Alaska Department of Environmental Conservation
and
U.S. Environmental Protection Agency

Performance Partnership Agreement
Midyear Performance Report

State Fiscal Year 2006
(July 1, 2005 - June 30, 2006)

Executive Summary

This Midyear Performance Report on the progress made implementing the SFY 2006 Performance Partnership Agreement (PPA) between the State of Alaska and the U.S. Environmental Protection Agency (EPA) is prepared in order to assist senior managers to monitor accomplishments based on performance measures identified in the PPA. The SFY2006 PPA continues the State of Alaska's Department of Environmental Conservation's (DEC) relationship with the EPA to foster excellence in state and federal environmental programs under the National Environmental Performance Partnership System. The PPA is a reflection of the relationship DEC and EPA Region 10 have been moving toward over the past years to protect and restore Alaska's environment.

Delivering on Commitments

EPA and the State have done well to accomplish many of the goals set forth in the PPA. The status of all these activities is presented in the body of this report. Several PPA accomplishments to date include:

- DEC completed the adoption of Drinking Water Rules: Variance and Exemption, Radionuclides, Arsenic and Filter Backwash Recycling Rules.
- EPA has formally recognized DEC's Notice of Violations as formal Public Water System Compliance enforcement actions.
- Both organizations recognized the need for an improved partnership. Specific commitments were established to improve cross-organizational knowledge and communication. This commitment has been largely implemented with good results.
- Improved communication between EPA and DEC has enhanced the process for changing Alaska Water Quality Standards.
- Both the State and EPA have invested in improving communications with Tribes in order to understand respective environmental priorities. DEC has participated in presentations to tribal communities at several tribal conferences/training sessions.
- Rural Airborne Particulates ambient air monitoring in Kotzebue has been implemented.
- Rural Diesel Emissions Health Risk Assessment pilot study has commenced.
- Additional EMAP funds secured for DEC Arctic work.

Some Tasks to Complete

While many of the tasks identified in the PPA have seen progress, several remain in need of refocused attention in order to be accomplished. Some of these include:

- The 2004 Impaired Waters List is out for public notice; the final List is to be provided to EPA on April 15, 2006.
- Reducing the backlog of permits continues to be an issue of concern for EPA Region 10 NPDES permit writers.

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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 the State of Alaska 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.

Successful implementation of the PPA is dependent upon the partners carrying out their respective parts. Joint evaluation, in which EPA and State officials assess progress and the remaining challenges together, facilitates mutual understanding of each other's strengths and opportunities for improvement, and sets the stage for continuous improvements in how they work together.

A well-managed system for conducting joint evaluations is essential to resolving the tension between providing more flexibility to States through PPAs and PPGs and ensuring accountability for results. Joint evaluation also provides an opportunity for reviewing EPA's progress in meeting its own commitments to the State, such as providing technical assistance, staff training, and analytic or legal support.

This Midyear Report provides for stronger accountability and a results-oriented evaluation of the PPA. The objective is to strengthen the PPA so that it can serve as the defining document for the State-EPA partnership. The PPA Midyear Report is one of the tools employed in the process of jointly evaluating how well the PPA is working. The performance information in the report supports State and EPA program planning and decision making and provides assurance to officials and the public that EPA and the States are carrying out their environmental program responsibilities. This report will be used by State and EPA managers to discuss accomplishments as measured against commitments, the cumulative effectiveness of the work performed under all work plan components, existing and potential problem areas, and suggestions for improvement.

II. MIDYEAR EVALUATION OF DEC/EPA SFY06 PPA PRIORITIES

EPA Region 10 Priorities

Timely Communication on Controversial Projects/Issues

Joint DEC and EPA Commitments - Midyear Evaluation:

- *For mining and oil and gas projects, appoint a primary point of contact who will meet to review the status of ongoing projects, review federal and state legal and policy*

requirements, and identify any issues needing review.

- Team leads have been identified for Oil and Gas activity and mining activity. EPA's Oil and Gas leadership has met with the DEC Commissioner. Mining Sector staff regularly review the status of active and proposed projects and identify issues needing review via frequent phone conversations. The State of Alaska's representative for the mining project team has been coordinated through the Department of Natural Resources, Office of Project Management and Permitting (OPMP), who coordinates with the individual divisions of the Department of Environmental Conservation. The State agencies in the Mining Sector team meet weekly. The State's team lead for mining meets bimonthly by phone with the EPA's Mining Sector team leader.

DEC Commitment - Midyear Evaluation:

- *Coordinate announcements to include EPA quote(s) in news releases explaining the TRI data to coincide with EPA's public announcements of data release.*
  - No action to date - pending release of TRI data expected in May/June.

EPA Commitment - Midyear Evaluation:

- *Assign staff to work with DEC to draft an Alaska-specific TRI document that provides additional context on factors to consider for Alaska's TRI releases and other waste management activities. EPA is willing to help Alaska tailor the Public Data Release brochure and the current "Factors to Consider When Using TRI Data" brochure to help Alaska educate its citizens on TRI.*
  - No action to date - pending release of TRI data expected in May/June.

- *Maintain continued timely notice of activities from headquarters, such as proposed rule making changes, that may affect Alaska.*
  - Successful accomplishment of this ongoing activity.

Health Concerns in Rural Alaska from Airborne Particulates - Fine Particle Dust

Joint DEC and EPA Commitments - Midyear Evaluation:

- *Communicate regularly as new monitoring or mitigation information becomes available.*
  - Complete and ongoing. In addition, other rural communities have been informed about monitoring and dust mitigation options.

- *Work collaboratively in communicating and working in partnership with the Northwest Arctic Borough and other local governments and tribes affected by adverse PM10 pollution.*
  - Ongoing communication. Future communication rests on future EPA PM coarse standard actions.

