

Public Comment Response Summary
Proposed Revisions to 18 AAC Chapter 75
June 2018

Introduction

The Alaska Department of Environmental Conservation's Prevention, Preparedness, and Response Program proposed this package to amend the regulations in 18 AAC 75 to clarify the oil spill prevention and contingency planning and financial responsibility requirements.

Summary of changes

This packet proposed to amend regulations in 18 AAC 75 to provide editorial updates, corrections, and specificity to existing oil spill prevention and contingency planning and financial responsibility regulations.

In response to the questions and comments received during public review period, the department made several changes to the original proposed language.

The bulk of the comments and questions received during the public comment period were regarding the proposed changes to 18 AAC 75.425(e)(3)(A)(i) and 18 AAC 75.425(e)(3)(A)(ii). The changes were proposed to incorporate the content of Guidance OPC-92 in the regulation. When implemented, the guidance would be rescinded.

Although the guidance document to be rescinded (OPC 92-6) has been effect since 1992, the department recognizes that many plans do not currently contain a facility listing of tanks between 1,000 to 10,000 gallons. The department also recognizes the challenges of managing plan updates for mobile and temporary tanks from 1,000 to 10,000 gallons, including contractor or project-specific tanks.

These issues were not adequately addressed in the proposed regulation language. Due to the public comments, the department has decided to address these changes in a second phase of this project. Comments received will be considered when drafting the proposed amendments.

In the interim, Guidance OPC-92-6 remains in effect and regulated facility owners and operators are responsible to ensure their plan's facility descriptions contain information on stationary or permanent tanks from 1,000 to 10,000 gallon especially within the discussion of the facility's oil storage capacity as defined by 18 AAC 75.990(121)(C).

Organization

This document, organized in a comment/response format, addresses comments made during the formal public review period that ended on April 20, 2018.

Summary of Comments

18 AAC 75.025

Comment: The department received comment stating that the clarification that 025(a) and 025(j) applies to exploration or production facilities is considered a substantive requirement and not merely an editorial change.

Response: General pollution prevention measures apply in the operation and maintenance of regulated facilities inclusive of exploration and production facilities. The proposed regulatory language change clarifies that transfers of oil, an activity associated with the occurrence of spill incidents, at all regulated facilities are subject to 18 AAC 75.025. The regulation clarification reflects reasonable expectations for oil handling and routine operations at regulated facilities. The department disagrees that this is a substantive change as the clarification is aligned with expectations for all regulated facilities. The language was not changed.

18 AAC 75.065(j)(3) and 18 AAC 75.065(j)(3)

Comment: One commenter urged the department to exempt “field-constructed” aboveground oil storage tanks from cathodic protection requirements of 18 AAC 75.065(i)(3) and 18 AAC 75.065(j)(3) when they are installed above-grade, elevated and not in contact with soil.

Response: The department agrees that cathodic protection of an aboveground oil storage tank situated above-grade, elevated, and not in contact with soil is not a reasonable requirement. Adequate tank descriptions in the facility Oil Discharge Prevention and Contingency Plan (plan) should support this determination without the need for explicit regulation. The language was not changed.

18 AAC 75.066(i)

Comment: One commenter suggested capitalization of the first word of subsection (i) as it is an independent sentence and new requirement.

Response: Changes to this provision resulted in deletion of the proposed subsection and the establishment of a new paragraph [18 AAC 75.066(a)(3)].

Comment: One commenter suggested that rather than creating a new subsection (i) under 18 AAC 75.066, that the department consider establishing a new paragraph 18 AAC 75.066(a)(3). This puts the change at the beginning of the section with other date-related requirements.

Response: The department agrees and the change was made.

Comment: One commenter suggested that the definition of “placed in service” as it applies to shop-fabricated tanks be clarified to prevent these tanks from being subject to the “returned to service” requirement, which can apply to field-constructed tanks under 18 AAC 75.990(178).

Response: The department’s objective is to ensure that prevention measures are reasonable and sufficient to preclude spills from the operation of regulated shop-fabricated tanks. The definition of placed in service for shop-fabricated tanks currently exists. As it applies to shop-fabricated tanks, “placed in service” means “...”commencement of operational use, either after initial construction or installation...” 18 AAC 75.990(178)

The 18 AAC 75.065 application to tanks over 50,000 gallons means these larger tanks will be subject to “returned to service” requirements. As written, the current regulations would require that tanks over 50,000 gallons, when returned to service, have leak detection and cathodic protection, which is not an unreasonable prevention measure if the tank bottom is in contact with soil. Elevated shop-fabricated tanks over 50,000 gallons are not required to have these technologies. Tank descriptions incorporated into the facility plan must clearly state the tanks are elevated, supporting that cathodic protection is not needed and leak detection capability is provided through visual inspection.

