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January 28, 2022

Zuzana Culakova
Alaska Department of Environmental Conservation
P.O. Box 111800
Juneau, AK 99811
Email: dec.cpr@alaska.gov

RE: Comments on proposed regulatory revisions to 18 AAC 75, Article 4

Dear Ms. Culakova:

The Prince William Sound Regional Citizens' Advisory Council (PWSRCAC) is an independent, nonprofit corporation promoting the environmentally safe operation of the Valdez Marine Terminal and associated tankers. Our work is guided by the Oil Pollution Act of 1990 and our contract with Alyeska Pipeline Service Company. PWSRCAC's 18 member organizations are communities in the region affected by the 1989 *Exxon Valdez* oil spill, as well as commercial fishing, aquaculture, Alaska Native, recreation, tourism, and environmental groups.

Many of the proposed changes provide useful clarifications or improve the organization of the regulations. However, a few key issues are noted requiring substantive improvements. In finalizing the new regulations, we request that ADEC:

- Increase the minimum number of annual exercises ADEC will conduct for crude oil plans;
- Keep the Best Available Technology conference and the option of studies as essential to achieving the statutory requirement that prevention and response equipment used in Alaska stay current with technological advances;
- Keep language ensuring that plan submittals and amendments will be shared with the Regional Citizens Advisory Councils; and
- Require that tankers calling at the Valdez Marine Terminal have an emergency towing arrangement that meets international and federal standards but can also be deployed from the bow in 15 minutes.

In addition to the above, we provide recommendations on items warranting edits to align with ADEC regulation drafting guidelines and consistency across the sections.

Thank you for your consideration of these comments. Please do not hesitate to contact us if you have any questions.

Sincerely,


Robert Archibald
President


Donna Schantz
Executive Director

Enclosures:

- 1) PWSRCAC Comments on Proposed Changes to Oil Prevention Requirements in the Regulations of the Alaska Department of Environmental Conservation, dated November 1, 2021.
- 2) Glosten Project Memorandum dated January 10, 2022 titled "Emergency Towing Arrangements on Tank Vessels".

Cc: Andres Morales, Alyeska
Commissioner Jason Brune, ADEC
Tiffany Larson, ADEC
Allison Natcher, ADEC
Graham Wood, ADEC
Melissa Woodgate, ADEC



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**Comments on Proposed Changes to Oil
Prevention Requirements in the
Regulations of the Alaska Department of
Environmental Conservation, dated
November 1, 2021**

Submitted by the
Prince William Sound Regional Citizens' Advisory Council

January 28, 2022

Introduction

The Prince William Sound Regional Citizens' Advisory Council (PWSRCAC or Council) provides these comments on regulatory revisions related to 18 AAC Chapter 75 that were released on November 1, 2021.

In its March 11, 2020 comments in response to the Alaska Department of Environmental Conservation's (ADEC) public scoping request, PWSRCAC expressed its views on the importance of the Oil Discharge Prevention and Contingency Plan regulations and the statutory requirements the regulations implement.

Many of the proposed changes provide useful clarifications or improve the organization of the regulations. However, a few key issues are noted requiring substantive improvements. In finalizing the new regulations, we request that ADEC:

- Increase the minimum number of annual exercises ADEC will conduct for crude oil plans;
- Keep the Best Available Technology conference and the option of studies as essential to achieving the statutory requirement that prevention and response equipment used in Alaska stay current with technological advances;
- Keep language ensuring that plan submittals and amendments will be shared with the Regional Citizens Advisory Councils; and
- Require that tankers calling at the Valdez Marine Terminal have an emergency towing arrangement that meets international and federal standards but can also be deployed from the bow in 15 minutes.

In addition to the above, we provide recommendations on items warranting relatively minor edits to align with ADEC regulation drafting guidelines and consistency across the sections.

Section Comments

18 AAC 75.400(a)(2). Applicability (vessels)

ADEC proposes to revise the section that describes who must apply for a vessel contingency plan. Currently, regulations describe the categories of owner, operator, demise charterer, or in any other case, the person with primary operational control. ADEC proposes, instead, to rely on "primary operational control" as the defining category for a vessel applicant. Primary operational control is a unique ADEC provision without counterpart in U.S. Coast Guard regulations. If ADEC wishes to rely on this classification alone instead of the traditional legal maritime categories that the U.S. Coast Guard utilizes, it is important that ADEC ensure that the vessel owner/operator agrees that the plan holder has primary operational control over

the vessel as to the operational aspects in state waters and the prevention and response requirements of the contingency plan. For example, it is not enough that the plan holder has time-chartered a tanker.

ADEC addresses this issue in part with a proposed definition of "primary operational control" under 18 AAC 75.990 of the proposed regulations. This definition is helpful in specifying the things the contingency plan holder must have control over to have primary operational control over the vessel, including the parameters of the approved prevention and response plan. PWSRCAC suggests that agreement regarding the "person" (or company) with primary operational control for the purpose of Alaska regulations can be further clarified by adding this information to its application form required by 18 AAC 75.408.