- *Strive to secure the use of Congestion Mitigation and Air Quality (CMAQ) funds through the Federal Highways Administration for use in mitigation or assessment of PM10*

pollution in rural Alaska.

- This possibility was explored but the result was unsuccessful. EPA staff coordinated discussions with the Federal Highway Administration, ADOT, and ADEC staff regarding the possibility of using CMAQ funds for rural road dust mitigation purposes.

DEC Commitments - Midyear Evaluation:

- *Continue ambient air monitoring in Kotzebue for the spring through fall of 2005 and 2006.*
  - Completed.

- *Based upon ambient measurements through September of 2005, determine if the State will request EPA to designate Kotzebue and other areas within the Northwest Arctic Borough as non-attainment for 24-hour exposures of PM10 pollution.*
  - The State will take no action until the EPA makes a decision on the new PM coarse standard and its applicability to small communities.

- *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.*
  - Road paving was done in Kotzebue this summer. In addition, the City of Kotzebue conducted some road watering. Follow-up monitoring needs to be done next summer to measure degree of success.

- *Provide assistance to the Northwest Arctic Borough, the City of Kotzebue, NANA Regional Corporation, Manniliq Health Corporation, and Kotzebue-based tribes in assessing pollution condition and dust mitigation options or related matters.*
  - Complete. Additional coordination and communication needed to inform them of EPA's proposal to change PM standards and remove the PM standard for rural locales.

- *To the extent practical for DEC Air Quality Division, provide similar assistance to villages within the Northwest Arctic Borough.*
  - Complete. Provided assistance to several other villages in the region.

EPA Commitments - Midyear Evaluation:

- *Not oppose any legislative proposals the State may advocate to open opportunities through federal legislation to apply federal highway funds for rural Alaska PM10 problem locations while those locales are not formally designated as non-attainment areas.*
  - EPA Region 10 Air Director discussed possible future non-attainment designations and its implications on EPA and the State with the senior managers of EPA Office of Air Quality Planning and Standards. The results of these fact finding and informational inquiries were communicated with ADEC through email and

conference calls.

- *Strongly support ambient air monitoring projects or PM10 mitigation assessment projects that Alaska tribes desire to undertake, using federal funds to resolve PM10 pollution in their respective villages or communities.*
  - EPA staff have worked with ADEC staff to fund, site, and operate several particulate monitors under the Clean Air Act Tribal grants. In addition, the regional IGAP grant funding also supported similar monitoring and baseline assessment activities in Alaska villages. EPA provided technical assistance to the tribal village grantees such as SOP and QA/QC development and reviews, training through ITEP, etc. EPA staff visited these monitoring locations and provided technical consultation and outreach to the tribal staff and village councils during the summer of 2005.

- *Give fair consideration to any request made by the State to designate one or more locales in Alaska as non-attainment for PM10.*
  - No action.

- *Continue to seek opportunities for Alaska to use 'mandatory' CMAQ funds for roadway and trail dust mitigation through any vehicle possible that does not require designation of the locale as non-attainment (i.e., early action compact or similar process).*
  - Ongoing.

Rural Diesel Emissions Health Risk Assessment

Joint DEC and EPA Commitments - Midyear Evaluation:

- *Communicate with the chosen study communities to convey the purpose and findings of the study, with periodic updates to inform the community of study progress (this will primarily be a DEC task).*
  - Complete, field study is now underway.

- *As the study is implemented, share scientific knowledge or resolve field study problems.*
  - Study began in early January. Information sharing will proceed as information or problems come forward during the winter and spring of 2006.

- *Evaluate the study results with respect to options for stationary source emission controls and/or other appropriate mitigation measures.*
  - No action taken to date since the study is still underway and results are not expected for several months.

DEC Commitments - Midyear Evaluation:

- *Inform rural Alaska communities and tribes of the research purpose, goals, schedule, data gathering techniques, and the implications of the research.*
  - Complete.

- *Execute the pilot phase study in SFY 2006.*
  - Project has started in St. Mary's.

- *Finalize the study design following the pilot phase and peer review with the expected completion date of SFY 2007.*
  - No action as yet - none expected.

- *Take the lead in communicating with other rural Alaska communities and Tribes about the diesel health assessment work so those communities can be better prepared to make decisions about the use of ultra low sulfur diesel fuel conversion in their community.*
  - Some communication has started; most will await information gained from pilot field study.

- *Take the lead in executing the full field study, provided the peer review establishes scientific merit for the study design.*
  - No action taken or expected thus far.

EPA Commitments - Midyear Evaluation:

- *Support DEC as it seeks funding for this study from EPA Headquarters or EPA Research Labs as a unique regional issue in the Region's Strategic Plan. This work is expected to require funding in excess of discretionary State funds or normal Clean Air Act Section 105 grant funds available to Alaska.*
  - EPA accommodated ADEC's proposal to partially fund this study through the Clean Air Act Section 105 grant.

- *Identify and assist in contacting additional consultation from EPA experts across the country who are knowledgeable in the field of risk assessment and field monitoring.*
  - EPA staff helped ADEC staff make necessary linkage with relevant EPA Office of Research and Development scientists and experts.

- *Assist DEC if the study features or logistics require unique regulatory, policy, consultative, or interpretive actions by EPA.*
  - EPA staff provided peer review comments on ADEC's proposal for rural diesel health study.

- *To the maximum extent possible, support Alaska tribal governments and Alaska native health corporations who desire to participate with DEC in executing the pilot phase or full field phase study using eligible federal funds that may become available to tribes.*
  - No status update.

- *Work with DEC staff to identify and create opportunities to share program information about the Rural Diesel Health Assessment with Alaska tribal governments.*
  - No status update.

