Alaska Pollutant Discharge Elimination System

Program Description

Final

October 29, 2008

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Abbreviations and Acronyms

AAC	Alaska Administrative Code
AAG	Assistant Attorney General
ACMP	Alaska Coastal Management Program
ALJ	Administrative Law Judge
APDES	Alaska Pollutant Discharge Elimination System
BMP	Best Management Practices
CATS	Complaint Automated Tracking System
CDX	Central Data Exchange
CFR	Code of Federal Regulation
CGP	Construction General Permit
COBC	Compliance Order by Consent
CPP	Continuing Planning Process
CPQ	Coastal Project Questionnaire
CROMERR	Cross Media Electronic Reporting Requirement
CSO	Combined Sewer Overflow
CV	Coefficient of Variation
CWA	Clean Water Act
DMR	Discharge Monitoring Report
DOL	Department of Law
DROPS	Discharge Results and Online Permit System
ECU	Environmental Crimes Unit
EDSC	Environmental Data Standards Council
EPA	United States Environmental Protection Agency
FTE	Full Time Equivalent
GP	General Permit
GPD	Gallons per Day
ICIS-NPDES	Integrated Compliance Information System-National Pollutant Discharge Elimination System
LTF	Log Transfer Facility
MGD	Million Gallons per Day
MOA	Memorandum of Agreement
MOU	Memorandum of Understanding
MS4	Municipal Separate Storm Sewer System
MS&R	Monitoring, Sampling, and Reporting
MSGP	Multi-Sector General Permit
NMP	Nutrient Management Plan
NMS	NPDES Management System
NOI	Notice of Intent
NOV	Notice of Violation
NPDES	National Pollutant Discharge Elimination System
OASys	Online Application System

PCA	Pretreatment Compliance Audit
PCI	Pretreatment Compliance Inspection
PCS	Permit Compliance System
POTW	Publicly Owned Treatment Works
QA	Quality Assurance
QAPP	Quality Assurance Project Plan
QNCR	Quarterly Noncompliance Report
RCAC	Regional Citizens' Advisory Council
RIDE	Required ICIS-NPDES Data Elements
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
SOW	Scope of Work
SSO	Sanitary Sewer Overflow
State Resource Agencies	Alaska Department of Natural Resources and Department of Fish and Game
SWMP	Stormwater Management Plan
SWPPP	Stormwater Pollution Prevention Plan
TBEL	Technology-Based Effluent Limit
TRE	Toxicity Reduction Evaluation
TSD	Technical Support Document for Water Quality Based Toxics Control
TWTDS	Treatment Works Treating Domestic Sewage
U.S.C.	United States Code
WET	Whole Effluent Toxicity
WLA	Wasteload Allocation
WQBEL	Water Quality-Based Effluent Limit
XML	eXtensible Markup Language

PROGRAM DESCRIPTION

1.0 Introduction

As required under the Clean Water Act (CWA) §402(b) and 40 CFR §123.22, the Alaska Pollutant Discharge Elimination System (APDES) Program Description specifies how the Alaska Department of Environmental Conservation (Department) will administer the National Pollutant Discharge Elimination System (NPDES) program.

The Program Description is part of a full program submission to the U.S. Environmental Protection Agency (EPA) that includes:

- a letter from the Governor of Alaska requesting program approval;
- this Program Description that describes the organization, staffing and funding resources, and procedures for the Department to carry out its responsibilities;
- a Memorandum of Agreement (MOA) that describes the transfer from EPA to the Department administration of permitting and compliance of specified permits, identifies draft permits EPA will review, specifies the frequency and contents of information the Department is required to submit to EPA, and describes the provisions of the Department's compliance monitoring and enforcement program;
- an Attorney General Statement certifying that state laws provide adequate authority to implement the APDES Program;
- copies of all applicable statutes and regulations necessary to implement the APDES Program; and
- a Continuing Planning Process document that describes the procedures to manage and keep current the Department's water quality program.

2.0 Scope of the Program [40 CFR §123.22(a)]

Senate Bill 110 passed in the 2005 Legislative session amended existing sections of Alaska Statutes 46.03.020, 46.03.100, 46.03.120(b), and 44.46.025(a). The statutes direct the Department to seek authority from EPA to implement a state wastewater discharge permitting and compliance and enforcement program in lieu of the EPA-administrated NPDES program. The legislation directed the Department to seek primacy of the NPDES program by filing a complete application to EPA before July 1, 2006.

In 2007, the Department completed administrative rules for the APDES Program that govern discharges of pollutants into navigable waters (waters of the United States), including stormwater and pretreatment controls for certain discharges to publicly owned treatment works (POTWs). These rules apply to discharges that are within Alaska and occur in its territorial seas (within 3 miles of shore) with the exception of facilities the Department is not authorized to assume authority over, including: facilities located within the Denali National Park and Preserve, facilities in Indian Country, and facilities granted a CWA §301(h) waiver (see MOA, Appendix A). EPA retains authority for NPDES permitting and compliance for these facilities, as well as for operations that occur beyond the territorial seas. The Department will not assume authority for the biosolids management program, an optional NPDES program component.

With NPDES program authorization, the Department will conduct:

- permitting, compliance, and enforcement of both individual and general permits for discharges to waters of the United States from facilities, including nondomestic (e.g. commercial, mining, seafood processing, oil and gas, and silviculture discharges; animal feeding operations; and aquatic animal production facilities) and domestic wastewater treatment facilities (e.g. POTWs and privately-owned treatment works);
- permitting, compliance, and enforcement of discharges to waters of the United States from federal facilities;
- permitting, compliance, and enforcement of stormwater discharges, including municipal storm sewer systems (combined and separate), general permits, and individual permits for stormwater discharges; and
- the NPDES Pretreatment Program.

The Department will implement the APDES Program using the procedures, resources, policies, and guidance documents described in this Program Description. Department guidance documents currently in use are included as appendices. The Department will adopt all EPA guidance documents referenced in this Program Description until such time as the Department develops its own guidance document to replace an EPA guidance document. Each Department office will have access to all procedures, policies, and guidance documents referenced in this Program Description. The most current procedures, policies, and guidance documents are listed in Chapter 12.0, Reference Documents.

The Department will issue APDES permits; certify EPA-issued NPDES permits for facilities granted a CWA §301(h) waiver; conduct compliance and enforcement activities; record

information and data and report to EPA; and oversee the activities of all APDES permitted facilities. EPA will retain the authority to issue NPDES permits for facilities located in Denali National Park and Preserve and Indian Country and will certify that the discharges meet applicable water quality standards. EPA will comply with United States Code (U.S.C.) §1341(a)(2) regarding the effect of discharges on state waters.

The Department will assume permitting and compliance authority for the NPDES program in phases. Per 33 U.S.C. §1342(n)(4) and 40 CFR §123.1(d)(1), EPA will retain full permitting and compliance authority over facilities until such time as that authority is transferred to the Department in accordance with the transfer schedule in the MOA, Appendix B. Table 1 shows the schedule to transfer permitting and compliance authority. In addition, MOA, Appendix E lists each permitted facility according to its transfer phase.

Table 1. Schedule to Transfer Authority

Phases of Authorization	APDES Program Components
Phase I: At program approval	Domestic discharges (individual and general permits) Log storage and transfer facilities Seafood processing facilities (individual and general permits) Hatcheries
Phase II: 1 year from program approval	Federal facilities (Domestic plants at Dept. of Defense and U.S. Coast Guard facilities / cooling water) Stormwater (Construction and Multi-sector general permits, municipal separate storm sewer systems) Pretreatment program Miscellaneous nondomestic discharges (e.g. utilities, ship and dry dock, filter backwash, transportation, and seawater treatment)
Phase III: 2 years from program approval	Mining (individual hard rock and general permits)
Phase IV: 3 years from program approval	Oil and gas industry Cooling water intakes and discharges Munitions All remaining facilities not previously covered.

3.0 Organization and Structure [40 CFR §123.22(b)]

The Department is a regulatory agency within the executive branch of the Alaska State Government and is responsible for environmental protection in Alaska. Appendix A provides the Department's organizational structure.

3.1 Office of the Commissioner

The Office of the Commissioner oversees the activities of all the Department's Divisions, provides direction for the Department, establishes Department objectives, and assures performance. The Commissioner is appointed by the Governor and serves as spokesperson for the Governor on environmental matters and adopts all Department regulations. The APDES legislation and administrative code provide that all permits be issued by the Commissioner or the Commissioner's designee. The Commissioner retains the final decision-making authority on all agency actions relating to permit issuance, compliance, and enforcement. These decisions may be challenged in court under Alaska Administrative Code (AAC) Title 18, Chapter 83 Section 175 after a party exhausts all administrative remedies within the Department under 18 AAC 15.185 and 18 AAC 15.195 through 18 AAC 15.340. The Office of Administrative Hearings, established as an independent office within the Department of Administration, will provide regulatory review and administrative adjudication services that include conducting administrative hearings. However, the Commissioner retains the authority to determine whether a hearing request should be granted and makes the final agency decision.

The Department consists of five divisions: Information and Administrative Services; Water; Air Quality; Environmental Health; and Spill Prevention and Response.

3.2 Division of Information and Administrative Services

The Division of Information and Administrative Services (DIAS) provides several support services for the Department, including finance and accounting, procurement, and preparation of the annual budget. DIAS provides the Department with planning and technical support through the Department's centralized electronic network system, including data management, desktop support, and computer hardware and software assistance.

The Department's Environmental Crimes Unit (ECU), established in DIAS, conducts criminal investigations and, when appropriate, initiates criminal enforcement when violations are intentional, knowing, reckless, or negligent. Working closely with Division of Water staff and Department of Law (DOL), the ECU has statewide responsibility to investigate and prosecute the most egregious violations of environmental law.

3.3 Division of Water

The Division of Water will consistently implement the APDES Program through its three main offices in Fairbanks, Anchorage, and Juneau and field offices in Soldotna and Wasilla. The Program Description provides detailed descriptions of the APDES Program resources and funding (Chapter 5.0) and of procedures to draft and issue permits (Chapter 6.0); implement the Stormwater and Pretreatment Programs (Chapters 7.0 and 8.0, respectively); conduct compliance and enforcement activities (Chapter 9.0); and implement data management and reporting requirements (Chapter 10).

The Division of Water organization chart is found at Appendix B. Position descriptions identifying staff responsibilities, required knowledge, and necessary skills are found at Appendix C.

3.3.1 Director's Office

The Director's Office will develop Division policies; prepare Division-wide annual budget and work plans, performance measures, and performance reports; draft regulations and manage the regulations promulgation process; make decisions on informal reviews of staff decisions under 18 AAC 15.220; work with DOL to draft state legislation; testify on behalf of the administration at legislative hearings; review federal initiatives and regulations relating to the APDES program; track national NPDES efforts and, where appropriate, align the state's priorities with the national priorities; conduct technical and policy reviews of coastal management issues; and act as the liaison between the Department and EPA Region 10.

3.3.2 Wastewater Discharge Authorization Program

The Wastewater Discharge Authorization Program will issue APDES permits for the discharge of domestic and nondomestic wastewater and stormwater to waters of the United States. This program will provide assistance to permittees to comply with their wastewater and stormwater discharge permits and track facility data in the Department's Discharge Results and Online Permit System (DROPS) database.

This program will oversee and implement the domestic wastewater Pretreatment Program authorized under 40 CFR Part 403 and its Appendices D, E, and G that are incorporated by reference under 18 AAC 83.010(g)(2).

3.3.3 Compliance and Enforcement Program

The Compliance and Enforcement Program will conduct compliance reviews [e.g. discharge monitoring reports (DMRs), reports, and file review]; provide compliance assistance; conduct facility inspections to ensure compliance with APDES permits; collect and analyze data; take enforcement actions; coordinate enforcement actions with the Wastewater Discharge Authorization Program, the Department's ECU, and DOL; and enter and track compliance and enforcement information in the DROPS database.

3.3.4 Water Quality Standards, Assessment, and Restoration Programs

The Water Quality Standards, Assessment, and Restoration Programs will develop water quality standards based on regulations at 40 CFR Part 131 and EPA's *Water Quality Standards Handbook: Second Edition* (August 1994) that serve as the basis to protect and improve the quality of the state's waters; conduct triennial reviews of Alaska Water Quality Standards based on an agreed upon schedule in the Performance Partnership Agreement; review and modify designated uses for specific waterbodies; and adopt site-specific criteria. This Program will include a Quality Assurance (QA) Officer to maintain and ensure implementation of the *Water Programs Quality Management Plan* (August 2007) (Appendix D) and provide quality assurance on data the Division collects, data required to be collected by permittees, and data collected that the Division pays for through grants and contracts. The QA officer will assist with the development of Quality Assurance Project Plans (QAPPs) (Appendix E) for monitoring and sampling conducted in conjunction with APDES permit compliance inspections and for ambient water quality monitoring.

This Program will certify CWA §404 permits to ensure that wetland fills and other activities authorized under CWA §404 permits do not adversely affect water quality; review timber harvest plans and perform related field inspections for forestry operations; identify impaired waters under CWA §303(d); report on the status and trends of Alaska's marine and freshwaters by preparation of CWA §§303(d) and 305(b) integrated report; develop total maximum daily load allocations and watershed management plans; identify state water quality priorities and needs; and establish a schedule to develop recovery plans on impaired waterbodies.

3.3.5 Administration and Information Programs

The Administration and Information Programs will assist the Water Quality Programs to develop, track, and manage federal grant applications; develop the Division budget and spending plans; carry out accounting; and provide internal management and administrative support to the APDES Program, including clerical and human resources support. The Program will develop and maintain the Division's DROPS database to track DMR, permit, compliance, inspection, and fee information and will ensure that all required data are entered into EPA's National Integrated Compliance Information System (ICIS)-NPDES database.

3.3.6 NPDES Primacy Program

The NPDES Primacy Program will report to the Director's Office and monitor any revisions to federal laws, regulations, and policies relating to the APDES Program. As part of this review, necessary changes in Department statutes or administrative regulations will be identified. Necessary legislative changes will be submitted by the Department through the Governor's Office to the Legislature for amendment of

Alaska's APDES-related statutes. The Department will initiate necessary regulation changes. Proposed changes to either the Department's statutes or administrative regulations and new or revised program guidance will be coordinated with EPA Region 10 to ensure that the proposals will adequately address the federal program requirements.

Continuing planning will be done in accordance with the Division's Continuing Planning Process document. Specific projects and goals will be negotiated annually with EPA via the Performance Partnership Agreement.

3.4 Department of Law

3.4.1 Introduction

The Alaska Department of Law (DOL) is divided into the civil and criminal divisions. The civil division is further divided into sections to handle different client agencies and subject matters. The Environmental Section advises and represents the Department in all aspects of its duties and functions. DOL's statewide Environmental Section is staffed by 9 full-time and two part-time attorneys, two paralegals, and five law office assistants.

3.4.2 Program and Permit Development

Department staff will work closely with attorneys at DOL's Environmental Section on several aspects of the APDES Program. The APDES regulations, as well as the state water quality standards (18 AAC 70) and all other regulations, are developed in consultation with DOL. The regulations are reviewed and approved by an Assistant Attorney General (AAG) and by the statewide Regulations Attorney for DOL (*see* AS 44.62.060).

Department staff will consult with DOL, as appropriate, in permit drafting and development and in preparing responses to public comments received on draft permits. AAGs familiar with the APDES Program will be involved in the review of any guidance drafted by the Department in connection with the APDES Program.

3.4.3 Appeals of Permits

Once an APDES permit is issued, AAGs will assist the Director in the consideration and resolution of any request for informal review of the permit that may be filed under 18 AAC 15.185 and/or any request for an adjudicatory hearing filed under 18 AAC 15.195 through 18AAC 15.200. In the case of a hearing request, DOL will assign separate counsel to the Department staff who issued the contested permit and to the Commissioner considering the request. If the Commissioner grants a hearing request, the Alaska Office of Administrative Hearings will assist the Commissioner in considering the administrative appeal. If there is an appeal to the Superior Court from the Department's final decision, an

AAG will be assigned to handle that appeal in court, including possible appeal to the Alaska Supreme Court.

3.4.4 Civil Enforcement

The Department will enforce violations of a permit through administrative and civil remedies. The decision to pursue civil enforcement of a permit will be made by the Department in consultation with DOL. If the decision is made to bring a lawsuit, DOL will assign one or more AAGs to work with the Department in all aspects of preparing, filing, and pursuing that case.

3.4.5 Criminal Enforcement

The Criminal Division of DOL also employs an environmental crimes prosecutor within the Office of Special Prosecutions and Appeals who will work with the Department's ECU and be responsible for the criminal enforcement of Alaska's environmental statutes and regulations.

4.0 Major / Minor Facilities and Types of Wastewater Discharge Permits

An APDES permit will authorize a facility to discharge wastewater into Alaska's waters of the United States under certain conditions. Each facility requiring an ADPES permit will be categorized as either a major or minor facility. A major domestic facility will be defined as a facility with a treatment plant design flow of 1.0 million gallons per day (MGD) or greater; with an approved Pretreatment Program; or that is designated at the Director's discretion due to a high potential for violation of water quality standards or a potential or actual threat to human health or the environment. A nondomestic facility will be defined as a major facility based on the *APDES Permit Rating Work Sheet* or at the Director's discretion due to a high potential for violation of water quality standards or a potential or actual threat to human health or the environment. The *APDES Permit Rating Work Sheet* is the same as EPA's NPDES Permit Rating Work Sheet.

A minor facility is a discharger not classified as a major facility.

The Department will issue APDES permits only for discharges to waters of the United States. The Department does not intend to require an APDES permit for categories of discharges not required to have an NPDES individual or general permit by EPA.

The APDES Program will also administer permits for stormwater discharges in Alaska. The Stormwater Program is described in Chapter 7.0.

4.1 Individual Permits

An individual permit is issued to a single facility and is specifically tailored to the unique aspects of that facility and the receiving waterbody. Consistent with EPA's process and upon receipt of the appropriate applications(s), the Department will develop a permit for that particular facility based on the information contained in the permit application (e.g. type of activity and nature of discharge and receiving water). Provided state water quality standards will be met, the state will issue the permit to the facility for a specific time period (not to exceed five years) with a requirement to reapply prior to the expiration date. Individual permits will be issued in Alaska to domestic and nondomestic facilities and municipal separate storm sewer systems.

The procedures to develop and issue an individual permit are found in Chapter 6.0.

4.1.1 EPA-Issued Individual Permits

Table 2 shows individual NPDES permits issued by EPA and certified by the Department under CWA §401. With the exception of facilities where EPA will retain authority, the Department will continue to issue similar types of individual permits under its APDES Program. The NPDES individual permits are based on a January 10, 2008 query from EPA's ICIS-NPDES database. A list of the facilities issued an NPDES individual permit is found in the MOA, Appendix C.

Table 2. NPDES Individual Permits

NPDES Individual Permits [1]	Major	Minor	Number of Permits
Domestic			
Publicly Owned Treatment Works	12	14 (1)[2]	26 (1)
CWA §301(h) waivers	7	2	9
Domestic Federal Facilities	0	4	4
Domestic [3]	1	3 (4)	4 (4)
Nondomestic (Industrial)			
Chemical Production Plant	1	0	1
Federal Facilities	0	8	8
Hatcheries [4]	0	(22)	(22)
Mining	5	12	17
Oil and Gas Operations	2	2	4
Power Plants / Utilities	1	4	5
Refinery	1	0	1
Seafood	9	0	9
Seawater Treatment	3	0	3
Stormwater MS4	1	3	4
Other [5]	0	18	18
TOTALS	43	70 (27)	113 (27)

1. Federal NPDES permits administered by EPA. Authority will transfer to the Department at APDES Program approval in accordance with the transfer schedule agreed to in the MOA, Appendix B.
2. Numbers in parenthesis are pending permits.
3. Domestic discharges from privately-owned facilities.
4. Twenty-two applications are pending with EPA. One hatchery application is for Metlakatla Island (Indian Country).
5. Other permits have been issued to control discharges from landfills, petroleum bulk stations, ship building, transportation, and an aquarium.

4.1.2 State-Issued Individual Permits

The Department has issued state individual permits for domestic and nondomestic facilities under state authorities to facilities that require an NPDES permit but where EPA has not issued or reissued an NPDES permit. After program approval and in accordance with the transfer schedule in the MOA, Appendix B, a state permit administered by the Department that regulates a discharge to waters of the United States will be issued as an APDES permit at the time of permit reissuance.

In Table 3, the number of permits represents the number of facilities currently permitted or in the process of receiving a permit as of a March 10, 2008 query from the Department's DROPS database. A list of the facilities operating under a state-issued individual permit is found in the MOA, Appendix D. Note that the list may include non surface water discharges that will not be permitted under the APDES Program.

Table 3. State-Issued Individual Permits

State Individual Permits	Number of Permits
Domestic	
Publicly Owned Treatment Works	61
Nondomestic (Industrial)	
Car Wash	2
Brine Reject	1
Defense	1
Filter Backwash	17
Fire Training Facilities	3
Landfill Leachate	1
Log Transfer Facility	1
Oil and Gas refining	2
Seafood	1
Seawater Treatment	3
Utilities	8
TOTAL	101

4.2 General Permits

A general permit covers discharges from multiple facilities. The Department's regulations at 18 AAC 83, Article 3 provide general permitting authority that allows the issuance of one permit to cover a class or category of similar discharges in a defined

geographic area with similar effluent limits. The continued use of general permits will allow the state to allocate resources in an efficient manner and provide timely permit coverage. For example, a large number of facilities that have certain elements in common may be covered under a general permit without expending the resources necessary to issue an individual permit to each facility. Use of general permits will ensure consistent permit conditions for similar facilities. The Department may issue a general permit for a specific geographic area to cover categories of discharges that:

- involve the same or substantially similar types of operations;
- discharge the same types of wastes;
- require the same effluent limits or operating conditions;
- require the same or similar monitoring; and
- are more appropriately controlled by a general permit, as determined by the Department.

The Department may consider covering additional categories of discharges under a general permit, including fish hatcheries, car washes, and filter backwash discharges from drinking water treatment facilities.

The procedures to develop and issue a general permit and the process to authorize a discharge under a general permit are found in Sections 6.3 and 6.4.

4.2.1 EPA-Issued NPDES General Permits

EPA has issued NPDES general permits that cover discharges for major and minor facilities. Three nondomestic general permits authorize discharges for 23 major facilities, 11 nondomestic general permits authorize discharges for 1658 minor facilities, and two general permits authorize domestic discharges for 103 small POTWs. Table 4 lists the NPDES general permits issued by EPA and the number of authorizations under each permit. The Department will continue the use of general permits and, upon program approval and in accordance with the transfer schedule in the MOA, Appendix B, will assume permitting and compliance authority for the NPDES general permits.

The data in Table 4 are based on a January 10, 2008 query from EPA's ICIS-NPDES database. A list of the facilities authorized to discharge under an EPA-issued NPDES general permit is found in the MOA, Appendix C.

Table 4. NPDES General Permits and Authorizations

NPDES General Permits[1]	No. of Major Authorizations	No. of Minor Authorizations	Expiration Date
DOMESTIC			
Small Sewage Treatment Plants - Marine discharge	0	50	July 21, 2009
Small Sewage Treatment Plants – Freshwater discharge	0	53	July 21, 2009
LOG TRANSFER FACILITY (LTF)[2]			
LTF ~ Pre-1985	0	55	March 21, 2005
LTF ~ Post-1985	0	35	March 21, 2005
SEAFOOD PROCESSORS			
Kodiak – shore based	4	8	April 30, 2003
Pribilof - onshore & offshore	0	14	February 8, 2004
Seafood Processors in Alaska[3]	16	193	July 27, 2006
OIL AND GAS EXPLORATION			
Arctic	0	2	June 26, 2011
Cook Inlet	3	14	July 2, 2012
North Slope	0	60	January 2, 2009
MINING			
Small suction dredge placer	0	912	May 31, 2012
Medium-size suction dredge placer	0	52	October 4, 2010
Mechanical placer	0	313	October 4, 2010
TOTAL	23	1761	

1. Excludes permits issued for stormwater discharges only. (See Table 10)
2. New general permits are under development that will include discharges from log storage and transfer. Saw mills are included as authorized dischargers under the LTF General Permits. There are currently two saw mills operating in Alaska (Viking Lumber and Pacific Log and Lumber).
3. Some hatcheries that also process seafood are authorized under the Seafood Processors in Alaska General Permit.

4.2.2 State-Issued General Permits

The Department has issued general permits under state authority for discharges from facilities that require an NPDES permit but where EPA has not issued one. After program approval and in accordance with the transfer schedule in the MOA, Appendix B, a state permit administered by the Department that requires NPDES coverage will be issued as an APDES permit at the time of permit reissuance. Table 5 lists state-issued general permits and the number of discharge authorizations

under each permit. The data in Table 5 are based on a March 10, 2008 query from the Department's DROPS database. A list of the facilities authorized to discharge under a state-issued general permit is found the MOA, Appendix D. Note that the list may include non surface water discharges that will not be permitted under the APDES Program.

