

NOTICE OF PROPOSED CHANGES TO OIL POLLUTION PREVENTION
REQUIREMENTS
IN THE REGULATIONS OF ALASKA DEPARTMENT OF ENVIRONMENTAL
CONSERVATION

BRIEF DESCRIPTION

The Alaska Department of Environmental Conservation (ADEC) proposes to change regulations on Oil Discharge Prevention and Contingency Plans (plans) and Streamlined plans that certain vessels, railroads, pipelines, and oil terminal facilities must obtain to lawfully operate in the state. Based on input received from public scoping in 2019 and 2020, the department is proposing regulation changes to better implement the statutory authorities for contingency plans under AS 46.04, streamline and clarify regulations, and reorganize and update the content and approval requirements for all five parts of the plan.

ADEC proposes to adopt regulation changes at 18 AAC 75.400 – 18 AAC 75.496 (Article 4), 18 AAC 75.990, 18 AAC 75.027, and 18 AAC 75.075, and minor clarifying edits as described below, including:

- (1) Amend **18 AAC 75.400 - Applicability** to clarify applicability, requirements for who may apply for a plan for specific facility types, how to apply for statutory exemptions, and to repeal two subsections that duplicate statutory exemptions for certain types of natural gas facilities
- (2) Amend **18 AAC 75.405 - Pre-application notification and consultation for oil discharge prevention and contingency plans; new plans and plan renewals** to clarify application package requirements, including timelines and notice
- (3) Amend **18 AAC 75.408 - General procedures to apply for oil discharge prevention and contingency plans** to update and standardize the notification and distribution processes, and to clarify the format for plan application packages and who must sign the application
- (4) Amend **18 AAC 75.415 - Procedures to apply for oil discharge prevention and contingency plans; plan amendments** to change the deadline for submitting a routine plan update, clarify notification requirements for major or minor amendments, and add a new subsection to establish application procedures for temporary use of regulated aboveground oil storage tanks
- (5) Amend **18 AAC 75.420 - Procedures to apply for oil discharge prevention and contingency plans; plan renewals** to update review procedures during renewal, including to clarify that the entire plan will be reviewed and to repeal the option to not submit a copy of an unchanged plan
- (6) Repeal **18 AAC 75.425 - Oil discharge prevention and contingency plan contents** and incorporate content into new sections to provide requirements and approval criteria for Parts 1 – 5 of the contingency plan
- (7) Amend **18 AAC 75.432 - Response planning standards for oil terminal facilities** to clarify the response planning standard volumes for vessels operating as terminal facilities and to clarify prevention credits for leak detection systems and secondary containment enhancements
- (8) Amend **18 AAC 75.434 - Response planning standards for exploration or production facilities** to clarify the purpose of voluntary ignition of a well blowout proposal in determining a response planning standard volume

- (9) Amend **18 AAC 45.436 - Response planning standards for crude oil pipelines** to clarify the prevention credit for leak detection systems
- (10) Amend **18 AAC 75.442 - Response planning standards for multiple operations** to clarify language describing the response planning standard for a plan that includes multiple facility types
- (11) Repeal **18 AAC 75.445 - Approval criteria for oil discharge prevention and contingency plans** and incorporate content into new sections to provide requirements and approval criteria for Parts 1 – 5 of the contingency plan
- (12) Repeal **18 AAC 75.447 - Department examination of new technologies**
- (13) Add a new section **18 AAC 75.448 - Oil discharge prevention and contingency plan, general content and approval criteria** to consolidate plan general content and approval criteria information
- (14) Add a new section **18 AAC 75.449 - Part 1 - Oil discharge prevention and contingency plan, Response Action Plan** to consolidate and update the requirements for the Response Action Plan portion of the oil discharge prevention and contingency plan, including initial response actions and response planning standard scenarios. Specificity added for: contact information requirements, response scenario contents and approval criteria, fire control planning information, description of equipment used in surveillance and tracking of discharged oil, information for procedures to transfer recovered oil held in temporary storage, decanting planning and approval, use of the *Alaska Regional Response Team Wildlife Protection Guidelines for Oil Spills in Alaska* as a reference, criteria for requiring additional response strategies in the scenario, requirements for information about blowout contingency plans, and response scenarios for typical summer and winter conditions
- (15) Add a new section **18 AAC 75.450 - Part 2 - Oil discharge prevention and contingency plan, Prevention Plan** to consolidate the requirements for Prevention Plan contents, including descriptions of required prevention programs, technologies, and waivers or alternate compliance schedules in place at the facility
- (16) Add a new section **18 AAC 75.451 - Part 3 - Oil discharge prevention and contingency plan, Supplemental Information** to consolidate and update content requirements and approval criteria for Supplemental Information. Includes updates for: information required for aboveground oil storage tanks with a capacity of >10,000 gallons versus 1,000 to 10,000 gallons; piping diagrams required for oil terminal, exploration, and production facilities and for transmission pipelines; command system information; analysis of weather based on National Weather Service data or local historic weather information; calculations and storage-based limitations for effective daily recovery capacity (EDRC); temporary storage requirements; process for applying for an alternative EDRC; and requirements for response personnel training records. Clarifies that the use of a primary response action contractor does not relieve the plan holder’s responsibility to meet regulations and defines “manufacturer’s rated throughput capacity”
- (17) Add a new section **18 AAC 75.452 - Part 4 - Oil discharge prevention and contingency plan, Best Available Technology Review** to consolidate and describe the Best Available Technology (BAT) review requirements for technologies applicable to a plan holder’s operation, remove BAT review requirements for specific technologies required to meet a codified performance standard for corrosion control systems, pipeline leak detection systems, and tank vessel tow lines

