

**National Pollutant Discharge Elimination
System**

Memorandum of Agreement

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

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Abbreviations and Acronyms

AAC	Alaska Administrative Code
ACMP	Alaska Coastal Management Plan
APDES	Alaska Pollutant Discharge Elimination System
AS	Alaska Statute
CFR	Code of Federal Regulation
CWA	Clean Water Act
DMR	Discharge Monitoring Report
DNR	Alaska Department of Natural Resources
DOL	Alaska Department of Law
DROPS	Discharge Reporting and Online Permit System
EPA	United States Environmental Protection Agency
FDF	Fundamentally Different Factor
ICIS-NPDES	Integrated Compliance Information System-National Pollutant Discharge Elimination System
IU	Industrial User
MGD	Million Gallons per Day
MOA	Memorandum of Agreement
MSGP	Multi-Sector General Permit
NOI	Notice of Intent
NPDES	National Pollutant Discharge Elimination System
POTW	Publicly Owned Treatment Works
PSES	Pretreatment Standards for Existing Users
QA	Quality Assurance
QNCR	Quarterly Noncompliance Report
RCAC	Regional Citizens' Advisory Council
Services	U.S. Army Corp of Engineers, U.S. Fish and Wildlife Service, and National Marine Fisheries Service
SIU	Significant Industrial User
SNC	Significant Noncompliance
State Resource Agencies	Alaska Department of Natural Resources and Department of Fish and Game

Section 1.0 General

This Memorandum of Agreement (hereinafter, AGREEMENT) establishes policies, responsibilities, and procedures pursuant to 40 CFR §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).

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 addresses permits or portions of permits issued by the DEPARTMENT pursuant to Alaska Administrative Code (AAC) which apply to 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 program, under 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.

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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 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: Performance Partnership Agreement, the EPA/State Agreement on Compliance Assurance Principles (May 1997), Compliance Assurance and Evaluation Principles (March 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 state APDES Program, but EPA guidance and policy may be referenced or used as 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 state APDES Program priorities consistent with national NPDES goals and objectives.

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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 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 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 CWA §402(n) and in accordance with 40 CFR §123.1(g)(2). Appendix C 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 C. 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). The DEPARTMENT will continue to certify EPA-issued NPDES permits under CWA §401 and support EPA's program activities.

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¹ [State NPDES authority is excluded from Denali National Park and Preserve because ...**](#)

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 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, proposed 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, proposed 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(b).
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 to issue, reissue, modify, deny, suspend, or revoke all APDES permits. Permit applications for new dischargers and from major dischargers shall normally receive first priority in all APDES 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 keep current a *Continuing Planning Process* document per 40 CFR §130.5 primarily through negotiations with EPA on the 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. Maintain a vigorous program of taking timely and appropriate enforcement actions in accordance with the CWA, Alaska Statutes, and Alaska Administrative Code.
10. Maintain an adequate public file at the three main offices (Juneau, Anchorage, or Fairbanks) that is easily accessible to EPA for program evaluation for each

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permittee. Such files must include, at a minimum, copies of or access to electronic copies of:

- Permit application
 - Public notice
 - Fact sheet on draft permit
 - Draft permit
 - Studies supporting permit limits (e.g. wasteload allocation, total maximum daily load, site specific analysis, instream sampling data)
 - [All studies necessary to support the mixing zone](#)
 - [Comments received on the preliminary draft permit](#)
 - Public comments
 - Response to comments received
 - [Comments received on the proposed permit](#)
 - Proposed permit
 - Issued permit or final order of denial
 - [Statement of basis](#)
 - Fact sheet reflecting 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
11. Input all national required data elements [including required ICIS data elements \(RIDE\)](#), for all APDES permitted facilities into the DEPARTMENT's Discharge Results and Online Permitting System (DROPS) database and EPA's Integrated Compliance Information System - National Pollutant Discharge Elimination System (ICIS-NPDES) database. This includes data for major and minor dischargers covered by an individual or general permit.
 12. 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 [Director of the Office of Water and Watersheds](#), the DEPARTMENT shall submit specific information and allow access to files necessary to evaluate the DEPARTMENT's administration of the APDES Program.
 13. [Make available to EPA any information obtained or used by the DEPARTMENT under the APDES program upon request without restriction due to claims of](#)

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confidentiality. 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.

14. Coordinate the Alaska Coastal Zone Management Program (ACMP) consistency review process according to DEPARTMENT Guidance No. 2003-001 *DEC Single Agency Coastal Management Consistency Review Procedures* (Appendix B) when an applicable project requires only an APDES individual permit or when an APDES general permit is developed or amended.
15. Work with the Alaska Department of Natural Resources (DNR) Office of Program Management and Permitting 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.
16. Issue 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.

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3.02 EPA's Responsibilities

In accordance with the priorities and procedures established in this AGREEMENT, the Performance Partnership Agreement, and any other APDES-related agreements between the DEPARTMENT and EPA, 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. At the DEPARTMENT’s request, as EPA resources allow, provide technical support and assistance to the DEPARTMENT to:
 - a) Interpret effluent limitation guidelines regulations.
 - b) Develop technology-based effluent requirements and related “best management practices” that include the use of “best professional judgment.”
 - c) Provide general technical assistance in program implementation.
 - d) Develop and coordinate a training program with the DEPARTMENT, on an as needed basis and contingent upon available EPA resources, with the course details and scheduling negotiated via the Performance Partnership Agreement.

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4.

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5. To the extent allowed by law, ensure that the DEPARTMENT is kept informed and up to date concerning:

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- 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.
- c) Draft, proposed, and final versions of EPA regulations, technical guidance, policies, and procedures that pertain to: implementation of the APDES Wastewater Discharge Authorizations Program and Compliance 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 the 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 a continuous 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.

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8. Issue NPDES individual or general permits to facilities it retains jurisdiction over (Appendix A) that are consistent with the ACMP 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. 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

Upon EPA’s approval of the APDES Program and in accordance with the schedule in Appendix C, the DEPARTMENT will assume authority [subject to EPA’s oversight and enforcement authority pursuant to 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 F. A complete list of facilities issued a state permit is found at Appendix G.

1. Upon program approval, the DEPARTMENT will:
 - a) Assume permitting, compliance, and enforcement authority for facilities in accordance with the transfer schedule in Appendix C of this AGREEMENT.
 - b) Receive and review discharge monitoring reports (DMRs) and conduct inspections for all permits pursuant to the Performance Partnership Agreement and the transfer schedule in Appendix C.
 - c) Retain the right to take enforcement action on an existing state-issued discharge permit or state certification of an NPDES permit prior to the DEPARTMENT’s assuming APDES Program authority for the permitted facility in accordance with the transfer schedule in Appendix C.
 - d) In accordance with state law, retain the right to take and enforce actions at facilities with EPA-issued NPDES permits where authority remains with EPA and will not transfer to the DEPARTMENT after program approval.
2. EPA shall retain permitting, compliance, and enforcement authority of the biosolids program regulated under CWA §405; for facilities in Denali National Park and Preserve; facilities located Indian Country; facilities operating outside state waters (three miles offshore); and facilities with CWA §301(h) waivers.
3. Upon program approval and in accordance with the transfer schedule in Appendix C, EPA shall suspend the issuance of NPDES permits for those activities subject to the approved state program, except as provided in paragraph 13 of this Section.
4. Upon program approval and notwithstanding the transfer schedule in Appendix C, 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 E of this AGREEMENT lists EPA’s permit issuance schedule for calendar years 2007 and 2008 and the permits that could be on public notice at the time of state 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.
 - b) ~~_____~~
 - c) A facility where EPA has a pending or ongoing EPA enforcement action. EPA will complete the enforcement action for permits under active federal

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enforcement cases (administrative orders or formal referrals to the Department of Justice) at the time of program authorization. The DEPARTMENT will assume permitting, compliance, 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 C, subject to EPA's oversight and enforcement authority pursuant to 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 can be accomplished by:

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- 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 enforceable compliance schedule by the DEPARTMENT.

5. Upon program approval, EPA will 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 challenge and in accordance with the transfer schedule in Appendix C, 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, schedule meetings to discuss issues pertaining to NPDES permits retained by EPA. The DEPARTMENT shall retain its rights under CWA §401 to consider state certification to subsequent EPA permitting actions on these retained NPDES permits.

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6. Upon program approval, EPA shall 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.
7. An EPA-administratively extended NPDES individual or general permit transferred to the DEPARTMENT in accordance with the schedule in Appendix C 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.
8. The DEPARTMENT and EPA recognize there are seventy-six (76) Alaska Native Villages that submitted preliminary 301(h) applications (44 FR 52207 September 7, 1979) for a CWA §301(h) waiver. EPA did not require those facilities to submit a formal application for the waiver. The DEPARTMENT will assume permitting and compliance authority for these facilities in accordance with the transfer schedule in Appendix C and, based on resource availability, provide technical and funding assistance to these communities to improve wastewater treatment.