Table 5. State General Permits and Authorizations

State General Permit	No. of Authorizations
DOMESTIC	
Alaska Camps and Barges	14
Domestic (POTWs) (3 permits)	16
Lagoons w/ discharge 1-2 / year	8
Sub Total	38
NONDOMESTIC	
Contained water [1]	14
Excavation dewatering [1]	17
Sub Total	31
TOTAL	69

1. Data based on the number of authorizations issued from January 2007 – April 2008.

5.0 Resources and Funding [40 CFR §123.22(b)]

5.1 Human Resources

The Department has operated a wastewater discharge permitting program and NPDES permit certification program under state authorities for many years. Prior to submitting the NPDES application the state program included 29 full time equivalents (FTE) and a $3.1 million budget.

A significant component of the Legislature's authorization of the APDES Program was the allocation of 14 additional permanent full time positions and additional funding to support assistant attorneys general at the Department of Law (DOL). These positions were funded through fiscal notes approved with the March 2004, "Act relating to the regulation of timber-related discharges under NPDES" (HB 546) and the April 2005, "DEC regulation of wastewater and federal Clean Water Act NPDES primacy" (SB110). The new positions and funding are now a part of the Department's annual budget.

Beginning in fiscal year (FY) 2007, the Department was allocated the resources for an APDES Program fully staffed with 43 FTE and funded at $4.8 million. Descriptions of the APDES Program professional, technical, and administrative positions are included in Appendix C. The workload to administer the APDES Program and the allocation of APDES professional, technical, and administrative staff in the first two years after EPA approval of the APDES Program are shown in Table 6. In addition to the Department staff resources listed in Table 6, the Department will contract for two FTE assistant attorneys general at the DOL each year with the ability to increase the contract, as needed. If the Department obtains NPDES Program approval before EPA's data system is capable to receive electronic batch uploads from primacy states' data systems, the Department will hire non-permanent student interns to assist with the manual data entry into the EPA ICIS-NPDES database.

Table 6. APDES Program Workload and Allocation of Professional, Technical, and Administrative Staff in Years 1 and 2 of APDES Program Implementation

Number of Full Time Equivalent Positions (FTEs)						
JOB CLASSES	**Wastewater Discharge Authorization Program**	**Compliance and Enforcement Program**	**Water Quality Standards, Assessment, and Restoration Programs**	**Administration and Information Programs**	**NPDES Primacy Program**	**Total**
Director	0.1	0.1	0.1		0.1	**0.4**
Deputy Director	0.1	0.1		0.1		**0.3**
Environmental Program Manager	2.2	2.2	0.2	0.1	1.1	**5.8**
Environmental Program Specialist	7.0	7.0		2.0	2.0	**18.0**
Environmental Program Technician				2.0		**2.0**
Technical Engineer	0.5	0.5				**1.0**
Environmental Engineer	2.5	2.5				**5.0**
Project Coordinator (Outreach)			0.6			**0.6**
Chemist IV (Quality Assurance)			0.6			**0.6**
Analyst Programmer				3.0		**3.0**
Administrative Manager				1.5		**1.5**
Accountant				0.8		**0.8**
Administrative Clerk	1.0	1.0		2.0		**4.0**
Total	**13.4**	**13.4**	**1.5**	**11.5**	**3.2**	**43.0**

The salaries of the positions in the job classes that will administer the APDES Program are found in Table 7.

Table 7. Salary of Professional, Technical, and Administrative Staff in the APDES Program

POSITION TITLE	RANGE	MINIMUM ANNUAL BASE SALARY
Supervisory Unit		
Director	27	$82,908
Deputy Director	24	$71,916
Environmental Program Manager III	23	$67,212
Environmental Program Manager II	22	$62,880
Environmental Program Manager I	21	$58,884
Environmental Program Specialist IV	20	$55,020
Technical Engineer II	25	$71,916
Environmental Engineer II	23	$62,880
Environmental Engineer Associate	21	$55,020
Administrative Manager IV	21	$58,884
Administrative Manager I	15	$39,036
Accountant III	18	$48,180
General Government Unit		
Environmental Program Specialist IV	20	$54,130
Environmental Program Specialist III	18	$47,284
Environmental Program Specialist II	16	$41,048
Environmental Program Specialist I	14	$35,743
Environmental Program Technician	13	$33,494
Environmental Engineer II	23	$61,857
Environmental Engineer I	22	$57,894
Environmental Engineer Associate	21	$54,130
Project Coordinator	18	$47,284
Chemist IV	20	$54,130
Analyst Programmer IV	20	$54,130
Analyst Programmer III	18	$47,284
Administrative Clerk III	10	$27,879
Administrative Clerk II	8	$24,773
Administrative Clerk I	7	$23,456

5.2 Fiscal Resources

During the first two years of program implementation, the APDES Program will operate with a total budget of approximately $4.8 million. Funding allocation is shown

in Table 8. The ongoing federal investment in FY08 and beyond is projected to be approximately $1.3 million annually. Federal grant funding for state wastewater permitting work is provided under CWA §106. This funding is based on a formula that is unaffected by whether or not a state has NPDES primacy.

Table 8. Cost to Implement the APDES Program in Years 1 and 2

	Years 1 and 2 (in thousands)
Personal Services [1]	$2,928.2
Travel [2]	$286.6
Contractual [3]	$1,503.8
Supplies	$43.0
Equipment	$64.5
Total	**$4,826.1**
Total FTE	**43.0**

1. Personal Services cover APDES Program professional, technical, and administrative staff salaries and benefits.
2. Travel funds are for permitting, facility inspections, and ongoing specialized training.
3. Contractual funds are for laboratory sample analysis, public notices, staff training, and professional services contracts for assistance with APDES permitting and compliance-related issues. Contractual funds are also used to obtain legal services from DOL for permitting assistance, enforcement actions, and program legal assistance.

State general funds and permit fee receipts will be the primary funding sources for the APDES Program. The balance between general funds and permit fee receipts is shown in Table 9.

Based upon current statutes (AS 37.10.052), Alaska's current wastewater discharge authorization fees are based on the direct costs to issue and maintain permits and compliance work. Fees are averaged across each fee category (made up of similar types of discharges). Staff time, inspection costs, and other costs directly attributable to each APDES permit (e.g., public notices, laboratory tests, and inspection travel) are recoverable.

Federal funds can only be used for projects identified in the annual Performance Partnership Grant work plan.

Table 9. Funding Sources for APDES Program in Years 1 and 2

Funding Sources	Approved APDES Program (in thousands)
Federal Funds [1]	$1,332.6
State General Funds	$2,965.1
Permit Fee Receipts [2]	$528.4
Total	**$4,826.1**

1. Federal funds include a portion of CWA grants received by the Department.
2. Permit fee receipts include permit and compliance fees from routine annual billings and negotiated fees for reimbursable expenses on large projects based on FY08 and FY09 fee collection estimates.

As the Department assumes increased permitting and compliance and enforcement work in accordance with the transfer schedule listed in the MOA, Appendix B, the Department's program receipt authority will increase each year - with a commensurate decrease in general funds - until annual fee collection is approximately $753,400.

6.0 Description of State Procedures [40 CFR §123.22(c)]

6.1 General Administrative Procedures

Per 18 AAC 83.155(f), an EPA-issued NPDES permit in effect at the time of approval of the state's administration of the APDES Program and transfer of permit authority to the Department per the schedule in the MOA, Appendix B, will continue in effect and serve as the APDES permit required by state law. An EPA permit transferred to the Department will be the same permit originally issued by EPA with the same terms and conditions and will retain the original expiration date. An EPA-administratively extended permit will retain its extension until the Department reissues or takes other action on the permit.

An application for a new, revised, or reissued APDES permit will be filed under the requirements of 18 AAC 83.105 and 18 AAC 83.110 that outline the timing, content, and format of information submitted to the Department for domestic and nondomestic wastewater discharge permits. 18 AAC 83, Article 4 prescribes permit application forms and content. A permit applicant will complete and submit Department application forms that are equivalent to EPA forms but modified to include the Department's logo, state specific regulation citations, information to process a mixing zone or zone of deposit requests, contractor information, and billing information (Appendix E).

The Department will follow procedures specified in 18 AAC 83.105 and 18 AAC 83.110 to process a permit application. The Department's intent is to issue an individual permit within 180 days after receipt of a complete application, reissue a general permit prior to the expiration of the existing permit, issue a new general permit within 180 days after identifying a need for a general permit, and process an authorization to discharge under a general permit within 30 days of receipt of a complete notice of intent (NOI) to discharge when required by the terms of the general permit. The Department's intent is to maintain current APDES permits for at least 90% of all permitted facilities (major and minor).

There are administratively extended EPA-issued NPDES permits, as well as unpermitted facilities, in Alaska that the Department will assume authority for under the APDES Program. The Department will prioritize permit issuance, including reissuing administratively extended permits and issuing permits to unpermitted facilities, based on the potential impact to human health and the environment. The general permitting priorities are identified in the *Continuing Planning Process* document (May 2008). A schedule to address the administratively extended permits and unpermitted facilities will be transmitted to EPA annually and specified in the annual Performance Partnership Agreement.

In accordance with 18 AAC 83.480, upon reissuance of an EPA-issued NPDES permit as a state-issued APDES permit, the Department will include effluent limits, standards, and conditions at least as stringent as in the previous permit. However, the Department

will, on a case-by-case basis, evaluate permit limits and conditions during the reissuance of a permit to ensure that the limits and conditions are appropriate for that facility, discharge, and receiving waterbody and in accordance with state regulations, including anti-backsliding provisions.

6.2 APDES Permitting Procedures for an Individual Permit

This Section describes the APDES permit development, review, issuance, and modification processes required under 40 CFR Parts 122 and 124 and adopted at 18 AAC 83, Article 2. All permitting will follow the same process, except that an application for a new or substantially modified nondomestic facility will include a new source determination review. Every APDES facility will be assigned to a permit writer who will be responsible to issue or reissue the permit.

6.2.1 Permit Application and Review

1. *Pre-application Conference.* The applicant can request a pre-application conference to explain the project for clarification of the application requirements prior to submitting a permit application to the Department.
2. *Application.* The applicant will submit to the Department an application for an individual permit on an approved form (18 AAC 83.305) and with the appropriate information for a new source, new discharger, or existing source (18 AAC 83, Article 4). An applicant seeking reissuance of an existing permit must submit an application 180 days prior to the permit expiration date. An applicant proposing a new discharge must submit an application at least 180 days prior to the anticipated date of the discharge.
3. *Data Management.* Application information will be automatically stored in the DROPS database when a permittee submits an application electronically online. Department staff will manually enter application information submitted as a hard copy within 14 days of receipt of an application.
4. *Work Plan.* The Department and applicant may negotiate a tailored work plan for a permit for a major new source, major new discharger, or for a complex project. The work plan will establish target dates for the applicant to submit a complete permit application and for the Department to prepare a draft permit and supporting documents, provide public notice, complete the public review process, and issue the permit.
5. *Administrative Completeness Review.* The Department's intent is to conduct an administrative completeness review of an application for a major discharge (new or existing source, new discharger, or POTW) within 15 days from receipt of the application and notify the applicant. [18 AAC 83.110(d) allows 30 days to complete the review.] The purpose of the review is to verify that the submitted information is administratively complete. For example, the Department will check that the application is properly signed, appropriate fee is submitted, and required attachments are included. A complete application requires a valid signature and receipt of full payment of appropriate fees.

Reimbursable Service Agreements or other negotiated fee agreements are considered full payment of appropriate fees. In the event the review is not completed within 30 days, the application will be deemed acceptable for processing. Acceptance of an application for processing does not constitute satisfying the requirements of a technical review or preclude the Department from requesting additional information from the applicant at a later date.

6. *Incomplete Application.* If the Department determines that an application is incomplete, information inadequate, or fees unpaid, the Department will contact the applicant directly to request additional information or fee payment. In the event that the information is not readily available or the applicant is non responsive, the Department will send a written summary of the application deficiencies to the applicant. Review of the application will be suspended pending receipt of the additional information or appropriate fees. If an applicant fails or refuses to correct deficiencies in the application, the application will be denied and no permit will be drafted. An applicant of an existing facility that fails to submit a complete application to reissue a permit prior to its expiration date but continues to discharge after the expiration date will be operating without a valid permit as required under AS 46.03.100.

7. *Administrative Extension.* Upon receipt of a timely application and any supplemental information that satisfies the administrative completeness review, if the Department determines, through no fault of the applicant, that an existing permit will expire before a permit reissued, then the permit will be administratively extended per AS 46.03.110(d) and incorporated at 18 AAC 83.155(c). The administrative extension has no time limit, and the existing permit will remain fully effective and enforceable until the Department takes action on the application. Administratively extending a permit does not extend the original expiration date of the permit. The Department will not modify an administratively extended permit. The Department will notify the applicant by letter that the application was received and that the permit is administratively extended until the Department takes action on the application.

8. *Technical Review.* When the application is deemed administratively complete, the permit writer will begin a technical review of the application material to determine if sufficient information is provided to draft a permit. The permit writer will complete the technical review within 45 days after the application has been deemed administratively complete. The permit writer will conduct a site visit if necessary to clarify information submitted in the application in preparation to draft a permit. The permit writer may request additional information from an applicant when necessary to clarify, modify, or supplement previously submitted material. If necessary, the technical review will be suspended pending receipt and review of additional information. The applicant may request a time extension to review new information or provide requested information.

9. *Engineering Plans and Specifications.* Engineering plans and specifications accompanying a permit application will be reviewed and approved concurrently with the development and issuance of the permit.

10. The Department will not issue a public notice for a draft permit until a complete application is submitted.

6.2.2 Individual Permit Development

1. *Large Projects Team.* The Department will participate in the Department of Natural Resources' Large Projects Office process [established at AS 38.05.020(b)(9)] to ensure that all aspects of a large project, including APDES permitting, are considered during a single review and approval process.
2. *Permitting Facilities that Operate in Both State and Federal Jurisdictions.* The intent is that a work share agreement or memorandum of agreement between the Department and EPA will generally designate the Department as the lead agency to draft a permit for a facility that operates in both state and federal jurisdictions (e.g. floating seafood processors and oil and gas activities). The Department and EPA will remain flexible in commitments made to accomplish this, but in general the Department will prepare one permit, fact sheet, and any supporting documents that include state and federal requirements to avoid conflicting requirements. The Department will rely on EPA to provide the federal requirements to incorporate into the permit. The Department will transmit the preliminary draft permit to EPA for review. Once EPA approves the preliminary draft permit and after the applicant review period (see Section 6.2.3), the Department and EPA will hold one joint public review period and may hold a joint public hearing, if necessary. The final permit will be signed and issued by both agencies. The Department will be responsible for compliance and enforcement of the state APDES permit conditions when the facility operates in state jurisdiction. EPA will be responsible for compliance and enforcement for the EPA NPDES permit conditions when the facility operates in federal jurisdiction.
3. *Initial Review.* The permit writer will begin the permit development with a review of the permit application and facility file, including inspection reports, compliance information, DMR data, and ambient water data. Additional document review could include pretreatment, combined sewer overflow, and storm sewer overflow reports and bypass notifications.
4. *Site Visit.* When necessary and appropriate, the Department will conduct a site visit of a facility as part of developing a draft permit.
5. *New Source / New Discharge.* The Department will conduct a new source / new discharge determination for new applications in accordance with 18 AAC 83.360.
6. *Fact Sheet.* The Department will use a fact sheet template (Appendix E) to ensure consistent permit development and documentation. In accordance with 18 AAC 83.115(b), a fact sheet will be prepared for every draft APDES permit for a major facility, an APDES permit that incorporates a variance or requires an explanation of why a waiver was granted, and any other draft permit that is subject of wide-spread public interest or raises major issues. The fact sheet will describe the discharge, outfall location and design, water

quality information, and receiving waterbody characteristics. The fact sheet will include a mixing zone analysis per the governing regulations at 18 AAC 70. The fact sheet will explain the basis for the permit limits, for example, why a permit includes a technology-based effluent limitation to control toxic pollutants, internal waste streams, solids, sludges, or filter backwash; why a technology-based effluent limitation is not applicable or applies to only part of the treatment process; how a water quality-based permit limit was derived; when a new source / new discharger proposes a discharge to an impaired waterbody; use of compliance schedules; or when waivers from monitoring requirements are granted. The basis for monitoring frequencies and sampling locations will be described. Permit requirements and special conditions will be explained. The fact sheet will briefly establish the principal facts and the significant factual, legal, and policy questions considered in preparing the draft permit.

7. *Statement of Basis*. The permit writer will prepare a statement of basis for every draft APDES permit for a minor facility, except those for which a fact sheet is prepared as described in 6.2.2, #6. The statement of basis will briefly describe information relevant to the establishment of permit limits and conditions, including but not limited to the discharge, outfall location and design, water quality information, and receiving waterbody characteristics. The statement of basis will include a mixing zone analysis per the governing regulations at 18 AAC 70. The basis for monitoring frequencies and sampling locations will be described. Permit requirements, use of compliance schedules, when included, and any special conditions will be explained.

8. *Biosolids Regulations.* When applicable, the Department will include language in an APDES permit fact sheet informing a permittee that compliance with the federal biosolids regulations is required and to submit Form 2S directly to EPA for a biosolids handling and management permit.

9. *Technology-Based Effluent Limits.* The Department will establish technology-based effluent limits for nondomestic discharges based on national effluent limitations guidelines and Best Professional Judgment on a case-by-case basis when no effluent limitation guideline exists. Technology-based effluent limits for domestic discharges will be derived from regulations using the secondary treatment standards. The Department will incorporate, as appropriate, several types of technology-based effluent limits, including:

   - Best Professional Judgment
   - Best Practicable Control Technology Currently Available
   - Best Available Technology Economically Achievable
   - Best Conventional Pollutant Control Technology
   - Secondary Treatment Requirements
   - New Source Performance Standards

In addition, the Department will use the EPA regulations that are adopted by reference into state regulations, including:

- Effluent Limitations and Guidelines General Provisions ~ 40 CFR Part 401, Subpart N, adopted by reference at 18 AAC 83.010(g)(1)

- Industry Sector Effluent Limitations and Guidelines ~ 40 CFR Parts 405 through 471, adopted by reference at 18 AAC 83.010(g)(3)

- Criteria and Standards for Imposing Technology-Based Treatment Requirements ~ 40 CFR §125.1 through §125.3, adopted by reference at 18 AAC 83.010(c)(1)

- Secondary Treatment Requirements ~ 40 CFR Part 133, adopted by reference at 18 AAC 83.010(e)

In addition, Department regulations will be used for appropriate domestic discharges, including:

- Wastewater Disposal ~ 18 AAC 72

EPA guidance documents the Department will refer to include:

- *U.S. EPA NPDES Permit Writers' Manual*, Chapter 5, Technology-Based Effluent Limits (December 1996)

- *Writing NPDES BAT Permits in the Absence of Promulgated Effluent Guidelines* (June 25, 1980)

- Best Management Practices (BMPs) in NPDES Permits - Informational Memo (August 19, 1988)

10. *Reasonable Potential Analysis and Water Quality-Based Effluent Limits*. The Department will determine if any pollutant in the discharge has the potential to cause or contribute to an excursion of a state water quality standard. 18 AAC 83.435 [40 CFR §122.44(d)(1)(i)] requires that effluent limits be established for all pollutants and pollutant parameters that are or may be discharged at levels that will cause, have the reasonable potential to cause, or contribute to an excursion above any state narrative or numeric water quality criteria. Where reasonable potential is found, a permit must include water quality-based effluent limits (WQBELs) that ensure the discharge will not cause violations of applicable water quality standards for individual pollutants and whole effluent toxicity.

    The Department will determine reasonable potential for an exceedance of numeric water quality criteria in general by following the procedures outlined

in EPA's *Technical Support Document for Water Quality-Based Toxics Control (TSD)* (March 1991).

The initial step in the *TSD* procedure is to determine pollutants of concern for a specific discharge by evaluating the industry type, source of the discharge, and expected characteristics of the discharge relative to the toxic pollutants addressed by the state's water quality standards. In part, the Department will rely on the information provided by a discharger in the permit application, as each discharger will be required to monitor for specific pollutants and identify priority pollutants believed present or absent in the effluent.

As described in the *TSD*, a maximum projected effluent concentration will be statistically calculated based on the maximum value reported in available effluent data and a coefficient of variation (CV) that accounts for the number of samples and effluent variability. Following the *TSD*, the Department will use a 95th percent confidence level and the maximum value of the effluent data set to establish the maximum projected effluent concentration. The Department will, in general, use effluent data collected during the five years prior to permit reissuance to perform reasonable potential analyses.

After the maximum projected effluent concentrations are calculated, the Department will account for dilution, where appropriate and based on a mixing zone analysis, to determine the maximum pollutant concentration at the point in the receiving water where compliance with the applicable water quality standard is determined. If the maximum concentration exceeds the water quality standard, then there is reasonable potential and WQBELs will be included in the permit.

The Department will follow *TSD* procedures to calculate WQBELs for pollutants that show reasonable potential. The Department will first determine a wasteload allocation (WLA) that represents the level of effluent quality necessary to attain and maintain the applicable narrative and numerical water quality standards in the receiving water. The WLA will be based on the applicable water quality standard while accounting for dilution and background concentrations of the pollutant. WLAs will be developed for acute, chronic, and human health criteria. The permit writer will develop a long term average (LTA) value for each WLA following the *TSD* procedures. Finally, the permit writer will use the most restrictive LTA to establish effluent limits for a permit.

In accordance with the *TSD*, the Department will then further account for effluent variability to calculate the average monthly and maximum daily effluent limits to include in the permit. The Department will calculate concentration limits for pollutants of concern based on assumptions described in the *TSD*, including establishing a monthly average concentration limit that represents, as a 95th percent confidence level, the 95th percentile of the distribution of the projected effluent data set. Similarly, a daily maximum

concentration limit will be established based on the 99th percentile. The Department will also ensure compliance with anti-backsliding and anti-degradation requirements.

In addition to EPA's *TSD,* the Department will consult EPA guidance, policy, and regulations, as follows:

- *U.S. EPA NPDES Permit Writers' Manual*, Chapter 6, Water Quality-Based Effluent Limits (December 1996)
- *Guidance on Water Quality-Based Effluent Limits Set Below Analytical Detection / Quantitation Limits* (April 2005)
- *Policy for the Development of Water Quality-Based Permit Limitations for Toxic Pollutants* (February 3, 1984)
- *Permit Writer's Guide to Water Quality-Based Permitting for Toxic Pollutants* (February 20, 1987)
- *Water Quality Standard Handbook: Second Edition* (August 1994)
- Toxic Pollutant Effluent Standards and Prohibitions ~ 40 CFR §129.1 through §129.105, adopted by reference at 18 AAC 83.010(d)
- Criteria and Standards for Determining Alternative Effluent Limitations ~ 40 CFR §125.70 through §125.73

11. *Mixing Zone.* If the applicant requests a mixing zone, the Department will determine the propriety and size in accordance with the EPA's *TSD* and the Department's mixing zone regulations. The fact sheet accompanying the permit will include a mixing zone analysis per the governing regulations at 18 AAC 70.
12. *Metals Limits.* The Department will establish effluent limits for metals based on total recoverable metal (18 AAC 83.525) and, when appropriate, may develop a translator to calculate a total recoverable permit limit from a dissolved criterion. However, ambient monitoring in the receiving waterbody may be reported as dissolved if the water quality standard for that parameter is measured as dissolved. The fact sheet accompanying the permit will explain the circumstances. The Department will consult the following EPA guidance to develop a translator:
    - *The Metals Translator: Guidance for Calculating a Total Recoverable Permit Limit From a Dissolved Criterion* (June 1996)
13. *Establishing Effluent Limits.* The Department will compare the technology-based effluent limits to the calculated water quality-based effluent limits and

place the more stringent of the two in a preliminary draft permit; draft; and final permit, in accordance with 40 CFR §122.44 and 40 CFR §122.45 and incorporated at 18 AAC 83, Article 5. The fact sheet will explain the basis for establishing the effluent limits. The Department will prepare a preliminary draft permit that includes consistent, predictable permit terms and conditions and monitoring and reporting requirements (40 CFR §122.48) as in other APDES permits with similar treatment processes and waste streams, unless compelling circumstances exist that warrant otherwise. The Department will employ best professional judgment on a case-by-case basis to establish monitoring frequencies to collect samples that not only represent the treated wastewater discharged, but also will be sufficient in number to determine the impact to the receiving waterbody and if water quality standards are met. The Department will require similar and consistent monitoring requirements for similar facilities, discharges, and receiving environments. The Department will consider unique Alaskan conditions and will consult EPA guidance documents and policy to assist with establishing monitoring locations, frequencies, analytical methods, and reporting requirements:

- *U.S. EPA NPDES Permit Writers' Manual*, Chapter 7, Monitoring and Reporting Conditions
- *Representative Sampling in NPDES Permits* (May 6, 1983)

14. *Natural Conditions.* When appropriate, the Department can establish effluent limits and permit conditions based on natural or site-specific conditions in the receiving waterbody (18 AAC 70.235). The permit may include requirements to conduct concurrent monitoring of natural conditions or other conditions specific to the project to determine compliance with state water quality standards.

