

**A FAIR WARNING:  
DIMINISHED STATE OVERSIGHT OF OIL SPILL CONTINGENCY PLANS  
FEBRUARY, 2006**

The purpose of this memorandum is to highlight changes the Alaska Department of Environmental Conservation ("ADEC") has made in its program for oil spill contingency planning. These changes have weakened oil spill discharge prevention and contingency planning standards and ADEC's oversight of the oil industry's preparedness.

In the summer of 2004, the Murkowski Administration adopted amendments to Alaska's oil spill contingency planning regulations. These regulatory amendments severely weakened them in crucial respects. To make matters worse, in the past few years ADEC has misinterpreted Alaska statutes and its own regulations so as to weaken contingency planning requirements further.

These actions could lead to an environmental disaster in the event of a major oil spill, especially in Cook Inlet and in the Beaufort Sea. In these waters, offshore oil and gas production platforms operate and subsea oil and gas pipelines service them. During significant portions of the year, sea ice and adverse weather conditions make containing and cleaning up oil spills virtually impossible. In fact, containment and cleanup is highly problematic in these waters under even the best of weather conditions.

Because of the potentially disastrous consequences of ADEC's actions, it is important that the reasoning underlying them be scrutinized. Before doing that, however, is first worth looking back at what happened immediately after the T/C Exxon Valdez oil spill.

**THE T/V EXXON VALDEZ OIL SPILL DISASTER PROMPTS TOUGHER LAWS.**

The T/V Exxon Valdez ran aground shortly after midnight on March 24, 1989. The huge tanker immediately began spilling crude oil into Prince William Sound. ADEC and the U.S. Coast Guard quickly decided that limiting the volume of oil that could be released should be the top priority in the initial response to the spill. Within just a few hours after the grounding, therefore, the agencies authorized another Exxon tanker already inbound to Valdez to discharge its oily ballast water into the Sound and to begin lightering oil off the T/V Exxon Valdez. Lightering began that night, eventually involved three tankers, and continued for eleven days, until 1,030,000 barrels of crude oil were transferred off the T/V Exxon Valdez onto other tankers. Offloading this oil prevented it from joining the 260,000 barrels (11,000,000 gallons) the T/V Exxon Valdez spilled into the Sound.<sup>1</sup>

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<sup>1</sup> ADEC, *The Exxon Valdez Oil Spill – Final Report, State of Alaska Response* (June 1993), at ix, 92.

Just a few weeks later, ADEC issued an Emergency Order to Alyeska Pipeline Service Company, the operator of the trans-Alaska Pipeline System and the crude oil storage and tanker loading facilities in Valdez. Among other things, the Order set specific planning standards for lightering oil from a stricken Prince William Sound tanker involved in any future spill.<sup>2</sup>

Both ADEC's action in focusing first on lightering oil off the T/V Exxon Valdez spill and its Emergency Order demonstrate that from day one of that spill, ADEC considered mitigation of the threat of any additional release of oil to be a critical part of the initial response to a spill.<sup>3</sup>

In reaction to the T/V Exxon Valdez disaster, in the early 1990s the Alaska Legislature enacted legislation that revised contingency plan requirements, specified volumetric oil spill planning response standards, and strengthened ADEC's ability to enforce the requirements concerning contingency plans.<sup>4</sup> Many of these statutory changes were based upon recommendations the Alaska Oil Spill Commission had made early in 1990.<sup>5</sup> After it examined the events that led to the T/V Exxon Valdez disaster, the Alaska Oil Spill Commission had found that “[s]tate government was not fully prepared” to “oversee industry operations ... and to insure proper response capabilities in case of accident,” and that “[r]egulatory effectiveness ... should be improved” because “[p]rivate voluntary prevention measures, though commendable, are often ignored as memories fade unless backed up by state regulations.”<sup>6</sup>

The new, tougher Alaska laws prohibited the operation of an oil terminal facility, pipeline, exploration or production facility, or tank vessel or oil barge unless the operator first received the approval of a contingency plan from ADEC.<sup>7</sup> The new laws charged ADEC with “ensur[ing] that the applicant for a contingency plan has access to sufficient

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<sup>2</sup> *Id.* 93.

