



March 16, 2020

Alaska Department of Environmental Conservation

Submitted electronically at:
<http://alaskadec.commentinput.com>

Re: Input on Current Spill Prevention and Response Regulations/Statutes: 18 AAC 75, Article 4 and AS 46.04

Alaska Department of Environmental Conservation Staff,

As a result of the Alaska Department of Environmental Conservation's (ADEC's) request seeking input on the current spill prevention and response regulations/statutes contained in 18 AAC 75, Article 4 and in Alaska Statute 46.04, Delta Western, LLC (Delta) has reviewed the above-referenced regulations/statute and would like to offer the following comments.

As a company with several facilities subject to these regulations, Delta Western would like to first, and foremost, voice its support for ADEC in seeking input from the public and regulated operations to 1) make the regulations more clear and understandable, 2) remove outdated language, and 3) remove unnecessary duplication. Delta Western feels that there are several places within the regulations that could be improved to the benefit of both industry and ADEC without diminishing any of the existing environmental protection. As you will see throughout our comments, Delta Western has not proposed any changes that affect oil response prevention, requirements for facility or response capabilities, or any other environmental protections. Instead our comments focus on providing clear expectations, predictability, and consistent application of the regulations; removing archaic practices; and providing a means in which industry can respond to opportunities, changes in supply and demand, and streamline what is currently a cumbersome and time consuming process. Delta Western believes making these types of changes is in the best interest of ADEC and those in the regulated community. It is with this spirit in mind, that Delta Western makes the following comments.

The comments that follow are provided to aid ADEC in drafting an amendment to the current Oil Discharge Prevention and Contingency Plan (CPLAN) regulations and statutes that addresses ADEC's Commissioner Jason Brune's comments outlined in the Press Release dated October 15, 2019:

- "I've heard from many Alaskans that contingency plans are unnecessarily burdensome while lacking corresponding environmental benefits."
- "To achieve Governor Dunleavy's goal of being open for business, today we are beginning a fully transparent scoping process seeking the public's input."



Comment 1: Clarification of the use and intent of the word “day”

In general, 18 AAC 75, Article 4 does not differentiate between calendar days and business days, but simply says “days”. This is persistent throughout the regulation and provides an unnecessary level of ambiguity that requires operators to assume what ADEC’s intent is. A few examples are provided below, although it should be noted that there are many more.

18 AAC 75.405(a) “at least 60 days before...”

18 AAC 75.405(b) “.... no later than 30 days before...”

18 AAC 75.415(b) “.... not later than five days after the date...”

Delta Western suggests that all usage of the word “days” be preceded by the word “calendar” or “business” to provide clarity and predictability for both the regulated community and the regulators enforcing these deadlines.

Comment 2: Pre-Application notification and consultation

State of Alaska regulations in 18 AAC 75.405(a) requires that at least 60 days prior to submitting an application for a new plan or a renewal, the applicant must submit written intent to submit an application. 18 AAC 75.405(b) then requires the applicant to consult with ADEC no later than 30 days prior to the submittal process. These two requirements are antiquated with respect to the regulated community today. From an operator’s perspective these two tasks provide little to no value to the process and simply impose unnecessary deadlines and additional time to an already unreasonably lengthy process. In comparison, these two practices add 60 days to the approval process, which is how long it takes to get a federal contingency plan both reviewed and approved.

Delta Western suggests that ADEC remove the requirements for pre-application notification and consultation in full, or if necessary, for new facilities, allow this process to be shortened, streamlined, and only apply to new plans. This should not apply to plan renewals, especially those with little or no substantive changes.

Comment 3: Application form and signatures

State of Alaska regulations in 18 AAC 75.408 require that an application must be submitted for approval of an Oil Discharge Prevention and Contingency Plan (CPLAN) and signed by an individual meeting the requirements set forth in (b), which in short requires an executive to sign an application. The application is required for everything from a routine update (i.e., changing personnel names or telephone numbers) to applying for a new plan or completing a major amendment.

Delta Western asserts that this practice is archaic and needs to be revised.

ADEC has identified three different levels of revisions (routine update, minor amendment, and major amendment) in addition to a new plan approval or a plan renewal. Delta Western believes that the signature authority and requirements for submittal should coincide with level of revision.

