



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

Department of Environmental Conservation

DIVISION OF WATER
Director's Office

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January 16, 2013

Honorable Charles Huggins
President of the Senate
Alaska State Legislature
State Capitol, Room 111
Juneau, AK 99801

Honorable Mike Chenault
Speaker of the House
Alaska State Legislature
State Capitol, Room 208
Juneau, AK 99801

Dear President Huggins and Speaker Chenault:

This letter serves as the Department of Environmental Conservation's (DEC) seventh and final annual report to the legislature on efforts to obtain and implement state primacy for the National Pollutant Discharge Elimination System (NPDES) wastewater discharge program. This report highlights our four years of effort since the Environmental Protection Agency (EPA) approved the state's program on October 31, 2008 – the Alaska Pollutant Discharge Elimination System (APDES) program. This report provides background information; a description of the program responsibilities transferred to the Department; and permitting, compliance, and enforcement activities during the previous year.

Background

The 24th Alaska Legislature passed Senate Bill 110 during its first regular session in 2005 directing DEC to seek primacy from EPA for the NPDES wastewater discharge program. Governor Murkowski signed this legislation into law on August 27, 2005 with an effective date of November 25, 2005. Section 6 of the bill reads as follows:

REPORT TO THE LEGISLATURE. Until full authority for administering the National Pollutant Discharge Elimination System has been transferred to the Department of Environmental Conservation, the Department of Environmental Conservation shall submit, within 10 days after the date the Legislature convenes in regular session, a report to both houses of the Legislature and the governor that includes the following information:

(1) the department's progress in preparing and submitting its application to the United States Environmental Protection Agency by June 30, 2006;

(2) a description of the progress by the United States Environmental Protection Agency in reviewing the state's application and the expected or actual date and contents of the agency's approval; and

(3) the progress made by the Department of Environmental Conservation and the United States Environmental Protection Agency during the five-year National Pollutant Discharge Elimination System program transition period, the identification of the program responsibilities that have been transferred to the Department of Environmental Conservation and the program responsibilities retained by the United States Environmental Protection Agency, whether the transition is proceeding on schedule, and identification of relevant statutory, regulatory, or financial impediments to obtaining National Pollutant Discharge Elimination System primacy as intended by the Legislature.

Work Group Involvement

As required by Section 5 of SB 110, DEC will continue to confer as needed with the NPDES Primacy Work Group, which includes representatives of affected permittees. The Work Group was not convened in 2011 or 2012. The Work Group's members are listed at the DEC website at: http://www.dec.state.ak.us/water/npdes/work_group.htm, along with the 2005 Work Group Report.

Statutory, Regulatory, and Financial Issues

No statutory or regulatory impediments to implement the program exist; however, DEC will occasionally need to make revisions in response to changes to the federal program to keep Alaska's program current.

Transfer of Authority

EPA's October 2008 approval of the state's APDES program included transfer of permitting, compliance, and enforcement for specific dischargers in phases over a three-year period, rather than the five-year period envisioned in SB 110. Transfer of the final phase, Phase IV, was scheduled for October 31, 2011. In March 2011, DEC proposed a one year extension of the transfer of Phase IV. On August 11, 2011, EPA approved DEC's request, and Phase IV facilities transferred to DEC on October 31, 2012.

Program authority was transferred to the State as follows:

Phase I: At program approval - October 31, 2008

Domestic discharges, seafood industry, and timber handling

Phase II: One year from program approval - October 31, 2009

Storm Water Program, Pretreatment Program, and miscellaneous industrial discharges

Phase III: Two years from program approval - October 31, 2010

Mining industry

Phase IV: Four years from program approval - October 31, 2012
Oil and gas industry and cooling water intakes and discharges

As of October 31, 2012, all phases have successfully transferred from EPA to DEC, and DEC has full authority to implement the APDES program with the exception of facilities that must be retained by EPA for permitting and compliance. Program responsibilities EPA retains after full authority for the NPDES program transferred to DEC include permitting and enforcement authorities for facilities located in Denali National Park and Preserve, facilities located in Indian Country (Metlakatla), facilities operating outside state waters (generally greater than three miles offshore), and domestic facilities issued Clean Water Act §301(h) waivers from secondary treatment standards.