<sup>3</sup> Stopping the ongoing discharge is the well-accepted second goal of the oil spill response strategy. The first goal is to maintain the safety of human life. *See, e.g.*, U.S. Department of Commerce, National Oceanic & Atmospheric Administration, *Strategies & Guidelines for Selecting Response Methods*, at 7, (available at <http://response.restoration.noaa.gov/oil/laidis/response/response.html> (last visited Dec. 20, 2005)) (emphasis added) (“Generally, oil spill response goals, in order of priority, are: 1. Maintain safety of human life; 2. *Stabilize the situation to preclude it from worsening*; and 3. Minimize adverse environmental and socioeconomic impacts by coordinating all containment and removal activities to carry out a timely, effective response.”); *see also* 40 C.F.R. § 300.305(d) (U.S. Environmental Protection Agency’s National Contingency Plan requiring immediate removal of discharged substances and mitigation of any threatened discharge).

<sup>4</sup> *See* ADEC, *The Exxon Valdez Oil Spill – Final Report, State of Alaska Response*, at 156.

<sup>5</sup> *See* State of Alaska, *Alaska Oil Spill Commission, Spill – The Wreck of the Exxon Valdez – Implications for the Safe Transportation of Oil – Final Report* (February 1990).

<sup>6</sup> *Id.* 137, 140.

<sup>7</sup> *See* AS 46.04.030(a)-(c).

resources ... to contain, clean up, and mitigate potential oil discharges from the facility or vessel . . . .”<sup>8</sup> The Legislature defined containment and cleanup to include “all direct and indirect efforts associated with the prevention, abatement, containment, or removal of a pollutant . . . .”<sup>9</sup> It defined “discharge” to mean any “spilling, leaking, pumping, pouring, emitting, emptying, or dumping . . . .”<sup>10</sup> These definitions were intentionally broad. The definitions made plain that a contingency plan had to cover all aspects of responding to an oil spill.

The Legislature also understood, however, that under the new requirements for contingency plans, vessel, barge and facility operators might have to rely upon experienced oil spill response contractors to supply the personnel and resources needed in a spill response. Thus, in the new law the Legislature specified that the holder of an approved contingency plan could either “maintain or have available under contract” sufficient resources to meet the applicable response planning standard.<sup>11</sup> To ensure that any promised contractual services would actually be performed, the Legislature forbade ADEC from approving a contingency plan that relied upon the services of an “oil spill primary response action contractor” unless the contractor was first registered and approved by ADEC.<sup>12</sup>

## WELL BLOWOUTS

In the early 1990s, ADEC adopted regulations implementing the new contingency planning statutes. Among the more significant regulations was one concerned with the possible blowouts of wells at onshore and offshore oil and gas exploration or production facilities. A blowout occurs when a well builds up sufficient gas pressure at the bottom of the well to overcome the hydrostatic weight in the well, and the gas forces its way to the ground surface carrying with it a plume of crude oil.<sup>13</sup>

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<sup>8</sup> *Id.* (e).

<sup>9</sup> AS 46.04.900(5) (emphasis added). “Abatement” is not defined in the Alaska Statutes, but its common dictionary definition is “put an end to,” e.g., putting an end to the ongoing discharge of oil. *Webster’s New Encyclopedic Dictionary 2* (Merriam Webster, Inc., 2002).

<sup>10</sup> AS 46.04.900(7).

<sup>11</sup> *See* AS 46.04.030(k); *see also* 18 AAC § 75.434(a).

<sup>12</sup> *See* AS 46.04.030(e); *see also* AS 46.04.035(g)(2) (defining a “primary response action contractor” as “a person who enters into a response action contract” for a spill and “who is carrying out the contract”), and 18 AAC § 75.500 (defining a “response action contractor” similarly).

<sup>13</sup> The Alaska Department of Natural Resources, Division of Oil and Gas, describes a well blowout as follows:

The most dramatic form of spill can occur during a well blowout which occurs when high pressure gas is encountered in the well and sufficient precautions, such as increasing the weight of the drilling mud have not been taken (Williams and Meyers, 1981). The result is that oil, gas, or mud is suddenly and violently expelled from the well bore, followed by uncontrolled flow from the well. Blowout preventers which immediately close off the open well and prevent or minimize any

Blowouts are a primary cause of well head fires and a drilling operator's loss of control over a well.<sup>14</sup> Knowing this, drilling rig companies apply operational practices and install mechanical devices that are intended to prevent blowouts from happening. The State of Alaska's Oil and Gas Conservation Commission supervises these practices and sets standards relevant to the mechanical devices.<sup>15</sup> The Commission, however, lacks authority to approve or otherwise regulate the contents of contingency plans. Oversight of contingency plans is solely the province of ADEC.<sup>16</sup>

Well blowouts are not that uncommon, at least in other states.<sup>17</sup> Luckily, in modern times a blowout causing a major crude oil spill has rarely occurred in Alaska.<sup>18</sup>

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discharges, are required for all drilling and work-over rigs, and are inspected routinely by the AOGCC.

