

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8043 HOUSE RESOURCES

308

SECTION 46.04.045. ADJUSTMENT OF DOLLAR AMOUNTS.

(a) The dollar amounts in AS 46.04.040 change, as provided in this section, according to and to the extent of changes in the Consumer Price Index for all urban consumers for the Anchorage metropolitan area compiled by the Bureau of Labor Statistics, United States Department of Labor (the index). The index for January 1990 is the reference base index.

(b) The dollar amounts change on October 1 of each third year according to the percentage change between the index for January of that year and the most recent index used to determine whether to change the dollar amounts. After calculation of the new amounts, the resulting amounts shall be rounded to the nearest cent.

(c) If the index is revised, the percentage of change is calculated on the basis of the revised index. If a revision of the index changes the reference base index, a revised reference base index is determined by multiplying the reference base index applicable by the rebasing factor furnished by the United States Bureau of Labor Statistics. If the index is superseded, the index referred to in this section is the one represented by the Bureau of Labor Statistics as reflecting most accurately changes in the purchasing power of the dollar for Alaskan consumers.

(d) The department shall adopt a regulation authorizing

(1) on or before June 30 of each third year, the changes in dollar amounts required by (b) of this section; and

(2) promptly after the changes occur, changes in the index required by (c) of this section, including, if applicable, the numerical equivalent of the reference base index under a revised reference base index and the designation or title of any index superseding the index.

(e) The department shall also provide notification of a change in dollar amounts required under (b) of this section to the clerks of court in each judicial district of the state.

SECTION 46.04.050. EXEMPTIONS.

(a) The provisions of AS 46.04.030, 46.04.040, and 46.04.060 do not apply to an oil terminal facility that has an effective storage capacity of less than 5,000 barrels of crude oil or less than 10,000 barrels of noncrude oil.

(b) The provisions of AS 46.04.030 and 46.04.040 do not apply to a natural gas production facility and a natural gas terminal facility; for purposes of this subsection the terms "natural gas production facility" and "natural gas terminal facility"

(1) mean a platform, facility, or structure that is used solely for the production, compression, storage, or transport of natural gas;

(2) do not include a platform, facility, or structure that produces, stores, or transports natural gas in combination with oil.

SECTION 46.04.060. INSPECTIONS.

(a) In addition to other rights of access or inspection conferred upon the department by law or otherwise, the department may at reasonable times and in a safe manner enter and inspect oil terminal facilities, pipelines, exploration and production facilities, tank vessels, and oil barges in order to

(1) ensure compliance with the provisions of this chapter; or

(2) participate in an examination of the structural integrity and the operating and mechanical systems of those vessels, barges, pipelines, and facilities by federal and state agencies with jurisdiction.

(b) When the department determines that no federal or state agencies with jurisdiction are performing timely and adequate inspections of an oil terminal facility, pipeline, exploration or production facility, tank vessel, or oil barge, it may perform its own inspection of the structural integrity and operating and mechanical systems of a facility, pipeline, tank vessel, or oil barge by using personnel with qualifications in the areas being inspected.

SECTION 46.04.070. SCOPE OF REGULATIONS.

The department shall adopt regulations that are necessary to carry out the purposes of this chapter and that do not conflict with and are not preempted by federal law or regulations.

SECTION 46.04.080. CATASTROPHIC OIL DISCHARGES.

(a) The commissioner of environmental conservation or the commissioner of military and veterans' affairs may request the governor to determine that an actual or imminent occurrence of a catastrophic oil discharge constitutes a disaster emergency under AS 26.23. The commissioner of environmental conservation and the commissioner of military and veterans' affairs shall respond appropriately in the relief of the actual or imminent discharge under the relevant provisions of the applicable incident command system.

(b) The department shall promptly, under AS 46.04.010, seek reimbursement of oil discharge cleanup or containment expenses incurred as a result of an actual or imminent catastrophic oil discharge under AS 26.23.050.

SECTION 46.04.090. OIL DISCHARGE, CLEANUP PERSONNEL, EQUIPMENT, EXPENSES.

The department, when feasible, shall enter into contracts with persons or private organizations to provide the personnel, equipment, or other services or supplies that may be required to carry out this chapter. Contracts under this section are governed by AS 36.30 (State Procurement Code). When private contracting is not feasible, the department may establish and maintain at ports, harbors, or other locations in the state, the cleanup personnel, equipment, and supplies that, in its judgment, are necessary to carry out this chapter. When exercising its authority under this subsection, the department shall coordinate with the Department of Military and Veterans' Affairs to avoid duplication of efforts.

SECTION 46.04.100. COMPACTS AUTHORIZED.

The governor may execute supplementary agreements, reciprocal arrangements, or compacts with any other state or country, subject to the approval, if required by the United States Constitution, of the Congress of the United States, for the purpose of implementing this chapter.

SECTION 46.04.110. MUNICIPAL POWERS LIMITED.

If a conflict occurs between a provision of this chapter, or a regulation, order, decision, or other determination of the department under this chapter, and a charter, ordinance, permit, regulation, franchise, decision, or other determination of a municipality, the provisions of this chapter or the regulation, order, decision, or other determination of the department prevail. However, nothing in this chapter precludes a municipality, by ordinance or regulation, from exercising its police powers in the area regulated by this chapter.

ARTICLE 2. OIL AND HAZARDOUS SUBSTANCE DISCHARGE AND PREVENTION CONTINGENCY PLANS.

SECTION 46.04.200. STATE MASTER PLAN.

(a) The department shall prepare and annually review and revise a statewide master oil and hazardous substance discharge prevention and contingency plan.

(b) The state master plan prepared under this section must

(1) take into consideration the elements of an oil discharge prevention and contingency plan approved or submitted for approval under AS 46.04.030;

(2) include incident command systems that clarify and specify the respective responsibilities of each of the following in the assessment, containment, and cleanup of various types and sizes of discharges of oil or a hazardous substance into the environment of the state:

(A) the Department of Environmental Conservation, the division of emergency services in the Department of Military and Veterans' Affairs, and other agencies of the state; responsibilities assigned to each agency must be consistent with its statutory authority;

(B) municipalities of the state;

(C) appropriate federal agencies;

(D) operators of facilities;

(E) private parties whose land and other property may be affected by the oil or hazardous substance discharge; and

(F) other parties identified by the commission as having an interest in or the resources to assist in the containment and cleanup of an oil or hazardous substance discharge;

(3) include incident command systems that specify the respective responsibilities of parties identified in (2) of this subsection in an emergency response under AS 26.23, AS 46.03.865, or AS 46.04.080; responsibilities assigned to each state agency must be consistent with its statutory authority;

(4) identify actions necessary to reduce the likelihood of catastrophic oil discharges and significant discharges of hazardous substances; and

(5) designate the locations where oil and hazardous substance emergency response depots should be established in the state and where emergency response corps personnel should be available.

(c) In preparing and annually reviewing the state master plan, the commissioner shall

(1) consult with municipal and community officials, and with representatives of affected regional organizations;

(2) submit the draft plan to the public for review and comment;

(3) submit to the legislature for review, not later than the 10th day following the convening of each regular session, the plan and any annual revision of the plan;

(4) require or schedule unannounced oil spill drills to test the sufficiency of an oil discharge prevention and contingency plan approved under AS 46.04.030 or of the cleanup plans of a party identified under (b)(2) of this section; and

(5) submit the plan and any annual revision to the Alaska State Emergency Response Commission for its review and approval under AS 46.13.045.

SECTION 46.04.210. REGIONAL MASTER PLAN.

(a) For any region of the state, the boundaries of which are determined by the commissioner by regulation, in which the department is required to review and approve

an oil discharge prevention and contingency plan submitted by a person under AS 46.04.030, the department shall prepare and annually review and revise a regional master oil and hazardous substance discharge prevention and contingency plan.

(b) The provisions of AS 46.04.200(b) and (c) apply to preparation and review of a regional master plan under this section.

ARTICLE 3. GENERAL PROVISIONS.

SECTION 46.04.900. DEFINITIONS.

In this chapter, unless the context requires otherwise,

(1) "barrel" is a measure of capacity equal to the space occupied by 42 U.S. gallons at 60 degrees Fahrenheit;

(2) "catastrophic oil discharge" means an oil discharge in excess of 100,000 barrels, or any other discharge which the governor determines presents a grave and substantial threat to the economy or environment of the state;

(3) "Clean Water Act" means the Federal Water Pollution Control Act of 1972 (P.L. 92-500), as amended by the Clean Water Act of 1977 (P.L. 95-217), as amended (33 U.S.C. 1251 - 1376);

(4) "commissioner" means the commissioner of environmental conservation;

(5) "containment and cleanup" includes all direct and indirect efforts associated with the prevention, abatement, containment, or removal of a pollutant, and the restoration of the environment to its former state; when applied to expenses, the term includes the additional costs of providing a reasonable and appropriate function or service incurred in response to the discharge of a pollutant, including administrative expenses for the incremental costs of providing the function or service;

(6) "department" means the Department of Environmental Conservation;

(7) "discharge" means spilling, leaking, pumping, pouring, emitting, emptying, or dumping;

(8) "exploration facility" means a platform, vessel, or other facility used to explore for hydrocarbons in or on the waters of the state or in or on land in the state; the term does not include platforms or vessels used for stratigraphic drilling or other operations that are not authorized or intended to drill to a producing formation;

(9) "natural gas"

(A) means a hydrocarbon that at 70 degrees Fahrenheit and atmospheric pressure is in a gaseous state;

(B) includes liquefied natural gas or other form of natural gas that has been converted to a liquid state by pressure or cooling that at 70 degrees Fahrenheit and atmospheric pressure reverts to a gaseous state.

(10) "oil" means oil of any kind and in any form, whether crude, refined, or a petroleum by-product, including but not limited to petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oil refuse, oil mixed with other wastes, crude oils, liquefied natural gas, propane, butane, or other liquid hydrocarbons regardless of specific gravity;

(11) "oil barge" means a vessel which is not self-propelled and which is constructed or converted to carry oil as cargo in bulk;

(12) "oil terminal facility" means an onshore or offshore facility of any kind, and related appurtenances, including but not limited to a deepwater port, bulk storage facility or marina, located in, on, or under the surface of the land or waters of the state, including tide and submerged land, which is used for the purpose of transferring, processing, refining, or storing oil; a vessel is considered an oil terminal facility only

Selected Alaska Oil & Hazardous Substance Pollution Control Statutes

when it is used to make a ship-to-ship transfer of oil, and when it is traveling between the place of the ship-to-ship transfer of oil and an oil terminal facility;

(13) "operator" means the person who, through contract, lease, sublease, or otherwise, exerts general supervision and control of activities at the facility; the term includes, by way of example and not limitation, a prime or general contractor, the master of a vessel and the master's employer, or any other person who, personally or through an agent or contractor, undertakes the general functioning of the facility;

(14) "person" means an individual, public or private corporation, political subdivision, government agency, municipality, industry, partnership, association, firm, trust, estate, or any other entity;

(15) "pipeline" means the facilities, including piping, compressors, pump stations, and storage tanks, used to transport crude oil and associated hydrocarbons between production facilities or from one or more production facilities to marine vessels;

(16) "production facility" means a drilling rig, drill site, flow station, gathering center, pump station, storage tank, well, and related appurtenances on other facilities to produce, gather, clean, dehydrate, condition, or store crude oil and associated hydrocarbons in or on the water of the state or on land in the state, and gathering and flow lines used to transport crude oil and associated hydrocarbons to the inlet of a pipeline system for delivery to a marine facility, refinery, or other production facility;

(17) "response action" means an action taken to respond to a release or threatened release of oil, including mitigation, cleanup, or removal.

(18) "self-propelled" means propelled either by machinery aboard the vessel, or by a tug or other vessel secured into the cargo-carrying vessel through special hull design;

(19) "service" means a function performed or service provided by the state, including functions not previously performed and services not previously provided by the state;

(20) "tank vessel" means a self-propelled waterborne vessel that is constructed or converted to carry liquid bulk cargo in tanks and includes tankers, tankships, and combination carriers when carrying oil; the term does not include vessels carrying oil in drums, barrels, or other packages, or vessels carrying oil as fuel or stores for that vessel;

(21) "vessel" includes tank vessels and oil barges;

(22) "village" means a place within the unorganized borough or within a borough as to a power, function, or service that is not exercised or provided by the borough on an areawide or nonareawide basis that

(A) has irrevocably waived, in a form approved by the Department of Law, any claim of sovereign immunity that might arise under this chapter; and

(B) has

(i) a council organized under 25 U.S.C. 476 (sec. 16 of the Indian Reorganization Act);

(ii) a traditional village council, recognized by the United States as eligible for federal aid to Indians; or

(iii) a council recognized by the commissioner of community and regional affairs under regulations adopted by the Department of Community and Regional Affairs to determine and give official recognition of village entities under AS 44.47.150(b);

(23) "waters of the state" includes lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, straits, passages, canals, the Pacific Ocean, Gulf of Alaska, Bering Sea and Arctic Ocean, in the territorial limits of the state, and all other bodies of surface or underground water, natural or artificial, public or private, inland or coastal, fresh or salt, which are wholly or partially in or bordering the state or under the jurisdiction of the state.

CHAPTER 8. OIL AND HAZARDOUS SUBSTANCE RELEASES.

ARTICLE 1. RELEASE RESPONSE FUND.

SECTION 46.08.005. PURPOSE.

The legislature finds and declares that the release of oil or hazardous substances into the environment presents a real and substantial threat to the public health and welfare, to the environment, and to the economy of the state. The legislature therefore concludes that it is in the best interest of the state and its citizens to provide a readily available fund for the payment of the expenses incurred by the Department of Environmental Conservation and the Department of Transportation and Public Facilities in the protection of the environment of the state from the release of oil or hazardous substances.

SECTION 46.08.010. FUND ESTABLISHED.

(a) There is established in the state general fund the oil and hazardous substance release response fund. The fund shall be administered by the commissioner.

(b) Money from an appropriation made to the fund remaining in the fund at the end of a fiscal year remains available for expenditure in successive fiscal years.

(c) The fund shall be used for actual expenses incurred under AS 46.08.040. Except as provided in AS 46.08.040(d)(2), the fund may not be used for capital improvements.

SECTION 46.08.029. FINANCING OF THE FUND.

(a) The legislature may appropriate from the following sources to the fund:

(1) money received from federal, state, or other sources or from a private donor;

(2) money recovered or otherwise received from parties responsible for the containment and cleanup of oil or a hazardous substance at a specific site, but excluding funds from performance bonds and other forms of financial responsibility held in escrow pending satisfactory performance of a privately financed response action;

(3) fines, penalties, or damages recovered under AS 46.08.005 - 46.08.080 or other law for costs incurred by the state as a result of the release or threatened release of oil or a hazardous substance.

(b) Money received by the state under (a)(2) and (a)(3) of this section shall be deposited in the general fund and credited to a special account called the "oil and hazardous substance release mitigation account." The legislature may annually appropriate to the fund from this account a sum equal to the amount received under (a)(2) and (a)(3) of this section during the calendar year preceding the legislative session in which the appropriations are to be made.

SECTION 46.08.030. FINANCING THE ABATEMENT OF OIL OR HAZARDOUS SUBSTANCE RELEASES.

It is the intent of the legislature and declared to be the public policy of the state that funds for the abatement of a release of oil or a hazardous substance will always be available.

SECTION 46.08.040. PURPOSES OF THE FUND.

(a) In addition to money in the fund that is transferred to the commissioner of community and regional affairs to make grants under AS 29.60.510 and to pay for impact assessments under AS 29.60.560, the commissioner of environmental conservation may use money from the fund to

(1) investigate and evaluate the release or threatened release of oil or a hazardous substance, and contain, clean up, and take other necessary action, such as monitoring and assessing, to address a release or threatened release of oil or a hazardous substance that poses an imminent and substantial threat to the public health or welfare, or to the environment;

(2) pay all costs incurred to

(A) establish and maintain the oil and hazardous substance response office;

(B) review oil discharge prevention and contingency plans submitted under AS 46.04.030;

(C) conduct training, response exercises, inspections, and tests, in order to verify equipment inventories and ability to prevent and respond to oil and hazardous substance release emergencies, and to undertake other activities intended to verify or establish the preparedness of the state, a municipality, or a party required by AS 46.04.030 to have an approved contingency plan to act in accordance with that plan; and

(D) verify or establish proof of financial responsibility required by AS 46.04.040;

(3) pay the expenses incurred by the Alaska division of emergency services for the oil and hazardous substance response corps and the oil and hazardous substance response depots when presented with appropriate documentation by the division;

(4) provide matching funds for participation in federal oil discharge cleanup activities and under 42 U.S.C. 9601 - 9657 (Comprehensive Environmental Response, Compensation, and Liability Act of 1980);

(5) recover the costs to the state, a municipality, or a village of a containment and cleanup resulting from the release or the threatened release of oil or a hazardous substance;

(6) prepare, review, and revise

(A) the state's master oil and hazardous substance discharge prevention and contingency plan required by AS 46.04.200; and

(B) a regional master oil and hazardous substance discharge prevention and contingency plan required by AS 46.04.210; and

(7) restore the environment by addressing the effects of an oil or hazardous substance release.

(b) When the governor declares a disaster related to an oil or hazardous substance discharge emergency under AS 26.23.020(c), the governor may, during the effective period of the disaster emergency, use money from the fund to respond to the disaster emergency.

(c) Notwithstanding other provisions of this section, money from the fund may not be used for a purpose specified in (a)(2) - (7) and (d)(2) of this section unless money is available from an appropriation made specifically for that purpose.

(d) Upon a request from

(1) the Alaska Legislative Council, the commissioner shall use money from the fund to reimburse the Alaska Legislative Council for expenditures that it makes for the operation of the Citizens' Oversight Council on Oil and Other Hazardous Substances, established under AS 24.20.600; and

(2) the commissioner of transportation and public facilities, the commissioner shall transfer money from the fund to the Department of Transportation and Public Facilities

to pay for the construction or refurbishment of one or more vessels of the Alaska marine highway system that have the capability to assist in responding to spills of oil and hazardous substances; in expending money in the fund whose use for vessels of the marine highway system is authorized by AS 19.65.025 and this paragraph, the commissioner shall give priority to construction of one or more new vessels that have the characteristics required by this paragraph.

SECTION 46.08.050. RECORDS OF THE FUND.

(a) The department shall maintain accounting records showing the income and expenses of the fund.

(b) The department shall develop procedures governing the expenditure of, and accounting for, money expended from the fund, and may not delay implementation of this chapter pending the effective date of the procedures.

SECTION 46.08.060. REPORT TO THE LEGISLATURE.

(a) The commissioner shall submit a report to the legislature not later than the 10th day following the convening of each regular session of the legislature. The report may include information considered significant by the commissioner but must include:

(1) the amount of money expended by the department under AS 46.08.040(a) during the preceding fiscal year;

(2) the amount and source of money received and money recovered by or on behalf of the department during the preceding fiscal year as specified in AS 46.08.020;..

(3) a summary of municipal participation in the department's responses that were funded by the fund;

(4) a detailed summary of department activities in responses funded by the fund during the preceding fiscal year, including response descriptions and statements outlining the nature of the threat; in this paragraph, "detailed" includes information describing each personal services position and total compensation for that position, each contract in excess of \$20,000, and each purchase in excess of \$10,000; and

(5) the projected cost to the department for the next fiscal year of monitoring, operating, and maintaining sites where response has been completed or is expected to be continued during the fiscal year

(b) As part of the department's on-going identification efforts associated with oil spill or hazardous waste sites, the commissioner shall include in the report under this section

(1) a summary of the sites identified by the department;

(2) the immediate and long-term threats to the public health or welfare or to the environment posed by these sites; and

(3) the appropriate actions needed to abate these threats, and their estimated cost.

(c) In addition to the department's report required under (a) of this section, the governor shall submit a report about use of the fund during the previous fiscal year to the legislature not later than the 10th day following the convening of each regular session of the legislature. In the report, the governor shall describe in detail the governor's use of money from the fund, with separate explanations, by agency, of the activities that were funded under the authority of AS 46.08.040(b).

SECTION 46.08.070. REIMBURSEMENT FOR CONTAINMENT AND CLEANUP.

(a) The commissioner shall seek reimbursement promptly under this section, AS 46.03.760(e), or federal law for the cost incurred in the cleanup or containment of oil or a hazardous substance that has been released.

(b) The attorney general, at the request of the commissioner, shall immediately seek to recover money expended by the department under AS 46.08.005 - 46.08.080 or other law to contain and clean up oil or a hazardous substance that has been released or to control the threatened release of oil or a hazardous substance.

(c) The department shall reimburse a municipality or village for actual expenses, other than normal operating expenses, incurred in the abatement of a release or threatened release and may advance money to a municipality or village to carry out an emergency first response to a release or threatened release of oil or a hazardous substance if

(1) the municipality or village has entered into an agreement with the commissioner under AS 46.04.020(e) or AS 46.09.020(e); and

(2) the commissioner determines that

(A) the expenses to be reimbursed were for a necessary emergency first response to a release or threatened release that, at the time of the release or threatened release, posed an imminent and substantial threat to the public health or welfare, or to the environment;

(B) the municipality or village has demonstrated a need for financial assistance, and the money to be advanced is necessary to enable the municipality or village to carry out an emergency first response to a release or threatened release that, at the time of the release or threatened release, poses an imminent and substantial threat to the public health or welfare, or to the environment; and

(C) containment and cleanup efforts paid for in whole or in part by a reimbursement or an advance made under this section were consistent with the regional master plan for the region in which the municipality or village is located if a plan has been prepared by the department under AS 46.04.210.

SECTION 46.08.075. LIENS AGAINST PROPERTY AS SECURITY FOR STATE EXPENDITURES.

(a) The state has a lien for expenditures by the state from the oil and hazardous substance release response fund or from any other state fund, for the costs of response, containment, removal, or remedial action resulting from an oil or hazardous substance spill, or, with respect to response costs, the substantial threat of a release of oil or a hazardous substance against all property owned by a person who is determined by the commissioner to be liable for the expenditures under this chapter, AS 46.03, AS 46.04, 42 U.S.C. 9607, or other state or federal law. The lien includes interest, at the maximum rate allowable under AS 45.45.010(a), from the date of the expenditures. The state may file an action in a court of competent jurisdiction in order to foreclose on the lien.

(b) A lien established under this section against real property is not effective until

(1) a certificate of lien is recorded in the district recorder's office for the district in which the property is located, describing the property and stating the amount of the lien, the name of the owner as grantor, and, if known, the name of the person causing the oil or hazardous substance release; and

(2) the commissioner sends a copy of the certificate of lien by certified mail return receipt requested, or actually delivers a copy of the certificate of lien, to the persons described in (1) of this subsection and to all other persons of record holding an interest in the property.

(c) When any amount with respect to which a lien has been recorded under this section has been paid or reduced, the commissioner shall, upon request of the property owner, issue a certificate discharging or partially releasing the lien. That certificate may be recorded in the office in which the certificate of lien was recorded.

Selected Alaska Oil & Hazardous Substance Pollution Control Statutes

(d) The commissioner may, in the commissioner's discretion, reduce, discharge or partially release a lien under this section if a bond, or other security, in a form and an amount satisfactory to the commissioner is posted. The bond or other security must include an amount sufficient to cover the cost of execution, collection, or foreclosure, including attorney fees. A reduction, discharge, or partial release may not be granted under this subsection if it would be contrary to the public interest. When a lien is reduced, discharged, or partially released under this subsection, the commissioner shall, at the request of the property owner, issue a certificate to that effect.

(e) A person with an ownership interest in property against which a lien is recorded may bring an action in a court of competent jurisdiction to require that the lien be released. The lien may be released to the extent of that person's ownership interest if the court finds that the person is not liable for the expenses incurred by the state in connection with the costs of response, containment, removal, or remedial action resulting from the oil or hazardous substance release or threat of release of oil or a hazardous substance.

SECTION 46.08.080. REGULATIONS.

The commissioner shall periodically review the minimum quantities of hazardous substances established under federal law and may adopt regulations establishing minimum quantities of substances for all or any portion of the substances to which AS 46.08.005 - 46.08.080 otherwise apply. The commissioner may otherwise adopt only those regulations that are expressly required to implement the specific purposes of AS 46.08.005 - 46.08.080.

ARTICLE 2. OIL AND HAZARDOUS SUBSTANCE RESPONSE OFFICE.

SECTION 46.08.100. OFFICE ESTABLISHED.

There is established in the department the oil and hazardous substance response office. The office shall include a director and employees who are specially trained in programs and technologies related to the containment and cleanup of releases or threatened releases of oil and hazardous substances.

SECTION 46.08.110. RESPONSE CORPS.

(a) The division of emergency services, Department of Military and Veterans' Affairs, shall establish an oil and hazardous substance response corps.

(b) The corps consists of volunteers who register with the division and agree to be trained by the division in techniques for containment and cleanup and to be available on short notice to assist in containment and cleanup consistent with the responsibilities assigned to the corps under an applicable incident command system.

