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ADEC should be applauded for requesting public comments on Contingency Plans, the basic regulations have been in place for nearly 30 years and much has changed. Over time many C-Plans have been expanded through regulatory over reach and it is time for C-Plans to reflect what is reasonably needed to respond to an emergency and actions taken to prevent or minimize an incident in keeping with the regulations.

1. 18 AAC 75.430 Response Planning Standards:

Planning standard vs. performance standards: Language should be added in a new paragraph (75.430. (f)) that states that planning standards are not performance standards and the department in reviewing and approving a contingency plan will be based on established industry and national standards for equipment and procedures cited by the plan holder to meet the response planning standard.

Discussion: A response-planning standard sets a target that the plan holder designs the C-plan around based on established equipment performance and normal weather and environmental conditions for the area of operation. In the past members of the department have treated planning standards as rigid performance standards.

In 18 AAC 75.445. (n) Response Planning Standard, it states, "must provide a mathematical calculation of the applicable response planning standards"; it is a calculation, not a performance standard and the agency in the past has been arbitrary and capricious in manipulating calculations to achieve a higher performance standard. It is important for the agency to establish policies to ensure plan holders are not subject to a re-negotiation of a plan that in many cases has been in place for multiple renewals each time renewal time comes.

2. C-Plans are based on regulatory requirements and are not meant to be the result of on-going and continuous expansion with each plan renewal:

The applicable section of the regulations for change in a C-plan is in 18 AAC 75.445. (k) Best Available Technology Review, which addresses to what extent the regulations provide for change of a plan. This section states in (k) (1) "technology used for oil discharge ... will be considered best available technology if the technology of the applicant's oil discharge response as a whole is appropriate and reliable for the intended use as well as the magnitude of the applicable response planning standard". This paragraph envisions that a c-plan once approved, as long as it remains, "as a whole is appropriate and reliable for the intended use" can be re-approved without re-writing significant portions of the plan. ADEC should include a regulatory statement or develop a policy that states to the effect that once a C-Plan is approved renewals should only address changes in operations or procedures at the facility or vessel and not a complete review of the C-Plan.

3. If a company qualifies for a prevention credit it should be granted regardless of the level of the revised response. Prevention of a spill 100% effective compared to oil in the water: In the past the agency has been somewhat arbitrary and capricious in granting prevention credits. ADEC should include a regulatory statement or develop a policy that addresses the awarding of prevention credits.

4. Requirements for items such as waste management need to reflect reality not a percentage of a past spill, which has little bearing on the current C-Plan. The agency has with certain C-Plans used a percentage of the Exxon Valdez oil spill waste figures as a basis for dealing with waste in current plans. This approach ignores changes such as double hull vessels, protective booming and significantly more response equipment that is far more readily available. Such factors significantly

reduce the amount of waste that should be planned for in a response. Likewise, for the plan holder increase the work to identify resources to respond to a theoretical amount of waste based on past events with little or no relevance today. ADEC should include a regulatory statement or develop a policy that addresses realistic quantities for waste management and other areas covered in C-Plans.

5. A scenario is a theoretical script that demonstrates how a response could be conducted. The scenario should be based on accepted planning standards and in a drill actual variation should be accepted. Use of stopwatches and artificial time lines to evaluate the acceptability of a drill or response is inappropriate; the weather, sea conditions, tides etc. are all natural events that shade performance. A scenario may state personnel will arrive at a certain place, or deploy specific equipment within a specified time. These times should not be taken as strict performance standards but rather as what they are, an estimate of the amount of time to accomplish a task in the scenario. Obviously the times in a scenario need to be realistic, but a myriad of factors especially in Alaska can affect how long something takes, i.e. weather, tides, sea state and while response equipment has required maintenance criteria equipment can break down.