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Lieutenant Governor
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**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

M E M O R A N D U M

TO: Gary Mendivil, Department of Environmental Conservation
FROM: April Simpson, Office of the Lieutenant Governor 
465.4081
DATE: August 16, 2023
RE: Filed Permanent Regulations: Department of Environmental Conservation

Department of Environmental Conservation regulations re: SPAR Proof of Financial
Responsibility (18 AAC 75.205, .215, .235, .270)

Attorney General File:	2023200136
Regulation Filed:	8/16/2023
Effective Date:	10/1/2023
Print:	247, October 2023

cc with enclosures: Colleen Bailey, Department of Law
Judy Herndon, LexisNexis
Rebecca Spiegel, Department of Environmental Conservation



THE STATE
of ALASKA
GOVERNOR MIKE DUNLEAVY

Department of Law

CIVIL DIVISION

P.O. Box 110300
Juneau, Alaska 99811
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August 15, 2023

The Honorable Nancy Dahlstrom
Lieutenant Governor
State of Alaska
P.O. Box 110015
Juneau, AK 99811-0015

Re: *18 AAC 75.205, .215, .235, .270: DEC SPAR Proof of Financial
Responsibility*

Our file: 2023200136

Dear Lieutenant Governor Dahlstrom:

The Department of Law has reviewed the attached regulations of the Department of Environmental Conservation against the statutory standards of the Administrative Procedure Act. Based upon our review, we find no legal problems. This letter constitutes the written statement of approval under AS 44.62.060(b) and (c) that authorizes your office to file the attached regulations. The regulations were adopted by the Department of Environmental Conservation after the close of the public comment period.

The regulations make triennial changes in dollar amounts, in accordance with AS 46.04.045, of financial responsibility under AS 46.04.040 for discharges of oil.

The August 14, 2023 adoption order sets a special effective date of October 1, 2023 for these regulations, in accordance with AS 44.62.180 and AS 46.04.045. Accordingly, we respectfully request that your office file these regulations on or before September 1, 2023.

The June 6, 2023 public notice and the August 14, 2023 adoption order both state that this action is not expected to require an increased appropriation. Therefore, a fiscal note under AS 44.62.060 is not required.

No technical corrections were necessary to conform the regulations in accordance with AS 44.62.060.

Sincerely,

TREG TAYLOR
ATTORNEY GENERAL

By: **Rebecca C. Polizzotto** Digitally signed by
Rebecca C. Polizzotto
Date: 2023.08.15
11:37:30 -08'00'

Rebecca C. Polizzotto
Chief Assistant Attorney General
Legislation, Regulations, and
Legislative Research Section

RCP/scw

CC w/enclosure: Gary Mendivil, Regulations Contact
Department of Environmental Conservation

Rebecca Spiegel, Regulations Contact
Department of Environmental Conservation

Cameron Q. Jimmo, Assistant Attorney General
Department of Law

Steven C. Weaver, Assistant Attorney General
Department of Law

ORDER ADOPTING CHANGES TO REGULATIONS
OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

The attached 5 pages of regulations, dealing with proof of financial responsibility under 18 AAC 75 (Oil and Other Hazardous Substances Pollution Control), are adopted and certified to be a correct copy of the regulation changes that the Department of Environmental Conservation adopts under the authority of AS 46.03 and AS 46.04 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

In considering public comments, the Department of Environmental Conservation paid special attention to the cost to private persons of the regulatory action being taken.

The regulation changes adopted under this order take effect on October 1, 2023, as provided in AS 44.62.180 and AS 46.04.045.

Date: August 14, 2023

Jason W. Brune

Digitally signed by Jason W.
Brune
Date: 2023.08.14 09:30:30
-08'00'

Jason W. Brune, Commissioner
Department of Environmental Conservation

April Simpson for

FILING CERTIFICATION

I, Nancy Dahlstrom, Lieutenant Governor for the State of Alaska, certify that on August 16, 2023, at 4:31 p..m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.

for April Simpson

Nancy Dahlstrom, Lieutenant Governor

Effective: October 1, 2023.

Register: 24th October 2023.

FOR DELEGATION OF THE LIEUTENANT GOVERNOR'S AUTHORITY

I, NANCY DAHLSTROM, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA, designate the following state employees to perform the Administrative Procedures Act filing functions of the Office of the Lieutenant Governor:

April Simpson, Regulations and Initiatives Specialist

IN TESTIMONY WHEREOF, I have signed and affixed the Seal of the State of Alaska, in Juneau, on May 15th, 2023.



Nancy Dahlstrom

**NANCY DAHLSTROM
LIEUTENANT GOVERNOR**

Chapter 75. Oil and Other Hazardous Substances Pollution Control.

Article 2. Financial Responsibility for Oil Discharges.

The introductory language of 18 AAC 75.205(c) is amended to read:

(c) Applications submitted under this section and renewal applications submitted under 18 AAC 75.225 must be signed [UPON OATH OR AFFIRMATION] as follows:

...

(Eff. 5/14/92, Register 122; am 10/28/2000, Register 156; am 11/27/2002, Register 164; am 3/23/2017, Register 221; am 10/27/2018, Register 228; am 10 / 1 / 2023, Register 247)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070
AS 46.04.040

18 AAC 75.215 is amended to read:

18 AAC 75.215. Applications submitted by facsimile or electronic mail. The department will accept an application by [FACSIMILE TRANSMISSION OR] electronic mail.

Original documentation for self-insurance under 18 AAC 75.245 or a guaranty under 18 AAC 75.260 [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 OR] electronic mail. (Eff.

