

EPA COMMENTS ON ADEC'S FINAL APDES APPLICATION,
dated June 30, 2006

THE PROGRAM DESCRIPTION

General Comments

1. The current program description does not include procedures for how ADEC intends to implement the APDES program. To the extent that these procedures have been developed, for instance the Natural Conditions guidance document, they should be included in the program description.
2. Several specific comments below request clarification and explanation regarding the roles and responsibilities of ADEC staff. The 1986 guidance (page 5-17) explains that the program description must include a synopsis of the relationship and coordination between the permitting office, the inspection and compliance office and state legal officials. We understand ADEC plans to achieve the organizational structure outlined in Appendix B. Increased detail regarding the coordination, roles and responsibilities of the staff are needed in the program description. Specific comments are identified below.
3. In the program description, ADEC has a separate section for storm water. However, Section 4 appears to be incomplete until you read Section 7. We recommend that descriptions about storm water be added to Section 4.

Specific Comments by Section

4. **Editorial:** Page 4, Section 3.1 - Typo - Chapter 83 Section, 175 should be Chapter 83 Section 175.
5. **Editorial:** Page 12, Section 4.2.1 - Typo – ‘2126minors’ should be 2126 minors.

Section 3—Organization and Structure

6. Page 7, Section 3.4.1 - This section states that 9 AGAs work in the Environmental Section but not how many work on APDES issues. Please clarify.

Section 4—Types of Permits and Major/Minor Facilities

7. Page 9, Section 4.0, last paragraph - Revise the second sentence of this paragraph by deleting “already.” As currently written, this paragraph could be read to restrict ADEC’s ability to regulate discharges that may be subject to regulation in the future (e.g., ballast water discharges from ships).

Section 6—Description of State Procedures

8. Page 24, Section 6.2.2 #6 - States that a fact sheet will be prepared only for major facilities; however, the justification for the conditions in all minor permits must be documented (e.g., fact sheet or statement of basis).
9. Page 24, Section 6.2.2 #6 - This section mentions technology-based limits. It is unclear whether the fact sheet provisions only apply to these types of limits (and not to water quality-based limits) or if these are only examples of what may be in a fact sheet. Please clarify.
10. Page 25, Section 6.2.2 #8 - The last 4 bullet items contain documents that are required by the regulations, as applicable, but the text states that they will only be consulted.
11. Page 25, Section 6.2.2 #9 ¶3 - The description of how to determine reasonable potential is not consistent with the TSD. On page 53 of the TSD, the process is described as comparing the maximum projected receiving water concentration (highest dataset value X RPM) to the criteria. The program description compares the calculated limits to the water quality standard in order to determine reasonable potential. ADEC may propose the use of another methodology to determine reasonable potential and describe it fully in the program description.
12. Page 26, Section 6.2.2 #9 ¶ 6 - The PD outlines the permit procedures that ADEC will follow but lacks many of the specific procedures that Region 10 expected to see in the application. The description largely references existing EPA guidance documents but states that “In the future, the Department may develop additional and more detailed guidance regarding use of effluent and ambient receiving water data ... minimum data requirements, calculation of hardness dependent standards, handling of non-detect values, CV determinations for limited data sets...” Guidance documents covering these areas should be part of the application.
13. Page 26, Section 6.2.2 #11 -This paragraph is appropriate but need to check consistency with the regulation (18 AAC 83.525(4)).
14. Page 27, Section 6.2.2 #12 - This section states that the more stringent water quality-based and technology-based limits will be included in the preliminary draft. Please clarify whether these limits will be carried forward into the draft and final permits.
15. Page 28, Section 6.2.2 #13 - The PD indicates that ADEC will incorporate monitoring and reporting in a permit but only to the extent that the requirements are mandated by law. The program description explains that “the Department will establish separate monitoring and reporting agreements with permittees to collect and report data for informational purposes or for the development of future permit limits. The monitoring and reporting associated with these agreements will not be incorporated as conditions of the permit.” The ability to gather this data is an

important program element and EPA expects a more complete description under what circumstances ADEC will seek additional information from permittees and how it will implement obtaining this information.

16. Page 28, Section 6.2.2 #14 – Monitoring to obtain data to establish future permit limits is required. CWA 308.
17. Page 28, Section 6.2.2 #17 - This section of the program description is appropriate but contradicts the procedures outlined in Section 4.12 of the MOA.
18. Page 31, Section 6.2.2 #27 - The waiver by the applicant of all or part of this review provision and the statement that ADEC would then proceed with the draft permit, seems inconsistent with #1 of Section 6.2.3, which says that ADEC will proceed with the draft permit after receiving comments from the applicant, EPA or other federal agencies.
19. Page 31, Section 6.2.3 #4 - This section incorporates yet to be negotiated (between EPA and ADEC) 30 day EPA review period from Section 4.03 of the MOA. Once the timeframe is agreed upon in the negotiations on the MOA, this section needs to be modified.
20. Page 35, Section 6.3.2 #1 - The procedure described for the review of general permits is inconsistent with Section 4.03 #5 of the MOA.
21. Page 36, Section 6.3.2 after #2 - Another item should be added to the list between #2 and #3 that ADEC will transmit the draft to EPA.
22. Page 36, Section 6.3.2 #5 - EPA should also get a notice of the proposed permit when it is posted on the web.
23. Pages 37, Section 6.3.4 #1 - For NOI requirements, add “other information as required by the General Permit.” Change the term “variance” to site-specific “conditions” such as mixing zones and zones of deposit.
24. Page 37, Section 6.3.4 #5 - The position description states that ADEC intends to issue authorization within 60 days after the applicant requests a variance, a new mixing zone or zone of deposit. EPA is not sure what types of variances [“variance” is used to describe mixing zones and zones of deposit in #1] are being processed under this provision, how they could be done within 60 days, and whether EPA has an approval requirement under granting of variances. The process to authorize discharges under general permits needs clarification.
25. Page 37, Section 6.3.4 #5: The NOI process described in the position description is different than how mechanical placer mining NOIs are currently processed by ADEC. Does ADEC intend to process NOIs individually or by batching them as per current practice? Please clarify.

26. Page 37, Section 6.3.4 #5 - ADEC does not sign NOIs – either the applicant signs the NOI or ADEC signs the authorization.
27. Page 41, Section 6.4.1 #9 - ADEC needs to develop implementation procedures for anti-degradation.
28. Page 41, Section 6.4.1 #10 - This Section uses “renew” and “reissue” as if they are two separate processes. Reissue is the regulatory term that should be used.

Section 7.0--Storm Water

29. **Editorial:** The term “storm water” is two words.
30. Page 49, Section 7.2 – The second paragraph states that the “Department does not intend to expand coverage beyond what EPA currently covers.” This could limit ADEC’s program if the federal storm water program expands in the future. Therefore, please remove this statement. On a case-by-case basis, ADEC must be able to designate storm water sources that need permits under 40 CFR 122.26(a).
31. Page 54, Table 9 - The Cook Inlet General Permit covers deck drainage (the oil and gas equivalent of storm water) and should be added to this table.
32. Page 51, Section 7.4 Compliance Assistance –It is unclear how ADEC plans to implement compliance assistance activities. Please clarify whether compliance or permitting staff will be responsible for the compliance assistance activities described in this section. It appears that the permit writer will be responsible for reviewing SWPPPs. If so, will the permit writers and inspectors coordinate to ensure consistent evaluations of the SWPPP? Please clarify how the roles and responsibilities will be divided.
33. Page 53, Section 7.5.2. When the regional multi-sector and construction general permits expire and are reissued by EPA, they will not cover facilities in Alaska after the transfer of this sector to ADEC. The State needs to discuss the types of permits it will issue to replace the MSGP and CGP when they expire.
34. Page 53, Section 7.5.2, first paragraph, second sentence – It is unclear what ADEC means by an “evaluation of compliance.” Does ADEC mean compliance rates across the sector?
35. Page 53, Section 7.5.2, second paragraph, first sentence – This sentence describes actions ADEC may consider with respect to the MSGP and CGP and states that “ADEC may provide proactive permittee feedback on SWPPPs (based on, for instance, EPA Region 10’s Construction SWPPP Checklist).” It is unclear how this activity differs from ADEC’s current responsibility to review SWPPPs for both MSGP and CGP facilities. Please explain. To assist with this distinction, it would be

useful ADEC describe the actions it currently takes in review of CGP and MSGP SWPPPs.

