

Comment Responsiveness Summary
Proposed Revisions to 18 AAC 75 Article 3
Responses to comments received during public comment period
June 27, 2018

Introduction

In March 2018 the Alaska Department of Environmental Conservation (DEC) proposed revisions to 18 AAC 75 Article 3 to update a small number of soil and groundwater cleanup levels for compounds where toxicity or other chemical specific information had changed, along with conforming updates to several adopted by reference technical documents. In addition, a change was made to eliminate the requirement for DEC approval before moving soil or groundwater from a site closed without conditions under the site cleanup rules. Other edits were made to address housekeeping related edits and definitions. The revisions were released for a 39-day public comment period beginning on March 19, 2018 and ending on April 26, 2018. Comments submitted are compiled in this Comment Responsiveness Summary.

Public Participation

At the start of the formal rulemaking (March 19, 2018) the department published a notice in Alaska Online Public Notices and in the Anchorage Daily News describing the proposed regulatory update. In addition, notice was sent to the Contaminated Sites email Listserv and the Interested Persons List, which included approximately 185 individuals. Responses were supplied to questions received during the public comment period and posted on Alaska Online Public Notices and the SPAR Division regulations web page for the project. No public workshops were scheduled or requested by the public.

Comment Summary

The department received comments from three individuals/entities. All three entities opposed the proposed change eliminating the requirement for DEC approval before moving soil or groundwater from a site closed without conditions under the site cleanup rules. The comments and the department's response to each comment are included in the table below. The last column indicates whether changes were made based on each comment.

No.	Comment	ADEC Response	Changes Made? (Y/N)
1.	<p>18 AAC 75.325(i) I agree that adding “owner, or operator” is a good idea, it makes it more consistent with the language in 18 AAC 75.325(e), 18 AAC 78.274(b), and 18 AAC 78.600(h). Also the responsible person may not be the current property owner or operator so they may no longer be involved in the day to day operations, site development, and removal of soil and water at the site.</p>	<p>Comment noted.</p>	<p>N</p>
2.	<p>The proposed changes to 18 AAC 75.325(i)(2) remove the requirement that ADEC be notified prior to transport of soil or groundwater from sites with contamination remaining above method two soil cleanup levels or groundwater cleanup levels listed in Table C.</p>	<p>The commenter is incorrect about the change. The proposed amendment removes the requirement to notify the department prior to transport of soil or groundwater from a site that has met the method two soil cleanup levels and Table C groundwater cleanup levels. Any closed site where documented contamination remains above these levels retains the notification requirement.</p>	<p>N</p>
3.	<p>AS&G would greatly caution against the proposed amendment to 18 AAC 75.325 that removes the requirement to obtain ADEC approval before transporting groundwater or soil from sites closed under method two. It is the opinion to AS&G that this will have unintended negative consequences. With this rule in place there has still been periodic instances that have lead to significant hardships for individuals, companies, and governments that have proven to be very costly financially and legally. The repeal of this rule will undoubtedly further exacerbate the frequency of occurrence.</p> <p>The benefit to the rule is that it requires a 'check-in' by the owner or responsible person to the ADEC to ensure that, even though the site is closed, there is opportunity for the regulatory community to judge the risk of the proposed action to the community and environment.</p> <p>Many locations, such as wet lands, surface waters, tidelands, gardens, parks, play grounds, aquiculture, near drinking water wells, and many fill permits are more sensitive, where the Table C and Method 2</p>	<p>Although included as a stipulation in site closure letters, permission to transport soil and groundwater from sites closed under these cleanup levels has rarely if ever been requested by responsible parties. Despite the assertions by the commenter, in the nearly 20 years this requirement has been in regulation, DEC has no documented occurrences or reports of soil or groundwater from sites closed under Method two sites being used on another site in a manner that has resulted in exposures or impacts to human health and the environment, including violations of water quality standards. It is the department’s determination that the effort to track this potential occurrence far outweighs the risk from such activities which is extremely low. More so, the department feels that retaining this requirement places an unreasonable burden on the owners, operators and responsible parties.</p>	<p>N</p>