15. *Ocean Discharge Criteria Evaluation.* When the proposed discharge will be from a point source into the territorial seas or the contiguous zone, the Department will prepare an Ocean Discharge Criteria Evaluation that specifies the ecological, social, and economic factors to be used by a permit writer to evaluate the impact of a discharge on the marine environment. The following EPA guidance will be followed:

    - Ocean Discharge Guidelines ~ 40 CFR Part 125, Subpart M (45 FR 65953, October 3, 1980), adopted by reference at 18 AAC 83.010(c)(8)

16. *Variances.* The Department will process a variance request consistent with 18 AAC 83.160. The Department will conduct an initial review of a variance request received on or after the date of program authorization and when permitting authority for the permit has been transferred from EPA to the Department per the transfer schedule in the MOA, Appendix B. Variance requests for fundamentally different factors; variances under CWA §§301(c), 301(g), and 316(a); and for modifications to federal effluent limits are established under CWA §302. The Department may deny or approve a request

for a variance under CWA §316(a). A copy of the request will be sent to EPA. The Department's determination to deny a request for a variance will be sent to the requester and EPA. If the Department determines that factors exist that may warrant such a variance or modification, the request and recommendation for approval will be sent to EPA. If EPA denies a variance or modification request, EPA will notify the requester and the Department. EPA will consider a fundamentally different factor variance only after the Department has forwarded the variance to EPA with their written concurrence. If EPA approves a variance or modification request, the Department will prepare a draft permit factoring in the variance. The Department will consult the following EPA regulations and guidance document to process variance requests:

- Criteria and Standards for Determining Fundamentally Different Factors ~ 40 CFR Part 125, Subpart D, adopted by reference at 18 AAC 83.010(c)(3)

- *Procedures for Processing Fundamentally Different Factor Variances* (June 1983)

17. *Whole Effluent Toxicity.* The Department will include whole effluent toxicity (WET) testing requirements in permits for POTWs with a design flow greater than 1 MGD, POTWs with approved Pretreatment Programs, and for facilities with a discharge that has a reasonable potential to cause or contribute to an exceedance of a state water quality standard.

18. *Wet Testing.* For facilities required to conduct WET testing, the Department will include a special condition in the permit requiring the permittee to prepare and implement a toxicity reduction evaluation (TRE) plan if the results reveal WET limits or water quality standards exceedances. The purpose of the TRE will be to investigate the causes and identify corrective actions for effluent toxicity problems. The Department will consult the following EPA guidances and policy to assist with the development of the TRE plan and to reduce and control toxicity:

    - *Generalized Methodology for Conducting Industrial Toxicity Reduction Evaluations (TREs)* (April 1989)

    - *Toxicity Reduction Evaluation Guidance for Municipal Wastewater Treatment Plants* (August 1999)

    - *Clarifications Regarding Toxicity Reduction and Identification Evaluations in National Pollutant Discharge Elimination System Program* (March 2001)

    - *Guidelines Establishing Test Procedures for the Analysis of Pollutants; Whole Effluent Toxicity Test Methods* [Final Rule Federal register/Vol. 67 69951] (November 2002)

- *Whole Effluent Toxicity (WET) Control Policy* (July 1994)

19. *Toxics Control.* The Department will include a reopener clause in a permit that allows for the inclusion of a WQBEL to control toxics. The Department will include a requirement in the permit to prepare a TRE plan if actions are necessary to achieve WQBELs. As appropriate, the Department will consult EPA guidance to assist with the development of the TRE plan.

20. *Primary Industry.* The Department will include a special condition in a permit for a primary industry category identified in Appendix A of 40 CFR Part 122 requiring the permittee to conduct a priority pollutant scan.

21. *Quality Assurance Project Plan.* The permit writer will include in a permit the requirement to implement a Quality Assurance Project Plan (QAPP) describing appropriate quality assurance procedures to ensure proper collection, laboratory controls, and analysis of samples required by the permit. A domestic wastewater treatment facility operator may develop a facility-specific QAPP or implement the Department's generic Wastewater Treatment Facility QAPP (found at the Department's web page and Appendix E). A nondomestic facility operator will develop a facility-specific QAPP. The permit writer will consult the following EPA guidance:

    - *EPA Requirements for Quality Assurance Project Plans* (EPA/QA/R-5) (March 2001)

    - *Guidance for Quality Assurance Project Plans* (EPA/QA/G-5) (December 2002)

    The Department developed *Elements of a Good Quality Assurance Project Plan (QAPP)* (November 2001) (Appendix E) based on EPA guidance documents to provide additional explanation and assistance. The guidance is also available on the Department's web page.

22. *Best Management Practices.* The Department will include in a permit the requirement to implement best management practices (BMPs) in accordance with CWA §402 and 40 CFR §122.44(k) and incorporated at 18 AAC 83.475 to encourage waste minimization and pollution prevention. The Department will consult the following EPA guidance document to assist with developing the BMPs conditions:

    - *Guidance Manual for Developing Best Management Practices (BMP)* (October 1993)

23. *Discharge Monitoring Report.* The Department will prepare a discharge monitoring report (DMR) template for each applicant based on the limits and conditions established in the draft permit. The Department's DROPS database

will automatically generate the DMR template based on the facility and permit information entered into the database.

24. *Permit Checklist.* The Department will use a Permit Submission Checklist with the goal to develop consistent, legally defensible permits throughout the state. The Department will conduct an internal peer review of the preliminary draft permit, fact sheet, and DMR template to ensure consistency with similar issued permits and allow for senior management review, when appropriate.

25. *Compliance and Enforcement Program.* At the discretion of the program manager and when appropriate, the permit writer will transmit the preliminary draft permit to the Compliance and Enforcement Program staff assigned to the facility to review the permit for enforceability. The permit writer will consider any changes based on comments received from the Compliance and Enforcement Program staff.

6.2.3 Preliminary Draft Permit

1. *Applicant Review.* The Department will transmit the preliminary draft permit, fact sheet, and any supporting documentation to the applicant for an applicant review period for at least 10 working days, unless the applicant waives all or part of the applicant review period. During the applicant review period, the applicant and other interested parties may provide comments and amendments on the preliminary draft permit and discuss the preliminary draft permit with Department staff. The Department may revise the preliminary draft permit and fact sheet based on comments received from the applicant. The preliminary draft permit, fact sheet, and any supporting documentation will be posted on the Department's web page and the Alaska Online Public Notice System during the 10-day applicant review period. An applicant can waive part or all of the applicant review period, in writing, at which time the Department will proceed with preparing a draft permit for public review.

2. *Electronic Mailing List.* The Department will maintain an electronic mailing list to notify EPA and other federal agencies [U.S. Army Corp of Engineers, U.S. Fish and Wildlife Service, and National Marine Fisheries Service (Services)]; State Historic Preservation Office (SHPO); Alaska Department of Natural Resources and Department of Fish and Game (State Resource Agencies); and affected Tribes and Regional Citizens' Advisory Councils (RCACs) that a preliminary draft permit, fact sheet, and an Ocean Discharge Criteria Evaluation, when prepared, are available on the Department's web page for a 10-day applicant review period, unless waived by the applicant, at the time the documents are transmitted to the applicant. The Department will transmit these documents to any member of the public upon request.

3. *Essential Fish Habitat.* 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 (NMFS), 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.

6.2.4 Draft Permit and Public Participation

1. Provided the applicant has not waived all or part of the applicant review period, following the review of any comments received from the applicant, EPA, other agencies, or the public, as appropriate, the Department will prepare a draft permit for public review and comment. The fact sheet will be amended, if necessary, to reflect the draft permit available for public review and comment.

2. *Public Notice.* Every draft and modified permit (except for a modification deemed minor pursuant to 18 AAC 83.145) and the associated fact sheet (for a major discharger) prepared by the Department will be subject to a public review process. The public review and comment procedures will be in accordance with 40 CFR Parts 122 and 124 incorporated at 18 AAC 83.120, as well as 18 AAC 15.050 requirements. In accordance with 18 AAC 15.120 and 18 AAC 83.050, the Department will give notice to the public that a draft permit has been prepared under 18 AAC 83.115 or that a proposed Pretreatment Program approval is available for public review and comment. The public notice will be posted on Alaska's Online Public Notice system in accordance with AS 44.62.175. The public review and comment period will be no less than 30 days but can be extended by the Department, if requested. The public notification will include procedures to review and copy the draft documents and to request a public hearing. The Division's Project Coordinator may assist with the public notice process or develop public notice documents or outreach materials.

3. *Denial.* No public notice will be required when a request to modify, revoke and reissue, or terminate an existing permit is denied. A written notice of the denial will be sent to the requester and to the permittee, if different from the requester.

4. *EPA Review.* The public notification, along with the draft individual permit and fact sheet available for public review, will be transmitted to EPA Region 10 at the beginning of the public review period (with the exception of those permits EPA waives review of per the MOA, Section 4.04.). In accordance with the MOA, EPA has up to 45 days from receipt of the draft permit to comment on, make general objections to, or provide recommendations on the draft permit. Within the 45-day review period EPA can 1) waive its right to review the draft permit or 2) file either a specific objection or a general objection to the permit. If EPA files a general objection to the permit, EPA has up to 90 days from receipt of the draft permit to file a specific objection. EPA's intent is to notify the Department before the end of the initial 45-day review period if EPA knows comments will not be provided or will waive review of the draft permit. The Department and EPA can mutually agree to an initial review period longer than 45 days to provide EPA with additional time

to review the permit. Upon the Department's request, EPA may agree to submit comments in a shorter time frame. Notwithstanding the foregoing, EPA and the Department may mutually agree to extend EPA's review time on a particular permit to the full 90 days without filing a general objection during the initial 45-day period. Nothing in this agreement waives EPA's right to submit a general objection to the permit and request the full 90 days to review a draft permit to provide a specific objection.

5. *Agency and Tribal Review.* At the start of the public review period, the Department will transmit the public notification via an electronic mailing list to the permittee, Services, SHPO, State Resource Agencies, affected Tribes and RCACs, and interested persons announcing that a draft permit, fact sheet, and Ocean Discharge Criteria Evaluation, when prepared, are available on the Department's web page for review and comment.

6. *Public Review.* Copies of the public notice, draft permit, fact sheet, and any supporting documentation will be transmitted to a member of the public upon request. All documents available for public review will be posted on the Department's web page.

7. *Public Hearing.* The Department will conduct a public hearing at the Department's discretion. Factors to be considered include significant public interest in a draft permit or significant information brought to the Department's attention during the public review period that was not considered during the permit development process. A public hearing will be held only after public notice of at least 30 days, as prescribed at 18 AAC 83.120(b). The Department will follow the administrative process in 18 AAC, Chapter 15 to conduct a hearing. The Department will consider comments received at the public hearing, along with the comments received as a result of the public review period, including comments from EPA.

6.2.5 Post Public Notice Procedures

At the close of the public review period and after a public hearing, if applicable, the Department will review the comments received on the draft permit and prepare a proposed final permit.

1. If the Department changes the draft permit such that the proposed final permit is in character with the draft permit and is a logical outgrowth of the public notice and comments received, then the Department will prepare a draft response to comments, incorporate any changes into a proposed final permit, and amend the fact sheet to reflect the proposed final permit. The fact sheet will clearly identify any changes made from the draft permit to the proposed final permit.

2. If the Department makes changes to the permit that are beyond the scope of the preceding paragraph, then the Department will conduct a second public review on the draft permit for no less than a 30-day period (and will schedule a hearing, if requested and appropriate). The Department will follow the public review procedures identified in Section 6.2.4.

6.2.6 Proposed Final Permit Review

1. The Department will transmit the proposed final permit and fact sheet to the applicant for a final review of at least five working days. The applicant may also discuss the proposed final permit with Department staff. The proposed final permit, the fact sheet revised to reflect the proposed final permit, and the draft response to comments will be posted on the Department's web page during the five-day applicant review period and transmitted to EPA (except for those permits EPA waives their right to review) and to any interested person upon request. The Department will also notify the Services, SHPO, State Resource Agencies, and affected Tribes and RCACs via an electronic mailing list that the proposed final permit is available on the Department's web page. The applicant can waive part or all of this review period, at which time the Department will proceed to issue a final permit.

2. The applicant must submit any suggested changes to the proposed final permit to the Department in writing. If the applicant provides no comments within five working days, then the Department will proceed with final issuance of the permit.

3. The Department will review any suggested changes to the proposed final permit submitted by the applicant. The Department will document in the fact sheet and response to comments any changes made from the proposed final permit to the final permit.

4. If the Department makes changes to the proposed final permit that are in character with the publicly noticed draft permit; fact sheet; or accompanying information, and the changes are a logical outgrowth of the notice and comment received on the draft permit, the Department will not conduct additional public notice or review. The Department will finalize the response to comments, amend the fact sheet to reflect the final permit, as appropriate, and proceed to issue the final permit.

5. Any changes to the proposed final permit that are beyond the scope of Section 6.2.6, #4 will require a review by EPA and a public notice prior to final issuance. The Department will send to EPA one copy of the proposed final permit, copies of written public comments received, including hearing records, and the response to comments. EPA will within 45 days of receipt of the proposed final permit notify the Department and the permit applicant of any formal objections to the proposed final permit.

   A permit that requires additional public review will be made available for no less than a 30-day public review period. A public hearing may be held at the Commissioner's discretion. Following the close of the public review period, the Department will review comments received, prepare a response to comments, prepare the proposed final permit for issuance, amend the fact sheet to reflect the proposed final permit, as appropriate, allow for a five-day applicant review period following the steps of Section 6.2.6 #1- 4, and proceed with final issuance of the permit.

6.2.7 Final Permit Decision

1. The Department will prepare and issue a final permit decision after documenting and considering all comments received. The Program Manager of the Wastewater Discharge Authorization Program will sign the final individual permit. A final permit decision will become effective 30 days after service of the notice of the final permit decision.
2. The Department will transmit the final permit, fact sheet (amended as appropriate), response to comments, and the DMR template to the applicant.
3. The Department will transmit the final permit, fact sheet (amended as appropriate), and response to comments to EPA and to anyone who provided comments during the public review period or requested to be notified of the Department's final decision. The final documents will be posted on the Department's web page and hard copies filed in the permit folder at the appropriate Department office. All documents will also be stored in the DROPS database.
4. Final agency action occurs when the Department issues or denies a final APDES permit and the informal review and administrative hearing procedures are exhausted. An appeal of a final agency action is authorized and governed by Alaska appellate rules 601 through 612.
5. All actions, reviews, or determinations by the Department will be in accordance with AS 46.03.020 (*Powers of the Department*), AS 44.46.025 (*Fees for service*), AS 46.03.100 (*Waste Management and Disposal Authorizations*), AS 46.03.120 (*Termination or Modification of Waste Management and Disposal Authorizations*), 18 AAC 15 (*Administrative Procedures*), 18 AAC 70 (*Water Quality Standards*), 18 AAC 72 *(Wastewater Disposal, best professional judgment for non-POTW domestic wastewater discharges to waters of the U.S.),* and 18 AAC 83 (*APDES Program*).

6.2.8 Permit Reissuance

1. A permittee with an existing permit has the duty to re-apply by submitting an application at least 180 days prior to the permit expiration date (18 AAC 83.105). The Department will notify a permittee 210 days prior to the permit expiration date that an application is required. The Department's DROPS database will automatically generate a reissuance notice letter.
2. The Department may reduce the monitoring frequencies and reporting requirements in a reissued permit if a facility has demonstrated excellent compliance performance and can demonstrate the ability to consistently reduce pollutants in the discharge below the levels necessary to meet permit limits. Continued excellent performance is expected to receive the reduced frequencies in a future permit reissuance. The Department will consult EPA guidance:

- *Interim Guidance for Performance-Based Reduction of NPDES Permit Monitoring Frequencies* (April 1996)

3. Except in the case of a permit that contains technology-based effluent limits determined by the use of best professional judgment, the Department will not modify or reissue a permit to include more stringent limits solely based on past performance demonstrating that the facility achieves better effluent quality than required.

6.3 APDES Permitting Procedures for General Permits

18 AAC 83, Article 3 provides the Department with the general permitting authority to the same extent granted EPA under the CWA. The Department intends to make optimal use of general permits for situations where multiple discharges meet the similarity criteria of 18 AAC 83.205(b) and are more appropriately controlled under a general permit. When the Department determines a need for a new general permit or reissues an existing general permit, the Department will follow similar issuance procedures as for an individual permit. However, for a new general permit there may be no specific applicant or applications at the time of the general permit development.

The Department will notify permittees authorized to discharge under an existing general permit 210 days prior to the general permit's expiration date that the permit will expire with instructions to submit a notice of intent (NOI) to continue coverage under the general permit. A permittee authorized to discharge under a general permit will be required to meet similar requirements as a permittee issued an individual permit, such as self-monitoring, reporting, and submitting to Department inspections.

6.3.1 General Permit Development

The Department will follow the individual permit development procedures (Section 6.2.2) to develop a new general permit or reissue an existing general permit.

1. The Department will prepare a preliminary draft general permit that includes water quality-based and/or technology-based discharge limits. When the discharges under the general permit are point source discharges to the territorial seas, the Department will prepare an Ocean Discharge Criteria Evaluation in accordance to 40 CFR §125.120 through §125.124 and adopted by reference at 18 AAC 83.010(c)(8).
2. A fact sheet will accompany every general permit to explain the legal authority, principal facts, and permit limit development. The Department will rely on a fact sheet template similar to a template for an individual permit (Appendix E).
3. A general permit will be issued, modified, revoked and reissued, or terminated according to the same procedures and conditions as an individual permit.

6.3.2 General Permit Reviews

1. *Preliminary Draft.* The Department will provide the preliminary draft general permit and fact sheet to current permittees when reissuing a permit and to appropriate industry trade organizations for potential applicant review when developing a new general permit. The preliminary draft general permit will also be posted on Alaska's Online Public Notice system for at least 10 working days. Potential permittees can provide written comments within 10 days and have the opportunity to discuss the preliminary draft permit with the Department staff. The Department will transmit the preliminary draft permit, fact sheet, and Ocean Discharge Criteria Evaluation, when prepared, to EPA. The Department will also provide notice that the documents are available on the Department web page to the Services, SHPO, State Resource Agencies, and affected Tribes and RCACs via an electronic mailing list.

2. *Draft Permit.* The Department will consider comments received and prepare a draft general permit for public review and comment. The draft general permit, fact sheet, and Ocean Discharge Criteria Evaluation, when prepared, will be posted on the Department's web page. The Services, SHPO, State Resource Agencies, and affected Tribes and RCACs will be notified via an electronic mailing list that the documents are available for review.

3. The Department will transmit the draft general permit to EPA for a 90-day review period, in accordance with 40 CFR §123.44(a)(2), at the beginning of the public review period (See section 6.2.4).

4. After review of the draft general permit and incorporating any revisions, the Department will follow the same post public notice procedures as for an individual permit (Sections 6.2.5).

5. The Department will notify potential permittees and post the proposed final general permit on Alaska's Online Public Notice system for at least five working days for potential permittees to review and provide written comments on and discuss with Department staff the proposed final permit prior to the Department's taking final action on the general permit. The Department will also notify EPA, the Services, SHPO, State Resource Agencies, affected Tribes, RCACs, and interested persons via an electronic mailing list that the proposed final general permit is available on the Department's web page.

6.3.3 Final Permit Decision

1. After documenting and considering all comments received, the Department will prepare and issue a final general permit decision. The Program Manager of the Wastewater Discharge Authorization Program will sign the final general permit. The fact sheet and response to comments will be amended to reflect the conditions of the issued permit and to document any changes made from the draft permit to the final permit. A final permit decision will become effective 30 days after service of the notice of the final permit decision.

2. The final permit, fact sheet, response to comments, and Ocean Discharge Criteria Evaluation, when prepared, will be posted on the Department's web

page and transmitted to EPA, applicants who have applied for coverage under a reissued general permit, and anyone who commented during the public review period or requested notification of the Department's final decision.

3. The final general permit will be in effect for a period not to exceed five years.

6.3.4 General Permit Authorizations

This Section describes the Department's procedures and reporting requirements to authorize a discharge under an effective general permit.

1. The general permit will specify when and where to submit an NOI to discharge under the general permit and the dates when a discharge is authorized under the permit. An applicant will submit an NOI to discharge under a general permit and the appropriate fee to the Department. The NOI, at a minimum, will include the legal name and address of the owner or operator, site contact information, the facility name and address, billing information, type of facility or discharge, the name of the receiving waterbody, other information as required by the general permit, and, as appropriate, a request for an exception to statewide standards (e.g. mixing zone or zone of deposit). An NOI will be signed in accordance with 18 AAC 83.210(d) (40 CFR §122.22).
2. The Department's Online Application System (OASys) will allow for electronic submittal of NOIs for some general permits and fee payments. The Department's web page will inform applicants of the availability of electronic submittal of NOIs.
3. Upon receipt of an NOI and appropriate fee, the Department will concurrently conduct a timely administrative completeness review and technical review of the NOI, as well as coordinate the review of any necessary engineering plans and specifications. If necessary, the Department will contact the applicant for clarification or additional information.
4. Unless otherwise noted in the general permit, the Department's intent will be to issue an authorization to discharge under a general permit within 30 days of receipt of a complete NOI when no requests for an exception to statewide standards have been submitted.
5. The Department's intent is to issue an authorization to discharge under a general permit within 60 days from when an applicant requests an exception to a statewide standard when a 30-day public notice is required [e.g. a new mixing zone or zone of deposit or is considered a major discharger (see MOA, Appendix G)]. The Department will continue to batch the public notice for NOIs for coverage under a general permit when a mixing zone or zone of deposit is requested and for a facility considered a 'major' discharger operating under a general permit (see MOA, Appendix G). The Department also retains the right to public notice a single NOI when appropriate.
6. Based on the information submitted in the NOI, the Department will determine if the applicant qualifies for coverage under the general permit. If

the applicant qualifies for coverage under the general permit and authorization to discharge is not automatic based on the requirements of the general permit, the Department will sign and transmit an authorization to discharge (Appendix E) to the applicant, including any site-specific conditions, along with the appropriate DMR form. An authorization to discharge under a general permit will be effective until the expiration date of the general permit.

7. If the Department determines that the applicant does not qualify for coverage under the general permit, the Department will notify the applicant that coverage is denied and require the applicant to submit an application for an individual permit if the applicant wants to continue to seek an authorization to discharge wastewater to waters of the United States.

8. The Department will notify an applicant who applies for an individual permit when the applicant qualifies for coverage under a general permit. The applicant may withdraw the individual application and submit an NOI for coverage under the general permit.

9. An authorized discharger under an existing general permit will have the duty to reapply to continue coverage under the general permit prior to the general permit's expiration date, in accordance with the time frame established in the general permit.

10. The general permit will specify the deadlines to submit an NOI to be covered under the general permit and the date(s) when a discharger will be authorized to discharge under the general permit. The general permit will specify that authorization to discharge will be effective either: 1) immediately following an applicant's submittal of an NOI to discharge under the general permit, 2) after a period specified in the general permit, 3) on a date specified in the general permit, or 4) upon receipt of notification of coverage by the Department.

11. With the exception of discharges from POTWs; combined sewer overflows; municipal separate storm sewer systems; primary industrial facilities; and stormwater discharges associated with industrial activity, the Department may authorize a discharger to discharge under a general permit without submitting an NOI when submittal of an NOI would be inappropriate.

12. If the Department will not reissue a general permit prior to its expiration date, the Department will administratively extend the existing general permit coverage for a permittee who submitted a timely and complete reissuance NOI prior to the general permit expiration date and in accordance with the general permit. The administratively extended general permit and coverage under the administratively extended general permit will remain fully effective and enforceable until the general permit is reissued and the Department reauthorizes coverage under the reissued general permit. Administratively extending a general permit will not extend the original expiration date of the general permit. The Department will transmit authorizations to the permittees once the general permit is reissued. The Department will not authorize a new discharge under an administratively extended general permit until such time as

the general permit is reissued. The Department will instruct an applicant seeking coverage under an administratively extended general permit to apply for an individual permit.

13. The Department may revoke a permittee's coverage under a general permit if the permittee violates the terms or conditions of a general permit or conditions change such that coverage under a general permit is not appropriate (18 AAC 83.215) and require the permittee to apply for an individual permit. A violation of any condition of a general permit, as with all permits, will be subject to enforcement action by the Department.

14. A facility operating under a general permit designated as a 'major' facility (see MOA, Appendix G) will be tracked, inspected, and reported on in the same manner as a major individual permit holder.

15. On a regular basis, the Department will update the list of permittees authorized to discharge under each APDES general permit and post the information on the Department's web page.

6.4 Permitting Procedures Applicable to All Permits

6.4.1 General

1. *Permit Issuance Plan.* The Department will prepare a Permit Issuance Plan that identifies the permits the Department intends to issue or reissue during the next three year period. The Permit Issuance Plan will be updated annually and posted on the Department's web page and notification made via an electronic mailing list that the Plan is available for public review.

2. *Signature.* All permit applications and reports submitted to the Department will be signed by a responsible person, as described at 18 AAC 83.385 (40 CFR §122.22).

3. *Enter Premises.* The Department requires an applicant to consent to entry upon the premises by representatives of the Department by completing and signing an APDES application in order for the Department to: 1) have access to and copy any records that permit conditions require the applicant to keep; 2) inspect any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under a permit; and 3) sample or monitor any substances or parameters at any location for the purpose of assuring permit compliance or as otherwise authorized by 33 U.S.C. §1251-1387 (Clean Water Act).