Section 8.0--Pretreatment Program Administrative Procedures

36. Page 55, Section 8.1: General - The intention to adopt and incorporate 40 CFR 403 by reference is noted. It appears that the program description provided is meant to be a paraphrased summary of the regulations and associated procedures. However, some of the program text is missing key points. The comments below identify sections in the program description that are not as stringent as the federal regulations. EPA requests that ADEC update their procedures to be consistent with the federal regulations.
37. Page 55, Section 8.2: Definitions -Interference: The definition included on page 55 is less inclusive than the definition in 403.3(k). Alaska needs to amend their definition as follows: “*Interference* means a discharge alone or in conjunction with a discharge or discharges from other sources that inhibits or disrupts the POTW; its treatment process or operations; or its biosolids processes, uses, or disposal and causes a violation of any requirement of the POTW’s APDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent State or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA), and including State regulations contained in any State sludge management plan prepared pursuant to subtitle D of the SWDA), the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research and Sanctuaries Act.” The underlined text is directly from 403.3(k) without paraphrasing.
38. Non-Significant Categorical Industrial User: The definition included on page 55, Section 8.2 is less inclusive than the definition in 403.3(v)(2). Alaska needs to amend their definition as follows:“...complied with all pretreatment standards and requirements...” Standards and requirements are not the same thing.
39. Significant Industrial User: The definition included on page 55, Section 8.2, refers to an incorrect citation, §403.3(t). The correct citation is §403.3(v). The paragraph also needs punctuation to retain the same meaning as the federal citation and not allow some categorical IUs to be inappropriately exempted: “...user subject to Categorical Pretreatment Standards under 40 CFR §403.6 and 40 CFR Chapter I, Subchapter N; and any other industrial user that discharges on average 25,000 gpd or more of process wastewater to a POTW....”

40. Page 56, Section 8.3, 3rd paragraph: POTW Program Submission - The 3rd paragraph should refer to “an SIU discharging to a POTW without an approved Pretreatment Program,” not to an IU.”
41. Page 60, Section 8.6: Variances - It is unclear if the bulleted list of items for inclusion in a variance request is intended to mirror the State Code, or if this list is paraphrased. If it is considered to be “complete,” it will need to be revised to comply with the minimum requirements of §403.13(h): a) “detail of the IU’s facilities”-- §403.13(h)(7) specifies “description of the Industrial User’s existing water pollution control facilities;” b) “a schematic flow chart of the IU’s water system”-- §403.13(h)(8) specifies “water system including water supply, process wastewater systems, and points of Discharge;” and c) “a statement of fact establishing why the request should be approved”--§403.13(h)(9) specifies “A Statement of facts clearly establishing why the variance request should be approved, including detailed support data, documentation, and evidence necessary to fully evaluate the merits of the request, e.g., technical and economic data collected by the EPA and used in developing each pollutant discharge limit in the Pretreatment Standard.”
42. Page 61, Section 8.7: Removal Credits – The last paragraph should be modified to be consistent with federal requirements. The last sentence currently reads as follows: “More frequent reporting by the POTW may also be included as enforceable conditions in the POTW’s permit to verify consistent pollutant removal.” It should be modified to be consistent with §403.7(f)(3) it should be modified to read as follows: “Following authorization to give removal credits, a POTW shall continue to monitor and report on (at such intervals as may be specified by the Approval Authority, but in no case less than once per year) the POTW’s removal capabilities. A minimum of one representative sample per month during the reporting period is required, and all sampling data must be included in the POTW’s compliance report.”
43. Page 61, Section 8.9: Time to Comply - The ^{first} sentence needs to be revised as follows to comply with federal regulations: “comply with pretreatment standards no ~~more than three years after the effective date of the categorical standard~~ later than the compliance date established for the applicable Pretreatment Standard.” Although the Clean Water Act allows up to 3 years from the effective date, some standards have shorter compliance periods in order to comply with court decrees, etc.
44. Page 62, Section 8.11: Reporting - It is unclear if the bulleted list of items for inclusion in the POTW annual report is intended to mirror the State Code, or if this list is paraphrased. If it is considered to be “complete”, it will need to be revised as follows to comply with the minimum requirements of §403.12(i): “a list of IUs that discharge to the POTW, including their names and addresses, or a list of deletions and additions keyed to a previously submitted list. The POTW shall provide a brief explanation of each deletion. This list shall identify which Industrial Users are subject to categorical Pretreatment Standards and specify which Standards are applicable to each Industrial User. The list shall indicate which Industrial Users are subject to local standards that are more stringent than the categorical Pretreatment Standards. The

POTW shall also list the Industrial Users that are subject only to local Requirements. The list must also identify Industrial Users subject to categorical Pretreatment Standards that are subject to reduced reporting requirements under paragraph (e)(3), and identify which Industrial Users are Non-Significant Categorical Industrial Users. a summary of the compliance status of the IUs during the reporting period, a summary of compliance and enforcement activities (including inspections) conducted by the POTW during the reporting period, and a summary of changes to the POTW's Pretreatment Program that have not been previously reported to the Approval Authority.”

45. Page 63, Section 8.13, Enforcement - The first paragraph on page 63 refers to an incorrect citation reference of §403.8(f)(2)(vii). The general concept of investigating instances of noncompliance is §403.8(f)(2)(vii). However, with respect to providing public notification of significant non-compliance, the correct citation is §403.8(f)(2)(viii).

Section 9.0--Compliance and Enforcement Program

General Comments

46. Please describe how ADEC intends to manage confidential business information (CBI) during compliance monitoring and enforcement activities.
47. The AGS and Section 6.2.2 of the program description state that ADEC may require the owner or operator of a point source to perform monitoring and reporting outside of permit conditions and that as long as the requirement takes the form of an order, approval, or acceptance, it is fully enforceable under state law. The program description lacks an explanation of ADEC's compliance monitoring and enforcement activities pertaining to “orders, approvals, or acceptances.” The Compliance and Enforcement section must describe these orders, approvals, or acceptances and ADEC's capabilities to monitor and respond to violations and/or noncompliance.
48. If other Department guidance documents explain how ADEC will make compliance determinations for the APDES program, EPA requests that they be included in the APDES application for consideration.

Specific Comments:

49. **Editorial:** Page 67, Section 9.1 – Typo: e2 should be E2.
50. Page 67, Section 9.1.1 #3: This section of the program description states that “when significant potential violations are found during the review of required information” a telephone interview will be conducted. Please clarify how ADEC defines a “significant potential violation.” A telephone interview would not in and of itself be an adequate enforcement response to a documented violation.

