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Examples of Industry Issues and Concerns Associated with Contingency Plan
Review

1. GENERAL

- a) Guidance Document: The 1994 Guidance Document was originally written to assist ADEC plan reviewers and industry in understanding/clarifying regulatory intent, as well as establishing a level of consistency. Since 1994, regulations have changed and the guidance document is not in line with the regulations. A copy of the guidance document cannot be obtained nor is it available online. In addition, no consistency exists between plan reviewers and sections within ADEC's Industry Preparedness Program. Although ADEC is attempting to update the Guidance Document the unpredictable interpretations by plan reviewers of the regulations is having a negative impact between the plan holder and reviewer(s).

Issue Analysis:

Action/Resolution:

- b) Consistency Between Reviewers Over Time: The plan is accepted and approved; and then when an applicant applies for renewal or another large operational change, suddenly it's not acceptable. What to put in the plan or "what ADEC staff want to see" to fill the requirement of the section changes over time. The regulations are vague and open to interpretation and often interpreted differently by industry and ADEC, and between reviewers in different sections of IPP. The inconsistency between reviewers and review standards need to be corrected.

Issue Analysis:

Action/Resolution:

- c) Web Links, Including Web Addresses, E-mail Addresses, Cross References, Etc.: ADEC is always asking the applicant to add them to a plan, and then asking for the references to be removed. Asking the applicant to include the information in the plan rather than reference: “information must be included within this Section of the Plan as website links often break or are no longer in service.” Most of the references are AK government agency links (ACP, SCP, GRS, MESA, maps, STAR, etc.), which should be consistently maintained by the agencies.

Issue Analysis:

Action/Resolution:

2. PROCESS

- a) Renewal/Review Determination: Plans are typically approved per 18 AAC 75.460(a). When a plan holder submits a plan for renewal per 18 AAC 75.420(a), regardless of the number of plan amendments that have occurred during the 5-year period all plans are being treated as a major renewal. This determination is made regardless of the fact that the department has already reviewed amendments during the preceding period. 18 AAC 75.420 needs to be re-examined to allow for a timely review and renewal process.

Issue Analysis:

Action/Resolution:

- b) Sufficiency for Review: Sufficiency needs to be defined in the regulations and the process for determining sufficiency need to be articulated. Plans previously approved and submitted for renewal are being deemed “insufficient” and the method used by DEC is not clear.

Issue Analysis:

Action/Resolution:

- c) Public Review Requirements: The review of industry contingency plans is a public process under state law controlled by the Alaska Coastal Zone Management Program (ACMP). Even though the ACMP has been obsolete since 2008, ADEC reviewers have continued to list them in the plan holders sufficient for review letters and the plan holders have had to provide documentation that they received a copy of the plan into 2011.

The public review requirements need to be updated allowing for electronic submission and posting of plans. In the past plan reviewers were very accepting of electronic submissions of revisions and amendments, and it was quite efficient. Now only paper submissions with duplicate copies are required. The regulations should be revised to allow for either option. Plans can be submitted as PDF files, posted on the ADEC website for anyone to access and review.

Issue Analysis:

Action/Resolution:

- d) Request for Additional Information (RFAI): Plans previously approved and submitted for renewal are receiving RFAI letters up to 35 pages in length. The reviewers should be required to clearly state what is missing to meet the regulations. The RFAI comments should be clear and concise. If the reviewer can offer a solution or text to insert, or offer the correct reference they wish to see, that would be helpful. In working for the State as reviewers, these persons are in a position not only to regulate but also to assist the plan holder in meeting the regulations and getting their plans approved to the benefit of all.

The incessant requests for additional information by reviewers that does not contribute any value to the plan, and/or is not required to be provided per the regulations (i.e. copies of Certificate of Inspections) needs to be addressed by DEC managers.

Clear guidance for RFAI's needs to be established by DEC. Once an RFAI is issued and corrections submitted, only the revised text submitted should be subject to review. The reviewer should not be allowed to come back again and again with more comments from different sections of the plan that were not identified initially.

Issue Analysis:

Action/Resolution:

3. CONTRACTS

Statutory Citation: AS 46.04.030(k), Except as provide in (m) and (o) of this section, the holder of an approved contingency plan required under this section shall maintain, or have available under contract, in its region of operation or in another region of operation approved by the department, singly or in conjunction with other operators, sufficient oil discharge containment, storage, transfer, and cleanup equipment, personnel, and resources to meet the response planning standard.

