Cook Inletkeeper & Kachemak Bay Conservation Society

Please see the attached files with comments on behalf of Inletkeeper and KBCS, we appreciate the opportunity to comment on the proposed changes to these important regulations.

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VIA ONLINE SUBMISSION ONLY THROUGH
(https://spar.alaskadec.commentinput.com/?id=uh7DP)

January 31, 2022

Alaska Department of Environmental Conservation
550 West 7th Ave., Ste. 1100
Anchorage, AK 99501-3560

Re: Proposed Changes to the ADEC Regulation Regarding Oil Discharge Prevention and Contingency Plans

To Whom It May Concern:

Cook Inletkeeper (Inletkeeper) is a community based organization with more than 8,500 members and supporters throughout the Cook Inlet watershed. Our members and supporters are very concerned about the amazing resources and places in Cook Inlet including many who rely on fish from the Inlet, who surf the bore tide, who harvest clams or other shellfish, and whose livelihood is connected to our tourism industry. Many supporters spend time in Cook Inlet watching our endangered Cook Inlet beluga whale population or simply looking out at the stunning views.

Inletkeeper's history is grounded in Alaska's history of oil spills, as Alaskans came together and formed Cook Inletkeeper in the aftermath of the *Exxon Valdez* oil spill in order to ensure that citizens were able to speak up to protect our waters, fish, communities, and state. Although Inletkeeper was started because of a disastrous oil spill, Inletkeeper is not an oil spill response organization and that is for a simple reason: thirty years later and there is still damage from the *Exxon Valdez.* We know that when an oil spill happens there will be long lasting damage. But until Alaska has fully transitioned to renewable energy and successfully dismantled and removed oil and gas platforms, spills will be inevitable making the regulations regarding the Oil Discharge Prevention and Contingency Plan essential to limit the damage to the maximum extent possible to protect our waters, wildlife, fish, and communities.

Kachemak Bay Conservation Society's (KBCS) 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. KBCS is concerned with environmental protection of the Kachemak Bay region and is concerned with issues throughout Kachemak Bay and the state including the prevention and response to oil spills.

Inletkeeper and KBCS also recognizes that Cook Inlet, or Tikahtnu, is the traditional waters of the Dena'ina and Sugpiaq people who have lived, thrived, and cared for these waters from time immemorial and continue to do so today. We recognize that the state should seek out and honor indigenous knowledge for the management of Alaska's resources including considering the risks and response from potential spills. Inletkeeper recognizes that Alaska Native Tribes are sovereign governments and should be consulted on any management action that could impact their traditional lands and their citizens. If the Alaska Department of Environmental Conservation (ADEC) has not initiated formal government to government consultations with Tribes throughout the state, Inletkeeper would encourage ADEC to offer such consultations opportunities to allow the state to benefit from traditional knowledge and to ensure that concerns from these nations are understood and considered.

In addition to the above general statements, we offer the following technical suggestions regarding the agency's proposed changes.

1. ADEC must maintain an adequate number of oil spill drills and exercises.

When there is the inevitable oil spill, we must be prepared to have a rapid response to contain and clean up as much oil as possible. This is particularly important in Cook Inlet where large tides and challenging conditions complicate any response actions. But regardless of the conditions, a rapid and effective response is essential to limit damage to the Inlet and life that it sustains to the maximum extent possible.

The proposed regulations allow for an inadequate minimum number of oil spill drills and exercises. Ultimately, this could reduce the total number of oil spill drills and exercises that ADEC would conduct for large crude operators such as those in Cook Inlet. The long history of oil spills in Cook Inlet since the 1960's reminds us how essential a robust oil spill prevention and response system is to ensure that there will be rapid deployment of resources for effective containment and clean up when spills occur while protecting our community members who are serving the community as first responders to these disasters. A well prepared response team must be allowed to practice response activities outside of actual emergency situations.

Inletkeeper and KBCS recommend that the regulations set the minimum number of exercises required for crude oil plans at one significant Incident Management Team and two field deployment exercises per year and allow for other unannounced exercises as ADEC deems necessary. Further, the regulations must retain the commitment that if a plan holder fails to show that they can implement their plan, that the Department will require additional exercises or take another appropriate action.

