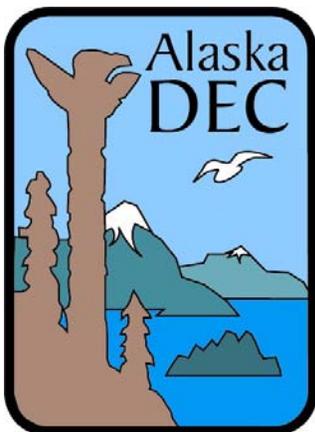


**National Pollutant Discharge Elimination
System**

Memorandum of Agreement

**Between State of Alaska and
United States Environmental Protection Agency
Region 10**



Final
October 29, 2008

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Section 1.0 General

This Memorandum of Agreement (hereinafter, this AGREEMENT) establishes policies, responsibilities, and procedures pursuant to 40 CFR Part 123 and defines the manner in which the National Pollutant Discharge Elimination System (NPDES) Program will be administered by the State of Alaska Department of Environmental Conservation (hereinafter, the DEPARTMENT) and reviewed by Region 10 of the United States Environmental Protection Agency (hereinafter, EPA). All additional agreements between the DEPARTMENT and EPA shall be in writing and are subject to review by the COMMISSIONER of the DEPARTMENT (hereinafter, the COMMISSIONER) and the REGIONAL ADMINISTRATOR of EPA (hereinafter, the REGIONAL ADMINISTRATOR). The DEPARTMENT will implement the APDES Program using the procedures, resources, and guidance documents described in the Program Description.

If EPA determines that any provision of any NPDES-related agreement does not conform to the requirements of the federal Clean Water Act (hereinafter, the CWA) §402(b); 33 U.S.C. §1251 et seq.; the requirements of 40 CFR Parts 122-125; or other applicable federal regulations, the REGIONAL ADMINISTRATOR shall notify the COMMISSIONER of any proposed revisions or modifications which must be in such NPDES-related agreements.

The COMMISSIONER and the REGIONAL ADMINISTRATOR hereby agree that this AGREEMENT applies to permits or portions of permits issued by the DEPARTMENT pursuant to Alaska Administrative Code (AAC) for discharges of pollutants to navigable waters of the United States, as defined in the CWA, and that are within the scope of the program authorization set forth in Section 2.0. The DEPARTMENT's program, under the CWA §402 and the regulations promulgated thereunder, will be the Alaska Pollutant Discharge Elimination System Program (hereinafter, the APDES Program) adopted under Alaska Statutes (AS) 46.03 and implemented by 18 AAC Chapters 15, 72, and 83.

The COMMISSIONER and the REGIONAL ADMINISTRATOR hereby agree to maintain a high level of cooperation and coordination between the DEPARTMENT and EPA in a partnership to assure successful and effective administration of the APDES Program. In this partnership, EPA will provide to the DEPARTMENT, as EPA resources allow, technical and other assistance on APDES permit matters, as requested.

The DEPARTMENT will administer the APDES Program in accordance with the CWA §402 and the applicable federal regulations promulgated thereunder, this AGREEMENT, and applicable state legal authority. Other agreements include the most current versions of the following documents: the Performance Partnership Agreement, the *EPA/State Agreement on Compliance Assurance Principles* (May 1997), *Compliance Assurance Evaluation Principles* (March 24, 1998), and *Enforcement and Compliance Strategy* (March 1997). EPA guidance, circulars, and pretreatment bulletins regarding the NPDES Program have no force of law in the APDES Program, but EPA guidance and policy may be referenced or used as the DEPARTMENT guidance or may be employed by the DEPARTMENT and regulated entities to negotiate permit conditions and interpret program requirements. The DEPARTMENT has

the primary responsibility to establish the APDES Program priorities consistent with national NPDES Program goals and objectives.

