UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

REGIONAL ADMINISTRATOR
M/S RA-140

October 31, 2008

Dear Tribal Leader:

The purpose of this correspondence is to inform you that on October 31, 2008, the U.S. Environmental Protection Agency approved the State of Alaska's application to run the National Pollutant Discharge Elimination System (NPDES) Program in the State of Alaska. The NPDES Program regulates pollutants discharged into waters of the U.S. through a pipe or other such conveyance and requires those sources of pollution to obtain a permit that meets water quality standards. The Clean Water Act (CWA) envisions that states will seek to run the program and sets forth nine factors that states must meet before EPA can approve the program. The State of Alaska has demonstrated that it meets the requirements set forth in the CWA.

Alaska submitted a full application to EPA for review on July 5, 2006, and made numerous revisions to the application in response to EPA's comments. On September 11, 2006, EPA sent a notification to tribes in Alaska informing them that Alaska Department of Environmental Conservation (ADEC) was seeking approval from EPA to run the NPDES Program. As it reviewed Alaska's application, EPA Region 10 sought to inform tribes in Alaska of the State's request and provided information to tribes on numerous occasions both through informal presentations at forums such as the 2007 and 2008 Alaska Forum on the Environment and formally via government-to-government consultation.

On November 5, 2007, EPA Region 10 asked Alaska Tribes whether they wanted to hold government-to-government consultation regarding EPA's decision. Based on the responses received, EPA scheduled four face-to-face consultations with interested tribes in Dillingham, Kotzebue, Sitka and Bethel, Alaska. We also held two telephone consultations for interested tribes. At the consultations, EPA heard tribes express concern that government-to-government tribal consultation will no longer be required when the State receives approval to run the program, and that the tribes will lose a significant avenue for providing input into the permitting process. While it is accurate that the State is not required to extend government-to-government consultation to tribes and that EPA cannot require the State to do so as a condition of program approval, the State has developed a public participation document that lays out a process the State will follow to obtain tribal input into permitting decisions—"Public Participation in the APDES Permitting Process." EPA urges tribes in Alaska to become familiar with this process and to take advantage of the opportunities for input. Additionally, in response to the concerns EPA heard during the consultations, EPA Region 10 has developed a policy (enclosed) on how it will continue to consult with tribes and seek their input as it oversees the State's implementation of the NPDES Program. EPA remains committed to hearing from tribes and taking traditional knowledge into account as it oversees the State's program. In short, EPA will maintain its government-to-government relationship with the tribes as it shifts its role from writing permits to overseeing the State's permitting actions.

In its application, Alaska requested that it assume authority for the NPDES Program in phases. EPA's approval of Alaska's application includes this phased approach where Alaska will assume authority for different permitting sectors over a three year period. EPA will continue to write permits and conduct compliance and enforcement for sectors not yet assumed by Alaska. The phases of program administration are as follows:

- Phase I: Domestic Discharges, Timber Harvesting, Seafood Processing (at time of approval)
- Phase II: Federal Facilities, Stormwater Program, Pretreatment Program (one year after program approval)
- Phase III: Mining (two years after program approval)
- Phase IV: Oil and Gas, cooling water, and all other remaining facilities (three years after program approval)

EPA will retain NPDES permitting authority and primary enforcement responsibility for the biosolids program; facilities operating in the Denali National Park and Preserve pursuant to Alaska Statehood Act § 11; facilities discharging in Indian Country as defined in 18 U.S.C. § 1151; facilities operating three miles offshore outside state waters; and facilities with CWA § 301(h) waivers.

More information about the State's application and EPA's approval, including EPA's response to public comments can be found at:

http://yosemite.epa.gov/r10/water.nsf/NPDES=Permits/Permits+Homepage
http://yosemite.epa.gov/R10/Homepage.NSF/Citizens/Alaska
www.dec.state.aka.us/water/npdes/application.htm

In closing, EPA appreciates the interest tribes in Alaska have expressed concerning EPA's decision to approve the State's request to run the NPDES Program and hopes that tribes will continue to stay engaged in future permitting decisions. I want to reiterate that EPA will continue its government-to-government relationship with tribes in Alaska as it oversees Alaska's implementation of the permitting program. The enclosed EPA policy outlines how we will work with tribes as we oversee Alaska's program. I can be reached at (206) 553-1234. You or your staff can also contact Michelle Davis at (907) 271-3434 if you have questions or would like more information.

