

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 hand delivery, electronic mail or U.S. mail (see 18 AAC 15.200(a), (c) and (e), as well as on the division that issued the decision.

Attn: Larry Hartig, Commissioner -Alaska Department of Environmental Conservation
P.O. Box 111800

Juneau, AK 99811-1800 or DEC.Commissioner@alaska.gov

Air Quality

Denise Koch, Director
Dept. of Env. Conservation
P.O. Box 111800
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Spill Prevention & Response

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Requestor Contact Information

Name*	Donna Schantz	Telephone*	(907) 834-5000
Address*	PWSRCAC P.O. Box 3089 Valdez, AK 99686	Fax	
		Email Address	schantz@pwsrcac.org

Please provide the name(s), mailing address(es), electronic 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))

Timothy Joyce, Interim General Manager
Prince William Sound Aquaculture Corp.
P.O. Box 1110
Cordova, AK 99574

Ruth E. Knight, Mayor
City of Valdez
P.O. Box 307
Valdez, AK 99686

Additional information is provided in the attached Joint Request for Adjudicatory Hearing and Joint Request for Alternative Dispute Resolution and Exhibits thereto.

Please identify the permit or other decision you are seeking to have reviewed. Please include information such as who made the decision, the title of the document within which the decision is contained or the permit number.

Contested Decision:

Alyeska Pipeline Service Company

Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan

ADEC Plan No. 14-CP-4057, Amendment 2017-1

Approved October 23, 2017 by Graham Wood, Program Manager, Preparedness, Prevention, and Response Program, Division of Spill Prevention and Response, Alaska Department of Environmental Conservation

Copies of the Decision and Statement of Basis are attached as Exhibit A to the Joint Request for Adjudicatory Hearing and Joint Request for Alternative Dispute Resolution submitted herewith.

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 relating to an issue.

Contested Issue 1 - Whether ADEC's Decision Violates Statutory and Regulatory Requirements for the Protection of Environmentally Sensitive Areas and Areas of Public Concern (AS 46.04.030 and 18 AAC Ch. 75, Art. 4, including AS 46.04.030(e), 18 AAC §§ 75.425(a),(e), 75.430(a), 75.432, and 75.445)

Contested Issue 2 - Whether ADEC's Decision Constitutes a Prejudicial Abuse of Discretion (AS § 44.62.570(b)(3)).

Additional information is provided in the attached Joint Request for Adjudicatory Hearing and Joint Request for Alternative Dispute Resolution and Exhibits thereto.

Contested Issue and Location of the Issue

See attached Joint Request for Adjudicatory Hearing and Joint Request for Alternative Dispute Resolution and Exhibits thereto.

Explanation and reasons the contested issue is relevant to the decision

See attached Joint Request for Adjudicatory Hearing and Joint Request for Alternative Dispute Resolution and Exhibits thereto.

How are requesters directly and substantively affected?

See attached Joint Request for Adjudicatory Hearing and Joint Request for Alternative Dispute Resolution and Exhibits thereto.

Any suggested terms or conditions?

See attached Joint Request for Adjudicatory Hearing and Joint Request for Alternative Dispute Resolution and Exhibits thereto.

Why should your request be granted?

See attached Joint Request for Adjudicatory Hearing and Joint Request for Alternative Dispute Resolution and Exhibits thereto.

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 or
 - 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, then 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 and location of the Issue

See attached Joint Request for Adjudicatory Hearing and Joint Request for Alternative Dispute Resolution and Exhibits thereto.

Explanation and reasons the contested issue is relevant to the decision

See attached Joint Request for Adjudicatory Hearing and Joint Request for Alternative Dispute Resolution and Exhibits thereto.

How are requesters directly and substantively affected?

See attached Joint Request for Adjudicatory Hearing and Joint Request for Alternative Dispute Resolution and Exhibits thereto.

Any suggested terms or conditions

See attached Joint Request for Adjudicatory Hearing and Joint Request for Alternative Dispute Resolution and Exhibits thereto.

Why should your request be granted?

See attached Joint Request for Adjudicatory Hearing and Joint Request for Alternative Dispute Resolution and Exhibits thereto.

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 or

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 AAC15.245)**

(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, then 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 and location of the issue

[Empty box for contested issue and location]

Explanation and reasons the contested issue is relevant to the decision

[Empty box for explanation and reasons]

How are requesters directly and substantively affected?

[Empty box for requester impact]

Any suggested terms or conditions?

[Empty box for suggested terms]

Why should your request be granted?

[Empty box for justification]

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 or

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, then 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 Issues 1 and 2. Additional information is provided in the attached Joint Request for Adjudicatory Hearing and Joint Request for Alternative Dispute Resolution.

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 you answers in you response above if they describe all the questions of fact that you want considered at an evidentiary hearing

See attached Joint Request for Adjudicatory Hearing and Joint Request for Alternative Dispute Resolution and Exhibits thereto.

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.

Approximately 1-2 days.

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 <http://dec.alaska.gov/commish/regulations/index.htm>. The definitions of key terms may be found at 18 AAC 15.920.
2. Reviewing the guidance documents posted by the department at <http://dec.alaska.gov/commish/ReviewGuidance.htm>; or
3. Contacting the department's adjudicatory hearing liaison, Gary Mendivil, in the Commissioner's Office at (907) 465-5061 or at Gary.Mendivil@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))

Donna Schantz, Exec. Director
Walt Wrede, Director of Admin.
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Ruth E. Knight, Mayor
CITY OF VALDEZ
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**BEFORE THE COMMISSIONER OF THE
ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

PRINCE WILLIAM SOUND REGIONAL
CITIZENS' ADVISORY COUNCIL, INC.,
an Alaska non-profit corporation; PRINCE
WILLIAM SOUND AQUACULTURE
CORPORATION, an Alaska non-profit
corporation; and CITY OF VALDEZ, an
Alaska municipal corporation,

Requesters,

v.

ALASKA DEPARTMENT OF
ENVIRONMENTAL CONSERVATION,
DIVISION OF SPILL PREVENTION AND
RESPONSE,

Respondent.