Tribal Capacity Building Performance Results - Solid Waste

Joint DEC and EPA Commitments - Midyear Evaluation:

- *Each agency will appoint one or two representatives to lead their respective organizations in this endeavor.*
  - Fran Stefan represents EPA Region 10 as a tribal specialist for the Office of Air, Waste, and Toxics. Kristin Ryan is the DEC Director of the Division of Environmental Health which has jurisdiction for the State's Solid Waste Management Program.

DEC Commitments - Midyear Evaluation:

- *Provide information to Alaska tribes and EPA on Alaska's environmental statutes, regulations, and DEC's responsibilities, services, priorities, and expectations of the Solid Waste Program.*
  - Representatives from DEC's Solid Waste Program have made presentations at several conferences/training sessions around the state providing information on the solid waste regulations, State statutes, and guidance regarding solid waste management. Outreach opportunities included the Sitka Tribal Summit, Alaska Forum on the Environment, ANTHC Environmental Health Conference, as well as various Rural Alaska Landfill Operators (RALO) training sessions.

- *Provide draft solid waste regulations to EPA for a review before sending the new regulations package out for official public comment.*
  - Draft SW regulations were submitted concurrently to both the ADEC Commissioner's Office and EPA solid waste staff for review in May 2005. Review comments are currently being incorporated. The proposed regulations have not been public noticed at this time.

- *Participate in discussions to share program information, and provide technical assistance to tribes regarding solid waste management.*
  - DEC Solid Waste Program staff have made presentations at several conferences/training sessions including best management practices for the design, siting, operation, and closure of rural community landfills. Presenters received accolades from communities members regarding the presentations.

- *Participate in discussions with EPA on how DEC's proposed manual of new Class III regulations may be used in lieu of a tribal waste management plan.*
  - DEC Solid Waste staff have been in close communication with EPA Solid Waste staff on how the proposed Alaska landfill manual can be incorporated into a tribal solid waste management plan. A strategy will be finalized as the regulations get closer to implementation.

EPA Commitments - Midyear Evaluation:

- *Provide information to DEC on program grants to Alaska tribes, including work done under the Indian Lands Open Dumps grant.*
  - The midyear report was delivered to DEC.

- *Identify tribal grantees by media interest and proposed projects and develop opportunities for open communication and coordination between DEC technical specialists and tribal environmental specialists.*
  - EPA is in the process of reviewing IGAP proposals to be funded this year and is prepared to work with ADEC to implement this agreement. It would be very helpful for ADEC to provide a list of specialists to assist EPA in its communication efforts.

- *Identify potential sources of EPA funding for those tribes interested in collaborating with DEC and EPA regarding solid waste projects.*
  - Region 10 is in the process of developing a collaborative effort with ADEC, EPA, Tribes and other state and federal agencies in Alaska to develop and fund specific tribal pilot projects. There have been preliminary discussions between EPA Regional Administrator Michael Bogert and DEC Commissioner Kurt Fredriksson on this issue.

- *Work jointly with DEC, providing comments on the draft solid waste regulations for Alaska.*
  - EPA has provided comments on DEC's draft solid waste regulations.

DEC Priorities

State Due Deference

DEC Commitments - Midyear Evaluation:

- *Make a "due deference claim" to the appropriate EPA office director, providing a precise description of the issue.*
  - DEC requested EPA Water Director review of a decision on NPDES primacy and the potential opportunities for phasing in authority over permits over a period of time. The original EPA decision was very limiting. Upon reconsideration, EPA is willing to consider additional options proposed by the State.

- *In the case of an EPA decision based on a legal interpretation of federal law by EPA Program staff, DEC may request confirmation by State or EPA attorneys.*
  - This provision has not been exercised to date; however, DEC is in the process of seeking EPA legal confirmation on a couple of issues associated with the State's draft NPDES regulations.

EPA Commitments - Midyear Evaluation:

- *Take actions, make decisions, and provide direction to DEC that is based only on law or written guidance and identify advisory information as such.*
  - On track.

- *Provide a prompt response to a DEC "due deference claim" by either, 1) providing the written policy, guidance, law, or other documentation on which EPA is relying to support its action, decision or direction to DEC, or 2) by rescinding EPA staff direction.*
  - The EPA Water Director has provided greater flexibility on an NPDES phasing issue than had earlier been provided by EPA staff.

- *In the case of an EPA decision based on a legal interpretation of federal law by EPA Program staff, provide a legal basis for the interpretation from EPA attorneys.*
  - This provision has not been exercised to date.

Joint DEC and EPA Commitments - Midyear Evaluation:

- *If a "due deference claim" by the State is not promptly resolved at the director or legal levels, elevate the issue through the PPA dispute resolution procedures.*
  - This provision has not been exercised to date.

Grant Allocation Parity

DEC Commitments - Midyear Evaluation:

- *Provide EPA with PPG work plans that describe the State's work priorities, work strategies and performance results.*
  - Completed.

- *Provide EPA with an analysis of the funding impacts to DEC from EPA's current funding allocation systems for Clean Water Act Sections 106 and 319 funds*.
  - These analyses had been completed in the past. SFY06 updates are yet to be submitted by DEC to EPA. DEC has requested the assistance of Region 10 in ensuring that the new CWA Section 106 set-aside funding formula recognizes unique Alaskan needs.

EPA Commitments - Midyear Evaluation:

- *Review and approve DEC's PPG workplan commitments.*
  - Completed.

- *Assist DEC in obtaining current funding formula application data from EPA Headquarters in a timely manner.*
  - Ongoing - action pending specific request from DEC.

- *To the extent possible, consolidate regional Clean Water Act Section 104(b)(3) grant*

solicitations into a single offering.

- No 104(b)(3) funding provided in EPA's FY2006 Appropriation.

Timely Approval of NPDES Primacy Application

Joint DEC and EPA Commitments - Midyear Evaluation:

- *Work together to develop regulations, a program description, a memorandum of understanding, and other necessary elements of a State NPDES primacy application.*
  - Good communication channels established at the staff and management levels managing and tracking progress on this high priority item. Continuing discussions between programs is needed to ensure successful and timely review of DEC work elements by EPA. This PPA task should be discussed at the PPA midyear meeting.

