

Byron Mallott  
Lieutenant Governor  
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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:** July 17, 2017

**RE:** Filed Permanent Regulations: Department of Environmental Conservation

Department of Environmental Conservation Regulation re: Oil and Other Hazardous  
Substances Pollution Control: Financial Responsibility for Oil Discharges; Consumer  
Price Adjustments (18 AAC 75.235; 18 AAC 75.270)

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Attorney General File:	JU017200215
Regulation Filed:	7/17/2017
Effective Date:	10/1/2017
Print:	223, October 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 3 pages of regulations, dealing with financial responsibility dollar amounts under 18 AAC 75, 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 46.04.045 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.

Although no public comments were received, 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, 2017, as provided in AS 44.62.180.

Date: June 14, 2017

  
\_\_\_\_\_  
Larry Hartig, Commissioner



FILING CERTIFICATION

I, Byron Mallott, Lieutenant Governor for the State of Alaska, certify that on

July 17<sup>th</sup>, 2017, at 10:06 AM, I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.

  
\_\_\_\_\_  
Lieutenant Governor Byron Mallott

Effective: October 1, 2017

Register: 223, October 2017

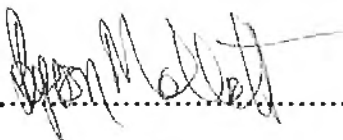
**FOR DELEGATION OF THE LIEUTENANT GOVERNOR'S AUTHORITY**

**I, BYRON MALLOTT, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA, designate the following state employee to perform the Administrative Procedures Act filing functions of the Office of the Lieutenant Governor:**

**Claire Richardson, Special Assistant**

**IN TESTIMONY WHEREOF, I have signed and affixed the Seal of the State of Alaska, in Juneau, on January 7<sup>th</sup> 2015.**



  
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**BYRON MALLOTT  
LIEUTENANT GOVERNOR**

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 consumers in the Anchorage metropolitan area for the second half of 2016 [2013], as reported by the United States Department of Labor, ~~Bureau of Labor~~ <sup>b</sup> ~~Statistics~~ <sup>s</sup>. 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, \$93,550,000 [\$91,500,000] per incident;
- (2) for a noncrude oil terminal facility, \$46.78 [\$45.75], per incident, for each barrel of total noncrude oil storage capacity at the terminal, or \$1,871,000 [\$1,830,000], whichever is greater, subject to a maximum of \$93,550,000 [\$91,500,000]; if the facility stores more noncrude oil than crude oil, the \$46.78 [\$45.75] 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, \$561.30 [\$549.00], per incident, for each barrel of storage capacity or \$187,100,000 [\$183,000,000] whichever is greater;
- (4) for a tank vessel or barge carrying noncrude oil, \$187.10 [\$183.00], per incident, for each barrel of storage capacity or \$1,871,000 [\$1,830,000], whichever is greater, subject to a maximum of \$65,485,000 [\$64,050,000];
- (5) for a nontank vessel carrying predominantly nonpersistent product, \$187.10 [\$183.00] per incident, for each barrel of total oil storage capacity, persistent and nonpersistent product, on the vessel or \$1,871,000 [\$1,830,000], whichever is greater;

(6) for a nontank vessel carrying predominantly persistent product, \$561.30 [\$549.00] per incident, for each barrel of total oil storage capacity, persistent product and nonpersistent product, on the vessel or \$9,355,000 [\$9,150,000], whichever is greater;

(7) for a railroad tank car,

(A) \$561.30 [\$549.00] 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) \$187.10 [\$183.00] 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 \$1,871,000 [\$1,830,000], whichever is greater;

(8) for a pipeline, \$93,550,000 [\$91,500,000] per incident;

(9) for an offshore exploration or production facility, \$93,550,000 [\$91,500,000] per incident;

(10) for an onshore production facility that produces more than 10,000 barrels per day of oil, \$37,420,000 [\$36,600,000] 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, \$18,710,000 [\$18,300,000] 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, \$9,355,000 [\$9,150,000] per incident;

(13) for an onshore production facility that produces 2,500 or fewer barrels per day of oil, \$1,871,000 [\$1,830,000] per incident;

(14) for an onshore exploration facility, \$1,871,000 [\$1,830,000] 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 10/6/2005, Register 176; am 8/31/2008, Register 187; am 10/~~6~~<sup>add'l</sup>/2011, Register 199; am 9/4/2014, Register 211; am 10/1/2014, Register 211; am 10/1/2017, Register 223)

