



## Public Input Needed on Alaska Department of Environmental Conservation's Oil Spill Contingency Plan Regulation Reform Initiative

Alaska Department of Environmental Conservation (ADEC) recently opened a public scoping process to solicit comments and input from stakeholders, the public, and industry on areas where Alaska oil spill regulations ([18 AAC 75, Article 4](#)) and Alaska State Statute 46.04 ([AS 46.04](#)), Oil and Hazardous Substance Pollution Control, could be streamlined.

AS 46.04, the basis for oil spill regulations, contains many key laws designed to prevent oil spills and ensure that there are enough trained responders and equipment in place should prevention measures fail. For instance, AS 46.04 includes Alaska's Oil Spill Response Planning Standard (RPS). The RPS was created after the 1989 Exxon Valdez oil spill as a direct result of the massive failure of the spill response system at that time. The RPS establishes a foundation that continues to distinguish Alaska, and particularly Prince William Sound, as having a world-class prevention, preparedness, and response system.

**Input from the public will be critical as ADEC seeks to modify existing regulations.** While regulations can be changed by the agency that oversees them (in this case ADEC), state statutes can only be amended by the legislature. This means that ADEC will need to propose any statutory changes they would like to see during the legislative session in Juneau. ***Should that occur, public input to individual representatives in the House and Senate will be crucial to preventing rollback of state statutes that protect our communities, local economies, and the environment.***

Strong statutes and regulations are one of the main reasons why Alaska has not had a major oil spill since the Exxon Valdez disaster. The world-class oil spill prevention and response system for the Valdez Marine Terminal and associated tankers is a direct result of post-Exxon Valdez spill laws and regulations designed to protect Alaskans and our environment, as well as commercial and sport fishing, aquaculture, recreation, tourism, subsistence, and cultural interests. It is unreasonable for ADEC to claim now, after 30 profitable years of industry compliance, that the requirements are too onerous.

Protecting our communities and the environment is not burdensome; it is the cost of doing business in Alaska. Reducing any perceived burden to industry by rolling back or eliminating proven oil spill prevention and response requirements transfers the risk and burden of another oil spill to the communities, citizens, and environment they were designed to protect. This initiative disregards the efforts of hundreds of Alaskans who worked tirelessly on improving regulatory requirements after the Exxon Valdez oil spill to ensure that our state would never again suffer a similar environmental disaster.

**Public input is needed to strongly oppose any legislative or regulatory changes that would erode oil spill prevention and response standards, increase the risk of a catastrophic spill, or demonstrate a return of the complacency on the part of the oil industry and regulators that Congress determined to be a primary cause of the Exxon Valdez oil spill.**

### How You Can Help

On October 15, 2019, ADEC published a [90-day public scoping notice](#) to solicit input on areas of the regulations that could be streamlined or removed (to reduce burden on industry), as well as areas which could be improved. The scoping notice covers oil discharge prevention and contingency plan regulations under [Article 4 of 18 AAC 75](#) and allows for

comments on ADEC statutory authorities relevant to contingency planning under [AS 46.04](#). No specific regulation or statute revisions are proposed at this time, nor are there any drafts of either to review.

PWSRCAC wants to do everything possible to make sure the safeguards put in place over the past 30 years are not weakened. Industry has shown they have been able to meet or exceed current regulatory requirements and has demonstrated a commitment to the environment through safer operations. Any perceived burden to industry should be weighed against the devastation and enormous burden another major oil spill would place on the people, fish, wildlife, and environment of our region.

**Public input is needed to protect and retain Alaska’s strong oil spill prevention and response regulations.** After the public scoping, ADEC will review the input received and put forth any potential changes, followed by a formal public comment period for those proposed changes. There is a 30-day minimum required for all state public comment periods.

**During the current scoping period, we encourage the public to provide input which strongly opposes any legislative or regulatory changes that would erode oil spill prevention and response standards. Also we encourage the public to insist on more than the required minimum 30-day public comment period for any proposed revisions put forth by ADEC.** We must ensure that adequate time is provided to analyze proposed changes and gather input from all interested public stakeholders. This is essential to make sure proposed changes do not weaken important oil spill prevention and response measures that many people fought so hard to implement after the Exxon Valdez oil spill. Public input during the scoping process can be submitted through January 15, 2020: <http://alaskadec.commentinput.com/?id=fdLgJY2gM>

*“The notion that safety can be ensured in the shipping industry through self-regulation has proved false and should be abandoned as a premise for policy. Alert regulatory agencies, subject to continuous public oversight, are needed to enforce laws governing the safe shipment of oil.”*

- Alaska Oil Spill Commission Report (1990), The Wreck of the Exxon Valdez: Implications for Safe Transportation of Oil

**What PWSRCAC knows about ADEC’s Regulation Reform Initiative**

To date, though it has been repeatedly requested, ADEC has not provided any details in writing regarding specific input they received which triggered this reform initiative or what specific aspects of the regulations are the focus of this reform. As a result, what is known is based solely on public comments made by Commissioner Jason Brune, as is reflected in the following summary.

