

STATE OF ALASKA

**Selected Oil and Other Hazardous
Substances Pollution Control Statutes
And Regulations**



Current as of September 24, 2009

Alaska Department of Environmental Conservation

NOTICE TO READERS

This is a compilation of selected Alaska Statutes and regulations that pertain to, or are closely associated with, the protection of public health and the environment from oil and hazardous substance pollution. The summary was excerpted from the official codes on file with the Lieutenant Governor. Portions may not be complete. There may be errors or omissions from current state law that have not been identified and changes that have occurred after printing. This booklet is intended as an informational guide only and has been simplified for your convenience. To be certain of the current laws, refer to the official codes, the Department's Internet home page at <http://www.dec.state.ak.us>, or contact your local office of the Alaska Department of Environmental Conservation in:

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TABLE OF CONTENTS

SELECTED ALASKA STATUTES

AS 26.23.071- AS 26.23.090	1
AS 43.55.201- AS 43.55.310	7
AS 46.03.010- AS 46.03.900	10
AS 46.04.010- AS 46.04.900	69
AS 46.08.005- AS 46.08.900	86
AS 46.09.010- AS 46.09.900	96

CHAPTER 75

Article 1. Oil Pollution Prevention Requirements. 18 AAC 75.005- 18 AAC 75.090	102
Article 2. Financial Responsibility For Oil Discharges. 18 AAC 75.205- 18 AAC 75.290	121
Article 3. Discharge Reporting, Cleanup, And Disposal Of Oil And Other Hazardous Substances. 18 AAC 75.300- 18 AAC 75.396	137
Article 4. Oil Discharge Prevention And Contingency Plans And Nontank Vessel Plans. 18 AAC 75.400- 18 AAC 75.496	183
Article 5. Oil Spill Primary Response Action Contractors. 18 AAC 75.500- 18 AAC 75.580	231
Article 6. Civil Penalties For Discharge Of Petroleum And Petroleum Products And Byproducts. 18 AAC 75.605- 18 AAC 75.670	252
Article 7. Surface Oiling. 18 AAC 75.700- 18 AAC 75.730	258
Article 8. Oil Discharge For Scientific Purposes. 18 AAC 75.800- 18 AAC 75.830	261
Article 9. General Provisions. 18 AAC 75.905- 18 AAC 75.990	263

CHAPTER 78

Article 1. Underground Storage Tanks. 18 AAC 78.005- 18 AAC 78.100	275
Article 2. Corrective Action For Leaking Underground Storage Tanks. 18 AAC 78.200- 18 AAC 78.280	303
Article 3. Cleanup Standards. 18 AAC 78.300- 18 AAC 78.350	321
Article 4. Certification Of Underground Storage Tank Workers And Inspectors. 18 AAC 78.400- 18 AAC 78.499	323
Article 5. Storage Tank Assistance Fund. 18 AAC 78.500- 18 AAC 78.560	332
Article 6. Cleanup Levels. 18 AAC AAC 78.600- 18 AAC 78.625	338

Article 8. Underground Storage Tank Laboratory Approval.
18 AAC 78.800- 18 AAC 78.815 343
Article 9. General Provision.
18AAC 78.910- 18 AAC 78.995 347

CHAPTER 79

Chapter 79. Illegal Drug Manufacturing Sites
18 AAC 79.010- 18 AAC 79.900 359

ALASKA STATUTES

TITLE 26. MILITARY AFFAIRS AND VETERANS

CHAPTER 23. DISASTERS

ARTICLE 01. ALASKA DISASTER ACT

SEC. 26.23.071. ALASKA STATE EMERGENCY RESPONSE COMMISSION.

(a) The Alaska State Emergency Response Commission is established in the Department of Military and Veterans' Affairs.

(b) The commission consists of the commissioners of commerce, community, and economic development, environmental conservation, fish and game, health and social services, labor and workforce development, natural resources, public safety, and transportation and public facilities, or the designees of the commissioners, the adjutant general of the Department of Military and Veterans' Affairs or a designee, and seven members of the public appointed by the governor, two of whom must be members of a local emergency planning committee for an emergency planning district that is predominantly rural in character and two of whom must be members of a local emergency planning committee for an emergency planning district that is predominantly urban in character. Two of the other three members of the public who are appointed to the commission must be members of the governing body of, or the mayor of, a political subdivision that has a local emergency planning committee or a person who, in the opinion of the governor, is otherwise appropriate to represent the political subdivision. The United States Department of Defense - Alaska Command, the Federal Emergency Management Agency, the United States Environmental Protection Agency, and the United States Coast Guard may each appoint a representative to serve on the commission in an ex-officio, nonvoting capacity. To the extent practicable, the commission must include members with expertise in the emergency response field.

(c) The adjutant general of the Department of Military and Veterans' Affairs, or the adjutant general's designee, and the commissioner of environmental conservation, or the commissioner's designee, shall co-chair the commission. The Department of Military and Veterans' Affairs shall provide staff support to the commission.

(d) Members of the commission other than those from the designated state departments serve at the pleasure of the governor for staggered terms of three years. Members of the commission serve without compensation but are entitled to per diem and travel expenses authorized for members of boards and commissions under AS 39.20.180.

(e) The commission shall

(1) serve as the state emergency response commission required under 42 U.S.C. 11001 - 11005;

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

(2) facilitate the preparation and implementation of all emergency plans prepared by state agencies under other authorities; the statewide, interjurisdictional, and local plans prepared under this chapter; and the state and regional plans prepared under AS 46.04.200 - 46.04.210;

(3) review the plans described in (2) of this subsection according to the criteria established in AS 26.23.077;

(4) designate, and revise as necessary, the boundaries of emergency planning districts under AS 26.23.073;

(5) establish a local emergency planning committee under AS 26.23.073(d) for each emergency planning district;

(6) supervise and coordinate the activities of local emergency planning committees;

(7) establish procedures for receiving and processing requests from the public for information under 42 U.S.C. 11044, including tier II information under 42 U.S.C. 11022; procedures established under this paragraph shall designate the Department of Environmental Conservation as the state agency to receive and process these requests on behalf of the commission;

(8) review reports about responses to disaster emergencies and make recommendations to the appropriate parties involved in the response concerning improved prevention and preparedness;

(9) perform other coordinating, advisory, or planning tasks related to emergency planning and preparedness for all types of hazards, community right-to-know reporting, toxic chemical release reporting, or management of hazardous substances;

(10) recommend procedures to integrate, as appropriate, hazardous substance response planning under 42 U.S.C. 11001 - 11005, federal contingency planning under 33 U.S.C. 1321 and other federal laws applicable to hazardous substance discharges, and state, regional, and local planning under this chapter and AS 46.04.200 - 46.04.210;

(11) to the extent consistent with the constitution and law of the state, perform all other functions prescribed for state emergency response commissions under 42 U.S.C. 11001 - 11005; and

(12) adopt regulations necessary to carry out the purposes of AS 26.23.071 - 26.23.077 and 42 U.S.C. 11001 - 11005.

SEC. 26.23.073. EMERGENCY PLANNING DISTRICTS AND COMMITTEES.

(a) The commission shall set the boundaries of local emergency planning districts. The commission shall set the boundaries of a district so that they are coextensive with the boundaries of a single political subdivision except when it would be more appropriate, based on findings of the commission, for the district to include more than one political subdivision or some area that is not contained within a political subdivision. Before the commission sets the boundaries for a district under this subsection so that it includes more than one political subdivision or some area that is not within a political subdivision, the commission shall consult the emergency response organizations and the political subdivisions in the proposed district.

(b) If, after the commission sets boundaries for districts under (a) of this section, there remain areas of the state that are not included in any district, those areas constitute a local emergency planning district.

(c) If the commission sets boundaries for a district under this section that includes more than one political subdivision, the commission shall recommend to the governor the designation of an interjurisdictional disaster planning and service area under AS 26.23.070 whose boundaries are coextensive with the boundaries of the local emergency planning district established under this section.

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

(d) The commission shall appoint the members of a local emergency planning committee for each emergency planning district established under (a) and (b) of this section. In making appointments for a district that contains only one political subdivision, the commission shall follow the recommendations of the political subdivision if those recommendations would constitute a committee that meets the requirements of this subsection. In making appointments for a district that contains more than one political subdivision, the commission shall consider the recommendations of each political subdivision and follow the recommendations to the extent that the political subdivisions are in agreement and their recommendations would constitute a committee that meets the requirements of this subsection. To the extent required under regulations that may be adopted by the commission, the political subdivisions in a district that includes more than one political subdivision shall follow a process under which they develop coordinated recommendations to submit to the commission under this subsection. In making appointments for a district that includes some area that is not contained within a political subdivision, the commission shall consider the recommendations of emergency response organizations in the district. In making appointments for the district formed under (b) of this section, the commission shall attempt to achieve equitable geographical representation on the committee. Except as provided in (e) of this section, each committee must include, at a minimum, representatives of each of the following seven categories:

- (1) elected local officials;
- (2) law enforcement, civil defense, fire fighting, first aid, health, local environmental, hospital, and transportation personnel;
- (3) broadcast or print media;
- (4) community groups;
- (5) owners and operators of facilities subject to the requirements of 42 U.S.C. 11001 - 11005;
- (6) representatives of a local or interjurisdictional disaster planning and service area if one has been established that includes part of the district; and
- (7) members of the public that are not described in (1) - (6) of this subsection.

(e) If advertisement and the commission's own initiative do not result in the acceptance of appointment to a committee by at least one person from a category under (d)(1) - (7) of this section, the requirement of (d) of this section that there be representation of that category on that committee is suspended until sufficient willing appointees become available.

(f) A person may request the commission to change the membership of a local emergency planning committee.

(g) Each local emergency planning committee shall

- (1) establish procedures for receiving and processing requests from the public for information under 42 U.S.C. 11044, including tier II information under 42 U.S.C. 11022;
- (2) appoint a chair and establish rules by which the committee shall function, including provisions for public notification of committee activities, public advertising of positions available on the committee, public meetings to discuss the emergency plan, public comments, response to the comments by the committee, distribution of the emergency plan, and designation of an official to serve as coordinator for information;
- (3) prepare and periodically review an emergency plan in accordance with 42 U.S.C. 11003(a) in a manner that includes coordination with the political subdivisions covered by the plan;
- (4) evaluate the need for resources necessary to develop, implement, and exercise the emergency plan, and submit recommendations to the political subdivisions in the emergency planning district with respect to the resources that may be required and the means for providing the resources;
- (5) to the extent consistent with the constitution and law of the state, perform all other functions prescribed for emergency planning committees in 42 U.S.C. 11001 - 11005;

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

(6) to the extent considered advisable by the committee, make recommendations to political subdivisions, representatives of interjurisdictional disaster planning and service areas, and state agencies about the preparation of local, state, and interjurisdictional plans; and

(7) serve as an advisory committee to the political subdivisions within the emergency planning district or the interjurisdictional planning and service area established under AS 26.23.070 with respect to emergency planning, training, and response.

(h) A state agency represented on the commission shall, upon request, provide technical assistance to a local emergency planning committee in the performance of its duties under this section.

SEC. 26.23.075. EMERGENCY PLANS.

(a) An emergency plan prepared under AS 26.23.073 must include

(1) identification of facilities subject to the requirements of 42 U.S.C. 11001 - 11005 that are within the emergency planning district, identification of routes likely to be used for the transportation of substances on the list of extremely hazardous substances referred to in 42 U.S.C. 11002(a), and identification of additional facilities contributing or subjected to additional risk due to their proximity to facilities subject to the requirements of 42 U.S.C. 11001 - 11005 such as hospitals or natural gas facilities;

(2) methods and procedures to be followed by facility owners and operators and local emergency and medical personnel to respond to a release of hazardous substances or a release of substances on the list of extremely hazardous substances referred to in 42 U.S.C. 11002(a);

(3) designation of an emergency coordinator, as required under AS 26.23.060(d), and facility emergency coordinators, who shall make determinations necessary to implement the emergency plan;

(4) procedures providing reliable, effective, and timely notification by the facility emergency coordinators to persons designated in the emergency plan, and to the public, that a release has occurred, consistent with the emergency notification requirements of 42 U.S.C. 11004;

(5) methods for determining the occurrence of a release and the area or population likely to be affected by that release;

(6) a description of emergency equipment and facilities in the community and at each facility in the community subject to the requirements of 42 U.S.C. 11001 - 11005, and an identification of the persons responsible for the equipment and facilities;

(7) evacuation plans, including provisions for a precautionary evacuation and alternative traffic routes;

(8) training programs, including schedules for training of local emergency response and medical personnel; and

(9) methods and schedules for exercising the emergency plan.

(b) An emergency plan prepared under AS 26.23.073 may include descriptions, procedures, and programs related to disasters other than those caused by releases of hazardous substances.

(c) Each emergency plan prepared under AS 26.23.073 must incorporate within it an incident command system. The incident command system must be substantially equivalent in relevant respects to the incident command systems established under AS 46.04.200 - 46.04.210 and meet the requirements of AS 26.23.077.

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

SEC. 26.23.077. PLAN REVIEW; INCIDENT COMMAND SYSTEMS.

(a) The commission shall review and make recommendations about local, interjurisdictional, regional, and state emergency plans, including plans prepared under this chapter and AS 46.04.200 - 46.04.210 and all emergency plans prepared by state agencies under other authorities.

(b) When making recommendations about a plan, the commission shall suggest changes that ensure that the plan includes an incident command system that describes the respective roles of affected persons and agencies in a clear and specific manner and that the respective roles of state agencies are consistent with their statutory duties. The commission shall also suggest changes that ensure that the plans are well-integrated with related plans.

(c) To the extent consistent with other law, an incident command system recommended under this section or included in a plan reviewed under this section must provide that the Department of Military and Veterans' Affairs has a major role in mobilization of personnel and resources, communications, transportation planning, and other logistics involved in a state response to a disaster or other emergency.

SEC. 26.23.080. FEDERAL DISASTER LOANS TO POLITICAL SUBDIVISIONS.

Whenever, at the request of the governor, the President has declared a major disaster to exist in this state, the governor may

(1) upon the governor's determination that a political subdivision of the state will suffer a substantial loss of tax and other revenue from the disaster and has demonstrated a need for financial assistance to perform its governmental functions, apply to the federal government, on behalf of the political subdivision, for a loan; the governor may receive and disburse the proceeds of any approved loan to any applicant political subdivision;

(2) determine the amount needed by any applicant political subdivision to restore or resume its governmental functions, and to certify the amount to the federal government;

(3) recommend to the federal government, based upon review by the governor, the cancellation of all or any part of repayment when, for the first three full fiscal years following the major disaster, the revenue of the political subdivision is insufficient to meet its operating expenses, including additional disaster-related expenses of a municipal operation character.

SEC. 26.23.090. GRANTS TO DISASTER VICTIMS.

(a) Whenever the President, at the request of the governor, has declared a major disaster to exist in this state, the governor may

(1) upon the governor's determination that financial assistance is essential to meet disaster-related necessary expenses or serious needs of individuals or families adversely affected by a major disaster that cannot be otherwise adequately met from other means of assistance, accept a grant by the federal government to fund that financial assistance, subject to the terms and conditions that may be imposed upon the grant;

(2) enter into an agreement with the federal government, or any officer or agency of it, pledging the state to participate in the funding of the financial assistance authorized in (1) of this subsection, in an amount not to exceed 25 percent of the assistance and, if state funds are not otherwise available to the governor, to accept an advance of the state's share from the federal government to be repaid when the state is able to do so.

(b) The governor is authorized to make financial grants to an individual or family to meet disaster-related necessary expenses or serious needs of individuals or families adversely affected by

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

the disaster that cannot otherwise adequately be met from other means of assistance. The governor may make a grant to an individual and family under this subsection as follows:

(1) when the President declares a major disaster, the governor may make a grant of an amount whose total of federal and state shares does not exceed the maximum amount authorized by 42 U.S.C. 5178(f) for grants payable to individuals and families;

(2) when the President does not declare a major disaster but the governor declares a disaster emergency, the governor may make a grant of an amount not to exceed \$5,000.

(c) *[Repealed, Sec. 18 ch 178 SLA 1990].*

TITLE 43. REVENUE AND TAXATION

CHAPTER 55. OIL AND GAS PRODUCTION TAXES AND OIL SURCHARGE

ARTICLE 02. CONSERVATION SURCHARGE ON OIL

Sec. 43.55.200. Surcharge levied. [Repealed, Sec. 43 ch 128 SLA 1994].

Repealed or Renumbered

SEC. 43.55.201. SURCHARGE LEVIED.

(a) Every producer of oil shall pay a surcharge of \$.01 per barrel of oil produced from each lease or property in the state, less any oil the ownership or right to which is exempt from taxation.

(b) The surcharge imposed by (a) of this section is in addition to the tax imposed by AS 43.55.011 and is due on the last day of the month on oil produced from each lease or property during the preceding month. The surcharge is in addition to the surcharge imposed by AS 43.55.300 - 43.55.310.

(c) A producer of oil shall make a report of production on March 31 of the year following the calendar year of production and in the same manner and under the same penalties as required under AS 43.55.011 - 43.55.180.

(d) Oil not considered under AS 43.55.020(e) to be produced from a lease or property is not considered to be produced from a lease or property for purposes of this section.

Sec. 43.55.210. Disposition of proceeds of surcharge. [Repealed, Sec. 43 ch 128 SLA 1994].

Repealed or Renumbered

SEC. 43.55.211. USE OF REVENUE DERIVED FROM SURCHARGE.

The legislature may appropriate the annual estimated balance of the account maintained under AS 37.05.142 for deposits into the general fund of the proceeds of the surcharge levied under AS 43.55.201 to the response account in the oil and hazardous substance release prevention and response fund established by AS 46.08.010.

Sec. 43.55.220. Use of revenue derived from surcharge. [Repealed, Sec. 43 ch 128 SLA 1994].

Repealed or Renumbered

SEC. 43.55.221. SUSPENSION AND REIMPOSITION OF THE SURCHARGE.

(a) Not later than 30 days after the end of each calendar quarter, the commissioner of administration shall determine, as of the end of that quarter, the fiscal year's

(1) unreserved and unobligated balance in the response account of the oil and hazardous substance release prevention and response fund established in AS 46.08.010; for purposes of this paragraph, the "unreserved and unobligated balance in the response account" means the cash balance of the account less the sum of

(A) reserves for outstanding appropriations from the account;

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

- (B) encumbrances of money in the account; and
- (C) other liabilities of the account;
- (2) balance of the account maintained under AS 37.05.142 that accounts for the proceeds of the surcharge that are deposited in the general fund;
- (3) the balance of the response mitigation account established by AS 46.08.025(b) that originated from the sources described in AS 46.08.025(a)(3) and that is available for appropriation to the response account of the fund established in AS 46.08.010.

(b) Within 15 days after making the determinations required by (a) of this section, the commissioner of administration shall

- (1) add the amounts determined under (a)(1) - (3) of this section; and
- (2) report the sum calculated under (1) of this subsection to the commissioner of revenue.

(c) In making the determination required by (a) of this section, the commissioner of administration may not consider money described in (a) of this section that is subject to a dedication imposed by law that restricts the use of the money to a specific purpose for which the response account of the oil and hazardous substance release prevention and response fund established in AS 46.08.010 may not be lawfully expended.

(d) If the commissioner of administration reports that the sum reported under (b) of this section equals or exceeds \$50,000,000, the commissioner of revenue shall suspend imposition and collection of the surcharge levied and collected under AS 43.55.201. Suspension of the imposition and collection of the surcharge begins on the first day of the calendar quarter next following the commissioner's receipt of the commissioner of administration's report under (b) of this section. Before the first day of a suspension authorized by this subsection, the commissioner shall make a reasonable effort to notify all persons who are known to the department to be paying the surcharge under AS 43.55.201 that the surcharge will be suspended.

(e) Except as provided in AS 43.55.231, if the commissioner of administration reports that the sum reported under (b) of this section is less than \$50,000,000, the commissioner of revenue shall require imposition and collection of the surcharge authorized under AS 43.55.201. If the surcharge is not in effect, reimposition of the surcharge begins on the first day of the calendar quarter next following the commissioner's receipt of the commissioner of administration's report under (b) of this section. Before the first day of reimposition of the surcharge authorized by this subsection, the commissioner shall make a reasonable effort to notify all persons who are known to the department to be required to pay the surcharge under AS 43.55.201 that the surcharge will be reimposed.

Sec. 43.55.230. Suspension and reimposition of the surcharge. [Repealed, Sec. 43 ch 128 SLA 1994].
Repealed or Renumbered

SEC. 43.55.231. SURCHARGE NOT IMPOSED.

- (a) The surcharge authorized by AS 43.55.201 is not levied during any fiscal year for which
 - (1) the legislature does not, during the regular or a special legislative session preceding the first day of the fiscal year, appropriate at least an amount equal to the amount determined under (b) of this section from the general fund to the response account in the oil and hazardous substance release prevention and response fund; or
 - (2) the legislature, during the regular or a special legislative session preceding the first day of the fiscal year, appropriates at least the amount of money equal to the amount determined under (b) of this section from the general fund to the response account in the oil and hazardous substance release prevention and response fund and that appropriation is vetoed or reduced by the governor.

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

(b) The amount of money required to be appropriated from the general fund to the response account in the oil and hazardous substance release prevention and response fund by (a) of this section is the amount, determined for the last day of the preceding fiscal year, that is the sum of the actual or estimated balance of

(1) the account maintained under AS 37.05.142 to account for all proceeds of the surcharge that are deposited into the general fund; and

(2) the portion of the balance of the response mitigation account established by AS 46.08.025(b) that originated from the recovery of money described in AS 46.08.025(a)(3).

Sec. 43.55.240. Surcharge not imposed. [Repealed, Sec. 43 ch 128 SLA 1994].

Repealed or Renumbered

SEC. 43.55.299. DEFINITIONS.

In AS 43.55.201 - 43.55.299,

(1) "response account" means the oil and hazardous substance release response account established in AS 46.08.010(a)(2);

(2) "response mitigation account" means the oil and hazardous substance release response mitigation account established in AS 46.08.025(b).

Article 03. ADDITIONAL CONSERVATION SURCHARGE ON OIL

Sec. 43.55.300. SURCHARGE LEVIED.

(a) Every producer of oil shall pay a surcharge of \$.04 per barrel of oil produced from each lease or property in the state, less any oil the ownership or right to which is exempt from taxation.

(b) The surcharge imposed by (a) of this section is in addition to the tax imposed by AS 43.55.011 and is due on the last day of the month on oil produced from each lease or property during the preceding month. The surcharge is in addition to the surcharge imposed by AS 43.55.201 - 43.55.231.

(c) A producer of oil shall make a report of production on March 31 of the year following the calendar year of production and in the same manner and under the same penalties as required under AS 43.55.011 - 43.55.180.

(d) Oil not considered under AS 43.55.020(e) to be produced from a lease or property is not considered to be produced from a lease or property for purposes of this section.

SEC. 43.55.310. USE OF REVENUE DERIVED FROM SURCHARGE.

The legislature may appropriate the annual estimated balance of the account maintained under AS 37.05.142 for deposits into the general fund of the proceeds of the surcharge levied under AS 43.55.300 to the oil and hazardous substance release prevention account in the oil and hazardous substance release prevention and response fund established by AS 46.08.010.

Title 46. WATER, AIR, ENERGY, AND ENVIRONMENTAL CONSERVATION

Chapter 46.03. ENVIRONMENTAL CONSERVATION

Article 01. DECLARATION OF POLICY

SEC. 46.03.010. DECLARATION OF POLICY.

(a) It is the policy of the state to conserve, improve, and protect its natural resources and environment and control water, land, and air pollution, in order to enhance the health, safety, and welfare of the people of the state and their overall economic and social well-being.

(b) It is the policy of the state to improve and coordinate the environmental plans, functions, powers, and programs of the state, in cooperation with the federal government, regions, local governments, other public and private organizations, and concerned individuals, and to develop and manage the basic resources of water, land, and air to the end that the state may fulfill its responsibility as trustee of the environment for the present and future generations.

Article 02. DEPARTMENT OF ENVIRONMENTAL CONSERVATION

SEC. 46.03.020. POWERS OF THE DEPARTMENT.

The department may

(1) enter into contracts and compliance agreements necessary or convenient to carry out the functions, powers, and duties of the department;

(2) review and appraise programs and activities of state departments and agencies in light of the policy set out in AS 46.03.010 for the purpose of determining the extent to which the programs and activities are contributing to the achievement of that policy and to make recommendations to the departments and agencies, including environmental guidelines;

(3) consult with and cooperate with

(A) officials and representatives of any nonprofit corporation or organization in the state;

(B) persons, organizations, and groups, public and private, using, served by, interested in, or concerned with the environment of the state;

(4) appear and participate in proceedings before any state or federal regulatory agency involving or affecting the purposes of the department;

(5) undertake studies, inquiries, surveys, or analyses it may consider essential to the accomplishment of the purposes of the department; these activities may be carried out by the personnel of the department or in cooperation with public or private agencies, including educational, civic, and research organizations, colleges, universities, institutes, and foundations;

(6) at reasonable times, enter and inspect with the consent of the owner or occupier any property or premises to investigate either actual or suspected sources of pollution or contamination or to ascertain compliance or noncompliance with a regulation that may be adopted under AS 46.03.020 - 46.03.040; information relating to secret processes or methods of manufacture discovered during investigation is confidential;

(7) conduct investigations and hold hearings and compel the attendance of witnesses and the production of accounts, books, and documents by the issuance of a subpoena;

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

(8) advise and cooperate with municipal, regional, and other local agencies and officials in the state, to carry out the purposes of this chapter;

(9) act as the official agency of the state in all matters affecting the purposes of the department under federal laws now or hereafter enacted;

(10) adopt regulations necessary to carry out the purposes of this chapter, including, by way of example and not limitation, regulations providing for

(A) control, prevention, and abatement of air, water, or land or subsurface land pollution;

(B) safeguard standards for petroleum and natural gas pipeline construction, operation, modification, or alteration;

(C) protection of public water supplies by establishing minimum drinking water standards, and standards for the construction, improvement, and maintenance of public water supply systems;

(D) collection and disposal of sewage and industrial waste;

(E) collection and disposal of garbage, refuse, and other discarded solid materials from industrial, commercial, agricultural, and community activities or operations;

(F) control of pesticides;

(G) other purposes as may be required for the implementation of the policy declared in AS 46.03.010;

(H) handling, transportation, treatment, storage, and disposal of hazardous wastes;

(11) inspect the premises of sellers and suppliers of paint, vessels, and marine and boating supplies, and take other actions necessary to enforce AS 46.03.715;

(12) notwithstanding any other provision of law, take all actions necessary to receive authorization from the administrator of the United States Environmental Protection Agency to administer and enforce a National Pollutant Discharge Elimination System program in accordance with 33 U.S.C. 1342 (sec. 402, Clean Water Act), 33 U.S.C. 1345 (sec. 405, Clean Water Act), 40 C.F.R. Part 123, and 40 C.F.R. Part 403, as amended;

(13) require the owner or operator of a facility to undertake monitoring, sampling, and reporting activities described in 33 U.S.C. 1318 (sec. 308, Clean Water Act).

SEC. 46.03.022. DENTAL RADIOLOGICAL EQUIPMENT.

This title does not authorize the department to register, inspect, test, or otherwise regulate dental radiological equipment or records relating to dental radiological equipment regulated by the Board of Dental Examiners under AS 08.36.075.

SEC. 46.03.024. CONSIDERATION IN ADOPTING POLLUTION REGULATIONS.

Notwithstanding another provision of law to the contrary, when adopting a regulation relating to the control, prevention, and abatement of air, water, or land or subsurface land pollution, the department shall give special attention to public comments concerning the cost of compliance with the regulation and to alternate practical methods of complying with the statute being interpreted or implemented by the regulation.

Sec. 46.03.025. Accounting and disposition of fees. [Repealed, Sec. 92 ch 36 SLA 1990. For current provisions, see AS 37.05.142 - 37.05.146].

Repealed or Renumbered

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

SEC. 46.03.030. WATER QUALITY ENHANCEMENT, WATER SUPPLY, SEWAGE, AND SOLID WASTE FACILITIES GRANTS.

- (a) *[Repealed, Sec. 19 ch 220 SLA 1976].*
- (b) The department may grant to a municipality, as funds are available, a grant for any of the following:
 - (1) a water quality enhancement project;
 - (2) a public water supply, treatment, or distribution system;
 - (3) a wastewater collection, treatment, or discharge system;
 - (4) a solid waste processing, disposal, or resource recovery system.
- (c) There is a water quality enhancement and water supply, wastewater, and solid waste systems program created in the department to carry out the purposes of this section.
- (d) The department shall, by regulation, identify those costs that are eligible costs for the purposes of this section. Eligible costs do not include interest and financing and right-of-way acquisition, or costs that are related to the operation, maintenance, or repair of a system.
- (e) A grant under this section to a municipality for a project funded by an appropriation made by the legislature
 - (1) before July 1, 1994, may not exceed 50 percent of the eligible costs of the project;
 - (2) after July 1, 1994, may not exceed
 - (A) 85 percent of the eligible costs for a municipality with a population of 1,000 persons or less;
 - (B) 70 percent of the eligible costs for a municipality with a population of 1,001 to 10,000 persons; and
 - (C) 60 percent of the eligible costs for a municipality with a population greater than 10,000 persons.
- (f) *[Repealed, Sec. 14 ch 106 SLA 1994].*
- (g) The match required for grants made under this section may include
 - (1) federal funds; or
 - (2) state funds, other than those funds received under this section or AS 37.06.
- (h) Construction of a project for which a grant is made under this section may commence only after the department has approved in writing the plans and specifications for the project.

SEC. 46.03.032. ALASKA CLEAN WATER FUND.

- (a) There is established as a separate fund the Alaska clean water fund, which is distinct from any other money or fund in the treasury, and which consists of money appropriated by the legislature to meet federal matching requirements, federal capitalization grants, loan repayments, interest received from loan repayments, interest received from investment of money in the Alaska clean water fund, and the proceeds and accrued interest received from the sale of revenue bonds issued under AS 37.15.560 - 37.15.605 and secured by the Alaska clean water fund. Separate accounts may be created in the Alaska clean water fund. The accounts may be combined for purposes of investment.
- (b) The provisions of this section shall be liberally construed in order to carry out the purposes for which they were enacted. The department shall administer the Alaska clean water fund consistent with the requirements of this section and AS 37.15.560 - 37.15.605.
- (c) The department may accept and make use of all capitalization grants provided by the federal government under 33 U.S.C. 1251 - 1387 (the federal Clean Water Act), as amended.
- (d) Except as otherwise limited by federal law, the Alaska clean water fund may be used

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

(1) for the following categories of projects:

(A) planning, designing, building, constructing, and rehabilitating a public wastewater collection, treatment, or discharge system;

(B) implementing a management program for controlling water pollution from nonpoint sources under 33 U.S.C. 1329, including planning, designing, building, constructing, and rehabilitating a solid waste management system; and

(C) developing and implementing an estuary conservation and management program under 33 U.S.C. 1330;

(2) to provide the following types of financial assistance for the categories of projects listed in (1) of this subsection:

(A) making loans to municipalities and other qualified entities;

(B) buying or refinancing the debt obligations of a municipality or other qualified entity;

(C) providing collateral security for or purchasing insurance for a municipal, state agency, or other qualified entity debt obligation; and

(3) to pay and secure the payment of the principal of and interest on revenue bonds issued by the state and to pay the costs of issuance and administration of the bonds, so long as the proceeds of the bond sale are deposited in the Alaska clean water fund.

(e) Repayment of loans shall be secured in a manner that the department determines is feasible to assure prompt repayment under a loan agreement entered into with the borrower.

(f) The department

(1) may spend money from the Alaska clean water fund to pay the costs of

(A) administering the fund; and

(B) the department in conducting activities under this section and AS 37.15.560 - 37.15.605, including the costs of issuance and administration as defined in AS 37.15.605;

(2) shall spend money from the Alaska clean water fund to pay

(A) into the bond redemption fund (AS 37.15.565), and into any other bond redemption fund or account created by a relevant bond resolution, the amount certified by the state bond committee under AS 37.15.585; and

(B) the costs of the state bond committee in conducting activities under this section and AS 37.15.560 - 37.15.605, including the costs of issuance and administration as defined in AS 37.15.605.

(g) A municipality or other qualified entity wishing to borrow money from the Alaska clean water fund shall demonstrate to the satisfaction of the department that it

(1) has sufficient legal authority to incur the debt for which it is applying; and

(2) will establish and maintain a dedicated source of revenue or other acceptable revenue source for repayment of the loan and sufficient reserves for the loan as may be necessary.

(h) Allocation of Alaska clean water fund loans shall be made in accordance with the priority list developed by the department, using criteria specified in regulations adopted by the department.

(i) Before making a loan from the Alaska clean water fund, the department shall, by regulation, specify

(1) standards for the eligibility of borrowers and the type of projects to be financed with loans;

(2) loan term and interest rate policies for loans made from the fund;

(3) standards regarding the technical and economic viability and revenue self-sufficiency of eligible projects;

(4) collateral or other security required for loans;

(5) terms of loans; and

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

(6) other relevant criteria, standards, or procedures.

(j) Except as necessary to comply with the covenants of a bond resolution under AS 37.15.573, a loan made by the department shall be made according to the standards, criteria, and procedures established by regulations under this section. A loan made from the Alaska clean water fund may be subject to the state aid intercept provisions of AS 37.15.575. Except as necessary to comply with the covenants of a bond resolution under AS 37.15.573, in making a loan from the Alaska clean water fund for a solid waste management system, the department shall give priority to a project that will alleviate severe health or environmental concerns in the community or region proposing the system. In addition, the department may consider

(1) the extent of local or regional support for the proposed system; and

(2) the extent to which the applicant can demonstrate that the full range of solid waste management options has been reasonably considered and that the proposed system is consistent with the promotion of the solid and hazardous waste management practices established in AS 46.06.021.

(k) The department shall prepare reports required by the federal government in conjunction with federal capitalization grant award conditions. The department shall also prepare reports and notices, including notices of default, required by the state bond committee in conjunction with bonds issued under AS 37.15.560 - 37.15.605. The department shall also prepare a biennial report on the Alaska clean water fund and notify the legislature that it is available on or before the first day of each first regular session of the legislature.

(l) Loan repayments and interest earned by loans from the Alaska clean water fund shall be deposited in the Alaska clean water fund.

(m) Annual principal payments shall commence within one year after project completion.

(n) *[Repealed, Sec. 14 ch 106 SLA 1994]*.

(o) Regulations adopted by the department under this section that would affect issuance or repayment of revenue bonds under AS 37.15.560 - 37.15.605 may not be inconsistent with those statutes or with regulations adopted by the state bond committee under those statutes. To the extent that regulations adopted by the department are inconsistent with AS 37.15.560 - 37.15.605, with regulations adopted by the state bond committee under those statutes, or with the covenants of a bond resolution adopted under AS 37.15.573, the provisions of AS 37.15.560 - 37.15.605, the regulations adopted under those statutes, and the covenants of the bond resolution govern.

(p) In this section,

(1) "other qualified entity" means

(A) an intermunicipal or interstate agency as those terms are used in 33 U.S.C. 1383, and may include an authority, corporation, instrumentality, enterprise, or other entity formed through an agreement between a municipality and one or more other governmental entities under AS 29.35.010(13) or under art. X, sec. 13, Constitution of the State of Alaska, or between a municipality and a regional housing authority under AS 18.55.996(b); or

(B) an organization that is eligible for assistance under 33 U.S.C. 1383, that is not exempted from regulation under AS 42.05.711(d), that provides wastewater service under a certificate of convenience and necessity from the former Alaska Public Utilities Commission or the Regulatory Commission of Alaska, and that is economically regulated by the Regulatory Commission of Alaska;

(2) "solid waste management system" includes capital improvements and equipment used for the purpose of solid and hazardous waste source reduction, recycling, treatment, or disposal.

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

SEC. 46.03.034. ALASKA CLEAN WATER ADMINISTRATIVE FUND.

- (a) The Alaska clean water administrative fund is established as a separate fund that is distinct from other money or funds in the treasury. The fund is composed of two accounts, the
- (1) Alaska clean water administrative operating account; and
 - (2) Alaska clean water administrative income account.
- (b) The legislature may appropriate to the Alaska clean water administrative operating account the annual balance of the Alaska clean water administrative income account.
- (c) The department shall administer the Alaska clean water administrative fund.
- (d) The Alaska clean water administrative operating account may be used to pay for the department's operational and administrative costs necessary to manage the Alaska clean water fund and the Alaska clean water administrative fund and for such other purposes permitted by federal law.
- (e) Money received in payment of fees charged by the department under the authority of AS 46.03.035 and earnings on the Alaska clean water administrative fund shall be deposited in the Alaska clean water administrative income account.

SEC. 46.03.035. FEES CHARGED FOR LOANS MADE FROM THE ALASKA CLEAN WATER FUND.

The department may charge and collect reasonable fees in connection with making and servicing loans made by the department under the authority of AS 46.03.032. The department shall by regulation specify the rates and amounts of the fees.

SEC. 46.03.036. ALASKA DRINKING WATER FUND.

- (a) The Alaska drinking water fund is established as a separate fund that is distinct from other money or funds in the treasury. The fund shall be administered by the department. The Alaska drinking water fund consists of the following items, all of which shall be deposited into the fund upon receipt:
- (1) the proceeds and accrued interest received from the sale of revenue bonds issued under AS 37.15.560 - 37.15.605 and secured by the Alaska drinking water fund;
 - (2) money appropriated by the legislature, including federal capitalization grants;
 - (3) loan repayments; and
 - (4) interest received from loan repayments and interest received from investment of money in the Alaska drinking water fund.
- (b) Except as otherwise limited by federal law, the department may use money in the Alaska drinking water fund to
- (1) provide financial assistance for drinking water system projects, including projects to plan, design, build, construct, or rehabilitate a public drinking water collection, storage, treatment, or distribution system, to
 - (A) municipalities;
 - (B) organizations that are not exempted from regulation under AS 42.05.711(d), that provide water service under a certificate of convenience and necessity from the former Alaska Public Utilities Commission or the Regulatory Commission of Alaska, and that are economically regulated by the Regulatory Commission of Alaska;
 - (2) earn interest on the amounts deposited in the fund;
 - (3) pay the costs of administering the fund and conducting activities under this section and AS 37.15.560 - 37.15.605, including the costs of issuance and administration as defined in AS 37.15.605;

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

(4) pay and secure the payment of the principal of and interest on revenue bonds issued by the state and to pay the costs of issuance and administration of the bonds, so long as the proceeds of the bond sale are deposited in the Alaska drinking water fund;

(5) pay

(A) into the bond redemption fund (AS 37.15.565), and into any other bond redemption fund or account created by a relevant bond resolution, the amount certified by the state bond committee under AS 37.15.585; and

(B) the costs of the state bond committee in conducting activities under this section and AS 37.15.560 - 37.15.605, including the costs of issuance and administration as defined in AS 37.15.605.

(c) Repayment of loans shall be secured in a manner that the department determines is feasible to ensure prompt repayment under a loan agreement entered into with the borrower.

(d) Separate accounts may be created in the Alaska drinking water fund. The accounts may be combined for purposes of investment.

(e) The department may adopt regulations necessary to implement the Alaska drinking water fund in a manner consistent with federal law. The regulations adopted by the department under (h) of this section may establish different loan terms, charges, rates, and standards for different classes of borrowers to accommodate the different levels of risk and costs that the different classes may present.

(f) An organization that qualifies for financial assistance under (b)(1)(B) of this section or a municipality wishing to borrow money from the Alaska drinking water fund shall demonstrate to the satisfaction of the department that it

(1) has sufficient legal authority to incur the debt for which it is applying; and

(2) will establish and maintain a dedicated source of revenue or other acceptable revenue source for repayment of the loan and sufficient reserves for the loan as may be necessary.

(g) Allocation of Alaska drinking water fund loans shall be made in accordance with a priority list developed by the department, using criteria specified in regulations adopted by the department. A loan may not be made to an organization that is not a municipality to refinance debt of that organization.

(h) Before making a loan from the Alaska drinking water fund, the department shall, by regulation, specify

(1) standards for the eligibility of borrowers and the type of projects to be financed with loans;

(2) loan term and interest rate policies for loans made from the fund;

(3) standards regarding the technical and economic viability and revenue of self-sufficiency of eligible projects;

(4) collateral or other security required for loans;

(5) terms of loans; and

(6) other relevant standards or procedures.

(i) Except as necessary to comply with the covenants of a bond resolution under AS 37.15.573, a loan made by the department shall be made according to the standards and procedures established by regulations under this section. A loan made from the Alaska drinking water fund may be subject to the state aid intercept provisions of AS 37.15.575.

(j) The department shall also prepare reports and notices, including notices of default, required by the state bond committee in conjunction with bonds issued under AS 37.15.560 - 37.15.605.

(k) Regulations adopted by the department under this section that would affect issuance or repayment of revenue bonds under AS 37.15.560 - 37.15.605 may not be inconsistent with those statutes or with regulations adopted by the state bond committee under those statutes. To the extent

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

that regulations adopted by the department are inconsistent with AS 37.15.560 - 37.15.605, with regulations adopted by the state bond committee under those statutes, or with the covenants of a bond resolution adopted under AS 37.15.573, the provisions of AS 37.15.560 - 37.15.605, the regulations adopted under those statutes, and the covenants of the bond resolution govern.

SEC. 46.03.038. ALASKA DRINKING WATER ADMINISTRATIVE FUND.

(a) The Alaska drinking water administrative fund is established as a separate fund that is distinct from other money or funds in the state treasury. The fund is composed of two accounts, the

- (1) Alaska drinking water administrative operating account; and
- (2) Alaska drinking water administrative income account.

(b) The legislature may appropriate to the Alaska drinking water administrative operating account the annual balance of the Alaska drinking water administrative income account.

(c) The department shall administer the Alaska drinking water administrative fund.

(d) The Alaska drinking water administrative operating account may be used to pay for the department's operational and administrative costs necessary to manage the Alaska drinking water fund and the Alaska drinking water administrative fund and for such other purposes permitted by federal law.

(e) Money received in payment of fees charged by the department under the authority of AS 46.03.039 and earnings on the Alaska drinking water administrative fund shall be deposited in the Alaska drinking water administrative income account.

SEC. 46.03.039. FEES CHARGED FOR LOANS MADE FROM THE ALASKA DRINKING WATER FUND.

The department may charge and collect reasonable fees in connection with making and servicing loans made by the department under the authority of AS 46.03.036. The department shall by regulation specify the rates and amounts of such fees.

SEC. 46.03.040. ALASKA ENVIRONMENTAL PLAN.

(a) The department shall formulate and annually review and revise a statewide environmental plan for the management and protection of the quality of the environment and the natural resources of the state, in furtherance of the legislative policy and purposes expressed in this chapter.

(b) The department shall submit the first plan to the governor on or before January 1, 1972, and thereafter submit periodic revisions of the plan to the governor. The plan is effective upon approval by the governor and shall serve thereafter as a guide to the public, the state government and the political subdivisions of the state in the development of the environment and natural resources of the state.

(c) In formulating the plan and any revisions, the department may consult with persons, organizations, and groups, public or private, interested in or concerned with the environment of the state, and with a department, division, board, commission, or other agency of the state, with a political subdivision, or with any public authority as may be necessary to enable the department to carry out its responsibilities under this section.

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

SEC. 46.03.045. PUBLIC RECOGNITION OF POLLUTION PREVENTION EFFORTS.

In addition to the school awards program under AS 46.11.070, the department may identify, document, and publicly acknowledge exemplary pollution prevention achievements by individuals, businesses, or government agencies in the state.

Article 03. WATER POLLUTION CONTROL AND WASTE DISPOSAL

SEC. 46.03.050. AUTHORITY.

The department has jurisdiction to prevent and abate the pollution of the waters of the state.

SEC. 46.03.060. WATER POLLUTION CONTROL PLAN.

The department shall develop comprehensive plans for water pollution control in the state and conduct investigations it considers advisable and necessary for the discharge of its duties.

SEC. 46.03.070. POLLUTION STANDARDS.

After public hearing, the department may adopt standards and make them public and determine what qualities and properties of water indicate a polluted condition actually or potentially deleterious, harmful, detrimental, or injurious to the public health, safety, or welfare, to terrestrial and aquatic life or their growth and propagation, or to the use of waters for domestic, commercial, industrial, agricultural, recreational, or other reasonable purposes.

Sec. 46.03.080. QUALITY AND PURITY STANDARDS.

After study and public hearings held upon due notice, the department may establish standards of quality and purity or group the designated waters of the state into classes as to minimum quality and purity, or both. The department shall classify waters in accordance with considerations of best usage in the interest of the public. The department may alter and modify classifications after hearing.

Sec. 46.03.090. Plans for pollution disposal.

[Repealed, Sec. 12 ch 136 SLA 2004].

Repealed or Renumbered

SEC. 46.03.100. WASTE MANAGEMENT AND DISPOSAL AUTHORIZATION.

(a) A person may not construct, modify, or operate a sewerage system or treatment works or dispose of or conduct an operation that results in the disposal of solid or liquid waste material or heated process or cooling water into the waters or onto the land of the state without prior authorization from the department. Department authorization shall be obtained for direct disposal and for disposal, other than of domestic sewage, into publicly owned or operated sewerage systems.

(b) Prior authorization by the department is provided through one or a combination of the following:

- (1) an individual permit issued for a specific facility or disposal activity;
- (2) a general permit issued on a statewide, regional, or other geographical basis for a category of disposal activities that the commissioner, using information available when the permit is

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

developed, determines are similar in nature and will comply with applicable environmental quality standards established under this title;

(3) regulations adopted by the department authorizing a category of disposal without requiring a permit and establishing specific siting or operational requirements, discharge limits, or best management practices for the disposal category;

(4) designation and approval of a plan as described under (c) of this section;

(5) an integrated waste management and disposal authorization as described in (d) of this section.

(c) The department may require the submission of plans for review and written approval before construction, extension, installation, modification, or operation of a publicly or privately owned or operated sewerage system or treatment works. If the sewerage system or treatment works is designed to prevent disposal from the system or works outside of containment under normal operating conditions, the department may designate that the plan approval constitutes the authorization required under (a) of this section.

(d) The department may issue an integrated waste management and disposal authorization covering multiple related or unrelated waste management or disposal activities to be conducted at a facility, including generation, treatment, storage, and disposal of solid or liquid waste. An integrated waste management and disposal authorization may include the authorizations in (b) and (c) of this section and a water-quality-related certification required by 33 U.S.C. 1341 for the discharge of dredged or fill materials or of pollutants to surface waters from point sources.

(e) This section does not apply to

(1) a person discharging only domestic sewage into a sewerage system;

(2) disposals subject to regulation under AS 31.05.030(e)(2);

(3) injection projects permitted under AS 31.05.030(h);

(4) discharges of solid or liquid waste material or water discharges from the following activities if the discharge is incidental to the activity and the activity does not produce a discharge from a point source, as that term is defined in regulations adopted under this chapter, directly into any surface water of the state:

(A) mineral drilling, trenching, ditching, and similar activities;

(B) landscaping;

(C) water well drilling and geophysical drilling; or

(D) drilling, ditching, trenching, and similar activities associated with facility construction and maintenance or with road or other transportation facility construction and maintenance; however, the exemption provided by this subparagraph does not relieve a person from obtaining a prior authorization under this section if the drilling, ditching, trenching, or similar activity will involve the removal of the groundwater, stormwater, or wastewater runoff that has accumulated and is present at an excavation site for facility, road, or other transportation construction or maintenance and a prior authorization is otherwise required by this section;

(5) bilge pumping, unless the bilge product pumped may be expected to yield an oily sludge, emulsion, or sheen on the surface of any water of the state;

(6) cooling water discharges from a boat or vessel into any surface water of the state;

or

(7) the firing or other use of munitions in training activities conducted on active ranges, including active ranges operated by the United States Department of Defense or a United States military agency.

(f) A person who applies for an authorization to operate a solid waste disposal facility that accepts hazardous waste or a mining waste disposal facility for an operation that chemically processes ores or has the potential to generate acid shall furnish to the department proof of financial

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

responsibility to manage and close the facility in a manner that the department finds will control or minimize the risk of the release of unauthorized levels of pollutants from the facility to waters. The department may require that a municipal solid waste disposal facility furnish proof of financial responsibility. Proof of financial responsibility may be demonstrated by self-insurance, insurance, surety bond, corporate guarantee, letter of credit, certificate of deposit, or other proof of financial responsibility approved by the department, under regulations adopted by the department. Regulations adopted under this subsection must set financial tests for the acceptance of corporate guarantees and other forms of financial responsibility that the department determines would be required for an independent showing of financial capability. For a mining waste disposal facility, the department may accept as adequate to satisfy the requirement of this subsection financial assurance for reclamation provided to a state or federal land management agency if it otherwise meets the requirements of this subsection. The department's acceptance of proof of financial responsibility under this subsection expires

(1) one year after its issuance for self-insurance, unless the department accepts a renewal of the same self-insurance demonstration after a financial review under regulations adopted by the department;

(2) on the effective date of a change in the insurance agreement, surety bond, corporate guarantee, letter of credit, or certificate of deposit;

(3) on the expiration or cancellation of the insurance agreement, surety bond, corporate guarantee, letter of credit, or certificate of deposit.

(g) A person who applies for a solid waste disposal authorization under this section, except for an authorization under (b)(2) of this section or an authorization to dispose of municipal solid waste, shall demonstrate to the satisfaction of the department that the applicant has reasonably considered all solid waste management options and that the authorization would be consistent with the practices and priorities established under AS 46.06.021.

(h) The program developed to issue permits by the department to authorize discharge of pollutants into surface waters and submitted to the United States Environmental Protection Agency for approval under 33 U.S.C. 1342 (sec. 402, Clean Water Act) shall include the monitoring and reporting requirements included in the permits, limited to those requirements mandated by law, including any legal settlements, and those necessary to ascertain compliance with the effluent limitations contained in the permit and with state water quality standards.

(i) A person who applies for a permit under the program may review and provide comments and amendments to a draft permit and discuss the draft permit with the staff of the department before that draft permit undergoes public notice and comment under AS 46.03.110.

(j) A person who applies for a permit under the program has the opportunity to review a proposed final permit and discuss it with the staff of the department before the department issues the permit.

(k) A permit issued under the program is not automatically stayed by the filing of a request for an adjudicatory hearing on the permit; a request to stay a permit issued under the program shall be decided by the commissioner or the commissioner's designee.

(l) Permits issued under this section shall be issued as expeditiously as possible.

SEC. 46.03.110. WASTE DISPOSAL PERMIT PROCEDURE.

(a) An application for a permit under AS 46.03.100(b)(1) or (2) or an authorization under AS 46.03.100(d) shall be made on forms prescribed by the department. Forms must contain the name and address of the applicant, a description of the applicant's operations, the quantity and type of waste material sought to be disposed of, the proposed method of disposal, and any other information considered necessary by the department. The applicant may request that a general permit be issued,

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

or the department may, on its own initiative, propose that an applicant be authorized under a general permit.

(b) After receipt of a proper application for an individual or general permit or a determination by the department that a general permit should be proposed, the department shall publish notice of the application or proposal, or of the availability of a draft permit for comment, as applicable, in at least two publications of a newspaper of general circulation within the general area in which the disposal of waste material is proposed to be made. The notice shall also be posted on the Alaska Online Public Notice System maintained under AS 44.62.175 and may also be published in other appropriate information media. The notice must include a statement that a person who wants to present views to the department with regard to the application or proposal may do so in writing to the department within 30 days after the first publication of the notice. The written response entitles the writer to a copy of the application or draft permit, and, in the case of an application or proposal to issue a general permit, the application or proposal shall also be posted by the department on the Internet at the same time that notice is published under this subsection.

(c) When the department receives an application or makes a proposal that a general permit be issued, the commissioner shall immediately send copies of the application or proposal to the commissioner of fish and game, the commissioner of natural resources, the commissioner of commerce, community, and economic development, and the commissioner of health and social services.

(d) The department may specify in a permit or other authorization the terms and conditions under which waste material or water may be disposed of. The terms and conditions shall be directed to avoiding pollution and to otherwise carry out the policies of this chapter. The commissioner may provide, as a term of a general permit, that a person intending to dispose of waste material or water under the general permit shall first obtain specific authorization from the department. A general permit shall be posted on the Internet by the department; the posting must include the names of persons authorized to make disposals under the permit and the locations at which disposals may be made if those locations are specifically authorized under this subsection. A permit may not be issued for a term in excess of five years from the date of issuance. The department may prescribe in regulations the circumstances under which an expiring permit may be administratively continued.

(e) If the department has certified a National Pollutant Discharge Elimination System permit under 33 U.S.C. 1341 (sec. 401, Federal Water Pollution Control Act Amendments of 1972), and the United States Environmental Protection Agency has issued that permit to a person, the department may waive the requirements of this section, and adopt the federal permit as the permit required under AS 46.03.100.

SEC. 46.03.120. TERMINATION OR MODIFICATION OF WASTE MANAGEMENT AND DISPOSAL AUTHORIZATION.

(a) The department may terminate a permit or other authorization issued under AS 46.03.100 or may rescind a person's authority to dispose of waste in accordance with regulations adopted under AS 46.03.100(b)(3) upon 30 days' written notice if the department finds

(1) that the permit or other authorization was procured by misrepresentation of material fact or by failure of the applicant to disclose fully the facts relating to its issuance;

(2) that there has been a violation of the conditions of the permit or other authorization;

(3) that there has been a material change in the quantity or type of waste disposed of;

or

(4) for a permit issued under a federally approved program under 33 U.S.C. 1342 (sec. 402, Clean Water Act), that

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

(A) a change in any condition of the receiving environment or the quality of discharge requires either a temporary or permanent reduction of the authorization or elimination of the authorized discharge; or

(B) the permittee had made a material misrepresentation of fact to the department relevant to the authorized activity at any time.

(b) The department may modify a permit or other authorization issued under AS 46.03.100, or may rescind a person's authority to dispose of waste in accordance with regulations adopted under AS 46.03.100(b)(3),

(1) for any of the causes for termination listed in (a) of this section;

(2) if the department finds that a material change in the quality or classification of the waters of the state has occurred; or

(3) in the case of a permit issued under a federally approved program under 33 U.S.C. 1342 (sec. 402, Clean Water Act), as provided in regulations adopted under AS 46.03.020(12).

(c) Nothing in this section limits the authority of the department to terminate or modify a permit or plan approval under other circumstances if requested to do so by the permittee or plan holder.

Sec. 46.03.130. Compliance order.

[Repealed, Sec. 19 ch 220 SLA 1976. For current law, see AS 46.03.850].

Repealed or Renumbered

Sec. 46.03.140. - 46.03.245. Air pollution control.

[Repealed, Sec. 27 ch 74 SLA 1993. For current provisions, see AS 46.14].

Repealed or Renumbered

Sec. 46.03.240. Construction and implementation of AS 46.03.230.

[Repealed, Sec. 19 ch 220 SLA 1976].

Repealed or Renumbered

Article 04. RADIATION AND HAZARDOUS WASTE PROTECTION

SEC. 46.03.250. AUTHORITY.

The department shall adopt regulations

(1) establishing standards governing the discharge of low level radioactive materials to the air, water, land, and subsurface land of the state;

(2) establishing safeguards for radioactive waste materials that do not constitute a threat to public health or safety and that may be stored or disposed of in the state; and

(3) establishing procedures for the storage and disposal of radioactive materials used in medicine, education, instruments, industrial testing, or scientific research.

SEC. 46.03.260. USE OF RADIOACTIVE MATERIALS.

A person who conducts an operation that results in the discharge of low level radioactive materials to the air, water, land, or subsurface land of the state shall obtain a permit from the department before commencing the discharge.

Sec. 46.03.270. - 46.03.280l Electronic product radiation; notification of violation and order of abatement.

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

[Repealed, Sec. 12 ch 172 SLA 1978. For radiation protection, see AS 18.60.475 - 18.60.545].

Repealed or Renumbered

Sec. 46.03.290. [Renumbered as AS 46.03.865]

Repealed or Renumbered

SEC. 46.03.296. DISPOSAL OF HAZARDOUS WASTES.

(a) It is unlawful to dispose of hazardous wastes in the state unless

(1) the waste has been treated and disposed of in a manner that uses the maximum degree of reduction of the harmful qualities of a hazardous waste that is subject to this chapter and that the department, on a case-by-case basis, determines is achievable for the hazardous waste by application of production processes and available methods, systems, and techniques, taking into account energy, environmental, and economic impacts and other costs; and

(2) the waste is disposed of in a manner that will ensure the protection of human health, livestock, wildlife, property, and the environment.

(b) The department shall adopt regulations in accordance with AS 44.62 (Administrative Procedure Act) for the treatment, storage, and disposal of hazardous wastes to ensure the protection of human health, livestock, wildlife, property, and the environment.

SEC. 46.03.299. HAZARDOUS WASTE REGULATIONS.

(a) The department shall adopt regulations under AS 44.62 (Administrative Procedure Act) for the identification and management of hazardous waste as defined by the Environmental Protection Agency and hazardous waste that exhibits the characteristic of toxicity, persistence, or carcinogenicity.

(b) Regulations adopted under (a) of this section must exempt from their coverage mining waste and waste associated with the exploration, development, or production of crude oil, natural gas, or geothermal energy until studies required under 42 U.S.C. 6982(f) and (m) are completed. The department, after considering the findings in the reports of these studies, may terminate or amend the exemptions.

(c) The department shall take all actions necessary to receive authorization from the administrator of the Environmental Protection Agency to administer and enforce a hazardous waste program in accordance with 42 U.S.C. 6901 - 6987 (Resource Conservation and Recovery Act of 1976).

(d) Regulations adopted under (a) of this section shall cover (1) hazardous waste, not otherwise exempted by law, that is generated in any month by a single generator in an amount of 220 pounds or more, and (2) acute hazardous wastes identified in 40 C.F.R. 261.33(e), not otherwise exempted by law, that are generated in any month by a single generator in an amount of 2.2 pounds or more. The department shall extend the regulations to manage smaller quantities of hazardous waste if the quantities specified in this subsection exceed the quantities regulated under the authority of 42 U.S.C. 6921 - 6934, as amended. The department may at any time extend coverage of regulations adopted under (a) of this section to small quantities of hazardous waste and acute hazardous waste.

(e) *[Repealed, Sec. 61 ch 50 SLA 1989].*

(f) *[Repealed, Sec. 4 ch 88 SLA 1990].*

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

Sec. 46.03.300. Exceptions.

[Repealed, Sec. 12 ch 172 SLA 1978].

Repealed or Renumbered

SEC. 46.03.302. HAZARDOUS WASTE PERMIT.

(a) A person may not treat, transport, store, or dispose of a hazardous waste as defined by the department by regulation unless that person first secures a permit from the department and submits to the department any reports or manifests that the department may require for handling the hazardous wastes.

(b) A person who generates hazardous waste is not required to obtain a permit under (a) of this section unless the person also treats, transports, stores, or disposes of the hazardous waste.

SEC. 46.03.305. HAZARDOUS WASTE REPORTS AND MANIFESTS.

A person who generates hazardous wastes shall submit to the department reports or manifests that the department may require for handling the hazardous wastes.

SEC. 46.03.308. TRANSPORTATION OF HAZARDOUS WASTE.

(a) Hazardous waste may not be transported in the state unless the waste is accompanied by the uniform hazardous waste manifest required under 42 U.S.C. 6922 - 6923 or other applicable federal law.

(b) *[Repealed, Sec. 15 ch 71 SLA 1997].*

SEC. 46.03.309. TEMPORARY COLLECTION OF HAZARDOUS WASTE.

The department shall provide for the temporary collection of hazardous waste to be prepared for shipment to a federally approved hazardous waste disposal site. The department shall establish four periods in each calendar year during which it shall collect hazardous waste. A collection point may accept hazardous waste only from small quantity generators and household generators as defined by the Environmental Protection Agency.

Sec. 46.03.310. Conflicting laws.

[Repealed, Sec. 12 ch 172 SLA 1978].

Repealed or Renumbered

SEC. 46.03.311. PUBLIC RECORDS.

(a) Permits, permit applications, records, reports, and information and documentation obtained under AS 46.03.302 - 46.03.308 are available to the public for inspection and copying. However, upon a showing satisfactory to the commissioner that a record, report, permit, application, or information would, if made public, divulge methods or processes entitled to protection as trade secrets, the commissioner shall treat the record, report, permit, application, or information as confidential.

(b) Information that is confidential may be transmitted under a continuing restriction of confidentiality to other officers, employees, or authorized representatives of the state or of the United States if

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

(1) the person responsible for furnishing the record, report, permit, application, or information to which the information pertains is informed at least two weeks before the transmittal; and

(2) the information has been acquired by the department under the provisions of AS 46.03.296 - 46.03.311.

(c) This section does not limit the department's authority to release confidential information during emergency situations.

SEC. 46.03.313. HAZARDOUS WASTE MANAGEMENT FACILITIES AND SITES.

(a) The department shall evaluate and select potential sites for hazardous waste management facilities in the state. In evaluating and selecting sites for management facilities, the department shall consider at least the following factors:

(1) economic feasibility, including proximity to concentrations of generators of the types of hazardous waste likely to be proposed and permitted for management;

(2) intrinsic suitability of the sites;

(3) federal and state pollution control and environmental protection regulations;

(4) the risk and effect for local residents, units of government, and the local public health, safety, and welfare, including such dangers as an accidental release of waste during transportation to a facility or at a facility, water, air, and land pollution, and fire or explosion;

(5) the consistency of a facility with, and its effect on, existing and planned local land use and development; local laws, ordinances, and permits; and local public facilities and services; and

(6) the adverse effects of a facility at the site on agriculture and natural resources and opportunities to mitigate or eliminate the adverse effects by stipulations, conditions, and requirements relating to the design and operation of a management facility at the proposed site.

(b) The department shall adopt regulations that

(1) interpret and clarify the factors listed in (a) of this section; and

(2) establish procedures for processing, reviewing, and approving or disapproving applications for the siting and operation of privately owned hazardous waste management facilities.

(c) The department may authorize the siting and operation of privately owned hazardous waste management facilities in accordance with factors and requirements established under this section.

(d) The department shall hold public hearings in each house district in which a hazardous waste management facility site is proposed to be located. The department shall give reasonable public notice of the time, date, and place of each public hearing at least 30 days before the hearing. The public shall be afforded an opportunity at each hearing to submit written and oral testimony concerning a potential site.

(e) In this section, "intrinsic suitability" of a site means that, based on existing data on the inherent and natural attributes, physical features, and location of the site, there is no known reason why a waste management facility that may be located in the site could not reasonably be expected to qualify for a permit under AS 46.03.302.

*Sec. 46.03.314. Reports on management sites and facilities.
[Repealed, Sec. 62 ch 21 SLA 1991].*

Repealed or Renumbered

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

*Sec. 46.03.316. Hazardous waste reduction and recycling program.
[Repealed, Sec. 4 ch 88 SLA 1990].*

Repealed or Renumbered

SEC. 46.03.317. HAZARDOUS WASTE REDUCTION MATCHING GRANTS.

(a) A hazardous waste reduction grant account is established in the general fund. It consists of appropriations made to it.

(b) The department may issue matching grants from money in the account to businesses, local governments, industry trade associations, labor organizations, or nonprofit organizations for the purpose of feasibility analysis and evaluation of ways to implement hazardous waste reduction.

(c) Grants under this section

(1) must be matched on a dollar-for-dollar basis by the grantee in cash or in kind;

(2) may not exceed \$10,000 for any single proposal or project.

(d) The department shall establish an advisory committee, consisting of five members, to assist the department in reviewing and evaluating grant applications under this section. The advisory committee must include

(1) an officer or employee of the department;

(2) a representative of the University of Alaska;

(3) a professional civil or chemical engineer with experience in environmental engineering;

(4) an owner or representative of a small business; and

(5) a public member.

Article 05. PESTICIDE CONTROL

SEC. 46.03.320. REGULATION OF PESTICIDES AND BROADCAST CHEMICALS.

(a) The department may

(1) regulate the transportation, testing, inspection, packaging, labeling, handling, and advertising of pesticides and broadcast chemicals offered for sale or placed in commerce for use in the state;

(2) regulate and supervise the distribution, application, or use of pesticides and broadcast chemicals in any state project or program or by a public agency under the jurisdiction of the state;

(3) regulate or prohibit the use of pesticides and broadcast chemicals;

(4) register pesticides and broadcast chemicals for sale or distribution.

(b) The department may provide by regulation for the licensing of or temporary license waiver for private applicators of restricted-use pesticides, for persons engaged in the custom, commercial, or contract spraying or application of pesticides and broadcast chemicals, and for other persons engaged in the spraying or application of pesticides and broadcast chemicals in public places. A person engaged in the custom, commercial, or contract spraying or application of pesticides and broadcast chemicals may, by regulation, be required to secure a surety bond or liability insurance.

(c) A person may not apply a pesticide or broadcast chemical in a public place unless licensed by the department or otherwise authorized under a regulation of the department. The department shall by regulation provide for reasonable public notification, including written notice posted on the application site, when pesticides and broadcast chemicals are applied in a public place. In this subsection, "public place" means (1) common areas of an apartment building or other multi-

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

family dwelling; (2) that portion of a government office or facility to which access is not ordinarily restricted to employees; and (3) plazas, parks, and public sports fields.

(d) In this section, "multi-family dwelling" means a building that includes more than four single-family dwellings.

SEC. 46.03.330. PUBLIC PESTICIDE PROGRAMS.

(a) An officer, agent, or employee of the state, or of a borough or city of any class, may not direct, carry out, or participate in the spraying or application of a pesticide or broadcast chemical in any program or project involving funds, materials, or equipment of the state, borough, or city, except in accordance with regulations adopted by the department under AS 46.03.320.

(b) Before a public project that would affect land owned separately by two or more persons is initiated, the person directing the program shall give public notice of the program in the manner required by regulations of the department. The department shall conduct a public hearing on the proposed program if a hearing is requested by the governing body of the affected borough or city, or by a petition signed by at least 50 residents. The requirement for public notice or public hearing may be waived if the commissioner determines that a public emergency exists.

(c) The provisions of this section apply to home rule municipalities.

Article 06. UNDERGROUND STORAGE TANK SYSTEMS

Sec. 46.03.360., 46.03.363l Board of storage tank assistance; Reports.
[Repealed, Sec. 2 ch 102 SLA 2006].

Repealed or Renumbered

SEC. 46.03.365. REGULATION OF UNDERGROUND PETROLEUM STORAGE TANK SYSTEMS.

(a) The department shall develop a program to abate and prevent pollution from underground petroleum storage tank systems through the adoption of regulations under AS 44.62 (Administrative Procedure Act). Consistent with other provisions in AS 46.03.360 - 46.03.450, the regulations may govern

- (1) notification and registration;
- (2) inspection and record keeping;
- (3) construction, installation, and performance;
- (4) maintenance, operation, and repair;
- (5) technical standards, including standards for spill and overfill control, corrosion prevention, and release detection and reporting;
- (6) financial responsibility;
- (7) certification of underground petroleum storage tank system workers;
- (8) corrective action and cost recovery;
- (9) closure and abandonment;
- (10) enforcement of regulations; and
- (11) prevention of releases to protect the public health and environment.

(b) In the regulations adopted under (a) of this section, the department may

- (1) distinguish among the sizes, types, classes, locations, and ages of underground petroleum storage tank systems;

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

(2) provide for exemptions and deferrals determined to be necessary by the department; exemptions and deferrals under this paragraph must be consistent with those granted under federal laws and regulations.

(c) When the regulations adopted under this section address areas governed by federal laws or regulations, the state regulations must be consistent with federal laws and regulations and may not be more stringent than the federal laws and regulations.

(d) *[Repealed, Sec. 2 ch 102 SLA 2006]*.

SEC. 46.03.370. EDUCATIONAL ASSISTANCE.

The department shall provide

(1) educational assistance to owners and operators of underground petroleum storage tank systems to help them comply with federal and state laws and regulations applicable to the tank systems, including the registration and notification requirements under AS 46.03.380 - 46.03.400;

(2) the public with information to help the public understand the effects associated with the release of petroleum and chemical products into the environment, including releases from petroleum and chemical storage tank systems.

SEC. 46.03.375. CERTIFICATION OF STORAGE TANK WORKERS.

(a) The department shall adopt regulations governing the certification of persons who install, test, close, repair, or significantly change the configuration of underground petroleum storage tanks and tank systems. The certification program shall be administered by the Department of Commerce, Community, and Economic Development. In consultation with the Department of Environmental Conservation, the Department of Commerce, Community, and Economic Development shall make every reasonable attempt to ensure that opportunities for obtaining certification under this section are available throughout the state. The Department of Commerce, Community, and Economic Development shall organize presentation of national training courses that are available in the state and assist residents of isolated communities who request assistance in becoming certified. The Department of Commerce, Community, and Economic Development may contract with the University of Alaska, a vocational technical school, or a regional nonprofit organization to provide the education and testing necessary for certification.

(b) The Department of Commerce, Community, and Economic Development shall establish fees applicable to certification under this section in an amount necessary to cover the costs of the certification program. The fees shall be collected by the Department of Commerce, Community, and Economic Development.

(c) Except as provided in (d) of this section, a person may not install, test, close, repair, or significantly change the configuration of an underground petroleum storage tank or tank system unless that person is certified for the appropriate activity under (a) of this section. A person who violates this subsection is guilty of a class B misdemeanor.

(d) A person may install, test, close, repair, or significantly change the configuration of an underground petroleum storage tank or tank system without being certified under this section if

(1) the person performs the work under the direct supervision of another who is certified for that work under this section;

(2) the supervisor inspects the work performed; and

(3) after inspection, the supervisor approves the work in writing.

(e) AS 44.62 (Administrative Procedure Act) applies to regulations and certifications under this section.

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

(f) The department shall develop and maintain lists of persons certified under this section to perform the various activities related to underground petroleum storage tanks and tank systems. The department shall provide the lists on request to interested persons.

(g) In this section, "close" means to remove petroleum and sludges from the tanks in the tank system and either fill the tanks with inert solid material or remove, dismantle, and dispose of the tanks.

SEC. 46.03.380. REGISTRATION OF TANKS AND TANK SYSTEMS.

(a) A person, including a governmental entity or institution, or a public corporation, who intends to install, have installed, return to operation, or acquire ownership of an underground petroleum storage tank or tank system shall, before the installation or return to operation, or 30 days after acquisition, register the tank or tank system with the department on a form provided by the department and pay the tank registration fee required under AS 46.03.385.

(b) The owner or operator of an underground petroleum storage tank or tank system that was installed before and is still in use on September 5, 1990 shall register the tank or tank system with the department on a form provided by the department and pay the tank registration fee required under AS 46.03.385. For each tank or tank system registered under this subsection that was installed before December 22, 1988, the owner or operator shall provide to the department at the time of registration

(1) proof of plans for prompt site assessment or testing for tank tightness;

(2) proof of tank tightness testing or site assessment that occurred within the previous 12 months and

(A) satisfactory performance of the tank or tank system during the test, proof of noncontamination if a site assessment was performed, and proof of compliance with applicable state financial responsibility requirements; or

(B) if the tank or tank system did not perform satisfactorily during the test, or the site assessment showed evidence of contamination, a summary of the upgrading, repair, containment, or cleanup efforts that have been or will be used for the tank, tank system, or site.

SEC. 46.03.385. REGISTRATION FEE.

(a) At the time of registration under AS 46.03.380, and annually thereafter, the owner or operator shall pay to the department a registration fee for each tank registered unless the owner or operator has notified the department under AS 46.03.395 that the tank has been taken out of service. An underground storage tank that has leak detection, spill and overflow protection, and corrosion protection that meet requirements of the department is subject to a \$50 annual registration fee, regardless of tank capacity. An underground storage tank system that lacks any or all of these features is subject to an annual registration fee of

(1) \$150 if the underground storage tank capacity is less than 1,000 gallons;

(2) \$300 if the underground storage tank capacity is 1,000 - 5,000 gallons;

(3) \$500 if the underground storage tank capacity is over 5,000 gallons.

(b) An underground petroleum storage tank or tank system owned or operated by the federal or state government is exempt from the registration fee in (a) of this section.

(c) A registration fee that is not paid within 30 days of when it is due shall be increased by a late payment fee equal to \$10 per day until the day of payment.

(d) The first annual fee under this section must be accompanied by the information required under AS 46.03.400. Subsequent annual fees must be accompanied by the names and addresses of

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

the owner and operator of the tank system, and the location and capacity of, and substance being stored in, the tanks for which the fee is being submitted.

(e) *[Repealed, Sec. 2 ch 102 SLA 2006].*

SEC. 46.03.390. NOTIFICATION OF CHANGES IN TANK SYSTEMS.

An owner or operator who intends to significantly change the configuration of an underground petroleum storage tank system shall notify the department before beginning work on the change by completing and returning to the department a notification form obtained from the department.

SEC. 46.03.395. NOTIFICATION OF TANK SYSTEM CLOSURE.

If an underground petroleum tank or storage tank system is taken out of operation, the owner or operator of the tank or tank system, or an agent on the owner's or operator's behalf, shall provide on forms obtained from the department

(1) notification of that fact to the department at least 15 days, but not more than 60 days, before the date the tank or tank system will be taken out of operation unless the tank or tank system is taken out of operation because of an emergency; in emergency situations, the owner or operator shall provide notification as promptly as possible under the circumstances; and

(2) evidence satisfactory to the department within 30 days after the tank or tank system is taken out of operation that the owner or operator has complied with applicable state and federal laws and regulations governing temporary or permanent tank closure.

SEC. 46.03.400. REGISTRATION FORMS.

The registration forms required under AS 46.03.380 - 46.03.395 must require information about the geographical location of a tank or tank system, the estimated age of the tanks and tank system, the total capacity, type of construction, internal and external protection, and piping of the tanks and tank system, and the substance currently or proposed to be stored in the tank system. If the tank or tank system is newly installed, the owner or operator shall certify that the owner or operator has complied with installation, release detection, corrosion protection, and financial responsibility requirements of state and federal law.

SEC. 46.03.405. PROHIBITIONS.

A person, including a governmental entity or institution or a public corporation, may not operate an underground petroleum storage tank or tank system unless

(1) the tank and tank system are registered with the department as provided in AS 46.03.360 - 46.03.450 or other law; and

(2) the person has provided to the department proof of financial responsibility to the extent required under regulations adopted under AS 46.03.365 or proof of application for arrangements that would satisfy state financial responsibility requirements.

Sec. 46.03.410. Underground storage tank revolving loan fund.

Repealed, Sec. 2 ch 102 SLA 2006].

Repealed or Renumbered

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

*Sec. 46.03.415. Tank tightness and site assessment incentive program.
[Repealed, Sec. 14 ch 70 SLA 1999].*

Repealed or Renumbered

*Sec. 46.03.420. Tank cleanup program.
[Repealed, Sec. 21 ch 41 SLA 2002].*

Repealed or Renumbered

*Sec. 46.03.422. Tank cleanup loan program.
[Repealed, Sec. 2 ch 102 SLA 2006].*

Repealed or Renumbered

*Sec. 46.03.430. Tank upgrading and closure program.
[Repealed, Sec. 20 ch 41 SLA 2002].*

Repealed or Renumbered

SEC. 46.03.440. CONFIDENTIALITY OF FINANCIAL RECORDS.

(a) Financial records submitted to the department or to the former Board of Storage Tank Assistance by the owner or operator of an underground petroleum storage tank system are confidential and not subject to inspection or copying under AS 40.25.110 - 40.25.120. The department, in consultation with the affected owner or operator, shall determine which information is confidential under this subsection.

(b) The confidentiality conferred by (a) of this section does not apply to statistical information compiled by the department about the number, capacity, and location of underground petroleum storage tank systems in the state.

SEC. 46.03.450. DEFINITIONS.

In AS 46.03.360 - 46.03.450

(1) "chemical" means any substance defined in 42 U.S.C. 9601(14) (sec. 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980), as amended, and any substance having the characteristics identified or listed under 42 U.S.C. 6921 (sec. 3001 of the Solid Waste Disposal Act), regardless of whether the substance is a solid waste;

(2) "corrective action" means action necessary to stop the migration, determine the extent, and undertake recovery of petroleum after its unpermitted release; clean up affected soil and groundwater; and stabilize the site of the release to prevent or remove hazards to public health or the environment;

(3) "farm" means a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements; "farm" includes fish hatcheries, rangelands, and nurseries with growing operations;

(4) "petroleum" means crude oil or any fraction of crude oil that is liquid at 60 degrees Fahrenheit and pressure of 14.7 pounds per square inch absolute; "petroleum" includes petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils;

(5) "release" has the meaning given in AS 46.08.900;

(6) "site assessment" means investigation of suspected underground petroleum storage tank system leaks and source identification;

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

(7) "tank system" means an underground petroleum storage tank system;

(8) "underground storage tank" means one or a combination of stationary devices, including underground pipes connected to the devices, that is designed to contain an accumulation of petroleum, the volume of which, including the volume of underground pipes, is 10 percent or more beneath the surface of the ground, except that the term does not include a

(A) farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

(B) tank used for storing heating oil for consumptive use on the premises where stored;

(C) septic tank;

(D) pipeline facility, including gathering lines,

(i) regulated under 49 U.S.C. 1671, et seq., (Natural Gas Pipeline Safety Act of 1968);

(ii) regulated under 49 U.S.C. 2001, et seq., (Hazardous Liquid Pipeline Safety Act of 1979); or

(iii) that is an intrastate pipeline facility regulated under state laws comparable to the provisions of law referred to in (i) or (ii) of this subparagraph;

(E) surface impoundment, pit, pond, or lagoon;

(F) storm water or waste water collection system;

(G) flow-through process tank;

(H) liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;

(I) storage tank situated in an underground area such as a basement, cellar, mineworking, drift, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor;

(J) tank with a capacity of 110 gallons or less;

(K) tank containing hazardous wastes regulated under 42 U.S.C. 6921 - 6939b; or

(L) tank system that the department has exempted by regulations adopted under AS 46.03.365;

(9) "underground petroleum storage tank system" means an underground storage tank containing petroleum together with its underground ancillary equipment and related containment system, if any; in this paragraph, "ancillary equipment" means devices used to distribute, meter, or control the flow of petroleum to and from the system, including piping, fittings, flanges, valves, and pumps.

Article 07. COMMERCIAL PASSENGER VESSEL ENVIRONMENTAL COMPLIANCE PROGRAM

SEC. 46.03.460. PROGRAM ESTABLISHED.

(a) There is established the commercial passenger vessel environmental compliance program providing for

(1) terms and conditions of vessel discharges;

(2) independent verification of environmental compliance; and

(3) allowing the department to monitor and supervise discharges from commercial passenger vessels through a registration system.

(b) The department may adopt regulations to carry out the purposes of AS 46.03.460 - 46.03.490. The department shall use negotiated regulation making under AS 44.62.710 - 44.62.800, when appropriate, to develop those regulations.

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

SEC. 46.03.461. REGISTRATION REQUIREMENTS.

(a) Except as provided in AS 46.03.487, each calendar year in which the owner or operator of a commercial passenger vessel intends to operate, or cause or allow to be operated, the vessel in the marine waters of the state, the owner or operator of the vessel shall register with the department. The registration shall be completed before the time any commercial passenger vessel of the owner or operator enters the marine waters of the state in that calendar year. The registration must include the following information:

(1) the vessel owner's business name and, if different, the vessel operator's business name for each commercial passenger vessel of the owner or operator that is scheduled to be in the marine waters of the state during the calendar year;

(2) the postal address, electronic mail address, telephone number, and facsimile number for the principal place of each business identified under (1) of this subsection;

(3) the name and address of an agent for service of process for each business identified under (1) of this subsection; the owner and operator shall continuously maintain a designated agent for service of process whenever a commercial passenger vessel of the owner or operator is in the marine waters of the state, and the agent must be an individual resident of this state, a domestic corporation, or a foreign corporation having a place of business in and authorized to do business in this state;

(4) the name or call sign of and Port of Registry for each of the owner's or operator's vessels that is scheduled either to call upon a port in this state or otherwise to be in the marine waters of the state during the calendar year and after the date of registration; and

(5) an agreement to comply with the terms and conditions of vessel discharges specified under AS 46.03.462.

(b) Registration under (a) of this section shall be executed under oath by the owner or operator.

(c) Upon request of the department, the registrant shall submit registration information required under this section electronically.

SEC. 46.03.462. TERMS AND CONDITIONS OF DISCHARGE PERMITS.

(a) An owner or operator may not discharge any treated sewage, graywater, or other wastewater from a commercial passenger vessel into the marine waters of the state unless the owner or operator

(1) obtains a permit under AS 46.03.100, which shall comply with the terms and conditions of vessel discharge requirements specified in (b) of this section; or

(2) has a plan approved by the department under (c) of this section.

(b) The minimum standard terms and conditions for all discharge permits authorized under this section require that the owner or operator

(1) may not discharge untreated sewage, treated sewage, graywater, or other wastewaters in a manner that violates any applicable effluent limits or standards under state or federal law, including Alaska Water Quality Standards governing pollution at the point of discharge;

(2) shall maintain records and provide the reports required under AS 46.03.465(a);

(3) shall collect and test samples as required under AS 46.03.465(b) and (d) and provide the reports with respect those samples required by AS 46.03.475(c);

(4) shall report discharges in accordance with AS 46.03.475(a);

(5) shall allow the department access to the vessel at the time samples are taken under AS 46.03.465 for purposes of taking the samples or for purposes of verifying the integrity of the sampling process; and

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

(6) shall submit records, notices, and reports to the department in accordance with AS 46.03.475(b), (d), and (e).

(c) The owner or operator of a small commercial passenger vessel may submit a plan for alternative terms and conditions of vessel discharges if the keel of the vessel was laid before January 1, 2004. The alternative terms and conditions may include alternatives to the requirements under AS 46.03.465(a) - (d). Except as provided in (d) of this section, the department shall approve the plan for a three-year period if the department finds that the alternative terms and conditions in the plan incorporate the best management practices for protecting the environment to the maximum extent feasible. The department shall adopt regulations to implement this subsection but may not require an owner or operator to retrofit a vessel solely for the purpose of waste treatment if the retrofitting requires additional stability testing or relicensing by the United States Coast Guard. In this subsection, "best management practices" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of the marine waters of the state.

(d) A plan submitted under (c) of this section after December 31, 2012, may not be approved by the department for a period extending beyond December 31, 2015.

SEC. 46.03.463. PROHIBITED DISCHARGES; LIMITATIONS ON DISCHARGES.

(a) Except as provided in (h) of this section, a person may not discharge untreated sewage from a commercial passenger vessel into the marine waters of the state.

(b) Except as provided in (h) of this section or under AS 46.03.462(c), a person may not discharge sewage from a commercial passenger vessel into the marine waters of the state that has suspended solids greater than 150 milligrams per liter or a fecal coliform count greater than 200 colonies per 100 milliliters except that the department may by regulation adopt a protocol for retesting for fecal coliform, if this discharge limit for fecal coliform is exceeded, under which a discharger will be considered to be in compliance with the fecal coliform limit if the geometric mean of fecal coliform count in the samples considered under the protocol does not exceed 200 colonies per 100 milliliters.

(c) Except as provided in (h) of this section or under AS 46.03.462(c), a person may not discharge graywater or other wastewater from a commercial passenger vessel into the marine waters of the state that has suspended solids greater than 150 milligrams per liter or a fecal coliform count greater than 200 colonies per 100 milliliters except that the department may by regulation adopt a protocol for retesting for fecal coliform, if this discharge limit for fecal coliform is exceeded, under which a discharger will be considered to be in compliance with the fecal coliform limit if the geometric mean of fecal coliform count in the samples considered under the protocol does not exceed 200 colonies per 100 milliliters.

(d) *[Repealed, Sec. 5, 2006 Primary Election Ballot Measure No. 2].*

(e) An owner or operator may not discharge any treated sewage, graywater, or other wastewater from a large commercial passenger vessel into the marine waters of the state unless the owner or operator obtains a permit under AS 46.03.100 and 46.03.462, and provided that the vessel is not in an area where the discharge of treated sewage, graywater, or other wastewaters is otherwise prohibited.

(f) Except as provided in (h) of this section, a person may not discharge sewage from a small commercial passenger vessel unless the sewage has been processed through a properly operated and properly maintained marine sanitation device.

(g) *[Repealed, Sec. 5, 2006 Primary Election Ballot Measure No. 2].*

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

(h) The provisions of (a) - (f) of this section do not apply to discharges made for the purpose of securing the safety of the commercial passenger vessel or saving life at sea if all reasonable precautions have been taken for the purpose of preventing or minimizing the discharge.

SEC. 46.03.465. INFORMATION-GATHERING REQUIREMENTS.

(a) The owner or operator of a commercial passenger vessel shall maintain daily records related to the period of operation while in the state, detailing the dates, times, and locations, and the volumes and flow rates of any discharges of sewage, graywater, or other waster into the marine waters of the state, provide electronic copies of such records on a monthly basis to the department no later than five days after each calendar month of operation in state waters.

(b) While a commercial passenger vessel is present in the marine waters of the state, the owner or operator of the vessel shall provide an hourly report of the vessel's location based on Global Positioning System technology and collect routine samples of the vessel's treated sewage, graywater, and other wastewaters being discharged into marine waters of the state with a sampling technique approved by the department.

(c) While a commercial passenger vessel is present in the marine waters of the state, the department, or an independent contractor retained by the department, may collect additional samples of the vessel's treated sewage, graywater, and other wastewaters being discharged into the marine waters of the state.

(d) The owner or operator of a vessel required to collect samples under (b) of this section shall ensure that all sampling techniques and frequency of sampling events are approved by the department in a manner sufficient to ensure demonstration of compliance with all discharge requirements under AS 46.03.462.

(e) The owner or operator of a commercial passenger vessel shall pay for all reporting, sampling, and testing of samples under this section.

(f) If the owner or operator of a commercial passenger vessel has, when complying with another state or federal law that requires substantially equivalent information required under (a), (b), or (d) of this section, the owner or operator shall be considered to be in compliance with that subsection so long as the information is also provided to the department.

(g) The department may exempt from the requirements of (a) - (d) of this section the owner or operator of a small commercial passenger vessel who has a plan for alternative terms and conditions of vessel discharges approved by the department under AS 46.03.462(c).

SEC. 46.03.470. RECORD KEEPING REQUIREMENTS.

An owner or operator subject to AS 46.03.465 shall record the information required to be gathered under that section and shall maintain the records for three years after the date the information was gathered.

SEC. 46.03.475. REPORTING REQUIREMENTS.

(a) An owner or operator of a commercial passenger vessel who becomes aware of a discharge in violation of AS 46.03.463 shall immediately report that discharge to the department. There is no audit report privilege under AS 09.25.450 for this information.

(b) If the owner or operator of a commercial passenger vessel operating in the marine waters of the state is required by the Administrator of the Environmental Protection Agency or the secretary of the federal department in which the United States Coast Guard is operating to collect samples and test sewage, graywater, or other wastewater and keep records of the sampling and testing, the owner

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

or operator shall, within 21 days after the sewage, graywater, or other wastewater is tested, submit to the department a copy of the records.

(c) Within 21 days after the testing required under AS 46.03.465(d), the owner or operator shall submit a written report to the department that contains the measurements required under AS 46.03.465(d) and describes the sampling technique and analytical testing methods used. The information in the report required under this subsection may be provided by referring to, and including copies of, other reports that are required by substantially equivalent state or federal reporting requirements.

(d) If the owner or operator of a commercial passenger vessel operating in the marine waters of the state is required by the laws of the United States or by the laws of Canada or of a province or territory of Canada to file a report or provide notice of a discharge or offloading of a hazardous waste, as defined in AS 46.03.900, or of a hazardous substance, as defined in AS 46.03.826, that was generated, discharged, or offloaded while the vessel was operating in the marine waters of the state, the owner or operator shall submit to the department a copy of the report or notice within 21 days after having provided the report or notice to an agency of the government of the United States or to an agency of the government of Canada or of a province or territory of Canada.

(e) Before the operation of a commercial passenger vessel in the marine waters of the state, the owner or operator of the vessel shall provide to the department a plan that describes the vessel's policies and procedures for

(1) offloading in this state or disposing into the marine waters of the state of nonhazardous solid waste other than sewage; and

(2) offloading of hazardous waste or a hazardous substance from the vessel while it is operating in the marine waters of the state to the extent that the offloading is not covered by (d) of this section.

(f) Upon request of the department, the information required under this section shall be submitted electronically.

(g) This section does not relieve the owner or operator of a commercial passenger vessel from other applicable reporting requirements of state or federal law.

SEC. 46.03.476. OCEAN RANGERS.

(a) An owner or operator of a large commercial passenger vessel entering the marine waters of the state is required to have a marine engineer licensed by the United States Coast Guard hired or retained by the department on board the vessel to act as an independent observer for the purpose of monitoring state and federal requirements pertaining to marine discharge and pollution requirements and to insure that passengers, crew, and residents at ports are protected from improper sanitation, health, and safety practices.

(b) The licensed marine engineer shall monitor, observe, and record data and information related to the engineering, sanitation, and health related operations of the vessel, including but not limited to registration, reporting, record-keeping, and discharge functions required by state and federal law.

(c) Any information recorded or gathered by the licensed marine engineer shall be promptly conveyed to the Alaska Department of Environmental Conservation and the United States Coast Guard on a form or in a manner approved by the commissioner of environmental conservation. The commissioner may share information gathered with other state and federal agencies.

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

SEC. 46.03.480. FEES.

(a) There is imposed an environmental compliance fee on each commercial passenger vessel operating in the marine waters of the state.

(b) The fee imposed by (a) of this section for all commercial passenger vessels, other than vessels operated by the state, is a separate fee for each voyage during which the commercial passenger vessel operates in the marine waters of the state. The fee shall range from \$.70 to \$1.75 per berth, based on the overnight accommodation capacity of the vessel, determined with reference to the number of lower berths, according to the following categories:

- (1) \$75 for a commercial passenger vessel with overnight accommodations for at least 50 but not more than 99 passengers for hire;
- (2) \$175 for a commercial passenger vessel with overnight accommodations for at least 100 but not more than 249 passengers for hire;
- (3) \$375 for a commercial passenger vessel with overnight accommodations for at least 250 but not more than 499 passengers for hire;
- (4) \$750 for a commercial passenger vessel with overnight accommodations for at least 500 but not more than 999 passengers for hire;
- (5) \$1,250 for a commercial passenger vessel with overnight accommodations for at least 1,000 but not more than 1,499 passengers for hire;
- (6) \$1,750 for a commercial passenger vessel with overnight accommodations for at least 1,500 but not more than 1,999 passengers for hire;
- (7) \$2,250 for a commercial passenger vessel with overnight accommodations for at least 2,000 but not more than 2,499 passengers for hire;
- (8) \$2,750 for a commercial passenger vessel with overnight accommodations for at least 2,500 but not more than 2,999 passengers for hire;
- (9) \$3,250 for a commercial passenger vessel with overnight accommodations for at least 3,000 but not more than 3,499 passengers for hire;
- (10) \$3,750 for each commercial passenger vessel with overnight accommodations for 3,500 or more passengers for hire.

(c) The fee imposed by (a) of this section for a commercial passenger vessel that is operated by this state shall be determined by agreement between the commissioner of environmental conservation and the commissioner of transportation and public facilities.

(d) An additional fee in the amount of \$4 per berth, is imposed on all large commercial passenger vessels, other than vessels operated by the state, for the purpose of operating the Ocean Ranger program established in AS 46.03.476; said program shall be subject to legislative appropriation.

(e) A commercial passenger vessel operating in the marine waters of the state is liable for the fee imposed by this section. The fee is due and payable to the department in the manner and at the times required by the department by regulation.

SEC. 46.03.481. CITIZENS' SUITS.

(a) Any citizen of the State of Alaska may commence a civil action (1) against an owner or operator of a large passenger vessel alleged to have violated any provision of this chapter, or (2) against the department where there is an alleged failure to perform any act or duty under this chapter which is not discretionary. No civil action may be commenced under this section, however, prior to 45 days after the plaintiff has provided written notice of the intent to sue to the Attorney General of Alaska.

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

(b) Subject to appropriation, as necessary, up to 50 percent and not less than 25 percent of any fines, penalties, or other funds recovered as a result of enforcement of this chapter shall be paid to the person or entity, other than the defendant, providing information sufficient to commence an investigation and enforcement of this chapter under this provision.

SEC. 46.03.482. COMMERCIAL PASSENGER VESSEL ENVIRONMENTAL COMPLIANCE FUND.

(a) The commercial passenger vessel environmental compliance fund is created in the general fund.

(b) The fund consists of the following, all of which shall be deposited in the fund upon receipt:

- (1) money received by the department in payment of fees under AS 46.03.480;
- (2) money received under AS 46.03.760(e) as a result of a violation related to AS 46.03.460 - 46.03.490 unless the money would otherwise be deposited in the oil and hazardous substance release prevention and response fund established by AS 46.08.010;
- (3) money appropriated to the fund by the legislature;
- (4) earnings on the fund.

(c) The legislature may make appropriations from the fund to the department to pay for the department's operational costs necessary to prepare reports that assess the information received by the department for the cruise ship seasons of 2000, 2001, 2002, and 2003 and for the department's operational costs necessary to carry out activities under AS 46.03.460 - 46.03.490 relating to commercial passenger vessels.

(d) The unexpended and unobligated balance of an appropriation made from the fund to the department for the purposes described in (c) of this section lapses into the fund on December 31 following the end of the period for which the appropriation was made.

(e) Nothing in this section creates a dedicated fund.

SEC. 46.03.485. RECOGNITION PROGRAM.

The department may engage in efforts to encourage and recognize superior environmental protection efforts made by the owners or operators of commercial passenger vessels that exceed the requirements established by law.

SEC. 46.03.487. EXEMPTION FOR VESSELS IN INNOCENT PASSAGE.

AS 46.03.460 - 46.03.490 do not apply to a commercial passenger vessel that operates in the marine waters of the state solely in innocent passage. For purposes of this section, a vessel is engaged in innocent passage if its operation in marine waters of the state, regardless of whether the vessel is a United States or foreign-flag vessel, would constitute innocent passage under the

(1) Convention on the Territorial Sea and the Contiguous Zone, April 29, 1958, 15 U.S.T. 1606; or

(2) United Nations Convention on the Law of the Sea 1982, December 10, 1982, United Nations Publication No. E.83.V.5, 21 I.L.M. 1261 (1982), were the vessel a foreign-flag vessel.

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

SEC. 46.03.488. ACTIVITIES OF THE DEPARTMENT.

The department may engage in the following activities relating to commercial passenger vessels operating in the marine waters of the state:

- (1) direct in-water monitoring of discharges or releases of sewage, graywater, and other wastewater and direct monitoring of the opacity of air emissions from those vessels;
- (2) monitoring and studying of direct or indirect environmental effects of those vessels; and
- (3) researching ways to reduce effects of the vessels on marine waters and other coastal resources.

SEC. 46.03.490. DEFINITIONS.

In AS 46.03.460 - 46.03.490,

- (1) "agent for service of process" means an agent upon whom process, notice, or demand required or permitted by law to be served upon the owner or operator may be served;
- (2) "commercial passenger vessel" means a vessel that carries passengers for hire except that "commercial passenger vessel" does not include a vessel
 - (A) authorized to carry fewer than 50 passengers;
 - (B) that does not provide overnight accommodations for at least 50 passengers for hire, determined with reference to the number of lower berths; or
 - (C) operated by the United States or a foreign government;
- (3) "discharge" means any release, however caused, from a commercial passenger vessel, and includes any escape, disposal, spilling, leaking, pumping, emitting, or emptying;
- (4) "federal cruise ship legislation" means secs. 1401 - 1414 of H.R. 5666, as incorporated by reference into P.L. 106-554;
- (5) "fund" means the commercial passenger vessel environmental compliance fund established under AS 46.03.482;
- (6) "graywater" means galley, dishwasher, bath, and laundry waste water;
- (7) "large commercial passenger vessel" means a commercial passenger vessel that provides overnight accommodations for 250 or more passengers for hire, determined with reference to the number of lower berths;
- (8) "marine waters of the state" means all waters within the boundaries of the state together with all of the waters of the Alexander Archipelago even if not within the boundaries of the state;
- (9) "offloading" means the removal of a hazardous substance, hazardous waste, or nonhazardous solid waste from a commercial passenger vessel onto or into a controlled storage, processing, or disposal facility or treatment works;
- (10) "other wastewater" means graywater or sewage that is stored in or transferred to a ballast tank or other holding area on the vessel that may not be customarily used for storing graywater or sewage;
- (11) "passengers for hire" means vessel passengers for whom consideration is contributed as a condition of carriage on the vessel, whether directly or indirectly flowing to the owner, charterer, operator, agent, or any other person having an interest in the vessel;
- (12) "sewage" means human body wastes and the wastes from toilets and other receptacles intended to receive or retain human body waste;
- (13) "small commercial passenger vessel" means a commercial passenger vessel that provides overnight accommodations for 249 or fewer passengers for hire, determined with reference to the number of lower berths;

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

(14) "treated sewage" means sewage that meets all applicable effluent limitation standards and processing requirements of 33 U.S.C. 1251 - 1376 (Federal Water Pollution Control Act), as amended, the federal cruise ship legislation, and regulations adopted under 33 U.S.C. 1251 - 1376 or under the federal cruise ship legislation;

(15) "untreated sewage" means sewage that is not treated sewage;

(16) "vessel" means any form or manner of watercraft, other than a seaplane on the water, whether or not capable of self-propulsion;

(17) "voyage" means a vessel trip to or from one or more ports of call in the state with the majority of the passengers for hire completing the entire vessel trip; a vessel trip involving stops at more than one port of call is considered a single voyage so long as the majority of passengers for hire complete the entire trip;

(18) "waters of the Alexander Archipelago" means all waters under the sovereignty of the United States within or near Southeast Alaska, beginning at a point 58 degrees 11 minutes 41 seconds North, 136 degrees 39 minutes 25 seconds West (near Cape Spencer Light), thence southeasterly along a line three nautical miles seaward of the baseline from which the breadth of the territorial sea is measured in the Pacific Ocean and the Dixon Entrance, except where this line intersects geodesics connecting the following five pairs of points: (A) 58 degrees 05 minutes 17 seconds North, 136 degrees 33 minutes 49 seconds West and 58 degrees 11 minutes 41 seconds North, 136 degrees 39 minutes 25 seconds West (Cross Sound); (B) 56 degrees 09 minutes 40 seconds North, 134 degrees 40 minutes 00 seconds West and 55 degrees 49 minutes 15 seconds North, 134 degrees 17 minutes 40 seconds West (Chatham Strait); (C) 55 degrees 49 minutes 15 seconds North, 134 degrees 17 minutes 40 seconds West and 55 degrees 50 minutes 30 seconds North, 133 degrees 54 minutes 15 seconds West (Sumner Strait); (D) 54 degrees 41 minutes 30 seconds North, 132 degrees 01 minutes 00 seconds West and 54 degrees 51 minutes 30 seconds North, 131 degrees 20 minutes 45 seconds West (Clarence Strait); (E) 54 degrees 51 minutes 30 seconds North, 131 degrees 20 minutes 45 seconds West and 54 degrees 46 minutes 15 seconds North, 130 degrees 52 minutes 00 seconds West (Revillagigedo Channel); the portion of each such geodesic situated beyond three nautical miles from the baseline from which the breadth of the territorial sea is measured forms the outer limit of the waters of the Alexander Archipelago in those five locations.

Article 08. CLEANUP OF ILLEGAL DRUG SITES

SEC. 46.03.500. NOTICE OF ILLEGAL DRUG MANUFACTURING SITE; INTERNET LIST.

(a) When a law enforcement officer or team of law enforcement officers, qualified under federal regulations to investigate and dismantle illegal drug manufacturing sites, determines that a site constitutes an illegal drug manufacturing site, the primary law enforcement agency that conducted the investigation shall notify the owner of the property, the occupants and users of the property, and the department that the determination has been made. The owner of the property may appeal the determination to the superior court for review of whether the determination was made in compliance with this subsection. In the appeal, the burden of proving by a preponderance of the evidence that the determination was made in compliance with this subsection is on the primary law enforcement agency that conducted the investigation.

(b) The notice to the property owner required under (a) of this section shall be given in a manner that is consistent with the Alaska Rules of Civil Procedure for the service of process in a civil action in this state and must include the following information:

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

(1) the parcel identification number and legal description of the property where the site is located;

(2) a statement of the determination made by the primary law enforcement agency that the site was an illegal drug manufacturing site and the findings that formed the basis for the determination;

(3) a citation to, and short summary of, AS 46.03.510, which restricts transfer and occupancy of the site until it is determined to be fit for use; and

(4) the following information, which shall be provided to the primary law enforcement agency by the department:

(A) a copy of the standards contained in regulations adopted under AS 46.03.530 that determine whether the property is fit for use;

(B) a copy of the sampling and testing procedures established under AS 46.03.520(b) and a copy of the list of laboratories maintained under AS 46.03.520(c) that must be used for determining whether the property is fit for use; and

(C) a copy of the guidelines for decontamination established by the department under AS 46.03.540(b).

(c) The notice to the department required under (a) of this section must include

(1) the parcel identification number and legal description of the property where the site is located;

(2) a statement of the determination made by the primary law enforcement agency that the site was an illegal drug manufacturing site and the findings that formed the basis for the determination; and

(3) the name and mailing address of the person who owns the property where the site is located.

(d) The notice required under (a) of this section for the occupants and users of the property shall be accomplished by immediate posting of the property with a notice that includes the location of the property, the information described in (b)(2) and (3) of this section, and a statement that the property may pose a substantial risk of physical harm to persons who occupy or use the property. For purposes of posting of the notice to the occupants and users of the property required by this subsection, the posting shall be made, for property that is

(1) a single family dwelling, at the main entryway of the property; and

(2) other than a single family dwelling and for a hotel, motel, public inn, or similar place of public accommodation that provides lodging, at the door of the unit that is the site that constitutes the illegal drug manufacturing site.

(e) If a person other than the owner, such as a property manager or rental agency, is authorized to let others use or occupy property for which an owner has received a notice under (a) of this section or is authorized to transfer, sell, lease, or rent the property to others, the owner of the property shall communicate the substance of the notice to that person within four days after receiving the notice.

(f) The department shall maintain on its Internet website a list of all properties for which a notice has been issued under (a) of this section. For each of those properties, the list must contain the parcel identification number, legal description, and physical address and owner's name at the time the notice was issued.

SEC. 46.03.510. RESTRICTIONS ON PROPERTY.

(a) Until determined to be fit for use under AS 46.03.550, the property for which a notice has been issued under AS 46.03.500(a) may not be transferred, sold, leased, or rented to another person except as provided in (b) of this section, and a person may not use or occupy the property at any time

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

after the fourth day following the day on which the property was posted with the notice required under AS 46.03.500(d), except as necessary for sampling, testing, or decontamination under AS 46.03.520 and 46.03.540. An oral or written contract that would transfer, sell, lease, rent, or otherwise allow the use of the property in violation of this subsection is voidable between the parties at the option of the purchaser, transferee, user, lessee, or renter. However, this subsection does not

(1) make voidable a promissory note or other evidence of indebtedness or a mortgage, trust deed, or other security interest securing the promissory note or evidence of indebtedness, if the note or evidence of indebtedness, mortgage, trust deed, or other security interest was given to a person other than the person transferring, selling, using, leasing, or renting the property to induce the person to finance the transfer, sale, use, leasing, or rental of the property;

(2) make voidable a lease or rental agreement between the property owner and the person who caused the property to be contaminated and determined unfit for use; or

(3) impair obligations or duties required to be performed on termination of a contract, as required by the contract, such as payment of damages or return of refundable deposits.

(b) Notwithstanding (a) of this section, property covered by (a) of this section may be transferred or sold if full written disclosure is made to the prospective transferee or purchaser that the property has been determined to be an illegal drug manufacturing site and the property has not been determined to be fit for use. The disclosure shall be attached to the earnest money receipt, if any, and shall accompany the transfer or sale document. The disclosure is not considered to be part of the transfer or sale document, however, and may not be recorded. The property shall continue to be subject to the restrictions in (a) of this section after transfer or sale under this subsection.

(c) A person who knowingly transfers, sells, leases, or rents property to another, knowingly allows another to use or occupy property, or, being the owner of property, knowingly occupies or uses the property in violation of this section is guilty of a class A misdemeanor. In this subsection, "knowingly" has the meaning given in AS 11.81.900(a).

(d) It is an affirmative defense to a prosecution under (c) of this section for allowing another to use or occupy the property that the defendant or an agent of the defendant, within four days after receiving a notice under AS 46.03.500, filed an appropriate civil action to remove the user or occupier from the property for which the notice was received.

SEC. 46.03.520. SAMPLING AND TESTING PROCEDURES.

(a) If the owner of the property for which notice was received under AS 46.03.500(b) desires to determine if the property is fit for use, the owner shall cause the site to be sampled and tested for the substances covered in regulations adopted under AS 46.03.530, using the procedures and laboratory services specified under (b) and (c) of this section. The property owner shall inform the laboratory used for sampling or testing under this subsection that the sampling and testing are related to property that has been determined to be an illegal drug manufacturing site.

(b) The department shall establish procedures for sampling and testing property that may have been an illegal drug manufacturing site.

(c) The department shall establish and maintain a list of laboratories in the state that have notified the department that they have the capacity to perform the sampling and testing procedures and that they wish to be on the list maintained under this subsection. A laboratory may not be included on the list unless the laboratory agrees to send the department a copy of test results related to properties whose owners have informed the laboratory that the test results are for property that has been determined to be an illegal drug manufacturing site.

SEC. 46.03.530. STANDARDS FOR DETERMINING FITNESS.

(a) Property for which a notice was received under AS 46.03.500(b) is not fit for use if sampling and testing of the property under AS 46.03.520 shows the presence of substances for which the department has set a limit under (b) of this section.

(b) The Department of Public Safety shall annually submit a list of substances to the Department of Environmental Conservation. The department shall adopt regulations that set the limit for each substance specified by the Department of Public Safety for purposes of determining whether the property for which a notice was received under AS 46.03.500 is fit for use. The department may also determine whether there are other substances associated with illegal drug manufacturing sites that may pose a substantial risk of harm to persons who occupy or use the site or to public health and may adopt regulations that set limits for those substances for the purposes of determining whether the property for which notice was received under AS 46.03.500 is fit for use.

SEC. 46.03.540. DECONTAMINATION REQUIREMENTS.

(a) If the owner desires to decontaminate the property for which a notice has been issued under AS 46.03.500, the owner shall follow the guidelines established by the department under (b) of this section.

(b) The department shall establish guidelines for decontamination of sites that are determined to be unfit for use under AS 46.03.530. The department shall provide a copy of the guidelines to any person who requests a copy.

SEC. 46.03.550. FITNESS FOR USE.

(a) Property for which a notice has been issued under AS 46.03.500 shall be determined by the department to be fit for use if the owner certifies to the department under penalty of unsworn falsification in the second degree that

(1) based on sampling and testing procedures established by the department under AS 46.03.520(b) and performed by laboratories that are on the list maintained by the department under AS 46.03.520(c), the limits on substances specified in regulations adopted under AS 46.03.530 are not exceeded on the property;

(2) if the property was ever sampled and tested under AS 46.03.520 and the test results showed the property to be unfit for use under AS 46.03.530, decontamination procedures were performed in accordance with the guidelines established under AS 46.03.540(b) and the requirements of (1) of this subsection have been met; or

(3) a court has held that the determination that the property was an illegal drug manufacturing site was not made in compliance with AS 46.03.500(a).

(b) The department shall maintain a list of properties for which the department has received notice under AS 46.03.500(c). When the department determines under (a) of this section that a property on the list is fit for use, the department shall note on the list maintained on its Internet website under AS 46.03.500(f), and on any other list or database it maintains related to illegal drug manufacturing sites, that the property is fit for use and shall notify the owner of the property that the property is fit for use. The property shall remain on the lists or databases for five years after it is determined that the property is fit for use and shall be removed from the lists or databases within three months after the five-year period has elapsed. On request, the department shall give a copy of the list maintained under this section to any person who requests the list.

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

SEC. 46.03.560. SECURING THE PROPERTY.

The owner of property for which a notice was received under AS 46.03.500(b) shall ensure that the property is vacated and secured against use

(1) within four days after receiving the notice if the owner does not test the property under AS 46.03.520 within four days after receiving the notice; or

(2) within four days after receiving the test results if the owner tests the property within four days after receiving the notice, the test shows the presence of a substance that exceeds the limits set in regulations adopted under AS 46.03.530, and the owner does not begin decontamination procedures under AS 46.03.540 within four days after receiving the test results.

SEC. 46.03.570. DUTIES OF THE DEPARTMENT; REGULATIONS.

The department shall adopt regulations implementing AS 46.03.500 - 46.03.599.

SEC. 46.03.599. DEFINITIONS.

In AS 46.03.500 - 46.03.599,

(1) "illegal drug manufacturing site" means property on which there is reasonable cause to suspect contamination with chemicals associated with the manufacturing of a controlled substance and where

(A) activity involving the unauthorized manufacture of a controlled substance listed on schedule I or II in AS 11.71 or a precursor chemical or necessary chemical for the substances has occurred; or

(B) there are kept, stored, or located any of the devices, equipment, things, or substances used for the unauthorized manufacture of a controlled substance listed on schedule I or II in AS 11.71;

(2) "site" means an illegal drug manufacturing site.

Article 09. PROHIBITED ACTS AND PENALTIES

SEC. 46.03.710. POLLUTION PROHIBITED.

A person may not pollute or add to the pollution of the air, land, subsurface land, or water of the state.

SEC. 46.03.730. PESTICIDES.

A person may not spray or apply, or cause to be sprayed or applied dichloro-diphenyl-trichloro-ethane (DDT), dieldrin, or other pesticide or broadcast chemical in a manner that may cause damage to or endanger the health, welfare, or property of another person, or in a manner that is likely to pollute the air, soil, or water of the state without prior authorization of the department.

SEC. 46.03.740. OIL POLLUTION.

A person may not discharge, cause to be discharged, or permit the discharge of petroleum, acid, coal or oil tar, lampblack, aniline, asphalt, bitumen, or a residuary product of petroleum, into, or upon the waters or land of the state except in quantities, and at times and locations or under circumstances and

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

conditions as the department may by regulation permit or where permitted under art. IV of the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, as amended.

SEC. 46.03.742. RECKLESS OPERATION OF TANK VESSEL.

(a) A person commits the crime of reckless operation of a tank vessel when, by recklessly operating, navigating, or piloting a tank vessel, the person causes a release of a hazardous substance and the release causes serious physical injury to another person or damage to the property of another.

(b) Reckless operation of a tank vessel is a class C felony.

