



Regional Citizens' Advisory Council / "Citizens promoting environmentally safe operation of the Alyeska terminal and associated tankers."

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MEMBERS

May 31, 2016

Jade Gamble

Alaska Department of Environmental Conservation

43335 Kalifornsky Beach Road, Suite 11

Soldotna, AK 99669 *Via email: decsparplanning@alaska.gov*

Subject: Supplemental Comments on Proposed Amendment to Annex B of the Alaska Federal/State Preparedness Plan for Response to Oil & Hazardous Substance Discharges/Releases (Unified Plan)

Dear Ms. Gamble:

On behalf of the member organizations of the Prince William Sound Regional Citizens' Advisory Council (PWSRCAC or Council), we submit for consideration and action the PWSRCAC's enclosed comments regarding the Alaska Department of Environmental Conservation (ADEC), U.S. Coast Guard (USCG), and Environmental Protection Agency (EPA), on behalf of Alaska Regional Response Team's (ARRT) proposed revisions to Annex B of the Alaska Federal/State Preparedness Plan for Response to Oil & Hazardous Substance Discharges/Releases (Unified Plan).

The PWSRCAC is an independent, non-profit corporation authorized by federal law whose mission is to promote environmentally safe operation of the Valdez Marine Terminal and associated tankers. This Council's work is mandated by the Oil Pollution Act of 1990 and guided by its contract with Alyeska Pipeline Service Company. The PWSRCAC's membership is comprised of representatives from 18 member organizations from communities throughout the Exxon Valdez oil spill region in Prince William Sound, Kenai Peninsula and the Kodiak Archipelago, including city and borough governments, the commercial fishing and aquaculture industries, Alaska Natives, the State Chamber of Commerce, the environmental community, and the outdoor recreation and tourism industries.

The proposed amendment dissolves the Regional Stakeholders Committee (RSC) and replace it with two groups: the Tribal and Local Government Group (TLG), and the Affected Stakeholders Group (ASG). PWSRCAC believes that the proposed changes as currently drafted would not accomplish any improved engagement with communities, tribes, and other organizations during oil spill responses. The proposed changes do not clarify the role of existing stakeholder participation, but instead have created additional confusion among our member entities about the role of local communities and tribal governments during an oil spill response. PWSRCAC sees no advancements from this amendment, but rather the potential for net loss to communities, tribes, and stakeholders.

We appreciate that an extension of the comment period was granted as it allowed us time to obtain additional information about the background to the proposal and develop more extensive comments. Additionally, the PWSRCAC members heard from the

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ADEC and USCG at the Council's May board meeting, received a letter from ADEC Commissioner Hartig that provided further insight to the proposal, and reviewed ADEC's Fact Sheet that explained some of the reasons for the proposal. However, after reading the documents and hearing from Federal and State agency representatives, we do not understand how the proposed change would accomplish the stated goal to "enhance engagement with communities and tribes during oil spill responses" and to overcome the problem that the "existing RSC group wasn't clear about stakeholder participation."

PWSRCAC understands that the proposed amendment was driven primarily by the *Kulluk* drill rig grounding in 2012, during which the process of stakeholder engagement proved challenging. We have been informed that other drivers for the changes to the Unified Plan include:

- The current Unified Plan language does not specify who will be included on the RSC, leaving it up to the Unified Command to make difficult decisions during the time of an incident;
- There is a desire to limit disruptions caused by outside groups inserting political agendas into the spill response efforts;
- The current Unified Plan language does not satisfy the federal government-to-government tribal consultation requirements;
- To better align the Unified Plan with the National Contingency Plan and Area Contingency Plans;
- The Incident Action Plan (IAP) cannot be shared because it is too cumbersome and certain information cannot be legally shared; and
- The current RSC language is too prescriptive with regards to when the Unified Command meets with the RSC.

PWSRCAC agrees that these are important considerations, but in our review the proposed amendment does not satisfy or solve any of the issues or drivers cited as necessitating these changes. For example, with the TLG and ASG, the Unified Command will still have to make some difficult decisions as to the membership of each group during an incident, and the two group concept does not preclude or impede in any way the federal government-to-government tribal consultation requirement should a tribe wish to exercise that right. Additionally, the current process of making IAPs available for public review, minus redacted information that is sensitive or private, is independent of how stakeholder groups are organized, and we are not aware of any legal constraints to publishing portions of the IAP. We note and support that the State of Alaska has been making IAPs available to the public on their website for a number of years.

