

Department of Environmental Conservation
Division of Spill Prevention & Response



18 AAC Chapter 75 – Oil and Other Hazardous Substances Pollution
Control and 18 AAC Chapter 78 – Underground Storage Tanks

Proposed Regulation Revisions

September 19, 2016

Bill Walker
Governor

Larry Hartig
Commissioner

Public Comment period ends
October 23, 2016 5:00 p.m.

Please see public notice for
details about how to comment

Background and changes addressed

This packet is being proposed to amend the regulations to make housekeeping changes to 18 AAC 75 Articles 1, Oil Pollution Prevention Requirements; 2, Financial Responsibility For Oil Discharges; 4 Oil Discharge Prevention and Contingency Plans and Nontank Vessel Plans; and 9, General Provisions; and 18 AAC 78 Article 9, General Provisions for Underground Storage Tanks.

Understanding the changes

In the following text, the proposed changes follow the formatting requirements of the “Drafting Manual for Administrative Regulations,” August 2015, as promulgated by the State of Alaska Department of Law. The draft changes are indicated as follows:

Lead-in text explains the changes to the text that follows.

[CAPITALIZED TEXT IN BRACKETS] indicates current regulatory text proposed to be deleted.

Bolded and underlined indicates proposed new text that amends the regulation. When an entire section or subsection is new, it is only indicated by the lead in line.

[...] indicates unchanged chunks of regulatory text.

For comparison purposes, a complete copy of the current 18 AAC 75 regulations can be found online at: <http://dec.alaska.gov/commish/regulations/index.htm>

The introductory language of 18 AAC 75.047(f) is amended to read:

(f) On or after December 30, 2006, flow lines removed from service for more than one year [AND NOT MAINTAINED IN ACCORDANCE WITH (c) AND (d) OF THIS SECTION] must be free of accumulated oil and isolated from the system. The owner or operator shall notify the department when flow lines are removed from service and when the actions required by this subsection are completed. For purposes of this subsection, a flow line removed from service is free of accumulated oil if

...

18 AAC 75.047(i)(3) is amended to read:

(3) “removed from service” means not in regular use for the service intended and not included in a regular maintenance and inspection program in accordance with **(c) and (d) of** this section.

(Eff. 12/30/2006, Register 180; am __/__/__, Register __)

Authority: AS 46.03.020 AS 46.04.030 AS 46.04.070

18 AAC 75.065(e)(2) is amended to read:

(2) before a field-constructed aboveground oil storage tank **resumes** [IS RETURNED TO] service following major repair or major alteration, as defined in Section 12.3.1.2 of *Tank Inspection, Repair, Alteration, and Reconstruction*, (API 653), adopted by reference in (a) of this section.

Register ____, _____2016 ENVIRONMENTAL CONSERVATION

(Eff. 5/14/92, Register 122; am 5/26/2004, Register 170; am 12/30/2006, Register 180;

am __/__/__, Register__)

Authority: AS 46.03.020 AS 46.04.030 AS 46.04.070

18 AAC 75.080(b) is amended to read:

(b) The owner or operator shall maintain metallic facility oil piping containing oil in accordance with a **written** corrosion control program.

18 AAC 75.080(o) is amended to read:

(o) The owner or operator of facility oil piping that is removed from service for more than one year shall ensure that the facility oil piping is free of accumulated oil, identified as to origin, marked on the exterior with the words "Out of Service" and the date taken out of service, secured in a manner to prevent unauthorized use, and either blank flanged or otherwise isolated from the system. **For piping removed from service after December 30, 2006, the** [THE] owner or operator shall notify the department when facility oil piping is removed from service and when the actions required by this subsection are completed.

(Eff. 5/14/92, Register 122; am 12/30/2006, Register 180; am __/__/__, Register__)

Authority: AS 46.03.020 AS 46.04.030 AS 46.04.070

18 AAC 75.205(a)(1) is amended to read:

(1) for an oil terminal facility **that has a storage capacity of 5,000 barrels or**

more of crude oil or 10,000 barrels or more of noncrude oil as provided in AS 46.04.050(a),

by the owner or operator of the facility;

18 AAC 75.205(a)(3)(B) is amended to read:

(B) the owner of the vessel, if the agents or employees of the owner retain control and responsibility for the operation of the vessel [OR BARGE] ; [OR]

