



Role of Citizen Oversight in the Safe Management of Oil Transportation Operations and Facilities In Prince William Sound

February 2012

Twenty-two years ago, following the *Exxon Valdez* oil spill in Prince William Sound, Alaska, through the efforts of Senator Ted Stevens, Senator Frank Murkowski, Congressman Don Young and strong bipartisan action in Congress during the administration of President George H. W. Bush, two existing citizen panels were authorized and empowered to help reduce the frequency and impacts of oil spills in Alaska's waters through more effective oversight: the Prince William Sound Regional Citizens' Advisory Council (PWSRCAC) and its counterpart for Cook Inlet. The genesis of such panels came from congressional review of a similar panel established in Sullom Voe, Scotland, the largest oil terminal in Europe, and from citizen concerns following the March 24, 1989, *Exxon Valdez* oil spill in Alaska.

The diverse make up of the PWSRCAC includes:

- Communities of Chenega Bay (ground zero of the impacts of the 1989 oil spill) and Tatitlek.
- Cities of Valdez, Seward, Kodiak, Cordova, Homer, Seldovia and Whittier
- Alaska State Chamber of Commerce
- Kenai Peninsula Borough
- Kodiak Island Borough
- Kodiak Village Mayors Association
- Alaska Wilderness Recreation and Tourism Association
- Chugach Alaska Corporation
- Port Graham Corporation
- Cordova District Fishermen United
- Oil Spill Region Environmental Coalition
- Prince William Sound Aquaculture Corporation

The accomplishments and effectiveness of this membership and its citizen-based approach to oversight have clearly vindicated the judgment of including such authorization and direction in the Oil Pollution Act of 1990.

Here is a summary of the role of citizen oversight in promoting safe crude oil transportation in Prince William Sound.

1. Rationale for and Purposes Served by Citizen Oversight

In the aftermath of the 1989 *Exxon Valdez* oil spill in Prince William Sound, Congress in the Oil Pollution Act of 1990 (OPA 90) empowered two already existing citizens' councils to help combat the complacency seen as responsible for the 1989 spill and to provide a needed layer of scrutiny to increase public confidence in the safety of Alaska's oil transportation system. The council role, defined by OPA 90 as purely advisory, was to help correct the problems leading to the oil spill by fostering partnership among the oil industry, government, and local communities in addressing environmental concerns. The responsibilities assigned to the Prince William Sound council by Congress in OPA 90 include:

- **provide advice and recommendations . . .** on policies, permits, and site-specific regulations relating to the operation and maintenance of terminal facilities and crude oil tankers which affect or may affect the environment in the vicinity of the terminal facilities;
- **monitor . . . the environmental impacts** of the operation of the terminal facilities and crude oil tankers;
- **monitor** those aspects of terminal facilities' and crude oil tankers' operations and maintenance which affect or may affect the environment in the vicinity of the terminal facilities;
- **review . . . the adequacy of oil spill prevention and contingency plans** for the terminal facilities and the adequacy of oil spill prevention and contingency plans for crude oil tankers operating in Prince William Sound;
- **provide advice and recommendations . . .** on port operations, policies and practices;
- **recommend . . .**
 - **standards and stipulations** for permits and site-specific regulations intended to minimize the impact of the terminal facilities' and crude oil tankers' operations in the vicinity of the terminal facilities;
 - **modifications of terminal facility operations and maintenance** intended to minimize the risk and mitigate the impact of terminal facilities, operations in the vicinity of the terminal facilities and to minimize the risk of oil spills;
 - **modifications of crude oil tanker operations and maintenance** in Prince William Sound intended to minimize the risk and mitigate the impact of oil spills; and
 - **modifications to the oil spill prevention and contingency plans** for terminal facilities and for crude oil tankers in Prince William Sound intended to enhance the ability to prevent and respond to an oil spill.

Additionally, the Council is authorized to conduct its own scientific research and to review the scientific work undertaken by or on behalf of the terminal operators or crude oil tanker operators as a result of a legal requirement to undertake that work. The Council is also authorized to review the relevant scientific work undertaken by or on behalf of any government entity relating to the terminal facilities or crude oil tankers.

