

# NORTH SLOPE BOROUGH

## DEPARTMENT OF PUBLIC WORKS

P.O. Box 350

Barrow, Alaska 99723

Phone: 907-852-0489



**Scott K. Danner, Director**

January 21, 2022

Zuzana Culakova  
Alaska Department of Environmental Conservation  
410 Willoughby Ave, Suite 303  
Juneau, AK 99811

**Re: North Slope Borough Comments Towards ADEC Notice of Proposed Changes to 18 AAC 75 Part IV**

Ms. Culakova:

The North Slope Borough (NSB / Borough) respectfully submits its comments pertaining to the draft 18 AAC 75 Part IV modifications, issued by the ADEC on October 28, 2021. Our comments are detailed in the attached table.

The Borough does appreciate and support the Alaska Department of Environmental Conservation (ADEC's) attempts to clarify and streamline the application process for Oil Discharge Prevention and Countermeasure Plans (ODPCP). However, the Borough does have some concern over the modifications surrounding the apparent reduction in flexibility in ODPCP plan structure, information sources and how information is required to be displayed. With the breadth of the proposed changes, the Borough respectfully requests a substantial implementation period to allow plan holders adequate time to redesign and update their ODPCP's and related internal processes as needed.

After a review and analysis of the proposed regulatory changes, the Borough believes there will be a sizable economic impact should the proposed changes be adopted. While the Borough does agree that savings will be realized with repealing the need for publishing Public Notices in publications; those cost will be more than offset by the costs incurred by updating to new regulatory requirements.

If you have any questions, please contact me at (907) 852-0469, ([Scott.Danner@north-slope.org](mailto:Scott.Danner@north-slope.org)), or Mr. Kevin Fisher, Borough Law Department, at 907- 852-0300 ([Kevin.Fisher@north-slope.org](mailto:Kevin.Fisher@north-slope.org)).

Respectfully,



Scott K. Danner, Director  
North Slope Borough, Public Works  
PO Box 350  
Utqiagvik, Alaska, 99723

cc: Joe Ramirez, NSB Public Works, Division Program Manager  
Matt Dunn, NSB Public Works, Division Manager of Fuels and Natural Gas  
Guy Wade, Jacobs Technology  
Cynthia Trapp, Jacobs Technology

Attachment:

- North Slope Borough Draft 18 AAC 75 Part IV Comments

Comment #	Proposed 18 AAC 75 Part IV Modifications. 18 AAC 75....	North Slope Borough Response and /or Comments
1	<b>.400 (f) and (g).</b> Repealing natural gas production or natural gas terminal facilities not being required to submit an ODPCP	As the ADEC knows, the North Slope Borough has sizable natural gas fields in Utqiagvik as well as in Nuiqsut, and the potential rescinding of a long-standing exemption for natural gas infrastructure, directly and immediately impacts the North Slope Borough's ODPCP.  Additional clarification is required on whether natural gas wells, condensate flare tanks and associated natural gas transportation pipelines and processing facilities are required to be included within ODPCP's.
2	<b>.400(j)</b> This newly added subsection states that the person filing an application must be the same person that files an application for proof of financial responsibility	This proposed regulation does not provide for any increase in ODPCP regulatory processing, ODPCP implementation or spill response efficiencies.  The Borough department responsible for proof of financial responsibility certification (essentially an insurance policy confirmation statement) is not involved in the development and implementation of an operational spill response plan. As such this department does not <i>"have the authority to sign the application and commit the resources necessary to implement the plan on behalf of the applicant..."</i> ; which is the current certification required for all ODPCP applications. Mandating this change, impacts the roles and responsibility of Borough personnel who are not included in or associated with the processing of an ODPCP, essentially interrupting and interfering with internal Borough processes. This proposed subsection provides no increase in efficiencies in the enacting and operationalization of this plan and may be viewed as regulatory overreach that is in direct conflict with Borough personnel and division mandates, and roles and responsibilities.  The Borough requests the removal of this proposed subsection.
3	<b>.415(b)</b> Increasing the duration of a routine plan update submission from 5 days following the date of the proposed change, to 10 days.	The Borough supports this proposed addition of time in which to submit a routine plan amendment.
4	<b>.425</b> Repealing 18 AAC 75.425 <b>.445</b> Repealing 18 AAC 75.445	The proposed new section 75.448 mandates the same five sections identified within the current .425. What was the regulatory driver to repeal an entire long-standing section and essentially move it to a new section?