DEC Commitments - Midyear Evaluation:

- *Seek EPA guidance and assistance while developing the primacy application.*
  - Continuous communication between Alaska and EPA regarding guidance and assistance to develop the State's primacy application package.

- *Provide an opportunity for EPA to review early drafts of all major elements of the primacy application.*
  - DEC continues to actively solicit EPA guidance on all major elements of the primacy application. EPA has recently expressed [letter dated 10 February 2006] a broad concern over the schedule for the NPDES authorization project, particularly the sharing of early drafts of major elements of the application package. EPA is concerned that the statutorily established June 30, 2006 target submittal date remains fixed, narrowing the window of opportunity for EPA to review critical elements of the primacy application package. This shortened window of opportunity for EPA to review major elements of the application package could diminish EPA's ability to provide mutually beneficial comprehensive review and comment.

EPA Commitments - Midyear Evaluation:

- *Dedicate managerial and legal staff to assist DEC with primacy application development and provide timely review of all draft primacy-related documents, with a goal to provide responses to the State within two weeks of a request.*
  - EPA Region 10 has built and staffed a dedicated team to assist DEC in the development of its application.

Timely Approval of Water Quality Standards

Joint DEC and EPA Commitments - Midyear Evaluation:

- *Work together early in the Water Quality Standard (WQS) revision process to identify the information, data, and justification that may be needed to support the timely approval of changes to the WQS.*

- DEC and EPA have been working closely on several WQS revisions. DEC has asked for, received and discussed EPA comments on draft revisions to mixing zones and residue criteria prior to public notice. Extensive comments provided on pre-public notice draft of mixing zone regulation reflecting input from multiple EPA programs. EPA has also contributed constructive comments on the proposed revisions during the public notice period. DEC and EPA have discussed proposed site specific criterion for total dissolved solids in Red Dog Creek, including the draft, proposed and adopted regulation revisions. DEC is preparing the final submittal package for this criteria. The final regulations have been transmitted to EPA for review. A natural conditions based site specific criterion has also been developed for cadmium in Red Dog Creek, which is included in the draft State certification of the Red Dog Mine permit. EPA provided comments during public comment period on proposed changes to dissolved gas criterion and to analytical methods citations. Overall, EPA appreciates DEC's efforts to solicit comment from, and engage in dialogue with, EPA (as well as the "Services") on early draft regulation changes.

- *Work together to bring about the early involvement of NOAA-Fisheries and US Fish & Wildlife ("Services") in the development of a standards revision when an Endangered Species Act (ESA) or Essential Fish Habitat (EFH) consultation may be required.*
  - Discussions and early consultation on the draft; proposed and adopted revisions for mixing zones and residue criteria is ongoing for Endangered Species Act and Essential Fish Habitat issues with the USFWS and NMFS with both EPA and DEC. EPA is preparing a draft biological evaluation for the adopted mixing zones regulation. DEC is preparing a draft biological evaluation for the proposed residue criteria. DEC and EPA have both made significant efforts to foster early involvement by discussing early, pre-public notice drafts of regulations to the Services and EPA, and in engaging the Services on providing early input to inform DEC's further development of the regulation.

- *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.*
  - EPA, DEC, and Services met in October, 2005 to discuss approach on the mixing zone Biological Evaluation (BE) and overall early involvement process. This meeting reflected the willingness and engagement of all to discuss these complex issues. EPA is working to complete a draft ESA/EFH biological evaluation (BE) for the mixing zone regulation prior to the State's submittal of the revised regulation to the EPA for review and approval. DEC, EPA, and the Services will need to engage closely and quickly once the BE is available to ensure conclusion of ESA and EFH consultation within the CWA approval time frame.

DEC Commitments - Midyear Evaluation:

- *Inform EPA of Water Quality Standard issues under consideration for revision. Provide a schedule, including dates, when EPA approval is needed and describe DEC's proposed*

approach and schedule before releasing revisions for public comment.

- DEC has kept EPA informed of developing regulation revisions, expected timelier, and changing schedules well in advance of public notice. EPA and DEC have developed a detailed timeline for the Red Dog Creek site specific criteria in coordination with permitting staff. Predicting project schedules on complex and controversial issues (e.g., the mixing zone regulation) has been difficult.

- *Provide EPA an opportunity to review a draft revision and discuss their comments with DEC before the public comment period. To the extent possible, the draft documents provided to EPA should include a clear explanation of the technical support for the change (e.g., any technical literature reviews that were conducted to inform the revisions and clear discussions of how the changes affect the protectiveness of the Standard for designated uses).*
  - The mixing zone revisions have been accompanied by draft guidance which responds to issues raised by EPA as to how designated uses would be protected, as well as implementation concerns regarding some provisions. EPA has commented on the various drafts of the guidance document. Explanation of proposed changes often occurs verbally between DEC and EPA staff on the early drafts of revisions. The proposed residue criteria were accompanied by both draft guidance and a scientific literature review. EPA commented on the draft guidance document. DEC developed a technical justification for this TDS criterion in Red Dog Creek in close cooperation with EPA. DEC also provided a technical justification for cadmium criterion in Red Dog Creek in the permit certification for Red Dog Mine.

- *In order to facilitate informal and timely Endangered Species Act (ESA) and Essential Fish Habitat (EFH) consultation, be prepared to engage in early exchange with the Services regarding WQS revisions under consideration and the technical basis for these revisions.*
  - DEC has met with EPA and the Services on ESA and EFH issues several times during the development of draft regulations. DEC has provided guidance, factsheets and scientific literature review to the Services to show the technical basis for the regulation revisions. EPA, DEC, and Services met in October 2005 to discuss approach on the mixing zone Biological Evaluation (BE) and overall early involvement process. This meeting reflected the willingness and engagement of all to discuss these complex issues.