To ensure the requirements of primary operational control are met, PWSRCAC requests that ADEC include a section in its application form where the vessel and contingency plan holder with primary operational control attests that they have a "binding agreement" establishing primary operational control over the vessel as defined in 18 AAC 75.990(XXX) for these purposes and the vessel agrees to comply with the prevention and response provisions of the approved plan.

18 AAC 75.408(b). Submittal of documents

The proposed change removes the text describing who can sign the application form and instead refers to 18 AAC 15.030.

Regulations at 18 AAC 75.408(b) and 18 AAC 15.030 are not identical. The 18 AAC 15.030 regulations referenced have not been updated since 1977, and do not include Limited Liability Company, or LLCs, which are newer creations of the law, nor joint ventures. Referencing 18 AAC 15.030 is fine for making the 18 AAC 75 regulations shorter, but 18 AAC 15.030 should then be updated to include the new legal entities and who must sign on their behalf.

18 AAC 75.408(c). Distribution of plan documents to the Regional Citizens Advisory Councils

ADEC proposes to take responsibility for posting application packages on its website and informing interested stakeholders of the availability of these documents and additional information provided by a plan applicant.

ADEC also proposes removing the requirement to ensure that plan copies and amendments are received by the Regional Citizens Advisory Councils (RCACs) and the Departments of Natural Resources and Fish and Game. Instead, ADEC proposes to notify "interested stakeholders" of these applications and documents.

The Departments of Natural Resources and Fish and Game are named reviewers by virtue of the contingency plan statute in AS 46.04.030(j).¹ Similarly, federal law, in 33 U.S.C § 2732, recognizes the RCACs' responsibility to review oil spill contingency plans. This provision of the Oil Pollution Act of 1990, drafted by Alaska's Congressional Delegation, recognizes the PWSRCAC's special role in reviewing contingency plans for the Valdez Marine Terminal and Trans Alaska Pipeline System (TAPS) tankers.² The law includes findings concerning the importance of this role.³ The Alaska Oil Spill Commission similarly recommended that the Councils be integrated into a state system of citizen oversight including government agency operations. ADEC has also recognized the role of the RCACs in reviewing contingency plans and has included its participation in special workgroups as part of ADEC's actions on the plans. Finally, in repealing the Alaska Citizens' Oversight Council on Oil and Other Hazardous Substances in 1994,⁴ the Alaska Legislature recognized the continuing role of the RCACs in citizen participation and oversight.

In light of these legal authorities recognizing the Councils and their vital role in the review of oil discharge prevention and contingency plans, the PWSRCAC requests that 18 AAC 75.408 continue to specify that the Regional Citizens Advisory Councils must receive notification of plan submittals, renewals, and amendments subject to public review.

¹ (j) Before the department approves or modifies a contingency plan under this section, the department shall provide a copy of the contingency plan to the Department of Fish and Game and to the Department of Natural Resources for their review.

² 33 U.S.C. § 2732(d)(6) "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;"

³ The Congress finds that—(A) the March 24, 1989, grounding and rupture of the fully loaded oil tanker, the EXXON VALDEZ, spilled 11 million gallons of crude oil in Prince William Sound, an environmentally sensitive area; (B) many people believe that complacency on the part of the industry and government personnel responsible for monitoring the operation of the Valdez terminal and vessel traffic in Prince William Sound was one of the contributing factors to the EXXON VALDEZ oil spill; (C) one way to combat this complacency is to involve local citizens in the process of preparing, adopting, and revising oil spill contingency plans; (D) a mechanism should be established which fosters the long-term partnership of industry, government, and local communities in overseeing compliance with environmental concerns in the operation of crude oil terminals; (E) such a mechanism presently exists at the Sullom Voe terminal in the Shetland Islands and this terminal should serve as a model for others; (F) because of the effective partnership that has developed at Sullom Voe, Sullom Voe is considered the safest terminal in Europe; (G) the present system of regulation and oversight of crude oil terminals in the United States has degenerated into a process of continual mistrust and confrontation; (H) only when local citizens are involved in the process will the trust develop that is necessary to change the present system from confrontation to consensus; (I) a pilot program patterned after Sullom Voe should be established in Alaska to further refine the concepts and relationships involved; . . . 33 U.S.C. § 2732(a)(2).

⁴ 43 ch 128 SLA 1994.

PWSRCAC requests that ADEC retain language in the regulations stipulating that the Regional Citizens Advisory Councils will receive relevant plan documents, or notification of their availability on the ADEC website, as described for plan submittals, renewals, and amendments. This mirrors the language in current regulations but maintains the proposed shift in the responsibility to distribute the documents from the plan holder to ADEC.

