



“The mission of the Council is to represent the citizens of Cook Inlet in promoting environmentally safe marine transportation and oil facility operations in Cook Inlet.”

January 29, 2021

Members

**Tourism
Organizations**

Zuzana Culakova
Alaska Department of Environmental Conservation
Division of Spill Prevention and Response, Prevention, Preparedness, and Response Program
P.O. Box 111800
Juneau, AK 99811

**Alaska Native
Groups**

RE: Comments regarding Revisions to the Oil Discharge Prevention and Contingency Plan Plans and Streamlined plans; 18 AAC 75 Article 4

**Environmental
Groups**

Dear Ms. Culakova:

**Recreational
Groups**

The Cook Inlet Regional Citizens Advisory Council (CIRCAC) is a nonprofit corporation created by Congress under the Oil Pollution Act of 1990. Our mission is to represent citizens in promoting environmentally safe marine transportation and oil facility operations in Cook Inlet.

**Aquaculture
Associations**

Under our Oil Pollution Act of 1990 mandate, CIRCAC is charged, among other things, with reviewing adequacy of oil spill prevention and contingency plans in Cook Inlet. CIRCAC is also one of two non-governmental entities named in the State regulations (under review here) as having the opportunity to review and comment on Oil Spill Discharge and Contingency Plans (ODPCP), per 18 AAC 75.408(c)(4). We take this responsibility seriously and have reviewed hundreds of contingency plan submittals, renewals, and amendments since 1992. In doing so, CIRCAC strives to provide comments that will enhance the clarity, accuracy, and utility of the documents and support compliance with Alaska regulations. In most cases, contingency plans represent the only way that our constituent communities and stakeholders can be assured of the measures in place to prevent or respond to a spill from a company's Cook Inlet operations.

**Commercial
Fishing
Organizations**

City of Kodiak

CIRCAC submits these comments to the Alaska Department of Environmental Conservation (ADEC) in response to the request for comments on proposed regulation changes dated November 1, 2022. Many of the proposed revisions provide useful clarification or improve the organization of the regulations.

City of Kenai

City of Seldovia

Within the attached comments we identify some additional items that we believe will further support the consistent implementation of the regulations for diverse operators. I wish to highlight the following items of particular importance to us: (1) ensuring that the Regional Citizens Advisory Councils remain specifically identified within regulation to receive any notifications of relevant plan documents under review, (2) clearly stating within Article 4 that plan holders should also comply with all relevant state and federal laws; (3) ensuring an opportunity for Alaska regulators and regulated industry to keep up to date on best available technology for oil spill prevention and response, and (4) revising the treatment of prevention credits in the regulations to incentivize meaningful prevention measures that enhance regulatory requirements.

City of Homer

**Kodiak Island
Borough**

**Kenai Peninsula
Borough**

Given the significance of the changes proposed within these regulations and the potential scope of the comments ADEC may receive, CIRCAC requests that ADEC develop and share a comment matrix that includes whether and how the comments were addressed. CIRCAC also requests a second public comment opportunity to allow us the chance to review any changes made in response to the comments received.

**Municipality
of Anchorage**

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“The mission of the Council is to represent the citizens of Cook Inlet in promoting environmentally safe marine transportation and oil facility operations in Cook Inlet.”

We appreciate ADEC providing a 90-day comment period for this review and would strongly recommend a 30-day comment period for a second round review. This should allow the public and industry sufficient time to thoroughly review the results of this review and comment period.

We hope our enclosed comments will be helpful to ADEC. If you have any questions or wish to discuss this further, I can be reached at (907) 283-7222 or via email at Munger@circac.org.

Sincerely,



Michael Munger
Executive Director



**Comments on
Proposed Regulation Revisions**

18 AAC Chapter 75

Article 4

Oil and Other Hazardous Substances Pollution Control

Submitted

By

COOK INLET REGIONAL CITIZENS ADVISORY COUNCIL

JANUARY 29, 2022

Introduction

Cook Inlet Regional Citizens Advisory Council (CIRCAC) submits these comments to the Alaska Department of Environmental Conservation (ADEC) in response to the request for comments on proposed regulation changes dated November 1, 2022. Many of the proposed revisions provide useful clarification or improve the organization of the regulations.

