DEC Request for Adjudicatory Hearing Form Pursuant to 18 AAC 15.200

A request for adjudicatory hearing must be submitted using this form and timely served upon the Commissioner by hand delivery, electronic mail or U.S. mail (see 18 AAC 15.200(a), (c) and (e), as well as on the division that issued the decision.
Attn: Larry Hartig, Commissioner -Alaska Department of Environmental Conservation
P.O. Box 111800
Juneau, AK 99811-1800 or DEC.Commissioner@alaska.gov

Air Quality
Denise Koch, Director
Dept. of Env. Conservation
P.O. Box 111800
Juneau, AK 99811-1800
Fax: (907) 465-5129

Spill Prevention & Response
Kristin Ryan, Director
Dept. of Env. Conservation
555 Cordova Street
Anchorage, AK 99501
Fax: (907) 269-7687

Environmental Health
Christina Carpenter, Director
Dept. of Env. Conservation
555 Cordova Street
Anchorage, AK 99501
Fax: (907) 269-7654

Water
Michelle Hale, Director
Dept. of Env. Conservation
P.O. Box 111800
Juneau, AK 99811-1800
Fax: (907) 465-5177

Requestor Contact Information

Name* Valdez Fisheries Development, Ass'n In

Address* Michael H. Wells
Executive Director
Box 125
Valdez, Alaska 99686

Telephone* 907 835 4874

Fax 907 835 4831

Email Address vfdamike@valdezfisheries.com

Please provide the name(s), mailing address(es), electronic mail address(es) and telephone number(s) for the individual(s) or organization(s) bringing forward this request for adjudicatory hearing (see 18 AAC 15.200(c) and 18 AAC 15.920(13))
*Required

Identification of Represented Parties

For each requester named above that is a member organization, please provide the names and addresses of members who are adversely affected by the decision who are being represented by the organization in this matter (see 18 AAC 15.200(c)(3))

N/A

Decision and Issues to be Reviewed

Please identify the permit or other decision you are seeking to have reviewed. Please include information such as who made the decision, the title of the document within which the decision is contained or the permit number.

ADEC Plan Number 14-CP-4057, Amendment 2017-1, (October 23, 2017) Approval of Alyeska Pipeline Service Company's Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan. ADEC's Certificate of Approval, Oil Discharge Prevention and Contingency Plan and ADEC's Oil Discharge Prevention and Contingency Plan Decision dated October 23, 2017. The title of the Plan ADEC approved is Alyeska Pipeline Service Company Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan. Plan No. 14-CP-4057. The Plan Holder is Alyeska Pipeline Service Company. The Basis of Decision was prepared by Ron Doyel. The ADEC Division that issued the Decision was the Division of Spill Prevention and Response, Prevention, Preparedness, and Response Program.

Issues to be Decided

Please provide the following information for each question of material fact or law (collectively referred to as "contested issues" you are asking to be reviewed as part of the adjudicatory hearing request. Attach additional pages as needed if you are seeking to raise more than three issues or if you need more space for your response relating to an issue.

See the attached letter accompanying this form.

Contested Issue 1:

Contested Issue and Location of the Issue

See the attached letter accompanying this form.

Explanation and reasons the contested issue is relevant to the decision

See the attached letter accompanying this form.

How are requesters directly and substantively affected?

See the attached letter accompanying this form.

Any suggested terms or conditions?

See the attached letter accompanying this form.

Why should your request be granted?

See the attached letter accompanying this form.

Contested Issue 1
a) A concise statement of the contested issue proposed for hearing (see 18 AAC 15.200(c)(4)(C))
b) The location(s) in the permit, or other decision where the specific terms or conditions appear, that you are contesting (e.g. page, paragraph or other identifying description)
c) An explanation of how the decision was in error with respect to the contested issue
d) The reason(s) you believe the contested issue you are raising is relevant to the Division's decision (why you believe resolving the contested issue in your favor will materially change the Division's decision
e) How each requester (including represented parties if the requester is a member organization representing them in this matter) is directly and substantively affected by the contested decision to justify review; more specifically, please include a discussion or
1) the nature of the interest of the requester or represented party who is impacted by the contested decision(s):
2) whether that interest is one that the department's applicable statutes and regulations intend to protect; and
3) the extent to which the Division's decision relating to this contested issue directly and substantively impairs the interest described in (2) above
(f) Identify when and where you raised this issue in testimony or comments you provided to DEC. if your comments or testimony were submitted to DEC in writing, please provide a reference to the page and paragraph where they appear. (see 18 AAC 15.200(a) and 18 AAC15.245)**
(g) Suggested alternative terms and conditions that in your judgement are required for the Division's decision to be in accord with the facts or law applicable to the issue you are raising.
(h) A discussion of any other reasons you believe your request for an adjudicatory hearing should be granted. Please include a concise summary of the facts and laws that you believe support your request.
(i) If you believe a provision of the final decision or permit you are challenging was not in the draft decision or permit that was subject to the public notice or comment process, please explain the basis of your claim. (see 18 AAC 15.200(a))
** this requirement does not apply to a person challenging an Air Quality Division Stationary Source Emission Control permit under AS 46.15.2200 either (1) on the basis of a private, substantive legally protective interest under state law that may be adversely affected by the permit action, or (2) as the owner or operator of the stationary air source.

NOTE: IF you did not raise your issue before the Division's issuance of the permit or contested decision, then 18 AAC 15.245 requires you to show "good cause" for the failure to raise the issue for it to be considered. You should include this information in your response to (h) above.

Contested Issue 2

Contested Issue and location of the Issue

Explanation and reasons the contested issue is relevant to the decision

How are requesters directly and substantively affected?

Any suggested terms or conditions

Why should your request be granted?