- (18) Add a new section **18 AAC 75.453 - Part 5 - Oil discharge prevention and contingency plan, Response Planning Standard** to consolidate the Response Planning Standard information that must be included in the plan
- (19) Amend **18 AAC 75.455 - Department review procedures for oil discharge prevention and contingency plans; new plans, plan renewals, and major plan amendments** to clarify plan application review timelines and procedures, to revise the timeline for the department to issue requests for additional information and final decisions, and to update criteria for public hearings
- (20) Amend **18 AAC 75.459 - Preissuance Conference** to clarify prerequisites for requesting a preissuance conference
- (21) Amend **18 AAC 75.460 - Department decision on oil discharge prevention and contingency plans; new plans, plan renewals, and major plan amendments** to revise the content of department decisions, revise plan publication requirements, and revise notification procedures
- (22) Amend **18 AAC 75.465 - Proof of approved plan** to clarify allowable document formats and verification log requirements, and to clarify and consolidate requirements for plan documents that must be available at all times
- (23) Amend **18 AAC 75.475 - Notification of nonreadiness** to specify that the cleanup contractor must notify the department if there are significant changes to response plan components for a streamlined plan, and to remove specificity of what constitutes a written notice
- (24) Repeal and readopt **18 AAC 75.480 - Inspections** to provide greater detail about department-led inspections and requirements for plan holders
- (25) Repeal and readopt **18 AAC 75.485 - Discharge exercises** to update requirements for discharge exercises and to adopt by reference the department's *Oil Spill Response Exercise Manual*
- (26) Add a new section **18 AAC 75.489 - Definitions** to define "temporary basis" for use of aboveground oil storage tanks within Article 4
- (27) Repeal and readopt **18 AAC 75.495 - Regional master discharge prevention and contingency plan boundaries** to update regional planning boundaries and current place name designations
- (28) Amend **18 AAC 75.496 - Regional response operations plan boundaries for nontank vessels** to update current place name designations
- (29) Amend **18 AAC 75.990 - Definitions** to update the definition of "annual average daily oil production volume," add new definitions for "deadweight tonnage," "failsafe," and "primary operational control," and repeal the definition of "Prince William Sound towing package"
- (30) Amend **18 AAC 75.027(f) - Requirements for laden tank vessels** to clarify and update requirements for tank vessel tow lines
- (31) Repeal **18 AAC 75.075(i)** because definition of "failsafe" will be added to 18 AAC 75.990
- (32) Editorial updates to clarify language, update citations, and align with the *State of Alaska Drafting Manual* are made throughout the above identified sections and also in 18 AAC 75.410, 18 AAC 75.426, 18 AAC 75.428, 18 AAC 75.429, 18 AAC 75.430, 18 AAC 75.456, 18 AAC 75.457, 18 AAC 75.500, 18 AAC 75.510, 18 AAC 75.560, 18 AAC 75.580, and 18 AAC 75.990

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments electronically via our public notice site at <https://dec.alaska.gov/comment/>. The full contents of all submitted comments are considered public records and will be posted online in full during the public comment period. If you are unable to submit comments via this site you may submit them by mail to Zuzana Culakova, ADEC P.O. Box 111800, Juneau, AK 99811 or in person to Zuzana Culakova, ADEC 410 Willoughby Ave, Suite 303, in Juneau, or by electronic mail at dec.cpr@alaska.gov and they will be uploaded to the public comment site. The comments must be received no later than 11:59 p.m. on January 31, 2022.