The strategies and priorities for issuance, compliance monitoring, and enforcement of permits, as established in this AGREEMENT, may be set forth in more detail in the annual Performance Partnership Agreement. This AGREEMENT and the Performance Partnership Agreement regarding the APDES Program shall be consistent. However, the basic requirements of this AGREEMENT shall override any other APDES-related agreement(s) entered into between the DEPARTMENT and EPA, as required by 40 CFR §123.24(c).

Either the COMMISSIONER or the REGIONAL ADMINISTRATOR may initiate action to modify this AGREEMENT at any time. Modifications must be put in writing and do not take effect until signed by the COMMISSIONER and the REGIONAL ADMINISTRATOR.

Section 2.0 Scope of Authorization

The COMMISSIONER and the REGIONAL ADMINISTRATOR agree that EPA has granted authority to the DEPARTMENT to administer the NPDES permitting, compliance, and enforcement programs for individual and general permits, as well as for the pretreatment and stormwater programs in Alaska. The DEPARTMENT does not have NPDES Program authority for facilities located in the Denali National Park and Preserve¹, facilities located in Indian Country, facilities operating outside state waters (three miles offshore), the nine (9) facilities with the CWA §301(h) waivers, or a biosolids management program as part of the APDES Program. EPA retains authority over those facilities the DEPARTMENT cannot seek authority over (Appendix A) and the biosolids management program.

The DEPARTMENT will implement the APDES Program in phases, as provided for by the CWA §402(n) and in accordance with 40 CFR §123.1(g)(2). Appendix B identifies the schedule to phase permitting, compliance, and enforcement authority from EPA to the DEPARTMENT for specific program components and permits. The DEPARTMENT will assume administration of the program components and permits per the agreed upon schedule in Appendix B. Until the DEPARTMENT assumes administration of each program component or permit, EPA will continue to administer that program component or permit in accordance with 33 U.S.C. §1342(n)(4). That continued EPA role includes accepting applications; drafting permits and fact sheets; public noticing draft permits and review; preparing a response to comments; issuing permits; conducting inspections, audits, and reviews of various reports; and initiation of compliance and enforcement actions, as necessary. The DEPARTMENT will continue to certify EPA-issued NPDES permits with the CWA §301(h) waivers under the CWA §401 and support EPA's program activities.

¹ State NPDES authority is excluded from Denali National Park and Preserve pursuant to Alaska Statehood Act §11. That section gives the United States exclusive jurisdiction over the Denali National Park and Preserve.

Section 3.0 Program Responsibilities

3.01 DEPARTMENT Responsibilities

In accordance with the priorities and procedures established in this AGREEMENT and the Performance Partnership Agreement, the DEPARTMENT will:

1. Develop and maintain the legal authority, and to the maximum extent possible, the resources required to carry out all aspects of the APDES Program, including revisions to the state's program legal authority, as provided for at 40 CFR Part 123.
2. Ensure that EPA is kept fully informed and up to date regarding:
 - a) Draft and final policy and program development documents related to the APDES Program.
 - b) Draft and final statutes and regulations related to the APDES Program.
 - c) New case law, settlement agreements, and remands of regulations related to the APDES Program.
 - d) Draft and final technical guidance and policies that pertain to the APDES Program.
3. Ensure that any proposed revision of the APDES Program is submitted to EPA for approval, pursuant to 40 CFR §123.62(a).
4. Ensure that new applicable federal NPDES regulations are incorporated into state regulations within one year of federal promulgation or within two years if a state statute must first be enacted, pursuant to 40 CFR §123.62(e).
5. Process permit applications in a timely manner and issue, reissue, modify, deny, or revoke and reissue all APDES permits. Permit applications for new dischargers and from major dischargers shall normally receive first priority in all APDES Program activities; however, priorities may be revised based upon other considerations, including risk-based analyses concerning water quality and human health and the DEPARTMENT's *Continuing Planning Process* document.
6. Develop and maintain a *Continuing Planning Process* document per 40 CFR §130.5. Activities to maintain current planning processes will be identified in the annual Performance Partnership Agreement.
7. Maintain an effective program to carry out the pretreatment responsibilities outlined in Section 5.0 (Pretreatment Program) of this AGREEMENT.
8. Comprehensively evaluate and assess compliance with schedules, effluent limitations, and other conditions in the permits, as outlined in Section 6.0 (Compliance Monitoring) of this AGREEMENT.
9. Comprehensively evaluate and assess compliance with monitoring, sampling, and reporting requirements outside of permits.
10. Maintain a vigorous program of taking timely and appropriate enforcement actions in accordance with the CWA, Alaska Statutes, and Alaska

Administrative Code, as outlined in Section 7.0 (Enforcement) of this AGREEMENT.

