

Douglas Mertz

My experience qualifies me to comment on this review project more than most. Beginning in the late 1970s, as an assistant attorney general, I litigated the largest spills from the TAPS line on behalf of the State. I was present during most of the response to the Exxon Valdez spill. I then became one of the main architects of the administration's effort to revise the statutes and regulations governing spills and spill prevention in Alaska. As the main legal advisor to the Department of Environmental Conservation in the 1980s I drafted or advised on the drafting of most of the spill regulations still on the books. After leaving state service in 1991, I became the Juneau liaison for the Prince William Sound Regional Citizens Advisory Committee (RCAC) and served in that capacity until last year. I was the state's representative on the BC/States spill response committee, and am the author of several articles on spill contingency planning.

Here are my comments:

1. The current regulations and statutes are among the best anywhere and do not need revisions. What they need are a renewed commitment to inspections, drills, and enforcement. We have seen repeated cycles of increased attention after a spill, following which there is a slow withdrawal of commitment and resources, until the next spill creates a spike in enforcement. This cycle repeats over and over. This proposal for revisions represents another low point, in which even less authority is proposed for use of even less resources.
2. Any experienced spill regulator knows the rubric "you get out of it what you inspect in it." The EVOS spill response failed because there were inadequate drills and no enforcement of the requirement that non-readiness be reported. The non-readiness was allowed to exist because there were no adequate inspections of equipment and there was a lack of realtime drills with realistic scenarios. The current regulations and statutes are adequate, but only if they are backed by inspections, mandatory drills, and mandatory reporting of non-readiness of equipment and personnel.
2. Now is the time to reinvigorate ADEC spill personnel and enforcement, not gut them. Now the most likely site of spills has shifted from Prince William Sound to the Aleutians, and is likely to move northward as more activity takes place in the Bering Sea and the Arctic Ocean. Current resources will be stretched too thin to cover even current responsibilities. That is the problem that needs fixing, not gutting the current regulations and prevention and response programs.
3. Contingency planning requires plans with details, easily understood roles for all personnel, and a high degree of implementability at all times and under all circumstances. A move to vaguer, less strict, less enforceable standards will make Alaska more vulnerable than ever to catastrophic spills.
4. ADEC has never adequately enforced the statutory requirement for use of Best Available Technology [BAT] in all contingency plans and all actual responses. The BAT requirement will not self-implement, it requires ADEC to be the driver of adoption and requires ADEC to not only mandate specific technologies but provide regular reviews to establish what technologies exist. This is a requirement that the agency has long failed to implement, which means that we do not have any net improvement in spill prevention and response over the longterm.

I recommend that this proposal for lessening requirements be abandoned and that instead the department implement a new commitment to vigorous inspections and enforcement of the existing statutes and regulations.

Douglas K. Mertz, Juneau Alaska March 16, 2020

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