18 AAC 75.408(c). Notification of minor amendments

This section states that ADEC will notify interested stakeholders (see previous request about including RCACs in this definition) when a minor amendment has been approved. Section 18 AAC 75.415(a) defines types of amendments that will be considered major, with all others being either minor or routine. We have no suggested changes to the definition of major amendment, but we recognize from experience that there may be amendments that do not fit neatly into the definition of major or minor amendment. Notification of minor amendments should therefore be sent to the RCACs and other interested stakeholders prior to their acceptance by ADEC.

In order to fulfill its mission to provide a voice for citizens affected by decisions related to the Valdez Marine Terminal and associated tankers, PWSRCAC must be apprised of potential changes to the operations of the terminal or tankers *before* they occur, whether or not there is a formal comment period.

PWSRCAC requests that 18 AAC 75.408 be amended to state that RCACs and other interested stakeholders should be notified of the receipt of a minor amendment and its availability on the department's website.

18 AAC 75.414. Changes of plan ownership

According to 18 AAC 75.414, "A change in the owner, operator, or name of the owner or operator of a facility or operation with an approved oil discharge prevention and contingency plan or a non-tank vessel equivalent plan requires that the new owner or operator submit an application package as an amendment under 18 AAC 75.415." However, 18 AAC 75.415 considers "major" reviews requiring public review and "minor amendments" which do not in the context of changes made by the original plan holder. An effective spill response, including management of that response, however, is directly tied to the capabilities and capacities of the plan holder, capabilities and capacities which cannot be assumed to be the same when a plan transfers from one owner/operator to another. Consequently, such actual change of owners or operators, as opposed to simple name changes, should be treated as major amendments.

PWSRCAC requests that all amendment applications changing the owner or operator of a facility or operation with an approved ODPCP be treated as "major amendments" subject to public review under 18 AAC 75.455.

18 AAC 75.415. Procedures to apply for oil discharge prevention and contingency plans – status of ownership change

Language at 18 AAC 75.415(a) identifies the criteria ADEC will use to determine if a plan amendment is considered "major" warranting a public review. PWSRCAC agrees with these criteria, but requests that a "change in ownership" (as is mentioned at 18 AAC 75.414) should be included in this list. An effective spill response, including management of that response, is directly tied to the capabilities and capacities of the plan holder, capabilities and capacities which cannot be assumed to be the same when a plan transfers from one owner/operator to another. Consequently, an actual change of owners, as opposed to simple name change, should be treated as a major amendment.

PWSRCAC requests that all amendment applications changing the owner or operator of a facility or operation be treated as "major amendments" subject to public review.

18 AAC 75.430(b). Prevention credits to reduce the Response Planning Standard (regarding removal of the phrase, "to the Department's satisfaction")

ADEC proposes to remove the phrase "to the Department's satisfaction" as to whether a plan holder demonstrates that a proposed prevention measure reduces the size of the potential spill or risk of a discharge. Throughout this set of regulations, ADEC has similarly proposed to repeal "to the Department's satisfaction" as to whether the plan demonstrates a particular requirement.

Removal of this phrase is misplaced for several reasons. First, under Alaska statute, it is ADEC who determines whether a plan meets the requirements of law. AS 46.04.030(h) states: "The department is the only state agency that has the power to approve, modify, or revoke a contingency plan for the purposes of this section." Obviously, ADEC's actions with respect to a plan are subject to review in adjudicatory hearings and in judicial appeals, but the role of ADEC to make these technical decisions is recognized by statute. Consequently, removal of the phrase "to the Department's satisfaction" does not change the fact that ADEC is the entity that determines whether a requirement of the contingency plan regulations is satisfied.

Second, PWSRCAC believes that removal of the phrase violates the Department of Law's Drafting Manual on Administrative Regulations. See page 53 of that document. AS 44.62.060(a) requires an agency to comply with the Department of Law Drafting Manual. The phrase is used in the Drafting Manual to recognize when an action – in this case granting a prevention credit – is within the discretion of the agency because the statute says "the department may" grant a prevention credit but is not required to do so unless it is convinced that it reduces the threat or magnitude of a discharge. See AS 46.04.030(m).⁵

⁵ "When considering whether to approve or modify a contingency plan, the department may consider evidence that oil discharge prevention measures such as double hulls or double bottoms on vessels or

The proposed removal of the phrase does not change the department's role deciding whether certain criteria are met. The department's determination is then given deference by a court if the determination implicates the department's technical expertise which is the case here.

PWSRCAC requests that the phrase, "to the Department's satisfaction" be retained in this and the other sections of 18 AAC 75 under review here.

18 AAC 75.432(a)(1). Response Planning Standard for oil terminal facilities

PWSRCAC suggests removing the comma after "72 hours" to be consistent with the Response Planning Standard (RPS) wording for 432(a)(1) (oil exploration and production facilities), 436(a)(1) (crude oil pipelines), and 438(a)(1) (crude oil tank vessels and barges).