18 AAC 75.205(a)(3)(C) is amended to read:

(C) **in any other case,** the person with primary operational control[, IN ANY CASE OTHER THAN ONE SET OUT IN (A) OR (B) OF THIS PARAGRAPH];

or

18 AAC 75.205(a)(3) is amended by adding a new subparagraph to read:

(D) the operator of the vessel;

18 AAC 75.205(c)(1) is amended to read:

(1) in the case of a corporation, by **a principal executive officer of at least the level of vice president or that officer's authorized representative, if the** [AN AUTHORIZED] representative **is** responsible for the overall management of the facility or operation [, OR THAT PERSON'S DESIGNEE];

18 AAC 75.205(c)(4) is amended to read:

(4) in the case of a municipal, state, federal, or other public facility, by **either a principal executive officer, ranking elected official, or other** [AN] authorized [PUBLIC OFFICIAL OR] employee;

18 AAC 75.205(c)(6) is amended to read:

(6) in the case of a joint venture, by the operator; [AND]

18 AAC 75.205(c)(7) is amended to read:

(7) by an agent who has been delegated that authority by the responsible party under (a) of this section on a form supplied by the department; **and** [.]

18 AAC 75.205(c) amended by adding a new paragraph to read:

(8) for a limited liability company, by a member.

(Eff. 5/14/92, Register 122; am 10/28/2000, Register 156; am 11/27/2002, Register 164;

am __/__/__, Register__)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070
AS 46.04.040

18 AAC 75.236(c)(1) is amended to read:

(1) **more than** [OVER] 10,000 barrels a day;

Register __, _____2016 ENVIRONMENTAL CONSERVATION

(2) **more than** [OVER] 5,000 barrels a day, but **not more** [LESS] than 10,000 barrels a day;

(3) **more than** [OVER] 2,500 barrels a day, but **not more** [LESS] than 5,000 barrels a day; or

(4) 2,500 or **fewer** [LESS] barrels a day.

(Eff. 12/8/95, Register 136; am 11/27/2002, Register 164; am __/__/__, Register __)

Authority: AS 46.03.020 AS 46.04.040 AS 46.04.070

The section heading and 18 AAC 75.405(a) are amended to read:

18 AAC 75.405. Pre-application notification and consultation for oil discharge prevention and contingency plans [AND NONTANK VESSEL EQUIVALENT PLANS]; new plans and plan renewals. (a) At least 60 days before submitting an application for approval of a new oil discharge prevention and contingency plan [OR A NONTANK VESSEL EQUIVALENT PLAN] under 18 AAC 75.410 or for renewal of approval under 18 AAC 75.420, the applicant must notify the department in writing of its intent to submit an application. An electronic mail or facsimile transmission delivered to the appropriate department office will be considered written notice for purposes of this subsection.

(Eff. 5/14/92, Register 122; am 11/27/2002, Register 164; am 4/16/2016, Register 218;

am __/__/__, Register __)

Authority: AS 46.03.020 AS 46.04.050 AS 46.04.070
AS 46.04.030 AS 46.04.055

The section heading and introductory language of 18 AAC 75.408 (a) is amended to read:

18 AAC 75.408. General procedures to apply for oil discharge and contingency plans [AND NONTANK VESSEL EQUIVALENT PLANS]. (a) An application for approval of an oil discharge prevention and contingency plan [OR A NONTANK VESSEL EQUIVALENT PLAN] must contain

...

18 AAC 75.408(c)(6) is amended to read:

(6) an applicant must notify the Department of Natural Resources, the Department of Fish and Game, regional citizens' advisory councils, and other persons designated by the department when a proposed minor amendment is provided to the department; [IF THESE] parties **requesting** [SUBMIT A REQUEST TO THE DEPARTMENT FOR] a copy of the minor amendment [,] **shall submit the request to the applicant and** [THE DEPARTMENT WILL DIRECT] the applicant **will** [TO] provide a copy;

(Eff. 4/16/2016, Register 218; am __/__/__, Register __)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070
AS 46.04.030

The section heading and 18 AAC 75.410(a) are amended to read:

18 AAC 75.410. Procedures to apply for oil discharge prevention and contingency plans [AND NONTANK VESSEL EQUIVALENT PLANS]; new plans. (a) An application for approval of a new oil discharge prevention and contingency plan [OR A NEW NONTANK VESSEL EQUIVALENT PLAN] must be submitted in accordance with 18 AAC 75.408. For submittals after October 16, 2016, an application must be submitted at least 180 days before the proposed start of operation.

