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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

ATTACHMENT B
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ATTACHMENT F
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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.

ATTACHMENT H
Evaluation of Methods for Establishing the Integrity of the Secondary Containment Liners at the Valdez Marine Terminal, Golder Associates, August 21, 2013.

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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.

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EPA Liner Study, Report to Congress, Section 4113(a) of the Oil Pollution Act of 1990, May 1996.

ATTACHMENT L
APSC letter to ADEC, March 23, 1993 transmitting CBA liner test results, Letter No. 93-1223-G.

ATTACHMENT M
Harvey Consulting, LLC, Status of Contaminated Sites at Valdez Marine Terminal, Report to PWSRCAC, August 21, 2012.

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.

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BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL BY THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION

CITY OF VALDEZ, Requester, v. DEPARTMENT OF ENVIRONMENTAL CONSERVATION, DIVISION OF SPILL PREVENTION & RESPONSE, and ALYESKA PIPELINE SERVICE COMPANY, Respondents	OAH No. 25-0950-DEC

RECOMMENDED RULING ON PHASE ONE (REQUEST FOR ADJUDICATORY HEARING) UNDER 18 AAC 15.220

I. Introduction

In general, parties who received an adverse decision by a division of the Alaska Department of Environmental Conservation (ADEC) may seek commissioner-level review of the underlying decision. This is accomplished by filing a request for hearing under 18 AAC 15.200. The City of Valdez ("City") used this mechanism to challenge the approval, by ADEC's Division of Spill Prevention and Response (SPAR), of the Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, Plan No. 3-CP-4057("VMT C-Plan") which is "the property of the Owners of the Trans Alaska Pipeline System" and for the "sole use" of Alyeska Pipeline Service Company ("Alyeska").[1] The City identified six contested issues for a hearing. The Commissioner of ADEC remanded three of the issues to SPAR and preliminarily referred three of the requests to the Office of Administrative Hearings for a determination of whether they met the requirements for a hearing. SPAR opposed most of those referrals, but did not oppose the referral of part of contested Issue 5.[2] Additionally, the permit holding party, Alyeska, participated in this appeal and opposed all of the referrals.

This decision concludes that some of this opposition rests upon a misplaced belief in the strength of the Respondent's arguments on the merits, and that—for some of the proposed issues—the requesters have met the threshold for demonstrating a hearing is appropriate. However, for parts of Issue 5 the City either lacks standing to bring suit against SPAR for supposed violations of agreements with third parties, or raises issues outside the

[1] ADEC000051.
[2] SPAR's Opp. To Req. for Adj. Hearing at 13.

scope of a hearing available under 18 AAC 15.200. Accordingly, while a hearing is granted on Issue 5, that hearing is limited to contested issues for which a hearing is available under 18 AAC 15.200 and the City has standing to pursue.

Regarding Issue 4, this proposed decision is not definitively finding that a best available technology analysis for a sensitive gauging system was required in approving the VMT C-Plan. However—in the interest of avoiding disputes among the parties about record supplementation and the potential need for an evidentiary hearing or discovery—Issue 4 is being remanded to SPAR to require them to amend their basis of decision to demonstrate that such an analysis was made at some point.

II. Factual and Procedural History

A. Relevant C-Plan Requirements

State law requires an oil terminal facility to develop and comply with a SPAR approved oil discharge prevention and contingency plan, known as an ODPCP or C-Plan.[3] General C-Plan requirements are laid out at 18 AAC 75.448 as follows:

> An oil discharge prevention and contingency plan submitted for approval under 18 AAC 75.400 - 18 AAC 75.495 must be usable as a working plan for oil discharge control, containment, cleanup, and disposal. The plan must contain enough information, analyses, supporting data, and documentation to demonstrate the plan holder's ability to meet the requirements of AS 46.04.030, AS 46.04.055(c)(2), and 18 AAC 75.400 - 18 AAC 75.495. The plan must demonstrate that the personnel, equipment, and other resources identified in the plan are sufficient for meeting each response planning standard applicable for each facility in the plan. The plan must take into account realistic maximum response operating limitations and their effects on response capability and the deployment of resources. The department will review and evaluate a plan by verifying that it meets the applicable requirements under 18 AAC 75.448 - 18 AAC 75.453.[4]

There are four primary categories of C-Plan or related requirements specifically at issue in this matter: those governing: Oil Spill Primary Response Action Contractors ("PRACs"), aboveground oil storage tanks, the procedures to respond to the greatest possible discharge, and the degree of coordination with other entities.

[3] AS 46.04.030.
[4] 18 AAC 75.448(a).

a. Oil Spill Primary Response Action Contractors

"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."[5] The term "Primary Response Action Contractor" is defined at AS 46.04.035 as "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."

SPAR regulations provide a further definition at 18 AAC 75.500(a) stating a PRAC is:

> 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. "Oil spill primary response action contractor" does not include
>
> > (1) a person who provides only ancillary services or equipment not for the specific purpose of containing, controlling, or cleaning up an oil discharge; or
> >
> > (2) an approved oil discharge prevention and contingency plan holder who provides to another plan holder resources or equipment to contain, control, or clean up an oil discharge.

Under 18 AAC 75.451(i), if a plan holder proposes to use the services of a PRAC to meet C-Plan requirements they must be registered and described in the C-Plan in specific detail.

b. Aboveground Oil Storage Tank Requirements

Under 18 AAC 75.450(a), a C-Plan's "prevention plan" "must demonstrate" that the plan holder "meets all applicable requirements of 18 AAC 75.005 – 18 AAC 75.085." This includes requirements for field-constructed aboveground oil storage tanks at oil terminal facilities such as those at 18 AAC 75.065(h)(1)(A). That regulation requires an "owner or operator of an installation placed in service before May 14, 1992 to . . . equip each field-constructed aboveground oil storage tank" with one of various options, including a leak detection system such as a "sensitive gauging system." A sensitive gauging system is a defined term that "means the

[5] AS 46.05.035.

best demonstrated available gauging technology at the time of tank construction or substantial reconstruction, or initial gauging system installation."[6]

c. Greatest Possible Discharge

A C-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."[7] "Greatest possible discharge" is not a defined term at 18 AAC 75.990. The C-Plan must also include a list of resources, in addition to those used to meet the response planning standard, that may be used in responding to the greatest possible discharge.[8] SPAR's briefing claims that, in drafting these regulations, they intended "greatest possible discharge" to be interpreted by its plain language.[9] No information has been presented yet directly tying the level of a "greatest possible discharge" to the level of a federal "worst case discharge," which appears to be a discharge level calculated by a formula and not necessarily one based on the plain meaning of "worst."[10]

d. Coordination with Other Entities

Among other things, under AS 46.04.020(e) SPAR:
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 . . . and . . .
> (2) provide for cooperative review of oil discharge prevention and contingency plans submitted to the department under AS 46.04.030;

Relatedly, AS 46.04.020(f) states that, "[i]n fulfilling its responsibilities under (e) of this section, the department shall consult with the governing bodies of municipalities and villages."

B. Procedural History

On October 20, 2023, Alyeska applied for renewal of the VMT C-Plan.[11] The City provided comments on that application and requested additional information on December 15, 2023, and October 11, 2024.

[6] 18 AAC 75.990(112).
[7] 18 AAC 75.448(b).
[8] 18 AAC 75.451(l).
[9] SPAR Opp. to Req. for Adj. Hearing at 5.
[10] Appendix D of 40 C.F.R. Part 112.
[11] ADEC000001.

On November 6, 2024, DEC approved the VMT C-Plan subject to a number of terms and conditions, one of which was a suggestion the City provided in its comments.[12] On November 26, 2024, the City requested an informal review of that decision. On February 24, 2025, the Division responded with a final decision that changed a few of the conditions of approval of the VMT C-Plan,[13] but did not take all of the actions the City requested. On March 26, 2025, the City then submitted a request for a formal hearing under 18 AAC 15.195 – 15.340 as permitted by 18 AAC 75.460.

The City identified six contested issues. Pursuant to 18 AAC 15.220(a)(2), the City's request for an adjudicatory hearing on three of those issues was conditionally referred to the Office of Administrative Hearings ("OAH") for a recommended decision on whether the request meets the requirements of 18 AAC 15.200, and, if it does, on the scope of any hearing on the request. OAH may also recommend that the matter should be vacated and remanded to the division director for further action. Simultaneously with that appeal request, the City submitted a request for alternative dispute resolution under 18 AAC 15.205, and request for a stay under 18 AAC 15.210.[14] The request for a stay has not been referred to OAH.

Combined, the City's required concise statement of the three contested issues referred to this office take up more than four pages of their voluminous request.[15] While somewhat sympathetic to the City's objection to SPAR's attempt to clarify the issues for hearing, SPAR is not wrong that, particularly in regard to contested Issue 5, the issues presented by the City can be somewhat sprawling. As 18 AAC 15.220(a)(2) permits OAH to make a decision on the scope of a hearing OAH has attempted to encapsulate the City's issues for analysis. "Contested issue No. 5" has been split into Issues 5a, 5b, 5c, and 5d for the purpose of identifying appropriate issues for a hearing. The issues referred to OAH for a recommended ruling are understood to be as follows:

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[12] *Id.*
[13] ADEC000049.
[14] City's Req. for Adj. Hearing, Mar. 26, 2025, 102 – 103.
[15] A party may have good cause to believe that more space than provided on the required forms is necessary to explain their dispute and capture all the necessary detail. However, when it comes to providing the required the concise statement of the issue itself, the City is encouraged in future filings to attempt to provide a thesis statement encapsulating each issue. If it cannot be compressed in such a manner it may mean that it is an amalgam more than one issue, and a requester is always welcome to raise those separately.

3. Was SPAR's approval of the VMT C-Plan flawed because the C-Plan lacks a PRAC certificate?

4. Is the VMT gauging system a "sensitive gauging system" and does that system provide a basis for SPAR to grant a credit reducing the Response Planning Standard Volume in Scenario 5?

5a. Did the VMT C-Plan fail to include an adequate list of resources that could be used in responding to the greatest possible discharge?

5b. In approving the VMT C-Plan did SPAR fail to comply with AS 46.04.020?

5c. Was SPAR required to examine the C-Plan's compliance with 40 C.F.R. 112.20, and other requirements imposed and governed by agencies other than the Division?

5d. In approving the VMT C-Plan did SPAR fail to comply with the TAPS Grant and Lease or cooperative agreements with the federal government?

III. Discussion

For a hearing request under 18 AAC 15 to be appropriate, the request must comply with the requirements governing such requests set out in 18 AAC 15.200. The Division and Alyeska identified four ways in which they believe the request failed to comply with those requirements. They argue that:

1. the City lacks standing;
2. there is no right to a hearing under 18 AAC 15.200 on some of these issues;
3. some of the issues were not raised previously as required; and
4. the requesters failed to identify disputed issues of material fact and law.

These alleged issues will each be addressed in turn.

A. Standing

Under 18 AAC 15.200(d), a requester must show in their request:

(1) that the requester or, if the requester is an organization, the representative members of the organization, are directly and adversely affected by the contested issues in the department's decision so as to justify relief;
(2) the nature of the interest asserted by the requester;

(3) whether that interest is one that the applicable statutes and regulations were intended to protect; and
(4) the extent to which the contested issues in the department's decision directly and substantively impairs that interest.

In *Copeland v. Ballard*, the Alaska Supreme Court noted that "given the potentially devastating effects of oil spills on the ecology and economy of the state" it considered "approval of contingency plans to protect Alaska's marine and coastal environments in the event of an oil spill" to be "a matter of utmost importance to the public interest."[16] As recognized in a prior administrative decision, courts "tend to look favorably on the standing of citizens or organizations to participate in proceedings about the VMT C-Plan when they can demonstrate an interest in the land or water likely to be affected by an oil spill."[17]

For all the issues here the City provides largely similar statements of standing. The City describes its interests in the environment, in the protection offered by a fully compliant C-Plan, and its interest in not being unreasonably exposed to the risk of oil spills. They argue that any failure by SPAR to ensure a compliant C-Plan adversely impacts the City and its citizens.

SPAR does not challenge the City's standing, however Alyeska does, arguing that the "city relies on cut and paste statements of standing that are too general, too speculative, and wholly disconnected from the issues the City disputes."[18] Alyeska concedes that the City has a general interest in the C-Plan, environment, and economy, but contends that the City failed to demonstrate how each of the contested issues directly impacts protected specific interests.

Alyeska challenges the City's standing based on claims that there will be no direct adverse impacts to the City from the lack of PRAC certificate, the supposed insufficiency of a greatest possible discharge level, and the lack of harm caused by improving VMT leak detection. However, these claims often rely on Alyeska's assumption that their interpretation of the facts and law is the only possible interpretation, or they undervalue the interest of parties protected by a C-Plan in ensuring C-Plan compliance.[19] Alyeska also makes arguments that focus on what they claim are the positive impacts of changes in the C-Plan—such as contending that their current

[16] *Copeland v. Ballard*, 210 P.3d 1197, 1203 (Alaska 2009).
[17] Ruling on Req. for Adj. Hearing, *Prince William Sound Regional Citizen's Advisory Council v. DEC, Spill Prevention and Response,* OAH 22-0111-DEC, at 6.
[18] Alyeska's Opp. To Req. for Adj. Hearing at 8.
[19] *See, e.g., id.* at 10, 14 – 15 (arguing that the City's interpretation of the requirements of PRAC certificates and the implications of section 6 are incorrect and that is why the City lacks standing.)

monitoring system is better than the previous one[20]—but no argument has been presented that the default here is the old C-Plan instead of nonoperation or a better plan.

There is little question here that the City of Valdez would be significantly impacted by a serious oil spill from VMT—after all VMT is within the City limits and the City's economy and property could both be seriously impacted by significant incidents. SPAR and the legislature have determined that statutory and regulatory C-Plan requirements are necessary to protect the public and the environment. Any weakness in the C-Plan that undermines those requirements or might lessen SPAR's ability to ensure a comprehensive clean up represents an increased risk of adverse consequences on the City and its citizens. That increased risk is a direct and adverse impact, and it is present throughout most of the City's contested issues.

However, Issue 5d involves the City attempting to enforce the supposed terms of various agreements between the state and federal government. The City is not a party to those agreements, and the City has failed to demonstrate their interests are those that were intended to be protected by those agreements. If federal agencies believe that SPAR has failed to meet its obligations, those agencies can bring suit, but that is not what is happening here today. Accordingly, the City is found to have standing[21] to bring Issues 3 through 5c, but not Issue 5d. Accordingly, while a hearing is granted on the City's contested Issue 5, that hearing is not for the arguments discussed here under Issue 5d and Issue 5d is not addressed in the rest of this analysis.

B. Right to a Hearing

A hearing can be requested regarding a limited array of matters under 18 AAC 15.200.[22] A detailed discussion of the types of matters is unnecessary here, but one of them is the appeal of a C-Plan. Under 18 AAC 75.460(b)(2)(B), a party aggrieved by SPAR's decision to approve a C-Plan may request a hearing under 18 AAC 15.200.

No authority has been identified or is known that permits an appeal under 18 AAC 15.200 of issues of federal compliance outside of SPAR's jurisdiction.

[20] *Id.* at 13.
[21] As the parties may be aware, this is not the first time the VMT C-Plan has been appealed to this office by the City and the City has also previously been found to have standing as well. *See, e.g.,* Ruling on Request for Adjudicatory Hearing, *Prince William Sound Regional Citizens Advisory Council, et. Al, v. ADEC Div. of Spill Prevention and Response,* OAH No. 17-1219-DEC, at 12.
[22] *See, e.g.,* 18 AAC 15.195.

In Issue 5c, the City is alleging that the C-Plan approved by SPAR is non-compliant with federal requirements for Facility Response Plans. Facility Response Plans are federally required documents submitted to the EPA regional administrator for approval.[23] Whether or not the VMT C-Plan complies with federal Facility Response Plans requirements is not up to SPAR and is not in one of the categories of matters for which a hearing can be granted under 18 AAC 15.200. Accordingly, while a hearing is granted on the City's contested Issue 5, that hearing is not for the arguments discussed here under Issue 5c and Issue 5c is not addressed in the rest of this analysis.

C. Failure to Raise Issues Below

Under 18 AAC 15.200(a), "a person who requests an adjudicatory hearing . . . must have actively raised the issue to the department through participation in the public review process on the draft decision, if the department offered one, either by submitting written comments or by testifying at a public hearing on the draft decision, unless the challenge is to a provision of a final permit that was not in the draft permit that was the subject of the public notice or comment process."

A "draft decision" here, is defined by 18 AAC 15.920 to include "the permit or approval application, along with supporting materials submitted by the permit applicant or permittee and put out for public comment, that formed the basis for the contested decision." Additionally, "permit" is also defined to include C-Plans.[24]

As discussed previously,[25] the City participated in at least two rounds of comments on this edition of the VMT C-Plan. It appears that the status of certain parts of the C-Plan such as the PRAC certificate were in flux during the public comment period, with the City alleging that the PRAC was to be part of the C-Plan in the original renewal application and was later removed.[26]

Two allegations were made that the City failed to raise issues below, one by each of the Respondents on separate issues. Alyeska alleges that the City failed to raise the issue that the sensitive gauging system fails to meet its definition in its comments.[27] And SPAR contends that

[23] 40 CFR 112.20.
[24] 18 AAC 15.920(13).
[25] Supra at 4.
[26] City's Req. for Hearing at 63.
[27] Alyeska's Opp. To Req. for Adj. Hearing at 19.

the City failed to argue below that SPAR errored in approving the renewed VMT C-Plan because of the lack of Alyeska's PRAC certificate.

a. Sensitive Gauging System

Alyeska very briefly claims the City failed to raise their dispute about the necessity for a Best Available Technology review of the sensitive gauging system below.[28] It is not clear if this was meant to be a full claim that the City had failed to raise the issue below, but SPAR's basis of decision directly addresses the City of Valdez in responding to that claim.[29] Accordingly it appears the issue was properly raised below.

b. PRAC Certificate

Similarly, instead of plainly showing that the City failed to raise the issue about the PRAC certificate below, SPAR argues instead that the City has changed its argument regarding why the PRAC certificate must be included. SPAR alleges it has shifted from focusing on Alyeska serving as its own PRAC to Alyeska serving as a PRAC for the owners of the Trans-Alaska Pipeline System (TAPS).

In response, the City alleges their comment on October 11, 2024, argued that the PRAC certificate was required to be included by, among other things, the requirements of 18 AAC 75.451.[30]

The full record is not yet available; however, a review of the City's comments at pages 46 to 47 of attachment G to their hearing request demonstrate the City did claim that deletion of the PRAC certificate would make the C-Plan non-compliant with 18 AAC 75.451. While SPAR may be correct that some of the related argumentation regarding corporate and ownership structures has developed since then, that does not invalidate the fact that the primary legal argument—that the removal of the PRAC made the C-Plan noncompliant—was raised.

D. <u>Disputed issues of Material Fact and Law</u>

Under 18 AAC 15.200(c)(4)(C), a request for a hearing is required to contain supporting information including, among other things, "a clear and concise statement of the contested issues proposed for hearing, identifying for each contested issue . . . the disputed issues of material fact

[28] *Id.*
[29] ADEC000032.
[30] City's Reply to Alyeska's and SPAR's Opp. to Req. for Adj. Hearing at 5 – 6.

and law proposed for review." "A material fact is one upon which resolution of an issue turns."[31] This means that if it's irrelevant to the outcome which side's interpretation of the fact or law is correct the fact is not material.[32]

This is not a high burden and the question of whether or not material issues have been identified does not turn on whether, ultimately, those arguments will be successful. "[T]he question for consideration here is not whether the . . . requesters are entitled to prevail at hearing, but whether they have articulated a basis for a hearing—specifically, by setting forth what issues should be adjudicated and the basis for their allegation that the Division erred as to those issues."[33]

SPAR argues that City failed to identify a disputed issue of material fact or law for contested Issues 3 and 4.[34] Alyeska takes the position that the City has failed to identify an issue of material fact or law for any of the contested issues.[35] In taking these positions, the Respondents spend significant time attempting to show the City's arguments on these issues will be unsuccessful, but the question here is merely whether the standards for sufficiency of pleading have been met. In advancing arguments that dispute the Requester's interpretation of the facts and law, the Respondents demonstrate that there are matters in dispute that should be appropriately resolved through a hearing. A party's belief that it has ironclad arguments in its favor does not mean there is not a dispute.[36] An assessment of the relative strength of the parties' arguments is the precise point of that adjudicatory hearing.

To some extent, the parties may be conflating the standard here for raising material issues with the summary judgement standard which examines whether there is any "genuine" issue of material fact.[37] However, while the standard for granting an administrative hearing under 18 AAC 15 used to require identifying a disputed "genuine" issue of fact or a "significant" issue of law,[38]

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[31] *Fischer v. Kenai Peninsula Borough Sch. Dist.*, 548 P.3d 1086, 1091 (Alaska 2024) (citing *Christensen v. Alaska Sales & Serv., Inc.*, 335 P.3d 514, 519 (Alaska 2014)).
[32] *See, e.g., Sonneman v. State*, 969 P.2d 632, 635 (Alaska 1998) ("A factual issue will not be considered material if, even assuming the factual situation to be as the non-moving party contends, he or she would still not have a factual basis for a claim for relief against the moving party.")
[33] Ruling on Request for Adjudicatory Hearing, *Prince William Sound Regional Citizens Advisory Council, et. Al, v. ADEC Div. of Spill Prevention and Response,* OAH No. 17-1219-DEC, at 18.
[34] SPAR's Opp. To Req. for Adj. Hearing at 10 – 13.
[35] Alyeska Opp. To Req. for Adj. Hearing at 16 – 21.
[36] *See, e.g., OAH No 17-1218/1219-DEC* Recommended Ruling on Request for Adjudicatory hearing, at 16.
[37] *See, e.g.,* ARCP 56(c); *Scott v. Harris,* 550 U.S. 372, 380, (2007)
[38] 18 AAC 15.220, as amended July 11, 2002.

it was amended in 2017 and removed those stronger requirements.[39] Accordingly, the analysis here does not need to consider whether a dispute is genuine or significant to quite the same degree as the parties might expect in a motion for summary judgement or in a hearing prior to that change. This does not mean facially ridiculous arguments will be humored, but the standard is not high. Moreover, contrary to Respondents' assertions that success on these disputed issues would not change the outcome, these disputed issues involve questions of compliance and process that would—if the City is correct—result in, at the very least, what the City contends to be a more protective C-Plan that decreases the risk to the City and its environment and economy.

c. Issue 3: Was SPAR's approval of the VMT C-Plan flawed because the C-Plan lacks a PRAC certificate?

In its briefing the City identifies numerous disputed issues it believes are material to determining if APSC's PRAC certificate is required to be part of the VMT C-Plan. These include purely legal arguments, such as that the VMT C-Plan fails to meet the requirements of AS 46 and 18 AAC 75 because of its failure to include the PRAC certificate and information therein, as well as various factual assertions supporting that claim regarding past SPAR practices, VMT's ownership structure, and more.[40] These are disputed material issues. For example, if that statement of law is correct, the VMT C-Plan will be required to change—meaning it is material—and it is plainly a legal conclusion that the Division and Alyeska disagree with—making it disputed. It thus satisfies the requirement that the City identify a material issue of disputed law or fact for contested Issue 3. If true, the Division and Alyeska's rebuttal—that the City's legal arguments hinge a flawed interpretation of who the responsible parties are for C-Plans, or that the previously included PRAC certificate has no bearing on the VMT C-Plan—may hold merit, but they do not utterly invalidate the potential reasonability of the claim. This is particularly true given that the City is arguing not just that the PRAC certificate needs to be included, but that without it the C-Plan fails to meet the requirement of demonstrating sufficient resources are available. More importantly, the PRAC certificate was included in the 2019 VMT C-Plan. While it is not yet clear if SPAR required that inclusion or not, there has obviously been a change in practice. If the City is correct and the requirements for the inclusion of the PRAC certificate changed between 2019 and 2024 without any apparent regulatory or statutory change, it is

[39] 18 AAC 15.220, as amended Nov. 5, 2017.
[40] City's Req. for Adj. Hearing at 56.

difficult to summarily dismiss the City's contention that the standards relied on in 2019 should apply the current C-Plan.

d. Issue 4: Is the VMT gauging system a "sensitive gauging system" and does that system provide a basis for SPAR to grant a credit reducing the Response Planning Standard Volume in Scenario 5?

As above, in its briefing the City identifies various factual and legal disputes that are part of its contested Issue 4. These issues surround what the City believes is the improper award of a two percent reduction in the VMT C-Plan's Response Planning Standard (RPS). These issues include whether the existing system is a sensitive gauging system fulfilling the requirements of 18 AAC 75.065(h)(1)(A), and whether the lack of basis for SPAR's determination to grant a 2% reduction for the identified system is problematic.

The City alleges there is no technical or regulatory justification or explanation given for the 2% credit in the C-Plan or SPAR's Basis of Decision. Moreover, the City argues that the system fails to meet the requirements for that credit or for a sensitive gauging system as no evidence is provided that the VMT's system meets the definition of sensitive gauging system which allegedly requires a best available technology determination.

In response, SPAR asserts that the sensitive gauging system is not subject to a best available technology determination as part of the VMT C-Plan renewal. They argue that—even though the definition of sensitive gauging system at 18 AAC 75.990(112) requires it to be the best available technology at some point—there is no plain requirement for that analysis to be duplicated or confirmed during a C-Plan renewal or 18 AAC 75.065(h)(1) analysis. Alyeska adds to this by asserting that no leak detection methodology was removed from the prior VMT C-Plan and this is merely an upgrade—presumably trying to suggest that if the sensitive gauging system standard and 18 AAC 75.065(h)(1) was met by the prior system there can be no dispute whether it was met by an improved system.

But again, the standard is not necessarily merely what has changed since the last plan. Under 18 AAC 75.450(a), the VMT C-Plan "must demonstrate that the applicant meets all applicable requirements" of 18 AAC 75.065(h)(1)(A). That regulation requires an "owner or operator of an installation placed in service before May 14, 1992 to . . . equip each field-constructed aboveground oil storage tank" with one of various options, including a leak detection system such as a "sensitive gauging system." A sensitive gauging system is a defined term that "means the best demonstrated available gauging technology at the time of tank construction or

substantial reconstruction, or initial gauging system installation."[41] Accordingly, an argument can be made that each C-Plan needs to demonstrate that standard is met.

SPAR's argument encounters similar difficulties. A sensitive gauging system is one way in which compliance with 18 AAC 75.065(h)(1)(A) can be achieved. As stated in the VMT C-Plan, "[Alyeska] complies with 18 AAC 75.065(h)(1)(A) by using a sensitive gauging system."[42] If the C-Plan is required to demonstrate compliance on this point, whether the system meets the definition of "sensitive gauging system" is a very important question. As the parties all acknowledge, "sensitive gauging system" has a specific definition that includes a requirement that it use what was—at least at some point—"the best demonstrated available gauging technology."[43] If the City is correct, for Alyeska to cite their sensitive gauging system as the reason they meet requirements, they must actually "demonstrate," under 18 AAC 75.450(a), that the system meets that definition. This appears to be a material issue and, without deciding that such a showing is required in each C-Plan, such a demonstration does need to have occurred at some point.

The administrative record is necessarily limited at this phase of the proceeding, so it is unsurprising that there are no readily identifiable materials definitively showing when the current gauging system was installed or modified. However, a viable argument exists that such information needs to have been cited or included in SPAR's basis for decision, and it was not. While it would be possible for the Commissioner to go forward with a hearing on this issue, it would be more efficient to remand this issue to provide SPAR with an opportunity to develop the record on this point. This would allow the parties to present arguments regarding this issue based on known facts and may eliminate the need for future discovery or an evidentiary hearing.

Given that three related issues on the VMT C-Plan have already been remanded to the Division for consideration, contested Issue 4 is also being remanded to SPAR. This is not a decision that, as part of this C-Plan review, SPAR was necessarily required to complete a best available technology analysis for what Alyeska asserts is a sensitive gauging system. However, a viable argument exists that SPAR was required to make a determination that the system meets that definition at some point. Accordingly, SPAR is directed to either identify that analysis and cite it in their basis for decision here, or, if such an analysis is unavailable, conduct an analysis of

[41] 18 AAC 75.990(112).
[42] ADEC 000311.
[43] 18 AAC 75.990(112).

the system's ability to meet that definition. If such a determination has already been made in a prior C-Plan or elsewhere, this remand could be resolved as simply as incorporating that analysis and record into the basis for decision. However, the current lack of any discussion of whether the definition is met is insufficient given the apparent strength of the Requester's arguments and the desire to avoid the need for more complex litigation.

e. Issue 5a: Did the VMT C-Plan fail to include an adequate list of resources that could be used in responding to the greatest possible discharge?

The City next argues that scenario 6 does not comply with the requirements of 18 AAC 75.430(a), 75.448(b), and 75.451(l) because scenario 6 does not reflect the "greatest possible discharge" from the VMT and the VMT C-Plan failed to include an adequate list of resources that may be used in responding to that greatest possible discharge. Additionally, it ties its argument back to Issue 3 and asserts that—without the information found in the PRAC—the C-Plan fails to contain the required complete list of equipment available for the response or evidence of the necessary contractual commitments for Alyeska to use that equipment.

There are numerous disputed issues raised here, such as whether the VMT C-Plan complies with 18 AAC 75.448(b) in identifying the "greatest possible discharge." The City contends that it needs to be the absolute maximum amount of oil at the tank farm. SPAR does not argue that the City failed to raise material issues here, but Alyeska does. Alyeska contends that nothing requires the "greatest" spill to be the entire capacity of the tank farm and no evidence has shown that there could even be such a spill. This is clearly a legal and factual dispute over what the greatest possible discharge is defined as and whether a spill of the entire volume of the tanks is a possibility. Alyeska contends as an alternative argument that even if SPAR regulations require the equivalent of a federal worst-case discharge, that level is already met. That may also be true, but no information has been provided to demonstrate that the state's "greatest possible" discharge requirement is necessarily equivalent to the federal "worst case" discharge and, thus, there is insufficient evidence to demonstrate the claim is immaterial.

Other related legal issues are raised as well, such as whether the VMT C-Plan fulfills the requirements of 18 AAC 75.451(l) and 18 AAC 75.449(a)(10). These are not directly addressed by the Respondents' briefing and also seem to be material questions.

f. Issue 5b: In approving the VMT C-Plan Did SPAR fail to comply with AS 46.04.020?

Finally, the City alleges the C-Plan is impermissible because AS 46.04.020(e) requires SPAR to enter into agreements with federal agencies to provide for cooperative review and coordinate oil discharge prevention and response. They also allege that SPAR is required to consult with the City under AS 46.04.020(f), but that never happened.

Neither SPAR nor Alyeska address this argument in their briefs, but the City is apparently arguing here that 46.04.020(e) creates an ongoing obligation for SPAR to continually enter negotiations to provide for cooperative review of each C-Plan. Additionally, they are claiming that, because of that alleged ongoing obligation, SPAR is required to consult cities such as the City of Valdez during the cooperative review of each C-Plan. That is a reading of the statute that the Respondents made no attempt to rebut but seems to lie counter to SPAR's actions if the City's allegations are correct. Therefore, it is a material dispute and a hearing is appropriate.

IV. Future Proceedings

A. Type of Hearing

In their briefs the parties also dispute the appropriate form of the hearing. The City alleges that any failure to provide full discovery and an evidentiary hearing would be an abuse of discretion by the Office of Administrative Hearings (OAH),[44] while SPAR requests a hearing on the existing record and written briefs.[45]

Under 18 AAC 15.220(b), the Office of Administrative Hearings is to issue a recommended decision determining whether a hearing request meets hearing requirements and whether an adjudicatory hearing or hearing on the briefs should be held. Neither of these options compels a full evidentiary hearing with discovery. Instead, the scope of any hearing, and any related discovery, is a matter left to the Commissioner's discretion through a determination of good cause.

The case cited by the City to suggest denying discovery would be an abuse of discretion was an appeal of a Department of Revenue hearing decision, not an environmental permitting hearing such as this under 18 AAC 15. Moreover, that case held the denial of discovery to be an abuse of discretion in a highly specific circumstance and did not identify every failure to grant

[44] City's Reply to Alyeska's and SPAR's Opp. to Req. for Adj. Hearing at 33, 36.
[45] SPAR's Resp. and Opp. to Req. for Adj. Hearing at 14 – 15.

discovery was an abuse of discretion.[46] As explained by AS 46.03.880 and AS 46.04.890, adjudicatory hearing procedures reviewing permit decisions such as C-Plan approvals are not subject to quite the same standards the City may be familiar with in other types of matters. Accordingly, and as the City may already expect from the discussion of the remand of Issue 4, evidentiary hearings and discovery are rarer in the context of this type of permit appeal. Indeed, outside of specific demonstrations of good cause, 18 AAC 15.245 explicitly forbids a party from submitting many types of information that was not timely submitted to a Division prior to its decision.

