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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: May 26, 2017

RE: Filed Permanent Regulations: Department of Environmental Conservation
Department of Environmental Conservation regulations re: aboveground storage tanks (ASTs) at Class 2 facilities (18 AAC 75.835 - 18 AAC 75.849)

Attorney General File:	JU2016201025
Regulation Filed:	5/25/2017
Effective Date:	6/24/2017
Print:	222, July 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 5 pages of regulations, dealing with Class 2 aboveground storage tanks 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: April 21, 2017



Larry Hartig, Commissioner
Department of Environmental Conservation

FILING CERTIFICATION

I, Byron Mallott, Lieutenant Governor for the State of Alaska, certify that on May 25, 2017, at 3:00 p.m., I filed the attached regulations according to the provisions of AS 44.62.040 – 44.62.120.



Byron Mallott, Lieutenant Governor

Effective: June 24, 2017.

Register: 222, July 2017.

18 AAC 75 is amended by adding ³ new section ^{to read:}

75.835.

On or after

18 AAC 75.915. Applicability of Class 2 facility regulations. (a) ~~Effective~~ {60 days

August 23, 2017 after effective date of regulation}, the owner or operator of a Class 2 facility as defined in

18 AAC 75.849

18 AAC 75.835 - 18 AAC 75.849.

~~18 AAC 75.985~~ shall meet the requirements of ~~18 AAC 75.915 - 18 AAC 75.985.~~

An

is not subject to

(b) The following aboveground storage tanks (ASTs) located at a Class 2 facility ~~are~~

18 AAC 75.835 - 18 AAC 75.849 if the AST

~~is excluded~~ from the requirements of ~~18 AAC 75.915 - 18 AAC 75.985.~~

is

(1) ~~an~~ AST used in a wastewater treatment works or wastewater collection

system regulated under 18 AAC 72 or 18 AAC 83, including oil-water separators;

is

(2) ~~an~~ AST located at the facility for 90 consecutive days or less;

contains

(3) ~~an~~ AST containing liquefied petroleum gas or liquefied natural gas;

has

(4) ~~an~~ AST with a storage capacity of less than 1,000 gallons;

is

including

(5) a vehicle, ~~such as~~ a tank truck or railroad tank car, unless it contains oil and

remains at the facility for more than 90 consecutive days; ~~and~~ or

is

(6) oil-filled operational equipment. (Eff. 6/24/2017, Register 222)

Authority: AS 46.03.020 AS 46.04.070

Article 9. Aboveground Storage Tanks; Class 2 Facilities.
Section
835. Applicability of Class 2 facility regulations
840. Registration and notification requirements
849. Definitions for 18 AAC 75.835 - 18 AAC 75.849

18 AAC 75 is amended by adding a new section to read:

75.840.

18 AAC 75.920. Registration and notification requirements. (a) An owner or operator

of a Class 2 facility shall register the facility with the department using the paper or electronic

form supplied by the department not later than 30 days after the facility is placed in service. If

the facility was placed in service before {60 days after effective date of regulation}, the owner or

not later than

operator shall register the facility by {90 days after effective date of regulation}.

Publisher: Please renumber, as Article 10, existing Article 9 (General Provisions) covering 18 AAC 75.900 - 18 AAC 75.990.))

(b) An owner or operator of a Class 2 facility shall notify the department using the paper or electronic form supplied by the department not later than 30 days after

- (1) an AST is placed in service;
- (2) an AST is permanently closed;
- (3) the facility ^{is} no longer ~~meets the definition of~~ a Class 2 facility ~~due to~~ a change

as defined in 18 AAC 75.849, because of

in storage capacity; or

- (4) ^{the} ~~a~~ change in owner, operator, or name of the owner or operator of the facility.

changes

(Eff. 6/24/2017, Register 222)

Authority: AS 46.03.020 AS 46.04.070

75.840

Editor's note: The forms referenced in 18 AAC ~~75.920~~ are available on the department's Internet website: <http://dec.alaska.gov/spar/ppr/Class2Facilities.htm>.