11. Maintain an adequate public file at one of the three main offices (Juneau, Anchorage, or Fairbanks) that is easily accessible to EPA for program evaluation for every permittee. Such files must include, at a minimum, copies of or access to electronic copies of:
 - Permit application
 - Public notice
 - Fact sheet or statement of basis on the preliminary draft permit and draft permit
 - Preliminary draft and draft permit
 - Studies supporting permit decisions (e.g. mixing zone, wasteload allocation, total maximum daily load, site specific analysis, or instream sampling data)
 - Comments received on the preliminary draft permit
 - Public comments received on the draft permit
 - Response to comments received on the draft permit
 - Comments received on the proposed final permit
 - Proposed final permit
 - Final (issued) permit or final order of denial
 - Fact sheet or statement of basis reflecting the final (issued) permit
 - Discharge monitoring reports
 - Annual reports from permittees, if required
 - Compliance schedule reports
 - All inspection reports
 - All enforcement actions
 - Stormwater related documents, including stormwater management plans and pollution prevention plans received by the DEPARTMENT
 - Requests for hearings, motions for reconsideration and rehearing, and any order issued by the DEPARTMENT
 - All pretreatment related documents, including the permittee's Pretreatment Program and annual reports, as applicable
 - Other pertinent information and correspondence
12. Input all national required data elements, including Required Integrated Compliance Information System (ICIS) Data Elements (RIDE) for all APDES permitted facilities, in accordance with the transfer schedule, into the DEPARTMENT's Discharge Results and Online Permit System (DROPS) database and EPA's ICIS-NPDES database. This includes data for major and minor dischargers covered by an individual or general permit.
13. Submit to EPA the information described in Section 8.0 (Reporting and Transmittal of Information on APDES Regulated Facilities) of this AGREEMENT, the Performance Partnership Agreement, and applicable portions of 40 CFR Part 123. Additionally, upon request by the REGIONAL ADMINISTRATOR or designee, the DEPARTMENT shall submit specific

information and allow access to files necessary to evaluate the DEPARTMENT's administration of the APDES Program.

14. Make available to EPA any information obtained or used by the DEPARTMENT under the APDES Program upon request without restriction due to claims of confidentiality. The DEPARTMENT will determine if information submitted by an applicant under a claim of confidentiality is confidential in accordance with state law and identify the material accordingly. EPA will be informed of any confidential information that is transmitted to EPA. EPA shall treat such claims as confidential in accordance with 40 CFR Part 2, Subpart B and 40 CFR §122.7.
15. Coordinate the Alaska Coastal Zone Management Program (ACMP) consistency review process according to the DEPARTMENT Guidance No. 2003-001, *DEC Single Agency Coastal Management Consistency Review Procedures* when an applicable project requires only an APDES individual permit or when an APDES general permit is developed or amended.
16. Work with the Alaska Department of Natural Resources (DNR) Division of Coastal and Ocean Management (DCOM) during DNR coordination of the ACMP consistency review process (11 AAC 110) for a proposed project within the state's coastal zone that requires an APDES individual permit and an authorization from the DNR or Alaska Department of Fish and Game or includes a federal activity or authorization.
17. Issue the CWA §401 certifications of draft NPDES permits that comply with Alaska Water Quality Standards prepared by EPA for facilities that EPA retains legal jurisdiction over that discharge to state waters (with the exception of an NPDES permit issued for a discharge within Indian Country or Denali National Park and Preserve where EPA is responsible to issue the CWA §401 certification).
18. The DEPARTMENT will strive to keep fully informed and up to date concerning:
 - a) EPA contractor reports; draft and final EPA development documents; and draft, proposed, and final effluent limitation guidelines regulations.
 - b) Draft and final settlement agreements between litigants and EPA that concern the interpretation or modification of effluent limitation guidelines regulations for various industry categories that may affect the APDES Program or water quality standards and planning program.
 - c) Draft, proposed, and final versions of EPA regulations, technical guidance, policies, and procedures that pertain to: implementation of the APDES Wastewater Discharge Authorization Program and Compliance and Enforcement Program; changes in National Enforcement Priorities and associated strategies; and the water quality standards and planning program.

