STATE OF ALASKA

FRANK H. MURKOWSKI, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION
DIVISION OF SPILL PREVENTION AND RESPONSE
INDUSTRY PREPAREDNESS PROGRAM

555 Cordova Street
Anchorage, AK 99501
PHONE: (907) 269-3094
FAX: (907) 269-7687
http://www.state.ak.us/dec

June 30, 2003

File:304.30(1013)

OIL DISCHARGE PREVENTION AND CONTINGENCY PLAN APPROVAL

Mr. James Soriano, President
Delta Western, Inc.
P.O. Box 79018
Seattle, WA 98119

Dear Mr. Soriano:

Re: Extended Plan Approval Period for Delta Western Haines II Oil Discharge Prevention and Contingency Plan. ADEC Plan #: 023-CP-1015.

The Alaska Department of Environmental Conservation (Department) has received your request to extend by two years the approval period for the following Oil Discharge Prevention and Contingency Plan, as provided for in the recently enacted Senate Bill 74 (An Act extending the renewal period for Oil Discharge Prevention and Contingency Plans):

Plan Title:	**Delta Western Haines II; Oil Discharge Prevention and Contingency Plan**
Supporting Documents:	**SEAPRO Technical Manual, dated May 2001, as revised, updated, and amended upon approval.**
Plan Holder:	**Delta Western, Inc., Seattle, WA.**
Covered Facilities:	**Delta Western Haines II oil terminal, Haines, Alaska.**

PLAN APPROVAL: The referenced plan is hereby approved, **effective June 30, 2003.** This approval supersedes the previous Approval and Certificate, dated December 22, 2002.

A certificate of approval is enclosed, stating that the contingency plan has been approved by the Department. **This approval is subject to the following terms and conditions:**

1. **Notice of Changed Relationship with Response Contractor.** Because the plan relies on the use of response contractor(s) for its implementation, the plan holder must immediately notify the Department in writing of any change in the contractual relationship with the plan holder's response contractor(s), and of any event including but not limited to any breach by either party to the response contract that may excuse a response contractor from performing, that indicates a response contractor may fail or refuse to perform, or that may otherwise affect the response, prevention, or preparedness capabilities described in the approved plan.

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This condition is reasonably necessary because there are certain risks associated with allowing a plan holder to rely in part or total upon a response contractor instead of obtaining its own response capability. The risks arise, in part, because the certainty of the contractor's response is dependent upon the continuation of the legal relationship between it and the plan holder. Given this risk, the Department must be promptly informed of any change of the contractual relationship between the plan holder and the response contractor, and of any other event that may arguably excuse the response contractor from performing or that would otherwise affect the response, prevention, or preparedness capabilities described in the approved plan. The Department may seek appropriate modifications to the plan or take other steps to ensure that the plan holder has continuous access to sufficient resources to protect the environment and to contain, cleanup, and mitigate potential oil spills.

EXPIRATION: This approval **expires December 22, 2007.** After the approval expires, Alaska law prohibits operation of these facilities until an approved plan is once again in effect.

AMENDMENT: Before any change to this plan may take affect, the planholder must submit an Application for Amendment to the plan with any additional information needed to evaluate the proposed amendment. This is to ensure that changes to the plan do not diminish the planholder's ability to respond to a discharge and to evaluate any additional environmental considerations that may need to be taken into account. (18 AAC 75.415).

REVOCATION, SUSPENSION, OR MODIFICATION: This approval is effective only while the plan holder is in "compliance with the plan" and with all of the terms and conditions described above. The Department may, after notice and opportunity for a hearing, revoke, suspend, or require the modification of an approved plan if the plan holder is not in compliance with it, or for any other reason stated in AS 46.04.030(f). In addition, Alaska law provides that a vessel or facility that is not in "compliance with the plan" may not operate (AS 46.04.030). The Department may terminate approval prior to the expiration date if deficiencies are identified that would adversely affect spill prevention, response or preparedness capabilities.

DUTY TO RESPOND: Notwithstanding any other provisions or requirements of this contingency plan, a person causing or permitting the discharge of oil is required by law to immediately contain and cleanup the discharge regardless of the adequacy or inadequacy of a contingency plan (AS 46.04.020).

NOTIFICATION OF NON-READINESS: Within twenty-four (24) hours after any significant response equipment specified in the plan becomes non-operational or is removed from its designated storage location, the plan holder must notify the Department in writing and provide a schedule for the equipment's substitution, repair, or return to service (18 AAC 75.475(b)).

CIVIL AND CRIMINAL SANCTIONS: Failure to comply with the plan may subject the plan holder to civil liability for damages and to civil and criminal penalties. Civil and criminal sanctions may also be imposed for any violation of AS 46.04, any regulation issued thereunder, or any violation of a lawful order of the Department.

INSPECTIONS, DRILLS, RIGHTS TO ACCESS AND VERIFICATION OF EQUIPMENT, SUPPLIES AND PERSONNEL: The Department has the right to verify the ability of the plan holder to carry out the provisions of its contingency plan and access to inventories of equipment, supplies and personnel through such means as inspections and discharge exercises, without prior

notice to the plan holder. The Department has the right to enter and inspect the covered vessel or facility in a safe manner at any reasonable time for these purposes and to otherwise ensure compliance with the plan and the terms and conditions (AS 46.04.030(e) and AS 46.04.060). The plan holder shall conduct exercises for the purpose of testing the adequacy of the contingency plan and its implementation (18 AAC 75.480 and 485).

FAILURE TO PERFORM: In granting approval of the plan, the Department has determined that the plan, as represented to it by the applicant in the plan and application for approval, satisfies the minimum planning standards and other requirements established by applicable statutes and regulations, taking as true all information provided by the applicant. The Department does not warrant to the applicant, the plan holder, or any other person or entity: (1) the accuracy or validity of the information or assurances relied upon; (2) that the plan is or will be implemented; or (3) that even full compliance and implementation with the plan will result in complete containment, control, or clean-up of any given oil spill, including a spill specifically described in the planning standards. The plan holder is encouraged to take any additional precautions and obtain any additional response capability it deems appropriate to further guard against the risk of oil spills and to enhance its ability to comply with its duty under AS 46.04.020(a) to immediately contain and clean up an oil discharge.

COMPLIANCE WITH APPLICABLE LAWS: If amendments to the approved plan are necessary to meet the requirements of any new laws or regulations, the plan holder must submit an application for amendment to the Department at the above address. The plan holder must adhere to all applicable state statutes and regulations as they may be amended from time to time. This approval does not relieve the plan holder of the responsibility for securing other federal, state or local approvals or permits, and that the plan holder is still required to comply with all other applicable laws.

APPEAL: This is a final decision. Aggrieved persons with standing may appeal this decision to the Alaska Superior Court within 30 days as provided by the Alaska Rules of Appellate Procedure.

If you have any questions, please contact Dan Hopson at (907) 465-5368.

Sincerely,

Bill Hutmacher
Program Manager

Enclosure: Certificate of Approval, Number 03-CER-3592

cc: Bob Dreyer, ADEC, Anchorage
Dan Hopson, ADEC, Juneau
Moira Ingle, ADFG, Juneau
Sam Means, ADNR, Anchorage
Matt Carr, USEPA
CDR John Sifling, USCG, MSO Juneau