

Briefing for PWSRCAC Board of Directors – September 2020

INFORMATION ITEM

Sponsor: Linda Swiss
Project number and name or topic: 6000 - Oil Spill Response
 Program/ADEC's C-Plan Regulation
 Scoping Process

1. **Description of agenda item:** Staff from the Alaska Department of Environmental Conservation (ADEC) will provide an update on ADEC's 2018/2019 oil spill regulatory reform efforts to Article 4 of 18 AAC 75 and to Alaska Statute 46.04 (AS 46.04). Starting in October of 2019, ADEC announced a public scoping soliciting comments and input from stakeholders, the public, and industry on areas where these regulations and/or statutes 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. It is important to note the significance of AS 46.04, as it includes Alaska's Oil Spill Response Planning Standards (RPS) that were created after the 1989 Exxon Valdez oil spill as a direct result of the massive failure of the spill response system at that time.

PWSRCAC is concerned that ADEC's c-plan reform initiative could result in changes that could significantly weaken the world-class oil spill prevention and response system in Prince William Sound. This system 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.

Approximately 130 comment letters were submitted to ADEC for this public scoping. All comments submitted to ADEC can be found [here](#). The Council's March 11, 2020 comment letter in response to the public scoping is attached.

2. **Why is this item important to PWSRCAC:** Maintaining strong oil spill prevention and response standards is a key objective for PWSRCAC. Any rollbacks in regulations have the potential to result in cuts to the existing prevention and response system. PWSRCAC recently commissioned a report about the history and legislative intent of Alaska's strong Response Planning Standards, titled "Alaska's Oil Spill Response Planning Standard - History and Legislative Intent." A link to the report can be found here: www.bit.ly/LegislativeIntent. Every individual interviewed for this report spoke about their involvement in creating and establishing Alaska's response planning standards with a profound sense of accomplishment. These individuals were adamant that if the system created after the 1989 spill were to be weakened or removed, Alaskans would face the risk of reliving an event that is still deeply impressed upon all who lived through it. With oil spills, as with many things, we must learn from history and endeavor never to repeat the past.

3. **Previous actions taken by the Board on this item:**

<u>Meeting</u>	<u>Date</u>	<u>Action</u>
Board	10/29/19	Approved Resolution 19-03, "Safeguarding Alaska's Oil Spill Prevention and Response Standards."
Board	10/29/19	Approved a budget modification adding \$40,000 to 6000 Oil Spill Response program/professional services for regulatory review assistance.

4. **Summary of policy, issues, support or opposition:** The position taken by the Council in Resolution 19-03 is to strongly advise against any legislative or regulatory changes that 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 oil industry and regulators that Congress determined to be a primary cause of the Exxon Valdez oil spill. The Council also believes that if the system created after the 1989 spill is weakened, Alaskans will likely face an increased risk of reliving another major oil spill that could damage Alaska's commercial, sport, and subsistence fishing; sport and subsistence hunting; other businesses; fish, wildlife, and environment; and the culture and quality of life of the people.
5. **Committee Recommendation:** All committees have been kept apprised of ADEC's Regulatory Scoping Process and have been involved and in support of the actions that have been taken by the Council. All PWSRCAC committee volunteers are encouraged to provide input on future actions planned to ensure the protection of the c-plan regulations and statutes that have been so successful in preventing another catastrophic oil spill for more than 30 years.
6. **Action Requested of the Board of Directors:** No action is requested, as the agenda item is for information only.
7. **Attachments:**
 - a. Council's March 11, 2020 letter to ADEC re: Comments on Notice of Public Scoping Concerning Oil Discharge Prevention and Contingency Plan Requirements
 - b. Council Resolution 19-03 Safeguarding Alaska's Oil Spill Prevention and Response Standards



Regional Citizens' Advisory Council / "Citizens promoting environmentally safe operation of the Alyeska terminal and associated tankers."

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March 11, 2020

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Seth Robinson
Alaska Department of Environmental Conservation
Division of Spill Prevention and Response
Prevention, Preparedness, and Response Program
610 University Avenue
Fairbanks, Alaska 99709
Via email: dec.cpr@alaska.gov

RE: Comments on Notice of Public Scoping Concerning Oil Discharge
Prevention and Contingency Plan Requirements

Dear Mr. Robinson:

The Prince William Sound Regional Citizens' Advisory Council (PWSRCAC) is an independent non-profit corporation whose mission is to promote environmentally safe operation of the Valdez Marine Terminal and associated tankers. Our work is guided by the Oil Pollution Act of 1990 and our contract with Alyeska Pipeline Service Company. PWSRCAC's 18 member organizations include communities in the region affected by the 1989 *Exxon Valdez* oil spill as well as commercial fishing, aquaculture, Native, recreation, tourism, and environmental groups. PWSRCAC takes the responsibility of reviewing and commenting on industry Oil Discharge Prevention and Contingency Plans (ODPCP) very seriously and has reviewed and/or commented on every plan application and amendment made available to it.