18 AAC 75.432(d)(5)(B). Oil terminal facility prevention measures

The Department of Law Drafting Manual does not recognize use of a parenthetical plural as used in the term "failsafe valve(s)."

ADEC should revise the proposed regulation to clarify its intent as to singular or plural valves.

18 AAC 75.447. Department examination of new technologies

ADEC has proposed the repeal of this section requiring the department evaluate technologies used to meet the Response Planning Standard (RPS) or a performance standard set out in ADEC's oil pollution prevention regulations.

This important provision is from the 1997 Best Available Technology (BAT) Regulation Workgroup and is intended to ensure that ADEC reviews – outside of the plan review process – break-out RPS and performance standard technologies that are exempted from individualized BAT reviews at the time of plan renewal. It is intended to ensure that the plans do not go technologically stale for those two of the three regulatory categories of technology. ADEC has not consistently held a technology conference and has not fully implemented the regulation because of funding challenges. Those challenges, however, do not justify removing ADEC's examination of new technologies as part of the BAT regulations.

How is ADEC going to meet the mandates of AS 46.04.030(e) in ensuring that spill response and prevention equipment remains Best Available Technology? How will ADEC determine when performance standards set in regulation need strengthening because new technology now allows a reliable higher standard of performance? There are other alternatives to a

barges, secondary containment systems, hydrostatic testing, enhanced vessel traffic systems, or enhanced crew or staffing levels have been implemented, and, in its discretion, may make exceptions to the requirements of (k) of this section to reflect the reduced risk of oil discharges from the facility, pipeline, vessel, or barge for which the plan is submitted or being modified."

technology conference under .447(a)(1) – held at frequency of least once every five years – that could be pursued without wholesale repeal of the regulation. For example, ADEC could work with Washington State in conjunction with its Best Achievable Protection for spill response review and with other members of the Pacific States – British Columbia Oil Spill Task Force on these technology issues.

The mandate to engage in studies, inquiries, surveys, or analyses to consider new technologies would be lost by the repeal of the regulation. Shifting all of this analysis to the contingency plan renewal process will not be effective given the narrow set of equipment required to be reviewed there and the reliance solely on the plan holders to identify the range of alternatives to be assessed. ADEC initiated the BAT regulation review in 1997 because of the challenges of dealing with all technology issues as part of plan reviews. Renewed funding and ADEC regulatory focus on the role of 18 AAC 75.447 are the preferred regulatory responses towards improving BAT reviews – not backsliding on the examination of new technologies.

PWSRCAC opposes the repeal of 18 AAC 75.447.

18 AAC 75.448(c)(3). Oil discharge prevention and contingency plan (ODPCP); general content and approval criteria

18 AAC 75.448(c)(3) identifies, by type of entity, the appropriate person with the authority to commit the resources set out in the plan. The revised paragraph cross-references 18 AAC 15.010(b) which is not the correct section in 18 AAC 15. The reference should be 18 AAC 15.030 but that section needs to be updated to include LLCs and Joint Ventures. See comments on 18 AAC 75.408(b).

The reference and referenced section need to be revised.

18 AAC 75.449(a)(6)(M). Response scenario - wildlife

This proposed subparagraph adds language that wildlife procedures and methods should follow recommendations from the Alaska Regional Response Team's (ARRT) Wildlife Protection Guidelines for Oil Spill Response in Alaska. These procedures are required by the Alaska Regional Contingency Plan and are promulgated after public review under 40 C.F.R. § 300.210(c)(3).

To comply with AS 44.62.245, which governs incorporation of material by reference, the regulation needs to reference the date of the adopted Guidelines and, if future amendments are to be incorporated, state "as amended."

If future versions of the Wildlife Protection Guidelines, which have undergone public review as part of the ARRT process, are intended to be incorporated by reference, the cross-reference should read: "the Alaska Regional Response Team Wildlife Protection Guidelines for Oil Spill Response in Alaska,

dated August 31, 2020, as amended, and promulgated pursuant to 40 C.F.R. § 300.210(c)(3) and the Alaska Regional Contingency Plan.”

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

For purposes of requiring a description and schedule in the prevention plan, proposed 18 AAC 75.450(b)(1) removes specific references to oil discharge prevention training programs required by 18 AAC 75.020(a); (ii) substance abuse and medical monitoring programs required by 18 AAC 75.007(e); and (iii) security and surveillance programs required by 18 AAC 75.007(f).

Proposed 18 AAC 75.450(a) still requires a description and schedule of regular oil discharge prevention, inspection, and maintenance programs in place at the facility or operation. We interpret that phrase to include discharge prevention training programs required by 18 AAC 75.020(a); substance abuse and medical monitoring programs required by 18 AAC 75.007(e); and security and surveillance programs required by 18 AAC 75.007(f).