The City has plainly been a substantial participant in the public review process for this decision and has repeatedly been involved with SPAR's successive review of VMT C-Plans over the decades. It makes no allegations that it has factual information relevant to SPAR's decision that it failed to have an opportunity to provide to SPAR during the decision-making process. Instead, to support its argument that it should be permitted to present evidence it baldly alleges that SPAR's record is incomplete because it failed to consider certain information. This is not a sufficient demonstration that a full evidentiary hearing is necessary.

Moreover, while the City attempts to support its request by alleging that SPAR has failed to compile a complete and accurate record, this argument is premature. Under 18 AAC 15.237, the complete record is not yet required. Now that a hearing has been granted SPAR is required to compile a complete record on a set timeline.[47] If, upon reviewing that agency record the City believes it can demonstrate good cause to supplement that record, it can move to do so under 18 AAC 15.237, which points to 2 AAC 64.310. Similarly, if the City desires to submit a factual contention, expert opinion, issue of fact, or question of law that was not timely submitted to SPAR before their decision, it may move to do so by following the procedures at 18 AAC 15.245.

While it is apparent from the City's briefing that there is some kind of dispute regarding a public records request and its importance in completing the record here, the City's dispute with ADEC related to its public records request is not an issue that has been referred for a recommended decision on a hearing, and OAH is unaware of any denied public record request. Relatedly, OAH is unaware of any ruling by the Commissioner that this hearing may be amended

[46] *See* Decision on Appeal, *City of Valdez v. State Dep't of Revenue*, 3VA-00-22CI/3VA-10-84CI/3AN-11-7874CI (Nov. 18, 2013), at 45 – 46.
[47] 18 AAC 15.237.

to include additional evidence and treats any such assertions with significant skepticism until they are conclusively demonstrated given the above citations.

Accordingly, at this time the parties are granted a hearing on the briefs. The subject of the appropriateness of oral arguments can be addressed at the next conference after this decision is adopted. However, once SPAR has submitted the full record the parties will have thirty days to demonstrate the necessity of supplementation of that record or raise new issues, and further analysis of the appropriateness of a full evidentiary hearing and discovery may occur at that point.

B. Motions for Reconsideration

In acknowledgement of the potential complications caused by both the encapsulation of the requester's complex "concise statements" and a remand of a finding undergirding a C-Plan decision, the parties are given the opportunity to move for reconsideration. If the parties want to request reconsideration of this decision after its adoption, they have seven calendar days from the date of adoption to submit a motion of no more than five pages, and the opposing parties would have seven calendar days to respond in the same manner. Any reiteration of the arguments already contained in the briefing is disfavored, but, for example, if any of the parties believe the information to avoid a remand of Issue 4 is already available or that the encapsulation of the City's issues failed to capture important arguments the parties are welcome to inform the tribunal of that information.

C. Alternative Dispute Resolution

Alyeska has requested alternative dispute resolution and has suggested a discussion of next steps would be appropriate at a conference after the release of this decision. If this recommended decision is adopted, the ALJ is directed to set a conference for the parties soon afterwards to discuss the potential for mediation or other resolution, as well as scheduling and various other subjects. The parties are encouraged to discuss prior to that conference the potential for alternative dispute resolution here, as well as any foreseen motion practice, potential briefing timelines, and other areas of potential administrative cooperation.

V. Conclusion

The City's request for a hearing on Issues 3, 5a, and 5b is granted, but this hearing will be conducted through written briefs based on the agency record—subject to the City's right to

demonstrate good cause as detailed above. Issue 4 is being remanded to SPAR to identify or develop a record analyzing whether Alyeska's leak detection system meets the definition of a "sensitive gauging system." The ALJ is directed to set a scheduling conference.

RECOMMENDED: May 15, 2025

Garrison A. Todd
Administrative Law Judge

Adoption

A. The undersigned, in accordance with 18 AAC 15.220(c)(1), GRANTS the request(s) for adjudicatory hearing and returns the matter to the Office of Administrative Hearings to schedule and hold appropriate proceedings.

DATED this 16 day of May, 20 25.

DocuSigned by:
By: 
43FB79DD997A4BA...
Signature
Christina Carpenter
Name
Acting Commissioner

Non-Adoption Options

B. The undersigned, in accordance with 18 AAC 15.220(c)(2), DENIES the request(s) for adjudicatory hearing as not satisfying the requirements of 18 AAC 15.200, as follows:

Under AS 44.64.060(b), judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this _____ day of _____, 20___.

By: _____
Signature

_____
Name
Commissioner
Title

C. The undersigned, in accordance with 18 AAC 15.220(c)(3), VACATES the underlying decision and remands this matter to the Division for further action, as follows:

DATED this _____ day of _____, 20___.

By: _____
Signature

_____
Name
Commissioner
Title

ATTACHMENT AH

Administrative Law Judge Garrison Todd Report of Status Conference and Order on Motions for Reconsiderations, City of Valdez vs. ADEC SPAR and APSC, OAH No. 25-0950-DEC, June 13, 2025.

BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL BY THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION

CITY OF VALDEZ, Requester, v. DEPARTMENT OF ENVIRONMENTAL CONSERVATION, DIVISION OF SPILL PREVENTION & RESPONSE, and ALYESKA PIPELINE SERVICE COMPANY, Respondents	OAH No. 25-0950-DEC

REPORT OF STATUS CONFERENCE AND ORDER ON MOTIONS FOR RECONSIDERATION

All parties attended a status conference held for this matter on June 2, 2025. The conference was intended to discuss the possibility of mediation and discuss the necessary timeline for SPAR's compliance with the remand of Issue 4.

At that conference, SPAR's counsel indicated that they were not prepared to state that the exhibits attached to their motion for reconsideration were necessarily sufficient to fulfill the mandate contained within Issue 4's remand of identifying a record analyzing whether APSC's leak detection system meets the definition of a sensitive gauging system. SPAR indicated that decisions pertaining to leak detection system requirements with regard to APSC's sensitive gauging systems occurred a long time ago, and SPARs record retention policy regarding contingency planning may mean some records could have been lost or difficult to find. Accordingly, SPAR requested a three-week interim deadline to review historical records to ensure all relevant information for those prior decisions have been found and to then have a status conference to determine how long compliance with the remand will take. No party objected to that timeline. SPAR also indicated they were unable to state how long it could take to create such an analysis.

Additionally, the parties discussed the Office of Administrative Hearing's 120-day deadline to issue a decision at AS 44.64.060(d). The parties were preliminarily open to extending that deadline but wanted to confer with their clients. After the conference the parties all confirmed with OAH that they were willing to extend the deadline by at least 60 days, which would be until October 4, 2025.

Finally, SPAR's counsel indicated SPAR was not interested in engaging in mediation or other alternative dispute resolution at this time.

After that conference, SPAR and APSC submitted motions for reconsideration which were opposed by the City. After reviewing those motions, and at the direction of the Commissioner of the Alaska Department of Environmental Conservation, reconsideration of the grant of a hearing for issues 3, 5a, and 5b is denied. Similarly, reconsideration of the remand of issue 4 is denied, however, that remand is hereby amended and clarified as follows.

Issue 4 was originally remanded to require SPAR to ensure that their record and basis of decision for the VMT C-Plan was complete and adequately supported their decision. SPAR's briefing demonstrated a belief that historical VMT C-Plan decisions might be relied upon to justify portions of the 2024 VMT C-Plan decision. However, as discussed above, SPAR counsel indicated at conference that complete records of prior analyses may no longer exist in SPAR's custody or control. SPAR appears to be further claiming that historical VMT C-Plan decisions relied upon those analyses in reaching decisions that are likely now untimely to appeal. They also argue that in the absence of those analyses SPAR can rely upon those historic C-Plan decisions themselves in approving the 2024 C-Plan instead of a more complete record of the analyses themselves.

The original remand only clearly specified that SPAR needed to incorporate records related to the sensitive gauging question. The remand is modified here, however, to also include a directive to SPAR to incorporate files into the record and basis for decision for the 2024 VMT C-Plan supporting the grant of the 2% response planning standard credit under 18 AAC 75.432(d)(3).

So long as the following conditions are met, SPAR may fulfil the conditions of the remand by incorporating sections of their historic VMT C-Plan decisions impacting Issue 4—including parts relevant to 18 AAC 75.065(h), 75.420(e), 75.432(d)(3), and 75.450—into the record and basis for decision on the 2024 VMT C-Plan even if the full analyses supporting those decisions is unavailable. These conditions are:

- SPAR intends to argue that—assuming their record of decision of the 2024 C-Plan was required to incorporate anything on issue 4 at all—the incorporation of a prior decision into the record is a sufficient basis to legally justify their 2024 decision and meet various applicable legal requirements including, but not limited to, the applicable standard of review, 18 AAC 75.065(h), 18 AAC 75.420(e), 75.432(d)(3), and 75.450.
- SPAR is unable to provide or obtain from APSC the analyses underlying the incorporated parts of their prior decision(s) by June 27, 2025, at 4:30 p.m.

- SPAR incorporates into their 2024 VMT C-Plan record and basis for decision any information they have regarding—
    - the reasoning and basis for their prior decision(s) specifically related to the sensitive gauging issue and the response planning standard credit;
    - changes at VMT since the date of the relied upon prior decision(s) that could undermine the ongoing reasonableness of any incorporated decision(s); and
    - changes to the relevant systems or procedures at VMT that could be reasonably be considered to trigger the need for a new review under 18 AAC 75.432, the definition at 18 AAC 75.990, or elsewhere.

A telephonic status conference is hereby set in this matter for **June 23, 2025, at 11 a.m.**

DATED: June 13, 2025.

By: _____
Garrison A. Todd
Administrative Law Judge

Certificate of Service: I certify that on June 13, 2025, a true and correct copy of this order was distributed as follows: Jake Staser, Attorney (by email); Cameron Jimmo, AAG (by email); Cody Doig, Attorney (by email); Thad Adkins, AAG (by email); Thomas Mooney-Myers, AAG (by email); Julia B. Schweminski, Administrative Assistant (by email); Jessalynn Rintala (by email); Dept. of Law Central Email (by email).

By: _____
Office of Administrative Hearings

ATTACHMENT AI

Alaska Department of Environmental Conservation Oil Discharge Prevention and Contingency Plan Revised Basis of Decision regarding Approval of Alyeska Pipeline Service Company Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan # 23-CP-4057, August 8, 2025.

OIL DISCHARGE PREVENTION AND CONTINGENCY PLAN
BASIS OF DECISION
REVISED

August 8, 2025

Plan Title: Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan

Plan #: 23-CP-4057

Plan Holder: Alyeska Pipeline Service Company

Basis of Decision Prepared by: Melissa Woodgate

Findings
This document presents the final findings that support the decision of the Alaska Department of Environmental Conservation (department) regarding the plan renewal application package for the Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan (plan).

Findings are provided to assist the interested public and participating reviewers in understanding the department's analysis of selected priority issues addressed as part of the decision process. In developing the findings, the department reviewed all public, agency and plan holder comments. This document is intended to respond to the most substantive issues raised by commenting parties. All department decisions must be supported by the regulations.

Following a May 16, 2025 order and June 23, 2025 order issued by the Commissioner and the Office of Administrative Hearings (OAH), respectively, this document has been revised to discuss prior decisions and findings made by the department. These prior decisions and findings are included to provide background. The department has identified in this Basis of Decision what findings were clarified pursuant to the abovementioned orders.

Proposed Activity
Alyeska Pipeline Service Company is requesting approval of its plan to operate the Valdez Marine Terminal, a crude oil terminal facility.

Location
Alyeska Pipeline Service Company conducts operations in Valdez, Alaska.

Environmental Risk
A potential risk exists of oil spills entering the lands or waters of the state as a result of this operation.

Authority
Under AS 46.04.030, an owner or operator of a terminal facility must have an approved oil discharge prevention and contingency plan covering the facility. Through the plan review process, the department's objective is to ensure that the plan provides prevention and response measures that satisfy the state's regulatory requirements.

Review

The department received a plan renewal application package in accordance with AS 46.04.030 and 18 AAC 75.420. The application package was posted on the department website and notice of the availability of the package was distributed to the stakeholder listserv.

The department completed a review and analysis of the application package using the procedures outlined in 18 AAC 75.455 to ensure that the plan conforms to the applicable requirements and regulations. The major milestones during the review process were as follows:

Event/Action	Date
Application received	10/20/2023
Sufficient for review determination	10/31/2023
Start of comment period	11/1/2023
End of comment period	12/15/2023
1st Request for additional information (RFAI) issued	3/14/2024
Response to 1st RFAI received	4/10/2024
2nd Request for additional information (RFAI) issued	7/8/2024
Response to 2nd RFAI received	8/13/2024
3rd Request for additional information (RFAI) issued	9/13/2024
Response to 3rd RFAI received	9/19/2024
Start of comment period for additional information	9/23/2024
End of comment period for additional information	10/12/2024
Application package determined complete	10/23/2024
Department's decision	11/6/2024
Department's revised decision to Issue #5	8/8/2025

Comments

Comments and requests for additional information were received from Alaska Department of Fish & Game (ADF&G), Alaska Department of Natural Resources (ADNR), Valdez Fisheries Development Association (VFDA), City of Valdez, and Prince William Sound Regional Citizens' Advisory Council (PWSRCAC). The comments and requests that met the department's statutory and regulatory requirements were included with the department's own comments in an RFAI to Alyeska Pipeline Service Company (APSC). The following is a discussion of the major topics that were addressed in the renewal process:

Issue #1 Article 4 Updates

Statement of Issue

Did the plan incorporate the 2023 18 AAC 75, Article 4 regulatory package updates throughout?

Regulatory Authority

Regulations listed in 18 AAC 75.400 – 18 AAC 75.496.

Finding

The plan was updated to incorporate revisions to the 18 AAC 75, Article 4 regulations that went into effect February 5, 2023. This regulation package update included numerous revisions to 18 AAC 75.449 – 453, which are the requirements for oil discharge prevention and contingency plan (ODPCP) contents.

During the renewal, regulation citations were updated, plan information was updated by additions, removals and changes in language to various sections in Volumes 1, 2 and 3 of the VMT plan. Some specific updates to oil terminal facility plans include requirements for additional diagrams with information on fire supression equipment under 18 AAC 75.449(a)(9)(C); oil storage capacity information, product type and location of tanks with storage capacity of 1,000 gallons and greater but less than or equal to 10,000 gallons under 18 AAC 75.451(b)(2); piping diagram showing all facility piping, including location of valves under 18 AAC 75.451(b)(7); and updates to requirements for best available technology review under 18AAC 75.452(a)(2). Changes to best available technology are explained in greater detail in Issue #11.

There was also a regulation update for temporary tanks where the addition of temporary tanks with a storage capacity of 10,000 gallons or greater can be submitted as an amendment application under 18 AAC 75.415(i). This regulation update required changes in the VMT plan for how temporary tanks are evaluated before use at the facility.

Information in the VMT plan was updated in accordance with the requirements. The department supports the changes in the plans to incorporate the 2023 18 AAC 75, regulations revisions.

Issue #2 Administrative Updates and Documents Incorporated by Reference

Statement of Issue
Does the plan remain a usable working document with the administrative changes to the plan?

Regulatory Authority
18 AAC 75.448. Oil discharge prevention and contingency plan; general plan requirements. (a) An oil discharge and contingency plan submitted for approval under 18 AAC 75.400 – 18 AAC 75.495 must be usable as a working plan for oil discharge control, containment, cleanup, and disposal. The plan must contain enough information, analyses, supporting data, and documentation to demonstrate the plan holder's ability to meet the requirements of AS 46.04.030, AS 46.04.055(c)(2), and 18 AAC 75.400 – 18 AAC 75.495. The plan must demonstrate that the personnel, equipment, and other resources identified in the plan are sufficient for meeting each response planning standard applicable for each facility in the plan. The plan must take into account realistic maximum operating limitations and their effects on response capability and the deployment of resources. The department will review and evaluate a plan by verifying that it meets the applicable requirements under 18 AAC 75.448 – 18 AAC 75.453.

Finding
During the renewal the plan was updated with new regulatory citations, changes to section titles, changes to clean-up language to remove redundant information, changes to use acronyms to simplify language, and changes to the organization of some plan information.

Many of the proposed changes improved the usability of the plan but in some circumstances the department found the proposed changes confusing. For example, in some locations the department requested for acronyms to not replace some selected terms and to include lists of acronyms in all volumes of the plan. The department also requested for section descriptions and regulatory citations to remain in the plan to clarify the information represented in those sections.

PWSRCAC provided comments on the operational and procedural documents that are incorporated by reference in the plan. PWSRCAC requested that the documents that APSC references in the plan, which are used to demonstrate compliance with department regulations, be made available for public review or summarized in the plan itself as part of the plan renewal under 18 AAC 75.408(a)(2)

and 18 AAC 75.455(b). The department has addressed the ability for APSC to reference operational and procedural documents as part of the 2000, 2003, 2014, and 2019 renewals, including an explanation for why these documents are not required to be part of the supporting documents in the renewal available for public review. The department periodically reviews referenced documents when questions come up on specific operational procedures and recommends for PWSRCAC to request referenced documents from APSC when questions arise. The referenced documents have revision numbers, effective dates, and revision summaries along with the procedural information. The department finds that APSC continues to meet regulatory requirements with the content that is listed in the plan that includes references to operational and procedural documents and will continue to monitor APSC's ability to meet prevention plan requirements.

During the comment period on the additional information, PWSRCAC requested copies of specific procedures referenced in the plan or in APSC's response to the department's RFAI. ADEC does not maintain copies of these documents and reviews these documents as needed. Based on the procedures/processes incorporated into the plan from the referenced documents, the department has determined that APSC is meeting all applicable state regulations.

In the comment period on the additional information PWSRCAC requested that the barge loading/decanting/offloading plans (required in 18 AAC 75.449(a)(6)(J)) shared with the department by APSC as part of the review, be provided to the public to meet the review opportunity required at 18 AAC 75.455. The department did not include this in the review documents for the comment period on the additional information, but this document has been available for review in the past and remains available to review, if requested.

The department finds the administrative updates made to the plan, with additional information included through RFAI responses, continue to support the plan's ability to be used as a usable guide as required under 18 AAC 75.448.

Volume 1

Issue #3 Response Action Plan Updates

Statement of Issue
Do the updates to the response action plan continue to meet regulatory requirements?

Regulatory Authority
18 AAC 75.448. Oil discharge prevention and contingency plan; general plan requirements. (a) An oil discharge and contingency plan submitted for approval under 18 AAC 75.400 – 18 AAC 75.495 must be usable as a working plan for oil discharge control, containment, cleanup, and disposal. The plan must contain enough information, analyses, supporting data, and documentation to demonstrate the plan holder's ability to meet the requirements of AS 46.04.030, AS 46.04.055(c)(2), and 18 AAC 75.400 – 18 AAC 75.495. The plan must demonstrate that the personnel, equipment, and other resources identified in the plan are sufficient for meeting each response planning standard applicable for each facility in the plan. The plan must take into account realistic maximum operating limitations and their effects on response capability and the deployment of resources. The department will review and evaluate a plan by verifying that it meets the applicable requirements under 18 AAC 75.448 – 18 AAC 75.453.

18 AAC 75.449. Part 1 – oil discharge and contingency plan; Response action plan. (a) The response action plan must include the following information in sufficient detail to clearly guide responders in an emergency event:

(1) emergency action checklist – a short checklist of the immediate response and notification steps to be taken if an oil discharge occurs; the checklist must be immediately available to response personnel while on duty;

(2) reporting and notification – a description of the immediate spill reporting actions to be taken at any hour of the day, including

(A) the titles and telephone numbers of facility personnel responsible for making the notification;

(B) the telephone number of each appropriate government agency to be notified if a discharge occurs; and

(C) additional contact information for potentially impacted groups;

(3) safety – based on the applicable safety standards, a description of the steps necessary to develop an incident-specific safety plan for conducting a response;

(4) communications – a description of field communications procedures, including, if applicable, assigned radio channels or frequencies and their intended use by response personnel;

(5) deployment strategies – a description of proposed initial response actions that may be taken, including

(A) procedures for the transport of equipment, personnel, and other resources to the spill site, including plans for alternate methods in adverse weather conditions; and

(B) if the operator is not the primary spill responder, procedures to notify and mobilize the response action contractor or other responder identified in the plan, including a description of the interim actions that the operator will perform until the responder identified in the plan initiates a full response to the discharge; the description must demonstrate that the transition and substitution of equipment and resources between the plan holder and response contractor will occur without interruption of response or cleanup;

(6) response scenario – a written description of a hypothetical spill and response that demonstrates a plan holder's ability, using the resources described in the plan, to respond to a discharge of each applicable response planning standard volume within the required time frames under 18 AAC 75.430 – 18 AAC 75.442 and under environmental conditions that might reasonably be expected to occur at the discharge site; the response scenario must be useable as a general guide for a discharge of any size, must describe the discharge containment, control, recovery, transfer, storage, and cleanup actions to be taken, and must clearly demonstrate the strategies and procedures adopted to conduct and maintain an effective response, consistent with ensuring the safety of personnel; if the information required by this paragraph is contained in a separate document developed by the plan holder or the plan holder's oil spill primary response action contractor identified in 18 AAC 75.451(i), the plan holder may incorporate the information…

(I) procedure for lightering, transfer, and storage of oil that demonstrate access to sufficient lightering equipment and personnel to transfer all oil from damaged tanks and from undamaged tanks that might be at risk of discharging additional oil; the plan must provide for the start and completion of lightering within the shortest possible time;

Finding

For the renewal there were a variety of updates made to Volume 1, Section 1 of the VMT plan. Most of the updates were considered administrative, but there were updates to compliance information such as reporting and notification, and to some of the descriptions of the transfer procedures from recovered crude oil storage tanks at the facility.

The department reviewed the proposed updates on reporting and notifications in Table 1.2-5 and found that some information was not consistent with the department's discharge or release

reporting requirements in 18 AAC 75.300. The department requested for Table 1.2-5 to not include glycol for the substance "Petroleum Products & Glycol" because glycol has different reporting requirements than petroleum products since it is considered a hazardous substance and if spilled should be reported immediately. The department asked for APSC to also consider adding information on reporting for hazardous substances to this list because this information was not included in Table 1.2-5. APSC updated Table 1.2-5 as requested to remove glycol but did not add information on reporting for hazardous substances. The department can support these changes without information on hazardous substances because the plan continues to meet 18 AAC 75.448(a), which describes how the plan is to be a usable working plan for oil discharge control. Choosing to not include in the plan information on reporting hazardous substances does not alter the obligation to notify the department of all reportable spills under 18 AAC 75.300.

PWSRCAC requested information in Table 1.2-5 to be consistent with the table included in the JPO letter dated March 9, 2020, by adding the column on "Supplemental Instruction/Clarification" information and the summary of requirements for "Chemicals (non-petroleum hazardous substances other than glycol)," to support the usefulness of the document as a working plan as required by 18 AAC 75.448(a). The department is not requiring the information from the JPO letter dated March 9, 2020 be added to the plan because this letter includes information that is not consistent with department specific reporting requirements. APSC is required to report all spills in accordance with 18 AAC 75.300. The updated information in Table 1.2-5, including the changes made through the RFAI process and other reporting and notification information in Section 1.2, meet the requirements of 18 AAC 75.449(a)(2).

APSC made updates to procedures for transfers from recovered crude oil storage tanks in Volume 1, Section 1.6.7.4. PWSRCAC requested for APSC to provide information regarding why the water return pump rates to Tanks 93 and 94 were inaccurate. The department requested additional information from APSC on the changes to procedures for transfers from recovered crude oil storage tanks (Tanks 93 and 94). APSC explained, "This section has been updated to reflect Recovered Crude Tank 51-TK-80. The change in the water return pump capacity 2500 bbl/hr to 330 bbls/hr is updated for accuracy. The water return pumps for TK-80 are 51-P-4A and 51-P-4B. Flow is limited to 330 bbls/hr, as to not overcome the nitrogen blanketing system on 51-TK-80. Exceeding this rate would potentially create an explosive environment in the headspace of TK-80." As part of the comment period on the additional information, PWSRCAC requested APSC reduce the risk of explosion associated with the water return pumps by replacing the pumps or installing a mechanism to ensure they do not exceed the maximum pump rate of 330 bbls/hr.

APSC includes the procedures for transfer from recovered crude oil tanks to meet the requirements in 18 AAC 75.449(a)(6)(I). The information in Section 1.6.7.4 was updated for accuracy and to ensure safety of the system. The department views the renewal as an opportunity for plan holders to assess processes and procedures in the plan to ensure the continued applicability and appropriateness of the plan. APSC's effort to review and update Section 1.6.7.4 demonstrates this effort. The plan now states that the average estimated maximum volume to be pumped is 330 bbls per hour. The department is not requiring APSC to replace the pumps or to install a mechanism to ensure the pumping rate does not exceed 300 bbls/hr. The department expects APSC to review processes and procedures before any operation to understand the risks associated with the operations. The processes identified in Section 1.6.7.4 are those that APSC could use if a recovered crude oil storage tank was damaged. The information in Section 1.6.7.4 with the proposed updates

continue to meet requirements in 18 AAC 75.449(a)(6)(I). The department supports the updates to the plan for transfer procedures from recovered crude oil tanks.

The department finds the updates made to the response action plan meet the requirements of 18 AAC 75.449.

Issue #4 Prevention Training Programs

Statement of Issue
Does the plan include sufficient information to describe the prevention training program?

Regulatory Authority
18 AAC 75.450. Part 2 – oil discharge prevention and contingency plan; prevention plan. (a) The prevention plan must demonstrate that the applicant meets all applicable requirement of 18 AAC 75.005 – 18 AAC 75.085 and must provide a detailed description of all oil discharge prevention measures, policies, and programs in place at the facility, with reference to the specific oil discharge risk involved. The prevention plan may be submitted as a separate volume.

(b) The prevention plan must include the following information

(1) discharge prevention programs – a description and schedule of regular oil discharge prevention, inspection, maintenance, substance abuse, and medical monitoring, security and surveillance, and oil discharge prevention training programs in place at the facility or operation;

Finding
During the renewal APSC updated information in Volume 1, Section 2.1 for Prevention Training Program. Most of the renewal changes were administrative with updates to the description listing for the OCC Controller Qualification Program.

As public comment, PWSRCAC requested that all job roles directly involving inspection, maintenance, or operation of oil storage and transfer equipment regulated under 18 AAC 75.005 - 18 AAC 75.085 be identified in the plan and confirm the information in the plan includes everything described in 18 AAC 75.020(b). PWSRCAC also requested the following information be added to the plan:

- The training and level of knowledge appropriate to each position identified that shows how personnel are trained to meet state prevention requirements, as required at 18 AAC 75.020(b)(1).
- Licenses or certifications required for each position, if applicable and required in state or federal law, per 18 AAC 75.020(b)(2). If none are applicable, PWSRCAC asks to explain how APSC complies with state licensing requirements with no required licenses or certifications.
- Training objectives, subjects, schedules, frequency, and type as required at 18 AAC 75.020(b)(3). PWSRCAC asserts these are not available for review if they are included in referenced documents, which are not available.
- How APSC ensures that contractor personnel have met the necessary requirements before beginning work at the VMT.

As an RFAI, the department requested for APSC to confirm the training programs described in Vol. 1, Section 2.1.1 include all personnel with job duties directly involving inspection, maintenance, or operation of oil storage transfer equipment regulated under 18 AAC 75.005 – 18 AAC 75.085 and confirm the information in the plan includes everything described in 18 AAC 75.020(b). APSC responded that the plan includes:

(1) a listing of each position with job duties listed under (a) of this section and the training and level of knowledge appropriate to that position. Section 2.1.1.1, "Key VMT Positions," lists the general job duties, qualifications, and/or certifications.
(2) a listing of any licenses, certifications, or other prerequisites needed to hold each position listed in (1) of this subsection. Section 2.1.1.2, "Technician Progression Program," lists the progression level requirements for technicians and 2.1.1.3 OCC Controller Qualification outlines the qualification program for OCC Controllers and includes certifications required.
(3) a listing of training objectives and the means of achieving them, including training subjects, training schedules, frequency, and type. Section 2.1.1, "Prevention Training Programs," includes objectives for the progression of technicians, maintenance, inspection, support services, and project personnel for those having direct control or maintenance responsibilities over the oil handling or transportation portions of the spill prevention training through multiple mechanisms.

PWSRCAC also requested that the C-Plan be revised to clearly indicate that contractor training records will be complete, kept in the learning management system, and maintained for five years as required at 18 AAC 75.020(e), and PWSRCAC requested clarification regarding who the "people leaders and program owners" are and how these are different from supervisors. The department asked APSC who the people leaders and program owners were as an RFAI and APSC clarified these were supervisors or managers in the plan in Section 2.1.1.6. APSC also updated Section 2.1.1.6 to clarify expectations for contractors.

The department has reviewed the proposed changes and finds that APSC continues to meet regulatory requirements for prevention training as outlined in 18 AAC 75.450(b)(1).

Issue #5 Leak Detection

Statement of Issue
Does the prevention plan include sufficient information to meet regulatory requirements for leak detection?

Regulatory Authority
18 AAC 75.450. Part 2 – oil discharge prevention and contingency plan; prevention plan. (a) The prevention plan must demonstrate that the applicant meets all applicable requirement of 18 AAC 75.005 – 18 AAC 75.085 and must provide a detailed description of all oil discharge prevention measures, policies, and programs in place at the facility, with reference to the specific oil discharge risk involved. The prevention plan may be submitted as a separate volume.

18 AAC 75.450(b)(5) discharge detection – a description of the existing and proposed means of discharge detection, including surveillance schedules, leak detection, observation wells, monitoring systems, and spill detection instrumentation; if electronic or mechanical instrumentation is employed, detailed specifications, including threshold detection, sensitivities, and limitations of equipment, or an approved waiver, must be provided;

18 AAC 75.065(h) An owner or operator of an installation placed in service before May 14, 1992 shall

(1) equip each field-constructed aboveground oil storage tank with one or more of the following:

(A) a leak detection system that an observer from outside the tank can use to detect leaks in the bottom of the tank, such as secondary catchment under the tank bottom with a

leak detection sump, a sensitive gauging system, or other leak detection system approved by the department;

(B) cathodic protection in accordance with the American Petroleum Institute's (API) Cathodic Protection of Aboveground Petroleum Storage Tanks, First Edition, 1991 (API RP 651), adopted by reference;

(C) a thick film liner in accordance with Lining of Aboveground Petroleum Storage Tank Bottoms; First Edition, 1991 (API R 652), adopted by reference in (g)(1) of this section;

(D) another leak detection or spill prevention system approved by the department;

18 AAC 75.990(112) "sensitive gauging system" means the best demonstrated available gauging technology at the time of tank construction or substantial reconstruction, or initial gauging system installation;

18 AAC 75.432. Response planning standards for oil terminal facilities. (a) For an oil terminal facility, the plan holder shall maintain or have available under contract within the plan holder's region of operation or another approved location, sufficient oil discharge containment, storage, transfer, and cleanup equipment, personnel, and other resources to

(1) contain or control, and clean up within 72 hours that portion of the response planning standard volume that enters open water; and

(2) contain or control within 72 hours, and clean up within the shortest possible time consistent with minimizing damage to the environment, that portion of the response planning standard volume that enters a receiving environment other than open water.

(b) The response planning standard volume for an oil terminal facility is equal to the capacity of the largest aboveground oil storage tank at the facility covered by the plan, unless there are specific natural or man-made conditions outside the facility which could place the facility at an increased risk of an oil discharge affecting one or more storage tanks. For a vessel operating as an oil terminal facility, the response planning standard is based on the entire storage capacity of the vessel.

(c) For an increased risk described in (b) of this section, the response planning standard volume is equal to the capacity of all of the potentially affected aboveground oil storage tanks at the facility. The plan must set out the basis for selecting the storage tanks and the volume of oil planned for in the response.

(d) The department will, in its discretion, reduce the requirements of (b) of this section, by a percentage up to that shown, for each of the following prevention measures in place at the facility:

(3) on-line leak detection systems that automatically alarm at a facility control room that is continuously monitored, for tanks and piping: five percent;

Finding

As part of the renewal, updates were made to the sensitive gauging system for the East Tank Farm. The department requested additional information through an RFAI to describe the changes on the static level devices and the leak detection evaluation process. PWSRCAC requested information about why the reports changed from intervals of 30 minutes to 24 hours, particularly since this does not appear to have changed for the Ballast Water System; how this will impact APSC's ability to implement prompt and effective source control; and an explanation to why the most sensitive threshold available in the current system was not used.

APSC provided a detailed summary of the changes in the RFAI #1 response. For the tank static levels, APSC clarified that the sensitivity is not changing but the process by which the static tank levels are monitored was upgraded. The changes included automation of the process by

programming specified setpoints instead of the previous method where the OCC Controller manually set setpoints at the start of each shift.

In the previous method the terminal net gain or loss of oil was calculated every 30 minutes and monitored every 60 minutes by the OCC Controller for anomolies greater than +/- 3,000 bbls. This 3,000 bbbl threshold is based on an old assumption of average transfer rates of 700,000 bbls/day and current throughput is averaging 480,000 bbls/day. The change in the throughput effects the daily sensitivity and to reach the industry standard of 0.5 % sensitivity the threshhold needed to be lowered to a 2,400 bbls threshold. The updated process in the plan states, "The OCC receives a terminal gain/loss alarm if the incoming flow rate exceeds the calculated threshhold, which is determined by multiplying the average VMT incoming flow rate by leak detection sensitivity set-point…" APSC clarified that this updated process will reduce the likelihood of missing a leak in the system due to human error.