Contested Issue 2
a) A concise statement of the contested issue proposed for hearing (see 18 AAC 15.200(c)(4)(C))
b) The location(s) in the permit, or other decision where the specific terms or conditions appear, that you are contesting (e.g. page, paragraph or other identifying description)
c) An explanation of how the decision was in error with respect to the contested issue
d) The reason(s) you believe the contested issue you are raising is relevant to the Division's decision (why you believe resolving the contested issue in your favor will materially change the Division's decision
e) How each requester (including represented parties if the requester is a member organization representing them in this matter) is directly and substantively affected by the contested decision to justify review; more specifically, please include a discussion or
1) the nature of the interest of the requester or represented party who is impacted by the contested decision(s);
2) whether that interest is one that the department's applicable statutes and regulations intend to protect; and
3) the extent to which the Division's decision relating to this contested issue directly and substantively impairs the interest described in (2) above
(f) Identify when and where you raised this issue in testimony or comments you provided to DEC. if your comments or testimony were submitted to DEC in writing, please provide a reference to the page and paragraph where they appear. (see 18 AAC 15.200(a) and 18 AAC15.245)**
(g) Suggested alternative terms and conditions that in your judgement are required for the Division's decision to be in accord with the facts or law applicable to the issue you are raising.
(h) A discussion of any other reasons you believe your request for an adjudicatory hearing should be granted. Please include a concise summary of the facts and laws that you believe support your request.
(i) If you believe a provision of the final decision or permit you are challenging was not in the draft decision or permit that was subject to the public notice or comment process, please explain the basis of your claim. (see 18 AAC 15.200(a))
** this requirement does not apply to a person challenging an Air Quality Division Stationary Source Emission Control permit under AS 46.15.2200 either (1) on the basis of a private, substantive legally protective interest under state law that may be adversely affected by the permit action, or (2) as the owner or operator of the stationary air source.

NOTE: IF you did not raise your issue before the Division's issuance of the permit or contested decision, then 18 AAC 15.245 requires you to show "good cause" for the failure to raise the issue for it to be considered. You should include this information in your response to (h) above.

Contested Issue 3

Contested issue and location of the issue

Explanation and reasons the contested issue is relevant to the decision

How are requesters directly and substantively affected?

Any suggested terms or conditions?

Why should your request be granted?

Contested Issue 3

a) A concise statement of the contested issue proposed for hearing (see 18 AAC 15.200(c)(4)(C))

b) The location(s) in the permit, or other decision where the specific terms or conditions appear, that you are contesting (e.g. page, paragraph or other identifying description)

c) An explanation of how the decision was in error with respect to the contested issue

d) The reason(s) you believe the contested issue you are raising is relevant to the Division's decision (why you believe resolving the contested issue in your favor will materially change the Division's decision

e) How each requester (including represented parties if the requester is a member organization representing them in this matter) is directly and substantively affected by the contested decision to justify review; more specifically, please include a discussion or

1) the nature of the interest of the requester or represented party who is impacted by the contested decision(s):

2) whether that interest is one that the department's applicable statutes and regulations intend to protect; and

3) the extent to which the Division's decision relating to this contested issue directly and substantively impairs the interest described in (2) above

(f) Identify when and where you raised this issue in testimony or comments you provided to DEC. if your comments or testimony were submitted to DEC in writing, please provide a reference to the page and paragraph where they appear. (see 18 AAC 15.200(a) and 18 AAC15.245)**

(g) Suggested alternative terms and conditions that in your judgement are required for the Division's decision to be in accord with the facts or law applicable to the issue you are raising.

(h) A discussion of any other reasons you believe your request for an adjudicatory hearing should be granted. Please include a concise summary of the facts and laws that you believe support your request.

(i) If you believe a provision of the final decision or permit you are challenging was not in the draft decision or permit that was subject to the public notice or comment process, please explain the basis of your claim. (see 18 AAC 15.200(a))

** this requirement does not apply to a person challenging an Air Quality Division Stationary Source Emission Control permit under AS 46.15.2200 either (1) on the basis of a private, substantive legally protective interest under state law that may be adversely affected by the permit action, or (2) as the owner or operator of the stationary air source.

NOTE: IF you did not raise your issue before the Division's issuance of the permit or contested decision, then 18 AAC 15.245 requires you to show "good cause" for the failure to raise the issue for it to be considered. You should include this information in your response to (h) above.

Request for Evidentiary Hearing
With reference to the number of issues listed in your response to "Issues to be Decided" above, please list the number of the issues for which you are requesting an evidentiary hearing that may involve the testimony of factual witnesses, expert witnesses or the offering of additional documents or other evidence not already in the existing agency record.

VFDA requests an evidentiary hearing on the one issue it has raised. See the attached letter accompanying this form.

Description of Question of Fact to be Raised at an Evidentiary Hearing
With reference to the number of issues listed in your response to "Request for Evidentiary Hearing" above, please describe each of the factual issues you want considered in an evidentiary hearing. You may reference you answers in you response above if they describe all the questions of fact that you want considered at an evidentiary hearing

See the attached letter accompanying this form.

Estimated Time for an Evidentiary Hearing
Please provide your estimate of the time you think will be needed to conduct the evidentiary hearing you are requesting.

One day.

IF YOU HAVE QUESTIONS

If you have questions regarding what information needs to be included in this form or questions about the process for requesting an adjudicatory hearing, you may find help by:

1. Reviewing the department's regulations, many of which are referenced in this form. The Administrative Procedures regulations at 18 AAC 15 are available on the Internet at http://dec.alaska.gov/commish/regulations/index.htm. The definitions of key terms may be found at 18 AAC 15.920.
2. Reviewing the guidance documents posted by the department at http://dec.alaska.gov/commish/ReviewGuidance.htm; or
3. Contacting the department's adjudicatory hearing liaison, Gary Mendivil, in the Commissioner's Office at (907) 465-5061 or at Gary.Mendivil@alaska.gov

Please be aware that failing to comply with the requirements for filing and serving a request for adjudicatory hearing could result in all or a portion of your request being denied.

