

**MEMORANDUM OF AGREEMENT BETWEEN**

**THE STATE OF ALASKA**

**AND**

**THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**REGION 10**

**I. GENERAL**

This Memorandum of Agreement (Agreement) establishes policies, responsibilities, and procedures pursuant to 40 CFR 271.8 for the State of Alaska's Hazardous Waste Program (State) authorized under Section 3006 of the Resource Conservation and Recovery Act (RCRA or the Act) of 1976 (42 USC 6901 et seq.), as amended, and the United States Environmental Protection Agency (EPA) Regional Office for Region 10. This Agreement further sets forth the manner in which the State and EPA will coordinate in the State's administration and enforcement of the authorized State program, pending authorization, and the EPA's administration of the non-authorized provisions of the Hazardous and Solid Waste Amendments of 1984 (HSWA). For purposes of this Agreement, references to RCRA include HSWA.

The Commissioner of the Alaska Department of Environmental Conservation (DEC or State), and the Regional Administrator, EPA Region 10 (Regional Administrator or EPA), enter into this Agreement (collectively referred to as "the parties" or singularly as "party").

Nothing in this Agreement shall be construed to restrict in any way EPA's oversight and enforcement authority under RCRA. Nothing in this Agreement shall be construed to contravene any provision of 40 CFR Part 271. The Agreement does not restrict the EPA oversight authority for State program activities that are part of the federal program, does not establish privity between EPA and the State, and does not restrict the EPA's independent enforcement authority. No waiver of sovereign immunity is implied or assumed by this Agreement.

The parties will review the Agreement jointly as needed or appropriate during preparation of the biennial State Grant workplan (workplan), in connection with grant funding under section 3011 of RCRA.

This Agreement may be modified upon the initiative of either party in order to ensure consistency with State program modifications made or for any other purpose mutually agreed upon. Any revisions or modifications to this Agreement must be in writing and must be signed by the State and the Regional Administrator.

This Agreement will remain in effect until such time as modified and authorized pursuant to a State program revision authorization, or until the State program authorization is withdrawn by or is voluntarily transferred to EPA according to the criteria and procedures established in 40 CFR 271.22 and 40 CFR 271.23.

This Agreement is being executed because the State is seeking initial authorization for RCRA Subtitle C. The State and the Regional Administrator will sign this Agreement, and it shall become effective at the time the State's authorization takes effect, on *(date of the Federal Register notice of the Regional Administrator's decision to grant authorization to the State)*.

## II. POLICY STATEMENT

Each of the parties to this Agreement is responsible for ensuring that its obligations under RCRA are met. Upon granting of final authorization by EPA, the State assumes primary responsibility for implementing provisions of the RCRA hazardous waste program within its geographic boundaries, except in Indian country and Denali National Park and Preserve<sup>1</sup>. Within the State of Alaska, EPA retains full authority and responsibility for the implementation of RCRA in Indian country and Denali National Park and Preserve.

The State will conduct its hazardous waste program in accordance with EPA program policies and guidance.<sup>2</sup> While EPA is responsible for the implementation of those provisions of HSWA for which the State is not authorized, it is the intention of EPA and the State to coordinate the implementation of such provisions to the greatest degree possible. The State and the EPA agree to maintain a high level of cooperation and coordination between their respective staffs in a partnership to assure successful and effective administration of the State program.

EPA will oversee implementation of the authorized State program in order to ensure full execution of the requirements of RCRA, to promote national consistency in the hazardous waste program, and to allow EPA to report to the President and Congress on the achievements of the hazardous waste program. EPA will conduct oversight through written reporting requirements, permit overview, compliance and enforcement overview, and periodic review of the State's program.

The State and the EPA will strive for agreement in their actions. Should the State and the EPA not reach agreement, the State and the EPA agree to pursue informal, staff-level dispute resolution to the maximum extent possible.

In situations where informal, staff level dispute resolution is not effective, a formal dispute resolution procedure will be used. Whenever the EPA or the State personnel directly involved in the implementation of this MOA judge that a problem exists or that this MOA is not being followed, the issue should be resolved at the next level of management (DEC Manager/EPA Unit Manager). If the issue cannot reach agreement at this level, the issue will be elevated to the next

<sup>1</sup> State RCRA authority is excluded from Denali National Park and Preserve pursuant to Alaska Statehood Act §11. That section gives the United States exclusive jurisdiction over the Denali National Park and Preserve.