The 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., per one-tenth (0.10) of a foot range, should a sudden leak develop on one of the active storage tanks."

During the comment period on the additional information, PWSRCAC requested that the details APSC provided in the RFAI response be added to the plan, specifically the calculated threshold of 0.5% of the throughput (which would be dynamic based on the carrying throughput of the line). PWSRCAC asserts that this is important information regarding leak detection.

The department's RFAI was to better understand the proposed changes in the plan and APSC's response clarified those specific changes. The information in the plan continues to meet requirements for leak detection in 18 AAC 75.065(h)(1). In addition, APSC has cathodic protection in place which also meets requirements of 18 AAC 75.065(h)(1), in which APSC is required to have one leak detection method in place but includes multiple methods. For additional information on the changes to the sensitive gauging system and the process to detect leaks, the department recommends that PWSRCAC request a presentation through the VMT Coordination Group. Information on how APSC carries out source control is described in Volume 1, Section 1.6.7 of the plan.

The department asked as an RFAI for information on the leak detection process for the Ballast Water Tanks (BWT) because there were no proposed updates to leak detection for BWT tanks during the initial renewal submittal. APSC responded that "Section 2.1.6.3 Leak Detection, Ballast Water System, has been updated to remove obsolete software that is no longer in use. Leak detection at BWT includes daily verifications including the level and status of the BWT and Recovered Crude Oil Tanks every 4 hours, recording beginning and ending tank levels every time a tank's status has changed, and performing daily inspections inside the secondary containment area to look for leaks or damage. BWT-9.10 is the BWT Facility Operator routine duties-normal operation procedure." In the RFAI response, APSC updated the leak detection information for BWT tanks to clarify the changes in the procedure. The updated information in the plan continues to meet regulatory requirements in 18 AAC 75.065(h)(1) for leak detection of BWT tanks. In addition, APSC has cathodic protection in place for the BWT tanks which also meets requirements of 18 AAC 75.065(h)(1).

PWSRCAC requested for details provided in APSC's RFAI response on the leak detection process for BWT tanks be added to the plan, specifically the procedure to check the level and status of the

BWT and recovered oil tanks every four hours. The plan includes this information in Volume 1 Section 2.1.6.3.

PWSRCAC requested that APSC explain how a spill underneath a crude oil storage tank would be detected under layers of gravel associated with the secondary containment system using visual detection methods. The department responded to this comment in the 2014 VMT plan approval findings document.

18 AAC 75.065(h)(1) requires each field constructed aboveground oil storage tank to have one or more of the options listed in (A)-(D). APSC listed the sensitive gauging system as the method used to meet the requirement for 18 AAC 75.065(h)(1). 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.

Office of Administrative Hearings Order

On May 19, 2025, the Commissioner remanded to the department an issue concerning certain sensitive gauging equipment used by APSC at the VMT and a response planning standard credit issued to APSC by the department. On June 13, 2025, OAH clarified the Commissioner's remand order and directed the department to incorporate the following into the Basis of Decision:

- the reasoning and basis for their prior decision(s) specifically related to the sensitive gauging issue and the response planning standard credit;
- changes at VMT since the date of the relied upon prior decision(s) that could undermine the ongoing reasonableness of any incorporated decision(s); and
- changes to the relevant systems or procedures at VMT that could be reasonably be considered to trigger the need for a new review under 18 AAC 75.432, the definition at 18 AAC 75.990, or elsewhere.

This and the following subsections have been added to the Basis of Decision to comply with the remand order. The department notes that it is standard practice for the agency to rely upon past decisions and reviews without incorporating this level of detail into a decisional document. The department regulations only require plan decisions to include "a summary of the basis for its decision" (18 AAC 75.460(b)(1)) and the department does not interpret that to require historical findings be restated in every subsequent decision, particularly when no information is presented to the agency suggesting those past decisions must be revisited. These revisions will not alter the department's standard practice for future reviews.

Given the complexity of the additional detail, the department has chosen to incorporate subheadings into this section. This is atypical for Basis of Decision documents. The subheadings are added solely for the reader's convenience and do not constitute a departure from standard formatting for future documents.

The included references to past decisions and findings do not subject them to informal review or adjudicatory hearings under 18 AAC 15 or appeal per the Alaska Rules of Appellate Procedure. The department noticed authorized persons of their ability to timely request review at the time those decisions were made, and any attempts to request review or challenge these historical decisions now would be untimely.

Finally, the department's issuance of an updated Basis of Decision is solely in response to the Commissioner's remand order. Aside from the updates to this document, the findings and conclusions stated in this document remain effective upon the initial issuance of the department's approval of the renewed plan, November 6, 2024.

Sensitive Gauging Equipment

The current sensitive gauging equipment used on regulated oil storage tanks at the VMT are Enraf Model 854 Servo Level Gauges. The department reviewed and assessed the adequacy of APSC's Enraf gauging system through a series of requests to APSC between 1995 and 2000, summarized below.

The Enraf gauging equipment was installed on APSC's regulated oil storage tanks (both crude and fuel oil) at the VMT between 1995 and 2000. The tank level gauges initially installed on tanks at the VMT were Varec gauges that represented the best available level gauging technology in the late 1970s when the tanks were constructed. APSC evaluated the Enraf tank level gauges and provided a summary to the department in a memorandum dated April 25, 1995 subject: Leak Detection Information for Question 34, Subpart (c), which was part of a request for additional information for the VMT plan review in 1995. Technical specifications from the two manufacturers document that the Enraf gauges were more accurate than the Varec gauges. Because of the accuracy of the Enraf gauges, they were the only automatic gauges available at the time that met American Petroleum Institute (API) standards for custody transfer. In the April 25, 1995 memorandum, APSC asserted that the Enraf gauging system was the best available gauging technology at the time of its installation, consistent with the department's definition of "sensitive gauging system" at that time, formerly found at 18 AAC 75.990(59).

As a Condition of Approval to its January 14, 1997 VMT plan renewal decision, the department required APSC to collect information during the first year following approval "to optimize the leak detection sensitivity by using a range of static holding times from 2 hours to 48 hours during their monthly tests of the 10 crude oil storage tanks" that relied solely on the Enraf gauges to meet leak detection requirements. The static holding time refers to a period where all flow into and out of a tank is shut off; the static test allows for confirmation of tank liquid levels when thermal expansion is accounted for in the tank. As explained in the department's 1997 Basis of Decision, the department consulted with API on testing the leak detection performance of the Enraf gauges, and based on API recommendations, determined that requiring APSC to collect data on this range of static holding times would allow APSC "to establish a hold time which optimizes the leak detection sensitivity." Through this evaluation, APSC would prove the capability of the new Enraf gauges as part of the leak detection system.

In 1998, APSC completed a year of leak detection evaluation work based on the API Publication No. 325, *An Evaluation of a Methodology for the Detection of Leaks in Aboveground Storage Tanks*. APSC submitted a twelve-month comparative data summary report detailing this work and submitted a response to the department on July 21, 1998 in Government Letter 98-13340.

The department accepted this evaluation and, based on its findings, approved APSC to perform monthly 48-hour static leak detection tests for crude oil storage tanks without cathodic protection (i.e. that rely solely on sensitive gauging to meet leak detection requirements) in a January 12, 1999 letter. The department's decision also confirmed that Enraf gauges met the department's definition of "sensitive gauging system" for crude oil storage tanks at the VMT.

In 2000, APSC completed installation of Enraf gauges on fuel storage tanks at the VMT (Tanks 53 through 56). Because the tanks held different petroleum products and the tanks are different sizes, the department required as a Condition of Approval to its April 11, 2000 VMT renewal decision that APSC confirm the leak detection performance of the Enraf gauges for the fuel storage tanks. APSC completed a year-long leak detection analysis following the same process they used for the crude oil storage tanks to demonstrate the sensitivity of the gauging equipment and confirm leak detection capability. In an April 18, 2001 letter, the department accepted APSC's findings from the leak detection analysis work for the fuel storage tanks, closed out the Condition of Approval, and found the Enraf gauges met the department's definition of "sensitive gauging system" for the fuel storage tanks at the VMT.

Enraf gauges continue to be used for all regulated oil storage tanks at the VMT. APSC continues to reference the gauges in the plan and follow the approved leak detection procedure for tanks that do not have under-tank cathodic protection. Section 2.1.5.1 of the current plan commits APSC to monthly instrument verification on Tanks 1-14, 51-54, 93-94, and 80 which employ Enraf gauges.

The detailed specifications, including threshold detection, sensitivities, and limitations of equipment used for discharge detection are required to be listed in the plan as stated in 18 AAC 75.450(b)(5). APSC meets this requirement through the information described in Volume 1, Section 2.1.5.3 Leak Detection for the sensitive gauging system.

On-Line Leak Detection System and Prevention Credit

For the VMT on-line leak detection system for tanks, APSC has a Supervisory Control and Data Acquisition (SCADA) control system that monitors the movement of oil at the facility by taking "data points from the incoming metering system, the storage tank level gauges, the outgoing meter system, the recovered crude injection system, and the header fill volume system to calculate a net gain or loss value between the amount of oil received, in-storage, and loaded onto tankers." The SCADA system reports information from the Enraf gauges that have communication systems (Enraf Entis) and independent high-level alarms to APSC's operation control center (OCC). This technology and process allows APSC to continuously monitor tanks at the VMT. The SCADA system (formerly described by APSC as the "Terminal Supervisory Control & Data Acquisition System" in the VMT plan) has been in place at the facility and eligible for prevention credit under 18 AAC 75.432(d) since as early as 1992.

Following the passage of House Bill 567 (HB 567) on June 27, 1990, APSC was required to make significant updates to the VMT plan with revisions to the response planning standard volume and response scenario, prevention credits, and the prevention plan. In an August 12, 1992 plan amendment submitted by APSC to the department, the prevention credit proposed for on-line leak detection systems for tanks and piping was 5%. The department responded via letter on August 30, 1993, requiring updates to the response planning standard calculations used at the facility, but supporting the "5% credit for the on-line leak detection system."

As part of the 2014 VMT plan renewal, the department reduced the prevention credit from 5% to 2%. In its findings, the department explained that it reduced the prevention credit because "[w]hile the draft plan presented adequate information on leak detection for tanks, . . . the department determined that APSC does not have on-line leak detection for piping." The department did not support a prevention credit for the piping's leak detection system because APSC could not demonstrate 24-hour on-line monitoring capability to remotely detect a leak from any segment of facility oil piping at the VMT. The 2014 VMT plan findings document reaffirmed the department's

decision to support APSC's remaining prevention credit based on their ability to provide on-line leak detection for tanks.

Finally, the department's revisions to its Article 4 regulations in 2023 included an update to 18 AAC 75.432(d)(3), which clarified that on-line leak detection systems for tanks and piping need to "automatically alarm at a facility control room that is continuously monitored" to be eligible for prevention credit. APSC's on-line leak detection system met the revised regulatory requirements without equipment or operational changes. During the 2023 VMT plan renewal, APSC updated Volume 1 Section 5.1 of the plan to demonstrate that its on-line leak detection system for tanks was consistent with these updates. The department reviewed the plan revisions, and continued to support the 2% prevention credit to APSC because they meet the updated requirements at 18 AAC 75.432(d)(3) for the tanks.

VMT Plan Renewal

During a plan renewal, department regulations require a second public comment period limited to information submitted by the plan holder in response to a request for additional information (RFAI) (18 AAC 75.455(d)). During this phase of the 2024 VMT plan renewal, APSC submitted additional information in response to a RFAI concerning the sensitivity of tank static level devices and the leak detection evaluation process. The City of Valdez commented that the department should "require APSC to install the Best Available Technology to identify crude oil tank system leaks, evaluating the best technology available in 2024, providing the public with a comprehensive technical and economic analysis prepared by independent leak detection experts in the field of crude oil tank system leak detection. If the tank leak detection system does not meet BAT standards, Valdez requests that the two percent prevention credit applied in Volume 1, Section 5.1 be removed until a new system can be installed that meets the BAT standard."

The department determined that the issues identified by the City did not reflect applicable requirements or warrant changes to the VMT facility or the plan.

Fundamentally, the department's best available technology (BAT) regulations at 18 AAC 75.452(a)(2) do not require an oil terminal facility to demonstrate BAT for the leak detection systems used for the VMT aboveground oil storage tanks, which were constructed before 1992. Further discussion of this can be found in Issue #11. To the extent the City's comment was directed at the tanks' sensitive gauging systems, no information submitted by APSC or the City indicated that there was substantial reconstruction to the aboveground storage tanks or that new gauging technology was installed, so APSC's Enraf gauges remained the "best demonstrated available gauging technology" as described at 18 AAC 75.990(112). Finally, the department's response planning standard regulations at 18 AAC 75.432, which authorize the department to issue prevention credits for on-line leak detection systems, do not subject those systems to BAT review under 18 AAC 75.452. No other information submitted to the department during the renewal period indicated that its prior findings concerning APSC's sensitive gauging systems or its on-line leak detection systems needed to be revisited.

When the gauging equipment was first installed the department required APSC to evaluate the equipment for sensitivity and threshold detection limits, and through this process the Enraf was demonstrated to meet the definition in 18 AAC 75.990(112) as the best demonstrated available gauging technology for the VMT facility. This supports the ability for the VMT facility to use sensitive gauging equipment as part of the on-line leak detection system to effectively monitor the tanks continuously for leaks and other issues.

Clarified Findings

The department evaluated all application materials under the provisions of 18 AAC 75.455, including items that were not changed since the last plan approval, pursuant to 18 AAC 75.420(e).

To summarize the historical findings outlined above, for sensitive gauging, the definition in 18 AAC 75.990(112) explains that if the equipment is exchanged with other sensitive gauging equipment, or if there is a major reconstruction of the tank, then APSC would need to demonstrate the capability of the sensitive gauging technology. Because there were no changes to the sensitive gauging equipment a review of the technology's capabilities compared to new technologies was not warranted, nor required by 18 AAC 75.420(e). The sensitive gauging equipment transmits tank information to the SCADA system which provides on-line leak detection for tanks that is continuously monitored and automatically alarms at the VMT Operations Control Center, supporting APSC's receipt of 2% prevention credit under 18 AAC 75.432(d)(3).

The department finds that APSC continues to meet requirements for aboveground oil storage tanks at 18 AAC 75.065(h)(1), the information in the plan meets prevention plan requirements of 18 AAC 75.450 for regulated oil storage tanks at the VMT, and APSC can continue to receive prevention credit for on-line leak detection for tanks at 18 AAC 75.432(d)(3).

Issue #6 Cathodic Protection

Statement of Issue
Does the cathodic protection system in place meet regulatory requirements?

Regulatory Authority
18 AAC 75.065. Field-constructed aboveground oil storage tank requirements.

(h) An owner or operator of an installation placed in service before May 14, 1992 shall

(1) equip each field-constructed aboveground oil storage tank with one or more of the following:

(A) a leak detection system that an observer from outside the tank can use to detect leaks in the bottom of the tank, such as secondary catchment under the tank bottom with a leak detection sump, a sensitive gauging system, or other leak detection system approved by the department;

(B) cathodic protection in accordance with the American Petroleum Institute's (API) *Cathodic Protection of Aboveground Petroleum Storage Tanks*, First Edition, 1991 (API RP 651), adopted by reference;

(C) a thick film liner in accordance with *Lining of Aboveground Petroleum Storage Tank Bottoms*; First Edition, 1991 (API R 652), adopted by reference in (g)(1) of this section;

(D) another leak detection or spill prevention system approved by the department; and

(2) operate and maintain, after December 30, 2007 and before November 18, 2021, the cathodic protection system on each field-constructed aboveground oil storage tank consistent with Section 11 of Standard Recommended Practice: External Cathodic Protection of On-Grade Carbon Steel Storage Tank Bottoms, (NACE RP0193-2001), adopted by reference in (j) of this section; a corrosion expert or qualified cathodic protection tester shall perform a cathodic protection survey specified under that standard; and

(3) on or after November 18, 2021, operate and maintain the cathodic protection system of each field-constructed aboveground oil storage tank consistent with Section 11 of

NACE International's Standard Practice: Application of Cathodic Protection to Control External Corrosion of Carbon Steel On-Grade Storage Tank Bottoms (NACE SP0193-2016), adopted by reference; a corrosion expert or qualified cathodic protection tester shall perform a cathodic protection survey specified under that standard.

18 AAC 75.990(169) "corrosion expert" means a person who

(A) by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired through professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried metal piping and metal tanks, and

(B) is accredited or certified as being qualified by NACE International as a corrosion specialist, cathodic protection specialist, or is a registered engineer with education and experience in corrosion control of buried metal piping systems and metal tanks;

Finding

For the renewal, there were minor administrative updates to Volume 1, Section 2.1.6.4 that describe the cathodic protection (CP) system at the VMT. The department requested for APSC to include additional information in the plan on the maintenance of the CP test leads. APSC included the requested information in the plan.

The PWSRCAC provided public comments on APSC's cathodic protection system. PWSRCAC requested for APSC to confirm what the source of interference is with the CP systems under some of the tanks and verify that the issue has been resolved with testing within the correct data ranges for an effective CP system. In addition, PWSRCAC requested that APSC explain why the cathodic protection system reports used old depolarized data when the API and NACE standards require that recent (current) data be used to measure polarization, and requests APSC use current depolarized data for future reports to comply with API and NACE standards.

In compliance with 18 AAC 75.065, APSC's CP system is being operated and maintained in accordance with NACE 0193 Section 11 and surveyed by a corrosion expert as defined in 18 AAC 75.990(169). To be in compliance with NACE 0193, CP readings must meet at least one of three criteria, one of the criteria includes a change in voltage from an established baseline. APSC's CP contractor uses a baseline established in 2015 for the 2016 to 2018 CP surveys. PWSRCAC's contractor believes that a new baseline needs to be set every year. NACE 0193-2016, codified by 18 AAC 75.065, does not provide specific requirements on how often the baseline needs to be established.

APSC references NACE RP0193-93 in the plan, which is incorrectly referenced. The department is requiring APSC to update this reference to NACE SP0193-2016 as Condition of Approval (COA #2A). The NACE standard was updated in 18 AAC 75.065(h)(3) during the update to oil prevention standards for tank operations and maintenance that went into effect November 18, 2021.

The department encourages PWSRCAC to continue discussing options for CP systems at the VMT with APSC. The department is not requiring any additional information on CP systems from APSC at this time, other than correcting the NACE reference.

Issue #7 VMT 2019 Plan Approval Conditions of Approval for Secondary Containment Area Evaluation Process for the East Tank Farm

Statement of Issue
Does the process identified to evaluate the integrity of secondary containment areas for the VMT East Tank Farm meet department requirements?

Regulatory Authority
18 AAC 75.075. Secondary containment requirements for aboveground oil storage tanks.
(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.

18 AAC 75.432. Response planning standards for oil terminal facilities. (a) For an oil terminal facility, the plan holder shall maintain or have available under contract within the plan holder's region of operation or another approved location, sufficient oil discharge containment, storage, transfer, and cleanup equipment, personnel, and other resources to:

(1) contain or control, and clean up within 72 hours that portion of the response planning standard volume that enters open water; and

(2) contain or control within 72 hours, and clean up within the shortest possible time consistent with minimizing damage to the environment, that portion of the response planning standard volume that enters a receiving environment other than open water.

(b) The response planning standard volume for an oil terminal facility is equal to the capacity of the largest aboveground oil storage tank at the facility covered by the plan, unless there are specific natural or man-made conditions outside the facility which could place the facility at an increased risk of an oil discharge affecting one or more storage tanks. For a vessel operating as an oil terminal facility, the response planning standard is based on the entire storage capacity of the vessel.

(c) For an increased risk described in (b) of this section, the response planning standard volume is equal to the capacity of all of the potentially affected aboveground oil storage tanks at the facility. The plan must set out the basis for selecting the storage tanks and the volume of oil planned for in the response.

(d) The department will, in its discretion, reduce the requirements of (b) of this section, by a percentage up to that shown, for each of the following prevention measures in place at the facility:

(4) 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: 60 percent;

18 AAC 75.990. Definitions.

(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.

Finding
As part of the November 15, 2019 VMT plan renewal approval letter the department required as Conditions of Approval (COA) #2 APSC to continue exploring the condition of the secondary containment liner:

> A. For a method APSC identifies, conduct proof of concept testing for a potential way to evaluate the integrity of the buried CBA membrane secondary containment liner in situ in the East Tank Farm at the VMT. Testing can be done outside of the East Tank Farm. Provide a report to the department for review before October 1, 2023, or before using the method in B of this Condition.
>
> B. Evaluate the integrity of 1% (approximately 2,420 ft^2) of the buried (or ballasted) membrane (CBA and other materials) of the East Tank Farm's Secondary Containment Area. Any liner exposed during project work counts toward the evaluation. The procedures for conducting the evaluations should incorporate the method identified in A of this condition for these evaluations, and must be submitted to the department for approval by March 1, 2024 or at least 30 days prior to beginning evaluations. APSC must provide a report to the department on findings 6 months after work completion or before submittal of the next plan renewal.
>
> C. Coordinate with the department to plan a table top exercise or work shop to review APSC's capabilities to remove oil from a containment cell prior to impacts to groundwater and the Port of Valdez. This must be conducted by June 1, 2021, and can be combined with another exercise. A report must be produced and provided to the department, along with exercise/workshop documentation within 60 days of the exercise.
>
> D. Provide the department with the most up-to-date procedures for secondary containment inspection, repair, and record keeping. These procedures must include the commitments to continue to evaluate the CBA liner anytime it is exposed (as outlined in Volume 1, Section 2.1.7 of the plan), if necessary to complete repairs as soon as possible, and to notify the department any time damage is found.

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.

The requirements in COAs 2A, 2B, and 2C were challenged by APSC and PWSRCAC and the department's director issued a final decision on the COAs in a letter dated May 11, 2022. The following are the updated requirements:

> 2A. No later than October 1, 2023, make a preliminary selection for which method APSC will use to evaluate the integrity of the buried CBA membrane secondary containment liner in situ in the East Tank Farm at the VMT. No later than March 1, 2025, provide a report to DEC proposing a final selection for which method APSC will use for evaluations. APSC may request an extension of these deadlines for good cause shown.
>
> > a. The report must explain why the method was selected, what alternatives were considered and why they were dismissed, and must discuss the anticipated reliability, scalability, and accuracy of the method to identify existing damage in the liner. The report must also account for any variation in the characteristics of different sections of the liner in the East Tank Farm. For example, if APSC's preferred evaluation method cannot be implemented in certain sections of the liner, the report should explain why that is true and should propose an alternative method to evaluate those sections. The report must also identify which portions of the liner are most susceptible to damage, if any, and identify a priority list for which sections should be evaluated first.
> >
> > b. To assist in the selection process, APSC may conduct a pilot study in the West Tank Farm. APSC may also request a formal meeting with SPAR staff every six months to review the status and trajectory of the method selection process.
> >
> > c. After reviewing the report proposing APSC's final selection for an evaluation method, DEC will either approve the method, conditionally approve the method, or deny it and provide feedback. If DEC denies or conditionally approves the proposed method, APSC shall incorporate any DEC feedback into the method and resubmit the proposal no later than 30 days after DEC's decision.
>
> 2B. With the 2024 application for renewal, submit the most recent results of any pilot study performed as part of the evaluation method selection process under COA 2A. APSC is not required to conduct visual inspections of the liner before selecting the final evaluation method under COA 2A, but any inspections done during project work will count toward future evaluation requirements. APSC shall submit a report to DEC detailing the results of any inspection within 60 days of completing the inspection.
>
> 2C. Coordinate with the department to plan a table top exercise or work shop to review APSC's capabilities to remove oil from a containment cell prior to impacts to groundwater and the Port of Valdez. This must be conducted by June 1, 2021, and can be combined with another exercise. A report must be produced and provided to the department, along with exercise/workshop documentation within 60 days of the exercise.

Because the original deadline had passed when the director's decision was issued, APSC was given an extension for the deadline to complete COA 2C from June 1, 2021 until August 31, 2022. APSC completed a workshop to meet COA 2C on August 11, 2022 that was accepted by the department in a letter dated October 21, 2022.

The procedures for secondary containment inspection, repair, and record keeping was provided to the department to meet the requirement in COA 2D, which was not challenged or part of the director's decision in the May 11, 2022 letter.

To meet the preliminary selection requirements of COA 2A, APSC submitted to the department a proposed evaluation method on September 25, 2023. The method APSC selected was Geoelectric Leak Location (GELL) which has been successfully used to identify defects on other liner types but has not been tested for catalytically blown asphalt (CBA) liner systems. APSC proposed to perform a pilot study and to intentionally create defects in the West Tank Farm to calibrate the sensitivity and accuracy of the GELL method prior to implementing in the East Tank Farm. As part of this work, the buried CBA would be exposed to confirm the condition of the liner confirming the results from the GELL surveys. Data collected on the condition of the liner is to be used in the simulation model for the liner. A Monte Carlo analysis is proposed to be used which is a probabilistic simulation model used to determine the required scale of a survey or amount of buried liner to be evaluated that would accurately characterize the condition of the whole liner.

When APSC subitted the renewal application on October 20, 2023, this proposed evaluation method was included as part of the 2024 VMT plan renewal and was available for public review during the public comment period. PWSRCAC provided comments on the proposed evaluation. In addition, as public comment, the VFDA requested for the department to continue to require substantive testing and work to evaluate the integrity of the CBA liner. These comments were submitted to the department during the initial public comment period that ended on December 15, 2023 and the department's response is discussed in greater detail later in this issue.

On July 9, 2024, prior to the start of the pilot study, APSC provided the department with the *SCS Condition Evaluation WTF ELL Pilot Study Issued For Inspection (IFI)*. This document included the scope of work for the pilot study in the West Tank Farm and describes the plans for carrying out Electric Leakage Location (ELL) surveys (which is the updated term rather than GELL as described above in APSC's proposed evaluation method letter dated September 25, 2023). The ELL surveys were to be completed in a 15,000 ft^2 area. To electrically isolate the test area and meet conditions necessary for the test method the test area would be surrounded by a trench exposing the CBA liner.

As part of the IFI, and in addition to ELL, APSC planned to test an additional liner evaluation method, Electrical Resistivity Tomography (ERT). This test method was planned for the same 15,000 ft^2 area prepared for the ELL test. Both tests were to be carried out and anomalies identified from the surveys would be excavated to validate the test methods. If anomalies were not discovered then defects would be fabricated in the liner, then buried, then ELL and ERT technologies would be used to try to detect the fabricated defects in the liner. The work was to be completed using standard practices, ASTM D7007-16 *Standard Practices for Electrical Methods for Locating Leaks in Geomembranes Covered with Water or Earthen Materials.*

The pilot study in the West Tank Farm was completed from July 22 to July 29, 2024. During this time the department attended the project work to observe and verify the work along with representatives from the Bureau of Land Management (BLM), PWSRCAC, PWSRCAC's contractor, APSC, and WSP (formerly Golder, APSC's contractor to complete the liner evaluation survey work). The work appeared to follow the processes outlined in the IFI submitted on July 9, 2024. There were some challenges in preparing the site due to rain, but APSC was able to complete work to isolate the planned amount of area to execute the test. WSP are subject matter experts in liner evaluations, including use of the ELL and ERT devices. PWSRCAC's contractor noted that the work was completed following standard practices and protocols in a presentation to the PWSRCAC Board Meeting on September 19, 2024.

Additional details on the testing methods used in the West Tank Farm and WSP's detailed report on the findings from the work, were not available before the completion of the renewal process. The final report that includes APSC's decision on the method to be used to evaluate the integrity of the secondary containment liner in the East Tank Farm is not required to be submitted to the department until March 1, 2025 per COA 2A. The department will evaluate WSP's work report and APSC's final method selection report when submitted to the department.

As a part of the RFAI process, the department requested for APSC to update the plan to include a general description of COA 2A and 2B in the plan. In response, APSC updated Section 2.1.7.1 to include a general description of the process APSC is following to meet COA 2A and 2B. The information clarifies the planned submittal of APSC's report with the final selection of the evaluation method by March 1, 2025; the process for the department's review of the report; and a statement that clarifies that the department will determine the specific requirements for evaluation performance, the amount of liner to be inspected, and any deadlines for completion. Volume 1 Section 2.6 Waivers [18 AAC 75.450(b)(6)] also acknowledges the conditions of approvals in the plan by including the following statement, "General description of the 2019 Condition of Approval 2A and 2B can be found in Section 2.1.7.1, "Secondary Containment Integrity Maintenance Program." As new Conditions of Approval (COA #1A and 1B) for the 2024 VMT plan renewal, the department is requiring APSC to complete the commitments outlined in the plan and continue the response to the director's decision on the Conditions of Approval from the 2019 renewal for secondary containment integrity evaluation of the East Tank Farm.

The department is requiring the commitment from APSC to continue the progress in determining the best method to evaluate the integrity of the secondary containment system to be in the plan. APSC is required to propose an evaluation method that is reliable, scalable, and accurate and the department will determine if requirements are being met. The process now incorporated in the plan, commits APSC to evaluate the integrity of liner under 18 AAC 75.075(a)(2), and follows the process outlined in the department's Director's letter dated May 11, 2022. The department will review the final report as required by the director's decision to determine how well the technology works, including if the testing method is reliable, scalable, and accurate to confirm the evaluation work will meet the intent of the COAs. Input received from the public during this renewal application review process along with other input from the public will continue to be considered. Reports provided to the department will be available through the public records request process. The department recommends for APSC to provide updates on the process to the VMT Coordination Group.

In addition to the department's interest in ensuring the secondary containment liner integrity, the BLM has also been tracking and providing input into the process. The department and BLM have

met on the SCA project and coordinated efforts to attend the West Tank Farm Pilot Study to ensure the process and path forward for APSC is meeting both BLM and the department's needs.

PWSRCAC requested for the department to reduce the prevention credit granted under 18 AAC 75.432(d)(4) for the secondary containment system while the process to complete the COAs is underway. The City of Valdez requested for all prevention credit related to secondary containment be removed until the secondary containment liner is replaced. 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.

Secondary containment systems of oil terminal facilities are required to meet 18 AAC 75.075 of the department's Article 1 Oil Pollution Prevention Requirements. 18 AAC 75.450 includes the requirement to provide a detailed description of the oil discharge prevention programs at the facility in the plan. The department recognizes that the secondary containment liner of the East Tank Farm has been identified to have some anomalies in the past that has driven the need to continue to evaluate the integrity of the liner, but it is important to point out that there are no known defects in the current state of the secondary containment liner. All known issues in the liner have been repaired and the expectation is that APSC will continue to evaluate and make necessary repairs according to the plan and procedure provided to the department. The commitments in the plan by APSC to evaluate the integrity of the liner, including the timeline to complete this work, demonstrate how APSC continues to meet prevention plan requirements under 18 AAC 75.450 for the secondary containment systems.

The department is requiring SCA liner integrity evaluations because of the previous history of discovering anomalies that were uncovered when completing project work. Once APSC has selected a method to evaluate the liner and completes the evaluations, the department will consider the COA 1A and 1B complete from the 2024 VMT renewal, which also completes COA 2A and 2B from the 2019 VMT renewal. 18 AAC 75.075(a)(2) does not require plan holders to evaluate the condition of the liner but requires SCA systems to be sufficiently impermeable. Once APSC completes the liner evaluation work to confirm the integrity of the liner, additional evaluations may not be required.

Issue #8 Other Prevention Plan Updates

Statement of Issue
Does the information in the Prevention Plan meet regulatory requirements?

Regulatory Authority
18 AAC 75.450. Part 2 – oil discharge prevention and contingency plan; prevention plan. (a) The prevention plan must demonstrate that the applicant meets all applicable requirement of 18 AAC 75.005 – 18 AAC 75.085 and must provide a detailed description of all oil discharge prevention measures, policies, and programs in place at the facility, with reference to the specific oil discharge risk involved. The prevention plan may be submitted as a separate volume.
(b) The prevention plan must include the following information
(1) discharge prevention programs – a description and schedule of regular oil discharge prevention, inspection, maintenance, substance abuse, and medical monitoring, security and surveillance, and oil discharge prevention training programs in place at the facility or operation;
(2) discharge history – a list of all known oil discharges greater than 55 gallons that have occurred at the facility within the state; the history must include

(A) the source, cause, and amount of each discharge;

(B) corrective actions taken;

(C) an analysis of the relationship, if any, between the frequency, cause and size of the discharges; and

(D) a description of actions to be taken to prevent or mitigate similar discharges in the future;

(3) potential discharge analysis – an analysis of potential oil discharges, including size, frequency, cause, duration, and location, and a description of actions taken to prevent a potential discharge;

(4) specific conditions – based on the discharge history required in (2) of this subsection and the potential discharge analysis required in (3) of this subsection, a description of

(A) conditions specific to the facility or operation that might increase the risk of a discharge, including physical or navigational hazards, traffic patterns, and other site-specific factors; and

(B) measures that have been taken to reduce the risk of a discharge attributable to these conditions, including a summary of operating procedures designed to mitigate the risk of discharge;

(5) discharge detection – a description of the existing and proposed means of discharge detection, including surveillance schedules, leak detection, observation wells, monitoring systems, and spill detection instrumentation; if electronic or mechanical instrumentation is employed, detailed specifications, including threshold detection, sensitivities, and limitations of equipment, or an approved waiver, must be provided; and

(6) waivers – for an operation subject to a waiver, alternate compliance schedule, or existing condition of plan approval under 18 AAC 75.005 – 18 AAC 75.085 or 18 AAC 75.400 – 18 AAC 75.496, documentation of

(A) each waiver, alternate compliance schedule, or existing condition of plan approval; and

(B) the approval of each waiver, alternate compliance schedule, or existing condition of plan approval. (Eff. 2/5/2023, Register 245)

Finding

There were various updates to Volume 1, Section 2, in addition to those described in other issues of this document that change procedures and processes in the Prevention Plan.