APPLICABLE DEADLINES

Requests for an adjudicatory hearing must be made not later than 30 days after the issuance of the department's decision or permit, or not later than 30 days after the issuance of a decision on a request for informal review under 18 AAC 15.185, whichever is later. (see 18 AAC 15.200(a))

LAW OFFICE OF
BRUCE B. WEYHRAUCH, LLC
whyrock@gci.net
114 S. FRANKLIN ST.
SUITE 200
JUNEAU, ALASKA 99801
TELEPHONE: (907) 463-5566 FAX: (907) 463-5858

November 21, 2017

Commissioner Larry Hartig
Alaska Department of Environmental Conservation
P.O. Box 111800
Juneau, Alaska 99811-1800
Via email (DEC.Commissioner@alaska.gov) and hand delivery

Kristin Ryan, Director
Alaska Department of Environmental Conservation
Division of Spill Prevention & Response
555 Cordova Street
Anchorage, Alaska
via fax ((907) 269-7687), email (kristin.ryan@alaska.gov) and certified mail

Re: Request for Adjudicatory Hearing by Valdez Fisheries Development Association, Inc. on ADEC Plan Number 14-CP-4057, Amendment 2017-1, (October 23, 2017) Approval of Alyeska Pipeline Service Company's Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan

Commissioner Hartig and Director Ryan:

We represent Valdez Fisheries Development Association, Inc., which owns and operates the Solomon Gulch Salmon Hatchery in Valdez, Alaska. We submit this Request for an Adjudicatory Hearing on the above referenced Decision and supplement the accompanying ADEC Request for Adjudicatory Hearing Form with this letter.

The reason for VFDA's Adjudicatory Hearing Request is because ADEC-approved amendments to the 2017 Alyeska Pipeline Service Company Valdez

Marine Terminal Oil Discharge Prevention and Contingency Plan that replaces the Solomon Gulch Hatchery and Valdez Duck Flats Sensitive Area Protection Mobilization Decision Matrix developed in 1997 with a revised Matrix that does not require an immediate and rapid deployment of protective boom for VFDA's Solomon Gulch Hatchery when there is an oil spill response.

VFDA's Solomon Gulch Hatchery has been designated one of the only two areas in close proximity to the Marine Terminal (the other is Valdez Duck Flats) that have, for at least two decades, been designated as the sensitive areas that ADEC has required immediate and rapid deployment of protective boom when there is an oil spill. Yet in the Decision that VFDA appeals, ADEC approval of a revised Matrix that eliminates immediate and rapid deployment of protective boom for VFDA's Solomon Gulch Hatchery when there is an oil spill response is without any factual or policy support.

This letter accompanies a Request for Adjudicatory Hearing Form. Any responses or questions should be sent to both this office and VFDA. The following should be incorporated by reference into the Form.

REQUEST FOR ADJUDICATORY HEARING

On October 23, 2017, ADEC determined that the Oil Spill Contingency Plan for the Valdez Marine Terminal was consistent with the applicable requirements of 18 AAC 75 and approved it. VFDA submitted comments to ADEC on the Plan on December 11, 2016, on March 31, 2017, and August 18, 2017 strongly opposing amendments to the Decision Matrix, and to diminished changes to response times at VFDA's Solomon Gulch Hatchery under 18 AAC 75.455. ADEC's decision to approve the Plan and the amendments to the Decision Matrix reducing response times to the Solomon Gulch Hatchery aggrieves and harms VFDA.

VFDA's request for an Adjudicatory Hearing on ADEC's approval of amendments to the Oil Spill Contingency Plan for the Valdez Marine Terminal that changes the 1997 Solomon Gulch Hatchery and Valdez Duck Flats Sensitive Area Protection Mobilization Decision Matrix should be granted. ADEC should stay amendments in the Plan that amends the 1997 Solomon Gulch Hatchery and Valdez Duck Flats Sensitive Area Protection Mobilization Decision Matrix. VFDA should be given the opportunity to present its evidence and arguments on this Adjudicatory Hearing Request in an Adjudicatory Hearing.

Requestor Contact Information (page 1 of the Form): For each requestor named that is a member organization, please provide the names and addresses of members who are adversely affected by the decision who are being represented by the organization in this matter (see 18 AAC 15.200(c)(3)).

VFDA is not a member organization, but the name, address, and phone numbers for VFDA, which files this Request, is on the Form. The Law Office of Bruce B. Weyhrauch, LLC (phone numbers, address, and email above) is filing this Request on behalf of VFDA.

ADEC's Request for Adjudicatory Hearing Form does not provide a box for the information required by 18 AAC 15.200(d). Nevertheless VFDA provides the following information.[1]

18 AAC 15.200(d)(1): VFDA is directly and adversely affected by the contested issue in ADEC's Decision justifying relief that VFDA has requested. The contested issue, as more extensively discussed below, is that ADEC's Decision replaced the 1997 Solomon Gulch Hatchery and Valdez Duck Flats Sensitive Area Protection Mobilization Decision Matrix with a revised Matrix that does not require an immediate and rapid deployment of protective boom for VFDA's Solomon Gulch Hatchery when there is an oil spill response. VFDA is directly and adversely affected by that contested issue because it is the owner and operator of the Solomon Gulch Hatchery. It is at risk of losing millions of salmon fry and millions of dollars if the Solomon Gulch Hatchery does not receive an immediate and rapid deployment of protective boom when there is another oil spill.

18 AAC 15.200(d)(2): The nature of the interest asserted by VFDA is that it is the owner and operator of the Solomon Gulch Hatchery. VFDA's

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[1] 18 AAC 15.200(d) reads:

> The requester must show in the hearing request
> (1) that the requester or, if the requester is an organization, the representative members of the organization, are directly and adversely affected by the contested issues in the department's decision so as to justify relief;
> (2) the nature of the interest asserted by the requester;
> (3) whether that interest is one the applicable statutes and regulations were intended to protect; and
> (4) the extent to which the contested issues in the department's decision directly and substantively impairs that interest.

Solomon Gulch Hatchery, along with the Valdez Duck Flats, have, and are, identified as the two pre-identified sensitive areas. It is critically important to VFDA, which rears and releases salmon fry and smolt adjacent to the Valdez Marine Terminal, that it receives an immediate and rapid deployment of protective boom to its Solomon Gulch Hatchery when there is an oil spill response. ADEC's Decision to replace the 1997 Solomon Gulch Hatchery and Valdez Duck Flats Sensitive Area Protection Mobilization Decision Matrix with a revised Matrix that does not require an immediate and rapid deployment of protective boom for VFDA's Solomon Gulch Hatchery is essentially a life or death issue for VFDA.