OAH No. _____

**JOINT REQUEST FOR
ADJUDICATORY HEARING AND
JOINT REQUEST FOR
ALTERNATIVE DISPUTE
RESOLUTION**

Alyeska Pipeline Service Company,
Valdez Marine Terminal
Oil Discharge Prevention and
Contingency Plan, ADEC Plan No. 14-
CP-4057, Amendment 2017-1, Approved
October 23, 2017

JOINT REQUEST FOR ADJUDICATORY HEARING

The Prince William Sound Regional Citizens' Advisory Council, Inc. ("PWSRCAC"), Prince William Sound Aquaculture Corp. ("PWSAC"), and City of Valdez (each individually as "Requester" and collectively "Requesters") hereby jointly request an adjudicatory hearing concerning the decision ("Decision") made by the Alaska Department of Environmental Conservation ("ADEC") on October 23, 2017 to approve Amendment 2017-1 to the Alyeska Pipeline Service Company ("Alyeska" or "APSC") Oil Discharge Prevention and Contingency Plan for the Valdez Marine Terminal, ADEC Plan No. 14-CP-4057 ("VMT C-Plan").¹ This request is timely filed within 30 days after the Decision.²

I. REQUESTERS' AUTHORIZATION AND CONTACT INFORMATION

This Joint Request for Adjudicatory Hearing is being submitted by PWSRCAC, PWSAC, and City of Valdez. Each Requester's authorization to seek an adjudicatory hearing and contact information are provided below.³

PWSRCAC is authorized to seek an adjudicatory hearing for the Decision because, on April 13, 2017 and August 23, 2017, it submitted extensive comments to ADEC opposing Alyeska's proposed VMT C-Plan amendment.⁴ Filings, orders, and other communications in this matter should be directed to PWSRCAC as follows:

¹ See Exhibit A (ADEC Decision Approving Amendment 2017-1 to the Alyeska VMT C-Plan and ADEC Statement of Basis for the Alyeska VMT C-Plan Approval, Oct. 23, 2017); 18 AAC § 15.200(c)(1). Alyeska's internal identification for the VMT C-Plan is No. CP-35-2.

² See 18 AAC § 15.200(a).

³ See *id.* § 15.200(a) and (c)(2).

⁴ See Exhibit B (PWSRCAC Comments, April 13, 2017); Exhibit C (PWSRCAC Comments, August 23, 2017). Some PWSRCAC members submitted separate comments as well. See Exhibit D (City of Valdez Comments, August 2017); Exhibit E (Cordova District Fishermen United ("CDFU") Comments, Aug. 22, 2017). See also Valdez Fisheries Devt. Assoc. Inc. ("VFDA") Comments, Dec. 11, 2016, Mar. 31, 2017, and Aug. 18, 2017 (raising similar concerns).

Donna Schantz, Executive Director
Walt Wrede, Director of Administration
PRINCE WILLIAM SOUND REGIONAL
CITIZENS' ADVISORY COUNCIL
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schantz@pwsrcac.org
walt.wrede@pwsrcac.org

PWSAC is authorized to seek an adjudicatory hearing for the Decision because it is a member of PWSRCAC, which submitted extensive comments to ADEC on PWSAC's behalf on April 13, 2017 and August 23, 2017.⁵ Filings, orders, and other communications in this matter should be directed to PWSAC as follows:

Timothy Joyce, Interim General Manager
PRINCE WILLIAM SOUND
AQUACULTURE CORPORATION
P.O. Box 1110
Cordova, AK 99574
(907) 424-7511
tim.joyce@pwsac.com

The City of Valdez is authorized to seek an adjudicatory hearing for the Decision because it submitted comments to ADEC regarding the proposed Amendment 2017-1 in August 2017.⁶ Additionally, the City is a member of PWSRCAC, which submitted extensive comments to ADEC on April 13, 2017 and August 23, 2017.⁷ Filings, orders, and other communications in this matter should be directed to the City as follows:

Ruth E. Knight, Mayor
CITY OF VALDEZ
P.O. Box 307

⁵ See *supra* note 4 and accompanying text. See also 18 AAC 15.200(a) (providing that "a person designated to act on the person's behalf ... must have actively raised the issue to the department through participation in the public review process on the draft decision").

⁶ See Exhibit D.

⁷ See *supra* note 4 and accompanying text.

Valdez, AK 99686
(907) 835-4313
rknight@ci.valdez.ak.us

II. CONTESTED ISSUES

This request for an adjudicatory hearing focuses on contested issues relating to the adequacy of the amended VMT C-Plan in protecting the Valdez Duck Flats and Solomon Gulch Hatchery from the adverse effects of oil spills. The following discussion provides an overview of the legal framework and procedural history as background for the contested issues, as well as a statement of each specific contested issue. The discussion will include explanations of (1) disputed issues of material fact and law and their relevance to the Decision, (2) contested terms and conditions, (3) how the Decision was in error, and (4) the hearing time estimated to be needed for adjudication.⁸

A. Legal Framework

The Alaska C-Plan statute (AS 46.04.030) and its implementing regulations (18 AAC Ch. 75, Art. 4) are designed to ensure that oil terminals and other facilities have sufficient resources and procedures in place to prevent and respond to an oil spill. Toward that end, a C-Plan “must ... demonstrate the plan holder’s ability to meet the requirements of AS 46.04.030 and 18 AAC 75.400 - 18 AAC 75.495,” and it must be accompanied by a signed statement “committing the oil discharge prevention and response resources necessary to implement the plan.”⁹ A C-Plan consists of five basic components: Response Action Plan, Prevention Plan, Supplemental Information, Best Available Technology Review, and Response Planning Standard (“RPS”).¹⁰

⁸ See 18 AAC § 15.200(c)(4)(C), (E).

⁹ 18 AAC § 75.425(a).

¹⁰ See *id.* § 75.425(a), (c)(3).

The RPS is the heart of the C-Plan as it is the “planning standard against which the department evaluates the adequacy” of the C-Plan.¹¹

The C-Plan statute and regulations call for enhanced protection of “environmentally sensitive areas”¹² and “areas of public concern.”¹³ ADEC is expected to “ensure that the applicant for a [C-Plan] has access to sufficient resources to protect environmentally sensitive areas.”¹⁴ The following are the key regulatory requirements for such areas:

The Response Action Plan “must include ... a written description of a hypothetical spill incident and response that demonstrates a plan holder’s ability to respond to a discharge of each applicable [RPS] volume within the required time frames using the resources described in the [C-Plan],” and the “response strategies” therein “must include ... a description of site-specific strategies for the protection of environmentally sensitive areas and areas of public concern”¹⁵

The Supplemental Information section “must ... include[e] ... a complete list of contracted or other oil discharge containment, control, cleanup, storage, transfer, lightering, and related response equipment to meet the applicable response planning standard, and to protect environmentally sensitive areas and areas of public concern ... and that may be reasonably expected to suffer an impact from a spill of the [RPS] volume ...
... a plan for protecting environmentally sensitive areas ..., areas of public concern ..., and the public from any adverse effects of the nonmechanical response option;

¹¹ *Id.* § 75.990(107).