(c) In this section, "reckless" has the meaning given in AS 11.81.900.

SEC. 46.03.743. NEGLIGENT OPERATION OF TANK VESSEL.

(a) A person commits the crime of negligent operation of a tank vessel when, by operating, navigating, or piloting a tank vessel with criminal negligence, the person creates an unjustifiable risk of a release of a hazardous substance or an unjustifiable risk of harm to a person or property.

(b) Negligent operation of a tank vessel is a class A misdemeanor.

(c) In this section, "criminal negligence" has the meaning given in AS 11.81.900.

SEC. 46.03.744. DEFINITIONS FOR AS 46.03.742 - 46.03.744.

In AS 46.03.742 - 46.03.744,

(1) "hazardous substance" has the meaning given in AS 46.03.826;

(2) "tank vessel" means

(A) a vessel that is constructed or adapted to carry, or that carries, as a means of transportation by water, a hazardous substance in bulk as cargo or cargo residue;

(B) the vessel that propels the tank vessel if the tank vessel is a barge or other vessel that is not self-propelled.

SEC. 46.03.745. HAZARDOUS SUBSTANCE RELEASE.

Except for a controlled release, the reporting of which is the subject of an agreement with the commissioner under AS 46.09.010(b), a person may not cause or permit the release of a hazardous substance as defined in AS 46.09.900.

SEC. 46.03.750. BALLAST WATER DISCHARGE.

(a) Except as provided in (b) of this section, a person may not cause or permit the discharge of ballast water from a cargo tank of a tank vessel into the waters of the state. A tank vessel may not take on petroleum or a petroleum product or by-product as cargo unless it arrives in ports in the state without having discharged ballast from cargo tanks into the waters of the state and the master of the vessel certifies that fact on forms provided by the department.

(b) The master of a tank vessel may discharge ballast water from a cargo tank of a tank vessel if it is necessary for the safety of the tank vessel and no alternative action is feasible to ensure the safety of the tank vessel.

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

Sec. 46.03.755. DISCHARGE REPORTING.

(a) A person in charge of a facility, operation, or vessel, as soon as the person has knowledge of any discharge from the facility, operation, or vessel in violation of AS 46.03.740 or 46.03.750, shall immediately notify the department of the discharge.

(b) Notwithstanding (a) of this section, the department may enter into a written agreement with a person for the periodic reporting of minor discharges other than into the waters of t

SEC. 46.03.758. CIVIL PENALTIES FOR DISCHARGES OF OIL.

(a) The legislature finds that

(1) recent information discloses that the discharge of oil may cause significant short and long-term damage to the state's environment; even minute quantities of oil released to the environment may cause high mortalities among larval and juvenile forms of important commercial species, may affect salmon migration patterns, and may otherwise degrade and diminish the renewable resources of the state;

(2) the exact nature and extent of oil pollution can be neither documented with certainty nor precisely quantified on a spill-by-spill basis; however, in light of the magnitude of harm which may be caused by oil discharges, and the vital importance of commercial, sport, and subsistence fishing, tourism, and the state's natural abundance and beauty to the economic future of the state and its quality of life, it is the judgment of the legislature that substantial civil penalties should be imposed for the discharge of oil in order to provide a meaningful incentive for the safe handling of oil and to insure that the public does not bear substantial losses from oil pollution for which, because of its subtle, long-term, or unquantifiable nature, compensation would not otherwise be received; and

(3) the handling of oil in large quantities is a hazardous undertaking that poses a significant threat to the economy and environment of the state, which can be substantially reduced only by the taking of rigorous safety precautions involving considerable expense; conversely, persons handling oil in smaller amounts pose a correspondingly lower risk to the economy and environment of the state, and are capable of safe oil handling practices at correspondingly lower costs; in order to provide an incentive that is effective, but not punitive, it is necessary and appropriate that the assessment of civil penalties for discharges of small quantities of oil be left for case-by-case judicial determination, while ensuring, through the penalty provisions of this section, that the handling of oil in large quantities occurs in a manner that will not impair the renewable resources of the state.

(b) No later than the 10th day after the convening of the Second Session of the Tenth Alaska Legislature, the department shall submit to the legislature regulations establishing the following schedule of fixed penalties for discharges of oil:

(1) subject to (2) of this subsection, the penalties for the following categories of receiving environments may not exceed

(A) \$10 per gallon of oil which enters an anadromous stream or other freshwater environment with significant aquatic resources;

(B) \$2.50 per gallon of oil which enters an estuarine, intertidal or confined saltwater environment; and

(C) \$1 per gallon of oil which enters an unconfined saltwater environment, public land or freshwater environment without significant aquatic resources;

(2) for discharges of oil that are caused by the gross negligence or intentional act of the discharger, or when the court finds that the discharger did not take reasonable measures to contain and clean up the discharged oil, the penalty shall be determined by multiplying the penalty established under (1) of this subsection by a factor of five.

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

(c) Regulations adopted under (b) of this section shall become effective 60 days after submission to the legislature, unless disapproved by a special concurrent resolution introduced in either house, and concurred in by a majority of the members in joint session within 60 days of the submission of the regulations. The department may periodically revise regulations adopted under (b) of this section. Revised regulations shall be submitted to the legislature no later than 10 days after the convening of the appropriate regular session of the legislature, and are subject to disapproval as specified in this subsection.

(d) The schedule shall vary according to the toxicity, degradability and dispersal characteristics of the oil. The schedule shall also vary according to the sensitivity and productivity of the receiving environment. Variations under this subsection may be by subcategories of receiving environments, specific receiving environments, or both. The maximum penalties established in (b) of this section shall apply to discharges in the most sensitive and productive of receiving environments within each category of receiving environment, and the penalty shall decrease for less productive or sensitive receiving environments.

(e) If a discharge of oil in excess of 18,000 gallons not permitted under applicable state and federal law occurs within the territorial jurisdiction of the state, or into or upon the adjacent outer continental shelf of the state, the following persons, in addition to the person causing or permitting the discharge, are jointly and severally liable to the state, in a civil action, for the full amount of penalties established in the regulations adopted under this section:

- (1) if the discharge occurs from any commercial or industrial facility other than a vessel or offshore platform, the owner, lessee or permittee, and operator of the facility;
- (2) if the discharge occurs from a vessel,
 - (A) the owner and operator of the vessel; and
 - (B) the owner of the oil carried as cargo on the vessel at the time the vessel was loaded, if the loading occurred within the territorial jurisdiction of the state, or at a deep-water port or other offshore storage facility adjacent to the state; however, if the owner of the oil temporarily transfers ownership of the oil to another person, and the transfer has the purpose or effect of evading the vicarious liability imposed by this section, the transferor shall be considered the owner of the oil for the purposes of this subsection; and
- (3) if the discharge occurs from an offshore platform, the lessee or permittee of the tract or acreage upon which the platform is situated, and the operator of the platform.

(f) The court shall deduct from the penalties for which the person charged is liable under (e) of this section that amount of oil which was removed from the environment as a result of a cleanup operation undertaken in conformity with applicable state and federal law, unless the oil was removed by an agency of state, local or federal government. The dispersal of oil through the use of chemical agents or other means is not considered removal for the purposes of this subsection. The court may estimate the amount of oil removed.

(g) Except as provided in (f) and (j) of this section, the entire penalty specified in the regulations shall be imposed, except that a person who discharges oil into a receiving environment may demonstrate, by a preponderance of evidence, that mitigating circumstances relating to the effects of the discharge would make imposition of the full penalty inappropriate. In determining whether mitigating circumstances exist, the court shall recognize that scientific knowledge pertaining to oil spills is very limited and if there is insufficient knowledge either to predict a base case or to show mitigating circumstances varying from that base case, the administratively established schedule of penalties shall apply. If mitigating circumstances are proven by a preponderance of the evidence, the court may reduce or totally eliminate the penalty, in accordance with the purposes of this section.

(h) A person otherwise liable for penalties under (e) of this section is not liable if the person demonstrates, by a preponderance of the evidence, that the discharge occurred solely as a result of

- (1) an act of God;

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

(2) an act of a third person with intent to cause a discharge, unless the third person is a person with whom the person charged is made jointly and severally liable under (e)(1) - (3) of this section;

(3) a negligent or intentional act of this state or the United States; or

(4) an act of war.

(i) Notwithstanding AS 46.03.875, a person liable under this section is not also liable for the discharge of oil under AS 46.03.760(a). A person causing or permitting a discharge of oil of 18,000 gallons or less not permitted under applicable state or federal law is liable for that discharge under the penalty provisions of AS 46.03.760(a); however, the court may impose a penalty of less than \$500 for the discharge.

(j) The court may reduce the penalty imposed under this section if the person charged demonstrates, by a preponderance of the evidence, that the discharge was caused solely by a negligent act of a third person, unless the third person is a person with whom the person charged is made jointly and severally liable under (e)(1) - (3) of this section.

(k) *[Repealed, Sec. 19 ch 59 SLA 1986].*

(l) In this section

(1) "adjacent outer continental shelf" means that portion of the outer continental shelf that would be within the territorial jurisdiction of the state if its boundaries were extended seaward to the outer margin of the outer continental shelf;

(2) "confined saltwater environment" means a bay, sound, or other partially enclosed saltwater body in which flushing through tidal or current action is significantly restricted;

(3) "discharge of oil" means the entry of oil into or upon the water or public land of the state, except oil discharges into an enclosed and impervious oil spill containment area, regardless of causation;

(4) "intertidal" means the ocean area between highest high water and lowest low water of tidal action;

(5) "offshore platform" means an offshore structure, whether floating or temporarily or permanently secured to the floor of the ocean or other water body, which is used primarily for the exploration for or production of oil or natural gas;

(6) "oil" means petroleum and any substance refined from petroleum, except crude oil;

(7) "operator" means the person who, through contract, lease, sublease, or otherwise, exerts general supervision and control of activities at the facility; the term includes, by way of example and not limitation, a prime or general contractor, the master of a vessel and the master's employer, or any other person who, personally or through an agent or contractor, undertakes the general functioning of the facility;

(8) "vessel" means any form or manner of watercraft, whether or not capable of self-propulsion, except offshore platforms.

SEC. 46.03.759. CIVIL PENALTIES FOR DISCHARGES OF CRUDE OIL.

(a) A person who is found to be liable under any other state law for an unpermitted discharge of crude oil in excess of 18,000 gallons is, in addition to liability for any other penalties or for damages or the cost of containment and cleanup, liable to the state in a civil action for a civil penalty, up to a maximum of \$500,000,000, in the amount of

(1) \$8 per gallon of crude oil discharged for the first 420,000 gallons discharged; and

(2) \$12.50 per gallon of crude oil discharged for amounts discharged in excess of 420,000 gallons.

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

(b) In determining how many gallons of crude oil have been discharged for purposes of assessing a penalty under (a) of this section, the court shall deduct the number of discharged gallons of crude oil that the defendant proves were removed by the defendant from the environment within the first 36 hours after the discharge as a result of a cleanup operation undertaken in conformity with applicable state and federal law. The dispersal of oil through burning, the use of chemical agents, biological additives, or sinking agents, or other means is not considered removal for the purposes of this subsection.

(c) Subject to the \$500,000,000 maximum set under (a) of this section the court shall assess four times the penalty set out in (a) of this section if the court finds

- (1) the discharge was caused by the gross negligence or intentional act of the defendant;
- (2) the defendant did not take reasonable measures to contain and clean up the discharged oil; or
- (3) the defendant did not act or respond in accordance with an approved oil discharge prevention and contingency plan.

(d) Notwithstanding AS 46.03.875, a person liable for civil penalties under this section is not also liable for the discharge of the crude oil under AS 46.03.760(a). A person causing or permitting a discharge of crude oil of 18,000 gallons or less not permitted under applicable state or federal law is liable for that discharge under the penalty provisions of AS 46.03.760(a); however, the court may impose a penalty of less than \$500 for the discharge.

(e) The court may reduce the penalty imposed under this section if the defendant demonstrates, by a preponderance of the evidence, that the discharge was caused solely by a negligent act of a third person unless the third person is a person with whom the defendant was found jointly and severally liable for the discharge under other state law.

(f) A person otherwise liable for penalties under this section is not liable if the person demonstrates, by a preponderance of the evidence, that the discharge occurred solely as a result of

- (1) an act of God;
- (2) a negligent or intentional act of the State of Alaska or the United States; or
- (3) an act of war.

(g) In this section, "discharge" means entry of crude oil into or upon the water or public land of the state, regardless of causation, except discharges into an enclosed and impervious oil spill containment area.

SEC. 46.03.760. CIVIL ACTION FOR POLLUTION; DAMAGES.

(a) A person who violates or causes or permits to be violated a provision of this chapter other than AS 46.03.250 - 46.03.313, or a provision of AS 46.04 or AS 46.09, or a regulation, a lawful order of the department, or a permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued under this chapter or AS 46.04 or AS 46.09 is liable, in a civil action, to the state for a sum to be assessed by the court of not less than \$500 nor more than \$100,000 for the initial violation, nor more than \$5,000 for each day after that on which the violation continues, and that shall reflect, when applicable,

(1) reasonable compensation in the nature of liquidated damages for any adverse environmental effects caused by the violation, which shall be determined by the court according to the toxicity, degradability, and dispersal characteristics of the substance discharged, the sensitivity of the receiving environment, and the degree to which the discharge degrades existing environmental quality;

(2) reasonable costs incurred by the state in detection, investigation, and attempted correction of the violation;

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

(3) the economic savings realized by the person in not complying with the requirement for which a violation is charged.

(b) Except as determined by the court under (e)(4) of this section, actions under this section may not be used for punitive purposes, and sums assessed by the court must be compensatory and remedial in nature.

(c) The court, upon motion of the department or upon its own motion, may defer assessment of all or part of that portion of the sum imposed upon a person under (a)(3) of this section conditioned upon the person complying, within the shortest feasible time, with the requirement for which a violation is shown.

(d) In addition to liability under (a) - (c) of this section, a person who violates or causes or permits to be violated a provision of AS 46.03.740 - 46.03.750 is liable to the state, in a civil action brought under AS 46.03.822, for the full amount of actual damages caused to the state by the violation, including

(1) direct and indirect costs associated with the abatement, containment, or removal of the pollutant;

(2) restoration of the environment to its former state;

(3) amounts paid as grants under AS 29.60.510 - 29.60.599 and as emergency first response advances and reimbursements under AS 46.08.070(c); and

(4) all incidental administrative costs.

(e) A person who violates or causes or permits to be violated a provision of AS 46.03.250 - 46.03.313, 46.03.460 - 46.03.475, AS 46.14, or a regulation, a lawful order of the department, or a permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued under AS 46.03.250 - 46.03.313, 46.03.460 - 46.03.475, AS 46.14, or under the program authorized by AS 46.03.020(12), is liable, in a civil action, to the state for a sum to be assessed by the court of not less than \$500 nor more than \$100,000 for the initial violation, nor more than \$10,000 for each day after that on which the violation continues, and that shall reflect, when applicable,

(1) reasonable compensation in the nature of liquidated damages for any adverse environmental effects caused by the violation, that shall be determined by the court according to the toxicity, degradability and dispersal characteristics of the substance discharged, the sensitivity of the receiving environment, and the degree to which the discharge degrades existing environmental quality; for a violation relating to AS 46.14, the court, in making its determination under this paragraph, shall also consider the degree to which the discharge causes harm to persons or property; for a violation of AS 46.03.463, the court, in making its determination under this paragraph, shall also consider the volume of the graywater, sewage, or other wastewater discharged; this paragraph may not be construed to limit the right of parties other than the state to recover for personal injuries or damage to their property;

(2) reasonable costs incurred by the state in detection, investigation, and attempted correction of the violation;

(3) the economic savings realized by the person in not complying with the requirement for which a violation is charged; and

(4) the need for an enhanced civil penalty to deter future noncompliance.

(f) An owner, agent, employee, or operator of a commercial passenger vessel, as defined in AS 43.52.295, who falsifies a registration or report required by AS 46.03.460 or 46.03.475 or who violates or causes or permits to be violated a provision of AS 46.03.250 - 46.03.314, 46.03.460 - 46.03.490, AS 46.14, or a regulation, a lawful order of the department, or a permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued under AS 46.03.250 - 46.03.314, 46.03.460 - 46.03.490, or AS 46.14 is liable, in a civil action, to the state for a sum to be assessed by the court of not less than \$5,000 nor more than \$100,000 for the initial violation, nor

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

more than \$10,000 for each day after that on which the violation continues, and that shall reflect, when applicable,

(1) reasonable compensation in the nature of liquidated damages for any adverse environmental effects caused by the violation, that shall be determined by the court according to the toxicity, degradability, and dispersal characteristics of the substance discharged, the sensitivity of the receiving environment, and the degree to which the discharge degrades existing environmental quality; for a violation relating to AS 46.14, the court, in making its determination under this paragraph, shall also consider the degree to which the discharge causes harm to persons or property; this paragraph may not be construed to limit the right of parties other than the state to recover for personal injuries or damage to their property;

(2) reasonable costs incurred by the state in detection, investigation, and attempted correction of the violation;

(3) the economic savings realized by the person in not complying with the requirement for which a violation is charged; and

(4) the need for an enhanced civil penalty to deter future noncompliance.

(g) As used in this section, "economic savings" means that sum which a person would be required to expend for the planning, acquisition, siting, construction, installation and operation of facilities necessary to effect compliance with the standard violated.

SEC. 46.03.761. ADMINISTRATIVE PENALTIES.

(a) The department may assess an administrative penalty against an entity that violates or causes or permits to be violated a provision of AS 46.03.720(b) or a term or condition of a regulation, order, permit, approval, or certificate of the department issued or adopted under AS 46.03.720(b).

(b) Before assessing an administrative penalty under this section, the department shall

(1) communicate about the alleged noncompliance with the entity and the governing body of the community or municipality whose residents are served by the public water system; communication under this paragraph must be in language designed to be easily understood by the entity and governing body and must clearly describe the nature of the alleged noncompliance;

(2) offer technical assistance to aid in correcting the alleged noncompliance when the department has reason to believe that the entity may lack the resources or expertise to get technical assistance from other sources; and

(3) unless the alleged noncompliance poses an immediate threat to the public health, give the entity a reasonable amount of time to correct the alleged noncompliance after the department has complied with (1) and (2) of this subsection.

(c) If, after complying with (b) of this section, the department determines that noncompliance still exists and the violation is subject to a penalty under this section, the department may make a preliminary determination to assess the penalty. The department shall provide notice to the entity of its preliminary determination. The entity may, within 10 days after receiving the notice, request the department to reconsider its decision. If a timely request for reconsideration is made, the department shall reconsider its preliminary determination and may affirm or modify the determination. The department shall notify the entity of the decision. If a timely request for reconsideration is not received or if, after reconsideration, the department determines that a penalty should be assessed, the department may assess the penalty. The department shall provide notice of the assessment and instructions for contesting and appealing the assessment to the entity by personal service or by certified mail, return receipt requested. The notice must inform the entity of the amount of the proposed penalty and that the entity has 45 days within which to file a notice with the department contesting the proposed penalty. If, within 45 days after receiving the notification issued by the department, the entity fails to file a notice contesting the proposed penalty, the proposed penalty is

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

considered a final order. The department may extend the time periods specified in this subsection for good cause.

(d) If an entity sends notice to the department contesting a proposed penalty under (c) of this section, the department shall afford an opportunity for a hearing in accordance with its adjudicatory hearing procedures. After an opportunity for a hearing, the department shall issue an order, based upon findings of fact, affirming, modifying, or rescinding the administrative penalty. The order must include notice that the entity may appeal the order to the superior court and the address of the appropriate superior court. The order is the final agency action on the penalty.

(e) An entity against whom an administrative penalty is assessed under this section may obtain judicial review of the administrative penalty by filing a notice of appeal in the superior court as provided by the Alaska Rules of Appellate Procedure. An order of the department under (d) of this section becomes final and is not subject to review by a court if a notice of appeal is not filed with the superior court within the period provided for by the Alaska Rules of Appellate Procedure.

(f) Unless the notice of appeal is incomplete or otherwise not in conformance with court rules, a notice of appeal under (e) of this section is considered to be filed with the superior court on the day the entity delivers the appropriate documents and fee to the appropriate superior court. Determining whether the notice of appeal is complete and otherwise in conformance with court rules is the responsibility of the superior court.

(g) An administrative penalty assessed under this section may not exceed (1) \$1,000 a day for each violation if the affected public water supply system serves a population of more than 10,000 persons; (2) \$250 a day for each violation if the affected public water supply system serves a population of 10,000 or fewer persons but more than 1,000 persons; and (3) \$100 a day for each violation if the public water supply system serves 1,000 or fewer persons. Each provision, term, or condition violated is a separate and distinct violation. If a violation of a provision, term, or condition continues from day to day, each day is a separate violation.

(h) In determining the amount of a penalty assessed under this section, the department shall consider

- (1) the effect of the violation on the public health or the environment;
- (2) reasonable costs incurred by the state in the detection, investigation, and attempted correction of the violation;
- (3) the economic savings realized by the entity by not complying with the requirement for which a violation is charged;
- (4) any previous history of compliance or noncompliance by the entity with this chapter, AS 46.04, AS 46.09, and AS 46.14;
- (5) the need to deter future violations;
- (6) the extent and seriousness of the violation, including the potential for the violation to threaten public health or the environment;
- (7) whether the entity achieved compliance with the requirement violated within the shortest feasible time; and
- (8) other factors considered relevant to the assessment that are adopted by the department in regulation.

(i) If an entity fails to pay an administrative penalty assessed under this section after the penalty becomes final, the department may bring an action to collect the penalty. The amount of the penalty is not subject to review by the court in such an action.

(j) In a collection action under (i) of this section, the court shall award the prevailing party full reasonable attorney fees and costs incurred in the collection action.

(k) Action under this section by the department does not limit or otherwise affect the authority of the department to otherwise enforce this chapter, AS 46.04, AS 46.08, AS 46.09, AS 46.14, or regulations adopted under those statutes, or to recover damages, restoration expenses,

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

investigation costs, court costs, attorney fees, or other necessary expenses. The court shall set off against a judicial civil assessment subsequently awarded under AS 46.03.760 an amount ordered to be paid under this section by the same entity for the same violation.

(l) In this section, "entity" means the owner or operator of a public water system.

SEC. 46.03.763. ATTORNEY FEES AND COSTS.

In an action to impose civil penalties under AS 46.03.758, 46.03.759, or 46.03.760 for a discharge of oil, the state may recover full reasonable attorney fees and costs incurred by the state in maintaining the action.

SEC. 46.03.765. INJUNCTIONS.

The superior court has jurisdiction to enjoin a violation of this chapter, AS 46.04, AS 46.09, AS 46.14, or of a regulation, a lawful order of the department, or permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued under this chapter, AS 46.04, AS 46.09, or AS 46.14. In actions brought under this section, temporary or preliminary relief may be obtained upon a showing of an imminent threat of continued violation, and probable success on the merits, without the necessity of demonstrating physical irreparable harm. The balance of equities in actions under this section may affect the timing of compliance, but not the necessity of compliance within a reasonable period of time.

SEC. 46.03.770. DETENTION OF VESSEL WITHOUT WARRANT AS SECURITY FOR DAMAGES.

A vessel that is used in or in aid of a violation of AS 46.03.740 - 46.03.750 may be detained after a valid search by the department, an agent of the department, a peace officer of the state, or an authorized protection officer of the Department of Fish and Game. Upon judgment of the court having jurisdiction that the vessel was used in, or was the cause of, a violation of AS 46.03.740 - 46.03.750 with knowledge of its owner or under circumstances indicating that the owner should reasonably have had this knowledge, the vessel may be held as security for payment to the state of the amount of damages assessed by the court under AS 46.03.758, 46.03.759, 46.03.760, 46.03.822, and AS 46.04.030(g). If the damages assessed are not paid within 30 days after judgment or final determination of an appeal, the vessel shall be sold at public auction, or as otherwise directed by the court, and the damages paid from the proceeds. The balance, if any, shall be paid by the court to the owner of the vessel. The court shall permit the release of the vessel upon posting of a bond set by the court in an amount not to exceed the maximum amount of damages available under AS 46.03.758, 46.03.759, 46.03.760, 46.03.822, and AS 46.04.030(g). The damages received under this section shall be transmitted to the proper state officer for deposit in the general fund. A vessel seized under this section shall be returned or the bond exonerated if no damages are assessed under AS 46.03.758, 46.03.759, 46.03.760, 46.03.822, or AS 46.04.030(g).

SEC. 46.03.780. LIABILITY FOR RESTORATION.

(a) A person who violates a provision of this chapter, AS 46.04, AS 46.09, or AS 46.14, or who fails to perform a duty imposed by this chapter, AS 46.04, AS 46.09, or AS 46.14, or violates or disregards an order, permit, or other determination of the department made under the provisions of this chapter, AS 46.04, AS 46.09, or AS 46.14, respectively, and thereby causes the death of fish,

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

animals, or vegetation or otherwise injures or degrades the environment of the state is liable to the state for damages.

(b) Liability for damages under (a) of this section includes an amount equal to the sum of money required to restock injured land or waters, to replenish a damaged or degraded resource, or to otherwise restore the environment of the state to its condition before the injury.

(c) Damages under (a) of this section shall be recovered by the attorney general on behalf of the state.

SEC. 46.03.790. CRIMINAL PENALTIES.

(a) Except as provided in (d) of this section, a person is guilty of a class A misdemeanor if the person with criminal negligence

(1) violates a provision of this chapter, AS 46.04, AS 46.09, or AS 46.14, a regulation or order of the department, or a permit, approval, or acceptance, or a term or condition of a permit, approval, or acceptance issued under this chapter, AS 46.04, AS 46.09, or AS 46.14;

(2) fails to provide information or provides false information required by AS 46.03.465, 46.03.475, 46.03.755, AS 46.04, or AS 46.09, or by a regulation adopted by the department under AS 46.03.020(12), 46.03.460, 46.03.755, AS 46.04, or AS 46.09;

(3) makes a false statement or representation in an application, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of compliance with AS 46.03.250 - 46.03.313 applicable to hazardous wastes or a regulation adopted by the department under AS 46.03.250 - 46.03.313;

(4) makes a false statement, representation, or certification in an application, notice, record, report, permit, or other document filed, maintained, or used for purposes of compliance with AS 46.03.460 - 46.03.475, AS 46.14, or a regulation adopted under AS 46.03.020(12), 46.03.460, or AS 46.14; or

(5) renders inaccurate a monitoring device or method required to be maintained under AS 46.14, a regulation adopted under AS 46.03.020(12) or AS 46.14, a permit issued by the department or a local air quality control program under AS 46.14, or a permit issued by the department under the program authorized by AS 46.03.020(12).

(b) *[Repealed, Sec. 5 ch 141 SLA 1990].*

(c) Each day on which a violation described in this section occurs is considered a separate violation.

(d) Notwithstanding (a) of this section, a person who with criminal negligence discharges oil in violation of AS 46.03.740 or who, when required by an oil discharge to comply with the provisions of an oil discharge contingency plan approved under AS 46.04.030, with criminal negligence fails to comply with the plan is guilty of

(1) a class C felony if the oil discharge is 10,000 barrels or more;

(2) a class A misdemeanor if the oil discharge is less than 10,000 barrels.

(e) *[Repealed, Sec. 5 ch 141 SLA 1990].*

(f) *[Repealed, Sec. 5 ch 141 SLA 1990].*

(g) Notwithstanding AS 12.55.035(b), upon conviction of a violation of a regulation adopted under AS 46.03.020(12) or of a violation related to AS 46.14 and described in (a) of this section, a defendant who is not an organization may be sentenced to pay a fine of not more than \$10,000 for each separate violation.

(h) Notwithstanding (a) and (d) of this section, a person is guilty of a class A misdemeanor if the person negligently

(1) violates a regulation adopted by the department under AS 46.03.020(12);

(2) violates a permit issued under the program authorized by AS 46.03.020(12);

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

(3) fails to provide information or provides false information required by a regulation adopted under AS 46.03.020(12);

(4) makes a false statement, representation, or certification in an application, notice, record, report, permit, or other document filed, maintained, or used for purposes of compliance with a permit issued under or a regulation adopted under AS 46.03.020(12); or

(5) renders inaccurate a monitoring device or method required to be maintained by a permit issued under or a regulation adopted under AS 46.03.020(12).

(i) In this section,

(1) "barrel" has the meaning given in AS 46.04.900;

(2) "criminal negligence" has the meaning given in AS 11.81.900.

SEC. 46.03.820. EMERGENCY POWERS.

(a) When the department finds, after investigation, that a person is causing, engaging in, or maintaining a condition or activity that, in the judgment of its commissioner presents an imminent or present danger to the health or welfare of the people of the state or would result in or be likely to result in irreversible or irreparable damage to the natural resources or environment, and it appears to be prejudicial to the interests of the people of the state to delay action until an opportunity for a hearing can be provided, the department may, without prior hearing, order that person by notice to discontinue, abate, or alleviate the condition or activity. The proscribed condition or activity shall be immediately discontinued, abated, or alleviated.

(b) Upon receipt of an order of the department made under (a) of this section, the person affected has the right to be heard and to present proof to the department that the condition or activity does not constitute an actual or potential source of irreversible or irreparable damage to the natural resources or environment of the state, or that the order may constitute a substantial private hardship.

(c) In the commissioner's discretion or upon application made by the recipient of an order within 15 days of receipt of the order, the department shall schedule a hearing at the earliest possible time. The hearing shall be scheduled within five days of the receipt of the application. The submission of an application or the scheduling of a hearing does not stay the operation of the department's order issued under (a) of this section.

(d) After a hearing the department may affirm, modify, or set aside the order. An order affirmed, modified, or set aside after hearing is subject to judicial review as provided in AS 44.62.560. The order is not stayed pending judicial review unless the commissioner so directs. If an order is not immediately complied with, the attorney general, upon request of the commissioner, shall seek enforcement of the order.

(e) The department may adopt additional regulations prescribing the procedure to be followed in the issuance of emergency orders.

SEC. 46.03.822. STRICT LIABILITY FOR THE RELEASE OF HAZARDOUS SUBSTANCES.

(a) Notwithstanding any other provision or rule of law and subject only to the defenses set out in (b) of this section, the exception set out in (i) of this section, the exception set out in AS 09.65.240, and the limitation on liability provided under AS 46.03.825, the following persons are strictly liable, jointly and severally, for damages, for the costs of response, containment, removal, or remedial action incurred by the state, a municipality, or a village, and for the additional costs of a function or service, including administrative expenses for the incremental costs of providing the function or service, that are incurred by the state, a municipality, or a village, and the costs of projects or activities that are delayed or lost because of the efforts of the state, the municipality, or

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

the village, resulting from an unpermitted release of a hazardous substance or, with respect to response costs, the substantial threat of an unpermitted release of a hazardous substance:

(1) the owner of, and the person having control over, the hazardous substance at the time of the release or threatened release; this paragraph does not apply to a consumer product in consumer use;

(2) the owner and the operator of a vessel or facility, from which there is a release, or a threatened release that causes the incurrence of response costs, of a hazardous substance;

(3) any person who at the time of disposal of any hazardous substance owned or operated any facility or vessel at which the hazardous substances were disposed of, from which there is a release, or a threatened release that causes the incurrence of response costs, of a hazardous substance;

(4) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by the person, other than domestic sewage, or by any other party or entity, at any facility or vessel owned or operated by another party or entity and containing hazardous substances, from which there is a release, or a threatened release that causes the incurrence of response costs, of a hazardous substance;

(5) any person who accepts or accepted any hazardous substances, other than refined oil, for transport to disposal or treatment facilities, vessels or sites selected by the person, from which there is a release, or a threatened release that causes the incurrence of response costs, of a hazardous substance.

(b) In an action to recover damages or costs, a person otherwise liable under this section is relieved from liability under this section if the person proves

(1) that the release or threatened release of the hazardous substance to which the damages relate occurred solely as a result of

(A) an act of war;

(B) except as provided under AS 46.03.823(c) and 46.03.825(d), an intentional or negligent act or omission of a third party, other than a party or its agents in privity of contract with, or employed by, the person, and that the person

(i) exercised due care with respect to the hazardous substance; and

(ii) took reasonable precautions against the act or omission of the third party and against the consequences of the act or omission; or

(C) an act of God; and

(2) in relation to (1)(B) or (C) of this subsection, that the person, within a reasonable period of time after the act occurred,

(A) discovered the release or threatened release of the hazardous substance;

and

(B) began operations to contain and clean up the hazardous substance.

(c) For purposes of (b)(1)(B) of this section, a third party or an agent of a third party is in privity of contract with the person who is otherwise liable, if the third party or its agent and the person are parties to a land contract, deed, or other instrument transferring title or possession of the real property on which the facility in question is located, unless that property was acquired by the person after the disposal or placement of the hazardous substance on, in, or at the facility, and the person establishes that the person has satisfied the requirements of (b)(1)(B) of this section and establishes that

(1) at the time the person acquired the facility the person did not know and had no reason to know that a hazardous substance that is the subject of the release or threatened release was disposed of on, in, or at the facility;

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

(2) the person is a governmental entity that acquired the facility by escheat, or through another involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation;

(3) the person is a corporation organized under 43 U.S.C. 1601 et seq. (Alaska Native Claims Settlement Act) that acquired the facility under those sections;

(4) the person acquired the facility by inheritance or bequest; or

(5) the person is a state governmental entity and the state acquired the facility under Public Law 85-508 (Alaska Statehood Act).

(d) To establish that a person had no reason to know that the hazardous substance was disposed of on, in, or at the facility, as provided in (c)(1) and (l) of this section, the person must have undertaken, at the time of voluntary acquisition, all reasonable inquiries into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of this subsection a court shall take into account all relevant facts, including

(1) any specialized knowledge or experience the person has;

(2) the relationship of the purchase price to the value of the property if it were uncontaminated;

(3) commonly known or reasonably ascertainable information about the property;

(4) the obviousness of the presence or likely presence of contamination at the property; and

(5) the ability to detect contamination by appropriate inspection.

(e) This section does not diminish the liability of a person who previously owned or operated a facility or vessel and who would otherwise be liable. If the person obtained actual knowledge of the release or threatened release of a hazardous substance at the facility or vessel and subsequently transferred ownership to another without disclosing that knowledge, the person is liable under (a)(2) of this section, and a defense under (b)(1)(B) of this section is not available to the person.

(f) This section does not diminish the liability of a person who, by an act or omission, caused or contributed to the release or threatened release of a hazardous substance that is the subject of the action relating to the facility or vessel.

(g) An indemnification, hold harmless, or similar agreement, or conveyance of any nature is not effective to transfer liability under this section from the owner or operator of a facility or vessel or from a person who might be liable for a release or substantial threat of a release under this section. This subsection does not bar an agreement to insure, hold harmless, or indemnify a party to the agreement for liability under this section. This subsection does not bar a cause of action that an owner, operator, or other person subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against another person.

(h) The state, a municipality, a village, a person who acts as a volunteer and is engaged in a response action under the direction of the federal or state on-scene coordinator, and a vessel of opportunity engaged in a response action under the direction of the federal or state on-scene coordinator are not liable under this section for costs or damages as a result of actions taken in response to an emergency created by a release or threatened release of a hazardous substance generated by or from a facility or vessel owned by another person unless the actions taken by the state, the municipality, the village, the volunteer, or the vessel constitute gross negligence or intentional misconduct.

(i) In an action to recover damages and costs, a person otherwise jointly and severally liable under this section is relieved of joint liability and is liable severally for damages and costs attributable to that person if the person proves that

(1) the harm caused by the release or threatened release is divisible; and

(2) there is a reasonable basis for apportionment of costs and damages to that person.

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

(j) A person may seek contribution from any other person who is liable under (a) of this section during or after a civil action under (a) of this section or after the issuance of a potential liability determination by the department. Actions under this subsection shall be brought under the Alaska Rules of Civil Procedure and are governed by state law. In resolving claims for contribution under this section, the court may allocate damages and costs among liable parties using equitable factors determined to be appropriate by the court. This subsection does not diminish the right of a person to bring an action for contribution in the absence of a civil action under (a) of this section.

(k) A unit of state or local government that acquired ownership or control of a vessel or facility through bankruptcy, foreclosure, deed in lieu of foreclosure, tax delinquency proceeding, abandonment, escheat, the exercise of eminent domain authority by purchase or condemnation, or circumstances in which the governmental unit involuntarily acquired title by virtue of its function as a sovereign is not liable as an owner or operator under this section unless the governmental unit has caused or contributed to the release or threatened release of a hazardous substance at or from the facility or vessel, in which case, the governmental unit is subject to liability under this section in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity. A hazardous substance release shall be determined to have occurred as provided in this section. For purposes of this subsection, "caused or contributed to the release or threatened release of a hazardous substance"

(1) does not include the failure to prevent the passive leaching or migration at or from a facility or vessel of a hazardous substance in the air, land, or water that had first been released to the environment by a person other than the governmental unit that acquired the facility or vessel;

(2) does not include the exercise or failure to exercise regulatory or enforcement authority;

(3) after the ownership or control of the facility or vessel has been acquired by the governmental unit, includes

(A) the spilling, leaking, pumping, pouring, emptying, injecting, escaping, or dumping of a hazardous substance from barrels, tanks, containers, or other closed receptacles; or

(B) the abandonment or discarding of barrels, tanks, containers, or other closed receptacles containing a hazardous substance.

(l) For purposes of determining liability in an action to recover damages or costs under this section, a person who acquires a facility and who, upon discovering a release or threatened release on, in, or at the facility that occurred before acquisition of the facility, who had no reason to know that a hazardous substance was disposed of on, in, or at the facility, and who, upon discovering the release or threatened release, acted in accordance with (b)(2) of this section to begin operations to contain and clean up the hazardous substance, may not be held liable under this section unless the person has caused or contributed to the release or threatened release of the hazardous substance, in which case, the person is subject to liability under this section in the same manner as any other person. For purposes of this subsection, "caused or contributed to the release or threatened release of the hazardous substance"

(1) does not include the failure to prevent the passive leaching or migration at or from a facility of a hazardous substance in the air, land, or water that had first been released into the environment by a person other than the person that acquired the facility;

(2) after the ownership or control of the facility has been acquired by the person includes

(A) the spilling, leaking, pumping, pouring, emptying, injecting, escaping, or dumping of a hazardous substance from barrels, tanks, containers, or other closed receptacles; or

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

(B) the abandonment or discarding of barrels, tanks, containers, or other closed receptacles containing a hazardous substance.

(m) In this section,

(1) "damages" has the meaning given in AS 46.03.824 and includes damage to persons or to public or private property, damage to the natural resources of the state or a municipality, and damage caused by acts or omissions of a response action contractor for which the response action contractor is not liable under AS 46.03.823 or 46.03.825;

(2) "potential liability determination" means an administrative determination issued by the department notifying a person of the person's potential liability under (a) of this section as the result of the release or threatened release of hazardous substances and includes a

(A) letter notifying the person that the person is a potentially responsible party;

(B) notice to a person of state interest in a release or threatened release of a hazardous substance;

(C) request to the person for site characterization or cleanup;

(D) notice of violation; and

(E) similar notification by the department of a person's potential liability under this section.

SEC. 46.03.823. HAZARDOUS SUBSTANCE RESPONSE ACTION CONTRACTORS.

(a) A person who is a response action contractor with respect to a release or threatened release of a hazardous substance other than oil whose acts or omissions are not contrary to a response plan or order by a state or federal agency having jurisdiction over the release or threatened release is not civilly liable for injuries, costs, damages, expenses, or other liability that results from the release or threatened release unless the release or threatened release is caused by an act or omission of the response action contractor that is negligent or grossly negligent or constitutes intentional misconduct. To show negligence by a response action contractor, a claimant must show that the acts or omissions of the contractor under the response action contract were not in accordance with generally accepted professional standards and practices at the time the response action services were performed.

(b) The liability limitation under (a) of this section

(1) does not apply to a response action contractor who would otherwise be liable for the release or threatened release under state or federal law even if that person had not carried out a response action with respect to the release or threatened release; and

(2) does apply only to releases for which notification to the department was provided and received in the manner prescribed under state law.

(c) The defense provided in AS 46.03.822(b)(1)(B) is not available to a potentially liable person with respect to costs or damages caused by an act or omission of a response action contractor.

(d) Except as provided in (c) of this section, this section does not affect the liability under this chapter or under any other state law of a person other than a response action contractor.

(e) This section does not affect the liability of a response action contractor that may arise from the response action contractor's failure to comply with the terms or conditions of a

(1) response action contract or a remedial action plan if one has been approved by the department; or

(2) contingency plan approved by the department where the response action contractor is the plan holder.

(f) This section does not affect the liability of an employer who is a response action contractor with respect to an employee of the employer under any provision of law, including a law related to workers' compensation.

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

(g) In this section, "response action" means an action taken in connection with the mitigation or cleanup of a release or threatened release of a hazardous substance other than oil, including investigation, evaluation, plan development, mapping and surveying, engineering, design and construction, removal, and equipment provision.

SEC. 46.03.824. DAMAGES.

Damages include but are not limited to injury to or loss of persons or property, real or personal, loss of income, loss of the means of producing income, or the loss of an economic benefit.

SEC. 46.03.825. OIL SPILL RESPONSE ACTION CONTRACTORS.

(a) A response action contractor who responds to a release or threatened release of oil is not civilly liable for removal costs or damages that result from an act or omission in the course of providing care, assistance, or advice

(1) consistent with a contingency plan

(A) approved under AS 46.04.030 or 46.04.055 if the response action contractor is listed in the contingency plan; or

(B) prepared under AS 46.04.200, 46.04.210, or 33 U.S.C. 1321(d) if the response action contractor is not listed in the contingency plan; or

(2) as otherwise directed by the federal or state on-scene coordinator.

(b) The limitation on liability contained in (a) of this section does not apply to

(1) an action for personal injury or death; or

(2) a response action contractor who

(A) would otherwise have been liable for the release or threatened release under AS 46.03.822;

(B) acts with gross negligence or intentional misconduct; or

(C) has agreed in writing to be listed as a primary response action contractor, who is listed as a primary response action contractor in a contingency plan approved under AS 46.04.030 or 46.04.055, and who fails to respond to a release or threatened release of oil that the primary response action contractor was required to respond to under its contract with the applicable contingency plan holder; this subparagraph does not apply to a primary response action contractor if the failure to respond to a release or threatened release of oil results from a prior and ongoing response under another contingency plan approved under AS 46.04.030 or 46.04.055 in which the primary response action contractor has the primary duty to respond and a significant portion of the response action contractor's oil spill cleanup equipment listed in the contingency plan approved under AS 46.04.030 or 46.04.055 is in use.

(c) If the liability of an oil spill response action contractor is not limited under (a) of this section or if the provisions of (a) of this section do not apply because of (b) of this section, the oil spill response action contractor is not civilly liable for injuries, costs, damages, expenses, or other liability that results from the response action contractor's act or omission with respect to a release or threatened release of oil unless the act or omission of the oil spill response action contractor is negligent, grossly negligent, or constitutes intentional misconduct. This subsection does not apply to an oil spill response action contractor who would have been liable for the initial release or threatened release of oil under AS 46.03.822 even if that contractor had not carried out a response action.

(d) The defense provided in AS 46.03.822(b)(1)(B) is not available to a potentially liable person with respect to costs or damages caused by an act or omission of a response action contractor.

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

(e) Except as provided in (d) of this section, this section does not affect the liability under this chapter or under any other state law of a person other than a response action contractor.

(f) Nothing in this section is intended to amend AS 46.04.030(l) or 46.04.055, or to create a cleanup or performance standard that must be met by a holder of a contingency plan or by a primary response action contractor.

(g) In this section,

(1) "consistent" means in substantial compliance with a contingency plan;

(2) "primary response action contractor" has the meaning given in AS 46.04.035;

(3) "response action" means an action taken to respond to a release or threatened release of oil, including mitigation, clean up, marine salvage, incident management team services, response plan facilitator services, or removal of a release or threatened release of oil.

SEC. 46.03.826. DEFINITIONS FOR AS 46.03.822 - 46.03.828.

In AS 46.03.822 - 46.03.828

(1) "act of God" means an act of nature which is unforeseeable in kind or degree;

(2) "economic benefit" means a benefit measurable in economic terms, including but not limited to the gathering, catching, or killing of food or other items utilized in a subsistence economy and their replacement cost;

(3) "facility"

(A) includes a

(i) building, structure, installation, equipment, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, aircraft, or pipe or pipeline, including a pipe into a sewer or publicly-owned treatment works;

(ii) site or area at which a hazardous substance has been deposited, stored, disposed of, placed, or otherwise located;

(B) does not include any consumer product in consumer use;

(4) "having control over a hazardous substance" means producing, handling, storing, transporting, or refining a hazardous substance for commercial purposes immediately before entry of the hazardous substance into the atmosphere or in or upon the water, surface, or subsurface land of the state, and specifically includes bailees and carriers of a hazardous substance;

(5) "hazardous substance" means

(A) an element or compound which, when it enters into the atmosphere or in or upon the water or surface or subsurface land of the state, presents an imminent and substantial danger to the public health or welfare, including but not limited to fish, animals, vegetation, or any part of the natural habitat in which they are found;

(B) oil; or

(C) a substance defined as a hazardous substance under 42 U.S.C. 9601(14);

(6) "natural resources" means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the state or a municipality;

(7) "oil" means a derivative of a liquid hydrocarbon and includes crude oil, lubricating oil, sludge, oil refuse or another petroleum-related product or by-product;

(8) "owner" and "operator"

(A) mean

(i) in the case of a vessel, any person owning, operating, or chartering by demise, a vessel;

(ii) in the case of facility, any person owning or operating the facility;

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

(iii) in the case of an abandoned facility or vessel, any person who owned, operated, or otherwise controlled activities at the facility or vessel immediately before the abandonment; and

(iv) in the case of a facility or vessel, title or control of which was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to a unit of the state or a political subdivision of the state, any person who owned, operated, or otherwise controlled the facility or vessel immediately beforehand;

(B) do not include a person who, without participating in the management of a vessel or facility, holds indicia of ownership primarily to protect that person's security interest in the vessel or facility;

(9) "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance, but excluding

(A) any release that results in exposure to persons solely within a workplace, with respect to a claim that those persons may assert against the persons' employer; and

(B) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, or vessel;

(10) "response action contract" means a written contract or agreement to provide response action with respect to a release or threatened release of a hazardous substance entered into by a person with

(A) the department;

(B) another person who has entered into an agreement with the department that provides for response action subject to the department's oversight and control;

(C) a federal agency with jurisdiction over the release or threatened release;

or

(D) another person potentially liable for the release or threatened release under state or federal law;

(11) "response action contractor" means

(A) a person who enters into a response action contract with respect to a release or threatened release of a hazardous substance and who is carrying out the contract, including a cooperative organization formed to maintain and supply response equipment and materials that enters into a response action contract relating to a release or threatened release;

(B) a person who is retained or hired by and is under the control of a person described in (A) of this paragraph to provide services related to the response action contract; and

(C) a person who acts as a volunteer and is engaged in a response action;

(12) "subsistence economy" means an economy which utilizes on a regular basis an item which is owned in common by the people of the state, or the United States, including but not limited to fish, game, fur bearing animals, birds, timber or any part of the natural habitat for noncommercial purposes;

(13) "transport" means the movement of a hazardous substance by any mode, including pipeline; in the case of a hazardous substance that has been accepted for transportation by a common or contract carrier, "transport" includes any stoppage in transit that is temporary, incidental to the transportation movement, and at the ordinary operating convenience of a common or contract carrier, and any stoppage of this type shall be considered as a continuity of movement and not as the storage of a hazardous substance;

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

(14) "vessel" means every description of watercraft or other artificial contrivance that is used, or is capable of being used, as a means of transportation on water, or that carries hazardous substances for the purpose of incineration of the hazardous substances;

(15) "water, surface or subsurface land of the state" means all water, surface or subsurface land within the territorial limits of the State of Alaska.

SEC. 46.03.828. OTHER RIGHTS OF ACTION NOT AFFECTED.

The provisions of AS 46.03.822 - 46.03.828 do not abridge or alter a right of action or remedy under another statute, in equity, or at common law. However, an award of damages to a person or the state on a cause of action for an injury under AS 46.03.822 bars recovery in an action by another person or the state on the same cause of action for the same injury.

SEC. 46.03.830. PROOF OF FINANCIAL RESPONSIBILITY REQUIRED FOR PETROCHEMICAL FACILITY OR HAZARDOUS WASTE DISPOSAL SITE OPERATION.

(a) A person may not operate a petrochemical facility or a hazardous waste disposal site unless the person has furnished proof to the commissioner of financial ability to control a hazardous waste that will be used in, produced by, or disposed of at the facility or the site. Proof of financial responsibility shall include responsibility for the hazardous waste after the facility or site is closed, and may be demonstrated by self-insurance, insurance, surety, or guarantee, under regulations adopted by the department.

(b) Acceptance of proof of financial responsibility under this section expires

- (1) one year from its issuance for self-insurance;
- (2) on the effective date of a change in the surety bond, guarantee, or insurance agreement; or
- (3) on the expiration or cancellation of the surety bond, guarantee, or insurance agreement.

SEC. 46.03.833. COMPLIANCE WITH FINANCIAL RESPONSIBILITY REQUIREMENTS.

(a) A person whose proof of financial responsibility is accepted by the department under AS 46.03.830 or 46.03.100(f) shall notify the department at least 90 days before the effective date of a change in, or expiration or cancellation of, the proof of financial responsibility. Application for renewal of acceptance of proof of financial responsibility under AS 46.03.830 or 46.03.100(f) must be filed at least 90 days before the date of expiration.

(b) The department, after notice and hearing, may revoke acceptance of proof of financial responsibility if it determines that

- (1) acceptance was procured by fraud or misrepresentation; or
- (2) a change of circumstance has occurred that warrants revocation under regulations adopted by the department.

Sec. 46.03.840. Radiation penalties.

[Repealed, Sec. 12 ch 172 SLA 1978. For current provisions, see AS 18.60.475 - 18.60.545].

Repealed or Renumbered

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

SEC. 46.03.850. COMPLIANCE ORDER.

(a) When, in the opinion of the department, a person is violating or is about to violate a provision of this chapter, AS 46.04, or AS 46.14, or a regulation or lawful order of the department, or a permit or certificate, or a term or condition of a permit or certificate issued by the department under this chapter, AS 46.04, AS 46.14, the department may notify the person of its determination by personal service or certified mail. The determination and notice do not constitute an order under AS 46.03.820.

(b) The recipient of the determination shall file with the department, within the time period specified in the notice, a report stating what measures have been and are being taken, or are proposed to be taken, to correct or control the conditions outlined in the notice.

(c) After the report is filed under (b) of this section or the time period specified for it has elapsed, the department may issue a compliance order in conformity with the authority of the department and the public policy declared in AS 46.03.010. A copy of the compliance order shall be served personally or sent by certified mail to the person affected. A compliance order is effective upon receipt.

(d) Within 30 days after receipt the recipient may request a hearing to review the compliance order. Failure to request a hearing within 30 days after the receipt of a compliance order constitutes a waiver of the recipient's right of review.

(e) The department shall hold a hearing within 20 days after receipt of a request for one under (d) of this section. After the hearing the department may rescind, modify, or affirm the compliance order.

(f) The attorney general shall seek enforcement of a compliance order.

Article 10. GENERAL PROVISIONS

SEC. 46.03.860. INSPECTION WARRANT.

The department may seek search warrants for the purpose of investigating actual or suspected sources of pollution or contamination or to ascertain compliance or noncompliance with AS 46.14 or this chapter or a regulation adopted under AS 46.14 or this chapter.

SEC. 46.03.865. AUTHORITY OF DEPARTMENT IN CASES OF EMERGENCY.

(a) When the department finds that an actual or imminent discharge of oil, a hazardous substance, or low level radioactive materials to the air, water, land, or subsurface land of the state poses an immediate threat to the public health or welfare or the environment of the state, it may issue an order declaring an emergency and directing a person or persons to take action the department believes necessary to meet the emergency, and protect the public health, welfare, or environment. If there is an incident command system established under AS 26.23 or AS 46.04.200 - 46.04.210 that is applicable to the situation for which the department issues an order under this subsection, the department's exercise of authority under this subsection shall be guided by the relevant provisions of the incident command system.

(b) A person to whom an order is directed shall comply with it immediately, but on application to the department shall be given a hearing under AS 44.62 (Administrative Procedure Act). Thereafter the department may affirm, revoke, or modify the order.

(c) During a period of emergency declared under (a) of this section, each state agency shall take whatever action the department finds necessary to meet the emergency and to protect the public health, welfare, or environment, consistent with the responsibilities assigned to them under an

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

incident command system established under AS 26.23 or AS 46.04.200 - 46.04.210 if one is applicable to the situation.

SEC. 46.03.870. ACTIONABLE RIGHTS.

(a) Except as specified in AS 46.03.822 - 46.03.828, the bases for proceedings or actions resulting from violations of this chapter or a regulation adopted under this chapter inure solely to and are for the benefit of the state, and are not intended to in any way create new or enlarge existing rights of persons or groups of persons in the state.

(b) Except as specified in AS 46.03.822 - 46.03.828, a determination or order of the department does not create a presumption of law or finding of fact inuring to or for the benefit of persons other than the state.

(c) This chapter does not estop the state, persons, or political subdivisions of the state in the exercise of their rights to suppress nuisances, to seek damages, or to otherwise abate or recover for the effects of pollution or other environmental degradation.

SEC. 46.03.875. REMEDIES CUMULATIVE.

All remedies provided by this chapter, AS 46.04, or AS 46.14 are cumulative, and the securing of relief, whether injunctive, civil, or criminal, under a section of this chapter, AS 46.04, or AS 46.14 does not stop the state from obtaining relief under any other section of this chapter, AS 46.04, or AS 46.14.

SEC. 46.03.880. APPLICABILITY OF THE ADMINISTRATIVE PROCEDURE ACT.

(a) Except as otherwise specifically provided in this chapter, AS 44.62 (Administrative Procedure Act) governs the activities and the proceedings of the department.

(b) Notwithstanding AS 44.62.330(a)(44), adjudicatory hearing procedures to review permit decisions under this chapter need not conform to AS 44.62.330 - 44.62.630 (Administrative Procedure Act).

SEC. 46.03.890. ENFORCEMENT AUTHORITY.

(a) The following persons are authorized to enforce this chapter:

- (1) a state employee authorized by the commissioner;
- (2) a police officer of the state.

(b) Inspection and enforcement employees of the department designated by the commissioner are peace officers in the performance of their duties under this chapter, AS 46.04, AS 46.09, and AS 46.14.

SEC. 46.03.900. DEFINITIONS.

In this chapter

(1) "air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances or a combination of these;

(2) "air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in quantities and duration that tend to be injurious to human health or welfare, animal or plant life or property or would unreasonably interfere with the enjoyment of life or property;

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

(3) "broadcast chemicals" means chemical substances which are released into the air or onto land or water for the purpose of preventing, destroying, repelling, stimulating, or retarding plant or animal life, or chemical substances released for meteorological control, oil spill control, or fire control;

(4) "commissioner" means the commissioner of environmental conservation;

(5) "compliance agreement" means a mutual understanding and voluntary, enforceable agreement on a course of action for a specific set of circumstances entered into by the department and a person to control, prevent, or abate air, water, land, or subsurface land pollution;

(6) "department" means the Department of Environmental Conservation;

(7) "dispose" has the meaning given "disposal" in 42 U.S.C. 6903(3);

(8) "facility" means any offshore or onshore structure, improvement, vessel, vehicle, land, enterprise, or endeavor;

(9) "hazardous waste" means a waste or combination of wastes that because of quantity, concentration, or physical, chemical, or infectious characteristics may

(A) cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(B) pose a substantial present or potential hazard to human health or the environment when improperly managed, treated, stored, transported, or disposed of;

(10) "hazardous waste reduction" means decreasing, avoiding, or eliminating wastes that are hazardous to human health or the environment through source reduction or recycling; the term does not include hazardous waste treatment or hazardous waste disposal;

(11) "industrial waste" means a liquid, gaseous, solid, or other waste substance or a combination of them resulting from process of industry, manufacturing trade or business, or from the development of natural resources; however, gravel, sand, mud, or earth taken from its original situs and put through sluice boxes, dredges, or other devices for the washing and recovery of the precious metal contained in them and redeposited in the same watershed from which it came is not industrial waste;

(12) "low level radioactive materials" means a radioactive waste other than

(A) used nuclear reactor fuel;

(B) waste produced during the reprocessing of used nuclear reactor fuel; and

(C) elements having an atomic number greater than 92 and containing 10 or more nanocuries per gram;

(13) "manifest" means the form used for identifying the quantity, composition, origin, routing, and destination of a hazardous waste when the hazardous waste is transported;

(14) "mining waste" means solid waste from the extraction, beneficiation, and processing of ores and minerals, including coal, and including phosphate rock and overburden from the mining of uranium ore;

(15) "motor vehicle" has the meaning given in AS 28.90.990;

(16) "municipal solid waste" means waste material

(A) generated by a household, including a single-family or multi-family residence, and collected and disposed of as part of municipal solid waste collection services; or

(B) generated by a commercial, industrial, or institutional entity, to the extent that the waste material

(i) is essentially the same as waste normally generated by a household;

(ii) is collected and disposed of with other municipal solid waste as part of normal municipal solid waste collection services; and

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

(iii) contains a relative quantity of hazardous substances not greater than the relative quantity of hazardous substances contained in waste material generated by a typical single-family household;

(17) "other wastes" means garbage, refuse, decayed wood, sawdust, shavings, bark, trimmings from logging operations, sand, lime cinders, ashes, offal, oil, tar, dyestuffs, acids, chemicals, heat from cooling or other operations, and other substances not sewage or industrial waste which may cause or tend to cause pollution of the waters of the state;

(18) "person" means any individual, public or private corporation, political subdivision, government agency, municipality, industry, copartnership, association, firm, trust, estate, or any other entity whatsoever;

(19) "pesticide" means any chemical or biological agent intended for preventing, destroying, repelling, or mitigating plant or animal life and any substance intended for use as a plant regulator, defoliant or desiccant, including but not limited to insecticides, fungicides, rodenticides, herbicides, nematocides, and biocides;

(20) "pollution" means the contamination or altering of waters, land, or subsurface land of the state in a manner which creates a nuisance or makes waters, land, or subsurface land unclean, or noxious, or impure, or unfit so that they are actually or potentially harmful or detrimental or injurious to public health, safety, or welfare, to domestic, commercial, industrial, or recreational use, or to livestock, wild animals, bird, fish, or other aquatic life;

(21) "resource recovery" means the recovery of materials or energy from solid wastes for industrial use, agriculture, heat production, power production, or other processes or purposes and includes the reuse of materials or products to conserve natural resources;

(22) "restricted-use pesticides" means pesticides that are classified for restricted use under 7 U.S.C. 136a(d)(1)(C) (sec. 3(d)(1)(C), Federal Insecticide, Fungicide, and Rodenticide Act), as amended;

(23) "service" means a function performed or service provided by the state or by a municipality under a duty or power authorized by AS 29 or other provision of law authorizing a municipality to perform functions or provide services, or a comparable function performed or service provided by a village; "service" includes functions not previously performed and services not previously provided;

(24) "sewage" means the water-carried human or animal wastes from residences, buildings, industrial establishments, or other places, together with ground water infiltration and surface water as may be present; the admixture with sewage of industrial wastes or other wastes is "sewage";

(25) "sewer system" or "sewerage system" means pipelines or conduits, pumping stations, and force mains, and all other appurtenant constructions, devices, and appliances used for conducting sewage, industrial waste, or other wastes to a point of ultimate disposal;

(26) "solid waste" means garbage, refuse, abandoned, or other discarded solid or semi-solid material, regardless of whether subject to decomposition, originating from any source;

(27) "solid waste disposal facility" means a facility for the discharge, deposit, injection, consolidation, or placement of solid waste into or onto the land and includes transfer stations and sanitary landfills;

(28) "solid waste processing facility" means a facility for the extraction of materials from solid waste, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal and includes incinerators, shredders, balers, and transfer stations;

(29) "standard" means the measure of purity or quality for air, water, and land in relation to their reasonable and necessary use as established by the department;

(30) "storage" means the containment of hazardous waste, either on a temporary basis or for a period of years, in a manner that does not constitute disposal of the hazardous waste

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

(31) "subdivision" has the meaning given in AS 40.15.900;

(32) "treat" has the meaning given "treatment" in 42 U.S.C. 6903(34);

(33) "treatment works" means a plant, disposal field, lagoon, pumping station, constructed drainage ditch or surface water intercepting ditch, incinerator, area devoted to sanitary landfills, or other works installed for the purpose of treating, neutralizing, stabilizing, or disposing of sewage, industrial waste, or other wastes;

(34) "village" means a place within the unorganized borough or within a borough as to a power, function, or service that is not exercised or provided by the borough on an areawide or nonareawide basis that

(A) has irrevocably waived, in a form approved by the Department of Law, any claim of sovereign immunity that might arise under this chapter; and

(B) has

(i) a council organized under 25 U.S.C. 476 (sec. 16 of the Indian Reorganization Act);

(ii) a traditional village council recognized by the United States as eligible for federal aid to Indians; or

(iii) a council recognized by the commissioner of commerce, community, and economic development under regulations adopted by the Department of Commerce, Community, and Economic Development to determine and give official recognition of village entities under AS 44.33.755(b);

(35) "waste associated with the exploration, development, or production of crude oil, natural gas, or geothermal energy" means (A) waste, including drilling muds, cuttings, hydrocarbons, brine, acid, sand, and emulsions or mixtures of fluids produced from and unique to the operation or maintenance of a well, whether naturally occurring or added for the operation or productivity of the well; and (B) waste that is derived intrinsically from primary field operations; "waste associated with the exploration, development, or production of crude oil, natural gas, or geothermal energy" does not include spent solvents and oils from equipment maintenance activities, discarded chemical products, or fuels;

(36) "waste derived intrinsically from primary field operations" means waste produced from a well, and removed

(A) at the drill site; or

(B) at crude oil production facilities by crude oil or wastewater treatment process before custody transfer of the crude oil;

(37) "waters" includes lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, straits, passages, canals, the Pacific Ocean, Gulf of Alaska, Bering Sea, and Arctic Ocean, in the territorial limits of the state, and all other bodies of surface or underground water, natural or artificial, public or private, inland or coastal, fresh or salt, which are wholly or partially in or bordering the state or under the jurisdiction of the state.

**Chapter 46.04. OIL AND HAZARDOUS SUBSTANCE
POLLUTION CONTROL**

Article 01. OIL POLLUTION CONTROL

SEC. 46.04.010. REIMBURSEMENT FOR CLEANUP EXPENSES.

The department shall promptly seek reimbursement under AS 46.03.760(d), AS 46.08.070, or from an applicable federal fund, for the expenses it incurs in cleaning up or containing a discharge of oil. If the department obtains reimbursement for a portion of its expenses from a federal fund, the remainder of the expenses incurred may be recovered under AS 46.03.760(d) or AS 46.08.070. Money received by the department under this section shall be deposited in the general fund and credited to

(1) the oil and hazardous substance release response mitigation account established under AS 46.08.025(b); the amount required to be deposited under this paragraph shall represent the proportion of the expenses recovered that were originally paid for from the oil and hazardous substance release account established under AS 46.08.010(a)(2); or

(2) the oil and hazardous substance release prevention mitigation account established under AS 46.08.020(b); the amount required to be deposited under this paragraph is the amount of money recovered that exceeds the amount payable to the response mitigation account under (1) of this section.

SEC. 46.04.020. REMOVAL OF OIL DISCHARGES.

(a) A person causing or permitting the discharge of oil shall immediately contain and clean up the discharge. The department may waive this requirement

(1) if it determines, in consultation with the United States Coast Guard or the United States Environmental Protection Agency, as appropriate, that containment or cleanup is technically not feasible; or

(2) if the cleanup or containment activities would result in greater environmental damage than the discharge itself.

(b) The containment and cleanup of discharged oil shall be carried out in a manner approved by the department. Wastes generated as a result of containment or cleanup activities shall be disposed of in a manner approved by the department. The requirement of this subsection for approval of containment and cleanup activities does not apply to the United States Coast Guard or United States Environmental Protection Agency acting under the authority of Sec. 311(c) or (d) of the Clean Water Act.

(c) If the department determines that containment or cleanup activities are not adequate, it may direct the person engaged in the activities to cease and may undertake the activities itself through contract or its own resources, or both. The department may not direct the cessation of containment or cleanup activities undertaken by the United States Coast Guard or United States Environmental Protection Agency under Sec. 311 of the Clean Water Act. However, the department may undertake, direct, or authorize supplemental cleanup or containment efforts.

(d) The department shall provide for the immediate containment or cleanup of an oil discharge of unexplained origin unless

(1) the department determines, in consultation with the United States Coast Guard or the United States Environmental Protection Agency that containment or cleanup of the oil discharge is technically not feasible; or

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

(2) the containment or cleanup activities would result in greater environmental damage than the discharge itself.

(e) The department shall enter into negotiations for memoranda of understanding or cooperative agreements with the United States Coast Guard, the United States Environmental Protection Agency, and other persons in order to

(1) facilitate coordinated and effective oil discharge prevention and response in the state, including agreements relating to development and enforcement of vessel traffic control and monitoring systems for tank vessels and oil barges operating in or near the waters of the state;

(2) provide for cooperative review of oil discharge prevention and contingency plans submitted to the department under AS 46.04.030;

(3) provide for cooperative inspections of oil terminal facilities by the department and the United States Coast Guard or United States Environmental Protection Agency; and

(4) provide for cooperative oil discharge notification procedures.

(f) In fulfilling its responsibilities under (e) of this section, the department shall consult with the governing bodies of municipalities and villages.

(g) In addition to existing obligations under state and federal law, and the provisions of the state and federal Trans Alaska Pipeline System right-of-way agreements, the common operating agent for the holder and lessees of the right-of-way agreement for the trans Alaska pipeline shall (1) immediately contain and clean up a discharge or threatened discharge of oil transported by or due to the operation of the Trans Alaska Pipeline System or due to related activities, including activities related to a vessel en route to, berthed at, or transiting from the Trans Alaska Pipeline System marine terminal or traveling on waters within Prince William Sound; and (2) provide services required in a response action under contract terms as provided under AS 46.04.030(q). The obligations imposed under this subsection do not affect the response action duties of another person or the liability of another person for a discharge or threatened discharge. Upon the request of the person required to respond to a discharge or threatened discharge under this subsection, the obligation imposed by this subsection may be transferred to another person required by law to respond to the discharge or threatened discharge if the transfer is approved by the federal and state on-scene coordinators. In this subsection, "Prince William Sound" has the meaning given in AS 46.04.030(q).

(h) A charge, contract term, or financial responsibility requirement imposed by the holders and lessees of the right-of-way agreement for the Trans Alaska Pipeline System, the holders and lessees' common operating agent, or the agent or representative of either the holders and lessees, or their common operating agent, on or for a vessel traveling from a marine terminal and related to containing and cleaning up a discharge or threatened discharge of oil or the obligations imposed under (g) of this section

(1) must be fair, reasonable, and nondiscriminatory; and

(2) with respect to a financial responsibility requirement in excess of \$10,000,000,

must

(A) not exceed the potential cost of containment and cleanup as provided in the applicable contingency plan under AS 46.04.030 that the agent may reasonably be expected to incur from a discharge or threatened discharge of oil from that vessel before the transfer of cleanup and containment management and control to the responsible party; in establishing the financial responsibility requirement, the common operating agent shall assume that transfer of management and control will occur at the earliest practicable time following the discharge or threat of discharge; and

(B) vary among each vessel in proportion to the volume of oil carried by each vessel per voyage from a marine terminal; for purposes of this subparagraph, the volume of oil carried by the vessel must be reduced by the percentage of spill reduction credits granted that vessel under regulations adopted by the department.

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

(i) The superior court and, with respect to intrastate voyages, the Regulatory Commission of Alaska under AS 42.05.361 - 42.05.431, have concurrent jurisdiction to review and enjoin a charge, contract term, or financial responsibility requirement described under (h) of this section at the request of a vessel owner, operator, or charterer. Except as provided in this subsection, nothing in this section affects the jurisdiction of the Regulatory Commission of Alaska.

SEC. 46.04.025. CONFIDENTIAL INFORMATION.

The department may maintain the confidentiality of a manufacturer's proprietary technical information relating to chemical and biological agents used to control or mitigate the effects of an oil discharge. The department may refuse to release the information unless the manufacturer authorizes its release or unless a court orders its release. The department may provide the information to the Department of Fish and Game and other state and federal agencies if the department or other agency requesting the information agrees to maintain its confidentiality.

SEC. 46.04.030. OIL DISCHARGE PREVENTION AND CONTINGENCY PLANS.

(a) A person may not cause or permit the operation of an oil terminal facility in the state unless an oil discharge prevention and contingency plan for the facility has been approved by the department and the person is in compliance with the plan.

(b) A person may not cause or permit the operation of a pipeline or an exploration or production facility in the state unless an oil discharge prevention and contingency plan for the pipeline or facility has been approved by the department and the person is in compliance with the plan.

(c) Except as provided in (n) of this section, a person may not operate a tank vessel or an oil barge within the waters of the state, or cause or permit the transfer of oil to or from a tank vessel or an oil barge, unless an oil discharge prevention and contingency plan for the tank vessel or oil barge has been approved by the department and the person is in compliance with the plan.

(d) Upon approval of a contingency plan, the department shall issue to the plan holder a certificate stating that the contingency plan has been approved by the department. The certificate must include the name of the facility, pipeline, tank vessel, or oil barge for which it is issued, the effective date of the contingency plan, and the date by which the contingency plan must be submitted for renewal. A contingency plan must be submitted for renewal every five years.

(e) The department may attach reasonable terms and conditions to its approval or modification of a contingency plan that the department determines are necessary to ensure that the applicant for a contingency plan has access to sufficient resources to protect environmentally sensitive areas and to contain, clean up, and mitigate potential oil discharges from the facility or vessel as provided in (k) of this section, and to ensure that the applicant complies with the contingency plan. If a contingency plan submitted to the department for approval relies on the services of an oil spill primary response action contractor, the department may not approve the contingency plan unless the primary response action contractor is registered and approved under AS 46.04.035. The contingency plan must provide for the use by the applicant of the best technology that was available at the time the contingency plan was submitted or renewed. The department shall identify the prevention and response technologies that are subject to a best available technology determination. The department may find that any technology meeting the response planning standards in (k) of this section or a prevention performance standard established under AS 46.04.070 is the best available technology. The department may prepare findings and maintain a list of those technologies that are considered the best available. The department may require an applicant or

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

holder of an approved contingency plan to take steps necessary to demonstrate the applicant's or holder's ability to carry out the contingency plan, including

- (1) periodic training;
- (2) response team exercises; and
- (3) verifying access to inventories of equipment, supplies, and personnel identified as

available in the approved contingency plan.

(f) Upon request of a plan holder or on the department's own initiative, the department, after notice and opportunity for hearing, may modify its approval of a contingency plan if the department determines that a change has occurred in the operation of a facility or vessel necessitating an amended or supplemented plan, or the operator's discharge experience demonstrates a necessity for modification. The department, after notice and opportunity for hearing, may revoke its approval of a contingency plan if the department determines that

- (1) approval was obtained by fraud or misrepresentation;
- (2) the operator does not have access to the quality or quantity of resources identified

in the plan;

- (3) a term or condition of approval or modification has been violated; or
- (4) the person is not in compliance with the contingency plan and the deficiency

materially affects the plan holder's response capability.

(g) Failure of a holder of an approved or modified contingency plan to comply with the plan, or to have access to the quality or quantity of resources identified in the plan or to respond with those resources within the shortest possible time in the event of a spill is a violation of this chapter for purposes of AS 46.03.760(a), 46.03.765, 46.03.790, and any other applicable law. If the holder of an approved or modified contingency plan fails to respond to and conduct cleanup operations of an unpermitted discharge of crude oil with the quality and quantity of resources identified in the plan and in a manner required under the plan, the holder is strictly liable, jointly and severally, for the civil penalty assessed under AS 46.03.758, 46.03.759, or 46.03.760 against any other person for that discharge.

(h) The department is the only state agency that has the power to approve, modify, or revoke a contingency plan for the purposes of this section. The department shall exercise its power under this section in a timely manner. Except as provided in (i) of this section, it is not a defense to an action brought for a violation of (a) - (c) of this section that the person charged believed that a current contingency plan had been approved by the department.

(i) It is a defense to an action brought for a violation of (a) - (c) of this section that the person charged relied on a certificate of approval issued by the department under (d) of this section unless the person knew or had reason to know at the time of the alleged violation that approval of the plan had been revoked or that the holder of the plan was not capable of carrying out the plan.

(j) Before the department approves or modifies a contingency plan under this section, the department shall provide a copy of the contingency plan to the Department of Fish and Game and to the Department of Natural Resources for their review. The department shall by regulation establish the procedures and time limits applicable to agency review of contingency plans.

(k) Except as provided in (m) and (o) of this section, the holder of an approved contingency plan required under this section shall maintain, or have available under contract, in its region of operation or in another region of operation approved by the department, singly or in conjunction with other operators, sufficient oil discharge containment, storage, transfer, and cleanup equipment, personnel, and resources to meet the following response planning standards:

- (1) for a discharge from an oil terminal facility, the plan holder shall plan to be able to contain or control, and clean up a discharge equal to the capacity of the largest oil storage tank at the facility within 72 hours, except that if the department determines that the facility is located in an area of high risk because of natural or man-made conditions outside of the facility, it may increase

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

the volume requirement under this paragraph so that the contingency plan must be designed for a response that is greater in amount than the capacity of the largest oil storage tank at the facility;

(2) for a discharge from an exploration or production facility or a pipeline, the plan holder shall plan to be able to contain or control, and clean up the realistic maximum oil discharge within 72 hours;

(3) for a discharge of crude oil from a tank vessel or oil barge, the plan holder shall plan to be able to contain or control, and clean up a realistic maximum oil discharge as provided in (A), (B), and (C) of this paragraph:

(A) for tank vessels and oil barges having a cargo volume of less than 500,000 barrels, the plan holder shall maintain at a minimum in the region of operation, equipment, personnel, and other resources sufficient to contain or control, and clean up a 50,000 barrel discharge within 72 hours;

(B) for tank vessels and oil barges having a cargo volume of 500,000 barrels or more, the plan holder shall maintain at a minimum in its region of operation, equipment, personnel, and other resources sufficient to contain or control, and clean up a 300,000 barrel discharge within 72 hours;

(C) in addition to the minimum equipment, personnel, and other resources required to be maintained within the region of operation by (A) or (B) of this paragraph, a plan holder shall maintain, either within or outside of the plan holder's region of operation, additional equipment, personnel, and other resources sufficient to contain or control, and clean up a realistic maximum discharge within the shortest possible time; the plan holder must demonstrate that the equipment, personnel, and other resources maintained outside the plan holder's region of operation are accessible to the plan holder and will be deployed and operating at the discharge site within 72 hours;

(4) for a discharge from a tank vessel or oil barge carrying noncrude oil in bulk as cargo, the plan holder shall plan to be able to contain or control 15 percent of the maximum capacity of the vessel or barge or the realistic maximum oil discharge, whichever is greater, within 48 hours and clean up the discharge within the shortest possible time consistent with minimizing damage to the environment;

(5) for a discharge subject to the provisions of (1) - (3) of this subsection that enters a receiving environment other than open water, the time requirement for clean up of the portion of the discharge that enters the receiving environment may, in the department's discretion, be within the shortest possible time consistent with minimizing damage to the environment.

(l) The provisions of (k) of this section do not constitute cleanup standards that must be met by the holder of a contingency plan. Notwithstanding (k) of this section, failure to remove a discharge within the time periods set out in (k) of this section does not constitute failure to comply with a contingency plan for purposes of (g) of this section or for the purpose of imposing administrative, civil, or criminal penalties under any other law.

(m) When considering whether to approve or modify a contingency plan, the department may consider evidence that oil discharge prevention measures such as double hulls or double bottoms on vessels or barges, secondary containment systems, hydrostatic testing, enhanced vessel traffic systems, or enhanced crew or staffing levels have been implemented, and, in its discretion, may make exceptions to the requirements of (k) of this section to reflect the reduced risk of oil discharges from the facility, pipeline, vessel, or barge for which the plan is submitted or being modified.

(n) A tank vessel or oil barge that is conducting, or is available only for conducting, oil discharge response operations is exempt from the requirements of (c) of this section if the tank vessel or oil barge has received prior approval of the department. The department may approve exemptions under this subsection upon application and presentation of information required by the department.

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

(o) A holder of an approved contingency plan does not violate the terms of the contingency plan by furnishing to another plan holder, with the approval of the department, equipment, materials, or personnel to assist the other plan holder in a response to an oil discharge. The plan holder shall replace or return the transferred equipment, materials, and personnel as soon as feasible. The department shall by regulation determine the maximum amount of equipment, materials, or personnel and the maximum amount of time for which it will approve a transfer.

(p) *[Repealed, Sec. 1 ch 16 SLA 1993].*

(q) Except as provided in (n) of this section and in order to receive approval from the department for an oil discharge prevention and contingency plan submitted under this section, the owner, operator, or charterer of a vessel that intends to carry oil that has been transported by the Trans Alaska Pipeline System shall obtain by contract the services required in a response action from the common operating agent for the holders and lessees of the right-of-way agreement for the Trans Alaska Pipeline System. The contract must contain the following provisions: (1) the common operating agent, as a primary response action contractor shall, unless services required in a response action are transferred as provided in (3) of this subsection, provide services required in a response action for a discharge or a threatened discharge of oil to the owner, operator, or charterer of the vessel while the vessel is berthed at, en route to, or transiting from the Trans Alaska Pipeline System marine terminal or traveling on waters within Prince William Sound; (2) that its coverage for any particular vessel may not be terminated by the common operating agent while that vessel is within Prince William Sound; this provision may not be interpreted to limit the department's authority to revoke approval under this section for an oil discharge prevention and contingency plan submitted by the owner, operator, or charterer of a vessel; and (3) the owner, operator, or charterer of the vessel shall accept a transfer of the services required in a response action to a discharge or threatened discharge, after receiving not less than 72 hours of advance notice and after the transfer has been approved by the federal and state on-scene coordinators. In addition to the requirements of this subsection, the department may require individual vessels to submit additional contingency plans to cover specific vessel response, prevention equipment, and procedures. Nothing in this subsection is intended to preclude the federal or state government from assuming management and control of an oil spill response to a discharge or threatened discharge from a vessel under appropriate circumstances. In this subsection, "Prince William Sound" means all marine waters within the boundary line established at Cape Puget, southeasterly to Cape Cleare, along Montague Island to Zaikof Point, easterly to Cape Hinchinbrook, along Hinchinbrook Island to Point Bintinck, and easterly to Point Whitshed.

(r) In this section,

(1) "contingency plan" means an oil discharge prevention and contingency plan required under this section;

(2) "in compliance with the plan" means, with respect to a contingency plan, to

(A) establish and carry out procedures identified in the plan as being the responsibility of the holder of the plan;

(B) have access to and have on hand the quantity and quality of equipment, personnel, and other resources identified as being accessible or on hand in the plan;

(C) fulfill the assurances espoused in the plan in the manner described in the plan;

(D) comply with terms and conditions attached to the plan by the department under the authority of (e) of this section; and

(E) successfully demonstrate the ability to carry out the plan when required by the department under (e) of this section;

(3) "realistic maximum oil discharge" means the maximum and most damaging oil discharge that the department estimates could occur during the lifetime of the tank vessel, oil barge,

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

facility, or pipeline based on the size, location, and capacity of the tank vessel, oil barge, facility, or pipeline; on the department's knowledge and experience with the tank vessel, oil barge, facility, or pipeline; or with similar tank vessels, oil barges, facilities, or pipelines; and on the department's analysis of possible mishaps to the tank vessel or oil barge or at the facility or pipeline or to similar tank vessels or oil barges or at similar facilities or pipelines;

(4) "region of operation," with respect to the holder of a contingency plan, means the area where the operations of the holder that require a contingency plan are located, the boundaries of which correspond to the regional boundaries established by the commissioner for regional master planning purposes under AS 46.04.210.

SEC. 46.04.035. REGISTRATION OF OIL SPILL RESPONSE ACTION CONTRACTORS.

(a) A person may apply to the department for registration as an oil spill primary response action contractor. The department shall adopt regulations governing the registration and approval of oil spill primary response action contractors. Regulations adopted by the department under this section must include

- (1) minimum training standards for personnel;
- (2) verification requirements that ensure the existence of resources, including personnel, equipment, services, and an adequate deployment plan necessary to a response action or as required by a contingency plan in which the contractor has agreed in writing to be listed and is listed;
- (3) minimum professional response action standards and practices; and
- (4) minimum planning standards for oil spill primary response action contractors listed in an oil spill contingency plan approved under AS 46.04.030.

(b) Notwithstanding (a) of this section, the department may substitute a primary response action contractor approval program, and a subsequent process to approve primary response action contractors who agree to be listed in a contingency plan approved under AS 46.04.030, for regulations required under (a)(1) - (3) of this section if the approval program and subsequent process are developed by the United States Coast Guard.

(c) The department shall establish fees applicable to registration under this section in an amount necessary to cover the costs of the registration program. The fees shall be collected by the department.

(d) AS 44.62 (Administrative Procedure Act) applies to regulations and registrations under this section.

(e) The department shall develop and maintain a list of oil spill primary response action contractors registered under this section. The department shall provide the list on request to interested persons.

(f) A primary response action contractor registered under this section shall annually provide to the department a list of all contingency plans approved under AS 46.04.030 in which the primary response action contractor has agreed in writing to be listed as a responder.

(g) Nothing in this section is intended to amend AS 46.04.030(1) or to create a cleanup or performance standard that must be met by a holder of a contingency plan or a response action contractor.

(h) In this section,

- (1) "oil" has the meaning given in AS 46.03.826;
- (2) "primary response action contractor" means a person who enters into a response action contract with respect to a release or threatened release of oil and who is carrying out the contract, including a cooperative organization formed to maintain and supply response equipment and materials that enters into a response action contract relating to a release or threatened release of oil.

SEC. 46.04.040. PROOF OF FINANCIAL RESPONSIBILITY.

(a) A person may not cause or permit the operation of an oil terminal facility in the state unless the person has furnished to the department, and the department has approved, proof of financial ability to respond in damages. Proof of financial responsibility required for a crude oil terminal is \$50,000,000 per incident. Proof of financial responsibility required for a noncrude oil terminal is \$25, per incident, for each barrel of total noncrude oil storage capacity at the terminal or \$1,000,000, whichever is greater, subject to a maximum of \$50,000,000. For purposes of this subsection, an oil terminal facility that stores both crude oil and noncrude oil is subject to the financial responsibility requirements applicable to the type of facility that corresponds to the type of oil storage that predominates at the facility. However, if the facility stores more noncrude oil than crude oil, the \$25 per incident, per barrel requirement of this subsection applies to each barrel of oil storage capacity at the facility.

(b) A person may not cause or permit the operation of a pipeline or an exploration or production facility in the state unless the person has furnished to the department, and the department has approved, proof of financial ability to respond in damages. Proof of financial responsibility required for

(1) a pipeline or an offshore exploration or production facility is \$50,000,000 per incident;

(2) an onshore production facility is

(A) \$20,000,000 per incident if the facility produces over 10,000 barrels per day of oil;

(B) \$10,000,000 per incident if the facility produces over 5,000 barrels per day but not more than 10,000 barrels per day of oil;

(C) \$5,000,000 per incident if the facility produces over 2,500 barrels per day but not more than 5,000 barrels per day of oil;

(D) \$1,000,000 per incident if the facility produces 2,500 barrels per day or less of oil;

(3) an onshore exploration facility is \$1,000,000 per incident.

(c) Except as provided in (m) of this section, a person may not operate a tank vessel or an oil barge within the waters of the state, or cause or permit the transfer of oil to or from a tank vessel or an oil barge, unless the person operating the tank vessel or oil barge has furnished to the department, and the department has approved, proof of financial ability to respond in damages. Proof of financial responsibility required under this subsection is

(1) \$300, per incident, for each barrel of storage capacity or \$100,000,000, whichever is greater, for a tank vessel or barge carrying crude oil;

(2) \$100, per incident, for each barrel of storage capacity or \$1,000,000, whichever is greater, subject to a maximum of \$35,000,000, for a tank vessel or barge carrying noncrude oil.

(d) Except as provided in (k) of this section, it is not a defense to an action brought for violation of (a) - (c) of this section that the person charged believed in good faith that proof of financial ability to respond in damages had been furnished to, and approved by, the department.

(e) Financial responsibility may be demonstrated by (1) self-insurance, (2) insurance, (3) surety, (4) guarantee, (5) letter of credit approved by the department, or (6) other proof of financial responsibility approved by the department, including proof of financial responsibility provided by a group of insureds who have agreed to cover pollution risks of members of the group under terms the department may prescribe. An action brought under AS 46.03.758, 46.03.759, 46.03.760(a) or (d), 46.03.822, or AS 46.04.030(g) may be brought in a state court directly against the insurer, the group, or another person providing evidence of financial responsibility; however, the liability under this section of a third-party insurer is limited to the type of risk assumed and the amount of coverage

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

specified in the proof of financial responsibility furnished to and approved by the department. The applicant, and an insurer, surety, guarantor, person furnishing an approved letter of credit, or other group or person providing proof of financial responsibility approved by the department shall appoint an agent for service of process in the state. For purposes of this subsection, an insurer, other than a group of insureds whose agreement has been approved by the department, must either be authorized by the Department of Commerce, Community, and Economic Development to sell insurance in the state or be an unauthorized insurer listed by the Department of Commerce, Community, and Economic Development as not disapproved for use in the state. In this subsection, "third-party insurer" means a third-party insurer, surety, guarantor, person furnishing a letter of credit, or other group or person providing proof of financial responsibility on behalf of an applicant under this section; "third-party insurer" does not include the applicant.

(f) Acceptance of proof of financial responsibility expires

- (1) one year from its issuance for self-insurance;
- (2) on the effective date of a change in the surety bond, guarantee, insurance agreement, letter of credit, or other proof of financial responsibility; or
- (3) on the expiration or cancellation of the surety bond, guarantee, insurance agreement, letter of credit, or other proof of financial responsibility.

(g) The person whose proof of financial responsibility is accepted by the department under this section shall notify the department at least 30 days before the effective date of a change, expiration or cancellation in the surety bond, guarantee, insurance agreement, letter of credit, or other proof of financial responsibility. Application for renewal of acceptance of proof of financial responsibility under this section must be filed at least 30 days before the date of expiration.

(h) The department, after notice and hearing, may revoke acceptance of proof of financial responsibility if it determines that

- (1) acceptance was procured by fraud or misrepresentation; or
- (2) a change of circumstance has occurred other than a change specified in (f)(1) - (3) of this section, which would have warranted denial of the application.

(i) Financial responsibility under this section extends to a loss compensable under AS 46.03.760(d) or 46.03.822 and an assessment under AS 46.03.758, 46.03.759, 46.03.760(a), or AS 46.04.030(g).

(j) Upon acceptance and approval of proof of financial responsibility under this section, the department shall issue to the applicant a certificate stating that the state's financial responsibility requirements have been satisfied. The certificate must include the name of the facility, pipeline, tank vessel, or oil barge for which it is issued and the expiration date of the certificate.

(k) It is a defense to an action brought for violation of (a) - (c) of this section that the person charged relied on a certificate of approval issued under (j) of this section unless the person knew or had reason to know at the time of the alleged violation that the approval had been revoked or was expired.

(l) Notwithstanding the requirements of (e) of this section, the applicant may provide evidence of financial responsibility provided by an insurer or other person who does not agree to be subject to direct action in state courts or to appoint an agent for service of process if

- (1) the department is satisfied that the insurance or other form of financial responsibility covers judgments under the statutes listed in (e) of this section;
- (2) the applicant provides proof of \$50,000,000, or the amount required by (a) - (c) of this section, whichever is less, in insurance or other form of financial responsibility that meets the requirements of (e) of this section; and
- (3) the applicant provides a sworn statement or affidavit that insurance or other form of financial responsibility that meets the requirements of (e) of this section is not available in greater amounts.

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

(m) A tank vessel or oil barge that is conducting, or is available only for conducting, oil discharge response operations is exempt from the requirements of (c) of this section if the tank vessel or oil barge has received prior approval of the department. The department may approve an exemption under this subsection upon application and presentation of information required by the department.

SEC. 46.04.045. ADJUSTMENT OF DOLLAR AMOUNTS.

(a) The dollar amounts in AS 46.04.040 change, as provided in this section, according to and to the extent of changes in the Consumer Price Index for all urban consumers for the Anchorage metropolitan area compiled by the Bureau of Labor Statistics, United States Department of Labor (the index). The index for January 1990 is the reference base index.

(b) The dollar amounts change on October 1 of each third year according to the percentage change between the index for January of that year and the most recent index used to determine whether to change the dollar amounts. After calculation of the new amounts, the resulting amounts shall be rounded to the nearest cent.

(c) If the index is revised, the percentage of change is calculated on the basis of the revised index. If a revision of the index changes the reference base index, a revised reference base index is determined by multiplying the reference base index applicable by the rebasing factor furnished by the United States Bureau of Labor Statistics. If the index is superseded, the index referred to in this section is the one represented by the Bureau of Labor Statistics as reflecting most accurately changes in the purchasing power of the dollar for Alaskan consumers.

(d) The department shall adopt a regulation announcing

(1) on or before June 30 of each third year, the changes in dollar amounts required by (b) of this section; and

(2) promptly after the changes occur, changes in the index required by (c) of this section, including, if applicable, the numerical equivalent of the reference base index under a revised reference base index and the designation or title of any index superseding the index.

(e) The department shall also provide notification of a change in dollar amounts required under (b) of this section to the clerks of court in each judicial district of the state.

SEC. 46.04.047. NONCRUDE OIL OPERATIONS.

Notwithstanding AS 46.04.040, the department may, with respect to noncrude oil operations, approve proof of financial responsibility by a person, other than the applicant, who does not agree to be subject to a direct action in the state or to appoint an agent for service of process if the applicant

(1) provides proof of financial responsibility in the form and amounts otherwise required under AS 46.04.040;

(2) provides a sworn statement that

(A) is acceptable to the department;

(B) attests that the applicant has diligently attempted to obtain a form of proof of financial responsibility that would provide for a direct action and appointment of an agent for service of process;

(C) describes the steps the applicant has taken to obtain a form of proof of financial responsibility that would provide for a direct action and appointment of an agent for service of process;

(D) states that a form of proof of financial responsibility that would provide for a direct action and appointment of an agent for service of process is unavailable to the applicant;

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

(3) continues diligent efforts to obtain a form of proof of financial responsibility that would provide for a direct action and appointment of an agent for service of process and provides a sworn statement every six months that is acceptable to the department, containing the information required in (2) of this section.

SEC. 46.04.050. EXEMPTIONS.

(a) The provisions of AS 46.04.030, 46.04.040, and 46.04.060 do not apply to an oil terminal facility that has an effective storage capacity of less than 5,000 barrels of crude oil or less than 10,000 barrels of noncrude oil.

(b) The provisions of AS 46.04.030 and 46.04.040 do not apply to a natural gas production facility and a natural gas terminal facility; for purposes of this subsection, "natural gas production facility" and "natural gas terminal facility" mean a platform, facility, or structure that, except for storage of refined petroleum products in a quantity that does not exceed 10,000 barrels, is used solely for the production, compression, storage, or transport of natural gas.

(c) The provisions of AS 46.04.030 and 46.04.040 do not apply to a natural gas exploration facility if the Alaska Oil and Gas Conservation Commission has determined under AS 31.05.030 (1) that evidence obtained through evaluation demonstrates with reasonable certainty that all of the wells at a natural gas exploration facility will not penetrate a formation capable of flowing oil to the ground surface. If the drilling of a well at an exploration facility exempted under this subsection does penetrate a formation capable of flowing oil to the surface, the owner or operator shall submit an oil discharge prevention and contingency plan and proof of financial responsibility to the department to meet the requirements of AS 46.04.030 and 46.04.040. For purposes of this subsection, "natural gas exploration facility" means a platform, facility, or structure that, except for storage of refined petroleum products in a quantity that does not exceed 10,000 barrels, is used solely for the exploration for natural gas.

SEC. 46.04.055. NONTANK VESSELS AND RAILROAD TANK CARS.

(a) A person may not operate a nontank vessel within the waters of the state or cause or permit the transfer of oil to or from a nontank vessel unless the person has furnished to the department and the department has approved proof of financial ability to respond to damages meeting the requirements of AS 46.04.040. Proof of financial responsibility required under this subsection is subject to adjustment of dollar amounts under AS 46.04.045 and is established, for a nontank vessel that carries

(1) predominantly persistent product, at \$300 per incident for each barrel of oil storage capacity on the vessel or \$5,000,000, whichever is greater; and

(2) predominantly nonpersistent product, at \$100 per incident for each barrel of oil storage capacity on the vessel or \$1,000,000, whichever is greater.

(b) A person may not transport oil by railroad tank car or cause or permit the transfer of oil to or from a railroad tank car unless the person has furnished to the department and the department has approved proof of financial ability to respond to damages meeting the requirements of AS 46.04.040. Proof of financial responsibility required under this subsection is subject to adjustment of dollar amounts under AS 46.04.045 and is established at

(1) \$300 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

(2) \$100 per incident for each barrel of nonpersistent product based upon the maximum amount of nonpersistent product storage capacity of any train on the railroad or \$1,000,000, whichever is greater.

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

(c) For purposes of AS 46.04.030 (k), response planning standards apply to nontank vessels and railroad tank cars as follows:

(1) for a nontank vessel,

(A) containment and control of 15 percent of the maximum oil capacity of the nontank vessel within 48 hours; and

(B) cleanup of the discharge within the shortest possible time consistent with minimizing damage to the environment; and

(2) for a railroad tank car,

(A) containment and control of 15 percent of the maximum oil capacity of a train on the railroad within 48 hours; and

(B) cleanup of the discharge within the shortest possible time consistent with minimizing damage to the environment.

(d) Notwithstanding the requirements of AS 46.04.040 (e) and (l) and 46.04.047, for purposes of (a) of this section, an applicant may provide evidence of financial responsibility by proof of entry of the nontank vessel in a protection and indemnity association or proof of coverage with another insurer that

(1) is financially solvent and has a favorable history of claim handling;

(2) provides coverage against pollution risks in at least the amount of the financial responsibility required under (a) of this section without any requirement for a special endorsement;

(3) does not agree to be subject to direct action in court or to appointment of an agent for service of process; and

(4) in the case of a protection and indemnity association or group of insureds, is not authorized by the Department of Commerce, Community, and Economic Development to sell insurance in the state so long as it is not listed by the Department of Commerce, Community, and Economic Development as being disapproved for use in the state.

(e) The requirements of this section do not apply to a nontank vessel operating in the waters of the state if the nontank vessel

(1) is engaged in innocent passage; for purposes of this paragraph, a nontank vessel is engaged in innocent passage if its operation in state waters, irrespective of whether it is a United States or foreign-flag vessel, would constitute innocent passage under the Convention on the Territorial Sea and the Contiguous Zone, April 29, 1958, 15 U.S.T. 1606, or the United Nations Convention on the Law of the Sea 1982, December 10, 1982, U.N. Publication No. E 83.V.5, 21 I.L.M. 1261 (1982), were the vessel a foreign-flag vessel;

(2) enters state waters because of imminent danger to the crew, or in an effort to prevent an oil spill or other harm to public safety or the environment, and are inapplicable only until the vessel is able to leave state waters as soon as it may do so without imminent risk of harm to the crew, public safety, or the environment; or

(3) enters state waters after the United States Coast Guard has determined that the vessel is in distress, and are inapplicable only until the vessel is able to leave state waters as soon as it may do so without imminent risk of harm to the crew, public safety, or the environment.

(f) On and after May 26, 2003, a person may not operate a nontank vessel within the waters of the state or cause or permit the transfer of oil to or from a nontank vessel unless the department has approved an oil discharge prevention and contingency plan covering that nontank vessel and the person is in compliance with the plan.

(g) The oil discharge prevention and contingency plan for a nontank vessel required by (f) of this section must include

(1) vessel-specific information;

(2) a response plan consisting of

(A) initial notification procedures;

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

(B) a certification that the applicant for the nontank vessel contingency plan is a member of, or has a contract with, an oil spill response organization that is an oil spill primary response action contractor with a response action plan approved by the department as meeting the response planning standards of (c)(1) of this section for the maximum oil capacity of the nontank vessel; and

(C) a certification that the applicant for the nontank vessel contingency plan has contracted with an oil spill primary response action contractor providing incident management team services; and

(3) a prevention plan certification stating that the nontank vessel for which contingency plan approval is made complies with applicable federal and International Maritime Organization requirements.

(h) In lieu of the requirements

(1) of (g)(2)(B) of this section, a person may comply with the requirement of (g)(2)(B) of this section by demonstrating, to the satisfaction of the department, that the person is maintaining an oil spill response plan and equivalent equipment, personnel, and resources to enable the person to meet the requirements of this section; and

(2) of (g)(2)(C) of this section, a person may comply with the requirement of (g)(2)(C) of this section by demonstrating, to the satisfaction of the department, that the person is maintaining an incident management team in order to implement a planned response to a release or threatened release of oil from its nontank vessel.

(i) The provisions of AS 46.04.030 (d) - (l), (n), (o), and (r) apply to a nontank vessel, to a nontank vessel contingency plan required by this section, and to a person applying for and holding an approved nontank vessel contingency plan.

(j) On and after June 12, 2003, a person may not transport oil by railroad tank car or cause or permit the transfer of oil to or from a railroad tank car unless the department has approved an oil discharge prevention and contingency plan covering the transportation of oil by railroad tank cars by the railroad and the person is in compliance with the plan.

(k) The provisions of AS 46.04.030 (d) - (l), (n), (o), and (r) apply to a railroad tank car, to a railroad tank car contingency plan required by this section, and to a person applying for and holding an approved railroad tank car contingency plan.

(l) The department shall adopt regulations under AS 46.04.070 to implement

- (1) the requirements of response planning standards under (c) of this section;
- (2) the requirements of (f) - (i) of this section as applicable to nontank vessels; and
- (3) the requirements of (j) and (k) of this section as applicable to railroad tank cars.

SEC. 46.04.060. INSPECTIONS.

(a) In addition to other rights of access or inspection conferred upon the department by law or otherwise, the department may at reasonable times and in a safe manner enter and inspect oil terminal facilities, pipelines, exploration and production facilities, tank vessels, and oil barges in order to

- (1) ensure compliance with the provisions of this chapter; or
- (2) participate in an examination of the structural integrity and the operating and mechanical systems of those vessels, barges, pipelines, and facilities by federal and state agencies with jurisdiction.

(b) When the department determines that no federal or state agencies with jurisdiction are performing timely and adequate inspections of an oil terminal facility, pipeline, exploration or production facility, tank vessel, or oil barge, it may perform its own inspection of the structural integrity and operating and mechanical systems of a facility, pipeline, tank vessel, or oil barge by using personnel with qualifications in the areas being inspected.

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

SEC. 46.04.065. COMPLIANCE VERIFICATION FOR NONTANK VESSELS AND FOR TRAINS AND RELATED FACILITIES AND OPERATIONS.

In addition to other rights of access or examination conferred upon the department by law or otherwise, to ensure compliance with the provisions of this chapter relating to oil pollution control, the department may at reasonable times and in a safe manner enter and examine

- (1) nontank vessels; and
- (2) trains, railroad tracks, associated facilities, and railroad operations.

SEC. 46.04.070. SCOPE OF REGULATIONS.

The department shall adopt regulations that are necessary to carry out the purposes of this chapter and that do not conflict with and are not preempted by federal law or regulations.

SEC. 46.04.080. CATASTROPHIC OIL DISCHARGES.

(a) The commissioner of environmental conservation or the adjutant general of the Department of Military and Veterans' Affairs may request the governor to determine that an actual or imminent occurrence of a catastrophic oil discharge constitutes a disaster emergency under AS 26.23. The commissioner of environmental conservation and the adjutant general of the Department of Military and Veterans' Affairs shall respond appropriately in the relief of the actual or imminent discharge under the relevant provisions of the applicable incident command system.

(b) The department shall promptly, under AS 46.04.010, seek reimbursement of oil discharge cleanup or containment expenses incurred as a result of an actual or imminent catastrophic oil discharge under AS 26.23.050.

SEC. 46.04.090. OIL DISCHARGE CLEANUP PERSONNEL, EQUIPMENT, EXPENSES.

The department, when feasible, shall enter into contracts with persons or private organizations to provide the personnel, equipment, or other services or supplies that may be required to carry out this chapter. Contracts under this section are governed by AS 36.30 (State Procurement Code). When private contracting is not feasible, the department may establish and maintain at ports, harbors, or other locations in the state, the cleanup personnel, equipment, and supplies that, in its judgment, are necessary to carry out this chapter. When exercising its authority under this subsection, the department shall coordinate with the Department of Military and Veterans' Affairs to avoid duplication of efforts.

SEC. 46.04.100. COMPACTS AUTHORIZED.

The governor may execute supplementary agreements, reciprocal arrangements, or compacts with any other state or country, subject to the approval, if required by the United States Constitution, of the Congress of the United States, for the purpose of implementing this chapter.

SEC. 46.04.110. MUNICIPAL POWERS LIMITED.

If a conflict occurs between a provision of this chapter, or a regulation, order, decision, or other determination of the department under this chapter, and a charter, ordinance, permit, regulation, franchise, decision, or other determination of a municipality, the provisions of this chapter or the regulation, order, decision, or other determination of the department prevail. However, nothing in

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

this chapter precludes a municipality, by ordinance or regulation, from exercising its police powers in the area regulated by this chapter.

Sec. 46.04.120. [Renumbered as AS 46.04.900].

Repealed or Renumbered

**Article 02. OIL AND HAZARDOUS SUBSTANCE DISCHARGE AND PREVENTION
CONTINGENCY PLANS**

SEC. 46.04.200. STATE MASTER PLAN.

(a) The department shall prepare, annually review, and revise as necessary a statewide master oil and hazardous substance discharge prevention and contingency plan.

(b) The state master plan prepared under this section must

(1) take into consideration the elements of an oil discharge prevention and contingency plan approved or submitted for approval under AS 46.04.030;

(2) include incident command systems that clarify and specify the respective responsibilities of each of the following in the assessment, containment, and cleanup of various types and sizes of discharges of oil or a hazardous substance into the environment of the state:

(A) the Department of Environmental Conservation, the division of homeland security and emergency management in the Department of Military and Veterans' Affairs, and other agencies of the state; responsibilities assigned to each agency must be consistent with its statutory authority;

(B) municipalities of the state;

(C) appropriate federal agencies;

(D) operators of facilities;

(E) private parties whose land and other property may be affected by the oil or hazardous substance discharge; and

(F) other parties identified by the commission as having an interest in or the resources to assist in the containment and cleanup of an oil or hazardous substance discharge;

(3) include incident command systems that specify the respective responsibilities of parties identified in (2) of this subsection in an emergency response under AS 26.23, AS 46.03.865, AS 46.04.080, or AS 46.09.030; responsibilities assigned to each state agency must be consistent with its statutory authority; and

(4) identify actions necessary to reduce the likelihood of discharges of oil or hazardous substances.

(c) If the commissioner determines that the state master plan should be revised, the commissioner shall

(1) consult with municipal, community, and local emergency planning committee officials, and with representatives of affected regional organizations;

(2) submit the draft plan with revisions to the public for review and comment;

(3) submit to the legislature for review, not later than the 10th day following the convening of each regular session, any revision of the plan; and

(4) submit any revision of the plan to the Alaska State Emergency Response Commission for its review under AS 26.23.077.

(d) In order to determine whether the state master plan should be revised, or at any other time the commissioner determines it necessary, the commissioner shall require or schedule unannounced oil spill drills to test the sufficiency of an oil discharge prevention and contingency

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

plan approved under AS 46.04.030 or of the cleanup plans of a party identified under (b)(2) of this section.

SEC. 46.04.210. REGIONAL MASTER PLAN.

(a) For any region of the state, the boundaries of which are determined by the commissioner by regulation, in which the department is required to review and approve an oil discharge prevention and contingency plan submitted by a person under AS 46.04.030, the department shall prepare, annually review, and revise as necessary a regional master oil and hazardous substance discharge prevention and contingency plan.

(b) The provisions of AS 46.04.200(b) and (c) apply to preparation and review of a regional master plan under this section.

(c) In setting boundaries under (a) of this section, the department shall, when possible, group together communities that are likely to require coordination of their efforts to respond effectively to a discharge.

Article 03. GENERAL PROVISIONS

SEC. 46.04.890. APPLICABILITY OF ADMINISTRATIVE PROCEDURE ACT.

Notwithstanding AS 44.62.330(a)(44), adjudicatory hearing procedures to review permit decisions under this chapter need not conform to AS 44.62.330 - 44.62.630 (Administrative Procedure Act).

SEC. 46.04.900. DEFINITIONS.

In this chapter, unless the context requires otherwise,

(1) "barrel" is a measure of capacity equal to the space occupied by 42 U.S. gallons at 60 degrees Fahrenheit;

(2) "catastrophic oil discharge" means an oil discharge in excess of 100,000 barrels, or any other discharge which the governor determines presents a grave and substantial threat to the economy or environment of the state;

(3) "Clean Water Act" means the Federal Water Pollution Control Act of 1972 (P.L. 92-500), as amended by the Clean Water Act of 1977 (P.L. 95-217), as amended (33 U.S.C. 1251 - 1376);

(4) "commissioner" means the commissioner of environmental conservation;

(5) "containment and cleanup" includes all direct and indirect efforts associated with the prevention, abatement, containment, or removal of a pollutant, and the restoration of the environment to its former state; when applied to expenses, the term includes the additional costs of providing a reasonable and appropriate function or service incurred in response to the discharge of a pollutant, including administrative expenses for the incremental costs of providing the function or service;

(6) "department" means the Department of Environmental Conservation;

(7) "discharge" means spilling, leaking, pumping, pouring, emitting, emptying, or dumping;

(8) "exploration facility" means a platform, vessel, or other facility used to explore for hydrocarbons in or on the waters of the state or in or on land in the state; the term does not include platforms or vessels used for stratigraphic drilling or other operations that are not authorized or intended to drill to a producing formation;

(9) "natural gas"

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

(A) means a hydrocarbon that at 70 degrees Fahrenheit and atmospheric pressure is in a gaseous state;

(B) includes liquefied natural gas or other form of natural gas that has been converted to a liquid state by pressure or cooling that at 70 degrees Fahrenheit and atmospheric pressure reverts to a gaseous state;

(10) *[Repealed, Sec. 6 ch 79 SLA 2005]*.

(11) "nonpersistent product" has the meaning given to "non-persistent or Group I oil" in 33 C.F.R. 155.1020;

(12) "nontank vessel" means a self-propelled watercraft of more than 400 gross registered tons; in this paragraph, "watercraft" includes commercial fishing vessels, commercial fish processor vessels, passenger vessels, and cargo vessels, but does not include a tank vessel, oil barge, or public vessel;

(13) "oil" means oil of any kind and in any form, whether crude, refined, or a petroleum by-product, including but not limited to petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oil refuse, oil mixed with other wastes, crude oils, liquefied natural gas, propane, butane, or other liquid hydrocarbons regardless of specific gravity;

(14) "oil barge" means a vessel which is not self-propelled and which is constructed or converted to carry oil as cargo in bulk;

(15) "oil terminal facility" means an onshore or offshore facility of any kind, and related appurtenances, including but not limited to a deepwater port, bulk storage facility, or marina, located in, on, or under the surface of the land or waters of the state, including tide and submerged land, that is used for the purpose of transferring, processing, refining, or storing oil; a vessel, other than a nontank vessel, is considered an oil terminal facility only when it is used to make a ship-to-ship transfer of oil, and when it is traveling between the place of the ship-to-ship transfer of oil and an oil terminal facility;

(16) "operator" means the person who, through contract, lease, sublease, or otherwise, exerts general supervision and control of activities at the facility; the term includes, by way of example and not limitation, a prime or general contractor, the master of a vessel and the master's employer, or any other person who, personally or through an agent or contractor, undertakes the general functioning of the facility;

(17) "persistent product" has the meaning given to "persistent oil" in 33 C.F.R. 155.1020;

(18) "person" means an individual, public or private corporation, political subdivision, government agency, municipality, industry, partnership, association, firm, trust, estate, or any other entity;

(19) "pipeline" means the facilities, including piping, compressors, pump stations, and storage tanks, used to transport crude oil and associated hydrocarbons between production facilities or from one or more production facilities to marine vessels;

(20) "production facility" means a drilling rig, drill site, flow station, gathering center, pump station, storage tank, well, and related appurtenances on other facilities to produce, gather, clean, dehydrate, condition, or store crude oil and associated hydrocarbons in or on the water of the state or on land in the state, and gathering and flow lines used to transport crude oil and associated hydrocarbons to the inlet of a pipeline system for delivery to a marine facility, refinery, or other production facility;

(21) "public vessel" means a vessel that is operated by and is either owned or bareboat chartered by the United States, a state or a political subdivision of that state, or a foreign nation, except when the vessel is engaged in commerce;

(22) "railroad tank car" means rolling stock used to transport oil in bulk as cargo by rail;

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

(23) "response action" means an action taken to respond to a release or threatened release of oil, including mitigation, cleanup, or removal;

(24) "self-propelled" means propelled either by machinery aboard the vessel, or by a tug or other vessel secured into the cargo-carrying vessel through special hull design;

(25) "service" means a function performed or service provided by the state, including functions not previously performed and services not previously provided by the state;

(26) "tank vessel" means a self-propelled waterborne vessel that is constructed or converted to carry liquid bulk cargo in tanks and includes tankers, tankships, and combination carriers when carrying oil; the term does not include vessels carrying oil in drums, barrels, or other packages, or vessels carrying oil as fuel or stores for that vessel;

(27) "train" means connected rolling stock operated as a single moving vehicle on rails; for purposes of this paragraph, "connected rolling stock" includes railroad tank cars;

(28) "vessel" includes tank vessels, oil barges, and nontank vessels;

(29) "village" means a place within the unorganized borough or within a borough as to a power, function, or service that is not exercised or provided by the borough on an areawide or nonareawide basis that

(A) has irrevocably waived, in a form approved by the Department of Law, any claim of sovereign immunity that might arise under this chapter; and

(B) has

(i) a council organized under 25 U.S.C. 476 (sec. 16 of the Indian Reorganization Act);

(ii) a traditional village council recognized by the United States as eligible for federal aid to Indians; or

(iii) a council recognized by the commissioner of commerce, community, and economic development under regulations adopted by the Department of Commerce, Community, and Economic Development to determine and give official recognition of village entities under AS 44.33.755(b);

(30) "waters of the state" includes lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, straits, passages, canals, the Pacific Ocean, Gulf of Alaska, Bering Sea and Arctic Ocean, in the territorial limits of the state, and all other bodies of surface or underground water, natural or artificial, public or private, inland or coastal, fresh or salt, which are wholly or partially in or bordering the state or under the jurisdiction of the state.

