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January 31, 2022

Government Letter No. 48835
APSC File No. 2.08

Zuzana Culakova
Alaska Department of Environmental Conservation (ADEC)
410 Willoughby Ave, Suite 3
Juneau, Alaska 99801

Subject: Proposed Changes to Oil Pollution Prevention Requirements in the Regulations of the Alaska Department of Environmental Conservation

Dear Ms. Culakova,

Alyeska Pipeline Service Company (APSC) appreciates the opportunity to provide comments on the changes proposed by the Alaska Department of Environmental Conservation (ADEC or department) to the state oil discharge prevention and contingency plan (ODPCP or plan) regulations under 18 AAC 75 Article 4. As a major holder of multiple state approved ODPCPs, APSC has a strong commitment to environmental protection and a deep interest in the department's efforts to clarify and improve these regulations. This letter presents our general comments and concerns over the proposed changes, and specific comments on the revised provisions are set forth in the attached table.

ADEC's stated intent for proposing the changes to Article 4 is "to help streamline, modernize requirements, clarify regulations, reduce time and cost burdens for applicants, minimize confusion and ensure clarity for plan applicants and reviewers."

As written, the proposed regulations add significantly burdensome administrative changes to the ODPCP's and increase resource requirements that do not improve response or provide additional environmental protection. Whole sections of the current regulation are repealed, re-organized and/or re-written, resulting in little to no streamlining for the regulated community or the department. Additionally, proposed new sections of the regulations need additional clarification. It is also unclear how ADEC will evaluate approved plans against the proposed rewrite given the extensiveness of the changes and the historical complexity of currently approved plans. Many of the proposed changes and reorganization of Article 4 if adopted likely would force plan-holders to submit entire new written plans for approval. Further, ADEC makes no mention of when C-Plan holders must be in compliance with the new regulations.

Moreover, the proposed regulations require additional information, descriptions, procedures, documentation, and other narrative that are outside the scope and purpose of the regulations. Experience has shown that when additional content is required, this becomes an additional performance standard that does not necessarily improve the ability to respond. For example, the proposed changes require a description of methods to prevent or control a potential fire hazard, including a facility diagram is outside of ADEC's regulatory authority. Facility fire suppression systems should be utilized by trained fire response personnel to control a fire resulting from a representative scenario-based discharge of

January 31, 2022

significant volume. ADEC does not explain why this information should be included in a plan - it does not improve oil spill response and it is beyond the regulatory authority of ADEC.

In addition, there are several instances where the lack of clarity in the proposed changes could lead to unreasonable and unrealistic impacts on spill response resources management and ODPCP implementation. For example, 18 AAC 75.451(h) as proposed could have significant impacts on recovery capacity and can be interpreted to apply to a single skimmer rather than a skimming system or tactic. Effectively, this could result in a massive skimmer derating which will reduce the overall recovery capacity of proven skimmer and barge/storage recovery systems. If implemented as written this provision will be a huge resource barrier for equipment and personnel.

APSC maintains concerns over the lack of standardized processes and standardized agency approval authorities resulting from broad language currently contained in Article 4 that opens the door for individual discretion and interpretation by the agency. The proposed revisions of Article 4 do not address these concerns. Requiring plan holders to adhere to regulations that are managed by individual discretion or interpretation leads to an inconsistent and potentially arbitrary application of the regulatory requirements across the regulated community. For example, 18 AAC 75.449(a) currently states that a plan holder "...must include the following information in sufficient detail to clearly guide responders..." The requirement to provide "sufficient detail to clearly guide responders" is subjective. It is wording carried over from the current regulation and a missed opportunity for ADEC to remove or better quantify.

Below are examples of where ADEC and industry would have benefited from standardized processes:

- Current ADEC expectations exceed the regulation for 24-hour notification as written in the ADEC Expectations for Out-of-Service Notification from Alyeska/SERVS', a document specific to only Alyeska and SERVS.
- A lack of standardized processes and timelines resulted in an informal review of the VMT C-Plan taking over 2 years.
- No clear criteria exist for determining when scenarios are required, and the number of scenarios required. In addition, scenario-based planning is unique to Alaska and only applies to theoretical sets of circumstances.
- Inconsistent treatment of plan holder management of training programs results in administrative and operational burdens. The regulation requires that plan holders implement, track and maintain a training program. In some plans, ADEC requires inclusion of elements beyond response training, including specific curricula and qualifications. For example, the Prince William Sound plan lists all the training elements for the Vessels of Opportunity program. Because of the level of detail in the plan, making improvements is difficult and involves amendments to the plan. Another example is the request that Group Supervisor training be specific by equipment and a down to a tactical level, limiting operational flexibility.