¹² An “environmentally sensitive area” is a “geographic area that ... is especially sensitive to change or alteration, including (A) an area of unique, scarce, fragile, or vulnerable natural habitat; (B) an area of high natural productivity or essential habitat for living organisms; (C) an area of unique geologic or topographic significance that is susceptible to a discharge; (D) an area needed to protect, maintain, or replenish land or resources, including floodplains, aquifer recharge areas, beaches, and offshore sand deposits; [and] (E) a state or federal critical habitat, refuge, park, wilderness area, or other designated park, refuge, or preserve.” *Id.* § 75.990(35).

¹³ An “area of public concern” is a “geographic area that ... deserves special protection from an oil discharge, including (A) an area of unique cultural value, historical significance, or scenic importance; (B) an area of substantial residential or public recreational value or opportunity; (C) an area where fish hatcheries or other facilities primarily dependent upon the use of potentially affected water are located; (D) an area significantly used for commercial, sport, or subsistence hunting, fishing, and gathering; and (E) an area where concentrations of terrestrial or marine mammals or bird populations primarily dependent on the marine environment are located.” *Id.* § 75.990(5).

¹⁴ AS § 46.04.030(e).

¹⁵ 18 AAC § 75.425(e), (e)(1), (e)(1)(F), (e)(1)(F)(v).

... identification of environmentally sensitive areas and areas of public concern that may suffer an impact from a spill of the applicable [RPS] volume; ..., the identification of and planned protection measures for those areas must be based on mapped predictions of discharge movement, spreading, and probable points of contact, based on expected local, seasonal, meteorologic, and oceanographic or topographic conditions; and, for each probable point of contact, must include a description of each environmentally sensitive area and each area of public concern, including

- (i) the effect of seasonal conditions on the sensitivity of each area;
- (ii) a discussion of the toxicity effects and persistence of the discharge, based on type of product; and
- (iii) an identification of which areas will be given priority attention if a discharge occurs.”¹⁶

ADEC’s decision to approve a C-Plan must be based on the “criteria” set out in 18 AAC § 75.445.¹⁷ In order to warrant ADEC approval, the C-Plan’s “response strategies ... must demonstrate that ... sufficient oil discharge response equipment, personnel, and other resources are maintained and available for the specific purpose of preventing discharged oil from entering an environmentally sensitive area or an area of public concern that would likely be impacted if a discharge occurs, and that this equipment and personnel will be deployed and maintained on a time schedule that will protect those areas before oil reaches them according to the predicted oil trajectories for an oil discharge of the [RPS] volume[.]”¹⁸ i.e., the “greatest possible discharge that could occur.”¹⁹

Additionally, to help ensure that C-Plans are adequately protective of “fish and game, state land, areas of public concern, and environmentally sensitive areas,” ADEC is required to enter into an “annual agreement” with the Alaska Department of Natural Resources (“ADNR”) and Alaska Department of Fish and Game (“ADFG”) to obtain “expertise” that will inform its C-Plan decisionmaking.²⁰ Moreover, the C-Plan statute mandates that, “before” ADEC “approves or modifies” a C-Plan, it “shall provide a copy” to ADNR and ADFG “for their review.”²¹

¹⁶ *Id.* § 75.425(e)(3), (e)(3)(F), (e)(3)(G)(v), (e)(3)(J).

¹⁷ *Id.* § 75.445(a). *See id.* § 75.445(b)-(n) (describing various approval criteria).

¹⁸ *Id.* § 75.445(d), (d)(4).

¹⁹ *Id.* § 75.430(a). *See id.* § 75.432 (RPS for oil terminal facilities).

²⁰ *Id.* § 75.455(h).

²¹ AS § 46.04.030(j).

B. Procedural History

For the past twenty years, ADEC has consistently recognized the Solomon Gulch Hatchery and the Valdez Duck Flats as sensitive areas requiring enhanced protection, and it has taken reasonable steps to ensure their protection. Until recently, ADEC has also resisted Alyeska's attempts to weaken such protections.

In 1997, ADEC's approval of the Alyeska VMT C-Plan included the following conditions of approval:

Condition of approval number 8. Environmentally Sensitive Areas and Shoreline Protection: Within 90 days after plan approval, Alyeska is to submit a schedule to develop site specific and season specific deployment strategies ... for ten priority sensitive areas inside Port Valdez identified in the contingency plan. ...

Condition of approval number 9. Valdez Duck Flats and Solomon Gulch Hatchery: Within 60 days after plan approval, Alyeska is to submit for review and approval a plan amendment which describes the conditions under which rapid and immediate deployment of protective equipment at the Valdez Duck Flats and Solomon Gulch Hatchery will occur during a spill response. ...²²

ADEC later explained that “[c]onditions of approval 8 and 9” were “based on ensuring that the environmentally sensitive areas in Port Valdez are protected.”²³

In 1999, after reviewing Alyeska's submissions in response to conditions 8 and 9, ADEC formally found that, subject to minor edits, Alyeska's *Sensitive Areas Tactical Guide* satisfied condition 8.²⁴ ADEC also found that Alyeska's final edits to the *Solomon Gulch Hatchery and Valdez Duck Flats Sensitive Area Protection Mobilization Decision Matrix* (“Decision Matrix”)

²² ADEC, VMT C-Plan Decision Document and Response to Comments for Conditions of Plan Approval Nos. 1, 4, 8, and 9, at 8, 9 (Oct. 8, 1999) (quoting Conditions of Approval No. 8 and No. 9 in ADEC's 1997 VMT C-Plan Approval).

²³ *Id.* at 8.