3.02 EPA's Responsibilities

In accordance with the priorities and procedures established in this AGREEMENT and the Performance Partnership Agreement, EPA will:

1. Commit to funding the DEPARTMENT to the maximum extent possible, as allowed by law and within existing budget requirements and priorities to support APDES Program activities.
2. Where no effective effluent guidelines or standards exist for a discharge, provide available technical information, to the extent information is available to EPA Region 10, to assist the DEPARTMENT in writing permit terms and conditions. For example, EPA may provide contractor reports, draft development documents, and available permits and effluent data from similar facilities.
3. Provide draft and final copies of permits for facilities that EPA retains authority over when the discharge may affect state waters.
4. At the DEPARTMENT's request, and as EPA resources allow, provide technical support and assistance to the DEPARTMENT, as negotiated via the Performance Partnership Agreement.
5. To the extent allowed by law, subject to confidentiality considerations at EPA discretion, ensure that the DEPARTMENT is kept fully informed and up to date concerning:
 - a) EPA contractor reports; draft and final EPA development documents; and draft, proposed, and final effluent limitation guidelines regulations.
 - b) Draft and final settlement agreements between litigants and EPA that concern the interpretation or modification of effluent limitation guidelines regulations for various industry categories that may affect the APDES Program or water quality standards and planning program.
 - c) Draft, proposed, and final versions of EPA regulations, technical guidance, policies, and procedures that pertain to: implementation of the APDES Wastewater Discharge Authorization Program and Compliance and Enforcement Program; changes in National Enforcement Priorities and associated strategies; and the water quality standards and planning program.
6. Provide the DEPARTMENT with the opportunity for meaningful involvement in program development activities and program initiatives. EPA will keep the DEPARTMENT informed, to the extent allowed by law, of the development of national NPDES program policy statements, strategies, performance measures, and related guidance and provide for input by the DEPARTMENT, when appropriate.
7. As outlined in Section 9.0 (Program Review) of this AGREEMENT, oversee the DEPARTMENT's administration of the APDES Program on an ongoing basis for consistency with: the CWA; this AGREEMENT; the Performance Partnership Agreement; all applicable regulations promulgated pursuant to the CWA; and any other APDES relevant agreements between the DEPARTMENT and EPA. EPA may consider, as a part of its assessment,

review of permits, reports, and enforcement actions submitted by the DEPARTMENT and may also consider comments from permittees, the public, and federal and local agencies concerning the DEPARTMENT's administration of the APDES Program. Any such comments to EPA will be brought to the attention of the DEPARTMENT by written correspondence if the person commenting has not previously communicated the comment to the DEPARTMENT.

8. Issue NPDES individual or general permits to facilities it retains jurisdiction over (Appendix A) that are consistent with the ACMP process under the federal Coastal Zone Management Act, when applicable.
9. Assist the DEPARTMENT with the development of standard pretreatment language to include in all applicable APDES permits, as well as model sewer use ordinances, to be used by non-delegated municipalities.
10. Input all required data into ICIS-NPDES for the facilities EPA retains permanent authority over and for facilities EPA retains authority over in accordance with the transfer schedule.
11. Retain authority for the biosolids program, which includes permitting, compliance, and enforcement. EPA will provide standard language to the DEPARTMENT for inclusion in APDES fact sheets that notifies permittees of their responsibility to comply with biosolids requirements with instructions to apply directly to EPA for a biosolids management and handling permit.

