DEC Request for Adjudicatory Hearing Form pursuant to 18 AAC 15.200

A request for adjudicatory hearing must be submitted using this form and timely served upon the Commissioner by e-mail or U.S. mail (see 18 AAC 15.200(a), (c) and (e)), as well as on the division that issued the decision and the permittee.

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

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

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

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

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

Requestor Contact Information

Name*	Jake Staser, City of Valdez
Address*	Brena, Bell & Walker, P.C. 810 N. Street, Suite 100 Anchorage, AK 99501
Telephone*	907-258-2000
Fax	907-258-2001
Email Address*	jstaser@brenalaw.com
Date*	September 8, 2025

Please provide the name(s), mailing address(es), e-mail address(es), and telephone number(s) for the individual(s) or organization(s) bringing forward this request for adjudicatory hearing (see 18 AAC 15.200(c) and 18 AAC 15.920(13)).
***Required**

Identification of Represented Parties

For each requester named above that is a member organization, please provide the names and addresses of members who are adversely affected by the decision who are being represented by the organization in this matter (see 18 AAC 15.200(c)(3)).

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

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

Decision and Issues to be Reviewed

Please identify the permit or other decision you are seeking to have reviewed. Please include information such as the date of the decision, who made the decision, the title of the document within which the decision is contained or the permit number. The requester bears the burden of presenting evidence in the hearing request. **Please provide a copy of the decision document at issue.** If the Department provided an opportunity for public comment on the permit, approval, or decision, please provide a copy of submitted comments. If you did not comment during the applicable comment period, please so indicate.

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

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 (Attachment AI).

Issues to be Decided

Please provide the following information for each question of material fact or law (collectively referred to as "contested issues") you are asking to be reviewed as part of the adjudicatory hearing request. Attach additional pages as needed if you are seeking to raise more than three issues or if you need more space for your response.

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

Contested Issue 1:

Contested Issue and Location of the Issue

See attached additional pages.

Explanation and reasons the contested issue is relevant to the decision

See attached additional pages.

How are requesters directly and substantively affected?

See Attached additional pages.

Any suggested terms or conditions?

See attached additional pages.

Why should your request be granted?

See attached additional pages.

Contested Issue 1

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

b) The location(s) in the permit, or other decision where the specific terms or conditions appear, that you are contesting (e.g. page, paragraph or other identifying description)

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

d) The reason(s) you believe the contested issue you are raising is relevant to the Division's decision (why you believe resolving the contested issue in your favor will materially change the Division's decision)

e) How each requester (including represented parties if the requester is a member organization representing them in this matter) is directly and substantively affected by the contested decision to justify review; more specifically, please include a discussion of:

1) the nature of the interest of the requester or represented party who is impacted by the contested decision(s);

2) whether that interest is one that the department's applicable statutes and regulations intend to protect; and

3) the extent to which the Division's decision relating to this contested issue directly and substantively impairs the interest described in (2) above.

(f) Identify when and where you raised this issue in testimony or comments you provided to DEC. if your comments or testimony were submitted to DEC in writing, please provide a reference to the page and paragraph where they appear. (see 18 AAC 15.200(a) and 18 AAC 15.245)**

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

(h) A discussion of any other reasons you believe your request for an adjudicatory hearing should be granted. Please include a concise summary of the facts and laws that you believe support your request.

(i) If you believe a provision of the final decision or permit you are challenging was not in the draft decision or permit that was subject to the public notice or comment process, please explain the basis of your claim (see 18 AAC 15.200(a)).

** this requirement does not apply to a person challenging an Air Quality Division Stationary Source Emission Control permit under AS 46.15.2200 either (1) on the basis of a private, substantive legally protective interest under state law that may be adversely affected by the permit action, or (2) as the owner or operator of the stationary air source

NOTE: If you did not raise your issue before the Division's issuance of the permit or contested decision, 18 AAC 15.245 requires you to show "good cause" for the failure to raise the issue for it to be considered. You should include this information in your response to (h) above.

Contested Issue 2

Contested Issue and location of the Issue

See attached additional pages.

Explanation and reasons the contested issue is relevant to the decision

See attached additional pages.

How are requesters directly and substantively affected?

See attached additional pages.

Any suggested terms or conditions?

See attached additional pages.

Why should your request be granted?

See attached additional pages.

Contested Issue 2

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

b) The location(s) in the permit, or other decision where the specific terms or conditions appear, that you are contesting (e.g. page, paragraph or other identifying description)

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

d) The reason(s) you believe the contested issue you are raising is relevant to the Division's decision (why you believe resolving the contested issue in your favor will materially change the Division's decision)

e) How each requester (including represented parties if the requester is a member organization representing them in this matter) is directly and substantively affected by the contested decision to justify review; more specifically, please include a discussion of:

1) the nature of the interest of the requester or represented party who is impacted by the contested decision(s);

2) whether that interest is one that the department's applicable statutes and regulations intend to protect; and

3) the extent to which the Division's decision relating to this contested issue directly and substantively impairs the interest described in (2) above.

(f) Identify when and where you raised this issue in testimony or comments you provided to DEC. if your comments or testimony were submitted to DEC in writing, please provide a reference to the page and paragraph where they appear. (see 18 AAC 15.200(a) and 18 AAC 15.245)**

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

(h) A discussion of any other reasons you believe your request for an adjudicatory hearing should be granted. Please include a concise summary of the facts and laws that you believe support your request.

(i) If you believe a provision of the final decision or permit you are challenging was not in the draft decision or permit that was subject to the public notice or comment process, please explain the basis of your claim (see 18 AAC 15.200(a)).

** this requirement does not apply to a person challenging an Air Quality Division Stationary Source Emission Control permit under AS 46.15.2200 either (1) on the basis of a private, substantive legally protective interest under state law that may be adversely affected by the permit action, or (2) as the owner or operator of the stationary air source

NOTE: If you did not raise your issue before the Division's issuance of the permit or contested decision, 18 AAC 15.245 requires you to show "good cause" for the failure to raise the issue for it to be considered. You should include this information in your response to (h) above.

Contested Issue 3

Contested issue and location of the issue

See attached additional pages.

Explanation and reasons the contested issue is relevant to the decision

See attached additional pages.

How are requesters directly and substantively affected?

See attached additional pages.

Any suggested terms or conditions?

See attached additional pages.

Why should your request be granted?

See attached additional pages.

Contested Issue 3

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

b) The location(s) in the permit, or other decision where the specific terms or conditions appear, that you are contesting (e.g. page, paragraph or other identifying description)

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

d) The reason(s) you believe the contested issue you are raising is relevant to the Division's decision (why you believe resolving the contested issue in your favor will materially change the Division's decision)

e) How each requester (including represented parties if the requester is a member organization representing them in this matter) is directly and substantively affected by the contested decision to justify review; more specifically, please include a discussion of:

1) the nature of the interest of the requester or represented party who is impacted by the contested decision(s);

2) whether that interest is one that the department's applicable statutes and regulations intend to protect; and

3) the extent to which the Division's decision relating to this contested issue directly and substantively impairs the interest described in (2) above.

(f) Identify when and where you raised this issue in testimony or comments you provided to DEC. if your comments or testimony were submitted to DEC in writing, please provide a reference to the page and paragraph where they appear. (see 18 AAC 15.200(a) and 18 AAC 15.245)**

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

(h) A discussion of any other reasons you believe your request for an adjudicatory hearing should be granted. Please include a concise summary of the facts and laws that you believe support your request.

(i) If you believe a provision of the final decision or permit you are challenging was not in the draft decision or permit that was subject to the public notice or comment process, please explain the basis of your claim (see 18 AAC 15.200(a)).

** this requirement does not apply to a person challenging an Air Quality Division Stationary Source Emission Control permit under AS 46.15.2200 either (1) on the basis of a private, substantive legally protective interest under state law that may be adversely affected by the permit action, or (2) as the owner or operator of the stationary air source

NOTE: If you did not raise your issue before the Division's issuance of the permit or contested decision, 18 AAC 15.245 requires you to show "good cause" for the failure to raise the issue for it to be considered. You should include this information in your response to (h) above.

Request for Evidentiary Hearing

With reference to the number of issues listed in your response to "Issues to be Decided" above, please list the number of the issues for which you are requesting an evidentiary hearing that may involve the testimony of factual witnesses, expert witnesses or the offering of additional documents or other evidence not already in the existing agency record.

Contested Issue 4 raised in the attached Adjudicatory Review Request Additional Pages document.

Description of Question of Fact to be Raised at an Evidentiary Hearing

With reference to the number of issues listed in your response to "Request for Evidentiary Hearing" above, please describe each of the factual issues you want considered in an evidentiary hearing. You may reference your answers in your response above if they describe all the questions of fact that you want considered at an evidentiary hearing

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

Estimated Time for an Evidentiary Hearing

Please provide your estimate of the time you think will be needed to conduct the evidentiary hearing you are requesting.

See attached additional pages.

IF YOU HAVE QUESTIONS

If you have questions regarding what information needs to be included in this form or questions about the process for requesting an adjudicatory hearing, you may find help by:

1) Reviewing the department's regulations, many of which are referenced in this form. The Administrative Procedures regulations at 18 AAC 15 are available on the Internet at https://dec.alaska.gov/commish/regulations/ . The definitions of key terms may be found at 18 AAC 15.920;
2) Reviewing the guidance documents posted by the department at https://dec.alaska.gov/commish/review-guidance/; or
3) Contacting the department's adjudicatory hearing liaison, Jessalynn Rintala, in the Commissioner's Office at (907) 465-6097 or at Jessalynn.Rintala@alaska.gov

Please be aware that failing to comply with the requirements for filing and serving a request for adjudicatory hearing could result in all or a portion of your request being denied.

