



VIA EMAIL ONLY
(kristin.ryan@alaska.gov)

October 3, 2014

Kristin Ryan, Director
Division of Spill Prevention & Response
Alaska Department of Environmental Conservation
555 Cordova St
Anchorage, AK 99501

RE: ADEC PARTICIPATION IN ALASKA REGIONAL RESPONSE TEAM; PUBLIC RECORDS ACT
REQUEST; ALASKA OPEN MEETINGS ACT; TRIBAL ENGAGEMENT

Dear Ms. Ryan:

I. Introduction

Cook Inletkeeper is a citizen-based organization with long-standing interests in oil spill prevention and response issues, and concurrent interests in ensuring open and transparent government. I am writing now to express our serious concerns regarding ADEC's recent activities involving the Alaska Regional Response Team (ARRT), and to request ADEC documents relevant to such activities.

II. Background

The ARRT plays an important role by providing the regional mechanism for development and coordination of preparedness activities before a response action is taken, and for coordination of assistance and advice to Federal On-Scene Coordinators (FOSCs) during such response actions. It also provides guidance to Subarea Committees to ensure inter-area consistency among individual Subarea Contingency Plans (SCPs), and consistency of individual SCPs with the Regional Contingency Plan and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). Because the ARRT is made up of representatives from federal agencies and the State of Alaska, its actions are subject to state and federal laws, regulations, and policy directives.

Among other responsibilities, ARTT is charged with developing and implementing plans for the use of chemical dispersants as an oil spill response tool pursuant to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) - Subpart J (Section 300.910). In the wake of the *BP Horizon Disaster* in the Gulf of Mexico, and the unprecedented use of chemical

dispersants to dissipate the catastrophic blow-out, there has been considerable public concern around the pre-authorized and site-specific use of dispersants in Alaskan waters. Many of these concerns have been brought to bear through ARRT meetings and public engagement.

Recently, however, the ARRT revised its Charter, which guides how the ARRT operates. Among other things, the ARRT Charter revisions now give the ARRT Co-Chairs – the EPA and the U.S. Coast Guard – the unilateral authority to make decisions on important policy matters and to amend the ARRT Charter. This is a dramatic change from the inclusive, participatory process which guided ARRT activities in the past. As a result, there are serious and legitimate concerns these procedural changes will be used to unilaterally amend the draft ARRT Oil Dispersant Authorization Plan (Revision 1; Sept. 25, 2013), and allow for the pre-authorization of dispersants in the Arctic and other waters around Alaska.

III. Alaska Open Meetings Act

We are especially concerned about the secretive process undertaken by ADEC and other ARRT members to adopt the latest Charter revisions. Without any public notice or public discussion, ARRT Co-Chair Mark Everett noted in passing during the closing comments at the May 21, 2014 ARRT meeting:

“Mr. Everett also remarked that an item that should have been noted in the status report of work and accomplishments since the last meeting, was the approval of the new version of the ARRT charter. Nine member agencies voted their support for the revisions (EPA, USCG, FEMA, DOC/NOAA, DOD, DOT, DHHS, USDA/USFS, and the State of Alaska). The final draft will be signed by the tri-chairs, and posted to the ARRT website.”

The decision to amend the Charter did not occur in an open and transparent fashion, and instead relied on phone calls and/or emails to solicit the support from select ARRT members. As a result, we believe ADEC has violated the Alaska Open Meetings Act (Act) by participating in the process to amend the ARRT Charter. The Act clearly states “[a]ll meetings of a governmental body of a public entity of the state are open to the public except as otherwise provided by this section or another provision of law. 44.62.310(a). A proper remedy to this situation would be to provide public notice and comment on the latest proposed changes to the ARRT Charter.

IV. Alaska Tribal Engagement

Two members of Cook Inletkeeper's Board of Directors are Alaska Natives, and Inletkeeper routinely works with Alaska Native Tribes on various oil spill response issues. As a result, we are strongly concerned with how the ARRT's Charter revisions excluded Native input and participation.

In April 2014, the ARRT finalized its "Guidelines for Coordination & Consultation with Federally Recognized Tribes." In the Guidelines, ARRT establishes an affirmative duty that it "will communicate with tribes via letter and/or email on issues of concern to tribes..." Guidelines, p.3 (emphasis added). The ARRT's Charter revisions have sweeping implications for Tribal stakeholders, and ARRT violated its own rules by failing to engage Tribes on the important issues surrounding the Charter revisions.

V. Public Records Act Request

Pursuant to the Alaska Public Records Act ("PRA"), AS 40.25, and its implementing regulations, 2 AAC 96, please provide copies of all public records dated from January 1, 2014 to the present concerning changes or revisions to the ARRT Charter. Attached please find an executed Certification of Non-Litigation.

If you determine that any of the requested records are not disclosable, please specify the legal authority and facts supporting nondisclosure. 2 AAC 96.325(a)(2), 96.335(c). If you determine that portions of any of the requested records are not disclosable, please segregate those portions, specify the legal authority and facts supporting nondisclosure, and release the remainder of the record(s). 2 AAC 96.330(a).

In addition, we request ADEC waive any fees associated with this request under AS 40.25.110(d). A fee waiver would be consistent with the PRA because it will enable the public to better understand the ARRT process. See *Fuller v. City of Homer*, 75 P.3d 1059, 1061-1062 (Alaska 2003) ("[W]e have emphasized that broad public access to government records is a vitally important part of our contemporary system of government.") (citing *Jones v. Jennings*, 788 P.2d 732, 735-736 (Alaska 1990)).

If you decide not to grant a fee waiver, please suspend production and contact me for further instructions if the fee to produce these records will exceed \$25. Please also contact me if I can clarify this request or if you need further information. I look forward to receiving your response within 10 working days of your receipt of this request. 2 AAC 96.325(a).

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VI. Conclusion

Transparency and openness are the hallmarks of our democratic system. At a time when public trust in state and federal government conduct remains low, it's vital to ensure Alaskans have an opportunity to engage in government processes that have broad implications for our fisheries and coastal waters and the economies they support.

Thank you for your attention to this matter, and I look forward to working with you to ensure any changes to the ARRT process occur in an open and transparent manner.

Very truly yours,

A handwritten signature in black ink, appearing to read "Bob Shavelson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Bob Shavelson
Inletkeeper

cc: (VIA EMAIL ONLY)
Larry Hartig, ADEC
Dennis McLarren, EPA Region 10
Dianne Soderlund, EPA Alaska
ARRT Members & Affiliates

**PUBLIC RECORDS REQUEST
CERTIFICATE OF NONLITIGATION AFFILIATION
AS 40.25.122; 2 AAC 96.220**

I, Bob Shavelson, hereby certify that

- (1)** I am not involved in litigation, in a judicial or administrative forum, with the State of Alaska or a public agency to which the requested record is relevant;
- (2)** I am not acting on behalf of or otherwise representing any person who is involved in litigation with the State of Alaska or a public agency to which the requested record is relevant; and
- (3)** neither a notary public nor another official empowered to administer oaths is available at the time I make this certification of nonlitigation affiliation.

DATED: October 3, 2014

A handwritten signature in black ink, appearing to read 'Bob Shavelson', written in a cursive style.

Requestor's Signature