National Pollutant Discharge Elimination System

Memorandum of Agreement

Between State of Alaska and United States Environmental Protection Agency

Region 10

Final

October 29, 2008

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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 Results 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
MSGP	Multi-Sector General Permit
NOI	Notice of Intent
NPDES	National Pollutant Discharge Elimination System
POTW	Publicly Owned Treatment Works
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
SHPO	State Historic Preservation Office
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, this AGREEMENT) establishes policies, responsibilities, and procedures pursuant to 40 CFR Part 123 and defines the manner in which the National Pollutant Discharge Elimination System (NPDES) Program will be administered by the State of Alaska Department of Environmental Conservation (hereinafter, the DEPARTMENT) and reviewed by Region 10 of the United States Environmental Protection Agency (hereinafter, EPA). All additional agreements between the DEPARTMENT and EPA shall be in writing and are subject to review by the COMMISSIONER of the DEPARTMENT (hereinafter, the COMMISSIONER) and the REGIONAL ADMINISTRATOR of EPA (hereinafter, the REGIONAL ADMINISTRATOR). The DEPARTMENT will implement the APDES Program using the procedures, resources, and guidance documents described in the Program Description.

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

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

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

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

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

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

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

Section 2.0 Scope of Authorization

The COMMISSIONER and the REGIONAL ADMINISTRATOR agree that EPA has granted authority to the DEPARTMENT to administer the NPDES permitting, compliance, and enforcement programs for individual and general permits, as well as for the pretreatment and stormwater programs in Alaska. The DEPARTMENT does not have NPDES Program authority for facilities located in the Denali National Park and Preserve[1], facilities located in Indian Country, facilities operating outside state waters (three miles offshore), the nine (9) facilities with the CWA §301(h) waivers, or a biosolids management program as part of the APDES Program. EPA retains authority over those facilities the DEPARTMENT cannot seek authority over (Appendix A) and the biosolids management program.

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

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

Section 3.0 Program Responsibilities

3.01 DEPARTMENT Responsibilities

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

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

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

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

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

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

3.02 EPA's Responsibilities

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

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

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

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

3.03 Jurisdiction Over Permits

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

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

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

c) Retain the right to enforce state law at facilities with EPA-issued NPDES permits.

2. Upon program approval and in accordance with the transfer schedule in Appendix B, EPA shall:

   a) Retain permitting, compliance, and enforcement authority for facilities in Denali National Park and Preserve; facilities located in Indian Country; facilities operating outside state waters (three miles offshore); and facilities with the CWA §301(h) waivers. EPA shall suspend the issuance of NPDES permits for those activities subject to the approved APDES Program, except as provided in paragraph 10 of this Section. EPA shall retain authority over the biosolids management program.

   b) Retain full jurisdiction for permits for which an appeal has been filed at the time of program authorization until that matter is resolved. Upon resolution of the administrative or judicial challenge and in accordance with the transfer schedule in Appendix B, EPA will notify the DEPARTMENT and the permittee that jurisdiction over the permit has been transferred to the DEPARTMENT. EPA will make every effort to resolve these issues in a timely manner, and if requested by either EPA or the DEPARTMENT, meet to discuss issues pertaining to NPDES permits retained by EPA. The DEPARTMENT shall retain its rights under the CWA §401 to consider state certification to subsequent EPA permitting actions on these retained NPDES permits.

   c) Process appeals, modifications requests, and variance requests pertaining to permits issued by EPA and that EPA retains authority over. EPA will copy the DEPARTMENT on all correspondence and permitting decisions.

3. Upon program approval and notwithstanding the transfer schedule in Appendix B, EPA shall continue to work on specific permits identified in and negotiated via the Performance Partnership Agreement for the following circumstances:

   a) A permit where EPA has substantially completed the permitting process or concluded a public review period. Appendix F of this AGREEMENT lists EPA's permit issuance schedule and the permits that could be on public notice at the time of APDES Program approval. EPA will provide a final list to the DEPARTMENT of permits that EPA has substantially completed or that are on public notice at the time of program approval. Upon EPA's completion of the proposed final permit, the permit will be issued by the DEPARTMENT and authority over the permit, including compliance and enforcement, will be the responsibility of the DEPARTMENT. In certain cases, if mutually agreed to by EPA and the DEPARTMENT, the DEPARTMENT may prepare the proposed final permit from an EPA-drafted permit and issue the permit, which would otherwise be prepared by EPA.