APPLICABLE DEADLINES

Requests for an adjudicatory hearing must be made not later than 30 days after the issuance of the department's decision or permit, or not later than 30 days after the issuance of a decision on a request for informal review under 18 AAC 15.185, whichever is later (see 18 AAC 15.200(a)).

BEFORE THE COMMISSIONER OF THE ALASKA DEPARTMENT

OF ENVIRONMENTAL CONSERVATION

CITY OF VALDEZ, an Alaska municipal corporation, Requester, v. ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION, DIVISION OF SPILL PREVENTION AND RESPONSE, Respondent.	OAH No. _____

RENEWED REQUEST FOR ADJUDICATORY HEARING ON
ADEC-SPAR'S REVISED DECISION ON CONTESTED ISSUE 4

On March 26, 2025, the City of Valdez ("Valdez" or "City") submitted an adjudicatory hearing request for six contested issues pertaining to the Alaska Department of Environmental Conservation's ("ADEC") November 6, 2024, approval of Alyeska Pipeline Service Company's ("APSC") Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan ("VMT C-Plan") #23-CP-4057 ("2024 VMT C-Plan Renewal").[1] The ADEC Commissioner remanded four of the City's contested issues (Contested Issues 1, 2, 4, and 6) to ADEC's Division of Spill Prevention and Response ("ADEC-SPAR") to cure the November 6, 2024, decision deficiencies. Remands occur when ADEC-SPAR's decision is not supported by the administrative record or the decision contains a substantive error, and the flawed decision is remanded to the division to cure the deficiency or error.[2] The City's Contested Issues 3 and 5 were approved for Adjudicatory Hearing but were stayed pending the remand of the City's Contested Issue 4.

This is a renewed adjudicatory hearing request related to the City's Contested Issue 4.

On May 16, 2025, the ADEC Commissioner adopted the recommended ruling from the Office of Administrative Hearings granting the City's request for an adjudicatory hearing regarding ADEC-SPAR's review of the VMT C-Plan relating to Valdez's Contested Issue 4

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

[2] ADEC's Citizens Guide to Administrative Appeals at 11-12. file:///C:/Users/sharv/Downloads/citizens-guide-to-administrative-appeals.pdf.

concerning the unsupported 2% response planning standard prevention credit granted to APSC for crude oil storage tanks.

The Commissioner found ADEC-SPAR's Basis for Decision was incomplete and unsupported related to the City's Contested Issue 4, and remanded it to ADEC-SPAR to revise. The Commissioner concluded:

> [T]he 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". Accordingly, an argument can be made that each C-Plan needs to demonstrate that the 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." 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." 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.
>
> 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 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.[3]

[3] Attachment AG: ADEC Commissioner's Ruling on Phase One (Request for Adjudicatory Hearing) Under 18 AAC 15.220, *City of Valdez vs. ADEC and APSC*, OAH No. 25-0950-DEC ("Ruling"), May 16, 2025.

On June 13, 2025, Administrative Law Judge ("ALJ") Garrison Todd denied ADEC-SPAR's and APSC's request for reconsideration of the Contested Issue 4 remand. The ALJ instructed ADEC-SPAR to identify records related to crude oil tank leak detection and determine whether it was deemed to meet the definition of a sensitive gauging system, as well as records supporting the grant of the 2% response planning standard prevention credit under 18 AAC 75.432(d)(3).[4] The ALJ specifically instructed ADEC-SPAR to incorporate into its 2024 VMT C-Plan Basis for 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 considered to trigger the need for a new review under 18 AAC 75.432, the definition at 18 AAC 75.990, or elsewhere."[5]

On August 8, 2025, ADEC-SPAR issued a Revised VMT C-Plan Basis for Decision ("Revised Decision")[6] replacing the one issued on November 6, 2024. ADEC-SPAR's Revised Decision made changes to its "Issue #5 Leak Detection" listed on pages 8-15 to address the remand of the City's Contested Issue 4; ADEC-SPAR did not make other changes to its prior decision.

The City's Contested Issues 1, 2, and 6 are still on remand. ADEC-SPAR has granted APSC numerous extensions. By September 2025, APSC will have produced four different secondary containment liner inspection plans without resolution, almost one year after the VMT C-Plan was decided in November 2024. At issue is the lack of oil spill response equipment at the Valdez Marine Terminal ("VMT" or "Terminal") needed to respond to a crude oil tank spill, for which APSC is unprepared, when the unjustified 60% oil spill prevention credit is removed.

No action has been taken on the City's Contested Issues 3 and 5, which are stayed pending the remand of Issue 4.

The City renews its request for an Adjudicatory Hearing on City's Contested Issue 4. The City also requests that the agency take more expedient action on the resolution of the City's Contested Issues 1, 2, and 6, and resume the adjudicatory hearing process for the City's Contested Issues 3 and 5.

Nothing in ADEC-SPAR's Revised Decision resolves the City's appeal. In fact, the information provided in ADEC-SPAR's Revised Decision bolsters the City's appeal, as it further reveals ADEC-SPAR's flawed decision-making. ADEC-SPAR's Revised Decision does not demonstrate that the applicant (APSC) meets the applicable requirements of 18 AAC 75, the Alaska Statutes at Title 46, nor deserves a 2% prevention credit. The Revised Decision is not

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[4] Attachment AH: Administrative Law Judge Garrison Todd Report of Status Conference and Order on Motions for Reconsiderations, *City of* V*aldez vs. ADEC SPAR and APSC*, OAH No. 25-0950-DEC, June 13, 2025, at 2.

[5] Attachment AH at 3.

[6] Attachment AI: Alaska Department of Environmental Conservation, Division of Spill Prevention and Response 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.

supported by the administrative record or the application submitted by the applicant and contains substantive errors and omissions.

The City requests that the ADEC Commissioner determine that ADEC-SPAR's Revised Decision related to Contested Issue 4 is not supported by the applicable statutes and regulations, the administrative record, or the contents of the application before it, and that the ADEC Commissioner revoke the 2% prevention credit that was wrongly awarded for crude oil tank leak detection. The City believes the ADEC Commissioner has sufficient information to issue this revocation without further hearing. However, if the ADEC Commissioner needs to hear further from the parties, the City requests an Adjuicatory Hearing on this Contested Issue 4.

The City also requests that the Adjudicatory Hearing process stay for Contested Issues 3 and 5 be lifted and the 20-day clock for preparing the administrative record commence. There should be no further delay. Almost a year has elapsed since the flawed November 2024 decision.

The City opposes ADEC-SPAR's Revised Decision and incorporates prior arguments filed in the City's March 26, 2025, Adjudicatory Hearing Request.

Administrative Note Regarding Attachments to this Adjudicatory Hearing Request

On March 26, 2025, the City submitted an adjudicatory hearing request for six contested issues pertaining to ADEC's 2024 VMT C-Plan Decision. The City included Attachments A-AF to that request. The City's renewed request for an adjudicatory hearing on the City's Contested Issue 4 below refers to some of those attachments, which have been included again here for administrative ease of reference. New attachments added since that time have been designated Attachments AG-AK.

Contested Issue No. 4

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

ADEC-SPAR improperly awarded a 2% oil spill prevention credit for crude oil tank on-line leak detection, reducing the 72-hour Response Planning Standard volume (Scenario 5) by an undeserved 10,417 barrels (437,514 gallons).[7] Improper award of an oil spill prevention credit reduces the amount of oil spill response equipment required for the VMT. It unnecessarily exposes Valdez citizens to a crude oil spill for which APSC will be underprepared. The 2% prevention credit should be revoked, and APSC should be required to increase its oil spill response equipment to meet its 72-hour response planning standard requirement for the crude oil tanks.

Neither the approved plan nor ADEC's November 6, 2024 Basis of Decision or August 8, 2024 Revised Decision provides a technical, regulatory, or statutory basis for awarding the 2% oil spill prevention credit to a gauging system that is unable to detect a leak until thousands of barrels of crude oil per hour are leaked, that is incapable of detecting leaks through the tank floors, and cannot detect small leaks unless the tanks are isolated and tested for 48 hours, which is not even a requirement of the approved plan.

AS 46.04.030(m) provides the department the authority to consider oil discharge prevention measures and to make exceptions to the planning volume established by AS 46.04.030(k)(1) "to reflect the reduced risk of oil discharges from the facility." Granting credit for crude oil tank leak detection is not explicitly listed in the statute. AS 46.04.030(m) provides:

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

The provisions of 18 AAC 75.432(d)(3) allow an on-line leak detection system credit of up to 5% if the facility has such a system for <u>both</u> tanks <u>and</u> piping. The VMT does not have an on-line leak detection system for piping. ADEC-SPAR's Revised Decision affirms that the VMT does not have a piping leak detection system that meets 18 AAC 75.432(d)(3). ADEC-SPAR wrote:

[7] Attachment F: 2024 VMT C-Plan, Volume 1, Part 5, Section 5.1, 72-hour RPS volume calculation reduced the volume from 520,867 barrels to 510,450 barrels by applying an undeserved 2% credit, equating to 10,417 barrels.

> [T]he department determined that APSC does not have on-line leak detection for piping.[8]

An oil spill prevention credit of up to 5% is allowed under 18 AAC 75.432(d)(3) only for on-line leak detection systems for tanks and piping located at oil terminal facilities that automatically alarm at a facility control room that is continuously monitored. The conjunctive "and" clearly requires both tanks and piping meet this standard. Because this standard is not met by APSC, no credit, even a partial one, can be awarded, and the 2% credit must be revoked. ADEC-SPAR's defense fails by arguing that a credit is due even though the leak detection system clearly fails to meet the regulatory threshold.