CHAPTER 8. OIL AND HAZARDOUS SUBSTANCE RELEASES

Article 01. RELEASE PREVENTION AND RESPONSE FUND; REIMBURSEMENT; LIENS

SEC. 46.08.005. PURPOSE OF FUND; DESCRIPTION OF ACCOUNTS.

The legislature finds and declares that the release of oil or hazardous substances into the environment presents a real and substantial threat to the public health and welfare, to the environment, and to the economy of the state. The legislature therefore concludes that it is in the best interest of the state and its citizens to provide a fund containing two accounts. Within the fund,

(1) one account consists of money readily available to the commissioner for the payment of the expenses incurred by the Department of Environmental Conservation during a response to a release or threatened release of oil or hazardous substances when authorized by AS 46.08.045 and for related purposes intended to address those releases;

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

(2) the other account consists of money that the state may use during a response to a release of oil or a hazardous substance, other than one described in (1) of this subsection, and to a threatened release of oil or a hazardous substance, to pay the expenses of making preparations for the possibility of a release or threatened release of oil or hazardous substances, to reduce the amount, degree, or intensity of a release or threatened release, and for other related purposes identified in law.

SEC. 46.08.010. FUND ESTABLISHED.

(a) There is established in the state general fund the oil and hazardous substance release prevention and response fund. The fund shall be administered by the commissioner. The fund is composed of two accounts,

- (1) the oil and hazardous substance release prevention account;
- (2) the oil and hazardous substance release response account.

(b) Money from an appropriation made to an account in the fund remaining in that account at the end of a fiscal year does not lapse and remains available for expenditure in successive fiscal years.

(c) The fund shall be used for actual expenses incurred under AS 46.08.040. Except as provided in AS 46.08.040(a)(2)(D) for the acquisition, repair, or improvement of assets as preparedness measures, the fund may not be used for capital improvements.

SEC. 46.08.020. FINANCING OF THE OIL AND HAZARDOUS SUBSTANCE RELEASE PREVENTION ACCOUNT; PREVENTION MITIGATION ACCOUNT.

(a) The legislature may appropriate from the following sources to the prevention account in the fund:

- (1) the annual estimated balance of the account maintained under AS 37.05.142 for deposits into the general fund of the proceeds of the oil conservation surcharge levied by AS 43.55.300;
- (2) money received from other state sources, from federal or other sources, or from a private donor;
- (3) money recovered or otherwise received from parties responsible for the containment and cleanup of oil or a hazardous substance at a specific site, but excluding money
 - (A) from performance bonds and other forms of financial responsibility held in escrow pending satisfactory performance of a privately financed response action; and
 - (B) described in AS 46.08.025(a)(3);
- (4) fines, penalties, or damages recovered under AS 46.08.005 - 46.08.080 or other law for costs incurred by the state as a result of the release or threatened release of oil or a hazardous substance; and
- (5) the interest earned on the balance of the accounts maintained under AS 37.05.142 for deposits into the general fund from the proceeds of the surcharges levied under AS 43.55.201 and 43.55.300.

(b) Money received by the state under (a)(2) - (5) of this section shall be deposited in the general fund and credited to a special account called the "oil and hazardous substance release prevention mitigation account." The legislature may annually appropriate to the prevention account in the fund from the prevention mitigation account a sum equal to the amount received under (a)(2) - (5) of this section during the calendar year preceding the legislative session in which the appropriations are to be made.

(c) The interest earned on the balances of each of the following accounts shall be deposited into the general fund and credited to the prevention account in the fund:

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

- (1) the prevention account;
- (2) the prevention mitigation account;
- (3) the response account; and
- (4) the response mitigation account.

SEC. 46.08.025. FINANCING OF THE OIL AND HAZARDOUS SUBSTANCE RELEASE RESPONSE ACCOUNT; RELEASE MITIGATION ACCOUNT.

(a) The legislature may appropriate from the following sources to the oil and hazardous substance release response account in the fund:

(1) the annual estimated balance of the account maintained under AS 37.05.142 for deposit into the general fund of the proceeds of the oil conservation surcharge levied by AS 43.55.201;

(2) money received from other state sources, from federal or other sources, or from a private donor; and

(3) money recovered or otherwise received from parties responsible for the containment and cleanup of oil or a hazardous substance at a specific site for which the state expended money from the former oil and hazardous substance release response fund before October 2, 1994 or for which the state expended money from the response account, but excluding

(A) money from performance bonds and other forms of financial responsibility held in escrow pending satisfactory performance of a privately financed response action;

(B) fines, penalties, and damages described in AS 46.08.020(a)(4).

(b) Money received by the state under (a)(2) and (3) of this section shall be deposited in the general fund and credited to a special account called the "oil and hazardous substance release response mitigation account." The legislature may annually appropriate to the response account in the fund from the response mitigation account a sum equal to the amount received under (a)(2) and (3) of this section during the calendar year preceding the legislative session in which the appropriations are to be made.

SEC. 46.08.030. INTENT CONCERNING THE ABATEMENT OF OIL OR HAZARDOUS SUBSTANCE RELEASES.

It is the intent of the legislature and declared to be the public policy of the state that funds for the abatement of a release of oil or a hazardous substance will always be available.

SEC. 46.08.040. USES OF THE FUND.

(a) In addition to money in the response account of the fund that is transferred to the commissioner of commerce, community, and economic development to make grants under AS 29.60.510 and to pay for impact assessments under AS 29.60.560, the commissioner of environmental conservation may use money

(1) from the response account in the fund

(A) when authorized by AS 46.08.045, to investigate and evaluate the release or threatened release of oil or a hazardous substance, and contain, clean up, and take other necessary action, such as monitoring and assessing, to address a release or threatened release of oil or a hazardous substance that poses an imminent and substantial threat to the public health or welfare, or to the environment;

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

(B) to provide matching funds in the event of a release of oil or a hazardous substance for which use of the response account is authorized by AS 46.08.045 for participation

(i) in federal oil discharge cleanup activities; and

(ii) under 42 U.S.C. 9601 - 9657 (Comprehensive Environmental Response, Compensation, and Liability Act of 1980); and

(C) to recover the costs to the state, a municipality, a village, or a school district of a containment and cleanup resulting from the release or the threatened release of oil or a hazardous substance for which money was expended from the response account;

(2) from the prevention account in the fund to

(A) investigate and evaluate the release or threatened release of oil or a hazardous substance, except a release described in AS 46.08.045(a), and contain, clean up, and take other necessary action, such as monitoring and assessing, to address a release or threatened release of oil or a hazardous substance, except a release described in AS 46.08.045(a);

(B) pay all costs incurred

(i) to establish and maintain the oil and hazardous substance response office;

(ii) under agreements entered into under AS 46.04.090 or AS 46.09.040;

(iii) to review oil discharge prevention and contingency plans submitted under AS 46.04.030;

(iv) to conduct training, response exercises, inspections, and tests, in order to verify equipment inventories and ability to prevent and respond to oil and hazardous substance release emergencies, and to undertake other activities intended to verify or establish the preparedness of the state, a municipality, or a party required by AS 46.04.030 to have an approved contingency plan to act in accordance with that plan; and

(v) to verify or establish proof of financial responsibility required by AS 46.04.040;

(C) pay, when presented with appropriate documentation by the Department of Military and Veterans' Affairs, the expenses incurred by the Department of Military and Veterans' Affairs for Alaska State Emergency Response Commission activities, including staff support, when the activities and staff support relate to oil or hazardous substances, and for the costs of being prepared for responding to a request by the department for support in response and restoration, but not including the costs of maintaining the response corps and the emergency response depots under AS 26.23.045;

(D) pay all costs incurred to acquire, repair, or improve an asset having an anticipated life of more than one year and that is acquired, repaired, or improved as a preparedness measure by which the state may respond to, recover from, reduce, or eliminate the effects of a release or threatened release of oil or a hazardous substance;

(E) pay the costs, if approved by the commissioner, that were incurred by local emergency planning committees to carry out the duties assigned them by AS 26.23.073(g);

(F) provide matching funds in the event of the release of oil or a hazardous substance, except a release of oil for the containment and cleanup of which use of the response account is authorized by AS 46.08.045, for participation

(i) in federal oil discharge cleanup activities; and

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

(ii) under 42 U.S.C. 9601 - 9657 (Comprehensive Environmental Response, Compensation, and Liability Act of 1980);

(G) *[Repealed, Sec. 2 ch 102 SLA 2006]*.

(H) transfer to the Department of Commerce, Community, and Economic Development for payment by the commissioner of commerce, community, and economic development of

(i) municipal impact grants when authorized under AS 29.60.510(b)(2);

(ii) assessments of the social and economic effects of the release of oil or hazardous substances as required by AS 29.60.560 when, in the judgment of the commissioner, the release of oil or a hazardous substance is not one that is described in AS 46.08.045; and

(iii) grants to repair, improve, or replace fuel storage facilities under the bulk fuel system emergency repair and upgrade program;

(I) recover the costs to the state, a municipality, a village, or a school district of a containment and cleanup resulting from the release or threatened release of oil or a hazardous substance for which money was expended from the prevention account;

(J) prepare, review, and revise

(i) the state's master oil and hazardous substance discharge prevention and contingency plan required by AS 46.04.200; and

(ii) a regional master oil and hazardous substance discharge prevention and contingency plan required by AS 46.04.210; and

(K) restore the environment by addressing the effects of an oil or hazardous substance release.

(b) *[Repealed, Sec. 43 ch 128 SLA 1994]*.

(c) Notwithstanding other provisions of this section, money from the fund may not be used for a purpose specified in (a)(1)(B) or (C) or (a)(2) of this section unless money is available from an appropriation made specifically for that purpose. The legislature may use not more than three percent of the estimated annual balance of the prevention account to make appropriations for the purposes described in (a)(2)(E) of this section.

(d) *[Repealed, Sec. 43 ch 128 SLA 1994]*.

SEC. 46.08.045. USE OF THE RESPONSE ACCOUNT; DECLARED DISASTERS.

(a) The commissioner may use money from the response account in the fund to respond to a release or threatened release when the governor declares a disaster related to an oil or hazardous substance discharge emergency under AS 26.23.020(c). During the effective period of the disaster emergency, the commissioner may use money from the response account to respond to the disaster emergency.

(b) Notwithstanding (a) of this section, money from the response account may be used for the purpose in AS 46.08.040(a)(1)(A) without a declaration under AS 26.23.020(c). However, when exercising authority under this subsection, the commissioner shall, within 120 hours of using money in the response account when authorized by this subsection, provide a written report to the governor and to the Legislative Budget and Audit Committee summarizing the release, the state's actions, both taken and anticipated, the costs of the state's actions, both taken and anticipated, and other information considered appropriate by the commissioner or the governor. The governor may, at any time during the state's response, approve, disapprove, or amend the action.

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

SEC. 46.08.050. RECORDS OF THE FUND.

(a) The department shall maintain accounting records showing the income and expenses of the fund.

(b) A department that is appropriated or allocated money from the fund, either directly or through a reimbursable service agreement with the Department of Environmental Conservation, shall develop procedures governing the expenditure of, and accounting for, money it expends from the fund. The Department of Environmental Conservation may not reimburse or pay money to another state agency for the agency's activities under AS 46.08.040 unless the state agency provides to the department the information necessary to complete the report required by AS 46.08.060.

SEC. 46.08.060. REPORT.

(a) The commissioner shall make available a report to the legislature not later than the 10th day following the convening of each first regular session of the legislature. The commissioner shall notify the legislature that the report is available. The report may include information considered significant by the commissioner but must include

(1) the amount of money expended by the department under AS 46.08.040(a) during the preceding two fiscal years;

(2) the amount and source of money received and money recovered by or on behalf of the department during the preceding two fiscal years under

(A) AS 46.08.020; and

(B) AS 46.08.025;

(3) a summary of municipal participation in the department's responses that were paid for by the fund;

(4) a detailed summary of department activities in responses paid for by the fund during the preceding two fiscal years, including response descriptions and statements outlining the nature of the threat; in this paragraph, "detailed" includes information describing each personal services position and total compensation for that position, each contract in excess of \$10,000, and each purchase in excess of \$10,000; and

(5) the projected cost to the department for the next two fiscal years of monitoring, operating, and maintaining sites where response has been completed or is expected to be continued during the next two fiscal years.

(b) As part of the department's on-going identification efforts associated with oil spill or hazardous substance release or waste sites, the commissioner shall include in the report under this section

(1) the number of sites that are included in the department's contaminated sites data base, whether the site is active or closed; and

(2) a prioritized listing of those sites, both statewide and by community, based on the immediate and long-term threats to the public health or welfare or to the environment.

(c) In addition to the department's report required under (a) of this section, the governor shall submit a report about use of the fund during the previous two fiscal years to the legislature not later than the 10th day following the convening of each first regular session of the legislature. In the report, the governor shall describe in detail the governor's use of money from the fund, with separate explanations, by agency, of the activities that were paid for under the authority of AS 46.08.045.

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

SEC. 46.08.070. REIMBURSEMENT FOR CONTAINMENT AND CLEANUP.

(a) The commissioner shall seek reimbursement promptly under this section, AS 46.03.760(d), or federal law for the cost incurred in the cleanup or containment of oil or a hazardous substance that has been released.

(b) The attorney general, at the request of the commissioner, shall immediately seek to recover money expended by the department under AS 46.08.005 - 46.08.080 or other law to contain and clean up oil or a hazardous substance that has been released or to control the threatened release of oil or a hazardous substance.

(c) The department shall reimburse a municipality or village for actual expenses, other than normal operating expenses, incurred in the abatement of a release or threatened release and may advance money to a municipality or village to carry out an emergency first response to a release or threatened release of oil or a hazardous substance if

(1) the municipality or village has entered into an agreement with the commissioner under AS 46.04.020(e) or AS 46.09.020(e); and

(2) the commissioner determines that

(A) the expenses to be reimbursed were for a necessary emergency first response to a release or threatened release that, at the time of the release or threatened release, posed an imminent and substantial threat to the public health or welfare, or to the environment;

(B) the municipality or village has demonstrated a need for financial assistance, and the money to be advanced is necessary to enable the municipality or village to carry out an emergency first response to a release or threatened release that, at the time of the release or threatened release, poses an imminent and substantial threat to the public health or welfare, or to the environment; and

(C) containment and cleanup efforts paid for in whole or in part by a reimbursement or an advance made under this section were consistent with the regional master plan for the region in which the municipality or village is located if a plan has been prepared by the department under AS 46.04.210.

(d) The department shall adopt regulations to implement the cost recovery requirements of (a) and (b) of this section, but may not delay cost recovery actions pending the effective date of the adoption of the regulations.

SEC. 46.08.075. LIENS AGAINST PROPERTY AS SECURITY FOR STATE EXPENDITURES.

(a) The state has a lien for expenditures by the state from the fund, or from any other state fund, for the costs of response, containment, removal, or remedial action resulting from an oil or hazardous substance release, or, with respect to response costs, for the costs of response to a threatened release of oil or a hazardous substance, against all property owned by a person who is determined by the commissioner to be liable for the expenditures under this chapter, AS 46.03, AS 46.04, 42 U.S.C. 9607, or other state or federal law. The lien includes interest, at the maximum rate allowable under AS 45.45.010(a), from the date of the expenditures. The state may file an action in a court of competent jurisdiction in order to foreclose on the lien.

(b) A lien established under this section against real property is not effective until

(1) a certificate of lien is recorded in the district recorder's office for the district in which the property is located, describing the property and stating the amount of the lien, the name of the owner as grantor, and, if known, the name of the person causing the oil or hazardous substance release; and

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

(2) the commissioner sends a copy of the certificate of lien by certified mail return receipt requested, or actually delivers a copy of the certificate of lien, to the persons described in (1) of this subsection and to all other persons of record holding an interest in the property.

(c) When any amount with respect to which a lien has been recorded under this section has been paid or reduced, the commissioner shall, upon request of the property owner, issue a certificate discharging or partially releasing the lien. That certificate may be recorded in the office in which the certificate of lien was recorded.

(d) The commissioner may, in the commissioner's discretion, reduce, discharge or partially release a lien under this section if a bond, or other security, in a form and an amount satisfactory to the commissioner is posted. The bond or other security must include an amount sufficient to cover the cost of execution, collection, or foreclosure, including attorney fees. A reduction, discharge, or partial release may not be granted under this subsection if it would be contrary to the public interest. When a lien is reduced, discharged, or partially released under this subsection, the commissioner shall, at the request of the property owner, issue a certificate to that effect.

(e) A person with an ownership interest in property against which a lien is recorded may bring an action in a court of competent jurisdiction to require that the lien be released. The lien may be released to the extent of that person's ownership interest if the court finds that the person is not liable for the expenses incurred by the state in connection with the costs of response, containment, removal, or remedial action resulting from the release or from the threatened release, of oil or a hazardous substance.

SEC. 46.08.080. REGULATIONS.

The commissioner shall periodically review the minimum quantities of hazardous substances established under federal law and may adopt regulations establishing minimum quantities of substances for all or any portion of the substances to which AS 46.08.005 - 46.08.080 otherwise apply. The commissioner may otherwise adopt only those regulations that are expressly required to implement the specific purposes of AS 46.08.005 - 46.08.080.

Article 02. OIL AND HAZARDOUS SUBSTANCE RESPONSE OFFICE

SEC. 46.08.100. OFFICE ESTABLISHED.

There is established in the department the oil and hazardous substance response office. The office shall include a director and employees who are specially trained in programs and technologies related to the containment and cleanup of releases or threatened releases of oil and hazardous substances.

*Sec. 46.08.110., 46.08.120. Response corps; response depots.
[Repealed, Sec. 28 ch 32 SLA 1994].*

Repealed or Renumbered

SEC. 46.08.130. DUTIES OF THE OFFICE.

(a) The office shall be prepared to respond promptly to a discharge of oil or a hazardous substance.

(b) The office may respond under (a) of this section to an oil or hazardous substance discharge only if

(1) the oil discharge is a catastrophic oil discharge that constitutes an emergency under AS 46.04.080 (a);

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

(2) the discharge of oil or a hazardous substance is declared to be an emergency under AS 46.03.865;

(3) the governor declares the discharge an emergency under AS 26.23;

(4) the commissioner reasonably believes that there has been a discharge of oil or a hazardous substance, or that there is a potential discharge of oil or a hazardous substance, and the discharge may qualify under (1) - (3) of this subsection; or

(5) the commissioner reasonably believes that the discharge or potential discharge poses an imminent and substantial threat to public health or welfare or to the environment.

(c) When the office or corps responds to an oil or hazardous substance discharge under this section, its activities shall be guided by the relevant provisions of the incident command system applicable to the type of discharge to which it is responding.

SEC. 46.08.140. EMERGENCY POWERS.

(a) When the office has reasonable grounds to believe that a release of oil or a hazardous substance has occurred or is threatened to occur which, in the judgment of its director, presents an imminent or present danger to the health or welfare of the people of the state or would result in or is likely to result in irreversible or irreparable damage to the natural resources or environment, and it appears to be prejudicial to the interest of the people of the state to delay action until an opportunity for a hearing can be provided, state employees or members of the corps may, with permission of the director and without prior hearing, enter private property for the purpose of containment or cleanup.

(b) The property owner affected by a response action taken under (a) of this section has the right to be heard as soon as practicable and to present proof to the office that the containment or cleanup action is unnecessary or that it is not necessary to enter the person's property for the containment or cleanup action.

SEC. 46.08.150. CONTRACTS.

The department may enter into agreements with agencies of the state and federal government, political subdivisions, the University of Alaska, or private persons or entities to conduct research into oil and hazardous substances spill technology.

SEC. 46.08.160. LIMITATION OF LIABILITY.

The state, an employee of the state, and a member of the corps are not liable for costs or damages as a result of actions taken under AS 46.08.100 - 46.08.190 in response to a release or threatened release unless the actions taken by the state, the employee, or the member of the corps constitute gross negligence or intentional misconduct.

SEC. 46.08.190. DEFINITION OF "OFFICE" FOR AS 46.08.100 - 46.08.190.

In AS 46.08.100 - 46.08.190 "office" means the oil and hazardous substance response office.

Article 03. GENERAL PROVISIONS

SEC. 46.08.900. DEFINITIONS.

In this chapter

(1) "capital improvement" includes construction, renovation, repair of, and improvement to, a building, but does not include other improvements to real property, such as construction of a dike or retaining wall;

(2) "commissioner" means the commissioner of environmental conservation;

(3) "containment and cleanup" includes the direct and indirect efforts associated with the prevention, abatement, containment, or removal of oil or a hazardous substance, and the restoration of the environment; when applied to expenses, the term includes the additional costs of providing a reasonable and appropriate function or service incurred in response to the release of the oil or hazardous substance, including administrative expenses for the incremental costs of providing the function or service;

(4) "department" means the Department of Environmental Conservation;

(5) "fund" means the oil and hazardous substance release prevention and response fund;

(6) "hazardous substance" means (A) an element or compound that, when it enters into or on the surface or subsurface land or water of the state, presents an imminent and substantial danger to the public health or welfare, or to fish, animals, vegetation, or any part of the natural habitat in which fish, animals, or wildlife may be found; or (B) a substance defined as a hazardous substance under 42 U.S.C. 9601 - 9657 (Comprehensive Environmental Response, Compensation, and Liability Act of 1980); "hazardous substance" does not include uncontaminated crude oil or uncontaminated refined oil in an amount of 10 gallons or less;

(7) "oil" means petroleum products of any kind and in any form, whether crude, refined, or a petroleum by-product, including petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oily refuse, oil mixed with other wastes, liquified natural gas, propane, butane, and other liquid hydrocarbons regardless of specific gravity;

(8) "permitted release" means a release occurring under the authority of a valid permit issued by the department or by the Environmental Protection Agency;

(9) "prevention account" means the oil and hazardous substance release prevention account established in AS 46.08.010(a)(1);

(10) "prevention mitigation account" means the oil and hazardous substance release prevention mitigation account established in AS 46.08.020(b);

(11) "release"

(A) means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment;

(B) does not include

(i) a permitted release; or

(ii) an act of nature;

(12) "response account" means the oil and hazardous substance release response account established in AS 46.08.010(a)(2);

(13) "response mitigation account" means the oil and hazardous substance release response mitigation account established in AS 46.08.025(b);

(14) "service"

(A) means a function performed or service provided by a municipality under a duty or power authorized by AS 29 or by another provision of law authorizing a

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

municipality to perform functions or provide services, or a comparable function performed or service provided by a village;

(B) includes functions not previously performed and services not previously provided by the municipality or village;

(15) "threatened release" means that a release is imminent; a release is imminent if

(A) it is impending, or on the point of happening; or

(B) though not impending, in the judgment of the commissioner

(i) the incident or occurrence may reasonably be expected to culminate in an actual release; and

(ii) that actual release may reasonably be expected to cause personal injury, other injury to life, or loss of or damage to property, including the environment;

(16) "village" means a place within the unorganized borough or within a borough if the power, function, or service for which a grant application under AS 29.60.510 is submitted is not exercised or provided by the borough on an areawide or nonareawide basis at the time the grant application is submitted that

(A) has irrevocably waived, in a form approved by the Department of Law, any claim of sovereign immunity that might arise in connection with the use of grant money under this chapter; and

(B) has

(i) a council organized under 25 U.S.C. 476 (sec. 16 of the Indian Reorganization Act);

(ii) a traditional village council recognized by the United States as eligible for federal aid to Indians; or

(iii) a council recognized by the commissioner of commerce, community, and economic development under regulations adopted by the Department of Commerce, Community, and Economic Development to determine and give official recognition of village entities under AS 44.33.755(b).

CHAPTER 09. HAZARDOUS SUBSTANCE RELEASE CONTROL

SEC. 46.09.010. REPORT OF HAZARDOUS SUBSTANCE RELEASES.

(a) Except as provided in (b) of this section, a person in charge of a vehicle, vessel, or container from which, or a place at which, a hazardous substance is released shall report the release to the department and appropriate public safety agencies promptly after learning of the release.

(b) The commissioner may enter into an agreement with a person for the periodic reporting of a controlled release of a hazardous substance if the release is not into water.

SEC. 46.09.020. CONTAINMENT AND CLEANUP OF A RELEASED HAZARDOUS SUBSTANCE.

(a) A person who causes a release of a hazardous substance shall make reasonable efforts to contain and clean up the hazardous substance promptly after learning of the release, unless the commissioner determines

(1) after consulting the Environmental Protection Agency or appropriate public safety agencies, that containment or cleanup is technically infeasible;

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

(2) that containment or cleanup would cause greater environmental damage than if the release were not contained or cleaned up; or

(3) that containment or cleanup would pose a greater threat to human life or health than if the release were not contained or cleaned up.

(b) The commissioner shall develop guidelines prescribing general procedures and methods to be used in the containment and cleanup of a hazardous substance. The guidelines shall be consistent with the national contingency plan revised and republished under 42 U.S.C. 9605.

(c) If the commissioner determines that the containment or cleanup of a hazardous substance undertaken is inadequate, the commissioner may direct the person undertaking the containment or cleanup to cease and may undertake the containment or cleanup directly or by contract.

(d) If it appears to the commissioner that the cause or responsibility for the release of a hazardous substance is unclear or unexplained, the commissioner may immediately undertake the containment and cleanup of the release unless the commissioner determines

(1) after consulting the Environmental Protection Agency or appropriate public safety agencies, that containment or cleanup is technically infeasible;

(2) that containment or cleanup would cause greater environmental damage than if the release were not contained or cleaned up; or

(3) that containment or cleanup would pose a greater threat to human life or health than if the release were not contained or cleaned up.

(e) The commissioner shall enter into agreement with the Environmental Protection Agency, and may enter into agreements with other persons and municipalities, in order to

(1) facilitate a coordinated and effective hazardous substance release response in the state;

(2) provide for cooperative hazardous substance release notification procedures; or

(3) provide for cooperative review of hazardous substance release response contingency plans submitted to the department.

SEC. 46.09.030. DISASTER EMERGENCIES.

The commissioner of environmental conservation or the adjutant general of the Department of Military and Veterans' Affairs may request the governor to determine that an actual or imminent release of a hazardous substance constitutes a disaster emergency under AS 26.23. The commissioner of environmental conservation and the adjutant general of the Department of Military and Veterans' Affairs shall respond appropriately in the relief of the actual or imminent release under the relevant provisions of the applicable incident command system.

SEC. 46.09.040. HAZARDOUS SUBSTANCES CONTAINMENT AND CLEANUP.

The department may contract with a person or a municipality for personnel, equipment, or services that may be useful to carry out the requirements of this chapter. If the department determines that it is infeasible to contract with a person or a municipality, the department may establish and maintain containment and cleanup personnel, equipment, and supplies necessary to carry out the requirements of this chapter. When exercising its authority under this section, the department shall coordinate with the Department of Military and Veterans' Affairs to avoid duplication of efforts.

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

SEC. 46.09.050. COMPACTS AUTHORIZED.

The governor may enter into supplementary agreements, reciprocal arrangements, and compacts with another state or country for the implementation of this chapter subject to the approval of the Congress of the United States, if required, under the Constitution of the United States.

SEC. 46.09.060. MUNICIPALITIES.

(a) If a provision of this chapter or of a regulation adopted by the commissioner under this chapter conflicts with the charter, ordinance, or regulation of a municipality, the provisions of this chapter or of the regulation adopted by the commissioner under this chapter prevails.

(b) Authority to contain, clean up, or prevent a release or threatened release of oil or of a hazardous substance, and to exercise other powers necessary to implement this chapter, AS 46.04, and AS 46.08, are granted to municipalities that do not otherwise have that authority. Except as provided in (a) of this section, a municipality may exercise its police power within the area of the municipality.

SEC. 46.09.070. REGULATIONS.

The commissioner shall periodically review the minimum quantities of hazardous substances established under federal law and may adopt regulations establishing minimum quantities of substances for all or any portion of the substances to which this chapter otherwise applies. The commissioner shall adopt only those regulations that are expressly required to implement the specific purposes of this chapter.

SEC. 46.09.900. DEFINITIONS.

In this chapter

- (1) "commissioner" means the commissioner of environmental conservation;
- (2) "containment and cleanup" includes the direct and indirect efforts associated with the prevention, abatement, containment, or removal of a hazardous substance, and the restoration of the environment; when applied to expenses, the term includes the additional costs of providing a reasonable and appropriate function or service incurred in response to the release of the hazardous substance, including administrative expenses for the incremental costs of providing the function or service;
- (3) "department" means the Department of Environmental Conservation;
- (4) "hazardous substance" means (A) an element or compound that, when it enters into or on the surface or subsurface land or water of the state, presents an imminent and substantial danger to the public health or welfare, or to fish, animals, vegetation, or any part of the natural habitat in which fish, animals, or wildlife may be found; or (B) a substance defined as a hazardous substance under 42 U.S.C. 9601 - 9657 (Comprehensive Environmental Response, Compensation, and Liability Act of 1980); "hazardous substance" does not include uncontaminated crude oil or uncontaminated refined oil;
- (5) "permitted release" means a release occurring under the authority of a valid permit issued by the department or by the Environmental Protection Agency;
- (6) "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, except that "release" does not include a permitted release or an act of nature;

Selected Oil and Other Hazardous Substances Pollution Control Statutes and Regulations

(7) "service" means a function performed or service provided by the state, including functions not previously performed and services not previously provided by the state;

(8) "threatened release" means that a release is imminent; a release is imminent if

(A) it is impending, or on the point of happening; or

(B) though not impending, in the judgment of the commissioner

(i) the incident or occurrence may reasonably be expected to culminate in an actual release; and

(ii) that actual release may reasonably be expected to cause personal injury, other injury to life, or loss of or damage to property, including the environment.

Chapter 46.13. HAZARDOUS SUBSTANCE SPILL TECHNOLOGY REVIEW COUNCIL

Sec. 46.13.010. - 46.13.090l Alaska State Emergency Response Commission.

[Repealed Sec. 28 ch 32 SLA 1994. For current law, see AS 26.23.071 - 26.23.077].

Repealed or Renumbered

Sec. 46.13.100. - 46.13.900l Hazardous Substance Spill Technology Review Council.

[Repealed, Sec. 102 ch 21 SLA 2000].

Repealed or Renumbered

ALASKA ADMINISTRATIVE CODE

TITLE 18. ENVIRONMENTAL CONSERVATION

CHAPTER 75. OIL AND OTHER HAZARDOUS SUBSTANCES

POLLUTION CONTROL

Article

1. Oil Pollution Prevention Requirements (18 AAC 75.005 - 18 AAC 75.090)
2. Financial Responsibility for Oil Discharges (18 AAC 75.205 - 18 AAC 75.290)
3. Discharge Reporting, Cleanup, and Disposal of Oil and Other Hazardous Substances
(18 AAC 75.300 - 18 AAC 75.396)
4. Oil Discharge Prevention and Contingency Plans and Nontank Vessel Plans
(18 AAC 75.400 - 18 AAC 75.496)
5. Oil Spill Primary Response Action Contractors and Nontank Vessel Cleanup Contractors, Incident Management Teams, and Response Planning Facilitators
(18 AAC 75.500 - 18 AAC 75.580)
6. Civil Penalties for Discharge of Petroleum and Petroleum Products and Byproducts
(18 AAC 75.605 - 18 AAC 75.670)
7. Surface Oiling (18 AAC 75.700 - 18 AAC 75.730)
8. Oil Discharge for Scientific Purposes (18 AAC 75.800 - 18 AAC 75.830)
9. General Provisions (18 AAC 75.905 - 18 AAC 75.990)

Editor's notes: Effective May 14, 1992, Register 122, the regulations in 18 AAC 75 were comprehensively reorganized and revised. They replace all previous regulations in this chapter and in 18 AAC 20 (Financial Responsibility), which were repealed simultaneously with the adoption of these regulations. The history line at the end of each section does not reflect the history of that provision before the May 14, 1992 effective date of this chapter, nor is the section numbering related to the numbering before that date.

Previous amendments to 18 AAC 20 and to this chapter are on file in the Office of the Lieutenant Governor as follows:

Selected Alaska Oil & Hazardous Substances Pollution Control Statutes and Regulations

Previous amendments to regulations dealing with financial responsibility, which now appear at 18 AAC 75.205 - 18 AAC 75.275, are found at Register 79, 9/9/81; and at Register 103, 8/6/87.

Previous amendments to regulations dealing with oil and hazardous substances pollution control are found at Register 45, 4/15/73; Register 62, 4/23/77; Register 63, 9/16/77; Register 66, 4/19/78; Register 79, 9/9/81; Register 94, 5/2/85; Register 103, 8/6/87; Register 110, 7/89; Register 115, 8/17/90, and at Register 142, April 4, 1997.

The regulations in 18 AAC 75.300 - 18 AAC 75.396, grouped under Article 3, effective January 22, 1999 and distributed in Register 149, constitute a comprehensive reorganization and revision of material formerly set out at 18 AAC 75.300 - 18 AAC 75.370, which also had been grouped at Article 3. The regulations at 18 AAC 75.300 - 18 AAC 75.396 replace former 18 AAC 75.300 - 18 AAC 75.370, which were repealed simultaneously with the adoption of these regulations. The history line at the end of each section does not reflect the history of the replaced provisions before January 22, 1999. Some section numbers in this revision were used for previous regulations, but current sections are not necessarily related to previous sections with the same section number. The earlier version of 18 AAC 75.300 - 18 AAC 75.370 may be reviewed at the Office of the Lieutenant Governor, and may be found at Register 122, effective May 14, 1992.

ARTICLE 1. OIL POLLUTION PREVENTION REQUIREMENTS.

Section

- 005. Responsibility
- 007. General oil pollution prevention requirements
- 015. Waiver
- 020. Oil discharge prevention training and recordkeeping
- 025. Transfer requirements
- 027. Requirements for laden tank vessels
- 037. Requirements for laden oil barges
- 045. Operating requirements for exploration and production facilities
- 047. Requirements for flow lines at production facilities
- 055. Leak detection, monitoring, and operating requirements for crude oil transmission pipelines
- 065. Field-constructed aboveground oil storage tank requirements
- 066. Shop-fabricated aboveground oil storage tanks
- 075. Secondary containment requirements for aboveground oil storage tanks
- 080. Requirements for facility oil piping
- 085. Requirements for railroad tank cars and operations by rail
- 090. (Repealed).

18 AAC 75.005. RESPONSIBILITY.

The owner or operator of a tank vessel, oil barge, pipeline, oil terminal, railroad tank car, exploration facility, or production facility subject to the requirements of AS 46.04.030 or AS 46.04.055(j) is responsible for meeting the applicable requirements of this chapter and for preventing the discharge of oil into waters or onto land of the state. (Eff. 5/14/92, Register 122; am 12/14/2002, Register 164; am 12/30/2006, Register 180)

Authority:	AS 46.03.020	AS 46.04.030	AS 46.04.055
	AS 46.03.740	AS 46.04.050	AS 46.04.070

18 AAC 75.007. GENERAL OIL POLLUTION PREVENTION REQUIREMENTS.

(a) Except where application of the requirements of 18 AAC 75.005 - 18 AAC 75.085 would be preempted by federal law, those requirements apply to each facility or operation for which an approved oil discharge prevention and contingency plan is required under AS 46.04.030 or AS 46.04.055(j).

(b) A vessel, barge, pipeline, railroad tank car, or other facility subject to the applicable requirements of this chapter must be equipped and operated in accordance with this chapter and other state and federal law applicable to the prevention of an oil discharge. A railroad must be operated in compliance with applicable federal railroad safety regulations.

(c) If a requirement of 18 AAC 75.005 – 18 AAC 75.085 and a corresponding requirement of federal law differ and application of the requirement of 18 AAC 75.005 – 18 AAC 75.085 would not be preempted by federal law, the more stringent requirement applies.

(d) Repealed 12/30/2006

(e) The owner or operator shall have in place programs designed to ensure that each drill operator, each person who has navigational, towline, security, or maintenance duties, and any other person directly responsible for an activity that might result in a violation of this chapter is free of substance-abuse or medical conditions that would impair that person's ability to do that person's job. The requirements of this section may be met

Selected Alaska Oil & Hazardous Substances Pollution Control Statutes and Regulations

(1) for a railroad, by a program in accordance with 49 C.F.R. Part 219, revised as of October 1, 2005 and adopted by reference;

(2) for a pipeline, by a program in accordance with 49 C.F.R. Part 199, revised as of October 1, 2005 and adopted by reference; or

(3) for a vessel, by a program in accordance with 46 C.F.R. Part 16, revised as of October 1, 2005 and adopted by reference

(f) The owner or operator shall provide security measures and surveillance appropriate to each component of the operation to minimize the risk of vandalism, sabotage, and unauthorized entry.

(g) Repealed 12/30/2006.

(h) Repealed 12/30/2006. (Eff. 5/14/92, Register 122; am 4/4/97, Register 142; am 12/14/2002, Register 164; am 12/30/2006, Register 180)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070
AS 46.04.030

18 AAC 75.015. WAIVER.

(a) The department may waive a requirement of 18 AAC 75.005 – 18 AAC 75.085 if the owner or operator demonstrates to the department’s satisfaction that an equivalent level of protection will be achieved by using a technology or procedure other than the technology or procedure required by 18 AAC 75.005 – 18 AAC 75.085. (Eff. 5/14/92, Register 122; am 5/26/2004, Register 170; am 12/30/2006, Register 180)

Authority: AS 46.03.020 AS 46.04.050 AS 46.04.070
AS 46.04.030

18 AAC 75.020. OIL DISCHARGE PREVENTION TRAINING AND RECORDKEEPING.

(a) The owner or operator shall have in place personnel training programs designed to ensure that all personnel with job duties directly involving inspection, maintenance, or operation of oil storage and transfer equipment regulated under 18 AAC 75.005 - 18 AAC 75.085 are appropriately and regularly trained regarding company and state oil pollution prevention measures that are applicable to each position’s duties.

(b) Personnel training programs must include

(1) a listing of each position with job duties described in (a) of this section and the training and level of knowledge appropriate to that position;

(2) a listing of any licenses, certifications, or other prerequisites needed to hold each position listed in (1) of this subsection; and

(3) a listing of training objectives and the means of achieving them, including training subjects, training schedules, frequency, and type.

(c) Completion of training required by this subsection shall be verified by

(1) a statement, signed and dated by each participant, listing the course or program content;

(2) shipboard records verified by the vessel master; or

(3) computerized records verified by the owner or operator.

(d) The owner or operator shall maintain for the life of the facility or operation, a history of all known oil discharges over 55 gallons within the state, including the source, cause, amount, and corrective action taken. Copies of records shall be provided to the department upon request.

(e) The owner or operator shall prepare and maintain records in retrievable form to document training, inspections, tests, maintenance, and repairs required by 18 AAC 75.005 - 18 AAC 75.085. Unless specified otherwise in this chapter, records must be kept for at least five years and copies shall be provided to the department upon request. (Eff. 12/30/2006, Register 180)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070
AS 46.04.030

18 AAC 75.025. TRANSFER REQUIREMENTS.

(a) The owner or operator of an oil terminal facility, railroad, tank vessel, or oil barge shall take all appropriate measures to prevent spills or overfilling during a transfer of oil, including reduced loading rates at the beginning and end of a transfer.

(b) Unless it is technically unfeasible to do so, an oil containment boom appropriate for local conditions must be deployed in an effective manner around a tank vessel or oil barge during the transfer of

- (1) crude oil;
- (2) other persistent product; and
- (3) oily ballast water.

(c) Except for crude oil washing, tank cleaning operations may not be conducted during cargo offloading.

(d) The owner or operator shall ensure that each person involved in a transfer is capable of clearly communicating orders to stop a transfer at any time during the transfer.

(e) A positive means must be provided to stop a transfer in the shortest possible time consistent with the best commercially available technology.

(f) Before beginning a transfer to or from an area not protected by secondary containment, the owner or operator shall ensure that all valves in the transfer system have been checked to ensure that they are in the correct position, and that all manifolds not in use are blank flanged or capped. Where feasible, the owner or operator shall also inspect for damage or defects all piping and hoses used in the transfer before and at least once during each transfer.

(g) The lowermost drain and all outlets of any tank car or tank truck must be visually examined for leakage before filling and before departure. All tank car or tank truck manifolds must be blank flanged or capped, and valves must be secured before leaving the transfer area.

(h) All aboveground transfer piping that is used to transfer oil to or from docks or vessels must be visually checked before and during each transfer or monthly, whichever is less frequent.

(i) For purposes of (b) of this section, deployment of an oil containment boom is technically unfeasible if

(1) expected tidal currents and other local environmental conditions preclude the effective configuration and operation of the oil containment boom due to entrainment or splash over; or

(2) the physical facility layout precludes the effective configuration of the oil containment boom around the tank vessel or oil barge.

(j) In this section, "transfer" means any movement of oil within an oil terminal facility or between an oil terminal facility and a railroad tank car, tank truck, tank vessel, or oil barge by means of pumping, gravity, or displacement. (Eff. 5/14/92, Register 122; am 10/28/2000, Register 156; am 12/14/2002, Register 164; am 12/30/2006, Register 180)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070
AS 46.04.030

18 AAC 75.027. REQUIREMENTS FOR LADEN TANK VESSELS.

(a) In addition to meeting the applicable requirements of 18 AAC 75.007 - 18 AAC 75.025, a laden tank vessel must carry or have ready access to sufficient oil transfer equipment to facilitate lightering to and from other vessels. The oil transfer equipment must be sufficient to lighter the volume of the largest cargo tank within 24 hours.

(b) The owner or operator shall ensure that each laden tank vessel has on board a person who is designated as an oil spill prevention and response officer and is responsible for training and drilling the crew on state and federal oil pollution prevention and response requirements.

(c) If the master is not fluent in English, a person fluent in English and in the master's language must be immediately available to the bridge of any laden tank vessel when underway in state waters.

(d) The owner or operator shall ensure that measures are in place that allow the prompt detection of an oil discharge, including

- (1) visual lookouts;
- (2) the sounding of all cargo tanks to check cargo and water levels in the tanks after an intentional or unintentional grounding, collision, or allision; and
- (3) where technically feasible, electronic leak detection systems.

(e) A tank vessel under escort by another vessel must, at all times, be operated in a manner that permits the escort vessel to be available immediately to provide the intended assistance to the tank vessel.

(f) While in state waters, towing line must be made up and prepared for rapid deployment to a towing vessel. The tow line must be fitted to allow tow vessels commonly available in the area of operation to take the vessel in tow rapidly. For a vessel operating at the oil loading terminal at Valdez, the Prince William Sound towing package may be used instead of having lines made up, if the package permits rapid deployment to a towing vessel. (Eff. 5/14/92, Register 122; am 12/30/2006, Register 180)

Authority: AS 46.03.020 AS 46.04.030 AS 46.04.070

18 AAC 75.037. REQUIREMENTS FOR LADEN OIL BARGES.

(a) In addition to meeting the applicable requirements of 18 AAC 75.007 - 18 AAC 75.025, a laden oil barge must carry or have ready access to sufficient oil transfer equipment to facilitate lightering to and from other vessels. The oil transfer equipment must be sufficient to lighter the volume of the largest cargo tank within 24 hours.

(b) The owner or operator of a laden oil barge shall ensure that each barge or vessel towing a barge has on board a person who is designated as an oil spill prevention and response officer and is responsible for training and drilling the crew on state and federal oil pollution prevention and response requirements.

(c) If the master is not fluent in English, a person fluent in English and in the master's language must be immediately available to any vessel towing an oil laden barge.

(d) The owner or operator shall ensure that measures are in place that allow the prompt detection of an oil discharge, including visual inspections of the barge and the area around the barge, and the sounding of all cargo tanks to check cargo and water levels in the tanks after an intentional or unintentional grounding, collision, or allision.

(e) The owner or operator shall inspect towing equipment every two months and shall record the results of each inspection and any actions taken to resolve problems discovered during an inspection.

(f) The owner or operator shall provide an adequate means of recovering a barge that breaks free of its towing vessel. The recovery means must be capable of being used by other vessels if the towing vessel is lost or incapacitated. (Eff. 5/14/92, Register 122; am 12/30/2006, Register 180)

Authority: AS 46.03.020 AS 46.04.030 AS 46.04.070

18 AAC 75.045. OPERATING REQUIREMENTS FOR EXPLORATION AND PRODUCTION FACILITIES.

(a) In addition to the applicable requirements of 18 AAC 75.007 - 18 AAC 75.025, the owner or operator of an exploration or production facility shall collect and store oil produced during a formation flow test or other drilling operation in a manner that prevents the oil from entering the land or waters of the state.

(b) In state waters, a marine structure used for drilling must be inspected for fatigue and structural integrity as required by 30 C.F.R. Part 250, Subpart I, revised as of July 1, 2001 and adopted by reference. The inspection must be conducted after installation of the structure and before drilling or production operations begin. The owner or operator shall submit to the department a report of the inspection results and any corrective actions taken.

(c) Closure valves for pipelines leaving marine structures must be located at a protected location that isolates the pipeline from the structure if a discharge or other emergency occurs and must function both manually and remotely as part of an emergency shutdown system.

(d) The owner or operator of an exploration or production facility shall provide, at a minimum,

(1) containment and collection devices such as drip pans and curbs for offshore exploration and production wells; and

(2) wellhead sumps for exploration and production wells located onshore or on artificial islands or ice islands; for exploration and production wells drilled and completed after December 30, 2008 and located onshore or on artificial islands or ice islands, wellhead sumps shall be designed and installed to be sufficiently impermeable.

(e) A marine structure used for oil production other than an artificial island, must have a sufficiently impermeable deck with catch tanks or other devices adequate to contain, collect, and divert spilled oil. The catch tank must have adequate storage capacity to contain anticipated and accidental discharges of oil and high-liquid-level alarms that will immediately notify the operator if a high liquid level develops.

(f) Aboveground oil storage tanks, including bulk fuel tanks, must meet the applicable requirements of 18 AAC 75.065, 18 AAC 75.066, and 18 AAC 75.075.

(g) Piping associated with an exploration or production facility must meet the applicable requirements of 18 AAC 75.047 and 18 AAC 75.080. (Eff. 5/14/92, Register 122; am 12/30/2006, Register 180)

Authority: AS 46.03.020 AS 46.04.030 AS 46.04.070

18 AAC 75.047. REQUIREMENTS FOR FLOW LINES AT PRODUCTION FACILITIES.

(a) The requirements of this section apply to each flow line associated with a production facility.

(b) Unless the owner or operator must comply with a more stringent requirement set out in this section, the owner or operator shall ensure that the design and construction of each flow line placed in service after December 30, 2008 is consistent with one of the following standards:

Selected Alaska Oil & Hazardous Substances Pollution Control Statutes and Regulations

(1) American Society of Mechanical Engineers, *Pipeline Transportation Systems for Liquid Hydrocarbons and Other Liquids*, 2002 Edition (ASME B31.4-2002), adopted by reference;

(2) American Society of Mechanical Engineers, *Gas Transmission and Distribution Piping Systems*, 2003 Edition (ASME B31.8-2003), adopted by reference;

(3) another equivalent and nationally recognized standard approved by the department.

(c) No later than December 30, 2007, the owner or operator shall ensure that measures for controlling corrosion in flow lines are undertaken, including, at a minimum,

(1) a corrosion monitoring and control program consistent with Chapter VIII of *Pipeline Transportation Systems for Liquid Hydrocarbons and Other Liquids* (ASME B31.4-2002), adopted by reference in (b)(1) of this section;

(2) unless a more stringent requirement is set out in this section, external corrosion control of buried or submerged flow lines consistent with NACE International's *Standard Recommended Practice: Control of External Corrosion on Underground or Submerged Metallic Piping Systems*, 2002 edition (NACE, RP0169-2002), adopted by reference;

(3) external corrosion control of aboveground flow lines by the application of a protective coating, by the use of corrosion-resistant alloys, or by another method approved by the department, unless the operator demonstrates by test, investigation, or experience appropriate to the environment of the flow line segment, that the anticipated extent of corrosion will not affect the flow line's fitness for service; and

(4) a program designed to minimize internal corrosion, including, as appropriate, one or more of the following:

(A) removal of foreign material by scraping or pigging;

(B) treatment of residual water or dehydration;

(C) injection of inhibitors, biocides, or other chemical agents;

(D) removal of dissolved gases by thermal or mechanical means;

(E) gas blanketing;

(F) continuous internal coating or lining;

(G) another method approved by the department.

(d) No later than December 30, 2007, the operator shall

(1) completely contain the entire circumference of the flow line and provide the interstitial space with a leak detection system approved by the department; or

(2) have in place a preventative maintenance program that ensures the continued operational reliability of any flow line system component affecting quality, safety, and pollution prevention; the owner or operator shall ensure that the program,

(A) for submerged flow lines, is consistent with Chapters VII through IX of *Pipeline Transportation Systems for Liquid Hydrocarbons and Other Liquids* (ASME B31.4-2002), adopted by reference in (b)(1) of this section;

(B) for buried flow lines, is consistent with Chapters VII and VIII of *Pipeline Transportation Systems for Liquid Hydrocarbons and Other Liquids* (ASME B31.4-2002), adopted by reference in (b)(1) of this section;

(C) for aboveground flow lines, as appropriate, a program consistent with

(i) the requirements of American Petroleum Institute's (API) *Piping Inspection Code: Inspection, Repair, Alteration, and Rerating of In-service Piping Systems*, Second Edition, October 1998, Addendum 1, February 2000, Addendum 2, December 2001, and Addendum 3, August 2003 (API 570), adopted by reference excluding Section 8; and

(ii) Chapters VII and VIII of *Pipeline Transportation Systems for Liquid Hydrocarbons and Other Liquids* (ASME B31.4-2002), adopted by reference in (b)(1) of this section; and

(D) for all flow lines, procedures to review proposed changes in operations to evaluate potential impacts on pipe integrity.

(e) Line markers shall be installed no later than December 30, 2007 and maintained over each onshore flow line at each road crossing and at one-mile intervals along the remainder of the pipe to identify and, for buried pipe, properly locate each flow line.

(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

(1) in the case of a piggable pipe, a cleaning pig is run through the pipe;

(2) in the case of a pipe that is not piggable but that can be drained entirely of its contents by gravity, the pipe is completely drained of oil; or

(3) in all other cases, air is blown through the pipe or another method is used to flush or evacuate standing oil accumulated in low spots.

(g) Aboveground flow lines must be supported consistent with the requirements of Paragraph 421 of *Pipeline Transportation Systems for Liquid Hydrocarbons and Other Liquids* (ASME 31.4-2002), adopted by reference in (b)(1) of this section.

(h) The owner or operator shall verify compliance with the requirements of (c) and (d)(2) of this section by documentation, including

(1) for corrosion control measures under (c) of this section, documentation to validate the effectiveness of those measures, including

(A) dates and locations of inspections and tests;

(B) inspections and test data evaluation including analysis of

(i) weight loss coupons and electrical resistance probes; and

(ii) corrosion inspections;

(C) data and analysis of chemical optimization activities;

(D) analysis of corrosion trends that affect the fitness for service of the flow

line; and

(E) a list and description of repair activities undertaken; and

(2) for a preventative maintenance program under (d)(2) of this section, documentation to validate the effectiveness of that program, including

(A) the procedures for program implementation under (d)(2) of this

section;

(B) dates and locations of inspections and tests;

(C) inspections and test data evaluation including analysis, pipewall thickness measurements, and remaining life calculations; and

(D) internal audit procedures of the program, including descriptions of controls and corrections for identified defects.

(i) In this section,

(1) “buried” means covered or in contact with soil;

(2) “defects”

(A) means an imperfection listed in Paragraph 451.6.2 of *Pipeline Transportation Systems for Liquid Hydrocarbons and Other Liquids* (ASME B.31.4-2002), adopted by reference in (b)(1) of this section; and

(B) has the meaning given in Section 3.10 of *Piping Inspection Code: Inspection, Repair, Alteration, and Rerating of In-service Piping Systems* (API 570), adopted by reference in (d)(2) of this section;

(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 this section;

(4) “submerged” means located below the surface of waters of the state.
(Eff. 12/30/2006, Register 180)

Authority: AS 46.03.020 AS 46.04.030 AS 46.04.070

Editor’s Note: The publications adopted by reference in 18 AAC 75.047 may be reviewed at the department’s offices in Anchorage, Fairbanks or Juneau, or may be obtained directly from the appropriate publisher. The mailing address, telephone number, facsimile number, and website, if available, for each publisher are as follows: American Society of Mechanical Engineers (ASME), 22 Law Drive, P.O. Box 2300, Fairfield, New Jersey 07007-2300; telephone (800) 843-2763; fax (973) 882-1717; website: <http://www.asme.org/>; NACE International, 1440 South Creek Drive, Houston, Texas 77084-4906; telephone (800) 797-6223; fax (281) 228-6300; website: <http://www.nace.org/>; American Petroleum Institute (API), 1220 L Street NW, Washington, DC 20005-4070; telephone (202) 682-8000; fax (303) 397-2740; website: <http://www.api.org/>.

18 AAC 75.055. LEAK DETECTION, MONITORING, AND OPERATING REQUIREMENTS FOR CRUDE OIL TRANSMISSION PIPELINES.

(a) A crude oil transmission pipeline must be equipped with a leak detection system capable of promptly detecting a leak, including

- (1) if technically feasible, the continuous capability to detect a daily discharge equal to not more than one percent of daily throughput;
- (2) flow verification through an accounting method, at least once every 24 hours; and
- (3) for a remote pipeline not otherwise directly accessible, weekly aerial surveillance, unless precluded by safety or weather conditions.

(b) The owner or operator of a crude oil transmission pipeline shall ensure that the incoming flow of oil can be completely stopped within one hour after detection of a discharge.

(c) If aboveground oil storage tanks are present at the crude oil transmission pipeline facility, the owner or operator shall meet the applicable requirements of 18 AAC 75.065, 18 AAC 75.066, and 18 AAC 75.075.

(d) For facility oil piping connected to or associated with the main crude oil transmission pipeline the owner or operator shall meet the requirements of 18 AAC 75.080. (Eff. 5/14/92, Register 122; am 12/30/2006, Register 180)

Authority: AS 46.03.020 AS 46.04.030 AS 46.04.070

18 AAC 75.065. FIELD-CONSTRUCTED ABOVEGROUND OIL STORAGE TANK REQUIREMENTS.

(a) Unless the owner or operator must comply with a more stringent requirement set out in this section, the owner or operator of an oil terminal, crude oil pipeline, exploration, or production facility shall maintain and inspect each field-constructed aboveground oil storage tank consistent with the requirements, as appropriate, of American Petroleum Institute’s (API)

- (1) *Tank Inspection, Repair, Alteration, and Reconstruction*, Third Edition, December 2001, and Addendum 1, September 2003 (API 653), adopted by reference; or
- (2) *Recommended Practice for Setting, Maintenance, Inspection, Operation, and Repair of Tanks in Production Service*, Fifth Edition, August 1997 (API RP 12R1) adopted by reference.

(b) Inspection intervals for a field-constructed aboveground oil storage tank

- (1) may be reduced by the department

Selected Alaska Oil & Hazardous Substances Pollution Control Statutes and Regulations

- (A) for a field-constructed aboveground oil storage tank older than 30 years;
 - (B) for a field-constructed aboveground oil storage tank that is riveted or bolted;
 - (C) for a field-constructed aboveground oil storage tank with a demonstrated structural, corrosion, or foundation problem; or
 - (D) after a significant seismic event;
- (2) may not be based upon similar service as specified in Section 6.4.2 of *Tank Inspection, Repair, Alteration, and Reconstruction* (API 653), adopted by reference in (a) of this section; and
- (3) may be based upon risk-based inspection as specified in Section 6.4.3 of *Tank Inspection, Repair, Alteration, and Reconstruction* (API 653), adopted by reference in (a) of this section, if the risk based inspection assessment is submitted to the department for approval; the assessment must include
- (A) a quantitative risk assessment, signed by a registered engineer and conducted in accordance with the American Petroleum Institute's (*API Risk-Based Inspection*, First Edition, May 2002 (API RP 580), adopted by reference; and
 - (B) an inspection schedule with inspection intervals not to exceed 30 years.
- (c) An onshore elevated field-constructed aboveground oil storage tank whose configuration allows external inspection of more than 50 percent of the tank bottom is not required to undergo an internal inspection if
- (1) an external integrity inspection is substituted, and performed in accordance with *Tank Inspection, Repair, Alteration, and Reconstruction* (API 653), adopted by reference in (a) of this section, or *Recommended Practice for Setting, Maintenance, Inspection, Operation, and Repair of Tanks in Production Service* (API RP 12R1), adopted by reference in (a) of this section; and
 - (2) the external integrity inspection includes an inspection and a nondestructive integrity test of the tank, including the tank bottom.
- (d) Records and documentation
- (1) required by this section shall be maintained by the owner or operator, except as provide in (2) of this subsection, for the service life of the tank and shall be provided to the department for inspection and copying upon request;
 - (2) of inspections required as specified in Section 6.3.1 of *Tank Inspection, Repair, Alteration, and Reconstruction* (API 653), adopted by reference in (a) of this section, shall be maintained by the owner or operator for five years and shall be provided to the department for inspection and copying upon request.
- (e) The owner or operator shall notify the department
- (1) as soon as practical before a field-constructed aboveground oil storage tank undergoes 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; and
 - (2) before a field-constructed aboveground oil storage tank 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.
- (f) A field-constructed aboveground oil storage tank served by an internal steam heating system must be designed to control leakage through defective heating coils. Condensate lines must be monitored, passed through an oil separating device, or passed through a retention system.
- (g) An internal lining system installed and used to control corrosion or to meet the requirements of (h) of this section must be installed in accordance with the American Petroleum Institute's (API)
- (1) *Lining of Aboveground Petroleum Storage Tank Bottoms*, First Edition, 1991 (API RP 652), adopted by reference, for an internal lining system installed before December 30, 2008; or

Selected Alaska Oil & Hazardous Substances Pollution Control Statutes and Regulations

(2) *Lining of Aboveground Petroleum Storage Tank Bottoms*, Third Edition, October 2005 (API RP 652), adopted by reference, for an internal lining system installed on or after December 30, 2008.

(h) An owner or operator of an installation placed in service before May 14, 1992 shall

(1) equip each field-constructed aboveground oil storage tank with one or more of the following:

(A) a leak detection system that an observer from outside the tank can use to detect leaks in the bottom of the tank, such as secondary catchment under the tank bottom with a leak detection sump, a sensitive gauging system, or another leak detection system approved by the department;

(B) cathodic protection in accordance with the American Petroleum Institute's (API) *Cathodic Protection of Aboveground Petroleum Storage Tanks*, First Edition, 1991 (API RP 651), adopted by reference;

(C) a thick film liner in accordance with *Linings of Aboveground Petroleum Storage Tank Bottoms*, First Edition, 1991 (API RP 652), adopted by reference in (g)(1) of this section;

(D) another leak detection or spill prevention system approved by the department; and operate and maintain, after December 30, 2007, the cathodic protection system on each field-constructed aboveground oil storage tank consistent with Section 11 of *Standard Recommended Practice: External Cathodic Protection of On-Grade Carbon Steel Storage Tank Bottoms* (NACE RP0193-2001), adopted by reference in (j) of this section; a corrosion expert or qualified cathodic protection tester shall perform a cathodic protection survey specified under that standard.

(i) The owner or operator of an installation placed in service on or after May 14, 1992 and before December 30, 2008 shall meet each of the following requirements:

(1) each field-constructed aboveground oil storage tank must be constructed and installed in compliance with

(A) the American Petroleum Institute's (API)

(i) *Welded Steel Tanks for Oil Storage*, Eighth Edition, 1988 (API 650), adopted by reference;

(ii) *Specifications for Field Welded Tanks for Storage of Production Liquids*, Ninth Edition, 1989 (API Spec 12D), adopted by reference;

(iii) *Specification for Shop Welded Tanks for Storage of Production Liquids*, 10th Edition, 1989 (API Spec 12F), adopted by reference; or

(iv) *Specification for Fiberglass Reinforced Tanks*, First Edition, 1986 (API Spec 12P), adopted by reference; or

(B) another equivalent standard approved by the department;

(2) a field-constructed aboveground oil storage tank may not be of riveted or bolted construction;

(3) cathodic protection or another approved corrosion control system must be installed, to protect the bottom of each field-constructed aboveground oil storage tank from external corrosion where local soil conditions warrant; after December 30, 2007, operation and maintenance of the cathodic protection system must be consistent with Section 11 of *External Cathodic Protection of On-Grade Carbon Steel Storage Tank Bottoms* (NACE RP 0193-2001), adopted by reference in (j) of this section; a corrosion expert or qualified cathodic protection tester shall perform a cathodic protection survey specified under that standard;

(4) each field-constructed aboveground oil storage tank must be equipped with one or more of the following leak detection systems that an observer from outside the tank can use to detect leaks in the bottom of the tank:

Selected Alaska Oil & Hazardous Substances Pollution Control Statutes and Regulations

- (A) secondary catchment under the tank bottom with a leak detection sump;
- (B) a sensitive gauging system;
- (C) another leak detection system approved by the department.

(j) An owner or operator of an installation placed in service after December 30, 2008 shall meet each of the following requirements:

(1) each field-constructed aboveground oil storage tank must be constructed and installed in compliance with

(A) the American Petroleum Institute's (API) *Welded Steel Tanks for Oil Storage*, 10th Edition, November 1998, Addendum 1, January 2000, Addendum 2, November 2001, and Addendum 3, September 2003 (API 650), adopted by reference;

(B) the American Petroleum Institute's (API) *Specification for Field Welded Tanks for Storage of Production Liquids*, 10th Edition, November 1994 (API Spec 12D), adopted by reference; or

(C) another equivalent standard approved by the department;

(2) a field-constructed aboveground oil storage tank may not be of riveted or bolted construction;

(3) a cathodic protection system or another approved corrosion control system shall be installed to protect the bottom of each field-constructed aboveground oil storage tank from external corrosion unless deemed not necessary by an evaluation conducted by a corrosion expert in accordance with Chapter 5 of the American Petroleum Institute's (API) *Cathodic Protection of Aboveground Petroleum Storage Tanks*, Second Edition, December 1997 (API RP 651), adopted by reference; a cathodic protection system must be

(A) designed by a corrosion expert;

(B) installed under the supervision of a corrosion expert; and

(C) installed, operated, and maintained in accordance with NACE International's *Standard Recommended Practice: External Cathodic Protection of On-Grade Carbon Steel Storage Tank Bottoms*, 2001 edition (NACE RP0193-2001), adopted by reference: a corrosion expert or qualified cathodic protection tester shall perform a cathodic protection survey specified under that standard; and

(4) each field constructed aboveground oil storage tank must be equipped with

(A) a leak detection system that

(i) an observer from outside the tank can use to detect leaks in the bottom of the tank; and

(ii) is designed and installed, in accordance with Appendix I of *Welded Steel Tanks for Oil Storage* (API 650), adopted by reference in (1) of this subsection; or

(B) another leak detection system approved by the department.

(k) In addition to meeting the applicable requirements of 18 AAC 75.025, and except as required in (1) of this subsection, the owner or operator of a field-constructed aboveground oil storage tank shall ensure that one or more of the following means of preventing overfilling is provided:

(1) high liquid level alarms with signals that sound and display in a manner immediately recognizable by personnel conducting a transfer; an installation placed in service after

December 30, 2008 must be in compliance with this paragraph, regardless of whether another means of preventing overfilling is provided;

(2) high liquid level automatic pump shutoff devices set to stop flow at a predetermined tank content level;

(3) a means of immediately determining the liquid level of each bulk storage tank, if the liquid level is closely monitored during a transfer;

(4) a system approved by the department which will immediately notify the operator of high liquid levels.

(l) Overfill protection devices must be tested before each transfer operation or monthly, whichever is less frequent. If monthly testing would necessitate interrupting the operation of a system subject to continuous flow, the owner or operator may substitute monthly inspection and annual testing for the monthly testing of overfill protection devices.

(m) An owner or operator who installs a cathodic protection system after December 30, 2008 on a field-constructed aboveground oil storage tank shall meet the applicable requirements of (j)(3) of this section.

(n) An owner or operator shall maintain the cathodic protection test lead wires on a field-constructed aboveground oil storage tank in a condition that enables electrical measurements to determine the effectiveness of a cathodic protection system.

(o) A field-constructed aboveground oil storage tank removed from service for more than one year must be free of accumulated oil, marked 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 disconnected from facility piping. The owner or operator shall notify the department when a tank is removed from service and when the actions required by this subsection are completed. In this subsection, "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 this section. (Eff. 5/14/92, Register 122; am 5/26/2004, Register 170; am 12/30/2006, Register 180)

Authority: AS 46.03.020 AS 46.04.030 AS 46.04.070

Editor's Note: The publications adopted by reference in 18 AAC 75.065 may be reviewed at the department's offices in Anchorage, Fairbanks, or Juneau, or may be obtained directly from the appropriate publisher. The mailing address, telephone number, facsimile number, and website, if available, for each publisher are as follows: American Petroleum Institute (API), 1220 L Street NW, Washington, DC 20005-4070; telephone (202) 682-8000; fax (303) 397-2740; website: <http://www.api.org/>; NACE International, 1440 South Creek Drive, Houston, Texas 77084-4906; telephone (800) 797-6223; fax (281) 228-6300; website: <http://www.nace.org>.

18 AAC 75.066. SHOP-FABRICATED ABOVEGROUND OIL STORAGE TANKS.

(a) The owner or operator of a shop-fabricated aboveground oil storage tank placed in service

(1) on or before December 30, 2008 shall meet the requirements of (f) - (h) of this section;

(2) after December 30, 2008 shall meet the requirements of this section.

(b) Unless the owner or operator must comply with a more stringent requirement set out in this section, the owner or operator shall ensure that

(1) one of the following standards is used for the design and construction of each shop-fabricated aboveground oil storage tank:

(A) Underwriters Laboratories' (UL) *Steel Aboveground Tanks for Flammable and Combustible Liquids*, Eighth Edition, dated July 11, 2002 (UL 142), adopted by reference;

(B) Appendix J of the American Petroleum Institute's (API) *Welded Steel Tanks for Oil Storage*, 10th Edition, November 1998, Addendum 1, January 2000, Addendum 2, November 2001, Addendum 3, September 2003 (API 650), adopted by reference;

Selected Alaska Oil & Hazardous Substances Pollution Control Statutes and Regulations

(C) the American Petroleum Institute's (API) *Specification for Shop Welded Tanks for Storage of Production Liquids*, 11th Edition, November 1994 (API Spec 12F), adopted by reference;

(D) the Steel Tank Institute's (STI) *Standard for Aboveground Tanks with Integral Secondary Containment*, revised as of October 21, 2004 (STI F921-03), adopted by reference;

(E) Underwriters Laboratories' (UL) *Protected Aboveground Tanks for Flammable and Combustible Liquids*, Second Edition, revised as of December 1, 1999 (UL 2085), adopted by reference; or

(2) the design of a shop-fabricated above ground oil storage tank is certified by a registered engineer, and approved by the department as equivalent to a design for which a standard listed in (1) of this subsection is used.

(c) The owner or operator of a vaulted shop-fabricated aboveground oil storage tank shall ensure that the tank has

(1) a discrete secondary containment vault system

(A) constructed of

(i) seamless, poured concrete that is sealed or lined;

(ii) welded carbon or stainless metal; or

(iii) other impermeable material; and

(B) able to contain 100 percent of the volume of the tank plus any necessary allowance for precipitation; and

(2) sufficient personnel access to allow full physical inspection of all sides of the tank.

(d) The owner or operator of a self-diked shop-fabricated aboveground oil storage tank shall ensure that the tank

(1) has access that allows visual inspection for corrosion or damage to the

(A) outer shell of the storage tank; and

(B) interior surfaces of the integral secondary containment dike;

(2) has, at each tank fill connection, a fixed overfill spill containment system designed to prevent a discharge when a transfer hose or pipe is detached from the tank fill pipe or to divert that discharge into the secondary containment dike;

(3) is equipped with a system for freeing water or spilled fuel from the integral dike and for regular maintenance in accordance with 18 AAC 75.075(c) and (d); and

(4) is equipped with an operating interstitial monitoring system that enables an observer from outside the tank to detect oil leaks from the tank bottom and water accumulation within the secondary containment area.

(e) The owner or operator of a double-walled shop-fabricated aboveground oil storage tank shall ensure that the tank is equipped

(1) with an operating interstitial monitoring system that enables an observer from outside the tank to detect oil leaks and water accumulation;

(2) at each tank fill connection with a fixed overfill spill containment system designed to prevent a discharge when a transfer hose or pipe is detached from the tank fill pipe; and

(3) with a system for freeing water or spilled fuel from the interstitial space and for regular maintenance in accordance with 18 AAC 75.075(c) and (d).

(f) Unless the owner or operator must comply with a more stringent requirement set out in this section, the owner or operator of an oil terminal facility, crude oil pipeline, exploration facility, or production facility shall ensure that one of the following standards is used for the maintenance and inspection of each shop-fabricated aboveground oil storage tank:

(1) the Steel Tank Institute's (STI) *Standard for the Inspection of Aboveground Storage Tanks*, Third Edition, July 2005, (STI SP001), adopted by reference;

(2) the American Petroleum Institute's (API) *Tank Inspection, Repair, Alteration, and Reconstruction*, Third Edition, December 2001, and Addendum 1, September 2003 (API 653), adopted by reference;

(3) another equivalent standard approved by the department.

(g) In addition to the applicable requirements of 18 AAC 75.025, the owner or operator of a shop-fabricated aboveground oil storage tank

(1) shall ensure that the tank is equipped with one or more of the following means of preventing discharges:

(A) high liquid level alarms with signals that sound and display in a manner immediately recognizable by personnel conducting a transfer;

(B) high liquid level automatic pump shutoff devices set to stop flow at a predetermined tank content level;

(C) a means of immediately determining the liquid level of each bulk storage tank, if the liquid level is closely monitored during a transfer;

(D) a system approved by the department which will immediately notify the operator of high liquid levels; and

(2) if the tank is placed in service after December 30, 2008, shall ensure that the tank is equipped, at each tank fill connection, with a fixed overfill spill containment system designed to prevent a discharge when a transfer hose or pipe is detached from the tank fill pipe.

(h) The owner or operator of a shop-fabricated aboveground storage tank shall ensure that each discharge prevention device for the tank is tested before each transfer operation or monthly, whichever is less frequent. If monthly testing would necessitate interrupting the operation of a system subject to continuous flow, the owner or operator may substitute monthly inspection and annual testing for the monthly testing of overfill protection devices. (Eff.12/30/2006, Register 180)

Authority: AS 46.03.020 AS 46.04.030 AS 46.04.070

Editor's Note: The publications adopted by reference in 18 AAC 75.066 may be reviewed at the department's offices in Anchorage, Fairbanks, or Juneau, or may be obtained directly from the appropriate publisher. The mailing address, telephone number, facsimile number, and website, if available, for each publisher are as follows: Underwriters Laboratories, Inc. (UL), Standards Department, 333 Pfingsten Road, Northbrook, Illinois 60062; telephone (847) 272-8800; fax (847) 272-8129; website: <http://www.ul.com>; Steel Tank Institute (STI), 570 Oakwood Road, Lake Zurich, Illinois 60062; telephone (847) 438-8265, extension 4331; fax (847) 438-8766; website: <http://www.steel tank.com>; American Petroleum Institute (API), 1220 L Street NW, Washington, DC 20005-4070; telephone (202) 682-8000; fax (303) 397-2740; website: <http://www.api.org/>.

18 AAC 75.075. SECONDARY CONTAINMENT REQUIREMENTS FOR ABOVEGROUND OIL STORAGE TANKS.

(a) Onshore aboveground oil storage tanks must be located within a secondary containment area that has the capacity to hold the volume of the largest tank within the containment area, plus enough additional capacity to allow for local precipitation. Minimum secondary containment system requirements include

(1) berms, dikes, or retaining walls that are constructed to prevent the release of spilled oil from within the containment area; and

(2) with the exception of the area under a tank, components constructed of, or lined with, materials that are

(A) adequately resistant to damage by the products stored to maintain sufficient impermeability;

- (B) resistant to damage from prevailing weather conditions; and
- (C) sufficiently impermeable; and
- (D) resistant to operational damage.

(3) Repealed 12/30/2006.

(b) In locations where physically feasible, aboveground oil storage tank areas at an offshore exploration or production facility must incorporate a secondary containment method to prevent oil spills from entering the water.

(c) A secondary containment system must be maintained free of debris, vegetation, excessive accumulated water, or other materials or conditions that might interfere with the effectiveness of the system. Facility personnel shall visually check for the presence of oil leaks or spills within secondary containment areas during routine operations, and, unless precluded by safety concerns or weather conditions, shall conduct documented weekly inspections of secondary containment areas, including checking for

- (1) debris and vegetation;
- (2) proper alignment and operation of drain valves;
- (3) visible signs of oil leaks or spills; and
- (4) defects or failures of the secondary containment system.

(d) Drainage of water accumulations from secondary containment areas that discharge directly to the land or waters of the state must be controlled by locally operated, positive close failsafe valves or other positive means to prevent a discharge. Valves must be kept closed and locked when not in use. The owner or operator shall inspect accumulated water before discharging it from a secondary containment area to ensure that no oil will be discharged and shall keep for five years a written record of each drainage operation and whether a sheen was present or not. A discharge of water to land is subject to a cleanup plan approved under 18 AAC 75.360, a corrective action plan approval under 18 AAC 78.260, or a wastewater discharge permit issued under 18 AAC 72. If the discharge of water from a secondary containment area is to surface waters or wetlands, either a permit under 18 AAC 72, a permit under 18 AAC 83, or a certified NPDES permit under 18 AAC 15.120 may be required.

(e) An installation placed in service on or after May 14, 1992 is subject to the following:

- (1) impermeable liners or double bottoms that are chemically resistant to damage by the product being stored in the tank must be installed under all tanks, except for tanks containing viscous products exceeding 400 SUS (Saybolt Universal System) at storage temperatures; and
- (2) drains and other penetrations through secondary containment areas must be minimized consistent with facility operational requirements.

(f) At an installation placed in service before May 14, 1992, in the event of a known or suspected discharge, the department may require installation of monitoring wells to detect oil or other hazardous substances in the groundwater if the local geology and groundwater conditions allow installation of monitoring wells, and if monitoring wells will not substantially increase the risk of contaminating groundwater.

(g) The owner or operator of rail tank car and tank truck loading areas and permanent unloading areas must ensure that those loading and unloading areas

- (1) have a secondary containment system designed to contain the maximum capacity of any single compartment of the tank car or tank truck, including containment curbing and a trenching system or drains with drainage to a collection tank or device designed to handle a discharge;

- (2) are paved, surfaced, or lined with sufficiently impermeable materials;
- (3) are maintained free of debris, vegetation, excessive accumulated water, or other materials or conditions that might interfere with the effectiveness of the system;
- (4) have warning lights, warning signs, or a physical barrier system to prevent premature vehicular movement; and

(5) are visually inspected before any transfer operation or at least monthly.

(h) Shop-fabricated aboveground oil storage tanks of a vaulted, self-diked, or double-walled design meeting the requirements of 18 AAC 75.066(c), (d), or (e) are not required to be placed within bermed, lined, secondary containment areas if those tanks are equipped with catchments that positively hold any fuel overflow due to tank overfill or divert it into an integral secondary containment area.

(i) In this section, "failsafe" means designed so that the equipment defaults to a closed condition in the event of an equipment failure. (Eff. 5/14/92, Register 122; am 12/30/2006, Register 180)

Authority: AS 46.03.020 AS 46.04.030 AS 46.04.070

18 AAC 75.080. REQUIREMENTS FOR FACILITY OIL PIPING.

(a) The owner or operator of an oil terminal, crude oil transmission pipeline, exploration facility, or production facility shall ensure that all facility oil piping associated with that facility meets the requirements of this section.

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

(c) Unless the owner or operator must comply with a more stringent requirement set out in this section, the owner or operator shall ensure that facility oil piping placed in service after December 30, 2008 is designed and constructed in accordance with one of the following standards, as appropriate:

(1) American Society of Mechanical Engineers, *Process Piping*, 2005 Edition (ASME B31.3-2004), adopted by reference;

(2) American Society of Mechanical Engineers, *Pipeline Transportation Systems for Liquid Hydrocarbons and Other Liquids*, 2002 Edition (ASME B31.4-2002), adopted by reference;

(3) American Society of Mechanical Engineers, *Gas Transmission and Distribution Piping Systems*, 2003 Edition (ASME B31.8-2003), adopted by reference;

(4) another equivalent standard approved by the department.

(d) The owner or operator shall ensure that buried metallic facility oil piping placed in service between May 14, 1992 and December 30, 2008 is protected from corrosion by installing protective coating and cathodic protection appropriate for local soil conditions, and is of all welded construction with no clamped, threaded, or similar connections for lines larger than a one inch nominal pipe size.

(e) The owner or operator shall ensure that buried facility oil piping placed in service after December 30, 2008

(1) is of all welded construction with no clamped, threaded, or similar connections for lines larger than one inch nominal pipe size; and

(2) unless constructed of a corrosion-resistant material approved by the department, is

(A) protected from corrosion by installing protective coating; and

(B) cathodically protected in accordance with (f) of this section.

(f) The owner or operator shall ensure that, after December 30, 2008 cathodic protection systems installed on facility oil piping are

(1) consistent with NACE International's *Standard Recommended Practice: Control of External Corrosion on Underground or Submerged Metallic Piping Systems*, 2002 edition (NACE RP0169-2002), adopted by reference;

(2) designed by a corrosion expert; and

(3) installed under the supervision of a corrosion expert.

Selected Alaska Oil & Hazardous Substances Pollution Control Statutes and Regulations

(g) The owner or operator shall ensure that, if a piping segment of a buried facility oil piping installation is exposed for any reason, the segment is carefully examined for damaged coating or corroded piping in accordance with Section 9.2.6 of *Piping Inspection Code: Inspection, Repair, Alteration, and Rerating of In-service Piping Systems* (API 570), adopted by reference in (j) of this section. If active corrosion is found during that examination,

- (1) the owner or operator shall implement actions for control of future corrosion;
- and
- (2) significant repairs or replacements must meet the requirements of (c) and (e) of this section.

(h) An owner or operator of a buried facility oil piping installation of metallic construction without cathodic protection shall ensure that the piping

- (1) is electrically inspected by a corrosion expert for active corrosion at least once every three years, but with intervals between inspection not exceeding 39 months; and
- (2) in areas in which active corrosion is found, is cathodically protected in accordance with (d) or (f) of this section, as appropriate.

(i) The owner or operator shall ensure that aboveground facility oil piping is supported consistent with the requirements of Paragraph 321 of *Process Piping* (ASME B31.3-2004), adopted by reference in (c) of this section.

(j) After December 30, 2007, unless the owner or operator must comply with a more stringent requirement set out in this section, the owner or operator shall ensure that all facility oil piping is maintained and inspected under

- (1) a program developed in accordance with the requirements of the American Petroleum Institute's (API) *Piping Inspection Code: Inspection, Repair, Alteration, and Rerating of In-service Piping Systems*, Second Edition, October 1998, Addendum 1, February 2000, Addendum 2, December 2001, and Addendum 3, August 2003 (API 570), adopted by reference; or
- (2) another equivalent program approved by the department.

(k) Unless the owner or operator must comply with a more stringent requirement set out in this section, the operation and maintenance of a cathodic protection system on facility oil piping must

- (1) be consistent with Section 10 of *Standard Recommended Practice: Control of External Corrosion on Underground or Submerged Metallic Piping Systems* (NACE RP0169-2002), adopted by reference in (f) of this section;
- (2) include a cathodic protection survey by a corrosion expert or qualified cathodic protection tester; and
- (3) include maintenance of test lead wires, in a condition that enables electrical measurements to be taken to determine the effectiveness of a cathodic protection system.

(l) The owner or operator of aboveground facility oil piping, other than piping specified in (m) of this section, shall ensure that the piping is protected from atmospheric corrosion by the application of a protective coating or by the use of corrosion-resistant material unless the owner or operator demonstrates by test, investigation, or experience appropriate to the environment of the piping segment that the anticipated extent of corrosion will

- (1) only be a light surface oxide; or
- (2) not affect the safe operation of the piping before the next scheduled inspection under a program developed under (j) of this section.

(m) The owner or operator of aboveground facility oil piping located outside a sufficiently impermeable deck onboard a marine structure or at a soil-to-air interface shall ensure that the piping is protected against external corrosion through the application of a protective coating or by the use of corrosion-resistant materials.

(n) The owner or operator of aboveground facility oil piping and valves shall ensure that the piping and valves are

Selected Alaska Oil & Hazardous Substances Pollution Control Statutes and Regulations

(1) visually checked for leaks or damage during routine operations or at least monthly; and

(2) appropriately protected from damage by vehicles.

(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. 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.

(p) In this section,

(1) "active corrosion" means continuing corrosion that, unless controlled, could result in a spill;

(2) "buried" means covered or in contact with soil;

(3) "protective coating" means a durable external coating that is applied to piping and that

(A) isolates the external surface of the piping from the environment;

(B) has sufficient adhesion to effectively resist underfilm migration of moisture;

(C) is sufficiently ductile to resist cracking in the range of temperatures encountered during bending, handling, installation, and operation;

(D) has sufficient strength and adhesion, or is otherwise protected, to resist mechanical damage;

(E) resists degradation throughout the range of temperatures encountered during storage, shipping, construction, and operation; and

(F) is compatible with the cathodic protection system in use on the piping;

(4) "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 (j) of this section;

(5) "submerged" means located below the surface of waters of the state. (Eff. 5/14/92, Register 122; am 12/30/2006, Register 180)

Authority: AS 46.03.020 AS 46.04.030 AS 46.04.070

Editor's Note: The publications adopted by reference in 18 AAC 75.080 may be reviewed at the department's offices in Anchorage, Fairbanks, or Juneau, or may be obtained directly from the appropriate publisher. The mailing address, telephone number, facsimile number, and website, if available, for each publisher are as follows: American Society of Mechanical Engineers (ASME), 22 Law Drive, P.O. Box 2300, Fairfield, New Jersey 07007-2300; telephone (800) 843-2763; fax (201) 882-1717; website: <http://www.asme.org/>; NACE International, 1440 South Creek Drive, Houston, Texas 77084-4906; telephone (800) 797-6223; fax (281) 228-6300; website <http://www.nace.org>; American Petroleum Institute (API), 1220 L Street NW, Washington, DC 20005-4070; telephone (202) 682-8000; fax (303) 397-2740; website: <http://www.api.org/>.

18 AAC 75.085. REQUIREMENTS FOR RAILROAD TANK CARS AND OPERATIONS BY RAIL.

In addition to the applicable requirements of 18 AAC 75.007 – 18 AAC 75.025, the owner or operator of a railroad tank car shall ensure that

- (1) the tank car meets all applicable federal specifications;
- (2) the operation and transport of railroad tank cars by railroad, at a minimum, meet all applicable federal operating and transport criteria and practices;
- (3) if the tank car is subject to the federal inspection and maintenance reporting requirements of 49 C.F.R. 180.501 – 180.519, the required reports are available for review by the department upon request;
- (4) the transporting railroad maintains avalanche detection and mitigation systems designed to address local avalanche hazards to the safe transportation of railroad tank cars; and
- (5) the transporting railroad maintains an appropriate system of track-mounted detectors designed to detect defects on railroad tank cars during transit. (Eff. 12/14/2002, Register 164)

Authority: AS 46.03.020 AS 46.04.030 AS 46.03.070
AS 46.04.055

18 AAC 75.090. Recommended practices.

Repealed.

(Eff. 5/14/92, Register 122; repealed 12/30/2006, Register 180)

ARTICLE 2. FINANCIAL RESPONSIBILITY FOR OIL DISCHARGES.

Section

- 205. Application for approval
- 215. Applications submitted by facsimile
- 220. Application for amendment
- 225. Renewals
- 235. Amount and evidence of financial responsibility: general provisions
- 236. Amount and evidence of financial responsibility: onshore production facilities
- 237. Public access to records
- 240. Certificate of proof of financial responsibility
- 245. Self-insurance
- 250. Insurance
- 255. Surety
- 260. Guaranty
- 265. Letters of credit
- 270. Other proof of financial responsibility for tank vessels, oil barges, oil terminal facilities, and oil exploration or production facilities, pipelines and railroad tank cars
- 271. Proof of financial responsibility for nontank vessels
- 272. Termination or cancellation of proof of financial responsibility
- 275. Service of process
- 280. Classification as an oil terminal facility
- 285. Oil terminal facilities
- 290. Enforcement

18 AAC 75.205. APPLICATION FOR APPROVAL.

(a) Subject to the exemptions provided under AS 46.04.050 and (d) of this section, an application for approval of proof of financial responsibility under AS 46.04.040 or 46.04.055, including an application for renewal of approval under 18 AAC 75.225, must be submitted to the department by the following responsible party:

- (1) for an oil terminal facility, by the owner or operator of the facility;
- (2) for a railroad tank car, by the owner or operator of the railroad tank car;
- (3) for a vessel, by
 - (A) the charterer, if the vessel is chartered by demise;
 - (B) the owner of the vessel, if the agents or employees of the owner retain control and responsibility for the operation of the vessel or barge; or
 - (C) the person with primary operational control, in any case other than one set out in (A) or (B) of this paragraph;
- (4) for an exploration or production facility, whether mobile or fixed, by the operator or one or more lease holders;
- (5) for a pipeline facility, by the operator or one or more lease holders;
- (6) for a group of vessel or facility owners or operators who have agreed to pool their resources to provide proof of financial responsibility for each other, by a designated person in the group.

(b) Applications under this section and renewal applications under 18 AAC 75.225 must be made on a form supplied by the department. The following conditions apply, as appropriate, to an application:

- (1) an applicant must furnish the department with the appropriate documents listed in the "financial responsibility application and checklist" supplied by the department;

Selected Alaska Oil & Hazardous Substances Pollution Control Statutes and Regulations

(2) except for a nontank vessel, the completed and signed application must be submitted to the department at least 30 days, but no earlier than 90 days before operations are proposed to begin; the department will, in its discretion, expedite its review of an application if circumstances warrant;

(3) for a nontank vessel, the completed and signed application must be received by the department at least 15 days before operations are proposed to begin; the department will accept an application received less than 15 days before operations are proposed to begin and expedite the review of the application, if the

(A) application is received at least five days before operations are proposed to begin; and

(B) applicant demonstrates that unanticipated circumstances prevent the applicant from meeting the 15-day deadline under this paragraph;

(4) if the applicant is an agency of the United States or this state whose debts and liabilities are the debts and liabilities of the United States or this state, proof of financial responsibility is not required, but the "financial responsibility application and checklist" must be submitted to the department in accordance with the time frames established under this section;

(5) an applicant may submit a combined application for more than one vessel or facility;

(6) an approval may not be assigned to another person, and may not be transferred from one vessel or facility to another; an attempted assignment or transfer of an approval voids the approval;

(7) all forms of proof of financial responsibility must be in effect before operations begin; an approval will not be given on pending coverage.

(c) Applications submitted under this section and renewal applications submitted under 18 AAC 75.225 must be signed upon oath or affirmation as follows:

(1) in the case of a corporation, by an authorized representative responsible for the overall management of the facility or operation, or that person's designee;

(2) in the case of a partnership, by a general partner;

(3) in the case of a sole proprietorship, by the proprietor;

(4) in the case of a municipal, state, federal, or other public facility, by an authorized public official or employee;

(5) in the case of a combined application, by an appropriate representative of each party to the application; and

(6) in the case of a joint venture, by the operator;

(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.

(d) The department will, in its discretion, approve an application for an exemption from the proof of financial responsibility requirements of AS 46.04.040(c) and 46.04.055(a) if the owner or operator of a vessel that is conducting, or is available only for conducting, an oil discharge response operation submits to the department

(1) a written explanation, to the department's satisfaction, requesting the exemption, giving details of the time period during which the exemption is requested for each vessel for the oil discharge response operation; and

(2) a completed "application for exemption from financial responsibility" form.
(Eff. 5/14/92, Register 122; am 10/28/2000, Register 156; am 11/27/2002, Register 164)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070
AS 46.04.040

18 AAC 75.215. Applications submitted by facsimile.

The department will accept an application by facsimile transmission. 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. (Eff. 5/14/92, Register 122; am 10/28/2000, Register 156)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070
AS 46.04.040

18 AAC 75.220. APPLICATION FOR AMENDMENT.

The owner or operator must file an application with the department for a change in operation that would change the dollar amount of financial responsibility required under 18 AAC 75.235(a). The application must include appropriate proof of financial responsibility under 18 AAC 75.235 – 18 AAC 75.271, include a letter describing the change in operation, and be submitted to the department at least 30 days before placing the changed operations into service, except that the owner or operator of a nontank vessel must submit changes at least 15 days before placing the changed operations into service within state waters. The department will review the application in accordance with 18 AAC 75.205 - 18 AAC 75.270. (Eff. 11/27/2002, Register 164)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070
AS 46.04.040

18 AAC 75.225. RENEWALS.

(a) Application for renewal of department approval of proof of financial responsibility must be submitted to the department at least 30 days, but no earlier than 90 days, before the current approval of proof of financial responsibility expires.

(b) An application for renewal must include the information required by 18 AAC 75.205(b)(1). (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070
AS 46.04.040

18 AAC 75.235. AMOUNT AND EVIDENCE OF FINANCIAL RESPONSIBILITY: GENERAL PROVISIONS.

(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 2007, as reported 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, \$78,300,000 per incident;
- (2) for a noncrude oil terminal facility, \$39.15, per incident, for each barrel of total noncrude oil storage capacity at the terminal, or \$1,566,000, whichever is greater, subject to a maximum of \$78,300,000; if the facility stores more noncrude oil than crude oil, the \$39.15 per

Selected Alaska Oil & Hazardous Substances Pollution Control Statutes and Regulations

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, \$469.80, per incident, for each barrel of storage capacity or \$156,600,000, whichever is greater;

(4) for a tank vessel or barge carrying noncrude oil, \$156.60, per incident, for each barrel of storage capacity or \$1,566,000, whichever is greater, subject to a maximum of \$54,810,000;

(5) for a nontank vessel carrying predominantly nonpersistent product, \$156.60 per incident, for each barrel of total oil storage capacity, persistent and nonpersistent product, on the vessel or \$1,566,000, whichever is greater;

(6) for a nontank vessel carrying predominantly persistent product, \$469.80 per incident, for each barrel of total oil storage capacity, persistent product and nonpersistent product, on the vessel or \$7,830,000, whichever is greater;

(7) for a railroad tank car,

(A) \$469.80 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) \$156.60 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 \$1,566,000, whichever is greater;

(8) for a pipeline, \$78,300,000 per incident;

(9) for an offshore exploration or production facility, \$78,300,000 per incident;

(10) for an onshore production facility that produces more than 10,000 barrels per day of oil, \$31,320,000 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, \$15,660,000 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, \$7,830,000 per incident;

(13) for an onshore production facility that produces 2,500 or fewer barrels per day of oil, \$1,566,000 per incident;

(14) for an onshore exploration facility, \$1,566,000 per incident.

(b) The required amount of financial responsibility does not increase with increasing numbers of vessels or facilities operated by the same applicant. An application for multiple vessels or facilities must show proof of financial responsibility in an amount equal to the highest applicable amount prescribed by (a) of this section. The department will, in its discretion, consider the proof of financial responsibility as being applicable to all operations if each separate operation is named as being specifically covered by the proof submitted.

(c) The applicant may add an owned, operated, leased, or chartered vessel or facility to its proof of financial responsibility by submitting a letter to the department requesting an amendment to the application and including documents that verify to the department's satisfaction that the additional operation is covered by the current approved proof of financial responsibility.

(d) The applicant may delete an owned, operated, leased, or chartered vessel or facility from its proof of financial responsibility by submitting a letter to the department requesting an amendment to the application and including documents that verify to the department's satisfaction that the vessel or facility is no longer covered by the current approved proof of financial responsibility.

(e) In satisfying proof of financial responsibility requirements for a combined application, a guarantor or insurer is responsible only for the amount applicable to the vessel or facility that discharges oil and not the amount applicable to another vessel or facility listed on the application.

(f) If a vessel or facility subject to AS 46.04.040 or 46.04.055 discharges oil and the department determines that a claim has been or is likely to be presented as a result of the discharge and that payment of the claim will reduce the owner's or operator's demonstrated financial responsibility below that required by (a) of this section, the department will, in its discretion, require

the owner or operator to demonstrate an additional amount of financial responsibility equal to the amount the department determines might be paid as a result of the claim.

(g) If the applicant fails to comply with the requirement imposed under (f) of this section to demonstrate an additional amount of financial responsibility, the department will, in its discretion, provide the owner or operator with 10 days' notice of the department's intent to revoke its approval of the proof of financial responsibility.

(h) If the department provides a notice under (g) of this section, the applicant may request an informal review under 18 AAC 15.195 - 18 AAC 15.340. The requirement of (f) of this section is not stayed during the pendency of an adjudicatory hearing.

(i) Proof of financial responsibility may be demonstrated by one or any combination of the mechanisms listed in AS 46.04.040 (e), as approved by the department.

(j) An insurer or surety shall respond to damages covered by AS 46.04.040 (i), but only with respect to the stated limit of liability contained in an insurance policy or surety submitted as proof of financial responsibility and approved under this chapter.

(k) For purposes of this section, the reference base index is the semi-annual average Consumer Price Index for all urban consumers in the Anchorage metropolitan area for the first half of 1990, as reported by the United States Department of Labor, bureau of labor statistics.

(l) A person required to demonstrate proof of financial responsibility under AS 46.04.040 or 46.04.055 shall maintain coverage for at least 60 days after operation of the vessel or facility ceases.

(m) Short-term testing, evaluation, or experimental pilot production activities are subject to the financial responsibility requirements of AS 46.04.040 and 18 AAC 75.205 - 18 AAC 75.290 for exploration facilities.

(n) For purposes of AS 46.04.040 , 46.06.055, and this section, "operation" means, for

(1) an oil terminal facility, until the

(A) department finds that storage tanks are empty and out of use and that all connecting pipe lines are rendered unusable and posted with a placard prohibiting refilling of the tank without department approval; or

(B) facility is closed and dismantled;

(2) a pipeline, while the pipeline

(A) is connected to a production facility; or

(B) contains oil;

(3) an exploration or production facility, until the department has been notified in writing that the Alaska Oil and Gas Conservation Commission found that all wells were properly plugged and abandoned; for purposes of this paragraph, "abandoned" means that a well has been plugged as required by 20 AAC 25.105; and

(4) a vessel, while the vessel is in the waters of the state, unless the owner or operator submits a notarized statement to the department certifying that all oil on the vessel has been removed.

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

Editor's note: On September 16, 2005, the Office of the Lieutenant Governor filed amendments to 18 AAC 75.235(a). Under AS 44.62.180, those amendments became effective on October 16, 2005. Due to a clerical error, the regulations did not appear in print in the Alaska Administrative Code. As of Register 186 (July 2008), the regulations attorney made a technical revision under AS 44.62.125(b)(6), to incorporate the October 16, 2005 amendments into 18 AAC 75.235(a).

18 AAC 75.236. AMOUNT AND EVIDENCE OF FINANCIAL RESPONSIBILITY; ONSHORE PRODUCTION FACILITIES.

(a) In addition to the other applicable requirements of this chapter, for an onshore production facility, the amount of financial responsibility required is based on maximum daily production of oil, measured in barrels per day. "Maximum daily production" means the highest amount of oil to be produced at a facility in one day during the period for which application is made.

(b) For an onshore production facility that is taken out of service, or suspended under 20 AAC 25, but that is not closed or abandoned, the amount of financial responsibility required is the most recent amount of financial responsibility required under this chapter, and that amount will continue to be required until production resumes, at which time the owner or operator shall determine maximum daily production under (a) of this section.

(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

- (1) over 10,000 barrels a day;
- (2) over 5,000 barrels a day, but less than 10,000 barrels a day;
- (3) over 2,500 barrels a day, but less than 5,000 barrels a day; or
- (4) 2,500 or less barrels a day.

(d) With the certification submitted under (c) of this section, the owner or operator shall submit to the department a description of how the owner or operator determined the maximum daily production.

(e) The owner or operator shall notify the department in writing at its Juneau office of a change in production that would alter the certification submitted under (c) of this section within 30 days after the operator has knowledge of the change or knowledge of the impending change, whichever occurs first.

(f) If the department finds that the maximum daily production is or may be higher than that certified under (c) or reported under (e) of this section, the department will require the owner or operator to provide proof within 20 days that the amount certified or reported is correct. If the owner or operator fails to provide proof under this subsection that is satisfactory to the department, or fails to report a change under (e) of this section, the department will, in its discretion, deny or revoke its approval of the proof of financial responsibility.

(g) For purposes of this section, "production" has the meaning given "regular production" in AS 31.05.170; however, the term "production facility" retains the meaning given in 18 AAC 75.990. (Eff. 12/8/95, Register 136; am 11/27/2002, Register 164)

Authority: AS 46.03.020 AS 46.04.040 AS 46.04.070

18 AAC 75.237. PUBLIC ACCESS TO RECORDS. Records received by the department under 18 AAC 75.205 - 18 AAC 75.290, including financial responsibility applications, operations files, and proof of financial ability to respond to a spill incident, are subject to AS 40.25.110 - 40.25.220. (Eff. 12/8/95, Register 136)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070
AS 46.04.040

18 AAC 75.240. CERTIFICATE OF PROOF OF FINANCIAL RESPONSIBILITY.

(a) If the department approves a proof of financial responsibility, it will issue a certificate to the applicant stating that the proof of financial responsibility requirements have been met for each vessel or facility identified in the application.

(b) The original certificate, or a copy of the original certificate, including a facsimile copy, that is certified by the applicant to be a true copy of the original certificate, must be readily available for inspection

(1) at each covered facility or pipeline;

(2) on each covered vessel while it is in state waters; the certificate must be shown to the owner or operator of an oil terminal facility before loading or unloading

(A) liquid bulk oil cargo; or

(B) oil to or from a nontank vessel; or

(3) with respect to a railroad tank car, at the headquarters office of the responsible party under 18 AAC 75.205(a) and at each facility at which oil is loaded or unloaded; if the financial responsibility requirements of the responsible party change, the responsible party shall immediately notify the department and the affected facilities and obtain an updated or amended certificate to reflect such changes, in accordance with 18 AAC 75.205 and 18 AAC 75.225.

(c) The effective date and the expiration date, as determined under AS 46.04.040(f), will be clearly marked on the certificate. For certificates that are effective for more than one year when issued, the continuing effectiveness of the form of financial responsibility that was approved by the department must be verified annually by submitting to the department, not more than 90 days and not less than 30 days before the anniversary of the certificate's effective date, the affidavit of a responsible party, as specified under 18 AAC 75.205(a), stating that the form of financial responsibility remains in effect and stating the date on which it will expire.

(d) If the owner or operator to whom the certificate was issued ceases to be the responsible party under 18 AAC 75.205(a), that person shall immediately return the original certificate to the department with written information regarding the new owner or operator's name and address and the date of the change in ownership or operational control so that a new certificate can be issued.

(e) A certificate is void and subject to immediate revocation by the department, without prior notice, if

(1) it contains erasures or is altered in any way, except for erasures, errors, or alterations made by the department in issuing the certificate;

(2) the person to whom the certificate was issued

(A) is no longer the responsible party under 18 AAC 75.205(a) for the facility or vessel identified on the certificate;

(B) fails to furnish acceptable proof of the continuing effectiveness of a form of financial responsibility as required under (c) of this section or in support of an application for renewal; or

(C) permits the cancellation or termination of the form of financial responsibility upon which issuance of the certificate was based.

(f) The department will give a certificate holder 10 days' written notice of the department's intent to revoke a certificate under AS 46.04.040(h). The notice will include an effective date for and an explanation of the revocation.

(g) If the department acts or provides a notice under (e) or (f) of this section, the applicant may request an informal review under 18 AAC 15.185 or an adjudicatory hearing under 18 AAC 15.195 – 18 AAC 15.340. (Eff. 5/14/92, Register 122; am 10/28/2000, Register 156; am 11/27/2002, Register 164)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070
AS 46.04.040

18 AAC 75.245. SELF-INSURANCE.

(a) In order to demonstrate financial responsibility through self-insurance, an applicant shall maintain in the United States, working capital and net worth, each in an amount at least equal to the applicable amount required under 18 AAC 75.235(a), or a lesser amount necessary to supplement other forms of proof which, when combined, are at least equal to the applicable amount required under 18 AAC 75.235(a). In determining working capital or net worth, the department will consider all current contractual requirements to which the applicant is bound. For the purposes of this subsection,

(1) "working capital" means the amount of current assets located in the United States, less all worldwide current liabilities; and

(2) "net worth" means the amount of all assets located in the United States, less all worldwide liabilities.

(b) The proof of financial responsibility required under (a) of this section must be supported by the following, which must be submitted with the application for approval, and which must be later supplemented as described:

(1) annual audited financial statements for consolidated holdings in the United States for the fiscal year ending immediately before each initial or renewal application, certified by an independent certified public accountant;

(2) subsequent quarterly affidavits attesting that the amounts of working capital and net worth are each equal to the applicable amount required under 18 AAC 75.235(a); and

(3) any additional information the department considers necessary.

(c) Instead of the information required under (b) of this section, a self-insuring applicant may provide the department with a copy of the applicant's Form 10K as filed with the United States Securities and Exchange Commission for the fiscal year preceding application or renewal, and each Form 10Q subsequently filed with that commission, subject to the following conditions:

(1) if the applicant's fiscal year ended six months or more before initial application, the applicant's Form 10Q for the first quarter of the current fiscal year must also be submitted with the initial application; and

(2) if the applicant's United States Securities and Exchange Commission forms do not specify what portion of its working capital and net worth are located in the United States, each form must be supplemented by an affidavit from the applicant's chief financial officer or treasurer, or a sworn statement by the certified public accountant who prepared the form, certifying that the working capital and net worth located in the United States are each in an amount equal to the applicable amount required under 18 AAC 75.235(a).

(d) Instead of the affidavit or sworn statement required under (b)(2) and (c)(2) of this section, the applicant may file a quarterly affidavit showing that sufficient liquid assets and cash flow, other than those assets with a high exposure to damage in a pollution incident, are immediately available to respond to claims in the required self-insured amount without placing the applicant in an insolvent position.

(e) Instead of the information required under (b)(1) and (c) of this section, the applicant may submit annually to the department a copy of its Form No. 6 as filed with the Federal Energy Regulatory Commission for each fiscal year, starting with the fiscal year that ended immediately preceding application and subsequent quarterly affidavits under (b)(2) or (c)(2) of this section.

(f) The affidavits or sworn statement required under (b)(2), (c)(2), and (d) of this section must be signed as follows:

(1) in the case of a corporation, by the treasurer or chief financial officer;

- (2) in the case of a partnership, by a general partner;
- (3) in the case of a sole proprietorship, by the proprietor;
- (4) in the case of a municipal, state, federal, or other public facility, by an authorized public official or employee; and
- (5) in the case of a combined application, by a representative of each party to the application.

(g) A self-insurer shall notify the department within 10 days after the self-insurer knows, or has reason to believe, that the amount of the self-insurer's working capital or net worth has fallen below the applicable amount required under 18 AAC 75.235(a) or the lesser amount necessary to supplement other forms of proof.

(h) Unless it is earlier replaced by another form of financial responsibility approved by the department, termination or cancellation of self-insurance that serves as proof of financial responsibility under AS 46.04.040 may not take effect until 60 days after the self-insurer sends written notice to the department's Juneau office by certified mail.

(i) The department will, in its discretion, revoke a certificate issued under 18 AAC 75.240 if any document required under this section is not submitted to the department on or before the following due date:

- (1) a Form 10K is due within four calendar months after the end of the applicant's fiscal year;
- (2) a Form 10Q is due two calendar months after the quarter ends;
- (3) a Form No. 6 is due no later than four calendar months after the end of the applicant's fiscal year;
- (4) an annual audited financial statement is due within four calendar months after the end of the applicant's fiscal year; and
- (5) a quarterly affidavit is due within two calendar months after the quarter ends.

(j) Upon written request, the department will, in its discretion, grant a reasonable extension of a time limit set in (i) of this section if the request is received at least 15 days before the document is due. (Eff. 5/14/92, Register 122; am 11/26/94, Register 132; am 12/8/95, Register 136; am 11/27/2002, Register 164)

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

18 AAC 75.250. INSURANCE.

(a) An applicant may demonstrate financial responsibility with insurance for the applicable amount required under 18 AAC 75.235(a), in full or in part. The applicant shall provide proof of insurance issued by an insurer either who is authorized to sell insurance in Alaska under a certificate of authority issued by the director of the division of insurance of the Department of Commerce, Community, and Economic Development or who is an unauthorized insurer listed by the division of insurance as meeting the minimum trust or capital and surplus requirements of AS 21.34.040(c). Proof of insurance may be provided by a binder, by a certificate of insurance acceptable in form to the department, or by a copy of the policy. If a binder or certificate of insurance is submitted to meet the requirements of this subsection, a copy of the underlying insurance policy must also be provided to the department within 90 days.

(b) Except for nontank vessels submitting proof of financial responsibility under 18 AAC 75.271(a)(2) or (3), if a policy of insurance, certificate, or binder is submitted, it must include an endorsement with the following, or substantially similar language:
"Any other provision of this policy notwithstanding: (1) this policy insures against any liability the insured may incur under Alaska Statute 46.04.040(i) or any provision cited in it as a result of an

unlawful discharge of oil within or affecting land or waters within the territorial jurisdiction of the State of Alaska; however, the insurer's liability does not exceed the limits of coverage set out in Section (Article or Clause) of this policy, subject to any deductible as specifically set out in Section (Article or Clause) of this policy (binder, certificate); (2) the insurer agrees that any final judgment against the insured for damages under AS 46.04.040(i) or any provision cited in it resulting from an unlawful discharge of oil from or by any vessel or facility named in this policy may be enforced or executed in Alaska state courts, directly against the insurer, subject to the limits of coverage in this policy; the insurer will be bound by such a judgment as if the judgment were against the insurer; any person obtaining such a judgment against the insured is expressly made a third-party beneficiary of this provision; and (3) termination or cancellation of this policy, insofar as it serves as proof of the insured's financial responsibility under AS 46.04.040, shall not become effective until 60 days after notice with the exception for nonpayment of premium which will require 30 days notice, in writing has been mailed, prepaid and certified, by the insurer to the insured and to the Alaska Department of Environmental Conservation at its office in Juneau, Alaska; however, this policy shall apply to all claims arising from a discharge occurring during the period covered by the policy and before the effective date of the termination or cancellation."

(c) An applicant may submit a claims-made policy if it contains

(1) an extended reporting period of at least six months; and

(2) the endorsement language required by (b) of this section, with the following added to the end of the endorsement: "and made to the insurer during the policy period or the extended reporting period."

(d) A deductible provision in any policy of insurance, binder, or certificate is acceptable if

(1) the applicant demonstrates supplemental coverage for the amount of the deductible by means of other acceptable insurance, surety, guaranty, self-insurance, letter of credit, or other proof of financial responsibility approved by the department; or

(2) the deductible provision provides for a loss reimbursement plan that contains language guaranteeing that the insurer will be responsible for the payment of all claims on a first dollar basis, without waiting for the insured to pay the deductible.

(e) For purposes of this section, "claims made policy" means a policy of liability insurance that covers claims arising out of a discharge occurring after a specified retroactive date but before the end of the policy period and first made to the insurer during the policy period or extended reporting period. (Eff. 5/14/92, Register 122; am 11/26/94, Register 132; am 10/28/2000, Register 156)

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

Editor's note: As of Register 171 (October 2004), the regulations attorney made technical revisions under AS 44.62.125(b)(6) to reflect the name change of the Department of Community and Economic Development to the Department of Commerce, Community, and Economic Development made by ch. 47, SLA 2004 and the corresponding title change of the commissioner of community and economic development.

18 AAC 75.255. SURETY.

(a) An applicant may demonstrate financial responsibility with a contract of surety, in full or in part, for the applicable amount required under 18 AAC 75.235(a). The applicant shall submit the contract of surety to the department on forms supplied by the department.

(b) The issuer of the contract of surety must

(1) be registered to do business in Alaska;

Selected Alaska Oil & Hazardous Substances Pollution Control Statutes and Regulations

(2) possess a current certificate of authority to do business in the United States under 31 C.F.R. 223; and

(3) possess an underwriting limitation of risk at least equal to the amount of the bond, or in a lesser amount necessary to supplement other forms of proof of financial responsibility.

(c) An applicant may demonstrate financial responsibility by a contract of surety for an amount equal to the deductible of an insurance policy submitted under 18 AAC 75.250 or in combination with another means of proof.

(d) Termination or cancellation of a contract of surety that serves as proof of financial responsibility under AS 46.04.040 may not become effective until 60 days after the surety notifies the department in writing, by certified mail, at its office in Juneau, Alaska. The surety remains liable for any discharge occurring before the effective date of termination or cancellation. (Eff. 5/14/92, Register 122; am 11/26/94, Register 132)

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

18 AAC 75.260. GUARANTY.

(a) An applicant may demonstrate financial responsibility with a contract of guaranty, in full or in part, for the applicable amount required under 18 AAC 75.235(a). The applicant shall submit the contract of guaranty to the department, using a form supplied by the department.

(b) The issuer of the guaranty contract must meet the financial and reporting requirements of 18 AAC 75.245.

(c) Termination or cancellation of a guaranty that serves as proof of financial responsibility under AS 46.04.040 may not become effective until 60 days after the guarantor notifies the department in writing, by certified mail, at its office in Juneau, Alaska. The guarantor remains liable for any discharge occurring before the effective date of termination or cancellation. (Eff. 5/14/92, Register 122; am 11/26/94, Register 132)

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

18 AAC 75.265. LETTERS OF CREDIT.

(a) An applicant may demonstrate financial responsibility with a letter of credit, in favor of the State of Alaska, for the applicable amount required under 18 AAC 75.235(a), in full or in part. The letter of credit

(1) must be irrevocable for a period of not less than one year on the part of the issuer; in addition, the letter must provide that it will be automatically extended for one year unless the department and the applicant are notified in writing at least 90 days before expiration of its stated term that the letter will not be renewed; however, if a vessel is to be used in state waters for less than one year, the letter of credit must cover the period that the vessel is to be used in state waters plus 30 days;

(2) must be irrevocable until satisfaction of a judgment or of a claim against the applicant under AS 46.04.040(i) or the provisions cited in it which results from a discharge occurring during its term, subject to the limit of credit;

(3) must be a standby letter of credit to respond specifically to a claim under AS 46.04.040(i) or the provisions cited in it, subject to the limit of credit;

(4) may not be used as collateral and may not be drawn upon by the applicant except to respond to a claim under AS 46.04.040(i) or the provisions cited in that subsection for as long as the letter of credit is used by the applicant as proof of financial responsibility under AS 46.04.040 or 46.04.055;

(5) must be issued by a financial institution that has authority to issue letters of credit, and that is regulated and examined by state and federal banking agencies; and

(6) must state an effective date and an expiration date, and must be effective on or before the approval date of proof of financial responsibility.