(c) Members of the corps are entitled to per diem and expenses as determined by the division for training and for days spent in service to the state in containment and cleanup actions.

SECTION 46.08.120. RESPONSE DEPOTS.

The division shall maintain emergency response depots in areas of the state determined in the plans prepared under AS 46.04.200 - 46.04.210 to be potential sites of releases or threatened releases of oil or hazardous substances. The depots shall be equipped and staffed in a manner that ensures prompt response when containment and cleanup actions are necessary.

SECTION 46.08.130. DUTIES OF THE OFFICE.

(a) The office shall be prepared to respond promptly to a discharge of oil or a hazardous substance.

(b) The office may respond under (a) of this section to an oil or hazardous substance discharge only if:

(1) the oil discharge is a catastrophic oil discharge that constitutes an emergency under AS 46.04.080(a);

(2) the discharge of oil or a hazardous substance is declared to be an emergency under AS 46.03.865;

(3) the governor declares the discharge an emergency under AS 26.23;

(4) the commissioner reasonably believes that there has been a discharge of oil or a hazardous substance, or that there is a potential discharge of oil or a hazardous substance, and the discharge may qualify under (1) - (3) of this subsection; or

(5) the commissioner reasonably believes that the discharge or potential discharge poses an imminent and substantial threat to public health or welfare or to the environment.

(c) When the office or corps responds to an oil or hazardous substance discharge under this section, its activities shall be guided by the relevant provisions of the incident command system applicable to the type of discharge to which it is responding.

SECTION 46.08.140. EMERGENCY POWERS.

(a) When the office has reasonable grounds to believe that a release of oil or a hazardous substance has occurred or is threatened to occur which, in the judgment of its director, presents an imminent or present danger to the health or welfare of the people of the state or would result in or is likely to result in irreversible or irreparable damage to the natural resources or environment, and it appears to be prejudicial to the interest of the people of the state to delay action until an opportunity for a hearing can be provided, state employees or members of the corps may, with permission of the director and without prior hearing, enter private property for the purpose of containment or cleanup.

(b) The property owner affected by a response action taken under (a) of this section has the right to be heard as soon as practicable and to present proof to the office that the containment or cleanup action is unnecessary or that it is not necessary to enter the person's property for the containment or cleanup action.

SECTION 46.08.150. CONTRACTS.

The office or the division, as applicable, may enter into agreements with agencies of the state and federal government, political subdivisions, the University of Alaska, or private persons or entities to

(1) provide the personnel, equipment, or other services or supplies necessary to establish and maintain regional oil and hazardous substances depots and as necessary for response readiness;

(2) train members of response corps; and

(3) conduct research into oil and hazardous substances spill technology; the office shall include in the research topics for which it conducts or contracts for research, the research topics recommended to it by the Hazardous Substance Spill Technology Review Council under AS 46.13.120.

SECTION 46.08.160. LIMITATION OF LIABILITY.

The state, an employee of the state, and a member of the corps are not liable for costs or damages as a result of actions taken under AS 46.08.100 - 46.08.190 in response to a release or threatened release unless the actions taken by the state, the employee, or the member of the corps constitute gross negligence or intentional misconduct.

SECTION 46.08.190. DEFINITIONS.

In AS 46.08.100 - 46.08.190

- (1) "corps" means the oil and hazardous substance response corps;
- (2) "depots" means the oil and hazardous substance supply and equipment storage depots;
- (3) "division" means the division of emergency services, Department of Military and Veterans' Affairs;
- (4) "office" means the oil and hazardous substance response office.

ARTICLE 3. GENERAL PROVISIONS.

SECTION 46.08.900. DEFINITIONS.

In this chapter

- (1) "capital improvement" includes construction, renovation, repair of, and improvement to, a building, but does not include other improvements to real property, such as construction of a dike or retaining wall;
- (2) "commissioner" means the commissioner of environmental conservation;
- (3) "containment and cleanup" includes the direct and indirect efforts associated with the prevention, abatement, containment, or removal of oil or a hazardous substance, and the restoration of the environment; when applied to expenses, the term includes the additional costs of providing a reasonable and appropriate function or service incurred in response to the release of the oil or hazardous substance, including administrative expenses for the incremental costs of providing the function or service;
- (4) "department" means the Department of Environmental Conservation;
- (5) "fund" means the oil and hazardous substance release response fund;
- (6) "hazardous substance" means (A) an element or compound that, when it enters into or on the surface or subsurface land or water of the state, presents an imminent and substantial danger to the public health or welfare, or to fish, animals, vegetation, or any part of the natural habitat in which fish, animals, or wildlife may be found; or (B) a substance defined as a hazardous substance under 42 U.S.C. 9601 - 9657 (Comprehensive Environmental Response, Compensation, and Liability Act of 1980); "hazardous substance" does not include uncontaminated crude oil or uncontaminated refined oil in an amount of 10 gallons or less;
- (7) "oil" means petroleum products of any kind and in any form, whether crude, refined, or a petroleum by-product, including petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oily refuse, oil mixed with other wastes, liquified natural gas, propane, butane, and other liquid hydrocarbons regardless of specific gravity
- (8) "permitted release" means a release occurring under the authority of a valid permit issued by the department or by the Environmental Protection Agency;
- (9) "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, except that "release" does not include a permitted release or an act of nature;
- (10) "service"

Selected Alaska Oil & Hazardous Substance Pollution Control Statutes

(A) means a function performed or service provided by a municipality under a duty or power authorized by AS 29 or by another provision of law authorizing a municipality to perform functions or provide services, or a comparable function performed or service provided by a village;

(B) includes functions not previously performed and services not previously provided by the municipality or village;

(11) "threatened release" means an imminent danger that a release will occur;

(12) "village" means a place within the unorganized borough or within a borough if the power, function, or service for which a grant application under AS 29.60.510 is submitted is not exercised or provided by the borough on an areawide or nonareawide basis at the time the grant application is submitted that

(A) has irrevocably waived, in a form approved by the Department of Law, any claim of sovereign immunity that might arise in connection with the use of grant money under this chapter; and

(B) has

(i) a council organized under 25 U.S.C. 476 (sec. 16 of the Indian Reorganization Act);

(ii) a traditional village council recognized by the United States as eligible for federal aid to Indians; or

(iii) a council recognized by the commissioner of community and regional affairs under regulations adopted by the Department of Community and Regional Affairs to determine and give official recognition of village entities under AS 44.47.150(b).

CHAPTER 9. HAZARDOUS SUBSTANCE RELEASE CONTROL.

SECTION 46.09.010. REPORT OF HAZARDOUS SUBSTANCE RELEASES.

(a) Except as provided in (b) of this section, a person in charge of a vehicle, vessel, or container from which, or a place at which, a hazardous substance is released shall report the release to the department and appropriate public safety agencies promptly after learning of the release.

(b) The commissioner may enter into an agreement with a person for the periodic reporting of a controlled release of a hazardous substance if the release is not into water.

SECTION 46.09.020. CONTAINMENT AND CLEANUP OF A RELEASED HAZARDOUS SUBSTANCE.

(a) A person who causes a release of a hazardous substance shall make reasonable efforts to contain and clean up the hazardous substance promptly after learning of the release, unless the commissioner determines

(1) after consulting the Environmental Protection Agency or appropriate public safety agencies, that containment or cleanup is technically infeasible;

(2) that containment or cleanup would cause greater environmental damage than if the release were not contained or cleaned up; or

(3) that containment or cleanup would pose a greater threat to human life or health than if the release were not contained or cleaned up.

(b) The commissioner shall develop guidelines prescribing general procedures and methods to be used in the containment and cleanup of a hazardous substance. The guidelines shall be consistent with the national contingency plan revised and republished under 42 U.S.C. 9605.

(c) If the commissioner determines that the containment or cleanup of a hazardous substance undertaken is inadequate, the commissioner may direct the person undertaking the containment or cleanup to cease and may undertake the containment or cleanup directly or by contract.

(d) If it appears to the commissioner that the cause or responsibility for the release of a hazardous substance is unclear or unexplained, the commissioner may immediately undertake the containment and cleanup of the release unless the commissioner determines

(1) after consulting the Environmental Protection Agency or appropriate public safety agencies, that containment or cleanup is technically infeasible;

(2) that containment or cleanup would cause greater environmental damage than if the release were not contained or cleaned up; or

(3) that containment or cleanup would pose a greater threat to human life or health than if the release were not contained or cleaned up.

(e) The commissioner shall enter into agreement with the Environmental Protection Agency, and may enter into agreements with other persons and municipalities, in order to

(1) facilitate a coordinated and effective hazardous substance release response in the state;

(2) provide for cooperative hazardous substance release notification procedures; or

(3) provide for cooperative review of hazardous substance release response contingency plans submitted to the department.

SECTION 46.09.030. DISASTER EMERGENCIES.

The commissioner of environmental conservation or the commissioner of military and veterans' affairs may request the governor to determine that an actual or imminent release of a hazardous substance constitutes a disaster emergency under AS 26.23. If the governor declares a disaster emergency under AS 26.23. The commissioner of environmental conservation and the commissioner of military and veterans' affairs shall respond appropriately in the relief of the actual or imminent release under the relevant provisions of the applicable incident command system.

SECTION 46.09.040. HAZARDOUS SUBSTANCES CONTAINMENT AND CLEANUP.

The commissioner may contract with a person or a municipality for personnel, equipment, or services that may be useful to carry out the requirements of this chapter. If the commissioner determines that it is infeasible to contract with a person or a municipality, the commissioner may establish and maintain containment and cleanup personnel, equipment, and supplies necessary to carry out the requirements of this chapter.

SECTION 46.09.050. COMPACTS AUTHORIZED.

The governor may enter into supplementary agreements, reciprocal arrangements, and compacts with another state or country for the implementation of this chapter subject to the approval of the Congress of the United States, if required, under the Constitution of the United States.

SECTION 46.09.060. MUNICIPALITIES.

(a) If a provision of this chapter or of a regulation adopted by the commissioner under this chapter conflicts with the charter, ordinance, or regulation of a municipality, the provisions of this chapter or of the regulation adopted by the commissioner under this chapter prevails.

(b) Authority to contain, clean up, or prevent a release or threatened release of oil or of a hazardous substance, and to exercise other powers necessary to implement this chapter, AS 46.04, and AS 46.08, are granted to municipalities that do not otherwise have that authority. Except as provided in (a) of this section, a municipality may exercise its police power within the area of the municipality.

SECTION 46.09.070. REGULATIONS.

The commissioner shall periodically review the minimum quantities of hazardous substances established under federal law and may adopt regulations establishing minimum quantities of substances for all or any portion of the substances to which this chapter otherwise applies. The commissioner shall adopt only those regulations that are expressly required to implement the specific purposes of this chapter.

SECTION 46.09.900. DEFINITIONS.

In this chapter

- (1) "commissioner" means the commissioner of environmental conservation;
- (2) "containment and cleanup" includes the direct and indirect efforts associated with the prevention, abatement, containment, or removal of a hazardous substance, and the restoration of the environment; when applied to expenses, the term includes the additional costs of providing a reasonable and appropriate function or service incurred

in response to the release of the hazardous substance, including administrative expenses for the incremental costs of providing the function or service;

(3) "department" means the Department of Environmental Conservation.

(4) "hazardous substance" means (A) an element or compound that, when it enters into or on the surface or subsurface land or water of the state, presents an imminent and substantial danger to the public health or welfare, or to fish, animals, vegetation, or any part of the natural habitat in which fish, animals, or wildlife may be found or (B) a substance defined as a hazardous substance under 42 U.S.C. 9601 - 9657 (Comprehensive Environmental Response, Compensation, and Liability Act of 1980); "hazardous substance" does not include uncontaminated crude oil or uncontaminated refined oil;

(5) "permitted release" means a release occurring under the authority of a valid permit issued by the department or by the Environmental Protection Agency;

(6) "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, except that "release" does not include a permitted release or an act of nature;

(7) "service" means a function performed or service provided by the state, including functions not previously performed and services not previously provided by the state;

(8) "threatened release" means an imminent danger that a release will occur.

CHAPTER 13. ALASKA STATE EMERGENCY RESPONSE COMMISSION.

SECTION 46.13.010. ALASKA STATE EMERGENCY RESPONSE COMMISSION ESTABLISHED.

(a) There is established in the Department of Environmental Conservation the Alaska State Emergency Response Commission.

(b) The oil and hazardous substance response office established under AS 46.08.100 shall serve as staff for the commission.

SECTION 46.13.020. COMPOSITION OF THE COMMISSION.

The commission consists of the commissioners of community and regional affairs, environmental conservation, fish and game, health and social services, labor, natural resources, public safety, and transportation and public facilities, or the designees of the commissioners, the adjutant general of the Department of Military and Veterans' Affairs or a designee, and seven public members to be appointed by the governor. To the extent practicable, the commission must include members with expertise in the emergency response field.

SECTION 46.13.030. OFFICERS, TERMS, AND COMPENSATION.

The commissioner of environmental conservation, or the commissioner's designee, shall chair the commission. The adjutant general of the Department of Military and Veterans' Affairs, or the adjutant general's designee, shall serve as vice-chair. Members of the commission other than those from the designated state departments serve at the pleasure of the governor for staggered terms of three years. Members of the commission serve without compensation but are entitled to per diem and travel expenses authorized for members of boards and commissions under AS 39.20.180.

SECTION 46.13.040. POWERS AND DUTIES OF COMMISSION.

The commission shall

- (1) serve as the state emergency response commission required under 42 U.S.C. 11001 - 11005;
- (2) designate, and revise as necessary, the boundaries of emergency planning districts, using the boundaries of regions established under AS 46.04.200 - 46.04.210 and of political subdivisions where appropriate;
- (3) facilitate the preparation and implementation of emergency plans for hazardous substance response, including the statewide, interjurisdictional, and local plans prepared under AS 26.23, state and regional plans prepared under AS 46.04.200 - 46.04.210, and plans prepared under this chapter;
- (4) review and approve or disapprove the plans described in (3) of this section according to the criteria established in AS 46.13.045;
- (5) establish a local emergency planning committee for each emergency planning district, and appoint, and revise as necessary, the membership of each committee;
- (6) supervise and coordinate the activities of local emergency planning committees;
- (7) establish procedures for receiving and processing requests from the public for information under 42 U.S.C. 11044, including tier II information under 42 U.S.C. 11022;
- (8) perform other coordinating, advisory, or planning tasks related to hazardous

substance emergency planning and preparedness, community right-to-know reporting, toxic chemical release reporting, or management of hazardous substances;

(9) recommend procedures to integrate, as appropriate, hazardous substance response planning under 42 U.S.C. 11001 - 11005, federal contingency planning under 33 U.S.C. 1321 and other federal laws applicable to hazardous substance discharges, and state, regional, and local hazardous substance contingency planning under AS 26.23 and AS 46.04.200 - 46.04.210;

(10) to the extent consistent with the constitution and law of the state, perform all other functions prescribed for state emergency response commissions under 42 U.S.C. 11001 - 11005; and

(11) adopt regulations necessary to carry out the purposes of this chapter and 42 U.S.C. 11001 - 11005.

SECTION 46.13.045. PLAN APPROVAL; INCIDENT COMMAND SYSTEMS.

(a) The commission shall review and exercise approval authority over local, interjurisdictional, regional, and state plans for hazardous substance discharge response, including plans prepared under AS 26.23, AS 46.04.200 - 46.04.210, and this chapter.

(b) Before approving a plan, the commission shall ensure that the plan includes an incident command system that describes the respective roles of affected persons and agencies in a clear and specific manner and that the respective roles of state agencies are consistent with their statutory duties. The commission shall also ensure that the plans are well-integrated with related plans.

(c) To the extent consistent with other law, an incident command system approved under this section must provide that the Alaska division of emergency services has a major role in mobilization of personnel and resources, communications, transportation planning, and other logistics involved in a state response to an imminent or actual hazardous substance discharge.

SECTION 46.13.050. AGENCY COOPERATION.

The commission may request data, reports, or other information from a state agency. To the extent feasible and not otherwise prohibited by laws making specific information confidential and nondisclosable, a state agency shall cooperate with the commission and furnish the commission with the information and assistance necessary to accomplish the purposes of 42 U.S.C. 11001 - 11005 and this chapter.

SECTION 46.13.060. EMERGENCY PLANNING DISTRICT BOUNDARIES.

Boundaries for emergency planning districts are the regions designated by the Department of Environmental Conservation under AS 46.04.210, unless otherwise designated by the commission.

SECTION 46.13.070. LOCAL EMERGENCY PLANNING COMMITTEES.

The commission shall establish and appoint the members of a local emergency planning committee for each emergency planning district. Each committee must include, at a minimum, representatives from each of the following groups or organizations: elected state and local officials; law enforcement; civil defense; fire fighting; first aid; health; local environmental, hospital, and transportation personnel; broadcast and print media; community groups; and owners and operators of facilities subject to the requirements of 42 U.S.C. 11001 - 11005.

SECTION 46.13.080. DUTIES OF LOCAL EMERGENCY PLANNING COMMITTEES.

Each local emergency planning committee shall

(1) establish procedures for receiving and processing requests from the public for information under 42 U.S.C. 11044, including tier II information under 42 U.S.C. 11022;

(2) appoint a chair and establish rules by which the committee shall function, including provisions for public notification of committee activities, public meetings to discuss the emergency plan, public comments, response to the comments by the committee, distribution of the emergency plan, and designation of an official to serve as coordinator for information;

(3) prepare and periodically review an emergency plan in accordance with 42 U.S.C. 11003(a);

(4) evaluate the need for resources necessary to develop, implement, and exercise the emergency plan, and make recommendations with respect to additional resources that may be required and the means for providing the additional resources;

(5) to the extent consistent with the constitution and law of the state, perform all other functions prescribed for emergency planning committees in 42 U.S.C. 11001 - 11005; and

(6) participate as a local advisory committee in the preparation of statewide regional contingency plans.

SECTION 46.13.090. EMERGENCY PLANS.

(a) An emergency plan prepared under AS 46.13.080 must include

(1) identification of facilities subject to the requirements of 42 U.S.C. 11001 - 11005 that are within the emergency planning district, identification of routes likely to be used for the transportation of substances on the list of extremely hazardous substances referred to in 42 U.S.C. 302(a), and identification of additional facilities contributing or subjected to additional risk due to their proximity to facilities subject to the requirements of 42 U.S.C. 11001 - 11005, such as hospitals or natural gas facilities;

(2) methods and procedures to be followed by facility owners and operators and local emergency and medical personnel to respond to a release of hazardous substances, and to a release of substances on the list of extremely hazardous substances referred to in 42 U.S.C. 302(a);

(3) designation of a community emergency coordinator and facility emergency coordinators, who shall make determinations necessary to implement the emergency plan;

(4) procedures providing reliable, effective, and timely notification by the facility emergency coordinators to persons designated in the emergency plan, and to the public, that a release has occurred, consistent with the emergency notification requirements of 42 U.S.C. 11004;

(5) methods for determining the occurrence of a release, and the area or population likely to be affected by that release;

(6) a description of emergency equipment and facilities in the community and at each facility in the community subject to the requirements of 42 U.S.C. 11001 - 11005, and an identification of the persons responsible for the equipment and facilities;

(7) evacuation plans, including provisions for a precautionary evacuation and alternative traffic routes;

(8) training programs, including schedules for training of local emergency response and medical personnel; and

(9) methods and schedules for exercising the emergency plan.

(b) Each emergency plan prepared under AS 46.13.080 must incorporate within it an incident command system. The incident command system must be substantially equivalent in relevant respects to the incident command systems established under AS 46.04.200 - 46.04.210 and meet the requirements of AS 46.13.045.

SECTION 46.13.100. FINDINGS AND PURPOSE.

The legislature

(1) finds and declares that there exists a lack of scientific knowledge concerning the availability, properties, and effectiveness of various hazardous substance containment and cleanup technologies; and

(2) concludes that it is in the best interest of the state and its citizens to establish a Hazardous Substance Spill Technology Review Council in the Alaska State Emergency Response Commission to assist in the identification of containment and cleanup products and procedures for arctic and sub-arctic hazardous substance releases and make recommendations to the departments and agencies of the state regarding their use and deployment.

SECTION 46.13.110. HAZARDOUS SUBSTANCE SPILL TECHNOLOGY REVIEW COUNCIL.

(a) There is established in the Alaska State Emergency Response Commission the Hazardous Substance Spill Technology Review Council.

(b) The council consists of the commissioner of environmental conservation, the adjutant general of the Department of Military and Veterans' Affairs, a representative of the University of Alaska appointed by the governor, the governor's senior science advisor, a representative of the Prince William Sound Science Center in Cordova appointed by the governor, and four other members, one from each judicial district of the state, appointed by the governor, with broad experience or expertise in one or more of the following areas: physical or biological science; oil technology, transportation, or management; fisheries; economics; environmental engineering; or law. The U.S. Coast Guard and the Environmental Protection Agency may each appoint a federal employee to the council to represent their agencies as nonvoting members. Appointed state members of the council serve overlapping three-year terms.

(c) The council members shall elect from among themselves a chair and vice-chair.

(d) The oil and hazardous substance response office established under AS 46.08.100 shall serve as staff for the council.

(e) State and federal members of the council serve without compensation, but are entitled to per diem and travel expenses authorized for boards and commissions under AS 39.20.180.

(f) The council shall meet regularly at the call of the commission or the chair of the council.

(g) State members of the council are subject to AS 39.50.

SECTION 46.13.120. DUTIES OF THE COUNCIL.

The council shall:

(1) review and recommend to the Department of Environmental Conservation research topics for it to pursue;

(2) establish testing protocols to be used by the Department of Environmental Conservation to evaluate the effectiveness of hazardous substance spill technologies for use in the state;

(3) identify sources of money that may be available for discharge-related research;

Selected Alaska Oil & Hazardous Substance Pollution Control Statutes

(4) make proposals to the governor, commission, and other entities to encourage and fund prevention, response, cleanup, and mitigation of future discharges of hazardous substances;

(5) compile and maintain information relating to

(A) containment and cleanup technology that is available in the event of a hazardous substance discharge, the extent to which current containment and cleanup technology is available and may be applied in the state, and ways to improve hazardous substance spill response technology and procedures;

(B) steps that should be taken by government and industry to ensure proper management, handling, and transportation of hazardous substances and to improve the statewide ability of industry and governmental agencies to respond to discharges of hazardous substances;

(C) the extent to which industry practices and governmental practices or laws should be changed to reduce or minimize the potential for hazardous substance discharges;

(D) hazardous substances spill technology research conducted by the Department of Environmental Conservation; and

(6) perform other functions as may be requested by the commission.

SECTION 46.13.130. INVESTIGATIONS; HEARINGS.

(a) The council may issue subpoenas, administer oaths, and conduct investigations related to its duties.

(b) The council may compel the attendance of witnesses and production of papers, books, records, accounts, documents, and testimony, and may have the deposition of witnesses taken in a manner prescribed by court rule or law for the taking of depositions in civil actions when consistent with the duties assigned to the council.

(c) On a majority vote of the council, subpoenas and subpoenas duces tecum may be issued and served in the manner prescribed by AS 44.62.430(b) and (c) and court rule. The failure, refusal, or neglect to obey a subpoena is punishable as contempt in the manner prescribed by law or court rule. The superior court may compel obedience to the council's subpoena in the same manner as prescribed for obedience to a subpoena issued by the court.

(d) State agencies shall, to the extent permitted by law, cooperate with the council and provide it with information it requests for carrying out its duties.

SECTION 46.13.900. DEFINITIONS.

In this chapter,

(1) "commission" means the Alaska State Emergency Response Commission;

(2) "council" means the Hazardous Substance Spill Technology Review Council;

(3) "hazardous substance" has the meaning given in AS 46.03.826.

ALASKA ADMINISTRATIVE CODE

TITLE 18. ENVIRONMENTAL CONSERVATION.

CHAPTER 75. OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTROL.

ARTICLE 1. Oil Pollution Prevention Requirements.

18 AAC 75.005. RESPONSIBILITY.

The owner or operator of an oil tank vessel, oil barge, pipeline, oil terminal, exploration facility, or production facility subject to the requirements of AS 46.04.030 is responsible for meeting the applicable requirements of this chapter and for preventing the discharge of oil into waters or onto land of the state. (Eff. 5/14/92, Register 122).

Authority: AS 46.03.020 AS 46.04.050
AS 46.03.740 AS 46.04.070
AS 46.04.030

18 AAC 75.007. GENERAL OIL POLLUTION PREVENTION REQUIREMENTS.

(a) The oil pollution prevention requirements of 18 AAC 75.005 -- 18 AAC 75.090 apply to each facility or operation for which an approved oil discharge prevention and contingency plan is required under AS 46.04.030.

(b) A vessel, barge, pipeline, or other facility subject to the applicable requirements of this chapter must be equipped and operated in accordance with this chapter and other state and federal law applicable to the prevention of an oil discharge.