State of Alaska, Division of Oil and Gas, Department of Natural Resources, *Cook Inlet Areawide Oil and Gas Lease Sale Final Finding of the Director* (Jan. 20, 1999), Chapter 5.C.1. See also *Anderson-Prichard Oil Corp. v. Parker*, 245 F.2d 831, 836 (10th Cir. 1957) (describing a well blowout).

<sup>14</sup> See *Atlantic Richfield Co. v. Underwriters at Lloyd's of London*, 398 F.Supp. 708, 716 (D.C. Tex. 1975).

<sup>15</sup> See 20 AAC §§ 25.005 - .080, §§ 25.200 - .290 (Alaska Oil and Gas Conservation Commission drilling and production regulations, including one covering blowout prevention devices at § 25.035).

<sup>16</sup> See AS 46.04.030(h) (ADEC "is the only state agency that has the power to approve, modify, or revoke a contingency plan").

<sup>17</sup> See, e.g., the Texas Railroad Commission's listing of events in *Blowouts and Well Control Problems* at <http://www.rrc.state.tx.us/divisions/og/blowouts-mm/allblowoutspg1.html> (last visited Dec. 20, 2005), and the California Department of Conservation, Division of Oil, Gas and Geothermal Resources's *A History of Oil and Gas Well Blowouts in California 1950 – 1990, Publication No. TR43*, at [http://www.consrv.ca.gov/DOG/pubs\\_stats/archived\\_pages/technical\\_reports1.htm](http://www.consrv.ca.gov/DOG/pubs_stats/archived_pages/technical_reports1.htm) (last visited Dec. 20, 2005). The latter document also contains a lengthy discussion of the circumstances under which a well blowout occurs. *Id.* 1-2.

The Alaska Oil and Gas Conservation Commission does not maintain a listing of well control or blowout problems that have occurred in Alaska. Email from AOGCC to Trustees for Alaska (Feb. 1, 2005, 1:17 AST) (on file with Trustees for Alaska). The Commission's regulations do require an operator to report any use of blowout preventer equipment or any uncontrolled release of oil or gas within reporting thresholds of 10 barrels of oil and 1,000 mscf of gas. See 20 AAC § 25.205 and §§ 25.035(e)(11) and 25.036(g).

<sup>18</sup> A well blowout occurred from the Discovery Well in Katalla, Alaska, a "gusher that sprang from the bowels of the earth in September of 1902 rose 85 feet in the air, and flowed at an estimated rate of 1,600 barrels per day."<sup>18</sup> Janson, Lone, *THE COPPER SPIKE*, at 25 (1975). The blowout caused a major spill at the mouth of the Katalla River, a prime salmon spawning ground and migratory bird habitat.

According to a 1999 finding for a Cook Inlet oil and gas leasing sale made by the State of Alaska's Division of Oil and Gas:

A blowout that results in an oil spill is extremely rare and none are known to have occurred in Alaska. However, natural gas blowouts have occurred. The Pan American blowout occurred offshore in August 1962 when the well, Cook Inlet State No. 1, was being drilled from a barge located eight miles east and two north of North Forelands. The well encountered natural gas and

It is, of course, costly for an operator to remain fully prepared to respond to the

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blew gas from August 23, 1962 to October 23, 1963. Pan American Petroleum Corporation drilled a relief well, No. 1-A, to stop the blowout.

The Grayling Platform experienced a short-term natural gas blowout in May 1985. Union Oil Company was drilling well G-10RD into the McArthur River Field when the blowout occurred. The event lasted from May 23 to May 26. The platform was evacuated, and observers noted a plume of gas, water and mud reaching a height of 600 feet above sea level. Union prepared to drill a relief well, but the blowout stopped on its own because of bridging. Bridging seals off the escaping fluids and gases when part of the formation around the well bore collapses into the well bore and naturally closes it. The operator regained permanent well control by pumping cement through the drill pipe in G-10RD. There was no fire nor injuries, and personnel shut-in all oil wells prior to evacuating the platform.

The last reported blowout in Cook Inlet occurred when the Steelhead Platform well, M-26, encountered natural gas in December 1987. Marathon Oil Company was drilling into the McArthur River Field. The gas blowout lasted from December 1987 until June 1988. A relief well was started but the blowout bridged before the relief well was completed. The well blew out natural gas, water, coal, and rocks. The escaping gas caught fire which damaged the deck of the platform, and some injuries occurred as workers attempted to stop the blowout.

