Public Comment Response Summary
Proposed Revisions to 18 AAC Chapter 78
April 2018

Introduction

The Alaska Department of Environmental Conservation's Prevention, Preparedness, and Response Program and Contaminated Sites Program proposed this package to incorporate changes made to the federal underground storage tank (UST) regulations and to align the chapter's organization and language more closely with the federal regulations.

Summary of changes

This packet proposes to amend the regulations in 18 AAC 78 dealing with USTs by:

1. Adding new sections to address the following: requirements for partially excluded USTs; the testing of spill prevention equipment; walkthrough inspections of UST facilities; recordkeeping requirements; reporting and cleanup of spills; and USTs with field-constructed tanks and airport hydrant fuel distribution systems.
2. Amending sections to clarify the following: the applicability requirements; the registration requirements; standards for new USTs; standards for upgrading USTs; notification requirements; spill and overfill control standards; corrosion protection standards; compatibility standards for the product stored in USTs; requirements for repairing USTs; release detection standards; temporary and permanent closure and change-in-service requirements; requirements for investigating and reporting suspected releases; requirements for release investigation and confirmation; and requirements for the initial spill response, abatement, and site assessment.
3. Amending a section to update the delivery prohibition requirements.
4. Amending a section to update definitions and create new definitions.
5. Repealing and moving sections related to the following: operator training; operations inspections notifications for tanks taken out of service; and requirements for existing USTs.
6. Repealing the section related to minimum requirements for USTs, since it is already covered in other sections.

In response to the questions and comments received during public review period, the department made the following changes to the original proposal: added a phrase to 18 AAC 78.025(j)(2) to clarify monitoring requirements for under-dispenser containment; modified the punctuation for the title of 18 AAC 78.057; and deleted a phrase from 18 AAC 78.060(a)(4) to align with the federal UST regulations.

Organization

This document is organized in a comment/response format and addresses comments made during the formal public review period that ended on February 26, 2018.

Response Summary

1.	**Comment:** One commenter asked if the nationally recognized codes of practices should be the most current editions available. **Response:** The department is not able to automatically use the most current edition. To be legally valid, the regulation must clearly state that a particular dated version of the material is being adopted by reference. The department reviewed the codes of practices and adopted by reference the most current editions where appropriate.

18 AAC 78.005

2.	**Comment:** One commenter requested that "expeditiously" as used in (c)(4) be defined. The existing regulation in (b)(4) uses "within 24 hours". **Response:** "Within 24 hours" was replaced with "expeditiously" for two reasons. First, it is often not feasible for remote locations within Alaska to comply with a hard time limit of 24 hours. "Expeditiously" generally means "as soon as practicable" and allows a responsible party and the department to develop a mutually agreeable and environmentally protective plan of action that takes into account site-specific limitations. Second, "within 24 hours" is more stringent than the federal regulation, which uses the term "expeditiously". AS 46.03.365(c) prohibits state UST regulations from being more stringent than the federal UST regulations.
3.	**Comment:** One commenter suggested the following change to (e)(9): "storage tank situated in an underground area such as a basement, cellar, mineworking, drift, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor**, such that it is protected from corrosion, and can be visually inspected**". **Response:** The language from (e)(9) is taken directly from the definition of "underground storage tank" in statute [AS 46.03.450(8)]. In order to keep the regulations aligned with the statutes, the department is not modifying the language in (e)(9).

18 AAC 78.025

4.	**Comment:** One commenter asked if an exception could be allowed for the interstitial monitoring requirement for tanks and piping in (c) if automatic tank gauging and electronic automatic line leak detection are used monthly, especially if the monthly walkthrough inspection includes the piping or dispenser sumps. **Response:** An exception is not allowable for a few reasons. First, state UST regulations can't be less stringent that federal UST regulations, and allowing an exception would make 18 AAC 78.025(c) less stringent. Second, this requirement is in compliance with the Energy Policy Act of 2005 and an exception cannot be granted. UST owners/operators may use a secondary and even tertiary method of leak detection for redundancy; however, the secondary containment and interstitial monitoring requirements outlined in 18 AAC 78.025(c) must be the primary leak detection method utilized.
5.	**Comment:** One commenter noted that the existing regulation in (j) requires new piping to have monitoring of the dispenser sumps but the proposed regulation in (j) says that "under-dispenser containment must be liquid-tight on its sides, bottom, and at any penetrations; and allow for visual inspection and access to the components in the containment system or be periodically monitored for leaks from the dispenser system". **Response:** The proposed revisions to (j) were meant to reorganize and clarify the regulation and not to change the content. The department was unable to find the abovementioned reference in the existing (j).
6.	**Comment:** One commenter asked if "periodically" in (j) was going to be interpreted/enforced as the same frequency as the monthly walkthrough inspections required in 18 AAC 78.058. The commenter noted that if an under-dispenser containment is used for interstitial monitoring of the piping, then monitoring and recordkeeping must be conducted at least once each 30 days, but if not, then the walkthrough inspection is only required once each 12 months. The commenter asked that "periodically" be defined. The commenter also asked how periodic monitoring was going to be enforced.

