

ADEC should be commended for their long overdue review of the Oil Discharge Prevention and Contingency Plan (ODPCP) regulations. The bulk of the current regulations was developed in the 1990s and has received only basic updating with no major changes since that time period.

Major Areas of Comment;

Repealing 18 AAC 75.425 and 18 AAC 75.445

Repealing these two sections appears to be the largest rewrite being proposed as there was significant discrepancies between 18 AAC 75.425 - *Plan Contents* and 18 AAC 75.445 - *Approval Criteria*. Parting 425 into separate sections 448-453 should reduce some of the inconsistencies that have been obvious in past review of plan applications and renewals. While much of the wording remains the same and improvements can be made, this should be considered a start in the right direction that may reduce inconsistencies in plan contents and approvals statewide.

Innocent Passage Nontank Vessels:

The proposal contains new language that can be confusing and may exceed state authority in relation to vessels on innocent passage. 18 AAC 75.400(e) states in part that; “*the department will determine if the circumstances warranted entry without an approved nontank vessel streamlined plan*” Under international law and treaties the state of Alaska does not have the authority to regulate vessels operating on the high seas under innocent passage (see AS 46.04.055(e)). In addition, ADEC does not have the expertise to *determine if the circumstances warrant* entry into state waters under *force majeure* conditions. If a vessel on the high seas intends to operate in state waters then yes, ADEC may require an ODPCP.

There are many instances where vessels transiting the *Great Circle Route* will deviate and take a “*scenic*” cruise through Shelikof Strait or a SE inside water way but legally the state does not have the authority to impose environmental standards on these vessels. The only way for ADEC to have knowledge of, or restrict passage of vessels on innocent passage is to maintain a close working relationship with the USCG Captains of the Port stationed in Alaska.

There are circumstances where tank vessels operate near state waters, outside of the three mile limit specifically to avoid state regulations and conduct operations such as bulk fuel transfer at these locations. AS 46.03.820(a) allows ADEC the authority to curtail or restrict these operations if ADEC wishes to do so.

Plan Amendments:

The proposal does not change the language currently in use in 18 AAC 75.415(a)(1)-(5) which defines a major amendment to an ODPCP. The descriptions used for a major amendment are focused on increases in the RPS or expansion of the operations contained in the ODPCP. Language in 18 AAC 75.415(a)(4) states; “*a change in the amount or quality of prevention, response resources,*” This language in can be improved by stating; “*any change in the amount, location, quality or direct control of prevention and response capabilities effecting the requirements of 18 AAC 75.448.*” The wording “*any change*” should be used to define and clarify a major amendment to an ODPCP.

There are many areas in the plan holders operation that may significantly change the response capabilities without an increase in the RPS volume; manning reductions, changes from on-site monitoring to remote monitoring, PRAC or OSRO changes, have been or should be considered major amendments and are not described in these sub sections.

Prevention Credits:

The new language proposal does not repeal, amend, or alter the language of 18 AAC 75.430(c) (1)-(2) which limits the amount of *prevention credits* the plan applicant can claim for a reduction in the *Response Planning Standard* (RPS) for their facility or vessel. ADEC currently is approving OPDCPs for vessels and facilities with prevention credits that exceed the limits imposed by 18 AAC 75.430, examples are, ATC 41% equal 11% above the limit and KRSF&TF 60% above the limit, (see ATC Alaska State Vessel Contingency Plan, Annex 8 page A8-9 of 62 and Kenai Refinery Storage Facility and Truck Terminal, Page 5-3) The proposed language in 18 AAC 75.432-441 does not address this deficiency.

Exploration and Production RPS:

The language in 18 AAC 75.434 has altered little from the current regulations and is primarily based on an uncontrolled release from a blowout during drilling or exploration of new oil wells. ADEC should consider adding new sections separating oil wells in *production* versus oil wells in *exploration*.

There is a significant distinction in risk from an oil well in exploration to one that is in production, oil wells in production do not have the “*open hole*” conditions that are present in exploration. Oil wells in exploration, for a period of time, lack the cemented casing and other safety features that can contribute to a uncontrolled release and these operations should be required to have response capabilities for a fifteen day (or the 30 day federal standard) discharge. Oil wells in production have a fully cemented casing and multiple downhole and aboveground safety features that enhance the plan holder’s ability to respond to, and regain control of an uncontrolled discharge in a shorter time period than the fifteen day requirement.

The RPS for oil wells in production should be reduced to a three day (72 hr.) time period and the volume for the RPS should be based on the highest actual capability of well output of the facility.

Contract vessels:

There are many instances within the proposed language that allow a plan holder to add vessels or apply for amendments with a five day notice to ADEC, the language most commonly used is “*A plan amendment for the addition of an oil barge or tank vessel must be submitted not later than five working days before the vessel operates in state waters. The department will review the amendment and issue a written decision not later than five working days after receiving a proposed plan amendment*” This language clearly states that ADEC may be approving an amendment on the day the vessel is scheduled to operate in state waters, this is an unreasonably tight time line.

In order for ADEC to adequately review an amendment of this type, under its current structure and manning, the plan holder should be required to apply for the addition of the vessel or an amendment ten days before the schedule arrival of the vessel in state waters. ADEC may decide to retain their five day review period, but this ten day requirement gives the plan holder and the vessel time to reschedule the plan operations if the application is denied or delayed.

The risk being, that a vessel will arrive in state waters or position themselves just outside state waters, waiting for approval of the amendment. Marine vessels are very costly and delays are even more expensive, this may pressure ADEC personnel to approve an application without proper research and review of the vessel or operation.

