

STATE OF ALASKA

SARAH PALIN, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION
DIVISION OF SPILL PREVENTION AND RESPONSE
INDUSTRY PREPAREDNESS PROGRAM
Exploration Production & Refineries

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

December 30, 2008

File: 305.30 (Flint Hills)

OIL DISCHARGE PREVENTION AND CONTINGENCY PLAN APPROVAL

Mark Gregory
Vice President of Alaska Operations
Flint Hills North Pole Refinery
1100 H&H Lane
North Pole, AK 99507

Subject: **Flint Hills North Pole Refinery Oil Discharge Prevention and Contingency Plan (Plan), ADEC Plan Number 08-CP-3110. Plan Approval**

Dear Mr. Gregory:

The Alaska Department of Environmental Conservation (ADEC) has completed our review of your application for the above referenced Oil Discharge Prevention and Contingency Plan (plan). ADEC coordinated the State of Alaska's public review for compliance with 18 AAC 75, using the review procedures outlined in 18 AAC 75.455. Based on our review, ADEC has determined that your plan is consistent with the applicable requirements of the referenced statute/regulation and is hereby approved.

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

Plan Title: **Flint Hills Resources Alaska North Pole Refinery Oil Discharge Prevention and Contingency Plan**

Plan Holder: **Flint Hills Resources Alaska, LLC**

Covered Facilities: **North Pole refinery and crude oil storage tanks**

PLAN APPROVAL: Approval of the referenced plan is hereby granted, effective **December 30, 2008**. A certificate of approval stating that ADEC has approved the contingency plan is enclosed. **This approval is subject to the following terms and conditions:**

TERMS AND CONDITIONS

The following items must be completed and/or received as specified to complete the plan in accordance with AS 46.04.030(e).

1. Notice of Changed Relationship with Response Action Contractor. Because the plan relies on the use of response contractors for its implementation, Flint Hills must immediately notify us in writing of any change in the contractual relationship with the plan holder's response action contractor, 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 reasonable and 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 the contractor and the plan holder. Given this risk, ADEC 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. ADEC 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. 18 AAC 75.425(e)(3)(H) and 18 AAC 75.445(i)

2. Secondary Containment Repairs. Because a large number of secondary containment areas were not in compliance with the standards set forth in 18 AAC 75.075 ADEC has not allowed a prevention credit for secondary containment in accordance with 18 AAC 75.430(d). ADEC is also pursuing a Compliance Order by Consent (COBC) with Flint Hills to ensure compliance with 18 AAC 75.075. In good faith, Flint Hills has indicated to ADEC that all of the secondary containment areas will be repaired by the end of the 2009 construction season. However, because the COBC is not completed yet Flint Hills must report to the Department all of the secondary containment areas that were repaired this year by February 20, 2009, as well as indicate which ones are scheduled for repair in 2009. Once all of the secondary containment areas are repaired, an evaluation must be conducted by a third party and the finding shared with ADEC. Once the standards found in 18 AAC 75.075 are met, ADEC will grant a 60% prevention credit. This will be done through a routine amendment.

This condition is reasonable and necessary as a plan condition to ensure the plan holder's compliance with 18 AAC 75.075 as well as the prevention credit for secondary containment as required by 18 AAC 75.432 (d)(4).

3. Adequate Response Equipment in Place. In order for Flint Hills to meet the new larger RPS of 81, 867 barrels, new pieces of response equipment were purchased. Flint Hills indicated to ADEC in their December 17, 2008 letter that these pieces of equipment (3 diaphragm pumps, 2100 feet of additional hose, and an air compressor) have been purchased but have not yet been received. Because these pieces of equipment are not on scene at the time of approval, Flint Hills must submit to ADEC proof of purchase to ADEC no later than January 15, 2009, as well as ensure that the pieces of equipment are on scene within 60 day after the date of this approval letter.

This condition is reasonable and necessary as a plan condition to ensure the plan holder's compliance with 18 AAC 75.432(2).

4. Final Copy of the Plan. Within 30 days of this letter, the plan holder must submit to ADEC updated versions of the approved plan, Flint Hills must send two complete plan copies to the Exploration, Production & Refineries Section and one copy to the ADEC office in Fairbanks. In addition, you must send either a complete updated version of the plan or a copy of the plan edits and revisions to each controlled document holder of your plan.

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

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).

RENEWAL: To renew this approval, the plan holder must submit a completed renewal application and plan to ADEC 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).

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. ADEC 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). ADEC 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 ADEC 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 there under, or any violation of a lawful order of ADEC.

INSPECTIONS, DRILLS, RIGHTS TO ACCESS, AND VERIFICATION OF EQUIPMENT, SUPPLIES AND PERSONNEL: ADEC 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. ADEC 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, ADEC has determined that the plan, as represented to ADEC 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. ADEC 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 cleanup 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 ADEC 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 the plan holder is still required to comply with all other applicable laws.

INFORMAL REVIEW OR 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 Director of the Division of Spill Prevention and Response, 410 Willoughby Avenue, Suite 303, PO Box 111800, Juneau, Alaska 99811-1800 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, PO Box 111800, Juneau, Alaska 99811-1800, within 30 days of the permit decision. If a hearing is not requested within 30 days, the right to appeal is waived. Anyone who submits a request for an informal review or an adjudicatory hearing should also send a copy of the request to the undersigned.

If you have any questions, please contact Graham Wood at (907) 269- 7569 or Dianne Munson at 269-3080.

Sincerely,



Betty Schorr
Program Manager

Attachment: **Summary of Basis for Department Decision**
Enclosure: **Certificate of Approval, Number 08-CER-029**

cc (with enclosure):

Dianne Munson, ADEC, EPR
Graham Wood, ADEC, ERP

cc (w/o enclosure):

Laurie Silfven, ADEC, Anchorage
Ed Meggert, ADEC, Fairbanks
Carol Fries, ADNR, Anchorage
Todd Nichols, ADFG, Fairbanks
Pam Miller, NAEC, Fairbanks
Mac McLean/Jack Winters, ADNR Fairbanks
Carl Lautenberger, EPA Anchorage
Brian LaPlaunt, Flint Hills