Standardized processes provide the certainty and consistency necessary for effective spill response planning, plan development and implementation, as well as for sound decision-making by both industry and the department.

January 31, 2022

APSC supports AOGA's separately filed comments and recommendations. Thank you for considering these and the attached comments.

Attachment: APSC comments on proposed Article 4 rewrite.

Please address all responses to:

Allison Iversen
HSEC Director
Alyeska Pipeline Service Company
P.O. Box 196660, MS 502
Anchorage, Alaska 99519-6660

Sincerely,

A handwritten signature in blue ink that reads "Andres Morales" with a stylized flourish at the end.

Andres Morales
Emergency Preparedness & Response Director

Proposed Regulatory Citation	Proposed Regulation	APSC Comment
18 AAC 75.400(j)	“(j) The person that files an application under (a) of this section must be the same person that files an application for proof of financial responsibility for oil discharges under 18 AAC 75.205(a).”	The proposed regulation states that a person that files an application under (a) of this section must be the same person that files an application for proof of financial responsibility for oil discharges under 18 AAC 75.205(a). This could be problematic within organizations as regulatory responsibilities are often delegated across a wide array of divisions and employees. Plan holders recommend that the regulation refer to an entity (i.e. "company") rather than a person.
18 AAC 75.408(b)	“(b)The application form must be signed as required under 18 AAC 15.030”	The proposed regulation omits references that an agent who has been delegated authority may also sign applications. This could be problematic for routine planned maintenance. Plan holders should continue to have the ability to delegate signature authority to an approved agent within their organization. Also, the regulation refers to 18 AAC 15.030 which does not in turn reference back to 18 AAC 75.408(b).
18 AAC 75.408 (c)(1)(B)	" a person that is not able to access the documents from the department’s Internet website shall submit a request to the department for an alternate format to be provided and the department will approve or disapprove the request; if approved, the plan holder will provide the package to the requester in an alternate format"	This proposed change does not support the intent of the amendment changes from 2016. Plan holders contend that this proposed change introduces an additional administrative burden with no value added. Amendment regulations in 2016 allowed for the State to host industry ODPCPs on the ADEC website. While this may seem like a minor consideration, it is an improvement for both plan holders and the public. By eliminating expensive and time-consuming hard copy production and distribution, plan holders can be more agile with amendment submittals and more efficient. At the same time, hosting the industry ODPCPs on the state website benefits everyone by making the plans accessible and transparent to a wider audience.

18 AAC 75.449 (a)(2)(B)	"additional contact information for potentially impacted groups and others who may be called on to provide resources during the spill"	No definition or parameters to determine who is a "potentially impacted group."
18 AAC 75.449 (a)(5)(B)	"the description must demonstrate that the transition and substitution of equipment and resources between the plan holder and response contractor will occur without interruption of response or cleanup;"	The deployment strategies are neither a performance standard indication nor a guarantee of performance. Experience has shown that additional information and description will become a requirement and performance standard outside the scope and/or intent of the regulation.
18 AAC 75.449 (a)(6)	"the response scenario must be usable as a general guide for a discharge of any size and must describe the discharge containment, control, and cleanup actions to be taken, and clearly demonstrate the strategies and procedures adopted to conduct and maintain an effective response,"	"must be usable as a general guide" - Scenarios describe equipment, personnel, strategies, and tactics for planning purposes only and are neither a performance standard indication nor a guarantee of performance outside the scope or intent of the regulation. . Plan holder recommends this nuance be explicitly stated in the regulation.
18 AAC 75.449 (a)(6)(E)	"procedures and methods, and a description of the equipment that will be used for real-time surveillance and tracking of the discharged oil on land and on open water,"	Scenarios describe equipment, personnel, strategies, and tactics for planning purposes only. Spill response operations including real-time surveillance and tracking are tailored to each actual event to reflect the conditions at the time of the spill.
18 AAC 75.449 (a)(6)(F)	"equipment and personnel will be deployed and maintained on a time schedule that will protect those areas before oil reaches them according to the predicted oil trajectories for an oil discharge of the volumes established... must include areas added by the department as a condition of plan approval"	Scenarios describe equipment, personnel, strategies, and tactics for planning purposes only. Experience has shown that timelines and time schedules become a performance standard. Spill response operations are tailored to each actual event to reflect the conditions at the time of the spill.

