system installed on the crude oil tanks was approved by the department years ago as a leak detection system that met the criteria in 18 AAC 75.065(h)(1) for "other leak detection systems approved by the department," as it is not a "sensitive gauging system." For this reason, APSC describes it as a "gauging system" in the plan. The 2024 VMT C-Plan does not use the term "sensitive gauging system" for the "gauging system" used on the crude oil tanks.[151] A gauging system that can't detect a leak of less than 3,000 barrels per hour is not a sensitive gauging system.

ADEC's Basis of Decision claimed the 2024 VMT C-Plan now requires APSC to detect leaks at a 2,400-barrel-per-hour threshold, but this is found nowhere in the plan. The 3,000-barrel-per-hour threshold was deleted and not replaced.

ADEC's Basis of Decision went on to state that "[t]he plan now includes this update on the sensitivity of the leak detection system, 'The VMT static Crude oil tank leak detection method allows for determining a leak size with a minimum of 872 bbls.,[152] per one-tenth (0.10) of a foot range,' should a sudden leak develop on one of the active storage tanks." Yet, ADEC failed to understand the significance of this change, as the crude oil tanks are rarely in a static condition; therefore, the ability to detect a leak when tanks are static is rare.

ADEC's Basis of Decision acknowledged that no tank-bottom leak detection system is installed in the crude oil tanks and, incongruously, offered technicians walking around the tank and searching for leaks as an alternative. ADEC wrote:

> *APSC explains in Section 2.1.6.3 that there is no specific tank-bottom leak detection system, but technicians check the tank farm for any visual signs of leaks, such as oil on the grounds, and checks for the smell of oil in the dike cells when doing daily tank farm inspections.*[153]

Each crude oil tank is approximately one acre in size, a leak in the center of the tank floor would not be detected by "technicians checking the tank farm for any visual signs of leaks, such as oil on the grounds, and checks for the smell of oil in the dike cells when doing daily

[151] A search of the 2024 VMT C-Plan, Volume 1, located only one sentence in the 352-page volume that even used the term "sensitive gauging system" and that applied to fuel tanks, not the crude oil storage tanks. *See* Attachment F at 263.
[152] Barrels ("bbls").
[153] Attachment C at 10.

tank farm inspections" from a location outside the tank wall; hence the reason Mr. Morales has nightmares about large leaks going through the crude oil tank bottoms undetected.

ADEC's Basis of Decision concluded: "The department finds that APSC continues to meet requirements for aboveground oil storage tanks in 18 AAC 75.065(h)(1) and prevention plan requirements of 18 AAC 75.450(a) for regulated storage tanks at the VMT."

ADEC's Basis of Decision did not address whether the 2% prevention credit was deserved for this antiquated system, and did not address the fact that APSC management was raising grave concerns about the inability to detect leaks from crude oil tanks that could result in catastrophic spills.

2. February 24, 2025, Final Decision on Request for Informal Review of Renewal of Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057, Appeal Issue 6, Page 6.[154]

   ADEC's Informal Review doubled down on the claim that the crude oil storage tanks met the "sensitive gauging system" standard of 18 AAC 75.990(112) claiming that the static leak detection system it approved meets "the **best** demonstrated **available gauging technology at the time of the tank construction** or substantial reconstruction, or initial gauging system installation."[155] Emphasis added. ADEC did not explain how this was true. ADEC did not reference anywhere in the approved 2024 VMT C-Plan that provides proof that this standard is met, because there is nothing in the approved plan that states this standard is met.

   ADEC's Informal Review concluded there is no requirement for 48-year old crude oil tanks installed in 1976 to meet a best available technology review for crude oil tank leak detection, but did not explain how its unverified, unsupported claim that the current system meets the "sensitive gauging system" standard of 18 AAC 75.990(112) that requires "the **best** demonstrated **available gauging technology at the time of the tank construction** or substantial reconstruction, or initial gauging system installation." Emphasis added. A gauging system that can't detect a leak under 2,400 barrels or 3,000 barrels per hour doesn't meet the best demonstrated available gauging technology, not even for technology available in 1976 or when the tank bottoms were replaced. For example, leak detection systems such as a secondary catchment under the tank with a leak detection sump to collect and measure leaks, were the best demonstrated available gauging technology at the time of the tank construction in 1976, but were not installed. Other improved sensitive gauging technology was available, and hydrocarbon sensing technology was available when the tanks were reconstructed and tank floor bottoms were completely replaced in all the tanks, but were not installed.

[154] Attachment D at 6.
[155] *Id.* at 6.

February 24, 2025, Final Decision on Request for Informal Review of Renewal of Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057, Appeal Issue 7, Page 6-7.[156] ADEC's Informal Review incorrectly concluded that "[t]he comments submitted by Valdez were appropriately considered and addressed by the Division as required by law;" as explained above, they were not.

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).

The City's appeal will resolve this wrongly decided issue and result in a logical, consistent, and technically supported agency decision.

ADEC incorrectly decided the 2024 VMT C-Plan without considering all applicable statutory and regulatory requirements that must be met to grant a 2% prevention credit. The agency's decision must be revised to meet all applicable statutes and regulations and provide the public with evidence to support that decision. Removal of the undeserved prevention credit will result in a revision to Scenario 5, improving APSC's ability to respond to crude oil tank leaks.

ADEC incorrectly decided that the 2024 VMT C-Plan states the crude oil tank gauging system meets the definition of 18 AAC 75.990(112) when it does not; this must be corrected.

ADEC incorrectly decided that the 2024 VMT C-Plan states the crude oil tank gauging system can detect a 2,400-barrel leak in an hour; however, this is not stated in the plan and must be corrected.

The City makes specific recommendations for correcting the agency's wrongly decided approval in section (g) below.

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.**

Valdez citizens were adversely impacted by the *Exxon Valdez* spill. ADEC is charged with ensuring all applicable regulatory requirements governing the VMT C-Plan are satisfied. To

[156] Attachment D at 6-7.

the extent that such regulatory requirements are not satisfied, Valdez and its citizens are unreasonably exposed to the harms of oil spills at the VMT.

A crude oil spill at the VMT poses catastrophic environmental and economic repercussions for Valdez, its citizens, and all Alaskans. Valdez seeks to ensure that the VMT C-Plan includes requirements and planning standards that protect the City and its citizens from the harm of oil spills. As evidenced by the *Exxon Valdez* oil spill, the implications of oil spills from facilities and tankers involved in the transporting crude oil through TAPS are dire. The *Exxon Valdez* oil spill demonstrated the inability of the oil industry to regulate itself and the need for robust State laws to provide adequate protections against oil spills and ensure that adequate response capabilities are maintained to minimize the harm of oil spills when they do occur.

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).

On October 11, 2024, the City submitted comments to ADEC on the 2024 VMT C-Plan Renewal. The City opposed APSC's revision of the plan to eliminate longstanding language about how the leak detection system worked, including revisions that reported significant reductions in leak detection capability. The City raised technical concerns that were not addressed by ADEC. The City opposed ADEC's granting a 2% oil spill prevention credit for a crude oil tank leak detection system that does not meet a best technology standard.[157]

On November 26, 2024, the City submitted an Informal Review Request to ADEC on the 2024 VMT C-Plan Renewal. The City raised technical concerns about the crude oil tank leak detection system, and changes to the plan language that did not appear to be improvements, which were not addressed by ADEC. The City opposed APSC's obtaining a 2% oil spill prevention credit for a crude oil tank leak detection system that does not meet a best technology standard.[158]

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.

The City requests ADEC's 2024 VMT C-Plan decision, and the 2024 VMT C-Plan be revised to meet all the suggested alternative terms and conditions listed in the City's response to Contested Issue No. 1(g) 'and Contested Issue No. 2(g). Additionally:

[157] Attachment G at 36-46.
[158] Attachment D at 8.

1. VMT C-Plan, Volume 1, Sections 5.1 and 5.2, be revised to remove the State's 2% prevention credit for leak detection. APSC has provided no evidence the credit was deserved. Moreover, ADEC cited no evidence to support its decision to award the credit.

2. VMT C-Plan, Volume 2, Scenario 5, be revised to add personnel and equipment to meet the higher 72-hour Response Planning Standard volume when the credit is removed.

3. VMT C-Plan, Volume 3, be revised to include tactics and equipment necessary to meet the revised Scenario 5 described above.

4. VMT C-Plan, Volume 1, Section 2.1.5, be revised to clearly state that a 2,400 barrel per hour leak detection capability exists, as ADEC claims to exist in the plan, but it does not.

5. VMT C-Plan, Volume 1, Section 2.1.5, be revised to clearly state what the 3,000 barrel-per-hour leak detection capability has changed to <u>when the crude oil tanks are operating</u>. The approved plan lists a <u>static</u> crude oil tank leak detection method to determine the leak size with a minimum threshold of 872 barrels, per one-tenth (0.10) of a foot range; however, it does not specify the barrels per hour detection when the tanks are not static. ADEC should clearly state what it approved (in barrels per hour when the tanks are operating) and the technical and regulatory basis for approving the change.

6. VMT C-Plan, Volume 1, Section 2.1.5, be revised to clearly state the total number of barrels that could spill into the environment using the new "<u>static</u> crude oil tank leak detection method to determine a leak size with a minimum threshold of 872 bbls., per one-tenth (0.10) of a foot range." The plan should specifically state the amount of oil that would equate to, so all citizens of Valdez can clearly understand what was approved, and state how many hours a year tanks are static and how this measurement would actually be implemented.

7. VMT C-Plan, Volume 1, Section 2.1.5, be revised to clearly state the number of hours in a year the crude oil tanks <u>do not</u> operate in a "static" mode, and are <u>not</u> gauged by the "<u>static</u> crude oil tank leak detection method."