To aid ADEC in drafting language that is more appropriate to the way companies operate and manage their CPLANS, Delta Western offers the following recommendation:

- The requirement to submit an application should be limited to new plan approvals or renewals or where there is a change in owner or operator. After that, any subsequent



revisions should be able to be addressed in a cover letter or written correspondence between the operator and ADEC. Typically, the contents of the application do not change during revisions and thus operators are submitting duplicative information, which does not add any value.

Delta Western acknowledges that it is appropriate to have an executive with the authority to commit company resources sign an application for a new plan approval or renewal.

- A major amendment should not require the submittal of application form. That said, Delta Western acknowledges that typically a major amendment may change spill response and financial commitments and thus, having a mechanism for ADEC to validate that company can meet these obligations, may require a signature or approval of an executive on behalf of the company.
- A minor amendment should not require an application nor an executive to sign. These changes do not affect a company's ability or requirement in a substantive manner, and thus, the current requirements put an additional burden on operators that does not add anything to the process other than increasing the time it takes to prepare and the amount of paperwork included in the submittal.
- A routine update should not require an application nor an executive to sign. These changes do not affect a company's ability or requirement in a substantive manner, and thus, the current requirements put an additional burden on operators that does not add anything to the process other than increasing the time it takes to prepare and the amount of paperwork included in the submittal.

Additionally, as ADEC plan reviewers are aware, the personnel who typically manage and update CPLANs, as part of their job duties, and have been given the financial authority to commit resources on behalf of their company (i.e., designated as a Qualified Individual as defined by the EPA and USCG) typically do not meet the definitions of someone having signature authority under 18 AAC 75.408(b). Delta Western strongly suggests that ADEC add that personnel who manage and oversee the implementation of CPLANs and have financial authority as described above be added to the list of persons allowed to sign applications.

Comment 4: Plan copies

State of Alaska regulations in 18 AAC 75.408(c) require operators to provide copies of the plan in specific format and to specific individuals. While Delta Western does not object to ADEC specifying the number of copies and to whom the plans must be submitted, we do object to the requirement to provide paper copies to parties outside of our organization. As other parts of ADEC and other State and Federal agencies have moved to electronic only submittals, this language is outdated.

Delta Western recommends that the duty to provide paper copies be removed.



Comment 5: Plan updates

State of Alaska regulations in 18 AAC 75.408(c)(7) state “all proposed additions, revisions, and deletions must be identified in the plan as applicable; the department may also request a summary of changes in a table format;”. This has been interpreted by industry, or pushed by ADEC reviewers, to mean a request for redline PDF, in addition to a fully changed plan without redlines present. It is also unclear as to what ADEC reviewers want to or need to see in redlines; for example, do changes that are grammatical or formatting in nature that don’t change the overall protection or intention of the document really need to be provided in redlines? While Delta Western sees the benefit in providing a redlined PDF showing the changes as an effective means of communicating what changes have been made, it is time consuming and burdensome to provide PDFs for impacted pages only in both redline and clean format. For each submittal, it takes time to make the edits, create a PDF, remove the unaffected pages, accept all the changes, make another PDF, and remove the unaffected pages. The time spent making multiple versions of the same thing, in addition to stating all the proposed additions, revisions, etc., could be better spent on other tasks.

Delta Western recommends ADEC update this section of regulation to state “all proposed additions, revisions, and deletions must be identified in the plan.” If ADEC has a specific format, they should state that, but consider the burden it poses on the plan holder. If ADEC would like to see redlines, then only redline should have to be submitted, not clean pages also.

Comment 6: New plans

State of Alaska regulations in 18 AAC 75.410(a) require that new CPLANs must be submitted 180 days before the planned start date of operations. This timeline expands with the pre-application notice at least 60 days before submitting the application. Thus, the minimum timeline for a new CPLAN to be approved is 240 days. This approval timeline is in sharp contrast to the federal Facility Response Plan (FRP) timeline which require an operator to submit their proposed FRP at least 60 days before the planned start date of operations.