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		The Borough does not support the removal of .445, which currently contains information on how the ADEC will review and evaluate submitted ODPCP's. Removing this section with no comparable new section in which to replace it, thereby removes the regulatory transparency on how plans will be evaluated and enables subjectivity and inconsistencies to plan reviews. The Borough strongly suggests that the ADEC include its review checklist in the updated 18 AAC 75.
5	<b>.432(d)(2)</b> states "an operations training program with a professional organization or federal certification or licensing of program participants.	The Borough requests clarification of what the ADEC considers a 'professional organization' for training purposes.
6	<b>.432(d)(3)</b> states 'online leak detection systems that automatically alarm as a central facility system that is continually monitored for tanks and piping	The Borough requests clarification as to what the ADEC considers "continually monitored.' The Borough's current leak detection monitoring program for its tank infrastructure consists of both an automated tank management system (TMS) located on its bulk fuel storage and distribution tanks, and routine personnel monitoring and visual inspection on its intermediate and day use tanks. It automated TMS is accessible at the specific facility as well as remotely, so that potential alarms are not only identified at the facility but can be accessed at the Public Works building in Utqiagvik. As the Borough's automated TMS continuously records data with redundant local and remote monitoring capabilities, confirmation is requested that this meets the 'continually monitored' phrase of the proposed revised leak detection system definition.
7	<b>.448 ODPCP, general content and approval criteria</b>	<p>Through the adoption of section .448, it would now be a regulatory 'requirement' to follow the plan structure identified within. ADEC promoted this same plan structure for years with most plans, including the Borough's, following the <u>recommended</u> structure. However, flexibility in plan style and layout to best fit the plan holders' needs was allowed.</p> <p>Now the design and structure of all plans, regardless of the needs of the plan holder and responders, are mandated. Please explain what the driver for changing a 'recommendation' to a 'requirement' was when most of the plans already comply? Is it efficiencies gained by the ADEC in plan reviews? If so, please be transparent with why this change was proposed. For now, it seems that there is regulatory overreach by mandating how an entities' plan must be structured, without the possibility of structural modification that best fits the plan holder's situation. The ADEC states in .448 that "a plan must be useable as a working plan." But with the ADEC mandating the plans' specific structure, they are negating the plan design and</p>