(b) The issuing bank shall pay upon presentation by the State of Alaska of a draft or other document as specified in the letter of credit and may not make determinations of fact or law that might be at issue between the responsible party and the department. (Eff. 5/14/92, Register 122; am 11/26/94, Register 132; am 10/28/2000, Register 156)

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. OTHER PROOF OF FINANCIAL RESPONSIBILITY FOR TANK VESSELS, OIL BARGES, OIL TERMINAL FACILITIES, OIL EXPLORATION OR PRODUCTION FACILITIES, PIPELINES, AND RAILROAD TANK CARS.

(a) This section applies to other proof of financial responsibility for tank vessels, oil barges, oil terminal facilities, oil exploration or production facilities, pipelines, and railroad tank cars. An applicant may demonstrate financial responsibility for the applicable amount required under 18 AAC 75.235(a)(1)-(4) or (7)-(14), in full or in part, with a contract of indemnity or with insurance issued by a group of insureds who have agreed to cover the pollution risks of the group's members, if approved by the department.

(b) Subject to AS 46.04.040(e), the department will, in its discretion, approve a protection and indemnity (P&I) club or an insurance syndicate contract of indemnification as demonstrating financial responsibility under this section if

(1) a statement of indemnification issued by the P&I club or insurance syndicate contains an endorsement that meets the requirements of 18 AAC 75.250(b);

(2) the P&I club or insurance syndicate has the financial solvency and a favorable history of claim handling to meet the obligations contained in the contract of indemnity; and

(3) the P&I club or insurance syndicate appoints an agent for service of process in the state as required under AS 46.04.040(e).

(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 \$78,300,000 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)

Authority: AS 46.03.020 AS 46.04.045 AS 46.04.070
AS 46.04.040

Editor's note: On September 16, 2005, the Office of the Lieutenant Governor filed amendments to 18 AAC 75.270. Under AS 44.62.180, those amendments became effective on October 16, 2005. Due to a clerical error, the regulations did not appear in print in the Alaska Administrative Code. As

of Register 186 (July 2008), the regulations attorney made a technical revision under AS 44.62.125 (b)(6), to incorporate the October 16, 2005 amendments into 18 AAC 75.270.

18 AAC 75.271. PROOF OF FINANCIAL RESPONSIBILITY FOR NONTANK VESSELS.

(a) This section applies to proof of financial responsibility for nontank vessels. An applicant may demonstrate financial responsibility for the applicable amount required under 18 AAC 75.235(a)(5) or (6), in full or in part, with

(1) evidence of financial responsibility meeting the requirements of 18 AAC 75.245, 18 AAC 75.250, 18 AAC 75.255, 18 AAC 75.260, or 18 AAC 75.265;

(2) proof of entry of the nontank vessel in a P&I club or proof of coverage with another insurer, including a group of insureds who have agreed to cover the pollution risks of the members of the group, if approved by the department; or

(3) insurance, a surety bond, self-insurance, a financial guaranty, or other evidence of financial responsibility used to satisfy the federal financial responsibility requirements contained in 33 C.F.R. Part 138, if the coverage includes the oil pollution risks specified in AS 46.04.040(i).

(b) The department will, in its discretion approve an insurance policy, or a P&I club or insurance syndicate contract of indemnification, as demonstrating financial responsibility under this section if

(1) the insurance policy, contract of indemnification, or P&I club rules and related documentation

(A) reflects that each entered nontank vessel is covered for the oil pollution risks specified in AS 46.04.040(i) in at least the applicable amount specified in 18 AAC 75.235(a)(5) or (6); coverage for the oil pollution risks specified in AS 46.04.040(i) may be demonstrated by using the following endorsement or substantially similar language: “Any other provision of this policy notwithstanding, this policy insures against any liability the insured may incur under AS 46.04.040(i) or any provision cited in it as a result of an unlawful discharge of oil from or by a covered vessel within or affecting land or waters within the territorial jurisdiction of the State of Alaska; however, the insurer’s liability does not exceed the limits of coverage set out in Section (Article or Clause) of this policy, subject to any deductible as specifically set out in Section (Article or Clause) of this policy (binder, certificate)”;

(B) names the applicant as an assured or member; and

(2) for a contract of indemnification from a P&I club or insurance syndicate, the P&I club or insurance syndicate has the financial solvency and a favorable history of claim handling to meet the obligations contained in the contract of indemnification.

(c) The insurance policy or contract of indemnification submitted as evidence of financial responsibility for a nontank vessel under this section

(1) need not include the endorsement required by 18 AAC 75.250(b); and

(2) must include

(A) all addenda that pertain to pollution coverage and deductibles; and

(B) for a contract of indemnification by a P&I club, a copy of the applicable P&I club rules and the vessel’s certificate of entry into the P&I club.

(d) If an applicant submits a policy of insurance, binder, certificate, or evidence of P&I club coverage containing a deductible or similar provision exceeding \$50,000,

(1) the applicant must demonstrate supplemental coverage for the amount of the deductible by means of other acceptable insurance, a surety, a guaranty, self-insurance, a letter of credit, or other proof of financial responsibility approved by the department; or

(2) the deductible provision must provide for a loss reimbursement plan that contains language guaranteeing that the insurer will be responsible for the payment of all claims on a first dollar basis, without waiting for the insured to pay the deductible.

(e) In addition to meeting the renewal requirements of 18 AAC 75.225, and no later than 60 days after the renewal of the P&I club coverage, a holder of a certificate of proof of financial responsibility who uses P&I club membership as the method of financial responsibility shall submit to the department a renewal confirmation letter from the P&I club showing that the certificate holder's membership in the P&I club has been renewed. The certificate holder shall also submit additional documentation acceptable to the department showing renewal of the certificant's membership in the P&I club, no later than 90 days after renewal of the P&I club coverage. Acceptable documentation includes a copy of the addendum or renewal certificate of entry, both of which contain the information required by this subsection, and any additional terms or conditions that may affect coverage, including renewal and new expiration dates.

(f) If requested by the department, a holder of a certificate of proof of financial responsibility who uses P&I club membership as the method of financial responsibility shall submit documentation executed by the certificate holder's P&I club confirming that the certificate holder's coverage used to demonstrate financial responsibility remains current. (Eff. 10/28/2000, Register 156; am 11/27/2002, Register 164)

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

18 AAC 75.272. TERMINATION OR CANCELLATION OF PROOF OF FINANCIAL RESPONSIBILITY.

Termination or cancellation of proof of financial responsibility does not relieve a person subject to AS 46.04.040 or 46.04.055 from

(1) the requirement to provide proof of financial responsibility if that person's vessel or facility remains in operation as defined in 18 AAC 75.235(n); and

(2) liability for a discharge from that person's vessel or facility before, at the time of, or after termination or cancellation of proof of financial responsibility. (Eff. 12/8/95, Register 136; am 10/28/2000, Register 156)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070
AS 46.04.040

18 AAC 75.275. SERVICE OF PROCESS.

An agent designated for service of process under AS 46.04.040(e) must be a resident of the state or a corporation authorized to do business in the state. If no designation is made and filed, or if process cannot be served in Alaska upon the designated agent, process may be served upon the commissioner. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070
AS 46.04.040

18 AAC 75.280. CLASSIFICATION AS AN OIL TERMINAL FACILITY.

(a) If a vessel is to operate as an oil terminal facility as defined at AS 46.04.900, the owner or operator shall submit a written request for classification of the vessel as an oil terminal facility to the department. The request for classification must include the

- (1) name of the owner or operator;
- (2) vessel name and official number;
- (3) oil storage capacity of the vessel;
- (4) type of product carried as cargo; and
- (5) period of time during which the classification will apply.

(b) Upon receipt of a request under (a) of this section, the department will issue a certificate to the vessel, classifying the vessel as an oil terminal facility for the prescribed period.

(c) If the capacity of the vessel for which classification is requested is more than 10,000 barrels of noncrude oil, the owner or operator must meet the financial responsibility requirements of 18 AAC 75.235(a)(2) and the oil discharge prevention and contingency plan requirements of AS 46.04.030. (Eff. 5/14/92, Register 122; am 11/26/94, Register 132)

Authority:	AS 46.03.020	AS 46.04.050	AS 46.04.070
	AS 46.04.040	AS 46.04.055	AS 46.04.900
	AS 46.04.045		

18 AAC 75.285. OIL TERMINAL FACILITIES.

(a) An oil terminal facility may not transfer a liquid bulk oil product to or from a tank vessel or oil barge if the oil product is declared as liquid bulk cargo, unless the tank vessel or oil barge provides proof to the terminal operator that the tank vessel or oil barge has a current, valid certificate of proof of financial responsibility issued under 18 AAC 75.205 – 18 AAC 75.290, an exemption under 18 AAC 75.205(d), or a certificate of classification as an oil terminal facility issued under 18 AAC 75.280.

(b) Unless a nontank vessel is subject to an exemption in AS 46.04.055(e)(2) or (3), an oil terminal facility may not transfer oil to or from a nontank vessel unless the nontank vessel provides proof to the terminal operator that the nontank vessel has a current, valid certificate of proof of financial responsibility issued under 18 AAC 75.205 – 18 AAC 75.290.

(c) If a vessel has frequent transactions at an oil terminal facility and is known by the facility operator, the owner or operator of that oil terminal facility may accept verbal confirmation from the vessel's master that the vessel has on board a current, valid certificate of proof of financial responsibility issued under 18 AAC 75.205 – 18 AAC 75.290.

(d) An oil terminal facility may not transfer a liquid bulk oil product to or from a railroad tank car, unless the owner or operator of the railroad tank car has previously provided the terminal owner or operator with a certified copy of the current, valid certificate of proof of financial responsibility as required by 18 AAC 75.240(b)(3).

(e) If a tank vessel, oil barge, or railroad tank car operator fails or refuses to provide proof of a current, valid certificate of proof of financial responsibility issued under 18 AAC 75.205 – 18 AAC 75.290, an exemption under 18 AAC 75.205(d), or a certificate of classification as an oil terminal facility issued under 18 AAC 75.280(b), or if a railroad tank car owner or operator has not provided a current certificate to the oil terminal facility as required by 18 AAC 75.240(b)(3) before loading or unloading a railroad tank car, the owner or operator of an oil terminal facility shall notify the department's Anchorage, Fairbanks, or Juneau office of that failure or refusal by telephone or facsimile on the next working day.

Selected Alaska Oil & Hazardous Substances Pollution Control Statutes and Regulations

(f) If a nontank vessel owner or operator fails or refuses to provide proof of a current, valid certificate of proof of financial responsibility issued under 18 AAC 75.205 – 18 AAC 75.290, or to demonstrate that the nontank vessel owner or operator is subject to an exemption under AS 46.04.055(e)(2) or (3), the owner or operator of an oil terminal facility shall notify the department's Anchorage, Fairbanks, or Juneau office of that failure or refusal by telephone or facsimile on the next working day.

(g) The requirements of this section with respect to nontank vessels and railroad tank cars apply after January 30, 2001. (Eff. 5/14/92, Register 122; am 10/28/2000, Register 156)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070
AS 46.04.040

18 AAC 75.290. ENFORCEMENT.

If a person required to provide proof of financial responsibility under AS 46.04.040 , AS 46.04.055 , or 18 AAC 75.205 - 18 AAC 75.290 fails or refuses to do so, the department will, in its discretion,

(1) seek civil assessments and costs under AS 46.03.760 or other appropriate statutes for each separate violation of AS 46.04.040, 46.04.055, or of 18 AAC 75.205 - 18 AAC 75.290;

(2) take action to halt the operation of a vessel or facility that is not in compliance with AS 46.04.040, AS 46.04.055, or 18 AAC 75.205 - 18 AAC 75.290;

(3) take action to deny entry to a vessel to the navigable waters of the state;

(4) take action to detain a vessel that does not produce, upon the department's request, a current, valid certificate of proof of financial responsibility issued under 18 AAC 75.205 - 18 AAC 75.290; or

(5) take such other and further action as may be warranted by the circumstances. (Eff. 5/14/92, Register 122; am 10/28/2000, Register 156)

Authority: AS 46.03.020 AS 46.04.040 AS 46.04.070
AS 46.03.760 AS 46.04.050 AS 46.04.900
AS 46.03.850 AS 46.04.055

ARTICLE 3. DISCHARGE REPORTING, CLEANUP, AND DISPOSAL OF OIL AND OTHER HAZARDOUS SUBSTANCES

Section

- 300. Discharge or release notification; reporting requirements
- 305. Posting of information required
- 310. Scope and duration of initial response actions
- 315. Initial response actions
- 320. Department oversight of containment and cleanup
- 325. Site cleanup rules: purpose, applicability, and general provisions
- 330. Interim removal actions
- 335. Site characterization
- 340. Soil cleanup levels; general requirements
- 341. Soil cleanup levels; tables
- 345. Groundwater and surface water cleanup levels
- 350. Groundwater use
- 355. Sampling and analysis
- 360. Cleanup operation requirements
- 365. Offsite or portable treatment facilities
- 370. Soil storage and disposal
- 375. Institutional controls
- 380. Final reporting requirements and site closure
- 385. Appeals
- 390. Waiver or modification
- 395. Interference with cleanup prohibited
- 396. Local control

Editor's note: The regulations in 18 AAC 75.300 – 18 AAC 75.396, grouped under Article 3, effective January 22, 1999 and distributed in Register 149, constitute a comprehensive reorganization and revision of material formerly set out at 18 AAC 75.300 - 18 AAC 75.370, which also had been grouped at Article 3. The regulations at 18 AAC 75.300 - 18 AAC 75.396 replace former 18 AAC 75.300 - 18 AAC 75.370, which were repealed simultaneously with the adoption of these regulations. The history line at the end of each section does not reflect the history of the replaced provisions before January 22, 1999. Some section numbers in this revision were used for previous regulations, but current sections are not necessarily related to previous sections with the same section number. The earlier version of 18 AAC 75.300 - 18 AAC 75.370 may be reviewed at the Office of the Lieutenant Governor, and may be found at Register 122, effective May 14, 1992.

18 AAC 75.300. Discharge or release notification; reporting requirements.

(a) Subject to (b), (c), and (g) of this section, a person in charge of a facility or operation shall notify the department by telephone, and immediately afterwards send the department a written notice by facsimile, hand delivery, or first class mail, informing the department about a discharge or release of a hazardous substance at or from the facility or operation as follows:

(1) as soon as the person has knowledge of a

(A) discharge or release of a hazardous substance other than oil;

(B) discharge or release of oil to water; or

(C) discharge or release, including a cumulative discharge or release, of oil in excess of 55 gallons solely to land outside an impermeable secondary containment area or structure; and

(2) within 48 hours after the person has knowledge of a discharge or release, including a cumulative discharge, of oil solely to land

(A) in excess of 10 gallons, but 55 gallons or less; or

(B) in excess of 55 gallons, if the discharge or release is the result of the escape or release of oil from its original storage tank, pipeline, or other immediate container into an impermeable secondary containment area or structure.

(b) A person in charge of a facility or operation shall maintain, and provide to the department monthly, a written record of each discharge or release, including a cumulative discharge or release, of one gallon to 10 gallons of oil solely to land.

(c) If a person in charge of a facility or operation has entered into an agreement with the department, as provided under AS 46.03.755(b) or AS 46.09.010(b), for the periodic reporting of a discharge or release of a hazardous substance, the terms of the agreement replace the applicable requirements of this section for the hazardous substance.

(d) After receiving notice of a discharge or release under (a) of this section, and until containment and cleanup are completed, the department will require interim reports as the department considers necessary to ascertain any threat to human health, safety, or welfare, or to the environment.

(e) Unless the department determines that a written report is not needed for the department to ascertain any threat to human health, safety, or welfare, or to the environment, a written report must be submitted to the department within 15 days after containment and cleanup are completed or, if no cleanup occurs, within 15 days after the discharge or release. The report must be submitted to the department's Anchorage, Fairbanks, or Juneau office, whichever is nearest to the location of the discharge, unless the department specifies otherwise. The report must contain the information specified in (f) of this section.

(f) A report, record, or notification required by this section must contain, as applicable,

(1) the date and time of the discharge or release;

(2) the location of the discharge or release;

(3) the name of the facility or operation;

(4) the name, mailing address, and telephone number of

(A) each responsible person; and

(B) the owner and the operator of the facility or operation;

(5) the type and amount of each hazardous substance discharged or released;

(6) factors that caused or contributed to the discharge or release;

(7) a description of any environmental effects of the discharge or release, or the containment and cleanup, to the extent those effects can be identified;

(8) a description of the containment or cleanup action taken;

(9) the estimated amount of

(A) hazardous substance cleaned up; and

(B) hazardous waste generated;

- (10) the date and method of disposal or treatment of the hazardous substance, contaminated equipment, contaminated materials, contaminated soil, and contaminated water;
- (11) a description of actions being taken to prevent another discharge or release; and
- (12) other information that the department requires to fully assess the cause and impact of the discharge or release, including any sampling reports and a description and estimate of any remaining contamination.

(g) Reporting under this section is not required for a discharge or release

(1) that is authorized by a valid permit issued by the department; or

(2) that is excluded from the definition of "release" under AS 46.03.826(9). (Eff. 1/22/99, Register 149; am 1/30/2003, Register 165)

Authority:	AS 46.03.020	AS 46.03.745	AS 46.04.070
	AS 46.03.050	AS 46.03.755	AS 46.09.010
	AS 46.03.710	AS 46.04.020	AS 46.09.020
	AS 46.03.740		

18 AAC 75.305. Posting of information required.

(a) The owner or operator shall display a discharge or release notification placard, provided by the department, that includes telephone numbers of department offices in conspicuous locations on a

(1) tank truck containing more than 500 gallons of a hazardous substance, in addition to that required to operate the vehicle;

(2) tugboat, tank vessel, oil barge, tow boat, or other vessel transporting a hazardous substance as cargo in state waters;

(3) vehicle carrying or towing a hazardous substance other than oil, or more than 500 gallons of oil, as cargo off-road over frozen or unfrozen ground; and

(4) facility that has a total above-ground or underground storage capacity in excess of 1,000 gallons of a hazardous substance.

(b) A person who wants to post a substitute for a placard provided by the department shall submit the proposed placard to the department for approval. The department will approve the substitute if the department determines that the substitute meets the requirements of (a) of this section. A placard approved under this subsection must contain the words: "Form approved by the Alaska Department of Environmental Conservation." (Eff. 1/22/99, Register 149)

Authority:	AS 46.03.020	AS 46.04.020	AS 46.09.020
	AS 46.03.050	AS 46.09.010	AS 46.09.070
	AS 46.03.755		

18 AAC 75.310. Scope and duration of initial response actions.

(a) Immediately after receiving notice from a person or after otherwise becoming aware of a discharge or release of a hazardous substance to land or waters of the state, a responsible person shall, as required by 18 AAC 75.315, immediately contain and control the discharge or release and seek approval of cleanup and disposal plans to be used for that release. After obtaining approval of cleanup and disposal plans, the responsible person shall perform a cleanup of the discharge or release and dispose of the contaminated material in accordance with those plans.

(b) The department under AS 46.04.020(a), or the commissioner under AS 46.09.020(a), will waive the requirements of (a) of this section if the department or commissioner as appropriate

(1) determines, in consultation with appropriate agencies as provided in AS 46.04.020(a)(1) or AS 46.09.020(a)(1), that containment or cleanup of the discharge or release is technically not feasible; or

(2) determines that the containment or cleanup effort would result in a greater threat to human health, safety, or welfare, or in greater damage to the environment than the discharge or release itself.

(c) Unless relieved under (b) of this section, a responsible person shall immediately begin the initial response actions required by 18 AAC 75.315 and continue until

(1) the department, using the factors set out in 18 AAC 75.315, determines that

(A) the lowest practicable level of contamination has been achieved;

(B) any imminent and substantial threat to human health, safety, or welfare, or to the environment is abated; and

(C) additional action, including site cleanup under 18 AAC 75.325 - 18 AAC 75.390, is not required; or

(2) the department determines, on its own or at the request of a responsible person, that the source of the contamination has abated and that cleanup of residual soil and groundwater contamination should proceed under 18 AAC 75.325 - 18 AAC 75.396. (Eff. 1/22/99, Register 149; am 8/27/2000, Register 155; am 1/30/2003, Register 165)

Authority:	AS 46.03.020	AS 46.03.740	AS 46.04.070
	AS 46.03.050	AS 46.03.745	AS 46.09.020
	AS 46.03.710	AS 46.04.020	

18 AAC 75.315. Initial response actions.

(a) A responsible person shall investigate, contain, and perform a cleanup of a sudden or recent discharge or release of a hazardous substance

(1) in consultation with the department, or upon notification of a discharge or release under 18 AAC 75.300;

(2) in a manner that does not result in a significantly greater overall threat or damage to human health, safety, or welfare, or to the environment than another alternative, including taking no action; and

(3) until the lowest practicable level of contamination is achieved under (c) of this section.

(b) A person who is not a responsible person and who undertakes an initial response action at a site subject to this section shall comply with this section and 18 AAC 75.320.

(c) For containment and cleanup under this section, the department will determine the lowest practicable level of contamination based on

(1) protection of human health, safety, and welfare, and of the environment;

(2) the nature and toxicity of the hazardous substance, including amount and concentration;

(3) hydrogeological and climatological factors;

(4) the extent to which the hazardous substance has migrated, or is likely to migrate, from the area of original contamination if the hazardous substance remains onsite;

(5) the natural dispersion, attenuation, or degradation of the contamination;

(6) the extent to which residual soil contamination exceeds the cleanup levels in 18 AAC 75.340 and 18 AAC 75.341;

(7) the extent to which groundwater contamination exceeds the groundwater cleanup levels in 18 AAC 75.345;

(8) the current and future use of the groundwater under 18 AAC 75.350; and

(9) the need for an interim removal action under 18 AAC 75.330.

(d) If the department determines that the lowest practicable level of contamination has been achieved under this section, a responsible person is not required to perform additional containment or cleanup. The department will base a determination under this section on the most current and complete information available to the department. The department will require a responsible person to perform additional containment or cleanup if subsequent information indicates that

(1) the level of contamination that remains does not protect human health, safety, or welfare, or the environment; or

(2) the information the department relied upon was invalid, incomplete, or fraudulent. (Eff. 1/22/99, Register 149)

Authority:	AS 46.03.020	AS 46.03.740	AS 46.04.070
	AS 46.03.050	AS 46.03.745	AS 46.09.020
	AS 46.03.710	AS 46.04.020	

18 AAC 75.320. Department oversight of containment and cleanup.

(a) The department will determine that a responsible person's containment and cleanup efforts are inadequate under 18 AAC 75.315 or 18 AAC 75.325 - 18 AAC 75.396 if the department determines that

(1) the responsible person has not used, or has not adequately used, containment equipment to intercept, concentrate, and collect the hazardous substance in its pattern of movement, unless environmental conditions exceed the operational limitations of the equipment;

(2) the responsible person has not used, or has not adequately used, exclusion equipment to protect a sensitive environmental zone, unless environmental conditions exceed the operational limitations of the equipment;

(3) the area affected by the hazardous substance is increasing at an avoidable rate despite containment and removal activities, unless environmental conditions exceed the operational limitations of the equipment, or unless immediate containment would pose a greater threat to human health, safety, or welfare, or to the environment, than to allow the discharge or release to temporarily spread;

(4) the containment and exclusion equipment is not functioning effectively because of weather or oceanographic conditions, and other equipment is reasonably available that can function effectively in those conditions;

(5) containment, exclusion, and lightering equipment is not deployed and operational as specified in an applicable oil discharge prevention and contingency plan approved under AS 46.04.030 or a nontank vessel plan approved under AS 46.04.055;

(6) major items of cleanup equipment and materials, including booms, skimmers, lightering pumps, sorbent, and storage containers, are not fully operational;

(7) available personnel, equipment, sorbent, or supplies are inappropriate, being mismanaged, or not being used, or additional personnel, equipment, sorbent, or supplies are required but not being provided; or

(8) containment and cleanup have not proceeded in a timely manner that is protective of human health, safety, and welfare, and of the environment.

(b) If the department determines that a responsible person's containment and cleanup efforts do not adequately protect human health, safety, or welfare, or the environment, the department will

(1) direct that responsible person or another responsible person to use additional measures or to cease cleanup activities;

(2) begin cleanup activities, or authorize an agent of the department to begin cleanup activities; or

(3) take a combination of these actions. (Eff. 1/22/99, Register 149; am 11/27/2002, Register 164)

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

18 AAC 75.325. Site cleanup rules: purpose, applicability, and general provisions.

(a) The requirements of 18 AAC 75.325 - 18 AAC 75.390 are referred to in this chapter as the “site cleanup rules”. The site cleanup rules establish administrative processes and standards to determine the necessity for and degree of cleanup required to protect human health, safety, and welfare, and the environment at a site where a hazardous substance is located.

(b) The site cleanup rules apply to

(1) a sudden or recent discharge or release of a hazardous substance, if the department determines under 18 AAC 75.310 that application of the site cleanup rules is necessary; or

(2) a release of a hazardous substance caused by past activities.

(c) The site cleanup rules do not apply to

(1) a release from an underground storage tank (UST) subject to AS 46.03.360 - 46.03.450 and 18 AAC 78, except as made applicable expressly by 18 AAC 78; or

(2) an oil and gas reserve pit closure and permitted solid waste storage or disposal facility regulated under 18 AAC 60, 18 AAC 62, or 42 U.S.C. 6901 - 6992k (Solid Waste Disposal Act, as amended by the Resource Conservation Recovery Act).

(d) A responsible person shall investigate, contain, and perform a cleanup of a discharge or release of a hazardous substance unless

(1) the department makes a written determination that a discharge or release does not pose a threat to human health, safety, or welfare, or to the environment and requires no cleanup action according to the information available at the time of the determination; or

(2) the department issues an order under AS 46.04.020(c), or the commissioner issues an order under AS 46.09.020(c) that the responsible person cease cleanup activities.

(e) A person who is not a responsible person and who undertakes a cleanup activity at a site that is subject to the site cleanup rules shall comply with those provisions of the site cleanup rules that are applicable to the particular cleanup activity undertaken.

(f) A responsible person shall

(1) to the maximum extent practicable,

(A) use permanent remedies;

(B) recover free product in a manner that

(i) minimizes the spread of contamination into an uncontaminated area by using containment, recovery, and disposal techniques appropriate to site conditions;

(ii) avoids additional discharge; and

(iii) disposes of the recovered free product in compliance with applicable local, state, and federal requirements;

(C) complete cleanup in a period of time that the department determines to be protective of human health, safety, and welfare, and of the environment;

(D) prevent, eliminate, or minimize potential adverse impacts to human health, safety, and welfare, and to the environment, onsite and offsite, from any hazardous substance remaining at the site; and

(E) evaluate and perform a cleanup of surface soil staining attributable to a hazardous substance;

(2) meet the applicable cleanup levels determined under 18 AAC 75.340 - 18 AAC 75.350; and

(3) provide for long-term care and management of a site as required under the site cleanup rules, including proper operation and maintenance of

- (A) cleanup techniques and equipment;
- (B) monitoring wells and equipment, if required; and
- (C) institutional controls, if required under 18 AAC 75.375

(g) If using method two or method three for determining the applicable soil cleanup levels as described in 18 AAC 75.340 - 18 AAC 75.341, or if applying the groundwater cleanup levels at Table C in 18 AAC 75.345, a responsible person shall ensure that, after completing site cleanup, the risk from hazardous substances does not exceed a cumulative carcinogenic risk standard of 1 in 100,000 across all exposure pathways and does not exceed a cumulative noncarcinogenic risk standard at a hazard index of one across all exposure pathways. Guidance on cumulative risk determinations is provided in the department's *Cumulative Risk Guidance*, dated June 9, 2008. The department's *Cumulative Risk Guidance*, dated June 9, 2008, is adopted by reference.

(h) If proposing an alternative cleanup level for soil or groundwater, based on a site-specific risk assessment under method four in 18 AAC 75.340(f) or under the provisions of 18 AAC 75.345(b)(2), a responsible person shall ensure that the risk from hazardous substances does not exceed the cumulative carcinogenic risk standard of 1 in 100,000 across all exposure pathways and does not exceed the cumulative noncarcinogenic risk standard at a hazard index of one across all exposure pathways. Guidance on cumulative risk determinations is provided in the department's *Cumulative Risk Guidance*, adopted by reference in (g) of this section. Instead of the risk standards required by this subsection, the department may consider a risk standard consistent with the range acceptable under 40 C.F.R. 300.430, revised as of July 1, 2004, adopted by reference, based on

- (1) site-specific conditions;
- (2) land use;
- (3) hazardous substance characteristics;
- (4) statutory compliance;
- (5) protection of human health, safety, and welfare, and the environment;
- (6) ability of cleanup to be implemented;
- (7) long-term and short-term effectiveness;
- (8) use of treatment technologies;
- (9) public comment; and
- (10) cost.

(i) A responsible person shall obtain approval before disposing of soil or groundwater from a site

- (1) that is subject to the site cleanup rules; or
- (2) for which the responsible person has received a written determination from the department under 18 AAC 75.380(d)(1);

(j) The department will seek public participation regarding activities conducted under the site cleanup rules, using methods that the department determines to be appropriate for seeking public participation.

(k) If a discharge, release, or planned cleanup affects an anadromous fish-bearing stream or lake or an area designated under AS 16.20, activities under the site cleanup rules are subject to coordination with appropriate resource agencies, including the Department of Fish and Game under AS 16.05.871(a) or AS 16.20 (Eff. 1/22/99, Register 149; am 8/27/2000, Register 155; am 1/30/2003, Register 165; am 10/9/2008, Register 188)

Authority:	AS 46.03.020	AS 46.03.740	AS 46.04.020
	AS 46.03.050	AS 46.03.745	AS 46.04.070
	AS 46.03.710	AS 46.03.822	AS 46.09.020

Editor's note: The document adopted by reference in 18 AAC 75.325 may be reviewed at, or requested from, the department's offices in Anchorage, Fairbanks, Juneau, and Soldotna.

As of Register 166 (July 2003), and acting under AS 44.62.125(b)(6), the regulations attorney made technical changes to 18 AAC 75.325(k), to reflect Executive Order 107 (2003). Executive Order 107 transferred functions related to protection of fish habitat in rivers, lakes, and streams from the Department of Fish and Game to the Department of Natural Resources.

As of Register 179 (October 2006), and acting under AS 44.62.125(b)(6), the regulations attorney made a technical revision to 18 AAC 75.325(c)(1). This change reflects the enactment of sec. 2, ch. 102, SLA 2006, effective August 5, 2006, which repealed AS 46.03.360 and 46.03.363.

As of Register 186 (July 2008), and acting under AS 44.62.125(b)(6), the regulations attorney made technical changes to 18 AAC 75.325(k), to reflect Executive Order 114 (2008). Executive Order 114 transferred functions related to protection of fish habitat in rivers, lakes, and streams from the Department of Natural Resources to the Department of Fish and Game.

18 AAC 75.330. Interim removal actions.

(a) The department, or a responsible person as provided in (c) of this section, will perform an interim removal action if the department determines that an interim removal action is necessary under the site cleanup rules to prevent

- (1) human or environmental exposure to a hazardous substance at the site; or
- (2) migration of a hazardous substance at or from the site.

(b) An interim removal action must, to the maximum extent practicable, contribute to the overall performance of any long-term cleanup action at the site. An interim removal action may

- (1) achieve cleanup levels for a portion of the site;
- (2) provide for a partial cleanup for all or part of the site, but not achieve cleanup

levels; or

(3) provide for a partial cleanup at the site and not achieve cleanup levels, but provide information on how to achieve cleanup levels for the final cleanup action.

(c) An interim removal action may occur at any time during the cleanup process and may be performed by the department or by a responsible person with prior approval of the proposed action. An interim removal action may not be used to delay or supplant the cleanup process.

(d) An interim removal action must be followed by additional cleanup actions at the site unless the department determines that the interim removal action has met the requirements of the site cleanup rules.

(e) An interim removal action taken by the department does not

- (1) require the department to take an additional response or cleanup action; or
- (2) relieve a person from liability associated with the discharge or release. (Eff.

1/22/99, Register 149)

Authority:	AS 46.03.020	AS 46.03.745	AS 46.04.070
	AS 46.03.050	AS 46.03.822	AS 46.08.140
	AS 46.03.710	AS 46.04.020	AS 46.09.020
	AS 46.03.740		

18 AAC 75.335. Site characterization.

(a) Before proceeding with site cleanup under the site cleanup rules, a responsible person shall characterize the extent of hazardous substance contamination at the site.

(b) A responsible person shall submit a site characterization workplan to the department for approval before beginning site characterization work. The department will approve the site characterization workplan if the workplan is

- (1) prepared by a qualified person; and
- (2) designed, to the maximum extent practicable, to

- (A) determine if a discharge or release of a hazardous substance has occurred;
- (B) identify each hazardous substance at the site, including the concentration and extent of contamination; this information must be sufficient to determine cleanup options;
- (C) identify site characteristics or conditions that could result in ongoing site contamination, including the potential for leaching of in-situ contamination and the presence of leaking barrels, drums, tanks, or other containers;
- (D) evaluate the potential threat to human health, safety, and welfare, and to the environment from site contamination;
- (E) identify any interim removal action necessary under 18 AAC 75.330;
- (F) locate sources of known site contamination, including a description of potential releases into soil, sediment, groundwater, or surface water;
- (G) evaluate the size of the contaminated area, including the concentrations and extent of any soil, sediment, groundwater, or surface water contamination;
- (H) identify the vertical depth to groundwater and the horizontal distance to nearby wells, surface water, and water supply intakes;
- (I) evaluate the potential for surface water run-off from the site and the potential for surface water or sediment contamination; and
- (J) identify the soil type and determine if the soil is a continuing source for groundwater contamination.

- (c) After completing site characterization work, the responsible person shall submit to the department for approval a site characterization report that
- (1) is prepared by a qualified person;
 - (2) sets out the information obtained from activities performed in accordance with a site characterization workplan;
 - (3) sets out the results of sampling and analysis;
 - (4) demonstrates that the inspections, sampling, and analysis performed adequately characterize the extent of hazardous substance contamination; and
 - (5) proposes cleanup techniques for the site.

(d) The department will approve the report submitted under (c) of this section if the department determines that the work described in the report and the cleanup techniques proposed are protective of human health, safety, and welfare, and of the environment. The department will, as part of its approval, modify proposed cleanup techniques or require additional cleanup techniques for the site as the department determines to be necessary to protect human health, safety, and welfare, and the environment. (Eff. 1/22/99, Register 149; am 8/27/2000, Register 155)

Authority:	AS 46.03.020	AS 46.03.745	AS 46.04.070
	AS 46.03.050	AS 46.03.755	AS 46.09.010
	AS 46.03.710	AS 46.04.020	AS 46.09.020
	AS 46.03.740		

18 AAC 75.340. Soil cleanup levels; general requirements.

(a) This section provides the requirements for cleanup levels for hazardous substances in soil. For each site, except as provided in (b) of this section, a responsible person shall propose soil cleanup levels for approval, shall base those cleanup levels upon an estimate of the reasonable maximum exposure expected to occur under current and future site conditions, and shall develop those cleanup levels using one or more of the following methods:

- (1) method one for petroleum hydrocarbon-contaminated soil in
 - (A) a non-Arctic zone as set out in Table A1 of 18 AAC 75.341(a); or
 - (B) an Arctic zone as set out in Table A2 of 18 AAC 75.341(b);

- (2) method two for soil contaminated with
 - (A) chemicals other than petroleum hydrocarbons as set out in Table B1 of 18 AAC 75.341(c); or
 - (B) petroleum hydrocarbons as set out in Table B2 of 18 AAC 75.341(d);
- (3) method three, as described in (e) of this section, for developing site-specific alternative cleanup levels; or
- (4) method four, as described in (f) of this section, for developing site-specific alternative cleanup levels.

(b) Alternative soil cleanup levels developed under method three or method four may not be used at another site without prior approval. If alternative cleanup levels are developed for one site within a facility with multiple similarly contaminated sites, and if the department determines that the use of those cleanup levels at another site within that facility will be protective of human health, safety, and welfare, and of the environment, the department will approve the use of those cleanup levels at the other site.

(c) For methods two, three, and four, a responsible person shall demonstrate that the Arctic zone soil cleanup level, if applicable, is protective of migration to surface water.

(d) The soil cleanup levels provided under method one and method two apply at a contaminated site unless the department approves an alternative cleanup level that the responsible person has proposed under method three or method four. To obtain approval for an alternative cleanup level, a responsible person must demonstrate that an alternative cleanup level proposed under method three or method four is protective of human health, safety, and welfare, and of the environment, and must demonstrate compliance with the applicable institutional control requirements under 18 AAC 75.375.

(e) Under method three, a responsible person may propose a site-specific alternative cleanup level that modifies

- (1) the migration to groundwater or inhalation levels in Table B1 of 18 AAC 75.341(c) or Table B2 of 18 AAC 75.341(d), based on the use of approved site-specific soil data, and the equations set out in the department's *Cleanup Levels Guidance*, dated June 9, 2008, adopted by reference; the alternative cleanup level that then applies at the site for a hazardous substance is the most stringent of the Table B1 direct contact or Table B2 ingestion level and the site-specific calculated levels for inhalation or migration to groundwater;

- (2) the migration to groundwater levels in Table B1 or Table B2 based on approved site-specific soil data and an approved fate and transport model that demonstrates that alternative soil cleanup levels are protective of the applicable groundwater cleanup levels under 18 AAC 75.345 if the alternative migration to groundwater cleanup level does not exceed

- (A) the direct contact level in Table B1 or the ingestion level in Table B2;

- (B) the inhalation level in Table B1 or Table B2; or

- (C) a site-specific inhalation level calculated under (1) of this subsection; the level that applies at the site is the most stringent level; or

- (3) the direct contact level or the inhalation level in Table B1 or the ingestion level or the inhalation level in Table B2 based on use of commercial or industrial exposure parameters listed in Appendix B of the *Cleanup Levels Guidance*, adopted by reference in (1) of this subsection, if the department determines that the site serves a commercial or industrial land use, and if the alternative direct contact level or inhalation level does not exceed the migration to groundwater cleanup level in Table B1, the alternative ingestion level or inhalation level does not exceed the migration to groundwater cleanup level in Table B2 or the alternative level does not exceed a site-specific migration to groundwater level calculated under (2) of this subsection; the department will base a land use determination under this paragraph upon

- (A) consultation with the public, including the local zoning authority, if any;

- (B) a determination that the site does not serve a residential land use;

- (C) a determination that the site will not serve a future residential land use based on consideration of the factors in EPA's *Land Use in the CERCLA Remedy Selection*

Process, OSWER Dir. No. 9355.7-04, dated May 25, 1995, adopted by reference; land in an undeveloped area for which it would be difficult to determine a future use pattern is capable of being a residential area, unless demonstrated otherwise; and

(D) consent of each landowner who is affected by the contamination at the site that a cleanup level less stringent than a cleanup level appropriate to residential land use is appropriate for the site.

(f) Under method four, the department will approve a site-specific alternative cleanup level if a responsible person

(1) performs a site-specific risk assessment and submits a risk assessment report to the department for approval, and if the department determines that the alternative cleanup level is protective of human health, safety, and welfare, and of the environment based on the site-specific risk assessment; in performing the risk assessment, a responsible person shall follow the department's *Risk Assessment Procedures Manual*, dated June 8, 2000, adopted by reference; and

(2) obtains the consent of each landowner who is affected by the contamination at the site that a cleanup level less stringent than a cleanup level appropriate to residential land use is appropriate for the site.

(g) The department will develop a site-specific cleanup level for a hazardous substance not listed under 18 AAC 75.341(c) using the equations set out in the department's *Cleanup Levels Guidance*, adopted by reference in (e)(1) of this section, unless the responsible person demonstrates that a site-specific cleanup level is not necessary to ensure protection of human health, safety, and welfare, and of the environment.

(h) The department will approve less stringent soil cleanup levels subject to any institutional controls required under 18 AAC 75.375, if a responsible person demonstrates that

(1) background concentrations of a hazardous substance in the site area exceed the applicable cleanup level set out in 18 AAC 75.341 for the hazardous substance; or

(2) the practical quantitation limit for the hazardous substance exceeds the applicable cleanup level set out in 18 AAC 75.341 for that substance.

(i) The department will require a responsible person to modify a cleanup level under this section or to perform a site-specific analysis of additional site risks if the department determines that

(1) as a result of site conditions or new data, a modification is necessary to protect human health, safety, or welfare, or the environment; or

(2) a site-specific analysis is necessary due to

(A) exposure pathways such as

(i) accumulation of vapors in buildings or other structures at levels that threaten human health; and

(ii) human inhalation of fugitive dust if the proposed remedy includes leaving a hazardous substance in place within the upper one foot of the surface soil at the site;

(B) sediment contamination;

(C) impacts to ecological receptors; or

(D) other site uses such as recreational, agricultural, or subsistence use.

(j) Soil cleanup levels based on

(1) migration of a hazardous substance to groundwater must be attained in the surface soil and the subsurface soil;

(2) human exposure from ingestion, direct contact or inhalation of a volatile hazardous substance must be attained in the surface soil and the subsurface soil to a depth of at least 15 feet, unless an institutional control or site conditions prevent human exposure to the subsurface soil; and

(3) the maximum allowable concentrations for petroleum hydrocarbons described in Table B2 of 18 AAC 75.341(d) must be attained in the surface soil and the subsurface soil.

(k) For a cleanup conducted under methods two and three, a chemical that is detected at one-tenth or more of the Table B1 direct contact and inhalation cleanup levels set out in

Selected Alaska Oil & Hazardous Substances Pollution Control Statutes and Regulations

18 AAC 75.341(c) must be included when calculating cumulative risk under 18 AAC 75.325(g). (Eff. 1/22/99, Register 149; am 8/27/2000, Register 155; am 1/30/2003, Register 165; am 10/9/2008, Register 188)

Authority:	AS 46.03.020	AS 46.03.740	AS 46.04.070
	AS 46.03.050	AS 46.03.745	AS 46.09.020
	AS 46.03.710	AS 46.04.020	

Editor’s note: The documents adopted by reference in 18 AAC 75.340 may be reviewed at, or requested from, the department’s offices in Anchorage, Fairbanks, Juneau, and Soldotna.

18 AAC 75.341. Soil cleanup levels; tables.

(a) If a responsible person uses method one for a non-Arctic zone under 18 AAC 75.340, the soil cleanup levels must be based on Table A1 in this subsection.

**TABLE A1. METHOD ONE – PETROLEUM HYDROCARBON SOIL
CLEANUP LEVELS IN NONARCTIC ZONES
(See notes to table for further requirements)**

Part A: Determine score for each item*

1. Depth to Groundwater		
Less than 5 feet	(10)	
5 feet to 15 feet	(8)	
More than 15 feet to 25 feet	(6)	
More than 25 feet to 50 feet	(4)	
More than 50 feet	(1)	
2. Mean Annual Precipitation		
More than 40 inches	(10)	
More than 25 inches to 40 inches	(5)	
15 inches to 25 inches	(3)	
	(1)	
3. Soil Type (Unified Soil Classification)		
Clean, coarse-grained soils	(10)	
Coarse-grained soils with fines	(8)	
Fine-grained soils (low organic carbon)	(3)	
Fine-grained soils (high organic carbon)	(1)	
4. Potential Receptors (Select the most applicable category)		
a. Public water system within 1000 feet, or private water system within 500 feet	(15)	
b. Public/private water system within 1/2 mile	(12)	
c. Public/private water system within one mile	(8)	
d. No water system within one mile	(4)	
e. Nonpotable groundwater	(1)	
5. Volume of Contaminated Soil		
More than 500 cubic yards	(10)	
More than 100 cubic yards to 500 cubic yards	(8)	
More than 25 cubic yards to 100 cubic yards	(5)	
10 cubic yards to 25 cubic yards	(2)	
Less than 10 cubic yards	(0)	

*The items to be scored are defined in note 1 to this table.

Part B: Add scores from Part A to determine matrix score and cleanup level

Matrix Score for Each Category	Cleanup Level in mg/kg		
	Gasoline Range Organics	Diesel Range Organics	Residual Range Organics
Category A: More than 40	50	100	2000
Category B: More than 26 to 40	100	200	2000
Category C: 21-26	500	1000	2000
Category D: Less than 21	1000	2000	2000

Notes to Table A1:

1. The following definitions for items 1 - 5 in Part A apply for purposes of using method one:
 - a. "depth to groundwater" means the measurement from the lowest point of the zone of soil contamination to the seasonal high groundwater table; a responsible person may not claim a lower matrix score for soil by moving contaminated soil to a higher elevation relative to the groundwater table;
 - b. "mean annual precipitation" is defined at 18 AAC 75.990;
 - c. "soil type" means the predominant Unified Soil Classification (USC) soil type between the deepest point of contamination and the seasonal high groundwater table; a responsible person may seek to demonstrate that otherwise coarse-grained soil has an organic carbon content that might enable a lower point classification. Soil types using the USC system are further defined as shown in Figure 1:

Figure 1

SOIL TYPE	UNIFIED SOIL CLASSIFICATIONS
Clean coarse-grained	GW, GP, SW, SP
Coarse-grained with fines	GM, GC, SM, SC, GP-GC, SP-SM, GW-GM, SW-SM, SW-SC
Fine-grained with low organic carbon	ML, CL, HM, CH
Fine-grained with high organic carbon	OL, OH, Pt

- d. for the "potential receptors" categories,
 - (i) "public water system" and "private water system" have the meaning given those terms in 18 AAC 80.1990;
 - (ii) "nonpotable" means unusable for drinking water due to a water quality condition, such as salinity, that was not caused by or that does not arise from contamination at the site;
 - e. "volume of contaminated soil" means the total estimated volume of soil that is contaminated above the applicable cleanup level before a responsible person begins a removal or cleanup action.
2. For the "potential receptors" categories, a responsible person shall submit a demonstration supporting the score assigned, including the results of an approved water well survey; the most conservative score must be used to determine the proximity of potential receptors; for example, if a water system is within one-quarter mile, the category "public/private water system within one mile" that would score 8 would be superseded by the category "public/private water system within 1/2 mile" that would score 12.
 3. The identity of a released refined petroleum product must be assumed to be unknown unless a responsible person demonstrates that the product is only gasoline, or only a refined nongasoline product; the department will waive the requirement that a product be identified by analysis if a responsible person demonstrates that only one type of product was stored or distributed at the site; the soil cleanup levels in Part B are based on gas chromatographic analytical measurements corresponding to a specific measured range of petroleum hydrocarbons as follows:
 - a. gasoline range organics: light-range petroleum products such as gasoline, with petroleum hydrocarbon compounds corresponding to an alkane range from the beginning of C₆ to the beginning of C₁₀ and a boiling point range between approximately 60° Centigrade and 170° Centigrade;
 - b. diesel range organics: mid-range petroleum products such as diesel fuel, with petroleum hydrocarbon compounds corresponding to an alkane range from the beginning of C₁₀ to the

beginning of C₂₅ and a boiling point range between approximately 170° Centigrade and 400° Centigrade;

c. residual range organics: heavy-range petroleum products such as lubricating oils, with petroleum hydrocarbon compounds corresponding to an alkane range from the beginning of C₂₅ to the beginning of C₃₆ and a boiling point range between approximately 400° Centigrade and 500° Centigrade.

4. In addition to meeting the soil cleanup levels in Part B, a responsible person shall ensure that the site meets the most stringent standards for benzene, toluene, ethylbenzene, and total xylenes for the applicable exposure pathway in Table B1 in (c) of this section.

(b) If a responsible person uses method one for an Arctic zone under 18 AAC 75.340, the soil cleanup levels must be based on Table A2 in this subsection.

TABLE A2. METHOD ONE - PETROLEUM HYDROCARBON SOIL CLEANUP LEVELS IN THE ARCTIC ZONE			
PRODUCT	Cleanup Level in mg/kg		
	Diesel Range Petroleum Hydrocarbons	Gasoline Range Petroleum Hydrocarbons	Residual Range Petroleum Hydrocarbons
Gasoline	N/A	100	N/A
Diesel	200*	N/A	N/A
Unknown/Crude	200	100	N/A
Residual	N/A	N/A	2000

In this table, “N/A” means “not applicable.”

* If a responsible party demonstrates that contamination is due to a diesel spill, that levels of benzene, toluene, ethylbenzene, and total xylene isomers (BTEX) are less than 15 mg/kg, that benzene levels are less than 0.5 mg/kg, and that other site conditions are favorable, and if the department determines that a less stringent level is protective of human health, safety, and welfare, and of the environment, the department will allow a cleanup level of 500 mg/kg for diesel range petroleum hydrocarbons.

The Arctic Zone numeric cleanup levels in this table cover only contamination related to manmade pads and roads. The department will determine the cleanup levels for undisturbed tundra or other undisturbed native vegetation on a site-specific basis, depending upon whether a cleanup action would cause more severe or long-term damage than would the discharge or release alone.

(c) If a responsible person uses method two for chemicals other than petroleum hydrocarbons under 18 AAC 75.340, the soil cleanup levels must be based on Table B1 in this subsection.

TABLE B1. METHOD TWO – SOIL CLEANUP LEVELS TABLE (See notes for additional requirements)									
CAS Number ⁴	Hazardous Substance	Carcinogenic (c/nc)	Arctic Zone ¹		Under 40 inch Zone ²		Over 40 inch Zone ³		Migration to Groundwater ⁷ (mg/kg)
			Direct Contact (mg/kg) ⁵	Outdoor Inhalation ⁶ (mg/kg)	Direct Contact (mg/kg) ⁵	Outdoor Inhalation ⁶ (mg/kg)	Direct Contact (mg/kg) ⁵	Outdoor Inhalation ⁶ (mg/kg)	
ORGANICS									
355-72-782	2-Amino-4,6-dinitrotoluene	nc	26		20		16		0.029
194-06-510	4-Amino-2,6-dinitrotoluene	nc	26		19		16		0.029
83-32-9	Acenaphthene ¹⁴	nc	3800		2800		2300		180
208-96-8	Acenaphthylene ¹⁴	nc	3800		2800		2300		180
67-64-1	Acetone	nc	123000	102000	91300	68600	74700	51100	88
309-00-2	Aldrin	c	0.40		0.30		0.24		0.070
120-12-7	Anthracene ¹⁴	nc	27800		20600		16800		3000
71-43-2	Benzene ¹⁴	c	200	17	150	11	120	8.5	0.025
56-55-3	Benzo(a)anthracene ¹⁴	c	6.6		4.9		4.0		3.6
205-99-2	Benzo(b)fluoranthene ¹⁴	c	6.6		4.9		4.0		12
207-08-9	Benzo(k)fluoranthene ¹⁴	c	66		49		40		120
65-85-0	Benzoic acid	nc	428000		317000		259000		410
191-24-2	Benzo(g,h,i)perylene ¹⁴	nc	1900		1400		1100		38700
50-32-8	Benzo(a)pyrene ¹⁴	c	0.66		0.49		0.40		2.1
111-44-4	Bis(2-chloroethyl)ether	c	10	4.9	7.5	3.3	6.2	2.5	0.0022
117-81-7	Bis(2-ethylhexyl)phthalate	c	300		220		180		13
75-27-4	Bromodichloromethane	c	180	15	130	10	110	7.3	0.044
75-25-2	Bromoform	c	1400	430 ¹²	1100	420	860	320	0.34
71-36-3	Butanol	nc	8800		6500		5300		9.8
104-51-8	n-Butylbenzene	nc	1400	42 ¹²	1000	42 ¹²	830	42 ¹²	15
135-98-8	sec-Butylbenzene	nc	1400	41 ¹²	1000	41 ¹²	830	41 ¹²	12
98-06-6	tert-Butylbenzene	nc	1400	70 ¹²	1000	70 ¹²	830	70 ¹²	12
85-68-7	Butyl benzyl phthalate	c	3900		2900		2400		920

TABLE B1. METHOD TWO – SOIL CLEANUP LEVELS TABLE (See notes for additional requirements)									
CAS Number ⁴	Hazardous Substance	Carcinogenic (c/nc)	Arctic Zone ¹		Under 40 inch Zone ²		Over 40 inch Zone ³		Migration to Groundwater ⁷ (mg/kg)
			Direct Contact (mg/kg) ⁵	Outdoor Inhalation ⁶ (mg/kg)	Direct Contact (mg/kg) ⁵	Outdoor Inhalation ⁶ (mg/kg)	Direct Contact (mg/kg) ⁵	Outdoor Inhalation ⁶ (mg/kg)	
86-74-8	Carbazole	c	390		290		230		6.5
75-15-0	Carbon disulfide	nc	6500	250 ¹²	4800	250 ¹²	3900	250 ¹²	12
56-23-5	Carbon tetrachloride	c	86	4.5	64	3.1	52	2.3	0.023
57-74-9	Chlordane	c	26		19		15		2.3
106-47-8	p-Chloroaniline	c	130		90		80		0.057
108-90-7	Chlorobenzene	nc	2700	200 ¹²	2000	200 ¹²	1700	200 ¹²	0.63
124-48-1	Chlorodibromomethane (Dibromochloromethane)	c	130	21	99	14	81	11	0.032
75-00-3	Chloroethane	c	3900	34	2900	23	2300	17	580
67-66-3	Chloroform	c	1400	4.7	1000	3.2	830	2.4	0.46
91-58-7	2-Chloronaphthalene	nc	6300		4700		3800		120
95-57-8	2-Chlorophenol	nc	680	3800	510	2500	410	1900	1.5
218-01-9	Chrysene ¹⁴	c	660		490		400		360
72-54-8	DDD	c	41		30		25		7.2
72-55-9	DDE	c	29		21		18		5.1
50-29-3	DDT	c	29		21		18		7.3
53-70-3	Dibenzo(a,h)anthracene ¹⁴	c	0.66		0.49		0.40		4.0
132-64-9	Dibenzofuran	nc	270		200		170		11
84-74-2	Di-n-butyl phthalate	nc	10700		7900		6500		80
117-84-0	Di-n-octyl phthalate	nc	4200		3100		2500		3800
94-75-7	2,4-Dichlororphenoxy acetic acid (2,4-D)	nc	1200		860		710		0.21
95-50-1	1,2-Dichlorobenzene	nc	12300	45 ¹²	9100	45 ¹²	7500	45 ¹²	5.1
541-73-1	1,3-Dichlorobenzene	nc	12300	69 ¹²	9100	69 ¹²	7500	69 ¹²	28
106-46-7	1,4-Dichlorobenzene	c	470	44	350	30	280	22	0.64
91-94-1	3,3-Dichlorobenzidine	c	15		11		9.2		0.19

Selected Alaska Oil & Hazardous Substances Pollution Control Statutes and Regulations

TABLE B1. METHOD TWO – SOIL CLEANUP LEVELS TABLE (See notes for additional requirements)									
CAS Number ⁴	Hazardous Substance	Carcinogenic (c/nc)	Arctic Zone ¹		Under 40 inch Zone ²		Over 40 inch Zone ³		Migration to Groundwater ⁷ (mg/kg)
			Direct Contact (mg/kg) ⁵	Outdoor Inhalation ⁶ (mg/kg)	Direct Contact (mg/kg) ⁵	Outdoor Inhalation ⁶ (mg/kg)	Direct Contact (mg/kg) ⁵	Outdoor Inhalation ⁶ (mg/kg)	
75-71-8	Dichlorodifluoromethane	nc	27400	570	20300	380	16600	280	140
75-34-3	1,1-Dichloroethane	c	27400	900 ¹²	20300	900 ¹²	16600	900 ¹²	25
107-06-2	1,2-Dichloroethane	c	120	7.1	91	4.8	75	3.6	0.016
75-35-4	1,1-Dichloroethylene	c	19	1.3	14	0.85	11	0.63	0.030
156-59-2	<i>cis</i> -1,2-Dichloroethylene	nc	1400	190	1000	130	830	95	0.24
156-60-5	<i>trans</i> -1,2-Dichloroethylene	nc	2700	240	2000	160	1700	120	0.37
120-83-2	2,4-Dichlorophenol	nc	310		230		190		1.3
78-87-5	1,2-Dichloropropane	c	160	7.9	120	5.3	100	4.0	0.018
542-75-6	1,3-Dichloropropene	c	110	40	83	27	68	20	0.033
60-57-1	Dieldrin	c	0.43		0.32		0.26		0.0076
84-66-2	Diethyl phthalate	nc	84000		61900		50600		130
105-67-9	2,4-Dimethylphenol	nc	1800		1300		1100		8.8
131-11-3	Dimethyl phthalate	nc	>10 ⁶		773000		633000		1100
528-29-0	1,2-Dinitrobenzene	nc	11		7.8		6.4		0.020
99-65-0	1,3-Dinitrobenzene	nc	10		7.1		5.8		0.020
100-25-4	1,4-Dinitrobenzene	nc	8.8		6.5		5.3		0.020
51-28-5	2,4-Dinitrophenol	nc	210		160		130		0.54
121-14-2	2,4-Dinitrotoluene	nc	12		8.8		7.2		0.0093
606-20-2	2,6-Dinitrotoluene	c	12		8.9		7.3		0.0094
123-91-1	1,4-Dioxane	c	700		540		440		0.21
1746-01-6	2,3,7,8-TCDD (Dioxin) ⁸	c	0.000063		0.000047		0.000038		0.000058
122-39-4	Diphenylamine	nc	2200		1600		1300		25
115-29-7	Endosulfan	nc	820		610		500		64
72-20-8	Endrin	nc	2.7		2.0		1.7		0.29

Selected Alaska Oil & Hazardous Substances Pollution Control Statutes and Regulations

TABLE B1. METHOD TWO – SOIL CLEANUP LEVELS TABLE (See notes for additional requirements)									
CAS Number ⁴	Hazardous Substance	Carcinogenic (c/nc)	Arctic Zone ¹		Under 40 inch Zone ²		Over 40 inch Zone ³		Migration to Groundwater ⁷ (mg/kg)
			Direct Contact (mg/kg) ⁵	Outdoor Inhalation ⁶ (mg/kg)	Direct Contact (mg/kg) ⁵	Outdoor Inhalation ⁶ (mg/kg)	Direct Contact (mg/kg) ⁵	Outdoor Inhalation ⁶ (mg/kg)	
100-41-4	Ethylbenzene ¹⁴	c	13700	110 ¹²	10100	110	8300	81	6.9
106-93-4	Ethylene dibromide (1,2-Dibromoethane)	c	5.6	0.89	4.2	0.60	3.4	0.44	0.00016
107-21-1	Ethylene glycol	nc	175000		130000		106000		190
206-44-0	Fluoranthene ¹⁴	nc	2500		1900		1500		1400
86-73-7	Fluorene ¹⁴	nc	3200		2300		1900		220
76-44-8	Heptachlor	c	1.7		1.3		1.0		0.28
1024-57-3	Heptachlor epoxide	c	0.86		0.63		0.52		0.014
118-74-1	Hexachlorobenzene	c	4.3	2.2	3.2	1.5	2.6	1.1	0.047
87-68-3	Hexachloro-1,3-butadiene	c	18	3.8 ¹²	13	3.8 ¹²	11	3.8 ¹²	0.12
319-84-6	alpha-Hexachlorocyclohexane	c	1.6		1.2		1.0		0.0064
319-85-7	beta-Hexachlorocyclohexane	c	5.5		4.0		3.3		0.022
58-89-9	gamma-Hexachlorocyclohexane (Lindane)	c	7.6		5.6		4.6		0.0095
77-47-4	Hexachlorocyclopentadiene	nc	530	3.0	390	2.0	320	1.5	1.3
67-72-1	Hexachloroethane	c	88	250	65	170	53	130	0.21
121-82-4	Hexahydro-1,3,5-trinitro-1,3,5-triazine (RDX)	c	97		72		59		0.040
302-01-2	Hydrazine	c	2.3	1.5	1.7	0.98	1.4	0.73	0.00080
193-39-5	Indeno(1,2,3-c,d)pyrene ¹⁴	c	6.6		4.9		4.0		41
78-59-1	Isophorone	c	7200		5300		4400		3.1
98-82-8	Isopropylbenzene (Cumene)	nc	13700	62 ¹²	10100	62 ¹²	8300	62 ¹²	51
72-43-5	Methoxychlor	nc	440		320		270		23
74-83-9	Methyl bromide (Bromomethane)	nc	190	21	140	14	120	11	0.16
74-87-3	Methyl chloride (Chloromethane)	c	860	37	640	25	520	19	0.21
78-93-3	Methyl ethyl ketone (MEK)	nc	82100	23300 ¹²	60800	23300 ¹²	49800	23300 ¹²	59
108-10-1	Methyl isobutyl ketone (MIBK)	nc	11000	2100 ¹²	8100	2100 ¹²	6600	2100 ¹²	8.1

TABLE B1. METHOD TWO – SOIL CLEANUP LEVELS TABLE (See notes for additional requirements)									
CAS Number ⁴	Hazardous Substance	Carcinogenic (c/nc)	Arctic Zone ¹		Under 40 inch Zone ²		Over 40 inch Zone ³		Migration to Groundwater ⁷ (mg/kg)
			Direct Contact (mg/kg) ⁵	Outdoor Inhalation ⁶ (mg/kg)	Direct Contact (mg/kg) ⁵	Outdoor Inhalation ⁶ (mg/kg)	Direct Contact (mg/kg) ⁵	Outdoor Inhalation ⁶ (mg/kg)	
74-95-3	Methylene bromide	nc	1400	560	1000	370	830	280	1.1
75-09-2	Methylene chloride	c	1500	240	1100	160	910	120	0.016
22967-92-6	Mercury (Methyl)	nc	10		7.7		6.3		0.012
90-12-0	1-Methylnaphthalene	nc	380	1100	280	760	230	560	6.2
91-57-6	2-Methylnaphthalene	nc	380	1100	280	750	230	560	6.1
95-48-7	2-Methylphenol (o-cresol)	c	4400		3200		2700		15
108-39-4	3-Methylphenol (m-cresol)	c	4400		3200		2700		15
106-44-5	4-Methylphenol (p-cresol)	c	480		350		290		1.5
1634-04-4	Methyl <i>tert</i> -butyl ether (MTBE)	c	6200	440	4600	290	3800	220	1.3
91-20-3	Naphthalene ¹⁴	nc	1900	42	1400	28	1100	21	20
98-95-3	Nitrobenzene	nc	68	180	51	120	41	90	0.094
55-63-0	Nitroglycerin	c	400		300		240		0.22
556-88-7	Nitroguanidine	nc	8800		6500		5300		11
62-75-9	n-Nitrosodimethylamine	c	0.22	0.28	0.16	0.19	0.13	0.14	0.000053
86-30-6	n-Nitrosodiphenylamine	c	1000		750		610		15
621-64-7	n-Nitroso-di-n-propylamine	c	0.71		0.52		0.43		0.0011
88-72-2	2-Nitrotoluene	c	35		26		21		0.025
99-08-1	3-Nitrotoluene	c	2000		1500		1200		4.9
99-99-0	4-Nitrotoluene	c	470		350		290		0.34
103-65-1	n-Propylbenzene	nc	1400	42 ¹²	1000	42 ¹²	830	42 ¹²	15
2691-41-0	Octahydro-1,3,5,7-tetranitro-1,3,5,7-tetrazocine (HMX)	nc	6200		4600		3700		49
87-86-5	Pentachlorophenol	c	52		39		32		0.047
85-01-8	Phenanthrene ¹⁴	nc	27800		20600		16800		3000
108-95-2	Phenol	nc	31300		23200		19000		68

Selected Alaska Oil & Hazardous Substances Pollution Control Statutes and Regulations

TABLE B1. METHOD TWO – SOIL CLEANUP LEVELS TABLE (See notes for additional requirements)									
CAS Number ⁴	Hazardous Substance	Carcinogenic (c/nc)	Arctic Zone ¹		Under 40 inch Zone ²		Over 40 inch Zone ³		Migration to Groundwater ⁷ (mg/kg)
			Direct Contact (mg/kg) ⁵	Outdoor Inhalation ⁶ (mg/kg)	Direct Contact (mg/kg) ⁵	Outdoor Inhalation ⁶ (mg/kg)	Direct Contact (mg/kg) ⁵	Outdoor Inhalation ⁶ (mg/kg)	
133-63-63	Polychlorinated biphenyls (PCBs) ⁹	c	1		1		1		
129-00-0	Pyrene ¹⁴	nc	1900		1400		1100		1000
100-42-5	Styrene	nc	27400	200 ¹²	20300	200 ¹²	16600	200 ¹²	0.96
79-34-5	1,1,2,2-Tetrachloroethane	c	56	8.1	42	5.5	34	4.1	0.017
127-18-4	Tetrachloroethylene (PCE)	c	21	15	15	10	13	7.3	0.024
108-88-3	Toluene ¹⁴	nc	11000	220 ¹²	8100	220 ¹²	6600	220 ¹²	6.5
8001-35-2	Toxaphene	c	10		7.5		6.2		3.9
688-73-3	Tributyltin	nc	26		19		16		5500
120-82-1	1,2,4-Trichlorobenzene	nc	1400	41 ¹²	1000	41 ¹²	830	41 ¹²	0.85
71-55-6	1,1,1-Trichloroethane	nc	27400	360 ¹²	20300	360 ¹²	16600	360 ¹²	0.82
79-00-5	1,1,2-Trichloroethane	c	200	17	150	11	120	8.6	0.018
79-01-6	Trichloroethylene (TCE)	c	28	0.85	21	0.57	17	0.42	0.020
95-95-4	2,4,5-Trichlorophenol	nc	8800		6500		5300		67
88-06-2	2,4,6-Trichlorophenol	c	620	6100	460	4100	380	3000	1.4
93-72-1	2-(2,4,5-Trichlorophenoxy) propionic acid (2,4,5-TP)	nc	700		520		430		0.19
96-18-4	1,2,3-Trichloropropane	c	1.6	0.26	1.2	0.17	0.97	0.13	0.00053
76-13-1	1,1,2-Trichloro-1,2,2-trifluoroethane (Freon-113)	nc	>10 ⁶	750 ¹²	>10 ⁶	750 ¹²	>10 ⁶	750 ¹²	750 ¹²
75-69-4	Trichlorofluoromethane (Freon-11)	nc	41100	990 ¹²	30400	990 ¹²	24900	820	86
95-63-6	1,2,4-Trimethylbenzene	nc	6800	49 ¹²	5100	49	4100	37	23
108-67-8	1,3,5-Trimethylbenzene	nc	6800	42 ¹²	5100	42 ¹²	4100	32	23
99-35-4	1,3,5-Trinitrobenzene	nc	3800		2800		2300		19
479-45-8	2,4,6-Trinitrophenylmethylnitramine (Tetryl)	nc	550		400		330		4.5
118-96-7	2,4,6-Trinitrotoluene (TNT)	c	60		44		36		0.49
108-05-4	Vinyl acetate	nc	137000	2200 ¹²	101000	1500	83000	1100	100

TABLE B1. METHOD TWO – SOIL CLEANUP LEVELS TABLE (See notes for additional requirements)									
CAS Number ⁴	Hazardous Substance	Carcinogenic (c/nc)	Arctic Zone ¹		Under 40 inch Zone ²		Over 40 inch Zone ³		Migration to Groundwater ⁷ (mg/kg)
			Direct Contact (mg/kg) ⁵	Outdoor Inhalation ⁶ (mg/kg)	Direct Contact (mg/kg) ⁵	Outdoor Inhalation ⁶ (mg/kg)	Direct Contact (mg/kg) ⁵	Outdoor Inhalation ⁶ (mg/kg)	
75-01-4	Vinyl chloride (Chloroethene)	c	7.5	6.4	5.5	4.3	4.5	3.2	0.0085
1330-20-7	Xylenes (total) ¹⁴	nc	27400	63 ¹²	20300	63 ¹²	16600	63 ¹²	63 ¹²
INORGANICS									
7440-36-0	Antimony	nc	55		41		33		3.6
7440-38-2	Arsenic ¹⁵	c	6.1		4.5		3.7		3.9
7440-39-3	Barium	nc	27400		20300		16600		1100
7440-41-7	Beryllium	c	270		200		170		42
7440-43-9	Cadmium	c	110		79		65		5.0
7440-47-3	Chromium (Total)	nc	410		300		250		25
16065-83-1	Chromium +3	nc	205000		152000		124000		>10 ⁶
18540-29-9	Chromium +6	nc	410		300		250		25
7440-50-8	Copper	nc	5500		4100		3300		460
57-12-5	Cyanide ¹⁰	nc	2700		2000		1700		27
7439-92-1	Lead ¹¹	c	400		400		400		
7439-97-6	Mercury	nc	41	26	30	18	25	13	1.4
7440-02-0	Nickel	nc	2700		2000		1700		86
7790-98-9	Perchlorate	nc	96		71		58		0.067
7782-49-2	Selenium	nc	680		510		410		3.4
7440-22-4	Silver	nc	680		510		410		11.2
7440-28-0	Thallium	nc	11		8.1		6.6		1.9
7440-62-2	Vanadium	nc	960		710		580		3400
7723-14-0	White phosphorus	nc	2.7		2.0		1.7		0.036
7440-66-6	Zinc	nc	41100		30400		24900		4100

NOTES TO TABLE B1 FOLLOW TABLE B2 IN (d) OF THIS SECTION

(d) If a responsible person uses method two for petroleum hydrocarbons under 18 AAC 75.340, the soil cleanup levels must be based on Table B2 in this subsection.

TABLE B2. METHOD TWO - PETROLEUM HYDROCARBON SOIL CLEANUP LEVELS

Petroleum Hydrocarbon Range	Arctic Zone ¹ mg/kg			Under 40 Inch Zone ²			Over 40 Inch Zone ³			Maximum Allowable Concentrations ¹³ mg/kg
	Ingestion (mg/kg) ¹⁶	Inhalation (mg/kg) ¹⁷	Migration to Groundwater (mg/kg) ⁷	Ingestion (mg/kg) ¹⁶	Inhalation (mg/kg) ¹⁷	Migration to groundwater (mg/kg) ⁷	Ingestion (mg/kg) ¹⁶	Inhalation (mg/kg) ¹⁷	Migration to Groundwater (mg/kg) ⁷	
For Laboratory Analysis using AK Methods 101, 102, and 103										
C ₆ -C ₁₀ GRO using AK 101	1400	1400	n/a	1400	1400	300	1400	1400	260	1400
C ₁₀ -C ₂₅ DRO using AK 102	12500	12500	n/a	10250	12500	250	8250	12500	230	12500
C ₂₅ -C ₃₆ RRO using AK 103	13700	22000	n/a	10000	22000	11000	8300	22000	9700	22000
For Laboratory Analysis using AK Aliphatic and Aromatic Fraction Methods 101AA, 102AA, and 103AA										
C ₆ -C ₁₀ Aliphatics	1000	1000	n/a	1000	1000	270	1000	1000	240	1000
C ₆ -C ₁₀ Aromatics	1000	1000	n/a	1000	1000	150	1000	1000	130	1000
C ₁₀ -C ₂₅ Aliphatics	10000	10000	n/a	10000	10000	7200	8300	10000	6400	10000
C ₁₀ -C ₂₅ Aromatics	5000	5000	n/a	4100	5000	100	3300	5000	90	5000
C ₂₅ -C ₃₆ Aliphatics	20000	20000	n/a	20000	20000	20000	20000	20000	20000	20000
C ₂₅ -C ₃₆ Aromatics	4100	10000	n/a	3000	10000	3300	2500	10000	2900	10000
See notes to table for further requirements. "n/a" means not applicable.										

Notes to Tables B1 and B2:

If applicable, site specific cleanup levels must be protective of migration to surface water.

Concentrations of hazardous substances in soil must be calculated and presented on a per dry weight basis. For volatile organic hazardous substances for which toxicity data is not currently available or calculated levels exceed the calculated saturation concentration, the cleanup level that applies at a site is the calculated saturation concentration determined using the equations set out in *Cleanup Levels Guidance*, adopted by reference in 18 AAC 75.340. The cleanup level from Table B1 or B2 that applies at a site is the most stringent of the applicable exposure pathway-specific cleanup levels based on direct contact, inhalation, or migration to groundwater.

In Table B1, a blank space means not available or not applicable.

1. "Arctic zone" is defined at 18 AAC 75.990.
2. "under 40 inch zone" means a site that receives mean annual precipitation of less than 40 inches each year.
3. "over 40 inch zone" means a site that receives mean annual precipitation of 40 or more inches each year.
4. "CAS Number" means the Chemical Abstract Service (CAS) registry number uniquely assigned to chemicals by the American Chemical Society and recorded in the CAS Registry System.
5. "Direct contact" means exposure through both incidental ingestion of soil and through dermal absorption of the contaminant from soil.
6. "outdoor inhalation" means a potential pathway of exposure to volatile organic hazardous substances in the soil through volatilization and migration to outdoor air.
7. "migration to groundwater" means the potential for hazardous substances to leach to groundwater where they may result in a completed human exposure pathway through direct ingestion of contaminants at or above levels listed in Table C at 18 AAC 75.345(b)(1); soil cleanup levels protective of migration to surface water must be determined on a site-specific basis.
8. The cleanup level in Table B1 for dioxin is for 2,3,7,8-Tetrachlorodibenzo-*p*-Dioxin (TCDD) only; all cleanup levels for polychlorinated dibenzo-*p*-dioxin (PCDD) and polychlorinated dibenzofuran (PCDF) congeners must be determined on a site-specific basis.
9. For unrestricted land use, polychlorinated biphenyls (PCBs) in soil shall be cleaned up to one mg/kg or less, unless the department determines that a different cleanup level is necessary as provided in 18 AAC 75.340(i); with the prior approval of the department, PCBs in soil may be cleaned up to
 - (A) between 1 and 10 mg/kg if the responsible person
 - (i) caps each area containing PCBs in soil at levels between 1 and 10 mg/kg; for purposes of this Note 9, "caps" means covering an area of PCB contaminated soil with an appropriate material to prevent exposure of humans and the environment to PCBs; to be approved, a cap must be designed and constructed of a material acceptable to the department and of sufficient strength and durability to withstand the use of the surface that is exposed to the environment; within 72 hours after discovery of a breach to the integrity of a cap, the responsible person or the landowner shall initiate repairs to that breach; and
 - (ii) provides the department within 60 days after completing the cleanup, documentation that the responsible person has recorded a deed notation in the appropriate land records, or on another instrument that is normally examined during a title search, documenting that PCBs remain in the soil, that the contaminated soil has been capped, and that subsequent interest holders may have legal obligations with respect to the cap and the contaminated soil; or
 - (B) an alternative PCB soil cleanup level developed through an approved site-specific risk assessment, conducted according to the *Risk Assessment Procedures Manual*, adopted by reference at 18 AAC 75.340.
10. Cyanide expressed as free, or physiologically available cyanide.
11. Lead cleanup levels are based on land use; for residential land use, the soil cleanup level is 400 mg/kg. For commercial or industrial land use, as applied in 18 AAC 75.340(e)(3), the soil

cleanup level is 800 mg/kg; through an approved site-specific risk assessment, conducted according to the *Risk Assessment Procedures Manual*, adopted by reference at 18 AAC 75.340, approved exposure models may be used to evaluate exposure to a child resident or an adult worker; a responsible person may also propose an alternative cleanup level, through a site-specific risk assessment conducted according to the *Manual*, and based on a chemical speciation of the lead present at the site. For soils contaminated with lead more than 15 feet below ground surface, lead cleanup levels will be determined on a site-specific basis.

12. These levels are based on soil saturation level (C_{sat}) using the equations set out in *Cleanup Levels Guidance*, adopted by reference in 18 AAC 75.340. Refer to the Cumulative Risk Guidance, adopted by reference in 18 AAC 75.325(g), for inhalation risk screening levels.

13. This level is the concentration of C₆ - C₁₀, C₁₀ - C₂₅, or C₂₅ - C₃₆ petroleum hydrocarbon range in surface and subsurface soil that if exceeded, indicates an increased potential for hazardous substance migration or for risk to human health, safety or welfare, or to the environment; the level of a petroleum hydrocarbon may not remain at a concentration above the maximum allowable concentration unless a responsible person demonstrates that the petroleum hydrocarbon will not migrate and will not pose a significant risk to human health, safety, or welfare, or to the environment; free product must be recovered as required by 18 AAC 75.325(f).

14. If using method two or method three, the applicable petroleum hydrocarbon cleanup levels must be met in addition to the applicable chemical-specific cleanup levels for benzene, ethylbenzene, toluene, and total xylenes; the chemical-specific cleanup levels for the polynuclear aromatic hydrocarbons acenaphthene, acenaphthylene, anthracene, benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, benzo(g,h,i)pyrene, chrysene, dibenzo(a,h)anthracene, flouranthene, fluorene, indeno(1,2,3-c,d)pyrene, naphthalene, phenanthrene, and pyrene must also be met unless the department determines that those cleanup levels need not be met to protect human health, safety, and welfare, and the environment.

15. Due to naturally occurring variable concentrations throughout the state, arsenic must be evaluated as a contaminant of potential concern on a site-specific basis.

16. "Ingestion" means a potential pathway of exposure to hazardous substances through direct consumption of the soil.

17. "inhalation" means a potential pathway to volatile organic hazardous substances in the soil through volatilization.

18. "c" means carcinogenic, and "nc" means noncarcinogenic. (Eff. 1/22/99, Register 149; am 8/27/2000, Register 155; am 10/9/2008, Register 188)

Authority:	AS 46.03.020	AS 46.03.740	AS 46.04.070
	AS 46.03.050	AS 46.03.745	AS 46.09.020
	AS 46.03.710	AS 46.04.020	

Editor's note: The applicable EPA rule governing disposal and cleanup of PCB contaminated facilities under 40 C.F.R. Part 761.61 (PCB remediation waste) may apply to PCB cleanup at a contaminated site. The PCB cleanup levels listed in Table B1 are based on cleanup levels referred to in 40 C.F.R. 761.61 for high occupancy areas with no cap.

18 AAC 75.345. Groundwater and surface water cleanup levels.

(a) Except as otherwise provided in this section, cleanup of a discharge or release of a hazardous substance to groundwater or surface water must meet the requirements of this section.

(b) Contaminated groundwater must meet

(1) the cleanup levels in Table C if the current use or the reasonably expected potential future use of the groundwater, determined under 18 AAC 75.350, is a drinking water source;

TABLE C. GROUNDWATER CLEANUP LEVELS

CAS Number ¹	Hazardous Substance	Carcinogenic (c/nc) ²	Groundwater cleanup level (mg/L)
ORGANICS			
355-72-782	2-Amino-4,6-dinitrotoluene	nc	0.0073
194-06-510	4-Amino-2,6-dinitrotoluene	nc	0.0073
83-32-9	Acenaphthene	nc	2.2
208-96-8	Acenaphthylene	nc	2.2
67-64-1	Acetone	nc	33
309-00-2	Aldrin	c	0.00005
120-12-7	Anthracene	nc	11
71-43-2	Benzene	c	0.005
56-55-3	Benzo(a)anthracene	c	0.0012
205-99-2	Benzo(b)fluoranthene	c	0.0012
207-08-9	Benzo(k)fluoranthene	c	0.012
65-85-0	Benzoic acid	nc	150
191-24-2	Benzo(g,h,i)perylene	nc	1.1
50-32-8	Benzo(a)pyrene	c	0.0002
111-44-4	Bis(2-chloroethyl)ether	c	0.00077
117-81-7	Bis(2-ethylhexyl)phthalate	c	0.006
75-27-4	Bromodichloromethane	c	0.014
75-25-2	Bromoform	c	0.11
71-36-3	Butanol	nc	3.7
104-51-8	n-Butylbenzene	nc	0.37
135-98-8	sec-Butylbenzene	nc	0.37
98-06-6	tert-Butylbenzene	nc	0.37
85-68-7	Butyl benzyl phthalate	c	7.3
86-74-8	Carbazole	c	0.043
75-15-0	Carbon disulfide	nc	3.7
56-23-5	Carbon tetrachloride	c	0.005
57-74-9	Chlordane	c	0.002
106-47-8	p-Chloroaniline	c	0.016
108-90-7	Chlorobenzene	nc	0.1
124-48-1	Chlorodibromomethane (Dibromochloromethane)	c	0.010
75-00-3	Chloroethane	c	0.29
67-66-3	Chloroform	c	0.14
91-58-7	2-Chloronaphthalene	nc	2.9
95-57-8	2-Chlorophenol	nc	0.18
218-01-9	Chrysene	c	0.12

TABLE C. GROUNDWATER CLEANUP LEVELS

CAS Number¹	Hazardous Substance	Carcinogenic (c/nc)²	Groundwater cleanup level (mg/L)
72-54-8	DDD	c	0.0035
72-55-9	DDE	c	0.0025
50-29-3	DDT	c	0.0025
53-70-3	Dibenzo(a,h)anthracene	c	0.00012
132-64-9	Dibenzofuran	nc	0.073
84-74-2	Di-n-butyl phthalate	nc	3.7
117-84-0	Di-n-octyl phthalate	nc	1.5
94-75-7	2,4-Dichlorophenoxy acetic acid (2,4-D)	nc	0.07
95-50-1	1,2-Dichlorobenzene	nc	0.6
541-73-1	1,3-Dichlorobenzene	nc	3.3
106-46-7	1,4-Dichlorobenzene	c	0.075
91-94-1	3,3-Dichlorobenzidine	c	0.0019
75-71-8	Dichlorodifluoromethane	nc	7.3
75-34-3	1,1-Dichloroethane	c	7.3
107-06-2	1,2-Dichloroethane	c	0.005
75-35-4	1,1-Dichloroethylene	c	0.007
156-59-2	<i>cis</i> -1,2-Dichloroethylene	nc	0.07
156-60-5	<i>trans</i> -1,2-Dichloroethylene	nc	0.10
120-83-2	2,4-Dichlorophenol	nc	0.11
78-87-5	1,2-Dichloropropane	c	0.005
542-75-6	1,3-Dichloropropene	c	0.0085
60-57-1	Dieldrin	c	0.000053
84-66-2	Diethyl phthalate	nc	29
105-67-9	2,4-Dimethylphenol	nc	0.73
131-11-3	Dimethyl phthalate	nc	370
528-29-0	1,2-Dinitrobenzene	nc	0.0037
99-65-0	1,3-Dinitrobenzene	nc	0.0037
100-25-4	1,4-Dinitrobenzene	nc	0.0037
51-28-5	2,4-Dinitrophenol	nc	0.073
121-14-2	2,4-Dinitrotoluene	nc	0.0013
606-20-2	2,6-Dinitrotoluene	c	0.0013
123-91-1	1,4-Dioxane	c	0.077
1746-01-6	2,3,7,8-TCDD (Dioxin)	c	0.000000030
122-39-4	Diphenylamine	nc	0.91
115-29-7	Endosulfan	nc	0.22
72-20-8	Endrin	nc	0.002
100-41-4	Ethylbenzene	c	0.7

TABLE C. GROUNDWATER CLEANUP LEVELS

CAS Number¹	Hazardous Substance	Carcinogenic (c/nc)²	Groundwater cleanup level (mg/L)
106-93-4	Ethylene dibromide (1,2-Dibromoethane)	c	0.00005
107-21-1	Ethylene glycol	nc	73
206-44-0	Fluoranthene	nc	1.5
86-73-7	Fluorene	nc	1.5
76-44-8	Heptachlor	c	0.0004
1024-57-3	Heptachlor epoxide	c	0.0002
118-74-1	Hexachlorobenzene	c	0.001
87-68-3	Hexachloro-1,3-butadiene	c	0.0073
319-84-6	alpha-Hexachlorocyclohexane	c	0.00014
319-85-7	beta-Hexachlorocyclohexane	c	0.00047
58-89-9	gamma-Hexachlorocyclohexane (Lindane)	c	0.0002
77-47-4	Hexachlorocyclopentadiene	nc	0.05
67-72-1	Hexachloroethane	c	0.04
121-82-4	Hexahydro-1,3,5-trinitro-1,3,5-triazine (RDX)	c	0.0077
302-01-2	Hydrazine	c	0.00028
193-39-5	Indeno(1,2,3-c,d)pyrene	c	0.0012
78-59-1	Isophorone	c	0.90
98-82-8	Isopropylbenzene (Cumene)	nc	3.7
72-43-5	Methoxychlor	nc	0.04
74-83-9	Methyl bromide (Bromomethane)	nc	0.051
74-87-3	Methyl chloride (Chloromethane)	c	0.066
78-93-3	Methyl ethyl ketone (MEK)	nc	22
108-10-1	Methyl isobutyl ketone (MIBK)	nc	2.9
74-95-3	Methylene bromide	nc	0.37
75-09-2	Methylene chloride	c	0.005
22967-92-6	Mercury (Methyl)	nc	0.0037
90-12-0	1-Methylnaphthalene	nc	0.15
91-57-6	2-Methylnaphthalene	nc	0.15
95-48-7	2-Methylphenol (o-cresol)	c	1.8
108-39-4	3-Methylphenol (m-cresol)	c	1.8
106-44-5	4-Methylphenol (p-cresol)	c	0.18
1634-04-4	Methyl <i>tert</i> -butyl ether (MTBE)	c	0.47
91-20-3	Naphthalene	nc	0.73
98-95-3	Nitrobenzene	nc	0.018
55-63-0	Nitroglycerin	c	0.050
556-88-7	Nitroguanidine	nc	3.7
62-75-9	n-Nitrosodimethylamine	c	0.000017
86-30-6	n-Nitrosodiphenylamine	c	0.17

TABLE C. GROUNDWATER CLEANUP LEVELS

CAS Number¹	Hazardous Substance	Carcinogenic (c/nc)²	Groundwater cleanup level (mg/L)
621-64-7	n-Nitroso-di-n-propylamine	c	0.00012
88-72-2	2-Nitrotoluene	c	0.0037
99-08-1	3-Nitrotoluene	c	0.73
99-99-0	4-Nitrotoluene	c	0.050
103-65-1	n-Propylbenzene	nc	0.37
2691-41-0	Octahydro-1,3,5,7-tetranitro-1,3,5,7-tetrazocine (HMX)	nc	1.8
87-86-5	Pentachlorophenol	c	0.001
85-01-8	Phenanthrene	nc	11
108-95-2	Phenol	nc	11
133-63-63	Polychlorinated biphenyls (PCBs)	c	0.0005
129-00-0	Pyrene	nc	1.1
100-42-5	Styrene	nc	0.1
79-34-5	1,1,2,2-Tetrachloroethane	c	0.0043
127-18-4	Tetrachloroethylene (PCE)	c	0.005
108-88-3	Toluene	nc	1.0
8001-35-2	Toxaphene	c	0.003
688-73-3	Tributyltin	nc	0.011
120-82-1	1,2,4-Trichlorobenzene	nc	0.07
71-55-6	1,1,1-Trichloroethane	nc	0.2
79-00-5	1,1,2-Trichloroethane	c	0.005
79-01-6	Trichloroethylene (TCE)	c	0.005
95-95-4	2,4,5-Trichlorophenol	nc	3.7
88-06-2	2,4,6-Trichlorophenol	c	0.077
93-72-1	2-(2,4,5-Trichlorophenoxy) Propionic Acid (2,4,5-TP)	nc	0.05
96-18-4	1,2,3-Trichloropropane	c	0.00012
76-13-1	1,1,2-Trichloro-1,2,2-trifluoroethane (Freon-113)	nc	1100
75-69-4	Trichlorofluoromethane (Freon-11)	nc	11
95-63-6	1,2,4-Trimethylbenzene	nc	1.8
108-67-8	1,3,5-Trimethylbenzene	nc	1.8
99-35-4	1,3,5-Trinitrobenzene	nc	1.1
479-45-8	2,4,6-Trinitrophenylmethylnitramine (Tetryl)	nc	0.15
118-96-7	2,4,6-Trinitrotoluene (TNT)	c	0.018
108-05-4	Vinyl acetate	nc	37
75-01-4	Vinyl chloride (Chloroethene)	c	0.002
1330-20-7	Xylenes (total)	nc	10

TABLE C. GROUNDWATER CLEANUP LEVELS

CAS Number ¹	Hazardous Substance	Carcinogenic (c/nc) ²	Groundwater cleanup level (mg/L)
INORGANICS			
7440-36-0	Antimony	nc	0.006
7440-38-2	Arsenic	c	0.010
7440-39-3	Barium	nc	2.0
7440-41-7	Beryllium	c	0.004
7440-43-9	Cadmium	c	0.005
7440-47-3	Chromium (Total)	nc	0.10
16065-83-1	Chromium +3	nc	55
18540-29-9	Chromium +6	nc	0.10
7440-50-8	Copper	nc	1.0
57-12-5	Cyanide	nc	0.20
7439-92-1	Lead	c	0.015
7439-97-6	Mercury	nc	0.002
7440-02-0	Nickel	nc	0.10
7790-98-9	Perchlorate	nc	0.026
7782-49-2	Selenium	nc	0.05
7440-22-4	Silver	nc	0.10
7440-28-0	Thallium	nc	0.002
7440-62-2	Vanadium	nc	0.26
7723-14-0	White phosphorus	nc	0.00073
7440-66-6	Zinc	nc	5.0
PETROLEUM HYDROCARBONS			
	C ₆ -C ₁₀ GRO	nc	2.2
	C ₁₀ -C ₂₅ DRO	nc	1.5
	C ₂₅ -C ₃₆ RRO	nc	1.1

Notes to Table C:

1. "CAS Number" means the Chemical Abstract Service (CAS) registry number uniquely assigned to chemicals by the American Chemical Society and recorded in the CAS Registry System.
2. "c" means carcinogenic, and "nc" means noncarcinogenic.

(2) an approved cleanup level based on an approved site-specific risk assessment conducted under the *Risk Assessment Procedures Manual* adopted by reference in 18 AAC 75.340.

(c) The department will require a more stringent cleanup level than the applicable level under (b) of this section, if the department determines that a more stringent cleanup level is necessary to ensure protection of human health, safety, or welfare, or of the environment, and based on actual onsite and actual or likely offsite uses of the groundwater that are likely to be affected by the hazardous substance, and

(1) the groundwater use classifications other than for drinking water, as set out under 18 AAC 70.020(a)(1)(A) and 18 AAC 70.050(a)(2);

(2) groundwater hazardous substance concentrations complying with the secondary maximum contaminant levels in 18 AAC 80.300 for actual or likely drinking water supplies; and

(3) the cleanup levels in this section for groundwater contaminated with petroleum, the contamination may not exceed, for each petroleum hydrocarbon range applicable, including the gasoline range, the diesel range, and the residual range,

(A) a threshold odor number (TON) of 1 for odor, as measured by Method 2150B, *Standard Methods for the Examination of Water and Wastewater*, 21st edition, American Public Health Association (2005), adopted by reference; or

(B) a flavor threshold number (FTN) of 1 for flavor, as measured by Method 2160B, *Standard Methods for the Examination of Water and Wastewater*, adopted by reference in (A) of this paragraph.

(d) Toxic substances in sediment may not cause, and may not be reasonably be expected to cause, a toxic or other deleterious effect on aquatic life, except as authorized under 18 AAC 70. For purposes of this subsection, "toxic substances" has the meaning given in 18 AAC 70.990.

(e) The point of compliance where groundwater cleanup levels must be attained is throughout the site from each point extending vertically from the uppermost level of the saturated zone to the lowest possible depth that could potentially be affected by the discharge or release of a hazardous substance, unless the department approves an alternative point of compliance as part of the cleanup action under 18 AAC 75.360. For the department to approve an alternative point of compliance under this subsection, the

(1) alternative point of compliance must be within the existing groundwater contamination plume; and

(2) the cleanup levels in Table C at (b)(1) of this section must be met at the property boundary in an area where the current use or reasonably expected potential future use of groundwater in the neighboring property is determined to be a source of drinking water, unless a responsible person

(A) demonstrates that attainment of the applicable groundwater cleanup levels is not practicable; and

(B) provides an alternative source of water for affected persons.

(f) Groundwater that is closely connected hydrologically to nearby surface water may not cause a violation of the water quality standards in 18 AAC 70 for surface water or sediment. The department will, in consultation with local, state, and federal officials and the public, establish points of compliance with this subsection, taking into account the following factors:

(1) groundwater travel time and distance from sources of hazardous substances to surface water;

(2) the contribution of the groundwater to the chemical and physical quantity and quality of the surface water;

(3) organisms living in or dependent upon the groundwater to surface water ecosystems;

(4) climatic, tidal, or seasonal variations;

(5) feasibility of attaining applicable water quality standards to support the designated uses of the surface water;

(6) presence of sediment contamination;

(7) if conducted for the site, the conclusions of a site-specific risk assessment conducted under the *Risk Assessment Procedures Manual*, adopted by reference in 18 AAC 75.340.

(g) If the groundwater point of compliance is established at or near a property boundary or if groundwater is closely connected hydrologically to a surface waterbody, the department will, if the

department determines that sentinel monitoring is necessary to ensure protection of human health, safety, or welfare, or the environment, require a responsible person to develop sentinel monitoring wells that monitor for any hazardous substances likely to migrate to the applicable point of compliance at concentrations that exceed the cleanup levels.

(h) The department will require long-term monitoring if the department determines that monitoring is necessary to ensure protection of human health, safety, or welfare, or of the environment and if groundwater, surface water, soil, or sediment contains residual concentrations of a hazardous substance that exceed the applicable cleanup levels. If long-term monitoring is required under this subsection, a responsible person shall submit a plan and schedule for monitoring as part of the requirements for cleanup operations under 18 AAC 75.360. Unless otherwise approved by the department, a responsible person shall conduct monitoring quarterly for at least one year to establish the concentration trend. The department will evaluate the monitoring program yearly. If the monitoring indicates that the concentration trend

(1) is increasing, the department will require additional followup monitoring and assess the need for additional cleanup; or

(2) is stable or decreasing, and that hazardous substance migration is not occurring, the department will decrease or discontinue the monitoring frequency and locations, if the responsible person demonstrates that continued monitoring is not necessary to ensure protection of human health, safety, and welfare, and of the environment.

(i) The department will require groundwater, surface water, soil, or sediment monitoring to estimate contaminant flux rates and to address potential bioaccumulation of each hazardous substance at the site, if the department determines that monitoring is necessary to ensure protection of human health, safety, or welfare, or of the environment. If monitoring is required under this subsection, a responsible person shall submit a plan and schedule for monitoring as part of the cleanup operation requirements under 18 AAC 75.360.

(j) Groundwater monitoring wells must be installed, developed, and decommissioned in accordance with the department's *Recommended Practices for Monitoring Well Design, Installation, and Decommissioning*, April 1992, adopted by reference, or another approved method that is protective of human health, safety, and welfare, and of the environment.

(k) For a cleanup conducted under (b)(1) of this section, a chemical that is detected at one-tenth or more of the Table C value must be included when calculating cumulative risk under 18 AAC 75.325(g). (Eff. 1/22/99, Register 149; am 8/27/2000, Register 155; am 1/30/2003, Register 165; am 10/9/2008, Register 188)

Authority:	AS 46.03.020	AS 46.03.745	AS 46.04.070
	AS 46.03.050	AS 46.03.755	AS 46.09.010
	AS 46.03.710	AS 46.04.020	AS 46.09.020
	AS 46.03.740		

Editor's note: *Standard Methods for the Examination of Water and Wastewater*, adopted by reference in this section, may be purchased from the American Water Works Association Bookstore, 6666 West Quincy Avenue, Denver, Colorado 80235, or may be viewed at the department's Anchorage, Fairbanks, Juneau, and Soldotna offices. *Recommended Practices for Monitoring Well Design, Installation, and Decommissioning*, adopted by reference in this section, may be viewed at, or requested from, the department's Anchorage, Fairbanks, Juneau, and Soldotna offices.

18 AAC 75.350. Groundwater use.

Subject to 18 AAC 75.345(c), groundwater at the site is considered to be a drinking water source unless a responsible person demonstrates or the department determines that

- (1) the groundwater is not
 - (A) used for a private or public drinking water system;
 - (B) within the zone of contribution of an active private or public drinking water system; or
 - (C) within a recharge area for a private or public drinking water well, a wellhead protection area, or a sole source aquifer;
- (2) the groundwater is not a reasonably expected potential future source of drinking water, based on an evaluation of
 - (A) the availability of the groundwater as a drinking water source, including depth to groundwater, the storativity and transmissivity of the aquifer, the presence of permafrost, and other relevant information;
 - (B) actual or potential quality of the groundwater, including organic and inorganic substances, and as affected by background, saltwater intrusion, and known or existing areawide contamination;
 - (C) the existence and enforceability of institutional controls described in 18 AAC 75.375 or municipal ordinances or comprehensive plans that prohibit or limit access to the groundwater for use as drinking water;
 - (D) land use of the site and neighboring property, using the factors in EPA's *Land Use in the CERCLA Remedy Selection Process*, adopted by reference in 18 AAC 75.340;
 - (E) the need for a drinking water source and the availability of an alternative source; and
 - (F) whether the groundwater is exempt under 40 C.F.R. 146.4, revised as of July 1, 1997, and adopted by reference; and
- (3) the groundwater affected by the hazardous substance will not be transported to groundwater that is a source of drinking water, or that is a reasonably expected potential future source of drinking water, in concentrations in the receiving groundwater that exceed the groundwater cleanup levels; in reviewing the demonstration required under this paragraph, the department will consider
 - (A) the areal extent of the affected groundwater;
 - (B) the distance to any existing or reasonably anticipated future water supply well;
 - (C) the likelihood of an aquifer connection due to well construction practices in the area where the site is located;
 - (D) the physical and chemical characteristics of the hazardous substance;
 - (E) the hydrogeological characteristics of the site;
 - (F) the presence of discontinuities in the affected geologic stratum at the site;
 - (G) the local climate;
 - (H) the degree of confidence in any predictive modeling performed; and
 - (I) other relevant information; the department will request additional information if the department determines that the information is necessary to protect human health, safety, or welfare, or the environment. (Eff. 1/22/99, Register 149; am 8/27/2000, Register 155)

Authority:	AS 46.03.020	AS 46.03.740	AS 46.04.070
	AS 46.03.050	AS 46.03.745	AS 46.09.020
	AS 46.03.710	AS 46.04.020	

18 AAC 75.355. Sampling and analysis.

(a) Unless the department determines that final confirmation sampling is not needed to meet the requirements of the site cleanup rules, a responsible person shall submit a sampling and analysis plan for approval under 18 AAC 75.360, and after implementing the plan, shall submit the analytical sampling results collected to the department. Based on the results of the analyses, a responsible person shall demonstrate compliance with the site cleanup rules.

(b) A responsible person and the owner or operator of an offsite or portable treatment facility under 18 AAC 75.365 shall ensure that the collection, interpretation, and reporting of data, and the required sampling and analysis is conducted or supervised by a qualified, impartial third party. The department will waive the requirement for use of an impartial third party if a responsible person demonstrates that work performed will be conducted or supervised by a qualified and objective person, and if the department determines that a waiver is protective of human health, safety, and welfare, and of the environment, and that strict compliance with the impartial third party requirement is not practicable. To request a waiver under this subsection, in addition to meeting the requirements of 18 AAC 75.390, a responsible person shall submit

- (1) a written request for a waiver;
- (2) the resume of the person qualified to conduct or supervise the work to be performed, showing relevant education, vocational training, related work experience, and any special training, license, certificate, or registration held by that person; and
- (3) a description of the supervisory and organizational structure related to the person identified in (2) of this subsection.

(c) If a hazardous substance is suspected at the site because of empirical evidence or prior analysis, but is not detected or is detected at a concentration below the practical quantitation limit, and the practical quantitation limit is higher than the cleanup level for that substance,

(1) the department will determine the responsible person to have attained the cleanup level, if additionally the more stringent of the following conditions is met:

(A) the practical quantitation limit is no greater than 10 times the method detection limit for all hazardous substances other than polychlorinated biphenyls where the practical quantitation limit is no greater than five times the method detection limit; or

(B) the practical quantitation limit is no greater than the practical quantitation limit established in EPA's *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods* (SW-846), Third Edition, including Final Update III (1997), adopted by reference;

(2) and if the department determines that additional action is necessary to ensure protection of human health, safety, or welfare, or of the environment, the department will require one or more of the following:

(A) use of a surrogate measure to estimate the concentration of the hazardous substance;

(B) use of a specialized sample collection or analytical method to improve the accuracy, precision, method detection limit, or practical quantitation limit for the hazardous substances at the site; or

(C) monitoring to ensure that the concentration of the hazardous substance does not exceed quantifiable levels; and

(3) and if the department determines that an improved analytical method or other responsive action is necessary to ensure protection of human health, safety, or welfare, or of the environment, the department will, before site closure and if the site is in a monitoring stage, periodically consider whether improved analytical methods should be used at the site and will require the use of an improved analytical method or other responsive action.

(d) Among the analytical methods set out in EPA's *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods* (SW-846), as adopted by reference in (c) of this section, if there is more than one analytical method for a hazardous substance, a responsible person may select any of

those methods with a practical quantitation limit less than the applicable cleanup level. If only one analytical method has a practical quantitation limit less than the applicable cleanup level, that method must be used. Analysis for petroleum contamination must follow the applicable Alaska methods for petroleum hydrocarbons referred to in Table 1 of Chapter 2 of the *Underground Storage Tanks Procedures Manual*, dated November 7, 2002. Table 1 of Chapter 2 and Appendices D and E of the *Underground Storage Tanks Procedures Manual*, dated November 7, 2002 are adopted by reference. (e) Laboratory analysis under the site cleanup rules must be performed by a laboratory approved by the department under 18 AAC 78.800 - 18 AAC 78.815. (Eff. 1/22/99, Register 149; am 8/27/2000, Register 155; am 1/30/2003, Register 165)

Authority:	AS 44.46.025	AS 46.03.710	AS 46.04.020
	AS 46.03.020	AS 46.03.740	AS 46.04.070
	AS 46.03.050	AS 46.03.745	AS 46.09.020

Editor's note. EPA's *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods* (SW-846), adopted by reference in this section, may be purchased from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, (800) 553-6847, Fax: (703) 321-8547. The *Underground Storage Tank Procedures Manual*, adopted by reference in 18 AAC 75.355, may be requested from the department at any of the offices listed below. Both documents may be viewed at the department's Anchorage, Fairbanks, Juneau, or Soldotna office.

18 AAC 75.360. Cleanup operation requirements.

A responsible person shall ensure that site cleanup is conducted or supervised by a qualified person. Except as provided in 18 AAC 75.355(b), a responsible person shall submit each of the following elements for approval before work on that element begins, and for additional approval if a modification to an element is anticipated:

- (1) a schedule for conducting field work, monitoring, cleanup, and submittal of interim and final cleanup reports;
- (2) a sampling and analysis plan that meets the requirements of 18 AAC 75.355;
- (3) a waste management plan for handling, transporting and disposing of investigation-derived wastes, including
 - (A) purged water from a boring or monitoring well;
 - (B) cuttings, mud, and other wastes from well or boring installation and development; and
 - (C) contaminated equipment and materials;
- (4) a cleanup plan that includes
 - (A) provisions for the cleanup of soil and groundwater contaminated at levels exceeding the applicable cleanup levels determined under the site cleanup rules;
 - (B) detailed specifications for each cleanup technique that the department has approved under 18 AAC 75.335(c) - (d);
 - (C) provisions for minimizing hazardous substance migration to previously unaffected areas;
 - (D) provisions for transporting contaminated soil as a covered load in compliance with 18 AAC 60.015; and
 - (E) provisions for the disposal of contaminated soil and groundwater, including the location and method of disposal;
- (5) a list of chemical additives proposed for use and their potential effects on
 - (A) the hazardous substances at the site; and
 - (B) human health, safety, and welfare, and the environment;

(6) a site control plan, if necessary to protect human health, safety, or welfare, or the environment, including engineering measures, such as the installation of caps and liners, and provisions for restricting access, such as the use of fences, signs, or other barriers;

(7) a demonstration that site work and the cleanup action will comply with the air quality standards and requirements of 18 AAC 50;

(8) a plan for ensuring that contaminated soil does not come in contact with uncontaminated soil during the cleanup process, except under an approved cleanup plan under this subsection or an approved operations plan under 18 AAC 75.365;

(9) a nondomestic wastewater system plan under 18 AAC 72.600, if the cleanup operation requires construction, alteration, installation, modification, or operation of a nondomestic wastewater treatment works or disposal system; and

(10) the additional elements required under 18 AAC 75.365, as applicable;

(11) for ex-situ cleanup techniques,

(A) provisions for containment and handling of leachate, if leachate is produced;

(B) provisions for storing contaminated soil in compliance with the requirements of 18 AAC 75.370;

(C) if using a hot asphalt batch plant, written certification by a registered engineer that processes incorporating contaminated soils meet current industry standards for asphalt paving; and

(D) if combining contaminated soil with asphalt for the purpose of cold asphalt recycling;

(i) a pavement structure design study for incorporating the excavated material; the study must be certified by a registered engineer;

(ii) the leaching assessment or model proposed for use in determining hazardous substance migration; and

(iii) results of the approved hazardous substance leaching assessment or model, referenced under (ii) of this subparagraph; those results must demonstrate that hazardous substance concentrations in the soil will not migrate;

(E) if using bioremediation, a detailed description of

(i) cultured microbes, unless using an indigenous microbe population;

(ii) electron acceptor and nutrient source for microbes;

(iii) the expected rate of biodegradation;

(iv) intermediate and final breakdown products;

(v) type and amount of contamination;

(vi) any potential adverse effect on human health, safety, or welfare, or on the environment; and

(vii) other information requested by the department; the department will request additional information if it determines that the information is necessary to ensure protection of human health, safety, or welfare, or of the environment;

(F) if using solidification, a solidification report that includes

(i) a demonstration that hazardous substance concentrations in the solidified material will not migrate;

(ii) results of structural testing on the solidified material to demonstrate that the solidified material has an unconfined compressive strength of 2,000 psi or more after 28 days;

(iii) results of leachability testing of the solidified material; and

(iv) specifications for the ratio of the mass of contaminated soil to the mass of reagent;

- (G) if using soil contaminated with petroleum hydrocarbons or metals as a base for a physical barrier,
- (i) a demonstration that the contaminated soil that is used for the base will be blended with uncontaminated soil only if necessary to meet design specifications;
 - (ii) a physical barrier design study, certified by a registered engineer;
 - (iii) the leaching assessment or model proposed for use in determining hazardous substance migration;
 - (iv) results of the approved leaching assessment or model referenced under (iii) of this subparagraph; those results must demonstrate that hazardous substance concentrations in the soil will not migrate;
 - (v) a demonstration that the base for a physical barrier will use no more than 18 vertical inches of material containing contaminated soil;
 - (vi) a demonstration that the contaminated zone will be compacted to 95 percent or more of the maximum density as specified in American Society for Testing and Materials (ASTM) D 1557-07, *Standard Test Methods for Laboratory Compaction Characteristics of Soil Using Modified Effort*, updated November 2007 and adopted by reference or ASTM D 4253-00, *Standard Test Methods for Maximum Index Density and Unit Weight of Soils Using a Vibratory Table*, updated March 2006 and adopted by reference;
 - (vii) a demonstration that the material containing contaminated soil will be placed in a zone directly beneath the final base course with at least 18 inches of impervious pavement extending beyond the horizontal limit of the material containing contaminated soil;
 - (viii) a demonstration that at least six feet will separate the seasonal high groundwater point from the lowest point of material containing contaminated soil; and
 - (ix) as-built drawings, certified by a registered engineer, that show the final location of material containing contaminated soil; and
- (12) for in-situ cleanup techniques,
- (A) a site monitoring plan showing proposed locations of monitoring wells;
 - (B) a hydrogeologic description of the site, including
 - (i) soil and sediments present;
 - (ii) stratigraphy;
 - (iii) aquifer characteristics, including groundwater gradient, confining layers, perched water, permeability, and aquifer transmissivity;
 - (iv) percolation rates from precipitation; and
 - (v) other relevant factors;
 - (C) results of hydrogeologic modeling performed to address capture zones, effects of hydraulic loading, and plume migration; and
 - (D) if using bioremediation, a demonstration of compliance with (11)(E) of this section. (Eff. 1/22/99, Register 149; am 10/9/2008, Register 188)

Authority:	AS 46.03.020	AS 46.03.740	AS 46.04.020
	AS 46.03.050	AS 46.03.745	AS 46.04.070
	AS 46.03.710	AS 46.03.822	AS 46.09.020

Editor's note: The ASTM methods adopted by reference in 18 AAC 75.360 may be reviewed at the department's Anchorage, Fairbanks, Juneau, and Soldotna offices, and may be obtained from the

ASTM International, Publications Department, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, Pennsylvania 19428-2959; telephone (610) 832-9585; fax (610) 832-9555.

