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**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

MEMORANDUM

TO: Gary Mendivil, Department of Environmental Conservation
FROM: Scott Meriwether, Office of the Lieutenant Governor - 465.4081 
DATE: March 17, 2016
RE: Filed Permanent Regulations: Department of Environmental Conservation

Regulations re: spill prevention and response and spill response plan amendments (18 AAC 75.400 - 18 AAC 75.421; 18 AAC 75.428; 18 AAC 75.446(a); 18 AAC 75.455 - 18 AAC 75.465; 18 AAC 75.990)

Attorney General File:	JU2015200192
Regulation Filed:	March 17, 2016
Effective Date:	April 16, 2016
Print:	218, July 2016

cc with enclosures: Linda Miller, Department of Law
Dianne Blumer, Administrative Regulation Review Committee
Judy Herndon, LexisNexis

ORDER ADOPTING CHANGES TO
REGULATIONS OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

The attached thirty-three pages of regulations, dealing with 18 AAC 75 (Oil and Other Hazardous Substances Pollution Control) spill response plan amendments are hereby adopted and certified to be a correct copy of the regulation changes that the Department of Environmental Conservation adopts under the authority of AS 46.03 and AS 46.04 after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

In considering the comments the Department of Environmental Conservation paid special attention to the cost to private persons of the regulatory action being taken. The Department of Environmental Conservation also gave special attention to alternate practical methods in this regulatory action, as required by AS 46.03.024.

The regulation changes adopted under this order take effect on the 30th day after they have been filed by the Lieutenant Governor as provided in AS 44.62.180.

DATE: March 14, 2016
Juneau, Alaska



Larry Hartig, Commissioner

FILING CERTIFICATION

I, Byron Mallott, Lieutenant Governor for the State of Alaska, certify that on March 17, 2016, at 1:50 p.m., I filed the attached regulations according to the provisions of AS 44.62.040 – 44.62.120.



Byron Mallott, Lieutenant Governor

Effective: April 16, 2016

Register: 218, July 2016

18 AAC 75.400 is amended to read:

18 AAC 75.400. Applicability. (a) A person who is subject to AS 46.04.030 or AS 46.04.055(j) must file an application for approval of an oil discharge prevention and contingency plan as required under 18 AAC 75.400 - 18 AAC 75.420 and meet the applicable requirements of 18 AAC 75.425 - 18 AAC 75.495. A person who is subject to AS 46.04.055(f) must file an application for approval of a nontank vessel plan as required under **18 AAC 75.400 - 18 AAC 75.421** [18 AAC 75.400 - 18 AAC 75.420] and meet the applicable requirements of 18 AAC 75.426 - 18 AAC 75.496. The application must be made

(1) for an oil terminal facility **that has a storage capacity of 5,000 barrels or more of crude oil or 10,000 barrels or more of noncrude oil as provided in AS 46.04.050(a)**, by the owner or operator of the facility;

(2) for a [TANK] vessel [, OIL BARGE, OR ANY OTHER VESSEL TRANSPORTING LIQUID BULK OIL CARGO], by

(A) the charterer, if the vessel [OR BARGE] is chartered by demise;

(B) the operator of the vessel;

(C) the owner of the vessel [OR BARGE], if the agents or employees of the owner retain control and responsibility for the operation of the vessel [OR BARGE];
or

(D) in any other case, the person with primary operational control;

(3) for an exploration or production facility, whether mobile or fixed, by the lease holder or the operator;

(4) for a pipeline, by the lease holder or the operator; **or**

(5) [FOR A NONTANK VESSEL, BY

(A) THE CHARTERER, IF THE NONTANK VESSEL IS
CHARTERED BY DEMISE;

(B) THE OPERATOR;

(C) THE OWNER, IF THE AGENTS OR EMPLOYEES OF THE
OWNER RETAIN CONTROL AND RESPONSIBILITY FOR THE OPERATION OF
THE NONTANK VESSEL; OR

(D) IN ANY OTHER CASE, THE PERSON WITH PRIMARY
OPERATIONAL CONTROL; OR

(6)] for a railroad tank car, by the railroad transporting the railroad tank car.

(b) If it determines that an exemption will be protective of human health, safety, and welfare, and of the environment, the department will exempt from the requirements of **AS 46.04.030(c) and 46.04.055(f)** [AS 46.04.030(c) AND AS 46.04.055(f),] a vessel that is conducting, or is available only for conducting, an oil discharge response operation. A person seeking an exemption under this subsection must apply on **an application** [A] form supplied by the department. The department will approve or deny the request for **an** exemption **not later than** [WITHIN] 10 **working** days after it receives an application. In an emergency response to an actual discharge, a person seeking an exemption may make a verbal request, and the department **may** [WILL, IN ITS DISCRETION,] issue a verbal approval. The department will confirm a verbal approval in writing, stating the period during which the approval is valid.

(c) The owner or operator of an oil terminal facility that is subject to the requirements of AS 46.04.030 and 18 AAC 75.400 - 18 AAC 75.495 may apply for an exemption to those

requirements upon proof to the department that the effective storage capacity of the facility has been **permanently** reduced below the amounts set out in AS 46.04.050. For purposes of reducing effective storage capacity, tanks and associated piping must be emptied and rendered unusable to the department's satisfaction. Tanks **removed from** [TAKEN OUT OF] service must be clearly **marked with the words "Out of Service" and the date taken out of service. A person seeking an exemption under this subsection must apply on an application form supplied by the department. The department will approve or deny the request for an exemption not later than 30 days after it receives an application** [POSTED WITH A PLACARD PROHIBITING REFILLING OF THE TANK WITHOUT DEPARTMENT APPROVAL]. Before reactivation of a tank that has been **removed from service** [DISABLED] for the purposes of an exemption under this subsection, the owner or operator must notify the department and, if necessary, must file a new application for approval of an oil discharge prevention and contingency plan. **For the purpose of changes to the storage capacity of a tank, any change must be made in a permanent manner.** The department will conduct inspections as necessary to ensure compliance with this subsection.