In the final analysis, the PWSRCAC believes each of these "drivers" can best be dealt with and remediated effectively and appropriately through the process that is part of this organization's recommendations and requests.

This letter and the enclosed comments supplement the positions stated in our April 29, 2016 submission. PWSRCAC offers the following five recommendations, which are discussed in more detail in the enclosed comments:

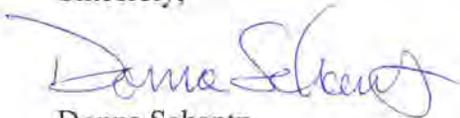
1. The PWSRCAC recommends and requests that the proposed changes to Annex B be withdrawn and a process initiated that ensures that local and tribal governments, Alaska's Regional Citizens' Advisory Councils (RCACs), and other stakeholders engage directly with ADEC, USCG, and EPA, on behalf of the ARRT, in a process to revise the proposed draft amendment so as to enhance engagement with communities, tribes, non-governmental organizations, and other stakeholders during oil spill responses, and clarify the expectations for stakeholder participation.

2. The PWSRCAC recommends and requests that the RSC not be replaced by two separate stakeholder groups, and instead ADEC, USCG, and EPA, on behalf of the ARRT, work with this organization and other stakeholders on refining the RSC process to clarify membership parameters and refine workable means for stakeholders interacting with the Unified Command during an incident.
3. In the event that the RSC is dissolved and replaced with two separate stakeholder groups, the PWSRCAC recommends and requests that this RCAC be designated as a participant in the TLG, not the ASG.
4. PWSRCAC recommends and requests that the level of access to Unified Command and IAP as currently provided is preserved, regardless of any changes to the organization of current stakeholder groups.
5. PWSRCAC recommends and requests that, prior to final approval of any proposed changes to the Annex B of the Unified Plan, a complete and comprehensive public review draft of Annex B is published that clearly shows how the revised content will supplement or replace information in the current draft, including clarification that the paragraph regarding RCACs will remain in the document unchanged from the current draft.

Alaska has always been a leader, in the U.S. and worldwide, in oil spill preparedness and response. Our Unified Plan is a strong and comprehensive document that continues to evolve with changes to regulation and practice. We do not disagree that the stakeholder engagement process in Alaska should be periodically reconsidered and fine-tuned based on lessons learned through incidents and exercises. However, we believe that there is a fatal flaw in the proposal at hand, in that a solution has been presented without clearly articulating the problem. Perhaps a better approach would be to start a dialogue that includes stakeholders, and consider how we could revise the RSC process to address the challenges that arose during the *Kulluk* incident. As we have stated many times, PWSRCAC would be eager to participate in and support such an effort.

On behalf of PWSRCAC members from across the *Exxon Valdez* oil spill region of Prince William Sound and the Kodiak Archipelago, we request the favorable support by ADEC, USCG, and EPA, on behalf of the ARRT, of this letter and the attached comments and recommendations regarding these matters of such importance to stakeholders in the EVOS region and throughout the State.

Sincerely,



Donna Schantz
Executive Director



Amanda Bauer
President

Enclosure: Supplemental Comments from the PWSRCAC about the ARRT Proposed Amendment to Annex B of the Alaska Federal/State Preparedness Plan for Response to Oil & Hazardous Substance Discharges/Releases (Unified Plan)

cc: Chris Field, ARRT Co-Chair
Mark Everett, ARRT Co-Chair
Kristin Ryan, ADEC
Commissioner Larry Hartig, ADEC
Governor Bill Walker, State of Alaska
ARRT Members



**Supplemental Comments on Proposed Amendment to Annex B of the
Alaska Federal/State Preparedness Plan for Response to Oil & Hazardous
Substance Discharges/Releases (Unified Plan)
May 31, 2016**

