

Alaska Department of Environmental Conservation  
And  
Environmental Protection Agency  
State Fiscal Year 2009  
July 1, 2008 – June 30, 2009

This agreement constitutes the State of Alaska's relationship with the United States Environmental Protection Agency (EPA) under the National Environmental Performance Partnership System. The Alaska Department of Environmental Conservation (DEC) enters the agreement for the State of Alaska with EPA Region 10, for state fiscal year 2009 (July 1, 2008 – June 30, 2009).

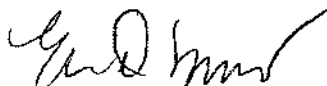
This Agreement describes the expected work and performance results for each of the agencies. The Performance Partnership Agreement [PPA] is an important tool that strengthens the protection of the environment by encouraging flexibility to focus on the activities that achieve the best environmental results consistent with the missions and authorities of each agency.

DATE:

June 30<sup>th</sup> 2008

Larry Hartig, Commissioner  
Alaska Department of Environmental Conservation

DATE:

July 21, 2008

Elin Miller, Regional Administrator  
U.S. Environmental Protection Agency, Region 10

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## **I. Introduction and Purpose**

The National Environmental Performance Partnership System is a framework designed to achieve better environmental results by focusing the capacities and resources of the Environmental Protection Agency and States to jointly address the most pressing environmental problems. Common goals, priorities, and strategies are based on information about environmental conditions, and progress is evaluated based on results actually achieved in the environment. Performance Partnership Agreements (PPA), through which EPA and states set priorities and design strategies, are intended to strengthen protection of the environment by focusing resources on agreed upon environment protection goals.

This State Fiscal Year (SFY) 2009 PPA describes the overlapping missions of DEC and EPA for protecting Alaska's environment. The agreement describes how each agency will work together to achieve joint priorities and performance expectations in order to address Alaska's most important environmental and public health protection issues.

- The purpose of the agreement is to establish mutual priorities and performance expectations for both agencies during SFY 2009.

This agreement includes specific commitments made by each agency regarding Alaska's most important environmental priorities for the period July 1, 2008 – June 30, 2009.

## **II. Missions**

DEC and EPA Region 10 both share a common mission to protect Alaska's environment consistent with State and Federal law.

DEC Mission:  
Protect human health and the environment.

EPA Region 10 Mission:  
Protect and restore the environment of the Pacific Northwest and Alaska for present and future generations.

## **III. Agreement Coverage**

This Agreement is based on the National Environmental Performance Partnership System (NEPPS) and EPA's Office of Congressional and Intergovernmental Relations (OCIR) NEPPS National Program Guidance which allows states flexibility to address their highest environmental priorities and establish resource allocations based on those priorities. This Agreement includes DEC and EPA Region 10 environmental priorities that have been identified as areas of partnership for the two agencies. The guiding principles and concepts of this agreement apply to all DEC and EPA interactions even though this Agreement does not cover all DEC programs receiving EPA grant assistance.

In addition to this Agreement, the State of Alaska receives two Partnership Performance Grants [PPGs] which include specific workplan commitments for water quality programs, and radon and air quality programs. The purpose of the PPGs is to reduce the administrative burden by consolidating several grants into one and to increase the flexibility of DEC to move resources within the air and radon programs, and within the water quality programs, to meet Alaska's highest environmental needs.

As explained in the National Environmental Performance Partnership System National Guidance, "once funds are awarded in a PPG, the state can direct the funds as needed to achieve work plan commitments and does not need to account for funds in accordance with their original funding program sources." PPG expenditures should be focused on state priorities using funding methods and workplans developed by the state and approved by the EPA. At the end of the year, DEC is not expected under this agreement to account for how PPG funding has been allocated by the original funding program source.

#### **IV. State of Alaska**

Alaska is different from the other EPA Region 10 states. Alaska is the nation's only arctic state, with environmental issues more common to Russia, Finland, Sweden, Norway, Greenland, and Canada than to other states. Alaska is also the largest ocean state in the country and its oceans include the North Pacific Ocean, Bering, Chukchi, and Beaufort Seas. Alaska has 33,904 miles of shoreline – twice the length of all the other states combined. The estimated tidal shoreline, including islands, inlets and shoreline to head of the tidewater is 47,300 miles. Alaska occupies 20% of the nation's land base, 40% of the nation's surface water, and contains half the nation's wetlands.

Alaska has vast proven and unexplored natural resources. Alaska oceans and coastal watersheds produce 25% of the nation's oil, over 50% of the nation's seafood, and minerals from several world-class mines including the world's largest operating zinc mine.

The unique regional qualities of Alaska's ocean and watershed resources are also reflected in their quality. Alaska's resources, for the most part, are healthy, productive, and relatively pollution-free. The EPA's 2004 report on the condition of the nation's coast concludes that, "Alaska's coastal resources are generally in pristine condition. Concentrations of contaminants have been measured at levels significantly lower than those in the rest of the coastal United States."

Most of Alaska's communities are isolated, small, and can only be reached by air or water. There is no statewide power grid, so most Alaska communities depend on energy produced from individual community diesel generators. Alaska is also the home of 229 federally recognized tribes in Alaska – over 40 percent of the nation's total number of tribes.

Alaska's state resource and public health protection agencies are actively pursuing appropriate forums for coordinating with their federal agency counterparts on environmental and public health protection issues of mutual concern.

## **IV. Priorities**

### **1. Climate Change**

Climate change is not just an environmental issue in Alaska. It is also a social, cultural, and economic issue important to all Alaskans. The impacts of climate include coastal erosion, increased storm effects, sea ice retreat and permafrost melt. The villages of Shishmaref, Kivalina, and Newtok have already begun relocation plans. The U.S. Army Corps of Engineers has identified over 160 additional rural communities threatened by erosion. Alaska needs a strategy that prepares the state for the impacts of climate change and that identifies opportunities to lower greenhouse gas emissions. This strategy must be built on sound science, the best available facts and recognize Alaska's interest in economic growth and the development of its resources. A strong state and federal partnership is essential for aligning research needs, securing research funding and building a central base of knowledge for decision makers. Aligning research needs among state and federal agencies is a key area for DEC and EPA to coordinate their efforts in the coming year.