51. Page 67, Section 9.1.1 #4: This section indicates that the results of ambient monitoring data collected by the Department or permittee will be used to determine compliance with permit limits and state water quality standards. Please describe this process further.
52. Page 68, Section 9.1.1, last paragraph: This paragraph states that violations will be documented and reported to an Enforcement Officer. Who will document the violations? Who will conduct the compliance evaluation?
53. Page 68, Section 9.1.2 Use of Compliance Schedules – 18 AAC 70.910 appears to give ADEC broader authority for issuance of compliance schedules than is allowed in 40 CFR 122.47. Therefore, this section must be revised to state that ADEC will limit the issuance of compliance schedules to the circumstances identified in 40 CFR 122.47. Additionally, please indicate in what instances and for what parameters ADEC will incorporate compliance schedules into permits.
54. Page 69, Section 9.1.3 Inspection of APDES Facilities, third paragraph – According to this paragraph, ADEC’s intent is to inspect minor facilities with individual permits at least once every five years and to inspect minor facilities operating under a general permit based on ADEC’s Inspection Ranking Model. However, the MOA (Section 6.02 #3) states that ADEC’s goal is to inspect minor facilities once every five years. This discrepancy should be corrected.
55. Page 69, Section 9.1.3, fourth paragraph – It is unclear whether ADEC will use the Inspection Ranking Model to schedule inspections for industrial storm water sites. Please clarify.
56. Page 69, Section 9.1.3, Inspection of APDES Facilities: Please explain whether the authority to enter sites or premises subject to the program is limited to those instances in which ADEC has consent. Further, explain how ADEC would enter a site or premise that is currently not subject to the APDES program, but should be (i.e. unpermitted discharger)? [Crossover with AGS/Regulations]
57. Page 69, Section 9.1.3 - The Inspection Ranking Model does not currently include differentiations for major facilities versus minors. Will this consideration be added to the Model? Will DROPS contain information pertaining to EPA conducted inspections and enforcement actions? If not, ADEC should be aware of this limitation associated with utilizing the Inspection Ranking Model for inspection planning purposes.
58. Page 72, Section 9.1.4, Construction Site Storm Water Inspection - The Information Management section 10.3.4 (#2) of the program description mentions a single event violation with respect to storm water. Please define a single event violation in this section and evaluate its consistency with EPA’s definition.

59. Page 72, Section 9.1.4 - The second paragraph identifies the level of effort for storm water inspections. It appears to be low, especially given that wet weather is a national priority as described in the National Program Manager's Guidance. As described, ADEC intends to inspect 10% of construction sites at least once every five years, which equates to approximately 10 inspections per year. The frequency and timing may not be appropriate for transient projects (i.e., the project length of most construction projects is less than 5 years).
60. Page 72, Section 9.1.4, Second Paragraph - Clarify whether ADEC intends the activities described on the third line of this paragraph "...onsite comprehensive review of all elements of the general permit and implementation of the facility/site SWPPP..." to be different from the activities conducted during a construction site and industrial facility storm water inspection. Omit the last part of this sentence "...or as negotiated as part of the annual PPA." ADEC could acknowledge in Section 9.1.3, *Inspection of APDES Facilities* that the PPG will be used as the primary vehicle to identify the specific types and number of inspections to be conducted from year to year. However, a component of ADEC's compliance strategy should be to conduct a representative number of inspections annually.
61. Page 73, 9.1.4 Types of Inspections – The second to the last paragraph mentions *de minimus* compliance issues, yet this phrase is not defined. Please clarify the meaning of this statement. Furthermore, as noted on page 73, Section 9.1.5, inspectors will conduct an exit interview to identify areas of concern or issues noticed during the inspection. Is the statement regarding *de minimus* compliance issues intended to be something different than what is conducted during an exit interview?
62. Page 73, 9.1.5, Post Inspection – Note, an exit interview is an element of an inspection, and not a post inspection activity.
63. Page 74, 9.1.5, Inspection Report, last paragraph: The last sentence in this paragraph mentions providing inspector recommendations not related to APDES compliance, such as compliance assistance provided during the inspection. This sentence is confusing – will inspectors be providing compliance assistance outside of the APDES program?
64. Page 74, 9.2, Compliance Assistance: The first paragraph and item #1 describe ADEC conducting a facility audit upon request from the facility. Please explain how ADEC defines a facility audit and whether it is a type of inspection. Furthermore, is a facility audit covered under the state's Audit Report Privilege (AS 09.25.450) and/or Immunity statutes (AS 09.25.475)? In addition, there are differences between technical assistance and compliance assistance. Clarify what specific activities ADEC will conduct for each of these separate activities. Also, please note that in most cases, compliance assistance activities should be tracked in ICIS and are "RIDE" elements. In reporting on such activities, ADEC should be sure to report outcomes associated with such activities. An example outcome could be that an

entity changed behavior as a result of compliance assistance. EPA guidance discusses how to capture these outcomes and it is available if ADEC would like it.

65. Page 75, Section 9.2 #3 - This section mentions compliance schedules. Clarify and describe in greater detail whether ADEC intends these to be compliance schedules in permits of compliance orders and what parameters ADEC anticipates including in the compliance schedule or order. This paragraph also seems to limit the use of grants and loans as incentives solely to the municipal sector. Incentives can and should be used throughout the program. While it is important to couple needy entities with appropriate funding sources, this action alone is not an appropriate enforcement response to permit violations. Please clarify and expand on this section.
66. Page 75, Section 9.3 – The first paragraph appears to describe examples of how ADEC will utilize an informal enforcement response to remedy violations; therefore, it is unclear how a Compliance Letter is an incentive since it is an informal enforcement response.
67. Page 75, Section 9.3 - The second paragraph describes incentives available to facilities that voluntarily disclose under EPA's Audit Policy. However, according to the AGS, the State has Audit Report Privilege (AS 09.25.450) and Immunity statutes (AS 09.25.475). This section should discuss ADEC's implementation of its own provisions and must be consistent with the AGS.
68. Page 76, Section 9.4 – The second paragraph states that all staff occupying an Environmental Program Technician or higher job class in the Compliance Program, where the staff person's position description identifies inspections and/or enforcement as work duties, will be required to obtain the ECU-approved Enforcement Training. According to the resources table, this equates to 9 out of the 13.5 FTE. How will the duties of these 9 FTE be different from the other compliance staff and how will these roles be coordinated?
69. Page 76, Section 9.4 – The second paragraph states that all staff occupying an Environmental Program Technician or higher job class in the Compliance Program, where the staff person's position description identifies inspections and/or enforcement as work duties, will be required to obtain the ECU-approved Enforcement Training. According to the resources table, this equates to 9 out of the 13.5 FTE. How will the duties of these 9 FTE be different from the other compliance staff and how will these roles be coordinated?
70. Page 76, Section 9.4, Bulleted list - Please explain what is meant by bullets 3 and 4. Provide additional explanation for the subsequent paragraph (for example, it is unclear what is meant by timely reports – are these the quarterly and annual reports described in previous paragraphs in this section?).
71. Page 77, Section 9.4.2 Administrative Remedies, second paragraph – This paragraph states that the Department will unilaterally issue a compliance order AND a

- compliance order will be issued by DOL through the court system. In Appendix G, the “Timing of Enforcement Response” attachment includes a definition for a compliance order and describes that it is a unilateral, non-judicial enforcement tool. Clarify how the Department will issue a compliance order. In addition, this paragraph, as well as the “Timing of Enforcement Response” document, state that an emergency order is signed by the Director of Water Division. However, page 4-13 of ADEC’s Enforcement Manual state that emergency orders can only be signed by the Commissioner. Clarify the delegation of an emergency order.
72. Page 78, Section 9.4.2, last paragraph – This paragraph is inconsistent with the introductory statement in Section 9.4, which states that “each time a facility or individual is determined to be out of compliance, the Department will decide the need for and level of enforcement.” The paragraph, as written implies that only if repeat violations are present or violations warrant a “more elevated response” will the Department review violations internally. This paragraph describes compliance assistance as a response to violations. Compliance assistance may achieve compliance. However, the activity in and of itself is **not considered** an enforcement response. Assistance should be provided proactively and well in advance of finding violations.
73. Page 79, Section 9.4.4, second set of bullets and preceding paragraph: Is this an ADEC Division of Water policy? This language is similar to AS 46.03.761 which only pertains to public water supplies. If these are procedures ADEC intends to follow for the APDES program, please clarify the procedures ADEC will use to determine, “a reasonable amount of time to correct the noncompliance.” The AGS specifically states that there aren’t any limitations or steps ADEC must take prior to the issuance of penalties. Therefore, this section is inconsistent with the AGS. Please review these procedures and revise the program description and AGS accordingly.
74. Page 79, Section 9.4.4, Calculating a Penalty: The March 1995 penalty policy has “addenda.” For example, EPA has a penalty policy for storm water cases and a separate penalty policy for municipalities. Please revise this section to include a discussion on penalty policy implementation in the different sectors. Furthermore, describe the process, role and responsibilities of staff (ADEC and DOL) for calculating penalties. MOA Section 7.03 #2 mentions procedures established between DOL and ADEC, in addition to identifying a referral time frame for enforcement cases. Please describe these procedures in this section.
75. Page 80, Section 9.5.2 – This section does not describe how ADEC will determine significant non- compliance (SNC) for non-DMR and wet weather dischargers. ADEC should rely on the most current versions of EPA guidance for determining SNC for effluent limit, non-effluent limit, and wet weather dischargers. Please clarify.
76. Page 87, Section 10.3.4, Storm water program, Construction General Permit – Item #2 implies that ADEC will track only authorizations and single event violations for

the CGP. EPA would like to emphasize that ADEC is responsible for all the RIDE elements associated with the CGP and not simply reporting of single event violations.