   b) Permits where EPA and the DEPARTMENT agree that, due to work load issues and resources, EPA may perform the work up to drafting a proposed final permit. Upon EPA's completion of the proposed final permit, the

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

c) A facility where EPA has a pending or ongoing EPA enforcement action. EPA will complete the enforcement action for permits under active federal enforcement cases (administrative orders or formal referrals to the Department of Justice). The DEPARTMENT will assume permitting, compliance monitoring, and pretreatment responsibilities and take the lead on future enforcement actions when such facilities are transferred upon resolution of the enforcement action consistent with the schedule in Appendix B, subject to EPA's oversight and enforcement authority pursuant to the CWA §§402(d) and (i). As each EPA enforcement action is resolved, EPA will notify the DEPARTMENT and transfer any additional permit file materials at that time. EPA will make every effort to resolve these matters in a timely manner. Resolution of an enforcement action may be accomplished by:

   i. the permittee's compliance with the requirements of a compliance order, consent agreement, or court order resulting from the EPA enforcement action;
   ii. withdrawal of the action by EPA;
   iii. a court decision dismissing the action (in whole or in part); or
   iv. if agreed to by EPA, the imposition of an equivalent state enforcement action by the DEPARTMENT.

4. A current or EPA-administratively extended NPDES individual or general permit transferred to the DEPARTMENT in accordance with the schedule in Appendix B will remain in effect until the DEPARTMENT issues an APDES permit to replace it, per the procedures in 18 AAC 83.155(f). The DEPARTMENT-issued APDES permit will replace the state certification and state-issued permit, if one exists for the facility, upon issuance of the APDES permit.

5. A current or administratively extended NPDES individual permit transferred to the DEPARTMENT will remain in effect and be deemed an APDES permit. At the time authority of an individual permit is transferred from EPA to the DEPARTMENT, the DEPARTMENT will transmit an APDES permit cover sheet to the permittee that will replace the NPDES cover sheet. The cover sheet will include the: name of the permit, permit effective date, and DEPARTMENT telephone number and address for inquiries and where to send required information. At reissuance, a state-issued APDES individual permit will replace the transferred NPDES permit and state certification, if applicable.

6. A current or administratively extended NPDES general permit transferred to the DEPARTMENT will remain in effect and be deemed an APDES general permit. At the time authority is transferred from EPA to the DEPARTMENT, the DEPARTMENT will transmit an APDES general permit cover sheet to the permittees covered under the general permit that will replace the NPDES

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

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

Section 4.0 Permit Review and Issuance

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

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 final permit" means a document prepared after the close of the public comment and, when applicable, any public hearing. A "final permit' means the issued permit.

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 and becomes an APDES permit in accordance with the transfer schedule identified in Appendix B.

All expiring APDES permits for which timely and complete permit reissuance 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.

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 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 final permits. A proposed final 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 reviewed by EPA, EPA has objected to the draft permit,

there is significant public comment, or EPA requests in writing to review the proposed final permit. The Department will not proceed to issue a permit if there are unresolved EPA objections to the permit.

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. The DEPARTMENT will notify EPA, other federal agencies, state resources agencies, and interested persons via an electronic mailing list that a preliminary draft permit and associated documents are available for review on the DEPARTMENT's web page at the time a preliminary draft individual permit is transmitted to the applicant for a 10-day review, unless the review period is waived by the applicant.
4. 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 the 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.
5. Within forty-five (45) days of EPA's receipt of a draft individual permit, EPA will send to the DEPARTMENT written comments on, objections to, or recommendations with respect to the draft permit. The DEPARTMENT and EPA can mutually agree to extend this review period to provide EPA additional time. Upon the DEPARTMENT's request, EPA may agree to submit comments within a shorter time frame or EPA may notify the DEPARTMENT that no comments will be submitted on a specific permit. EPA will communicate to the DEPARTMENT as soon as possible during the forty-five (45) day review period if EPA knows there will be no written comments on, objections to, or recommendations on a draft permit.

   A notification of objection by EPA during the initial forty-five (45) day period need only set forth the general nature of the objection(s). If a general objection is filed within the forty-five (45) day period, EPA shall have the remainder of ninety (90) days from the date EPA received the draft permit to supply specific grounds for objection. Notwithstanding the foregoing, EPA and the DEPARTMENT may mutually agree to extend EPA's review time on a particular permit to the full ninety (90) days without filing a general objection during the initial forty-five (45) day period. Nothing in this agreement waives EPA's right to submit a general objection to the permit and request the full ninety (90) days to review a draft permit to provide a specific objection. EPA shall also send a copy of any comments, objections, or recommendations to the permit applicant.