Sensitive Area and Areas of Public Concern:

18 AAC 75.449.(a)(6)(F) in part states; “*sufficient oil discharge response equipment, personnel, and other resources must be maintained and available for the specific purpose of preventing discharged oil from entering these environmentally sensitive areas or an areas of public concern*” Currently within the Area Plans there are approximately 1,000 sites designated as Sensitive Areas or Areas of Public Concern. The proposed language suggests that each site must have dedicated response resources available to the plan holder. This has never been the intent of the GRS program and is impracticable for a plan holder to comply with. ADEC does not specify in the ODPCP regulations that the plan holder have a certain portion of response equipment capable or designed to operate in the *nearshore* environment (as does federal regulations) Suggest removing the word “*specific*” from the text.

Restoration;

18 AAC 75.449(6)(N) is the only reference to *habitat restoration* found in the ODPCP regulations. This subparagraph has historically been ignored by ADEC and states in part; “*if applicable, a description of procedures for the deployment of shoreline cleanup equipment and personnel, including cleanup **and restoration methods and techniques** (added emphasis) to be used if the shoreline is impacted by the discharge*” While many ODPCPs contain language relating to SCAT (survey) or NRDA (assessment) there are very few examples of methods or tactics used for shoreline habitat restoration. This is one of the most deficient areas of the ODPCP regulations and restoration deserves its own subsection to establish a plan holder’s ability to adequately address shoreline habitat impacts and recovery. ADEC does not currently have standards for defining the term *clean up* which is used in numerous regulations (see 18 AAC 75.430(a)) for coastal conditions. Currently the state and federal standard is a visual determination, if no oil sheen is observed, the area is considered to have met the *clean up* definition, in many if not all spills this determination is insufficient.

Exercises:

The proposed language in 18 AAC 75 485 *Discharge Exercises* is unclear and is a major change from existing language which states in part; “*Unless an exercise demonstrates, in the department’s judgement, a plan holder’s failure to implement the plan effectively, in each 12-month period the department will conduct (1) not more than two exercises for an oil discharge prevention and contingency plan*”. The proposed language seems to state that ADEC will conduct one operations based exercise within the five year plan approval cycle and (B) *the department may conduct not more than one additional exercise in each 12-month period*; . This equals a 40% reduction in the amount of potential exercises that the department may conduct and without the addition of other options suggested below, is unacceptable for adequate determination of plan holder’s capabilities for effective response measures.

There are many avenues for ADEC or other regulatory authorities to conduct ODPCP verification activities. The first part of 18 AAC 75.485(e) states; “*The department will consider a regularly scheduled training exercise*” This language encourages industry to conduct internal training exercises that can be used by ADEC and others to target specific areas within the ODPCP that the department or plan holder deem as weakness or verification of new tactics or structure within the plan holders preparedness capabilities. Further in 18 AAC 75.485(e) states; “*if the department participates in the planning and evaluation of an operations-based exercise*” this language has the opposite effect on encouraging industry to *self-test*.

Exercises continued:

The major crude oil plan holders operating in the state conduct dozens of preparedness and response exercises yearly within the state and do so without ADEC involved in the pre planning and organization of the exercise. The current ADEC structure and staffing does not provide adequate time for ADEC to be involved in the preplanning of dozens of exercises conducted by industry; at best ADEC may observe a small portion of these events. 18 AAC 75.485(e) require the plan holder to implement the *Homeland Security Exercise and Evaluation Program* (HSEEP) methodology, by adding language requiring these evaluations to be provided to ADEC, they can be used in collaboration with industry and other regulators, to determine if additional exercises should be conducted and what plan areas should be included in a N-PREP (one exercise every three years) or the one exercise allowed by the proposed regulations.

Thank You

Steven Russell

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Item #	Page	Section	Current	Proposed	Comment
1	6	18 AAC 75.400(c)(1)(A) Applicability	Tanks and associated piping must be emptied and rendered unusable to the departments' satisfaction.	Tanks and associated piping must be emptied	The state currently does not have a definition of "emptied" CFR 40 261.7 allows up to 0.3 % by weight in an empty container. ADEC should define the term "empty." Suggest; <i>emptied and cleaned of residual oils</i>
2	8	18 AAC 75.400(e) Applicability	the requirements of this section do not apply to a nontank vessel operating in the waters of the state if the nontank vessel is entering waters of the state under circumstances determined by the department to be necessary under as 46.04.055(e). A person shall notify the department as soon as the person is aware of circumstances warranting a nontank vessel to enter state waters without an approved plan.	(e) [THE REQUIREMENTS OF THIS SECTION DO NOT APPLY TO A NONTANK VESSEL OPERATING IN THE WATERS OF THE STATE IF THE NONTANK VESSEL IS ENTERING WATERS OF THE STATE UNDER CIRCUMSTANCES DETERMINED BY THE DEPARTMENT TO BE NECESSARY UNDER AS 46.04.055(e).] <u>A person shall notify the department as soon as the person is aware of circumstances warranting a</u>	The state does not have the ability under international law and treaties to restrict vessels at sea under innocent passage or other circumstances by requiring a vessel to attain a ODPCP before entry into state waters. By international treaty the authority to regulate vessels on innocent passage rests with the federal government. AS 46.04.055(e)(1)-(3) clearly states this.