(d) The department may accept a single plan from an operator to address multiple facilities based on similarities in operations, **receiving environments**, logistical considerations, or other factors indicating to the satisfaction of the department that a single plan is appropriate given the commonality of operations.

18 AAC 75.400 is amended by adding new subsections to read:

(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). 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.

(f) A natural gas production or natural gas terminal facility as defined in AS 46.04.050(b) is not required to submit an oil discharge prevention and contingency plan application.

(g) An exploration facility meeting the natural gas exploration facility exemption provisions of AS 46.04.050(c) is not required to submit an oil discharge prevention and contingency plan application.

(h) An oil discharge prevention and contingency plan is required for
(1) an oil terminal facility, except for a vessel operating as an oil terminal facility, until the storage capacity of the facility has been permanently reduced as set out in (c) of this section;

(2) a pipeline, while the pipeline

(A) is connected to a production facility or oil terminal facility; or

(B) contains oil;

(3) an exploration or production facility until the Alaska Oil and Gas Conservation Commission determines that all wells have been plugged as required under 20 AAC 25.112 and abandoned as required under 20 AAC 25.105; and

(4) a vessel while in the waters of the state.

(i) In this section, "receiving environment" means fresh or marine water, ice, or land

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outside of an impermeable secondary containment area. (Eff. 5/14/92, Register 122; am 11/27/2002, Register 164; am 12/14/2002, Register 164; am 5/26/2004, Register 170; am 4/16/2016, Register 218)

Authority: AS 46.03.020 AS 46.04.050 AS 46.04.070
AS 46.04.030 AS 46.04.055

18 AAC 75.405 is amended to read:

18 AAC 75.405. Pre-application notification and consultation for oil discharge prevention and contingency plans and nontank vessel equivalent plans; new plans and plan renewals. (a) At least 60 days before submitting an application for approval of a new oil discharge prevention and contingency plan or a nontank vessel equivalent 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. **An electronic mail or facsimile transmission delivered to the appropriate department office will be considered written notice for purposes of this subsection.** [THE DEPARTMENT WILL DETERMINE THE NUMBER OF COPIES OF THE PLAN THAT THE APPLICANT WILL BE REQUIRED TO SUBMIT TO THE DEPARTMENT.]

(b) **For an application submitted after {^{October 16, 2016} date six months after effective date of regulation}, the** [THE] applicant **must** [MAY] consult with the department **not later than 30 days before submitting the application package** to ensure that the application meets the requirements of **18 AAC 75.408 and the requirements of** 18 AAC 75.410 **or 18 AAC 75.420,** [AND] to discuss the contents of the proposed **plan, and to discuss the review process under**

18 AAC 75.455 [PLANS].

(c) Pre-application notification and consultation is not required for a nontank vessel streamlined application submitted under **18 AAC 75.421** [18 AAC 75.410(d)]. (Eff. 5/14/92, Register 122; am 11/27/2002, Register 164; am 4/16/2016, Register 218)

Authority: AS 46.03.020 AS 46.04.050 AS 46.04.070
 AS 46.04.030 AS 46.04.055

18 AAC 75 is amended by adding a new section to read:

18 AAC 75.408. General procedures to apply for oil discharge and contingency plans and nontank vessel equivalent plans. (a) An application for approval of an oil discharge prevention and contingency plan or a nontank vessel equivalent plan must contain

- (1) an application form supplied by the department containing
 - (A) the applicant's legal name, address, and telephone number;
 - (B) the name, location, and type of facility or operation covered by the plan;
 - (C) for a vessel, the vessel's name, official number, and country of registry, the name and address of the owner, and the name and address of the operator;
 - (D) for a railroad tank car, the name of the railroad covered by the plan;
 - (E) the scheduled date for the operations covered by the plan to begin;and
 - (F) any other information on the application form that is applicable to the facility or operation;

(2) a copy of the plan or amendment to the plan as applicable; and

(3) supporting documentation as requested by the department.

(b) The application form must be signed as follows:

(1) for a corporation, by a principal executive officer of at least the level of vice president or that officer's authorized representative, if the representative is responsible for the overall management of the project or operation;

(2) for a partnership, by a general partner;

(3) for a sole proprietorship, by the proprietor;

(4) for a municipal, state, federal, or other public facility, by either a principal executive officer, ranking elected official, or other authorized employee;

(5) for a joint venture, by the operator;

(6) for a limited liability company, by a member;

(7) by an agent who has been delegated that authority in writing to the department by the responsible party under (1) - (6) of this subsection.