²⁴ *See id.* at 9.

and related text changes “now describe conditions under which rapid and immediate deployment of protective equipment at the Valdez Duck Flats and Solomon Gulch Hatchery will occur during a spill response” and thus satisfied condition 9.²⁵

In 2014, ADEC conducted a comprehensive analysis of whether the Alyeska’s VMT C-Plan “demonstrate[d]” that it had “sufficient strategies, tactics and resources, including personnel and equipment, to effectively protect sensitive areas that may be impacted by an oil spill from the VMT before oil reaches them,” as required under AS § 46.04.030(e) and 18 AAC §§ 75.425(e)(1)(F)(v), 75.445(d)(4).²⁶ ADEC relied heavily on the C-Plan’s “quick decision matrix for deploying protective strategies for prioritized sites closest to the facility” to support its finding that, with some modifications, Alyeska had “adequately planned to protect environmentally sensitive areas and areas of public concern before oil reaches them.”²⁷ ADEC emphasized that Alyeska “must be capable of protecting sensitive areas in Port Valdez while simultaneously containing and controlling the further spread of oil in a catastrophic incident.”²⁸

ADEC further explained that

The prioritization of the [Valdez] Duck Flats and [Solomon Gulch] Hatchery has been captured in multiple plan review decision documents The primary concerns throughout the years ... were that APSC had the personnel and equipment resources to deploy those protections simultaneously with on-water control and containment efforts and secondly, that the protections would be in place in a timeframe that would reasonably be completed before oil would reach either location. The timing goals were implemented following the real life experience of the T/V Eastern Lion discharge in 1994, when both the Duck Flats and Hatchery experienced oil sheening well before predictive models would have anticipated.

²⁵ *Id.* at 9-10.

²⁶ ADEC, Alyeska VMT C-Plan Renewal, Final Findings Document, at 48 (Nov. 21, 2014) [hereafter “ADEC 2014 Renewal Findings Document”].

²⁷ *Id.* at 48.

²⁸ *Id.* at 49.

In collaboration with a multi-stakeholder workgroup including state and federal trustee agencies, and as a condition of plan approval in 1997, APSC developed the Solomon Gulch Hatchery and Valdez Duck Flats Sensitive Area Protection Mobilization Decision Matrix (Matrix.) The Matrix provides criteria and assessment points for use by the initial incident commander within the first one or two hours of a spill. ...

As part of past conditions of approval, APSC worked to be able to deploy both Valdez Duck Flats and Solomon Gulch Hatchery protection tactics within 6–10 hours of the decision to implement them. On February 19, 2002, [ADEC] and [U.S. Bureau of Land Management] representatives ... conducted an unannounced discharge exercise to determine whether APSC responders could meet the timing and effectiveness expectations. APSC responders successfully deployed the protections for both sites, and the successful strategies, including resource needs, were incorporated into the plan ... on June 27, 2002. ...

As acknowledged in [ADEC’s] October 8, 1999 approval ..., deployment of protective strategies will take longer in RMROL²⁹ conditions. It is expected that in non-RMROL conditions, however, APSC will effectively and simultaneously deploy the Duck Flats and Solomon Gulch Hatchery protections in no more than 10 hours.

[ADEC’s] definition of when a site is protected means the oil would not impact the sensitive area if the oil was to reach the sensitive area protection mechanism. In the case of the Valdez Duck Flats and Solomon Gulch Hatchery, the protection mechanism is exclusionary boom using intertidal boom in combination with calm water boom. ...

Personnel and equipment resources committed to protection of the Valdez Duck Flats and Solomon Gulch Hatchery have been reduced in the plan application, and the Duck Flats strategy was modified so that the east and west sides are deployed sequentially rather than simultaneously. To date, the proposed strategies have not been successfully implemented in two discharge exercises ... nor in multiple training exercises in the intervening months. ...

[ADEC] finds the reduction in personnel and vessels reduced APSC’s ability to protect the sensitive areas within the required timeframe ...

To date, APSC has not demonstrated that timing and completeness of the deployments is fully achievable, and [ADEC] cannot approve the revised

²⁹ The term “RMROL” is an acronym for the “realistic maximum response operating limitation,” which means the “upper limit of a combination of environmental factors that might occur at a facility or operation beyond which an operator would be unable to mount a mechanical response to a discharge event.” 18 AAC § 75.990(101).

strategies and reduced resource commitments with no plausible expectation that as devised, they will provide effective protection of the Duck Flats and Hatchery before oil reaches them. As a result, [ADEC] is requiring APSC to restore the Duck Flats and Hatchery protection strategies, including sequencing and personnel and equipment resources to the plan as part of Condition of Approval No. 3b.³⁰

Based on these findings, ADEC's approval of the revised C-Plan included several conditions designed to ensure adequate protection of the Valdez Duck Flats and Solomon Gulch Hatchery, and it described these conditions as "reasonable and necessary under AS 46.04.030(e) to ensure that the plan holder has access to sufficient resources to protect environmentally sensitive areas and meet the requirements of 18 AAC 75.425(e)(1)(F)(v) and 18 AAC 75.445(d)(4)."³¹

In 2017, Alyeska proposed to dramatically weaken protections for the Valdez Duck Flats and Solomon Gulch Hatchery.³² Despite twenty years of precedent to the contrary, this time ADEC allowed Alyeska to do so. For instance, instead of requiring Alyeska to "effectively and simultaneously deploy the [Valdez] Duck Flats and Solomon Gulch Hatchery protections in no more than 10 hours,"³³ ADEC's approval letter acknowledges that "[d]eployment of [protections for] the Solomon Gulch Hatchery will begin by hour 12 and Valdez Duck Flats deployments will begin by hour 36."³⁴ ADEC has nevertheless concluded that "overall appropriate resources are deployed for sensitive area protection" in Scenario 4.³⁵

For further example, ADEC has acknowledged several ways in which the Decision Matrix has been weakened, including the removal of "wave height, visibility, and current

³⁰ ADEC 2014 Renewal Findings Document, at 49-51.

³¹ ADEC, Alyeska VMT C-Plan Approval Letter, at 5 (Nov. 21, 2014, revised Dec. 5, 2014 and Jan. 14, 2015).

³² See Alyeska, VMT C-Plan Major Amendment Application Package (Feb. 28, 2017).

³³ ADEC 2014 Renewal Findings Document, at 50 (emphasis added).

³⁴ Exhibit A (ADEC Statement of Basis, at 9, emphasis added).

³⁵ *Id.*

direction” inputs and the substantially greater discretion for Alyeska responders to: (1) take into account “exigent conditions;” (2) determine “incident specific objectives and prioritization;” and (3) redirect response efforts to “other sensitive areas in Port Valdez” rather than prioritizing the Valdez Duck Flats and Solomon Gulch Hatchery.³⁶ Notwithstanding the removal of important data inputs and expansive new leeway granted to Alyeska, ADEC has concluded that the “updated Matrix does not change the commitment to evaluate and deploy [protections for] the Valdez Duck Flats and Solomon Gulch Hatchery within the same timeframes.”³⁷

C. Contested Issue 1 – Whether ADEC’s Decision Violates Statutory and Regulatory Requirements for the Protection of Environmentally Sensitive Areas and Areas of Public Concern.