				<p><u>nontank vessel to enter state waters under AS 46.04.055(e) and the department will determine if the circumstances warranted entry</u> without an approved <u>nontank vessel streamlined</u> plan</p>	
3	10	18 AAC 75.405(a) Pre-application notification	Allowing email notification of a proposed application is removed	<p>Editor’s note A notification can be submitted to the department inbox at INBOXNAME@ADDRESS.</p>	<p>This section requires a potential applicant to notify the department 60 days before an application is submitted and 30 days before a pre submittal conference is scheduled. This initial contact with the department should not require a written notification, e-mail should be allowed.</p>
5	14	18 AAC 75.408(c)(3)(B) General procedures	(4) for new plans, plan renewals, and major amendments, the applicant must provide all copies to the department, the Department of Natural Resources, the Department of Fish and Game; regional citizens’ advisory councils, and other persons designated by the department;	(c)(3)(B) the department will post a copy of the final version of the application package on the department’s Internet website and will notify interested stakeholders of the availability of the package by electronic mail to a listserv facilitated by the department;	<p>This section removes the requirement for the <u>applicant</u> to provided copies of the application to ADF&G, RCAC’s and ADNR and substitutes the department posting the final version of the application on the website and notifying stakeholders it has been posted.</p> <p>Language should be included to allow ADNR, ADF&G and other to request hard copies of the package from the applicant.</p>

6	16	18 AAC 75.410(a) Procedures to apply	a) An application for approval of a new oil discharge prevention and contingency plan must be submitted in accordance with 18 AAC 75.408. An application must be submitted at least 180 days before the proposed start of operation.	(a) An application package for approval of a new oil discharge prevention and contingency plan must be submitted in accordance with 18 AAC 75.408. An application package must be submitted at least 180 days before the proposed start of operation.	<p>This coupled with 75.405(a) requires the applicant to contact the department no later than 240 days before planned operations start.</p> <p><i>(a) At least 60 days before submitting an application package for approval of a new oil discharge prevention and contingency plan under 18 AAC 75.410 or for renewal of approval under 18 AAC 75.420, the applicant must notify the department in writing of its intent to submit an application.</i></p> <p>A requirement for a 240 day engagement period with ADEC during plan submittal and review appears excessive.</p>
7	17	18 AAC 75.415(a)(1)-(5) plan amendments	Major amendment definition		<p>This language in this subsection can be improved.</p> <p>While paragraphs (1),(2),(3), and (5) suggest only <i>increases</i> in the RPS or expansion of the level of operations constitute a “<i>major</i>” amendment, paragraph (4) states “A <i>change in the amount or quality</i>,,” paragraph (4) does not require an <i>increase</i> in response capabilities only a “<i>change in the amount or quality</i>.”</p> <p>Examples of a change not specifically directed at RPS could include; a shift from on-site monitoring to remote monitoring, dedicated response resources to contracted resources,</p>

					changes to RMROL, relocation of primary Emergency operations centers or initial command posts, etc. A <i>Major</i> amendment should be defined as <i>any change in the amount, location, quality or direct control of prevention and response capabilities effecting the requirements of 18 AAC 75.448.</i>
8	19	18 AAC 75.415(c) plan amendments	(c) An application for approval of a plan amendment to allow the addition of a vessel to operate under an approved oil barge or tank vessel oil discharge prevention and contingency plan must include the information required by 18 AAC 75.425(e)(1)(H) and (3)(A)(iii), (v), (vi),(viii), and (x). A plan amendment for the addition of an oil barge or tank vessel must be submitted not later than five working days before the vessel operates in state waters. The department will review the amendment and issue a written decision not later than five working days after receiving a proposed plan amendment under this subsection unless the department determines that it is a major amendment under (a) of this section.	(c) An amendment application to allow the addition of a vessel to operate under an approved oil barge or tank vessel oil discharge prevention and contingency plan must include the information required by 18 AAC 75.449(a)(9) and 18 AAC 75.451(b)(3) and (b)(5) and must be submitted not later than five working days before the vessel enters state waters. The department will review the amendment and issue a written decision not later than five working days after receiving a complete proposed	Both the current language and the proposed language state that an amendment for the addition of a vessel to an ODPCP must be submitted five days before the vessel arrives in state waters and the department has five days to review the amendment. This means that a plan holder may not receive a determination of the amendment until the day the vessel is scheduled to arrive in state waters. This timeline can result in costly delays for the plan holder and increase risk to state waters by potentially forcing a vessel to stand by just outside of state waters awaiting a determination by the department. Suggest; must be submitted not later than ten working days before the vessel enters state waters for the purpose of oil transfer operations . The department will review the amendment and issue a written decision not later than five

