Temporary and Seasonal Class 2 Facilities

Purpose: To establish the department’s position on registration and notification requirements for temporary and seasonal Class 2 facilities.

Applicability: This guidance applies to owners and operators of Class 2 facilities regulated under 18 AAC 75.835 to 18 AAC 75.849 and Prevention, Preparedness, and Response personnel engaged in reviewing Class 2 facility registration and notification forms.

Background: On April 21, 2017, the department adopted regulations in 18 AAC 75.835 - 18 AAC 75.849 requiring the registration and notification of Class 2 facilities. An owner or operator of a Class 2 facility must register the facility not later than 30 days after the facility is placed in service (existing facilities must register not later than September 22, 2017). The owner or operator must also notify the department not later than 30 days after any of the following events: an AST is placed in service; an AST is permanently closed; the facility is no longer a Class 2 facility because of a change in storage capacity; or the owner, operator, or name of the owner or operator changes. The department adopted these regulations in response to the Legislature’s directive to reduce costs associated with response to and the remediation of oil spills at unregulated facilities. The department will accomplish this by using the information gathered about the Class 2 facilities to provide technical assistance to these facilities regarding spill prevention and response. Shortly after the regulations were signed by the lieutenant governor on May 25, 2017, the department became aware of the high number of facilities that do not operate year round. Some of these facilities operate at one location temporarily while others are at the same location each year but remove or permanently close the AST’s at the end of each season.

Discussion: Facilities that do not operate year round can be grouped into two categories:

1. Temporary, defined as a facility that operates for a duration of less than 12 months at one location; examples may include construction sites, wildfire suppression operations, and remote sites for wildlife monitoring; and
2. Seasonal, defined as a facility that operates for less than 12 months in a calendar year at the same location on an annual basis; examples may include campgrounds, lodges, and tourist attractions.

The department attempted to address temporary facilities with an exemption for ASTs located at a facility for 90 consecutive days or less [18 AAC 75.835(b)(2)]. However, it has become clear that this exemption for ASTs would not apply to a significant number of temporary facilities, and that exempting temporary facilities as a whole would be a better approach.
Since they are temporary, these facilities may not benefit as much from the department's technical assistance for spill prevention and response, and therefore registration and notification may not effectively meet the department's goal to lessen the financial impact to the state, communities, and owners and operators.

Although seasonal facilities are like temporary facilities in that they do not operate year round, they are more similar to permanent facilities because they operate year after year at the same location and should have the same registration and notification requirements with a few exceptions.

Department notification for permanently closing or removing a Class 2 facility AST at the end of a facility's operating season should not be required if the AST will be placed in service at the same location the next season. Similarly, notifications that the facility is no longer a Class 2 facility because all of the ASTs are permanently closed or removed at the end of the operating season should not be required if the facility will be placed in service the next season. The word permanent in common terms means to remain unchanged indefinitely and is not intended to capture seasonal variations. Without these exceptions, seasonal facilities would need to register the facility and notify the department that the facility is no longer a Class 2 facility every year, which could be a significant administrative burden on the owners or operators and the department and not contribute to achieving our cost reducing objective.

Action:
1. A temporary facility, defined as a facility that operates for a duration of less than 12 months at one location, is not considered a Class 2 facility and therefore does not need to register or send notifications to the department.

2. A seasonal facility, defined as a facility that operates for less than 12 months in a calendar year at the same location on an annual basis, is considered a Class 2 facility and therefore does need to register. However, while initial registration is required, notifications in 18 AAC 75.840(b)(2) and (3) are not required when operations cease for the season and the ASTs are no longer in use, regardless of whether the ASTs remain in place or are removed from the facility during the offseason, if they will be used at the facility the following season.

3. In the future, the department will amend the regulations found under 18 AAC 75.835 to 18 AAC 75.849. Until that time, the department provides this guidance for determining the registration requirements for temporary and seasonal facilities.

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