4. *Confidential Business Information.* A permit applicant or permittee may assert a claim of confidentiality for proprietary or confidential business information per 18 AAC 83.165 and 40 CFR §2.208 by stamping the words "confidential business information" on each page of a submission containing proprietary or confidential business information. The Department will treat the stamped submission as confidential if:

- the confidentiality claim has not expired by its terms nor been waived nor withdrawn;
- the permit applicant or permittee has satisfactorily shown that it has taken reasonable measures to protect the confidentiality of the information, and that it intends to continue to take such measures;
- the information is not, and has not been, reasonably obtainable without the permit applicant or permittee's consent;
- the permit applicant or permittee has satisfactorily shown that disclosure of the information is likely to cause substantial harm to the permit applicant or permittee's competitive position, or the information is voluntarily submitted information and its disclosure would be likely to impair the Department's ability to obtain necessary information in the future; and
- the information is not otherwise required to be made public by state law.

The permittee will use a "Confidentiality of Records Application and Certification" form (Appendix E) to certify under oath that public disclosure would tend to adversely affect the owner's and operator's competitive position, and that the information is entitled to protection as trade secrets under AS 45.50.910 through 45.50.945 (Alaska Uniform Trade Secrets Act). All confirmed confidential material identified in the form will be stored in a locked cabinet when it is not under direct control of staff. The locked cabinet will be dedicated to containing confidential material and be separate from the rest of the application and facility file. A "Confidential Records Replacement" form (Appendix E) will be included in the permit file advising that confidential information exists. The Department will clearly mark any confidential material transmitted to EPA to facilitate proper handling of the information and will adhere to the requirements of 40 CFR §2.

5. *Threatened and Endangered Species.* After completing the administrative completeness review of an application, the Department will transmit a letter to the Services requesting a list of threatened and endangered species and identification of critical habitat in the area of the proposed discharge.

6. *Permit Template.* The Department will use a permit template to ensure uniformity and consistency that includes Limitations; Monitoring, Recording, and Reporting Requirements; Compliance Responsibilities; and General Requirements to develop a preliminary draft permit. Standard conditions generally will be included by reference unless a permittee would benefit from a particular condition included in the permit. (18 AAC 83, Articles 4 and 5 and in accordance with 40 CFR §122.41 and §122.42). The Department will include standard language applicable to all individual and general permits (Appendix E).

7. Permit development will be assigned to a permit writer with appropriate domestic, stormwater, or industrial sector expertise and training or to a permit writer mentored by senior staff with the sector-specific expertise.

8. *Procedures for Senior Management Input into APDES Permit Preparation.* The Program Manager of the Wastewater Discharge Authorization Program will provide day-to-day oversight of all APDES permitting activities, including reviewing and signing all APDES permits prior to issuance. The Department anticipates a higher level of senior management involvement in permitting during the first few years implementing the APDES Program. The Department will use the following procedures to provide for Director participation and review in the APDES permitting program.

   The Program Manager of the Wastewater Discharge Authorization Program will develop the Permit Issuance Plan identifying expiring permits and new permits expected to be issued in the upcoming three-year period for Director approval. Certain permits will be identified for Director level participation and review, typically those that:

   - may set a precedent for future permits;
   - are likely to attract a high level of interest from environmental groups, industry trade groups, and the public;
   - authorize discharges to a CWA §303(d) listed waterbody;
   - potentially affect threatened or endangered species;
   - include site-specific criteria or other exceptions to Alaska's Water Quality Standards; or
   - incorporate compliance schedules, particularly for major dischargers.

   The Department will encourage frequent communication with a permittee in the permit development process. The Director will consider permittee requests for senior management involvement at any stage in the APDES permitting process where the permittee believes that the permit may set a precedent or is potentially controversial. The Director will make available senior staff, as needed, to discuss complex issues that arise between the Department and the permittee.

   These procedures for senior management involvement will be available to permittees and the general public on the Department's web page upon EPA's approval of the APDES Program. Any future changes or additions must have Director approval. These procedures establish the standard practices that are followed by the Department in permit development. Some permits, however, will require variations from the procedures to address facility-specific issues or conditions. Variations may be identified by the permittee or the Department.

   Where a potential variation is identified, Department staff will be required to bring it to the attention of the Program Manager of the Wastewater Discharge Authorization Program for review. The Program Manager will determine whether the variation constitutes minor changes or whether it is a significant variation that requires Director or legal counsel review and approval prior to issuance of the permit. A variation from the procedures that has precedent-setting implications will receive more extensive scrutiny by senior management, including the Commissioner, as needed.

9. *Requirements in a Permit.* The permit writer will include some monitoring, sampling, and reporting (MS&R) requirements in APDES permits and include others in separate orders or compliance agreements outside of permits. In general, the permit writer will limit the MS&R conditions in APDES permits to those required by law, those required by any legal settlements, and those necessary to ascertain the permittee's compliance with effluent limitations and/or water quality standards. If the permit writer elects to include MS&R conditions in an APDES permit for purposes other than those stated above, the permit writer will include in the fact sheet or statement of basis an explanation of the reasons for including those conditions.

10. *Requirements outside a Permit.* The Department may, by order (e.g. a compliance order by consent or unilateral order) impose other MS&R requirements, either on permittees or on unpermitted facilities, that the Department believes or reasonably suspects to be subject to the requirement to obtain an APDES permit. The permit writer's authority to impose MS&R requirements outside a permit is constrained by the same federal law that governs EPA's exercise of its information-gathering authority: 33 U.S.C. §1318. The Department can only require MS&R requirements for the purposes set out in that federal provision (e.g. to develop or assist in the development of effluent limitations or effluent standards). The Department may enforce such MS&R requirements just as it can enforce any other lawful order. (*See* AS 46.03.760(e) and AS 46.03.765.) An order prepared in conjunction with preparing a draft permit will be discussed in the fact sheet.

11. *Data Review.* The Department will review available data from samples collected during a permit cycle (e.g. effluent, ambient, or sediment) and may revise permit limits in the reissued permit based on the results and in compliance with meeting water quality standards and in accordance with anti-backsliding provisions.

12. *Nutrient Management Plan.* The Department will ensure that development of standards for a nutrient management plan (NMP) will be consistent with 40 CFR §412.4(c), adopted by reference at 18 AAC 83.010(g)(3), if and when an applicant applies for a concentrated animal feeding operation permit. The Department will review the NMP, incorporate terms of the NMP into an APDES permit, and ensure that the NMP is available for public review.

13. *Anti-degradation.* The Department will continue to implement the existing anti-degradation policy set forth at 18 AAC 70.015 and approved by EPA to draft and issue an APDES permit. The Department is committed to develop anti-degradation implementation procedures during the 2007-2009 triennial review process.

14. *Anti-backsliding.* The Department will not reissue or modify a permit (originally issued by EPA or the Department) to contain an effluent limitation, standard, or condition that is less stringent than required by the previous permit, unless one of the exceptions outlined in CWA §402(o)(2) or 40 CFR §122.44(*l*)(2)(i), incorporated at 18 AAC 83.480, is met. In no event

will such a permit be reissued or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a water quality standard outlined at 18 AAC 70. The Department will consult EPA guidance:

- *Interim Guidance on Implementation of Section 402(o) Anti-backsliding Rules for Water Quality-Based Permits* (1988/1989)

15. *Minor Modifications of Existing Permits.* Upon receipt of an application for a minor modification of an existing permit, the permit writer shall consider the list of types of minor modifications set forth in 18 AAC 83.145(a). Included in the list of circumstances that constitute a minor modification are those where the Department is "making a change in a permit provision that will neither result in allowing an actual or potential increase in the discharge of a pollutant or pollutants into the environment nor result in a reduction in monitoring of a permittee's compliance with applicable statutes or regulations." [18 AAC 83.145(a)(6)]. This provision requires that any modification that the Department may approve as minor (e.g., approving the use of a more sensitive analytical methodology for discharge monitoring) is, in fact, minor in nature. Under 18 AAC 83.145(a)(6), the permit writer may only process a minor modification application if the proposed change will have no potential for additional deleterious impact on the environment or will not reduce the ability to confirm a permittee's compliance with applicable requirements. If the proposed change could not meet these regulatory requirements, or fit into one of the other categories listed in 18 AAC 83.145(a), the proposed change cannot be processed as a minor modification and must be processed in accordance with the draft permit and public notice requirements set forth in 18 AAC 83.115, 18 AAC 83.120, 18 AAC 83.130, and 18 AAC 83.135.
16. *Administrative Record.* An administrative record will be prepared for every permit developed (see Section 6.4.8).
17. *Data Management.* All Required ICIS-NPDES Data Elements (RIDE) will be entered into DROPS and electronically transmitted to populate ICIS-NPDES (see Chapter 10.0, Information Management).
18. *EPA Objection.* The Department will not issue an individual or general permit until any EPA objection to the permit is satisfied.
19. *Issuance and Effectiveness.* A permit will be effective 30 days following issuance by the Department. The effect of a permit may be stayed in part or in whole by the Commissioner or a court. A permit is effective for a fixed term not to exceed five years; however, nothing in regulations prohibits the Department from issuing a permit with an expiration date less than five years.

6.4.2 Conflict of Interest

The Department plans to implement 18 AAC 83.170 as follows. The persons with authority to approve all or portions of an APDES permit are the Department

Commissioner, the Director of the Division of Water, and the Program Manager for the Wastewater Discharge Authorization Program. There is no separate 'board or body', aside from these three Department employees, with authority over an APDES permit.

Before assuming authority over an APDES permit, each person acting in one of these three positions will first certify, upon a form substantially similar to the Certificate of Compliance (Appendix F) that he or she has not received a significant portion of income directly or indirectly from APDES permit holders or applicants during the previous two years. If the person has not been employed by a state agency during the entire period of those pervious two years, the certificate shall be accompanied by financial records sufficient to verify the certificate. The certificate also includes a commitment to notify appropriate authorities in the unlikely event that circumstances change so as to create a prohibited conflict situation.

Each person signing such a certificate shall also provide, upon request of the Department, any additional information deemed necessary to verify the certificate. Should any question arise regarding the sufficiency or accuracy of any such certificate, the Department will promptly bring that question to the attention of EPA and pursue a prompt and mutually agreeable resolution.

Occasionally, the Department may delegate the final decision in a hearing over an APDES permit to an Administrative Law Judge (ALJ) in the Office of the Administrative Hearings (OAH). [*See* AS 44.64.03.030(c)]. In that case, the ALJ will make the final agency decision on the permit and so fall within the coverage of 18 AAC 83.170. In such circumstance, the Department will require, as a condition of the delegation of authority to the OAH, that the ALJ assigned to the case by the OAH also fill out a certificate substantially similar to the one described above (Appendix F).

6.4.3 Data Entry

1. *Coding permits.* An informational technology staff will review a draft permit before the permit is issued to ensure that the coding is consistent with ICIS-NPDES requirements and all RIDE requirements and that the data can be tracked in DROPS.
2. *DMR data.* A data entry clerk will enter DMR data into DROPS received in hard copy format. Data submitted via the e2 system or EPA's NetDMR will automatically populate DROPS (see Chapter 10.0). Permit writers and compliance staff will have access to the data via DROPS. Permit writers and compliance staff will have ready access to all data via DROPS' reporting capabilities.
3. *Supplemental data.* A data clerk will enter into DROPS the due date and receipt date of data collected outside the requirements of a permit.
4. *Compliance schedule.* A compliance schedule included in a permit will be entered into DROPS.

6.4.4 Third Party Contractors

18 AAC 83.125 allows the Department to use a contractor to develop a preliminary or draft permit, fact sheet, other supporting documents, and a response to comments. The contractor will submit the documents in a required format using Department templates and formats. The Department anticipates that these options will be exercised mainly for large development projects but could also be used for smaller projects. The contractor options include:

1. *Applicant Hires Contractor to Develop Permit.* An applicant can directly hire a contractor to develop the supporting information and prepare a preliminary draft or draft permit that are then transmitted to the Department. The Department will not be bound to accept a preliminary draft or draft permit or supporting documents developed by the applicant's contractor. However, if a preliminary draft permit or draft permit is accepted by the Department, the Department will check the assumptions, effluent limits, monitoring, and other requirements in the contractor's preliminary draft permit or draft permit to ensure the permit meets all APDES permit requirements and guidance. Based on the permit writer's review of the preliminary draft permit or draft permit, the permit writer may: a) propose a draft permit as the Department's proposed decision for public comment, if the permit meets all APDES requirements and guidance; b) amend the contractor's draft permit prior to taking public comment on the draft permit; or c) not use the contractor's draft permit and develop a preliminary draft permit using Department resources. The Department will process a Department accepted contractor's preliminary draft or draft permit in the same manner as a permit prepared by the Department, as described in Sections 6.2 and 6.4.

2. *Memorandum of Understanding -Based Approach to Permit Development.* Under this option, the Department and applicant enter into a Memorandum of Understanding (MOU) that identifies the process and timeline to develop a draft permit and supporting documents. The Department will prepare the scope of work (SOW) for the contractor's permit development work with applicant input and select the contractor with input from the applicant. The selected contractor will submit a disclosure statement pledging that no conflict of interest exists in the contractor's preparing the drafts of the permit and supporting documents (see 18 AAC 83.125). The Department will enter into the contract and manage the work of the contractor. If the applicant and the Department agree to the SOW and the contractor selection, then the applicant and the Department will establish a negotiated service agreement whereby the applicant will pay the Department for designated regulatory services during the permit development process, and the Department will pay the contractor for developing drafts of the permit and associated documents. An applicant that does not agree with the SOW or contractor selection can cancel out of the agreement. The Department will use in-house resources or contractor assistance to develop the drafts of the permit, and the permittee's fee will be based on permit fee regulations established at 18 AAC 83.905.

6.4.5 Modification or Revocation and Reissuance

1. *Modify or Revoke and Reissue.* The Department can decide to modify or revoke and reissue a permit based on a review of new information received, an inspection of the facility, the results of a file review, or a request to modify or revoke and reissue the permit. If the Department decides that a request to modify or revoke and reissue a permit is not justified, a written response will be sent to the requester giving the reason for the decision. The Department will not public notice the Department's decision to deny a request to modify or revoke and reissue a permit. A permit can be modified to reflect a permit transfer after the effective date of an automatic transfer under 18 AAC 83.150(b) [40 CFR §122.61(b)]. The Department can modify or revoke and reissue a permit if cause exists for termination of the permit under 18 AAC 83.140 and 18 AAC 83.130(j) and (k), respectively (40 CFR §122.64). Submittal of a new application may be required if the permit is revoked and reissued.

2. *Permit Modification.* The Department may modify a permit prior to its expiration date only for causes specified at 18 AAC 83.135 (40 CFR §122.62). A modification other than a 'minor modification' (18 AAC 83.145) requires the preparation of a draft permit incorporating the proposed changes, preparation of a fact sheet, and a public review period. Only the permit conditions subject to the modification will be reopened when a permit is modified. All other conditions of the existing permit will remain in effect. A modification can not extend the existing permit beyond its five-year limit.

3. *Additional Information.* The Department may request additional information or require the permittee to submit an updated application if the permit is to be modified for any of the following reasons:

   a) *Alterations.* There are material and substantial alterations or additions to the permitted facility or activity that occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

   b) *Information.* New information is received that was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of permit issuance.

   c) *New Regulations.* The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued.

   d) *Compliance Schedules.* Good cause exists for modification of a compliance schedule for which the permittee has little or no control.

   e) *Request for Variance.* When the permittee files a request for a variance under CWA §§301(c), 301(g), 301(i), or 316(a) or for fundamentally

different factors within the time specified in 18 AAC 83.365, 18 AAC 83.370, and 18 AAC 83.375 (40 CFR §122.21).

f) *Toxics*. When required to incorporate an applicable CWA §307(a) toxic effluent standards or prohibition as required by 18 AAC 83.430(a)(2) [40 CFR §122.44(b)].

g) *Reopener*. When a reopener clause in the permit requires the permit to be reopened to include toxic effluent limits or Pretreatment Program requirements.

h) *Net Limits*. Upon request of a permittee who qualifies for effluent limits on a net basis under 18 AAC 83.545 [40 CFR §122.45(g)] or when the discharger no longer is eligible for net limits.

i) *Pretreatment*. When required to include a compliance schedule for development of a Pretreatment Program.

j) *Non-limited Pollutants*. When the level of discharge of any pollutant that is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 18 AAC 83.010(c)(1) [40 CFR §125.3(c)].

k) *Notification Levels*. To establish a 'notification level', as provided in 18 AAC 83.445 [40 CFR §122.44(f)].

l) *Small Municipal Separate Storm Sewer Systems*. To include an effluent limitation requiring implementation of minimum control measures, as specified in 40 CFR §122.34(b) and adopted by reference at 18 AAC 83.010(b)(5), when the permit does not include such measures based upon the determination that another entity was responsible for implementing the requirements and the other entity fails to implement the measures that satisfy the requirements.

m) *Technical Mistakes*. To correct technical mistakes, such as errors in calculation or mistaken interpretation of law, made in determining permit conditions

n) *Inability to Achieve Limits*. When properly installed and maintained treatment technology fails to meet effluent limits the Department considered appropriate at the time of permit issuance. In this case, the limits in the modified permit may reflect the level of pollutant control actually achieved, but shall not be less stringent than required by a subsequently promulgated effluent limitation guideline.

4. *Minor Modification.* When the modification of an existing permit satisfies the criteria of a 'minor modification' described at 18 AAC 83.145 (40 CFR §122.63), a permit is modified without preparation of a draft permit or a public review period.

5. *Revoke and Reissue.* Substantial modifications may require that the permit be revoked and reissued and that the permittee submit a new application. When a permit is revoked and reissued, the entire permit will be reopened as if the

permit has expired and is being reissued. The permittee will comply with all conditions of the existing permit until it is replaced with a reissued permit. In addition to a substantive permit modification, a permit will be revoked and reissued when there is cause to terminate the permit as described at 18 AAC 83.140 (40 CFR §122.64). A revoked and reissued permit will be issued for a new term not to exceed five years.

6. *Modified State Certification.* In the event that the Department modifies the state's CWA §401 certification of an NPDES permit that EPA retains legal authority over (MOA, Appendix A) or until authority transfers to the Department per the transfer schedule (MOA, Appendix B), the Department will forward the modified state certification to EPA with the request to modify the NPDES permit, if applicable. EPA will be responsible to modify the NPDES permits it retains authority over, at its discretion.

6.4.6 Transfer

In accordance with 18 AAC 83.150 (40 CFR §122.61), a permit can transfer to a new permittee by either: 1) modifying or revoking and then reissuing a permit to the new permittee or 2) an automatic transfer if the permittee notifies the Department in writing 30 days prior to the proposed transfer date; prepares a written agreement between the existing permittee and new permittee containing the specific date of transfer of permit responsibility, coverage, and liability; and the Department does not notify the permittee that the permit will be modified or revoked and reissued. An automatic transfer will be effective on the date specified in the written agreement between the original and new permittees.

6.4.7 Termination

Provided for at 18 AAC 83.140 (40 CFR §122.64), an existing permit may be terminated or a permit reissuance application denied because: 1) the permittee does not comply with the permit, 2) the permittee fails to fully disclose relevant information in the application or misrepresents the information, 3) the discharge endangers human health or the environment, or 4) a change in any condition that requires either a temporary or permanent reduction or elimination of any discharge (e.g., plant closure or termination of the discharge by connection to a POTW).

The Department will prepare a notice to terminate describing the Department's rationale to terminate a permit. A notice to terminate is a type of decision that follows the same procedures as any draft permit prepared under 18 AAC 83.115 (40 CFR §124.6). The notice to terminate will be sent to the permittee, EPA, and anyone else upon request. Depending on the reasons for termination and public interest, a public hearing may be held. The Department will respond to comments received and issue a final decision. If the final decision is to terminate the permit, termination will be effective 30 days after the service of final decision.

If the final decision is not to terminate a permit, then the Department will document its decision in a statement of basis and send a copy to the permittee, EPA, anyone

who commented during the public review period, and anyone else upon request. The final decision will be posted on the Department's web page.

A permit can be terminated by notice to the permittee if the discharge is permanently eliminated or connected to a POTW. Termination by notice will be effective 30 days after the termination notice is sent, unless the permittee objects within that time. If the permittee objects to the termination, then the Department will follow the procedures for termination of a permit stated above.

6.4.8 Administrative Record

1. Once a final permit is issued, the Department will enter permit limits, any special conditions, and a compliance schedule, when included, into the DROPS database to track a facility's compliance performance with the permit.
2. Prior to final issuance, the Department will prepare an administrative record for a final permit that reflects the administrative record for the preliminary draft, draft, proposed final, and final permits and will consist of:
   a) application and supporting data;
   b) notice of intent to deny the application (if applicable);
   c) inspection report, if applicable;
   d) preliminary draft, draft, proposed final, and issued permits;
   e) fact sheet or statement of basis that reflects the draft permit and final permit;
   f) all documents cited in the fact sheet (except EPA and state guidance documents), including calculations used to derive permit limits;
   g) list of EPA and state guidance documents used to develop the permit and fact sheet;
   h) comments received during the public review and comment period, including during any hearing(s), as well as comments received from the applicant on the preliminary draft permit and proposed final permit;
   i) the tape or transcript of any hearing(s) held;
   j) the response to comments;
   k) Ocean Discharge Criteria Evaluation, when prepared;
   l) meeting reports, trip reports, telephone memos; and
   m) other documents contained in the supporting file for the permit.
3. The permit file will include the associated documentation for a permit that is modified, revoked and reissued, transferred, or terminated.

6.4.9 Integrated Permitting

1. *Integrated Waste Management.* The Department can provide for integrated waste management and disposal permits for multiple waste streams (e.g. wastewater and solid waste) whenever possible and feasible. However, if the applicant requests a separate permit for each discharge and submits separate applications, the Department may process the applications as submitted.
2. *Multiple Dischargers.* The Department can issue one APDES permit for multiple discharges from facilities or activities at a particular geographic site whenever possible or feasible. If the applicant requests a separate permit for each of the discharges from the geographic site by filing separate applications, the Department may process the applications as submitted.
3. *Watershed Permitting.* The Department will consider permitting on a watershed-basis based on EPA policy and guidance, if feasible or appropriate.

6.5 Permit Procedures for Facilities Located in the Coastal Zone

The issuance of a Department authorization establishes consistency with the Alaska Coastal Management Program (ACMP). Therefore, the specific aspects of an activity that are subject to a Department authorization (e.g. APDES Program authorization) are excluded from the scope of an ACMP consistency review conducted under 11 AAC 110 [11 AAC 110.010(d)].

The Department of Natural Resources (DNR) Division of Coastal and Ocean Management (DCOM) will coordinate the ACMP consistency review process for a proposed project within the state's coastal zone that requires an APDES individual permit in addition to an authorization from another resource agency, a federal activity, or a project located on federal land. A DCOM coordinated review will be conducted independent of the APDES permit process.

The Department will conduct a consistency review in accordance with 11 AAC 110 Article 2, State Consistency Review Process, and the "DEC Single Agency Coastal Management Consistency Review Procedures," ADEC Policy Guidance No. 2003-001, January 7, 2004 (Appendix G), for projects that:

1. require only an APDES permit to operate;
2. are located within the coastal zone boundaries of an approved coastal district; and
3. include activities that are the subject of a coastal resource district enforceable policy or statewide standard, if applicable.

When obtaining an APDES permit, an applicant will submit to the Department a completed Coastal Project Questionnaire (CPQ) along with the APDES permit application. The CPQ preliminarily identifies the required state and federal

authorizations for a particular project. If the permit writer determines that the applicant requires one or more authorizations from other state or federal agencies, the CPQ will be sent to DCOM along with a letter transferring the project consistency review to DCOM and a copy of the letter to the applicant.

If the permit writer determines that the applicant does not require one or more authorizations from other state or federal agencies, then the permit writer will follow the "DEC Single Agency Coastal Management Consistency Review Procedures".

The Department's intent is to develop and issue a permit concurrently with the single agency ACMP consistency review, if one is required, as follows:

1. The Department will send a project scope letter via fax or email to the project applicant, any potentially affected coastal district, and DCOM that explains the Department's responsibility to determine if the scope of the project includes activities that are subject to a coastal district enforceable policy. The Department will transmit the project scope letter on the same day the APDES preliminary draft permit, fact sheet, and any supporting documentation are transmitted to the applicant for the 10-day applicant review period (see Section 6.2.3 #1).
2. An affected coastal district has 10 calendar days from issuance of the project scope letter to comment to the Department that a project includes activities subject to a coastal district enforceable policy. The coastal district is allowed the full 10-day comment period even if the applicant waives or reduces the length of the 10-day applicant review period.
3. The Department's Deputy Commissioner will determine whether the project includes activities subject to a coastal consistency review within four calendar days of receipt of the coastal district's comments. If the Deputy Commissioner determines an enforceable policy applies, a single agency ACMP consistency review will be conducted. The Department will not conduct a single agency ACMP consistency review if the district does not comment within the 10-day comment period or if the Deputy Commissioner determines that there are no activities subject to a district enforceable policy. The Department will notify the applicant, coastal district, and DCOM of the Deputy Commissioner's determination. The letter will include the scope of review if a consistency review is required.
4. The Department's intent is to public notice a draft permit (see Section 6.2.4, #2) concurrently with the 30-day or 50-day single agency ACMP consistency. The Department may modify the consistency review schedule under the circumstances listed and for the time specified in 11 AAC 110.270(a) or may suspend the consistency review schedule pursuant to 11 AAC 110.265(b)(2). The Department may extend the draft permit public review period if the consistency review schedule is modified.