The field constructed aboveground oil storage tank oil spill prevention requirements of 18 AAC 75.065(h)(1) are met for East Tank Farm ("ETF") Crude Oil Tanks 1-14 by a cathodic protection system in accordance with 18 AAC 75.065(h)(1)(B). There is no need for ADEC-SPAR to approve a second method under 18 AAC 75.065(h)(1) because compliance can be achieved by one of the methods listed in 18 AAC 75.065(h)(1)(A-D). Even if ADEC-SPAR approves a second method, such as a crude oil tank gauging system, as meeting the 18 AAC 75.065(h)(1)(D) standard of "another leak detection or spill prevention system approved by the department," this has nothing to do with whether an oil spill prevention measure deserves credit under 18 AAC 75.432(d)(3). Award of a prevention credit under 18 AAC 75.432(d)(3) must stand on its own merits, which ADEC-SPAR's award does not.

Neither ADEC-SPAR's November 6, 2024 Basis of Decision nor August 8, 2024 Revised Decision addresses the 2024 Superior Court Property Tax Trial testimony of APSC's leadership (Mr. Morales who was responsible for all oil spill prevention and response issues at the VMT and along the pipeline) who testified under oath that he was gravely concerned about crude oil tank leaks that could spill hundreds of thousands of barrels undetected; he testified a spill of up to 500,000 barrels might go undetected. Nothing in ADEC-SPAR's decision defends granting an oil spill prevention credit to a leak detection system about which APSC's management is gravely concerned.[9]

ADEC-SPAR incorrectly concluded, without evidence, that the existing crude oil gauging system meets the 18 AAC 75.990(112) "sensitive gauging system" standard. That regulation requires: "the best demonstrated available gauging technology at the time of the tank construction or substantial reconstruction, or initial gauging system installation."

Nothing in the approved plan states that the 18 AAC 75.990(112) "sensitive gauging system" standard is met for crude oil storage tanks. Indeed, the approved plan does not require the crude oil tank leak detection system to be tested monthly for 48 hours. Even if it did, the

[8] Attachment AI at 13.
[9] Attachment AA: 2024 Property Tax Trial Transcript at 2927-2930 (Morales).

approved plan fails to provide for accurate leak detection for the remaining 672 hours of each month.

The approved plan is also silent on the requirement that APSC prove it had the "best demonstrated available gauging technology at the time of the tank construction" or at the time of "substantial reconstruction."

ADEC-SPAR falsely claimed the 2024 VMT C-Plan application contained certain information SPAR relied upon in its decision, where it did not. The agency's decision must be based on the application before it. It cannot now, at an appeal stage, invent VMT C-Plan application content that does not exist. ADEC-SPAR's defense fails because the VMT C-Plan does not include the content ADEC-SPAR claims.

ADEC-SPAR's Revised Decision incorrectly argues that prior, long-expired VMT C-Plan decisions are binding today and that the City's opportunity to challenge ADEC's 2024 VMT C-Plan decisions has long passed. However, 18 AAC 75.460 limits the agency's prior C-Plan approvals to a maximum of five years. All prior C-Plan decisions referenced by ADEC-SPAR have expired.

Furthermore, 18 AAC 75.420(e) requires the agency to review and approve all of the plan application contents once every five years ("including items that were not changed since the last plan approval"), not just a subset of new changes made to the plan. The provisions of 18 AAC 75.420(e) specifically require that "an application for a plan renewal, including items that were not changed since the last plan approval, will be reviewed under the provisions of 18 AAC 75.455." Emphasis added. ADEC-SPAR incorrectly argues that "the Division is not required to expressly readopt all past agency findings every time a C-Plan is renewed," providing no statutory or regulatory basis for its position.[10]

b) The location(s) in the permit, or other decision where the specific terms or conditions appear, that you are contesting (*e.g.* page, paragraph or other identifying description).

August 8, 2025, Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057; Plan Approval, Revised Basis of Decision, Issue No. 5, at 8-15.[11]

November 6, 2024, Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057; Plan Approval, Basis of Decision, Issue No. 5, at 8-10.[12]

[10] Attachment AJ: ADEC's Motion for Reconsideration, *City of Valdez vs. ADEC and APSC*, OAH No. 25-0950-DEC (May 30, 2025), at 4.
[11] Attachment AI at 8-15.
[12] Attachment C at 8-10.

February 24, 2025, Final Decision on Request for Informal Review of Renewal of Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057, Appeal Issue 6, at 6.[13]

February 24, 2025, Final Decision on Request for Informal Review of Renewal of Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057, Appeal Issue 7, at 6-7.[14]

Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan, ADEC Plan #: 23-CP-4057; Volume 1, Section 2.1.5.3 Leak Detection.[15]

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

AS 46.04.030(m) provides the department the authority to consider oil discharge prevention measures and to make exceptions to the planning volume established by AS 46.04.030(k)(1) "to reflect the reduced risk of oil discharges from the facility." Granting credit for crude oil tank leak detection is not explicitly listed in the statute.

An on-line leak detection system credit, of up to 5% under 18 AAC 75.432(d)(3), requires an on-line leak detection system for tanks and piping. The VMT does not have an on-line leak detection system for piping. An oil spill prevention credit of up to 5% is only allowed under 18 AAC 75.432(d)(3) for on-line leak detection systems for tanks and piping located at oil terminal facilities that automatically alarm at a facility control room that is continuously monitored. The conjunctive "and" clearly requires both tanks and piping to meet this standard.

ADEC-SPAR's Revised Decision states that the department has previously determined that the VMT does not have on-line leak detection for piping[16] that automatically alarms at a facility control room that is continuously monitored. Consequently, 18 AAC 75.432(d)(3) is not met because neither the tanks nor the piping meet the regulation. Therefore, no prevention credit, even a partial one, can be awarded.

ADEC-SPAR's Revised Decision improperly awards a 2% oil spill prevention credit for crude oil tank on-line leak detection, reducing the 72-hour Response Planning Standard volume (Scenario 5) by an undeserved 10,417 barrels (437,514 gallons).[17] Improper award of an oil spill prevention credit reduces the amount of oil spill response equipment required for the VMT. Unnecessarily exposes Valdez citizens to a crude oil spill for which APSC will be underprepared.

[13] Attachment D at 6.
[14] Attachment D at 6-7.
[15] Attachment F at 82-83.
[16] Attachment AI at 13.
[17] Attachment F: 2024 VMT C-Plan, Volume 1, Part 5, Section 5.1, 72-hour RPS volume calculation reduced the volume from 520,867 barrels to 510,450 barrels by applying an undeserved 2% credit, equating to 10,417 barrels.

Neither the approved plan nor ADEC's November 6, 2024 Basis of Decision or August 8, 2024 Revised Decision provides a technical, regulatory, or statutory basis for awarding the 2% oil spill prevention credit to a tank gauging system that is not explicitly listed in AS 46.04.030(m), does not meet the requirements of 18 AAC 75.432(d)(3), is unable to detect a leak until thousands of barrels of crude oil per hour are leaked, is incapable of detecting leaks through the tank floors, and cannot detect small leaks unless the tanks are isolated and tested for 48 hours.

Neither ADEC-SPAR's November 6, 2024 Basis of Decision nor August 8, 2024 Revised Decision address the 2024 Superior Court Property Tax Trial testimony of APSC's leadership (Mr. Morales who is responsible for all oil spill prevention and response issues at the terminal and along the pipeline) who testified under oath that he was gravely concerned about crude oil tank leaks that could spill hundreds of thousands of barrels undetected; he testified a spill of up to 500,000 barrels might go undetected.

As stated above, ADEC incorrectly concluded, without evidence, that the existing crude oil gauging system meets the 18 AAC 75.990(112) "sensitive gauging system" standard, which requires: "the best demonstrated available gauging technology at the time of the tank construction or substantial reconstruction, or initial gauging system installation." Nothing in the approved plan states that the 18 AAC 75.990(112) "sensitive gauging system" standard is met for crude oil storage tanks, and there is no requirement that the crude oil tank leak detection system be tested monthly for 48 hours. Even if it did, which it does not, it would not provide accurate leak detection for the remaining 672 hours of each month.

The approved plan also does not require APSC to prove it had employed "best demonstrated available gauging technology at the time of the tank construction." The crude oil storage tanks were constructed in 1976 and 1977. Nothing in the 2024 VMT C-Plan states that the gauges used on the crude oil tanks were the "best demonstrated available gauging technology at the time of the tank construction" in 1976-1977; nor does ADEC-SPAR's November 2024 Basis of Decision or August 2025 Revised Decision. Instead, ADEC-SPAR's August 2025 Revised Decision stated it did not evaluate the gauges until 1995-2000, nearly two decades after construction.[18] ADEC-SPAR reported that the 1995-2000 evaluation proved the Varec gauges installed on the crude oil tanks at "tank construction" in 1976-1977 were <u>not</u> the "best demonstrated available gauging technology at the time of the tank construction."[19]

ADEC-SPAR's Revised Decision reported that APSC replaced the Varec gauges with Enraf gauges, and that in a January 12, 1999, letter, the agency confirmed Enraf gauges met the department's definition of "sensitive gauging system" for the crude oil tanks without cathodic protection (that rely solely on sensitive gauging to meet leak detection requirements).[20] ADEC-SPAR reported that the January 12, 1999, letter required APSC to perform a monthly 48-hour

[18] Attachment AI at 12.
[19] *Id*. at 9 (emphasis added).
[20] *Id*. at 12-13.

static leak detection test on the Enraf gauges.[21] ADEC-SPAR did not provide a copy of this letter to the ALJ, the ADEC Commissioner, or the City to prove SPAR's case. However, without actually seeing the January 12, 1999 letter, which should have been provided in this appeal, ADEC-SPAR's claim that the department's 1999 decision is still relevant today fails on numerous grounds.

