

Alaska Fuel Storage and Handlers Alliance

Please find uploaded, comments from the Alaska Fuel Storage and Handlers Alliance.



Alaska Fuel Storage and Handlers Alliance

January 31, 2022

Alaska Department of Environmental Conservation
Division of Spill Prevention & Response
Attn: Zuzana Culakova
P.O. Box 111800
Juneau, AK 99811

Subject: Comments to the Proposed Changes to Oil Pollution Prevention Contingency Plan (ODPCP) Requirements

Dear ADEC:

The Alaska Fuel Storage & Handlers Alliance (AFSHA) is an industry trade association comprised of members whose operations are subject to state and federal oil spill preparedness and response regulations. For background, the Alaska Fuel Storage & Handlers Alliance (AFSHA) was formed in 2007. AFSHA has approximately 17 members, which represent the major fuel barge, storage, and seafood processing industries in Alaska. AFSHA members take pride in not only meeting current environmental protections, but also exceeding those requirements.

Since AFSHA's inception, members have been advocating for the review of these regulations which became effective in 1992, when more stringent oil spill statutes were adopted after the T/V Exxon Valdez oil spill. In 2003-04, the Alaska Department of Environmental Conservation (ADEC) recognized the need to review these regulations and implemented the Contingency Plan Review (CPR) project. The CPR project was phased in over time and in 2012, AFSHA and its members continued to advocate to ADEC/Division of Spill Prevention and Response (SPAR) for predictability and consistent interpretation of these regulations. It's taken nearly 19-years to reach this point.

AFSHA members commend ADEC for initiating the scoping project in 2019-2020. AFSHA submitted comments in January 2020 and some items raised were addressed in the proposed changes, other suggestions were discounted and are discussed in the following paragraphs.

ODPCP Timeframe and Process: Notification, Consultation, Application, Review and Approval Process {.405; .410; .455, etc.}

The department may want to consider separating **new plan** review from **renewals/major amendments**. The pre-consultation process that an ODPCP holder must currently perform **to renew** their plan(s) are burdensome and the timeframe for agency review excessive. These steps/process may be appropriate for new plans but for



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facilities that have operated in Alaska for decades this is excessive and unreasonable. There is no apparent reason or benefit to the environment for an extended 240-days/ 8-months renewal period for an existing ODPCP that's been previously approved through all renewal cycles since the inception of the laws. There is no apparent reason or benefit to the environment an extended 180-days/ 6-months period to conduct a major amendment either. The timeframes that originally existed (prior to 2016) of 120 days/4 months were sufficient and kept renewal and amendment costs lower. These timeframes allowed businesses to take advantage of opportunities without a 6–8-month permit review delay.

The primary reason for extending the review timeframe appears to be solely advantageous for ADEC staff and schedules. The request for additional information (RFAI) comments provided to the plan holder support no net gain in environmental protection since the majority of RFAI comments focus on spelling and grammar errors, correcting agency contact information, etc. Despite repeated requests and comments during public comment periods in 2017 and 2020, the State of Alaska has ignored industry feedback on this point. We concur with the changes reflected in the proposed regulations for reducing the review timeframe, however reducing the review period by **5-days** in total is grossly insufficient.

Collapsing the renewal/major amendment timeframe to no more than 120-days/4 months allows industry to plan for and take advantage of business opportunities whether seasonal or year-round, and reduces unnecessary expenses related to tracking and responding to 8 months of renewal and amendment correspondence. As an industry we also propose reducing the number of days associated with providing the request for additional information and approval documentation to **no more than 30-days of the proposed 120-day renewal/major amendment timeframe.**

Part 4 - Oil discharge prevention and contingency plan, Best Available Technology Review 18 AAC 75.452 -

To meet this requirement, at each contingency plan review or renewal, the department makes a BAT determination on certain plan components, as described in 18 AAC 75.425(e)(4). In addition, in 1997, regulations were implemented for a more general BAT review.

All contingency plans are required at a minimum to include a BAT analysis for: Communications, Source Control Procedures, Trajectory Analysis and Forecasts and Wildlife Capture, Treatment, Release Procedures and Methods. Information for each item is discussed other relevant sections of an ODPCP, and a BAT analysis is redundant or unnecessary. When BAT was first proposed in the 1990's communication technology was limited to phone landlines and facsimile machines (pre-internet), computers but no internet. Now the facsimile machines are nearly obsolete, and communications options are unlimited via satellite and wireless options. Operators embrace communications



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technology to alleviate personnel, safety, health, and asset concerns. Currently, a BAT analysis is no longer warranted. The same rationale applies to Wildlife Capture, Treatment and Release Procedures since the update of the ARRT Wildlife Protection Guidelines. These guidelines are the BAT analysis and industry through their contractors have arrangements to implement the procedures should a spill occur and warrant activation.

ADEC is required to conduct a BAT conference every 5-years. The first technology conference was held in 2004. The department has sponsored two additional technology conferences. It's apparent that ADEC cannot comply with its regulatory obligations to administer BAT since with the last conference was conducted in September 2011, over a decade ago. The BAT regulations warrant a more detailed review in what is or isn't applicable based on current events and development.

Discharge Exercises {18 AAC 75.485}

The benefits of discharge exercises are many and have proven beneficial to plan holders, agency representatives, contractors, and stakeholders for practicing their skills and decision-making process required during an emergency, developing relationships, and improving contingency plans. All facilities with ODPCP's have adopted the National Preparedness for Response Exercise Program (PREP) to meet federal requirements since the inception of spill response planning in the 1990's. Until this proposed change ADEC allowed for the PREP requirements to meet ADEC discharge exercise requirements. The PREP program has been identified as highly successful in the past by both State and Federal regulators in preparing plan holders, agency representatives, contractors, and stakeholders to respond to spill events.

The department proposes to adopt by reference the "*Oil Spill Response Exercise Manual- A Guide for Planning, Conducting, and Evaluation Exercises*", (*Exercise Manual*) Draft Version-October 27,2021 to formulate and establish a discharge exercise program in Alaska for entities regulated under 18 AAC 75. The program as described in the Exercise Manual is designed to comply with HSEEP requirements, which are typically applied to community led emergency response by entities such as the Federal Emergency Response Agency (FEMA). The resulting guidance as proposed has significant impacts to Alaska's bulk fuel storage and handling industry.

The requirements proposed are cumbersome, with a 76-page document that prescribes nine months of development for every drill event, and a long list of new requirements, definitions, and State oversight roles. It lacks clear objectives or desired outcomes and is missing several key definitions. Without clear objectives on desired outcomes, this proposed guidance will be difficult, if not impossible for the State of Alaska and Industry to comply with. As written, this guidance does not provide any limitations to the scope of an exercise and does not define terms such as "significantly deficient" and "inadequate" which further exacerbates uncertainty around the desired outcomes. The discharge



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exercise process should be clearly defined to ensure the same outcomes for each plan holder.