<sup>2</sup> These policies and guidance include, at a minimum, the OSWER Consolidated Guidance; the Office of Enforcement and Compliance Assurance's National Program Manager Guidance; RCRA Civil Penalty Policy (June 2003); National Criteria for a Quality Hazardous Waste Program; revised Hazardous Waste Civil Enforcement Response Policy (December 2003); the EPA Policy on Performance Based Assistance (May 31, 1985); Advanced Notice of Proposed Rulemaking for the Corrective Action Program (May 1, 1996); Setting Customer Service Standards (E.O. 12862, September 11, 1993); Improving Customer Service (Fred Hanson, April 8, 1998); Federal Actions to Address Environmental Justice in Minority Populations and Low-income Populations (E.O. 12892, February 11, 1994); and the EPA OSWER Environmental Justice Action Agenda (EPA 540/R-95/023, 1995).

**Commented [JJS1]:** The State seeks to be authorized for everything it can be authorized for. Going forward, when EPA makes new rules, wouldn't the State need to be authorized for any new rule made by EPA, whether pursuant to HSWA or another part of RCRA? Or am I misunderstanding the relationship with those amendments?

**Commented [BRJ(2R1)]:** I guess our question to EPA is whether this template language is adequate to account for both any provisions that it cannot authorize a state to do, plus new rules promulgated after program approval

level of management (DEC EH Division Director/EPA Office Director). If the issue cannot reach agreement at this second level, the issue will be elevated to the Commissioner and the Regional Administrator for the State and the EPA, respectively, for final resolution.

### **III. STATE PROGRAM REVIEW**

The EPA will assess the State administration and enforcement of the hazardous waste program on a continuing basis for equivalence and consistency with RCRA, this Agreement, and all applicable Federal requirements and policies, and for adequacy of enforcement. EPA will conduct this assessment by reviewing information submitted by the State in accordance with this Agreement and the State grant work program, permit overview, compliance and enforcement overview, and annual review of State program activities. The EPA may also consider, as part of this regular assessment, written comments about the State's program administration and enforcement that are received from regulated persons, the public, and Federal, State and local agencies. Copies of any such comments received by the EPA will be provided to the State.

The State agrees to allow EPA access to all files and other information requested by the Regional Administrator or his or her designee and deemed necessary by EPA for reviewing State program administration and enforcement. The EPA agrees all such requests for information will be coordinated in advance, when possible, but may be scheduled at any time.

Program review meetings between the State and the EPA will be scheduled at reasonable intervals, not less than annually, to review specific operating procedures and schedules, to resolve problems and to discuss mutual program concerns. These meetings will be scheduled at least fifteen days in advance unless mutually agreed to differently. A tentative agenda for the meeting will be prepared by EPA.

The State and EPA agree to develop, on a biennial basis as a part of the State grant workplan, criteria for priority activities, including activities regarding handlers of hazardous waste. These criteria will be based on guidance issued by EPA in the annual National Program Manager Guidance, other guidance documents as appropriate, State specific concerns, and will serve to identify those activities which should receive the highest priority during the grant period.

### **IV. INFORMATION SHARING**

#### **A. General**

During the periodic review of this Agreement, the State and EPA will carefully examine the information sharing requirements for needed revision.

Information related to Section V. Permit Issuance, Section VI. Permit Administration, and Section VII. Compliance Monitoring and Enforcement will be sent by the State to EPA. The EPA shall send permit and enforcement related information to the State as specified in the Appendix A, B, and C tables related to Permitting, Corrective Action, and Enforcement.

#### **B. EPA**

EPA will keep the State informed of the content and meaning of Federal statutes, regulations, guidelines, standards, policy decisions, directives, and any other factors that affect the State program. EPA will also provide general technical guidance to the State. EPA will share with the State any reports developed by EPA from the data submitted through State reporting requirements.

EPA will make available to the State other relevant information as requested which the State needs to implement its approved program. "Make Available" may mean temporary access in lieu of actual delivery to the State.

The EPA agrees to adhere to the schedule set forth in the biennial grant workplan. To the extent provided under applicable statutes or regulations, the EPA agrees to make available to the State reports and data resulting from compliance inspections at facilities under the State's jurisdiction within thirty days of completion of the final inspection report.

### C. State

The State agrees to inform the EPA of any proposed program changes which would affect the State's ability to implement the authorized program with as much advance notice as possible. Program changes of concern include modification of the State's legal authorities (i.e., statutes, regulations and judicial or legislative actions affecting those authorities), modifications of Memoranda of Agreement or Understanding with other agencies, and modifications of resource levels (i.e., available or budgeted personnel and funds). Program changes also include legal changes that would affect compliance monitoring and enforcement, such as privileges and immunities laws. The State recognizes that program revisions must be made in accordance with the provisions of 40 CFR 271.21, and that until approved by EPA, revisions are not authorized as RCRA Subtitle C requirements. EPA agrees to support the State with timely review of proposed State legislation that might affect the authorized hazardous waste program.