<p>18 AAC 75.449 (a)(6)(O)</p>	<p>"additional response strategies to demonstrate alternative strategies for anticipated receiving environments and seasonal conditions, including time of year, spills of varying source and size, and weather limitations; "</p>	<p>Clarify the criteria for requiring additional scenarios beyond RPS scenarios. The regulation allows the department to require additional response strategies to account for variations in receiving environments and seasonal conditions. The Pipeline C-Plan has 12 additional scenarios to the RPS. The VMT C-Plan has 4 additional scenarios to the RPS. Requiring plan holders to adhere to regulations that are managed by department discretion introduces interpretation into decisions that may not be fully comprehensible or consistent across the regulated community.</p>
<p>18 AAC75.449 (a)(6)(D)</p>	<p>"Including a facility diagram which includes the location of fire suppression equipment, main power shutoff switches, and other relevant information; all fire control plans must be compatible with applicable fire codes and industry standards"</p>	<p>New requirement and outside of ADEC regulatory authority.</p> <p>TAPS is designated critical infrastructure by DHS and therefore we have special obligations to take steps to protect TAPS facilities and data, and we therefore have concerns about some of the information being required in these provisions that will become public. This could include detailed information or descriptions of systems, facilities, and infrastructure that if disclosed and misused could reasonably be expected to endanger physical safety or present a risk to public health and welfare – the type of protected information in A.S. 40.25.120(10). The amended regs at 75.434(i) expressly obligate DEC to protect “trade secrets” from disclosure but the regulations should expressly acknowledge that any information required to be provided under 449 and 541 or anywhere else will be protected from disclosure if its security sensitive info pursuant to 40.25.120(10).</p>

18 AAC 75.449 (a)(6)(I)	"the plan must provide for the start and completion of lightering within the shortest possible time, consistent with ensuring the safety of personnel"	The scenarios describe equipment, personnel, strategies, and tactics for planning purposes only and are neither a performance standard indication nor a guarantee of performance. Experience has shown that including the shortest possible time to lighter will become a performance standard.
18 AAC 75.449 (a)(6)(J)	"for on -water recovery, this includes procedures for offloading and transfer of oil and oil-water mixture to shore-side storage; for on-land recovery this includes procedures for transfer from onsite temporary storage to more secure storage"	Scenarios describe equipment, personnel, strategies, and tactics for planning purposes only. Including operating procedures into the response scenarios creates additional administrative burden with no va that does operating procedures are updated.
18 AAC 75.449 (a)(6)(K)	"with enough detail to demonstrate that there is adequate temporary storage and removal capacity for recovered oil and oily wastes available at or near the site of the spill to keep up with the skimming and recovery operations and to mee the applicable planning standard....must include identification of all necessary permits, approvals, or authorizations and the timeline for them"	Scenarios describe equipment, personnel, strategies, and tactics for planning purposes only. Experience has shown that timelines become a performance standard outside the scope and intent of the regulation.
18 AAC 75.449 (a)(6)(M)	"plans for wildlife protection, recovery, disposal, rehab, and release should follow the recommendations of the ARRT Wildlife Protection Guidelines for Oil Spill Response in Alaska"	Alyeska supports following the ARRT Wildlife Protection Guidelines for Oil Spill Response in Alaska.
18 AAC 75.449 (a)(6)(N)	"including cleanup and restoration methods and techniques to be used if the shoreline is impacted"	Scenarios describe equipment, personnel, strategies, and tactics for planning purposes only. Experience has shown that including additional information on cleanup methods and techniques will become a performance standard or requirement. Spill response operations are tailored to each actual event to reflect the conditions at the time of the spill.