An APDES permit reissued for an existing project or issued to replace an expired but administratively extended APDES permit for an existing project is not subject to a

single agency ACMP consistency review, unless the applicant proposes a modification (11 AAC 110.830).

The Department will follow the ACMP project modification review process when an APDES permit for which a final consistency determination has been issued is proposed to be modified (11 AAC 110.820). The Department will follow the "DEC Single Agency Coastal Management Consistency Review Procedures" if the Department determines that the proposed modification may cause significant additional impacts to a coastal resource or use [11 AAC 110.820(c)]. Only the part of the project affected by the modification is subject to the review [11 AAC 110.820(e)].

6.6 Appeals Process

The Department has both an informal review process and a formal administrative appeal process for waste disposal authorization decisions. A request for an informal review is denied if the request does not have merit. If the request for review is granted, the Director will issue a final decision within 15 days of receipt of the request or receipt of any additional information requested by the Department, whichever is later.

As provided for at 18 AAC 83.175, the formal appeals process is initiated by a party submitting a request to the Department for an adjudicatory hearing within 30 days after the permit decision or decision issued under the informal review process. Any person who wishes to file a response to the request has 20 days to do this. The requestor then has seven days to file a reply. The Commissioner or the Commissioner's designee may: 1) grant the request for adjudicatory hearing, 2) remand the permit decision to DEC staff with instructions, 3) deny the request for an adjudicatory hearing and grant a hearing on the existing agency record and on written briefs, or 4) deny the request for an adjudicatory hearing and issue a final agency decision. A final decision by the Commissioner constitutes the final agency decision. An aggrieved party has 30 days to appeal the decision to the Alaska Superior Court. Within the 30 days, the party must submit a notice of appeal listing the points that the party wishes to raise. The actual preparation of a record and briefing of the appeal takes place over the ensuing months.

Department regulations provide that a request for an adjudicatory hearing does not automatically stay any provisions in the contested permit. However, the party requesting the adjudicatory hearing may also request the Commissioner to stay the Department's decision, or a portion of it, pending completion of the proceedings. Similarly, AS 46.03.100(k) states a permit issued by the Department is not automatically stayed, and a request for a stay will be decided by the Commissioner or the Commissioner's designee.

Adjudicatory hearings will be conducted by an administrative law judge (ALJ) in the Office of Administrative Hearings within the Department of Administration. The ALJ will follow procedures adopted by that office. The decision whether to grant an administrative hearing and the final agency decision itself will still be made by the Commissioner or the Commissioner's designee. A request for an adjudicatory hearing will not trigger an automatic stay of any provision in a state-issued APDES permit.

6.6.1 Attorney's Fees

There is no provision for recovery of costs and attorney's fees by the prevailing party in an adjudicatory hearing. The Department does not intend to seek attorney's fees awards in cases where an APDES permit is upheld on appeal to the Alaska courts, unless the appeal was frivolous or brought simply for purposes of delay. In those cases, the Department may seek fee awards under Alaska Appellate Rule 508. Such restraint on the part of the Department may be necessary to avoid deterrence of similarly situated litigants from voluntary use of the courts. *See* Alaska Civil Rule 82(b)(3)(I); 40 CFR §123.30.

Similarly, it is the Department's position that attorneys' fees awards against individuals or groups representing individuals who could be affected by a permitted discharge could have a chilling effect on the willingness and ability of certain litigants to challenge future APDES permits in court. 40 CFR §123.30 requires states that administer NPDES programs to have appellate procedures that "encourage[,] and assist public participation in the permitting process." To avoid deterring public participation in the judicial review of APDES permits, the Department's position is that Alaska Civil Rule 82(b)(3)(I) has particular relevance to consideration of any potential attorneys' fees award against litigants whose good faith appeal of an APDES permit proves unsuccessful.

6.7 Rural Community and Tribal Participation

The Department encourages participation and communication with rural communities, Tribes, and Regional Citizens' Advisory Councils (RCACs) throughout the permit development process, particularly to discuss potentially controversial or complex issues involved with a new permit. The Department will facilitate this dialogue by implementing the *Public Participation in APDES Permitting Process* (Appendix H). The Department will maintain an electronic mailing list where interested individuals and organizations can subscribe to receive an email notification when permit information is available on the Department's web page for review. The Department's web page includes instructions to subscribe to the electronic mailing list. The Department will notify the mailing list subscribers that draft and final permit documents are available for review during key points in the permitting process, as follows:

1. *Water Quality Standards Revisions.* The Alaska Water Quality Standards are the basis for many permit limits and conditions. Notification of proposed changes to the water quality standards will be sent via the electronic mailing list.

2. *Permit Issuance Plan.* The Department will prepare a Permit Issuance Plan that identifies the permits the Department proposes to issue during the upcoming three-year period. The Permit Issuance Plan will be updated annually, posted on the Department's web page, and notification sent via the electronic mailing list that the Plan is available for review.

3. *Preliminary draft permit.* The preliminary draft permit, fact sheet, Ocean Discharge Criteria Evaluation, when prepared, and any supporting documentation will be posted on the Department's web page for review during the 10-day applicant review period for an individual permit provided the applicant has not waived that review period (see section 6.2.3). A preliminary draft general permit will also be available for a 10-day review period (see Section 6.3.2).

4. *Draft permit.* The draft permit, fact sheet, Ocean Discharge Criteria Evaluation, when prepared, and any supporting documentation will be posted on the Department's web page during a minimum 30-day public review and comment period (see Section 6.2.4.). The Department will give notice to the public in accordance with 18 AAC 83.120 that a draft permit has been prepared and will post the draft permit documents on Alaska's Online Public Notice system. The public review and comment period will be no less than 30 days but can be extended by the Department. The Department will schedule a public meeting or public hearing on the draft permit if there is significant public interest in issuance of the permit or to describe the tentative permitting decisions.

5. *Response to comments.* The Department will prepare a response to comments received during the public review and comment period documenting how the Department addressed the comments received.

6. *Proposed final permit.* Following the close of the public review and comment period and after a public meeting or hearing, if applicable, the Department will prepare a proposed final permit based on the comments received, as appropriate. The proposed final permit, fact sheet, Ocean Discharge Criteria Evaluation, when prepared, and any supporting documentation will be available on the Department's web page for a five-day review (see Sections 6.2.6, #1 and 6.3.2, #5).

7. *Final permit.* Following the close of the five-day review of the proposed final permit, the Department will prepare a final permit for issuance. The final permit and associated permit documents will be posted on the Department's web page (see Sections 6.2.7 and 6.3.3).

8. *Permit Appeal.* In addition to the opportunities to review a preliminary draft permit; draft permit; and proposed final permit, rural communities; Tribes; and RCACs can appeal a permit decision either by an informal or formal review process. The Department will grant an informal review of a permit decision if the request has merit. The Director will issue a final decision from an informal review within 15 days of receipt of the request for the review.

   Rural communities, Tribes, and RCACs can initiate a formal appeal of the permit decision by submitting a request for an adjudicatory hearing within 30 days after the permit is issued or a decision is made during the informal review process. (See Section 6.6 and 18 AAC 83.175 for more details.)

7.0 Stormwater Program

7.1 Introduction

Chapter 7.0 describes the APDES Stormwater Program required under 33 USC §1342(p), as regulated in 40 CFR §122.26 and 40 CFR §122.30 through 40 CFR §122.37 and adopted by reference at 18 AAC 83.010(b)(3) and 18 AAC 83.010(b)(5), respectively.

In accordance with the transfer schedule (MOA, Appendix B), the Department will assume authority for permitting and compliance of stormwater discharges one year from program approval. The Department will evaluate the existing permits' effectiveness and applicability to Alaska conditions over the life of each permit for the different types of stormwater discharges.

7.2 Permit Categories and Coverage

There are two categories of stormwater discharges in the APDES Program: municipal separate storm sewer systems and industrial activities (including construction). The EPA program currently administers five individual permits and two general permits covering stormwater discharges in Alaska. In addition, five general permits and several individual permits regulate multiple discharges in a single permit that include stormwater controls. Table 10 provides a summary of the stormwater individual permits, general permits, and general permits that authorize stormwater as one of several discharges.

The Department does not intend to expand required coverage under the Stormwater Program beyond what EPA requires. The Department will apply regulatory criteria at 18 AAC 83.205 to determine when a general permit vs. an individual permit should be issued.

7.2.1 Municipal Separate Storm Sewer Systems (MS4)

Municipal Separate Storm Sewer Systems (MS4s) are regulated as either large/medium (Phase I) or small (Phase II) systems. There are currently four individual permits for MS4 coverage: two for large/medium systems and two for small systems. EPA has received one application for a small MS4 and anticipates receiving an application from at least one additional MS4 operator (see Table 10). The Department will evaluate other MS4s for designation as regulated MS4s based on the Department's *Designation Criteria and Selection Process for Small Municipal Separate Storm Sewer Systems* (October 2008), as well as criteria and models developed by other states and EPA Region 10. The Department will evaluate the potential for using a general permit for regulated small MS4s based on the effectiveness of the current individual permits and the potential increase in the number of regulated small MS4s in the future.

Table 10. Stormwater Permits in Alaska

Permit Name or Permittee	Type of Permit	NPDES Permit Number	Effective Date	Expiration Date	Number of NOIs
Industrial					
Multi-Sector General Permit (MSGP)	General	AKR05-0000	10/30/00	10/30/05	350
Ted Stevens Anchorage Int'l Airport	Individual	N/A	Application received		
Construction					
Construction General Permit	General	AKR10-0000	07/01/03	07/01/08	569[1]
Large/Medium MS4s					
Municipality of Anchorage ADOT&PF	Individual	AKS-052558	10/28/98	10/28/03	
Port of Anchorage	Individual	AKS-052426	03/03/95	03/03/00	
Small MS4s					
City of Fairbanks, ADOT, UAF, City of North Pole	Individual	AKS-053406	06/1/05	05/31/10	
North Star Borough	Individual	AKS-053414	06/01/05	05/31/10	
Fort Wainwright	Individual	N/A	Application pending		
Elmendorf Air Force Base	Individual	N/A	Application received		
Permits with multiple discharges, including stormwater					
Arctic Oil and Gas (Deck drainage)	General	AKG-28-0000	06/26/06	06/26/11	2
Cook Inlet (Deck drainage) [2]	General	AKG-315000	07/02/07	07/02/12	17
North Slope Oil and Gas	General	AKG-33-0000	01/02/04	01/02/09	15
Log Transfer Facility	General	AKG-70-0000 AKG-70-1000	03/27/04	05/21/05	55 36
Mechanical Placer Mine (Drainage water)[3]	General	AKG-37-0000	10/04/05	10/04/10	313

1) Issued July 1, 2006 through June 30, 2007.
2) Superseded by GP AKG 31-5000
3) Drainage water means incidental surface waters from diverse sources, such as rainfall, snow melt, or permafrost melt.

NOI = Notice of Intent
UAF = University of Alaska at Fairbanks
MS4 = municipal separate storm sewer system
N/A = not applicable
ADOT&PF = Alaska Dept. of Transportation and Public Facilities

7.2.2 Industrial

Industrial activities sub-grouped under 40 CFR §122.26 (b)(14), excluding construction, will be regulated under the existing Multi-Sector General Permit (MSGP), unless, because of ineligibility, an individual or alternate general permit is required. State use of the MSGP will allow all regulated industries to be covered under a general permit for discharges of stormwater runoff. The Department will evaluate compliance and effectiveness of this permit, along with experience of other states' NPDES programs (such as Oregon and Washington) to determine whether general permits for one or more specific industrial sectors is appropriate. When authority of the Stormwater Program is transferred to the Department and upon expiration of the MSGP, the Department will reissue the general permit to include Alaska specific requirements and conditions.

The Department will continue to implement the existing Construction General Permit (CGP) to regulate industrial activity involving large construction activity (disturbing five or more acres) under 40 CFR §122.26 (b)(14)(x) and small construction activity (disturbing one to five acres) under 40 CFR §122.26 (b)(15). When authority of the Stormwater Program is transferred to the Department and upon expiration of the CGP, the Department will reissue the general permit to include Alaska specific requirements and conditions.

The Department will adopt EPA's "No Exposure Certification" form and procedures that allow applicants to certify that the industrial activity is not exposed to stormwater, thus eliminating the need for stormwater permit coverage.

7.2.3 Integrated Permit

Five EPA-issued general permits (see Table 10) and several EPA-issued individual permits include stormwater as one of several authorized discharges in an "integrated" permit. The Department will continue to administer integrated permits that regulate multiple types of discharges at a facility on a case by case basis and in consultation with the permittee.

7.3 Permitting Procedures

Permitting procedures for stormwater permits are similar to the permitting procedures described in Sections 6.2 for individual permits, 6.3 for general permits, 6.4 for permitting procedures applicable to all permits, 6.5 for projects located in a coastal zone, and 6.6 for the appeals process.

7.3.1 Individual Permit

Procedures applicable to an individual stormwater permit are the same as described in Section 6.2, with the following exceptions:

- The review to develop a stormwater permit will include the permit application and municipal stormwater annual reports from an MS4 facility. There is no adopted permit application form for large and medium MS4s. Application contents and requirements are adopted by reference at
  18 AAC 83.010(3) [40 CFR §122.26(d)].

- Best Management Practices will be included as authorized under 33 U.S.C. §1342(p) or when the practices are reasonably necessary to achieve effluent limits and water quality standards.

- Although discretionary, water quality-based effluent limits may be evaluated and reasonable potential analyses may be conducted if sufficient data become available.

- Permits for MS4s will require controls to reduce the discharge of pollutants to the maximum extent practicable, as required by 33 U.S.C. §1342(p)(3)(B).

7.3.2 General Permits

Procedures applicable to stormwater general permits are the same as described in Section 6.3, APDES Permitting Procedures for General Permits, including the use of electronic NOI submittal. Two exceptions to the permitting procedures for general permits include:

- the incorporation of Best Management Practices, as authorized under 33 U.S.C. §1342(p) or when the practices are reasonably necessary to achieve effluent limits and water quality standards, and

- water quality-based effluent limits may be evaluated and reasonable potential analyses may be conducted if sufficient data become available.

7.4 Communication Outreach

At the outset of program approval, the Department will develop a Communications Plan targeting operators of activities that are currently regulated for stormwater discharges to provide information on the change in permitting authority. Outreach to the planning departments of local governments will also occur to provide information on the Stormwater Program requirements. Assistance from the Division's Project Coordinator will be sought, as appropriate. The Department has convened an APDES permittee Work Group and will continue to use this forum to inform regulated industries and local governments.

The intent of the Department is to make compliance requirements understandable to the regulated dischargers (MS4 communities, industrial facility operators, and construction

contractors). The Department will provide training on permit requirements and procedures for responding to stormwater inquiries to its stormwater permitting staff. This training will be reviewed and upgraded as necessary to keep abreast of emerging issues. Training that staff complete will be identified in the Department's Capacity Building summaries. To provide compliance outreach, the Department will:

- Maintain a web page that provides:
  a) information about specific permit requirements and procedures to obtain coverage,
  b) links to other resources, and
  c) web access to the Department's database of those with current CGP and MSGP NOIs. The posting will include the names of persons authorized to discharge under the permit and the locations the discharge is authorized.
- Answer telephone and email inquiries in a complete and consistent manner.
- Provide outreach to interested groups, particularly local government planning and permitting offices, construction contractors, engineers, and designers.
- Make training materials available online.
- Develop technical guidance for Best Management Practices, as required, for Alaska-specific conditions. Some of the guidance will be based on the outcome of several current grant-funded studies of Best Management Practices.

7.5 Permit Maintenance

The Department will perform permit maintenance duties on all permits issued to regulate stormwater runoff, as follows:

7.5.1 Municipal Separate Storm Sewer System (MS4)

All MS4 permittees with current, effective permits have the duty to reapply for permit coverage at least 180 days prior to the permit's expiration date. When the Department determines that a complete application has been submitted, a permittee's coverage under an expired permit and the conditions of that permit will continue until the effective date of a reissued permit. In accordance with EPA's *Interpretive Policy Memorandum on Reapplication Requirements for MS4s* (FRL-5533-7), requirements to demonstrate adequate legal authority, perform source identification, characterize data, and develop a stormwater management program will not apply to the reapplication of Phase I MS4s (large and medium).

The basic required reapplication information for Phase I MS4s (large and medium) will include:

- name and mailing address of the permittee operating the MS4,
- names and titles of the primary administrative and technical contacts for the municipal permittee, and

- identification of any proposed changes or improvements to the stormwater management program and monitoring activities for the upcoming five years.

The applicant can use the fourth year annual report information along with submittal of the basic information as the permit reapplication.

As the permitting authority for the regulated small MS4s, the Department will comply with the requirements of 40 CFR §123.35 to ensure consistent implementation of the MS4 program.

The Department will:

- Review Stormwater Management Plans (SWMPs) and annual reports connected with that plan.
- Review changes to the SWMPs.
- Review other records (e.g., monitoring data).
- Review and, as appropriate, approve specific submittals (e.g., Quality Assurance Plans).
- Coordinate on administrative and technical issues (e.g., Adopt-a-Stream Program).

7.5.2 Industrial (MSGP) and Construction General Permit (CGP)

The EPA-issued Multi-Sector General Permit (MSGP) and Construction General Permit (CGP) include coverage for facilities in multiple states, including Alaska. When authority of the Stormwater Program transfers to the Department, EPA can not reissue the general permits to cover facilities in Alaska. At the time of program authority transfer, a current or administratively extended EPA-issued general permit will serve as an APDES general permit until the Department reissues the permit. The Department will transmit a cover letter to all permit holders to inform them that the Department has assumed responsibility for permitting, compliance, and enforcement authority over the general permits. If either general permit has not been reissued as an APDES general permit, then the cover letter will also clarify that only the requirements specific to the discharges in the State of Alaska apply to the permittees.

The Department will continue its requirements for submittal of Stormwater Pollution Prevention Plans (SWPPPs) under the MSGP and the CGP for construction activity on sites five acres or greater. The Department will also require submittal of DMRs for certain industrial sectors, as required under the MSGP.

Currently, the Department reviews CGP SWPPPs for completeness (based on EPA Region 10's Construction SWPPP Checklist) and provides proactive feedback. The Department notifies a submitter by telephone or email if the SWPPP is determined to be incomplete or for additional information. The Department sends an acknowledgement letter when a submission is deemed complete. Actions that may be considered for the MSGP and CGP include continuing to provide proactive

permittee feedback on SWPPPs and requiring certification of Department stormwater inspectors to inspect construction sites. The Department will continue the delegation of SWPPP review to the Municipality of Anchorage and will consider expanding this delegation to other local governments (borough or city). Prior to expanding this delegation, the Department will develop criteria for local governments to adhere to and provide oversight for the local program.

Stormwater Program compliance inspections and enforcement are discussed in Chapter 9.0, Compliance and Enforcement Program.

8.0 Pretreatment Program Administrative Procedures

The purpose of the Department's Pretreatment Program will be to control pollutants from industrial and commercial facilities that discharge directly into Publicly Owned Treatment Works (POTWs). The Department will assume authority over the Pretreatment Program in accordance with the transfer schedule in the MOA, Appendix B.

8.1 General

The Department's Pretreatment Program will be essentially the same as the federal program established at 40 CFR Part 403 and adopted by reference at 18 AAC 83.010(g)(2). The objectives of the Pretreatment Program will be to:

1. prevent the introduction of pollutants into a POTW that will interfere with the operation of the POTW, including interference with the use or disposal of domestic sludges;
2. prevent the introduction of pollutants into a POTW that will pass through the treatment works or otherwise be incompatible with the works; and
3. improve the opportunities to recycle and reclaim domestic and nondomestic wastewaters and sludges.

8.2 Definitions

The regulations at 40 CFR Part 403 include definitions of terms that are used throughout this Chapter. A few of the more commonly used terms are briefly described below. The full regulatory definitions for the Pretreatment Program are found at 40 CFR §403.3.

Approval authority is the Commissioner in a state with an approved state Pretreatment Program.

Control Authority refers to:

a) a POTW if the POTW's Pretreatment Program submission has been approved in accordance with the requirements of 40 CFR Part 403, or

b) the Approval Authority if the submission has not been approved.

Industrial User (IU) or *User* refers to a source of an indirect discharge.

Interference means a discharge alone or in conjunction with a discharge or discharges from other sources that inhibits or disrupts the POTW; its treatment process or operations; or its sludge processes, uses, or disposal and causes a violation of any requirement of the POTW's APDES permit or prevents the use of sludge or its disposal.

Non-Significant Categorical Industrial User refers to an IU subject to federal categorical standards that never discharges more than 100 gallons per day (gpd) of total

categorical wastewater, has consistently complied with all pretreatment standards and requirements, never discharges untreated concentrated wastewater, and submits an annual compliance certification.

Pass through means a discharge that exits a POTW and enters waters of the United States in quantities or concentrations that alone, or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirements of the POTW's APDES permit.

Significant Industrial User (SIU) is defined at 40 CFR §403.3(v) and refers to an IU subject to Categorical Pretreatment Standards under 40 CFR §403.6 and 40 CFR Chapter I, Subchapter N; and any other IU that discharges on average 25,000 gpd or more of process wastewater to a POTW; contributes a process waste stream that makes up five percent or more of the average dry weather hydraulic or organic capacity of the POTW; or is designated as such by the Control Authority on the basis that the IU has a reasonable potential to adversely affect the POTW's operation or to violate any Pretreatment Standard or requirement.

8.3 POTW Program Submission

The Department will first rely on a POTW to regulate industrial discharges to its sewer system. A POTW with a total design flow greater than five million gallons per day (MGD) that receives industrial discharges that could interfere with or pass through the operations of the POTW will be required to develop a Pretreatment Program submission. The Department may also require a POTW with a design flow less than five MGD to develop a Pretreatment Program submission if the POTW receives significant industrial contributions that warrant a Pretreatment Program to prevent interference or pass-through. Finally, a Pretreatment Program submission may be required to improve the opportunities to recycle and reclaim domestic and nondomestic wastewaters and sludges. Once approved to implement the Pretreatment Program, in accordance with the transfer schedule in MOA, Appendix B, the Department will be the Approval Authority responsible to:

a) review and approve a POTW's Pretreatment Program submission;

b) delegate the POTW as the Control Authority authorized to control discharges to its POTW; and

c) ensure that the POTW complies with pretreatment conditions in its APDES permit and with the appropriate provisions of 40 CFR Part 403.

In addition, the Department will be responsible to ensure that an SIU discharging to a POTW without an approved Pretreatment Program complies with the National Pretreatment Standards.

The Department has discretion not to require a small POTW with industrial facility discharges to develop and implement a Pretreatment Program. In this situation, the Department will assume the role of the Control Authority responsible for imposing pretreatment requirements on any SIU, as defined in 40 CFR Part 403, discharging to

the POTW. These requirements are contained in 40 CFR §403.8(f); however, nothing will preclude a POTW from independently developing a Pretreatment Program. Should a POTW decide to develop a Pretreatment Program, although not formally required to do so by the Department, the POTW will be subject to the same program approval procedures as POTWs required to develop a program and must adhere to all federal and state requirements relating to the Pretreatment Program.

8.3.1 Industrial Survey

The Control Authority will be responsible to identify all IUs that might be subject to pretreatment requirements. The POTW as the Control Authority will notify the Department of a new IU discharging to its POTW. The Control Authority will determine if pretreatment standards and requirements apply to a particular IU. The Control Authority will maintain a current list of IUs subject to pretreatment requirements and update the list, as needed. The POTW as the Control Authority will transmit a list of IUs to the Department as part of its annual reporting requirements.

Prior to assuming authority from EPA to implement the Pretreatment Program, the Department will develop a plan to complete a state-wide industrial survey of all IUs in non-delegated POTWs that might be subject to pretreatment requirements in an effort to identify all facilities meeting the definition of a categorical or significant non-categorical SIU. Once the initial survey is complete, the Department will determine if a Pretreatment Program will be required of the POTW, or if the Department will accept responsibility for regulatory oversight of the identified SIUs within a particular municipality. The Department will periodically review and update the inventory of SIUs and determine if pretreatment requirements are necessary.

8.3.2 POTW Pretreatment Program Approval Process

The Department will approve future local program submissions with the exception of a submission from a POTW for which EPA retains NPDES jurisdiction. Currently, there are two POTWs with approved Pretreatment Programs in place (Municipality of Anchorage and City of Fairbanks). The status of the programs is discussed in Section 8.13. EPA determined that the City of North Pole POTW needs to develop a Pretreatment Program and is expected to have an approved program in place prior to EPA's approval of the Department's APDES Program. After state program approval, the Department will work with EPA to develop appropriate "Pretreatment Program development" permit language and an approval checklist if a new local program is identified in the future as needing a Pretreatment Program.

The Department will require the permittee to develop an approvable Pretreatment Program within the shortest reasonable time but not to exceed one year after written notification from the Department to develop a program. A compliance schedule will contain progress reporting due dates until a program is developed and

submitted for approval. A compliance schedule will be incorporated into the APDES permit in accordance with 40 CFR §403.8(e), adopted by reference at 18 AAC 83.010(g)(2). The Department will work with the permittee to develop the compliance schedule. The Department will also provide technical assistance to any new POTW identified to develop a Pretreatment Program.