(Eff. 5/14/92, Register 122; am 11/27/2002, Register 164; am 4/8/2012, Register 202; am 4/16/2016, Register 218; am __/__/__, Register __)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070
AS 46.03.030

The section heading and 18 AAC 75.414 are amended to read:

18 AAC 75.414. Procedures to apply for oil discharge prevention and contingency plans [AND NONTANK VESSEL EQUIVALENT PLANS]; owner or operator changes. A change in the owner, operator, or name of the owner or operator of a facility or operation with an approved oil discharge prevention and contingency plan [OR A NONTANK VESSEL EQUIVALENT PLAN] requires that the new owner or operator submit an application package as an amendment under 18 AAC 75.415. (Eff. 4/16/2016, Register 218; am __/__/__,

Register __)

Authority. AS 46.03.020 AS 46.04.055 AS 46.04.070

AS 46.04.030

The section heading and introductory language of 18 AAC 75.415(a) are amended to read:

18 AAC 75.415. Procedures to apply for oil discharge prevention and contingency plans [AND NONTANK VESSEL EQUIVALENT PLANS]; plan amendments. (a) An application for approval of an amendment to an oil discharge prevention and contingency plan [OR A NONTANK VESSEL EQUIVALENT PLAN] must be submitted in accordance with 18 AAC 75.408 and approved by the department, before a change to a plan may take effect, unless it is a routine plan update under (b) of this section. A plan amendment that incorporates one or more of the following will be reviewed as a major amendment:

...

18 AAC 75.415(d) is repealed:

(d) Repealed __/__/__.

[(d) AN APPLICATION FOR APPROVAL OF A PLAN AMENDMENT TO ALLOW THE ADDITION OF A VESSEL TO OPERATE UNDER AN APPROVED NONTANK VESSEL EQUIVALENT PLAN MUST INCLUDE ALL THE INFORMATION REQUIRED BY 18 AAC 75.427 FOR THAT VESSEL. A PLAN AMENDMENT FOR THE ADDITION OF A VESSEL MUST BE SUBMITTED NOT LATER THAN FIVE WORKING DAYS BEFORE THE VESSEL OPERATES IN STATE WATERS. THE DEPARTMENT WILL REVIEW THE AMENDMENT AND ISSUE A WRITTEN DECISION NOT LATER THAN FIVE WORKING DAYS AFTER RECEIVING A PROPOSED PLAN AMENDMENT UNDER THIS

Register ____, _____2016 ENVIRONMENTAL CONSERVATION

SUBSECTION UNLESS THE DEPARTMENT DETERMINES THAT IT IS A MAJOR AMENDMENT UNDER (a) OF THIS SECTION.]

(Eff. 5/14/92, Register 122; am 11/27/2002, Register 164; am 12/14/2002, Register 164; am 4/8/2012, Register 202; am 4/16/2016, Register 218; am __/__/__, Register __)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070
AS 46.04.030

The section heading and 18 AAC 75.420 are amended to read:

18 AAC 75.420. Procedures to apply for oil discharge prevention and contingency plans [AND NONTANK VESSEL EQUIVALENT PLANS]; plan renewals. (a) A plan holder must apply for renewal of the department's approval of an oil discharge prevention and contingency plan [OR NONTANK VESSEL EQUIVALENT PLAN] in accordance with 18 AAC 75.408. For submittals after October 16, 2016, the application must be submitted at least 180 days, or the number of days stated in the plan approval letter under 18 AAC 75.460(a), in advance of expiration of the plan to permit department review before the plan approval expires.

(Eff. 5/14/92, Register 122; am 11/27/2002, Register 164; am 4/16/2016, Register 218; am __/__/__, Register __)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070
AS 46.04.030

18 AAC 75.425(e)(3)(A)(x) is amended to read:

(x) any other information required by the department to evaluate the response capability of a vessel, including an approved loading manual that meets the requirements of **46 CFR 109.227** [46 C.F.R. 45.105], as amended through **October 1, 2009** [October 1, 1990];