~~18 AAC 75 is amended by adding a new section to read:~~

75.849.

~~18 AAC 75.835 - 18 AAC 75.849.~~

75.835-

18 AAC ~~75.985~~. Definitions for ~~18 AAC 75.915 - 18 AAC 75.985~~. In 18 AAC ~~75.915-~~

18 AAC 75.849,

requires

18 AAC 75.985, unless the context ~~indicates~~ otherwise,

9(A)

(1) "aboveground storage tank" or "AST" means a container ^{9(B)} that is used to store noncrude oil and ~~that~~ is not an underground storage tank as defined in AS 46.03.450;

(2) "Class 2 facility" ^{9(A)} means an onshore facility that stores noncrude oil in ASTs,

has a storage capacity of 1,000 gallons or greater, and is not subject to AS 46.04.030; ~~Class 2~~

^{9(B)} facility" does not include residential structures ⁹ with ²⁰ ASTs used solely to store heating oil for consumptive use on the premises;

(3) “dwelling unit” ^{¶(A)} means real or personal property inhabited as a primary or secondary residence; ^{¶(B)} “dwelling unit” includes an individual unit within a multiple ^{unit} residential structure;

(4) “oil-filled operational equipment” ^{¶(A)} means equipment that includes an oil storage container or multiple containers in which the oil is present solely to support the function of the apparatus or the device; ^{¶(B)} ~~“oil-filled operational equipment”~~ includes hydraulic systems, lubricating systems, machining coolant systems, and transformers; ~~“oil-filled operational~~

^{¶(C)} ~~Equipment”~~ does not include oil-filled manufacturing equipment ^{such as} ^{containers} (flow-through process);

(5) “permanently closed” means

(A) all liquid and sludge has been removed from the AST; ~~and~~

(B) all connecting lines and piping have been disconnected from the AST

^{¶(C)} and blanked off; all valves, except ventilation valves, have been closed and locked; and

^{¶(D)} conspicuous signs have been posted on the AST stating that it is permanently closed and noting the date of closure;

(6) “placed in service” means

(A) for an AST, at the start of operational use after initial construction, installation, or reactivation from being permanently closed; ~~and~~

(B) for a Class 2 facility, at the start of operational use of a facility after

(i) initial construction; or

(ii) an AST is placed in service or permanently closed that

changes the facility’s storage capacity causing the facility to ^{become} meet the definition of ^{as defined in this section} a Class 2 facility;

(7) "residential structure" means a structure used as a dwelling unit; residential structure does not include

- (i) (A) a structure with both residential and nonresidential uses and a common AST to store heating oil;
- (ii) (B) transient lodging;
- (iii) (C) a residential school or residence hall;
- (iv) (D) a state or local correctional facility;
- (v) (E) a nursing home;
- (vi) (F) a hospital; or
- (vii) (G) a place constructed primarily for recreation activities;

(8) "storage capacity" means

- (A) for an AST, the full physical volume of the tank; and
- (B) for a Class 2 facility, the aggregate storage capacity of the ASTs

subject to the requirements of 18 AAC 75.835 - 18 AAC 75.849; "storage capacity" does not include the aggregate storage capacity of ASTs that have been permanently closed;

(9) "transient lodging"

(A) means a room or suite of rooms which is occupied not as a primary or secondary residence

(i) by persons for periods of less than 30 consecutive days; or that is occupied not as a primary or secondary residence and that has (ii) with services normally offered by hotels, including

housekeeping services, a front desk, or telephone switchboard, regardless of the length of occupancy of a person;

(B) includes hotels, motels, hostels, employer-provided housing, and

resorts, and

~~(C) does not include dwelling units.~~ (Eff. 6/24/2017, Register 222)

Authority: AS 46.03.020 AS 46.04.070

MEMORANDUM


State of Alaska
Department of Law

To: Hon. Byron Mallott
Lieutenant Governor

Date: May 24, 2017

File No.: JU2016201025

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:
aboveground storage tanks (ASTs) at
Class 2 facilities (18 AAC 75.835 -
18 AAC 75.849)

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 May 24, 2017 from the Regulations Attorney. The regulations establish registration and notification requirements for aboveground storage tanks (ASTs) put into service and taken out of service at certain facilities, designated as "Class 2" according to the storage capacity of the tanks, and excluding most residential structures.