Regulatory Citation: 18 AAC 75.440, "...plan holder shall maintain or have available under contract within the plan holders region of operation or another approved location sufficient oil discharge containment, storage, transfer, and cleanup equipment, personnel, and other resources..." The word contract is not defined under 18 AAC 75.990 (definitions). Webster's Encyclopedic Unabridged Dictionary defines contract as, "1) an agreement between two or more parties for the doing or not doing of something specified; 2) an agreement enforceable by law; 3) the written form of such an agreement." Wikipedia definition states - "In some cases depending on the exact wording, MOUs can have the binding power of a contract; as a matter of law, contracts do not need to be labeled as such to be legally binding. Whether or not a document constitutes a binding contract depends only on the presence or absence of well-defined legal elements in the text proper of the document." "A contract is a legally enforceable agreement between two or more parties with mutual obligations."

- a) Not Accepting an MOU as a Contract: The MOU for storage barge assets is a federal USCG requirement, lays out specific terms, and therefore should be accepted as a contract per AS 46.04.030(k). Federal regulations state "contract or other approved means". MOU should be accepted as other approved means.

Issue Analysis:

B.S. - ADEC accepts MOU for storage barge assets
D.N. -
M.F. - ADEC accepts APDET. But no assurances
J.K. - ADEC was told that APDET only applies to food reg

Action/Resolution:

ADEC participation in APDET discussions.
Equipment sharing between planholders via OSRO/PRAK

(b) Equipment Contract Requirements: Having to have a contract for every piece of equipment, vessel, truck, machinery, person or consultant used to respond to the RPS. This is simply impossible. Regardless of whether a contract exists between two or more parties does not guarantee a resource's availability at the time of a spill. Due to the uncertainties associated with the cause, location, and time of year a spill may occur, many resources will have to be identified and hired at the time of a spill. It's unrealistic and impracticable for each plan holder to foresee all resource and personnel needs with the intent of consummating all contracts prior to a spill. It's common for plan holders to rapidly negotiate contracts at the time of a spill with the intent of filling resource and specialized needs for an incident. The burden placed on a plan holder to confirm training, availability, audit, maintain and inspect each piece of equipment, personnel records are unrealistic. Equipment and resources listed in the Unified Plan and each Subarea Plan is not updated and maintained and should also be held to the same standard as industry.

5 year schedule of review

Issue Analysis:

Planning Criteria = 15% in 48 hours *"contain & control"* *"in region"* High degree of certainty for critical assets

PRAC resources - are they valid? Vetted?

program in place?

example of fishing vessels availability (RWS)

Action/Resolution:

AFSHA to review with PRAC

4. MECHANICAL RECOVERY (SKIMMERS)

a) Skimmer De-rating: 18 AAC 75.455(g)(5) requires a recovery rate of 20 percent of the equipment manufacturer's rated throughput capacity unless proven to be greater. In a September 11, 2009 letter issued by ADEC a decision was made that all plan holders must use a 20% recovery rate for calculating how they meet the response planning standard for the scenario(s) in their plan. In order to attempt to justify a higher recovery rate the plan holder must:

1. Submit a request specific to their plan or one operating area
2. The request must be supported by an analysis which includes oil type(s) and characteristics, operating environment(s), response times, support for response, and any other applicable aspects of the response
3. The information will be reviewed by ADEC and a determination made, specifically for the individual plan. There are no established procedures based on industry standards and testing methodologies referenced to support a plan holder's submission. This vague and arbitrary approach is flawed and assumes that each DEC reviewer has enough of an engineering background to interpret test data associated with all factors. Response equipment, which has already been rated by OHMSETT, using a nationally accepted standard (ASTM) should be accepted by ADEC.

Issue Analysis:

Action/Resolution:

- b) Skimmer Classification Based on Receiving Environment: Various reference sources can be used to attempt to classify or categorize a skimmer type to environmental conditions. Actual environmental conditions such as location of spill, weather, and type of oil and weathering and operating environment determine the appropriate type/use of containment equipment/configuration and recovery devices. Deployment configuration, considerations and limitations are always evaluated during an actual spill. The STAR Manual rather than the World Catalogue recognizes these variables and provides latitude to the Operations Section Chief to evaluate and determine the most appropriate combination of tactics to minimize environmental impacts. Relying on one document such as the World Catalogue to determine whether one component within the on water recovery system is appropriate is prescriptive and counter-intuitive to effective oil recovery.