Whether due to thawing permafrost and associated impacts to infrastructure such as buildings, roads, and pipelines, or the effects of warming temperatures on marine and terrestrial ecosystems, or the shrinking Arctic sea ice and the resulting potential for commerce and travel through a northern shipping route, climate change touches, or has the potential to touch, nearly every aspect of life in Alaska. Development of a strategy to address climate change and its consequences in Alaska is in the planning phase and is set to launch in the near future. In 2007, the Governor issued Administrative Order 238, which established a Sub-cabinet on Climate Change to advise the Governor on the preparation and implementation of an Alaska climate change strategy.

EPA and DEC will:

- Work collaboratively to design and implement a broad and diverse stakeholder process to ensure input from all sectors throughout the state in developing the Climate Change Strategy (CCS).
- Partner in identifying and coordinating with key participants to serve as members of the Advisory and Technical Work Groups for the CCS from municipal, state, and federal agencies, tribes and Alaska Natives, academia, and other organizations.
- Foster and facilitate information exchanges between appropriate entities in development of the CCS to take into account the latest in technology, monitoring, modeling, regulatory, policy, and adaptation measures as well as local and state initiatives.

- Foster and facilitate information exchange between EPA and DEC on technical issues across programs, including specifically arctic haze.
- Work together to promote research needs in Alaska and identify potential resources and partners.
- Work together to organize effective public outreach through venues such as the Alaska Forum on the Environment and the Alaska Conference on Tribal Environmental Management, schedule sessions and ancillary workshops to capitalize on opportunities to build and strengthen existing working relationships.
- Coordinate efforts to identify opportunities to reduce generation of greenhouse gas emissions.
- Coordinate efforts on clean energy and renewable development.

EPA will:

- Provide a full-time person to serve as Project Coordinator for the Alaska CCS stakeholder process.
- Manage Climate Change Track and all ancillary sessions for the Alaska Forum on the Environment incorporating relevant information from the Alaska CCS and its Technical Work Groups in appropriate sessions.
- Continue to be receptive to state use of grant funds in developing some of the components of the CCS
- Invite the participation of the State of Alaska staff with expertise in climate change and energy conservation, efficiency, and renewable energy to share information and discuss ways in which Tribes can incorporate these into their Indian General Assistance Program (IGAP) workplans. EPA's Tribal Trust and Assistance Unit will designate a point of contact to facilitate communication on this issue with Tribal grantees and the State of Alaska.
- Work with rural communities to inventory dumpsites that are being threatened by climate change and come up with a strategy to address. EPA Region 10 Tribal Solid and Hazardous Waste Team will continue to inventory Alaska tribal open dumps for inclusion into the Indian Health Service's Operations and Maintenance Database (OMDS). At quarterly meetings with ADEC and others, EPA will discuss possible waste management options for those tribal open dumps which are threatened by climate change.

DEC will:

- Work from a refined inventory of greenhouse gas emissions to identify potential emission reduction strategies.

- Work with key sectors responsible for majority of emissions to reduce those emissions through conservation, increased efficiency, alternative and/or renewable energy, and improved technology.
- Continue to explore ways to remove barriers to the development of advanced, low-carbon technologies for fossil fuel-powered generation capable of capturing and sequestering CO<sub>2</sub> emissions and encourage appropriate Technical Work Groups to bring expertise to bear on future projects.
- Continue to observe regional and national activities and position the State for future rulemaking as it relates to emissions reporting and regulation through participation in the Western Climate Initiative.
- Ensure that the Alaska Climate Change Strategy is developed in an open and inclusive manner, by such means as publicly announcing meetings and working with contractors to build and maintain a website, accessible to the public, with materials for review and comment.

## **2. Timely communication on controversial projects/issues.**

DEC and EPA shall encourage effective and timely communication on large or controversial projects.

DEC and EPA will:

- For specific mining and oil and gas projects, EPA Project Managers or Team leads will serve as a primary point of contact for EPA to meet and review the status of ongoing projects, schedules and issues. Mining and Oil and Gas sector managers will meet on a routine basis to review status of major projects, discuss federal and state legal and policy requirements, and identify any issues needing resolution. The EPA, ADEC, and ADNR mining sector leads have established regular meetings to accommodate these discussions.
- Coordinate announcements, to include EPA statement(s) in news releases, explaining Toxics Release Inventory data. Coordinated announcements are to coincide with EPA's public announcement of the data release. Coordination will include DEC providing the final release draft to the EPA TRI Program prior to issuing. EPA's annual Toxics Release Inventory (TRI) continues to rank Alaska first in the nation for total toxic pollution releases. That ranking is based on total pounds of toxic chemical releases and other waste management activities in Alaska, most of which are attributed to trace metals in waste rock and tailings from the metal mining industry.
- Work together pro-actively throughout the year prior to and following the annual TRI Public Data Release to address mutual



concerns about the data release including the TRI data reporting concerns of industry.

DEC will:

- Work with EPA to draft an Alaska-specific TRI document as needed by DEC.

EPA will:

- Continue to provide technical assistance including review and comments for TRI documents and brochures to help Alaska educate its citizens on TRI. Prior examples of this assistance include the "Guide to the Toxics Release Inventory for Alaska" and "Factors to Consider when Using TRI Data".
- Maintain timely notice of activities from EPA headquarters and Region 10 including proposed rulemaking changes that may affect Alaska.

### **3. Mine Permitting Policies.**

There are two specific areas related to mining where it is timely for EPA and DEC to develop policies or procedures to ensure protection of the environment and provide clarity to the mining industry and stakeholders. These areas include: permitting of mine tailings impoundments and requirements for uranium exploration and mining. Recent litigation has resulted in uncertainty as to regulatory requirements and allowable configurations and practices for permitting tailings ponds for new mines in Alaska. There could be applications for new mine tailings impoundments submitted within the next two years. Due to high prices of uranium, there is increasing exploration for uranium and the potential for development of uranium mines. Currently Alaska does not have specific procedures for uranium exploration and mining. Establishing a policy for permitting mines in Alaska is a high priority.

