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**OFFICE OF THE LIEUTENANT GOVERNOR
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MEMORANDUM

TO: Gary Mendivil, Department of Environmental Conservation

FROM: Scott Meriwether, Office of the Lieutenant Governor - 465.4081 

DATE: April 8, 2016

RE: Filed Permanent Regulations: Department of Environmental Conservation
Regulations re: spill prevention and response and cost recovery (18 AAC 75.910)

Attorney General File: JU2010201122

Regulation Filed: April 8, 2016

Effective Date: May 8, 2016

Print: 218, July 2016

cc with enclosures: Linda Miller, Department of Law
Dianne Blumer, Administrative Regulation Review Committee
Judy Herndon, LexisNexis

ORDER ADOPTING CHANGES TO
REGULATIONS OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

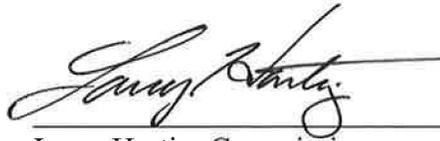
The attached 4 pages of regulations, dealing with 18 AAC 75 (Oil and Other Hazardous Substances Pollution Control) cost recovery for response and cleanup of oil spills and hazardous substances are hereby adopted and certified to be a correct copy of the regulation changes that the Department of Environmental Conservation adopts under the authority of AS 46.03 and AS 46.04 after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

In considering the comments the Department of Environmental Conservation paid special attention to the cost to private persons of the regulatory action being taken. The Department of Environmental Conservation also gave special attention to alternate practical methods in this regulatory action, as required by AS 46.03.024.

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

DATE: April 1, 2016
Anchorage, Alaska



Larry Hartig, Commissioner

FILING CERTIFICATION

I, Byron Mallott, Lieutenant Governor for the State of Alaska, certify that on April 8, 2016, at 11:30 a.m., I filed the attached regulations according to the provisions of AS 44.62.040 – 44.62.120.



Byron Mallott, Lieutenant Governor

Effective: May 8, 2016.

Register: 218, July 2016

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

18 AAC 75.910. Cost recovery. (a) In order to implement the provisions of AS 46.03.760(d), 46.03.822, AS 46.04.010, and AS 46.08.070, the department will complete and maintain documentation to support its response actions and to form the basis for cost recovery.

(b) Each person who is liable under AS 46.03.760, 46.03.822, AS 46.04.020, or AS 46.09.020 is liable for response costs that the department or this state incurs. Response costs are costs reasonably attributable to the site or incident and may include costs of direct activities, support costs of direct activities, and interest charges for delayed payments. Response costs include the costs of direct investigation, containment and cleanup, removal, and remedial actions associated with an incident or site undertaken by the department or its contractors, as well as the costs of oversight by the department of those activities involving an incident or site undertaken by a person other than the department. Response costs include legal costs incurred by the department concerning a site or incident, and include potential responsible party searches, obtaining site access, causal investigations, cleanup orders and agreements, cost recovery actions, and enforcement actions.

(c) The department will charge an hourly rate based on direct staff costs plus support costs. The department will on a fiscal year basis use the following formula for computing hourly personnel rates by job class:

(1) Hourly Rate = $DSC + DSC(AICR)$, where DSC means direct staff costs described in (2) of this subsection and AICR means the agency indirect cost rate described in (3) of this subsection;

(2) direct staff costs (DSC) are the average cost of hours worked per job class directly on an incident or site, including salaries, retirement plan benefits, health care benefits, and leave and holiday benefits required by law to be paid to, or on behalf of employees; direct staff costs do not include costs associated with responding to a public records request, preparing or reviewing invoices or answering questions pertaining to invoices, responding to governor, media, or legislative requests for information, responding to public inquiries concerning the site or incident with the exception of inquiries during a large response, internal or external training presentations or case studies, prospective purchaser agreements, policy or regulatory interpretation or discussion, or activities completed for training purposes;

(3) agency indirect costs are the costs of facilities, communications, personnel, fiscal, and other statewide and agency-wide services that are not directly attributable to a project; the agency indirect cost rate (AICR) used is the agency indirect rate expressed as a percentage, approved by the United States Environmental Protection Agency acting as the department's federal cognizant agency, or by a successor federal cognizant agency, for each fiscal year.

(d) The department will assign a unique code to each incident or site for purposes of tracking all state costs incurred. When the department requests payment of response costs it will provide an itemized statement documenting the costs incurred. The department will bill a liable party for response costs on a periodic basis as costs are incurred.

(e) The department will charge interest on past due costs incurred as the result of a release or threatened release. Interest for costs incurred in a calendar year accrues at a rate equal to three percentage points above the 12th Federal Reserve District discount rate in effect on January 2 of the year in which the cost is incurred. Unless otherwise agreed by the department

and the responsible party, interest begins to accrue on the date a cost is billed. The department may agree to waive interest if payment of the costs is made not later than 60 days after the billing date for the costs.

(f) A person receiving a cost recovery invoice may seek informal review of a disputed invoice by contacting the commissioner's designee not later than 30 days after receiving an invoice. Failure to pay invoices presented by the department may result in the department filing cost recovery liens under AS 46.08.075 and referring the matter to the attorney general for collection of response costs, interest, and legal costs.

(g) In consultation with the Department of Law, the department will consider a person's ability to pay response costs if payment of the costs would cause an undue financial hardship to the person. The department may allow for payment of response costs over time. The department may reduce the amount of response costs to be paid by a person by the amount that would create an undue financial hardship. In order to establish an undue financial hardship, the person must provide and authorize release of sufficient financial information to the department to clearly demonstrate that, in the determination of the department, payment of the response costs would deprive the person of ordinary and necessary assets or cause the person to be unable to pay for ordinary and necessary business expenses or ordinary and necessary living expenses. Under AS 40.25.120, the department will maintain non-public financial information as confidential to the extent the information qualifies as confidential business information, trade secrets, or confidential personal information.

(h) In this section, unless the context requires otherwise,

(1) "costs"

(A) means any money expended by the department in response to a release or threatened release of oil or a hazardous substance; in this subparagraph, "hazardous substance," "oil," and "release" have the meanings given in AS 46.03.826;

(B) includes the cost of response personnel, response equipment, necessary support services, additional supplies, overhead, contractors, travel-related expenses, oversight, administrative support, and legal services;

(2) "incident" means a release or discharge of oil or a hazardous substance from a facility or vessel or the substantial threat of a release or discharge of oil or a hazardous substance from a facility or vessel; in this paragraph, "facility," "hazardous substance," "oil," "release," and "vessel" have the meanings given in AS 46.03.826;

(3) "site" means a contaminated site or leaking underground storage tank site subject to the site cleanup rules under 18 AAC 75.325 - 18 AAC 75.390 or to site assessment and corrective action under 18 AAC 78. (Eff. 5/8/2016, Register 218)

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|-------------------|--------------|--------------|--------------|
| Authority: | AS 40.25.120 | AS 46.03.826 | AS 46.08.070 |
| | AS 46.03.020 | AS 46.04.010 | AS 46.08.075 |
| | AS 46.03.760 | AS 46.04.020 | AS 46.09.020 |
| | AS 46.03.822 | AS 46.04.070 | |