1. The State agrees to submit the following reports and documents to the EPA within the specified time periods as defined in the attached appendices:
  - a) Quarterly reports on the dates set in the grant workplan, and
  - b) Additional reports and documents as specified in the grant workplan.
2. The State agrees to provide the EPA with monthly electronic data regarding requests made by hazardous waste handlers to change their classifications.

Information related to Sections V. and VI., relating to permitting, shall be sent by the State to: *[EPA contact address.]* EPA shall send permit related information to: *[ State specify.]* Information related to Section VII., Enforcement, shall be sent to: *[EPA contact address.]* EPA shall send enforcement related information to: *[State specify.]*

### D. Site Visits & RCRA Data Management

Commented [BRJ(3)]: Propose that EPA and Alaska agree to transfer information electronically to minimize paper

In relation to information sharing, EPA Headquarters (HQ) is responsible for maintaining reliable national data on hazardous waste management. This data is used to report to the President and Congress on the achievements of the hazardous waste program and to support EPA's regulatory development efforts. Under most circumstances the EPA HQ will first seek to gain needed information from the States through the EPA Regions. The State of Alaska agrees to supply the EPA with this information if readily available and as resources allow in accordance with Section III. If the State is unable to provide the information or if it is necessary to supplement the State information, EPA HQ may conduct a special survey or perform information collection site visits after notifying the State (with at least seven days advance notice) and inviting the State to participate in the site visit. EPA Region 10 will share with the State any final reports developed by EPA HQ as a result of such information collection.

Hazardous waste handler notification identification numbers will be processed in accordance with the most recent RCRA Data Management Agreement and the grant workplan.

For the specific EPA and Alaska roles in maintaining data integrity, see the RCRA Data Management Agreement between Alaska and the EPA Region 10, dated [REDACTED].

#### **E. Emergency Situations**

Upon receipt of any information that the handling, storage, treatment, transportation, or disposal of hazardous waste is endangering human health or the environment, the party in receipt of such information shall immediately notify by telephone the other party to this Agreement of the existence of such situation. EPA shall call [State specify] at [State specify]. [The State shall call EPA's Emergency Response Branch at [EPA specify]. In a release situation, both the EPA and the State shall notify the DEC Response Team at: 1-800-478-9300.

#### **F. Confidentiality**

Subject to applicable protections including attorney client privilege and attorney work product protection, any information obtained or used in the administration of the State program shall be available to EPA upon request. If the information has been submitted to the State under a claim of confidentiality, the State must submit that claim to EPA when providing information. EPA agrees to treat the records, reports or information that is subject to the confidentiality claim as confidential in accordance with applicable federal law.

EPA agrees to furnish to the State information in its files which is not submitted under a claim of confidentiality and which the State needs to implement its program. EPA will make available to the State information submitted to the EPA under a claim of confidentiality which the State needs to implement its program. EPA will notify affected facilities when such information is sent to the State. The State will handle such information consistent with its authorized program.

#### **G. Delisting**

The State shall send a copy of any delisting application and delisting decision along with supporting documentation, and all subsequent revisions, as specified in the Appendix C

Commented [BRJ(4)]: EPA will need to specify what to list here. Oregon's MOA listed the EPA Oregon Operations Office. Alaska will need to set up a general contact number for non-release HW emergencies, and include in final MOA.

Enforcement and Compliance document flow table, attached to the Grant. The State shall send the final decision to the EPA before mailing it to the applicant.

## **H. Notification**

EPA and the State have jointly decided that the State will assign all EPA I.D. numbers and enter all notification data into RCRAInfo. If the applicant sends a notification form (8700-12 or equivalent) directly to EPA, EPA will forward the form to the State for the assignment of an I.D. number within 30 days of receipt. If the State receives a notification form from EPA or from the applicant, the State will assign an I.D. number to the applicant and inform the applicant of its number.

## **I. Variances and Waivers**

The State agrees to provide the EPA with a copy of each proposed variance and waiver at the time the application is received. The EPA may review and comment on any proposed variance or waiver. The State agrees to halt any proposed action, within the 45-day comment period, if the EPA determines that the proposed variance or waiver is inconsistent with the State's authorized program. The comment period is dependent on the type of waiver or variance and is identified in the appropriate workflow.