EPA and DEC will:

- Working with the Corp of Engineers, develop approaches to managing mine tailings in Alaska.
- In coordination with ADNR, develop an approach for uranium exploration and mining that is protective of human health and the environment. EPA will assist by sharing what other states have done regarding regulation of uranium mining.

### **4. Abandoned Mine Lands Database**

Due to the increase of mining activity in Alaska and EPA's Good Samaritan Initiative efforts, new light is being shed on the issue of abandoned mines in Alaska. EPA and DEC are working with other agencies to determine the number of abandoned mines where there may be environmental or human health concerns and to prioritize those mines for site assessment or cleanup actions. This will be accomplished by: developing a database that has information for each mine, developing a GIS map of mine locations; and, developing a prioritization scheme for ranking or grouping mine sites according to potential impacts.

DEC will:

- With ADNR, co-lead the interagency team working on this project by setting up and facilitating regular (every other month) calls.
- With ADNR, create the abandoned mine lands database and GIS map and maintain and revise the database and map as information changes.

EPA will:

- Continue to participate in the regular calls.
- Provide input on the contents of the data base and map and provide examples from other states and regions.
- Provide input on how to prioritize sites and provide examples of how this was done for other states and regions.

#### **5. Off-shore and Outer Continental Shelf Oil & Gas Coordination**

Given the increase in activity Off-shore and on the Outer Continental Shelf (OCS), further efforts towards coordination are needed.

EPA and DEC will:

- Meet at least once in SFY09 to review the status of ongoing Off-shore and OCS activities, projects, schedules and issues. Oil and gas managers will brief senior managers on the status of major projects, discuss federal and state legal and policy requirements, and identify any issues needing resolution. Other federal and state departments may be incorporated into this briefing.

#### **6. Improving Alaska Native Environmental conditions**

In order to improve environmental conditions in rural Alaska, DEC and EPA Region 10 will work to improve collaborative strategic planning efforts with Tribes in Alaska. A key component of meeting common goals is communication on a regular basis between EPA, DEC, and Alaska Tribes about technical assistance, educational, and funding

opportunities so that information can be compiled and passed along to Tribes. It will be our goal to create opportunities for partnerships between the DEC, the EPA, and the Alaska Tribes.

DEC has identified several environmental issues that are specific to tribes in rural Alaska, including the effects of long term exposure to the exhaust from the diesel generators that provide electrical power to nearly all of the rural villages, fine particle dust pollution in rural communities, and sustainable operation and maintenance of Village Safe Water projects.

The EPA has a government to government relationship with, and trust responsibility to tribes. EPA Region 10 will continue to work in partnership and consultation with all federally recognized tribes. EPA recognizes that tribes have the authority to set their own environmental priorities, and will continue to work with tribes in a manner that acknowledges tribal sovereignty and self-determination. In implementing the Indian Environmental General Assistance Program (IGAP), EPA works to build tribal environmental capacity and adequate internal mechanisms to help tribes improve environmental protection. The IGAP provides grants to Tribes for the purpose of developing their capacity to develop and implement environmental protection programs. IGAP resources may also be used to implement solid and hazardous waste programs. In light of the unique solid waste challenges facing Alaska Native Villages, EPA Region 10 will continue to utilize the implementation authority provided under IGAP to assist tribes in the development and implementation of integrated waste management programs.

Under Alaska's federally recognized constitution, Alaska Natives and members of Alaska's federally recognized tribes have all the rights and responsibilities of Alaska citizenship. Under state law, DEC serves the interests of all Alaskans as represented by the state's elected officials.

Region 10, Office of Air, Waste and Toxics', goal for FY 2009 is to help Tribes to develop ten or more Tribal Integrated Waste Management (IWM) plans and close, clean up or upgrade two open dumps. There is agreement between DEC and EPA on the need for collaboration and common sense approaches to achieving these strategic targets in Alaska.

EPA and DEC will:

- Continue to hold quarterly teleconferences to discuss tribal environmental and waste management issues.
- Participate in the Alaska Tribal Conference on Environmental Management (fall conference) and Alaska Forum on the Environment (AFE).

- Work to develop media specific modules that will help build tribal capacity through IGAP. This includes working with the tribal coordinators and tribal liaisons from the various media offices.
- Discuss ways in which EPA and State field solid waste experts can help tribes to take steps to bring their open dumps into compliance with State of Alaska solid waste regulations.
- Agree to mutually support the EPA sponsored Tribal integrated waste management plans.
- Provide contact names for leads on the tribal solid waste issues.

DEC will:

- Provide the EPA Office of Air Waste and Toxics Tribal Solid and Hazardous Waste Team Database coordinator, with current information on the names of Alaska Tribes with Class III permits.

EPA will:

- Provide information to DEC on FY 2009 Tribal Solid Waste Management Assistance Program Alaska recipients.
- Continue to convene EPA-ADEC quarterly solid waste teleconferences.

## **7. National Pollutant Discharge Elimination System [NPDES] program approval**

The Clean Water Act intends for states to implement the NPDES program. Establishing greater state control over managing water resources is a high priority for Alaska. Alaska is one of five remaining states that has not received NPDES program approval. Transferring control of the individual NPDES programs to the remaining states is a high priority for EPA. Alaska statutes direct DEC to seek EPA approval to administer the NPDES program.

DEC and EPA will:

- Work cooperatively to achieve approval of the State of Alaska's application to administer its own APDES permit program.

DEC will:

- Respond to EPA inquiries and all requests for clarification or additional information as needed.
- Amend or supplement the record or application per findings of the EPA's statutory review.
- Participate with the EPA in public meetings, meetings with natural resource agencies, hearings and the consultation process with the tribal governments.