(c) The initial application package, responses to requests for additional information, and final versions of the plan must comply with the following:

(1) for submittals after {*date six months after effective date of regulation*}, the format must be electronic, paper, or both, as the department specifies;

(2) the department will specify the number of copies;

(3) for submittals after {*date six months after effective date of regulation*}, the department will specify the electronic format to be used; the submittal must be electronically searchable;

(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;

(5) for minor amendments and routine updates, the applicant must

(A) provide all copies to the department;

(B) provide copies of the final version of the plan to the Department of Natural Resources, the Department of Fish and Game, regional citizens' advisory councils, and other persons designated by the department;

(6) an applicant must notify the Department of Natural Resources, the Department of Fish and Game, regional citizens' advisory councils, and other persons designated by the department when a proposed minor amendment is provided to the department; if these parties submit a request to the department for a copy of the minor amendment, the department will direct the applicant to provide a copy;

(7) for submittals after {*date six months after effective date of regulation*}, 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;

(8) after {*date six months after effective date of regulation*}, for new plans, plan renewals, and major amendments, the department will post a copy of the proposed and final version of the application package on the department's website; for minor amendments and routine updates, the department will post a copy of the final version of the application package on the department's website. (Eff. 4/16/2016, Register 218)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070
AS 46.04.030

Editor's note: The application form referenced in 18 AAC 75.408 is available on the department's Internet website.

18 AAC 75.410(a) is amended to read:

18 AAC 75.410. Procedures to apply for oil discharge prevention and contingency plans and nontank vessel equivalent plans; new plans [APPLICATION PROCEDURES].

(a) An application for approval of **a new** [AN] oil discharge prevention and contingency plan or a **new** nontank vessel equivalent plan must **be submitted in accordance with 18 AAC 75.408** [INCLUDE A COMPLETED APPLICATION FOR APPROVAL, ON A FORM SUPPLIED BY THE DEPARTMENT, AND THE NUMBER OF COPIES OF THE PLAN DETERMINED UNDER 18 AAC 75.405(a)]. **For submittals after {date six months after effective date of regulation}, an application must be submitted at least 180 days before the proposed start of operation.** [THE DEPARTMENT MAY REQUIRE THE SUBMISSION OF ADDITIONAL COPIES OF THE PLAN AND WILL NOTIFY THE APPLICANT OF THE NEED FOR ADDITIONAL COPIES WITHIN 10 DAYS AFTER THE PLAN IS SUBMITTED. IN ADDITION, THE APPLICANT MUST PROVIDE COPIES OF THE PLAN, UPON REQUEST, TO RESOURCE AGENCIES, REGIONAL CITIZENS' ADVISORY COUNCILS, AND OTHER PERSONS AS DIRECTED BY THE DEPARTMENT UNDER 18 AAC 75.455.]

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18 AAC 75.410(b) is repealed:

(b) Repealed 4/16/2016.

18 AAC 75.410(c) is amended to read:

(c) The department will review an application **for a new plan** [SUBMITTED UNDER (a) OF THIS SECTION] using the procedures set out **under** [AT] 18 AAC 75.455 and will issue its decision under 18 AAC 75.460(a).

18 AAC 75.410(d) is repealed:

(d) Repealed 4/16/2016.

18 AAC 75.410(e) is repealed:

(e) Repealed 4/16/2016. (Eff. 5/14/92, Register 122; am 11/27/2002, Register 164; am 12/14/2002, Register 164; am 4/8/2012, Register 202; am 4/16/2016, Register 218)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070
AS 46.04.030

18 AAC 75 is amended by adding a new section to read:

18 AAC 75.414. Procedures to apply for oil discharge prevention and contingency plans and nontank vessel equivalent plans; owner or operator changes. 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 nontank vessel equivalent plan requires that the

new owner or operator submit an application package as an amendment under 18 AAC 75.415.

(Eff. 4/16/2016, Register 218)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070
AS 46.04.030

18 AAC 75.415(a) is amended to read:

18 AAC 75.415. Procedures to apply for oil discharge prevention and contingency plans and nontank vessel equivalent plans; plan amendments [APPLICATION FOR AMENDMENT]. (a) **An application for approval of an amendment to an oil discharge prevention and contingency plan or a nontank vessel equivalent plan must be submitted in accordance with 18 AAC 75.408 and approved by the department** [SUBJECT TO (b) OF THIS SECTION,] before a change to a plan [THAT HAS BEEN APPROVED UNDER 18 AAC 75.400 - 18 AAC 75.496] may take effect, **unless it is a routine plan update under (b) of this section** [THE PLAN HOLDER MUST OBTAIN APPROVAL FROM THE DEPARTMENT FOR AN AMENDMENT TO THE PLAN. AN APPLICATION FOR APPROVAL OF AN AMENDMENT MUST BE SUBMITTED ON A FORM SUPPLIED BY THE DEPARTMENT. FOR PLANS APPROVED UNDER 18 AAC 75.460(a), THE APPLICATION MUST BE ACCOMPANIED BY THE NUMBER OF AMENDED PLANS OR PLAN AMENDMENTS DETERMINED UNDER 18 AAC 75.405(a). THE DEPARTMENT WILL USE THE PROCEDURES SET OUT AT 18 AAC 75.455 TO REVIEW A PLAN AMENDMENT, UNLESS THE PLAN AMENDMENT IS A ROUTINE PLAN UPDATE UNDER (b) OF THIS SECTION, ADDS A VESSEL UNDER (c) OF THIS SECTION, OR OTHERWISE DOES NOT

DIMINISH THE PLAN HOLDER'S ABILITY TO RESPOND TO AN OIL DISCHARGE]. A plan amendment that incorporates one or more of the following will be reviewed as a major amendment:

(1) an increase to the response planning standard volume that exceeds the response capabilities of the plan holder documented in the plan;

(2) a change that affects the response scenarios, including a change to the

(A) scenario location;

(B) receiving environment as defined in 18 AAC 75.400(i); or

(C) season of operations;

(3) expansion of the operations to include one or more new physical locations outside of the current operational area of the plan;

(4) a change to the amount or quality of prevention, response resources, or training that reduces the existing level of prevention or response capabilities;

(5) a change that requires an increase in prevention, response resources, or training.

