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**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

MEMORANDUM

TO: Gary Mendivil
Department of Environmental Conservation

FROM: Scott Meriwether, Office of the Lieutenant Governor 465.4081 

DATE: February 21, 2017

RE: Filed Permanent Regulations: Department of Environmental Conservation

Department of Environmental Conservation regulations re: discharges of oil and hazardous substances, nontank vessel equivalent plans, and cost recovery for cleanup of leaking underground storage tanks (18 AAC 75.047(f),(i)(3); 18 AAC 75.065(e)(2); 18 AAC 75.080(b),(o); 18 AAC 75.205; 18 AAC 75.236(c); 18 AAC 75.405 - 18 AAC 75.460; 18 AAC 75.485(a),(b); 18 AAC 75.562(c)(1)(A); 18 AAC 75.580; 18 AAC 75.990; 18 AAC 78.915)

Attorney General File:	JU2016200743
Regulation Filed:	2/21/2017
Effective Date:	3/23/2017
Print:	221, April 2017

cc with enclosures: Linda Miller, Department of Law
Judy Herndon, LexisNexis

ORDER ADOPTING CHANGES TO
REGULATIONS OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

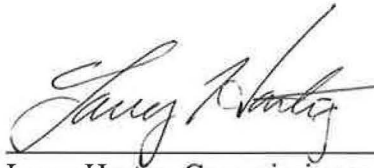
The attached 17 pages of regulations, dealing with nontank vessel equivalent plans under 18 AAC 75 (Oil and Other Hazardous Substances Pollution Control), are adopted and certified to be a correct copy of the regulation changes that the Department of Environmental Conservation adopts under the authority of AS 46.03 and AS 46.04 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. Public comments were received from three parties and responses were provided to those comments. Changes were made to address one of the comments. In addition, the Department of Environmental Conservation also gave special attention to alternate practical methods in this regulatory action, as required by AS 46.03.024.

The regulation changes adopted under this order take effect on the 30th day after they have been filed by the lieutenant governor, as provided in AS 44.62.180.

DATE: February 10, 2017



Larry Hartig, Commissioner
Department of Environmental Conservation

FILING CERTIFICATION

I, Byron Mallott, Lieutenant Governor for the State of Alaska, certify that on February 21, 2017, at 11:45 a.m., I filed the attached regulations according to the provisions of AS 44.62.040 – 44.62.120.



Byron Mallott, Lieutenant Governor

Effective: March 23, 2017.

Register: 221, April 2017.

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The introductory language of 18 AAC 75.047(f) is amended to read:

(f) On or after December 30, 2006, flow lines removed from service for more than one year [AND NOT MAINTAINED IN ACCORDANCE WITH (c) AND (d) OF THIS SECTION] must be free of accumulated oil and isolated from the system. The owner or operator shall notify the department when flow lines are removed from service and when the actions required by this subsection are completed. For purposes of this subsection, a flow line removed from service is free of accumulated oil if

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18 AAC 75.047(i)(3) is amended to read:

(3) "removed from service" means not in regular use for the service intended and not included in a regular maintenance and inspection program in accordance with (c) and (d) of this section;

(Eff. 12/30/2006, Register 180; am 3 / 23 / 2017, Register 221.)

Authority: AS 46.03.020 AS 46.04.030 AS 46.04.070

18 AAC 75.065(e)(2) is amended to read:

(2) before a field-constructed aboveground oil storage tank resumes [IS RETURNED TO] service following major repair or major alteration, as defined in Section 12.3.1.2 of *Tank Inspection, Repair, Alteration, and Reconstruction*, (API 653), adopted by reference in (a) of this section.

(Eff. 5/14/92, Register 122; am 5/26/2004, Register 170; am 12/30/2006, Register 180; am

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3 / 23 / 2017, Register 221)

Authority: AS 46.03.020 AS 46.04.030 AS 46.04.070

18 AAC 75.080(b) is amended to read:

(b) The owner or operator shall maintain metallic facility oil piping containing oil in accordance with a **written** corrosion control program.

18 AAC 75.080(o) is amended to read:

(o) The owner or operator of facility oil piping that is removed from service for more than one year shall ensure that the facility oil piping is free of accumulated oil, identified as to origin, marked on the exterior with the words "Out of Service" and the date taken out of service, secured in a manner to prevent unauthorized use, and either blank flanged or otherwise isolated from the system. **For piping removed from service after December 30, 2006, the** [THE] owner or operator shall notify the department when facility oil piping is removed from service and when the actions required by this subsection are completed.