EPA will:

- Perform its statutory review process, resulting in a program approval decision by November 1, 2008.
- Evaluate the adequacy of the NPDES program application per the statutory requirements.
- Consult and coordinate with tribal governments in a formal government to government basis regarding the NPDES program transfer.
- Provide information and technical assistance to DEC staff to support incorporation of these elements into the NPDES process. The EPA has technical experience developing tribal communication plans, and with incorporating traditional environmental knowledge into the permitting process.
- Provide examples of Tribal communications strategies from the NPDES programs from other States.

### **8. NPDES permit backlog**

An important measure of program effectiveness is tracking the percentage of permits that have expired or are “backlogged”. DEC remains concerned about the EPA Region 10 NPDES permit backlog. DEC and EPA Region 10 will work together to document and reduce the NPDES permit backlog. EPA’s NPDES Permits Unit Plan (2006-2009) outlines a plan to achieve national permit backlog goals. Backlog percentages are tracked nationally as performance measures. Keeping the backlog at a low level is also important as EPA and DEC look to ultimately transfer the program to the State. DEC plays an important role in addressing the backlog by issuance of timely CWA 401 certifications.

DEC and EPA will:

- Work cooperatively towards timely permit issuance and reduction of the permit backlog.
- Develop a specific plan for a cooperative effort to document and reduce the backlog. The plan will identify specific permits, the major components of the permit, the process and which agency is responsible for each component; along with a timeline.
- Meet quarterly to identify and discuss the status of each agency’s commitments to permit development and issuance.
- Coordinate efforts and requirements for EPA’s vessel permitting and regulation. A priority will be to coordinate efforts and requirements for regulating discharges from vessels to produce a coherent state and federal regulatory regime.

DEC will:

- Issue timely 401 certifications of draft and final NPDES permits with the goal of issuing certification within thirty days after receipt of the permit from EPA.
- As per the permit backlog plan, draft permits, permit components, and permit process documents (i.e. response to public comments).

EPA will:

- Issue or re-issue 17 NPDES permits.
- Work towards re-issuing the seafood processing general permit, the off-shore seafood general permit, and the on-shore seafood general permit in order to allow for timely Notice of Intent (NOI) submissions by seafood processors.
- As per the backlog plan, involve DEC staff during the drafting of the NPDES permits.
- Review and comment on all NPDES permits (or components of permits) drafted by DEC.
- Keep DEC informed of upcoming requirements for vessel permitting and regulation.

### **8. APDES program capacity development and implementation**

DEC will continue to develop its capacity to implement the APDES permit and compliance program, with assistance from EPA. The effort will focus on permitting, tribal and community involvement, as well as inspection and compliance capacity development with an emphasis on the first permit sectors to be transitioned to DEC after APDES program approval.

DEC and EPA will:

- Meet quarterly - develop and report on inspection and enforcement activities.
- Share inspection results and planned enforcement actions.
- Identify enforcement cases where DEC can participate in building the enforcement case or participate in calculating a penalty.
- Cooperatively develop a transition plan to address the transition of permits currently under development, and establish workshare projects that build program capacity and address the NPDES backlog.

DEC will:

- Seek EPA credentials, in accordance with EPA Order 3500.1, for DEC inspectors who conduct NPDES inspections on behalf of the EPA until full NPDES primacy is achieved. DEC will track each inspector's progress towards completion of the required training specified in EPA Order 3500.1. DEC management will certify each

individual inspector's completion of the required training and forward the information to the EPA.

- Conduct inspections consistent with the procedures outlined in the "EPA NPDES Compliance Inspection Manual" (EPA 300-B-94-014, September 1994) and in the Basic Inspector's Training course.
- Submit complete NPDES inspection reports [with forms 3560-3] to the EPA within 60 days of the inspection.
- Submit a draft list of anticipated NPDES inspection candidates by March 31<sup>st</sup>, 2009. Once the inspection list is final, DEC will coordinate all changes, which occur throughout the inspection year, with the EPA prior to the inspection. The inspection list will include DEC inspection of facilities conducted as part of (and funded by) the PPG grant workplan, as well as inspections funded by the State as part of DEC's capacity development for NPDES primacy.
- Provide storm water compliance assistance, primarily through outreach to construction trade organizations and local government planning/permitting offices.

EPA will:

- Issue EPA credentials to DEC inspectors who have fulfilled the training requirements specified in EPA Order 3500.1.
- Review and comment on DEC's candidate inspection list.
- Coordinate its NPDES inspections with the appropriate DEC contacts.
- Seek to ensure that needed training is made available in Alaska, as DEC approaches NPDES primacy, including training in NPDES permitting and enforcement.
- Provide information and technical assistance to DEC staff to support development of tribal communication plans, and with incorporating traditional environmental knowledge into the permitting process.
- Provide examples of Tribal communication strategies from the NPDES programs in other states.
- Transfer NPDES files and other relevant materials consistent with the terms of the NPDES MOA.

#### **10. Timely revision of state water quality standards**

Water quality standards (WQS) are the foundation of Alaska's water protection and restoration efforts. DEC is required by the Clean Water Act to conduct a comprehensive review of the Alaska's water quality standards every three years to integrate current science and technology. Before changes to the water quality standards can take effect for Clean Water Act purposes, they must be approved by the EPA. DEC and the

EPA are committed to working together collaboratively to ensure that appropriate water quality standards are in place.