Items from the proposed guidance that the industry finds overly burdensome include:

- An onerous nine-month planning period for each significant exercise.
 - For plan holders with multiple facilities within the State of Alaska, this could result in several large exercise events each year involving the highest levels of the plan holder's management team. A nine-month planning window is an excessive timeframe, especially given that drills are often performed in specific seasons to avoid poor weather – which often coincide with the busiest fuel transport times of the year.
 - As an industry we see potential conflicts with drill exercises impacting a company's ability to provide fuel to rural communities.
- ADEC pre-approval and participation in all other exercise elements.
 - Adding ADEC pre-approval and participation will create a bottleneck of exercise approvals and participation that will delay plan holders' ability to meet the requirements of the proposed guidance.
- Scheduling exercise components around ADEC's availability on a statewide calendar.
 - Given Alaska's weather creates seasonality for scheduling exercises and this would create competition for prime exercise times between plan holders for limited ADEC staff resources. This must also be managed around ODPCP renewal and amendment activities with the same staff resources.
- Allows non-Prevention and Preparedness staff from the State of Alaska to participate in evaluation of exercise performance, without detailing the training or experience that staff member must have to provide feedback or evaluation for sufficiency.
 - This presents an unfair situation for plan holders as they could potentially be evaluated and determined to be sufficient or insufficient by State of Alaska employees that are not guaranteed to have relevant training or industry experience or knowledge.
 - The guidance does not address how other State of Alaska employees will be chosen, nor does it limit their ability to hold any position within the incident management chart.
- By adopting the proposed guidance into regulation, this removes the ability for public comment on any changes to the guidance.
 - The industry objects to the creation of a document adopted by regulation that can be modified or changed without limitation, notice, or input from any of the key stakeholder groups.
- Although the number of State staff and their roles can expand or contract based on the type of exercise, what's proposed to determine whether an ODPCP spill response scenario is adequate is excessive.



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- The ODPCP Reviewer, Exercise Planner, Exercise Evaluator, and Improvement Planner as described are essentially the same person for most plan holders.
- During a full drill exercise, the State of Alaska must fill up to 16 observer, participant, and incident command roles.
- The SPAR division currently has approximately 60 employees that are already tasked with active spill response, ODPCP plan review, and facility inspections. With 131 active ODPCP's and 231 NTV Streamlined plans, ADEC does not have the trained staffing available to fill all these individual roles for all 362 active plans.

ODPCP holders need to maintain flexibility about how exercises are planned, designed, and implemented, and should not be subjected to the HSEEP planning, design, and evaluation process. AFSHA members recommend that ADEC continue to recognize and formally adopt into regulation the nationally recognized PREP guidelines since the program is consistently applied throughout the industry both in Alaska and the United States and has clear objectives and definitions already in place.

The following table includes detailed comments from AFSHA members to the proposed regulations. We look forward to any future communication and collaboration with ADEC to improve expectations and predictability with the contingency plan review process.

Sincerely,

Kevin O'Shea
AFSHA President

ALASKA FUEL STORAGE AND HANDLING ALLIANCE
 Comments to 18 AAC 75 Proposed Regulation Revisions

	Citation	Proposed Regulation	Recommended Change	Comment
Applicability	.400(c)	<p><u>The owner or operator of an oil terminal facility that is subject to the requirements of AS 46.04.030 and 18 AAC 75.400 - 18 AAC 75.495 may apply for an exemption from those requirements if the effective storage capacity of the facility has been permanently reduced below the amounts set out in AS 46.04.050 by submitting an application form supplied by the department and a letter describing the permanent modification that was made to the facility;</u></p> <p><u>(1) the applicant must provide proof of the permanent modification as follows:</u></p> <p><u>(A) for purposes of reducing storage capacity by removing one or more tanks, the tanks and associated piping must be emptied, secured in a manner to prevent unauthorized use, and blank flanged; or the tank and piping must be disconnected from each other; tanks removed from service must be clearly marked with the words "Out of Service" and the date taken out of service; before reactivation of a tank that has been removed from service for the purposes of an exemption under this subsection, the owner or operator must notify the department and, if necessary, must file a new application for approval of an oil discharge prevention and contingency plan; and</u></p> <p><u>(B) for the purpose of changes to the storage capacity of a tank, changes must be made in a permanent manner;</u></p> <p><u>(2) the department will approve or deny the request for an exemption not later than 30 days after it receives a complete application; and</u></p> <p><u>(3) the department will conduct inspections as necessary to ensure compliance with this subsection.</u></p>		<p>For a tank, taken 'out of service' in accordance with 18 AAC 75.065(o).</p> <p>For facility oil piping, taken 'out of service' in accordance with 18 AAC 75.080(o).</p> <p>Is 'permanent' defined?</p>

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	Citation	Proposed Regulation	Recommended Change	Comment
	.400(j)	<u>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).</u>	<u>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).</u>	<p>Delete in its entirety. This change is not needed. Industry uses financial and legal responsible parties with the financial authority within the company to ensure that the initial and annual Proof of Financial Responsibility is submitted in accordance with 18 AAC 75.205(a). It is the responsibility of the person filing the application to ensure that the Proof of Financial Responsibility is provided to ADEC. As proposed, this language is unworkable and should not be adopted.</p> <p>This proposed change will place undue burden on the financial personnel who are authorized to file the COFR annually to be in the ODPCP application process.</p>
Pre-application notification and consultation for ODPCP; new plans and plan renewals	.405			<p>Through the addition of the Editor's Note to this section, it appears as though an email will be considered "written notice", please provide confirmation or clarification.</p> <p>It is confusing to have removed such explicit language from the previous regulations and added something more ambiguous to an Editor's Note.</p> <p>Removal of accepting submittal via e-mail is moving backwards with technology/methodology and is inconsistent with the department's scope for these changes.</p> <p>Pertinent information should be added to the regulations vs. being captured in editors' notes.</p>
	.405(a)	At least 60 days before submitting an application package for approval of a new oil discharge prevention and contingency plan under 18 AAC 75.410 or for renewal of approval under 18 AAC 75.420, the applicant must notify the department in writing of its	At least 60 30 days before submitting an application package for approval of a new oil discharge prevention and contingency plan under 18 AAC 75.410 or for renewal of approval under 18 AAC 75.420 , the applicant must notify	Recommend not combining the new plan submittals with plan renewals. For new plan submittals only .405(a).