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.

Please note that 18 AAC 75.835(a) and 18 AAC 75.840(a) contain placeholders for dates that are timed to 60 days after the effective date of the regulations, or to 90 days after the effective date of the regulations. Once the regulations are filed and the effective date thus established under AS 44.62.180, we request that your office make handwritten edits to substitute the correct date for the placeholder text.

The December 16, 2016 public notice, and the April 21, 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.

Hon. Byron Mallott, Lieutenant Governor
Our file: JU2016201025

May 24, 2017
Page 2

We have made some technical corrections to conform the regulations in accordance with AS 44.62.125. The corrections are shown on the attached copy of the regulations.

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

Dennis Hartwick
Division of Spill Prevention and Response
Department of Environmental Conservation

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

Chris Peloso, Assistant Attorney General
Environmental Section

MEMORANDUM

State of Alaska Department of Law

TO: Hon. Byron Mallott
Lieutenant Governor

DATE: May 24, 2017

FILE NO.: JU2016201025

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:
aboveground storage tanks
(ASTs) at Class 2 facilities
(18 AAC 75.835 - 18 AAC
75.849)

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/enc: Scott C. Meriwether, AAC Coordinator
Office of the Lieutenant Governor

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

ABOVEGROUND STORAGE TANKS: NOTICE OF PROPOSED CHANGES TO THE OIL AND
OTHER HAZARDOUS SUBSTANCES POLLUTION CONTROL REGULATIONS OF THE ALASKA
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

BRIEF DESCRIPTION

The Alaska Department of Environmental Conservation is proposing to adopt new regulations requiring registration and notification for facilities that store noncrude oil in aboveground storage tanks and have capacities of 1,000 gallons or greater but less than 420,000 gallons.

The Alaska Department of Environmental Conservation proposes to adopt new regulations in 18 AAC 75 dealing with Class 2 facilities – facilities that store noncrude oil in aboveground storage tanks and have storage capacities of 1,000 gallons or greater but less than 420,000 gallons – including the following:

- (1) Add new section 18 AAC 75.915 to address the applicability requirements.
- (2) Add new section 18 AAC 75.920 to address the registration and notification requirements.
- (3) Add new section 18 AAC 75.985 to create definitions related to Class 2 facilities.

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 Dennis Hartwick, Alaska Department of Environmental Conservation, 610 University Ave., Fairbanks, AK 99709, 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 January 19, 2017.

You may submit written questions relevant to the proposed action to the Department of Environmental Conservation by sending in questions by electronic mail at dec.cpr@alaska.gov or by sending the questions to Dennis Hartwick, Department of Environmental Conservation, 610 University Ave., Fairbanks, AK 99709. The written questions must be received by January 9, 2017, 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 January 6, 2017 to ensure that any necessary accommodations can be provided.

A copy of the proposed regulation changes, supporting documents, and a link to the Alaska Online Public Notice System are available at http://dec.alaska.gov/spar/regulation_projects/index.htm and by contacting Dennis Hartwick at the address or email above or by calling 907-451-2171.

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.** Written comments received are public records and are subject to public inspection.

Statutory authority: AS 46.03.020; AS 46.04.070

Statutes being implemented, interpreted, or made specific: AS 46.03.020; AS 46.04.070

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: Class 2 facilities
3. Citation of regulation (may be grouped): 18 AAC 75
4. Department of Law file number, if any: JU2016201025
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): _____
6. Appropriation/Allocation: Spill Prevention and Response Division - Prevention, Preparedness and Response Program
7. Estimated annual costs in the aggregate to comply with the proposed action to: The proposed regulations will require Class 2 facilities to register aboveground fuel storage tanks with the department. There are no proposed registration fees. This action will require the submission of a form. The additional one-time cost to complete and submit the Class 2 facility registration form is estimated to be about 1-2 hours of staff time. This measure also has the potential to reduce future response and remediation costs for the state and responsible parties due to additional opportunities for targeted spill prevention.