	<p>cleanup levels would not be protective of human health, safety, welfare, and the environment. Typical fill permits require that the soil be non-detect for contamination.</p> <p>Department review is needed to help prevent the inappropriate disposal in these more sensitive areas. The current wording in the regulations has prevented this from occurring on numerous occasions, which would not have been prevented under the proposed language.</p>	<p>For permitted fill activities, sampling of the fill material is typically required regardless of where the material originated. Method two soil cleanup levels and Table C groundwater cleanup levels are suitable for residential use which includes many of the uses cited. Furthermore, these cleanup levels are designed to be overly conservative in the assumptions used to derive these values.</p> <p>The commenters appears to be referring to the unpermitted movement, use or disposal of contaminated soil that does not meet Method Two criteria. Retaining the requirement for sites where Method two cleanup levels have been achieved does not help address the issue raised by the commenter.</p>	
4.	<p>We value this rule at AS&G because it helps to protect us from receiving soils that are not compliant with the acceptance criteria of our fill sites that is based on the conditions in our Land Use Permits. There is a great amount of energy both physically and monetarily that is expended every year to safeguard ourselves from not being a victim to accepting contaminated soils albeit a deliberate, ad hoc, or accidental occurrence by others.</p>	<p>In the situation described by the commenter, it would appear that the best practice would be to require sample results prior to accepting any soils from a third party, regardless of where they originated. The notification requirement at issue does not mandate sampling prior to offsite transport and would therefore not provide the comfort the commenter seeks.</p>	N
5.	<p>There are two things that we feel deserve mentioning that are related to the historical basis for this rule. The first one is that cleanup levels periodically are amended, and therefore may render a former closure of a contaminated site not applicable. In fact, sites are still being reopened under the rule due to the cleanup criteria changes from the Fall of 2016.</p> <p>If there is contamination exceeding cleanup levels that was missed during site characterization or new unknown/unreported releases have occurred at a site they can dispose of the contaminated soil/water without department approval causing a risk to the human health and the environment and/or creating a new contaminated site where it was deposited.</p>	<p>Sites that have received closure determinations under regulations that have subsequently changed to include cleanup levels that have become more stringent are reviewed as a matter of course for protectiveness and the need for additional work; Therefore, repealing the requirement to seek approval from the department to move soil or groundwater from a site closed under method two does not affect this review process.</p> <p>Unknown contamination can be encountered anywhere, at both sites previously subject to the site cleanup rules or at sites where no cleanup has ever occurred. In either case, such contamination when found is required to be</p>	N

		reported to DEC and to be addressed under the site cleanup rules.	
6.	Furthermore, the closure of a site has historically been interpreted by the Department to be limited to the known contamination issues of a site. As a result, the rule essentially codifies the responsibility the Department has in managing risk with what amounts to a controlled 'check-in' process by owners or responsible parties on sites that in the Department's opinion potentially contains unidentified contamination	The department always reserves the right to re-open a closed site if new contamination is found. Repealing the requirement to seek approval from the department to move soil or groundwater off site from a site closed under method two does not change this process.	N
7.	For a site in the Arctic Zone for most compounds the Method 2 cleanup levels are much higher, such as 1,400 mg/kg GRO, 12,500 mg/kg DRO, and 13,700 RRO. Under the proposed change these concentrations would not require department approval before disposing of them, and in theory could be deposited of at a non-arctic zone area location without department approval where those concentrations would not be protective of human health, safety, welfare, and the environment at that disposal location and/or creating a new contaminated site where it was deposited.	Permission to transport soil and groundwater from sites closed under these cleanup levels has rarely if ever been requested by responsible parties. In the nearly 20 years this requirement has been in regulation, DEC has no documented occurrences or reports of soil or groundwater from such closed sites being used on another site in a manner that has resulted in exposures or impacts to human health and the environment, including violations of water quality standards. It is the department's determination that the effort to track this potential occurrence far outweighs the risk from such activities which is extremely low. Furthermore, petroleum cleanup levels for soil and groundwater for all climate zones are currently being evaluated for revision.	N
8.	For a site in the Arctic Zone Table C cleanup levels do not apply. The seasonal thaw water, supra-permafrost water, and intra-permafrost water could still be highly contaminated, far exceeding water quality standards for TAqH and TAH. Under the proposed change this water would not require department approval before disposing it. In addition in theory this highly contaminated water could be deposited of at a non-arctic zone area location without department approval where those concentrations would not be protective of human health, safety, welfare, and the environment at that disposal location and/or creating a new contaminated site where it was deposited.	Violations of Alaska water quality standards are already prohibited under 18 AAC 70. Repealing the requirement to seek approval from the department to move soil off site from a site closed under method two does not impact this regulatory requirement. The commenter describes a hypothetical activity that is unlikely and has not been documented in the 20 years since the site cleanup rules went into effect.	N

9.	The language is inconsistent with 18 AAC 78.274(b) and 18 AAC 78.600(h) causing different rules for water and soil disposal between 18 AAC 75 and 18 AAC 78 sites.	The commenter is correct; these regulations will also need to be amended or merged with 18 AAC 75.	N
10.	18 AAC 75.370(b) I agree that adding “owner, or operator” is a good idea, it makes it more consistent with the language in 18 AAC 75.325(e), 18 AAC 78.274(b), and 18 AAC 78.600(h). Also the responsible person may not be the current property owner or operator so they may no longer be involved in the day to day operations, site development, and removal of soil and water at the site.	Comment noted.	N
11.	AS&G would like it to be known that we are supportive of the other proposed amendment items that pertain to this notice and to thank you for the consideration of our comment.	Comment noted.	