It is with these responsibilities in mind that PWSRCAC offers these comments in response to the Alaska Department of Environmental Conservation (ADEC)'s Public Scoping Notice Concerning Oil Discharge Prevention and Contingency Plans.

1. The Importance of the Current Statutory and Regulatory Protections

The ODPCP statutes in Alaska Statute 46.04 (AS 46.04) are critical parts of Alaska's oil spill prevention and response mandates enacted after the failures of the response to the *Exxon Valdez* oil spill.

These statutes establish the response planning standards for the volumes of oil and timeframes for oil spill containment and cleanup that must be demonstrated in an ODPCP (AS 46.04.030(k)). The statute requires that the ODPCP provide for the use of best available technology available at the time the ODPCP is submitted or renewed. Recognizing the importance of preventing oil spills in the first place, AS 46.04.030 requires that an ODPCP address both oil spill prevention and oil spill response.

In order to ensure an immediate and timely response to tankers calling at the Valdez Marine Terminal, AS 46.04.020(g) requires that Alyeska Pipeline Service Company (Alyeska) immediately contain and control a spill from vessels en route to, berthed at, or transiting from the Trans-Alaska Pipeline System (TAPS) marine terminal or travelling on waters within Prince William Sound. In addition, Alyeska is required to provide these spill response services under contract by AS 46.04.030(q) until the spill response is transferred to another responsible party with the approval of the federal and state on-scene coordinators.

The Alaska ODPCP statutes focus on the unique challenges of oil operations and spill response in Alaska and the need to protect Alaska's resources, communities and local economies from the impact of oil spills. The Alaska statutes are more comprehensive and protective than the corresponding federal response plans required by the Oil Pollution Act of 1990. These statutes have been in place for some thirty years, protecting Alaska and ensuring that industry and responders maintain vigilance in preventing spills and readiness in the event of a mishap. Industry has flourished and profited with these essential mandates in place. The claim that these safeguards are now too onerous is simply untrue. These statutes and regulations are one of the reasons Prince William Sound has not suffered a catastrophic oil spill since 1989. For those spills that did occur, the statutes have provided the necessary enforcement tools to strengthen needed prevention measures. Success is not a reason to remove these vital safeguards. After the 1989 *Exxon Valdez* oil spill, Congress found that a lack of vigilance and complacency on the part of both industry and regulators played a role in the spill. We cannot afford to make that mistake again.

PWSRCAC does not think the regulations are necessarily flawed as they are written. The regulations have proven to be protective of Alaska's people and environment for decades, and it is critical that the protections written into them not be weakened in any way. It is equally important to maintain transparency, predictability, and specificity required to verify operational needs, which is currently in the regulations.

2. Alaska's Oil Discharge Prevention and Contingency Plans have Seven Important but Different Objectives which are Essential to Protection of the Communities and Environment of Prince William Sound

While current regulations could be clarified or simplified to improve their usability, it is critical that all stakeholders understand that the regulations require that an ODPCP meet seven important but differing objectives. An ODPCP is:

- A. a "working" emergency plan;
- B. a detailed long-term response plan and procedures;
- C. a compliance demonstration of the access to equipment and resources to meet the facility's response planning standard and the separate ability to protect environmentally sensitive areas;
- D. an assessment of past and potential spills at the facility and how they can be prevented;
- E. a description of spill prevention measures required by the Article 1 regulations (18 AAC 75.005 - .085), federal prevention requirements, and company spill prevention measures at use at the facility;
- F. a demonstration of the use of best available technology by the plan holder; and
- G. a permit to operate that, if not followed, is a violation of law.

If a plan fails to meet any of the above criteria, it does not meet the requirements of Alaska regulations and statutory mandates. Any future changes to the regulations need to be made with full recognition of these purposes.

3. Statutes and Regulations of Particular Importance to PWSRCAC

In sections 5-12 of our comments below, we provide input on parts of the regulations where improvements may be appropriate.

Before discussing those regulations, we want to highlight several areas of statute and regulation that PWSRCAC strongly believes should not be changed because to do so would result in a degradation of the protections currently in place. The following areas should not be eliminated or weakened:

- A. The statutory and regulatory requirements for response planning standards (RPS) at the volumes currently specified should be maintained. PWSRCAC is aware these planning standards are robust and the bar has been set high. The *Exxon Valdez* oil spill demonstrated that time is of the essence in a spill response in order to avoid an environmental and economic catastrophe. The RPS regulations set the expectation that appropriate equipment and trained responders will be available in the region of operation to begin a response immediately in order to contain, control, and clean up oil before it begins to spread across a larger geographic region. Doing so should reduce the impact of the spill on Alaska's people and environment.
- B. The statutory requirements for the common operating agent of TAPS, including the Valdez Marine Terminal (VMT) and associated oil tankers, should be preserved. This commitment is currently met by Alyeska's Ship Escort/Response Vessel System (SERVS) to provide services required in a response action under contract terms as provided under AS 46.04.030(q). Alyeska maintains and operates the TAPS and VMT for all companies who operate or charter vessels to transport crude oil through Prince William Sound (PWS). The impact of another crude oil spill in PWS could be devastating. It is imperative and practical for these companies to have one common primary response action contractor with local and regional knowledge, experience, and resources that are focused on and available for a crude oil spill response.