8. VMT C-Plan, Volume 1, Section 2.1.5, be revised to clearly state that the crude oil tank gauging system does not meet the 18 AAC 75.990(112) definition for a "sensitive gauging system," and that the crude oil tank gauging system actually meets a lesser standard of a gauging system under 18 AAC 75.065(h)(1) "<u>other</u> leak detection system approved by the department," which does not warrant granting a 2% oil spill prevention credit to an antiquated 48-year old system that cannot detect a leak when the tank is in operation of less than 3,000 barrels per hour (or 2,400 barrels per hour if ADEC can provide evidence that this new value is correct).

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.

AS 46.04.030(m) provides the department the authority to consider oil discharge prevention measures and to make exceptions to the planning volume established by AS 46.04.030(k)(1) "to reflect the reduced risk of oil discharges from the facility." AS 46.04.030(m) provides:

> *When considering whether to approve or modify a contingency plan, the department may consider evidence that oil discharge prevention measures such as double hulls or double bottoms on vessels or barges, secondary containment systems, hydrostatic testing, enhanced vessel traffic systems, or enhanced crew or staffing levels have been implemented, and, in its discretion, may make exceptions to the requirements of (k) of this section to reflect the reduced risk of oil discharges from the facility, pipeline, vessel, or barge for which the plan is submitted or being modified.*

Granting credit for crude oil tank leak detection is not specifically listed in the statute.

An oil spill prevention credit of up to 5% is allowed under 18 AAC 75.432(d)(3) for: online leak detection systems for crude oil tanks located at oil terminal facilities for tanks that automatically alarm at a facility control room that is continuously monitored.

The crude oil tanks were installed in 1976 and have an antiquated leak detection system that was historically reported in the VMT C-Plan as having the capability to measure incoming and outgoing crude oil (mass balance) and to detect a leak that had to exceed 3,000 barrels per hour. Historically, ADEC has awarded a 2% credit for the antiquated system, without explanation for why the credit was deserved, or why it applied a 2% credit rather than 5%.

VMT C-Plan, Volume 1, Section 2.1.5 and VMT C-Plan, Volume 1, Part 5, provide no technical or regulatory justification or explanation for the 2% credit; nor does ADEC provide justification or explanation in its 2024 VMT C-Plan Approval and Basis of Decision.

The City opposed wholesale changes to the longstanding technical language in the VMT C-Plan, which has been reviewed and approved by ADEC over many years, describing the gauging system used for the crude oil storage tanks. ADEC approved deletion of many paragraphs of language explaining how the system was designed to work and its capabilities, or lack thereof.

Previously approved VMT C-Plan language that was deleted requires a leak threshold of 3,000 barrels per hour as the trigger to initiate leak investigation. An allowable leak rate of 3,000 barrels per hour through the base of a crude oil storage tank is not a "sensitive gauging system." The inability to detect a leak through the floor of a crude oil tank before 3,000 or more barrels of crude oil (144,000 gallons) is plainly an inadequate gauging system that should not be the source of reductions in RPS volumes. ADEC dismissed the City's concerns and did

not provide a cogent explanation for why this longstanding language describing the antiquated gauging system was replaced with an even less effective gauging system that is only useful if the tanks are operating in a rare static condition.

Unable to provide a technical or regulatory explanation for allowing APSC to weaken the VMT C-Plan crude oil tank gauging system language, ADEC's 2024 VMT C-Plan Basis of Decision argued that the 1976 crude oil storage tanks are not even required to have tank bottom leak detection because cathodic protection installed for the tanks satisfies under 18 AAC 75.065(h)(1), so it didn't matter anyway.

ADEC's February 24, 2025 Informal Review decision then argued that the 1976 crude oil tanks and gauging system are so old that they don't have to meet any best technology standard, which is untrue if the agency is accounting for a gauging system to meet a "sensitive gauging standard" which ADEC claims exists. It also matters if ADEC assigns a 2% credit to that system.

State regulation defines a "sensitive gauging system" at 18 AAC 75.990(112), which means exactly that: "the best demonstrated available gauging technology at the time of the tank construction or substantial reconstruction, or initial gauging system installation." Emphasis added. Therefore, "sensitive gauging systems" must meet a "best demonstrated available gauging technology" when the tank was constructed or reconstructed. Nothing in the approved plan or ADEC's decision provides technical evidence that 18 AAC 75.990(112) is met.

ADEC's 2024 VMT C-Plan Approval and Basis of Decision stated that: updates were made to the 'sensitive gauging system for the East Tank Farm."[159] A search of the VMT C-Plan finds no term "sensitive gauging system." There is a crude oil tank "gauging system" that does not meet 18 AAC 75.990(112) and does not warrant a 2% credit.

The crude oil storage tanks were field-constructed in 1976 and are required to meet 18 AAC 75.065(h)(1), which requires field-constructed oil storage tanks to be equipped with leak detection or spill prevention systems. While the City agrees that VMT C-Plan, Volume 1, Section 2.1.5.4 states the 1976 vintage crude oil storage tanks are protected with cathodic protection systems that meet API RP 651 and NACE SP0193-2016,[160] the City does not agree that APSC lists sensitive gauging as the technology used to meet 18 AAC 75.065(h)(1) for the crude oil storage tanks. This is not what the VMT C-Plan says at all. To the contrary, APSC clearly states in the VMT C-Plan "[t]here is no specific tank-bottom leak detection system" for the crude oil storage tanks.[161] The 1976 vintage crude oil storage tanks do not satisfy 18 AAC 75.065(h)(1)(A). There is no "leak detection system that an observer from outside the tank can use to detect leaks in the bottom of the tank."

[159] Attachment C at 8-10.
[160] Attachment F at 84.
[161] *Id.* at 83.

The only use of "sensitive gauging" in the VMT C-Plan is to meet the leak detection requirements for fuel storage tanks, not the 1976 vintage crude oil storage tanks. VMT C-Plan, Volume 1, Section 4.6 clearly states: "Leak detection for fuel storage tanks is achieved via tank volume monitoring procedures using tank gauging systems. APSC complies with 18 AAC 75.065(h)(1)(A) by using a sensitive gauging system."

Compliance with fuel storage tank leak detection "using a sensitive gauging system" has nothing to do with compliance with crude oil storage tank leak detection. The City raised issues about the crude oil storage tanks, not the fuel tanks.

VMT C-Plan, Volume 1, Section 2.1.5.3 states the 1976 vintage crude oil storage tanks are equipped with "gauging systems," but they are not "sensitive gauging systems."[162] The City's comments on the VMT C-Plan raised concerns that: (1) the existing gauging systems are not best available technology for leak detection, (2) the VMT C-Plan crude oil leak detection language that had existed had been mostly deleted and replaced with language that did not explain the capability of the antiquated gauging system, (3) that the gauging system is ineffective during normal operations because the system requires the tank liquid levels to be static which rarely occurs during normal operations, and (4) that an oil spill prevention credit of 2% should not be applied to an antiquated system that does not meet best technology.

ADEC's February 24, 2025 response to the City's Information Review Request denied that APSC must meet a best technology standard for leak detection, but pointed the City to the definition of "sensitive gauging system" at 18 AAC 75.990(112) which means exactly that: "the best demonstrated available gauging technology at the time of the tank construction or substantial reconstruction, or initial gauging system installation."[163] Emphasis added. Leak detection systems, such as a secondary catchment under the tank with a leak detection sump to collect and measure leaks, for example, were best demonstrated available gauging technology at the time of the tank construction, but were not installed.

The City and its citizens have expressed concern about the lack of best available gauging technology and leak detection for the crude oil tanks for years through its participation in PWSRCAC. When the tanks were inspected, cleaned, and the tank bottoms replaced ("substantial reconstruction"), ADEC did not require best demonstrated available gauging technology at the time of the tank's substantial reconstruction. There was no analysis of under- or near-the-tank perimeter hydrocarbon sensing systems; no analysis of more accurate leak detection systems using acoustic technology or improved sensitive gauging methods; and no analysis of double tank floors with interstitial hydrocarbon sensing technology.

Instead, for many, many years, APSC has included a paragraph in the VMT C-Plan which explained that crude oil tank leaks are examined once every 30 minutes, and only triggers VMT personnel to start investigating leaks that exceeded 3,000 barrels in a one-hour period, and the

[162] Attachment F at 82. (Emphasis added).
[163] Attachment D at 6.

Operations Control Center ("OCC") controller would expect to take more serious investigative action if a leak of 3,000 barrels continued for a 24 hour period. APSC deleted all this language from the plan, and the agency approved the deletion, without evidence of need for the change.

As approved, the 2024 VMT C-Plan does not specify the accuracy of the current crude oil tank gauging/mass balance system during routine operations. Instead, the VMT C-Plan now states that a "static crude oil tank leak detection method allows for determining a leak size with a minimum of 872 bbls., per one-tenth (0.10) of a foot range," which means little to the average citizen. The plan does not clearly articulate how many barrels would actually leak through the tank bottom before this gauging system actually detected a leak.

Furthermore, in normal operations, the crude oil levels in the tank are not static. The ability to detect a leak in an isolated, static crude oil tank is not representative of the normal operating conditions of the crude oil volume-tracking system, which measures incoming crude, the amount of oil stored in the tanks, minus the oil loaded onto the tankers. Incoming crude from the pipeline, oil storage, and tanker loading is routinely in a state of flux.