First, the ADEC-SPAR's January 12, 1999 decision proves the gauges installed on ETF Crude Oil Tanks 1-14 at tank construction in 1976-1977 did not meet the 18 AAC 75.990(112) "sensitive gauging system" standard that requires: "the best demonstrated available gauging technology at the time of the tank construction." The Varec gauges were installed at the time of tank construction, and the agency has determined that they did not meet the best demonstrated available gauging technology at the time of the tank construction.

Second, ADEC-SPAR's January 12, 1999 decision was limited to crude oil tanks without cathodic protection (that rely solely on sensitive gauging to meet leak detection requirements). The City's Contested Issue 4 relates to the ETF Crude Oil Tanks 1-14. All 14 tanks have cathodic protection; therefore, this decision does not apply to these tanks.

Third, ADEC-SPAR's January 12, 1999 decision "reportedly" concluded Enraf gauges met the department's definition of "sensitive gauging system" for the crude oil tanks without cathodic protection if APSC was required to perform a monthly 48-hour static leak detection test on these gauges. There is no requirement in APSC's 2024 VMT C-Plan to perform a monthly 48-hour static leak detection test on the crude oil tank 1-14 Enraf gauges. The only requirement for a 48-hour Enraf gauge test in the 2024 VMT C-Plan is for fuel tanks, not crude oil tanks.

Fourth, each of the ETF Crude Oil Tanks 1-14 has undergone "substantial reconstruction." The provisions of 18 AAC 75.990(112) require an updated "best demonstrated available gauging technology" at the time of substantial reconstruction. ADEC-SPAR provided no evidence that this work was done for any of the 14 tanks. All ETF Crude Oil Tanks 1-14 have suffered from tank floor bottom corrosion so severe that the entire one-acre tank floor has been completely replaced once, and the second floors have been patched. Tank 8 is currently awaiting its third tank floor replacement. Undeniably, replacement of a one-acre-sized tank floor constitutes "substantial reconstruction."

Fifth, a determination that the system met a sensitive gauging standard is irrelevant to this matter since 18 AAC 75.432(d)(3) specifically precludes the agency from awarding a prevention credit up to 5% unless both the tanks and piping automatically alarm at a facility control room that is continuously monitored, which the piping system does not.

Sixth, a determination that the system met a sensitive gauging standard would only be relevant to determine compliance with 18 AAC 75.065(h)(1)(A), which the agency argues was already satisfied by cathodic protection on the ETF Crude Tanks 1-14.

[21] *Id*. at 12.

Furthermore, ADEC-SPAR's Revised Decision claims the 2024 VMT C-Plan application contained certain information the agency relied upon in its decision, where it did not. The agency must make its decision based on the application before it. It cannot now, at an appeal stage, invent VMT C-Plan application content that does not exist. ADEC-SPAR's entire defense relies on arguments that fail because the VMT C-Plan does not actually include the content ADEC-SPAR claims.

Nothing in ADEC-SPAR's Revised Decision alters the fact that the 2024 VMT C-Plan application submitted by APSC offered: a piping system that does not meet the 18 AAC 75.432(d)(3) requirement to automatically alarm at a facility control room that is continuously monitored; and a crude oil leak detection gauging system that: (1) was not described by the applicant as meeting the definition of a "sensitive gauging system" at 18 AAC 75.990(112);[22] (2) is not accurate in detecting small leaks unless the crude oil tanks are blocked in, isolated, and stabilized for 48-hours;[23] (3) does not include any commitment to conduct a monthly 48-hour stabilized test of the crude oil tank leak detection system; (4) does not include <u>any</u> statement of a leak detection capability of 2,400 barrels per hour anywhere in the plan; (5) does not include any history of prior agency approvals or technical work supporting APSC's request for approval of the gauges as meeting 18 AAC 75.990(112); (6) does not address the testimony provided by APSC Management (Mr. Morales) at the 2024 Property Tax Trial (included in the City's comments) that estimated hundreds of thousands of barrels could go undetected through a tank floor leak without APSC's knowing it is happening or having a method to identify the leak location rapidly; and (7) only includes a statement that APSC has taken a 2% credit for on-line leak detection without any justification at all for doing so.[24] Instead, ADEC-SPAR attempts to justify approving the 2024 VMT C-Plan based on past agency decisions that have long expired, are not relevant to ETF Crude Oil Tanks 1-14, and with arguments that were not included or part of APSC's 2024 VMT C-Plan application at all.

ADEC-SPAR's Revised Decision incorrectly argues that prior, long-expired VMT C-Plan decisions are binding today and that the City's opportunity to challenge ADEC's 2024 VMT C-Plan decisions has long passed; yet, 18 AAC 75.460 limits the agency's prior C-Plan approvals to a maximum of five years. All prior C-Plan decisions referenced by ADEC-SPAR have expired.

ADEC-SPAR also ignores the fact that 18 AAC 75.420(e) requires the agency to review and approve <u>all</u> of the plan application contents once every five years ("including items that were not changed since the last plan approval"), not just a subset of new changes made to the plan. 18 AAC 75.420(e) specifically requires that "an application for a plan renewal, <u>including items that were not changed since the last plan approval</u>, will be reviewed under the provisions of 18 AAC 75.455." Emphasis added. ADEC-SPAR incorrectly argues that "the Division is not required

[22] The 2024 VMT C-Plan contains no reference at all to 18 AAC 75.990(112) compliance.

[23] Attachment F at 83. The plan states that the crude oil leak detection system is only accurate enough to detect small leaks when the tank valves are blocked in, which does not occur most of the time when the crude oil tanks are in routine operation.

[24] Attachment F at 271: 2024 VMT C-Plan, Volume 1, Part 5, Response Planning Standard.

to expressly readopt all past agency findings every time a C-Plan is renewed," providing no statutory or regulatory basis for its position.[25]

ADEC-SPAR's Revised Decision references VMT C-Plan decisions (which were not provided to the ALJ, ADEC Commissioner, or the City) that have long-expired or do not relate to the ETF Crude Oil Tanks 1-14 at all. Instead, ADEC-SPAR's original decision and Revised Decision repeatedly reference long-expired fuel tank leak detection decisions for Tanks 53-56, which are not the subject of the City's appeal (Contested Issue 4) regarding crude oil tank leak detection for Tanks 1-14.

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

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

APSC concluded 18 AAC 75.065(h)(1) requires only one prevention measure, which can be a leak detection system, a cathodic protection system, or a thick film liner:

> 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).[26] [Emphasis added.]

ADEC-SPAR concluded that because the tanks have a cathodic protection system, 18 AAC 75.065(h)(1) was already satisfied with that measure.[27] ADEC-SPAR argues that a sensitive gauging system is not even required for the crude oil tanks to meet 18 AAC 75.065(h)(1) since the obligation was already met.

There is no need for ADEC-SPAR to approve a second method under 18 AAC 75.065(h)(1), because compliance can be achieved by one of the methods listed in 18 AAC 75.065(h)(1)(A-D). Even if ADEC-SPAR approves a second method, such as a crude oil tank gauging system, as meeting the 18 AAC 75.065(h)(1)(D) standard of "another leak detection

[25] Attachment AJ at 4.
[26] Attachment AI at 11.
[27] *Id*. at 11-12.

or spill prevention system approved by the department," this has nothing to do with whether an oil spill prevention measure deserves credit under 18 AAC 75.432(d)(3). Award of a prevention credit under 18 AAC 75.432(d)(3) must stand on its own merits, which SPAR's does not.

Both ADEC-SPAR's November 2024 Basis of Decision and August 2025 Revised Decision claim that the 2024 VMT C-Plan requires APSC to detect leaks at a 2,400-barrel-per-hour threshold, but this is found nowhere in the plan. The 3,000-barrel-per-hour threshold that was listed in prior VMT C-Plans was deleted without justification and not replaced. A gauging system that apparently cannot detect a leak of less than 2,400 barrels per hour is not a sensitive gauging system.

Similarly, a tank gauging system that cannot detect a leak under 2,400 barrels (or 3,000 barrels per hour whichever is actually correct) does not meet the best demonstrated available gauging technology, not even for technology available during initial installation in 1976 or when the tank bottoms were replaced. For example, leak detection systems, such as a secondary catchment under the tank with a leak detection sump to collect and measure leaks, were the best demonstrated available gauging technology at the time of the tank construction in 1976, but such systems were not installed. Other improved sensitive gauging technology and hydrocarbon sensing technology were available when the tanks were reconstructed (floor bottom replacement), but were not installed.

ADEC-SPAR's November 2024 Basis of Decision and August 2025 Revised Decision state that "[t]he plan now includes this update on the sensitivity of the leak detection system, 'The VMT **static** Crude oil tank leak detection method allows for determining a leak size with a minimum of 872 bbls.,[28] per one-tenth (0.10) of a foot range,' should a sudden leak develop on one of the active storage tanks." (Emphasis added). Yet, ADEC-SPAR failed to understand the significance of this change, as the crude oil tanks are rarely in a static condition; therefore, the ability to detect a leak when tanks are static is rare. There is no requirement to test the crude oil gauges via a 48-hour static test once per month in the currently approved plan, as ADEC-SPAR claims. Instead, this is only required of the fuel tank gauges.

ADEC-SPAR's November 2024 Basis of Decision and August 2025 Revised Decision acknowledged that no tank-bottom leak detection system is installed in the crude oil tanks and, incongruously, offered technicians walking around the tank and searching for leaks as an alternative. ADEC-SPAR wrote:

> APSC explains in Section 2.1.6.3 that there is no specific tank-bottom leak detection system, but technicians check the tank farm for any visual signs of leaks, such as oil on the grounds, and checks for the smell of oil in the dike cells when doing daily tank farm inspections.[29]

[28] Barrels ("bbls").
[29] Attachment C at 10; Attachment AI at 11.

