

**Summary of Comments and ADEC Responses
on 18 AAC 75 and Guidance
Public Comment Period Ending Date: February 11, 2002**

No	Comment Individual Number	Topic	Comment	ADEC Response
1	17	General Authority	Many of the proposed changes appear to give the department more discretionary authority without providing any criteria or limits. Criteria to use the discretionary power should be included with these Proposed changes.	No modification made.
2	17	General Review Process	The amount of time the department takes to review work plans, approve ACLs, and in general respond to submittals is not specified by regulation. The regulation should limit the amount of time the department has for review with provisions for extending the time under special circumstances. Many projects are delayed for months and even years because the department does not provide timely reviews and there is no provision in regulation that provides for the rights of the regulated community.	No modification made.
3	4	General Review Process	General - the time allowed for an ADEC review of documents is currently 30 days. In many instances this is not being accomplished within 30 days. A late review sometimes severely impacts project schedules and causes undue additional costs. Recommend some procedure that takes into account the urgency of the needed review.	No modification made.
4	6	General	<p>The department continues to ignore the most blatant shortcomings of these regulations and guidance. Essentially all our environment is contaminated, if tested according to the regulations, and there is no approved way of determining actual risks to health. Common examples are arsenic and asphalt. Arsenic naturally occurs locally 2-5+ times the default Table B1 cleanup level of 2 mg/kg, with Only rare impacts to groundwater. Testing background can absolve a responsible party from arsenic remediation, but the soil remains "contaminated". Fill placed over soil of lower arsenic Concentration is technically contamination. So, the department routinely accepts arsenic concentrations 5+ times the default cleanup level as safe and fortunately ignores the regulations. The department has no scientific bridge between common sense and the regulations. Unlike arsenic, not all soil has asphalt. By simply ignoring the regulations and guidance, sampling of asphalt is conveniently avoided. If sampled and analyzed, asphalt pavement usually exceeds default levels for all bulk petroleum fractions (AK101/102/103) and often BTEX and PAH compounds. We spread asphalt on driven surfaces and grind it for reuse in driveways, yet have to remediate other soil if it has a fraction of the contamination found in asphalt. Common sense dictates most natural arsenic and commonly applied asphalt are not excessive health risks, despite contrary regulations. Until the assessment package (screening, sampling, analysis, and limits defined by regulations) accommodates these simple benchmarks, the Regulations must be presumed inadequate for all compounds listed in Tables B1 and B2.</p> <p>Solutions are difficult; some suggestions include:</p> <ul style="list-style-type: none"> · Recognize the problem – ADEC itself does not have the political freedom, scientific expertise, or resources to identify and resolve these problems or others as they arise. · A fully open peer moderated discussion forum can identify and resolve the problems and help provide scientific resources needed for high quality regulations and guidance. · Accept Table B1 for what it is – conservative screening levels. To derive site specific action levels, all the tools discussed in the original EPA guidance must be allowed, not just those described under ADEC's Method 3. · The most important tool to develop is a leach test. Such a test could show when asphalt is not a threat to groundwater, and would discriminate between soil types/concentrations where arsenic (and other contaminants) might pollute groundwater · Table B2 and the AK methods do not have the scientific pedigree 	No modification made.

			of Table B1 and have more “outliers”. AK102, with the 250 mg/kg limit, is almost useless; petroleum and non-petroleum compounds with a wide range of solubilities and toxicities are lumped with inadequate means of discrimination. Fractionation by AK102AA, when accepted, will allow for different toxicities, but not different solubilities. Split AK102 into multiple ranges (C10-15, C16-20, etc.) with individual default cleanup goals.	
5	8	General Cleanup Levels	In many cases, the proposed revisions to the regulations make the cleanup standards more stringent. The regulations should clarify that cleanups completed prior to the effective date of the regulations are final and will not be re-opened to address the revised cleanup standards. Such a “no-retroactivity” provision is typical when EPA and other states revise cleanup standards and is necessary so that the regulated community may continue to rely on ADEC’s cleanup approvals.	No modification made.
6	37	General Funding and Merging	<p>The Department’s Notice of Public Comment Period indicates that no funds were appropriated for the implementation of the proposed changes to the regulations. Alyeska is concerned that the lack of funding will prevent the Department from performing its duty under AS46.03.024 to pay special attention to “public comments concerning the cost of compliance with the regulation and to alternate practical methods of complying with the statute being interpreted or implemented by the regulation.”</p> <p>Alyeska is generally concerned with the Department’s intention to merge the UST Program with the Contaminated Site Program and the corresponding merging of the regulations for these programs. The Department is transferring requirements from the UST program to all contaminated sites and spill sites. The Department is thus adding requirements for the cleanup of contaminated sites that are more stringent than the Federal requirements without providing adequate explanation or justification. Alyeska agrees that the Department can more effectively manage the two programs by merging the Department’s staff and combining regulations, however, forcing additional requirements on non-UST sites will be an added cost to contaminated site PRPs. In the long run, this will divert monies that could be used for the cleanup of contaminated sites to pay for compliance with non-required nor beneficial procedural requirements</p>	No modification made.
7	37	General Site Closure Decision	We also would like to be reassured that the new changes in the regulations will not reverse previous decisions on the site closures and cleanup approvals.	No modification made.
8	37	General/ Public Hearing	We greatly appreciate your considerations of our comments. It is our opinion, that the proposed changes will affect power generating facilities enormously, and we would like to request an additional public hearing to discuss our concerns.	No modification made.
9	8	General/ Public Hearing	Ask that a public hearing be held on the proposed regulations.	No modification made.
10	19	General/ Public Hearing	If at all possible, we would like to request that an additional public hearing be scheduled following closure of the comment period so that issues and concerns may be discussed and further addressed.	No modification made.

11	24	General/ Need for Technical Back Ground Documen t and Work Group	Before making any technical changes to the regulations the ADEC should prepare a technical background document for each issue which defines the problem and provides the technical basis for the proposed solution (i.e. the regulation). The technical background document should be a scholarly work that provides references for methods, equations, conclusions, etc. As appropriate, the technical background document should include several real case examples of how the new regulation would be used or applied. The technical background document should then be reviewed by a science advisory board. (Note that the ADEC should retroactively prepare technical background documents for the existing regulations). The technical background document and science advisory board review would increase the likelihood that the regulations have a good technical basis, and serve to educate the regulated parties, consultants, ADEC staff, and the public. I understand that the preparation of the technical background would take time, but I feel the benefits would outweigh the costs.	No modification made.
12	17	General/ Extension	Alyeska requests that the Department conduct another round of proposed rulemaking for these amendments and in that process include a comprehensive written explanation for the basis of these changes. The present explanations provided with the proposed regulations are so general as to be no information at all. Only one public workshop was provided to provide information. The process does not fairly embrace the requirement that the public have the opportunity to be informed about the changes and their impacts, and have the opportunity to fully comment on those impacts.	An Extension Was Granted.
13	17	Extension	Alyeska believes that ADEC failed to provide for adequate public participation. Alyeska understands that ADEC did not publish either a notice of proposed changes or information regarding the public workshop in any local papers. Additionally, only one public workshop was scheduled and conducted in Anchorage. This did not readily allow for public participation in other areas of the state, specifically Fairbanks or the Kenai Peninsula. Additionally, the timing of a January 3rd deadline for participating in the public process and providing comments did not adequately consider the disruptions around the holiday season. Therefore, Alyeska requests that the department either extends the public comment period for an additional 30 days or provides a second public comment period prior to promulgation of the changes.	An Extension Was Granted. The public notice was in the paper for two days in the Anchorage Daily News, Fairbanks News Miner, and the Juneau Empire on November 15 and 18, 2001. The announcement of the workshop was in all of these notices. In addition, the public notice was sent to all individuals and companies on the CS and UST Mailing lists.
14	1	Extension	The ARRC believes that the proposed changes are significant for both programs, yet the comment period includes 3 holidays, Thanksgiving, Christmas and New Year's Day! (I think this has happened before, also.) As you may guess, many folks plan their annual vacations for these holidays. The ARRC is requesting that the proposed comment period be extended for an additional 60 days, given the scope and potential significance of the proposed changes to the regulated community.	An Extension Was Granted.
15	3	Extension	The purpose of this email is to request a 30-day extension to the public comment period for the proposed rules listed below. I was just recently given information on the proposed regulation changes, including the associated guidance and information presented at the December 11, 2001. Because of the timing of the holidays this year it will be difficult to fully review these proposed changes and associated guidance and provide meaningful comments by January 3, 2001. Please let me know if it is possible to obtain such an extension.	An Extension Was Granted.
16	12	Extension	PAI has specific interest in Contaminated Site regulations found in 18 AAC 75 and would like to request that the Department consider public noticing these proposed changes for an additional 30 days to ensure the integrity and the success of the program.	An Extension Was Granted.
17	21	Extension	BPXA requests a 30-day extension to the review period for the proposed revisions to the 18 AAC 75 regulations. This will provide an opportunity for a larger number of our staff to review and comment upon the proposed changes.	An Extension Was Granted.