DEC and EPA will:

- Work together early in the water quality standards (WQS) revision process to identify the information, data, and justification that may be needed to support the timely approval of changes to the WQS.
- Work together to identify principles and processes to promote early involvement on WQS development. These may include procedures for development of action plans for individual WQS revisions and approvals; etc.
- Implement these principles and processes in new or revised WQS initiated in SFY 2009, including those initiated outside of triennial review process (e.g., UAAs, site-specific criteria that may be requested by permittees).
- Discuss overall WQS workload planning, prioritization, and resourcing for efforts to be undertaken in SFY 2009. The outcome of this discussion will be a written timeline for work to be undertaken in SFY 2009, their relative prioritization, timeframe of work elements, and resources expected to be needed. Update the plan monthly and provide to the water directors.
- Work together to bring about the early involvement of NOAA-Fisheries and US Fish & Wildlife ("Services") in standards revisions when an Endangered Species Act (ESA) or Essential Fish Habitat (EFH) consultation may be required.
- Continue to coordinate the timely involvement of the Services as needed to ensure that, wherever possible, ESA and EFH consultation requirements are completed within CWA approval timeframes.
- Continue to work together as EPA completes Tribal government-to-government consultation on WQS review actions.
- Work together to ensure DEC's updates to the toxics criteria are consistent with the requirements of the CWA and 40 C.F.R. 131. This will include EPA providing feedback during DEC's public comment period and other times as requested.
- Hold conference calls at the staff level to ensure a clear shared understanding of substantive issues raised by EPA during and after the public comment period.
- Work together to identify opportunities for direct communication and exchange with Tribes on the updates.
- Work together to complete i.e. gain EPA approval of water quality standards revisions already adopted by the state – residue, natural conditions and mixing zones.

DEC will:



- Inform EPA of water quality standards issues under consideration for revision.
- Negotiate a schedule for each action with EPA giving consideration to schedule drivers for EPA and DEC and the desired time frame for action.
- Describe their proposed approach and seek to reach agreement with EPA on this approach prior to releasing revisions for public comment.
- Provide EPA an opportunity to review a draft revision and discuss their comments with DEC prior to the public comment period.
- Provide draft and final submittal documents to EPA, consistent with 40 C.F.R. 131. A clear explanation of the technical support for the change (e.g., any technical literature reviews that were conducted to inform the revisions; a discussion of how the changes affect the protectiveness of the standard for designated uses) will also be included.
- Engage in early exchange with the Services regarding water quality standards revisions under consideration and the technical basis for these revisions.
- Continue to support EPA information needs in connection with its Tribal government-to-government consultation.

EPA will:

- Provide “upfront” technical assistance to DEC on proposed revisions to Alaska’s water quality standards, at a minimum regarding Clean Water Act requirements and implementation in Clean Water Act programs, and also including scientific, technical, and other input as appropriate.
- Perform Tribal consultation and ESA/EFH on WQS revisions.
- Where appropriate, raise issues that may be unique to Alaska waters in national WQS policy discussions.

## **11. Complete statewide coastal and freshwater EMAP surveys of the Nation’s waters**

DEC is committed to completing EPA’s sponsored Environmental Monitoring and Assessment Program (EMAP) surveys to assess the status and trends of Alaska’s coastline and freshwater. The information collected enables EPA to report on the condition of the nation’s waters and enables EPA and the states to understand the range of water quality conditions and monitor for environmental change. Alaska has more coastline than the Lower 48 states combined and about half of the nation’s surface water resources. To date, EPA has provided funding for three of Alaska’s five coastal areas and is returning to other coastal states to re-sample, prior to completing Alaska’s waters. EPA’s FY08 Budget funded a “national rivers” survey in proportion to a state’s water

resources, except for Alaska, Hawaii. EPA grant funding is to be used by DEC to sample approximately 45 lakes on the Kenai Peninsula in 2007 thru 2009 as part of the National Lakes Assessment.

EPA will:

- Provide funds for the National surveys, DEC has already received the funding for the lakes survey. The funding for the Streams and Rivers will be a competitive process for eligible States and Territories.
- Provide the National Survey methods and some of the equipment and supplies needed. EPA will also provide training on the National methods and will conduct field audits of DEC.
- Provide funding for the Monitoring Strategy implementation (~\$169K per year).

DEC will:

- Complete EMAP baseline surveys of the remaining coastal waters and additional freshwaters, as funding allows.
- Conduct sampling for the National Lake surveys in Alaska during the summer of 2008, using national methods and provide the data to EPA.
- Conduct EMAP National Streams and Rivers surveys in Alaska during the summer of 2009, as funding allows, using national methods and may add supplemental indicators if desired.
- Develop a plan for using the Monitoring Strategy funding for FY08-FY09. This funding can be used for any monitoring activity that implements the States monitoring strategy.

DEC and EPA will:

- Work on a long term plan for completing the survey of Alaska's waters supported by EPA funding commitments and incorporating partnerships with other agencies.
- Work jointly on including Alaska in the EPA Rivers Survey, including meaningful funding and adaptation of methods to Alaska to provide statistically valid baseline water quality information for Alaskan rivers.
- Discuss EPA's proposed National Rivers Survey funding scheme with a goal of seeking additional EPA funds or funding sources from other federal agencies for this survey.
- Work together to prepare grant workplans to provide funding to study the Yukon River as part of the 2009 Rivers Survey, as funding becomes available.
- Work jointly on developing a strategy that will result in completion of national baseline water quality data for Alaskan lakes under the National Lakes Survey. The strategy should include program

activity measures that would monitor progress on the path of completing statistically valid baseline water quality information.

## **12. Drinking water rules and primacy delegation approvals**

The EPA and DEC will work collaboratively to protect human health and ensure that water is safe to drink by reducing exposure to contaminants in drinking water. The numerous and increasingly more complex federal drinking water rules continue to challenge the DEC Drinking Water Program, requiring increased staff resources to complete timely adoption, primacy delegation approval, implementation, and reporting to EPA. Additional time is also spent in reviewing the regulatory packages with management and training staff to obtain a sound working knowledge of the rules for consistent statewide implementation.

DEC will:

- Assign staff to work with the EPA to obtain extension agreements, when necessary to complete rule development or rule adoption packages, and primacy applications.

EPA will:

- Support the use of extension agreements for rule adoptions and provide timely guidance in the form of staff and written documentation to DEC on the statutory requirements for rule adoptions, primacy delegation, and program requirements.
- Continue to implement the two new drinking water regulations that were finalized by EPA during January of 2006: 1) Long-Term 2 (LT2) Enhanced Surface Water Treatment Rule and 2) Stage 2 Disinfection By-Products Rule. In a number of instances, the EPA will work directly with the water systems; therefore, EPA will keep DEC informed of all activities undertaken by EPA Region 10 and or EPA Headquarters implementing these rules in Alaska.