18 AAC 15.200(d)(3): VFDA's interests in maintaining historic protections to its Solomon Gulch Hatchery are directly addressed by applicable statutes, and VFDA's interests are interests that those statutes were intended to protect. It is state policy assigned to ADEC in AS 46.03.010(a) to "conserve, improve, and protect its natural resources and environment and control water, land, and air pollution, in order to enhance the health, safety, and welfare of the people of the state and their overall economic and social well-being." If ADEC's Decision to replace the 1997 Solomon Gulch Hatchery Sensitive Area Protection Mobilization Decision Matrix with a revised Matrix is not adjudicated in VFDA's favor, and if the ADEC Decision on appeal here is not reversed, restoring the 1997 Matrix, ADEC will not be conserving and protecting the salmon resource in Prince William Sound, will not conserving and improving the control of water pollution that would harm VFDA and the salmon is raises at the Solomon Gulch Hatchery, and will significantly harm the health, safety, and welfare of the people of the state who rely on VFDA's salmon production.

AS 46.03.010(b) terms address and protect VFDA's interests and the extremely sensitive nature of the protections that must be afforded the Solomon Gulch Hatchery.[2] The requirements in that statute are violated because if ADEC does not restore the 1997 Matrix on boom deployment to the Solomon Gulch

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[2] AS 46.03.010(b) provides:

> It is the policy of the state to improve and coordinate the environmental plans, functions, powers, and programs of the state, in cooperation with the federal government, regions, local governments, other public and private organizations, and concerned individuals, and to develop and manage the basic resources of water, land, and air to the end that the state may fulfill its responsibility as trustee of the environment for the present and future generations.

Hatchery to the existing Alyeska Oil Spill Contingency Plan, then ADEC will not "fulfill its responsibility as trustee of the environment for the present and future generations."

VFDA has been raising and releasing salmon for more than three generations. If ADEC does not restore the 1997 Solomon Gulch Hatchery and Valdez Duck Flats Sensitive Area Protection Mobilization Decision Matrix, then when there is another oil spill in the area, ADEC will have failed in its responsibility as trustee of the environment. If ADEC allows a revised Matrix that does not require an immediate and rapid deployment of protective boom for VFDA's Solomon Gulch Hatchery when there is an oil spill response, then ADEC violates the terms of the applicable statutes designed to address the exact concerns raised by VFDA in this Request for Adjudicatory Hearing.

18 AAC 15.200(d)(4): The extent to which the contested issue raised by VFDA in this appeal, eliminating the 1997 Matrix on boom deployment to the Solomon Gulch Hatchery in ADEC's 2017 Decision, directly and substantively impairs the interests that Alaska law was intended to protect. The 1997 Matrix on boom deployment to the Solomon Gulch Hatchery insured that when there is an oil spill in Port Valdez, two places would receive immediate and priority response. The 1997 Matrix was explicit and long time recognition of the value of those two areas and their need for immediate and priority protections from the ravages of another oil spill.

Here, by deleting the protections contained in the 1997 Matrix from the 2017 Oil Spill Contingency Plan, ADEC is not making sure that the Solomon Gulch hatchery will be protected for future generations, and ADEC ignores its legal obligation to protect the salmon natural resources, the marine environment where Solomon Gulch Hatchery is located, and is not controlling water pollution to enhance the health, safety, and welfare of the people and their overall economic and social well-being. ADEC's Decision must be revised and the 1997 Matrix restored to the 2017 Oil Spill Contingency Plan.

Issue to be Decided (page 2 of the Form): Please provide the following information for each contested issue to be reviewed as part of the adjudicatory hearing request.

The issue to be decided is whether ADEC should amend its Decision that approved the 2017 Alyeska Oil Spill Contingency Plan and deleted the Solomon

Gulch Hatchery and Valdez Duck Flats Sensitive Area Protection Mobilization Decision Matrix developed in 1997 with a revised Matrix in the 2017 Plan that does not require an immediate and rapid deployment of protective boom for VFDA's Solomon Gulch Hatchery when there is an oil spill response.

The ADEC Adjudicatory Request Form asks for information on the Contested Issue and Location of the Issue.[3] The Contested issue has already been articulated. The Location of the Issue is in Port Valdez, Alaska. The Matrix that is at the heart of this Adjudicatory Hearing Request was developed in 1997 but is not in the Decision, and was modified to reduce response time to an oil spill at VFDA's Solomon Gulch Hatchery. The following is provided under 18 AAC 15.200 and page 3 of the Form.

18 AAC 15.200(a): VFDA files this Request not later than 30 days after ADEC issued the Decision, which is reviewable under 18 AAC 15.195-.340. VFDA is authorized to request an adjudicatory hearing and has served a request upon the commissioner, the director, and the permit applicant. VFDA actively raised the issue to the department through participation in the public review process on the draft decision by submitting written comments

18 AAC 15.200(b): VFDA is not raising issues relating to the validity of the permit for which an amendment is sought or unrelated permit conditions for which an amendment was not sought, except to the extent of the Contested Issue on the 1997 Decision Matrix discussed before.

18 AAC 15.200(c): VFDA demonstrates in its request that the requirements of 18 AAC 15.200(a)-(d) have been met. VFDA's adjudicatory hearing request is in writing on the form provided by the commissioner and contains the following:

18 AAC 15.200(c)(1): The Decision being reviewed was set forth above and under 18 AAC 15.200(c)(2), the requester's name, mailing address,

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[3] The sidebar on page 3 of the accompanying Form indicates that the reference for information required in the Form derives from 18 AAC 15.200(c). However, there is nothing in 18 AAC 15.200 that uses the word "location" and it is unclear what information ADEC requests related to location. Therefore, VFDA reserves the right to supplement this letter and the accompanying form in order to provide information to ADEC on what it is that ADEC wants related to "location."

electronic mail address and telephone number have all been provided on the accompanying Form.

18 AAC 15.200(c)(3): VFDA is adversely affected by the Decision because it is VFDA's Solomon Gulch that will bear the brunt of environmental and economic impacts if it is not given immediate attention when there is an oil spill. VFDA only represents itself in this Adjudicatory Request.