a. Private Persons: Limited. The general public will not be affected. Owners and operations of aboveground fuel storage tanks with a capacity of 1,000 gallons or greater but less than 420,000 gallons will have to submit a registration form to the department.

b. Other State Agencies: Limited. All departments with aboveground storage tanks with a capacity of 1,000 gallons or greater but less than 420,000 gallons will have to submit a registration form to the department.

c. Municipalities: Limited. All municipalities with aboveground storage tanks with a capacity of 1,000 gallons or greater but less than 420,000 gallons will have to submit a registration form to the department.

8. Cost of implementation to the state agency and available funding (in thousands of dollars):

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

AFFIDAVIT OF NOTICE OF PROPOSED REGULATION
AND FURNISHING OF ADDITIONAL INFORMATION

I, Dennis Hartwick, 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 18 AAC 75 to require registration and notification for facilities that store noncrude oil in aboveground storage tanks, have storage capacities of 1,000 gallons or greater, and are not required to have a contingency plan, 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.

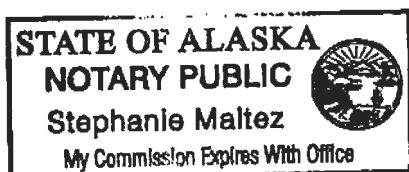
Date: 04/14/2017

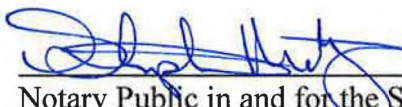


Dennis Hartwick, Environmental Program Specialist

Subscribed and sworn to before me at Fairbanks, Ak on
4/14/2017

(date)





Notary Public in and for the State of Alaska

AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

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

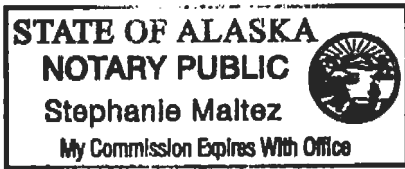
In compliance with AS 44.62.215, the Department of Environmental Conservation has kept a record of its use or rejection of factual or other substantive information that was submitted in writing as public comment and that was relevant to the accuracy, coverage, or other aspect of the Department of Environmental Conservation's regulation on registration and notification for facilities that store noncrude oil in aboveground storage tanks, have storage capacities of 1,000 gallons or greater, and are not required to have a contingency plan.

Date: 04/14/2017

Dennis Hartwick
Dennis Hartwick, Environmental Program Specialist

Subscribed and sworn to before me at Fairbank, AK on

4/14/2017
(date)



Stephanie Maltez
Notary Public in and for the State of Alaska

270239
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\$368.54

AFFIDAVIT OF PUBLICATION

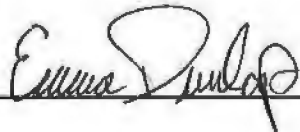
STATE OF ALASKA
THIRD JUDICIAL DISTRICT

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

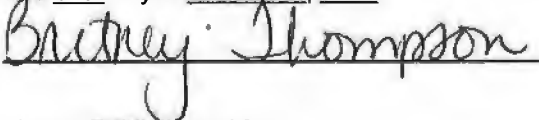
December 16, 2016

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 16th day of December, 2016



Notary Public in and for
The State of Alaska.
Third Division
Anchorage, Alaska
MY COMMISSION EXPIRES

2/23/2019

BRITNEY L. THOMPSON
State of Alaska

My Commission Expires Feb 23, 2019

ABOVEGROUND STORAGE TANKS: NOTICE OF PROPOSED CHANGES TO THE OIL AND OTHER HAZARDOUS SUBSTANCES POLLUTION CONTROL REGULATIONS OF THE ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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Statutory authority: AS 46.03.020; AS 46.04.070

Statutes being implemented, interpreted, or made specific:
AS 46.03.020; AS 46.04.070

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

DATE: December 13, 2016

Larry Hartig, Commissioner

Published: December 16, 2016