

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

CITY OF VALDEZ,

Requester,

v.

DEPARTMENT OF ENVIRONMENTAL
CONSERVATION, DIVISION OF SPILL
PREVENTION & RESPONSE, and
ALYESKA PIPELINE SERVICE
COMPANY,

Respondents

OAH No. 25-2929-DEC

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

I. Introduction

The Valdez Marine Terminal (VMT) is operated by Alyeska Pipeline Service Company (APSC) and is located within the City of Valdez (“City”). To operate, VMT needs to have an oil discharge prevention and contingency plan (“C-Plan”) that has been approved by the Alaska Department of Environmental Conservation, Division of Spill Prevention and Response (SPAR). The City previously challenged SPAR’s approval of the 2024 VMT C-Plan on various issues, including whether the VMT gauging system is a “sensitive gauging system” and whether that system provides a basis for SPAR to grant a 2% oil spill prevention credit (OSPC).

This tribunal previously remanded this matter to allow SPAR to further develop its record regarding the sensitive gauging system and OSPC issues. In response, SPAR revised its basis of decision for that C-Plan by incorporating—without re-adoption—some background information about past C-Plan decisions into its current analysis.

Here, the City renews its prior challenge and asserts the reissued C-Plan still fails to provide adequate support for its OSPC and sensitive gauging system determinations. In response, APSC and SPAR argue that the City’s request does not meet the requirements for a hearing as it is both untimely and unclear.

The City’s request is timely, as it only challenges the extent to which the new decision can rely without analysis on historical decisions instead of challenging those historical decisions themselves. The City’s request also clearly identifies one issue, whether SPAR still inadequately supported their decision to grant a 2% OSPC. However, the City’s hearing request fails to provide a clear statement of the issue for hearing regarding the

sensitive gauging system. Indeed, the City goes so far as to state that this question is irrelevant. Accordingly, its request fails to meet the requirements to receive a hearing on that issue.

II. Factual and Procedural History

A. Relevant C-Plan Requirements

State law requires an oil terminal facility to develop and comply with a SPAR approved C-Plan.¹ These plans must meet various requirements, two of which are relevant here. The first is that a C-Plan holder must maintain sufficient oil spill response equipment and resources to meet the facility's applicable response planning standard (RPS).² At its discretion, SPAR can decrease the necessary RPS level after considering evidence that discharge prevention measures reduce the risk of discharges.³ The specific measures SPAR will consider in making that determination are outlined at 18 AAC 75.432(d). Among others, SPAR uses that discretion to reduce RPS levels by up to five percent if a facility has "on-line leak detection systems that automatically alarm at a facility control room that is continually monitored, for tanks and piping."⁴ This kind of reduction in the RPS is an OSPC, and it allows a C-Plan holder to operate its facility with a lower amount of response equipment and resources that might otherwise be required.

The second relevant C-Plan requirement is at 18 AAC 75.065(h)(1), which requires each field constructed aboveground oil storage tank to be equipped with one of various kinds of leak detection or spill prevention systems. One type of acceptable leak detection system is 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."⁵

B. Procedural History

Here, the City is continuing its challenge to SPAR's approval of the VMT C-Plan.⁶ One of the issues it identified for the previous hearing, Issue 4, was whether the VMT

¹ AS 46.04.030.

² AS 46.04.030(k).

³ AS 46.04.030(m) (listing examples of discharge prevention measures that can be considered but not plainly limiting SPAR's ability to consider other measures).

⁴ 18 AAC 75.432(d)(3).

⁵ 18 AAC 75.990(112).

⁶ As the parties are aware, this matter is a continuation of OAH No. 25-0950-DEC, and to avoid repetition this decision adopts the procedural history laid out in the Ruling on Request for Adjudicatory Hearing in that matter.

gauging system is a “sensitive gauging system” that meets the requirements of 18 AAC 75.065(h) and whether that system provides a basis for SPAR to award a 2% OSPC. The Commissioner remanded the City’s Issue 4 in that matter, and instructed SPAR to identify the analysis it had conducted determining that the VMT gauging system in question was a sensitive gauging system or, if such a historic analysis was unavailable, to conduct an analysis of the system’s ability to meet that definition.⁷ Through the tribunal, the Commissioner then directed SPAR to also provide further support in its reissued decision justifying SPAR’s decision to grant a 2% OSPC for on-line leak detection systems.⁸

SPAR issued a Revised Basis of Decision on August 8, 2025, and the City filed a Renewed Request for Adjudicatory Hearing on Issue 4 on September 8, 2025.⁹ The City’s request for an adjudicatory hearing was conditionally referred to the Office of Administrative Hearings (OAH) for a recommended decision on whether the request meets the requirements of 18 AAC 15.200.¹⁰ Simultaneously with that appeal request, the City submitted a request for alternative dispute resolution under 18 AAC 15.205 and requested a resumption of the hearing process for the remaining contested issues in related matter 25-0950-DEC.¹¹

Despite this tribunal’s prior guidance,¹² the City’s “concise” statement is again multiple pages long—which has required some distilling of the issues raised by the City for purposes of analysis.¹³ Accordingly, “contested issue No. 4” has been split into Issues 4a and 4b for the purpose of identifying appropriate issues for a hearing. The issues conditionally referred to OAH for a recommended ruling on whether to grant a hearing are thus understood to be as follows:

- 4a. Did SPAR improperly grant a 2% OSPC for crude oil tank on-line leak detection?
- 4b. Did SPAR improperly conclude that the existing crude oil gauging system is a sensitive gauging system that meets the standard at 18 AAC 75.065(h)(1)?