At the Resource Development Council meeting on March 21, 2019,<sup>1</sup> Commissioner Brune reflected on Governor Mike Dunleavy’s message of Alaska being “open for business.” He then announced his initiative to review ADEC’s regulations to make sure they are “no more and no less than what the Legislature and the federal government has asked us to do.” Brune said his main focus is to ensure his department has predictable, science-based, timely, legally defensible programs within which companies can operate.

Of the more than 100 regulatory packages that the Dunleavy administration has identified for elimination or significant reform, nearly half were put forth by ADEC. Regulations governing oil spill contingency plans (c-plans) have been noted by ADEC as a starting place because, according to Brune, the 50 pages of regulations governing c-plans are “getting way

<sup>1</sup> Jason Brune at the March 21, 2019 Resource Development Council meeting. <https://player.vimeo.com/video/325737727?color=ffffff>

too burdensome.” At the March meeting, Brune urged business people to identify for ADEC any regulations that appear unnecessary and that may not, in fact, be protecting human health and the environment. He also talked about the importance of ADEC’s mission “to conserve, improve, and protect Alaska’s natural resources and environment to enhance the health, safety, economic and social well-being of Alaskans,” repeatedly emphasizing the importance of the word “economic.”

At a PWSRCAC Board meeting in May of 2019, Brune referenced the 30th anniversary of the Exxon Valdez oil spill and put forward the analogy of “safety lessons being written in blood, the same as environmental lessons are written in oil.” He went on to say that ADEC has “the responsibility to make sure that the economy of Alaska is protected and that economic development and environmental protection are not mutually exclusive.” When talking about the c-plan regulation review effort, Brune stated that he is not going to rush the process and is committed to working with the public.

#### **Additional context: What is a contingency plan?**

A contingency plan (c-plan) is a document which provides information and steps to be taken before, during, and after an emergency. An *oil spill* c-plan contains detailed information on activities and actions that will be taken to prevent and/or respond to an oil spill. **Preventing an oil spill from occurring in the first place is the most effective strategy to protecting human health and the environment.** If an oil spill occurs, however, it is necessary that a systematic and well-organized approach to contain, control, and clean up be planned ahead of time so it can be implemented quickly.

C-plans contain information about emergency actions and notifications that must be taken in the event of a spill, as well as comprehensive information on facilities or tank vessels, response organization, and chain-of-command structures. Each plan must also contain information that demonstrates that enough equipment and personnel are available to respond and that industry considers the best technology available. Owners and operators of facilities or tank vessels are required to submit their c-plans to regulating agencies and obtain approval prior to operation. Regulators review the c-plan, and if it meets applicable laws and regulations, the plan gets approved. These plans are renewed at fixed time intervals or when there is a change in operations.

#### **Some History of ADEC’s Contingency Planning Regulations**

Prior to the Exxon Valdez spill, Alaska’s regulations governing oil spill c-plans did not provide for adequate prevention and response. Two weeks after the spill, Alaska Governor Steve Cowper issued an Emergency Order that noted the failures of response system covered by the tanker c-plans in Prince William Sound and his expectation for a robust new system. A team of oil industry experts, attorneys, state employees, and spill response specialists came together to solve this challenge. The oil spill response framework created after the spill - established in AS 46.04 and enhanced over time - is ultimately the product of years of hard work, critical thinking, and creative problem-solving by a group of experienced professionals and passionate stakeholders who were impacted in some way by the Exxon Valdez oil spill.

Since the post-Exxon Valdez oil spill c-plan regulations were adopted in 1992, ADEC has revised them on nine occasions to address specific concerns, including the need to clarify the requirements; streamline the review process; include new categories of contingency plans; make the process of drafting plans less onerous; and expedite and improve the predictability of plan review. The current scoping process is extremely broad, covering some 60 pages of regulations and 34 sections of statutes, with no indication as to what is currently under consideration for removal or reform by ADEC. This review is coming at a time when ADEC staffing has a vacancy rate of almost 20 percent. The extra workload placed on ADEC staff to solicit and process comments received through this broad public scoping will require a significant

amount of time and effort. With limited resources, a thorough and adequate analysis of proposed changes may not occur.

One of the concerns expressed about the c-plan regulations specifically is that they encompass 50 pages. While that may sound substantial on its face, with review it becomes clear that this is due to the number of types of plans covering different operations subject to these requirements. In other words, there is no “one plan fits all” for facility operations and transport methods. For example, the Alaska Legislature has established various standards for crude tankers, non-crude tankers and barges, crude oil terminals, non-crude terminals, oil and gas exploration facilities, production facilities, pipelines, railroad tank cars, etc. Also, many of the details in c-plan regulations were adopted over time to provide guidance and predictability to industry concerning its expectations for timely approval of plans and to improve the state’s ability to defend its plan approval decisions in administrative and court appeals.

Many of the people involved in creating Alaska’s strong oil spill statutes and regulations after the Exxon Valdez oil spill believe that if the system were to be weakened or removed, Alaskans would face the risk of reliving an event that was devastating to the environment, economy, culture, and socio-economics of the oil spill impacted area - an event that Commissioner Brune stated he does not want to ever see happen again.