

Briefing for PWSRCAC Board of Directors – January 2018

INFORMATION ITEM

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| <u>Sponsor:</u> | Linda Swiss |
| <u>Project number and name or topic:</u> | 651- Valdez Marine Terminal C-Plan Review and Adjudicatory Hearing Request |

1. **Description of agenda item:** This action item is intended to brief the Board on the status of Alyeska’s Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan (VMT C-Plan) amendments filed in 2017 and subsequent request for adjudicatory hearing to ADEC. The VMT C-Plan was approved on November 21, 2014 for a period of five years, and is set to expire in November 2019.

VMT Amendment 2017-1: The review process began earlier this year on VMT Amendment 2017-1. This amendment covered, among other changes, adjustments to Scenario 4, incorporating enhanced mechanical recovery technology (Current Busters and Crucial skimmers), and Alyeska demonstrating resources needed to conduct assessment and monitoring of nonmechanical options.

On October 23, 2017, the Alaska Department of Environmental Conservation (ADEC) issued a decision on VMT Amendment 2017-1 dealing with changes to Scenario 4 and protections for the Solomon Gulch Hatchery and Valdez Duck Flats (Attachment A). ADEC approved Alyeska’s amendment which makes it much more difficult to trigger deployment of boom to protect these areas early in a spill response. PWSRCAC is opposed to Alyeska replacing the *Solomon Gulch Hatchery and Valdez Duck Flats Sensitive Area Protection Mobilization Decision Matrix* (Decision Matrix), developed in 1997 by a multi-stakeholder group as a Condition of Approval, with a revised matrix that would rarely, if ever, trigger immediate and rapid deployment of protective boom for these areas in the early hours of a spill response.

Due to concerns over the changes to the Decision Matrix contained in Volume 3 of the plan (Table 9.0-1), PWSRCAC, the City of Valdez, and Prince William Sound Aquaculture Corporation (PWSAC) jointly filed a “Request for Adjudicatory Hearing” on November 21, 2017. This step is considered an “administrative appeal” of ADEC’s October 23, 2017 decision.

Out of concern about the delay in protection of the Solomon Gulch Hatchery, Valdez Fisheries Development Association (VFDA) submitted comments during the public review. Further, VFDA filed its own “Request for Adjudicatory Hearing” on November 21, 2017.

ADEC has posted materials related to the filings on their website. Links to materials are listed below for reference:

- Administrative appeals: <http://dec.alaska.gov/Commish/review-guidance.htm>
- ADEC Notice of Request for Adjudicatory Hearing (PWSRCAC, City of Valdez, PWSAC): <http://test.dec.alaska.gov/commish/review-guidance/notice-of-appeal-prince-william-sound>

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- PWSRCAC/City of Valdez/PWSAC request:
<http://dec.alaska.gov/Commish/documents/pwsrcac-request-for-adjudicatory-hearing-valdez-marine-terminal.pdf>
- ADEC Notice of Request for Adjudicatory Hearing (VFDA):
<http://test.dec.alaska.gov/commish/review-guidance/notice-of-appeal-valdez-fisheries>
- VFDA request: <http://dec.alaska.gov/Commish/documents/vfda-request-for-adjudicatory-hearing-valdez-marine-terminal.pdf>

Requesting an adjudicatory hearing is an administrative procedure used to appeal an ADEC staff decision to the ADEC Commissioner. Through this process, if someone is directly and adversely affected by a decision, they can request the ADEC Commissioner overturn the ADEC staff decision. The process for adjudication is defined in state regulations. Because the hearing is administrative in nature, it is an appeal within the department itself and not a legal, court-based process. It is designed to avoid the more complex, legal steps involved in suing in court, avoiding litigation.

It is necessary for PWSRCAC to retain legal representation under this appeal process. Responses to comments, briefings, and attendance at hearings may be needed as this appeal proceeds.

2. **Why is this item important to PWSRCAC:** PWSRCAC believes the commitment in the VMT C-Plan requiring the “immediate and rapid deployment of protective oil spill boom” for Solomon Gulch Hatchery and Duck Flats during an oil spill at the terminal is removed by VMT Amendment 2017-1. Removal of this commitment would put commercial, sport, and subsistence use fishing resources, and a highly productive biological area that provides habitat for a variety of waterfowl, small mammals and marine mammals, at unnecessary risk of oil reaching these locations and causing both short and long-term damage if there was a spill at the terminal.

Additionally, the VMT C-Plan establishes state and federal oil spill prevention and response requirements that Alyeska is required to take to prevent and respond to a spill. Reviewing contingency plans is a major task for PWSRCAC as outlined in both the PWSRCAC/Alyeska contract and OPA 90.

3. **Previous actions taken by the Board on this item:**

| Meeting | Date | Action |
|---------|----------|--|
| XCOM | 11/10/17 | Approved authorizing the Executive Director to file Request for an Adjudicatory Hearing on ADEC’s Oct 23, 2017 approval of VMT Amendment 2017-1. |

4. **Committee Recommendation:** The OSPR Committee has been briefed on the status of the VMT C-Plan amendments.

5. **Relationship to LRP and Budget:** Project 651-Contingency Plan Review is in the approved FY2018 budget and annual work plan.

**6510-State Contingency Plan Review
As of December 7, 2017**

FY-2018 Budget \$92,500.00

Actual and Commitments

Status of VMT C-Plan Amendments and PWSRCAC Adjudicatory Hearing 4-7

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|-------------------------------------|--------------------|
| Actual Year-to-Date | \$19,357.49 |
| Commitments (Professional Services) | <u>\$31,136.25</u> |
| Actual + Commitments | <u>\$50,493.74</u> |
| | |
| Amount Remaining | <u>\$42,006.26</u> |

6. **Action Requested of the Board of Directors:** None, item is for information only.
7. **Attachments:** ADEC's October 23, 2017 approval letter and Basis of Decision on VMT Amendment 2017-1