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	Citation	Proposed Regulation	Recommended Change	Comment
		intent to submit an application. [AN ELECTRONIC MAIL OR FACSIMILE TRANSMISSION DELIVERED TO THE APPROPRIATE DEPARTMENT OFFICE WILL BE CONSIDERED WRITTEN NOTICE FOR PURPOSES OF THIS SUBSECTION.]	the department in writing by letter or electronic mail of its intent to submit an application and delivered to the department inbox at INBOXNAME@ADDRESS will be considered written notice for purposes of this subsection. The applicant must consult with the department prior to the scheduled submission date to ensure the application package meets the requirements of 18 AAC 75.408 and the requirements of 18 AAC 75.410	
	.405(b)	The applicant must consult with the department not later than 30 days before the scheduled submission date for [SUBMITTING] the application package to ensure that the application meets the requirements of 18 AAC 75.408 and the requirements of 18 AAC 75.410 or 18 AAC 75.420, to discuss the contents of the proposed plan, and to discuss the review process under 18 AAC 75.455.	At least 60 30 days before submitting an application package for approval of a new oil discharge prevention and contingency plan under 18 AAC 75.410 or for renewal of approval under 18 AAC 75.420, the applicant must notify the department in writing by letter or electronic mail of its intent to submit an application. application and delivered to the department inbox at INBOXNAME@ADDRESS will be considered written notice for purposes of this subsection.	Pre-consultation for renewal of an ODPCP should not be required since these meetings have resulted in little to no constructive assistance for an existing plan holder. Consultation should be a “new” plan only requirement.
	.405(d)	<u>Upon satisfying the requirements under (a) and (b) of this section, the application package may be submitted to the department before the 30 days specified in (b)</u>	Upon satisfying the requirements under (a) and (b) of this section, the application package may be submitted to the department before the 30 days specified in (b)	Delete in (b)
	.405 Editor's Note	<u>A notification can be submitted to the department inbox at INBOXNAME@ADDRESS.</u>		Pertinent information should be added to the regulations vs. being captured in editors’ notes.

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	Citation	Proposed Regulation	Recommended Change	Comment
General procedure to apply for ODPCP	.408(b)	The application form must be signed as required under 18 AAC 15.030. [FOLLOWS: (1) FOR A CORPORATION, BY A PRINCIPAL EXECUTIVE OFFICER OF AT LEAST THE LEVEL OF VICE PRESIDENT OR THAT OFFICER’S AUTHORIZED REPRESENTATIVE, IF THE REPRESENTATIVE IS RESPONSIBLE FOR THE OVERALL MANAGEMENT OF THE PROJECT FACILITY OR OPERATION; (2) FOR A PARTNERSHIP, BY A GENERAL PARTNER; (3) FOR A SOLE PROPRIETORSHIP, BY THE PROPRIETOR; (4) FOR A MUNICIPAL, STATE, FEDERAL, OR OTHER PUBLIC FACILITY, BY EITHER A PRINCIPAL EXECUTIVE OFFICER, RANKING ELECTED OFFICIAL, OR OTHER AUTHORIZED EMPLOYEE; (5) FOR A JOINT VENTURE, BY THE OPERATOR; (6) FOR A LIMITED LIABILITY COMPANY, BY A MEMBER; (7) BY AN AGENT WHO HAS BEEN DELEGATED THAT AUTHORITY IN WRITING TO THE DEPARTMENT BY THE RESPONSIBLE PARTY UNDER (1) - (6) OF THIS SUBSECTION.]	The application form must be signed as follows: (1) for a corporation, by a principal executive officer of at least the level of vice president or that officer’s authorized representative, if the representative is responsible for the overall management of the project or operation; (2) for a partnership, by a general partner; (3) for a sole proprietorship, by the proprietor; (4) for a municipal, state, federal, or other public facility, by either a principal executive officer, ranking elected official, or other authorized employee; (5) for a joint venture, by the operator; (6) for a limited liability company, by a member; (7) by an agent who has been delegated that authority in writing to the department by the responsible party under (1) – (6) of this subsection.	It is unclear why this change is needed or what the purpose of requiring high level personnel to sign the application is. 18 AAC 15.030 does not list 18 AAC 75 as applicable. LLCs are not listed in 18 AAC 15.030 and should be treated the same as a corporation. Suggest ADEC address LLCs specifically. Recommend keeping the current regulatory language.
	.408(c)(1)	<u>(1) the format must be electronic; one paper copy of the initial application package and response to requests for additional information must be provided to the department upon request; one paper copy of the final approved plan must be submitted to the department:</u> <u>(A) for paper copies of the plan, for an amendment or renewal application, the plan holder may submit only the changed pages if the pages are clearly marked and can easily be incorporated into the original plan document, otherwise the full plan must be provided;</u> <u>(B) a person that is not able to access the documents from the department’s Internet</u>	<u>(1) the department will specify the electronic format to be used</u> the format must be electronic, searchable and non-editable ; one paper copy of the initial application package and response to requests for additional information must be provided to the department upon request; one paper copy of the final approved plan must be submitted to the department: (A) for paper copies of the plan, for an amendment or renewal application, the plan holder may submit electronically only the changed pages if the pages are clearly marked and	The paper requirement should be removed. Alternate format should be defined.

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		<p><u>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;</u> <u>(C) the department will specify the electronic format to be used; the submittal must be electronically searchable;</u></p>	<p>can easily be incorporated into the original plan document, once approved by the department a full electronic version otherwise the full plan must be provided; (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 department will provide the package to the requester in an alternate format; (C) the department will specify the electronic format to be used; the submittal must be electronically searchable;</p>	
Procedures to apply for oil discharge prevention and contingency plans; new plans.	.410(a)	An application package for approval of a new oil discharge prevention and contingency plan must be submitted in accordance with 18 AAC 75.408. An application package must be submitted at least 180 days before the proposed start of operation.	An application package for approval of a new oil discharge prevention and contingency plan must be submitted in accordance with 18 AAC 75.408. An application package must be submitted at least 180 60 days before the proposed start of operation.	Recommend reducing the timeframe. As a result of regulatory change in 2016, the plan review and renewal and approval process can take up to 240 days when it used to be a 65-day review period. The requirement for a 60-day pre-notification and a 180-day submittal timeframe makes it difficult for a business to react to market changes. 240 days is far too long for a project to be permitted and in operation, many operations are seasonal in nature, and this may prevent business opportunities. Suggest reducing the review timeline. If the proposed 60 days is not reasonable for the department, we recommend the department evaluate the feasibility of 90 or 120 days.

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	Citation	Proposed Regulation	Recommended Change	Comment
Procedures to apply for oil discharge prevention and contingency plans, plan amendments.	.415(i)	<u>An amendment application to allow the addition of aboveground oil storage tank with a storage capacity of 10,000 gallons or greater to operate on a temporary basis under an approved plan must include, as appropriate, the information required by 18 AAC 75.451(b)(1) and (5). An application package for this type of plan amendment must be submitted not later than ten working days before the oil storage tank is located at a facility. Unless the department determines that it is a major amendment under (a) of this section, the department will review the application package and issue a written decision not later than ten working days after receiving the complete package.</u>		Please clarify: "Temporary basis" is defined as the use of an oil storage tank for a duration of less than a total of 12 consecutive months at a facility; and includes oil storage tanks used for construction or maintenance activities but does not include tanks that are moved within the facility and used for more than 12 months.
Procedures to apply for oil discharge prevention and contingency plans, plan renewal.	.420(e)	An application for a plan renewal, <u>including items that were not changed since the last plan approval,</u> will be reviewed under the provisions of 18 AAC 75.455.		Recommend deleting the new language. It is unclear why the department needs to review items in a plan that were reviewed and approved before and not changed.

