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REPRESENTATIVE ANDY JOSEPHSON

January 31st, 2022

Delivered by electronic transmission

Dear Commissioner Brune,

I am writing today to provide comments on the regulatory changes suggested to 18 AAC Chapter 75, relating to oil spill prevention requirements, put forward by the Alaska Department of Environmental Conservation (ADEC) and as a follow-up to the comment letter I submitted during the March 2020 scoping process. While many changes proposed by the department provide for more clarity, there are some that merit further scrutiny or outright rejection. I appreciate the ADEC's desire to streamline processes for discharge prevention and contingency planning but am uneasy about how these proposed changes might potentially impact liability and response effectiveness in the case of an oil discharge event. I also have some apprehensions that these changes may weaken our state's requirements for environmental responsibility in the oil and gas transportation industry.

One concern I have relates to ADEC's proposed revision to 18 AAC 75.400(a)(2) which suggests removing language relating to certain groups currently required to apply for vessel contingency plans (owners, operators, and demise charterers) and chooses to limit this requirement solely to the category of "primary operational control." This is problematic since this term does not exist in U.S. Coast Guard regulations. If ADEC implements this change, it is paramount that they ensure an additional regulatory mechanism is developed to track when vessel owners relinquish "primary operational control" and to carefully track who is liable for any given release event. I also request that when changes take place to the ownership or operator of a facility or operation holding an Oil Discharge Prevention and Contingency Plan that the public review process established in 18 AAC 75.455 be required. Alaskans deserve forthrightness regarding how oil transport companies operate and are regulated.

Another potential problem created by the proposed regulations is the replacement of detailed instructions designating precisely which groups must be informed when contingency plans are applied for or amended with the vague phrase "interested stakeholders." Currently, 18

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AAC 75.408(c) requires notification of Regional Citizens Advisory Councils (RCACs) and these organizations play an integral role in monitoring and approving these contingency plans. Cutting these citizen watchdog organizations out of the decision-making process is simply unacceptable. Specifically including RCACs in the definition of “interested stakeholders” is an important safeguard ADEC can implement to strengthen rather than weaken industry accountability.

I also support keeping the requirement that exists for the Best Available Technology (BAT) conference (currently found in 18 AAC 75.447) in place and strongly encourage the ADEC to hold these conferences with more frequency. Having a clear process in place for BAT to be studied and assessed by ADEC is integral to honoring the statutory requirement established under AS 46.04.030(e). Identifying the highest quality technology and insisting that the industry utilize it is a key component in ensuring that contingency plans function as intended. ADEC’s proposed repeal of this section is misplaced since it overlooks the importance of the role quality technology plays in oil discharge prevention.

Along the same vein, testing of technology and processes used in response activities is also essential to maintaining effective spill response. I strongly support an increase in the minimum number of annual exercises conducted by ADEC for crude oil plans. Removal of the schedule and description in the proposed new 18 AAC 75.450(b)(1) is an unfortunate watering down of the requirements that currently exist to ensure response plans work smoothly. Additionally, regulations should be adopted by ADEC to ensure that emergency towing arrangements meet the requirements outlined by both the United States Coast Guard and the International Maritime Organization and I support the additional requirement for an emergency towing response to take place within 15 minutes of an incident.

In conclusion, I concur with the following recommendations: continued use of the BAT framework with increased BAT testing, more required annual exercises conducted by ADEC for crude oil plans, ensuring that Regional Citizens Advisory Councils continue to be included in communications relating to plan submittals and amendments, and adoption of requirements that tankers have an emergency towing arrangement that meets international and federal standards. I hope you will consider these suggestions with care and reflect on the possible unintended consequence of some of the proposed regulatory changes currently being suggested by ADEC.

Respectfully,



Rep. Andy Josephson, District 17, Anchorage