18	23	Extension	It was not initially clear to us that the proposed changes affected the Contaminated Sites Program. The public notice appeared to be more specific to the Underground Storage Tank program. URS would like to request that the Department consider providing an additional 30 days for public review on the proposed changes to the Contaminated Sites Program to allow for additional evaluation by industry members as to the impact of these changes on the Contaminated Sites Program.	An Extension Was Granted.
19	12	300 (g)	18 AAC 75.300 (g): This section needs to be clarified to take into account (1) air “releases” which are not permitted because they are exempt from permitting requirements and (2) “releases” that may be authorized in a permit issued by State or Federal agencies other than ADEC.	No modification made. No change in the regulation was made in response to this comment. The proposed change allows an exemption from reporting discharges or releases which are authorized in a permit issued by the Department, thus subject to internal cross program scrutiny and agreement. Releases which may be authorized in a permit issued by State or Federal agencies other than ADEC, or are exempt from permitting based on statutes and or regulations not those of the Department, are problematic because the Department may not have substantial input in the permitting process. Such releases are best suited for case-by-case, or permit-by-permit review by the Department rather than a blanket exemption in this regulation.
20	23	300 (g)	18 AAC 75.300 (g): This section needs to be clarified to take into account (1) air “releases” which are not permitted because they are exempt from permitting requirements, and (2) “releases” that may be authorized in a permit issued by State or Federal agencies other than ADEC.	No modification made. No change in the regulation was made in response to this comment. The proposed change allows an exemption from reporting discharges or releases which are authorized in a permit issued by the Department, thus subject to internal cross program scrutiny and agreement. Releases which may be authorized in a permit issued by State or Federal agencies other than ADEC, or are exempt from permitting based on statutes and or regulations not those of the Department, are problematic because the Department may not have substantial input in the permitting process. Such releases are best suited for case-by-case, or permit-by-permit review by the Department rather than a blanket exemption in this regulation.
21	17	300 (g)	18 AAC 75.300 CHANGE: Added (g) to this section stating that Reporting under this section is not required for discharges or releases (1) that are authorized by a valid permit issued by the department; or (2) as provided under AS 46.03.826(9). Comment: Alyeska agrees and supports ADEC on this change	No modification made. No change in the regulation was needed in response to this comment.
22	41	300(a)	18AAC75.300(a) ARRC agrees that the proposed wording is a significant improvement.	No modification needed. Thank you for your comments.
23	20	310 and 315	At the December 11, 2001 workshop in Anchorage, the comment was made by one of the presenters (John Bauer I believe), that soil sampling would be required to prove that adequate clean up had been performed in the event of a spill of a hazardous substance. I	No modification made. No change in the regulation was made in response to this comment. For cleanups

			<p>made comment then and would like to officially comment on this issue before the close of the comment period this afternoon. One, I can't seem to find in the regulations, 18 AAC 75.310 (a) and (g) as well as the referenced 18 AAC 75.315, where this sampling is required. Two, in the mining industry it is just not feasible to do this every time there is a spill of oil or fuel in the area being mined. A pit cannot just be shut down to wait for test results to come back from a soil sample that has been pulled from the area of the spill. Usibelli Coal Mine, Inc. (UCM) currently has a letter of agreement with the ADEC (file: 150.02.001) for spills up to 500 gallons that clarifies alternate spill clean up procedures in the pit area. This agreement is due to the following factors:</p> <ol style="list-style-type: none"> 1. The type of material being mined allows only for minimal to no penetration, is not in a sensitive area and there are no pathways to sensitive or critical areas. 2. Once the liquid portion of a spill is collected, what remains will be a coating which by volume will contain fairly low levels of contamination if sampled, due to the large surface area of the material. 3. Mining takes place in vertical increments; hence the spill will be removed at a future date. To require soil sampling and submittal of test results would be contradictory to this agreement. 	<p>undertaken under 75.310 and 75.315, the Department may require soil sampling to determine the lowest practicable level of petroleum hydrocarbon contamination but sampling is not specifically required by either 75.310 or 75.315. This is especially true in the case of spills of 1-10 gallons for which alternate spill cleanup procedures are given in the agreements between the Department and facilities that allow monthly reporting of spills to land only. For spills of chemicals other than petroleum hydrocarbons, sampling would typically be the only way to adequately determine the level of contamination present at the site.</p> <p>Agreements between the Department and individual facilities may set agreed-upon alternate spill clean up procedures based upon site and process specific conditions.</p>
24	17	310	<p>18 AAC 75.310. CHANGE: requiring "immediate" notification and approval</p> <p>Comment: By requiring immediate notification and approval of cleanup methods for all spills, the Department is effectively modifying the notification requirements under 18 AAC 75.300. For example, the Department requires reporting 1 to 10-gallon spills of petroleum to land on a monthly basis, however under the amendment to section 310, immediate notification and approval of site-specific cleanup methods would be required, which effectively means immediate notification of the spill. This contradiction in the regulations should be resolved. Alyeska is also concerned that the Department does not have adequate resources to approve site-specific cleanup methods for all spills. This will cause delays in cleanup activities waiting for the Department to approve cleanup levels and is overly complicated for responsible parties. Alyeska suggests making the approval of site-specific cleanup methods applicable to spills of only the following: <i>hazardous materials and petroleum spills greater than XT-gallons.</i></p>	<p>Modification made to regulations. The Department agrees that notifications for spills of 1 to 10 gallons of petroleum solely to land are adequately addressed as stipulated in 75.300. Standard pre-approved methods for the cleanup and disposal associated for these minor spills are best worked through the monthly report agreement between facilities and the Department. Each facility which has an agreement with the Department to submit monthly reports under 75.300(b) undergoes a review of the cleanup and disposal methods. The agreement sets in place basic standard notification, cleanup and disposal procedures and methods which are approved by the Department.</p> <p>In the case of spills of hazardous materials other than petroleum, the Department believes it is imperative that a determination be made immediately by the Department, rather than the responsible party, regarding possible damages, mobilization of additional emergency response resources and the extent of the threat posed by the spill to public health, safety, welfare or the environment.</p> <p>The regulation has been modified to clarify that the responsible person is required to immediately take actions to contain and control the discharge</p>

				or release, and to then seek the Department's approval for the cleanup and disposal plan. The intent is to make it clear that the responsible person is to take immediate actions to contain and control the discharge or release without delay even though they may have difficulty in reaching the Department's staff for notification. The cleanup and disposal plan must be approved by the Department as required under AS 46.04.020.
25	17	310	The regulation should specify more clearly when a spill becomes a contaminated site; i.e. when initial response actions are complete and longer-term and/or more complicated measures are needed. In many cases spill responses have gone on for years, often with repeated investigations, feasibility studies, and remediation plans. The problem with managing a contaminated site as a spill is two fold: initial response actions may not be effective for complex spills and the response staff are often unfamiliar with longer term remediation alternatives. A one-year or six-month limit on the amount of time a release could be managed under the initial response provisions is recommended.	No modification made. No change in the regulation was made in response to this comment. The length of time for a spill response is site specific depending on conditions encountered at a particular site. The Department agrees that spills differ widely in terms of complexity. The Department feels that it is in everyone's best interest to do an expeditious cleanup if this can be accomplished. If not, considering conditions which may be unique to a site, the State On-Scene Coordinator should retain the discretion to make a decision under which program the cleanup is best managed and when to transfer the site to the contaminated sites program.
26	15	310 (a)	18 AAC 75.310(a): The second to the last sentence states, "using methods approved for the site" but it is unclear who approves the methods. The next sentence says the, "the department will approve a method" but it still leaves the preceding sentence a little bit unclear as to if the department is the only one that can approve the methods. A better way of wording the second to the last sentence to leave no doubt as to who approves the methods is to change the "using methods approved for the site" to "using departmental approved methods for the site".	Modification made to regulations. The wording has been changed to clarify that the Department approves the methods. Replaced the word "method" with "plans" which includes not just the methods themselves but the manner in which the clean up and disposal is carried out in conformance with AS 46.04.020.
27	13	310 (a)	18 AAC 75.310 (a). Changes would now require immediate notification by the responsible person to the Alaska Department of Environmental Conservation (ADEC) for approval of cleanup and disposal methods for any spill regardless of the size, contaminant, or location of the spill. We believe the vehicle for ADEC input and guidance is already in place with the notification requirements stipulated in 18 AAC 75.300, and that the proposed changes in this regulation would pose an undue burden on the responsible party as well as the ADEC. To illustrate, currently small spills, 1 to 10 gallons, are routinely cleaned up and the waste properly disposed of by Eielson AFB. These spills are documented to the ADEC in a monthly report as required by the State. If this regulation were to go into effect, these small spills would require immediate contact with ADEC, delaying clean-up response and possibly providing a greater risk to the environment. We suggest that 1) the current language remain or, 2) that the proposed regulation be further defined and limited to specify only spills that currently require immediate ADEC notification (i.e. oil spills greater than 55 gallons to land, oil spills to land or water, or any spill of hazardous materials); or 3) that the regulation stipulate that a call to the ADEC for approval of disposal and cleanup methods only needs to be made if methods other than those	Modification made to regulations. The Department agrees that notifications for spills of 1 to 10 gallons of petroleum solely to land are adequately addressed as stipulated in 75.300. Standard pre-approved methods for the cleanup and disposal associated for these minor spills are best worked through the monthly report agreement between facilities and the Department. Each facility which has an agreement with the Department to submit monthly reports under 75.300(b) undergoes a review of the cleanup and disposal methods. The agreement sets in place basic standard notification, cleanup and disposal procedures and methods which are approved by