				<p>plan amendment application package under this subsection unless the department determines that it is a major amendment under (a) of this section.</p>	<p>working days after receiving a completed proposed plan amendment under this subsection.</p> <p>This suggestion gives the plan holders a five day notice that the amendment is approved or disapproved <u>before the scheduled arrival</u> of the vessel into state waters.</p>
9	20	18 AAC 75.415(h) plan amendments	<p>(h) For a minor amendment approved under (f) of this section, the plan holder shall distribute copies in accordance with 18 AAC 75.408(c) not later than 30 days after approval. The department will notify parties identified in 18 AAC 75.408(c)(5) that the approved amended plan is available on the department’s Internet website.</p>	<p>(h) For a minor amendment approved under (f) of this section, the plan holder shall submit the final copy to the department not later than 30 days after approval. The department will notify interested stakeholders by electronic mail to a listserv facilitated by the department that the approved amended plan is available on the department’s Internet website.</p>	<p>The proposed language is unclear. The proposal states that the plan holder <i>will submit a final copy of the amendment to the department 30 days after the plan holder has received approval for the amendment</i>. Is this stating that the department approved a “draft” of the proposed amendment?</p> <p>If the amendment was “approved” why would the plan holder be required to submit a “<i>final copy</i>” 30 days after approval?</p>
10	21	18 AAC 75.420(c) plan renewals	<p>(c) If no change will be made in the plan when it is renewed, a copy of the original plan need not be submitted and may be incorporated by reference on the application form unless otherwise requested by the department.</p>	<p>18 AAC 75.420(c) is repealed:</p>	<p>The repeal of 18 AAC 75.420(c) is appropriate. With the requirement of 18 AAC 75.420(a) still in place this allows ADEC sufficient time to request format or other procedural changes relating to the existing plan.</p>

11	22	18 AAC 75.421(a) streamlined plans	(a) An application for approval of a new streamlined oil discharge prevention and contingency plan must be made on an application form supplied by the department.	same	The application of a new streamlined plan may require more time for review than an existing plan or an amendment. Applications for a new streamlined plan should be separated from 18 AAC 75.421(b)
12	22	18 AAC 75.421(c) streamlined plans	(c) An application for approval of a new nontank vessel streamlined plan, an amendment to a previously approved streamlined plan, or a reinstatement of a suspended streamlined plan must be submitted to the department for review and approval not later than five working days before a vessel covered in the plan enters waters of the state.	(c) An application for approval of a new streamlined plan, an amendment to a previously approved streamlined plan, or a reinstatement of a suspended nontank vessel streamlined plan must be submitted to the department for review and approval not later than five working days before a vessel covered in the plan enters waters of the state.	<p>While a five day timeline may be sufficient for a previously approved or a plan that was voluntarily suspended by the plan holder, five days is not adequate time for a <u>New</u> plan submittal and approval. As commented in Item # 8 it can potentially be costly and increase the risk to state waters by not providing a clear determination of approval or disapproval to the applicant as the vessel is approaching state waters.</p> <p>Suggest; 18AAC 75.421(c) An application for approval of [A NEW NONTANK VESSEL STREAMLINED PLAN,] an amendment to a previously approved streamlined plan, or a reinstatement of a suspended streamlined plan must be submitted to the department for review and approval not later than five working days before a vessel covered in the plan enters waters of the state.</p>

13	23	18 AAC 75.425 plan contents	ODPCP contents	Repealed	Repealing this section and 18 AAC 75.445 and combining into a new sections 18 AAC 75.448-451 is highly recommended as there were significant inconsistencies between 18 AAC 75.425 plan contents and 18 AAC 75.445 plan approval criteria.
14	24	18 AAC 75.426(7)(c) streamlined plan contents	(C) any other information that a responder may need to know in an emergency;	(C) other information that a responder may need to know in an emergency;	This regulation is subject to wide interpretation by the individual plan reviewer/stakeholders and encourages a lack of consistency within ODPCPs across the regions. Better language is found in 18 AAC 75.426(8)(F) <i>“other detailed information pertinent to emergency response”</i> While still subject to significant interpretation and encouraging a lack of consistency it is better language.
15	31	18 AAC 75.429(d) fuel transfer requirements	(d) Trained personnel shall be familiar with the vessel’s fuel transfer procedures and take all appropriate measures to prevent spills or overfilling during a transfer of oil, including the following fuel transfer procedures:	Same	The USCG regulates oil transfer procedures used throughout the state and the procedures should be referenced here Suggest; (d) Trained personnel shall be familiar with the vessel’s fuel transfer procedures and take all appropriate measures to prevent spills or overfilling during a transfer of oil, including the following fuel transfer procedures <u>consistent with USCG approved oil transfer procedures and pre transfer Declaration of Inspection (DOI).</u>

16	32	18 AAC 75.430(c) (1)-(2) response planning standards (RPS)	<p>(c) If more than one prevention measure is used to modify the response planning standard, each subsequent reduction will be applied separately to the response planning standard value that results from application of the previous modification. However, in no case will the department reduce the response planning standard below an amount equal to</p> <p>(1) 15 percent of the response planning standard applicable to a crude or noncrude oil terminal facility, an exploration or production facility, or a crude oil pipeline as determined under 18 AAC 75.432(b) or (c), 18 AAC 75.434, or 18 AAC 75.436(b), respectively; or</p> <p>(2) 30 percent of the response planning standard for a crude oil tank vessel or barge as determined by 18 AAC 75.438(c).</p>	Same	<p>Currently ADEC has approved C-plans that exceed the prevention credit limits set in subsection (c) in both paragraphs (1) and (2).</p> <p>AK Tanker plan approved credits =41% VMT plan approved credits = 67% KSRFTF plan approved credits = 75%</p> <p>Subsection (c) states; <i>However, in no case will the department reduce the response planning standard below an amount equal to</i> 15% for terminals/pipelines 30% for tank vessels</p> <p>Subsection (c) including paragraphs (1) and (2) should be enforced, repealed, or amended to remove the statement on limits for prevention credits allowed to reflect the current ADEC practice of allowing prevention credits above the limits imposed by 18 AAC 75.430(c)(1)-(2) Thus reducing the required RPS</p>
17	33	18 AAC 75.432(b) RPS terminal facilities		18 AAC 75.432(b) is amended to read: (b) The response planning standard volume for a crude or noncrude oil terminal facility is equal to the capacity of the largest	<p>Clarification should be applied to the proposed amendment relating to vessels operating as storage for oil terminals.</p> <p>Are vessels used for storage at a facility subject to the 15% prevention credit for a storage tank</p>