The state has a constitutional obligation to safeguard Alaska's resources and our ability to prevent and unfortunately respond to spills is integral to that obligation. That is particularly important when the major operator, like Hilcorp in Cook Inlet, has a history of noncompliance with safety regulations. The Department must not give away the ability to ensure that Hilcorp complies with safety regulations and to require corrective action should Hilcorp fail to comply with regulations that safeguard Alaska's natural resources including our oil but also our fish, marine mammals, waters, and lands.

Finally, oil spill drills and exercises should account for the real world conditions that we experience in Cook Inlet with large tides, heavy sea ice, and long stretches of darkness. To the extent that spills and drills are only occurring during optimum conditions, they are not demonstrating preparedness during most of the year when an accident is likely to occur. Unfortunately accidents do not wait for optimum conditions and we should be prepared for that.

2. Best available technologies are important to ensure that Alaska's spill clean up and prevention stays up to date with all new developments.

Currently, the regulations include commitments to examine best available technology (BAT) that are being used outside of Alaska, engage in studies, evaluate and identify where new technologies could help in Alaska, and hold a conference to advance this knowledge and provide findings to plan holders. The proposed changes remove the language regarding a conference on BAT. Under the new regulations, it is unclear how ADEC will ensure that the oil spill response and prevention equipment and processes reflect the BAT as it continues to change.

Inletkeeper and KBCS recommend that the regulations reflect a strong commitment to the agency staying informed and promoting best available technology. The BAT conference has been a vital component for this and should continue to be held every 5 years. If the agency removes

the conference, the regulations should explicitly state how the state will continue to evaluate and examine new technologies and their applications in Alaska.

3. The RCACs must continue to receive materials during contingency plan renewals, updates, and amendments regardless of the method.

After the *Exxon Valdez* oil spill the Regional Citizen Advisory Councils (RCACs) were enacted to ensure that citizens are informed and able to have a seat at the table to protect Alaska. Prince William Sound and Cook Inlet RCACs are both vital to ensure the protection of Alaska's waters but they can only do that if they are fully informed by the state and by industry.

The existing regulations require that the RCACs receive printed materials during contingency plan renewals, updates, and amendments. To the extent that the new regulations do not require the department to provide these important materials to the RCACs, that is not acceptable. The proposed change from printed to electronic material distribution is certainly appropriate but shifting the burden to RCACs to locate all relevant documents on listservs is inadequate.

The listservs run throughout the state are invaluable sources of information but it can be extremely challenging to find and sign up for all the relevant listservs. Unfortunately, it is easy to miss important notices if you are not signed up for all the right listservs. By ensuring that even with an additional listserv in place, that the RCACs are also receiving direct notification of these important documents it will continue to allow the RCACs to assist the state in distributing important information when appropriate and to be able to weigh in and provide the state additional expertise. The state should continue to fully engage with the RCACs by providing them notifications of plan reviews, updates, and amendments, electronically or otherwise.

4. Requirement for tug escorts is necessary in Cook Inlet.

Best Available Technology has repeatedly shown that tug escorts are the best way to respond to a disabled tanker, to avoid oil spills, and to have an immediate spill response.[1] This is particularly important in Alaska where we know we have extreme weather. It is also an important requirement in Prince William Sound to prevent a spill like the *Exxon Valdez* from ever occurring again.

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[1] Prince William Sound Regional Citizens Advisory Council, *Tanker Escort System*, available at https://www.pwsrcac.org/programs/maritime/tanker-escort-system/.

Inletkeeper and KBCS are in support of these strong protections within the Sound but are concerned that these protections are not applied in Cook Inlet. Cook Inlet has some of the highest tides in the world along with similar extreme weather conditions as Prince William Sound. Yet Cook Inlet does not have the same requirements for tug escorts. Instead Cook Inlet remains at risk because the suggested plan is that a laden tanker could simply drop and drag an anchor until the vessel stops.

Does ADEC have evidence that a runaway laden tanker with a dropped anchor would stop and how quickly would that occur? If it takes a hundred miles would the tanker stop before hitting the shore or platform throughout the inlet? Additionally, depending on where the anchor was dropped would it be dragging across a network of underwater oil and gas pipes? ADEC completed a risk assessment in 2015 that posed many of these same questions and concluded the uncertainty of the current plan to prevent a serious accident but it seems no corrective action was taken.[2] ADEC has understood this issue for years and the clear requirements in Prince William Sound make it much more perplexing that this omission has not been recognized and corrected by the agency. It is abundantly clear that accidents happen with tankers and that Cook Inlet has simply gotten lucky that these accidents have not resulted in widespread damage.[3]

5. In updating regulations, the Department must consider the history of Cook Inlet spills and the regulatory history of the operators present.

