

**State of Alaska's Assumption of the National Pollutant Discharge
Elimination System**

A Report to the Alaska Legislature

**Alaska Department of Environmental Conservation
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FINAL

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Introduction

Senate Bill 326 enacted by the 22nd Alaska Legislature directed the Alaska Department of Environmental Conservation (DEC) to evaluate the potential benefits and consequences of the state assuming primacy of the National Pollutant Discharge Elimination System (NPDES) program.

As directed by SB 326, the report includes:

- an overview of the federal NPDES Program and NPDES permitting in Alaska today,
- proposed statutory and regulatory changes needed for state primacy,
- procedures to resolve conflicts with the Environmental Protection Agency,
- projected costs to transition to primacy and to implement a state run program, and
- a timeline to achieve primacy.

The Department released the draft report for public review and comment, and also held an audio conference on January 5, 2004 for NPDES primacy stakeholders and interested persons to ask questions and provide comments on the draft NPDES Report. Written comments were also received on the draft report and are provided in Appendix L. The comments requested a better description of what a state-run NPDES will look like and generally reflected concerns such as, how the program will be funded and the potential loss of communication currently established between EPA and Alaska Natives. The final report addresses the comments received, to the extent possible.

Summary and Recommendation

In contrast to most other states, Alaska does not administer the National Pollutant Discharge Elimination System (NPDES) program for wastewater discharges in the state. The U.S. Environmental Protection Agency (EPA) performs this important task. Senate Bill 326 enacted by the 22nd Alaska Legislature directed the Alaska Department of Environmental Conservation (DEC) to examine whether the State of Alaska should assume responsibility for wastewater permitting and what that would mean to the State. This report presents the results of DEC's evaluation and planning pursuant to Senate Bill 326.

In calling for examining wastewater permitting options, the Legislature's timing was good. It came at a time when DEC was conducting in-depth reviews of all of its programs. As we focused on federal wastewater permitting, it became clear that state primacy for the NPDES permit program is essential for a rational water quality management system in Alaska. As long as the federal government is responsible for wastewater permitting, the State will never be able to fully accomplish its water protection policies.

Background on Federal Water Quality Protection

In response to concerns over the condition of the nation's waters, Congress enacted the Federal Water Pollution Control Act Amendments of 1972. Later amended and re-named the Clean Water Act, the Act established national goals and programs to restore and maintain water quality. The basis for federal authority in water pollution regulation derived from the interstate commerce clause of the U.S. Constitution. As a consequence, the Act's jurisdiction was limited to navigable waters even though its reach was nationwide.

To accomplish its water pollution control objective, the Act relied on two basic strategies – a massive grant program to build municipal sewage treatment plants and other sewerage works, and a permitting program under Section 402 of the Act – the NPDES program. Under the NPDES program, discharges of wastewater from municipal and industrial facilities into navigable waters had to be authorized by permit. NPDES permits required that wastewater receive a certain minimum level of treatment.

The combined grant and permit programs of the 1972 Act were highly successful at curbing pollution caused by the discharge of municipal sewage. It was soon realized, however, that the Act's focus on improving the treatment of municipal sewage was too narrow to achieve its broader water quality objectives. There were simply too many other sources and types of pollution that were not effectively controlled under the Act. Amendments in 1977 expanded the goals of the Act and fundamentally changed the NPDES program. The amendments shifted the program's focus from one of permits requiring certain treatment levels for a narrow range of wastewater types to one of

permits requiring compliance with a national system of federally-approved state water quality standards for essentially all types of wastewater discharges.

Today the NPDES permitting program remains one of the preeminent components of the federal water quality protection program. NPDES permits are the means by which state water quality standards are applied to wastewater discharges of all types to navigable waters.

Though the Act established the NPDES as a national permitting program under the EPA, it intended for the states to implement the program in conjunction with their water quality standards. In its declaration of goals and policy, the Act expressly states that, “[i]t is the policy of Congress that the States manage the construction grant program under this Act and implement the permitting programs under sections 402 [NPDES] and 404 of this Act.” All but five states currently administer the NPDES program. In the other five states, including Alaska, NPDES permits are issued and enforced by EPA.

State Water Quality Protection

In 1971 the state Legislature expressed a broad and unequivocal policy in AS 46.03.010 to protect natural resources and to control water, land and air pollution. At the same time the Legislature empowered DEC to adopt standards, promulgate regulations, and take other actions necessary to achieve compliance with the State’s policy.

To accomplish its policy, the State has developed an extensive legal framework for protecting water quality and controlling water pollution. Two key elements of the framework are the EPA-approved water quality standards found in regulation at 18 Alaska Administrative Code (AAC) 70 and the wastewater plan review processes at 18 AAC 72. These water quality protection authorities wielded by DEC, however, are only part of a broader state water protection tapestry. Other state authorities and agencies appropriate water and adjudicate water rights, protect water as habitat, plan for water uses, manage development within the coastal zone, and regulate drinking water utilities, among other water-related programs and policies.

While consistent with the Clean Water Act, state water quality jurisdiction is broader than federal jurisdiction. State jurisdiction includes all waters -- groundwater and surface water, navigable and non-navigable. Federal NPDES jurisdiction is confined to navigable, surface waters.

Why a State NPDES Program

NPDES program assumption is often associated with improvements in permitting performance. For example, some may see state NPDES primacy as a means to improve the timeliness of permit development, or they may want more predictability in permit terms and conditions, or they may want permits issued for discharges that are not currently permitted. These are valid objectives and expectations for a state-run program, but they are not sufficient basis for Alaska’s seeking primacy. Performance improvements could be realized without changing program responsibility.

In the most general sense, the State of Alaska needs NPDES program primacy because it is essential if the State is to accomplish its stated goals for protecting its water resources. There will always be a federal oversight role and a need to consult and coordinate with federal agencies in wastewater discharge permitting. As long as a federal agency is issuing wastewater discharge permits, however, there can be no seamless state programmatic framework to protect Alaska's water resources – from drinking water to habitat, from raindrops to oceans – as envisioned by state statute.

The problems stemming from federal implementation of the preeminent water quality program in Alaska are not a result of faulty EPA performance or intent. The problems are an inevitable consequence of the State looking to a federal program to fill a gaping hole in its resource management framework. The problems arise from a mistaken impression that federal and state programs will be equivalent somehow when they cannot be. The federal NPDES program in Alaska responds to federal, not state priorities. The federal program does not recognize, let alone seek to implement, the State's environmental policies. The federal program is not designed to be part of a seamless state water quality framework that integrates the water resource objectives and efforts of other state agencies. The federal program brings with it its own processes and focuses on consistent federal process instead of site-specific and risk-based results. The federal program places coordination and consultation with other federal agencies above cooperation with state agencies.

Performance improvements will result from a state-run wastewater permit program with sufficient resources to do its job. EPA's focus is on the relatively few major wastewater dischargers and to some extent the urbanized stormwater discharges, while EPA largely ignores minor discharges statewide. A state program will reduce the number of discharges not covered by permit. The State will issue permits more quickly than EPA has in the past. The State will perform more inspections and have a stronger field presence. There will be efficiencies gained in terms of cost effectiveness and use of government resources. These performance improvements, however, will be a welcome consequence of a State decision to assume complete responsibility for implementing its own water protection policies.

This broad concept of why Alaska should assume responsibility for the NPDES program rests on three pillars: Alaskans taking responsibility for Alaska's water quality; seamless application of state water quality standards to all waters; and state control over program planning, priorities, and performance through elected state officials.

Alaskans Taking Responsibility for Protecting Alaska's Water Quality

Alaskans insist upon a high degree of protection of their water resources. Alaska's Environmental Policy, as expressed in AS 46.03.010, is comprehensive and unequivocal. The State of Alaska will protect its water resources and control pollution “. . . in order to enhance the health, safety, and welfare of the people of the state and their overall economic and social well being”. All state agencies with environmental, resource management, social and economic responsibilities are directed to work in collaboration to

achieve the State's environmental policy. Alaska's Legislature charged DEC with establishing and enforcing standards to protect the quality of Alaska's air, land and waters (AS 44.46.020).

Following Alaska's public administrative rulemaking procedures, DEC has put in place a regulatory program to control the discharge of pollutants to all waters and implements programs that advance watershed planning and protection consistent with the national Clean Water Act. These programs operate in cooperation with local government, state stakeholders and the regulated community to develop and address state priorities for water quality protection.

Seamless Application of Alaska Water Quality Standards to All State Waters

The NPDES program only applies to navigable waters, but protection of navigable waters is not easily differentiated from protection of all waters within the state. Alaska's Water Quality Standards are the foundation for protecting all waters. The standards identify uses for all state waters, navigable or not, and set protective criteria to sustain those uses. The water quality standards establish the terms and conditions by which the protective criteria will be applied. All discharges must demonstrate that the water quality standards will be met. With the State's regulatory framework in place for all waters, the federal NPDES program is a redundant layer of regulation that is not capable of protecting all state waters and unnecessarily burdensome to all involved.

Alaska's Water Quality Protection Programs are Subject to Review and Approval by Alaskans through their Elected Officials

The mission, priorities, level of effort and performance measures of DEC's regulatory programs are subject to annual review and approval by the Legislature. Through the annual legislative process, all Alaskans have the opportunity to direct the state's commitment to water quality priorities. The Legislature and Executive can agree to standards of performance that assure that all discharges are covered by permit and that all permits are current and in force. Planning and budgeting for a federally run NPDES program does not offer this opportunity for state control, with the result that the current EPA program is not capable of achieving its mission. The current NPDES program is not protection for all of Alaska's navigable waters and dischargers are not protected from prosecution for failure to secure a permit.

Recommendation

EPA's implementation of the NPDES program in Alaska is not sufficient to provide the comprehensive water quality protection envisioned under state statute or expected by Alaskans. The State should seek primacy for the NPDES program with a goal of having a state-run program in place by July 2005. An Alaska NPDES program would require an additional investment of about \$1.7 million, for a total water quality permit program funding level of \$4.8 million in FY06. Alaska's NPDES program at primacy would require an increase of about 14 full time positions above today's 29 full-time equivalent positions.

I. The National Pollutant Discharge Elimination System Program

The core of the NPDES program is that discharges of wastewater to navigable waters are prohibited unless authorized by permit. NPDES permits specify limits on the quantity and quality of wastewater that can be discharged. Permits require dischargers to monitor their wastewater and to report that information to the administering agency. Permit compliance is ascertained by the implementing agency through review of the self-monitoring reports provided by the dischargers and through independent agency inspections. Fines and other remedies are available to deal with non-compliance.

The NPDES program has grown in scope and complexity as more traditional sources of water pollution have been brought under control and as the program has been expanded to address remaining, less conventional sources of water pollution. For example, rainfall runoff from agricultural areas, urban areas and construction sites was found to be a significant source of water pollution, and the program was expanded to include a stormwater component. Municipal wastewater treatment systems produce concentrated byproducts consisting of pollutants removed by treatment processes. The NPDES program has a component to address treatment and disposal of these treatment process byproducts collectively referred to as “biosolids”. In addition, the national pretreatment program has been an important feature for regulating discharges from industrial and commercial facilities into a community’s sewage treatment system. Today EPA regulations characterize the NPDES program as having six primary components, as discussed below.

As the number and different types of discharges covered by the NPDES program have grown, the program has also developed efficiency tools. A key tool is the general permit. General permits establish generic conditions applicable to similar discharges within a geographic area. Rather than apply for and receive an individual permit, dischargers simply notify the administering agency (by providing a Notice of Intent or NOI) of their intent to comply with the general permit. Often times a plan showing how a specific operation will comply with the general permit is required as part of the notification. The plan is typically subject to review and approval by the agency. Once the NOI and any relevant information is submitted by a facility and reviewed by the administering agency, the applicant is authorized to discharge under the general permit.

Program Components

The NPDES program has six primary components:

- NPDES Permitting (Individual and General Permits) – This basic component consists of developing, issuing and modifying permits for “end of pipe” wastewater discharges. Permits may be either an individual permit tailored to a specific facility or a general permit that covers a category of similar discharges within a geographical area.

- Stormwater Program – The stormwater program is the portion of the NPDES program that regulates wastewater discharges generated by runoff from land and impervious areas such as paved streets, parking lots, and building rooftops during rainfall and snow events. Stormwater discharges from industrial, commercial and construction sites are authorized under individual and general stormwater permits. The stormwater program requires certain municipalities and other local jurisdictions that own stormwater pipes (referred to as municipal separate storm sewer systems or MS4s) to develop a program to minimize the impact of stormwater discharges into receiving waters.
- Compliance and Enforcement - Permittees are required to self-monitor by sampling the treated wastewater and the receiving environment and by reporting the test results on a prescribed form and schedule. The permitting agency reviews a facility's monitoring reports and conducts inspections to determine a permittee's compliance with an NPDES permit, provide compliance assistance, and to take appropriate enforcement actions to penalize violators and compel compliance.
- Permitting Federal Facilities - Facilities, such as military bases, national parks and the Federal Aviation Administration installations, must also obtain NPDES permits for wastewater discharges.
- Pretreatment Program – Certain industrial and commercial facilities must pre-treat or remove industrial pollutants in the wastewater before discharging to a municipal sewerage system. This component of the NPDES program guards against disposing of industrial pollutants that could harm the biological treatment processes used to treat domestic sewage.
- Biosolids Management Program – Most forms of municipal wastewater treatment produce a residual of concentrated pollutants that have been removed by the treatment process. These residual biosolids must be recycled, incinerated, or properly disposed of in landfills.

A state can seek primacy from EPA for all or some of the NPDES program components. At a minimum, a state program must include NPDES permitting, a stormwater program, a compliance and enforcement program and a pretreatment program. Permitting federal facilities and a biosolids program are optional components. EPA retains responsibility for the optional program elements a state does not assume. States can also choose to phase in implementation of the optional program components over time.

EPA Delegation Process

A state formally applies to EPA to assume NPDES primacy. The State NPDES application describes how the state's program satisfies the required legal framework and

meets the federal requirements governing NPDES permitting and compliance procedures. The application must include:

- a letter from the Governor requesting approval of the state's application;
- a program narrative that describes how the state will issue permits, ensure permit compliance, perform enforcement, fund the program, track issued permits and enforcement actions, and submit periodic reports to EPA;
- an Attorney General statement of legal authority that confirms the state's laws and regulations are sufficient to implement the NPDES program;
- a signed Memorandum of Agreement between the state and EPA; and
- a compliance assurance agreement developed between the state and EPA.

If a state's application is acceptable, EPA issues a public notice of its intent to approve the state's submittal. Following public comment, EPA takes final action to delegate the NPDES program to the state. EPA is responsible for undergoing Endangered Species Act consultation with the U.S. Fish and Wildlife Service and the National Oceanic Atmospheric Administration fisheries as part of its review and approval of a state's NPDES program application. EPA will also seek input from tribes.

Recently authorized states (Arizona and Maine) took 18-24 months to revise their existing programs to fulfill legal and procedural requirements, prepare the state's NPDES application to EPA, obtain EPA approval, and achieve NPDES primacy. DEC proposes to revise its program, submit an application to EPA, and achieve NPDES primacy in mid-2005 - in roughly 18 months.

II. Wastewater Permitting in Alaska Today – EPA’s Role as NPDES Administrator

As NPDES program administrator in Alaska, EPA handles all six NPDES program components identified in Chapter I, although its primary focus is on the permitting and compliance of the relatively few larger facilities with “major” discharges greater than one million gallons per day. EPA pays little attention to “minor” discharges of less than one million gallons per day, stormwater discharges, federal facilities, and biosolids.

Individual Wastewater Permits

EPA issues individual permits to 45 Alaska facilities with major discharges of greater than one million gallons per day, such as large municipal treatment facilities, seafood processors, oil and gas operations, mining operations and some utilities (see Appendix A for a list of major permit holders).