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

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(*l*) are met with respect to the amount of \$93,550,000 [\$91,500,000] 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)

**Authority:** AS 46.03.020 AS 46.04.045 AS 46.04.070  
AS 46.04.040

# MEMORANDUM

## State of Alaska Department of Law

To: The Honorable Byron Mallott  
Lieutenant Governor

Date: July 14, 2017

File No.: JU2017200215

Tel. No.: 465-3600

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

Re: Department of Environmental  
Conservation Regulation re: Oil and  
Other Hazardous Substances  
Pollution Control: Financial  
Responsibility for Oil Discharges;  
Consumer Price Adjustments: 18  
AAC 75.235, 18 AAC 75.270

The Department of Law has reviewed the attached regulations of the Department of Environmental Conservation against the statutory standards of the Administrative Procedure Act. 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. *These regulations are to have an effective date of October 1, 2017; that date will need to be reflected in the history not following each section.*

The regulations were adopted by the Department of Environmental Conservation after the close of the public comment period. The regulations concern the dollar amount required for proof of financial responsibility (as adjusted by the Anchorage Consumer Price Index) that must be provided to the department by persons who operate certain oil facilities and vessels.

The April 21, 2017 public notice and the June 14, 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. 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.

SRP/ads

cc: Hon. Larry Hartig, Commissioner, Department of Environmental Conservation  
Brian Doyle, Environmental Program Specialist, Department of Environmental  
Conservation  
Cameron Q. Jimmo, Assistant Attorney General, Environmental Section

OIL SPILL FINANCIAL RESPONSIBILITY: NOTICE OF PROPOSED CHANGES TO THE  
REGULATIONS OF ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
(DEC)

BRIEF DESCRIPTION

DEC proposes to amend the regulations for proof of financial responsibility that must be provided to DEC by persons who operate certain oil facilities and vessels. AS 46.04.045 requires the dollar amounts to be reviewed and adjusted every three years.

DEC proposes to adopt regulation changes at 18 AAC 75.235 and 18 AAC 75.270 to adjust the dollar amounts of proof of financial responsibility in accordance with changes to the Anchorage Consumer Price Index (CPI). The Anchorage CPI for the second half of 2016 was published January 2017, and these increased dollar amounts correspond with the updated Anchorage CPI.

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 Brian Doyle, Alaska Department of Environmental Conservation, PO Box 111800, Juneau, AK 99811-1800, by facsimile at (907) 465-5262 or by electronic mail at [dec.cpr@alaska.gov](mailto: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 May 26, 2017.

You may submit written questions relevant to the proposed action to DEC by sending in questions by electronic mail at [dec.cpr@alaska.gov](mailto:dec.cpr@alaska.gov) or by sending the questions to Brian Doyle, Alaska Department of Environmental Conservation, PO Box 111800, Juneau, AK 99811-1800. The written questions must be received by May 16, 2017, which is 10 days before the end of the public comment period. DEC will aggregate its response to substantially similar questions and make the questions and response available on the Alaska Online Public Notice System and [http://dec.alaska.gov/spar/regulation\\_projects/index.htm](http://dec.alaska.gov/spar/regulation_projects/index.htm). DEC 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, [Natalie.Wolfe@alaska.gov](mailto:Natalie.Wolfe@alaska.gov) or TDD Relay Service 1-800-770-8973/TTY or dial 711 no later than May 19, 2017, which is 7 days before the end of the public comment period 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 Brian Doyle at the address or email above or by calling 907-465-5346.

After the public comment period ends, DEC 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 46.04.045; AS 46.04.070

**Statutes being implemented, interpreted, or made specific:** AS 46.04.040; AS 46.04.055

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

Date: April 21, 2017  
Anchorage, Alaska



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Larry Hartig, Commissioner

ADDITIONAL REGULATIONS NOTICE INFORMATION  
(AS 44.62.190(d))