18 AAC 75.365. Offsite or portable treatment facilities.

- (a) A person who owns or operates an offsite or portable treatment facility shall
- (1) obtain approval of an operations plan before that person accepts or treats contaminated soil; the department will approve the plan if the department determines that the operations proposed in the plan are protective of human health, safety, and welfare, and of the environment; a plan submitted under this paragraph must include
 - (A) a facility diagram that shows the location of
 - (i) each soil treatment, storage, and transportation area;
 - (ii) major roads within or bordering the site or facility; and
 - (iii) monitoring wells, surface water, water supply wells, facility boundaries, and public or private buildings within 500 feet of the facility boundary;
 - (B) a detailed process description, including a discussion of
 - (i) air, water, and solid waste process streams;
 - (ii) startup and shutdown procedures;
 - (iii) maximum process flow rate;
 - (iv) air pollution control equipment;
 - (v) water treatment systems;
 - (vi) the projected maximum time necessary for the treatment method to achieve soil cleanup levels for contaminated soil; and
 - (vii) a detailed description of any additive to be used;
 - (C) a post-treatment sampling and analysis plan prepared by a qualified person in accordance with 18 AAC 75.355(b) to verify that the applicable cleanup levels have been met;
 - (D) provisions for complete containment of the contaminated soil before, during, and after treatment until the contaminated soil meets the applicable cleanup levels; alternatively, if the treatment process, such as landfarming or landspreading, will not contain the contaminated soil, the person who owns or operates the offsite or portable treatment facility must demonstrate that there will be no uncontrolled leachate from the treatment area;
 - (E) for an offsite treatment facility classified as a Category C or Category D facility, as described in the department's *Soil Treatment Facility Guidance*, dated November 7, 2002, engineering plans and engineering record drawings for contaminated soil and water containment structures; the *Soil Treatment Facility Guidance*, dated November 7, 2002, is adopted by reference; and
 - (F) site monitoring procedures that will measure for secondary contamination at the treatment facility;
 - (2) if the facility is a Category C or Category D facility, as described in the *Soil Treatment Facility Guidance*, submit the following to the department before the owner or operator accepts or treats contaminated soil:
 - (A) proof of a performance bond or other approved means of fiscal responsibility that will provide the department with a source of funds to clean up contaminated soils that have been received for treatment if the facility operator fails to treat the contaminated soils in accordance with this chapter; a performance bond must be executed by an insurance company licensed in the state and include a bond amount that will cover cleanup of the contaminated soils at the treatment facility; the bond shall be based on

(i) the quantity of contaminated soil allowed at the facility specified in the facility's approved operation plan; and

(ii) the cost per ton for treating contaminated soil at that facility location; and

(B) proof of pollution liability insurance that will provide the department with a source of funds to clean up secondary contamination at the facility property that is caused by the soil treatment facility during soil treatment operations;

(3) perform confirmation sampling of treated soil in accordance with a sampling and analysis plan approved under this subsection to verify that applicable cleanup levels have been met;

(4) submit to the department an assessment of background contamination at the facility before initial startup of the treatment facility; and

(5) submit to the department within 90 days after terminating operation of the treatment facility, a closure assessment demonstrating that secondary contamination did not occur at the facility; if secondary contamination did occur at the facility, the owner or operator of the portable treatment facility shall perform a cleanup of the contamination by in-situ or ex-situ treatment within two years after terminating operation.

(b) If the owner or operator of an offsite or portable treatment facility fails to process soils to the department's satisfaction in accordance with the operations plan approved under (a)(1) of this section, the department will withdraw approval under (a)(1) of this section, and that owner or operator may not process or receive contaminated soil.

(c) For purposes of this section

(1) "engineering plans" means a set of plans approved and sealed by a registered engineer;

(2) "engineering record drawings" means the approved original plans prepared for construction and department approval under (a)(1) of this section, revised to reflect how the containment structure or system was constructed or installed, and sealed by a registered engineer;

(3) "facility" has the meaning given in AS 46.03.900; "facility" includes the land, structures, and equipment associated with treatment of contaminated soil;

(4) "offsite or portable treatment facility" has the meaning given in the *Soil Treatment Facility Guidance*, adopted by reference in (a)(1) of this section;

(5) "owner or operator" has the meaning given to "owner" and "operator" in AS 46.03.826;

(6) "performance bond" means a written agreement between the owner or operator and the department guaranteeing performance of the obligations covered by the agreement;

(7) "registered engineer" means a professional engineer registered to practice in the state under AS 08.48. (Eff. 1/22/99, Register 149; am 8/27/2000, Register 155; am 1/30/2003, Register 165)

Authority:	AS 46.03.020	AS 46.03.740	AS 46.04.070
	AS 46.03.050	AS 46.03.745	AS 46.09.020
	AS 46.03.710	AS 46.04.020	

Editor's note: The department's *Soil Treatment Facility Guidance*, adopted by reference in 18 AAC 75.365(a)(1), may be viewed at or requested from the department's offices in Anchorage, Fairbanks, Juneau, and Soldotna.

18 AAC 75.370. Soil storage and disposal.

(a) Unless the department approves the activity in question as protective of human health, safety, and welfare, and of the environment, a responsible person may not blend contaminated soil with uncontaminated soil and shall

- (1) segregate contaminated soil based on
 - (A) the intended cleanup alternatives; and
 - (B) the specific hazardous substance present;

- (2) store contaminated soil

- (A) 100 feet or more from surface water, a private water system, a Class C public water system as defined in 18 AAC 80.1990, or a fresh water supply system that uses groundwater for a use designated in 18 AAC 70.020(a)(1)(A) and 18 AAC 70.050(a)(2); and

- (B) 200 feet or more from a water source serving a Class A or Class B public water system, as defined in 18 AAC 80.1990;

- (3) place contaminated soil on a liner or on or within another impermeable surface that prevents soil and groundwater beneath the liner from becoming contaminated;

- (4) place petroleum-contaminated soil on a liner that meets the minimum specifications for the testing methods set out in Table D of this section;

- (5) place nonpetroleum contaminated soil on a liner compatible with the type of hazardous substance, and meet the general strength and thickness requirements of Table D;

- (6) cover and protect the contaminated soil stockpile from weather with no less than a six-mil, reinforced polyethylene liner or its equivalent, with the edge of the cover lapped over the bottom liner to prevent water running through the soil; and

- (7) inspect and maintain the contaminated soil stockpile regularly to ensure that the cover remains intact and that the soil and any liquid leachate derived from the soil is contained.

(b) A responsible person shall obtain approval before moving or disposing of soil subject to the site cleanup rules. (Eff. 1/22/99, Register 149; am 8/27/2000, Register 155; am 10/9/2008, Register 188)

Authority:	AS 46.03.020	AS 46.03.740	AS 46.04.070
	AS 46.03.050	AS 46.03.745	AS 46.09.020
	AS 46.03.710	AS 46.04.020	

Editor's note: The ASTM methods adopted by reference in Table D of 18 AAC 75.370 may be reviewed at the department's Anchorage, Fairbanks, Juneau, and Soldotna offices, or may be obtained from the ASTM International, Publications Department, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, Pennsylvania 19428-2959; telephone (610) 832-9585; fax (610) 832-9555.

TABLE D. BOTTOM LINER SPECIFICATIONS

Method	Coated Fabric	Extruded Fabric
Short-term storage of petroleum-contaminated soil (less than 180 days)		
Cold crack (ASTM D 2136-02, updated July 2007)	-60° F	-60° F
Black carbon content (ASTM D 1603-06, updated March 2006)	2% or greater	2% or greater
Tensile strength (ASTM D 751-06, updated May 2006)	125 lbs (warp)	N/A
Mullen burst (ASTM D 751-06, updated May 2006)	250 psi	N/A
One inch tensile strength (ASTM D 882-02, updated June 2002)	N/A	25 lbs (warp)
One inch elongation MD (machine direction)	N/A	550%
Nominal thickness	10 mil	10 mil
Oil resistance (ASTM D 471-06, updated November 2006)	No signs of deterioration and more than 80% retention of tensile and seam strength after immersion for 30 days at 73° F.	No signs of deterioration and more than 80% retention of tensile and seam strength after immersion for 30 days at 73° F.
Long-term storage of petroleum-contaminated soil (180 days to two years)		
Cold crack (ASTM D 2136-02, updated July 2007)	-60° F	-60° F
Black carbon content (ASTM D 1603-06, updated March 2006)	2% or greater	2% or greater
Tensile strength (ASTM D 751-06, updated May 2006)	300 lbs (warp)	N/A
Mullen burst (ASTM D 751-06, updated May 2006)	500 psi	N/A
One inch tensile strength (ASTM D 882-02, updated June 2002)	N/A	45 lbs (warp)
One inch elongation MD (machine direction)	N/A	625%
Nominal thickness	20 mil	20 mil
Oil resistance (ASTM D 471-06, updated November 2006)	No signs of deterioration and more than 80% retention of tensile and seam strength after immersion for 30 days at 73° F.	No signs of deterioration and more than 80% retention of tensile and seam strength after immersion for 30 days at 73° F.
The American Society for Testing and Materials (ASTM) methods referred to in this table are adopted by reference. "N/A" means not applicable.		

18 AAC 75.375. Institutional controls.

(a) The department will, after consultation with each landowner of the site, determine that the use of an institutional control is necessary, on a site-specific basis, if the department determines that controls are required to ensure

- (1) compliance with an applicable cleanup level;
- (2) protection of human health, safety, or welfare, or the environment; or
- (3) the integrity of site cleanup activities or improvements.

(b) Institutional controls include

- (1) the requirement for and maintenance of physical measures, such as fences and signs, to limit an activity that might interfere with cleanup or result in exposure to a hazardous substance at the site;
- (2) the requirement for and maintenance of engineering measures, such as liners and caps, to limit exposure to a hazardous substance;
- (3) restrictive covenants, easements, deed restrictions, or other measures that would be examined during a routine title search, and that limit site use or site conditions over time or provide notice of any residual contamination; and
- (4) a zoning restriction or land use plan by a local government with land use authority.

(c) The use of institutional controls must, to the maximum extent practicable, be

- (1) appurtenant to and run with the land so that the control is binding on each future owner of the site; and
- (2) maintained by each responsible person or owner of the site.

(d) If the department determines any of the following are necessary to protect human health, safety, or welfare, or the environment, the department will require that institutional controls be designed to accomplish one or more of the following:

- (1) prohibit activities on the site that might interfere with the site cleanup, operation and maintenance, monitoring, or other response actions;
- (2) prohibit activities that might result in the release of a hazardous substance that was contained as a part of the site cleanup activities;
- (3) require written notice to the department of any proposal to use the site in a manner that is inconsistent with a restrictive covenant or other measure described in (b)(3) of this section; and
- (4) grant the department and its designated representatives the right to enter the property at reasonable times to evaluate compliance with the institutional control, including the right to take samples, inspect any cleanup actions taken at the site, and inspect records relating to the operation and maintenance of the institutional control.

(e) If the department determines that financial assurance is necessary to ensure protection of human health, safety, or welfare, or of the environment, the department will require a responsible person to provide financial assurance sufficient to cover costs of operation and maintenance, including compliance monitoring and corrective measures, for any institutional control.

(f) If the concentrations of all residual hazardous substances remaining at the site are subsequently determined to be below the levels that allow for unrestricted use, the department will approve elimination of the institutional control. (Eff. 1/22/99, Register 149; am 10/9/2008, Register 188)

Authority:	AS 46.03.020	AS 46.03.745	AS 46.04.110
	AS 46.03.050	AS 46.04.020	AS 46.09.060
	AS 46.03.710	AS 46.04.070	AS 46.09.070
	AS 46.03.740		

18 AAC 75.380. Final reporting requirements and site closure.

(a) A responsible person shall submit a written final cleanup report to the department for each site undergoing cleanup under the site cleanup rules. The report must be prepared by a qualified person.

- (b) The written report required by (a) of this section must contain, as applicable,
- (1) the date and time of the discharge or release;
 - (2) the location of the discharge or release, including latitude and longitude coordinates;
 - (3) the name and physical address of the site, facility, or operation;
 - (4) the name, mailing address, and telephone number of the owner and of the operator of the site, facility, or operation;
 - (5) the type and amount of each hazardous substance discharged or released;
 - (6) a description of environmental damage caused by the discharge, release, or containment, to the extent the damage can be identified;
 - (7) a demonstration that the free product was recovered in compliance with 18 AAC 75.325(f)(1)(B) and that provides, at a minimum, the following information:
 - (A) the estimated amount, type, and thickness of free product observed or measured in wells, boreholes, and excavations;
 - (B) the type of free product recovery system used;
 - (C) whether a discharge or release has occurred or will occur at the site or offsite during the recovery operation and where the discharge or release occurred or will occur;
 - (D) the type of treatment applied to, and the effluent quality resulting or expected from, any substance that has been discharged or released or will be discharged or released;
 - (E) whether a discharge or other permit was required under local, state, or federal law and if each required permit was obtained;
 - (F) the date, location, and method of disposal of the recovered free product, dissolved phase product, or contaminated soil; and
 - (G) whether free product remains at the site, and, if so, the estimated quantity;
 - (8) a summary of each applicable soil and groundwater cleanup level approved under the site cleanup rules and a description of the factors used in determining each applicable cleanup level;
 - (9) a description of cleanup actions taken, including
 - (A) a demonstration that cleanup was conducted in accordance with the elements, including modifications to the elements, approved under 18 AAC 75.360;
 - (B) sampling reports and a description of the soil and groundwater sampling protocol and sampling locations;
 - (C) a summary of the laboratory reports for the final verification samples collected at the site; the laboratory or a responsible person shall keep those reports and make them available to the department upon request for at least 10 years after submission of the summary to the department;
 - (D) a detailed explanation of what was done if a sample exceeded the applicable required cleanup level;
 - (E) a demonstration that contaminated soil and groundwater were stored, treated, and disposed of in an approved manner;
 - (F) an estimate of the extent of any remaining residual contamination, above and below the applicable cleanup levels;

(G) a demonstration that surface soil staining was evaluated and that a cleanup of that staining was performed;

(H) whether permits were required under local, state, or federal law and if each required permit was obtained;

(I) confirmation that any hazardous waste generated was stored, treated, or disposed of in compliance with 42 U.S.C. 6901 - 6992k (Solid Waste Disposal Act, as amended by Resource Conservation Recovery Act), as amended through January 6, 2003 and adopted by reference; and

(J) other information requested by the department, as the department determines necessary to ensure protection of human health, safety, or welfare, or of the environment;

(10) a demonstration of compliance with applicable institutional control requirements under 18 AAC 75.375.

(11) cumulative risk calculations.

(c) The department will determine final compliance with the

(1) applicable soil cleanup levels, based on sampling results from onsite contaminated soil and from contaminated soil moved offsite for treatment or disposal, and based on the maximum concentrations detected, unless the department approves an appropriate statistical method, in which case compliance will be based on the mean soil concentration at the 95th percent upper confidence limit; approval of a statistical method will be based on

(A) the number and location of samples taken;

(B) whether large variations in hazardous substance concentrations relative to the mean concentration exist; and

(C) whether a large percentage of concentrations are below the method detection limit; and

(2) groundwater cleanup levels, based on an analysis of unfiltered groundwater samples unless a responsible person demonstrates that a filtered sample provides a more representative measure of groundwater quality; the department will determine compliance based on the maximum concentrations of a hazardous substance detected in the final confirmation samples; before closure, the size of the dissolved plume must be steady state or shrinking and concentrations of the hazardous substance must be decreasing.

(d) After reviewing the final cleanup report submitted under this section, if the department determines that

(1) a site has been adequately characterized under 18 AAC 75.335 and has achieved the applicable requirements under the site cleanup rules, the department will issue a written determination that the cleanup is complete, subject to a future department determination that the cleanup is not protective of human health, safety, or welfare, or of the environment; or

(2) the cleanup and applicable institutional controls are not protective of human health, safety, or welfare, or of the environment, the department will, as necessary to ensure protection of human health, safety, or welfare, or of the environment, require a responsible person to conduct additional actions that meet the requirements of the site cleanup rules. (Eff. 1/22/99, Register 149; am 10/9/2008, Register 188)

Authority:	AS 46.03.020	AS 46.03.745	AS 46.04.070
	AS 46.03.050	AS 46.03.755	AS 46.09.010
	AS 46.03.710	AS 46.04.020	AS 46.09.020
	AS 46.03.740		

18 AAC 75.385. Appeals.

A person aggrieved by a final department decision under the site cleanup rules may request an adjudicatory hearing under 18 AAC 15.195 - 18 AAC 15.340. A request for an adjudicatory hearing must be made within 30 days after the date of the decision being appealed. (Eff. 1/22/99, Register 149; am 7/11/2002, Register 163; am 1/30/2003, Register 165)

Authority: AS 46.03.020 AS 46.35.090

18 AAC 75.390. Waiver or modification.

If the department determines that a waiver of modification will be protective of human health, safety, and welfare, and of the environment, the department will waive or modify the site cleanup rules based on a review of the quantity or concentration of the discharge or release, soil and groundwater conditions, surface water and topography, geology, water and land use, construction methods and materials, and any other human health or environmental factor important to the evaluation. A responsible person seeking a waiver or modification of a provision of the site cleanup rules under this section shall submit a written report to justify the request and to demonstrate that the waiver or modification is protective of human health, safety, and welfare, and of the environment. A qualified person shall prepare and sign the report submitted under this section. (Eff. 1/22/99, Register 149)

Authority: AS 46.03.020 AS 46.03.745 AS 46.09.010
AS 46.03.050 AS 46.03.755 AS 46.09.020
AS 46.03.710 AS 46.04.070

18 AAC 75.395. Interference with cleanup prohibited.

A person may not interfere with, hinder, or obstruct the containment or cleanup of a hazardous substance conducted under this chapter. This prohibition does not apply to the United States Coast Guard or EPA. (Eff. 1/22/99, Register 149)

Authority: AS 46.03.020 AS 46.04.070 AS 46.09.020
AS 46.04.020

18 AAC 75.396. Local control.

Subject to AS 29.35.020, AS 46.04.110, and AS 46.09.060, the requirements of 18 AAC 75.300 - 18 AAC 75.390 do not preempt local control that is as stringent as, or more stringent than, those requirements, and that is consistent with a regional master plan prepared under AS 46.04.210. (Eff. 1/22/99, Register 149)

Authority: AS 46.03.020 AS 46.04.210 AS 46.09.060
AS 46.04.110

ARTICLE 4. OIL DISCHARGE PREVENTION AND CONTINGENCY PLANS AND NONTANK VESSEL PLANS.

Section

- 400. Applicability
- 405. Pre-application notification and consultation
- 410. Application procedures
- 412. (Repealed)
- 413. Transitional provisions for review and approval of nontank vessel plans
- 415. Application for amendment
- 420. Application for renewal
- 425. Oil discharge prevention and contingency plan contents
- 426. Nontank vessel streamlined plan contents
- 427. Nontank vessel equivalent plan contents
- 428. Response planning facilitator
- 430. Response planning standards
- 432. Response planning standards for oil terminal facilities
- 433. Response planning standards for railroad tank cars
- 434. Response planning standards for exploration or production facilities
- 436. Response planning standards for crude oil pipelines
- 438. Response planning standards for crude oil tank vessels and barges
- 440. Response planning standards for noncrude oil tank vessels and barges
- 441. Response planning standards for nontank vessels
- 442. Response planning standards for multiple operations
- 443. Prevention credits for nontank vessels
- 445. Approval criteria for oil discharge prevention and contingency plans
- 446. Approval criteria for nontank vessel equivalent plans
- 447. Department examination of new technologies
- 455. Department review procedures for oil discharge prevention and contingency plans and nontank vessel equivalent plans
- 456. Department decision on nontank vessel streamlined plans
- 457. Emergency modification of review process
- 459. Preissuance conference
- 460. Department decision on oil discharge prevention and contingency plans and nontank equivalent plans
- 465. Proof of approved plan
- 470. Transfers between plan holders
- 475. Notification of nonreadiness
- 480. Inspections
- 485. Discharge exercises
- 490. Failure to comply
- 495. Regional master discharge prevention and contingency plan boundaries
- 496. Regional response operations plan boundaries for nontank vessels

18 AAC 75.400. APPLICABILITY.

(a) A person who is subject to AS 46.04.030 or AS 46.04.055(j) must file an application for approval of an oil discharge prevention and contingency plan as required under 18 AAC 75.400 - 18 AAC 75.420 and meet the applicable requirements of 18 AAC 75.425 - 18 AAC 75.495. A person who is subject to AS 46.04.055(f) must file an application for approval of a nontank vessel plan as required under 18 AAC 75.400 – 18 AAC 75.420 and meet the applicable requirements of 18 AAC 75.426 – 18 AAC 75.496. The application must be made

- (1) for an oil terminal facility, by the owner or operator of the facility;
- (2) for a tank vessel, oil barge, or any other vessel transporting liquid bulk oil cargo,

by

- (A) the charterer, if the vessel or barge is chartered by demise;
 - (B) the operator of the vessel;
 - (C) the owner of the vessel or barge, if the agents or employees of the owner retain control and responsibility for the operation of the vessel or barge; or
 - (D) in any other case, the person with primary operational control;
- (3) for an exploration or production facility, whether mobile or fixed, by the lease holder or the operator;

- (4) for a pipeline, by the lease holder or the operator;

- (5) for a nontank vessel, by

- (A) the charterer, if the nontank vessel is chartered by demise;
- (B) the operator;
- (C) the owner, if the agents or employees of the owner retain control and responsibility for the operation of the nontank vessel; or

- (D) in any other case, the person with primary operational control; or

- (6) for a railroad tank car, by the railroad transporting the railroad tank car.

(b) If it determines that an exemption will be protective of human health, safety, and welfare, and of the environment, the department will exempt from the requirements of AS 46.04.030(c) and AS 46.04.055(f), a vessel that is conducting, or is available only for conducting, an oil discharge response operation. A person seeking an exemption under this subsection must apply on a form supplied by the department. The department will approve or deny the request for exemption within 10 days after it receives an application. In an emergency response to an actual discharge, a person seeking an exemption may make a verbal request, and the department will, in its discretion, issue a verbal approval. The department will confirm a verbal approval in writing, stating the period during which the approval is valid.

(c) The owner or operator of an oil terminal facility that is subject to the requirements of AS 46.04.030 and 18 AAC 75.400 - 18 AAC 75.495 may apply for an exemption to those requirements upon proof to the department that the effective storage capacity of the facility has been reduced below the amounts set out in AS 46.04.050. For purposes of reducing effective storage capacity, tanks and associated piping must be emptied and rendered unusable to the department's satisfaction. Tanks taken out of service must be clearly posted with a placard prohibiting refilling of the tank without department approval. Before reactivation of a tank that has been disabled for the purposes of an exemption under this subsection, the owner or operator must notify the department and, if necessary, must file a new application for approval of an oil discharge prevention and contingency plan. The department will conduct inspections as necessary to ensure compliance with this subsection.

(d) The department may accept a single plan from an operator to address multiple facilities based on similarities in operations, logistical consideration, or other factors indicating to the satisfaction of the department that a single plan is appropriate given the commonality of operations.

(Eff. 5/14/92, Register 122; am 11/27/2002, Register 164; am 12/14/ 2002, Register 164; am 5/26/2004, Register 170)

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

18 AAC 75.405. PRE-APPLICATION NOTIFICATION AND CONSULTATION.

(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 of its intent to submit an application. The department will determine the number of copies of the plan that the applicant will be required to submit to the department.

(b) The applicant may consult with the department to ensure that the application meets the requirements of 18 AAC 75.410 and to discuss the contents of the proposed plan.

(c) Pre-application notification and consultation is not required for a nontank vessel streamlined application submitted under 18 AAC 75.410(d). (Eff. 5/14/92, Register 122; am 11/27/2002, Register 164)

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

18 AAC 75.410. APPLICATION PROCEDURES.

(a) An application for approval of an oil discharge prevention and contingency plan or a nontank vessel equivalent plan must include a completed application for approval, on a form supplied by the department, and the number of copies of the plan determined under 18 AAC 75.405(a). The department may require the submission of additional copies of the plan and will notify the applicant of the need for additional copies within 10 days after the plan is submitted. In addition, the applicant must provide copies of the plan, upon request, to resource agencies, affected coastal resource districts and regional citizens' advisory councils, and other persons as directed by the department under 18 AAC 75.455.

(b) An application under (a) of this section must include

- (1) the applicant's name, address, and telephone number;
- (2) the name, location, and type of facility or operation covered by the plan;
- (3) for a vessel, the vessel's name, official number, and country of registry, the name and address of the owner, and the name and address of the operator;
- (4) for a railroad tank car, the name of the railroad covered by the plan;
- (5) the scheduled date for the operations covered by the plan to begin; and
- (6) any other information required on the application form that is applicable to the facility or operation.

(c) The department will review an application submitted under (a) of this section using the procedures set out at 18 AAC 75.455 and will issue its decision under 18 AAC 75.460(a).

(d) A complete application for a nontank vessel streamlined plan approval must be on a form supplied by the department and must contain the information described in 18 AAC 75.426.

(e) The department will review an application submitted under (d) of this section and issue a decision using the procedures set out at 18 AAC 75.456. (Eff. 5/14/92, Register 122; am 11/27/2002, Register 164; am 12/14/2002, Register 164)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070
AS 46.04.030

18 AAC 75.412. TRANSITIONAL PROVISIONS FOR REVIEW OF PLANS APPROVED BEFORE MAY 14, 1992.

Repealed.

(Eff. 5/14/92, Register 122; repealed 11/27/2002, Register 164)

18 AAC 75.413. TRANSITIONAL PROVISIONS FOR REVIEW AND APPROVAL OF NONTANK VESSEL PLANS.

(a) A nontank vessel plan application submitted within 180 days after November 27, 2002 will be considered conditionally approved and a schedule for review will be determined by the department. An applicant must submit the application and retain a copy of the receipt of delivery for the application as evidence of the conditional approval.

(b) Nontank vessel plan holders shall maintain or have available under contract, within each region of operation, sufficient oil discharge control and containment equipment to meet the requirements of 18 AAC 75.441 within 180 days after November 27, 2002. However, for any nontank vessel operating in the North Slope region as described in 18 AAC 75.496(9), a plan holder is allowed until July 1, 2003 to have the equipment in place.

(c) Nontank vessel plan holders shall maintain or have available under contract, within each region of operation or capable of arriving in each region of operation within 24 hours, sufficient oil discharge cleanup equipment to meet the requirements of 18 AAC 75.441 within two years after November 27, 2002. (Eff. 11/27/2002, Register 164)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070
AS 46.04.030

18 AAC 75.415. APPLICATION FOR AMENDMENT.

(a) Subject to (b) of this section, before a change to a plan that has been approved under 18 AAC 75.400 - 18 AAC 75.496 may take effect, the plan holder must obtain approval from the department for an amendment to the plan. An application for approval of an amendment must be submitted on a form supplied by the department. For plans approved under 18 AAC 75.460(a), the application must be accompanied by the number of amended plans or plan amendments determined under 18 AAC 75.405(a). The department will use the procedures set out at 18 AAC 75.455 to review a plan amendment, unless the plan amendment is a routine plan update under (b) of this section, adds a vessel under (c) of this section, or otherwise does not diminish the plan holder's ability to respond to an oil discharge.

(b) A routine plan update must be submitted to the department and, for plans approved under 18 AAC 75.460(a), to the applicable resource agencies within five days after the date the proposed change occurs. Routine plan updates include

(1) a deletion to the list of vessels operating under the approved plan;

(2) a revision to the list of names, addresses, or telephone numbers of spill command and response personnel; and

(3) a revision to a training procedure or course work requirement that does not reduce the amount or quality of training required by this chapter.

(c) An application for approval of a plan amendment to allow the addition of a vessel to operate under an approved oil discharge prevention and contingency plan must include the information required by 18 AAC 75.425(e)(1)(H) and 18 AAC 75.425(e)(3)(A)(iii), (v), (vi), (viii), and (x). A plan amendment for the addition of a vessel must be submitted at least five days before the vessel operates in state waters. The department will review the application and issue a written decision within five days after receiving a proposed plan amendment under this subsection if the

department determines that the addition of a vessel will not diminish the plan holder's ability to respond to an oil discharge. A plan amendment under this subsection that might diminish the plan holder's ability to respond to an oil discharge will be reviewed under 18 AAC 75.455.

(d) An application for approval of a plan amendment to allow the addition of a vessel to operate under an approved nontank vessel equivalent plan must include all the information required by 18 AAC 75.427 for that vessel. A plan amendment for the addition of a vessel must be submitted at least five days before the vessel operates in state waters. The department will review the application and issue a written decision within five days after receiving a proposed plan amendment under this subsection if the department determines that the addition of a vessel will not diminish the plan holder's ability to respond to an oil discharge. A plan amendment under this subsection that might diminish the plan holder's ability to respond to an oil discharge will be reviewed under 18 AAC 75.455.

(e) An application for approval of a plan amendment to allow the addition of a vessel to operate under an approved nontank vessel streamlined plan must include all of the information required by 18 AAC 75.426 for that vessel. A plan amendment for the addition of a vessel must be submitted at least five days before the vessel operates in state waters. The department will review the application and issue a written decision within five days after receiving a proposed plan amendment under this subsection. A plan amendment for the addition of a vessel will be reviewed under 18 AAC 75.456.

(f) For plans approved under 18 AAC 75.460(a), if the department determines that a proposed plan amendment submitted under (b) of this section will diminish the plan holder's ability to respond to an oil discharge, the department will notify the plan holder within 10 days after receipt of the amendment that the amendment will be reviewed under 18 AAC 75.455. If the department determines that a proposed plan amendment will not diminish the plan holder's ability to respond to an oil discharge, the department will review the plan amendment and issue a written decision within 30 days after receipt of the proposed plan amendment.

(g) For a plan approved under 18 AAC 75.460(a), the plan holder shall notify and, upon request, send a copy of any proposed plan amendment or update submitted under this section to resource agencies, affected coastal resource districts and regional citizens' advisory councils, and other persons as directed by the department under 18 AAC 75.455. (Eff. 5/14/92, Register 122; am 11/27/2002, Register 164; am 12/14/2002, Register 164)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070
AS 46.04.030

18 AAC 75.420. APPLICATION FOR RENEWAL.

(a) A plan holder must apply for renewal of the department's plan approval, using a form supplied by the department, sufficiently in advance of expiration of the plan to permit department review before the plan approval expires.

(b) A change in ownership of a facility or operation requires an application for renewal of the department's approval of the plan.

(c) If no change will be made in the plan when it is renewed, a copy of the original plan need not accompany the application and may be incorporated by reference on the renewal application form. In all other cases, the number of amended plans or plan amendments determined under 18 AAC 75.405(a) must accompany the application for renewal.

(d) If the department determines that the change in ownership of a facility or operation will not diminish the plan holder's ability to respond to an oil discharge, the department will review and issue a written decision within 30 days after receiving an application for renewal.

(e) Except as provided in (d) of this section, an application for renewal will be reviewed under the provisions of 18 AAC 75.455 or 18 AAC 75.456, as applicable. (Eff. 5/14/92, Register 122; am 11/27/2002, Register 164)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070
AS 46.04.030

18 AAC 75.425. OIL DISCHARGE PREVENTION AND CONTINGENCY PLAN CONTENTS.

(a) An oil discharge prevention and contingency plan submitted for approval under 18 AAC 75.400 - 18 AAC 75.495 must be in a form that is usable as a working plan for oil discharge prevention, control, containment, cleanup, and disposal. A plan must contain enough information, analyses, supporting data, and documentation to demonstrate the plan holder's ability to meet the requirements of AS 46.04.030 and 18 AAC 75.400 - 18 AAC 75.495.

(b) The plan for a facility comprised of multiple operations as described at 18 AAC 75.442 must describe, for each category of operation at the facility, the appropriate response measures to meet the applicable portion of the response planning standard.

(c) The submitted plan must be accompanied by a cover page or promulgation letter that includes

(1) the name of the plan holder, and the covered vessel, barge, railroad, facility, or operation, followed by the words "Oil Discharge Prevention and Contingency Plan";

(2) the date of the plan; and

(3) a statement, signed by a person with appropriate authority, committing the oil discharge prevention and response resources necessary to implement the plan.

(d) The plan must

(1) include the official plan title;

(2) consist of five parts and contain the information described in (e)(1)-(5) of this section;

(3) contain a complete table of contents and lists of any tables or figures, with corresponding page numbers; and

(4) be presented in the order shown in (e) of this section, or include a cross-reference table that directs the reader to the appropriate information.

(e) The information in the plan must include

(1) **Part 1 - Response Action Plan:** The response action plan must provide, in sufficient detail to clearly guide responders in an emergency event, all information necessary to guide response to a discharge of any size, up to and including a discharge that is equal to the applicable response planning standard set out at 18 AAC 75.430 - 18 AAC 75.442. The response action plan must include the following information:

(A) **emergency action checklist** - a short checklist of the immediate response and notification steps to be taken if an oil discharge occurs; it is recommended that this summary be duplicated on a wallet-size card, to be carried by the appropriate response personnel while on duty;

(B) **reporting and notification** - a description of the immediate spill reporting actions to be taken at any hour of the day, including the

(i) title and telephone number of facility personnel responsible for making the notification; and

(ii) telephone number of each appropriate government agency to be notified if a discharge occurs;

(C) **safety** - based on applicable safety standards, a description of the steps necessary to develop an incident-specific safety plan for conducting a response;

(D) **communications** - a description of field communications procedures, including, if applicable, assigned radio channels or frequencies and their intended use by response personnel;

(E) **deployment strategies** - a description of proposed initial response actions that may be taken, including

(i) procedures for the transport of equipment, personnel, and other resources to the spill site, including plans for alternative methods in adverse weather conditions; and

(ii) if the operator is not the primary spill responder, procedures to notify and mobilize the response action contractor or other responder identified in the plan, including a description of the interim actions that the operator will perform until the responder identified in the plan initiates a full response to the discharge;

(F) **response scenario** - a written description of a hypothetical spill incident and response that demonstrates a plan holder's ability to respond to a discharge of each applicable response planning standard volume within the required time frames using the resources described in the contingency plan and that identifies the spill location, time of year, and time of day, the source and cause of the spill, the quantity and type of oil spilled, the relevant environmental conditions, including weather, sea state, and visibility, the spill trajectory, and the expected timeline for response actions, describing response actions to be taken; the response scenario must be usable as a general guide for a discharge of any size, must describe the discharge containment, control, and cleanup actions to be taken, which clearly demonstrate the strategies and procedures adopted to conduct and maintain an effective response, and if the response scenario is for an exploration or production facility, must also meet the applicable requirements of (I) of this paragraph; if required by the department, the plan holder must provide additional response strategies to account for variations in receiving environments and seasonal conditions; if the information required by this subparagraph is contained within a separate document developed by the plan holder or the plan holder's primary response action contractor identified in (3)(H) of this subsection, the plan holder may incorporate the information by reference upon obtaining the department's approval; response strategies must include

(i) procedures to stop the discharge at its source and prevent its further spread;

(ii) a description of methods to prevent or control a potential fire hazard;

(iii) repealed 5/26/2004;

(iv) procedures and methods for real-time surveillance and tracking of the discharged oil on open water and forecasting of its expected points of shoreline contact;

(v) for a stationary facility or operation, or a railroad, and, if requested by the department, for a vessel, a description of site-specific strategies for the protection of environmentally sensitive areas and areas of public concern identified under (3)(J) of this subsection, including, for a land-based facility or railroad, protection of groundwater and public water supplies; if identification of those areas and site-specific strategies for protection of those areas are in an applicable subarea contingency plan, the plan holder may incorporate that information by reference;

(vi) a description of the actions to be taken to contain and control the spilled oil, including, as applicable, boom deployment strategies, construction of temporary berms, and other methods;

(vii) a description of the actions to be taken to recover the contained or controlled oil using mechanical response options, including procedures and provisions for skimming, absorbing, or otherwise recovering the contained or controlled product from water or land;

(viii) procedures for lightering, transfer, and storage of oil from damaged tanks or from undamaged tanks that might be at risk of discharging additional oil;

(ix) procedures for transfer and storage of recovered oil and oily water, including methods for estimating the amount of recovered oil;

(x) procedures and locations for temporary storage and ultimate disposal of oil contaminated materials, oily wastes, and sanitary and solid wastes, including procedures for obtaining any required permits or authorizations for temporary storage or ultimate disposal;

(xi) procedures and methods for the protection, recovery, disposal, rehabilitation, and release of potentially affected wildlife, including: minimizing wildlife contamination through hazing or other means, when appropriate; the recovery of oiled carcasses to preclude secondary contamination of scavengers; and the capture, cleaning, rehabilitation, and release of oiled wildlife, when appropriate; and

(xii) if applicable, a description of procedures for the deployment of shoreline cleanup equipment and personnel, including cleanup and restoration methods and techniques to be used if the shoreline is impacted by the discharge;

(G) **nonmechanical response options** - if applicable, a description of actions to be taken to obtain the necessary permits and approvals to initiate dispersant application, in situ burning, or other nonmechanical response options, the basis for determining the conditions or circumstances under which these options will be used, and how the nonmechanical response options will be implemented, including a description of all required equipment and personnel; and

(H) **facility, railroad, or vessel diagram** - a plan diagram of the facility, vessel, or operation for reference in conducting emergency response operations, with locations of response equipment and other features pertinent to the response plan clearly marked, including surrounding topography, roads, air transportation and other transportation access, location and bathymetry of adjacent water bodies, mooring areas, oil transfer locations, pipelines, control stations, drip pans and drainage of drip pans, and a representation of the distance and gradients to surface water for an operation located on land, by topographic map, aerial photographs, or other means; for a railroad tank car or locomotive, a diagram must be included for each distinct type of railroad tank car or locomotive showing locations of fuel and lubrication systems and oil storage tanks, piping, and valves;

(I) **response scenario for an exploration or production facility** – if the facility is an exploration or production facility, a response scenario that, in addition to complying with (F) of this paragraph, includes as part of the response strategies a summary of planned methods, equipment, logistics, and time frames proposed to be employed to control a well blowout within 15 days; the plan holder shall certify that the plan holder maintains a separate blowout contingency plan; the blowout contingency plan is not part of an application required under 18 AAC 75.410 - 18 AAC 75.420, but must be made available to the department for inspection upon request under 18 AAC 75.480; a plan holder may use for development of a response scenario the July 1997 S.L. Ross oil deposition model for surface oil well blowouts, or another oil deposition model approved by the department for surface oil well blowouts; if required by the department to account for variations in seasonal conditions, a plan holder must provide a response scenario for a discharge of the applicable response planning standard volume under typical summer environmental conditions and

typical winter environmental conditions; if the information required by this subparagraph is contained within a separate document developed by the plan holder or the plan holder's primary response action contractor identified in (3)(H) of this subsection, the plan holder may incorporate the information by reference upon obtaining the department's approval; for purposes of this subparagraph,

(i) "predominant wind directions" means those directions that occur greater than 10 percent of the time indicated;

(ii) "typical summer environmental conditions" means the average wind speeds and predominant wind directions as depicted by a wind rose, temperature, sea state, and other climactic and environmental conditions occurring during the period of May through October, based on National Weather Service data or local weather records of a duration sufficient to determine a reasonable average;

(iii) "typical winter environmental conditions" means the average wind speeds and predominant wind directions as depicted by a wind rose, temperature, sea state, and other climactic and environmental conditions occurring during the period of November through April, based on National Weather Service data or local weather records of a duration sufficient to determine a reasonable average;

(iv) "wind rose" means a polar coordinate plot designed to show the distribution of wind directions and speeds at a given location over a considerable period of time, with the distance from the origin proportional to the probability of the wind direction being at the given angle, measured in 16 cardinal compass points, and the disposition of the wind speeds indicated for each direction;

(2) **Part 2 - Prevention Plan:** The prevention plan must include a detailed description of all oil discharge prevention measures and policies employed at the facility, vessel, or operation, with reference to the specific oil discharge risks involved. The prevention plan must describe how the applicant meets all the applicable requirements of 18 AAC 75.005-18 AAC 75.085. The prevention plan may be submitted as a separate volume, and must include, at a minimum, the following information:

(A) discharge prevention programs - a description and schedule of regular oil discharge prevention, inspection, and maintenance programs in place at the facility or operation, including

(i) oil discharge prevention training programs required by 18 AAC 75.020(a);

(ii) substance abuse and medical monitoring programs required by 18 AAC 75.007(e); and

(iii) security and surveillance programs required by 18 AAC 75.007(f);

(B) discharge history - a history of all known oil discharges greater than 55 gallons that have occurred at the facility within the state; the history must include

(i) the source, cause, and amount of each discharge;

(ii) corrective actions taken;

(iii) an analysis of the relationship, if any, between the frequency, cause, and size of the discharges; and

(iv) a description of actions to be taken to prevent or mitigate similar discharges in the future;

(C) potential discharge analysis - an analysis of potential oil discharges, including size, frequency, cause, duration, and location, and a description of actions taken to prevent a potential discharge;

(D) specific conditions - a description of

(i) any conditions specific to the facility or operation that might increase the risk of a discharge, including physical or navigation hazards, traffic patterns, and other site-specific factors; and

(ii) any measures that have been taken to reduce the risk of a discharge attributable to these conditions, including a summary of operating procedures designed to mitigate the risk of a discharge;

(E) discharge detection - a description of the existing and proposed means of discharge detection, including surveillance schedules, leak detection, observation wells, monitoring systems, and spill-detection instrumentation; if electronic or mechanical instrumentation is employed, detailed specifications, including threshold detection, sensitivities, and limitations of equipment must be provided;

(F) waivers - for an operation subject to a waiver, alternate compliance schedule, or existing condition of plan approval under 18 AAC 75.005 - 18 AAC 75.085 or 18 AAC 75.400 – 18 AAC 75.496, documentation of

(i) each waiver, alternate compliance schedule, or existing condition of plan approval; and

(ii) the approval of each waiver, alternate compliance schedule, or existing condition of plan approval;

(3) **Part 3 - Supplemental Information:** The supplemental information section must provide background and verification information, including

(A) facility description and operational overview - a general description of the oil storage, transfer, exploration, or production activities of the operation, including

(i) the number, type, and oil storage capacity of each container covered under the plan and its installation date, design, construction, and general condition;

(ii) the type and amount of oil stored in each container;

(iii) for vessels, a general chart showing routes normally used for the transportation of oil products within state waters, and the frequency of use for each route;

(iv) for a railroad, a map showing the location of each main line, siding, and yard area;

(v) for vessels, plans or diagrams that identify cargo, bunker, and ballast tanks, all tank capacities, cargo piping, ballast piping, winches, emergency towing equipment, power plants, manifold pipe size, containment structures and equipment, and a description of the method of containing a discharge from fuel oil tank vent overflow and fill pipes;

(vi) a general description of the procedures for the loading or transfer of oil from or to a pipeline, facility, tank vessel, oil barge, railroad tank car, or storage tank;

(vii) for a production facility, a description of the flow and gathering lines and processing facilities;

(viii) for vessels, a description of the methods for retention and disposal of oily wastes and bilge slops;

(ix) for a railroad, a description of railroad tank cars and locomotives normally in service, including type, number and capacity, general piping diagrams, location of valves, and tank volumes; and

(x) any other information required by the department to evaluate the response capability of a vessel, including an approved loading manual that meets the requirements of 46 C.F.R. 45.105, as amended through October 1, 1990;

(B) receiving environment - for a land-based facility or operation:

(i) the potential routes of travel of oil discharged from the facility or operation to open water in the form of a drainage diagram or map, showing gradients and potential containment sites and features, including identification and explanation of all measures that will be taken to prevent a discharge from entering open water; and

(ii) based on the information in (i) of this subparagraph, an estimate of what percentage of the applicable response planning standard volume set out at 18 AAC 75.430 - 18 AAC 75.436, or 18 AAC 75.442 for the facility or operation will reach open water;

(C) command system - a description of the command system to be used in response to a discharge, including the title, address, telephone number, and affiliation by company, agency, or local government of each person, including a person identified in (1)(B) of this subsection, who by law or through employment, contract, or cooperative agreement, is responsible for responding to a discharge, and each person's functional role in the command system; this list must include command, fiscal, operations, planning, and logistics lead personnel; the command system must be compatible with the state's response structure outlined in the state master plan prepared under AS 46.04.200;

(D) realistic maximum response operating limitations - a description of the realistic maximum response operating limitations that might be encountered at the facility or operation and, based on environmental and safety considerations, an analysis of the frequency and duration, expressed as a percentage of time, of limitations that would render mechanical response methods ineffective; the realistic maximum response operating limitations for a response must be defined, with a description of any additional specific temporary prevention or response measures that will be taken to reduce the environmental consequences of a discharge, including nonmechanical response options, during those periods when environmental conditions exceed this maximum; environmental conditions to be considered in this analysis must include

- (i) weather, including wind, visibility, precipitation and temperature;
- (ii) sea states, tides, and currents;
- (iii) ice and debris presence;
- (iv) hours of daylight; and
- (v) other known environmental conditions that might influence the

efficiency of the response equipment or the overall effectiveness of a response effort;

(E) logistical support - identification of aircraft, vessels, and other means that may be used to transport equipment and personnel during a discharge response, including information on ownership and availability of identified means of transportation;

(F) response equipment - a complete list of contracted or other oil discharge containment, control, cleanup, storage, transfer, lightering, and related response equipment to meet the applicable response planning standard, and to protect environmentally sensitive areas and areas of public concern that are identified in (J) of this paragraph and that may be reasonably expected to suffer an impact from a spill of the response planning standard volume as described in the response strategies developed under (1)(F) and (1)(I) of this subsection; the list must include

- (i) the location, inventory, and ownership of the equipment;
- (ii) the time frame for delivery and startup of response equipment and trained personnel located outside the facility's primary region of operation;
- (iii) the manufacturer's rated capacities, limitations, and operational characteristics for each item of oil recovery equipment, including any nonmechanical response techniques;
- (iv) each vessel designated for oil recovery operations, including skimming vessels and platforms and vessels designated to tow and deploy boom;

(v) information on additional vessels available from other sources for oil recovery operations, including, if applicable, procedures for inventorying, training personnel, and equipping vessels;

(vi) pumping, transfer and temporary storage, and lightering equipment for transferring oil from damaged or undamaged tanks; and

(vii) the procedures for storage, maintenance, and inspection of spill response equipment under the immediate control of the operator when not in use, including procedures for periodic testing and maintenance of response equipment;

(G) nonmechanical response information - if a nonmechanical option such as dispersant use or in situ burning is proposed as a response option, the plan must include

(i) a description of the specific mechanisms in place to assess the environmental consequences of the nonmechanical response option and to provide continuous monitoring of its environmental effects;

(ii) a complete inventory of nonmechanical response equipment and supplies, including the type and toxicity of each dispersant, with procedures for storage, maintenance, and deployment;

(iii) identification of all necessary approvals, and a completed application for department approval for open burning if in situ burning is a proposed response option;

(iv) identification of all permits, approvals, or authorizations for use of nonmechanical response options and the timeline for obtaining them; and

(v) a plan for protecting environmentally sensitive areas identified in (J) of this paragraph, areas of public concern identified in (J) of this paragraph, and the public from any adverse effects of the nonmechanical response option;

(H) oil spill primary response action contractor information - if a plan holder proposes to use the services of an oil spill primary response action contractor to meet a requirement of AS 46.04.030 or 18 AAC 75.400 - 18 AAC 75.495, the contractor must be registered under 18 AAC 75.500 - 18 AAC 75.580; the plan holder shall include a correct and complete list of each primary response action contractor, with name, address, telephone number, and affiliation by company, the response contractor information described in 18 AAC 75.445(i), and a description of the response equipment and services provided; the use of an oil spill primary response action contractor does not relieve the plan holder of its responsibility to provide the information required by this subsection and to meet all other applicable requirements of 18 AAC 75.400 - 18 AAC 75.495;

(I) training - a detailed description of the training programs for discharge response personnel;

(J) protection of environmentally sensitive areas and areas of public concern - for a stationary facility or operation, or a railroad, and, if required by the department, for a vessel, identification of environmentally sensitive areas and areas of public concern that may suffer an impact from a spill of the applicable response planning standard volume; if identification of those areas and site-specific strategies for protection of those areas are in an applicable subarea contingency plan, the plan holder may incorporate that information by reference; whether prepared separately or incorporated by reference, the identification of and planned protection measures for those areas must be based on mapped predictions of discharge movement, spreading, and probable points of contact, based on expected local, seasonal, meteorologic, and oceanographic or topographic conditions; and, for each probable point of contact, must include a description of each environmentally sensitive area and each area of public concern, including

(i) the effect of seasonal conditions on the sensitivity of each area;

(ii) a discussion of the toxicity effects and persistence of the discharge, based on type of product; and

(iii) an identification of which areas will be given priority attention if a discharge occurs;

(K) additional information - other information necessary to provide background for or verification of the plan contents; and

(L) bibliography - a list of data and information sources used to determine the information contained in the plan; and

(4) **Part 4 -- Best Available Technology Review:** Unless application of a state requirement would be preempted by federal law, the plan must provide for the use of the best available technology consistent with the applicable criteria in 18 AAC 75.445(k). In addition, the plan must

(A) identify technologies applicable to the applicant's operation that are not subject to response planning or performance standards specified in 18 AAC 75.445(k)(1) and (2); these technologies include, at a minimum,

(i) for all contingency plans, communications described under (1)(D) of this subsection, source control procedures to stop the discharge at its source and prevent its further spread described under (1)(F)(i) of this subsection, trajectory analyses and forecasts described under (1)(F)(iv) of this subsection, and wildlife capture, treatment, and release procedures and methods described under (1)(F)(xi) of this subsection;

(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 corrosion surveys required by 18 AAC 75.080(k)(2);

(iii) for a tank vessel contingency plan: measures to assure prompt detection of an oil discharge as required by 18 AAC 75.027(d); operation of a tank vessel under escort in a manner that permits an escort vessel to be available immediately to provide the intended assistance to the tank vessel as required by 18 AAC 75.027(e); tow lines as required by 18 AAC 75.027(f); and escort vessels;

(iv) for a crude oil transmission pipeline contingency plan: leak detection, monitoring, and operating requirements for crude oil pipelines that include prompt leak detection as required by 18 AAC 75.055(a);

(v) for a barge contingency plan: measures to assure prompt detection of an oil discharge as required by 18 AAC 75.037(d) and means to recover a barge that breaks free of its towing vessel as required by 18 AAC 75.037(f); and

(vi) for a railroad tank car contingency plan, measures to assure prompt detection of a tank car leak, spill prevention and containment devices for locomotive fueling systems, spill collection and recovery devices at locomotive fueling and tank car filling locations, track-mounted railroad tank car defect detector systems, and avalanche detection and mitigation systems;

(B) for each applicable technology under (A) of this paragraph, identify all available technologies and include a written analysis of each technology, using the applicable criteria in 18 AAC 75.445(k)(3); and

(C) include a written justification that the technology proposed to be used is the best available for the applicant's operation.

(5) **Part 5 – Response Planning Standard:** A calculation of the applicable response planning standards set out in 18 AAC 75.430 - 18 AAC 75.440 and 18 AAC 75.442, including a detailed basis for the calculation of reductions, if any, to be applied to the response planning standards.

(f) For purposes of this section and 18 AAC 75.445, "technology" means equipment, supplies, other resources, and related practices. (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)

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

18 AAC 75.426. NONTANK VESSEL STREAMLINED PLAN CONTENTS.

A nontank vessel streamlined plan application must contain the following information:

- (1) the name, address, and telephone number of the plan holder;
- (2) for each covered vessel, the
 - (A) vessel's name, official number, and country of registry;
 - (B) name and address of the owner; and
 - (C) name and address of the operator;
- (3) the application date and the first scheduled date of entry into waters of the state;
- (4) the name, telephone number, title, electronic mail address, and facsimile number of each qualified individual for the plan holder;
- (5) a description of the immediate spill reporting actions to be taken at any hour of the day, including
 - (A) the title and telephone number, any electronic mail address, and any facsimile number of personnel responsible for making notifications; and
 - (B) the telephone number of each appropriate government agency to be notified if a discharge occurs;
- (6) the length overall, maximum beam, gross tonnage, and type and configuration of each covered vessel;
- (7) a description or diagram of each covered vessel for reference in conducting emergency response operations; each diagram must clearly mark the location of any feature pertinent to the response, including
 - (A) the location, size, and storage capacity of each oil storage tank;
 - (B) the type of oil carried in each tank; and
 - (C) any other information that a responder may need to know in an emergency;
- (8) the name, location, and telephone number of an emergency contact for gaining access to detailed plans for each vessel showing the
 - (A) location of personnel quarters and each emergency exit;
 - (B) location of all fuel piping locations, including valve locations and identification;
 - (C) the location and size of each tank, tank valve, overflow pipe, and tank access point;
 - (D) the location of each internal or portable pump on board;
 - (E) the location of each emergency shutdown switch; and
 - (F) other detailed information pertinent to emergency response operations;
- (9) the maximum fuel capacity, in barrels, of each covered vessel and the volume used to calculate the response planning standard under 18 AAC 75.441 for each vessel; if the volume

used to calculate the vessel's response planning standard is less than the maximum fuel capacity of the vessel, the vessel operator must certify that the volume used to calculate the vessel's response planning standard under 18 AAC 75.441 is the maximum volume of fuel carried by the vessel in state waters;

(10) each region of operation for each covered vessel;

(11) except for a plan using a response planning facilitator who is providing the response services described in 18 AAC 75.428(a)(2), the name and telephone number, any electronic mail address, and any facsimile number of each contracted nontank vessel cleanup contractor and nontank vessel incident management team;

(12) except for a plan using a response planning facilitator who is providing the response services described in 18 AAC 75.428(a)(2), a statement certifying that

(A) for each region of operation identified in the plan, the applicant has a contract with, or is a member of, at least one nontank vessel cleanup contractor for that region of operation;

(B) each nontank vessel cleanup contractor identified in the statement is registered under 18 AAC 75.500 - 18 AAC 75.580 for the appropriate vessel fuel classification under 18 AAC 75.561(b)(1), Table G, and region of operation identified in the plan; and

(C) each contract or membership agreement with the nontank vessel cleanup contractor demonstrates that the nontank vessel cleanup contractor will respond on behalf of the applicant;

(13) except for a plan using a response planning facilitator who is providing the response services described in 18 AAC 75.428(a)(2), a statement certifying that

(A) for each region of operation identified in the plan, the applicant has a contract with at least one nontank vessel incident management team for that region of operation;

(B) each nontank vessel incident management team identified in the statement is registered under 18 AAC 75.500 - 18 AAC 75.580 for the appropriate vessel fuel classification under 18 AAC 75.562(b), Table H, and region of operation identified in the plan; and

(C) each contract with the nontank vessel incident management team demonstrates that the nontank vessel incident management team will respond on behalf of the applicant;

(14) for a plan submitted by a response planning facilitator, the name, telephone number, title, any electronic mail address, and any facsimile number of that response planning facilitator, and the role of the response planning facilitator as described in 18 AAC 75.428(a)(1) or (2);

(15) for a plan using a response planning facilitator who is providing the response services described in 18 AAC 75.428(a)(2), a statement certifying that the

(A) applicant has a contract with the response planning facilitator to provide oil spill response services to the applicant to meet the applicable requirements of 18 AAC 75.400 – 18 AAC 75.496 for each region of operation identified in the plan and the appropriate vessel fuel classification under 18 AAC 75.561(b)(1), Table G and 18 AAC 75.562(b), Table H; and

(B) contract under (A) of this paragraph demonstrates that the response planning facilitator will respond on behalf of the applicant;

(16) a statement certifying that each vessel complies with applicable federal and international maritime requirements;

(17) a statement, signed by an individual with the authority described in the statement, committing the resources necessary to implement the plan, and certifying the contents of the application; the statement must read as follows: "I certify, under penalty of unsworn falsification

in violation of AS 11.56.210, that I am the applicant, a principal of the applicant, an authorized agent for the applicant, or an official of the applicant; that I have authority to sign this application and commit the resources necessary to implement the plan on behalf of the applicant; and that I have examined this application in its entirety and to the best of my knowledge, information, and belief, find it to be true, correct and complete.” (Eff. 11/27/2002, Register 164; am 12/13/2002, Register 164)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070
AS 46.04.030

18 AAC 75.427. NONTANK VESSEL EQUIVALENT PLAN CONTENTS.

(a) A nontank vessel equivalent plan must be in a form that is usable as a working plan for oil discharge control, containment, cleanup, and disposal, and must contain enough information, analyses, and documentation to demonstrate the plan holder’s ability to meet the applicable requirements of AS 46.04.055 and 18 AAC 75.441. The plan must provide sufficient detail to guide clearly an emergency response to a discharge, up to and including a discharge that is equal to the applicable response planning standard for each covered vessel as calculated under 18 AAC 75.441 in each of the applicant’s regions of operation.

(b) A nontank vessel equivalent plan must contain the following information:

(1) Part 1 - General Information: the plan must include the following general information:

- (A) the name of the plan holder;
- (B) the application date of the plan and the first scheduled date of entry into waters of the state;
- (C) the name of each covered nontank vessel;
- (D) the name, telephone number, title, electronic mail address, and facsimile number of each qualified individual for the plan holder;
- (E) the vessel fuel classification described in 18 AAC 75.446(e)(1), Table F, for which application is made; the vessel fuel classification must correspond to the largest vessel response planning standard volume calculated under (G) of this paragraph;
- (F) the length overall, maximum beam, gross tonnage, and type and configuration of each covered vessel;
- (G) the maximum fuel capacity, in barrels, of each covered vessel and the volume used to calculate the vessel's response planning standard under 18 AAC 75.441 for each vessel; if the volume used to calculate the vessel's response planning standard is less than the maximum fuel capacity of the vessel, the vessel operator must certify that the volume used to calculate the vessel's response planning standard under 18 AAC 75.441 is the maximum volume of fuel carried by the vessel in state waters;
- (H) a general chart showing each route normally used within state waters, and the frequency of use for each route;
- (I) if applicable, a statement certifying that
 - (i) for each region of operation identified in the plan, the applicant has a contract with, or is a member of, at least one nontank vessel cleanup contractor for that region of operation;
 - (ii) each nontank vessel cleanup contractor identified in the statement is registered under 18 AAC 75.500 - 18 AAC 75.580 for the appropriate vessel fuel classification under 18 AAC 75.561(b)(1), Table G, and region of operation identified in the plan; and

(iii) each contract or membership agreement with the nontank vessel cleanup contractor demonstrates that the nontank vessel cleanup contractor will respond on behalf of the applicant;

(J) if applicable, a statement certifying that

(i) for each region of operation identified in the plan, the applicant has a contract with at least one nontank vessel incident management team for that region of operation;

(ii) each nontank vessel incident management team identified in the statement is registered under 18 AAC 75.500 - 18 AAC 75.580 for the appropriate vessel fuel classification under 18 AAC 75.562(b), Table H, and region of operation identified in the plan; and

(iii) each contract with the nontank vessel incident management team demonstrates that the nontank vessel incident management team will respond on behalf of the applicant;

(K) a statement certifying that each vessel complies with applicable federal and international maritime requirements; and

(L) a statement, signed by an individual with the authority described in the statement, committing the resources necessary to implement the plan, and certifying the contents of the application; the statement must read as follows: "I hereby certify under penalty of unsworn falsification in violation of AS 11.56.210, that I am the applicant, a principal of the applicant, an authorized agent for the applicant, or an official of the applicant; that I have authority to sign this application and commit the resources necessary to implement the plan on behalf of the applicant; and that I have examined this application and plan in its entirety and to the best of my knowledge, information, and belief, find it to be true, correct, and complete.";

(2) **Part 2 - Response Operations Plan:** the plan must include a response operations plan; the response operations plan must include the following information:

(A) emergency action checklist - a short checklist of the immediate response and notification steps to be taken if an oil discharge occurs; this checklist must be posted in prominent locations on board the vessel, including the bridge and engine compartment, and must be duplicated on a wallet-sized card, to be carried by the appropriate response personnel while on duty;

(B) reporting and notification - a description of the immediate spill reporting actions to be taken at any hour of the day, including the

(i) title and telephone number of personnel responsible for making notifications;

(ii) telephone number of each appropriate government agency to be notified if a discharge occurs, and who is to notify them; and

(iii) telephone number of each contracted nontank vessel cleanup contractor and nontank vessel incident management team, as appropriate, and who is to notify them;

(C) safety - based on applicable safety standards, a description of the steps necessary to develop an incident-specific safety plan for conducting a response;

(D) communications - a description of field communications procedures, including, if applicable, assigned radio channels or frequencies and their intended use by response personnel;

(E) deployment strategies - a description of proposed initial response actions that may be taken, including

(i) procedures for the transport of equipment, personnel, and other resources to the spill site, including plans for alternative transport methods in adverse weather conditions;

(ii) procedures that provide for transportation of personnel and all auxiliary equipment to a staging area; the procedures must demonstrate that containment, control, and cleanup equipment, sufficient to meet the response planning standard, can be in the region within 24 hours after the spill; and

(iii) if the operator is not the primary spill responder, procedures to notify and mobilize the contractor or other responder identified in the plan, including a description of the interim actions that the operator will perform until the responder identified in the plan initiates a full response to the discharge;

(F) response strategies - a description of the discharge containment, control, and cleanup actions to be taken, which clearly demonstrate the strategies and procedures adopted to conduct and maintain an effective response; this information must be presented in the form of a response scenario to a discharge of the applicable response planning standard volume and must be usable as a general guide for a discharge of any size; response strategies must include

(i) procedures to stop the discharge at its source and prevent its further spread;

(ii) a description of methods to prevent or control a potential fire hazard;

(iii) procedures and methods for real-time surveillance and tracking of the discharged oil on open water and forecasting of its expected points of shoreline contact;

(iv) procedures and methods to exclude oil from environmentally sensitive areas and areas of public concern;

(v) a description of the actions to be taken to contain and control the spilled oil, including, as applicable, boom deployment strategies, construction of temporary berms, and other methods; for planning purposes, a maximum three-foot wave height must be assumed;

(vi) a description of the actions to be taken to recover the contained or controlled oil using mechanical methods, including plans and provisions for skimming, absorbing, or otherwise recovering the contained or controlled product from water or land;

(vii) procedures for lightering, transfer, and storage of oil from damaged tanks or from undamaged tanks that might be at risk of discharging additional oil;

(viii) procedures and plans for transfer and storage of recovered oil and oily water, including methods for estimating the amount of recovered oil;

(ix) plans, procedures, and locations for temporary storage and ultimate disposal of oil contaminated materials, oily wastes, and sanitary and solid wastes, including plans for obtaining any required permits or authorizations for temporary storage or ultimate disposal;

(x) plans for the protection, recovery, disposal, rehabilitation, and release of potentially affected wildlife, including minimizing wildlife contamination through hazing or other means, when appropriate, the recovery of oiled carcasses to preclude secondary contamination of scavengers, and the capture, cleaning, rehabilitation, and release of oiled wildlife, when appropriate; and

(xi) if applicable, plans for the deployment of shoreline cleanup equipment and personnel, including cleanup and restoration methods and techniques to be used if the shoreline is impacted by the discharge;

(G) vessel diagram - a diagram of each covered vessel for reference in conducting emergency response operations; each diagram must have locations of features pertinent to the response plan clearly marked, including the location, size, and storage

capacity of all oil storage tanks, the type of oil carried in each tank, and any other information that responders may need to know in an emergency;

(H) emergency contact - the name, location, and telephone number of an emergency contact for gaining access to detailed plans for each vessel showing the

(i) location of personnel quarters and each emergency exit;

(ii) location of all fuel piping locations, including valve locations and

identification;

(iii) location and size of each tank, tank valve, overflow pipe, and tank access point;

(iv) location of each internal or portable pump on board;

(v) location of emergency shutdown switches; and

(vi) other detailed information pertinent to emergency response

operations;

(I) response planning standard - a calculation of the response planning standard of each vessel, based on the fuel capacity as certified in (1)(G) of this subsection; the response planning standard volume for a plan covering more than one vessel must be equal to the largest calculated response planning standard volume for those vessels covered by the plan;

(3) **Part 3 - Supplemental Information:** the plan must include background and verification information, including:

(A) incident command system - a description of the incident command system to be used in response to a discharge, including the title, address, telephone number, and affiliation by company, agency, or local government of each person, including a person identified in (2)(B) of this subsection, who by law or through employment, contract, or cooperative agreement, is responsible for responding to a discharge, and each person's functional role in the command system; at a minimum, this list must include command, fiscal, operations, planning, and logistics lead personnel; the incident command system must be modeled after the National Interagency Incident Management System Incident Command System;

(B) logistical support - a listing of aircraft, vessels, and other means that may be used to transport equipment and personnel during a discharge response, including information of ownership and availability of identified means of transportation;

(C) response equipment - a complete list of contracted or other oil discharge containment, control, cleanup, storage, transfer, lightering, and related response equipment maintained or under contract which meets or exceeds the amounts set out in 18 AAC 75.446(e)(1), Table F, including

(i) the location, inventory, and ownership of the equipment;

(ii) the time frame for delivery and startup of response equipment and trained personnel located outside the vessel's region of operation;

(iii) the manufacturer's rated capacities, limitations, and operational characteristics for each item of oil recovery equipment;

(iv) each vessel designated for oil recovery operations, including skimming vessels and platforms and vessels designated to tow and deploy boom;

(v) information on each additional vessel available from other sources for oil recovery operations, including, if applicable, procedures for inventorying, training personnel, and equipping vessels;

(vi) pumping, transfer and temporary storage, and lightering equipment for transferring oil from damaged or undamaged tanks; and

(vii) the procedures for storage, maintenance, and inspection of spill response equipment under the immediate control of the operator when not in use, including procedures for periodic testing and maintenance of response equipment;

(D) training – a detailed description of the training programs for discharge response personnel; and

(E) additional information - other information necessary to provide background for or verification of the plan contents. (Eff. 11/27/2002, Register 164)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070
AS 46.04.030

18 AAC 75.428. RESPONSE PLANNING FACILITATOR.

(a) A response planning facilitator registered under 18 AAC 75.500 – 18 AAC 75.580 may submit a nontank vessel streamlined plan under 18 AAC 75.410(d) on behalf of a plan holder. A response planning facilitator may

(1) act as an intermediary between the plan holder and one or more nontank vessel cleanup contractors and one or more nontank vessel incident management teams in order to facilitate the submission of a nontank vessel streamlined plan under 18 AAC 75.410(d), including facilitation of the execution of a contract or membership agreement between the plan holder and each nontank vessel cleanup contractor and nontank vessel incident management team as described in 18 AAC 75.426(12) and (13); or

(2) enter into a contract with the plan holder to meet the requirements of 18 AAC 75.400 – 18 AAC 75.496; the response planning facilitator’s registration application under 18 AAC 75.553 must

(A) certify that the response planning facilitator has a contract with, or is a member of, one or more nontank vessel cleanup contractors and has a contract with one or more nontank vessel incident management teams registered under 18 AAC 75.500 – 18 AAC 75.580 in each region of operation and for the response planning standard appropriate to each vessel covered under the nontank vessel streamlined plan; and

(B) contain a statement, signed by the response planning facilitator and each nontank vessel cleanup contractor and nontank vessel incident management team, that the nontank vessel cleanup contractor and nontank vessel incident management team will respond on behalf of a plan holder who enters into a contract with the response planning facilitator to meet the requirements of 18 AAC 75.400 – 18 AAC 75.496.

(b) A response planning facilitator may sign a streamlined plan application as an authorized agent on behalf of the plan holder. An application signed by a response planning facilitator has the full force and effect of an application signed by the plan holder as described in 18 AAC 75.400(a)(5)(A) – (D). (Eff. 11/27/2002, Register 164)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070
AS 46.04.030

18 AAC 75.430. RESPONSE PLANNING STANDARDS.

(a) Notwithstanding the response planning standards set out in 18 AAC 75.430 - 18 AAC 75.442, the plan must demonstrate the general procedures to clean up a discharge of any size, including the greatest possible discharge that could occur, subject to the provisions of AS 46.04.020 and AS 46.09.020.

(b) Except for the requirements of 18 AAC 75.438(b)(1) and (2), 18 AAC 75.440, and 18 AAC 75.441, the department will consider and provide modifications to the response planning standards set out in 18 AAC 75.430 - 18 AAC 75.442 for a prevention measure that is in addition to

those listed in 18 AAC 75.432 - 18 AAC 75.438, if the plan holder demonstrates to the department's satisfaction that the proposed measure reduces the potential size or risk of a discharge.

(c) If more than one prevention measure is used to modify the response planning standard, each subsequent reduction will be applied separately to the response planning standard value that results from application of the previous modification. However, in no case will the department reduce the response planning standard below an amount equal to

(1) 15 percent of the response planning standard applicable to a crude or noncrude oil terminal facility, an exploration or production facility, or a crude oil pipeline as determined under 18 AAC 75.432(b) or (c), 18 AAC 75.434, or 18 AAC 75.436(b), respectively; or

(2) 30 percent of the response planning standard for a crude oil tank vessel or barge as determined by 18 AAC 75.438(c).

(d) The department will, in its discretion, revoke or reduce a prevention credit set out in 18 AAC 75.432 - 18 AAC 75.438 if the department finds that the plan holder has failed to execute or has not effectively implemented the prevention measure used to determine that credit.

(e) Liquefied petroleum gas is exempt from the requirements of 18 AAC 75.430 - 18 AAC 75.442. (Eff. 5/14/92, Register 122; am 11/27/2002, Register 164; am 5/26/2004, Register 170)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070
AS 46.04.030

18 AAC 75.432. RESPONSE PLANNING STANDARDS FOR OIL TERMINAL FACILITIES.

(a) For a crude or noncrude oil terminal facility, the plan holder shall maintain or have available under contract within the plan holder's region of operation or another approved location, sufficient oil discharge containment, storage, transfer, and cleanup equipment, personnel, and other resources to

(1) contain or control and clean up within 72 hours that portion of the response planning standard volume that enters open water; and

(2) contain or control within 72 hours, and clean up within the shortest possible time consistent with minimizing damage to the environment, that portion of the response planning standard volume that enters a receiving environment other than open water.

(b) The response planning standard volume for a crude or noncrude oil terminal facility is equal to the capacity of the largest oil storage tank at the facility covered by the plan, unless there are specific natural or man-made conditions outside the facility which could place the facility at an increased risk of an oil discharge affecting one or more storage tanks.

(c) For an increased risk described in (b) of this section, the response planning standard volume is equal to the capacity of all of the potentially affected oil storage tanks at the facility. The plan must set out the basis for selecting the storage tanks and the volume of oil planned for in the response.

(d) The department will, in its discretion, reduce the requirements of (b) of this section, by a percentage up to that shown, for each of the following prevention measures in place at the facility:

(1) alcohol and drug testing of key personnel: 5 percent;

(2) an operations training program with a professional organization or federal certification or licensing of program participants: 5 percent;

(3) on-line leak detection systems for tanks and piping: 5 percent;

(4) a sufficiently impermeable secondary containment area with a dike capable of holding the contents of the largest tank, or all potentially affected tanks in the case of increased risk, and precipitation: 60 percent;

(5) for secondary containment as described in (4) of this subsection, designed with the following enhancements, an additional allowance for

- (A) cathodic protection: 10 percent;
- (B) fail-safe valve piping systems: 15 percent; or
- (C) impervious containment area extending under the full area of each storage tank or double bottoms with leak detection: 25 percent; and

(6) containment outside the secondary containment area: 10 percent.
(Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.04.030 AS 46.04.070

18 AAC 75.433. RESPONSE PLANNING STANDARDS FOR RAILROAD TANK CARS.

For a railroad tank car, the plan holder shall maintain, or have available under contract within the plan holder's region of operation or another approved location, sufficient oil discharge containment, storage, transfer, and cleanup equipment, personnel, and other resources to

- (1) contain and control 15 percent of the maximum oil capacity of the train within 48 hours after a spill; and
- (2) clean up the discharge within the shortest possible time consistent with minimizing damage to the environment. (Eff. 12/14/2002, Register 164)

Authority: AS 46.03.020 AS 46.04.030 AS 46.04.070
AS 46.04.055

18 AAC 75.434. RESPONSE PLANNING STANDARDS FOR EXPLORATION OR PRODUCTION FACILITIES.

(a) For an exploration or production facility, the plan holder shall maintain or have available under contract within the plan holder's region of operation or another approved location, sufficient oil discharge containment, storage, transfer, and cleanup equipment, personnel, and other resources to

- (1) contain or control and clean up within 72 hours that portion of the response planning standard volume that enters open water; and
- (2) contain or control within 72 hours, and clean up within the shortest possible time consistent with minimizing damage to the environment, that portion of the response planning standard volume that enters a receiving environment other than open water.

(b) The response planning standard for an exploration facility is

- (1) 16,500 barrels, unless relevant well data, exploration data, and other supporting technical documentation provided to the department and to the Alaska Oil and Gas Conservation Commission demonstrates to the satisfaction of the department that a lower response planning standard volume is appropriate; and
- (2) an additional 5,500 barrels for each of 12 days beyond 72 hours, unless relevant well data, exploration data, and other supporting technical documentation provided to the department and to the Alaska Oil and Gas Conservation Commission demonstrates to the satisfaction of the department that a lower response planning standard volume is appropriate.

(c) Repealed 5/26/2004.

(d) If the actual flow rate of a well at an exploration facility exceeds 5,500 barrels per day, and the facility is to continue operations, the department will increase the response planning standard volume determined under (b) of this section for subsequent exploration wells drilled at that facility to a response planning standard volume taking into account the actual well flow rate of that well. The plan holder must submit a plan amendment under 18 AAC 75.415 addressing the increased response

planning standard volume within 30 days after the department notifies the plan holder of the department's determination under this section. The department will review the plan amendment under 18 AAC 75.455.

(e) The response planning standard for a production facility is

(1) three times the annual average daily oil production volume for the maximum producing well at the facility; and

(2) for a production facility with wells without assisted lift, an additional volume equal to the annual average daily oil production volume for the maximum producing well at the facility for each of 12 days beyond 72 hours.

(f) The department may consult with the Alaska Oil and Gas Conservation Commission and other agencies as necessary to

(1) verify the production data submitted under (d) of this section; and

(2) determine, under (b) of this section, a lower response planning standard for exploration facilities.

(g) If an operator proposes the planned voluntary ignition of a well blowout, the operator shall submit data, analyses, and supporting documentation that indicates to the satisfaction of the department that any discharged oil would have an American Petroleum Institute (API) gravity of 35 or greater, a gas-oil ratio in excess of 2,000, and an anticipated combustion efficiency of at least 90 percent, that well ignition would not exceed national ambient air quality standards set under 42 U.S.C. 7409 (Clean Air Act), and that well ignition will be protective of human health, safety, and welfare, and of the environment. The department will adjust the response planning standard determined under (b) - (e) of this section based on the submitted data. The department may consult with the Alaska Oil and Gas Conservation Commission and other agencies in evaluating the data provided by the operator under this subsection.

(h) If exploration and production facilities are covered under a single plan accepted under 18 AAC 75.400(d), the department will consider the largest of the response planning standards determined under (b) - (e) of this section to be the response planning standard for that plan.

(i) The department will protect from public disclosure any data, analyses, or supporting documentation that is required under this section and held confidential by the department or another state agency under applicable constitutional law, statutes, and common law doctrines that protect trade secrets within the meaning of AS 45.50.940 and other commercially sensitive, confidential, and proprietary information. If disclosure of that information is required in an adjudicatory hearing under 18 AAC 15.185 - 18 AAC 15.340, the hearing officer shall limit and condition disclosure to the extent necessary to comport with applicable constitutional, statutory, and common law doctrines that protect trade secrets within the meaning of AS 45.50.940 and other commercially sensitive, confidential, and proprietary information. In limiting or conditioning disclosure under this subsection, the hearing officer shall or department will, as necessary

(1) review confidential information in-camera; and

(2) redact department decisions to protect confidential information.

(j) The department may reduce the requirements of (b) - (e) of this section, up to the limits set out in 18 AAC 75.430(c)(1), for prevention measures in place at the facility beyond those measures imposed by the Alaska Oil and Gas Conservation Commission or another agency. (Eff. 5/14/92, Register 122; am 5/26/2004, Register 170)

Authority: AS 46.03.020 AS 46.04.030 AS 46.04.070

18 AAC 75.436. RESPONSE PLANNING STANDARDS FOR CRUDE OIL PIPELINES.

(a) For a crude oil pipeline facility, the plan holder shall maintain or have available under contract within the plan holder's region of operation or another approved location, sufficient oil discharge containment, storage, transfer, and cleanup equipment, personnel, and other resources to

(1) contain or control and clean up within 72 hours that portion of the response planning standard volume that enters open water; and

(2) contain or control within 72 hours, and clean up within the shortest possible time consistent with minimizing damage to the environment, that portion of the response planning standard volume that enters a receiving environment other than open water.

(b) The response planning standard volume for a crude oil pipeline facility is the amount of oil which equals the length of the pipeline between pumping or receiving stations or valves (Lpl), minus the hydraulic characteristics of the pipeline due to terrain profile (Hpl), times the capacity of the pipeline in barrels per lineal measure (Cpl), plus the flow rate of the pipeline in barrels per time period (FRpl), multiplied by the estimated time to detect a spill event (TDpl), plus the time to shut down the pipeline pump or system (TSDpl). Written as a formula, the response planning standard is $(Lpl - Hpl) * Cpl + FRpl * (TDpl + TSDpl)$.

(c) The department will, in its discretion, reduce the requirements of (b) of this section, by a percentage up to that shown, for each of the following prevention measures in place at the facility:

(1) alcohol and drug testing of key personnel: 5 percent;

(2) an operations training program with a professional organization or federal certification or licensing of program participants: 5 percent;

(3) on-line leak detection systems: 5 percent;

(4) corrosion control using

(A) ultrasonic thickness meters: 15 percent;

(B) instrumented in-line cleaning and diagnostic equipment ("smart pigs"): 15 percent; or

(C) a method described in (A) or (B) of this paragraph, coupled with cathodic-profile inspection at least triennially: 30 percent; and

(5) underwater pipeline cathodic- and burial-profile inspection: 5 percent.

(Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.04.070 AS 46.04.030

18 AAC 75.438. RESPONSE PLANNING STANDARDS FOR CRUDE OIL TANK VESSELS AND BARGES.

(a) For a crude oil tank vessel or barge, the plan holder shall maintain or have available under contract within its region of operation, sufficient discharge containment, storage, transfer, and cleanup equipment, personnel, and other resources to

(1) contain or control and clean up within 72 hours that portion of the response planning standard volume set out in (b) of this section that enters open water; and

(2) contain or control within 72 hours, and clean up within the shortest possible time consistent with minimizing damage to the environment, that portion of the response planning standard volume set out in (b) of this section that enters a receiving environment other than open water.

(b) For purposes of the requirements of (a) of this section, the response planning standard volume for a crude oil tank vessel or barge is

(1) 50,000 barrels, if the tank vessel or barge has a cargo volume of less than 500,000 barrels; and

(2) 300,000 barrels, if the tank vessel or barge has a cargo volume of 500,000 barrels or more.

(c) In addition to the requirements of (a) of this section, for all crude oil tank vessels and barges, the plan holder shall plan to have deployed and operating within 72 hours, from within or outside its region of operation, sufficient oil discharge containment, storage, transfer, and cleanup

equipment, personnel, and other resources to contain and control, and clean up at least 60 percent of the total cargo capacity of the tank vessel or barge.

(d) The department will, in its discretion, reduce the requirements of (c) of this section, by a percentage up to that shown, for each of the following prevention measures in place for the vessel or barge:

- (1) hydrostatic loading: 20 percent;
- (2) double hulls and bottoms: 30 percent;
- (3) double bottoms: 25 percent; and
- (4) emergency-response vessels and procedures described as follows:
 - (A) vessel escort during entire vessel transit in port area;
 - (B) escort vessels capable of
 - (i) providing steering and propulsion assistance with the ability to attach towing cables in a timely fashion under the weather conditions of transit; and
 - (ii) exerting sufficient force to change or maintain the escorted vessel's course;
 - (C) limits on the escorted vessel's speed in order to match escort vessel's ability to render assistance; and
 - (D) escort vessels have on-board oil discharge response equipment: 11

percent.

(e) A crude oil tank vessel or barge that has been exempted under 18 AAC 75.400(b) is exempt from the requirements of this section. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.04.030 AS 46.04.070

18 AAC 75.440. RESPONSE PLANNING STANDARDS FOR NONCRUDE OIL TANK VESSELS AND BARGES.

(a) For a noncrude oil tank vessel or barge, the plan holder shall maintain or have available under contract within the plan holder's region of operation or another approved location, sufficient oil discharge containment, storage, transfer, and cleanup equipment, personnel, and other resources to

(1) contain or control within 48 hours, and to clean up within the shortest possible time, that portion of the response planning standard volume that enters open water; and

(2) contain or control, and clean up within the shortest possible time consistent with minimizing damage to the environment, that portion of the response planning standard volume that enters a receiving environment other than open water.

(b) The response planning standard volume for a noncrude oil tank vessel or barge is equal to 15 percent of the total cargo capacity of the oil tank vessel or barge. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.04.030 AS 46.04.070

18 AAC 75.441. RESPONSE PLANNING STANDARDS FOR NONTANK VESSELS.

(a) For a nontank vessel, the plan holder shall maintain or have available under contract or membership agreement within the plan holder's region of operation, sufficient oil discharge containment and control equipment and shall maintain or have available under contract or membership agreement within the plan holder's region of operation or capable of arriving in the region of operation within 24 hours, sufficient storage, transfer, and cleanup equipment, personnel, and other resources to contain and control 15 percent of the maximum oil capacity of the nontank vessel within 48 hours. The plan holder must clean up the discharge within the shortest possible time consistent with minimizing damage to the environment.

- (b) For purposes of AS 46.04.055(c)(1) and this section, “maximum oil capacity” means the
- (1) total fuel tankage of the nontank vessel; or
 - (2) demonstrated actual maximum fuel volume that the vessel will carry in state waters, as certified by the vessel owner or operator. (Eff. 11/27/2002, Register 164)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070
AS 46.04.030

Editor's note: As of Register 170 (July 2004), the regulations attorney made a technical revision under AS 44.62.125(b)(6) to 18 AAC 75.441(a).

18 AAC 75.442. RESPONSE PLANNING STANDARDS FOR MULTIPLE OPERATIONS.

For a facility having more than one category of operation that requires an approved oil discharge prevention and contingency plan, the plan holder must plan to respond to a discharge of the applicable response planning standard volume for each separate category of operation at the facility as established under 18 AAC 75.430 - 18 AAC 75.440. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.04.030 AS 46.04.070

18 AAC 75.443. PREVENTION CREDITS FOR NONTANK VESSELS.

(a) A nontank vessel plan applicant may apply to the department for a prevention credit for measures taken to prevent an oil spill. To obtain a prevention credit, the nontank vessel owner or the owner’s representative must submit an affidavit to the department listing each prevention measure listed in Table E of this subsection employed by each vessel and stating the class of vessel to which that vessel belongs. Each prevention measure employed by a vessel and listed in Table E of this subsection will be assigned points under the column labeled “relative weight of measure” if that measure is applicable to that class of vessel. The total number of points possible for a class of vessel is at the bottom of the column for that vessel class.

TABLE E. PREVENTION MEASURES - WEIGHT AND APPLICABILITY											
Prevention Measure	Relative Weight of Measure	Fishing Vessels		Fish Processors & Tenders		General Cargo		Passenger Vessels		Container Ships	
		Applicable?	Weight	Applicable?	Weight	Applicable?	Weight	Applicable?	Weight	Applicable?	Weight
Emergency towline or dedicated mooring line with on-board means for deployment	2	Yes	2	Yes	2	Yes	2	Yes	2	Yes	2
Emergency on-board dewatering or petroleum pumps	2	Yes	2	Yes	2	Yes	2	Yes	2	Yes	2
On-board storage bladder or dedicated tank	2	Yes	2	Yes	2	Yes	2	Yes	2	Yes	2
Non-contiguous tank location on vessel	3	No	0	No	0	Yes	3	Yes	3	Yes	3
Redundant propulsion systems	3	Yes	3	Yes	3	Yes	3	Yes	3	Yes	3
Redundant and integrated navigation systems	1	Yes	1	Yes	1	Yes	1	Yes	1	Yes	1
Maintaining a transponder or automatic identification system	2	Yes	2	No	0	Yes	2	Yes	2	Yes	2
Use of an advanced anchoring system or placement of mooring buoys	2	No	0	No	0	Yes	2	Yes	2	Yes	2
Participation in a risk assessment process for vessel operations	2	Yes	2	Yes	2	Yes	2	Yes	2	Yes	2
Membership in a marine safety organization	1	Yes	1	Yes	1	Yes	1	Yes	1	Yes	1
Tugboats staged or on standby	2	No	0	No	0	No	0	Yes	2	Yes	2
Additional staged equipment onshore to improve response time to an oil spill	1	Yes	1	Yes	1	Yes	1	Yes	1	Yes	1
Continuous real-time weather and oceanographic condition monitoring and forecasting	1	No	0	No	0	Yes	1	Yes	1	Yes	1
Enhanced maintenance or preventative maintenance requirements more stringent than the requirements of 18 AAC 75.400 - 18 AAC 75.496	1	Yes	1	Yes	1	Yes	1	Yes	1	Yes	1
Vessel classified for operation in ice	2	No	0	No	0	Yes	2	Yes	2	Yes	2
Specialized onboard training programs in prevention and response	2	Yes	2	Yes	2	Yes	2	Yes	2	Yes	2
Mooring plan	1	No	0	Yes	1	Yes	1	Yes	1	Yes	1
Other measures as proposed by operators and approved by the department	1	Yes	1	Yes	1	Yes	1	Yes	1	Yes	1
Total possible score for vessel class	31		20		19		29		31		31

(b) The department will issue a prevention measure certificate for each vessel that will identify the class of vessel for which the certificate is issued and list the prevention measures that have been claimed by the owner. On the prevention measure certificate, the department will state the number of points that the owner has received as a result of those prevention measures.

(c) The prevention measure certificate is valid until the plan under which the vessel operates expires. A new affidavit as required under (a) of this section must be submitted at the time an application for renewal is submitted to the department.

(d) To be eligible for a prevention credit, a vessel must earn 50 percent of the points available to that vessel category set out in Table E in (a) of this section. If a vessel is determined eligible for the prevention credit, the department will give the vessel an acknowledgement, known as the Blue Star Award, for achieving prevention measures above and beyond compliance with the department's requirements.

(e) If all of the eligible vessels covered under a single nontank vessel plan meet the requirements of (d) of this section, and each affidavit is filed with or before an initial application, amendment, or renewal under 18 AAC 75.426, 18 AAC 75.427, or 18 AAC 75.428, the department will grant, as set out in 18 AAC 75.456(b) or 18 AAC 75.460(d), as applicable, a five year nontank vessel plan review cycle, instead of a three year cycle.

(f) Each affidavit must contain a statement that the vessel and that vessel's crew comply with all applicable state, federal, and international maritime laws. For failure to comply with those laws with respect to the vessel, the department will revoke any prevention credit granted to the owner of the vessel.

(g) By applying for a prevention credit, the vessel owner and operator consent to inspection of the owner's and operator's vessels and records by the department in order to verify the existence of prevention measures claimed in the application. The nontank vessel plan holder must retain records concerning its prevention measures for at least five years after the credit is claimed. (Eff. 11/27/2002, Register 164)

Authority:	AS 46.03.020	AS 46.04.055	AS 46.04.070
	AS 46.04.030	AS 46.04.065	

18 AAC 75.445. APPROVAL CRITERIA FOR OIL DISCHARGE PREVENTION AND CONTINGENCY PLANS.

(a) The department will use the criteria set out in this section to review an oil discharge prevention and contingency plan submitted under 18 AAC 75.425.

(b) **General Response Procedures.** The plan must identify the maximum possible discharge that could occur at the facility or operation, and the general procedures to be followed in responding to a discharge of that magnitude, including the identification of resources in addition to those maintained by the plan holder or available under contract to meet the applicable response planning standard for that facility or operation.

(c) **Deployment strategies.** The plan must demonstrate that the identified personnel and equipment are sufficient to meet the applicable response planning standard and can be deployed and operating within the time specified under 18 AAC 75.430 - 18 AAC 75.442. The plan must state what conditions were assumed and must take into account the realistic maximum response operating limitations and their effects on response capability and the deployment of resources. Plans using contractual resources must demonstrate that the transition and substitution of equipment and resources will occur without interruption of response or cleanup.

(d) **Response strategies.** The response strategies must take into account the type of product discharged and must demonstrate that

(1) procedures are in place to stop the discharge at its source within the shortest possible time;

(2) for an exploration or production facility, a summary of planned methods, equipment, logistics, and time frames in place that provide for the control of a well blowout within 15 days; the plan holder shall certify that the plan holder has a blowout contingency plan and shall make the blowout contingency plan available to the department for inspection upon request under 18 AAC 75.480; the department may consult with the Alaska Oil and Gas Conservation Commission, the Department of Natural Resources, or other agencies to determine the adequacy of the planned methods, equipment logistics, and time frames for the control of a well blowout;

(3) procedures and equipment are sufficient to monitor and track the discharge in order to ensure proper allocation and deployment of response personnel and equipment;

(4) sufficient oil discharge response equipment, personnel, and other resources are maintained and available for the specific purpose of preventing discharged oil from entering an environmentally sensitive area or an area of public concern that would likely be impacted if a discharge occurs, and that this equipment and personnel will be deployed and maintained on a time schedule that will protect those areas before oil reaches them according to the predicted oil trajectories for an oil discharge of the volumes established under 18 AAC 75.430 - 18 AAC 75.442; areas identified in the plan must include areas added by the department as a condition of plan approval;

(5) plan strategies are sufficient to meet the applicable response planning standard established under 18 AAC 75.430 - 18 AAC 75.442 for containment, control, recovery, transfer, storage, and cleanup within the specified time and under environmental conditions that might reasonably be expected to occur at the discharge site;

(6) there is access to sufficient lightering equipment and personnel to transfer all oil from damaged tanks and from undamaged tanks if the risk of an additional discharge is present; the plan must provide for commencement and completion of lightering within the shortest possible time, consistent with ensuring the safety of personnel; and

(7) adequate temporary storage and removal capacity for recovered oil and oily wastes will be available at or near the site of the spill to keep up with the skimming and recovery operations and to meet the applicable planning standard established under 18 AAC 75.430 - 18 AAC 75.442 for control, containment, and cleanup; plans for temporary storage and ultimate disposal must include the specific actions to be taken to obtain all necessary permits and approvals.

(e) **Receiving environment.** For an onshore facility or operation, the applicant must determine and clearly demonstrate that, based on an analysis of the facility or operation, resources identified in the plan are sufficient to clean up that portion of a discharge of the applicable planning standard volume that might realistically be expected to reach open water within the applicable time limit set out in 18 AAC 75.430 - 18 AAC 75.442.

(f) **Realistic Maximum Response Operating Limitations.** In designing a spill response, severe weather and environmental limitations that might be reasonably expected to occur during a discharge event must be identified. The plan must use realistic efficiency rates for the specified response methods to account for the reduction of control or removal rates under those severe weather or other environmental limitations that might reasonably be expected to occur. The department may require the plan holder to take specific temporary prevention or response measures until environmental conditions improve to reduce the risk or magnitude of an oil discharge during periods when planned mechanical spill response options are rendered ineffective by environmental limitations. Plans that propose the use of nonmechanical response options under 18 AAC 75.425(e)(3)(D) must meet the requirements of 18 AAC 75.425(e)(1)(G), 18 AAC 75.425(e)(3)(G), and (h) of this section.

(g) **Response equipment.** Response equipment identified in the plan must meet the following conditions:

(1) the applicant must have ready access to enough equipment to meet the applicable response planning standards established under 18 AAC 75.430 - 18 AAC 75.442 using mechanical methods of oil control, containment, and cleanup;

(2) identified equipment must reflect the best available technology at the time the plan is submitted or renewed;

(3) types and amounts of boom, boom connectors, and anchorage devices must be of the appropriate design for the particular oil product, type of environment, and environmental conditions experienced at the facility or operation; the boom must be of sufficient length to mount an effective response to the volume of discharged oil established under 18 AAC 75.430 - 18 AAC 75.442 for each type of facility or operation;

(4) vessels used to deploy and tow boom must be of a number, size, and power adequate to deploy the types and amounts of boom addressed in (3) of this subsection and must be capable of operating in the manner and at the speeds necessary for the effective use of boom;

(5) the number and size of skimmers and pumps to be used must be appropriate and adequate for recovery of the response planning standard volume of the type of oil discharged within the response planning standard time frame for cleanup established under 18 AAC 75.430 - 18 AAC 75.442, using an effective oil recovery capacity of 20 percent of the equipment manufacturer's rated throughput capacity over a 24-hour period, unless an analysis demonstrates to the satisfaction of the department that another effective daily oil recovery capacity is appropriate; equipment types must be compatible with each other as necessary to ensure an efficient response;

(6) the capacity of the temporary storage system for recovered oil and oil wastes must be appropriate and adequate for the total volume recovered within the response planning standard time frames for cleanup established under 18 AAC 75.430 - 18 AAC 75.442.

(h) **Nonmechanical Response Information.** Plans which propose the use of dispersants, in situ burning, or other nonmechanical response techniques during periods when environmental conditions or other factors limit the use of mechanical spill response methods must demonstrate their efficiency and effectiveness and must include a full assessment of potential environmental consequences, provisions for continuous monitoring and real-time assessment of environmental effects, and full compliance with all applicable approval requirements. If in situ burning is proposed as a response technique, a completed application for approval by the department must be included.

(i) **Oil Spill Primary Response Action Contractor Information.** If a plan holder proposes to use the services of an oil spill primary response action contractor to meet a requirement of AS 46.04.030 or 18 AAC 75.432 - 18 AAC 75.442, the contractor must be registered under 18 AAC 75.500 - 18 AAC 75.580. The plan holder shall include a correct and complete list of each primary response action contractor, with name, address, telephone number, and affiliation by company, and, for each response action contract, a statement signed by the plan holder and the primary response action contractor attesting to the department that the contract

(1) clearly specifies that the contractor is obligated to

(A) provide the response services and equipment listed for that contractor in the contingency plan;

(B) respond if a discharge occurs;

(C) notify the plan holder immediately if the contractor cannot carry out the response actions specified in the contract or the contingency plan;

(D) give written notice at least 30 days before terminating its contract with the plan holder;

(E) respond to a department-conducted discharge exercise required of the plan holder; and

(F) continuously maintain in a state of readiness, in accordance with industry standards, the equipment and other spill response resources to be provided by the contractor under the contingency plan; and

(2) contains the provisions required under AS 46.04.030(r), if the contract is between the plan holder for a tank vessel or oil barge carrying crude oil that has been transported by the Trans Alaska Pipeline System and a primary response action contractor who is the common operating agent for the holders and lessees of the right-of-way agreement for the Trans Alaska Pipeline System.

(j) **Training.** In addition to maintaining continuous compliance with other applicable state and federal training requirements, the plan holder shall demonstrate that

(1) designated oil spill response personnel are trained and kept current in the specifics of plan implementation, including deployment of containment boom, operation of skimmers and lightering equipment, and organization and mobilization of personnel and resources;

(2) personnel are trained and kept current in methods of preventing oil discharges as required by 18 AAC 75.020; and

(3) proof of that training is maintained for five years and is made available to the department upon request.

(k) **Best Available Technology Review.** For purposes of 18 AAC 75.425(e)(4), the department will review a plan and make a best available technology determination using the following criteria, as applicable:

(1) technology used for oil discharge containment, storage, transfer, and cleanup to satisfy a response planning standard in 18 AAC 75.430 - 18 AAC 75.442 will be considered best available technology if the technology of the applicant's oil discharge response system as a whole is appropriate and reliable for the intended use as well as the magnitude of the applicable response planning standard;

(2) technology that complies with the performance standards of 18 AAC 75.005 - 18 AAC 75.080 and that is not subject to a best available technology review under 18 AAC 75.425(e)(4)(A), will be considered best available technology;

(3) technology identified under 18 AAC 75.425(e)(4)(A) will be evaluated using the following criteria, if applicable:

(A) whether each technology is the best in use in other similar situations and is available for use by the applicant;

(B) whether each technology is transferable to the applicant's operations;

(C) whether there is a reasonable expectation each technology will provide increased spill prevention or other environmental benefits;

(D) the cost to the applicant of achieving best available technology, including consideration of that cost relative to the remaining years of service of the technology in use by the applicant;

(E) the age and condition of the technology in use by the applicant;

(F) whether each technology is compatible with existing operations and technologies in use by the applicant;

(G) the practical feasibility of each technology in terms of engineering and other operational aspects; and

(H) whether other environmental impacts of each technology, such as air, land, water pollution, and energy requirements, offset any anticipated environmental benefits.

(I) If the department's determination under (k) of this section is that a technology proposed for use by the applicant is not the best available technology, the department will provide a written finding explaining its decision.

(m) **Prevention Plan.** The prevention plan required by 18 AAC 75.425(e)(2) must describe all oil discharge prevention programs in place at the facility or operation. The plan must demonstrate that the applicant meets all the applicable requirements of 18 AAC 75.005 - 18 AAC 75.085 and 18 AAC 75.425(e)(2).

(n) **Response Planning Standard.** The response planning standard required by 18 AAC 75.425(e)(5) must provide a mathematical calculation of the applicable response planning standards set out in 18 AAC 75.430 - 18 AAC 75.440 and 18 AAC 75.442, and include a detailed

calculation and justification of any reductions to the response planning standard. (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 5/26/2004, Register 170; am 12/30/2006, Register 180)

Authority:	AS 46.03.020	AS 46.04.030	AS 46.04.055
	AS 46.04.020	AS 46.04.035	AS 46.04.070

Editor's note: As of Register 164 (January 2003), the regulations attorney made a technical revision under AS 44.62.125(b)(6), adding an authority citation for 18 AAC 75.445.

18 AAC 75.446. APPROVAL CRITERIA FOR NONTANK VESSEL EQUIVALENT PLANS.

(a) The department will use the criteria set out in (b) - (g) of this section to review a nontank vessel equivalent plan submitted under 18 AAC 75.410(a).

(b) **General Response Procedures.** The plan must identify the general procedures to be followed in responding to a discharge in order to meet the applicable response planning standard volume for each covered vessel.

(c) **Deployment Strategies.** The plan must demonstrate that the identified personnel and equipment are sufficient to meet the applicable response planning standard and can be deployed and operating within the time specified under 18 AAC 75.441. Plans using contractual resources must demonstrate that the transition and substitution of equipment and resources will occur without interruption of response or cleanup.

(d) **Response Strategies.** The response strategies must take into account the type of product discharged and must demonstrate that

(1) procedures are in place to stop the discharge at the source within the shortest possible time;

(2) plans, procedures, and equipment are sufficient to monitor and track the discharge in order to ensure proper allocation and deployment of response personnel and equipment;

(3) response strategies demonstrate the ability to mobilize and deploy sufficient equipment to allow the commencement of containment, control, and cleanup activities in the region of operation within the shortest possible time, and the ability to deliver all identified equipment in the region of operation within 24 hours after notification of an incident;

(4) access exists to sufficient lightering equipment and personnel to transfer all oil from any damaged tank and from any undamaged tank if the risk of an additional discharge is present; the plan must provide for commencement and completion of lightering within the shortest possible time, consistent with ensuring the safety of personnel; and

(5) adequate temporary storage and removal capacity for recovered oil and oily wastes will be available in the region of operation or capable of arriving in the region of operation within 24 hours to keep up with the skimming and recovery operations and to meet the applicable planning standard established under 18 AAC 75.441 for control, containment, and cleanup; plans for temporary storage and ultimate disposal must include the specific actions to be taken to obtain all necessary permits and approvals.

(e) **Response Equipment.** Response equipment identified in the plan must meet the following conditions:

(1) at a minimum, response equipment must meet the requirements set out in Table F of this paragraph;

TABLE F. MINIMUM NONTANK VESSEL EQUIVALENT PLAN EQUIPMENT REQUIREMENTS¹		
Classification A: Maximum Individual Vessel Fuel Capacity Or Fuel Volume To Be Carried, As Identified Under 18 AAC 75.441, Up To And Including 15,000 Barrels		
Required Equipment Type	Minimum Requirement For An Individual Vessel Plan	Minimum Requirement For A Plan Covering More Than One Vessel
boom ²	3 times the length of the vessel	3,000 feet or 3 times the length of the largest vessel, whichever is greater
skimmer ³	1/5 of response planning standard oil volume per day	2 or more skimmers, 900 barrels per day total
cleaning kit ⁴	1 kit	2 kits
storage capacity ⁵	1/5 of the response planning standard oil volume plus all associated water	900 barrels of oil plus all associated water
personnel ⁶	4 individuals	8 individuals
workboats ⁷	2 workboats	4 workboats
hazing kit ⁸	1 kit	2 kits
radios ⁹	5 radios	5 radios
Classification B: Maximum Individual Vessel Fuel Capacity Or Fuel Volume To Be Carried, As Identified Under 18 AAC 75.441, Greater Than 15,000 Barrels, Up To And Including 30,000 Barrels		
Required Equipment Type	Minimum Requirement For An Individual Vessel Plan	Minimum Requirement For A Plan Covering More Than One Vessel
boom ²	3 times the length of the vessel	3,000 feet or 3 times the length of the largest vessel, whichever is greater
skimmer ³	1/5 of response planning standard oil volume per day	2 or more skimmers, 1,800 barrels per day total
cleaning kit ⁴	1 kit	2 kits
storage capacity ⁵	1/5 of the response planning standard oil volume plus all associated water	1,800 barrels of oil plus all associated water
personnel ⁶	4 individuals	8 individuals
workboats ⁷	2 workboats	4 workboats
hazing kit ⁸	1 kit	2 kits
radios ⁹	5 radios	5 radios
Classification C: Maximum Individual Vessel Fuel Capacity Or Fuel Volume To Be Carried, As Identified Under 18 AAC 75.441, Greater Than 30,000 Barrels		
Required Equipment Type	Minimum Requirement For An Individual Vessel Plan	Minimum Requirement For A Plan Covering More Than One Vessel
boom ²	3 times the length of the vessel	3,000 feet or 3 times the length of the largest vessel, whichever is greater

skimmer ³	1/5 of response planning standard oil volume per day	2 or more skimmers, 2,700 barrels per day total, or 1/5 of the response planning standard oil volume of the largest vessel, whichever is greatest
cleaning kit ⁴	1 kit	2 kits
storage capacity ⁵	1/5 of the response planning standard oil volume plus all associated water, or 1/5 the response planning standard of oil volume of the largest vessel plus all associated water, whichever is greatest	2,700 barrels of oil plus all associated water, or 1/5 the response planning standard of oil volume of the largest vessel plus all associated water, whichever is greatest
personnel ⁶	6 individuals	10 individuals
workboats ⁷	2 workboats	4 workboats
hazing kit ⁸	1 kit	2 kits
radios ⁹	5 radios	5 radios

Notes to Table F:

¹This table sets out minimum planning requirements, not performance standards; during an incident, equipment must be mobilized in an amount and of a type appropriate to the actual circumstances of that incident.

²The type of boom must be based on an assumed maximum sea state of three feet; listed quantities of boom must be available in each region of operation.

³Skimmer capacity must meet or exceed the response planning standard volume for the predominant type of fuel, whether persistent product or nonpersistent product, carried by each vessel covered under a plan; skimmer capacity must be calculated based on a derated capacity corresponding to actual anticipated performance rather than manufacturer rated capacity, and may not include associated water; skimmers must be in the region of operation or capable of being deployed in the region of operation within 24 hours.

⁴Cleaning kits must be in the region of operation or available within 24 hours; cleaning kits must include, at a minimum,

- a. 2,500 feet of sorbent boom and 1,000 nine-ounce minimum sorbent pads for recovery of nonpersistent product;
- b. 2,500 feet of viscous, sweep, or similar material for recovery of persistent product;
- c. 12 fence posts;
- d. one fence post driver;
- e. 500 feet of rope;
- f. 10 anchor, buoy, and line systems sized to the containment boom and designed to work in 100 feet of water;
- g. 12 pitchforks;
- h. 12 rakes;
- i. 12 pointed shovels;
- j. 12 flat shovels;
- k. two bundles of survey stakes or two rolls of survey tape;
- l. 250 waste bags, each at least 6 mils thick;
- m. 12 rolls of barrier tape;
- n. 300 bag ties;
- o. three rolls of 100-foot x 24-foot plastic sheeting, at least six mils thick; and
- p. 12 rolls of duct tape.

⁵Storage capacity must be in the region of operation or available within 24 hours, and be capable of handling the specified amount of fuel and all associated water recovered in one day; the daily storage handling capacity must be calculated based on a five-day cleanup of the entire response planning standard volume; the amount of storage needed for associated water must be based on skimmer capacity; skimmer capacity must be calculated based on a derated capacity corresponding to actual anticipated performance rather than manufacturer rated capacity.

⁶Personnel numbers are based on the minimum number necessary to deploy boom using skiffs; personnel do not include incident management personnel.

⁷Workboats must be of appropriate size and horsepower for towing up to 500-foot sections of boom; listed quantities must be available in each region of operation.

⁸Hazing kits must be in the region of operation or available within 24 hours; hazing kits must include, at a minimum,

- a. 10 rolls of mylar tape;
- b. 20 mylar balloons;
- c. 30 pounds of towels or rags;
- d. gloves;
- e. binoculars;
- f. a field guide to birds of this state;
- g. an air horn;
- h. three predator silhouettes; and
- i. strapping tape.

⁹Radios must be in the region of operation or available within 24 hours; a minimum of five radios is required unless the contractor has more than 10 personnel; if the contractor has more than 10 personnel, the number of radios must equal at least one-half of the number of personnel.

(2) equipment stored in the region of operation must be maintained in a state of readiness in accordance with industry standards;

(3) types and amounts of recovery devices, boom, boom connectors, and anchoring systems must be of the appropriate design for the particular oil product and type of environment, and capable of operation in wave heights of up to three feet; and

(4) vessels used to deploy and tow boom must be of a number, size, and power adequate to deploy the types and amounts of boom addressed in (3) of this subsection and must be capable of operating in the manner and at the speeds necessary for the effective use of boom.

(f) **Response Action Contractor Information.** If a plan holder proposes to use the services of a nontank vessel cleanup contractor or nontank vessel incident management team to meet a requirement of AS 46.04.055 or 18 AAC 75.400 - 18 AAC 75.496, the contractor must be registered under 18 AAC 75.500 - 18 AAC 75.580 for the appropriate vessel fuel classification under 18 AAC 75.561(b)(1), Table G, and region of operation identified in the plan. The plan holder shall include a correct and complete list of each contractor, with name, address, telephone number, and affiliation by company. For each response action contract or membership agreement identified in a plan, the plan shall include a statement signed by the plan holder and the contractor attesting to the department that the contract or membership agreement clearly specifies that the contractor is obligated to

(1) provide the services and equipment listed for that contractor in the nontank vessel plan;

(2) respond if a discharge occurs;

(3) notify the plan holder immediately if the contractor cannot carry out the response actions specified in the contract, membership agreement, or nontank vessel plan;

(4) give written notice at least 30 days before terminating the contract or membership agreement with the plan holder;

(5) respond to a department-conducted discharge exercise required of the plan holder; and

(6) maintain in a state of readiness, in accordance with industry standards, the equipment and other spill response resources to be provided by the nontank vessel cleanup contractor or nontank vessel incident management team under the nontank vessel plan.

(g) **Training.** In addition to maintaining continuous compliance with other applicable state and federal training requirements, the plan holder shall demonstrate that designated oil spill response personnel are trained and kept current in the specifics of plan implementation, including deployment of containment boom, operation of skimmers and lightering equipment, and organization and mobilization of personnel and resources. The plan holder shall ensure that proof of training is maintained for three years and is made available to the department upon request. (Eff. 11/27/2002, Register 164)

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

18 AAC 75.447. DEPARTMENT EXAMINATION OF NEW TECHNOLOGIES.

(a) To assure that proven new technologies are considered for use in oil discharge prevention and contingency plans, the department will review and appraise technology applied at other locations in the United States and the world that represent alternatives to the technologies used by plan holders in their oil discharge prevention and contingency plans submitted to meet response planning standards in 18 AAC 75.430 - 18 AAC 75.442 and the performance standards of 18 AAC 75.005 - 18 AAC 75.080. The department will conduct this review and appraisal by

(1) sponsoring a technology conference at least every five years and in cooperation with persons, organizations, and groups with interests and expertise in relevant technologies; this conference will provide interested parties with an opportunity to describe the status of existing technologies in use as well as technologies that may be considered superior to those in use at that time; and

(2) engaging in studies, inquiries, surveys, or analyses the department believes appropriate to the consideration of new technologies.

(b) After its review and appraisal under (a) of this section, the department will issue written findings identifying new technologies that the department considers represent proven technological breakthroughs in oil discharge containment, control, or cleanup equipment. In its findings, the department will

(1) provide an evaluation of the technologies applied at other locations based on the applicable criteria in 18 AAC 75.445(k)(3);

(2) identify the evidence that clearly and convincingly supports the determination that the equipment represents a proven technology breakthrough that could result in superior advances in the efficiency or effectiveness of oil spill response efforts; and

(3) identify specific operations, geographical locations, or physical environments where the technology could be applied.

(c) If a finding is issued under (b) of this section, the department will inform plan holders, primary response action contractors, and other interested persons of the department's findings, the availability of the new technology, and the opportunity to submit comment on the report to the department. (Eff. 4/4/97, Register 142)

Authority: AS 46.03.020 AS 46.04.030 AS 46.04.070

18 AAC 75.455. DEPARTMENT REVIEW PROCEDURES FOR OIL DISCHARGE PREVENTION AND CONTINGENCY PLANS AND NONTANK VESSEL EQUIVALENT PLANS.

(a) Within seven working days after receipt of an oil discharge prevention and contingency plan application and plan or a nontank vessel equivalent plan application and plan, the department will determine if the application and plan are sufficient for public review. If the application or plan is not sufficient for public review, the department will request the necessary additional information from the applicant.

(b) When the department determines that an application and plan are sufficient for public review, the department will

(1) send a notice setting a 30-day comment period to the Department of Natural Resources, the Department of Fish and Game, affected coastal districts and regional citizens advisory councils, and other persons who have made a written request for information regarding submissions subject to review under this section;

(2) direct the applicant to provide a copy of the application and the plan to the Department of Natural Resources, the Department of Fish and Game, affected coastal districts and regional citizens advisory councils, and other persons designated by the department;

(3) set a date, within the 18th to 25th day of the 30-day comment period, by which the department will convey to the applicant any request from the department or a person reviewing the application that the department finds necessary to make a determination that the application or plan is complete; and

(4) publish one 30-day notice of the application, in the manner described in 18 AAC 15.050(b), stating the deadline for comments established under (1) of this subsection and the date established under (3) of this subsection for conveying requests for additional information; the applicant is responsible for paying the cost of the notice under this paragraph.

(c) The notice published under (b) of this section will state that a copy of the application and plan are available for review at the district and regional offices of the department nearest to the affected area of the state. It is the applicant's responsibility to provide a copy of the application and plan if the department receives a request for a copy.

(d) If, by the date set under (b)(3) of this section, the department determines that additional information is necessary to evaluate the application or plan, the department will

(1) notify the applicant of the information needed; and

(2) extend the 30-day comment period established under (b)(1) of this section until the information is received, plus 10 days.

(e) If the department determines that additional information is necessary under (d) of this section and requests the information from the applicant, the applicant shall send a copy of any additional information requested to the department and to the Department of Natural Resources, the Department of Fish and Game, affected coastal districts and regional citizens advisory councils, and other persons designated by the department.

(f) Upon receipt by the department of the additional information requested under (d) of this section, the department will provide to the parties described in (e) of this section notice of (1) receipt of the information and (2) the final comment deadline, as extended.

(g) The department will make a determination as to whether an application and plan are complete within seven days after the receipt of any additional information under (e) of this section or, if no additional information was requested under (d) of this section, within two days after the end of the 30-day comment period established under (b)(1) of this section.