## **V. PERMIT ISSUANCE**

The State and the EPA have agreed to a permitting process, under which the State and the EPA have established policies and procedures by which each will pursue its respective and/or joint responsibilities under RCRA, as amended. The State and the EPA agree to the sharing of information as specified below and in the biennial grant workplan. Information to be shared (in either electronic or hard copy) will include, but will not be limited to, the following:

- a. Part A and Part B Permit Applications, whether first received by the State or the EPA, and all permit modification requests;
- b. Information indicating the status of corrective action activities;
- c. Copies of draft permits, proposed permit modifications, draft public notices;
- d. Copies of final permits and permit modifications (including change pages); and
- e. Notices of permit denials.

### **A. EPA and State Permitting**

The State is authorized to issue RCRA permits at all facilities located in the State of Alaska except those within Indian country and Denali National Park and Preserve. If the EPA promulgates new standards requiring a permit modification, then the EPA may, pursuant to 40 CFR 270.42(b)(6)(vii), extend the time period for final approval or denial of a modification request until

such time that the State receives authorization for the new standards. At the time the State program is approved in the new areas, the EPA will suspend issuance of Federal permits in the State.

Permits issued by EPA pursuant to HSWA authority will remain effective and enforceable until the State issues a State hazardous waste permit in accordance with its authorized program, and such State-issued permit becomes effective, and until EPA revokes or modifies its permit, or those portions of a permit issued pursuant to HSWA for which the State's program has received authorization and which are included in the State permit. If the State permit already contains an equivalent HSWA provision, the State need not reissue the permit if the permit contains language, (i.e., a permit condition allowing for the automatic transfer of the permit upon authorization of the state for newly authorized HSWA requirements). Permits that expire or reach expiration before the State issues a permit under its authorized program will continue in full force and effect pursuant to 40 CFR 270.51 (d) until the effective date of the State permit. Under all circumstances, the EPA-issued HSWA permit remains effective and enforceable for those HSWA requirements and prohibitions for which the State is not yet authorized.

## **B. EPA Oversight of State Permits**

While EPA may comment on any permit application, draft permit or proposed permit modification, EPA's oversight function will focus primarily on those facilities identified by the State and EPA in the biennial State Grant Workplan. EPA's reviews will subscribe to the provisions of 40 CFR 271.19(b)–(f).

The EPA may comment on any draft permit or proposed permit modification within thirty days of its receipt by EPA, whether or not the EPA commented on the permit application or permit modification request. Where the EPA indicates in a comment that issuance, modification, reissuance, termination or denial of the permit would be inconsistent with the approved State program, EPA shall include in the comment:

- A statement of the reasons for the comment (including the section of the State or federal law or regulations that support the comment), and
- The actions that should be taken by the State to address the comment (including the conditions which the permit would include if it were issued by EPA).

Any other comments provided by EPA that do not indicate that issuance, modification, reissuance, termination or denial of the permit would be inconsistent with the approved State program will also be considered by the State.

For all RCRA permit actions written and issued solely or jointly by the State of Alaska, there are three opportunities for the EPA to review:

1. The first opportunity for review will be of the permit application or permit modification request submitted by the treatment, storage, or disposal (TSD) facility prior to a completeness determination by the State. The EPA has the opportunity to review the application or permit modification request to aid in determining if all appropriate technical

information has been provided. The EPA's review comments to the State shall include the following:

- i. A justification, based on guidance or regulation, why additional or different information is necessary; and,
- ii. A specific description of what changes may need to be made in order to determine the application complete.

These comments must be submitted in writing to the State to meet the application review schedule set forth by the State.

2. The second opportunity for review will be of the draft permit prior to the public notice process. The primary purpose of this review is to identify any issues that should be resolved prior to the permit going out to public comment. The EPA shall include comments as specified in section V.B.1.i and ii above.

3. The third opportunity for review is the review of the draft permit during the public comment period. The EPA shall include comments as specified in section V.B.1.i and ii above.

The State agrees to consider all comments the EPA makes on permit applications, permit modification requests, and draft permits. The State and the EPA will strive to reach concurrence on permit conditions prior to issuance of the permit or approval of proposed permit modifications. The State and the EPA agree to meet or confer, within the permit review period as noted in the Document Workflow Table in Appendix C, whenever necessary to resolve a disagreement on the terms of any State-issued permit. The State is authorized to issue RCRA permits, including corrective action permits. The timelines for actions and coordination between the State and the EPA are documented in Appendix A (Permitting) and Appendix B (Corrective Action) to this agreement.