(Eff. 5/14/92, Register 122; am 12/30/2006, Register 180; am 3 / 23 / 2017, Register 221)

Authority: AS 46.03.020 AS 46.04.030 AS 46.04.070

18 AAC 75.205(a)(1) is amended to read:

(1) for an oil terminal facility **that has a storage capacity of 5,000 barrels or more of crude oil or 10,000 barrels or more of noncrude oil as provided in AS 46.04.050(a),**
by the owner or operator of the facility;

18 AAC 75.205(a)(3) is repealed and readopted to read:

- (3) for a vessel, by
 - (A) the charterer, if the vessel is chartered by demise;
 - (B) the operator of the vessel;
 - (C) the owner of the vessel, if the agents or employees of the owner retain control and responsibility for the operation of the vessel; or
 - (D) in any other case, the person with primary operational control;

18 AAC 75.205(c)(1) is amended to read:

- (1) in the case of a corporation, by **a principal executive officer of at least the level of vice president or that officer's authorized representative, if the** [AN AUTHORIZED] representative **is** responsible for the overall management of the facility or operation [, OR THAT PERSON'S DESIGNEE];

18 AAC 75.205(c)(4) is amended to read:

- (4) in the case of a municipal, state, federal, or other public facility, by **a principal executive officer, ranking elected official, or other** [AN] authorized [PUBLIC OFFICIAL OR] employee;

18 AAC 75.205(c)(6) is amended to read:

- (6) in the case of a joint venture, by the operator; [AND]

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18 AAC 75.205(c)(7) is amended to read:

(7) by an agent who has been delegated that authority by the responsible party under (a) of this section on a form supplied by the department; **and** [.]

18 AAC 75.205(c) is amended by adding a new paragraph to read:

(8) for a limited liability company, by a member.

(Eff. 5/14/92, Register 122; am 10/28/2000, Register 156; am 11/27/2002, Register 164; am

3/23/2017, Register 221.)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070
AS 46.04.040

18 AAC 75.236(c)(1) is amended to read:

(1) **more than** [OVER] 10,000 barrels a day;

18 AAC 75.236(c)(2) is amended to read:

(2) **more than** [OVER] 5,000 barrels a day, but **not more** [LESS] than 10,000 barrels a day;

18 AAC 75.236(c)(3) is amended to read:

(3) **more than** [OVER] 2,500 barrels a day, but **not more** [LESS] than 5,000 barrels a day; or

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18 AAC 75.236(c)(4) is amended to read:

(4) 2,500 or **fewer** [LESS] barrels a day.

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

Authority: AS 46.03.020 AS 46.04.040 AS 46.04.070

18 AAC 75.405(a) is amended to read:

18 AAC 75.405. Pre-application notification and consultation for oil discharge prevention and contingency plans [AND NONTANK VESSEL EQUIVALENT PLANS]; new plans and plan renewals. (a) At least 60 days before submitting an application for approval of a new oil discharge prevention and contingency plan [OR A NONTANK VESSEL EQUIVALENT PLAN] under 18 AAC 75.410 or for renewal of approval under 18 AAC 75.420, the applicant must notify the department in writing of its intent to submit an application. An electronic mail or facsimile transmission delivered to the appropriate department office will be considered written notice for purposes of this subsection.

(Eff. 5/14/92, Register 122; am 11/27/2002, Register 164; am 4/16/2016, Register 218; am 3/23/2017, Register 221)

Authority: AS 46.03.020 AS 46.04.050 AS 46.04.070
AS 46.04.030 AS 46.04.055

The introductory language of 18 AAC 75.408(a) is amended to read:

18 AAC 75.408. General procedures to apply for oil discharge and contingency plans [AND NONTANK VESSEL EQUIVALENT PLANS]. (a) An application for approval

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of an oil discharge prevention and contingency plan [OR A NONTANK VESSEL EQUIVALENT PLAN] must contain

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18 AAC 75.408(c)(6) is amended to read:

(6) an applicant must notify the Department of Natural Resources, the Department of Fish and Game, regional citizens' advisory councils, and other persons designated by the department when a proposed minor amendment is provided to the department; [IF THESE] parties requesting [SUBMIT A REQUEST TO THE DEPARTMENT FOR] a copy of the minor amendment [,] shall submit the request to the applicant and [THE DEPARTMENT WILL DIRECT] the applicant shall [TO] provide a copy;

(Eff. 4/16/2016, Register 218; am 3/23/2017, Register 221.)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070
AS 46.04.030

18 AAC 75.410(a) is amended to read:

18 AAC 75.410. Procedures to apply for oil discharge prevention and contingency plans [AND NONTANK VESSEL EQUIVALENT PLANS]; new plans. (a) An application for approval of a new oil discharge prevention and contingency plan [OR A NEW NONTANK VESSEL EQUIVALENT PLAN] must be submitted in accordance with 18 AAC 75.408. For submittals after October 16, 2016, an application must be submitted at least 180 days before the proposed start of operation.