			normally in-place for cleanup of spills are proposed.	the Department. The regulation has been modified to clarify that the responsible person is required to immediately take actions to contain and control the discharge or release, and to then seek the Department's approval for the cleanup and disposal plan. The intent is to make it clear that the responsible person is to take immediate actions to contain and control the discharge or release without delay even though they may have difficulty in reaching the Department's staff for notification. The cleanup and disposal plan must be approved by the Department as required under AS 46.04.020.
28	13	310 (a)	Also, the proposed regulation adds the words "to land or waters of the state." If these terms are added to the regulation, we believe it necessary that both of these terms be defined to ensure proper reporting is completed. For example, spills to asphalt may be considered land to one party and not to another.	Modification made to regulations. The wording was changed to remain consistent with AS 46.03.740.
29	12	310 (a)	18 AAC 75.310 (a): This section has been modified to require immediate approval of a clean-up plan, including disposal methods, for all reportable spills. This is inconsistent with the spill reporting requirements found in 18 AAC 75.300 where oil spills between 1 and 10 gallons to land are required to be reported on a monthly basis. The Department should include some volume of spill in which a formal clean-up plan approval must be obtained. PAI suggest the Department consider hazardous materials and petroleum spills greater than 200 gallons as the minimum spill volume that requires formal clean-up plan approval.	Modification made to regulations. The Department agrees that notifications for spills of 1 to 10 gallons of petroleum solely to land are adequately addressed as stipulated in 75.300. Standard pre-approved methods for the cleanup and disposal associated for these minor spills are best worked through the monthly report agreement between facilities and the Department. Each facility which has an agreement with the Department to submit monthly reports under 75.300(b) undergoes a review of the cleanup and disposal methods. The agreement sets in place basic standard notification, cleanup and disposal procedures and methods which are approved by the Department. The regulation has been modified to clarify that the responsible person is required to immediately take actions to contain and control the discharge or release, and to then seek the Department's approval for the cleanup and disposal plan. The intent is to make it clear that the responsible person is to take immediate actions to contain and control the discharge or release without delay even though they may have difficulty in reaching the Department's staff for notification. The cleanup and disposal plan must be approved by the Department as required under AS 46.04.020.

30	12	310 (a)	.In addition, PAI suggests that disposal methods could be pre-approved for materials handled in facilities already permitted by the Department	No modification made. No change in the regulation was made in response to this comment. Releases which are permitted may have pre-approved disposal methods, however, the Department wishes to retain the flexibility to approve the manner of materials disposal on a case-by-case basis or within specific agreements with each facility or responsible person for non-permitted releases or discharges which occur at permitted facilities.
31	23	310 (a)	18 AAC 75.310 (a): This section has been modified to require immediate approval of a clean-up plan, including disposal methods, for all reportable spills. This is inconsistent with the spill reporting requirements found in 18 AAC 75.300 where oil spills between 1 and 10 gallons to land are required to be reported on a monthly basis. The Department should include some volume of spill in which a formal clean-up plan approval must be obtained. URS suggests the Department consider spills greater than 200 gallons as the minimum spill volume required for formal clean-up plan approval.	Modification made to regulations. The Department agrees that notifications for spills of 1 to 10 gallons of petroleum solely to land are adequately addressed as stipulated in 75.300. Standard pre-approved methods for the cleanup and disposal associated for these minor spills are best worked through the monthly report agreement between facilities and the Department. Each facility which has an agreement with the Department to submit monthly reports under 75.300(b) undergoes a review of the cleanup and disposal methods. The agreement sets in place basic standard notification, cleanup and disposal procedures and methods which are approved by the Department. The regulation has been modified to clarify that the responsible person is required to immediately take actions to contain and control the discharge or release, and to then seek the Department's approval for the cleanup and disposal plan. The intent is to make it clear that the responsible person is to take immediate actions to contain and control the discharge or release without delay even though they may have difficulty in reaching the Department's staff for notification. The cleanup and disposal plan must be approved by the Department as required under AS 46.04.020.
32	17	325	18 AAC 75.325. CHANGE: updating reference to new department guidance documents Comment: General objection to incorporating guidance into regulation without adequate public review. The public review time period was inadequate to both review the proposed amendments and the very large guidance documents, which also become regulation through their adoption by reference.	Extended Public Comment Period: The public comment period has been extended.

33	23	335 (c)(6)	18 AAC 75.335 (c)(6): This new paragraph requires the responsible person (RP) to propose a clean-up-level method in the site characterization report. Since 18 AAC 75.340 already requires the RP to propose clean-up levels, the clean-up levels should not have to be included in the site characterization report. There may be instances where the site data should be presented to impacted parties and the clean-up levels mutually agreed upon before being proposed by the RP. Including the proposed clean-up level in the initial site characterization report should be optional.	Modification made to public draft. Proposed change removed: The department has decided to remove proposed change as it could result in delaying approval of the site characterization plan (i.e. if the cleanup level method # is not proposed). For large sites, the site characterization plan can be an iterative document. Optionally, the Project Manager can provide conditional approvals of the Cleanup Plan: Plan is approved for Method 2 Default Cleanup Level.
34	36	Section 335(c)(6)	Section 335(c)(6) - I do not agree with the proposed change that will require the responsible person to identify the cleanup level method at the time the site characterization report is submitted. I suggest identifying a target or proposed cleanup level method at this stage in the investigation of the site conditions. The selection of the cleanup level methods should be flexible to allow for future discoveries that could change the direction of the cleanup action thereby justifying a change in the cleanup level method.	Modification made to public draft. Proposed change removed: The department has decided to remove proposed change as it could result in delaying approval of the site characterization plan (i.e. if the cleanup level method # is not proposed). For large sites, the site characterization plan can be an iterative document. Optionally, the Project Manager can provide conditional approvals of the Cleanup Plan: Plan is approved for Method 2 Default Cleanup Level
35	17	335 (c)(6)	18 AAC 75.335. CHANGE: adds a new paragraph requiring responsible parties to submit to the department for approval a site characterization report that identifies the cleanup level method to be proposed in accordance with 18 AAC 75.340. Comment: Alyeska objects to requiring that the site characterization report must identify the cleanup level method to be proposed in accordance with 18 AAC 75.340. Section 18 AAC 75.340 already requires that a responsible party propose cleanup levels. This new requirement could have the unintended consequence that a party prematurely develops a cleanup level that causes more impact to human health or the environment than a cleanup level proposed later after more extensive evaluation. For simple small cleanup sites this approach may be effective; however, numerous issues are associated with setting cleanup levels too early at complex sites. Often cleanup levels are developed during an iterative process where site data, risk, ARARs, community concerns, legal concerns, and available technologies are all evaluated. Establishing a cleanup method prior to evaluation of feasibility needlessly limits flexibility and could dramatically increase the cost of cleanup. If the department does include this change, Alyeska would propose an explanation that reserves the right of the Responsible Party to propose different cleanup level methods at a later time.	Modification made to public draft. Proposed change removed: The department has decided to remove proposed change as it could result in delaying approval of the site characterization plan (i.e. if the cleanup level method # is not proposed). For large sites, the site characterization plan can be an iterative document. Optionally, the Project Manager can provide conditional approvals of the Cleanup Plan: Plan is approved for Method 2 Default Cleanup Level..
36	4	335 (c)(6)	18 AAC 75.335(c)(6) - this is not appropriate information for a site characterization report. It belongs in a work plan that would be reviewed by ADEC. The proposed cleanup method has nothing at all to do with a report describing the extent of contamination. Recommend placing this item in a work plan.	Modification made to public draft. Proposed change removed: The department has decided to remove proposed change as it could result in delaying approval of the site characterization plan (i.e. if the cleanup level method # is not proposed). For large sites, the site characterization plan can be an iterative