With these comments we identify some additional items that we believe will further support the consistent implementation of the regulations for diverse operators. We also highlight the following items, elaborated on below, as being of particular importance to us: (1) ensuring that the Regional Citizens Advisory Councils remain specifically identified within regulation to receive directly any notifications of relevant plan documents for review, (2) clearly stating that plan holders should also comply with all relevant state and federal laws; (3) ensuring an opportunity for Alaska regulators and regulated industry to keep up to date on best available technology for oil spill prevention and response, and (4) revising the treatment of prevention credits in the regulations to incentivize meaningful prevention measures that enhance regulatory requirements.

Given the significance of the changes proposed to these regulations and the potential scope of the comments ADEC may receive, CIRCAC requests that ADEC develop and share a comment matrix that includes whether and how the comments were addressed. CIRCAC also requests a second public comment opportunity to allow us the chance to review any changes made in response to comments from this round. We appreciate ADEC providing a 90-day comment period this time and would assume that only the usual 30-day comment period would be needed for a second round review.

General Comments

Compliance with Alaska and federal regulations

The revised regulations do not include language stating that operators must comply with all Alaska and Federal regulations. It is vital to the safe and sustained oil and gas operations in Alaska that State and federal human and environmental safety regulations work hand in glove to provide consistent and achievable safety for operators' personnel, state residents, and the environment. Reinforcing this fact in regulations is important and should be included within the text of Article 4.

CIRCAC request: *Add language to Article 4 of 18 AAC 75 stating that operators subject to these regulations must also comply with all other state and federal regulatory requirements.*

Alignment with area planning documents

ADEC regulations should ensure that plan holders understand the importance of aligning their planning with agency area planning in place for Alaska. Alaska statute states that the state master plan for oil and hazardous substance discharge should take operators' plans under state regulation into consideration. It is just as important that operators' plans are consistent with the state master plan and regional master plan (which are implemented today as the Alaska Regional Contingency Plan and four Area Contingency Plans).

CIRCAC request: *Add language to Article 4 of 18 AAC 75 stating that plans subject to these regulations should also align with the Alaska Regional Contingency Plan and relevant Area Contingency Plan(s).*

Plan Submittal and Review Procedures

18 AAC 75.400(b) - Approval of exemptions to plan requirements for oil spill response vessels

Exemptions are granted to vessels that are part of the oil spill response system or involved in an oil spill response. 18 AAC 75.400(b) as amended states that the department will review the applications for exemption of plan requirements to determine if the exemption will be protective of human health, safety, and welfare, and of the environment. However, these decisions are made without an opportunity for public review or comment.

CIRCAC request: *Exemptions for vessels under 18 AAC 74.400(b) should be shared for public review and comment.*

18 AAC 75.408(b) - Submittal of documents/types of business entities included

This section specifies who can sign a plan application on behalf of the plan holder. In doing so, it references another section of regulations at 18 AAC 15.030. However, that section does not include Limited Liability Companies (LLCs). LLCs have become common corporate structures among operators in Cook Inlet and elsewhere. Language should be corrected to include LLCs, joint ventures, or any other current and acceptable corporate legal structures be included so it is clear to all involved who must sign on their behalf.

CIRCAC request: *Language should be amended to ensure that LLCs or any other relevant corporate structures be included so that it is clear to all parties who must sign submittals to ADEC on their behalf. Please also ensure that references to appropriate signatories are consistent throughout the regulations, noting that new language at 18 AAC 75.448(c)(3) incorrectly references 18 AAC 15.010(b).*

18 AAC 75.408(c)(3) - Distribution of plan documents to Regional Citizens Advisory Councils

Regulations previously required plan holders to distribute plan submittals, renewals, and major amendments to the regional citizens advisory councils (RCACs), the Alaska Department of Natural Resources (ADNR), and the Alaska Department of Fish and Game (ADFG).

Proposed language would modify this process, so that ADEC distributes notification of these events to a listserv of "interested stakeholders."