18 AAC 15.200(c)(4): The information that supports VFDA's Adjudicatory hearing request and a detailed factual statement of the nature and scope of VFDA's interests is as follows. VFDA has operated the Solomon Gulch salmon hatchery in Port Valdez, Alaska since 1980. The Solomon Gulch Hatchery is less than 2 miles down the road from the Valdez Marine Terminal. Replacing the Solomon Gulch Hatchery and Valdez Duck Flats Sensitive Area Protection Mobilization Decision Matrix that was developed in 1997, with a revised Matrix that does not require an immediate and rapid deployment of protective boom for VFDA's Solomon Gulch Hatchery when there is an oil spill response, is a critically important, and fundamentally flawed issue that must be addressed by ADEC in this appeal.

VFDA's Solomon Gulch Hatchery releases 240 million pink and coho salmon fry and smolts each year to enhance the commercial and sport fisheries of Prince William Sound. A 2013 McDowell Group study found VFDA's Solomon Gulch Hatchery provides approximately $80 million in direct economic impacts to the region, and its salmon output results in hundreds of tourism jobs and opportunities, sport and commercial fishing activities, and supports hundreds of seafood-related jobs each year. The PWS salmon purse seine fleet, numbering some 267 permit holders, depends on the returns of pink salmon to Solomon Gulch for 30 percent of its annual harvest. In addition, Valdez hosts one of the largest Silver Salmon sport fisheries in Alaska due in large part to VFDA's salmon enhancement program. Each year, about 17,500 sport anglers participate in salmon fisheries created by VFDA.

VFDA is critically dependent on a clean marine environment for the success of its hatchery program. Because the VFDA hatchery is within such close proximity to the Alyeska Marine Terminal, response times for sensitive area deployment and the decision process by which Alyeska Pipeline Service Company and the regulatory agencies initiate oil spill response tactics for hatchery protection should be of paramount concern to ADEC and Alyeska. The significant

interests of VFDA, the fishery resource enhanced by VFDA, and the fishing public demand that ADEC also treat VFDA and with immediate and certain protections under any Oil Discharge Prevention and Contingency Plan. The Plan ADEC approved, reference above, does not do that.

VFDA's interests are directly affected by the Plan holder's ability to provide timely and complete protection of the Solomon Gulch Hatchery site and surrounding waters when there is an oil spill. This ability must be demonstrated, not only by regularly exercising hatchery specific sensitive area protection tactics, but also by doing so in conjunction with broad, comprehensive, and realistic Oil Spill Contingency Plan scenarios.

18 AAC 15.200(c)(4)(B): An explanation of how and to what extent VFDA's interests would be directly and adversely affected by the contested issue in the Decision. If the 1997 Solomon Gulch Hatchery and Valdez Duck Flats Sensitive Area Protection Mobilization Decision Matrix is replaced in the 2014 Plan with a revised Matrix that does not require an immediate and rapid deployment of protective boom for VFDA's Solomon Gulch Hatchery when there is an oil spill response, VFDA entire operation is at risk. Its facility will become oiled, its salmon, at one of the most fragile times of their short life, will be killed or harmed. If ADEC allows that to happen because of its failure to require the immediate protections set forth in the 1997 Matrix, future repercussions to VFDA and "future generations" (AS 46.03.010(b) will be massive. That is because future brood stock and future runs of salmon to the Solomon Gulch hatchery will be diminished and VFDA and the common property fisheries will lose millions of dollars. The costs to VFDA and the region outweigh any benefits to ADEC or the Plan Holder by replacing the 1997 Matrix.

18 AAC 15.200(c)(4)(C): A clear and concise statement of the contested issue proposed for hearing: Whether ADEC-approved amendments to the 2017 Alyeska Oil Spill Contingency Plan replacing the Solomon Gulch Hatchery and Valdez Duck Flats Sensitive Area Protection Mobilization Decision Matrix developed in 1997 with a revised Matrix that does not require an immediate and rapid deployment of protective boom for VFDA's Solomon Gulch Hatchery when there is an oil spill response is without factual basis, arbitrary, an abuse of ADEC's discretion, in violation of law, and harms the interests of the state, locals, and VFDA.

18 AAC 15.200(c)(4)(C)(i): The disputed issue of material fact and law proposed for review is whether ADEC's Decision in approving the Plan violates relevant ADEC law in AS 46.03, ADEC's requirement that it make Decisions based on facts, and whether its Decision to approve amendments to the 2017 Alyeska Oil Spill Contingency Plan that replaces the 1997 Solomon Gulch Hatchery and Valdez Duck Flats Sensitive Area Protection Mobilization Decision Matrix with a revised Matrix that does not require an immediate and rapid deployment of protective boom for VFDA's Solomon Gulch Hatchery when there is an oil spill response is arbitrary, capricious and an abuse of discretion, and without any reasonable factual basis.

18 AAC 15.200(c)(4)(C)(ii): The relevance to the Decision of those disputed issues of material fact and law is direct. It is the Decision on appeal here that is based on ADEC's decision to dilute the historically required immediate and rapid deployment of protective boom for VFDA's Solomon Gulch Hatchery.

18 AAC 15.200(c)(4)(C)(iii): A detailed explanation of how the decision was in error with respect to the contested issue. VFDA's Solomon Gulch Hatchery has been included with the Valdez Duck Flats as the two areas that have required immediate and rapid deployment of protective boom for VFDA's Solomon Gulch Hatchery when there is an oil spill.

Instead of continuing to recognizing the long-standing practice of ADEC and Alyeska prioritizing oil spill response to Solomon Gulch Hatchery, the Plan ADEC approved on October 23, 2017 removes long-standing and important requirements to immediately begin hatchery deployment by hour 5, and instead more than doubles the response to the VFDA Solomon Gulch hatchery to hour 12.