				document. Optionally, the Project Manager can provide conditional approvals of the Cleanup Plan: Plan is approved for Method 2 Default Cleanup Level.
37	12	335 (c)(6)	18 AAC 75.335 (c)(6): This new paragraph requires the responsible person (RP) to propose a clean-up level method in the site characterization report. Since 18 AAC 75.340 already requires the RP to propose clean-up levels, it should not have to be included in the site characterization report. There may be instances where the site data should be presented to impacted parties and the clean-up levels mutually agreed to before being proposed by the RP. Including the proposed clean-up level in the initial site characterization report should be optional.	Modification made to public draft. Proposed change removed: The department has decided to remove proposed change as it could result in delaying approval of the site characterization plan (i.e. if the cleanup level method # is not proposed). For large sites, the site characterization plan can be an iterative document. Optionally, the Project Manager can provide conditional approvals of the Cleanup Plan: Plan is approved for Method 2 Default Cleanup Level.
38	24	335 (c)(6)	18 AAC 75.335 (c) (6). The proposed cleanup method should be identified following the feasibility study. A site conditions report should not be required to identify the final remedial approach.	Modification made to public draft. Proposed change removed: The department has decided to remove proposed change as it could result in delaying approval of the site characterization plan (i.e. if the cleanup level method # is not proposed). For large sites, the site characterization plan can be an iterative document. Optionally, the Project Manager can provide conditional approvals of the Cleanup Plan: Plan is approved for Method 2 Default Cleanup Level.
39	25	335 (c)(6)	18 AAC 75.335: Recommend that this be included in the Work Plan. It is difficult to develop DQOs when you haven't identified at least a screening criteria.	Modification made to public draft. Proposed change removed: The department has decided to remove proposed change as it could result in delaying approval of the site characterization plan (i.e. if the cleanup level method # is not proposed). For large sites, the site characterization plan can be an iterative document. Optionally, the Project Manager can provide conditional approvals of the Cleanup Plan: Plan is approved for Method 2 Default Cleanup Level.
40	32	.335(c)(6)	18 AAC 75.335 (c) (6) - It would be nice to be able to identify the cleanup level method to be proposed in the initial site characterization report but it is not always practical to do so. In simple situations, I'm sure that the responsible person (RP) would be pleased to be able to say which cleanup level method they are proposing. But in many situations, it is simply unknowable at the time of the initial site characterization report. It would be an onerous burden on some RPs and it would delay preparation of the report. May I suggest that if ADEC is going to add this requirement then they also consider requiring THEMSELVES to provide feedback on the proposed cleanup level methods within 60 days of receipt of the report.	Modification made to public draft. Proposed change removed: The department has decided to remove proposed change as it could result in delaying approval of the site characterization plan (i.e. if the cleanup level method # is not proposed). For large sites, the site characterization plan can be an iterative document. Optionally, the

				Project Manager can provide conditional approvals of the Cleanup Plan: Plan is approved for Method 2 Default Cleanup Level
41	34	.335(c)(6)	18 AAC 75.335 (c) (6) – I disagree with the requirement to identify the cleanup method in the site characterization report, due to practicality. One is seldom able to identify the cleanup level method to be proposed in the initial site characterization report, as all the information needed may not be available at that time. In many cases, the ADEC has been involved in the method selection and has disagreed with the one proposed by the consultant or RP and/or requested additional information. If ADEC should add this requirement, it should also add a clause requiring timely feedback from ADEC upon receipt of the report.	Modification made to public draft. Proposed change removed: The department has decided to remove proposed change as it could result in delaying approval of the site characterization plan (i.e. if the cleanup level method # is not proposed). For large sites, the site characterization plan can be an iterative document. Optionally, the Project Manager can provide conditional approvals of the Cleanup Plan: Plan is approved for Method 2 Default Cleanup Level
42	12	340 (c)	18 AAC 75.340(c): PAI is unclear as to the reason for including “sediment” in the applicability of water quality standards in the Arctic Zone. PAI requests that sediment be deleted from the proposed regulation.	Modification made to public draft. Proposed change removed: Emphasis on surface water and sediment is not necessary. 18 AAC 70 includes requirements for surface water and sediment. 18 AAC 75.345 explicitly requires protection of surface water and sediment.
43	23	340 (c)	18 AAC 75.340(c): This reference requires that the responsible person demonstrate that the soil cleanup level will not cause a violation of the water quality standards. Many soil and water data have been collected from North Slope that demonstrate surface water can have a significant amount of hydrocarbon sheen (i.e., surface water quality violation) without having elevated levels of hydrocarbons in the sediment or adjacent soil. Additionally, studies have shown that hydrocarbon sheen on surface water does not pose a risk to human health or the environment. URS recommends including in 18 AAC 75.340(c) an exception to the “no sheen” water quality standard.	Modification made to public draft. Proposed change removed: Emphasis on surface water and sediment is not necessary. 18 AAC 70 includes requirements for surface water and sediment. 18 AAC 75.345 explicitly requires protection of surface water and sediment.
44	17	340 (c)	18 AAC 75.340(c). CHANGE: adding language to demonstrate the arctic zone soil cleanup level is also protective of sediment Comment: The proposed changes intended to clarify protection of migration to surface water for Arctic zone soil cleanup levels causes more confusion. Chapter 18 AAC 70 does not provide a cleanup level for sediment. Alyeska suggests that the department use the following language “ <i>a responsible person shall demonstrate that the Arctic zone soil cleanup level, if applicable, will not cause a violation of water quality standards of 18 AAC 70 for surface water.</i> ” Also, the proposed change does not address a fundamental issue with using water quality standards to set soil cleanup levels: how will compliance be measured? The regulation should clarify if compliance is measured in the water column or the groundwater. The regulation should also list acceptable ways to demonstrate compliance: modeling, water column sampling, groundwater sampling near interface, bioassay, etc. These questions should be answered as a part of this regulation project.	Modification made to public draft. Proposed change removed: Emphasis on surface water and sediment is not necessary. 18 AAC 70 includes requirements for surface water and sediment. 18 AAC 75.345 explicitly requires protection of surface water and sediment. A technical memorandum is available that addresses water quality issues.

45	23	340 (c)	18 AAC 75.340(c): URS is unclear as to the reason for including “sediment” in the applicability of water quality standards in the Arctic Zone. URS requests that sediment be deleted from the proposed regulation.	Modification made to public draft. Proposed change removed: Emphasis on surface water and sediment is not necessary. 18 AAC 70 includes requirements for surface water and sediment. 18 AAC 75.345 explicitly requires protection of surface water and sediment.
46	12	340 (h)	18 AAC 75.340(h): The Department is proposing to change “will” to “may” in this section without providing adequate justification. It appears that this change will give the Department authority to deny a request for less stringent clean-up levels without justification and adds uncertainty to the process.	Modification made to public draft. Proposed change removed: Cannot use “may”. This regulation refers to the limited cases where either Background > default cleanup level or the practical quantitation limit > default cleanup level. The proposed change is not necessary, since the RP must make a successful demonstration; If the demonstration is not successful, default cleanup levels apply. If the demonstration is successful, the State must allow cleanup to background or PQL.
47	23	340 (h)	18 AAC 75.340(h): The Department is proposing to change “will” to “may” in this section without providing adequate justification. This change appears to give the Department authority to deny a request for less stringent clean-up levels without justification, adding uncertainty to the process.	Modification made to public draft. Proposed change removed: Cannot use “may”. This regulation refers to the limited cases where either Background > default cleanup level or the practical quantitation limit > default cleanup level. The proposed change is not necessary, since the RP must make a successful demonstration; If the demonstration is not successful, default cleanup levels apply. If the demonstration is successful, the State must allow cleanup to background or PQL.
48	????	340 (h)	18 AAC 75.340(h) Changing “will” to “may” gives the department complete discretionary authority over approval of less stringent cleanup levels. However, the regulation provides no criteria for the department to delineate how such discretionary power would be used or implemented. In effect the change makes the regulation much more ambiguous because all the requirements for an alternate cleanup level could be met and the department could still deny approval of the ACL with no basis.	Modification made to public draft. Proposed change removed: Cannot use “may”. This regulation refers to the limited cases where either Background > default cleanup level or the practical quantitation limit > default cleanup level. The proposed change is not necessary, since the RP must make a successful demonstration; If the demonstration is not successful, default cleanup levels apply. If the demonstration is successful, the State must allow cleanup to background or PQL.