(c) Unless preempted by federal law, if a conflict exists between a requirement of 18 AAC 75.005 -- 18 AAC 75.090 and a requirement of federal law, the more stringent requirement applies.

(d) The owner or operator shall ensure that all personnel are appropriately and regularly trained regarding company and state pollution prevention measures that are applicable to each person's duties. After completing a training course or program, each participant shall sign and date a statement that lists the course content.

(e) The owner or operator shall institute programs designed to ensure that each drill operator, each person who has navigational, towline, security, or maintenance duties, and any other person responsible for an activity that might result in a violation of this chapter is free of substance-abuse or medical problems that would impair that person's ability to do that person's job.

(f) The owner or operator shall provide security measures and surveillance appropriate to each component of the operation to minimize the risk of vandalism, sabotage, and unauthorized entry.

(g) The owner or operator shall maintain for the life of the facility or operation, a history of spills over 55 gallons, including the source, cause, amount, and corrective action taken.

(h) The owner or operator shall prepare and maintain records to document training, inspections, tests, maintenance, and repairs required by 18 AAC 75.005 -- 18 AAC

Selected Alaska Oil & Hazardous Substance Pollution Control Regulations

75.090. Unless specified otherwise, records must be kept for at least three years and must be available for inspection and copying by the department upon request. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

18 AAC 75.015. COMPLIANCE SCHEDULE.

(a) The owner or operator shall provide a compliance schedule for meeting the requirements of 18 AAC 75.005 -- 18 AAC 75.090 as part of the plan required by 18 AAC 75.400. Requirements that cannot be implemented immediately must be implemented as soon as feasible, but no later than January 1, 1997.

(b) If compliance with one or more of the requirements of 18 AAC 75.005 -- 18 AAC 75.090 is not practical within the time stated, the owner or operator may propose an alternate compliance schedule, citing substantial cause for delay. The department will, in its discretion, approve an alternate compliance schedule if other measures acceptable to the department have been taken in the interim to minimize the risk of a discharge.

(c) The department will, in its discretion, waive a requirement of 18 AAC 75.005 -- 18 AAC 75.090 if the owner or operator demonstrates to the department's satisfaction that an equivalent level of protection will be achieved by using a technology or procedure other than that required. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.04.050
AS 46.04.030 AS 46.04.070

18 AAC 75.025. TRANSFER REQUIREMENTS:

(a) The owner or operator of an oil terminal facility, oil tank vessel, or oil barge shall take all appropriate measures to prevent spills or overfilling during a transfer of oil, including reduced loading rates at the beginning and end of a transfer,

(b) Unless it is technically unfeasible to do so, an oil containment boom appropriate for local conditions must be deployed in an effective manner around an oil tank vessel or barge during the transfer of crude oil and persistent products.

(c) Except for crude oil washing, tank cleaning operations may not be conducted during cargo offloading.

(d) The owner or operator shall ensure that each person involved in a transfer is capable of clearly communicating orders to stop a transfer at any time during the transfer.

(e) A positive means must be provided to stop a transfer in the shortest possible time consistent with the best commercially available technology.

(f) Before beginning a transfer to or from an area not protected by secondary containment, the owner or operator shall ensure that all valves in the transfer system have been checked to ensure that they are in the correct position, and that all manifolds not in use are blank flanged or capped. Where feasible, the owner or operator shall also inspect for damage or defects all piping and hoses used in the transfer before and at least once during each transfer.

(g) The lowermost drain and all outlets of any tank car or tank truck must be examined for leakage before filling and before departure. All tank car or tank truck manifolds must be blank flanged or capped, and valves must be secured before leaving the transfer area. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

18 AAC 75.027. REQUIREMENTS FOR LADEN OIL TANK VESSELS.

(a) In addition to the applicable requirements of 18 AAC 75.007 -- 18 AAC 75.025, a laden oil tank vessel must carry or have ready access to sufficient oil transfer equipment to facilitate lightering to and from other vessels.

(b) The owner or operator shall ensure that each laden tank vessel has on board a person who is designated as an oil spill prevention and response officer and is responsible for training and drilling the crew on state and federal oil pollution prevention and response requirements.

(c) If the master is not fluent in English, a person fluent in English and in the master's language must be immediately available to the bridge of any laden tank vessel when underway in state waters.

(d) The owner or operator shall ensure that measures are in place that allow the prompt detection of an oil discharge, including measures such as visual lookouts, the sounding of all cargo tanks to check cargo and water levels in the tanks after an intentional or unintentional grounding, and, where technically feasible, electronic leak detection systems.

(e) A tank vessel under escort by another vessel must, at all times, be operated in a manner that permits the escort vessel to be available immediately to provide the intended assistance to the tank vessel.

(f) While in state waters, towing line must be made up and prepared for rapid deployment to a towing vessel. The tow line must be fitted to allow tow vessels commonly available in the area of operation to take the vessel in tow rapidly. For a vessel operating at the oil loading terminal at Valdez, the Prince William Sound towing package may be used instead of having lines made up, if the package permits rapid deployment to a towing vessel. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

18 AAC 75.037. REQUIREMENTS FOR LADEN OIL BARGES.

(a) In addition to the applicable requirements of 18 AAC 75.007 -- 18 AAC 75.025, a laden oil barge must carry or have ready access to sufficient oil transfer equipment to facilitate lightering to and from other vessels.

(b) The owner or operator of a laden oil barge shall ensure that each barge or vessel towing a barge has on board a person who is designated as an oil spill prevention and response officer and is responsible for training and drilling the crew on state and federal oil pollution prevention and response requirements.

(c) If the master is not fluent in English, a person fluent in English and in the master's language must be immediately available to any vessel towing an oil laden barge.

(d) The owner or operator shall ensure that measures are in place that allow the prompt detection of an oil discharge, including visual inspections of the barge and the area around the barge, and the sounding of all cargo tanks to check cargo and water levels in the tanks after an intentional or unintentional grounding.

Selected Alaska Oil & Hazardous Substance Pollution Control Regulations

(e) The owner or operator shall inspect towing equipment every two months and shall record the results of each inspection and any actions taken to resolve problems discovered during an inspection.

(f) The owner or operator shall provide an adequate means of recovering a barge that breaks free of its towing vessel. The recovery means must be capable of being used by other vessels if the towing vessel is lost or incapacitated. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

18 AAC 75.045. OPERATING REQUIREMENTS FOR EXPLORATION AND PRODUCTION FACILITIES.

(a) In addition to the applicable requirements of 18 AAC 75.007 -- 18 AAC 75.025, the owner or operator of an exploration or production facility shall collect and store oil produced during a formation flow test or other drilling operation in a manner that prevents the oil from entering the land or waters of the state.

(b) In state waters, a prefabricated offshore platform that is towed into place and begins operations after the effective date of this section must be inspected for fatigue and structural integrity as required by 30 C.F.R. 250, Subpart I, as amended through July 1, 1991, the provisions of which are adopted by reference. The inspection must be conducted after platform installation and before drilling or production operations begin. The owner or operator shall submit to the supervisor of the appropriate regional office of the department a report of the inspection results and any corrective actions taken.

(c) Closure valves for pipelines leaving the platform must be located at a protected location that isolates the pipeline from the platform if a discharge or other emergency occurs and must function both manually and remotely as part of an emergency shutdown system.

(d) The owner or operator of an exploration or production facility shall provide, at a minimum, containment and collection devices such as drip pans and curbs for offshore drilling and wellhead sumps for onshore drilling.

(e) An offshore production platform, including a mobile offshore drilling unit, must have a sufficiently impermeable deck with catch tanks or other devices adequate to contain, collect, and divert spilled oil. The catch tank must have adequate storage capacity to contain anticipated and accidental discharges of oil and high-liquid-level alarms that will immediately notify the operator if a high liquid level develops.

(f) Oil storage tanks, including bulk fuel tanks, must meet the applicable requirements of 18 AAC 75.065 and 18 AAC 75.075.

(g) Piping associated with an exploration or production facility must meet the applicable requirements of 18 AAC 75.080. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

18 AAC 75.055. LEAK DETECTION, MONITORING, AND OPERATING REQUIREMENTS FOR CRUDE OIL TRANSMISSION PIPELINES.

(a) A crude oil transmission pipeline must be equipped with a leak detection system capable of promptly detecting a leak, including

Selected Alaska Oil & Hazardous Substance Pollution Control Regulations

(1) if technically feasible, the continuous capability to detect a daily discharge equal to not more than one percent of daily throughput;

(2) flow verification through an accounting method, at least once every 24 hours; and

(3) for a remote pipeline not otherwise directly accessible, weekly aerial surveillance, unless precluded by safety or weather conditions.

(b) The owner or operator of a crude oil transmission pipeline shall ensure that the incoming flow of oil can be completely stopped within one hour after detection of a discharge.

(c) If oil storage tanks are present at the crude oil transmission pipeline facility, the owner or operator shall meet the requirements of 18 AAC 75.065 and 18 AAC 75.075.

(d) For piping connected to or associated with the main crude oil transmission pipeline the owner or operator shall meet the requirements of 18 AAC 75.080. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

18 AAC 75.065. OIL STORAGE TANK REQUIREMENTS.

(a) The owner or operator of an oil terminal, crude oil pipeline, exploration, or production facility shall maintain and inspect oil storage and surge tanks consistent with the requirements of API Standard 653, First Edition, 1991, and Supplement 1, January 1992, or API Recommended Practice 12R1, Fourth Edition, 1991, as appropriate, unless a more stringent requirement is set out in this section.

(b) The owner or operator shall inspect oil storage tanks for structural integrity at least every ten years unless a shorter or longer inspection interval is prescribed by API Standard 653, First Edition, 1991, and Supplement 1, January 1992, or API RP 12R1, Fourth Edition, 1991. The department will, in its discretion, require a more frequent schedule

(1) for tanks older than 30 years;

(2) for riveted or bolted tanks;

(3) for tanks with demonstrated corrosion or foundation problems; or

(4) after a significant seismic event.

(c) An elevated or a portable tank is not required to undergo an internal inspection if an external integrity inspection, performed in accordance with API Standard 653, First Edition, 1991, and Supplement 1, January 1992, or API RP 12R1, Fourth Edition, 1991, is substituted and that inspection includes a thorough inspection and a nondestructive integrity test of the tank, including the tank bottom.

(d) A record of inspection results and corrective actions taken after May 14, 1992 must be kept for the service life of the tank and must be available to the department for inspection and copying upon request.

(e) The owner or operator shall notify the department if an oil storage tank undergoes major repair or major alteration, as defined in API Standard 653, First Edition, 1991, and Supplement 1, January 1992, section 10.3.1.2.

(f) Oil storage tanks served by internal steam heating systems must be designed to control leakage through defective heating coils. Condensate lines must be monitored, passed through an oil separating device, or passed through a retention system.

(g) If an internal lining system is used to control corrosion or to meet the requirements of

(i) of this section, it must be installed in accordance with API Standard 652, First Edition, 1991.

(h) A new installation must meet the following requirements:

(1) tanks must be constructed and installed in compliance with API Standard 650, 1988 edition, API Standard 12, D (Ninth Edition, 1989), F (Tenth Edition, 1989) and P (First Edition, 1986), or another standard approved by the department;

(2) oil storage tanks may not be of riveted or bolted construction;

(3) cathodic protection or another approved corrosion control system must be installed to protect the tank bottom from external corrosion where local soil conditions warrant; and

(4) each tank must be equipped with a leak detection system that an observer from outside the tank can use to detect leaks in the bottom of the tank, such as secondary catchment under the tank bottom with a leak detection sump, a sensitive gauging system, or other leak detection system approved by the department.

(i) An existing installation is subject to the following:

(1) each tank must be equipped with

(A) a leak detection system that an observer from outside the tank can use to detect leaks in the bottom of the tank, such as secondary catchment under the tank bottom with a leak detection sump, a sensitive gauging system, or another leak detection system approved by the department;

(B) cathodic protection in accordance with API Standard 651, First Edition, 1991;

(C) a thick film liner in accordance with API Standard 652, First Edition, 1991; or

(D) another leak detection or spill prevention system approved by the department; and

(2) notwithstanding the provisions of 18 AAC 75.015(a), each tank must undergo an initial inspection in accordance with API Standard 653, First Edition, 1991, and Supplement 1, January 1992, or API 12R1, Fourth Edition, 1991, as appropriate, on the following schedule, with tank age determined as of 5/14/92:

(A) tanks 30 years old or older: by January 1, 1994;

(B) tanks 25 -- 29 years old: by January 1, 1995;

(C) tanks 20 -- 24 years old: by January 1, 1996;

(D) tanks 10 -- 19 years old: by January 1, 1997; and

(E) tanks less than 10 years old: in accordance with API Standard 653, First Edition, 1991, and Supplement 1, January 1992.

(j) In addition to the applicable requirements of 18 AAC 75.025, the owner or operator shall ensure that one or more of the following means of preventing overfilling is provided:

(1) high liquid level alarms with signals that sound and display in a manner immediately recognizable by personnel conducting a transfer;

(2) high liquid level automatic pump shutoff devices set to stop flow at a predetermined tank content level;

(3) a means of immediately determining the liquid level of each bulk storage tank, provided that the liquid level is closely monitored during a transfer; or

(4) a system approved by the department which will immediately notice the operator of high liquid levels.

(k) Overfill protection devices must be tested before each transfer operation or monthly, whichever is less frequent. If monthly testing would necessitate interrupting the operation of a system subject to continuous flow, the owner or operator may substitute monthly inspection and annual testing for the monthly testing of overfill protection devices. (Eff. 5/14/92, Register 122)

Selected Alaska Oil & Hazardous Substance Pollution Control Regulations

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

[Editor's Note: The API standards set out in this section may be reviewed at any regional office of the department or may be obtained from the American Petroleum Institute, 1220 L Street NW, Washington, D.C. 20005.]

18 AAC 75.075. SECONDARY CONTAINMENT REQUIREMENTS FOR ABOVEGROUND OIL STORAGE AND SURGE TANKS.

(a) Onshore oil storage tanks must be located within a secondary containment area that has the capacity to hold the volume of the largest tank within the containment area, plus enough additional capacity to allow for local precipitation. Minimum secondary containment system requirements include

(1) berms, dikes, or retaining walls that are constructed to prevent the release of spilled oil from within the containment area;

(2) with the exception of the area under a tank, components constructed of, or lined with, materials that are

(A) adequately resistant to damage by the products stored to maintain sufficient impermeability;

(B) resistant to damage from prevailing weather conditions;

(C) sufficiently impermeable; and

(3) checking for the presence of oil leaks or spills

(A) daily at a manned facility; or

(B) each time the facility is visited, but at least monthly, at an unmanned facility.

(b) In locations where physically feasible, offshore production platform oil storage tank areas must incorporate a secondary containment method to prevent oil spills from entering the water.

(c) Secondary containment systems must be maintained free of debris or other materials or conditions that might interfere with the effectiveness of the system, including excessive accumulated rainwater.

(d) Drainage of water accumulations from secondary containment areas that discharge directly to the land or waters of the state must be controlled by locally operated, positive close failsafe valves or other positive means to prevent a discharge. Valves must be kept closed and locked when not in use. The owner or operator shall inspect accumulated water before discharging it from a secondary containment area to ensure that no oil will be discharged and shall keep a written record of each drainage operation. If no sheen is present, water accumulated may be discharged without a state wastewater permit under 18 AAC 72. Oil-contaminated water accumulations may be discharged from secondary containment without a state wastewater permit under 18 AAC 72 if the receiving environment is not a sensitive receiving environment and if it is treated through an oil/water separating device that reduces the total concentration of hydrocarbons to below 15 ppm. The oil separating device must be equipped with effluent monitors and alarms that notice the operator if the device fails.

(e) A new installation is subject to the following:

(1) impermeable liners or double bottoms that are chemically resistant to damage by the product being stored in the tank must be installed under all tanks, except for tanks containing viscous products exceeding 400 SUS (Saybolt Universal System) at storage temperatures; and

Selected Alaska Oil & Hazardous Substance Pollution Control Regulations

(2) drains and other penetrations through secondary containment areas must be minimized consistent with facility operational requirements.

(f) At an existing installation, in the event of a known or suspected discharge, the department will, in its discretion, require installation of monitoring wells to detect oil or other hazardous substances in the groundwater if the local geology and groundwater conditions allow installation of monitoring wells, and if monitoring wells will not substantially increase the risk of contaminating groundwater.

(g) Rail tank car and tank truck loading areas and permanent unloading areas must

(1) have a secondary containment system designed to contain the maximum capacity of any single compartment of the tank car or tank truck, including containment curbing and a trenching system or drains with drainage to a collection tank or device designed to handle a discharge;

(2) be paved, surfaced, or lined with sufficiently impermeable materials;

(3) be maintained free of debris or other materials or conditions that might interfere with the effectiveness of the system, including excessive accumulated rainwater; and

(4) have warning lights, warning signs, or a physical barrier system to prevent premature vehicular movement. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

18 AAC 75.080. FACILITY PIPING REQUIREMENTS FOR OIL TERMINAL, CRUDE OIL TRANSMISSION PIPELINE, EXPLORATION, AND PRODUCTION FACILITIES.

(a) All facility oil piping associated with an oil terminal, crude oil transmission pipeline, exploration, or production facility must meet the requirements of this section.

(b) Buried steel piping containing oil must be maintained in accordance with a corrosion control program, approved by the department and,

(1) for a new installation, must be

(A) protected from corrosion by installing protective wrapping or coating and cathodic protection appropriate for local soil conditions; and

(B) of all pipe construction with no clamped, threaded, or similar connections for lines larger than a one inch nominal pipe size; and

(2) for an existing installation, must

(A) undergo a corrosion survey;

(B) be carefully examined for deterioration any time a section of buried line is exposed for any reason;

(C) undergo an additional examination and corrective action to repair the damaged pipe and control future corrosion if corrosion damage is found; and

(D) be replaced with piping that meets the requirements of (1) of this subsection, if feasible, when significant repairs or replacements are made.

(c) Buried or insulated transfer piping and hoses that are located outside of secondary containment areas and that are used to transfer oil to or from docks or vessels must be leak tested at least annually, at or above the normal operating pressures, or must be subjected to another verification method approved by the department. The testing medium used must be in accordance with API RP 1110, Second Edition, 1981, or another applicable published safety standard. The owner or operator shall keep records of the results of these tests. Piping and hoses must be stenciled or tagged with the date

Selected Alaska Oil & Hazardous Substance Pollution Control Regulations

of the last test and the allowable operating pressure. An oil discharge resulting from testing is not exempted from legal action under applicable state law.

(d) All aboveground transfer piping that is used to transfer oil to or from docks or vessels must be visually checked before and during each transfer or monthly, whichever is less frequent.

(e) Pipes removed from service for more than one year must be drained, identified as to origin, marked with the words "Out of Service", and capped or blank flanged.

(f) Aboveground piping and valves must be visually checked for leaks or damage during routine operations or at least monthly.

(g) Piping supports must be designed to be seismically stable and composed of materials to minimize corrosion and prevent chafing.

(h) Appropriate measures must be taken to protect aboveground piping from damage by vehicles. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

18 AAC 75.090. RECOMMENDED PRACTICES.

To meet the requirements of 18 AAC 75.005 -- 18 AAC 75.080, the owner or operator is encouraged to follow applicable recommended practices and operating guidelines, including the following:

(1) American Petroleum Institute (API) Chapter 6.6, Manual of Petroleum Measurement Standards, Metering Assemblies, Pipeline Metering Systems, First Edition, 1981, Reaffirmed August 1987 (ANSI/API MPMS 5.6-1984);

(2) API Publication 1615, Installation of Underground Petroleum Storage Systems, Fourth Edition, Cautionary Statement, March, 1989;

(3) API Publication 2008, Safe Operation of Inland Bulk Plants (1984);

(4) API Publication 2200-83, Repairing Crude Oil, Liquefied Natural Gas, and Product Pipelines (1983);

(5) API Recommended Practice 2A, Recommended Practice for Planning, Designing and Constructing Fixed Offshore Platforms;

(6) API Recommended Practice 2A-LFRD, Draft Recommended Practice for Planning, Designing and Construction Fixed Offshore Platforms -- Load and Resistance Factor Design, First Edition, December 15, 1989;

(7) API Recommended Practice 2K, Recommended Practice for Care and Use of Marine Drilling Risers, Second Edition, January 1982;

(8) API Recommended Practice 2Q, Recommended Practice for Design and Operation of Marine Drilling Riser Systems, Second Edition, April 1984;

(9) API Recommended Practice 2R, Recommended Practice for Design, Rating and Testing of Marine Drilling Riser Couplings, First Edition, May 1984;

(10) API Recommended Practice T-2, Recommended Practice for Qualification Programs for Offshore Production Personnel Who Work with Anti-Pollution Safety Devices, Revised Edition, October 1975;

(11) API Recommended Practice T-3, Recommended Practice for Training and Qualification of Personnel in Well Control Equipment and Techniques for Drilling on Offshore Locations, July 1976;

(12) API Recommended Practice T-6, Recommended Practice for Training and Qualification of Personnel in Well Control Equipment and Techniques for Completion and Workover Operations on Offshore Locations, First Edition, October 1986;

Selected Alaska Oil & Hazardous Substance Pollution Control Regulations

- (13) API Recommended Practice 6G, Recommended Practice on Through Flowline (TFL) Pump Down Systems, Third Edition, January 1982;
- (14) API Recommended Practice 12R1 (RP12R1), Recommended Practice for Setting, Maintenance, Inspection, Operation and Repair of Tanks in Production Service, Fourth Edition, 1991;
- (15) API Recommended Practice 14B, Recommended Practice for Design, Installation, Repair and Operation of Subsurface Safety Valve Systems, Third Edition, January 1, 1990;
- (16) API Recommended Practice 14C, Recommended Practice for Analysis, Design, Installation and Testing of Basic Surface Safety Systems on Offshore Production Platforms, Fourth Edition, September 1986, Errata November 1986;
- (17) API Recommended Practice 14E, Recommended Practice for Design and Installation of Offshore Production Platform Piping Systems, Fourth Edition, April 1984;
- (18) API Recommended Practice 14G, Recommended Practice for Fire Prevention and Control on Open Type Offshore Production Platforms, Second Edition, 1986;
- (19) API Recommended Practice 14H, Recommended Practice for Use of Surface Safety Valves and Underwater Safety Valves Offshore, Second Edition, April 1984 and Supplement 1 to the Second Edition for RP 14H, June 1986;
- (20) API Recommended Practice 16E, Recommended Practice for Design of Control Systems for Drilling Well Control Equipment, First Edition, October 1, 1990;
- (21) API Recommended Practice 17A-87, Recommended Practice for Design and Operation of Subsea Production Systems, First Edition, September 1, 1987;
- (22) API Recommended Practice 53, Recommended Practices for Blowout Prevention Equipment Systems for Drilling Wells, Second Edition, May 1984;
- (23) API Recommended Practice 521, Guide for Pressure-Relieving and Depressuring Systems, Second Edition, September 1982;
- (24) API Recommended Practice 652, Lining of Aboveground Petroleum Storage Tank Bottoms, First Edition, 1991;
- (25) API Recommended Practice 750-90, Management of Process Hazards, First Erratum, February 1990;
- (26) API Recommended Practice 1102, Recommended Practice for Liquid Petroleum Pipelines Crossing Railroads and Highways, Fifth Edition, November 1981 and Errata;
- (27) API Recommended Practice 1110, Recommended Practice for the Pressure Testing of Liquid Petroleum Pipelines, Second Edition, December 1981;
- (28) API Recommended Practice 1111, Recommended Practice for Design, Construction, Operation and Maintenance of Offshore Hydrocarbon Pipelines, First Edition, 1976;
- (29) API Recommended Practice 2003, Protection Against Ignitions Arising out of Static, Lightning, and Stray Currents, Fourth Edition, March 1982;
- (30) API Recommended Practice for Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems, Second Edition (1987) and Supplement 2, March 1989;
- (31) API Specification 5L, Specification for Line Pipe, Thirty-Eighth Edition, May 1, 1990;
- (32) API Specification 6A, Specification for Wellhead and Christmas Tree Equipment, Sixteenth Edition, October 1, 1989;
- (33) API Specification 6D, Specification for Pipeline Valves (Gate, Plug, Ball, and Check Valves), Twentieth Edition, 1991;
- (34) API Specification 10, Specification for Materials and Testing for Well Cements, Fifth Edition, 1990;