Since the late 1970’s, EPA also issued permits to 154 facilities with minor discharges of less than one million gallons per day, including small municipal and village sewage systems, subdivisions, schools, RV parks, and mining operations. Only 17 of these facilities operate under current NPDES permits today, whereas up-to-date information is lacking on most of the remaining 137 facilities. In some instances, EPA administratively extended NPDES permits beyond their five-year term, and facilities are operating with an out-dated NPDES permit that may conflict with newer state water quality standards adopted after the original permit was issued. Other facilities might be operating without an NPDES permit at all, or may no longer be in operation. Today, EPA rarely issues, renews or enforces minor NPDES permits in Alaska.

Table 1 summarizes the EPA individual NPDES wastewater permits in Alaska as of June 30, 2003.

Table 1. EPA Individual Wastewater Permits in Alaska in 2003

	Major	Minor	Total
Facilities with Current Permit			
EPA NPDES Permit	44	17	60
Facilities with Expired Permit or Unknown Status			
EPA NPDES Permit	1	137	138

Table 2 illustrates that during the period FY01 – FY03, EPA issued an average of 10 NPDES major permits each year.

Table 2. Individual Major Wastewater Permits Issued in Alaska: FY01-FY03

Wastewater	FY01	FY02	FY03	Annual Average Permits Issued
EPA NPDES Individual Major Permits Issued	10	15	4	10

One measure of EPA’s permitting performance in Alaska, compared with other state-run NPDES programs, is the percentage of total NPDES permits that are administratively extended beyond their five-year term. These are considered to be "backlogged". EPA’s national goal is to reduce the number of backlogged permits so that 90% of permitted facilities (major and minor) have current NPDES permits by the end of calendar year 2004. As of September 2003, 97% of the EPA-issued major permits and 11% of the EPA-issued minor permits are current in Alaska. As noted in the general permits section below, EPA has two pending domestic General Permits anticipated in 2004 that will reduce the backlog for minor facilities in Alaska. Table 3 compares the current permit status of Alaska and several primacy states based on data from EPA’s web page.

Table 3. Percent of NPDES Wastewater Permits Current in Selected States

Individual Permits Current	EPA Program in Alaska	Arizona	Maine	Montana	Oregon	Washington
Major Facilities	97%	79%	75%	58%	38%	73%
Minor Facilities	11%	83%	59%	49%	25%	68%

Individual Permits for Stormwater

EPA issues an individual stormwater permit to a few Alaska municipalities or facilities regulated under the NPDES stormwater program. The Municipality of Anchorage and Alaska Department of Transportation and Public Facilities share a joint large individual stormwater permit (considered a ‘major’ permit) for most of the downtown Anchorage area, while the University of Alaska Anchorage and the Port of Anchorage each have individual stormwater permits. EPA is in the process of developing an individual stormwater permit for Fairbanks. Juneau and the Mat-Su Borough may be required to obtain stormwater permits in the future.

General Permits

EPA is responsible for 13 NPDES general permits authorizing about 2,600 discharges in Alaska. Appendix B lists the NPDES general permits and the approximate number of facilities covered under each permit.

Municipal and Industrial General Permits - Two pending domestic NPDES general permits, expected to be completed in 2004, will cover discharges of less than one million gallons per day from small villages, towns, subdivisions, barges, and temporary camps. Examples of federal general permits for industrial facilities include oil and gas drilling and production, placer mining, log transfer facilities, and seafood processing.

Stormwater General Permits - Of the 13 NPDES general permits in Alaska, two cover stormwater discharges from industrial and construction sites. Most industrial discharges operate under a single general permit, and EPA received 42 notices from operators that they intended to operate under the permit in FY03. In FY03, EPA also processed 220 Notices of Intent to operate under the general permit for construction activities.

In FY04 and FY05, EPA proposes to revise and renew up to seven general permits covering oil and gas exploration, seafood processing, placer mining and stormwater.

Compliance and Enforcement

EPA may issue an order to any person or company who violates the Clean Water Act. The order may impose a civil penalty plus recovery of any economic benefit of noncompliance and may also require correction of the violation. The Clean Water Act also allows citizens to initiate civil suits.

EPA is responsible for compliance and enforcement actions for the 45 major NPDES permits, the minor permits and 13 general permits, the pretreatment program, federal facilities, biosolids, and the stormwater program. EPA staff are required to conduct annual inspections of the major Alaska dischargers or other priority facilities (such as some seafood operators), review discharge monitoring reports or specialized sampling reports, conduct inspections, and enforce discharge violations including penalties for violations.

EPA limits annual inspections in Alaska to the major wastewater facilities and less frequently conducts inspections of facilities with minor wastewater discharge permits. With EPA stormwater staff in Seattle, compliance assistance is by telephone to permittees and consultants in Alaska. In FY03, EPA completed the following compliance and enforcement efforts:

- 32 wastewater facility inspections and visits
- 1 pretreatment compliance inspection
- 5 reconnaissance visits (facility visited because staff was in the area conducting other inspections)

- 1 sanitary sewer overflow inspection
- 103 stormwater construction site inspections in the Anchorage and Mat-Su area, through contractual services
- 2 administrative orders issued
- 1 consent decree issued
- 9 letters of violation or warning sent

Permitting Federal Facilities

EPA has issued 27 permits to federal facilities in Alaska. All are expired.

Pretreatment Program

EPA has issued 11 permits with pretreatment requirements: one joint municipal permit between the Municipality of Anchorage and the Alaska Department of Transportation and Public Facilities and ten industrial permits. The facilities are located in the Anchorage area and include a municipality, dry cleaner, electroplater, landfill, power plant, and several seafood operations. Presently, the Municipality of Anchorage and the City of Fairbanks have EPA-approved pretreatment programs. EPA oversees these two programs through comprehensive audits conducted every five years and through annual compliance inspections. Implementing the pretreatment program requires knowledge of potential pollutants generated from industrial operations, application of appropriate industry effluent guidelines, and the inclusion of pretreatment conditions in permits.

Biosolids Management Program

In Alaska, most biosolids are disposed of at landfills or incinerated and covered under a DEC solid waste or air permit. EPA's implementation of the biosolids program in Alaska is minimal. There are no current NPDES permits with biosolids requirements.

Current EPA Permitting and Compliance Staffing

In FY03, EPA assigned 9 full time equivalent (FTE) employees to issue major individual permits, authorize discharges under the NPDES general permits, and develop new or renewed general permits in Alaska. They also issued pretreatment NPDES permits and in the past have issued NPDES permits to some federal facilities. EPA assigned another 9 FTE to conduct inspections of the major Alaska dischargers or other priority facilities, review monitoring reports, and pursue investigations and enforcement for wastewater and stormwater discharges. The remaining 4 FTE staff (up to the total EPA 22 FTE) provide management, legal, and clerical support.

III. Wastewater Permitting in Alaska Today – State Role

Current State Activities

Because of the comprehensive scope of Alaska's water quality statutes, the State has a considerable effort operating alongside EPA's Alaska NPDES program activities. The State currently develops and administers state wastewater discharge permits for discharges outside the jurisdiction of the NPDES program and for discharges that EPA is unable to permit due to lack of resources; and certifies NPDES permits issued by EPA under Section 401 of the Clean Water Act.

State statutes at AS 46.03.100 require permits for discharges to all lands and waters of the State. The State must develop, issue and enforce permits for all discharges to land or non-navigable waters that are outside of the navigable-waters-only scope of the NPDES program. In addition, EPA's current resources do not allow it to get around to permitting all discharges to navigable waters. Here again, the State issues and monitors state permits for those discharges as required by state law.

NPDES permits must include limits on discharge quality based on protecting receiving water quality in accordance with state water quality standards. EPA looks to the State to interpret its water quality standards and provisions for expressing the standards in NPDES permits.

State Certification: Under Section 401 of the Clean Water Act, states must certify that permits issued by federal agencies will ensure protection of water quality based upon state adoption of water quality standards. State statutes at AS 46.03.110(e) allow the State's certification of NPDES permits to serve as the required state permit. DEC certifies all of the 45 major NPDES individual permits issued by EPA. In addition, DEC certifies that EPA NPDES general permits will be protective of Alaska's waters based on the state water quality standards and provides comments to EPA on the proposed activities under several of EPA general permits (e.g. log transfer facilities, seafood processing, placer mining, and the Trans Alaska Pipeline System). State certification of NPDES permits entails direct involvement in the development of all proposed NPDES permits, public notice and comment on proposed permits, and the full-range of compliance monitoring and permit modification activities required of a state permit. When DEC certifies an NPDES permit, it can enforce the certification requirements under state law (18 AAC 15.120).

Individual and General Permitting: DEC has issued and is responsible for the compliance and enforcement of approximately 139 state waste disposal permits and has authorized approximately 78 discharges under one of 8 state general permits. During the period FY01-FY03, DEC averaged 35 authorizations under a state general permit and 65 under certain federal general permits. In addition, in FY03, 48 log transfer facilities were authorized under a state general permit.

Stormwater: In FY03, DEC's stormwater staff reviewed and/or approved:

- 26 stormwater pollution prevention plans for industrial operators under a federal stormwater general permit
- 115 stormwater pollution prevention plans for construction sites larger than 5 acres
- 72 engineering plans for permanent post-construction stormwater management

Compliance and Enforcement: DEC staff ensure compliance and pursued enforcement actions on state issued individual permits and authorizations to discharge under a state general permit. Under an annual federal grant agreement with EPA, DEC also performed inspections at a number of NPDES-permitted facilities. During FY01-FY03, DEC annually conducted an average of 59 wastewater inspections and 3 enforcement actions.

The FY04 state workload also reflects a considerable level of effort on program development as DEC works on new and renewed general permits, begins to streamline and document permitting processes, and initiates water quality standards revisions. In FY04, DEC continues to enhance its permit/facility data system initiated in 2002 and builds online permitting, online credit card payment of permit fees, and electronic filing to support the frontline permitting and compliance efforts.

Current State Resources

In FY04, DEC has 29 FTE staff dedicated to waste disposal permitting. The 29 FTE work effort is performed by 24 staff full-time and portions of an additional 25 staff. DEC's current program efforts are directed primarily at permitting (about 7 FTE), compliance (about 5 FTE), program development (about 5 FTE) and information management (about 6 FTE). Another 6 FTEs are devoted to program administrative and outreach functions.

IV. Requirements for NPDES Primacy

Based on the preceding discussion, this report recommends that the State of Alaska seek primacy for administering the entire scope of the NPDES program within its borders with the exception of the minimal biosolids component and permitting facilities within the Annette Island Reserve and the Denali National Park and Preserve. To position itself for that level of primacy, the State will need to make modest adjustments to its legal framework and to bolster resources committed to wastewater discharge permitting.

Legal Requirements

Congress set the requirements for a state to assume primacy for the NPDES program in section 402(b)(2) of the Clean Water Act. Congress directed the EPA Administrator to approve a state's program if the state has "adequate authority" to accomplish ten categories of activities:

- 1) Issue permits that ensure compliance with discharge limits established under the CWA, including state water quality standards; be limited to five-year terms and be subject to modification or termination for several reasons; and control disposal of pollutants into wells to prevent pollution of ground and surface waters.
- 2) Inspect and monitor the permitted operations.
- 3) Provide public notice of a proposed permit and an opportunity for a public hearing.
- 4) Ensure that EPA is notified of each NPDES permit application.
- 5) Ensure that adjacent states whose waters could be affected by discharges in the primacy state have an opportunity to make recommendations on permit applications.
- 6) Ensure that no NPDES permit will be issued that would substantially impair anchorage or navigation.
- 7) Enforce the program requirements to abate violations and impose civil and criminal penalties.
- 8) Ensure that information on discharges to publicly owned treatment works (e.g., a sewage plant) can be obtained.
- 9) Ensure that the operator of a publicly owned treatment works collects fees from the people and companies that use the treatment services.
- 10) Implement and enforce the requirements of the pretreatment and stormwater programs and the biosolids program (optional).

For most of the above categories, EPA has detailed regulations that a state must satisfy to implement the NPDES program. A state NPDES program must include statutory and regulatory language that complies with the NPDES regulations and that also requires permittees to comply with the regulations. A state program need not be identical to the EPA program, but variations have to be approved by EPA.

The CWA section 402(b)(2) regulations cover a range of topics including permit application forms for categories of discharges; who can sign the application form; what must be included in the permit including monitoring, reporting and record keeping requirements; when public notice has to be given of a proposed permit action; how public comments are addressed; the timeframe a permit is valid and the reasons for termination; and the minimum standards for judicial review of permit decisions.

State Statutes

Alaska's authority to permit the discharge of pollutants that are subject to NPDES permit requirements is broader than the CWA's and extends DEC's permitting authority to discharges to groundwater and the land surface, not just to navigable waters. Current Alaska law contains the enforcement authority necessary for the state to administer the NPDES program. The state can enter and inspect a discharging facility; review its records; enforce permit limits; terms and conditions; restrain a violation; go to court for an injunction; recover monetary penalties; and seek criminal punishment (including fines) for some types of violators, as required for primacy. DEC and state court administrative appeal procedures provide sufficient legal authority for judicial review of both permit denials and permit approvals and are sufficient to encourage and assist public participation (including citizens lawsuits) in the permitting process as required for primacy.

DEC recommends filling the relatively few statutory gaps by enacting legislation (as proposed in Appendix C) that provides DEC the enabling authority to assume the NPDES program; accommodates federal permit forms, public notice, and permit termination requirements; and gives DEC explicit authority to adopt regulations needed to assume primacy. Minor amendments cross-referencing to the NPDES program are proposed to ensure that the criminal penalties already in Alaska's environmental enforcement laws would extend to NPDES violations.

State Regulations

DEC has regulations in place for permit processing (18 AAC 15), wastewater discharge permits and treatment facility plan approvals (18 AAC 72), and water quality standards (18 AAC 70).

There are differences between EPA requirements and DEC's current regulations that must be resolved to obtain primacy. For example, DEC's regulations only address signatory requirements for permit applications, whereas EPA's NPDES signatory rule applies more broadly to include authority for required reports. Another example is DEC's regulations that require public notice of the permit application, whereas EPA's regulations require public notice of the draft permit.

Differences also exist between EPA's industry-sector effluent guidelines and Alaska's water quality standards. The industry effluent guidelines are technology-based limits developed based on the best treatment a specific industrial discharge is expected to achieve. Technology-based limits do not take into account the characteristics of the

receiving waters or the impact the discharge might have on the water quality. Currently, EPA determines discharge limits based on Alaska's water quality standards. The water quality standards protect water uses (e.g. drinking water supply, recreation, and growth/propagation of fish and harvesting for consumption) and apply the appropriate water quality criteria to protect those uses.

Under NPDES primacy, the permitting agency must determine if discharge limits based on industrial effluent guidelines will protect the water uses established by the state. If the industrial effluent guidelines do not offer sufficient protection, permittees must apply effluent limits based on the water quality standards. Application of the water quality standards generally result in more stringent limits than the EPA-developed, industry-sector effluent limitations. Continued application of Alaska's existing water quality standards by DEC and adoption of EPA's effluent limits will satisfy the federal NPDES requirements without changing how the state permittees would establish permit limits and issue discharge permits.

DEC recommends adopting NPDES-specific regulations covering permitting procedures and requirements in 18 AAC 72; incorporating by reference (in either 18 AAC 70 or 72) the federal effluent guidelines which due to the complexity of their technical content are better handled through incorporation by reference; and making conforming changes to permitting process regulations in 18 AAC 15 and 72. A contractor to DEC provided a draft set of regulations that will meet EPA requirements to implement a state-run NPDES program (Appendix D). However, DEC has not yet developed draft regulations for public notice that will incorporate the Alaska-specific flexibility contemplated in an approved permit program.