ADEC effectively eliminated the prioritization it gave to Hatchery protections and allows Alyeska to focus available resources protecting less important sensitive areas. ADEC's Decision creates adverse impacts on the effectiveness of the Plan and the planning and training required by the Plan. The result of ADEC's Decision will be to allow weaker and less responsive Solomon Gulch Hatchery protections for the critically important fishery resource in Port Valdez. That will lead to damages and impacts on hatchery operations during an oil spill. That will harm the salmon resource at the Solomon Gulch Hatchery, which will harm not only the fishery resources but the public, and VFDA in its brood takes and cost recovery fisheries, that rely on that resource, potentially for

years. VFDA is directly and adversely affected by ADEC's decision approving the Plan.

A brief discussion of past ADEC actions in the context of VFDA's request for an adjudicatory hearing illuminates VFDA's position that replacing the 1997 Solomon Gulch Hatchery Decision Matrix with a revised Matrix that does not require an immediate and rapid deployment of protective boom must be reversed. ADEC's Decision must be reversed and the 1997 Matrix restored because there is no valid substantive or policy reasons for revising the Matrix and diminishing the response time to the Solomon Gulch Hatchery to immediately protect it from oil spills.

The Solomon Gulch Hatchery and Valdez Duck Flats Sensitive Area Protection Mobilization Decision Matrix was developed and approved by ADEC in 1997 as part of the Valdez Terminal Oil Spill Response contingency Plan.

In 2014, ADEC approved amendments to the Plan, but maintained an immediate response to the VFDA Solomon Gulch Hatchery. (See Table 4-4. Scenario 4 - Day 1, page 4-16. Oil Discharge Prevention and Contingency Plan Valdez Marine Terminal CP-35-2, Volume 2 (CP-35-2 Volume 2, Edition 1, Revision 1 (7/15/15)). When there was an oil spill under that Plan, the Plan indicates that the Day 1 Initial Response, that Two workboats would begin booming the Solomon Gulch Hatchery immediately (Hours 0-5). That requirement is missing from the new plan under the Decision and no reason is given for not requiring immediate booming at the Hatchery.

In 2014, ADEC confirmed that the VFDA Solomon Gulch Hatchery is a "Sensitive Area" (along with the Valdez Duck Flats). In fact, ADEC placed VFDA's Solomon Gulch Hatchery on the same plateau as the Duck Flats in terms of protection and joined the Duck Flats with the Solomon Gulch Hatchery as priority areas for oil spill protection and response. Whenever the Plan refers to "Sensitive Areas," that included VFDA's Solomon Gulch Hatchery.

In Volume 3 of the 2014 Plan, the following parts of that Plan refer to and address VFDA's Solomon Gulch hatchery as follows (emphasis added):[4]

Section 9.0.1. Purpose of Sensitive Area Protection Tactics

> Sensitive Area Protection activities have primarily been designed to deflect or exclude oil from shorelines and sensitive areas.... specific pre-staged equipment and deployment configurations are in place at two pre-identified sensitive areas, the Solomon Gulch Hatchery and the Valdez Duck Flats.

9.0.2.1. Solomon Gulch Hatchery and Valdez Duck Flats Sensitive Area Protection Mobilization Decision Matrix

> To assist in determining the possible threat to these sensitive areas, a decision Matrix was developed. This Matrix provides assessment points to be used by the Initial Response Incident Commander (IRIC) or the Incident Command (IC) within the first one or two hours of an incident.

9.1 VMT-SA-1, Sensitive Area Protection Strike Team
9.1.1 Tactic Description

> Sensitive Area Protection Strike Teams are designed to deflect or exclude oil from impacting environmentally sensitive areas or areas of public concern. ... Sensitive Area Strike Teams are activated to deploy protection strategies in advance of arriving oil to mitigate impacts. When necessary, the Unified Command instructs the Operations Section Chief to activate sensitive area protection.

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4 http://dec.alaska.gov/Applications/SPAR/PublicMVC/IPP/DownloadCPlanDocument/3019

9.6 VMT-SA-6, Deployment Plan for Solomon Gulch Hatchery

NOTE: Due to limited response time associated with an oil spill, all or portions of the boom will be permanently installed whenever fish fry are in the fish pens, from approximately March to June each year.

9.6.1 Tactic Description

Due to limited response time for an oil spill from the VMT, this boom will be deployed whenever the fish fry are in the pens, usually between March and June each year.

As part of the 2014, Plan amendment approval process, ADEC published findings related to the 2014 Plan and address VFDA's Solomon Gulch Hatchery. ADEC's Division of Spill Prevention and Response Industry Preparedness Program issued an Oil Discharge Prevention and Contingency Plan for the Alyeska Pipeline Service Company Valdez Marine Terminal. In ADEC's Plan Renewal Final Findings Document (Nov. 21, 2014), ADEC wrote the following (emphasis added):

On page 44:

> PWS RCAC requested the RPS [Response Planning Standard] scenario more aggressively protect sensitive areas in Port Valdez. The department agrees that in Scenario 4 and the RPS scenario APSC has omitted important time commitments for the protection of sensitive areas. These commitments shape the number of resources and sequences of events for a response. Prior to renewal APSC must provide initiation and completion times within the scenarios for SAPs [Sensitive Area Protections] and reflect that Valdez Duck Flats and Solomon Gulch Hatchery will be protected no later than hour 10 from the time the decision is made to protect resources, which for planning purposes is immediate.

On page 49:

> The department's analysis and decisions concerning plan commitments to protect environmentally sensitive areas and areas of public concern extend beyond the specific comments received during the review period. The plan holder must be capable of protecting sensitive areas in Port Valdez while simultaneously containing and controlling the further spread of oil in a catastrophic incident. The proposed plan includes strategies, tactics and site specific strategies for protection of sensitive resources, including the site specific strategies in the SATG [Sensitive Area Tactical Guide] as discussed above. In addition, a rapid decision Matrix and specific strategies for the prioritized protection of the Valdez Duck Flats (Duck Flats) and Solomon Gulch Hatchery have been captured in Volume 3 of the plan. Nonetheless, the department finds that we cannot accept some of the proposed modifications, specifically those to the Duck Flats and Solomon Gulch Hatchery protection plans at this time.
>
> The prioritization of the Duck Flats and Hatchery has been captured in multiple plan review decision documents, notably in 1997 and in 2000. The primary concerns throughout the years of working on developing protective strategies were that APSC had the personnel and equipment resources to deploy those protections simultaneously with on-water control and containment efforts and secondly, that the protections would be in place in a timeframe that would reasonably be completed before oil would reach either location. The timing goals were implemented following the real life experience of the T/V Eastern Lion discharge in 1994, when both the Duck Flats and Hatchery experienced oil sheening well before predictive models would have anticipated.