PWSRCAC requests under AS 44.62.213(b) that ADEC confirm that the programs in former .425(e)(2)(A)(i)-(iii) are covered by the proposed language at 75.450(b)(1).

18 AAC 75.450(b)(2). Discharge history

Under 18 AAC 75.450(b)(2), the plan holder must list all known oil discharges greater than 55 gallons that have occurred at the facility within the state. This discharge volume is inconsistent with other ADEC oil release reporting requirements except those to impermeable secondary containment areas. PWSRCAC recommends that this section be revised to reduce the threshold for discharge history reporting from 55 gallons to a lower volume threshold. ADEC's current spill reporting requirements (found at <https://dec.alaska.gov/spar/ppr/spill-information/reporting/>) identify any release to water and any release to land of 10 gallons or more as significant and worthy of mandatory reporting.

PWSRCAC requests that the threshold for discharge history reporting in an ODPCP be brought into alignment with ADEC discharge reporting requirements.

18 AAC 75.451(b)(1-2). Information on oil storage containers in facility description and operational overview

This section adds specificity regarding the information that should be included for different types of oil storage containers. The additional clarification is helpful, but PWSRCAC suggests a few additional details should be required, at least for tanks of 10,000 gallons or larger. As is common practice in the Valdez Marine Terminal ODPCP, the regulation should add "year of last and next inspections as required" for 18 AAC 75.451(b)(1). Additionally, this section should include "location" for both the larger tanks at 18 AAC 75.451(b)(1), as is already included for the tanks of 1,000-10,000 gallons at 18 AAC 75.451(b)(2). This information should be readily available to the plan holder and a helpful way to share information on inspection cycles.

PWSRCAC requests that the proposed regulations be amended to require that a plan include both location and inspection dates (previous and next, for both internal and external inspections) for tanks with a capacity greater than 10,000 gallons.

18 AAC 75.451(b)(7-8). Information on oil terminal, exploration, and production facilities in facility description and operational overview

This section adds specificity regarding details required in the plan, including a requirement to provide information about all facility oil piping at an oil terminal. The additional clarification is helpful, but would be even more useful to both oil spill prevention and an actual response if it included a description of each piping segment name, piping material type, installation date, thickness, diameter, length, buried/aboveground length, insulated/uninsulated length, inspection classification and inspection standard used (e.g., Class 1, 2, or 3 based on API 570), applied inspection methods (e.g., UT, ILI, radiographic, guided-wave), date of last inspection, date for next inspection, highest measured corrosion rate and associated inspection date (based on most recent inspection), corrosion threshold for repair or replacement, number of corrosion coupons, number of corrosion inhibitor injection locations, type(s) of cathodic protection and/or protective coatings, and presence of any secondary containment around the piping. This type of information should be readily available to an operator and easily added to the more complete facility description that would be required under the proposed regulations.

PWSRCAC requests that the proposed regulations be amended to require additional details about facility oil piping, including each piping segment name, piping material type, installation date, thickness, diameter, length, buried/aboveground length, insulated/uninsulated length, inspection classification and inspection standard used (e.g., Class 1, 2, or 3 based on API 570), applied inspection methods (e.g., UT, ILI, radiographic, guided-wave), date of last inspection, date for next inspection, highest measured corrosion rate and associated inspection date (based on most recent inspection), corrosion threshold for repair or replacement, number of corrosion coupons, number of corrosion inhibitor injection locations, type(s) of cathodic protection and/or protective coatings, and presence of any secondary containment around the piping.

18 AAC 75.451(e). Realistic maximum response operating limitations (RMROL)

In combining 18 AAC 75.425(e)(3)(D) and 18 AAC 75.445(f), ADEC is proposing in new 18 AAC 75.451(e)(2) to require the plan to include descriptions of “additional specific temporary prevention or response measures that will be taken to reduce the environmental consequences of a discharge, including nonmechanical response options, during those periods when environmental conditions exceed realistic maximum response operating limitations.”

ADEC has included this requirement and removed the permissive statement from 18 AAC 75.445(f) that the “department may require the plan holder to take specific temporary prevention or response measures until environmental conditions improve to reduce the risk

or magnitude of an oil discharge during periods when planned mechanical spill response options are rendered ineffective by environmental limitations.”

PWSRCAC supports the plan requirement proposed in the new 18 AAC 75.451(e)(2) and notes that, after repeal of 18 AAC 75.445(f), ADEC still retains its approval authority under AS 46.04.030 and its condition of approval authority under AS 46.04.030(e) to ensure temporary prevention or response measures are utilized during times of RMROL.

18 AAC 75.445(c)(1). Requests for additional information

A semi-colon should be used instead of a comma after the new language.