The water draw operations procedure was removed from the plan. The department requested information about this change and APSC explained "East Tank Farm water draw capabilities were purposefully disconnected and isolated from service to address PHA identified Risk Rank #1 scenarios with vapor migration in the IWWS [Industrial Waste Water System]. Crude Oil Storage Tank sediment and water (S&W) is now managed by OCC-7.09 Terminal Crude Oil Tank Management." PWSRCAC requested that this procedure remain in the plan, but the department is not requiring this since the water draw operations capability were removed. During the comment period on the additional information, PWSRCAC requested for document OCC-7.09 to enhance clarity regarding management of water buildup in the tanks. The department recommends for PWSRCAC to request this document from APSC or request for APSC to present on this topic for the VMT Coordination Group. 18 AAC 75.025 includes the transfer requirements for terminal facilities and 18 AAC 75.451(b) includes the requirements that a general description of transfers to be included in the plan. The department is not requiring additional information in the plan on

APSC's management of water buildup in tanks to meet requirements in 18 AAC 75.025 or 18 AAC 75.451(b).

Updates were made to bedrock/rockwall groundwater monitoring and slope stability information provided in Section 2.1.7.6. Most of the updates were to move information previously listed in Section 2.4.4 Soils to Section 2.1.7.6. The department requested additional information on the updates and APSC clarified that the updates were to give more information on piezometer use at the five specific rock-wall cuts: Ballast Water Treatment cut, East Tank Farm cut, Power/Vapor cut, West Tank Farm cut, and the West Manifold cut, and the comparison of present data to historical data from 2022 piezometer readings. PWSRCAC requested in the comment period on the additional information that APSC confirm that the 2022 report found that all piezometer readings indicate no immediate threat. APSC is meeting the requirements in 18 AAC 75.450(b)(4) with the information in the plan on how bedrock/rockwall groundwater monitoring and slope stability is monitored. The department is not requiring additional information on the piezometer readings at this time.

Information for facility oil piping in the plan was updated for the renewal. APSC clarified in the plan that crude oil storage, metering, and loading piping systems are constructed to meet ASME B31.4 and other auxiliary crude oil piping including ballast water, recovered crude, and liquid fuel piping systems are constructed to meet ASME B31.3. PWSRCAC requested additional information on which piping segments are subject to which ASME standard, and which are not subject to either standard. PWSRCAC also requested that Section 2.1.8 be revised to provide each piping segment name, piping material type, installation date (age), diameter, length, buried/aboveground length, insulated/uninsulated length, inspection classification and inspection standard used (e.g., Class 1, 2, or 3 based on API 570), applied inspection methods (e.g., UT, ILI, radiographic, guided-wave), date of last inspection, date for next inspection, highest measured corrosion rate and associated inspection date (based on most recent inspection), corrosion threshold for repair or replacement, number of corrosion coupons, number of corrosion inhibitor injection locations, and type(s) of cathodic protection and/or protective coatings.

The department has addressed similar requests from PWSRCAC for including specific piping segment information in previous findings and basis of decision documents (2014 and 2019). The regulations do not require additional details for piping to be listed in the plan.

PWSRCAC requested that the plan be revised to include the required detailed list of preventative maintenance items completed at the terminal for oil spill prevention which specifies the equipment, frequency, methods, and what action is taken when integrity problems are found per 18 AAC 75.450(b)(1). The department finds that Section 2.1.9 provides a list of examples of regular preventative maintenance items including sumps, pumps, etc. This section of the plan states that records are kept in a database and monthly reports are put out on what work should be done. The department finds that the information in the plan provides a description of the maintenance program and record keeping process for preventative maintenance work to meet regulatory requirements.

PWSRCAC requested that the name of the preventative maintenance database used for VMT equipment and facilities, or recordkeeping and reporting systems used to document problems found and resolution, be added to the plan. The department finds that 18 AAC 75.450(b)(1) requires a description of the program, but the inclusion of the specific database name is not required.

PWSRCAC requested that a complete description of the surveillance and monitoring items completed at the terminal for oil spill prevention including the equipment, frequency,

methods, and what action is taken when integrity issues are found. PWSRCAC provided a similar comment in the 2019 VMT plan renewal and the department responded to this in the 2019 VMT renewal basis of decision document. The requirements for facility oil spill prevention inspection descriptions are listed in other sections of the plan. The information in Section 2.1.11 Surveillance and Monitoring includes a general description of the visual inspection program that is in place at the VMT to observe the general status of the facility.

APSC updated Section 2.2.1 Corrective Actions to remove the integrated incident reporting system name "IMPACT" from the plan. PWSRCAC requested that the incident reporting system name remain in the plan. The department finds that the specific incident reporting system name is not required to be in the plan, but the plan must include the corrective actions taken for oil discharges greater than 55 gallons, which is included in the plan as required by 18 AAC 75.450(b)(2)(B).

APSC made minor edits to Section 2.3.1 VMT Oil Spill Risk Assessments for the renewal. PWSRCAC requested for APSC to establish a date by which it will conduct a first principles risk assessment of the entire VMT based on current information about the aging facility and the best available information on potential natural hazards and other aspects of the context in which the VMT operates. This topic was discussed in the 2014 VMT renewal findings document and the 2019 VMT renewal basis of decision document. The department recommends that PWSRCAC request this topic to be presented for the VMT Coordination Group. Section 2.3.1 includes a description of the ongoing process APSC completes to assess risk at the facility, which meets the requirements of 18 AAC 75.450(b)(3).

PWSRCAC requested an update on the engineering solution to tank top snow removal. The department did not request as an RFAI for an update on the engineering solution for tank top snow removal in the East Tank Farm. The department has reviewed APSC's procedure for snow management (VT-470, *Valdez Marine Terminal Snow Removal Plan*), including revisions, to ensure APSC maintains the ability to manage snow at the VMT. There were no proposed changes to the plan to reference engineering controls during the renewal, but the department recommends for PWSRCAC to request updates on the status of this project for the VMT Coordination Group.

PWSRCAC requested clarification on the removal of firefighting substances from the list of "other spill sources." The department reviewed this request but finds the information required in the plan for 18 AAC 75.450(b)(3) includes a potential discharge analysis for oil discharges, not other hazardous substances or firefighting substances. The department is not requiring firefighting substances to be included in the discharge analysis in the plan.

The updates to the Prevention Plan were evaluated to ensure changes continued to meet the requirements listed in 18 AAC 75.450. The department finds the proposed changes to the Prevention Plan along with the updates made as part of the RFAI response continue to meet Prevention Plan requirements listed in 18 AAC 75.450.

Issue #9 Supplemental Information

Statement of Issue
Do the updates to the supplemental information in the plan meet regulatory requirements?

Regulatory Authority
18 AAC 75.451. Part 3 – oil discharge prevention and contingency plan; supplemental information.
(a) The supplemental information section must provide the background and verification information identified in (b) – (n) of this section.

Finding
For the renewal APSC made various updates to the Supplemental Information in the plan to remove redundancy in some locations, updates to meet 2023 Article 4 requirements, and updates to the plan to reflect current operations at the VMT.

PWSRCAC requested that the department require APSC to use all of API 653 criteria for internal inspections and when considering intervals between internal tank inspections, and for the department to use its authority at 18 AAC 75.065(b)(1)(A) to impose a maximum of 10 years between such inspections given the age of the tanks, uncertain integrity of the secondary containment liner, and sensitivity of the local environment. The department has addressed this specific request in the 2003 VMT plan findings document, the 2014 VMT renewal findings document, and the 2019 VMT renewal basis of decision document. The department requires APSC to meet 18 AAC 75.065 requirements and to use API 653.

PWSRCAC requested for the department to require APSC to submit corrected API 653 reports for Tank 7, Tank 94, and, if warranted, Tank 93. The department requires APSC to follow API 653 to meet 18 AAC 75.065. As part of API 653 (May 2020 Edition) the minimum requirements for report contents are explained in API 653 Section 6.9.2. Following the completion of the API 653 inspection and report, the department requests the API 653 inspection report before the tank inspection interval can be updated in the plan. When tanks receive an API 653 inspection, additional information generated as part of the tank inspection shall be included with the records of the tank, but is not required to be part of the API 653 report. Department staff can request the additional information on the tank when needed, such as when there are questions on the API 653 report, or questions on the requested inspection interval proposed in the plan. 18 AAC 75.065 requires the API 653 inspection be completed for regulated tanks but operators of regulated tanks have the ability to complete additional reviews of the tanks and impose more conservative inspection intervals. APSC is following the process described in API 653 and meeting the requirements in 18 AAC 75.065. To support the inspection report review process, the department is requiring as Condition of Approval 4 for APSC to provide tank inspection reports along with additional supporting documentation for tanks listed in Volume 1, Table 3.1-1 VMT Tankage (Greater Than 10,000 gallons), as soon as reasonably possible following the completion of an inspection and finalizing the report.

PWSRCAC requested an explanation of the basis for removing the timing limitations on the seasonal waiver for the use of temporary tanks and documentation of this change. The 2023 Article 4 update to 18 AAC 75.415(i) clarifies the process to submit a minor amendment for tanks greater than 10,000 gallons that are to be used at a facility on a temporary basis. As an RFAI, the department requested for an update to the information in the plan on how temporary tanks are to be managed to the process described in 18 AAC 75.415(i), or APSC has the option to remove from the plan the information on how temporary tanks are to be managed. APSC decided to remove the information in the plan that described temporary tanks. The department supports this decision because the process for how temporary tanks are managed is under 18 AAC 75.415(i).

PWSRCAC requested an explanation regarding whether the IWWS conveys water from the crude oil tanks, and if not, why this is not the case and if it remains true, the language should remain in the plan as a function in support of compliance. The department addressed the removal of the water draw operation procedure from the plan in Issue #8.

PWSRCAC requested that APSC add a commitment in Volume 1, Section 3.9 that contracted vessels will periodically and regularly be involved in sensitive area protection tactic deployments

during field deployment exercises. The department is not requiring additional information on the contracted vessels training program that is already described in Volume 3, Section 12.7, which includes the commitments for contracted vessels to complete exercises and deployments of sensitive area protection tactics.

PWSRCAC requested that a future IMT exercise stand up a Regional Stakeholder Committee (RSC) for a hypothetical VMT spill as has been done for exercises of the Prince William Sound Tanker plan. The department recommends that PWSRCAC make this request as a member of the VMT exercise design team. The department supports including the standing up of an RSC as an exercise objective to continue testing and improving the process to engage stakeholders.

The updates to the Supplemental Information in the plan with the updates made through the RFAI process continue to support APSC's ability to meet regulatory requirements in 18 AAC 75.451.

Issue #10 Waste Management

Statement of Issue
Does the plan adequately address waste management to meet regulatory requirements?

Regulatory Authority
18 AAC 75.449(a)(6)(K) procedures and locations for temporary storage and ultimate disposal of oil-contaminated materials, oily wastes, and sanitary and solid wastes generated during the response that demonstrate adequate temporary storage and removal capacity to keep up with the recovery operations; plans for temporary storage and ultimate disposal must include identification of necessary permits, approvals, and authorizations and the timeline to apply for them;

Finding
As part of the renewal, APSC updated information in Volume 1, Section 3.11 which includes supplemental information on Solid Waste. These updates included changes to amounts estimated for volumes of oily waste generated from a large-scale response from the VMT. Some of the revisions to the text included removals of references to the Exxon Valdez oil spill and assumptions of waste amounts generated from the 1989 response. The department requested information as RFAIs for APSC to explain the updates. APSC stated that the revisions were made to align with a smaller amount of shoreline impact that may occur from the response planning standard (RPS) scale response at the VMT. The department requested for additional changes to waste volume estimates to ensure information remained consistent in the plan.

Through the RFAI process, APSC decided to maintain the current amount of solid waste generated at a response event at 110 tons per day. Volume 1, Sections 3.11.1.11 Solid Waste Quantities, 3.11.1.11.3 Response-Based PPE, 3.11.1.11.4 Response-Based Sorbents, and 3.11.1.11.5 Non-Oily Solid Waste have been revised to consolidate information into 3.11.9 Solid Waste. The department finds that this update meets the requirements of 18 AAC75.448(a) and enhances the usability of the plan.

During the initial comment period PWSRCAC requested that waste management assumptions listed in Section 3.11.7 remain in the plan, claiming there is no reason to remove them as they enhance the utility of the plan as stated in 18 AAC 75.448(a). As explained above the assumptions were updated to more appropriately describe the potential impacts of a large-scale response from a spill at the VMT and planning amounts continue to include amounts generated for an event at 110 tons per day.

PWSRCAC requested that information be added to Section 3.11.7.2 to clarify that oil may leak out of the settlement ponds and require recovery as oily soil, as described in 3.11.9 Solid Waste. In addition, PWSRCAC requested for an excavator or backhoe to be added to the list of resources that may be needed for oily soil recovery on land, in addition to the front-end loader listed. The tactics in Volume 3, Section 3.11.7.2 describe how settlement ponds can be managed during a response. Additional descriptions of how the clean up and removal of oily soil in settlement ponds would be managed are not necessary to meet requirements under 18 AAC 75.451.

PWSRCAC requested that information be retained in the plan describing the electronic job aid's location and assumptions on which waste management volume estimates are based. PWSRCAC asserts that the removal of this information, in combination with the removal of related information proposed in Section 3.11.7, detracts from the quality of this as a "workable plan" as required at 18 AAC 75.448(a) and should be discussed with the VMT Coordination Workgroup.

The department has reviewed the changes and has reviewed APSC created waste management plans as part of response exercises for the VMT plan. Solid waste management is described in Volume 1, Section 3.11, Volume 2, Scenario 5, Volume 3, Section 11. The updates made to Volume 1, Section 3.11, do not remove a commitment for APSC to have to address the waste management needs in a response, but the updates were to improve the planning assumptions and to base them on a VMT RPS scale response versus the PWS Tanker plan RPS scale response and potential impacts.

The updates to the waste management information in the plan with the updates made through the RFAI process continue to support APSC's ability to meet regulatory requirements in 18 AAC 75.449.

Issue #11 Best Available Technology

Statement of Issue
Do updates to best available technology continue to meet regulatory requirements?

Regulatory Authority
18 AAC 75.452. Part 4 – oil discharge prevention and contingency plan; best available technology review. (a) Unless application of a state requirement would be preempted by federal law, the plan must provide for the use of best available technology consistent with the applicable criteria in (c) of this section. Technologies that are not subject to the response planning standards or the reference performance standards in (c)(1) and (2) of this section must be identified in the plan and evaluated using the criteria specified under (c)(3) of this section; these technologies include

(1) at a minimum, for all plans,

(A) communications described in 18 AAC 75.449(a)(4);

(B) source control procedures to stop the discharge at its source and prevent its further spread described under 18 AAC 75.449(a)(6)(G);

(C) trajectory analyses and forecasts described under 18 AAC 75.449(a)(6)(E); and

(D) wildlife capture, treatment, and release procedures and methods described under 18 AAC 75.449(a)(6)(M);

(2) for an oil terminal, a crude oil transmission pipeline, or an exploration or production facility plan,

(A) a leak detection system for each tank if required by 18 AAC 75.065(i)(4) or (j)(4);

(B) another leak detection system or spill prevention or control system approved by the department under 18 AAC 75.065(h)(1)(D);

(C) a means of immediately determining the liquid level of bulk storage tanks as specified in 18 AAC 75.065(k)(3) and (4) or in 18 AAC 75.066(g)(1)(C) and (D); and

(D) protective coating if required by 18 AAC 75.080(*l*) or (m)(1) or (2);

18 AAC 75.452(b) For each applicable technology under (a)(1) – (6) of this section, the plan must identify all available technologies and include written analysis of each technology, using the applicable criteria in (c)(3) of this section, and must include a written justification that the technology proposed to be used is the best available for the applicant's operation.

(c) For purposes of (a) of this section, the department will review a plan and make a best available technology determination as follows:

(1) technology used for oil discharge containment, storage, transfer, and cleanup to satisfy a response planning standard in 18 AAC 75.430 – 18 AAC 75.442 will be considered best available technology if the technology of the applicant's oil discharge response system as a whole is appropriate and reliable for the intended use as well as the magnitude of the response planning standard;

(2) technology that complies with the performance standards of 18 AAC 75.005 – 18 AAC 75.085 and is not subject to a best available technology review under (a) of this section will be considered best available technology;

(3) technology identified under (a) (1) –(6) of this section will be evaluated using the following criteria, if applicable:

(A) whether each technology is the best in use in other similar situations and is available for use by the applicant;

(B) whether there is a reasonable expectation that each technology will provide increased spill protection or other environmental benefits;

(C) the cost to the applicant of achieving best available technology, including consideration of that cost relative to the remaining years of service of the technology in use by the applicant;

(D) the age and condition of the technology in use by the applicant;

(E) the practical feasibility of each technology in terms of engineering and other operational aspects; and

(F) whether other environmental impacts of each technology, including air, land, water pollutions, and energy requirements, offset anticipated environmental benefits.

Finding

For the renewal, there were a variety of updates to the plan's Best Available Technology (BAT) section in Volume 1, Section 4 to align with revisions to the 2023 Article 4 regulations. The updates include removals of BAT reviews that were previously required for oil terminal facilities, such as reviews related to corrosion control or cathodic protection. The criteria to be used to evaluate the technologies reviewed were updated as part of the Article 4 updates to remove the criteria that describe if the technology is transferable or compatible with the applicant's operations, with all other criteria remaining the same.

The department received public comments from the Valdez Fisheries Development Association (VFDA) and PWSRCAC for trajectory modeling. VFDA requested that the department work with APSC to develop oil trajectory modeling within Port Valdez using the best available technology and local current data. The PWSRCAC requested for the department to work with APSC to ensure that the best possible inputs are used to inform trajectory analysis, including locally available current data.

As an RFAI, the department requested APSC to explain how trajectory modeling is evaluated for quality or works to improve trajectory modeling for Port Valdez. APSC's response was the following: "APSC continuously evaluates the quality of trajectory modeling and works to improve trajectory modeling for Port Valdez by using the technology in our drill and exercise program and reviewing the data for accuracy. Section 4.4 Trajectory Analyses & Forecasts list Visual Surveillance by response personnel, which can be augmented with infrared technology and reporting of observations to the VEOC along with computer based predictive trajectory modeling capable of using real-time surveillance input gathered from the field, visual surveillance, and tracking buoys. Table 4.4-1 lists other technologies such as Forward Looking Infrared systems, Laser Fluorsensor, Radar, and UV/IR sensors."

The department has discussed trajectory modeling in the 2019 VMT renewal decision documents. The models that APSC uses continue to be supported as acceptable for predicting trajectories of oil spills. With the Article 4 updates, there were no changes to the BAT requirements to complete an analysis that evaluates trajectories and forecasts described under 18 AAC 75.449(a)(6)(E). APSC continues to be required to review the information described as BAT to ensure the review meets the criteria every renewal.

The department finds the equipment and technologies used by APSC meet the requirements 18 AAC 75.452(a)(1)(C). The department will continue to monitor the use of trajectory modeling in exercises.

The specific updates to BAT for oil terminal facilities for the 2023 Article 4 updates include the removal of the requirement to complete BAT reviews for an approved corrosion control system if required by 18 AAC 75.065(i)(3) or (j)(3), a corrosion control program for metallic piping containing oil as required by 18 AAC 75.080(b), cathodic protection if required by 18 AAC 75.080(d), and cathodic protection surveys required by 18 AAC 75.080(k)(2). The department noted that the renewal submittal continued to include some information that was no longer required by BAT regulations in 18 AAC 75.449 and asked as an RFAI for APSC to review information to confirm the proposed updates. Also, the department recognized there were some inconsistencies between the information included in Section 4 BAT for the tanks and requested for APSC to correct and ensure Section 4 information matched Section 2 Prevention Plan information. APSC made corrections and updates to Section 4 to streamline with required BAT reviews called out in 18 AAC 75.452(a)(2).

PWSRCAC requested that the BAT section on tank leak detection systems be revised to consider double tank bottoms and other applicable technological improvements since tank installation. As part of the revisions APSC made in effort to update Section 4 in the renewal, the reviews completed for leak detection were revised in the plan. APSC is not required to complete a BAT review for 18 AAC 75.452(a)(2)(A), (B), or (C) based on the technology, age and type of tank construction in place to meet requirements listed in 18 AAC 75.065 and 18 AAC 75.066. Because APSC is not required to complete a BAT review for leak detection or other spill prevention measure for tanks at the VMT, the department is not requiring APSC to include double tank bottoms or other technologies in a BAT review. APSC is required to complete a BAT review to meet 18 AAC 75.452(a)(2)(D) for protective coating as required by 18 AAC 75.080(l) or (m)(1) or (2). This BAT review remains in the plan in Table 4.8-1.

The City of Valdez also provided comments on leak detection during the comment period on the additional information stating that APSC did not conduct a Best Available Technology review for the leak detection technology listed in the plan. APSC is not required to complete a Best Available

Technology review for the leak detection method selected under 18 AAC 75.065(h)(1). APSC is required to complete best available technology reviews for technologies listed to meet 18 AAC 75.452(a)(1)(A), (B), (C), and (D) and 18 AAC 75.449(a)(2)(D).

PWSRCAC made comments on Table 4.3-1, Source Control Procedures for a Leak – Piping, stating there is no information on the time required to detect the leak, the sensitivity of the leak detection system, and the amount of oil or fuel that may be spilled prior to piping insolation in the BAT review. The requested details are not required descriptions for the review criteria under 18 AAC 75.452. BAT analysis criteria require sufficient detail to allow for comparison of technologies to meet the spill prevention strategy or objective. The specific criteria are listed in 18 AAC 75.452(c).

For Table 4.3-2, Source Control Procedures for a Leak - Crude Oil Tank, PWSRCAC requested that APSC add a second pump to expedite source control from a crude oil tank. Also, PWSRCAC commented that they strongly oppose Method 3, which PWSRCAC asserts, allows hydrocarbons to be intentionally spilled into secondary containment. PWSRCAC requested that Section 4.3 be revised to include source control methods for the ballast water treatment (BWT) facility gravity separation and recovered oil tanks. The department addressed these comments in the VMT major amendment 2015-4 findings document and 2019 VMT renewal basis of decision document. The regulatory requirements for BAT of source control procedures did not change as part of the 2023 Article 4 updates. The department is not requiring additional updates to BAT for source control for crude oil tanks at this time.

For Table 4.3-3, Source Control Procedures for a Leak – Fuel Storage Tank, PWSRCAC requested for the BAT analysis to explain the feasibility of use for Method 1 including which fuel storage tanks Method 1 is applicable. Also, PWSRCAC requested when Method 1 is not feasible to identify another environmentally sound method which needs to be proposed, PWSRCAC asserts that Method 2 is not acceptable due to the uncertain integrity of the secondary containment system. The department has addressed similar comments from PWSRCAC in the 2019 VMT renewal basis of decision document. The department is not requiring additional information or explanations as part of this renewal to address BAT for source control of the fuel storage tanks.

PWSRCAC requested that APSC update the criteria used in the BAT reviews to match the updated criteria in the updated regulations for BAT. APSC did not update the criteria, but the criteria required by regulations remain in the plan for all the BAT reviews.

The department finds the information in the plan for best available technology, including the updates made as part of the renewal process, meets the requirements in 18 AAC 75.452.

Volume 2

Issue #12 Response Scenarios

Statement of Issue
Do the scenarios, including the response planning standard (RPS) scenario in the plan meet regulatory requirements?

Regulatory Authority
18 AAC 75.449(a)(6) response scenario – a written description of a hypothetical spill and response that demonstrates a plan holder's ability, using the resources described in the plan, to respond to a discharge of each applicable response planning standard volume within the required time frames under 18 AAC 75.430 – 18 AAC 75.442 and under environmental conditions that might reasonably

be expected to occur at the discharge site; the response scenario must be useable as a general guide for a discharge of any size, must describe the discharge containment, control, recovery, transfer, storage, and cleanup actions to be taken, and must clearly demonstrate the strategies and procedures adopted to conduct and maintain an effective response, consistent with ensuring the safety of personnel; if the information required by this paragraph is contained in a separate document developed by the plan holder or the plan holder's oil spill primary response action contractor identified in 18 AAC 75.451(i), the plan holder may incorporate the information by reference upon department approval; response strategies for the scenario must include

(A) the spill location, time of year, and time of day, the source, and cause of the spill, the quantity and type of oil spilled, the spill trajectory, and the relevant environmental conditions, including weather, sea state, and visibility;

(B) the expected timeline for response actions, describing response actions to be taken;

(C) in-place procedures to stop the discharge at its source, within the shortest possible time, and prevent its further spread;

(D) a description of methods to prevent or control a potential fire hazard;

(E) procedures, methods, and a description of the equipment that will be used for real-time surveillance and tracking of the discharged oil on land and on open water, and forecasting of its expected points of shoreline contact; these must be sufficient to ensure that there is proper allocation and deployment of response personnel and equipment;

(F) for a stationary facility or operation, for a railroad, and if requested by the department for a vessel, a description of site-specific strategies for the protection of environmentally sensitive areas and areas of public concern identified under 18 AAC 75.451(k), including a land-based facility or railroad, protection of groundwater and public water supplies; sufficient oil discharge response equipment, personnel, and other resources must be maintained and available for the specific purpose of preventing discharged oil from entering these environmentally sensitive areas or areas of public concern that would likely be impacted if a discharge occurs; this equipment and personnel must be deployed and maintained on a time schedule that will protect those areas before oil reaches them, according to the predicted oil trajectories for an oil discharge of the volumes calculated for the response planning standard under 18 AAC 75.430 – 18 AAC 75.442 for each type of facility or operation; areas identified in the plan must include areas added by the department as a condition of plan approval; if identification of those areas and site-specific strategies for protection of those areas are in an applicable geographic zone of one or more area contingency plans described in 18 AAC 75.495, the plan holder may incorporate that information by reference;

(G) a description of the actions to be taken to contain and control the spilled oil, including, as applicable, boom deployment strategies, construction of temporary berms, and other methods;

(H) a description of the actions to be taken to recover the contained or controlled oil using mechanical response options, including procedures and provisions for skimming, absorbing, or otherwise recovering the contained or controlled product from water or land;

(I) procedure for lightering, transfer, and storage of oil that demonstrate access to sufficient lightering equipment and personnel to transfer all oil from damaged tanks and from undamaged tanks that might be at risk of discharging additional oil; the plan must provide for the start and completion of lightering within the shortest possible time;

(J) procedures for transfer and storage of recovered oil and oily water that demonstrate adequate temporary storage and removal capacity to keep up with skimming and recovery operations; for on-water recovery, this includes procedures for offloading and transfer of oil and oily water from temporary storage at or near the spill site to shore-side storage; for on-land recovery, this includes procedures for transfer from onsite temporary storage to more secure storage; procedures must include methods for estimating the amount of recovered oil;

(K) procedures and locations for temporary storage and ultimate disposal of oil-contaminated materials, oily wastes, and sanitary and solid wastes generated during the response that demonstrate adequate temporary storage and removal capacity to keep up with the recovery operations; plans for temporary storage and ultimate disposal must include identification of necessary permits, approvals, and authorizations and the timeline to apply for them;

(L) procedures for decanting if the plan holder intends to request approval for decanting during a spill response; this does not eliminate the requirement for the response strategies to include procedures for storage of recovered oil and oily water; if, at the time of a spill, the responsible party wants to decant, the responsible party must apply to the department's state on-scene coordinator for approval on a form supplied by the department;

(M) procedures, methods and a description of equipment that will be used for protection, recovery, disposal, rehabilitation, and release of potentially affected wildlife; these procedures and methods must, as applicable, demonstrate best practices and recommendations in the Alaska Regional Response Team Wildlife Protection Guidelines for Oil Spill Response in Alaska, Version 2020.01, August 31, 2020, adopted by reference; if approved by the department, the response strategies may use alterative procedures and methods that adequately protect wildlife; the procedures, methods, and equipment must include

(i) minimizing wildlife contamination through hazing or other means, when appropriate;

(ii) the recovery of oil carcasses to preclude secondary contamination of scavengers;

(iii) the capture, cleaning, rehabilitation, and release of oiled wildlife, when appropriate;

(N) if applicable, a description of the procedures for the deployment of shoreline cleanup equipment and personnel, including cleanup and restoration methods and techniques to be used if the shoreline is impacted by the discharge; and

(O) if required by the department, additional response strategies to demonstrate alternative strategies for anticipated receiving environments and seasonal conditions, including time of year and spills of varying source and size;

Finding

During the renewal, minor changes were made to the Volume 2 scenarios, including the response planning standard (RPS) scenario, Scenario 5, in the plan. The department requested as RFAI for APSC to add the spotter aircraft to the mobilization charts of Scenarios 4 and 5 because it was missing. APSC updated the plan to include the spotter aircraft in the mobilization charts.

PWSRCAC requested that APSC consider modifying the start times across the four scenarios in the plan. The department suggests for varying the scenario start times to be requested for demonstration in discharge exercises. As PWSRCAC are a member of the VMT exercise design team, the department suggests requesting different start times than times listed in the plan scenarios to test the potential impacts of time of day on the hours of response. The scenarios in the plan continue to meet department requirements because in the scenarios of Volume 2 APSC commits to 24-hour operations in winter or summer addenda. This meets the requirements of 18 AAC 75.449(a)(6).

PWSRCAC requested that a response scenario be provided that shows a spill from the largest oil storage tank at the facility (Tank 11) as required by 18 AAC 75.449(a)(6) and 18 AAC 75.432(b). PWSRCAC provided similar comments during the 2014 and 2019 VMT plan renewals that were addressed in the associated findings or basis of decision documents. The Article 4 updates to 18 AAC 75.449(a)(6) and 18 AAC 75.432(b) did not affect the department's previous decision that Tank 1 can be used for the RPS scenario with the RPS volume amount based on the capacity of

Tank 11. APSC can continue to use Tank 1 as the spill source for the RPS scenario which meets requirements in 18 AAC 75.449(a)(6) and 18 AAC 75.432.

PWSRCAC requested that additional skimming capacity be located at the base of Drainage 58 along with a larger boom and a secondary booming system to better contain spilled oil. As discussed in previous decision documents for VMT renewals, Scenario 5 represents a hypothetical response to a large scale spill scenario. The tactics called out with personnel and equipment demonstrate how APSC could meet the requirements in 18 AAC 75.449(a)(6). APSC has additional boom and different types of boom available at the VMT and SERVS Annex that could support additional booming of Drainage 58 if needed in a response.

For planning assumptions of Scenario 5, PWSRCAC requested Scenario 5 include assumptions regarding visibility for both the scenario and summer addenda. Information that describes the limitations due to environmental conditions to respond is included in the RMROL (realistic maximum response operating limitation) section of Volume 1, Section 3.4.4. These assumptions do not need to be included in the scenario to meet the requirements of 18 AAC 75.449(a)(6) but are included in the plan to clarify conditions that can occur at the facility and potentially impact the response.

Also for the assumptions, PWSRCAC requested that vapor modeling be updated based on the current oil properties at each plan renewal and the details should be shared with the VMT Coordination Workgroup. For the described assumptions in the plan for Scenario 5, the information is a general description of how vapor levels may impact on-land and open-water response areas following a spill of the RPS magnitude. The scenario must begin by making some assumptions on how vapor concentrations may change and when responders may begin work in oiled areas. If there is a spill at the VMT, APSC will have to monitor for vapor concentrations in real time for safety. The department is not requiring APSC to update the assumptions listed for Scenario 5. The department recommends that PWSRCAC request oil properties be discussed as a topic for VMT Coordination Group meetings to better understand how changes in oil properties impact vapor modeling in a response.

Planning assumptions for the RPS scenario has been discussed previously in the VMT Coordination Group for Scenario 5 where the assumptions were updated to use more realistic assumptions for the scenario (see 2019 VMT renewal basis of decision document). Assumptions were not updated as part of this renewal.

PWSRCAC requested for the spill trajectory to be revised to address concerns or more information to be provided to justify the oil spill trajectory modeling assumptions and estimates. The department requested for additional information on trajectory modeling used at the VMT for BAT that is described in Issue #11. A similar question was asked during the 2019 VMT renewal and the department provided a response in the 2019 VMT renewal basis of decision document.