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(Eff. 5/14/92, Register 122; am 11/27/2002, Register 164; am 4/8/2012, Register 202; am 4/16/2016, Register 218; am 3/23/2017, Register 221)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070
AS 46.04.030

18 AAC 75.414 is amended to read:

18 AAC 75.414. Procedures to apply for oil discharge prevention and contingency plans [AND NONTANK VESSEL EQUIVALENT PLANS]; owner or operator changes. 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 NONTANK VESSEL EQUIVALENT PLAN] requires that the new owner or operator submit an application package as an amendment under 18 AAC 75.415. (Eff. 4/16/2016, Register 218; am 3/23/2017, Register 221)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070
AS 46.04.030

The introductory language of 18 AAC 75.415(a) is amended to read:

18 AAC 75.415. Procedures to apply for oil discharge prevention and contingency plans [AND NONTANK VESSEL EQUIVALENT PLANS]; plan amendments. (a) An application for approval of an amendment to an oil discharge prevention and contingency plan [OR A NONTANK VESSEL EQUIVALENT PLAN] must be submitted in accordance with 18 AAC 75.408 and approved by the department, before a change to a plan may take effect,

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unless it is a routine plan update under (b) of this section. A plan amendment that incorporates one or more of the following will be reviewed as a major amendment:

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18 AAC 75.415(d) is repealed:

(d) Repealed 3 / 23 / 2017.

(Eff. 5/14/92, Register 122; am 11/27/2002, Register 164; am 12/14/2002, Register 164; am 4/8/2012, Register 202; am 4/16/2016, Register 218; am 3 / 23 / 2017, Register 221)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070
AS 46.04.030

18 AAC 75.420(a) is amended to read:

18 AAC 75.420. Procedures to apply for oil discharge prevention and contingency plans [AND NONTANK VESSEL EQUIVALENT PLANS]; plan renewals. (a) A plan holder must apply for renewal of the department's approval of an oil discharge prevention and contingency plan [OR NONTANK VESSEL EQUIVALENT PLAN] in accordance with 18 AAC 75.408. For submittals after October 16, 2016, the application must be submitted at least 180 days, or the number of days stated in the plan approval letter under 18 AAC 75.460(a), in advance of expiration of the plan to permit department review before the plan approval expires. (Eff. 5/14/92, Register 122; am 11/27/2002, Register 164; am 4/16/2016, Register 218; am 3 / 23 / 2017, Register 221)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070

AS 46.04.030

18 AAC 75.425(e)(3)(A)(x) is amended to read:

(x) any other information required by the department to evaluate the response capability of a vessel, including verifying that the vessel is in compliance with applicable stability [AN APPROVED LOADING MANUAL THAT MEETS THE] requirements as set out in 46 C.F.R. 109.227 [OF 46 C.F.R. 45.105], as amended through September 11, 1992 [OCTOBER 1, 1990];

18 AAC 75.425(e)(4)(A)(ii) is amended to read:

(ii) for a terminal, a crude oil transmission pipeline, or an exploration and production contingency plan: cathodic protection or another approved corrosion control system if required by 18 AAC 75.065(h)(2), (i)(3), or (j)(3); a leak detection system for each tank if required by 18 AAC 75.065(i)(4) or (j)(4); any other prevention or control system approved by the department under 18 AAC 75.065(h)(1)(D); a means of immediately determining the liquid level of bulk storage tanks as specified in 18 AAC 75.065(k)(3) and (4) or in 18 AAC 75.066(g)(1)(C) and (D); maintenance practices for [BURIED] metallic piping containing oil as required by 18 AAC 75.080(b); protective coating and cathodic protection if required by 18 AAC 75.080(d) (k)(1), (l), or (m); and cathodic protection [CORROSION] surveys required by 18 AAC 75.080(k)(2);

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(Eff. 5/14/92, Register 122; am 9/25/93, Register 127; am 3/28/96, Register 137; am 4/4/97, Register 142; am 12/14/2002, Register 164; am 5/26/2004, Register 170; am 12/30/2006, Register 180; am 9/4/2014, Register 211; am 3/23/2017, Register 221)

Authority: AS 46.03.020 AS 46.04.035 AS 46.04.070
AS 46.04.030 AS 46.04.055

18 AAC 75.427 is repealed:

18 AAC 75.427. Nontank vessel equivalent plan contents. Repealed. (Eff. 11/27/2002, Register 164; repealed 3/23/2017, Register 221)

18 AAC 75.446 is repealed:

18 AAC 75.446. Approval criteria for nontank vessel equivalent plans. Repealed. (Eff. 11/27/2002, Register 164; am 4/16/2016, Register 218; repealed 3/23/2017, Register 221)

18 AAC 75.455(a) is amended to read:

18 AAC 75.455. Department review procedures for oil discharge prevention and contingency plans [AND NONTANK VESSEL EQUIVALENT PLANS]; new plans, plan renewals and major plan amendments. (a) Not later than seven working days after receipt of an oil discharge prevention and contingency plan [OR NONTANK VESSEL EQUIVALENT PLAN] application package for a new plan, plan renewal or major amendment, the department will determine if the application package is sufficient for review. If the application package is not

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sufficient for review, the department will notify the applicant in writing.