⁷ Recommended Ruling on Request for Adjudicatory Hearing at 14 – 15.

⁸ Report of Status Conference and Order on Motions for Reconsideration, OAH No. 25-0950-DEC, at 2.

⁹ City’s Hearing Request at 1 – 2.

¹⁰ 18 AAC 15.220(a)(2).

¹¹ The City also requests more expeditious action on contested issues 1, 2, and 6 which the Commissioner remanded to SPAR without referral to OAH, but those are not in front of OAH and this tribunal has no say in or knowledge of their status.

¹² Recommended Ruling on Request for Adjudicatory Hearing, OAH No. 25-0950-DEC, at n.15.

¹³ 18 AAC 15.220(a)(2).

III. Discussion

For a hearing request to be granted it must comply with the requirements at 18 AAC 15.200. APSC and SPAR identify two areas in which they contend the City's request was deficient: its clarity and its timeliness. The relevant requirements are as follows:

- The request must include a clear and concise statement of the contested issue(s), including the disputed issue(s) of material fact and law.¹⁴
- The hearing must be requested not later than 30 days after the challenged decision is issued.¹⁵

Each of these requirements are evaluated below.

A. Clear and Concise Statement of Material Issues

“A material fact is one upon which resolution of an issue turns.”¹⁶ This means that if it's irrelevant to the outcome which side's interpretation is correct the fact is not material.¹⁷ The requirement that a hearing request provide a clear statement of the contested material issue and supporting information is not a high burden, and the question of whether or not material issues have been identified does not turn on whether, ultimately, those arguments will be successful. “[T]he question for consideration here is not whether the . . . requesters are entitled to prevail at hearing, but whether they have articulated a basis for a hearing—specifically, by setting forth what issues should be adjudicated and the basis for their allegation that the Division erred as to those issues.”¹⁸

Here, SPAR suggests that—as the City's “clear and concise” statement is again multiple pages long and discusses a range of subjects—the lack of a clear statement of the issues should be disqualifying. However, the City clearly presents a contested issue meeting this standard for Issue 4a by repeatedly asserting that SPAR improperly granted a 2% OSPC for crude oil tank on-line leak detection and providing a range of support for that allegation. A hearing on this issue will accordingly be granted.

¹⁴ 18 AAC 15.200(c).

¹⁵ 18 AAC 15.200(a).

¹⁶ *Fischer v. Kenai Peninsula Borough Sch. Dist.*, 548 P.3d 1086, 1091 (Alaska 2024) (citing *Christensen v. Alaska Sales & Serv., Inc.*, 335 P.3d 514, 519 (Alaska 2014)).

¹⁷ *See, e.g., Sonneman v. State*, 969 P.2d 632, 635 (Alaska 1998) (“A factual issue will not be considered material if, even assuming the factual situation to be as the non-moving party contends, he or she would still not have a factual basis for a claim for relief against the moving party.”).

¹⁸ *Ruling on Request for Adjudicatory Hearing, Prince William Sound Regional Citizens Advisory Council, et. al, v. State, Dep't of Envtl. Conservation, Div. of Spill Prevention and Response*, OAH No. 17-1219-DEC, at 18.

Yet, despite the City's later averment to the contrary,¹⁹ the hearing request fails to provide a clear statement regarding Issue 4b. While the hearing request does state that SPAR incorrectly concluded the sensitive gauging system standard was met, it also admitted that the requirements of 18 AAC 75.065(h)(1) were already met by a cathodic protection system.²⁰ Since 18 AAC 75.065(h)(1) is the only regulation identified where the sensitive gauging system standard is relevant here, this indicates that whether or not there is a sensitive gauging system is immaterial. This reading is supported by the City's own filing, which later states "a determination that the system met a sensitive gauging standard is irrelevant to this Matter."²¹ These statements leave the tribunal unable to discern what the City is requesting a hearing on regarding this issue, and appear to include an admission that there is no material dispute over the sensitive gauging standard. Accordingly, despite the City's assertion in its Reply that its request properly raised material issues regarding 18 AAC 75.065(h) compliance and whether the sensitive gauging standard is met,²² the hearing request failed to articulate a clear material issue on this point. Accordingly, the City failed to meet the standard for a hearing on that issue and a hearing on Issue 4b is denied.