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9. The DEPARTMENT and EPA will coordinate permitting, compliance monitoring, and enforcement activities for those industries and permits where the agencies have dual jurisdiction.
10. Current and administratively extended NPDES individual permits transferred to the DEPARTMENT will become state-issued APDES permits that will replace the NPDES permits and state certifications.
11. Current and administratively extended NPDES general permits transferred to the DEPARTMENT will become state-issued APDES general permits.
12. 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 C. 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 schedule in Appendix C.
13. 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, permitting and compliance authority will transfer to the DEPARTMENT who will be responsible to reissue the permit.

Deleted: negotiate a work share agreement designating the DEPARTMENT as the lead permitting agency to draft one permit for a facility that operates in both state and federal jurisdictions (e.g. seafood processors and oil/gas exploration) (Appendix A). The work share agreement will designate the DEPARTMENT to draft the permit for EPA's review and approval; require a DEPARTMENT / EPA joint public review period; and establish that the DEPARTMENT and EPA sign the permit. The permit will specify that the DEPARTMENT is responsible for compliance and enforcement of state APDES permit conditions when the facility is operating in state jurisdiction, and that EPA is responsible for compliance and enforcement of the EPA permit conditions when the facility is operating in federal jurisdiction.

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Section 4.0 Permit Review and Issuance

The DEPARTMENT is responsible to draft, provide public notice, issue, authorize, deny, modify, revoke and reissue, and terminate APDES permits in accordance with: this AGREEMENT, including Appendix C of this AGREEMENT; the CWA; the regulations promulgated thereunder at 40 CFR Parts 122-123; and applicable state statutes and regulations.

Deleted: any other APDES-related agreements between the DEPARTMENT and EPA;

For the purposes of the APDES Program, “preliminary draft permit” means a document prepared prior to public notice. A “draft permit” means a document prepared by the DEPARTMENT for public notice and comment indicating the DEPARTMENT’s tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit. A “proposed permit” means a document prepared after the close of the public comment and, when applicable, any public hearing.

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4.01 Receipt of New Permit Applications by the DEPARTMENT

Within fourteen (14) days after receipt of a complete permit application, the DEPARTMENT will enter all required information into the current EPA national database system.

4.02 Permit Reissuance

In accordance with 18 AAC 83.155(f), a federally-issued NPDES permit in effect at the time EPA approves the APDES Program continues in effect until authority of the permit is transferred to the DEPARTMENT in accordance with the transfer schedule identified in Appendix C.

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All expiring APDES permits for which timely and complete permit renewal applications have been submitted shall be reissued on or before their expiration date. If such timely reissuance is not possible, the DEPARTMENT will notify EPA of the reasons for the delay. In such cases the permit may be administratively continued beyond its expiration date in accordance with state law, but in no event will the permit be modified or revised. An administratively extended permit remains in effect and enforceable until such time as the DEPARTMENT takes action.

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4.03 EPA Review of Draft and Proposed Permits, Permit Modifications, and Permit Revocations and Reissuances

The DEPARTMENT may consult with EPA before issuing public notice of a draft permit to ensure that the permit will comply with federal guidelines and requirements. The DEPARTMENT shall transmit to EPA appropriate portions of working documents in connection with these consultations.

1. Unless otherwise waived pursuant to Section 4.04 of this AGREEMENT, EPA will review and comment on draft permits, permit modifications, and revocations and reissuances rather than proposed permits. A proposed permit need not be prepared by the DEPARTMENT and transmitted to EPA for review unless the DEPARTMENT proposes to issue a permit which differs from the draft permit

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reviewed by EPA, EPA has objected to the draft permit, there is significant public comment, or EPA requests in writing to review the proposed permit.

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2. For the purposes of this Section, EPA's review of permit modifications and revocations and reissuances will follow the same procedures as outlined for the review of a draft individual permit or draft general permit, as appropriate.
3. At the time a draft individual permit is available for public review, the DEPARTMENT will transmit to EPA one copy of the complete permit application, the public notice, the draft individual permit, the fact sheet associated with the draft permit, and an Ocean Discharge Criteria Evaluation, if applicable, for formal review. Upon request by EPA, the DEPARTMENT will provide EPA with copies of documents related to or supporting the draft permit. If the permit is for a possible new source under CWA §306, the DEPARTMENT will submit a new source/new discharger determination to EPA, as necessary. The DEPARTMENT shall supply EPA with copies of these documents for permits EPA has waived review whenever requested by EPA.
4. Within thirty (30) days of EPA's receipt of a draft individual permit, EPA may submit in writing to the DEPARTMENT general comments upon, objections to, or recommendations with respect to the draft permit. Upon notification by EPA, EPA's review time shall be extended to no more than ninety (90) days from the receipt of the draft individual permit. Within this review time, EPA shall notify the DEPARTMENT of any objections to the issuance of the permit and shall set forth in writing the general nature of the objection. EPA shall also send a copy of any comments, objections, or recommendations to the permit applicant. If (1) EPA does not either make general comments, objections or recommendations, or extend its review time as provided above within thirty (30) days of receipt of the draft individual permit, and (2) no significant public comment on the draft permit is received during the public review period, then the DEPARTMENT may proceed with the permit issuance process.
5. At the time a draft general permit is available for public review, the DEPARTMENT will transmit to EPA one copy of the public notice, draft general permit, the fact sheet associated with the draft general permit, and an Ocean Discharge Criteria Evaluation, if applicable, for formal review. Within ninety (90) days of EPA's receipt of a draft general permit, EPA may submit in writing to the DEPARTMENT comments upon, objections to, or recommendations with respect to the draft general permit. If EPA does not object to the draft general permit in writing within ninety (90) days of receipt and no significant public comment on the general permit is received during the public review period, then the DEPARTMENT may proceed to issue the general permit.
6. In the event EPA files a general objection to a draft individual or general permit, EPA shall have ninety (90) days from the date of EPA's receipt of a draft permit to submit in writing to the DEPARTMENT the specific grounds for objection, including:
 - a) A statement of the reason for the objection (including the Section of the CWA or regulations that support the objection). EPA's objection to the issuance of a

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proposed permit must be based upon one or more of the grounds listed in 40 CFR §123.44(c).

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- b) The actions that must be taken by the DEPARTMENT to eliminate the objection (including the effluent limitations and conditions which the permit would include if it were issued by EPA).
7. Prior to notifying the DEPARTMENT of an objection based upon any of the grounds set forth in 40 CFR §123.44(c), EPA:
- a) Shall consider all data transmitted pursuant to 40 CFR §123.43.
 - b) May, if the information provided is inadequate to determine whether the draft permit meets the guidelines and requirements of the CWA, request the DEPARTMENT to transmit to EPA the complete record of the permit proceedings before the DEPARTMENT, or any portions of the record that EPA determines are necessary for review. If this request is made within thirty (30) days of receipt of the DEPARTMENT's submittal under 40 CFR §123.43, it shall constitute an interim objection to the issuance of the permit, and the full period of time specified in paragraphs 4 or 5 of this Section, as appropriate, for EPA's review shall recommence when EPA has received the requested information.
 - c) May, in its discretion, and to the extent feasible within the period of time available under paragraphs 4 or 5 of this Section, as appropriate, afford to the public an opportunity to comment on the basis for the objection.
8. Within ninety (90) days of receipt by the DEPARTMENT of an objection by EPA, the DEPARTMENT or the public may request that a public hearing be held by EPA on the objection in accordance with 40 CFR §123.44(e) and (f) and 40 CFR §124.10. Following the public hearing, EPA shall reaffirm the original objection, modify the terms of the objection, or withdraw the objection and shall notify the DEPARTMENT of the decision.
9. If the DEPARTMENT does not submit a proposed permit revised to satisfy EPA's objections within ninety (90) days of the notice of objection [or thirty (30) days following EPA's reaffirmation of the original objection or modification of the objection following a public hearing on the objection], EPA may issue the permit. Following the completion of the permit term, authority to issue and enforce the permit reverts to the DEPARTMENT.
10. EPA may request to review any applicant's notice of intent (NOI) to be covered under a general permit. The DEPARTMENT will provide a copy of the NOI to EPA within five (5) days of EPA's request. Within twenty (20) days after receipt of the NOI, EPA will notify the DEPARTMENT of any formal objections to the applicant's suitability for coverage under the general permit. If EPA determines that the applicant does not meet the eligibility criteria of the general permit, the DEPARTMENT and EPA will meet to discuss the basis for EPA's concerns. EPA retains the right to review all NOIs under a general permit.
- a) Following the close of the public comment period on a draft permit, a proposed permit will be prepared, a response to comments developed, and the fact sheet revised to reflect the proposed permit. The DEPARTMENT may issue the

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permit without further review by EPA if the proposed permit does not differ from the draft permit reviewed by EPA;

- b) EPA has not objected to such draft permit as outlined in paragraphs 4 or 5 and 7 of this Section; and,
- c) significant public comments have not been received.
- d) EPA has not requested to review the proposed permit.