The DEPARTMENT may proceed with the permit issuance process if 1) EPA does not make general comments, objections, or recommendations in writing or extend its review time as provided above within forty-five (45) 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.

6. The DEPARTMENT will notify EPA, other federal agencies, state resource agencies, and interested persons via an electronic mailing list that a preliminary draft general permit and associated documents are available for review at the time the DEPARTMENT transmits a preliminary draft general permit to current permittees when reissuing a permit or to appropriate industry trade organizations when developing a new general permit.
7. 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.
8. 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 proposed final permit must be based upon one or more of the grounds listed in 40 CFR §123.44(c).
   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).
9. 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 5 or 7 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 5 or 7 of this Section, as appropriate, afford to the public an opportunity to comment on the basis for the objection.

10. Within ninety (90) days of receipt by the DEPARTMENT of an objection by EPA, the DEPARTMENT or any interested person may request that a public hearing be held by EPA on the objection in accordance with 40 CFR §§123.44(e) and (f). 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.

11. If the DEPARTMENT does not submit a proposed final 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 issuance of an EPA-issued permit, authority to reissue the permit reverts to the DEPARTMENT.

12. 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.

13. Following the close of the public comment period on a draft permit, a proposed final permit will be prepared, a response to comments developed, and the fact sheet revised to reflect the proposed final permit. The DEPARTMENT may issue the permit without further review by EPA unless:

    a) the proposed final permit differs from the draft permit reviewed by EPA (unless the changes are insignificant, and EPA agrees that additional review is not needed);

    b) EPA has objected to such draft permit as outlined in paragraphs 5 or 7 and 8 of this Section; or

    c) significant public comments have been received.

14. If any condition of paragraph 13 of this Section is met, then the DEPARTMENT will send to EPA one copy of the proposed final permit, copies of the written public comments received, including hearing records, and a response to comments prepared under 18 AAC 83.120(o). EPA will within forty-five (45) days of receipt of the proposed final permit notify the DEPARTMENT and the permit applicant of any formal objections authorized under the CWA. The notification shall set forth in writing the general nature of the objection.

15. A copy of the final issued permit, fact sheet revised to reflect the issued permit, response to comments, and Ocean Discharge Criteria Evaluation, if applicable, shall be transmitted to EPA.

4.04 Waiver of Permit Review by EPA

1. On an annual basis, the DEPARTMENT will transmit to EPA and make available to the Services, Tribes, RCACs, and the public a three-year Permit Issuance Plan that will identify the permits the DEPARTMENT intends to issue during the upcoming three-year period. EPA waives the right to review, object to, or comment on the sufficiency of preliminary draft permits, draft permits, proposed final 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. The following does not include a waiver of receipt of all final permits issued or any notices required under Section 8.0 of this AGREEMENT:
   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 G;
   d) discharges of uncontaminated cooling water with a daily average discharge that exceeds 500 MGD;
   e) discharges from any major discharger (Appendix G);
   f) discharges from any discharger within any of the 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;
   i) discharges which may affect the waters of Indian Country in Alaska; and
   j) discharges which may affect waters of another nation.
2. With the exception of major discharges under a general permit, EPA waives its right to review the NOIs for minor discharges under a general permit.
3. EPA reserves the right to terminate the waivers in Section 4.04, in whole or in part, at any time. Any such termination shall be made in writing to the DEPARTMENT.
4. The foregoing waiver does not authorize the issuance of permits which do not comply with applicable provisions of federal laws, federal regulations, federal effluent guidelines, Alaska statutes, or Alaska regulations. The waiver shall not relinquish the right of EPA to petition the DEPARTMENT for review of any action or inaction.

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 or statements of basis, proposed final permits, and final 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 15, 18 AAC 83.115, and 18 AAC 83.120 [40 CFR §124.8. and 40 CFR §124.10, respectively].
3. The required public notice and comment procedures will be followed with respect to all permit modifications to final 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.
4. Notification of a final issued permit will be posted on the DEPARTMENT's web page and transmitted to persons who commented on the draft permit during the public review period or requested notification of the DEPARTMENT's final action.
5. 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.