77. **Editorial:** Page 85, Section 10.2 - Typo in the last sentence before 10.3: “The Department’s intent ~~is~~ is to batch...”
78. **Editorial:** Page 87, Section 10.3.4 #2 Typo: “DROPS will ~~a~~ track all authorizations...”

Appendices

79. Appendix D, Templates and Application Forms – The APDES Inspection Report and Inspection Data Entry Form Template are missing the single event violation portion of EPA Form 3560.
80. Appendix G, Section II focuses solely on enforcement responses to significant non compliance (SNC). Clarify whether the second paragraph is meant to apply to all violations or simply SNC.

THE CONTINUING PLANNING PROCESS

81. Page 2 Section 1.0 ¶2. EPA approved state water quality standards are used to develop permit limits, not EPA water quality criteria
82. Page 2 Section 1.0 ¶3. Since there can be no compliance schedules for technology-based effluent limits (states this on Page 3 ¶2), permits issued for the first time should be included in the list. Also, this list includes reissued and renewed as if they are two different processes but the term “reissued” should be used.
83. Page 2 Section 1.0 ¶5. This paragraph needs either a reference to a detailed section in the Program Description (more detailed than what was submitted in June – as per EPA comments) or more detail regarding the assumptions used in calculating limits from the use of data. For instance, how will data less than detection limits be utilized and how will ambient data be used; how will reasonable potential to exceed standards be determined (percentiles for statistics); or what assumptions will be used to determine the standards themselves (hardness for metals, pH and temperature for ammonia)?
84. Page 3 Section 1.0 ¶1. In other states, EPA has developed nutrient limits based on best professional judgment and the state’s “action level” or something similar embodied in the water quality standards prior to a TMDL being completed. Suggestion: “. . . TMDL process, Best Professional Judgment (BPJ), or other methods available through the state standards”.

85. Page 5 Section 3.0 ¶2. The term “persistent exceedence” is not defined or clarified. While this section states that the listing and assessment methodology is consistent with the water quality standards, it is EPA Region 10’s experience that the listing policy utilized by ADEC is no more specific than the general statements made in the CPP. That lack of specificity impedes adequate determination of impairment. Without specific information about how ADEC makes decisions whether a waterbody is impaired, EPA cannot determine the basis of ADEC’s rationale for listing or not listing and therefore EPA cannot fully document its decision on ADEC’s proposed 303(d) list submittals. ADEC needs to develop clear criteria for decision making in a listing and assessment methodology document. Listing decisions are a foundation for determining which water bodies are impaired and require total maximum daily loads (TMDLs). NPDES permits must be consistent with wasteload allocations in TMDLs. An listing policy that does not adequately identify impaired water bodies undermines the relationship between TMDLs and NPDES permits which is intended to protect water quality.
86. Page 15 Section 9.0 ¶1. Please add public health concerns to the list of considerations for permit issuance.

THE MEMORANDUM OF AGREEMENT

General Comments

87. In numerous instances, ADEC cites “in accordance with the PPA” or “as negotiated in the PPA.” This MOA should describe in sufficient detail how the agencies are going to coordinate and should not rely on negotiating such procedures through the PPA process. EPA acknowledges that annual negotiations will continue and provisions relating to the implementation of the APDES program will be a component of the PPA/PPG. However, this MOA must describe the framework the agencies will follow. PPA language is removed in several locations in the revised MOA.
88. There is uncertainty and inconsistency regarding the transfer of permits from EPA to ADEC. Further, a mechanism must be in place to notify the permittee that their existing permit is an APDES permit. This may consist of a notification letter to the permittee and EPA and a new cover page for the permit.
89. Once the State becomes the permitting authority, the Region recommends that ADEC fully participate in the National NPDES meetings, ASWIPCA and EROS meetings to stay up to date on changes in the NPDES program.
90. Tribal review of permits is included as part of the general public review. We are recommending that ADEC engage in consultation with the Tribes according to the ADEC policy developed based on the Millennium Agreement.

Section 3.0

91. Page 4: Section 3.01 #6 - How can the CPP updating be undertaken via negotiations with EPA on the Performance Partnership Agreement? This language should be clarified.
92. Page 6: Section 3.02 #1 – Revisions made to MOA, which delete the second sentence that discusses the funding under a Performance Partnership grant. EPA has concerns with this statement. Although, a portion of activities are currently funded under this grant, EPA cannot make a commitment for future funding under CWA 106 grants.
93. Page 6: Section 3.02 #3d. EPA is unclear what training program is referred to in #3d. Is this different from what is outlined in the Capacity Building Plan? EPA recommends deleting this item.
94. Page 8: Section 3.03 Opening paragraph - It may be helpful for the introductory paragraph to include a citation to 123.42 and 123.43 since they both address the information that EPA must transmit to the State and the information that the State must submit to EPA.
95. Page 8: Section 3.03 #1 c & d - It appears that 1d is redundant with 1c. Verify whether item 1d is needed. If 1d remains in MOA, add language limiting ADEC's enforcement to those violations of state law.
96. Page 8: Section 3.03 #4a - In some cases, it may make more sense for ADEC to complete the proposed permit, even if the public review period for a permit is over. It's not clear what constitutes "a substantially completed" permitting process.
97. Page 9: Section 3.03 #5 – Revisions made to MOA. The federal regulations no longer have evidentiary hearings for NPDES permits.
98. Page 9: Section 3.03 #7 - The MOA needs to clarify how the construction general permit and multi-sector general permits (regional general permits) will be transferred to ADEC and reissued by the state.
99. Page 10: Section 3.03 #9 – Revisions made to MOA. Having two agencies responsible for compliance and enforcement would be confusing for the industry and the agencies. Further, EPA has concerns with a work share agreement to draft one permit. Instead, EPA will work with ADEC to develop permit conditions, but two permits will be needed for facilities that operate in both jurisdictions

Section 4.0

100. Page 11: Section 4.0. Paragraph 2, Sentence 2. – Revision made to MOA. The entire MOA is revised to delete "final" from "proposed final permit." The revision

will be consistent with the terminology in 40 CFR 122.2 and clarify the function of the permit phase.

101. Page 11: Section 4.02, Paragraph 1 – Revisions made to MOA. The revision is needed to clarify that the Department will assume permitting and compliance authority for the NPDES program in accordance with the schedule in Appendix C of the MOA. NPDES permits become APDES permits once ADEC assumes permitting and enforcement authority for the given sector.
102. Page 11: Section 4.03 #1 – Revisions made to MOA. The revisions are needed for clarification. The purpose of the first part of the paragraph is to state which permits we will review. As it is currently written, the meaning of the sentence is that “unless otherwise waived, EPA reviews will be in accordance with the timeframes of 4.03.” The second part of the revision is needed to avoid limiting EPA’s oversight.
103. Page 12: Section 4.03 #4 – Revisions made to MOA. These revisions are needed to clarify that EPA may extend its review time to the full 90 days upon notification, even if EPA does not object to a permit within 30 days of the receipt of the draft permit.
104. Page 13: Section 4.03.9 – Revisions made to MOA. The revisions are needed to clarify the process for resolving an objection. The State must provide a proposed permit to EPA for review, and have EPA agree to the proposed permit before EPA will lift the objection. The state is prohibited from issuing permits over EPA’s objections. Refer to 40 CFR 123.44 (h)(1) and (2).
105. Page 14: Section 4.03.12 – Revisions made to MOA. This section is deleted. It’s confusing and unnecessary, because it mixes the requirement to provide EPA a proposed permit in accordance with 123.44 (j) and the reopening of the public notice period when a new draft permit with a revised fact sheet is prepared as a result of information submitted during the public comment period which raises substantial new questions about the draft permit.
106. Page 14 Section 4.04.1 - This section needs to clarify that permits to be issued will be listed in a Permit Issuance Plan, so that EPA may identify those that it intends to review. Otherwise this section limits EPA’s oversight waives EPA’s right to review all permits except those listed.
107. Page 15: Section 4.04 #3 – Revisions made to MOA. This section is deleted because the paragraph confuses which permits are waived. Section 4.04 #1 states that EPA waives the right to review all permits except those listed in a) through i). Therefore, Section 4.04.3 is not needed and leads to confusion. For example, what if a permit is a minor but it's included in a) through i). Further, EPA does not agree to waive its right to review permits for all minor dischargers.

