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Citizens promoting the environmentally safe operation of the Alyeska terminal and associated tankers.

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Oil Spill Region Environmental Coalition

Port Graham Corporation

Prince William Sound Aquaculture Corporation

April 24, 2023

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**Subject:** Transmitting the report titled "Assessment of Risks and Safety Culture at Alyeska's Valdez Marine Terminal," prepared by Ms. Billie Pirner Garde

Dear Mr. Parker and Ms. Lamont:

The purpose of this letter is to formally transmit to you the attached report titled "Assessment of Risks and Safety Culture at Alyeska's Valdez Marine Terminal," prepared by Ms. Billie Pirner Garde, a contractor to the Prince William Sound Regional Citizens' Advisory Council (PWSRCAC or Council). This report was initiated in June 2022, in response to safety concerns at the Valdez Marine Terminal (VMT) brought to PWSRCAC by current and former Alyeska staff. The final draft of this report was vetted with Alyeska Pipeline Service Company leadership by Ms. Garde and representatives of PWSRCAC on March 16, 2023, before being finalized in early April.

As you know, Alaska operates an Occupational Safety and Health Administration (OSHA)-approved State Plan, and OSHA compliance is regulated and enforced by the Alaska Department of Occupational Health and Safety (AKOSH). However, there is an issue of serious concern to the Council regarding the current inspection and enforcement of OSHA Process Safety Management (PSM) requirements at the VMT in Valdez, Alaska. As further explained in this letter and attached report, numerous employee concerns regarding PSM requirements as well as other programmatic and systemic issues at the terminal have been reported to the AKOSH office. However, they have been unable to investigate these issues since Alyeska contested the results of earlier inspection findings. This situation is untenable and has contributed to a safety risk at the terminal.

The Council is an independent nonprofit corporation whose mission is to promote the environmentally safe operation of the VMT and associated tankers. Our work is guided by the Oil Pollution Act of 1990 (OPA 90) and our contract with Alyeska Pipeline Service Company. PWSRCAC's member organizations are communities in the region affected by the 1989 Exxon Valdez oil spill, as well as commercial fishing, aquaculture, Alaska Native, recreation, tourism, and environmental groups. The Board of Directors, technical committee volunteers, and staff of the PWSRCAC strive

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to diligently carry out their responsibilities under the statutory authorization for the Council in the Oil Pollution Act of 1990 (33 U.S.C. 2701-2761). This work is done to help protect Alaska's residents, communities, economies, and environment.

OPA 90 mandates for the Council include developing long-term partnerships with government and industry, while also directing it to take steps to eliminate the previous complacency of those groups that led up to the 1989 Exxon Valdez oil spill. This is a challenging mission to achieve. It can be difficult to maintain productive relationships with those to whom you must also provide critical feedback, especially during times of serious reductions in staffing and budgets for those entities. While PWSRCAC recognizes this report could generate tension with Alyeska, and some of the state and federal regulatory agencies with oversight responsibilities at the VMT, we hope to work with all parties to address these issues in a manner that will lead to a constructive and productive path forward.

Alyeska, state and federal regulators, and the Council all do their best to work with all parties in a highly professional manner, seeking results that will help prevent further oil spills or accidents. This mature, collegial, and cooperative approach has helped protect Alaska from another Exxon Valdez-type of oil spill or other devastating accident over the past three plus decades. But, as the report findings indicate, it takes constant vigilance, training, and monitoring to help ensure that Alaska will be spared another major oil spill.

The report's author, Ms. Garde, is an attorney who has worked on numerous issues directly for Alyeska before working with the PWSRCAC. She has previously served as an appointed member of the Department of Labor (DOL)/OSHA Whistleblower Advisory Panel. Although she is an attorney, the agreement between PWSRCAC and Ms. Garde is not for legal services, but rather consulting work. The Council believes her professionalism and thoroughness is an asset to Alyeska and the regulatory agencies with oversight responsibilities at the VMT. As you will see from her report, Ms. Garde received a considerable amount of information from both current and former Alyeska employees, and she has been very careful and judicious to protect the identities of those with whom she consulted.

### **Key finding from the report**

The purpose of the assessment documented in the report was to reach a determination, based on the information provided to PWSRCAC, on whether there is a current level of unacceptable safety risk to the VMT, its workforce, the community of Valdez, and the environment. After reviewing all information available through the assessment, it is Ms. Garde's conclusion that there **currently is an unacceptable safety risk to the VMT, and consequently no reasonable assurance that the VMT is operating safely and in compliance with its regulatory requirements.**

Inadequate resources (e.g., staffing, equipment, adequate safety and reporting systems) and budget pressures are a common theme in all the issues addressed throughout the report. There is no substantive information in this report regarding safety or process safety issues that is not already available to Alyeska. The failure of the company to act on the information it has is one of the primary weaknesses identified by the assessment.