2. Examples of Tasks Accomplished by the PWSRCAC

In more than two decades of existence, the PWSRCAC, working closely with industry and regulators, has made many contributions to improving the environmental safety of oil-industry operations in Alaska waters. A few of these include:

- Representatives from the Council worked closely with Congress and the Coast Guard to establish and implement double-hull requirements pursuant to OPA90;
- The Council led the effort, and commissioned much of the technical research, that led to the world-class system of tanker escort tugs operating in the Sound today that are so vital to the safe transport of oil through these waters;
- The Council sponsored research and financed much of the hardware for a radar system that detects glacial icebergs that could threaten tankers and other vessels in the Sound, as such icebergs did in connection with the Exxon Valdez oil spill;
- The Council sponsored research that led to the installation of vapor controls on tanker loading berths at the Valdez terminal to reduce the release of dangerous air pollution;
- The Council sponsored research and collaborated closely with Alyeska Pipeline Service Co. on a plan, now in progress, that will eliminate virtually all dangerous hydrocarbon vapor emissions from the Ballast Water Treatment Facility at the Valdez terminal.
- The council funded or co-funded development of 327 Geographic Response Strategies in Prince William Sound and Kodiak. These are detailed plans for protecting environmentally sensitive areas, such as Salmon spawning streams, Clamming beaches, and haul outs for seals and sea lions.
- The council retained an expert consultant to analyze fire suppression systems at the Valdez terminal. His recommendations led to a major upgrade of those systems.
- The council has conducted extensive research and advocacy to understand and minimize the threat that non-indigenous marine organisms reaching Prince William Sound in oil tanker ballast water or by hull fouling on oil tankers will harm native species, including commercial fish.
- In the spring and summer of 2011, contractors retained by the council conducted an audit at Alyeska's Valdez Marine Terminal to determine the extent to which the company's maintenance activities are being performed in a timely fashion and in compliance with Alyeska's internal procedures

and with technical, legal, and regulatory requirements. The findings have been presented to Alyeska, regulators, and the Alaska Congressional delegation.

In recognition of its work, the PWSRCAC has twice received the Legacy Award from the Pacific States-British Columbia Oil Spill Task Force .

3. Structural Attributes Needed for a Citizens' Oversight Panel

Over time, the Council has learned that certain structural attributes are necessary for effective and constructive citizen oversight. These include:

Independence:

- The panel's independence should be assured if it is to effectively conduct oversight activities and its work is to have credibility with the citizens it represents. In furtherance of that independence, it should be allowed to devise its own system for seating board members. The makeup of a citizen oversight panel may be usefully specified in law, such as, for example, requirements that board representation include Alaska Native organizations, local municipalities, the tourism industry, and an environmental seat, but that it not include government agencies, companies or industries within the panel's oversight responsibilities. The specific details of how representatives from the designated interests are chosen and seated on the board are best left up to the panel, rather than being subject to political appointment and confirmation. In the case of the PWSRCAC, under existing law each member entity selects its representative to the Board; the Board then votes to seat the representative.
- Within reasonable constraints and guidelines provided by law and/or contract, the panel should be able to establish its own budget. As long as the panel operates within those guidelines, it is critical that neither industry, regulators, nor government officials have veto authority over council projects or initiatives (although the budgeting process, like all the panel's activities, should be public and open to comment by any interested party).
- The panel should be able to retain technical experts and commission research even if, in some cases, this research may be in the same areas as, or intended to verify, industry or regulator-sponsored research.
- The panel should be able to communicate with the public, news media, regulators, and elected officials as necessary to carry out its mission and inform the public of its work.

Assured funding: The panel should have adequate, inflation-adjusted funding not subject to the undue influence that a political process would entail. In PWSRCAC's case, funding is through a long-term contract with the oil industry. Such a funding contract should be mandatory as a matter of law in order for

the industry being overseen to be considered in compliance with its oil-spill contingency plans and other regulatory requirements.

Access: The establishing law, as well as any funding contract, should assure that the panel is provided authority for access to company facilities, personnel, and records on the same basis as regulators. In addition, regulators and companies receiving formal advice or other communications from the panel should be directed to respond in writing to panel requests (though, of course, they would not be required to accept the advice or agree with the communication). In the case of Prince William Sound, OPA 90 requires that federal agencies consult with the PWSRCAC when taking actions in the region that would affect the Council's mission.

4. Conclusion: Compelling Benefits of Citizen Oversight

Given the long history of responsible achievement by the existing Alaska citizens' councils, it is clear that a properly constituted citizen oversight panel could materially contribute not only to environmental safety, but also to protecting the nation's oil supply from the disruptions caused by major spills, breakdowns, and other technical problems.

Given the increasing challenges of operating in the oil industry, and realizing the important role that industry plays in the state and national economies, our nation's oil supply and its homeland security, instituting a responsible and vigorous citizen oversight can substantially bolster public confidence in the integrity and safety of ongoing as well as new oil operations.

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