While ADNR and ADFG are required in statute¹ to be able to review plans prior to approval, RCAC review of plans related to our area of interest is similarly important. CIRCAC and the Prince William Sound Regional Citizens' Advisory Council (PWSRCAC) are certified by the U.S. Coast Guard to implement a mandate established under the Oil Pollution Act of 1990. This mandate includes the responsibility to,

"review through the committee established under subsection (f), the adequacy of oil spill prevention and contingency plans for the terminal facilities and the adequacy of oil spill prevention and contingency plans for crude oil tankers, operating in Prince William Sound or in Cook Inlet;" 33 U.S.C. § 2732(d)(6)

CIRCAC is proud of the hundreds of comments we have submitted on Cook Inlet operators' plans, helping to improve plan contents and clarity for all involved. We bring to this process an understanding of Cook Inlet operations, operating environment, and stakeholders built over decades of sustained activity in plan reviews, exercise participation and observation, studies, and partnerships with ADEC and industry. Timely notification of the RCACs about plan submittals, renewals, and amendments should remain in State regulations. We are concerned that otherwise, over time and personnel changes, the significance of this role may be lost, thereby diminishing this cornerstone of sustained citizen oversight that was envisioned in OPA 90.

CIRCAC request: *CIRCAC fervently petitions the ADEC to include language at the proposed section 18 AAC 75.408(c)(3)(A-B) that specifically names the RCACs for Cook Inlet and Prince William Sound as recipients required to be notified of plan reviews, updates, and amendments, electronically or otherwise.*

18 AAC 75.414 and 18 AAC 75.415(a) - Plan amendments for change of ownership

Language at 18 AAC 75.414 describes procedures for submitting a plan amendment when there is a change in the owner, operator, or name of the owner or operator of a facility or operation with an approved plan. Language at 18 AAC 75.415(a) lists the criteria for determining whether a plan amendment should be reviewed as a major amendment, which requires an opportunity for public review. Currently (and in the proposed regulations) a change of ownership is not treated as a major amendment. Effective spill response, including management of that response, is directly tied to the capabilities and capacities of the plan holder. Those capabilities and capacities cannot be assumed to be the same when ownership transfers from one owner/operator to another. Consequently, actual change of owners (as opposed to simple name

¹ AS 46.04.030(j)

changes) should be treated as major amendments, warranting changes at both sections of regulations mentioned above.

CIRCAC request: *All amendment applications changing the owner or operator of a facility or operation for an approved plan should be treated as major amendment subject to public review.*

18 AAC 75.415(c) - Timing of amendment submittals for oil barges or tank vessels to be added to a plan

The timing of receipt and review of plan amendments for the purpose of adding a vessel or barge to an approved plan are described at 18 AAC 75.415(c), stating that such an amendment must be submitted no later than five working days before the vessel enters state waters, but also that ADEC will review the amendment and issue a written decision not later than five working days after receiving the proposed amendment. This creates a challenging situation for both vessel operators (needing to plan their operations) and regulators (needing to ensure information is complete and adequate).

CIRCAC request: *Regulations should be revised to avoid tight timing between submittal of application to add a vessel to an approved plan and arrival of the vessel.*

18 AAC 75.415(i) - Timing of amendment submittals for temporary aboveground storage

Similar to the above issue, an application package for adding an oil storage tank with a capacity of 10,000 gallons or greater must be submitted at least 10 working days before the tank is located at the facility. The department will then issue a written decision not later than 10 days after receiving the package (unless it is determined to warrant a review as a major amendment). Again, this approach seems to set up a very tight timeline that has the possibility of creating a costly uncertainty for industry or undue pressure on the regulator to approve the amendment.

CIRCAC request: *Regulations should be revised to avoid tight timing between submittal of application to add a temporary storage tank to an approved plan and use of the tank.*

Plan Contents

18 AAC 75.448 - Allowance for cross-referencing general content and approval criteria

This section allows the plan holder to use a cross-reference table indicating where content can be found to show the plan meets the requirements of these regulations. This is reasonable in concept but in practice can be cumbersome or even misleading, as we have seen cross-reference tables that appear complete but do not actually lead to the correct information, or only get there after one has followed several subsequent references. Cross-reference tables of this type should allow plan reviewers to quickly find the necessary information, or the efficiency gained by the plan holder in not fully revising their plan will then be lost in a cumbersome review process.