- 11. _____
- 12. A copy of the issued permit, fact sheet revised to reflect the issued permit, response to comments, and Ocean Discharge Criteria, if applicable, shall be transmitted to EPA.

4.04 Waiver of Permit Review by EPA

- 1. EPA waives the right to review, object to, or comment on the sufficiency of permit applications, preliminary draft permits, draft permits, proposed permits (to the extent that they are necessary to submit to EPA), and final (issued) permits for all discharges or proposed discharges, with the exceptions of the categories described below:
 - a) discharges into the territorial sea;
 - b) discharges proposed to be regulated by general permits;
 - c) discharges from Publicly Owned Treatment Works (POTWs) with a daily average discharge that exceeds one million gallons per day (MGD), as listed in Appendix D;
 - d) discharges of uncontaminated cooling water with a daily average discharge that exceeds 500 MGD;
 - e) discharges from any major discharger;
 - f) discharges from any discharger within any of the 21 industrial categories listed in Appendix A to 40 CFR Part 122;
 - g) discharges from any other sources with a daily average discharge that exceeds 0.5 MGD, except that EPA may waive review of permits for discharges of non-process wastewater regardless of flow;
 - h) POTWs required to have a Pretreatment Program; and,
 - i) discharges which may affect the waters of Indian Country in Alaska
 - j) discharges which may affect waters of another nation.

The foregoing does not include a waiver of receipt of all final permits issued, or any notices required under Section 8 of this MOA.

- 2. _____
- 3. _____
- 4. With regard to modifications, terminations, or revocations and reissuance of permits, EPA waives the right to review any permit action for which the right to review the original permit was waived (unless the modification would put the permit into one of the categories listed in Section 4.04, paragraph 1) or where a

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Deleted: <#>With the exception of major discharges under a general permit, EPA waives its right to review the NOLs to discharge under a general permit for:¶
<#>Mining (Mechanical Placer Mining, Medium-sized Suction Dredge Placer Miners, and Small Suction Dredge Placer Miners);¶
<#>Seafood (General Permit, Pribilof, and Kodiak);¶
<#>Oil and Gas Exploration (North Slope, Arctic, and Cook Inlet);¶
<#>Small Publicly Owned Treatment Works (fresh and marine);¶
<#>Log Transfer Facility; and,¶
<#>Stormwater (Multi-Sector General Permit and Construction).¶
Unless otherwise requested from EPA to the DEPARTMENT, EPA waives its right to review applications and individual preliminary draft, individual draft, and individual proposed final permits for minor discharges.

permit action qualifies as a minor modification, as defined by state regulation (18 AAC 83.145).

5. ~~_____~~
6. EPA reserves the right to terminate the waivers in Section 4.04, paragraphs number 1 through 4 in whole or in part, at any time. Any such termination shall be made in writing to the DEPARTMENT.
7. The foregoing waiver does not authorize the issuance of permits which do not comply with applicable provisions of federal laws, regulations, or effluent guidelines; or Alaska statutes or regulations. The waiver shall not relinquish the right of EPA to petition the DEPARTMENT for review of any action or inaction.

Deleted: Upon receipt of a draft permit from one of the categories described in Section 4.04 of this AGREEMENT, EPA will notify the DEPARTMENT as soon as practicable within the review period if EPA determines that no comments on the draft permit will be submitted to allow the DEPARTMENT to proceed with the public review and permit issuance procedures as expeditiously as possible.

Deleted: because of violation of federal laws, regulations, or effluent guidelines; or Alaska statutes or regulations.

4.05 Public Participation

The public notification provided in the permit process shall be consistent with 40 CFR Part 124 and state regulations.

1. Permit applications, public notices, preliminary draft permits, draft permits, fact sheets, statements of basis, proposed permits, and issued permits will be made available to any person upon request and upon payment of applicable state duplicating fees.
2. The DEPARTMENT will prepare and distribute copies of all public notices and fact sheets in accordance with state regulation at 18 AAC 83.115 and 18 AAC 83.120 [40 CFR §124.8. and 40 CFR §124.10, respectively].
3. In accordance with 18 AAC 15.050, the DEPARTMENT will publish two consecutive public notices in a newspaper of general circulation in the area affected by an operation notifying the public that a draft APDES individual permit, draft APDES general permit, or proposed Pretreatment Program approval is available for public review and comment. The public notice will be posted on Alaska's On-line Public Notice web site in accordance with AS 44.62.175.
4. The required public notice and comment procedures will be followed with respect to all permit modifications to issued permits, except for minor modifications described in 18 AAC 83.145. In the event the DEPARTMENT initiates a permit modification for the reasons set forth in 18 AAC 83.145, the DEPARTMENT will transmit the final minor modification to EPA, the applicant, and all persons who received notice of the permit issuance. In other cases, public notice of the permit modification application is given in the same manner as for initial permit applications.
5. Notification of a final issued permit will be posted on the DEPARTMENT's web page and transmitted to persons who commented on a draft permit during the public review period or requested notification of the DEPARTMENT's final action.
6. The DEPARTMENT shall provide an opportunity for judicial review in state court of the final approval or denial of a permit that is sufficient to provide for, encourage, and assist public participation in the permitting process in accordance with 40 CFR §123.30.

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4.06 Applicant Review and Federal, State, and Tribal Notice

1. At the time the DEPARTMENT transmits the public notification, preliminary draft permit, fact sheet, and an Ocean Discharge Criteria Evaluation, if applicable, to the applicant for a 10-day applicant review period [18 AAC 83.115(e)], the DEPARTMENT will notify EPA; the U.S. Army Corp of Engineers, U.S. Fish and Wildlife Service, and National Marine Fisheries Service (Services); Alaska Departments of Natural Resources and Fish and Game (State Resource Agencies); and appropriate Tribes and Regional Citizens' Advisory Councils (RCACs) that the documents are available on the DEPARTMENT's web page.
2. At the start of the public review period, the DEPARTMENT will notify the Services, State Resource Agencies, and appropriate Tribes and RCACs that the draft permit, fact sheet, and Ocean Discharge Criteria Evaluation, if applicable, are available on the DEPARTMENT's web page for review and comment. All documents will also be transmitted to EPA at this time.
3. The DEPARTMENT will notify the Services, State Resource Agencies, appropriate Tribes and RCACs, and anyone else who requested notification that the proposed permit, the issued permit, and the revised fact sheet reflecting the issued permit are available on the DEPARTMENT's web page.

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4.07 Issuance of Permits

1. If the final determination is to issue the permit, the permit will be forwarded to the permit applicant, along with a transmittal letter to notify of the DEPARTMENT's decision. Copies of issued permits are transmitted to EPA in accordance with the schedule contained in Section 8.0 of this AGREEMENT.

4.08 Termination, Modification, Revocation and Reissuance of Permits

1. *Termination.* The DEPARTMENT shall notify EPA whenever it intends to terminate an issued APDES permit.
2. *Modification, Revocation and Reissuance.* The DEPARTMENT shall transmit to EPA a copy of any permit that it proposes to modify or revoke and reissue with the proposed changes clearly identified. The procedures in Section 4.03 shall be followed with respect to modifications by the DEPARTMENT of any issued permit and, for purposes of this AGREEMENT, each permit proposed to be modified shall follow the same procedures as a new permit, except for permits which undergo minor modifications, as described 18 AAC 83.145. When the DEPARTMENT makes a determination to revoke a permit, the DEPARTMENT will notify EPA.
- 3.

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the DEPARTMENT makes a determination to suspend or revoke a permit, in whole or in part, the DEPARTMENT will notify EPA.

4.09 Major Discharger List

The DEPARTMENT and EPA will be responsible to input current data into ICIS-NPDES on the major facilities each agency is responsible for in order for EPA to generate a major dischargers list.

1. A domestic major discharger is a facility mutually defined by the DEPARTMENT and EPA as a major discharger based on a design treatment plant flow of at least 1.0 MGD, an approved Pretreatment Program, a high potential for violation of water quality standards, or poses a potential or actual threat to human health or the environment.
2. A non-domestic major discharger is a facility mutually defined by the DEPARTMENT and EPA as a major discharger based on the *APDES Permit Rating Work Sheet* that is the same as EPA's NPDES Permit Rating Work Sheet, plus any additional dischargers that, in the opinion of the DEPARTMENT or EPA, have a high potential for violation of water quality standards.