18 AAC 75.415(b) is amended to read:

(b) A routine plan update must be submitted in accordance with 18 AAC 75.408 not later than [TO THE DEPARTMENT AND, FOR PLANS APPROVED UNDER 18 AAC 75.460(a), TO THE APPLICABLE RESOURCE AGENCIES, WITHIN] five days after the date the proposed change occurs. Routine plan updates include

(1) a deletion from [TO] the list of vessels operating under the approved plan if

the deleted vessel is not included as a response asset in the current response action plan under 18 AAC 75.425(e)(1); and

(2) a revision to the list of names, addresses, or telephone numbers of spill command and response personnel [; AND

(3) A REVISION TO A TRAINING PROCEDURE OR COURSE WORK REQUIREMENT THAT DOES NOT REDUCE THE AMOUNT OR QUALITY OF TRAINING REQUIRED BY THIS CHAPTER].

18 AAC 75.415(c) is amended to read:

(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), (vi), (viii) and (x)** [18 AAC 75.425(e)(1)(H) AND 18 AAC 75.425(e)(3)(A)(iii), (vi), (viii), AND (x)]. A plan amendment for the addition of **an oil barge or tank vessel** [A VESSEL] must be submitted **not later than** [AT LEAST] five **working** days before the vessel operates in state waters. The department will review the **amendment** [APPLICATION] and issue a written decision **not later than** [WITHIN] five **working** days after receiving a proposed plan amendment under this subsection **unless** [IF] the department determines that **it is a major amendment under (a) of this section.** [THE ADDITION OF A VESSEL WILL NOT DIMINISH THE PLAN HOLDER'S ABILITY TO RESPOND TO AN OIL DISCHARGE. A PLAN AMENDMENT UNDER THIS SUBSECTION THAT MIGHT DIMINISH THE PLAN HOLDER'S ABILITY TO RESPOND TO AN OIL DISCHARGE WILL BE REVIEWED

UNDER 18 AAC 75.455.]

18 AAC 75.415(d) is amended to read:

(d) An application for approval of a plan amendment to allow the addition of a vessel to operate under an approved nontank vessel equivalent plan must include all the information required by 18 AAC 75.427 for that vessel. A plan amendment for the addition of a vessel must be submitted **not later than** [AT LEAST] five **working** days before the vessel operates in state waters. The department will review the **amendment** [APPLICATION] and issue a written decision **not later than** [WITHIN] five **working** days after receiving a proposed plan amendment under this subsection **unless** [IF] the department determines that **it is a major amendment under (a) of this section.** [THE ADDITION OF A VESSEL WILL NOT DIMINISH THE PLAN HOLDER'S ABILITY TO RESPOND TO AN OIL DISCHARGE. A PLAN AMENDMENT UNDER THIS SUBSECTION THAT MIGHT DIMINISH THE PLAN HOLDER'S ABILITY TO RESPOND TO AN OIL DISCHARGE WILL BE REVIEWED UNDER 18 AAC 75.455.]

18 AAC 75.415(e) is repealed:

(e) Repealed 4/16/2016.

18 AAC 75.415(f) is amended to read:

(f) **If** [FOR PLANS APPROVED UNDER 18 AAC 75.460(a), IF] the department determines that a proposed plan amendment submitted under **(a)** [(b)] of this section **is a major**

amendment [WILL DIMINISH THE PLAN HOLDER'S ABILITY TO RESPOND TO AN OIL DISCHARGE], the department will notify the plan holder **not later than** [WITHIN] 10 **working** days after receipt of the amendment [THAT THE AMENDMENT WILL BE REVIEWED UNDER 18 AAC 75.455]. If the department determines that a proposed plan amendment **is a** **minor amendment** [WILL NOT DIMINISH THE PLAN HOLDER'S ABILITY TO RESPOND TO AN OIL DISCHARGE], the department will **notify the plan holder not later than 10** **working days after receipt of the amendment** [REVIEW THE PLAN AMENDMENT] and issue a written decision **not later than** [WITHIN] 30 days after receipt of the proposed plan amendment.

18 AAC 75.415(g) is amended to read:

(g) **A major amendment will be reviewed under 18 AAC 75.455. A minor amendment will not be reviewed** [FOR A PLAN APPROVED UNDER 18 AAC 75.460(a), THE PLAN HOLDER SHALL NOTIFY AND, UPON REQUEST, SEND A COPY OF ANY PROPOSED PLAN AMENDMENT OR UPDATE SUBMITTED UNDER THIS SECTION TO RESOURCE AGENCIES, REGIONAL CITIZENS' ADVISORY COUNCILS, AND OTHER PERSONS AS DIRECTED BY THE DEPARTMENT] under 18 AAC 75.455.

18 AAC 75.415 is amended by adding a new subsection to read:

(h) For a minor plan 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

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is available on the department's Internet website. (Eff. 5/14/92, Register 122; am 11/27/2002, Register 164; am 12/14/2002, Register 164; am 4/8/2012, Register 202; am 4/16/2016, Register 218.)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070
AS 46.04.030

18 AAC 75.420(a) is amended to read:

18 AAC 75.420. Procedures to apply for oil discharge prevention and contingency plans and nontank vessel equivalent plans; plan renewals [APPLICATION FOR RENEWAL]. (a) A plan holder must apply for renewal of the department's [PLAN] approval **of an oil discharge prevention and contingency plan or nontank vessel equivalent plan in accordance with 18 AAC 75.408. For submittals after {date six months after effective date of regulation}, the application must be submitted at least 180 days, or the number of days stated in the plan approval letter under 18 AAC 75.460(a), [USING A FORM SUPPLIED BY THE DEPARTMENT, SUFFICIENTLY]** in advance of expiration of the plan to permit department review before the plan approval expires.

