

Committees:

House Finance Committee

•

Legislative Budget &
Audit

•

Finance Subcommittee
Chair of:

Alaska Court System

Department of Law

University of Alaska

ALASKA STATE LEGISLATURE



*Serving Midtown,
University, and
East Anchorage
neighborhoods*

REPRESENTATIVE ANDY JOSEPHSON

March 13th 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

Dear Mr. Robinson,

I am writing today to comment on current state regulations and statutory authority for the Department of Environmental Conservation (DEC), Division of Spill Prevention and Response (SPAR) Program. Overall, I support the robust and proactive nature of the current SPAR regulations and appreciate that current statutes governing this program center on environmental responsibility and careful preparation for potential oil releases. However, I also see some discrepancies in the current legal and regulatory structure in Alaska and think that some targeted updates would be both responsible and timely.

I oppose weakening of regulatory controls due to the severe environmental and economic impacts of petroleum release events and the scale at which industry operates in our state. The statutes and regulations currently in place provide substantial oversight; they ultimately serve to hold industry responsible for its mistakes. An emphasis on preparedness and training, clarity in procedures for establishing and carrying out contingency plans and clear assignment of liability are all strengths of AS 46.04. This chapter of statute ensures that response plans are adaptable by requiring use of the “best available technology” in spill response and by allowing for the DEC to modify or revoke plans based on the reality of a contingency plan’s implementation. DEC is also given a large amount of leeway in its authority to apply additional terms and conditions to plans prior to approval.

Additionally, this part of statute encourages collaboration between operators and contractors in response activities, making space for industry and government to work in concert on appropriate and timely implementation of plans to minimize impact of oil releases. I also support the fact that current SPAR regulations recognize the importance of oil storage facilities that are below minimum standards for

January-April: State Capitol, Juneau, Alaska 99801 • (907) 465-4939 • (800) 465-4939

May-December: 1500 W Benson Blvd, Room 403, Anchorage, Alaska 99503 • (907) 269-0265

Rep.Andy.Josephson@akleg.gov

size outlined in statute and designated as Class II storage facilities. Though these facilities fall below the 420,000 gallon statutory threshold, they are prevalent throughout the state and often are found in smaller communities. Maintenance of these facilities might be more sporadic and release events more frequent than with large and better maintained facilities.

During the recent budget process in the House, I was alarmed to find that SPAR was planning on eliminating the Class II storage facility program outlined in its regulations. I was subsequently alarmed by the budget proposal to do away with a training staff position, since training is such an integral part of creation and implementation of spill response contingency planning and since the staff turn over rate has been high, these training programs are even more essential. The major reasoning behind the proposal to cut spending through reduction of positions and elimination of the Class II Storage Facilities Program is financial; there is a concern that a fund source that SPAR relies on, the prevention fund, will run out.

One glaring issue in Alaska Statute is that the two sources of SPAR funding (the prevention account and the emergency response fund) are maintained by sources of income that are no longer adequate. Two examples of inadequate funding are found in the monetary damages from oil spills outlined in AS 46.03 and the Motor Fuel Tax outlined in AS 43.40. The majority of existing civil penalties under AS 46.03 were enacted in the 1970s and these rates have never been raised to keep in step with inflation leaving our state more economically vulnerable to oil spill damages and more financially unable to respond to spill events than appropriate. HB 322, filed by the House Resources Committee when I was a co-chair of that committee during the 30th legislature, sought to address this problem. (To emphasize, penalties for crude and non-crude oil spills per gallon spilled have not been updated—in some instances—for nearly 45 years!). With respect to the Motor Fuel Tax, currently this rate is very low (\$.0095 a gallon). Though this goes to supporting the SPAR prevention account it is inadequate and needs to be increased. Increasing this tax even by a few more cents a gallon would greatly contribute to the continued solvency of the SPAR prevention account.

Allowing these sources of funding to diminish and having no plan to replace them, in my opinion, is not only irresponsible but in violation of statute, AS 46.08.030 which states “It is the intent of the legislature and declared to be the public policy of the state that funds for the abatement of a release of oil or a hazardous substance will always be available.” This clearly outlines the importance of ensuring adequate funding for oil spill response and preparedness. Language in statute surrounding the purpose of this fund also leaves room for interpretation and for this reason, in recent years, this fund source has been used for remediation efforts of PFOS chemicals in addition to clean-up from oil release events. Though I feel strongly that environmental contamination like PFOS chemicals needs to be addressed, I would question whether spending down this essential fund source is the right way to address this issue. I would support language that clarified how this fund is to be used, either in statute or in administrative code as well as bolstering the income sources for this fund in statute.

I also believe that DEC should be actively promoting and endorsing significant reform of bonding, insurance, contingency plans the overall regulation of tractor-trailer traffic carrying chemicals, and other oil-based products. The number and frequency of rollovers is an outrage, far exceeds in costs the likely benefit of enhanced speed, and is provably under-regulated. The present system is an embarrassment, harmful to the environment and unsustainable.

Without some economic certainty in SPAR’s ability to respond to spill events and implement the planning and response programs appropriately, our state’s ability to enforce our robust regulations for planning and response will be hampered. Without commensurate funding, the laws and regulations we have in place will become unenforceable. Maintaining a strong legal framework of planning, preparedness and response to oil spills is deeply important to Alaska but ensuring adequate financial

support for the implementation of these laws is essential. I support laying out a legal framework for sustainable funding so that SPAR can effectively carry out its mission for years to come.

Sincerely,

Representative Andy Josephson, District 17