The 240 day minimum approval timeline is not conducive to business and in fact, is prohibitive with respect to being able to respond to changes in market conditions or supply and demand. This 240 day timeline often is much longer as in order to be able to submit a CPLAN that will be considered sufficient for review, an operator must have fully engineered and designed their proposed facility. The timeline is often extended due to changes in design as well. By the time a plan is approved, the seasonal period of operation could have passed, or the opportunity no longer exists as it once did. This provides a disservice to smaller communities in Alaska who currently have limited options and could be better served by additional options with respect to fuel providers.

Delta Western recommends that ADEC evaluate their review procedures and streamline the contents of the CPLANs to remove antiquated or duplicative information and utilize the operator’s ability to meet the requirements set forth in 18 AAC 75 to evaluate whether the facility is sufficient or not. The review process could be streamlined as well, which would allow ADEC staff more time to respond to spills or work with operators to improve capabilities.

Delta Western also recommends that ADEC adopt a timelier approval process. A good starting point would be to follow what both the EPA and the CG have considered appropriate and sufficient (i.e., 60 days). Delta Western believes that a CPLAN that can demonstrate compliance with the requirements set forth in 18 AAC 75 can be reviewed and approved in 60 days.



These recommendations are also directly applicable to 18 AAC 75.455; that section of the regulations should be updated, as appropriate to incorporate the above-recommended review procedures and timelier approval process.

Comment 7: Plan amendments – routine plan update

State of Alaska regulations in 18 AAC 75.415(b) states that a routine plan update must be submitted not later than five days after the proposed change occurs. As noted, in comment #1, this does not specify if the change is to be made within 5 calendar days or 5 business days. That said, regardless of the calendar days or business days, 5 days is an unrealistic and artificial deadline to impose. It is also unclear what benefit, if any is gained by ADEC to receiving this information within 5 days.

For context, typically, for fixed facilities, routine updates are personnel changes which are not planned and often occur at inopportune times. The 5 day timeline does not account for this nor the fact that there are a number of other changes companies must make when there is a change to spill command and response personnel. To simply change the names or telephone numbers of spill command and/or response personnel should not cause companies with multiple facilities to drop or postpone other activities in order to meet an artificial and overly strict deadline.

As ADEC does not approve personnel changes and these are not implemented until after the changes occur, these changes do not need to be implemented on such an aggressive timeline.

Delta Western recommends that personnel changes and other routine update have at least a 30 calendar day submittal due date.

Comment 8: CPLAN reviews

State of Alaska regulations in 18 AAC 75.415(g) states that a major amendment will be reviewed under 18 AAC 75.455 and a minor amendment will not be reviewed under 18 AAC 75.455. As Delta Western currently has multiple CPLANs that are managed by different reviewers and works within more than one jurisdictional area for ADEC, we have seen significant differences in the application of how CPLANs are reviewed and what is allowed as part of the review process. As an operator, it is difficult to manage this unpredictability in how the review process will unfold. Additionally, while ADEC has issued a guidance document for CPLAN reviews (Oil Discharge Prevention and Contingency Application Package and Review Guidance Document, Revision 1 dated December 2016), it is not regulation although is often treated as such and in some instances provides for additional confusion and/or inconsistencies between regulators. Please refer to comment 15.

Delta Western recommends that ADEC provide sufficient details in the regulations such that the CPLAN process can be applied consistently and fairly across the various jurisdictional areas and internal staff. Delta Western also recommends providing limits on the scope and scale for reviews consistent with the level of change. Some specific examples and recommendations are provided below to aid ADEC in this process.

1. Major amendment review procedures in 18 AA 75.455 provides the basis for the Request for Additional Information (RAFI) process. This section of regulations does



not apply to minor amendments however the Oil Discharge Prevention and Contingency Application Package and Review Guidance Document, Revision 1 dated December 2016, Section 2.3 includes a provision or means for formally requesting additional information. This seems to be in conflict. Delta Western does not believe a minor amendment should be subject to a RFAI.