The Department will review a POTW's program submission to ensure that it has the legal authority, procedures, funding, local limits, enforcement response plan, and a list of SIUs required to implement a Pretreatment Program. To review and approve a local Pretreatment Program submission, the Department will consult EPA's *Procedures Manual for Reviewing POTW Pretreatment Program Submission* (October 1983).

The POTW requesting program approval will submit three copies of its Pretreatment Program submission to the Department. Within 60 days of receipt of the submission, the Department will make a preliminary determination of whether the submission meets the requirements of 40 CFR §§403.8 and 403.9. If the preliminary determination is that the submission is inadequate and does not comply with the requirements, the Department will transmit a written notice to the POTW that identifies the deficiencies in the submission and includes advice on how the POTW can comply with the applicable requirements.

If the preliminary determination is that the submission meets the requirements, the Department will notify the POTW and proceed with the public review and evaluation procedures established in 40 CFR §403.11. The Department will initiate a public review of the draft program submission within 20 days of the preliminary determination and provide for a 30-day public review period. The Department will hold a public hearing if significant interest in one exists or if a significant issue or information is brought to the attention of the Department during the comment period that was not considered previously in the approval process.

Based on an evaluation of the program submission and comments received, the Department will approve, approve with modifications, or deny the Pretreatment Program approval request. If the decision is to deny the program submission, the Department will transmit a denial notification to the local government that contains suggested modifications and a time extension to correct the submission and resubmit. If the Department intends to approve the program submission, the program will be submitted to the EPA Region 10 Regional Administrator. In accordance with 40 CFR §403.11(d), no POTW Pretreatment Program or authorization to grant removal allowances will be approved by the Commissioner if, following the 30-day (or extended) evaluation period and any hearing, EPA objects in writing to the approval. A copy of EPA objections will be provided to the applicant and each person who requested individual notice. EPA will provide for a period to accept written comments and may hold a hearing on the objections. Unless retracted, EPA's objections will constitute a final ruling to deny approval of a POTW Pretreatment Program or authorization to grant removal allowances 90 days after the date the objections were issued.

Denial or approval of a submission will be published in the same newspaper that published the original public review notice. Program modifications, determined to be substantial under 40 CFR §403.18(b), follow the same review. Departmental approval of a Pretreatment Program submittal or modification of an existing program requires a minor modification of the APDES permit to incorporate the approved or modified program, as outlined in 40 CFR §403.18(e).

Approval of a local Pretreatment Program and issuance of an APDES permit with pretreatment requirements supplants a previously issued state permit for a POTW. The POTW as the Control Authority is responsible to ensure compliance with pretreatment requirements. However, the Department will retain its oversight authority and can initiate enforcement actions for noncompliance at any time. The Department may provide technical assistance to a Control Authority in its enforcement of pretreatment requirements, as resources allow.

8.4 Control Authority - POTW

The POTW as the Control Authority must have the legal authority, appropriate procedures, funding, adequate staff, and local limits to implement and enforce the pretreatment requirements, as outlined in 40 CFR §403.8(f). The POTW's legal authority typically will be detailed in its Sewer Use Ordinance.

The Department will be the Control Authority over an IU that introduces pollutants into a POTW that does not have an approved Pretreatment Program, in accordance with 40 CFR §403.10(e) and (f). As the Control Authority, the Department will have legal authority and procedures to require compliance by IUs, issue permits, carry out inspections, conduct surveillance and monitoring, obtain remedies for noncompliance by any IU with any Pretreatment Standards and requirements, and comply with confidentiality requirements. The Department will control through its APDES permitting program all SIUs in accordance with 40 CFR §403.8. The Department will issue, reissue, or modify permits according to the procedures outlined in Chapter 6.0 of the Program Description. The Department will be responsible for enforcing the National Pretreatment Standards promulgated by EPA in accordance with CWA §307(b) and (c) that apply to IUs, including the prohibitive discharge limits established pursuant to 40 CFR §403.5.

The DROPS system, combined with the APDES program business practices, will be capable to:

- distinguish IU APDES permits discharging to waters of the U.S.;
- associate a permit with a 'parent' permit, such as is required when associating IU permit information with a receiving POTW; and
- will map and batch that data to ICIS-NPDES, as needed.

As the Control Authority, the Department will consult EPA's *Control Authority Pretreatment Audit Checklist and Instructions* (May 1992 and any updates) to track an IU's compliance status with the Pretreatment Program.

8.5 Local Limits

In accordance with 40 CFR §403.8(f)(4), the Control Authority will establish local limits to implement the prohibitions listed in 40 CFR §403.5(c)(1).

The Department as the Control Authority issuing a permit to an SIU that discharges to a POTW without a Pretreatment Program will determine if specific local limit(s) will be needed beyond the National Categorical Standards to prevent interference and pass-through of pollutants at the POTW. If local limits are necessary, the Department will work with the affected POTW to establish local limits to be incorporated into its Sewer Use Ordinance. The Department will include the local limit(s) in the affected IU's APDES permit once the limits are established and adopted by the affected POTW into its Sewer Use Ordinance. The Department will track the IU's local limits and associated DMRs as required by the Required ICIS Data Elements (RIDE) in ICIS-NPDES. The mechanism for tracking this data will be either manually in ICIS-NPDES or via the batch mechanism from DROPS discussed in Chapter 10, depending upon the actual number of IUs discharging to POTWs in the state. In addition to applying the National Categorical Standards and specific local limits (whichever apply and are more restrictive), the Department will also include the general prohibitions [40 CFR §403.5(a)(1)] and the specific prohibitions [40 CFR §403.5(b)] in the IU's APDES permit.

The Department as the Approval Authority will have the authority to enforce local limits established by the Control Authority and has adopted 40 CFR Part 403 by reference at 18 AAC 83.010(g).

8.6 Variances

40 CFR §403.13(h) details the information that must be included to request a variance from Categorical Pretreatment Standards for fundamentally different factors. Refer to 40 CFR §403.13(h) for the specific details. Below is a summary of the required information:

- name and address of requesting party,
- interest of the requester,
- POTW receiving waste from the IU,
- categorical standards applicable to the IU,
- a list of pollutants or pollutant parameters for which an alternate discharge limit is sought,
- alternative limits proposed by the requestor for each pollutant,
- detail of the IU's water pollution control facilities,
- a schematic flow chart of the IU's water system,
- a statement of fact establishing why the request should be approved, and
- other facts necessary to evaluate the request.

An incomplete submission will be returned and the request denied if the submission is not corrected within 30 days. A complete request will be subject to a 30-day public

review period. If it is determined that fundamentally different factors do not exist, then the Department will deny the request. If fundamentally different factors do exist, the Department will recommend to the EPA Region 10 Regional Administrator that the request be approved. The Regional Administrator will either deny or approve the variance request and notify the Department, POTW, and IU of its determination.

8.7 Removal Credits

A POTW acting as Control Authority may seek authorization from the Department and EPA to grant removal credits by submitting to the Department a list of industrial pollutants for which discharge limits will be revised. The POTW will provide data to the Department indicating consistent pollutant removal, the proposed revised discharge limits, the amount of pollutants in the residual, and the method of residuals disposal in order for the Department to determine compliance with applicable standards. Applications, decisions, and revisions will be made in accordance with 40 CFR §403.7.

If the Department determines that the POTW's request for a removal credit is approvable, then the findings, together with the application and supporting information, will be submitted to EPA Region 10. No request for a removal credit will be approved by the Department if EPA objects in writing to the submission approval during the 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). Revised discharge limits, if approved by the Department and EPA, will be included in the APDES permit upon the earliest reissuance and become enforceable permit conditions to verify consistent pollutant removal. The Department will provide assistance to the POTW seeking removal credits. The Department will consult EPA's:

- *Guidance Manual for Preparation and Review of Removal Credit Applications* (July 1985)

For those POTWs authorized to grant removal credits, the Department will determine compliance or noncompliance with permit conditions with respect to those pollutants through routine records review and sampling inspection procedures for the affected facilities. In addition to the conventional pollutant analyses for permits for POTWs, analyses will be performed for those pollutants receiving pollutant removal credits. Inspections and sampling may be performed more frequently than the scheduled inspections to determine compliance status. Following authorization to give removal credits, a POTW shall continue to monitor and report on the POTW's removal capabilities. Reporting intervals may be specified by the Approval Authority, but in no case will reporting be less than once per year. A minimum of one representative sample per month during the reporting period is required, and all sampling data must be included in the POTW's compliance report.

8.8 Categorical Determinations

In accordance with 40 CFR §403.6(a), the Department will review requests from IUs for industrial category or subcategory determinations received within 60 calendar days

after the effective date of a National Pretreatment Standard published by EPA under which an IU believes itself to be included. The Department will prepare a written determination and justification whether the IU does or does not fall within that particular subcategory. The Department will forward its findings along with a copy of the request and necessary supporting information to EPA Region 10. If EPA does not modify or object to the Department's proposed findings within 60 calendar days after receipt of the determination and justification, then the Department may take action to approve or deny the request. A POTW or SIU may also submit a categorical determination request to the Department if process modifications occur. These modifications could include removal or modification to an existing line, as well as the addition of a completely new process.

8.9 Time to Comply

Existing IUs subject to Pretreatment Standards for Existing Users will be required to comply with pretreatment standards no later than the compliance date established for the applicable Pretreatment Standard. Dischargers subject to Pretreatment Standards for New Sources will be required to achieve compliance in the shortest amount of time not to exceed 90 days from commencement of the discharge.

8.10 Public Participation

The Department will make available for public review and comment the program submissions, requests for removal credits, fundamentally different factors variance requests, program modifications, local limits development and modifications, and a list of IUs in significant noncompliance, in accordance with 40 CFR §403.8(f)(2)(viii).

8.11 Reporting

An SIU's APDES permit will include requirements to submit reports to the Control Authority (either a POTW with an approved Pretreatment Program or the Department in cases where the SIU is discharging to a POTW without an approved Pretreatment Program), in accordance with 40 CFR §403.12. The types of reports include:

- baseline monitoring reports;
- compliance schedule reports;
- final compliance reports;
- periodic reports on compliance (sampling and monitoring results); and
- notice of potential problems, including slug loading.

In addition, a POTW with an approved Pretreatment Program must submit annual reports to the Department documenting status and activities performed during the previous calendar year, as required by 40 CFR §403.12(i). The requirement to submit an annual report will be included in the POTW's APDES permit. Refer to 40 CFR §403.12(i) for a complete detailed description of elements that must be included in the annual report. The list below is not inclusive, but provides a summary of the elements to include in the annual report.

- a list of IUs that discharge to the POTW,
- a summary of the compliance status of the IUs during the reporting period,
- a summary of compliance and enforcement activities (including inspections) conducted by the POTW during the reporting period, and
- a summary of changes to the POTW's Pretreatment Program that have not been previously reported to the Approval Authority.

The Department will develop procedures and time frames for reviewing monitoring reports, including reports submitted by POTWs and semi-annual reports submitted by categorical and significant non-categorical IUs in areas without local programs. The Department will establish and maintain a complete inventory of POTWs with a Pretreatment Program.

8.12 Reporting to EPA

The Department shall provide EPA with the following information:

1. An annual report on program implementation received from a POTW with an approved Pretreatment Program [40 CFR §403.12(i)].
2. A pretreatment facility inspection and sampling plan includes POTW audit/Pretreatment Compliance Inspection (PCI) and IU inspections.
3. A noncompliance report for all SIUs to include:
    - facility name,
    - location and permit number,
    - inspection and date history for each noncompliance,
    - description of Department actions and dates to obtain compliance,
    - current compliance status including date of resolution or date returned to compliance, and
    - mitigating circumstances.

The Department will use EPA-created checklists to implement the Pretreatment Program until such time as the Department creates its own. EPA guidance documents the Department will adopt to implement the Pretreatment Program include:

- *Local Limits Development Guidance (EPA 833-R-04-002A)* (July 2004)
- *FY 1990 Guidance for Reporting and Evaluating POTW Noncompliance with Pretreatment Implementation Requirements* (September 1989)
- *Industrial User Inspection and Sampling Manual for POTWs* (April 1994)
- *Industrial User Permitting Guidance Manual* (September 1989)

- *Pretreatment Compliance Monitoring and Enforcement Guidance* (July 1986)

The Department will track receipt of required reports, as well as noncompliance, inspection results, and compliance dates in the DROPS database.

8.13 Existing Pretreatment Programs in Alaska

8.13.1 Municipality of Anchorage

The Municipality of Anchorage (John M. Asplund POTW) will continue to implement a Pretreatment Program approved by EPA in 1982. EPA delegated implementation of the Anchorage Pretreatment Program to the Anchorage Wastewater Utilities (AWWU). The NPDES permit for the John M. Asplund facility includes a CWA §301(h) waiver. The Department is not authorized to assume jurisdiction over a facility with a CWA §301(h) waiver; therefore, the Department's APDES Program will not include oversight of the John M. Asplund facility Pretreatment Program. EPA will remain the Approval Authority for the Anchorage area Pretreatment Program and retain the permitting and compliance authority for this facility, including the pretreatment requirements.

Furthermore, EPA will be the Approval Authority for any future Pretreatment Program submissions for facilities it retains jurisdiction over (MOA, Appendix A).

8.13.2 City of Fairbanks

EPA approved a Pretreatment Program in Fairbanks in January 31, 1985. Currently, there is one categorical IU (Aurora Energy) and three SIUs (Fairbanks Memorial Hospital, Fort Wainwright, and University of Alaska Power Plant) that discharge to the municipal POTW.

8.13.3 City of North Pole

Three categorical IUs have been identified that discharge directly to the North Pole POTW: Petro Star, Golden Valley Energy Association, and Flint Hills (formerly Williams Refinery). EPA will reissue the North Pole NPDES individual permit and include a compliance schedule for the city to submit a Pretreatment Program application for EPA approval. EPA anticipates that an approved Pretreatment Program will be in place at the time the Department assumes authority of the Pretreatment Program in accordance with the schedule in Appendix B of the MOA. Until that time, EPA will be responsible to implement the Pretreatment Program requirements that include conducting inspections and receiving and reviewing required reports.

The Department will assume the role of Approval Authority over the Pretreatment Programs for Fairbanks and North Pole (after its approval) in accordance with the

schedule in the MOA, Appendix B. Pretreatment Program compliance inspections and enforcement are discussed in Chapter 9.0, Compliance and Enforcement Program.

9.0 Compliance and Enforcement Program [40 CFR 123.22(e)]

In accordance with *EPA / State Agency Agreement on Compliance Assurance Principles* (May 1997); *Compliance Assurance Evaluation Principles* (March 1998); *Enforcement and Compliance Strategy* (March 1997); and *NPDES Compliance Monitoring Strategy* (October 2007), the Department's Compliance and Enforcement Program will assure compliance with APDES permit and program requirements by using a combination of 1) Compliance Monitoring, 2) Compliance Assistance, 3) Compliance Incentives, and 4) Enforcement. The Department reserves the right to establish state compliance and enforcement priorities, but will generally target resources to coincide with EPA's National Priorities, as set out in the *National Program Manager's Guidance* prepared by the Office of Enforcement and Compliance Assurance.

Specific priorities, goals, and responsibilities will be negotiated annually with EPA through the Performance Partnership Agreement and will align with EPA's most current National Program Guidelines. The Department will determine and monitor a permittee's compliance with an APDES permit and related orders as defined in the Department's *Enforcement Manual* (Sixth Edition, October 2005) (Appendix I), inspect the facility, write an inspection report, determine the appropriate enforcement response, and follow-up with the permittee to ensure that compliance is achieved. The Department will consult EPA's *Enforcement Management System: National Pollutant Discharge Elimination System (Clean Water Act)* (1989) and the Department's *APDES Program Enforcement Response Guide* (Appendix J) to determine the most appropriate enforcement response. The Department's *Enforcement Manual* will also be used for APDES enforcement actions to ensure consistent use of enforcement terms and templates throughout the Division of Water. The Compliance Committee will make enforcement response recommendations to the Program Manager for all actions above a notice of violation (NOV) (see Section 9.4.1).

The Department's goal is that all facilities be in compliance with all requirements at all times and recognize that facility operators desire to be in compliance. The Department's permitting and compliance programs are designed to help achieve compliance through prompt, efficient, and cost-effective means. The Department will contribute to an operator's achieving and maintaining compliance by issuance of a clear permit with valid and understandable conditions based on state law, as well as immediate contact with operators when noncompliance is discovered.

The primary objective of the Compliance and Enforcement Program is to resolve compliance problems quickly and at the lowest appropriate level to avoid serious or lengthy violations. As a general practice, the Department will attempt to resolve potential compliance issues during the permit development process. Noncompliance that is accidental and isolated should be returned to compliance as quickly and efficiently as possible. The Department's approach will be an escalating response to noncompliance where actions will be fair, consistent and in proportion to the nature of the violation. For example, first time violators that do not cause actual harm to human health or the environment will be given an opportunity to rectify the situation. However, the Department is prepared to pursue formal civil or criminal action for willful, repeat, and the most egregious violations.

Business information collected during the course of conducting compliance and enforcement activities that is determined to be confidential will be handled in the same manner as confidential business information collected during permitting, as described at Section 6.4.1 #4.

9.1 Compliance Monitoring

The Department will receive, evaluate, retain, and investigate all notices and reports required of APDES-permitted dischargers to determine a facility's compliance status. The Department's compliance monitoring program will satisfy the requirements of a compliance evaluation program described at 40 CFR §123.26. The Division of Water's Discharge Results and Online Permit System (DROPS) database will maintain an inventory of all APDES-permitted sources, including application, facility, and billing information; permit limits; DMRs; other permittee reporting requirements covered in both the permit (established both inside and outside a permit) and in any related orders; facility location maps; inspection results; permittee compliance follow-up; enforcement actions; and compliance schedules. DROPS will allow the Department to compile, manage, track, review, and report on the compliance status of permitted facilities, in accordance with 40 CFR §123.26(e)(1). DROPS will allow the Department to verify compliance with the permit limits and conditions. As described in Chapter 10.0, data will be entered into EPA's Integrated Compliance Information System – National Pollutant Discharge Elimination System (ICIS-NPDES), either manually or via batch transfer from DROPS. All the Required ICIS-NPDES Data Elements (RIDE) will be entered.

The permittee will submit a DMR and related compliance documentation to the Department in accordance with the self-monitoring and reporting timeline requirements of the permit. The permittee will be able to submit a hard copy of the DMR or transmit the data electronically via the Internet and the Department's e2 system or EPA's NetDMR (see Chapter 10.0). DMR data from a hard copy submittal will be manually entered into DROPS; whereas, data submitted electronically will be automatically stored in DROPS. The date the Department receives a complete DMR, either hard copy or electronically, will be the receipt date considered for compliance purposes. The Department will provide guidance and training to encourage permittees to electronically submit compliance data. Required reports, other than DMRs (nonDMRs), will be submitted in hard copy or electronically via e2 or other mechanisms (depending upon size of document). NonDMR reports will be tracked in DROPS via their due dates specified in the permit.

Self-monitoring and reporting violations can be classified into two categories. The first category is a system generated violation (e.g. an effluent limit violation discovered via DMR submission, DMR non-receipt, or compliance schedule violation). The second category is a single event violation. A single event violation is a violation of an APDES permit or regulatory requirement that is distinct from a system generated violation (e.g. an unauthorized bypass or discharge, a violation detected during an inspection, a narrative violation description reported on a DMR, or a pretreatment violation).

9.1.1 Compliance Evaluation

The Department will conduct a compliance evaluation to determine a permittee's compliance status with APDES permit requirements. The Department's goal is to conduct a compliance evaluation of all major permittees at least once per calendar year prior to EPA's generation of the fourth quarter noncompliance report (QNCR). The intent is to review compliance information from minor permittees at least annually prior to EPA's generation of the required annual report on the compliance status of nonmajor permittees.

To conduct a compliance evaluation, the Department:

1. Will review DMRs and reports upon receipt for completeness and to determine compliance with permit limits and conditions. Staff will follow-up with a permittee, as needed, to request additional information. DROPS' reporting capabilities will enhance this review by creating automated exception reports for DMRs that are not submitted, incomplete DMRs, and DMR data points that are out of compliance with permit limits. The reports will be available to staff on a real time basis.
2. Will conduct a facility file review for the presence of other required permit reports (i.e., annual reports) utilizing DROPS' Schedule of Compliance capability to generate an automated exception report when the reports are missing.
3. May contact a facility and make a verbal or written information request when potential noncompliance issues are found during the review of required information. The Department may follow-up with a Notice of Violation (NOV) or a Compliance Letter and possibly an inspection in accordance with the *APDES Program Enforcement Response Guide* (Appendix J).
4. Will review the results of effluent and ambient monitoring data collected by the Department or permittee and stored in DROPS. The automated reporting capabilities of DROPS can produce a report that will assist the compliance and enforcement staff in determining compliance with permit limits and state water quality standards.
5. Will review Baseline Monitoring Reports submitted by industrial users subject to categorical pretreatment standards to determine the need for pretreatment requirements or development of a Pretreatment Program.
6. Will review a 90-day Compliance Report submitted by a new source industrial user following the date for final compliance with applicable categorical pretreatment standards.
7. Will review data in the Department's statewide Complaint Automated Tracking System (CATS).
8. Will review any permit-related orders.

Compliance and Enforcement Program staff will promptly notify the permittee of any potential noncompliance with the permit conditions or permit-related orders. Noncompliance that warrants a compliance letter or NOV will be handled directly by a staff member with Enforcement Officer credentials (Appendix K). Noncompliance that warrants an enforcement response beyond a NOV will be referred to the Compliance Committee (see Section 9.4.1). All follow-up actions will be documented in DROPS.

9.1.2 Use of Compliance Schedules

Two different regulations allow for the use of compliance schedules. One is specific to the use of compliance schedules in APDES permits, while the other, older regulation is more general and applies to contexts other than APDES permits.

Under 18 AAC 83.560, the Department can include in an APDES permit a schedule of compliance under certain specific circumstances. For example, a compliance schedule is available to a new discharger when necessary to allow for a reasonable opportunity to attain compliance with requirements issued after commencement of construction of the permitted facility [18 AAC 83.560(a)]. The circumstances covered by the state's regulation are modeled after, and comparable to, their federal counterpart (40 CFR §122.47).

There are also reporting requirements for compliance schedules in APDES permits that extend beyond one year [18 AAC 83.560(b) and (c)]. These requirements also follow federal law [40 CFR §122.47(a)(3) and (4)]. These provisions will allow the Department to track progress toward compliance. A permit writer will coordinate with the compliance and enforcement staff to determine the most appropriate compliance schedule to include in a permit. The Department's use of compliance schedules in APDES permits will be limited to what is allowed by state regulations in 18 AAC 83.560 and will follow EPA's May 10, 2007 memo, 'Compliance Schedules for Water Quality-Based Effluent Limits in NPDES Permits.'

The second regulation, 18 AAC 70.910, allows the Department to include in a permit, certification, or approval a compliance schedule allowing a facility time to come into full compliance with water quality standards. The Department plans to use this regulatory tool in contexts other than APDES permits, such as state certification under CWA §401 of fill permits issued by the U.S. Army Corps of Engineers under CWA §404.

Under this regulation, the Department will grant a compliance schedule only if no harm or threat to human health or the environment is expected to occur. If compliance cannot be achieved within one year, the regulation requires a schedule of regular progress reports to assist the Department in tracking the progress toward full compliance [18 AAC 70.910(b)(4)].

9.1.3 Inspection of APDES Facilities

The Department requires an applicant to consent to entry, inspect, and sample/monitor the facility by completing and signing an APDES application. The Department has authority under state law to enter any site or premise subject to the program in order to copy records, inspect, monitor, or otherwise investigate compliance with permit limits and conditions and other program requirements, such as the pretreatment regulations. By submitting the signed, complete application, the applicant consents to entry upon the premises Department staff in order to: 1) have access to and copy any records that permit conditions require the applicant to keep; 2) inspect facilities and equipment (including monitoring and control equipment) practices, or operations regulated or required under a permit; and 3) sample or monitor any substances or parameters at any location for the purpose of assuming compliance or as authorized under the CWA. In addition to reviewing information supplied by the permittee, compliance and enforcement staff will conduct an onsite inspection of a permitted facility to ascertain compliance or noncompliance with:

- APDES permit limits and conditions,
- regulations,
- compliance schedules,
- permit-related orders, and
- water quality standards.

The purpose of an inspection is to:

- verify the accuracy of information submitted by the permittee;
- verify the adequacy of the sampling and monitoring conducted by a permittee;
- gather evidence to support enforcement actions;
- obtain information that supports the permitting process; and
- assess compliance with previous administrative and judicial enforcement notices, orders, and agreements.

The inspector will consult EPA's *NPDES Compliance Inspection Manual* (July 2004) for guidance on how to conduct and report on APDES inspections of domestic and nondomestic facilities (including collection, conveyance systems, and disposal facilities); stormwater discharges from industrial and construction sites; pretreatment facilities; municipal wastewater collection systems (combined with and separate from stormwater); and unpermitted facilities.

The Department's intent is to annually inspect all facilities classified as a major discharger, whether covered under an individual or general permit, in accordance with 40 CFR §123.26(e)(5). (See MOA, Appendix G for the list of major dischargers.) The Department's goal is to inspect all facilities classified as a minor discharger with an individual or general permit at least once every five years.