EPA and DEC will:

- Continue implementation activities for LT2 and Stage 2 Disinfection By-Products Rule.

## **13. Public water system compliance**

New federal rules continue to challenge the overall ability of public water system owners and operators to achieve and maintain compliance with all the drinking water rules, to ensure that the public is being provided drinking water that meets all health-based standards.

DEC and EPA will:

- Implement the compliance assurance agreement and strategy on how to address the backlog of significant non-compliers (SNC's).

DEC will:

- Provide compliance assistance consisting of written information and workshops for public water system owners and operators, utility managers, technical service providers, and consulting engineers on drinking water rule requirements.
- Focus available resources on addressing violations before they become SNC's when possible and to the extent practicable address SNC's before they become exceptions.
- Provide training workshops in Alaska for DEC staff, public water system owners and operators, utility managers, technical service providers, and consulting engineers on the implementation requirements of new federal rules.

EPA will:

- In partnership with DEC, and when requested, complete timely enforcement on public water system referrals that have a significant history on noncompliance and non-cooperation with DEC.
- Ensure that DEC has an opportunity to provide comments on all press releases regarding public water systems (PWSs) in Alaska before they are finalized by the EPA press office and released. EPA will consider, address and respond to DEC's comments and seek DEC's agreement on the "final" version.
- Communicate and coordinate all PWS issues through DEC program management staff prior to contact with any third party to include Technical Assistance Providers and PWS owners and operators, on any work the EPA may do relating to PWS in Alaska.
- Work to ensure that DEC has an updated SNC List every quarter, to track performance of workplan objectives.

#### **14. Surface Water Quality Assessment, Restoration and Protection (nonpoint source pollution controls)**

Non-point sources can contribute significantly to water pollution in Alaska. Controlling and preventing non-point source pollution is challenging and requires the cooperation of local, state and federal land-manager levels to avoid costly waterbody restoration actions on polluted waters.

DEC and EPA will:

- Coordinate and implement activities that will address controlling non-point source pollution and restore waters that are already impaired.

This includes TMDL work to ensure that the court ordered requirement to develop and establish at least two TMDLs per year is met (WQ-8).

DEC will:

- Develop criteria to better integrate, define and document how waters in Alaska are determined to be impaired or to be attaining state water quality standards. This includes providing EPA with electronic georeferenced data (WQ-7) and submitting a pre-public draft detailed methodology on at least one pollutant to EPA.
- Identify preventative strategies that could be implemented to reduce non-point source pollution prior to impairment of state waters. Development of the preventative strategy will include investigating current statutes and practices, identifying regulatory gaps, and conducting an analysis of the effectiveness of the current programs in place to determine what other mechanisms are needed for state-wide protection.
- Implement Alaska's Nonpoint Source Management Strategy priorities and report on progress in meeting milestones in reducing nonpoint source pollution.
- Complete financial and mandatory data entry into GRTS for all 319 funded activities.
- Reduce impacts to healthy waterbodies and demonstrate improvement on impaired waterbodies including developing (monitoring) an approach on how Alaska will show improved water quality conditions using the watershed approach on the two selected watersheds for EPA National Measure SP-12).
- Provide timely program data to enable program review.

EPA will:

- Provide clear criteria for meeting national objectives, technical assistance and timely, constructive comments on draft work products.
- Provide timely review of final work products to ensure national and state goals are met.

### **15. Rural dust pollution**

DEC has suspected for some time that fine particle dust pollution in rural communities may be exceeding Clean Air Act health standards for PM<sub>10</sub>. DEC, in collaboration with Northwest Alaska communities and Alaska DOT, has conducted ambient air monitoring that has revealed numerous exceedances of the health standard in Kotzebue, Noatak, Buckland, Kiana, Noorvik, Ambler and Bethel. DEC suspects similar conditions of high PM<sub>10</sub> pollution exists in many more rural communities during spring through fall when dry conditions prevail.

The dust is caused primarily by vehicle and 4-wheeler traffic on unpaved roads and unvegetated areas, as well as wind scarification and erosion of loose surface materials including glacial till and fine sands from river delta areas.

Many communities and tribes are interested in reducing this pollution. If air monitoring is a pre-requisite documenting phase, they are willing to undertake ambient air monitoring. While DEC and EPA will provide assistance for monitoring projects, DEC, ADOT, and EPA need to focus attention on evaluating the improvements that may be accomplished through various dust mitigation options.

DEC and EPA will:

- Work collaboratively in communicating and working in partnership with the Northwest Arctic Borough and other local governments and tribes affected by adverse PM10 pollution.
- Work cooperatively to develop funding strategies for dust mitigation and implementation of pilot projects with local communities and tribes.

DEC will:

- Continue ambient air monitoring in Kotzebue.
- Provide technical assistance and training to tribal organizations that will be conducting air monitoring projects.
- Work in partnership with Alaska Department of Transportation and Public Facilities (ADOT), the Northwest Arctic Borough, and the City of Kotzebue to undertake roadway based PM10 mitigation studies and remedies to reduce PM10 exposure to the extent state or federal funds are made available through ADOT or the Federal Highways Administration.
- Provide assistance to the Northwest Arctic Borough, the City of Kotzebue, NANA Regional Corporation, Mannilaq Health Corporation, and Kotzebue based tribes, as well as other Alaskan communities and tribes in assessing dust conditions, assessing dust mitigation options or related matters.

EPA will:

- Work cooperatively with DEC staff to successfully evaluate air pollution conditions in rural / tribal communities.
- Collaborate with DEC to form forums including entities such as ADOT, Denali Commission, Bureau of Indian Affairs, Indian health services, HUD, etc. so that an integrated approach to road dust mitigation can be developed for Alaska Native Villages.

- Continue to support training and workshop for Alaska Native Villages and communities to discuss road dust concerns, share knowledge, and leverage resources.
- Produce and disseminate outreach materials to Alaska Native Villages and communities about health impacts of road dusts and best management practices to minimize exposure. EPA will consult with DEC and seek peer reviews of the outreach material as appropriate.