The EPA shall withdraw comments where EPA has indicated that issuance, modification, reissuance, termination or denial of the permit would be inconsistent with the approved State program if satisfied that the State has met or refuted its concerns. The EPA will provide the permit applicant with a copy of the withdrawal.

Under section 3008(a)(3) of RCRA, EPA may terminate a State-issued permit or bring an enforcement action in accordance with the procedures of 40 CFR Part 22 in the case of a violation of a State program requirement. In exercising these authorities, EPA will observe the conditions established in 40 CFR 271.19(e).



### **C. State Permitting**

The State is responsible for expeditiously drafting, circulating for public review and comment, issuing, modifying, reissuing, revoking or denying, and terminating RCRA permits at hazardous waste treatment, storage and disposal facilities subject to the authorized provisions of the State's program and shall do so in a manner consistent with RCRA as amended by HSWA, this Agreement, all applicable Federal requirements, and the State's Program Description.

The State agrees to issue, reissue, revoke, terminate or deny all permits subject to the authorized State's program in accordance with Alaska Statutes and to include as permit conditions all applicable provisions of 18 AAC 62.

The State agrees that any compliance schedule contained in any permit issued will require compliance with applicable standards within a specified time period.

## **VI. PERMIT ADMINISTRATION**

Upon the effective date of an equivalent State permit, EPA will terminate the Federal permit pursuant to 40 CFR 271.8(b)(6) and 124.5(d). EPA will notify the permittee by certified mail of its intent to terminate the federal permit and give the permittee 30 days in which to agree or object to termination of the permit. EPA will administer and enforce its permit until it expires or is terminated.

The State agrees to resolve all State permit appeals in a manner consistent with its authorized RCRA program.

## **VII. COMPLIANCE MONITORING AND ENFORCEMENT**

### **A. EPA**

Nothing in this Agreement restricts the EPA's right to inspect any hazardous waste generator, transporter or treatment, storage or disposal facility or bring enforcement action against any person believed to be in violation of the authorized State or Federal hazardous waste program or believed to have a release of hazardous waste or constituent. The EPA will endeavor to keep the State informed and to coordinate with the State to the extent reasonably possible. Before conducting an inspection of a generator, transporter or treatment, storage or disposal facility, the EPA will normally give the State at least seven days' notice of the EPA's intent to inspect in accordance with 40 CFR 271.8(b)(3)(i) and will invite the State to participate in the inspection. In case of an imminent hazard to human health and the environment, the EPA may shorten or waive the notice period, but will inform the State as soon as possible. The EPA agrees to make available to the State copies of any reports and data resulting from compliance inspections under the State's jurisdiction as specified in Appendix C from completion of the inspections to the extent provided under applicable statutes and regulations. No such notice is required for criminal enforcement actions undertaken by the EPA.

The frequency of EPA oversight and training inspections will be specified in the biennial grant workplan. The EPA will negotiate on a biennial basis with the State the number or percentage of the State's compliance inspections on which EPA will accompany the State as well as which inspections the EPA will be the lead agency.

The EPA may take enforcement as provided for under RCRA against any person in violation of RCRA. If the EPA intends to refer a case to the State for civil enforcement, the EPA will endeavor to make the referral as expeditiously as possible. The EPA may take civil enforcement action upon determining that the State has not taken timely and appropriate enforcement action and will notify the State in advance, or when the State has requested the EPA civil enforcement. No such notice or determination is required for criminal enforcement actions taken by the EPA. Prior to issuing a compliance order under Section 3008(a), the EPA will give notice to the State pursuant to 3008(a)(2). The EPA also retains its rights to issue orders and bring actions under Sections 3008(h), 3013, and 7003 of RCRA and any other applicable Federal statute.

After notice to the State, the EPA may take action under Section 3008(a) of RCRA against a holder of a State-issued permit on the grounds that the permittee is not complying with a condition of that permit. In addition, the EPA may take action under Section 3008(a) of RCRA (civil or criminal) against a holder of a State-issued permit on the grounds that the permittee is not complying with a condition that the EPA, in commenting on that permit application or draft permit, stated was necessary to implement the approved State program requirements, whether or not that condition was included in the final permit.

## **B. State**

The State agrees to carry out a timely and effective program for monitoring compliance by generators, transporters, and treatment, storage and disposal facilities with applicable program requirements (see 40 CFR 271.15). As part of this program, the State will conduct compliance inspections to assess compliance with generator and transporter standards (including manifest requirements), facility standards, permit requirements, compliance schedules, and all other program requirements. National compliance monitoring activities and priorities will be specified in the Office of Enforcement and Compliance Assurance's annual National Program Manager Guidance, as well as the State's biennial grant workplan and shall be consistent with all applicable Federal requirements and with the State's Program Description. State specific activities and priorities for compliance monitoring will also be included in the biennial grant workplan.