Selected Alaska Oil & Hazardous Substance Pollution Control Regulations

- (35) API Specification 12B, Specification for Bolted Tanks for Storage of Production Liquids, Thirteenth Edition, 1990;
- (36) API Specification 12D, Specification for Field Welded Tanks for Storage of Product Liquids, Ninth Edition, January 1982, Supplement 1, March 1983, Supplement 2, May 1985;
- (37) API Specification 12F, Specification for Shop Welded Tanks for Storage of Production Liquids, Tenth Edition, June 1, 1989;
- (38) API Specification 12P, Specification for Fiberglass Reinforced Tanks, First Edition, 1986;
- (39) API Specification 14D, Specification for Wellhead Surface Safety Valves and Underwater Safety Valves for Offshore Service, Seventh Edition, January 1988 and Supplement, August 1989;
- (40) API Standard 510, Pressure Vessel Inspection Code: Maintenance, Inspection, Rating, Repair and Alteration, Sixth Edition, June 1989, Erratum September 1989;
- (41) API Standard 526, Flanged Steel Safety Relief-Valves, Third Edition, February 1984;
- (42) API Standard 620, Design and Construction of Large Welded, Low-Pressure Storage Tanks, Eighth Edition, June 1990;
- (43) API Standard 650, Welded Steel Tanks for Oil Storage, Eighth Edition, November 1988, Revised 1990;
- (44) API Standard 653, Tank Inspection, Repair, Alteration, and Reconstruction, First Edition, 1991, and Supplement 1, January 1992;
- (45) API Standard 1104, Welding of Pipelines and Related Facilities, Seventeenth Edition, September 1988 and Errata, June 1989;
- (46) API Standard 2000, Venting Atmospheric and Low Pressure Storage Tanks, Third Edition, Revised 1987;
- (47) American Society of Mechanical Engineers (ASME), ASME SPPE 1-88, Quality Assurance and Certification of Safety and Pollution Prevention Equipment Used in Offshore Oil and Gas Operations, Addenda SPPE 1A-1988, Addenda SPPE 1B-1989, Addenda SPPE 1D-1990, Special Notice, October 1990;
- (48) ASME Boiler and Pressure Vessel Code, Section VIII, "Pressure Vessels Division 1" (1989);
- (49) ASME Boiler and Pressure Vessel Code, Section IX, "Qualification Standard for Welding and Brazing Procedures Welders, Brazers and Welding and Brazing Operators" (1989);
- (50) American National Standards Institute/American Society of Mechanical Engineers (ANSI/ASME), ANSI/ASME Boiler and Pressure Vessel Code, Section I, Power Boilers including Appendices (1989);
- (51) ANSI/ASME Boiler and Pressure Vessel Code, Section Heating Boilers including non-mandatory Appendices A, B, C, D, E, F, H, I, and J and the Guide to Manufacturers Data Report Forms (1989);
- (52) ANSI/ASME Boiler and Pressure Vessel Code Section VIII, Pressure Vessel Divisions 1 and 2, including Nonmandatory Appendices (1989);
- (53) ANSI B31.1, Pressure Piping Code, Power Piping, and Addenda B31.1a (1989);
- (54) ANSI B31.3, Chemical Plant and Petroleum Refinery Piping (1990);
- (55) ANSI B31.4, "Liquid Transportation Systems for Hydrocarbons, Liquid Petroleum Gas, Anhydrous Ammonia and Alcohols" (ASME) (1989);
- (56) ANSI B36.10M, Welded and Seamless Wrought Steel Pipe (1985);
- (57) American Concrete Institute (ACI), ACI Standard 201.2R- 77(82), Guide to Durable Concrete, Sixth Printing (1982);

Selected Alaska Oil & Hazardous Substance Pollution Control Regulations

- (58) ACI Standard 222R-89, Corrosion of Metals in Concrete (1989);
- (59) ACI Standard 224R-89, Control of Cracking in Concrete Structures (1989);
- (60) ACI Standard 318-89/318R-89, Building Code Requirements for Reinforced Concrete and Commentary (1989);
- (61) ACI Standard 350R-89, Environmental Engineering Concrete Structures ACI 515R.1R Guide to the Use of Waterproofing, Dampproofing, Protective and Decorative Barrier Systems for Concrete (1989);
- (62) ACI Standard 357-R-84, Guide for the Design and Construction of Fixed Offshore Concrete Structures (1989);
- (63) ACI Standard 357.1R-85, State-of-the Art Report on Offshore Concrete Structures for the Arctic (1985);
- (64) ASTM Specification A333/A333M, "Standard Specification for Seamless and Welded Steel Pipe for Low-Temperature Service" (1988), Revised A-88;
- (65) ASTM Specification A381, "Standard Specification for Metal-Arc-Welded Steel Pipe for Use with High Pressure Transmission Systems" (1989);
- (66) ASTM Specification A671, "Standard Specification for Electric-Fusion-Welded Steel Pipe for Atmospheric and Lower Temperatures" (1989), Revision A, 1989;
- (67) ASTM Specification A672, "Standard Specification for Electric-Fusion-Welded Steel Pipe for High Pressure Service at Moderate Temperatures" (1989), Revision B, 1989;
- (68) ASTM Specification A69 1 Rev A, Standard Specification for Carbon and Alloy Steel Pipe, Electric-Fusion Welded for High Pressure Service at High Temperatures (1989);
- (69) Manufacturers Standardization Society of the Valve and Fitting Industry (MSS) MSS SP-75, Specification for High-Test Wrought Welding Fittings (1983);
- (70) MMS OCS Order No. 2, Drilling Operations, Section 5, Blowout-Preventer (BOP) Equipment Requirements (1988);
- (71) National Association of Corrosion Engineers (NACE), NACE RP0175-75, Control of Internal Corrosion in Steel Pipelines and Piping Systems (1975);
- (72) NACE RP 0275-75, Application of Organic Coatings to the External Surface of Steel Pipe for Underground Service;
- (73) NACE RP 0276-76, Extruded Asphalt Mastic Type Protective Coatings for Underground Pipelines (1976);
- (74) NACE RP 0286-86, The Electrical Isolation of Cathodically Protected Pipelines (1986);
- (75) NACE-RP 06-75 Control of External Corrosion on Offshore Steel Pipelines (1988);
- (76) NACE RP 01-69 Recommended Practice for Control of External Corrosion on Underground or Submerged Metallic Piping Systems, Revised 1983;
- (77) NACE RP 02-85, Control of External Corrosion on Metallic Buried, Partially Buried or Submerged Liquid Storage Systems (1985);
- (78) National Association of Pipe Coating Applicators (NAPCA), NAPCA 3-67-87, External Application Procedures of Hot Applied Coal Tar and Asphalt Enamel Coatings to Steel Pipe (Specifications and Plant Coating Guide, 1983);
- (79) National Fire Protection Association (NFPA), NFPA 30-90, Flammable and Combustible Liquids Code (1990);
- (80) NFPA 77-88, Recommended Practice on Static Electricity (1988);
- (81) NFPA 78-89, Lightning Protection Code (1989);
- (82) NFPA Chapter 6, Bulk Plants and Terminals (Flammable and Combustible Liquids Code Handbook, Third Edition, 1990);

Selected Alaska Oil & Hazardous Substance Pollution Control Regulations

(83) Petroleum Equipment Institute (PEI) RP-100-90, Recommended Practice for Installation of Underground Liquid Storage Systems (1990);

(84) Steel Structural Painting Council (SSPC), SSPC Chapter 16.1-82, Coatings for Pipelines and Other Underground Structures (Good Painting Practice), Volume 1, Second Edition, 1982;

(85) Steel Tank Institute, STI-P3 Specification System and Manual for External Corrosion Protection of Underground Steel Storage Tanks (1987);

(86) Underwriters Laboratories Standard 58, Steel Underground Tanks for Flammable and Combustible Liquids, Eighth Edition, August 3, 1990;

(87) Underwriters Laboratories Standard 174689, External Corrosion Protection Systems for Underground Storage Tanks, First Edition, November 7, 1990. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

ARTICLE 2. Financial Responsibility for Oil Discharges.

18 AAC 75.205. APPLICATION FOR APPROVAL.

(a) Subject to the exemptions provided under AS 46.04.050 and (d) of this section, an application for approval of proof of financial responsibility under AS 46.04.040, including an application for renewal of approval under 18 AAC 75.225 must be submitted to the department by the following responsible party:

- (1) for an oil terminal facility, by the owner or operator of the facility;
- (2) for a vessel transporting liquid bulk oil cargo, by
 - (A) the charterer, if the vessel is chartered by demise (leased);
 - (B) the owner of the vessel, if the agents or employees of the owner retain control and responsibility for the operation of the vessel or barge; or
 - (C) in any other case, the person with primary operational control;
- (3) for an exploration or production facility, whether mobile or fixed, by the operator or one or more lease holders;
- (4) for a pipeline facility, by the operator or one or more lease holders; or
- (5) for a group of vessel or facility owners or operators who have agreed to pool their resources to provide proof of financial responsibility for each other, by a designated person in the group.

(b) Applications under this section and renewal applications under 18 AAC 75.225 must be made on a form supplied by the department. The following conditions apply, as appropriate, to an application:

- (1) an applicant must furnish the department with the appropriate documents listed in the "financial responsibility application and checklist" supplied by the department;
- (2) the completed and signed application must be submitted to the department at least 30 days, but no earlier than 90 days before operations are proposed to begin; the department will, in its discretion, expedite its review of an application if circumstances warrant;
- (3) if the applicant is an agency of the United States or the State of Alaska, proof of financial responsibility is not required, but the "financial responsibility application

Selected Alaska Oil & Hazardous Substance Pollution Control Regulations

and checklist" must be submitted to the department in accordance with the time frames established under (2) of this subsection;

(4) an applicant may submit a combined application for more than one vessel or facility;

(5) an approval may not be assigned to another person, nor may it be transferred from one vessel or facility to another; an attempted assignment or transfer of an approval voids the approval; and

(6) all forms of proof of financial responsibility must be in effect before operations begin; an approval will not be given on pending coverage.

(c) Applications submitted under this section and renewal applications submitted under 18 AAC 75.225 must be signed upon oath or affirmation as follows:

(1) in the case of a corporation, by an authorized representative responsible for the overall management of the facility or operation, or that person's designee;

(2) in the case of a partnership, by a general partner;

(3) in the case of a sole proprietorship, by the proprietor;

(4) in the case of a municipal, state, federal, or other public facility, by an authorized public official or employee;

(5) in the case of a combined application, by an appropriate representative of each party to the application; and

(6) in the case of a joint venture, by the operator.

(d) The department will, in its discretion, approve an application for an exemption from the proof of financial responsibility requirements of AS 46.04.040(c) if the owner or operator of a vessel that is conducting, or is available only for conducting, an oil discharge response operation submits to the department

(1) a written explanation requesting the exemption, giving details of the time period during which the exemption is requested for each vessel for the oil discharge response operation; and

(2) a completed "financial responsibility application and checklist" form. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.040
AS 46.04.070

18 AAC 75.215. APPLICATIONS SUBMITTED BY FACSIMILE.

The department will, in its discretion, accept an application by facsimile transmission if an unforeseen event prevents submission of the original application within the time frames stated under 18 AAC 75.205(b)(2) or 18 AAC 75.225(b). The completed original of the application must be submitted to the department by registered or certified mail or by courier and must be postmarked or dated by courier within two working days after it was sent by facsimile. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.040
AS 46.04.070

18 AAC 75.225. RENEWALS.

(a) Application for renewal of department approval of proof of financial responsibility must be submitted to the department at least 30 days, but no earlier than 90 days, before the current approval of proof of financial responsibility expires.

Selected Alaska Oil & Hazardous Substance Pollution Control Regulations

(b) An application for renewal must include the information required by 18 AAC 75.205(b)(1). (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.040
AS 46.04.070

18 AAC 75.235. AMOUNT AND EVIDENCE OF FINANCIAL RESPONSIBILITY.

(a) Each vessel or facility must be specifically covered by an approved form of financial responsibility. An applicant under 18 AAC 75.205 or 18 AAC 75.225 must demonstrate financial responsibility to respond in damages for claims covered by AS 46.04.040(i) in the amount required by AS 46.04.040(a) -- (c).

(b) The required amount of financial responsibility does not increase with increasing numbers of vessels or facilities operated by the same applicant. An application covering multiple vessels or facilities must show proof of financial responsibility in an amount equal to the greatest applicable amount prescribed by AS 46.04.040(a) -- (c). The department will, in its discretion, approve the proof of financial responsibility as being applicable to all combined operations if each separate operation is named as being specifically covered by the proof submitted.

(c) The applicant may add an owned, operated, leased, or chartered vessel or facility to its proof of financial responsibility by submitting a letter to the department requesting an amendment to the application and including documents that verify to the department's satisfaction that the additional operation is covered by the current approved proof of financial responsibility.

(d) The applicant may delete an owned, operated, leased, or chartered vessel or facility from its proof of financial responsibility by submitting a letter to the department requesting an amendment to the application and including documents that verify to the department's satisfaction that the vessel or facility is no longer covered by the current approved proof of financial responsibility.

(e) In satisfying proof of financial responsibility requirements for a combined application, a guarantor or insurer is responsible only for the amount applicable to the vessel or facility that discharges oil and not the amount applicable to another vessel or facility listed on the application.

(f) If a vessel or facility subject to AS 46.04.040 discharges oil and the department determines that a claim has been or is likely to be presented as a result of the discharge and that payment of the claim will reduce the owner's or operator's demonstrated financial responsibility below that required by AS 46.04.040(a) -- (c), the department will, in its discretion, require the owner or operator to demonstrate an additional amount of financial responsibility equal to the amount the department determines might be paid as a result of the claim.

(g) If the applicant fails to comply with the requirement imposed under (f) of this section to demonstrate an additional amount of financial responsibility, the department will, in its discretion, provide the owner or operator with 10 days' notice of the department's intent to revoke its approval of the proof of financial responsibility.

(h) An applicant may request a review of the department's decision under (g) of this section to revoke its approval, using the procedures set out at 18 AAC 75.490(c) -- (g). For the purposes of judicial review, the department's decision following a review under this subsection is final. The requirement of (f) of this section is not stayed during the pendency of a review.

Selected Alaska Oil & Hazardous Substance Pollution Control Regulations

(i) Proof of financial responsibility may be demonstrated by one or any combination of the mechanisms listed in AS 46.04.040(e), as approved by the department.

(j) An insurer or surety shall respond to damages covered by AS 46.04.040(i), but only with respect to the stated limit of liability contained in an insurance policy or surety submitted as proof of financial responsibility and approved under this chapter. (Eff. 5/14/92. Register 122)

Authority: AS 46.03.020
AS 46.04.040
AS 46.04.070

18 AAC 75.240. CERTIFICATE OF PROOF OF FINANCIAL RESPONSIBILITY.

(a) If the department approves a proof of financial responsibility, it will issue a certificate to the applicant stating that the proof of financial responsibility requirements have been met for each vessel or facility identified in the application.

(b) The original certificate, or a copy of the original certificate that is certified by the applicant to be a true copy of the original certificate, must be readily available for inspection

(1) at each covered facility or pipeline; or

(2) on each covered vessel while it is in state waters; the certificate must be shown to the owner or operator of an oil terminal facility before loading or unloading liquid bulk oil cargo.

(c) The effective date and the expiration date, as determined under AS 46.04.040(f), will be clearly marked on the certificate. For certificates that are effective for more than one year when issued, the continuing effectiveness of the form of financial responsibility that was approved by the department must be verified annually by submitting to the department, not more than 90 days and not less than 30 days before the anniversary of the certificate's effective date, the affidavit of a responsible party, as specified under 18 AAC 75.205(a), stating that the form of financial responsibility remains in effect and stating the date on which it will expire.

(d) If the owner or operator to whom the certificate was issued ceases to be the responsible party under 18 AAC 75.205(a), that person shall immediately return the original certificate to the department with written information regarding the new owner or operator's name and address and the date of the change in ownership or operational control so that a new certificate can be issued.

(e) A certificate is void and subject to immediate revocation by the department, without prior notice, if

(1) it contains erasures or is altered in any way, except for erasures, errors, or alterations made by the department in issuing the certificate;

(2) the person to whom the certificate was issued

(A) is no longer the responsible party under 18 AAC 75.205(a) for the facility or vessel identified on the certificate;

(B) fails to furnish acceptable proof of the continuing effectiveness of a form of financial responsibility as required under (c) of this section or in support of an application for renewal; or

(C) permits the cancellation or termination of the form of financial responsibility upon which issuance of the certificate was based.

(f) The department will give a certificate holder 10 days' written notice of the department's intent to revoke a certificate under AS 46.04.040(h). The notice will include an effective date for and an explanation of the revocation.

Selected Alaska Oil & Hazardous Substance Pollution Control Regulations

(g) The applicant may request a review of the department's action or decision issued under (e) or (f) of this section, using the procedures set out at 18 AAC 75.490(c) -- (g). For the purposes of judicial review, the department's decision following a review under this subsection is final. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.040
AS 46.04.070

18 AAC 75.245. SELF-INSURANCE.

(a) In order to demonstrate financial responsibility through self-insurance, an applicant shall maintain in the United States, working capital and net worth, each in an amount at least equal to the applicable amount required under AS 46.04.040(a) -- (c), or a lesser amount necessary to supplement other forms of proof which, when combined, are at least equal to the applicable amount required under AS 46.04.040(a) -- (c). In determining working capital or net worth, the department will consider all current contractual requirements to which the applicant is bound. For the purposes of this subsection,

(1) "working capital" means the amount of current assets located in the United States, less all worldwide current liabilities; and

(2) "net worth" means the amount of all assets located in the United States, less all worldwide liabilities;

(b) The proof of financial responsibility required under (a) of this section must be supported by the following, which must be submitted with the application for approval, and which must be later supplemented as described:

(1) annual audited financial statements for consolidated holdings in the United States for the fiscal year ending immediately before each initial or renewal application, certified by an independent certified public accountant;

(2) subsequent quarterly affidavits attesting that the amounts of working capital and net worth are each equal to the applicable amount required by AS 46.04.040(a) -- (c); and

(3) any additional information the department considers necessary.

(c) Instead of the information required under (b) of this section, a self-insuring applicant may provide the department with a copy of the applicant's Form 10K as filed with the United States Securities and Exchange Commission for the fiscal year preceding application or renewal, and each Form 10Q subsequently filed with that commission, subject to the following conditions:

(1) if the applicant's fiscal year ended six months or more before initial application, the applicant's Form 10Q for the first quarter of the current fiscal year must also be submitted with the initial application; and

(2) if the applicant's United States Securities and Exchange Commission forms do not specify what portion of its working capital and net worth are located in the United States, each form must be supplemented by an affidavit from the applicant's chief financial officer or treasurer, or a sworn statement by the certified public accountant who prepared the form, certifying that the working capital and net worth located in the United States are each in an amount equal to the applicable amount required under AS 46.04.040(a) -- (c).

(d) Instead of the affidavit or sworn statement required under (b)(2) and (c)(2) of this section, the applicant may file a quarterly affidavit showing that sufficient liquid assets and cash flow, other than those assets with a high exposure to damage in a

Selected Alaska Oil & Hazardous Substance Pollution Control Regulations

pollution incident, are immediately available to respond to claims in the required self-insured amount without placing the applicant in an insolvent position.

(e) Instead of the information required under (b) and (c) of this section, the applicant may submit annually to the department a copy of its Form No. 6 as filed with the Federal Energy Regulatory Commission for each fiscal year, starting with the fiscal year that ended immediately preceding application.

(f) The affidavits required under (b)(2), (c)(2), and (d) of this section must be signed as follows:

- (1) in the case of a corporation, by the treasurer or chief financial officer;
- (2) in the case of a partnership, by a general partner;
- (3) in the case of a sole proprietorship, by the proprietor;
- (4) in the case of a municipal, state, federal, or other public facility, by an authorized public official or employee; and
- (5) in the case of a combined application, by a representative of each party to the application.

(g) A self-insurer shall notify the department within 10 days after the self-insurer knows, or has reason to believe, that the amount of the self-insurer's working capital or net worth has fallen below the applicable amount required under AS 46.04.040(a) -- (c) or the lesser amount necessary to supplement other forms of proof.

(h) Unless it is earlier replaced by another form of financial responsibility approved by the department, termination or cancellation of self-insurance that serves as proof of financial responsibility under AS 46.04.040 may not become effective until 60 days after the self-insurer notifies the department in writing, by certified mail, at its office in Juneau, Alaska. The self-insurer remains liable for any discharge occurring before the effective date of termination or cancellation.

(i) The department will, in its discretion, revoke a certificate issued under 18 AAC 75.240 approving self-insurance as proof of financial responsibility if any document required under this section is not submitted on or before the following due date:

- (1) a Form 10K is due within three calendar months after the end of the applicant's fiscal year;
- (2) a Form 10Q is due 45 days after the quarter ends;
- (3) a Form No. 6 is due at the same time it is required to be filed with the Federal Energy Regulatory Commission, but no later than three calendar months after the end of the applicant's fiscal year;
- (4) an annual audited financial statement is due within three calendar months after the end of the applicant's fiscal year; and
- (5) a quarterly affidavit is due 30 days after the quarter ends.

(j) Upon written request, the department will, in its discretion, grant a reasonable extension of a time limit set in (i) of this section if the request is received at least 15 days before the document is due. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.040
AS 46.04.070

18 AAC 75.250. INSURANCE.

(a) An applicant may demonstrate financial responsibility with insurance for the applicable amount required under AS 46.04.040(a) -- (c), in full or in part. The applicant shall provide proof of insurance issued by an insurer who is either authorized to sell insurance in Alaska under a certificate of authority issued by the director of the division

Selected Alaska Oil & Hazardous Substance Pollution Control Regulations

of insurance of the Department of Commerce and Economic Development or who is an unauthorized insurer listed by the division of insurance as meeting the minimum trust or capital and surplus requirements of AS 21.34.040(c). Proof of insurance may be provided by a binder, by a certificate of insurance acceptable in form to the department, or by a copy of the policy. If a binder or certificate of insurance is submitted to meet the requirements of this subsection, a copy of the underlying insurance policy must also be provided to the department within 90 days.

(b) If a policy of insurance, certificate, or binder is submitted, it must include an endorsement with the following, or substantially similar language:

"Any other provision of this policy notwithstanding: (1) this policy insures against any liability the insured may incur under Alaska Statute 46.04.040(i) or any provision cited in it as a result of an unlawful discharge of oil within or affecting land or waters within the territorial jurisdiction of the State of Alaska; however, the insurer's liability does not exceed the limits of coverage set out in Section (Article or Clause) of this policy, subject to any deductible as specifically set out in Section (Article or Clause) of this policy (binder, certificate); (2) the insurer agrees that any final judgment against the insured for damages under AS 46.04.040(i) or any provision cited in it resulting from an unlawful discharge of oil from or by any vessel or facility named in this policy may be enforced or executed in Alaska state courts, directly against the insurer, subject to the limits of coverage in this policy; the insurer will be bound by such a judgment as if the judgment were against the insurer; any person obtaining such a judgment against the insured is expressly made a third-party beneficiary of this provision; and (3) termination or cancellation of this policy, insofar as it serves as proof of the insured's financial responsibility under AS 46.04.040, shall not become effective until 60 days after notice with the exception for nonpayment of premium which will require 30 days notice, in writing has been mailed, prepaid and certified, by the insurer to the insured and to the Alaska Department of Environmental Conservation at its office in Juneau, Alaska; however, this policy shall apply to all claims arising from a discharge occurring during the period covered by the policy and before the effective date of the termination or cancellation."

(c) An applicant may submit a claims made policy if it contains

(1) an extended reporting period of at least six months; and

(2) the endorsement language required by (b) of this section, with the following added to the end of the endorsement: "and made to the insurer during the policy period or the extended reporting period."

(d) A deductible provision in any policy of insurance, binder, or certificate is acceptable if

(1) the applicant demonstrates supplemental coverage for the amount of the deductible by means of other acceptable insurance, surety, guaranty, self-insurance, letter of credit, or other proof of financial responsibility approved by the department; or

(2) the deductible provision provides for a loss reimbursement plan that contains language guaranteeing that the insurer will be responsible for the payment of all claims on a first dollar basis, without waiting for the insured to pay the deductible.

(e) For purposes of this section "claims made policy" means a policy of liability insurance that covers claims arising out of a discharge occurring after a specified

Selected Alaska Oil & Hazardous Substance Pollution Control Regulations

retroactive date but before the end of the policy period and first made to the insurer during the policy period or extended reporting period. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.040
AS 46.04.070

18 AAC 75.255. SURETY.

(a) An applicant may demonstrate financial responsibility with a contract of surety, in full or in part, for the applicable amount required under AS 46.04.040(a) -- (c). The applicant shall submit the contract of surety to the department on forms supplied by the department.

(b) The issuer of the contract of surety must

(1) be registered to do business in Alaska;

(2) possess a current certificate of authority to do business in the United States under 31 C.F.R. 223; and

(3) possess an underwriting limitation of risk at least equal to the amount of the bond or in a lesser amount necessary to supplement other forms of proof of financial responsibility.

(c) An applicant may demonstrate financial responsibility by a contract of surety for an amount equal to the deductible of an insurance policy submitted under 18 AAC 75.250 or in combination with another means of proof.