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); State Historic Preservation Office (SHPO); 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 for review.
2. At the time the DEPARTMENT transmits the public notification, preliminary draft permit, fact sheet, and Ocean Discharge Criteria Evaluation, if applicable, to the National Marine Fisheries Services, the DEPARTMENT will identify when a permit includes a mixing zone established in essential fish habitat. The DEPARTMENT's mixing zone regulation calls for a detailed

analysis of most, if not all, of the same factors addressed in the federal essential fish habitat process, and that analysis will be included in the fact sheet for NMFS review and comment.

3. At the start of the public review period, the DEPARTMENT will notify the Services, SHPO, 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.
4. At the time the DEPARTMENT transmits the proposed final permit to the applicant for a 5-day applicant review period [18 AAC 83.115 (m)], the DEPARTMENT will notify the Services, SHPO, State Resource Agencies, and appropriate Tribes and RCACs that the proposed final permit, revised fact sheet to reflect the proposed final permit, and draft response to comments are available on the DEPARTMENT's web page for review. The documents will also be transmitted to EPA, except for those permits EPA has previously waived their right to review.
5. The DEPARTMENT will notify the Services, SHPO, State Resource Agencies, appropriate Tribes and RCACs, and anyone else who requested notification that the issued permit, the revised fact sheet reflecting the issued permit, and response to comments are available on the DEPARTMENT's web page.

4.07 Issuance of Permits or Notice to Deny

1. *Issue.* 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. A copy of the final issued permit will be transmitted to EPA in accordance with the schedule contained in Section 8.0 of this AGREEMENT.
2. *Deny.* If the final determination is to deny the permit, notice of intent to deny shall be given to EPA and the permit applicant.

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 or 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.

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. See Appendix G for the list of major facilities permitted in Alaska.

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 nondomestic 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 based on 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 F lists EPA's permit issuance schedule 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

There are several types of variances available under federal and state law. The DEPARTMENT is authorized to grant some kinds of variances but not others. The different types of variances, and the respective authority of the DEPARTMENT and EPA to address them, are spelled out in 18 AAC 83.160 and 40 CFR §124.62, respectively.

Because of the variety of variances, and the differences in how they should be processed, the DEPARTMENT will conduct an initial review of any request for a variance and shall also advise appropriate staff at EPA of the request. The DEPARTMENT and EPA will consult to determine the applicable review and approval process for the particular type of variance requested. The schedule for the staff consultation and for the substantive review process shall be negotiated by staff on a

case-by-case basis. All variances except those under the CWA §316(a) (applicable to thermal discharges) require approval by EPA.

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. The DEPARTMENT will assume jurisdiction over appeals on any permit issued by the DEPARTMENT, including a permit for which EPA has completed the proposed final permit.
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.
3. When the DEPARTMENT makes a determination to stay a permit, in whole or in part, the DEPARTMENT will notify EPA.
4. The DEPARTMENT will provide to EPA the results of any formal judicatory request.

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 the CWA §301(h) waivers (Appendix A).
2. Upon program approval and in accordance with the transfer schedule in Appendix B of this AGREEMENT, the DEPARTMENT will assume authority [subject to EPA's oversight and enforcement authority pursuant to CWA §§420(d) and (i)] for permitting, compliance, and enforcement activities for the APDES Program. A current EPA-issued NPDES permit transferred to the DEPARTMENT will serve as an APDES permit and will remain in effect and enforceable under state law [18 AAC 83.155(f)] until such time as the DEPARTMENT takes action. The terms and conditions of the transferred permit will be identical to the EPA-issued NPDES permit.
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 B.
4. Within thirty (30) days of transfer of a current or administratively extended permit from EPA to the DEPARTMENT, the DEPARTMENT will:
   a) Notify the permittee, with a copy to EPA, that authority to administer the permit has transferred to the DEPARTMENT and that the EPA-issued

NPDES permit will serve as an APDES permit and remain in effect along with the state-issued CWA §401 certification.

b) Send the permittee updated contact information for reporting requirements under the permit. (See Section 3.03 #5 and #6.)

c) Provide a new cover page to the permit that lists the date that the permit authority is transferred from EPA to the DEPARTMENT and the new permit number (if different). The permit expiration date will not change as a result of the permit transfer. (See Section 3.03 #5 and #6.)

5. An APDES permit issued by the DEPARTMENT will replace an EPA-issued NPDES permit and the state CWA §401 certification and/or a state-issued permit, as applicable.