For the reasons discussed above and in the public comments submitted to ADEC by PWSRCAC, City of Valdez, CDFU, and VFDA,³⁸ the Requesters contend that the Decision fails to adequately protect the Valdez Duck Flats and Solomon Gulch Hatchery and thus violates AS 46.04.030 and 18 AAC Ch. 75, Art. 4, including AS 46.04.030(e), 18 AAC §§ 75.425(a),(e), 75.430(a), 75.432, and 75.445.

The terms and conditions of the VMT C-Plan relevant for Contested Issue 1 are set forth primarily in:

- Volume 1 – Section 1.6.4 (Protection of Environmentally Sensitive Areas) and Section 3.10 (Protection of Environmentally Sensitive Areas and Areas of Public Concern);
- Volume 2 – Terms and conditions relating to environmentally sensitive areas, areas of public concern, Valdez Duck Flats, Solomon Gulch Hatchery, and the Decision Matrix within Section 2.0 (Scenario 2), Section 3.0 (Scenario 3), Section 4.0 (Scenario 4), and Section 5.0 (Scenario 5); and

³⁶ *Id.* at 10.

³⁷ *Id.*

³⁸ *See supra* note 4.

- Volume 3 – Section 9.0 (Sensitive Area Protection Tactics).

The factual and legal issues pertinent to Contested Issue 1 can be addressed largely through briefing and documentary evidence. To the extent testimony is needed, Requesters estimate that Contested Issue 1 may require approximately 1 to 2 days of hearing time.

D. Contested Issue 2 – Whether ADEC’s Decision Constitutes a Prejudicial Abuse of Discretion.

Under the Alaska Administrative Procedure Act, an administrative agency decision will be reversed where there has been a “prejudicial abuse of discretion,” which is established when “the agency has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.”³⁹

For the reasons discussed above and in the public comments submitted to ADEC by PWSRCAC, City of Valdez, CDFU, and VFDA,⁴⁰ the Requesters contend that the Decision constitutes a prejudicial abuse of discretion because (1) it violates applicable laws and regulations, as discussed in section C above; (2) ADEC’s findings are not supported by the evidence; (3) ADEC’s Decision is not supported by its findings; and (4) ADEC has not adequately explained or justified its substantial departure from twenty years of agency precedent concerning the protection of the Valdez Duck Flats and Solomon Gulch Hatchery from the devastating impacts of oil spills.

The terms and conditions of the VMT C-Plan relevant for Contested Issue 2 are set forth primarily in:

- Volume 1 – Section 1.6.4 (Protection of Environmentally Sensitive Areas) and Section 3.10 (Protection of Environmentally Sensitive Areas and Areas of Public Concern);

³⁹ AS § 44.62.570(b)(3).

⁴⁰ See *supra* note 4.

- Volume 2 – Terms and conditions relating to environmentally sensitive areas, areas of public concern, Valdez Duck Flats, Solomon Gulch Hatchery, and the Decision Matrix within Section 2.0 (Scenario 2), Section 3.0 (Scenario 3), Section 4.0 (Scenario 4), and Section 5.0 (Scenario 5); and
- Volume 3 – Section 9.0 (Sensitive Area Protection Tactics).

Most of the legal and factual issues relating to Contested Issue 1 are also relevant for Contested Issue 2. In light of this substantial overlap, the Requesters anticipate that Contested Issue 2 can be addressed concurrently with Contested Issue 1 with no additional hearing time needed.

III. INTERESTS OF THE REQUESTERS AND PERSONS ADVERSELY AFFECTED BY THE DECISION

The interests of the Requesters are adversely affected by the Decision. This section provides an overview of the purposes and interests protected by applicable statutes and regulations, factual background concerning the Valdez Duck Flats and Solomon Gulch Hatchery, as well as a description and explanation of (1) the nature and scope of Requesters' interests; (2) how and to what extent their interests will be directly, adversely, and substantively impaired by the contested issues; and (3) why their interests are among those the applicable laws were intended to protect.⁴¹

A. Purposes of and Interests Protected by Applicable Laws

State and federal laws relevant to the Decision are designed to protect against the calamitous impacts of oil spills and to uphold the public's strong interest in environmental conservation, quality of life, and economic opportunities that would be substantially impaired by oil spills if these laws are not properly implemented and enforced.

⁴¹ See 18 AAC § 15.200(c)(3), (4)(A)-(B), and (d).

The Alaska Supreme Court has afforded great weight to the purposes underlying the Alaska C-Plan statute and the interests it is designed to protect. In *Lakosh v. ADEC*, the Court recited the Alaska Legislature’s finding at the time of the C-Plan statute’s enactment in 1980 that “it is a matter of the highest urgency and priority to protect Alaska’s coastal and inside water, estuaries, wetlands, beaches, and land from the damage which may be occasioned by the discharge of oil.”⁴² The Court further noted that, “in 1990, the year after the EXXON VALDEZ ran aground in Prince William Sound, the legislature strengthened the statute to require that all [C-Plans] meet legislatively specified response planning standards for containing, controlling, and cleaning up spills.”⁴³

In *Copeland v. Ballard*, the Alaska Supreme Court once again explained that the purpose of C-Plans is to “prevent, contain, and clean up oil spills from oil tank vessels, offshore oil exploration or production facilities, and large oil terminal facilities.”⁴⁴ The Court went on to emphasize that the role C-Plans play in “protect[ing] 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, ... is a matter of utmost importance to the public interest.”⁴⁵ In light of the strong public interest underlying the C-Plan statute, as well as the Alaska Constitution’s due process protections, the Court ultimately held that ADEC had abused its discretion by dismissing two intervenors from a C-Plan administrative adjudication.⁴⁶

⁴² *Lakosh v. ADEC*, 49 P.3d 1111, 1113 (Ak. 2002) (quoting Alaska Legislature, Ch. 116, § 1(a)(1), SLA 1980).

⁴³ *Id.* (citing AS § 46.04.030(k) and Alaska Legislature, Ch. 191, §§ 9, 10, SLA 1990).

⁴⁴ *Copeland v. Ballard*, 210 P.3d 1197, 1200 (Ak. 2009) (citing AS § 46.04.030 and quoting *Lakosh*, 49 P.3d at 1113 n.2).