(h) Notwithstanding the review procedures set out in this section, if, at any time after receipt of an application and plan, and after consultation with the Department of Natural Resources, the Department of Fish and Game, and affected coastal districts and regional citizens advisory councils, the department determines that all information necessary to evaluate the application and plan has

been received, the department will, in its discretion, find the application and plan complete. However, no decision will be made under (i) of this section until after the comment deadline established under (b)(1) of this section.

(i) Following the comment deadline established under (b)(1) of this section, including any extension under (d)(2) of this section, and within 65 days after the department determines that an application and plan are complete, the department will approve, approve with conditions, or disapprove a plan.

(j) The department will, if it determines good cause exists, hold a public hearing on an application and plan in the manner provided under 18 AAC 15.060.

(k) 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)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070
AS 46.04.030

18 AAC 75.456. DEPARTMENT DECISION ON NONTANK VESSEL STREAMLINED PLANS.

(a) The department will make a decision on a nontank vessel streamlined plan or plan amendment within five days after receipt of a complete application. The department will approve a nontank vessel streamlined plan application submitted under 18 AAC 75.410(d) if the plan meets the following requirements:

(1) the information submitted conforms to the requirements of 18 AAC 75.426;
(2) any nontank vessel cleanup contractor identified under 18 AAC 75.426(11) is registered under 18 AAC 75.500 - 18 AAC 75.580 for the appropriate vessel fuel classification and region of operation identified in the application;

(3) any nontank vessel incident management team identified under 18 AAC 75.426(11) is registered under 18 AAC 75.500 - 18 AAC 75.580 for the appropriate vessel fuel classification and region of operation identified in the application;

(4) any response planning facilitator identified under 18 AAC 75.426(14) is registered under 18 AAC 75.500 - 18 AAC 75.580 to provide the appropriate response planning facilitation services identified in the application.

(b) A nontank vessel plan is effective for

(1) three years after the date the plan is approved by the department;

(2) a time period shorter than three years, as specified in the department's approval letter; or

(3) five years, if the requirements of 18 AAC 75.443(e) are met.

(c) Nontank vessel plans are available for review as public records upon request to the department. (Eff. 11/27/2002, Register 164)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070
AS 46.04.030

18 AAC 75.457. EMERGENCY MODIFICATION OF REVIEW PROCESS.

If, due to an emergency as described in AS 26.23 or AS 46.04.080 or other applicable law, an applicant needs an expedited review, or if the commissioner or the commissioner's designee finds

that an expedited review is necessary for the preservation of the public peace, health, safety, or general welfare, the commissioner or the commissioner's designee will, in that person's discretion, and consistent with the requirements of AS 46.04.030(j) that a copy of the applicant's plan be provided to the Department of Fish and Game and the Department of Natural Resources, modify the review process established in 18 AAC 75.455 as necessary to meet the emergency. Any modifications in the review process made under this section will be made in writing by the commissioner or the commissioner's designee based upon clear and convincing evidence of a need for the modification. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.04.030 AS 46.04.070

18 AAC 75.459. PREISSUANCE CONFERENCE.

(a) At any time before the department's decision under 18 AAC 75.460, the applicant may request a preissuance conference from the appropriate regional office of the department. The request may be made orally, and will be granted if the applicant demonstrates that holding a conference will materially aid the department in reaching its decision.

(b) A preissuance conference under this section will be conducted in the manner provided under 18 AAC 15.070. However, the time period for the department's review will not be held in abeyance pending completion of the conference. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070
AS 46.04.030

Editor's note: As of Register 164 (January 2003), the regulations attorney made a technical revision under AS 44.62.125(b)(6), adding an authority citation for 18 AAC 75.459.

18 AAC 75.460. DEPARTMENT DECISION ON OIL DISCHARGE PREVENTION AND CONTINGENCY PLANS AND NONTANK VESSEL EQUIVALENT PLANS.

(a) After considering the information, analyses, and commitments contained in a complete application for an oil discharge prevention and contingency plan approval and timely comments submitted under 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.

(b) A decision issued under (a) of this section will include

(1) the written approval, if it is the department's determination that an oil discharge prevention and contingency plan approval should be issued; the department will provide a summary of the basis for its decision to approve a plan in a case in which public comment adverse to the application has been received;

(2) a brief summary of the basis for the department's decision if the decision is to disapprove a plan, or to subject a plan to conditions specific to the activity; and

(3) a statement that, if aggrieved by the department's decision, the applicant or any person who submitted timely comments on the application under 18 AAC 75.455 may request an adjudicatory hearing by submitting the information required under 18 AAC 15.200(a)(1) - (5), and that any hearing requested under this subsection will be subject to the procedures set out at 18 AAC 15.195 - 18 AAC 15.340.

(c) The department's decision will be served on the applicant and each person who submitted timely comments on the application under 18 AAC 75.455. The applicant and any person who submitted timely comments on the application under 18 AAC 75.455 may request an adjudicatory hearing within 30 days after service of the department's decision. The hearing will be conducted in accordance with procedures set out at 18 AAC 15.195 - 18 AAC 15.340.

(d) An approval under this section is effective for

- (1) three years after the date it is issued;
- (2) a time period shorter than three years, as specified in the department's approval letter and certificate; or
- (3) five years, if the requirements of 18 AAC 75.443(e) are met. (Eff. 5/14/92, Register 122; am 7/11/2002, Register 163; am 11/27/2002, Register 164)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070
AS 46.04.030

Editor's note: Department of Environmental Conservation approval under 18 AAC 75.460 does not negate any other requirement for approval to operate under other statutes or regulations, such as Alaska Coastal Management Program approval under 6 AAC 50.

18 AAC 75.465. PROOF OF APPROVED PLAN.

(a) The owner or operator of an oil terminal facility may not cause or permit the transfer of oil to or from a vessel, barge, or railroad tank car unless

(1) the operator of the vessel, barge, or railroad tank car has produced for inspection by the facility owner or operator the original certificate, or a true photocopy of the original, approving the oil discharge prevention and contingency plan or nontank vessel plan for that operation; and

(2) the operator of the vessel, barge, or railroad tank car has certified, on a certification log form supplied by the department and maintained by the owner or operator of the oil terminal facility, that a copy of the response action plan section of the current approved oil discharge prevention and contingency plan, or the original certificate or a true photocopy of the original nontank vessel plan approval certificate, for that vessel or barge is on board the vessel or barge.

(b) The owner or operator of an oil terminal facility shall certify on the certification log form that the operator of the vessel or barge has complied with (a)(1) and (a)(2) of this section. The facility owner or operator shall maintain the log on a monthly basis and shall submit the log for the previous month to the department within the first five days of the following month. Service is effective upon personal delivery or transmittal by facsimile or on the date of mailing by certified mail to the department. The department will retain copies of all log forms received under this subsection for three years after receipt.

(c) On the first working day after the operator of a vessel or railroad tank car fails to comply with the requirements of (a)(1) or (2) of this section, the oil terminal facility owner or operator shall report that failure to the department by telephone or facsimile.

(d) Verification and entry on the certification log form referred to under (b) of this section is required for each separate loading or unloading operation of a vessel at an oil terminal facility. (Eff. 5/14/92, Register 122; am 11/27/2002, Register 164; am 12/14/2002, Register 164)

Authority: AS 46.03.020 AS 46.04.050 AS 46.04.070
AS 46.04.030 AS 46.04.055 AS 46.04.900

18 AAC 75.470. TRANSFERS BETWEEN PLAN HOLDERS.

(a) If approved under this section, a plan holder, or an oil spill response contractor or cooperative upon which one or more plan holders rely, may furnish to another plan holder or to another person, equipment, materials, or personnel to assist in response to an oil discharge. A description of the proposed transfer that addresses each of the considerations set out in (b) of this section must be provided with the request for approval of a transfer.

(b) The department will, in its discretion, approve a transfer under this section after considering

(1) for a provider of oil spill response equipment, materials, or personnel:

(A) the amount and types of equipment, personnel, or other resources to be transferred in response to a discharge and where it will be transferred;

(B) the number and types of other plan holders who rely upon the provider's response equipment, personnel, and other resources;

(C) the percentage by which the provider's response capability will be reduced by the transfer;

(D) the ability of the provider to acquire and deploy alternate response equipment if an emergency discharge occurs while equipment, materials, or personnel are transferred; and

(E) any compensating measures that will be taken by the provider to prevent or reduce the size of potential discharges during the period of reduced response capability; and

(2) for a plan holder receiving the equipment, the time estimated for the response equipment to reach the discharge.

(c) The department will, in its discretion, attach terms and conditions to an approval issued under (b) of this section.

(d) The provider shall reorder and replace equipment or materials that are

(1) exhausted, lost, destroyed, or rendered inoperable as soon the condition is known by the provider; and

(2) not expected to be returned, such as sorbent boom, sorbent pads, and dispersant, as soon as they are transferred.

(e) If equipment, materials, or personnel are not replaced or returned to the provider within 30 days after the transfer, the plan holder may request an extension from the department. If the extension is denied, the provider must apply for approval of an amendment to its approved prevention and contingency plan under 18 AAC 75.415.

(f) Except in response to a major or catastrophic discharge, the department will not approve a transfer of equipment, materials, or personnel to another plan holder if the provider's spill response capability would be reduced to less than 40 percent of the response capability identified in its plan. If a major or catastrophic oil discharge occurs, the department will, in its discretion, approve an immediate transfer of up to 100 percent of the provider's response equipment, personnel, and other resources.

(g) The department will issue a verbal approval for a transfer if a discharge poses an imminent threat to life, property, the environment, or other significant public concern. The verbal approval will be verified in writing by the department. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.04.030 AS 46.04.070
AS 46.04.055

Editor's note: As of Register 164 (January 2003), the regulations attorney made a technical revision under AS 44.62.125(b)(6), adding an authority citation for 18 AAC 75.470.

18 AAC 75.475. NOTIFICATION OF NONREADINESS.

(a) All spill response and other equipment identified in the approved oil discharge prevention and contingency plan or nontank vessel plan to meet the response planning standards set out at 18 AAC 75.430 - 18 AAC 75.442 must be maintained in operational condition. Any equipment found not to be operating properly must be repaired or replaced immediately.

(b) Except for a transfer approved under 18 AAC 75.470, if a significant change occurs in, or is made to, any component of a plan that would diminish the plan holder's response capability, the plan holder shall, within 24 hours, notify the department in writing and provide a schedule for a prompt return to operational status. A facsimile delivered to the appropriate regional office will be considered written notice for purposes of this subsection. If the department finds that, as a result of the change, the plan holder is no longer able to execute the plan, it will take appropriate action under 18 AAC 75.490.

(c) Notwithstanding (a) and (b) of this section, removal or inactivation of any major response item for maintenance or repair must be approved by the department before removal or inactivation. A request under this subsection must be submitted at least 10 days before the scheduled action or as soon as possible for an unanticipated repair. The request must state what substitute or temporary measures will be taken to provide equivalent response capability, reduce the time out of service, or otherwise ensure that equivalent response capability is maintained.

(d) A plan holder shall notify the department in writing within 24 hours if a significant change occurs in, or is made to, one or more of the following systems, and if, as a result of that change, the system no longer meets the applicable performance requirements;

(1) a leak detection system required by 18 AAC 75.047(d);

(2) a leak detection system required by 18 AAC 75.055(a);

(3) a secondary containment system required by 18 AAC 75.075. (Eff. 5/14/92, Register 122; am 11/27/2002, Register 164; am 12/30/2006, Register 180)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070
AS 46.04.030

18 AAC 75.480. INSPECTIONS.

(a) To verify compliance with the provisions of AS 46.04.030, AS 46.04.055, and 18 AAC 75.400 - 18 AAC 75.496, the department may conduct announced and unannounced inspections of a vessel, barge, pipeline, or other operation that is subject to the requirements of AS 46.04.030, AS 46.04.055, and 18 AAC 75.400 - 18 AAC 75.496. If practicable, an inspection under this section will be coordinated with other regulatory agencies.

(b) Based on the results of an inspection made under this section, the department will, in its discretion, take appropriate action under 18 AAC 75.490. (Eff. 5/14/92, Register 122; am 11/27/2002, Register 164)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.065
AS 46.04.030 AS 46.04.060 AS 46.04.070

18 AAC 75.485. DISCHARGE EXERCISES.

(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.

(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 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).

(c) If a plan holder cannot adequately execute the plan during a discharge exercise, the department will, in its discretion,

(1) require additional exercises until it is satisfied that the prevention and contingency plan and its execution are adequate; or

(2) take other appropriate action as described at 18 AAC 75.490.

(d) The department will consider a regularly scheduled training exercise initiated by a plan holder as a discharge exercise if the department monitors, evaluates, or participates in the exercise and concurs that it is equivalent to a discharge exercise conducted by the department.

A plan holder shall notify the department in advance of the exercise and shall provide an opportunity for a department representative to be present and participate.

(e) The department will conduct announced or unannounced discharge exercises appropriate to the plan holder's current status of operations. (Eff. 5/14/92, Register 122; am 11/27/2002, Register 164)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070
AS 46.04.030

18 AAC 75.490. FAILURE TO COMPLY.

(a) If a plan holder fails to comply with an approved oil discharge prevention and contingency plan or nontank vessel plan, demonstrates an inability to maintain continuous access to the quality or quantity of resources identified in the plan, fails to respond with those resources in the shortest possible time if a discharge occurs, or is in any other way subject to the terms of AS 46.04.030(f)(1) - (4) or AS 46.04.055, the department may

(1) revoke the approval of the plan after notice and opportunity for hearing under (c) of this section;

(2) suspend its approval of the plan after notice and opportunity for hearing under (c) of this section, stating the conditions under which the department will reinstate the approval and allow operations to resume;

(3) order the plan holder to file an application to amend the plan within a specified time under 18 AAC 75.415; or

(4) take other necessary action to correct the failure to comply.

(b) If a plan holder fails to apply for an amendment as required under (a)(3) of this section, the department may revoke the approval of the plan after notice and opportunity for hearing under (c) of this section.

(c) If the department issues a notice of intent to revoke an approval under this chapter, the plan holder may request an adjudicatory hearing under 18 AAC 15.195 – 18 AAC 15.340. (Eff. 5/14/92, Register 122; am 7/11/2002, Register 163; am 11/27/2002, Register 164)

Authority: AS 46.03.020 AS 46.03.750 AS 46.04.070
AS 46.03.740 AS 46.04.030 AS 46.35.090(e)
AS 46.03.745 AS 46.04.055

18 AAC 75.495. REGIONAL MASTER DISCHARGE PREVENTION AND CONTINGENCY PLAN BOUNDARIES.

(a) The regions described in this subsection and depicted on the map at Figure 1 are established for the purpose of preparing a regional master oil and hazardous substance discharge prevention and contingency plan as required by AS 46.04.210:

(1) Southeast Alaska Region: that area of the state east of 142° W. longitude and south of a line just west of Icy Bay that connects the U.S.-Canadian border with the Gulf of Alaska, including adjacent shorelines and state waters, and having as its seaward boundary a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured;

(2) Prince William Sound Region: that area south of 63°30' N. latitude, west of the region described in (1) of this subsection, and east of the region described in (3) of this subsection, including adjacent shorelines and state waters, and having as its seaward boundary a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured;

(3) Cook Inlet Region: that area encompassed by the boundaries of the Kenai Peninsula Borough, the Municipality of Anchorage, and the Matanuska-Susitna Borough, including adjacent shorelines and state waters, and having as its seaward boundary a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured;

(4) Kodiak Island Region: that area encompassed by the boundaries of the Kodiak Island Borough, including adjacent shorelines and state waters, and having as its seaward boundary a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured;

(5) Aleutian Region: those areas encompassed by the boundaries of the Aleutians East Borough, the Aleutians West Coastal Resource Service Area, and the Pribilof Islands, including adjacent shorelines and state waters, and having as its seaward boundary a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured;

(6) Bristol Bay Region: that area encompassed by the boundaries of the Bristol Bay Coastal Resource Service Area, the Bristol Bay Borough, and the Lake and Peninsula Borough, including adjacent shorelines and state waters, and having as its seaward boundary a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured;

(7) Western Alaska Region: that area north of the area described in (6) of this subsection, encompassed by the boundaries of the southernmost boundary of the Bering Straits Regional Corporation, and Iditarod and Kuspuk Regional Educational Attendance Areas, including adjacent shorelines and state waters, and having as its seaward boundary a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured;

(8) Northwest Arctic Region: that area encompassed by the Northwest Arctic Borough and the Bering Straits Regional Corporation, including adjacent shorelines and state waters, and having as its seaward boundary a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured;

(9) North Slope Region: that area encompassed by the boundaries of the North Slope Borough, including adjacent shorelines and state waters, and having as its seaward boundary a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured; and

(10) Interior Alaska Region: that area of the state not included in (1) - (9) of this subsection.

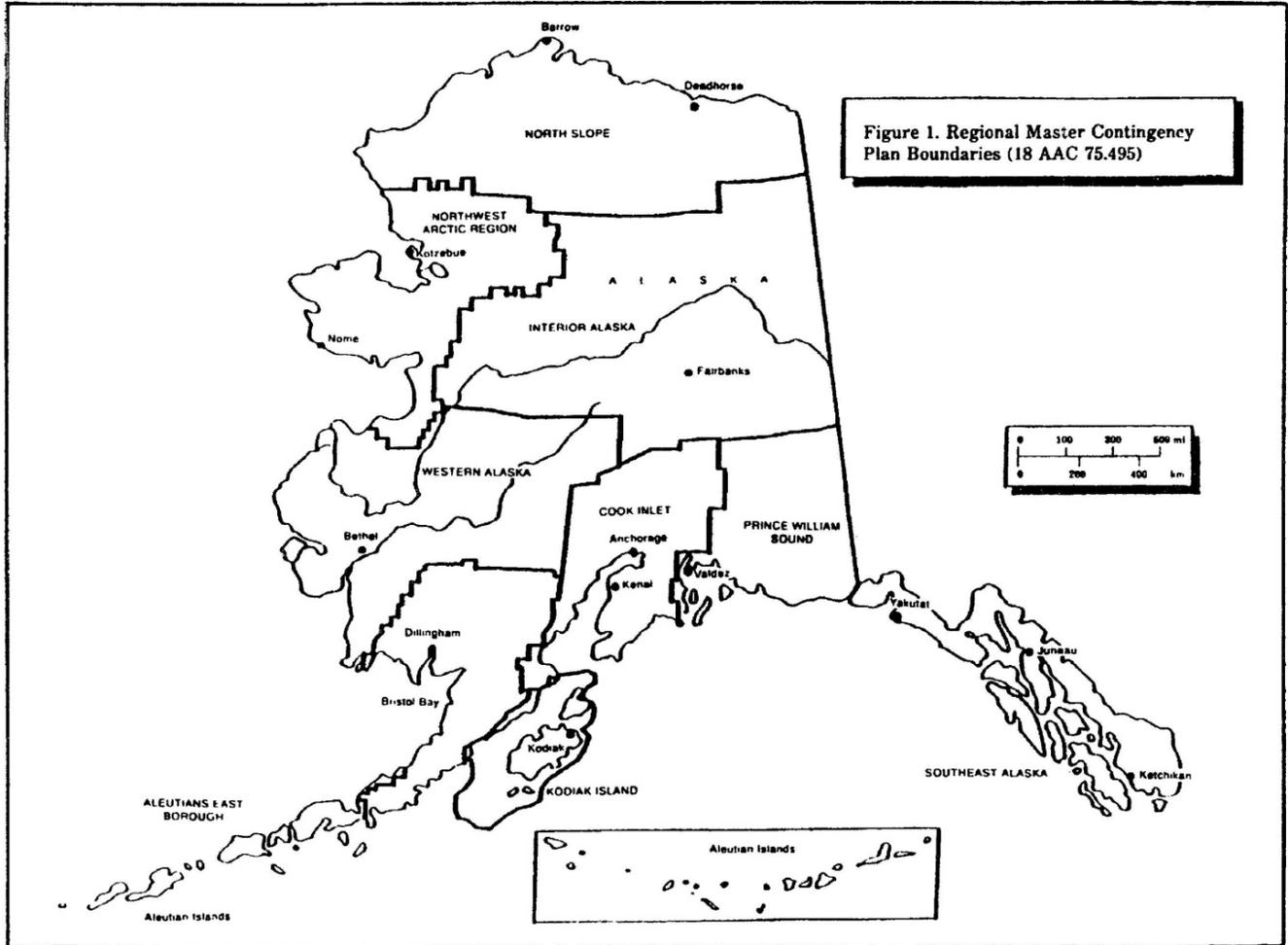
Selected Alaska Oil & Hazardous Substances Pollution Control Statutes and Regulations

(b) If the department finds that a discharge that could occur in an area beyond the territorial sea would not have a significant adverse impact on the resources of the state or on other interests of the state, the department will, in its discretion, adjust the seaward boundary of a region established in (a) of this section to exclude that area. (Eff. 5/14/92, Register 122; am 11/27/2002, Register 164; am 10/9/2008, Register 188)

Authority: AS 46.03.020 AS 46.04.070 AS 46.04.210
AS 46.04.055

Editor's note: As of Register 164 (January 2003), the regulations attorney made a technical revision under AS 44.62.125(b)(6), adding an authority citation for 18 AAC 75.495.

Figure 1. Regional Master Contingency Plan Boundaries



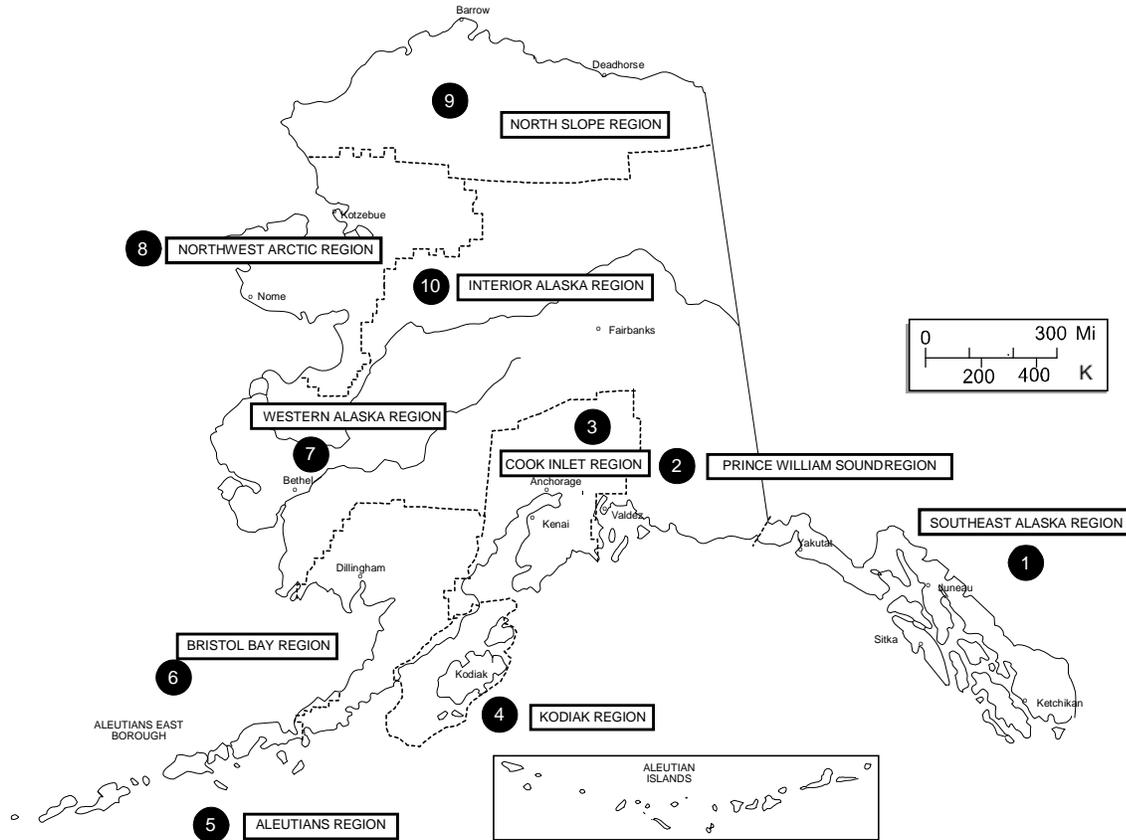
18 AAC 75.496. REGIONAL RESPONSE OPERATIONS PLAN BOUNDARIES FOR NONTANK VESSELS.

The regions described in this section and depicted on the map at Figure 2 are established for the purpose of establishing boundaries for nontank vessel plans:

- (1) Southeast Alaska Region: that area of the state east of 142° W. longitude and south of a line just west of Icy Bay that connects the U.S.-Canadian border with the Gulf of Alaska, including adjacent shorelines and state waters;
- (2) Prince William Sound Region: that area south of 63°30' N. latitude, west of the region described in (1) of this section, and east of the region described in (3) of this section, including adjacent shorelines and state waters;
- (3) Cook Inlet Region: that area encompassed by the boundaries of the Kenai Peninsula Borough, the Municipality of Anchorage, and the Matanuska-Susitna Borough, including adjacent shorelines and state waters;
- (4) Kodiak Island Region: that area encompassed by the boundaries of the Kodiak Island Borough, including adjacent shorelines and state waters;
- (5) Aleutian Region: those areas encompassed by the boundaries of the Aleutians East Borough, the Aleutians West Coastal Resource Service Area, and the Pribilof Islands, including adjacent shorelines and state waters;
- (6) Bristol Bay Region: that area encompassed by the boundaries of the Bristol Bay Coastal Resource Service Area, the Bristol Bay Borough, and the Lake and Peninsula Borough, including adjacent shorelines and state waters;
- (7) Western Alaska Region: that area north of the area described in (6) of this section, encompassed by the boundaries of the southernmost boundary of the Bering Straits Regional Corporation, and Regional Educational Attendance Areas 11 and 5, including adjacent shorelines and state waters;
- (8) Northwest Arctic Region: that area encompassed by the Northwest Arctic Borough and the Bering Straits Regional Corporation, including adjacent shorelines and state waters;
- (9) North Slope Region: that area encompassed by the boundaries of the North Slope Borough, including adjacent shorelines and state waters;
- (10) Interior Alaska Region: that area of the state not included in (1) - (9) of this section. (Eff. 11/27/2002, Register 164)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070
AS 46.04.030

Figure 2. Regional Response Operations Plan Boundaries (18 AAC 75.496)



ARTICLE 5. OIL SPILL PRIMARY RESPONSE ACTION CONTRACTORS.

Section

- 500. Definition of oil spill primary response action contractor; applicability
- 501. Applicability with respect to nontank vessel cleanup contractors, nontank vessel incident management teams, and response planning facilitators
- 510. General provisions
- 520. Application for oil spill primary response action contractor registration or renewal
- 521. Application for nontank vessel cleanup contractor registration
- 522. Application for nontank vessel incident management team registration
- 523. Application for response planning facilitator registration
- 530. Registration application contents for oil spill primary response action contractors
- 531. Registration application contents for nontank vessel cleanup contractors
- 532. Registration application contents for nontank vessel incident management teams
- 533. Registration application contents for response planning facilitators
- 540. Registration and renewal fees
- 550. Application review procedures for oil spill primary response action contractors
- 551. Application review procedures for nontank vessel cleanup contractors
- 552. Application review procedures for nontank vessel incident management teams
- 553. Application review procedures for response planning facilitators
- 560. Minimum registration standards for oil spill primary response action contractors
- 561. Minimum registration standards for nontank vessel cleanup contractors
- 562. Minimum registration standards for nontank vessel incident management teams
- 563. Minimum registration standards for response planning facilitators
- 565. Discharge exercises for nontank vessel cleanup contractors and nontank vessel incident management teams
- 570. Failure to comply
- 580. Voluntary termination of registration

18 AAC 75.500. DEFINITION OF OIL SPILL PRIMARY RESPONSE ACTION CONTRACTOR; APPLICABILITY.

(a) As used in AS 46.04.035 and 18 AAC 75.500 - 18 AAC 75.580, "oil spill primary response action contractor" means a person who is or intends to be obligated under contract to the holder of an approved oil discharge prevention and contingency plan issued under AS 46.04.030 to provide resources or equipment to contain, control, or clean up an oil discharge. "Oil spill primary response action contractor" does not include

- (1) a person who provides only ancillary services or equipment not for the specific purpose of containing, controlling, or cleaning up an oil discharge; or
- (2) an approved oil discharge prevention and contingency plan holder who provides to another plan holder resources or equipment to contain, control, or clean up an oil discharge.

(b) A response action contractor is not required to register under 18 AAC 75.500 - 18 AAC 75.580 unless the contractor is directly obligated to a plan holder by contract to provide spill response resources to meet the requirements of AS 46.04.030 and 18 AAC 75.400 - 18 AAC 75.495 and is listed in that plan holder's oil discharge prevention and contingency plan as providing all or part of the response resources required to demonstrate compliance with an applicable response planning standard under 18 AAC 75.432 - 18 AAC 75.442.

(c) The holder of an approved oil discharge prevention and contingency plan whose resources are listed in the plan of another plan holder to meet the requirements of AS 46.04.030 and 18 AAC 75.400 - 18 AAC 75.495 is not required to register as an oil spill primary response action contractor, but is subject to all other requirements of 18 AAC 75.425(e)(3)(H) and 18 AAC 75.445(i)(1) and (i)(2).

(d) Any person may apply to the department for registration under 18 AAC 75.500 - 18 AAC 75.580 as an oil spill primary response action contractor. (Eff. 9/25/93, Register 127; am 3/28/96, Register 137)

Authority:	AS 46.03.020	AS 46.04.030	AS 46.04.055
	AS 46.03.825	AS 46.04.035	AS46.04.070

Editor's note: As of Register 164 (January 2003), the regulations attorney made a technical revision under AS 44.62.125(b)(6), adding an authority citation for 18 AAC 75.500.

18 AAC 75.501. APPLICABILITY WITH RESPECT TO NONTANK VESSEL CLEANUP CONTRACTORS, NONTANK VESSEL INCIDENT MANAGEMENT TEAMS, AND RESPONSE PLANNING FACILITATORS.

(a) The department will not consider a person to be a nontank vessel cleanup contractor, nontank vessel incident management team, or response planning facilitator, or to be otherwise subject to the registration requirements of AS 46.04.055 and 18 AAC 75.500 - 18 AAC 75.580, if the person

(1) provides only ancillary services or equipment not for the specific purpose of

(A) containing, controlling, or cleaning up an oil discharge under a contract or membership agreement to meet all or part of the requirements of AS 46.04.055 and 18 AAC 75.400 - 18 AAC 75.496;

(B) providing incident management services for a spill under a contract to meet all or part of the requirements of AS 46.04.055 and 18 AAC 75.400 - 18 AAC 75.496; or

(C) response plan facilitation to develop the response operations plan under 18 AAC 75.428 to meet all or part of the requirements of AS 46.04.055 and 18 AAC 75.400 - 18 AAC 75.496; or

(2) is an approved oil discharge prevention and contingency plan holder or nontank vessel plan holder who provides to another plan holder resources or equipment to

(A) contain, control, or clean up an oil discharge;

(B) provide incident management services for a spill; or

(C) provide response plan facilitation services.

(b) A nontank vessel cleanup contractor is not required to register under this chapter unless that contractor is listed in a nontank vessel plan as providing containment, control, or cleanup actions under a contract or membership agreement to meet all or part of the requirements of AS 46.04.055 and 18 AAC 75.400 - 18 AAC 75.496.

(c) A nontank vessel incident management team is not required to register under this chapter unless that team is listed in a nontank vessel plan as providing incident management team services under a contract to meet all or part of the requirements of AS 46.04.055 and 18 AAC 75.400 - 18 AAC 75.496.

(d) A response planning facilitator is not required to register under this chapter unless that facilitator is listed in a nontank vessel plan as providing response planning facilitation services under 18 AAC 75.428 to meet all or part of the requirements of AS 46.04.055 and 18 AAC 75.400 - 18 AAC 75.496.

(e) Nothing in this chapter prohibits a person from registering as more than one of the following, in order to provide more than one type of response action for nontank vessels:

- (1) a nontank vessel cleanup contractor;
- (2) a nontank vessel incident management team;
- (3) a response planning facilitator. (Eff. 11/27/2002, Register 164)

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

18 AAC 75.510. GENERAL PROVISIONS.

(a) The resources of a response action contractor listed in an oil discharge prevention and contingency plan to contain, control, or clean up an oil discharge and to demonstrate compliance with all or part of a response planning standard under 18 AAC 75.432 - 18 AAC 75.442 will not be considered by the department in its review of the plan unless

(1) that person is registered as an oil spill primary response action contractor under 18 AAC 75.500 - 18 AAC 75.580; and

(2) all other requirements of 18 AAC 75.425(e)(3)(H) and 18 AAC 75.445(i) are met.

(b) Registration of an oil spill primary response action contractor by the department does not

(1) constitute an assurance by the department of the qualifications or abilities of that contractor;

(2) constitute an assurance by the department that the contractor will adequately respond to a release or threatened release of oil; or

(3) provide a defense to liability under state law. (Eff. 9/25/93, Register 127; am 3/28/96, Register 137)

Authority: AS 46.03.020 AS 46.04.030 AS 46.04.055
AS 46.03.825 AS 46.04.035 AS 46.04.070

Editor's note: As of Register 164 (January 2003), the regulations attorney made a technical revision under AS 44.62.125(b)(6), adding an authority citation for 18 AAC 75.510.

18 AAC 75.520. APPLICATION FOR OIL SPILL PRIMARY RESPONSE ACTION CONTRACTOR REGISTRATION OR RENEWAL.

(a) Oil spill primary response action contractor registration under this section is effective for three years after the date of issuance under 18 AAC 75.550.

(b) A person seeking registration or renewal of registration as an oil spill primary response action contractor must submit an application, on a form provided by the department, to the contractor registration program, division of spill prevention and response within the department.

(c) An applicant for renewal of registration must submit an application no less than 60 days before the registration expires. If the information required by 18 AAC 75.530 has not changed since the previous application, the renewal application may incorporate the previous application by reference. (Eff. 9/25/93, Register 127; am 3/28/96, Register 137; am 11/27/2002, Register 164)

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

Editor's note: An application for registration or renewal of registration as an oil spill primary response action contractor should be sent to Contractor Registration Program, Department of Environmental Conservation, Division of Spill Prevention and Response, 410 Willoughby Avenue, Suite 303, Juneau, Alaska 99801 - 1795.

18 AAC 75.521. APPLICATION FOR NONTANK VESSEL CLEANUP CONTRACTOR REGISTRATION.

(a) Nontank vessel cleanup contractor registration is effective for as long as the contractor is in compliance with the applicable requirements of this chapter.

(b) A person seeking registration as a nontank vessel cleanup contractor must submit an application, on a form provided by the department, to the nontank vessel cleanup contractor registration program, division of spill prevention and response within the department. The application must be submitted at least 60 days before the start of operations.

(c) Nontank vessel cleanup contractor applications submitted within 60 days after November 27, 2002 will be considered conditionally approved and a schedule for review will be determined by the department. An applicant must submit the application and retain a copy of the receipt of delivery for the application as evidence of the conditional approval. (Eff. 11/27/2002, Register 164)

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

Editor's note: An application for registration as a nontank vessel cleanup contractor should be sent to Nontank Vessel Cleanup Contractor Registration Program, Department of Environmental Conservation, Division of Spill Prevention and Response, 555 Cordova Street, Anchorage, Alaska 99501-2617.

18 AAC 75.522. APPLICATION FOR NONTANK VESSEL INCIDENT MANAGEMENT TEAM REGISTRATION.

(a) Nontank vessel incident management team registration is effective for as long as the contractor is in compliance with the applicable requirements of this chapter.

(b) A person seeking registration as a nontank vessel incident management team must submit an application, on a form provided by the department, to the nontank vessel cleanup contractor registration program, division of spill prevention and response within the department. The application must be submitted at least 60 days before the start of operations.

(c) Nontank vessel incident management team applications submitted within 60 days after November 27, 2002 will be considered conditionally approved and a schedule for review will be determined by the department. An applicant must submit the application and retain a copy of the receipt of delivery for the application as evidence of the conditional approval. (Eff. 11/27/2002, Register 164)

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

Editor's note: An application for registration as a nontank vessel incident management team should be sent to Nontank Vessel Cleanup Contractor Registration Program, Department of Environmental

Conservation, Division of Spill Prevention and Response, 555 Cordova Street, Anchorage, Alaska 99501-2617.

18 AAC 75.523. APPLICATION FOR RESPONSE PLANNING FACILITATOR REGISTRATION.

(a) A response planning facilitator registration is effective for as long as the contractor is in compliance with the applicable requirements of this chapter.

(b) A person seeking registration as a response planning facilitator must submit an application, on a form provided by the department, to the nontank vessel cleanup contractor registration program, division of spill prevention and response within the department. The application must be submitted at least 60 days before the start of operations.

(c) Nontank vessel response planning facilitator applications submitted within 60 days after November 27, 2002 will be considered conditionally approved and a schedule for review will be determined by the department. An applicant must submit the application and retain a copy of the receipt of delivery for the application as evidence of the conditional approval. (Eff. 11/27/2002, Register 164)

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

Editor's note: An application for registration as a response planning facilitator should be sent to Nontank Vessel Cleanup Contractor Registration Program, Department of Environmental Conservation, Division of Spill Prevention and Response, 555 Cordova Street, Anchorage, Alaska 99501-2617.

18 AAC 75.530. REGISTRATION APPLICATION CONTENTS FOR OIL SPILL PRIMARY RESPONSE ACTION CONTRACTORS FOR OIL DISCHARGE PREVENTION AND CONTINGENCY PLANS.

- (a) An application required under 18 AAC 75.520(b) must
- (1) include the applicant's name, address, telephone number, and facsimile machine number;
 - (2) identify each region described in 18 AAC 75.495 where the applicant's oil spill response resources will be made available for use by a contingency plan holder;
 - (3) include a call-out list of appropriate response personnel or identify any
 - (A) labor subcontractor; and
 - (B) labor contract to supply response personnel;
 - (4) completely describe the most recent inventory of the applicant's oil spill response resources available for mobilization and deployment to each of the geographic regions identified in (2) of this subsection, including
 - (A) the number and location of trained personnel;
 - (B) a description of the applicant's minimum training requirements for response personnel and procedures for training additional personnel if needed; and
 - (C) the amount and location of
 - (i) oil containment equipment;
 - (ii) oil recovery equipment, including equipment nameplate ratings in barrels per hour;
 - (iii) transfer, storage, and disposal equipment;

- (iv) dispersant or burning equipment; and
- (v) significant ancillary resources and equipment; and

(5) describe the applicant's previous oil spill activities and history of compliance with state and federal environmental laws.

(b) Instead of submitting the information required under (a)(4) and (5) of this section, an applicant may submit a complete copy of an application for and a certified copy of the applicant's current Interim or Final Letter of Classification as an Oil Spill Removal Organization issued by the United States Coast Guard. If a letter of classification has not been issued at the time of application, the applicant shall submit a certified copy of the letter of classification upon its receipt. (Eff. 9/25/93, Register 127; am 3/28/96, Register 137)

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

Editor's note: As of Register 164 (January 2003), the regulations attorney made a technical revision under AS 44.62.125(b)(6), adding an authority citation for 18 AAC 75.530.

18 AAC 75.531. REGISTRATION APPLICATION CONTENTS FOR NONTANK VESSEL CLEANUP CONTRACTORS.

An application submitted under 18 AAC 75.521 must include the following information:

- (1) the applicant's name, address, and telephone number, and any facsimile number;
- (2) a current list of nontank vessel plans that rely on the contracted services of the applicant, the number of vessels covered by those plans, and the largest vessel response planning standard volume;
- (3) the vessel fuel classification under 18 AAC 75.561(b)(1), Table G, for which application is made; the vessel fuel classification must correspond to the response planning standard volume specified under (2) of this subsection;
- (4) each region of operation for which application is made; the applicant's equipment required under 18 AAC 75.561(b)(1), Table G, must be available for use by a plan holder in each region of operation for which application is made;
- (5) a current inventory of equipment, and description of personnel and other resources, demonstrating that the applicant meets or exceeds the requirements of 18 AAC 75.561 for each vessel fuel classification for which application is made;
- (6) the location of personnel and equipment required under 18 AAC 75.561(b)(1), Table G;
- (7) a description of previous oil spill response activities and a history of compliance with state and federal environmental laws;
- (8) a statement, signed by the contractor, that each contract or membership agreement will obligate the contractor to
 - (A) respond upon notification by the plan holder or response planning facilitator, as applicable;
 - (B) notify the plan holder or response planning facilitator, as applicable, immediately if the contractor cannot carry out the services specified in the contract, membership agreement, or nontank vessel plan;
 - (C) give written notice at least 30 days before terminating the contract or membership agreement with the plan holder or the response planning facilitator, as applicable; and

(D) in accordance with industry standards, maintain the equipment and other spill response resources listed in the application in a state of readiness;

(9) a certification, under penalty of unsworn falsification in violation of AS 11.56.210, that the statements made in the application are correct to the best of the applicant's knowledge;

(10) an acknowledgment that knowingly providing false information, or a demonstrated inability to perform the services described in the application, may result in the revocation of registration. (Eff. 11/27/2002, Register 164)

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

18 AAC 75.532. REGISTRATION APPLICATION CONTENTS FOR NONTANK VESSEL INCIDENT MANAGEMENT TEAMS.

An application submitted under 18 AAC 75.522 must include the following information:

(1) the applicant's name, address, and telephone number, and any facsimile number;
(2) a current list of nontank vessel plans that rely on the contracted services of the applicant, the number of vessels covered by those plans, and the largest vessel response planning standard volume;

(3) the vessel fuel classification under 18 AAC 75.562(b), Table H, for which application is made; the vessel fuel classification must correspond to the response planning standard volume specified under (2) of this section;

(4) each region of operation for which application is made; the personnel required under 18 AAC 75.562(b), Table H, must be available for use by a plan holder in each region of operation for which application is made;

(5) a list of identified personnel required by 18 AAC 75.562(b), Table H, for each vessel fuel classification for which application is made; the list must

(A) provide the individual's name, emergency contact information, training, and experience; and

(B) demonstrate that the applicant meets or exceeds the requirements of 18 AAC 75.562 for each vessel fuel classification for which application is made;

(6) the location of identified personnel listed under (5) of this section, and the location of other resources;

(7) a description of previous oil spill response activities and a history of compliance with state and federal environmental laws;

(8) a list of the sources of available personnel required by 18 AAC 75.562(b), Table H, for each vessel fuel classification for which application is made; the list need not identify available personnel by name; however, the list must describe additional personnel resources available through contract or other means, and must describe the experience and training, location, and approximate timeframes for mobilization of those personnel resources, up to and including the maximum number of available personnel;

(9) a statement, signed by the contractor, that each contract will obligate the contractor to

(A) respond upon notification by the plan holder or response planning facilitator, as applicable;

(B) notify the plan holder or response planning facilitator, as applicable, immediately if the contractor cannot carry out the services specified in the contract or nontank vessel plan;

(C) give written notice at least 30 days before terminating the contract with the plan holder or the response planning facilitator, as applicable; and

(D) in accordance with industry standards, maintain the spill response resources listed in the application in a state of readiness;

(10) a certification, under penalty of unsworn falsification in violation of AS 11.56.210, that the statements made in the application are correct to the best of the applicant's knowledge;

(11) an acknowledgment that knowingly providing false information, or a demonstrated inability to perform the services described in the application, may result in the revocation of registration. (Eff. 11/27/2002, Register 164)

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

18 AAC 75.533. REGISTRATION APPLICATION CONTENTS FOR RESPONSE PLANNING FACILITATORS.

An application submitted under 18 AAC 75.523 must include the following information:

(1) the applicant's name, address, and telephone number, and any facsimile number;

(2) the role of the response planning facilitator, as described in 18 AAC 75.428(a)(1) or (2);

(3) as applicable under 18 AAC 75.428(a)(2), a current list of nontank vessel cleanup contractors with which the applicant has a contract, or of which the applicant is a member, and a statement, signed by the response planning facilitator and each nontank vessel cleanup contractor, that the nontank vessel cleanup contractor will respond on behalf of a plan holder who enters into a contract or membership agreement with the response planning facilitator to meet the requirements of 18 AAC 75.400 – 18 AAC 75.496;

(4) as applicable under 18 AAC 75.428(a)(2), a current list of each nontank vessel incident management team with which the applicant has a contract, and a statement, signed by the response planning facilitator and each nontank vessel incident management team, that the nontank vessel incident management team will respond on behalf of a plan holder who enters into a contract with the response planning facilitator to meet the requirements of 18 AAC 75.400 – 18 AAC 75.496;

(5) as applicable under 18 AAC 75.428(a)(2), a current list of each nontank vessel plan in which the applicant is identified as the contracted response planning facilitator, the number of vessels covered by each of those plans, each region of operation of each vessel covered by each plan, and the largest vessel response planning standard volume for each plan;

(6) as applicable under 18 AAC 75.428(a)(2), a statement, signed by the response planning facilitator, that each contract will obligate the response planning facilitator to

(A) activate the appropriate response resources if a discharge occurs;

(B) notify the plan holder immediately if the response planning facilitator cannot carry out the obligations specified in the contract; and

(C) give written notice at least 30 days before terminating the contract with the plan holder;

(7) a certification, under penalty of unsworn falsification in violation of AS 11.56.210, that the statements made in the application are correct to the best of the applicant's knowledge;

(8) an acknowledgment that knowingly providing false information, or a demonstrated inability to maintain the appropriate response planning facilitation services listed in the application, may result in the revocation of registration. (Eff. 11/27/2002, Register 164)

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

18 AAC 75.540. REGISTRATION AND RENEWAL FEES.

(a) The following fees are established for registration of oil spill primary response action contractors, except as provided in (b) – (e) of this section, and must be submitted with the appropriate application:

- (1) for initial application, \$500;
- (2) for renewal, \$100.

(b) The department will charge a \$500 fee for registration of nontank vessel cleanup contractors under 18 AAC 75.531.

(c) The department will charge a \$500 fee for registration of nontank vessel incident management teams under 18 AAC 75.532.

(d) The department will charge a \$100 fee for registration of response planning facilitators under 18 AAC 75.533.

(e) The department will not charge an additional fee for adding or deleting a region of operation to an existing registration under (b) or (c) of this section. (Eff. 9/25/93, Register 127; am 11/27/2002, Register 164)

Authority: AS 46.03.020 AS 46.04.055 AS 46.04.070
AS 46.03.035

18 AAC 75.550. APPLICATION REVIEW PROCEDURES FOR OIL SPILL PRIMARY RESPONSE ACTION CONTRACTORS.

(a) After receipt of an application for registration or renewal as an oil spill primary response action contractor, the department will determine whether the application is complete. If the department finds that an application is incomplete, the applicant will be notified of the need for additional information. The department will review each complete application and issue a decision.

(b) The department will approve an application for oil spill primary response action contractor registration or renewal of registration if the applicant meets the application requirements of 18 AAC 75.510 - 18 AAC 75.540 and the minimum registration standards of 18 AAC 75.560.

(c) After completing the review, the department will notify the applicant that the application for registration or renewal of registration has been approved or denied. If the application is approved, the department will include a registration certificate describing the conditions of approval, the date registration will expire, and each region of operation identified in 18 AAC 75.530(a)(2) for which the applicant is registered. If the application is denied, the department will explain the basis for the denial and include a list of corrective actions that would be required for the applicant to obtain approval of registration or renewal.

(d) Within 10 days after receiving a notice of denial under (c) of this section, the applicant may request an informal review of the decision under 18 AAC 15.185, and may request an adjudicatory hearing under AS 44.62 (Administrative Procedure Act).

(e) Repealed 7/11/2002.

(f) Repealed 7/11/2002.

(g) Repealed 7/11/2002.

(h) Repealed 7/11/2002.

(i) Repealed 7/11/2002. (Eff. 9/25/93, Register 127; am 3/28/96, Register 137; am 7/11/2002, Register 163)

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

Editor's note: As of Register 164 (January 2003), the regulations attorney made a technical revision under AS 44.62.125(b)(6), adding an authority citation for 18 AAC 75.550.

18 AAC 75.551. APPLICATION REVIEW PROCEDURES FOR NONTANK VESSEL CLEANUP CONTRACTORS.

(a) Except as provided in 18 AAC 75.521(c), after receipt of an application for registration as a nontank vessel cleanup contractor under 18 AAC 75.521, the department will determine whether the application is complete. If the department finds that an application is incomplete, the applicant will be notified of the need for additional information within 10 working days after receipt of the application. The department will review each complete application and issue a decision within 30 days after the department determines that the application is complete.

(b) The department will approve an application for a nontank vessel cleanup contractor registration if the applicant meets the application requirements of 18 AAC 75.521 and 18 AAC 75.531 and the minimum registration standards of 18 AAC 75.561.

(c) After completing the review, the department will notify the applicant that the application for registration has been approved or denied. If the application is approved, the department will include a registration certificate describing the conditions of approval, and listing the vessel fuel classifications identified in 18 AAC 75.531(a)(3) and regions of operation identified in 18 AAC 75.531(a)(4) for which the applicant is registered. If the application is denied, the department will explain the basis for the denial and include a list of corrective actions that would be required for the applicant to obtain approval of registration.

(d) Within 10 days after receiving a notice of denial under (c) of this section, the applicant may request an informal review of the decision under 18 AAC 15.185.

(e) Nothing in this section affects an applicant's right to appeal the department's decision under AS 44.62 (Administrative Procedure Act). (Eff. 11/27/2002, Register 164)

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

18 AAC 75.552. APPLICATION REVIEW PROCEDURES FOR NONTANK VESSEL INCIDENT MANAGEMENT TEAMS.

(a) Except as provided in 18 AAC 75.522(c), after receipt of an application for registration as an incident management team under 18 AAC 75.522, the department will determine whether the

application is complete. If the department finds that an application is incomplete, the applicant will be notified of the need for additional information within 10 working days after receipt of the application. The department will review each complete application and issue a decision within 30 days after the department determines that the application is complete.

(b) The department will approve an application for nontank incident management team registration if the applicant meets the application requirements of 18 AAC 75.522 and 18 AAC 75.532 and the minimum registration standards of 18 AAC 75.562.

(c) After completing the review, the department will notify the applicant that the application for registration has been approved or denied. If the application is approved, the department will include a registration certificate describing the conditions of approval, and listing the vessel fuel classifications identified in 18 AAC 75.532(a)(3) and regions of operation identified in 18 AAC 75.532(a)(4) for which the applicant is registered. If the application is denied, the department will explain the basis for the denial and include a list of corrective actions that would be required for the applicant to obtain approval of registration.

(d) Within 10 days after receiving a notice of denial under (c) of this section, the applicant may request an informal review of the decision under 18 AAC 15.185.

(e) Nothing in this section affects an applicant's right to appeal the department's decision under AS 44.62 (Administrative Procedure Act). (Eff. 11/27/2002, Register 164)

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

18 AAC 75.553. APPLICATION REVIEW PROCEDURES FOR RESPONSE PLANNING FACILITATORS.

(a) Except as provided in 18 AAC 75.523(c), after receipt of an application for registration as a response planning facilitator under 18 AAC 75.523, the department will determine whether the application is complete. If the department finds that an application is incomplete, the applicant will be notified of the need for additional information within 10 working days after receipt of the application. The department will review each complete application and issue a decision within 30 days after the department determines that the application is complete.

(b) The department will approve an application for a response planning facilitator registration if the applicant meets the application requirements of 18 AAC 75.523 and 18 AAC 75.533, the minimum registration standards of 18 AAC 75.563, and, as applicable, the registration requirements of 18 AAC 75.428(a)(2).

(c) After completing the review, the department will notify the applicant that the application for registration has been approved or denied. If the application is approved, the department will include a registration certificate describing the conditions of approval. If the application is denied, the department will explain the basis for the denial and include a list of corrective actions that would be required for the applicant to obtain approval of registration.

(d) Within 10 days after receiving a notice of denial under (c) of this section, the applicant may request an informal review of the decision under 18 AAC 15.185.

(e) Nothing in this section affects an applicant's right to appeal the department's decision under AS 44.62 (Administrative Procedure Act). (Eff. 11/27/2002, Register 164)

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

18 AAC 75.560. MINIMUM REGISTRATION STANDARDS FOR OIL SPILL PRIMARY RESPONSE ACTION CONTRACTORS.

(a) In addition to the requirements of (b) of this section, the minimum registration standards and verification requirements for an oil spill primary response action contractor listed in an approved oil discharge prevention and contingency plan are the oil discharge prevention and contingency plan requirements and the response planning standards set out in AS 46.04.030 and 18 AAC 75.425 - 18 AAC 75.495 that are applicable to a contractor listed in an approved oil discharge prevention and contingency plan.

(b) In addition to the requirements of (a) of this section, an oil spill primary response action contractor must be in compliance with the following minimum registration standards:

(1) repealed 3/28/96;

(2) the contractor shall maintain sufficient response preparedness to immediately initiate response efforts as described in the applicable contingency plan upon direction by the plan holder; response preparedness is subject to department verification through inspections and plan holder discharge exercises at any location for which the plan holder has listed the contractor in an approved oil discharge prevention and contingency plan as providing response resources;

(3) training of contractor personnel must comply with 18 AAC 75.445(j) and must include appropriate Occupational Safety and Health Administration Hazardous Operations training;

(4) professional response action standards and practices must be continuously maintained, and must include

(A) responding immediately upon direction by the plan holder;

(B) remaining in substantial compliance with applicable contracts;

(C) abiding by applicable permits and authorizations unless directed to proceed otherwise by the federal or state on-scene coordinator;

(D) maintaining a working knowledge of all applicable oil pollution statutes and regulations and pertinent provisions of each contingency plan in which that contractor is listed;

(E) maintaining a safe working environment and an acceptable safety history;

(F) notifying a plan holder within 24 hours after any significant change in the response preparedness referred to in (2) of this subsection, unless a 10-day pre-notice is required under 18 AAC 75.475(c); and

(G) notifying a plan holder and the department within five days after any change by the United States Coast Guard in classification as an Oil Spill Removal Organization under 18 AAC 75.530(b).

(c) No later than January 31 of each year, an oil spill primary response action contractor registered under this chapter shall provide to the department a complete list of oil discharge prevention and contingency plans in which that contractor has agreed in writing to be listed as a primary response action contractor. (Eff. 9/25/93, Register 127; am 3/28/96, Register 137)

Authority: AS 46.03.020 AS 46.04.035 AS 46.04.070
AS 46.04.030

Editor's note: As of Register 164 (January 2003), the regulations attorney made a technical revision under AS 44.62.125(b)(6), adding an authority citation for 18 AAC 75.560.

18 AAC 75.561. MINIMUM REGISTRATION STANDARDS FOR NONTANK VESSEL CLEANUP CONTRACTORS.

(a) Subject to the transitional provisions of 18 AAC 75.413(b) – (c), the minimum registration standards for nontank vessel cleanup contractors are set out in (b) – (f) of this section.

(b) Response equipment maintained by, or available under contract to the contractor must meet the following conditions:

(1) at a minimum, response equipment must meet the requirements set out in Table G of this paragraph;

TABLE G. MINIMUM REGISTRATION STANDARDS FOR NONTANK VESSEL CLEANUP CONTRACTORS¹	
Classification A: Maximum Individual Vessel Fuel Capacity Or Fuel Volume To Be Carried, As Identified Under 18 AAC 75.441, Up To And Including 15,000 Barrels	
Required Equipment Type	Minimum Equipment Requirement
boom ²	3,000 feet or 3 times the length of the largest vessel, whichever is greater
skimmer ³	2 or more skimmers, 900 barrels a day total
cleaning kit ⁴	2 kits
storage capacity ⁵	900 barrels of oil plus all associated water
personnel ⁶	8 individuals
workboats ⁷	4 workboats
hazing kit ⁸	2 kits
radios ⁹	5 radios
Classification B: Maximum Individual Vessel Fuel Capacity Or Fuel Volume To Be Carried, As Identified Under 18 AAC 75.441, Greater Than 15,000 Barrels, Up To And Including 30,000 Barrels	
Required Equipment Type	Minimum Equipment Requirement
boom ²	3,000 feet or 3 times the length of the largest vessel, whichever is greater
skimmer ³	2 or more skimmers, 1,800 barrels a day total
cleaning kit ⁴	2 kits
storage capacity ⁵	1,800 barrels of oil plus all associated water
personnel ⁶	8 individuals
workboats ⁷	4 workboats
hazing kit ⁸	2 kits
radios ⁹	5 radios
Classification C: Maximum Individual Vessel Fuel Capacity Or Fuel Volume To Be Carried, As Identified Under 18 AAC 75.441, Greater Than 30,000 Barrels	
Required Equipment Type	Minimum Equipment Requirement
boom ²	3,000 feet or 3 times the length of the largest vessel, whichever is greater
skimmer ³	2 or more skimmers, 2,700 barrels a day total, or 1/5 of the response planning standard oil volume of the largest vessel, whichever is greatest
cleaning kit ⁴	2 kits
storage capacity ⁵	2,700 barrels of oil plus all associated water, or 1/5 of the response planning standard oil volume of the largest vessel plus all associated water, whichever is greatest
personnel ⁶	10 individuals
workboats ⁷	4 workboats
hazing kit ⁸	2 kits
radios ⁹	5 radios

Notes to Table G:

¹This table sets out minimum registration standards, not performance standards; during an incident, equipment must be mobilized in an amount and of a type appropriate to the actual circumstances of that incident.

²The type of boom must be based on an assumed maximum sea state of three feet; listed quantities of boom must be available in each region of operation.

³Skimmer capacity must meet or exceed the response planning standard volume for the predominant type of fuel, whether persistent product or nonpersistent product, carried by each vessel covered under a plan; skimmer capacity must be calculated based on a derated capacity corresponding to actual anticipated performance rather than manufacturer rated capacity, and may not include associated water; skimmers must be in the region of operation or capable of being deployed in the region of operation within 24 hours.

⁴Cleaning kits must be in the region of operation or available within 24 hours; cleaning kits must include, at a minimum,

- a. 2,500 feet of sorbent boom and 1,000 nine-ounce minimum sorbent pads for recovery of nonpersistent product;
- b. 2,500 feet of viscous, sweep, or similar material for recovery of persistent product;
- c. 12 fence posts;
- d. one fence post driver;
- e. 500 feet of rope;
- f. 10 anchor, buoy, and line systems sized to the containment boom and designed to work in 100 feet of water;
- g. 12 pitchforks;
- h. 12 rakes;
- i. 12 pointed shovels;
- j. 12 flat shovels;
- k. two bundles of survey stakes or two rolls of survey tape;
- l. 12 rolls of barrier tape;
- m. 250 waste bags, each at least 6 mils thick;
- n. 300 bag ties;
- o. three rolls of 100-foot x 24-foot plastic sheeting, at least six mils thick; and
- p. 12 rolls of duct tape.

⁵Storage capacity must be in the region of operation or available within 24 hours, and be capable of handling the specified amount of fuel and all associated water recovered in one day; the daily storage handling capacity must be calculated based on a five-day cleanup of the entire response planning standard volume; the amount of storage needed for associated water must be based on skimmer capacity; skimmer capacity must be calculated based on a derated capacity corresponding to actual anticipated performance rather than manufacturer rated capacity.

⁶Personnel numbers are based on the minimum number necessary to deploy boom using skiffs; personnel do not include incident management personnel.

⁷Workboats must be of appropriate size and horsepower for towing up to 500-foot sections of boom; listed quantities must be available in each region of operation.

⁸Hazing kits must be in the region of operation or available within 24 hours; hazing kits must include, at a minimum,

- a. 10 rolls of mylar tape;
- b. 20 mylar balloons;
- c. 30 pounds of towels or rags;
- d. gloves;
- e. binoculars;

Selected Alaska Oil & Hazardous Substances Pollution Control Statutes and Regulations

- f. a field guide to birds of this state;
- g. an air horn;
- h. three predator silhouettes; and
- i. strapping tape.

⁹Radios must be in the region of operation or available within 24 hours; a minimum of five radios is required unless the contractor has more than 10 personnel; if the contractor has more than 10 personnel, the number of radios must equal at least one-half of the number of personnel.

(2) types and amounts of recovery devices, boom, boom connectors, and anchoring systems must be of the appropriate design for the particular oil product and type of environment, and capable of operation in wave heights of up to three feet; and

(3) vessels used to deploy and tow boom must be of a number, size, and power adequate to deploy the types and amounts of boom addressed in (2) of this subsection, and must be capable of operating in the manner and at the speeds necessary for the effective use of boom.

(c) The nontank vessel cleanup contractor must demonstrate the ability to mobilize and deploy sufficient equipment to allow the commencement of containment, control, and cleanup activities in the region of operation within the shortest possible time, and the ability to deliver all equipment identified in Table G in (b)(1) of this section to the region of operation within 24 hours after notification of an incident.

(d) Nontank vessel cleanup contractor personnel must be trained and kept current in the specifics of equipment mobilization, deployment, and operation. Proof of training must be maintained for three years and made available to the department upon request.

(e) Professional response action standards and practices and a response action plan must be maintained, and must include

- (1) responding immediately upon direction by the plan holder or incident management team;
- (2) remaining in substantial compliance with each applicable contract;
- (3) abiding by applicable permits and authorizations unless directed to proceed otherwise by the federal or state on-scene coordinator designated under 33 U.S.C. 1321 or AS 46.04.020;
- (4) maintaining a working knowledge of all applicable oil pollution statutes and regulations and pertinent provisions of each nontank vessel plan in which that contractor is listed;
- (5) maintaining a safe working environment and an acceptable safety history; and
- (6) notifying the plan holder or response planning facilitator, as applicable, within 24 hours after any significant change in the contractor's
 - (A) equipment required by Table G in (b)(1) of this section; or
 - (B) response preparedness described in (c) of this section.

(f) No later than January 31 of each year, a nontank vessel cleanup contractor registered under this chapter shall provide to the department a complete list of each nontank vessel plan in which that contractor has agreed in writing to be listed as a nontank vessel cleanup contractor. (Eff. 11/27/2002, Register 164)

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

18 AAC 75.562. MINIMUM REGISTRATION STANDARDS FOR NONTANK VESSEL INCIDENT MANAGEMENT TEAMS.

(a) The minimum registration standards for nontank vessel incident management teams are set out in (b) – (i) of this section.

(b) The nontank vessel incident management team shall, at a minimum, meet the registration requirements set out in Table H of this subsection.

TABLE H. MINIMUM PERSONNEL REQUIREMENTS FOR NONTANK VESSEL INCIDENT MANAGEMENT TEAMS		
Classification	Personnel Requirements	
	Identified Personnel¹	Available Personnel²
Classification A: Maximum individual vessel fuel capacity, or fuel volume to be carried, as identified under 18 AAC 75.441, up to and including 30,000 barrels	12 individuals, in the following capacities: 1 incident commander, and 1 alternate; 1 deputy incident commander, and 1 alternate; 1 planning section chief, and 1 alternate; 1 operations section chief, and 1 alternate; 1 logistics section chief, and 1 alternate; 1 finance section chief, and 1 alternate	10 additional responders
Classification B: Maximum individual vessel fuel capacity, or fuel volume to be carried, as identified under 18 AAC 75.441, greater than 30,000 barrels	12 individuals, in the following capacities: 1 incident commander, and 1 alternate; 1 deputy incident commander, and 1 alternate; 1 planning section chief, and 1 alternate; 1 operations section chief, and 1 alternate; 1 logistics section chief, and 1 alternate; 1 finance section chief, and 1 alternate	15 additional responders

Notes to Table H:

¹"Identified personnel" means individuals who must be identified under 18 AAC 75.532(5) in the application for registration.

²"Available personnel" means individuals who need not be identified by name, but for whom the information required by 18 AAC 75.532(8) must be provided.

(c) The nontank vessel incident management team shall demonstrate the ability to mobilize and position the personnel required in Table H in (b) of this section according to the following schedule:

(1) the incident commander and that individual's alternate must be

(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;

(B) capable of arriving in each region for which application is made within six hours after initial notification of an incident to continue to direct and manage the incident response;

(2) the deputy incident commander and that individual's alternate must be capable of arriving in each region for which application is made within six hours after the incident commander's initial notification of an incident to assist in directing and managing the incident response;

(3) the planning section chief, operations section chief, logistics section chief, and finance section chief, and the respective alternates for those individuals, must be capable of arriving in each region for which application is made within 12 hours after the incident commander's initial notification of an incident to perform relevant functions for the incident response;

(4) within 24 hours after the incident commander's initial notification of an incident, at least

(A) five additional responders must be capable of arriving to assist in the incident response in each region of operation for which application is made, for a maximum individual vessel fuel capacity or fuel volume to be carried, as identified under 18 AAC 75.441, up to and including 30,000 barrels; and

(B) 10 additional responders must be capable of arriving to assist in the incident response in each region of operation for which application is made, for a maximum individual vessel fuel capacity or fuel volume to be carried, as identified under 18 AAC 75.441, greater than 30,000 barrels.

(d) The requirements of Table H in (b) of this section and of (c) of this section set out minimum registration standards, not performance standards. During an incident, personnel must be mobilized in a number appropriate to the actual circumstances of that incident.

(e) Each incident commander and section chief, and the alternates for those individuals, must satisfy the following minimum training requirements:

(1) incident command system training appropriate to expected duties and tasks;

(2) Hazardous Waste Operations and Emergency Response Standards (HAZWOPER) certification under 29 C.F.R. 1910.120 with annual refreshers, appropriate to expected duties and tasks;

(3) familiarity with the plans prepared under 33 U.S.C. 1321(j)(4) and AS 46.04.200 - 46.04.210;

(4) familiarity with the oil discharge prevention and contingency plans or nontank vessel plans for which services are to be provided;

(5) a working knowledge of the response organizations and capabilities in this state, including marine salvage, firefighting, wildlife rescue, and related logistical support capabilities.

(f) Proof of training required by (e) of this section must be maintained for three years and made available to the department upon request.

(g) The nontank vessel incident management team must be capable of establishing and equipping an incident command post appropriate to the needs of an incident response and capable of facilitating the effective organization and direction of response activities.

(h) Professional response action standards and practices must be maintained and must include

- (1) immediate response upon direction by the plan holder or the federal or state on-scene coordinator designated under 33 U.S.C. 1321 or AS 46.04.020;
- (2) remaining in substantial compliance with applicable contracts;
- (3) abiding by applicable permits and authorizations unless directed to proceed otherwise by the federal or state on-scene coordinator designated under 33 U.S.C. 1321 or AS 46.04.020;
- (4) maintaining a working knowledge of all applicable oil pollution statutes and regulations and pertinent provisions of each nontank vessel plan in which that contractor is listed;
- (5) maintaining a safe working environment and an acceptable safety history; and
- (6) notifying the plan holder or response planning facilitator, as applicable, within 24 hours after any significant change in the response preparedness described in Table H in (b) of this section and in (c) of this section.

(i) No later than January 31 of each year, a nontank vessel incident management team registered under this chapter shall provide to the department a complete list of nontank vessel plans in which that contractor has agreed in writing to be listed as a nontank vessel incident management team. (Eff. 11/27/2002, Register 164; am 12/13/2002, Register 164)

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

18 AAC 75.563. MINIMUM REGISTRATION STANDARDS FOR RESPONSE PLANNING FACILITATORS.

(a) As applicable under 18 AAC 75.428(a)(2), a response planning facilitator shall maintain contracts with or membership in the nontank vessel cleanup contractors and nontank vessel incident management teams identified in 18 AAC 75.533(3) – (5).

(b) Professional response action standards and practices must be maintained, and must include

- (1) remaining in substantial compliance with applicable contracts;
- (2) maintaining a working knowledge of all applicable oil pollution statutes and regulations and pertinent provisions of each nontank vessel plan in which the response planning facilitator is listed;
- (3) maintaining a safe working environment and an acceptable safety history; and
- (4) notifying a plan holder and the department within 24 hours after any significant change in the response planning facilitator's ability to carry out its responsibilities under 18 AAC 75.428.

(c) No later than January 31 of each year, a response planning facilitator registered under this chapter shall provide to the department a complete list of nontank vessel plans in which that contractor has agreed in writing to be listed as a response planning facilitator, and shall identify on that list the role of the response planning facilitator with regard to each plan as described in 18 AAC 75.428(a)(1) or (2). (Eff. 11/27/2002, Register 164)

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

18 AAC 75.565. DISCHARGE EXERCISES FOR NONTANK VESSEL CLEANUP CONTRACTORS AND NONTANK VESSEL INCIDENT MANAGEMENT TEAMS.

(a) The department may conduct announced and unannounced discharge exercises to assure that a nontank vessel cleanup contractor or a nontank vessel incident management team is adequately

prepared to act in the event of a spill. No more than two exercises will be required for a nontank vessel cleanup contractor in each 12-month period. The department will consider other required discharge exercises conducted by the nontank vessel cleanup contractor in meeting this requirement. No more than two discharge exercises will be required for a nontank vessel incident management team in each 12-month period.

(b) The performance of a nontank vessel cleanup contractor or a nontank vessel incident management team during a discharge exercise will be considered inadequate if the nontank vessel cleanup contractor or nontank vessel incident management team does not respond in a manner consistent with the minimum registration standards of 18 AAC 75.561 and 18 AAC 75.562, as applicable.

(c) If the performance of a nontank vessel cleanup contractor or a nontank vessel incident management team during a discharge exercise is considered inadequate under (b) in this section, the department may

(1) require additional exercises until the department is satisfied that the performance of the contractor is adequate; or

(2) take enforcement action as described in 18 AAC 75.570.

(d) The department will consider a regularly scheduled training exercise initiated by a nontank vessel cleanup contractor or nontank vessel incident management team as a discharge exercise if the department monitors, evaluates, or participates in the exercise and concurs that it is equivalent to a discharge exercise conducted by the department. A nontank vessel cleanup contractor or nontank vessel incident management team shall notify the department in advance of the exercise and shall provide an opportunity for a department representative to be present and participate.

(e) The department will conduct announced or unannounced discharge exercises appropriate to the current status of operations of the nontank vessel cleanup contractor or nontank vessel incident management team and the participation of the nontank vessel cleanup contractor or nontank vessel incident management team in other discharge exercises or response actions. (Eff. 11/27/2002, Register 164)

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

18 AAC 75.570. FAILURE TO COMPLY.

(a) If the department determines that an oil spill primary response action contractor, nontank vessel cleanup contractor, nontank vessel incident management team, or response planning facilitator has failed to meet or maintain a minimum registration standard identified in 18 AAC 75.560 – 18 AAC 75.570, the department may revoke, suspend, or modify the

(1) contractor's registration; and

(2) department's approval of the oil discharge prevention and contingency plan in which that contractor is listed as an oil spill primary response action contractor or the nontank vessel plan in which that contractor is listed as a nontank vessel cleanup contractor, nontank vessel incident management team, or response planning facilitator.

(b) A person who is aggrieved by a department decision under (a) of this section may request an informal review of that decision, using the procedures described in 18 AAC 15.185. Nothing in this subsection affects that person's right to an adjudicatory hearing under AS 44.62 (Administrative Procedure Act). (Eff. 9/25/93, Register 127; am 7/11/2002, Register 163; am 11/27/2002, Register 164)

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. 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 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)

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

ARTICLE 6. CIVIL PENALTIES FOR DISCHARGE OF PETROLEUM AND PETROLEUM PRODUCTS AND BYPRODUCTS.

Section

- 605. Applicability
- 610. Freshwater environments
- 620. Marine environments
- 630. Public land environments
- 640. Toxicity of petroleum and petroleum products and byproducts
- 650. Degradability of petroleum and petroleum products and byproducts
- 660. Dispersibility of petroleum and petroleum products and byproducts
- 670. Schedule of civil penalties

18 AAC 75.605. APPLICABILITY. 18 AAC 75.605 - 18 AAC 75.670 establish a schedule of civil penalties under AS 46.03.758 for the discharge of petroleum and petroleum products and byproducts, other than crude oil. The schedule of civil penalties does not apply to a discharge that is specifically made subject to the provisions of AS 46.03.760(a). (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.03.758

18 AAC 75.610. FRESHWATER ENVIRONMENTS.

(a) For the purposes of AS 46.03.758(b)(1)(A), freshwater environments with significant aquatic resources are classified as follows:

(1) **Critical freshwater environments** include

(A) surface and subsurface water supplies that are currently being used or may reasonably be expected to be used sometime in the future as a drinking water source based on

- (i) water quality characteristics;
- (ii) technical feasibility of utilizing the water source; and
- (iii) population growth trends in the immediate area;

(B) rivers, lakes, and streams designated under AS 16.05.871(a) as important for the spawning, rearing, or migration of anadromous fish, and the water of lakes, streams, and rivers that flows or empties into those designated waters;

(C) lakes, streams, rivers, and freshwater wetlands within the boundaries of land administered under the National Wildlife Refuge System, and the water of lakes, streams, and rivers that flows or empties into those waters;

(D) lakes streams, rivers, and freshwater wetlands within the boundaries of game reserve areas, refuges, critical habitat areas, and sanctuaries established under AS 16.05.255(1) or AS 16.20, and the water of lakes, streams, and rivers that flows or empties into those waters; and

(E) lakes, streams, rivers, and freshwater wetlands within the boundaries of fish reserve areas, refuges, critical habitat areas, and sanctuaries established under AS 16.05.251(1) or AS 16.20, and the water of lakes, streams, and rivers that flows or empties into those waters; and

(2) **Sensitive freshwater environments** include

- (A) lakes other than those classified in (1) of this subsection;
- (B) freshwater wetlands other than those classified in (1) of this subsection;

and

(C) subsurface freshwaters other than those classified in (1)(A) of this subsection.

(b) For purposes of AS 46.03.758(b)(1)(C), all freshwater of the state that is not classified in (a) of this section is classified as "without significant aquatic resources." (Eff. 5/14/92, Register 122; am 1/30/2003, Register 165)

Authority: AS 46.03.020 AS 46.03.758

Editor's note:

As of Register 166 (July 2003), and acting under AS 44.62.125(b)(6), the regulations attorney made technical changes to 18 AAC 75.610(a)(1)(B), to reflect Executive Order 107 (2003). Executive Order 107 transferred functions related to protection of fish habitat in rivers, lakes, and streams from the Department of Fish and Game to the Department of Natural Resources.

As of Register 186 (July 2008), and acting under AS 44.62.125(b)(6), the regulations attorney made technical changes to 18 AAC 75.610(a)(1)(B), to reflect Executive Order 114 (2008). Executive Order 114 transferred functions related to protection of fish habitat in rivers, lakes, and streams from the Department of Natural Resources to the Department of Fish and Game.

18 AAC 75.620. MARINE ENVIRONMENTS.

(a) For the purposes of AS 46.03.758(b)(1)(B), estuarine, intertidal, and saltwater environments are classified as follows:

(1) Critical marine environments include

(A) marine water within the boundaries of state game refuges established under AS 16.05.255(1) or AS 16.20;

(B) marine water within the boundaries of fish and game critical habitats established under AS 16.20;

(C) marine water within the boundaries of marine sanctuaries established under 16 U.S.C. 1436 - 16 U.S.C. 1445, as amended through July 1, 1991;

(D) marine water within the boundaries of areas administered under the National Wildlife Refuge System;

(E) marine water within one statute mile of the mouth of waters designated under AS 16.05.871(a) as important for the spawning, rearing, or migration of anadromous fish;

(F) marine water within one statute mile of a seabird colony or marine mammal rookery or hauling ground identified by the Alaska Department of Fish and Game under AS 16.20;

(G) high density sea otter habitat identified by the Alaska Department of Fish and Game under AS 16.20; and

(H) marine water within the barrier island-lagoon ecosystems extending from the Colville River to Canning River, and seaward of the Copper River delta; and

(2) Sensitive marine environments include

(A) the inside waters of Southeast Alaska not otherwise classified in (1) of this subsection;

(B) saltwater wetlands and other intertidal and estuarine areas not otherwise classified in (1) of this subsection;

(C) Prince William Sound, and the bays, arms, fjords, ports, and other inside marine waters of Prince William Sound not otherwise classified in (1) of this subsection; and

(D) all marine water within 10 statute miles of any point of those waters designated in (1) of this subsection.

(b) For the purposes of AS 46.03.758(b)(1)(C), marine water that is not classified in (a) of this section is classified as "without significant aquatic resources." (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.03.758

Editor's note: Seabird colonies, marine mammal rookeries or hauling grounds, and high density sea otter habitats, referred to in 18 AAC 75.620(a)(1)(F) and (G) are described in the current edition of "Alaska Habitat Management Guides," published by, and available for review at the Alaska Department of Fish and Game.

18 AAC 75.630. PUBLIC LAND ENVIRONMENTS.

(a) For the purposes of AS 46.03.758(b)(1)(C), public land is classified as follows:

(1) Critical terrestrial environments include

(A) state game reserve areas, refuges, and sanctuaries established under AS 16.05.255(1) or AS 16.20;

(B) state parks, campgrounds, and waysides;

(C) municipal parks and park reserves;

(D) national parks, preserves, wilderness areas, monuments, recreation areas or other National Park System units, and lands administered under the National Wildlife Refuge System;

(E) established campgrounds, scenic waysides, and picnic areas; and

(F) national historical landmarks;

(2) Very sensitive terrestrial environments include

(A) land administered under the National Forest System not otherwise classified in (1) of this subsection;

(B) land underlain with continuous permafrost not otherwise classified in (1) of this subsection; and

(C) land in state forests and research areas not otherwise classified in (1) of this subsection; and

(3) Sensitive terrestrial environments include land other than that classified in (1) or (2) of this subsection upon which continuous natural terrestrial vegetation cover is present.

(b) For the purposes of AS 46.03.758(b)(1)(C), all public land not classified in (a) of this section is classified as "without significant terrestrial environmental resources." (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.03.758

18 AAC 75.640. TOXICITY OF PETROLEUM AND PETROLEUM PRODUCTS AND BYPRODUCTS.

For the purposes of AS 46.03.758(d), the toxicity of petroleum and petroleum products and byproducts is as follows:

(1) highly toxic:

(A) numbers 1, 2, and Arctic diesel fuel and heating oil;

(B) jet aviation fuels A and B;

(C) motor gasoline, including aviation gasoline;

- (D) kerosene; and
- (E) stationary turbine fuels;
- (2) moderately toxic:
 - (A) waste oil and waste oil mixtures;
 - (B) lubricating oil; and
 - (C) jet fuels other than those specified in (1)(B) of this section;
- (3) less toxic:
 - (A) bunker and residual fuel oils; and
 - (B) hydraulic fluids; and
- (4) relatively nontoxic:
 - (A) asphalts;
 - (B) tars; and
 - (C) other petroleum and petroleum products and byproducts not listed in (1) - (3) of this section. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.03.758

18 AAC 75.650. DEGRADABILITY OF PETROLEUM AND PETROLEUM PRODUCTS AND BYPRODUCTS.

For the purposes of AS 46.03.758(d), the degradability of petroleum and petroleum products and byproducts is as follows:

- (1) low degradability:
 - (A) asphalt;
 - (B) tar;
 - (C) bunker and residual fuel oils; and
 - (D) other petroleum and petroleum products and byproducts not otherwise listed in (2) or (3) of this section;
- (2) moderate degradability:
 - (A) hydraulic fluids;
 - (B) lubricating oil; and
 - (C) waste oils and waste oil mixtures; and
- (3) high degradability:
 - (A) motor gasoline, including aviation gasoline;
 - (B) numbers 1, 2, and Arctic diesel fuel and heating oil;
 - (C) jet and stationary turbine fuels; and
 - (D) kerosene. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.03.758

18 AAC 75.660. DISPERSIBILITY OF PETROLEUM AND PETROLEUM PRODUCTS AND BYPRODUCTS.

For the purposes of AS 46.03.758(d), the dispersibility of petroleum and petroleum products and byproducts is as follows:

- (1) highly dispersible:
 - (A) motor gasoline, including aviation gasoline;
 - (B) all jet fuels;
 - (C) kerosene;
 - (D) numbers 1, 2, and Arctic diesel fuel and heating oil;

- (E) hydraulic fluids; and
- (F) stationary turbine fuels;
- (2) moderately dispersible:
 - (A) emulsified oil mixtures;
 - (B) lubricating oils; and
 - (C) waste oil and waste oil mixtures; and
- (3) low dispersibility:
 - (A) bunker and residual fuel oils;
 - (B) asphalts;
 - (C) tars; and
 - (D) other petroleum and petroleum products and byproducts not otherwise listed in (1) or (2) of this section. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.03.758

18 AAC 75.670. SCHEDULE OF CIVIL PENALTIES.

The schedule of civil penalties for which a person may be held liable under AS 46.03.758(e) is established as follows:

- (1) The base civil penalty for a discharge into a receiving environment is as follows:

Receiving Environment	Freshwater	Marine	Public Land
Critical environments	\$10.00	\$2.50	\$1.00
Very sensitive environments	N/A	N/A	\$0.95
Sensitive environments	\$ 9.00	\$2.25	\$0.90
Environments without significant resources	\$ 1.00	\$1.00	\$0.70

- (2) Toxicity, degradability, and dispersibility factors are as follows:

	Factor
(A) toxicity	
(i) highly toxic	1.0
(ii) moderately toxic	0.75
(iii) less toxic	0.50
(iv) relatively nontoxic	0.25
(B) degradability	
(i) low degradability	1.0
(ii) moderate degradability	0.50
(iii) high degradability	0.25
(C) dispersibility	
(i) high dispersibility	0.15
(ii) moderate dispersibility	0.50
(iii) low dispersibility	1.0

Selected Alaska Oil & Hazardous Substances Pollution Control Statutes and Regulations

(3) The net civil penalty that will be assessed per gallon of oil discharged is calculated by multiplying the base penalty established in (1) of this section by the arithmetic mean of the factors established in (2) of this section. If a portion of the oil enters more than one receiving environment, the civil penalty will be based upon the most sensitive receiving environment which that portion enters. (Eff. 5/14/92, Register 122; am 1/30/2003, Register 165)

Authority: AS 46.03.020 AS 46.03.758

ARTICLE 7. SURFACE OILING.

Section

700. Surface oiling permit

710. Exemption from surface oiling permit

720. Prohibitions

730. Decision on application for surface oiling permit; permit terms and conditions

18 AAC 75.700. SURFACE OILING PERMIT.

(a) No person may discharge, cause to be discharged, or permit the discharge of oil, asphalt, bitumen, or a residuary product of petroleum onto the land of the state unless that person has been issued a surface oiling permit under 18 AAC 75.730.

(b) An application for a surface oiling permit

(1) is subject to the requirements of 18 AAC 15;

(2) must be made on forms supplied by the department; and

(3) must contain information considered necessary by the department.

(c) A person who proposes to stabilize soil with the application of asphalt emulsions, tars, asphaltic oils, cutback asphalts, oils, or other residuary petroleum product, without immediately applying a blotter or cover coat of aggregate, is not exempt from the surface oiling permit requirements of this chapter. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.03.740

18 AAC 75.710. EXEMPTION FROM SURFACE OILING PERMIT.

A person who proposes to construct one or more of the following types of surfaces is not required to obtain a surface oiling permit under this chapter, but shall ensure that construction of the surface does not result in pollution of land or waters of the state:

(1) a bituminous treatment surface that includes a surface constructed by sweeping the surface, applying a priming material, applying a bituminous body coat, and spreading a blotter or cover of mineral aggregate;

(2) a road-mix bituminous surface for which the mineral aggregate and the bituminous material are mixed directly in the surface;

(3) a plant-mixed bituminous surface for which the mineral aggregate and the bituminous material are thoroughly mixed at a suitable plant and then deposited on the surface;

(4) a bituminous macadam surface with a wearing course composed of broken stone aggregate of relatively coarse size and a bituminous material that is forced by penetration into the interstices of the stone after the stone has been compacted on the base; and

(5) a bituminous concrete or sheet asphalt surface with a wearing course composed of a bituminous mixture prepared in a stationary plant under close control of temperature, moisture content, and mixture composition. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.03.740

18 AAC 75.720. PROHIBITIONS.

(a) The use of oil for surface oiling or as a dust suppressant is prohibited if the oil contains any of the following components in the concentrations indicated:

- (1) polychlorinated biphenyls (PCBs) in any detectable concentration;
- (2) total volatile aromatics in 5000 parts per million by weight or greater;
- (3) total halogenated volatile organics in 100 parts per million by weight or greater;

or

- (4) lead in 300 parts per million by weight or greater.

(b) The department will, in its discretion, require analysis of oil for a component listed in (a) of this section, using methods prescribed on the surface oiling permit application form. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.03.299 AS 46.03.740
AS 46.03.296

18 AAC 75.730. DECISION ON APPLICATION FOR SURFACE OILING PERMIT; PERMIT TERMS AND CONDITIONS.

(a) The department will, in its discretion, grant or deny an application submitted under 18 AAC 75.700. The department will consider the following criteria before issuing a decision under this section:

- (1) the potential for pollution of adjacent waters, including groundwater;
- (2) the potential for pollution of vegetation;
- (3) the need for the oiling, including local public opinion, and considerations of air quality as addressed by 18 AAC 50;
- (4) the predicted weather conditions for the time of the oiling; and
- (5) effects on the environment.

(b) In addition to the specific terms and conditions set out in the permit, a surface oiling permit is subject to the following terms and conditions:

- (1) oil or other petroleum-derived dust retardants may not be applied to wet surfaces, frozen surfaces, or snow-covered surfaces; however, oil or other petroleum-derived dust retardants may be applied to a damp surface if deliberate dampening of the surface is part of the normal oiling procedure;
- (2) oil or other petroleum-derived dust retardants may be applied only in the minimum amounts necessary and may not be allowed to stand in ponds on the surface;
- (3) there may be no run-off of oil or other petroleum-derived dust retardants from the surface receiving the application;
- (4) oil or other petroleum-derived dust retardants may not be applied to any surface during precipitation or when precipitation is imminent;
- (5) there must be equipment such as brooms and mops on the job to prevent oily run-off and to spread any ponded oil or other petroleum-derived dust retardants;
- (6) unless specifically allowed in the permit, in order to avoid drifting of droplets to adjacent vegetation and property, oil or other petroleum-derived dust retardants may not be applied if local wind speed is 15 miles per hour or greater;
- (7) the permittee shall inspect immediately the freshly-treated surface for oily run-off and ponding of oil or other petroleum-derived dust retardants;
- (8) to avoid offensive odors, only nonodorous oils and other petroleum-derived dust retardants may be used on surfaces near residential areas or on surfaces that receive considerable

Selected Alaska Oil & Hazardous Substances Pollution Control Statutes and Regulations

pedestrian traffic; odorous oils may be used only on rural surfaces where the odor is less likely to be noticeable and pedestrian traffic is minimal; and

(9) no oil or other petroleum-derived dust retardants may be allowed to enter state waters or to enter upon private property. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.03.740

ARTICLE 8. OIL DISCHARGE FOR SCIENTIFIC PURPOSES.

Section

- 800. Permit for oil discharge for scientific purposes
- 810. Permit procedures
- 820. Modification of permit
- 830. Termination of permit

18 AAC 75.800. PERMIT FOR OIL DISCHARGE FOR SCIENTIFIC PURPOSES.

Notwithstanding 18 AAC 70.020, 18 AAC 72.010, and 18 AAC 75.700 - 18 AAC 75.730, the department will, in its discretion, issue a permit for the discharge of oil, asphalt, bitumen, or a residuary product of petroleum onto the land or into state waters for research and scientific purposes. The department will issue a permit under this section only after it has evaluated the proposed project and found that

- (1) the benefits from the information that will be developed outweigh the potential environmental damage that might result;
- (2) the project has the written approval of all potentially affected landowners and persons with appropriated water rights for the water to be affected;
- (3) the person proposing the project will, upon completion of the project, restore the environment affected by the project to a condition as near to the original condition as feasible;
- (4) the person proposing the project has sufficient expertise and resources to conduct the project in a responsible manner; and
- (5) the proposed project is otherwise in the public interest. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.03.740

18 AAC 75.810. PERMIT PROCEDURES.

(a) An application for a permit under 18 AAC 75.800 must be made on forms supplied by the department. The application must be sent to the department at least 60 days before the proposed discharge is to begin. The application must include

- (1) the name, address, and telephone number of the applicant;
- (2) a detailed description of the proposed project, including plans for restoration;
- (3) a description of the geographical area involved; and
- (4) a description of the expected flow pattern of any water to be affected by the project.

(b) The department will

(1) send a copy of a completed application received under this section to the departments of fish and game, natural resources, commerce and economic development, and health and social services; and

(2) publish notice of the application as provided in 18 AAC 15.050.

(c) The department will attach terms and conditions to the a permit which it finds are necessary to protect the environment and potentially affected property owners. A permit is further subject to the permittee's stipulation and agreement to

- (1) modify activities if served with a notice under 18 AAC 75.820; or
- (2) immediately cease all permitted activities if served with a notice to terminate under 18 AAC 75.830. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.03.740

18 AAC 75.820. MODIFICATION OF PERMIT.

The department will, in its discretion, and after giving notice to the permittee, modify the terms and conditions of a permit issued under 18 AAC 75.810 if the department finds that modification is necessary to protect the environment. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.03.740

18 AAC 75.830. TERMINATION OF PERMIT.

The department will, in its discretion, and after giving notice to the permittee, terminate a permit issued under 18 AAC 75.810 if the department finds that

- (1) the permit was obtained by misrepresentation of a material fact or by failure of the applicant to fully disclose the facts;
- (2) there has been noncompliance with a term or condition of the permit; or
- (3) based on information received after issuance of the permit, the permit should not have been granted. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.03.740

ARTICLE 9. GENERAL PROVISIONS.

Section

905. Falsification prohibited

990. Definitions

18 AAC 75.905. FALSIFICATION PROHIBITED.

No person may falsely state information submitted under AS 46.03, AS 46.04, 46.09, or this chapter. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.03.790 AS 46.04.070

18 AAC 75.990. DEFINITIONS.

Unless the context indicates otherwise, in this chapter

- (1) “accumulation” means the action or process that causes or results in the gradual increase in the quantity, concentration, or type of hazardous substance over time;
- (2) “approval” means written approval by the department;
- (3) “approved” means approved in writing by the department;
- (4) “Arctic zone” means areas north of latitude 68° North; and area south of that latitude will be considered an “Arctic zone” on a site-specific basis, based on a demonstration that the site is underlain by continuous permafrost;
- (5) “area of public concern” means a geographic area that, in the department's judgment, deserves special protection from an oil discharge, including
 - (A) an area of unique cultural value, historical significance, or scenic importance;
 - (B) an area of substantial residential or public recreational value or opportunity;
 - (C) an area where fish hatcheries or other facilities primarily dependent upon the use of potentially affected water are located;
 - (D) an area significantly used for commercial, sport, or subsistence hunting, fishing, and gathering; and
 - (E) an area where concentrations of terrestrial or marine mammals or bird populations primarily dependent on the marine environment are located;
- (6) “background concentration” means the concentration of a hazardous substance that is consistently present in the environment or in the vicinity of a site and that is naturally present or is the result of human activities unrelated to a discharge or release at the site;
- (7) “barge” means oil barge;
- (8) “barrel” has the meaning given in AS 46.04.900;
- (9) “best available technology” means the best proven technology that satisfies the provisions of 18 AAC 75.425(e)(4) and 18 AAC 75.445(k);
- (10) “bioremediation” means a remediation method that decreases the concentration of a hazardous substance in soil through biological action;
- (11) “capacity” means storage capacity;
- (12) “carcinogen” means
 - (A) a substance that is expected to cause cancer in nonhuman life; or
 - (B) for human health purposes, a substance that meets the criteria of the descriptors “Carcinogenic to Humans” or “Likely to be Carcinogenic to Humans” according

to EPA's *Guidelines for Carcinogen Risk Assessment*, EPA/630/P-03/001F (March 2005), adopted by reference;

(13) "carcinogenic" means of or relating to a carcinogen;

(14) "cargo volume" means storage capacity;

(15) "catastrophic oil discharge" has the meaning given in AS 46.04.900;

(16) "catch tank" means the container that collects well fluids, muds, and oil from

drilling;

(17) "cleanup" means efforts to mitigate environmental damage or a threat to human health, safety, or welfare resulting from a hazardous substance, and includes removal of a hazardous substance from the environment, restoration, and other measures that are necessary to mitigate or avoid further threat to human health, safety, or welfare, or to the environment;

(18) "cleanup level" means the concentration of a hazardous substance that may be present within a specified medium and under specified exposure conditions without posing a threat to human health, safety, or welfare, or to the environment;

(19) "commercial or industrial land use" means a use of real property or a portion of a property for other than human habitation or a purpose with a similar potential for human exposure; "commercial or industrial land use" includes manufacturing; industrial research and development; utilities; dry cleaning facilities; commercial warehouse operations; lumber yards; retail gas stations; auto service stations; auto dealerships; equipment repair and service stations; professional offices, such as for lawyers, architects, or engineers; real estate or insurance offices; medical or dental offices and clinics; financial institutions; publicly-owned office buildings; a retail business where the principal activity is the sale of food or merchandise; personal service establishments, such as health clubs, barbershops, beauty salons, mortuaries, and photographic studios; churches; motels or hotels; and property restricted to commercial or industrial use by a legally enforceable zoning ordinance or specific deed restriction; for purposes of this paragraph,

(A) "medical and dental offices and clinics" does not include hospitals;

(B) "churches" does not include churches that provide day care or school services other than during normal worship services; and

(C) "motels and hotels" does not include motels or hotels that allow month-by-month residence;

(20) "contain" means to surround a discharge or release of a hazardous substance with booms, berms, dikes, or other barriers to prevent the further spread of the discharge or release;

(21) "contaminant" means a hazardous substance;

(22) "contaminated groundwater" means groundwater containing a concentration of a hazardous substance that exceeds the applicable cleanup level determined under the site cleanup rules;

(23) "contaminated soil" means soil containing a concentration of a hazardous substance that exceeds the applicable cleanup level determined under the site cleanup rules;

(24) "control" means to stop, restrict, or deflect the movement of a discharge;

(25) "cuttings" means rock chips or soil produced during the process of drilling a well or boring;

(26) "degradation" means a process by which a chemical is reduced to a less complex form;

(27) "demonstrate" means to prove through documentation or other evidence to the department's satisfaction;

(28) "demonstration" means proof through documentation or other evidence to the department's satisfaction;

(29) "department" means the Department of Environmental Conservation;

(30) "deposit" means to place, set down, or leave behind material;

(31) "deposition" means a placing, setting down, or leaving behind of material;

- (32) “discharge” has the meaning given in AS 46.04.900, except that, as used in this chapter, “discharge” applies only to an unpermitted discharge into the environment;
- (33) “dispersant” means a chemical agent used to enhance the breakup of discharged oil into droplets, promoting mixing of oil into the water column and accelerating dilution and degradation rates;
- (34) “ecological receptor” means a
- (A) member or local population of plant or animal species in the geographic area of the site; and
 - (B) habitat on or adjacent to the site;
- (35) “environmentally sensitive area” means a geographic area that, in the department's determination, is especially sensitive to change or alteration, including
- (A) an area of unique, scarce, fragile, or vulnerable natural habitat;
 - (B) an area of high natural productivity or essential habitat for living organisms;
 - (C) an area of unique geologic or topographic significance that is susceptible to a discharge;
 - (D) an area needed to protect, maintain, or replenish land or resources, including floodplains, aquifer recharge areas, beaches, and offshore sand deposits;
 - (E) a state or federal critical habitat, refuge, park, wilderness area, or other designated park, refuge, or preserve; and
 - (F) an area that merits special attention as defined at 6 AAC 80.170;
- (36) “EPA” means the United States Environmental Protection Agency;
- (37) “estuarine” means of or relating to an estuary;
- (38) “estuary” means a semi-enclosed, waterbody with a free connection with the sea and within which seawater is measurably diluted with freshwater derived from land drainage;
- (39) repealed 12/30/2006;
- (40) “exploration facility” has the meaning given in AS 46.04.900;
- (41) “ex-situ” means as applied to soil or groundwater moved from its original place, excavated, removed, or recovered from the ground;
- (42) “facility” or “facility or operation” means any offshore or onshore structure, improvement, vessel, vehicle, land, enterprise, endeavor, or act; “facility” or “facility or operation” includes an oil terminal facility, tank vessel, oil barge, pipeline, railroad tank car, railroad, and exploration or production facility;
- (43) “free product” means a concentration of a hazardous substance that is present as a nonaqueous phase liquid; for purposes of this paragraph, a “nonaqueous phase liquid” is a liquid that is not dissolved in water;
- (44) “freshwater wetlands” means environments characterized by rooted vegetation that is partially submerged either continuously or periodically by surface freshwater with less than .5 parts per thousand salt content and not exceeding three meters in depth;
- (45) “fugitive dust” means particulate matter that has become airborne;
- (46) “groundwater” means
- (A) water in the saturated zone, for purposes of evaluating whether the groundwater is a drinking water source under 18 AAC 75.350; or
 - (B) water beneath the surface of the soil, for purposes of evaluating whether the water will act as a transport medium for hazardous substance migration;
- (47) “hazard index” means the sum of the hazard quotients attributable to noncarcinogenic hazardous substances with similar critical endpoints;
- (48) “hazardous substance” has the meaning given in AS 46.03.826;
- (49) “hazardous waste” means waste within the scope of 18 AAC 62.020;
- (50) “hazard quotient” means the ratio of the exposure point value to the reference dose for the hazardous substance;

(51) “impermeable” means using a layer of material that is of sufficient thickness, density, and composition to produce a maximum permeability for the substance being contained of 1×10^{-7} centimeters per second at the maximum anticipated hydrostatic pressure, and that is sufficient to contain a discharge or release until it is detected and cleaned up;

(52) “inside waters of Southeast Alaska” includes all those marine waters lying inside the boundary line established in 42 Federal Register 35791 (July 11, 1977);

(53) “in-situ” means as applied to soil or groundwater in its original place, unmoved, unexcavated, or remaining in the subsurface;

(54) “institutional control” means a measure taken to limit, prohibit, or protect against an activity that could

(A) interfere with the integrity of contaminated site cleanup activities or improvements designed to encapsulate or control residual contamination; or

(B) result in human or environmental exposure to a hazardous substance;

(55) “landfarming” means spreading contaminated soil in a thin layer on the surface of the ground so that biological activity can be enhanced by the addition of nutrients, mechanical aeration, the addition of water, adjustment of pH, and similar activities;

(56) “landspreading” means spreading contaminated soil in a thin layer on the surface of the ground, relying mainly on aeration and unenhanced biological action to perform remediation;

(57) “lightering” means the pumping or transferring of oil from the cargo compartment of a vessel, barge, storage tank, or container to another vessel, barge, storage tank, or container;

(58) “liquefied petroleum gas” means natural gas converted to a liquid state by pressure and cooling, including butane, propane, and other light ends which at 70 degrees Fahrenheit and atmospheric pressure revert to the gaseous state;

(59) “local government” means any borough, city, town, village, or other political subdivision of the state or any Indian tribe or authorized tribal organization; a “local government” includes any rural community or unincorporated town or village;

(60) “local population” means a group of plants, animals, or other organisms of the same species that live together and breed within a given habitat;

(61) “major discharge” means a discharge of oil

(A) over 10,000 gallons on inland waters;

(B) over 100,000 gallons on coastal waters; or

(C) in any amount that results in a release that

(i) might require evacuation or sheltering of nearby residents or businesses; or

(ii) causes a serious environmental threat;

(62) “marine waters” means all saltwater environments, including saltwater wetlands, estuaries, and the intertidal zone;

(63) “mean annual precipitation” means the measurement of average yearly rainfall and the water equivalent of snowfall; this measurement may be obtained from the nearest weather station;

(64) “mechanical response method” means the use of containment booms, skimmers, and other apparatus and equipment required for mechanical containment and removal of a discharge or release;

(65) “method detection limit” means the minimum concentration of an analyte that can be measured and reported with 99 percent confidence that the concentration is greater than zero, determined from an analysis of a sample in a given matrix containing the analyte;

(66) “mineral oil” means a highly-refined petroleum distillate used as an insulating and cooling media for electrical transformers and other electrical equipment;

- (67) “mobility” means freedom of particles to move in random motion or under the influence of fields or forces;
- (68) repealed 12/30/2006;
- (69) “noncarcinogen” means a hazardous substance with adverse health effects on humans other than cancer;
- (70) “noncarcinogenic” means of or relating to a noncarcinogen;
- (71) “noncrude oil” means a petroleum product derived from crude oil;
- (72) “oil” has the meaning given in AS 46.04.900;
- (73) “oil barge” has the meaning given in AS 46.04.900;
- (74) “oil spill primary response action contractor,” for purposes of 18 AAC 75.425 and 18 AAC 75.445, has the meaning given in 18 AAC 75.500(a).
- (75) repealed 12/30/2006;
- (76) “oil terminal facility” has the meaning given in AS 46.04.900 and includes vessels classified as oil terminal facilities under 18 AAC 75.280;
- (77) “oily waste” means any material, including water, that has been contaminated by or mixed with petroleum in other than naturally occurring circumstances;
- (78) “open burning” means the burning of any material so that the products of combustion are emitted directly into the ambient air without passing through a stack or flare;
- (79) “open water” means marine waters below mean low water and freshwaters of the state, excluding wetlands and the wetland or shoreline perimeter of lakes, rivers, and streams;
- (80) “operator” has the meaning given in AS 46.04.900;
- (81) “owner or operator” means the owner or operator of a facility or operation that is subject to the requirements of AS 46.04.030, 46.04.040, or this chapter;
- (82) “permafrost” means soil or other earth material with a temperature that remains below 32 degrees Fahrenheit for two or more years;
- (83) “persistence” means the length of time that a compound, once introduced into the environment, remains in the environment in a similar function or structure;
- (84) “persistent product” has the meaning give in AS 46.04.900;
- (85) “person” has the meaning given in AS 46.04.900;
- (86) “person in charge,” in addition to the person causing or permitting a discharge, includes
- (A) for a vessel, the master;
 - (B) for a vehicle, the operator; and
 - (C) the owner or person exercising a possessory interest in the facility or operation at the time of the discharge or release, unless the possessory interest is being exercised solely for the purpose of providing a place of residence for the person;
- (87) “physical barrier” means a concrete or asphalt surface that
- (A) is impermeable to water;
 - (B) is designed, constructed, and placed in accordance with industry standards; and
 - (C) provides enough support thickness, layering, and life to prevent compromising the structural integrity of the material;
- (88) “pipeline” has the meaning given in AS 46.04.900;
- (89) “plan” means an oil discharge prevention and contingency plan approved under this chapter; this paragraph does not apply to 18 AAC 75.300 – 18 AAC 75.396;
- (90) “plan holder” means an applicant who has received department approval for an oil discharge prevention and contingency plan or nontank vessel plan and who is responsible for compliance with the plan as approved;
- (91) “plume” means a visible or measurable discharge or release of a hazardous substance from a given point of origin;
- (92) “ppm” means parts per million;

(93) “practicable” means capable of being designed, constructed, and implemented in a reliable and cost-effective manner, taking into consideration existing technology, site location, and logistics in light of overall project purposes; “practicable” does not include an alternative if the incremental cost of the alternative is substantial and disproportionate to the incremental degree of protection provided by the alternative as compared to another lower cost alternative;

(94) “practical quantitation limit” means the lowest concentration that can be reliably measured within specified limits of precision, accuracy, representativeness, completeness, and comparability when testing field samples under routine laboratory operating conditions using approved methods;

(95) “Prince William Sound” includes all marine waters lying inside the boundary line established in 42 Federal Register 35791 (July 11, 1977);

(96) “Prince William Sound towing package” means a towing gear assembly that consists of

(A) 400 feet of 2-1/4 inch tow reaching wire;

(B) 720 feet of six-inch polypropylene floating pickup line;

(C) one floating pickup buoy; and

(D) a "D" shackle, 2-1/4 inches in diameter, with a 4-1/8 inch jaw opening,

and a breaking strain of 55 tons, to connect the floating line to the tow reaching wire;

(97) “private drinking water system” has the meaning given “private water system” in 18 AAC 80.1990;

(98) “production facility” has the meaning given in AS 46.04.900;

(99) “public drinking water system” has the meaning given “public water system” in 18 AAC 80.1990;

(100) “qualified person” means a person who actively practices environmental science or engineering, geology, physical science, hydrology, or a related field and who has the following minimum education and experience:

(A) a bachelor's degree or equivalent from a nationally or internationally accredited postsecondary institution in environmental science or engineering, geology, hydrology, physical science, or a related field; for purposes of this subparagraph, “equivalent” means at least 128 semester hours, 168 trimester hours, or 192 quarter hours at an accredited postsecondary institution, with at least 18 percent of those hours in a science major and at least 13 percent of those hours in upper division-level courses; and

(B) at least one year of professional experience in environmental science or engineering, geology, physical science, hydrology, or a related field, obtained after the degree in (A) of this paragraph was obtained;

(101) “realistic maximum response operating limitation” means the upper limit of a combination of environmental factors that might occur at a facility or operation beyond which an operator would be unable to mount a mechanical response to a discharge event;

(102) “reference dose” means the concentration of a hazardous substance via daily exposure through a specified exposure route for the human population, including sensitive subpopulations, that is likely to be without an appreciable risk of deleterious noncarcinogenic effects over the period of exposure;

(103) “registered engineer” means a professional engineer who is registered under AS 08.48.171 - 08.48.265;

(104) “release” has the meaning given in AS 46.03.826;

(105) “residential land use” means the use of property for dwellings such as single-family homes, multi-family apartments, children’s homes, and nursing homes; because of the similarity of exposure potential and the sensitive nature of the potentially exposed population, “residential land use” includes uses of property for day care facilities, educational facilities, hospitals, playgrounds, and similar facilities; “residential land use” includes property restricted to residential use by a legally enforceable zoning ordinance or specific deed restriction; vacant land that

is not zoned or deed-restricted for commercial or industrial land use will be considered residential unless demonstrated otherwise;

(106) “resource agencies” means the Department of Environmental Conservation, the Department of Natural Resources, and the Department of Fish and Game;

(107) “response planning standard” means a planning standard against which the department evaluates the adequacy of an oil discharge prevention and contingency plan or nontank vessel plan as described in 18 AAC 75.400 - 18 AAC 75.496; a “response planning standard” does not mean a cleanup level that a plan holder is required to achieve under 18 AAC 75.300 - 18 AAC 75.396;

(108) “responsible person” means a person who is required under AS 46.04.020 or AS 46.09.020 to contain or perform a cleanup of a discharge or release of a hazardous substance;

(109) “risk assessment” means a determination of potential health effects, including effects of contaminant exposure through inhalation, ingestion, dermal absorption, and other means, and the assessment of risk to human health and the environment from contaminants remaining in the land, air, or water as a result of a release;

(110) “saltwater wetlands” means coastal areas along sheltered shorelines characterized by halophytic hydrophytes and macroalgae extending from extreme low tide to an area above extreme high tide that is influenced by sea spray or tidally induced water table changes;

(111) “saturated zone” means the zone below the water table where, permanently or seasonally, all interstices are filled with water;

(112) “sensitive gauging system” means the best demonstrated available gauging technology at the time of tank construction or substantial reconstruction, or initial gauging system installation;

(113) repealed 12/30/2006;

(114) “significant change” means

(A) a change in operational readiness or removal from designated storage of significant equipment or materials;

(B) a management or ownership change resulting in new chain-of-command or lead response personnel;

(C) a change in response contractors;

(D) a change in spill control or cleanup strategies; or

(E) any factor that significantly alters or reduces the ability of the plan holder to respond according to the provisions of the approved contingency plan or nontank vessel plan;

(115) “site” means an area that is contaminated, including areas contaminated by the migration of hazardous substances from a source area, regardless of property ownership;

(116) “site cleanup rules” means the provisions of 18 AAC 75.325 - 18 AAC 75.390;

(117) “soil” means an unconsolidated geologic material, including clay, loam, loess, silt, sand, gravel, tills, or a combination of these materials;

(118) “sole source aquifer” means an aquifer that is needed to supply 50 percent or more of the drinking water for that area for which there are no reasonably available alternative sources if the aquifer becomes contaminated;

(119) “solidification” means the mixing of an additive into contaminated soil to immobilize the hazardous substances in the soil;

(120) “state waters” means waters of the state;

(121) “storage capacity” means,

(A) for a tank vessel or oil barge, either

(i) the maximum amount of oil that the vessel can legally carry as cargo while in state waters;

(ii) the amount certified by the American Bureau of Shipping, by the United States Coast Guard under a Certificate of Inspection, or by an equivalent - society or agency in a foreign country; or

(iii) a lesser amount than the amount in (i) or (ii) of this subparagraph, upon proof and verification to the department's satisfaction;

(B) for an oil storage tank, the full physical volume of the tank;

(C) for a facility, the total of the storage capacity of the facility itself and the storage capacity of pipes at that facility;

(D) for a nontank vessel, the full physical volume of all fuel tanks, lube oil tanks, hydraulic oil tanks, day tanks, slop/sludge tanks, waste oil tanks, and bilge tanks on the vessel; and

(E) for a train, the totally physical volume of all railroad tank cars in the train;

(122) "storativity" means the volume of water that a permeable aquifer unit will absorb or expel from storage per unit surface area per unit change in head;

(123) "subsurface soil" means soil that is more than two feet below the surface;

(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 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;

(125) "supervise" means to

(A) take direct responsibility for preparing reports or making interpretations regarding field data;

(B) exercise onsite control over all work that requires assessment, investigation, characterization, reporting, or interpretation, including

(i) selection of the number, location, or depth of sample points in soil, groundwater, surface water, or stockpiles;

(ii) location, placement, or supervision of construction or completion of monitoring or remediation wells;

(iii) description of site characteristics, soil characteristics, or geological characteristics in field notes that will be used in the report submitted by a responsible person;

(iv) duties required to be performed under the site cleanup rules other than those strictly limited to the physical act of sample collection and transport; and

(v) collection of final verification samples; and

(C) exercise onsite or offsite control over routine tasks associated with the physical act of sample collection and transportation;

(126) "surety" includes a surety bond;

(127) "surface soil" means soil that extends no more than two feet below the surface;

(128) "surface water" means waters of the state naturally open to the atmosphere, including rivers, lakes, reservoirs, streams, impoundments, and seas;

(129) "tank vessel" has the meaning given in AS 46.04.900;

(130) "technology" means equipment, supplies, other resources, and related practices;

(131) "total xylene isomers" means the sum of ortho-xylene, meta-xylene, and para-xylene concentrations;

(132) “toxicity index” means the number equal to the sum of the toxicity quotient numbers attributable to systemic toxic effects with similar critical endpoints for similarly responding ecological species;

(133) “toxicity quotient” means the ratio of the exposure point value to the ecological benchmark value;

(134) “transmission pipeline” means a pipeline through which crude oil moves in transportation, including line pipe, valves, and other appurtenances connected to line pipe, pumping units, and fabricated assemblies associated with pumping units; “transmission pipeline” does not include gathering lines, flow lines, or facility oil piping;

(135) “transmissivity” means the rate at which water is transmitted through a unit width of an aquifer or confining bed under a hydraulic gradient of one;

(136) “ultimate disposal” means disposal into or upon the waters or the surface or subsurface land of the state;

(137) “vessel” has the meaning given in AS 46.04.900; and

(138) “volatile organic” means an organic (carbon-containing) compound that evaporates or volatilizes readily at room temperature; in addition, for the purposes of 18 AAC 75.340 and 18 AAC 75.341, volatile organics are compounds that have a Henry’s Law constant, unitless, greater than 0.0001, that are liquids at soil temperatures, and that have a molecular weight of less than 200;

(139) “waters of the state” has the meaning given in AS 46.04.900;

(140) “wellhead protection area” means a three dimensional land surface and subsurface zone surrounding a water supply well or wellfield that encompasses the volume of materials through which water will move to the well;

(141) “nonpersistent product” has the meaning given in AS 46.04.900;

(142) “nontank vessel” has the meaning given in AS 46.04.900; as used in the definition of “nontank vessel” in AS 46.04.900, “gross registered tons” means “applicable gross tons” or “gross tonnage” as determined by the United States Coast Guard under 33 C.F.R. 138.30;

(143) “P&I club” means a protection and indemnity association;

(144) “railroad tank car” has the meaning given in AS 46.04.900;

(145) “train” has the meaning given in AS 46.04.900;

(146) “working day” means a day other than Saturday, Sunday, or a state holiday;

(147) “affected coastal resource district” has the meaning given in AS 46.40.096(g)(1);

(148) “equivalent plan” means a nontank vessel plan submitted under 18 AAC 75.410(a) and meeting the requirements of 18 AAC 75.427 and 18 AAC 75.460;

(149) “incident command system” means the incident management organization described in the National Interagency Incident Management System Incident Command System;

(150) “incident management team services” means those services described in the National Interagency Incident Management System Incident Command System;

(151) “National Interagency Incident Management System Incident Command System” means the command system followed by the National Interagency Incident Management System, as modified for oil spills, and set out in the

(A) United States Department of Transportation, United States Coast Guard's *Incident Management Handbook*, COMDTPUB P3120.17, as revised as of April 11, 2001 and adopted by reference; and

(B) *Alaska Incident Management System Guide for Oil and Hazardous Substance Response*, as revised as of January 2000 and adopted by reference;

(152) “nontank vessel cleanup contractor” means an oil spill primary response action contractor who is, or intends to be, obligated under contract or membership agreement to provide resources or equipment to contain, control, and perform cleanup of an oil discharge under an approved nontank vessel plan issued under AS 46.04.055;

(153) “nontank vessel incident management team” means an oil spill primary response action contractor who is, or intends to be, obligated under contract to provide incident management services under an approved nontank vessel plan issued under AS 46.04.055;

(154) “nontank vessel plan” means an oil discharge prevention and contingency plan covering a nontank vessel;

(155) “qualified individual”

(A) means an individual with the qualifications, duties, and authority of a qualified individual under 33 C.F.R. 155.1026; the provisions of 33 C.F.R. 155.1026, as revised as of July 1, 2001, are adopted by reference; and

(B) does not mean a “qualified person” as defined in this section;

(156) “region of operation” means, with respect to

(A) an oil discharge prevention and contingency plan other than a nontank vessel plan, a region established under 18 AAC 75.495; and

(B) a nontank vessel plan, a region established under 18 AAC 75.496;

(157) “regional citizens’ advisory council” means an entity established under 33 U.S.C. 2732(d);

(158) “response planning facilitator” means an oil spill primary response action contractor who provides services as described in 18 AAC 75.428 to the holder of an approved nontank vessel plan issued under AS 46.04.055;

(159) “streamlined plan” means a nontank vessel plan submitted under 18 AAC 75.410(d) and meeting the requirements of 18 AAC 75.426 and 18 AAC 75.456, as applicable;

(160) “voyage charter vessel” means a vessel contracted to lift a specific cargo on a one-time, periodic, non-scheduled, or tramp basis;

(161) “railroad” means a non-highway ground transportation system that runs on rails and transports railroad tank cars; “railroad” includes trains, locomotives, railroad tank cars, rolling stock, railroad tracks, and associated facilities and operations;

(162) "annual average daily oil production volume" means the average oil production volume from a common reservoir to a common production facility based on the highest annual volume produced by a well at the facility during the previous calendar year divided by the number of days in the year, expressed as barrels per day;

(163) "blowout contingency plan" means a written, site-specific description of the procedures, methods, equipment, personnel, logistics, and activities that will be employed to regain control of an uncontrolled flow of oil, gas, drilling mud, and other substances from an exploration or production well;

(164) "subarea contingency plan" means a regional master oil and hazardous substance discharge prevention and contingency plan approved under AS 46.04.210.