				oil storage tank at the facility covered by the plan, unless there are specific natural or man-made conditions outside the facility which could place the facility at an increased risk of an oil discharge affecting one or more storage tanks. For vessels operating as oil terminal facilities, the response planning standard is based on the entire storage capacity of the vessel.	or the 30% prevention credit available for vessels listed in 18 AAC 75.430(c)(1)-(2)?
18	34	18 AAC 75.432(d) Prevention credits	Prevention credits		18 AAC 75.432(d) is inconsistent with 18 AAC 75.430(c)(1) which states that the maximum amount of prevention credit allowed for a crude or noncrude oil terminal is 15% of the RPS; A statement limiting these potential credits should be applied in subsection (d) or a reference to 18 AAC 75.430(c) should be included.
19	35	18 AAC 75.434. RPS exploration or production facilities	Response planning standards for exploration or production facilities.		ADEC should consider separating oil <i>exploration</i> operations and oil <i>production</i> operations into two separate subsections. The bulk of 18 AAC 75.434 is based on the potential for an uncontrolled

					<p>well blowout from an oil exploration operation and not an oil well in production.</p> <p>Oil wells in production have additional safety features installed and in operation that oil wells in exploration may not have in place.</p> <p>A suggestion may be to reduce the twelve day RPS for <i>production</i> operations to a more realistic three day maximum flow rate</p>
20	42	18 AAC 75.438(d) RPS for tank vessels	Response planning standards for crude oil tank vessels and barges.		<p>Identical to comment 15. Wording should be added to 18 AAC 75.438(d) reflecting the language in 18 AAC 75.430(c) which states <i>However, in no case will the department reduce the response planning standard below an amount equal to</i> 15% for terminals/pipelines 30% for tank vessels</p>
21	52	18 AAC 75.449.(a)(6)(F) Response Action Plan		<p>18 AAC 75.449.(a)(6)(F) In part states; a description of site-specific strategies for the protection of environmentally sensitive areas and areas of public concern identified under 18 AAC</p>	<p>The language used in this new section “<i>sufficient oil discharge response equipment, personnel, and other resources must be maintained and available for the specific purpose of preventing discharged oil from entering these environmentally sensitive areas or an areas of public concern</i>” This language can be interpreted to require the plan holder to have dedicated response equipment for</p>

				75.451(k), including, for a land-based facility or railroad, protection of groundwater and public water supplies; sufficient oil discharge response equipment, personnel, and other resources must be maintained and available for the specific purpose of preventing discharged oil from entering these environmentally sensitive areas or an areas of public concern that would likely be impacted if a discharge occurs, and that this equipment and personnel will be deployed and maintained on a time schedule that will protect those areas before oil reaches them,,,,,,,,,	each SA or AoPC. Is this the intent of this regulation?
22	53	18 AAC 75.449(a)(6)(J) Estimating oil and oily water	18 AAC 75.425(e)(1)(F)(ix) procedures for transfer and storage of recovered oil and oily water, including methods for estimating	(J) procedures for transfer and storage of recovered oil and oily water, including	Clarification on the process and control of estimating the amount and quality of recovered fluids is required.

			the amount of recovered oil;	methods for estimating the amount of recovered oil; for on-water recovery, this includes procedures for offloading and transfer of oil and oil-water mixture to shore-side storage; for on-land recovery, this includes procedures for transfer from onsite temporary storage to more secure storage;	<p>Under AS 46.03.759(b) Civil Penalties for Discharges of Crude Oil: A person responsible for the discharge of crude oil may apply for and receive a deduction of the amount of oil spilled that was removed from the environment within the first 36 hours of the response.</p> <p>With this statute in place the estimation of recovered fluids within the 36 hour time frame should be subject to, at a minimum, third party evaluation and state representation or observation of the estimation processes used for determination of the quantity and quality of recovered fluids.</p>
23	54	18 AAC 75.449(a)(6)(L) decanting		(L) procedures for decanting if the plan holder intends to request approval for decanting during a spill response; this does not eliminate the requirement for the response strategies to include procedures for storage of recovered oil and oily water; if, at the time of a spill the responsible party wants to decant, they must apply to the	<p>Poor language Suggest;</p> <p>(L) procedures for decanting; if the plan holder intends to request approval for decanting during a spill response; this does not eliminate the requirement for the response strategies to include procedures for storage of all recovered oil and oily water; if, at the time of a spill the responsible party [WANTS TO DECANT, THEY MUST APPLY] <u>requests authorization to decant recovered free water from temporary storage, they may submit an application which</u></p>

				department's State On-Scene Coordinator for approval on a form supplied by the department;	<u>includes; procedures, and measures to prevent unintended discharge of oil</u> to the department's State On-Scene Coordinator for approval on a form supplied by the department;
24	54	18 AAC 75.449(6)(N) restoration	18 AAC 75.425(e)(1)(F)(xii)(xii) if applicable, a description of procedures for the deployment of shoreline cleanup equipment and personnel, including cleanup and restoration methods and techniques to be used if the shoreline is impacted by the discharge;	(N) if applicable, a description of procedures for the deployment of shoreline cleanup equipment and personnel, including cleanup and <i>restoration methods</i> and techniques to be used if the shoreline is impacted by the discharge; and	<p>18 AAC 75.448(N) contains the only reference to <i>restoration</i> within Article 4 of 18 AAC 75</p> <p>Few, if any ODPCPs approved within the state contain information relating to assessment and restoration of habitat impacted by oil spills.</p> <p>ADEC currently uses only a <i>Visual</i> standard for determining adequate cleanup for the marine, coastal, and wetland environments.</p> <p>The topic of habitat restoration of areas impacted by an oil spill deserves a separate subsection within this section to better allow a plan holder to identify methods and processes that will be used to determine impact and habitat restoration.</p> <p>Land based spills outside of the coastal environment have existing cleanup and restoration standards in place.</p>