A worst case discharge from an exploration or production facility is restricted by the maximum storage capacity of the facility or vessel or by a well's ability to produce oil. For example, a well with a production rate of 2,500 bbl per day can only spill a maximum of 2,500 bbl per day. There never has been a major oil spill (1,000 bbl or greater) from activities associated with the exploration, development, or production facilities in Cook Inlet.

State of Alaska, Division of Oil and Gas, Department of Natural Resources, *Cook Inlet Areawide Oil and Gas Lease Sale Final Finding of the Director* (Jan. 20, 1999), Chapter 5.C.1. Similarly, for a 1999 Beaufort Sea oil and gas lease sale the Division of Oil and Gas stated:

A blowout that results in an oil spill is extremely rare and has never occurred in Alaska. However, natural gas blowouts have occurred. From 1974 to 1997 an estimated 3,336 wells were drilled on the North Slope. There have been six documented instances of loss of secondary well control with a drill rig on the well. This equates to 1.8 blowouts per 1000 wells (Mallary, 1998). A gas blowout occurred in 1992 at the Cirque No. 1 well. The accident occurred while ARCO workers were drilling an exploratory well and hit a shallow zone of natural gas. Drilling mud spewed from the well and natural gas escaped. It took two weeks to plug the well (Anchorage Times, 1992). In 1994, a gas kick occurred at the Endicott field 1-53 well. BPX was forced to evacuate personnel and shut down most wells on the main production island. No oil was released to the surface, as the well had not yet reached an oil-bearing zone. There were no injuries, and the well was killed three days later by pumping heavily-weighted drilling muds into it (Schmitz, 1994; Anchorage Daily News, 1994a).

State of Alaska, Division of Oil and Gas, Department of Natural Resources, *Beaufort Sea Areawide Oil and Gas Lease Sale Final Finding of the Director* (July 15, 1999), at 6-22 to 6-23.

ADEC's listing of "major oil spills to coastal waters" in Alaska includes two relatively recent spills at the Steelhead and Marathon Spark offshore oil and gas production platforms in Cook Inlet. See <http://www.state.ak.us/dec/spar/perp/bigspills.htm> (last visited Jan. 13, 2005). The Steelhead platform had a large explosion in 1987. See <http://www.cookinletoilandgas.org/kpb/history.htm> (last visited Jan. 13, 2005).

possibility of a disastrous event that may only infrequently occur. But, as in the case of a large tanker spill, when a well blowout occurs the environmental, economic and social consequences are likely to be catastrophic, justifying the preparedness expense.<sup>19</sup>

To illustrate, in 1969, a well blowout occurred at a Union Oil Company oil and gas production platform about six miles off the coast of Santa Barbara, California. The blowout occurred after the U.S. Geological Survey had granted Union Oil Company a waiver of federal piping standards intended to prevent blowouts.<sup>20</sup> The blowout caused a 100,000-barrel crude oil spill. The spill spread over 800 square miles, oiling 35 miles of coastline, killing or injuring thousands of birds and other wildlife, and causing severe adverse impacts to important sectors of California's economy. Oil company workers took over eleven days to control the leaking well, although another leak sprung up weeks later, releasing oil for months to follow. Luckily, the oil and gas production platform did not explode into fire and entirely prevent the well control effort.

In addition to many *onshore* oil and gas production facilities on the North Slope and in the Kenai Peninsula Borough, Alaska also has a number of *offshore* oil and gas production facilities. In the Arctic Ocean's Beaufort Sea, the Northstar oil and gas production facility, owned by British Petroleum Alaska, Inc., began operations in 2002.<sup>21</sup> In Cook Inlet there are twelve offshore production platforms now operating off an on. One was installed in 1986 and another in 2002, but the rest were installed between 1964 and 1967.<sup>22</sup> In order to operate, all of these offshore facilities must have contingency plans approved by ADEC. In addition, ADEC periodically approves contingency plans for mobile oil and gas exploratory platforms. As long as offshore, and onshore, exploration and production facilities like these operate in Alaska, they pose a risk of a well blowout that would likely have catastrophic effects on sensitive ecosystems, particularly marine and coastal ones. The risk of a well blowout obviously will be much higher if the responsible regulatory agencies are not vigilant in their oversight.