18 AAC 75.205(b)(3)

Comment: One commenter suggested that the proposed language lacked clarity.

Response: The department agrees and will align the language with 75.205(b)(2).

Comment: Several commenters noted concern with procedural changes for owner, operator, or their contractors to pre-secure a Nontank Vessel (NTV) Certificate of Proof of Financial Responsibility (FR) on an annual basis, whether a vessel intends to transit Alaska waters or not. Concerns were expressed that with the proposed change, which would require an FR application to be submitted no more than 90 days prior to an ETA, Clients/Applicants would no longer be able to maintain their plans in ACTIVE status.

Response: It is not uncommon for the NTV FR and plan expirations to be out of sync. As stated in the terms and conditions of NTV streamlined plan approvals, the vessel must have a department-approved Certificate of Proof of Financial responsibility prior to entering Alaska state waters.

18 AAC 75.420(a)

Comment: One commenter suggested that the department revise their review procedures to set a 30-day period to transmit the request for additional information under 18 AAC 75.455(c)(1) to coincide with the public review period and providing sufficient time for department review before a plan approval expires.

Response: The department finds that the 90-day period allows for public comment compilation and plan review as well as the generation and transmittal of any necessary requests for additional information (RFAI). The language was not changed.

18 AAC 75.425(e)(3)(A)(i) and (ii)

Comment: The department received many comments objecting to the proposed changes.

Response: The department has decided to address these changes in a future second phase of this project. Comments received will be considered when drafting the proposed amendments and the package will go out for public comment.

18 AAC 75.425(e)(3)(A)(vii)

Comment: One commenter suggested that the department revise the facility description to include facility piping in the facility description, i.e., to read:

(vii) for a production facility, a description of the flow and gathering lines, facility piping, and processing facilities;

Response: The department did not include this change in the regulation package that went out for public review. Although the department agrees that inclusion of a description of regulated facility piping into the facility description is reasonable, this provision shall be considered for inclusion in a future regulatory package.

18 AAC 75.425(e)(4)(A)(ii)

Comment: One commenter noted a typo within the proposed regulations regarding the inclusion of ‘buried’.

Response: The commenter identified an unintended language change in the proposed regulation revision. Consistent with language found at the Alaska State Legislature <http://www.akleg.gov/basis/aac.asp#18.75.425>, the use of the word “buried” is not in the official version of the AAC. It is not an intended edit for the regulatory package to add the word and therefore was removed. The department’s internal procedures for editing future proposed regulation packages has also been modified to avoid these types of errors during the development of regulation packages.

Comment: One commenter noted that the provision 18 AAC 75.080(k)(1) is not a requirement to provide protective coating and/or cathodic protection under 18 AAC 75.425(e)(4)(A)(ii) but, rather directives for the operation and maintenance of a cathodic protection system. The mention of “(k)(1)” should be deleted.

Response: The department agrees and has changed the language.

18 AAC 75.438(c) and 18 AAC 75.440(b)

Comment: One commenter requested clarification from the department that the changed language in 18 AAC 75.438(c) and 18 AAC 75.440(b) is not intended to affect how the Response Planning Standard (RPS) is calculated.

Response: The proposed edits to this section are not intended to change the RPS volume calculation but to align language in the relevant statute and regulations. Specifically, replacing ‘capacity’ with the term ‘volume’ is consistent with the statutory language found in AS §46.04.030(k)(3)-(5), which establishes the RPS for both crude and noncrude oil tank vessels or barges. The regulations further defines “cargo volume” in 18 AAC 75.990(14).

18 AAC 75.990

Comment: One commenter suggested revision of the term “volume” and “capacity” to more closely reflect the conventionally accepted understanding of the words. The commenter suggested further clarification i.e.,

"Capacity" would refer to the maximum amount a tank vessel could carry and "Volume" would refer to the amount of cargo actually carried.

Response: The intention for the revision is simply to align language between the governing statute and the regulation. Cargo volume (as it correlates to the RPS as well as the vessel's storage capacity) most adequately addresses the legally permitted volume of oil that may be carried in state waters. The language was not changed.

18 AAC 75.990(181)

Comment: One commenter suggested that the definition of shop-fabricated tank be modified to read: (181) "shop-fabricated aboveground oil storage tank" means an oil storage tank that is constructed at manufacturer's facility and transported to a facility for installation or an aboveground storage tank not otherwise identified as field-constructed.

Response: The department finds the current definition sufficient for shop-fabricated tanks and the phrase "not otherwise identified as field-constructed" to be vague and potentially problematic for regulatory interpretation. The language was not changed.

Miscellaneous

Comment: Commenters pointed out typographical errors in 18 AAC 75 at: 047(d), 047(g), 066(b), and 475(d).

Response: The department appreciates the comments. The errors are not in the official versions of the AAC but in the unofficial PDF versions. These versions will be updated.