1. The process of developing the proposed amendment did not consider stakeholder concerns, views or priorities, nor utilize stakeholder experience and expertise

The proposal to change the Regional Stakeholder Committee (RSC) structure and process outlined in Annex B of the Unified Plan was first presented to the Prince William Sound Regional Citizens' Advisory Council (PWSRCAC) in 2013. At that time, the PWSRCAC provided written comments to the Alaska Department of Environmental Conservation (ADEC) and other members of the Alaska Regional Response Team (ARRT) outlining its concerns that the proposed changes would substantially reduce the role of local and tribal governments, stakeholders, and the Regional Citizens' Advisory Councils (RCACs) in oil spill response. PWSRCAC recommended that the ARRT engage with the RCACs and other stakeholder groups to collaborate on an approach to strengthen the RSC process. Instead, a draft revision to Annex B of the Unified Plan was published three years later by ADEC, the U.S. Coast Guard (USCG), and the Environmental Protection Agency (EPA), on behalf of the ARRT, that was nearly identical to the 2013 draft, with no apparent consideration of our recommendation that the ARRT enter into a collaborative process with stakeholders to refine the RSC process. The stakeholders are knowledgeable and essential components/assets to spill prevention and response.

We acknowledge the experience of the On-Scene Coordinators (OSC) and the value of their input into the Unified Plan, but we still believe that a better approach to updating Annex B would have been to include local and tribal governments, RCACs, and other RSC participants in the process.

We understand the myriad of challenges communities in the *Exxon Valdez* oil spill region (EVOS) faced in 1989, that because of a lack of prior planning and coordination, complacency had crept into oil spill prevention efforts at every level - with industry, with government regulators, and with the public. Based on that experience and efforts to avoid another major spill since, we believe the approach to updating Annex B should include soliciting input from local and tribal governments, RCACs, and other stakeholders to improve the RSC process.

A "stakeholder engagement" process that is designed without stakeholder input does not make sense. PWSRCAC cannot envision how the proposed shift from an RSC structure, which has been in use in drills, exercises, and training for over a decade, to a two-group structure that does not resemble anything in place currently in Alaska or elsewhere in the U.S., will enhance stakeholder engagement during oil spills.

The PWSRCAC recommends and requests that the proposed changes to Annex B be withdrawn and a process initiated that ensures that local and tribal governments, Alaska's RCACs, and other stakeholders engage directly with ADEC, USCG, and EPA, on behalf of the ARRT, in a process to revise the proposed draft amendment so as to improve interaction between communities, tribes, non-governmental organizations, and organizations during oil spill responses, and address other matters of concern to the ARRT and stakeholders

2. Changing from the RSC to the Tribal and Local Government Group (TLG) and Affected Stakeholders Group (ASG) will be detrimental to the best interests of the public and will not achieve the stated intent of the proposal

Annex B is being updated ostensibly to enhance engagement with communities and tribes during an oil spill response. As a federally-mandated citizens' group, the PWSRCAC strongly supports the concept that communities, tribes, and other stakeholders have a well-defined role for interfacing directly with the Unified Command (UC) during oil spills. As ADEC's Fact Sheet points out, inclusion of tribal and local government representation in oil spill response is mutually beneficial – spill managers have a duty of care to protect community members during a spill response, while local and tribal entities have resources and knowledge to contribute to the response. PWSRCAC strongly agrees with that assessment.

PWSRCAC is concerned, however, about the concept outlined in the proposed revisions to Annex B, and later published in ADEC's Fact Sheet, that suggest stakeholder organizations beyond local and tribal governments warrant a "separate audience" than tribal and local governments. We understand the need to ensure that a manageable stakeholder engagement process is in place to work effectively, but as an organization that represents a broad constituency including tribal and local governments as well as other stakeholder interests, we are concerned by the amendment's diminishment of the role of all stakeholders. The members of the PWSRCAC are all stakeholders and should be treated as such. Our experience has been that there is significant overlap across these groups. In Alaska, where local and tribal governments share many common interests and membership with tourism, environmental, fishing, recreation, or aquaculture groups, the "two group" concept would create serious problems in its implementation.