In order to ensure an immediate and timely response to tankers calling at the VMT, AS 46.04.020(g) requires that Alyeska immediately contain and control a spill from vessels en route to, berthed at, or transiting from the TAPS marine terminal or travelling on waters within Prince William Sound. In addition, Alyeska is required to provide these spill response services under contract by AS 46.04.030(q) until the spill response is transferred to another responsible party with the approval of the federal and state on-scene coordinators. These provisions were enacted because Alyeska questioned its obligation under the TAPS agreements and federal TAPS legislation to respond to tanker spills, and because of Alyeska's lack of response to the Exxon Valdez spill in the initial days of the spill and the challenges of the transition of the cleanup to Exxon. As Attorney General Charlie Cole explained to the Alaska Legislature in 1992, these provisions are necessary to ensure clear state legal authorities requiring Alyeska's response obligations, and to tie those obligations into the ODPCP provisions of AS 46.04.030.

- C. The regulatory requirement for operationally-specific and geographically-specific spill response scenarios is necessary to ensure that spill response planning includes

not just lists of available equipment but also demonstrates how that equipment will be used. During the Exxon Valdez response, one reason that a response was delayed was that there was no plan for immediately deploying the available equipment. The process of writing robust scenarios helps plan holders understand exactly what equipment and personnel they would need to address all aspects of a spill response and how those resources would be used. Additionally, scenarios help plan reviewers ensure that resources and procedures are in place to protect the environment and people of Alaska as required by statutes and regulations. Finally, having scenarios provides responders with “push-button” response actions that decrease delays in initiating a response and potentially decrease the geographic area affected by an oil spill.

- D. The regulatory requirement under 18 AAC 75.408(c)(7) requires plan holders to provide copies of plans and amendments in which all proposed additions, revisions, and deletions are identified in the plan. This is an important requirement because it ensures transparency in the process of reviewing ODPCPs and helps facilitate the public plan review process; therefore, this requirement should remain in place.
- E. The regulatory requirement for plan holders to provide electronic copies of the plans to ADEC and for those plans to be made available on the ADEC website is a reasonable and important requirement. The plans are legal assurances to the people of Alaska and, as such, the most current versions should be readily accessible. Maintenance of plans on the ADEC website reduces issues with version control by ensuring correct versions are easily accessible and publicly available.
- F. The regulatory requirement of including Regional Citizens' Advisory Councils (RCACs) as recipients required to receive copies of new plans, plan renewals, and plan amendments must be maintained in order for the RCACs to continue their Congressionally-mandated work of providing a voice to the people of Alaska who would be affected by a crude oil spill.

These are just a few areas that PWSRCAC views as high importance, yet not the only important parts of the statutes or the regulations. As noted in Section 1, the Alaska ODPCP requirements are designed to meet seven independent and critical objectives. The ODPCP regulations implement those objectives in terms of the required details of an ODPCP.

To be very clear, PWSRCAC remaining silent on a specific statute or regulation in these comments does not imply we have no opinion, or that those requirements are less important to us. PWSRCAC has, instead, chosen to focus on those regulations that PWSRCAC has identified could be clarified or simplified to make them more consistent and usable to all concerned.

4. The Implementation of the Current Regulations

Many comments previously submitted in response to this public scoping, as well as others heard in conversations over the past several years, suggest that some plan holders and response action contractors have become frustrated with inconsistencies in the interpretation, implementation, and enforcement of the ODPCP regulations. Some of this frustration is due to necessary differences in plan requirements for large, complex operations as compared to those for smaller, less complex operations, but much of it stems from different expectations of individual ADEC plan reviewers. This frustration indicates that the problems are not with the regulations in and of themselves, but instead lie with training and supervision of ADEC plan reviewers. This problem has increased in

recent years due to the loss of experience and institutional continuity attributable to high turnover in ADEC staff. In addition, organizational changes in the Division of Spill Prevention and Response that combined the responsibilities of plan review and spill response required staff to learn new tasks in a short time. This change has resulted in having inexperienced staff reviewing plans, increasing the time it takes for plan reviews to be completed, and exacerbating inconsistencies in the interpretation, implementation, and enforcement of the ODPCP regulations.

Below are a few examples where it is important that ADEC staff exercise consistent interpretation and application of the regulations.

First, the definition for major amendments at 18 AAC 75.415(a) allows for a great deal of ADEC discretion with regard to whether or not proposed plan revisions increase the response planning standard volume; affect response scenarios; change the amount or quality of prevention resources, response resources, or training that reduces the existing level of prevention or response capabilities; or is a change that requires an increase in prevention, response resources, or training. Such discretion is necessary as it would be impossible to list every possible reason a proposed amendment might be considered “major” and require public review, or, likewise, every reason an amendment might be considered “minor” and not require public review. However, it is critical that ADEC staff interprets and applies this regulation consistently across the scope of plan holders and facilities, an ability that requires adequate training and supervision.