EPA has no authority to issue a permit to a facility where jurisdiction over that facility has transferred to the state; however, pursuant to the Clean Water Act, EPA retains authority to review any DEC-drafted permit and to conduct inspections and pursue enforcement actions against any discharger in Alaska.

Phases I-IV Program Implementation

The APDES Program built on its successes during the previous year as the Department continued to issue permits for Phase I, II, and III facilities and assumed authority for Phase IV, oil and gas facilities and other remaining dischargers.

Throughout 2012, DEC increased permitting activity for Phase I-III facilities, continued development of permitting and enforcement templates and guidance, established a more comprehensive communications plan with EPA, conducted compliance and enforcement inspections, and accomplished a variety of capacity building activities.

EPA continues to review and comment on draft permits. While many of the EPA comments do not need to be addressed (i.e. they are not revisions required by the Clean Water Act), DEC strives to incorporate most comments. In some cases, EPA asks DEC to address long standing issues left unresolved by EPA in previous permits. These concerns are being addressed through improved communication, along with an elevation process whereby an unresolved issue is elevated to DEC and EPA management immediately for resolution.

DEC continues to fine tune permitting checklists and templates to streamline the permit issuance process and issue legally defensible permits; post draft permits on DEC's web page; and notify potentially affected local and tribal governments, the public, and EPA when a permit is available for review to encourage early input and foster transparency in permitting decisions. DEC continues to update web pages to better serve permittees and the public. Lastly, all required APDES data is reported to EPA's national database.

Permitting Activities

DEC has developed a Permit Issuance Plan that identifies the schedule of permits proposed to be issued during a two-year period and updates this plan periodically. The 2012-13 Permit Issuance Plan is available for review on DEC's web page: <http://dec.alaska.gov/water/wwdp/pdfs/PIP.pdf>.

In 2012, DEC issued 1,297 permit authorizations. Of that total, three were Clean Water Act Section 401 Certifications of EPA-issued NPDES permits, 41 were authorizations under EPA-NPDES general permits, four were APDES individual permits, four were APDES general permits, and 1,245 were authorizations under DEC-issued APDES general permits. Nineteen APDES permits are currently either under development or undergoing internal review prior to public notice and one APDES permit is in the public notice period.

Phase IV permits DEC issued after authority transferred to DEC on October 31, 2012 included one oil and gas individual permit and two oil and gas authorizations under general permits.

Lastly, DEC approved the City of North Pole's pretreatment program.

Compliance and Enforcement Activities

DEC conducted 154 inspections from January 1, 2012 through December 31, 2012. Facilities inspected include municipal domestic wastewater treatment plants, mining facilities, oil and gas facilities, seafood processors, and construction sites. Of that total, 135 were APDES permitted facilities, 16 were unpermitted facilities, and five were joint inspections with EPA. DEC completed an inspection report and provided a response to the permittee within 43 days on average.

Based on the inspections, 30 compliance letters and 24 Notices of Violation were issued. In addition, two formal enforcement actions resulted in a total of \$20,000 in penalties levied. Follow up enforcement actions, where appropriate, are pending.

Program Capacity Development

DEC continued to implement several components of its capacity building plan to ensure adequate staffing and training to implement the APDES program. In 2012, staff participated in 33 formal training opportunities and 14 public outreach events, such as technical conferences. The APDES program is actively recruiting for two vacancies.

In addition to permitting and compliance work for dischargers in Phases I-III and the five joint DEC-EPA inspections, staff received formal training for Phase IV facilities.

In its fifth year of responsibility for the APDES program, DEC is pleased to report the growing maturity of the APDES program as DEC moves from start up of the program toward managing the program for the long term. DEC looks forward to continuing to manage the APDES program in Alaska to ensure protection of our valuable water resources through timely issuance of discharge permits with input from the public, local governments, and tribes; a robust inspection program; technical assistance; and timely and predictable enforcement actions to ensure compliance. We are prepared to answer any questions you may have about the APDES program.

Sincerely,



Michelle Bonnet Hale
Division of Water Director

cc: Governor Sean Parnell
Mike Nizich, Chief of Staff, Office of the Governor
Randy Ruaro, Deputy Chief of Staff, Office of the Governor
Heather Brakes, Legislative Director, Office of the Governor
Liz Clark, Senate Secretary, Alaska State Legislature
Suzi Lowell, House Chief Clerk, Alaska State Legislature