3.03 Jurisdiction Over Permits

The DEPARTMENT retains the right to take enforcement action on an existing state-issued discharge permit or state certification of an EPA-issued NPDES permit prior to the DEPARTMENT's assuming APDES Program authority for the permitted facility in accordance with the transfer schedule in Appendix B.

Upon EPA's approval of the APDES Program and in accordance with the schedule in Appendix B, the DEPARTMENT will assume authority [subject to EPA's oversight and enforcement authority pursuant to the CWA §§402(d) and (i)] for permitting, compliance, and enforcement activities of the APDES Program, including administration of the Stormwater Program, Pretreatment Program, and federal facilities. A complete list of facilities issued an NPDES permit is found at Appendix C. A complete list of facilities issued a state permit is found at Appendix D. Appendix E lists each permitted facility according to when authority to administer the permit transfers to the DEPARTMENT. The DEPARTMENT and EPA will transmit and receive information regarding the APDES Program in accordance with 40 CFR §§123.41, 123.42, and 123.43.

1. Upon program approval, the DEPARTMENT shall:
 - a) Assume permitting, compliance, and enforcement authority for facilities in accordance with the transfer schedule in Appendix B of this AGREEMENT.
 - b) Receive and review discharge monitoring reports (DMRs) and conduct inspections for all permits pursuant to the transfer schedule in Appendix B.

- c) Retain the right to enforce state law at facilities with EPA-issued NPDES permits.
- 2. Upon program approval and in accordance with the transfer schedule in Appendix B, EPA shall:
 - a) Retain permitting, compliance, and enforcement authority for facilities in Denali National Park and Preserve; facilities located in Indian Country; facilities operating outside state waters (three miles offshore); and facilities with the CWA §301(h) waivers. EPA shall suspend the issuance of NPDES permits for those activities subject to the approved APDES Program, except as provided in paragraph 10 of this Section. EPA shall retain authority over the biosolids management program.
 - b) Retain full jurisdiction for permits for which an appeal has been filed at the time of program authorization until that matter is resolved. Upon resolution of the administrative or judicial challenge and in accordance with the transfer schedule in Appendix B, EPA will notify the DEPARTMENT and the permittee that jurisdiction over the permit has been transferred to the DEPARTMENT. EPA will make every effort to resolve these issues in a timely manner, and if requested by either EPA or the DEPARTMENT, meet to discuss issues pertaining to NPDES permits retained by EPA. The DEPARTMENT shall retain its rights under the CWA §401 to consider state certification to subsequent EPA permitting actions on these retained NPDES permits.
 - c) Process appeals, modifications requests, and variance requests pertaining to permits issued by EPA and that EPA retains authority over. EPA will copy the DEPARTMENT on all correspondence and permitting decisions.
- 3. Upon program approval and notwithstanding the transfer schedule in Appendix B, EPA shall continue to work on specific permits identified in and negotiated via the Performance Partnership Agreement for the following circumstances:
 - a) A permit where EPA has substantially completed the permitting process or concluded a public review period. Appendix F of this AGREEMENT lists EPA's permit issuance schedule and the permits that could be on public notice at the time of APDES Program approval. EPA will provide a final list to the DEPARTMENT of permits that EPA has substantially completed or that are on public notice at the time of program approval. Upon EPA's completion of the proposed final permit, the permit will be issued by the DEPARTMENT and authority over the permit, including compliance and enforcement, will be the responsibility of the DEPARTMENT. In certain cases, if mutually agreed to by EPA and the DEPARTMENT, the DEPARTMENT may prepare the proposed final permit from an EPA-drafted permit and issue the permit, which would otherwise be prepared by EPA.
 - b) Permits where EPA and the DEPARTMENT agree that, due to work load issues and resources, EPA may perform the work up to drafting a proposed final permit. Upon EPA's completion of the proposed final permit, the

permit will be issued by the DEPARTMENT and authority over the permit, including compliance and enforcement, will transfer to the DEPARTMENT.