4.10 NPDES Facilities on Public Notice

An EPA-drafted NPDES permit on public notice at the time authority over that facility is transferred to the DEPARTMENT will remain under the jurisdiction of EPA. EPA will preside over the public hearing, if scheduled, close the public review period, prepare a response to comments, and prepare a final permit for the DEPARTMENT to issue. Appendix E lists EPA's permit issuance schedule for calendar years 2007 and 2008 and identifies permits that may be on public notice at the time of program approval.

4.11 Administrative or Court Action

If the terms of any permit, including any permit for which review has been waived by EPA, are affected in any manner by an administrative or court action, the DEPARTMENT shall immediately transmit to EPA a copy of the permit with changes identified and shall allow for EPA to make written objections to the changed permit in accordance with Section 4.03. For purposes of this paragraph only, 'changed permit' shall replace 'draft permit' in Section 4.03.

4.12 Variances

The DEPARTMENT will conduct an initial review of all requests for fundamentally different factors variances; requests for variances under CWA §§301(c), (g), and (k) and 316(a); and for modifications to federal effluent limitations established under CWA §302 submitted on or after the date of authorization of the APDES Program by EPA.

1. The DEPARTMENT may deny or approve a request for a variance under CWA §§301(k) or 316(a) after EPA has concurred with the proposed decision.
2. The DEPARTMENT may deny a request for a variance under CWA §§301(c) or (g) or §302, or for fundamentally different factors. Such determination shall be forwarded to the requester and EPA. If the DEPARTMENT determines that factors exist that may warrant a variance, the request and the DEPARTMENT's recommendation for approval shall be sent to EPA. If EPA denies the variance request, the DEPARTMENT shall notify the applicant. If EPA approves the variance request, the DEPARTMENT will prepare a draft permit to incorporate the variance.

Deleted: Within thirty (30) days of EPA's receipt of the request and recommendation, EPA shall deny or approve the variance request and inform the DEPARTMENT of its decision.

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4.13 Appeals

1. EPA will retain responsibility over permit appeals that are pending on the date of the APDES Program approval. In the event that a permit appeal remains unresolved at the time the federally-issued permit expires, the DEPARTMENT will assume jurisdiction over the appeal, unless the DEPARTMENT and EPA agree that a particular matter should first be resolved by EPA.
2. The DEPARTMENT will provide EPA with a copy of all settlements and administrative decisions that impact the DEPARTMENT's ability to implement the APDES Program in accordance with federal requirements.

4.14 **Procedures to Transfer EPA-issued NPDES Permits to DEPARTMENT-issued APDES Permits**

1. EPA will retain permitting and compliance and enforcement authority for EPA-issued permits for facilities located within the Denali National Park and Preserve, facilities located in Indian Country, facilities operating outside state waters (three miles offshore), and for facilities granted a CWA §301(h) waiver (Appendix A).
2. Upon program approval, permitting and compliance authority for NPDES permits will transfer to the DEPARTMENT in accordance with the transition schedule in Appendix C of this AGREEMENT. Current EPA-issued NPDES permits transferred to the DEPARTMENT become APDES permits. will remain in effect and enforceable under state law [18 AAC 83.155(f)] until such time as the DEPARTMENT takes action. An APDES permit issued by the DEPARTMENT replaces the state CWA §401 certification and/or the state-issued permit, as applicable.
3. An administratively extended EPA-issued permit becomes a DEPARTMENT administratively extended permit at the time of program approval [18 AAC 83.155(f)] and transfer of authority over the permit per the schedule in Appendix C.

Section 5.0 Pretreatment Program

5.01 General

This Section defines DEPARTMENT and EPA responsibilities to establish, implement, and enforce the National Pretreatment Program, pursuant to CWA §§307 and CWA §402. In general, the DEPARTMENT will apply and enforce the pretreatment regulations as required by 40 CFR Part 403, and EPA will oversee DEPARTMENT Pretreatment Program operations consistent with 40 CFR Part 403 regulations and this AGREEMENT.

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The DEPARTMENT will have authority to implement the Pretreatment Program upon approval and will commence implementation of the Pretreatment Program per the schedule in Appendix C. As the DEPARTMENT issues, reissues, or modifies permits in accordance with Section 4.0 of this AGREEMENT, the DEPARTMENT will include in those issued, reissued, or modified permits appropriate pretreatment conditions.

After permitting, compliance, and enforcement authority of the Pretreatment Program is transferred to the DEPARTMENT in accordance with the schedule in Appendix C, in lieu of EPA, the DEPARTMENT will serve as:

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1. The 'control authority' for those industrial users who introduce pollutants into a POTW without an approved Pretreatment Program.
2. The 'approval authority' for a POTW that is required to have a Pretreatment Program.

5.02 Program Responsibility

Subject to the schedule in Appendix C and EPA's oversight and enforcement authority, and with the exception of facilities that EPA retains legal authority over [including the Municipality of Anchorage POTW (John M. Asplund)], the DEPARTMENT will:

1. Enforce against discharges prohibited by 40 CFR §403.5 (Prohibitive Standards).
2. Seek civil and criminal penalties and injunctive relief (including a temporary restraining order), as appropriate, for noncompliance by a POTW with pretreatment conditions incorporated into the POTW permit and for noncompliance with National Pretreatment Standards by Industrial Users (IUs), as set forth in 40 CFR §403.8(f)(1)(vi).
3. Review, approve, or deny a POTW Pretreatment Program in accordance with the procedures at 40 CFR §§403.8, 403.9 and 403.11. Review and approve program modifications, as specified in 40 CFR §403.18.
4. Incorporate POTW Pretreatment Program conditions in a permit issued to a POTW, as required in 40 CFR §403.8 and CWA §402(b)(8); require compliance by a POTW with the incorporated permit conditions; and require compliance by IUs with National Pretreatment Standards.
5. Require POTWs to develop and enforce local limits, as necessary, as set forth in 40 CFR §403.5(c).

6. Develop and enforce local limits, [including BMPs](#) as necessary, where there are categorical users discharging to a POTW without an approved Pretreatment Program.
7. Require industrial reports, as outlined in 40 CFR §403.12.
8. Ensure continuing compliance:
 - a) of a POTW with pretreatment conditions incorporated into the POTW permit through review of monitoring reports submitted to the DEPARTMENT by the POTW, as required by 40 CFR §403.12, and
 - b) by IUs with National Pretreatment Standards through the review of self-monitoring reports submitted to the POTW or to the DEPARTMENT by the IUs, as required by 40 CFR §403.12.
9. Carry out inspection, surveillance, and monitoring procedures that will determine, independent of information supplied by the POTW, compliance or noncompliance by the POTW with pretreatment conditions incorporated into the POTW permit.
10. Carry out inspection, surveillance, and monitoring procedures that will determine, independent of information supplied by the Significant Industrial Users (SIUs), whether a representative sample of the SIUs are in compliance with National Pretreatment Standards.
11. As specified in Section 5.05 of this AGREEMENT, review and recommend approval or denial to EPA of requests for Fundamentally Different Factors variances submitted by an IU in accordance with the criteria and procedures set forth in 40 CFR §§403.7, 403.9, and 403.11 and enforce related conditions in the POTW's APDES permit.
12. Review and, as appropriate, approve POTW requests for authority to modify categorical pretreatment standards to reflect removal of pollutants by a POTW in accordance with 40 CFR §§403.7, 403.9 and 403.11.
13. Identify a POTW required to develop a Pretreatment Program in accordance with 40 CFR §403.8(a); notify the POTW of the need to develop a POTW Pretreatment Program; and, provide technical and legal assistance to a POTW to develop a Pretreatment Program. In the absence of a POTW Pretreatment Program, the DEPARTMENT shall carry out the activities set forth in 40 CFR §403.8(f)(2).
14. Sample and analyze influent and effluent of a POTW to identify, independent of information supplied by the POTW, compliance or noncompliance with pollutant removal levels set forth in the POTW permit.
15. Investigate evidence of violations of pretreatment conditions set forth in the POTW permit by taking samples and acquiring other information, as needed.

5.03 National Pretreatment Standards Categorical Standards ~ 40 CFR §403.6(a)

Pursuant to 40 CFR §403.6(a), the DEPARTMENT shall review requests from IUs for industrial category or subcategory determinations received within sixty (60) days after the effective date of a National Pretreatment Standard for a subcategory under which an IU believes itself to be included. The DEPARTMENT will prepare a written determination and justification as to whether the IU does or does not fall within that

particular subcategory. The DEPARTMENT shall forward its findings, a copy of the request, and necessary supporting information to EPA for concurrence. If EPA does not modify or object to the DEPARTMENT's proposed findings within sixty (60) days after receipt thereof, the DEPARTMENT will take agency action to approve or deny the request.

