



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, DC 20310-0108



14 JUL 1993

REPLY TO
ATTENTION OF

Ms. Martha G. Prothro
Acting Assistant Administrator
Environmental Protection Agency
Washington, D. C. 20460

Dear Ms. Prothro:

This is in response to your letter of June 14, 1993, in which you requested higher level review of issues related to a Department of the Army permit modification being considered by the Army Corps of Engineers Alaska District. The permit modification would authorize the construction of a pipeline and barge loading facility to allow the shipment of refined petroleum products (marine diesel and Jet-A) from the Valdez Container Terminal (VCT), a bulk cargo facility in Port Valdez, Alaska. Your request was made pursuant to Part IV of the 1992 Section 404(q) Memorandum of Agreement (MOA) between the Department of the Army and the Environmental Protection Agency (EPA).

Part IV of the MOA establishes procedures for elevation of specific permit cases. To satisfy the explicit requirements for elevation, the permit case must pass two tests: 1) the proposed project would occur in aquatic resources of national importance (ARNIs); and 2) the project would result in substantial and unacceptable impacts to ARNIs.

We have carefully reviewed the concerns raised in your June 14 letter and the Alaska District's decision documents and draft permit for this case. Our review included a joint meeting with your staff, Fish and Wildlife Service, National Oceanic and Atmospheric Administration and Corps staff. Based on our evaluation, we have concluded that the Valdez Duck Flats qualify as an ARNI. We have also concluded that substantial and unacceptable impacts to the Valdez Duck Flats may occur as a result of spills of refined petroleum products at the VCT. We are presuming these impacts, based in part on the U.S. Coast Guard's (USCG) classification of the VCT as a significant and substantial harm marine transportation-related facility.

Pursuant to Part IV(3)(g) of the MOA, we have concluded that additional evaluation is required. This conclusion is based on several issues. First, the risks and impacts of petroleum spills at the VCT on the Valdez Duck Flats have not been clearly demonstrated. We believe that the city of Valdez, Petro Star and

the public interest will be best served by a more thorough assessment of such. Second, we note that the operator's ability to respond to spills effectively is critical to the avoidance or minimization of spill impacts. We believe any decision with respect to a barge loading facility in Port Valdez must consider the operator's demonstrated ability to respond to spills. Finally, the investigation of the practicability of alternatives located west of Solomon's Gulch and at the Alyeska Marine Terminal, both of which appear to be less environmentally damaging, is not conclusive. Therefore, we will require the Alaska District Engineer to undertake the following prior to making a final decision on the permit modification:

- Commission an independent assessment of the risks and impacts associated with the existing operation of the VCT and the proposed Petro Star facility. This assessment, which will include the participation of subject matter experts from EPA, will address a full range of factors such as those associated with types of spills, the probability of the occurrence of a spill, the area of impact and the types of impacts.

- Obtain an approved USCG facility response plan and/or Alaska Department of Environmental Conservation Oil Spill Contingency Plan prior to approving any alternative which involves a barge loading facility for the purpose of transferring petroleum products in Port Valdez.

- Further investigate the practicability of the alternatives at the site west of Solomon Gulch and the Alyeska Marine Terminal.

The EPA's interest and efforts in raising this case to our attention are appreciated. In my opinion, our discussions were constructive and helpful in identifying needs for additional information. Should you have any questions or comments concerning this elevation, or the program in general, do not hesitate to contact me, or Mr. Michael Davis, Assistant for Regulatory Affairs, at telephone (703) 695-1376.

Sincerely,



G. Edward Dickey
Acting Assistant Secretary of the Army
(Civil Works)