18 AAC 75.420(b) is repealed:

(b) Repealed 4/16/2016.

18 AAC 75.420(c) is amended to read:

(c) If no change will be made in the plan when it is renewed, a copy of the original plan

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need not **be submitted** [ACCOMPANY THE APPLICATION] and may be incorporated by reference on the [RENEWAL] application form **unless otherwise requested by the department.** [IN ALL OTHER CASES, THE NUMBER OF AMENDED PLAN OR PLAN AMENDMENTS DETERMINED UNDER 18 AAC 75.405(a) MUST ACCOMPANY THE APPLICATION FOR RENEWAL.]

18 AAC 75.420(d) is repealed:

(d) Repealed 4/16/2016

18 AAC 75.420(e) is amended to read:

(e) **An** [EXCEPT AS PROVIDED IN (d) OF THIS SECTION, AN] application for **a plan** renewal will be reviewed under the provisions of 18 AAC 75.455 [OR 18 AAC 75.456, AS APPLICABLE]. (Eff. 5/14/92, Register 122; am 11/27/2002, Register 164; am 4/16/2016, Register 218)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070
AS 46.04.030

18 AAC 75 is amended by adding a new section to read:

18 AAC 75.421. Procedures to apply for nontank vessel streamlined oil discharge prevention and contingency plans. (a) An application for approval of a new nontank vessel streamlined oil discharge prevention and contingency plan must be made on an application form supplied by the department.

(b) An application for approval of an amendment to a nontank vessel streamlined oil discharge prevention and contingency plan must be submitted using an application form supplied by the department and approved by the department before a change to the plan may take effect.

(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.

(d) A plan holder must apply for renewal of the department's streamlined plan approval, using an application form supplied by the department, not later than five working days in advance of the expiration of the plan.

(e) A plan holder may voluntarily suspend or terminate an approved streamlined plan by submitting a nontank vessel streamlined plan notification form supplied by the department. The department will provide acknowledgement of the plan holder's suspension or termination not later than five working days after receiving the notification.

(f) A terminated or expired streamlined plan cannot be reinstated. Before a vessel can enter state waters after a streamlined plan has been terminated or expired, an application for a nontank vessel streamlined plan must be submitted under (a) of this section. (Eff. 4/16/2016, Register 218)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070
AS 46.04.030

18 AAC 75.428 is amended to read:

18 AAC 75.428. Response planning facilitator. (a) A response planning facilitator registered under 18 AAC 75.500 - 18 AAC 75.580 may submit a nontank vessel streamlined plan under **18 AAC 75.421** [18 AAC 75.410(d)] on behalf of a plan holder. A response planning facilitator may

(1) act as an intermediary between the plan holder and one or more nontank vessel cleanup contractors and one or more nontank vessel incident management teams in order to facilitate the submission of a nontank vessel streamlined plan under **18 AAC 75.421** [18 AAC 75.410(d)], including facilitation of the execution of a contract or membership agreement between the plan holder and each nontank vessel cleanup contractor and nontank vessel incident management team as described in 18 AAC 75.426(12) and (13); or

(2) enter into a contract with the plan holder to meet the requirements of 18 AAC 75.400 - 18 AAC 75.496; the response planning facilitator's registration application under 18 AAC 75.553 must

(A) certify that the response planning facilitator has a contract with, or is a member of, one or more nontank vessel cleanup contractors and has a contract with one or more nontank vessel incident management teams registered under 18 AAC 75.500 - 18 AAC 75.580 in each region of operation and for the response planning standard appropriate to each vessel covered under the nontank vessel streamlined plan; and

(B) contain a statement, signed by the response planning facilitator and each nontank vessel cleanup contractor and nontank vessel incident management team, that the nontank vessel cleanup contractor and nontank vessel incident management team

will respond on behalf of a plan holder who enters into a contract with the response planning facilitator to meet the requirements of 18 AAC 75.400 - 18 AAC 75.496.

(b) A response planning facilitator may sign a streamlined plan application **form** as an authorized agent on behalf of the plan holder. An application signed by a response planning facilitator has the full force and effect of an application signed by the plan holder as described in **18 AAC 75.400(a)(2)** [18 AAC 75.400(a)(5)(A) – (D)]. (Eff. 11/27/2002, Register 164; am 4/16/2016, Register 218)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070
AS 46.04.030

18 AAC 75.446(a) is amended to read:

(a) The department will use the criteria set out in (b) - (g) of this section to review a nontank vessel equivalent plan submitted under **18 AAC 75.410, 18 AAC 75.414, 18 AAC 75.415, or 18 AAC 75.420** [18 AAC 75.410(a)].

(Eff. 11/27/2002, Register 164; am 4/16/2016, Register 218)

Authority: AS 46.03.020 AS 46.04.035 AS 46.04.070
AS 46.04.030 AS 46.04.055

18 AAC 75.455 is repealed and readopted to read:

18 AAC 75.455. Department review procedures for oil discharge prevention and contingency plans and nontank vessel equivalent plans; new plans, plan renewals, and major plan amendments. (a) Not later than seven working days after receipt of an oil discharge

prevention and contingency plan or nontank vessel equivalent plan application package for a new plan, plan renewal, or major amendment, the department will determine if the application package is sufficient for review. If the application package is not sufficient for review, the department will notify the applicant in writing.