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 the CWA §§307 and 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.

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 B. 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.

Upon program approval and in accordance with the transfer schedule in Appendix B, 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 Pretreatment Program. When authority to implement the Pretreatment Program is transferred to the DEPARTMENT in accordance with the schedule in Appendix B, in lieu of EPA, the DEPARTMENT will serve as:

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 B 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 (Prohibited Discharges).
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 the 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 is 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 §403.13 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 judicial 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 including when a POTW fails to submit an approvable Pretreatment Program, 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 and comply with enforcement procedures of Section 7.01 #2. 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 by the POTW of IUs which, at any time 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 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 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.

Section 6.0 Compliance Monitoring

The DEPARTMENT and EPA will implement the principles of the *EPA / State Agency Agreement on Compliance Assurance Principles* 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* (most current) and 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. A discharge endangering human 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. The DEPARTMENT will promptly review DMRs and other compliance information as they are submitted.
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, 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, EPA's *Clean Water Act NPDES Compliance Monitoring Strategy for the Core Program and Wet Weather Sources* (October 2007), National Program Managers' Guidance (most current), and the Performance Partnership Agreement.
2. *Inspections Schedules.* The DEPARTMENT and EPA will, as part of the Performance Partnership Agreement, define the scope of compliance inspections to be undertaken by the DEPARTMENT. For the purposes of this AGREEMENT, a 'compliance inspection' includes a compliance evaluation, compliance sampling, performance audit, biomonitoring, toxic sampling, diagnostic, reconnaissance, follow-up, construction site and industrial facility stormwater, municipal separate storm sewer system, combined sewer overflow, sanitary sewer overflow, and pretreatment program inspections. 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 an APDES facility. EPA retains the right to perform inspections of any permittee at any time but will typically notify the DEPARTMENT to give it an opportunity to participate and will otherwise keep the DEPARTMENT informed of its plans and results. EPA will enter into ICIS-NPDES inspection and enforcement information for activities it conducts. EPA will provide the inspection and enforcement information to the DEPARTMENT to enter the data into DROPS.
   c) EPA and the DEPARTMENT agree that inspection schedules are enforcement confidential. Both agencies agree to maintain their confidentiality using available legal authorities, to inform each other of any requests for their disclosure, and to coordinate with each other in

responding to any such requests. EPA and the DEPARTMENT retain the right to withhold its respective inspection schedules in the event of any disclosure.

3. *Inspection Targets*. 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 and EPA agree to negotiate alternative inspection schedules, via the Performance Partnership Agreement, 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. Furthermore, the DEPARTMENT may revise inspection schedules in the future in response to revisions made to EPA's *Clean Water Act NPDES Compliance Monitoring Strategy for the Core Program and Wet Weather Sources* (October 2007) and the *National Program Managers' Guidance* (most current).
4. *Reporting Schedule*. The DEPARTMENT will forward to EPA all the APDES inspection reports upon request. The DEPARTMENT will forward to EPA the inspection reports of all NPDES inspections of all permittees within sixty (60) days of the date of the inspection. When EPA solely conducts an inspection on an APDES facility, EPA will forward a copy of the inspection report to the DEPARTMENT within sixty (60) days from the date of the inspection. EPA will forward to the DEPARTMENT a copy of an NPDES inspection report, upon request, unless the report is enforcement confidential.

6.03 Compliance Tracking

1. In accordance with the APDES Program Description, this AGREEMENT, and as required in 40 CFR §123.26, the DEPARTMENT will operate a compliance tracking system so that staff will be 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) the data are accurately entered into ICIS-NPDES.
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 (e.g., required reports, Notices of Violation, Administrative Orders, Consent Agreements, and court orders). 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 to enter data into ICIS-NPDES for the facilities it retains authority over (Appendix A).

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 Program 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, as well as in conformance with the DEPARTMENT's *Enforcement Manual* (October 2005). Complaints received by the DEPARTMENT or referred to the DEPARTMENT by EPA under anonymity or confidentiality will be handled in accordance with AS 40.25.120(a)(6)(D) and DEPARTMENT policy and procedures described in the DEPARTMENT's *Enforcement Manual.* If EPA receives either an anonymous or confidential public complaint, EPA will refer to the DEPARTMENT only those portions of the complaint that are releasable. EPA and the DEPARTMENT will closely coordinate follow-up of such complaints.
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 dischargers 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).

