STATE OF ALASKA

SARAH PALIN, GOVERNOR

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

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January 2, 2008

OIL DISCHARGE PREVENTION AND CONTINGENCY PLAN APPROVAL

Mr. Kirk Payne
Chief Operating Officer
Delta Western, Inc.
Suite 101
420 L Street
Anchorage, AK 99501

File: 304.30 (1017)

Subject: **Delta Western, Inc., Yakutat Bulk Plant Oil Discharge Prevention and Contingency Plan, Dated December 2007, Plan No. 07-CP-1019**

Dear Mr. Payne:

The Alaska Department of Environmental Conservation (Department) has reviewed the renewal plan and application for Delta Western, Inc., Yakutat Bulk Plant Oil Discharge Prevention and Contingency Plan (plan), dated July 2007 and the revised plan dated December 2007.

This approval applies to the following oil discharge prevention and contingency plan:

Plan Title:	**Delta Western, Inc., Yakutat Bulk Plant Oil Discharge Prevention and Contingency Plan consisting of one (1) volume.**
Plan Holder:	**Delta Western, Inc.**
Covered Facilities:	**Delta Western, Inc. Yakutat Bulk Plant, Yakutat, Alaska**

PLAN APPROVAL: An approval for the referenced plan is hereby granted, **effective January 31, 2008.** This approval supersedes the approval letter and certificate dated 6/30/2003 for this facility.

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

EXPIRATION: This approval **expires January 30, 2013.** After the approval expires, Alaska law prohibits facility operations until an approved plan is once again in effect.

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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.

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.

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: Not withstanding 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 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 there under, 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.

ADJUDICATORY HEARING: Any person who disagrees with this decision may request an adjudicatory hearing in accordance with 18 AAC 15.195, 18 AAC 15.340 or an informal review by the Division Director in accordance with 18 AAC 15.185. **Informal review requests** must be delivered to the Division Director, 410 Willoughby Avenue, Suite 303, Juneau, Alaska 99801 within 15 days of the permit decision. **Adjudicatory hearing requests** must be delivered to the Commissioner of the Department of Environmental Conservation, 410 Willoughby Avenue, Suite 303, Juneau, Alaska 99801, within 30 days of the permit decision. If a hearing is not requested within 30 days, the right to appeal is waived.

If you have any questions, please contact Shannon Oelkers at (907) 269-0910 or Eric Breitenberger at (907) 451-2144.

Sincerely,

Betty Schorr
Program Manager

Enclosure: Certificate of Approval, Number: 08CER-002

cc w/o enclosure:
Eric Breitenberger, ADEC, T&TF Section Manager
Beverly Niemann, DWI, Seattle
Carol Fries, ADNR, Anchorage
Matt Carr, USEPA, Anchorage
Captain Mark DeVries, USCG, Anchorage
Teri Camery, City and Borough of Juneau, Juneau