108. Page 18 Section 4.12 - EPA questions if the State can approve a request for a 301(c) or 302(b)(c) or fundamentally different factors or 301(g) variance. It seems contrary to §124.62(b) and (e).
109. Page 19: Section 4.14 #2 and #3 – Revisions made to MOA. Additional revisions are needed in both #2 and #3, including a mechanism to notify the permittee when their existing permit becomes an APDES permit. This may consist of a notification letter to the permittee and EPA and a new cover page for the permit.

Section 5.0

110. Page 22: Section 5.06, Sentence 1. - This sentence states: "The DEPARTMENT's enforcement response procedures and time frames will be consistent with EPA's." EPA questions if this is an accurate statement since ADEC has to seek administrative penalties through the court system.. 40CFR403.10(f)(1)(iv) states "Seek civil and criminal penalties, and injunctive relief, for noncompliance by the POTW with pretreatment conditions incorporated into the POTW permit and for noncompliance with Pretreatment Standards by Industrial Users as set forth in 403.8(f)(1)(vi). The Director shall have authority to seek judicial relief for noncompliance by Industrial Users even when the POTW has acted to seek such relief (e.g., if the POTW has sought a penalty which the Director finds to be insufficient)..."
111. Page 23: Section 5.07 – Revisions made to MOA. Biosolids are not part of the APDES program.

Section 6.0

112. Page 26: Section 6.02 #1 - Note: ADEC's Inspection Ranking Model is not consistent with what is required in 40 CFR 123.26 which requires the inspection of all majors annually. [Crossover issue with PD]
113. Page 26: Section 6.02 #2b – Revisions made to the MOA. EPA will coordinate with ADEC but is unable to bind its discretionary authority to conduct inspections and take enforcement actions. This provision restricts EPA's ability to conduct inspections (at both APDES and NPDES facilities) without providing advance notice to ADEC and implies that the only reason for EPA to conduct an independent inspection would be in a criminal case. EPA requested ADEC add language reflecting the fact that while ADEC conducts announced inspections, EPA predominantly conducts unannounced inspections and due to ADEC's inability to withhold confidential information, EPA retains the right to conduct inspections without providing advance notice to ADEC. In addition, EPA retains the right to conduct inspections at any facility and under any circumstances and this paragraph must be revised accordingly. [See comment for Section 8.02, Table 2] The last sentence in #2b indicates that EPA will enter inspection data and its enforcement response in ICIS-NPDES for inspections conducted by EPA at APDES facilities. The MOA does not include a description of how ADEC will ensure DROPS is accurate

for EPA conducted inspections since data in ICIS cannot be exported to DROPS. In addition, this section fails to discuss the coordination for data management responsibility for ADEC responses to EPA-lead inspections.

114. Page 26: Section 6.02 #3 – Currently the National Program Guidance allows inspections to be conducted at 2 minor facilities in lieu of one inspection at a major facility. At minimum, the State is required to develop and maintain an inspection strategy that is consistent with the national guidelines. Therefore, at this time, the State is required to conduct inspections equivalent to the total number of majors in the State of Alaska. The State should be aware that the compliance monitoring strategy is currently under review and is subject to change. Subsequent to such a change, ADEC should adjust their inspection strategy accordingly. Note, the State will be required to report on this activity semi-annually and annually, as required by all NPDES approved programs.
115. Page 27: Section 6.03 #1d – Revisions made to MOA. It is not possible for a compliance tracking system to determine whether a permittee is in full compliance with all permit conditions. Not all permit conditions are tracked in ICIS and a compliance determination should be made by a compliance officer.
116. Page 28: Section 6.04 #1 - While EPA generally will refer all citizen complaints to ADEC as soon as possible, this provision lacks a discussion whether ADEC can hold public complaints anonymous or confidential. If EPA receives a complaint where the complainant requests confidentiality or anonymity, EPA will not be able to refer it to ADEC due to the Alaska public disclosure laws.
117. Page 28: Section 6.04 #4 - Revise to state “dischargers” rather than “wastewater treatment facilities.” Currently the program description does not include information pertaining to ADEC’s oversight of laboratories.

Section 7.0

118. Page 29: Section 7.01 #2c - This provision identifies how ADEC intends to determine Significant Non Compliance (SNC) for dischargers required to submit DMRs; however, this provision does not identify how ADEC will evaluate SNC for non-DMR and wet weather dischargers. Please describe this process. Note a similar comment was made for Section 9.5.2 of the program description.
119. Page 31: Section 7.03 - This provision mentions procedures which have not been described in the program description. The program description does not describe the procedures established for coordination of enforcement cases between Department of Law and ADEC. If procedures have been established, describe them in the program description.

Section 8.0

120. Page 35: Section 8.02, Table 2 #4 – Revisions made to MOA. Through the PPA/PPG process, EPA is committed to discussing its inspection plans annually; however, EPA cannot provide a list of inspections due to Alaska’s public disclosure law. [See comment above for Section 6.02 #2b]
121. Page 35: #8 – Revision made to MOA. The purpose of an oversight inspection is for EPA to observe an ADEC inspector. EPA will provide feedback to the ADEC inspector after the inspection. Similarly, if EPA observed deficiencies during the inspection that ADEC did not observe, EPA would identify those deficiencies during the inspection itself.
122. Page 36: #13 – Revisions made to MOA. EPA does not have the resources to commit to this. EPA will share any changes to ICIS as EPA becomes aware of the changes (as reflected in Section 3.02 #5 of this document). EPA encourages the State to participate in ASWIPCA. The Regional representative for states for the ICIS NPDES Steering Committee is Annette Liebe at ODEQ (503-229-5589).

Section 9.0

123. Page 37: Section 9.0 - Please note that EPA will utilize the National Program Guidance and other guidance documents (unless directed otherwise) to conduct program oversight.
124. Page 38: Section 9.0 #6 – Revisions made to MOA. Revisions to the APDES program should not be solely negotiated during the PPA process. Furthermore, EPA has the authority to request revisions of the APDES program.
125. Page 38: Section 9.0 #7 – Revision made to MOA. Revise this section to be consistent with 123.64

THE ATTORNEY GENERAL’S STATEMENT

126. **Editorial:** Page 10. Typo in Heading? Heading refers to effluent limits under CWA §§ 301 and 307, but the text talks about BPJ limits in the absence of limits under those sections.
127. **Editorial:** Page 19. Responsiveness summaries. Typo: AGS erroneously compares 18 AAC 83.120(o) to 40 CFR 123.43(c); the comparable EPA regulation is 40 CFR § 124.17.
128. Page 1: The Attorney General’s Statement (AGS) certifies that “the laws of Alaska provide adequate authority to carry out the program set forth in the ‘Program Description’” Federal regulations require that the AGS certify that state law

provides authority to comply with the Program Description “*and to meet the requirements of this part.*” 40 CFR §123.23(a).