49	12	341 Table B1 Cleanup Levels	18 AAC 75.341(c) Table B1: PAI requests the Department provide back up to support the changes in the Benzene and Naphthalene Method 2 clean-up levels.	No modification made. Detailed explanation for changes to the cleanup levels for these substances are on page three of the explanation summary in MS WORD document that was on the ADEC web site during the public review period. This can be provided to the commenter if desired.
50	6	341 Table B1 Cleanup Levels	75.341 Table B1: What has changed for each chemical/route that results in each change listed?	No modification made. Detailed explanation for changes to the cleanup levels for these substances are on page three of the explanation summary in MS WORD document that was on the ADEC web site during the public review period. This can be provided to the commenter if desired.
51	6	341 Table B1 Cleanup Levels	75.341 Table B1: Technical Memorandum 01-007 listed numerous additional compounds, such as glycol, for inclusion in this table. What is the regulatory status of cleanup requirements for compounds listed in that memorandum?	No modification made. ADEC has put the Tech Memo 01-007 listing additional compounds other than those in table B1 to assist the responsible party when complying with section 18 AAC 75.340(g). These compounds regularly are seen and providing a listing of them facilitates the cleanup level determination process. The regulation states "The department will require a responsible person to develop a site-specific cleanup level for a hazardous substance not listed under 18 AAC 75.341(c) using methods provided under (e) or (f) of this section, unless that person demonstrates that a site-specific cleanup level is not necessary to ensure protection of human health, safety, and welfare, and of the environment."
52	12	341 Table B1 Lead Levels	18 AAC 75.341(c) Table B1: Changes in the lead clean-up levels included in the table are unjustified by the Department. Inclusion of residential clean-up levels in Table B1 is not explained by the proposed changes and creates confusion when compared to footnote 11.	No modification made. The cleanup levels for lead have not changed but have been lifted out of a footnote and indicated in the table.
53	17	341 Table B1 Lead and PCB	Table B1. CHANGE: changes to different soil cleanup levels in Table Note 11, Table B1 and B2: The lead standard for contamination present greater than 15 feet below ground surface provide the department with complete discretionary authority to establish cleanup levels for these types of subsurface situations. Some types of limits are necessary. Comment: The note references TSCA but provides no procedure to deduce or establish when TSCA would apply in-lieu of 18 AAC 75. Indeed, one could infer that the state could require additional cleanup after TSCA requirements had been met. The PCB entry in Table B 1 should be expanded to include a row for each cleanup standard established in TSCA and the footnotes should explain how to determine which row to use. As written, the State of Alaska PCB cleanup standard is much more restrictive than the federal TSCA regulation. The new Regulations essentially require a risk assessment for contamination levels greater than 1 ppm without considering the expediency of using higher standards for certain types of land use, e.g. electric substations. This will add a	Modification made to regulations. The cleanup levels for lead have not changed but have been lifted out of a footnote and indicated in the table. Modifications to the proposed PCB language were made to reflect concerns. PCB requirements were clarified to ensure that the regulated community understood that both state and federal regulations requirements need to be met before a PCB site can be closed. TSCA federal rules apply to PCB sites. This clarification is intended to facilitate PCB cleanup.

			<p>significant cost to many industrial and commercial sites. Alyeska requests that the Department pay special attention to these cost/benefit concerns consistent with the Department’s duty under AS 46.03.024.1. No reason, including environmental benefit or cost effectiveness, is given for setting cleanup standards that are more restrictive than federal regulation.</p> <p>Also note, page 9 of the <i>Guidance on Calculating Cumulative Risk</i> states that PCB cleanup levels “. . . are determined site specifically, based on land use, or through a site-specific risk assessment.” The proposed changes appear to contradict this sentence or at least complicate making a land use based cleanup.</p> <p>’ AS 46.03.024. <i>Consideration in adopting pollution regulations</i> which states “Notwithstanding another provision of law to the contrary, when adopting a regulation relating to the control, prevention, and abatement of air, water, or land or subsurface land pollution, the department shall give special attention to public comments concerning the cost of compliance with the regulation and to alternate practical methods of complying with the statute being interpreted or implemented by the regulation”.</p>	
54	6	341 Table B1 Note 9 and 11 PCB Levels	75.341 Table B1: Notes 9 and 11: Federal cleanup guidelines/regulations for lead are reflected in this table; why not for PCBs? Doesn’t the Editor’s note at the end imply PCB cleanup/disposal will follow federal regulations, including other limits based on engineering controls?	Modification made to regulations. Cleanup levels for both lead and PCBs are reflected in the new table. Modifications to the proposed PCB language were made to reflect concerns. Both state and federal requirements need to be met. The state requirements are reflecting EPA TSCA regulations where possible to be consistent..
55	4	341 Table B1 FootNote 9 PCB Levels	18 AAC 75, Table B1 - The ADEC’s PCB regulations should not be more stringent than TOSCA’s. The cost of PCB remediation in Alaska is very expensive in remote areas and ADEC regulations should not be any more extreme than they need to be.	Modification made to regulations. Cleanup levels for both lead and PCBs are reflected in the new table. Modifications to the proposed PCB language were made to reflect concerns. Both state and federal requirements need to be met. The state requirements are reflecting EPA TSCA regulations where possible to be consistent..
56	23	341 Table B1 FootNote 9 PCB Levels	18 AAC 75.341(c) Table B1: Changes to the PCB clean-up levels appear to be more restrictive than federal requirements without justification. Federal PCB remediation clean-up levels are based on the type of material and the potential exposure to PCBs remaining after cleanup [40 CFR 761.61(a)(4)]. The Department has adopted the most restrictive clean-up level and requires a costly risk assessment to change this level. Applicable EPA clean-up levels should apply.	Modification made to regulations. Cleanup levels for both lead and PCBs are reflected in the new table. Modifications to the proposed PCB language were made to reflect concerns. Both state and federal requirements need to be met. The state requirements are reflecting EPA TSCA regulations where possible to be consistent...
57	31	341 Table B1 FootNote 9 PCB Levels	Municipal Light & Power (ML&P) is an electric utility with almost 5000 electrical transformers. We are greatly concerned about our environment, human health and safety, that is why most of our transformers are PCB free. Every year we have been able to replace dozens of old transformers containing high PCB levels with new PCB free transformers. We are also concerned about improving the standard of living of our customers. By making economically wise decisions, we have been able to provide lower rates to our customers and we would like to continue this practice in the future. Our policy is to prevent spills rather than clean them. However, the new proposed changes to the regulations will impose a significant additional cost to our operation, which in turn will increase the rates and reduce our spending on spill preventive measures.	Modification made to regulations. Cleanup levels for both lead and PCBs are reflected in the new table. Modifications to the proposed PCB language were made to reflect concerns. Both state and federal requirements need to be met. The state requirements are reflecting EPA TSCA regulations where possible to be consistent...

			The new PCB cleanup levels proposed by the ADEC are much more stringent and do not provide any flexibility for the Alaskan conditions, site specifics, contaminant location, etc. It is well known that the risk of potential exposure to PCB varies greatly from site to site depending on land use. To be consistent with the EPA requirements, the ADEC should recognize areas of high and low occupancy, industrial and other restricted access areas such as utility power plants and electrical substations and impose less stringent cleanup levels for the areas that have lower risks of potential exposure.	
58	Lena Saville 31	341 Table B1 FootNote 9 PCB Levels	The changes to the sampling and analysis procedures impose greater restrictions on the personnel conduction sampling. Most of our employees have many years of experience in the electrical industry. The individuals that work with transformer oil also have training on sampling procedures and sampling storage and handling provided by the analytical laboratory or by the environmental professionals. By using our personnel we were able to sample affected media in a timely manner and with low cost. The ADEC's preference of using a third party for sampling will tremendously increase sampling cost and delay necessary spill response actions.	Modification made to regulations. Cleanup levels for both lead and PCBs are reflected in the new table. Modifications to the proposed PCB language were made to reflect concerns. Both state and federal requirements need to be met. The state requirements are reflecting EPA TSCA regulations where possible to be consistent...
59	8	341 Table B1 FootNote 9 PCB Levels	<p>Footnote on PCB: Review of the applicable EPA regulations demonstrates that the changes proposed by ADEC (especially the changes to footnote 9) actually make the regulations <u>less</u> rather than more consistent with EPA requirements for PCBs. If ADEC wants to make its PCB soil standards consistent with EPA's TSCA standards, it should not put any values in the columns in Table B1 and revise footnote 9 as follows:</p> <p><u>9. PCB cleanup levels apply to the sum of all PCBs.</u> <u>For high occupancy areas the cleanup level is less than or equal to 1 ppm without further conditions.</u> <u>For high occupancy areas covered with a cap meeting the requirements of 40 CFR 761.61(a)(7) and (8) the cleanup level may be greater than 1 ppm to less than or equal to 10 ppm.</u> <u>For low occupancy areas the cleanup level is less than or equal to 25 ppm without further conditions.</u> <u>For low occupancy areas secured by a fence and marked with a sign in accordance with 40 CFR 761.61(a)(4)(i)(B)(2) the cleanup level may be greater than 25 ppm to less than or equal to 50 ppm.</u> <u>For low occupancy areas covered with a cap meeting the requirements of 40 CFR 761.61(a)(7) and (8) the cleanup level may be greater than 25 ppm to less than or equal to 100 ppm.</u> <u>These cleanup levels are in accordance with federal requirements in 40 CFR 761.61. A [FOR RESIDENTIAL LAND USE, THE CLEANUP LEVEL FOR PCBs IN SURFACE SOIL IS 1 MG/KG; FOR COMMERCIAL OR INDUSTRIAL LAND USE, THE CLEANUP LEVEL FOR PCBs IN SURFACE SOILS IS 10 MG/KG AND FOR PCBs IN SUBSURFACE SOIL IS 25 MG/KG; A] responsible person may propose an alternative cleanup level through an approved site-specific risk assessment, conducted according to the <i>Risk Assessment Procedures Manual</i>, adopted by reference at 18 AAC 75.340.</u></p> <p>In support of the above recommended wording, ADEC should also include in the regulation definitions of "High Occupancy Area" and "Low Occupancy Area" from 40 CFR 761.3 as follows:</p> <p><u>High Occupancy Area means any area where PCB remediation waste has been disposed of on-site and where occupancy for any individual not wearing dermal and respiratory protection for a calendar year is: 840 hours or more (an average of 16.8 hours or more per week) for non-porous surfaces and 335 hours or more (an average of 6.7 hours or more per week) for bulk PCB remediation waste. Examples could include a residence, school, day care center, sleeping quarters, a single or multiple occupancy 40 hours per week work station, a school class room, a cafeteria in an industrial facility, a control room, and a work station at an assembly line.</u> <u>Low Occupancy Area means any area where PCB remediation waste has been disposed of on-site and where occupancy for any</u></p>	Modification made to regulations. Cleanup levels for both lead and PCBs are reflected in the new table. Modifications to the proposed PCB language were made to reflect concerns. Both state and federal requirements need to be met. The state requirements are reflecting EPA TSCA regulations where possible to be consistent...

