



Memorandum of Understanding
On
Alaska Oil Spill Planning, Preparedness, and Response
Between the
Bureau of Safety and Environmental Enforcement
U.S. Department of the Interior
and
The State of Alaska
Department of Environmental Conservation
Division of Spill Prevention and Response

I. Purpose

This Memorandum of Understanding (MOU) is designed to promote consistency in the oversight of offshore facilities that handle, store, or transport oil or gas and that are located in State waters of Alaska seaward of the coast line by the State of Alaska (hereinafter “the State”) and the Bureau of Safety and Environmental Enforcement (BSEE) (separately “Party,” and together “Parties”) with respect to offshore facility oil spill planning, preparedness, and response. In accordance with this MOU, the Parties will coordinate to implement requirements related to offshore facility oil spill planning, preparedness, and response to minimize duplication of effort and aid the Parties in the successful completion of their respective missions and responsibilities.

To the extent permitted under applicable authorities, the Parties agree to cooperate in the execution of their respective regulatory responsibilities and to identify opportunities for innovative and effective implementation of oil spill planning, preparedness, and response oversight. Each Party must exercise its own rulemaking responsibilities independently and in accordance with applicable laws and procedures, though the Parties will coordinate to the extent practicable on their respective rulemaking initiatives.

The goal of this MOU is to promote oil spill response planning and preparedness, maximize oil spill response efficiency, and promote protection of human health and the environment by:

- Fostering communication and cooperation between the Parties,
- Promoting compliance with applicable regulations,
- Optimizing use of expertise and resources,
- Coordinating efforts with respect to oil spill planning, preparedness, and response, and
- Coordinating oversight and regulatory enforcement actions.

II. Scope

This MOU covers coordination of oil spill planning, preparedness, and response activities related to offshore facilities, that handle, store, or transport oil or gas located in State waters. The OCS

begins three nautical miles seaward of the coastline. This MOU will guide the Parties in coordinating their respective regulatory activities with respect to such covered facilities. For the purposes of this MOU, the phrase “waters seaward of the coastline” is defined as being on “lands beneath navigable waters” seaward of the “coastline” as those terms are defined in the Submerged Lands Act at 43 U.S.C. § 1301. The term “covered facilities” means an offshore facility located in State waters seaward of the coastline that handles, stores, or transports oil or gas and is regulated by both BSEE and the State.

III. Statutory and Regulatory Authority

The State enters this agreement under the authority of Title 46 of the Alaska Statutes. Water, Air, Energy, and Environmental Conservation, Chapter 03, Environmental Conservation, Title 46; Water, Air, Energy, and Environmental Conservation, Chapter 46.03 Environmental Conservation, Title 46; Water, Air, Energy, and Environmental Conservation, Chapter 46.04 Oil and Hazardous Substance Pollution Control; and the implementing regulations in Alaska Administrative Code, 18 AAC 75.

The Alaska Department of Environmental Conservation (ADEC) administers Alaska’s oil spill prevention, preparedness, and response program. Under its authority, ADEC ensures regulated facilities develop and exercise pollution prevention and response plans; conducts inspections; develops and enforces regulations; and coordinates with partner organizations and facilities to prevent pollution, among other activities.

BSEE enters into this agreement under the authority of section 311 of the Federal Water Pollution Control Act, known as the Clean Water Act, 33 U.S.C. § 1321, and the related authority delegated in Executive Order 12777, as amended, and U.S. Department of the Interior Secretary’s Order 3299, as amended. Applicable BSEE regulations are found in 30 C.F.R. part 254. Additional applicable regulations regarding the National Contingency Plan are found in 40 C.F.R. part 300.

BSEE implements certain oil spill planning, preparedness, and response authority over covered facilities, including, but not limited to, developing regulations governing oil spill response planning requirements, conducting oil spill response equipment inspections, initiating oil spill response exercises, enforcing regulatory requirements, and conducting research.

IV. Procedures and Responsibilities

The Parties agree to the following procedures and responsibilities, pursuant to the authorities cited above.

A. Oil Spill Response Planning

Alaska Statute (AS) 46.04 authorizes ADEC to control pollution in the state. The implementing regulations in 18 AAC 75.400-18 and AAC 75.496 (also known as ‘Article 4’) require covered facilities to develop and obtain ADEC approval of Oil Discharge Prevention and Contingency Plans (hereinafter ODPCPs). Pursuant to federal law, owners and operators of offshore facilities that handle, store, or transport oil or gas, as defined in 30 C.F.R. § 254.6, must submit an oil spill

response plan to BSEE for review and approval. Covered facility owners and operators must comply with both State and federal oil spill response plan (hereinafter “OSRP”) requirements, as applicable. To the extent permitted by law, the Parties agree to exchange upon request copies of all pertinent submittals and correspondence pertaining to the review of and action on ODPCPs/OSRPs for covered facilities.

