



Background Briefing Paper

Role of Statutorily Established Citizen Oversight Councils in the Conduct of Oversight of Oil Transportation Operations, Facilities and Procedures

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Seventeen years ago, following the *Exxon Valdez* oil spill in Prince William Sound, Alaska, through the efforts of Senator Ted Stevens, Senator Frank Murkowski, Congressman Don Young and strong bipartisan action in Congress during the Administration of President George H. W. Bush, two citizen panels were authorized to help reduce the frequency and impacts of oil spills in Alaska's waters through more effective oversight: the Prince William Sound Regional Citizens' Advisory Council (PWSRCAC) and its counterpart for the Cook Inlet. The genesis of such panels came from congressional review of similar panels established in Sullom Voe, Scotland, the largest oil terminal in Europe, and from citizen concerns following the 1989 oil spill.

The diverse make up of the PWSRCAC includes:

- Villages of Chenega Bay (ground zero of the impacts of the 1989 oil spill) and Tatitlek.
- Cities of Valdez, Seward, Kodiak, Cordova, Homer, Seldovia and Whittier
- Alaska State Chamber of Commerce
- Kenai Peninsula Borough
- Kodiak Island Borough
- Kodiak Village Mayors Association
- Alaska Wilderness Recreation and Tourism Association
- Chugach Alaska Corporation
- Cordova District Fishermen United
- Oil Spill Region Environmental Coalition
- Prince William Sound Aquaculture Corporation

The accomplishments and effectiveness of this membership and its citizen-based approach to oversight have clearly vindicated the judgment of including such authorization and direction in the Oil Pollution Act of 1990.

Recent concerns raised by Congress over several incidents on the North Slope of Alaska underscore the need for increased and enhanced oversight. Considering the record in Alaska of citizen oversight, applying best practices from citizens' oversight efforts to the North Slope could be similarly beneficial there.

1. Rationale for and Purposes Served by Citizen Oversight

In the aftermath of the 1989 *Exxon Valdez* oil spill in Prince William Sound, Congress in the Oil Pollution Act of 1990 (OPA 90) established citizens' councils to help combat the complacency seen as responsible for the 1989 spill and provide a needed layer of scrutiny to increase public confidence in the safety of the state's oil transportation system. The council role, defined by OPA 90 as purely advisory, was to help correct the problems leading to the oil spill by fostering partnership among the oil industry, government, and local communities in addressing environmental concerns. The responsibilities assigned to the PWSRCAC by Congress in OPA 90 include:

- **provide advice and recommendations** . . . on policies, permits, and site-specific regulations relating to the operation and maintenance of terminal facilities and crude oil tankers which affect or may affect the environment in the vicinity of the terminal facilities;
- **monitor** . . . **the environmental impacts** of the operation of the terminal facilities and crude oil tankers;
- **monitor** those aspects of terminal facilities' and crude oil tankers' operations and maintenance which affect or may affect the environment in the vicinity of the terminal facilities;
- **review** . . . **the adequacy of oil spill prevention and contingency plans** for the terminal facilities and the adequacy of oil spill prevention and contingency plans for crude oil tankers operating in Prince William Sound;
- **provide advice and recommendations** . . . on port operations, policies and practices;
- **recommend** . . .
 - **standards and stipulations** for permits and site-specific regulations intended to minimize the impact of the terminal facilities' and crude oil tankers' operations in the vicinity of the terminal facilities;
 - **modifications of terminal facility operations and maintenance** intended to minimize the risk and mitigate the impact of terminal facilities, operations in the vicinity of the terminal facilities and to minimize the risk of oil spills;
 - **modifications of crude oil tanker operations and maintenance** in Prince William Sound intended to minimize the risk and mitigate the impact of oil spills; and
 - **modifications to the oil spill prevention and contingency plans** for terminal facilities and for crude oil tankers in Prince William Sound intended to enhance the ability to prevent and respond to an oil spill.