Second, under 18 AAC 75.425(e)(3)(D), plan holders are required to describe the conditions under which their response operations would be hindered or precluded, and what actions will be taken to either prevent spills (in addition to prevention measures already in place) or continue a modified response. The concern here is that Realistic Maximum Response Operating Limitations (RMROL) is not being credibly assessed for all facilities and operations, and that in many cases the response limits are set higher than the limits established by manufacturers for their own equipment (e.g., the plan holder says that skimmers will be used in higher sea states than those in which the manufacturers say the skimmers can be effectively used). The problem is not with the regulation itself, but in how the regulation is interpreted, applied, and enforced. ADEC staff needs to be trained to ensure they understand the RMROL factors for their regions of responsibility and how they apply to the equipment their plan holders are using.

Although not specifically identified in regulation, another area of concern with regards to consistency is the assurance that changes to ODPCPs required by conditions of approval or notices of violation are not lost in future renewals or amendments. An example is ADEC’s requirement to include waste management information in a scenario contained in the Valdez Marine Terminal ODPCP, then retracting that requirement by allowing the information to be removed in a subsequent plan renewal years later. PWSRCAC recognizes that facilities change and ODPCPs need to be adjusted accordingly, but to disregard former conditions of approval without any facility change or justification is inconsistent and points to a loss of institutional knowledge within ADEC. It is important that ADEC staff remain cognizant of prior conditions of approval and notices of violation and only allow plan holders to move away from requirements under specific circumstances.

Additionally, there is a concept in the federal Clean Water Act that prohibits “backsliding” in National Pollutant Discharge Elimination System (NPDES) permits. “Backsliding” involves discharging higher levels of a pollutant pursuant to the new permit than what would be

contemplated by a prior permit. PWSRCAC recommends that a “no backsliding” regulation be implemented that prohibits removal of prevention or response measures without equivalent improvements or adequate justification. This would help to prohibit a plan holder from submitting significant rewrites of a plan that removes detail or weakens capabilities.

PWSRCAC strongly recommends that ADEC develop and adopt a training regime that ensures that (1) all plan reviewers are trained to interpret, implement, and enforce the regulations consistently; and (2) there are no reductions in details or diminished prevention or response capabilities due to forgotten or overlooked conditions of approval or notices of violation.

PWSRCAC further recommends creation of an anti-backsliding regulation to ensure that details or capabilities are not removed during plan renewals without justification or the addition of equivalent prevention or response capabilities.

5. Best Available Technology Review

Under AS 46.04.030(e), 18 AAC 75.425(e)(4), and 18 AAC 75.445(k), an ODPCP must provide for the use by the applicant of the best technology that was available at the time the ODPCP was submitted or renewed. ADEC must identify the prevention and response technologies that are subject to a best available technology (BAT) determination but may find that any technology meeting the established response planning standards or prevention performance standards is the best available technology. This requirement has been hotly contested for many years for a number of different reasons. The interpretation and enforcement of the BAT regulations and the three-tier treatment of technologies used in ODPCPs is highly complex and technical. The individualized analysis called for by the BAT regulations has not been consistently applied by industry or by ADEC staff. Finally, ADEC has not lived up to the intent behind 18 AAC 75.447 in evaluating new break-through technologies outside of the ODPCP approvals themselves because of inadequate funding and staff. ADEC has not used the 18 AAC 75.447 process to identify and then require use of new technologies in individual ODPCPs. Some of these problems would be solved by additional training of ADEC staff and more rigorous enforcement of the existing requirements. Renewed funding and ADEC regulatory focus on the role of 18 AAC 75.447 would address another part of the controversy. That said, the BAT process set out in 18 AAC 75 should be re-evaluated with specific attention given to (1) better description and clarity in the regulations of what technologies under 18 AAC 75.425(e)(4)(A) must undergo the individualized BAT analysis under 18 AAC 75.445(k)(3); and (2) whether 18 AAC 75.445(k)(1) should be amended to ensure that individual pieces of prevention or response equipment are best available technology given their intended role in the plan holder’s prevention or response system using the factors in 18 AAC 75.445(k)(3). ADEC, industry, and stakeholders should work together to find ways to ensure Alaska is protected by the best spill prevention and response equipment, tactics, and operations available.

PWSRCAC strongly recommends that ADEC develop and adopt a training regime that ensures that all plan reviewers are trained to interpret, implement, and enforce the BAT regulations consistently. PWSRCAC also recommends that ADEC seek renewed funding and regulatory focus on the 18 AAC 75.447 process to identify break-through ODPCP technologies and require their application in appropriate individual ODPCPs. Finally, PWSRCAC recommends that 18 AAC 75 should be re-evaluated with specific attention given to better description and clarity in the regulations of what technologies under 18 AAC 75.425(e)(4)(A) must undergo the individualized BAT analysis under 18 AAC 75.445(k)(3).