#### ADEC WEAKENS OVERSIGHT OF CONTINGENCY PLANS.

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<sup>19</sup> For a visual tour of an oil well blowout that occurred recently in Louisiana, *see* the National Oceanic and Atmospheric Administration site for the East Timbalier Island blowout at <http://www.photolib.noaa.gov/habrest/gos.htm> (last visited Dec. 20, 2005). (NOAA's collection of spill incident photos from around the world can be accessed at <http://photos.orr.noaa.gov/index.htm> (last visited Dec. 20, 2005).) A 2003 gas well blowout in mainland China killed nearly 200 people. *See* [http://www.chinadaily.com.cn/en/doc/2003-12/25/content\\_293409.htm](http://www.chinadaily.com.cn/en/doc/2003-12/25/content_293409.htm) (last visited Dec. 20, 2005).

<sup>20</sup> For information on the Santa Barbara well blowout, *see* <http://www.silcom.com/~sbwcn/spill.shtml>, <http://www.countyofsb.org/energy/information/1969blowout.asp>, and <http://www.geog.ucsb.edu/~kclarke/Papers/SBOilSpill1969.pdf> (all last visited Dec. 20, 2005).

<sup>21</sup> Another "offshore" facility in the Alaska Arctic is located at Endicott, but that facility is connected to the mainland by a manmade causeway. The Northstar facility is completely offshore. Undersea, buried pipelines lead from the Northstar facility to the shore.

<sup>22</sup> For the Kenai Peninsula Borough's history of Cook Inlet oil and gas development and a map showing the existing fields and facilities, *see* <http://www.cookinletoilandgas.org/kpb/history.htm> (last visited Dec. 20, 2005).

Until recently, ADEC's regulations required each well operator to include within its contingency plan a plan and time frame for controlling a well blowout, including provisions for drilling a relief well.<sup>23</sup> Unfortunately, during the Knowles Administration ADEC began interpreting its well blowout and contractor regulations in a manner inconsistent with the letter and spirit of Alaska's protective contingency planning statutes.

The first of ADEC's weakening changes occurred when ADEC decided it could approve contingency plans that relied on well blowout control services provided by independent contractors that were not registered with ADEC. In order to reach that result, ADEC decided that "well capping contractors do not provide containment, control, or cleanup of a spill."<sup>24</sup> To decide that, ADEC had to conclude that controlling a well blowout was *not* a "response action" under the contractor registration statute.<sup>25</sup> However, a "response action" is defined as "an action taken to respond to a release or *threatened* release of oil, including *mitigation*, cleanup, or removal,"<sup>26</sup> and a "primary response action contractor" is anyone "who enters into a response action contract with respect to a release or *threatened* release of oil and who is carrying out the contract."<sup>27</sup> Thus, not

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<sup>23</sup> ADEC's regulation required that the contingency plan include

response strategies. . . [that] must demonstrate that

(1) procedures are in place to stop the discharge at its source within the shortest possible time;  
(2) *for an exploration or production facility, plans and time frames are in place for controlling a well blowout, including provisions for drilling a relief well*, taking into account any seasonal environmental conditions that might reasonably be expected to preclude emergency operations from regaining control of well pressure . . . .

(5) plan strategies are sufficient to meet the applicable response planning standard established under 18 AAC 75.430 - 18 AAC 75.442 for containment, control, recovery, transfer, storage, and cleanup within the specified time and under environmental conditions that might reasonably be expected to occur at the discharge site;

18 AAC § 75.445(d)(1) and (2) (2003) (emphasis added). A "response action" is defined by statute as "an action taken to respond to a release or *threatened* release of oil, including *mitigation*, cleanup, or removal." AS 46.04.900(22) (emphasis added).

<sup>24</sup> See Email from ADEC's Lydia Miner to Trustees for Alaska (Nov. 27, 2002, 09:53 A.M. AST) *Subject: Conoco Phillips ADEC Plan No. 024-cp-5096* ("As our letter indicates, well capping contractors do not provide containment, control, or cleanup of a spill") (copy on file with Trustees for Alaska).

<sup>25</sup> See, e.g., Letter from Trustees for Alaska to Bill Hutmacher, Program Manager, DEC, *Re: Forest Oil Corporation's Oil Discharge Prevention and Contingency Plan for Cook Inlet Area Production Operations Alaska* (Dec. 23, 2002) at 1, and Letter from Stephen W. Geddes, ADEC C-Plan Support Specialist to Trustees for Alaska *Re: Comments on ConocoPhillips' Oil Discharge and Contingency Plan Amendments for Puviaq #1 and #2; ADEC Plan No. 024-CP-5096* (September 21, 2002), at 3-4.

