STATE OF ALASKA

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

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

June 9, 2003

FILE COPY

File No: 305.30 ~~(2013)~~ 2108

OIL DISCHARGE PREVENTION AND CONTINGENCY PLAN APPROVAL

Mr. James Soriano
Vice President
Delta Western
P. O. Box 70438
Seattle, WA 98107

Dear Mr. Soriano:

Re: **Extended Plan Approval Period for Delta Western Naknek Bulk Plant, Oil Discharge Prevention and Contingency Plan, ADEC Plan Number 003-CP-2082.**

The Alaska Department of Environmental Conservation (Department) has extended the approval period of the Delta Western Naknek Bulk Plant, Oil Discharge Prevention and Contingency Plan dated May 2001. As noted below, the approval period has been extended by two years as required by the recently enacted Senate Bill 74 (An Act extending the renewal period for Oil Discharge Prevention and Contingency Plans).

This approval applies to the following Oil Discharge Prevention and Contingency Plan (plan):

Plan Title:	**Delta Western Naknek Bulk Plant, Oil Discharge Prevention and Contingency Plan consisting of one (1) volume.**
Supporting Documents:	**Chadux Technical Manuals as revised and updated.**
Plan Holder:	**Delta Western Naknek Bulk Plant, Naknek, Alaska**
Covered Facilities:	**Delta Western Naknek Bulk Plant, Naknek, Alaska**

PLAN APPROVAL: Approval of the referenced plan is hereby granted, **effective June 9, 2003.** This approval supersedes the plan Approval and Certificate of Approval, dated May 10, 2001.

Printed on Recycled Paper

A certificate of approval stating that the Department has approved the contingency plan is enclosed. **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.

   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.

   This condition is reasonable and necessary to assure compliance with 18 AAC 75.415, 18 AAC 75.425(e)(1, 3 & 4), 18 AAC 75.430, 18 AAC 75.432, 18 AAC 75.436, and 18 AAC 75.445.

EXPIRATION: This approval **expires March 9, 2006.** After the approval expires, Alaska law prohibits operation of these facilities until an approved plan is once again in effect.

RENEWAL: To renew this approval, the plan holder must submit a completed renewal application and plan to the Department no later than 180 days prior to the expiration of this approval. This is to ensure that the submitted plan is approved before the current plan in effect expires. (18 AAC 75.420).

AMENDMENT: Before any change to this plan may take affect, the plan holder 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 plan holder'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 Procedures.

If you have any questions, please contact Gloria Beckley at 269-0910 or Bob Dreyer at 269-7664.

Sincerely,

Betty Schorr

Bill Hutmacher
Program Manager

Encl.: Certificate of Approval, Number 03-CER-3511

cc w/o encl. Bob Dreyer, ADEC, EPR
Dave Zuker, ADEC, EPR
Trena Hallback, Delta Western, Anchorage
Mark Fink, ADF&G
Sam Means, ADNR, Anchorage
Capt. Ron Morris, USCG, Anchorage MSO
Thede Tobish, Municipality of Anchorage
Matt Carr, EPA