CIRCAC request: *When cross-referenced tables and materials are used, the cross-reference should be limited to one step that takes the reader directly to the information sought to fulfil Article 4 requirements.*

18 AAC 75.449(a)(6)(L) - Decanting form

This section states that the responsible party must use a form when requesting permission to decant during a spill response. However, no form number or title is referenced.

CIRCAC request: *Incorporate the form title and/or number within the cite to allow the responsible party or their incident management personnel to identify and submit the application to the On-Scene Coordinator.*

18 AAC 75.449(a)(6)(M) - Version reference for Wildlife Protection Guidelines

This section cites the Alaska Regional Response Team's Wildlife Protection Guidelines for Oil Spill Response in Alaska but does not specify the version number and date.

CIRCAC request: *Include the version number and date of the guidelines as is done for other documents incorporated into regulations.*

18 AAC 75.450(b)(1) - Discharge prevention programs

Revised language is proposed regarding what the plans must say about operators' discharge prevention measures. However, prevention measures related to substance abuse, medical monitoring, and security and surveillance are no longer mentioned specifically. While these measures are required under 18 AAC 75.007, CIRCAC suggests retaining the specific requirement language as was cited in the repealed 18 AAC 75.425(e)(2)(A) to ensure clarity within this new section.

CIRCAC request: *18 AAC 75.450(a) should include specific identification of requirements that would be applicable to all operators as specific prevention measures as referenced 18 AAC 75.007 to enhance clarity of plan content requirements.*

Other Requirements

18 AAC 75.434(g) - Allowing for intentional well ignition (IWI) to reduce response planning standard

Regulations allow an operator to plan for the intentional ignition of a well in the event of a blowout, in certain circumstances. This is not a new provision and does not apply currently to any Cook Inlet operations. However, CIRCAC takes this opportunity to oppose the regulation that would allow a plan holder to reduce their Response Planning Standard (RPS) for mechanical recovery by intending IWI operations. Instead, we urge that igniting a well be considered in the same way as in-situ burning; it is a *response* tool to be deployed with approval

of the Alaska Regional Response Team and not similar to a spill prevention measure where ADEC may allow a reduced RPS.

CIRCAC request: *Remove the provision allowing for a reduced RPS in cases where a plan holder has determined that its operations meet the conditions allowing for IWI.*

18 AAC 75.438(a)(1) - Prevention credits

Proposed regulations continue to allow ADEC discretion to reduce the Response Planning Standard (RPS) for a plan based on operators' stated prevention measures. This discretion is granted in statute at AS 46.04.030(m) and implemented through regulations proposed at 18 AAC 75.432, 18 AAC 75.434, 18 AAC 75.436, and 18 AAC 75.438 for different types of operations. These sections list allowable preventions credits, or a percentage reduction in the RPS, if a plan holder commits to certain prevention measures. However, some of measures listed in both statute and regulation, such as use of double-hulled tankers, are now standard under federal law (in that case under the Oil Pollution Act of 1990 which required phase out of single-hulled tankers by 2010).²

CIRCAC supports the concept of incentivizing meaningful prevention measures by allowing for the reduced RPS, as long as the caps on those credits remain at 18 AAC 75.430(c). However, implementation of federal and state laws should be a baseline requirement, not worthy of a prevention credit. Instead, ADEC should have discretion to grant prevention credits for prevention measures that are suited to the operations and operating environment and go beyond compliance. For example, for Cook Inlet tankers that could mean ensuring that tankers call at docks with tension meters on mooring systems to help determine potential issues with sea ice. Discretion to allow credits up to the maximum allowable limit should not mean significant changes to the actual RPS that plan holders have to meet but could incentivize plan holders to enhance, implement and sustain oil spill prevention measures to benefit both their own operations and protect Alaska's environment.

CIRCAC request: *Regulations should not grant prevention credits for implementation of requirements already in Alaska or federal law but should allow ADEC discretion to grant credits for meaningful and documented prevention measures that go beyond compliance and are suited to the operations and operation conditions described in the plan.*

² Measures listed in statute are clearly identified as examples of prevention measures to consider, not a prescribed list. Since they were not all adopted verbatim in regulations we understand these to be examples only and that the statute intends to reward operators who commit to oil spill prevention in specific, tangible ways.