18 AAC 75.455(h) is amended to read:

(h) To assist the department in its review of oil discharge prevention and contingency plans [AND NONTANK VESSEL EQUIVALENT 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; am 11/27/2002, Register 164; am 4/8/2012, Register 202; am 4/16/2016, Register 218; am 3/23/2017, Register 221)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070
AS 46.04.030

18 AAC 75.460(a) is amended to read:

18 AAC 75.460. Department decision on oil discharge prevention and contingency plans [AND NONTANK VESSEL EQUIVALENT PLANS]; new plans, plan renewals, and major plan amendments. (a) After considering the information, analyses, and commitments contained in a complete application package for approval of an oil discharge prevention and contingency plan [OR NONTANK VESSEL EQUIVALENT PLAN] and comments received not later than the close of the public comment period set out in 18 AAC 75.455, the department will approve, approve with conditions, or disapprove an oil discharge prevention and contingency plan [OR A NONTANK VESSEL EQUIVALENT PLAN].

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(Eff. 5/14/92, Register 122; am 7/11/2002, Register 163; am 11/27/2002, Register 164; am 9/4/2014, Register 211; am 4/16/2016, Register 218; am 3/23/2017, Register 221)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070

AS 46.04.030

18 AAC 75.485(a) is amended to read:

(a) The department may conduct announced and unannounced discharge exercises to assure that an oil discharge prevention and contingency plan or nontank vessel plan is adequate in content and execution. No more than two exercises will be required for an oil discharge prevention and contingency plan in each 12-month period, unless an exercise demonstrates, in the department's judgment, a plan holder's failure to implement the plan effectively. [NO MORE THAN ONE DISCHARGE EXERCISE REQUIRING DEPLOYMENT OF EQUIPMENT IN THE FIELD AND ONE DISCHARGE EXERCISE WITHOUT DEPLOYMENT OF EQUIPMENT WILL BE REQUIRED FOR A NONTANK VESSEL EQUIVALENT PLAN IN EACH PLAN REVIEW CYCLE AS ESTABLISHED UNDER 18 AAC 75.456(b) OR 18 AAC 75.460(d), AS APPLICABLE, UNLESS AN EXERCISE DEMONSTRATES, IN THE DEPARTMENT'S JUDGMENT, A PLAN HOLDER'S FAILURE TO IMPLEMENT THE PLAN EFFECTIVELY.]

18 AAC 75.485(b) is amended to read:

(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

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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) [OR 18 AAC 75.446(f)].

(Eff. 5/14/92, Register 122; am 11/27/2002, Register 164; am 3/23/2017, Register 221)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070
AS 46.04.030

18 AAC 75.562(c)(1)(A) is amended to read:

(A) available at all times within two hours after initial notification of an incident to begin to establish, direct, and manage an incident command system organization; these functions may be performed by a qualified individual identified by the plan holder in accordance with 18 AAC 75.426(4) [OR 18 AAC 75.427(b)(1)(D), AS APPLICABLE]; these functions may be performed other than in person at the outset;
(Eff. 11/27/2002, Register 164; am 12/13/2002, Register 164; am 3/23/2017, Register 221)

Authority: AS 46.03.020 AS 46.04.035 AS 46.04.070
AS 46.04.030 AS 46.04.055

18 AAC 75.580 is amended to read:

18 AAC 75.580. Voluntary termination of registration. Unless the department has taken action under 18 AAC 75.570 for failure to comply, a registered oil spill primary response action contractor, nontank vessel cleanup contractor, nontank vessel incident management team, or response planning facilitator may ask the department to terminate registration and to remove

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that contractor's name from the list required by AS 46.04.035(e). A request under this section must be in writing and must be sent to all affected plan holders by certified mail. After the receipt of proof that all affected plan holders have been notified, the request must be submitted to the department with the certificate of registration and proof that all affected plan holders were notified. A request under this section becomes effective on the 30th day after the department receives it as provided in 18 AAC 75.445(i)(1)(D), [18 AAC 75.446(f)(4),] 18 AAC 75.531(8)(C), 18 AAC 75.532(9)(C), and 18 AAC 75.533(6)(C), as applicable. (Eff. 3/28/96, Register 137; am 11/27/2002, Register 164; am 3 / 23 / 2017, Register 221)