18 AAC 75.455(f). Criteria for holding a public hearing, page 79

This section is revised to include criteria for holding a public hearing, including a request from “50 residents of the affected area” and “the governing body of an affected municipality.” It is not clear how ADEC may determine the affected area of a contingency plan for this purpose: on the one hand, this may be a significant portion of the population of a village, and, on the other, people may be “affected” from many miles away if they rely on a particular area for commercial (e.g., fishing or tourism) or subsistence purposes. PWSRCAC also seeks to ensure that “municipality” is understood broadly, as appropriate to different forms of governance common in Alaska.

Please clarify that the term municipality includes a village, borough, city, or tribe.

18 AAC 75.485. Discharge exercises

In 2003, the Alaska Legislature changed the frequency of contingency plan renewals from every three years to every five years. At that time, Governor Frank Murkowski, who introduced the bill, stated in his bill introduction letter that, “A five-year renewal period will streamline the review for both the state and industry, while maintaining Alaska’s strong oil spill prevention and response standards. Focusing on the actual testing of oil spill prevention and response readiness through in-the-field inspections, drills, and exercises is our most effective means of ensuring spill prevention and response readiness.”

When making the change, the Alaska Legislature made a specific legislative finding: “The legislature finds that focusing on the actual testing of oil spill prevention and response preparedness through in-the-field inspections, drills, and exercises is our most effective means of ensuring spill prevention and response readiness and protection of the environment” (Section 1, ch. 12 SLA 2003). Since that time, regulations have given ADEC discretion to conduct up to two exercises per year, per ODPCP (or more if deficiencies are identified).

The current regulations allow ADEC to conduct no more than two exercises in a given year (announced or unannounced) per plan unless gross deficiencies are observed. This language

does not mean that ADEC *will* hold two exercises per plan holder, per year, simply that that they *can*. By contrast, the proposed regulation changes would reduce the maximum number of exercises that ADEC may conduct, while also committing ADEC to conduct at least one exercise per plan in each five-year plan cycle as a minimum, with the option of one additional potential exercise per year.

PWSRCAC supports the notion of establishing a clear minimum number of exercises but finds the proposed number of “at least one exercise per plan in each five-year plan cycle” inadequate for large crude operators such as those in Prince William Sound. Instead, the minimum number of exercises, at least for crude oil plans, should require one significant Incident Management Team (IMT) table-top exercise and two field deployments each year. ADEC could be granted discretion to allow deployment exercises to count for more than one plan if the response activities and operating environment would be the same for each plan holder.

If this more appropriate minimum is not feasible for ADEC's level of resources and commitment to rigorous oversight, an alternative would be to at least mirror the minimum level of exercises required in federal regulations and include a worst-case discharge IMT exercise *with* full field deployments every three years. However, we think this would actually require more effort on industry than strategically working with ADEC to ensure that both state and federal requirements – and, as noted above, the Alaska Legislature's intent when changing plan renewals to the five-year cycle – are met through a steady exercise effort with the minimum annual approach suggested above.

PWSRCAC strongly encourages ADEC to revise the proposed regulations at 18 AAC 75.485 to require a minimum of one IMT and two field deployment exercises each year for crude oil operators in Prince William Sound. The potential for additional exercises could then be reduced to two per plan cycle, allowing for unannounced notification or call-outs, or other unannounced exercises.

PWSRCAC requests that ADEC revise language at 18 AAC 75.485(d) to revert to the previous commitment that if a plan holder fails to demonstrate the ability to implement their plan, ADEC will require additional exercises or take other appropriate action. (The word “will” was changed to “may” in the proposed regulations.)

PWSRCAC requests that the regulations define the term “operations-based exercise” in the regulations (instead of just in the Oil Spill Response Exercise Manual or “Manual”). The phrase “operations-based exercise” should also be added to 18 AAC 75.485(a)(1)(B) to clarify that all exercises considered under this portion of the regulations should meet this broadly defined term.

Oil Spill Response Exercise Manual - A GUIDE FOR PLANNING, CONDUCTING, AND EVALUATING EXERCISES, DRAFT VERSION October 27, 2021

As discussed above, PWSRCAC disagrees with the proposed minimum number of exercises described in the proposed regulations and Table 2 of the draft Manual. It is clear that effort has been made to allow plan holders to modify their federal (National Preparedness for

Response Exercise Program [PREP]) exercises so they can meet ADEC requirements as well, and this should only make it possible to do *more* exercises and achieve the two-per-year maximum in the *current* regulations. It is also fully appropriate that ADEC commit to taking action if a plan holder fails to adequately demonstrate the ability to implement their plan. Thus, our comments on .485, above, apply to the relevant sections of the draft Manual as well (both in the new draft Table 2).

Wherever this document mentions Local On-Scene Coordinators (e.g., page 17 under Full-Scale/Combined IMT and Field Exercises), it should also mention Tribal On-Scene Coordinators since this role, recently introduced in Alaska planning, warrants attention in exercises.