1. Adopting agency: Department of Environmental Conservation
2. General subject of regulation: Proof of Financial Responsibility Requirements
3. Citation of regulation (may be grouped): 18 AAC 75.235 and 18 AAC 75.270
4. Department of Law file number, if any: JU2017200215
5. Reason for the proposed action:
  - ☐ compliance with federal law
  - ☐ compliance with new or changed state statute
  - ☐ compliance with court order
  - ☐ development of program standards
  - ☒ other: statutory requirement under AS 46.04.045
6. Appropriation/Allocation: \_\_\_\_\_
7. Estimated annual cost to comply with the proposed action to:
  - a. Private Persons: If commercial operators have current insurance coverage at a level extremely close to the current minimum requirements, there is a potential for a minor increase in the cost of insurance coverage. The rate of inflation over the past three years has been low, so adjustments would be modest. The department cannot provide an average cost for this subset of commercial operators, since the cost of insurance coverage depends on the type of facility and the storage capacity.
  - b. Another state agency: None
  - c. Municipalities: No identifiable additional compliance costs.
8. Cost of implementation to the state agency and available funding (in thousands of dollars):

	Initial Year FY <u>17</u>	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>
Other (identify)	\$ <u>0</u>	\$ <u>0</u>

9. The name of the contact person for the regulations:

Name Brian Doyle  
Title Environmental Program Specialist  
Address P.O. Box 111800  
Juneau, AK 99811-1800  
Telephone (907) 465-5346  
E-mail address [brian.doyle@alaska.gov](mailto:brian.doyle@alaska.gov)

10. The origin of the proposed action:

- ☒ staff of state agency  
☐ federal government  
☐ general public  
☐ petition for regulation change  
☐ other (please list) \_\_\_\_\_

11. Date: April 21, 2017

Prepared by: \_\_\_\_\_

Name (typed)

  
Brian Doyle

Title (typed)

Environmental Program Specialist

Telephone:

(907) 465-5346

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 Chapter 75 dealing with financial responsibility dollar amounts 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.

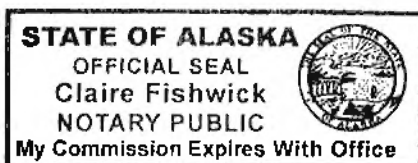
As required by AS 44.62.190, additional regulation notice information regarding the proposed adoption of the regulation changes described above has been furnished to interested persons and those in (5) and (6) of the list above. The additional regulation notice information also has been posted on the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

Date: 6/14/2017

  
\_\_\_\_\_  
Brian Doyle, Environmental Program Specialist

Subscribed and sworn to before me at Juneau on

6/14/17  
\_\_\_\_\_  
(date)




  
\_\_\_\_\_  
Notary Public in and for the State of Alaska

AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

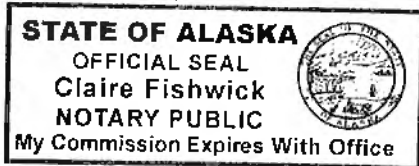
I, Brian Doyle, Environmental Program Specialist for the Department of Environmental Conservation, being duly sworn, state the following:

The Department of Environmental Conservation did not receive any 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 financial responsibility dollar amounts.

Date: 6/14/2017

  
\_\_\_\_\_  
Brian Doyle, Environmental Program Specialist

Subscribed and sworn to before me at Juneau on  
6/14/17  
\_\_\_\_\_  
(date)



  
\_\_\_\_\_  
Notary Public in and for the State of Alaska



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# AFFIDAVIT OF PUBLICATION

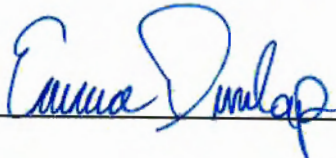
STATE OF ALASKA  
THIRD JUDICIAL DISTRICT

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

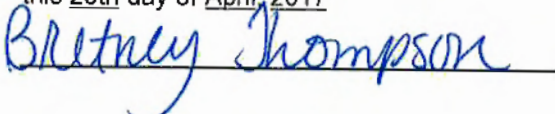
April 25, 2017

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 25th day of April, 2017



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

## OIL SPILL FINANCIAL RESPONSIBILITY: NOTICE OF PROPOSED CHANGES TO THE REGULATIONS OF ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION (DEC)

DEC proposes to adopt regulation changes at 18 AAC 75.235 and 18 AAC 75.270 to adjust the dollar amounts of proof of financial responsibility in accordance with changes to the Anchorage Consumer Price Index (CPI). The Anchorage CPI for the second half of 2016 was published January 2017, and these increased dollar amounts correspond with the updated Anchorage CPI.

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**Statutory authority:** AS 46.03.020; AS 46.04.045; AS 46.04.070

**Statutes being implemented, interpreted, or made specific:** AS 46.04.040; AS 46.04.055

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

Date: April 21, 2017  
Anchorage, Alaska

Larry Hartig, Commissioner

Published: April 25, 2017