Authority: AS 46.03.020 AS 46.04.035 AS 46.04.070
AS 46.04.030 AS 46.04.055

18 AAC 75.990(124) is amended to read:

(124) "sufficiently impermeable" means, for a secondary containment system, that its design and construction has the impermeability necessary to protect groundwater from contamination and to contain a discharge or release until it can be detected and cleaned up; for design purposes for **tanks constructed after May 1992** [A NEW INSTALLATION], "sufficiently impermeable" means using a layer of natural or manufactured material of sufficient thickness, density, and composition to produce a maximum permeability for the substance being contained of 1×10^{-6} cm per second at a maximum anticipated hydrostatic pressure, unless the department determines that an alternate design standard protects groundwater from contamination and contains a discharge or release until detection and cleanup;

18 AAC 75.990(148) is repealed:

(148) repealed 3/23/2017;

18 AAC 75.990(160) is repealed:

(160) repealed 3/23/2017;

18 AAC 75.990(175) is amended to read:

(175) "marine structure"

(A) means an assembly that is

(i) permanently or temporarily attached to the seabed; and

(ii) used by an exploration or production facility;

(B) ["MARINE STRUCTURE"] includes mobile offshore drilling units, prefabricated offshore platforms, and artificial islands;

18 AAC 75.990(191) is amended to read:

(191) "application package is complete" means that the applicant has provided the information necessary for the department to review and evaluate the plan using the criteria established under 18 AAC 75.445 for oil discharge prevention and contingency plans [AND ESTABLISHED UNDER 18 AAC 75.446 FOR NONTANK VESSEL EQUIVALENT PLANS];

18 AAC 75.990(195)(B) is amended to read:

(B) 18 AAC 75.425(e)(1) - (5) for oil discharge prevention and

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contingency plans [OR 18 AAC 75.427(b)(1) - (3) FOR NONTANK VESSEL

EQUIVALENT PLANS]; and

(Eff. 5/14/92, Register 122; am 9/25/93, Register 127; am 4/4/97, Register 142; am 4/11/97, Register 142; am 1/22/99, Register 149; am 8/27/2000, Register 155; am 10/28/2000, Register 156; am 11/27/2002, Register 164; am 12/14/2002, Register 164; am 1/30/2003, Register 165; am 8/8/2003, Register 167; am 5/26/2004, Register 170; am 12/30/2006, Register 180; am 10/9/2008, Register 188; am 4/8/2012, Register 202; am 9/4/2014, Register 211; am 6/17/2015, Register 214; am 4/16/2016, Register 218; am 11/6/2016, Register 220; am 3/23/2017, Register 221)

Authority:	AS 46.03.020	AS 46.03.755	AS 46.04.055
	AS 46.03.050	AS 46.03.822	AS 46.04.070
	AS 46.03.710	AS 46.04.020	AS 46.08.140
	AS 46.03.740	AS 46.04.030	AS 46.09.020
	AS 46.03.745	AS 46.04.035	

18 AAC 78 is amended by adding a new section to read:

18 AAC 78.915. Cost recovery. An owner or operator of a UST is liable for response costs that the department or the state incurs as set out in the cost recovery requirements under 18 AAC 75.910. (Eff. 3/23/2017, Register 221)

Authority:	AS 40.25.120	AS 46.03.822	AS 46.04.070
	AS 46.03.020	AS 46.03.826	AS 46.08.070
	AS 46.03.365	AS 46.04.010	AS 46.08.075

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AS 46.03.760

AS 46.04.020

AS 46.09.020

MEMORANDUM


State of Alaska Department of Law

To: Hon. Byron Mallott
Lieutenant Governor

Date: February 17, 2017

File No.: JU2016200743

Tel. No.: 465-3600

From: Steven C. Weaver 
Sr. Assistant Attorney General
and Assistant Regulations Attorney
Legislation and Regulations Section

Re: Department of Environmental
Conservation regulations re:
discharges of oil and hazardous
substances, nontank vessel equivalent
plans, and cost recovery for cleanup of
leaking underground storage tanks
(18 AAC 75.047(f), (i)(3); 18 AAC
75.065(e)(2); 18 AAC 75.080(b), (o);
18 AAC 75.205; 18 AAC 75.236(c);
18 AAC 75.405 - 18 AAC 75.460;
18 AAC 75.485(a), (b); 18 AAC
75.562(c)(1)(A); 18 AAC 75.580;
18 AAC 75.990; 18 AAC 78.915)

We have reviewed the attached regulations from the Department of Environmental Conservation against the statutory standards of the Administrative Procedure Act. I have reviewed this project under a specific delegation dated February 17, 2017 from the Regulations Attorney. The regulations update procedures and requirements regarding discharges of oil and hazardous substances, in particular repealing obsolete provisions regarding how the department addresses nontank vessel equivalent plans, and also establish cost recovery provisions for state cleanup of leaking underground storage tanks.