The City commented that even APSC's leadership (Mr. Morales, who is responsible for managing all oil spill prevention and response issues at the terminal and along the pipeline) is gravely concerned about undetected pinhole or corrosion leaks in the crude oil tanks that could spill hundreds of thousands of barrels undetected. At the 2024 Superior Court Property Tax Trial, Mr. Morales testified:

> *I don't like talking about these things. This is actually a nightmare scenario of mine. Corrosion, pinhole leaks terrify me because they happen and you're not aware they happened. Two simultaneous tanks having a corrosion failure pinhole leak can go on for weeks, months, a long time. Say it happened in the floor, it would fill up that volume underneath the tank with crude oil, and it would be sitting there for long periods of time on the liner. It would inevitably migrate, perhaps on top of the liner, perhaps through the ring wall, perhaps through the liner, and would start to propagate out under the terminal . . . this could easily get to be hundreds of thousands of barrels. . . .And then something changes, right? We have a heavy rain event, corrosion events, pinhole leaks. Again, they terrify me because it's corrosion-based. They get worse. So the worst even could be it splits. Suddenly the volume increases . . . And this is why it's a nightmare event. I know I've got crude oil, I know it's made it to tidewater, and I have no idea on our thousand-acre facility on the terminal were that oil came from, right?. . . suddenly I've got oil coming out from the ground appearing into my system, appearing in tidewater, and I have an entire terminal that I don't know how to control this leak. I don't know where it came from . . . So it could be happening in tankage. We could probably figure out pretty quickly if it was coming out through the sides, but it would be much more difficult to verify if it was coming out through the bottom. And in searching for this leak, I have to worry about putting people at health risk, right, ignition risk. If I've got crude oil, I've got vapors. That is a terrifying event to me. That is something*

> *that I could see going over 500,000 barrels. I mean, and that idea terrified me. And I would not be able to control it. I would not know where on the terminal it's happening. It would be spilling out into Prince William Sound. . . . that is my nightmare scenario because pinhole leaks, corrosion, definitely happens in our industry. It happened quite a bit.*[164] *[Emphasis added].*

Based on APSC's leadership's impassioned testimony at the 2024 Property Tax trial, and grave concern about large leaks going undetected from the crude oil storage tanks because the tanks lack the technology to identify leaks through the tank bottoms, it is bewildering to the City, why APSC proposed to delete the existing crude oil detection language trigging investigations for spills exceeding 3,000 barrels in a one-hour period and why ADEC awards a 2% credit to a system that APSC's management does not trust to detect catastrophic tank spills.

In sum, ADEC has long allowed APSC to operate an inadequate crude oil storage tank leak detection system that does not detect leaks through the tank bottom. ADEC should not allow APSC to further weaken leak detection provisions in the VMT C-Plan and should not award a 2% prevention credit for such an ineffective system.

(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)).

N/A

Contested Issue No. 5

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

The State takes the lead role in working with applicants to develop and renew C-Plans for regulated facilities in Alaska that must comply with State and federal laws and regulations. Scenario 6, as approved by ADEC in the 2024 C-Plan, does not meet State or federal laws or regulations.

As the lead agency under AS 46.04 and cooperating agency under the TAPS Grant and Lease, ADEC cannot unilaterally make changes to the C-Plan that are not in compliance with State and federal laws and regulations.

AS 46.04.020(e) requires ADEC to enter into agreements with federal agencies to provide for a cooperative State and federal C-plan review and to coordinate effective oil discharge prevention and response in Alaska. In fulfilling its responsibilities under AS 46.04.020(e), ADEC is required to consult with the City in accordance with AS 46.04.020(f).

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[164] Attachment AA. 2024 Property Tax Trial Transcript at 2927-2930 (Morales).

The Alaska legislative findings for AS 46.04 in the attached session law (ch 116 SLA 1980) state that it is Alaska State policy to ensure facility operators have sufficient resources and capabilities to respond to discharged oil:

> *[I]t is the policy of the state that, to the maximum extent practicable, prompt and adequate containment and cleanup of oil discharges is the responsibility of the discharger; it is therefore of the utmost importance to assure that those engaged in oil storage, transfer, transportation, exploration, and production operations have sufficient resources and capabilities to respond to oil discharges.*[165]

The legislative intent behind AS 46.04 requires ADEC to handle hazards and threats posed by oil storage and transfer facilities (such as the terminal) consistent with the National Contingency Plan (promulgated at 40 CFR Part 300) and to cooperate with all State and federal agencies. Specifically, the legislature provided:

> *[T]o exercise the police power of the state through the Department of Environmental Conservation by conferring upon the department the authority and capability to deal with the hazards and threats posed by oil storage, transfer, transportation, exploration and production operations in a manner which is not inconsistent with the National Contingency Plan (33 U.S.C. sec. 1321(c)) and to encourage and ensure, in accordance with 33 U.S.C. sec. 1321, cooperation with the United States Coast Guard and other state and federal departments and agencies; to require, through the maximum practicable use of private services and resources, the prompt containment and cleanup of oil discharges.*[166]

Additionally, TAPS Grant and Lease Exhibit E, established a "Cooperative Agreement between United States Department of the Interior and State of Alaska," which requires State and federal agencies to engage in "regular exchange of information" regarding "compliance in the field" and "to provide maximum protection of the environment" and that "the Parties will make every reasonable effort to ensure that construction and operation methods and activities will be planned and executed so as to minimize environmental degradation."[167] ADEC's 2024 VMT C-Plan renewal largely ignores those mandates.

During the 2024 VMT C-Plan renewal process, APSC proposed dismantling Scenario 6 to avoid property tax paid to the City. This occurred because Scenario 6 (the State's greatest possible discharge, and federal worst-case discharge scenarios) is key in tax litigation with the City. Because APSC was unsuccessful in its recent 2019-2022 tax appeals before the State Assessment Review Board (based on the language contained in the VMT C-Plan),

[165] Attachment AB: Ch. 116 SLA 1980, at 4-5.
[166] Attachment AB at 4-5.
[167] Attachment X: Renewal of the Agreement and Grant of Right-of-Way for the Trans-Alaska Pipeline and Related Facilities, 2003, Part 2, at 52.

APSC proposed and ADEC approved modifications to Scenario 6, PRAC Certificates, and other sections of the VMT C-Plan to avoid future taxation.

During the several-year-long review process, ADEC did not stop APSC's proposed dismantlement of Scenario 6. Further, ADEC did not make meaningful requests for additional information regarding the basis for the significant changes proposed by APSC to Scenario 6, which removed language required by State and federal agencies for decades.

In response to complaints by the City, ADEC imposed Condition of Approval No. 3 requiring the following language to be returned to Scenario 6:

> *The size and cause of such a catastrophic spill would be difficult to pinpoint, but for planning purposes two potential spills could be envisioned. The first could involve the simultaneous failure of two tanks in the same secondary containment area, with failure of the secondary containment. This could theoretically put 500,000 - 900,000 bbls of oil into the environment. This is an extremely low probability event.*
>
> *The second potential spill could be the failure of piping in the manifold to berth section of pipe while four tanks are open to the manifold all at the same time. Accompanying this failure, would be failures of the manifold valves and tank fill valves. These valves would have to be manually operated so a spill could conceivably be of the order of 250,000 to 400,000 bbls. This is also an extremely low probability event.*[168]

While Condition of Approval No. 3 returned a portion of Scenario 6 to the status quo, it did not adequately address the whole host of Scenario 6 defects that the City raised. Foremost, Scenario 6 does not comply with 18 AAC 75.451(*l*). The provisions of 18 AAC 75.451(*l*) require the plan to include "a list of resources, in addition to those maintained by the plan holder or available under contract to meet the applicable response planning standard for that facility or operation, that may be used in responding to the greatest possible discharge." [Emphasis added].

Scenario 6 does not reflect the "greatest possible discharge" for this facility, which is a spill of 6,124,527 barrels, not 900,000 barrels. And, with the APSC PRAC Certificate removed from the C-Plan (Contested Issue No. 3), there is no complete list of equipment available for the response, and no evidence of the contractual commitment required by federal regulation. The provisions of 40 CFR 112.20(h)(3)(iii) require "[e]vidence of contracts or other approved means for ensuring the availability of such personnel and equipment." ADEC's decision ignored these requirements.

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).

[168] Attachment A at 2.

November 6, 2024, Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-405,7; Plan Approval, Page 1. "The department has determined your plan is consistent with the applicable requirements of the referenced regulations."[169]

November 6, 2024, Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057; Plan Approval, Page 2. Condition of Approval 3.[170]

November 6, 2024, Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057; Plan Approval, Basis of Decision, Issue No. 13, Pages 30-33.[171]

February 24, 2025, Final Decision on Request for Informal Review of Renewal of Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057, Appeal Issue 2 and 3, Pages 3-5.[172]

February 24, 2025, Final Decision on Request for Informal Review of Renewal of Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057, Appeal Issue 7, Pages 6-7.[173]

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

1. November 6, 2024, Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057; Plan Approval, Page 1. "The department has determined your plan is consistent with the applicable requirements of the referenced regulations."[174] ADEC wrongly decided that revisions to Scenario 6 were consistent with the applicable requirements of the referenced regulations, for the reasons that follow:

    a. The Scenario Description Table included in the currently approved version of the VMT C-Plan states that Volume 2, Scenario 6 was developed by APSC to meet 18 AAC 75.430 and 33 CFR 154.1035. This table is incomplete because it does not list all applicable federal standards, including those of the Environmental Protection Agency ("EPA") or the U.S. Department of Transportation ("DOT"). The Scenario Description Table should list the following State and federal requirements: AS 46.04, 18 AAC 75.430, 18 AAC 75.448(b), 18 AAC 75.449(a)(10), 33 CFR 154.1035(b)(2)(i), 33 CFR 154.1035(b)(2)(ii), 40 CFR 112.20(h)(5)(i), and 49 CFR 194.105(b)(3). APSC has also proposed to delete the word "Scenario" from the term "Scenario 6." Federal regulations require the response plan to include a Worst-Case Discharge planning *scenario*. The term, "Scenario" cannot be deleted from "Scenario 6" and meet the federal regulations. The State is a cooperating agency under the TAPS Grant and Lease, and the lead agency under AS 46.04.020(e), coordinating a combined State and federal required C-Plan.