Section 7.0 Enforcement

7.01 Timely Enforcement Responsibility

1. *Enforcement Action Against Violators*. Consistent with the DEPARTMENT's *Enforcement Manual* and the *APDES Enforcement Response Guide* (May 2008), 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 industrial user (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 APDES Program Description, Chapter 9.0; the Performance Partnership Agreement; and appropriate state and federal statutes, regulations, and policies.
2. *Enforcement Procedures*. The DEPARTMENT's enforcement program will follow procedures consistent with the principles in the DEPARTMENT's *Enforcement Manual*. 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) in accordance with the current *National Program Managers' Guidance*.
   d) Review all inspection reports to determine what, if any, enforcement action may be necessary, subject to EPA's oversight and enforcement authority.
   e) Apply initial compliance and/or escalated formal enforcement to address identified violations according to specific time frames, as specified in EPA's *National Program Managers' Guidance* and the DEPARTMENT's *APDES Enforcement Response Guide*.

f) For the first five (5) years of implementation of the APDES Program, provide to EPA a copy of any enforcement follow-up when issued, ranging from a Compliance Letter to administrative and judicial action. After such time, the DEPARTMENT will provide to EPA a copy of any enforcement follow-up upon request.

g) Maintain a chronological summary of all violations.

3. For violations which endanger or cause damage to human 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 human 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 (i.e. judicial) penalty, when appropriate, is based on consideration of established factors and is an amount appropriate to the violation.

5. As required by 40 CFR §123.45 and as set forth in this AGREEMENT; the Performance Partnership Agreement; and information required to be tracked in ICIS-NPDES, the DEPARTMENT will provide EPA with information on 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 DEPARTMENT roles and responsibilities is intended to guide EPA and the 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. If EPA determines that the DEPARTMENT has not taken timely enforcement action against a violator and/or that the enforcement action has not been appropriate, EPA may proceed with any or all enforcement options available under the 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 the CWA §309 and 40 CFR §503.

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 a federal facility which may lead to formal filing of an enforcement action by the DEPARTMENT against a federal facility.

7.03 Miscellaneous Enforcement

1. The DEPARTMENT will not oppose 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 that EPA retains legal jurisdiction over that discharge to state waters.	Draft certification prior to public notice. Final certification at time of permit issuance.
2. State certification of an NPDES permit EPA retains jurisdiction over until authority is transferred to the DEPARTMENT.	Draft certification prior to public notice. Final certification at time of permit issuance.
3. One copy of all permit applications; draft permits and permit modifications, including fact sheets; Ocean Discharge Criteria Evaluation, if applicable; 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 5 days of request
5. One copy of all APDES-related public notices.	As issued
6. Documents related to or supporting the draft permit or permit modification.	Upon request
7. Copies of permit applications, draft permits, draft permit modifications, fact sheets, statements of basis, documents related to or supporting the draft permit or permit modification, new source/new discharger determination (as applicable), written comments received, hearing records, DEPARTMENT's response to comments on draft permits, proposed final permits, and revised fact sheet to reflect changes to the proposed final permit (if applicable) for which EPA has waived review.	Upon request
8. 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
9. One copy of the proposed final permit and revised fact sheet to reflect changes to the proposed final permit, if applicable, except those permits EPA waived review of, or where 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
10. One copy of all final issued permits, including all minor and major modifications.	As issued

11. A list of facilities scheduled for a compliance inspection, including the inspection dates.	Annually, as negotiated in the Performance Partnership Agreement
12. Copies of inspection reports and transmittal letters for facilities authorized under APDES (majors and minors).	Upon request
13. Copies of inspection reports and transmittal letters for NPDES facilities.	Within 60 days of completion of inspection
14. Proposed revisions to the schedule of compliance inspections.	As revisions occur.
15. 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).	With 14 days of receipt of applicant information
16. 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)
17. 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 calendar year.
18. Copies of all enforcement actions ranging from Compliance Letters to administrative and judicial actions for major and minor facilities.	As issued, for the first 5 years of APDES Program implementation. Thereafter, upon request.
19. 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
20. 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 60 days of inspection or receipt of information
21. Identification 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
22. Notification of any DEPARTMENT, legislative, or court action that may affect the APDES Program.	Within 10 days when the DEPARTMENT becomes aware
23. Copies of court decisions/actions affecting the permit issuance, compliance, and enforcement process.	Within 15 days of receipt by the DEPARTMENT
24. 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