(165) “aboveground oil storage tank,” for the purposes of 18 AAC 75.065, 18 AAC 75.066, and 18 AAC 75.075, means a container, including a storage and surge tank, that is used to store bulk quantities of oil and that has a capacity greater than 10,000 gallons; with the exception of a field-constructed underground storage tank, “aboveground oil storage tank” does not include a process pressure vessel or underground storage tank within the meaning of AS 46.03.450;

(166) “allision” means when a vessel comes into contact with a fixed object, including piers, rocks, platforms or other objects, whether manmade or naturally occurring, with sufficient force to incur damage to the vessel;

(167) “cathodic protection” means a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell through the application of either galvanic anodes or impressed current;

(168) “corrosion” means the deterioration of metal from the loss of positive charged metal ions from the metal surface into an electrolyte;

(169) “corrosion expert” means a person who

(A) by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired through a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried metal piping and metal tanks, and

(B) is accredited or certified as being qualified by NACE International as a corrosion specialist, cathodic protection specialist, or is a registered engineer with education and experience in corrosion control of buried metal piping systems and metal tanks;

(170) “double-walled shop-fabricated aboveground oil storage tank” means a shop-fabricated aboveground oil storage tank with a surrounding containment tank fully enclosing a sealed interstitial space of a capacity less than 100 percent of the storage tank capacity and preventing visual inspection of the inner tank;

(171) “facility oil piping” means piping and associated fittings, including all valves, elbows, joints, flanges, pumps, and flexible connectors, originating from or terminating at

(A) an aboveground oil storage tank regulated under 18 AAC 75.065 or 18 AAC 75.066 up to the

(i) union of the piping with a fuel dispensing system;

(ii) marine header;

(iii) fill cap or fill valve;

(iv) forwarding pump used to transfer oil between facilities, between adjacent pump stations, or between a pressure pump station and a terminal or breakout tank; or

(v) first flange or connection within a tank truck loading area or within a loading rack containment area; or

(B) an exploration or production well, up to the:

(i) choke or valve interconnection with a flowline; or

(ii) first valve or flange inside a processing unit boundary;

(172) “field-constructed aboveground oil storage tank” means a welded metal aboveground oil storage tank erected on site where it will be placed in service;

(173) “flowline”

(A) means piping and associated fittings, including all valves, elbows, joints, flanges, pumps and flexible connectors,

(i) containing liquid oil;

(ii) located at a production facility; and

(iii) that is installed or used for the purpose of transporting oil between a well pad or marine structure used for oil production and the interconnection point with a transmission pipeline; and

(B) includes all piping between interconnections, including multi-phase lines and process piping, except

(i) facility oil piping; and

(ii) transmission pipelines;

(174) “installation” means an aboveground oil storage tank and associated operational appurtenances, including secondary containment systems, integral piping, overflow protection devices, and associated leak detection equipment;

(175) “marine structure” means an assembly permanently or temporarily attached to the seabed; “marine structure” includes mobile offshore drilling units, prefabricated offshore platforms, and artificial islands;

(176) “permanent unloading areas” means unloading areas routinely used for transfer operations; “permanent unloading areas” does not include areas used for short-term emergency response, seasonal usage, or short-term temporary usage to meet unusual operational demands;

(177) “pipe” or “piping” means any hollow cylinder or tube used to convey oil;

(178) “placed in service” means commencement of operational use, either after initial construction or installation or

(A) for field-constructed aboveground oil storage tanks, after the date of return to service after reconstruction as defined by the American Petroleum Institute’s (API) *Tank Inspection, Repair, Alteration, and Reconstruction*, Third Edition, December 2001, and Addendum 1, September 2003 (API 653), adopted by reference, or after the date of return to service after being removed from service in accordance with 18 AAC 75.065(o); or

(B) for facility oil piping, after the date of return to service after being removed from service in accordance with 18 AAC 75.080(o); or

(C) for flow lines, after the date of return to service after being removed from service in accordance with 18 AAC 75.047(f);

(179) “qualified cathodic protection tester” means a person who is accredited or certified as being qualified as, at a minimum, CP1-CP Tester by NACE international;

(180) “self-diked shop-fabricated aboveground oil storage tank” mean a shop-fabricated aboveground oil storage tank with integral secondary containment of a minimum capacity of at least 100 percent of the capacity of the tank;

(181) “shop-fabricated aboveground oil storage tank” means an above ground oil storage tank that is constructed at a tank manufacturer’s plant and transported to a facility for installation;

(182) “vaulted shop-fabricated aboveground oil storage tank” means a shop-fabricated aboveground oil storage tank that is placed within a discrete secondary containment vault system at or below grade;

(183) "DRO" means diesel range organics within the meaning given in 18 AAC 78.995;

(184) "GRO" means gasoline range organics within the meaning given in 18 AAC 78.995;

(185) "PCBs" means polychlorinated biphenyls;

(186) "RRO" means residual range organics within the meaning given in 18 AAC 78.995. (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)

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 46.09.010
	AS 46.03.745	AS 46.04.035	AS 46.09.020

Editor’s Note: The publications adopted by reference in 18 AAC 75.990 may be reviewed at the department’s offices in Anchorage, Fairbanks, or Juneau, or may be obtained directly from the American Petroleum Institute (API), 1220 L Street NW, Washington, DC 20005-4070; telephone (202) 682-8000; fax (303) 397-2740; website: <http://www.api.org/Publications/>.

ALASKA ADMINISTRATIVE CODE

TITLE 18. ENVIRONMENTAL CONSERVATION

CHAPTER 78. UNDERGROUND STORAGE TANKS

Article

1. Underground Storage Tanks (18 AAC 78.005 - 18 AAC 78.100)
2. Corrective Action for Leaking Underground Storage Tanks
(18 AAC 78.200 - 18 AAC 78.280)
3. (Repealed)
4. Certification of Underground Storage Tank Workers and Inspectors
(18 AAC 78.400 - 18 AAC 78.499)
5. Storage Tank Assistance Fund (18 AAC 78.500 - 18 AAC 78.560)
6. Cleanup Levels (18 AAC 78.600 - 18 AAC 78.625)
8. Underground Storage Tank Laboratory Approval (18 AAC 78.800 - 18 AAC 78.815)
9. General Provisions (18 AAC 78.910 - 18 AAC 78.995)

ARTICLE 1. UNDERGROUND STORAGE TANKS

Section

005. Applicability; exemptions
007. UST Procedures Manual
010. Minimum requirements
015. Registration and fees
017. Operations inspection
020. Notification for tanks taken out of service
022. Requirements for existing UST systems
025. Requirements for new UST systems
030. Requirements to upgrade a UST system
035. Changes in configuration of system
040. Spill and overflow control
045. Operation and maintenance of corrosion protection
050. Compatibility
055. Repairs allowed
060. Release detection and reporting
065. Release detection methods and monitoring for tanks
070. Release detection methods and monitoring for piping
075. (Repealed)
080. Temporary closure
085. Permanent closure and change-in-service
090. Site characterization and assessment
095. Applicability to previously closed UST systems
100. Inspection, reporting, and recordkeeping requirements

18 AAC 78.005. APPLICABILITY; EXEMPTIONS.

(a) Except as provided in (e) - (g) of this section, the requirements of this chapter apply to the owner and the operator of an underground storage tank or underground storage tank system (UST) that contains, has contained, or will contain, petroleum. In this chapter, "UST" means

(1) "underground storage tank" as that term is defined at AS 46.03.450(12); and

(2) "underground storage tank system" as that term is defined at AS 46.03.450(13).

(b) No person may own or operate a UST unless

(1) it is registered under 18 AAC 78.015;

(2) that person meets all applicable requirements of this chapter; and

(3) except as provided at AS 46.03.420(c)(1)(D) and at sec. 7(c)(3), ch. 96, SLA 1990, that person has provided proof of financial responsibility under 18 AAC 78.910.

(c) Repealed 11/3/95.

(d) Repealed 1/30/2003.

(e) The following USTs are exempt from the requirements of this chapter:

(1) a UST that holds a hazardous waste identified at 18 AAC 62.020, or a mixture of hazardous waste and petroleum; a system exempt under this paragraph is subject to the requirements of 18 AAC 62;

(2) a wastewater treatment tank system that is part of a wastewater treatment facility subject to 33 U.S.C. 1317(b) or 1342 (Clean Water Act); a system excluded under this paragraph is subject to the requirements of 18 AAC 72;

(3) equipment or machinery, including hydraulic lift tanks and electrical equipment tanks, containing petroleum for operational purposes;

(4) an emergency spill or overflow containment UST that is emptied within 24 hours after use;

(5) a tank used for storing heating oil for consumptive use on the premises where stored.

(f) The following USTs must meet the minimum requirements of 18 AAC 78.010(b) and, if a release is suspected or confirmed, the requirements of 18 AAC 78.200 - 18 AAC 78.280 and of 18 AAC 78.600 - 18 AAC 78.625, but are exempt from all other requirements of this chapter:

(1) a wastewater treatment tank system not exempt under (e)(2) of this section;

(2) a UST that contains a radioactive material regulated under 42 U.S.C. 2011 - 2114 (Atomic Energy Act of 1954);

(3) a UST that is part of an emergency generator system at a nuclear power generation facility regulated by the Nuclear Regulatory Commission under 10 C.F.R. Part 50, Appendix A;

(4) an airport hydrant fuel distribution system; and

(5) a UST with field-constructed tanks.

(g) A UST that stores fuel solely for use by emergency power generators is exempt from the release detection requirements of 18 AAC 78.060 - 18 AAC 78.070. (Eff. 3/25/91, Register 118; am 8/21/91, Register 119; am 11/3/95, Register 136; am 1/22/99, Register 149; am 1/30/2003, Register 165)

Authority:	AS 46.03.020	AS 46.03.400	AS 46.03.420
	AS 46.03.365	AS 46.03.405	Sec. 7, ch. 96, SLA 1990
	AS 46.03.380		

18 AAC 78.007. UST PROCEDURES MANUAL.

The department's *Underground Storage Tanks Procedures Manual (UST Procedures Manual)*, dated November 7, 2002, is adopted by reference. The department will use this version of the *UST Procedures Manual* in making determinations under this chapter. (Eff 1/22/99, Register 149; am 6/25/99; Register 150; am 4/16/2000, Register 154; am 1/30/2003, Register 165)

Authority: AS 46.23.020 AS 46.03.365

Editor's note: The *UST Procedures Manual*, adopted by reference in 18 AAC 78.007, may be obtained from the department and may be reviewed at the department's Anchorage, Fairbanks, Juneau, and Soldotna offices.

18 AAC 78.010. MINIMUM REQUIREMENTS.

(a) A person who owns or operates a UST, or who intends to install, have installed, return to operation, or acquire ownership of a UST shall meet the requirements of 18 AAC 78.015. If the UST is closed, the owner or operator shall notify the department as required by 18 AAC 78.085(a).

(b) A person may not install a UST, including a UST described at 18 AAC 78.005(f), to store petroleum unless the UST, whether of single-wall or double-wall construction,

(1) will prevent a release caused by corrosion or structural failure for the operational life of the system;

(2) is cathodically protected against corrosion, constructed of noncorrodible material, steel clad with a noncorrodible material, or designed to prevent the release or threatened release of stored petroleum; and

(3) is constructed or lined with a material that is compatible with the stored petroleum as provided at 18 AAC 78.050. (Eff. 3/25/91, Register 118; am 11/3/95, Register 136)

Authority: AS 46.03.020 AS 46.03.365

18 AAC 78.015. REGISTRATION AND FEES.

(a) Except as provided in (e) of this section, a person who owns or operates a UST, or who intends to install, have installed, return to service, or acquire ownership of a UST, shall

(1) register the UST as required by AS 46.03.380 and pay the fee required by AS 46.03.385 within 30 days after installation, return to service, or acquisition;

(2) if the UST was installed before December 22, 1988, provide the information required by AS 46.03.380(b)(1) and (3);

(3) obtain a current tag, decal, or notice for a UST under 18 AAC 78.017 before allowing a petroleum product to be placed in the UST;

(4) permanently affix the tag, decal, or notice described in (3) of this subsection where it

(A) can be easily be seen by a person who attempts to fill the UST; and

(B) cannot reasonably be associated with any UST other than the UST for which it was issued;

(5) ensure that a person does not

(A) tamper with or alter a tag, decal, or notice associated with a UST;

(B) remove a tag, decal, or notice associated with a UST until it expires or is replaced with a new tag, decal, or notice, unless the tank is permanently closed or the return of the tag, decal, or notice is required under 18 AAC 78.017.

(b) The information required by AS 46.03.400 must be provided in the application for initial registration on a form provided by the department.

(c) UST registration expires on December 31 each year. The annual registration renewal fee required by AS 46.03.385(a) must be paid to the department at least 30 days before the registration expires each year and must be accompanied by the information required by AS 46.03.385(d) on a form provided by the department.

(d) If a UST is taken out of service, the owner or operator need not submit the fee and information required under (c) of this section in subsequent years unless the UST is returned to service. If the UST is returned to service, the owner or operator shall pay to the department the annual registration fee required by AS 46.03.385(a) within 30 days after the UST is returned to service.

(e) The owner or operator of a UST that was taken out of service or permanently closed on or before January 1, 1974, is exempt from the annual registration requirements of this section and AS 46.03.380.

(f) In assessing the late fee required by AS 46.03.385(c), the "day of payment" means the day the fee is received by the department or, if mailed, the day of postmark.

(g) In addition to the requirements of AS 46.03.400, at initial registration or annual registration renewal, the owner or operator of a UST that is installed, upgraded, or reconfigured shall certify that the installation, upgrading, or reconfiguration was performed or supervised by a person certified under this chapter.

(h) An owner or operator of a UST who sells a UST intended for continued use as a UST shall notify the purchaser of the requirements of this chapter. (Eff. 3/25/91, Register 118; am 8/21/91, Register 119; am 11/3/95, Register 136; am 8/15/99, Register 151; am 1/30/2003, Register 165)

Authority:	AS 46.03.020	AS 46.03.385	AS 46.03.405
	AS 46.03.365	AS 46.03.395	AS 46.03.410
	AS 46.03.375	AS 46.03.400	AS 46.03.420
	AS 46.03.380		

18 AAC 78.017. OPERATIONS INSPECTION.

(a) Except as provided in (b) and (c) of this section, the owner or operator of a UST system shall have each UST inspected at least every three years to determine compliance with the release detection, spill and overfill prevention, and corrosion protection requirements of this chapter. Each inspection must be performed by an inspector who is certified under 18 AAC 78.410 and must include, as applicable, examination, assessment, testing, and documentation of the following for the UST system inspected:

- (1) equipment;
- (2) procedures;
- (3) operations;
- (4) maintenance;
- (5) recordkeeping.

(b) Unless another date is approved under (d) of this section, an initial inspection of each UST at the facility must occur no sooner than April 30 and no later than August 31 of the year specified in Table 1 of this subsection.

Table 1. Initial Inspection Requirements		
Last Digit of ADEC Facility ID Number	For UST registered on or before June 1, 2000	For UST registered after June 1, 2000
	Year Inspection due	Year Inspection Due
1	2000	The third calendar year after registration.
2	2000	
3	2000	
4	2000	
5	2001	
6	2001	
7	2001	
8	2002	
9	2002	
0	2002	

(c) For a UST facility with multiple registration dates, all USTs shall be inspected no later than the earliest applicable date in Table 1 of (b) of this section.

(d) In a geographic area of the state in which obtaining an inspection may cost more because an inspector does not routinely offer services in that area, two or more owners or operators may arrange for an inspector to inspect a group of USTs in that area at the same time. The inspection must be completed on or before the earliest applicable date in Table 1 of (b) of this section unless the department grants an extension. The department will grant an extension for a group of tanks under this subsection, upon request, if the department determines that an earlier date is not practicable. The department will not grant an extension beyond the last applicable date specified in Table 1 in (b) of this section for a facility in the group receiving the extension. The department will provide a temporary extension tag, decal, or notice for a UST that receives an extension under this subsection.

(e) An inspection is not required for a tank that is permanently out of service.

(f) The department will provide each new UST with a tag, decal, or notice within 30 days after receiving the registration. A tag will not be provided for a UST that is out of service.

(g) A person performing an inspection must be a certified inspector under 18 AAC 78.410 and shall ensure that the inspection conforms to the requirements in 18 AAC 78.455(a)(5).

(h) No later than September 30 of the year the inspection is due, the owner or operator of a UST system shall provide to the department the results of the inspection on a form provided by the department. The form must be signed by the certified inspector who conducted the inspection and the owner or operator of the UST system.

(i) A tag, decal, or notice expires on October 31 of the third year after issuance.

(j) Within 30 days after receiving a form under (i) of this section that indicates the UST system is in compliance with this chapter, the department will provide the owner or operator with a tag, decal, or notice to be affixed as required by 18 AAC 78.015(a).

(k) If, after inspection, the inspector finds that the UST system is not in compliance with this chapter,

(1) the inspector shall notify the owner or operator of non-compliance; and

(2) no later than September 30 of the year the inspection is due, the owner or operator shall notify the department, in writing, of the results of the inspection; and

(3) no later than November 1 of the year the inspection is due, the owner or operator shall return the tag, decal, or notice for the UST system to the department.

(l) The owner or operator may not allow petroleum to be placed in a UST unless a valid tag, decal, or notice for the UST is displayed as required by 18 AAC 78.015.

(m) If a tag, decal, or notice is lost, stolen, or destroyed, the owner or operator may obtain a replacement by providing the department with a sworn statement or affidavit that includes the facility number and tank number assigned by the department and an explanation of why a replacement is needed. (Eff. 8/15/99, Register 151; am 4/16/2000, Register 154; am 1/30/2003, Register 165)

Authority:	AS 46.03.020	AS 46.03.385	AS 46.03.405
	AS 46.03.365	AS 46.03.395	AS 46.03.410
	AS 46.03.375	AS 46.03.400	AS 46.03.420
	AS 46.03.380		

Editor's note: As of Register 179 (October 2006), and acting under AS 44.62.125(b)(6), the regulations attorney made a technical revision to the authority citation following 18 AAC 78.017. This change reflects the enactment of sec. 2, ch. 102, SLA 2006, effective August 5, 2006, which repealed AS 46.03.410.

18 AAC 78.020. NOTIFICATION FOR TANKS TAKEN OUT OF SERVICE.

(a) The owner or operator of a UST installed or in service after January 1, 1974, and taken out of service after that date, shall notify the department that the UST was taken out of service by completing and returning a notification form available from the department.

(b) If the owner or operator of a UST that was closed between December 22, 1988, and September 5, 1990 reported the closure to the department as required by 40 C.F.R. 280.71 (1994), that closure notification fulfills the requirements of (a) of this section. (Eff. 3/25/91, Register 118; am 8/21/91, Register 119; am 11/3/95, Register 136)

Authority:	AS 46.03.020	Sec. 5, ch. 96, SLA 1990	Sec. 7, ch. 96, SLA 1990
	AS 46.03.365		

18 AAC 78.022. REQUIREMENTS FOR EXISTING UST SYSTEMS.

No later than December 22, 1998, all USTs shall comply with

- (1) 18 AAC 78.025 for a new tank;
 - (2) 18 AAC 78.030 to upgrade a tank or tank system; or
 - (3) the permanent closure requirements of 18 AAC 78.085, including the applicable requirements for corrective action under 18 AAC 78.200 - 18 AAC 78.280.
- (Eff. 3/25/91, Register 118; am 11/3/95, Register 136)

Authority:	AS 46.03.020	AS 46.03.375	AS 46.03.395
	AS 46.03.365		

18 AAC 78.025. REQUIREMENTS FOR NEW UST SYSTEMS.

(a) To prevent or detect a release caused by structural failure, corrosion, a spill, or an overflow while the UST is used to store petroleum, the owner or operator of a new UST shall meet the requirements of this section in addition to the requirements of 18 AAC 78.040 - 18 AAC 78.070.

(b) At least 15 days, but not more than 60 days, before beginning installation of a UST, the owner or operator shall notify the department in writing that it will do so, on a form provided by the department.

(c) Tanks, piping, and related UST equipment must be properly installed, using a nationally-recognized code of practice listed in (f) of this section, in accordance with the manufacturer's recommended installation instructions. The owner or operator shall ensure that the installer of a new UST is certified under this chapter.

(d) A person may not install or permit the installation of a UST within 100 feet of a Class A or Class B public water system, or within 75 feet of a Class C public water system, as those classes are defined under 18 AAC 80.1990. The department will require secondary containment if a sole-source aquifer exists and the department determines that secondary containment is necessary to protect human health and safety, and the environment.

(e) Any part of the tank or piping that is underground or in contact with the ground and that routinely contains petroleum must be protected from corrosion, using a nationally-recognized code of practice listed in (f) of this section. To protect the tank and piping from corrosion, the tank and piping must be constructed of

- (1) fiberglass-reinforced plastic or another corrosion-resistant material;
- (2) a steel-fiberglass-reinforced-plastic composite; or
- (3) steel, galvanized steel, or, for piping only, copper; in addition, the tank and

piping must be cathodically protected as follows:

(A) the tank and piping must be coated with a suitable dielectric material; for purposes of this subparagraph, "suitable" does not include paint or asphalt coating;

(B) field-installed cathodic protection systems must be designed by a corrosion expert and installed by a worker certified under 18 AAC 78.400 - 18 AAC 78.495;

(C) impressed current systems must be designed to allow inspection of their operating status as required by 18 AAC 78.045(e); and

(D) cathodic protection systems must be operated and maintained as required by 18 AAC 78.045.

(f) Unless the department, in its discretion, approves another procedure, code, or standard found by the department to be no less protective of human health and safety and the environment than the procedures, codes, and standards set out in this subsection, the owner and the operator of a UST shall ensure that the following procedures, codes, and standards, the provisions of which are adopted by reference, are used:

- (1) to meet the requirements of (c) of this section:

(A) American Petroleum Institute Recommended Practice 1615, *Installation of Underground Petroleum Storage Systems*, Fifth Edition, March 1996;

(B) Petroleum Equipment Institute Recommended Practice PEI/RP 100-2000, *Recommended Practices for Installation of Underground Liquid Storage Systems*, 2000;

(C) American Society of Mechanical Engineers Code for Pressure Piping, B31, an American National Standard, B31.3, *Process Piping*, 1999 Edition, and B31.3a-2000, *Addenda*, and B31.3b-2001, *Addenda*;

(D) American Society of Mechanical Engineers Code for Pressure Piping, B31, an American National Standard, B31.4, *Pipeline Transportation Systems for Liquid Hydrocarbons and Other Liquids*, 1998 Edition and B31.4a-2001, *Addenda*;

(E) National Fire Protection Association Standard 30, *Flammable and Combustible Liquids Code*, 2000 Edition; and

(F) National Fire Protection Association Standard 30A, *Code for Motor Fuel Dispensing Facilities and Repair Garages*, 2000 Edition;

(G) International Code Council, International Fire Code, Chapter 34, *Flammable and Combustible Liquids*, 2000; and

(H) International Code Council, International Fire Code, Chapter 27, *Hazardous Materials – General Provisions*, 2000;

(2) to meet the requirements of (e)(1) of this section for tanks constructed of fiberglass-reinforced plastic or another corrosion-resistant material:

(A) Underwriters Laboratories Standard 1316, *Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures*, Second Edition, 1994;

(B) repealed 1/30/2003;

(C) repealed 1/30/2003; and

(D) Steel Tank Institute Specification F894-01, *ACT-100-Specification for External Corrosion Protection of FRP Composite Steel Underground Storage Tanks*, May 2001;

(3) to meet the requirements of (e)(2) of this section for composite tanks:

(A) Underwriters Laboratories Standard 1746, *External Corrosion Protection Systems for Steel Underground Storage Tanks*, Second Edition, 1993; and

(B) Steel Tank Institute Specification F894-01, *ACT-100-Specification for External Corrosion Protection of FRP Composite Steel Underground Storage Tanks*, May 2001;

(4) to meet the requirements of (e)(3) of this section for steel tanks:

(A) Steel Tank Institute Specification STI-P3-01, *STI-P₃® Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks*, May 2001;

(B) Underwriters Laboratories Standard 1746, *External Corrosion Protection Systems for Steel Underground Storage Tanks*, Second Edition, 1993;

(C) repealed 1/30/2003;

(D) National Association of Corrosion Engineers Standard RP0285-2002, *Standard Recommended Practice-Corrosion Control of Underground Storage Tank Systems by Cathodic Protection*, 2002;

(E) repealed 1/30/2003;

(F) Underwriters Laboratories Standard UL 58, *Steel Underground Tanks for Flammable and Combustible Liquids*, Ninth Edition, 1996;

(G) Steel Tank Institute Specification R-972-01, *Recommended Practice for the Addition of Supplemental Anodes to STI-P₃® USTs*, 2001;

(5) to meet the requirements of (e)(1) of this section for piping constructed of fiberglass-reinforced plastic or another corrosion-resistant material:

(A) Underwriters Laboratories Standard 1316, *Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures*, Second Edition, 1994;

(B) Underwriters Laboratories Standard UL 567, *Pipe Connectors for Petroleum Products and LP-Gas*, Eighth Edition, 1996;

(C) repealed 1/30/2003;

(D) repealed 1/30/2003; and

(6) to meet the requirements of (e)(3) of this section for metal piping:

(A) National Fire Protection Association Standard 30, *Flammable and Combustible Liquids Code*, 2000 Edition;

(B) American Petroleum Institute Recommended Practice 1615, *Installation of Underground Petroleum Storage Systems*, Fifth Edition, March 1996;

(C) Petroleum Equipment Institute Recommended Practice PEI/RP 100-2000, *Recommended Practices for Installation of Underground Liquid Storage Systems*, 2000;

(D) American Petroleum Institute Recommended Practice 1632, *Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems*, Third Edition, May 1996;

(E) National Association of Corrosion Engineers Standard RP0169-96, *Standard Recommended Practice-Control of External Corrosion on Underground or Submerged Metallic Piping Systems*, reaffirmed September 1996; and

(F) National Association of Corrosion Engineers Standard RP0190-95, *Standard Recommended Practice-External Protective Coatings for Joints, Fittings, and Valves on Metallic Underground or Submerged Pipelines and Piping Systems*, 1990, reaffirmed 1995.

(g) The department will, in its discretion, inspect or require inspection of an installation to determine compliance with this section. If the department requires an inspection, it must be conducted by an independent third party certified under this chapter. (Eff. 3/25/91, Register 118; am 11/3/95, Register 136; am 4/16/2000, Register 154; am 1/30/2003, Register 165)

Authority: AS 46.03.020 AS 46.03.365 AS 46.03.375

Editor's Note: 1. The publications adopted by reference in 18 AAC 78.025 and other sections of this chapter may be reviewed at the department's offices in Anchorage, Fairbanks, Juneau, or Soldotna, or may be obtained directly from the appropriate publisher. The mailing address, telephone number, facsimile number, and website, if available, for each publisher are as follows:

American Petroleum Institute (API), Publications Department, 1220 L St. N.W., Washington, D.C. 20005; phone: (202) 682-8375; Fax: (202) 962-4776; URL: <http://api-ep.api.org/publications>;

American Society of Mechanical Engineers (ASME), 22 Law Drive, P.O. Box 2300, Fairfield, New Jersey 07007-2300; phone: (800) 843-2763; Fax: (201) 882-1717; URL: <http://www.asme.org/>;

American Society for Testing and Materials (ASTM), Publications Department, 1916 Race St., Philadelphia, Pennsylvania 19103; phone: (215) 299-5585; Fax: (215) 977-9679; URL: <http://www.astm.org/>;

International Code Council, 5203 Leesburg Pike, Suite 708, Falls Church, Virginia 22041; phone: (703) 931-4533; Fax: (703) 379-1546; URL: <http://www.intlcode.org/>;

International Conference of Building Code Officials, Ordering Department, 5360 Workman Mill Road, Whittier, California 90601; phone: (310) 692-4226; Fax: (310) 692-3853; URL: <http://www.icbo.org/>;

National Association of Corrosion Engineers (NACE), Publications Department, P.O. Box 218340, Houston, Texas 77218-8340; phone: (281) 228-6200; fax: (281) 228-6300; URL: <http://www.nace.org/>;

National Fire Protection Association, Inc. (NFPA), Publications Department, Batterymarch Park, P.O. Box 9146, Quincy, Massachusetts 02269; phone: (800) 344-3555; Fax: (617) 984-7057; URL: <http://www.nfpa.org/>;

National Leak Prevention Association (NLPA), P.O. Box 1643, Boise, Idaho 83701; phone: (208) 336-6941; Fax: (208) 336-0344;

Petroleum Equipment Institute (PEI), Publications Department, P.O. Box 2380, Tulsa, Oklahoma 74101; phone: (918) 494-9696; Fax: (918) 491-9895; URL: <http://www.pei.org/>;

Steel Tank Institute (STI), 570 Oakwood Road, Lake Zurich, Illinois 60062; phone: (708) 438-8265, extension 4331; Fax: (708) 438-8766; URL: <http://www.steeltank.com/>;

Underwriters Laboratories, Inc. (UL), Standards Department, 333 Pfingsten Road, Northbrook, Illinois 60062; phone: (708) 272-8800; Fax: (708) 272-8129; URL: <http://www.ul.com/>;

Underwriters Laboratories of Canada (ULC), Standards Department, 7 Crouse Road, Scarborough, Ontario M1R 3A9; phone: (416) 757-3611; Fax: (416) 757-8915; URL: <http://www.ulc.ca/>;

2. In addition to the organizations listed in Note 1, above, other sources of nationally-recognized codes of practice include:

American National Standards Institute (ANSI), Sales Department, 11 West 42nd Street, New York, New York 10036; phone: (212) 354-3300; Fax: (212) 302-1286; URL: <http://www.ansi.org/>;

Fiberglass Petroleum Tank & Pipe Institute, 9801 Westheimer, Suite 606, Houston, Texas 77042; phone: (713) 465-3310; Fax: (713) 465-6544; URL: <http://www.fiberglasstankandpipe.com/>;

United States Department of Labor, Occupational Safety and Health Administration (OSHA), Publication Office, Francis Perkins Building, 200 Constitution Avenue, NW, Room N-3101, Washington, D.C. 20210; phone: (202) 219-8148; Fax: (202) 219-9266; URL: <http://www.osha.gov/>.

3. A UST installed in an area that has been given a special designation for drinking water protection by a local government may be subject to additional requirements imposed by the local government.

18 AAC 78.030. REQUIREMENTS TO UPGRADE A UST SYSTEM.

(a) A person who upgrades a UST shall meet the

- (1) requirements of this section;
- (2) spill and overfill control requirements of 18 AAC 78.040; and
- (3) applicable requirements of 18 AAC 78.060 - 18 AAC 78.070.

(b) A UST that requires upgrading may be upgraded only by a person certified under this chapter and must be installed using nationally-recognized codes of practice specified in 18 AAC 78.025(e).

(c) Metal piping that routinely contains petroleum and that is in contact with the ground must be cathodically protected using nationally-recognized codes of practice specified in 18 AAC 78.025(f)(6) and must meet the requirements of 18 AAC 78.025(e)(3)(B) - (D).

(d) Steel tanks must be upgraded to meet one of the following requirements, using a nationally-recognized code of practice as specified in 18 AAC 78.025 and 18 AAC 78.055:

(1) a tank may be upgraded by internal lining if

(A) the lining is installed as required by 18 AAC 78.055(c);

(B) the internal lining or lining system used is specifically designed for that purpose, is compatible with the product stored, and meets applicable national standards specified in 18 AAC 78.055(c);

(C) a certified copy of the internal lining or lining system specifications and installation instructions, safety precautions, and other documentation is provided to the department by the manufacturer, including

(i) approvals by independent testing laboratories and other independent evaluation results that indicate compliance with the approved standards;

- (ii) approvals by other government agencies;
 - (iii) chemical compatibility data for common fuels; and
 - (iv) copies of guarantees or warranties; and
- (D) within 10 years after lining, and every five years after that, the lined tank is internally inspected and found to be structurally sound, with the lining still performing in accordance with the original design specifications;
- (2) a tank may be upgraded by cathodic protection if the
- (A) cathodic protection system complies with 18 AAC 78.025(e)(3)(B) - (D);
- and
- (B) the integrity of the tank is ensured by using one of the following methods:
- (i) the tank is internally inspected and assessed to ensure that the tank is structurally sound and free of corrosion holes before installing the cathodic protection system;
 - (ii) the tank has been installed for less than 10 years and is monitored monthly for releases using a method specified in 18 AAC 78.065(e)-(j);
 - (iii) the tank has been installed for less than 10 years and is assessed for corrosion holes by conducting two tightness tests that meet the requirements of 18 AAC 78.065(d); the first test must be conducted before installing the cathodic protection system, and the second test must be conducted between three and six months after the first operation of the cathodic protection system; or
 - (iv) the tank is assessed for corrosion holes by a method that is found by the department to prevent releases in a way that is no less protective of human health and safety and the environment than (i) - (iii) of this subparagraph; or
- (3) a tank may be upgraded by internal lining combined with cathodic protection if
- (A) the lining is installed as required by 18 AAC 78.055(c); and
 - (B) the cathodic protection complies with 18 AAC 78.025(e)(3)(B)-(D);
- (4) a STI-P₃® steel tank may be upgraded to cathodic protection if the
- (A) tank can be verified by the Steel Tank Institute to have been constructed in accordance with Steel Tank Institute Specification STI-P3-01, *STI-P₃® Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks*, adopted by reference in 18 AAC 78.025(f);
 - (B) upgrade is performed by a person certified under this chapter in UST installation; and
 - (C) upgrade is done in accordance with the Steel Tank Institute Specification R-972-01, *Recommended Practice for the Addition of Supplemental Anodes to STI-P₃® USTs*, adopted by reference in 18 AAC 78.025(f).

(e) The department will, in its discretion, inspect or require inspection of an upgrade to determine compliance with this section. If the department requires an inspection, it must be conducted by an independent third party certified under this chapter. (Eff. 3/25/91, Register 118; am 11/3/95, Register 136; am 1/22/99, Register 149; am 6/25/99, Register 150; am 1/30/2003, Register 165)

Authority: AS 46.03.020 AS 46.03.365 AS 46.03.375

18 AAC 78.035. CHANGES IN CONFIGURATION OF SYSTEM.

An owner or operator who intends to significantly reconfigure a UST shall notify the department at least 15 days, but not more than 60 days before beginning work on the proposed change, using a form provided by the department. (Eff. 3/25/91, Register 118)

Authority: AS 46.03.020 AS 46.03.365 AS 46.03.390

18 AAC 78.040. SPILL AND OVERFILL CONTROL.

(a) To prevent spilling and overfilling associated with transfer of petroleum to a UST, the owner or operator of a UST system shall, subject to (e) of this section, use the following spill and overfill prevention equipment:

(1) spill prevention equipment, such as a spill catchment basin, that will prevent release of the petroleum to the environment when the transfer hose is detached from the fill pipe; and

(2) overfill prevention equipment that will

(A) automatically shut off flow into the tank when the tank is no more than 95 percent full; or

(B) alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or by triggering a high-level alarm.

(b) The owner or operator shall ensure that

(1) a release due to spilling or overfilling does not occur;

(2) the volume available in the tank is greater than the volume of petroleum to be transferred to the tank before the transfer is made;

(3) the transfer operation is constantly monitored to prevent overfilling or spilling;

(4) the distributor is provided with the current UST tag, decal, or notice before the transfer is made; and

(5) any spill or overfill is reported and investigated, and that appropriate corrective action is completed.

(c) The owner or operator is not required to use the spill and overfill prevention equipment specified in (a) of this section if

(1) alternative equipment is used that, in the department's judgment, is no less protective of human health and safety and the environment than the equipment specified in (a) of this section; or

(2) the UST is filled by transfers of no more than 25 gallons at one time.

(d) The owner or operator shall report, investigate, and complete corrective action on a spill or overfill as required by 18 AAC 78.200 - 18 AAC 78.276.

(e) If a UST system has one or more of the following, the owner or operator of the system shall not use a ball float valve or a vent restrictor shut-off device on that system:

(1) a tank that receives a pumped delivery;

(2) suction piping with air eliminators;

(3) remote fill pipes and gauge openings;

(4) an emergency generator or an oil heating tank.

(f) To satisfy the recordkeeping requirements of 18 AAC 78.100(f), the owner or operator may maintain a log to show compliance with the requirements of this section for each transfer operation. The owner or operator may use a log form provided by the department or an equivalent form. The department's log form calls for the following information:

(1) the facility name and ID number;

(2) the product type, distributor name, and transfer personnel;

(3) the date and time of the transfer;

(4) the tank number, tank contents, and tank size;

(5) amount of fuel in tank before delivery;

(6) amount of ullage before delivery;

(7) amount delivered; and

(8) information relating to any spill or overfill that may have occurred during the transfer.

(g) In this section, "ullage" means the volume of the space between the product level in a tank and the top of the tank, expressed in gallons. (Eff. 3/25/91, Register 118; am 11/3/95, Register 136; am 1/22/99, Register 149; am 1/30/2003, Register 165)

Authority: AS 46.03.020 AS 46.03.380 AS 46.03.405
AS 46.03.365

Editor's note: To assist in meeting the requirements of 18 AAC 78.040, the transfer procedures in the National Fire Protection Association Publication 385 may be used as guidance. Further guidance on spill and overfill prevention appears in American Petroleum Institute Publication 1621, *Recommended Practice for Bulk Liquid Stock Control at Retail Outlets*, and National Fire Protection Association Standard 30, *Flammable and Combustible Liquids Code*. A copy of each document is available for review at the department's Anchorage, Fairbanks, Juneau, or Soldotna offices, or may be obtained from the appropriate publisher at the address listed in the editor's note at 18 AAC 78.025.

18 AAC 78.045. OPERATION AND MAINTENANCE OF CORROSION PROTECTION.

(a) The owner or operator of a steel UST with corrosion protection shall meet the requirements of this section to ensure that a release caused by corrosion is prevented while the system is used to store petroleum.

(b) A corrosion protection system must be operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank and piping that routinely contains petroleum and that is in contact with the ground. This requirement applies to single and double wall steel tanks and piping.

(c) A UST with a cathodic protection system must be inspected for proper operation by a cathodic protection tester or corrosion expert. An inspection under this subsection must be conducted as follows:

(1) a cathodic protection system must be tested within six months after installation and at least every three years after that, or according to another reasonable testing schedule approved by the department; and

(2) the criteria used to determine if cathodic protection is adequate under this section must be in accordance with the National Association of Corrosion Engineers Standard RP0285-2002, *Standard Recommended Practice-Corrosion Control of Underground Storage Tank Systems by Cathodic Protection*, 2002, adopted by reference in 18 AAC 78.025(f).

(d) The department will, in its discretion, approve a standard other than that specified in (c)(2) of this section if the department finds it to be no less protective of human health, safety, and the environment than the standard specified.

(e) A UST with an impressed current cathodic protection system must be inspected every 60 days to ensure that the equipment is running properly. The owner or operator shall document the findings of each inspection. The owner or operator may use a form provided by the department or an equivalent form to document those findings. If the inspection of the impressed current cathodic protection system indicates a redline of zero, the owner or operator shall notify the department and take corrective action to investigate and, if necessary, to correct the problem.

(f) As required by 18 AAC 78.100(f), the owner or operator of a UST with cathodic protection shall keep records of the operation of the cathodic protection system which are sufficient to demonstrate compliance with the performance standards set out in this section, including the results of

(1) the last three inspections required in (e) of this section; or

(2) testing from the last two inspections required in (c) of this section. (Eff. 3/25/91, Register 118; am 11/3/95, Register 136; am 1/30/2003, Register 165)

Authority: AS 46.03.020 AS 46.03.365 AS 46.03.375

Editor's note: Information about how to review or obtain a copy of the document referred to in 18 AAC 78.045 is in the editor's note at 18 AAC 78.025.

18 AAC 78.050. COMPATIBILITY.

(a) A UST must be made of or lined with material that is compatible with the petroleum stored in the system. An owner or operator storing alcohol blends may use the following codes to comply with the requirements of this subsection:

(1) the American Petroleum Institute Recommended Practice 1626, *Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Service Stations*, April 1985, reaffirmed June 2000, the provisions of which are adopted by reference; or

(2) the American Petroleum Institute Recommended Practice 1627, *Storage and Handling of Gasoline-Methanol/Cosolvent Blends at Distribution Terminals and Service Stations*, August 1986, reaffirmed October 1993, the provisions of which are adopted by reference.

(b) The department will, in its discretion, approve a standard or code other than those specified in (a) of this section if the department finds it to be no less protective of human health, safety, and the environment than the standards specified.

(c) For purposes of this section, "compatible" means that the UST, and any UST lining, is designed to prevent the release or threatened release of the stored substance. (Eff. 3/25/91, Register 118; am 11/3/95, Register 136; am 1/30/2003, Register 165)

Authority: AS 46.03.020 AS 46.03.365

Editor's note: The publications referred to in 18 AAC 78.050 are available for review at the department's Anchorage, Fairbanks, Juneau, and Soldotna offices, or a copy may be obtained from the appropriate publisher at the address listed in the editor's note at 18 AAC 78.025.

18 AAC 78.055. REPAIRS ALLOWED.

(a) The owner or operator of a UST shall ensure that any repairs to the UST will prevent a release caused by structural failure or corrosion while the UST is used to store petroleum. Repairs must meet the following requirements:

(1) repairs must be conducted using a nationally-recognized code of practice and must be conducted by a person certified under this chapter;

(2) repairs to tanks constructed of fiberglass-reinforced plastic or another corrosion-resistant material must be made by the manufacturer's authorized representative;

(3) metal pipe sections and fittings that have released petroleum as a result of corrosion or other damage must be replaced;

(4) pipes and fittings constructed of fiberglass-reinforced plastic or another corrosion-resistant material must be repaired as specified by the manufacturer;

(5) repaired tanks and piping must be tightness tested as required by 18 AAC 78.065(d) and 18 AAC 78.070(c) within 30 days after repairs are complete and before being placed back in operation, unless the repaired

(A) tank is internally inspected, using a nationally-recognized code of practice; and

(B) portion of the UST is monitored monthly for releases, using a method specified in 18 AAC 78.065(e)-(j); and

(6) within six months after the repair of a cathodically protected UST, the cathodic protection system must be tested as required by 18 AAC 78.045(c) and (e) to ensure that it is operating properly.

(b) As required by 18 AAC 78.100, the owner or operator shall keep records of each repair made under this section for the remaining operating life of the system.

(c) Unless the department, in its discretion, approves another procedure, code, or standard found by the department to be no less protective of human health and safety and the environment than the procedures, codes, and standards set out in this subsection, the owner or operator shall use the following procedures, codes, and standards, the provisions of which are adopted by reference, to meet the requirements of (a) of this section:

(1) National Fire Protection Association Standard 30, *Flammable and Combustible Liquids Code*, 2000 Edition;

(2) American Petroleum Institute Recommended Practice 2200, *Repairing Crude Oil, Liquefied Petroleum Gas, and Product Pipelines*, Third Edition, May 1994, reaffirmed May 1999;

(3) American Petroleum Institute Standard 1631, *Interior Lining and Periodic Inspection of Underground Storage Tanks*, Fifth Edition, June 2001; and

(4) National Leak Prevention Association Standard 631, *Entry, Cleaning, Interior Inspection, Repair and Lining of Underground Storage Tanks*, 1991.

(d) For purposes of this section, after a release has occurred, "repair" means to correct or restore a UST, or any part of a UST, that routinely contains petroleum, including repairs to the tank vessel, pipes, valves, fillpipes, or vents. "Repair" does not include routine maintenance. (Eff. 3/25/91, Register 118; am 11/3/95, Register 136; am 1/30/2003, Register 165)

Authority: AS 46.03.020 AS 46.03.365 AS 46.03.375

Editor's note: Information about how to review or obtain a copy of the publications adopted by reference in 18 AAC 78.055 is in the editor's note at 18 AAC 78.025.

18 AAC 78.060. RELEASE DETECTION AND REPORTING.

(a) Except for a UST used solely to fuel an emergency power generator, the owner or operator of a new or existing UST shall provide a method, or combination of methods, of release detection described at 18 AAC 78.065 and 18 AAC 78.070 that

(1) can detect a release from any part of the tank, including the connected underground piping, that routinely contains petroleum;

(2) is installed, calibrated, operated, and maintained according to the manufacturer's instructions, including routine maintenance and service checks for operability or running condition;

(3) meets the performance requirements in 18 AAC 78.065 or 18 AAC 78.070, with any performance claims and the manner of determination described in writing by the equipment manufacturer or installer; and

(4) is capable of detecting a leak as specified at 18 AAC 78.065(c), (d), (e), (i), or (j) or 18 AAC 78.070(b), (c), or (d) with a probability of detection of 95 percent and a probability of false alarm of five percent, if the method is used after December 22, 1990; this paragraph does not apply to a method permanently installed before December 22, 1990.

(b) When a release detection method indicates a release may have occurred, the owner or operator shall notify the department as required by 18 AAC 78.200(a).

(c) Repealed 11/3/95.

(d) The owner or operator of an existing UST who cannot apply a method of release detection meeting the requirements of this section shall permanently close the UST in accordance

with 18 AAC 78.085. (Eff. 3/25/91, Register 118; am 11/3/95, Register 136; am 1/30/2003, Register 165)

Authority: AS 46.03.020 AS 46.03.365 AS 46.03.395

18 AAC 78.065. RELEASE DETECTION METHODS AND MONITORING FOR TANKS.

(a) Each method of release detection for tanks that is used to meet the requirements of 18 AAC 78.060 and 18 AAC 78.070 must meet the requirements of this section. Using one method or a combination of the methods listed in this section, an owner or operator shall monitor each tank for releases at least once every 30 days.

(b) **Inventory Control.** Inventory control must be capable of detecting a release of at least 1.0 percent of flow-through plus 130 gallons monthly. Inventory control must be conducted monthly as follows:

- (1) inventory volume measurements are recorded each operating day for petroleum
 - (A) inputs;
 - (B) withdrawals; and
 - (C) amount remaining in the tank;
- (2) the equipment used is capable of measuring the level of petroleum over the full range of the tank's height to the nearest one-eighth of an inch;
- (3) at the time of delivery, inputs of petroleum are reconciled with delivery receipts, by measurement of the tank inventory volume before and after delivery;
- (4) deliveries are made through a drop tube that extends to within one foot of the tank bottom;
- (5) dispensing is metered and recorded within state standards for meter calibration;
- (6) at least once a month, the measurement of any water level in the bottom of the tank is made to the nearest one-eighth of an inch; and
- (7) the information generated under this subsection must be reviewed and analyzed monthly by the owner or operator.

(c) **Manual Tank Gauging.** Manual tank gauging as a release detection method may be used in the following circumstances:

- (1) for tanks of 1,000 gallons or less nominal capacity, only if
 - (A) tank liquid level measurements are taken at the beginning and end of a time period set out in Table A of this subsection, during which no liquid is added to or removed from the tank;
 - (B) level measurements are based on the average of two consecutive stick readings at the beginning and the end of the appropriate period in Table A;
 - (C) the equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch; and
 - (D) testing is conducted at least once each week, and the four weekly results are averaged to obtain a monthly result; if the variation between the beginning and ending measurements exceeds the weekly or monthly standards in Table A, a leak is suspected, and the owner or operator is subject to 18 AAC 78.200 - 18 AAC 78.280;

TABLE A

Nominal Tank Capacity and Dimensions	Weekly Standard (one test)	Monthly Standard (average of four tests)	Minimum Test Duration
550 gallons or less	10 gallons	5 gallons	36 hours
551-999 gallons	13 gallons	7 gallons	36 hours
1,000 gallons (64" X 73")	9 gallons	4 gallons	44 hours
1,000 gallons (48" X 128")	12 gallons	6 gallons	58 hours
1,001 - 2,000 gallons	26 gallons	13 gallons	36 hours

(2) for tanks of 1,001 - 2,000 gallons nominal capacity in combination with tank tightness testing under (d) of this section, instead of monthly inventory control; and

(3) for tanks of greater than 2,000 gallons nominal capacity, never.

(d) **Tank tightness testing.** Tank tightness testing, or another test of equal performance, must be capable of detecting a 0.1 gallon per hour leak rate from any part of a tank, including the associated piping, that routinely contains petroleum, while accounting for the effects of thermal expansion or contraction of the petroleum, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table. To satisfy the requirements of this subsection, the owner or operator may use only tank tightness tests that have been developed and reviewed by a nationally-recognized association or third-party testing laboratory and that meet or exceed the criteria for the detection of leaks set out in the United States Environmental Protection Agency's manuals *Standard Test Procedures for Evaluating Leak Detection Methods: Volumetric Tank Tightness Testing Methods*, March 1990 (EPA/530/UST-90/004), and *Standard Test Procedures for Evaluating Leak Detection Methods: Nonvolumetric Tank Tightness Testing Methods*, March 1990 (EPA/530/UST-90/005), the provisions of which are adopted by reference. The tests required by this subsection must be performed by a person certified under this chapter. The owner or operator shall submit to the department a certified copy of the evaluation results indicating that the criteria have been met or exceeded and a copy of the manufacturer's test protocol. An owner or operator may use tank tightness testing only if the UST meets the performance standards set out in 18 AAC 78.025 or 18 AAC 78.030 and the owner or operator complies with the monthly inventory control requirements set out in (b) of this section or the manual tank gauging requirements set out in (c) of this section. If tank tightness testing is used, the test must be conducted every five years for ten years after the tank is installed or upgraded, whichever is later. The department may disapprove a tank tightness test or testing system under this subsection if the

(1) test or testing system fails to disclose leaks that fall within the boundaries of the criteria stated in this subsection; or

(2) tester is not certified by the manufacturer of the test or testing system.

(e) **Automatic tank gauging.** Equipment for automatic tank gauging that tests for the loss of petroleum or that conducts inventory control must be capable of detecting

(1) a 0.2 gallon per hour leak rate from any part of the tank that routinely contains petroleum; and

(2) a release of 150 gallons within a 30-day period, with a probability of detection of 95 percent and a probability of false alarm of five percent.

(f) **Soil gas vapor monitoring.** Vapor monitoring may be used only at certain sites and only with department approval. The department will, in its discretion, approve the testing or monitoring of soil gas vapors in the excavation zone if the following requirements are met:

(1) material used as backfill is sufficiently porous to readily allow diffusion of vapors from a release into the excavation area; for purposes of this paragraph, gravel, sand, or crushed rock are "sufficiently porous" materials;

(2) the stored petroleum, or a tracer compound placed in the tank system, is sufficiently volatile to result in a vapor level that is detectable by the monitoring devices located in the excavation zone if a release from the tank occurs; for purposes of this paragraph, gasoline is "sufficiently volatile;"

(3) the measurement of vapors by the monitoring device is not rendered inoperative by groundwater, rainfall, soil moisture, other local climatological, geologic, or hydrogeologic conditions, or other known interference so that a release could go undetected for more than 30 days;

(4) the level of background contamination in the excavation zone will not interfere with the method used to detect a release from the tank;

(5) the vapor monitors are designed and operated to detect any significant increase in concentration above background of

(A) petroleum stored in the tank system;

(B) a component or components of the petroleum; or

(C) a tracer compound placed in the tank system;

(6) the UST excavation zone is assessed as required by 18 AAC 78.090 to

(A) ensure compliance with (1) - (4) of this subsection; and

(B) establish the number and positioning of observation wells that will detect a release within the excavation zone from any part of a tank that routinely contains petroleum; and

(7) observation wells are clearly marked and secured to avoid unauthorized access and tampering.

(g) **Groundwater monitoring.** Groundwater monitoring may be used only if the groundwater is never more than 20 feet from the ground surface and only with department approval.

(h) **Interstitial monitoring.** Interstitial monitoring between the UST or pipe and a secondary barrier immediately around or beneath the UST or pipe may be used only if the system

(1) is designed, constructed, and installed to detect a leak from any part of a tank or pipe that routinely contains petroleum; and

(2) meets one of the following requirements:

(A) for a double-walled UST, including piping, the sampling or testing method is capable of detecting a release through the inner wall in any part of a tank or pipe that routinely contains petroleum;

(B) for a UST with a secondary barrier within the excavation zone, the sampling or testing method used is capable of detecting a release between the UST and the secondary barrier as follows:

(i) the secondary barrier around or beneath the UST consists of artificially constructed material that is sufficiently thick and impermeable to direct a release to the monitoring point and permit its detection; for purposes of this clause, "sufficiently thick and impermeable" means having a permeability of at least 10^{-6} cm/sec for the petroleum stored;

(ii) the barrier is compatible with the petroleum stored so that a release from the UST will not cause a deterioration of the barrier and allow a release to pass through undetected;

(iii) for a cathodically protected tank, the secondary barrier must be installed so that it does not interfere with proper operation of the cathodic protection system;

(iv) groundwater, soil moisture, or rainfall will not render the testing or sampling method inoperative so that a release could go undetected for more than 30 days;

(v) the site is assessed to ensure that the secondary barrier is always above the groundwater and not in a 25-year floodplain, unless the barrier and monitoring designs are for use under those conditions; and

(vi) monitoring wells are clearly marked and secured to avoid unauthorized access and tampering; or

(C) for a tank with an internally fitted liner, an automated device is capable of detecting a release between the inner wall of the tank and the liner, and the liner is compatible with the substance stored.

(i) **Statistical inventory reconciliation.** Statistical inventory reconciliation methods that analyze inventory records for the loss of petroleum and that are intended as a release detection method must meet the following requirements:

(1) the statistical analysis must be capable of detecting a 0.2 gallon per hour leak rate from any part of the tank that routinely contains petroleum; and

(2) the collection of inventory data must meet the requirements of (b) of this section.

(j) **Other methods.** Any other type of release detection method, or combination of such other methods, may be used with prior approval, if the method or combination of methods can, for volumetric release detection methods, detect a 0.2 gallon per hour leak rate or a release of 150 gallons in a 30-day period with a probability of detection of 95 percent and a probability of a false alarm of five percent. For non-volumetric release detection methods, the department may approve another method of release detection not described in (d) – (i) of this section, if the owner or operator shows that the method can detect a release as effectively as any of the methods allowed in (d) - (i) of this section. In comparing methods, the department will consider the size of release that the method can detect and the frequency and reliability with which it can be detected. If the method is approved, the owner or operator shall comply with any conditions imposed by the department on its use to ensure the protection of human health and safety and the environment.

(k) **Certification of performance standards.** The National Work Group on Leak Detection Evaluations' *List of Leak Detection Evaluations for Underground Storage Tank (UST) Systems*, Ninth Edition, November 21, 2001, shall be used to determine compliance with the applicable performance standards for automatic tank gauging, statistical inventory reconciliation, tightness testing, electronic interstitial monitoring, and automatic line leak detectors. The *List of Leak Detection Evaluations for Underground Storage Tank (UST) Systems*, Ninth Edition, November 21, 2001, is adopted by reference. (Eff. 3/25/91, Register 118; am 8/21/91, Register 119; am 11/3/95, Register 136; am 6/25/99, Register 150; am 1/30/2003, Register 165)

Authority: AS 46.03.020 AS 46.03.365 AS 46.03.375

Editor's note: 1. Practices described in the American Petroleum Institute Recommended Practice 1621, *Bulk Liquid Stock Control at Retail Outlets*, Fifth Edition, May 1993, may be used, if applicable, as guidance in meeting the requirements of (b)(6) of this section.

2. The provisions outlined in the Steel Tank Institute's *Standard for Dual Wall Underground Steel Storage Tanks*, F841-01, revised June 1, 2001, may be used as guidance for aspects of the

design and construction of underground steel double-walled tanks as described in (h)(2)(A) of this section.

3. The information described in the United States Environmental Protection Agency's document *Detecting Leaks, Successful Methods Step-by-Step*, Chapter 4, November 1989 (EPA/530/UST-89/012), may be used as guidance for tank tightness testing.

4. The National Work Group on Leak Detection Evaluation's *List of Leak Detection Evaluations for Underground Storage Tank (UST) Systems*, Ninth Edition, November 21, 2001, may be reviewed at the Department of Environmental Conservation's offices in Anchorage, Fairbanks, Juneau, and Soldotna or may be obtained on the Internet at <http://www.nwglde.org>.

5. The tank tightness testing documents referred to in Notes 1 and 2 are on file in the Office of the Lieutenant Governor and may be reviewed at the Department of Environmental Conservation's offices in Anchorage, Fairbanks, Juneau, and Soldotna, or may be obtained from the publisher at the address listed in the editor's note at 18 AAC 78.025.

6. The United States Environmental Protection Agency tank tightness testing documents referred to in Note 3 and in 18 AAC 78.065(d) are on file in the Office of the Lieutenant Governor and may be reviewed at the Department of Environmental Conservation's offices in Anchorage, Fairbanks, Juneau, and Soldotna, or may be obtained from:

United States Environmental Protection Agency (EPA), Office of Underground Storage Tanks, 401 M St., SW, Mail Code 54-02W, Washington, D.C. 20460; phone: (703) 308-8850; Fax: (703) 308-8505; URL: <http://www.epa.gov/>;

United States Government Bookstore, Room 194 Federal Building, 915 Second Avenue, Seattle, Washington 98174; phone: (206) 553-4270; Fax: (206) 553-6717; URL: <http://bookstore.gpo.gov/>.

18 AAC 78.070. RELEASE DETECTION METHODS AND MONITORING FOR PIPING.

(a) Each method of release detection for piping used to meet the requirements of 18 AAC 78.060 and 18 AAC 78.065 must be conducted as required by this section. Pressurized piping must meet the applicable requirements set out either in (b) and (c) of this section or in (b) and (d) of this section. Suction piping must meet the applicable requirements set out in (c) of this section and, if applicable, (d) of this section.

(b) **Automatic line leak detection.** An automatic leak detection method that alerts the operator to the presence of a leak by restricting or shutting off the flow of petroleum through piping or by triggering an audible or visual alarm may be used only if that method is capable of detecting a leak of three gallons per hour at 10 pounds per square inch line pressure within one hour. An annual test of the operation of the leak detector must be conducted in accordance with the manufacturer's requirements. A stand-alone sump sensor is not sufficient to meet this requirement.

(c) **Line tightness testing.** A tightness test of piping may be conducted only if the tightness test is capable of detecting a 0.1 gallon per hour leak rate at one and one-half times the line's normal operating pressure. The test must be performed by a person certified under this chapter. Where a line leak detector is installed on the piping that has the same leak detection capability as the tightness test specified in 18 AAC 78.065(d), the tightness test may be omitted. Except as otherwise permitted under (d) of this section, if pressurized piping is used, the line tightness test must be conducted annually, and if underground piping that conveys petroleum under suction is used, the line tightness test must be conducted at least every three years. However, no release detection is required for suction piping designed and constructed to meet the following standards:

- (1) the below-grade piping operates at less than atmospheric pressure and is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released;
- (2) only one check valve is included in each suction line;

(3) the check valve is located directly below and as close as practical to the suction pump; and

(4) a means is provided to readily determine that (1) – (3) of this subsection are satisfied.

(d) Notwithstanding the requirements of (c) of this section, any monitoring method set out in 18 AAC 78.065(f) - (j) may be used if that method is designed to detect a release from any part of the underground piping that routinely contains petroleum and that method is used monthly. (Eff. 3/25/91, Register 118; am 11/3/95, Register 136; am 1/30/2003, Register 165)

Authority: AS 46.03.020 AS 46.03.365 AS 46.03.375

18 AAC 78.075. RELEASE DETECTION MONITORING REQUIREMENTS.

Repealed.

(Eff. 3/25/91, Register 118; am 11/3/95, Register 136; repealed 1/30/2003, Register 165)

18 AAC 78.080. TEMPORARY CLOSURE.

(a) If a UST is temporarily closed, an owner or operator required to install corrosion protection and release detection equipment under this chapter shall continue operation and maintenance of that equipment during temporary closure.

(b) If a release is suspected or confirmed during the temporary closure, the applicable requirements of 18 AAC 78.200 - 18 AAC 78.280 must be met.

(c) Release detection is not required if the UST is taken out of service.

(d) If a UST is temporarily closed for three months or longer, the owner or operator shall

(1) leave vent lines open and functioning; and

(2) cap and secure all other lines, pumps, manways, and ancillary equipment.

(e) A substandard UST may be temporarily closed for more than 12 months only with department approval. The department will, in its discretion, grant approval under this subsection only if

(1) the UST meets the performance standards in 18 AAC 78.025 for a new UST, or the upgrading requirements of 18 AAC 78.030, except that the spill and overfill equipment requirements of 18 AAC 78.030(a) need not be met; and

(2) a site assessment is completed as required by 18 AAC 78.090.

(f) Unless the department has approved temporary closure for more than 12 months under (e) of this section, the owner or operator shall

(1) after 12 months permanently close a substandard UST as required by 18 AAC 78.085; and

(2) complete a site assessment as required by 18 AAC 78.090.

(g) No person may use temporary closure to avoid the upgrading requirements of 18 AAC 78.030.

(h) The owner or operator of a UST that is temporarily closed on a seasonal basis, because of weather or other seasonal conditions, may apply to the department for a waiver under this section. No waiver will be granted for the requirements of (b) or (d) of this section.

(i) An owner or operator of a UST that is temporarily closed shall maintain financial responsibility as required in 18 AAC 78.910. (Eff. 3/25/91, Register 118; am 11/3/95, Register 136; am 1/30/2003, Register 165)

Authority: AS 46.03.020 AS 46.03.365 AS 46.03.375

18 AAC 78.085. PERMANENT CLOSURE AND CHANGE-IN-SERVICE.

(a) At least 15 days, but not more than 60 days, before beginning permanent closure under (c) of this section or a change-in-service under (d) of this section, the owner or operator shall notify the department, in writing, on a form provided by the department. The department will waive the minimum 15-day notification period if the owner or operator demonstrates that meeting the notification deadline would prevent the project from being completed or would be detrimental to human health or safety or to the environment. The owner or operator shall report a change in the stated date of closure or change-in-service to the nearest department office in Anchorage, Fairbanks, Juneau, or Soldotna at least three days before the scheduled closure or change-in-service. If closure does not occur within 60 days after the date given in the notice, the owner or operator shall submit a new notice to the department, indicating the actual closure date. The requirements of this subsection do not apply if

(1) the closure or change-in-service is in response to corrective action under 18 AAC 78.200 - 18 AAC 78.240; in that case, notification is as specified in 18 AAC 78.200 - 18 AAC 78.240; or

(2) a UST is taken out of service because of an emergency; in that case, the owner or operator shall notify the

(A) department within 24 hours; and

(B) applicable local government and fire department; the owner or operator might be subject to additional requirements imposed by those agencies.

(b) A site characterization and assessment, if required, must be performed in accordance with 18 AAC 78.090 after notifying the department, local government, and fire department, but before completion of permanent closure or change-in-service.

(c) To permanently close a tank, the owner or operator shall empty and clean it by removing all liquids and accumulated sludge. A UST that is to be closed must be removed from the ground, along with all associated piping, or must be filled with an inert solid material. A UST associated with a known release must be removed from the ground unless the department allows the tank to remain in place because removal of the tank would endanger existing structures. The resulting excavation must be investigated and corrective action completed as required by 18 AAC 78.230 - 18 AAC 78.280 and 18 AAC 78.600 - 18 AAC 78.625. The owner or operator shall document the name of the disposal firm, the disposal method, and the disposal location for all liquids, sludges, and UST components, including tanks, piping, and equipment.

(d) Continued use of a UST to store a substance other than petroleum, or to store heating oil for consumptive use on the premises as the sole use of the UST, is considered a change-in-service. Before a change-in-service, the owner or operator shall

(1) empty and clean the tank by removing all liquid and accumulated sludge;

(2) conduct a site characterization as prescribed in 18 AAC 78.090; and

(3) conduct either a site assessment or a release investigation as prescribed in 18 AAC 78.090 and 18 AAC 78.235.

(e) With the notice required under (a) of this section, the owner or operator shall describe the intended method for disposal of the liquid and accumulated sludge removed under (c) or (d) of this section.

(f) Within 30 days after closure or change-in-service, the owner or operator shall submit a completed post-closure notice and comply with 18 AAC 78.090 and 18 AAC 78.210, if applicable.

(g) The following UST cleaning and closure procedures, the provisions of which are adopted by reference, must be used to comply with this section, unless the department, in its discretion, approves an alternate procedure determined by the department to be no less protective of human health and safety and of the environment:

(1) American Petroleum Institute Recommended Practice 1604, *Closure of Underground Petroleum Storage Tanks*, Third Edition, 1996;

(2) American Petroleum Institute Standard 2015, *Safe Entry and Cleaning of Petroleum Storage Tanks, Planning and Managing Tank Entry from Decommissioning Through Recommissioning*, Fifth Edition, 1994;

(3) American Petroleum Institute Standard 1631, *Interior Lining and Periodic Inspection of Underground Storage Tanks*, Fifth Edition, June 2001; and

(4) New England Interstate Water Pollution Control Commission, *Tank Closure Without Tears: An Inspector's Safety Guide*, 1988. (Eff. 3/25/91, Register 118; am 11/3/95, Register 136; am 1/22/99, Register 149; am 1/30/2003, Register 165)

Authority: AS 46.03.020 AS 46.03.365 AS 46.03.395

Editor's notes: 1. The requirements of (c) of this section might be affected by a local ordinance requiring removal as the only acceptable method of permanent closure. The owner or operator should check with the local fire department to determine if in-place closure is allowed.

2. The documents referred to in this section are on file in the Office of the Lieutenant Governor and may be reviewed at the Department of Environmental Conservation's offices in Anchorage, Fairbanks, Juneau, and Soldotna or may be obtained from the publisher at the address listed in the editor's note at 18 AAC 78.025.

18 AAC 78.090. SITE CHARACTERIZATION AND ASSESSMENT.

(a) When performing permanent closure or a change-in-service, the owner or operator shall complete a site characterization, and depending on the results of the site characterization, perform a site assessment or a release investigation.

(b) A site characterization must include one or more of the following:

- (1) a visual inspection of the site;
- (2) photographs documenting the site;
- (3) surface or subsurface soil and water sampling and analytical testing;
- (4) personal interviews; and
- (5) data review.

(c) If the results of the site characterization indicate that a release of petroleum has

(1) not occurred, the owner or operator shall perform a site assessment in accordance with (d) of this section; or

(2) occurred, or is likely to have occurred, the owner or operator shall proceed with corrective action under 18 AAC 78.200 - 18 AAC 78.280, including release notification and release investigation.

(d) A site assessment, if conducted, must be conducted as follows:

- (1) the site assessment must include an evaluation of the UST site to
 - (A) check for obvious leaks at the dispensers and at exposed pumps and piping;
 - (B) check for obvious soil or water contamination caused by a release or leakage from a UST;
 - (C) review the UST inventory control and repair records for indications of a release; and
 - (D) determine the
 - (i) general nature of the stored substance;
 - (ii) general nature of the subsurface soils; and
 - (iii) estimated depth to groundwater; and

(2) the site assessment must include the collection of soil samples; the number and location of samples collected is determined as follows:

- (A) for an in-place assessment

(i) of an individual tank that occupies a surface area less than 250 square feet, at least two borings or test pits must be placed within five feet of the tank, each at the midpoint along two sides of an imaginary rectangle drawn around the tank, with one of the borings or pits located on the side parallel to the end of the tank that has the fill point and the second boring or pit located on the side parallel to the length of the tank where contamination is most likely to be present, as determined by field screening conducted as required by the *UST Procedures Manual*;

(ii) of an individual tank that occupies a surface area equal to or greater than 250 square feet, at least two borings or test pits must be placed within five feet of the tank, as required under (i) of this subparagraph; one additional sample must be collected for each additional 250 square feet of surface area, or portion thereof over the initial 250 square feet, at points where contamination is most likely to be present, as determined by field screening conducted as required by the *UST Procedures Manual*; for example, if the total surface area is 1,270 square feet, five additional samples are required;

(iii) of multiple tanks, the borings or test pits for each tank must be placed according to (i) or (ii) of this subparagraph, as applicable; the same boring or test pit may be used to satisfy the requirements applicable to more than one tank, if that boring or test pit meets the requirements for each tank separately;

(iv) of dispensing areas, at least one boring or test pit must be placed adjacent to any UST dispensing equipment; if multiple dispensers exist on a common dispensing island, then one boring or test pit may be placed at the midpoint between the dispensers; if multiple dispensing islands exist, then additional borings or test pits are required at each island; if a canopy exists in a configuration that prevents excavating or boring equipment from operating adjacent to the dispensers or dispenser islands, samples may be collected as close as possible to the dispenser islands;

(v) of in-place piping, at least one boring or test pit must be placed adjacent to the piping at points where contamination is most likely to be present, as determined by field screening conducted as required by the *UST Procedures Manual*;

(vi) soil samples for assessments under this subparagraph must be collected from each boring or test pit at an elevation that is below, and within two feet of, the tank bottom and that is within two feet below the lowest point of the piping for the UST dispensing equipment; and

(vii) in this subparagraph, “surface area” is the sum of the tank length plus five feet multiplied by the sum of the tank diameter, or width for square tanks, plus five feet;

(B) for assessment of a closure by removal

(i) of an individual tank with an excavated pit area less than 250 square feet, at least two samples must be collected from two different positions in the pit area, with position one on the longitudinal axis, centered between the ends of the tank, underneath where the tank was located, and position two on the longitudinal axis, underneath where the tank was located, where contamination is most likely to be present, as determined by field screening conducted as required by the *UST Procedures Manual*, but not including position one;

(ii) of an individual tank with an excavated pit area equal to or greater than 250 square feet, at least two samples must be collected from the pit area as required under (i) of this subparagraph; one additional sample must be collected for each additional 250 square feet of pit area, or portion thereof over the initial 250 square feet, at points where contamination is most likely to be present, as determined

by field screening conducted as required by the *UST Procedures Manual*; for example, if the total pit area is 1,270 square feet, five additional samples are required;

(iii) of multiple tanks, by taking the samples for each excavated pit area according to (i) or (ii) of this subparagraph, as applicable; the same sample location may be used to meet the requirements applicable to more than one tank, if that sample location meets the requirements for each tank separately;

(iv) of dispensing areas, at least one sample must be collected where the dispenser had been located;

(v) of piping trenches, at least one sample must be taken at points along the piping trench where contamination is most likely to be present;

(vi) soil samples for assessments under this subparagraph must be collected from native soils located at an elevation that is below, and within two feet of the bottom of, the excavated pit, and that is within two feet below the lowest point of the piping for the UST dispensing equipment; and

(vii) in this subparagraph, “the excavated pit area” is determined by the amount of ground surface that was excavated;

(C) repealed 1/22/99;

(D) if the borings or test pits cannot be placed or if samples cannot be collected in the manner described in (A) and (B) of this paragraph, any alternative sample location plans must be approved by the department; and

(E) if the tank or associated piping will be removed as part of closure activities, the minimum site assessment sampling for the portion of the UST system removed must be conducted as provided in (B) of this paragraph;

(3) if groundwater is encountered while undertaking the requirements of this subsection and the groundwater prevents the collection of representative soil samples as required in (2) of this subsection, then

(A) soil samples must be collected within the first six inches of the vadose zone above the zone of seasonal water table fluctuation as close as possible to the locations described in (2) of this subsection; and

(B) for the removal of an individual tank, soil samples must be collected from the walls of the excavation next to the ends of the tank at the soil/water interface; for the removal of multiple tanks from the same pit area, soil samples must be collected from each of the four walls of the excavation at the soil/water interface;

(4) if groundwater or the seasonal high water table is known or suspected to exist at a depth from the surface to within five feet below the bottom of the tank, then

(A) at least one boring or test pit must reach groundwater or the zone of seasonal water table fluctuation in an undisturbed portion of the excavation pit area or adjacent to the excavation; and

(B) at least one soil sample must then be collected from the first six inches of groundwater-saturated soil or the zone of seasonal water table fluctuation in accordance with the *UST Procedures Manual*; and

(5) within 60 days after closure or a change-in-service, the owner or operator shall provide to the department a site assessment report that includes a compilation of the information collected and results obtained under (1) - (4) of this subsection and

(A) the owner's name and address;

(B) the operator's name and address, if different from the owner;

(C) the location of the UST, including the legal description by

(i) subdivision lot, block, or tract information; or by section lot, tax lot, or government lot number; or

(ii) meridian, township, range, section, and nearest quarter section locations within the section if the location cannot be described under (i) of this subparagraph;

(D) the UST registration number assigned by the department;

(E) the name and business address of each person who supervised the site assessment;

(F) a site sketch that approximately shows

(i) the location and configuration of tanks and piping;

(ii) the sample locations, including depth below grade;

(iii) the proximity to property, buildings, and residences;

(iv) any sites where a release has occurred;

(v) any sites where free product has been or is located;

(vi) the facility and property boundaries;

(vii) a bar scale and north arrow; and

(viii) any other pertinent information;

(G) a narrative description of activities conducted at the site and the dates the activities occurred;

(H) any historical information encountered during the assessment regarding a previous release, repair, spill, or corrective action; and

(I) the data report required in the *UST Procedures Manual*, Section 8.4;

(e) The collection of field data and the interpretation and reporting of site characterization and site assessment data must be conducted or supervised by a qualified, impartial third party in accordance with the *UST Procedures Manual*.

(f) The department will on a site-specific basis, waive the requirement for use of an impartial third party if the owner or operator demonstrates that work performed will be conducted or supervised by a qualified and objective person, and if the department determines that a waiver is protective of human health and safety, and of the environment. To request a waiver under this subsection, the owner or operator shall submit

(1) a resume of the person qualified to conduct or supervise the work to be performed, showing relevant education, vocational training, related work experience, and any special training, license, certificate, or registration held by that person;

(2) a description of the supervisory and organizational structure related to the person identified in (1) of this subsection; and

(3) a written request for a waiver under this subsection.

(g) Laboratory analyses submitted to fulfill the requirements of this section must be performed by a laboratory approved by the department under 18 AAC 78.800 - 18 AAC 78.810.

(h) The owner or operator shall use the analytical methods set out in Table 1, Chapter 2 of the *UST Procedures Manual* for site assessment analysis.

(i) Repealed 1/30/2003.

(j) Further investigation is not required if

(1) the assessment, observations, and investigations of the UST site indicate that a release has not occurred; and

(2) the results of sample analysis indicate that

(A) groundwater cleanup levels in 18 AAC 75.345 are not exceeded at the UST site;

(B) surface water quality standards in 18 AAC 70.020(b) are not exceeded at the UST site; and

(C) soil cleanup levels in 18 AAC 75.340 – 18 AAC 75.341 are not exceeded at the UST site.

(k) If contaminated soil, petroleum vapor, contaminated surface water, or contaminated groundwater is discovered during a site assessment, or at any other time, the owner or operator shall

proceed with corrective action under 18 AAC 78.200 - 18 AAC 78.280, including release notification and release investigation. (Eff. 3/25/91, Register 118; am 8/21/91, Register 119; am 11/3/95, Register 136; am 1/22/99, Register 149; am 6/25/99, Register 150; am 1/30/2003, Register 165)

Authority: AS 46.03.020 AS 46.03.380 AS 46.03.405
AS 46.03.365

Editor's note: The EPA document adopted by reference in 18 AAC 78.090 may be obtained from United States Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, (800) 553-6847, Fax: (703) 605-6900, and may be reviewed at the department's Anchorage, Fairbanks, Juneau, and Soldotna offices.

18 AAC 78.095. APPLICABILITY TO PREVIOUSLY CLOSED UST SYSTEMS.

If the department determines that a release from a UST that was permanently closed before December 22, 1988, might pose a current or potential threat to human health, safety, or the environment, the department will direct the owner or operator of the UST to assess the site as required by 18 AAC 78.090 and to close the UST as required by 18 AAC 78.085. (Eff. 3/25/91, Register 118)

Authority: AS 46.03.020 AS 46.03.365

18 AAC 78.100. INSPECTION, REPORTING, AND RECORDKEEPING REQUIREMENTS.

- (a) The owner or operator of a UST shall cooperate fully
 - (1) during inspections, monitoring, and testing conducted by the department, its designee, or a representative of the United States Environmental Protection Agency; and
 - (2) in response to requests for document submission, testing, and monitoring required under 42 U.S.C. 6991d, as amended through September 22, 1995.
 - (b) The owner or operator of a UST shall submit to the department
 - (1) the applicable registration information and forms required by AS 46.03.380(b), 46.03.385(d), 46.03.400, and 18 AAC 78.015;
 - (2) if applicable, reports of
 - (A) the site assessment as required by 18 AAC 78.090(d)(5), including a site assessment summary, on a form provided by the department or a similar format that provides the same information;
 - (B) the release investigation as required by 18 AAC 78.235, including a release investigation summary, on a form provided by the department or a similar format that provides the same information;
 - (C) a suspected release as required by 18 AAC 78.200;
 - (D) a spill or overfill as required by 18 AAC 78.040;
 - (E) a confirmed release as required by 18 AAC 78.220;
 - (F) corrective actions planned or taken, including
 - (i) initial abatement, as required by 18 AAC 78.230 and 18 AAC 78.235;
 - (ii) free product removal, as required by 18 AAC 78.240;
 - (iii) soil and groundwater cleanup levels met, as required by 18 AAC 78.600 - 18 AAC 78.625; and
 - (iv) a copy of the corrective action plan described in 18 AAC 78.250;
- and

(G) an inspection as required by 18 AAC 78.017.

(c) Within 30 days after closure, the owner or operator shall notify the department as to whether all applicable local, state, and federal closure requirements were met.

(d) Within 30 days after closure or change-in-service, the owner or operator shall provide to the department a post-closure notice as required by 18 AAC 78.085.

(e) Within 60 days after closure or change-in-service, the owner or operator shall provide to the department a site assessment report if required by, and as prescribed in, 18 AAC 78.090.

(f) The owner or operator shall keep the following records for as long as the UST is used to store petroleum:

(1) records that show compliance with all applicable requirements of this chapter, including

(A) documentation of operation of corrosion protection equipment as required by 18 AAC 78.045(f);

(B) documentation of UST upgrades under 18 AAC 78.030 and repairs under 18 AAC 78.055;

(C) proof of compliance with applicable release detection requirements of 18 AAC 78.060 - 18 AAC 78.070; and

(D) results of all operations inspection reports as required under 18 AAC 78.017, until the UST is permanently closed; and

(2) information about any suspected or confirmed release and corrective actions.

(g) The results of any site characterization or site assessment performed under 18 AAC 78.090 shall be retained for at least three years after closure or change-in-service by either the

(1) owner or operator who closed the UST or changed its service; or

(2) current owner or operator of the UST site.

(h) In addition to the requirements of (f) and (g) of this section, the owner or operator shall keep the following records for the period indicated:

(1) leak detection manuals and written performance claims concerning any release detection system used, and the manner in which the claims have been justified or tested by the equipment manufacturer or installer shall be kept for five years after the date of installation or as long as the leak detection system is in service, whichever period is longer;

(2) the results of any sampling, testing, or monitoring must be kept for at least one year, except that the results of tank tightness testing conducted under 18 AAC 78.065(d) must be kept until the next test is conducted;

(3) written documentation of calibration, maintenance, and repair of release detection equipment permanently located onsite must be kept for at least one year after the work is completed;

(4) schedules of required calibration and maintenance provided by the release detection equipment manufacturer must be kept for at least five years; and

(5) for a UST installed between December 22, 1988 and March 25, 1991, the certificate of installation required by 40 C.F.R. 280.20(e) at the time of registration must be kept for the operational life of the UST.

(i) The owner or operator shall keep the records required under this section at the UST site, or at a readily available alternative site, and shall provide the records for department inspection upon request. (Eff. 3/25/91, Register 118; am 8/21/91, Register 119; am 11/3/95, Register 136; am 1/22/99, Register 149; am 6/25/99, Register 150; am 8/15/99, Register 151; am 1/30/2003, Register 165)

Authority:	AS 46.03.020	AS 46.03.390	AS 46.03.400
	AS 46.03.365	AS 46.03.395	AS 46.03.405
	AS 46.03.380		

ARTICLE 2. CORRECTIVE ACTION FOR LEAKING UNDERGROUND STORAGE TANKS

Section

- 200. Investigating a suspected release
- 210. Investigation methods
- 220. Release notification and response
- 230. Initial abatement
- 235. Release investigation
- 240. Corrective action
- 250. Corrective action plan
- 260. Corrective action plan approval
- 270. Corrective action plan revisions
- 271. General corrective action requirements
- 273. Offsite or portable soil treatment facilities
- 274. Storage, movement, and disposal of soil and groundwater
- 275. Sampling and analysis
- 276. Final corrective action report requirements and site closure
- 280. Public participation

18 AAC 78.200. INVESTIGATING A SUSPECTED RELEASE.

(a) If a release of petroleum is suspected, the owner or operator of the UST shall investigate the UST site using methods required by 18 AAC 78.210, and shall report any of the following conditions to the department in the manner and at the times described in 18 AAC 78.220(b) - (e):

(1) the discovery by the owner, operator, or another person of released petroleum at the UST site or in the surrounding area, including the presence of free product, soil contamination, surface water or groundwater contamination, or the presence of vapors in soils, basements, sewer or utility lines, or nearby surface water or groundwater;

(2) unusual operating conditions observed by the owner, operator, or another person, including the erratic behavior of dispensing equipment, the sudden loss of petroleum from the UST, or an unexplained presence of water in the tank; if system equipment is found to be defective but not leaking, and is immediately repaired or replaced and retested, a report to the department is not required; and

(3) release detection monitoring results under 18 AAC 78.060 – 18 AAC 78.070 indicate a release might have occurred, including two consecutive months of invalid or inconclusive results; a report to the department is not required under this paragraph if

(A) the monitoring device is found to be defective and is immediately repaired, recalibrated, or replaced, and additional monitoring does not confirm the initial result; or

(B) in the case of inventory control, a second month of data does not confirm the initial result.

(b) The department will, in its discretion, require the owner or operator of a UST system to investigate for a release of petroleum as required by 18 AAC 78.210 to determine if a UST is the source of off-site impacts. For purposes of this subsection, "off-site impacts" include the discovery of free product, soil contamination, surface water or groundwater contamination, or the presence of vapors in soils, basements, sewer and utility lines, or nearby surface water or groundwater as directly observed by the department or brought to the department's attention by another person. (Eff. 3/25/91, Register 118; am 11/3/95, Register 136; am 1/30/2003, Register 165)

Authority: AS 46.03.020 AS 46.03.365

18 AAC 78.210. INVESTIGATION METHODS.

(a) Unless corrective action is taken under 18 AAC 78.220 - 18 AAC 78.270, within seven days after learning of a suspected release of petroleum that requires reporting under 18 AAC 78.220, the owner or operator of a UST shall begin to investigate to confirm the release by conducting either a site assessment under 18 AAC 78.090 or a system test as described in this section. The department will, in its discretion, require both a site assessment and a system test.

(b) **System Test.** The owner or operator shall conduct a test as described in 18 AAC 78.065(d) and 18 AAC 78.070(c) to determine if a release has occurred in that part of a tank that routinely contains petroleum, or the attached delivery piping, or both. If the UST system fails the system test under this subsection, the release is considered confirmed, and the owner or operator shall remove, repair, or replace the UST, conduct a release investigation under 18 AAC 78.235, and begin corrective action as prescribed in 18 AAC 78.220 - 18 AAC 78.270. Replacement tanks, piping, and parts must meet the requirements for new tanks under 18 AAC 78.025. If the system test results for the UST, including the delivery piping, do not indicate that a release has occurred, but environmental contamination is the basis for suspecting a release, a site assessment must be performed as prescribed in 18 AAC 78.090. The department will, in its discretion, extend the seven-day limit set in (a) of this section if weather conditions preclude testing. The tests conducted under 18 AAC 78.065(d) and 18 AAC 78.070(c) must be performed by a person certified under this chapter. A system test performed as part of a repair must be done in accordance with 18 AAC 78.055.

(c) **Site Assessment.** If a site assessment conducted under (a) of this section indicates that a release has occurred, the owner or operator shall conduct a release investigation under 18 AAC 78.235 and begin corrective action as required by 18 AAC 78.220 - 18 AAC 78.280. No further investigation is required if

- (1) the site assessment indicates that a release has not occurred;
- (2) observations and investigations indicate that free product is not present; and
- (3) test results indicate that

(A) groundwater cleanup levels in 18 AAC 75.345 are not exceeded at the UST site;

(B) surface water quality standards in 18 AAC 70.020(b) are not exceeded at the UST site; and

(C) soil cleanup levels in 18 AAC 75.340 and 18 AAC 75.341 are not exceeded at the UST site. (Eff. 3/25/91, Register 118; am 11/3/95, Register 136; am 1/22/99, Register 149)

Authority: AS 46.03.020 AS 46.03.365 AS 46.03.375

18 AAC 78.220. RELEASE NOTIFICATION AND RESPONSE.

(a) The owner or operator of a UST shall meet the requirements of this section

- (1) in response to
 - (A) a confirmed release of petroleum from the UST; or
 - (B) a suspected release under 18 AAC 78.200; or
- (2) when the owner or operator first has knowledge of a confirmed release of petroleum from the UST.

(b) The owner or operator shall notify the department's Anchorage, Fairbanks, Juneau, or Soldotna office of any release that is known or suspected to be 55 gallons or more, immediately upon knowledge of the release.

(c) If a leak, overfill, or other petroleum release from a UST is identified, and soil or water contamination is discovered by direct observation, through site characterization or assessment under 18 AAC 78.090, or through any other means, the owner or operator shall perform the following

initial response actions within 24 hours after the owner or operator first discovers that a release has occurred:

- (1) notify the department's Anchorage, Fairbanks, Juneau, or Soldotna office of
 - (A) a belowground release from the UST in any amount;
 - (B) an aboveground release to land from the UST if the release exceeds 10 gallons; or
 - (C) an aboveground release to water of the state if the release causes a sheen or discoloration of the water surface;
 - (2) take immediate action to prevent any further release of the petroleum into the environment, including removal of the petroleum from the UST if that is necessary to meet the requirements of this paragraph; and
 - (3) identify and mitigate any fire, explosion, or vapor hazard.
- (d) The owner or operator shall report to the department's Anchorage, Fairbanks, Juneau, or Soldotna office
- (1) a release of less than 10 gallons to land, or a release of less than one-half pint to water, within seven days after discovering the release;
 - (2) any observation or unusual operating conditions described in 18 AAC 78.200(a)(2) within seven days after the observation occurs; and
 - (3) any release detection monitoring results that indicate a release might have occurred as described in 18 AAC 78.200(a)(3) within seven days after receiving the results.
- (e) After complying with the requirements of this section, the owner or operator, unless directed to do otherwise by the department, shall conduct initial abatement, release investigation, and corrective action as required by 18 AAC 78.230 - 18 AAC 78.270. (Eff. 3/25/91, Register 118; am 8/21/91, Register 119; am 11/3/95, Register 136; am 1/22/99, Register 149)

Authority: AS 46.03.020 AS 46.03.365 AS 46.03.755

18 AAC 78.230. INITIAL ABATEMENT.

Unless directed in writing by the department to do otherwise, after meeting the requirements of 18 AAC 78.220, the owner or operator of a UST with a confirmed release of petroleum shall perform the following abatement and containment measures:

- (1) cease using the system and, if not already performed under 18 AAC 78.220(c)(2), within seven days remove the petroleum from the UST to prevent further release of petroleum to the environment; the UST may not be refilled until the system is repaired, replaced, or upgraded so that a further release cannot occur;
- (2) visually inspect any aboveground release or exposed belowground release and prevent further migration of petroleum into surrounding soils and groundwater;
- (3) continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the UST excavation zone and entered into subsurface structures, including basements, sewers, and utility lines; and
- (4) properly stockpile excavated contaminated soils to prevent water run-on and run-off in accordance with 18 AAC 78.274 and remedy a hazard posed by contaminated soils that are excavated or exposed in response to a release confirmation, site characterization, site assessment, abatement, or corrective action; if these remedies include treatment, stockpiling, or disposal of contaminated soils, the owner or operator shall use a method that the department determines will adequately protect human health and safety, and the environment. (Eff. 3/25/91, Register 118; am 8/21/91, Register 119; am 11/3/95, Register 136; am 1/22/99, Register 149)

Authority: AS 46.03.020 AS 46.03.365

18 AAC 78.235. RELEASE INVESTIGATION.

(a) After meeting the requirements of 18 AAC 78.220 and 18 AAC 78.230, the owner or operator of a UST with a confirmed release of petroleum shall perform a release investigation to characterize the release and actual or potential threat to human health and safety, and to the environment. If applicable to the site, an investigation under this section must include the following:

(1) soil samples, sufficient in number and location to represent the conditions of the soil, must be taken to adequately characterize the horizontal and vertical distribution of the release in the soil and to identify soil properties that are likely to influence the type and rate of migration of the released petroleum;

(2) sample collection and other investigations of the site geology and hydrogeology must be conducted to adequately characterize the horizontal and vertical distribution of the release in groundwater and those features that affect the fate and transport of the petroleum; if groundwater contamination is confirmed, the owner or operator shall notify the department within 24 hours and identify public and private drinking water wells that are located within one-quarter mile of the release site;

(3) sample collection and other investigations of surface waters must be conducted to adequately characterize significant hydrologic features such as surface drainage patterns and quantities, surface waters, floodplains, and actual or potential contaminant migration routes toward or within these features; and

(4) a hazard ranking evaluation must be conducted to measure the potential risk to human health and safety and to the environment; data collected must include information on toxicity and quantity of the contaminants, release information, site access, air exposure, surrounding populations, water use and exposure, surrounding environmental and recreation areas, and observed environmental impacts; the hazard ranking evaluation must be submitted on a form provided by the department;

(5) a sampling and analysis plan must be submitted to and approved by the department, if the owner or operator plans to use a statistical method referenced in 18 AAC 78.276(e) for site closure and final compliance with the soil cleanup levels under 18 AAC 78.600 - 18 AAC 78.610.

(b) The collection and interpretation of field data and the reporting of release investigation data must be conducted or supervised by a qualified, impartial third party in accordance with the *UST Procedures Manual*.

(c) The department will, in its discretion, and on a site-specific basis, waive the requirement under (b) of this section for an impartial third party if the owner or operator documents to the department's satisfaction that work performed under (b) of this section will be conducted or supervised by a qualified and objective person. To meet the requirements of this subsection, the owner or operator shall submit

(1) a resume of the person who is to conduct or supervise the work to be performed under (b) of this section showing relevant education, vocational training, related work experience, and any special training, license, certificate, or registration held by that person; and

(2) for a company, agency, utility, or municipality with environmental staff, a description of the supervisory and organizational structure related to the person identified in (1) of this subsection.

(d) Laboratory analyses submitted to fulfill the requirements of this section must be performed by a laboratory approved by the department under 18 AAC 78.800 - 18 AAC 78.810.

(e) After completing a release investigation required under this section, the owner or operator shall undertake corrective action as prescribed in 18 AAC 78.240 - 18 AAC 78.276 unless directed by the department to do otherwise as necessary to ensure protection of human health or safety, or of the environment.

(f) In a release investigation, the owner or operator shall use the analytical methods set out in Table 1, Chapter 2 of the *UST Procedures Manual*.

(g) Within 45 days after the date of release confirmation, as established under (h) of this section, the owner or operator shall submit a release investigation report to the department, summarizing the initial abatement measures conducted under 18 AAC 78.230 and including

- (1) the owner's name and address;
- (2) the operator's name and address, if different from the owner;
- (3) the location of the UST, including the legal description by
 - (A) subdivision lot, block, or tract information; or by section lot, tax lot, or government lot number; or
 - (B) meridian, township, range, section, and nearest quarter section locations within the section if the location cannot be described under (A) of this paragraph;
- (4) the UST registration number assigned by the department;
- (5) the name and business address of each person who supervised the release investigation;
- (6) all sample analyses and test results received, reported as required in the *UST Procedures Manual*, Section 8.4;
- (7) data on the nature and estimated amount of the release;
- (8) data summarizing the hazard ranking evaluation conducted under (a)(4) of this section, on a form provided the department;
- (9) information gained through soil, groundwater, geology, and surface water investigations conducted under this section;
- (10) a narrative description of activities conducted at the site and the dates the activities occurred;
- (11) a site sketch that approximately shows
 - (A) the location and configuration of tanks and piping;
 - (B) the sample locations, including depth below grade;
 - (C) the proximity to property, buildings, and residences;
 - (D) any sites where a release has occurred;
 - (E) any sites where free product has been or is located;
 - (F) the facility and property boundaries;
 - (G) a bar scale and north arrow; and
 - (H) any other pertinent information;
- (12) a UST site history, including previous releases, repairs, spills, or corrective action activities; and
- (13) an evaluation of the existence of petroleum vapors within any nearby occupied structure.

(h) The date of release confirmation is established by the earlier of the following events:

- (1) the receipt, by the owner or operator, of a report under 18 AAC 78.090 or 18 AAC 78.210, if the report indicates petroleum contamination; or
- (2) the owner's or operator's first observation, or first knowledge of an observation, of petroleum contamination. (Eff. 11/3/95, Register 136; am 1/22/99, Register 149; am 1/30/2003, Register 165)

Authority: AS 46.03.020 AS 46.03.365

Editor's note: The hazard ranking evaluation form mentioned in 18 AAC 78.235(a)(4) is located in the department's *UST Procedures Manual* as Appendix F.

18 AAC 78.240. CORRECTIVE ACTION.

(a) If the release of petroleum from a UST is confirmed and corrective action is required under 18 AAC 78.235(e), the owner or operator of the UST shall undertake soil and water corrective actions as prescribed in 18 AAC 78.240 - 18 AAC 78.276 and 18 AAC 78.600 - 18 AAC 78.625. The department will direct the owner or operator to perform corrective action to mitigate an inhalation hazard, if the department determines that corrective action is necessary to protect human health or safety, or the environment. As part of that corrective action and as necessary, the owner or operator shall operate a vapor monitoring system in one or more occupied structures near the site.

(b) At a site where an investigation indicates the presence of free product, the owner or operator shall remove measurable free product to the maximum extent practicable, while continuing, as necessary, an action taken under 18 AAC 78.210 - 18 AAC 78.235 or preparing for an action required by 18 AAC 78.240 - 18 AAC 78.280. To meet the requirements of this subsection, the owner or operator shall

- (1) notify the department within 24 hours after the discovery of free product;
- (2) conduct free product removal in a manner that
 - (A) minimizes the spread of contamination into an uncontaminated area by using containment, recovery, and disposal techniques appropriate to site conditions;
 - (B) avoids additional discharges;
 - (C) disposes of the recovered free product in compliance with applicable local, state, and federal requirements; and
 - (D) minimizes, to the maximum extent practicable, the time necessary for corrective action;
- (3) ensure that each free product removal system is designed to minimize free product migration; and
- (4) ensure that a flammable substance is handled in a manner that avoids fires or explosions.

(c) Within 60 days after the date of release confirmation, as established under 18 AAC 78.235(h), the owner or operator shall submit to the department

- (1) an interim corrective action report informing the department of the status of corrective actions required by (a) of this section; and
- (2) a free product removal report that shows free product was removed in compliance with (b) of this section and that provides at least the following information:
 - (A) the name and address of the person supervising or responsible for implementing the free product removal;
 - (B) the estimated amount, type, and thickness of free product observed or measured in wells, boreholes, and excavations;
 - (C) the type of free product recovery system used;
 - (D) whether any discharge has occurred or will occur on or off site during the recovery operation and where this discharge occurred or will occur;
 - (E) the type of treatment applied to, and the effluent quality resulting or expected from, any substance that has been or will be discharged;
 - (F) the steps that have been or are being taken to obtain necessary permits for any discharge; and
 - (G) the disposition of the recovered free product, dissolved phase product, or contaminated soil.

(d) The department will, in its discretion, extend the deadline for a report required under (c) of this section. (Eff. 3/25/91, Register 118; am 8/21/91, Register 119; am 11/3/95, Register 136; am 1/22/99, Register 149)

Authority: AS 46.03.020 AS 46.03.365

18 AAC 78.250. CORRECTIVE ACTION PLAN.

(a) At any time after reviewing the information submitted under 18 AAC 78.210 - 18 AAC 78.240, if the department determines that a threat to human health or safety, or to the environment exists, the department will require the owner or operator to

(1) submit additional information; or
(2) develop and submit a corrective action plan to respond to contaminated soil, surface water, and groundwater.

(b) If a corrective action plan is required under (a) of this section, the owner or operator shall submit the plan for approval according to a schedule and format established by the department. To obtain approval, the plan must

(1) provide for adequate protection of human health and safety, and of the environment, as determined by the department;

(2) include the elements listed in (e) of this section; and

(3) be prepared by a qualified, impartial third party; the owner or operator may request a waiver from the use of an impartial third party under the procedures of 18 AAC 78.090(f).

(c) The owner or operator may, after fulfilling the requirements of 18 AAC 78.210 - 18 AAC 78.240, voluntarily submit a corrective action plan to respond to contaminated soil and groundwater. That corrective action plan must meet the requirements of (b)(1) and (b)(3) of this section. The owner or operator shall modify the plan as necessary to demonstrate that the plan meets the requirements of (b)(1) of this section.

(d) To minimize environmental contamination and perform more effective corrective actions, the owner or operator may begin corrective actions to respond to contaminated soil and groundwater, before the department approves a corrective action plan, if the owner or operator

(1) notifies the department of the intent to begin corrective actions;

(2) complies with any conditions imposed by the department, including halting corrective action or mitigating adverse consequences from corrective action activities; and

(3) incorporates any self-initiated corrective action measures in the corrective action plan, or as amendments to the plan.

(e) The corrective action plan must include the following elements:

(1) a schedule for conducting field work, monitoring, corrective action activities, and submittal of interim and final corrective action reports;

(2) sampling and analysis plan, including

(A) final verification sampling protocol; and

(B) provisions for handling, transporting, and disposing of investigation-derived wastes including

(i) purged water from a boring or monitoring well;

(ii) cuttings, mud, and other wastes from well or boring installation and development; and

(iii) contaminated equipment and materials;

(3) detailed specification for each proposed corrective action technique, and copies of all previous communications with the department regarding the proposed technique;

(4) provisions for minimizing contaminant migration to previously unaffected areas, except under an approved corrective action technique under this section;

(5) provisions for transporting contaminated soil as a covered load in accordance with 18 AAC 60.015;

(6) provisions for the disposal of contaminated soil and groundwater, including the location and method of disposal;

(7) a list of chemical additives proposed for use, and their potential effects on

(A) the hazardous substances at the site; and

(B) human health and safety, and the environment;

(8) a site control plan, if necessary to protect human health or safety or the environment, including engineering measures, such as the installation of caps or liners, and provisions for restricting access, such as the use of fences, signs, or other barriers;

(9) a demonstration that site work and the corrective action will comply with the air quality standards and requirements of 18 AAC 50;

(10) a plan for ensuring that contaminated soil does not come in contact with uncontaminated soil during the corrective action process, except under an approved corrective action technique under this section or an approved operations plan under 18 AAC 78.273;

(11) a nondomestic wastewater system plan under 18 AAC 72.600, if the corrective action requires construction, alteration, installation, modification, or operation of a nondomestic wastewater treatment works or disposal system;

(12) for ex-situ corrective action techniques,

(A) provisions for containment and handling of leachate, if leachate is produced;

(B) a demonstration that site work and the corrective action will comply with soil storage, movement, and disposal requirements in 18 AAC 78.274;

(C) if using a hot asphalt batch plant, written certification by a registered engineer that processes incorporating contaminated soils meet current industry standards for asphalt paving;

(D) if combining contaminated soil with asphalt for the purposes of cold asphalt recycling, a cold asphalt recycling plan that includes

(i) a pavement structure design study for incorporating the excavated material; the study must be certified by a registered engineer;

(ii) approval for use of the specific leaching assessment or model used to determine contaminant migration; and

(iii) results of the pre-approved contaminant leaching assessment or model, referenced under (ii) of this subparagraph; those results must demonstrate that contaminant concentrations in the soil will not migrate;

(E) if using bioremediation, a bioremediation plan that includes detailed descriptions of

(i) cultured microbes, unless using an indigenous microbe population;

(ii) electron acceptors and nutrient sources for microbes;

(iii) the expected rate of biodegradation;

(iv) intermediate and final breakdown products;

(v) the type and amount of contamination to be bioremediated;

(vi) any potential adverse effects on human health or safety, or on the environment; and

(vii) other information requested by the department; the department will request additional information if the department determines that the information is necessary to ensure protection of human health or safety, or of the environment;

(F) if using solidification, a solidification plan that includes

(i) a demonstration that contaminant concentrations in the contaminated media do not exceed 5,000 mg/kg for the total range of petroleum hydrocarbons described in the *UST Procedure Manual* and do not exceed 100 mg/kg of BTEX;

(ii) a demonstration that contaminant concentrations in the solidified material will not migrate;

(iii) results of structural testing on the solidified material to demonstrate that the solidified material has an unconfined compressive strength of 2,000 psi or more after 28 days;

- (iv) results of leachability testing of the solidified material; and
 - (v) specifications for the ratio of the mass of contaminated media to the mass of reagent;
- (G) if using soil contaminated with petroleum hydrocarbons as a base for a physical barrier, a physical barrier base plan that includes
- (i) a demonstration that contaminant concentrations in contaminated soil used for the base do not exceed 5,000 mg/kg for the total range of petroleum hydrocarbons described in the *UST Procedures Manual*, or that do not exceed 100 mg/kg of BTEX;
 - (ii) a demonstration that the contaminated soil that is used for the base will be blended with uncontaminated soil only if necessary to meet design specifications;
 - (iii) a physical barrier design study, certified by a registered engineer;
 - (iv) approval for use of the specific leaching assessment or model used to determine contaminant migration;
 - (v) results of the pre-approved contaminant leaching assessment or model, as specified under (iv) of this subparagraph; those results must demonstrate that contaminant concentrations in the soil will not migrate;
 - (vi) a demonstration that the base under the physical barrier will use no more than 18 vertical inches of material containing contaminated soil;
 - (vii) a demonstration that the contaminated zone will be compacted to 95 percent or more of the maximum density as specified in American Society for Testing and Materials (ASTM) D 1557 - 91, *Test Method for Laboratory Compaction Characteristics of Soil Using Modified Effort*, updated January 1997 and adopted by reference, or ASTM D 4253 - 93, *Standard Test Methods for Maximum Index Density and Unit Weight or Solids Using Vibratory Table*, updated February 1993 and adopted by reference;
 - (viii) a demonstration that the material containing contaminated soil will be placed in a zone directly beneath the final base course with at least 18 inches of impervious pavement extending beyond the horizontal limit of the material containing contaminated soil;
 - (ix) a demonstration that at least six feet will separate the seasonal high groundwater point from the lowest point of the material containing contaminated soil; and
 - (x) as-built drawings, certified by a registered engineer, that show the final location of the material containing contaminated soil;
- (H) if using soil contaminated with metals for a base as a physical barrier, and if that use is approved on a site-specific basis, the elements required by (G) of this paragraph; and
- (I) if using an offsite or portable treatment facility, a demonstration that only an offsite or portable treatment facility with an operations plan approved under 18 AAC 78.273 will be used;
- (13) for in-situ corrective techniques;
- (A) a site monitoring plan showing proposed locations of monitoring wells;
 - (B) a hydrogeologic description of the site, including
 - (i) soil and sediments present;
 - (ii) stratigraphy;
 - (iii) aquifer characteristics, including groundwater gradient, confining layers, perched water, permeability, and aquifer transmissivity;
 - (iv) percolation rates from precipitation; and
 - (v) other relevant factors;

(C) results of hydrogeologic modeling performed to address capture zones, effects of hydraulic loading, and plume migration; and

(D) if using bioremediation, a demonstration of compliance with (12)(E) of this subsection.

(f) The owner or operator shall submit and obtain approval for each of the applicable elements specified in (e) of this section before work on that element begins, and for additional approval if a modification to an element is anticipated. (Eff. 3/25/91, Register 118; am 11/3/95, Register 136; am 1/22/99, Register 149)

Authority:	AS 46.03.020	AS 46.03.740	AS 46.04.070
	AS 46.03.050	AS 46.03.745	AS 46.09.020
	AS 46.03.365	AS 46.04.020	

Editor's note: The ASTM methods adopted by reference in 18 AAC 78.250 may be reviewed in the department's Anchorage, Fairbanks, Juneau, and Soldotna offices, and may be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

18 AAC 78.260. CORRECTIVE ACTION PLAN APPROVAL.

(a) The department will approve or deny a corrective action plan after receipt of all information required or requested under 18 AAC 78.250 and any comments on the plan under 18 AAC 78.280(c), and only after determining whether implementation of the plan will adequately protect human health, safety, and the environment.

(b) In making a determination under (a) of this section, the department will consider

(1) the physical and chemical characteristics of the petroleum, including its toxicity, persistence, and potential for migration;

(2) the hydrogeologic characteristics of the facility and surrounding area;

(3) the proximity, quality, and current and future uses of nearby surface water and groundwater;

(4) the potential effects of residual contamination on nearby surface water and groundwater;

(5) an exposure evaluation;

(6) the overall cost effectiveness of the corrective action measures proposed;

(7) any information gathered and submitted in compliance with 18 AAC 78.200 - 18 AAC 78.250; and

(8) the qualifications of each person involved with the corrective action planning and activities.

(c) The department will, in its discretion, and upon a documented finding of public endangerment, require that the corrective action plan provide for

(1) adequate alternative drinking water systems, that meet the requirements of 18 AAC 80, for affected consumers; and

(2) the temporary relocation of persons affected by a contaminated water supply.

(d) At any time after reviewing the information submitted under 18 AAC 78.250, the department will, in its discretion, require the owner or operator to submit additional information by a schedule and in a format established by the department.