PWSRCAC requested for Scenario 5 be revised to include sufficient personnel to effectively and efficiently respond to this oil spill and that the number of people assigned be justified. As discussed in the 2019 VMT renewal basis of decision document, APSC continues to demonstrate the ability to scale and staff the IMT to meet the need of the response, the department is not requiring additional personnel to be added to the plan. The plan contents are adequate to meet regulatory requirements in 18 AAC 75.449(a)(6). APSC continues to demonstrate the capability to respond in spills and exercises, and personnel filling roles are qualified and demonstrate proficiency in carrying out the commitments in the plan, the department is not requiring additional personnel to be included in the

resource requirements table of Scenario 5. The department will continue to monitor the APSC ability to perform in exercises and will require updates to the plan if found necessary.

PWSRCAC requested that Sensitive Area Protection (SAP) strike teams be increased to include sufficient resources to protect all environmentally sensitive areas before oil reaches those areas. Scenario 5 includes a planned response to protect sensitive areas before oil reaches them as required by 18 AAC 75.449(a)(6)(F). Additional SAP strike teams are not being required to meet regulatory requirements of providing a strategy to respond to the hypothetical spill in Scenario 5. The department will continue to evaluate APSC's ability to support a response through exercises and how SAPs are prioritized and protected when the trajectories are different and show impacts to different locations and at different times.

PWSRCAC requested that summer oil spill trajectory maps be included in the scenario to indicate the areas of anticipated shoreline impact and inform planning for spills under different conditions. PWSRCAC also requested that the summer response addenda include wave heights based on realistic summer conditions. The summer addenda is supporting information to the RPS scenario (Scenario 5) and accounts for the variation in prevailing winds and currents that differ between summer and winter. The information provided in the summer addenda, along with the other scenarios, meets the requirements of 18 AAC 75.449(a)(6).

Issue #13 Greatest Possible Discharge

Statement of Issue
Does the plan meet requirements for general procedures to respond to the greatest possible discharge?

Regulatory Authority
46.04.030(k) Except as provided in (m) and (o) of this section, the holder of an approved contingency plan required under this section shall maintain, or have available under contract, in its region of operation or in another region of operation approved by the department, singly or in conjunction with other operators, sufficient oil discharge containment, storage, transfer, and cleanup equipment, personnel, and resources to meet the following response planning standards:

(1) for a discharge from an oil terminal facility, the plan holder shall plan to be able to contain or control, and clean up a discharge equal to the capacity of the largest oil storage tank at the facility within 72 hours, except that if the department determines that the facility is located in an area of high risk because of natural or man-made conditions outside of the facility, it may increase the volume requirement under this paragraph so that the contingency plan must be designed for a response that is greater in amount than the capacity of the largest oil storage tank at the facility;

46.04.030(r)(3) "realistic maximum oil discharge" means the maximum and most damaging oil discharge that the department estimates could occur during the lifetime of the tank vessel, oil barge, facility, or pipeline based on the size, location, and capacity of the tank vessel, oil barge, facility, or pipeline; on the department's knowledge and experience with the tank vessel, oil barge, facility, or pipeline or with similar tank vessels, oil barges, facilities, or pipelines; and on the department's analysis of possible mishaps to the tank vessel or oil barge or at the facility or pipeline or to similar tank vessels or oil barges or at similar facilities or pipelines;

18 AAC 75.430. Response planning standards. (a) Notwithstanding the response planning standards set out in 18 AAC 75.430 - 18 AAC 75.442, the plan must demonstrate the general procedures to

clean up a discharge of any size, including the greatest possible discharge that could occur, subject to the provisions of AS 46.04.020 and AS 46.09.020.

18 AAC 75.448. Oil discharge prevention and contingency plan; general plan requirements. (a) An oil discharge and contingency plan submitted for approval under 18 AAC 75.400 – 18 AAC 75.495 must be usable as a working plan for oil discharge control, containment, cleanup, and disposal. The plan must contain enough information, analyses, supporting data, and documentation to demonstrate the plan holder's ability to meet the requirements of AS 46.04.030, AS 46.04.055(c)(2), and 18 AAC 75.400 – 18 AAC 75.495. The plan must demonstrate that the personnel, equipment, and other resources identified in the plan are sufficient for meeting each response planning standard applicable for each facility in the plan. The plan must take into account realistic maximum operating limitations and their effects on response capability and the deployment of resources. The department will review and evaluate a plan by verifying that it meets the applicable requirements under 18 AAC 75.448 – 18 AAC 75.453.

(b) 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.

18 AAC 75.449(a)(10) the general procedures to be followed in responding to the greatest possible discharge that could occur at a facility – this information must be located in the plan immediately following the response planning standard scenario or scenarios required by (6) of this subsection.

18 AAC 75.451(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.

Finding

Prior to the renewal, Volume 2 Section 6 included information in the plan that described the general provisions in the event of a spill above the response planning standard (RPS) quantities. As part of the renewal process, the department requested for APSC to review the plan for requirements to include "the general procedures to be followed in responding to the greatest possible discharge that could occur at the facility" as stated in 18 AAC 75.449(a)(10). In addition, the department requested for APSC revise some additional information in this section because the information was confusing.

In response, APSC updated Section 6 to provide a general description of how APSC would respond to a catastrophic spill to land or water at the VMT. This information references the tactics outlined in Volume 3, as well as how those tactics would be implemented, and would continue to be followed using available resources. Also, that, "Additional equipment and personnel from Primary Response Action Contractors (PRACs), vendors, and other response organizations, both in region and out of region, would be used to supplement resources and local supplies as needed." The information in Volume 3, Section 12.3 describes the mutual aid agreements in place where APSC can access additional response services, as well as additional contractors and other service providers that may be used in responding to the greatest possible discharge at the VMT.

PWSRCAC requested that significant additional information and assurances be provided regarding the plan holder's ability to access adequate equipment, personnel, and out-of-region equipment, and assurances regarding the quantity of equipment, personnel, and other facilities that will be available for a greatest possible discharge response in Prince William Sound to satisfy the requirement at 18 AAC 75.448(b) and 18 AAC 75.449(a)(10).

The requirement of 18 AAC 75.449(a)(10) is to provide a general description of how a plan holder could respond to the greatest possible discharge. 18 AAC 75.449(a)(10) does not include the requirement for assurances or commitments of services to carry-out a response to the magnitude of the greatest possible discharge. The department is not requiring additional information on assurances or commitments of services to meet 18 AAC 75.449(a)(10).

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 procedures to respond to the greatest possible discharge would continue to follow procedures identified in Scenario 5 using all available reources.The requirements in 18 AAC 75.449(a)(10) specifically state a "general description," and to meet this requirement the information in the plan does not need to include specific procedures, specific equipment, or additional details on how additional equipment and personnel would be mobilized to respond to the greatest possible discharge. To meet requirements in 18 AAC 75.452(l) the plan includes a list of resources that may be used in responding to the greatest possible discharge which can be found throughout Volume 3, including Section 12 and Appendix A, with additional details described in Volume 1 Section 3.6.

To clarify how Volume 2 Section 6 is meeting the requirements in 18 AAC 75.448(b), the department is requiring APSC to retain some of the proposed changes in the plan and to keep the following greatest possible discharge magnitude description as a Condition of Approval (COA #3):

> 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.

The greatest possible discharge magnitude description listed in the plan was approved previously to meet regulatory requirements and the department supports these amounts to meet 18 AAC 75.448(b).

There were some comments that were outside the scope of the review. The comment period that ended on October 12, 2024 was limited to the additional information submitted in response to the requests for additional information (18 AAC 75.455(d)). The City of Valdez provided comments on the concern that APSC is not demonstrating the ability to respond to the federal worst case discharge or the state's greatest possible discharge. Alaska statutes and regulations do not require plan holders to develop plans to respond to a "worst case scenario," nor is there a requirement that plan response scenarios be written to "worst case conditions." Instead, 18 AAC 75.449(a)(6) requires that the response scenario include "a written description of a hypothetical spill and response that demonstrates a plan holder's ability, using the resources described in the plan, to respond to a discharge of each applicable response planning standard volume within the required time frames under 18 AAC 75.430 – 18 AAC 75.442 and under environmental conditions that might reasonably

be expected to occur at the discharge site." The department is reviewing the plan based on 18 AAC 75.400 – 18 AAC 75.496 regulations. The department has reviewed the City of Valdez's comments and the comments relevant to the department's regulatory oversight have been addressed in this basis of decision document.

The department finds that the information in the plan, including the information required as Condition of Approval, meet the regulatory requirements for information in the plan for greatest possible discharge under 18 AAC 75.448(b), 18 AAC 75.449(a)(10) and 18 AAC 75.452(l).

Volume 3

Issue #14 Additional Requests for Updates to Tactics Manual

Statement of Issue
Does the plan include sufficient response tactics and information to support the tactics to respond to spills at the VMT?

Regulatory Authority
18 AAC 75.448. Oil discharge prevention and contingency plan; general plan requirements. (a) An oil discharge and contingency plan submitted for approval under 18 AAC 75.400 – 18 AAC 75.495 must be usable as a working plan for oil discharge control, containment, cleanup, and disposal. The plan must contain enough information, analyses, supporting data, and documentation to demonstrate the plan holder's ability to meet the requirements of AS 46.04.030, AS 46.04.055(c)(2), and 18 AAC 75.400 – 18 AAC 75.495. The plan must demonstrate that the personnel, equipment, and other resources identified in the plan are sufficient for meeting each response planning standard applicable for each facility in the plan. The plan must take into account realistic maximum operating limitations and their effects on response capability and the deployment of resources. The department will review and evaluate a plan by verifying that it meets the applicable requirements under 18 AAC 75.448 – 18 AAC 75.453.

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, attesting to the department that the contract
(1) clearly specifies that the contractor is obligated to
(A) provide the response services and equipment listed for that contractor in the plan;
(B) respond if a discharge occurs;
(C) notify the plan holder immediately if the contractor cannot carry out the response actions specified in the contract or the plan;
(D) give written notice at least 30 days before terminating its contract with the plan holder;
(E) respond to a department-conducted discharge exercise required of the plan holder; and
(F) continuously maintain in a state of readiness, in accordance with industry standards, the equipment and other spill response resources to be provided by the contractor under the plan; and

18 AAC 75.500. Definition of oil spill primary response action contractor; applicability. (a) As used in AS 46.04.035 and 18 AAC 75.500 - 18 AAC 75.580, "oil spill primary response action contractor" means 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. "Oil spill primary response action contractor" does not include

(1) a person who provides only ancillary services or equipment not for the specific purpose of containing, controlling, or cleaning up an oil discharge; or

(2) an approved oil discharge prevention and contingency plan holder who provides to another plan holder resources or equipment to contain, control, or clean up an oil discharge.

(b) A response action contractor is not required to register under 18 AAC 75.500 - 18 AAC 75.580 unless the contractor is directly obligated to a plan holder by contract to provide spill response resources to meet the requirements of AS 46.04.030 and 18 AAC 75.400 - 18 AAC 75.495 and is listed in that plan holder's oil discharge prevention and contingency plan as providing all or part of the response resources required to demonstrate compliance with an applicable response planning standard under 18 AAC 75.432 - 18 AAC 75.442.

(c) The holder of an approved oil discharge prevention and contingency plan whose resources are listed in the plan of another plan holder to meet the requirements of AS 46.04.030 and 18 AAC 75.400 - 18 AAC 75.495 is not required to register as an oil spill primary response action contractor, but is subject to all other requirements of 18 AAC 75.451(i).

(d) Any person may apply to the department for registration under 18 AAC 75.500 - 18 AAC 75.580 as an oil spill primary response action contractor.

Finding

The department received comments from PWSRCAC requesting a tactic to drain dike cells be included in Volume 3 with all the necessary details regarding equipment and personnel requirements, safety, and other considerations. Also, PWSRCAC requested for APSC describe and demonstrate how they monitor for leaks around the dike cells as would be conducted during a large spill from a tank based on Volume 2, Scenario 5.

Potential spill sources are listed in Section 2.5 Discharge Detection. The dike cells are not included in this. The August 2022 exercise to demonstrate APSC's ability to clean-out a contaminated dike cell was completed as a condition of approval as required by the 2019 VMT plan renewal approval letter and was not required to be added to the plan as a tactic. Tactics used to support spills in dike cells could include source control tactics, pumping, vacuum trucks, temporary pipeline, contaminated soil removal, as well as other on-land tactics. Source control procedures are included in Volume 1, Section 1.6.1 Procedures to Stop the Discharge and in Section 4.3 Source Control Procedures to Stop the Discharge and Prevent Further Spread. Tactics listed in Volume 3, Section 14 include on-land tactics that APSC already has in place to respond to spills at the VMT and could be used in the dike cells. The department is not requiring additional tactics for dike cells to be included in the plan.

PWSRCAC requested that Volume 3 be revised to include source control tactics and equipment. As stated above, the department finds that the plan already includes source control procedures and the department is not requiring this information to be added to Volume 3 of the plan.

PWSRCAC recommended a mechanism or process be developed to bring in more nearshore task forces in the event of a large spill and incorporated into Section 5 of Volume 3. The department finds that the plan already includes a mechanism or process to access additional resources, if needed

in a response in Volume 3, Section 12 which provides the information on the logistics and planning. Volume 3, Section 5 includes the Nearshore tactics for spill response, such as skimming and booming. The department is not requiring a specific tactic for accessing additional Nearshore task forces in Volume 3, Section 5.

The table that describes how Fishing Vessel Availability is tracked, Volume 3, Table 12.7-1, Availability Status Tracking, was updated to reduce the number of vessels in the "Red" column by one vessel for all tiers. The "Red" column describes actions that would occur when Fishing Vessel Availability numbers fall under the numbers required to meet plan commitments in Scenario 5 (RPS scenario). The department requested as an RFAI to explain the changes and APSC's response was, "The proposed changes in the "Red" column were made to identify when the actions detailed below need to occur. For example, the proposed change from 21 to 20 vessels in first row of Table 12.7-1, is to ensure the appropriate action is taken once the latter number is reached. 21 vessels are required in the "Required for Availability" column, this number will remain in the "Yellow" stage until such time as the availability reports reflect 20 vessels." PWSRCAC requested that Table 12.7-1 be changed back to the currently approved version as a condition of plan approval. The department supports the updates in Table 12.7-1 for the Fishing Vessel Availability Status because there is no reduction in vessels committed to the Scenario 5 response or change in the commitment to monitor fishing vessel availability. There continues to be a "Yellow" action for when vessel numbers fall to a level that triggers action before vessel numbers were to reach what is minimally required. The "Yellow" action threshold is not being changed as part of the renewal. The department will continue to evaluate the process for monitoring Fishing Vessel Availability to ensure vessel number commitments are met.

PWSRCAC requested for the tactics to be improved to provide complete and consistent information across tactics. Though the department appreciates consistency where applicable in the plan, the department will not require for APSC to review and update the tactics to include the same layout for each tactic. The tactics include various details depending on the support needs of the tactic. Every tactic includes the minimal amount of equipment and responders, with operational considerations, to carry-out the tactic for a 12-hour or 24-hour period. The tactics are reviewed and used during exercises and trainings and are updated when needed.

PWSRCAC requested that the proposed edits to Volume 3, Section 12.7.3 Operations Considerations for the Fishing Vessel Program be amended so that it is clear who is responsible for maintaining the necessary information about fishing vessel availability (as is described in that section). The department finds this information on the management of the fishing vessel program is described in Section 12.7.5 which describes the duties of the fishing vessel coordinator (FVC) and fishing vessel administrator (FVA). The FVC and the FVAs maintain information about the fishing vessel fleet. The department is not requiring additional information to be added to Section 12.7.3.

PWSRCAC requested for Tactic VMT-BO-4 be revised to use a larger boom with a greater buoyancy to weight ratio than currently in place to contain potentially large crude oil spill volumes (e.g., Scenario 5 volumes), to mitigate drainage and entrainment, and to handle potential wave action and overtopping. PWSRCAC also requested that a shore seal boom with a beach connection point be used adjacent to the rock jetty, ideally with a permanent anchor installed. The department finds that the tactic currently describes the anchor points and the pre-positioned boom that is located in a connex strategically staged to support a response in Drainage 58. This provides a general description of the tactic. Under Operational Considerations in Section 15.4.2, the information describes that additional boom or a modified configuration may be used to support a cleanup if needed. As stated

in Issue #12, the department is not requiring larger boom to be added to the tactic to meet planning requirements. APSC has additional types of boom available to support the various potential needs of a response.

PWSRCAC requested for the boom sliders at Drainage 58 be added to the VMT-BO-4 tactic. The department asked APSC to consider including this information in the plan, but APSC chose not to include this information and stated that "the details for site deployment are included in site specific training for responders and the procedure referenced in the plan." During the comment period on the additional information, PWSRCAC requested again for the VMT-BO-4 to be updated with the information on the boom sliders. The department finds that Figure 15.4-1 includes the term "Boom Slider Anchor" and their approximate location as reference, and the department is not requiring additional details about the boom sliders in the plan. The information in the tactic includes sufficient details for equipment and personnel needs to deploy the tactic if needed in a response.

PWSRCAC requested clarification during the comment period on the additional information about where the vacuum trucks will be stored in winter, and whether this will be inside a heated facility and if not, it is unclear how they will be ready to use on short notice in cold conditions. The department asked APSC as an RFAI about the removal of the statement "In winter, the VMT's vacuum trucks are stored in a heated facility to further ensure response readiness," and to verify that the removal of this statement does not affect the response readiness of the vac trucks in winter. APSC confirmed in the RFAI response that the vac trucks will remain response ready. APSC has the ability to store vac trucks in various locations as long as the equipment is available and ready to support a response. The department is not requiring additional information on storage of vac trucks in winter in the plan.

A comment was submitted that was outside the scope of the review for the comment period that ended on October 12, 2024 that was limited to the additional information submitted in response to the requests for additional information (18 AAC 75.455(d)). 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.

The department finds the information in the tactics of Volume 3 meet requirements of 18 AAC 75.448(a) and the plan continues to be a usable document.

Issue #15 Sensitive Area Protection

Statement of Issue
Does the plan adequately plan to protect sensitve areas before oiling to meet regulatory requirements?

Regulatory Authority
18 AAC 75.449(a)(6)(F) for a stationary facility or operation, for a railroad, and if requested by the department for a vessel, a description of site-specific strategies for the protection of environmentally sensitive areas and areas of public concern identified under 18 AAC 75.451(k), including a land-based facility or railroad, protection of groundwater and public water supplies; sufficient oil discharge response equipment, personnel, and other resources must be maintained and available for

the specific purpose of preventing discharged oil from entering these environmentally sensitive areas or areas of public concern that would likely be impacted if a discharge occurs; this equipment and personnel must be deployed and maintained on a time schedule that will protect those areas before oil reaches them, according to the predicted oil trajectories for an oil discharge of the volumes calculated for the response planning standard under 18 AAC 75.430 – 18 AAC 75.442 for each type of facility or operation; areas identified in the plan must include areas added by the department as a condition of plan approval; if identification of those areas and site-specific strategies for protection of those areas are in an applicable geographic zone of one or more area contingency plans described in 18 AAC 75.495, the plan holder may incorporate that information by reference;

Finding
For the renewal, there were proposed changes to information in Volume 3 Section 9 that were mostly administrative including updates to acronyms, revisions to the order of information, removal of redundant statements, and updates to describe changes to the response program.

The department received public comments from VFDA on the removal of information under Figure 9.6-1 related to the permanent deployment of boom while fish fry are in the fish pens. The VFDA requested that the department require APSC to retain the original language under Figure 9.6-1 explaining that this is an important concept that should be associated with the map of the Solomon Gulch Hatchery (SGH) depicted in Figure 9.6-1 and its presence in the document is required. The department requested as an RFAI an explanation for the removal and APSC responded that the language under the image was redundant and that the information remains in the plan in Section 9.6.1 which is the tactic description. The department finds that APSC is not required to include the note under Figure 9.6-1 because the tactic description is directly following the figure and includes a sifficiently similar statement.

Issue #16 Wildife Response Updates

Statement of Issue
Do updates to wildlife response continue to meet regulatory requirements?

Regulatory Authority
18 AAC 75.449(a)(6)(M) procedures, methods and a description of equipment that will be used for protection, recovery, disposal, rehabilitation, and release of potentially affected wildlife; these procedures and methods must, as applicable, demonstrate best practices and recommendations in the Alaska Regional Response Team *Wildlife Protection Guidelines for Oil Spill Response in Alaska,* Version 2020.01, August 31, 2020, adopted by reference; if approved by the department, the response strategies may use alterative procedures and methods that adequately protect wildlife; the procedures, methods, and equipment must include

(i) minimizing wildlife contamination through hazing or other means, when appropriate;

(ii) the recovery of oil carcasses to preclude secondary contamination of scavengers;

(iii) the capture, cleaning, rehabilitation, and release of oiled wildlife, when appropriate;

18 AAC 75.451(g) The plan holder must have ready access to enough equipment to meet the applicable response planning standard established under 18 AAC 75.430 – 18 AAC 75.442 using mechanical methods of oil control, containment, and cleanup. Identified equipment must reflect the best available technology when the plan is submitted or renewed. The plan must include a complete list of contracted or other oil discharge containment, control, cleanup, storage, transfer, lightering,

and related response equipment to meet the applicable response planning standards, to protect and recover wildlife as required under 18 AAC 75.449(a)(6)(M), and to protect environmentally sensitive areas and areas of public concern that are identified in (k) of this section and may be reasonably expected to be impacted by a spill of the response planning standard volume as described in the response strategies developed under 18 AAC 75.449(a)(6) and (7) before oil reaches them. The list must include

(1) the location, inventory, and ownership of the equipment;

(2) the time frame for delivery and startup of response equipment and trained personnel located outside the facility's primary region of operation;

(3) the manufacturer's rated throughput capacities, limitations, and operational characteristics for each item of oil recovery equipment, including nonmechanical response techniques;

(4) each vessel designated for oil recovery operations, including skimming vessels and platforms, and vessels designated to tow and deploy boom; vessels used to deploy and tow boom must be of a number, size, and power adequate to deploy the types and amounts of boom and must be capable of operating in the manner and at the speeds necessary for the effective use of boom;

(5) information on additional vessels available from other sources for oil recovery operations, including, if applicable, procedures for inventorying, training personnel, and equipping vessels:

(6) pumping, transfer and temporary storage, and lightering equipment for transferring oil from damaged and undamaged tanks;

(7) the capacity of the temporary storage system for recovered oil and oily wastes; and

(8) the procedures for storage, maintenance, and inspection of spill response equipment under the immediate control of the operator when not in use, including procedures for periodic testing and maintenance of response equipment.

18 AAC 75.452. Part 4 – oil discharge prevention and contingency plan; best available technology review. (a) Unless application of a state requirement would be preempted by federal law, the plan must provide for the use of best available technology consistent with the applicable criteria in (c) of this section. Technologies that are not subject to the response planning standards or the reference performance standards in (c)(1) and (2) of this section must be identified in the plan and evaluated using the criteria specified under (c)(3) of this section; these technologies include

(1) at a minimum, for all plans,

(D) wildlife capture, treatment, and release procedures and methods described under 18 AAC 75.449(a)(6)(M);

Finding

There were proposed changes to wildlife response equipment for the number, location, and contents of the bird and otter capture and stabilization kits in Volume 3. In addition, the tangle net kits were proposed to be removed. The department requested information on these changes to ensure that with the equipment changes the wildlife response tactics would continue to be supported.

Additional changes were made to the wildlife response equipment through the RFAI, and was reviewed by the Alaska Department of Fish & Game. The Bird Stabilization Kits will now be called "Wildlife Facility Supply Kits" with an updated assortment of supplies. There were initial changes proposed to the Bird Capture Kits that were not incorporated into the plan. The removal of tangle nets is supported because these are not preferred to be used, except in extremely limited circumstances to support wildlife response.

PWSRCAC requests onshore wildlife hazing of terrestrial mammals be included in the plan, the wildlife tactic resources match those listed in the tanker plan, and that a mechanism or process be developed to bring in more wildlife task forces in the event of a large spill.

The information in the the plan for wildlife response includes a comprehensive description of tactics, equipment, and processes to perform wildlife response if needed for a spill from the VMT. The information in the plan has been tested through exercises and responses, and continues to be improved when needed. For example, in July 2024 APSC demonstrated new wildlife stabilization units that were designed to support smaller scale responses with potential impacts to smaller numbers of wildlife. As part of the exercise, local veterinarians were included in the demonstration and identified as trained wildlife responders that could support a spill response if needed. The department is not requiring additional wildlife response tactics or additional changes to the plan for wildlife response, but will continue monitoring APSC's ability to support wildlife response, including for terrestrial mammals, through exercises.

The department finds the plan with the updates to wildlife response actions meets the requirements of 18 AAC 75.449(a)(6)(M), 18 AAC 75.451(g) and 18 AAC 75.452(a)(1)(D), and describes how the plan holders will protect wildlife, if needed, in a response to a spill at the VMT.

Issue #17 VMT Major Equipment List

Statement of Issue
Should the plan include all the available spill response equipment that is in region?

Regulatory Authority
18 AAC 75.451(g) The plan holder must have ready access to enough equipment to meet the applicable response planning standard established under 18 AAC 75.430 – 18 AAC 75.442 using mechanical methods of oil control, containment, and cleanup. Identified equipment must reflect the best available technology when the plan is submitted or renewed. The plan must include a complete list of contracted or other oil discharge containment, control, cleanup, storage, transfer, lightering, and related response equipment to meet the applicable response planning standards, to protect and recover wildlife as required under 18 AAC 75.449(a)(6)(M), and to protect environmentally sensitive areas and areas of public concern that are identified in (k) of this section and may be reasonably expected to be impacted by a spill of the response planning standard volume as described in the response strategies developed under 18 AAC 75.449(a)(6) and (7) before oil reaches them. The list must include

(1) the location, inventory, and ownership of the equipment;

(2) the time frame for delivery and startup of response equipment and trained personnel located outside the facility's primary region of operation;

(3) the manufacturer's rated throughput capacities, limitations, and operational characteristics for each item of oil recovery equipment, including nonmechanical response techniques;

(4) each vessel designated for oil recovery operations, including skimming vessels and platforms, and vessels designated to tow and deploy boom; vessels used to deploy and tow boom must be of a number, size, and power adequate to deploy the types and amounts of boom and must be capable of operating in the manner and at the speeds necessary for the effective use of boom;

(5) information on additional vessels available from other sources for oil recovery operations, including, if applicable, procedures for inventorying, training personnel, and equipping vessels:

(6) pumping, transfer and temporary storage, and lightering equipment for transferring oil from damaged and undamaged tanks;

(7) the capacity of the temporary storage system for recovered oil and oily wastes; and

(8) the procedures for storage, maintenance, and inspection of spill response equipment under the immediate control of the operator when not in use, including procedures for periodic testing and maintenance of response equipment.

Finding

For the renewal, information in Volume 3, Section 12.4 VMT-LP-4, VMT Major Equipment was updated for minor administrative changes but there were no changes in the number or capabilities of the listed equipment in Table 12.4. All prior commitments for available response equipment remain in the plan to support a response planning standard (RPS) scale response at the VMT.

PWSRCAC requested Volume 3, Table 12.4-1 VMT Major Equipment be revised because they claim this is an artificially low subset of the resources available to APSC/SERVS in Prince William Sound. The department finds the equipment listed in Table 12.4-1 includes the equipment identified to meet the response in the RPS Scenario, as required by 18 AAC 75.451(g). As described Issue #13, information in Volume 3 Section 12.3 describes the mutual aid agreements in place where APSC can access additional response services if needed to support a response at the VMT. APSC is not required to include all available response equipment in Prince William Sound in the VMT plan.

Issue #18 Small and Large Vessel Decontamination

Statement of Issue

Does APSC need to demonstrate small and large vessel decontamination tactics as part of the renewal process?

Regulatory Authority

18 AAC 75.451(j) A plan holder shall provide a detailed description of the training programs for designated discharge response personnel and operations personnel to demonstrate that

(1) designated oil spill response personnel are trained and kept current in the specifics of plan implementation, including deployment of containment boom, operation of skimmers and lightering equipment, and organization and mobilization of personnel and resources;…

Finding

PWSRCAC requested that the department require APSC to demonstrate tactics VMT-VE-2 and VMT-VE-3, including repeating it, if necessary, until successful and that this could be done as a condition of plan approval with a set deadline for completion.

VMT-VE-2 is secondary small vessel decontamination and VMT-VE-3 is large vessel decontamination. In 2022, during the Crowley Alaska Tankers Prince William Sound (PWS) Tanker Exercise the small vessel decontamination tactic was demonstrated to meet requirements of a condition of approval for the 2022 PWS Tanker plan renewal. The tactic was successfully demonstrated.

The same responders and response equipment would be used to complete the vessel decontamination tactics for a response at the VMT or discharge exercise for the VMT plan. The 2022 PWS Tanker Exercise small vessel decontamination deployment was required to be demonstrated away from local Valdez harbors, to simulate the potential challenges to deploy in a remote location, which is part of the response planning standard scenario response for the PWS

Tanker plan. For an event that may occur at the VMT, small vessel decon may likely be set up at the VMT small boat harbor or at nearby harbor location.

For large vessel decontamination, the department asked as an RFAI for APSC to explain how training to the tactic VMT-VE-3 is completed. In the RFAI response APSC explained that basic responder level of training is required for VMT-VE-3 and the requirements for this level of training are in Volume 2, Table 3.9-3. The department recognizes that Table 3.9-3 Field Responder Training is listed in Volume 1, which includes the minimal training required for basic responders, and that there is not specialized training required to carry-out the large vessel decontamination tactic.

Though the department appreciates when APSC demonstrates tactics that have not been completed recently, the department is not requiring APSC to complete these deployments as part of the renewal process. In the 2022 PWS Tanker plan renewal there was a key contractor change for the decontamination service provider that justified the need to demonstrate the tactic. There has been no major changes in the VMT-VE-2 or VMT-VE-3 tactics or contractor that provides that service to warrant a condition of approval to require the demonstrations of these tactics for this renewal. The department recommends for PWSRCAC to request demonstrations of the small and large vessel decontamination tactics as a member of the VMT exercise design team for future exercises.

Issue #19 Berths on the Barge 500-2

Statement of Issue
Does the plan need to include the number of berths on the barge 500-2?

Regulatory Authority
18 AAC 75.448. Oil discharge prevention and contingency plan; general plan requirements. (a) An oil discharge and contingency plan submitted for approval under 18 AAC 75.400 – 18 AAC 75.495 must be usable as a working plan for oil discharge control, containment, cleanup, and disposal. The plan must contain enough information, analyses, supporting data, and documentation to demonstrate the plan holder's ability to meet the requirements of AS 46.04.030, AS 46.04.055(c)(2), and 18 AAC 75.400 – 18 AAC 75.495. The plan must demonstrate that the personnel, equipment, and other resources identified in the plan are sufficient for meeting each response planning standard applicable for each facility in the plan. The plan must take into account realistic maximum operating limitations and their effects on response capability and the deployment of resources. The department will review and evaluate a plan by verifying that it meets the applicable requirements under 18 AAC 75.448 – 18 AAC 75.453.

Finding
For the renewal, APSC did not propose any updates to the equipment description of the barge 500-2 that is used for Nearshore response. PWSRCAC requested for the berths to be included in the equipment list for the barge 500-2. The department asked as an RFAI for APSC to consider updating information on the 500-2 to include the number of berths or accommodations that could support response personnel. In APSC's response it was explained that the information on the berths will not be included at the time as the barge 500-2 provides support as a field command post for the VMT plan.

During the comment period on the additional information, PWSRCAC requested again that the number of berths on the barge 500-2 be added to Volume 3 and kept current. The department is not requiring the berths to be added to the equipment list for the barge 500-2. The equipment description includes the necessary information on how the barge 500-2 would support Nearshore

recovery operations in Port Valdez to support a potential spill from the VMT to meet 18 AAC 75.448(a).

Decision

The department does not make its decision to approve or disapprove a plan based solely on plan holder verification of every element in the plan. Rather, the department's decision is based upon the reasonableness of assertions and evidence that certain essential resources and practices are securely in place. The department and plan holder complete many follow-up field tasks to verify contingency plan commitments. Field tasks include but are not limited to: planned and unannounced inspections; planned and unannounced oil spill response drills; regular evaluation of field equipment and equipment deployment exercises; and verification of equipment maintenance and training records. The department may require any of the above to occur and may evaluate similar activities initiated by the plan holder.

Based on the above information and applicable statutes and regulations, it is the decision of the department to approve with conditions the Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan.