The Exxon Valdez oil spill in 1989, and Alyeska's failure to perform effective response capability, changed the industry and Alaska forever. It should have permanently changed Alyeska's respect for the dangers inherent in its operations as well. Unfortunately, the current situation reveals that due to changes in the organization, availability of resources, quality and audit functions, maintenance and system upgrades, and operational integrity and compliance have suffered significantly under more recent corporate management. At the same time, regulatory oversight at the VMT has also diminished.

**The importance of the operational integrity of the VMT cannot be overstated because an incident or accident could interrupt the flow of oil from the Alaska North Slope, thus endangering U.S. energy supplies and energy security.** With new oil development on the horizon, every effort must be made to ensure the integrity of systems and infrastructure within the Trans Alaska Pipeline System (TAPS).

### **Report recommendations**

The PWSRCAC Board of Directors endorses all recommendations contained in Ms. Garde's report. This includes the **recommendation that the DOL's OSHA conduct or commission a full independent audit of applicable VMT systems for compliance with PSM.** The audit should have a particular emphasis on the PSM elements of Process Hazard Analysis (PHA), Compliance with Standards, Hazard Identification and Risk Analysis, Management of Change (MOC), Audits, and the adequacy of the Quality Assurance/Quality Control (QA/QC) programs.

Per the report recommendations, the PWSRCAC is also recommending that Congress initiate a Government Accountability Office (GAO) audit to determine the adequacy of the present regulatory oversight of Alyeska's VMT operations by federal and state agencies with responsibility over the VMT, including compliance with the Federal Grant of Right-of-Way and Stipulations, and the State Lease.

In line with the recommendation for Congress, the Council is requesting that the State of Alaska initiate an assessment, or audit, of the present regulatory oversight of Alyeska's VMT operations by state agencies with responsibilities over the VMT. These include State of Alaska agencies with direct oversight and/or membership in the Joint Pipeline Office: Department of Environmental Conservation; Department of Fish and Game; Department of Labor - Electrical; Department of Labor - Safety, and specifically the Alaska Occupational Safety and Health; Department of Public Safety; Department of Transportation and Public Facilities; and the State Pipeline Coordinator's Section, under the Department of Natural Resources.

The main recommendations include specific requests for Alyeska and the TAPS Owners to:

- Commission an independent full assessment of the Alyeska safety management systems and determine a specific timeline for actual completion of the necessary changes to ensure safe operations;
- Commission an immediate independent audit to be conducted of all deferred maintenance at the VMT; and
- Provide mandatory training for all supervisory and management personnel on their responsibilities to manage in a manner that promotes a strong safety culture, upholds a

compliance culture, and does not tolerate harassment, intimidation, retaliation, or discrimination.

These recommendations and requests include more details, which can be found in the Recommendations section of the report. The Council acknowledges that there are recommendations directed internally to PWSRCAC and we will be considering appropriate actions in an effort to address these.

### **Concerns with AKOSH regulatory effectiveness**

AKOSH conducted a PSM investigation of the VMT in 2019. According to the findings of Ms. Garde's report, AKOSH has now become reactive to only imminent safety concerns or accidents. Ms. Garde's report states on page 80:

"AKOSH received employee concerns in early 2019 regarding violation of PSM requirements and safety concerns at the VMT, raising the risks of an accident, injury and environmental damage. As a result... AKOSH performed a PSM audit and inspection at the VMT in December of 2019. The inspection confirmed serious violations of OSHA PSM requirements and regulations at the VMT. It issued two inspection reports as a result of the inspection.

AKOSH Inspection Report 1449721 and Citations were issued February 25, 2020, against Alyeska confirming five (5) serious violations of PSM requirements and ten (10) other than serious violations... Alyeska and AKOSH entered into an informal settlement of the issues, resulting in a reduction in assessment penalties... and five (5) of the other than serious violations were deleted...

Other employee concerns, as well as programmed inspection items, were addressed in a separate AKOSH Inspection Report 1449993 and Citations were also issued against Alyeska on May 26, 2020, for 43 violations of various safety requirements, 22 of which were violations of PSM standards and 38 of which were designated by AKOSH as "serious". Enforcement action was initiated on 31 violations... Alyeska has contested all of the violations and penalties from Inspection Report 1449993 in their entirety."

This relates directly to AKOSH's Field Operations Manual Program Directives, PD 21-02, effective January 28, 2021, Chapter II Section IV. C "The Effect of Contest":

"If an employer has contested a citation and/or a penalty from a previous inspection at a specific worksite, and the case is still pending before the Review Board, the following guidelines apply to additional inspections of the employer at the worksite:

1. If the employer has contested the penalty only, the inspection will be scheduled as if there were no contest;
2. If the employer has contested the citation itself or any items therein, then programmed and unprogrammed inspections may be scheduled, but all issues under contest will be excluded from the inspection, unless a potential imminent danger is involved."