B. Oil Spill Response Exercises

Both Parties require owners or operators (hereinafter “operators”) of covered facilities to conduct exercises to ensure their oil spill response capability and readiness. The Parties agree to cooperate in scheduling, planning, conducting, and evaluating such exercises, including operator-initiated exercises, equipment deployment exercises, and government-initiated exercises to the extent practicable. BSEE will implement the objectives of the National Preparedness and Response Exercise Program (NPREP) that serve as a guide for conducting exercises.¹ ADEC will implement the drills and exercise objectives as described in the ADEC Oil Spill Response Exercise Guidance, which builds upon NPREP and is modeled after the Homeland Security Exercise and Evaluation Program.

The Parties will share notifications of exercises received from operators and their contractors. The Parties will exchange industry and Party evaluations of the exercises.

With respect to regulatory requirements for oil spill response (OSR) exercises, the Parties recognize that BSEE may allow credit for exercises that satisfy State regulatory requirements, pursuant to 30 C.F.R. § 254.42. Similarly, the State may allow credit for exercises that meet federal requirements pursuant to 18 AAC § 75.490.

In the event either Party recommends or requires an ODPCP/OSRP revision based on an evaluation of an exercise, the Party recommending or requiring such revision will notify the other Party, and the Parties may jointly coordinate prior to notifying the operator.

C. Oil Spill Response Equipment Inspections

Both Parties administer oil spill response equipment inspection programs for covered facilities for the purpose of ensuring compliance with the statutes and regulations that they implement. Each Party recognizes that it may independently execute its respective oil spill response equipment inspection responsibilities in accordance with applicable statutes and regulations.

The Parties will coordinate their respective oil spill response equipment inspection activities where practicable and work to conduct inspections that minimize disruption to industry, while maximizing efficiency and safety. To this end, the Parties will endeavor to exchange information prior to conducting independent oil spill response equipment inspections or to conducting joint

¹ The NPREP was developed to establish a workable exercise program which meets the intent of section 4202(a) of the Oil Pollution Act of 1990 (amending section 311(j) of the Clean Water Act by adding a new subsection for spill response preparedness, 33 U.S.C § 1321(j)(7)). NPREP 2016 (81 FR 21362) is the current version as of the signing of this MOU.

inspections. Each Party will provide the other with the opportunity to participate in oil spill response equipment inspections and will exchange or jointly prepare inspection reports.

The Parties also agree to cooperatively review inspection results, as permitted by applicable statutes and regulations. If during the review of oil spill response equipment a Party determines that the condition of the equipment is such that the operator may be unable to carry out its OSRP responsibilities, the reviewing Party will promptly inform the other Party, and the Parties may coordinate their response to the operator.

D. Incident Response

The Alaska Regional Response Team (ARRT) maintains the Alaska Regional Contingency Plan and related Area Contingency Plans to plan for and guide oil spill responses in Alaska. ADEC is one of the Tri-Chairs of the ARRT, and BSEE is represented by the Department of the Interior on the ARRT.

The Parties agree to promptly coordinate with each other regarding any offshore oil spill incident response efforts. The Parties agree to provide assistance upon request for incident response.

The Parties will promptly inform each other of any circumstance where an operator's failure to comply with applicable statutes and regulations significantly increases the potential for an unauthorized discharge or creates an unusual or an unacceptable risk to public health, safety, or the environment.

E. Enforcement

Each Party recognizes that it may independently enforce its applicable statutes and regulations within its respective jurisdiction. Enforcement action undertaken by either of the Parties will occur independently in accordance with applicable laws and regulations. The Parties agree that, to the extent they reasonably can, they will consult with each other and share information as appropriate regarding enforcement actions.

F. Information Sharing

To aid in the completion of their respective missions, the Parties will promote electronic information sharing, subject to any applicable legal requirements. The Parties will endeavor to develop and accept, to the extent practicable, electronic means of reporting information required by regulation. Both Parties will work to ensure the permissible sharing of lease, pipeline right-of-way, drilling, production well, platform, and permit information for covered facilities to help facilitate implementation of the Parties' respective missions.

Both Parties agree to follow their own applicable legal authorities regarding the disclosure of agency records, including authorities that provide for exemptions from the generally applicable duty that requires the government to disclose records to the public. The receiving Party may notify the other Party of receipt of any external requests implicating materials exchanged pursuant to this MOU, such as requests under the Freedom of Information Act or the Alaska

Public Records Act. The Party to whom the request was directed will refer the request to the agency or agencies in which the record(s) originated and consult with the agency or agencies having a stake in the information contained in such record(s). Nothing herein may be construed to require any Party to take any action inconsistent with any Federal or State law and its implementing rules and regulations.