6. Volume of Regulations

Another area of industry and ADEC comment concerns the volume of the regulations or the number of pages they encompass. Much of that volume is necessary due to the different operations covered by the regulations, including crude and non-crude oil tankers and barges, crude and non-crude oil terminals, oil and gas exploration facilities, production facilities, oil pipelines, railroad tank cars, and non-tank vessels. Many of the details of the ODPCP regulations were adopted over time to provide guidance and predictability to industry and plan reviewers concerning expectations for timely approval of plans and to improve the State's ability to defend its plan approval decisions in administrative and court appeals. While there may be some redundancies in the regulations for these very varied operations, ease of using the regulations requires that some requirements be repeated for different operations. There may be means of streamlining the regulations to reduce the page count, but doing so should not occur at the expense of removing necessary details and thereby weakening or diminishing the protections and intent of the Alaska regulations.

*PWSRCAC urges ADEC to **not** make regulatory changes simply to reduce the number of pages of regulations.*

7. Amendment Application Distribution

In order to fulfill its mission to provide a voice for citizens affected by decisions related to the Valdez Marine Terminal and associated tankers, PWSRCAC must be apprised of potential changes to the operations of the terminal or tankers *before* they occur. In the case of plan renewals or major amendments, under 18 AAC 75.408(c)(5) the Department of Natural Resources, the Department of Fish and Game, regional citizens' advisory councils, and other persons designated by the ADEC are provided with copies of the application packages at the same time they are submitted to ADEC. However, for minor amendments, according to 18 AAC 75.408(c)(6), those entities do not receive information about an amendment until after the changes have already been made and approved by ADEC. PWSRCAC cannot fulfill its mandate if it is not made aware of all amendments in time to be able to provide comment on them, whether or not ADEC intended there to be a formal public comment period, before they are approved.

PWSRCAC requests that 18 AAC 75.408(c) be revised to ensure that all of the entities listed in 18 AAC 75.408(c)(5) also receive copies of minor amendment and revision application packages at the same time as ADEC.

8. Change of Ownership Amendments

According to 18 AAC 75.414, "A change in the owner, operator, or name of the owner or operator of a facility or operation with an approved oil discharge prevention and contingency plan or a non-tank vessel equivalent plan requires that the new owner or operator submit an application package as an amendment under 18 AAC 75.415." However, 18 AAC 75.415 considers "major" reviews requiring public review and "minor amendments" which do not in the context of changes made by the original plan holder. An effective spill response, including management of that response, however, is directly tied to the capabilities and capacities of the plan holder, capabilities and capacities which cannot be assumed to be the same when a plan transfers from one owner/operator to another. Consequently, such actual change of owners, as opposed to simple name changes, should be treated as major amendments.

PWSRCAC requests that all amendment applications changing the owner or operator of a facility or operation with an approved ODPCP be treated as “major amendments” subject to public review.

9. Plan Renewal Requirements

Under 18 AAC 75.420(c), a plan does not need to be submitted if there are no changes made in the plan during a renewal. Instead, the original plan may be incorporated by reference in the plan renewal application form. There is no practical need for this regulation as at least some minor updates to the plan are expected in five years (spill history, contact information, etc.). In addition, 18 AAC 75.425(e)(4) requires that a best available technology review be conducted by the plan holder, a review which should be updated with every renewal.

PWSRCAC suggests that 18 AAC 75.420(c) be repealed from the regulations.

10. Plan Contents and Approval Criteria

Two critical parts of Article 4 that affect ODPCP contents are 18 AAC 75.425 and .445. In the regulations, 18 AAC 75.425 describes what information must be contained in the plan, while 18 AAC 75.445 contains the criteria which must be used by ADEC to evaluate that information. However, the two are not mirror images of one another and, in fact, contain different aspects of plan objectives or analysis. Therefore, plan writers and reviewers must pay careful attention to both sections to ensure that all required information is included and evaluated correctly. It would be much more efficient and less burdensome for all responsible for ensuring the accuracy of plans if the two sections were aligned. Several examples are described below.

Different aspects of the ODPCP are described in 18 AAC 75.425(e)(1), 18 AAC 75.430, and 18 AAC 75.445(b). 18 AAC 75.425(e)(1) states the response action plan must guide a response to a discharge of any size up to and including the Response Planning Standard. 18 AAC 75.430 states the ODPCP must demonstrate the general procedures to clean up a discharge of any size, including the greatest possible discharge. 18 AAC 75.445(b), general response procedures, requires the ODPCP to “identify the maximum possible discharge that could occur at the facility or operation, and the general procedures to be followed responding to a discharge of that magnitude....”

Both 18 AAC 75.430 and 18 AAC 75.445 require the ODPCP to contain a response plan that describes general procedures to clean up a discharge of any size including the greatest possible discharge, but 18 AAC 75.425 does not provide clear instruction for where this information should be located in the plan. It is important to clarify that this information should be contained in the Response Action Plan (Section 1) and specify the location of this information in regulation.