- c) A facility where EPA has a pending or ongoing EPA enforcement action. EPA will complete the enforcement action for permits under active federal enforcement cases (administrative orders or formal referrals to the Department of Justice). The DEPARTMENT will assume permitting, compliance monitoring, and pretreatment responsibilities and take the lead on future enforcement actions when such facilities are transferred upon resolution of the enforcement action consistent with the schedule in Appendix B, subject to EPA's oversight and enforcement authority pursuant to the CWA §§402(d) and (i). As each EPA enforcement action is resolved, EPA will notify the DEPARTMENT and transfer any additional permit file materials at that time. EPA will make every effort to resolve these matters in a timely manner. Resolution of an enforcement action may be accomplished by:
 - i. the permittee's compliance with the requirements of a compliance order, consent agreement, or court order resulting from the EPA enforcement action;
 - ii. withdrawal of the action by EPA;
 - iii. a court decision dismissing the action (in whole or in part); or
 - iv. if agreed to by EPA, the imposition of an equivalent state enforcement action by the DEPARTMENT.
4. A current or EPA-administratively extended NPDES individual or general permit transferred to the DEPARTMENT in accordance with the schedule in Appendix B will remain in effect until the DEPARTMENT issues an APDES permit to replace it, per the procedures in 18 AAC 83.155(f). The DEPARTMENT-issued APDES permit will replace the state certification and state-issued permit, if one exists for the facility, upon issuance of the APDES permit.
5. A current or administratively extended NPDES individual permit transferred to the DEPARTMENT will remain in effect and be deemed an APDES permit. At the time authority of an individual permit is transferred from EPA to the DEPARTMENT, the DEPARTMENT will transmit an APDES permit cover sheet to the permittee that will replace the NPDES cover sheet. The cover sheet will include the: name of the permit, permit effective date, and DEPARTMENT telephone number and address for inquiries and where to send required information. At reissuance, a state-issued APDES individual permit will replace the transferred NPDES permit and state certification, if applicable.
6. A current or administratively extended NPDES general permit transferred to the DEPARTMENT will remain in effect and be deemed an APDES general permit. At the time authority is transferred from EPA to the DEPARTMENT, the DEPARTMENT will transmit an APDES general permit cover sheet to the permittees covered under the general permit that will replace the NPDES

general permit cover sheet. The cover sheet will include the: name of the permit, permit effective date, and DEPARTMENT telephone number and address for inquiries and where to send information. At reissuance, a state-issued APDES general permit will replace the transferred NPDES general permit and state certification, if applicable.

7. The DEPARTMENT and EPA recognize there are seventy-six (76) Alaska Native Villages that submitted preliminary CWA §301(h) applications (44 FR 52207 September 7, 1979) for the CWA §301(h) modified permit. EPA did not require those facilities to submit a formal application for the modification. The DEPARTMENT will assume permitting and compliance and enforcement authority for these facilities in accordance with the transfer schedule in Appendix B and, based on resource availability, provide technical and funding assistance to these communities to improve wastewater treatment.
8. The DEPARTMENT and EPA will coordinate permitting, compliance monitoring, and enforcement activities for those industries and permits where the agencies have dual jurisdiction.
9. If the permittee or the DEPARTMENT requests, EPA may continue to process an NPDES permit application that is pending with EPA at the time permitting and compliance and enforcement authority are transferred to the DEPARTMENT in accordance with the schedule in Appendix B. The DEPARTMENT is responsible for final issuance for all permits upon taking over responsibility of that program component in accordance with 40 CFR §123.1(d) and the transfer schedule in Appendix B.
10. After program approval, if an EPA objection over a state proposed APDES permit is not resolved, then EPA will assume permitting, compliance, and enforcement authority for that facility, pursuant to federal law. At the end of the permit term, the DEPARTMENT will be responsible for permitting, compliance, and enforcement activities.