EPA Commitments - Midyear Evaluation:

- *Treat the approval of WQS as a high priority for achieving the water quality protection objective in Region 10's Strategic Plan.*
  - EPA has provided timely comments and assistance on all WQS issues. DEC has not yet formally submitted a WQS revision to the EPA for approval; however, EPA has provided early feedback to DEC during the development of their proposed WQS so that standards will ultimately meet the requirements of the CWA. The EPA has given a very high priority to the timely State WQS review and feedback.

- *Provide "up-front" technical assistance to DEC on proposed revisions to Alaska's Water Quality Standards.*
  - EPA has provided up-front technical assistance in a timely manner. EPA experts helped refine the methodology and actively participated in the Arctic Grayling study used to develop the Red Dog Creek site specific criterion for Total Dissolved Solids (TDS). Providing early feedback to the State as they develop their WQS that is intended to help develop a standard that meets the requirements of the CWA is a very high priority for the WQS Unit.

- *Perform timely and thorough tribal consultation on WQS revisions.*
  - Ongoing. The WQS Program has worked with the Alaska Operations Office (AOO) Tribal Coordinators to send timely and informative notices to all federally-recognized Alaska tribes for each of three proposed regulation changes (dissolved gas/methods; mixing zones; residues) this year. EPA has received requests for government-to-government consultation for both the mixing zone and residues standards. We have been in contact with the 10 or so tribes, working with them to set up the schedule and format for consultation. EPA and DEC staff worked together for a WQS session at the Alaska Tribal Conference on Environmental Management (ATCEM) in October 2005. DEC staff presented an overview of Alaska's WQS, and the State process for developing WQS. EPA gave a presentation on EPA's CWA role and our processes for review and approval, as well as government-to-government tribal consultation.

- *Perform timely and thorough ESA/EFH consultation.*
  - Ongoing. Consultation has been initiated in a timely manner. DEC requests that EPA provide a draft biological evaluation based on proposed regulations by (or near) the end of the public comment period, so that ESA and EFH issues can be identified before regulations are adopted by the State.

- *Where appropriate, raise issues that may be unique to Alaska waters in national WQS policy discussions.*
  - EPA has raised issues relevant to Alaska for national discussions on designated uses and use attainability analysis. DEC requests further EPA assistance in raising concerns with the development and implementation of bacteria criteria currently being discussed nationally. DEC also requests that EPA include Alaska in any discussion of fish consumption rates related to development of human health criteria that protect subsistence users.

Complete Statewide EMAP

EPA Commitments - Midyear Evaluation:

- *Act to help secure funding to complete the Northwest Alaska Beaufort Sea and the Northwest Bering and Chukchi Seas coastal assessments.*
  - $208k was secured for Arctic EMAP efforts.

- *Help communicate the need for the results and benefits of having Alaska's EMAP completed.*
  - Ongoing.

DEC Commitments - Midyear Evaluation:

- *Complete EMAP baseline surveys of the remaining coastal and inland waters.*
  - Alaska Southcentral Coastal EMAP: DEC submitted a preliminary technical report on the 2002 sampling to EPA and is currently putting together the final close-out project package as required by the cooperative agreement. Water quality indices were generally good (88%) for Southcentral Alaska estuaries, with the remainder being rated fair due to levels of phosphorus or water clarity. The phosphorus and water clarity are related to naturally occurring conditions, such as input of glacial flour from rivers or ocean upwelling inputs of phosphorus. A presentation on the results of this work was made at the Alaska Forum on the Environment in February 2006.
  - Alaska Southeast Coastal EMAP: Field work was completed in 2004. Data QA/QC activities are occurring in 2005 and 2006, with report completion scheduled for Fall 2007.
  - Alaska Tanana Drainage Basin Wadeable Stream Demonstration Project: Field work was completed in 2004 and 2005. Data QA/QC and analysis is planned for the first part of 2006, with the final report due by December 2006.
  - Alaska Aleutian Island Coastal EMAP: Funding has been received from EPA and logistical planning is ongoing for the 2006 field season for the Western Aleutian's. The eastern Aleutian section will be sampled in the summer of 2007. DEC is working closely with the University of Alaska to bring together the field team to conduct the field work.
  - Alaska Coastal Integrated and Comprehensive Data Mining and Assessment Project: DEC is moving forward working with the University of Alaska-Fairbanks to get the students involved and start up the project. It is not possible to progress much further on this project until funding is received, which is not expected until July or August of 2006. This will delay the project by up to six months, although we are working with EPA to try to find a solution allowing a more timely start up.
  - International Polar Year: Northwest Alaska Beaufort Sea Coastal Survey & Northwest Alaska Bering and Chukchi Seas EMAP: Planning efforts are ongoing as DEC works with EPA to obtain funding to complete the last two major coastal regions in Alaska. These projects are also part of the International Polar Year effort to assess the polar regions of Earth in 2007 and 2008.

Fish Tissue Monitoring

DEC Commitments - Midyear Evaluation:

- *Implement the statewide fish tissue monitoring plan for mercury and other contaminants.*

- DEC continued the statewide fish tissue monitoring plan for mercury and other contaminants following the QAPP established for this program. DEC was able to sample 575 fish, which included 22 different species of fish. Fish were sampled from Southeast Alaska, the Gulf of Alaska, Prince William Sound, Cook Inlet, the Aleutian Islands, Bristol Bay, the Bering Sea, and Lake Clark (freshwater lake in Southwest Alaska).

- *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.*
  - DEC maintained a web page which is accessible by EPA, the public, and tribes: http://www.dec.state.ak.us/eh/vet/fish.htm
    This web page will be updated with the current validated data in the next quarter.