Signed by:
Graham Wood
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Graham Wood
Program Manager

ATTACHMENT AJ

ADEC's Motion for Reconsideration, City of Valdez vs. ADEC and APSC, OAH No. 25-0950-DEC, May 30, 2025

BEFORE THE COMMISSIONER OF THE ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the matter of: City of Valdez, Requester. v. Alaska Department of Environmental Conservation, Division of Spill Prevention and Response and Alyeska Pipeline Service Company, Respondents.	)	OAH No. 25-0950-DEC

DIVISION'S MOTION FOR RECONSIDERATION

On May 16, 2025, the Commissioner of the Alaska Department of Environmental Conservation (ADEC) adopted a recommended ruling from the Office of Administrative Hearings pertaining to the City of Valdez' (City's) request for adjudicatory hearing concerning the Division of Spill Prevention and Response's (Division's) renewal of the Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #23-CP-4057 (VMT C-Plan). The adopted order granted a hearing on certain issues and remanded what it identified as Issue 4, which concerns a two percent prevention credit issued to Alyeska Pipeline Service Company (APSC) and the sensitivity gauging systems used by APSC for its aboveground fuel storage tanks at the VMT facility. The Commissioner's order allowed the parties to move for

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reconsideration. For the following reasons, the Division requests reconsideration of the remand of Issue 4.

When asked by the Division what changes occurred to the sensitivity gauging systems during review of the VMT C-Plan renewal, APSC clarified that only the process for monitoring those systems was updated. Division's Response to City's Adjudicatory Hearing Request at 7; ADEC 000014-15. APSC uses electro-magnetic tank level indicators (ENRAF) as its sensitive gauging system for all relevant oil storage tanks. *See* ADEC 000541-42 (Table 3.1-1. and Note 2). The monitoring of these ENRAF gauges occurs via the Supervisory Control and Data Acquisition (SCADA) control system, and the SCADA system and related processes were the focus of updates at Section 2.1.6.3, Volume 1 of the VMT C-Plan during the renewal process. ADEC 000480-81; ADEC 000014-15. As demonstrated below, the ENRAF gauges were subject to agency review and findings long before the plan renewal on appeal, and the City's opportunity to challenge these findings has passed.

As part of the January 14, 1997, approval of the VMT C-Plan, the Division explained in its basis of decision that APSC proposed to use ENRAF on its crude oil tanks subject to leak detection requirements.[1] Exhibit A at 39. The Division reviewed APSC's proposed procedures, consulted with the American Petroleum Institute as part

[1] At the time of the 1997 approval, the leak detection requirement pertaining to use of a sensitivity gauging system (found today at 18 AAC 75.065.(h)(1)(A)) was set out at 18 AAC 75.065(i)(1)(A). *See* Exhibit A at 38. Similarly, the current definition of "sensitive gauging system" also existed at that time. 18 AAC 75.990(59) (eff. May 14, 1992).

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of this review, and determined that APSC must perform a year-long study to optimize leak detection sensitivity (by establishing a hold time for monthly leak detection periods) to ensure 18 AAC 75.065 requirements were met. *Id.* This requirement was reflected in a Condition of Approval. *Id*. at 5. APSC submitted the results of this study to ADEC in July of 1998, concluding that a monthly 48-hour leak detection period was optimal. Exhibit B. The current VMT C-Plan references this study, the resulting monthly 48-hour leak test, and how this action was approved by the Division. ADEC 000482.

Additionally, as part of the April 11, 2000, VMT C-Plan approval, the Division reviewed leak detection sensitivity for APSC's fuel oil storage tanks subject to 18 AAC 75.065.[2] Exhibits C and D. The Division determined that APSC's initial submissions did not demonstrate the sensitive gauging systems were the best demonstrated available technology, and in response APSC committed to installing ENRAF gauges on the fuel oil storage tanks. Exhibit D at 20. The Division determined that APSC presented "a method of leak detection which meets the requirements of 18 AAC 75.065(i)(1)(A)." *Id.* Further, the Division required as a Condition of Approval that APSC submit performance information from the ENRAF gauging systems by March 2001 to determine final compliance with the leak detection requirement. Exhibit C at 6. APSC submitted that information, and the Division found the system sufficient. Exhibit E.

[2] As discussed in footnote 1, the relevant leak detection requirement at that time was found at 18 AAC 75.065(i)(1)(A).

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The Division provides this information to demonstrate that, at the time the sensitivity gauging systems were installed, the Division made findings and determined APSC complied with ADEC's regulations. But the Division does not submit these documents to develop the record in this appeal, and the Division opposes an adjudicatory hearing on any of these past findings. The Division recognizes that a C-Plan must demonstrate Article 1 requirements are met by the plan holder. 18 AAC 75.450. However, this should not reopen every previous approval to appeal decades after the fact. The Division it not required to expressly readopt all past agency findings every time a C-Plan is renewed. This would render appeal deadlines under ADEC regulations meaningless and create a wholly unreasonable burden on agency staff and resources. The Division can rely on its past decision-making concerning these gauging technologies without having to remake those same findings time and time again, and this is supported by the plain language of 18 AAC 75.990(12) and the fact that no changes were made to the ENRAF gauges during this renewal process.

For these reasons, the Division requests that the Commissioner reconsider its ruling concerning the remand of Issue 4. APSC's sensitivity gauging systems have not changed since they were last reviewed and approved by the Division well before this plan renewal. The Commissioner should instead deny an appeal on this issue because it does not present an issue or material fact or law under 18 AAC 15.200(c) and such an appeal would be untimely.

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DATED May 30, 2025.

TREG TAYLOR
ATTORNEY GENERAL

By: /s/Cameron Q. Jimmo
Cameron Q. Jimmo
Assistant Attorney General
Alaska Bar No. 1711055

/s/Thad Adkins
Thad Adkins
Assistant Attorney General
Alaska Bar No. 2205032

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Exhibits A-E

Division's Motion for Reconsideration

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

Telephone: (907) 269-7500
Fax: (907) 269-7652

DEPT. OF ENVIRONMENTAL CONSERVATION

DIVISION OF SPILL PREVENTION AND RESPONSE
Industry Preparedness and Pipeline Program
555 Cordova Street
Anchorage, Alaska 99501

File No. 306.30

January 14, 1997

OIL DISCHARGE PREVENTION
AND CONTINGENCY PLAN APPROVAL

Mr. Douglas Webb
Sr. Vice President, Health, Safety,
Environmental and Corporate Affairs
Alyeska Pipeline Service Company
1835 S. Bragaw Street, M.S. 542
Anchorage, AK 99512

Dear Mr. Webb:

SUBJECT: **Valdez Marine Terminal, Oil Discharge Prevention and Contingency Plan, dated April 10, 1996, Revision 1, Edition 3. ADEC Plan Number: 9643 - CP - 3094.**

The Alaska Department of Environmental Conservation (DEC) has completed review of the application for approval of the following oil discharge prevention and contingency plan (plan):

Plan Title:	**Valdez Marine Terminal, Oil Discharge Prevention and Contingency Plan, Dated April 10, 1996, Revision 1 as amended through December 20, 1996.**
Plan Holder:	**Alyeska Pipeline Service Company, Anchorage, Alaska**
Facility:	**Valdez Marine Terminal, P. O. Box 300, Valdez Alaska, 99686**

Supporting Document: **Valdez Marine Terminal Emergency Contingency Action Plan, EC 71.**

PLAN APPROVAL: The Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan is hereby approved, **effective January 14, 1997.** This approval supersedes all previous plan Approvals and Certificates of Approval.

A certificate of approval stating that the contingency plan has been approved by the Department is enclosed. This approval is subject to the following terms and conditions:

TERMS AND CONDITIONS:

1. Preventing or Controlling a Potential Fire Hazard. The plan holder shall submit proposed modifications to the plan within 120 days providing additional information and procedures to ensure that oil spill response operations are to be conducted in a manner which would prevent or control a potential fire hazard. The components of the submittal must include:

- an air monitoring strategy for a spill to determine if an area is safe, unsafe or dangerous with the establishment of action levels based on instrument readings. This should be done for a potential spill size up to and including the Response Planning Standard volume;
- procedures for establishing hazard control zones which include site safety diagrams, charts, and checklists;
- a time line for practical guidance on when a large spill should be expected to be in the flammable range and general guidelines for how long a foam blanket would need to be maintained on the spill to avoid the build up of hazardous vapors and;
- modification to the plan to include a reference to the interface with the firefighting command structure.

This condition is reasonable and necessary to assure compliance with 18 AAC 75.425 (e)(1)(F)(ii) which requires that a plan contain an oil spill response strategy that provides a description of methods to prevent or control a potential fire hazard.

2. Prevention Training Programs. The plan holder must provide to the Department a semiannual summary report of prevention and response training activities including courses/training exercises given and a list of attendees beginning July 1, 1997.

This condition is necessary and reasonable to ensure compliance with 18 AAC 75.007(d) which requires that "the owner or operator shall ensure that all personnel are appropriately and regularly trained regarding company and state pollution prevention measures that are applicable each person's duties. After completing a training course or program, each participant shall sign and date a statement that lists the course content." 18 AAC 445 (j) requires that "the plan holder shall demonstrate that designated oil spill response personnel are trained...in the specifics of plan implementation..."

3. Oil Storage Tank Secondary Containment Structures. In order to meet the regulatory definition of "sufficiently impermeable" the Department requires the plan holder to:

a) submit within 60 days after plan approval, a comprehensive integrity maintenance program for the catalytically blown asphalt liner system consisting of the four elements described in the Department's Findings Document: applicable leak detection, operating procedures, cleanup procedures, and investigation/testing/repair to ensure the continued integrity of the liner;

b) submit within 30 days after plan approval, documentation demonstrating that the repair project for the catch basins and draw sumps in the Tank Farms has been satisfactorily completed; and

c) attain sufficient impermeability for the south wall of the Ballast Water Treatment plant containment area by submitting a detailed retrofit proposal describing the selected retrofit technique and schedule by June 1, 1997 for review and approval. The proposal will need to be consistent with applicable regulations and the Department's white paper on secondary containment while also considering potentially competing engineering criteria for maintaining hydrostatic stability on the slope south of the tank area. Because of the potential engineering challenges, the proposal may request approval for retrofit actions to be completed in the 1998 construction season rather than 1997 if warranted by compelling technical considerations.

This condition is reasonable and necessary to assure compliance with secondary containment requirements for above ground oil storage and surge tanks as given in 18 AAC 75.075. This portion of the regulations specify that the minimum secondary containment requirements include berms, dikes, or retaining walls that are constructed to prevent the release of spilled oil from within the containment area constructed of, or lined with, materials that are adequately resistant to damage by the products stored to maintain sufficient impermeability and resistant to damage from prevailing weather conditions.

According to the definitions given under 18 AAC 75.990 "sufficiently impermeable" means, for a secondary containment system, that the design and construction of the system is such that it has the impermeability necessary to protect groundwater from contamination and to contain a discharge until it can be detected and cleaned up.

The regulations at 18 AAC 75.432(d)(4) allow a reduction of the response planning standard volume at a terminal facility for prevention measures such as "if 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, reduction: 60%". This reduction has already been applied to the current plan, in order to maintain this credit, the actions given above must be completed.

4. Conditions That Might Increase the Risk of Discharge-Slope Stability. The plan holder must take additional measures to ensure that an adequate maintenance, surveillance and monitoring program is in place at the Terminal to maintain slope stability and to limit hydrostatic uplift. This must be accomplished by enhancements to the present geotechnical monitoring program at the Terminal to include the following elements which are further described in the report titled "Valdez Marine Terminal Slope Stability/Geotechnical Review".

- Changes in the data collecting procedures to improve the reliability of piezometer readings.
- Standardization of data to facilitate the comparison of piezometer data to other piezometer values and precipitation data.
- Re-evaluation of the stability of certain slopes for contingency level conditions where piezometer readings have exceeded flag values and particular trends have been identified.
- Inspect and repair surface drainage and slope protection systems where certain piezometers have shown increased levels uncorrelated to precipitation trends.
- Use surface geophysical monitoring and analyses including Streaming Potential and Electrical Resistivity or Electromagnetic Surveys to establish a correlation between water flow trends within the slopes and piezometer trends; anomalies in the piezometer data, identify surface water entry points; and appropriate maintenance and repair to surface drainage structures.

No later than 60 days after plan approval, Alyeska is to submit any requests to the Department supported by clear and convincing evidence to expand, alter or contract the elements described above for a comprehensive slope stability monitoring program. Within 150 days after plan approval, Alyeska is to submit a detailed scope of action for all elements of the program unless otherwise adjusted by the Department, containing the detailed procedures and schedule for the implementing slope stability monitoring program.

This condition is reasonable and necessary to assure compliance with 18 AAC 75.425(e)(2)(D). This regulation requires "a description of any conditions specific to the facility or operation that might increase the risk of discharge including physical ... hazards... or other site specific factors.

and any measures that have been taken to reduce the risk of discharge attributable to these conditions." The Department finds it necessary that the plan holder completes the actions recommended to ensure that an adequate slope stability program is in place. If slope stability issues were considered to be the cause of increased risk, the regulations in 18 AAC 75.432 (b) and (c) would require that the Response Planning Standard (RPS) volume be increased to the volume of all the potentially affected oil tanks. The RPS volume currently being used in the prevention and contingency plan is based on the volume of a single tank, with the assumption that slope and soil stability issues are adequately addressed and pose no increased risk to the tanks.

5. Compliance Schedule and Waivers. In order that the plan contain a detailed compliance schedule, to assure that all equipment and operations of the facility will be in compliance with all applicable oil pollution prevention regulations, the plan holders must perform the following items:

- *Leak Detection:* During the first twelve months following Plan approval, Alyeska shall collect information to optimize the leak detection sensitivity by using a range of static holding times from 2 hours to 48 hours during their monthly tests of the 10 crude oil storage tanks not equipped with under-tank cathodic portection. Alyeska is to select a range of hold times founded upon developing a statistically supportable data base at the conclusion of twelve months, yet at a minimum, the data set is to provide for at least 50% of the leak tests to represent hold times of 24 hours or greater and 20% of the data set to represent hold times of 48 hours or more. Upon conclusion of data collection, Alyeska is to submit the data and its recommendation of a preferred optimum hold time to the Department for review and approval

- *Terminal Oily Water Sewer Inspections:* Alyeska is to complete the inspection of all remaining underground portions of the system by the end of plan approval term. The inspection schedule shall provide for at least one third of the remaining pipe segments in each of the first two years and consideration to inspecting the highest risk segments first.

This condition is necessary and reasonable to meet the requirements of oil spill contingency plan contents, in 18 AAC 75.425 (e)(2)(G), states that the contingency plan must contain "a compliance schedule as described in 18 AAC 75.015" to show when all aspects of the facility will be in compliance with Article 1, Oil Pollution Prevention Requirements, 18 AAC 75.005 -.090. The regulations make provisions for the Department to allow for an alternate compliance schedule if the plan holder shows substantial cause for delay beyond January 1, 1997. In addition, the Department may waive a requirement if the plan holder can show that an alternative technology or procedure is acceptable.

6. Plan Contents. The plan holder must make available to plan reviewers/users up-to-date copies of the supporting document EC -71, Emergency Contingency Action Plan.

This condition is necessary and reasonable to ensure that up to date copies of key supporting documents remain available to plan users per 18 AAC75.425 (e) (3) Part 3 -supplemental information.

7. Oil Spill Primary Response Action Contractors. Within 30 days after plan approval Alyeska is to provide to the Department copies of the respective statements of contractual terms for the contract firms of TCC, Tidewater and Crowley Marine.

This condition is necessary and reasonable to assure compliance with 18 AAC 75.445(i) which states that "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 75.400-18 AAC 75.495, the contractor must be registered under 18 AAC 75.500-18 AAC 75.580. The plan holder shall include a correct and complete list of each primary response action contractor with name, address, telephone number, and affiliation by company, and for each response action contract, a statement signed by the plan holder and the primary response action contractor attesting to the department that the contract (1) clearly specifies that the contractor is obligated to..."

8. Environmentally Sensitive Areas and Shoreline Protection: Within 90 days after plan approval, Alyeska is to submit a schedule to develop site specific and season specific deployment strategies (not a full protection plan with pre-deployed equipment) for ten priority sensitive areas inside Port Valdez identified in the contingency plan. This may be accomplished through tabletop drills and actual exercises over the term of the plan approval.

This condition is reasonable and necessary to assure compliance with 18 AAC 75.425(e)(1)(F)(i), procedures to stop the discharge at its source and prevent its further spread and 18 AAC 75.425(e)(3)(J), protection of environmentally sensitive areas and areas of public concern.

9. Valdez Duck Flats and Solomon Gulch Hatchery: Within 60 days after plan approval, Alyeska is to submit for review and approval a plan amendment which describes the conditions under which rapid and immediate deployment of protective equipment at the Valdez Duck Flats and Solomon Gulch Hatchery will occur during a spill response. State resource agencies are willing to assist development of Alyeska's plan amendment so as to bring clarity to the state's expectations.

This condition is reasonable and necessary to assure compliance with 18 AAC 75.425(e)(3)(J), protection of environmentally sensitive areas and areas of public concern.

10. Oil Spill Trajectories: Within 60 days after plan approval, Alyeska is to submit an amendment to the plan describing other techniques for tracking spilled oil in the immediate vicinity of the Terminal, thereby removing primarily reliance for spill tracking in this locale on the projections of the ATOM model.

This condition of plan approval is reasonable and necessary to ensure that "procedures and methods for real-time surveillance and tracking of the discharged oil on open water and forecasting of its expected points of shoreline contact" (18 AAC 75.425 (e)(1)(F)(iv) are included in the plan.

11. Plan Changes. Within sixty days of this plan approval, Alyeska must provide the appropriate revisions and updates to the Valdez Terminal Oil Discharge Prevention and Contingency Plan as described in the Department's Findings Document and Response to Comments, dated December 20, 1996. The topics identified for revisions include:

- *In Situ* Burning in Port Valdez.
- Compliance Schedule and Waivers.
  Ballast Water Treatment Plant Piping Inspection Program
- Estimate of Spill Volume to Reach Open Water.
- Topics of Public Concern Originating From the Prince William Sound Tanker Plans.

  Near shore spill response.
  Sensitive Area Identification.
  Training of Wildlife Recovery/Rehabilitation Personnel and Completion of Wildlife Response Activities.
- May 15, 1996 VMT Drill Lessons Learned.
- Initial Response Teams and Other Personnel Assigned to a Response.
- Public Hearing Comments.

This condition is reasonable and necessary to assure that the contents of the Valdez Marine Terminal Contingency Plan meets the approval criteria of the Department in 18 AAC 75.445.

12. Notice of Changed Relationship with Response Contractors. The plan relies in part on the use of response contractor(s) for its implementation, therefore, the plan holder must immediately notify the Department in writing of any change in the contractual relationship with the plan holder's response contractor(s), and of any event including but not limited to any breach by either party to the response contract that may excuse a response contractor from performing, that indicates a response contractor may fail or refuse to perform, or that may otherwise affect the response, prevention, or preparedness capabilities described in the approved plan.

This condition is reasonably necessary because there are certain risks associated with allowing a plan holder to rely in part or total upon a response contractor instead of obtaining its own response capability. The risks arise, in part, because the certainty of the contractor's response is dependent upon the continuation of the legal relationship between it and the plan holder. Given this risk, the Department must be promptly informed of any change of the contractual relationship between the plan holder and the response contractor, and of any other event that may arguably excuse the response contractor from performing or that would otherwise affect the response, prevention, or preparedness capabilities described in the approved plan. The Department may seek appropriate modifications to the plan or take other steps to ensure that the plan holder has continuous access to sufficient resources to protect the environment and to contain, cleanup, and mitigate potential oil spills.

PLAN AMENDMENTS: All submittals provided to the Department in satisfying plan approval conditions are considered plan amendments as described in 18 AAC 75.415 (a). These amendments to the plan will be processed according to 18 AAC 75.415 (d).

EXPIRATION: This approval **expires January 13, 2000.** After the approval expires, operation of the facility/vessel is prohibited by Alaska law until an approved plan is once again in effect.

RENEWAL: To renew the approval, the plan holder must submit a complete renewal application to the Department approximately 120 days before expiration of the plan.

REVOCATION, SUSPENSION, OR MODIFICATION: This approval is effective only while the plan holder is in "compliance with the plan" and with all of the terms and conditions described above. The Department may, after notice and opportunity for a hearing, revoke, suspend, or require the modification of an approved plan if the plan holder is not in compliance with it, or for any other reason stated in AS 46.04.030(f). In addition, Alaska law provides that a vessel or facility that is not in "compliance with the plan" may not operate (AS 46.04.030). The Department may terminate approval prior to the expiration date if deficiencies are identified that would adversely affect spill prevention, response or preparedness capabilities.

DUTY TO RESPOND: Notwithstanding any other provisions or requirements of this contingency plan, a person causing or permitting the discharge of oil is required by law to immediately contain and cleanup the discharge regardless of the adequacy or inadequacy of a contingency plan (AS 46.04.020).

BEST AVAILABLE TECHNOLOGY: The contingency plan must provide for use by the applicant of the best available technology at the time it is submitted or renewed (AS 46.04.030 (e)).

TRANSFERS BETWEEN PLAN HOLDERS: The Department has the discretion under AAC 75.470 (b)(1)(D) to approve a transfer between plan holders after consideration of a number of factors, one of which may include "any compensating measures that will be taken by the provider to prevent or reduce the size of potential discharges during the period of reduced response capability". The plan holder may be required to work with the Department, other plan holders, or other spill response providers to address compensating measures that may be enacted during an oil discharge event.

NOTIFICATION OF NON-READINESS: Within twenty four (24) hours after any significant response equipment specified in the plan becomes nonoperational or is removed from its designated storage location, the plan holder must notify the Department in writing and provide a schedule for the substitution, repair, or return to service of the equipment (18 AAC 75.475(b)).

CIVIL AND CRIMINAL SANCTIONS: Failure to comply with the plan may subject the plan holder to civil liability for damages and to civil and criminal penalties. Civil and criminal sanctions may also be imposed for any violation of AS 46.04, any regulation issued thereunder, or any violation of a lawful order of the Department.

INSPECTIONS, DRILLS, RIGHTS TO ACCESS AND VERIFICATION OF EQUIPMENT, SUPPLIES AND PERSONNEL: The Department has the right to verify the ability of the plan holder to carry out the provisions of its contingency plan and access to inventories of equipment, supplies and personnel through such means as inspections and discharge exercises, without prior notice to the plan holder. The Department has the right to enter and inspect the covered vessel or facility in a safe manner at any reasonable time for these purposes and to otherwise ensure compliance with the plan and the terms and conditions (AS 46.04.030(e) and AS 46.04.060). The plan holder shall conduct exercises for the purpose of testing the adequacy of the contingency plan and its implementation (18 AAC 75.480 and 485).

FAILURE TO PERFORM: In granting approval of the plan, the Department has determined that the plan, as represented by the plan and application 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. 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. The plan holder is encouraged to take any additional precautions and obtain any additional response capability it deems appropriate to further guard against the risk of oil spills and to enhance its ability to comply with its duty under AS 46.04.020(a) to immediately contain and clean up an oil discharge.

COMPLIANCE WITH APPLICABLE LAWS: If amendments to the approved plan are necessary to meet the requirements of any new laws or regulations, the plan holder must submit

an application for amendment to the Department at the above address. The plan holder must adhere to all applicable state statutes and regulations as they may be amended from time to time. This approval does not relieve the plan holder of the responsibility for securing other federal, state or local approvals or permits, and that the plan holder is still required to comply with all other applicable laws.

ADJUDICATORY HEARING: Any person who disagrees with the decision may request an adjudicatory hearing by serving upon the Commissioner a request for hearing that complies with the requirements of 18 AAC 15.200-310. Hearing requests must be delivered to the Commissioner of the Department of Environmental Conservation at 410 Willoughby Ave, Suite 105, Juneau, AK 99801-1795 within 30 days of receipt of this letter. If a hearing is not requested within 30 days, the right to a hearing is waived and the decision becomes final. Please send a copy of the hearing request to the undersigned.

If you have any questions, please contact Bonnie Friedman at (907) 271-4113.

Sincerely,

Tom Chapple
Program Manager

TC/BF/mgh (H:\HOME\MHARMON\TOM\APPROVAL.VMT)

Enclosures: 1. Certificate of Approval: 9643-CP-3094

cc w/o enclosure:
Amerada Hess Pipeline Corp.
ARCO Transportation Alaska, Inc.
BP Pipelines (Alaska) Inc.
EXXON Pipeline Co.
UNOCAL Pipeline Company
Mobile Alaska Pipeline Company
Phillips Alaska Pipeline
Glenda Landua, Kenai Peninsula Borough
Dave Dengel, City of Valdez
Larry Evanoff, Village of Chenega
George Keeney, City of Cordova
Gary Kompkoff, Tatitlek Village
David Morgan, City of Whittier
Cordova District Fishermen United
David Jenka, Prince William Sound Conservation Alliance
Stan Stanley, RCAC/Anchorage

Pat Lavin, Trustees for Alaska
David Janka, PWS Conservation Alliance
Tom Lakosh
Ron Morris, USCG
Jerry Brossia, SPCO/JPO
Gary Reimer, Acting AO/JPO
Carl Lautenberger, EPA/JPO
Claudia Slater, ADF&G
Jim Taylor, US DOT
Phil Brna, ADF&G
Mike Bennett, ADNR
Glenn Gray, DGC/Juneau
Larry Shier, APSC
Bill Newbold, APSC

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Alaska Department of Environmental Conservation
Division of Spill Prevention and Response
Industry Preparedness and Pipeline Program

VALDEZ MARINE TERMINAL OIL DISCHARGE PREVENTION AND CONTINGENCY PLAN

Findings Document
and
Response to Comments

12/20/96

INTRODUCTION

This document serves to present both the Department's findings and the analysis of public comments regarding the contents of the Oil Discharge Prevention and Contingency Plan for the Alyeska Valdez Marine Terminal. It is the intention of the Department to present this information to assist the interested public and the participating reviewers in understanding the Department's review and basis of decision on issues which must be addressed in order for the plan to be approved.

The Department has reviewed the Valdez coastal district plan and briefed the Valdez City Council on the plan contents. No comments were received by any coastal districts. Based upon our review and the opportunity provided to potentially affected coastal districts to provide specific comments, the Department believes the plan as amended is consistent with the Alaska Coastal Management Program.

These final findings are based on comments received from the public after examination of the April 10, 1996, version of the contingency plan and the Department's draft findings. Comments were received during the public hearings held in Anchorage and Valdez on June 13 and 18, respectively, or submitted in writing anytime during the public comment period which began on May 1, 1996 and ended on July 1, 1996. The Department's review of the plan and the comments received was conducted to fulfill the provisions of the Alaska Coastal Management Program in ascertaining whether the plan is consistent with the applicable provisions of coastal management plans for districts affected by operations of the Valdez Marine Terminal. This document also includes an analysis of additional information and plan supplements provided by the applicant during and after the close of the public review. All comments received by the deadline were reviewed and considered by the Department. This document is a response to the most substantive issues raised by commentors. It does not include minor comments or comments of an administrative nature, many of which have been passed directly to the plan holder. Individuals desiring to understand the Department's review of a particular comment not mentioned here may contact the Department of Environmental Conservation at the Joint Pipeline Office for further information by calling (907) 271-5070 or by writing to ADEC at 411 W 4th Avenue, Suite 2B, Anchorage, AK, 99501.

Although ten primary issues were highlighted in the Department's draft findings, it should be noted that the entire contents of the April 10, 1996, contingency plan was open to comment during the public review period. The original issues are addressed in this paper in light of the comments received. In addition, sections have been added to this document which respond to significant comments received that were not related to one of the original topics of the draft findings.

The purpose of this document is to focus discussion on the critical issues that the Department sees as the most noteworthy for finalizing our decision. Issues were highlighted in the draft findings because there had already been a high level of public interest surrounding the issue or

because it appeared likely that the issue's resolution would require changes to the plan or a condition of plan approval to fulfill the requirements of the law. In addition to the major issues highlighted in this document. ADEC has compiled a list of short comments to be addressed by the plan holder. Some of these have already been resolved by the plan holder and a copy of the remaining short comments are attached for review. (Attachment 1)

This document uses the following format for each of the selected topics:

Summary

1) Statement of Issue

2) Findings

Analysis

(3) Regulatory Authority

(4) Response to Comments

(5) Basis for Decision

The Department has benefitted from and appreciates the contribution of many individuals and organizations made during the public process of reviewing and approving this plan. Any questions concerning these findings may be directed to Bonnie Friedman, (907) 271-4113.

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COMMENTS NOT RELATED TO THE ORIGINAL DRAFT FINDINGS

ISSUE #11 PLAN REVIEW JURISDICTION

ISSUE #12 INITIAL RESPONSE TEAMS AND OTHER PERSONNEL ASSIGNED TO A RESPONSE

ISSUE #13 COMMENTS TO PLAN AS A RESULT OF MAY 15, 1996 DRILL

- Environmentally Sensitive Areas and Shoreline Protection
- Valdez Duck Flats and Solomon Gulch Hatchery
- ATOM Model and Oil Spill Trajectory
- Drill Lessons Learned

ISSUE #14 TRANSFERS BETWEEN PLAN HOLDERS

ISSUE #15 PUBLIC HEARING COMMENTS

ISSUE #1 PREVENTING OR CONTROLLING A POTENTIAL FIRE HAZARD

STATEMENT OF ISSUE

Reviewers have raised concerns that ADEC has not required the plan to address what they consider critical issues of fire prevention and control.

FINDINGS

The Department finds that the terminal plan must be revised to include additional information and procedures to ensure that oil spill response operations will be conducted in a manner which would prevent or control a potential fire hazard. Specifically, the plan is to include an air monitoring strategy that provides for the safety of spill responders and prevents an accidental ignition of vapors. The strategy is to be commensurate with a spill size up to and including the Response Planning Standard (RPS) volume.

Although some procedures supportive to this strategy may exist as separate documents currently unassociated with the submitted Plan, the new section of the Plan is to describe a comprehensive air monitoring strategy providing tactics, site assessment techniques, action levels for making spill control and firefighting decisions, and procedures for establishing hazard control zones which include site safety diagrams, charts, checklists for the Safety Officer. A timeline should be developed which includes practical guidance on when a large spill of crude oil would be expected to be in the flammable range and a general guideline for how long a foam blanket would need to be maintained. Additionally, the plan should be modified to include a reference to the interface with the firefighting command structure. The Department will require these revisions to be developed within 120 days of plan approval.

REGULATORY AUTHORITY

The only State contingency plan regulation dealing with fire control is 18 AAC 75.425 (e)(1)(F)(ii). This regulation requires that the plan contain an oil spill response strategy that provides a description of methods to prevent or control a potential fire hazard.

Fire issues have previously been raised during the review and approval of the Prince William Sound Contingency Plan. As a result, ADEC has received guidance from the state Attorney General's Office to delineate the agency's authorities on this topic. (See attached memorandum dated March 16, 1995 - Attachment I.)

RESPONSE TO COMMENTS

Several significant questions were raised during the public review period regarding the adequacy of the methods listed in the oil spill plan to prevent ignition of an accidental spill at the terminal. After reviewing the plan, some commentors raised concerns about the potential for fire or explosion during the response to an oil spill based on the magnitude of the Response Planning Standard volume spill, which for this plan is 203,000 barrels. Specifically, some reviewers felt that the vapor hazard evaluation methods for the RPS volume spill were inadequately addressed in the plan. In addition, questions were raised regarding the methods to be used for reducing the potential for ignition during a spill. Some commentors also felt that the plan should address oil spill response equipment as potential ignition sources.

Beyond the information contained in the Oil Discharge and Prevention Plan, some public reviewers pointed out that the Emergency Contingency Action Plan (EC 71) [1], which independently addresses fire control, contains some information which overlaps and conflicts with the oil spill plan. Consequently, some commentors felt that the potential for confusion during an actual response may exist. Several reviewers suggested that the two documents be jointly edited to make them consistent. For example, the oil spill plan states that, "if an explosion or a fire involves spilled oil, the incident would be treated as a fire response first." Some reviewers suggested that the oil spill plan should address how the transition from the fire response to the spill response would be handled using the Incident Command System, especially in regard to communications and organization. Some commentors also suggested that the oil spill plan should include a description of the procedures that the Incident Commander would use to shift command from the fire suppression mode to the spill response mode.

The numerous citizen and agency comments submitted during the public comment period prompted the Department to solicit an independent third party opinion concerning the fire safety related issues. In November 1996, the consultant firm of Hildebrand and Noll Associates, Inc. was retained by ADEC to review the Valdez Marine Terminal Oil Discharge and Prevention Plan and related public comments to determine if the plan adequately includes a description of methods to prevent or control a potential oil spill related fire hazard. All comments related to fire were forwarded to the consultant for review and analysis. The consultant issued a report, "Valdez Marine Terminal: Preventing or Controlling a Fire Hazard During a Spill Response" [2] which was used to help the Department formulate its findings and determine information needed as a condition for plan approval.

It should be noted that the consultant was asked to address all fire related comments. However, some of these comments dealt with issues that have been determined by the ADEC, with advice by the state Department of Law, to be beyond the jurisdiction of the Department. Consequently, in their report, the consultant was responsive to all the comments and made recommendations which go beyond the scope of the VMT oil spill plan. In light of the Department's draft findings

which identified the possibility that a regulatory gap could exist to provide oversight for preventing or responding to a fire related incident at the Terminal. the consultant's report is being forwarded to the plan holder for information purposes and is also available for public review.