⁴⁵ *Id.* at 1203.

⁴⁶ *See id.* at 1205-06.

Following the Exxon Valdez Oil Spill, Congress also took bold steps to protect against catastrophic impacts from oil discharges. In Section 2732 of the Oil Pollution Act of 1990, Congress found that:

- A. the March 24, 1989, grounding and rupture of the fully loaded oil tanker, the EXXON VALDEZ, spilled 11 million gallons of crude oil in Prince William Sound, an environmentally sensitive area;
- B. many people believe that complacency on the part of the industry and government personnel responsible for monitoring the operation of the Valdez terminal and vessel traffic in Prince William Sound was one of the contributing factors to the EXXON VALDEZ oil spill;
- C. one way to combat this complacency is to involve local citizens in the process of preparing, adopting, and revising oil spill contingency plans;
- D. a mechanism should be established which fosters the long-term partnership of industry, government, and local communities in overseeing compliance with environmental concerns in the operation of crude oil terminals; ...
- G. the present system of regulation and oversight of crude oil terminals in the United States has degenerated into a process of continual mistrust and confrontation; [and]
- H. only when local citizens are involved in the process will the trust develop that is necessary to change the present system from confrontation to consensus; ...⁴⁷

Based on these findings, Congress mandated the creation of Regional Citizens' Advisory Councils ("RCACs") and assigned them duties to:

- A. provide advice and recommendations ... on policies, permits, and site-specific regulations relating to the operation and maintenance of terminal facilities ... which affect or may affect the environment in the vicinity of the terminal facilities;
- B. monitor ... the environmental impacts of the operation of the terminal facilities ... ;
- C. monitor those aspects of terminal facilities' ... operations and maintenance which affect or may affect the environment in the vicinity of the terminal facilities;
- D. review ... the adequacy of oil spill prevention and contingency plans for the terminal facilities ... operating in Prince William Sound ... ;

⁴⁷ 33 U.S.C. § 2732(a)(2).

- E. provide advice and recommendations ... on port operations, policies and practices; [and]
- F. recommend ... (i) standards and stipulations for permits and site-specific regulations intended to minimize the impact of the terminal facilities' ... operations in the vicinity of the terminal facilities; (ii) modifications of terminal facility operations and maintenance intended to ... to minimize the risk of oil spills; ...and (iv) modifications to the oil spill prevention and contingency plans for terminal facilities ... in Prince William Sound ... intended to enhance the ability to prevent and respond to an oil spill;
...⁴⁸

Both the Alaska Legislature and Congress have thus placed a high priority on C-Plan requirements, treating them as a key mechanism for avoiding the massive destruction of the environment and injury to the public that can result from oil spills and inadequate response efforts. Moreover, as shown by the Alaska Supreme Court's decision in *Copeland* and Congress's creation of RCACs, citizens are meant to play a paramount role in ensuring the rigorous and effective implementation of C-Plans.

B. Factual Background

In addition to the strengthening of the C-Plan statute and creation of RCACs, the Exxon Valdez Oil Spill led to civil and criminal settlements totaling more than \$1 billion, and to the creation of the Exxon Valdez Oil Spill Trustee Council ("EVOS Trustee Council").⁴⁹ A significant portion of the civil settlement funds have been used by the EVOS Trustee Council for restoration projects to improve subsistence resources, enhance salmon streams, reduce marine pollution, and restore damaged habitats.⁵⁰ For instance, in the Valdez Duck Flats Restoration Project, ADNR "identified the waters of Valdez Duck Flats ... as crucial estuarine habitat in the

⁴⁸ *Id.* § 2732(d)(6).

⁴⁹ The EVOS Trustee Council includes the Commissioners of ADFG, ADEC, and the Alaska Attorney General, as well as the Alaska leadership of the National Marine Fisheries Service, U.S. Forest Service, and U.S. Department of the Interior. *See* EVOS Trustee Council Website, A State and Federal Partnership, <http://www.evostc.state.ak.us/index.cfm?FA=aboutUs.home>.

⁵⁰ *See generally id.*, Restoration Plan, <http://www.evostc.state.ak.us/index.cfm?FA=facts.restorationPlan>.

Prince William Sound Area Plan ... [that] provides important habitat for water birds, anadromous fish, and other estuarine and intertidal species,” and project goals were to “further identify injured resources, aid in the recovery of spill impacted populations, mitigate effects of visitor traffic, design a local volunteer monitoring program, and educate the public about the value of tidelands.”⁵¹ Another settlement-funded effort near the VMT was the Tatitlek Coho Salmon Release Restoration Project, which used smolt from the Solomon Gulch Hatchery to replace lost salmon runs for subsistence use.⁵²

The U.S. Army Corps has described these areas in detail in connection with navigational projects, and it has acknowledged that their importance far exceeds that of other sensitive areas in the region. For example, the Corps has explained that the Valdez Duck Flats:

- Have been “regarded by federal and state resource agencies and the scientific community” since the 1970s as the “most productive ecosystem in Port Valdez, containing unique habitat with high natural productivity, plant and animal diversity, and essential habitat for biological resources;”⁵³
- Have been “recognized as an Aquatic Resource of National Importance by the U.S. Army Corps of Engineers;”⁵⁴
- Are “noteworthy for their size not only in [Prince William Sound] but in Alaska” because salt marshes are “relatively rare” in Alaska;⁵⁵
- Consist of “expansive tidal flats and marsh at the northeastern head of Valdez Harbor,” which “are home to a diversity of marine invertebrates that seasonally support flocks of migrating shorebirds and waterfowl, rearing pink, chum and

⁵¹ See *id.*, Valdez Duck Flats Restoration Project No. 97230, http://www.evostc.state.ak.us/index.cfm?FA=searchresults.projectInfo&Project_ID=1139.

⁵² See *id.*, Tatitlek Coho Salmon Release Restoration Project No. 00127, http://www.evostc.state.ak.us/index.cfm?FA=searchResults.projectInfo&Project_ID=298.

⁵³ U.S. Army Corps Eng’s, Draft Interim Integ. Feasibility Report, Env’tl. Assessment, and Finding of No Signif. Impact, Navigation Improvements, Valdez, Alaska [“Valdez Navigation EA”], Appx. 4, at 20 (U.S. Fish and Wildlife Coordination Act Report) (Jan. 2010), *available at* <http://www.poa.usace.army.mil/Portals/34/docs/civilworks/currentproj/valdezharborfeasibilityrptandea.pdf>.