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	Citation	Proposed Regulation	Recommended Change	Comment
RPS for oil terminal facilities	432(b)	(b) The response planning standard volume for a crude or noncrude oil terminal facility is equal to the capacity of the largest oil storage tank at the facility covered by the plan, unless there are specific natural or man-made conditions outside the facility which could place the facility at an increased risk of an oil discharge affecting one or more storage tanks. <u>For vessels operating as oil terminal facilities, the response planning standard is based on the entire storage capacity of the vessel.</u>	b) The response planning standard volume for a crude or noncrude oil terminal facility is equal to the capacity of the largest oil storage tank at the facility covered by the plan, unless there are specific natural or man-made conditions outside the facility which could place the facility at an increased risk of an oil discharge affecting one or more storage tanks. For vessels operating as oil terminal facilities, the response planning standard is based on the entire storage capacity of the vessel.	Delete the language added/proposed. What exactly is a “vessel operating as oil terminal facility”? Please define and provide parameters when a VESSEL (barge, NTV or TV) is considered an OIL TERMINAL FACILITY . Under the new requirements, would the RPS of a 120,000 bbl. non crude barge be 120,000 bbl.? Why isn’t the 15% reduction (for calculating RPS of non-crude barge or tank vessel) utilized since these are VESSELS . Does DEC consider vessels moored offshore for transfer operations, to be a greater threat than a vessel transiting from port to port? Please provide examples (real world) of how a double-hulled vessel or barge will lose its entire cargo.
	.432(d)(5)(A)	cathodic protection for aboveground petroleum storage tanks and facility oil piping within secondary containment: 10 percent;		There are several facilities built prior to the mid 90's tank CP requirement as well as tanks with waivers due to low corrosivity soil - does this reduction apply to these tanks and/or facilities or do they still have the less 10% response?

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	Citation	Proposed Regulation	Recommended Change	Comment
ODPCP general content and approval criteria	.448(a)	<p><u>Oil discharge prevention and contingency plan, general content and approval criteria. (a) An oil discharge prevention and contingency plan submitted for approval under 18 AAC 75.400 – 495 must be usable as a working plan for oil discharge control, containment, cleanup, and disposal of an oil discharge of any size. The plan must contain enough information, analyses, supporting data, and documentation to demonstrate the plan holder's ability to meet the requirements of AS 46.04.030, AS 46.055(c)(2), and 18 AAC 75.400 - 18 AAC 75.495. It must demonstrate that the personnel, equipment, and other resources identified in the plan are sufficient for meeting each response planning standard applicable for each facility in the plan. The plan must take into account realistic maximum response operating limitations and their effects on response capability and the deployment of resources. The department will review and evaluate a plan by verifying that it meets the applicable requirements under 18 AAC 75.448 - 18 AAC 75.453.</u></p>	<p>The new citation should likely be AS 46.04.055(c)(2).</p> <p>Add Article 1 requirements; 18 AAC 75.005 - 18 AAC 75.085 after new citation for clarification.</p>	ADEC should review and update citation as needed before finalizing new rule.

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	Citation	Proposed Regulation	Recommended Change	Comment
Part 1 ODPCP Response Action Plan	.449(a)	<u>Part 1 - Oil discharge prevention and contingency plan, Response Action Plan. (a) The oil discharge prevention and contingency plan response action plan must contain immediate steps to be taken in response to a discharge of any size, hypothetical response scenarios based on applicable response planning standards, nonmechanical response procedures if the plan holder intends to request approval for their use, facility diagrams to support emergency response plans, and general procedures for responding to the maximum possible discharge that could occur at the facility or facilities covered by the plan. The plan must include the following information in sufficient detail to clearly guide responders in an emergency event:</u>	Part 1 - Oil discharge prevention and contingency plan, Response Action Plan. (a) The oil discharge prevention and contingency plan response action plan must contain immediate steps to be taken in response to a discharge of any size, hypothetical response scenarios based on applicable response planning standards, nonmechanical response procedures if the plan holder intends to request approval for their use, facility diagrams to support emergency response plans, and general procedures for responding to the maximum possible discharge that could occur at the facility or facilities covered by the plan. The plan must include the following information in sufficient detail to clearly guide responders in an emergency event:	Please define or provide a definition for "maximum possible discharge". A plan holder needs this term defined to comply. Recommend using the term "response planning standard" which is defined. The information recommended for deleting is covered in the subsequent regulations under .449(a).
	.449(a)(1)	<u>emergency action checklist - a short checklist of the immediate response and notification steps to be taken if an oil discharge occurs to be carried by the response personnel;</u>	emergency action checklist - a short checklist of the immediate response and notification steps to be taken if an oil discharge occurs to be carried by the response personnel made available to designated personnel;	The Emergency Action Checklist is posted in many obvious locations and training on this occurs annually. Please clarify who "response personnel" are. If this is any person who may conceivably respond to a spill, this is difficult to comply with. This should stay as a recommendation and not a requirement.
	.449(a)(2)	<u>reporting and notification - a description of the immediate spill reporting actions to be taken at any hour of the day, including (A) the title and telephone number of facility personnel responsible for making the notification; and (B) the telephone number of each appropriate government agency to be notified if a discharge occurs and additional contact information for potentially impacted</u>	reporting and notification - a description of the immediate spill reporting actions to be taken at any hour of the day, including (A) the title and telephone number of facility personnel responsible for making the notification; and (B) the telephone number of each appropriate government agency to be notified if a discharge occurs and additional	"Potentially impacted groups" needs a defined parameter (e.g., those within the immediate impact area). "others who may be called on to provide resources" are not defined in the regulation. Contact information should be contained in the Area Contingency plans and not reiterated in each plan.

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		<u>groups and others who may be called on to provide resources during the spill;</u>	contact information for potentially impacted groups and others who may be called on to provide resources during the spill;	
	.449(a)(6)	<u>response scenario - a written description of a hypothetical spill and response that demonstrates a plan holder’s ability to respond to a discharge of each applicable response planning standard volume within the required time frames under 18 AAC 75.430 – 18 AAC 75.442, using the resources described in the contingency plan; 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, and if the response scenario is for an exploration or production facility, must also meet the applicable requirements of (7) of this subsection; if the information required by this subparagraph is contained in a separate document developed by the plan holder or the plan holder’s primary response action contractor identified in 18 AAC 75.451(i), the plan holder may incorporate the information by reference upon receiving the department’s approval; response strategies must be sufficient to meet the applicable response planning standard established under 18 AAC 75.430 - 18 AAC 75.442 for containment, control, recovery, transfer, storage, and cleanup within the specified time and under environmental conditions that might reasonably be expected to occur at the discharge site and must include</u>		The purpose of the scenarios is not to be a guide but rather to demonstrate the ability to contain, control, and recover the RPS volume. The use of the scenarios for a general response guide is not what was originally intended. This section should be revised.
	.449(a)(6)(C)	<u>in place procedures to stop the discharge at its source, within the shortest possible time, and prevent its further spread;</u>	in place procedures to stop the discharge at its source, within the	It should be noted by DEC, that the shortest possible time may not be the safest or best response at the time.