(d) Termination or cancellation of a contract of surety that serves as proof of financial responsibility under AS 46.04.040 may not become effective until 60 days after the surety notifies the department in writing, by certified mail, at its office in Juneau, Alaska. The surety remains liable for any discharge occurring before the effective date of termination or cancellation. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.040
AS 46.04.070

18 AAC 75.260. GUARANTY.

(a) An applicant may demonstrate financial responsibility with a contract of guaranty, in full or in part, for the applicable amount required under AS 46.04.040(a) -- (c). The applicant shall submit the contract of guaranty to the department, using a form supplied by the department.

(b) The issuer of the guaranty contract must meet the financial and reporting requirements of 18 AAC 75.245.

(c) Termination or cancellation of a guaranty that serves as proof of financial responsibility under AS 46.04.040 may not become effective until 60 days after the guarantor notifies the department in writing, by certified mail, at its office in Juneau, Alaska. The guarantor remains liable for any discharge occurring before the effective date of termination or cancellation. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.040
AS 46.04.070

18 AAC 75.265. LETTERS OF CREDIT.

(a) An applicant may demonstrate financial responsibility with a letter of credit, in favor of the State of Alaska, for the applicable amount required under AS 46.04.040(a) -- (c), in full or in part. The letter of credit

(1) must be irrevocable for a period of not less than one year on the part of the issuer; in addition, the letter must provide that it will be automatically extended for one year unless the department and the applicant are notified in writing at least 90 days before expiration of its stated term that the letter will not be renewed; however, if a vessel is to be used in state waters for less than one year, the letter of credit must cover the period that the vessel is to be used in state waters plus 30 days;

(2) must be irrevocable until satisfaction of a judgment or of a claim against the applicant under AS 46.04.040(i) or the provisions cited in it which results from a discharge occurring during its term, subject to the limit of credit;

(3) must be a standby letter of credit to respond specifically to a claim under AS 46.04.040(i) or the provisions cited in it, subject to the limit of credit;

(4) may not be used as collateral nor be drawn upon by the applicant except to respond to a claim under AS 46.04.040(i) or the provisions cited in it for as long as the letter of credit is used by the applicant as proof of financial responsibility under AS 46.04.040;

(5) must be issued by a financial institution that has authority to issue letters of credit, and that is regulated and examined by state and federal banking agencies; and

(6) must state an effective date and an expiration date, and must be effective on or before the approval date of proof of financial responsibility.

(b) The issuing bank shall pay upon presentation by the State of Alaska of a draft or other document as specified in the letter of credit and may not make determinations of fact or law that might be at issue between the responsible party and the department. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.040
AS 46.04.070

18 AAC 75.270. OTHER PROOF OF FINANCIAL RESPONSIBILITY.

(a) An applicant may demonstrate financial responsibility for the applicable amount required under AS 46.04.040(a) -- (c), in full or in part, with a contract of indemnity or with insurance issued by a group of insureds who have agreed to cover the pollution risks of the group's members, if approved by the department.

(b) Subject to AS 46.04.040(e), the department will, in its discretion, approve a Protection and Indemnity (P&I) club or an insurance syndicate contract of indemnification as demonstrating financial responsibility if

(1) a statement of indemnification issued by the P&I club or insurance syndicate contains an endorsement that meets the requirements of 18 AAC 75.250(b);

(2) the P&I club or insurance syndicate has the financial solvency and a favorable history of claim handling to meet the obligations contained in the contract of indemnity; and

(3) the P&I club or insurance syndicate appoints an agent for service of process in the state as required under AS 46.04.040(e).

(c) The department will, in its discretion, approve a P&I club or insurance syndicate that does not agree to be subject to direct court action in Alaska or that does not agree

Selected Alaska Oil & Hazardous Substance Pollution Control Regulations

to appoint an agent for service of process in the state if the requirements of AS 46.04.040(1) are met. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.040
AS 46.04.070

18 AAC 75.275. SERVICE OF PROCESS.

An agent designated for service of process under AS 46.04.040(e) must be a resident of the state or a corporation authorized to do business in the state. If no designation is made and filed, or if process cannot be served in Alaska upon the designated agent, process may be served upon the commissioner. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.040
AS 46.04.070

18 AAC 75.280. CLASSIFICATION AS AN OIL TERMINAL FACILITY:

(a) If a vessel is to operate as an oil terminal facility as defined at AS 46.04.900, the owner or operator shall submit a written request for classification of the vessel as an oil terminal facility to the department. The request for classification must include the

- (1) name of the owner or operator;
- (2) vessel name and official number;
- (3) oil storage capacity of the vessel;
- (4) type of product carried as cargo; and
- (5) period of time during which the classification will apply.

(b) Upon receipt of a request under (a) of this section, the department will issue a certificate to the vessel, classifying the vessel as an oil terminal facility for the prescribed period.

(c) If the capacity of the vessel for which classification is requested is more than 10,000 barrels of noncrude oil, the owner or operator must meet the financial responsibility requirements of AS 46.04.040(a) and the oil discharge prevention and contingency plan requirements of AS 46.04.030. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.04.070
AS 46.04.040 AS 46.04.900
AS 46.04.050

18 AAC 75.285. OIL TERMINAL FACILITIES.

(a) An oil terminal facility may not load or transfer a liquid bulk oil product to a vessel if the oil product is declared as liquid bulk cargo, unless the vessel provides proof to the terminal operator that the vessel has a current, valid certificate of proof of financial responsibility issued under 18 AAC 75.205 -- 18 AAC 75.290, an exemption under 18 AAC 75.205(d), or has a capacity of less than 10,000 barrels and has a certificate of classification as an oil terminal facility issued under 18 AAC 75.280.

(b) For a vessel that has frequent transactions at an oil terminal facility and is known by the facility operator, the owner or operator of that oil terminal facility may accept verbal confirmation from the vessel's master that the vessel has the required certificate of financial responsibility on board.

Selected Alaska Oil & Hazardous Substance Pollution Control Regulations

(c) If a vessel operator fails or refuses to provide proof of a current, valid certificate of proof of financial responsibility issued under 18 AAC 75.205 -- 18 AAC 75.290, an exemption under 18 AAC 75.205(d), or a certificate of classification as an oil terminal facility issued under 18 AAC 75.280 as required under (a) of this section, the owner or operator of an oil terminal facility shall notify the department's appropriate regional or district office of that failure or refusal by telephone or facsimile on the first working day. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.040
AS 46.04.070

18 AAC 75.290. ENFORCEMENT.

If a person required to provide proof of financial responsibility under AS 46.04.040 and 18 AAC 75.205 -- 18 AAC 75.290 fails or refuses to do so, the department will, in its discretion,

(1) seek civil assessments and costs under AS 46.03.760 or other appropriate statutes for each separate violation of AS 46.04.040 or of 18 AAC 75.205 -- 18 AAC 75.290;

(2) take action to halt the operation of a vessel or facility that is not in compliance with AS 46.04.040 or 18 AAC 75.205 -- 18 AAC 75.290;

(3) take action to deny entry to a vessel to the navigable waters of the state;

(4) take action to detain a vessel that does not produce, upon the department's request, a current, valid certificate of proof of financial responsibility issued under 18 AAC 75.205 -- 18 AAC 75.290; or

(5) take such other and further action as may be warranted by the circumstances. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.04.050
AS 46.03.760 AS 46.04.070
AS 46.03.850 AS 46.04.900
AS 46.04.040

ARTICLE 3. Discharge Reporting, Cleanup, and Disposal.

18 AAC 75.300. DISCHARGE NOTIFICATION REQUIRED.

(a) Subject to (b) of this section, a person in charge of a facility or operation shall notify the department of a discharge of any hazardous substance at or from the facility or operation as follows:

(1) as soon as the person has knowledge of

(A) any discharge of a hazardous substance other than oil;

(B) any discharge of oil to water; or

(C) any discharge, including a cumulative discharge, of oil in excess of 55 gallons solely to land outside an impermeable secondary containment area or structure; and

(2) within 48 hours after the person has knowledge of any discharge, including a cumulative discharge, of oil solely to land

(A) in excess of 10 gallons, but 55 gallons or less; or

(B) in excess of 55 gallons, if it is the result of the escape or release of oil from its original storage tank, pipeline, or other immediate container into an impermeable secondary containment area or structure.

Selected Alaska Oil & Hazardous Substance Pollution Control Regulations

(b) A person in charge of a facility or operation shall maintain, and shall provide to the department on a monthly basis, a written record of any discharge, including a cumulative discharge, of oil solely to land from one gallon to 10 gallons.

(c) The information required by (a) and (b) of this section must include, to the extent known, the information required by 18 AAC 75.307(c).

(d) If a person is a person in charge solely by operation of 18 AAC 75.990(47)(C), the requirements of this section are met if notice of the discharge is in fact given by another person in charge. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.04.070
AS 46.03.740 AS 46.09.010
AS 46.03.755

18 AAC 75.307. REPORTS REQUIRED.

(a) After receiving notice of a discharge, the department will, in its discretion, require interim reports until cleanup is completed.

(b) For a discharge covered under 18 AAC 75.300(a), a written final report must be submitted within 15 days after cleanup is completed or, if no cleanup occurs, within 15 days after the discharge. The report must be submitted to the appropriate district or regional office of the department.

(c) Written reports required by this section and written notifications required under 18 AAC 75.300 must contain, as applicable

- (1) the date and time of the discharge;
- (2) the location of the discharge;
- (3) the name of the facility or vessel;
- (4) the name, mailing address, and telephone number of
 - (A) the person or persons causing or responsible for the discharge; and
 - (B) the owner and the operator of the facility or vessel;
- (5) the type and amount of each hazardous substance discharged;
- (6) the cause of the discharge;
- (7) a description of any environmental damage caused by the discharge or containment, to the extent the damage can be identified;
- (8) a description of cleanup actions taken;
- (9) the estimated amount of
 - (A) hazardous substance cleaned up; and
 - (B) hazardous waste generated;
- (10) the date, location, and method of ultimate disposal of the hazardous substance and any contaminated materials;
- (11) a description of actions being taken to prevent recurrence of the discharge; and
- (12) other information the department requires to fully assess the cause and impact of the discharge. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.04.070
AS 46.03.740 AS 46.09.010
AS 46.03.755

18 AAC 75.317. POSTING OF INFORMATION REQUIRED.

(a) A discharge notification placard provided or approved by the department, which includes telephone numbers of department offices, must be displayed in conspicuous locations on

Selected Alaska Oil & Hazardous Substance Pollution Control Regulations

(1) a tank truck containing more than 500 gallons of a hazardous substance, in addition to that required to operate the vehicle;

(2) a tugboat, tank vessel, oil barge, tow boat, or any other vessel transporting a hazardous substance as cargo in state waters;

(3) a vehicle carrying or towing a hazardous substance other than oil, or more than 500 gallons of oil, as cargo off-road over frozen or unfrozen ground; and

(4) a facility that has a total above-ground or underground storage capacity in excess of 1,000 gallons of a hazardous substance.

(b) A person who wants to post a substitute for a placard provided by the department shall submit the proposed placard for department approval. A placard approved under this subsection must contain the words: "form approved by the Alaska Department of Environmental Conservation." (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.03.755
AS 46.03.740 AS 46.09.010

18 AAC 75.319. DISPOSAL OF HAZARDOUS SUBSTANCES.

Prior department approval is required for the ultimate disposal of a hazardous substance and of soil, cleanup materials, or other substances contaminated with a hazardous substance. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.04.070
AS 46.03.745 AS 46.09.020
AS 46.04.020

18 AAC 75.327. CLEANUP.

(a) Immediately upon becoming aware of a discharge of a hazardous substance to land or waters of the state, any person responsible for that discharge shall contain, clean up, and dispose of the material collected, using methods for which approval has been given by the department. The discharge must be cleaned up to the department's satisfaction.

(b) Upon request, the department, in consultation with federal officials, as appropriate, will waive the requirements of (a) of this section if the department determines that it is technically not feasible to contain or clean up the discharge or that the containment or cleanup effort would result in greater environmental damage than the discharge itself. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.04.020
AS 46.03.740 AS 46.04.070
AS 46.03.745 AS 46.09.020

18 AAC 75.337. ADEQUACY OF CLEANUP.

(a) Subject to the provisions of AS 46.04.020 and AS 46.09.020, if the department finds that cleanup efforts are inadequate, the department will, in its discretion,

(1) order the person engaged in cleanup operations to use additional measures or to cease cleanup activities;

(2) authorize other agents to begin cleanup activities; or

(3) adopt a combination of these actions.

(b) Cleanup efforts will be considered inadequate if

Selected Alaska Oil & Hazardous Substance Pollution Control Regulations

(1) containment equipment is not deployed and used to intercept and concentrate the discharge in its pattern of movement, unless environmental conditions exceed the operational limitations of the equipment;

(2) exclusion equipment is not deployed and used to protect sensitive environmental zones, unless environmental conditions exceed the limitations of the equipment;

(3) the area affected by the discharge is increasing at an avoidable rate despite containment and removal activities, unless environmental conditions exceed the limitations of the equipment, or unless immediate containment would pose greater environmental risks than to allow the discharge to temporarily spread;

(4) the containment and exclusion equipment being used is not functioning effectively, because of existing weather or oceanographic conditions, and other containment and exclusion equipment is reasonably available which can function effectively in existing weather and oceanographic conditions;

(5) containment, exclusion, and lightering equipment is not deployed and operational in accordance with the procedures specified in an applicable oil discharge prevention and contingency plan;

(6) major items of cleanup equipment, including booms, skimmers, lightering pumps, sorbent, and storage containers, are not operational, or are not operating adequately; or

(7) available personnel, equipment, sorbent, or supplies are inappropriate or are being unused or mismanaged, or additional personnel, equipment, sorbent, or supplies are required, but not being provided. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.04.020
AS 46.03.740 AS 46.04.070
AS 46.03.745 AS 46.09.020

18 AAC 75.347. INTERFERENCE WITH CLEANUP PROHIBITED.

No person may interfere with, hinder, or obstruct oil or hazardous substance discharge cleanup operations conducted under this chapter. This prohibition does not apply to the U.S. Coast Guard or to the U.S. Environmental Protection Agency. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.020
AS 46.09.020

18 AAC 75.357. LOCAL CONTROL.

Subject to the provisions of AS 29.35.020, AS 46.04.110, and AS 46.09.060, nothing in this chapter preempts local control as stringent as, or more stringent than the requirements of 18 AAC 75.300 -- 18 AAC 75.347, consistent with a regional master plan prepared by the department under AS 46.04.210. (Eff. 5/14/92, Register 122)

Authority: AS 29.35.020 AS 46.04.210
AS 46.03.020 AS 46.09.060
AS 46.04.110

18 AAC 75.370. USE IMMUNITY.

In any criminal action for the discharge, information given under 18 AAC 75.300 -- 18 AAC 75.307, or information directly obtained through the exploitation of a notification

Selected Alaska Oil & Hazardous Substance Pollution Control Regulations

or report regarding the discharge will not be used against any natural person who provides the notification or report. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.03.755

ARTICLE 4. Oil Discharge Prevention and Contingency Plans.

18 AAC 75.400. APPLICABILITY.

(a) A person who is subject to AS 46.04.030 must file an application for approval of an oil discharge prevention and contingency plan as required under 18 AAC 75.400 -- 18 AAC 75.420 and meet the applicable requirements of 18 AAC 75.425 -- 18 AAC 75.495. The application must be made

(1) for an oil terminal facility, by the owner or operator of the facility;
(2) for a tank vessel, oil barge, or any other vessel transporting liquid bulk oil cargo, by

(A) the charterer, if the vessel or barge is chartered by demise (leased);
(B) the operator of the vessel, as defined at AS 46.04.900;
(C) the owner of the vessel or barge, if the agents or employees of the owner retain control and responsibility for the operation of the vessel or barge; or

(D) in any other case, the person with primary operational control;
(3) for an exploration or production facility, whether mobile or fixed, by the lease holder or the operator; or

(4) for a pipeline, by the lease holder or the operator.

(b) The department will, in its discretion, exempt from the requirements of AS 46.04.030(c), a vessel that is conducting, or is available only for conducting, an oil discharge response operation. A person seeking an exemption under this subsection must apply on a form supplied by the department. The department will approve or deny the request for exemption within 10 days after it receives an application. In an emergency response to an actual discharge, a person seeking an exemption may make a verbal request, and the department will, in its discretion, issue a verbal approval. The department will confirm a verbal approval in writing, stating the period during which the approval is valid.

(c) 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 to those requirements upon proof to the department that the effective storage capacity of the facility has been reduced below the amounts set out in AS 46.04.050. For purposes of reducing effective storage capacity, tanks and associated piping must be emptied and rendered unusable to the department's satisfaction. Tanks taken out of service must be clearly posted with a placard prohibiting refilling of the tank without department approval. Before reactivation of a tank that has been disabled 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. The department will conduct inspections as necessary to ensure compliance with this subsection. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.04.050
AS 46.04.030 AS 46.04.070

Selected Alaska Oil & Hazardous Substance Pollution Control Regulations

18 AAC 75.405. PRE-APPLICATION NOTIFICATION AND CONSULTATION.

(a) At least 60 days before submitting an application 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 appropriate regional office of the department of its intent to submit. The department will determine the number of copies of the plan that the applicant will be required to submit to the department.

(b) The applicant may consult with the department to ensure that the application meets the requirements of 18 AAC 75.410 and to discuss the contents of the proposed plans. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.04.050
AS 46.04.030 AS 46.04.070

18 AAC 75.410. APPLICATION FOR APPROVAL.

(a) An application for approval must be delivered to the department's regional office in the primary region of operation for which the plan was prepared. The application for approval must include a completed application for approval, on a form supplied by the department and the number of copies of the plan determined under 18 AAC 75.405(a). The department will, in its discretion, require the submission to it of additional copies of the plan and will notify the applicant of the need for additional copies within 10 days after the plan is submitted to it. In addition, the applicant is responsible for providing copies of the plan, upon request, to resource agencies, coastal districts, regional citizens' advisory councils, and other persons as directed by the department under 18 AAC 75.455.

(b) The application for approval must include

- (1) the applicant's name, address, and telephone number;
- (2) the name, location, and type of facility or operation covered by the plan;
- (3) for a vessel, the vessel's name, official number, country of registry, the name and address of the owner, and the name and address of the operator;
- (4) the scheduled date for the operations covered by the plan to begin; and
- (5) any other information required on the application form that is applicable to the facility or operation.

(c) The department will review an application submitted under this section using the procedures set out at 18 AAC 75.455 and will issue its decision under 18 AAC 75.460. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

18 AAC 75.412. TRANSITIONAL PROVISIONS FOR REVIEW OF PLANS APPROVED BEFORE MAY 14, 1992.

(a) In order to comply with the requirements of 18 AAC 75.400 -- 18 AAC 75.495, an owner or operator of a facility or vessel operating under an oil discharge prevention and contingency plan approved by the department before May 14, 1992 must amend that plan, as necessary; and submit it, along with an application for approval on a form supplied by the department, to the appropriate regional office on or before August 12, 1992.

(b) If an owner or operator submits an application for approval of an amended plan in accordance with (a) of this section and agrees immediately to begin operating the

Selected Alaska Oil & Hazardous Substance Pollution Control Regulations

facility or vessel or conducting a spill response under those provisions of the amended plan that would result in increased spill prevention or spill response capability, a plan that was approved before May 14, 1992 will continue to be considered approved for the purposes of AS 46.04.030 pending the department's review of and decision on the application and amended plan, unless the department determines otherwise with respect to a particular plan.

(c) If approval for a plan that was approved before May 14, 1992 will expire before the department's decision on the application and amended plan will be issued, the applicant may request an extension of the plan's expiration date. The department will, in its discretion, grant an extension of a plan's expiration date upon the applicant's agreement to operate the facility or vessel under the provisions of the amended plan submitted for approval under (a) of this section that would result in increased spill prevention or spill response capability.

(d) The department will use the procedures set out at 18 AAC 75.455 to review an application for approval of an amended plan under (a) of this section. However, notwithstanding any provision of 18 AAC 75.455(a) to the contrary, the timing by a regional office of the determination of whether an application and amended plan are sufficient for public review will be scheduled, based upon the relative priority of review of a particular plan as compared to the priorities assigned to all amended plans submitted to that regional office.

(e) The department's decision on an application for approval of an amended plan submitted under (a) of this section will be made under 18 AAC 75.460. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

18 AAC 75.415. APPLICATION FOR AMENDMENT.

(a) Subject to (b) of this section, before a change to an oil discharge prevention and contingency plan that has been approved under 18 AAC 75.400 -- 18 AAC 75.495 may take effect, the plan holder must obtain approval from the department for an amendment to the plan. An application for approval of an amendment must be submitted to the appropriate regional office on a form supplied by the department, accompanied by the number of amended plans or plan amendments determined under 18 AAC 75.405(a). The department will use the procedures set out at 18 AAC 75.455 to review a plan amendment, unless it is a routine plan update under (b) of this section; adds a vessel under (c) of this section, or otherwise that does not diminish the plan holder's ability to respond to an oil discharge.

(b) A routine plan update must be submitted to the department and to the applicable resource agencies within five days after the date of the proposed change. Routine plan updates include

- (1) deletions to the list of vessels operating under the approved plan;
- (2) revisions to the list of names, addresses, or telephone numbers of spill command and response personnel; and
- (3) revisions to training procedures or course work requirements that do not reduce the amount or quality of training required by this chapter.

(c) An application for approval of a plan amendment to allow the addition of a vessel to operate under an approved plan must include the information required by 18 AAC 75.425(e)(1)(H) and 18 AAC 75.425(e)(3)(A)(iii), (iv), (v), (vii), and (viii). Plan

Selected Alaska Oil & Hazardous Substance Pollution Control Regulations

amendments for the addition of vessels must be submitted at least five days before operation in state waters. The department will review the application and issue a written decision within five days after receiving a proposed plan amendment under this subsection if the department determines that the addition of vessels will not diminish the plan holder's ability to respond to an oil discharge. A plan amendment under this subsection that might diminish the plan holder's ability to respond to an oil discharge will be reviewed under 18 AAC 75.455.

(d) If the department determines that a proposed plan amendment submitted under (b) of this section will diminish the plan holder's ability to respond to an oil discharge, the department will notify the plan holder within 10 days after receipt of the amendment that it will be reviewed under 18 AAC 75.455. If the department determines that a proposed plan amendment will not diminish the plan holder's ability to respond to an oil discharge, the department will review the plan amendment and issue a written decision within 30 days after receiving it.

(e) The plan holder shall notify and, upon request, send a copy of any proposed plan amendment or update submitted under this section to the Department of Fish and Game, the Department of Natural Resources, affected coastal districts and regional citizens advisory councils, and other persons as directed by the department. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

18 AAC 75.420. APPLICATION FOR RENEWAL.

(a) A plan holder must apply to the appropriate regional office for renewal of the department's plan approval, using a form supplied by the department, sufficiently in advance of expiration of the plan to permit department review before the plan approval expires.

(b) A change in ownership of a facility or operation requires an application for renewal of the department's approval of the plan.

(c) If no change will be made in the plan when it is renewed, a copy of the original plan need not accompany the application and may be incorporated by reference on the renewal application form. In all other cases, the number of amended plans or plan amendments determined under 18 AAC 75.405(a) must accompany the application for renewal.

(d) If the department determines that the change in ownership of a facility or operation will not diminish the plan holder's ability to respond to an oil discharge, the department will review and issue a written decision within 30 days after receiving an application for renewal.

(e) Except as provided in (d) of this section, an application for renewal will be reviewed under the provisions of 18 AAC 75.455. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

18 AAC 75.425. OIL DISCHARGE PREVENTION AND CONTINGENCY PLAN CONTENTS.

(a) An oil discharge prevention and contingency plan submitted for approval under 18 AAC 75.400 -- 18 AAC 75.495 must be in a form that is usable as a working plan for oil discharge prevention, control, containment, cleanup, and disposal. A 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 and 18 AAC 75.400 -- 18 AAC 75.495.

(b) The plan for a facility comprised of multiple operations as described at 18 AAC 75.442 must describe, for each category of operation at the facility, the appropriate response measures to meet the applicable portion of the response planning standard.

(c) The submitted plan must be accompanied by a cover page or promulgation-letter that includes

(1) the name of the plan holder, and the covered vessel, barge, facility, or operation, followed by the words "Oil Discharge Prevention and Contingency Plan";

(2) the date of the plan; and

(3) a statement, signed by a person with appropriate authority, committing the resources necessary to implement the plan.

(d) The plan must

(1) include the official plan title;

(2) consist of three parts and contain the information described in (e)(1) -- (3) of this section;

(3) contain a complete table of contents and lists of any tables or figures, with corresponding page numbers; and

(4) be presented in the order shown in (e) of this section, or include a cross-reference table that directs the reader to the appropriate information.