## **16. Fish Tissue Monitoring**

DEC has collected fish from Alaskan waters every year, starting in 2001. The fish have been processed at DEC's Environmental Health Laboratory and analyzed for heavy metals (methyl mercury, total mercury, lead, arsenic, chromium, cadmium, selenium, & nickel). A subset of the fish samples collected is being analyzed at a commercial lab for dioxins and furans, pesticides, PCB and PBDE congeners, and inorganic arsenic.

DEC has developed a statewide sampling plan that defines: 1) where ongoing sampling is needed for sentinel monitoring, 2) areas or species that need further evaluation, and 3) what new species or locations need to be assessed. EPA Region 10 has included fish contaminant surveys in their strategic plan for achieving the objective for fish and shellfish that are safe to eat.

DEC will:

- Implement the statewide fish tissue monitoring plan for mercury and other contaminants, informing EPA of general progress in implementation of the plan and consulting with EPA in the case of deviations from the Quality Assurance Monitoring Plan.
- Maintain a web page where EPA, the public, and tribes can access data collected on the levels of mercury and other heavy metals found in Alaska fish.
- Submit to EPA a draft report of the data results when DEC has finalized it. This report will include all validated data from the analysis of fish tissue performed as part of the Fish Tissue Testing Program.
- Consult with the Alaska Department of Health and Social Services regarding the benefits and risks of consuming Alaska fish.
- Provide EPA with all past and future validated fish tissue data.
- Meet with EPA to discuss the Mercury Fish Consumption Advisory for Alaska.

EPA will:

- Provide information to DEC on mercury and other fish consumption advisories developed by the State of Alaska.

### **17. Contaminants Mercury and Persistent Organic Pollutants.**

A priority will be to better understand and begin to address the threat posed by persistent organic pollutants (POPs) to Alaska and North Pacific and Arctic Ocean resources. A long term goal will be to develop a predictive trends model.

EPA and DEC will:

- Work together to identify a stable long-term funding source to continue and expand current efforts to monitor mercury and POPs levels in fish tissue and human populations.

### **18. Drinking water laboratory certification program**

In order to maintain primacy for the Drinking Water Certification Program for chemistry and microbiology under the Safe Drinking Water Act, the State of Alaska must meet a number of regulatory requirements including:

- establishing and maintaining a program for the certification of laboratories conducting analyses of drinking water compliance samples,
- designating a "laboratory officer or officers, certified by the Administrator or designee as the official(s) responsible for the certification program," and
- having (an) available EPA/National Environmental Laboratory Accreditation Conference (NELAC) or American Association for Laboratory Accreditation (A2LA) certified laboratory facility(ies) capable of performing analytical measurements for all of the federally required contaminants specified in the State Primary Drinking Water Regulations.

The EPA Region 10 Laboratory is responsible for oversight of the Drinking Water Certification Programs in Alaska. The Laboratory's roles are to:

- Evaluate the State's Drinking Water Certification Program at least once every three years during an on-site audit and once a year through a questionnaire and/or teleconference.
- Monitor annual Performance Test results from state principal laboratories.
- Audit state principal laboratories on a triennial bases.
- Monitor the adequacy of the State's Drinking Water Certification Program, and determine the certification status of the principal State laboratories.

DEC will:



- Participate with the EPA Region 10 Laboratory Drinking Water Certification Officers in the annual review of the Alaska Drinking Water Laboratory Certification Program and the triennial EPA inspection of the State-maintained principal laboratory. The triennial EPA inspection will include the EPA Region 10 Laboratory Drinking Water Certification Officers accompanying the Alaska Drinking Water Certification Officers on an audit of one or more commercial drinking water laboratories.
- Designate third-party EPA/NELAC certified laboratories as State principal laboratories for analysis of contaminants for which the State-maintained laboratory is not EPA/NELAC certified. Written agreements are maintained with each of the laboratories.
- Ensure that the Alaska Drinking Water Certification Program meets all criteria in EPA's current "Manual for the Certification of Laboratories Analyzing Drinking Water" by maintaining a current Quality Assurance Plan and Standard Operation Procedures. This effort will be the responsibility of the Quality Systems Manager with assistance from the DEC Certification Authority and Drinking Water Certification Officers.
- Ensure Alaska Drinking Water Certification Officers are provided with a minimum of two weeks per year of laboratory bench experience in their area of drinking water analysis in order to maintain proficiency.
- Inform the EPA Certification Authority of major changes to the State's Drinking Water Certification Program, including but not limited to, loss of Certification Officers, within a reasonable length of time.

EPA will:

- Conduct the annual evaluation of the Alaska Drinking Water Laboratory Certification Program and the triennial audit of the State-maintained laboratory and designated- principal laboratories. This effort will include the EPA Region 10 Laboratory Drinking Water Certification Officers accompanying the Alaska Drinking Water Certification Officers on a triennial audit of one or more commercial drinking water laboratories.
- Assist the State Drinking Water Certification Officers with access to the EPA Region 10 Laboratory when practical, in order to assist in gaining two weeks of laboratory bench experience in drinking water analysis to maintain proficiency.
- Keep the State Drinking Water Certification Officers aware of changes to EPA requirements for the Drinking Water Certification Program and provide advice and guidance on technical issues.

### **19. Technical assistance evaluating use of pesticides**

DEC implements a comprehensive pesticide program in the state. Alaska has had primary enforcement responsibility for pesticide misuse since 1989. DEC also trains and licenses pesticide applicators, and implements ground water, worker, and endangered species protection programs. All these programs are part of the Cooperative Agreement between the EPA and DEC. The Department also implements a Pesticide Registration Program and Pesticide Use Permitting Program, which is not part of the Agreement. The mission of the DEC Pesticide Program is to protect human health, safety, and welfare, animals, and the environment by ensuring the proper use, sale, distribution, and disposal of pesticides.