Please increase the minimum number of exercises as discussed above. Please also change "may" back to "will" when referring to ADEC's commitment to taking appropriate action if a plan holder does not adequately demonstrate the ability to implement their plan.

We appreciate that the reference to RCACs remains on page 20 where the Exercise Joint Planning Team is discussed.

Please also add mention on page 36 of the fact that RCACs may participate in the Evaluation Team (as noted, this group will typically "mirror that of the planning team").

Also, PWSRCAC suggests fixing a typo on page 28 (moving the word "plan" in the sentence, "ADEC strongly supports and encourages plan ODPCP holders to do this, as the benefits are many.")

18 AAC 75.990(xxx). "Primary operational control"

See above comments on 18 AAC 75.400(a)(2).

18 AAC 75.027(f). Emergency towing arrangements

The proposed regulations would remove the option of using the Prince William Sound tow package for tankers calling at the Valdez Marine Terminal. Instead, all tankers larger than 20,000 deadweight tons would be required to have an emergency towing arrangement that meets the requirements of U.S. Coast Guard regulations at 33 C.F.R. 155.235 which in turn requires towing arrangements to be in accordance with International Maritime Organization (IMO) standards found in IMO resolution MSC.35(63). State regulations would still require the emergency towing arrangement to be "fitted to allow towing vessels commonly available in the area of operation to take the vessel in tow rapidly." State regulations do not define "rapidly" (and never did), but the IMO guidelines require that the aft arrangement be able to be deployed in 15 minutes and the forward arrangement in 60 minutes or less.

At the same time, the proposed change in Best Available Technology regulations means that the tow lines would no longer be included in a BAT analysis submitted within operators' plans, since they would rely on a fixed performance standard. This provides an important

opportunity to ensure that such a fixed standard achieves the statutory intent of being best available technology under 46.04.030(e). With technological improvements since the 1990s, it is readily feasible for tankers calling at the terminal to be outfitted with an emergency tow system that meets IMO requirements and to also meet the 15-minute standard from the forward position, as well as the aft position.

As described in the attached memo from Glosten Associates dated January 10, 2022, the 15-minute standard for the forward system can be achieved with available technology, including, if operators choose, with a portable package that could be used when tankers are engaged in the TAPS trade. As explained in the memo, the ability to take a tanker under tow quickly from the bow is important and likely necessary to a successful rescue of a drifting ship, particularly in an area such as Hinchinbrook Entrance in Prince William Sound.

PWSRCAC supports adoption of the requirements of 33 C.F.R. 155.235 that includes the IMO standards for emergency towing arrangements, with the additional requirement that tankers calling at the Valdez Marine Terminal should be able to deploy the arrangement from the forward position in 15 minutes.



Glosten

PROJECT MEMORANDUM

Emergency Towing Arrangements on Tank Vessels

10 January 2022

TO: Alan Sorum
FROM: Peter Soles
JOB/FILE NO. 22001.01

References

1. *Adoption of Guidelines for Emergency Towing Arrangements on Tankers*, IMO resolution MSC.35(63), adopted 20 May 1994.
2. *Comparison of Capabilities Between Prince William Sound Emergency Towing Package and IMO/SOLAS Emergency Towing Package for Tankers*, Prepared for Prince William Sound Regional Citizens' Advisory Council, Little River Marine Consultants, February 2018.

Introduction

Glosten was contracted to provide written expert opinion on the extent to which the Prince William Sound (PWS) Emergency Towing Package required under 18 AAC 75.027(f) is redundant or duplicative with respect to the emergency towing outfit tank vessels (tankers) are required to have under the International Convention for the Safety of Life at Sea (SOLAS). We were asked to comment specifically on the potential benefits of (1) carrying a rapidly deployable synthetic emergency towing system (ETS) on the bow, and (2) the ability to tow a disabled tanker stern-first in the event a towing connection to the bow cannot be safely established.

Regulatory Background

ETS's were first introduced by IMO resolution A.535(13) in 1983 for tankers greater than 50,000 DWT, with recommendatory guidelines for their technical layout, including provision of an emergency towing arrangement at both ends of the ship. The resolution was adopted, and the requirements codified in SOLAS 1974 Chapter V, regulation 15-1.

In 1994, an amendment to SOLAS expanded the requirement to apply to all tankers of 20,000 DWT and above, including oil, chemical, and gas tankers. Installation became mandatory for new ships by 1996 and for existing ships by 1 January 1999. IMO resolution MSC.35(63), also adopted in 1994, "upgraded" the layout description. In addition to establishing new technical requirements, MSC.35(63) required that the aft arrangement must be possible to rig in 15 minutes under "harbour conditions," while the forward arrangement has a permitted deployment time of 60 minutes.