18 AAC 75.425(e)(4)(A)(ii) is amended to read:

(ii) for a terminal, a crude oil transmission pipeline, or an exploration and production contingency plan: cathodic protection or another approved corrosion control system if required by 18 AAC 75.065(h)(2), (i)(3), or (j)(3); a leak detection system for each tank if required by 18 AAC 75.065(i)(4) or (j)(4); any other prevention or control system approved by the department under 18 AAC 75.065(h)(1)(D); a means of immediately determining the liquid level of bulk storage tanks as specified in 18 AAC 75.065(k)(3) and (4) or in 18 AAC 75.066(g)(1)(C) and (D); maintenance practices for [BURIED] metallic piping containing oil as required by 18 AAC 75.080(b); protective coating and cathodic protection if required by 18 AAC 75.080(d) (k)(1),(l) or (m); and **cathodic protection** [CORROSION] surveys required by 18 AAC 75.080(k)(2);

(Eff. 5/14/92, Register 122; am 9/25/93, Register 127; am 3/28/96, Register 137; am 4/4/97, Register 142; am 12/14/2002, Register 164; am 5/26/2004, Register 170; am 12/30/2006, Register 180; am 9/4/2014, Register 211; am __/__/__, Register __)

Register ____, _____2016 ENVIRONMENTAL CONSERVATION

Authority: AS 46.03.020 AS 46.04.035 AS 46.04.070
AS 46.04.030 AS 46.04.055

18 AAC 75.427 is repealed:

18 AAC 75.427. Nontank vessel equivalent plan contents. Repealed. (Eff. 11/27/2002, Register 164; repealed __/__/__, Register __)

18 AAC 75.446 is repealed:

18 AAC 75.446. Approval criteria for nontank vessel equivalent plans. Repealed. (Eff. 11/27/2002, Register 164; am 4/16/2016, Register 218; repealed __/__/__, Register __)

The section heading and 18 AAC 75.455(a) are amended to read:

18 AAC 75.455. Department review procedures for oil discharge prevention and contingency plans [AND NONTANK VESSEL EQUIVALENT PLANS]; new plans, plan renewals and major plan amendments. (a) Not later than seven working days after receipt of an oil discharge prevention and contingency plan [OR NONTANK VESSEL EQUIVALENT PLAN] application package for a new plan, plan renewal or major amendment, the department will determine if the application package is sufficient for review. If the application package is not sufficient for review, the department will notify the applicant in writing.

18 AAC 75.455(h) is amended to read:

(h) To assist the department in its review of oil discharge prevention and contingency plans [AND NONTANK VESSEL EQUIVALENT PLANS] under this chapter, the department will enter into an annual agreement with the Department of Natural Resources and the Department of Fish and Game to provide expertise regarding protection of fish and game, state land, areas of public concern, and environmentally sensitive areas. (Eff. 5/14/92, Register 122; am 11/27/2002, Register 164; am 4/8/2012, Register 202; am 4/16/2016, Register 218; am __/__/__, Register __)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070
AS 46.04.030

The section heading and 18 AAC 75.460(a) are amended to read:

18 AAC 75.460. Department decision on oil discharge prevention and contingency plans [AND NONTANK VESSEL EQUIVALENT PLANS]; new plans, plan renewals, and major plan amendments. (a) After considering the information, analyses, and commitments contained in a complete application package for approval of an oil discharge prevention and contingency plan [OR NONTANK VESSEL EQUIVALENT PLAN] and comments received not later than the close of the public comment period set out in 18 AAC 75.455, the department will approve, approve with conditions, or disapprove an oil discharge prevention and contingency plan [OR A NONTANK VESSEL EQUIVALENT PLAN].

Register ____, _____2016 ENVIRONMENTAL CONSERVATION

(Eff. 5/14/92, Register 122; am 7/11/2002, Register 163; am 11/27/2002, Register 164; am

9/4/2014, Register 211; am 4/16/2016, Register 218; am __/__/__, Register __)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070

AS 46.03.030

18 AAC 75.485(a) is amended to read:

(a) The department may conduct announced and unannounced discharge exercises to assure that an oil discharge prevention and contingency plan or nontank vessel plan is adequate in content and execution. No more than two exercises will be required for an oil discharge prevention and contingency plan in each 12-month period, unless an exercise demonstrates, in the department's judgment, a plan holder's failure to implement the plan effectively. [NO MORE THAN ONE DISCHARGE EXERCISE REQUIRING DEPLOYMENT OF EQUIPMENT IN THE FIELD AND ONE DISCHARGE EXERCISE WITHOUT DEPLOYMENT OF EQUIPMENT WILL BE REQUIRED FOR A NONTANK VESSEL EQUIVALENT PLAN IN EACH PLAN REVIEW CYCLE AS ESTABLISHED UNDER 18 AAC 75.456(b) OR 18 AAC 75.460(d), AS APPLICABLE, UNLESS AN EXERCISE DEMONSTRATES, IN THE DEPARTMENT'S JUDGMENT, A PLAN HOLDER'S FAILURE TO IMPLEMENT THE PLAN EFFECTIVELY].