(e) The information in the plan must include

(1) part 1 -- response action plan: The response action plan must provide, in sufficient detail to clearly guide responders in an emergency event, all information necessary to guide response to a discharge of any size, up to and including a discharge that is equal to the applicable response planning standard set out at 18 AAC 75.430 -- 18 AAC 75.442. The response action plan must include the following information:

(A) emergency action checklist -- a short checklist of the immediate response and notification steps to be taken if an oil discharge occurs; it is recommended that this summary be duplicated on a wallet-size card, to be carried by the appropriate response personnel while on duty;

(B) reporting and notification -- a description of the immediate spill reporting actions to be taken at any hour of the day, including

(i) the title and telephone number of facility personnel responsible for making the notification; and

(ii) the telephone number of each appropriate government agency to be notified if a discharge occurs;

(C) safety -- based on applicable safety standards, a description of the steps necessary to develop an incident-specific safety plan for conducting a response;

(D) communications -- a description of field communications procedures, including, if applicable, assigned radio channels or frequencies and their intended use by response personnel;

(E) deployment strategies -- a description of proposed initial response actions that may be taken, including

Selected Alaska Oil & Hazardous Substance Pollution Control Regulations

(i) procedures for the transport of equipment, personnel, and other resources to the spill site, including plans for alternative methods in adverse weather conditions; and

(ii) if the operator is not the primary spill responder, procedures to notify and mobilize the response action contractor or other responder identified in the plan, including a description of the interim actions that the operator will perform until the responder identified in the plan initiates a full response to the discharge;

(F) response strategies -- a description of the discharge containment, control, and cleanup actions to be taken, which clearly demonstrate the strategies and procedures adopted to conduct and maintain an effective response; this information must be presented in the form of a response scenario to a discharge of the applicable response planning standard volume and must be usable as a general guide for a discharge of any size; response strategies must include

(i) procedures to stop the discharge at its source and prevent its further spread;

(ii) a description of methods to prevent or control a potential fire hazard;

(iii) for an exploration or production facility, a plan and time frame for drilling a relief well or otherwise controlling an exploration or production well blowout;

(iv) procedures and methods for real-time surveillance and tracking of the discharged oil on open water and forecasting of its expected points of shoreline contact; (v) for a stationary facility or operation, and, if requested by the department, for a vessel, procedures and methods to exclude oil from environmentally sensitive areas and areas of public concern identified under (3)(J) of this subsection, including, for a land-based facility, protection of groundwater and public water supplies;

(vi) a description of the actions to be taken to contain and control the spilled oil, including, as applicable, boom deployment strategies, construction of temporary berms, and other methods;

(vii) a description of the actions to be taken to recover the contained or controlled oil using mechanical methods, including plans and provisions for skimming, absorbing, or otherwise recovering the contained or controlled product from water or land;

(viii) procedures for lightering, transfer, and storage of oil from damaged tanks or from undamaged tanks that might be at risk of discharging additional oil;

(ix) procedures and plans for transfer and storage of recovered oil and oily water, including methods for estimating the amount of recovered oil;

(x) plans, procedures, and locations for temporary storage and ultimate disposal of oil contaminated materials, oily wastes, and sanitary and solid wastes, including plans for obtaining any required permits or authorizations for temporary storage or ultimate disposal;

(xi) plans 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; and

(xii) if applicable, plans for the deployment of shoreline cleanup equipment and personnel, including cleanup and restoration methods and techniques to be used if the shoreline is impacted by the discharge;

(G) nonmechanical response options -- if applicable, a description of actions to be taken to obtain the necessary permits and approvals to initiate dispersant application, in situ burning, or other nonmechanical response methods, the basis for determining the conditions or circumstances under which these options will be used, and how the nonmechanical response techniques will be implemented, including a description of all required equipment and personnel; and

Selected Alaska Oil & Hazardous Substance Pollution Control Regulations

(H) facility or vessel diagram -- a plan diagram of the facility, vessel, or operation for reference in conducting emergency response operations, with locations of response equipment and other features pertinent to the response plan clearly marked, including surrounding topography, roads, air transportation and other transportation access, location and bathymetry of adjacent water bodies, mooring areas, oil transfer locations, pipelines, control stations, drip pans and drainage of drip pans, and a representation of the distance and gradients to surface water for an operation located on land, by topographic map, aerial photographs, or other means;

(2) part 2 -- prevention plan -- Under the provisions of 18 AAC 75.005 -- 18 AAC 75.090, the prevention plan must include a detailed description of all oil discharge prevention measures and policies employed at the facility, vessel, or operation, with reference to the risks involved. The prevention plan may be submitted as a separate volume; and must include, at a minimum, the following information:

(A) a description and schedule of regular pollution prevention, inspection, and maintenance programs in place at the facility or operation;

(B) a history of all known discharges greater than 55 gallons that have occurred at the facility, with an analysis of the relationship, if any, between their frequency, cause, and size, and a description of actions to be taken to prevent or mitigate similar discharges in the future;

(C) an analysis of potential oil discharges, including size, frequency, cause, duration, and location, and a description of actions taken to prevent a potential discharge;

(D) a description of any conditions specific to the facility or operation that might increase the risk of a discharge, including physical or navigation hazards, traffic patterns, or other site-specific factors, and any measures that have been taken to reduce the risk of a discharge attributable to these conditions;

(E) a description of the existing and proposed means of discharge detection, including surveillance schedules, leak detection, observation wells, monitoring systems, and spill-detection instrumentation; if electronic or mechanical instrumentation is employed, detailed specifications, including threshold detection, sensitivities, and limitations of equipment must be provided;

(F) a detailed basis for the calculation of exceptions, if any, to be applied to the response planning standards set out in 18 AAC 75.430 -- 18 AAC 75.438; and

(G) for an operation in existence or substantially completed before the effective date of this section, a compliance schedule as described at 18 AAC 75.015; and

(3) part 3 --- supplemental information: The supplemental information section must provide background and verification information, including

(A) facility description and operational overview -- a general description of the oil storage, transfer, exploration, or production activities of the operation, including

(i) the number, type, and oil storage capacity of each container covered under the plan and its installation date, design, construction, and general condition;

(ii) the type and amount of oil stored in each container;

(iii) for vessels, a general chart showing routes normally used for the transportation of oil products within state waters, and the frequency of use for each route;

(iv) for vessels, plans or diagrams that identify cargo, bunker, and ballast tanks, all tank capacities, cargo piping, ballast piping, winches, emergency towing equipment, power plants, manifold pipe size, containment structures and equipment, and a description of the method of containing a discharge from fuel oil tank vent overflow and fill pipes;

(v) a description of the normal procedures for the loading or transfer of oil from or to a pipeline, facility, tank vessel, oil barge, or storage tank;

Selected Alaska Oil & Hazardous Substance Pollution Control Regulations

(vi) for a production facility, a description of the flow and gathering lines and processing facilities;

(vii) for vessels, a description of the methods for retention and disposal of oily wastes and bilge slops; and

(viii) any other information required by the department to evaluate the response capability of a vessel, including an approved loading manual that meets the requirements of 46 C.F.R. 45.105, amended through October 1, 1990;

(B) receiving environment -- for a land-based facility or operation:

(i) the potential routes of travel of oil discharged from the facility or operation to open water in the form of a drainage diagram or map, showing gradients and potential containment sites and features, including identification and explanation of all measures that will be taken to prevent a discharge from entering open water; and

(ii) based on the information in

(i) of this subparagraph, an estimate of what percentage of the applicable response planning standard volume set out at 18 AAC 75.430 -- 18 AAC 75.436, or 18 AAC 75.442 for the facility or operation will reach open water;

(C) command system -- a description of the command system to be used in response to a discharge, including the title, address, telephone number, and affiliation by company, agency, or local government of each person, including a person identified in (1)(B) of this subsection, 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, fiscal, operations, planning, and logistics lead personnel; the command system must be compatible with the state's response structure outlined in the state master plan prepared under AS 46.04.200;

(D) realistic maximum response operating limitations -- a description of the realistic maximum response operating limitations that might be encountered at the facility or operation and, based on environmental and safety considerations, an analysis of the frequency and duration, expressed as a percentage of time, of limitations that would render mechanical and other response methods ineffective; the realistic maximum operating limitations for a response must be defined, with a description of any measures that will be taken to compensate for those periods when environmental conditions exceed this maximum; environmental conditions to be considered in this analysis must include

(i) weather, including wind, visibility, precipitation and temperature;

(ii) sea states, tides, and currents;

(iii) ice and debris presence;

(iv) hours of daylight; and

(v) other known environmental conditions that might influence the efficiency of the response equipment or the overall effectiveness of a response effort;

(E) logistical support -- identification of aircraft, vessels, and other means that may be used to transport equipment and personnel during a discharge response, including information on ownership and availability of identified means of transportation;

(F) response equipment -- a complete list of contracted or other oil discharge containment, control, cleanup, storage, transfer, lightering, and related response equipment, including

(i) the location, inventory, and ownership of the equipment;

(ii) the time frame for delivery and startup of response equipment and trained personnel located outside the facility's primary region of operation;

Selected Alaska Oil & Hazardous Substance Pollution Control Regulations

(iii) the manufacturer's rated capacities, limitations, and operational characteristics for each item of oil recovery equipment, including any nonmechanical response techniques;

(iv) each vessel designated for oil recovery operations, including skimming vessels and platforms and vessels designated to tow and deploy boom;

(v) information on additional vessels available from other sources for oil recovery operations, including, if applicable, procedures for inventorying, training personnel, and equipping vessels;

(vi) pumping, transfer and temporary storage, and lightering equipment for transferring oil from damaged or undamaged tanks; and

(vii) the procedures for storage, maintenance, and inspection of spill response equipment under the immediate control of the operator when not in use, including procedures for periodic testing and maintenance of response equipment;

(G) nonmechanical response information -- if a nonmechanical technique such as dispersant use or in situ burning is proposed as a response option, the plan must include

(i) a description of the specific mechanisms in place to assess the environmental consequences of the nonmechanical response option and to provide continuous monitoring of its environmental effects;

(ii) a complete inventory of nonmechanical response equipment and supplies, including the type and toxicity of each dispersant, with procedures for storage, maintenance, and deployment;

(iii) identification of all necessary approvals, and a completed application for department approval for open burning if in situ burning is a proposed response technique;

(iv) identification of all permits, approvals, or authorizations for use of nonmechanical response techniques and the timeline for obtaining them; and

(v) a plan for protecting environmentally sensitive areas, areas of public concern, and the public from any adverse effects of the nonmechanical response action;

(H) oil spill primary response action contractor information -- if a plan holder proposes to use the services of an oil spill primary response action contractor to meet a requirement of AS 46.04.030 or 18 AAC 75.400 -- 18 AAC 75.495, the contractor must be registered under 18 AAC 75.500 -- 18 AAC 75.570; the plan holder shall include a correct and complete list of each primary response action contractor, with name, address, telephone number, and affiliation by company, the response contractor information described in 18 AAC 75.445(i), and a description of the response equipment and services provided; the use of an oil spill primary response action contractor does not relieve the plan holder of its responsibility to provide the information required by this subsection and to meet all other applicable requirements of 18 AAC 75.400 -- 18 AAC 75.495;

(I) training -- a detailed description of the training programs for discharge response personnel;

(J) protection of environmentally sensitive areas and areas of public concern -- for a stationary facility or operation, and, if required by the department, for a vessel, mapped predictions of discharge movement, spreading, and probable points of contact, based on expected local, seasonal, meteorologic, and oceanographic or topographic conditions; and, for each probable point of contact, a description of each environmentally sensitive area and each area of public concern, including

(i) the effect of seasonal conditions on the sensitivity of each area;

(ii) a discussion of the toxicity effects and persistence of the discharge, based on type of product; and

Selected Alaska Oil & Hazardous Substance Pollution Control Regulations

(iii) an identification of which areas will be given priority attention if a discharge occurs;

(K) additional information -- other information necessary to provide background for or verification of the plan contents; and

(L) bibliography -- a list of data and information sources used to determine the information contained in the plan. (Eff. 5/14/92, Register 122; am 9/25/93, Register 127)

Authority: AS 46.03.020 AS 46.04.035
AS 46.04.030 AS 46.04.070

18 AAC 75.430. RESPONSE PLANNING STANDARDS.

(a) Notwithstanding the response planning standards set out in 18 AAC 75.430 -- 18 AAC 75.442, the plan must demonstrate the general procedures to clean up a discharge of any size, including the greatest possible discharge that could occur, subject to the provisions of AS 46.04.020 and AS 46.09.020.

(b) Except for the requirements of 18 AAC 75.438(b)(1) and (2) and 18 AAC 75.440, the department will, in its discretion, consider and provide modifications to the response planning standards set out in 18 AAC 75.430 -- 18 AAC 75.442 for a prevention measure that is in addition to those listed in 18 AAC 75.432 -- 18 AAC 75.438, if the plan holder demonstrates to the department's satisfaction that the proposed measure reduces the potential size or risk of a discharge.

(c) If more than one prevention measure is used to modify the response planning standard, each subsequent reduction will be applied separately to the response planning standard value that results from application of the previous modification. However, in no case will the department reduce the response planning standard below an amount equal to

(1) 15 percent of the response planning standard applicable to a crude or noncrude oil terminal facility, an exploration or production facility, or a crude oil pipeline as determined under 18 AAC 75.432(b) or (c), 18 AAC 75.434(b), or 18 AAC 75.486(b), respectively, or

(2) 30 percent of the response planning standard for a crude oil tank vessel or barge as determined by 18 AAC 75.438(c).

(d) The department will, in its discretion, revoke or reduce a prevention credit set out in 18 AAC 75.432 -- 18 AAC 75.438 if the department finds that the plan holder has failed to execute or has not effectively implemented the prevention measure used to determine that credit.

(e) Liquefied petroleum gas is exempt from the requirements of 18 AAC 75.430 -- 18 AAC 75.442. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

18 AAC 75.432. RESPONSE PLANNING STANDARDS FOR OIL TERMINAL FACILITIES.

(a) For a crude or noncrude oil terminal facility, the plan holder shall maintain or have available under contract within the plan holder's region of operation or another approved location, sufficient oil discharge containment, storage, transfer, and cleanup equipment, personnel, and other resources to

Selected Alaska Oil & Hazardous Substance Pollution Control Regulations

(1) contain or control and clean up within 72 hours that portion of the response planning standard volume that enters open water; and

(2) contain or control within 72 hours, and clean up within the shortest possible time consistent with minimizing damage to the environment, that portion of the response planning standard volume that enters a receiving environment other than open water.

(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 manmade conditions outside the facility which could place the facility at an increased risk of an oil discharge affecting one or more storage tanks.

(c) For an increased risk described in (b) of this section, the response planning standard volume is equal to the capacity of all of the potentially affected oil storage tanks at the facility. The plan must set out the basis for selecting the storage tanks and the volume of oil planned for in the response.

(d) The department will, in its discretion, reduce the requirements of (b) of this section, by a percentage up to that shown, for each of the following prevention measures in place at the facility:

(1) alcohol and drug testing of key personnel: 5 percent;

(2) an operations training program with a professional organization or federal certification or licensing of program participants: 5 percent;

(3) on-line leak detection systems for tanks and piping: 5 percent;

(4) a sufficiently impermeable secondary containment area with a dike capable of holding the contents of the largest tank, or all potentially affected tanks in the case of increased risk, and precipitation: 60 percent;

(5) for secondary containment as described in (4) of this subsection, designed with the following enhancements, an additional allowance for

(A) cathodic protection: 10 percent;

(B) fail-safe valve piping systems: 15 percent; or

(C) impervious containment area extending under the full area of each storage tank or double bottoms with leak detection: 25 percent; and

(6) containment outside the secondary containment area: 10 percent. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020

AS 46.04.030

AS 46.04.070

18 AAC 75.434. RESPONSE PLANNING STANDARDS FOR EXPLORATION OR PRODUCTION FACILITIES.

(a) For an exploration or production facility, the plan holder shall maintain or have available under contract within the plan holder's region of operation or another approved location, sufficient oil discharge containment, storage, transfer, and clean up equipment, personnel, and other resources to

(1) contain or control and clean up within 72 hours that portion of the response planning standard volume that enters open water; and

(2) contain or control within 72 hours, and clean up within the shortest possible time consistent with minimizing damage to the environment, that portion of the response planning standard volume that enters a receiving environment other than open water.

(b) The response planning standard volume for an exploration or production facility is 16,500 barrels, plus an additional 5,500 barrels for each day beyond 72 hours

Selected Alaska Oil & Hazardous Substance Pollution Control Regulations

necessary to stop the discharge, unless the plan demonstrates, based on adequate well data, analyses, and supporting documentation, that a higher or lower discharge rate is appropriate.

(c) The department will, in its discretion, reduce the requirements of (b) of this section, by a percentage up to that shown, for each of the following prevention measures in place at the facility:

- (1) alcohol and drug testing of key personnel: 5 percent;
- (2) an operations training program with a professional organization or federal certification or licensing of program participants: 5 percent;
- (3) on-line leak detection systems: 5 percent;
- (4) measurement of on-line bottom hole pressure while drilling, with computer-aided circulation control of drilling fluids, using a professional organization standard or recommended practice: 5 percent;
- (5) a computer-aided management system of inspection, maintenance, and repair such as Bureau Veritas "IRM-Expert": 5 percent;
- (6) a formal safety analysis, using reliability-management methods such as the United Kingdom's Formal Safety Assessment or Norway's Concept Safety Evaluation: 5 percent; and
- (7) emergency pipeline-shutdown valves with remote, local, and fail-safe operation, capable of closing against full differential pipeline pressure and not used for any purpose other than emergency shutdown: 5 percent. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

18 AAC 75.436. RESPONSE PLANNING STANDARDS FOR CRUDE OIL PIPELINES.

(a) For a crude oil pipeline facility, the plan holder shall maintain or have available under contract within the plan holder's region of operation or another approved location, sufficient oil discharge containment, storage, transfer, and cleanup equipment, personnel, and other resources to

(1) contain or control and clean up within 72 hours that portion of the response planning standard volume that enters open water; and

(2) contain or control within 72 hours, and clean up within the shortest possible time consistent with minimizing damage to the environment, that portion of the response planning standard volume that enters a receiving environment other than open water.

(b) The response planning standard volume for a crude oil pipeline facility is the amount of oil which equals the length of the pipeline between pumping or receiving stations or valves (L_{pi}), minus the hydraulic characteristics of the pipeline due to terrain profile (H_{pi}), times the capacity of the pipeline in barrels per lineal measure (C_{pi}), plus the flow rate of the pipeline in barrels per time period (FR_{pi}), multiplied by the estimated time to detect a spill event (TD_{pi}), plus the time to shut down the pipeline pump or system (TSD_{pi}). Written as a formula, the response planning standard is $(L_{pi} - H_{pi}) \cdot C_{pi} + FR_{pi} \cdot (TD_{pi} + TSD_{pi})$.

(c) The department will, in its discretion, reduce the requirements of (b) of this section, by a percentage up to that shown, for each of the following prevention measures in place at the facility:

- (1) alcohol and drug testing of key personnel: 5 percent;

Selected Alaska Oil & Hazardous Substance Pollution Control Regulations

- (2) an operations training program with a professional organization or federal certification or licensing of program participants: 5 percent;
 - (3) on-line leak detection systems: 5 percent;
 - (4) corrosion control using
 - (A) ultrasonic thickness meters: 15 percent;
 - (B) instrumented in-line cleaning and diagnostic equipment ("smart pigs"): 15 percent; or
 - (C) a method described in (A) or (B) of this paragraph, coupled with cathodic-profile inspection at least triennially: 30 percent; and
 - (5) underwater pipeline cathodic- and burial-profile inspection: 5 percent.
- (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

18 AAC 75.438. RESPONSE PLANNING STANDARDS FOR CRUDE OIL TANK VESSELS AND BARGES.

(a) For a crude oil tank vessel or barge, the plan holder shall maintain or have available under contract within its region of operation, sufficient discharge containment, storage, transfer, and cleanup equipment, personnel, and other resources to

(1) contain or control and clean up within 72 hours that portion of the response planning standard volume set out in (b) of this section that enters open water; and

(2) contain or control within 72 hours, and clean up within the shortest possible time consistent with minimizing damage to the environment, that portion of the response planning standard volume set out in (b) of this section that enters a receiving environment other than open water.

(b) For purposes of the requirements of (a) of this section, the response planning standard volume for a crude oil tank vessel or barge is

(1) 50,000 barrels, if the tank vessel or barge has a cargo volume of less than 500,000 barrels; and

(2) 300,000 barrels, if the tank vessel or barge has a cargo volume of 500,000 barrels or more.

(c) In addition to the requirements of (a) of this section, for all crude oil tank vessels and barges, the plan holder shall plan to have deployed and operating within 72 hours, from within or outside its region of operation, sufficient oil discharge containment, storage, transfer, and cleanup equipment, personnel, and other resources to contain and control, and clean up at least 60 percent of the total cargo capacity of the tank vessel or barge.

(d) The department will, in its discretion, reduce the requirements of (c) of this section, by a percentage up to that shown, for each of the following prevention measures in place for the vessel or barge:

(1) hydrostatic loading: 20 percent;

(2) double hulls and bottoms: 30 percent;

(3) double bottoms: 25 percent; and

(4) emergency-response vessels and procedures described as follows:

(A) vessel escort during entire vessel transit in port area;

(B) escort vessels capable of

(i) providing steering and propulsion assistance with the ability to attach towing cables in a timely fashion under the weather conditions of transit; and

Selected Alaska Oil & Hazardous Substance Pollution Control Regulations

- (ii) exerting sufficient force to change or maintain the escorted vessel's course;
- (C) limits on the escorted vessel's speed in order to match escort vessel's ability to render assistance; and
- (D) escort vessels have on-board oil discharge response equipment: 11 percent.
- (e) A crude oil tank vessel or barge that has been exempted under 18 AAC 75.400(b) is exempt from the requirements of this section. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

18 AAC 75.440. RESPONSE PLANNING STANDARDS FOR NONCRUDE OIL TANK VESSELS AND BARGES.

(a) For a noncrude oil tank vessel or barge, the plan holder shall maintain or have available under contract within the plan holder's region of operation or another approved location, sufficient oil discharge containment, storage, transfer, and cleanup equipment, personnel, and other resources to

- (1) contain or control within 48 hours, and to clean up within the shortest possible time, that portion of the response planning standard volume that enters open water; and
- (2) contain or control, and clean up within the shortest possible time consistent with minimizing damage to the environment, that portion of the response planning standard volume that enters a receiving environment other than open water.

(b) The response planning standard volume for a noncrude oil tank vessel or barge is equal to 15 percent of the total cargo capacity of the oil tank vessel or barge. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

18 AAC 75.442. RESPONSE PLANNING STANDARDS FOR MULTIPLE OPERATIONS.

For a facility having more than one category of operation that requires an approved oil discharge prevention and contingency plan, the plan holder must plan to respond to a discharge of the applicable response planning standard volume for each separate category of operation at the facility as established under 18 AAC 75.430 -- 18 AAC 75.440. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

18 AAC 75.445. APPROVAL CRITERIA.

(a) The department will use the criteria set out in this section to review an oil discharge prevention and contingency plan submitted under 18 AAC 75.425.

(b) General Response Procedures. The plan must identify the maximum possible discharge that could occur at the facility or operation, 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.

Selected Alaska Oil & Hazardous Substance Pollution Control Regulations

(c) **Deployment Strategies.** The plan must demonstrate that the identified personnel and equipment are sufficient to meet the applicable response planning standard and can be deployed and operating within the time specified under 18 AAC 75.430 -- 18 AAC 75.442. The plan must state what conditions were assumed and must take into account the realistic maximum operating conditions and their effects on response capability and the deployment of resources. Plans using contractual resources must demonstrate that the transition and substitution of equipment and resources will occur without interruption of response or cleanup.

(d) **Response Strategies.** The response strategies must take into account the type of product discharged and must demonstrate that

(1) procedures are in place to stop the discharge at its source within the shortest possible time;

(2) for an exploration or production facility, plans and time frames are in place for controlling a well blowout, including provisions for drilling a relief well, and taking into account any seasonal environmental conditions that might reasonably be expected to preclude emergency operations from regaining control of well pressure;

(3) plans, procedures, and equipment are sufficient to monitor and track the discharge in order to ensure proper allocation and deployment of response personnel and equipment;

(4) sufficient oil discharge response equipment, personnel, and other resources are maintained and available for the specific purpose of preventing discharged oil from entering an environmentally sensitive area or an area 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 identified in the plan must include areas added by the department as a condition of plan approval;

(5) plan strategies are 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;

(6) 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 commencement and completion of lightering within the shortest possible time, consistent with ensuring the safety of personnel; and

(7) adequate temporary storage and removal capacity for recovered oil and oily wastes will be 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 the specific actions to be taken to obtain all necessary permits and approvals.

(e) **Receiving Environment.** For an onshore facility or operation, the applicant must determine and clearly demonstrate that, based on an analysis of the facility or operation, resources identified in the plan are sufficient to clean up that portion of a discharge of the applicable planning standard volume that might realistically be expected to reach open water within the applicable time limit set out in 18 AAC 75.430 -- 18 AAC 75.442.