We find no legal problems. This memorandum constitutes the written statement of approval under AS 44.62.060(b) and (c) that authorizes your office to file the attached regulations.

Hon. Byron Mallott, Lieutenant Governor
Our file: JU2015200743

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The September 22, 2016 public notice and the February 10, 2017 adoption order both state that this action is not expected to require an increased appropriation. Therefore, a fiscal note under AS 44.62.195 is not required.

SCW

cc w/enc: (via email)

Hon. Larry Hartig, Commissioner
Department of Environmental Conservation

Gary Mendivil, Regulations Contact
Department of Environmental Conservation

Kristin Ryan, Director
Division of Spill Prevention and Response
Department of Environmental Conservation

Clare Pavia
Division of Spill Prevention and Response
Department of Environmental Conservation

Christopher D. Peloso
Assistant Attorney General
Environmental Section

MEMORANDUM

State of Alaska Department of Law

TO: Hon. Byron Mallott
Lieutenant Governor

DATE: February 16, 2017

FILE NO.: JU2016200743

TELEPHONE NO.: (907) 465-3600

FROM: Susan R. Pollard *SRP*
Chief Assistant Attorney General
and Regulations Attorney
Legislation/Regulations Section

SUBJECT: Specific delegation of authority regarding regulations review on Department of Environmental Conservation regulations re: discharges of oil and hazardous substances, nontank vessel equivalent plans, and cost recovery for cleanup of leaking underground storage tanks (18 AAC 75.047(f), (i)(3); 18 AAC 75.065(e)(2); 18 AAC 75.080(b), (o); 18 AAC 75.205; 18 AAC 75.236(c); 18 AAC 75.405 - 18 AAC 75.460; 18 AAC 75.485(a), (b); 18 AAC 75.562(c)(1)(A); 18 AAC 75.580; 18 AAC 75.990; 18 AAC 78.915)

By this memorandum, I am delegating my authority as Regulations Attorney under AS 44.62 to Assistant Attorney General Steven C. Weaver for the above-referenced regulations project. Under this delegation of authority, Steven Weaver has my full authority under AS 44.62 to conduct the legal review under AS 44.62 and take necessary actions on this regulations project.

If you have questions, please let me know.

SCW

cc w/cnc: Scott C. Meriwether, AAC Coordinator
Office of the Lieutenant Governor

Steven C. Weaver
Sr. Assistant Attorney General and
Assistant Regulations Attorney
Legislation/Regulations Section—Juneau

AFFIDAVIT OF NOTICE OF PROPOSED REGULATION
AND FURNISHING OF ADDITIONAL INFORMATION


I, Brian Doyle, Environmental Program Specialist, of the Department of Environmental Conservation, being sworn, state the following:

As required by AS 44.62.190, notice of the proposed adoption of changes to Titles 75 and 78 dealing with Oil and other Hazardous Substances Pollution Control and Underground Storage Tanks and the repeal of the regulations addressing nontank vessel equivalent plans has been given by being

- (1) published in a newspaper or trade publication;
- (2) furnished to interested persons;
- (3) furnished to appropriate state officials;
- (4) furnished to the Department of Law, along with a copy of the proposed regulation;
- (5) furnished electronically to incumbent State of Alaska legislators;
- (6) furnished to the Legislative Affairs Agency, Division of Legal and Research Services;
- (7) posted on the Alaska Online Public Notice System as required by AS 44.62.175(a)(1) and (b) and 44.62.190(a)(1);
- (8) furnished electronically, along with a copy of the proposed regulation, to the Legislative Affairs Agency, the chair of the Resources Committee of the Alaska Senate and House of Representatives, the Administrative Regulation Review Committee, and the legislative council.

As required by AS 44.62.190, additional regulation notice information regarding the proposed adoption of the regulation changes described above has been furnished to interested persons and those in (5) and (6) of the list above. The additional regulation notice information also has been posted on the Alaska Online Public Notice System.

Date: 11/4/2016

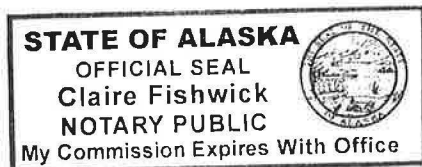


Brian Doyle, Environmental Program Specialist

Subscribed and sworn to before me at Tuneau on

11/4/16

(date)





Notary Public in and for the State of Alaska

AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

I, Brian Doyle, Environmental Program Specialist for the Department of Environmental Conservation, being duly sworn, state the following:

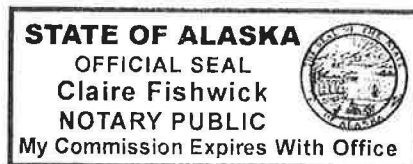
In compliance with AS 44.62.215, the Department of Environmental Conservation has kept a record of its use or rejection of factual or other substantive information that was submitted in writing as public comment and that was relevant to the accuracy, coverage, or other aspect of the Department of Environmental Conservation regulation on Oil and other Hazardous Substances Pollution Control and Underground Storage Tanks.