It should be noted that the term "harbour conditions" is not defined in the resolution. IMO and classification societies generally use this term to describe a vessel loading condition (e.g. *harbor condition* vs. *seagoing condition*), where higher bending and shear forces imposed on a ship's structure are permissible due to lower environmental forces in a given area. Used in this context,

however, the term “harbour conditions” is assumed to mean such sheltered water conditions as found in fjords, lakes, and rivers, where there is a degree of protection from ocean waves and swell.

Emergency Towing by Bow Versus Stern

Though it is certainly debatable which portions of the standard inbound/outbound tanker route through PWS should be regarded as “sheltered,” it has little relevance to the issue in question. The crucial point to note is that fastening a towline to a disabled vessel is an inherently difficult and dangerous operation in any condition.

As metocean conditions worsen, the task of establishing an emergency towing connection becomes increasingly difficult and dangerous. Particularly for a tanker in a blackout condition, where deck machinery is of no use, it may prove impossible to safely rig the fixed ETS SOLAS requires on the bow when wind speeds and/or wave heights become too great. These forward ETS's are typically composed of heavy steel components such as stud-link chafe chain and large diameter wire rope, such that they can withstand the rigors of a long-distance, multi-day ocean towing operation. As such, they take time and moderate-to-favorable conditions to deploy successfully – hence the “relaxed” 60-minute time-to-deploy requirement, as compared to the ETS SOLAS requires on the stern.

The logic behind the SOLAS stern ETS requirement is somewhat different from that of the forward ETS. These systems are intended for situations where immediate action is necessary to prevent a grounding, collision, or allision – principally nearshore disablements where the ship still has forward inertia. The arrangement of the aft ETS, as required by resolution MSC.35(63), affords the ability to connect very quickly and apply braking/towing forces. While the language of the resolution does not opine on the functional intent of the aft ETS, it is our opinion that these systems are suitable for the following purposes/emergency scenarios:

- To provide a means to arrest the forward inertia of a vessel that experiences a propulsion or steering system failure while transiting in a confined water body or navigation channel.
- To provide a means to take a disabled vessel in tow, on a temporary/short-term basis, very quickly in adverse weather conditions – owing principally to the lower elevation and approachability of the aft deck as compared to the bow.
- To provide a means to take a vessel in tow by the stern in the event of a powered grounding (i.e. the bow is aground and inapproachable).
- To provide an alternative means to take a vessel in tow if, for any reason, it is not possible to safely connect to the bow.

It is our understanding that the original intent of the PWS Emergency Towing Package was to address a specific gap in the SOLAS requirements: given the lack of sea room in PWS and limited time to prevent a drift grounding in adverse conditions, there is need for a means to rapidly take a disabled TAPS tanker in tow by the *bow*. This ability is not afforded by the forward ETS required under SOLAS. We agree with this principle.

It is also our opinion that the aft systems should *not* be used for long-distance or multi-day tows unless there is no alternative. With the exception of specialized double-acting icebreakers that serve Arctic oilfields, tankers are simply not designed to transit/travel backwards (stern first) for any significant distance or period of time. Without a second tug on the bow to stabilize the forward end, a ship being towed stern first will exhibit considerable directional instability; and while the required strength of towing components comprising the aft ETS is equivalent to that of

the forward ETS, increased towline stress will occur if yawing is experienced. For this reason, if the ship is to be towed stern first for any distance, every reasonable effort should be made to secure the rudder amidships to prevent the ship from going hard-over as it gathers sternway. Failure to do this will not only make it extremely difficult to maneuver and maintain course during towing, but the resulting towline stresses will increase the probability of parting the tow wire or overloading other components of the towing system.

Conclusion

In conclusion, carriage of a rapidly deployable synthetic towing kit on the bow of a tanker, supplemental to the fixed ETS required under SOLAS, may appear largely redundant to those unfamiliar with emergency towing operations. However, for ships operating on nearshore service routes or in confined water bodies like Prince William Sound, portable emergency towing kits such as those manufactured by Samson Rope Technologies and Cortland can serve as an important and relatively inexpensive tool to reduce the probability of a vessel casualty and related environmental damage. This is true largely because the language of resolution MSC.35(63) does not require the forward ETS to be rapidly deployable as it does for the aft ETS. Because it is not specifically required, most vessels are not outfitted in this way. This is the result of commercial/economic concerns on the part of the vessel owner, seeking to control/minimize cost at the time of construction. Without some form of economic incentive to exceed SOLAS requirements, most ship designers and/or owners will elect only to satisfy the rules as written.

Simply put, portable ETS's similar to the PWS Emergency Tow Package in terms of construction provide the ability to connect to the bow of a disabled tanker safely and quickly in conditions when the forward ETS required by SOLAS may not be practically deployable. In such circumstances, portable ETS's increase the likelihood that a stricken vessel can be taken in tow bow-first and towed, in a controlled manner, from its original position to a port of refuge or other safe location several miles away, or more.