

North Slope Borough

Attached are the North Slope Borough's comments regarding Oil Discharge Prevention and Contingency Plan requirements.

Thank you,

Kevin Fisher

North Slope Borough

OFFICE OF THE MAYOR

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Harry K. Brower, Jr., Mayor

March 16, 2020

Seth Robinson
Alaska Department of Environmental Conservation
Division of Spill Prevention and Response,
Prevention, Preparedness and Response Program
610 University Avenue
Fairbanks, AK 99709

Re: Notice of Public Scoping: Alaska Department of Environmental Conservation Oil Discharge Prevention and Contingency Plan Requirements

Submitted via USPS mail, email at dec.cpr@alaska.gov and <http://alaskadec.commentinput.com>

Dear Mr. Robinson:

On behalf of the North Slope Borough, please accept these comments in relation to the Alaska Department of Environmental Conservation's (ADEC) public scoping period on 18 AAC 75 Part 4 and AS 46.04.

The North Slope Borough (Borough) encompasses an area of approximately 94,000 square miles in northern Alaska. It extends 650 miles from Point Hope on the Chukchi Sea to the Canadian Border; and 225 miles south from Point Barrow; the most northern point in Alaska and the United States. Approximately 9,000 permanent residents live in our eight remote communities: Anaktuvuk Pass, Atqasuk, Kaktovik, Nuiqsut, Point Hope, Point Lay, Utqiagvik, and Wainwright.

The North Slope Borough owns and/or operates the bulk fuel tank farms in all of our communities. The bulk fuel tank farms are a vital component to our community's energy security. To ensure the safety of our community's residents and the environment surrounding our tank farms and bulk fuel storage activities, the Borough maintains Oil Discharge Prevention and Contingency Plans (ODPCP), as required by 18 AAC 75, Article 4.¹

¹ 18 AAC 75 Oil and Other Hazardous Substances Pollution Control as amended through October 27, 2018.

ADEC approved the Borough's most current ODPCP (number 16-CP-5127) in September 2017. ADEC later approved a major amendment in March 2019. The Borough's knowledge and experience with ODPCPs and spill response is well established and is a critical component to the ongoing safe operations of our communities. Therefore, the Borough provides the following comments in relation to ADEC's Oil Discharge Prevention and Contingency Plan public scoping opportunity.

18 AAC 75 Article 4

The Borough is encouraged by ADEC's Public Scoping announcement seeking feedback on the clarity of current ODPCP regulations contained in 18 AAC 75 Part 4,² including comments pertaining to the applicability of the ODPCP-required content. The Borough has maintained an ODPCP for its applicable operations for years, and has been subject to several ODPCP regulatory reviews and inspections.

It is the Borough's position that 18 AAC 75.425(a) should be re-evaluated to allow flexibility in the structure and layout of ODPCPs. 18 AAC 75.425 mandates the organization of ODPCPs into five (5) prescribed parts. Having such a prescribed format does not promote 'a working plan for oil discharge prevention, control, containment, cleanup and disposal.'³ As a regulatory body itself, the Borough recognizes that prescribed document formats can make the regulatory review process more efficient. However, the purpose of an ODPCP is not simply for regulatory expediency; it is a manual and guidance document for tank farm operators and responders to mitigate release events, provide efficient response and to consider future countermeasures. The Borough recommends that in place of a prescribed format, ADEC consider requiring a regulatory cross reference sheet detailing where the required information is contained in each entity's individual plan. This would enable the plan holder to customize the plan's format to meet the needs of its operators and responders, thereby increasing the functionality of the document for facility operators and field responders.

ODPCP Applicability and Class 2 Facilities

The Borough notes that 18 AAC 75.849(2) defines a Class 2 facility as an onshore facility that stores non-crude oil in aboveground storage tanks (ASTs) that have a storage capacity between 1,000 gallons and 420,000 gallons, and as such are not subject to 18 AAC 75.400(1) which requires the development of an ODPCP. The stated intent of the Class 2 facility registration requirement was to create a statewide inventory of tanks not included within an ODPCP. The Borough is concerned that this statewide inventory may be used in the future as justification for decreasing 18 AAC 75.400(1) listed storage volume thresholds, thereby creating additional financial burden to owners/operators, especially in rural Alaska, for the development of these plans. The Borough further notes that many Class 2 facilities are included within federally required spill response plans (i.e. SPCC plans) and any inclusion of Class 2 facilities into 18 AAC 75 Part 4 could place a significant regulatory burden upon owners/operations throughout the state. As such, the Borough encourages ADEC to not undertake future revisions regarding what storage tanks are subject to Part 4 of the regulations.

² Alaska Administrative Code.

³ 18 AAC 75.425(a).

AS 46.04 - Regulatory Authority

The Borough recognizes that AS 46.04 includes a statute pertaining to owner/operator financial responsibility. The Borough concurs that a Responsible Party (RP) should be required to assume reasonable clean-up costs or to reimburse reasonable clean-up costs undertaken on the RP's behalf (AS 46.04.010). The Borough further agrees that cooperative agreements, engagements, and communications between entities involved in release clean-up should be engaged in for an effective response (AS.46.04.02(e)). However, the Borough is concerned with the practice of invoicing non-emergency, administrative activities undertaken by ADEC,⁴ thereby increasing the financial responsibility of facility owners and plan holders.

In the past, the Borough has received invoices itemizing costs associated with calls from and to ADEC for ODPCP reviews, facility inspection travel, and other non-spill related administrative activity. The Borough assumes that similar billing events have occurred with other bulk fuel storage/ODPCP plan holders throughout the state. The Borough is concerned that continuation of this administrative billing could be detrimental to maintaining and fostering cooperative relationships and response actions vital to effective spill response activities. Therefore, we respectfully recommend that ADEC re-evaluate its jurisdictional actions and investigate reducing those actions and activities, which are billed back to the very stakeholders that ADEC serves.

Conclusion

The Borough respectfully submits these comments for consideration within ADEC's public scoping effort. We recognize that no specific regulatory revisions are proposed through this notice and comment period, but do acknowledge that our feedback may be used in drafting, modifying or redacting future regulations and ODPCP requirements. Questions or responses to our comment letter should be directed to the Mayor's Office. Thank you for your consideration of these comments.

Sincerely,


Harry K Brower Jr.
Mayor

⁴ 18 AAC 75.910.