18 AAC 75.447 - Ensuring and sustaining awareness of improved technologies

Alaska statute at AS 46.04.030(e) requires that the best available oil spill prevention and response equipment be used in Alaska. ADEC proposes removing the long-standing regulatory requirement that the state hold a periodic conference and conduct studies to ensure both regulators and regulated industry are apprised of new and improved technologies.

CIRCAC opposes this proposed change. When held, the conference presented an incredibly valuable forum for the prevention and response community in Alaska, nationally and internationally. For the state to revoke this requirement to sponsor this event does a great disservice to the department and other agencies, academia, statewide response organizations, and plan holders. This event allowed each of those groups the opportunity to attend a local event that provided exposure to new technologies that they may otherwise never see. This also deprives the department of a much needed broad knowledge base. Without it, there is no apparent mechanism through which ADEC personnel will gain information about new technologies to improve spill prevention, detection, or response in the diverse range of operations underway in Alaska. Since a relatively narrow set of equipment is required to be analyzed in the plans regarding its suitability as being considered "best available," this mechanism alone is not adequate. Instead, ADEC personnel need an opportunity to gain a broad understanding of emerging technologies from around the U.S. and the world. The conference and engagement in periodic studies should be retained for this purpose.

CIRCAC request: *18 AAC 75.447 should not be repealed but retained in full, but with a modification to clarify that the conference requirement can be met through an event such as the Alaska Oil Spill Technology Symposium that is hosted and sponsored by other Alaska-based organizations.*

CIRCAC recommends: *The addition of language to require a conference to be held every two years but specifically allow for outside coordination and sponsorship as occurred with the Alaska Oil Spill Technology Symposium.*

18 AAC 75.485 - Exercises

ADEC proposes to change the regulation describing its authority and responsibility to conduct exercises for the purpose of ensuring plan holders' ability to implement their plans. Instead of stating that ADEC *may* conduct up to two exercises per year, the proposed regulations state that ADEC *will* conduct at least one exercise per plan in a five-year period (aligning with the plan approval period) and *may* conduct one additional exercise per year.

CIRCAC supports the concept of establishing a commitment to conduct a minimum number of exercises but considers the proposed minimum of one exercise in five years far too low for crude oil operations that could affect Alaska's marine environment. While having clear and comprehensive plans on paper is important, the entire body of regulations governing Alaska's contingency plans will only be useful for protecting our environment and economy if they can be implemented promptly and effectively. Exercises are the primary mechanism in place to provide this assurance to the public. For this reason, CIRCAC proposes a higher minimum number of exercises with the goal of ensuring both a robust exercise program and predictability

for all involved. We believe this can be attained by the ADEC retaining the discretion to allow plan holders with operations in the same/similar location to meet their exercise obligations for more than one plan by demonstrating their ability to execute command and control to satisfy contingency plan regulatory requirements. While maintaining a minimum number of exercises, the number of potential additional exercises could then be reduced as long as exercise results are satisfactory.

CIRCAC request: *Regulations at 18 AAC 75.485 should specify at minimum that each plan holder will conduct one Incident Management Team (IMT) exercise (covering several similar plans/locations where appropriate) each year with a field deployment every two years (which could be conducted in conjunction with an IMT exercise or separately).*

Additionally, it is important that if ADEC is *not* satisfied with a plan holders' performance, the department should call follow-up exercises as needed with no maximum number.

CIRCAC request: *Regulations at the proposed 18 AAC 75.485(d) should state that if a plan holder cannot adequately execute their plan during an exercise, ADEC will require additional exercises or take other appropriate action.*

Proposed regulations refer to "operations-based exercises." While this definition is in the exercise manual, also proposed for reference in the regulations, it would be helpful to have it in the regulations as well since the phrase is used there. The term should be used consistently in different sections of 18 AAC 75.485 for improved clarity.

CIRCAC request: *Regulations should define "operations-based exercise" at 18 AAC 74.485(g) and use the phrase consistently in all sections where this type of exercise is intended.*