[169] Attachment A at. 1.
[170] *Id.* at 2.
[171] Attachment C at 30-33.
[172] Attachment D at 3-5.
[173] *Id*. at 7.
[174] Attachment A at 1.

ADEC unilaterally made changes to the C-Plan that are not in compliance with federal laws and regulations and the TAPS Grant and Lease. There is no evidence of the required coordination with federal agencies during the revision and approval process.

b. The Scenario 6 oil spill scenario must address the greatest possible discharge that could occur at the VMT. The greatest possible discharge is a spill from all 14 ETF tanks. Scenario 6 must be revised to address a spill of all 14 tanks.

c. Scenario 6 must clearly identify response resources under APSC's control that are located in Alaska and immediately available. APSC's PRAC Certification includes such a list. As explained in Contested Issue No. 3, the inclusion of APSC's PRAC Certification provided a complete list of TAPS-owned, contracted, and subcontracted equipment located in Alaska and immediately available during a catastrophic spill must be listed in the VMT C-Plan. ADEC wrongly purged APSC's PRAC Certification from the VMT C-plan; therefore, "a list of resources" in addition to those required for the 72-hour Response Planning Standard scenario (Scenario 5) that may be used in responding to the greatest possible discharge (18 AAC 75.451(*1*)) no longer appears in the plan.

d. The approved 2024 VMT C-Plan does not identify the greatest possible discharge that could occur at the facility or operation.

e. The approved 2024 VMT C-Plan does not identify the general procedures necessary to respond to the greatest possible discharge. There is insufficient instruction in Scenario 6 to guide a responder or the on-scene coordinator.

f. The approved 2024 VMT C-Plan does not explain how APSC, as the common operating agent for the holder and lessees of the right-of-way agreement for the Trans Alaska Pipeline System, will immediately contain and clean up a discharge or threatened discharge regardless of size.

g. The approved 2024 VMT C-Plan does not provide sufficient information to be a usable working plan for oil discharge control, containment, cleanup, and disposal with enough information, analyses, supporting data, and documentation to demonstrate the plan holder's ability to meet the requirements of AS 46.04.030 to respond to any size spill up to and including the greatest possible discharge.

h. The approved 2024 VMT C-Plan does not contain sufficient detail in the response action plan to clearly guide responders and the on-scene coordinator in an emergency event, including the general procedures to be followed in responding to the greatest possible discharge that could occur at a facility.

i. The approved 2024 VMT C-Plan does not contain sufficient information to ensure that there are necessary general procedures or resources to protect environmentally sensitive areas before they are oiled by the greatest possible discharge.

j. The approved 2024 VMT C-Plan does not expressly reference in Volume 2, Section 6, "a list of resources" in addition to that required to "meet the applicable response

planning standard . . . that may be used in responding to the greatest possible discharge." The list of resources should include, at a minimum, all equipment under Alyeska's control, including the quantity and identifying information for all 4517 and 3212 tugs, as well as OSRB-1 and OSRB-2.

2. November 6, 2024, Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057; Plan Approval, Page 2. Condition of Approval 3.[175]

As explained in the City's response to Contested Issue No. 5(a) and (h), Condition of Approval No. 3 responded to the City's complaint, in part, but did not address all the Scenario 6 issues raised. The 2024 VMT C-Plan is a joint State and federal oil spill prevention and response plan that meets the obligations of the State and a number of federal agencies. ADEC does not have the authority to remove sections of the plan that are required to meet federal laws and regulations. Instead, Alaska has an express duty to coordinate and cooperate with the federal government on matters involving the TAPS Grant and Lease and federal requirements. ADEC has an express duty to lead and coordinate joint State and federally required C-Plan applications and renewals in the State, to ensure the C-Plan is not dismantled to remove longstanding language that complies with federal laws and regulations, and to coordinate with appropriate federal agencies when a local government raises serious concern about compliance with State and federal standards. ADEC has a specific compliance obligation to consult with local governments under AS 46.04.020(f). There is no evidence in ADEC's review or approval process of the required federal consultation and coordination, and there is no evidence that ADEC addressed the City's concerns with the federal agencies. For example, ADEC's Basis for Decision could have explained that it coordinated the City's concerns with the federal agencies and that the federal agencies recommended the City be ignored. However, ADEC ignored the City's concerns, did not coordinate with the federal agencies, and concluded it was not ADEC's responsibility.[176]

3. November 6, 2024, Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057; Plan Approval, Basis of Decision, Issue No. 13, Pages 30-33.[177]

ADEC's Basis of Decision related to Scenario 6 stated:

> *The department also received comments from the City of Valdez to revise Scenario 6 (Section 6) to fully identify the procedures needed to respond to the greatest possible discharge. Scenario 5 provides the procedures and processes APSC could use to respond to an RPS size response as required by 18 AAC 75.449(a)(6), the*

[175] Attachment A at 2.
[176] As noted elsewhere in this request, ADEC's decisions simply deferred to the bald assertions of APSC. ADEC simply took "as true all information provided by the applicant." (*Id.* at 4).
[177] Attachment C at 30-33.

procedures to respond to the greatest possible discharge would continue to follow procedures identified in Scenario 5 using all available resources.

Nothing in the approved 2024 VMT C-Plan version of Scenario 6 states that the procedures and processes listed in Scenario 5 would be used to respond to Scenario 6 "using all available resources" to APSC and the TAPS Owners. The City searched the approved plan and found no approved language in Scenario 6, or at any other location in the plan, which states that intent.

4. February 24, 2025, Final Decision on Request for Informal Review of Renewal of Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057, Appeal Issue 2 and 3, Pages 3-5.[178]

   a. ADEC's Informal Review response to the City's appeal concluded, without evidence:

      The Division determines that Volume 2, Section 6 complies with state regulatory requirements.[179]

      ADEC did not explain how the revised Scenario 6 complies with State regulatory requirements. It is wholly inadequate for ADEC to respond to the City's appeal with a dismissive response that the requirements were met, with no explanation of how it complies. ADEC is required to specifically explain how it made this determination. ADEC's Basis for Decision does not meet this standard. Instead, ADEC appears to have deferred to APSC without proper investigation or analysis.

   b. ADEC's Informal Review response to the City's appeal ignored ADEC's responsibilities as the lead agency responsible for coordinating C-Plans required in Alaska:

      [T]he Division does not verify compliance with other agency requirements, including those imposed by federal agencies, when approving a plan.[180]

      ADEC has failed to satisfy its responsibility as lead coordinator of the C-Plans to coordinate with federal agencies as required by State and federal laws and the TAPS Grant and Lease Cooperative Agreement.

   c. ADEC's Informal Review response to the City's appeal ignored ADEC's responsibilities as the lead agency responsible for coordinating C-Plans required in Alaska:

[178] Attachment D at 3-5.
[179] *Id.* at 3.
[180] *Id.*

APSC is not obligated under 18 AAC 75 to include a description of the federal "Worst-Case Discharge" in the plan.[181]

ADEC does not address the fact that the VMT C-Plan is a joint State and federal C-Plan that is intended to meet all State and federal requirements. APSC is obligated to coordinate with federal agencies and, under federal requirements, include a Worst-Case Discharge oil spill scenario in the VMT C-Plan. The federal Worst-Case Discharge oil spill scenario has been Scenario 6 for decades. ADEC does not have the authority to allow APSC to remove and dispose of Scenario 6 entirely without federal agency consultation and concurrence. ADEC retitled Scenario 6 to be "General Provisions in the Event of a Spill Above RPS Quantities." This is State nomenclature that ignores federal regulations requiring the inclusion of an oil spill scenario that meets a federal Worst-Case Discharge standard.

d. ADEC's Informal Review response to the City's appeal concluded, without evidence:

Under 18 AAC 75.449(a)(10), the plan must include general procedures to respond to the greatest possible discharge that could occur at the facility. The VMT plan Volume 2 Section 6 includes the required information to meet this regulation.[182]

ADEC did not explain how the revised Scenario 6 complies with State regulatory requirements. It is wholly inadequate for ADEC to respond to the City's appeal with an unsupported response stating simply that the requirements were met. ADEC should explain how it complies based upon technical and regulatory analysis. ADEC's Basis for Decision does not meet this standard.

e. ADEC's Informal Review response to the City states the greatest possible discharge is equivalent to the spill amounts listed in the plan (up to 900,000 barrels) with no evidence to support that decision:

APSC is required to identify the greatest possible discharge considering operational, physical, and environmental risks associated with the facility operation, and the Division finds that APSC has taken these local factors into consideration. The catastrophic spill amounts listed in the plan, which are spill amounts used in previously approved plans, continue to meet the planning requirement of greatest possible discharge for the VMT facility.[183]

ADEC's Informal Review points to Condition of Approval No. 3, which was required in response to the City's complaints that during the multi-year review, ADEC staff did not object to or address APSC's proposed removal of all volumes contained in Scenario

[181] Attachment D at 3.
[182] *Id.* at 4.
[183] *Id.*

6. It was through the City's objection that Scenario 6 volumes were actually retained. However, Condition of Approval No. 3 is inadequate to address the City's appeal, which argued a 900,000-barrel spill is not the "greatest possible discharge." The City contends the greatest possible discharge is a simultaneous spill from all 14 tanks still in operation, which the City estimates at 6,124,507 barrels. A spill of that magnitude is 23 times larger than the 1989 *Exxon Valdez* oil spill (257,000 barrels).