Issue Analysis:

Action/Resolution:

- c) Skimmers Are Not Rated to Work in OPEN WATER: Open water is defined (in 18AAC.75.990(79) as “marine waters below mean low low water and freshwaters of the state, excluding wetlands and the wetland or shoreline perimeter of lakes, rivers, and streams.” This implies that no skimmer is rated to work in the near shore zone or can work below mean low low water (lowest tide), in a protected bay, calm water away from shore, etc. only “wetlands and the wetland or shoreline perimeter of lakes, rivers, and streams” This basically excludes all of the Chadux portable skimmers. This is another example of discrepancy of definitions.

Issue Analysis:

Action/Resolution:

5. SCENARIOS

- a) Scenarios (General): There is an overzealous emphasis on the construction of scenarios, the requirement of multiple scenarios in a single plan, and the creation of a performance standard rather than a planning standard. In some cases, plan holders (renewal) are being told to develop new scenarios in an area of the state where they MIGHT make one trip per year and told to discard a scenario where they do a majority of the work.

Master scenarios using a standard format should be developed for each region. 18 AAC 75.425(e)(1)(F) allows “if the information required by this paragraph is contained within a separate document developed by the

plan holder or the plan holder's PRAC identified in (3)(H) of this subsection, the plan holder may incorporate the information by reference upon obtaining the department's approval;"

Issue Analysis:

Action/Resolution:

- b) Scenario Format: 18 AAC 75.425(e)(1)(F) states, " a written description of a hypothetical spill incident and response that demonstrates a plan holders ability to respond to a discharge.... the response scenario must be usable as a general guide for a discharge of any size..."

The Marine Vessels Section suggests that the online scenario template be used for creating each of the contingency plan scenarios required by 18 AAC 75.425(e)(1)(F). "This template is intended to ensure that adequate information is included in the scenario to not only meet regulatory requirements, but also allow it to fulfill its purpose as a usable guide to a response. It is incumbent on the plan holder to ensure that the information provided is accurate and complete. The conclusion of the scenario must demonstrate that the response planning standard can be met as detailed in the contingency plan". Scenario needs to include the following sections in order to be complete:

1. A description of scenario conditions and assumptions
2. An overview of command objectives, actions, and decisions
3. A timeline describing the strategic actions taken to meet the tactical objectives
4. Information to support the conclusion that the response planning standard can be met in the required timeframe

Plan holders are being informed by DEC's Marine Vessel staff the online template must be used to update older version scenarios and/or for new scenarios. It's clear under the regulation and based on the language found online that the template "may be used" by plan holders and is not required. A key point in the regulation is that the scenario format be "usable as a guide".

Issue Analysis:

Action/Resolution:

- c) “Impact to shoreline indicates that the spill has not been contained or controlled.” Industry is required to show shoreline cleanup tactics in the scenario. The STAR Manual contains numerous shoreline containment and recovery tactics, which don’t imply failure of the plan holder to contain or control a discharge. It’s recognized by mature and seasoned spill responders that when a spill occurs there is a high probability of shoreline impact, especially when the incident occurs near shore. It’s apparent the plan reviewer(s) need to attend a basic oil spill course to understand oil spill transport, fate, and effects in the environment.

Issue Analysis:

Action/Resolution:

- d) Scenario Trajectories: 18 AAC 75.425(e)(1)(F) states, “ ...the relevant environmental conditions, including weather sea state, and visibility, the spill trajectory...”

Vessel plans submitted to ADEC for review have received the following RFAI: “trajectories do not contain sufficient information... including geographical features that could be potentially impacted by the spill. Consider placing the trajectories on overlaid maps”. This is a consistent comment and was noted in RFAI’s for the COSMO and TransMontaigne spot-charter ODPCP’s. The scenario trajectory is intended to show where oil is going, not all of the resources at risk. Other lists information and maps should show that. A map is provided in another example – they

can compare. The regulation is not prescriptive and does not list additional parameters outside of the intent of a trajectory. To satisfy ADEC's request all past scenario trajectories would need to be reformatted with a cost range of \$3,000 to \$20,000 per trajectory depending upon the company and model contracted to conduct the trajectory. The trajectories were approved in the past and serve the intent of guiding the scenarios strategy and tactics.

Issue Analysis:

Action/Resolution:

6. Response Planning Standards (RPS)

The RPS for non-crude carriers needs to be updated. The current 15% RPS has applied to a non-crude barge of either single or double hull construction for years, with no recognition of the decrease in risk by using the double-hull. Incorporating some recognition of the value of double hull barges as preventing a catastrophic discharge is warranted.

Issue Analysis:

Action/Resolution: