

U.S. Department
of Transportation

United States
Coast Guard



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Coast Guard District

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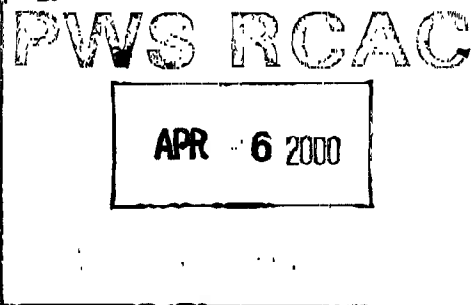
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Mr. John Devens
Executive Director
Prince William Sound Regional Citizen's Advisory Council
3709 Spenard Rd.
Anchorage, AK 99503

Dear Mr. Devens:

Your request for recertification as the alternative voluntary advisory group in lieu of council for Prince William Sound, Alaska, is approved effective January 31, 2000 through January 31, 2001. A notice of the recertification has been published in the Federal Register, a copy of which is attached as enclosure (1).

Your application for recertification was evaluated in accordance with the policy statement published in the Federal Register on July 7, 1993, (58 FR 36505), that outlines the factors the Coast Guard considers in determining whether advisory groups should be certified in accordance with Section 5002 of OPA 90, the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act (the Act). Consistent with this policy statement, we solicited and considered comments from the industry and government, as well as the general public, in conducting this year's evaluation of the Prince William Sound Citizens Advisory Council (PWSRCAC).

We additionally reviewed the information provided with your request for recertification. Overall, we found the PWSRCAC to be working toward fulfilling the mandates of OPA 90 as outlined in the Act: that is, "to foster the general goals and purposes of the Act" and the Council "is broadly representative of the communities and interest in the vicinity of the terminal facilities and Prince William Sound."

Comments from industry, government and the general public received during this review process were mostly favorable and supported your request for recertification. Our responses to comments were provided in the Federal Register notification of the Coast Guard's recertification of the PWSRCAC. In the spirit in which the comments were made, I urge you to continue to press forward with innovation and energy to continue to ensure the PWSRCAC is effective in furthering the long-term partnership of industry, government, and local communities in overseeing compliance with environmental concerns in PWS.

While nothing was raised that questioned the PWSRCAC's suitability for recertification, I was disappointed to see points of contention raised by several industry members. I encourage you, as I will encourage them, to seek ways to foster trust and cooperation, and continually seek consensus on the important issues in PWS. I am confident that resolution of these points can be accomplished at working levels.

C.C. Helmer
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As you know, this was the first time your organization's recertification was addressed by the Seventeenth Coast Guard District. In response to your interest in simplifying the recertification process, I am amenable to considering alternatives. My staff is prepared to work with you on developing a less complicated, time consuming procedure while still ensuring an appropriate level of periodic oversight by the Coast Guard.

In closing, I find PWSRCAC's endeavors to provide advice, oversight and monitoring of the terminal facilities and tanker operations in Prince William Sound, Alaska consonant with the objectives of OPA-90. My staff and I look forward to working with you on common issues during the coming year.

Sincerely



T. J. BARRETT
Rear Admiral, U. S. Coast Guard
Commander
Seventeenth Coast Guard District

Enclosure (1): Federal Register Notice of PWSRCAC recertification

DEPARTMENT OF TRANSPORTATION**Coast Guard**

[CGD17-00-002]

Annual Certification of Prince William Sound Regional Citizen's Advisory
Council

AGENCY: Coast Guard, DOT.

ACTION: Notice of Recertification

SUMMARY: Under the Oil Terminal and Tanker Environmental Oversight Act of 1990, the Coast Guard may certify on an annual basis, an alternative voluntary advisory group in lieu of a regional citizens' advisory council for Prince William Sound, Alaska. This certification allows the advisory group to monitor the activities of terminal facilities and crude oil tankers under the Prince William Sound Program established by the statute. The purpose of this notice is to inform the public that the Coast Guard has recertified the alternative voluntary advisory group for Prince William Sound, Alaska. The effective period of this certification is from January 31, 2000 to January 31, 2001.

FOR FURTHER INFORMATION CONTACT: For general information regarding the PWS RCAC or viewing material submitted to the docket, contact LCDR Larry Musarra, Seventeenth Coast Guard District, Marine Safety Division, (907) 463-2211.

SUPPLEMENTARY INFORMATION: As part of the Oil Pollution Act of 1990 Congress passed the Oil Pollution Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990, (the Act), Section 5002, to foster the long-term partnership among industry, government, and local communities in overseeing compliance with the environmental concerns in the operation of terminal facilities and crude-oil tankers. Subsection 5002(o) permits an alternative voluntary advisory group to represent the communities and interests in the vicinity of the terminal facilities in Prince William Sound (PWS), in lieu of a council of the type specified in subsection 5002(d), if certain conditions are met.