(f) **Realistic Maximum Response Limitations.** In designing a spill response, severe weather and environmental limitations that might be reasonably expected to occur during a discharge event must be identified. The plan must use realistic efficiency rates for the

Selected Alaska Oil & Hazardous Substance Pollution Control Regulations

specified response methods to account for the reduction of control or removal rates under those severe weather or other environmental limitations that might reasonably be expected to occur. The department will, in its discretion, require the plan holder to take specific temporary prevention measures until environmental conditions improve to reduce the risk or magnitude of an oil discharge during periods when planned spill response methods are rendered ineffective by environmental limitations.

(g) Response Equipment. Response equipment identified in the plan must meet the following conditions:

(1) 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;

(2) identified equipment must reflect the best available technology at the time the plan is submitted or renewed;

(3) types and amounts of boom, boom connectors, and anchorage devices must be of the appropriate design for the particular oil product, type of environment, and environmental conditions experienced at the facility or operation; the boom must be of sufficient length to mount an effective response to the volume of discharged oil established under 18 AAC 75.430 -- 18 AAC 75.442 for each type of facility or operation;

(4) vessels used to deploy and tow boom must be of a number, size, and power adequate to deploy the types and amounts of boom addressed in

(3) of this subsection and must be capable of operating in the manner and at the speeds necessary for the effective use of boom; and

(5) the number and size of skimmers and pumps to be used must be appropriate and adequate for recovery of the planning standard volume of the type of oil discharged within the planning standard time limit for cleanup established under 18 AAC 75.430 -- 18 AAC 75.442; equipment types must be compatible with each other as necessary to ensure an efficient response.

(h) Nonmechanical Response Information. Plans which propose the use of dispersants, in situ burning, or other nonmechanical response techniques during periods when environmental conditions or other factors limit the use of mechanical spill response methods must demonstrate their efficiency and effectiveness and must include a full assessment of potential environmental consequences, provisions for continuous monitoring and real-time assessment of environmental effects, and full compliance with all applicable approval requirements. If in situ burning is proposed as a response technique, a completed application for approval by the department must be included.

(i) Oil Spill Primary Response Action Contractor Information. If a plan holder proposes to use the services of an oil spill primary response action contractor to meet a requirement of AS 46.04.030 or 18 AAC 75.400 -- 18 AAC 75.495, the contractor must be registered under 18 AAC 75.500 -- 18 AAC 75.570. The plan holder shall include a correct and complete list of each primary response action contractor, with name, address, telephone number, and affiliation by company, and, for each response action contract, a statement signed by the plan holder and the primary response action contractor attesting to the department that the contract

(1) clearly specifies that the contractor is obligated to

(A) provide the response services and equipment listed for that contractor in the contingency plan;

(B) respond if a discharge occurs;

(C) notify the plan holder immediately if the contractor cannot carry out the response actions specified in the contract or the contingency plan;

Selected Alaska Oil & Hazardous Substance Pollution Control Regulations

(D) give written notice at least 30 days before terminating its contract with the plan holder;

(E) respond to a department-conducted discharge exercise required of the plan holder; and

(F) continuously maintain in a state of readiness, in accordance with industry standards, the equipment and other spill response resources to be provided by the contractor under the contingency plan; and

(2) contains the provisions required under AS 46.04.030(r), if the contract is between the plan holder for a tank vessel or oil barge carrying crude oil that has been transported by the Trans Alaska Pipeline System and a primary response action contractor who is the common operating agent for the holders and lessees of the right-of-way agreement for the Trans Alaska Pipeline System.

(j) Training. In addition to maintaining continuous compliance with other applicable state and federal training requirements, the plan holder shall demonstrate that designated oil spill response personnel are trained and kept current in the specifics of plan implementation, including deployment of containment boom, operation of skimmers and lightering equipment, and organization and mobilization of personnel and resources. The plan holder shall ensure that proof of training is maintained for three years and is made available to the department upon request. (Eff. 5/14/92, Register 122; am 9/25/93, Register 127)

Authority: AS 46.03.020 AS 46.04.035
AS 46.04.020 AS 46.04.070
AS 46.04.030

18 AAC 75.455. DEPARTMENT REVIEW PROCEDURES.

(a) Within seven days after receipt of an application and plan, the department will determine if the application and plan are sufficient for public review. If the application or plan is not sufficient for public review, the department will request the necessary additional information from the applicant.

(b) When the department determines that an application and plan are sufficient for public review, the department will

(1) send a notice setting a 30-day comment period to the Department of Natural Resources, the Department of Fish and Game, affected coastal districts and regional citizens advisory councils, and persons who have made a written request for information regarding submission subject to review under this section;

(2) direct the applicant to provide a copy of the application and the plan to the Department of Natural Resources, the Department of Fish and Game, affected coastal districts and regional citizens advisory councils, and other persons designated by the department;

(3) set a date, within the 18th to 25th day of the 30-day comment period, by which the department will convey to the applicant any request from the department or a person reviewing the application that the department finds necessary to make a determination that the application or plan is complete; and

(4) publish one 30-day notice of the application, in the manner described in 18 AAC 15.050(b), stating the deadline for comments established under (1) of this subsection and the date established under (3) of this subsection for conveying requests for additional information; the applicant is responsible for paying the cost of the notice under this paragraph.

Selected Alaska Oil & Hazardous Substance Pollution Control Regulations

(c) The notice published under (b) of this section will state that a copy of the application and plan are available for review at the district and regional offices of the department nearest to the affected area of the state. It is the applicant's responsibility to provide a copy of the application and plan if the department receives a request for a copy.

(d) If, by the date set under (b)(3) of this section, the department determines that additional information is necessary to evaluate the application or plan, the department will

(1) notify the applicant of the information needed; and

(2) extend the 30-day comment period established under (b)(1) of this section until the information is received, plus 10 days.

(e) If the department determines that additional information is necessary under (d) of this section and requests the information from the applicant, the applicant shall send a copy of any additional information requested to the department and to the Department of Natural Resources, the Department of Fish and Game, affected coastal districts and regional citizens advisory councils, and other persons designated by the department.

(f) Upon receipt by the department of the additional information requested under (d) of this section, the department will provide to the parties described in (e) of this section notice of

(1) receipt of the information and

(2) the final comment deadline, as extended.

(g) The department will make a determination as to whether an application and plan are complete within seven days after the receipt of any additional information under (e) of this section or, if no additional information was requested under (d) of this section, within two days after the end of the 30-day comment period established under (b)(1) of this section.

(h) Notwithstanding the review procedures set out in this section, if, at any time after receipt of an application and plan, and after consultation with the Department of Natural Resources, the Department of Fish and Game, and affected coastal districts and regional citizens advisory councils, the department determines that all information necessary to evaluate the application and plan has been received, the department will, in its discretion, find the application and plan complete. However, no decision will be made under (i) of this section until after the comment deadline established under (b)(1) of this section.

(i) Following the comment deadline established under (b)(1) of this section, including any extension under (d)(2) of this section, and within 65 days after the department determines that an application and plan are complete, the department will approve, approve with conditions, or disapprove a plan.

(j) The department will, if it determines good cause exists, hold a public hearing on an application and plan in the manner provided under 18 AAC 15.060.

(k) To assist the department in its review of contingency plans under this chapter, the department will enter into an annual agreement with the Department of Natural Resources and the Department of Fish and Game to provide expertise regarding protection of fish and game, state land, areas of public concern, and environmentally sensitive areas. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

18 AAC 75.457. EMERGENCY MODIFICATION OF REVIEW PROCESS.

If, due to an emergency as described in AS 26.23 or AS 46.04.080 or other applicable law, an applicant needs an expedited review, or if the commissioner or the commissioner's designee finds that an expedited review is necessary for the preservation of the public peace, health, safety, or general welfare, the commissioner or the commissioner's designee will, in that person's discretion, and consistent with the requirements of AS 46.04.030(j) that a copy of the applicant's plan be provided to the Department of Fish and Game and the Department of Natural Resources, modify the review process established in 18 AAC 75.455 as necessary to meet the emergency. Any modifications in the review process made under this section will be made in writing by the commissioner or the commissioner's designee based upon clear and convincing evidence of a need for the modification. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

18 AAC 75.459. PREISSUANCE CONFERENCE.

(a) At any time before the department's decision under 18 AAC 75.460, the applicant may request a preissuance conference from the appropriate regional office of the department. The request may be made orally, and will be granted if the applicant demonstrates that holding a conference will materially aid the department in reaching its decision.

(b) A preissuance conference under this section will be conducted in the manner provided under 18 AAC 15.070. However, the time period for the department's review will not be held in abeyance pending completion of the conference. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

18 AAC 75.460. DEPARTMENT DECISION.

(a) After considering the information, analyses, and commitments contained in a complete application for an oil discharge prevention and contingency plan approval and timely comments submitted under 18 AAC 75.455, the department will approve, approve with conditions, or disapprove a plan.

(b) A decision issued under (a) of this section will include

(1) the written approval, if it is the department's determination that an oil discharge prevention and contingency plan approval should be issued; the department will provide a summary of the basis for its decision to approve a plan in a case in which public comment adverse to the application has been received;

(2) a brief summary of the basis for the department's decision if the decision is to disapprove a plan, or to subject a plan to conditions specific to the activity; and

(3) a statement that, if aggrieved by the department's decision, the applicant or any person who submitted timely comments on the application under 18 AAC 75.455 may request an adjudicatory hearing by submitting the information required under 18 AAC 15.200(a)(1) -- (5), and that any hearing requested under this subsection will be subject to the procedures set out at 18 AAC 15.210 -- 18 AAC 15.310.

Selected Alaska Oil & Hazardous Substance Pollution Control Regulations

(c) The department's decision will be served on the applicant and each person who submitted timely comments on the application under 18 AAC 75.455. The applicant and any person who submitted timely comments on the application under 18 AAC 75.455 may request an adjudicatory hearing with 30 days after service of the department's decision. The hearing will be conducted in accordance with procedures set out in 18 AAC 75.200 -- 18 AAC 75.310.

(d) An approval under this section is effective for three years after the date it is issued, or for a shorter time specified in the approval letter and certificate.
(Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

[Editor's note: Department of Environmental Conservation approval under 18 AAC 75.460 does not negate any other requirement for approval to operate under other statutes or regulations, such as Alaska Coastal Management Program approval under 6 AAC 50.]

18 AAC 75.465. PROOF OF APPROVED PLAN.

(a) The owner or operator of an oil terminal facility may not cause or permit the transfer of oil to or from a vessel or barge unless

(1) the operator of the vessel or barge has produced for inspection by the facility owner or operator the original certificate or a true photocopy of the original, approving the oil discharge prevention and contingency plan for that operation; and

(2) the operator of the vessel or barge has certified, on a certification log form supplied by the department and maintained by the owner or operator of the oil terminal facility, that a copy of the response action plan section of the current approved oil discharge prevention and contingency plan for that vessel or barge is on board the vessel or barge.

(b) The owner or operator of an oil terminal facility shall certify on the certification log form that the operator of the vessel or barge has complied with (a)(1) and (a)(2) of this section. The facility owner or operator shall maintain the log on a monthly basis and shall submit the log for the previous month to the appropriate regional office within the first five days of the following month. Service is effective upon personal delivery or transmittal by facsimile or on the date of mailing by certified mail to the appropriate regional office. The department will retain copies of all log forms received under this subsection for three years after receipt.

(c) On the first working day after the operator of a vessel fails to comply with the requirements of (a)(1) or (a)(2) of this section, the oil terminal facility owner or operator shall report that failure to the appropriate regional or district office by telephone or facsimile.

(d) Verification and entry on the certification log form referred to under (b) of this section is required for each separate loading or unloading operation of a vessel at an oil terminal facility. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.04.070
AS 46.04.030 AS 46.04.070
AS 46.04.050

Selected Alaska Oil & Hazardous Substance Pollution Control Regulations

18 AAC 75.470. TRANSFERS BETWEEN PLAN HOLDERS.

(a) If approved under this section, a plan holder, or an oil spill response contractor or cooperative upon which one or more plan holders rely, may furnish to another plan holder or to another person, equipment, materials, or personnel to assist in response to an oil discharge. A description of the proposed transfer that addresses each of the considerations set out in (b) of this section must be provided with the request for approval of a transfer.

(b) The department will, in its discretion, approve a transfer under this section after considering

(1) for a provider of oil spill response equipment, materials, or personnel:

(A) the amount and types of equipment, personnel, or other resources to be transferred in response to a discharge and where it will be transferred;

(B) the number and types of other plan holders who rely upon the provider's response equipment, personnel, and other resources;

(C) the percentage by which the provider's response capability will be reduced by the transfer;

(D) the ability of the provider to acquire and deploy alternate response equipment if an emergency discharge occurs while equipment, materials, or personnel are transferred; and

(E) any compensating measures that will be taken by the provider to prevent or reduce the size of potential discharges during the period of reduced response capability; and

(2) for a plan holder receiving the equipment, the time estimated for the response equipment to reach the discharge.

(c) The department will, in its discretion, attach terms and conditions to an approval issued under (b) of this section.

(d) The provider shall reorder and replace equipment or materials that are

(1) exhausted, lost, destroyed, or rendered inoperable as soon as the condition is known by the provider; and

(2) not expected to be returned, such as sorbent boom, sorbent pads, and dispersant, as soon as they are transferred.

(e) If equipment, materials, or personnel are not replaced or returned to the provider within 30 days after the transfer, the plan holder may request an extension from the department. If the extension is denied, the provider must apply for approval of an amendment to its approved prevention and contingency plan under 18 AAC 75.415.

(f) Except in response to a major or catastrophic discharge, the department will not approve a transfer of equipment, materials, or personnel to another plan holder if the provider's spill response capability would be reduced to less than 40 percent of the response capability identified in its plan. If a major or catastrophic oil discharge occurs, the department will, in its discretion, approve an immediate transfer of up to 100 percent of the provider's response equipment, personnel, and other resources.

(g) The department will issue a verbal approval for a transfer if a discharge poses an imminent threat to life, property, the environment, or other significant public concern. The verbal approval will be verified in writing by the department.

(Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

Selected Alaska Oil & Hazardous Substance Pollution Control Regulations

18 AAC 75.475. NOTIFICATION OF NONREADINESS.

(a) All spill response and other equipment identified in the approved oil discharge prevention and contingency plan to meet the response planning standards set out at 18 AAC 75.430 -- 18 AAC 75.442 must be maintained in operational condition. Any equipment found not to be operating properly must be repaired or replaced immediately.

(b) Except for a transfer approved under 18 AAC 75.470, if a significant change occurs in, or is made to, 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. A facsimile delivered to the appropriate regional 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.

(c) Notwithstanding (a) and (b) of this section, removal or inactivation of any major response item for maintenance or repair must be approved by the department before removal or inactivation. A request under this subsection must be submitted at least 10 days before the scheduled action or as soon as possible for an unanticipated repair. The request must state what substitute or temporary measures will be taken to provide equivalent response capability, reduce the time out of service, or otherwise ensure that equivalent response capability is maintained. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

18 AAC 75.480. INSPECTIONS.

(a) To verify compliance with the oil discharge prevention and contingency plan provisions of AS 46.04.030 and 18 AAC 75.400 -- 18 AAC 75.495, the department will, in its discretion, conduct announced and unannounced inspections of a vessel, barge, pipeline, or other operation that is subject to the requirements of AS 46.04.030 and 18 AAC 75.400 -- 18 AAC 75.495. If practicable, an inspection under this section will be coordinated with other regulatory agencies.

(b) Based on the results of an inspection made under this section, the department will, in its discretion, take appropriate action under 18 AAC 75.490. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.04.060
AS 46.04.030 AS 46.04.070

18 AAC 75.485. DISCHARGE EXERCISES.

(a) The department will, in its discretion, conduct announced and unannounced discharge exercises to assure that an oil discharge prevention and contingency plan is adequate in content and execution. No more than two exercises will be required in each 12-month period, unless an exercise demonstrates, in the department's judgment, a plan holder's failure to effectively implement the plan.

(b) Execution of a plan during a discharge exercise will be considered inadequate if the readiness for response and response performance stated 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 75.445(i).

Selected Alaska Oil & Hazardous Substance Pollution Control Regulations

(c) If a plan holder cannot adequately execute the plan during a discharge exercise, the department will, in its discretion,

(1) require additional exercises until it is satisfied that the prevention and contingency plan and its execution are adequate; or

(2) take other appropriate action as described at 18 AAC 75.490.

(d) The department will consider a regularly scheduled training exercise initiated by a plan holder as a discharge exercise if the department monitors, evaluates, or participates in the exercise and concurs that it is equivalent to a discharge exercise conducted by the department. A plan holder shall notify the department in advance of the exercise and shall provide an opportunity for a department representative to be present and participate.

(e) The department will conduct announced or unannounced discharge exercises appropriate to the plan holder's current status of operations. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

18 AAC 75.490. FAILURE TO COMPLY.

(a) If a plan holder fails to comply with an approved oil discharge prevention and contingency plan, demonstrates an inability to maintain continuous access to the quality or quantity of resources identified in the plan, fails to respond with those resources in the shortest possible time if a discharge occurs, or is in any other way subject to the terms of AS 46.04.030(f)(1) -- (4), the department will, in its discretion,

(1) revoke its approval of the plan after notice and opportunity for hearing under (c) of this section;

(2) suspend its approval of the plan after notice and opportunity for hearing under (c) of this section, stating the conditions under which the department will reinstate its approval and allow operations to resume;

(3) order the plan holder to file an application to amend the plan within a specified time under 18 AAC 75.415; or

(4) take other necessary action to correct the failure to comply.

(b) If a plan holder fails to apply for an amendment as required under (a)(3) of this section, the department will, in its discretion, revoke its approval of the plan after notice and opportunity for hearing under (c) of this section.

(c) If the department issues a notice of intent to revoke an approval under this chapter, the plan holder may either request a hearing to review the department's proposed action under (d) -- (g) of this section or it may request an adjudicatory hearing. An adjudicatory hearing will be conducted in accordance with procedures set out in 18 AAC 15.200 -- 18 AAC 15.310. The request for review must be submitted in writing to the supervisor of the appropriate regional office within 10 days after the plan holder receives the department's notice and must include

(1) the name, mailing address, and telephone number of the plan holder; and

(2) a brief, clear summary of the reasons for requesting the review.

(d) A hearing under (d) -- (g) of this section will be held within 10 working days after the department receives a request for hearing, unless the department and the plan holder agree that the hearing will be held at another time. Immediately after receiving a request for review under (c) of this section, the department will notify the plan holder, by telephone, facsimile, or personal delivery, of the time and place of the hearing.

Selected Alaska Oil & Hazardous Substance Pollution Control Regulations

(e) If the plan holder fails to appear for the hearing at the time and place stated in the notice issued under (d) of this section, and if a delay has not been granted by the department, the failure to appear will be considered a waiver of the plan holder's right to a hearing under this section.

(f) A hearing under this section will be recorded, will be heard by the regional supervisor or a designee, and will be informal. The plan holder may

(1) present witnesses and evidence in its own behalf; and

(2) question witnesses and seek to disprove evidence presented by the department.

(g) Within 10 working days after a hearing under this section, the department will issue a final decision, stating the reasons for the decision, and indicating the evidence relied upon in reaching that decision.

(h) Nothing in (d) -- (g) of this section affects a plan holder's right under (c) of this section to an adjudicatory hearing. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.03.750 AS 46.35.090(e)
AS 46.03.740 AS 46.04.030
AS 46.03.745 AS 46.04.070

18 AAC 75.495. REGIONAL MASTER DISCHARGE PREVENTION AND CONTINGENCY PLAN BOUNDARIES.

(a) The regions described in this subsection and depicted on the map at Figure 1 are established for the purpose of preparing a regional master oil and hazardous substance discharge prevention and contingency plan as required by AS 46.04.210:

(1) Southeast Alaska Region: that area of the state east of 142°W. longitude and south of a line just west of Icy Bay that connects the U.S. - Canadian border with the Gulf of Alaska, including adjacent shorelines and state waters, and having as its seaward boundary a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured;

(2) Prince William Sound Region: that area south of 63°30' N. latitude, west of the region described in (1) of this subsection, and east of the region described in (3) of this subsection, including adjacent shorelines and state waters, and having as its seaward boundary a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured;

(3) Cook Inlet Region: that area encompassed by the boundaries of the Kenai Peninsula Borough, the Municipality of Anchorage, and the Matanuska-Susitna Borough, including adjacent shorelines and state waters, and having as its seaward boundary a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured;

(4) Kodiak Island Region: that area encompassed by the boundaries of the Kodiak Island Borough, including adjacent shorelines and state waters, and having as its seaward boundary a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured;

(5) Aleutian Region: that area encompassed by the boundaries of the Aleutians East Borough and the Aleutians West Coastal Resource Service Area, including adjacent shorelines and state waters, and having as its seaward boundary a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured;

(6) Bristol Bay Region: that area encompassed by the boundaries of the Bristol Bay Coastal Resource Service Area, the Bristol Bay Borough, and the Lake and Peninsula

Selected Alaska Oil & Hazardous Substance Pollution Control Regulations

Borough, including adjacent shorelines and state waters, and having as its seaward boundary a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured:

(7) Western Alaska Region: that area north of the area described in (6) of this subsection, encompassed by the boundaries of the southernmost boundary of the Bering Straits Regional Corporation, and Regional Educational Attendance Areas 11 and 5, including adjacent shorelines and state waters, and having as its seaward boundary a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured;

(8) Northwest Arctic Region: that area encompassed by the Northwest Arctic Borough and the Bering Straits Regional Corporation, including adjacent shorelines and state waters, and having as its seaward boundary a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured;

(9) North Slope Region: that area encompassed by the boundaries of the North Slope Borough, including adjacent shorelines and state waters, and having as its seaward boundary a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured; and

(10) Interior Alaska Region: that area of the state not included in (1) -- (9) of this subsection.

(b) If the department finds that a discharge that could occur in an area beyond the territorial sea would not have a significant adverse impact on the resources of the state or on other interests of the state, the department will, in its discretion, adjust the seaward boundary of a region established in (a) of this section to exclude that area. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.070
AS 46.04.210

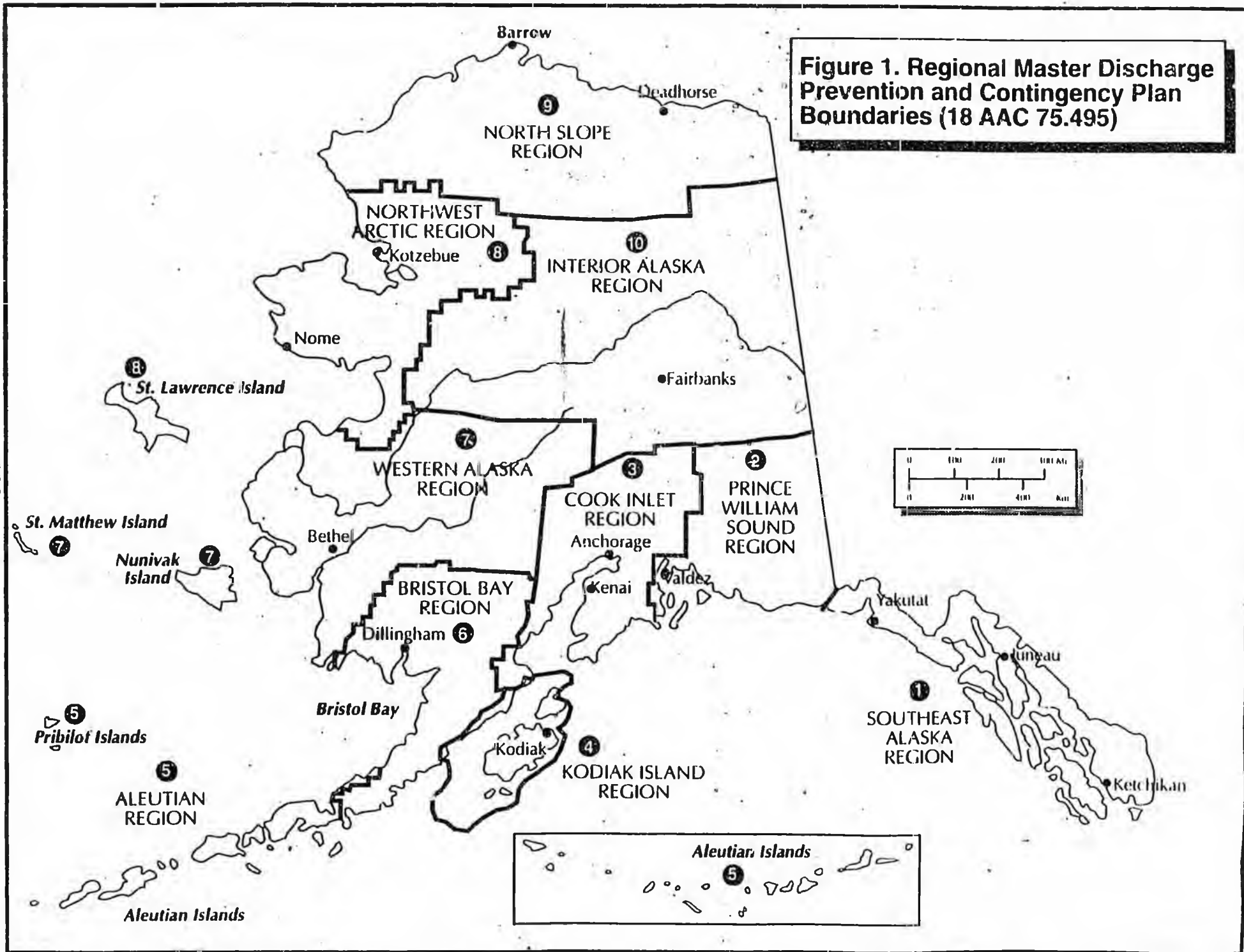


Figure 1. Regional Master Discharge Prevention and Contingency Plan Boundaries (18 AAC 75.495)

110

ARTICLE 5. Oil Spill Primary Response Action Contractors.