18 AAC 75.449 (a)(10)	"this information must be located in the plan immediately following the scenario or scenarios required by (6) of this subsection"	Administrative change with potential to require more repeated information that does not improve ability to respond to a spill. The changes expected from the extensive re-organizing of the regulations do not result in significant difference or improvement.
18 AAC 75.450	"The applicant must take discharge history and other factors into account when designing a prevention program that addresses the specific areas and situations encountered at the facility or on or near the vessel."	Plan holder recommends the regulation explicitly state criteria or parameters for "other factors" or "discharge history" to be considered.
18 AAC 75.450 (b)(3)	“(3) potential discharge analysis - including size, frequency, cause, duration, and location, and a description of actions taken to prevent a potential discharge;”	Revise 18 AAC 75.450 (b)(3) to allow reference to a compliant SPCC plan as an acceptable method of compliance. Potential discharge analysis requirements in the current 18 AAC 75.425(e)(2)(C) and proposed 18 AAC 75.450(b)(3) duplicate the requirements of the federal Spill Prevention Control and Countermeasures (SPCC) regulations required by 40 CFR 112.
18 AAC 75.475 (b)	“(b) Except for a transfer approved under 18 AAC 75.470, if a significant change occurs in, or is made to, a [any] component of a plan that would diminish the plan holder's response capability, the plan holder shall, within 24 hours, notify the department in writing and provide a schedule for a prompt return to operational status. For equipment that is maintained by a streamlined plan cleanup contractor, the cleanup contractor shall be responsible for this notification.”	Alyeska supports the 18 AAC 75.475 (b) 24-hour notification for non-readiness. Current ADEC expectations go above and beyond the regulation for 24-hour notification as written in the 'ADEC Expectations for Out-of-Service Notification from Alyeska/SERVS', a document specific to only Alyeska and SERVS.
18 AAC 75.451 (b)(2)	"for each oil storage tank with a storage capacity of 1,000 gallons and greater but less than or equal to 10,000 gallons, the location, oil storage capacity, and the product type stored, unless the oil storage tank is used on a temporary basis;"	Administrative burdensome due to the number of tanks that are 1,000 gallons and greater that will have to be added to the plans, as well as subsequent updates to the plans to maintain list.

18 AAC 75.451 (b)(7)	"for an oil terminal facility, an exploration facility, and a production facility, a piping diagram showing all facility oil piping, including the location of valves; and (8) for a transmission pipeline, a pipeline diagram including the location of all mainline valves, pumping units, and other appurtenances connected to the pipeline."	New requirement. Security concerns with sharing facility diagrams publicly. TAPS is designated critical infrastructure by DHS and therefore we have special obligations to take steps to protect TAPS facilities and data, and we therefore have concerns about some of the information being required in these provisions that will become public. This could include detailed information or descriptions of systems, facilities, and infrastructure that if disclosed and misused could reasonably be expected to endanger physical safety or present a risk to public health and welfare – the type of protected information in A.S. 40.25.120(10). The amended regs at 75.434(i) expressly obligate DEC to protect “trade secrets” from disclosure but the regulations should expressly acknowledge that any information required to be provided under 449 and 451 or anywhere else will be protected from disclosure if its security sensitive info pursuant to 40.25.120(10).
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<p>18 AAC 75.451 (d)</p>	<p>"Command system descriptions, diagram, and management hierarchy must all be contained in the plan. At a minimum, the detailed personnel contact information for the qualified individual must be in the plan. Detailed information for other listed incident command system personnel may be maintained by the plan holder in a separate document; the document is part of the plan, and it must be provided to the department with the plan application package. For plans that propose 24- hour operations, the detailed personnel document must identify available staff for 24- hour operations. This separate document will be treated as a confidential document and will not be publicly reviewed; it must be maintained and updated in real time. Notwithstanding the requirements of 18 AAC 75.415(b)(2), an updated document may be provided to the department on a quarterly basis if changes occur."</p>	<p>Standardize contact information requirement to functional titles across plans. Personnel contact information changes frequently and necessitates a plan amendment each time along with the requisite production distribution processes. Standardizing requirements across plans to appropriate level of detail i.e., functional titles of position will reduce administrative work that does not improve plan holder ability to prevent or respond to an incident. Maintaining a detailed personnel document real-time, 24/7 has no definable value and is administratively burdensome.</p>
<p>18 AAC 75.451 (g)</p>	<p>"(g) Response equipment - the applicant must have ready access to enough equipment to meet the applicable response planning standards established under 18 AAC 75.430 - 18 AAC 75.442 using mechanical methods of oil control, containment, and cleanup. Identified equipment must reflect the best available technology when the plan is submitted or renewed; the plan must include a complete list of contracted or other oil discharge containment, control, cleanup, storage, transfer, lightering, and related response equipment to meet the applicable response planning standard, and to protect environmentally sensitive areas and areas of public concern that are identified in (k) of this section before oil reaches them and that may be</p>	<p>Current expectations include listing equipment beyond what is required and is enforced differently across plans requiring mitigation for equipment that is not required by regulation. This is burdensome administrative work that does not improve plan-holders ability to prevent or respond to an oil spill. Changing this expectation back to only what is regulatory required as written in 18 AAC 75.451 (g) will promote innovation in oil spill response equipment around the state</p>