G. Research

To leverage research opportunities and to aid in the completion of their missions, the Parties are committed to collaborating on research projects whenever possible. BSEE conducts research through the Oil Spill Preparedness Division – Response Research Branch. The University of Alaska may conduct oil spill related research on behalf of ADEC. Applicable information will be disseminated through the ADEC Prevention, Preparedness, and Response Program. The Parties will cooperate in the coordination and implementation of research and other informational programs of mutual benefit to both Parties. Subject to applicable legal authorities, cooperation may include granting access to and sharing of data, providing joint funding for research programs of mutual interest, and co-developing various analytical methodologies.

H. Exchange of Services and Personnel

The Parties will endeavor to make personnel available to support mutual work objectives, workshops, conferences, seminars, training opportunities, work teams, exercises, inspections, and enforcement. Exchanges of services and personnel will generally be non-reimbursable and will be subject to applicable statutes and regulations.

V. General Provisions

1. Nothing in this MOU alters, amends, or affects in any way the statutory or regulatory authority of the Parties or other agencies.
2. Nothing in this MOU limits informal consultations not otherwise mentioned in this agreement.
3. This MOU is to be executed in full compliance with all applicable laws.
4. Nothing in this MOU may be construed to obligate or commit funds or serve as the basis for a transfer of funds. Nothing in this agreement may be construed to obligate the Parties to any current or future expenditure of resources in advance or in excess of the availability of appropriations from Congress. This agreement does not obligate the Parties to spend funds on any project or purpose even if the funds are available.
5. This MOU is not intended to, nor does it, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any person or Party against the U.S., the State of Alaska, or their respective agencies, officers, or any other person.

VI. Affected Documents

Upon the effective date of this MOU, the Letter of Agreement previously entered into between the Minerals Management Service and the Alaska Department of Environmental Conservation Regarding Pollution Prevention and Response Preparedness for Oil and Gas Facilities on Alaska

Submerged Lands and executed in 2005 is hereby terminated and is hereafter void. This provision applies only to the agreement specifically listed above.

VII. Amendments

This MOU may be amended by mutual agreement of the Parties. Amendments to the MOU will be in writing and require the approval of the BSEE Director and the Director of the ADEC Division of Spill Prevention and Response.

XIII. Review and Termination

The Parties agree to review this agreement at least every five (5) years. Either Party may terminate this MOU unilaterally through provision of a 30-day advance written notice to the other Party. This MOU will remain in full force and effect until one or both Parties terminate this agreement in writing.

IX. Administration and Designated Representatives

This MOU will be administered by BSEE's Oil Spill Preparedness Division and ADEC's Preparedness Prevention and Response Program.


Each Party will identify in writing a Designated Representative, or their designee, who will keep the other Party informed, in a timely manner, of issues, response plan submittals, and policy determinations that are relevant to oil spill planning, preparedness, and response for covered facilities. The Designated Representatives will facilitate the coordination of joint events under this MOU. For BSEE, the Director is responsible for identifying its Designated Representative. For ADEC, the Division of Spill Prevention and Response Director is responsible for identifying its Designated Representative.

The attachment entitled "Designated Representatives Addendum" lists the initial respective Designated Representatives and Points of Contact for implementation of this MOU. Each Designated Representative will maintain an accurate and updated list of Points of Contact for its respective agency and will notify its counterpart Designated Representative of any changes in agency representatives within a reasonable amount of time not to exceed 30 calendar days from the date the change became effective. These Designated Representatives and Points of Contact may be updated as needed by mutual written agreement and will be entitled "Updated Designated Representatives Addendum." Any updates to the Designated Representatives Addendum will not constitute material changes to this MOU and will become an addendum to the attachment and incorporated herein for all purposes. The version date should be included on any updated addendum.

The Parties will review their internal procedures and, where appropriate, revise them to accommodate the provisions of this MOU. The Designated Representatives will be responsible for ensuring that this review takes place, that their respective agency is aware of the terms and conditions of this MOU, and that the MOU is appropriately implemented.

X. Effective Date

This MOU is effective upon acceptance by both Parties as indicated by the signatures below.

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Kevin M. Sligh Sr.
Director of the Bureau of Safety and
Environmental Enforcement (BSEE).
U.S. Department of the Interior

Tiffany M. Larson
Director, Division of Spill Prevention and
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Alaska Department of Environmental
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ATTACHMENT: Designated Representatives Addendum

Designated Representatives:

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