^{f.} See Valdez Navigation EA, at 96.

⁵⁴ *Id.*, Appx. 4, at 20.

⁵⁵ *Id.*, Appx. 4, at 20. See *id.* Valdez Navigation, EA, at 27.

coho salmon.”⁵⁶

- Are fed by six freshwater streams, all of which are “anadromous” and classified by ADFG as “sensitive habitat;”⁵⁷
- Provide foraging habitat for salmon fry from Siwash Creek and other creeks in the spring, and, since Siwash Creek is the “most important pink salmon producer in Port Valdez,” the Duck Flats support a high percentage of the pink salmon taken in the Valdez Arm commercial fishery;⁵⁸
- Provide important habitat for ducks, migratory waterfowl, and many species of sea birds,⁵⁹ and serve as “easily the best waterfowl habitat in all of Port Valdez and possibly in all of Valdez Arm;”⁶⁰ and
- Provide important habitat for sea otters and other marine mammals.⁶¹

The Corps has also explained that the Solomon Gulch Hatchery plays an important role in ensuring the continued health and productivity of salmon rearing and foraging in the Valdez Duck Flats, as well as economic vitality of the region, noting that:

- Ten million pink, chum, and coho salmon fry are released from the Solomon Gulch Hatchery annually;⁶²
- After being released from the Solomon Gulch Hatchery, these millions of juvenile salmon are carried toward the Duck Flats by the counter-clockwise currents in Port Valdez;⁶³ and
- The “returning adults attract many anglers with trailer-hauled pleasure craft,” with transient boat operators reaching “200 per day” during peak-use months.⁶⁴

⁵⁶ *Id.*, Valdez Navigation EA, at 9. *See id.* Appx. 4, at 14 (describing the Duck Flats and nearby areas as providing “important habitat components for the early stages of fry development and feeding for chum and pink salmon”); *id.* Appx. 4, at 20 (describing the Duck Flats as “1000 acres of extremely productive intertidal fish and wildlife habitat providing high levels of nutrient availability”).

⁵⁷ *Id.* Appx. 4, at 15.

⁵⁸ *Id.*

⁵⁹ *Id.*, Valdez Navigation EA, at 115, 118. *See id.*, Appx. 4, at 20.

⁶⁰ *Id.*, Valdez Navigation EA, at 118.

⁶¹ *Id.* at 116, 119, 137.

⁶² *Id.*, Appx. 4, at 15.

⁶³ *Id.*

⁶⁴ *Id.*, Valdez Navigation EA, at 140.

It is thus well established that the Valdez Duck Flats serve as one of the most important salmon, waterfowl, and wildlife habitats in Alaska, and its salmon productivity is sustained in part by the Solomon Gulch Hatchery. Moreover, through the multi-year EVOS Trustee Council restoration projects described above, State and federal resource agencies have demonstrated a longstanding financial and public policy commitment to ensuring the continued health and vitality of these resources.

C. Interests of and Adverse Effects on PWSRCAC

It is indisputable that PWSRCAC is an aggrieved party with standing to bring this administrative appeal. PWSRCAC is one of the RCACs whose creation was mandated by Congress in the aftermath of the Exxon Valdez Oil Spill.⁶⁵ As such, its fundamental mission and statutory mandate is to promote environmentally safe operation of the Valdez Marine Terminal, and it has been specifically tasked with reviewing the adequacy of Alyeska's VMT C-Plan and recommending modifications to ensure its ability to prevent and respond to an oil spill.⁶⁶

The Requesters contend that ADEC has unlawfully weakened C-Plan protections for the Valdez Duck Flats and Solomon Gulch Hatchery, putting these sensitive areas at greater risk of harm from oil spills. PWSRCAC's interests in ensuring robust C-Plan implementation and protection of the Valdez Duck Flats and Solomon Gulch Hatchery against the harmful impacts of oil spills are adversely affected and substantively impaired by the Decision. The Contested Issues and PWSRCAC's interest in adjudicating them also fall squarely within the purposes of and interests protected by the Alaska C-Plan statute and the federal Oil Pollution Act.

The interests of PWSRCAC's eighteen member organizations are also adversely affected

⁶⁵ See 33 U.S.C. § 2732(d); PWSRCAC Website, About Us, <http://www.pwsrcac.org/about/>.

⁶⁶ See 33 U.S.C. § 2732(d)(6)(D) and (F)(iv).

and substantively impaired by the Contested Issues.⁶⁷ By way of example, the interests of three of these member organizations—PWSAC, City of Valdez, and CDFU—will be discussed in more detail in sections D, E, and F below.

D. Interests of and Adverse Effects on PWSAC

PWSAC is a non-profit Alaska corporation founded in 1974 by a local commercial fishermen's organization to optimize Alaska's wild salmon resources. PWSAC produces hatchery-born, ocean-raised wild salmon for the commercial, sport, and subsistence fisheries in Prince William Sound.⁶⁸ PWSAC engages in egg transfers with the Solomon Gulch Hatchery to support its operations.⁶⁹ Additionally, PWSAC receives hundreds of thousands of dollars of enhancement taxes annually from fish produced at the Solomon Gulch Hatchery, which is operated by VFDA. The State of Alaska collects a 2% enhancement tax on all fish caught in Prince William Sound.⁷⁰ As the Regional Hatchery Organization, PWSAC receives that money,⁷¹ half of which is generated by the Solomon Gulch Hatchery. PWSAC thus has a strong interest in and depends upon maintaining a pristine and robust environment in Prince William Sound for the protection of salmon stocks and their genetic variety.

As discussed above, the Requesters contend that ADEC has unlawfully weakened C-Plan

⁶⁷ PWSRCAC is comprised of the following 18 member organizations: Alaska State Chamber of Commerce, Chugach Alaska Corporation, City of Cordova, City of Homer, City of Kodiak, City of Seldovia, City of Seward, City of Valdez, City of Whittier, Community of Chenega Bay, Community of Tatitlek, CDFU, Kenai Peninsula Borough, Kodiak Island Borough, Kodiak Village Mayors Association, Oil Spill Region Environmental Coalition, Port Graham Corporation, and PWSAC. See PWSRCAC Website, Member Entities, <http://www.pwsrcac.org/about/member-entities/>.

⁶⁸ See generally PWSAC Website, About, <http://pwsac.com/about/history/>.

