



July 5, 2023

www.pwsrcac.org

Citizens promoting the environmentally safe operation of the Alyeska terminal and associated tankers.

Members:

Alaska State Chamber of Commerce

Chugach Alaska Corporation

City of Cordova

City of Homer

City of Kodiak

City of Seldovia

City of Seward

City of Valdez

City of Whittier

Community of Chenega

Community of Tatitlek

Cordova District Fishermen United

Kenai Peninsula Borough

Kodiak Island Borough

Kodiak Village Mayors Association

Oil Spill Region Environmental Coalition

Port Graham Corporation

Prince William Sound Aquaculture Corporation

Rebecca Spiegel

Alaska Department of Environmental Conservation

555 Cordova Street

Anchorage, AK 99501

Email: dec.cpr@alaska.gov

Re: Article 2 Financial Responsibility Dollar Amount Update

The Prince William Sound Regional Citizens' Advisory Council (PWSRCAC) is an independent, nonprofit corporation promoting the environmentally safe operation of the Valdez Marine Terminal and associated tankers. Our work is guided by the Oil Pollution Act of 1990 and our contract with Alyeska Pipeline Service Company. PWSRCAC's 19 member organizations are communities in the region affected by the 1989 Exxon Valdez oil spill, as well as commercial fishing, aquaculture, Alaska Native, recreation, tourism, and environmental groups.

The Prince William Sound Regional Citizens' Advisory Council (PWSRCAC or Council) provides these comments on regulatory revisions related to Article 2, 18 AAC Chapter 75 Proof of Financial Responsibility regulations released on June 6, 2023.

Proof of financial responsibility for oil discharges is an important safeguard in Alaska law. It ensures that a minimum amount of funds are available to an operator to respond to a spill and pay compensation to those injured by the spill. The requirements have been in place since the creation of the Alaska Department of Environmental Conservation (ADEC) and were updated after the Exxon Valdez oil spill. The financial responsibility requirements are particularly important in the case of operators who rely on insurance, self-insurance, guarantees and letters of credit to ensure that the mechanisms are in place, enforceable, sound and meet the requirements of Alaska law. Consequently, changes to the existing financial responsibility regulatory approval framework should be carefully scrutinized.

Section Comments:

18 AAC 75.205(c) Application for approval

ADEC proposes to remove the requirement that applications for approval or renewal of a certificate of financial responsibility for oil discharges be made "under oath or affirmation." ADEC does not explain a basis for the change to a requirement in place since May 1992. The requirement that an application is

Anchorage

3709 Spenard Rd, Ste 100
Anchorage, AK 99503
O: (907) 277-7222
(800) 478-7221

Valdez

P.O. Box 3089
130 S. Meals, Ste 202
Valdez, AK 99686
O: (907) 834-5000
(877) 478-7221

under oath or affirmation is important to ensure that the information on the amount of proof of financial responsibility is true and accurate and that the financial responsibility is in place in the event of an oil discharge. The oath or affirmation requirement is not a burden on regulated operators. It is a basic requirement of court documents, regulatory, financial, and tax filings. The required statement and notarization is contained on ADEC's financial responsibility application and checklist. There was no justification provided for removing it from financial responsibility regulations.

To ensure the requirements of financial responsibility for oil discharges are met and that financial responsibility is in place for the facility or vessel, PWSRCAC requests that ADEC retain the requirement that financial responsibility application be made under oath or affirmation.

18 AAC 75.215. Applications submitted by facsimile or electronic mail

18 AAC 75.215 allows submission of a financial responsibility application by facsimile or electronic mail. The regulation requires that the complete original of the application then be submitted within two business days by registered or certified mail or by courier.

ADEC is proposing to remove the facsimile transmission option and to require submission by electronic mail. ADEC is also proposing to only require submission of "original documentation" for self-insurance under 18 AAC 75.245 or a guaranty under 18 AAC 75.260 within two working days. Other types of financial responsibility such as insurance, surety, or coverage from a Protection and Indemnity (P&I) Club would not have to submit follow-up original documentation. ADEC does not explain why this change in original documentation is being made or why just two types of financial responsibility mechanisms have been selected for retention of the original documentation mailing.

It is not clear why requirements for documentation for different financial responsibility mechanisms are not consistent. Requirements for original documentation should be consistent for all types of financial responsibility mechanisms.

18 AAC 75.236(c) Amount and evidence of financial responsibility; onshore production facilities

ADEC similarly proposes removing the requirement that a certification of an onshore oil production facility's maximum daily production of oil, governing the required amount of financial responsibility coverage, be **notarized**.

ADEC does not provide a justification for the change, other than a statement it is proposing "to remove requirements for how certain documents must be signed to allow for electronic submissions." This statement does not justify removal of the oath or affirmation requirement because an application form can be signed under oath, scanned and sent by email just as an unsworn letter or document. Similarly, notarized documents are routinely scanned and submitted electronically by email. It is not clear why the requirement for

electronic submission is being removed. These important certification requirements ensure the truthfulness and accuracy of financial responsibility applications.

AS 09.63.030 explains that the requirement of notarization ensures that the notarized statement is made under oath or affirmation and that the person providing the certification is the person listed on the certification.¹The notary requirement is not a burden on operators since notaries are routinely available in business offices, banks, copy centers, and law offices. The formality of a notarized statement is routinely used in business, legal proceedings, financial transactions, and real estate.

Given the importance of the maximum daily production of oil in determining the amount of required financial responsibility for production facilities, the notarization requirement should be retained.

18 AAC 75.235 and 18 AAC 75.270: Adjustment of the dollar amounts of financial responsibility

PWSRCAC supports the increase of the dollar amounts of financial responsibility according to the Consumer Price Index (CPI). This increase is an important component of ensuring that a minimum amount of financial resources are available to cover the costs of an oil spill without passing the burden onto the State of Alaska and the public.

While PWSRCAC supports the CPI increase, we do not believe this increase adequately accounts for the increased cost of responding to a significant spill since the financial responsibility base amounts were last updated by the Alaska Legislature after the Exxon Valdez oil spill. While we realize it is outside the scope of this rulemaking, PWSRCAC recommends that ADEC revisit the financial responsibility updated base amounts set by the Legislature in statute under AS 46.04.040, and make appropriate recommendations regarding a potential increase to the amounts to help ensure that an operator has the ability to respond to damages caused by a spill. Recognizing that the proof of financial responsibility requirements is not meant to cover the entire cost of an oil spill, assessing the adequacy of the updated base amounts established over 30 years ago will help to protect Alaska, its people, fish and wildlife, livelihoods, and the environment from a devastating oil spill.

¹ 09.63.030. Notarization provides:

(a) When a document is required by law to be notarized, the person who executes the document shall sign and swear to or affirm it before an officer authorized by law to take the person's oath or affirmation and the officer shall certify on the document that it was signed and sworn to or affirmed before the officer

In addition, including certificates of approval of financial responsibility as part of the documents available on ADEC's contingency plan website would provide valuable information for the public.

PWSRCAC appreciates the opportunity to provide comments on this regulatory change. Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Donna Schantz". The signature is written in a cursive, flowing style.

Donna Schantz
Executive Director