In general. the consultant found that the terminal oil discharge and prevention plan in relation to fire prevention and control was above average compared to similar plans in the U.S.. and that the plan provides very clear direction concerning the strategy for dealing with an oil spill scenario concerning fire. In particular, the consultant is referring to the statement in the plan that the incident should be treated as a fire-event first. and an oil spill second.

The consultant found that many of the comments had merit, especially in respect to the need to improve the plan to include more information and procedures to ensure that oil spill response operations are to be conducted in a manner which would prevent or control a potential fire hazard. The suggested section on air monitoring strategies. tactics. site assessment techniques, action levels for making spill control and firefighting decisions. and procedures for establishing hazard control zones which include site safety diagrams. charts. checklists for the Safety Officer, a timeline for foaming spills and additional language to describe the interface between the oil spill plan and the emergency response plan have been required in direct response to comments.

The consultant did not agree with citizen comments that fire boom should be routinely deployed around a vessel loading at berth as a safeguard in the event of a spill. Nor did the consultant agree with a commentor about the plan holder's ability to deploy fire boom or that the present tugs would be available or capable for the fire fighting task presented by a large crude oil spill. Since these comments are not within the jurisdiction of the oil spill plan. they are only briefly mentioned here and the reader is referred to the consultant's report for further details.

One group of commentors submitted a legal analysis which found that the ADEC's interpretation of the Department of Law's opinion and the regulation on which it is based to be overly narrow. The Department has considered these comments and maintains its position on its jurisdiction. However, in response to comments, the Department is requiring portions of the plan that deal with preventing or controlling a fire hazard to be greatly expanded. As described above, the consultant did review and make recommendations to improve methods to control a fire by suggesting that portions of the Emergency Contingency Action Plan concerning fire response be revised. Since this is out of the scope of the ADEC review, these recommendations are being passed on to the plan holder for information purposes only.

In recent oral conversations with the applicant, the Department was informed that Alyeska maintains existing procedures that are implemented by the incident Safety Officer to manage and control initial response activities for safety. It was conveyed that the procedures are based upon detection and measurement of potentially explosive gas vapors at the spill site and based upon these measurements build or restrict a response effort accordingly. To the Department's

knowledge. these procedures have not been submitted or reviewed. Yet. these or similar procedures are viewed as essential for safe incident management in the initial period of an oil spill response.

BASIS FOR DECISION

The Department has found that the terminal plan must be revised to include additional information and procedures as recommended by the consultant firm of Hildebrand and Noll Associates, Inc. to ensure that oil spill response operations are to be conducted in a manner which would prevent or control a potential fire hazard. However, the remainder of the plan has been determined to adequately address the regulatory requirements. (For an additional summary of the fire related portions of the plan. please see the Department's Draft Findings Document of May 1. 1996.)

The Department has concluded that the regulations require that a plan demonstrate the ability of the plan holder to respond to an oil spill caused by a fire or explosion. The Department finds that the potential for such a discharge should be considered. but that the required response depends upon the specific response planning standard discharge. In such a situation, the direction provided in the plan is given: "should an explosion and attending fire occur involving spilled oil, the incident will be treated as a fire incident first. Once the incident is controlled ... the incident will then expand and be dealt with as an oil spill incident under this plan." The Department is essentially in agreement with this response.

The Department finds no legal basis to require the plan holder to demonstrate fire/explosion response capabilities for an oil spill which is on fire. The Department is not responsible for oversight of fire response actions nor do the state's contingency planning authorities include fire fighting capabilities. Based on this opinion, the Department finds that requests that the plan contain response scenarios for a fire induced discharge are beyond the scope since the plan already provides information to meet the response planning standard discharge. Because the consultants were given all public comments to review, they have made specific recommendations for revisions to EC 71, the Emergency Contingency Action Plan. Although fire response capabilities are not within the Department's jurisdiction, a copy of the consultant's report is being submitted to the Alyeska for information purposes.

In the course of researching the problem of fire related authorities, the Department discovered that possible regulatory gaps exist to provide the oversight for preventing or responding to a fire related incident which may occur at the Valdez Marine Terminal. As part of this acknowledgment, the Department, in it's Draft Findings Document, made a commitment to join with the Prince William Sound Regional Citizen's Advisory Council (PWS RCAC), Alyeska Pipeline Service Company. the members of the Valdez Coastal District and federal and local

governmental agencies to participate in the activities of the Fire Protection Task Force as it relates to oil spill issues at the Valdez Marine Terminal. During 1996, the group has made many advances toward upgrading fire response plans for Port Valdez. Under the direction of RCAC, a consultant firm was hired to review marine fire response and emergency planning for Prince William Sound. As a result of their study, recommendations were made to institute a fire fighting symposium, to develop a Marine Incident Response Team and to upgrade the marine fire response plan.

The Draft Findings Document also referred to the need to oversee the closure and field verification of audit action items (corrective actions stemming from the 1993 TAPS audits) having to do with fire at the Terminal. Most of these issues have now been closed out. In addition, the RCAC had their contractor review these items.

ISSUE #2 *IN SITU* BURNING IN PORT VALDEZ

STATEMENT OF ISSUE

Is *in situ* burning an appropriate response action to be considered for spills originating at the Valdez Marine Terminal and reaching Port Valdez?

FINDINGS

The Department finds that, *in situ* burning, as currently presented in the plan, is not an appropriate response technique to be considered for a spill originating at the Valdez Marine Terminal. Although not precluded as a possible response alternative, this option has not been satisfactorily developed for the specific locale and expected conditions to enable a rapid pre-planned use of this technique.

If *in situ* burning is expected to be used in any response event, the contingency plan should provide a discussion of environmental conditions and physical circumstances when *in situ* burning may be appropriate. The plan should describe detailed information about the quantity, location, application method and time frame envisioned for its use as described in the Department's "Oil Discharge Prevention and Response Contingency Plan Application and Review Guidelines" [3]. There appears to be value and interest in further planning for the use of in-situ burning at the western reaches of Port of Valdez. If developed, this could be incorporated into the Plan as a plan amendment.

REGULATORY AUTHORITY

The plan holder is not required to plan for non-mechanical response, however, if it is proposed as an option, 18 AAC 75.425(e)(3)(G) requires that the plan "must include (i) a description of the specific mechanisms in place to assess the environmental consequences of the non- mechanical response option and to provide continuing monitoring of its environmental effects; (ii) a complete inventory of nonmechanical response equipment and supplies...with procedures for storage, maintenance and deployment; (iii) identification of all necessary approvals, and a completed application for Department approval for open burning if in situ burning is a proposed response technique; (iv) identification of all permits, approvals, or authorizations for use of nonmechanical response techniques and the time line for obtaining them; and (v) a plan for protecting environmentally sensitive areas, areas of public concern, and the public from any adverse effects of the non mechanical response action."

Contingency plan approval criteria, under 18 AAC 75.445(h), Nonmechanical Response Information, requires that "plans which propose ... nonmechanical response techniques during periods when environmental conditions or other factors limit the use of mechanical spill response methods must demonstrate their efficiency and effectiveness and must include a full assessment of potential environmental consequences, provisions for continuous monitoring and real-time assessment of environmental effects and full compliance with all applicable approval requirements. If *in situ* burning is proposed as a response technique, a completed application for approval by the Department must be included."

RESPONSE TO COMMENTS

Agency commentors have essentially agreed with the Department's draft findings on this issue. Citizen commentors have expressed concern that for *in situ* burning to be effective, it must be done within the first few hours of a release to water. They noted that it would take too much time to assemble information during the spill for prompt processing of a burn application, suggesting that a permit should be applied for and pre-approved for certain conditions. The commentors have suggested that certain scenarios can be included in the plan which would allow for *in situ* burning to be a viable response. Commentors also noted that the reference to emulsion breakers or emulsifiers in the plan should be specified and also pre-approved.

The Department agrees with these comments and has been willing to work with the plan holder to review plausible scenarios. However, since no further information on this issue was submitted, the Department can only determine that this option has not been developed sufficiently to be included in the plan. The Department also agrees with commentors, that the use of emulsion breakers or emulsifiers should be specifically identified and preapproved in the plan if they are to be used.

The plan holder has commented that while it understands that *in situ* burning may be severely limited in Port Valdez. it can be an effective technique to eliminate spilled oil and thus prevent longer term and more severe environmental impacts. The plan holder wishes to preserve the option to initiate *in situ* burning under the approval processes of the Alaska Regional Response team as detailed in the Alaska Unified Plan and requests that the Valdez Marine Terminal Plan approval not categorically preclude in situ burning.

The Department's response to this comment is that the Unified Command would be reticent to approve *in-situ* burning without the necessary background information. The area of the Valdez Marine Terminal is outside the parameters established in the ARRT's guidelines for *in situ* burning due to the proximity of Valdez residents and need to use a complex terrain air dispersion model. Therefore, it is highly unlikely that it would be possible to get enough information to make a decision within the limited window of time for which *in situ* burning may be appropriate. Yet. there appears to be merit in further planning for in-situ burning in the western portion of Port Valdez and such burning may not necessarily be undertaken in the immediate hours after a spill. but later in the event to assist in controlling any spilled oil from entering the open Sound. Projecting air quality impacts from a burn in this locale may not be as dependent upon the ability to use a complex terrain model in some weather conditions to assure protection for the communities of Valdez or Tatitlek.

BASIS FOR DECISION

There are two reasons which formed the basis of the Department's decision. The first has to do with the predictive limitations of the current model used in the "*In Situ* Burning Guidelines for Alaska" as approved by the Alaska Regional Response Team (ARRT) [4]. The "*In Situ* Burning Guidelines for Alaska" were developed for emergency burning of oil in an open water marine spill scenario. The model used in the guidelines to determine safe distances was based on flat terrain, unlike the terrain which surrounds Port Valdez. A project has recently been contracted by the Department to modify the current model to include complex terrain, including the area of the Valdez Marine Terminal. Once this project is complete, it is possible that the plan holder can use the modified model to determine safe distances in Port Valdez.

The second reason has to do with the lack of identification by the plan holder of specific conditions when wind direction and velocities in Port Valdez would be such that the smoke plume trajectory would not endanger populated areas such as Valdez and Tatitlek. The Department would prefer to see that the background work of refining an appropriate model is accomplished in a planning context rather than during an incident when resources would have to be dedicated to fighting the spill.

ISSUE #3 PREVENTION TRAINING PROGRAMS

STATEMENT OF ISSUE

Does the plan adequately document oil spill prevention and response training programs for personnel involved in operations that could result in a spill?

FINDINGS

The Department's finding is that the information contained in the plan that address training; Section 2.1, Section 3.9 or Appendix G, is now adequate to meet the applicable regulatory requirements. Due to the merit of concerns raised about monitoring training programs as contractors have assumed increased roles in spill response, the Department shall require a semiannual summary report of training activities, including courses/training exercises given and a list of attendees.

REGULATORY AUTHORITY

18 AAC 75.007(d) requires that "the owner or operator shall ensure that all personnel are appropriately and regularly trained regarding company and state pollution prevention measures that are applicable each person's duties. After completing a training course or program, each participant shall sign and date a statement that lists the course content."

18 AAC 75.425 (e) (2) (A) Requires contingency plans to contain a "description and schedule of regular pollution prevention, inspection, and maintenance programs in place at the facility or operation."

RESPONSE TO COMMENTS

Comments were received that expressed acceptance of the revised sections of the plan. However, both citizen and agency commentors brought up the issue that tracking, reviewing, and coordinating training in a comprehensive manner with APSC's increased use of contractors is becoming more difficult. To better monitor personnel training, the Department will require the plan holder to submit a biannual summary report of training activites including courses/training exercises given and a list of attendees. Commentors have suggested that ADEC should consider the formation of a program or a work group to review the subject of adequacy of training for APSC and contractor personnel. The Department concurs with the suggestion of a training work group as a beneficial means for the agencies and plan holder to stay current with the contingency plan, follow up on lessons learned, or have further interactions that can improve the effectiveness of response or drill/training programs. The Department is requiring the submittal of the

semiannual report to get further verification of the training program. If it is found that concerns persist, the Department will establish a drills/training workgroup consisting of the Prince William Sound Regional Citizens Advisory Council and the plan holder to further review the training program.

BASIS FOR DECISION

The Department's Oil Discharge Prevention & Contingency Plan Application and Review guidelines specify the inclusion of:

1. A brief job description for each position with regular duties that may affect the risk or size of an oil spill, and the training and level of knowledge appropriate to that position;

2. The means of achieving the identified training objectives, including training subjects, schedules, frequency (initial training upon hire and annual refresher training is recommended), and type (classroom, videotape, on-the-job, etc.); and

3. A description of any licenses, certifications and or other prerequisites needed to hold a particular job.

As a result of the plan holder rewriting portions of the relevant sections, the plan now provides the required details pertaining to training: the identification of those positions that may affect the risk or size of a spill and the level of training required for those positions; a listing of specific modules or courses including course objectives, schedules, frequency and type of training; and a description of licenses and certificates needed to hold a particular job. A matrix is now included which shows position descriptions, training descriptions and the frequency of the training required.

In response to public comments addressing the difficulty of monitoring training programs at the Terminal, the Department has determined it is reasonable to require a semiannual summary report of training activites including courses and/or training exercises given and a list of attendees.

ISSUE #4 OIL STORAGE TANK SECONDARY CONTAINMENT STRUCTURES

STATEMENT OF ISSUE

Do the secondary containment structures at the facility, especially for the crude oil storage tanks and the ballast water treatment tanks, meet the regulatory requirement of sufficiently impermeable?

FINDINGS

Certain secondary containment structures for the crude oil storage tanks at the Terminal, namely, the catalytically blown asphalt (CBA) liner, and the catch basins and draw sumps will meet the regulatory definition of "sufficiently impermeable" once:

> The plan holder has consolidated procedures to assemble an integrity maintenance program consisting of essential elements described below in the basis for decision, and
>
> The plan holder has provided supporting documentation to oral communications that the catch basins and draw sumps in the Tank Farms have been repaired.

Information provided by the applicant has failed to demonstrate that the rock wall at the Ballast Water Treatment tank containment area is sufficiently impermeable. This area of the containment system is to be made sufficiently impermeable. A detailed proposal to achieve this goal is to be submitted for review and approval by June 1, 1997. The proposal will need to consider the potentially competing interest of maintaining stability on the slope south of the tank area. Because of the potential engineering challenges, the proposal may request approval for retrofit actions to be completed in the 1998 construction season rather than 1997 if warranted by compelling technical considerations.

REGULATORY AUTHORITY

Secondary containment requirements for above ground oil storage and surge tanks are given in 18 AAC 75.075. This portion of the regulations specify that the "minimum secondary containment requirements include:

(1) berms, dikes, or retaining walls that are constructed to prevent the release of spilled oil from within the containment area;

(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

(3) checking for the presence of leaks or spills

(a) daily at a manned facility..."

Secondary containment requirements for new installations are different than those for existing installations. These distinctions are made in two areas of the regulations: in the definition of "sufficiently impermeable" and the requirement to monitor a known or suspected spill.

According to the definitions given under 18 AAC 75.990 "sufficiently impermeable" means, for a secondary containment system, that the design and construction of the system is such that it has the impermeability necessary to protect groundwater from contamination and to contain a discharge until it can be detected and cleaned up; for design purposes for a new installation, this 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 1X10-6 cm per second at a maximum anticipated hydrostatic pressure, unless an alternate design standard is approved by the Department.

For an existing installation, 18 AAC 75.075 (f) requires that "in the event of a known or suspected discharge, the Department will, in its discretion, require installation of monitoring wells to detect oil or other hazardous substances in the groundwater if the local geology and groundwater conditions allow installation of monitoring wells. and if monitoring wells will not substantially increase the risk of contaminating groundwater."

18 AAC 75.075(g)(3) states that the secondary containment area must "be maintained free of debris or other materials or conditions that might interfere with the effectiveness of the system, including excessive accumulated rainwater..."

The regulations at 18 AAC 75.432(d)(4) allow a reduction of the response planning standard volume at a terminal facility for prevention measures such as "if 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, reduction: 60%". In order to obtain this reduction, the contingency plan must include a "Detailed basis for calculations of exceptions, if any, to be applied to the response planning standards." as stated in 18 AAC 75.425(e)(2)(F).

RESPONSE TO COMMENTS

Citizen and agency comments were essentially in agreement with the Department's draft findings. Commentors expressed concern that the 60% credit to the Response Planning standard volume for secondary containment should not be applied until this issue is resolved. The Department is in agreement with this assertion. and has allowed for the credit based on the

determination that the secondary containment requirements will be met as provided for in the contingency plan approval.

BASIS FOR DECISION

The basis for the Department's decision on three elements of the secondary containment system is given below.

*1. **Catalytically Blown Asphalt (CBA)**:* A great deal of investigative work has been performed by Alyeska regarding the condition of the Catalytically Blown Asphalt (CBA) liner and its ability to meet the regulatory definition of "sufficiently impermeable". A review of the background material provided to the Department showed that the CBA could be demonstrated to meet the requirements. however, the review also showed the limitations of the CBA to provide a sufficiently impermeable barrier when it was not adequately maintained. The Department's decision to accept the CBA liner is based on the necessity for Alyeska to assemble and implement a comprehensive integrity maintenance program consisting of elements described below. The maintenance program document may consolidate existing procedures where they exist.

ADEC's guidelines for an existing installation stress that the standard for sufficiently impermeable is performance based. and that the operator must demonstrate that the secondary containment system, combined with applicable leak detection, operating and cleanup procedures is sufficient to ensure that leaks or spills will be contained and isolated from groundwater for a sufficient amount of time to enable the oil to be detected and removed.

To fulfill this objective the integrity maintenance program is to include the following categories:

- Applicable leak detection - Tests have shown that CBA will be damaged when exposed to crude oil over time. Because of this, the Department is concerned about the chronic, low level leak, rather than the catastrophic leak which would be easily detected. Improved means of leak detection could be used to shorten the length of time the CBA may be exposed to oil and thus reduce the chance of damaging the CBA. Alyeska is to propose and implement leak detection surveillance procedures or available discharge detection technology as a means for early detection oil leaked into in the tank farm area. Should surveillance procedures be developed rather than technology, the procedures would need to consider seasonal snow accumulations on piping running to and from the tanks.

The procedures would need to provide for periodic spot inspections under the piping for leaks that may not otherwise be visible from the surface without snow removal.

- Operating procedures - Some inappropriate past practices at the tank farms have already been halted such as depositing contaminated soils and land farming with heavy equipment. Other practices, such as snow removal using heavy equipment have also been restricted. As part of its sump repair project, Alyeska has investigated procedures such as water sump draw so avoid or minimize backup of oily water from the tanks into the containment area. As an element of the consolidated integrity maintenance program document, Alyeska should revisit each of the current operating procedures intended to be incorporated into the new document with the perspective of making appropriate changes to minimize potential damage to the CBA liner.

- Cleanup procedures - The Department has determined that the previous Alyeska guideline to cleanup any spill within three months is inappropriate, considering the nature of the CBA liner. Alyeska recently indicated that their present practice is to clean up spills immediately upon discovery, if possible. The Department agrees and finds that this practice should be incorporated into the maintenance program.

- Investigation / Testing / Repair of the CBA system - The Department retains questions about the condition of the CBA liner at some specific sites despite the results of investigations already presented. Uncertainties exist on whether the investigations accurately determined the liner conditions in all areas which had activities that may have compromised the liner. To bring closure to this issue, within the first 90 days following approval Department staff with document assistance from Alyeska will identify specific sites within the containment areas that require further investigation with possible follow-up testing or repair. The analysis to determine any sites for additional work will be based upon a review of the record associated with:

  a) the 19 areas of the East Tank Farm of known previous contamination including areas of groundwater contamination;
  b) areas known to have sustained heavy vehicle traffic;
  c) areas under tank mixing motors; and
  d) areas where previous liner repairs or replacement was performed.

The Department is approving the crude oil tank secondary containment system as being sufficiently impermeable based upon the premise that a comprehensive CBA integrity

maintenance program will contain provisions of all four elements described above. The Department will work with Alyeska to approve a program consistent with the objectives stated above and the Department's policy on sufficiently impermeable secondary containment systems as described in the Department's white paper of March 1996 [ref. 5].

*2. **Catch basins and draw sumps**:* The Department acknowledges Alyeska's attempts to find a solution to the problem of leaking catch basins and draw sumps and their commitment to complete repairs by 1996. Alyeska executed a program during the winter of 1995 in which repair prototypes were tested and determined that inserted steel liners were successful solutions to the problem. Alyeska then committed to a scope of work and a schedule to complete repairs by the end of October, 1996. The Department is currently awaiting a final report on this project to ensure that the problem has been addressed for all catch basins, draw sumps and manholes to bring closure to this issue.

*3. **Bedrock in BWT areas**:* The Department has examined whether the bedrock along the sidewalls to the south of the BWT tanks met the definition of "sufficiently impermeable". Department guidance for the review of contingency plans states that bedrock may be considered sufficiently impermeable only if it can be demonstrated that it is not fractured and thereby allow oil to leak to subsurface water. The guidelines suggest that adequate documentation, such as an engineer certified permeability test which demonstrates attainment of the requirements for impermeability, may serve as a basis for the Department to approve the integrity of the bedrock.

In September, 1996, Alyeska submitted a report to the Department which mapped and qualitatively described the geologic conditions in the BWT area [ref.6]. This report did not determine actual permeability by testing, rather, it inferred permeability values at the BWT by comparing representative hydraulic conductivity values to the various rock types present in the area.

The report describes the greenstone, which makes up much of the south wall, to be classified as an unfractured metamorphic rock, to be highly impermeable since the material in this category is listed as having a hydraulic conductivity of between 3X10-12 and 2X10-8cm/sec. However, the argillite, phyllite, and graywacke interbeds within the greenstone may represent the low permeability end of the fractured igneous and metamorphic rock class (8x10-7 to 3X10-2 cm/sec) or the graywacke class of material (3.2X10-8 cm/sec).

Because of the uncertainties regarding permeability of the interbeds, the Department does not accept this qualitative description, based on a published range of values, in place of on-site permeability testing. Alyeska's analysis does not eliminate the possibility that portions of the fractured igneous and metamorphic materials present may be at the more permeable end of the range which is below the threshold considered sufficiently impermeable. A reference in the report to permeability tests performed at the Terminal stated that *in situ* permeability tests for

phyllite showed 2 X10-2 cm/sec, although it is unclear where these tests occurred. Finally, the report points out that the constructed weep holes in the wall may be the most likely pathway for impounded ballast water to infiltrate into the groundwater system. These breaches of the secondary containment system would need to be addressed in order to close out this issue. The Department is aware that the weep holes serve the function of alleviating water pressure to ensure slope stability in the area.

The report also indicates that the subsurface water in area of the BWT is not hydrologically discontinuous with the saline subsurface water adjacent to the Port. This lower elevation saline water table is in turn contiguous with waters of Port Valdez. Consequently, it appears probable that any contamination escaping the BWT containment area could eventually migrate, albeit at a slow rate, to the waters of Port Valdez.

For these reasons, the Department has found the plan holder has not demonstrated that the south wall is sufficiently impermeable and does not assure protection of the ground and surface waters. Field action to make the side wall impermeable cannot reasonably commence until spring of 1997 at the earliest. Completion could potentially be can be attained by the close of the construction season, yet engineering complications may arise that would require additional time before an impermeable solution is selected because the south wall of the BWT area must also relieve hydraulic pressure from the mountain slope to sustain slope stability.

Analysis of Background Material

The Department received a vast amount of background material from the plan holder in support of the secondary containment issue. The Department analyzed much of this material and distributed its summary in the Draft Findings document, on May 1, 1996. It was determined that such a detailed analysis was not appropriate for the Final Findings document, however, interested parties may request copies of this information by contacting Bonnie Friedman at (907) 271-4113.

ISSUE #5 CONDITIONS THAT MIGHT INCREASE THE RISK OF DISCHARGE - SLOPE STABILITY

STATEMENT OF ISSUE

Has Alyeska taken adequate measures to address concerns regarding slope stability at the Terminal?

FINDINGS

The ADEC's finding is that additional measures must be taken to ensure that an adequate maintenance, surveillance and monitoring program is in place at the Terminal to maintain slope stability and to limit hydrostatic uplift. This must be accomplished by attaining enhancements to the present geotechnical monitoring program at the Terminal. The following recommendations were made by J. P. Singh and Associates in their report to the Department titled "Valdez Marine Terminal Slope Stability/Geotechnical Review" [7]. The report recommends the continuation of the current slope monitoring program with the following modifications:

1) Changes in the data collecting procedures to improve the reliability of piezometer readings.

2) Standardization of data to facilitate the comparison of piezometer data to other piezometer values and precipitation data.

3) Performance of a re-evaluation of the stability of certain slopes for contingency level conditions where piezometers readings have exceeded flag values and particular trends have been identified.

4) Inspection and repair of surface drainage and slope protection systems where certain piezometers have shown increased levels uncorrelated to precipitation trends.

5) Establishment of a correlation between water flow trends within the slopes and piezometer trends, anomalies in the data, identification of surface water entry points, and maintenance and repair needs by using surface geophysical studies consisting of Soil Potential and Resistivity Surveys.

The engineer's report will be submitted to the plan holder as an aid to clarify the Department's expectations for the comprehensive slope stability monitoring program. Prior to setting a clear and concise course of action for this program, it is appropriate to provide an opportunity for Alyeska to review the detailed engineering work contained in this report and submit any rebuttals deemed appropriate. This was not possible to accomplish earlier due to the late date of completion of the report with respect to the date of plan approval.

No later than 60 days after plan approval, Alyeska is to submit any requests to the Department supported by clear and convincing evidence to expand, alter or contract the elements described above for a comprehensive slope stability monitoring program. Within 150 days after plan approval, Alyeska is to submit a detailed scope of action for all elements of the program unless otherwise adjusted by the Department, containing the detailed procedures and schedule for the implementing slope stability monitoring program.

REGULATORY AUTHORITY

The ADEC contingency plan regulation dealing with this issue is 18 AAC 75.425(e)(2)(D). This regulation requires "a description of any conditions specific to the facility or operation that might increase the risk of discharge including physical ... hazards... or other site specific factors, and any measures that have been taken to reduce the risk of discharge attributable to these conditions."

The regulation in 18 AAC 75.432 (b) states that "the Response Planning Standard (RPS) volume for a crude or a noncrude oil terminal facility is equal to the capacity of the largest oil storage tank at the facility covered by the plan, unless there are specific natural or man made conditions outside the facility which could place the facility at an increased risk of an oil discharge affecting one or more storage tanks." According to 18 AAC 75.432 (c), "For an increased risk described in (b) of this section, the response planning standard volume is equal to the capacity of all the potentially affected oil storage tanks at the facility. The plan must set out the basis for selecting the storage tanks and the volume of oil planned for in the response."

RESPONSE TO COMMENTS

Agency and citizen commentors were essentially in agreement with the position taken by the Department in the Draft Findings document which suggested that additional measures could be taken to ensure that the plan holder is maintaining an adequate slope stability program. Both groups expressed concern that the terminal was constructed to withstand an 8.5 Richter magnitude earthquake in accordance with earthquake design criteria from the 1970's but that new information may change this assumption. Recent California and Japanese earthquake events have resulted in new engineering approaches for earthquake mitigation. Both agency and citizen groups referred to the regulatory requirement that the Response Planning Standard volume used in the plan is contingent upon there being no specific conditions which could place the facility at an increased risk of discharge affecting one or more tanks. The Prince William Sound Regional Citizen's Advisory Council suggested that they, along with other agencies and Alyeska, jointly sponsor a workshop on earthquake engineering where professionals current in the field could present information.

The Department recognized that it lacked the technical expertise necessary to thoroughly research this issue, and as a result, solicited an independent third party to review Alyeska's slope stability program. In October, 1996, the Department retained J. P. Singh and Associates to address issues identified by both the commentors and the Department in its Draft Findings document of May 1, 1996. The Final Findings presented in this document have been derived from the consultant's final report to the Department.

BASIS FOR DECISION

The recommendations made by the earthquake engineer formed the basis for the Department's decision. The specific purpose of contracting the professional civil/geotechnical engineer was to evaluate Alyeska reports and data and if necessary, to recommend additional documentation, studies or site work needed. In addition, the consultant was asked to evaluate the slope stability (basis for design of the terminal) with respect to state of the art methods to determine if it is still adequate or if a seismic reassessment is necessary. The consultant performed an extensive review of material ranging from pre-construction drawings made in the 1970's to 1996 piezometric data. The Department has relied upon the expertise of its contractor to require the plan holder to complete the actions described in the Findings of this document. Copies of the engineer's report, "Valdez Marine Terminal Slope Stability/Geotechnical Review" are available and readers are encouraged to review the report in order to obtain a more thorough understanding of this issue. Interested parties may obtain copies of this report or the Department's Draft Findings document by contacting Bonnie Friedman at (907) 271-4113.

The Department finds it necessary that the plan holder completes the actions recommended to ensure that an adequate slope stability program is in place. If slope stability issues were considered to be the cause of increased risk, the regulations would require that the Response Planning Standard (RPS) volume be increased to the volume of all the potentially affected oil tanks. The RPS volume currently being used in the prevention and contingency plan is based on the volume of a single tank, with the assumption that slope and soil stability issues are adequately addressed and pose no increased risk to the tank structures.

ISSUE # 6 COMPLIANCE SCHEDULES AND WAIVERS

STATEMENT OF ISSUE

Has Alyeska satisfactorily provided a detailed compliance schedule, including anticipated dates, when all aspects of the facility will be in compliance with state oil pollution prevention requirements?

FINDINGS

ADEC's finding is that the plan currently does not contain a detailed compliance schedule, including anticipated dates, when all equipment and operations of the facility will be in compliance with all applicable oil pollution prevention regulations.

Outstanding compliance deficiencies that must be addressed by a compliance schedule are:

1. Oil Storage Tank Requirements.

a) Leak Detection: The Department has required updated support documentation concerning methods to be used to meet the leak detection requirements for all regulated crude oil tanks at the facility. Three safe operating procedures which utilize different classes of technology were submitted. The three procedures were for the crude oil tanks, the ballast water storage tanks (90's tanks) and the recovered crude oil tanks (80's tanks), and the turbine/diesel fuel storage tanks. Leak detection is required for the 10 crude oil storage tanks that are not equipped with under-tank cathodic protection.

The Department has evaluated these submittals and finds the methods applicable to the ballast water tanks and the fuel tanks to be acceptable. The leak detection procedure for the crude oil tanks has been found unacceptable because the current static holding time of two hours is not supportable as an optimum time for leak detection sensitivity.

During the first twelve months following Plan approval, Alyeska shall collect information to optimize the leak detection sensitivity by using a range of static holding times from 2 hours to 48 hours during their monthly tests on the 10 tanks. Alyeska is to select a range of hold times founded upon developing a statistically supportable data base at the conclusion of twelve months, yet at a minimum, the data set is to provide for at least 50% of the leak tests to represent hold times of 24 hours or greater and 20% of the data set to represent hold times of 48 hours. Upon conclusion of data collection, Alyeska is to submit the data and its recommendation of a preferred optimum hold time to the Department for review and approval.

b) Maintenance Consistent with API Standard 653: The applicant has determined that it is not feasible to complete repairs to weather seals around the tank bottoms and foundation ringwalls. The Department acknowledges Alyeska's attempt to finds repair solutions for the weather seals and the efforts to assess their importance in tank corrosion protection. Based upon information provided to date, it is evident that the lack of weather seals do not increase the susceptability of the tanks to corrosion. However, it would appear beneficial for Alyeska to seek methods that would minimize water influx under the tanks.

2. Secondary Containment Requirements.

a) Tank Secondary Containment Structures: The compliance issue regarding certain tank secondary containment structures is addressed in detail under Issue #4 in this document. Activity schedules and completion dates will be reflected in the compliance schedule of the plan.

3. Facility Piping Requirements.

a) Terminal Oily Water Sewer Inspections: The recent history of events such as the documented caustic spills and repairs to the oily water sewer system have resulted in Department staff requesting additional information of Alyeska to demonstrate the integrity of the system. Based on the information received in a letter from the plan holder dated October 31, 1996 [8], and the history of the system, the Department is requiring an expansion of the corrosion inspection program so as to complete the inspection of all remaining underground portions of the system by the end of plan approval term (Dec 1999). It is expected that Alyeska will inspect at least a third of the remaining pipe segments in each of the first two years and the inspection schedule will prioritize the highest risk segments first.

b) Ballast Water Treatment Plant Piping Inspection Program: The Department rejected APSC's previous proposal to substitute internal visual inspection for the required annual leak test program. On October 28, 1996 [9], Alyeska transmitted a letter to the Department describing leak testing and internal visual piping inspection for the ballast water transfer piping and the fuel oil transfer piping. The recent proposal does meet the regulatory requirements and is therefore accepted as a supplement to the plan.

REGULATORY AUTHORITY

The regulations on oil spill contingency plan contents, in 18 AAC 75.425 (e)(2)(G), states that the contingency plan must contain "a compliance schedule as described in 18 AAC 75.015" to show when all aspects of the facility will be in compliance with Article 1, Oil Pollution Prevention Requirements, 18 AAC 75.005 -.090. The regulations make provisions for the Department to allow for an alternate compliance schedule if the plan holder shows substantial cause for delay beyond January 1, 1997. In addition, the Department may waive a requirement if the plan holder can show that an alternative technology or procedure is acceptable.