B. Timeliness

As appropriate given the Commissioner's directive, the parties spent much of their briefing discussing whether the hearing request was timely. However, at this initial stage of review timeliness is a deceptively simple matter. While the issue the parties truly want to debate is the important question of whether SPAR's historic C-Plan decisions are permanent and inviolable or expired and outdated, the timeliness question in front of the tribunal now is far less debatable. This is because the City is not challenging those historic decisions themselves, merely how the recent decision uses them.²³

A hearing request must be served not later than 30 days after the issuance of the contested decision.²⁴ Here, the renewed decision was issued on August 8, 2025. 30 days after that date is September 7, however, that is a Sunday making the actual deadline September 8.²⁵ The City

¹⁹ City's Reply to SPAR & APSC's Responses to Renewed Req. for Adj. Hearing at 3 – 4, 11.

²⁰ City's Hearing Request at 6.

²¹ *Id.* at 10.

²² City's Reply to SPAR & APSC's Responses to Renewed Req. for Adj. Hearing at 11.

²³ *Id.* at 6. SPAR admittedly seems to acknowledge this by merely opposing the request on this point "to the extent it challenges these prior agency decisions." SPAR's Response to Request for Adjudicatory Hearing at 4.

²⁴ 18 AAC 15.200(a).

²⁵ AS 01.10.080 (preventing deadlines from falling on holidays, including Sundays as determined in *Fields v. Fairbanks North Star Borough*, 1991, 818 P.2d 658).

submitted its request on that date²⁶ and thus complied with the requirements for a timely hearing request.²⁷

SPAR expresses specific concerns that the City raised a new issue by asserting SPAR is required to expressly readopt past C-Plan findings every time a C-Plan is renewed, but that is not in itself an issue identified for hearing. The extent to which SPAR is prohibited from, able to, or required to reassess past C-Plan decisions is undoubtedly an important question, but it is a legal question undergirding the analysis of Issue 4, not an issue on its own.

While SPAR and APSC also raise concerns that the City identified other new issues for hearing after the remand in an allegedly impermissible manner, no other issues have been plainly identified for hearing. That is not to say, however, that the various concerns the City raised about the additional justifications SPAR provided through the remand cannot be discussed. The previously raised Issue 4 focused on SPAR having insufficient support to grant APSC a 2% OSPC. The remand required SPAR to provide more support for its OSPC decision, and now the City is attacking that support as still being insufficient. If SPAR is permitted or required to reanalyze past decisions, the reliability of those historic decisions remain highly relevant as those questions relate to whether SPAR's decision to grant the OSPC was appropriate. For example, if SPAR's 2014 decision needed to be or should have been reanalyzed here, the City is not barred from highlighting flaws in that decision to show the 2024 decision lacked sufficient support.

That being said, the alleged flaws with the historic decisions SPAR is relying on will only become live disputes if the Commissioner finds SPAR was either required to reanalyze those decisions, or consider doing so. In such circumstances, SPAR has already requested a remand to allow it to reanalyze those decisions outside of the context of litigation; a request that seems reasonable at this time given the apparent need in that circumstance to significantly broaden the record.

IV. Future Proceedings

Upon adoption or modification of this Recommended Ruling the tribunal will issue an order consolidating this matter with 25-0950-DEC,²⁸ and terminating the abeyance on issues 3a, 5a, and 5b.²⁹ The 20-day deadline for SPAR to produce the agency record for both consolidated

²⁶ City's Hearing Request at 1.

²⁷ 18 AAC 15.200.

²⁸ 2 AAC 64.190(a).

²⁹ See, Order Putting Issues 3, 5a, and 5b In Abeyance and Setting Status Conference, OAH No. 25-0950-DEC.

cases will also begin upon the Commissioner's adoption or modification of this Recommended Ruling.³⁰

For the reasons detailed prior to the completion of the remand,³¹ the parties in these matters have been granted a hearing on the briefs but will have the opportunity to demonstrate the necessity of record supplementation and request oral arguments.

Additionally, while the City has requested mediation,³² SPAR has indicated it is not interested in mediation at this time.³³ Mediation requires the consent of all the parties and will thus not be scheduled here. Once the agency record is produced and the time for intervention has passed a status conference will be set to determine the timeline for hearing and any necessary motion practice.

V. Conclusion

The City submitted a timely hearing request clearly identifying a material dispute over whether SPAR improperly granted a 2% OSPC for crude oil tank on-line leak detection when it approved the VMT C-Plan. Accordingly, a hearing on briefs is granted on Issue 4a. However, the City failed to meet their burden to identify a clearly disputed material issue regarding compliance with 18 AAC 75.065 or whether the sensitive gauging system standard was met. Therefore, a hearing on Issue 4b is denied.

Dated: October 27, 2025


Garrison A. Todd
Administrative Law Judge

³⁰ 18 AAC 15.237(c).

³¹ Ruling on Request for Adjudicatory Hearing, OAH No. 25-0950-DEC at 16 – 18.

³² City's Hearing Request at 32.

³³ SPAR's Response to Request for Adjudicatory Hearing at 11.

Adoption

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

DATED this 5 day of November, 2025.

By:



Signature

Randy Bates

Name

Commissioner