Additionally, the Council is authorized to conduct its own scientific research and review the scientific work undertaken by or on behalf of the terminal operators or crude oil tanker operators as a result of a legal requirement to undertake that work. The Council is authorized to review the relevant scientific work undertaken by or on behalf of any government entity relating to the terminal facilities or crude oil tankers.

2. Examples of Tasks Accomplished by the PWSRCAC

In almost two decades of existence, the PWSRCAC, working closely with industry and regulators, has made many contributions to improving the environmental safety of oil-industry operations in Alaska waters. A few of these include:

- Representatives from the Council worked closely with Congress and the Coast Guard to establish and implement double-hull requirements pursuant to OPA90;
- The Council led the effort, and commissioned much of the technical research, that led to the world-class system of tanker escort tugs operating in the Sound today which are vital to the system of transport of oil through the Port which is the safest in the world;
- The Council sponsored research and financed much of the hardware for a radar system that detects glacial icebergs that could threaten tankers and other vessels in the Sound as such icebergs did in connection with the Exxon Valdez oil spill;
- The Council sponsored research that led to the installation of vapor controls on the loading systems at the Valdez tanker terminal to reduce the release of dangerous air pollution.

In recognition of its work, the PWSRCAC has twice received the Legacy Award from the Pacific States-British Columbia Oil Spill Task Force .

3. Structural Attributes Needed for a Citizens' Oversight Panel

Over time, the Council has learned that certain structural attributes are necessary for effective and constructive citizen oversight. These include:

Independence

- The panel's independence should be assured if it is to effectively conduct oversight activities and its work to have credibility. In furtherance of that independence, it should be allowed to devise its own system for seating board members. The makeup of a federally mandated panel may be usefully specified in law – for example, a requirement that board representation must include Alaska Natives organizations, local municipalities, the tourism industry, and an environmental seat, from within the group's area, but not representation of government agencies, companies or industries within the panel's oversight responsibilities. The specific details of the manner in which representatives from the designated community interests are chosen and seated on the board are best left up to the panel, rather than being a matter of political appointment and confirmation. In the case of the PWSRCAC, under the regime established under existing law, each member entity selects its representative to the Board; the Board then votes to seat the representative.
- Within reasonable constraints and guidelines provided by law and/or contract, the panel should be able to establish its budget. As long as the panel operates within those guidelines, it is critical that neither industry, regulators, nor government officials have veto authority over council projects or initiatives (although the budgeting process, like all the panel's activities, would be public and open to comment by any interested party).
- The panel should be able to retain technical experts and commission research even if, in some cases, this research may be in the same areas as, or intended to verify, industry or regulator-sponsored research.
- The panel should be able to communicate with the public, news media, regulators, and elected officials as necessary to carry out its mission and inform the public of its work.

Assured funding: The panel should have adequate, inflation-adjusted funding not subject to undue influence that a political process would entail. In PWSRCAC's case, funding is through a long-term contract with industry. Such a funding contract should be mandatory as a matter of law in order for the industry being overseen to be considered in compliance with its oil-spill contingency plans and other regulatory requirements.

Access: The establishing law, as well as any funding contract, should assure that the panel is provided authority for access to company facilities, personnel, and records on the same basis as regulators. In addition, regulators and companies receiving formal advice or other communications from the panel should be directed to respond in writing to panel requests (though, of course, they would not be required to accept the advice or agree with the communication). In the case of Prince William Sound, OPA 90 requires that federal agencies consult with the PWSRCAC when taking actions in the region that would affect the Council's mission.

4. Conclusion: Compelling Benefits of Citizen Oversight

Given the long history of responsible achievement by the existing Alaska citizens' councils, and today's problems at Prudhoe Bay on the North Slope, it is clear that a properly constituted citizen oversight panel could materially contribute not only to environmental safety, but also to protecting the nation's oil supply from the disruptions caused by major spills, breakdowns, and other technical problems.

Given the increasing challenges of operating in the oil industry, and realizing the important role that industry plays in the state and national economies, our nation's oil supply and its homeland security, instituting a responsible and vigorous citizens' oversight capability for the North Slope can substantially bolster public confidence in the integrity and safety of ongoing as well as new oil operations.