ADEC's response to the City's appeal did not provide any technical or scientific evidence to show how ADEC arrived at the 900,000-barrel spill volume or how ADEC is convinced that the greatest possible spill from the terminal could never be higher than 900,000 barrels.

A spill of 900,000 barrels is less than the volume of two crude oil storage tanks; yet, 14 crude oil storage tanks are currently permitted to operate with a potential combined spill volume of 6,124,507 barrels. ADEC did not include any reference to any technical, scientific, or regulatory basis to support its conclusion.

f. ADEC's Informal Review response to the City provided contradictory responses to Contested Issues 2 and 3.

In ADEC's response to Appeal Issue 3, involving which equipment must be identified in Scenario 6, ADEC cited the actual regulatory requirement that clearly requires the plan to include a list of resources that may be used in responding to the greatest possible discharge:

> *18 AAC 75.451(l) requires the plan to include "a list of resources, in addition to those maintained by the plan holder or available under contract to meet the applicable response planning standard for that facility or operation, that may be used in responding to the greatest possible discharge."*[184] *[Emphasis added].*

Then, in ADEC's response to Appeal Issue 3 involving which equipment must be identified in Scenario 6, ADEC wrongly concluded:

> *The Division finds that these identified resources are sufficient and that it is not necessary for APSC to also identify all resources under its control in order to meet 18 AAC 75.451(l).*[185] *[Emphasis added].*

ADEC's response to Appeal Issue 2, involving which equipment must be identified in Scenario 6, was also wrongly concluded:

[184] Attachment D at 4.
[185] *Id.* at 5.

[T]he plan is also not required to identify all response resources under APSC's control that are in Alaska and immediately available.[186] *[Emphasis added]*.

It is illogical for ADEC to cite 18 AAC 75.451(*l*), which requires the plan to include a list of resources that may be used in responding to the greatest possible discharge and then conclude that it is not necessary for APSC to identify all resources under its control in order to meet 18 AAC 75.451(*l*).

The "applicable response planning standard" for the VMT C-Plan is the 72-hour Response Planning Standard for a spill of one crude oil tank (Scenario 5). The provisions of 18 AAC 75.451(*l*) require the plan to include a list of resources in addition to those for Scenario 5 to respond to the greatest possible discharge (Scenario 6). Scenario 6 needs to be improved to clearly list the equipment and resources already located in Alaska and on contract to APSC (acting as an agent for the TAPS Owners) that would be readily available for response to a catastrophic Scenario 6 sized spill; additionally, more specificity is needed about the plan to bring in other resources by type and from where those resources would be sourced. The purpose of having the greatest possible discharge oil spill scenario is to put some real thought and rigorous planning into how APSC would actually respond. Scenario 6 is less than one page and lacks the detail required by State and federal law. This has been a longstanding complaint of the City and PWSRCAC. ADEC argues that all the resources listed in Volume 3, Section 12.3 would be used; but Scenario 6 does not specifically state that, nor does Volume 3, Section 12.3.

The City maintains that no professional oil spill responder would have sufficient information in Scenario 6, as written, to respond to a catastrophic spill at the terminal. Scenario 6 is less than one page long and is wholly inadequate to meet that goal. Both APSC and ADEC have continuously weakened Scenario 6 over the years to the point that it does not serve as a useful guide to a catastrophic response.

5. Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057, Appeal Issue 7, Pages 6-7.[187] ADEC's Informal Review incorrectly concluded that "[t]he comments submitted by Valdez were appropriately considered and addressed by the Division as required by law; as explained above, they were not.

[186] Attachment D at 4.
[187] *Id.* at 7.

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).

ADEC incorrectly decided the 2024 VMT C-Plan without considering all applicable statutory and regulatory requirements and coordinating with federal agencies. An improved version of Scenario 6 should be developed and included in the VMT C-Plan, providing a substantially better plan for professional oil spill responders to follow during a catastrophic oil spill that meets State and federal requirements for the State's greatest possible discharge and the federal worst-case discharge scenario.

The City makes specific recommendations in section (g) below for correcting the agency's wrongly decided approval.

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.

Valdez citizens were adversely impacted by the *Exxon Valdez*. Laws and regulations put in place after that spill require facility owners to provide a plan to respond to the greatest possible discharge that could occur from the facility, including a list of resources that would be used.

A crude oil spill at the VMT poses catastrophic environmental and economic repercussions for Valdez, its citizens, and all Alaskans. Valdez seeks to ensure that the VMT C-Plan includes requirements and planning standards that protect the City and its citizens from the harm of oil spills. As evidenced by the *Exxon Valdez* oil spill, the implications of oil spills from facilities and tankers involved in transporting crude oil through the TAPS are dire. The *Exxon Valdez* oil spill demonstrated the inability of the oil industry to regulate itself and the need for robust State and federal laws to provide adequate protections against oil spills and ensure that adequate response capabilities are maintained to minimize the harm of oil spills when they do occur. The VMT C-Plan must contain a complete inventory of equipment available to APSC in Prince William Sound in the case of a catastrophic spill, including retaining the APSC PRAC Certificate and all information related to the PRAC.

ADEC is charged with ensuring that all applicable regulatory requirements governing the VMT C-Plan are satisfied. To the extent that such regulatory requirements are not satisfied, Valdez and its citizens are unreasonably exposed to the harms of oil spills at the VMT.

ADEC is also charged with leading a coordinated State and federal VMT C-Plan review. ADEC did not effectively coordinate a joint State and federal review of the 2024 VMT C-Plan and knowingly allowed substantial, serious degradation to the VMT C-Plan that conflicts with federal laws and regulations, which adversely impacts the citizens of Valdez and all Alaska.

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).

On December 15, 2023, the City submitted comments to ADEC on the 2024 VMT C-Plan renewal regarding the greatest possible discharge scenario (Scenario 6), pages 1-57.[188]

On October 11, 2024, the City also submitted comments to ADEC on the 2024 VMT C-Plan renewal, regarding the greatest possible discharge scenario (Scenario 6), pages 1-30.[189]

On November 26, 2024, the City submitted an Informal Review Request to ADEC on the 2024 VMT C-Plan renewal. The second and third contested terms related to the 2024 VMT C-Plan Volume 6, Section 6, failing to satisfy statutory and regulatory requirements and the need to provide greater detail regarding the general procedures to respond to the greatest possible discharge (Condition of Approval No. 3 and Issue No. 13).[190]

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.

1. The Scenario Description Table included in the currently approved version of the VMT C-Plan states that Volume 2, Scenario 6 was developed by APSC to meet 18 AAC 75.430 and 33 CFR 154.1035. This table is incomplete because it does not list all applicable federal standards, including the EPA or USDOT. The Scenario Description Table should list the following State and federal requirements: AS 46.04, 18 AAC 75.430, 18 AAC 75.448(b), 18 AAC 75.449(a)(10), 33 CFR 154.1035(b)(2)(i), 33 CFR 154.1035(b)(2)(ii), 40 CFR 112.20(h)(5)(i), and 49 CFR 194.105(b)(3). APSC has also proposed to delete the word "Scenario" from the term "Scenario 6." Federal regulations require the response plan to include a Worst-Case Discharge planning scenario. The term, "Scenario" cannot be deleted from "Scenario 6" and meet the federal regulations.

[188] Attachment AC: Comments and Requests for Additional Information on the Valdez Marine Terminal ("VMT") Oil Discharge Prevention and Contingency Plan ("ODPCP") Renewal (Round 1), State Contingency Plan Number 23-CP-4057. City of Valdez submitted to ADEC, December 15, 2023, at 1-57.
[189] Attachment G at 1-30. Comments Regarding Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan Renewal, State Contingency Plan Number 23-CP-4057, City of Valdez submitted to ADEC, BLM, USCG, EPPA, DOT, October 11, 2024.
[190] Attachment D at 2-6.

2. Scenario 6 oil spill scenario must address the greatest possible discharge that could occur at the VMT. The greatest possible discharge is a spill from all 14 East Tank Farm tanks. Scenario 6 must be revised to address a spill of all 14 tanks.

3. Scenario 6 must clearly identify response resources under APSC's control that are located in Alaska and immediately available. APSC's PRAC Certification includes a list of response equipment under its control that is located in Alaska and immediately available. A complete list of TAPS owned, contracted, and subcontracted equipment located in Alaska and immediately available in the event of a catastrophic spill must be maintained.

4. Scenario 6 must meet all State and federal requirements. The VMT C-Plan is a joint State and federal plan.

5. Specific shortcomings in the proposed amendment to Scenario 6 were articulated in great detail in the City's comments. These problems still persist and need to be addressed.

    a. The 2024 VMT C-Plan does not identify the greatest possible discharge that could occur at the facility or operation;

    b. The 2024 VMT C-Plan does not identify the general procedures necessary to respond to the greatest possible discharge;

    c. The 2024 VMT C-Plan does not explain how APSC, as the common operating agent for the plan holder and lessee of the right-of-way agreement for the Trans Alaska Pipeline System, will immediately contain and clean up a discharge or threatened discharge regardless of size;

    d. The 2024 VMT C-Plan does not provide sufficient information to be a usable working plan for oil discharge control, containment, cleanup, and disposal with enough information, analyses, supporting data, and documentation to demonstrate the plan holder's ability to meet the requirements of AS 46.04.030 to respond to any size spill up to and including the greatest possible discharge;

    e. The 2024 VMT C-Plan does not contain sufficient detail in the response action plan to clearly guide responders in an emergency event, including the general procedures to be followed in responding to the greatest possible discharge that could occur at a facility; and

    f. The 2024 VMT C-Plan does not contain sufficient information to ensure that necessary general procedures or resources are in place to protect environmentally sensitive areas before they are oiled by the greatest possible discharge.