18 AAC 75.425(e)(1)(F) requires “a written description of a hypothetical spill incident and response” and lists the information such as location, weather, etc. that must be included. However, it is 18 AAC 75.445(c) and (d) that state that the scenario must demonstrate, using the resources described in the ODPCP, that the identified personnel and equipment are sufficient to meet the applicable response planning standards for each applicable type of product that could be discharged and can be deployed and operating within the time specified under 18 AAC 75.430 – 18 AAC 75.442. This takes into account the realistic maximum response operating limitations and their effects on response capability and the

deployment of resources. Having the requirements for how scenarios are to be written in two different places is inefficient and confusing.

PWSRCAC recommends that 18 AAC 75.425 and .445 be evaluated to ensure clarity and consistency concerning ODPCP contents and evaluation.

11. Discharge History

Within the Prevention Section of an ODPCP, under 18 AAC 75.425(e)(2)(B), the plan holder must list all known oil discharges greater than 55 gallons which have occurred at the facility within the state. This discharge volume is inconsistent with other ADEC oil release reporting requirements except those to impermeable secondary containment areas.

PWSRCAC recommends that 18 AAC 75.425(e)(2)(B) be revised to reduce the threshold for discharge history reporting from 55 gallons to a lower volume threshold. ADEC's current spill reporting requirements (found at <https://dec.alaska.gov/spar/ppr/spill-information/reporting/>) identify any release to water and any release to land of 10 gallons or more as significant and worthy of mandatory reporting.

PWSRCAC requests that the threshold for discharge history reporting in an ODPCP be brought into alignment with ADEC discharge reporting requirements.

12. Prevention Credits

Under 18 AAC 75.430, plan holders may apply for a reduction in their response planning standard, the volume of spilled oil for which they must demonstrate the capacity to contain, control, and clean up, based on implementation of a variety of prevention measures. When this regulation was written, the prevention measures listed were sound and justifiable as they were not standard practices. Use of them went above and beyond those measures otherwise required by state or federal law. However, over time, many of these items (e.g., double hulls and bottoms in oil tankers) have become otherwise required by law and no longer represent measures implemented as good-faith efforts to prevent oil spills by going above and beyond legal requirements. PWSRCAC agrees that encouraging owners/operators to implement additional prevention measures is good for the protection of public health and the environment, but also concludes that the prevention measures for which owners/operators receive prevention credit should be limited to actions which are not already required under state or federal law. PWSRCAC recognizes that this suggested regulatory change will likely be unpopular with industry plan holders, but it is a logical change that could be phased in over a period of time to provide for continuous improvement and the highest protection for Alaska's people and environment.

PWSRCAC requests that 18 AAC 75.430 be revised to give prevention credits only for measures not otherwise mandated under state or federal law.

13. Next Steps

Following this Public Scoping process, if ADEC chooses to initiate a revision of the Article 4 regulations, PWSRCAC thinks that it is critical that this process be cooperative and involve interested stakeholders. Convening a work group that includes ADEC staff, industry representatives, and public-interest representatives to work cooperatively on revising the regulations will ensure that the process is transparent and meets the needs of all stakeholders. Doing so should also decrease the time needed for subsequent public reviews.


As was stated earlier, the fact that a statute or regulation was not commented on in these public comments does not mean it is not of importance to PWSRCAC. To the contrary, these statutes and regulations are so important that PWSRCAC requests that any subsequent public review period be long enough to allow the public sufficient time to thoroughly review any proposed revisions, significantly longer than the 30 days required under regulation.

PWSRCAC hopes these comments will be useful to ADEC. If you have any questions or wish to discuss them further, please contact Executive Director Donna Schantz at (907) 834-5070 or schantz@pwsrcac.org.

Sincerely,



Robert Archibald, President of PWSRCAC and Executive Committee Member, Representative from the City of Homer



Wayne Donaldson, Treasurer of PWSRCAC and Executive Committee Member, Representative from the City of Kodiak



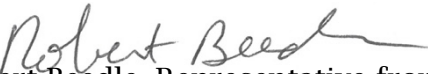
Bob Shavelson, Secretary of PWSRCAC and Executive Committee Member, Representative from the Oil Spill Region Environmental Coalition



Ben Cutrell, Executive Committee Member-at-Large, Representative from the Chugach Alaska Corporation



Patience Andersen Faulkner, Representative from Cordova District Fishermen United



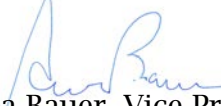
Robert Beedle, Representative from the City of Cordova



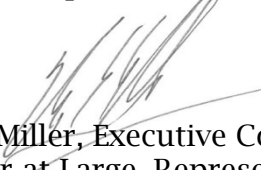
Michael Bender, Representative from the City of Whittier



Donna Schantz
PWSRCAC Executive Director



Amanda Bauer, Vice President of PWSRCAC and Executive Committee Member, Representative from the City of Valdez



Thane Miller, Executive Committee Member-at-Large, Representative from the Prince William Sound Aquaculture Corporation

(Unavailable for Signature)

Rebecca Skinner, Executive Committee Member-at-Large, Representative from the Kodiak Island Borough



Rob Chadwell, Representative from the City of Seward



Mako Haggerty, Representative from the Kenai Peninsula Borough



Luke Hasenbank, Representative from the Alaska State Chamber of Commerce



Melvin Malchoff, Representative from Port Graham Corporation



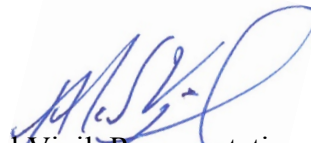
Dorothy Moore, Representative from the City of Valdez



Conrad Peterson, Representative from the Kodiak Village Mayors Assn.