ADEC will aggregate its response to substantially similar questions and make the questions and response available at <http://dec.alaska.gov/spar/regulation-projects>. ADEC may, but is not required to, answer written questions received after the 10-day cut-off date and before the end of the comment period. You may submit written questions relevant to the proposed action to ADEC by sending in questions by electronic mail at dec.cpr@alaska.gov or by sending the questions by mail to Zuzana Culakova, ADEC P.O. Box 111800, Juneau, AK 99811 or in person to Zuzana Culakova, ADEC 410 Willoughby Ave, Suite 303, in Juneau. The written questions must be received by January 21, 2022, which is 10 days before the end of the public comment period. If you are a person with a disability who needs an accommodation in order to participate in this process, please contact ADEC HR Manager Brian Blessington at (907) 269-6272 or TDD Relay Service 1-800-770-8973/TTY or dial 711 no later than January 21, 2022 to ensure that any necessary accommodations can be provided.

A copy of the proposed regulation changes is available on the Alaska Online Public Notice System and by contacting Zuzana Culakova at the email or address above or by calling 907-465-5346. This document also contains portions of regulation that are not proposed to change, to assist the reader in understanding the proposed changes. After the public comment period ends, ADEC will either adopt the proposed regulation changes or other provisions dealing with the same subject, without further notice, or decide to take no action. The language of the final regulations may be different from that of the proposed regulations. **You should comment during the time allowed if your interests could be affected.** Written comments are public records and are subject to public inspection.

Statutory authority: AS 46.03.020, AS 46.04.030, AS 46.04.040, AS 46.04.047, AS 46.04.050, AS 46.04.055, AS 46.04.060, AS 46.04.065, AS 46.04.070

Statutes being implemented, interpreted, or made specific: AS 46.03.020, AS 46.04.030, AS 46.04.040, AS 46.04.047, AS 46.04.050, AS 46.04.055, AS 46.04.060, AS 46.04.065, AS 46.04.070

Fiscal information: The proposed regulation changes are not expected to require an increased appropriation.

Date: _____

_____/s/
Jason W. Brune

ADDITIONAL REGULATION NOTICE INFORMATION
(AS 44.62.190(d))¹

1. Adopting agency: Department of Environmental Conservation, Division of Spill Prevention and Response
2. General subject of regulation: Oil discharge prevention & response plan requirements
3. Citation of regulation (may be grouped): 18 AAC 75.400 – 18 AAC 75.496
4. Department of Law file number, if any: 2020200377

5. Reason for the proposed action:

- Compliance with federal law or action (identify): _____
- Compliance with new or changed state statute
- Compliance with federal or state court decision (identify): _____
- Development of program standards
- Other (identify): Amend to clarify, streamline, and modernize requirements

6. Appropriation/Allocation: Spill Prevention and Response / Prevention, Preparedness, and Response Program

7. Estimated annual cost to comply with the proposed action to:

A private person: It is expected that there will not be additional costs for Oil Discharge Prevention and Contingency Plan holders. It is possible that there will be a small cost savings associated with the removal of requirements to publish notices, to provide multiple paper copies of plans, and to distribute plan application packages to plan reviewers.

Another state agency: Additional costs are not anticipated for the Alaska Department of Fish and Game or the Alaska Department of Natural Resources, both of which review Oil Discharge Prevention and Contingency Plans through an agreement with the Alaska Department of Environmental Conservation as required by statute and implemented under 18 AAC 75.455(h). The Alaska Department of Transportation's airport and pipeline Oil Discharge Prevention and Contingency Plans are currently operated by private companies, so the agency and private operators are not expected to experience additional costs.

A municipality: Costs for a municipality or a city entity with an oil terminal or pipeline facility with an Oil Discharge Prevention and Contingency Plan are equivalent to those expected for private persons; a possible small costs savings is anticipated.

8. Cost of implementation to the state agency and available funding (in thousands of dollars):

	Initial Year FY <u>22</u>	Subsequent Years
Operating Cost	\$ <u>0</u>	\$ <u>0</u>
Capital Cost	\$ <u>0</u>	\$ <u>0</u>
1002 Federal receipts	\$ <u>0</u>	\$ <u>0</u>
1003 General fund match	\$ <u>0</u>	\$ <u>0</u>
1004 General fund	\$ <u>0</u>	\$ <u>0</u>
1005 General fund/ program	\$ <u>0</u>	\$ <u>0</u>
Other (identify)	\$ <u>0</u>	\$ <u>0</u>

9. The name of the contact person for the regulation:

Name: Rebecca Spiegel
Title: Environmental Program Specialist
Address: 555 Cordova Street, Anchorage, AK 99501
Telephone: (907) 269-7543
E-mail address: rebecca.spiegel@alaska.gov

10. The origin of the proposed action:

Staff of state agency
 Federal government
 General public
 Petition for regulation change
 Other (identify): _____

11. Date: _____ Prepared by: _____ /s/

[signature]

Name (printed): Rebecca A. Spiegel

Title (printed): Environmental Program Specialist

Telephone: (907) 269-7543