Each crude oil tank is approximately one acre in size. Thus, a leak in the center of the tank floor would not be detected from a location outside the tank wall by "technicians checking the tank farm for any visual signs of leaks, such as oil on the grounds, and checks for the smell of oil in the dike cells when doing daily tank farm inspections." This fact comports with the reason Mr. Morales testified that he has nightmares about large leaks going through the crude oil tank bottoms undetected.[30]

While ADEC's decisions and Informal Review incorrectly concluded that "[t]he comments submitted by Valdez were appropriately considered and addressed by the Division as required by law," as explained above, they were not.

d) The reason(s) you believe the contested issue you are raising is relevant to the Division's decision (why you believe resolving the contested issue in your favor will materially change the Division's decision).

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

ADEC-SPAR incorrectly decided the 2024 VMT C-Plan without considering all applicable statutory and regulatory requirements that must be met to grant a 2% prevention credit. The fundamental legal flaw is that the agency cannot grant an oil spill prevention credit of up to 5% under 18 AAC 75.432(d)(3) unless a facility has on-line leak detection systems for both tanks and piping that automatically alarm at a facility control room that is continuously monitored. Because the VMT does not meet this standard, no prevention credit, even a partial one, can be awarded.

The field constructed aboveground oil storage tank oil spill prevention requirements of 18 AAC 75.065(h)(1) are met for ETF Crude Oil Tanks 1-14 by a cathodic protection system in accordance with 18 AAC 75.065(h)(1)(B).

There is no need for ADEC to approve a second method under 18 AAC 75.065(h)(1) because compliance can be achieved by one of the methods listed in 18 AAC 75.065(h)(1)(A-D).

Even if ADEC approves a second method, such as a crude oil tank gauging system, as meeting 18 AAC 75.065(h)(1)(D) standard of "another leak detection or spill prevention system approved by the department," this has nothing to do with whether an oil spill prevention measure deserves credit under 18 AAC 75.432(d)(3). Award of a prevention credit under 18 AAC 75.432(d)(3) must stand on its own merits, which SPAR's does not.

The agency's decision must be revised to meet all applicable statutes and regulations and provide the public with evidence to support that decision. Removal of the undeserved prevention

[30] *See supra* at n.9.

credit will result in a revision to Scenario 5, improving APSC's ability to respond to crude oil tank leaks.

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

ADEC-SPAR incorrectly decided that the 2024 VMT C-Plan included content that it did not; this must be corrected.

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

e) How each requester (including represented parties if the requester is a member organization representing them in this matter) is directly and substantively affected by the contested decision to justify review; more specifically, please include a discussion of:
   1) the nature of the interest of the requester or represented party who is impacted by the contested decision(s);
   2) whether that interest is one that the department's applicable statutes and regulations intend to protect; and
   3) the extent to which the Division's decision relating to this contested issue directly and substantively impairs the interest described in (2) above.

Valdez clearly has standing to proceed with the contested issues set forth in its request for adjudicatory hearing, including Contested Issues 4.

It is difficult to overstate the importance of protecting Valdez and its citizens from oil spills. The VMT is located within the City's municipal boundaries, and the economic and environmental impacts of oil spills are far too well known to the City and its citizens by virtue of the *Exxon Valdez* oil spill. An oil spill at the VMT poses immediate and direct impacts on the City as recognized by APSC's own high level employees.[31] Accordingly, administrative decisions that weaken oil spill prevention and response requirements and thereby increase the risk of harm from oil spills directly and adversely impact the City and its citizens.

In fact, the Alaska Supreme Court has highlighted the importance of contingency plans to the public interest, stating:

> This case involves two matters fundamental to the public interest. The first is approval of contingency plans to protect Alaska's marine and coastal environments in the event of an oil spill, and **given the potentially devastating effects of oil spills on the ecology and economy of the state, this is a matter of utmost importance to the public interest**. The second is an administrative

[31] Attachment AA (Morales Testimony).

> procedures challenge grounded in the due process clause, and given the need for transparency in governance and access to administrative records, this also is a matter of importance to the public interest.[32]

Similarly, in the context of transfer of operating authority for TAPS, the Alaska Supreme Court held:

> Valdez's interest in this case is discrete because Valdez is uniquely affected by the transfer of the TAPS operating authority. Its interest is not speculative or generalized. In fact, it is difficult to imagine any individual or entity that has a greater direct interest than Valdez in this transfer and in Harvest Alaska's operational and financial capacity to operate TAPS safely and effectively. Significant TAPS facilities are located within Valdez, including the Valdez Marine Terminal, which is used by tankers moving oil from TAPS. Transfer of the certificate under Order 17 therefore implicated Valdez's unique interests, including its interests in protecting its environment and citizens by ensuring the safe operation of TAPS. As Valdez explained in its public comments to the RCA: The economic and environmental well-being of the citizens of Valdez depends on safe, environmentally sound, and effective TAPS operations. Accordingly, the financial and organizational capacity of [Harvest Alaska] to properly resource TAPS operations and to respond to oil spills and other safety or environmental incidents is of critical importance for the citizens of Valdez.[33]

The City is "directly and adversely affected" by Contested Issue 4 as it relates to the level of protection from oil spills provided under the VMT C-Plan. Accordingly, Valdez has a strong interest in ensuring the VMT C-Plan complies with applicable statutes and regulations and is vigorously implemented and enforced.

Under Alaska law, standing is determined through a liberal standard.[34] Where standing is conferred by statute or regulation, Alaska courts are guided by "a long-held policy in favor of increased accessibility to judicial forums . . . to promot[e] citizen access to the courts, in harmony with our long-held, expansive views of standing."[35] Further, "[w]here challenges to administrative practices are involved, this court has adopted a liberal posture towards standing, favoring

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[32] *Copeland v. Ballard*, 210 P.3d 1197, 1203 (Alaska 2009) (emphasis added).

[33] *Valdez v. Regul. Comm'n of Alaska,* 548 P.3d 1067, 1077 (Alaska 2024) *(emphasis added)*

[34] *Trustees for Alaska v. State*, 736 P.2d 324, 327 (Alaska 1987) (quoting *Coghill v. Boucher,* 511 P.2d 1297, 1303 (Alaska 1973)) ("The concept of standing has been interpreted broadly in Alaska. We have 'departed from a restrictive interpretation of the standing requirement.'"); *id.* (citing *Wagstaff v. Super. Ct., Fam. Ct. Div.*, 535 P.2d 1220, 1225, n.7 (Alaska 1975)) ("The degree of injury to the interest need not be great; '[t]he basic idea . . . is that an identifiable trifle is enough for standing to fight out a question of principle; the trifle is the basis for standing and the principle supplies the motivation.'").

[35] *Griswold v. Homer Bd. of Adjustment*, 440 P.3d 248, 252-53 (Alaska 2019) (internal citation and quotations omitted).

accessibility to the courts."[36] In light of the liberal standard for standing in Alaska, the City clearly has standing to participate in an adjudicatory hearing on Contested Issue 4.

A crude oil spill at the VMT poses catastrophic environmental and economic repercussions for Valdez, its citizens, and all Alaskans. Valdez seeks to ensure that the VMT C-Plan includes requirements and planning standards that protect the City and its citizens from the harm of oil spills and leaks.

f) Identify when and where you raised this issue in testimony or comments you provided to DEC. If your comments or testimony were submitted to DEC in writing, please provide a reference to the page and paragraph where they appear. (*see* 18 AAC 15.200(a) and 18 AAC 15.245).

On October 11, 2024, the City submitted comments to ADEC-SPAR on the 2024 VMT C-Plan Renewal. The City opposed APSC's revision of the plan to eliminate longstanding language about how the leak detection system worked, including revisions that reported significant reductions in leak detection capability. The City raised technical concerns that were not addressed by ADEC. The City opposed ADEC-SPAR's granting a 2% oil spill prevention credit for a crude oil tank leak detection system that does not meet the best technology standard.[37]

On November 26, 2024, the City submitted an Informal Review Request to ADEC and SPAR on the 2024 VMT C-Plan Renewal. The City raised technical concerns about the crude oil tank leak detection system, and changes to the plan language that did not appear to be improvements, which were not addressed by ADEC-SPAR. The City opposed APSC's obtaining a 2% oil spill prevention credit for a crude oil tank leak detection system that does not meet a best technology standard.[38]

On March 26, 2025, the City submitted an adjudicatory hearing request to ADEC for six contested issues pertaining to ADEC-SPAR's 2024 VMT C-Plan Renewal.[39] The ADEC Commissioner remanded four of the City's contested issues (Contested Issues 1, 2, 4, and 6) back to ADEC-SPAR to cure the deficiencies in the November 6, 2024, decision. The City's Contested Issues 3 and 5 were approved for Adjudicatory Hearing but were stayed pending the remand of the City's Contested Issue 4.

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[36] *Wickersham v. CFEC,* 680 P.2d 1135, 1139 (Alaska 1984) (citing *Johns v. Com. Fisheries Entry Comm'n*, 699 P.2d 334, 336 (Alaska 1985)).

[37] Attachment G at 36-46.

[38] Attachment D at 8.

[39] 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.

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

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

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

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

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

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

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

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

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

8. VMT C-Plan, Volume 1, Section 2.1.5, be revised to clearly state that the crude oil tank gauging system does not meet the 18 AAC 75.990(112) definition for a "sensitive gauging system."

h) A discussion of any other reasons you believe your request for an adjudicatory hearing should be granted. Please include a concise summary of the facts and laws that you believe support your request.