129. Page 2. “Pollutant” vs. “Waste Material.” While ADEC’s definition of “pollutant” tracks federal regulations, Alaska statutory law refers to “solid or liquid waste material,” AS 46.03.100(a). The statutory term is not defined. AGS needs to address whether the “waste material” definition under State law is as broad as the federal definition of “pollutant.” The AGS should also address whether that section’s reference to “conduct an operation that results in disposal” is as broad as the CWA 301(a)’s “Discharge of any pollutant by any person.”
130. Page 2. “Waters of the U.S.” vs. “Waters.” While ADEC’s definition of “waters of the U.S.” tracks federal regulations, Alaska statutory law refers to “waters.” (See AS 46.03.100 and AAC 46.03.900(37)) The AGS needs to address whether “waters” definition under State law is as broad as federal definition of “waters of the U.S.”
131. Page 3: Federal facilities. The AGS bases ADEC’s authority to regulate discharges from federal facilities on the fact that Alaska statutes authorize ADEC to regulate discharges by any "person," which is defined to include "any . . . government agency," AS 46.03.900. Read in context, however, it is not clear whether the definition was intended to cover federal agencies or just local government bodies. The AGS should provide an analysis of State law supporting the interpretation of that language to include federal agencies.
132. Page 3: Domestic sewage. AS 46.03.100(e)(1), 18 AAC 83.015(b)(3). State statute exempts from regulation any domestic sewage discharge to a “sewerage system,” which includes collection and discharge pipes with no treatment. EPA regulations allow States to exempt these discharges *only* if they go to *publicly owned* systems that involve *treatment*. The State recognizes this deficiency and addressed it with regulations, but the regulations appear to conflict with the State statute.
133. Page 3. Alternatives to Permitting. AS 46.03.100(b)-(d) provides alternatives to obtaining an NPDES permit that would circumvent the requirements for NPDES permits. The AGS simply says that “ADEC will use permits, rather than the other forms of authorization listed in AS 46.03.100(b)-(d), to authorize discharges under the APDES regulations.” The regulations do prohibit discharges without a permit, 18 AAC 83.015(a), but the AGS needs to demonstrate that the statutory alternatives do not provide a way to circumvent the APDES permitting requirement.
134. Page 3. Incidental Discharges. AS 46.03.100(e)(4) exempts certain “incidental discharges” from permitting requirements. Footnote 2 regarding AS 46.03.100(e)(4) says that the exception only applies when there is no discharge from a point source to waters of the U.S. AS 46.03.100(e)(4) excludes a long list of activities if they do not ‘produce a discharge from a point source. . . directly into any surface water of the state.’ (emphasis added) The AGS should clarify that this would not exempt these activities from permitting requirement if they discharged to a storm drain and that

they could be permitted if they discharged through a privately owned treatment works.

135. Page 4: Munitions. Alaska statute exempts munitions discharges from regulation. The State recognizes this deficiency and attempts to fix it through regulations, but the regulations appear to conflict with the State statute.
136. Pages 8-9, CWA § 307(a) Toxic Pollutant Requirements. The AGS needs to explain how CWA § 307(a) toxic pollutants requirements are implemented, including the authority to require compliance with 307(a) toxics requirements even if not in permit, changed requirements if not in permits, modify permits if these requirements change, etc. See 40 CFR 122.5(a), .41(a)(1), .44(b)(1), .62(a)(6); compare 18 AAC 83.155(a), .405(b), .430(a)(2), .135(a)(7).
137. Page 11. Compliance Schedules. The AGS needs to explain how 18 AAC 70.910 will be used to include a compliance schedule in a permit, and how this comports with 122.47. Also, on pages 68 and 75 of the Program Description, there are discussions on use of compliance schedules that should be explained in the AGS.
138. Page 12. The AGS states that the State variances are based on federal models, but contains no analysis. The AGS needs to analyze the variance provisions and demonstrate that the State variance provisions are no less stringent than the federal ones. Also, the AGS needs to demonstrate that the State is only asserting authority to grant those variances that federal regulations allow States to grant, and not those that only EPA may grant.
139. Pages 13-17. Information-Gathering; Unpermitted Discharges. The AGS needs to discuss un-permitted discharges, in addition to State authority with regard to permittees.
140. Page 14. Information-Gathering; in Permits vs. Outside Permits. The AGS says that CWA § 402(b)(2) only requires either authority to issue permits that comply with 308, or authority to gather information per 308. The State must have both of these authorities, and the AGS needs to describe both the authority to issue permits that comply with 308 and the authority to gather information per 308. The “side agreements” that are tied to information gathering/monitoring outside of permits need to be explained.
141. Page 15. Information-Gathering; “Mandated by Law.” State statute limits ADEC’s authority to impose information-gathering requirements in permits to those requirements “mandated by law.” This seems to eliminate ADEC’s discretion regarding monitoring requirements in permits. The AGS cites State regulations that provide the State with discretion, but not mandates, to request information in permits. It seems that the “mandated by law” statute would preclude ADEC from exercising these discretionary (non-mandatory) authorities. State authority seems inadequate

- because CWA §§ 402(b)(2) and 308 appear to describe discretionary authority that the State must have in order to carry out the NPDES program.
142. Page 15. Inspection Authority for non-permitted facilities. State statute provides ADEC with inspection authority *only* when the property owner consents. The AGS cites the State's warrant authority, but it is not clear that the State statute would allow ADEC to obtain warrants for NPDES inspections at un-permitted facilities, absent consent.
143. Page 16. Inspection Authority for permitted facilities. For permitted facilities, the AGS relies on the argument that the statute authorized ADEC to promulgate regulations requiring inspection consent as a precondition to obtaining an APDES permit. It is not apparent from the AGS that ADEC really has the authority to override the statutory privacy right by regulation. The AGS also asserts that the statute requiring consent applies only to inspections to determine compliance with regulations, not "to inspections for purposes of permit compliance." Permit compliance seems to be part of compliance with regulations, as regulations require permit compliance and dictate the permit requirements.
144. Page 20. Disclosure of confidential information to EPA. The AGS lacks assurance that Alaska may disclose confidential information to EPA, as required by 40 CFR § 123.41. The required State authority does appear to exist, however, at 18 AAC 83.165(c).
145. Pages 21-22. Minor modifications. AS 46.03.120(b)(3) provides that ADEC may modify an APDES permit "as provided in regulations adopted under AS 46.03.020(12)." However, the following subsection declares that "[n]othing in this section limits the authority of the department to . . . modify a permit . . . under other circumstances if requested to do so by the permittee. . . ." AS 46.03.120(c). The modification regulation, says "[a] minor modification *includes* the following [seven things]," 18 AAC 83.145(a). This appears to leave the door open for minor modifications in additional circumstances besides those listed, contrary to EPA regulations.
146. Page 23. Criminal negligence. EPA is still evaluating whether the state definition is consistent with the federal definition. The AGS should be revised to discuss whether the standard of criminal negligence is ordinary or a higher standard.
147. Pages 23-26. Limits on enforcement authority. The AGS needs to describe any "limitations or prerequisites to enforcement," or provide assurance that State law does not provide additional defenses not allowed by federal law, as required by '86 Guidance, p. 3-21.
148. Page 24. Criminal fines. Alaska meets the penalty amount requirement, but only if the AGS can certify that there are no restrictions on the ability of the State to

consider each day of violation a separate violation and to assess penalties accordingly.