(b) When the department determines that an application package is sufficient for review, the department will

(1) notify the applicant in writing;

(2) direct the applicant to provide copies of the application package to reviewers in accordance with 18 AAC 75.408(c);

(3) set the public comment period for a minimum of 30 days; if the department determines the package to be unusually large or complex, or determines a longer comment period to be in the public interest, the department will set the public comment period for a maximum of 45 days;

(4) send a letter to the applicant, the parties specified in 18 AAC 75.408(c)(4), and other persons who have made a written request for information regarding submissions subject to review under this section; in the letter the department will include

(A) information on the public comment period established under (3) of this subsection; and

(B) a statement that the department will accept comments on the plan and proposed requests for additional information until the end of the comment period; and

(5) direct the applicant to publish a one-time notice provided by the department announcing the public comment period for the plan; the applicant is responsible for paying the

cost of the notice under this paragraph; the applicant must publish the notice in one or more publications of general circulation in the area that would be affected by the operation; in the notice the department will include

(A) a statement that a person may submit comments or propose requests for additional information by providing them to the department before the published deadline;

(B) information on the nature and location of the plan;

(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

(D) after {October 16, 2016 *date six months after effective date of regulation*}, a statement that the application package is available on the department's Internet website.

(c) If the department determines that additional information is required to evaluate if the application package is complete,

(1) the department will notify the applicant in writing that a request for additional information will be transmitted; the department will transmit the request for additional information not later than 90 days after the end of the public comment period in (b) of this section; the department may set a deadline for the submittal of the additional information;

(2) the applicant must provide responses to the department's requests for additional information to the department as required by 18 AAC 75.408(c)(1) - (4) and (7);

(3) if the applicant has not provided the information requested or if the applicant's responses to requests for additional information cause the department to identify

additional information needed to find the application package is complete, the department will send subsequent requests for additional information until the department determines that the requests have been answered and the application package is complete; and

(4) when the department has verified all requests have been addressed, the applicant must provide copies of the responses to the requests for additional information in accordance with 18 AAC 75.408(c)(1) - (4) and (7).

(d) Upon receipt by the department of all additional information requested under (c) of this section, the department will provide notice to the parties described in 18 AAC 75.408(c)(4) of a minimum 10-day public comment period on the additional information. The comment period under this subsection is limited to the additional information submitted in response to the request for additional information.

(e) The department will make a determination as to whether an application package is complete not later than seven working days after the end of the public comment period established in (d) of this section, or if no additional information was requested under (c) of this section, not later than seven working days after the end of the comment period established under (b)(3) of this section. The department will notify the applicant when the application package is complete.

(f) The department will, if it determines good cause exists, hold a public hearing on an application package in the manner provided under 18 AAC 15.060.

(g) Not later than 65 days after the department determines that an application package is complete under (e) of this section, the department will approve, approve with conditions, or disapprove a plan and issue a decision under 18 AAC 75.460.

(h) To assist the department in its review of oil discharge prevention and contingency plans and nontank vessel equivalent plans under this chapter, the department will enter into an annual agreement with the Department of Natural Resources and the Department of Fish and Game to provide expertise regarding protection of fish and game, state land, areas of public concern, and environmentally sensitive areas. (Eff. 5/14/92, Register 122; **am** 11/27/2002, Register 164; am 4/8/2012, Register 202; am 4 / 16 / 2016, Register 218.)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070
AS 46.04.030

The introductory language of 18 AAC 75.456(a) is amended to read:

18 AAC 75.456. Department decision on nontank vessel streamlined oil discharge prevention and contingency plans. (a) The department will make a decision on a nontank vessel streamlined oil discharge prevention and contingency plan or plan amendment **not later than** [WITHIN] five **working** days after receipt of a complete application. The department will approve a nontank vessel streamlined plan application submitted under **18 AAC 75.421** [18 AAC 75.410(d)] if the plan meets the following requirements:

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(Eff. 11/27/2002, Register 164; am 9/4/2014, Register 211; am 4 / 16 / 2016, Register 218.)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070
AS 46.04.030

18 AAC 75.457 is amended to read:

18 AAC 75.457. Emergency modification of review process. If, due to an emergency as described in AS 26.23, [OR] AS 46.04.080, or other applicable law, an applicant needs an expedited review, or if the commissioner or the commissioner's designee finds that an expedited review is necessary for the preservation of the public peace, health, safety, or general welfare, the commissioner or the commissioner's designee may, [WILL, IN THAT PERSON'S DISCRETION, AND] consistent with the requirements of AS 46.04.030(j) [THAT A COPY OF THE APPLICANT'S PLAN BE PROVIDED TO THE DEPARTMENT OF FISH AND GAME AND THE DEPARTMENT OF NATURAL RESOURCES], modify the review process established in 18 AAC 75.455 as necessary to meet the emergency. Any modifications in the review process made under this section will be made in writing by the commissioner or the commissioner's designee based upon clear and convincing evidence of a need for the modification. (Eff. 5/14/92, Register 122; am 4/16/2016, Register 218)

Authority: AS 46.03.020 AS 46.04.030 AS 46.04.070

18 AAC 75.460(a) is amended to read:

18 AAC 75.460. Department decision on oil discharge prevention and contingency plans and nontank vessel equivalent plans; new plans, plan renewals, and major plan amendments. (a) After considering the information, analyses, and commitments contained in a complete application package for approval of an oil discharge prevention and contingency plan or nontank vessel equivalent plan [APPROVAL] and [TIMELY] comments received not later than the close of the public comment period set out in [SUBMITTED UNDER] 18 AAC

75.455, the department will approve, approve with conditions, or disapprove an oil discharge prevention and contingency plan or a nontank vessel equivalent plan.