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			shortest possible time, and prevent its further spread;	Adding "within the shortest possible time" wording seems to be redundant and an unnecessary addition to the regulation. All plan holders wish to stop discharges within the shortest possible time while taking measures to ensure personnel safety. This addition makes it seem as though safety of personnel should not be the highest priority.
	.449(a)(6)(D)	<u>a description of methods to prevent or control a potential fire hazard, 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;</u>	a description of methods to prevent or control a potential fire hazard, 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;	Regulatory overreach by ADEC into Fire Marshall or Local Fire Departments jurisdiction. All facility designs are reviewed and approved by the State Fire Marshal or local Fire Department. Subjecting these items for further review by personnel not familiar with the fire code is not productive.
	.449(a)(6)(F)	<u>for a stationary facility or operation, or a railroad, and, if requested by the department, for a vessel, a description of site-specific strategies for the protection of environmentally sensitive areas and areas of public concern identified under 18 AAC 75.451(k), including, for a land-based facility or railroad, protection of groundwater and public water supplies; sufficient oil discharge response equipment, personnel, and other resources must be maintained and available for the specific purpose of preventing discharged oil from entering these environmentally sensitive areas or an areas of public concern that would likely be impacted if a discharge occurs, and that this 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 under 18 AAC 75.430 - 18 AAC 75.442; areas</u>	for a stationary facility or operation, or a railroad, and, if requested by the department, for a vessel, a description of site-specific strategies for the protection of environmentally sensitive areas and areas of public concern including, for a land-based facility or railroad, protection of groundwater and public water supplies; sufficient oil discharge response equipment, personnel, and other resources must be maintained and available for the specific purpose of preventing discharged oil from entering these environmentally sensitive areas or an areas of public concern that would likely be impacted if a discharge occurs, and that this equipment and personnel will be deployed and maintained on a time schedule that will protect those areas before oil reaches them according to	Isn't this the purpose of the plan in the first place? If operations take place within an ESA or area of public concern, the new language is impossible to comply with. It also appears to create a higher tier of requirements for operations near these areas and may contain contradictory response methods to the existing GRS. Lastly, as there does not appear to be a master list ESAs and areas of public concern, this may be difficult to comply with for many plan holders. This requirement may make remote fuel facilities unable to meet regulatory requirements based on someone's arbitrary judgement for response times. Many of these facilities have few employees and are located 12 to 24 hours from a contactor/OSRO resources arrival. The protection of "groundwater" before it would likely be impacted is unreasonable as

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		<u>identified in the plan must include areas added by the department as a condition of plan approval; if identification of those areas and site-specific strategies for protection of those areas are in an applicable Geographic Zone of one or more Area Contingency Plans described in 18 AAC 75.495, the plan holder may incorporate that information by reference;</u>	the predicted oil trajectories for an oil discharge of the volumes established under 18 AAC 75.430 – 18 AAC 75.442; if identification of those areas and site-specific strategies for protection of those areas are in an applicable Area contingency plan, the plan holder may incorporate that information by reference;	"groundwater" could be at the surface or a very shallow depth throughout much of Alaska.
	.449(a)(6)(I)	<u>procedures for lightering, transfer, and storage of oil with enough detail to demonstrate that there is access to sufficient lightering equipment and personnel to transfer all oil from damaged tanks and from undamaged tanks if the risk of an additional discharge is present; the plan must provide for the start and completion of lightering within the shortest possible time, consistent with ensuring the safety of personnel;</u>	procedures for lightering, transfer, and storage of oil with enough detail to demonstrate that there is access to sufficient lightering equipment and personnel to transfer all oil from damaged tanks and from undamaged tanks if the risk of an additional discharge is present; the plan must provide for the start and completion of lightering within the shortest possible time, consistent with ensuring the safety of personnel;	It should be noted by DEC, that the shortest possible time may not be the safest or best response at the time. The health and safety of the response team is always the first priority. Lightering details will be developed after consultation with naval architect and salvage master and are performed by the vessels Salvage and Marine Fire Fighting provider as required under federal requirements.
	.449(a)(6)(J)	<u>procedures for transfer and storage of recovered oil and oily water, including methods for estimating the amount of recovered oil; 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;</u>	procedures for transfer and storage of recovered oil and oily water, including methods for estimating the amount of recovered oil; 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;	The operators can't be held to this level of detail over time because spill conditions can change, spill components can change, disposal facilities can change, etc. These types of activities will most likely be carried out by the plan holders certified PRAC or OSRO which would have outlined the necessary response procedures in their ADEC registration and operating plans and manuals. The procedures for on-water recovery may include transfer to another vessel for transport to reception facility. Facilities will likely transfer to a vessel/barge for transit to treatment facility. These are ultimately part of the long-term cleanup plan and not part of the emergency response.

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	.449(a)(6)(K)	<p><u>procedures and locations for temporary storage and ultimate disposal of oil contaminated materials, oily wastes, and sanitary and solid wastes, 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 meet the applicable planning standard established under 18 AAC 75.430 - 18 AAC 75.442 for control, containment, and cleanup; plans for temporary storage and ultimate disposal must include identification of all necessary permits, approvals, or authorizations and the timeline for them;</u></p>	<p>procedures and locations for temporary storage and ultimate disposal of oil contaminated materials, oily wastes, and sanitary and solid wastes, 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 meet the applicable planning standard established under 18 AAC 75.430 - 18 AAC 75.442 for control, containment, and cleanup; plans for temporary storage and ultimate disposal must include identification of all necessary permits, approvals, or authorizations and the timeline for the submittal application. them;</p>	<p>This requirement is asking for information that is unrealistic and controlled by various state agencies, not the plan holder. This is also creating a performance standard instead of a planning standard.</p> <p>Timing and permit requirements will change with time of year, current federal and state requirements, spill response capability of the agencies, etc. Responders are not in control of the when agencies issue permits/approvals.</p>
	.449(a)(6)(M)	<p><u>procedures and methods for the protection, recovery, disposal, rehabilitation, and release of potentially affected wildlife, including: minimizing wildlife contamination through hazing or other means, when appropriate; the recovery of oiled carcasses to preclude secondary contamination of scavengers; and the capture, cleaning, rehabilitation, and release of oiled wildlife, when appropriate; plans for wildlife protection, recovery, disposal, rehabilitation, and release of wildlife should follow the recommendations of the Alaska Regional Response Team Wildlife Protection Guidelines for Oil Spill Response in Alaska or equivalent;</u></p>	<p>procedures and methods for the protection, recovery, disposal, rehabilitation, and release of potentially affected wildlife, including: minimizing wildlife contamination through hazing or other means, when appropriate; the recovery of oiled carcasses to preclude secondary contamination of scavengers; and the capture, cleaning, rehabilitation, and release of oiled wildlife, when appropriate; plans for wildlife protection, recovery, disposal, rehabilitation, and release of wildlife should following the recommendations of the Alaska Regional Response Team <i>Wildlife Protection Guidelines for Oil Spill Response in Alaska</i> or equivalent;</p>	<p>Require the plan to follow the Wildlife Protection Guidelines (WPG) or equivalent and allow for referencing the WPG. Essentially DEC is adopting the WPG by reference.</p>