<sup>26</sup> AS 46.04.900(22) (emphasis added). "Mitigation" is not defined in AS 46.04. A common dictionary definition of mitigate is "to cause to become less harsh or hostile" and "to make less severe or painful." *Webster's New Encyclopedic Dictionary* 1173 (Merriam-Webster, Inc. 2002).

<sup>27</sup> AS 46.04.035(h)(2) (emphasis added).

only does ADEC's astonishing conclusion that controlling a well blow out is not a response action defy common sense, it conflicts with these two statutory definitions.

ADEC's conclusion also directly contradicts its own regulatory definition of a "primary response action contractor." A "primary response action contractor" is defined in ADEC's regulation as a "person who is or intends to be obligated under contract ... to provide resources or equipment to *contain, control, or clean up an oil discharge*"<sup>28</sup> It is obvious that stopping a well from releasing additional oil after a blowout occurs is within the definition of containing and controlling the oil discharge.<sup>29</sup> Indeed, ADEC's current interpretation of its own regulation is directly at odds with how ADEC said its regulation would be interpreted when ADEC adopted it back in 1993. Then, ADEC stated that a well control contractor would be considered a primary response action contractor:

Sentence 2 has been reworded to specify that contractors who provide resources not for the specific purpose of containing, controlling, or cleaning up a discharge are not PRACs. *This change clarifies that a relief-well drilling company contracted to the plan holder would be considered a ... [primary response action contractor] under the regulations.*<sup>30</sup>

The contingency planning statutes require that the holder of an approved contingency plan either maintain or have available under contract sufficient resources to meet the applicable response planning standard.<sup>31</sup> However, under ADEC's misinterpretation of the applicable law, before approving a contingency plan it is no longer required to make sure the oil company holding the plan has entered into a binding contract with an experienced contractor that has sufficient personnel and equipment ready to stop an ongoing discharge from a well blowout. When ADEC does not perform its duty to approve a well control contractor that the plan holder intends to rely upon, or to make sure there are binding contractual arrangements between the well control contractor and the plan holder, ADEC fails to ensure that the plan holder will be able to meet the response planning standard.<sup>32</sup>

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<sup>28</sup> 18 AAC § 75.500(a) (emphasis added). It is worth noting that this regulatory definition comports with the statutory definition of "response action."

<sup>29</sup> See AS 46.04.900(5) (" 'containment and cleanup' includes all direct and indirect efforts associated with the prevention, abatement, containment, or removal of a pollutant, and the restoration of the environment to its former state").

<sup>30</sup> ADEC letter, enclosure to interested parties, (June 15, 1993), at 2 (emphasis added).

<sup>31</sup> See AS 46.04.030(k); see also 18 AAC § 75.434(a).

<sup>32</sup> Another adverse effect of ADEC's misinterpretation of applicable law relates to liability. If named in a contingency plan, a primary response action contractor becomes liable for remove costs or damages in the event it fails to respond to a spill as required by its contract with the contingency plan holder. See AS 46.03.825(b)(2)(C). By exempting responders that provide well capping or other well blowout control services from the requirement to register under AS 46.04.035, ADEC may be inadvertently providing them an argument that they are immune from costs or damages liability no matter how badly they perform response services during a spill.



To claim, as ADEC now does, that well control blowout services have nothing to do with the containment or control of an oil spill ignores the fundamental principle of spill response: after ensuring human safety, the first and most important step that responders must take is to stop the continuing discharge of oil at its source. That is the service that well blowout control contractors provide: they control the blowout and stop the discharge at its source. To exempt them from regulation makes no sense and is inconsistent with Alaska law.

#### NEW ADEC REGULATIONS IN 2004 CREATE MORE LOOPHOLES.

In 2004 ADEC formalized its erroneous interpretations of applicable law by amending its regulations. These amendments, which became effective on May 24, 2004, eliminated the requirement that contingency plans include a complete plan for controlling a well blowout. Now the regulations only require that the applicant for approval of a proposed contingency plan submit a “summary” of what the holder of the plan intends to do in the event of a blowout.<sup>33</sup> While the amended regulations give ADEC the option to request and inspect the well blowout plan, during the contingency plan review process the public has no right to review and comment on the well blowout plan. Indeed, there really is no way for the public to know whether the well blowout plan exists unless ADEC asks the applicant to produce it and then makes the plan available to the public for review.

Since ADEC does not treat well blowout control as a “response action,” under its amended regulations ADEC is not requiring the plan holder to include a simple statement of contractual terms confirming that the plan holder has a binding contract requiring the well control contractor to respond in the event of a well blowout. This means that for well blowouts, the plan holder now regulates itself.