The shift away from the RSC structure to a TLG and ASG has no clear nexus to the National Contingency Plan, and PWSRCAC cannot find a single example of an Area Contingency Plan that utilizes this two-group approach. Additionally, it is unclear how unincorporated communities fit into the new structure as they do not technically meeting the requirements for the TLG. It is important that any change from the RSC to a TLG and ASG be thoroughly vetted to insure it would result in significant improvements to the stakeholder engagement process. This must be done *before* requiring changes to contingency plans, drills, and exercises statewide. If the ARRT reconsiders the shift from one group to two, we would welcome the opportunity to enter into a broader dialogue with the ARRT and OSCs on stakeholder involvement in Alaska oil spills.

The PWSRCAC recommends and requests that the Regional Stakeholder Committee not be replaced by two separate stakeholder groups, and instead work with this organization and other

stakeholders on refining the RSC process to clarify membership parameters and refine workable means for stakeholders to interact with the Unified Command during an incident.

3. Include RCACs in Tribal and Local Government (TLG) group

As indicated above, PWSRCAC does not support the change from the RSC to two smaller stakeholder groups. We are concerned that such a change does not provide the TLG and ASG with equal status in the overall incident response. The proposed changes to Annex B describe a much more robust information flow between the Unified Command and the TLG (Tab A) as compared to the ASG (Tab B).

Revisions to Annex B also use different language to describe the formation of each group. The ASG's activation seems to be more discretionary, while the TLG is afforded a clearer role in providing input on incident priorities and objectives. Additionally, the ASG appears to be more of a public outreach mechanism with less opportunity for two-way dialogue. The TLG language is clear that the Liaison Officer works as a team to represent the federal, state, and Responsible Party OSCs, while the ASG language does not. We understand that engagement process challenges arose during the *Kulluk* incident that need to be addressed, but we do not believe that this is a reasonable solution to the challenges raised in that incident.

However, if the ARRT does proceed toward splitting up the RSC and weakening stakeholder participation overall in response, then the RCACs should be included in the TLG group. As can be seen from the list below, PWSRCAC's membership and expertise are more closely aligned with the TLG as described in the proposed revisions. TLG membership is described on page 4 of 7 of the proposed revisions to Annex B as "each tribal council leader and mayor (or city manager/council leader), or their designees, from the respective villages or communities that may be affected by the spill incident." PWSRCAC's member entities are as follows (listed alphabetically):

- **Alaska State Chamber of Commerce** (representing more than 400 Alaskan businesses, including tourism)
- **Chenega Corporation and Chenega IRA Council**
- **Chugach Alaska Corporation**
- **City of Cordova**
- **City of Homer**
- **City of Kodiak**
- **City of Seldovia**
- **City of Seward**
- **City of Valdez**
- **City of Whittier**
- **Cordova District Fishermen United** (a nonprofit organization of Cordova area fishermen who have banded together to preserve and protect Area E fisheries, and promote safety at sea)
- **Kenai Peninsula Borough**
- **Kodiak Island Borough**

(list continued on next page)

- **Kodiak Village Mayors Association** (representing Cities of Akhiok, Kodiak, Larsen Bay, Old Harbor, Ouzinkie, Port Lions, and Karluk IRA Tribal Council)
- **Oil Spill Region Environmental Coalition (OSREC)** (comprised of conservation and environmental organization members whose mission is to preserve the integrity of the marine ecosystem and coastal communities)
- **Port Graham Corporation**
- **Prince William Sound Aquaculture Corporation** (a non-profit corporation created by local commercial fishermen to ethically and professionally optimize salmon production for the long-term well-being of all user groups)
- **Tatitlek Corporation and Tatitlek IRA Council**

Given that the PWSRCAC membership is predominantly local government and tribal entities, it is reasonable to assume the RCACs should be placed in the TLG if the ARRT does not accept our recommendation that it not split up the RSC.

Furthermore, ADEC’s Fact Sheet describes the TLG during a spill as having a role in communicating “health and safety issues, community infrastructure impacts from increased population, economic impacts, transportation information and issues, harbor facilities, subsistence concerns, and cultural concerns.” Not only do our member entities possess direct knowledge and resources related to all of these issues, the PWSRCAC as an organization has been actively promoting citizen awareness of oil spill-related issues for over 25 years.