Roy Totemoff, Representative from Tatitlek Corporation and Tatitlek IRA Council



Michael Vigil, Representation from Chenega Corporation and Chenega IRA Council



Kirk Zinck, Representative from the City of Seldovia

Cc: Jason Brune, ADEC Commissioner
Denise Koch, SPAR Director
Graham Wood, PPR Program Manager

Schantz, Donna

From: noreply@smartcomment.com
Sent: Wednesday, March 11, 2020 2:22 PM
To: Schantz, Donna
Subject: Oil Discharge Prevention and Contingency Plan Public Scoping comment

WARNING: Be careful when clicking on links or opening attachments in this message. It originated from outside the PWSRCAC domain and may contain malware or links to phishing schemes..

Thank you for your comments on the Oil Discharge Prevention and Contingency Plan Public Scoping. Your comments have been received.

Name: Donna Schantz
Address: PO Box 3089
City: Valdez
Province: Alaska
Postal Code: 99686
Email: Schantz@pwsrcac.org
Submitted By: Prince William Sound RCAC

Oil Discharge Prevention and Contingency Plan Public Scoping

Please see the attached comments provided by the Prince William Sound Regional Citizens' Advisory Council. Thank you.

Attachment(s):
600.105.200311.ADECRegReformCmt.pdf



Regional Citizens' Advisory Council / "Citizens promoting environmentally safe operation of the Alyeska terminal and associated tankers."

In Anchorage: 3709 Spenard Road / Suite 100 / Anchorage, Alaska 99503 / (907) 277-7222 / FAX (907) 277-4523
In Valdez: P.O. Box 3089 / 130 South Meals / Suite 202 / Valdez, Alaska 99686 / (907) 834-5000 / FAX (907) 835-5926

MEMBERS

Alaska State
Chamber of Commerce

Chugach Alaska
Corporation

City of Cordova

City of Homer

City of Kodiak

City of Seldovia

City of Seward

City of Valdez

City of Whittier

Community of
Chenega

Community of
Tatitlek

Cordova District
Fishermen United

Kenai Peninsula
Borough

Kodiak Island
Borough

Kodiak Village Mayors
Association

Oil Spill Region
Environmental
Coalition

Port Graham
Corporation

Prince William Sound
Aquaculture
Corporation

Resolution 19-03 Safeguarding Alaska's Oil Spill Prevention and Response Standards

WHEREAS, after the 1989 *Exxon Valdez* oil spill, Congress found that complacency on the part of industry and regulators played a role in the spill, the public trust was broken, and one way to combat this complacency and rebuild trust was to involve the public, those with the most to lose in the event of a large spill, in decisions that affect the safe transportation of oil;

WHEREAS, Congress enacted the Oil Pollution Act of 1990 that included, among other things, the creation of citizen advisory councils for Cook Inlet and Prince William Sound;

WHEREAS, after the *Exxon Valdez* oil spill, Alaska citizens and the Alaska Legislature worked together to protect the state from major oil spills by enacting comprehensive laws and regulations dealing with prevention, response, contingency planning, financial responsibility, oversight, monitoring, and other subjects related to the safe handling and transportation of oil and other hazardous substances;

WHEREAS, these laws and regulations were based on real world experiences and the painful lessons of the *Exxon Valdez* oil spill and were crafted in coordination with State government and oil industry partners, requiring extensive compromise in the determined Response Planning Standards¹;

WHEREAS, oil spill prevention and response contingency planning regulations were adopted by the State of Alaska in 1992, and the regulations have been revised on nine occasions to clarify the requirements, streamline the review process, and make the process of drafting contingency plans less onerous and the review of those plans more predictable and expeditious;

WHEREAS, as a result of post-*Exxon Valdez* oil spill laws and regulations, Alaska has world-class oil spill prevention and response requirements to protect its people and its environment, as well as commercial and sport fishing, aquaculture, recreation, tourism, subsistence, and cultural interests;

WHEREAS, on October 15, 2019, the State of Alaska's Department of Environmental Conservation Commissioner issued a public scoping notice seeking input on existing regulations and statutes because he has "heard from many Alaskans that contingency plans are unnecessarily burdensome while lacking corresponding environmental benefits," and that his Department has identified regulations that can be eliminated or significantly reformed;

WHEREAS, despite repeated requests, the Alaska Department of Environmental Conservation has yet to identify the companies, organizations, or Alaskans that