2. With respect to minor amendments, there are inconsistencies with the scope and scale of review. In most instances, ADEC reviewers have limited their reviews to only the proposed changes as outlined by the applicant. However, in some instances, ADEC reviewers have used the submittal of a minor amendment to review the entire CPLAN. Delta Western strongly recommends that language be added to 18 AAC 75 to limit the scope and scale of minor and major amendments to only proposed changes. ADEC has the opportunity to review each CPLAN in full during the original submittal and during each subsequent renewal. Full plan updates should be limited to these instances only.
3. The review process often gets bogged down and sometimes extends beyond the regulatory authority (i.e., written decision not later than 30 days after receipt) due to grammatical, formatting, or other administrative type changes. While Delta Western acknowledges that all operators should strive for their plans to be accurate, we do not believe that deadlines should be held up for these types of issues that do not affect the overall content of the plan. Additionally, we feel that the State of Alaska would be best served if our reviewers are able to focus their reviews on the actual content of the plans, not page numbers, missing commas, upper vs. lower case letters, etc.

Comment 8: CPLAN renewals

State of Alaska regulations in 18 AAC 75.420 requires plan renewals to be submitted at least 180 days ahead of the expiration date to allow “sufficient time for department review”. In addition, the provisions in 18 AAC 75.405 for pre-application notification and consultation apply to renewals (bringing the total notice period for a renewal to 240 days). This means that for a 5-year approval, almost 20% of that time is preparing for renewal. This is overly burdensome and frankly, unnecessary. This requirement does not account for the fact that ADEC requires operators to maintain and amend their plans as things change (routine updates, minor amendments, and major amendments), during the approval period. In fact, this regulatory requirement unfairly penalizes those operators who maintain their plans in accordance with the regulations by effectively shortening the five (5) year approval period by the length of the renewal process.

Delta Western recommends that ADEC implement provisions or a streamlined approach for renewals for plans that have been maintained in accordance with the regulations and do not have substantial changes.

Comment 9: CPLAN contents

State of Alaska regulations in 18 AAC 75.425 sets forth required content for CPLANs. While this is very helpful in understanding ADEC’s expectations and requirements there are several parts that outdated, duplicative, and have no current day value.

Delta Western recommends that ADEC update this section of the regulation such that the plans contain only current and relevant information. Additionally, Delta Western recommends implementing some changes to streamline processes and add clarification. Some specific examples and recommendations are provided below to aid ADEC in this process.



1. 18 AAC 75.425(c)(3) – ADEC should clarify what they mean by “an individual with appropriate authority”. Delta Western recommends that this person be clarified to match those individuals with signature authority under 18 AAC 75.408(b) after making the proposed changes outlined in comment #3 above.
2. 18 AAC 75.425(e)(1)(E) – This section requires plan holders to regurgitate the contents of the Alaska STAR Manual in their CPLAN. This is duplicative and unnecessary. Delta Western suggests that ADEC allow plan holders to reference the STAR Manual for compliance with this section with no further discussion.
3. 18 AAC 75.425(e)(1)(F) – See comment #10 below.
4. 18 AAC 75.425(e)(2)(C) – The potential discharge analysis is a fairly typical section and does not vary much from facility to facility. Delta Western suggest ADEC not require this information to be re-hashed in each and every CPLAN.
5. 18 AAC 75.425(e)(3)(C) – This section requires each plan holder to include detailed information with respect to the command system to be used in their CPLAN; this text is typically 3 to 7 pages worth of text. It should be sufficient at this point in time to point to the Incident Command System (ICS) and not have to explain it to the state. This section of the CPLAN is outdated and does not add value to responders or plan holders. Delta Western recommends the requirements be limited to identify any contracted resources and stating which command system will be used, if not ICS.
6. 18 AAC 75.425(e)(4) – The Best Available Technology (BAT) is archaic with respect the current CPLANs. While this section may have had value at some point, it does not now. If a company is able to comply with the regulatory requirements and employees modern-technology, they should not have to add unnecessary bulk to the CPLAN. This section offers no value to the personnel onsite who will be implementing the plan, should a spill occur. Instead it just adds pages that no one reads. Delta Western recommends that ADEC remove the BAT review from 18 AAC 75.425(e) in its entirety.

Comment 10: Scenarios

State of Alaska regulations in 18 AAC 75.425(e)(1)(F) requires plan holders to provide “a written description of a hypothetical spill incident and response”. The key word here being “hypothetical”. The spill response scenario requirements identified in this and other sections of the regulation require information that typically extends to activities that would not be performed by plan holder personnel, but rather by contracted response companies. It is burdensome to write and review an artificially constructed response to deal with the highly improbable meteorite falling from the sky and taking out the largest tank at the facility plus breaching the secondary containment and all but a small percentage of oil reaching water. Section 1 of the CPLANs talk about emergency response actions that would be taken by the plan holder, which is a reasonable request. As every spill is different, these scenarios do not necessarily provide a “how to” guide for spill response, which is what is needed and improbable to include. A plan holder that has a plan, which includes utilizing a State-approved contractor should be sufficient. These spill scenarios are burdensome and provide little if any added environmental protections.