			<p>individual not wearing dermal and respiratory protection for a calendar year is: less than 840 hours (an average of 16.8 hours per week) for non-porous surfaces and less than 335 hours (an average of 6.7 hours per week) for bulk PCB remediation waste. Examples could include an electrical substation or a location in an industrial facility where a worker spends small amounts of time per week (such as an unoccupied area outside a building, an electrical equipment vault, or in the non-office space in a warehouse where occupancy is transitory). These changes would make the cleanup standards for PCBs truly consistent with the EPA requirements. Making the standards consistent with EPA requirements would also provide appropriate flexibility for Chugach when cleanups occur in low access areas such as substations. If ADEC is not willing to make the changes recommended by Chugach, it should make no changes at all to the existing PCB soil standards in Table B1 or to the existing language in footnote 9.</p>	
60	19	<p>341 Table B1 FootNote 9 PCB Levels</p>	<p>AVEC is greatly concerned about the implications of the proposed new standards for soil cleanup – especially as related to cleanup of PCBs. Through the years AVEC has been extremely diligent about meeting or exceeding environmental standards wherever that is economically and practically possible. It would appear however that the current amendments proposed promulgate standards that will be significantly more stringent than those mandated by the EPA.</p> <p>It is unrealistic and impractical to mandate standards that go well beyond levels necessary to protect human and environmental health, especially when meeting those standards will, without any doubt, impose significant financial burdens upon the ratepayers of the utilities. In proposing these amendments, it is important that you realize that demonstrating compliance after a spill will impose a major expense against the utility, whose only option is to recapture that expense from the already overburdened consumer that you are seeking to protect. On behalf of our 5,500 members, I urge you to carefully consider the cost/benefit ratio of the changes being proposed and also to demonstrate that the changes will actually result in a material improvement to the communities ostensibly being protected after a spill incident. I also urge you to examine why the proposed standards deviate so significantly from EPA cleanup levels while purporting to be based upon them. Finally, I hope that, once new standards are adopted, that they will not be applied retroactively to cleanups already completed or in process.</p>	<p>Modification made to regulations. Cleanup levels for both lead and PCBs are reflected in the new table. Modifications to the proposed PCB language were made to reflect concerns. Both state and federal requirements need to be met. The state requirements are reflecting EPA TSCA regulations where possible to be consistent..</p>
61	12	<p>341 (c) Table B1 FootNote 9 PCB levels</p>	<p>18 AAC 75.341(c) Table B1: Changes to the PCB clean-up level appear to be more restrictive than federal requirements with no justification. Federal PCB remediation clean-up levels are based on “the kind of material and the potential exposure to PCBs left after cleanup is completed” [40 CFR 761.61(a)(4)]. The Department has adopted the most restrictive clean-up level and requires a costly risk assessment to change this level. Applicable EPA clean-up levels should apply.</p>	<p>Modification made to regulations. Cleanup levels for both lead and PCBs are reflected in the new table. Modifications to the proposed PCB language were made to reflect concerns. Both state and federal requirements need to be met. The state requirements are reflecting EPA TSCA regulations where possible to be consistent...</p>
62	23	<p>341 Table B1 Footnote 14 MAC</p>	<p>18 AAC 75.341(c) Table B2 Footnote 14: The proposed change incorporates a requirement of a sieve analysis of representative soils at and beneath the contaminated site. URS suggests that the word “will” be changed to “may” to give the Department flexibility in implementing this change. In addition, clarification on the specific procedure for this analysis should be provided.</p>	<p>Modification made to public draft. Proposed change removed based on public comment. Determination of methods that can be used to calculate maximum allowable concentrations will be considered by the department during a future round of proposed regulatory changes</p>
63	6	<p>341 Table B1 Note 14 MAC</p>	<p>75.341 Table B1, Note 14: New concepts are presented here that require definitions and guidance. You are on the right track, but have admitted only part of the real problem with these tables. Soil type does make a big difference in potential migration, but the mix of hydrocarbons (rather than the amount of any one compound) is a</p>	<p>Modification made to public draft. Proposed change removed based on public comment. Determination of methods that</p>

			larger factor. In developing guidance, please “truth” the numbers against real life. Ensure that the cleanup limits and methods work with, say, asphalt and peat without the artificiality of “background concentration”.	can be used to calculate maximum allowable concentrations will be considered by the department during a future round of proposed regulatory changes
64	15	341 Table B2 Note 14 MAC	18 AAC 75.341: In Note 14, in Table B1 and B2, ethylbenzene was misspelled.	Modification made to regulations. “Ethybenzene” to correct spelling error.
65	15	341 Table B2 Note 14 MAC	18 AAC 75.341: In Note 14, the Table B1 and B2 is not referenced anywhere in Tables B1 and B2.	Modification made to regulations. The “14” is in the column headed “Maximum Allowable Concentration”. Due to column width the 4 moved to the second line and will be fixed in public draft of regulations.
66	25	341 Table B2 Note 14 MAC	Footnote 14 states that the petroleum ranges are protective of the environment. How they are protective of the environment when they are based on human health and an ecological risk value is not available for GRO, DRO, and RRO.	Modification made to public draft. Proposed change removed based on public comment. Determination of methods that can be used to calculate maximum allowable concentrations will be considered by the department during a future round of proposed regulatory changes
67	12	341 Table B2 Note 14 MAC	18 AAC 75.341(c) Table B2 Footnote 14: The proposed change incorporates a requirement of a sieve analysis of representative soils at and beneath the contaminated site. PAI suggests that the word “will” be changed to “may” to give the Department flexibility in implementing this change. In addition, clarification on the specific procedure to use for this analysis should be provided.	Modification made to public draft. Proposed change removed based on public comment. Determination of methods that can be used to calculate maximum allowable concentrations will be considered by the department during a future round of proposed regulatory changes.
68	24	341 Table B2 MAC	18 AAC 75.341 (c) notes to table B2 . I agree that the soil texture (or hydraulic conductivity or soil moisture retention curve) should be identified to help assess the residual saturation concentration of a soil. However, I do not agree with the concept of a regulation requiring cleanup to a maximum allowable level based on a soil texture; the referenced ADEC document “Discussion Paper, Saturation Concentration for Fuel Mixtures” is not technically accurate and should be trashed; the data from the referenced API paper should only be used in the context intended.	Modification made to public draft. Proposed change removed based on public comment. Determination of methods that can be used to calculate maximum allowable concentrations will be considered by the department during a future round of proposed regulatory changes.
69	17	341 Table B2 MAC	Comment on Note to Table B2: - addition required sieve analyses “at and beneath” the contaminated soils at a site if proposed cleanup levels are based on the maximum allowable concentrations. The Table B 1 and B2 original values were developed using conservative assumptions. If the department will require the additional expense to collect subsurface soils and require additional analyses, it should also accept the calculation of NEW maximum allowable concentrations based on the data collected. It seems the department wants to impose additional requirements to meet standard look up table values. If this additional work is completed, new values should be developed on a site-specific basis based on the new data.	Modification made to regulations. Modified to change the word "will" to "may" The issue of whether other calculations of new maximum allowable concentrations will be considered by the department during a future round of proposed regulatory changes.
70	6	341 Table C Arsenic	Arsenic level remains the same. Are there plans to reduce this level to reflect lowered national drinking water standards? If so, the soil cleanup level will also decrease and it will be much harder to ignore the lack of a leach test to determine if there actually is a potential problem with a given soil.	No modification made. This change is not part of this regulation package.