18 AAC 75.500. DEFINITION OF OIL SPILL PRIMARY RESPONSE ACTION CONTRACTOR; APPLICABILITY.

(a) As used in AS 46.04.035 and 18 AAC 75.500 -- 18 AAC 75.570, "oil spill primary response action contractor" means a person who is or intends to be obligated under contract to the holder of an approved oil discharge prevention and contingency plan issued under AS 46.04.030 to provide resources or equipment to contain, control, or clean up an oil discharge. "Oil spill primary response action contractor" does not include

(1) a person who provides only ancillary services or equipment not for the specific purpose of containing, controlling, or cleaning up an oil discharge; or

(2) an approved oil discharge prevention and contingency plan holder who provides to another plan holder resources or equipment to contain, control, or clean up an oil discharge.

(b) An oil spill primary response action contractor is not required to register under 18 AAC 75.500 -- 18 AAC 75.570 unless the contractor is directly obligated to a plan holder by contract to provide spill response resources to meet the requirements of AS 46.04.030 and 18 AAC 75.400 -- 18 AAC 75.495 and is listed in that plan holder's oil discharge prevention and contingency plan as providing those resources.

(c) The holder of an approved oil discharge prevention and contingency plan whose resources are listed in the plan of another plan holder for purposes of meeting the requirements of AS 46.04.030 and 18 AAC 75.400 -- 18 AAC 75.495 is not required to register as an oil spill primary response action contractor, but is subject to all other requirements of 18 AAC 75.425(e)(3)(H) and 18 AAC 75.445(i)(1) and (2).

(d) Any person may apply to the department for registration under 18 AAC 75.500 -- 18 AAC 75.570 as an oil spill primary response action contractor. (Eff. 9/25/93, Register 127)

Authority: AS 46.03.020 AS 46.04.035
AS 46.04.030(k) AS 46.04.070

18 AAC 75.510. GENERAL PROVISIONS.

(a) Beginning January 1, 1994, the resources of an oil spill primary response action contractor listed in an oil discharge prevention and contingency plan submitted under this chapter will not be considered by the department in its review of the plan unless that person is registered in accordance with 18 AAC 75.500 -- 18 AAC 75.570 and all other requirements of 18 AAC 75.425(e)(3)(H) and 18 AAC 75.445(i) are met.

(b) Registration of an oil spill primary response action contractor by the department does not

(1) constitute an assurance by the department of the qualifications or abilities of that contractor;

(2) constitute an assurance by the department that the contractor will adequately respond to a release or threatened release of oil; or

(3) provide a defense to liability under state law. (Eff. 9/25/93, Register 127)

Selected Alaska Oil & Hazardous Substance Pollution Control Regulations

Authority: AS 46.03.020 AS 46.04.035
AS 46.03.825 AS 46.04.070
AS 46.04.030

18 AAC 75.520. APPLICATION FOR REGISTRATION OR RENEWAL.

(a) Oil spill primary response action contractor registration under 18 AAC 75.500 -- 18 AAC 75.570 is effective for three years from the date of issuance under 18 AAC 75.550.

(b) A person seeking registration or renewal of registration as a primary response action contractor shall submit three copies of the application to the department's contractor registration and approval coordinator, division of spill prevention and response.

(c) An applicant for renewal of registration shall submit an application no less than 60 days before the registration expires. If there are no changes in the conditions of registration since the previous application, an application for renewal may incorporate the previous application by reference.

(d) An applicant for registration as a primary response action contractor whose resources will be used to meet all or part of an in-region response planning standard shall submit a separate application for each geographic region of operation as described in 18 AAC 75.495 for which the contractor's resources will be used.

(e) An applicant for registration as a primary response action contractor whose resources will be used to meet all or part of an out-of-region response planning standard shall submit an application for registration as an out-of-region oil spill primary response action contractor. Only one application is required for statewide out-of-region registration.

(f) Nothing in this section precludes a person from submitting applications for in-region and for out-of-region registration.

(g) A separate registration fee under 18 AAC 75.540 must accompany each application for registration or renewal of registration as an oil spill primary response action contractor. (Eff. 9/25/93, Register 127)

Authority: AS 46.03.020 AS 46.04.035
AS 46.04.030 AS 46.04.070

Editor's note: An application for registration or renewal of registration as an oil spill primary response action contractor should be sent to:

*Contractor Registration and Approval Coordinator
Alaska Department of Environmental Conservation
Division of Spill Prevention and Response
410 Willoughby Avenue, Suite 105
Juneau, Alaska 99801 - 1795*

*Telephone (907) 465-5275
FAX (907) 465-5245*

18 AAC 75.530. REGISTRATION APPLICATION CONTENTS.

(a) An applicant for registration as an oil spill primary response action contractor shall submit a written application to the department that includes

(1) the applicant's name, address, telephone number, and facsimile machine number;

Selected Alaska Oil & Hazardous Substance Pollution Control Regulations

(2) a call-out list of appropriate response personnel;

(3) a statement that the applicant is seeking registration as an out-of-region oil spill primary response action contractor or, if applying for in-region contractor registration, identification of the geographic region of operation described in 18 AAC 75.495 for which application is being made;

(4) the types of oil (such as persistent or nonpersistent) and receiving environments (such as marine, fresh water, open ocean, shallow water, ice, or land) for which the applicant is trained and equipped to respond;

(5) a complete description and most recent inventory of the applicant's oil spill response resources, including

(A) the number and location of trained personnel;

(B) a description of the applicant's minimum training requirements for response personnel and procedures for training additional personnel if needed; and

(C) the amount and location of

(i) oil containment equipment;

(ii) oil recovery equipment, including equipment nameplate ratings in barrels per hour;

(iii) transfer, storage, and disposal equipment;

(iv) dispersant or burning equipment; and

(v) significant ancillary resources and equipment; and

(6) a description of the applicant's previous oil spill activities and compliance history.

(b) Instead of submitting the information required under (a)(4) and (5) of this section, an applicant may submit a complete copy of an application for and a certified copy of the applicant's current Interim or Final Letter of Classification as an Oil Spill Removal Organization issued by the United States Coast Guard. If a letter of classification has not been issued at the time of application, the applicant shall submit a certified copy of the letter of classification upon its receipt.

(Eff. 9/25/93, Register 127)

Authority: AS 46.03.020 AS 46.04.035
AS 46.04.030 AS 46.04.070

18 AAC 75.540. REGISTRATION AND RENEWAL FEES.

The following fees are established for registration of oil spill primary response action contractors and must be submitted with the appropriate application:

(1) for initial application, \$500; or

(2) for renewal, \$100. (Eff. 9/25/93, Register 127)

Authority: AS 46.03.020
AS 46.04.035
AS 46.04.070

18 AAC 75.550. APPLICATION REVIEW PROCEDURES.

(a) After receipt of an application for registration or renewal as an oil spill primary response action contractor, the department will determine whether the application is complete. If the department finds that an application is incomplete, the applicant will be notified of the need for additional information. The department will review each complete application and issue a decision.

Selected Alaska Oil & Hazardous Substance Pollution Control Regulations

(b) The department will approve an application for oil spill primary response action contractor registration or renewal of registration if the applicant meets the application requirements of 18 AAC 75.510 -- 18 AAC 75.540 and the minimum registration standards of 18 AAC 75.560.

(c) After completing the review, the department will notify the applicant that the application for registration or renewal of registration has been approved or denied. If the application for registration or renewal has been approved, the department will include a registration certificate describing the conditions of approval, the date registration will expire, and, for an in-region primary response action contractor, the region of operation for which that contractor is registered. If the application is denied, the department will explain the basis for the denial and include a list of corrective actions that would be required for the applicant to obtain approval of registration or renewal.

(d) Within 10 days after receiving a notice of denial under (c) of this section, the applicant may request an informal review of the decision. The request for review must be submitted in writing to the director of the division of spill prevention and response and must include

- (1) the applicant's name, mailing address, and telephone number; and
- (2) a brief, clear summary of the reasons for requesting the review.

(e) A review requested under (d) of this section will be held within 10 days after the director receives a request for review, unless the director and the applicant agree to another time. After receiving a request for review under (d) of this section, the director will notify the applicant by telephone, facsimile, or personal delivery, of the time and place of the review.

(f) If the applicant fails to appear at the time and place stated in the notice issued under (e) of this section, and if a delay has not been granted by the director, the failure to appear will be considered a waiver of the applicant's right to an informal review under this section.

(g) A review under this section will be recorded, will be heard by the director or a designee, and will be informal. The applicant may

- (1) present witnesses and evidence in the applicant's own behalf; and
- (2) question witnesses and seek to disprove evidence presented by the department.

(h) Within 10 days after a review under this section, the director will issue a final decision, stating the reasons for the decision, and indicating the evidence relied upon in reaching that decision.

(i) Nothing in this section affects an applicant's right to appeal the department's decision under the Administrative Procedure Act. (Eff. 9/25/93, Register 127)

Authority: AS 46.03.020 AS 46.04.035
 AS 46.04.030 AS 46.04.070

18 AAC 75.560. MINIMUM REGISTRATION STANDARDS.

(a) In addition to the requirements of (b) of this section, the minimum registration standards and verification requirements for an oil spill primary response action contractor required under AS 46.04.035(a)(1) -- (4) are the oil discharge prevention and contingency plan requirements and the response planning standards set out in AS 46.04.030 and 18 AAC 75.425 -- 18 AAC 75.495 that are applicable to a contractor listed in an approved oil discharge prevention and contingency plan.

(b) In addition to the requirements of (a) of this section, an oil spill primary response action contractor must be in compliance with the following minimum registration standards:

Selected Alaska Oil & Hazardous Substance Pollution Control Regulations

(1) all response resources that the contractor has agreed in writing to provide to the oil discharge prevention and contingency plan holder to meet all or part of the in-region response planning standards applicable to that plan holder must be located within the plan holder's region of operation unless the department has approved another location;

(2) the contractor shall maintain sufficient response preparedness to immediately initiate response efforts as described in the applicable contingency plan upon direction by the plan holder; response preparedness is subject to verification by the department through inspections and plan holder discharge exercises;

(3) training of contractor personnel must comply with 18 AAC 75.445(j) and must include appropriate Occupational Safety and Health Administration Hazardous Operations training;

(4) professional response action standards and practices must be continuously maintained, and must include

(A) responding immediately upon direction by the plan holder;

(B) remaining in substantial compliance with applicable contracts;

(C) abiding by applicable permits and authorizations unless directed to proceed otherwise by the federal or state on-scene coordinator;

(D) maintaining a working knowledge of all applicable oil pollution statutes and regulations and pertinent provisions of each contingency plan in which that contractor is listed; and

(E) maintaining a safe working environment and an acceptable safety history.

(c) No later than January 31 of each year, an oil spill primary response action contractor registered under this chapter shall provide to the department a complete list of oil discharge prevention and contingency plans in which that contractor has agreed in writing to be listed as a primary response action contractor. (Eff. 9/25/93, Register 127)

Authority: AS 46.03.020 AS 46.04.035
AS 46.04.030 AS 46.04.070

18 AAC 75.570. FAILURE TO COMPLY.

(a) If the department determines that an oil spill primary response action contractor has failed to meet or maintain a minimum registration standard identified in 18 AAC 75.560, the department will, in its discretion, revoke, suspend, or modify

(1) the contractor's registration; and

(2) its approval of the oil discharge prevention and contingency plan in which that contractor is listed as an oil spill primary response action contractor.

(b) A person who is aggrieved by a department decision under (a) of this section may request an informal review of that decision, using the procedures described in 18 AAC 75.550(d) -- (h). Nothing in this subsection affects that person's right to appeal the department's decision under the Administrative Procedure Act.

(Eff. 9/25/93, Register 127)

Authority: AS 46.03.020 AS 46.04.035
AS 46.04.030 AS 46.04.070

**ARTICLE 6. Civil Penalties for Discharge of Petroleum
and Petroleum Products.**

18 AAC 75.605. APPLICABILITY.

18 AAC 75.605 -- 18 AAC 75.670 establish a schedule of civil penalties under AS 46.03.758 for the discharge of petroleum and petroleum products and byproducts, other than crude oil. The schedule of civil penalties does not apply to a discharge that is specifically made subject to the provisions of AS 46.03.760(a). (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.03.758

18 AAC 75.610. FRESHWATER ENVIRONMENTS.

(a) For the purposes of AS 46.03.758(b)(1)(A), freshwater environments with significant aquatic resources are classified as follows:

(1) Critical freshwater environments include

(A) surface and subsurface water supplies for which the commissioner of natural resources has issued a water use permit under AS 46.15.040 -- 46.15.185, or which are in fact being used for a purpose that would qualify for a water use permit;

(B) rivers, lakes, and streams designated under AS 16.05.870(a) as important for the spawning, rearing, or migration of anadromous fish, and the water of lakes, streams, and rivers that flows or empties into those designated waters;

(C) lakes, streams, rivers, and freshwater wetlands within the boundaries of land administered under the National Wildlife Refuge System, and the water of lakes, streams, and rivers that flows or empties into those waters;

(D) lakes, streams, rivers, and freshwater wetlands within the boundaries of game reserve areas, refuges, critical habitat areas, and sanctuaries established under AS 16.05.255(1) or AS 16.20, and the water of lakes, streams, and rivers that flows or empties into those waters; and

(E) lakes, streams, rivers, and freshwater wetlands within the boundaries of fish reserve areas, refuges, critical habitat areas, and sanctuaries established under AS 16.05.251(1) or AS 16.20, and the water of lakes, streams, and rivers that flows or empties into those waters; and

(2) Sensitive freshwater environments include

(A) lakes other than those classified in (1) of this subsection;

(B) freshwater wetlands other than those classified in (1) of this subsection; and

(C) subsurface freshwaters other than those classified in (1)(A) of this subsection.

(b) For purposes of AS 46.03.758(b)(1)(C), all freshwater of the state that is not classified in (a) of this section is classified as "without significant aquatic resources." (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.03.758

18 AAC 75.620. MARINE ENVIRONMENTS.

(a) For the purposes of AS 46.03.758(b)(1)(B), estuarine, intertidal, and saltwater environments are classified as follows:

(1) Critical marine environments include

Selected Alaska Oil & Hazardous Substance Pollution Control Regulations

(A) marine water within the boundaries of state game refuges established under AS 16.05.255(1) or AS 16.20;

(B) marine water within the boundaries of fish and game critical habitats established under AS 16.20;

(C) marine water within the boundaries of marine sanctuaries established under 16 U.S.C. 1431 -- 16 U.S.C. 1445, as amended through July 1, 1991;

(D) marine water within the boundaries of areas administered under the National Wildlife Refuge System;

(E) marine water within one statute mile of the mouth of waters designated under AS 16.05.870(a) as important for the spawning, rearing, or migration of anadromous fish;

(F) marine water within one statute mile of a seabird colony or marine mammal rookery or hauling ground identified by the Alaska Department of Fish and Game under AS 16.20;

(G) high density sea otter habitat identified by the Alaska Department of Fish and Game under AS 16.20; and

(H) marine water within the barrier island-lagoon ecosystems extending from the Colville River to Canning River, and seaward of the Copper River delta; and

(2) Sensitive marine environments include

(A) the inside waters of Southeast Alaska not otherwise classified in (1) of this subsection;

(B) saltwater wetlands and other intertidal and estuarine areas not otherwise classified in (1) of this subsection;

(C) Prince William Sound, and the bays, arms, fjords, ports, and other inside marine waters of Prince William Sound not otherwise classified in (1) of this subsection; and

(D) all marine water within 10 statute miles of any point of those waters designated in (1) of this subsection.

(b) For the purposes of AS 46.03.758(b)(1)(C), marine water that is not classified in (a) of this section is classified as "without significant aquatic resources." (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.03.758

[Editor's note: Seabird colonies, marine mammal rookeries or hauling grounds, and high density sea otter habitats, referred to in 18 AAC 75.620(a)(1)(F) and (G) are described in the current edition of "Alaska Habitat Management Guides", published by, and available for review at the Alaska Department of Fish and Game.]

18 AAC 75.630. PUBLIC LAND ENVIRONMENTS.

(a) For the purposes of AS 46.03.758(b)(1)(C), public land is classified as follows:

(1) Critical terrestrial environments include

(A) state game reserve areas, refuges, and sanctuaries established under AS 16.05.255(1) or AS 16.020;

(B) state parks, campgrounds, and waysides;

(C) municipal parks and park reserves;

(D) national parks, preserves, wilderness areas, monuments, recreation areas or other National Park System units, and lands administered under the National Wildlife Refuge System;

(E) established campgrounds, scenic waysides, and public areas; and

Selected Alaska Oil & Hazardous Substance Pollution Control Regulations

(F) national historical landmarks;

(2) Very sensitive terrestrial environments include

(A) land administered under the National Forest System not otherwise classified in (1) of this subsection;

(B) land underlain with continuous permafrost not otherwise classified in (1) of this subsection; and

(C) land in state forests and research areas not otherwise classified in (1) of this subsection; and

(3) Sensitive terrestrial environments include land other than that classified in (1) or (2) of this subsection upon which continuous natural terrestrial vegetation cover is present.

(b) For the purposes of AS 46.03.758(b)(1)(C), all public land not classified in (a) of this section is classified as "without significant terrestrial environmental resources." (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.03.758

18 AAC 75.640. TOXICITY OF PETROLEUM AND PETROLEUM PRODUCTS AND BYPRODUCTS.

For the purposes of AS 46.03.758(d), the toxicity of petroleum and petroleum products and byproducts is as follows:

(1) highly toxic:

(A) numbers 1, 2, and Arctic diesel fuel and heating oil;

(B) jet aviation fuels A and B;

(C) motor gasoline, including aviation gasoline;

(D) kerosene; and

(E) stationary turbine fuels;

(2) moderately toxic:

(A) waste oil and waste oil mixtures;

(B) lubricating oil; and

(C) jet fuels other than those specified in (1)(B) of this section;

(3) less toxic:

(A) bunker and residual fuel oils; and

(B) hydraulic fluids; and

(4) relatively nontoxic:

(A) asphalts;

(B) tars; and

(C) other petroleum and petroleum products and byproducts not listed in

(1) -- (3) of this section. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.03.758

18 AAC 75.650. DEGRADABILITY OF PETROLEUM AND PETROLEUM PRODUCTS AND BYPRODUCTS.

For the purposes of AS 46.03.758(d), the degradability of petroleum and petroleum products and byproducts is as follows:

(1) low degradability:

(A) asphalt;

Selected Alaska Oil & Hazardous Substance Pollution Control Regulations

- (B) tar;
 - (C) bunker and residual fuel oils; and
 - (D) other petroleum and petroleum products and byproducts not otherwise listed in
- (2) or (3) of this section;
- (2) moderate degradability:
 - (A) hydraulic fluids;
 - (B) lubricating oil; and
 - (C) waste oils and waste oil mixtures; and
 - (3) high degradability:
 - (A) motor gasoline, including aviation gasoline;
 - (B) numbers 1, 2, and Arctic diesel fuel and heating oil;
 - (C) jet and stationary turbine fuels; and
 - (D) kerosene. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.03.758

18 AAC 75.660. DISPERSIBILITY OF PETROLEUM AND PETROLEUM PRODUCTS AND BYPRODUCTS.

For the purposes of AS 46.03.758(d), the dispersibility of petroleum and petroleum products and byproducts is as follows:

- (1) highly dispersible:
 - (A) motor gasoline, including aviation gasoline;
 - (B) all jet fuels;
 - (C) kerosene;
 - (D) numbers 1, 2, and Arctic diesel fuel and heating oil;
 - (E) hydraulic fluids; and
 - (F) stationary turbine fuels;
 - (2) moderately dispersible:
 - (A) emulsified oil mixtures;
 - (B) lubricating oils; and
 - (C) waste oil and waste oil mixtures; and
 - (3) low dispersibility:
 - (A) bunker and residual fuel oils;
 - (B) asphalts;
 - (C) tars; and
 - (D) other petroleum and petroleum products and byproducts not otherwise listed in
- (1) or (2) of this section. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.03.758

Selected Alaska Oil & Hazardous Substance Pollution Control Regulations

18 AAC 75.670. SCHEDULE OF CIVIL PENALTIES.

The schedule of civil penalties for which a person may be held liable under AS 46.03.758(e) is established as follows:

(1) The base civil penalty for a discharge into a receiving environment is as follows:

Receiving Environment	Freshwater	Marine	Public Land
Critical environments	\$10.00	\$2.50	\$1.00
Very sensitive environments	N/A	N/A	\$0.75
Sensitive environments	\$ 5.00	\$2.00	\$0.50
Environments without significant resources	\$ 1.00	\$1.00	\$0.25

(2) Toxicity, degradability, and dispersibility factors are as follows:

	Factor
(A) toxicity*	
(i) highly toxic	1.0
(ii) moderately toxic	0.75
(iii) less toxic	0.50
(iv) relatively nontoxic	0.25
(B) degradability	
(i) low degradability	1.0
(ii) moderate degradability	0.50
(iii) high degradability	0.25
(C) dispersibility	
(i) high dispersibility	0.15
(ii) moderate dispersibility	0.50
(iii) low dispersibility	1.0

(3) The net civil penalty that will be assessed per gallon of petroleum or petroleum product or byproduct discharged is calculated by multiplying the base penalty established in (1) of this section by the arithmetic mean of the factors established in (2) of this section. If a portion of the petroleum or petroleum product or byproduct enters more than one receiving environment, the civil penalty will be based upon the most sensitive receiving environment which that portion enters.

(Eff. 5/14/92, Register 122)

Authority: AS 46.03.020

AS 46.03.758

**[Editor's note: To determine the toxicity factor for a particular oil, the factor from the table is multiplied by a fraction whose numerator is the percent concentration of aromatics in the oil and whose denominator is 45. In no case may the toxicity factor exceed 1.0.]*

ARTICLE 7. Surface Oiling.

18 AAC 75.700. SURFACE OILING PERMIT.

(a) No person may discharge, cause to be discharged, or permit the discharge of oil, asphalt, bitumen, or a residuary product of petroleum onto the land of the state unless that person has been issued a surface oiling permit under 18 AAC 75.730.

(b) An application for a surface oiling permit

(1) is subject to the requirements of 18 AAC 15;

(2) must be made on forms supplied by the department; and

(3) must contain information considered necessary by the department.

(c) A person who proposes to stabilize soil with the application of asphalt emulsions, tars, asphaltic oils, cutback asphalts, oils, or other residuary petroleum product, without immediately applying a blotter or cover coat of aggregate, is not exempt from the surface oiling permit requirements of this chapter. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.03.740

18 AAC 75.710. EXEMPTION FROM SURFACE OILING PERMIT.

A person who proposes to construct one or more of the following types of surfaces is not required to obtain a surface oiling permit under this chapter, but shall ensure that construction of the surface does not result in pollution of land or waters of the state:

(1) a bituminous treatment surface that includes a surface constructed by sweeping the surface, applying a priming material, applying a bituminous body coat, and spreading a blotter or cover of mineral aggregate;

(2) a road-mix bituminous surface for which the mineral aggregate and the bituminous material are mixed directly in the surface;

(3) a plant-mixed bituminous surface for which the mineral aggregate and the bituminous material are thoroughly mixed at a suitable plant and then deposited on the surface;

(4) a bituminous macadam surface with a wearing course composed of broken stone aggregate of relatively coarse size and a bituminous material that is forced by penetration into the interstices of the stone after the stone has been compacted on the base; and

(5) a bituminous concrete or sheet asphalt surface with a wearing course composed of a bituminous mixture prepared in a stationary plant under close control of temperature, moisture content, and mixture composition. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.03.740

18 AAC 75.720. PROHIBITIONS.

(a) The use of oil for surface oiling or as a dust suppressant is prohibited if the oil contains any of the following components in the concentrations indicated:

(1) polychlorinated biphenyls (PCBs) in any detectable concentration;

(2) total volatile aromatics in 5000 parts per million by weight or greater;

(3) total halogenated volatile organics in 100 parts per million by weight or greater;

or

(4) lead in 300 parts per million by weight or greater.