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, CWA §401 certification, public notice, hearing records, EPA's response to comments, and final issued permit.	When received from applicant or drafted by EPA
2. Copies of original written comments received.	Upon request
3. 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 B
4. EPA will notify the DEPARTMENT of inspections EPA intends to conduct independently and jointly with the DEPARTMENT.	Annually, as negotiated in the Performance Partnership Agreement
5. Proposed revisions to the schedule of compliance inspections.	As revisions occur
6. 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
7. Notification to the DEPARTMENT of observed deficiencies resulting from EPA oversight inspections.	As performed
8. Copies of all inspection reports and transmittal letters for APDES facilities.	Within 60 days of inspection
9. Copies of all inspection reports and transmittal letters for NPDES facilities, excluding those that EPA considers enforcement confidential.	Upon request
10. Copies of all enforcement actions against violators, including letters, notices of violation, administrative orders, judicial filings, and settlements.	As issued
11. Notification of the commencement of federal enforcement and copies of final actions.	As issued
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
13. Copies of court decisions/actions affecting the permit issuance, compliance, or enforcement processes.	Within 15 days of receipt by EPA
14. Notification of citizen complaints.	Upon receipt
15. Draft and final or revised EPA laws that affect NPDES programs.	As EPA becomes aware
16. Draft and final or revised EPA guidance related to NPDES program implementation.	As EPA becomes aware

8.03 Transfer of Files from EPA to the DEPARTMENT upon Program Approval

In accordance with the mutually agreed upon schedule pursuant to Appendix B, 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. It is the intent of EPA and the DEPARTMENT to work cooperatively to assure that the APDES Program is consistent with these requirements and to rectify any problems. 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, as set forth in the Performance Partnership Agreement, to review the DEPARTMENT's data handling (including both manual and automated data processing), permit processing, compliance monitoring, and enforcement procedures.
3. 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.
4. EPA shall notify the DEPARTMENT thirty (30) days in advance of the program 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 the DEPARTMENT's review and comment prior to EPA's issuing a final audit report.
5. 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 to withdraw the APDES Program if the Alaska Legislature enacts any legislation that is less

stringent than the CWA or its regulations required. 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.

6. If an amendment, rescission, or repeal of any statute, regulation, rule, directive, or policy described in paragraph 5.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.

7. 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). During the negotiation of the Performance Partnership Agreement, the DEPARTMENT and EPA shall discuss the status and schedule of necessary revisions to the APDES Program that are required as a result of any changes to the CWA and the regulations promulgated thereunder, as well as related guidance documents.

8. 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.

9. Nothing in this AGREEMENT shall be construed to limit EPA's authority to take action under the CWA.

10. 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.

11. 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.

12. 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.

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 state or federal legal holiday, in which case the period extends until the next day which is not a state or federal legal holiday.

Section 11.0 Reference Documents

The following documents referenced in this AGREEMENT will be consulted to implement the APDES Program. Over time, the documents may be updated or, in the case of EPA guidance documents, replaced with guidance documents prepared by the DEPARTMENT. The Reference Documents list will be periodically updated to reflect the most current documents in use to implement the APDES Program.

Alaska Pollutant Discharge Elimination System (APDES) Program, Enforcement Response Guide. ADEC. May 2008.

Clean Water Act National Pollutant Discharge Elimination System Compliance Monitoring Strategy for the Core Program and Wet Weather Sources. USEPA. Washington, D.C. October 17, 2007.

Compliance Assurance Program Evaluation Principles. USEPA. Seattle WA. March 24, 1998.

Enforcement and Compliance Strategy. USEPA. Region 10, Seattle, WA. March 1997.

EPA / State Agency Agreement on Compliance Assurance Principles. USEPA. May 1997.

Final FY07 Update to Office of Enforcement Compliance Assurance (OECA), National Program Managers' Guidance. USEPA. April 2006.

Interim Clean Water Act Settlement Penalty Policy. USEPA. March 1, 1995.

NPDES Compliance Inspection Manual. Office of Enforcement and Compliance Assurance, EPA 305-X-03-004. USEPA. July 2004.

State of Alaska, Department of Environmental Conservation, Enforcement Manual, Sixth Edition. ADEC. October 2005.

Section 12.0 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:

Larry Hartig, Commissioner
Alaska Department of Environmental Conservation

October 24th 2008
Date

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

Elin Miller, Regional Administrator
EPA, Region 10

10/31/08
Date