- *Submit to EPA a report of the data results when DEC has completed the evaluation and interpretation of study findings. This report will include all validated data from the analysis of fish tissue performed as part of the Fish Tissue Testing Program.*
  - Data collected on the levels of mercury and other heavy metals found in Alaska fish will be submitted to EPA in an Excel format, and a copy of the total mercury data will be forwarded to the National Descriptive Model of Mercury in Fish (NDMMF). The mercury data will be finalized in the near future. The full EPA report will include all validated data (inorganic trace metals and organochlorine contaminants) from the analysis of fish tissue performed as part of the Fish Tissue Testing Program, as well as the human biomonitoring data from the Alaska Department of Health and Social Services (DHSS).

- *Publish fish consumption bulletins with the Alaska Department of Health and Social Services regarding the benefits and risks of consuming Alaska fish.*
  - A state meeting is scheduled for May 1-2, 2006 to discuss the current information on contaminants in Alaska fishes and human biomonitoring data in order to update the Public Health Recommendations for Fish Consumption in Alaska, published June 15, 2001.

- *Provide EPA with all past and future validated fish tissue data.*
  - The mercury data will be finalized within the next month.

- *Hold public meetings to communicate the results of the program.*
  - Fish Monitoring Project data was presented by Bob Gerlach, and DHSS data was presented by Scott Arnold at the EPA Fish Contaminants Forum in Baltimore, Maryland in September of 2005, and at the Alaska Forum on the Environment in Anchorage, Alaska in February of 2006.

EPA Commitments - Midyear Evaluation:

- *Fund DEC's fish monitoring program with the Congressional appropriation.*
  - Complete.

- *Provide technical assistance to develop the QAPP and workplan for this project.*
  - Technical assistance provided.

- *Use Alaska's fish tissue data in developing consumption advice, and consult with the Alaska Department of Health and Social Services and DEC before issuing any fish consumption advisories in the state of Alaska.*
  - No data received to date.

- *Identify potential sources of EPA funding, including IGAP funding, for those tribes interested in collaborating with DEC and EPA regarding fish tissue testing.*
  - No action.

- *Inform tribes of the laboratory services (fish processing and analysis) that the DEC Environmental Health Laboratory has to offer for fish tissue testing and encourage the use of DEC's lab.*
  - No action.

Non-point Source Pollution Controls

DEC Commitments - Midyear Evaluation:

- *Working through the state land-management agency (Department of Natural Resources), institute non-point source pollution controls on state-managed lands. At a minimum these will include establishing minimum setbacks or management practices for water-polluting activities near water bodies in State land-use plans.*
  - Working with DNR on language options to include in plans.

EPA Commitments - Midyear Evaluation:

- *Work with federal land management agencies such as the Forest Service and Bureau of Land Management, and in consultation with DEC to institute non-point source pollution controls on federally-managed lands. At a minimum, these will include establishing minimum setbacks or management practices for water polluting activities near water bodies in federal land-use plans.*
  - No action to date.

Environmental Health Laboratory Utilization

Joint DEC and EPA Commitments - Midyear Evaluation:

- *Identify managers responsible for lab utilization. These managers will meet twice per year to evaluate the effectiveness of these provisions and recommend actions to improve utilization of the State of Alaska's Environmental Health Laboratory.*
  - The EPA managers responsible for Drinking Water Laboratory Certification include

Bill Riley, Director OEA; Linda Anderson-Carnahan, Director, Manchester Environmental Laboratory, Dr. Stephanie Harris, Senior Microbiologist, and Isa Chamberlain, Senior Chemist. Mr. Riley met with Kristin Ryan, Director of ADEC Division of Environmental Health, in November 2005, and discussed issues regarding ADEC's need to train and certify DW Certification Officers. Dr. Harris and Isa Chamberlain will be conducting a Drinking Water Program Laboratory Certification audit later in the spring of 2006.

DEC Commitments - Midyear Evaluation:

- *Provide reliable and valid data as quickly as possible.*
  - Lab is operational - Construction punch list items are being completed as well as warranty work.

- *Implement a quality assurance program.*
  - QA manual has been published.

- *Use EPA-approved methods when applicable.*
  - Yes.

EPA Commitments - Midyear Evaluation:

- *Encourage grants awarded by EPA for environmental research in Alaska to use the DEC Environmental Health Laboratory when appropriate.*
  - EPA Region 10 is not aware of any EPA grants awarded for research in Alaska.

Drinking Water Rules and Primacy Delegation Approvals

DEC Commitments - Midyear Evaluation:

- *Assign staff to work with EPA to obtain extension agreements, when necessary, and complete rule development or rule adoption packages and primacy applications.*
  - Karen Leis of the Drinking Water Program in the Environmental Health Division is assigned to work on rule development, rule adoption packages, and primacy applications. In December 2005, ADEC submitted a primacy application package with their revision of State drinking water regulations to accommodate the Variance and Exemption, Radionuclides, Arsenic, and Filter Backwash Recycling Rules. The rules were adopted December 9, 2005 and became effective January 11, 2006.

EPA Commitments - Midyear Evaluation:

- *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.*
  - The Drinking Water Unit in the Office of Water and Watersheds at EPA Region 10 is working with ADEC and EPA staff are providing advice and guidance about primacy rules and program requirements. Three EPA staff are reviewing the State Primacy

Rules Application that was submitted in December 2005.

Public Water System Compliance

Joint DEC and EPA Commitments - Midyear Evaluation:

- *Clearly delineate, in writing, when and in what circumstances each agency will take on the enforcement role for drinking water systems.*
  - DEC and EPA are participating in ongoing conversations about enforcement roles related to drinking water. These conversations are in preparation for creation of a new, written agreement related to roles and responsibilities, especially as related to cases that are or will be referred to EPA. ADEC and EPA have agreed that the new agreement will be included in the FY2007 PPA.

