



## Government-to-Government Consultation on Alaska Mixing Zone Regulation – UPDATE

(for distribution at Alaska Tribal Conference on Environmental  
Management (ATCEM), Anchorage, October 9-11, 2006)

### ***Consultation background***

The purpose of this consultation is for EPA and Federally-recognized tribal governments in Alaska to discuss EPA's upcoming decision on the State of Alaska's revised mixing zone regulation. The State formally submitted the revised regulation to EPA for EPA's review and approval under the Clean Water Act by letter dated August 14, 2006<sup>1</sup>. The Clean Water Act requires EPA to review and approve or disapprove of any new or revised water quality standards, including mixing zone regulations, adopted by States. EPA approves revised standards if they meet the requirements of the Clean Water Act and its implementing regulations.

### ***Consultation process to date***

By letter dated October 27, 2005 EPA invited federally-recognized Alaska tribes to notify EPA if they wished to initiate government-to-government consultation with EPA regarding EPA's decision on Alaska's mixing zone regulation. To date, this consultation has involved conference calls between tribal and EPA staff, e-mail and other written updates and exchanges, and a face-to-face meeting between EPA decision makers and tribal leaders hosted by Ekwok Village Council. See consultation history on next page for more information on these activities. Participating tribes include: Igiugig, Sitka, New Koliganek, New Stuyahok, Ekuik, Ekwok, Curyung, Portage Creek, Nondalton, and Clarks Point. In addition, at the request of a federally-recognized tribe, Bristol Bay Native Association and Aleknagik Native Corporation have also taken part in this consultation.

### ***Next steps***

EPA currently anticipates making its decision on the mixing zone regulation **by the first quarter of 2007**. The critical next steps in our government-to-government consultation are as follows:

- Update phone calls. EPA proposes to schedule these calls during **November 2006**. The purpose of these calls is for EPA staff to review with tribal participants the consultation activities to date, the final mixing zone regulation as submitted by the State, and to briefly discuss how EPA is addressing tribal concerns raised during consultation so far.
- Further discussions between tribal leaders and EPA decision makers. EPA proposes to arrange these further discussions during **December 2006**. The purpose of these discussions is for tribal leaders and EPA decision makers to further discuss or raise any additional concerns regarding EPA's decision, prior to the decision. These discussions are currently planned to be held telephonically. However, if circumstances permit, EPA will strive to seek a face-to-face venue in Alaska for these discussions.

***Lisa McGuire, EPA's staff contact for this issue, will communicate in the near future with tribal staff contacts regarding the scheduling and organization of these next steps. If you have any questions regarding the information on this handout or this consultation, please contact Ms. McGuire at (206) 553-0226 (phone), [mcguire.lisa@epa.gov](mailto:mcguire.lisa@epa.gov) (e-mail), or (206) 553-0165 (fax).***

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<sup>1</sup> The regulation became effective for State law on March 23, 2006. However, it is not effective for Clean Water Act purposes unless EPA approves it.

**DRAFT mixing zone consultation history and schedule.** Gray shading indicates tasks/steps yet to be completed. Dates in gray area of schedule subject to change.

<i>Milestone or task/step</i>	<i>Date</i>
<p><b>EPA sends consultation initiation letter to tribes</b></p> <p>By letter dated October 27, 2005, signed by Michael Gearheard, Director, EPA Region 10 Office of Water and Watersheds, and sent to the leaders of federally-recognized Alaskan tribes, EPA requested that tribes desiring to initiate government-to-government consultation on EPA's anticipated review and action on Alaska's revised mixing zone regulation notify EPA. (DEC had issued a public notice of proposed changes to the mixing zone regulation on October 17, 2005.)</p>	<b>Oct 2005</b>
<p><b>EPA holds information exchange calls with tribes</b></p> <p>EPA staff and tribal participants hold two "information exchange" conference calls on February 28, 2006. The purpose of the calls was to share some basic information on mixing zones, to review the State's final mixing zone regulation, to explain EPA's role and authority in reviewing and approving or disapproving the State's regulation, and for tribal participants to share concerns relating to the State's regulation and EPA's approval/disapproval decision. (DEC had finalized the revised regulation in February, 2006, and it became effective for state purposes in March 2006).</p>	<b>Feb 2006</b>
<p><b>EPA provides summary of issues raised during information exchange calls</b></p> <p>On April 7, 2006, EPA staff distributed a written summary of issues and questions raised during the February "information exchange" conference calls. The summary provided EPA responses to the issues and questions, and was distributed to all participants on the calls.</p>	<b>Apr 2006</b>
<p><b>Other exchange in government-to-government consultation</b></p> <p>During the period April through September, 2006, further exchange between EPA and tribes participating in the consultation occurred. For example, in April 2006 Sitka Tribe of Alaska submitted written comments to EPA with mixing zone comments (EPA shared these comments with other tribes participating in this consultation).</p>	<b>Apr-Sep 2006</b>
<p><b>Face-to-face consultation meeting in Ekwok</b></p> <p>On July 19-21, Ekwok Village Council, supported by Alaska Inter-Tribal Council, hosted a face-to-face meeting between EPA decision-makers and tribal leaders. The meeting involved discussions of Alaska's revised regulation, participants' concerns about the regulation, question and answer discussions, and a watershed tour on the Nushagak, Mulchatna, and Kaktuli rivers led by Ekwok Village Council President Luki Akelkok, Sr.</p>	<b>July 2006</b>
<p><b>DEC formally submits revised mixing zone regulation package to EPA</b></p> <p>DEC formally submitted the revised regulation to EPA for EPA's review and action under the Clean Water Act by letter dated August 14, 2006. (EPA shared the submittal via e-mail with tribal staff participating in the government-to-government consultation).</p>	<b>Aug 2006</b>
<p><b>EPA holds update phone calls with tribes</b></p> <p>The purpose of these calls will be for EPA staff to review with tribal participants the consultation activities to date, the final mixing zone regulation as submitted by the State, the schedule for EPA's action, and to briefly discuss how EPA is addressing tribal concerns raised during consultation so far.</p>	<b>Nov 2006</b>
<p><b>Further discussions between EPA and tribal leaders about issues of concern</b></p> <p>The purpose of these discussions will be for tribal leaders and EPA decision makers to further discuss or raise any additional concerns regarding EPA's decision, prior to our decision. These discussions are currently planned to be held telephonically. However, if circumstances permit, EPA will strive to seek a face-to-face venue in Alaska for these discussions.</p>	<b>Dec 2006</b>
<p><b>EPA decision on mixing zone regulation</b></p> <p>EPA currently anticipates making its decision (approval or disapproval) on the mixing zone regulation by the first quarter of 2007, pursuant to our authorities under the Clean Water Act.</p>	<b>By 1<sup>st</sup> quarter 2007</b>