149. Pages 27-28. Conflict of Interest. The discussion of conflict of interest is not consistent with the actual language of the State’s regulation, which has changed. The State needs to amend its regulation, and the AGS needs to be updated to reflect the amendment. See comment re: 83.170. In addition, on page 28, the referenced portion of the state Executive Branch Ethics Act and the rules of conduct for Administrative Law Judges do not meet federal requirements for conflict of interest protection. The Act requires intent to profit from official duties while there is no intent requirement in the federal regulations, AS 39.52.120(b). Lastly, the AGS needs to clarify and more thoroughly explain that if staff are approving all or portions of permits, those staff are subject to the COI requirements of 123.25(c).
150. Page 29. Incorporation by reference. Apparent error: The Dyncorp case cited in the AGS does not appear to address the issue for which it is cited as authority.
151. Pages 29-30. Standing to challenge permits. The AGS states that standing to challenge a permit is as broad under State law as it is under federal law, but does not analyze and compare who has standing under federal law and who has standing under State law. The AGS should define who is included in the term “parties to an administrative proceeding,” and explain how this definition of “party” does not narrowly restrict the class of persons who can challenge a permit.
152. Additional Authorities/Program mechanisms described in the Program Description that need to be discussed in the AGS statement are: 1) Nuisance abatement orders (AS 46.03.800); 2) SEPs; and 3) the “side agreements” outside of permits that will contain monitoring requirements, and the enforcement options for them.

THE REGULATIONS

153. **Editorial:** Page 43. Permit modifications; facility changes. 83.135(b)(1) vs. 122.62(a)(1). The required federal regulation talks about new “permit conditions that are different or absent in the existing permit.” The State version says “permit conditions different from the existing permit,” making it unclear as to whether this covers new permit conditions not contained in the existing permit. This could be fixed with a minor edit.
154. **Editorial:** Page 50. Effect of permit. 18 AAC 83.155(a) vs. 122.5. Typo: reference to 33 U.S.C. §1318 should be to § 1328.
155. Page 14. Regulations’ Effective Date. The federal regulations require that APDES regulations be effective at the time of program approval. The State

- regulations provide that they will not take effect until *after* ADEC certifies to the Lt. Governor that EPA *has approved* the program.
156. Page 17. Incorporation by reference of superseded federal regulations. 83.010(g)(3) incorporates by reference “the following provisions of Subchapter N” revised as of 2005; should change to 2006 because there are new ELGs as of 2006.
157. Page 19. 18 AAC 83.015(b)(3) vs. 122.3 (exclusions). 83.015(b)(3) should be clarified because it is internally inconsistent – the regulation initially states that all “indirect dischargers defined as significant industrial users” need permits, and then later states that only those SIUs discharging to POTWs without an approved program need permits.
158. Page 19. 83.015(b)(4) vs. 122.3(d) (OSC exclusion). The State regulation should cite to 33 CFR 153.10(e), not just 33 CFR 153.
159. Page 20. 18 AAC 83.015(c) vs. 122.4 (prohibitions). Alaska's own drafting manual for regulations prescribes that a prohibition should be in the form "may not" (rather than “will not”), so this regulation should read "The Department may not issue a permit for a discharge" This issue recurs in numerous places in the regulations, as does a similar issue involving the use of “will” instead of “shall”, which also appears inconsistent with Alaska’s drafting manual. The places where these issues arise include: p. 23 (top), 18 AAC 83.020(a) vs. 122.46; p. 27, 18 AAC 83.115(a) (second sentence) vs. 124.8; p. 31, 18 AAC 83.120(a) and (b) (three times); pp. 36-38, 18 AAC 83.120(i), (1) and (o); and p. 40, 18 AAC 83.130(b)
160. Page 20. Compliance with CWA. 18 AAC 83.015(c)(1) vs. 122.4 (prohibitions). The State’s regulation only requires compliance with the CWA **or** 18 AAC 83; the regulation needs to be changed to require compliance with the CWA **and** 18 AAC 83.
161. Page 20. EPA authority to veto permit. 18 AAC 83.015(c)(2). Federal counterpart, 40 CFR Section 122.4(c), prohibits issuance of permit where EPA objects “under Section 123.44.” State regulations prohibit issuance where EPA objects “under Section 123.44, *as revised as of July 1, 2005.*” The clause in italics must be deleted because it arguably would allow a state permit to be issued if EPA objects under a later revision of Section 123.44, which is contrary to the EPA regulations.
162. Page 21. 18 AAC 83.015(c)(8)(A)(ii) vs. 122.4(i) (prohibitions). The EPA regulations cite 1311(b)(1)(A) **and (B)**, while the ADEC regulations only cite (A). Why was B eliminated?
163. Page 22. Jurisdiction in Denali Park. 18 AAC 83.015(c)(9) vs. 122.4 (prohibitions). EPA needs to understand the State’s position regarding permitting within Denali Park, including whether and how it differs from any other federal land in Alaska.

164. Page 27. Mandatory Permit Conditions. 18 AAC 83.115(a)(1)-(5) vs. 124.6 (draft permits). The State regulation sets out the conditions that EPA requires go in every state NPDES permit, by cross-referencing other State regulations that incorporate the federal standard permit provisions. However, the State regulations appear to be missing cross-references to 18 AAC 83.410, 18 AAC 83.415, and 18 AAC 83.420.
165. Page 27. Mandatory Permit Conditions. 18 AAC 83.115(a)(1)-(5) vs. 124.6 (draft permits). The State regulation sets out the conditions that EPA requires go in every state NPDES permit, by cross-referencing other State regulations that incorporate the federal standard permit provisions. However, the State regulations appear to be missing cross-references to 18 AAC 83.410, 18 AAC 83.415, and 18 AAC 83.420.
166. Page 31 and page 34. Notice of draft permits. 83.120 vs. 124.10. EPA regulations (124.10(c)) list four required means for giving notice of draft permits, the third being followed by the word "*and*" in italics. The ADEC regulations list the same four means with *no connector* – need to either add in “and” or at the beginning, say “all of the following.”
167. Page 34. 83.120(c)(2) vs. 124.10(c)(2)(i) (notice – methods) - In order to be consistent with the federal regulations, the State needs to change “major facility permit” to “major permit.”
168. Page 34. Public notice of permit issuance. 18 AAC 83.120(d)(5) vs. 40 CFR 124.10(d)(1)(v). The federal regulation, which the State must adopt, includes cross references to both 124.11 [120(h)] and 124.12 [120(l)]; the State version references 120(h), but omits the reference to 120(l).
169. Page 39. 18 AAC 83.125(a) and (c). State regulations on Use of Contractors to develop permits exclude consideration of conflict of interest as a criterion. The NEPA regulations include consideration of “an absence of conflict of interest” in addition to contractor ability as selection criteria. In addition, in 83.125(a), “directly pay for” and “prepared by the department” have been removed.
170. Page 42. Permit modifications; new information. 18 AAC 83.135(a) vs. 122.62. Federal regulations say that whenever “the Director receives any information” including certain listed types, he or she may determine whether there is cause to modify a permit. The State counterpart only authorizes the Director to make that determination when he or she receives information of those types listed. This narrows the State’s authority in a way that is not consistent with the required federal regulation.

171. Page 45. Permit modifications; compliance schedule for POTW innovative facilities. 18 AAC 83.135(b)(14) third line from the bottom. The citation to 33 USC 1282(a)(3) should cite (a)(2).
172. Page 45. Permit modifications; compliance schedule for POTW innovative facilities. 18 AAC 83.135(b)(14) third line from the bottom. The citation to 33 USC 1282(a)(3) should cite (a)(2).
173. Page 48. Minor modifications. 18 AAC 83.145(a) vs. 122.63. EPA regulations provide that minor modifications are allowed *only* in certain listed circumstances. State version says "a minor modification *includes* the following," followed by a similar list. This makes the regulations ambiguous as to whether there might be other circumstances when minor modifications would be allowed, which is inconsistent with EPA requirements. The State regulations must restrict minor modifications to the listed circumstances.
174. Page 55. Conflict of interest. 18 AAC 83.170(a) vs. 123.25(c). Instead of prohibiting a person with a conflict of interest from being a member of the board/body that makes permitting decisions (as the federal regulations require), the State regulations as edited penalize permit applicants by prohibiting ADEC from processing an application if "the application will require" a decision by someone with a conflict.
175. Page 56. Judicial review. 83.175 vs. 123.30. It is unclear whether the State regulation meets the minimum requirement for state appeal processes. The State needs a detailed explanation of why 83.175 satisfies 123.30, and in particular should address the extent to which the public may be "parties to an administrative proceeding."
176. Page 83. Permit applications. 18 AAC 83.315(e)(2) vs. 122.21(h)(4). State adopted the federal regulation, but appears to have inadvertently changed meaning. The last clause ("all pollutant levels must be reported or estimated as concentration and as total mass, except for flow, pH, and temp.") is supposed to apply to *both* existing and new dischargers. See 122.21(h)(4). State version makes the clause apply only to *new* dischargers.
177. Page 85. 83.320(10) – Is this a placeholder until final federal CAFO rule is adopted? If so, then a portion of this regulation may need to be revised once that occurs, including the date.
178. Page 94. Permit application; POTWs. 18 AAC 83.330(f)(3) vs. 122.21(j)(4)(iv). The State needs to insert a provision equivalent to (j)(4)(iv)(C) that includes "other POTWs as required by the Director."