Date: 11/4/2016


Brian Doyle Environmental Program Specialist

Subscribed and sworn to before me at Tuneau on
11/4/16
(date)


Notary Public in and for the State of Alaska



NONTANK VESSEL EQUIVALENT PLANS: NOTICE OF PROPOSED CHANGES ON OIL AND
OTHER HAZARDOUS SUBSTANCES POLLUTION CONTROL AND UNDERGROUND STORAGE
TANKS IN THE REGULATIONS OF THE ALASKA DEPARTMENT OF ENVIRONMENTAL
CONSERVATION

BRIEF DESCRIPTION

The Alaska Department of Environmental Conservation proposes to change regulations dealing with Oil and other Hazardous Substances Pollution Control and Underground Storage Tanks and repeal the regulations addressing nontank vessel equivalent plans.

The Alaska Department of Environmental Conservation proposes to adopt regulation changes in Titles 75 and 78 of the Alaska Administrative Code, dealing with oil pollution prevention, financial responsibility, nontank vessel equivalent plans, and underground storage tanks, including the following:

- (1) Amend 18 AAC 75.047 to update citations regarding inspections and maintenance.
- (2) Amend 18 AAC 75.065 to clarify the requirement for field-constructed aboveground oil storage tanks.
- (3) Amend 18 AAC 75.080(b) and (o) to clarify a requirement for a corrosion control program and to specify a compliance date for piping removed from service, respectively.
- (4) Amend 18 AAC 75.205(a) to update who can submit an application.
- (5) Amend 18 AAC 75.205(c) to update who can sign an application.
- (6) Amend 18 AAC 75.236(c) to clarify the language regarding oil production quantities.
- (7) Repeal all references in 18 AAC Chapter 75 to "nontank vessel equivalent plan" to eliminate this option for nontank vessel plans.
- (8) Amend 18 AAC 75.408(c) to clarify submittal requirements for minor amendments.
- (9) Amend 18 AAC 75.425(e)(3) to update a citation regarding vessel loading manuals.
- (10) Amend 18 AAC 75.425(e)(4) to clarify requirements for the evaluation of best available technology.
- (11) Add a new section at 18 AAC 78.915 to address cost recovery for underground storage tank spills
- (12) Amend 18 AAC 75.990 to update or repeal selected definitions.

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to Clare Pavia, Department of Environmental Conservation, PO Box 111800, Juneau, AK 99811-1800, or by electronic mail at dec.cpr@alaska.gov. Comments may also be submitted through the Alaska Online Public Notice System, by accessing this notice on the system and using the "comment" link. The comments must be received no later than 5 p.m. on October 23, 2016.

You may submit written questions relevant to the proposed action to DEC by sending in questions by electronic mail at dec.cpr@alaska.gov or by sending the questions to Clare Pavia, Department of Environmental Conservation, PO Box 111800, Juneau, AK 99811-1800. The written questions must be received by October 13, 2016 which is 10 days before the end of the public comment period. The Department of Environmental Conservation will aggregate its response to substantially similar questions and make the questions and response available at http://dec.alaska.gov/spar/regulation_projects/index.htm. The Department of Environmental Conservation may, but is not required to, answer written questions received after the 10-day cut-off date and before the end of the comment period.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Natalie Wolfe at (907) 269-0291 or TDD Relay Service 1-800-770-8973/TTY or dial 711 no later than October 11, 2016 to ensure that any necessary accommodations can be provided.

A copy of the proposed regulation changes is available on the Alaska Online Public Notice System and by contacting Clare Pavia at the address or email above or by calling 907-465-5283.

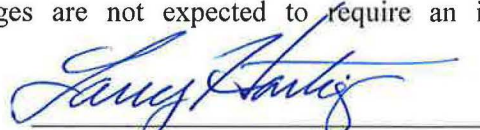
After the public comment period ends, the Department of Environmental Conservation will either adopt the proposed regulation changes or other provisions dealing with the same subject, without further notice, or decide to take no action. The language of the final regulations may be different from that of the proposed regulations. **You should comment during the time allowed if your interests could be affected.**

Statutory Authority: AS 46.03.020, AS 46.04.070 and AS 46.03.365.

Statutes Being Implemented, Interpreted, or Made Specific: AS 46.03.020, AS 46.04.030, AS 46.04.040, AS 46.04.055, and AS 46.03.365.

Fiscal Information: The proposed regulation changes are not expected to require an increased appropriation.