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	Citation	Proposed Regulation	Recommended Change	Comment
	.449(a)(6)(O)	<u>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;</u>	additional response strategies if required by the department , to demonstrate alternative strategies for anticipated receiving environments and seasonal conditions, including time of year, spills of varying source and size, and weather limitations;	Please define or provide an example of what is being implied by “additional response strategies to demonstrate alternative strategies for anticipated receiving environments and seasonal conditions” The addition of this requirement will increase the burden to plan holders and allows the agency to request an undefined number of scenarios for any reason.
	.449(a)(8)(F)	<u>identification of all necessary permits, approvals, or authorizations for use of nonmechanical response options and the timeline for them; and</u>	identification of all necessary permits, approvals, or authorizations for use of nonmechanical response options and the timeline for the submittal application. them; and	There is no way that a plan holder can estimate the time required for an agency to issue a permit.
	.449(a)(10)	<u>the plan must identify the maximum possible discharge that could occur at the facility and the general procedures to be followed in responding to a discharge of that magnitude, including the identification of resources in addition to those maintained by the plan holder or available under contract to meet the applicable response planning standard for that facility or operation; this information must be located in the plan immediately following the scenario or scenarios required by (6) of this subsection.</u>	the plan must identify the maximum possible discharge response planning standard discharge volume that could occur at the facility and the general procedures to be followed in responding to a discharge of that magnitude, including the identification of resources in addition to those maintained by the plan holder or available under contract to meet the applicable response planning standard for that facility or operation; this information must be located in the plan immediately following the scenario or scenarios required by (6) of this subsection.	Need definition of maximum possible discharge; The RPS volume is supposed to meet this. The plans already contain various lists of response equipment, and the additional list of equipment should be contained in the Area plan or added to the existing information. Because the plan is already required to list all response equipment, response contractors, etc., requiring the "identification of resources" is redundant. The plan holder should be allowed to put the list of equipment in the appropriate section of their plan (Appendix, Part 3) and reference the location in the scenario.
	.449(b)	<u>In this section (1) "typical summer environmental conditions" means the average wind speeds and predominant wind directions as depicted by a wind rose, temperature, sea state, and other climatic and environmental conditions occurring during the period of May through</u>		Wind roses data is not available throughout Alaska and where it is available it's from land-based weather stations. Operators are not capable of developing the wind roses themselves. Perhaps just adding average wind speed and direction data to the temperature/precipitation (weather) table.

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		<p><u>October, based on National Weather Service data or local weather records of a duration sufficient to determine a reasonable average;</u> <u>(2) "typical winter environmental conditions" means the average wind speeds and predominant wind directions as depicted by a wind rose, temperature, sea state, and other climatic and environmental conditions occurring during the period of November through April, based on National Weather Service data or local weather records of a duration sufficient to determine a reasonable average;</u> <u>(3) "wind rose" means a polar coordinate plot designed to show the distribution of wind directions and speeds at a given location over a considerable period of time, with the distance from the origin proportional to the probability of the wind direction being at the given angle, measured in 16 cardinal compass points, and the disposition of the wind speeds indicated for each direction; and</u> <u>(4) "predominant wind directions" means those directions that occur greater than 10 percent of the time indicated.</u></p>		<p>Additionally, wind speed and direction are usually addressed in the scenario description and response.</p>

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	Citation	Proposed Regulation	Recommended Change	Comment
Part 2: Prevention Plan	.450(b)(2)	<u>discharge history - list all known oil discharges greater than 55 gallons that have occurred at the facility within the state; the history must include</u>	discharge history - list all known oil discharges greater than 55 gallons that have occurred at the facility within the state in the past 5-years ; the history must include	Spills (reported) which have occurred at a facility over the last five years should be recorded in ADEC Spills Database and thus easily accessible by the public and ADEC. If the spill is greater than 55 gallons it would most likely be managed as a contaminated site by ADEC and the Owner. Facilities often undergo changes in owners and operators and the current responsible party may not have access to the spill history at the facility. This data requirement appears arbitrary and only adds additional time to the application process. Perhaps it would be more useful to ask applicant to identify known contaminants of concern and location of contaminated sites at the facility which may need to be considered during a response for safety and treatment considerations.
	.450(b)(2)(C)	<u>an analysis of the relationship, if any, between the frequency, cause, and size of the discharges; and</u>	an analysis of the relationship, if any, between the frequency, cause, and size of the discharges; and	Delete as this is included in .450(b)(3)

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	Citation	Proposed Regulation	Recommended Change	Comment
PART 3- Supplemental Information	.451(b)(1)	<u>for an oil terminal, exploration facility, production facility, or pipeline, a list of field-constructed aboveground oil storage tanks and permanent shop-fabricated aboveground oil storage tanks at the facility; for each oil storage tanks with a storage capacity of greater than 10,000 gallons, the list shall include tank identification, type of oil stored, the oil storage capacity, installation date, year the tank was placed in service, design, and construction standard, inspection and maintenance standard, last and next dates (years) of internal and external inspections, leak detection method, corrosion control system, and overfill protection devices; and the product type stored;</u>	for an oil terminal, exploration facility, production facility, or pipeline, a list of field-constructed aboveground oil storage tanks and permanent shop-fabricated aboveground oil storage tanks at the facility; for each oil storage tanks with a storage capacity of greater than 10,000 gallons, the list shall include tank identification, type of oil stored, the oil storage capacity, installation date , year the tank was placed in service, design, and construction standard, inspection and maintenance standard, last and next dates (years) of internal and external inspections, leak detection method, corrosion control system, and overfill protection devices; and the product type stored;	
	.451(b)(2)	<u>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;</u>	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;	Delete. Regulations are only applicable to 10,000 or greater. This is over-reach. On May 5, 2020, DEC repealed the AST Class 2 Facility regulations due to lack of funding and resources https://dec.alaska.gov/spar/ppr/prevention-preparedness/class-2-facilities/ Why is DEC adding this in when knowingly they don't have the staff or funds to support this expansion? Operators are already required to have EPA SPPC plans.