25	55	18 AAC 75.449(a)(7)(B) Blowout Plans	18 AAC 75.425(e)(1)(I) In part states; <i>the plan holder shall certify that the plan holder maintains a separate blowout contingency plan; the blowout contingency plan is not part of an application required under 18 AAC 75.410 - 18 AAC 75.420, but must be made available to the department for inspection upon request under 18 AAC 75.480;</i>	Blowout contingency plan reads in part; <i>the department may consult with the Alaska Oil and Gas Conservation Commission, the Department of Natural Resources, or other agencies to determine the adequacy of the planned methods, equipment, logistics, and time frames for the control of a well blowout;</i>	Cook Inlet Regional Citizens Advisory Council is mandated by OPA 90 regulations to; “ <i>The Cook Inlet Program shall be responsible for environmental monitoring of the terminal facilities and crude oil tankers operating in Cook Inlet located South of the latitude at Point Possession and North of the latitude at Amatuli Island, including offshore facilities in Cook Inlet</i> ”. It has been clarified that the offshore facilities include oil production and exploration platforms within the Cook Inlet region. This “ <i>environmental monitoring</i> ” includes blowout prevention and response. Suggested language: <i>the department may consult with the Alaska Oil and Gas Conservation Commission, the Department of Natural Resources, <u>(in Cook Inlet, CIRCAC)</u> or other agencies to determine the adequacy of the planned methods, equipment, logistics, and time frames for the control of a well blowout;</i>
26	56	18 AAC 75.449(a)(8)(E)-(F) Nonmechanical	Nonmechanical Response Options		Section 18 AAC 75.449(a)(8)(E)-(F) should incorporate and reference the <i>Alaska Regional Plan August 2018 - Annexes III-IV</i> ;

					Annex discusses permits and approvals for nonmechanical options.
27	57	18 AAC 75.449(a)(8)(G) Nonmechanical	Nonmechanical Response Options	(G) a plan for protecting environmentally sensitive areas and areas of public concern identified in 18 AAC 75.451(k), and the public from adverse effects of the nonmechanical response option;	Similar to comment 26, The Regional Plan Annexes III-IV describe specific procedures for protection of public health and safety when nonmechanical tactics are used.
28	59	18 AAC 75.450(b)(2) Discharge History		(2) discharge history - list all known oil discharges greater than 55 gallons that have occurred at the facility within the state;	Listing all known spills that have occurred at a facility for the entire life of the facility is cumbersome and unnecessary. The applicant can be required to retain this information but submittal to ADEC to review 30 year old spill history is unnecessary. Suggest; (2) discharge history - list all known oil discharges greater than 55 gallons that have occurred at the facility within the [STATE] previous ten years;
29	62	18 AAC 75.451(b)(3)(D) Tank Vessel Stability		(D) additional information required by the department to evaluate the response capability of a vessel, including verifying that the vessel is in	It is unclear why ADEC is requiring that this specific CFR be referenced. “including verifying that the vessel is in compliance with the applicable stability requirements as set out in 46 C.F.R. 109.227, as amended through September 11, 1992;”

				<p>compliance with the applicable stability requirements as set out in 46 C.F.R. 109.227, as amended through September 11, 1992;</p>	<p>ADEC has little to no capability internally to validate the stability of a tank vessel operating in state waters.</p> <p>Suggest; (D) additional information required by the department to evaluate the response capability of a vessel, including a statement verifying that the vessel is in compliance with <u>all USCG and vessel class society requirements for operating as a tank vessel.</u> [THE APPLICABLE STABILITY REQUIREMENTS AS SET OUT IN 46 C.F.R. 109.227, AS AMENDED THROUGH SEPTEMBER 11, 1992;]</p>
30	65	18 AAC 75.451(g)(1)-(2) Response equipment		<p>(g) Response equipment in part states;</p> <p><i>“the plan must include a complete list of contracted or other oil discharge containment, control, cleanup, storage, transfer, lightering, and related response equipment to meet the applicable response planning standard”</i></p> <p>And</p> <p><i>“the list must include (1) the location,</i></p>	<p>Comment;</p> <p>Currently, many approved plans <u>do not</u> require the plan holder to identify the location of response equipment available to the plan holder that is located outside of its region of operation. In addition; these resources are not identified by contract.</p> <p>If ADEC intends to enforce the new provisions requiring identification by location and contract of out of region resources this is a very good addition.</p>