Related Federal Law Requirements

EPA's regulations identify six other federal environmental laws (Appendix E) that might pertain to NPDES permit decisions [40 Code of Federal Regulation (CFR) § 122.49]. The National Environmental Policy Act does not apply to a primacy state's issuance of an NPDES permit because it does not constitute a "federal action". Under five other federal laws, a primacy state must provide notice to federal and state fish and wildlife or health agencies of proposed NPDES permit actions and provide the agencies the opportunity to review and comment on draft permits. For federal laws requiring consultation among federal agencies, Alaska would not have to consult with the federal agencies but would have to ensure that Alaska's permits comply with the federal laws when applicable. NPDES primacy states must consult with the Corps of Engineers on potential navigation and anchorage impairment associated with NPDES permits.

The EPA NPDES regulations recognize that issuance of an NPDES permit by an approved state is not a federal action. DEC will provide draft permits to the federal agencies and EPA will continue to be the lead agency responsible for consulting with other federal agencies whose laws might affect the issuance of an NPDES permit. EPA must complete these consultations within 30 days so that permit issuance will not be delayed. Although not required to participate in these consultations, DEC would actively

participate in order to reduce permit delays. DEC's participation will be negotiated with EPA through the Memorandum of Agreement required as part of the NPDES primacy application.

NPDES Permitting Procedures Requirements

NPDES permitting procedures are codified in 40 CFR, Parts 122, 123 and 124. Appendix F identifies the differences between DEC's current permitting processes and required NPDES permit processes and proposes necessary changes. The changes will result in permitting processes that meet federal primacy requirements and provide permittees with a streamlined application process and a permit from a single agency. The revised permit procedures will be described in a DEC *Permit Writer's Handbook* that will include the required forms, templates and procedures for processing permits, handling confidential information, public notice, compliance assistance, conducting inspections, and taking enforcement actions.

Primacy Requirements

At primacy, DEC would issue and enforce all NPDES permits (with the exception of the facilities located in Denali National Park Reserve and the Annette Island Reserve). An Alaskan NPDES program would transfer to DEC EPA's responsibility for all permitted and unpermitted facilities (including federal facilities), stormwater discharges and the pretreatment program.

EPA will expect DEC to increase State enforcement efforts as EPA transitions from permitting and enforcement to overseeing Alaska's NPDES program. Primacy requires that all major and pretreatment facilities be inspected annually and minor facilities inspected at least once during their 5-year permit cycle. DEC proposes using an inspection ranking model to prioritize inspections based on risk to human health and the environment, compliance history and the last time the facility was visited (Appendix I).

DEC will be required to transmit to EPA periodic reports on the permitting and inspection activity, discharge monitoring data received from permittees, and enforcement actions taken.

Resource Requirements for an Alaska NPDES Program

DEC will require additional resources to 1) complete FY05 transition-to-primacy tasks including, staff training and development of regulations, permit procedures, and a primacy application to EPA for delegation by FY06; and 2) operate the NPDES program beginning in FY06. The NPDES primacy application Alaska would submit to EPA must include a description of the projected staffing, level of effort and funding necessary to run an approved NPDES program.

Human Resources

The work and staffing analysis uses work categories similar to those used by Maine and Arizona in their recent successful NPDES primacy efforts:

Administration – conduct program management and policy development; respond to legislative, executive and public inquiries; perform budgeting; recruit and evaluate staff; analyze permit fees; perform accounting and billing; and negotiate annual work with EPA.

Program Development – write procedures, review technical information, revise Alaska's Water Quality Standards used in permitting, develop general permits, and train staff.

Program Implementation – ensure quality assurance/quality control, produce Internet-ready information, maintain website, and conduct public outreach/education.

Permitting – perform pre-application design consultation; receive permit applications; analyze data; draft permits; conduct the public notice and review; revise, complete and distribute the permit; and handle permit appeals.

Compliance and Enforcement – review discharge monitoring data and reports, conduct inspections, provide facility-specific and general technical assistance, train operators, perform investigations, take enforcement actions, and respond to citizen complaints.

Information Management – develop and maintain the facility/permit data system, perform facility record keeping by all staff, provide clerical support, track staff billable time, maintain electronic and physical files, and periodically report to EPA.

Table 4 summarizes the current workload and staffing for EPA's and DEC's waste disposal permit programs and the projected workload and staffing for DEC to transition to primacy during FY05 and to operate an approved NPDES program beginning in FY06.

In FY04, DEC has 29 FTE staff dedicated to waste disposal permitting under current State authorities. The FY04 workload reflects a considerable level of effort on program development as DEC develops new and revised general permits; streamlines permit procedures; revises Alaska Water Quality Standards; improves the permit/facility data system; and builds electronic permitting, credit card payment of permit fees and filing.

Table 4. Workload and Staffing to Achieve NPDES Primacy in Alaska

		FY04	FY05	FY06
	EPA's Program Today	DEC's Program Today	DEC's Transition to Primacy	DEC's Delegated NPDES Program
WORK CATEGORIES	Staff FTE ¹ (estimated)	Staff FTE (estimated)	Staff FTE (proposed)	Staff FTE (proposed)
Administration	2	4.2	4.7	4.7
Program Development		4.7	10	3.4
Program Implementation		1.7	2.2	2.5
Permitting	9	6.7	8.9	12.3
Compliance and Enforcement	9	5.2	8.9	12.2
Information Management	2	6.5	8.3	7.9
Total FTE	22²	29³	43⁴	43

Notes:

- 1) FTE = full-time equivalent
- 2) EPA estimates include 2.0 FTE attorney
- 3) DEC estimates include 0.4 FTE AK Dept. of Law attorney
- 4) DEC estimates in FY05 and FY06 include 1.5 FTE AK Dept of Law attorney

Transition to Primacy Program

Projected work in FY05 supports preparation for NPDES primacy. Principal activities would be rulemaking, water quality standards revisions, general permit renewal and development, staff training in specialized NPDES skills, procedures and forms simplification, online permitting and electronic monitoring data reporting and analysis, and preparing the NPDES primacy application to submit to EPA in early 2005. (See a detailed list of work tasks in Appendix G – FY04-FY06 Implementation Plan to Achieve NPDES Primacy.)

Delegated NPDES Program

A total of 43 FTE will be required to run an approved NPDES program beginning in FY06. Table 5 compares the current FY04 work categories of permitting and compliance staffing at EPA and DEC with the proposed DEC staffing at primacy in FY06.

Table 5. Comparison of Permit and Compliance Staff Levels in Alaska

<i>Agency</i>	Today's Staffing (Existing)		Delegated NPDES Staffing FY06 (proposed)
	<i>DEC</i>	<i>EPA</i>	<i>DEC</i>
Permitting	6.7	9	12.3
Compliance and Enforcement	5.2	9	12.2
Subtotal:	11.9	18	24.5
Total:	29.9 FTE		24.5 FTE

The 18% reduction in total permitting and compliance staffing in Alaska between today (29.9 FTE) and an approved NPDES program in FY06 (24.5 FTE) acknowledges that permitting redundancies between the two agencies would be eliminated and that the FY04-FY05 efforts to modernize general permits, procedures, and information handling will yield program efficiencies.

When calculated on a per-permit basis, DEC's estimated human resource needs for NPDES primacy are comparable to the human resources of some other primacy states (Table 6).

Table 6. Comparison of Alaska's Proposed NPDES Program with Selected States

	Alaska Proposed (NPDES Primacy Program)	Arizona* (NPDES Primacy State)	Washington (NPDES Primacy State)
Program Staffing			
FTE (Full Program)	43	N/A	117
FTE (Permitting & Compliance)	24	9.5	47
Permit Caseload			
No. of Individual Permits (IPs)	343	170	839
No. of Major (Individual) Permits	45	50	80
No. of General Permits (GPs)	21	3	11
No. of GP Authorizations	2680	6665	5680
No. of IPs and GPs / FTE (Full program)	8	N/A	7
No. of Major (Individual) Permits / FTE (Full Program)	1	N/A	0.7
No. of IPs & GPs / FTE (Permitting / Compliance)	15	18	18
No. of Major (Individual) Permits / FTE (Permitting / Compliance)	2	5	2
Program Budget			
Annual Program Budget (millions)	\$4.8	\$2.1	\$17.8
Budget \$ per permit (dollars)	\$13,187	\$12,139	\$20,940
Adjusted for Alaska COLA (120%)	\$10,989		

FTE = full time equivalent GP = General Permit IP = Individual Permit.

* Arizona includes only permitting staff. Compliance and enforcement staff not included. The effect is to overstate the per staff permit caseload.

Fiscal Resources

Table 7 presents annual program costs to run the State's current waste disposal program (FY04), complete transition work to achieve NPDES primacy (FY05), and implement a primacy program (FY06 and beyond). The current state FY04 permitting program costs approximately \$3.1 million. A funding increase of \$1.6 million would be necessary for the FY05 transition. An additional \$1.7 million in FY06 would be necessary to implement the NPDES primacy program.

Table 7 estimates likely program funding sources for the period FY04 through FY06. EPA has indicated that no new federal money is available to implement NPDES primacy in FY06. Federal grant funding for state wastewater permitting work is provided under the Clean Water Act, Section 106. This funding is based on a formula that is not affected by whether or not a state has NPDES primacy. DEC has not spent its entire grant allotment for prior years and would apply this “surplus” (approximately \$470.0) to NPDES primacy development work in FY05.

The ongoing federal investment in FY06 and beyond is projected to be approximately \$1.3 million annually. The state should assume that state general funds and permit fee receipts will be the primary funding sources for a NPDES primacy program. The balance between general funds and permit fee receipts to cover the increased program costs at primacy would be determined by the Alaska Legislature.

Table 7. Annual Program Costs and Funding Sources to Achieve NPDES Primacy

Program Costs (in thousands)			
	Today's Program	Transition to NPDES Primacy	Approved NPDES Program
	FY04 (Estimated)	FY05 (Proposed)	FY06 (Proposed)
Personal Services	\$1,997.9	\$2,833.9	\$2,875.7
Travel	181.6	326.6	321.6 ¹
Contractual	893.7	1,397.7	1,497.7 ²
Equipment	43.5	140.1	64.5
Supplies	29.0	43.0	43.0
Total	\$3,145.7	\$4,741.3	\$4,802.5
Total FTE	29.0	43.0	43.0

Funding Sources (in thousands)			
	Today's Program	Transition to NPDES Primacy	Approved NPDES Program
	FY04 (Estimated)	FY05 (Proposed)	FY06 (Proposed)
Federal Funds ³	\$1,332.6	\$1,802.6	\$1,332.6
State General Funds	1,389.7	2,214.7	3,469.9 ⁵
Permit Fee Receipts ⁴			
Program Receipts (annual billing)	270.0	570.6	
Interagency Receipts (negotiated fees)	153.4	153.4	
Total	\$3,145.7	\$4,741.3	\$4,802.5

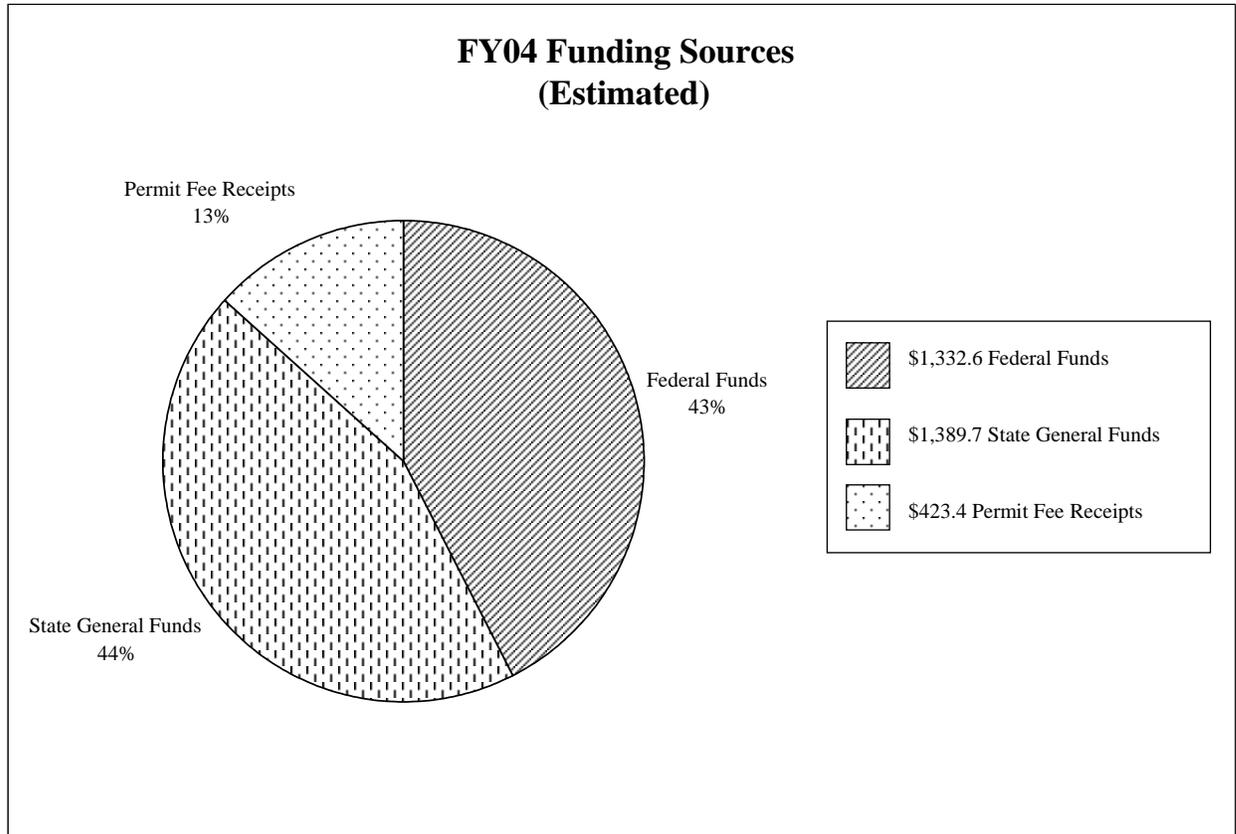
Notes:

- 1) Travel funds are for permitting and facility inspections and ongoing specialized training
- 2) Contractual funds are for laboratory sample analysis, public notices, staff training, professional services contracts for assistance with NPDES permitting and compliance-related issues, legal services from Dept. of Law for enforcement actions, and program legal assistance and position support costs.
- 3) Federal funding includes a portion of the CWA grants received by DEC.
- 4) Permit Fee Receipts include permit fees from routine annual billings and negotiated fees for reimbursable expenses on large (mine) projects.
- 5) The allocation between state general funds and permit fees receipts in FY06 would be determined by the Alaska Legislature.

Funding Sources

Figure 1 illustrates the reliance placed on different sources to fund the waste disposal permitting program today, as follows: federal (43%), state (44%), and permit fee receipts from routine billings and negotiated permit fees for large projects (13%). Potential funding sources for a state administered NPDES program include federal grants from EPA, state general funds and program receipts from permit fees.

Figure 1. FY04 Funding Sources (Estimated) for Wastewater and Stormwater Programs in Alaska



Permit Fees

Based upon current statutes (AS 37.10.052), Alaska's current water permit fees are limited to direct, actual costs of issuing and maintaining permits and are averaged across each fee category (made up of similar types of discharges). Staff time, inspection costs, and other costs directly attributable to each water permit (e.g., public notices, laboratory tests, and inspection travel) are recoverable. In contrast to the department's air permit fees, the water permit fees do not capture any indirect costs (such as building and administrative overhead, cost of third party appeals of permits, or management costs).