Between 1995 and 2020, 12,807 spills occurred in Cook Inlet.[4] 694 of these spills were related to offshore oil drilling activities and 2,151 from oil production facility types. Looking just at offshore spills, companies have reported 185 spills of crude oil for a total of 7,980 gallons of spilled crude oil. Besides crude oil, companies have spilled 35 gallons of extremely hazardous substances and 119 spills of hazardous substances offshore in Cook Inlet. Remaining spills were of produced water or non-crude oil. Although none of these spills were huge spill events like the *Exxon Valdez*, the *Deepwater Horizon*, or even the spill off the shore of California in October

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[2] Nuka Research & Planning Group, LLM & Pearson Consulting, LLC, *Cook Inlet Risk Assessment*, Jan. 27, 2015, available at https://dec.alaska.gov/media/8149/cira_final_report.pdf.

[3] Alaska Journal of Commerce, *Tanker Dodges Disaster in Cook Inlet*, Feb. 11, 2006, availabe at https://www.alaskajournal.com/community/2006-02-12/tanker-dodges-disaster-cook-inlet.

[4] Susan Lubetkin, Critical review of the oil spill risk analysis as presented in the Cook Inlet Planning Area Oil and Gas Lease Sale 258 in Cook Inlet, Alaska Draft Environmental Impact Statement and Oil Spill Risk Analysis: Cook Inlet Planning Area OCS Lease Sale 258 (Revised) OCS Report BOEM 2021-061 (Dec. 13, 2021) (attached hereto for your convenience).

2021, prevention and clean up efforts are vital to protect Cook Inlet and the life that it sustains including the fish, wildlife, and Alaskas that rely on these waters.

Planning for spill prevention and response is critical in Cook Inlet when you consider the main operator in Cook Inlet, Hilcorp, and its troubled history with compliance with state and federal regulations.[5] Over the eight years that Hilcorp has been operating in Cook Inlet, the company has reported 99 spills total: 38 crude oil spills of 10,305.5 gallons, 21 hazardous substances of 3,233.1 gallons, 30 non-crude oil spills of 1,254.49 gallons, and 14 produced water spills of 4,395.6 gallons.

This record and Hilcorp's history of noncompliance with state regulations must be a consideration for any changes to spill prevention and response regulations to ensure that Cook Inlet is protected. The state has an incredible responsibility in revising these regulations as Alaskans rely on state agencies to protect them from Outside companies that will no longer care about our waters once the oil is gone.

Inletkeeper and KBCS appreciate the opportunity to provide these comments on behalf of our members and supporters regarding the agency's proposed changes.

Yours for the Inlet and Kachemak Bay,

Liz Mering, Inletkeeper
Cook Inletkeeper

Roberta Highland, President
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[5] Anchorage Daily News, *Alaska Oil and Gas Regulators Fine Hilcorp More than $50,000 for Violations*, Jan. 3, 2022 available at https://www.adn.com/business-economy/energy/2022/01/03/alaska-oil-and-gas-regulators-fine-hilcorp-more-than-50000-for-violations/. Albuquerque Business First, *Houston Energy Company Settles with New Mexico Over "Improper" Remediation Work in the San Juan Basin*, Jan. 10, 2022 available at https://www.bizjournals.com/albuquerque/news/2022/01/10/hilcorp-settles-with-state-for-nearly-one-million.html. Anchorage Daily News, *Hilcorp Fined After a Valve Designed to Prevent an Oil Spill at Prudhoe Bay was Shut Down,* Dec. 1, 2021 available at https://www.adn.com/business-economy/energy/2021/12/01/hilcorp-fined-after-a-valve-designed-to-prevent-an-oil-spill-at-prudhoe-bay-was-shut-down/, Alaska Public Media, *Hilcorp Gas Pipeline Springs Another Leak in Cook Inlet*, Apr. 6, 2021 available at https://www.alaskapublic.org/2021/04/06/hilcorp-gas-pipeline-springs-another-leak/, The Cordova Times, *Commentary: Why has Hilcorp developed the nickname 'Spillcorp'?* Mar. 10, 2020 available at https://www.thecordovatimes.com/2020/03/10/commentary-why-has-hilcorp-developed-the-nickname-spillcorp/