The State agrees to take timely and appropriate enforcement action as defined in the December 2003 Hazardous Waste Civil Enforcement Response Policy against all persons in violation of generator and transporter standards (including manifest requirements), facility standards, permit requirements, compliance schedules, and all other program requirements, including violations detected by State or Federal compliance inspections. The State will maintain procedures for receiving and ensuring proper consideration of information about violations submitted by the public.

The State agrees to provide the EPA with copies of reports resulting from any compliance inspection and subsequent enforcement actions, when the EPA requests such copies. The State agrees to retain all records for at least three years unless there is an enforcement action pending. In that case all records will be retained until such action is resolved.

## **VIII. AVAILABILITY OF INFORMATION**

### **A. General**

Section 3006(f) of RCRA requires an authorized State to provide for the public availability of information obtained by the State regarding facilities and sites for treatment, storage and disposal of hazardous waste. Such information must be available to the public in substantially the same manner as, and to the same degree as, that available under federal law.

### **B. Public Requests for Information**

After a determination that this information is available for disclosure under the Alaska Public Records Act (Alaska Statute 40.25.100 – 40.25.350), the State agrees to make certain materials routinely available without a formal public record request. Examples of these materials are final opinions or orders in case adjudication, State regulations, statements of Agency policy, and administrative staff manuals affecting the public. In addition, records prepared for routine public distribution will also be made available. Examples of such records are press releases, copies of speeches, pamphlets, and educational materials. All other documents not routinely available online will need to follow the public request procedure.

1. The State agrees to make reasonable efforts to assist a requestor in identifying records (including electronic records) being sought, and to help the requestor formulate his or her request.
2. If a request for information is denied, the State agrees to provide the requestor the basis for the denial and to notify the requestor of any State judicial, administrative procedures, or statutes of limitation.
3. The State agrees to make the fullest possible disclosure of records to the public, except where the record would qualify for any of the exemptions under the Federal Freedom of Information Act, 5 U.S.C. 552(a)(2), if such exemption is recognized by the State.
4. DEC follows all state agency policy and state regulation regarding requests for records.

A reduction or waiver of fees will be considered if requested and will follow state and agency policy.

### **C. Confidentiality of Business Information**

The State agrees to manage information submitted under a claim of confidentiality, confidential business information, or trade secret and to determine whether such a record constitutes confidential business information or trade secret in a manner consistent with and pursuant to the Alaska Public Records Act, and the Alaska Uniform Trade Secrets Act (Alaska Statute 45.50.910 – 45.50.945).

#### **D. Oversight**

The State agrees to keep EPA fully informed of any proposed modifications to its basic statutory or regulatory authority, its forms, procedures, or priorities, as applied to section 3006(f).

### **IX. CORRECTIVE ACTION**

#### **A. State Role.**

The State will conduct the RCRA Corrective Action Program in a manner that promotes rapid achievement of cleanups while protecting human health and the environment. Specifically, the State will, to the extent practicable:

1. Embrace flexible, practical, results-based approaches that focus on control of human exposure and contaminated groundwater migration in the short term, with final cleanup being the long term goal;
2. Provide ready public access to information and meaningful opportunities for public involvement in the cleanup process;
3. Foster a culture of innovation, creativity, communication and technical expertise, focused on accelerating cleanups and meeting program goals; and
4. Carefully consider state and federal program guidance (and any updates) in conducting the RCRA Corrective Action Program.

#### **B. EPA Role.**

EPA will assist the State with all aspects of the cleanup program and support its efforts to conduct faster, focused and more flexible RCRA cleanups.

#### **X. Disclaimer**

This Agreement does not create any right or benefit, substantive or procedural, enforceable by law or equity, against the State or EPA, their officers or employees, or any other person. This Agreement does not apply to any person other than the State of Alaska and EPA.