As Table 8 shows, permit fee revenue is projected to increase in FY05 for several reasons: the permit fees will be revised based on 2002-2003 actual costs and a better understanding of what constitutes billable “direct services” under current law; some permits previously grandfathered under pre-2002 fees will be renewed under higher fees; additional facilities will be permitted; and a substantial number of authorizations will occur when a stormwater general permit is renewed. The FY06 permit fee revenues reflect a net increase due to more billable hours in the first year of NPDES primacy (that offsets the decline in the stormwater renewal fees in FY05). These projections are based on the current structure of the water permit fee law.

Table 8. Permit Fee Revenue Projections With No Change in Permit Fee Law

	FY04	FY05	FY06
Total (in thousands)	\$423.4	\$724.0	\$754.1

Legislative direction to collect a larger share of the program costs (including indirect costs) could result in additional fee receipts that could cover all of the increased costs associated with NPDES assumption and could potentially replace the “base” level of approximately \$1.4 million in General Funds with General Fund Program Receipts.

Alaska currently funds a relatively small portion (13%) of its program costs through permit fees in comparison with other selected states (Table 9). Table 9 compares Alaska’s current fee structure for various types of discharges with other selected states. The states chosen for comparison in Tables 9 and 10 are among the 22 that responded to the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) survey, include states with similar industries to Alaska, include a recent primacy state (Maine), include neighboring Northwest states and other northern states across the United States. Alaska is at the low end of the range for permit fee revenues and the portion of the permit program costs covered by fees. In contrast, Wyoming and Georgia charge no fees for NPDES permits.

Table 9. Comparison of State Pollutant Discharge Permit Fees

	Alaska (State Permit Only) ¹	Maine (Primacy State NPDES permit) ²	Minnesota (Primacy State NPDES Permit)	Montana (Primacy State NPDES Permit)	Oregon (Primacy State NPDES Permit)	Washington (Primacy State NPDES Permit)
Total Permit Fee Revenue	\$423,400	\$500,000	\$3.6 M	\$1.1 M	\$2.3 M	\$12.6 M
Percentage of Pollutant Discharge Program Budget Funded by Permit Fees	13%	25%	23%	100%	57%	75 – 80%

Notes:

- 1) Based on FY03 permit fees.
- 2) The NPDES primacy states' data is based on a survey of state permit fees, ASWIPCA, Spring 2003.

Table 10 demonstrates that the annual permit fees charged by states have a broad range. For example, Alaska charges an annual fee of \$3,430 for certification of an EPA NPDES seafood individual permit and permit holders pay nothing to EPA for their NPDES permit. In contrast, Washington annually assesses a \$13,292 fee and Maine charges up to \$20,000 per year for NPDES permits. Of the 22 states responding to a 2003 ASIWPCA survey, 10 had increased permit fees since 2000.

Although the results of the ASIWPCA survey do not provide a level of detail to discern the types of program costs recoverable under their permit fees, it appears that some states have flexibility to recover at least some program support and indirect costs in their permit fees (e.g., Oregon, Montana, and Washington).

Table 10. Annual Permit Fees for Selected Categories

Category	Alaska	Maine (Primacy State NPDES Permit)	Minnesota (Primacy State NPDES Permit)	Montana (Primacy State NPDES Permit)	Oregon (Primacy State NPDES Permit)	Washington (Primacy State NPDES Permit)
Individual Permits						
Domestic - Major	N/A	\$189-834 ²	\$5,948- 175,548	\$2800 min up to \$2500/mgd ⁵	\$24,012 + ACDF ⁸	\$0.99 per residential equivalents (RE) >250,000
Domestic - Minor	230- 1,560	\$60-189 ³	\$553-1498	\$1200 min up to \$2500/mgd	\$4,812 + ACDF	\$1.63 per RE < 250,000
Industrial - Major	N/A	\$2276 ³	\$8498- 44,248	\$3900 min up to \$3000/mgd	\$37,692 + ACDF	\$400 – 6,694
Industrial - Minor	560- 4,300	\$683 ³	\$553-1,278	\$1500 min up to \$3000/mgd	\$7,547 + ACDF	\$400 – 6,694
Seafood Processing	\$3,430	\$1,000 - 20,000 ⁴	N/A	N/A	\$4,144	\$13,292
Fertilizer Production	4,300	1,000 - 20,000 ⁴	8,450 – 44,200 ⁴	3,900 - 15,900 ⁶	13,184	8,000
Coal Mining	4,300	1,000 - 20,000 ⁴	8,450 – 44,200 ⁴	3,900 - 15,900 ⁶	13,184	39,875 ⁹
Ore mining with chemical concentration	4,300 ¹	1,000 - 20,000 ⁴	8,450 – 44,200 ⁴	3,900 - 15,900 ⁶	13,184	21,266
Domestic 2 million gallons per day	1,560	880	5,900	5,800 ⁷	3,390	6,644
General Permits						
Seafood Processing	390	No general permit	N/A	no general permit	185	no general permit
Domestic > 15,000 gallons per day	700	No general permit	505	430	185	no general permit

Notes:

- 1) Annual maintenance fee. For large mines, costs associated with permit issuance are covered under agreements negotiated with the applicant. These costs are not reflected in this table.
- 2) Total fee is this base fee range plus \$0.021 per gallon discharged
- 3) Total fee is this base fee plus a pollutant fee based on per gallon discharged
- 4) Fees range depending on volume of discharge
- 5) 5 mgd = million gallons discharged per day
- 6) Fee range for discharges 1 to 5 mgd
- 7) Fee is \$2,500 / mgd + 1/5 application fee of \$4,000
- 8) ACDF = Annual compliance determination fee
- 9) Based on coal production of > 1 million tons per year. Production number obtained from Rich Harris with the AK Dept. of Community and Economic Development (451-3050) and Usibelli Coal Mine, Inc.

V. The Potential Benefits and Consequences of an Alaskan NPDES Program

Alaskans Protecting Alaska's Water Resources

One of the public values most clearly and widely held by Alaskans is environmental protection. The State of Alaska's environmental protection policy is comprehensive and unequivocal. Alaska will protect its air, land and water resources and control pollution "...in order to enhance the health, safety, and welfare of the people of the state and their overall economic and social well being" (AS 46.03.010). Alaskans should be in charge of protecting Alaska's environment. The State is capable of protecting its own resources. Assuming wastewater permitting authority is an opportunity for the State of Alaska to exercise its commitment and competence.

Consistent Application of State Water Quality Standards

Whether EPA or the State is responsible for wastewater discharge permitting, discharge limits are based on the state water quality standards. EPA often interprets those standards differently than DEC, and does not make appropriate use of all of the water quality standard regulations' site-specific and risk-based provisions. A single program will achieve consistent, statewide application of the water quality standard regulations.

Seamless Jurisdiction

Federal jurisdiction under the NPDES program only covers Alaska's navigable waters, while the State's water quality jurisdiction extends to all surface waters (and groundwater). With the State's regulatory framework in place for all waters, the federal NPDES program is a redundant layer of regulation incapable of protecting all state waters, and unnecessarily burdensome to all involved. A state permit program will be protective of all waters. Jurisdiction will be simple and clear.

Working with a single agency, permittees would expend less effort to submit one application, respond to questions from one regulator, and comply with only one set of monitoring requirements. Permittees avoid the cost and confusion of complying with two sets of permit requirements, as has occurred in some instances.

Better Permit Coverage and Information Management

Under the current EPA program, many known wastewater discharges requiring an individual permit are not covered by a current permit. That is bad for water quality and bad for dischargers that find themselves in violation of the Clean Water Act only because EPA has not been able to get around to issuing a permit. A state program will cover all discharges and result in improved tracking of permit holders. Currently, information about permittees covered under an NPDES permit is not always shared with DEC. For example, DEC certifies an EPA NPDES general permit but may have incomplete knowledge of the facilities approved by EPA to discharge under the general permit. A state NPDES program will result in DEC receiving and tracking all permits and authorizations to discharge in the state.

Protecting Municipalities

Many of the wastewater discharges lacking a current permit are for small community or subdivision sewage systems. A state program will not make inadvertent Clean Water Act violators out of Alaska's villages, subdivisions and small communities. Permits will be issued to authorize sewage discharges and to protect water quality.

Rational Rules

A state wastewater discharge permit program will be a part of a broader state program for regulating water quality. The state program will be based on six essential elements of a good regulatory program: unambiguous statutory authority, a documented basis for concern, protective standards, rational regulations, documented compliance, and enforcement. The state program will protect water quality sensibly and comprehensively throughout the hydrologic cycle -- from raindrops to oceans.

Fair, Predictable Enforcement

Under primacy, DEC would become the Clean Water Act enforcement agency in Alaska and EPA would oversee DEC's compliance and enforcement efforts. A state program will include a coherent system for assessing compliance with permit terms and conditions and an increased level of inspections. Permittees will know exactly what is expected of them. Along with clarity will come higher expectations for compliance and predictable enforcement.

Efficiency and Timeliness

With a state-run program permit holders can expect their permits to be timely and current. A state program will allow for efficiencies such as integrated permits for complex operations. Integrated permits consolidate requirements from various programs into one or two permits.

Reflecting Alaska's Priorities

A state permit program will reflect Alaska's priorities -- not national priorities. For example, recent national focus on combined storm sewer overflows or concentrated animal feeding operations has little relevance in Alaska. These national priorities, however, exert significant force on EPA's permitting and funding priorities.

A Stable Investment Environment

The clarity and predictability of the regulatory environment, along with the costs associated with wastewater permitting, are significant factors weighed by companies looking to invest in Alaska. An efficient, rational wastewater discharge permitting program will help attract investment while ensuring that development is responsible and resources are protected.

Alaskans Accountable to Alaskans

The mission, priorities, level of effort and performance measures of DEC's regulatory programs are subject to annual review and approval by the State Legislature. Planning and budgeting for a federally run NPDES program does not offer this opportunity for state control.

Equitable Distribution of Program Costs

In other states permit recipients pay for permitting costs. When EPA issues permits in Alaska its costs are borne by the U.S. public. A state permit program will shift more of the permitting costs to the permit holders.

Better Access to Rule Makers and Permit Writers

A state run program will place rule makers and permit writers closer to the Alaskan public, permit holders and their consultants. No longer will permits be written and enforced by federal staff that is unfamiliar with the State. A permittee would work with Alaska-based staff knowledgeable about local environmental conditions and about the particular industrial or municipal activity and wastewater treatment technology. DEC staff would develop permit requirements based on sector-specific experience and a greater likelihood of field familiarity with northern conditions. Staff with Alaska-based field experience are more likely to know what works at the next town's waste treatment facility or at a similar industrial plant that might yield a workable solution to a particular problem.

A Focus on Results, Not Process

The federal program focuses on consistent federal processes instead of site-specific and risk-based results. A state program will focus on results.

VI. Recommendations and Description of an Alaska NPDES Program

The Department recommends that the state seek primacy for federal wastewater discharge permitting. Of the six NPDES program components, DEC recommends initial assumption of five: NPDES permitting, stormwater program, permitting of federal facilities, pre-treatment program, and compliance and enforcement. Assumption of the biosolids component can be evaluated later as the need arises. Highlights of the Alaska-led NPDES program are described below.

Regulations

The NPDES permit process will be described to some extent in revisions to regulations. A contractor to DEC has provided a draft set of regulations that will meet EPA requirements (Appendix D). However, DEC has not yet developed draft regulations for public notice that will incorporate the Alaska-specific flexibility contemplated in an approved permit program. Assuming legislative direction to seek primacy, DEC will begin the rulemaking process starting with a scoping meeting. Draft regulations will be available for public review and comment.

While all wastewater discharges to lands or waters of the state require authorization from DEC, the NPDES permit process and permit requirements will only apply to permits for discharges to waters of the United States. Facilities with a domestic wastewater Clean Water Act Section 401(h) waiver will maintain those waivers under state primacy, unless a threat to water quality is identified.

The Alaska water quality standards established by DEC identify the levels of a pollutant allowable for the following uses: drinking water, agriculture, aquaculture, industrial, contact and non contact recreation, growth and propagation of fish, shellfish and other aquatic life and wildlife.

Water quality protection is dependent upon the Alaska water quality standards. They are used, along with federal effluent limits, to establish permit conditions, regardless of whether EPA or the State has primacy for the NPDES program. State primacy will not result in the use of different water quality standards. Updates to Alaska water quality standards regulations are not a requirement of primacy, rather they must be updated via a “triennial review” – a three-year process required under the Clean Water Act to update the standards to reflect the most current science and technology. The triennial review is currently underway and will consist of a series of regulatory updates to reflect priority issues identified by DEC and the public. Appendix H describes the major issues for water quality standards revisions and the timeline for those revisions.

In addition, DEC will pursue changes to the water quality standards’ applicability to exclude federally designated disposal sites, federally designated treatment systems and artificial waters, such as swimming pools and constructed hatchery pools.

Permitting

The primacy Memorandum of Agreement with EPA will include a “continuity provision” that describes the process of transferring from EPA to DEC the management of existing NPDES individual permits and existing and requests for new authorizations under existing NPDES general permits including the stormwater permits. The primary focus of the stormwater program would be on urban runoff problems. By federal law, NPDES permit terms may not exceed five years. DEC will seek ways to minimize problems caused by this federal limitation on the permit life. DEC does not anticipate making changes to existing permits during the remainder of the permit term. DEC has issued state permits to some facilities that discharge to navigable waters of the United States where EPA has not issued an NPDES permit. Under primacy, DEC plans to issue NPDES permits for these facilities when the existing state permit expires.

Using streamlined permit processes, DEC intends to permit every discharge to state lands and waters that is not exempted via regulation, with a current DEC authorization. DEC will use a risk-based tool – an individual permit, a general permit, a plan approval, an integrated waste management and disposal authorization, or an authorization through regulation using best management practices or specific engineering or technologies (commonly referred to as “permit-by-rule”). NPDES permit process and requirements will only apply to discharges to navigable waters of the United States. Improved permit processing will include on-line permit application, on-line permit fee payment, electronic permit tracking, and notification to permittees before permit term expires with sufficient time to ensure that permits can be renewed without lapse.

DEC will establish a process to prioritize issuance of permits, focusing on

- discharges that pose the greatest threat to human health or the environment and have no permit or a long-expired permit
- discharges to an impaired waterbody
- discharges that are high risk requiring modification
- facilities with permits that require modification or issuance to avoid project delay or to address seasonal projects
- facilities posing low risk to human health and the environment that have a current or administratively extended permit and are meeting their permit requirements

DEC will seek to streamline the permit renewal application process for permittees where no changes to the facility, operations, or discharges are contemplated. Administrative extensions of permits will be allowed by law. However, the department’s goal is to renew permits in a timely manner before their expiration date to avoid administratively extended permits.

Under the current state permitting program and certification of federal NPDES permits, about 77% of wastewater discharges are authorized under general permits. Under a primacy program, over time, DEC can pursue additional classes of discharges for general permits and permits-by-rule.

Alaska NPDES permit conditions will consider Alaska conditions such as seasonal flow, natural background concentrations, climate, and risk analysis. It is DEC's intent to focus NPDES permit conditions on water quality as allowed under law and regulation and to avoid project requirements not directly related to water quality. DEC will not include voluntary permittee efforts as mandatory permit conditions. However, when a permittee takes extra samples or performs monitoring on a more frequent basis than required by the permit, these results must be reported to DEC. DEC enforcement guidance will take into account a permittee's good faith efforts associated with the extra monitoring in enforcement matters or when establishing any financial penalties.