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		<p>function for what works best for the responder and the responding parties; the very entities that these plans are developed for.</p> <p>The Borough strongly recommends that the ADEC revise mandating the plan structure and allow for plan structure alternatives as is currently stated in 18 AAC 75.425(d)(4).</p>
8	<p><b>.449(a)(6)(K) Part 1 ODPCP – Response Action Plan</b> This proposed subsection states: ... must include identification of all necessary permits, approval, or authorizations and the timeline for them</p>	<p>Inclusion of information pertaining to the length of time to obtain a permit approval is beyond the capabilities and the responsibilities of the plan holder. The needed regulatory permit review and approval time are at the sole discretion of the applicable regulatory agencies. There is no consistent and verifiable way to obtain and provide the timeframe in which the different regulatory agencies will process an application during a spill response event. We recommended that the ADEC provide the timeframes and other listed regulatory agencies will commit to processing received applications during spill response activities or remove this requirement from the draft section changes.</p>
9	<p><b>.449(10)(b)(1)</b> defines a ‘typical summer environmental condition’ as being the average wind speeds and predominant winds as depicted by a wind rose, temperature, sea state etc., occurring during the period of May through October</p> <p><b>.449 (10)(b)(2)</b> states that the ‘typical winter environmental conditions’ are to be demonstrated for the timeframe of November through April’</p>	<p>The stated ‘summer’ weather timeframe of May through October is not ‘summer’ for the North Slope Borough. Typical summer weather for the Borough is from July through September. Similarly, typical winter weather for the Borough is not November through to April, but rather is October through June. As such the Borough is requesting that allowances be available, when presenting the required data, to represent what is summer and winter in the actual areas of operations, rather than a predefined and potentially incompatible timeframe.</p> <p>.449(10)(b) (1) and (2) also require the predominant wind directions to be depicted by a wind rose diagram. This is overly prescriptive and forces a plan holder into including information in a manner that may not be in readily usable format for the responder. Specifying the exact format in which information is portrayed forces plan holders to adopt methodologies that hinder the plan being ‘useable as a working plan’ for the responders. The Borough recommends allowing additional graphical representations (e.g., bar graphs, scatter plot etc.) for wind direction.</p>
10	<p><b>.451(g) Part 3 ODPCP, Supplemental Information – Response Equipment</b> States that the applicant must have ready access to enough equipment to</p>	<p>Clarification is requested on the ADEC’s definition of ‘ready access.’</p> <p>This new subsection also requires that identified equipment must reflect the best available technology when the plan is submitted. It is recommended that this statement is revised to</p>

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	meet the applicable response planning standards.... And that the identified equipment must reflect the best available technology when the plan is submitted	state ‘best applicable or practicable available technology’ or some similar statement. The “best available technology” may not be appropriate for the unique situation and circumstances in which the Borough conducts its operations. To demonstrate that each response equipment item is the best available technology essentially constitutes requiring a Best Available Technology (BAT) analysis on each piece of equipment. If the ADEC is requiring plan holders to conduct a BAT analysis on each type of spill response equipment listed within its plans, then this should be clearly stated in the proposed section 4 requirements.
11	<b>.455(b)(5)</b>	The Borough supports the proposed revisions detailed in this section, in which the ADEC will publish an online public notice announcing the public comment period, and the removal of the requirement to provide notices in general circulation publication (newspaper).
12	<b>.455(c )(1)</b>	<p>The Borough supports the proposed reduction in time in which the ADEC has to provide its request for additional information following the closure of the public comment period. Currently, plan holders must wait up to three months for the ADEC to provide a list of additional comments received during the public notice period which can lead to a longer review and approval process then needs to occur and reduce the time available for the plan holder to adequately address received RFAI’s.</p> <p>It also states, however, that the ADEC may retain the 90-day timeframe for complex or larger plans. This creates ambiguity as to when the plan holders will receive the public comments. We recommend that additional text be added to this section that indicates when the decision on the number of days before receipt of additional information requests will be communicated to the plan holder (preferably within 7 days of closure of public notice period) or this issue will become a consistent topic for discussion during the pre-submission application meeting.</p>
13	<b>.480 (c )(2) Inspections</b> This repealed and readopted section provides that new statements that the documents must be readily available and provided to the department as part of an in person or virtual facility inspection	Please provide a timeframe associated with ‘readily available’ and consider the inclusion of additional text stating that provision of requested documentation is to be provided to the ADEC with a specific timeframe (e.g., 48 hours etc.).
14	<b>.480 (d) Inspections</b>	The Borough does not support the ADEC collecting or engaging in invasive sampling activities on its property without prior and proper notification. The Borough expects that the ADEC will

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	States that 'during a facility inspection the ADEC may obtain samples of suspected contaminated materials...'	<p>provide written notification of its intent to collect samples prior to the activity and requires that no sampling activity will occur without the presence of a Borough representative, unless communicated otherwise in writing by the Borough. We request a copy of all resulting laboratory analysis or findings because collected samples must be shared with the Borough immediately upon receipt of, and interpretation of, received analysis.</p> <p>The Borough strongly requests that .480(d) be amended to state that the ADEC will share all received analytical data from the collected sample with the facility owner/operator.</p>