5.04 Removal Credits and POTW Pretreatment Program Approvals ~ 40 CFR §403.7

Pursuant to 40 CFR §403.7, the DEPARTMENT shall review and approve a POTW application for removal credits for IUs who are or may be subject to National Pretreatment Standards in the future. The DEPARTMENT findings, the application, and supporting information shall be submitted to EPA for review. No removal credits request shall be approved by the DEPARTMENT if, during the thirty (30) day (or extended) evaluation period provided for in 40 CFR §403.11(b)(1)(ii) and any hearing held pursuant to 40 CFR §403.11(b)(2), EPA objects in writing to the approval of such a submission, per 40 CFR §403.11(d).

5.05 Variances from Categorical National Pretreatment Standards for Fundamentally Different Factors (FDF) ~ 40 CFR §403.13

Pursuant to 40 CFR §403.13, the DEPARTMENT will make an initial finding on all requests from IUs for variances from categorical National Pretreatment Standards for fundamentally different factors (FDFs), and in cases where the DEPARTMENT supports the variance, submit its findings, the FDF request, and supporting information to EPA for concurrence. The DEPARTMENT will not grant a FDF request until written concurrence has been received from EPA. The DEPARTMENT can deny requests for FDF without EPA concurrence.

5.06 Effective Integration of Pretreatment Enforcement Activities into the APDES Program

1. The DEPARTMENT's enforcement response procedures and time frames will be consistent with EPA's. Response procedures include reporting all regulated POTWs (including minor POTWs with approved Pretreatment Programs) on the quarterly noncompliance report (QNCR) when reportable noncompliance and significant noncompliance criteria (SNC) are met. The procedures will include taking appropriate enforcement action when a POTW fails to submit approvable Pretreatment Programs, has violations of pretreatment requirements, or fails to submit timely reports. The DEPARTMENT will initiate enforcement actions against a POTW for failure to adequately enforce against its IUs. The DEPARTMENT will ensure that the POTWs comply with the public participation requirements of 40 CFR Part 25 in the enforcement of National Pretreatment Standards. These procedures shall include provision for at least annual public notification in a newspaper(s) of general circulation that provides meaningful public notice within the jurisdiction(s) served during the previous 12 months, were in significant noncompliance with applicable Pretreatment requirements in accordance with 40 CFR 403.8(f)(2)(viii). Where a POTW is not the primary control authority, the DEPARTMENT will be directly responsible to have the

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procedures in place for categorical and significant non-categorical IUs in accordance with 40 CFR §403.8(f)(2). The DEPARTMENT will use the same compliance and enforcement procedures it uses for direct dischargers.

2. The DEPARTMENT will take appropriate action against a permittee with a Pretreatment Program that is in noncompliance with 40 CFR Part 403, such as:
 - a) failure to meet milestones in enforceable schedules for submitting a required local Pretreatment Program;
 - b) violations of effluent limits; and,
 - c) delinquent POTW pretreatment reports.

Enforcement actions against a POTW will be consistent with the criteria and time frames for the APDES Program.

5.07

5.08 Miscellaneous

Nothing in this AGREEMENT is intended to affect any pretreatment requirement, including any standards or prohibitions, established by state or local law, as long as the state or local requirements are no less stringent than any set forth in the National Pretreatment Program or other requirements or prohibitions established under the CWA or federal regulations.

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Section 6.0 Compliance Monitoring

The DEPARTMENT and EPA will implement the principles of the *EPA / State Agency Agreement on Compliance Assurance Principles* (May 1997) to coordinate their respective compliance assurance and enforcement planning efforts to complement the Performance Partnership Agreement process.

In accordance with the *National Program Managers' Guidance* (June 2005 or as updated), in conjunction with the Region 10 Strategic Plan (most current), and as negotiated via the Performance Partnership Agreement, the DEPARTMENT agrees to maintain a vigorous program to identify noncompliance and initiate timely, appropriate, and effective actions to return the discharger to compliance. Discharges endangering public health shall receive immediate and paramount attention.

For purposes of this AGREEMENT the term “compliance monitoring” shall refer to all efforts to assure full compliance with APDES permit conditions and program requirements. These efforts include DMR, report, and file review; complaint response; inspections; and inspection follow-up. Compliance monitoring will focus on discharges to waters of the United States for all activities covered by the APDES Program, including facilities authorized to discharge under an individual or general permit, indirect discharges to a POTW, and unpermitted discharges. Compliance monitoring is in accordance with the priorities and time frames for compliance tracking, as established in this AGREEMENT and as further negotiated through the Performance Partnership Agreement. All compliance monitoring activities shall be undertaken in such a manner that compliance is assured in a timely manner, and if required to achieve compliance, will lead to timely, appropriate, and effective formal enforcement actions, as outlined in Section 7.0 of this AGREEMENT. The DEPARTMENT will operate a timely and effective compliance monitoring system including entry of required data to ICIS-NPDES where batch uploads will occur at a minimum of every 14 days and/or manual data entry into ICIS-NPDES within 14 days of receipt of the data or an event occurrence.

6.01 Compliance Review

1. The DEPARTMENT requires a permittee to use DEPARTMENT approved DMR formats for all APDES facilities.
2. 
3. The DEPARTMENT will conduct timely and substantive review and maintain complete records of all material relating to the compliance status of an APDES permittee including DMRs, Compliance Schedule Reports, Compliance Inspection Reports, enforcement documents, and any other reports that a permittee may be required to submit under the terms and conditions of an APDES permit, state certification of an NPDES permit, approved Pretreatment Program (when applicable), state administrative actions, or state court order.
4. The DEPARTMENT will evaluate a permittee's compliance status based on the review of material submitted, as well as results of a site inspection, if conducted. The evaluation will be uniform and consistent and take into account the frequency,

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severity, circumstances, and analytical error to determine the appropriate enforcement response to noncompliance.

6.02 Facility Compliance Inspections

1. *General.* The DEPARTMENT will conduct field activities to determine the status of compliance with permit and pretreatment requirements, including sampling and nonsampling inspections. The different types of compliance inspections are described in the Program Description, Section 9.1.4 and will be conducted in accordance with EPA's *NPDES Compliance Inspection Manual* (July 2004) or any subsequent revisions thereto, 40 CFR §123.26(d), the DEPARTMENT's Inspection Ranking Model (December 2003 or as updated), and the Performance Partnership Agreement.
2. *Inspections.* The DEPARTMENT and EPA will, as part of the Performance Partnership Agreement, define the scope of compliance audits and inspections to be undertaken by the DEPARTMENT. For the purposes of this AGREEMENT, a 'compliance inspection' includes an evaluation inspection, performance audit, sampling inspection, biomonitoring inspection, and a multi-media inspection that includes NPDES and/or pretreatment management components. In addition:
 - a) The DEPARTMENT will give EPA adequate notice and opportunity to participate in its inspection activities. As agreed to in the Performance Partnership Agreement, the DEPARTMENT will inform EPA of the inspections it intends to conduct in the coming year. The DEPARTMENT will update ICIS-NPDES with inspection and enforcement results for inspections the DEPARTMENT conducts.
 - b) EPA will inform the DEPARTMENT of its plans to conduct an inspection of a facility it retains authority over, as well as an inspection of a state APDES permitted facility. EPA and the DEPARTMENT will negotiate on a case-by-case basis which agency will follow up on any enforcement action as a result of an EPA inspection of a state APDES facility. EPA will provide the DEPARTMENT with notice before a joint or independent inspection is conducted to allow time for the DEPARTMENT to participate in the inspection, except for confidential criminal program inspections where EPA will not provide the DEPARTMENT notice. EPA will enter into ICIS-NPDES inspection information and its enforcement response for inspections EPA conducts.
3. *Inspection Schedules.* The DEPARTMENT and EPA will develop targets in the Performance Partnership Agreement for the number of compliance inspections to be performed annually by the DEPARTMENT. The targets may be modified with the concurrence of the DEPARTMENT and EPA. The DEPARTMENT's goal is to inspect all major facilities annually in accordance with 40 CFR 123.26(e)(5). The DEPARTMENT's goal is to inspect minor facilities at least once every five years. The DEPARTMENT will furnish EPA with an estimate of the number of other compliance inspections to be conducted during the year. The DEPARTMENT will schedule additional inspections using the DEPARTMENT's Inspection Ranking Model (December 2003 or as updated) as a guide to prioritize inspections. The DEPARTMENT reserves the right to initiate an inspection based

on threats to human health or the environment. The DEPARTMENT and EPA agree to negotiate alternative inspection schedules, via the Performance Partnership Agreement and based on the Inspection Ranking Model, to allow for the substitution of two minor facility inspections for one major facility inspection when a major facility has demonstrated long-term permit compliance.