6. APSC should be required to provide and expressly reference in Volume 2, Section 6, "a list of resources" in addition to that required to "meet the applicable response planning standard . . . that may be used in responding to the greatest possible discharge." The list of resources should include, at a minimum, all equipment under Alyeska's control, including

the quantity and identifying information for all 4517 and 3212 tugs, as well as OSRB-1 and OSRB-2. This is best accomplished by revising Volume 3, Section 12 and Volume 3, Appendix A to identify such resources and expressly referencing those sections in Volume 2, Section 6. Alternatively, referencing the resources identified in the Prince William Sound Oil Discharge and Contingency Plan could accomplish this.

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.

On December 15, 2023, and October 11, 2024, the City submitted comments on Scenario 6. ADEC's Decision on Scenario 6 did not address all the issues related to Scenario 6 raised by Valdez. Valdez strongly opposes APSC's changes to its VMT C-Plan to weaken Scenario 6 for the purpose of avoiding paying property taxes due on oil spill prevention and response equipment.

Scenario 6 has been in the VMT C-Plan since 2000 (over 23+ years) and has been approved by five different APSC Managers (Rod Hanson, Tom Stokes, Kathleen Zinn, Scott Hicks, and Andres Morales), five different ADEC regulators (Susan Harvey, Bill Hutmacher, Betty Schorr, Graham Wood, and Rebecca Spiegel), and numerous federal agencies and regulators. It is inappropriate to allow APSC to undermine its spill prevention and response responsibilities for an unrelated taxation purpose.

Communities so gravely impacted by the *Exxon Valdez* oil spill have worked tirelessly, through their membership in the PWSRCAC and their own supplemental comments, to ensure robust oil spill prevention and response plans for the VMT and associated tanker operations. APSC should not be allowed to dismantle longstanding oil spill preparedness plans to avoid tax.

While ADEC made some changes to State regulations at 18 AAC 75 in October 2023, these changes did not affect the fundamental basis for Scenario 6 (18 AAC 75.430), which remains unchanged. 18 AAC 75.430 still requires APSC to plan for the greatest possible discharge, which is distinctly different from the 72-hour response plan to a one-tank spill at 18 AAC 75.432.

Federal regulations have not changed and still require Scenario 6 for the same reasons it was put into place over 23 years ago. Federal regulations at 40 CFR 112.20(h), 33 CFR 154.1035, and 49 CFR 194.105(b)(3) still require APSC to plan for a Worst-Case Discharge from the VMT, provide a list of equipment for each oil spill scenario, and evidence of contractual commitment for that equipment. More specifically:

- 40 CFR 112.20(h)(1) requires an emergency response action plan "shall include an emergency response action plan in the format specified in paragraphs (h)(1)(i) through (viii) of this section.". Scenario 6 does not meet this standard.

- 40 CFR 112.20(h)(1(iv) requires "[a] description of the facility's response equipment and its location." Scenario 6 does not meet this standard.

- 40 CFR 112.20(h)(7)(ii) requires "[a] description of the equipment to be used for each scenario." Scenario 6 does not meet this standard.

- 40 CFR 112.20(h)(3)(iii) requires "[e]vidence of contracts or other approved means for ensuring the availability of such personnel and equipment." Volume 3, Section 12, VMT-LP-11 is required to meet this federal regulation. VMT-LP-11 has, for decades, included APSC's PRAC Certificate, which ADEC has unilaterally and incorrectly decided to eliminate without consideration of federal requirements.

Because the VMT C-Plan is a jointly approved State and federal oil spill prevention and response plan, ADEC cannot unilaterally dismantle Scenario 6 without full State and federal agency review and agreement. All oil spill preparedness requirements must be met.

ADEC's 2024 VMT C-Plan decision is also inconsistent with Alaska law and the State's obligations to cooperate with federal agencies under the TAPS Grant and Lease. The State takes the lead role in working with applicants to develop and renew C-Plans for regulated facilities in the Alaska that must meet State and federal laws and regulations. The TAPS Grant and Lease Exhibit E, established a "Cooperative Agreement between United States Department of the Interior and State of Alaska," which requires the State and federal agencies to engage in "regular exchange of information" regarding "compliance in the field" and "to provide maximum protection of the environment" and that "the Parties will make every reasonable effort to ensure that construction and operation methods and activities will be planned and executed so as to minimize environmental degradation."[191]

The State takes the lead role in working with applicants to develop and renew C-Plans for regulated facilities in Alaska that must meet State and federal laws and regulations. State statute at AS 46.04.020(e) requires ADEC to enter into agreements with federal agencies to provide for cooperative review of C-Plans and to coordinate effective oil discharge prevention and response in Alaska.

> *AS 46.04.020(e) The department shall enter into negotiations for memoranda of understanding or cooperative agreements with the United States Coast Guard, the United States Environmental Protection Agency, and other persons in order to:*
>
> *(1) facilitate coordinated and effective oil discharge prevention and response in the state, including agreements relating to development and enforcement of vessel traffic control and monitoring systems for tank vessels and oil barges operating in or near the waters of the state;*

[191] Attachment X: Renewal of the Agreement and Grant of Right-of-Way for the Trans-Alaska Pipeline and Related Facilities, 2003, Part 2, at 52

(2) provide for cooperative review of oil discharge prevention and contingency plans submitted to the department under AS 46.04.030;

(3) provide for cooperative inspections of oil terminal facilities by the department and the United States Coast Guard or United States Environmental Protection Agency; and

(4) provide for cooperative oil discharge notification procedures.

And, in fulfilling its responsibly under AS 46.04.020(e), ADEC is required to consult with the City in accordance with AS 46.04.020(f).

AS 46.04.020(f) In fulfilling its responsibilities under (e) of this section, the department shall consult with the governing bodies of municipalities and villages. [Emphasis added].

Alaska legislative findings, Section 1 of the Legislative Intent to AS 46.04 in the session law (Section 1, ch 116 SLA 1980).

** Section 1. FINDINGS AND INTENT.*

(a) The legislature finds that
(1) it is a matter of the ***highest urgency*** ***and priority to protect Alaska's coastal and inside water, estuaries, wetlands, beaches, and land from the damage which may be occasioned by the discharge of oil****;*
(2) the storage, transfer, transportation, and offshore exploration for and production of oil within the Jurisdiction of the state are is hazardous undertakings; oil discharges may cause both short-term and long-term damage to the environment and the beauty of the state, to owners and users of affected property, to public and private recreation, to residents of the state and other interests deriving livelihood from fishing, hunting, tourism and related activities;
(3) ***assuring sufficient capability, among industrial and commercial interests, and the state and federal governments, to contain and clean up discharges of oil is of vital public interest****; weather conditions, logistic constraints and the relative paucity of labor and equipment resources in the state increase the difficulty of oil discharge containment and cleanup in Alaska, making imperative an active state role;* ***it is the policy of the state that, to the maximum extent practicable,*** *prompt and adequate containment and cleanup of oil discharges is the responsibility of the discharger;* ***it is therefore of the utmost importance to assure that those engaged in oil storage, transfer, transportation, exploration, and production operations have sufficient resources and capabilities to respond to oil discharges****, and to provide for compensation of third persons injured by those discharges; and*

(4) the state should continue its cooperative relationships with appropriate federal agencies, protecting its legitimate interests while a working to remove any duplicative or potentially conflicting regulatory activities.

***(b)** The legislature intends **by** the enactment of this legislation*
*(1) **to exercise the police power of the state through the Department of Environmental Conservation by conferring upon the department the authority and capability to deal with the hazards and threats posed by oil storage, transfer, transportation**, exploration and production operations **in a manner which is not inconsistent with the National Contingency Plan (33 U.S.C. sec. 1321(c)) and to encourage and ensure, in accordance with 33 U.S.C. sec. 1321, cooperation with the United States Coast Guard and other state and federal departments and agencies**;*
*(2) **to require, through the maximum practicable use of private services and resources, the prompt containment and cleanup of oil discharges***
(3) to provide assurance that persons suffering damage from oil discharges will be compensated promptly,
(4) to provide for the inspection and supervision of oil transportation, transfer, storage, and offshore exploration and production activities, and to guarantee the prompt cleanup of oil discharges and the payment of costs incurred as a result of the oil discharges and
(5) that oil discharge containment, cleanup or contingency measures which are undertaken, directed, or authorized by the Department of Environmental Conservation should supplement and support federal cleanup and containment actions under 33 U.S.C. sec. 1321.[192] *[Emphasis added].*

Furthermore, the State currently operates under a Memorandum of Agreement that Established an Operating Agreement for The Joint Pipeline Office which is intended to provide State and federal coordinated oversight of TAPS.[193]

APSC has sought to incrementally remove oil spill volumes in Scenario 6 and erode the procedures set forth in the VMT C-Plan. This has occurred because Scenario 6 (the State's greatest possible discharge, and federal worst-case discharge scenarios) is key in tax litigation with the City. Because APSC was unsuccessful in its recent 2019-2022 tax appeals before the State Assessment Review Board, based on the language contained in the VMT C-Plan, APSC proposed, and ADEC approved, modifications to Scenario 6, PRAC Certificates, and other sections of the VMT C-Plan to avoid APSC's future taxation.

