

Proposed Revisions to 18 AAC Chapter 75: Noncrude Tank Vessel & Oil Barge Regulation Package
Public Comment and Response Summary
May 15, 2020

Introduction

The Alaska Department of Environmental Conservation's Prevention, Preparedness, and Response Program (PPRP) initiated a regulatory change aimed to improve efficiency and relieve burdensome regulatory obligations for small capacity vessels that provide fueling services to remote communities in Alaska. The department has had requests over the years to provide a streamlined plan for smaller capacity tank vessels and oil barges because obtaining a plan for small operations is cost prohibitive and leads to a lack of service in remote locations or may lead to riskier fuel transfer procedures such as offloading fuel trucks from a vessel to shore in locations that don't have the infrastructure to support these types of operations. The proposed regulations provide a balance between regulatory oversight and environmental protection and reducing riskier fuel transfer procedures.

All noncrude tank vessels and oil barges (NC/TV-B) are required to have an approved Oil Discharge Prevention and Contingency Plan (plan) regardless of their storage capacity. The department developed amendments to existing regulations for noncrude oil tank vessels and barges with a storage capacity of less than 500 barrels (~20,000 gallons) to allow the owner/operator to apply for a streamlined plan. It is not mandatory that the owner/operator of these types of vessels have a streamlined plan and they can opt to keep their existing plan. In order to qualify for an approved streamlined plan, the vessel will need to carry specific initial response equipment and have at least two personnel trained to deploy on-board response equipment during transit and the transfer of oil from ship to shore and to have contracts with a streamlined plan cleanup contractor and Incident Management Team (IMT).

Public Comment

The Noncrude Tank Vessel and Oil Barge regulation package went out for public comment on October 11, 2018 and was adopted May 9, 2019 by the Commissioner. The regulations were again sent out to public comment for a supplemental public notice from January 6, 2020 to January 23, 2020. The comments summarized below include comments received during the initial and the supplemental public comment period. The following comments are organized in a comment/response format with similar comments grouped into one comment for response purposes.

Summary

The department received supportive comments and suggested changes for the final regulations. In response to the questions and comments received during the public comment periods, the department made several changes to the original proposed language.

Response to Comments Received in 2020

1.	<p><u>Comment:</u> One commenter stated that they are in support of the regulatory intent to make acquiring plans more accessible and less expensive for small operators, but they expressed concerns about some of the proposed changes.</p> <p><u>Response:</u> Please see individual responses to comments received.</p>
2.	<p><u>Comment:</u> Two commenters stated that the proposed spill response equipment requirements may not be practical, especially in regard to the amount of boom required onboard due to limited deck space found on smaller vessels.</p> <p><u>Response:</u> Based on comments received, the department has reevaluated onboard equipment requirements and has modified 18 AAC 75.429 by removing the requirement to carry containment boom due to onboard storage size restrictions for smaller vessels. The department has added the requirement that trained personnel shall be familiar with the vessel's fuel transfer procedures, take all appropriate measures to prevent spills, and follow fuel transfer procedures in accordance with 18 AAC 75.429(d).</p>

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3.	<p><u>Comment:</u> One commenter noted that the requirement to have streamlined plan contractors and onboard equipment are more stringent than current plan requirements for these vessels.</p> <p><u>Response:</u> Overall, operators that choose to operate under a full contingency plan must meet more complex requirements that require longer review times and more resources than those with a streamlined plan. The department has drafted these regulations based on balancing the risks of the protection provided by each type of plan. The language was not changed.</p>
4.	<p><u>Comment:</u> One commenter questioned the size limit imposed by the proposed regulations (500 barrels storage) and questioned how the department arrived at that size limit.</p> <p><u>Response:</u> The department chose the 500 barrel storage capacity cut off based on a number of factors including the risk factors for the nearshore areas that these vessels tend to travel through; the current plan holders that might benefit from being able to apply for a streamlined plan; as well as the USCG's Southeast Alaska Advance Notice of Transfer Policy, dated November 12, 2013 which requires that all facilities that intend to transfer over 20,000 gallons of oil (~500 bbls.) to or from a vessel to provide an advance notice of transfer at least four hours prior to the start of transfer operations. The language was not changed.</p>
5.	<p><u>Comment:</u> One commenter asked if the United States Coast Guard (USCG) was consulted and if applicable USCG regulations had been considered during regulation development.</p> <p><u>Response:</u> The department did consult with Sector Juneau, USCG during the public scoping process for the NC/TV-B regulatory package.</p>
6.	<p><u>Comment:</u> One commenter questioned the need for the IMT to be staffed with 12 persons.</p> <p><u>Response:</u> Based on the comments received, the department has reduced the number of IMT staffing required for streamlined plan approval to reflect the lower risk associated with smaller capacity vessels. The number of IMT personnel required has been reduced from 12 identified to six personnel with no alternates required, the number of additional responders remains unchanged (see 18 AAC 75.562(b), Table G, Classification C).</p>
7.	<p><u>Comment:</u> One commenter stated that the streamline plan requirement to have a contract with an IMT is more stringent than the current contingency plan requirements and another commented that they don't believe streamlined plan holders should be required to have an IMT on contract.</p> <p><u>Response:</u> The streamlined plan statutes and regulations were originally implemented for nontank vessels (NTVs) in 2002 and were the model used to develop these regulations. To balance the risks of not having a full contingency plan the department requires that the vessel have both a streamlined plan cleanup contractor and IMT. It has been the department's requirement that NTVs that chose <u>not</u> to have a streamlined cleanup contractor and an IMT would not be approved for a streamlined plan but would be required to have a full contingency plan. The language was not changed.</p>
8.	<p><u>Comment:</u> One commenter stated that an Incident Management Team (IMT) should be capable of supporting a response regardless of vessel fuel classification or region.</p> <p><u>Response:</u> The streamlined plan IMT program allows the IMT to choose the classification, based on vessel type and storage capacity, that they want to work with and what region they want to operate in. The department evaluates their application based on what the IMT is applying for. The language was not changed.</p>