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	Citation	Proposed Regulation	Recommended Change	Comment
	.451(b)(7)	<u>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</u>	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 a description of facility oil piping, including the location of safety shutdown valved; and	Revise

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	.451(d)	<p><u>Command system - a description and diagram of the incident command system management hierarchy to be used in response to a discharge, specific to operations described in the response planning standard scenario, including the name position, telephone number, and affiliation by company, agency, or local government of each person, including a person identified in 18 AAC 75.449(a)(2), who by law or through employment, contract, or cooperative agreement, is responsible for responding to a discharge, and each person's functional role in the command system; this list must include command, financial, operations, planning, logistics and environmental personnel; the incident command system must be compatible with the state's response structure outlined in the Alaska Regional Contingency Plan. 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 located 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.</u></p>	<p>Command system - a description and diagram of the incident command system management hierarchy to be used in response to a discharge, specific to operations described in the response planning standard scenario, including the name position, telephone number, and affiliation by company, agency, or local government of each person, including a person identified in 18 AAC 75.449(a)(2), who by law or through employment, contract, or cooperative agreement, is responsible for responding to a discharge, and each person's functional role in the command system; this list must include command, financial, operations, planning, logistics and environmental personnel; the incident command system must be compatible with the state's response structure outlined in the Alaska Regional Contingency Plan. 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 located 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</p>	<p>A reference to the Alaska Regional Contingency plan is sufficient to describe the ICS structure (in general).</p> <p>The requirement for a detailed 24-hour response plan to include individual names and contact numbers is counter to the purpose of the ICS which relies on ensuring that the company, designated PRAC, and IMT personnel are qualified and available to fill ICS roles in the event of a major spill. As a public government entity, how will ADEC ensure that the plan is maintained as confidential? Where will it be stored and what restrictions will be provided to ensure confidentiality? Will the plans be subject to FOIA requests? This requirement appears unreasonable and may not be supported by department statute or regulatory authority.</p>
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			<p>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>	
	.451(g)	<p><u>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 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</u></p>	<p>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 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>This contradicts what's proposed in .449(a)(10) and where response equipment must be listed. Please align.</p> <p>It is not reasonable in all cases to be able to protect environmentally sensitive areas and areas of public concern prior to oil reaching them. Often the vessels are operating near these areas and if a spill were to occur it may not be possible to meet this requirement.</p>

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	.451(h)(3)(B)	<u>if available storage capacity is insufficient, then the effective daily recovery capacity must be reduced to the limits of the available storage; and</u>		Who is authorized to determine the limit? Clarification may be required as temporary storage is likely an intermediate step between recovery and disposal/oil separation. In this case, temporary storage may not appear to be sufficient for an entire day's recovery efforts but if simultaneous removal is occurring, the scenario would still be valid.
	.451(h)(3)(C)	<u>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.</u>		Is the department making guidance a regulation with this proposed language? What criteria is the department using to evaluate and approve or deny a request?
	.451(j)(3)(A)	<u>a statement, signed and dated by each participant, listing the course or program content;</u>		Delete. This is already stated in Article 1.
	.451(j)(3)(B)	<u>shipboard records verified by the vessel master; or</u>		Delete. This is already stated in Article 1.
	.451(j)(3)(C)	<u>computerized records verified by the owner or operator.</u>		Delete. This is already stated in Article 1.
PART 4: Best Available Technology	.452(a)	<u>Part 4 - Oil discharge prevention and contingency plan, Best Available Technology Review. (a) Best Available Technology Review: Unless application of a state requirement would be preempted by federal law, the plan must provide for the use of best available technology consistent with the applicable criteria in (b) of this section. In addition, the plan must identify technologies applicable to the applicant's operation that are not subject to response planning or performance standards specified in (b) of this section, these technologies include</u>	Part 4— Oil discharge prevention and contingency plan, Best Available Technology Review. (a) Best Available Technology Review: Unless application of a state requirement would be preempted by federal law, the plan must provide for the use of best available technology consistent with the applicable criteria in (b) of this section. In addition, the plan must identify technologies applicable to the applicant's operation that are not subject to response planning or performance standards specified in (b) of this section, these technologies include	BAT sections in general should require the applicant to affirm that BAT is being used and not require the exercise of review. The entire BAT exercise/section is outdated/unnecessary and simplistic alternatives should be available for plan holders who utilize BAT.

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	.452(a)(1)(A)	<u>communications described under 18 AAC 75.449(a)(4);</u>	communications described under 18 AAC 75.449(a)(4);	Delete BAT. This was originally put into the regulations post Exxon Valdez spill when communication technology was limited to hardline phones, facsimile machine and the internet didn't exist. Plan holders are going to implement the best communication method possible for operating in AK.
	.452(a)(1)(B)	<u>source control procedures to stop the discharge at its source and prevent its further spread described under 18 AAC 75.449(a)(6)(G);</u>	source control procedures to stop the discharge at its source and prevent its further spread described under 18 AAC 75.449(a)(6)(G);	Plan holders are going to implement the source control method possible to limit the discharge of oil.
	.452(a)(1)(C)	<u>trajectory analyses and forecasts described under 18 AAC 75.449(a)(6)(E); and</u>	trajectory analyses and forecasts described under 18 AAC 75.449(a)(6)(E); and	Delete BAT. Plan holders (and through their PRAC) are going to utilize acceptable trajectory analysis and forecasting models and methods to track a discharge to water with the intent of minimizing impact to sensitive areas.
	.452(a)(1)(D)	<u>wildlife capture, treatment, and release procedures and methods described under 18 AAC 75.449(a)(6)(M);</u>	wildlife capture, treatment, and release procedures and methods described under 18 AAC 75.449(a)(6)(M);	Delete BAT. The department through these regulations are already adopting the ARRT Wildlife Protection Guidelines by reference and therefore considered BAT. See comment for .449(a)(6)(M)
	.455(a)	Not later than seven working days after receipt of an oil discharge prevention and contingency plan application package for a new plan, plan renewal or major amendment, the department will determine if the application package is sufficient for review. <u>For minor amendment applications that are determined to be a major amendment, the department will determine if the application package is sufficient for review not later than seven working days after it is determined to be a major amendment.</u> If the application package is not sufficient for review, the department will notify the applicant in writing.		Wording is confusing. If during the initial seven-day review, the department determines that a minor plan amendment application should be submitted as a major plan amendment, then that determination is made and communicated with the same seven working days.

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Department Review Procedures for ODP/CP; New, renewals and major amendments	.455(b)(5)	[DIRECT THE APPLICANT TO PUBLISH A ONE-TIME NOTICE PROVIDED BY] the department will publish an online public notice announcing the public comment period for the plan and will notify interested stakeholders of the availability of the package on the department's Internet website by electronic mail to a listserv facilitated by the department; [THE APPLICANT IS RESPONSIBLE FOR PAYING THE COST OF THE NOTICE UNDER THIS PARAGRAPH; THE APPLICANT MUST PUBLISH THE NOTICE IN ONE OR MORE PUBLICATIONS OF GENERAL CIRCULATION IN THE AREA THAT WOULD BE AFFECTED BY THE OPERATION;] in the notice the department will include		The applicant should have the opportunity to review the notice before being published.
	.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 [90] 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;	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 [90] 30 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 60 days, the department may set a deadline for the submittal of the additional information;	The timeframe proposed is too long and should be reduced especially for renewals and major amendments. Should add "or sooner" to allow for a shorter review period if possible.