[192] Attachment AB: 1980 ch 116 SLA.
[193] Attachment AD: Memorandum of Agreement Between BLM, MMS, PHMSA, EPA, USCG, TSA, COE, ADNR, ADEC, ADOLWD, ADF&G, ADOT&PF, and ADPS Establishing an Operating Agreement for The Joint Pipeline Office, 2008.

While the Basis of Decision states that "the procedures to respond to the greatest possible discharge would continue to follow procedures identified in Scenario 5 using all available re[s]ources,"[194] the language included in Volume 2, Section 6 does not make clear what additional resources would be used.

The provisions of 18 AAC 75.448(b) clearly state that: "The plan must identify the greatest possible discharge that could occur at the facility or operation, and the general procedures to respond to a discharge of that magnitude." The VMT C-Plan must set forth "the general procedures to be followed in responding to the greatest possible discharge that could occur at the facility - this information must be located in the plan immediately following the response planning standard scenario or scenarios required by (6) of this subsection."[195] Further, 18 AAC 75.451(*l*) requires that "The plan must include a list of resources, in addition to those maintained by the plan holder or available under contract to meet the applicable response planning standard for that facility or operation, that may be used in responding to the greatest possible discharge."

The Basis of Decision references "Volume 3, including Section 12 and Appendix A, with additional details described in Volume 1 Section 3.6" as providing sufficient information to satisfy 18 AAC 75.451(*l*). However, these sections are neither expressly referenced in Volume 2, Section 6, nor do they, or any other section of the 2024 VMT C-Plan, contain sufficient information to identify the equipment available to APSC to respond to the State's greatest possible discharge. For example, neither Volume 3, Section 12 nor Volume 3, Appendix A, Section A.1 identifies the quantity of 4517 tugs that may be available for deployment. Indeed, the number of, and identifying information for, the 4517 tugs under APSC's control is not found anywhere in the 2024 VMT C-Plan. APSC maintains control over five 4517 tugs (*Commander, Courageous, Contender, Champion, and Challenger*). These tugs and identifying information must be listed in the VMT C-Plan in order to satisfy 18 AAC 75.451(*l*). In addition, APSC maintains control over four 3212 tugs (*Elrington, Latouche, Bainbridge, and Ingot*); yet, only three of them are identified in the 2024 VMT C-Plan. The full quantity of 3212 tugs in APSC's control that may be deployed in response to the greatest possible discharge is not identified in the VMT C-Plan, nor is there any identifying information for the *Bainbridge*. Similarly, neither Volume 3, Appendix A, Section A.1-4, or any other section of the VMT C-Plan, lists OSRB-1 or OSRB-2 or provides identifying information associated therewith.

At a minimum, the VMT C-Plan must contain or reference a list of all property within APSC's control that may be deployed in response to the greatest possible discharge. The provisions of 18 AAC 75.451(*l*) expressly require "a list of resources, in addition to those maintained by the plan holder or available under contract to meet the applicable response planning standard for that facility or operation, that may be used in responding to the greatest possible discharge."

[194] Attachment C at 31.
[195] *Id.*

Further, 18 AAC 75.451(*l*) requires the identification of additional equipment that may be used in response to the greatest possible discharge. Accordingly, it is improper to rely on equipment lists showing only equipment that APSC has identified to meet the Scenario 5 Response Planning Standard.

ADEC did not meet its obligations under Alaska Statute and the TAPS Grant and Lease to cooperate with federal agencies on the revisions to Scenario 6. ADEC's February 19, 2025 response to the City's public records request, confirmed that ADEC did not have standard operating procedures or instructions for staff on how to conduct a C-Plan review with federal agency involvement to ensure that changes directed by the State of Alaska do not adversely affect compliance with federal requirements, and ADEC had no evidence of the State of Alaska coordinated changes made to the VMT C-Plan with the host of federal agencies that also require the VMT C-Plan to comply with federal requirements. To both public record requests (#16 and #17), ADEC responded that "DEC has no records responsive to this request."[196]

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)).

N/A

Contested Issue No. 6

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

As explained in Contested Issue Nos. 1 and No. 2, it is the City's position that inspections completed on the CBA liner in 2014-2017 proved that the liner does not meet the State's sufficiently impermeable standard or the federal impervious standard required under the TAPS Grant and Lease, to which the State is a cooperating agency to ensure environmental compliance. A 10-year (2019-2028) protracted study of the remaining 99% of the liner is unnecessary for purposes of a finding of non-compliance. ADEC already possesses sufficient evidence to make a determination on non-compliance and to require corrective action now. The logical and expeditious method to resolve the non-compliance is for the agency to order the replacement of the 48-year-old ETF Liner on an expedited schedule, by no later than 2027.

However, if this Adjudicatory Hearing or subsequent litigation on the matter results in a determination that a protracted study of the ETF Secondary Containment system is still necessary, then that study should be completed correctly and meet high technical and scientific standards. Study findings should be communicated to the public with an opportunity for public review, comment, and participation in determining the corrective action required.

[196] Attachment AF at 2-3. Public Records Response (Feb. 19, 2025).

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).

November 6, 2024, Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057; Plan Approval, Page 1. "The department has determined your plan is consistent with the applicable requirements of the referenced regulations."[197]

November 6, 2024, Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057; Plan Approval, Page 2. Condition of Approval No. 1.[198]

November 6, 2024, Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057; Plan Approval, Page 4, Term No. 10 Failure to Perform.[199]

November 6, 2024, Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057; Plan Approval, Basis of Decision, Issue No. 7, Pages 12-17.[200]

February 24, 2025, Final Decision on Request for Informal Review of Renewal of Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057, Appeal Issue 1, Pages 1-3.[201]

February 24, 2025, Final Decision on Request for Informal Review of Renewal of Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057, Appeal Issue 7, Pages 6-7.[202]

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

1. November 6, 2024, Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057; Plan Approval, Page 1. "The department has determined your plan is consistent with the applicable requirements of the referenced regulations."[203] *See* the City's response to this question in Contested Issue No. 1.

2. November 6, 2024, Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057; Plan Approval, Page 2. Condition of Approval No. 1.[204] *See* the City's response to this question in Contested Issue No. 1.

[197] Attachment A at 1.
[198] *Id.* at 2.
[199] *Id.* at 4.
[200] Attachment C at 12-17.
[201] Attachment D at 1-3.
[202] *Id.* at 7.
[203] Attachment A at 1.
[204] *Id.* at 2.

3. November 6, 2024, Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057; Plan Approval, Page 4, Term No. 10 Failure to Perform.[205] *See* the City's response to this question in Contested Issue No. 1.

4. November 6, 2024, Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057; Plan Approval, Basis of Decision, Issue No. 7, Page 12. [206] *See* the City's response to this question in Contested Issue No. 1.

5. November 6, 2024, Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057; Plan Approval, Basis of Decision, Issue No. 7, Pages 13-14.[207] *See* the City's response to this question in Contested Issue No. 1.

6. February 24, 2025, Final Decision on Request for Informal Review of Renewal of Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057, Appeal Issue 1, Pages 1-3.[208]

   ADEC's Informal Review response to the City's request clearly articulated that ADEC has not confirmed compliance with secondary containment requirements and that Condition of Approval No. 1 is necessary to collect that data. ADEC wrote:

   > *The information that APSC submits to complete the required actions in COA # 1 will be reviewed by SPAR to confirm compliance with secondary containment requirements for aboveground oil storage tanks under 18 AAC 75.075.[209] [Emphasis added].*

   ADEC cannot find the VMT C-Plan is in compliance with secondary containment requirements but Condition of Approval No. 1 is necessary to collect that data to confirm compliance. Both cannot be true.

   > *ADEC further argued that it was reasonable to set Condition of Approval No .1 without a schedule or details for starting liner inspections. ADEC's decision to allow APSC to write the inspection plan and only review that plan after the public process for the 2024 renewal was over raises substantial due process concerns. ADEC wrote:*
   >
   > *The Program did not establish a schedule for starting liner inspections in COA #1 because the Program found it prudent to wait until after it reviews and approves APSC's final report, due March 1, 2025, that will include the method, alternatives, and area for inspection. As required by the Director's May 11, 2022 decision, this*

[205] Attachment A at 4.
[206] Attachment C at 12.
[207] *Id.*
[208] Attachment D at 1-3.
[209] *Id.* at 1.

report will contain information regarding the reliability, scalability, and accuracy of the method identified by APSC. DEC will approve, conditionally approve, or deny and provide feedback on the report; if the report is denied, APSC will have 30 days to resubmit the report for DEC review and approval. The Program did not want to establish an inspection schedule until it understands and approves what type of evaluation will occur.[210] *[Emphasis added].*

Thus, no public process has been afforded for inspection plan review or public input. Instead, ADEC has granted APSC more time (outside the public review process) to develop an inspection plan by April 1, 2025, that would identify "key deliverables and project milestones" for a liner evaluation that would not be completed until November 2028. ADEC further confirmed that its 2024 VMT C-Plan approval was made without any "key deliverables and project milestones" for nearly five more years of liner inspection.

ADEC determined that it was not necessary to include corrective action in Condition of Approval No. 1 because ADEC routinely handles persistent non-compliance with the secondary containment system with APSC. ADEC's course of action to have an inspection plan that continues to locate holes, tears, and rips in the liner and just repair them as found or grant APSC a waiver of compliance if necessary to delay those repairs is unreasonable. To date, this agency process has resulted in less than 1% of the entire 48-year-old, 52.5-acre liner being inspected and repaired. There is no reasonable scientific or statistical probability that similar damage to that found in 1% of the liner that has been inspected would not be found in the remaining 99% of the liner. This process is wholly inadequate and inconsistent with State laws that require secondary containment system compliance, and for the public to have assurance that the system will actually contain spilled oil. This process is also inconsistent with environmental and public protection assurances in the TAPS Grant and Lease to which the State is a cooperating agency.