				<p><i>inventory, and ownership of the equipment;</i></p> <p><i>(2) the time frame for delivery and startup of response equipment and trained personnel located outside the facility's primary region of operation”;</i></p>	
31	66-67	18 AAC 75.451(h)(2)-(3) Skimmer efficiencies		20% formula for determining oil skimmer efficiencies	<p>Subsections (h) and subsection (n) of 18 AAC 75.451 should be combined into a new subsection describing use of ASTM 2709-08 or other internationally accepted formula for determining oil to water recovery ratios.</p> <p>ASTM 2709-08 or the latest ASTM standard that has been accepted by the international community currently as the most effective way to determine skimmer oil to water ratios and should be adopted by ADEC.</p>
32	70	18 AAC 75.451(j)(2) Training	(2) personnel are trained and kept current in methods of preventing oil discharges as required by 18 AAC 75.020; and	Same	<p>The intent of this language is unclear. Is the intent to train response contractors to prevent spills from the facility or the vessel? Or is the intent to train responders to prevent additional spills during the response? Spill responders such as SERVS, ACS, CISPRI, Chadux, should not be expected to be trained to prevent</p>

					spills during terminal or vessel daily operations.
33	71	18 AAC 75.451(n) Skimmer efficiency	BAT		<p>Subsections (h) and subsection (n) should be combined into a new subsection describing use of ASTM 2709-08 or other internationally accepted formula for determining oil to water recovery ratios.</p> <p>ASTM 2709-08 or the latest ASTM standard that has been accepted by the international community currently is the most effective way to determine skimmer oil to water ratios and should be adopted by ADEC.</p>
34	72	18 AAC 75.452(a) Best available technology	BAT	<p>In part states; “In addition, the plan must identify technologies applicable to the applicant's operation <i>that are not subject to response planning or performance standards</i> specified in (b) of this section, these technologies include”</p> <p>(1) at a minimum, for all contingency plans: (A) communications (B) source control (C) trajectory analyses</p>	<p>Communications, trajectory analysis, wildlife management have advanced considerably since 1990. It is unclear why these required areas are not subject to BAT review. IMT responders are still using paper charts, and T-cards to coordinate and manage response equipment and communications flow.</p> <p>The expansion of computer networking, aerial and pipeline drone capability, cell phone, video conferencing, and internet are currently integral parts of an effective response and should be required, where applicable, by ADEC.</p> <p>Suggested language; (a) Best Available Technology Review: Unless application of a state</p>

				<p>and forecasts</p> <p>(D) wildlife capture, treatment, and release</p> <p>(2) for an oil terminal, a crude oil transmission pipeline, or an exploration or production facility:</p> <p>(A) a leak detection system for each tank if required by</p>	<p>requirement would be preempted by federal law, the plan must provide for the use of best available technology consistent with the applicable criteria in (b) of this section. In addition, the plan must identify technologies applicable to the applicant's operation that are [NOT] are subject to [RESPONSE PLANNING OR] performance standards specified in (b) of this section, <u>and enhance effective response and subject to review under 18 AAC 75.442(b)(3)</u> these technologies include,,,,,,,,,</p>
35	75	18 AAC 75.452(b)(1)	BAT review	<p>(1) technology used for oil discharge containment, storage, transfer, and cleanup to satisfy a response planning standard in 18 AAC 75.430 - 18 AAC 75.442 will be considered best available technology if the technology of the applicant's oil discharge response system as a whole is appropriate and reliable for the intended use as well as the magnitude of the applicable response planning standard;</p>	<p>The BAT review process in 18 AAC 75.452(b)(1) language states; <i>if the technology of the applicant's oil discharge response system as a whole is appropriate and reliable for the intended use as well as the magnitude of the applicable response planning standard;</i></p> <p>This language, "<i>if the technology of the applicant's oil discharge response system <u>as a whole</u> is appropriate</i>"</p> <p>Should be applied to all aspects of the required resources for efficient spill response and management and not primarily focus on in field response equipment.</p>

36	75	18 AAC 75.452(b)(3)	BAT review		18 AAC 75.452(b)(3) is adequate but ADEC should conduct an internal review to confirm that the department has the resources to adequately comply with the provisions of this subsection.
37	76	18 AAC 75.455(a) Amendments	Minor/Major amendment	<p>18 AAC 75.455(a) is amended to read:</p> <p>(a) Not later than seven working days after receipt of an oil discharge prevention and contingency plan application package for a new plan, plan renewal or major amendment, the department will determine if the application package is sufficient for review.</p> <p>For minor amendment applications that are determined to be a major amendment, the department will determine if the application package is sufficient for review not later than seven working days after it is determined to be a major amendment. If the</p>	<p>This language is open ended It states that not later than seven days after receipt of the application the department will notify the applicant that the application is sufficient for review. Then states that if a minor amendment application is determined to be major, the department has an additional seven days to notify the applicant if the application is sufficient for review.</p> <p>The current language does not state that after the initial seven day period that the department will notify the applicant that additional time is required for review</p> <p>Suggested language; For minor amendment applications that are determined to be a major amendment, the department will <u>notify the applicant and conduct a review to</u> determine if the application package is sufficient for review not later than seven working days after the amendment is determined to be a major amendment.</p>

				application package is not sufficient for review, the department will notify the applicant in writing.	
38	78	18 AAC 75.455(b)(5)(c) and (d) Amendment review		(C) a statement that a copy of the application package is available for review [AT SPECIFIC OFFICES OF THE DEPARTMENT AND OTHER LOCATIONS AS DETERMINED BY THE DEPARTMENT]; and 18 AAC 75.455(b)(5)(D) is amended to read: (D) a statement that the application package is available on the department's Internet website.	Combine 18 AAC 75.455(b)(5)(c) and (d) to read; <u>(C) a statement that a copy of the application package is available for review on the department's Internet website.</u>
39	80	18 AAC 75.455(e) Request for additional information	RFAI	States in part; (e) The department will make a determination as to whether an application package is complete not later than seven working days after the	It may be unrealistic to review all public comments received during a RFAI within this seven day period Suggest; (e) The department will make a determination as to whether an application package is complete not

