



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Environmental
Conservation

DIVISION OF SPILL PREVENTION AND RESPONSE
Prevention, Preparedness, and Response Program

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September 3, 2021

Nathan Spinner
New Horizons
901 Cope Industrial Way
Palmer, AK 99645

Subject: Native Village of Chitina Community Hall HHO spill, Spill #: 21229923401; Letter of State Interest

Dear Mr. Spinner:

This letter is to advise you that on or about August 22, 2021, a discharge occurred at or near the Native Village of Chitina Community Hall at Mile 1 Upper Village Road, Chitina, AK, 99566 for which you may be financially responsible. The discharge of 60 gallons of diesel occurred when installing buried fiber optic cable near the building, the transfer line to the heating oil tank was damaged. Alaska Statute (AS) Title 46 authorizes the state to respond to this discharge and to take appropriate action to minimize damage to human health, safety, or welfare or to the environment.

Under AS 46.03.740, the discharge of any amount of oil into or upon the waters or land of the state is prohibited unless authorized by the Alaska Department of Environmental Conservation (department). Under AS 46.03.745, an uncontrolled release of a hazardous substance is prohibited. AS 46.04.020 and AS 46.09.020 require the immediate containment and cleanup of oil and hazardous substance releases by the person causing or permitting the release. In addition, AS 46.03.822 establishes who is financially responsible or liable for the investigation and cleanup of any release or threatened release of oil or a hazardous substance. State records indicate that you may meet one or more of the following criteria:

- caused or permitted the discharge/release [AS 46.04.020/46.09.020];
- owned or controlled the hazardous substance at the time of its release [AS 46.03.822(a)(1)];
- own(ed) or operate(ed) the property or facility from which the release occurred [AS 46.03.822(a)(2)];
- own or operate the property at which the hazardous substance came to be located [AS 46.03.822(a)(3)]; and/or
- arranged for transport, disposal or treatment of hazardous substances that were released [AS 46.03.822(a)(4)].

If you undertake response actions, they must be approved in advance by the department under 18 AAC 75.300 - 18 AAC 75.396 and the adequacy of those actions will be evaluated by Melissa Woodgate, the State On-Scene Coordinator's representative for this discharge. Response actions are adequate if they are in accord with state and federal law, including 18 AAC 75. If the department considers your response actions adequate, state involvement in the cleanup actions will be limited to approving cleanup plans, monitoring the progress of cleanup activities, and providing guidance as necessary. However, if your response actions are not satisfactory, the department may assume the

lead role in the investigation and cleanup efforts and recover these costs from the responsible party (RP).

Please be advised that AS 46.08.070 requires the department seek recovery for certain costs, including oversight activities, incurred by the state in responding to discharges.

As an RP under AS 46.03.822 or AS 46.03.760(d), you will be billed by the state at a later date for state expenditures associated with this discharge, unless the department waives all or a portion of response costs incurred by the state. Department practice is to hold billing until a 5-hour threshold is exceeded and then send a bill for all staff time related to this release in excess of 5 hours. Billable state expenditures include the direct costs of state staff time and indirect state overhead costs, as well as contractual and materials costs and interest for delayed payments. Billable state staff time includes all time spent on activities related to the incident, including site visits, response and report reviews, telephone conversations, meetings, and legal services. Failure to reimburse the state for billable oversight and response actions may result in the filing of liens against property you own, pursuant to AS 46.08.075.

In the event that the release is from a home heating oil tank, and the building has four or fewer dwelling units, the department may waive all or a portion of the response costs incurred by the state if the department finds that all of the following conditions are true:

- release was from a tank, piping, or other equipment used solely to provide heat or electricity to a residential building of not more than four dwelling units;
- responsible party (RP) did not willfully or negligently fail to comply with spill prevention, reporting, and response requirements of the department;
- RP took immediate measures upon discovery of the release to contain the release where possible; and
- RP provided reasonable assistance to the department and other governmental entities that responded to the release, including providing reasonable access to the property and information to the department about the release and property.

Please submit an interim report regarding the cleanup as required under 18 AAC 75.300(d).

Nothing in this letter shall be construed as a waiver of the state's authority or as an agreement on the part of the state to forego civil, criminal, or administrative enforcement of the above-described violations or to seek recovery of damages, costs, and penalties as prescribed by law. In addition, nothing herein shall be construed as a waiver of the state's enforcement authority for past, present, or future violations not specifically described in this letter.

If you believe someone else may be responsible for this discharge or if you have any questions concerning this matter, please contact me at 907-835-1471 or Melissa.Woodgate@alaska.gov.

Sincerely,

DocuSigned by:



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Melissa Woodgate

Environmental Program Specialist

cc:

Anna Carey, ADEC
Mo Radotich, ADEC
Stephanie Lovell, ADEC