The Act requires that the group enter into a contract to ensure annual funding, and that it receive annual certification by the President to the effect that it fosters the general goals and purposes of the Act, and is broadly representative of the communities and interests in the vicinity of the terminal facilities and Prince William Sound. Accordingly, in 1991, the President granted certification to the Prince William Sound Regional Citizen's Advisory Council (PWS RCAC). The authority to certify alternative advisory groups was subsequently delegated to the Commandant of the Coast Guard and redelegated to the Commander, Seventeenth Coast Guard District.

On January 6, 2000, the Coast Guard announced in the Federal Register the availability of the application for recertification that it received from the PWS RCAC and requested comments (65 FR 800). Twenty-seven comments were received.

Discussion of Comments: Of the 27 comments received, 24 were supportive of recertification and generally noted the positive efforts, good communication, and broad representation of PWS communities as PWS RCAC carries out its responsibilities as intended by the Act. Three commenters recommended the Coast Guard conditionally certify the PWS RCAC due to what they perceived were substantial non-conformities with the Council's By Laws and the intent of OPA-90. The following summarizes the Coast Guard's analysis of the issues raised during the review process.

Two commented that the PWS RCAC is confrontational or adversarial, engaging in "polarizing/ politicization" behavior, noting that such relations were not consistent with fostering cooperation, as per the Act. However, the majority of the commenters did not share that view. While the Act promotes developing trust, cooperation, and consensus between the industry, government and local citizens, it also establishes that local citizens (through the PWS RCAC) should provide advice and recommendations regarding environmental concerns of crude oil terminal and tanker operations in PWS. Based on 24 positive comments received, the action taken by PWS RCAC is consistent with their advisory role in representing the interests of local citizens on environmental concerns.

One commenter criticized the resolution passed by PWS RCAC regarding the proposed BP acquisition of ARCO. The resolution urged that certain factors be taken into consideration, and that certain commitments be sought from BP if the

acquisition was approved. The commenter suggested this was a tactic based on "unsubstantiated and subjective judgments" of various issues. Upon review, the Coast Guard concludes that the resolution offered advice to regulators to help ensure that environmental safety would be preserved during the proposed BP acquisition of ARCO, an action within the scope of the purposes of the Act.

Three commenters complained that the PWS RCAC's activities regarding the PWS tanker contingency plan were not consistent with their role under the Act, showing lack of clarity in their role and moving from the role of advisor to adversary. The complaints in this area center around changes suggested by the PWS RCAC to the 1998 tanker contingency plans and advice provided to the government regarding an appeal of the Conditions of Approval of the plans. The Coast Guard finds that the advice and suggestions provided by PWS RCAC was within the scope of the purposes of the PWS RCAC in their role to review and advise on the adequacy of oil spill prevention and contingency plans for the terminal facilities and crude oil tankers operating in Prince William Sound.

Three commenters believe that PWS RCAC has shown an increasing tendency to expand its scope beyond "environmental monitoring for terminal facilities in Prince William Sound and the crude oil tankers operating in Prince William Sound." However, the PWS RCAC may be recertificated so long as it fosters the general goals and purposes of the Act and is broadly representative of the communities and interests in the vicinity of the terminal facilities and Prince William Sound.

One commenter suggested that last year's recertification provided for insufficient scrutiny and follow-up in assessing PWS RCAC's compliance with OPA-90 and called for an audit and the establishment of new performance criteria beyond that provided by law. The Coast Guard does not agree that last year's process was insufficient and does not agree that establishment of measurable performance criteria ^{beyond that provided by law} is necessary.

One commenter complained that there is a lack of accountability for the scope and application of funded studies by the PWS RCAC and called on the Coast Guard to provide oversight of the projects undertaken and funded by the PWS RCAC to ensure the studies are within the scope of the organization and have practical application. The Coast Guard reviewed the funded studies and found all met the intent of the Act. Procedures exist for the government and industry to provide input on such projects. The PWS RCAC provides the Coast Guard and industry written information on their projects and invites both the Coast Guard and industry to attend meetings of RCAC's technical advisory committees. The Coast Guard encourages interested parties to utilize these avenues of communication.

One commenter believes that there is a need for "improving representation of regional citizens and communities" and calling for recertification to be conditioned on "completion of assessments with public comment opportunities" in this and other areas. Upon review, the 19-member board, with members from

all areas of the PWS region as well as from various interest groups with stakes in the region represents citizens and communities in a way that satisfies the demands of OPA-90. Additionally, this year's recertification notice drew numerous letters of support from citizens and communities in the represented area in response to the "public comment opportunities" provided by the Federal Register and Alaska media notification of the recertification process. The requirements of the Act were met.