One of the objectives of the Oil Pollution Act of 1990 was to foster partnerships among the oil industry, government agencies, and local citizens. The day-to-day operations of the PWSRCAC involve a broad range of technical projects, including research projects, complemented by ongoing outreach aimed at maintaining an informed constituency, and participation in oil spill drills. PWSRCAC represents a unique resource to support stakeholder engagement during oil spills, and it is important to member organizations and to the public that proposed changes to Annex B do not diminish the ability of the PWSRCAC to carry out its mission.

With respect to our tribal member entities, we point out that regardless of how the stakeholder group is organized or sorted, tribes have unique standing that is protected by federal law. The standing afforded to tribes under E.O. 13175 (2000), furthered by the Presidential Memorandum on Tribal Consultation (November 5, 2009), elevates their position far beyond the stakeholder consultation process contemplated in the Unified Plan.

Separate from their participation in the RSC (or TLG), tribal governments can exercise their sovereignty through direct government-to-government consultation with the federal government. It is important to recognize the distinction between the sovereign authority of tribal governments and their participation in the RSC or TLG. Regardless of how the Unified Plan describes their role, tribes have direct access to consult with the Federal On Scene Coordinator (FOSC) or other federal agencies under E.O. 13175 on any aspect of the oil spill response with tribal implications. We recommend and request that fact *not be misused* as rationale for changing the organizational structure that has worked well and can continue to work well into the future.

In light of PWSRCAC's OPA 90 mandate and considering that 14 of its 18 current members are either tribal or local governments, Alaska Native Claims Settlement Act (ANSCA) corporations that represent tribal members, or major landowners around Native villages, PWSRCAC would clearly belong in the TLG and should be placed in that group if the ARRT does not favorably respond to our recommendation and request to not split up the RSC.

In the event that the ARRT chooses to proceed with dissolving the RSC and replacing it with two separate stakeholder groups, the PWSRCAC recommends and requests that this RCAC be designated as a participant in the TLG.

4. Preserve daily access to Unified Command and Incident Action Plan

The proposed revisions to Annex B do not provide the TLG/ASG with the same level of access to the Unified Command and Incident Action Plan (IAP) as the RSC currently has. The current version of Annex B (page B-30) reads:

The RSC should have direct access to the Unified Command. Their input needs to be considered during the planning cycle. But the Unified Command can commit limited time (usually less than 1 hour per day) to directly deal with the RSC. (emphasis added)

PWSRCAC's first-hand experience during drills and exercises, as well as the experience of its member organizations dating back to the time of the *Exxon Valdez* Oil Spill, has been that this level of access provides an opportunity to vet information and create a level of trust and confidence that helps RSC members assure their constituents that priority issues have been considered by the Unified Command and that feasible and prudent actions will be utilized in the response.

We have heard from State and Federal On-Scene Coordinators and others that the provision in the current Unified Plan specifies that the Unified Command should meet with the Regional Stakeholder Committee every afternoon for an hour, and that the Unified Command may have other demands that would not allow this. The Unified Plan does not require a rigid approach to timing the RSC/Unified Command meeting – it simply creates an expectation that the Unified Command commit limited time for a face-to-face meeting with RSC members each day, and that these meetings should occur during the planning cycle. We cannot overstate the value of this level of access to the confidence of the public and stakeholders that the response will be done right. During the EVOS, damage was being inflicted hour by hour so it is imperative that this interaction occur each day even if just for a brief session when events on the ground or water require such constraints.

The proposed revisions to Annex B also create a number of conditions that limit access of the TLG and ASG to the Incident Action Plan (IAP), resulting in diminished access to the IAP by stakeholder groups. PWSRCAC understands that there is certain information that may need to be redacted from publicly released documents for reasons of security or to protect individual privacy or proprietary information, but there is a lot of important information in the IAP that should be made available to stakeholder groups to inform their understanding of response operations, incident objectives, needs for community assistance, and other points of fact about the response. PWSRCAC's comments dated April 29, 2016, identify specific components of the IAP that are

currently provided to the RSC that should continue to be available to the RSC, or, in the event of a change, to the TLG/ASG groups.