18 AAC 75.460(b) is amended to read:

(b) A decision issued under (a) of this section will include

(1) the **department's** written **decision** [APPROVAL], if it is the department's determination that an oil discharge prevention and contingency plan approval should be issued; the department will provide a summary of the basis for its decision to approve a plan, **disapprove a plan, or subject a plan to conditions specific to the activity** [IN A CASE IN WHICH PUBLIC COMMENT ADVERSE TO THE APPLICATION HAS BEEN RECEIVED];

(2) [A BRIEF SUMMARY OF THE BASIS FOR THE DEPARTMENT'S DECISION IF THE DECISION IS TO DISAPPROVE A PLAN, OR TO SUBJECT A PLAN TO CONDITIONS SPECIFIC TO THE ACTIVITY; AND

(3)] a statement that, if aggrieved by the department's decision, the applicant or any person who submitted [TIMELY] comments on the application **not later than the close of the public comment period set out in** [UNDER] 18 AAC 75.455 may request

(A) an informal review in accordance with 18 AAC 15.185; or

(B) an adjudicatory hearing by submitting the information required under 18 AAC 15.200(a) [18 AAC 15.200(a)(1) - (5)], and that any hearing requested under this **subparagraph** [SUBSECTION] will be subject to the procedures set out **under** [AT] 18 AAC 15.195 - 18 AAC 15.340; **and**

(3) a statement that the plan holder will provide copies of the approved plan

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in accordance with 18 AAC 75.408 not later than 30 days after approval; for submittals after {date October 16, 2016 6 months after effective date of regulation}, the department will send a notice by electronic mail to the parties specified in 18 AAC 75.408(c)(4) that the document is available on the department's Internet website.

18 AAC 75.460(c) is amended to read:

(c) The department's decision will be served on the applicant and each person who submitted [TIMELY] comments on the application not later than the close of the public comment period set out in 18 AAC 75.455(b), or the close of the public comment period set out in 18 AAC 75.455(d) if a request for additional information was made [UNDER 18 AAC 75.455]. The applicant and any person who submitted [TIMELY] comments on the application not later than the close of the public comment period set out in 18 AAC 75.455(b), or the close of the public comment period set out in 18 AAC 75.455(d) if a request for additional information was made, [UNDER 18 AAC 75.455] may request an informal review in accordance with 18 AAC 15.185 or an adjudicatory hearing in accordance with 18 AAC 15.195 - 18 AAC 15.340. An informal review request must be delivered in accordance with 18 AAC 15.185 to the Anchorage office of the director of the department division that oversees spill prevention and response. An adjudicatory hearing request must be delivered in accordance with 18 AAC 15.200 to the Juneau office of the commissioner. [WITHIN 30 DAYS AFTER SERVICE OF THE DEPARTMENT'S DECISION. THE HEARING WILL BE CONDUCTED IN ACCORDANCE WITH PROCEDURES SET OUT IN 18 AAC 15.195 - 18 AAC 15.340.]

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(Eff. 5/14/92, Register 122; am 7/11/2002, Register 163; am 11/27/2002, Register 164; am 9/4/2014, Register 211; am 4/16/2016, Register 218)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070
AS 46.04.030

Editor's note: The mailing address for informal review requests for purposes of 18 AAC 75.460 is Department of Environmental Conservation, Office of the Director, Division of Spill Prevention and Response, 555 Cordova Street, Anchorage, Alaska 99501-2617. The mail address for adjudicatory hearing requests is Department of Environmental Conservation, Office of the Commissioner, 410 Willoughby Avenue, Suite 303, Juneau, Alaska 99801.

Department of Environmental Conservation approval under 18 AAC 75.460 does not negate any other requirement for approval to operate under other statutes or regulations.

18 AAC 75.465 is amended to read:

18 AAC 75.465. Proof of approved plan. (a) The owner or operator of an oil terminal facility may not cause or permit the transfer of oil to or from a vessel, barge, or railroad tank car unless

(1) the operator of the vessel, barge, or railroad tank car has produced for inspection by the facility owner or operator the original certificate or a true photocopy of the original, approving the oil discharge prevention and contingency plan or nontank vessel plan for that operation; and

(2) the operator of the vessel, barge, or railroad tank car has certified, on a **contingency plan verification** [CERTIFICATION] log [FORM] supplied by the department and maintained by the owner or operator of the oil terminal facility, that **copies** [A COPY] of the response action **and prevention** plan **sections** [SECTION] of the current approved oil discharge prevention and contingency plan, or the original certificate or a true photocopy of the original nontank vessel plan approval certificate, for that vessel or barge is on board the vessel or barge, **or for a railroad tank car is available from the operator of the railroad tank car.**

(b) The owner or operator of an oil terminal facility shall certify on the **contingency plan verification** [CERTIFICATION] log [FORM] that the operator of the vessel or barge has complied with (a)(1) and (2) of this section. The facility owner or operator shall maintain the log on a monthly basis and shall submit the log for the previous month to the department **not later than** [WITHIN] the **fifth day** [FIRST FIVE DAYS] of the following month. **Submission** [SERVICE] is effective upon personal delivery, [OR TRANSMITTAL BY] facsimile **transmission, or electronic mail transmission,** or on the date of mailing by certified mail to the department. The department will retain copies of all **logs** [LOG FORMS] received under this subsection for **five** [THREE] years after receipt.