71	41	Table B2 Footnotes MAC	<p>18AAC75.341(c) There are significant technical errors in the footnotes to Table B2 and in related documents, such as the Department’s discussion paper, <i>Saturation Concentration for Fuel Mixtures</i>. The Department’s discussion in both documents makes a fundamental error, which leads to erroneous conclusions, specifically, the Department uses “Csat” and “residual saturation” concentrations as synonymous, when they are in fact different physical phenomena.</p> <p>a. Csat represents the dissolved, adsorbed, and vapor phase holding capacity of a soil, and for diesel-contaminated soils this is typically about 30 mg/kg. The Csat for heavy oil is much lower. The residual saturation concentration is the point at which a NAPL becomes mobile as a separate phase, in other words, when migration to groundwater becomes possible. The residual saturation concentration varies with soil texture and soil structure but is commonly 5,000 to 50,000+ mg/kg depending on whether the soil in question is above or below the water table. Note the residual saturation concentration provides a basis for “maximum allowable concentrations”.</p> <p>b. The conclusion that the 3-phase soil cleanup equations are applicable at concentrations below the residual saturation concentration is wrong, as the EPA guidance documents state repeatedly. The existing ADEC soil cleanup equations are valid at concentrations below Csat, but are not valid in the range between Csat and the residual saturation concentration, where many of the cleanup levels are observed. Above Csat a 4-phase contaminant distribution exists and the dissolved, adsorbed and vapor phase concentrations are limited by the constituents’ solubility and partitioning coefficients, and its mole fraction in the NAPL. Due to these technical errors the Department’s equations for the migration to groundwater and vapor inhalation pathways commonly overestimate human health risks for the BTEX, DRO and GRO compounds by several orders of magnitude.</p> <p>c. Note that the maximum allowable values that the discussion paper referenced from an API 1628 paper appear to be the lowest published values (not a reasonable criteria possibly based on a probability distribution), and the particular values referenced by the Department do not appear to be from a well documented, peer reviewed source.</p> <p>Finally, the discussion paper does not present established criteria for relating the soil classes listed in the API paper to real, site-specific soils.</p>	No modification made.
72	17	355(d)	<p>18 AAC 75.355(d) CHANGE: adds new sampling requirements to the regulations Comment: Alyeska objects to the addition of specified sampling requirements without a new notification and public comment period. The UST procedures manual was created for small sites from UST releases. It is not appropriate to reference the sampling requirements of the procedures manual and apply these procedures to contaminated sites that may extend for acres and may also include non-petroleum hydrocarbon contamination. Recommend striking the “sampling” addition.</p>	Modification made to the public draft. The change has been removed. The intent was to maintain consistency between UST and CS sites in the sampling and analysis detailed in Table 1, Table2, Table2B, and a reference the AK Methods themselves. It was not the intent to reference the entire Manual for contaminated sites. Additional work will be done so that the Manual can be used for both UST and Contaminated site work. Many of the same principles apply whether they are small or large sites.
73	22	.355(c)(6)	<p>Sampling and Analysis: 18 AAC 75.355 (c) addresses how to evaluate results that have a PQL higher than the MCL but no associated guidance is given when the PQL is higher than 1/10th the MCL. This issue continues to remain a problem for laboratories and responsible parties.</p>	No modification made.

74	8	355	<p>Change language on sampling and analysis to: ADEC will waive the requirement for use of an impartial third party if a responsible person demonstrates that work performed will be conducted or supervised by a qualified and objective person <u>or demonstrates</u> that strict compliance with the impartial third party requirement is not practicable <u>and</u> ADEC determines that a waiver is protective of human health, safety, and welfare, and of the environment.</p> <p>By making this simple re-ordering of the phrases in the sentence, the regulation makes clear that a waiver is available under two circumstances: 1) if the work will be conducted or supervised by a qualified and objective person, or 2) if it is impractical to have the work conducted by an impartial third party. However, under both of these circumstances, the revised language ensures that human health, safety, welfare and the environment are also protected. The revised language allows Chugach to continue to use its qualified and objective personnel to perform sampling without having to show in each instance that hiring a third party consultant is not practicable. The language also allows ADEC to deny a waiver if it determines that the applicant will not protect human health and the environment. Thus, the revised language proposed by Chugach makes cleanups more efficient and less expensive by allowing them to be conducted by qualified and objective in-house personnel, while also protecting the environment.</p> <p>Another alternative would be to delete the impartial third party requirement in its entirety as it serves no useful purpose. ...The important thing is for the regulations to require that the personnel performing the sampling and analysis be qualified and objective. ...The provision adds unnecessary delay and expense to cleanups by requiring the retention of outside consulting firms, while adding no protection to the environment not already provided by the requirement that all sampling personnel be qualified and objective.</p>	<p>No modification made. The section is consistent with the text in the UST regulations.</p>
75	41	355(d)	<p>The Department should stop promulgating the state testing methods and return to the EPA testing methods for fuel and solvents for the following reasons:</p> <p>a. The proposed methods for aliphatic and aromatic hydrocarbons (AK101AA, AK102AA, AK103AA) have not been properly validated, which certainly contributed to the recent suspension in the use of these methods when a problem was discovered. The methods should be suspended until proper interlaboratory validation can be performed.</p> <p>b. ARRC has observed anomalies in the AK101 method, specifically, in a situation where two contractors collected soil samples to test for GRO, the sample collected using the SW846 method (no field methanol preservation) had 2,000 ppm GRO, and 38 ppm (not ppb) of benzene. The sample collected by the second contractor using the AK102 methanol collection procedure had the same concentration of GRO (2,000 ppm), but no BTEX was reported in the sample. This single case may not represent the spectrum of possibilities in the field, but it certainly is a red flag.</p> <p>c. As ARRC has stated before, carrying extremely hazardous methanol to and from the field makes little sense when the laboratory can preserve the samples with methanol immediately upon receiving them. There is little technical justification for lugging methanol around in airplanes and cars when preservation can be done in a well-equipped laboratory within hours of sample collection. ARRC recommends again that laboratory preservation be permitted after field sampling.</p>	<p>No modification made. Neither the AA Methods or methanol preservation requirement were part of the revisions noted by the public notice. The commenter's points are noted for future consideration.</p>
76	12	365 (a)(2)	<p>18 AAC 75.365(a)(2): PAI is concerned these new requirements will impact the already limited number of remediation firms in the State. Since remediation options are already limited, the impact of these proposed regulations should (be) understood by the Department. In addition, Subsection B requires "as-built" drawings to be submitted prior to the completion of construction. This is</p>	<p>Modifications made to the public draft. The requirement of the "as-built drawings" has been removed. The performance bond and the pollution liability requirements</p>

			impossible. This should be revised to request design drawings.	are needed to deal with co-mingled soils.
77	20	.365	<p>1. Is this for Category C Facility only?</p> <p>2. Has the State of Alaska contacted any Insurance Underwriters as to what the cost of this bond will be?</p> <p>3. How would the cost be determined? Fixed cost? Quantity? Contamination level?</p> <p>4. This added expense (which I am sure will be excessive since we are talking insurance) is just another cost passed on to the client who is already concerned about the cost per ton.</p> <p>5. Does this apply to a temporary set up at a client's location?</p>	<p>Reply given to commenter during public comment period.</p> <p>1.) no</p> <p>2.) no</p> <p>3.) The performance bond amount is based on the quantity of contaminated soil allowed at the facility and the cost per ton for treating the contaminated soil at the specific facility. (This has been added to the section to clarify the bond)</p> <p>4.) This measure is required to protect the Responsible Party and be protective of the environment</p> <p>5.) No, the bond only applies to the stationary facilities handling multiple site contamination Category C and D.</p>
78	17	365	<p>18 AAC 75.365. CHANGE: adds significant new requirements for mobile treatment system operators.</p> <p>Comment: Alyeska objects to these additions. There are very few remedial alternatives for remote areas in the state. These additions will be extremely costly for the operator and may result in the elimination of several remediation firms. Alyeska requests that the Department pay special attention to these cost/benefit concerns consistent with the Department's duty under AS 46.03.024.No basis is given for setting these rigorous new standards. We suggest that the department set an operational time limit of one year for "mobile" systems that treat more than one waste stream. If operations continue for more than one year, the system is no longer "mobile" and the engineering designs and bond requirements are applicable.</p>	<p>No modifications made to regulations.</p> <p>The new requirements (a performance bond and pollution liability insurance) applies to stationary Category C and D facilities only not mobile or temporary systems.</p>
79	17	365 (a)(2)(B)	<p>18 AAC 75.365(a)(2)(B): As-built drawings, by definition, are not prepared until construction is complete. The regulation appears to require drawings that cannot be produced. In addition, design and construction of a major facility may take months. Reviewing a drawing only 45 days prior to completion, with comments possibly following only a few days before completion will cause unneeded delays. If the department wants to review a soil storage area they should review the design drawings prior to the start of construction. In addition, there are no provisions for how long the department can take to review the drawings. The department should have a regulatory requirement to provide comments to design drawings within 30 days.</p>	<p>Modifications made to the public draft.</p> <p>The text for the "as-built drawings" requirement has been removed.</p>
80	17	380	<p>18 AAC 75.380 CHANGE: New reporting requirement for the department</p> <p>Comment: This would be acceptable if the department has the resources to do this task. It is our experience that DEC staff have a difficult time in turning around work plans and reports in a timely manner. Adding an additional reporting requirement to their workload may slow down the oversight process.</p>	<p>Modifications made to the public draft.</p> <p>Eliminated the proposed change to this section.</p>
81	32	380 (e)	<p>18 AAC 75.380 (e) - How about giving the ADEC project manager a time period in which they must provide determinations to RPs? How about one year for starters?</p>	<p>No modification made</p>
82	12	385	<p>18 AAC 75.385: This revision should be applicable to all department decisions under Article 3, not just the site clean-up rules.</p>	<p>No modification made.</p>
83	24	385	<p>18 AAC 75.385 Do not require responsible parties or consultants to meet impractical timelines (e.g. my clients have waited for more than a year for ADEC to review documents, so do not expect others to be significantly more responsive).</p>	<p>No modification made.</p>