STATE OF ALASKA  
DEPARTMENT OF ENVIRONMENTAL  
CONSERVATION

U.S. ENVIRONMENTAL PROTECTION  
AGENCY - REGION 10

BY: \_\_\_\_\_ BY: \_\_\_\_\_

DATE: \_\_\_\_\_ DATE: \_\_\_\_\_

**APPENDIX A**  
**BASE PERMITTING DOCUMENT FLOW**  
**BETWEEN EPA AND ALASKA DEC<sup>1</sup>**

Days are in Calendar Days unless otherwise specified

Item	Item Description	State Action <sup>2,5</sup>	EPA Action <sup>3,4</sup>
1	New and revised Part A application	Copy to the EPA within 15 days of receipt	Review and comment within 30 days of receipt or as negotiated, file
2	Part B Permit or renewal application	Copy to EPA within 30 days of receipt of complete application	Review and comment within 30 days of receipt or as negotiated, file
3	Negotiate permitting issues	DEC and the EPA coordinate and negotiate permitting issues within 60 days of receipt of EPA comments	DEC and the EPA coordinate and negotiate permitting issues within 60 days of receipt of EPA comments
4	Draft Permit for public comment with statement of basis, factsheet, and public notice	Send to the EPA when completed and 21 days prior to public notice	Review, comment if warranted within 14 days of receipt or as negotiated prior to public comment period, file if no comment, required communication back to DEC within 10 business days
5	Final permit/modification with comment response; statement of basis or fact sheet; any technical justification relating to permit	Copy to the EPA	Review, file
6	Class 1 permit modification request (Minor changes to permit that do not require EPA review)	Copy to the EPA within 7 days of receipt, may request EPA review if DEC has questions	Review, file
7	Class 2 permit modification request <sup>6</sup>	Copy to the EPA within 15 days of receipt	Review and comment within 30 days of receipt or as negotiated, file
8	Class 3 permit modification request <sup>6</sup>	Copy to the EPA within 15 days of receipt	Review and comment within 30 days of receipt or as negotiated, file
9	Temporary authorization	Copy to the EPA	Review, file
10	Emergency permits	Copy to the EPA	File, review upon request
11	Closure acceptance letter	Copy to the EPA	File

Item	Item Description	State Action <sup>2,5</sup>	EPA Action <sup>3,4</sup>
12	Permit Decision Termination/Denial	Copy to the EPA	Review, file
13	All Public Notices	Provide draft to EPA 14 days prior to public notice issuance, provide link to Online Public Notices posting	Review, file
14	Other documents at State's request <sup>5</sup>	Per State schedule	Assist State to maximum extent possible

1 Table applies to all permits and permitted facilities subject to Alaska's authorized hazardous waste program.

2 If DEC knows or suspects a controversy or potential precedent-setting issue(s) associated with a permit or other document, DEC will inform the EPA as soon as possible. DEC and the EPA may consult to inform the EPA's decision regarding whether to conduct a review.

3 DEC may request an EPA review, or the EPA may choose to conduct a review. The EPA may comment on any document it reviews and will provide DEC with these comments within 30 days from receipt by the EPA office, or as otherwise negotiated. Generally, the EPA will make the decision to comment during quarterly meetings or as negotiated, but may amend its decision based on new information, cursory review of a document, or other circumstance. Should the EPA conduct a review, DEC will copy subsequent submittals and correspondence relating to the document (e.g., NODs, *revised* part B, *revised* permit) to the EPA. Default EPA review time for documents is 30 days from receipt by the EPA office, or as otherwise negotiated.

4 To manage both the EPA and DEC expectations, a courtesy call or email will be exchanged should one party agree to provide information/comments and then miss the timeline or negotiated date established. This practice will allow both agencies to move forward with their necessary activities after confirming no response.

5 DEC need not send the EPA documents not identified on this workflow table, unless specifically requested by the EPA or unless DEC requests an EPA review.

6 40 CFR 270.42 requires the permittee to notify the public 7 days before or after the date of the submission of a modification request. For both Class 2 and 3 modifications, that notification starts a 60-day public comment period. EPA would like to provide its comments prior to the start of a public comment period. Therefore, DEC will ask for drafts of Class 2 and 3 modifications and ensure they meet DEC's information requirements before providing them to EPA for their 30-day review. DEC and EPA realize that a permittee is not required to provide a draft of a permit modification, but all efforts will be made by DEC to receive one.

To save resources, including time and money, both agencies encourage electronic transfer of documents.