(c) On the first working day after the operator of a vessel or railroad tank car fails to comply with the requirements of (a)(1) or (2) of this section, the oil terminal facility owner or operator shall report that failure to the department by telephone, **electronic mail,** or facsimile **transmission.**

(d) Verification and entry on the **contingency plan verification** [CERTIFICATION] log [FORM] referred to under (b) of this section is required for each separate loading or unloading

operation of a vessel at an oil terminal facility.

18 AAC 75.465 is amended by adding new subsections to read:

(e) Any tank vessel, oil barge, or railroad tank car required to have a plan under AS 46.04.030 and 46.04.055 and approved under 18 AAC 75.460(a) must have the original or true photocopy of the following on board the tank vessel or oil barge and available for inspection when operating in state waters, or for a railroad tank car, available from the operator of the railroad tank car:

- (1) copies of the response action and prevention plan sections of the current approved oil discharge prevention and contingency plan;
- (2) the approval letter and certificate of approval issued by the department; and
- (3) any additional department approval letters issued after initial plan approval is granted.

(f) A nontank vessel required to have a plan under AS 46.04.030 and 46.04.055 and approved under 18 AAC 75.456(a) must have the original or true photocopy of the following on board the vessel and available for inspection when operating in state waters:

- (1) the approved nontank vessel streamlined plan;
- (2) the approval letter and certificate of approval issued by the department; and
- (3) any additional department approval letters issued after initial plan approval is granted. (Eff. 5/14/92, Register 122; am 11/27/2002, Register 164; am 12/14/2002, Register 164; am 4/16/2016, Register 218)

Authority: AS 46.03.020 AS 46.04.050 AS 46.04.070

AS 46.04.030

AS 46.04.055

AS 46.04.900

18 AAC 75.990(81) is amended to read:

(81) "owner or operator" means the owner or operator of a facility or operation that is subject to the requirements of AS 46.04.030, 46.04.040, 46.04.055, or this chapter;

18 AAC 75.990(121)(C) is amended to read:

(C) for a facility, the full physical volume of the oil storage tanks with storage capacities of 1,000 gallons and greater and the piping at that facility [TOTAL OF THE STORAGE CAPACITY OF THE FACILITY ITSELF AND THE STORAGE CAPACITY OF PIPES AT THAT FACILITY];

18 AAC 75.990(121) is amended by adding a new subparagraph to read:

(F) for piping, the full physical volume of the piping;

18 AAC 75.990(148) is amended to read:

(148) "equivalent plan" means a nontank vessel plan submitted under 18 AAC 75.414, 18 AAC 75.415, or 18 AAC 75.420 [18 AAC 75.410(a)] and meeting the requirements of 18 AAC 75.408, 18 AAC 75.427, and 18 AAC 75.460;

18 AAC 75.990(159) is amended to read:

(159) "streamlined plan" means a nontank vessel plan submitted under 18 AAC

75.421 [18 AAC 75.410(d)] and meeting the requirements of 18 AAC 75.426 and 18 AAC 75.456, as applicable;

18 AAC 75.990 is amended by adding new paragraphs to read:

(190) "application package" means the documents required by 18 AAC 75.408(a)(1) - (3) to be included in the application submittal;

(191) "application package is complete" means that the applicant has provided the information necessary for the department to review and evaluate the plan using the criteria established under 18 AAC 75.445 for oil discharge prevention and contingency plans and established under 18 AAC 75.446 for nontank vessel equivalent plans;

(192) "major amendment" means a proposed change to a plan that the department has determined will be reviewed under 18 AAC 75.455 after considering the factors under 18 AAC 75.415(a);

(193) "minor amendment" means a proposed change to a plan that the department has determined will not be reviewed under 18 AAC 75.455 after considering the factors under 18 AAC 75.415(a) and that is not a routine plan update under 18 AAC 75.415(b);

(194) "request for additional information" means a request to an applicant by the department for additional information necessary for an application package to be complete;

(195) "sufficient for review" means that the application package contains the information necessary to begin the public review of the plan including the information identified in

(A) 18 AAC 75.408;

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(B) 18 AAC 75.425(e)(1) - (5) for oil discharge prevention and contingency plans or 18 AAC 75.427(b)(1) - (3) for nontank vessel equivalent plans; and

(C) supporting documentation as requested by the department. (Eff. 5/14/92, Register 122; am 9/25/93, Register 127; am 4/4/97, Register 142; am 4/11/97, Register 142; am 1/22/99, Register 149; am 8/27/2000, Register 155; am 10/28/2000, Register 156; am 11/27/2002, Register 164; am 12/14/2002, Register 164; am 1/30/2003, Register 165; am 8/8/2003, Register 167; am 5/26/2004, Register 170; am 12/30/2006, Register 180; am 10/9/2008, Register 188; am 4/8/2012, Register 202; am 9/4/2014, Register 211; am 6/17/2015, Register 214; am 4/16/2016, Register 218)

Authority:	AS 46.03.020	AS 46.03.755	AS 46.04.055
	AS 46.03.050	AS 46.03.822	AS 46.04.070
	AS 46.03.710	AS 46.04.020	AS 46.08.140
	AS 46.03.740	AS 46.04.030	AS 46.09.010
	AS 46.03.745	AS 46.04.035	AS 46.09.020