				end of the public comment period established in (d) of this section,	later than [SEVEN] fourteen working days after the end of the public comment period established in (d) of this section,
40	83	18 AAC 75.457. Emergency approvals	Emergency modification of review process.		<p>This language does not allow for a shorter expiration date for a plan that was approved under expedited review.</p> <p>An emergency modification approval process should only last as long as a declaration of emergency exists and not be subject to the full five year approval term.</p> <p>Suggest adding; <u>18 AAC 75.457(b)</u> <u>Plans approved under expedited review processes will expire no later than one year from the date of the expedited approval.</u></p>
41	90	18 AAC 75.470. Transfers between plan holders.			<p>Historically ADEC has not been supportive of transfer of resources between plan holders. This attitude has restricted the OSROs ability to work in cooperation relating to training, equipment design or use, and technology or process exchange.</p> <p>The language in 18 AAC 75.470 for the most part is adequate, ADEC has been the restrictive element in developing and supporting the concept of a <i>response community</i>.</p>

42	92	18 AAC 75.475(a) Non readiness		<p>18 AAC 75.475(a) are amended to read: (a) All spill response and other equipment identified in the approved oil discharge prevention and contingency plan or streamlined plan to meet the response planning standards set out at 18 AAC 75.430 - 18 AAC 75.442 must be maintained in operational condition. Equipment [ANY EQUIPMENT] found not to be operating properly must be repaired or replaced immediately.</p>	<p>This language is focused on equipment and not response capabilities. Non readiness may result from several factors outside of equipment breakdowns, pandemic, weather events, and other conditions may result in reduced capabilities for a plan holder.</p> <p>Suggest: (a) All spill response capabilities and response [OTHER] equipment identified in the approved oil discharge prevention and contingency plan or streamlined plan to meet the response planning standards set out at,,,,,,,,,</p>
43	93	18 AAC 75.475(b) Non readiness		<p>In part states; (b) Except for a transfer approved under 18 AAC 75.470, if a significant change occurs in, or is made to, a [ANY] component of a plan that would diminish the plan holder's response capability, the plan holder shall, within 24 hours, notify</p>	<p>This subsection does not require ADEC or the plan holder to notify relevant stakeholders of the potential non readiness status.</p> <p>Suggest; <i>For equipment that is maintained by a streamlined plan cleanup contractor, the cleanup contractor shall be responsible for this notification. The department will notify interested stakeholders by electronic mail to a listserv facilitated by the department that a</i></p>

				<p>the department in writing and provide a schedule for a prompt return to operational status. For equipment that is maintained by a streamlined plan cleanup contractor, the cleanup contractor shall be responsible for this notification. ,,,,,,,,,,,,,,</p>	<p><u>notification of potential non readiness has been received and is available on the department’s Internet website.</u></p>
44	96-97	18 AAC 75.485(a)(1)(A) and (B) Exercises	Discharge exercises	<p>(A) the department will conduct <i>one operations based discharge exercise for each 5-year plan approval cycle</i> in coordination with the plan holder, based on the Homeland Security Exercise and Evaluation Program methodology described in the department’s <i>Oil Spill Response Exercise Manual</i>, adopted in (e) of this section, and</p> <p>(B) the department <i>may conduct not more than one additional exercise in each 12-month period</i>; and</p>	<p>Language in 18 AAC 75.485(a)(1)(A) and (B) is contradictory and unclear. It states the department will only conduct one operations based exercise within the five year plan approval cycle and then states it <i>may</i> conduct not more than one additional exercise in a twelve month each period.</p> <p>Is this stating the maximum amount of exercises allowed by ADEC (with the exception of failure to comply) is six exercises per five year plan cycle?</p> <p>This language is unclear. Is it stating only one operations based exercise in the five year cycle? Or can any of the 12 month exercises be operations based exercises as well?</p>

45	98	18 AAC 75.485(e) Training	18 AAC 75.485(d) (d) The department will consider a regularly scheduled training exercise initiated by a plan holder as a discharge exercise if the department monitors, evaluates, or participates in the exercise and concurs that it is equivalent to a discharge exercise conducted by the department. A plan holder shall notify the department in advance of the exercise and shall provide an opportunity for a department representative to be present and participate.	(e) The department will consider a <i>regularly scheduled training exercise</i> or a Preparedness for Response Exercise Program exercise initiated by a plan holder as a discharge exercise, as required under (a) of this section, if the department participates in the planning and <u><i>evaluation of an operations-based exercise as outlined</i></u> in the Homeland Security Exercise and Evaluation Program methodology and described in the department's <i>Oil Spill Response Exercise Manual</i> , MONTH, XX, 202X, adopted by reference.	18 AAC 75.485(e) states: that only operations based regularly scheduled training exercises will be considered by ADEC. This language potentially restricts the plan holder from conducting internal unannounced IMT or other readiness exercises that may assist them in determining response capabilities within their organizations structure. The HS-EEP program can be used in any format and can be designed to allow the plan holder to evaluate specific areas that they have identified as weak areas within their response structure. By restricting the plan holders exercise program to regularly scheduled exercises in which ADEC participates in planning can undermine the effectiveness and willingness of a plan holder to conduct internal or contractor based response capability evaluations.
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