5/14/92, Register 122; am 10/28/2000, Register 156; am 9/4/2014, Register 211; am

10 / 1 / 2023, Register 247)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070
AS 46.04.040

Editor's note: Completed applications may be submitted to the department financial responsibility inbox at dec.spar.pprp.ind.fr@alaska.gov.

18 AAC 75.235(a) is amended to read:

(a) Each vessel or facility must be specifically covered by an approved form of financial responsibility. The dollar amounts of required financial responsibility set out in AS 46.04.040 or 46.04.055 are adjusted, based upon the percentage change between the reference base index and the semi-annual average Consumer Price Index for all urban Alaska consumers for the second half of 2022 [2019], as reported for Anchorage and Matanuska-Susitna Borough by the United States Department of Labor, Bureau of Labor Statistics. 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 following applicable minimum amount:

- (1) for a crude oil terminal facility, **\$111,450,000** [\$97,750,000] per incident;
- (2) for a noncrude oil terminal facility, **\$55.72** [\$48.88], per incident, for each barrel of total noncrude oil storage capacity at the terminal, or **\$2,229,000** [\$1,955,000], whichever is greater, subject to a maximum of **\$111,450,000** [\$97,750,000]; if the facility stores more noncrude oil than crude oil, the **\$55.72** [\$48.88] per incident, per barrel requirement of this paragraph applies to each barrel of oil storage capacity at the facility;
- (3) for a tank vessel or barge carrying crude oil, **\$688.70** [\$586.50], per incident, for each barrel of storage capacity or **\$222,900,000** [\$195,500,000], whichever is greater;
- (4) for a tank vessel or barge carrying noncrude oil, **\$222.90** [\$195.50], per incident, for each barrel of storage capacity or **\$2,229,000** [\$1,955,000], whichever is greater,

subject to a maximum of \$78,015,000 [\$68,425,000];

(5) for a nontank vessel carrying predominantly nonpersistent product, \$222.90 [\$195.50] per incident, for each barrel of total oil storage capacity, persistent and nonpersistent product, on the vessel or \$2,229,000 [\$1,955,000], whichever is greater;

(6) for a nontank vessel carrying predominantly persistent product, \$688.70 [\$586.50] per incident, for each barrel of total oil storage capacity, persistent product and nonpersistent product, on the vessel or \$11,145,000 [\$9,775,000], whichever is greater;

(7) for a railroad tank car,

(A) \$688.70 [\$586.50] per incident for each barrel of persistent product based on the maximum amount of persistent product storage capacity of any train on the railroad; and

(B) \$222.90 [\$195.50] per incident for each barrel of nonpersistent product based on the maximum amount of nonpersistent product storage capacity of any train on the railroad or \$2,229,000 [\$1,955,000], whichever is greater;

(8) for a pipeline, \$111,450,000 [\$97,750,000] per incident;

(9) for an offshore exploration or production facility, \$111,450,000 [\$97,750,000] per incident;

(10) for an onshore production facility that produces more than 10,000 barrels per day of oil, \$44,580,000 [\$39,100,000] per incident;

(11) for an onshore production facility that produces more than 5,000, but not more than 10,000 barrels per day of oil, \$22,290,000 [\$19,550,000] per incident;

(12) for an onshore production facility that produces more than 2,500, but not more than 5,000 barrels per day of oil, \$11,145,000 [\$9,775,000] per incident;

(13) for an onshore production facility that produces 2,500 or fewer barrels per day of oil, \$2,229,000 [\$1,955,000] per incident;

(14) for an onshore exploration facility, \$2,229,000 [\$1,955,000] per incident. (Eff. 5/14/92, Register 122; am 11/26/94, Register 132; am 12/8/95, Register 136; am 10/1/99, Register 151; am 10/28/2000, Register 156; am 10/27/2002, Register 164; am 11/27/2002, Register 164; am 10/16/2005, Register 176; am 8/31/2008, Register 187; am 10/1/2011, Register 199; am 9/4/2014, Register 211; am 10/1/2014, Register 211; am 10/1/2017, Register 223; am 11/5/2017, Register 224; am 6/24/2021, Register 238; am 10 / 1 / 2023, Register 247)

Authority: AS 46.03.020 AS 46.04.045 AS 46.04.070
AS 46.04.040 AS 46.04.055 AS 46.04.890

The introductory language of 18 AAC 75.236(c) is amended to read:

(c) The owner or operator shall, when submitting an application under 18 AAC 75.205 or 18 AAC 75.225, submit a [NOTARIZED] statement certifying that the maximum daily production of oil at a facility during the period for which application is made will be
...

(Eff. 12/8/95, Register 136; am 11/27/2002, Register 164; am 3/23/2017, Register 221; am 10 / 1 / 2023, Register 247)

Authority: AS 46.03.020 AS 46.04.040 AS 46.04.070

18 AAC 75.270(c) is amended to read:

(c) The department may approve a P&I club or insurance syndicate that does not agree to be subject to direct court action in this state or that does not agree to appoint an agent for service

of process in this state if the requirements of AS 46.04.040(I) are met with respect to the amount of **\$111,450,000** [\$97,750,000] or the amount required by 18 AAC 75.235(a), whichever is less.

(Eff. 5/14/92, Register 122; am 11/26/94, Register 132; am 10/1/99, Register 151; am

10/28/2000, Register 156; am 10/27/2002, Register 164; am 10/16/2005, Register 176; am

8/31/2008, Register 187; am 10/1/2011, Register 199; am 10/1/2014, Register 211; am

10/1/2017, Register 223; am 6/24/2021, Register 238; am 10 / 1 / 2023, Register 247)

Authority: AS 46.03.020 AS 46.04.045 AS 46.04.070
AS 46.04.040