One commenter suggested that PWS RCAC should hold "monthly meetings in various communities throughout the Sound" to improve communications with the communities. The Coast Guard finds the PWS RCAC is presently doing this through having the board meet in member communities, as well as having staff members, board members and committee volunteers attending public hearings, oil spill drills and exercises in affected communities. Additionally, PWS RCAC technical advisory committee meetings are held in member communities and the RCAC's executive director, the community liaison and other staffers periodically travel to member communities to share with city councils, borough assemblies, and the public the state of oil spill prevention and response issues.

One commenter noted conflicts of interest of the PWS RCAC leadership. This comment was made as a result of an incident at an international conference on environmental protection. This problem was limited to a single individual, and was resolved to the Coast Guard's satisfaction.

Two commenters stated that PWS RCAC has engaged in litigation, which is barred under OPA-90. Upon review, the Coast Guard concludes the two examples cited are not engaging in litigation. PWS RCAC's actions in the 1995 contingency plan approvals were reviewed during last year's recertification process by the Coast Guard and were found to be appropriate. The PWS RCAC filed a friend-of-the-court brief with the U. S. Supreme Court in the Intertanko case. The friend-of-the-court brief was in the role of analyst and adviser to industry and government (not as a litigation party) in a case that could clearly affect the regulation of oil shipping in PWS.

Two commenters were concerned over the residency standards for membership on the PWS RCAC board. This issue was raised last year and addressed by the PWS RCAC board in adopting a new residency definition, which was included with this year's recertification application.

One commenter raised an issue that the PWS RCAC Code of Conduct does not specify consequences to an employee or volunteer for non-compliance. In exploring this issue the Coast Guard found the Executive Director of PWS RCAC is responsible for the management of employees. Violations of the Code of Conduct exposes an employee to the full range of sanctions traditionally at management's disposal, from counseling in minor cases up to dismissal in the most serious cases. For volunteers, the PWS RCAC's Board addresses dealing with Code of Conduct violations with actions ranging from advising the sponsoring entity of the problem to denial of the board or committee seat.

The PWS RCAC has asked the Coast Guard to consider whether a different recertification process would be more efficient. The Coast Guard is willing to consider alternatives and will request comments and suggestions from interested parties.

As a result of the above analysis the Coast Guard recommends PWS RCAC continue to seek ways to foster trust and cooperation, and lead from confrontation to partnership on the important issues of oil terminal and tanker operations in PWS. The Coast Guard encourages industry to raise issues with PWS RCAC at the working level to also foster cooperation and consensus.

PWS RCAC's Response to Coast Guard Comments: In its last recertification letter (dated Jan. 13, 1999) to the Prince William Sound Regional Citizens' Advisory Council, the Coast Guard made several recommendations. The following is a summary of each recommendation, and an explanation of the council's response:

The Coast Guard recommended that organizations receiving inaccurate information from council board or staff members about council positions should be provided with feedback from the council. Response: This issue has not arisen in the current certification period, but it is the council's intention to respond appropriately should it arise in the future.

The Coast Guard recommended that the council revisit the issue of who is an Alaska resident for purposes of membership on the council board. Response: The council considered this issue over the spring and summer of 1999, and

unanimously adopted the following definition of residency at its September 1999 board meeting: A resident is a person who intends to make Alaska his or her home, does not claim residency in any other state, and meets two of the following criteria: (1) Is a registered voter in Alaska and is not registered to vote in any other state. (2) Has a current Alaska driver's license and does not maintain a driver's license from any other state. (3) Earns primary income in Alaska and is not employed full-time in another state.

The Coast Guard recommended that the council conduct an internal policy-controls audit. Response: In September 1998, the council board appointed a committee of board members to revise the policy manual. The final draft was presented to the board in December 1998 and approved after minor revisions.

The Coast Guard requested the PWS RCAC include a copy of their By Laws as part of their recertification application. Response: The By Laws were included with the request for recertification. The Coast Guard is satisfied with the PWS RCAC responses to these recommendations.

Upon review of the comments received regarding the PWS RCAC's performance during the past year and the information provided by the RCAC in their annual report and recertification package the Coast Guard finds the PWS RCAC meets the criteria established under the Oil Pollution Act, and that recertification in accordance with the Act is appropriate.

RECERTIFICATION: By letter dated April 4, 2000, the Commander, Seventeenth Coast Guard certified that the PWSRCAC qualifies as an alternative voluntary advisory group under 33 U.S.C. 2732(o). This recertification terminates on January 31, 2001.

Dated:



P. J. Barrett

Admiral, U. S. Coast Guard

Commander, Seventeenth Coast Guard District