On page 50:

> In collaboration with a multi-stakeholder workgroup including state and federal trustee agencies, and as a

> condition of plan approval in 1997, APSC developed the Solomon Gulch Hatchery and Valdez Duck Flats Sensitive Area Protection Mobilization Decision Matrix (Matrix.) The Matrix provides criteria and assessment points for use by the initial incident commander within the first one or two hours of a spill. ...
>
> As part of past conditions of approval, APSC worked to be able to deploy both Valdez Duck Flats and Solomon Gulch Hatchery protection tactics within 6-10 hours of the decision to implement them. ... It is expected that in non-RMROL conditions, however, APSC will effectively and simultaneously deploy the Duck Flats and Solomon Gulch Hatchery protections in no more than 10 hours.

Page 51.

> The department finds the reduction in personnel and vessels reduced APSC's ability to protect the sensitive areas within the required timeframe because the resources are not available to fill the water chambers during the required timeframe during low water. ... The difficulty with this assumption, particularly with the time sensitive nature of protecting the Solomon Gulch Hatchery and Valdez Duck Flats, is that the incoming tide may likely bring oil or oil sheen with it. ...
>
> To date, APSC has not demonstrated that timing and completeness of the deployments is fully achievable, and the department cannot approve the revised strategies and reduced resource commitments with no plausible expectation that as devised, they will provide effective protection of the Duck Flats and Hatchery before oil reaches them. As a result, the department is requiring APSC to restore the Duck Flats and Hatchery protection strategies, including sequencing and personnel and equipment resources to the plan as part of Condition of Approval No. 3b.

Volume 2 of the ADEC Plan contains figures, maps, scenarios, and tables that discuss or illustrate oil spill response, actions, tactics, and strategies.[5] Figure 4-5 on page 4-22 of Volume 2 emphasizes that VFDA's Solomon Gulch Hatchery is the Highest Sensitive Area and receives priority response by the Sensitive Area Protection Strike Team (SAP ST) 1. That designation of the VFDA Solomon Gulch Hatchery as the Highest Sensitive Area is repeated for Spill Scenario 4 (Hour 72 Response, Figure 4-14 page 4-45).

In Figure 5-15 presents an Equipment and Personnel Mobilization Chart (page 5-22). VFDA's Solomon Gulch Hatchery is the first area that is address to contain or prevent oil contamination. Table -4 indicates that for Scenario 5, Day 1 Strategies, VFDA's Solomon Gulch hatchery is again receiving a first response because it, along with the Valdez Duck Flats, is the Sensitive Area that ADEC intended to protect. That admonition of protection for VFDA's Solomon Gulch Hatchery is reiterated in Table 2.1.3 for Scenario 2, Day Response Actions and Tactics (page 2.1-11). Table 4-4, Scenario 4, Day 1, Strategies) (page 4-16) shows that within Hours 0-5, oil spill protections must have been implemented at VFDA's Solomon Gulch Hatchery.

A. <u>2017 Plan Amendments Approved by ADEC.</u>

In ADEC's CP-35-2 Volume 2, Edition 1, Revision 3 Draft A (TBD), Table 4.1-3 indicates that for Scenario 4 – Day 1 (page 4.1-19), that on the Day 1 Shift, Hours, 12-24, two fishing boats are dispatched to deploy boom at VFDA's Solomon Gulch Hatchery as part of a SAP ST2 group. Booming of Solomon Gulch Hatchery would not be completed until hours 24-36 of Day 2. (See Table 4.2-3. Scenario 4 - Day 2, Strategies (Continued) Response Actions (page 4.2-15). In Table 9.0-1 (page 9.0-4) entitled Solomon Gulch Hatchery and Valdez Duck Flats Sensitive Area Protection Mobilization Decision Matrix, it is noted that the "total estimated deployment time for both Solomon Gulch Hatchery and the Valdez Duck Flats, when done simultaneously, would range from six hours in favorable conditions, to ten or more hours in unfavorable conditions."

These excerpts show the importance ADEC put on protecting the VFDA's Solomon Gulch Hatchery and the factual need to do so quickly. On the other hand, there is no factual support for ADEC-approved amendments to the 2017 Alyeska

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[5] http://dec.alaska.gov/Applications/SPAR/PublicMVC/IPP/DownloadCPlanDocument/3019.

Oil Spill Contingency Plan that replaces the 1997 Solomon Gulch Hatchery and Valdez Duck Flats Sensitive Area Protection Mobilization Decision Matrix with a revised Matrix that does not require an immediate and rapid deployment of protective boom for VFDA's Solomon Gulch Hatchery when there is an oil spill response.

The 1997 Decision Matrix triggers immediate and rapid deployment of protective oil spill boom for the VFDA's Solomon Gulch Hatchery and Valdez Duck Flats Sensitive Areas in the early hours of a spill response for uncontained Valdez Marine Terminal spills of 10 barrels (420 gallons) or larger. The Solomon Gulch Hatchery and Duck Flats are located very close to the terminal, approximately 2 miles, and approximately 4 miles away, respectively. An uncontained spill of 10 barrels (420 gallons) or larger would rapidly travel that short distance and contaminate these environmentally sensitive areas, and areas of public concern and economic importance.

In 1994 a 200-barrel oil spill occurred at the Valdez Marine Terminal while loading the *Eastern Lion* tanker. Crude oil reached the VFDA's Solomon Gulch Hatchery in 18 hours and oil encroached on the Duck Flats within 36 hours. Boom deployment can take 10-12 hours or longer; therefore, a decision to protect must be made early in a spill response. The 1997 Decision Matrix triggers immediate booming of Solomon Gulch Hatchery and Duck Flats for uncontained Valdez Marine Terminal spills of 10 barrels (420 gallons) or larger.