	<p>reasonably expected to be impacted by a spill of the response planning standard volume as described in the response strategies developed under 18 AAC 75.449(a)(6) and (7); the list must include”</p>	
<p>18 AAC 75.451 (h)(3)</p>	<p>"The following formula must be used to determine the effective daily oil recovery capacity for each piece of recovery equipment; compliance with the response planning standard is attainable by designing a response capability that is equal to or greater than the volume of oil established by the response planning standard and as demonstrated through the plan scenario</p> $R = T \times U \times E$ <p>R = Effective daily oil recovery capacity in barrels; T = Manufacturer’s rated throughput capacity, in barrels per hour; for those devices in which the pump limits the throughput of liquid, throughput rate must be calculated using the pump capacity; U = Hours that an operator can document capability to operate equipment during a 24-hour period under spill conditions; may not exceed 20 hours per day unless an operator can demonstrate that the recovery rate can be sustained for longer periods; E = Oil recovery efficiency rate, 0.2 (20%) unless otherwise approved by the department;"</p>	<p>The proposed regulation as written could be interpreted to apply to a single skimmer unit rather than a system or tactic which could have significant impacts on recovery numbers.</p>

<p>18 AAC 75.451 (h)(3)(A)</p>	<p>(A) the capacity of the temporary storage system for recovered oil and oil wastes must be appropriate and adequate for the total volume of oily fluids recovered, based on the equipment manufacturer's rated throughput capacity, within the response planning standard time frames for cleanup established under 18 AAC 75.430 - 18 AAC 75.442; a system with a manufacturer's rated throughput capacity (T) with a planned operating period (U) would require temporary storage of T x U barrels per day to account for total liquids recovered;</p>	<p>The proposed regulation as written could be interpreted to apply to a single skimmer unit rather than a system or tactic which will have significant impacts on recovery.</p>
<p>18 AAC 75.451 (h)(3)(B)</p>	<p>(B) if available storage capacity is insufficient, then the effective daily recovery capacity must be reduced to the limits of the available storage; and (C) if a plan holder wants to demonstrate to the department that another oil recovery efficiency rate is appropriate, the plan holder must submit a request for skimmer system efficiency evaluation form to the department; the department will approve or deny the request.</p>	<p>The proposed regulation as written could be interpreted to apply to a single skimmer unit rather than a system or tactic which could have significant impacts on recovery.</p>
<p>18 AAC 75.451(i)</p>	<p>"Plans using contractual resources must demonstrate that the transition and substitution of equipment and resources will occur without interruption of response or cleanup. a statement of contractual terms"</p>	<p>Clarification in what information is required in "statement of contractual terms", some terms such as compensation are confidential.</p>
<p>18 AAC 75.452 (b)(1)</p>	<p>"technology used for oil discharge containment, storage, transfer, and cleanup to satisfy a response planning standard in 18 AAC 75.430 - 18 AAC 75.442 will be considered best available technology if the technology of the applicant's oil discharge response system as a whole is appropriate and reliable for the intended use as well as the magnitude of the applicable response planning standard"</p>	<p>Removed requirements for communicating information and reporting on BAT reviews as well as the opportunity to comment. This means there wouldn't be any documentation to refer to for planning purposes and nor to support ADEC determinations.</p>