¹ To find out more about the history and legislative intent of Alaska's strong Response Planning Standards, read the Council's August 2018 report [Alaska's Oil Spill Response Planning Standard - History and Legislative Intent](#).

have said the existing system is too burdensome, or identify the regulations or statutes they believe can be eliminated or significantly reformed;

WHEREAS, it is unreasonable for the Department of Environmental Conservation to claim now, after 30 profitable years of industry compliance with the laws and regulations, that they are too burdensome, and this claim disregards the hard work of hundreds of Alaskans who worked tirelessly after the *Exxon Valdez* oil spill to create oil spill prevention and response standards, to ensure that the State of Alaska would never again suffer an environmental disaster like the *Exxon Valdez* oil spill;

WHEREAS, reducing the burden on 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; and

WHEREAS, Alaska's Congressional Delegation has steadfastly supported over the past thirty years prudent and sensible actions to help lessen the risks, trauma, and injury to Alaska from another major oil spill.

NOW THEREFORE BE IT RESOLVED, that, in its statutory advisory role, the Prince William Sound Regional Citizens' Advisory Council strongly advises against any legislative or regulatory changes that 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 oil the industry and regulators that Congress determined to be a primary cause of the *Exxon Valdez* oil spill;

BE IT FURTHER RESOLVED, that the Prince William Sound Regional Citizens' Advisory Council believes that, if the system created after the 1989 spill is weakened, Alaskans will likely face an increased risk of reliving another major oil spill that could damage Alaska's commercial, sport and subsistence fishing, sport and subsistence hunting, other businesses, fish, wildlife, environment, and the culture and quality of life of the people;

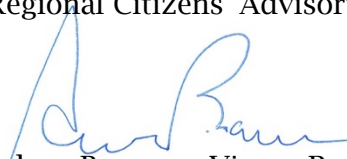
BE IT FURTHER RESOLVED, that the Prince William Sound Regional Citizens' Advisory Council advises that the State of Alaska halt this Public Scoping process until detailed information is provided to the public as to the driving factors that led to this regulatory and statutory reform initiative, identifying the Alaskans, including individuals, companies and organizations, who have contacted them with claims that the existing regulations are too burdensome, and by providing information on the statutes and regulations the Department claims can be eliminated or significantly reformed; and

BE IT FURTHER RESOLVED, that the Prince William Sound Regional Citizens' Advisory Council strongly recommends that Alaskans interested in maintaining safety standards designed to protect the state's environment, people, and economy from catastrophic oil spills contact the Alaska Department of Environmental Conservation to register their views regarding any weakening of existing safeguards.

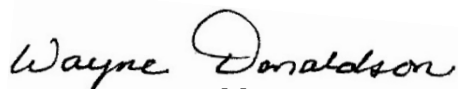
PASSED and APPROVED by the Prince William Sound Regional Citizens' Advisory Council Board of Directors on this 29th day of October, 2019.



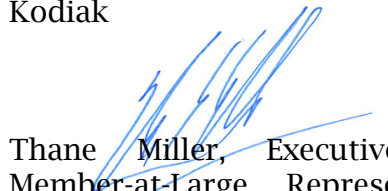
Robert Archibald, President of PWSRCAC and Executive Committee Member, Representative from the City of Homer



Amanda Bauer, Vice President of PWSRCAC and Executive Committee Member, Representative from the City of Valdez




Wayne Donaldson, Treasurer of PWSRCAC and Executive Committee Member, Representative from the City of Kodiak



Thane Miller, Executive Committee Member-at-Large, Representative from the Prince William Sound Aquaculture Corporation

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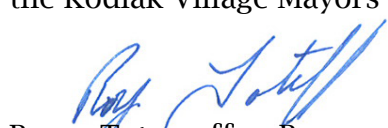
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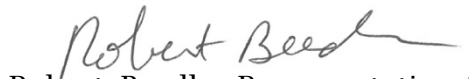
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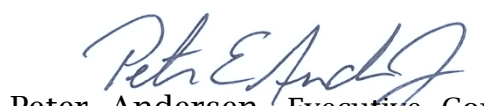
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Robert Beedle, Representative from the City of Cordova



Bob Shavelson, Secretary of PWSRCAC and Executive Committee Member, Representative from the Oil Spill Region Environmental Coalition



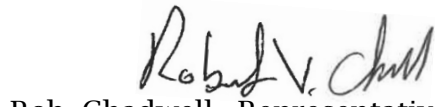
Peter Andersen, Executive Committee Member-at-Large, Representative from the Chugach Alaska Corporation



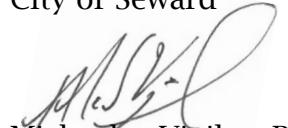
Patience Andersen Faulkner, Representative from Cordova District Fishermen United



Michael Bender, Representative from the City of Whittier




Rob Chadwell, Representative from the City of Seward



Michael Vigil, Representation from Chenega Corporation and Chenega IRA Council



Mako Haggerty, Representative from the Kenai Peninsula Borough



Kirk Zinck, Representative from the City of Seldovia

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