**APPENDIX B**  
**CORRECTIVE ACTION DOCUMENT FLOW**  
**BETWEEN EPA AND ALASKA DEC<sup>1</sup>**

Days are in Calendar Days

Item	Item Description	State Action <sup>2</sup>	EPA Action <sup>3,4</sup>
1	If required in a new RCRA permit, a draft RCRA Facility Assessment (RFA) <sup>5</sup> report will be generated by the State or by the applicant	Send to the EPA in draft form	Review and comment within 30 days of receipt or inform State that EPA will not review
2	Final RFA Reports sent to facilities	Copy to the EPA	Review if needed, file
3	Final Environmental indicator evaluation forms/National Corrective Action Prioritization System (NCAPS) worksheets	Send to the EPA	Review, post to website, file.
4	Draft Corrective Action orders	Send to the EPA in draft final form 30 days prior to issuance/public notice	Review and comment within 30 days of receipt or as negotiated, file
5	Final Corrective Action orders, revisions	Copy to the EPA	Review, file
6	Remedy Selection documents, including Statement of Basis, permit modification, or order	Copy to the EPA	Review and comment, file
7	Corrective Action Completion determinations/No Further Action determinations	Copy to the EPA	Review, file.
8	All public notices	Provide draft to EPA 14 days prior to public notice issuance, provide link to Online Public Notices posting	Review, file
9	Other, at DEC request <sup>6</sup>	Per State schedule	Assist State to maximum extent possible.

<sup>1</sup> Table applies to all corrective action facilities subject to the authorized hazardous waste program in Alaska.



2 If DEC knows or suspects a controversy or potential precedent-setting issue(s) related to an action or document, DEC will inform the EPA as soon as possible. DEC and the EPA may consult to inform EPA's decision regarding whether to conduct a review.

3 DEC may request an EPA review or EPA may choose to conduct a review. The EPA may comment on any document reviewed and will inform DEC as soon as possible EPA will provide comments. Generally, the EPA will make the decision to comment during quarterly meetings, but may amend its decision based on new information, cursory review of a document, or other circumstance. Should EPA conduct a review, DEC will copy subsequent submittals and correspondence relating to the document (e.g., revised EI, revised Order) to the EPA.

4 DEC and the EPA may negotiate timing during the quarterly meetings with updates as necessary. Default EPA review time for documents is 30 days from the date of receipt by the EPA office.

5 A RCRA Facility Assessment may be completed by DEC through preliminary assessment under 18 AAC 75 or 18 AAC 78.

6 DEC does not need to send the EPA documents not identified on this table, unless specifically requested by the EPA or unless DEC requests the EPA review.

To save resources, including time and money, both agencies encourage electronic transfer of documents.

**APPENDIX C**  
**ENFORCEMENT AND COMPLIANCE DOCUMENT FLOW**  
**BETWEEN EPA AND ALASKA DEC**  
Days are in Calendar Days

Item	Item Description	State Action	EPA Action
1	List of TSDs to be inspected will be provided to EPA each year	Selected facilities are included in grant workplan	Review list and notify State of TSD inspections the EPA will lead or accompany, if any
2	Request for EPA Identification Number sent to EPA	Provide EPA ID Number to requester and EPA	Send original request received by EPA to the State within 10 working days
3	Notice of Intent (NOI) to receive hazardous waste from a foreign source pursuant to 40 CFR 265.12	Send copy of NOI to the EPA within 5 days of receipt	Region review and take action as necessary
4	Notification of State that EPA will take enforcement action	Receive notification	Notification 15 days prior to issuing 3008(a) in writing; and make available to State, to the extent provided under applicable statutes or regulations, reports and data resulting from compliance inspections at facilities under the State's jurisdiction within 30 days of completion of final inspection report.
5	Notification of EPA of any determination that a <u>CERCLA off-site facility</u> is a Significant Noncomplier (SNC) or may be posing significant threat to public health, welfare or the environment or otherwise affect the satisfactory operation of the facility.	State notifies EPA within 5 days of determination	EPA reviews per off-site rule, consults with State, and takes appropriate action.

Item	Item Description	State Action	EPA Action
6	For all TSDFs receiving CERCLA off-site waste, Inspection Reports, NOV's, Orders, Civil and or Criminal actions and corrective action requirements when significant RCRA violations occur and DEC initiates a formal enforcement response.	State will send to the EPA within 15 days of issuance	EPA reviews per off-site rule, consults with State, and takes appropriate action.
7	Delisting Petitions, draft and final delisting decisions, where State is authorized for delisting	Petitions – send copies to the EPA within 15 days of receipt. Send draft to decisions to the EPA 30 days before public notice. Send final decision to the EPA 15 days before mailing to applicant	EPA review and provide comments to State within 30 days of receipt of draft decision.
8	Waiver of Variance requests and response/approval	Send a copy to the EPA Region 10 within 5 days of receipt	Review and respond to the State within 5 days or as negotiated
9	Citizen concerns referred to State by EPA	State investigates	EPA refer to State.

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