



Kachemak Bay Conservation Society

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Seth Robinson
Alaska Department of Environmental Conservation
Division of Spill Prevention and Response
Prevention, Preparedness, and Response Program
610 University Avenue
Fairbanks, Alaska 99709
dec.cpr@alaska.gov

RE: Comments on Notice of Public Scoping Concerning Oil Discharge Prevention and Contingency Plan Requirements

Dear Mr. Robinson:

The Kachemak Bay Conservation Society's mission is to protect the environment of the Kachemak Bay region and greater Alaska by encouraging sustainable use and stewardship of natural resources through advocacy, education, information, and collaboration. Coastal communities like Homer depend on clean water and abundant fish; we rely on strong processes around contingency plans. As has been demonstrated all over the world and in our own state, large spills wreak havoc on local economies. Bankruptcies and foreclosures increase. Fishing and tourism can collapse, and many losses are permanent. Furthermore, there is a heavy toll on mental health and the stability of families. After the Exxon-Valdez Oil Spill, rates of alcoholism, drug use, divorce, and suicide increased and many people still haunted by the memories of the clean-up and huge losses of biomass and biodiversity in that spill. Please keep in mind the following as you conduct your review of contingency plan requirements:

- **Clean water is good for business.**
- **Healthy and abundant fish is good for business.**
- **Safe oil transportation is good for business.**
- **Strong oil spill prevention and response contingency plans are good for business.**

The Oil Discharge Prevention and Contingency Plan (ODPCP) statutes in Alaska Statute 46.04 (AS 46.04) are critical parts of Alaska's oil spill prevention and response mandates enacted after the failures of the response to the Exxon Valdez oil spill. Industry has flourished and profited with these essential mandates in place. The claim that these safeguards are now too great a burden is not based on any change other than the dimming of the memory of the Exxon Valdez Spill—we cannot forget or erase the lessons Alaska learned in that spill.



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The statutes and regulations now in place are one of the reasons Prince William Sound has not suffered a catastrophic oil spill since 1989. The regulations have proven to be protective of Alaska's people and environment for decades, and it is critical that the protections written into them not be weakened in any way.

Success is not a reason to remove these vital safeguards. After the 1989 Exxon Valdez oil spill, Congress found that a lack of vigilance and complacency on the part of both industry and regulators played a role in the spill. We cannot afford to make that mistake again.

1. No change by ADEC can undermine the seven basic precepts guiding ODPCPs:

- a “working” emergency plan;
- a detailed long-term response plan and procedures;
- a compliance demonstration of the access to equipment and resources to meet the facility's response planning standard and the separate ability to protect environmentally sensitive areas;
- an assessment of past and potential spills at the facility and how they can be prevented;
- a description of spill prevention measures required by the Article 1 regulations (18 AAC 75.005 - .085), federal prevention requirements, and company spill prevention measures at use at the facility;
- a demonstration of the use of best available technology by the plan holder; and
- a permit to operate that, if not followed, is a violation of law.

If agency changes fail to meet any of the above criteria, it will not meet the requirements of Alaska regulations and statutory mandates. All regulations need to be made in full compliance with these purposes.

2. One area of industry and ADEC comment concerns the number of pages in regulation. A closer look reveals that these outline procedures for different operations, including crude and non-crude oil tankers and barges, crude and non-crude oil terminals, oil and gas exploration facilities, production facilities, oil pipelines, railroad tank cars, and non-tank vessels. These operations are all distinct enough that they require different regulations. It would be arbitrary and capricious to regulatory changes simply to reduce the number of pages of regulations.

3. We concur with the Prince William Sound Citizen's Advisory Council (RCAC) that there are several areas of statute and regulation that must be maintained to uphold the basic and effective protections that are in place:



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A. The statutory and regulatory requirements for response planning standards (RPS) at the volumes currently specified should be maintained. The Exxon Valdez oil spill demonstrated that time is of the essence in a spill response in order to avoid an environmental and economic catastrophe. The RPS regulations set the expectation that appropriate equipment and trained responders will be available in the region of operation to begin a response immediately in order to contain, control, and clean up oil before it begins to spread across a larger geographic region. Doing so should reduce the impact of the spill on Alaska's people and environment.