Compliance

Under primacy DEC would be the Clean Water Act enforcement agency in Alaska. EPA would oversee DEC's compliance and enforcement efforts through long-standing federal requirements on NPDES primacy states for quarterly reporting of permittee monitoring results, documentation of significant non-compliance and state enforcement actions, and interagency negotiation of annual inspection efforts.

The Department will establish a system for on-line submittal of permittee's discharge monitoring reports and a data system that provides for initial electronic review of monitoring data against permit conditions. This will result in more timely feedback to permittees and, if necessary, enforcement actions. In cases where limits are below analytical quantification levels, compliance with the analytical quantification level will be considered compliance with the water quality based effluent limit or water quality standard in ambient water.

EPA regulations require inspection of all major dischargers once each year. However, DEC can negotiate with EPA to inspect minor discharges in lieu of an annual inspection of a major discharger that has a history of full permit compliance. DEC will negotiate an annual NPDES inspection plan with EPA. DEC inspections will address a range of permittees, not just those with NPDES permits for discharges to navigable waters of the United States. DEC will establish a risk-based inspection program based upon an existing draft ranking model (see Appendix I). Inspections will involve review of facility monitoring data and record-keeping, facility operations, and, for approximately 15% percent of inspections, effluent or receiving waterbody monitoring.

DEC's goal at primacy is to conduct approximately 250 inspections/year (140 wastewater and 110 stormwater).

DEC will take timely enforcement actions, including notification to operators when violations are noted so they can be corrected promptly. This approach will avoid multiple violations and accumulating fines without notice to the permittee due to lack of prompt agency enforcement.

Program Management

DEC will negotiate annual work priorities with EPA to ensure Alaska's priorities are met, while deflecting the imposition of unnecessary national priorities. Once the state's primacy program matures, EPA continues to monitor the state through annual work plans and funding agreements, negotiations on annual inspection schedules, quarterly reporting requirements of permittee significant non-compliance, and reporting of agency compliance and enforcement efforts.

DEC will seek Alaska-specific improvements to implementation of the NPDES program. For example, under federal NPDES permits, fecal coliform sample holding times (prior to sample analysis) are too short to account for the transportation times from rural areas to the laboratories. DEC permit staff have a better understanding of the constraints faced by permittees and will seek solutions that are Alaska-specific yet protect water quality.

DEC will be required to submit periodic reports to EPA on Alaska permitting and compliance activity and compliance records for "major" dischargers. DEC will rely on its AKPermit data system to efficiently record this information and produce reports.

The DEC permit streamlining efforts underway since 2001 would expedite service to permittees. Online and simplified permit applications, a permit/facility tracking data system for information storage and retrieval, online inventory of existing permits for comparison, online permit fee payment by credit card, written staff guidance on permitting processes, and electronic monitoring reports are ongoing efforts that will yield consistent, efficient permitting. Behind-the-scene transactions using current technology would replace out-dated NPDES permitting practices in use today. Guidance will include a state *Permit Writer's Handbook* that covers topics such as, effluent limit calculations, appropriate monitoring frequencies and parameters, permit and administrative processes, and compliance and enforcement.

The current DEC permit fees for wastewater and stormwater permits were established in regulation in January 2002 (18 AAC 72.955 – 72.959). As part of NPDES primacy, DEC intends to annually review its wastewater permit fees and make adjustments as warranted.

Staffing and Training

The DEC wastewater discharge program will consist of approximately 43 staff at primacy. Approximately 24 FTE will be directly involved in permitting and compliance and located in DEC's three main offices: Anchorage (38%), Fairbanks (38%) and Juneau (24%).

A cornerstone of an Alaskan NPDES program is trained staff with technical competency in primary and secondary domestic wastewater treatment, seafood and wood waste use or disposal, oil/gas and mining waste treatment, thermal discharges, mixing zone and effluent limit modeling, and ambient water quality monitoring in freshwater and marine waters. Cross-trained staff will be reallocated to handle permitting surges. DEC plans to

budget sufficient funding for training and development of staff. Appendix J describes the training needs.

Dispute resolution with EPA

NPDES primacy changes EPA's role from directly issuing and enforcing permits to one that oversees a state's program. As part of its oversight role, EPA could object to elements of a state's draft permit. Federal regulations specify the conditions and timelines within which EPA can object to a state's draft permit and establish a process for EPA and the state to resolve differences. The process for dispute resolution is incorporated in the Memorandum of Agreement signed by EPA and the state and is submitted as part of the NPDES primacy application. (See Appendix K for an excerpt from the State of Maine's approved Memorandum of Agreement that discusses the dispute resolution procedures.)

Typically, EPA limits its permit reviews to the major discharges and relies on the state to ensure that minor discharges and others operating under general permit authorizations comply with the Clean Water Act. In Alaska, EPA's focus would be on the status of the 44 major wastewater dischargers and 3 stormwater individual permits.

Appendix A. Major Individual Permit Holders in Alaska-2003

Major Individual Permits
Domestic
Anchorage, Municipality of, Eagle River WWTP
Anchorage, Municipality of, Girdwood WWTP
Anchorage, Municipality of, John M. Asplund WPCF 301H
Cordova, City of, Wastewater Treatment Plant
Haines, City of, Wastewater Treatment Plant
Homer, City of, Wastewater Treatment Plant
Juneau City & Borough, Juneau-Douglas WWTP
Juneau City & Borough, Mendenhall Wastewater Treatment Facility
Kenai, City of, Wastewater Treatment Plant
Ketchikan, City of, Charcoal Point WWTP 301 H
Kodiak, City of, Wastewater Treatment Plant
Petersburg, City of, WWTP
Seward, City Of, Lowell Point WWTP
Sitka, City & Borough, WWTP
Skagway, City of, WWTP 301(H)
Soldotna City of, Wastewater Treatment Plant
Unalaska, City of Wastewater Treatment Plant
Valdez, City of, Wastewater Treatment Plant
Wrangell, City of, WWTP
Stormwater
MS4 Anchorage Department of Transportation

Major Individual Permits
Industrial
Couer Alaska Inc., Kensington Mine
Juneau, City & Borough, AJT Mining Properties Inc
Kennecott Greens Creek Mining Co., Greens Creek Mining Project
Teck Cominco Alaska Inc., Red Dog Mine
Usibelli Coal Mine Inc., Poker Flats & Gold Run Pass
Agrium, U.S. Inc., Non-domestic WWTP
Fairbanks, City of, Golden Heart Utilities, Inc,
Gateway Forest Products Inc
Golden Valley Electric Assn., Healy Power Plant
Alyeska Seafoods Inc., S: Unalaska (Fish Meal / Surimi)
Icicle Seafoods Inc., Northern Victor (248959)
Peter Pan Seafood Inc., King Cove Shore Plant
Royal Aleutian Seafoods Inc., F: Royal Aleutian (556508)
Trident Seafood Corp., S: Akutan (Fish Meal/ Surimi)
Trident Seafood Corp., Sand Point Shore Plant
TT Acquisition Inc., F: Arctic V
Unisea Inc., S; Dutch Harbor Complex
Westward Seafood Co., S: Unalaska (Fish Meal/Surimi)
BP Exploration (Alaska) Inc., Endicott Development
BP Exploration (Alaska) Inc., Northstar Development Project
BP Exploration (Alaska) Inc., Prudhoe Bay Waterflood Project
Conocophillips Alaska Inc., Kuparuk Waterflood Project
Tesoro Alaska Petroleum Co., Kenai (Nikiski) Refinery
Alyeska Pipeline Service Co., Ballast Water Treatment Plant
Cook Inlet Pipe Line CO., Drift River Terminal (Ballast)

Appendix B. EPA NPDES General Permits

NPDES General Permits	Major Facilities No. of Authorizations (approx.)	Minor Facilities No. of Authorizations (approx.)
Arctic Oil and Gas Exploration and Drilling Facilities	0	5
North Slope Oil and Gas General Permit for Exploration, Development and Production	0	36
Mechanical Placer Miners	0	297
Medium Size Suction Dredges	0	97
Small Size Suction Dredges	0	1278
Seafood Processors - Statewide General Permit	26	212
Seafood Processors – Kodiak	0	12
Seafood Processors - General Pribilof Island, Offshore St. Paul Municipal STP	0	12
Cook Inlet for Oil and Gas Development	3	16
Stormwater Multi-Sector permit for industrial activity	1	350
Stormwater discharges from construction activities associated with industrial activity	0	143
Log Transfer Facilities, pre-1985	0	58
Log Transfer Facilities, post-1985	0	46
Small Domestic Wastewater Discharge to marine waters	Pending	Pending
Small Domestic Wastewater Discharge to fresh waters	Pending	Pending
Total	30	2562

Appendix C. Draft Legislation to Assume NPDES Primacy

Statutory Changes Needed for NPDES Primacy or Desired to Facilitate Efficient Administration of the NPDES Program.

1. Amend the general powers of the Department of Environmental Conservation (AS 46.03.020) by adding a new paragraph to expressly provide that the department may take all actions necessary to receive authorization from the administrator of the Environmental Protection Agency to administer and enforce a National Pollutant Discharge Elimination System program in accordance with 33 U.S.C. 1342 (Clean Water Act section 402).
2. Amend the waste disposal authorization provisions of AS 46.03.100 (which under the State's broad jurisdiction and definitions include the permitting program for discharges to land and waters) to clarify the existing general permit authority so that general permits are designed to ensure compliance with the state's environmental quality standards, which include the water quality standards.
3. Amend three subsections of the waste disposal permit procedure (specifically, AS 46.03.110(a), (b) & (d)) to allow NPDES regulations to conform to application requirements, to public notice of the draft permit (rather than receipt of the application), and to including the administrative continuance of expiring permits provision. (This may be done in conjunction with other changes to AS 46.03.110 proposed for non-NPDES programs affected by the existing statutory procedural requirements.)
4. Amend the permit termination or modification provisions of AS 46.03.120 to eliminate any inconsistency with the causes for termination and modification required by the NPDES regulations. (This may be done in conjunction with other changes required or desired for non-NPDES programs.)
5. Amend the civil penalties provisions of AS 46.03.760 to extend the court's authority to impose enhanced penalties for deterrence purposes to the state NPDES program.
6. Amend the criminal penalties provisions of AS 46.03.790 to ensure that the existing sanctions for violations involving deceit (e.g., false reporting, tampering with monitoring devices) extend to the NPDES program and existing statutory limit on criminal fines assessable against individuals does not preclude imposition of the maximum sentence for each separate violation.
7. Add to the definitions in AS 46.03.900 the term "Alaska Pollutant Discharge Elimination System."

Appendix D. Draft Regulatory Language to Assume NPDES Primacy

A contractor to DEC provided a draft set of regulations that will meet EPA requirements to implement a state-run NPDES program. However, DEC has not yet developed draft regulations for public notice that will incorporate the Alaska-specific flexibility contemplated in an approved permit program.

Appendix E. Federal Laws Related to NPDES Primacy

EPA's regulations identify other federal environmental laws that may pertain to NPDES permit decisions [40 Code of Federal Regulation (CFR) § 122.49]. Six laws are specifically identified and discussed below. For laws requiring consultation among federal agencies, a primacy state does not have to consult with the federal agencies but would have to ensure that Alaska's permits comply with the federal laws when applicable.

- 1) The National Environmental Policy Act (NEPA) requires preparation of an environmental impact statement for major federal actions significantly affecting the quality of the human environment. EPA's NPDES regulations recognize that issuance of an NPDES permit by an approved state is not a federal action requiring a NEPA review, even if the permit is issued to a new source for which EPA might have to conduct a NEPA review if it were the permitting agency.
- 2) Five additional federal laws require that a state provide notice to federal and state fish and wildlife or health agencies of proposed NPDES permit actions and provide the agencies the opportunity to review and comment on the draft permit.
- 3) The Coastal Zone Management Act requires federal agencies to determine whether their own activities and those they authorize are consistent with state coastal management plans. It provides for coordination of state and federal permitting which is presently implemented by the Alaska Department of Natural Resources.
- 4) The Endangered Species Act Section 7 consultation process applies to federal agencies and provides for federal agency cooperation with states. However, states are not required to participate in the formal section 7 consultation process when issuing NPDES permits.
- 5) The Fish and Wildlife Coordination Act requires pre-permit issuance coordination among federal agencies and dictates that federal agencies take fish and wildlife values into account when planning water projects. It provides for consultation with state agencies having wildlife resource jurisdiction but does not require state NPDES permitting agencies to consult with federal agencies.
- 6) The Wild and Scenic Rivers Act requires that federal agencies provide for protection of a national wild and scenic river's values when developing or assisting in construction projects that would directly and adversely affect those values. This requires consultation between federal agencies but state NPDES discharge permitting agencies are not required to participate in such consultations.
- 7) The National Historic Preservation Act requires federal agencies to engage in pre-permit issuance consultation and coordination to develop mitigation measures

when feasible for National Register listed or eligible sites. It does not dictate that state NPDES permitting agencies participate in that process.

Appendix F. Comparison of Federal & DEC Permitting / Compliance Processes

<p>Comparison of Federal Requirements to DEC’s Current Permitting Processes</p>	<p>Status or DEC’s Recommendations</p>
<p>Using Approved Forms: Permittees must submit required information on EPA approved forms.</p>	<ul style="list-style-type: none"> • Review state forms and make necessary changes to conform to federal requirements. The format of state forms does not have to be identical to EPA’s forms but must include EPA required information, at a minimum. • Develop on-line permit application submittal via the agency’s web page to streamline the application process.
<p>Calculating Permit Limits: Using statistical modeling, EPA calculates water quality based on methods described in <i>U.S. EPA NPDES Permit Writers’ Manual</i>. DEC certifies that the proposed discharge limits will satisfy the state’s water quality standards.</p> <p>DEC calculates discharge limits for state issued permits based on stream flow and mixing zone sizes. The analysis is not statistical.</p>	<ul style="list-style-type: none"> • Beginning July 2004 staff will attend training courses on statistical modeling to determine appropriate mixing zones sizes and calculate water quality based discharge permit limits. • DEC will incorporate EPA permit writing methods where appropriate and justify Alaska specific permitting methods. • Cross train existing staff on calculating mixing zones and permit limits. • Develop guidance documents for staff to calculate water quality based effluent limits consistently and effectively.
<p>Monitoring frequencies: EPA establishes more frequent monitoring schedules in NPDES permits compared to DEC state permits</p>	<ul style="list-style-type: none"> • DEC will develop a matrix for establishing monitoring frequencies in permits and justify differences in EPA monitoring frequencies for Alaska specific sources.
<p>New Source and New Discharger Determination: EPA determines if a discharge is a new source or new discharger according to federal definitions. A new source or new discharger must complete an Environmental Impact Statement or comply with new source performance standards before a permit is issued. DEC has not conducted this task.</p>	<ul style="list-style-type: none"> • Beginning July 2004, staff will attend new source and new discharger determination training courses and cross-train other staff. This requirement does not require DEC to conduct the EISs.
<p>Modifying, revoking or terminating a permit: Federal requirements include definitions and a process for modifying, revoking or terminating a permit.</p>	<ul style="list-style-type: none"> • DEC drafted required statutory language for modifying, revoking or terminating a permit. • Document the process for modifying, revoking or terminating permit in the Permit Writer’s Handbook.
<p>Fact Sheets: EPA prepares fact sheets for major NPDES permits and new or renewal general permits. With a few exceptions, DEC does not prepare fact sheets for state issued permits or for the certification of NPDES permits.</p>	<ul style="list-style-type: none"> • Prepare fact sheets for major dischargers. • Consider fact sheets for minor dischargers on a case by case basis. • Develop templates and standard language to streamline completing fact sheets.
<p>Public Notification of Draft Permits: EPA provides public notice for draft major permits, accommodates requests for public hearings on draft major permits, and new draft general permits. Large mine projects receive a joint public notice by EPA, the federal land manager and the Army Corp of Engineers.</p> <p>DEC provides public notices for complete permit applications, general permits with mixing zones, new permits,</p>	<ul style="list-style-type: none"> • Public notice the permit application, proposed permit and draft fact sheet for all major dischargers when the draft permit is completed. • Public notice general permits with mixing zones, new permits, permit renewals with major modifications and requests for public hearings for state permits. • Public notice draft minor permits on case by case basis.