In the past, ADEC has created websites for active incidents that include daily posting of IAPs, Situation Reports, and other incident-specific documentation. Members of the public use and appreciate such key information and this level of transparency. PWSRCAC strongly opposes any efforts to reduce public and stakeholder access to relevant information about response operations. Such access must be provided to help ensure that both the public and private sectors work in concert when responding to a major oil spill or release of hazardous substances.

PWSRCAC recommends and requests that the level of access to Unified Command and Incident Action Plan (IAP) as currently provided is preserved for the RSC, regardless of any changes to the organization of current stakeholder groups.

5. Unified Plan must retain language regarding RCAC role and function in response organization

The purpose of the RCACs, memorialized in federal law, is to “involve local citizens in the process of preparing, adopting, and revising oil spill contingency plans.”¹ The legislation states, “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.”²

We have been assured by ADEC that the entirety of paragraph number 4 on page B-11 entitled “Regional Citizens Advisory Councils” will be retained in Annex B written as follows:

The Oil Pollution Act of 1990 (OPA 90) established two RCACs in Alaska: the Prince William Sound RCAC and the Cook Inlet RCAC. The RCACs are independent, non-profit organizations that monitor and advise on oil industry programs to include areas such as spill prevention and response, tanker safety, and environmental impact assessments. The RCACs' role in the spill response organization are defined in the Prince William Sound, Cook Inlet, and Kodiak Subarea Contingency Plans. The normal contribution of the RCAC is to provide local knowledge and technical expertise within the ICS structure (e.g., as part of the Operations and Planning Sections and the Joint Information Center).

It is of critical importance to the membership of the PWSRCAC and to the public that any changes to Annex B of the Unified Plan ensure that the role and ability of RCACs to fulfill its responsibilities are not diminished and are, therefore, accurately reflected by retaining the above paragraph. The proposed revisions to Annex B were published as an outtake rather than providing a full, cohesive draft of Annex B. The section numbering and headers in the public comment draft do not correspond to the current version of Annex B, making it difficult to determine what Annex B will or will not include in its next publication; hence, our strong support for insistence on this language being maintained.

¹ OPA 90 Section 5002(a)(2)(C).

² OPA 90 Section 5002(a)(2)(F).

PWSRCAC recommends and requests that, prior to final approval of any proposed changes to the Annex B of the Unified Plan, a complete and comprehensive draft of Annex B is published for public review that clearly shows how the revised content is intended to supplement or replace information in the current draft, including clarification that the paragraph regarding RCACs will remain in the document unchanged from the current draft.

Conclusion

PWSRCAC has concerns with both the process that was used to revise Annex B and the resulting proposed changes to stakeholder engagement in Alaska. We reiterate our gratitude for the expanded public comment period which provided an opportunity for stakeholders to obtain additional information on justification for proposed changes. PWSRCAC has provided more detailed comments and recommendations for ARRT consideration, in addition to the comments provided on April 29, 2016, and act on them going forward with any changes to Annex B.

Alaska has long been a leader in the U.S. and worldwide in oil spill preparedness and response. The State/Federal Unified Plan is a strong and comprehensive document that continues to evolve with changes to regulation and practice. We agree that the stakeholder engagement process in Alaska should be periodically reconsidered and fine-tuned based on lessons learned through incidents and exercises. However, we believe that there is a serious flaw in the proposal at hand in that a solution has been presented without first engaging with stakeholders to craft a remedial enhancement to Annex B. The PWSRCAC believes that a more effective approach with the best chance of working well and effectively over the long-term would have been to engage in a small working group process including stakeholder representatives. Such a collaborative, small working group could consider the current RSC organization, process, and challenges that arose during the *Kulluk* incident and help craft remedial adjustments and refinements to that organization and process.

The PWSRCAC stands ready to engage and assist in such a process as soon as possible. The member communities and organizations of this RCAC believe that this process would in all likelihood resolve outstanding issues forthwith and assist in reaching a consensus in a compressed time frame with workable and feasible changes with widespread support and represent a genuine advancement in terms of oil spill and hazardous substance release response.