For discharges other than stormwater from construction sites, the Department will use the *Division of Water, Wastewater Risk-Based Inspection Ranking Model*

(Appendix L) as a guide to help prioritize and schedule inspections. The model involves a comprehensive survey of APDES facilities using a point system to identify facilities that pose a higher risk to human health or the environment. The Inspection Ranking Model criteria and point system are incorporated into the DROPS database to generate a ranked report. The Department will use the report as a guide to develop an annual Facility Inspection Schedule.

The criteria that influence the ranked report include:

- classification as a major or minor discharger,
- time since last inspection,
- type of receiving environment,
- cumulative effects from other discharges,
- discharge into an impaired waterbody,
- health effects from potential wastewater treatment process failure,
- failure to submit a DMR, and
- post inspection compliance.

For stormwater discharges from construction sites [facilities operating under the Construction General Permit (CGP)], the Department plans to use a combination of planning methods for scheduling construction site inspections. For example, the Department may use a rotating geographic area basis for CGP inspection planning. An inspection may also be scheduled when inspecting another facility in the area. The criteria that influence where the Department will conduct an inspection include:

- whether a previous inspection required follow-up action
- post-inspection compliance
- receiving environment of the discharge
- cumulative effects from other discharges
- whether the discharge is to an impaired waterbody
- previous noncompliance by the operator
- complaints and noncompliance
- if the project is on-going, particularly through more than one season
- land area disturbed
- size of operation
- heavy weather conditions
- timing of construction work
- proximity to a waterbody
- number of NOIs in a geographic area

Facilities that otherwise score low in the overall ranking may also be inspected.

Additional criteria that may influence the annual inspection schedule for both the Wastewater Discharge Authorization Program and the Stormwater Program include:

- a legitimate complaint of human health or environmental hazards;
- a new site or significant modification to existing permitted site or facility;
- significant permit violations; or
- other factors at the Department's discretion, including fish kills, significant environmental or human health problems, joint inspections with other agencies, and inspections of opportunity due to travel to the vicinity.

The Department will ensure a representative number of inspections are conducted annually. The Performance Partnership Agreement will include a task for the Department to provide EPA with an annual Facility Inspection Schedule for permitted facilities. The Department's Facility Inspection Schedule will also include the number of stormwater inspections at construction sites that will be completed but not the actual site since many of the NOIs filed under the CGP are submitted just prior to the commencement of construction activities, and because the Department will inspect unpermitted facilities, as well. The Department cautions that situations may arise that will change the actual facilities that are inspected.

AS 40.25.120 allows for the Department to keep the Facility Inspection Schedule confidential. The same statute allows the Department to keep confidential an inspection schedule received by EPA.

The Department will also negotiate inspection schedules with EPA that will allow for the substitution of two minor discharger inspections for one major discharger inspection when a major discharger has demonstrated long-term permit compliance or when it is otherwise deemed appropriate by the Department. This approach will allow the Department to inspect as many minor dischargers as possible and use staff time and travel resources efficiently by inspecting several facilities on a single trip to a geographic area.

Compliance and Enforcement Program staff will have the discretion to conduct unannounced inspections and may do so, particularly in more accessible locations or where noncompliance is suspected. However, the Department will generally announce its inspections especially in remote locations to ensure that the facility operator will be present, to ensure overnight accommodations for staff, if necessary, and to confirm that seasonal processes will be operating. The inspection form will document if the inspection was unannounced or announced.

The inspector will use an Inspection Checklist to assist with an inspection at domestic and nondomestic facilities, as well as checklists for the Pretreatment and Stormwater Programs.

9.1.4 Types of Inspections

The type of inspection that is conducted will depend on several factors, including, but not limited to, the complexity of the facility, volume and toxicity of the

discharge(s), receiving water, and the facility's compliance history, including the number of single event violations. The Department will use standard forms and methods to conduct and report on an inspection. The types of inspections are described as follows.

The Department will conduct *Compliance Evaluation Inspections* and *Compliance Sampling Inspections.* Both inspections involve the same basic activities where compliance and enforcement staff will:

- conduct a visual inspection of the facility;
- examine or review onsite records (DMRs, sampling and laboratory procedures manuals, logs or recordkeeping books, operation and maintenance records, etc.);
- review past and ongoing noncompliance either noted from the permittee's reporting or from a previous inspection;
- interview the facility operator;
- take photographic records and possibly video tape;
- observe the facility operations;
- inspect the processes and equipment that treat and dispose of the wastewater;
- inspect the outfall location and outfall line or the final effluent collection point if the outfall is inaccessible;
- inspect the discharge content and appearance and the receiving environment;
- identify potential single event violations; and
- review other matters to ensure compliance with the permit.

A *Compliance Sampling Inspection* is more comprehensive than a *Compliance Evaluation Inspection* and will include sample collection and analysis. In addition to the basic inspection activities listed above, during a Compliance Sampling Inspection, Compliance and Enforcement Program staff will:

- review the permittee's sampling and laboratory procedures,
- consider facility operator certification levels, and
- collect wastewater effluent samples or ambient water or sediment samples that might also include collecting 'split samples' with the operator to compare sample results and document a permittee's laboratory techniques.

The Department will use the results of a *Compliance Sampling Inspection* to:

- verify the accuracy of the permittee's self-monitoring program and reports;
- determine the quantity and quality of effluents;
- determine compliance with discharge limitations;
- develop a permit; and
- provide evidence for enforcement proceedings, where appropriate.

A *Performance Audit Inspection* is a more intensive review of a permittee's self-monitoring program to ensure that a permittee's sampling program and collection procedures comply with permit requirements, the QAPP, and approved test methods. The inspector will review a permittee's procedures for flow measurement, chain-of-custody, laboratory analyses, data compilation, and reporting.

Other types of inspections the Department may conduct include the following:

Compliance Biomonitoring Inspection to evaluate compliance with the biomonitoring terms of a permit and to determine if the effluent is toxic.

Toxics Sampling Inspection to evaluate compliance with permit requirements for toxic substances.

Diagnostic Inspection of a POTW that has not achieved permit compliance to assist with diagnosing the problems.

Reconnaissance Inspection to obtain a preliminary overview of a permittee's compliance program by performing a visual inspection of the facility, effluent, and receiving water to identify any potential compliance problems. A reconnaissance inspection will be the least resource intensive inspection.

Follow-up Inspection to confirm that a documented compliance problem has been addressed by the permittee.

Types of inspections the Department may conduct as part of the Stormwater Program include the following:

Construction Site and Industrial Facility Stormwater Inspection to ensure that construction sites and other regulated facilities have a permit and a Stormwater Pollution Prevention Plan (SWPPP) and are implementing both. In addition to scheduling stormwater inspections as described in Section 9.1.3, the Department will consult EPA's 2003 *Storm Water Compliance and Enforcement Strategy* for construction sites inspections and be consistent with EPA's most current national program guidance.

Municipal Separate Storm Sewer System (MS4) Inspection to ensure that the permittee is complying with all aspects of the MS4 permit. The Department will consult *MS4 Program Evaluation Guidance* developed by EPA's Office of Wastewater Management to conduct the inspections.

Combined Sewer Overflow (CSO) Inspection to evaluate compliance with the CSO Policy and CSO provisions included in a permit, compliance order, or consent decree.

Sanitary Sewer Overflow (SSO) Inspection to determine if the owner / operator of the sewer system is properly managing, operating, and maintaining the collection

system; reporting SSO events; and taking all measures possible to prevent SSOs from occurring.

Types of inspections the Department may conduct as part of the Pretreatment Program include the following:

Pretreatment Compliance Inspection of an approved Pretreatment Program to determine compliance with the program requirements. The major oversight mechanisms will be an annual inspection and an audit conducted at least once during a permit term. Pretreatment Program records will be reviewed and a sample of relevant industrial users (IUs) visited to determine program compliance. A POTW with an approved Pretreatment Program will be required to annually inspect and sample all significant industrial users (SIUs) subject to pretreatment regulatory requirements. Each SIU will be required to self-monitor semiannually and submit results to the Department. The Department will consult existing EPA guidance to assist with satisfying this requirement:

- *Pretreatment Compliance Inspection and Audit Manual for Approval Authorities* (July 1986)

- *Control Authority Pretreatment Checklist and Instructions* (May 1992)

The Department will inspect and sample SIUs in a non-delegated POTW at least once per year, in accordance with 40 CFR §403.8(f)(2)(v). The Department will carry out inspection and surveillance procedures to determine, independent of information supplied by the SIUs, whether a representative sample of the SIUs is in compliance with the National Pretreatment Standards. Inspections of non-significant IUs will generally be dictated by problem facilities or those issued a Compliance Order by the Department or the Control Authority. Inspections of IUs suspected of or documented to have compliance problems may be incorporated into a pretreatment compliance inspection or pretreatment audit.

The Department will oversee the implementation of the approved POTW Pretreatment Program by conducting independent inspections of the treatment plants and industrial facilities to determine if industrial dischargers are complying with pretreatment standards and requirements. The Department will conduct a Pretreatment Compliance Audit (PCA) of the approved POTW program every five years and a Pretreatment Compliance Inspection (PCI) in the intervening years.

When the Department is the Control Authority and the Approval Authority, then the facility inspection and sampling plan and noncompliance report for an SIU will also include the compliance status of the local POTW program.

In cases where a Control Authority has been granted a removal credit, the Department will sample and analyze the influent and effluent of the POTW to identify, independent of information supplied by the POTW, compliance or noncompliance with pollutant removal levels set forth in the POTW's APDES permit.

Quality Assurance / Quality Control. For all inspections that include sampling, Quality Assurance / Quality Control (QA / QC) policies will be in place to ensure that the Department's field tests and collection and transport of samples to an analytical laboratory are conducted in accordance with the Department's *Water Programs Quality Management Plan* (Appendix D) and site specific Wastewater Treatment Facility Quality Assurance Project Plan (QAPP) (Appendix E). Compliance with QAPP requirements will be coordinated through the Department's QA Officer. The integrity of a sample will be protected by the proper use of chain of custody procedures.

The Department will cross-train staff in other Divisions (e.g. Environmental Health) and at other state agencies (e.g. Departments of Fish and Game and Natural Resources) to provide enough knowledge to identify problems or violations when at a facility conducting other business. The cross-trained staff will report back to the APDES Compliance and Enforcement Program staff who may follow-up with an inspection. Cross-trained staff may also conduct a follow-up inspection to verify that a previous identified compliance issue has been addressed.

Exit interview. The inspector will conduct an exit interview with the permittee at the conclusion of an inspection to verbally identify areas of concern or issues noted during the inspection. The exit interview will also serve to note any activities or actions the permittee should initiate immediately to reduce the risk to human health or the environment and to come into compliance with their permit conditions.

9.1.5 Post Inspection

Inspection Report. The Department will enter and track the inspection results in DROPS and use DROPS to prepare an Inspection Report to document a permittee's compliance or noncompliance with an APDES permit. An electronic copy of the Inspection Report will be stored in DROPS and a hard copy filed in the facility file. EPA's *NPDES Compliance Inspection Manual* will be used as guidance for completing an inspection report. The Department will use EPA's form 3560-3 and the APDES Inspection Report template (Appendix E). To the extent practicable, the Inspection Report will contain the required elements in conformance with the most current *NPDES Compliance Inspection Manual.*

The Department's intent is to transmit the final inspection report to the inspected facility's responsible party within 30 days of a *Compliance Evaluation Inspection* or within 45 days of a *Compliance Sampling Inspection.* Transmitting the final inspection report to the responsible party does not preclude the Department from taking an enforcement action in the future. Any dissenting opinion from the responsible party regarding the final inspection report will be separately documented and stored in DROPS. For credibility to build an enforcement case, no subsequent revisions or updates to the final report will occur.

9.2 Compliance Assistance

Compliance assistance includes any activity not considered part of an enforcement action that is designed to help a permittee achieve or remain in compliance with environmental regulatory requirements. Compliance assistance will be exercised as a proactive tool to help a permittee before noncompliance occurs. The Department will attempt to resolve potential compliance issues early on during the permit development process. Compliance assistance may be offered after the permit is issued but is not a waiver of the Department's enforcement authority or right of obligation to pursue other compliance measures. Compliance assistance includes activities or tools that provide clear and consistent information to help:

- the regulated community understand and meet its obligations under environmental regulations;
- a permittee understand changes in a permit;
- the owner/operator identify and reduce or eliminate pollution sources or modify treatment process to improve effluent quality; and
- other compliance assistance providers to aid the regulated community in complying with environmental regulations, as outlined in the *National Program Managers' Guidance* (Office of Enforcement and Compliance Assurance).

Additional compliance assistance activities or tools to improve compliance rates may include:

1. *Web links.* Post links on the Department web pages to tools such as the National Compliance Assistance Clearinghouse, Compliance Assistance Centers, and web-based support such as the Business.gov web site. Users can search for materials on regulations, pollution prevention opportunities, and voluntary programs created by EPA and other regulatory agencies.
2. *File review.* Conduct a DEC office facility file review and inform the facility regarding the physical equipment or processes and reports and/or records that need to be maintained, as well as a general idea of what the required documents should contain to ensure compliance.
3. *Workshops.* Participate in workshops for industry or assist in development of compliance assistance materials.
4. *Conferences.* Attend and present at conferences to provide information, including prepared guidance, manuals, and technology transfer documents.
5. *Newsletters.* Publish newsletters or information guides.
6. *Pollution Prevention.* The Department will encourage pollution prevention at domestic and nondomestic facilities during a routine inspection, as resources and opportunities allow. The Department will consult EPA's *NPDES Compliance Inspection Manual* and associated references for guidance.

7. *Operator Training and Certification Program.* The Department will continue to develop training programs, administer examinations, and certify wastewater system operators. The Program also makes available a lending library of reference and training materials available to operators. Staff are also available to answer questions and provide information about available training opportunities.
8. *Remote Maintenance Worker.* The Division of Water's Remote Maintenance Worker Program will continue to assist operators in rural Alaska to operate local domestic facilities. The Program will:
    - Provide on-the-job training and assistance to local domestic wastewater operators through a circuit rider program.
    - Provide immediate response to emergency situations that threaten or impact community domestic wastewater facilities.
    - Provide regional classroom training for area utility operators.
    - Maintain an inventory of emergency repair equipment for loan to communities.

The Department will maintain in the DROPS database a list of unpermitted facilities identified through observations, visits to the community, complaints, or other sources that might have a regulated discharge and will work with the facility operator to determine the need for a permit.

9.3 Compliance Incentives

The Department may provide compliance incentives to ensure compliance before applying a more formal enforcement action that may take longer to affect an environmental outcome.

The Department will act in accordance with the state's audit report privilege (AS 09.25.450) and voluntary disclosure (AS 09.25.475) statutes. These laws provide incentives for the regulated community to promptly resolve environmental problems and expeditiously come into compliance through self-assessment, disclosure, and correction of violations.

In addition, the Department has the discretion to reduce ambient water quality monitoring as an incentive for a facility that has an excellent permit compliance record and history of meeting all of its ambient water quality criteria limits for a defensible period of time. The Department will consult the *Interim Guidance for Performance-Based Reduction of NPDES Permit Monitoring Frequencies* (April 1996) when evaluating this option.

As is the case with compliance assistance, the fact that the Department may provide compliance incentives is not a waiver of the Department's authority, right, or obligation, nor does it prohibit the Department from pursuing more formal enforcement, as necessary.

9.4 Enforcement Program

The Department will decide the necessary level of enforcement each time a facility or individual is determined to be out of compliance.

Staff will have training and experience appropriate to their assigned responsibilities. All staff occupying an Environmental Program Specialist, Environmental Engineer, or higher job class in the Compliance and Enforcement Program where the staff person's position description identifies inspections and/or enforcement as work duties will be required to obtain the Environmental Crimes Unit (ECU) approved Enforcement Training.

Compliance and Enforcement Program staff with Enforcement Officer Credentials (Appendix K) may issue compliance letters and NOVs. All potential enforcement actions above an NOV will be determined by the Compliance Committee (see Section 9.4.1). The Compliance Committee will work closely with DOL and the Department's ECU to determine the most appropriate enforcement action to address noncompliance with the APDES Program. The Compliance Committee will rely on the Department's *Enforcement Manual* (Appendix I) and the *APDES Program Enforcement Response Guide* (May 2008) (Appendix J) for the range of enforcement responses available to address violations. In addition, the Department will consult EPA's guidance in the *Enforcement Management System, National Pollutant Discharge Elimination System (Clean Water Act)* (1989).

Enforcement information obtained during the course of conducting compliance or enforcement activities can be kept confidential in accordance with AS 40.25.120.

The Department's escalating response to noncompliance will be directly related to:

- the nature and severity of the violation;
- the pollutant's persistence, toxicity, and environmental impact;
- risks to human health and the environment;
- history of noncompliance; and
- a permittee's timeliness and willingness to comply.

Enforcement responses can range from administrative remedies to criminal charges. Civil (administrative and judicial) remedies and criminal remedies will be used to address documented violations and to deter future compliance problems. A more detailed description of the enforcement tools and corresponding templates can be found in the Department's *Enforcement Manual* (Appendix I).

A permittee's self-monitoring and reporting requirements, along with facility inspections, will be the core elements of the Department's Compliance and Enforcement Program. The Department's obligation in this regard will be to:

- perform a timely review of compliance information submitted by permittees,
- follow-up on failures to submit required reports,
- identify a situation that needs immediate attention,

- promptly notify the permittee of any problems, and
- seek an explanation and prompt corrective actions.

The Department's DROPS database will aid in meeting these obligations by generating timely reports and by providing staff immediate access to the compliance information.

The Department's intent is to resolve violations expeditiously by identifying potential violations and quickly notifying the responsible party. The Department will consider compliance that cannot be achieved expeditiously by no fault of the permittee in prescribing an appropriate enforcement response.

The Department has discretion to consider EPA's policy, 'Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations', May 11, 2000 [FRL 6576-3] in enforcement cases to eliminate or reduce the gravity component when determining a civil penalty.

The Department may issue a press release at the conclusion of an enforcement action, particularly for significant cases. In preparing a press release, the Department will consider, and may include in addition to a description of the violation, any actions by the permittee to disclose, mitigate, or resolve violations.

9.4.1 Compliance Committee

The purpose of the Compliance Committee is to provide guidance, structure, and consistency to determine an appropriate enforcement response to a noncompliance situation. Compliance and Enforcement Program staff may issue compliance letters and NOVs without involving the Compliance Committee. However, staff may elect to involve the Committee in these early actions.

An enforcement action above an NOV will be determined by the Program Manager based upon recommendations made by the Compliance Committee. Each potential enforcement action will be assigned a case lead. The case lead is assigned by the Program Manager and is typically the staff member who either discovers the case of potential noncompliance (e.g. during a DMR review or inspection) or learns of the case through a complaint follow-up investigation.

The Department's intent is for the case lead to bring an issue of potential noncompliance to the Compliance Committee within 30 days of discovery or assignment to the case.

The Compliance Committee will be comprised of the case lead, the Compliance and Enforcement Program Manager, designated Compliance and Enforcement Program staff, the permit writer, an Assistant Attorney General, and if necessary, a member of the Environmental Crimes Unit. All deliberations of the Compliance Committee are confidential.

The Compliance Committee will strive to reach consensus on the recommendations made to the Program Manager on the cited violation(s), the proposed corrective

action, and the enforcement response. Consensus is defined as a decision that can be supported by all members but does not require concurrence from each member. The Program Manager will make the final decision regarding the appropriate course of action. If necessary, the Compliance Committee will recommend an appropriate settlement amount to DOL, as detailed in Section 9.4.5.

The case lead will work with DOL to implement the recommended enforcement action. The case lead will enter enforcement information into the DROPS and CATS databases.

9.4.2 Pretreatment Program

The enforcement strategy for violations of Pretreatment Program requirements will follow the general enforcement procedures for the APDES Program and the Department's *Enforcement Manual*. In conjunction with the Attorney General's Office, the Department will consult the following EPA guidance to calculate a proposed penalty:

- *Penalty Calculations for POTW Failure to Implement an Approved Pretreatment Program* (December 1988)

The Department will initiate enforcement actions against a POTW for failure to adequately enforce against its IUs. The POTW will ensure that it provides, at least annually, public notification of significant noncompliance in a newspaper of general circulation in the municipality or borough where the POTW is located, in accordance with 40 CFR §403.8(f)(2)(viii). Where a POTW is not the Control Authority, the Department will be responsible to have the procedures in place for categorical and significant non-categorical IUs. The Department will use the same compliance procedures and enforcement responses it will use for direct discharges.

All violations will be noted and entered into the Department's DROPS database system for follow-up actions, including administrative and other enforcement actions. The Control Authority and IUs will be notified by letter of pending follow-up actions, including additional inspections or conferences, as necessary.

9.4.3 Administrative Remedies

The Department's administrative remedies will consist of enforcement tools that are less formal and may be executed by the Department outside of the judicial system. Administrative remedies usually require the violator to agree to undertake actions to correct the noncompliance, and in the case of a compliance order by consent, to pay a stipulated penalty and/or to reimburse reasonable agency costs. The DROPS and CATS databases, along with Department procedures as outlined in the Department's *Enforcement Manual*, provide methods to ensure proper tracking and efficient follow-up to avoid unnecessary delays in responding to a permittee's requirement to achieve compliance. As further described in the Department's *Enforcement Manual*, administrative remedies include: a *Compliance Letter*, *Notice of Violation (NOV)*, *Nuisance Abatement Order* (per AS 46.03.800

and AS 46.03.810), *Compliance Order by Consent (COBC), Compliance Order (CO), Permit Revocation or Modification, Emergency Order* (per AS 46.03.820), *Subpoena Powers*, and *Settlement Agreement.* A more detailed description of each enforcement tool is included in the *Enforcement Manual.* The state may use these administrative remedies to resolve violations or may opt to proceed to judicial or criminal enforcement. Examples and templates for these administrative actions can be found in the Department's *Enforcement Manual.* The Department does not have authority to assess an administrative monetary penalty for APDES violations.

The Department has authority to require monitoring, sampling, and reporting either as conditions of an APDES permit or in an order outside of an APDES permit. In general, the Department will include such conditions in a permit as necessary to determine compliance with permit limitations and with state water quality standards. The Department may also include monitoring, sampling, and reporting provisions in orders issued under AS 46.03.020(13) and 18 AAC 83.425(d) or in agreements entered into with a permittee or facility. The Department has the authority to impose an order or an agreement unilaterally or by consent. Examples of situations where the Department may do that are when it needs more information about the characteristics of a discharge or operation in order to determine appropriate conditions for that facility or to design appropriate best management practices for that industry.

Enforcement actions (compliance letter, NOV, COBC, CO, subpoena, emergency order, and a settlement agreement) will be signed by the Department in accordance with the most current delegation of authority. More detailed information on the types of enforcement actions can be found in the Department's *APDES Program Enforcement Response Guide* (Appendix J). A permit revocation or modification will be signed by the Program Manager of the Wastewater Discharge Authorization Program.

When the Department identifies potential noncompliance by a permittee that has had few or no previous violations during the previous six months, the Department may use enforcement tools that are less formal and may contact the permittee by telephone or site visit or may send a Compliance Letter or NOV, depending on the circumstances. If the permittee is a repeat violator or the violations warrant a more elevated response, the potential noncompliance will be referred to the Compliance Committee to determine the most appropriate enforcement action. The Department's *APDES Program Enforcement Response Guide* (Appendix J) will be used to determine the most appropriate enforcement response. At a minimum, the permittee will be sent a NOV to initiate the formal enforcement response. Issuance of a NOV does not preclude the Department from pursuing additional actions.

9.4.4 Civil Judicial and Criminal Remedies

The Department will use several different civil judicial and criminal remedies to address noncompliance with the APDES Program. The Department will refer potential civil judicial and criminal cases to DOL, as these remedies all involve

filing an action in court. Types of civil judicial remedies the Department can use include: a *Consent Decree, Civil Suit* for injunctive relief and damages (AS 46.03.760 and AS 46.03.765), *Preliminary Injunction and Temporary Restraining Order* (per AS 46.03.765), and *Permanent Injunction.*

AS 46.03.790 defines the actions that constitute criminal violations. The Department will consult with the Compliance Committee and ECU to determine if a criminal action has occurred. Criminal cases will be filed in court by DOL. A criminal penalty will be proposed by DOL, discussed with the Department, and assessed by the court. Proposed criminal remedies will be designed to punish (e.g. monetary penalty or imprisonment) and are reserved for the most severe and willful violations. The Department's *Enforcement Manual* includes procedures to process criminal actions.

9.4.5 Penalties

AS 46.03.760 provides the State of Alaska with the authority to assess monetary penalties (also referred to as civil damages) for violating the APDES Program or conditions of an APDES permit. However, all such penalties must be processed through the court system by DOL and cannot be assessed by the Department outside of a court action, unless they are part of a settlement. DOL can seek the following:

- a civil penalty for violation of an APDES permit condition, filing requirement, monitoring and reporting requirement, or the APDES Program in general (e.g. unpermitted discharges);
- a criminal penalty against any person who intentionally, knowingly, recklessly, or negligently violates any applicable APDES standard or permit limit or condition or any filing or reporting requirement; and
- a criminal penalty for any person who intentionally, knowingly, recklessly, or negligently makes a false statement on an APDES form or any notice or report or renders inaccurate any monitoring device or method.