Comparison of Federal Requirements to DEC's Current Permitting Processes	Status or DEC's Recommendations
<p>permit renewals with major modifications. DEC holds public hearings on draft state permits when requested. DEC rarely provides a public review period for renewals of state permits. EPA prepares a 'response to comments' for comments received during the public review process for major permits.</p> <p>Finalized permits and permits on public notice are available for review on DEC's web page.</p>	<ul style="list-style-type: none"> • Develop a template for preparing a 'response to comments received'. • Implement electronic based public notice procedures to streamline the notification process.
<p>Distribution lists for Public Notification: Neither EPA nor DEC maintains a centralized distribution list of persons interested in receiving advance notification of draft permits.</p>	<ul style="list-style-type: none"> • Develop and maintain a web-based list server for interested persons to receive information on specific permits.
<p>General Permits: Applicants send a notice of intent (NOI) to discharge to EPA for NPDES general permits EPA issued. DEC receives a copy of the NOI and can submit (but does not in all cases) a "non-objection letter to discharge" to EPA. After receiving an NOI, EPA mails the applicant an "authorization to discharge" under the general permit.</p> <p>For general permits issued by DEC, the applicant submits an NOI directly to DEC. DEC authorizes the discharge under the general permit.</p>	<ul style="list-style-type: none"> • Develop electronic procedures for accepting all NOI forms and authorizing discharges. • Receive approval by EPA of the state's NOI format and content.
<p>Information Management: EPA maintains a database of all major dischargers and general permits EPA issues. DEC's database tracks most of the major permits, state issued permits and certifications.</p>	<ul style="list-style-type: none"> • Continue to develop and maintain a database for tracking all permits and permit related activities, including inspection results, enforcement actions, compliance dates and plan reviews. • Develop the database to generate permit status reports required under primacy.
<p>Compliance and Enforcement Program: EPA is responsible for compliance and enforcement for all major dischargers. Major facilities require annual inspections.</p> <p>DEC is responsible for compliance and enforcement of state issued permits. All facilities should be inspected at least once every five years.</p>	<ul style="list-style-type: none"> • Annually inspect all major facilities. • Use the inspection-ranking matrix to prioritize inspections for minor dischargers based on a higher risk to human health or the environment. • Based on the inspection-ranking matrix, negotiate with EPA to inspect higher risks minor discharges in lieu of a major discharger, when appropriate. • Consult the agency's Enforcement Manual for consistent handling of compliance issues. • Develop a database capable of electronically accepting the monthly discharge monitoring reports. (Anticipated in 2005.)
<p>Noncompliance and program reporting: Specific and timely reporting to EPA on the status of the major permits is required.</p>	<ul style="list-style-type: none"> • Fulfill the reporting requirements negotiated in the Performance Partnership Agreement between EPA and DEC. • Develop a database system capable of generating the required reports to streamline the reporting responsibility.
<p>Confidential Information: Applicants can claim some proprietary information as confidential. DEC does not have standard methods for receiving, filing and maintaining confidential information.</p>	<ul style="list-style-type: none"> • Develop standard procedures for accepting and filing confidential information in accordance with state and federal regulations.

Appendix G. FY04 – FY06 Implementation Plan to Achieve NPDES Primacy

WORK CATEGORIES			
WASTEWATER PROGRAM	FY04	FY05	FY06
Administration (1)			
Permit Fee Rulemaking	X		
Program Development (2)			
POLICY GUIDANCE AND DEVELOPMENT			
Streamlining & integrating initiatives (process mapping, Water Program Review)	X	X	X
Written procedures for permitting and enforcement	X	X	X
Document business practices (Permit Writers' Handbook)	X	X	X
Prepare NPDES Primacy package to submit to EPA	X	X	X
Develop surface water monitoring strategy/program	X	X	
Water prioritization	X	X	
Rulemaking support on 18 AAC 70 and 72	X	X	X
Develop Compliance Assurance Agreement with EPA		X	
Develop application forms equivalent to EPA		X	
WATER QUALITY STANDARDS DEVELOPMENT			
Residues, Treatment Works, HC, Bacteria, Dis Inorg, MZ	X	X	
Designated uses	X	X	X
Mixing zones, groundwater & antidegradation		X	X
GENERAL PERMIT DEVELOPMENT & DISCHARGE AUTHORIZATIONS			
NPDES GP renewals: Small Domestic GPs; Renew Arctic O/G, Kodiak Seafood	X		
State GP renewals: Hatchery, Contained Water, Primacy Domestic, Excavation Dewatering, Filter Backwash	X	X	
Legal support for program development (Rules and GPs)	X	X	X
NPDES GP renewals: Cook Inlet O/G, Seafood Pribilof, Placer Mining (mechanical), Placer Mining (suction dredge)		X	
NPDES GP development: AK Biosolids, AK Aquaculture, AK Hydrostatic Test Water (O/G & WW)		X	
Develop Authorizations to Discharge			
State GP renewals: Log Transfer Facility			X
TRAINING			
Process mapping	X		
Training by EPA: WQ Academy	X		
DEC Cross-Training: Mixing Zone	X		
DEC cross training – QA	X	X	X
National training by EPA: WQBELs, WET		X	
New source / new discharger		X	
OTJ Training by EPA: RPAs, WQBELs, Joint Inspections, WET, new source/new discharge determination		X	X

WORK CATEGORIES			
WASTEWATER PROGRAM	FY04	FY05	FY06
Inspector training (state perspective / DEC cross training). Additional training: Advance wastewater treatment, pretreatment hydrology.		X	X
EPA Inspector/Compliance/Enforcement Training		X	X
NPDES Permit Writer's Course			X
Program Implementation (3)			
Implement changes from Water Program Review	X	X	X
Public Outreach - Make ongoing improvements to WebPages	X	X	X
Public Outreach - Explain NPDES: news articles, attend conferences		X	X
TRAVEL	X	X	X
QUALITY ASSURANCE - ongoing direction and audit	X	X	X
PRETREATMENT PROGRAM - EPA joint inspections / OTJ training		X	X
Permitting (4)			
PLAN REVIEW			
Domestic facilities (EH & FCO), Industrial facilities	X	X	X
PERMITTING			
Convert permittees to one of the new NPDES small domestic GP	X	X	X
Develop ListServer to distribute public notice information	X	X	X
Legal support for permitting	X	X	X
Develop permit fact sheets (templates, standard text)		X	
Develop procedures for permit quality control		X	
Develop Response to Comments (templates, standard text)		X	
New staff to support in mining issues		X	X
New staff to support domestic permitting		X	X
New staff to support industrial permitting		X	X
Implement EPA training		X	X
Work share with EPA		X	X
Work with EPA to rationalize 'major' dischargers in AK.		X	X
Compliance and Enforcement (5)			
COMPLIANCE			
Increased DMR review and follow-up	X	X	X
Process DMR data	X	X	X
INSPECTIONS			
Develop inspection report templates	X		
Develop inspection ranking (business practices)	X	X	
Develop annual inspection planning	X	X	X
Perform annual inspections of major dischargers beginning FY06			X
TECHNICAL ASSISTANCE			
Develop BMP materials for web page and handouts	X	X	X
Attendance at AWWA Conferences	X	X	X
Provide operator training on new GPs	X	X	X

WORK CATEGORIES			
WASTEWATER PROGRAM	FY04	FY05	FY06
ENFORCEMENT			
Increased enforcement	X	X	X
Legal support for compliance	X	X	X
Develop templates for enforcement correspondence		X	
Work share with EPA		X	X
Information Management (6)			
DATABASE DEVELOPMENT			
Department integration	X	X	X
AK Permit: Online permit	X	X	X
Integrate GP development	X	X	X
AK Permit: DMR module	X	X	
Electronic signature: application, DMR.	X	X	
Ambient water quality database	X	X	
AK Permit: DMR reporting to PCS		X	
DATABASE MAINTENANCE			
AK Permit data cleanup	X		
AK Permit DMR data entry	X	X	X
AK Permit maintenance	X	X	X
AK Permit - All EPA permits tracked in database		X	
RECORDKEEPING			
Streamline time tracking	X		
File modernization – continued	X	X	X
REPORTING			
AK Permit reporting on DMR compliance status of majors		X	X
AK Permit quarterly reporting and submittal of data to PCS (EPA)		X	X
STORMWATER PERMITTING PROGRAM			
Administration			
Program Development			
Streamline processes (process mapping)	X	X	X
NPDES MSGP renewal		X	
EPA Training: advance stormwater management		X	X
Program Implementation			
Permitting			
Increased permitting	X	X	X
Compliance and Enforcement			
Increased compliance	X	X	X
Information Management			
Total Permitting Program FTEs	29.0	43.0	43.0

NOTES:
DESCRIPTIONS OF WORK CATEGORIES:
(1) Administration
Overall program management, fee review, fee assistance and collections.
Personnel (hiring, work plans, evaluations)
Budget, expense tracking, PPA
Federal grant management, management reporting requirements
(2) Program Development
Program guidance for staff, permittees handbook
Term contract administration, technical information review
Water quality standards development and review, scoring/ranking
Development of GPs and discharge authorizations, technical workgroup development
(3) Program Implementation
Quality assurance, web development, brochure development, news letters, general public inquiries
(4) Permitting
Receive permit application, draft permit, public notice, response to comments received, finalizing and issuance of permit and posting on web page. 401 certifications.
Electronic submission of permit information (AK Permit)
(5) Compliance and Enforcement
DMR review, inspections of NPDES & state permitted facilities, inspection reports, facility-specific and general technical assistance. Enforcement actions.
Citizen's complaints. Training for operators
(6) Information Management
Database development/maintenance, beta testing new systems, recordkeeping, reporting
Clerical support, filing, paperwork, timesheet entry.

Protective Standards

DEC is required by the CWA to conduct a comprehensive review of the Alaska Water Quality Standards every three years to integrate the most current science and technology. Before changes to the water quality standards can take effect, they must be approved by EPA. EPA has been delinquent in the timely approval of the last two changes submitted by Alaska. To avoid delays in the future DEC has advised EPA of the state's following water quality amendment priorities. With this advance notice EPA should be prepared to provide Alaska a timely approval.

Residue Standard and Zones of Deposit

The current standards imply a zero discharge of debris such as log bark, seafood wastes or clean fill. However, the standards also allow the permitted discharge of residues/debris within limited areas in marine waters called Zones of Deposit. Applications of these standards need to be clarified.

Groundwater Standards

The current Water Quality Standards apply to groundwater, even though the standards were written for the purpose of protecting surface water uses. Under the current regulations groundwater is protected by applying aquatic life criteria, even though aquatic life does not exist in groundwater. The standard needs to clarify when the aquatic life criteria should be applied.

Petroleum Hydrocarbon Criteria

The appropriate application of the petroleum hydrocarbon standard is an issue. DEC has received public requests to review of this standard based on more recent scientific research that indicates that aquatic life may be sensitive to lower levels of petroleum hydrocarbons.

Treatment Works

A treatment works is a body of water that is used for treating wastewater or solids prior to discharging to the environment. Treatment works are constructed dams, dikes, ditches and other water control features, and may involve modification or diversion of a natural water body. Clarifying the treatment works provisions may include procedures for evaluating existing uses, alternatives, and social and economic factors that would justify a modification of a water body.

Mixing Zones

The water quality standards authorize mixing zones where discharges may mix with the receiving water. The water quality within the mixing zone may exceed the criteria that must otherwise be met outside the mixing zone. Issues affecting the mixing zone provisions that need review include:

- Prohibitions in spawning areas prohibition- some pollutants do not have adverse effects on spawning.
- Timing restrictions - mixing zone limits could be varied to be more restrictive during critical seasons and less restrictive at other times of the year.
- Mixing zones in groundwater - The velocity, dilution, size, monitoring well locations, and point of compliance should be considered for mixing zones in groundwater.

Dissolved Inorganic Substances

A recent research study on salmon indicates that early stages of fish eggs are sensitive to relatively low levels of dissolved inorganic substances. Re-evaluation of these criteria is appropriate in light of the study results.

Bacteria Criteria

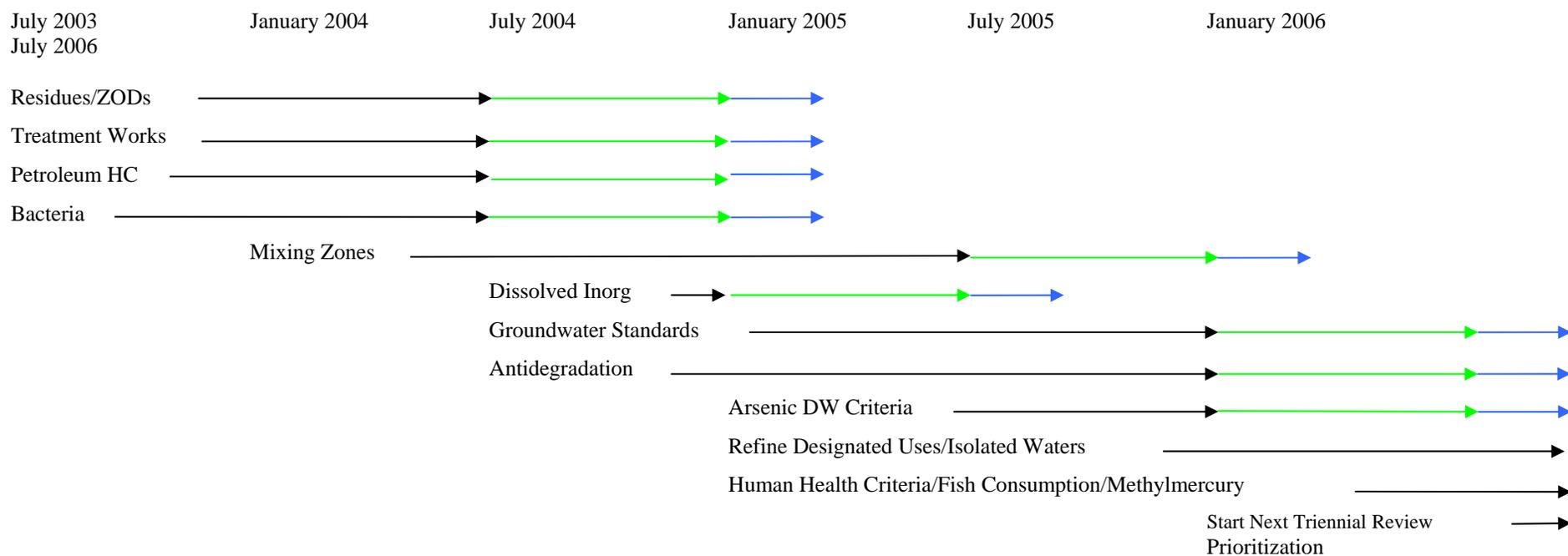
In 1986, EPA published Ambient Water Quality Criteria for Bacteria in which they recommended the use of E. coli and enterococci rather than fecal coliforms as indicators for human pathogens. In May 2002 the EPA released a final draft of the Bacteria Criteria Implementation Guidance and expects states to adopt the 1986 recommended bacteria criteria by April 2004.

Antidegradation Policy Implementation

In Alaska, many water bodies have natural water quality that is better than the criteria set by the Water Quality Standards. In such cases, a discharge may meet Water Quality Standards, but still cause some degradation of the water body. EPA requires DEC to develop an Antidegradation Policy Implementation Plan that specifies the procedures and criteria used to determine when waters are degraded by discharges or non-point sources of pollution, and what social and economic benefit to the state would be necessary to justify any degradation.