84	23	385	18 AAC 75.385: This revision should be applicable to all department decisions under Article 3, not just the site clean-up rules.	No modification made.
85	17	385	18 AAC 75.385 CHANGE: adds a 30 day limit on appeals Comment: Providing a time limit to appeal is reasonable. However, not having timelines associated with key decisions by the department in the program is equally important and is not being included in this regulation project. Therefore, Alyeska objects to this addition. The department has no time restrictions on document review, approval, or decision making processes. Some reports are in the system for over a year with no notification from the department. There is no mechanism for interested parties to know when the department has made a decision that may be appealed. For this to be effective, there must be a strict timeline for all stages of the contaminated site assessment and remediation process, or add a thirty-day time limit on decisions that are public noticed in a statewide publication.	No modification made.
86	36	385	Section 385 - I recommend this section on appeals be expanded to include specific information on the procedures for requesting an appeal and/or adjudicatory hearing. A good example for the procedures that has been successfully used for several years is given under another set of regulations dealing with wastewater disposal (18 AAC 72.960). The wastewater regs makes it clear about the department's requirements to decide on the merit of the appeal within 10 days, establishing a 3 person panel of technically qualified department staff to review and comment within 15 days, and then the director issues a final decision within 30 days.	No modification made.
87	12	610(1)	18 AAC 75.610(1): PAI objects to the proposed revision to the definition of critical freshwater environments. Since the State of Alaska manages water resources under the presumption that all surface water "may reasonably be expected to be used sometime in the future as a drinking water source", this change expands the intended definition immensely without adequate justification. This section would create more controversy and litigation as to the applicability of "reasonably be expect to be used" then the current definition.	Modification made to regulations. Wording was added to clarify the Department's definition of a critical freshwater environment to include criteria on which to base a determination of a specific surface water as being reasonably expected to be used as a drinking water source.
88	17	610 (a)(1)(A) Critical Fresh Water Environments	18 AAC 75610(a)(1)(A) CHANGE: changing the definition of critical fresh water environments Criteria should be included for making a determination about water source's utility as drinking water source and a definition of the term "reasonably be expected" need to be developed. In many cases, reasonably expected is interpreted as "remotely possible" by regulators.	Modification made to regulations. Wording was added to clarify the Department's definition of a critical freshwater environment to include criteria on which to base a determination of a specific surface water as being reasonably expected to be used as a drinking water source.
89	23	610 (a)(1)(A) Critical Fresh water Environments	18 AAC 75.610(a1): URS objects to the proposed revision to the definition of critical freshwater environments. Since the State of Alaska manages water resources under the presumption that all surface water "may reasonably be expected to be used sometime in the future as a drinking water source", this change expands the intended definition immensely without adequate justification. This section would create more controversy and litigation as to the applicability of "reasonably be expected to be used" than the current definition.	Modification made to regulations. Wording was added to clarify the Department's definition of a critical freshwater environment to include criteria on which to base a determination of a specific surface water as being reasonably expected to be used as a drinking water source.
90	36	610 (a)(1)(A) Critical Fresh water Environments	Section 610(a)(1)(A) - I question the <u>vagueness</u> of the proposed requirement "may reasonably be expected to be used sometime in the future as a drinking water source". I recommend the <i>reasonableness</i> be define to include water quality criteria, cost of developing the water source compared to other more reliable sources, and public acceptance of using shallow or surface water for a drinking water source. Also, rather than saying "sometime in the future" there should be a reasonable time given to the possible development of the water source that is dependent on the usability of the water resource.	Modification made to regulations. Wording was added to clarify the Department's definition of a critical freshwater environment to include criteria on which to base a determination of a specific surface water as being reasonably expected to be used as a drinking water source.

91	17	670 Civil Penalty	<p>18 AAC 75.670 CHANGE: changing the civil penalty amount. Comment: The basis is explained as an adjustment for inflation. No explanation of the inflation factor or the calculation method was provided. This is inadequate notice to the public to comment on the legitimacy of the proposed increases. The public will most certainly bring this to the attention of the legislature when this regulation goes to it for review consistent with As 46.03.758. Alyeska recommends noticing this amendment with an explanation of the basis for the increases. For example the increase for very sensitive environments is 26%, for sensitive environments is 80% and for environments without significant resources it is 180%. How can that be if the adjustment is an inflation adjustment? This must be explained to provide adequate notice to the public for comment. As such if fails to comport with the Alaska Administrative procedures Act and would be deemed unenforceable if challenged.</p>	<p>No modification made. Since the base civil penalties were adopted in 1978, Cumulative inflation has progressed such that \$1.00 in 1978 was equivalent to \$2.74 in 2000 (http://www.westegg.com/inflation/). Insofar as adjustment is possible under the governing statute, the department has revised the base civil penalties to make them more nearly equivalent to the values intended when there were first adopted.</p> <p>In most cases the proposed Regulation does not increase the base penalties by the full Amount of inflation since 1978. This is because the governing statute, as currently written, would not permit so large an adjustment in most cases, and in some cases would not permit any adjustment at all. Accordingly, base penalties for many types of spills will remain much lower, in constant dollars, than the legislature and the agency envisioned when this penalty structure was first created. The commenter is the beneficiary of this decline in the value of most penalties in terms of real dollars.</p> <p>Further, it should be noted that because of the presence of 18 AAC 75.670(2) as that provision interacts with 18 AAC 75.640-660, no spill can ever be assessed the full amount of the base penalty. See also AS 46.03.758(g). The Office of the Attorney General does not concur with the commenter's view as to the adequacy of public notice. Specific Public notice was given as to the proposed change.</p>
92	12	670(1) Civil Penalty	<p>18 AAC 75.670 (1): The Department needs to provide detailed justification for increasing the civil penalties. PAI objects to this revision. In addition, the Department should provide a new process on which to use the toxicity factor since the current note is being deleted.</p>	<p>No modification made. See response to comment 73. The asterisked note regarding Toxicity has been deleted because it reflects an outdated assumption that toxicity is dependent solely on the percentage of aromatics in the spilled product. New research shows that many other compounds affect overall toxicity.</p>
93	6	670 Civil Penalty	<p>Says 75.679 (2), but means 75.670. This system of penalties/factors is very myopic. Consider the fines for equal volume spills of asphalt, gasoline, lead dust, cyanide, etc., and compare to their potential damage.</p>	<p>No modification made. The department agrees that the matrix of presumptive penalties does not always distinguish perfectly among types of spills. The legislature</p>

				apparently foresaw that no fixed matrix could achieve such perfection, and therefore enacted AS 46.03.758(g).
94	41	18AAC75.990(86)(C)	ARRC agrees that this clarification was necessary	Thank you for your comments.
95	17	Guidance Calc. Cumulative Risk	Page 10 - The guidance should stipulate how to address chemicals that are both not in Tables B1, B2 or C and no toxicity information is available.	Thank you for your comments. As the science in relation to this is changing, the department felt not to adopt this process into regulations at this time.
96	25	Cumulative Risk:	Cumulative Risk: I am attaching a link to the USAED EM 200-1-3 document that contains the Shell. This is the document that states reporting limits should be one-half the action limit. If we follow the Shell we will not be able to properly evaluate cumulative risk.	Thank you for your comments.

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