Sincerely,

Elin Miller
Regional Administrator

Enclosure

October 31, 2008

U.S. Environmental Protection Agency Region 10 Policy Regarding Interactions With Alaska Tribal Governments under the State of Alaska NPDES Program

General Policy

EPA Region 10 Office of Water and Watershed recognizes our trust responsibility to federally recognized Tribal governments in Alaska. EPA will carry out the work described below after approval of the State program consistent with our trust responsibilities to Tribal governments. In addition to the specific actions below, EPA's existing Government to Government Tribal consultation relationship relative to environmental issues will continue intact after approval of the Alaska NPDES program. EPA will continue to be available for Tribal consultation at the request of a Tribe during Alaska's implementation of the program.

It is a shared goal that the NPDES permits issued by Alaska be protective of the Tribal environment and natural resources, and the health and safety of Tribal members. However, when the State of Alaska is the NPDES permit authority, EPA, Tribal Governments, and all stakeholders must work within the existing State program framework as reflected in the Memorandum of Agreement between EPA and DEC and as described in DEC's "Public Participation in APDES Permitting Process" document.

Specific Actions

EPA Review of State Permits in Year 1: EPA Region 10 will review every Alaska NPDES permit that is issued during the first year after program approval for consistency with federal requirements and will send to any affected tribal government a copy of the permit and any comments provided by EPA to the State.

Forward State Workplan and Solicit Tribal Interest: When Alaska develops its annual or three year work plan which describes permits that they intend to issue in upcoming years, EPA will forward the plan to the Tribes in Alaska and solicit Tribal interest in specific permits. When a Tribe specifies interest in a specific permit, EPA will consider that interest when targeting permits for federal review by EPA after Year 1.

Send Permit and EPA Comments to the Tribe: When interest is expressed by a Tribe on a State-issued permit, EPA will notify the Tribe when EPA receives a draft permit from the state. EPA will also notify the Tribe of any comments developed by EPA and submitted to the State, and will provide a copy of the draft permit and EPA's comments to interested Tribes.

Tribal Permit Review: Tribes are encouraged to review permits that are of interest and provide comments to both EPA and the State. If the Tribe provides concerns/comments on a State permit action to EPA before the close of the specified comment period, EPA may convey those comments in EPA correspondence to the State.

EPA Objection: If EPA finds that an Alaska NPDES permit does not meet the requirements of the Clean Water Act, EPA will submit an "objection" to the state issued permit. (A State cannot issue a permit until the EPA objection is resolved). If a Tribe believes that a State permit is not consistent with the federal Clean Water Act following Tribal review of a state permit, the Tribe can provide that information to EPA as well as to the State. If EPA agrees with the Tribe that an Alaska NPDES permit does not meet CWA requirements, EPA will submit an "objection" to the State-issued permit. Reviews must be consistent with the time frames specified in the State program as reflected in the Memorandum of Agreement between EPA and DEC and DEC's "Public Participation in APDES Permitting Process" document.

Coordination with ADEC: The State has committed to provide specific information to Tribal governments. EPA will provide to ADEC a current list and contact information of Federally Recognized Tribes in Alaska which the State can use for their correspondence with Tribal governments.

EPA will work with ADEC through APDES program reviews and our annual review with the State through the performance partnership agreement process to ensure that the process established in the Public Participation document is followed.

If a Tribal government needs more time to review an Alaska NPDES permit, the Tribe should notify the State as described in the Public Participation document. The Tribe should copy EPA on such request.

EPA Issued Permits: For permits where EPA has jurisdiction and issues the NPDES permit, or in cases where EPA takes over a state permit, EPA will consult with affected Tribes on our permit decision consistent with our existing permit program Tribal consultation policy.