7. February 24, 2025, Final Decision on Request for Informal Review of Renewal of Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057, Appeal Issue 7, Page 6-7.[211] ADEC's Informal Review incorrectly concluded that "[t]he comments submitted by Valdez were appropriately considered and addressed by the Division as required by law;" as explained above, they were not.

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).

See the City's response to this question in Contested Issue No. 1.

[210] Attachment D at 2.
[211] *Id.* at 7.

The City makes specific recommendations in section (g) below for correcting the agency's incorrectly decided approval.

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.**

See the City's response to this question in Contested Issue No. 1 and 3.

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).

On October 11, 2024, the City submitted comments to ADEC on the 2024 VMT C-Plan renewal. The City stated that: "In addition to the comments specifically set forth herein, Valdez generally supports and adopts the comments concurrently submitted by [PWSRCAC]."[212] PWSRCAC submitted comments on the ETF Secondary Containment System and proposed inspection program.

On November 26, 2024, the City submitted an Informal Review Request to ADEC on the 2024 VMT C-Plan renewal. The first contested term or condition related to the inspection and corrective action for the ETF Secondary Containment System liner (Condition of Approval No. 1 and Issue No. 7).[213] The City's Informal Review Request incorporated by reference the proposed alternative provided by PWSRCAC.

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.

The City requests ADEC's 2024 VMT C-Plan decision and the 2024 VMT C-Plan be revised to meet all the suggested alternative terms and conditions listed in the City's response to Contested Issue No. 1 (g) and Contested Issue No. 2 (g).

[212] Attachment G at 4.
[213] Attachment D at 1.

As clearly stated in the City's response to Contested Issue No. 5, the logical and expeditious resolution to the non-compliance is for the agency to order the replacement of the 48-year-old ETF Liner on an expedited schedule, no later than 2027.

However, if this Adjudicatory Hearing decides more study of the ETF liner is necessary, the VMT C-Plan, Volume 1, Section 2.1.6 should be revised to include an ETF Secondary Containment System visual inspection program for at least 10% of the CBA and XR-5 Liner in 2025-2026. Visual inspections in the ETF Liner are the most reliable way to locate existing damage. Repairs to the liner must be made in a timely manner If expected holes, cracks, and tears through the liner are found, the liner should be replaced in 2027. Liner replacement is a reasonable requirement for a facility that will be 50 years old by 2027 with known compliance issues. It is time for the agency to take action on this critical issue of importance to the City and all Alaska Citizens.

However, if this Adjudicatory Hearing, or subsequent litigation, results in adoption of ADEC's proposed 10-year study of the liner (2019-2028), the City incorporates by reference the recommendations made in PWSRCAC's Adjudicatory Hearing Request for improving the study and allowing public participation regarding the corrective action to remedy the issues rendering the liner ineffective.

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.

As explained in Contested Issues Nos. 1 and No. 2, it is the City's position that past inspections completed on the CBA liner have proved that the liner does not meet the sufficiently impermeable standard required to award a volumetric credit. A nearly 10-year study (2019-2028) of the remaining 99% of the liner is unnecessary for purposes of determining compliance. ADEC already has sufficient evidence in its possession to make a determination of non-compliance and require corrective action.

Nonetheless, if this Adjudicatory Hearing, or subsequent litigation on the matter, decides a protracted study of the ETF Secondary Containment system is still necessary to further delay the inevitable corrective action, then that study should be meet high technical and scientific standards. Study findings should be communicated to the public with an opportunity for public review, comment, and participation in the agreed-upon corrective action.

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)).

N/A

Request for Stay Under 18 AAC 15.210

The City requests a stay of ADEC's November 6, 2024, Decision approving the APSC VMT C-Plan relating to Contested Issues Nos. 3, 4, and 5 pending completion of these proceedings: the Alyeska Pipeline Service Company (APSC) Primary Response Action Contractor (PRAC) Certificate must be maintained in the VMT C-Plan; existing language of Scenario 6 must remain in place; existing language of the crude oil leak detection system must be maintained in the VMT C-Plan. A stay is appropriate and should be granted for the reasons set forth below as established by 18 AAC 15.210.

1. The City will suffer irreparable harm if a stay is not granted.

The City will suffer irreparable harm if the requested stay is not granted. The APSC PRAC Certificate must be maintained in the VMT C-Plan (Contested Issue No. 3), and the language of Scenario 6 must remain in place (Contested Issue No. 5) to comply with State and federal statutes and regulations and ensure there is a complete list of oil spill response property included in the plan.

The language describing the leak detection system must remain in place and be followed by APSC to detect crude oil storage tank leaks until the agency provides a convincing technical and regulatory basis for removing long-standing leak detection requirements from the VMT C-Plan and replacing it with language that appears to diminish the ability to detect a leak (Contested Issue No. 4).

Accordingly, absent a stay, the City will be unnecessarily exposed to irreparable harm, including having an incomplete plan that does not identify all oil spill response resources, does not meet the obligation to have a plan that responds to the State's greatest possible discharge and federal worst-case discharge scenario, and uses a crude oil tank leak detection plan that has not been properly vetted as an improvement.

2. The rights of other persons and the public interest can be adequately protected if the stay is granted.

The public's interest in protecting the marine and terrestrial environment, environmentally sensitive areas, and human health from spills from the crude oil storage tanks at the Valdez Marine Terminal is well established. The existing Scenario 6 language, crude oil tank leak detection system requirements, and APSC PRAC Certificate have been in the VMT C-Plan and approved by numerous state and federal regulators for decades. Requiring the VMT C-Plan language to remain in place (unchanged) for these three contested issues during the pendency of this appeal better protects the public and does not impact APSC or ADEC, as they have been operating under this language for decades. ADEC's and APSC's interests are adequately protected if a stay is granted.

3. The relative harm to the person requesting the stay, the permit applicant or permittee, public health, safety, the environment, and the public interest, if a stay were granted or denied.

If a stay is not granted, the VMT C-Plan will not comply with state and federal statutes and regulations, will not include a complete list of oil spill response property included in the plan, and will not include a crude oil tank leak detection method that has been properly vetted.

4. The resources that would be committed during the pendency of proceedings under this chapter if a stay were granted or denied.

The resources committed during the pendency of a stay would be minimal. The existing Scenario 6 language, crude oil tank leak detection system requirements, and PRAC Certificate have been in the VMT C-Plan and approved by numerous state and federal regulators for decades. A stay now would continue to maintain the status quo during the pendency of this appeal. There would be no additional commitment of resources if the stay is granted.

5. The likelihood that the person requesting the stay will prevail in the proceedings on the merits.

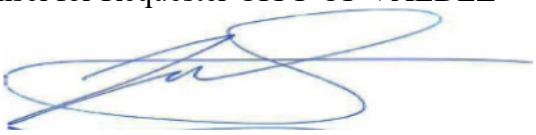
It is more likely than not that the City will prevail in this proceeding on the merits of Contested Issues Nos. 3-5, as changes made to the 2024 VMT C-Plan regarding these issues plainly failed to meet statutory and regulatory requirements and did not receive proper technical vetting.

Request for Alternative Dispute Resolution under 18 AAC 15.205

The City hereby requests alternative dispute resolution pursuant to 18 AAC 15.205. The City propose that the precise timing and method of alternative dispute resolution (*e.g.*, non-binding arbitration, modified adjudication, non-record abbreviated hearing, negotiation, mediation, neutral fact-finder, or settlement conference) be discussed by the parties and the designated hearing officer at a scheduling conference shortly after the Commissioner or is designee decides on the hearing request.

Respectfully submitted this 26th day of March, 2025.

BRENA, BELL & WALKER, P.C.
Counsel for Requester CITY OF VALDEZ



By _____

Robin O. Brena, AK Bar No. 8410089
Jake W. Staser, AK Bar No. 1111089
Email: rbrena@brenalaw.com
jstaser@brenalaw.com

AFFIDAVIT OF SERVICE

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I hereby swear and affirm that on March 26, 2025, the foregoing **REQUEST FOR ADJUDICATORY HEARING, STAY, AND ALTERNATIVE DISPUTE RESOLUTION** was served via First-Class U.S. Mail or electronic mail on the following:

Christina Carpenter, Acting Commissioner
Office of the Commissioner
ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION
P.O. Box 111800
410 Willoughby Ave., Ste. 303
Juneau, Alaska 99811-1800
Email: dec.commissioner@alaska.gov

Teresa Melville, Director
Division of Spill Prevention and Response
Graham Wood, Program Manager
Preparedness, Prevention, and Response Program
ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION
555 Cordova Street
Anchorage, Alaska 99501
Email: teresa.melville@alaska.gov
graham.wood@alaska.gov

John Kurz, President & Chief Executive Officer (via U.S. Mail)
ALYESKA PIPELINE SERVICE CO.
P.O. Box 196660
Anchorage, Alaska 99519-6660

Andres Morales, Director, Emergency Preparedness and Response
ALYESKA PIPELINE SERVICE CO.
P.O. Box 196660
Anchorage, Alaska 99519-6660
Email: andres.morales@alyeska-pipeline.com

Mary G. Hodsdon

SUBSCRIBED AND SWORN TO before me this 26th day of March, 2025.

STATE OF ALASKA
NOTARY PUBLIC
Liza A. Then
My Commission Expires Jul 2, 2028

Notary Public in and for Alaska
My Commission Expires: 7/2/2028