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March 16, 2020

Ms. Denise Koch
Director
Division of Spill Prevention and Response –
Prevention, Preparedness, and Response Program
Alaska Department of Environmental Conservation
610 University Avenue
Fairbanks, AK 99709

RE: Oil Discharge Prevention and
Contingency Plan Public Scoping

Dear Ms. Koch:

On behalf of The American Waterways Operators, the national trade association for the tugboat, towboat, and barge industry, thank you for the opportunity to comment on Alaska's oil discharge prevention and contingency plan regulations under 18 AAC 75 Article 4.

The U.S. tugboat, towboat, and barge industry is a vital segment of America's transportation system. The industry safely and efficiently moves over 760 million tons of cargo each year, including more than 60 percent of U.S. export grain, energy sources, and other bulk commodities that are the building blocks of the U.S. economy. The fleet consists of more than 5,500 tugboats and towboats, and over 31,000 dry and liquid cargo barges. These vessels transit 25,000 miles of inland and intracoastal waterways, the Great Lakes, and the Atlantic, Pacific and Gulf coasts.

At least six AWO member companies operate tank barges in Alaska. These vessels provide Alaskan communities with fuel and support key Alaskan industries such as fishing, mining, and oil and gas exploration. These vessels provide critical freight transportation service for Alaska's economy because the towing industry can transit to areas where road or rail transportation is impossible, air transportation is cost prohibitive, and deep-draft vessels cannot safely transit.

AWO's 300-plus member companies are proud to be part of an industry that has a strong record on oil spill prevention and response. Improved vessel equipment and response technology coupled with more efficient regulatory oversight such as the enactment of The Oil Pollution Act of 1990 and the advent of federal towing inspection under Subchapter M help make the towing industry the safest and most environmentally friendly mode for oil transportation.

AWO appreciates the longstanding effective collaboration between AWO members, the U.S. Coast Guard, and Alaska DEC regarding oil spill prevention and response. We welcome the opportunity for continuous improvement utilizing and industry best practices to capture greater efficiency and effectiveness in marine oil spill contingency planning.

Oil Spill Response Master Scenarios

AWO recognizes the importance of ensuring contingency plan effectiveness and acknowledges the utility of Alaska's robust spill response exercise and drill training requirements. AWO also understands the value of testing plan holders through simulations and drills. **However, AWO recommends that ADEC revise its regulations to allow plan holders to adopt regional master scenarios to fit specific operations instead of individualized spill response scenarios.**

AWO supports revising state regulations to allow for the creation and utilization of spill response master scenarios across different geographic regions. If adopted, companies could incorporate master scenarios into their contingency plans in lieu of preparing individualized scenarios. Current regulations require the number of scenarios in a plan be based on the company's scope of operations, the route of each vessel, and potential spill sources and locations. This would lead to an unwieldy proliferation of individual response scenarios for larger companies operating in multiple regions. Preparing these individual scenarios diverts significant resources away from safe day-to-day business operations, decreasing safety.

The benefits of using a standard format for regional master scenarios instead of individualized scenarios include eliminating redundancy and duplication when submitting plans to the federal and state government. Plans created for the state are similar to federal plans with the exception that federal plans require a company only to demonstrate response capabilities to a worst-case discharge. If Alaska allowed the use of master scenarios, plans would be less redundant, and plan development and review would be timelier and more efficient.

Contingency Plan Approval and Review Process

AWO and its members appreciate the thoroughness of ADEC's plan approval processes, but there are some ways that it could be improved. AWO recommends a more efficient contingency plan review process, and that ADEC allow plan holders to operate conditionally while their plans are being reviewed.

Plan approvals that exceed ninety days negatively impact business. The length of time between initial plan submission to ADEC, the public comment period, inevitable requests for additional information, and plan approval should be reduced through the application of additional agency staff resources, a shorter public review period, and a concurrent and streamlined request-for-additional-information period.

In certain circumstances, ADEC should allow conditional operation within the waters of Alaska while contingency plans are under review. The state of California allows vessels to operate without approved plans so long as they meet certain criteria. Within five days of

entering California's waters, incoming vessels transiting to a terminal or tank ship can resume operations so long as the incoming vessel takes the following actions: (1) A terminal or tank ship must be the destination of the incoming tank ship or tank barge; (2) The operator of the terminal or tank ship must provide advance written assurance to the state that they will assume full responsibility for the operation of the incoming vessel; (3) The terminal or tank ship's contingency plan must include all conditions needed for the operation of tank barges; (4) The incoming tank barge contingency plan must meet all requirements of its destination's contingency plan; and, (5) The tank barge without an approved contingency plan cannot have entered California waters within the last 12-months.¹ AWO's recommendation for conditional operation would mirror California's similar rule and would ensure business continuity for vessel operators.

Towing Industry Response and Prevention Improvements

The towing industry also has a strong national record on oil spill prevention and response. On the West Coast there has not been a cargo oil spill resulting from an allision, collision or grounding of a tank barge since 1989. Federal and state rules and regulations around oil spill prevention and response, coupled with improvements in equipment, safety management systems, and oversight from operators and petroleum companies has fostered an extraordinarily high-functioning system for preventing spills and responding effectively in the rare instances when they occur. For example:

- The U.S. Coast Guard's recent promulgation of towing vessel inspection regulations under 46 CFR Subchapter M will continue to elevate industry safety by establishing higher standards for towing vessel operation, management, and equipment.
- With a narrow exemption outlined at 33 CFR § 157.08(n), tanks vessels in Alaska are double hulled to reduce the likelihood that a marine casualty results in a spill.
- Navigation equipment, such as Automated Identification Systems (AIS), and other technology has become more sophisticated. AIS systems provide mariners with clearer domain awareness by allowing mariners and shoreside watch standers to recognize other vessels and routing decisions that could increase oil spill risk.
- The large and robust network of Alaska-based oil spill response organizations (OSROs) has enhanced capabilities and technologies to respond to oil spills and threats of oil spills throughout Alaska state waters.

Conclusion

Thank you again for the opportunity to comment on Alaska's oil discharge prevention and contingency plan regulations. We would be pleased to answer any questions or provide further consultation.

¹ California Stats. 2014, Ch. 35, Sec. 26. 2014

Sincerely,

A handwritten signature in blue ink, appearing to read "Charles P. Costanzo". The signature is stylized and cursive.

Charles P. Costanzo
General Counsel and Vice President – Pacific Region