(Eff. 5/14/92, Register 122; am 11/27/2002, Register 164; am __/__/__, Register __)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070

AS 46.05.030

18 AAC 75.990(124) is amended to read:

(124) “sufficiently impermeable” means, for a secondary containment system, that its design and construction has the impermeability necessary to protect groundwater from contamination and to contain a discharge or release until it can be detected and cleaned up; for design purposes for **tanks constructed after May 1992** [A NEW INSTALLATION], “sufficiently impermeable” means using a layer of natural or manufactured material of sufficient thickness, density, and composition to produce a maximum permeability for the substance being contained of 1×10^{-6} cm per second at a maximum anticipated hydrostatic pressure, unless the department determines that an alternate design standard protects groundwater from contamination and contains a discharge or release until detection and cleanup;

18 AAC 75.990(148) is repealed:

(148) repealed __/__/__. [“EQUIVALENT PLAN” MEANS A NONTANK VESSEL PLAN SUBMITTED UNDER 18 AAC 75.414, 18 AAC 75.415, OR 18 AAC 75.420 AND MEETING THE REQUIREMENTS OF 18 AAC 75.408, 18 AAC 75.427, AND 18 AAC 75.460;]

18 AAC 75.990(160) is repealed:

(160) repealed __/__/__. [“VOYAGE CHARTER VESSEL” MEANS A VESSEL CONTRACTED TO LIFT A SPECIFIC CARGO ON A ONETIME, PERIODIC, NON-

Register ____, _____2016 ENVIRONMENTAL CONSERVATION

SCHEDULED, OR TRAMP BASIS;]

18 AAC 75.990(175) is amended to read:

(175) “marine structure” includes any assembly permanently or temporarily attached to the seabed **that is used by an exploration or production facility**; “marine structure” includes mobile offshore drilling units, prefabricated offshore platforms, and artificial islands;

18 AAC 75.990(191) is amended to read:

(191) “application package is complete” means that the applicant has provided the information necessary for the department to review and evaluate the plan using the criteria established under 18 AAC 75.445 for oil discharge prevention and contingency plans [AND ESTABLISHED UNDER 18 AAC 75.446 FOR NONTANK VESSEL EQUIVALENT PLANS];

18 AAC 75.990(195)(B) is amended to read:

(B) 18 AAC 75.425(e)(1) – (5) for oil discharge prevention and contingency plans [OR 18 AAC 75.427(b)(1) – (3) FOR NONTANK VESSEL EQUIVALENT PLANS]; and (Eff. 5/14/92, Register 122; am 9/25/93, Register 127; am 4/4/97, Register 142; am 4/11/97, Register 142; am 1/22/99, Register 149; am 8/27/2000, Register 155; am 10/28/2000, Register 156; am 11/27/2002, Register 164; am 12/14/2002, Register 164; am 1/30/2003, Register 165; am 8/8/2003, Register 167; am 5/26/2004, Register 170; am 12/30/2006, Register 180; am 10/9/2008, Register 188; am 4/8/2012, Register 202; am 9/4/2014, Register 211; am 6/17/2015,

Register ____, _____2016 ENVIRONMENTAL CONSERVATION

Register 214; am 4/16/2016, Register 218; am __/__/__, Register __)

Authority:	AS 46.03.020	AS 46.03.755	AS 46.04.055
	AS 46.03.050	AS 46.03.822	AS 46.04.070
	AS 46.03.710	AS 46.04.020	AS 46.08.140
	AS 46.03.740	AS 46.04.030	AS 46.09.010
	AS 46.03.745	AS 46.04.035	AS 46.09.020

18 AAC 78 is amended by adding a new section to read:

18 AAC 78.915 Cost recovery. An owner or operator of a UST is liable for response costs that the department or the state incurs as set out in the cost recovery requirements under 18 AAC 75.910. (Eff. __/__/__, Register __)

Authority:	AS 40.25.120	AS 46.03.822	AS 46.04.070
	AS 46.03.020	AS 46.03.826	AS 46.08.070
	AS 46.03.365	AS 46.04.010	AS 46.08.075
	AS 46.03.760	AS 46.04.020	AS 46.09.020