See, also, page 2-3, regarding exceptions to Follow Up Inspections:

"[W]hen a citation is currently under contest, a follow-up inspection will not be scheduled regarding the contested items. If the employer contests the proposed penalty but not the underlying citation, a follow up inspection normally should not be conducted unless the violations are considered high-gravity and the supervisor decides that a follow up inspection is necessary. If a follow up inspection is conducted at establishments involved in proceedings before the Occupational Safety and Health Review Board, the CSHO will explain the follow up inspection will not involve matters before the Review Board."

Ms. Garde's report states on page 81 the following based on information reported by Alyeska concerned employees:

"Employees have continued to raise issues to AKOSH. But, according to the agency's process, it cannot investigate these issues while similar issues are being contested by Alyeska.

Thus, Alyeska's decision to appeal the May 2020 findings has effectively stymied AKOSH from being able to do anything other than wait for an accident or incident which would then provide it the authority to conduct further inspections into similar issues.

**This is a serious situation. If employee concerns about PSM violations and risks are not credibly investigated internally by Alyeska, and AKOSH cannot investigate any additional PSM concerns (subject to the contested case) because Alyeska has contested the earlier findings - no one is ensuring that these risks are being addressed.**

The AK Field Operations Manual, cited above, makes it clear that it can conduct inspections, regardless of the status of a contested case, in the event of an incident or accident, but that is cold comfort to those who may be impacted and/or worried about oversight and safety.

The 2019-2020 AKOSH inspections discussed herein were done in response to employee concerns raised on safety and PSM issues at the VMT. Many of the substantiated, serious violations are also programmatic in nature, such as the confirmed, serious violation of "Inadequate Preventive Maintenance Procedures regarding the power vapor operations at the VMT" (See, Inspection Report OSHA Inspection 1449993). Yet, it appears that AKOSH procedures prohibit further inspections on new examples of "inadequate preventive maintenance at VMT" until the original violations run the entire course of contested litigation - appeal, mediation, an evidentiary hearing before a 3-person Board (during which Alyeska would be entitled to discovery of all the information supplied to AKOSH by Alyeska employees, per Chapter 13, Section VIII Discovery A-C), and any further appeals through the Alaska Superior Court."

By applying the AKOSH's Field Operations Manual Program Directives referenced above to Alyeska's appeal of the May 26, 2020 citations in their entirety, and because that appeal is pending, similar issues raised by employees since May 2020 cannot be investigated and remain "open" at AKOSH, but must await adjudication of the contested findings.

## Next steps

We know that Alyeska and the associated regulatory agencies have dedicated staff working daily on the Trans Alaska Pipeline System, doing their best to ensure it is operated as safely as possible with the resources they are given. We also recognize that Alyeska and the associated regulatory agencies all have full plates in fulfilling their missions which benefit our nation in terms of safe transport and storage of Alaska North Slope crude oil. And, considering the events taking place in global affairs, the importance of those missions continues to grow.

PWSRCAC recognizes that while zero defects in such missions is the clear intended goal, we also acknowledge there will be times when issues, problems, and deficiencies arise that must be dealt with and resolved once identified. The view of the PWSRCAC, as authorized by Congress, is that the work of this Council should be carried out in a collegial, cooperative, and constructive manner so as to be of substantial assistance to the mission of Alyeska, and the associated state and federal regulatory agencies, in transport and storage of oil safely through the VMT and associated tankers.

PWSRCAC sincerely appreciates the spirit of cooperation present at its March meeting with Alyeska and hopes to continue to support their work to address the issues raised in the report in the long term. The Council's Board of Directors and staff agree with the sentiment expressed by Alyeska executives, after their receipt of the draft report, that this report provides an opportunity to make Alyeska better by looking into these issues, addressing problems, and making sure employees are heard. It is the Council's hope that both OSHA and AKOSH also view the findings and recommendations in the report as an opportunity for improvements to the system.

The Council stands ready to support OSHA, AKOSH, Alyeska, and other state and federal regulatory agencies, in our role as an advisor. We believe firmly that the greatest successes result from citizens, industry, and regulators at all levels working together to maintain and improve the safeguards designed to prepare for and prevent future oil spills.

Thank you for your consideration of the issues and recommendations contained in this letter and enclosures. PWSRCAC looks forward to continued coordination with all parties to ensure these matters are addressed.

Sincerely,



Donna Schantz  
Executive Director



Robert Archibald  
President

Enclosure: "Assessment of Risks and Safety Culture at Alyeska's Valdez Marine Terminal," Billie Pirner Garde, February 2023

cc: William "Dale" Williamson, Chief of Enforcement, AKOSH  
Doug Kalinowski, Director, AKOSH