Delta Western recommends that ADEC revise this and related sections to reflect a plan holder’s ability to utilize a State-approved contractor for oil spill response activities; if a State-approved contractor is utilized, the plan holder should simply be able to state that they would activate their contractor and take the initial response actions as outlined in Section 1 of the CPLAN rather than put together a highly-detailed timeline and hypothetical response that will in all likelihood either not be used or in the event of an actual release or not coincide with the specific details of the release.



Comment 11: Review procedures

State of Alaska regulations in 18 AAC 75.455 sets forth required review procedures for oil discharge prevention and contingency plans. The allowance for ADEC to respond within 90 days following the public comment period is excessive given that most public comment periods receive few, if any, public comments.

Delta Western recommends a reduction in this timeframe to achieve a reasonable overall review and approval timeline. Please refer back to recommendations under Comment 6.

Comment 12: Discharge Exercises

State of Alaska regulations in 18 AAC 75.485 are relatively short and yet have a significant and costly impact to plan holders. However, that is partially due to the fact, that ADEC has included much of their expectations and requirements for how compliance with this section will be considered in their Oil Spill Response Exercise Guidance document. While ADEC has both regulations that apply to this and a guidance document, there are still several questions that remain unanswered or leave much of the expectations up to interpretation. This is not beneficial to ADEC or the regulated community.

Without restating the problems of “regulating via guidance documents”, which is discussed below or getting into the lack of State funding to pay for no more than two exercises in each 12-month period, there are much more efficient ways to confirm that each CPLAN is adequate in content and execution. Additionally, it is overly burdensome to expect a plan holder to demonstrate their abilities through an announced or unannounced exercise up to twice a year. This would be both costly and a disruption to operations, which at certain times of the year, could have significant negative impacts on the customers who receive fuel from plan holders.

Additionally, many plan holders follow NPREP requirements and are under the jurisdiction of other regulatory bodies such as the Coast Guard who routinely perform unannounced exercises once every three years. It would be in ADEC’s interest to utilize and recognize what other agencies are doing and giving plan holders credit for this. This would both save ADEC funds, but also provide them the assurances that plan holders are able to respond.

With respect to 18 AAC 75.485(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.” This language is very ambiguous and planning an exercise with ADEC has been described as a 6 to 9 month planning process. For a plan holder that follows NPREP, there is not sufficient time to go through a 6 to 9 month planning process for each exercise. Likewise, when exercises are planned with ADEC, they take on a scope and scale that is not realistic of what plan holders typically respond to. These exercises also take a significant amount of time and money to plan and while a good networking and learning experience, do not have mirror in reality what most plan holders would do. For example, it is unlikely that a plan holder would have a venue on reserve and forty people show up from across different geographies within their companies and multiple agencies within hours of discovery. It would be far more beneficial to the communities in which plan holders operate to practice realistic scenarios with proper scale and scope and address the what happens the majority of the time verses the a catastrophic scenario, where contracted resources who manage these types of events as their primary duties would be brought in.



Delta Western strongly recommends that ADEC completely revise this section of the regulation to recognize NPREP and do away with their Oil Spill Response Exercise Guidance document in its entirety. Additionally, Delta Western recommends that ADEC be allowed to conduct no more than one announced or unannounced discharge exercise per plan cycle and if the plan holder can demonstrate that they have complied with NPREP and successfully completed an unannounced exercise conducted by another State or Federal agency or demonstrated their capabilities through an actual response, this would meet that obligation for the plan cycle. This approach would still allow ADEC to determine a CPLAN is adequate in content and execution while saving time and money.

Comment 13: CPLAN verification log

State of Alaska regulations in 18 AAC 75.465 sets forth requirements for oil terminal facility to certify that vessels, barges, and railroad tank cars are in compliance with the 18 AAC 75 Article 4 regulations, or in essence putting the burden of regulating these entities onto oil terminal facilities. This constitutes over-reach on the part of ADEC and that it is the ADEC's obligation to regulate such entities, not oil terminal facilities.