- *DEC and EPA senior managers will have quarterly discussions regarding Alaska's Capacity Development Program Strategy Implementation Status, and define next steps accordingly.*
  - DEC is reporting program implementation on a quarterly basis. During the past six month period, ADEC hired a new Capacity Development lead engineer. The Capacity Development Program is being implemented according to the 2006 work plan commitments with EPA.

DEC Commitments - Midyear Evaluation:

- *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.*
  - DEC has provided compliance assistance through written communication, training and workshops, and coordination with assistance providers. The Drinking Water Program's newsletter, *Northern Flows*, Issues #22- Summer 2005 and #23- Fall 2005, were completed and mailed to over 3,300 individuals, including PWS owners and operators, City Administrators, and Alaska State Legislators. Newsletter Issue #22- Summer 2005, focused on the **Long Term 1 Enhanced Surface Water Treatment Rule (LT1ESWTR)**, Class B Systems, Electronic Data Reporting System (EDRS), Overdue Sanitary Surveys, SNC Exceptions List (a special insert), and the Resource Corner – Southeast Alaska Rural Health Consortium. Newsletter Issue #23- Fall 2005, focused on the **Arsenic Rule**, Drinking Water Watch, Community Profile - Igiugig, Training Opportunities, Water Hauler Requirements, and "What's Wrong with this Picture". Included in all issues of the newsletter is the "The Message from the Manager," which provides a summary of all major Drinking Water Program projects and initiatives, including new rules development and requirements. These newsletters continue to be available from our Website at: http://www.state.ak.us/dec/eh/dw/publications/newsletters.html

    During the first half of FY06, staff participated in the following technical or

regulatory workshops and/or conferences:

- Arsenic Treatment Technology Workshop in Anchorage, Alaska, September 13–14, 2005. This was a joint EPA/ADEC workshop focusing on arsenic treatment technologies, compliance options for PWS owners, and enforcement activities for noncompliance. Ninety-two (92) participants registered for this workshop.
- Alaska Water Wastewater Management Association (AWWMA) Southeast Region Operator Training Conference in Sitka, Alaska, September 21-23, 2005. ADEC DW Program staff participated in the conference and provided a presentation on the LT1 ESWTR and Stage 1 Disinfectants/Disinfection By-products (D/DBP) Rule.
- Alaska Rural Water Association annual fall conference in Anchorage, Alaska, September 26–29, 2005. ADEC DW Program staff provided presentations on Drinking Water Regulations update and Alaska Wellhead Protection activities.
- Comprehensive Performance Evaluation (CPE) Workshop with the City of Haines, Alaska, October 24-29, 2005. This training workshop was a joint effort of ADEC and EPA, Alaska Training and Technical Assistance Center, and Idaho Department of Environmental Quality, for staff and the Borough of Haines for compliance with the LT1 ESWTR.
- Introduction to Environmental Enforcement in Anchorage, October 25–27, 2005. This was a joint ADEC/Western States enforcement workshop attended by several ADEC DW Program staff.
- Emergency Response Planning for Alaska PWS training workshop in Anchorage, November 29, 2005. This was a joint ADEC Drinking Water Program and NANA Training Services workshop.

During the first half of FY06, DEC staff participated in the following 13 EPA-sponsored (Drinking Water Academy, EPA Regions or Headquarters, or Cadmus Group) technical or regulatory Web casts workshops:

- "Introduction to Compliance Activities," EPA/Cadmus.
- "Data Verifications and You," EPA/Cadmus.
- "Phase II – V Rules: A Primer, A Reminder, an Update," EPA/Cadmus.
- "The Importance of Board Member Training for Building Capacity," EPA Drinking Water Academy.
- "Stage 2 DBPR (Pre-promulgation)," EPA.
- "Public Notification," EPA.
- :Introduction to Capacity Development and Water System Technical Capacity," EPA/Cadmus.
- "LT2 ESWTR," EPA Regions 9 and 10.
- "Introduction to the Public Water System Supervision Program," November.
- "Developing Water System Managerial Capacity," EPA Web cast.
- "Introduction to Electronic Sanitary Survey Software".
- "LT2 and Stage 2: What to Expect the First Two Years after Promulgation."

- *Focus increased resources, when available, on enforcement activities for those public water systems on EPA's Significant Noncompliers (SNC) List before the water systems become SNC Exceptions and are noted on the EPA SNC Exceptions List.*
  - ADEC and EPA meet quarterly to review lists of New SNC systems and SNC systems that are "about to become exceptions" to ensure that the State and EPA are planning appropriately to address as many systems as possible before they move to the exceptions category. To date, ADEC and EPA are meeting the goal of addressing systems that are about to become exceptions and both agencies have committed to continue to do so in the future.

FY 2006 ADEC commitments (count) of the Total Targeted SNC PWS (211 systems using the April 2005 SNC List) to be formally addressed by June 30, 2006, not including those PWS referred to EPA are the following:

- TCR: 37 PWS (ADEC agreed to 90%, or 33 PWS), as of 9/30/05*****, 70% achieved (23 PWS), 10 PWS remain unaddressed.
- SWTR: 34 PWS (ADEC agreed to 50%, or 17 PWS), as of 9/30/05*****, 47% achieved (8 PWS), 9 PWS remain unaddressed.
- Nitrate: 36 PWS (ADEC agreed to 85%, or 30 PWS), as of 9/30/05*****, 86% achieved (26 PWS), 4 PWS remain unaddressed.
- CHRD: 48 PWS (ADEC agreed to 85%, or 40 PWS), as of 9/30/05*****, 70% achieved (28 PWS), 12 PWS remain unaddressed.
- Initial Lead: 27 PWS (ADEC agreed to 85%, or 23 PWS), as of 9/30/05*****, 96% achieved (22 PWS), 1 PWS remains unaddressed.
- CCR: 29 PWS (ADEC agreed to 85%, or 24 PWS), as of 9/30/05*****, 112% achieved (27 PWS), TARGET GOAL MET and EXCEEDED!