	Response: In (j), "periodically" refers to under dispenser containment (UDC) sumps that are too small or inaccessible to visually monitor and must be monitored with an electronic sensor as a result. If a UDC sump can be visually inspected, then it would be inspected as needed and preferably monthly during the walk through inspection. In the event an electronic sensor monitoring method is necessary due to the inability to visually inspect, then the monitoring must be done at least annually during the walkthrough inspections required under 18 AAC 78.058. The department added this clarification to (j)(2).
7.	**Comment:** One commenter stated that the proposed (e)(4) is unenforceable as written and should be deleted. If not, the commenter asked that "operating life" be defined. The commenter doesn't think a corrosion expert will guarantee that a tank won't corrode over a 20-30 year period without periodic inspection. The commenter suggested "remaining life of the tank" be deleted from (e)(4)(A) because it is vague and undefinable, that no one can determine the remaining life of a tank with periodic internal and external corrosion examinations, and respectable corrosion experts would require exams. The commenter said (e)(4)(A) is cost prohibitive because proving compliance with this option would require additional periodic examinations by corrosion experts unless the tank is equipped with impressed current or galvanic anodes testable under NACE criteria. **Response:** Paragraph (e)(4) can't be removed because it would make the state UST regulations more stringent than the federal UST regulations, which is not permitted under AS 46.03.365(c). Also, (e)(4)(B) further clarifies that additional testing, documentation, and proof is required to be able to utilize option (e)(4). 18 AAC 78.056(c)(1) requires a corrosion expert's analysis of the site corrosion potential to be maintained as proof the site does not require corrosion protection due to a non-corrosive native soil condition.
8.	**Comment:** One commenter wrote that (f)(1) should include the following industry standards: American Petroleum Institute Recommended Practice 1632, *Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems;* Underwriters Laboratories Subject 971A, *Outline of Investigation for Metallic Underground Fuel Pipe;* Steel Tank Institute Recommended Practice R892, *Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems;* NACE International Standard Practice SP0169, *Control of External Corrosion on Underground or Submerged Metallic Piping Systems;* and NACE International Standard Practice SP0285, *External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection.* **Response:** The industry standards referenced in (f)(1) are for non-corrodible material. The industry standards mentioned by the commenter are for steel piping and cathodic protection, which are covered in (f)(2).

18 AAC 78.045

9.	**Comment:** One commenter stated that (e) is missing from the proposed amendment. **Response:** Subsection (e) was not included in the amendment because changes to it are not being proposed.
10.	**Comment:** One commenter suggested that (f) should require the retention of the bi-monthly cathodic protection inspection records for one to three years to show proof of compliance to the current inspection. **Response:** Detailed records retention requirements for the 60-day impressed current rectifier log are outlined in 18 AAC 78.045(f)(1), the same as the current version of 18 AAC 78, and in line with the requirements outlined in the federal UST regulations. At the time of inspection, it is only required to verify that the log is being completed and

	maintaining results for the last 3 inspections minimum accomplishes this requirement. To date we have not had a systemic issue of noncompliance with this requirement as it currently is written. Adding a different records retention requirement would make the state UST regulations more stringent than the federal UST regulations, which is not permitted under AS 46.03.365(c).

18 AAC 78.057

11.	**Comment:** One commenter questioned whether integrity testing for spill buckets and sumps was required every three years. **Response:** Initial testing (no later than October 13, 2018) and testing every three years after that is required for all single-walled spill buckets and containment sumps used for interstitial monitoring of piping. Only double-walled and visually or electronically monitored spill buckets and containment sumps are exempt from this requirement. This information is described in 18 AAC 78.057.
12.	**Comment:** One commenter recommends this section be rewritten to separate the requirements of spill bucket integrity testing from the testing of containment sumps that are used for interstitial monitoring requirements. The commenter suggested the addition of commas to clarify the section. **Response:** Section 057 is a new section dealing with topics recently added to the federal regulations. The language for the section was copied directly from the federal regulations, keeping with the goal of aligning the department regulations with the federal regulations. At this time, the department does not see the need to separate the requirements for spill bucket integrity testing and the testing of containment sumps that are used for interstitial monitoring. The department modified the punctuation for the section title for clarification.

18 AAC 78.060

13.	**Comment:** One commenter asked for clarification on the following part of (a)(4): "this paragraph does not apply to a method permanently installed before December 22, 1990". The commenter stated that all UST systems must have a monthly leak detection method installed and that tanks using 18 AAC 78.065(b) are required to upgrade after 10 years. **Response:** The abovementioned portion of (a)(4) should have been deleted from the proposed amendment to reflect a similar change to the federal UST regulations. The department updated the amendment accordingly.
14.	**Comment:** One commenter suggested the following change to (e)(1)(A): "USTs that meet the performance standards in 18 AAC 78.025 or 18 AAC 78.030, and the monthly inventory control requirements in 18 AAC 78.065(b) or (c), **shall also** [MAY] use tank tightness testing in accordance with 18 AAC 78.065(d) at least every five years until October 13, 2025; **this method may not be used for UST systems installed after April 11, 2016**; and". **Response:** Subparagraph (e)(1)(A) gives the owner or operator the option to use tank tightness testing if the UST meets performance standards in 18 AAC 78.025 or 18 AAC 78.030, and the monthly inventory control requirements in 18 AAC 78.065(b) or (c). If those conditions are not met, the release monitoring methods listed in 18 AAC 78.065(e) - (j) must be used as indicated in (e)(1). Paragraph (e)(1) only deals with tanks installed before April 11, 2016. Paragraph (e)(3) deals with tanks installed after April 11, 2016.

18 AAC 78.070

15.	**Comment:** One commenter suggested the following edit to (d): "…any monitoring method set out in **18 AAC 78.065(e) - (j)** [18 AAC 78.065(f) - (j)] may be used…" **Response:** This change is not allowable because it would make the state UST regulations more stringent that the federal UST regulations, which is not permitted under AS 46.03.365(c). 18 AAC 78.065(e) is "Automatic Tank Gauging" which is performed monthly and must detect at least a 0.2 gallon per hour leak rate. This option is allowable for piping release detection as well.