Before going to court to recover a penalty, and with the assistance of DOL, the Department:

- will communicate to the permittee the alleged noncompliance;
- will provide documentation outlining the noncompliance issue; and
- may offer the opportunity to meet with the responsible party to discuss a settlement, notwithstanding the Department's right to continue to seek a court ordered penalty.

DOL follows its internal confidential *Settlement and Case Assessment Review Policy* to ensure consistent response to similar violations. Depending on several factors, including the monetary amount at stake and potential policy implications, an Assistant Attorney General will consult with a Statewide Section Supervisor, Statewide Office Chief, Deputy Attorney General, and/or the Attorney General.

Furthermore, case assessment committees are employed under certain circumstances and provide recommendations to the final decision maker. As a general rule, DOL will file any penalty with the court within 90 days of when it was referred by the Department.

Calculating a Penalty. The Department's general approach to calculate a proposed penalty will be similar to EPA's and based on EPA's penalty policies:

- *Interim Clean Water Act Settlement Penalty Policy* (March 1995)
- *New CWA Civil Penalty Policy* (February 1986)

In consultation with DOL, the Compliance and Enforcement Program Manager will propose a penalty based on the economic benefit derived from noncompliance adjusted for gravity components and other adjustment factors.

Examples of gravity components that might be considered include:

- Significance of the violation
- Threat or harm to human health or the environment
- Number of violations
- Duration of noncompliance
- History of recalcitrance and nonresponsiveness
- Simplicity or difficulty of the technological fix
- Permittee's ability to pay
- Litigation considerations

The Department may also use Supplemental Environment Projects to partially offset monetary penalties. In doing so, the Department will consult EPA's *Issuance of Final Supplemental Environmental Projects Policy* (April 1998 or most current).

9.4.6 Appropriate Involvement of the Department of Law (DOL) / Attorney General's Office

The Department and DOL have established procedures for the routine coordination of enforcement cases, including DOL participation in the Compliance Committee and coordination of general time frames for actions from case referral to filing. The Department shall maintain procedures to assure that coordination with DOL results in:

- timely review of initial referral packages;
- satisfactory settlement of cases, as appropriate;
- timely filing and prosecution of well-prepared referral cases; and
- prompt action where dischargers violate consent orders.

As a general rule, the Department's cases should proceed from referral to filing within 90 days.

9.5 Compliance and Enforcement Reporting

9.5.1 Data Tracking

All inspection results and enforcement actions will be logged in the DROPS database. In addition, actions resulting in an NOV or higher level of enforcement response will be tracked in the existing agency-wide CATS database. The CATS database tracks each administrative, civil, and criminal enforcement action taken by the Department against an offender and provides cross program communications on enforcement issues.

9.5.2 Reporting Noncompliance

The Department will enter and store all noncompliance activities and enforcement actions in the DROPS database for every APDES facility (see Chapter 10.0). The Department will enter data into DROPS and into EPA's ICIS-NPDES (manually until batch transfer is available) so that the required QNCR, semiannual statistical summary, and annual noncompliance reports will be produced from ICIS-NPDES on schedule and made available to the public, in accordance with 40 CFR §123.45. Reporting violations of APDES permit effluent limits in the QNCR will be done in accordance with Appendix A to 40 CFR §123.45.

The Department will enter data into ICIS-NPDES that will then report on significant noncompliance (SNC) permittees with monthly and non-monthly effluent limit violations, noneffluent violations, and wet weather discharge violations. Examples of noneffluent violations include an unauthorized bypass, an unpermitted discharge, pass-through of pollutants, and failure to implement an approved Pretreatment Program. The Department will consult the following EPA guidance:

- EPA's memo 'Revision of NPDES Significant Noncompliance (SNC) Criteria to Address Violations of Nonmonthly Average Limits' (September 21, 1995)

- EPA OECA *Guidance on NPDES Wet Weather and CAFO Inspection Reporting Changes, Other NPDES Inspection Reporting Changes, and PCS Data Entry and Software Changes* (January 2006)

- EPA's memo 'Transmittal of Final Guidance on the Reporting of CWA NPDES Wet Weather and CAFO Inspections to PCS, Other Reporting Changes to PCS, and Changes to the 3560-3 Water Compliance Inspection Report Form, and EPA Responses to Comments Received on the Draft Guidance' (January 17, 2006)

- EPA's memo 'Revisions to the Recently Issued Final Guidance on the Reporting of CWA NPDES Wet Weather and CAFO Inspections to PCS

and Changes to 3560-3 Water Compliance Inspection Report Form' (April 11, 2006)

Additionally, Compliance and Enforcement Program staff will evaluate SNC for wet weather discharges by relying on the most current versions of EPA guidance, such as:

- *Compliance and Enforcement Strategy Addressing Combined Sewer Overflows and Sanitary Sewer Overflows* (April 2000)
- *Compliance and Enforcement National Priority: Clean Water Act, Wet Weather, Concentrated Animal Feeding Operations* (November 2004)
- *Inspection Frequency Guidance for the Core Program and Wet Weather Sources* (draft April 2007)
- *Interim Significant Noncompliance Policy for CWA Violations Associated with CSOs, SSOs, CAFOs, and Storm Water Point Sources (i.e. Interim Wet Weather SNC Policy)* (October 2007) (When finalized for use by states.)

9.6 Public Involvement

9.6.1 Public Participation in the Enforcement Process

Like federal law, state law allows persons to intervene in the Department's civil enforcement actions. Under the rules governing Alaska's courts, intervention of right is available under the same circumstances as in federal courts: Alaska Rule of Civil Procedure 24(a) is essentially identical to its federal counterpart, Federal Rule of Civil Procedure 24(a). Both rules provide for intervention of right in a civil case where the applicant's interest is at risk. The Department will not oppose a request for intervention on the grounds that the intervenor's interests are adequately represented by the state. Every person has the right to inspect public records or information compiled for law enforcement purposes, to the extent allowed by AS 40.25.120(a)(6).

9.6.2 Citizen Complaint

A citizen complaint of an alleged or suspected violation of statute or regulation will be entered and tracked in the Department's CATS database. The Department will allow for the receipt of anonymous complaints. The Department may use the information to initiate an inquiry or investigation that could result in an enforcement action. Once the Department's investigation is no longer confidential under state law (see AS 40.25.120) and if the complainant requested feedback, the Department will notify the complainant of the results.

10.0 Information Management

This Chapter describes the systems and approaches that the Department proposes to use to manage, administer, and report on the APDES Program. The Department will provide information that allows EPA to determine whether the state is effectively implementing the CWA and associated regulatory requirements. The state's system will provide a reliable mechanism to ensure that APDES-permitted dischargers submit compliance monitoring information to the state, and that the state can efficiently determine compliance with permit limits and conditions. EPA Region 10 has been updating Alaskan data in the Integrated Compliance Information System-National Pollutant Discharge Elimination System (ICIS-NPDES) since the data was migrated from the Permit Compliance System (PCS) in 2006. The Department will ensure that all required data on APDES permits are uploaded to ICIS-NPDES in order for EPA to generate the quarterly noncompliance reports (QNCRs) and semi- and annual status reports, as well as to track overall program implementation.

The Department proposes a broader approach to information management as part of APDES Program implementation. The Department's data systems will facilitate CWA compliance tracking, as well as program management, through online permit application/notice of intent (NOI) filing; automated reissuance notification and online reissuance capability; automated permit development; electronic compliance data/DMR submittal; inspection process automation and follow-up action tracking; and other functions.

The following information management descriptions are subject to several implementation timelines [e.g., Cross Media Electronic Reporting Rule (CROMERR) and ICIS-NPDES batch upload] that are outside the control of the State of Alaska. The descriptions represent the Department's best estimate of the status of the various systems at NPDES program approval.

10.1 Information Management Systems

10.1.1 Discharge Results and Online Permit System (DROPS)

DROPS will be the primary information system used to assist with the implementation and management of the APDES Program, including domestic and nondomestic wastewater discharges, stormwater discharges, CWA §401 certification of §402 (NPDES) permits issued by EPA, and the Pretreatment Program. DROPS will allow the Department to compile, manage, and report on APDES Program permitting and compliance monitoring data. All Department staff assigned to the APDES Program will receive DROPS user support, guidance, and periodic training.

The Department acquired the NPDES Management System (NMS), designed and implemented by the State of Michigan, and modified the system as DROPS to meet specific data management needs of the APDES Program. Michigan's NMS was designed to flow data to PCS; thus, most data fields were compliant with EPA's PCS data standards. However, as the Department implements DROPS and batch transfer to ICIS-NPDES, DROPS data fields are being reconciled for compliance

with the Environmental Data Standards Council (EDSC) and ICIS-NPDES data standards.

10.1.2 Online Application System (OASys)

The Department's Online Application System (OASys) will support web-based application for initial coverage under domestic and nondomestic general permits and reissuance of individual permits and general permit authorizations. OASys will support electronic application submittal for MS4s and NOIs under the stormwater Construction and Multi-Sector General Permits. OASys includes electronic signature and electronic payment capabilities, as well as an upload interface to DROPS resulting in no re-entry of application information.

The electronic signature and identity management components of OASys will be compliant with the CROMERR published October 13, 2005 after NPDES program approval. Until CROMERR approval is obtained, the Department will require a signed, hard copy of an application.

Downloadable application forms will also be available to allow the applicant to fill in the information offline, print the document, and submit a hard copy even after CROMERR approval.

10.1.3 DMR Submittals

The Department will use EPA's NetDMR system for electronic DMR submittal if NetDMR is functioning and available for use at NPDES Program approval. While CROMERR approval is already in place for NetDMR itself, the Department will still be required to apply for CROMERR approval of the Department's implementation of NetDMR. The Department will seek this CROMERR approval after NPDES program approval.

If NetDMR is not available at NPDES program approval, the Department will use its existing e2 system for electronic DMR submittal.

The e2 system is a web-based interface where DMR templates are uploaded from DROPS. A DMR created specifically for each facility will include all required EPA data reporting elements. The e2 system will allow permittees to electronically submit DMRs. The Department has licensed the e2 system to supplement DROPS and has modified the system to address Alaska-specific data management needs. The Department will provide outreach, training, and user support to dischargers that elect to use the e2 system.

The e2 system is also subject to CROMERR requirements and to the application process for CROMERR approval under 40 CFR §3.2(b)(2). However, e2 was developed by an independent contractor; therefore, the process for CROMERR approval differs from that found in OASys. The Department will apply for CROMERR approval for e2 after NPDES program approval. Until CROMERR

approval is obtained for either system, the Department will require a signed, hard copy DMR.

Even after CROMERR approval, printed DMR forms will still be available for permittees to fill in, sign offline, and submit as hard copy.

10.1.4 ICIS-NPDES Technical Account of Data Flow

Upon APDES Program approval and as permitting and compliance responsibilities transfer to the Department per the schedule in the MOA, Appendix B, the Department will be responsible to ensure data are entered into ICIS-NPDES for the facilities the Department has authority over. Until the electronic batch process for ICIS-NPDES is available, the Department will manually enter required data into ICIS-NPDES for facilities the Department has authority over. EPA will be responsible for ICIS-NPDES data entry for the facilities they retain authority over (MOA, Appendix A).

The Department has participated with EPA and delegated states in the development of batch processes where data entered into DROPS will be uploaded to ICIS-NPDES through EPA's Central Data Exchange (CDX) Node and the Department's eXtensible Markup Language (XML) Network node. The Department's Network Node adheres to the Network Node Functional Specifications Version 1.1 (published at http://www.exchangenetwork.net/node/dev_toolbox/index.htm).

The Department's current implementation of the Network Node was developed by Windsor Solutions and is written in C# .NET for an SQL database. Data in DROPS will be extracted using SQL queries and loaded into an SQL staging database with native XML format. A C# .NET "plug-in" to the node will be developed to perform the serialization of the DROPS data to the ICIS-NPDES XML Schema (http://www.exchangenetwork.net/exchanges/water/index.htm). The Department will upgrade to the Network Node version 2, follow standard exchange network practices and, in accordance with the *Pacific Northwest Water Quality Data Exchange, Trading Partner Agreement* (December 28, 2004), develop an agreement with EPA Headquarters on the specifics of the exchange of data (e.g. data pull or push, frequency, etc.).

The batch processes will initially include flowing DMR data to ICIS-NPDES and will later include permit facility data as the Department's and the ICIS-NPDES data mapping and flow capabilities expand (permit number; address; effective and expiration dates; contact information; outfall number, description, and location; permit limits; inspection dates; enforcement actions; and compliance schedules). Thus, the Department will initially be a "hybrid" state by using the most data-intensive segment (DMR data) to implement and test the batch transfer mechanism and infrastructure while entering the less frequent data into ICIS-NPDES manually until batch processes for other data sets are ready for implementation.

10.2 Initial Data Migration and Business Practice Development

The Department recognizes that the utility of DROPS is directly related to data quality. One of the Department's major goals in developing and implementing DROPS is to initially populate the system with accurate data and to provide for future entry of clean, consistent data. The Department pulled data from historical Department data systems to populate DROPS and added data from PCS for facilities not included in the older systems. The Department has periodically found inconsistencies in the data for the same facilities between older Department data systems and PCS, so during the implementation of DROPS and the concurrent implementation of ICIS-NPDES, the Department will continue to identify and reconcile inconsistent data between the systems. The Department has worked closely with EPA Region 10 staff to verify facility- and permit-specific information in order to address data gaps prior to the data's incorporation into DROPS and to update data in PCS/ICIS-NPDES.

The Department has worked with contractors having ICIS-NPDES and DMR data expertise to establish business management and quality control practices to ensure the quality of data and to provide for efficient, accurate, and complete data entry into DROPS that is compliant with EPA data requirements. These practices will be incorporated into the DROPS training staff receive. The Department will periodically conduct data audits of the information in DROPS, make corrections, and refine the business practices, as necessary.

EPA is currently scheduled to have batch transfer of DMR data in place for hybrid states by August 2008 per the 2007 PCS and ICIS-NPDES National User's Group Meeting – ICIS-NPDES Batch Processing held July 18, 2007. The Department's data staff will closely monitor this schedule and work with EPA to perform the data mapping necessary for the batch upload.

10.3 Use of Data Management in Permit Development, Compliance Monitoring, and Program Management

The Department's information management systems will be integrated into each step of permit application and development, compliance monitoring and enforcement, program management, and EPA reporting processes. The following Sections describe the information management-related components of each process.

10.3.1 Individual Permits

1. As discussed in Section 6.2., an existing discharger must submit a permit application no later than 180 days before permit expiration, and a new discharger must submit an application at least 180 days prior to initiating a discharge. DROPS will generate advance notices of the application due date for expiring permits to be sent to the existing dischargers. An application to reissue an individual permit, as well as a fee payment, can be submitted electronically through OASys. Alternatively, a discharger can submit a hard-copy application.

2. DROPS will be automatically populated with application information submitted electronically via OASys. Department staff will manually enter information submitted in hard-copy.

3. The Department will use the application information and additional information obtained during the permitting process to establish permit requirements, including permit limits, submittal schedules, and annual reports. These permit requirements will be entered in DROPS.

4. Information from DROPS will be used to populate a permit template that includes facility-specific information, such as discharge limits, along with standard terms and conditions applicable to all dischargers.

5. As described in Section 10.1.3, the Department will use EPA's NetDMR if NetDMR is available for use at NPDES program approval. If NetDMR is used, the process will be similar to that described below for e2 but will involve data flows between DROPS, ICIS-NPDES, and NetDMR.

6. DROPS will automatically produce a DMR template for the permittee that is specific to the facility. The Department will either upload the DMR template into the e2 system for electronic submittal or send the DMR template to the discharger for manual entry of monitoring results and hard copy submittal. The permittee will have three options to enter discharge monitoring data directly into the e2 system: direct entry via the Internet, copying and pasting of Excel files, or XML data transfer. The e2 system will provide quality control checks to ensure data input accuracy and will retain 'qualifiers' on analytical results. After completing DMR entry, the permittee will electronically sign and submit the DMR to the Department. The Department will promptly review the submittal and then automatically upload the data directly into DROPS where it will be accessible to all staff. Additional staff resources will be specifically dedicated to enter DMR data submitted by hard copy directly into DROPS.

7. DROPS will automatically screen the DMR data for noncompliance with permit limits and monitoring requirements and will identify facilities that have not submitted DMRs in a timely manner.

8. DROPS will provide for electronic DMR data transfer to ICIS-NPDES and will be used to track noncompliance follow-up actions. While the data transfer mechanisms become established, the Department will enter nonDMR data manually, with additional data elements electronically transferred over time. The Department will follow the guidelines for data transmittal outlined in the ICIS-NPDES Policy Statement when the statement becomes final. The April 30, 2007, draft ICIS-NPDES Policy Statement specifies that batch uploads are to occur at a minimum of every 30 days and/or manual data entry into ICIS-NPDES within 30 days of receipt of the data or an event occurrence. The Department will meet either these standards or the revised standards that appear in the final ICIS-NPDES Policy Statement. Through ICIS-NPDES, EPA will track individual facility noncompliance and the Department's follow-up actions. Through EPA's online Envirofacts database, the public will be able to access

information from several databases, including ICIS-NPDES. Users can develop online queries, create reports, and map results.

9. EPA will use the data in ICIS-NPDES to generate:
   a) The QNCR for major APDES dischargers (see MOA, Appendix G). The QNCR includes:
      - name, location, and permit number of non-complying facilities;
      - identification and date of each noncompliance occurrence;
      - dates and description of response actions by the Department; and
      - any other information related to the cause and mitigation of each noncompliance occurrence.
   b) Semi-annual statistical summary reports on the number of major permittees with two or more violations of the same monthly average permit limit in a six-month period [40 CFR §123.45(b)].
   c) Statistical compliance information for minor facilities. The information will include the number and percentage of noncompliant facilities and the number of enforcement actions the Department has taken. [40 CFR §123.45(c)].

10. The Department will use the DROPS Schedule of Compliance capability and the automated reports generated to confirm compliance and review a permittee's status in meeting compliance schedules incorporated into an APDES permit in accordance with 18 AAC 83.560 (40 CFR §122.47). The DROPS Schedule of Compliance module will manage schedules of compliance for permits, as well as inspection and enforcement actions. Schedules are established in DROPS by specifying the due dates and the type of information required, such as DMRs, annual reports, or completion of a permit condition. Inspection report results and information received from a permittee are logged into DROPS. Information not received or received late will generate a flag within DROPS.

11. DROPS will generate letters notifying applicants of pending permit expiration dates, Notices of Violations, and other documents used as part of the APDES Program.

10.3.2 General Permits

1. As discussed in Section 6.3.4., an applicant must submit an NOI to seek coverage under a general permit. An NOI as well as a fee payment can be submitted electronically through OASys. Alternatively, an applicant can submit a hard copy of the NOI.

2. A permittee authorized under a general permit will be tracked in DROPS. Similar to individual permits, DROPS will track a permittee's compliance with a general permit, including noncompliance with permit limits and conditions, inspection results, follow-up compliance, and enforcement actions.

3. Facility information and compliance history of a permittee operating under a general permit and designated as a major discharger (MOA, Appendix G) will be included in the quarterly noncompliance reports, as well as the semi-annual statistical summary reports.

10.3.3 Pretreatment Program

DROPS will track

1. facility and permit information,
2. compliance with annual report submittal requirements of the Pretreatment Program, and
3. pretreatment compliance audits and inspections and will upload this information directly into ICIS-NPDES.

10.3.4 Stormwater Program

1. DROPS will track all MS4 permits and authorizations under the CGP and MSGP, along with the related permit and compliance data similar to an individual permit. Applications for authorizations for coverage under the CGP and MSGP can be submitted electronically through OASys. When authority to implement the Stormwater Program is transferred to the Department, electronic submittal of the NOIs will be done via OASys instead of EPA's eNOI system.
2. Per the ICIS-NPDES Policy Statement, the Department will be required to transmit only the single event violations (as defined by the ICIS-NPDES Policy Statement) that occur under the CGP, MSGP, and any other stormwater permit along with all the Required ICIS-NPDES Data Elements (RIDE) for the facility and permit information of the site at which the violation occurred (if not already available in ICIS-NPDES). This information includes the enforcement action, penalty, or compliance schedule and all inspections and associated identified violations which precipitated that enforcement action.

10.3.5 Entry of required data

EPA Region 10 participated in Phase I of the data migration from PCS to ICIS-NPDES with Alaska's data fully managed through ICIS-NPDES beginning in July 2006. Thus, all Alaskan data, either manually entered or batch-transferred, will be entered into ICIS-NPDES. The Department has reviewed both the 2005 and the April 30, 2007 draft ICIS-NPDES Policy Statements and is aware of the additional data entry requirements proposed. The Department will comply with the final ICIS-NPDES Policy Statement rather than the 1985 PCS Policy Statement. The Department will enter all RIDE data into DROPS, as well as other non-required data.

As discussed in Section 10.1.4, the batch process for DMR data is scheduled for implementation in August 2008. The Department will continue to monitor the batch

upload schedule and is aware that, as with any software development schedule, the current schedule may change. If necessary, the Department will manually enter data into ICIS-NPDES until the batch process is ready. The Department will hire additional temporary data entry staff to work closely with the Department's data management group to manually enter RIDE data to ICIS-NPDES.

Hard copy data will be manually entered by the Department into ICIS-NPDES within 30 days of receipt. For example, as DMRs are received they will be entered into both DROPS and ICIS-NPDES. The data entry will follow the quality control procedures developed during the data reconciliation to meet or exceed the criteria for timeliness, accuracy, completeness, and consistency identified in the ICIS-NPDES Draft Policy Statement.

The same level of quality control will be exercised with data entry and data review in DROPS. Upon batch transfer to ICIS-NPDES, the data in DROPS will have been subjected to the same kind and level of data quality practices and review as data entered directly to ICIS-NPDES. In addition, the Alaska data steward will review exception and error reports generated by ICIS-NPDES after batch uploads and will correct erroneous data in ICIS-NPDES and DROPS, as well as correct the behavior that led to the data errors.

10.3.6 Management of Related Information and Records

The Department will initially maintain a hard copy file of all permit applications, permits, fact sheets, statements of basis, public notices, DMRs, facility/Department correspondence, inspection reports, compliance orders and enforcement actions, and other permit-related documentation. The hard copy materials are maintained for all types of dischargers, including individual and general permittees and Pretreatment and Stormwater Programs. The hard copy files will be available to the public, with the exception of any confidential information which will be filed separately. The Department intends to implement a document imaging and automated content management system in place of retaining hard copies of all documents. Such a system will enhance the Department's ability to electronically distribute permits, inspection reports, compliance and enforcement action documentation, guidance, and other materials related to the APDES Program internally and to the public. The document management system is in the early stages of development and will eventually be linked directly to DROPS.

10.3.7 Schedule

The Department will continue to conduct analysis and planning in preparation to transfer NPDES-related data to ICIS-NPDES. The exact date of data transfer is dependent on EPA's progress with batch-uploading to ICIS-NPDES and the date of NPDES program approval.

11.0 Program Capacity Building and Training

The Department will implement an APDES Program Capacity Building Plan until full NPDES program authorization is transferred from EPA (three years from program approval). The Capacity Building Plan identifies recruitment and retention strategies and training requirements necessary to implement the APDES Program. The Capacity Building Plan documents how the Department intends to hire new employees to staff the APDES Program and also includes a training plan to ensure that current and new staff receive the appropriate training to implement all components of the APDES Program including, data management and permitting, stormwater, pretreatment, and compliance and enforcement programs. In addition to attendance at formal class room courses listed in the Plan, staff will have the opportunity to receive on-the-job training from EPA staff, senior Department staff, or staff from another NPDES state; work under an interpersonal governmental agreement with EPA; job shadow more experienced staff in state as well as from other NPDES primacy states; or participate in joint EPA / Department inspections. In addition, staff will complete required training courses specific to their job duties. Examples of training courses are included as part of the Capacity Building Plan. The Department will prepare a bi-annual Capacity Building Summary report until full NPDES Program authority is transferred to the Department.

12.0 Reference Documents

The following documents referenced in the Program Description 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. October 2007.

APDES Permit Rating Work Sheet. ADEC. October 2008.

Best Management Practices (BMPs) in NPDES Permits – Informational Memorandum. USEPA. Memorandum. Washington, DC. August 19, 1988.

DEC Single Agency Coastal Management Consistency Review Procedures. ADEC. January 7, 2004 (or most current).

Division of Water, Wastewater Risk-Based Inspection Ranking Model. ADEC. May 2008.

Clarifications Regarding Toxicity Reduction and Identification Evaluations in National Pollutant Discharge Elimination System Program. USEPA. Region 10. Seattle. March, 2001.

Compliance and Enforcement National Priority: Clean Water Act, Wet Weather, Concentrated Animal Feeding Operations. USEPA. November 2004.

Compliance and Enforcement Strategy Addressing Combined Sewer Overflows and Sanitary Sewer Overflows. USEPA. Memorandum. Washington, DC. April, 27, 2000.

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

Compliance Schedules for Water Quality-Based Effluent Limits in NPDES Permits. USEPA. Memorandum. Washington, D.C. May 10, 2007.

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