ADEC's October 23, 2017 approval of Valdez Marine Terminal C-Plan Amendment 2017-1 included major changes to the 1997 Decision Matrix that no longer require immediate and rapid deployment of protective oil spill boom for the Solomon Gulch Hatchery and Duck Flats in the early hours of a spill response for uncontained Valdez Marine Terminal spills of 10 barrel (420 gallons) or larger. Instead, ADEC approved a new decision Matrix (2017 Decision Matrix) that would rarely, if ever trigger immediate and rapid deployment of protective booming.

The 2017 Decision Matrix is inconsistent with how APSC actually trains responders and implements hatchery and Duck Flat protections during actual oil spills. In response to a year 2017, 2.4 barrel (100-gallon) oil spill at the terminal, APSC activated hatchery and Duck Flats booming within a few hours. APSC correctly implemented immediate protection as the prudent course. However, if initial oil spill response personnel used the 2017 Decision Matrix, they would not

have come to this common-sense solution. Instead the 2017 Matrix would instruct staff to ignore the Solomon Gulch Hatchery and Duck Flats protection.

18 AAC 15.200(c)(4)(C)(iv): The hearing time estimated to be necessary for the adjudication is one day.

18 AAC 15.200(c)(4)(D): VFDA's request for hearing should be granted because of the important issue it has raised, and the potential for devastating impacts to VFDA's Solomon Gulch Hatchery, VFDA's continued viability as an entity if its hatchery is not protected, the local economy, the fish that VFDA holds in pens adjacent to the Valdez Marine Terminal, and local and regional common property fishery resource.

18 AAC 15.200(c)(4)(E): A specific reference to the contested condition of ADEC's decision is the replacement of the 1997 Solomon Gulch Hatchery and Valdez Duck Flats Sensitive Area Protection Mobilization Decision Matrix with a revised Matrix that does not require an immediate and rapid deployment of protective boom for VFDA's Solomon Gulch Hatchery when there is an oil spill response. A suggested alternative condition that is required to implement applicable requirements of law would be to insure that VFDA's Solomon Gulch Hatchery is protected by restoring the 1997 Matrix to the 2017 Valdez Marine Terminal's Oil Spill Contingency Plan.

18 AAC 15.200(d): VFDA has already shown in this hearing request under 18 AAC 15.200(d)(1) that VFDA is directly and adversely affected by the issue it has raised in ADEC's Decision justify the relief that VFDA requested, which is restoring the 1997 Solomon Gulch Hatchery and Valdez Duck Flats Sensitive Area Protection Mobilization Decision Matrix to the 2017 Plan.

18 AAC 15.200(d)(2): The nature of the interest asserted by VFDA is that it is the owner and operator of the Solomon Gulch Hatchery. The Solomon gulch hatchery is one of two sensitive areas in Port Valdez that ADEC previously required priority response if there were an oil spill. By diluting that response time in the 2017 ADEC Decision, VFDA's entire operation is threatened.

18 AAC 15.200(d)(3): The interests that VFDA has asserted here is one the applicable statutes were intended to protect. AS 46.03.010(a) requires ADEC to "conserve, improve, and protect its natural resources and environment" and control water pollution in order to enhance the health, safety, and welfare of

the people of the state and their overall economic and social well-being." That means that ADEC must restore oil spill response times in the 2017 Decision that protect the natural resources VFDA propagates at the Solomon Gulch Hatchery. AS 46.03.010(b) requires ADEC to "improve" plans in cooperation with private organizations to develop resources so state fulfills trust responsibilities for present and future generations. That means that ADEC's 2017 Decision cannot be allowed to diminish protections that the 1997 Matrix gave to VFDA's Solomon Gulch Hatchery and prioritized response times to the Solomon Gulch Hatchery when there is an oil spill.

18 AAC 15.200(d)(4): The extent to which the contested issue in ADEC's Decision directly and substantively impairs that interest. By allowing reduced response times to VFDA's Solomon Gulch Hatchery when there is a spill, that will directly and substantially impairs VFDA's interests.

VFDA raised the issue in public comments it provided to ADEC in an August 18, 2017 letter to Anna Carey, ADEC; in a December 11, 2016 letter to Kevin Kearney, Program Administrator, Bureau of Land Management, Branch of Pipeline Monitoring, the US Coast Guard, ADEC, and Alyeska; and in a March 31, 2017 letter to Anna Carey, ADEC.

18 AAC 15.210: VFDA requests a Stay of ADEC's Decision pending completion of proceedings under this chapter. VFDA's Stay request is supported by the following reasons.

1. If the new Decision Matrix is used, and immediate and rapid deployment of protective oil spill boom does not occur, VFDA interests will be adversely and directly affected.

2. The 2017 Decision Matrix fails to provide appropriate instruction to oil spill responders contrary to the 1997 Condition of Approval and spill repose Matrix. If the Decision is not stayed, oil spill responders will not provide immediate protective booming for the Solomon Gulch Hatchery to protect this critically important, environmentally sensitive area of public concern before oil reaches it.

3. If an oil spill occurs while VFDA's adjudicatory hearing process continues, and if ADEC's 2017 Decision is stayed, the status quo will remain in effect. Oil spill responders will be able to rely on a two-

decades-old, proven, tested, and technical and scientific instructions already developed by the State and other responders that will timely protect the environmentally sensitive Solomon Gulch Hatchery before oil reaches it.

4. The state and Alyeska and others working on an oil spill will continue working on a Plan already in effect and will not be harmed by a Stay.

5. If the 2017 Decision Matrix is not stayed, it will require updated oil spill responder training and that will create a false impression and confusion that the revised Matrix should be relied upon. If it is not stayed, responders will start to train with the idea that the Solomon Gulch Hatchery is not as valuable as it once was, and that protections of the sensitive VFDA Solomon Gulch Hatchery are no longer important public policy objectives. All of that is inaccurate, but all of that would be avoided by imposing a stay of the Decision.

Very truly yours,

Bruce B. Weyhrauch

Enclosure

C: Alyeska Marine Terminal
Scott Hicks, Terminal Manager
200 Dayville Road
Valdez, Alaska 99686
Via fax: 907 834 6914