179. Page 96. Permit application; WET. 83.335(b) vs. 122.21(j)(5)(ii). The State regulation needs to reference 83.335(c)-(f)(3), not just (c), in order to match required federal regulations.
180. Page 99. 18 AAC 83.335(f)(2)-(3) vs. 122.21(j)(5) (effluent monitoring for WET). DEC omitted an apparently required provision on methods of testing, 122.21(j)(5)(viii), perhaps because there is an exemption for "chronic methods" in "facilities in the Or., Ca., Ak., Hawaii., and the Pacific Territories. The missing language from the federal regulations should be insert: *“WET testing...must be conducted using methods approved under Part 136. West Coast facilities in Washington...Alaska...are exempted from part 136 chronic methods and must use alternative guidance...”*
181. Page 105. Permit application; new sources and dischargers. 18 AAC 83.360(a)(4). Need to insert "as required by 18 AAC 83.520(b)-(d)" just before the phrase "for each of the first three years."
182. Page 114. Permit application; cooling water intake structures. 83.380(b) vs. 122.21(r)(5). The federal regulation has requirements for information submission at 122.21(r)(5)(i) and (ii), which State regulations incorporate in 83.380(f). In 83.380(b), however, cross-references other state information requirements in (c)-(e), but not (f). Alaska needs to also require (f) since those are federal requirements that must be adopted.
183. Page 126. 18 AAC 83.405(k)(2)(B)-(C). The EPA regulations require the permittee to retain "all" original strip chart recordings and reports. ADEC omitted the word "all" in these two provisions. There is an “all” at the start of the sentence, but it’s repeated for (A), but not repeated for (B)-(D), which implies that “all” doesn’t apply to those.
184. Page 130 (top). Permit reporting requirements. 18 AAC 83.410(f)(4) allows DEC to waive a reporting requirement specified in a cross-referenced subsection, but the cross-reference is wrong. State regulations reference “(1)(B) and 2” (sic), but should cross-reference (3). The corresponding EPA regulation is 122.41(l)(6)(ii), and State regulation copies it exactly except for the wrong cross-reference.
185. Pages 130-131. Permit bypass provisions. 18 AAC 83.415(m) vs. 122.41(m). In adapting EPA's regulation on bypass, ADEC appears to have eliminated the definition of "severe property damage." This is a required federal regulation, so the State needs this definition.
186. Page 140 (top). Permit requirements; water quality standards. 18 AAC 83.435(h)(1). The reference to "paragraph" should be to "section.” The corresponding federal regulation uses “paragraph,” but it is a paragraph as formatted there. As formatted in the State regulation, “paragraph” is incorrect because it omits the necessary reference to the applicable requirements.

187. Page 141. 18 AAC 83.445. This relaxes the EPA notification requirements. It allows increased notification levels in more circumstances than the EPA regulation, 122.44(f). The EPA regulation allows the notification levels to be raised in just three cases. 122.42(a)(1)(i)-(iii). But the ADEC regulation prescribes increases in notification levels for all those set out in 18 AAC 83.610, and 610 has the three from the EPA regulation plus *five additional levels* set out in 610(b)(1)(D)-(2)(A)-(D). To fix this overly broad notification, the ADEC citation should be limited to 18 AAC 83.610(b)(1)(A)-(C), not an unlimited citation to 610.
188. Page 143. Permit monitoring requirements. 18 AAC 83.455(a)(4)(C)(iv), (D). Drafting error undercuts meaning. (D) is not another item in the list that starts with (A), (B) and (C). 455(a)(4)(C)(iv), should end with a period. (D) is a separate requirement regarding how the monitoring in (4)(A)-(C) is conducted.
189. Page 143-144. Permit monitoring requirements. 18 AAC 83.455(b)-(d). Each subsection of the ADEC regulation contains several drafting errors. Each jumbles the words "report monitoring results requirements." ADEC may cure this in all three subsections by substituting the clause "the department shall establish requirements to report monitoring results. . . ." Also, in the federal regulation, 122.44(i)(4), the modifying clause about case-by-case discretion applies just to monitoring frequency. In the state version, that modifying clause applies to the entire "report monitoring results requirements, including the frequency."
190. Page 144. Permit monitoring requirements. 18 AAC 83.455(d). The EPA regulation, 122.44(i)(4), requires monitoring conditions, established on a case-by-case basis, that, "at a minimum," include four features. The ADEC regulation omits "at a minimum," undercutting the "case-by-case" authority because it essentially ends up requiring only the four features specified. Need to retain the "at a minimum" language to grant ADEC the case-by-case authority to go beyond those four features, as per the required federal regulations.
191. 83.465 and 83.470, which were included in the previous version of the regulations, are not in the final version. Why were they removed? In the absence of 83.470, what will be the basis for permit limits for industrial users regulated by the State?
192. Page 152. End-of-pipe limits. 18 AAC 83.515. The EPA regulation, 122.45(a), requires end-of-pipe limits except for certain exceptions. One exception is under 122.44(k) where numeric permit limits are infeasible. That's one of four things listed in 122.44(k). The problem is that the State version of 122.45(a) exempts from end-of-pipe limits all four of the things listed in 122.44(k), rather than just the one. It does this by eliminating the parenthetical in 122.45(a) that says "(BMPs where limitations are infeasible)."

193. Page 154. Total Recoverable vs. Dissolved Metal Limits. 18 AAC 83.525(4), 40 CFR 122.45(c). The federal regulations require State programs to limit metals using “total recoverable,” with three exceptions that allow use of a dissolved metal limit. The State’s regulations include a fourth exception for when the Director concludes that dissolved limits will be “as protective” as total recoverable limits. The federal regulations do not allow this. Program Description sets out approach that may make this regulatory exception unnecessary.
194. Page 165. 18 AAC 83.610(c). The EPA regulation, 122.42(b), requires a POTW to provide "adequate notice" of changes in the effluent flowing into and out of the POTW. The ADEC regulation changes "adequate notice" to "at least seven days...." This means that, no matter how significant the change and no matter how far in advance a POTW knows about the change, the POTW will comply with the regulation if it gives 7 days notice. The regulation should encourage POTWs to report as soon as possible. Please remove the reference to “at least seven days.”
195. Page 186. 18 AAC 83.990(67). In the same ADEC regulation, there are internal definitions of "rock crushing" and "log sorting." The EPA regulation 122.27 included cross-references to 40 CFR Part 436 and part 429, "including the effluent limitations guidelines." The cross references were omitted from the ADEC regulations.
196. Pages 188-189. Definition of “Waters of the U.S.” at 18 AAC 83.990(77) has two problems. First, all the insertions of “of the United States” after “waters” (five times) make the entire definition circular. Second, there’s a grammatical problem with (B)(ii); that part of the definition would read “waters of the U.S. . . . (B) does not include . . . (ii) prior converted cropland, notwithstanding the determination of an area’s status as prior converted cropland by any federal agency other than EPA; the final authority regarding Clean Water Act jurisdiction remains with EPA.” In the corresponding federal reg, the last two clauses (“notwithstanding . . . remains with EPA”) are one separate sentence. This changes the meaning.
197. Omitted Provision: Prior versions lacked a State regulation corresponding to 40 CFR § 123.35. Does the state have any regulation that corresponds to 123.35?

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