DATE: September 19, 2016


Larry Hartig, Commissioner

ADDITIONAL REGULATIONS NOTICE INFORMATION
(AS 44.62.190(d))

1. Adopting agency: Department of Environmental Conservation, Division of Spill Prevention and Response
2. General subject of regulation: Oil and other Hazardous Substances Pollution Control and Underground Storage Tanks.
3. Citation of regulation (may be grouped): 18 AAC 75 and 18 AAC 78
4. Department of Law file number, if any: JU2016200743
5. Reason for the proposed action:
 - ☐ Compliance with federal law or action (identify): _____
 - ☐ Compliance with new or changed state statute
 - ☐ Compliance with Federal or state court decision (identify) _____
 - ☐ Development of program standards
 - ☒ Other (identify): Repeal nontank vessel equivalent plan regulations, provide consistency between regulations, minor edits to clarify language, and add a cross-reference in 18 AAC 78 to the cost recovery regulations under 18 AAC 75
6. Appropriation/Allocation: Spill Prevention and Response/ Prevention Preparedness and Response Program
7. Estimated annual costs in the aggregate to comply with the proposed action to:
Private Persons: No identifiable additional costs to comply.
Other State Agencies: None.
Municipalities: No identifiable additional costs to comply.
8. Cost of implementation to the state agency and available funding (in thousands of dollars):

	Initial Year FY 17	Subsequent Years
Operating Cost	\$ <u>0</u>	\$ <u>0</u>
Capital Cost	\$ <u>0</u>	\$ <u>0</u>
1002 Federal receipts	\$ <u>0</u>	\$ <u>0</u>
1003 General fund match	\$ <u>0</u>	\$ <u>0</u>
1004 General fund	\$ <u>0</u>	\$ <u>0</u>
1005 General fund/ program	\$ <u>0</u>	\$ <u>0</u>
1037 General fund/ mental health	\$ <u>0</u>	\$ <u>0</u>
Other	\$ <u>0</u>	\$ <u>0</u>

9. The name of the contact person for the regulations:
Name: Clare Pavia
Title: Guidance and Regulations Group Lead
Address: PO Box 111800, Juneau, AK 99811-1800
Telephone: 907-465-5283
E-mail address: dec.cpr@alaska.gov

10. The origin of the proposed action:
- ☒ Staff of state agency
 - ☐ Federal government
 - ☐ General public
 - ☐ Petition for regulation change
 - ☐ Other (identify) _____

Date: September 19, 2016

Prepared by: _____



Name (printed): Clare Pavia

Title (printed): Guidance and Regulations Group Lead

Telephone: (907) 465-5283

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0001393072
\$448.22

Received 10/4/2016
D.E.C. S.A.R.

AFFIDAVIT OF PUBLICATION

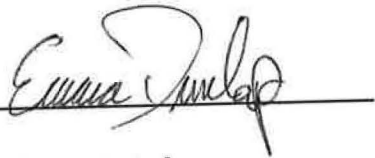
STATE OF ALASKA
THIRD JUDICIAL DISTRICT

Emma Dunlap
being first duly sworn on oath deposes and
says that he/she is a representative of the
Alaska Dispatch News, a daily newspaper.
That said newspaper has been approved
by the Third Judicial Court, Anchorage,
Alaska, and it now and has been published
in the English language continually as a
daily newspaper in Anchorage, Alaska, and
it is now and during all said time was
printed in an office maintained at the
aforesaid place of publication of said
newspaper. That the annexed is a copy of
an advertisement as it was published in
regular issues (and not in supplemental
form) of said newspaper on

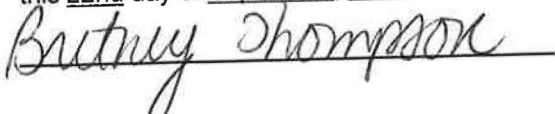
September 22, 2016

and that such newspaper was regularly
distributed to its subscribers during all of
said period. That the full amount of the fee
charged for the foregoing publication is not
in excess of the rate charged private
individuals.

Signed



Subscribed and sworn to before me
this 22nd day of September, 2016



Notary Public in and for
The State of Alaska.

Third Division

Anchorage, Alaska

MY COMMISSION EXPIRES

2/23/2019

Notary Public
BRITNEY L. THOMPSON
State of Alaska

My Commission Expires Feb 23, 2019

NONTANK VESSEL EQUIVALENT PLANS: NOTICE OF PROPOSED CHANGES ON OIL AND OTHER HAZARDOUS SUBSTANCES POLLUTION CONTROL AND UNDERGROUND STORAGE TANKS IN THE REGULATIONS OF THE ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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Statutory Authority: AS 46.03.020, AS 46.04.070 and AS 46.03.365.

Statutes Being Implemented, Interpreted, or Made Specific:

A. Gentle Reader: That your over it, with whatever authority no objection to your president dignified, Miss Manners has ed that you keep the ceremony think? What does Miss Manners are not religious.