DEC and EPA will:

- Conduct a joint evaluation process that focuses on the reporting items specified in the grant workplan.
- Conduct a mid-year evaluation to review the current program accomplishments in relation to the grant workplan.
- Within 60 days after the end of the budget period, conduct an evaluation and review the accomplishments for the year. Both parties shall jointly prepare an evaluation report.

EPA will:

- Provide technical assistance to the DEC Pesticide Program staff as needed.

### **20. EPA to report bi-annually on EPA progress on PPG workplans**

By receiving EPA reports bi-annually, DEC can gain a clearer understanding of project status and how projects track against the workplan.

EPA will:

- Provide bi-annual PPG workplan report to DEC.

### **21. Coal-Fired Power Permits.**

Recent litigation concerning the Clean Air Mercury Rule (CAMR) complicates the regulatory regime for permitting emissions of mercury from coal-fired power generating facilities.

EPA and DEC will:

- Work together to develop an appropriate mercury strategy for Alaska. Ensuring that the State of Alaska's concerns are clearly communicated with EPA HQ as it drafts new mercury rules.

## **22. Drinking Water and Wastewater Loan Programs**

DEC and EPA share an interest in improving environmental protection and public health by making low interest loans available to Alaskan communities and other eligible entities for financing drinking water, wastewater and water quality related projects.

In order to efficiently and effectively meet these needs, the DEC and EPA agree to the following:

DEC and EPA will:

- Cooperate in performing an annual program review for both State Revolving Fund (SRF) loan programs in order to assure that all state and federal requirements are being met, to identify areas where improvements can be made, and to recognize successful program implementation.

DEC will:

- Follow all terms and conditions outlined in the Operating Agreement, yearly capitalization grant agreements, federal statutes, regulations and published national guidance and policies for both SRF loan programs.
- Submit annual SRF reports to EPA as required.
- Develop, review and modify annual Intended Use Plans for both SRF loan programs.

EPA will:

- Provide DEC with updated program guidance from EPA Headquarters as it becomes available.
- Upon request, provide timely advice regarding SRF program implementation.
- Make necessary training available to DEC staff responsible for administration of both loan programs.

## **23. Sanitation Facility Projects for Rural Alaska Communities**

DEC and EPA have a vested interest in providing sanitation facilities to the rural Alaska communities and Alaska Native communities to improve the health and sanitation conditions in these communities and villages. In order to efficiently and effectively meet the needs of the communities the DEC and EPA agree to the following

DEC and EPA will:

- Abide by the 2006 three party MOU.

- Participate in interagency coordination meetings at least semi-annually, with other agencies involved with rural sanitation.
- Work cooperatively to maintain procedures for allocating state and Federal funding available for sanitation facility improvement projects. All available funding will be allocated annually.

DEC will:

- Annually, update a database of rural sanitation needs organized by community, including water and sewer service levels to individual homes.
- Submit required Federal grant application forms and associated work plans to Federal funding agencies a minimum of sixty days prior to the proposed start date of the proposed federal award, and no later than August 1st.
- Implement the policy for stalled projects. The goal of the policy is to ensure that studies and construction projects are completed as soon as practical taking into consideration community needs, expectations, capacity and local conditions. In the event that projects cannot be complete within established time frames funding will be reallocated to projects that are progressing and will be completed within the established time frames.

EPA will:

- Notify DEC of the final amount available to the program as soon as the allocation amount is final. Federal grant awards will be awarded in accordance with Uniform Administrative Requirements for Federal Grants to States.

## **VI. Compliance and enforcement**

EPA has primary compliance and enforcement responsibility for non-delegated federal environmental programs and in "Indian Country" in Alaska as defined in 18 U.S.C. Section 1151. DEC has primary compliance and enforcement responsibility for the state's environmental laws and delegated federal environmental and public health protection programs. It is essential that EPA and DEC coordinate enforcement and compliance with each other.

The EPA and DEC will coordinate enforcement and compliance with each other in a manner consistent with the May 1997 Agreement on Compliance Assurance Principles and the March 1988 Compliance Assurance and Evaluation Principles agreed to by the EPA Region 10 States and the EPA. The EPA and DEC will provide required compliance and enforcement information to each other in an appropriate and timely manner. Current relevant documents include (1) DEC's Enforcement

Manual and (2) the Compliance Assurance Agreement between DEC's Air Permits Program and the EPA Office of Air, and (3) the Compliance and Enforcement Strategy between DEC's Drinking Water Program and EPA Region 10's Office of Water and Watersheds Drinking Water Unit.

#### **VII. Performance reporting and evaluation**

DEC and EPA will report on the activities identified in this agreement semi-annually. Reports will be based on information supporting performance measures and program activity measures identified in this agreement outlining accomplishment, existing or potential problems, and suggestions for improvement. The reports will be exchanged by February 15 and August 15 of 2009. The EPA will schedule a report preview meeting with DEC to discuss the report and make appropriate adjustments.

The EPA and DEC programs directors agree to meet in the Fall of 2009 to discuss strategic environmental and public health protection issues in Alaska. Information from this discussion will be used by each agency when developing subsequent strategies and budgets.

#### **VIII. Dispute Resolution**

Parties to this agreement realize there may be different expectations and understandings of the terms of this agreement by each party from time-to-time. Resolving those differences early will keep each party focused on the intent of the agreement and avoid difficult, time-consuming situations that disrupt healthy working relationships necessary to achieve mutual success.

The EPA and DEC agree to work issues at the lowest level possible, making reasonable efforts to clarify expectations and understandings. If those responsible for implementing activities and achieving expected performance are not able to resolve disagreements that prevent accomplishments mutually, they are authorized to elevate the matter to the next higher level of responsibility. They will notify their supervisor of this action and schedule a discussion among supervisors and affected staffs. This elevation process will continue up to the program director level. If a matter is not resolved before reaching the program director level, program directors will notify the agency head that they are engaged in resolving a conflict. Most issues will be resolved either before reaching this level or at the conclusions of the director elevation. However, significant issues may remain and will be addressed between the agency heads.

