



VIA EMAIL ONLY  
([Jason.brune@alaska.gov](mailto:Jason.brune@alaska.gov))

March 16, 2020

Jason Brune, Commissioner  
Alaska Department of Environmental Conservation  
555 Cordova Street  
Anchorage, Alaska 99501

RE: SCOPING COMMENTS ON ADEC OIL SPILL PREVENTION AND RESPONSE RULES

Dear Commissioner:

Cook Inletkeeper (Inletkeeper) is community-based organization formed by engaged Alaskans in 1995 to protect the Cook Inlet watershed and the life it sustains. Please accept these comments on behalf of Inletkeeper's more than 8500 members and supporters throughout Alaska.

The rules around contingency planning have been revised and updated at least nine times since their adoption after the *Exxon Valdez* Oil Spill (EVOS), and it's safe to say they have been revisited more than the vast majority of regulations in Alaska. Yet despite repeated requests, ADEC has refused to provide any meaningful rationale for forcing Alaskans to make the time-consuming and expensive effort to re-write Alaska spill prevention and response rules.<sup>1</sup>

This lack of transparency casts doubt on ADEC's purported values of accountability, integrity, collaboration and objectivity. At a time when ADEC is failing to adequately implement the APDES program,<sup>2</sup> and with a host of pressing issues from PFAS to climate change across the

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<sup>1</sup> The Dunleavy Administration similarly provided no meaningful justification for re-opening long-standing and broadly-supported rules around the use of jetskis in the Kachemak Bay Critical Habitat Area. This lack of transparency by the Dunleavy Administration undermines the public trust and contradicts sound public policy, and as a result, it raises serious questions about the legitimacy of any final rules that may flow from these processes.

<sup>2</sup> See [http://www.akleg.gov/basis/get\\_documents.asp?session=31&docid=58223](http://www.akleg.gov/basis/get_documents.asp?session=31&docid=58223)

state, it makes little sense to embark on a major rule making when the current statute and rules are working as well as can be expected.

Because ADEC has refused to provide any specificity around these proposed rule changes, Inletkeeper will keep its comments similarly broad and generalized, with the intent to provide more specific comments if and when ADEC decides to share with Alaskans the true direction behind this process.

- As a threshold issue, ADEC should embrace a “Hippocratic Oath” approach to its re-examination of Alaska’s spill prevention and response rules. In other words, maintain or strengthen standards, but at all levels, do no harm. The federal Clean Water Act embraces the notion of “anti-backsliding” in the context of pollution permits and standards, and ADEC should adopt a similar policy into statute or rule. The rationale behind this directive is simple: over time, technology improves, and so too should the requirements around spill prevention and response.
- One of the complaints Alaskans hear from the Alaska Oil & Gas Association and the oil and gas companies which profit off our public resources is that current rules are burdensome and lack of predictability. First of all, there’s hardly a rule or a standard that’s been written which has not been attacked by industry on similar grounds. But as Jay Hammond recognized, we understand the corporation’s fiduciary duty is to maximize its profits. The fiduciary duty of ADEC, on the other hand, is to conserve, protect and improve Alaska’s environment for current and future generations. As a result, ADEC can address concerns about statutory and/or regulatory implementation with enhanced staff training, increased staff size to improve levels of service, and better guidance to increase certainty around C-Plan and related decision making.
- One of the most outrageous components of the current rules is the allowance for credits against Response Planning Standards (RPS) for things already required by local, state or federal law. For example, credits for drug and alcohol testing, or for impermeable liners around above-ground tanks, make a mockery out of the entire notion of the RPS. Accordingly, any new rules should provide RPS credits only for things that go above and beyond the requirements for current laws and rules.
- Another significant problem with the current rules centers on the lack of transparency and discretionary review around blow out control plans for exploration and production facilities. Currently, ADEC has the discretion to see blow out control plans, but it’s not required to review them. This oversight should be corrected and revised to a

mandatory review by ADEC because if ADEC decides currently not to review a plan, it cannot assess potential compliance with a C-Plan or the RPS. Additionally, there's no honest reason to hide blow-out control plans from Alaskans, yet under current rules, they are treated as confidential business information. There's no legitimate and protected business interest contained in blow out plans that requires secrecy protections, and Alaskans have a right-to-know if a company has the capacity to adequately address a worst case scenario. Finally, ADEC should bring blow out control requirements in-line with federal rules – i.e., extend response capacities from 15 days to at least 30 days or more.

- Although ADEC has refused to be forthright with Alaskans about why it's re-opening these rules, an obvious reason could be the melting Arctic, and the prospect of increased shipping in remote areas where prevention and response activities may be difficult if not impossible to implement. Accordingly, any new rule making or statutory changes must make special considerations for the unique conditions and resources in the Arctic, and tailor new requirements to recognize the inherent limitations of spill prevention and response in these areas.
- The issues implicated in any proposed rulemaking around spill prevention and response are complex and nuanced, and require the full range of expertise Alaskans have to offer. Accordingly, if ADEC moves ahead with this time-consuming and expensive effort, it should do so through a negotiated process that involves stakeholder work groups and similar elements to ensure all deliberations are transparent and based on science, not simply politics and industry profits.

Thank you for the opportunity to comment. Inletkeeper incorporates by reference the comments submitted on this matter by the Prince William Sound and Cook Inlet Regional Citizens Advisory Committees.

Please contact me at 907.299.3277 or [bob@inletkeeper.org](mailto:bob@inletkeeper.org) if you have any questions.

Yours for Cook Inlet,



Bob Shavelson  
Inletkeeper

Cc: dec.cpr@alaska.gov