1. The provisions of 18 AAC 75.460 limit prior agency decisions to five years from date of issue.

ADEC-SPAR's Revised Decision incorrectly argues that prior, long-expired VMT C-Plan decisions are binding today and that the City's opportunity to challenge ADEC's 2024 VMT C-Plan decisions has long passed."[40] ADEC wrongly argues, "the Division is not required to expressly readopt all past agency findings every time a C-Plan is renewed." ADEC-SPAR provided no statutory or regulatory basis for its position.[41] ADEC-SPAR is incorrect. Agency decisions on C-Plans are limited to a maximum of five years.

2. AS 46.04.030 (a) and (d), and the procedures of 18 AAC 75 require an oil terminal facility to submit a contingency plan every five years and for the agency to review and approve its contents**,** including the content that has not changed since the last approval.

The provisions of 18 AAC 75.420(e) require that "an application for a plan renewal, including items that were not changed since the last plan approval, will be reviewed under the provisions of 18 AAC 75.455."

The provisions of 18 AAC 75.460 require ADEC-SPAR to issue a Basis of Decision based on the C-Plan application contents before it. Nothing in this regulation allows the agency to ignore a full and complete review of the plan content based on a prior decision that has expired.

The provisions of 18 AAC 75.450(a) require the VMT C-Plan to "demonstrate that the applicant meets all applicable requirements" of 18 AAC 75.065(h)(1)(A).

Nothing in 18 AAC 75 exempts the division or department from a thorough review and decision of the entire renewal application contents (including items that were not changed from the last plan approval). And, as the ADEC Commissioner has already decided this matter in its May 16, 2025, decision, APSC must demonstrate that its gauging system meets the definition of a "sensitive gauging system" which the 2024 VMT C-Plan does not:

> 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). . .

[40] Attachment AJ at 2.
[41] *Id*. at 4.

> 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." 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." **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.[42] [Emphasis added]

ADEC-SPAR's Revised Decision cites prior, long-expired agency decisions that determined fuel tank leak detection systems were approved for Tanks 53-56, but SPAR did not provide evidence that crude oil tank leak detection systems were approved as "sensitive gauging systems" meeting the definition of 18 AAC 75.990(112) or deserving of a 2% credit for ETF Crude Oil Tanks 1-14.

ADEC-SPAR's Revised Decision does not demonstrate under 18 AAC 75.450(a) that APSC's leak detection system meets the sensitive gauging system definition at 18 AAC 75.990(112) as instructed by the Commissioner. And, even if prior decisions had concluded that it met the definition, those agency C-Plan decisions had long expired and were ripe for reconsideration at each C-Plan renewal. A new, updated, and comprehensive decision was required by 18 AAC 75.460 for the 2024 VMT C-Plan.

The provisions of 18 AAC 75.460(d)(1-2) state that each C-Plan approval is effective for "five years after the date it is issued; or a time period shorter than five years, as specified in the department's approval letter and certificate." Nothing in 18 AAC 75.460 states that ADEC-SPAR's decisions on VMT C-Plans before 2024 were still effective and binding when ADEC-SPAR made a new decision on APSC's 2024 VMT C-Plan.

The provisions of 18 AAC 75.460(b) require ADEC-SPAR to issue a written decision and a summary of the basis for its decision to approve a C-Plan based on the contents of the application before it. Nothing in 18 AAC 75 or AS 46 states that "the Division is not required to expressly readopt all past agency findings every time a C-Plan is renewed"[43] or that prior decisions on prior C-Plans are indefinitely binding and unchallengeable as part of future C-Plan decisions. Valdez questions whether such SPAR conclusions would withstand a court challenge in the event of another oil spill.

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[42] Attachment AG at 13-14.
[43] Attachment AJ at 4.

ADEC-SPAR's decision must be based on the content of APSC's 2024 VMT C-Plan application; nothing in 18 AAC 75 or AS 46 provides for ADEC-SPAR to decide on information not contained in the application before it.

A primary failing in ADEC-SPAR's November 2024 VMT C-Plan Basis for Decision, and its subsequent August 8, 2025, revision, is that ADEC-SPAR claims information is contained in APSC's 2024 VMT C-Plan application that does not exist. ADEC-SPAR cannot approve C-Plan application content that does not exist. SPAR's decision must be based on the facts in the application and the law. Below, the City provides examples where ADEC-SPAR claims the 2024 VMT C-Plan includes information that does not exist.

While the City agrees that APSC's C-Plan renewal applications may incorporate prior technical work, analysis, and decisions and that ADEC-SPAR may approve APSC's application that contains prior technical work, analysis, and decisions by acknowledging it is still relevant, this was not the case for the City's Contested Issue No. 4. In this case, APSC's 2024 VMT C-Plan application did not include a complete description of how the crude oil tank leak detection system met 18 AAC 75.990(112) nor how APSC deserved an oil spill prevention credit under 18 AAC 75.432. The 2024 VMT C-Plan did not document any prior agency decisions or analysis. Neither SPAR nor the courts can rely on facts not in existence to determine the 2% leak detection credit is warranted.

ADEC-SPAR's Revised Decision continues to argue it is reasonable for its original 2024 VMT C-Plan Basis for Decision to be silent on the technical and regulatory basis for its 18 AAC 75.990 (112) and 18 AAC 75.432 decisions, and expects the public to know of SPAR's prior decisions that occurred decades before some members of the public were even born. Indeed the decisions at issue are not readily available, and it appears the agency struggled to find the decisions they now rely on during the remand of Contested Issue No. 4. It is entirely unreasonable for the agency to take a position that neither the applicant nor the agency needs to document how a facility complies with AS 46 or 18 AAC 75 at each C-Plan renewal.

Furthermore, ADEC-SPAR claimed that it had no obligation to include historic findings in its 2024 VMT C-Plan decision, "particularly when no information is presented to the agency suggesting those past decisions must be revisited."[44] This claim is patently false. The City filed timely and detailed comments on the 2024 VMT C-Plan contesting ADEC-SPAR's leak detection decision and questioning its basis. For this reason alone, ADEC-SPAR was required to explain its decision.

3. The provisions of 18 AAC 75.460 require that a Basis of Decision be based on the C-Plan Application contents before the agency.

[44] Attachment AI at 11.

Both ADEC-SPAR's May 30, 2024, Motion for Reconsideration and Revised Decision contain inaccurate and misleading information. ADEC-SPAR claims the 2024 VMT C-Plan application contained certain information it relied upon in its decision, where it did not.

Nothing in ADEC-SPAR's Revised Decision alters the fact that the 2024 VMT C-Plan application submitted by APSC offered a crude oil leak detection gauging system that: (1) was not described by the applicant as a "sensitive gauging system;"[45] (2) was not described by the applicant as meeting the definition of a "sensitive gauging system" at 18 AAC 75.990(112);[46] (3) is not accurate in detecting small leaks unless the crude oil tanks are blocked in, isolated, and stabilized for 48-hours;[47] (4) does not include any commitment to conduct a monthly 48-hour stabilized test of the crude oil tank leak detection system; (5) does not include any statement of a leak detection capability of 2,400 barrels per hour anywhere in the plan; (6) does not include any history of prior agency approvals or technical work supporting its request for approval of the gauges as meeting 18 AAC 75.990(112); (7) does not address the testimony provided by APSC Management (Mr. Morales) at the 2024 Property Tax Trial (included in the City's comments) that estimated hundreds of thousands of barrels could go undetected through a tank floor leak without APSC's knowing it is happening or having a method to identify the leak location rapidly; and (8) only includes a statement that it has applied a 2% credit for on-line leak detection without any justification at all for doing so.[48] Instead, ADEC-SPAR attempts to justify approving the 2024 VMT C-Plan based on past agency decisions that have long expired and with arguments that were not even included or part of APSC's 2024 VMT C-Plan application.

A primary failure of ADEC-SPAR's Basis for Decision, and its subsequent Revised Decision, is that ADEC claims information is contained in APSC's 2024 VMT C-Plan application that does not exist. ADEC cannot approve the C-Plan application content that does not exist. Nothing in 18 AAC 75 or AS 46 provides for ADEC to decide on information not contained in the application before it. For example:

- ADEC's Motion for Reconsideration claimed that APSC submitted the results of a crude oil tank leak detection study to ADEC in July 1998, concluding that a monthly 48-hour leak detection period was optimal, and that "the current VMT C-Plan references this study, the resulting monthly 48-hour leak test, and how the Division approved this action."[49] This is not true. The only monthly 48-hour leak tests referenced in the 2024 VMT C-Plan related to the <u>fuel oil</u> tanks (Section 2.1.5.3 Leak Detection – Fuel Oil System), <u>not crude oil tanks</u>, which were the subject of the City's appeal.[50]

[45] The only reference in the 2024 VMT C-Plan to sensitive gauging related to APSC's <u>fuel</u> tanks, not to crude oil storage tanks. Attachment F at 263.
[46] The 2024 VMT C-Plan contains no reference at all to 18 AAC 75.990(112) compliance.
[47] The Plan states that the crude oil leak detection system is only accurate enough to detect small leaks when the tank valves are blocked in which does not occur most of the time when the crude oil tanks are in routine operation. Attachment F at 83.
[48] Attachment F at 271: 2024 VMT C-Plan, Volume 1, Part 5, Response Planning Standard.
[49] Attachment AJ at 3.
[50] Attachment F at 84.

- ADEC-SPAR's Revised Decision claims that "Section 2.1.5.1 of the current plan commits APSC to monthly instrument verification on Tanks 1-14…which employ Enraf gauges;" however, 2024 VMT C-Plan Section 2.1.5.1 is about tank overfill prevention, not crude oil leak detection.[51] Nothing in Section 2.1.5.1, Prevention of Tank Overfill, states that monthly 48-hour crude oil tank testing is required for leak detection to meet the best available gauging technology.