* The January 2006 SNC List has not been released by EPA at this time, therefore, the State of Alaska Drinking Water Program is unable to report progress as of 12/31/05. The Drinking Water Program has made outstanding progress on reducing the number of Alaska PWS on the SNC List, and is on schedule to meet most, if not all, targets (unaddressed) SNCs by June 30, 2006.

Important Note: As of November 16, 2005, there were 76 Alaska PWS on the EPA SNC List. This is a reduction of 29 PWS, or 27%, from the April 2005 corrected SNC List reported in the FY 2005 End-of-Year Drinking Water Program report dated August 23, 2005.

Enforcement actions issued statewide for the first half of FY 2006 by Drinking Water Program Staff Total: **274**. Summary as follows:

- Monitoring Summaries (establish compliance monitoring schedules for PWS): 113
- Warning Letters (Letters 1– 3): 124
- *Notices of Violation (NOV): **34** (We are on track to issue more NOVs than the 68 issued in FY2005.)
- Compliance Orders by Consent (COBCs): 1
- Bilateral Compliance Agreements (BCA): 2
- Administrative Penalty (AP): **0**

ADEC Drinking Water Program referred three (3) Alaska PWS to EPA Region 10 for enforcement. The systems (Ekuk Fisheries, Kuskokwim School District (KSD) Joe Parent School, and Saint George) were referred to EPA for formal enforcement in response to NOVs issued to ADEC in October 2005. The compliance status of the systems referred to EPA are the following:

- **Ekuk Fisheries, AK2261208**: System returned to compliance soon after NOV was issued to ADEC. As such, no Administrative Order (AO) was issued by EPA. Once system drops off the SNC List, EPA Region 10 will issue letter closing out the NOV to ADEC. Drinking Water Program staff are waiting for the January 2006 SNC List to determine if system is "off" the List and allow EPA to close the NOV.
- **KSD Joe Parent School, AK2271716**: System returned to compliance for their outstanding SNC, but have one item left to complete before the EPA AO is closed. It is expected that EPA will close the AO by March 31, 2006.
- **Saint George, AK2260074**: System returned to compliance for a VOC SNC and EPA closed the AO (final close-out letter has been sent).

*Note – No additional Alaska PWS are planned for referral to EPA for the remainder of FY 2006.

- *DEC will work with the Attorney General's office and EPA Headquarters to recognize Notices of Violations as formal enforcement actions.*
  - On October 28, 2005, EPA formally recognized ADEC's NOVs as formal enforcement actions.

EPA Commitments - Midyear Evaluation:

- *Provide in person and "hands-on" training workshops in Alaska using EPA staff or contractors, as well as fully utilize satellite videoconferences with downlink sites in Alaska, and webcast training seminars 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. Alaska is specifically requesting the EPA-sponsored and taught Arsenic Training Workshop in Alaska during Fall 2005.*
  - EPA has provided in-person training in Alaska during the last six months. Training has included a week-long on-site Comprehensive Performance Evaluation (CPE) training for ADEC engineers through the Capacity Development Program. A two-day arsenic training was offered in Alaska on September 13-14, 2005.

- *In partnership with DEC, and when requested, complete timely enforcement on public water system referrals with a significant history on non-compliance and non-cooperation with DEC.*
  - EPA is working with ADEC to address significant non-compliant public water systems in a timely manner. EPA and ADEC participate in quarterly and additional case-specific conference calls to address joint issues.

Pesticide Application Technical Assistance

Joint DEC and EPA Commitments - Midyear Evaluation:

- *Conduct a joint evaluation process that focuses on the reporting items specified in the PPG work plan.*
  - Complete.

- *Conduct a midyear evaluation to review the current program accomplishments in relation to the PPG work plan.*
  - Complete.

- *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.*
  - No action required to date.

EPA Commitments - Midyear Evaluation:

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

Collaborative Training

Joint DEC and EPA Commitments - Midyear Evaluation:

- *Identify a point of contact within each of the organizations that can assist in coordinating the notification and scheduling of available training opportunities.*
  - No action taken.

DEC Commitments - Midyear Evaluation:

- *Work with EPA to identify joint training opportunities and appropriate subject areas.*
  - This has taken place for NPDES-related training.

- *Apply for a grant under Section 104(b)(3) of the Clean Water Act with the intention of using the funds to obtain NPDES training in Alaska.*
  - Completed.

EPA Commitments - Midyear Evaluation:

- *As DEC approaches NPDES primacy, EPA will seek to ensure needed training is made available in Alaska, including training in NPDES permitting, enforcement and the Water Quality Standards.*
  - NPDES training scheduled in Alaska during April and May 2006.

III. PERFORMANCE REPORTING AND EVALUATION

EPA and DEC Commitments - Midyear Evaluation:

- *As a condition of this Agreement and subsequent grants awarded to DEC by EPA, DEC will report accomplishments to EPA semi-annually and EPA will report its accomplishments semi-annually to DEC. 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 January 30 and July 30 of 2006. EPA will schedule a report preview meeting with DEC to discuss the report and make appropriate adjustments.*
  - This Midyear PPA Report is being disseminated in March, slightly behind the January 30 delivery date.

- *EPA and DEC program directors agree to meet in September to discuss strategic environmental issues in Alaska. Information from this discussion will be used by each agency when developing subsequent strategies and budgets.*
  - Senior program managers, including the DEC Commissioner and the EPA Region 10 Regional Administrator, met in November 2005 at DEC's offices in Anchorage for an all day management summit to discus strategic high priority environmental issues. Several senior managers continued in-depth program specific discussions for a second day.