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**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

MEMORANDUM

TO: Gary Mendivil
Department of Environmental Conservation

FROM: April Simpson, Office of the Lieutenant Governor 465.4081 *AS*

DATE: March 26, 2021

RE: Filed Permanent Regulations: Department of Environmental Conservation
Department of Environmental Conservation regulations re: amounts of financial responsibility for oil or hazardous substance spill prevention and response (18 AAC 75.235; 18 AAC 75.270)

Attorney General File:	2020200093
Regulation Filed:	3/26/2021
Effective Date:	6/24/2021
Print:	238, July 2021

cc with enclosures: Harry Hale, Department of Law
Judy Herndon, LexisNexis

ORDER ADOPTING CHANGES TO
REGULATIONS OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

The attached 3 pages of regulations, dealing with financial responsibility for oil spills under 18 AAC 75 (Oil and Other Hazardous Substances Pollution Control), are adopted and certified to be a correct copy of the regulation changes that the Department of Environmental Conservation adopts under the authority of AS 46.03 and AS 46.04 after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

In considering public comments, the Department of Environmental Conservation paid special attention to the cost to private persons of the regulatory action being taken. In addition, the Department of Environmental Conservation also gave special attention to alternate practical methods in this regulatory action, as required by AS 46.03.024.

We request that the effective date of the regulations be 90 days after they have been filed with the Lt Governor's Office. This would be the same time span as anticipated in the statute.

DATE: March 4, 2021

Jason W. Brune Digitally signed by Jason W. Brune
Date: 2021.03.04 09:38:11 -09'00'

Jason W. Brune, Commissioner
Department of Environmental Conservation

FILING CERTIFICATION

April Simpson, for

I, Kevin Meyer, Lieutenant Governor for the State of Alaska, certify that on March 26, 2021, at 11:38 a.m., I filed the attached regulations according to the provisions of AS 44.62.040 – 44.62.120.

Kevin Meyer

Kevin Meyer, Lieutenant Governor

Effective: June 24, 2021 *for*

Register: 238, July 2021

FOR DELEGATION OF THE LIEUTENANT GOVERNOR'S AUTHORITY

I, KEVIN MEYER, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA, designate the following state employees to perform the Administrative Procedures Act filing functions of the Office of the Lieutenant Governor:

**Josh Applebee, Chief of Staff
Kady Levale, Notary Administrator
April Simpson, Regulations and Initiatives Specialist**

IN TESTIMONY WHEREOF, I have signed and affixed the Seal of the State of Alaska, in Juneau, on December 11th, 2018.



Kevin Meyer
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**KEVIN MEYER
LIEUTENANT GOVERNOR**

18 AAC 75.235(a) is amended to read:

(a) Each vessel or facility must be specifically covered by an approved form of financial responsibility. The dollar amounts of required financial responsibility set out in AS 46.04.040 or 46.04.055 are adjusted, based upon the percentage change between the reference base index and the semi-annual average Consumer Price Index for all Urban Alaska [URBAN] consumers [IN THE ANCHORAGE METROPOLITAN AREA] [for Anchorage and the Matanuska-Susitna Borough] for the second half of 2019 [2016], as reported by [BUREAU OF LABOR STATISTICS] the United States Department of Labor, Bureau of Labor Statistics. An applicant under 18 AAC 75.205 or 18 AAC 75.225 must demonstrate financial responsibility to respond in damages for claims covered by AS 46.04.040(i) in the following applicable minimum amount:

- (1) for a crude oil terminal facility, \$97,750,000 [\$93,550,000] per incident;
- (2) for a noncrude oil terminal facility, \$48.88 [\$46.78], per incident, for each barrel of total noncrude oil storage capacity at the terminal, or \$1,955,000 [\$1,871,000], whichever is greater, subject to a maximum of \$97,750,000 [\$93,550,000]; if the facility stores more noncrude oil than crude oil, the \$48.88 [\$46.78] per incident, per barrel requirement of this paragraph applies to each barrel of oil storage capacity at the facility;
- (3) for a tank vessel or barge carrying crude oil, \$586.50 [\$561.30], per incident, for each barrel of storage capacity or \$195,500,000 [\$187,100,000], whichever is greater;
- (4) for a tank vessel or barge carrying noncrude oil, \$195.50 [\$187.10], per incident, for each barrel of storage capacity or \$1,955,000 [\$1,871,000], whichever is greater, subject to a maximum of \$68,425,000 [\$65,485,000];
- (5) for a nontank vessel carrying predominantly nonpersistent product, \$195.50 [\$187.10] per incident, for each barrel of total oil storage capacity, persistent and nonpersistent product, on the vessel or \$1,955,000 [\$1,871,000], whichever is greater;

(6) for a nontank vessel carrying predominantly persistent product, **\$586.50** [\$561.30] per incident, for each barrel of total oil storage capacity, persistent product and nonpersistent product, on the vessel or **\$9,775,000** [\$9,355,000], whichever is greater;

(7) for a railroad tank car,

(A) **\$586.50** [\$561.30] per incident for each barrel of persistent product based on the maximum amount of persistent product storage capacity of any train on the railroad; and

(B) **\$195.50** [\$187.10] per incident for each barrel of nonpersistent product based on the maximum amount of nonpersistent product storage capacity of any train on the railroad or **\$1,955,000** [\$1,871,000], whichever is greater;

(8) for a pipeline, **\$97,750,000** [\$93,550,000] per incident;

(9) for an offshore exploration or production facility, **\$97,750,000** [\$93,550,000] per incident;

(10) for an onshore production facility that produces more than 10,000 barrels per day of oil, **\$39,100,000** [\$37,420,000] per incident;

(11) for an onshore production facility that produces more than 5,000, but not more than 10,000 barrels per day of oil, **\$19,550,000** [\$18,710,000] per incident;

(12) for an onshore production facility that produces more than 2,500, but not more than 5,000 barrels per day of oil, **\$9,775,000** [\$9,355,000] per incident;

(13) for an onshore production facility that produces 2,500 or fewer barrels per day of oil, **\$1,955,000** [\$1,871,000] per incident;

(14) for an onshore exploration facility, **\$1,955,000** [\$1,871,000] per incident.

(Eff. 5/14/92, Register 122; am 11/26/94, Register 132; am 12/8/95, Register 136; am 10/1/99,

Register 151; am 10/28/2000, Register 156; am 10/27/2002, Register 164; am 11/27/2002, Register 164; am 10/16/2005, Register 176; am 8/31/2008, Register 187; am 10/1/2011, Register 199; am 9/4/2014, Register 211; add'l am 10/1/2014, Register 211; am 10/1/2017, Register 223; am 11/7/2017, Register 224; am ~~10/1/2020, Register~~ 6/24/2021, Register 238)

Authority: AS 46.03.020 AS 46.04.045 AS 46.04.070
AS 46.04.040 AS 46.04.055 AS 46.04.890

A 18 AC 75.270(c) is amended to read:

AC Publisher: Please note that the draft sets out the reference to AS 46.04.040(2) correctly, with only the "l" in italics. Please correct the error in the print AAC.))

(c) The department may approve a P&I club or insurance syndicate that does not agree to be subject to direct court action in this state or that does not agree to appoint an agent for service of process in this state if the requirements of AS 46.04.040(*l*) are met with respect to the amount of \$97,750,000 [\$93,550,000] or the amount required by 18 AAC 75.235(a), whichever is less.

(Eff. 5/14/92, Register 122; am 11/26/94, Register 132; am 10/1/99, Register 151; am 10/28/2000, Register 156; am 10/27/2002, Register 164; am 10/16/2005, Register 176; am 8/31/2008, Register 187; am 10/1/2011, Register 199; am 10/1/2014, Register 211; am 10/1/2017, Register 223; am ~~10/1/2020, Register~~ 6/24/2021, Register 238)

Authority: AS 46.03.020 AS 46.04.045 AS 46.04.070
AS 46.04.040