- 2024 VMT C-Plan Volume 1, Section 2.1.5.3 covers Crude Oil Tank Leak Detection.[52] Section 2.1.5.3 states "there is no specific tank-bottom leak detection system," and that only when the tanks are blocked in (block valves closed at both tank inlet and manifold valves), and that "the gauging system is accurate enough to detect small leaks." Nothing in this section states that the Enraf gauges installed on the crude oil tanks (Tanks 1-14) are capable of detecting a leak when the tanks are in normal operating condition. Instead, the 2024 VMT C-Plan clearly states that the Enraf gauges are <u>not</u> capable of detecting small leaks unless the system is isolated, which is rarely the case. Nothing in Section 2.1.5.3 states that monthly 48-hour crude oil tank testing is required for leak detection to meet the best available gauging technology. Nor is there anything in the 2024 VMT C-Plan that states the Enraf gauges installed on the crude oil tanks meet a best available gauging technology standard under 18 AAC 75.990(112) without a 48-hour static test or are deserving of a prevention credit even if a 48-hour test is performed.

- ADEC-SPAR's Revised Decision relies on an April 11, 2000, VMT renewal decision, and an April 18, 2001, letter that involved Enraf gauges for fuel tanks (53-56) that have nothing to do with the crude oil tanks (1-14).[53]

- ADEC-SPAR's Revised Decision states that "[i]n 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 anomalies greater than +/-3,000 bbls. This 3,000 bbl 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 affects the daily sensitivity, and to reach the industry standard of 0.5% sensitivity, the threshold needed to be lowered to a 2,400 bbls threshold."[54] Nothing in the 2024 VMT C-Plan states that the modified crude oil leak detection system meets a 2,400 bbl threshold, a crude oil tank isolated and tested in static mode, nor does the C-Plan explain the size of the leak that can be detected when the tanks are operating in normal (non-static, non-isolated) mode.

4. ADEC-SPAR's Revised Decision relies on documents not provided to the ALJ or City.

ADEC-SPAR's Revised Decision relies on documents that were not included in APSC's 2024 VMT C-Plan Application or SPAR's Basis for Decision, were not available to the public during the review, and have not been provided to the City during this appeal. Instead, ADEC-

[51] *Id*. at 81.
[52] Attachment F at 82.
[53] Attachment AI at 12.
[54] *Id*. at 10.

SPAR points to these documents, without providing them, making claims about their content that the ALJ, ADEC Commissioner, or City cannot verify. These documents include:

- April 12, 1992, APSC prevention credit application for on-line leak detection system for tanks);[55]
- April 30, 1993, ADEC letter supporting 5% credit for on-line leak detection;[56]
- April 25, 1995, APSC Enraf Gauge Memorandum;[57]
- January 12, 1999, ADEC letter requiring crude oil storage tank leak detection testing;[58]
- April 18, 2001, letter that involved Enraf gauges for fuel tanks (Tanks 53-56);[59] and,
- 2014 VMT C-Plan Decision that reduced the prevention credit from 5% to 2% which had long-expired.[60]

5. Historical documents and decisions that ADEC-SPAR now incorporates into its Revised 2024 VMT C-Plan Basis of Decision and May 30, 2024, Motion for Reconsideration do not support ADEC-SPAR's position.

ADEC-SPAR's Revised Decision cites an April 25, 1995, APSC Enraf Gauge Memorandum, where "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)."[61] This memorandum was not provided for ALJ or City review; however, ADEC-SPAR states that this is APSC's document, and APSC's claim that the sensitive gauging system met best available gauging technology. This is not an agency decision that this standard was met.

ADEC-SPAR's Revised Decision inappropriately relies on and points to Enraf gauge leak testing on the fuel oil storage tanks (Tanks 53-56) that have nothing to do with the City's Contested Issue No. 4 that relates to Crude Oil Storage Tanks (1-14).

ADEC-SPAR's Revised Decision makes false claims that the City claimed Best Available Technology (BAT) regulations at 18 AAC 75.452 applied to the crude oil tank leak detection system.[62] This is erroneous and misleading information. The City's appeal concerns whether the crude oil tank leak detection system complies with 18 AAC 75.990 (112) and whether a 2% prevention credit is deserved.

ADEC-SPAR's Revised Decision states "[w]hen the gauging equipment was first installed, the department required APSC to evaluate the equipment for sensitivity and threshold detection

[55] *Id*. at 13.
[56] Attachment AI at 13.
[57] *Id*. at 12.
[58] *Id*.
[59] *Id*.
[60] *Id*. at 13.
[61] *Id*. at 12.
[62] *Id*. at 14.

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."[63] Yet, ADEC-SPAR provided no document to the ALJ or City that actually states this, nor was this finding found in APSC's 2024 VMT C-Plan application.

ADEC-SPAR's Motion for Reconsideration cites the December 20, 1996, VMT C-Plan Findings Document as the basis for SPAR's decision regarding the best available sensitive gauging technology. There are two problems with ADEC-SPAR's reliance on a 1996 VMT C-Plan decision. First, the decision has long expired (C-Plan decisions are valid for a maximum of five years). Second, the 1996 document does not support the conclusion that ADEC claims. Instead, this document states that APSC proposed a new sensitive gauging system for the crude oil tanks that ADEC consulted with the American Petroleum Institute ("API"), and that API advised 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 . . . . Therefore, the Department's decision is to require Alyeska to perform monthly leak tests . . . between 2 and 48 hours to create a site-specific database by which to establish a hold time which optimizes the leak detection sensitivity."[64] ADEC provided a July 21, 1998, letter from APSC to ADEC concluding monthly 48-hour testing was necessary.[65] Yet nothing in the 2024 VMT C-Plan or ADEC decision requires 48-hour monthly testing on the crude oil tanks. Only fuel tanks have a monthly 48-hour testing requirement in the 2024 VMT C-Plan. ADEC does not explain how it awarded a best available sensitive gauging technology determination in 2024 to a system that is not tested at least monthly and is unable to detect leaks of less than 2,400 barrels when the tanks are not isolated for testing. Nor did ADEC explain how it awards a 2% prevention credit to the crude oil tank leak detection system, which is unable to detect leaks below a reported, unverified threshold of 2,400 barrels for most of the year. A spill of 2,400 barrels (100,800 gallons) is a large oil spill. ADEC's reporting regulations for crude oil spill reporting categorize a spill of more than 55 barrels[66] (2,310 gallons) to land or water as a significant spill. A leak detection system that cannot detect a leak until a spill of this size is not deserving of a prevention credit (even if APSC could verify that the system can actually detect a spill of this size while the tanks are in operation), which has not been proven.

ADEC's Motion for Reconsideration cites the December 20, 1996, VMT C-Plan April 11, 2000 VMT renewal decision[67] and points to Issue #6 in its findings document on leak detection for oil storage tanks; however, this decision is related to leak detection for the fuel oil storage tanks (Tanks 53-56) not the crude oil storage tanks (Tanks 1-14). Furthermore, this 2000 decision concluded that the current fuel tank leak detection system did not meet the requirements of 18 AAC 75, and more testing was necessary.[68]

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[63] *Id*. at 14.
[64] Attachment AJ at 45 (emphasis added).
[65] *Id*. at 68.
[66] 18 AAC 75.300.
[67] Attachment AJ at 86.
[68] *Id*. at 113.

ADEC's Motion for Reconsideration cites an April 18, 2001, letter from ADEC to APSC stating that ADEC received a March 22, 2011, letter from APSC about leak detection systems testing for fuel tanks (53-56). This decision is related to leak detection for the fuel oil storage tanks (53-56), not the crude oil storage tanks (1-14).

6. ADEC-SPAR's Revised Decision does not show that the Oil Discharge Prevention Plan (18 AAC 75.450(a)) Requirements are met for crude oil tank sensitive gauging.

The provisions of 18 AAC 75.450(a) require a VMT C-Plan application to include an oil discharge prevention and contingency plan that "must demonstrate that the applicant meets all applicable requirements 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…" Therefore, APSC's 2024 VMT C-Plan was required to demonstrate that the applicant met the applicable requirements of 18 AAC 75.065(h)(1)(A) for a "sensitive gauging system," which it did not.

APSC's 2024 VMT C-Plan application Volume 1, Section 2.1.5.3 included a section on oil storage tank compliance with 18 AAC 75.065(h)(1)(A) leak detection requirements.[69] APSC's application stated: "Field constructed oil storage tanks at the VMT are equipped with gauging systems."[70] Nothing in APSC's application stated the crude oil storage tanks were equipped with "sensitive gauging systems" that met the requirements of 18 AAC 75.990(112).

APSC's application explains that the crude oil tank "gauging system" is only effective in detecting small leaks when the tanks are blocked in and tested, which rarely occurs. There is no specific commitment in the plan as to the frequency of this testing.

APSC's application confirmed that the crude oil tanks have "no specific tank-bottom leak detection system," and that a leak would only be detected if "visible on the surface or in the snow," or by "olfactory recognition."[71] Therefore, most of the time, APSC's application states that crude oil tank leaks rely on visual and olfactory leak detection, unless a leak as large as 2,400 barrels (100,800 gallons) is recorded by APSC's Supervisory Control and Data Acquisition (SCADA), at which point APSC staff initiate a leak investigation while the spill size continues to grow to an unspecified amount. There is no commitment in APSC's VMT C-Plan to immediately shut down, isolate, or test crude oil tanks when SCADA indicates a large leak; APSC only commits to start investigating while the leak continues.

APSC's application explains that during routine operation, its SCADA system monitors incoming and outgoing flows to the crude oil tanks and that APSC staff take investigative action if the flow rate exceeds some unspecified calculated threshold (ADEC-SPAR claims this is 2,400 barrels, but that is nowhere stated in APSC's C-Plan application). Nothing in APSC's application

[69] Attachment F at 82-83.
[70] *Id*. at 82.
[71] *Id*. at 83.

states that the SCADA system and the crude oil tank gauges, meet the definition of a "sensitive gauging system" under 18 AAC 75.990(112) or describes any prior technical work or any prior agency decision that concluded the same.