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<sup>33</sup> The amended *application* regulation requires that the applicant submit only a

summary of planned methods, equipment, logistics, and time frames proposed to be employed to control a well blowout within 15 days; the plan holder shall certify that the plan holder maintains a separate blowout contingency plan; the blowout contingency plan is not part of an application required under [c-plan application, amendment, and renewal procedures], but must be made available to the department for inspection upon request.

18 AAC § 75.425(e)(1)(I). The amended *approval* regulation requires that a contingency plan include only a

summary of planned methods, equipment, logistics, and time frames in place that provide for the control of a well blowout within 15 days; the plan holder shall certify that the plan holder has a blowout contingency plan and shall make the blowout contingency plan available to the department for inspection upon request under 18 AAC 75.480 [c-plan inspection regulations]; [ADEC] may consult with the Alaska Oil and Gas Conservation Commission, the Department of Natural Resources, or other agencies to determine the adequacy of the planned methods, equipment, logistics, and time frames for the control of a well blowout.

18 AAC § 75.445(d)(2).

In addition to weakening amendments to the regulations governing well blowout mentioned above, ADEC also has weakened contingency planning oversight in other ways. For example, under its recently amended regulations, there is now a cap on the response planning standard for well blowouts. The new regulations provide that the response planning standard for a well blowout will be based on a flow rate of 5,500 barrels per day for a maximum of 15 days regardless of how many days it is expected to take to stop the discharge.<sup>34</sup> Over the years, however, both ADEC and plan holders have acknowledged that it could take up to 30 days to stop a well blowout if well capping is used, and that it could take up to 60 days to stop a well blowout if it is necessary to drill a relief well.<sup>35</sup> Thus, ADEC is allowing the oil industry to get away with having the resources to respond to a spill of, at most, 82,500 barrels (5,500 barrels/day x 15 days) when it is widely known that a blowout could allow the release of oil for 60 days, meaning much more than 82,500 barrels would be discharged into the environment.

ADEC's amended regulations also now allow contingency plan holders to plan for the "voluntary ignition" of a well that has blown out.<sup>36</sup> If certain data is provided to ADEC in that regard, the regulation directs ADEC to adjust the response planning standard downward, i.e., lower the volume of oil that a holder must be ready to, and plan to, contain and cleanup.<sup>37</sup> In effect, based on the untested assumption that less oil would reach the water once a "voluntary" ignition of the blown out well occurs, this downward adjustment allows the plan holder to keep less personnel and equipment at the ready.

As another example of changes that significantly weaken planning oversight, under ADEC's amended regulations multiple facilities now may be grouped under a single contingency plan. While this grouped approach may make it cheaper for operators willing to jointly develop a contingency plan, it may also mean that the special features of facilities or sensitive receiving environments near the facilities will not be adequately analyzed or protected.

Exacerbating the problems created by the amended regulations, ADEC has misinterpreted its authority to attach reasonable terms and conditions to a contingency plan approval. ADEC is allowed by statute and regulation to impose conditions necessary to ensure that the applicant for a contingency plan has access to the resources promised in the plan in order to respond to a spill.<sup>38</sup> ADEC applies the law, however, so

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<sup>34</sup> See 18 AAC § 75.434(b). Note that ASRC Energy Services indicated that it would take up to *sixty* days to drill a relief well. See ASRC C-Plan, ADEC Plan No. 044-CP-5105, at 1-1, 1.6-4, 1.6-25 (approved Dec. 16, 2004).

<sup>35</sup> See, e.g., ASRC C-Plan, ADEC Plan No. 044-CP-5105, at 1-1, 1.6-4, 1.6-25 (approved Dec. 16, 2004).

<sup>36</sup> See 18 AAC § 75.434(e).

<sup>37</sup> See *id.* Indeed, under the amended regulations ADEC may now only adjust the response planning standard downward, not upward, even if it receives information that the planning standard established in the plan is too low.