DEC will revise Alaska's water quality standards to ensure they are protective and tailored to address specific risks to water quality through out the hydrologic cycle. We intend to adopt scientifically sound standards that are relevant to the issues facing Alaska now and in the future.

TRIENNIAL REVIEW TIMELINE



The second phase of each project (last 6 months) is for state adoption of a regulation revision. The third phase is an additional 60 days required for EPA review and approval under the Clean Water Act, although actual review times may be considerably longer. Time estimates are optimistic, i.e. this schedule assumes that all phases go as planned. The Triennial Review schedule will be adjusted and updated as necessary.

Appendix I. ADEC Wastewater Discharger Program Risk-Based Inspection Ranking Model

**ADEC Wastewater Discharge Program Risk-Based Inspection Ranking –
A Working Model (December 2003)**

The department drafted this inspection ranking model to identify for inspection those permitted facilities that pose a higher risk to human health or the environment. For each permitted facility, points are assigned for each criteria listed in Section II. Under a given criterion, more points are assigned for characteristics that pose greater risks.

When fully automated via the AKPermit data system, the points for each facility will be totaled and the scores for all permitted facilities then ranked in order of priority for inspection. Program managers develop an annual inspection schedule using the ranking as a guide. Also, on an ongoing basis, certain facilities may become a higher priority that dictates an automatic inspection, based on factors listed below in Section I.

As the program gains experience with this inspection ranking model, criteria may be modified. The availability of additional information may also prompt revisions. This is considered a working model that will be improved as experience warrants.

I. Automatic Inspections

DEC will perform an inspection, even though a facility scores lower in the overall ranking, because of:

- a legitimate complaint of human health or environmental hazards
- a new facility or significant modification to existing permitted facility
- significant permit violations
- other factors as determined by staff, including fish kills, significant environmental or human health problems, joint inspections with other agencies, inspections of opportunity due to travel to the vicinity, etc.

II. The Scoring Criteria

The following eight criteria provide the basis for assigning risk to facilities discharging wastewater into Alaska's land and waters.¹ The criterion number corresponds to the numbered fields in the existing scoring spreadsheet. The AKPermit tracking system will automatically calculate the scoring once this module and reporting mechanism are developed. Initial use of the automated inspection ranking is tentatively scheduled for spring 2004.

Each facility receives a score for:

Criterion 1: Time since Last Inspection

- 1 point for every year since last inspection. Cap at 8.

¹ ADEC inspections of cruise ships and State ferries are addressed separately under the Commercial Passenger Vessel Environmental Compliance program.

Staff Guidance: The goal of the State wastewater program is to inspect all permitted facilities. Until staff are able to make the rounds statewide, facilities should accumulate points under this criterion.

Criterion 2: The Receiving Environment

- 3 points for discharge to fresh, surface and wetlands
- 3 points for discharge to sub-surface or uplands within 1 mile of drinking water wells.
- 2 points for discharge to marine waters
- 1 point for discharge to sub-surface and uplands

Criterion 3: Cumulative Effects from Other Discharges

- 1 point for multiple permitted discharges within 1 mile

Staff Guidance: this criterion takes into consideration four elements:

- 1) cumulative impacts is addressed, to some extent, during a permit review & the level of monitoring scrutiny put in place in a permit (see Criterion 6);
- 2) AKPermit provides the ability to automate only for permitted discharges. Other known discharges would come into play in staff review of the overall inspection ranking;
- 3) 1 mile is a realistic scale that matches current locational data, but may be refined to ½ mile in the future; and
- 4) this criterion is restricted to cumulative effects caused by discharges, whereas other reviews (e.g., ACMP or an EA/EIS) may consider cumulative effects on a broader scale.

Criterion 4: An Impaired Water Body

- 2 points for discharge of a pollutant to an impaired water body if that pollutant is listed as a source of the impairment
- 1 point for discharge of a pollutant to an impaired water body, regardless of the pollutant of concern for listing as impaired.

Staff Guidance: Greater weight is given if the pollutant being discharged is the same as that causing the impairment. However, an organism or species in an impaired waterbody could already be stressed by whatever pollutant is causing the waterbody to be impaired. Another pollutant could add to the stress. For example, a waterbody with a turbidity problem could cause smothering of fish eggs so fewer fish hatch. In this circumstance, if the pH (for example) declines because of another discharge, that could further stress or kill the remaining fish eggs, even though the pollutants are different.

Criterion 5: Health Effects from Potential Wastewater Treatment Process Failure

- 3 points for NPDES individual permits (IPs)
- 3 points for all domestic permits discharging to fresh water, whether general permit (GP) or IP, state or federal NPDES permits
- 2 points for state non domestic IPs
- 2 points for state domestic IPs discharging to marine water
- 1 point for all other NPDES GP or state GP authorizations

Staff Guidance: Note that domestic wastewater discharges to fresh water receive points twice in the inspection ranking model because of the freshwater environment – once in Criterion 2 and again in Criterion 5. This occurs because of the high potential risk to nearby drinking water posed by domestic wastewater discharges.

Criterion 6: Failure to submit Discharge Monitoring Reports

- 1 point for failure to submit each DMR (since last inspection).

Staff Guidance: This criterion is important and without a cap because failure to submit DMRs is a significant compliance issue. There is no need to weight the number of DMRs because that weighting already occurs in the permitting, de facto, with more DMRs required for higher risk discharges. High-risk discharges have additional monitoring requirements with more frequent monitoring and shorter reporting periods, so they would accumulate points faster for failure to submit DMRs. Lower risk discharges have less frequent reporting and would accumulate points at a slower rate.

Criterion 7: Compliance as Measured by DMRs and Other Permit Requirements (fish monitoring, annual dive surveys, etc.)

- 10 points if an exceedance on a DMR is a bona fide emergency that requires an immediate enforcement action such as a subpoena, emergency order, restraining order, or injunction.
- 8 points if an exceedance on a DMR or a failure to meet other permit requirements requires a compliance order by consent, compliance order, civil suit, consent decree, or criminal charges. Administrative penalty?
- 6 points if an exceedance on a DMR or a failure to meet other permit requirements requires a notice of violation, or nuisance abatement order.
- 4 points if an exceedance on a DMR or a failure to meet other permit requirements requires a warning letter in addition to corrective actions required in the inspection report.
- 1 point each time a phone follow-up is needed.
- 0 point if no follow-up action is needed after review of DMR or other required information.

Staff Guidance: Staff scores each DMR following review by selecting the appropriate option for follow-up action in AKPermit. Staff will use the ADEC Enforcement Manual (10/2002), in conjunction with supervisor and Department of Law as appropriate, to determine the level of enforcement.

DMR exceedance severity is reflected in the decision the permitter makes about the follow-up compliance action needed after reviewing the DMR. In conjunction with the guidance in the department's Enforcement Manual, the permitter should consider various site-specific or programmatic factors when determining the follow-up action needed, including:

- 1) the toxicity of the particular pollutant in exceedance and the likelihood of human health or environmental impacts (e.g., cadmium or mercury vs. BOD);
- 2) the repetitive nature of the treatment failure (e.g., high fecals for 3 consecutive months);
- 3) the proximity of the discharge to harvestable foods (subsistence, recreational, or commercial);
- 4) the magnitude of the specific exceedance(s); and
- 5) the season during which the exceedance occurs.

Criterion 8: Post-Inspection Compliance:

- 8 points if the permittee has not met and maintained the requirements in the department's inspection report, the permittee has not sent a required follow-up letter to the department, or the follow-up letter submitted by the permittee indicates 0% compliance with requirements specified in the department's inspection report.
- 4 points if < 50 % of the department's inspection report requirements have been met and maintained by the permittee.
- 2 point if > 50 % but < 100 % of the department's inspection report requirements have been met and maintained by the permittee.
- - 4 points if 100% of the department's inspection report requirements have been met and maintained by the permittee.

Staff Guidance: Criteria 6, 7, and 8 address compliance issues sequentially. Criteria 6 and 7 focus on poor compliance behavior, whereas Criterion 8 also rewards a "good actor" by reducing the facility's overall scoring.

When considering the level of compliance effort by the permittee, staff should consider several factors, including:

- 1) The difference between legally required corrective action and recommended actions, as specified in the inspection report.
- 2) The level of treatment technology needed to take a corrective action.
- 3) The amount of effort, time and cost involved in taking a corrective action (e.g., are local or state funds needed for a major facility investment?)
- 4) The level of operator knowledge/training needed to take a corrective action.
- 5) Weather/seasonal conditions during the time when a corrective action is required.
- 6) The amount of time needed to take the corrective action (i.e., different actions may have different deadlines).
- 7) Any continuing human health or environmental impacts resulting from the non-compliance.

Appendix J. Training Course Matrix

Course Name	Course Description
NPDES Permit Writers' Training Course	The objective of the NPDES Permit Writers' Training Course is to provide the basic regulatory framework and technical considerations that support the development of wastewater discharge permits as required under the National Pollutant Discharge Elimination System (NPDES) Permit Program.
NPDES Stormwater Permit Compliance	This training course provides practical and realistic measures for complying with the EPA's most recent requirements for stormwater discharge permits issued for industrial and construction activities, and for municipalities.
NPDES Storm Water Permit Compliance	Day one focuses on NPDES storm water permit compliance for municipalities and construction sites with complete discussion of which construction sites need to be permitted and who in the organization is responsible. Day two focuses on EPA's NPDES storm water permit requirements for industrial facilities.
Participating in the NPDES Permitting Process Workshop	This workshop will assist applicants to prepare more thorough applications and to understand how they can participate in the process. The workshop presents an overview of the NPDES program, along with exercises on how to complete an NPDES application.
Observations of an Inspector: WWTP Compliance Evaluation Assessments,	The objective of this NPDES training course is to provide students with information on observations of common mistakes made by wastewater treatment plants, and some possible approaches for compliance.
Permit Compliance Data System (PCS) Basic Training NETI CWA102	This course trains users in the basics of entering and retrieving data in the Permit Compliance Data System (PCS). Students may be new database users or those desiring a refresher course.
Phase II: How to Select, Install and Inspect Construction Site Erosion and Sediment Control Best Management Practices for NPDES Storm Water Permit Compliance	Learn the regulatory basis for erosion and sediment control, including the requirements for a comprehensive Storm Water Pollution Prevention Plan (SWPPP).
Flow Measurement at Wastewater Treatment Facilities NETI CWA110	This course, designed for NPDES inspectors, reviews the various types of flow measurement systems encountered at NPDES wastewater facilities.
Comprehensive Pretreatment Course; Industrial Classification and Permitting	The objective of this training course is to provide the basic regulatory and technical framework that support the development and implementation of pretreatment programs under the National Pollutant Discharge Elimination System (NPDES) program and the Clean Water Act (CWA).

Course Name	Course Description
Water Careers NPDES Permit Writers' Training Course	The objective of the Water Careers NPDES Permit Writers' Training Course is to provide the basic regulatory framework and technical considerations that support the development of wastewater discharge permits as required under the National Pollutant Discharge Elimination System (NPDES) Permit Program.
WET (Whole Effluent Toxicity) Tale: Toxicity of Complex Effluents	The WET training courses cover water quality topics such as water quality criteria and standards, NPDES permitting and enforcement, WET testing, and quality assurance/quality control (QA/QC), as they apply to the WET program.
WET Toxicity Identification Evaluations/Toxicity Reduction Evaluations	The WET training courses cover water quality topics such as water quality criteria and standards, NPDES permitting and enforcement, WET testing, and quality assurance/quality control (QA/QC), as they apply to the WET program.
Wild, Wild, WET: Responses to Questions Regarding Data Analysis and Interpretation of Toxicity Tests	The WET training courses cover water quality topics such as water quality criteria and standards, NPDES permitting and enforcement, WET testing, and quality assurance/quality control (QA/QC), as they apply to the WET program.
20th Annual National Operator Trainers' Conference	Course content includes the following: Wastewater Security, VSAT, Environmental Management Systems, Financial & Asset management, Instructional Technology, and Public Agenda as well as a workshop "Advanced Activated Sludge Troubleshooting."
Advanced Inspector Training NETI CST309	3-day course designed for experienced inspectors (with at least 3 years of experience) provides discussion, demonstrations, and practice in specific skills, such as information research, digital camera usage, vulnerability assessment, interviewing, report writing, lab fraud, and program enhancements.
Advanced Negotiations Skills Training NETI CST304	2-day course provides environmental professionals with adequate skills and experience for interacting effectively in individual and team negotiations on behalf of the government with members of the regulated community and/or other government personnel.
Basic Inspector Course: Classroom NETI CST109	4 1/2-day introductory course designed for new federal, state, tribal and local environmental inspectors. The course provides an overview of all aspects of inspection preparation, conduct, and follow-up. The course also introduces various federal environmental laws and regulations.
Basic Inspector Training (BIT) U.S. EPA - Region 10	Basic Inspector Training provides a comprehensive overview of the knowledge and skills needed for CI/FIs under any EPA statute and covers the fundamentals of enforcement policy, regulatory authorities, ethics and basic protocols for conducting compliance activities in the field.

Course Name	Course Description
Enforcement Teamwork: Regulations to Resolutions NETI CST208	Course is designed to teach students the basics of the enforcement process and how to be an effective part of the enforcement team. Students should have at least six months experience, but not more than three years experience in an enforcement program.
How to Select, Install, and Inspect Construction Site Erosion and Sediment Control BMPs for NPDES Storm Water Permit Compliance	This course was prepared under an EPA grant and with the association of the IECA and URS Corp. Course covers rules and regulations, site planning and management, erosion, runoff, and sediment controls, the erosion control planning process, and construction site inspections.
Multimedia Inspections NETI MLS102	This course trains federal, state and local inspectors and investigators in determining total environmental compliance through multimedia approaches. Topics include how to prepare multimedia enforcement actions, investigation techniques, investigation coordinator responsibilities and legal requirements. Students should have program-specific experience.
Orientation to Wastewater Treatment Processes NETI CWA106	This 3-day introductory wastewater course focuses on basic unit processes of wastewater treatment and is designed for new inspectors or inspectors transferring from other programs. Topics include wastewater characteristics, natural treatment systems, mechanical treatment systems, dual processes, basic wastewater microbiology, physical observations, wastewater flow measurement, and sampling. The course also includes a tour of an operational wastewater treatment facility.
Performance Evaluations of Wastewater Treatment Facilities NETI CWA105	This course, designed for industrial and municipal wastewater treatment plant inspectors, provides an overview of the basic treatment units, principles of operation, and key physical observations to evaluate treatment plant performance. Course includes classroom and field components. Can be tailored to be a 2 or 3 day course depending on field activities.
Pleading and Litigating Civil Penalties NETI CST303	This 4.5 hour course will review the emerging law, policy and practice of seeking civil administrative penalties in EPA enforcement actions.
POTW Control of Oil and Grease (O&G) Course	The purpose of the training course is to present an approach that can be used by POTWs and sewer utilities as a point of departure for developing and implementing their own site specific O&G control programs for preventing or eliminating the entry of O&G into the sewerage system.
Storm Water Phase II Rule Workshop	EPA developed a 1-day training course on the Phase II storm water rule. The training covers how the changes in the storm water program affect municipalities, construction operators, and industrial facilities.
Storm Water Program Comprehensive Training Course	EPA developed a 2-day training course on the entire storm water program.