⁶⁹ See Exhibit F (Letter from PWSAC to PWSRCAC, Nov. 15, 2017).

⁷⁰ See PWSAC Website, History (Enhancement Tax), <http://pwsac.com/about/history/>; Alaska Dept. Revenue - Tax Division Website, Salmon Enhancement Tax Historical Overview, <http://www.tax.alaska.gov/programs/programs/reports/Historical.aspx?60632>.

⁷¹ See *supra* note 77.

protections for the Valdez Duck Flats and Solomon Gulch Hatchery, exposing these areas to greater risk of harm from oil spills. PWSAC's interests in preserving the Valdez Duck Flats and Solomon Gulch Hatchery and protecting these areas from oil spills are thus adversely affected and substantively impaired by the Decision. PWSAC is also concerned that the weakening of the VMT C-Plan could set a precedent that would lead to the weakening of other C-Plans in the region, posing greater oil spill risks to PWSAC's hatchery operations throughout the region.⁷² The Contested Issues and PWSAC's interest in adjudicating them also fall squarely within the purposes of and interests protected by the Alaska C-Plan statute and the federal Oil Pollution Act.

E. Interests of and Adverse Effects on the City of Valdez

The City of Valdez is an Alaska municipal corporation representing a population of approximately 4,500 Alaskans on the northeast tip of Prince William Sound.⁷³ According to ADFG, "Valdez Arm supports the largest recreational fishery in Prince William Sound (PWS) and the largest pink salmon commercial fishery in the state, and anglers fishing from Valdez account for nearly one-half of the fishing effort in all the Sound."⁷⁴ The economic value of the Solomon Gulch Hatchery to the Valdez economy is in excess of \$80 million.⁷⁵ It supports hundreds of jobs, including nearly 1,000 jobs on vessels alone,⁷⁶ and provides landing taxes to

⁷² See Exhibit F.

⁷³ See generally City of Valdez Website, About Valdez, <http://www.ci.valdez.ak.us/index.aspx?nid=114>.

⁷⁴ See ADFG, Division of Sport Fish, Southcentral Region, PWS Recreational Fishing Series – Valdez (Oct. 2006), available at <http://www.adfg.alaska.gov/static/fishing/pdfs/sport/byarea/southcentral/valdez.pdf>.

⁷⁵ See VDFA, Economic Impact of the Valdez Fisheries Dev't Ass'n, at 3-4 (Dec. 2013) (prepared by McDowell Group, Inc.), available at https://www.adfg.alaska.gov/static/.../vdfa_economic_impact_report_dec2013.pdf.

⁷⁶ See *id.*

the City and economic benefits to local businesses.

For the reasons discussed above, the vitality of these fisheries is maintained in large part by the Valdez Duck Flats and Solomon Gulch Hatchery. The City and its residents depend heavily on these sensitive areas to sustain the world-class salmon runs which support its economy, including not only commercial, sport, and subsistence fisheries, but also the associated tourism, lodging, bear viewing, wilderness guide, and supply businesses. The City of Valdez and its residents were devastated by the Exxon Valdez Oil Spill in 1989 due to its harmful impacts on salmon and estuarine habitat. As such, the City has a strong interest in ensuring the VMT C-Plan complies with applicable regulations and is vigorously implemented and enforced.

The Requesters contend that ADEC has unlawfully weakened C-Plan protections for the Valdez Duck Flats and Solomon Gulch Hatchery, exposing these areas to greater risk of harm from oil spills. The City's interests in protecting these areas from oil spills are thus adversely affected and substantively impaired by the Decision. The Contested Issues and the City's interest in adjudicating them also fall squarely within the purposes of and interests protected by the Alaska C-Plan statute and the federal Oil Pollution Act.

F. Interests of and Adverse Effects on CDFU

CDFU is an Alaska non-profit corporation dedicated to preserving, promoting, and perpetuating commercial fishing, safety at sea, conservation, responsible management, and general welfare in Alaska's Area E, which includes the waters of Prince William Sound. CDFU represents and advocates on behalf of over 900 commercial fishermen and their families who harvest Alaska's sustainable wild resources.⁷⁷ CDFU's institutional interests and the livelihoods

⁷⁷ See generally CDFU Website, About CDFU, <http://cdfu.org/about-cdfu/>.

of the fishermen it represents depend in large part on the continued health and sustainability of the Valdez Duck Flats and Solomon Gulch Hatchery. Commercial fishermen were devastated by the Exxon Valdez Oil Spill and the damage it caused to salmon runs and estuarine habitat. CDFU thus has a strong interest in ensuring the VMT C-Plan complies with applicable regulations and is vigorously implemented and enforced.

The Requesters contend that ADEC has unlawfully weakened C-Plan protections for the Valdez Duck Flats and Solomon Gulch Hatchery, exposing these areas to greater risk of harm from oil spills. CDFU's interests in protecting these areas from oil spills are thus adversely affected and substantively impaired by the Decision.

IV. REASONS HEARING SHOULD BE GRANTED

The Requesters respectfully submit that an adjudicatory hearing should be granted because they have identified in detail above numerous legal and factual problems with ADEC's Decision, as well as substantial adverse effects that will result if the unlawful Decision is not promptly corrected.

V. PROPOSED ALTERNATIVE TERMS AND CONDITIONS

In their public comments, the Requesters and others have vehemently urged ADEC to retain the prior Decision Matrix and other related protections for the Valdez Duck Flats and Solomon Gulch Hatchery.⁷⁸ The Requesters hereby reiterate their proposal for these provisions of the VMT C-Plan to be reinstated.

⁷⁸ See *supra* note 4.

JOINT REQUEST FOR ALTERNATIVE DISPUTE RESOLUTION

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

DATED: November 21, 2017


Respectfully submitted,

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AFFIDAVIT OF SERVICE

I hereby swear and affirm that the foregoing JOINT REQUEST FOR ADJUDICATORY HEARING AND JOINT REQUEST FOR ALTERNATIVE DISPUTE RESOLUTION were served via First-Class U.S. Mail and electronic mail on the following:

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Dated: November 21, 2017.

Signed: Jennifery

STATE OF ALASKA,

VAUDEZ COUNTY, SS

At CITY HALL, VAUDEZ,

this 21 day of November 2017,

affiant JENNIFER FLEMING personally appeared

and acknowledged this instrument by them sealed and subscribed,

to be their free act and deed.

Before me: Lydia Lardy, Notary Public

My Commission Expires: 3/13/21