The specific applicable regulations for this discussion include:

18 AAC 75.065. Oil Storage Tank Requirements -
(a) The owner or operator of an oil terminal, crude oil pipeline, exploration, or production facility shall maintain and inspect oil storage and surge tanks consistent with the requirements of API

standard 653. first Addition 1991 and supplement 1 January 1992 or API Recommended Practice 12R1. fourth Addition 1991. as appropriate...

(i)(l)each tank must be equipped with

(A) a leak detection system that an observer from outside the tank can use to detect leaks in the bottom of the tank, such as a secondary catchment under the tank bottom with a leak detection sump. a sensitive gauging system, or another leak detection system approved by the department...

18 AAC 75.075. Secondary Containment Requirements for Aboveground Oil Storage and Surge Tanks. (This section is discussed in detail under Issue # 4 in this document.)

18 AAC 75.080. Facility Piping Requirements For Oil Terminal, Crude Oil Transmission Pipeline, Exploration and Production Facilities. This section specifies that (b) Buried steel piping containing oil must be maintained in accordance with a corrosion program approved by the department...

(2) for an existing installation. must
(A) undergo a corrosion survey;
(B) be carefully examined for deterioration any time a section of buried line is exposed for any reason;
(C) undergo an additional examination and corrective action to repair and control future corrosion if corrosion damage is found...

(c) buried or insulated transfer piping and hoses that are located outside of secondary containment areas and that are used to transfer oil to or from docks or vessels must be leak tested at least annually, at or above normal operating pressures, or must be subjected to another verification method approved by the Department. The testing medium used must be in accordance with API RP 1110, Second Edition, 1981, or another applicable published safety standard. The owner or operator shall keep records of the results of these tests. Piping and hoses must be stenciled or tagged with the date of the last test and the allowable operating pressure...

RESPONSE TO COMMENTS

Citizen and agency comments were essentially in agreement with the Department's proposed decisions as stated in the Draft Findings document. Commentors recommended that the Department set deadlines to obtain closure on the outstanding issues. The Department has made compliance determinations on recent submittals provided by APSC and where appropriate, will impose specific completion dates.

BASIS FOR DECISION

1a. Leak Detection: In response to an Alyeska audit action item. Alyeska proposed that a new sensitive gauging system was to have been installed on all regulated tanks at the terminal to meet the requirements of leak detection as specified in the regulations. This system. ENRAF 854 ATG. is adequate for leak detection when used under certain procedures to optimize it's accuracy. Of concern to the Department was the use of this system for leak detection where tanks are frequently filled and emptied. In May, 1996, the Department requested in its Draft Findings Document. a summary of procedures to be used for leak detection purposes so that they may be reviewed for regulatory compliance (tanks subject to leak detection by regulation are those 10 crude oil tanks not equipped with under-tank cathodic protection) .

On August 21. 1996. the plan holder submitted a safe operating procedure. "OMS-3.45", to perform monthly leak detection testing for the crude oil tanks [10]. This procedure required that the tanks remain static for a minimum of two hours. Department staff consulted with a committee member for American Petroleum Institute. It was his professional advise that. given the size of the tanks and the accuracy of the ENRAF system. this procedure could only be effective with the tanks being static for at least 48 hours. Given there is no established time period set by API, simply a recommendation at this time. there appears to be valid argument for supporting a site specific analysis and determination. Therefore, the Department's decision is require Alyeska to perform monthly tank leak tests on each of the 10 tanks not equipped with under-tank cathodic protection over the next year with varying static hold times between 2 and 48 hours to create a site specific data base by which to establish a hold time which optimizes the leak detection sensitivity.

On October 28, 1996, Alyeska submitted a procedure to determine leakage from the ballast water storage tanks and the recovered crude oil tanks. On November 8, 1996, Alyeska submitted a draft safe operating procedure for leak detection to be applied to the turbine/diesel storage tanks. Both testing procedures utilize a form of inventory control to accomplish leak detection. These procedures have been reviewed and found to fulfill the regulatory requirement by the Department. In order to close this issue, the revised procedure, including the standard operating procedures, and an implementation schedule will be incorporated into the contingency plan to ensure that the requirements under 18 AAC 75.065(i)(1)(A) for all regulated storage tanks at the facility are met.

1b. Maintenance Consistent With API Standard 653: On July 13-14, 1995, Department personnel performed an inspection at the Terminal and observed weather seals which were seen to have failed between some of the tank bottoms and the foundation ring walls. This observation was transmitted to Alyeska. Alyeska responded to the Department that:

> Some weather seals have separated at the juncture of the tank bottom and foundation ring wall. Alyeska recognizes this as a maintenance issue. The nature of the problem (location, tank movements, temperature variations, etc.) has not lent itself to a simple solution. However, we are still investigating several products that look promising. When the results of these in-situ tests are in and have been evaluated, a product/application will be used, or additional testing may be initiated.

In the draft findings, the Department requested this maintenance issue be addressed. In a response to the Department dated July 24, 1996, [11] the plan holder stated that the "engineering plans for redoing the caulking were examined and that Alyeska is not confident that a suitable method to ensure reliability has been achieved. Historically, the weather seals have failed due to thermal expansion and contraction of the tank steel...data did not establish a benefit of weather seals. Alyeska has now decided in the absence of any indication of a benefit to be achieved, there is no legitimate reason to continue pursuing a weather seal solution"

API Standard 653 requires that any conditions which may cause corrosion must be eliminated or minimized. Based upon recent information provided by Alyeska, it appears that the lack of weather seals do not increase the succeptability of the tanks to corrosion. Therefore, there is not a regulatory basis nor necessarily a reasoned basis to assert that action must be taken. However, it would appear beneficial for Alyeska to seek methods that would minimize water influx under the tanks.

2a. Tank Secondary Containment Structures: Secondary containment requirements have been addressed in detail under Issue #4 in this document.

3a. Terminal Oily Water Sewer Inspections: A process waste sewer, part of the oily water and chemical sewer systems, failed in June, 1994, and resulted in a caustic soda spill. This event caused follow up repair projects and testing of the oily water sewer in the Power House to insure its integrity. Testing revealed that sections of piping were found to be leaking and were subsequently taken out of service. Alyeska stated in the draft contingency plan that the entire system had not been tested - scheduling for 1996 called for a total of 40% of the system to be tested. The Department took the position in the Draft Findings Document that a more aggressive integrity inspection of the entire system may be warranted. (Please see the May 1, 1996 copy of the Draft Findings Document for a more detailed discussion of this topic.)

On October 31, 1996, Alyeska submitted information addressing items requested in the Draft Findings regarding the piping integrity. Based upon a review of the provided information, the Department will require Alyeska to complete its inspection of the remaining underground portions of the system (considered to present a higher risk than above ground piping -consisting of about 5 to 6 miles of piping).

3b) Ballast Water Treatment Plant Piping Inspection Program: Alyeska previously proposed to perform periodic internal inspections of the ballast water piping system in lieu of annual leak tests. ADEC requested JPO engineering assistance in evaluating Alyeska's program. The engineering conclusions were that Alyeska should "upgrade the system and perform the required leak test".

The JPO engineering report stated that:

> "An internal visual inspection of epoxy lined pipe does not afford the inspector the ability to examine the actual pipe wall, nor does it provide for evaluation of external corrosion. Visual inspections do not have the sensitivity to detect defects in the epoxy liner due to sludge deposits, corrosion that may exist under disbonded coating, or mechanical deficiencies in the piping arrangement that could be detected by leak testing. Furthermore, the proposed APSC inspection program has inspection frequencies that are less frequent than that specified by Title 18 of the Alaska Administrative Code, 10 years versus annually". [12]

On October 28, 1996, Alyeska submitted a proposed new testing methodology for the ballast water piping system and the fuel oil transfer piping. Leak testing of transfer piping using the methodology given was proposed to be completed prior to December 31, 1996. The Department has reviewed the proposed testing procedure and finds it to meet the regulatory requirements.

ISSUE #7 PLAN CONTENTS - WHAT INFORMATION MUST BE INCLUDED IN THE PLAN, AND WHAT INFORMATION MAY BE REFERENCED?

STATEMENT OF ISSUE

Reviewers have asked the agency for a decision regarding what information must be included or when information may be referenced in contingency plans. Reviewers have also raised concerns about having access to relevant documents not included in the plan.

FINDINGS

Although the contingency plan must remain a stand alone document, the Department's finding is that, in certain cases, it is necessary and appropriate to reference documents that are not part of the plan. Although the regulations and the Department's guidance document, "Oil Discharge Prevention & Contingency Plan Application and Review Guidelines", set forth the type of information that is required, the Department's position is that it is both reasonable and necessary to make a professional judgement, on a case by case basis, to balance the amount of detail required in the plan while keeping the plan a useable working document.

In the Department's judgement. the information now contained in the plan meets the requirements set forth in the regulations and the Department's guidance document. The Department finds that it is appropriate to reference those materials which are not a part of the plan, as long as they are correctly cited in the plan's bibliography. The Department finds that one key referenced document. EC - 71. listed in the ADEC's Plan Approval letter must be made available to plan reviewers/users through Alyeska's document control system.

The bibliography in the April 10, 1996, revision of the plan was found to be updated and appears to be complete.

REGULATORY AUTHORITY

The contents and format required for contingency plans are given in the regulations under 18 AAC 75.425. The first part of the section (a) describes. in general, information needed for a complete plan: "An oil discharge prevention and contingency plan submitted must ... be in form that is usable as a working plan for oil discharge prevention. control. containment. cleanup and disposal. A plan must contain enough information. analyses. supporting data. and documentation to demonstrate the plan holder's ability to meet the requirements AS 46.04.030 and 18 AAC 75.400-495."

Later in this section is a description of "supplemental information" which must be included in Part 3 of the plan (18 AAC 75.425 (e) (3) Part 3 -supplemental information). "The supplemental information section must contain background and verification information" on listed topics such as facility description and operational overview, receiving environment, command system etc. Finally, the last part of Part 3, (L) requires a bibliography -- "a list of data and information sources used to determine the information contained in the plan."

Department review procedures are listed under 18 AAC 75.455. As part of the review process, this section, under (d) describes additional information necessary for the Department to evaluate the plan.

RESPONSE TO COMMENTS

A citizen's group expressed the concern that plan reviewers must be notified of any updates to the documents that are referenced in the plan. The Department finds this to be a valid request and proposes that certain plan reviewers/users receive "controlled" copies of selected referenced documents managed by Alyeska's document control system to ensure that the groups have material that is up-to-date. These documents will be listed in the Plan Approval letter as "Supporting Documents" to the plan.

BASIS FOR DECISION

Prior to the public comment period, when agencies were evaluating whether the plan was sufficient for review, it was determined that the Valdez Marine Terminal C-Plan was to be a stand alone document and that information necessary to make the plan complete was to be excerpted and placed in the appropriate section of the plan. This position was a result of discussions regarding the Supporting Information Documents (SIDS) for the PWS Tanker Plans, which Alyeska had proposed to reference for the Terminal C-plans as well. Instead of incorporating the information by reference, the agencies directed Alyeska to incorporate relevant text from the SIDS into the plan.

Although documents have been incorporated into the plan, it should be noted that the current version of the Valdez Marine Terminal Contingency Plan still contains certain references to key documents outside the plan. Some examples of these include Alyeska manuals such as *EC- 71-VT "Emergency Contingency Action Plan"*, certain best management practices, and other documents such as manuals and standard operating procedures. The Department recognizes that all references do not need to be incorporated into the plan and it is the judgement of the Department that the requirements for the contents of the plan have been now been met.

Special attention was given to the referencing or incorporation of SIDs during the review process and it should be noted that the plan still contains some minor reference to SIDS from the PWS tanker plans. The Department has chosen to allow these references to stand since the important references have already been excerpted. With the finalization of the PWS tanker plans in 1995, the SIDs have now completed the public review process, been approved by the Department, and as such, are final documents appropriate for referencing in the plan.

At the request of the agencies, much background information was submitted to plan reviewers to assist them in making determinations about compliance issues or to insure that the plan holder met certain standards. This information was detailed beyond what was required for the plan, but served to provide clarification. Because this information was submitted to the agencies and was reviewed by them to formulate findings, all material submitted has become part of the public record for this plan review and is available by contacting the Department.

Prior to the beginning of the public comment period, the bibliography included in Section 3 of the plan was incomplete. The revised April 10, 1996 edition of the plan appears to have an updated and complete bibliography.

Both regulations and the Department guidelines, " Oil Discharge Prevention & Contingency Plan Application and Review Guidelines" specify contingency plan contents and approval criteria. These documents, with the professional judgement of Department staff and suggestions from the

public via public review. should be sufficient to determine. on a case by case basis, the amount of material which should be included in the plan and those documents which may be referenced.

ISSUE #8 ESTIMATE OF SPILL VOLUME TO REACH OPEN WATER

STATEMENT OF ISSUE

Does the plan adequately estimate the percentage of the applicable response planning standard volume of oil to reach open water? Does the plan demonstrate a response strategy that addresses the possibility of oil reaching Port Valdez?

FINDINGS

The Department has found that the plan does adequately address activities needed to respond to oil reaching open water. The plan provides a response strategy to an oil spill where over 350,000 barrels of oil (an amount greater than the response planning standard volume) reaches Port Valdez in a fifteen hour period. This was completed to the Department's satisfaction and is included in the plan under the "VMT Response Planning Standard Scenario".

The Department does not agree with Alyeska's assertion in the plan that in all foreseeable situations, the secondary containment area will hold the discharge from a tank rupture, and prevent oil from reaching open water. The Department disagrees because this does not conform with other information known about the terminal facility. This claim in the plan is to be removed.

REGULATORY AUTHORITY

The relevant portion of the regulation, 18 AAC 75.425(e)(3)(B)(I), requires "the potential routes of travel of oil discharged from the facility or operation to open water in the form of a drainage diagram or map, showing gradients and potential containment sites and features, including identification and explanation of all measures that will be taken to prevent a discharge from entering open water..."

18 AAC 75.425 (e)(3)(B)(ii), states that, "based on the information in (I) of this subparagraph, an estimate of what percentage of the applicable response planning standard volume ... for the facility or operation will reach open water."

The regulations in 18 AAC 75.425(e)(1)(F) require that contingency plans contain "response strategies -- a description of the discharge containment, control, and cleanup actions to be taken, which clearly demonstrate the strategies and procedures adopted to conduct and maintain an effective response; this information must be presented in the form of a response scenario to a discharge of the applicable response planning standard volume and must be useable as a general guide for a discharge of any size..."

The regulations in 18 AAC 75.432(a)(1) states that the plan holder shall have the resources to "contain or control and clean up within 72 hours that portion of the response planning standard volume that enters open water".

RESPONSE TO COMMENTS

The plan holder's comment to this issue was that "Spill prevention measures outlined in the plan should eliminate the likelihood of oil entering Port Valdez. Nevertheless, Alyeska acknowledges that oil spill response planning is appropriate". One citizen commented that, in a catastrophic tank failure scenario, a significant portion of the spill ... must be assumed to reach tidewater in a matter of minutes given the steep slopes of the VMT.

The Department has considered these comments and has found that the plan does provide for the capability to contain, control and clean up 100% of the response planning standard volume in open water. Until such time that the plan is amended and an alternative volume approved by the Department, the Department will assume, for planning purposes, that the full RPS volume could reach open water.

BASIS FOR DECISION

The Department found that it could not agree with Alyeska's assertion as written in the plan for various reasons. Alyeska's own risk assessment, which is included in the plan, provides a scenario whereby oil from a ruptured tank may not be contained within secondary containment. The analysis states that "In the case of a very large rupture, (greater than about 5 ft. in diameter), it is likely that the oil would wash over or break the dike wall". Although the risk assessment states that there would be opportunity for capturing oil at the "final dam at the outflow of no Name Creek and Dayville Creeks", equipment and personnel would have to be in place for this to be successful.

The Department's position is that there may not always be sufficient containment volumes and opportunities for on land capture of all potential spills from the storage tanks. A portion of a spill escaping secondary containment in the area of the West Tank Farm would likely reach Port Valdez due to the steepness of the terrain and the lack of significant settlement areas.

The Department has analyzed the "VMT Response Planning Standard Scenario" in detail and was satisfied that the plan holder demonstrated a response to a spill in open water since the response scenario was based on an amount of oil exceeding 100% of the RPS volume enters Port Valdez. Once the portion of the plan where the plan holder asserts that the discharge from a tank failure will be wholly contained within the secondary containment (in Section A.4.1.6), is deleted, this issue will be resolved. The Department is instructing the applicant to remove this language from the final printing of the plan.

ISSUE #9 OIL SPILL PRIMARY RESPONSE ACTION CONTRACTOR INFORMATION

STATEMENT OF ISSUE

Should any of the contractors currently employed at the Valdez Marine Terminal be identified by Alyeska as Primary Response Action Contractors (PRACs) as defined in state regulations?

FINDINGS

The Department finds that the firms of TCC and Tidewater must be registered as primary response action contractors. Within 30 days after plan approval, Alyeska is to provide copies of the statement of contractual terms for the contractors of TCC, Tidewater and Crowley Marine.

REGULATORY AUTHORITY

Contingency plans must provide oil spill primary response action contractor information (18 AAC 75.425(e)(3)(H). The regulations under 18 AAC 75.445(i) state that "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 75.400-18 AAC 75.495, the contractor must be registered under 18 AAC 75.500-18 AAC 75.580. The plan holder shall include a correct and complete list of each primary response action contractor with name, address, telephone number, and affiliation by company, and for each response action contract, a statement signed by the plan holder and the primary response action contractor attesting to the department that the contract (1) clearly specifies that the contractor is obligated to..."
An "oil spill primary response action contractor" is defined in regulations under 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 to provide resources or equipment to contain, control or clean up an oil discharge." 18 AAC 75.500(b) states that "A response action contractor is not required to register... unless the contractor is directly obligated to a plan holder by contract to provide spill response resources to meet the requirements... and is listed in that plan holder's oil discharge prevention and contingency plan as providing all or part of the

response resources required to demonstrate compliance with an applicable response planning standard."

RESPONSE TO COMMENTS

Citizen commentors argued that the contractor, TCC, provides personnel not only for day to day operations but also brings in additional ramp up personnel for spill response. The plan holder commented that PRAC registration of various Alyeska contractors working on the Terminal is unnecessary and administratively burdensome. In addition, the plan holder expressed the opinion that contract personnel cited in the plan are already administered through SERVS, which is currently registered as a PRAC.

An oil spill exercise conducted at the Terminal in May 1996 revealed that contractors were fully integrated in the on-land response efforts at the Terminal and in the on-water efforts. During the drill, it was also found that the listing of contractors in the April 10, 1996, edition of the plan was incomplete. The plan holder submitted a comment regarding this omission and committed to review its current listing of contractors in the plan and update the list.

BASIS FOR DECISION

The Department has found that the contingency plan does not reflect current practices at the Terminal in regard to the role of contractors. At this time, the Department is aware that contractors from Tidewater, Crowley and TCC play significant roles in spill response at the Terminal and/or at SERVS. SERVS ICS organizational charts identify Strike Team Members as being composed of "63 TCC Oil Spill Personnel". Additional organizational charts, such as that of the Operations Unified Team Leads, show Tidewater, Crowley and TCC roles under the Mechanical Response Team Lead.

Although Alyeska's SERVS organization is a registered PRAC, this is for the role SERVS plays in the Prince William Sound Tanker Plans, not the VMT plan. SERVS does not list the Valdez Marine Terminal plan as one of the plans for which it has agreed to be PRAC, nor would it make any sense to do so, since SERVS is a business unit and part of Alyeska, not a contractor to Alyeska. The Department believes there has been confusion on this issue because SERVS plays two different roles. For the PWS Tanker Plans, SERVS acts as a PRAC for the shippers. In that role, its support contractors, such as TCC, are not required to be registered as a PRAC since SERVS already is the PRAC. In this context, TCC, Crowley and Tidewater are response action contractors, but not a primary response action contractor. If they work under a primary response action contractor, by regulation they are not required to register.

For the Valdez Marine Terminal contingency plan, SERVS as part of Alyeska is the plan holder and therefore does not appear to fit the regulatory concept of a PRAC because it is the same entity. Should SERVS exist as a separate corporation as the case with Alaska Clean Seas and north slope producers. SERVS could be the PRAC. The Department fully explored the law to examine whether SERVS could serve as a PRAC because under several analogous situations around the state, the roles that are fulfilled by TCC, Crowley and Tidewater would not require these organizations to be registered Primary Response Action Contractors. Upon review of the statute and regulations, it appears that the Department can only conclude that SERVS can not be the PRAC for the terminal. It then follows that the contractors of TCC, Crowley and Tidewater meet the definition of a "primary response action contractor" since they are necessary for the plan holder to meet the response planning standard.

Crowley Marine is a company engaged in other business in Alaska which require it to be a plan holder. The regulations specify that if the resources of one plan holder are listed in another company's contingency plan, the first company is not required to be a PRAC, but must fulfill all other requirements applicable to PRACs (18 AAC 75.500(c)).
The current version of the Terminal contingency plan does not list any contractors as PRACs. The firms TCC and Tidewater must become registered primary response action contractors. Associated statements of contractual terms are to be submitted to the Department within 30 days after plan approval.

ISSUE #10 TOPICS OF PUBLIC CONCERN ORIGINATING FROM THE PRINCE WILLIAM SOUND TANKER PLANS

The Terminal plan addresses spill prevention and response for spills originating from Terminal equipment and facilities, up to the berth loading arm connection flange, while the Prince William Sound Tanker plans address spills originating from the tankers. Although the two sets of plans are distinct, both share certain common strategies, tactics and equipment to respond to spills.

The following have been identified by the Department as "cross over issues" because they are almost identical in both the Prince William Sound Tanker Plans and the Valdez Marine Terminal Plan. The ADEC has already issued final findings on these topics through the approval process for the Tanker Plans. They are included here because resolution of these topics in the Terminal plan is linked with the decisions made during the Tanker plan review.

It should be noted that some of the following findings have resulted in conditions of approval attached to the Tanker Plans which require certain activities to be completed by the plan holders. These issues must remain incomplete in the Terminal plan until such time that the conditioned activities are completed and accepted by the Department.

I. USE OF DISPERSANT FOR SPILL RESPONSE

STATEMENT OF ISSUE

Should dispersant be used in spill response? Is the dispersant Corexit 9527 effective on north slope crude oil?

FINDINGS FROM PWS TANKER PLANS

These same concerns were addressed in the VMT Plan. The use of dispersant in Port Valdez are given in the plan and found acceptable to the Department. The Department's response regarding the use of Corexit as given in the Tanker Plan findings is also relevant here: " Corexit 9527 is on EPA's February 1996 approved products list in the National Contingency Plan (NCP). Dispersant on that list may be proposed for consideration to the Federal On-Scene Coordinator (FOSC) in a spill response."

II. APPLICATION OF BAT TO ANALYSIS OF MARINE SPILL RESPONSE RECOVERY

STATEMENT OF ISSUE

Does the marine response equipment identified in the plans adequately provide for the best available technology (BAT)? Must ADEC adopt objective guidelines using data derived from scientifically accepted methods to make legally supportable BAT determinations and evaluations?

FINDINGS FROM PWS TANKER PLANS

The findings in the PWS Tanker plans were as follows: The Department, using its best professional judgement, has determined after analysis of the response equipment, the training of response personnel and extensive drills and test exercises, that the present open water response system constitutes BAT.

Since the publication of the final findings and the subsequent approval of the Tanker Plans, the Department has embarked on amending the Oil and Hazardous Substances Pollution Control regulations to include new sections relating to a Best Available Technology Review. At this time, it is anticipated that the draft amendments will be adopted by the end of 1996. The Department concludes under its statutory authority and the regulations currently in effect that the response equipment identified in both the Tanker plans and VMT plan meet the best available

technology requirements. Furthermore, assuming the proposed regulations are adopted in a substantially similar form, this finding will not be in conflict with the amended regulations.

The new regulations will require the Department to undertake a "New Technology Review" which will consist, in part, of sponsoring a technology conference to be held once at least every five years to provide interested parties the opportunity to review existing and new response technologies. The Department may also undertake other studies, inquiries, analyses, etc. in consideration of the new technologies.

III NEAR SHORE SPILL RESPONSE

STATEMENT OF ISSUE

Does the Near Shore Response Capability meet the criteria, as required in the PWS Tanker plans?

FINDINGS FROM PWS TANKER PLANS

At the time of the publication of the Department's draft findings for the VMT Plan, the near shore response capability, as described in the Tanker Plans, was still in the process of being evaluated under Condition Number 3 of the PWS Tanker plan approval.

A decision on this topic was issued by the Department in a letter dated September 20, 1996. [13] The Department determined that the plan holders had demonstrated compliance with most aspects of the condition, yet needed to secure additional contract fishing vessels and increase the oily water storage capacity. The Department required the plan holders to complete the activities in January 1997.

IV. SENSITIVE AREA IDENTIFICATION

STATEMENT OF ISSUE

Do the contingency plans contain an identification of all "environmentally sensitive areas" or "areas of public concern"? Specifically, are environmentally sensitive areas and the recreational areas of PWS identified and protected?

FINDINGS FROM PWS TANKER PLANS

Information on environmentally sensitive areas was excerpted from the SIDs of the Tanker Plans and incorporated into the Terminal Plan. Deployment plans to protect Solomon Gulch Hatchery and the Valdez Duck Flats are included in the Valdez Marine Terminal plan.

Department decisions on PWS Tanker Plan conditions number 5, 6, and 7 were transmitted to the plan holders in a letter dated August 1, 1996 [14]. Topics applicable to the Terminal plan are discussed below:

Data on sensitive areas and areas of public concern were transmitted from local, state and federal resource agencies through the sensitive areas working group to the plan holder's response planning group (RPG). The RPG, through SERVS and their contractor, provided the Department with an updated Geographical Resource Database on sensitive areas and areas of public concern. In consultation with the Alaska Department of Fish and Game (ADF&G), the Department verified the accuracy of the data in the GRD and determined that the requirements of condition number 5 have been met.

As additional environmentally sensitive area information becomes available in the future, the plan holders have agreed to work with the Department as part of the Sensitive Areas Work Group process. New information that is generated as a result of this identification process will be added to the GRD within one year after it is incorporated into the State and Federal Sub Area Plans.

One commentor for the Terminal Plan observed that subsistence harvest sites have not been incorporated into the GRD. This was omitted for proprietary reasons at the request of subsistance users, but the information is available to agencies in the event of a spill. The Department is requiring that any new information for Port Valdez, which has been received as a result of the revised GRD, be incorporated into the VMT Plan as well.

The Department, through condition of approval number 6 of the Tanker Plans, required the identification of recreational use areas of Prince William Sound. This condition has been satisfied for the Tanker plans by the submittal of revisions to SID #13 which included the identification of primary recreational use areas, notification procedures, responder training to minimize intrusion and a spill notification check list. The Department is requiring that any areas identified in Port Valdez as a result of the revisions to SID #13 be incorporated into the VMT Plan for completeness.

V. TRAINING OF WILDLIFE RECOVERY/REHABILITATION PERSONNEL AND COMPLETION OF WILDLIFE RESPONSE FACILITIES

STATEMENT OF ISSUE

Is the personnel training for wildlife capture and handling adequately addressed in the plan? Has the condition regarding the completion of the wildlife response facility been met?

FINDINGS FROM PWS TANKER PLANS

The Department required. through condition of approval number 7, the completion of a wildlife recovery/rehabilitation personnel training program within a time frame acceptable to ADF&G. The requirements of this condition have been satisfied.

The Department finds that references to wildlife training and the otter treatment facility in the Terminal plan should be updated in accordance with the completion of this condition.

VI. EASTERN LION SPILL/LESSONS LEARNED

STATEMENT OF ISSUE

Is the plan responsive to small spills that may occur while a tanker is berthed at the Valdez Marine Terminal?

FINDINGS FROM PWS TANKER PLANS

Only the Tanker plans address spills originating from a tanker at berth, however, the response for a spill of approximately 2500 barrels in the water at the location of the berths has now been adequately addressed for both plans. Please see additional references to the Eastern Lion Spill in the response to comments as a result of the May 15, 1996 drill at the Terminal.

RESPONSE TO COMMENTS

The Alaska Department of Fish and Game (ADF&G) commented that "lessons learned" documents have been produced and that it is uncertain if these lessons have been adequately incorporated into the VMT plan. ADF&G recommended that the Department should form a working group to review the lessons learned from the Eastern Lion spill to assure that appropriate provisions are incorporated into the VMT plan. The Department has incorporated many of the lessons learned from the Eastern Lion spill through the Tanker Plan and VMT Plan review in addition to subsequent drills and exercises. Specific points from the "lessons learned" comments from RCAC and plan holders which have been followed up include:

1) the incorporation of a 2500 barrel spill at berth scenario into the VMT plan;
2) small drills in Port Valdez where the Transrec Barge responds to spills at the berths;
3) revised booming configurations for tankers at berth;
4) modification for boom configuration at the Solomon Gulch hatchery including the installation of permanent anchors at the hatchery; and
5) permanent boom anchors and exclusion booming located on-site for the Valdez Duck Flats.

The Department is in agreement with commentors that although many changes and improvements have already been made, not all of the lessons learned from the Eastern Lion have been followed up. One, such as the need to address the "automatic" response to boom the Solomon Gulch Hatchery and the Valdez Duck Flats are discussed elsewhere in this document, other lessons learned, such as specific comments regarding response strategies taken at the time, are best resolved through continued training exercises.

RESPONSE TO COMMENTS NOT RELATED TO THE ORIGINAL DRAFT FINDINGS

ISSUE #11 PLAN REVIEW JURISDICTION

Some commentors expressed confusion about the State's April 30, 1996, decision to restart the review process for the Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan. The original multi-agency review, which was coordinated by the Division of Governmental Coordination (DGC), was ended and restarted as a single agency review coordinated by the Department of Environmental Conservation. Commentors expressed concern that this decision may unintentionally undermine the authority of the Bureau of Land Management (BLM) and the Department of Natural Resources (DNR) regarding contingency plan requirements and the coastal zone management review process.

The State had formally initiated the review of the draft plan for the Terminal on July 24, 1994. Based on the volume and nature of the requests for additional information from the review participants and other individuals, the review was subsequently stopped by the coordinating agency (at that time, the DGC). Based upon the numerous information requests and agency and public comments, Alyeska submitted a new proposed plan, review package and coastal project questionnaire in April, 1996. It was the decision of the State to not restart the multi-agency review of the old plan, but to initiate a single agency review by DEC of the new and substantially revised plan. The decision was made to begin at Day 1 of the review clock to insure a clear record of response to this specific proposal. Comments from the Federal and State agencies, BLM and DNR, have been received and incorporated into the plan. As part of the single agency

review, the DEC also conducted a single-agency Alaska Coastal Management Program (ACMP) consistency review under 6 AAC 50.030(b) and has been prepared to incorporate comments from the citizens of the Alaska Coastal Districts into it's draft ACMP Consistency Finding.

The Department is not capable of fully responding to the commentor's specific concern regarding the jurisdiction of the other state and federal agencies as this was not a decision made by ADEC, but rather a decision made by DGC with input from the resource agencies.

ISSUE #12 INITIAL RESPONSE TEAMS AND OTHER PERSONNEL ASSIGNED TO A RESPONSE

Comments were received by agency reviewers questioning the adequacy of descriptions in the plan to evaluate Alyeska's ability to conduct response actions in a timely manner. This included personnel responsible both for assessment actions and initial control actions. It was not clear to the reviewer where the immediate or initial response teams or individuals described in Chapter 1 of the plan came from or who they were. The reviewer wrote that a reference in the plan to certain personnel was made, but the reader could not correlate the involvement of these individuals to the response.

The Department is in agreement with this comment. In addition to the example given for Chapter 1, there has been confusion about the minimum numbers of personnel available for initial response as described in Appendix L. This must be clarified by the plan holder and appropriate changes made to the plan.

ISSUE #13 COMMENTS TO PLAN AS A RESULT OF THE May 15, 1996 VMT DRILL

As an element of the VMT Contingency Plan review process, the Department, other agencies and Alyeska planned and executed an oil spill drill at the Terminal in May, 1996. One of the primary objectives of the drill was to demonstrate the use of tactics and strategies consistent with the VMT Plan. Several commentors had the opportunity to participate in the drill, which happened to be held during the public comment period, and as a result of their experience at the drill, provided comments relative to the plan.

1. Environmentally Sensitive Areas and Shoreline Protection: The Alaska Department of Fish and Game (ADF&G) commented that while the VMT plan identifies about a dozen environmentally sensitive shoreline protection sites in Port Valdez, with the exception of the Solomon Gulch Hatchery and the Valdez Duck Flats, only a general statement about the type of protection that might be considered for these sites is included in the plan. Based on observations made during the Eastern Lion Spill and the May 15 VMT drill, the commentor observed that there appeared to be uncertainty about what particular protection measures should be deployed at