4. *Reporting Schedule.* The DEPARTMENT will forward to EPA the reports of all compliance and sampling inspections of all permittees within sixty (60) days of the date of the inspection. When EPA solely conducts an inspection on an APDES or NPDES facility, EPA will forward a copy of the inspection report to the DEPARTMENT within sixty (60) days from the date of the inspection, except for inspection reports which EPA considers enforcement confidential. In such cases, EPA will inform the DEPARTMENT of its intent to withhold the inspection report.
5. *Facility Follow-up.* The DEPARTMENT will provide timely inspection follow-up. The DEPARTMENT will conduct an exit interview with the facility representative, informing the facility of significant issues, and will generally provide written follow-up to the facility within 30 days of the inspection or 45 days if compliance samples were collected.

- Deleted: major
- Deleted: thirty (30)
- Deleted: or within 45 days after the inspection if compliance samples were collected to allow time to analyze the samples and interpret the results.
- Deleted: thirty (30)
- Deleted: (or within 45 days if compliance samples were collected)
- Deleted: criminal program inspections
- Deleted: that a criminal investigation is ongoing at
- Deleted: facility

6.03 Compliance Tracking

1. In accordance with the program description, this agreement, and as required in 40 CFR 123.26, the DEPARTMENT will operate a compliance tracking system capable of determining that:
 - a) self-monitoring reports required by permit and/or pretreatment management requirements are submitted in a timely manner;
 - b) submitted reports are complete and accurate;
 - c) permit conditions and/or pretreatment management requirements (when applicable) are met; and
 - d)
 - e) the data are accurately entered into ICIS-NPDES in accordance with the Performance Partnership Agreement.
2. The DEPARTMENT's DROPS database will track the submittal of all reports on date-related permit conditions or other schedules in effect pursuant to the permit (i.e., required reports, Notices of Violation, Administrative Orders, Consent Agreements, court orders, etc.). The DEPARTMENT will conduct a timely and substantive review of all date-related permit conditions and reports and will consider possible enforcement actions for failure to submit required reports.
3. EPA will be responsible for entering data into ICIS-NPDES for the facilities it retains authority over (Appendix A).

- Deleted: Performance Partnership Agreement
- Deleted: the permittee is in full compliance with all permit conditions; and

6.04 Miscellaneous Compliance Activities

1. *Citizen Complaint and Follow-up.* The DEPARTMENT shall maintain procedures to receive and ensure proper consideration of information submitted by the public about alleged APDES violations and maintain a system to track and evaluate the complaints received from the public. Public complaints received by EPA shall be referred to the DEPARTMENT as soon as reasonably possible. The DEPARTMENT shall maintain either a physical or electronic record of the initial contact, assignment, investigation, and final disposition of APDES related complaints received from the public. This record shall be made available to EPA and the public pursuant to applicable state and federal law.
2. *Information Requests.* Whenever EPA or the DEPARTMENT requests information concerning a specific discharger and the requested information is available from the files, that information will be provided to the requesting agency within a reasonable time.
3. *Laboratory Quality Assurance.* The DEPARTMENT will ensure that laboratories serving the wastewater treatment facilities in Alaska comply with the Discharge Monitoring Report-Quality Assurance (DMR-QA) Program. The DEPARTMENT will review and approve a laboratory's quality assurance plan.
4. *Emergency Pollution Incidents.* Upon receipt of any information of any actual or threatened pollution incident that may result in endangerment to human health or the environment, a party to this AGREEMENT in receipt of such information shall immediately notify by telephone the other party to this AGREEMENT of the incident (i.e., the DEPARTMENT notifies EPA, and EPA notifies the DEPARTMENT).

Deleted: *Independent Inspection Capability.*
The DEPARTMENT shall have inspection and surveillance procedures to identify compliance or noncompliance independent of permittee supplied information.

Section 7.0 Enforcement

7.01 Timely Enforcement Responsibility

1. *Enforcement Action Against Violators.* Consistent with the DEPARTMENT's *Enforcement Manual* (October 2005), and the *Enforcement Response Guide* (June 2006), the DEPARTMENT is responsible, subject to EPA's oversight and enforcement authority, to take timely and appropriate enforcement action against persons in violation of compliance schedules, effluent limitations, all other permit conditions, a discharger without a permit, and all other APDES Program requirements. The DEPARTMENT is responsible to take timely and appropriate enforcement action against an IU in violation of pretreatment requirements, except in situations where a POTW with an approved Pretreatment Program has taken timely and appropriate enforcement action against the IU. This includes violations detected by the DEPARTMENT employees or assignees, as well as through other information provided to the DEPARTMENT. This responsibility encompasses violations whether detected by the DEPARTMENT or EPA. The DEPARTMENT understands, supports, and agrees to employ the spirit of the EPA CWA penalty policy, as established in the *Interim Clean Water Act Settlement Penalty Policy* (March 1, 1995). EPA will supply the DEPARTMENT with a copy of any subsequent additions or revisions. The DEPARTMENT agrees to implement the enforcement procedures described in the Program Description, Section 9.0 of the APDES Program application; the Performance Partnership Agreement; and, appropriate state and federal statutes, regulations, and policies. Deleted: Performance Partnership Agreement, the

2. *Enforcement Procedures.* The DEPARTMENT's enforcement program will follow procedures consistent with the principles in the DEPARTMENT's *Enforcement Manual* (October 2005). Procedures will include, but are not limited to, the ability to:
 - a) Track the timeliness of permittee program submissions and the permittee's compliance with compliance schedules.
 - b) Review DMR compliance data from permittees and all compliance reporting requirements of the pretreatment monitoring programs to determine the level and frequency of all violations and to evaluate instances of noncompliance by all major and minor permittees.
 - c) Review DMR compliance data and apply the Technical Review Criteria to determine Significant Non Compliance (SNC).
 - d) Review all inspection reports to determine what, if any, enforcement action may be necessary, subject to EPA's oversight and enforcement authority. All DEPARTMENT and EPA inspection results are entered into ICIS-NPDES. Deleted: and the Performance Partnership Agreement.
 - e) Apply initial compliance and/or escalated formal enforcement to address identified violations according to specific time frames, as specified in the *National Program Managers' Guidance* (June 2005) and the DEPARTMENT's *Enforcement Response Guide* (June 2006). Deleted: , as negotiated in the Performance Partnership Agreement.

f) Provide to EPA a copy of any enforcement follow-up when issued, ranging from Compliance Letters to administrative and judicial actions.

Deleted: action when issued

g) Maintain a chronological summary of all violations.

3. For violations which endanger or cause damage to public health or the environment, the DEPARTMENT shall issue a complaint for injunctive relief (or temporary restraining order) under AS 46.03.765 or shall take other appropriate enforcement action which may include, but not be limited to, an order, pursuant to AS 46.03.820, to effect the immediate correction of the violation. Such orders shall be issued as soon as possible when the DEPARTMENT makes a determination that the condition or activity is of a nature which, if not abated, will endanger or cause damage to public health or the environment.
4. The DEPARTMENT shall keep records to demonstrate that:
 - a) enforcement procedures result in appropriate initial and follow-up enforcement actions that are applied in a uniform, consistent, and timely manner;
 - b) formal enforcement actions clearly define what the permittee is expected to do by a reasonable certain date; and,
 - c) the assessment of a civil penalty, when appropriate, is based on consideration of established factors and is an amount appropriate to the violation.
5. The DEPARTMENT, as set forth in this AGREEMENT, in accordance with 40 CFR 123.45, will provide EPA with information of the compliance status of facilities, enforcement activities completed, and cases filed in court.

Deleted: The DEPARTMENT, as set forth in the Performance Partnership Agreement and based on information required to be tracked in ICIS-NPDES, will provide EPA with information of the compliance status of facilities, enforcement activities completed, and cases filed in court.