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	Citation	Proposed Regulation	Recommended Change	Comment
	.455(d)	Upon receipt and review by the department of the additional information requested under (c) of this section, the department will provide notice to the parties described in 18 AAC 75.408(c)(4) of a minimum 10-day public comment period on the additional information. The comment period under this subsection is limited to the additional information submitted in response to the request for additional information.		How long is the departments review period?
	.455(g)	Not later than 60 [65] days after the department determines that an application package is complete under (e) of this section, the department will approve, approve with conditions, or disapprove a plan and issue a decision under 18 AAC 75.460.	Not later than 60 [65] 10 days after the department determines that an application package is complete under (e) of this section, the department will approve, approve with conditions, or disapprove a plan and issue a decision under 18 AAC 75.460.	Sixty days is a very long time particularly after all parties should have reviewed and responded as required. Should add "or sooner" to allow for a shorter review period if possible.
	.459(a)	[AT ANY TIME] After the department has determined the application package is complete and before the department issues its [THE DEPARTMENT'S] decision under 18 AAC 75.460, the applicant may request a preissuance conference from the [APPROPRIATE] department [OFFICE]. The request must [MAY] be made in writing [ORALLY] and will be granted if the applicant demonstrates that holding a conference will materially aid the department in reaching its decision.		Editor's Note should not be used where important information on how notices will be accepted.

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	Citation	Proposed Regulation	Recommended Change	Comment
	.475(b)	Except for a transfer approved under 18 AAC 75.470, if a significant change occurs in, or is made to, <u>a</u> [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. <u>For equipment that is maintained by a streamlined plan cleanup contractor, the cleanup contractor shall be responsible for this notification.</u> [AN ELECTRONIC MAIL OR FACSIMILE TRANSMISSION DELIVERED TO THE APPROPRIATE DEPARTMENT OFFICE WILL BE CONSIDERED WRITTEN NOTICE FOR PURPOSES OF THIS SUBSECTION.] If the department finds that, as a result of the change, the plan holder is no longer able to execute the plan, it will take appropriate action under 18 AAC 75.490.		Email should be acceptable. Editor's Note should not be used where important information on how notices will be accepted.
Inspections	.480(d)	<u>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.</u>	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.	What is the purpose of this in the regulations? What problem of noncompliance with spill preparedness and response is the department trying to solve? Will the inspector have a search warrant or subpoena to collect a sample or samples on private property? Will the ADEC sampler be qualified to collect and submit the sample to a laboratory in full compliance with a site-specific sampling plan including chain of custody procedures? Will the department pay for the expense of collecting and analyzing the sample? Many regulated facilities have known contaminated sites which are already actively managed and regulated through the ADEC Contaminated Sites Program.

ALASKA FUEL STORAGE AND HANDLING ALLIANCE
 Comments to 18 AAC 75 Proposed Regulation Revisions

	Citation	Proposed Regulation	Recommended Change	Comment
	.480(e)	<u>Upon mutual agreement between the facility owner or operator and the department, the department may conduct inspections using virtual technology.</u>		What constitutes a mutual agreement? What is a virtual inspection? The department needs guidance on what a virtual inspection is to ensure consistency within the organization and individuals. Parameters must be reasonable (time limit) and not burdensome on the plan holder.
Discharge Exercises	.485(a)(1)(A)	<u>the department will conduct one operations based discharge exercise for each 5-year plan approval cycle in coordination with the plan holder, based on the Homeland Security Exercise and Evaluation Program methodology described in the department's Oil Spill Response Exercise Manual, adopted in (e) of this section, and</u>	the department will conduct one operations based discharge exercise for each 5-year plan approval cycle in coordination with the plan holder, based on the Homeland Security Exercise and Evaluation Program methodology described in the department's Oil Spill Response Exercise Manual, adopted in (e) of this section, and	AFSHA does not support the adoption of the Oil Spill Response Exercise Manual into the regulation. The PREP works well for the entire United States, and it should be acceptable to the State of Alaska. Industry and federal agencies utilize the PREP program. The state should also utilize this standard to reduce the need for separate drills. Upon review of the manual, there are several suggestions that would be extremely difficult to comply with (reference How and When to Schedule Drills section) and adoption would allow for revision of the manual at any time without a public comment period, thus skirting the regulatory process.

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	Citation	Proposed Regulation	Recommended Change	Comment
	.485(2)	<p><u>(2) for each noncrude oil tank vessel or barge with a streamlined plan, the plan holder must conduct one exercise onboard the vessel in each 12-month period to ensure on-going familiarity with on-board response equipment and response actions required under 18 AAC 75.429(a) and capability to conduct initial emergency response actions required under 18 AAC 75.426(5); the exercise must be an operations-based drill as described in the department's Oil Spill Response Exercise Manual, adopted in (e) of this section and must include documentation of readiness of on-board response equipment and currency of on-board personnel training; the plan holder will self-certify the exercise conduct and lessons learned and any corrective actions taken as a result on a form provided by the department; the plan holder will retain documentation of each exercise in retrievable form; exercise records must be kept for five years and copies shall be provided to the department upon request; the department may conduct not more than one additional onboard equipment deployment exercise in each 12-month period.</u></p>		<p>The "self-certification form" referenced has not been provided. This should be included as part of the public comment process.</p>
	.485(b)	<p><u>Execution of an oil discharge prevention and contingency plan during a discharge exercise will be considered inadequate if the readiness for response and response performance described in the plan are significantly deficient due to inadequate mobilization or performance of personnel, equipment, other resources, or other factors, including the mobilization or performance of a response action contractor identified under 18 AAC 75.451(i).</u></p>	<p>Execution of an oil discharge prevention and contingency plan during a discharge exercise will be considered inadequate if the readiness for response and response performance described in the plan are significantly deficient due to inadequate mobilization or performance of personnel, equipment, other resources, or other factors, including the mobilization or performance of a response action contractor identified under 18 AAC 75.451(i).</p>	<p>The contingency plan is a planning standard not a performance standard. The definition for significantly deficient should be included.</p>

ALASKA FUEL STORAGE AND HANDLING ALLIANCE
 Comments to 18 AAC 75 Proposed Regulation Revisions

	Citation	Proposed Regulation	Recommended Change	Comment
	.485(e)	<u>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 Exercise and Evaluation Program methodology and described in the department's Oil Spill Response Exercise Manual, MONTH, XX, 202X, adopted by reference.</u>	The department will consider a regularly scheduled training exercise or a Preparedness for Response Exercise Program (PREP) 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 Exercise and Evaluation Program methodology and described in the department's <i>Oil Spill Response Exercise Manual</i> , MONTH, XX, 202X, adopted by reference.	AFSHA does not support the adoption of the Oil Spill Response Exercise Manual into the regulation.
	.485(g)(1)	<u>"Homeland Security Exercise and Evaluation Program" means the January 2020 Federal Emergency Management Agency document that provides a set of guiding principles for exercise programs, as well as a common approach to exercise program management, design and development, conduct, evaluation, and improvement planning; and</u>	"Homeland Security Exercise and Evaluation Program" means the January 2020 Federal Emergency Management Agency document that provides a set of guiding principles for exercise programs, as well as a common approach to exercise program management, design and development, conduct, evaluation, and improvement planning; and	Industry and federal government utilize the PREP program for drills. This will potentially cause undue duplication.
Regional Master Discharge Plan boundaries	.495(a)			Requesting an update to Figure 2 to be landscape orientation, moving the extended Aleutian Islands to their geographic location and adding a key. Regions 2 (PWS), 5 (Aleutian), 7 (Western), 10 (Interior Alaska) do not have dotted lines outlining their boundaries making compliance difficult.