Course Name	Course Description
Wastewater Clarifications™, Everything You Wanted to Know About 5-Day Biochemical Oxygen Demand But Were Afraid to Ask	The objective of this course is for students to learn everything they ever wanted to know about 5-day biochemical oxygen demand, but were afraid to ask.
Wastewater Clarifications™, Everything You Wanted to Know About pH But Were Afraid to Ask	The objective of this course is for students to learn everything they ever wanted to know about pH, but were afraid to ask.
Wastewater Clarifications™, Everything You Wanted to Know About Total Suspended Solids But Were Afraid to Ask	The objective of this course is for students to learn everything they ever wanted to know about total suspended solids, but were afraid to ask.
Wonderful World of Widgets™ - Materials Flow Balance Exercise	The objective of this course is for students to learn to conduct basic materials flow balances within industrial facilities.
Wonderful World of Widgets™ - NPDES Permit Limitations Exercise	The objective of this course is for students to learn to determine appropriate NPDES permit limitations and conditions.
Wonderful World of Widgets™ - Pretreatment Permit Limitations Exercise	The objective of this course is for students to learn to determine appropriate pretreatment permit limitations and conditions.
Field Analytical Technologies for VOCs in Groundwater	Seminar is based upon a US EPA Environmental Technology Verification (ETV) Program evaluation of five different technologies for field analytical measurements of VOCs in groundwater.
Working with Hostile Meetings and Difficult People	The purpose of this 8-hour course is to help those who participate in difficult exchanges with communities and the public to deal with situations that can arise.
Learn Environmental Math 1	The objective of this course is for students to learn basic environmental math skills necessary for everyday commonplace activities at water and wastewater treatment plants.
Learn Environmental Math 1, Part A	The objective of this course is for students to begin learning the basic environmental math skills necessary for everyday commonplace activities at water and wastewater treatment plants.
Learn Environmental Math 1, Part B	The objective of this course is for students to continue to learn basic environmental math skills necessary for everyday commonplace activities at water and wastewater treatment plants.

Course Name	Course Description
Chemistry for Environmental Professionals - Applied 165.21	2 day course provides participants with an introduction to applied environmental chemistry principles and practices which underlay the release, fate and transport, sampling, analysis, and cleanup of chemicals contaminating environmental media.
Chemistry for Environmental Professionals - Fundamentals 165.21	2 day course provides participants with a review of fundamental chemical concepts which underlay an understanding of applied environmental chemistry concepts and practices.
Basic Environmental Math	The objective of this course is for students to learn basic environmental math skills necessary for everyday commonplace activities at water and wastewater treatment plants.
Write it Easy to Read	This is a 2-day, hands-on, interactive workshop that introduces attendees to all the essentials of lively plain language writing.
Capacity, Management, Operation, and Maintenance (CMOM) Workshops	Participants will gain an understanding of the CMOM part of the proposed Sanitary Sewer Overflows Regulations and how to implement and pay for their own CMOM programs.
Certified Training for Sanitary Sewer Design & Modeling	In this certified two-day sanitary sewer modeling course, attendees will use SewerCAD for master planning, rehabilitation alternatives, and design of new sanitary sewer systems. Attendees will apply SewerCAD's new cost estimation tools and user defined attributes for evaluation of design alternatives and facilities maintenance. Every attendee will receive a special 3-month license of Sewer CAD.
Handbook of Groundwater Protection and Cleanup Policies for RCRA Corrective Action Internet-based seminar	Seminar will provide an overview of the recently finalized Handbook that contains EPA's latest interpretations of policies on topics such as, cleanup goals, groundwater use, point of compliance, source control, and completing groundwater remedies.
Introduction to Groundwater Investigations 165.7	This introductory course is designed to provide participants with information concerning hydrogeological processes and the necessary elements of a sound groundwater site investigation.

Appendix K. State of Maine Dispute Resolution

The following excerpt is **Section IV. Permit Review and Issuance** from the State of Maine's approved Memorandum of Agreement with EPA submitted as part of their application for NPDES primacy.

SECTION IV. PERMIT REVIEW AND ISSUANCE

The DEPARTMENT is responsible for drafting, providing public notice if not provided by the permittee, issuing, modifying, revoking and reissuing, and terminating permits in accordance with Section III, Section VIII, and Subsection IV.D of this AGREEMENT, any other agreements between the DEPARTMENT and EPA, the CWA, and the regulations promulgated thereunder at 40 CFR Parts 122-123, and applicable State statutes and rules.

- A. Receipt of New Permit Applications by the DEPARTMENT.
Upon receipt of a completed permit application, the DEPARTMENT will enter all required information into the EPA national Permit Compliance System (PCS).
- B. Permit Reissuance. All expiring NPDES permits for which timely and complete permit renewal requests have been submitted shall be reissued on or before their date of expiration. If such timely reissuance is not possible, the DEPARTMENT will notify EPA of the reasons for the delay. In such case the permit may be administratively continued beyond its expiration date in accordance with State law, but in no event will the permit be modified or revised to extend its expiration date.
- C. EPA Review of Draft and Proposed Permits, Permit Modifications, and Permit Revocations and Reissuances. The DEPARTMENT shall consult with EPA before issuing public notice of a draft permit to ensure that the permit will comply with federal guidelines and requirements. The DEPARTMENT shall transmit to the EPA appropriate portions of working documents in connection with these consultations.
 - 1. EPA will review draft permits rather than proposed permits. A proposed permit need not be prepared by the DEPARTMENT and transmitted to EPA for review unless the DEPARTMENT proposes to issue a permit which differs from the draft permit reviewed by EPA, the EPA has objected to the draft permit, or there is significant public comment.
 - 2. Unless otherwise waived, EPA will review all draft MEPDES permits, permit modifications and revocations and reissuances. Prior to the date the draft permit is sent to the applicant, the DEPARTMENT will send EPA one copy of the public notice, the draft permit, the complete permit application, the fact sheet associated with the draft permit, copies of significant comments, and once issued, a copy of the issued permit. Upon request, the DEPARTMENT will provide EPA with copies of documents related to or supporting the draft permit. When applicable, the submittal must be accompanied by a new source/new discharger determination. The DEPARTMENT shall supply EPA with copies of these documents for permits EPA has waived review whenever requested by EPA.
 - 3. Within thirty (30) days of EPA's receipt of the draft permit, EPA may make to the DEPARTMENT general comments upon, objections to, or recommendations with respect to the draft permit. Within this review time, EPA shall notify the

- DEPARTMENT of any objections to the issuance of the draft permit, and shall set forth in writing the general nature of the objection. The time for EPA review shall be extended to ninety (90) days upon request of EPA. A copy of any comments, objections, recommendations will also be sent by EPA to the permit applicant.
4. In the case of general permits, EPA shall have ninety (90) days from the date of receipt of the draft general permit to comment upon, object to or make recommendations with respect to the draft general permit.
 5. In the event EPA files a general objection to a draft permit, EPA shall have ninety (90) days from the date of EPA's receipt of the draft permit to supply the DEPARTMENT, in writing, with the specific grounds for objection, including:
 - (i) A statement of the reason for the objection (including the section of CWA or regulations that support the objection); and
 - (ii) The actions that must be taken by the DEPARTMENT to eliminate the objection (including the effluent limitations and conditions which the permit would include if it were issued by the EPA.).EPA's objection to the issuance of a draft permit must be based upon one or more of the grounds listed in 40 CFR § 123.44 (c).
 6. Prior to notifying the DEPARTMENT of an objection based upon any of the grounds set forth in 40 CFR § 123.44(c), EPA:
 - a. Shall consider all data transmitted pursuant to 40 CFR § 123.43;
 - b. May, if the information provided is inadequate to determine whether the proposed permit meets the guidelines and requirements of CWA, request the DEPARTMENT to transmit to EPA the complete record of the permit proceedings before the DEPARTMENT, or any portions of the record that EPA determines are necessary for review. If this request is made within 30 days of receipt of the DEPARTMENT's submittal under 40 CFR § 123.43, it shall constitute an interim objection to the issuance of the permit, and the full period of time specified in Paragraph 3 above for EPA's review shall recommence when EPA has received such record or portions of the record; and
 - c. May, in its discretion, and to the extent feasible within the period of time available under Paragraph 3 above afford to interested persons an opportunity to comment on the basis for the objection.
 7. In the event written notification is not provided within ninety (90) days of the draft or proposed permit having been sent, the objection shall be considered to be satisfied.
 8. Within 90 days of receipt by the DEPARTMENT of an objection by EPA, the DEPARTMENT or any interested person may request that a public hearing be held by EPA on the objection in accordance with 40 CFR §§ 123.44(e) and (f), and 124.10. Following the public hearing, EPA shall reaffirm the original objection, modify the terms of the objection, or withdraw the objection, and shall notify the DEPARTMENT of this decision.

If no public hearing is held and the DEPARTMENT does not resubmit a permit

revised to meet EPA's objection within ninety (90) days of receipt of the objection, EPA may issue the permit in accordance with 40 CFR Parts 121, 122 and 124 and any other guidelines and requirements of CWA.

If a public hearing is held, EPA does not withdraw the objection, and the State does not resubmit a permit revised to meet EPA's objection or modified objection, EPA may issue the permit in accordance with 40 CFR Parts 121, 122, and 124 and any other guidelines and requirements of CWA. Exclusive authority to issue the permit passes to EPA if its objections are not satisfied within ninety (90) days of the notice of objection (or thirty (30) days following EPA's reaffirmation of the original objection or modification of the objection following a public hearing on the objection).

9. EPA may request to review any applicant's notice of intent to be covered under a general permit. EPA will, within ten (10) days after receipt of the notice of intent, notify the DEPARTMENT of any formal objections to the applicant's suitability for coverage under the general permit.
 10. Following expiration of the period for public comment on a draft permit, a proposed permit will be drafted. If (a) the proposed permit is the same as the draft permit defined in the public notice, (b) EPA has not objected to such draft permit, and (c) significant public comments have not been made, the DEPARTMENT may assume EPA has waived its review of the proposed permit and issue the permit without further review by EPA. A copy of the final issued permit shall be sent to EPA. In all other cases, the DEPARTMENT will send one copy of the proposed permit, recommendations of any other affected State and copies of written comments and hearing records, including the response to comments prepared under 40 CFR § 124.17 to the EPA. Whenever the DEPARTMENT prepares a written explanation to an affected State explaining the reasons for rejecting any of its recommendations, the DEPARTMENT shall transmit a copy to EPA. EPA will, within thirty (30) days of the date the proposed permit is received by EPA, notify the DEPARTMENT and the permit applicant of any formal objections authorized under the CWA. The notification shall set forth in writing the general nature of the objection.
- D. Waiver of Permit Review by EPA. The EPA is not waiving the review of any permits at this time. The EPA may waive review of designated permits or classes of permits through a letter sent by the EPA to the DEPARTMENT. The EPA also may terminate any such waiver, through such a letter, at any time prior to a permit becoming final.
- E. Public Participation. The public notice provided in the permit process shall be consistent with 40 CFR Part 124, but the EPA agrees that the DEPARTMENT may issue public notice of the permit application instead of public notice of the draft permit, provided that the intent of the federal regulations are met. To ensure that the intent of the federal regulations are met, the DEPARTMENT agrees to provide, at the time of the application,

a public notice containing all the information in Chapter 522 § 8(d)(1) of the Department's rules and those sections of 40 CFR Part 124 applicable to state programs. The DEPARTMENT also agrees to send the entities listed in Chapter 522 § 8(e) and 40 CFR Part 124, as well as anyone else who responds to the notice of the permit application, a copy of the permit application and, when prepared, copies of the fact sheet and draft permit. The DEPARTMENT also agrees to provide each person who receives a copy of the draft permit with thirty (30) days within which to submit comments on the draft permit and/or request a public hearing.

1. Draft permits, public notices, applications and fact sheets or statements of basis will be provided to any party upon request and upon payment of applicable state duplicating fees.
2. Unless otherwise waived by the specific organizations, the DEPARTMENT will provide the persons listed in Chapter 522 § 8(c) and 40 CFR § 124.10(c) with copies of public notices and, if required by Chapter 522 § 6, or 40 CFR § 124.8, or Chapter 522 § 8(e) or 40 CFR § 124.10(e), copies of fact sheets, permit applications and draft permits. In particular, all of the above documents will be provided to the National Marine Fisheries Service and the U.S. Fish and Wildlife Service.
3. All draft general permits, applications for permits, and pretreatment program approvals shall be publicly noticed in a daily or weekly newspaper within the area affected by the activity, in accordance with Chapters 2 and 522.
4. The federally required public notice and comment procedures will be followed with respect to all permit modifications, except those minor modifications described in 40 CFR § 122.63. In the event the DEPARTMENT initiates a permit modification for the reasons set forth in 38 MRSA § 414-A(5), it will make the necessary public notice of the proposed permit modification when a draft permit modification has been prepared. In other cases, public notice will be given of the permit modification application in the same manner as for initial permit applications.
5. Copies of final permits will be sent to persons requesting or commenting upon draft permits.

F. Issuance of Permits or Notice of Intent to Deny.

1. If the final determination is to issue the permit, the final permit will be forwarded to the permit applicant, along with a transmittal letter notifying the applicant that the permit is being issued. Copies of issued permits will be forwarded to EPA in accordance with the schedule contained in Section VIII of this AGREEMENT.
2. If the final determination is to deny the permit, notice of intent to deny shall be given to EPA, and to the applicant in accordance with applicable MEPDES Rules, and NPDES regulations.

G. Termination, Modification, Revocation and Reissuance of permits. Except as waived

pursuant to Section IV.D above, the DEPARTMENT shall notify EPA whenever it intends to terminate an issued NPDES permit. In addition, the DEPARTMENT shall transmit to EPA a copy of any permit that it proposes to modify or revoke or reissue with the proposed changes clearly identified. The procedures in Section IV.C above shall be followed with respect to modifications by the DEPARTMENT of any issued permit and, for purposes of this agreement, each permit proposed to be modified shall be deemed to be a newly proposed draft permit, except for minor modifications as described in 40 CFR § 122.63.

- H. Major Discharger List. There shall be included as a part of the annual State Program Plan a “major dischargers” list, for industrial and municipal facilities. The industrial major dischargers list shall include those facilities mutually defined by the DEPARTMENT and EPA as major dischargers based on a point rating worksheet or applicable definitions plus any additional dischargers that, in the opinion of the DEPARTMENT or EPA, have a high potential for violation of water quality standards. The municipal major dischargers list shall include those facilities mutually defined by the DEPARTMENT and EPA as major dischargers based on a design domestic treatment plant flow of at least 1.0 MGD or a high potential for violation of water quality standards or pose a threat to human health or the environment.
- I. Administrative or Court Action. If the terms of any permit, including any permit for which review has been waived by EPA, are affected in any manner by administrative or court action, the DEPARTMENT shall immediately transmit a copy of the permit, with changes identified to the EPA and shall allow for EPA to make written objections to the changed permit in accordance with Section IV.C above.
- J. Variances. The DEPARTMENT will conduct an initial review of all requests for fundamentally different factors variances, for variances under Sections 301(c), (g), (h) and (k) and Section 316(a) of the CWA, and for modifications to federal effluent limitations established under Section 302 of the CWA.
 - 1. The DEPARTMENT may deny or approve a request for a variance under Sections 301(k) or 316(a) of the CWA after EPA has concurred with the proposed decision.
 - 2. The DEPARTMENT may deny a request for a variance under Sections 301(c), (g), or (h), or Section 302 of the CWA, or for fundamentally different factors. Such determination shall be forwarded to the requester and EPA. If the DEPARTMENT determines that factors exist that may warrant a variance, the request and the DEPARTMENT recommendation for approval shall be sent to EPA. If EPA denies the variance request, the DEPARTMENT shall notify the applicant. If EPA approves the variance request, the DEPARTMENT will prepare a draft permit factoring in the variance.

Appendix L. Comments Received on Draft NPDES Primacy Report