7.02 EPA's Oversight and Enforcement Authority

1. This AGREEMENT is not meant to restrict or limit EPA's oversight and enforcement authorities under the CWA. Any discussion of EPA or state roles and responsibilities is intended to guide EPA and DEPARTMENT personnel to carry out an effective partnership, but is not meant to make the DEPARTMENT EPA's agent for purposes of enforcement, or to restrict or limit EPA's direct enforcement authority under the CWA. Thus, EPA reserves the right to bring federal enforcement action under the CWA in response to any violation of the CWA.
2. In particular, if EPA determines that the DEPARTMENT has not taken timely enforcement action against a violator and/or that its enforcement action has not been appropriate, EPA may proceed with any or all enforcement options available under CWA §309. EPA generally will not proceed with federal civil enforcement until the DEPARTMENT has been given at least thirty (30) days notice to take appropriate enforcement action. Such notification will be made through a written communication to the COMMISSIONER. Notwithstanding the above, nothing shall be construed as limiting EPA's authority under CWA §§309 and 504.
3. This AGREEMENT does not create any rights in law or equity for any person not a party to this AGREEMENT. Any failure by EPA or the DEPARTMENT to follow any provision(s) of this AGREEMENT shall not affect the validity of any inspection or enforcement action and shall not constitute a defense to any violation of the CWA.

4. The DEPARTMENT may request EPA to initiate federal enforcement action when the DEPARTMENT has been unable to achieve compliance through state remedies.
5. The DEPARTMENT may request EPA to participate in conferences and/or discussions in the pursuit of enforcement actions against federal facilities which may lead to formal filing of an enforcement action by the DEPARTMENT against a federal facility.

7.03 Appropriate Involvement of Department of Law / Attorney General Office

1. The DEPARTMENT and the Department of Law (DOL) have established procedures for the routine coordination of enforcement cases, including notification of proposed enforcement actions and coordination of general time frames for actions from case referral to filing. The DEPARTMENT shall maintain procedures to assure that coordination with the DOL results in:
 - a) timely review of initial referral packages;
 - b) satisfactory settlement of cases, as appropriate;
 - c) timely filing and prosecution of well-prepared referral cases; and,
 - d) prompt action where dischargers violate consent orders.
2. As a general rule, the DEPARTMENT's cases should proceed from referral to filing within ninety (90) days.
3. The DEPARTMENT will implement internal procedures to notify and consult with the DOL on individual cases arising throughout the year.

7.04 Enforcement Miscellaneous

1. The DEPARTMENT commits to not opposing intervention-by-right on the basis that the intervenor's interest is adequately represented by the DEPARTMENT.
2. The DEPARTMENT will not oppose intervention in the state enforcement process by any citizen when permissive intervention may be authorized by statute, rule, or regulation.
3. Nothing in this AGREEMENT should be construed to constitute or create a valid defense to regulated parties in violation of environmental statutes, regulations, or permits.

Section 8.0 Reporting and Transmittal of Information on APDES Regulated Facilities

8.01 DEPARTMENT to EPA

Table 1. DEPARTMENT to EPA Responsibilities

The DEPARTMENT will transmit the following documents to EPA when indicated:

1. State certification of NPDES permits <u>that EPA retains legal jurisdiction over that discharge to State waters.</u>	Draft certification prior to public notice. Final certification at time of permit issuance.	Deleted: Deleted: EPA permanently retains jurisdiction over (such as facilities issued a CWA 301(h) waiver).
2. State certification of an NPDES permit EPA retains jurisdiction over until authority is transferred to the DEPARTMENT.	<u>Draft certification prior to public notice. Final certification at time of permit issuance.</u>	Deleted: As negotiated in the annual Performance Partnership Agreement and in accordance with the schedule in Appendix C
3. One copy of all permit applications, draft permits and permit modifications, including fact sheets, and as applicable, new source/new discharger determination, except those for which EPA has waived review.	When transmitted to the applicant and when placed on public notice	
4. One copy of an applicant's NOI to be covered by a general permit.	Upon request and within 15 days of request	
5. One copy of all APDES-related public notices, except those for which EPA has waived review.	As issued	
<u>6. Copies of all permit application and public notices for which EPA has waived review.</u>	<u>Upon request</u>	
6. One copy of the written comments received, hearing records, and the DEPARTMENT's response to comments on draft permits, except for those EPA has waived review.	When draft response to comments is completed	
7. One copy of the proposed permit and revised fact sheet to reflect changes to the proposed permit, if applicable, except those permits EPA waived review of, or EPA has reviewed and approved a draft permit that has not changed as a result of public comment.	Upon request or when transmitted to the applicant for an individual permit or when posted on DEPARTMENT web page for a general permit	Deleted: final Deleted: final Deleted: , except those for which EPA has waived review.
8. One copy of all issued permits and documentation that are related to or affect authorization of the permit <u>including all minor and major modifications.</u>	As issued	Deleted: One copy of major facility inspection reports and a copy of letters transmitting the reports to permittees.
9. A list of facilities scheduled for a compliance inspection, including the inspection dates.	As negotiated in the annual Performance Partnership Agreement	Deleted: 30 Deleted: or within 45 days if samples were collected
<u>10. Copies inspection reports and transmittal letters for facilities authorized under APDES (both majors and minors).</u>	Within <u>60</u> days of completion of inspection.	Deleted: needed Deleted: Copies of compliance inspection reports, report forms, data and transmittal letters to minor permittees.
11. Proposed revisions to the schedule of compliance inspections.	As <u>revisions occur.</u>	
12.		Deleted: Upon request

13. Input of required data into ICIS-NPDES to enable EPA to prepare narrative reports for major permittees, as specified in 40 CFR §123.45(a)	Quarterly
14. Input of required data in ICIS-NPDES to enable EPA to prepare a statistical summary report on the number of major permittees with two or more violations, as specified in 40 CFR §123.45(b)	Semi-annually at the same time as the 1st and 3rd quarter QNCRs (federal fiscal year)
15. Input of required data in ICIS-NPDES to enable EPA to prepare a statistical summary report on all non major dischargers listing the number of noncompliances, enforcement actions, and extensions of compliance deadlines, as specified in 40 CFR §123.45(c).	Annually within 60 days following the end of the federal fiscal year -- due November 30
16. Copies of all enforcement actions, <u>ranging from Compliance Letters to administrative and judicial actions for both major and minor facilities.</u>	As issued
17. Copies of the correspondence to carry out the Pretreatment Program, including: a. Categorical pretreatment determinations made under Section 5.03 b. Initial removal credit determinations made under Section 5.04 c. Initial determinations on pretreatment FDF under Section 5.05	As issued
18. When the DEPARTMENT is the control authority, copies of inspection reports of SIUs, reporting results from SIUs, noted SIU violations, and enforcement action against SIUs.	Within 30 days of inspection or receipt of information
19. <u>Identification</u> of any revisions to the APDES Program necessary to preserve compliance with new or revised federal NPDES program requirements and a timetable for completing such revisions.	Annually with the Performance Partnership Agreement
20. Notification of any DEPARTMENT, legislative, or court action that may affect the APDES Program.	Within 10 days when the DEPARTMENT becomes aware
21. Copies of court decisions/actions affecting the permit issuance, compliance, and enforcement process.	Within 15 days of receipt by the DEPARTMENT
22. Information of any situation posing a substantial endangerment to the health, welfare, or the environment resulting from the actual or threatened direct or indirect discharge of pollutants into waters of the United States.	Immediately

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Deleted: against major discharger violators of permit conditions and pretreatment requirements, including Administrative Orders, Processing for Judicial Action, and Consent Decrees.

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8.02 EPA to DEPARTMENT

Table 2. EPA to DEPARTMENT Responsibilities

EPA will transmit the following to the DEPARTMENT when indicated:

1. Copies of information pertaining to dischargers EPA retains jurisdiction over, including facilities located in Denali National Park and Preserve, facilities located in Indian Country, facilities operating outside state waters (three miles offshore), and facilities issued CWA §301(h) waivers, including: NOI, draft permit, fact sheet, Ocean Discharge Criteria Evaluation, public notice, hearing records, EPA's response to comments, and final issued permit.	When drafted	<p>Deleted: complete application,</p> <p>Deleted: written comments received,</p>
2. Copies of all NOIs and permit applications until authority is transferred to the DEPARTMENT for permits that fall under DEPARTMENT authority.	Within 15 days of receipt of information based on the transfer of authority schedule in Appendix C	
3. ▼	▼	<p>Deleted: Copies of all NPDES Pretreatment Program files not already transferred to the DEPARTMENT. EPA shall ensure that all files are complete prior to transfer to the DEPARTMENT.</p>
4. ▼	▼	
5. ▼	▼	
6. Copies of information regarding the Municipality of Anchorage (John M. Asplund) Pretreatment Program, including, annual reports, inspection reports (<u>excluding those which EPA considers enforcement confidential</u>), and enforcement actions.	As completed	<p>Deleted: Prior to 30 days of EPA's relinquishment of EPA primary jurisdiction in accordance with the schedule in Appendix C</p>
7. Copies of approval of a Pretreatment Program for a municipality under its jurisdiction [e.g. a facility with a CWA §301(h) waiver].	As issued	<p>Deleted: A list of compliance inspections EPA intends to conduct independently and jointly with the DEPARTMENT as part of its program oversight role.</p>
8. Notification to the DEPARTMENT of observed <u>deficiencies</u> resulting from EPA oversight inspections.	Within <u>60</u> days of inspection	<p>Deleted: Annually, as negotiated in the annual Performance Partnership Agreement</p>
9. Copies of all compliance inspection reports, report forms, data, and transmittal letters to permittees, <u>except those that EPA considers enforcement sensitive</u> or for those cases in which EPA is actively pursuing enforcement.	Within <u>60</u> days of inspection	<p>Deleted: Proposed revisions to the schedule of compliance inspections.</p>
10. Copies of all enforcement actions against violators, including letters, notices of violation, administrative orders, judicial filings, and settlements.	As issued	<p>Deleted: As needed</p>
11. Notification of the commencement of federal enforcement and copies of final actions.	As issued	<p>Deleted: violations</p>
12. Draft and final reviews of the APDES Program, including the Pretreatment Program, based on DEPARTMENT reports, meetings with DEPARTMENT officials, comments received from the public, and file audits.	As performed	<p>Deleted: 30</p>
13. ▼	▼	<p>Deleted: 30</p>
14. Copies of court decisions/actions affecting the permit issuance, compliance, or enforcement processes.	Within 15 days of receipt by EPA	<p>Deleted: Assistance to the DEPARTMENT in obtaining ICIS-NPDES retrievals and prompt notice of changes to ICIS-NPDES procedures.</p>
15. Notification of citizen complaints, <u>unless the complainant requests anonymity or that the complaint be held confidential.</u>	Upon receipt	<p>Deleted: As needed, 30 days in advance of change in ICIS-NPDES procedures</p>
16. ▼	▼	<p>Deleted: Draft and final or revised EPA laws that affect NPDES programs.</p>
		<p>Deleted: As EPA becomes aware</p>

Deleted: Draft and final or revised EPA guidance related to NPDES program implementation.

Deleted: As EPA becomes aware

8.03 Transfer of Files from EPA to State upon Program Approval

In accordance with a mutually agreed upon schedule pursuant to Appendix C, EPA will deliver to the DEPARTMENT all facility files requested by the DEPARTMENT. Permit files shall contain all relevant information pertaining to the issuance of the permit, as well as copies of all DMRs, compliance reports, enforcement actions, applicable pretreatment files, and other pertinent information and correspondence. For pending permit applications, files shall contain all relevant information including, but not limited to, application forms, correspondence, draft permits, public notices, fact sheets, statements of basis, and any other documents relating to the pending permit. EPA will ensure all files are complete prior to delivery to the DEPARTMENT.

Section 9.0 Program Review

The DEPARTMENT and EPA are responsible to assure that the APDES Program is consistent with all requirements of this AGREEMENT, the annual Performance Partnership Agreement, and applicable sections of the CWA and the regulations promulgated thereunder, including 40 CFR Parts 122-125 and 403. To fulfill this responsibility:

1. EPA shall review the information transmitted between the DEPARTMENT and EPA to assure that all the requirements of Section 8.0 of this AGREEMENT are met.
2. EPA shall meet with DEPARTMENT officials, ~~to review the DEPARTMENT's~~ data handling (including both manual and automated data processing), permit processing, compliance monitoring, and enforcement procedures.
3. The EPA officials shall meet with the DEPARTMENT, as requested by EPA, to conduct an audit which shall consist, in part, of examining in detail the DEPARTMENT files and documentation of selected facilities to determine whether:
 - a) permits are processed and issued consistently with federal requirements;
 - b) capability exists to discover permit violations when they occur;
 - c) the DEPARTMENT's Pretreatment Program is compliant;
 - d) the DEPARTMENT's compliance reviews are timely;
 - e) the DEPARTMENT's selection of enforcement actions is appropriate;
 - f) the DEPARTMENT's enforcement actions are both timely and effective; and,
 - g) the DEPARTMENT's public participation policies, practices, and procedures are satisfactory.

Deleted: as set forth in the Performance Partnership Agreement,

The DEPARTMENT shall be notified thirty (30) days in advance of the audit so that appropriate DEPARTMENT officials may be available to discuss with EPA individual circumstances and problems. A copy of the draft audit report shall be transmitted to the DEPARTMENT when available for DEPARTMENT review and comment prior to EPA's issuing a final audit report.

4. The DEPARTMENT shall keep EPA fully informed of any proposed legislative or court action which acts to amend, rescind, or repeal any part of the DEPARTMENT's authority to administer the APDES Program or which may affect its ability to implement the APDES Program. The DEPARTMENT agrees to monitor bills proposed in the Alaska Legislature and to promptly notify EPA of any legislative action which proposes to repeal or enact any statute, regulation, rule, directive, or policy, including the state water quality standards, which may affect implementation of the APDES Program as soon as the DEPARTMENT becomes aware of any such proposed action. Notification under this paragraph shall be given to the EPA Office of Water and Watersheds and the Office of Regional Counsel. EPA reserves the right to initiate procedures for withdrawal of approval of the APDES Program in the event that the Alaska Legislature enacts any legislation which is inconsistent with and less stringent than the CWA or the

regulations promulgated thereunder. The DEPARTMENT shall notify EPA prior to taking any action to:

- a) propose or effect any substantial amendment, rescission, or repeal of any statute, regulation, rule, directive, or policy which has been approved by EPA in connection with the APDES Program;
 - b) propose or enact any statute, regulation, rule, directive, or policy which affects the implementation of the APDES Program, including water quality standards; or
 - c) modify program approval documents.
5. If an amendment, rescission, or repeal of any statute, regulation, rule, directive, or policy described in paragraph 4.a) of this Section shall occur for any reason, including action of the Alaska Legislature or a court, the DEPARTMENT shall within ten (10) days of such event notify the REGIONAL ADMINISTRATOR and shall transmit a copy of the text of such revision to the REGIONAL ADMINISTRATOR.
 6. If there are revisions to the CWA and the regulations which implement it, the DEPARTMENT shall seek any amendments to its statutes, rules, or program authorization necessary to preserve and maintain compliance with NPDES program requirements within the shortest possible time frame, but in no event longer than the time frames set out in 40 CFR §123.62(e).
 7. EPA may initiate withdrawal proceedings under 40 CFR §123.64 on its own initiative or in response to a petition from an interested person alleging failure of the DEPARTMENT to comply with the requirements of 40 CFR Part 123, as set forth in 40 CFR §123.63. EPA shall notify the DEPARTMENT in writing of these inconsistencies or other deficiencies prior to the initiation of withdrawal proceedings. The DEPARTMENT shall respond in writing within thirty (30) days. EPA shall inform the DEPARTMENT in writing whether noted inconsistencies or deficiencies have been rectified. If the inconsistencies or deficiencies have not been corrected, EPA may proceed with withdrawal proceedings, pursuant to 40 CFR §123.64.
 8. Nothing in this AGREEMENT shall be construed to limit EPA's authority to take action under the CWA.
 9. Nothing in this AGREEMENT shall be construed to require the DEPARTMENT to take any action that is less stringent than or inconsistent with the CWA.
 10. Nothing in this AGREEMENT establishes an agency relationship or privity between EPA and the DEPARTMENT. No waiver of sovereign immunity is implied or assumed in this AGREEMENT.
 11. Nothing in this AGREEMENT shall be construed to constitute or create any rights or valid defenses to regulated parties in violation of an environmental statute, regulation, or permit, including, without limitation, any defense to an enforcement action taken by the DEPARTMENT or EPA.

Deleted: During the negotiation of the Performance Partnership Agreement, the DEPARTMENT and EPA shall determine whether revisions to the APDES Program are required as a result of any changes to the CWA and the regulations promulgated thereunder, as well as related guidance documents. Included in the Performance Partnership Agreement shall be a list of the revisions that have been made by the state as a result of that determination, or, if such revisions have not yet been made, a timetable for implementing such revisions.

Deleted: , within thirty (30) days of its determination,

Section 10.0 Computation of Time

In accordance with AS 01.10.080, in the computation of any period of time prescribed by this AGREEMENT, the day from which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is a holiday, in which case the period extends until the next day which is not a legal holiday.

Section 11.0 Approval and Effective Date

This Memorandum of Agreement shall take effect upon approval by the REGIONAL ADMINISTRATOR of the Environmental Protection Agency, Region 10.

In witness whereof, the parties execute this AGREEMENT:

FOR THE STATE OF ALASKA:

Kurt Fredriksson, Commissioner
Alaska Department of Environmental Conservation

Date

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

Ron Kreizenbeck, Acting Regional Administrator
EPA, Region X

Date