18 AAC 75.452	Removal of "tow lines as required by 18 AAC 75.027	Alyeska supports the proposed amendment to remove tow line from BAT.
18 AAC 75.453	"and include, based on the receiving environment information in 18 AAC 75.451(c), an estimate of what percentage of the applicable response planning standard volume set out at 18 AAC 75.430 - 18 AAC 75.436, or 18 AAC 75.442 for the facility or operation that will reach open water"	Administrative change with potential to require more repeated information that does not improve ability to respond to a spill.
18 AAC 75.455(c)(1)	" the department will notify the applicant in writing that a request for additional information will be transmitted; the department will transmit the request for additional information not later than 60 days after the end of the public comment period in (b) of this section; if the department determines the package to be unusually large or complex, or determines a longer period is required, the request will be transmitted not later than 90 days, the department may set a deadline for the submittal of the additional information; "	Alyeska supports the proposed change and timeframe for RFAIs.
18 AAC 75.460 (b)(3)	"unless the department determines that the plan is unusually large or complex, in which case the decision will include a statement requiring the plan holder to provide copies not later than 45 days after approval; the department will notify interested stakeholders of the availability of the approved plan on the department's Internet website by electronic mail to a listserv facilitated by the department"	Alyeska supports the proposed change to 45 days. Increasing this time to 45 days or more would provide a more reasonable timeframe to distribute amended plans.
18 AAC 75.480 (b)	"The owner or operator of a facility subject to the requirements of AS 46.04.030, AS 46.04.055, and 18 AAC 75.400 - 18 AAC 75.496 shall allow the department to, at reasonable times and upon presentation of credentials establishing authority, enter or access the facility to conduct in-person or virtual inspections and verification of"	Reasonable virtual inspections have been useful over the past two years. Additional clarification is needed to define scopes of "virtual technology".

<p>18 AAC 75.480 (c)</p>	<p>"The owner or operator of a facility subject to the requirements of AS 46.04.030, AS 46.04.055, and 18 AAC 75.400 - 18 AAC 74.496 must maintain and provide copies of required documents to the department upon request during a facility inspection, including a records audit; the department may choose to make its own copies;"</p>	<p>Alyeska views this change as an expansion of the responsibility of the plan holders. There is an established process in place for requesting documentation.</p>
<p>18 AAC 75.480 (d)</p>	<p>"During a facility inspection under this section, the department may obtain samples of suspected contaminated materials for purposes of compliance verification with 18 AAC 75.400 - 18 AAC 75.496."</p>	<p>Clarification is need on who may obtain, handle and transport contaminated materials within the department. This provision should be limited to: (1) taking samples of suspected "oil" contaminated materials as "oil" is defined in the statute (46.03.990); and (2) taken from facilities, components, equipment, and locations of a facility that are specifically subject to Article 4 requirements. The provision also should require split samples, so the operator gets a sample as well.</p>
<p>18 AAC 75.480 (e)</p>	<p>"Upon mutual agreement between the facility owner or operator and the department, the department may conduct inspections using virtual technology"</p>	<p>Reasonable virtual Inspections have been useful over the past two years. Additional clarification is needed to define scopes of "virtual inspections."</p>
<p>18 AAC 75.485 (d)</p>	<p>"Repealed from 18 AAC 75.425 (1) require additional exercises until it is satisfied that the oil discharge prevention and contingency plan or the non-crude streamlined plan and its execution are adequate; or"</p>	<p>Plan holders remain concerned that the regulation does not provide any limitations to the scope of an exercise. This creates ongoing uncertainty with regard to business planning processes. References within the regulation to undefined terms such as "significantly deficient" and "inadequate" exacerbate this uncertainty.</p> <p>In addition, plan holders need to retain latitude flexibility with regard to how exercises are planned and designed. Plan holders should have the flexibility to conduct regularly scheduled training exercises that are not subject to strict planning and evaluation process, which may be impractical or may overly complicate the training exercise.</p>

18 AAC 75.485 (e)

"The department will consider a regularly scheduled training exercise, or a Preparedness for Response Exercise Program exercise initiated by a plan holder as a discharge exercise, as required under (a) of this section, if the department participates in the planning and evaluation of an operations-based exercise as outlined in the Homeland Security"

Alyeska supports this proposed change. The National Preparedness for Response Exercise Program (PREP) is nationally recognized by industry and government, including the State of Alaska. State exercise requirements duplicate response requirements of other agencies, such as the United States Coast Guard (USCG), Environmental Protection Agency (EPA), Pipeline and Hazardous Material Safety Administration (PHMSA), and the Bureau of Land Management (BLM), all of whom follow PREP requirements.