Instead, APSC's 2024 VMT C-Plan application Volume 1, Section 2.1.5.3 clearly describes a crude oil tank gauging system that cannot detect a leak through the tank-bottom, is capable only of detecting small leaks if the tank is isolated and no commitment for that testing is made, and states that APSC may take some investigative action to follow up on a potential leak if the SCADA system flow rate exceeds some unspecified calculated threshold.

The only place in APSC's 2024 VMT C-Plan application where APSC declares it meets a "sensitive gauging system" standard as best technology is Volume 1, Section 4.6,[72] addressing fuel tanks (53-56), which has nothing to do with the City's Contested Issue 4 that relates to crude oil tanks (1-14) leak detection.[73]

7. ADEC-SPAR's basis for granting 2% Prevention Credit is not supported (AS 46.04.030 and 18 AAC 75.432)

As explained above ADEC-SPAR's decision to grant a 2% credit is wrong because APSC does not have a piping and crude oil leak detection system that meets the 18 AAC 75.432 requirements to award a credit. This is the fundamental legal flaw in ADEC-SPAR's decision; however, other arguments listed below further support the City's appeal.

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

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

ADEC-SPAR's revised decision does not explain how APSC's crude oil tank gauging system "reduces the risk of oil discharges from the facility" as required by the statute.

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[72] Attachment F: 2024 VMT C-Plan, Volume 1, Section 4.6 clearly states: "Leak detection for fuel storage tanks is achieved via tank volume monitoring procedures using tank gauging systems. APSC complies with 18 AAC 75.065(h)(1)(A) by using a sensitive gauging system."

[73] *Id*. at 263.

APSC's VMT C-Plan application at Volume 1, Section 2.1.5 and VMT C-Plan, Volume 1, Part 5, provide no technical or regulatory justification or explanation for the 2% credit. There is no explanation of how the 18 AAC 75.432(d)(3) standard is met for both piping and crude oil tanks and no explanation of how AS 46.04.030(m) is met.

In its Revised Decision, ADEC-SPAR states that its rationale for granting the 2% prevention credit hinges on the fact that the crude oil gauging equipment is recorded by a SCADA system and monitored at the VMT Operations Control Center.[74] However, ADEC-SPAR says nothing about the lack of an equivalent piping system leak detection system. Both are required to obtain the 18 AAC 75.432(d)(3) credit; both do not exist.

ADEC-SPAR's Revised Decision is also silent on the fact that APSC's application does not include a threshold for SCADA system detection. While ADEC-SPAR claims a leak might be identified after 2,400 barrels (100,800 gallons) have already leaked, this is nowhere stated in APSC's application. The crude oil gauging system will not "prevent" a leak; it may only detect a large leak after it has occurred, and is not deserving of a 2% prevention credit that reduces the amount of oil spill response equipment APSC is required to own or have on contract

8. There were changes to the crude oil leak detection system in 2024, and the crude oil tanks have been substantially reconstructed.

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

Previously approved VMT C-Plan language that was deleted during the 2024 renewal required a leak threshold of 3,000 barrels per hour as the trigger to initiate leak investigation. An allowable leak rate of 3,000 barrels per hour through the base of a crude oil storage tank is not a "sensitive gauging system." The inability to detect a leak through the floor of a crude oil tank before 3,000 or more barrels of crude oil (144,000 gallons) is plainly an inadequate gauging system that should not be the source of reductions in RPS volumes. ADEC-SPAR dismissed the City's concerns and did not provide a cogent explanation for why this longstanding language describing the antiquated gauging system was replaced with an even less effective gauging system that is only useful if the tanks are operating in a rare static condition.

Unable to provide a technical or regulatory explanation for allowing APSC to weaken the VMT C-Plan crude oil tank gauging system language, ADEC-SPAR's 2024 VMT C-Plan Basis of Decision argued that the 1976 crude oil storage tanks are not even required to have tank bottom

[74] Attachment AI at 15.

leak detection because cathodic protection installed for the tanks satisfies under 18 AAC 75.065(h)(1), so it did not matter anyway.

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

ADEC's Basis for Decision acknowledges "updates were made to the sensitive gauging system for the East Tank Farm"[75] crude oil tanks, which undoubtedly trigger the need for a thorough agency review.

ADEC's Motion for Reconsideration states that APSC's process for monitoring the crude oil tank leak detection system gauges using APSC's SCADA control system changed in 2024 and that revisions were made to Section 2.1.6.3, Volume 1 of the VMT C-Plan during the renewal process.[76] APSC's Motion for Reconsideration included a typo referring to changes in Section 2.1.6.3, when the changes to the leak detection system were actually done in Section 2.1.5.3 Leak Detection – Crude Oil Tanks.

ADEC-SPAR's Revised Decision ignores the fact that the crude oil tanks have undergone substantial reconstruction, warranting a thorough agency review of the sensitive gauging system under 18 AAC 75.990(112).

> [F]or 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).[77] [Emphasis added.]

For years, the City and its citizens have expressed concern about the lack of best available gauging technology and leak detection for the crude oil tanks through the City's participation in PWSRCAC.[78] When the tanks were inspected, cleaned, and the tank bottoms replaced ("substantial reconstruction"), ADEC did not require best demonstrated available gauging technology at the time of the tank's substantial reconstruction. There was no analysis of under- or near-the-tank perimeter hydrocarbon sensing systems; no analysis of more accurate leak detection

[75] Attachment AI at 9.
[76] Attachment AJ at 2.
[77] Attachment AI at 15.
[78] Prince William Sound Regional Citizens Advisory Committee.

systems using acoustic technology or improved sensitive gauging methods; and no analysis of double tank floors with interstitial hydrocarbon sensing technology.

Instead, for many, many years, APSC has included a paragraph in the VMT C-Plan which explained that crude oil tank leaks are examined once every 30 minutes and "[w]hen an anomaly exceeding 3,000 barrels occurs in a one-hour period, notification of VMT personnel is made and a facilities check is initiated to resolve the anomaly."[79] APSC deleted this language from the plan, and the agency approved the deletion, without evidence that the change was appropriate.

As approved, the 2024 VMT C-Plan does not specify the accuracy of the current crude oil tank gauging/mass balance system during routine operations. Instead, the VMT C-Plan now states that a "static crude oil tank leak detection method allows for determining a leak size with a minimum of 872 bbls., per one-tenth (0.10) of a foot range," which means little to the average citizen. The plan does not clearly articulate how many barrels would leak through the tank bottom before this gauging system actually detected a leak.[80]

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

9. APSC Management Testified at the Superior Court that the Leak Detection System is not capable of detecting crude oil tank leaks and that leaks over 500,000 barrels could go undetected.

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

> I don't like talking about these things. <u>This is actually a nightmare scenario of mine</u>. Corrosion, pinhole leaks terrify me because they happen and you're not aware they happened. <u>Two simultaneous tanks having a corrosion failure pinhole leak can go on for weeks, months, a long</u> time. Say it happened in the floor, it would fill up that volume underneath the tank with crude oil, and it would be sitting there for long periods of time on the liner. It would inevitably migrate, perhaps on top of the liner, perhaps through the ring wall, perhaps through the liner, and would start to propagate out under the terminal . . . <u>this could easily get to be hundreds of</u>

[79] Attachment AK: APSC Government Letter No. 53083, Enclosure C, proposed changes to Section 2.1.6.3 Leak Detection, at 1.
[80] Attachment AK at 1-2.

> thousands of barrels. . . .And then something changes, right? We have a heavy rain event, corrosion events, pinhole leaks. Again, they terrify me because it's corrosion-based. They get worse. So the worst even could be it splits. Suddenly the volume increases . . . And this is why it's a nightmare event. I know I've got crude oil, I know it's made it to tidewater, and I have no idea on our thousand-acre facility on the terminal were that oil came from, right?. . . suddenly I've got oil coming out from the ground appearing into my system, appearing in tidewater, and I have an entire terminal that I don't know how to control this leak. I don't know where it came from . . . So it could be happening in tankage. We could probably figure out pretty quickly if it was coming out through the sides, but it would be much more difficult to verify if it was coming out through the bottom. And in searching for this leak, I have to worry about putting people at health risk, right, ignition risk. If I've got crude oil, I've got vapors. That is a terrifying event to me. That is something that I could see going over 500,000 barrels. I mean, and that idea terrified me. And I would not be able to control it. I would not know where on the terminal it's happening. It would be spilling out into Prince William Sound. . . . that is my nightmare scenario because pinhole leaks, corrosion, definitely happens in our industry. It happened quite a bit.[81] [Emphasis added].

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

(i) If you believe a provision of the final decision or permit you are challenging was not in the draft decision or permit that was subject to the public notice or comment process, please explain the basis of your claim (*see* 18 AAC 15.200(a)).

None of ADEC-SPAR's additional language added to its August 8, 2025, Revised Decision was issued by ADEC-SPAR for public notice or comment.

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[81] Attachment AA (Morales Testimony).

Request for Alternative Dispute Resolution under 18 AAC 15.205

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

Respectfully submitted this 8th day of September, 2025.

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

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

AFFIDAVIT OF SERVICE

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I hereby swear and affirm that on September 8, 2025, the foregoing **RENEWED REQUEST FOR ADJUDICATORY HEARING ON ADEC-SPAR'S REVISED DECISION ON CONTESTED ISSUE 4** was served via First-Class U.S. Mail or electronic mail on the following:

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

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

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

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

Mary G. Hodsdon

SUBSCRIBED AND SWORN TO before me this 8th day of September, 2025.

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

Notary Public in and for Alaska
My Commission Expires: 7/12/2028