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9.	<p>Comment: A commenter asked if the proposed regulatory changes would require approved Cleanup Contractors to submit an application and pay the application fee.</p> <p>Response: There is no fee for currently approved streamlined plan contractors to amend their registration.</p>
10.	<p>Comment: Two commenters questioned the regulatory requirements to contract with a Response Planning Facilitator (RPF).</p> <p>Response: The choice to hire an RPF is optional and is not required by the regulations.</p>
11.	<p>Comment: One commenter noted that the definition of a “streamlined incident management team,” defined in 18 AAC 75. 990(153), is incorrect and should be consistent with 18 AAC 75. 990(150) and the oil spill primary response action contractor language should be deleted from 18 AAC 75. 990(153).</p> <p>Response: The “oil spill primary response action contractor” language aligns with the statutes that address the cleanup contractor, RPF, and IMT requirements (AS 46.04.055(g)).</p>
12.	<p>Comment: One commenter suggested that a Portable Document Format (PDF) of a current approved plan be allowed onboard to satisfy compliance with the streamlined plan approval requirement.</p> <p>Response: The department agrees and intends to send all approval documents in electronic format and will allow an electronic version to be onboard. The documents will need to be retrievable at all times so the operator will need to assure this is the case if they choose to only have an electronic version onboard.</p>
13.	<p>Comment: One commenter asked that the department define the word “judgment” as it relates to exercise requirements and commented that the word is subjective.</p> <p>Response: The department will not be defining "judgement" for these regulations. Terms not defined in regulation would be defined as they are in Webster's dictionary. The language was not changed.</p>
14.	<p>Comment: One commenter noted that a table was mislabeled.</p> <p>Response: The department appreciates the comment and the table has been corrected.</p>

Response to Comments Received in 2018

1.	<p>Comment: One commenter stated that the proposed changes would encourage better practices and prevention.</p>
2.	<p>Comment: One commenter stated that they were glad that a plan holder with an existing oil discharge prevention and contingency plan for a NC TV/B would be able to continue using their existing plan.</p>
3.	<p>Comment: One commenter expressed support for the onboard equipment requirements proposed in this package.</p>
4.	<p>Comment: One commenter stated the proposed changes would make it easier for small operators to comply with regulations. They further stated that compliance should prevent sloppy and environmentally damaging practices, and allow their vessel to operate in a more efficient way to lower the potential for spills.</p>
5.	<p>Comment: One commenter asked during both the initial and the supplemental public comment periods if there would be increased education, awareness, and enforcement of transit/transfer activities and contingency plan requirements if the amendments are adopted.</p> <p>Response:</p> <ul style="list-style-type: none"> • To increase awareness and compliance assistance, the department will perform outreach activities to notify NC TV/B operators about the option to submit a streamlined oil discharge prevention and contingency plan, and the associated requirements.

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	<ul style="list-style-type: none">• The department will provide a webinar to educate interested parties about the streamlined plan option for NC TV/Bs. The webinar will be an introduction to the streamlined plan and application process.• The department will provide a webinar to educate interested parties about the streamlined plan contractor's option for NC TV/Bs. The webinar will be an introduction to the streamlined plan and contractor program and the application process.• The streamlined plan application and plan document, along with step by step instructions, will be available on the department's website.• The department does provide compliance assistance and enforcement for facilities when they discover that a facility is out of compliance with department regulations. We do not anticipate an increase in enforcement activities for contingency plan requirements.
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