<sup>38</sup> See 18 AAC § 75.460(a); AS 46.40.030(e).

as to create an approval loophole for deficient plans. ADEC claims that it has authority to approve otherwise deficient plans as long as it imposes terms and conditions that the holder must comply with at later date. These terms and conditions might require the plan holder to submit documents or take certain kinds of action. Since the submission of documents or other actions a plan holder takes would occur *after* ADEC approves the contingency plan, there is no way for the public to know if they are sufficient. After ADEC's plan approval occurs, there is no public review process. Thus, the public can't comment on plan provisions it hasn't seen and which will supposedly be implemented later, after the operator may have begun operations.<sup>39</sup>

### EXAMPLE

A recent example shows how lax contingency plan oversight has become. In late 2004, ADEC approved a contingency plan that ASRC Energy Services submitted for the so-called Nearshore Stratigraphic Test Well in Eastern Beaufort Sea waters offshore of the Arctic National Wildlife Refuge.<sup>40</sup> The contingency plan spends one page discussing well-capping<sup>41</sup> and drilling a relief well (which would take "50 to 60 days") as the strategy for responding to a well blowout.<sup>42</sup> The contingency plan ostensibly relies upon the services of GSM, Inc. to provide control services in the event of a well blowout, and the contingency plan states that details of a well capping plan are in a "separate proprietary "separate proprietary document."<sup>43</sup> Conservation organizations submitted a public records act request to ADE in order to review this "separate proprietary document." In response, ADEC released a document entitled "Teaming Agreement," signed by representatives of GSM, Inc. and ASRC Energy Services. ASRC's cover letter referred to this as "*the agreement* with the well control specialist."<sup>44</sup> And, ADEC's cover letter releasing the document to conservation organizations referred to it as "*the contract* between GSM, Inc., and ASRC Energy Services, as you requested."<sup>45</sup>

Contrary to ASRC's and ADEC's claim, however, the Teaming Agreement is not a contract. In fact, the Teaming Agreement expressly states that it is *not* contract:

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<sup>39</sup> See 18 AAC § 75.455 (setting out the procedures for taking public comment on a proposed a contingency plan).

<sup>40</sup> Conservation organizations lengthy criticism of ADEC's approval of the ASRC Energy Services' contingency plan is available on Trustees for Alaska's website at [www.trustees.org](http://www.trustees.org).

<sup>41</sup> A summary description of well capping, and the significant safety and mechanical problems faced during a blowout, can be found at the John Wright Co. website, <http://www.jwco.com/technical-litterature/p10.htm> (last visited Dec. 20, 2005).

<sup>42</sup> ASRC Energy Services, *Oil Discharge Prevention and Contingency Plan for Nearshore Stratigraphic Test Well Eastern Beaufort Sea, Alaska* (April 2004), at 1.6.4.

<sup>43</sup> *Id.*

<sup>44</sup> ASRC Cover Letter (July 26, 2004).

<sup>45</sup> ADEC Cover Letter (Oct. 25, 2004).

*This Agreement is nonbinding* and is intended solely as a summary of the terms currently proposed by the Parties. The Parties further acknowledge and agree that they neither intend to enter, nor have they entered into any agreement to negotiate a definitive agreement pursuant to this document, and that either Party may, at any time prior to execution of such definitive agreement, propose different terms from those summarized here, or unilaterally, and at either Party's absolute discretion, terminate all negotiations without any liability whatsoever to the other Party.<sup>46</sup>

The Teaming Agreement also is devoid of any reference to a specific project. It does not mention the Nearshore Stratigraphic Test Well, exploratory drilling activities in the Beaufort Sea, or any well blowout control or other spill response obligations that GSM, Inc. might undertake. Nonetheless, ADEC approved the contingency plan. The public had no opportunity to review the Teaming Agreement and therefore no opportunity to comment on its obvious deficiencies.<sup>47</sup>

#### ADEC HAS FORGOTTEN WHAT LED TO THE T/V EXXON VALDEZ SPILL.

In total, the regulatory amendments and misinterpretations of law ADEC has come up with represent the same kind of agency backsliding on standards and coziness with the regulated industry that led to the Santa Barbara, the T/V Exxon Valdez, and other major oil spills. It is thus worth repeating, as warnings, two of the key findings that the Alaska Oil Spill Commission made:

IV. In government as well as industry, enforcement zeal declined, alertness sagged and complacency took root in the years preceding the Exxon Valdez disaster. Prevention was neglected.

\* \* \*

VII. Privatization and self-regulation in oil transportation contributed to the complacency and neglect that helped cause the wreck of the Exxon Valdez.<sup>48</sup>

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<sup>46</sup> Teaming Agreement, at 1 (emphasis added)(document on file at Trustees for Alaska).

<sup>47</sup> ADEC did require ASRC to submit a copy of the "contract" between ASRC and the well-control specialist to ADEC for its files at least 30 days before setting down its drilling rig each drilling season. See ADEC Final Approval (Dec. 16, 2004).

<sup>48</sup> State of Alaska, *Alaska Oil Spill Commission, Spill – The Wreck of the Exxon Valdez – Implications for the Safe Transportation of Oil – Executive Summary*, (January 1990), at 1.