(e) Upon approval of a corrective action plan, or as directed by the department, the owner or operator shall implement the plan, including modifications to the plan made by the department. The owner or operator shall monitor, evaluate, and report the results of implementing the plan in a final corrective action report as specified by 18 AAC 78.276. (Eff. 3/25/91, Register 118; am 11/3/95, Register 136; am 1/22/99, Register 149)

Authority: AS 46.03.020 AS 46.03.365

18 AAC 78.270. CORRECTIVE ACTION PLAN REVISIONS.

(a) The owner or operator of the UST must have written department approval before taking an action that constitutes a substantive revision to or deviation from an approved corrective action plan.

(b) The department will require the owner or operator to take corrective action to bring any change or revision into compliance with this chapter, if the department determines that corrective action is necessary to ensure protection of human health and safety, and of the environment. (Eff. 3/25/91, Register 118; am 11/3/95, Register 136; am 1/22/99, Register 149)

Authority: AS 46.03.020 AS 46.03.365

18 AAC 78.271. GENERAL CORRECTIVE ACTION REQUIREMENTS.

(a) The owner or operator of a facility at which a release of petroleum from a UST has occurred and for which corrective action is required under 18 AAC 78.240 shall

(1) comply with 18 AAC 78.240 - 18 AAC 78.276;

(2) ensure that the collection, interpretation, and reporting of data are in accordance with the *UST Procedures Manual*; and

(3) ensure that required sampling and analysis is conducted or supervised by a qualified, impartial third party; the owner or operator may request a waiver from the use of an impartial third party under the procedures in 18 AAC 78.090(f).

(b) The owner and operator of an offsite or portable treatment facility shall ensure that a qualified, impartial third party conducts or supervises soil sampling to verify that cleanup levels are met. The owner or operator may request a waiver from the use of an impartial third party under the procedures in 18 AAC 78.090(f). Soil sampling and analysis must be conducted as required by the *UST Procedures Manual*.

(c) Laboratory analyses that are submitted to comply with this section must be performed by a laboratory approved or provisionally approved under 18 AAC 78.800 - 18 AAC 78.815 for each parameter analyzed and analytical method used. The owner or operator shall ensure that reports submitted to the department include the current state laboratory UST identification number for the laboratory that performed the analysis.

(d) Petroleum-contaminated soil that originates from a UST site and that is stockpiled must comply with 18 AAC 78.274.

(e) The owner and operator shall ensure that the person conducting corrective action under this chapter complies with the corrective action requirements in 18 AAC 78.240 - 18 AAC 78.276. (Eff. 1/22/99, Register 149)

Authority: AS 46.03.020 AS 46.03.365 AS 46.03.375

18 AAC 78.273. OFFSITE OR PORTABLE SOIL TREATMENT FACILITIES.

(a) An owner or operator of an offsite or portable soil treatment facility shall

(1) obtain approval of an operations plan before that person accepts or treats contaminated soil; the department will approve the plan if the department determines that the operations proposed are protective of human health and safety, and of the environment; a plan submitted under this paragraph must include

(A) a facility diagram that shows the location of

(i) each soil treatment, storage, and transportation area;

- (ii) major roads within or bordering the site or facility; and
 - (iii) monitoring wells, surface water, water supply wells, facility boundaries, and public or private buildings within 500 feet of the facility boundary;
- (B) a detailed process description including a discussion of
- (i) air, water, and solid waste process streams;
 - (ii) startup and shutdown procedures;
 - (iii) maximum process flow rate;
 - (iv) air pollution control equipment;
 - (v) water treatment systems;
 - (vi) the projected maximum time necessary for the treatment method to fully remediate contaminated soil; and
 - (vii) a detailed description of any additive to be used;

(C) a post-treatment sampling and analysis plan prepared by a qualified person in accordance with 18 AAC 75.355(b) to verify that the applicable cleanup levels have been met;

(D) provisions for complete containment of the contaminated soil before, during, and after treatment until the contaminated soil meets the applicable cleanup levels; alternatively, if the treatment process, such as landfarming or landspreading, will not contain the contaminated soil, the owner or operator of the offsite or portable treatment facility must demonstrate that there will be no uncontrolled leachate from the treatment area;

(E) for an offsite treatment facility classified as a Category C or Category D facility, as described in the department's *Soil Treatment Facility Guidance*, dated November 7, 2002, engineering plans and engineering record drawings for contaminated soil and water containment structures; the *Soil Treatment Facility Guidance*, dated November 7, 2002, is adopted by reference; and

(F) site monitoring procedures that will measure for secondary contamination at the treatment facility;

(2) if the facility is a Category C or a Category D facility, as described in the *Soil Treatment Facility Guidance*, submit the following to the department before the owner or operator accepts or treats contaminated soil:

(A) proof of a performance bond or other approved means of fiscal responsibility that will provide the department with a source of funds to clean up contaminated soils that have been received for treatment if the facility operator fails to treat the contaminated soils in accordance with this chapter; a performance bond must be executed by an insurance company licensed in the state and include a bond amount that will cover cleanup of the contaminated soils at the treatment facility; the bond shall be based on

- (i) the quantity of contaminated soil allowed at the facility specified in the facility's approved operation plan; and
- (ii) the cost per ton for treating contaminated soil at that facility location; and

(B) proof of pollution liability insurance that will provide the department with a source of funds to clean up secondary contamination at the facility property that is caused by the soil treatment facility during soil treatment operations;

(3) perform confirmation sampling of treated soil in accordance with a sampling and analysis plan approved under this subsection to verify that applicable cleanup levels have been met;

(4) submit to the department an assessment of background contamination at the facility before initial startup of the treatment facility; and

(5) submit to the department within 90 days after terminating operation of the treatment facility, a closure assessment demonstrating that secondary contamination did not occur at the facility; if secondary contamination did occur at the facility, the owner or operator of the portable

treatment facility shall perform a cleanup of the contamination by in-situ or ex-situ treatment within two years after terminating operation.

(b) If the owner or operator of an offsite or portable treatment facility fails to process soils to the department's satisfaction in accordance with the plan approved under (a)(1) of this section, the department will withdraw its approval under (a)(1) of this section, and that person may not process or receive contaminated soil.

(c) For purposes of this section,

(1) "background contamination" means the concentration of a hazardous substance that is consistently present in the environment or in the vicinity of a site and that is naturally present or is the result of human activities unrelated to a discharge or release at the site;

(2) "engineering plans" means a set of plans approved and sealed by a registered engineer;

(3) "engineering record drawings" means the approved original plans prepared for construction and department approval under (a)(1) of this section, revised to reflect how the containment structure or system was constructed or installed, and sealed by a registered engineer;

(4) "facility" has the meaning given in AS 46.03.900; "facility" includes the land, structures, and equipment associated with treatment of contaminated soil;

(5) "offsite or portable treatment facility" has the meaning given in the *Soil Treatment Facility Guidance*, adopted by reference in (a)(1) of this section;

(6) "owner or operator" has the meaning given to "owner" and "operator" in AS 46.03.826;

(7) "performance bond" means a written agreement between the owner or operator and the department guaranteeing performance of the obligations covered by the agreement;

(8) "registered engineer" means a professional engineer registered to practice in the state under AS 08.48. (Eff. 1/22/99, Register 149; am 1/30/2003, Register 165)

Authority:	AS 46.03.020	AS 46.03.740	AS 46.04.070
	AS 46.03.050	AS 46.03.745	AS 46.09.020
	AS 46.03.365	AS 46.04.020	

Editor's note: The department's *Soil Treatment Facility Guidance*, adopted by reference in 18 AAC 78.273(a)(1), may be viewed at or requested from the department's offices in Anchorage, Fairbanks, Juneau, and Soldotna.

18 AAC 78.274. STORAGE, MOVEMENT, AND DISPOSAL OF SOIL AND GROUNDWATER.

(a) Unless the department approves the activity in question as protective of human health and safety, and of the environment, the owner or operator may not blend contaminated soil with uncontaminated soil, and shall

(1) segregate contaminated soil based on

(A) the intended corrective action techniques; and

(B) the specific contaminants present;

(2) store contaminated soil

(A) 100 feet or more from surface water, a private water system as defined in 18 AAC 80.1990, a Class C public water system as defined in 18 AAC 80.1990, or a fresh water supply system that uses groundwater for a use designated in 18 AAC 70.020(a)(1)(A) and 18 AAC 70.050(a)(2); and

(B) 200 feet or more from a water source serving a Class A or Class B public water system, as defined in 18 AAC 80.1990;

(3) place contaminated soil on a liner or on or within another impermeable surface that prevents soil and groundwater beneath the liner from becoming contaminated; in addition, the owner or operator shall ensure that, for petroleum-contaminated soil, liners meet the minimum specifications for the testing methods set out in Table B of this section;

TABLE B. BOTTOM LINER SPECIFICATIONS		
Short-term storage of petroleum-contaminated soil (less than 180 days)		
Method	Coated Fabric	Extruded Fabric
Cold crack (ASTM D2136-94, September 15, 1994)	-60 °F	-60 °F
Black carbon content (ASTM D1603-94, June 15, 1994)	2 % or greater	2 % or greater
Carbon dispersion (ASTM D3015-95, September 10, 1995)	A-2 range	A-2 range
Tensile strength (ASTM D751-95E1, February 1997)	125 lbs (warp)	N/A
Mullen burst (ASTM D751-95E1, February 1997)	250 psi	N/A
One inch tensile strength (ASTM D882-97, June 10, 1997)	N/A	25 lbs (warp)
One inch elongation MD (machine direction)	N/A	550 %
Nominal thickness	10 mil	10 mil
Oil resistance (ASTM D471-96, June 10, 1996)	No signs of deterioration and more than 80 % retention of tensile and seam strength after immersion for 30 days at 73 °F	No signs of deterioration and more than 80 % retention of tensile and seam strength after immersion for 30 days at 73 °F
Long-term storage of petroleum-contaminated soil (180 days to two years)		
Cold crack (ASTM D2136-94, September 15, 1994)	-60 °F	-60 °F
Black carbon content (ASTM D1603-94, June 15, 1994)	2 % or greater	2 % or greater
Carbon dispersion (ASTM D3015-95, September 10, 1995)	A-2 range	A-2 range
Tensile strength (ASTM D751-95E1, February 1997)	300 lbs (warp)	N/A

Mullen burst (ASTM D751-95E1, February 1997)	500 psi	N/A
One inch tensile strength (ASTM D882-97, June 10, 1997)	N/A	45 lbs (warp)
One inch elongation MD (machine direction)	N/A	625 %
Nominal thickness	20 mil	20 mil
Oil resistance (ASTM D471-96, June 10, 1996)	No signs of deterioration and more than 80 % retention of tensile and seam strength after immersion for 30 days at 73 °F	No signs of deterioration and more than 80 % retention of tensile and seam strength after immersion for 30 days at 73 °F
The American Society for Testing and Materials (ASTM) methods referred to in this table, and revised as of the date identified for each method, are adopted by reference. They may be reviewed at the department's Anchorage, Fairbanks, Juneau, or Soldotna office, and they may be obtained from the American Society for Testing and Materials, 1916 Race St., Philadelphia, Pennsylvania 19103. "N/A" means not applicable.		

(4) cover and protect the contaminated soil stockpile from weather with no less than a six-mil, reinforced polyethylene liner or its equivalent, with the edge of the cover lapped over the bottom liner to prevent water running through the soil; and

(5) inspect and maintain the contaminated soil stockpile regularly to ensure that the cover remains intact and that the soil and any liquid leachate derived from the soil is contained.

(b) An owner or operator shall obtain approval before moving or disposing of contaminated soil or groundwater subject to the requirements under this chapter. (Eff. 1/22/99, Register 149; am 6/25/99, Register 150; am 4/16/2000, Register 154)

Authority: AS 46.03.020 AS 46.03.710 AS 46.04.020
AS 46.03.050 AS 46.03.740 AS 46.04.070
AS 46.03.365 AS 46.03.745 AS 46.09.020

18 AAC 78.275. SAMPLING AND ANALYSIS.

(a) The owner or operator shall ensure that soil and groundwater sampling for a release investigation or associated with a corrective action is conducted by a qualified impartial third party in accordance with 18 AAC 78.605 and the *UST Procedures Manual*. The owner or operator may request a waiver from the use of an impartial third party under the procedures set out in 18 AAC 78.090(f).

(b) The owner or operator of an offsite or portable treatment facility under 18 AAC 78.273 shall ensure that the collection, interpretation, and reporting of data, and the required sampling and analysis are conducted or supervised by a qualified, impartial third party in accordance with the *UST Procedures Manual*. The owner or operator may request a waiver from the use of an impartial third party under the procedures in 18 AAC 78.090(f).

(c) If a contaminant is suspected at the site because of empirical evidence or prior analysis, but is not detected or is detected at a concentration below the practical quantitation limit, and the practical quantitation limit is higher than the cleanup level for that substance, the department will

(1) determine the owner or operator to have attained the cleanup level, if additionally the more stringent of the following conditions is met:

(A) the practical quantitation limit is no greater than 10 times the method detection limit; or

(B) the practical quantitation limit is no greater than the practical quantitation limit referred to in Table 1 of the *UST Procedures Manual*; or

(2) as the department determines necessary to ensure protection of human health or safety or of the environment, require the use of a specialized analytical method to improve the accuracy, precision, method detection limit, or practical quantitation limit for the contaminant.

(d) Among the analytical methods set out in EPA's *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*, SW-846, as adopted by reference in 18 AAC 78.090, if there is more than one analytical method for a contaminant, an owner or operator may select any of those methods with a practical quantitation limit less than the applicable cleanup level. If only one analytical method has a practical quantitation limit less than the applicable cleanup level, that method must be used. Analysis for petroleum contamination must follow the Alaska methods for petroleum hydrocarbons referred to in Table 1 of the *UST Procedures Manual*.

(e) Laboratory analysis submitted to comply with this chapter must be performed by a laboratory approved under 18 AAC 78.800 - 18 AAC 78.815 for each analyzed parameter and analytical method used.

(f) The owner or operator shall submit the results of the laboratory analyses for samples collected under this chapter and shall include the current state laboratory UST identification number for the laboratory that performed the analyses. (Eff. 1/22/99, Register 149; 6/25/99, Register 150; am 4/16/2000. Register 154)

Authority:	AS 46.03.020	AS 46.03.745	AS 46.04.070
	AS 46.03.740	AS 46.04.020	AS 46.09.020

18 AAC 78.276. FINAL CORRECTIVE ACTION REPORTING REQUIREMENTS AND SITE CLOSURE.

(a) The owner or operator shall submit a written final corrective action report to the department for each UST site at which corrective action activities have been completed. Based on analytical results, the report must demonstrate that the site meets the applicable cleanup levels and requirements specified in 18 AAC 78.600 - 18 AAC 78.625. The report must be prepared by a qualified, impartial third party. The owner or operator may request a waiver from the use of an impartial third party under the procedures in 18 AAC 78.090(f).

(b) The written report required by (a) of this section must contain, as applicable,

- (1) the date and time of the discharge or release;
- (2) the location of the discharge or release, including latitude and longitude coordinates;
- (3) the name and physical address of the site, facility, or operation;
- (4) the name, mailing address, and telephone number of the owner and of the operator of the site, facility, or operation;
- (5) the type and amount of each contaminant discharged or released;
- (6) a description of any environmental damage caused by the discharge, release, or containment to the extent the damage can be identified;
- (7) a demonstration that the free product removal report required in 18 AAC 78.240(c) was submitted to the department and that free product was recovered in compliance with 18 AAC 78.240;

(8) a summary of each applicable soil and groundwater cleanup level approved for the site under 18 AAC 78 600 - 18 AAC 78.625 and a description of the factors used in developing each applicable cleanup level;

(9) a description of the corrective actions taken, including

(A) a demonstration that corrective action was conducted in accordance with the corrective action plan project elements, including modifications to the project elements, approved under 18 AAC 78.250;

(B) sampling reports and a description of the soil and groundwater sampling protocol and sampling locations;

(C) a summary of the laboratory reports for the final verification samples collected at the site; the laboratory or the owner or operator shall keep these reports and make them available to the department upon request for at least 10 years after submission of the summary to the department;

(D) a demonstration that contaminated soil and groundwater were stored, treated, and disposed of in an approved manner;

(E) a description of any site-specific modification to any procedures in the *UST Procedures Manual*;

(F) an estimate of the extent of any remaining residual contamination, above and below the applicable cleanup levels;

(G) confirmation that any hazardous waste generated was stored, treated, or disposed of in compliance with 42 U.S.C. 6901 - 6992k (Solid Waste Disposal Act, as amended by Resource Conservation Recovery Act), as amended through October 1, 1998 and adopted by reference; and

(H) other information requested by the department, as the department determines necessary to ensure protection of human health or safety, or of the environment; and

(10) a demonstration of compliance with applicable institutional control requirements under 18 AAC 78.625.

(c) Repealed 6/25/99.

(d) The owner or operator shall keep a copy of the corrective action report submitted under this section for at least 10 years after that report is submitted to the department.

(e) The department will determine final compliance with the

(1) applicable soil cleanup levels, based on sampling results from onsite contaminated soil and from contaminated soil moved offsite for treatment or disposal, and based on the maximum concentrations detected, unless an appropriate statistical method is approved, in which case compliance will be based on the mean soil concentration at the 95 percent upper confidence limit; approval of a statistical method will be based on

(A) the number and location of samples taken;

(B) whether large variations in contaminant concentrations relative to the mean concentration exist; and

(C) whether a large percentage of concentrations are below the method detection limit; and

(2) groundwater cleanup levels, based on an analysis of unfiltered groundwater samples unless the owner and operator demonstrates that a filtered sample provides a more representative measure of groundwater quality; compliance will be determined based on the maximum concentrations of a contaminant detected in the final confirmation samples; before closure, the size of the dissolved plume must be steady state or shrinking and concentrations of the contaminant must be decreasing.

(f) After reviewing the final corrective action report submitted under this section, if the department determines that

(1) a site has been adequately characterized and has achieved the applicable cleanup levels and requirements in 18 AAC 78.600 - 18 AAC 78.625, the department will issue the owner or operator a written determination that corrective action is complete, subject to a future department determination that the corrective action is not protective of human health or safety, or of the environment; or

(2) the corrective action and applicable institutional controls are not protective of human health or safety, or of the environment, the department will, as necessary to ensure protection of human health or safety, or of the environment, require the owner or operator to conduct additional actions that meet the requirements of this chapter. (Eff. 1/22/99, Register 149; am 6/25/99, Register 150)

Authority:	AS 46.03.020	AS 46.03.740	AS 46.04.020
	AS 46.03.050	AS 46.03.745	AS 46.04.070
	AS 46.03.365	AS 46.03.755	AS 46.09.010
	AS 46.03.710		

18 AAC 78.280. PUBLIC PARTICIPATION.

(a) If a confirmed release of petroleum requires a corrective action plan under 18 AAC 78.250(a)(2), the department will notify members of the public who are directly affected by the release and the planned corrective action, using methods the department finds appropriate, including public notice in a local newspaper, block advertisement, public service announcement, publication in a state register, letters to individual households, personal contacts by field staff, posting of notice in the location scheduled for corrective action, or a combination of any of these methods.

(b) The department will make site release information and decisions concerning the corrective action plan available for public inspection upon request.

(c) Before approving a corrective action plan, the department will, in its discretion, hold a public meeting to consider comments on the proposed plan if there is sufficient public interest, or for any other reason.

(d) The department will give public notice under (a) of this section if implementation of an approved plan does not achieve the applicable cleanup levels in the plan and termination of that plan is being considered by the department. (Eff. 3/25/91, Register 118; am 11/3/95, Register 136; am 1/22/99, Register 149)

Authority:	AS 46.03.020	AS 46.03.365
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ARTICLE 3. CLEANUP STANDARDS

Section

- 300. (Repealed)
- 310. (Repealed)
- 311. (Repealed)
- 312. (Repealed)
- 315. (Repealed)
- 320. (Repealed)
- 322. (Repealed)
- 325. (Repealed)
- 327. (Repealed)
- 330. (Repealed)
- 335. (Repealed)
- 340. (Repealed)
- 345. (Repealed)
- 350. (Repealed)

Editor's note: As of Register 149, effective 1/22/99, the provisions of former 18 AAC 78.300 - 18 AAC 78.350 were incorporated into 18 AAC 78.600 - 18 AAC 78.625.

18 AAC 78.300. APPLICABILITY; GENERAL CLEANUP REQUIREMENTS.

Repealed.
(Eff 3/25/91, Register 118; am 11/3/95, Register 136; repealed 1/22/99, Register 149)

18 AAC 78.310. SOIL CLEANUP OPTIONS.

Repealed.
(Eff 3/25/91, Register 118; am 11/3/95, Register 136; repealed 1/22/99, Register 149)

18 AAC 78.311. SOIL STORAGE AND DISPOSAL.

Repealed.
(Eff. 11/3/95, Register 136; repealed 1/22/99, Register 149)

18 AAC 78.312. SOIL REMEDIATION REQUIREMENTS.

Repealed.
(Eff. 11/3/95, Register 136; repealed 1/22/99, Register 149)

18 AAC 78.315. SOIL CLEANUP LEVELS.

Repealed.
(Eff 3/25/91, Register 118; am 11/3/95, Register 136; repealed 1/22/99, Register 149)

18 AAC 78.320. SOIL SAMPLE NUMBER AND LOCATION.

Repealed.
(Eff. 3/25/91, Register 118; am 11/3/95, Register 136; repealed 1/22/99, Register 149)

18 AAC 78.322. GROUNDWATER AND SURFACE WATER CLEANUP.

Repealed.

(Eff. 11/3/95, Register 136; repealed 1/22/99, Register 149)

18 AAC 78.325. SOIL SAMPLE COLLECTION METHODS.

Repealed.

(Eff. 3/25/91, Register 118; Repealed 11/3/95; Register 136)

18 AAC 78.327. GROUNDWATER AND SURFACE WATER SAMPLE NUMBER, SAMPLE LOCATION, AND LONG-TERM MONITORING.

Repealed.

(Eff. 11/3/95, Register 136; repealed 1/22/99, Register 149)

18 AAC 78.330. SOIL ANALYTICAL METHODS AND DOCUMENTATION.

(Eff. 3/25/91, Register 118; repealed 11/3/95, Register 136)

18 AAC 78.335. SUBMISSION AND EVALUATION OF ANALYTICAL RESULTS.

Repealed.

(Eff. 3/25/91, Register 118; am 11/3/95, Register 136; repealed 1/22/98, Register 149)

18 AAC 78.340. ANALYTICAL REPORTING REQUIREMENTS.

Repealed.

(Eff. 3/25/91, Register 118; am 11/3/95, Register 136; repealed 1/22/99, Register 149)

18 AAC 78.345. SURFACE WATER AND GROUNDWATER CLEANUP.

Repealed.

(Eff. 3/25/91, Register 118; Repealed 11/3/95, Register 136)

18 AAC 78.350. RISK ASSESSMENT.

Repealed.

(Eff. 3/25/91, Register 118; am 11/3/95, Register 136; repealed 1/22/99, Register 149)

Authority: AS 46.03.020 AS 46.03.365

ARTICLE 4. CERTIFICATION OF UNDERGROUND STORAGE TANK WORKERS AND INSPECTORS

Section

- 400. Certification required
- 410. Categories of certification
- 415. Certification requirements
- 420. Examination requirements
- 425. Work experience and education requirements
- 430. Display of certificate
- 435. Term of certification
- 440. Renewal requirements
- 450. Technical review committee
- 455. Standards of practice
- 470. Suspension or revocation; disciplinary action
- 475. Reciprocity
- 476. Conflict of interest prohibition
- 480. Certification of department employees
- 490. Administration
- 495. Fees
- 499. Definitions

18 AAC 78.400. CERTIFICATION REQUIRED.

(a) A person may not conduct, and an owner or operator may not allow a person to conduct any part of a UST installation, repair, reconfiguration, closure, tank tightness test, cathodic protection, or inspection unless the person

- (1) is certified under this chapter; or
- (2) meets the requirements of AS 46.03.375(d).

(b) The requirements of this section also apply to a person who is an officer or employee of the owner or operator of a UST and who performs an activity described in this section.

(c) The requirements of this section do not prohibit the employment of an uncertified person on the job site if a certified person exercises responsible supervisory control and is physically present onsite during the installation, repair, closure, reconfiguration, or while the tank tightness test, cathodic protection test, or inspection is being conducted.

(d) Repealed 8/15/99. (Eff. 3/25/91, Register 118; am 8/21/91, Register 119; am 8/4/94, Register 131; am 11/3/95, Register 136; am 8/15/99, Register 151)

Authority: AS 46.03.020 AS 46.03.365 AS 46.03.375

Editor's note: As of August 15, 1999, the substance of 18 AAC 78.400(d) appears in 18 AAC 78.499.

18 AAC 78.410. CATEGORIES OF CERTIFICATION.

(a) If the certification requirements of 18 AAC 78.415 are met, the division will issue a certification for one or more of the following categories:

- (1) installation, including repairs and significant reconfiguration;
- (2) closure, including removal;
- (3) tank tightness testing;

- (4) cathodic protection testing;
- (5) inspection.

(b) Subject to 18 AAC 78.480(a), a department employee may obtain a department inspector certification in any category listed in (a)(1)-(4) of this section if the requirements of 18 AAC 78.415 are met. Department inspector certification is for compliance inspection purposes only. A department employee certified as an inspector may not conduct an activity described in 18 AAC 78.400(a).

(c) A certification issued under this chapter may not be assigned. (Eff. 3/25/91, Register 118; am 8/21/91, Register 119; am 8/4/94, Register 131; am 8/15/99, Register 151)

Authority: AS 46.03.020 AS 46.03.365 AS 46.03.375

18 AAC 78.415. CERTIFICATION REQUIREMENTS.

(a) A person seeking certification under this chapter shall submit a completed application to the division of occupational licensing on a form provided by the division, and shall pay the applicable fees set by 18 AAC 78.495.

(b) An applicant must

- (1) be an individual;
- (2) meet the work experience or educational requirements at 18 AAC 78.425;
- (3) pass the examination required by 18 AAC 78.420; and
- (4) have all other licenses applicable to the profession for which certification is

sought.

(c) If the application is for tank tightness testing, the applicant shall designate the type or types of tightness test for which certification is sought, and show proof that he or she is certified by the manufacturer of the particular tank tightness test. The test method must meet the requirements of 18 AAC 78.065(d). The manufacturer's certification must remain in effect for the duration of a certification issued under this chapter. The department will, in its discretion, recommend that the division of occupational licensing revoke certification under this chapter if the requirements of this subsection are not met.

(d) If the application is for inspection, the applicant shall also obtain and maintain certification in UST installation and cathodic protection. An applicant may apply for certification in UST inspection while an application for certification in UST installation or cathodic protection is pending; however, the division will not issue or renew a certification for inspection unless the applicant is certified in UST installation and cathodic protection.

(e) A person whose UST certification is suspended or revoked under this chapter, or by another state if certification is received through reciprocity under 18 AAC 78.475, will not be certified under this chapter until the period of suspension or revocation has expired. (Eff. 3/25/91, Register 118; am 8/21/91, Register 119; am 8/15/99, Register 151)

Authority: AS 46.03.020 AS 46.03.365 AS 46.03.375

18 AAC 78.420. EXAMINATION REQUIREMENTS.

A person who seeks certification or renewal of certification under this chapter shall take an examination approved by the department and administered by the division. The examination must test the extent of the applicant's knowledge regarding the category of certification sought, the state statutes and regulations relating to USTs, including familiarity with the nationally-recognized codes of practice listed in this chapter, and the unique environmental conditions affecting USTs in the state. A score of 75 or more is required to pass an examination. (Eff. 3/25/91, Register 118; am 8/21/91, Register 119; am 8/4/94, Register 131; am 11/3/95, Register 136)

Authority: AS 46.03.020 AS 46.03.365 AS 46.03.375

18 AAC 78.425. WORK EXPERIENCE AND EDUCATION REQUIREMENTS.

A person seeking a certification under this chapter, other than inspector certification, must have satisfactory work performance on at least two UST projects in the category for which the certification is sought during the three years immediately before application. Satisfactory work performance must be verified by an endorsement from a person certified under this chapter or under an equivalent program established outside of the state. The division will, in its discretion, accept applicable vocational training for any or all of the work experience required by this section.

(b) A person seeking to become a certified inspector shall show proof of completion within two years before the date of application of

(1) at least one nationally recognized training course, class, examination, or workshop dealing with UST design, installation, testing, or inspection; and

(2) an inspector orientation course provided by the department. (Eff. 3/25/91, Register 118; am 8/21/91, Register 119; am 8/4/94, Register 131; am 8/15/99, Register 151)

Authority: AS 46.03.020 AS 46.03.365 AS 46.03.375

18 AAC 78.430. DISPLAY OF CERTIFICATE.

A certificate, or a copy of a certificate, issued under this chapter must be readily available when work that requires certification is being performed. (Eff. 3/25/91, Register 118)

Authority: AS 46.03.020 AS 46.03.365 AS 46.03.375

18 AAC 78.435. TERM OF CERTIFICATION.

(a) Except as provided in (b) of this section, a certification issued under this chapter is valid until the next certification expiration date. The certification expiration date is December 31, 1995, and reoccurs every December 31 of odd-numbered years.

(b) If a person is issued certification within 90 days before the next certification expiration date, the person's certification is valid until the following certification expiration date. (Eff. 3/25/91, Register 118; am 8/4/94, Register 131)

Authority: AS 46.03.020 AS 46.03.365 AS 46.03.375

18 AAC 78.440. RENEWAL REQUIREMENTS.

(a) A person who seeks to renew a certification under this chapter shall renew the certification before it expires in accordance with (c) of this section. If the person's certification expires before it is renewed, the person must meet the requirements for a new certification under 18 AAC 78.415, unless renewal under (c) of this section occurs within 90 days after expiration. A person whose certification has expired may not perform work described in 18 AAC 78.455 unless the

(1) person obtains written department approval before doing the work;

(2) work is necessary to respond to an emergency that threatens human health or the environment; and

(3) the work is performed in the first 90 days after certification expires.

(b) The division will mail a renewal form at least 30 days before the next certification expiration date to a person certified under this chapter. The form will be mailed to the person's last address of record with the division. Failure to receive a renewal form does not relieve a person of the

responsibility to renew certification before the current certification expires. A renewal form may also be requested from the division.

- (c) To qualify for a renewed certification, a person certified under this chapter shall
 - (1) submit a completed renewal form to the division;
 - (2) pay the applicable fee as set out in 18 AAC 78.495;
 - (3) pass the examination required by 18 AAC 78.420, except as provided in (d) and (e) of this section; and
 - (4) have all other licenses applicable to the profession for which certification is requested.

(d) A person certified under this chapter who was examined within one year before the certification expiration date is exempt from taking an examination required by (c)(3) of this section.

(e) Notwithstanding the exam requirement of (c)(3) of this section, a person who has maintained certification in a specific category under 18 AAC 78.410 for at least six consecutive years is only required to pass the examination required by 18 AAC 78.420 for every third renewal of that category of certification thereafter, so long as that person performs at least two UST projects in the category during the calendar year before each renewal for which an examination is not required under this subsection.

- (f) The division will renew a certification under this section effective as of
 - (1) January 1 of the first year of the new certification period, if the submittal required by (c) of this section is legibly postmarked or received by the division before that date; or
 - (2) the date the submittal is legibly postmarked or the date the division receives the submittal required by (c) of this section, whichever is earlier, if that date is after January 1 of the first year of the new certification period.

(g) The division will prorate the first license renewal fee following initial licensure in accordance with 12 AAC 02.020. (Eff. 3/25/91, Register 118; am 8/21/91, Register 119; am 8/4/94, Register 131; am 11/3/95, Register 136; am 12/21/95, Register 137; am 1/30/2003, Register 165)

Authority: AS 46.03.020 AS 46.03.365 AS 46.03.375

18 AAC 78.450. TECHNICAL REVIEW COMMITTEE.

(a) The department will designate a technical review committee to review and to advise the department on examination questions for the categories of certification established by 18 AAC 78.410. The committee will meet at the request of the department.

(b) The technical review committee is comprised of the following members, each of whom must be certified under this chapter:

- (1) an employee of the department familiar with UST requirements, regulations, and standards of practice;
- (2) an employee of the division familiar with the certification regulations in this chapter; and
- (3) one to three persons per certification category to represent the category in which they are certified.

(c) The members of the technical review committee serve at the pleasure of the commissioner of the department. (Eff. 8/4/94, Register 131)

Authority: AS 46.03.020 AS 46.03.365 AS 46.03.375

18 AAC 78.455. STANDARDS OF PRACTICE.

- (a) Except for a person certified under 18 AAC 78.480, a person certified under this chapter

(1) for installation or reconfiguration, shall be at the job site when work requiring certification of installation or reconfiguration is being performed, including

(A) preparation of an excavation before receiving backfill and while the backfill is being placed;

(B) any movement of a tank at a job site, including a transfer of the tank from a vehicle used to transport the tank to the job site;

(C) placement of a tank and its associated piping into the excavation, including placement of an anchoring device, backfill, or strapping;

(D) placement or connection of a piping system to a tank;

(E) installation of cathodic protection;

(F) completion of a backfill and filling of an installation;

(G) covering a UST with concrete, asphalt, or other similar substance;

(H) preparation for and installation of a tank lining system; and

(I) installation, replacement, or repair of release detection equipment; and

(2) for closure, shall be at the job site when work requiring certification of closure is being performed, including

(A) excavation of a tank or piping before removal from the ground;

(B) emptying the contents of a tank or its piping, cleaning a tank, or filling a tank with a solid, inert material;

(C) removal or disposal of a tank's contents after cleaning; and

(D) movement of a tank on the job site, including transfer of the tank to a vehicle used to transport the tank from the job site; the requirements of this subparagraph do not apply to a tank that has been cleaned in accordance with the requirements of *American Petroleum Institute Standard 2015*, adopted by reference in 18 AAC 78.085(g)(2);

(3) for tank tightness testing, shall

(A) be at the job site when tightness testing of the UST or associated piping is being performed; or

(B) verify the tightness testing results if a statistical inventory reconciliation method is being used;

(4) for cathodic protection testing shall be at the job site when testing of cathodic protection is being performed;

(5) for inspection, shall

(A) refer to the department's operations inspection report form; and

(B) no later than 30 days after completing the inspection, sign and submit to the owner or operator a completed inspection report on a form supplied by the department; the report must contain a description of any

(i) deficiencies found;

(ii) corrective action taken by the inspector or a person certified under this chapter; and

(iii) recommendations of the inspector or a person certified under this chapter for further necessary corrections;

(6) may perform only those installations, repairs, reconfigurations, closures, tightness tests, cathodic protection tests, and inspections for which the person is certified under this chapter and which

(A) conform to accepted technical standards imposed by federal, state, and local law;

(B) safeguard human life, health, safety, and property; and

(C) protect the environment;

(7) shall immediately report to the owner or operator a release or suspected release of petroleum detected at a job site or the surrounding area;

(8) shall sign or affix the person's certification number only to an installation, repair, closure, reconfiguration, tightness test, cathodic protection test, or inspection that was done under the person's direct control and supervision; and

(9) shall, after completing a UST installation, reconfiguration, repair, closure, test, or inspection file with the owner or operator a completed checklist on a form supplied by the department that

(A) bears the person's signature and certification number;

(B) provides the registration number of the tank; and

(C) verifies that the items on the checklist have been completed for the tank.

(b) The requirements of this section

(1) must be disclosed by a person certified under this chapter to the person's client or employer; and

(2) are in addition to the certification requirements of 18 AAC 78.415.

(Eff. 3/25/91, Register 118; am 8/4/94, Register 131; am 11/3/95, Register 136; am 1/22/99, Register 149; 8/15/99, Register 151; am 1/30/2003, Register 165)

Authority: AS 46.03.020 AS 46.03.365 AS 46.03.375

18 AAC 78.460. BOARD OF STORAGE TANK ASSISTANCE.

(In effect 3/25/91 - 7/22/91, by em adopt., Register 118)

18 AAC 78.465. DISPUTE RESOLUTION.

(In effect 3/25/91 - 7/22/91, by em adopt., Register 118)

18 AAC 78.470. SUSPENSION OR REVOCATION; DISCIPLINARY ACTION.

(a) Upon written finding, the division of occupational licensing will, in its discretion, suspend certification for a period recommended by the department, or revoke a certification if a certified tank worker

(1) fraudulently obtained certification;

(2) fails at any time to meet the requirements for certification;

(3) fails to comply with this chapter;

(4) fails to meet any applicable federal, state, or local law relating to the service performed under the certification; or

(5) falsifies a document regarding work done under this chapter.

(b) If the department receives a complaint regarding the work performance of a person certified under this chapter, or if the department initiates a complaint under (a) of this section, the department will

(1) notify the certified worker of the nature of the complaint and explain all rights and duties under the law;

(2) keep the name of the certified worker confidential unless it finds that disciplinary action, as described in (c) of this section, is warranted;

(3) if the complainant is a third party, request from the complainant the specific nature of the alleged violation, including the statute, regulation, or industry standard that was allegedly violated by the certified worker, if known, and any other documentation the department believes is necessary to determine the validity of the complaint; and

(4) fully review the documentation obtained and determine whether disciplinary or other action is warranted.

(c) If the department finds that disciplinary action is appropriate under (a) or (b) of this section, it will notify the division of occupational licensing of its recommended action, including reasons for the recommendation. The department will, in its discretion, recommend suspension of the certificate for a specific period, or revocation of the certificate. If a certificate is suspended under this subsection, the period of suspension will not exceed the remaining life of the certificate.

(d) If the department finds that disciplinary or other action is not warranted, it will notify the certified worker and the complainant in writing that the allegations were found to be untrue or that the evidence was insufficient. (Eff. 3/25/91, Register 118; am 8/21/91, Register 119; am 8/4/94, Register 131)

Authority: AS 46.03.020 AS 46.03.365 AS 46.03.375

Editor's note: With Register 180, January 2007 and under the authority of AS 44.62.125, the regulation attorney changed obsolete terminology concerning division of occupational licensing and the division of banking and securities in conformity with ch. 14, SLA 2005 and to reflect the transfer of certain corporations functions within the Department of Commerce, Community, and Economic Development.

18 AAC 78.475. RECIPROCITY.

(a) The division of occupational licensing will, in its discretion, issue a certificate to a person who has a certificate or license as a tank worker from another state if the division finds that the program in that state is comparable to the requirements of this chapter.

(b) To obtain certification under this section, a person shall apply for certification under 18 AAC 78.415 and shall demonstrate knowledge regarding state statutes and regulations relating to USTs, including familiarity with the nationally-recognized codes of practice listed in this chapter, and the unique environmental conditions affecting USTs and their installation by passing that part of the examination described in 18 AAC 78.420.

(c) A certificate issued under this section is limited to the term set out in 18 AAC 78.435, and is subject to the renewal requirements of 18 AAC 78.440. (Eff. 3/25/91, Register 118; am 8/21/91, Register 119; am 8/4/94, Register 131; am 11/3/95, Register 136)

Authority: AS 46.03.020 AS 46.03.365 AS 46.03.375

Editor's note: With Register 180, January 2007 and under the authority of AS 44.62.125, the regulation attorney changed obsolete terminology concerning division of occupational licensing and the division of banking and securities in conformity with ch. 14, SLA 2005 and to reflect the transfer of certain corporations functions within the Department of Commerce, Community, and Economic Development.

18 AAC 78.476. CONFLICT OF INTEREST PROHIBITION.

An inspector may not perform or supervise an inspection at a UST facility if the inspector owns or has a significant financial interest in the facility. (Eff. 8/15/99, Register 151)

Authority: AS 46.03.020 AS 46.03.365 AS 46.03.375

18 AAC 78.480. CERTIFICATION OF DEPARTMENT EMPLOYEES.

(a) Within one year after employment begins, a department employee shall become certified as an underground storage tank department inspector under this chapter if the employee's assigned duties and responsibilities include

(1) investigating discharges to determine if the discharge is related to potentially faulty UST installation, closure, repair, or reconfiguration; or

(2) field enforcement of the department's regulations regarding UST installation, closure, repair, reconfiguration, or testing.

(b) A department employee will be certified as an underground storage tank inspector if the employee's duties include those listed in (a) of this section and if the employee meets the certification requirements of 18 AAC 78.415(a) - (c). A department employee need not meet the requirements of 18 AAC 78.455.

(c) The department employee's supervisor shall determine the category of certification appropriate for the employee's duties and responsibilities.

(d) A department employee certified under this chapter is subject to the renewal requirements set out in 18 AAC 78.440 other than the fee requirement.

(e) Certification issued to a department employee under this chapter expires automatically on the employee's last day of employment with the department. If the employee wishes to become certified as an underground storage tank worker after leaving department employment, he or she must meet the requirements of all applicable state laws, including 18 AAC 78.415 and 18 AAC 78.455, and pay all required fees.

(f) A state agency that owns or operates a UST may request the division of occupational licensing to certify an employee of that agency under the terms of this section. (Eff. 3/25/91, Register 118; am 8/21/91, Register 119; am 8/4/94, Register 131; am 11/3/95, Register 136; 8/15/99, Register 151)

Authority: AS 46.03.020 AS 46.03.375 AS 46.03.395
AS 46.03.365

Editor's note: With Register 180, January 2007 and under the authority of AS 44.62.125, the regulation attorney changed obsolete terminology concerning division of occupational licensing and the division of banking and securities in conformity with ch. 14, SLA 2005 and to reflect the transfer of certain corporations functions within the Department of Commerce, Community, and Economic Development.

18 AAC 78.490. ADMINISTRATION. The division will

(1) keep a list of the names and certification numbers of all persons certified under this chapter, provide that list to the department, and make it available for public distribution;

(2) keep a file on a person certified under this chapter;

(3) notify an applicant for certification under this chapter, including a department employee applying under 18 AAC 78.480, within 60 days after taking an examination under 18 AAC 78.420, of whether the applicant qualifies for certification, or whether additional information is required; if the applicant qualifies, the notice must be accompanied by a certificate and certification number;

(4) administer, or arrange to have administered, the required examination for each category of certification as determined necessary by the division, and publish notice of the examination and the final filing date in a newspaper of general circulation at least 60 days before the examination;

(5) notify a person certified under this chapter

- (A) within five days after the division
 - (i) receives a complaint regarding the person under 18 AAC 78.470(b); or
 - (ii) learns of a suspected violation of a federal, state, or local law by the person; and
- (B) within 15 days after a disciplinary action decision has been made by the division regarding a complaint or suspected violation;
- (6) publish notice jointly with the department, in a newspaper of general circulation in the area where a continuing education course or workshop related to USTs will be offered;
- (7) collect fees required for certification under this chapter; and
- (8) inactivate an applicant's application or examination results if 12 months or more have elapsed since a correspondence was last received by the division from or on behalf of the applicant. (Eff. 3/25/91, Register 118; am 8/21/91, Register 119; am 8/4/94, Register 131)

Authority: AS 44.66.010 AS 46.03.365
AS 46.03.020 AS 46.03.375

18 AAC 78.495. FEES.

- (a) The following fees are established for purposes of this chapter:
 - (1) application fee: \$50;
 - (2) certification fee for each category for which an applicant seeks certification: \$105;
 - (3) certification fee for each category for which an applicant seeks renewal: \$105;
 - (4) duplicate certificate fee: \$5;
 - (5) reciprocity certification fee for each category for which an applicant seeks certification through reciprocity: \$105.
- (b) An applicant shall submit a fee required under this section to the division at the time of application, renewal, or request for duplicate certificate. (Eff. 3/25/91, Register 118; am 8/21/91, Register 119; am 8/4/94, Register 131; am 11/3/95, Register 136; am 10/19/97, Register 144)

Authority: AS 46.03.375

18 AAC 78.499. DEFINITIONS.

For purposes of 18 AAC 78.400 – 18 AAC 78.499,

- (1) “certified inspector” means a person who is certified in inspection under this chapter;
- (2) “inspect” or “inspection” means to perform a third party inspection, using standards of practice set out in 18 AAC 78.455; “inspect” does not include routine maintenance or an inspection performed by a department inspector;
- (3) “repair” means to correct or restore, after a release has occurred, a UST or any part of a UST that routinely contains petroleum, and includes repairs to the tank vessel, pipes, valves, fillpipes, or vents; “repair” does not include routine maintenance. (Eff. 8/15/99, Register 151)

Authority: AS 46.03.020 AS 46.03.365 AS 46.03.375

Article 5. Storage Tank Assistance Fund.

Section

- 500. (Deleted)
- 505. (Deleted)
- 508. (Deleted)
- 509. (Deleted)
- 510. (Repealed)
- 511. (Deleted)
- 513. (Deleted)
- 514. (Deleted)
- 515. (Deleted)
- 517. (Repealed)
- 520. (Deleted)
- 521. (Deleted)
- 523. (Deleted)
- 524. (Deleted)
- 525. (Repealed)
- 526. (Deleted)
- 528. (Deleted)
- 529. (Deleted)
- 530. (Repealed)
- 534. (Deleted)
- 535. (Deleted)
- 537. (Deleted)
- 540. (Repealed)
- 545. (Repealed)
- 550. (Repealed)
- 555. (Deleted)
- 560. (Deleted)

Editor's note: As of Register 179 (October 2006), and acting under AS 44.62.125(b)(6), the regulations attorney deleted 18 AAC 78.500 – 18 AAC 78.528 and 18 AAC 78.534 – 18 AAC 78.560. These changes reflect the enactment of sec. 2, ch. 102, SLA 2006, effective August 5, 2006, which repealed statutes establishing the Board of Storage Tank Assistance, underground storage tank revolving loan fund, and tank cleanup loan program. Section 3, ch. 102, SLA 2006 annulled regulations made obsolete by those repeals.

18 AAC 78.500. Applicability.

Deleted.

(Eff. 3/25/91, Register 118; am 8/21/91, Register 119; am 1/27/94, Register 129; am 6/23/94, Register 130; am 11/3/95, Register 136; am 1/22/99, Register 149; am 4/16/2000, Register 154; deleted as of Register 179, October 2006)

18 AAC 78.505. General requirements for financial assistance.

Deleted.

(Eff. 3/25/91, Register 118; am 8/21/91, Register 119; am 1/27/94, Register 129; am 6/23/94, Register 130; am 4/16/2000, Register 154; deleted as of Register 179, October 2006)

18 AAC 78.506. Form of eligibility certification for cleanup assistance.

Deleted.

(Eff. 8/24/99, Register 151; am 4/16/2000, Register 154; deleted as of Register 179, October 2006)

18 AAC 78.507. Form of eligibility certification for upgrade and closure assistance

Deleted.

(Eff. 8/24/99, Register 151; am 4/16/2000, Register 154; deleted as of Register 179, October 2006)

18 AAC 78.508. Application requirements.

Deleted.

(Eff. 1/27/94, Register 129; am 6/23/94, Register 130; am 11/3/95, Register 136; am 1/22/99, Register 149; am 4/16/2000; am 1/30/2003, Register 154; deleted as of Register 179, October 2006)

18 AAC 78.509. Additional requirements for upgrading, closure, and cleanup funding applications.

Deleted.

(Eff. 1/27/94, Register 129; am 6/23/94, Register 130; am 4/16/2000, Register 154; am 1/30/2003, Register 165; deleted as of Register 179, October 2006)

18 AAC 78.510. Tank tightness and site assessment incentive program eligibility requirements.

Repealed.

(Eff. 3/25/91, Register 118; am 8/21/91, Register 119; repealed 1/27/94, Register 129)

18 AAC 78.511. Continuation grants and loans.

Deleted.

(Eff. 1/27/94, Register 129; am 6/23/94, Register 130; am 4/16/2000, Register 154; deleted as of Register 179, October 2006)

18 AAC 78.513. Determination and conditions of financial assistance.

Deleted.

(Eff. 1/27/94, Register 129; am 6/23/94, Register 130; am 11/3/95, Register 136; am 4/16/2000, Register 154; deleted as of Register 179, October 2006)

18 AAC 78.514. Ineligible costs.

Deleted.

(Eff. 1/27/94, Register 129; am 6/23/94, Register 130; am 11/3/95, Register 136; am 1/22/99, Register 149; am 4/16/2000, Register 154; deleted as of Register 179, October 2006)

18 AAC 78.515. Tank cleanup grant program eligibility requirements.

Deleted.

(Eff. 3/25/91, Register 118; am 8/21/91, Register 119; am 1/6/93, Register 125; am 1/27/94, Register 129; am 6/23/94, Register 130; am 11/3/95, Register 136; am 1/22/99, Register 149; am 4/16/2000, Register 154; deleted as of Register 179, October 2006)

18 AAC 78.517. Emergency grants.

Repealed.

(Eff. 8/21/91, Register 119; repealed 1/27/94, Register 129)

18 AAC 78.520. Tank upgrading and closure program eligibility requirements.

Deleted.

(Eff. 3/25/91, Register 118; am 8/21/91, Register 119; am 6/23/94, Register 130; am 11/3/95, Register 136; am 1/22/99, Register 149; am 4/16/2000, Register 154; deleted as of Register 179, October 2006)

18 AAC 78.521. Tank cleanup loan application process.

Deleted.

(Eff. 4/16/2000, Register 154; deleted as of Register 179, October 2006)

18 AAC 78.523. Tank cleanup loan examination.

Deleted.

(Eff. 4/16/2000, Register 154; deleted as of Register 179, October 2006)

18 AAC 78.524. Tank cleanup loan committee.

Deleted.

(Eff. 4/16/2000, Register 154; deleted as of Register 179, October 2006)

18 AAC 78.525. Reimbursement program eligibility requirements.

Repealed.

(Eff. 3/25/91, Register 118; am 8/21/91, Register 119; am 1/27/94, Register 129; am 6/23/94, Register 130; repealed 4/16/2000, Register 154)

18 AAC 78.526. Disbursement of loan money.

Deleted.

(Eff. 4/16/2000, Register 154; deleted as of Register 179, October 2006)

18 AAC 78.528. Reconsideration of a loan request.

Deleted.

(Eff. 4/16/2000, Register 154; deleted as of Register 179, October 2006)

18 AAC 78.529. Confidentiality of loan information. [Annulled; see editor's note].

(a) The following information is not confidential and is available for public inspection upon request:

(1) a document that is readily available for public inspection as described in 6 AAC 96.100(b), including a deed of trust, a financing statement, a warranty deed, a bill of sale, a mortgage, a judgment or lien, or a vehicle title;

(2) general information regarding loans; that information includes the original loan amount, loan terms, personal guarantees, or disbursement and repayment schedules;

(3) insurance matters, including title insurance policies and correspondence with insurance companies or borrowers regarding losses, accident reports, and nonpayment of premiums;

(4) foreclosure and default proceedings.

(b) The following information is considered confidential and is not subject to public disclosure unless ordered by a court:

(1) financial information, including income tax returns, financial statements, business income statements, pro forma profit and loss statements, credit information obtained directly from banks and other creditors, and reports from consumer credit reporting agencies; and

(2) memoranda and minutes of a loan committee appointed under 18 AAC 78.524, containing information relating to the creditworthiness of an applicant.

(c) Information not described in (a) or (b) of this section may be subject to public disclosure. A request for disclosure must be made, and will be determined, in accordance with 2 AAC 96. Upon receipt of a request for disclosure of information not listed in (a) or (b) of this section, the department will make reasonable efforts to notify the loan applicant and other persons with a privacy interest in the request to present reasons why the requested information should not be disclosed. (Eff. 4/16/2000, Register 154)

Authority: AS 40.25.110 AS 46.03.020 AS 46.03.440
AS 40.25.120

Editor's note: As of Register 176 (January 2006), and acting under AS 44.62.125(b)(6), the regulations attorney made technical changes to 18 AAC 78.529(a)(1) and (c), to reflect Executive Order 113 (2005). Executive Order 113 eliminated the Telecommunications Information Council and transferred its functions related to public information and records to the governor and to the Department of Administration. Effective August 5, 2006, 18 AAC 78.529 was annulled by sec. 3, ch. 102, SLA 2006.

18 AAC 78.530. Ineligible costs.

Repealed.
(Eff. 3/25/91, Register 118; repealed 1/27/94, Register 129)

18 AAC 78.534. Project priority ranking procedure.

Deleted.
(Eff. 1/27/94, Register 129; am 6/23/94, Register 130; am 11/3/95, Register 136; am 1/22/99, Register 149; am 4/16/2000, Register 154; am 1/30/2003, Register 165; deleted as of Register 179, October 2006)

18 AAC 78.535. Program funding allocation.

Deleted.
(Eff. 3/25/91, Register 118; am 1/27/94, Register 129; am 6/23/94, Register 130; am 4/16/2000, Register 154; am 1/30/2003, Register 165; deleted as of Register 179, October 2006)

18 AAC 78.537. Emergency grants or loans.

Deleted.
(Eff. 1/27/94, Register 129; am 6/23/94, Register 130; am 11/3/95, Register 136; am 4/16/2000, Register 154; deleted as of Register 179, October 2006)

18 AAC 78.540. Project priority ranking procedure.

Repealed.
(Eff. 3/25/91, Register 118; repealed 1/27/94, Register 129)

18 AAC 78.545. Application requirements.

Repealed.
(Eff. 3/25/91, Register 118; repealed 1/27/94, Register 129)

18 AAC 78.550. Determination and conditions of financial assistance.

Repealed.
(Eff. 3/25/91, Register 118; am 8/21/91, Register 119; repealed 1/27/94, Register 129)

18 AAC 78.555. Payment procedures.

Deleted.
(Eff. 3/25/91, Register 118; am 8/21/91, Register 119; am 1/27/94, Register 129; am 6/23/94, Register 130; am 1/22/99, Register 149; am 4/16/2000, Register 154; deleted as of Register 179, October 2006)

18 AAC 78.560. Compliance agreement.

Deleted.

(Eff. 3/25/91, Register 118; am 1/27/94, Register 129; am 6/23/94, Register 130; readopt 4/16/2000, Register 154; deleted as of Register 179, October 2006)

ARTICLE 6. CLEANUP LEVELS

Section

- 600. Cleanup levels: general requirements
- 605. Soil sample number and location
- 610. Soil cleanup levels
- 615. Groundwater and surface water sample number and location
- 620. Groundwater and surface water cleanup levels
- 625. Institutional controls

18 AAC 78.600. CLEANUP LEVELS: GENERAL REQUIREMENTS.

(a) Soil samples from an excavation or stockpile created as part of a corrective action must be collected as required by 18 AAC 78.605, analyzed in accordance with Chapter 2 of the *UST Procedures Manual*, and reported as required by 18 AAC 78.276. If laboratory results indicate that the concentrations of a contaminant are below the applicable soil cleanup levels determined under 18 AAC 75.340 and 18 AAC 75.341, the department will determine soil corrective actions to be adequate, unless subsequent evidence shows that the testing was not representative or that sampling did not detect all contamination.

(b) The identity of a released refined petroleum product must be assumed to be unknown unless the owner or operator demonstrates, by analysis done as required by the *UST Procedures Manual*, that the product is only gasoline, or only a refined nongasoline product. The department will waive the requirement that a product be identified by analysis if the owner or operator demonstrates that only one type of product was stored or distributed during the facility's operational life.

(c) Soils additionally contaminated with a hazardous substance other than a petroleum product are subject to 18 AAC 75 and as applicable, 18 AAC 60, 18 AAC 62, 18 AAC 70, 18 AAC 72, or another chapter of this title.

(d) If using method two or method three for determining the applicable soil cleanup levels as described in 18 AAC 75.340 and 18 AAC 75.341, or if applying the groundwater cleanup levels at Table C in 18 AAC 75.345, the owner or operator shall ensure that, after completing site corrective action activities, the risk from contaminants does not exceed a cumulative carcinogenic risk standard of 1 in 100,000 across all exposure pathways and a cumulative noncarcinogenic risk standard at a hazard index of 1.0 across all exposure pathways. Guidance on cumulative risk determinations is provided in the department's *Cumulative Risk Guidance*, dated November 7, 2002. The department's *Cumulative Risk Guidance*, dated November 7, 2002, is adopted by reference.

(e) If proposing an alternative cleanup level for soil or groundwater, based on a site-specific risk assessment under method four in 18 AAC 75.340(f) or under the provisions of 18 AAC 75.345(b)(3), the owner or operator shall ensure that the risk from contaminants does not exceed a cumulative carcinogenic risk standard of 1 in 100,000 across all exposure pathways and a cumulative noncarcinogenic risk standard at a hazard index of 1.0 for each exposure pathway. Guidance on cumulative risk determinations is provided in the department's *Cumulative Risk Guidance*, adopted by reference in (d) of this section. Instead of the risk standard required by this subsection, the department may consider a risk standard consistent with the range acceptable under 40 C.F.R. 300.430, revised as of July 1, 2002, adopted by reference, based on

- (1) site-specific conditions;
- (2) land use;
- (3) contaminant characteristics;
- (4) statutory compliance;
- (5) protection of human health and safety, and of the environment;

- (6) ability of corrective action to be implemented;
- (7) long-term and short-term effectiveness;
- (8) use of treatment technologies;
- (9) public comment; and
- (10) cost.

(f) An owner or operator requesting approval of a cleanup level for soil or groundwater based on a site-specific risk assessment under 18 AAC 75.340(f) or 18 AAC 75.345(b)(3) shall reimburse the department for its expenses to hire a contractor to review a risk assessment report.

(g) An owner or operator shall provide for long-term care and management of a site subject to corrective action under this chapter, including proper operation and maintenance of

- (1) corrective action techniques and equipment;
- (2) monitoring wells and equipment, if required; and
- (3) institutional controls if required under 18 AAC 78.625.

(h) An owner or operator shall obtain approval before disposing of soil or groundwater from a site

- (1) that is subject to this chapter; or
- (2) for which the owner or operator has received a written determination from the department under 18 AAC 78.276(f).

(i) The collection, interpretation, and reporting of data under this section must be conducted or supervised by a qualified, impartial third party as required by the *UST Procedures Manual*. The owner or operator may request a waiver from the use of an impartial third party under the procedures of 18 AAC 78.090(f). (Eff. 1/22/99, Register 149; am 8/27/2000, Register 155; am 1/30/2003, Register 165)

Authority:	AS 46.03.020	AS 46.03.740	AS 46.04.020
	AS 46.03.050	AS 46.03.745	AS 46.04.070
	AS 46.03.365	AS 46.03.822	AS 46.09.020
	AS 46.03.710		

Editor's note: The department's *Cumulative Risk Guidance*, adopted by reference in 18 AAC 78.600(d), may be viewed at or requested from the department's offices in Anchorage, Fairbanks, Juneau, and Soldotna.

18 AAC 78.605. SOIL SAMPLE NUMBER AND LOCATION.

(a) The owner or operator of a UST shall collect and analyze soil samples to verify that a site subject to corrective action meets the cleanup levels and requirements of this chapter. Soil samples must be collected and analyzed in accordance with 18 AAC 78.271.

(b) The minimum number of final verification grab samples required for excavated soil that have been treated is set out in Table C of this section.

TABLE C NUMBER OF SAMPLES FOR POST-TREATMENT EXCAVATED SOIL	
Cubic Yards of Soil	Minimum Number of Samples
0-10	1
11-50	2
51-100	3
101-500	5
501-1000	7
1001-2000	10
More than 2000	10 samples, plus one additional sample for each additional 500 cubic yards, or additional samples as the department determines necessary to ensure protection of human health and safety, and of the environment

(c) For untreated stockpiled soil, at least two grab samples must be collected from stockpiles of 50 cubic yards or less, with at least one additional sample collected from each additional 50 cubic yards of soil or portion thereof over the initial 50 cubic yards.

(d) Samples for any soil remaining in place at the site must be sufficient in number and location to represent the condition of the soil. (Eff. 1/22/99, Register 149; am 6/25/99, Register 150)

Authority: AS 46.03.020 AS 46.03.365

18 AAC 78.610. SOIL CLEANUP LEVELS.

(a) The owner or operator shall ensure that corrective action activities at the site meet applicable soil cleanup levels as determined under 18 AAC 75.340 - 18 AAC 75.341. If the department, as part of its approval of soil cleanup levels under 18 AAC 75.340 - 18 AAC 75.341, determines that compliance with an institutional control is required, the department will make that determination under 18 AAC 78.625.

(b) If an analysis of soil samples as required in this chapter shows soil to be contaminated with a hazardous substance other than a petroleum product, the owner or operator is subject to 18 AAC 75 and, as applicable, 18 AAC 60, 18 AAC 62, 18 AAC 70, 18 AAC 72, or another chapter of this title.

(c) Except as provided in 18 AAC 75.340(c) - (f), soil at a site where groundwater has been impacted by petroleum leachate must meet the soil cleanup levels in 18 AAC 75.341(a), Table A1, Part B, Category A unless the department approves another soil cleanup level under 18 AAC 75.340. (Eff. 1/22/99, Register 149)

Authority: AS 46.03.020 AS 46.03.050 AS 46.03.365

18 AAC 78.615. GROUNDWATER AND SURFACE WATER SAMPLE NUMBER AND LOCATION.

(a) If available evidence indicates that groundwater contains a hazardous substance in concentrations exceeding the applicable cleanup level determined under 18 AAC 75.345, or that surface

water contains a hazardous substance in concentrations exceeding the applicable standard in 18 AAC 70.020(b), the owner or operator of the UST that caused or contributed to the groundwater or surface water contamination shall, collect and analyze water samples to verify that the corrective action activities met the corrective action requirements of this chapter.

(b) Groundwater monitoring wells must be installed, developed, and decommissioned in accordance with the department's *Recommended Practices for Monitoring Well Design, Installation, and Decommissioning*, April 1992, adopted by reference, or another method that the department determines to be protective of human health and safety, and of the environment. Samples must be collected in accordance with the *UST Procedures Manual*.

(c) If a hazardous substance at a UST site has impacted surface water quality, the owner or operator of the UST that caused or contributed to the impact shall, after corrective action, collect and analyze surface water samples to verify that the corrective action activities met the corrective action requirements of this chapter. Analysis of water samples must be conducted in accordance with the *UST Procedures Manual*. (Eff. 1/22/99, Register 149; am 6/25/99, Register 150)

Authority: AS 46.03.020 AS 46.03.050 AS 46.03.365

Editor's note: *Recommended Practices for Monitoring Well Design, Installation, and Decommissioning*, adopted by reference in 18 AAC 78.615, may be viewed at or requested from the department's Anchorage, Fairbanks, Juneau, and Soldotna offices.

18 AAC 78.620. GROUNDWATER AND SURFACE WATER CLEANUP LEVELS.

The owner or operator shall complete corrective action activities and ensure that the site meets applicable groundwater cleanup levels determined under 18 AAC 75.345 and the applicable surface water quality standards and requirements of 18 AAC 70. If the department, as part of its approval of those cleanup levels, determines that compliance with an institutional control is required, the department will make that determination under 18 AAC 78.625. (Eff. 1/22/99, Register 149)

Authority: AS 46.03.020 AS 46.03.050 AS 46.03.365

18 AAC 78.625. INSTITUTIONAL CONTROLS.

(a) The department will, after consultation with each landowner of the site, determine that the use of an institutional control is necessary, on a site-specific basis, if the department determines that controls are required to ensure

- (1) compliance with an applicable cleanup level;
- (2) protection of human health or safety, or of the environment; or
- (3) the integrity of site corrective action activities or improvements.

(b) Institutional controls include

- (1) the requirement for and maintenance of physical measures, such as fences and signs to limit an activity that might interfere with corrective action or result in exposure to a contaminant at the site;
- (2) the requirement and maintenance of engineering measures such as liners and caps to limit exposure to a contaminant;
- (3) restrictive covenants, easements, deed restrictions, or other measures that would be examined during a routing title search, and that limit site use or site conditions over time or provide notice of any residual contamination; and
- (4) a zoning restriction or land use plan by a local government with land use authority.

(c) The use of institutional controls must, to the maximum extent practicable, be

Selected Alaska Oil & Hazardous Substances Pollution Control Statutes and Regulations

(1) appurtenant to and run with the land so that the control is binding on each future owner of the site; and

(2) maintained by each owner or operator of the site.

(d) If the department determines any of the following are necessary to protect human health or safety, or the environment, the department will require that institutional controls be designed to accomplish one or more of the following:

(1) prohibit activities on the site that might interfere with the site corrective action activities, operation and maintenance, monitoring, or other response actions;

(2) prohibit activities that might result in the release of a contaminant that was contained as a part of the site corrective action activities;

(3) require written notice to the department of any proposal to use the site in a manner that is inconsistent with a restrictive covenant or other measure described in (b)(3) of this section; and

(4) grant the department and its designated representatives the right to enter the property at reasonable times to evaluate compliance with the institutional control, including the right to take samples, inspect any corrective actions taken at the site, and inspect records relating to the operation and maintenance of the institutional control.

(e) If the department determines that financial assurance is necessary to ensure protection of human health or safety, or of the environment, the department will require the owner or operator to provide financial assurance sufficient to cover costs of operation and maintenance, including compliance monitoring and corrective measures, for any institutional control.

(f) If the concentrations of all residual contaminants remaining at the site are subsequently determined to be below the applicable cleanup levels, the department will approve, at the owner's request, elimination of the institutional control. (Eff. 1/22/99, Register 149)

Authority:	AS 46.03.020	AS 46.03.740	AS 46.04.110
	AS 46.03.050	AS 46.03.745	AS 46.09.060
	AS 46.03.365	AS 46.04.020	AS 46.09.070
	AS 46.03.710	AS 46.04.070	

ARTICLE 8. UNDERGROUND STORAGE TANK LABORATORY APPROVAL

Section

800. Approval requirements

810. Laboratory status

815. Change in laboratory status

18 AAC 78.800. APPROVAL REQUIREMENTS.

(a) Laboratory chemical analyses of soil and water required to be conducted under this chapter must be performed by a laboratory approved by the department under 18 AAC 78.800 - 18 AAC 78.815. If an owner or operator submits samples of soil or water under 18 AAC 78.090, 18 AAC 78.235, or 18 AAC 78.600 - 18 AAC 78.620, the manager of the laboratory that performs the chemical analysis shall include with each analysis the current state laboratory UST identification number. The department will assign a laboratory that number if the department receives an application and fee under this section from the laboratory. The department will not accept the submission of a soil or water sample analysis without that number.

(b) To obtain approval of the laboratory, the laboratory manager must

(1) submit a complete application on a form supplied by the department and pay a nonrefundable \$800 annual fee for department review of the laboratory's application, quality assurance (QA) manual, and performance evaluation (PE) audit sample results;

(2) submit a notarized statement signed by the laboratory manager, certifying that, for purposes of AS 46.03.360 – 46.03.450 and this chapter, the laboratory will adhere to the methods listed in Table 1 in the *UST Procedures Manual* and will include the standard operating procedures (SOPs) for those methods in its QA manual;

(3) unless waived under (f) of this section, submit for approval a QA manual or similar document that assures generation of quality data by the laboratory; the QA manual must contain the methods referred to in (2) of this subsection and must include the minimum elements described in EPA's *Guidance on Preparation of Laboratory Quality Assurance Plans*, Revision No. 1, dated October 9, 1992, (EPA 910/9-92-032), adopted by reference; and

(4) pass the performance evaluation audits for gasoline range organics, diesel range organics, residual range organics, and BTEX required under (c) and (d) of this section.

(c) A laboratory manager seeking an initial approval or renewal of approval under this section and 18 AAC 78.810 shall demonstrate the laboratory's ability to analyze samples for the parameters listed in Table 1 of the *UST Procedures Manual* by successfully analyzing PE samples, using one or more of the methods specified in Table 1, for gasoline range organics, diesel range organics, residual range organics, and BTEX in solids and in waters. The laboratory manager shall submit the analysis of the PE samples to the department no earlier than 90 days before the application is submitted and no later than 30 days after the application is submitted. If the PE result falls outside the acceptable range, the laboratory manager shall submit to the department, within 30 days after the laboratory manager receives notice of the failure, a corrective action report that identifies the cause of failure and includes a remedial action plan. If the department

(1) approves the corrective action report, the department will place the laboratory on provisionally approved status; within six months, the laboratory manager shall have the laboratory reanalyze a PE sample of the regulated analyte for which the previous analysis was unacceptable; if the laboratory

(A) passes the PE, the department will approve the laboratory; or

(B) fails the PE, the department will remove the laboratory from provisionally approved status and deny approval;

(2) does not approve the corrective action report, the department will deny approval.

(d) In the analysis of PE samples under (c) of this section, the laboratory shall use the required methods listed in Table 1 of the *UST Procedures Manual*. The laboratory manager shall obtain PE samples from a supplier listed by the American Association for Laboratory Accreditation unless the department, after receiving a written request from the laboratory manager, approves use of another supplier. The department will approve the use of another supplier if the laboratory manager demonstrates that a national or international accreditation body has accredited the supplier, based on evaluation of the supplier's technical qualifications, competence for conducting specific test methods, measurements, and services in specified fields of calibration or testing, and an onsite audit. To pass a PE, the analysis of each sample analyzed must be accurate to a minimum confidence interval of 95 percent.

(e) If a change in the laboratory operations affects the minimum elements described in the QA manual under (b)(3) of this section, the laboratory manager shall report the change to the department within 30 days after the change occurs. Laboratory approval is valid only if the QA manual reflects the minimum elements currently in effect at the laboratory.

(f) If a laboratory is accredited, certified, or approved for organic and inorganic analytical methods for purposes of another chapter in this title, the department, upon request, will waive the requirement to submit a QA manual for approval under (b)(3) of this section, unless the department determines that compliance with (b)(3) is necessary to assure generation of quality data. A laboratory manager requesting a waiver under this subsection shall submit a written request and the laboratory's current EPA identification number to the department.

(g) To renew an approval, a laboratory manager must submit an application with the required \$800 annual fee no more than 90 days and no less than 30 days before approval expires, and must perform the demonstration required in (c) of this section. Failure to submit a completed renewal application and fee when due results in lapse of approval.

(h) Approval under 18 AAC 78.800 - 18 AAC 78.815 constitutes a certification for purposes of AS 44.46.025. (Eff. 11/3/95, Register 136; am 1/22/99, Register 149; am 6/25/99, Register 150)

Authority: AS 44.46.020 AS 46.03.020 AS 46.03.365
AS 44.46.025

Editor's note:

1. The EPA's *Guidance on Preparation of Laboratory Quality Assurance Plans*, Revision No. 1, adopted by reference in 18 AAC 78.800, may be reviewed at the department's offices in Anchorage, Fairbanks, Juneau, and Soldotna, or may be obtained from the United States Environmental Protection Agency, 1200 Sixth Avenue, Seattle, WA 98101, phone: (360) 871-0748, fax: (360) 871-8747.
2. The American Association for Laboratory Accreditation may be contacted at 5301 Buckeystown Pike, Suite 350, Frederick, MD 21704-8307, phone: (301) 644-3248.
3. Application materials are available upon request from the State Chemistry Lab, 10107 Bentwood Street, Juneau, Alaska 99801, phone: (907) 790-2169, fax: (907) 790-2451. Application materials include the names and addresses of suppliers listed by the American Association for Laboratory Accreditation. The department's list of suppliers is updated on a periodic basis and may not reflect recent changes.
4. As of Register 179 (October 2006), and acting under AS 44.62.125(b)(6), the regulations attorney made a technical revision to 18 AAC 75.800(b)(2). This change reflects the enactment of sec. 2, ch. 102, SLA 2006, effective August 5, 2006, which repealed AS 46.03.060 and 46.03.363.

18 AAC 78.810. LABORATORY STATUS.

Based on its review of the application, the QA manual, and the PE results submitted under 18 AAC 78.800, and subject to change under 18 AAC 78.815, the department will, upon initial application or renewal, place a laboratory in one of the following classifications:

(1) “provisionally approved,” for a limited approval that allows a laboratory to operate as an approved laboratory while the laboratory’s application is pending due to circumstances described in (A) - (C) of this paragraph, or for one year, whichever period is less; for a laboratory with provisional approval, the laboratory manager shall ensure that all requirements for full approval are completed before provisional approval expires or the department will deny approval upon reapplication; the department will grant provisional approval to a laboratory that is not currently provisionally approved and that has not previously been denied approval, if at least one of the following circumstances exist:

(A) the department cannot process applications for approval in a timely manner;

(B) the department determines that laboratory has minor deficiencies in its QA manual;

(C) the laboratory fails one or more parameters from a PE and provides an acceptable corrective action report as required in 18 AAC 78.800(c);

(2) “approved,” for the full or partial approval of a laboratory that meets the requirements of 18 AAC 78.800; the department will send a letter of acceptance and a certificate of approval to the laboratory manager; an approval

(A) is effective for one year;

(B) is partial if the department denies approval for a specific parameter; the department will deny approval for a specific parameter if the laboratory has not passed the PE for that parameter as required under 18 AAC 78.800; and

(C) for gasoline range organics, diesel range organics, residual range organics, and BTEX is limited to the methods for which the laboratory demonstrated the ability to successfully analyze PE samples under 18 AAC 78.800;

(3) “disapproved,” for a laboratory that does not receive approval; the department will disapprove an application if the department determines that the laboratory manager has

(A) failed to demonstrate that the laboratory meets the requirements of 18 AAC 78.800;

(B) misrepresented the laboratory's capabilities;

(C) failed to disclose pertinent information in the application; or

(D) failed to pay the required fee.

(Eff. 11/3/95, Register 136; am 1/22/99, Register 149; am 6/25/99, Register 150)

Authority: AS 44.46.020 AS 46.03.020 AS 46.03.365
AS 44.46.025

18 AAC 78.815. CHANGE IN LABORATORY STATUS.

(a) If the department receives a written complaint about a laboratory's performance, the department will, in its discretion, review that laboratory's work product, submittals to the department, and the results of any investigation conducted under (e) of this section. If, based on a review under this section, the department determines action is warranted, the department will

(1) downgrade the laboratory to provisionally approved status; or

(2) suspend or revoke approval, or provisional approval, subject to 18 AAC 78.960.

(b) The department will downgrade a laboratory's status because of an unsatisfactory PE, as follows:

(1) if a laboratory with provisionally approved status fails a PE, the department will revoke the provisional approval and downgrade the laboratory to disapproved status;

(2) if an approved laboratory fails a PE, the laboratory manager shall submit to the department a corrective action report within 30 days after receiving notice of the failure; if the department

(A) approves the corrective action report, the department will maintain the laboratory's approved status; within six months, the laboratory manager shall ensure that a PE sample of the analyte for which the previous analysis was unacceptable is reanalyzed; if the laboratory

(i) fails the follow-up PE, the department will revoke the laboratory's approval and downgrade the laboratory to disapproved status; or

(ii) passes the follow-up PE, the department will maintain the laboratory's approved status; or

(B) does not approve the corrective action report, the department will place the laboratory on provisionally approved status.

(c) The following are grounds for suspension or revocation of approval or of provisionally approved status:

(1) violating or failing to meet a requirement applicable to the operation of a laboratory under this chapter;

(2) misrepresenting a laboratory's qualifications, capabilities, or experience;

(3) falsifying data or a report;

(4) engaging in unethical or fraudulent practices in generating analytical data;

(5) failing an onsite investigation under (e) of this section;

(6) operating under significant deficiencies in quality assurance as evidenced by the production of invalid analytical data or otherwise being unable to provide accurate analytical data using approved methods.

(d) In addition to the grounds for suspension or revocation of approval stated in (c) of this section, the department will suspend or revoke approval or the provisionally approved status of a laboratory that is principally owned, operated, or controlled by an entity that has been suspended or otherwise restricted in its laboratory operation by a federal agency or by an agency of this state or another state, if the suspension or revocation based on grounds listed in (c)(2)-(4) of this section or on significant deficiencies in quality assurance.

(e) If available information indicates that an approved or provisionally approved laboratory is frequently submitting erroneous data or is otherwise not performing according to the requirements of 18 AAC 78.800, the department will, in its discretion, conduct an onsite investigation of the laboratory. The department will charge the laboratory \$73 per hour for costs of the investigation, including development of the report that describes each area of noncompliance.

(f) The department will maintain a list of approved and provisionally approved laboratories and will distribute the list to interested persons upon request. (Eff. 1/22/99, Register 149)

Authority: AS 44.46.020 AS 46.03.020 AS 46.03.365
AS 44.46.025

ARTICLE 9. GENERAL PROVISION.

Section

- 910. Financial responsibility
- 920. Coordination with related federal, state, and local requirements
- 930. Waivers or modifications
- 940. Enforcement
- 950. Dispute resolution
- 960. Appeals
- 995. Definitions

18 AAC 78.910. FINANCIAL RESPONSIBILITY.

The financial responsibility requirements of 40 C.F.R. 280.90 - 280.115 and 281.37, as amended through September 22, 1995, are adopted by reference in this section. Nothing in this chapter exempts the owner or operator of a UST from meeting any other applicable federal financial responsibility requirement. (Eff. 3/25/91, Register 118; am 11/3/95, Register 136)

Authority: AS 46.03.020 AS 46.03.365 AS 46.03.405
AS 46.03.360

Editor's note: As of Register 179 (October 2006), and acting under AS 44.62.125(b)(6), the regulations attorney made a technical revision to the authority citation following 18 AAC 78.910. This change reflects the enactment of sec. 2, ch. 102, SLA 2006, effective August 5, 2006, which repealed AS 46.03.360.

18 AAC 78.920. COORDINATION WITH RELATED FEDERAL, STATE, AND LOCAL REQUIREMENTS.

(a) Nothing in this chapter exempts the owner or operator of a UST from meeting any other applicable requirement of federal, state, or local law.

(b) For purposes of 40 C.F.R., Part 281, as amended through September 22, 1995, if a court determines that a provision of this chapter is inconsistent with its corresponding provision in federal law under 40 C.F.R. Part 280, as amended through September 22, 1995, then the corresponding federal provision prevails. (Eff. 3/25/91, Register 118; am 11/3/95, Register 136)

Authority: AS 46.03.020 AS 46.03.360 AS 46.03.365

Editor's note: As of Register 179 (October 2006), and acting under AS 44.62.125(b)(6), the regulations attorney made a technical revision to the authority citation following 18 AAC 78.920. This change reflects the enactment of sec. 2, ch. 102, SLA 2006, effective August 5, 2006, which repealed AS 46.03.360.

18 AAC 78.930. WAIVERS OR MODIFICATIONS.

If the department determines that a waiver or modification will be protective of human health and safety, and of the environment, the department will waive or modify the site characterization, site assessment, investigation, corrective action, or cleanup level provisions of this chapter based on a review of release quantity and quality, soil and groundwater conditions, surface waters and topography, geology, water and land uses, construction methods and materials, and any other

environmental factor important to the evaluation. A person seeking a waiver or modification of a provision of this chapter under this section shall submit a written report to justify the request, and to demonstrate that the waiver or modification is protective of human health and safety, and of the environment. A qualified person shall prepare and sign the report submitted under this section. (Eff. 3/25/91, Register 118; am 11/3/95, Register 136; am 1/22/99, Register 149; am 6/25/99, Register 150)

Authority: AS 46.03.020 AS 46.03.365 AS 46.03.375

18 AAC 78.940. ENFORCEMENT.

The department will, in its discretion, take enforcement action in response to a violation of this chapter, using the compliance procedures at 18 AAC 95. Nothing in this section precludes the department from taking other appropriate action under AS 46.03.758, 46.03.760, 46.03.765, 46.03.790, or other applicable law. The department will, in its discretion, suspend or revoke an approval issued under this chapter as a means of enforcing the provisions of this chapter. (Eff. 3/25/91, Register 118; am 11/3/95, Register 136)

Authority: AS 46.03.020 AS 46.03.760 AS 46.03.790
AS 46.03.365 AS 46.03.765 AS 46.03.850
AS 46.03.758

18 AAC 78.950. Dispute resolution.

Deleted.

(Eff. 3/25/91, Register 118; am 11/3/95, Register 136; am 4/16/2000, Register 154; am 1/30/2003, Register 165; deleted as of Register 179, October 2006)

Editor's note: As of Register 179 (October 2006), and acting under AS 44.62.125(b)(6), the regulations attorney deleted 18 AAC 78.950. This change reflects the enactment of sec. 2, ch. 102, SLA 2006, effective August 5, 2006, which repealed statutes establishing the Board of Storage Tank Assistance, underground storage tank revolving loan fund, and tank cleanup loan program. Section 3, ch. 102, SLA 2006 annulled regulations made obsolete by those repeals.

18 AAC 78.960. APPEALS.

Any person who is aggrieved by a department decision regarding issuance, denial, suspension, or revocation of an approval or certification under this chapter may request an adjudicatory hearing under 18 AAC 15.195 - 18 AAC 15.340. (Eff. 11/3/95, Register 136; am 7/11/2002, Register 163)

Authority: AS 46.03.020 AS 46.03.365 AS 46.35.090(e)

18 AAC 78.995. DEFINITIONS.

Unless the context indicates otherwise, in this chapter or in AS 46.03.360 - 46.03.450

(1) "aboveground release" means a release to the surface of the land or to surface water, including a release from the aboveground portion of a UST, and an aboveground release associated with overfills or transfer operations as the petroleum moves to or from a UST;

(2) "accuracy" means the degree of agreement between an analytical result and the true value;

- (3) "airport hydrant fuel distribution system" means an underground or aboveground fuel piping system connected to a fuel storage tank if the system includes
- (A) a bulk reservoir of at least 100,000 gallons;
 - (B) a fuel dispensing station located 200 feet or more from the storage tank;
 - (C) multiple hydrants;
 - (D) pipe diameter of at least six inches;
 - (E) system operating pressure capable of at least 75 psi; and
 - (F) a minimum monthly flow-through of 1,000,000 gallons;
- (4) "alkane range" means a group of saturated open-chain hydrocarbons that have the general formula C_nH_{2n+2} ;
- (5) "analytical method" means a set of written instructions that define procedures to be followed by an analyst to obtain the required result;
- (6) "ancillary equipment" has the meaning given that term in the definition for "underground petroleum storage tank system" in AS 46.03.450;
- (7) "applicant" means a person who has applied for certification, approval, or assistance under this chapter;
- (8) "approval" means written approval by the department;
- (9) "approved" means approved in writing by the department;
- (10) "aromatic" means of, related to, or containing one or more six-carbon rings characteristic of the benzene series and related organic groups;
- (11) "before beginning work" means before a change, upgrade, addition, or removal of any part of a UST, including associated equipment and material surrounding the UST, or before a change-in-service;
- (12) "belowground release" means a release of petroleum to the subsurface of the land or to groundwater, including a release from the belowground portion of a UST, and a belowground release associated with an overfill or transfer operation as the petroleum moves to or from a UST;
- (13) "beneath the surface of the ground," as that term is used in the definition of "underground storage tank" in AS 46.03.450, means overspread with earthen materials;
- (14) "bioremediation" means a remediation method that decreases the concentration of a contaminant in soil through biological action;
- (15) "board" means the Board of Storage Tank Assistance established under AS 46.03.360;
- (16) "BTEX" means benzene, toluene, ethylbenzene, and total xylenes;
- (17) "carcinogen" means
- (A) a substance that is expected to cause cancer in nonhuman life; or
 - (B) for human health purposes, a substance that meets the criteria of a Group A or Group B carcinogen according to EPA's *Guidelines for Carcinogen Risk Assessment*, 51 Fed. Reg. 33992, 33999 - 34000 (Sept. 24, 1986), adopted by reference;
- (18) "carcinogenic" means of or relating to a carcinogen;
- (19) "cathodic protection" means a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell; for example, a tank system can be cathodically protected through the application of either galvanic anodes or impressed current;
- (20) "certification" means a certification of competency issued by the division under this chapter indicating that a person has met the requirements for a specified category of UST work;
- (21) "certified" means having been issued a certification;
- (22) "certified tank worker," or "certified worker" mean a person who has been issued certification for a specific category of UST work by the division;
- (23) "change in configuration" means a change, upgrade, addition, or removal of a part of a UST and ancillary equipment;
- (24) "change-in-service" means a change in the use of a UST

(A) from containing petroleum to containing a substance other than petroleum; or

(B) to a use that removes the tank from the definition of "underground storage tank" at AS 46.03.450;

(25) "chemical" has the meaning given in AS 46.03.450;

(26) "cleanup level" means the concentration of a contaminant that may be present within a specified medium and under specified exposure conditions without posing a threat to human health or safety, or to the environment;

(27) "close" has the meaning given in AS 46.03.375(g)(1);

(28) "closure" has the meaning given in AS 46.03.430(d)(1);

(29) "compatible," as used to describe two or more substances, means able to maintain respective physical and chemical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered in the UST;

(30) "connected underground piping" means the underground piping, including valves, elbows, joints, flanges, and flexible connectors attached to a tank system through which petroleum flows; to determine how much piping is connected to a UST, the piping that joins two USTs is allocated equally between them;

(31) "construction season" means April 1 through September 30;

(32) "containment and cleanup" has the meaning given in AS 46.03.450;

(33) "contaminant" means a hazardous substance;

(34) "contaminated groundwater" means groundwater with concentrations of contaminants that exceed the applicable groundwater levels referenced in 18 AAC 78.600 and 18 AAC 78.620;

(35) "contaminated soil" means soil with concentrations of contaminants that exceed the applicable soil cleanup levels referenced in 18 AAC 78.600 - 18 AAC 78.610;

(36) "contaminated surface water" means surface water with concentrations of contaminants that exceed the applicable water quality standards in 18 AAC 70;

(37) "corrective action" has the meaning given in AS 46.03.450;

(38) "corrective action plan" means a plan that describes the procedures proposed by the owner or operator under 18 AAC 78.250 to investigate, assess, correct, contain, and clean up a petroleum release, and, if financial assistance is requested, contains an interim cleanup cost estimate;

(39) "corrosion" means the deterioration of metal from the loss of positive charged metal ions from the metal surface into an electrolyte;

(40) "corrosion expert" means a person who

(A) by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired through a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks; and

(B) is accredited or certified as being qualified by the National Association of Corrosion Engineers or is a registered engineer with education and experience in corrosion control of buried or submerged metal piping systems and metal tanks;

(41) "corrosion protection" means a measure to prevent degradation of UST components caused by electrolysis or chemical action;

(42) "corrosion protection equipment" means cathodic protection systems and dielectric coatings that prevent electrolysis or chemical action;

(43) "degradation" means a process by which a chemical is reduced to a less complex form;

(44) "demonstrate" means to prove through demonstration or other evidence to the department's satisfaction;

(45) "demonstration" means proof through documentation or other evidence to the department's satisfaction;

- (46) "department" means the Department of Environmental Conservation;
- (47) "dielectric material" means a material that does not conduct direct electrical current; dielectric coatings are used to electrically isolate a UST from surrounding soil; dielectric bushings are used to electrically isolate portions of the UST, such as the tank, from the piping;
- (48) "diesel range organics" or "DRO" means mid-range petroleum products, including diesel fuel, with petroleum hydrocarbon compounds corresponding to an alkane range from the beginning of n-decane (C₁₀) to the beginning of n-pentacosane (C₂₅) and with a boiling point range between approximately 170 - 400 degrees Centigrade;
- (49) "discharge" has the meaning given in AS 46.04.900;
- (50) "division" means the division of occupational licensing in the Department of Commerce and Economic Development;
- (51) "electrical equipment" means underground equipment that contains dielectric fluid necessary for the operation of equipment, such as transformers and buried electrical cable;
- (52) "emergency power generator" means an electrical motor-generator used exclusively to provide electrical power during primary power failure;
- (53) "engineering measure" means a modification to a site or facility, including a liner, cap, or slurry wall, that is designed by a registered engineer to reduce or eliminate the potential exposure to a contaminant;
- (54) "EPA" means the United States Environmental Protection Agency;
- (55) "excavation zone" means a space containing a UST and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST is placed when installed;
- (56) "existing tank" means a UST used to contain an accumulation of petroleum and for which installation commenced on or before December 22, 1988; installation is considered to have commenced if the owner or operator had obtained all federal, state, and local approvals or permits necessary to begin construction of the site or installation of the UST and
- (A) a continuous onsite construction or installation program had begun; or
 - (B) the owner or operator had entered into contractual obligations for physical construction at the site or installation of the UST to be completed within a reasonable time and the contract could not have been canceled or modified without substantial loss;
- (57) "exposure point value" means the concentration of a contaminant determined at the point of exposure to the contaminant;
- (58) "ex-situ" means as applied to soil or groundwater moved from its original place, excavated, removed, or recovered from the ground;
- (59) "facility" has the meaning given in AS 46.03.450;
- (60) "farm" has the meaning given in AS 46.03.450;
- (61) "farm tank," as that term is used in the definition of "underground storage tank" in AS 46.03.450, means a UST located on a farm;
- (62) "field-constructed tank" means a 50,000 gallon or larger UST constructed onsite from readily available materials, but does not include a UST assembled from commercially available, factory constructed modular components;
- (63) "final cleanup activities cost estimate" means an interim cleanup activities cost estimate that has been modified as required by 18 AAC 78.509(b)(3) for services other than professional services;
- (64) "financial assistance" means a grant, loan, or reimbursement awarded under this chapter;
- (65) "flow-through process tank," as that term is used in the definition of "underground storage tank" in AS 46.03.450, means a UST that forms an integral part of a production process through which a steady, variable, recurring, or intermittent flow of petroleum exists during the operation of the process; "flow-through process tank" does not include a UST used

for the storage of petroleum before its introduction into the production process or for the storage of finished products or byproducts from the production process;

(66) "force account" means work performed by the owner or operator of a UST, or an employee of the owner or operator;

(67) "free product" means a concentration of petroleum that is present as a nonaqueous phase liquid; for purposes of this paragraph, a "nonaqueous phase liquid" is a liquid that is not dissolved in water;

(68) "gasoline" means a petroleum distillate that is used for motor fuel or heating oil and that consists predominantly of hydrocarbons corresponding to an alkane range from the beginning of n-hexane (C₆) to the beginning of the n-decane (C₁₀);

(69) "gasoline range organics" or "GRO" means light range petroleum products, including gasoline, with petroleum hydrocarbon compounds corresponding to an alkane range from the beginning of n-hexane (C₆) to the beginning of n-decane (C₁₀) and with a boiling point range between approximately 60 - 170 degrees Centigrade;

(70) "gathering lines," as that term is used in the definition of "underground storage tank" in AS 46.03.450, means any pipeline equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations;

(71) "groundwater" has the meaning given in 18 AAC 75.990;

(72) "hazard index" means the sum of the hazard quotients attributable to non-carcinogenic contaminants with similar critical endpoints;

(73) "hazard quotient" means the ratio of the exposure point value to the reference dose for the contaminant;

(74) "hazardous substance" has the meaning given in AS 46.03.826;

(75) "heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, and No. 6 technical grades of fuel oil, other residual fuel oils, including Navy Special Fuel Oil and Bunker C, and other fuels if used as a substitute for one of the fuels listed in this paragraph; "heating oil" includes oil typically used in the operation of heating equipment, boilers, or furnaces;

(76) "hydraulic lift tank" means a UST holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices;

(77) "hydrocarbons" means organic compounds, such as benzene and methane, that contains only carbon and hydrogen;

(78) "in-situ" means as applied to soil or groundwater in its original place, unmoved, unexcavated, or remaining in the subsurface;

(79) "install" means to perform the work involved in placing a UST or any part of a UST in the ground and preparing it to be placed in service;

(80) "institutional control" means a measure taken to limit, prohibit, or protect against an activity that could

(A) interfere with the integrity of corrective action activities or improvements designed to encapsulate or control residual contamination; or

(B) result in human or environmental exposure to a contaminant;

(81) "interim cleanup activities cost estimate" means an estimate, prepared by a qualified impartial third party, of costs necessary to implement a corrective action plan;

(82) "job site" means the physical location where a UST is to be installed or removed;

(83) "laboratory" means a mobile or fixed facility capable of providing analytical services;

(84) "laboratory manager" means the person principally responsible for overall management of laboratory operations, including compliance with applicable requirements of AS 46.03.360 – 46.03.450, this chapter, and the *UST Procedures Manual*;

(85) "landfarming" means spreading contaminated soil in a thin layer on the surface of the ground so that biological activity can be enhanced by the addition of nutrients, mechanical aeration, the addition of water, adjustment of pH, and similar activities;

(86) "landspreading" means spreading contaminated soil in a thin layer on the surface of the ground, relying mainly on aeration and unenhanced biological action to perform remediation;

(87) "liquid trap," as that term is used in the definition of "underground storage tank" in AS 46.03.450, means a sump, well cellar, or other trap used in association with oil and gas production, gathering, and extraction operations to collect oil, water, and other liquids; "liquid trap" includes a trap to temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream or to collect and separate liquids from a gas stream; in this paragraph, "oil and gas production, gathering, and extraction operations" include a gas production plant;

(88) "maintenance" means the normal operational upkeep to prevent a UST from releasing petroleum;

(89) "method detection limit" means the minimum concentration of an analyte that can be measured and reported with 99 percent confidence that the value is greater than zero, determined from an analysis of a sample in a given matrix containing the analyte used in the analysis;

(90) "motor fuel" means petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or a grade of gasohol; "motor fuel" includes fuel that is typically used in the operation of a motor engine;

(91) "nationally recognized code of practice" means a procedure, code, or standard developed by a nationally recognized association or independent testing laboratory, or by a federal agency, including the Petroleum Equipment Institute (PEI), National Fire Protection Association (NFPA), International Fire Code Institute (IFCI), American Petroleum Institute (API), National Association of Corrosion Engineers (NACE), Occupational Safety and Health Agency (OSHA), United States Environmental Protection Agency (EPA), Steel Tank Institute (STI), Fiberglass Petroleum Tank and Pipe Institute, American National Standards Institute (ANSI), American Society of Mechanical Engineers (ASME), American Society for Testing Materials (ASTM), Underwriters Laboratories, and Underwriters Laboratories of Canada;

(92) "new tank" or "new UST" means a UST that will be used to contain an accumulation of petroleum, and for which installation commenced after December 22, 1988;

(93) "noncarcinogen" means a contaminant with adverse health effects on humans other than cancer;

(94) "noncarcinogenic" means of or relating to a noncarcinogen;

(95) "noncommercial purposes," as that term is used in the definition of "underground storage tank" in AS 46.03.450, means, with respect to motor fuel, not for resale;

(96) "nongasoline fraction" means diesel or any other petroleum distillate used for motor fuel or heating oil that consists predominantly of hydrocarbons corresponding to an alkane range of n-decane (C₁₀) or greater;

(97) "on the premises where stored," as that term is used in the definition of "underground storage tank" in AS 46.03.450, means located on the same property on which the stored heating oil is used;

(98) "operational life" means the period beginning when installation of a UST commences until the UST is permanently closed under 18 AAC 78.085;

(99) "operator" means a person who is in control of, or who has responsibility for, the daily operation of a UST used to store or dispense petroleum;

(100) "overfill" means a release that occurs when a UST is filled beyond its capacity, resulting in the discharge of petroleum into the environment;

(101) "owner" means a person who owns a UST used to store or dispense petroleum;

(102) "owner or operator" means the owner or operator of a UST that is subject to the requirements of this chapter; if owner or operator is used to impose a duty that would result in a

duplicative response or action if taken by both the owner and the operator, "owner or operator" means that the response or action shall be taken either by the owner or by the operator;

(103) "parameter" means a single analytical determination or group of determinations using a specific method of analysis identified by the laboratory;

(104) "performance evaluation audit" or "PE" means the analysis and reporting by a laboratory of an unknown sample provided by a source external to the laboratory;

(105) "PE sample" means a performance evaluation audit sample;

(106) "petroleum" has the meaning given in AS 46.03.450;

(107) "phase I funding" means a grant or loan available to an eligible owner or operator for expedited funding to complete a corrective action plan, site characterization, site assessment, or interim cleanup activities cost estimate as part of an application for a grant or loan under 18 AAC 78.515; for purposes of this paragraph, "expedited funding" means a procedure that provides funding in advance of the normal funding procedure described in 18 AAC 78.509 for implementation of a corrective action plan prepared under 18 AAC 78.250;

(108) "phase II funding" means a grant or loan available to an eligible owner or operator seeking financial assistance for

(A) the cost of implementing corrective action activities under the approved corrective action plan; or

(B) reimbursement under 18 AAC 78.509(b)(2) or (3);

(109) "physical barrier" means a concrete or asphalt surface that

(A) is impermeable to water;

(B) is designed, constructed, and placed in accordance with industry

standards; and

(C) provides sufficient support thickness, layering, and life to prevent compromising the structural integrity of the material;

(110) "pipe" or "piping" means a hollow cylinder or tubular conduit that is constructed of nonearthen materials;

(111) "pipeline facility," as that term is used in the definition of "underground storage tank" in AS 46.03.450, means pipe, pipe rights-of-way, and associated equipment, gathering lines, facilities, or buildings;

(112) "plume" means a visible or measurable discharge or release of a contaminant from a given point of origin;

(113) "practicable" means capable of being designed, constructed, and implemented in a reliable and cost-effective manner, taking into consideration existing technology, site location, and logistics in light of overall project purposes; "practicable" does not include an alternative if the incremental cost of the alternative is substantial and disproportionate to the incremental degree of protection provided by the alternative as compared to another lower cost alternative;

(114) "practical quantitation limit" means the lowest concentration that can be reliably measured within specified limits of precision, accuracy, representativeness, completeness, and comparability when testing field samples under routine laboratory operating conditions using approved methods;

(115) "preliminary cleanup activities cost estimate" means an estimate of costs necessary to prepare and implement a corrective action plan;

(116) "professional services" means professional, technical, or consultant's services that are predominantly intellectual in character, result in the production of a report or the completion of a task, and include analysis, evaluation, prediction, planning, or recommendation;

(117) "property" means an area in which a UST is located and that is defined by legal title;

(118) "qualified person" or ☐qualified third party☐ means a person who actively practices environmental science or engineering, geology, physical science, hydrology, or a related field and has the following minimum education and experience:

(A) a bachelor's degree or equivalent from a nationally or internationally accredited postsecondary institution in environmental science or engineering, geology, hydrology, physical science, or a related field; for purposes of this subparagraph, "equivalent" means that the person earned at least 128 semester hours, 168 trimester hours, or 192 quarter hours at an accredited postsecondary institution, and with at least 18 percent of those hours in a science major and at least 13 percent of those hours in upper division-level courses; and

(B) at least one year of professional experience in environmental science or engineering, geology, physical science, or a related field, completed after the degree described in (A) of this paragraph was obtained;

(119) "quality assurance" means the act of establishing confidence that analytical data is of a known and documented degree of excellence; "quality assurance" covers the general areas of accuracy, completeness, representativeness, and comparability of data;

(120) "quality assurance program" means a totally integrated program for quality assurance, ensuring reliability of measurement data;

(121) "quality assurance manual" or "QA manual" means a written record of the policies, organization, objectives, and specific quality assurance program established by a laboratory to assure generation of quality data;

(122) "reconfiguration" means the replacement or realignment of the pipes connected to a UST, or the retrofitting of a UST or any part of a UST by adding cathodic protection, lining, release detection equipment, or spill or overfill controls that are designed to improve the ability of the UST to prevent a release;

(123) "reference dose" means the concentration of a contaminant via daily exposure through a specified exposure route for the human population, including sensitive subpopulations, that is likely to be without an appreciable risk of deleterious noncarcinogenic effects over the period of exposure;

(124) "registered engineer" means a professional engineer who is registered under AS 08.48.171 - 08.48.265;

(125) "release" has the meaning given in AS 46.08.900;

(126) "release detection" means a process or method used to determine if a release of petroleum has occurred from a UST into the environment or into the interstitial space between the UST and its secondary barrier or the secondary containment around it;

(127) "residential tank," as that term is used in the definition of "underground storage tank" in AS 46.03.450, means a UST located on property used primarily for dwelling purposes;

(128) "residual range organic" or "RRO" means heavy range petroleum products, including lubricating oils, with petroleum hydrocarbon compounds corresponding to an alkane range from the beginning of n-pentacosane (C₂₅) to the beginning of n-hextriacontane (C₃₆) and a boiling point range between approximately 400 - 500 degrees Centigrade;

(129) "return to service" means to dispense, replenish, or sell petroleum;

(130) "risk assessment" has the meaning given in AS 46.03.450;

(131) "secondary containment" means features of a UST that are designed to

(A) contain all leaks and spills from tanks and associated underground equipment; and

(B) prevent the escape of a leak or spill into the surrounding soil, surface water, or groundwater;

(132) "septic tank," as that term is used in the definition of "underground storage tank" in AS 46.03.450, means a watertight, covered receptacle designed and built to receive domestic wastewater, separate floating and settling solids from the liquid, anaerobically digest organic matter, store digested solids through a period of detention, and allow clarified liquids to discharge for final disposal;

(133) "significantly reconfigure" means to perform a reconfiguration;

- (134) "site" means an area that is contaminated, including areas contaminated by the migration of a contaminant from a source area, regardless of property ownership;
- (135) "site assessment" has the meaning given in AS 46.03.450;
- (136) "soil" means an unconsolidated geologic material, including clay, loam, loess, silt, sand, gravel, tills, or any combination of these materials;
- (137) "solidification" means the mixing of an additive into contaminated soil to immobilize the contaminants in the soil;
- (138) "standard operating procedure" or "SOP" means a detailed written description of a procedure designed to systematize the performance of the procedure;
- (139) "storm water or waste water collection system," as that term is used in the definition of "underground storage tank" in AS 46.03.450, means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water run-off resulting from precipitation or domestic or nondomestic wastewater to and from a retention area or an area where treatment is designated to occur; "storm water or waste water collection system" does not include treatment except if incidental to conveyance; "stormwater or wastewater collection system" includes
- (A) gravity, pressure, and vacuum sewers, including associated parts such as manholes and cleanouts;
 - (B) pump or collection stations; and
 - (C) each part of a collector sewer, regardless of ownership of the land on which it is installed;
- (140) "substandard UST" means a UST that does not have corrosion protection or spill and overflow control;
- (141) "sufficient evidence" means proof that satisfies the department;
- (142) "supervise," as it applies to the supervision by a qualified person, means
- (A) to take direct responsibility for preparing each report or making an interpretation regarding field data;
 - (B) to exercise onsite control over all work that requires assessment, investigation, characterization, reporting, or interpretation, including
 - (i) selection of the location or depth of sample points in soil, groundwater, surface water, or stockpiles;
 - (ii) location, placement, or supervision of construction or completion of monitoring or corrective action wells;
 - (iii) description of site characteristics, soil characteristics, or geological characteristics in field notes that will be used by the assessment firm in the report submitted to the owner or operator of the project;
 - (iv) duties required to be performed under the *UST Procedures Manual* other than those strictly limited to the physical act of sample collection and transport; and
 - (v) collection of final verification samples; and
 - (C) to exercise onsite or offsite control over routine tasks associated with the physical act of sample collection and transportation;
- (143) "surface impoundment," as used in the definition of "underground storage tank" in AS 46.03.450, means a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials, although the depression, excavation, or area might be lined with man-made materials; "surface impoundment" does not include an injection well;
- (144) "surface water" means waters of the state naturally open to the atmosphere including rivers, lakes, reservoirs, streams, impoundments, and seas;
- (145) "taken out of service" means, with reference to a UST; a UST is considered empty if all materials are removed so that no more than 2.5 centimeters or one inch of residue, or 0.3 percent by weight of the total capacity of the UST, remains in the system; "taken out of service" is sometimes referred to as "out of use," "not in use," or "out of operation";

(146) "tank" means a stationary device that is designed to hold an accumulation of petroleum, and that is constructed of nonearthen materials such as concrete, steel, or plastic that provide structural support;

(147) "tank system" has the meaning given in AS 46.03.450;

(148) "tank tightness test" means a leak detection method capable of detecting a leak rate of at least 0.1 gallons per hour in any part of a UST that routinely contains petroleum, including associated piping, while accounting for the effects of thermal expansion or contraction of the petroleum, vapor pockets, tank deformation, evaporation, condensation, and the location of the water table;

(149) "technology" means equipment, supplies, other resources, and related practices;

(150) "test" means to perform a tank tightness test or a cathodic protection test;

(151) "total xylenes" means the sum of the ortho-xylene, meta-xylene, and para-xylene concentrations;

(152) "transmissivity" means the rate at which water is transmitted through a unit width of an aquifer or confining bed under a hydraulic gradient of one;

(153) "underground area," as that term is used in the definition of "underground storage tank" in AS 46.03.450, means an underground room such as a basement, cellar, shaft, or vault that provides enough space for physical inspection of the exterior of a UST that is located on or above the surface of the floor;

(154) "underground storage tank" has the meaning given in AS 46.03.450;

(155) "underground petroleum storage tank system" and "underground storage tank system" have the meaning given to "underground petroleum storage tank system" in AS 46.03.450;

(156) "upgrade" or "upgrading" have the meaning given to "upgrading" in AS 46.03.430(d)(2);

(157) "UST" means an underground storage tank or an underground storage tank system;

(158) "*UST Procedures Manual*" means the department's *Underground Storage Tanks Procedures Manual* adopted by reference in 18 AAC 78.007;

(159) "vadose zone" means the ground layer beneath the topsoil and overlying the water table in which water in pore spaces coexists with air or in which geological matter is unsaturated;

(160) "vault" means an enclosure that

(A) is liquid tight, vapor tight, and without backfill inside;

(B) is reinforced with concrete at least six inches thick on the sides, top, and bottom of the enclosure;

(C) has openings for inspection through the top only;

(D) has tank connections piped or closed so that neither vapors nor liquid can escape into the enclosure; and

(E) permits portable equipment to discharge to the outside vapors that may accumulate should leakage occur;

(161) "wastewater collection system" is defined within the definition of "storm water or waste water collection system" in this section;

(162) "wastewater treatment tank" means a UST designed to receive and treat an influent wastewater through physical, chemical, or biological methods; and

(163) "working day" means a day other than Saturday, Sunday, or a state holiday. (Eff. 3/25/91, Register 118; am 8/21/91, Register 119; am 1/27/94, Register 129; am 6/23/94, Register 130; am 8/4/94, Register 131; am 11/3/95, Register 136; am 1/22/99, Register 149; am 4/16/2000, Register 154; am 1/30/2003, Register 165)

Selected Alaska Oil & Hazardous Substances Pollution Control Statutes and Regulations

Authority:	AS 44.46.020	AS 46.03.360	AS 46.03.430
	AS 44.46.025	AS 46.03.365	AS 46.03.740
	AS 46.03.020	AS 46.03.375	AS 46.03.758
	AS 46.03.050	AS 46.03.420	Sec. 7, ch. 96, SLA 1990
	AS 46.03.070	AS 46.03.422	

Editor's note: A listing of sources for nationally-recognized codes of practice, as that term is defined in 18 AAC 78.995, may be found in the editor's note following 18 AAC 78.025.

As of Register 171 (October 2004), the regulations attorney made technical revisions under AS 44.62.125(b)(6) to reflect the name change of the Department of Community and Economic Development to the Department of Commerce, Community, and Economic Development made by ch. 47, SLA 2004 and the corresponding title change of the commissioner of community and economic development.

As of Register 179 (October 2006), and acting under AS 44.62.125(b)(6), the regulations attorney made technical revisions to the lead-in language of 18 AAC 78.995 and to 18 AAC 78.995(84); deleted 18 AAC 78.995(15), (32), (59), (63), (107), (108), and (130); and made technical revisions to the authority citation following 18 AAC 78.995. These changes reflect the enactment of sec. 2, ch. 102, SLA 2006, effective August 5, 2006, which repealed statutes establishing the Board of Storage Tank Assistance, underground storage tank revolving loan fund, and tank cleanup loan program. Section 3, ch. 102, SLA 2006 annulled enumerated regulations made obsolete by those repeals, including the definitions in 18 AAC 78.995(15), (32), (59), and (130). The regulations attorney additionally deleted definitions in 18 AAC 78.995(63), (107), and (108), reflecting the annulment of those regulations in which the defined terms appear or to which they relate.

With Register 180, January 2007 and under the authority of AS 44.62.125, the regulations attorney changed obsolete terminology concerning the division of occupational licensing and the division of banking and securities in conformity with ch. 14, SLA 2005 and to reflect the transfer of certain corporations functions within the Department of Commerce, Community, and Economic Development.

As of Register 187 (October 2008), the regulations attorney made a technical revision under AS 44.62.125 (b)(6), to the definition of "UST" in 18 AAC 78.995.

ALASKA ADMINISTRATIVE CODE

TITLE 18. ENVIRONMENTAL CONSERVATION

CHAPTER 79. ILLEGAL DRUG MANUFACTURING SITES

Section

- 010. Notice of illegal drug manufacturing site; list of properties
- 020. Sampling and testing procedures
- 030 Fitness standards
- 040 Decontamination procedures
- 050 Laboratory reports
- 900. Definitions

18AAC 79.010. NOTICE OF ILLEGAL DRUG MANUFACTURING SITE; LIST OF PROPERTIES.

(a) When the department receives notice from a law enforcement agency of an illegal drug manufacturing site under AS 46.03.500, the department will provide that law enforcement agency with

(1) A copy of the department's Guidance and Standards for Cleanup of Illegal Drug Manufacturing Sites, dated April 19, 2007, adopted by reference; and

(2) A copy of the list of laboratories for sampling and testing illegal drug manufacturing sites required under AS 46.03.520

(b) Certification of fitness for use under AS 46.03.550(a) shall be made on a form supplied by the department. (Eff. 2/20/2005; Register 173; am 11/24/2007, Register 184)

Authority: AS 46.03.500 AS 46.03.530 AS 46.03.560
AS 46.03.510 AS 46.03.540 AS 46.03.570
AS 46.03.520 AS 46.03.550 AS 46.03.599

18AAC 79.020. SAMPLING AND TESTING PROCEDURES.

Procedures for sampling and testing of illegal drug manufacturing sites under AS 46.03.520(B) are provided in Part 4 of the department's Guidance and Standards for Cleanup of Illegal Drug Manufacturing Sites, adopted by reference in 18aac 79.010. (Eff. 2/20/2005, Register 173)

Authority: AS 46.03.500 AS 46.03.520 AS 46.03.570

18 AAC 79.030. FITNESS STANDARDS.

Cleanup standards for determining whether an illegal drug manufacturing site is fit for use under AS 46.03.530 are provided in Part 2 of the department's Guidance and Standards for Cleanup of illegal Drug Manufacturing Sites, adopted by reference in 18 AAC 79.010. (Eff. 2/20/2005, Register 173)

Authority: AS 46.03.500 AS 46.03.550 AS 46.03.530

18 AAC 79.040. DECONTAMINATION PROCEDURES.

Procedures for decontaminating illegal drug manufacturing sites under AS 46.03.540 are provided in Part 3 of the department's Guidance and Standards for Cleanup of illegal Drug Manufacturing Sites, adopted by reference in 18 AAC 79.010. (Eff. 2/20/2005, Register 173)

Authority: AS 46.03.500 AS46.03.520 AS 46.03.570

18 AAC 79.900. DEFINITIONS. In this chapter, "illegal drug manufacturing site" has the meaning given in AS 46.03.599. (Eff. 2/20/2005, Register 173)

Authority: AS 46.03.570 AS 46.03.599