B. The statutory requirements for the common operating agent of TAPS, including the Valdez Marine Terminal (VMT) and associated oil tankers, should be preserved. This commitment is currently met by Alyeska's Ship Escort/Response Vessel System (SERVS) to provide services required in a response action under contract terms as provided under AS 46.04.030(q). The impact of another crude oil spill in PWS could be devastating. It is imperative and practical for these companies to have one common primary response action contractor with local and regional knowledge, experience, and resources that are focused on and available for a crude oil spill response.

C. The regulatory requirement for operationally-specific and geographically-specific spill response scenarios is necessary to ensure that spill response planning includes not just lists of available equipment but also demonstrates how that equipment will be used. During the Exxon Valdez response, one reason that a response was delayed was that there was no plan for immediately deploying the available equipment. The process of writing robust scenarios helps plan holders understand exactly what equipment and personnel they would need to address all aspects of a spill response and how those resources would be used. Additionally, scenarios help plan reviewers ensure that resources and procedures are in place to protect the environment and people of Alaska as required by statutes and regulations. Finally, having scenarios provides responders with "push-button" response actions that decrease delays in initiating a response and potentially decrease the geographic area affected by an oil spill.

D. The regulatory requirement under 18 AAC 75.408(c)(7) requires plan holders to provide copies of plans and amendments in which all proposed additions, revisions, and deletions are identified in the plan. This is an important requirement because it ensures transparency in the process of reviewing ODPCPs and helps facilitate the public plan review process; therefore, this requirement should remain in place.

E. The regulatory requirement for plan holders to provide electronic copies of the plans to ADEC and for those plans to be made available on the ADEC website is a reasonable and important requirement. The plans are legal assurances to the people of Alaska and, as such, the most current versions should be readily accessible. Maintenance of plans on the ADEC website reduces issues with version control by ensuring correct versions are easily accessible and publicly available.



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F. The regulatory requirement of including RCACs as recipients required to receive copies of new plans, plan renewals, and plan amendments must be maintained in order for the RCACs to continue their Congressionally-mandated work of providing a voice to the people of Alaska who would be affected by a crude oil spill.

4. We join the Prince William Sound RCAC in in their recommendations to ADEC:

- ADEC must develop and adopt a training regime that ensures that all plan reviewers are trained to interpret, implement, and enforce the Best Available Technology regulations consistently. We also suggest that ADEC seek renewed funding and regulatory focus on the 18 AAC 75.447 process to identify break-through ODPCP technologies and require their application in appropriate individual ODPCPs. Finally, we recommend that 18 AAC 75 be re-evaluated with specific attention given to better description and clarity in the regulations of what technologies under 18 AAC 75.425(e)(4)(A) must undergo the individualized Best Available Technology analysis under 18 AAC 75.445(k)(3).
- Within the Prevention Section of an ODPCP, under 18 AAC 75.425(e)(2)(B), the plan holder must list all known oil discharges greater than 55 gallons which have occurred at the facility within the state. This discharge volume is inconsistent with other ADEC oil release reporting requirements except those to impermeable secondary containment areas. We request that the threshold for discharge history reporting in an ODPCP be brought into alignment with ADEC discharge reporting requirements (10 gal or more).
- Under 18 AAC 75.430, plan holders may apply for a reduction in their response planning standard, the volume of spilled oil for which they must demonstrate the capacity to contain, control, and clean up, based on implementation of a variety of prevention measures. Prevention measures for which owners/operators receive prevention credit should be limited to actions which are not already required under state or federal law. There is no reason to give producers a credit for something they are already required to do.

Protect our economy, protect our waters.

Sincerely,

Roberta Highland,
President Kachemak Bay Conservation Society

Cc: Rep. Louisse Stutes, Rep. Sarah Vance, Rep. Gary Knopp