Delta Western strongly suggests that this section be removed in its entirety.

Comment 14: Definition of a facility

State of Alaska regulations in 18 AAC 75 Article 4 uses the term oil terminal facility throughout. 18 AAC 75 defines an oil terminal facility as having the meaning given in AS 46.04.900. The definition in AS 46.04.900. The definition of facility in AS 46.04.900 reads “oil terminal facility” means an onshore or offshore facility of any kind, and related appurtenances, including a deepwater port, bulk storage facility, or marina, located in, on, or under the surface of the land or waters of the state, including tide and submerged land, that is used for the purpose of transferring, processing, refining, or storing oil; a vessel, other than a nontank vessel, is considered an oil terminal facility only when it is used to make a ship-to-ship transfer of oil, and when it is traveling between the place of the ship-to-ship transfer of oil and an oil terminal facility.” While this definition is long, it lacks one key component, a geographic boundary. This missing verbiage has resulted in ADEC combining or proposing to combine separate operations that have similar, but different operations because as a combined entity they would trigger the 18 AAC 75 Article 4 applicability criteria. This lack of clarity and lead to regulatory over-reach and inconsistencies as well as uncertainty for the regulated community.

Delta Western recommends that ADEC update their definition of oil terminal facility to include a geographic component similar to what the EPA had done in 40 CFR 112.2 which defines a facility as having a boundary: “...The boundaries of a facility depend on several site-specific factors, including but not limited to, the ownership or operation of buildings, structures, and equipment on the same site and types of activity at the site. Contiguous or non-contiguous buildings, properties, parcels, leases, structures, installations, pipes, or pipelines under the ownership or operation of the same person may be considered separate facilities....”



While not specific to any particular regulatory section or statute, Delta Western would also like to offer the following comments as they related to the CPLAN process.

Comment 15: Regulating through guidance documents

With respect to 18 AAC 75, Article 4, the regulations as currently written appear to contain insufficient information such that ADEC has felt the need to product guidance documents. Namely, with respect to CPLAN applications and review procedures and discharge exercises. This comment is directed at the following guidance documents specifically, it applies to all of them:

- Oil Discharge Prevention and Contingency Plan Application Package and Review Guidance Document
- Oil Spill Response Exercise Guidelines: A Manual for Planning, Conducting, and Evaluating Exercises

While guidance documents can be useful, they should not be applied like regulations or used to hold plan holders to specific standards that are not called out in the regulations.

Comment 16: ADEC mandated CPLAN updates in 2019 and 2020

ADEC issued two letters in 2018 and 2019 that required plan holders to update their CPLANs with respect to ADEC updating the response planning framework for Alaska. The first letter, which was dated September 14, 2018 required plan holders to submit amendments to their plans before August 14, 2019. On August 22, 2019, ADEC sent a second letter that notified plan holders that ADEC's ability to maintain active hyperlinks was significantly reduced and also required additional updates to be submitted by January 31, 2020. While this may not seem like a big deal, the rollout of these changes has resulted in a significant burden on companies that maintain more than one CPLAN. While Delta Western understands the importance of maintaining current information and resources and updating plans in a timely fashion, ADEC needs to understand the burden they are imposing by setting a deadline, failing to maintain links, and as a result requiring not one but two agency-dictated plan updates. It should be further noted that the links listed in the second letter are also not those that are preferred by many of the plan reviewers, who indicated that some of these links cited in the letter still may change.

In order to streamline and improve processes such as this in the future, Delta Western recommends following an approach similar to how EPA responded to ADEC's changes. EPA sent a letter with a one-page addendum for plan holders to add to the front of their currently approved plans. As technology advances, it is necessary to adapt to the fast pace at which information can change and be available with the internet. This addendum would be updated as needed to reflect recent changes and be integrated as part of until such a time that the overall document upon plan renewal at the end of the cycle. This approach would save both ADEC and plan holders insurmountable amounts of time and do away with the back and forth of submitting and changing whole plans based on link updates.

If you have any questions on the comments/questions provided, please feel free to contact me at via e-mail or phone.

Respectfully,

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