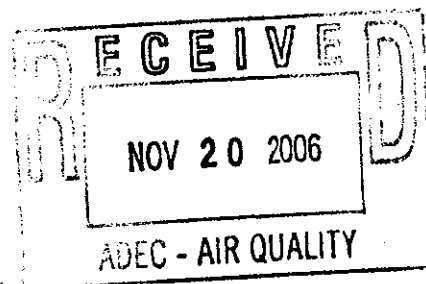




UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

Reply To
Attn of: OCE-127

OCT 10 2006



MEMORANDUM

SUBJECT: Updated CAA Compliance Assurance Agreement - ADEC

FROM: Betty A. Wiese, Manager
Air/RCRA Compliance Unit

Betty Wiese

THRU: Michael A. Bussell, Director
Office of Compliance and Enforcement

Send E Downy, for

TO: Ronald A. Kreizenbeck
Acting Regional Administrator

Attached for your signature is an updated Compliance Assurance Agreement between EPA Region 10 and the ADEC air program. John Kuterbach and I agreed we wanted to update the agreement, last revised in June 2000, to incorporate a revised national Compliance Monitoring Strategy (CMS), new reporting requirements, as well as to clarify our roles in the asbestos NESHAPS program. The CAA agreements are all based on the overarching Region 10 Compliance Assurance Principles.

Once it is signed by Region 10, I will forward the document to ADEC who will then get the commissioner's signature.

Please call me at 3-0695 if you have any questions.

cc: John Pavitt, AOO

Attachments

**Alaska State Compliance Assurance
Agreement for Air Programs**

between

The Alaska Department of Environmental Conservation

and

The U. S. Environmental Protection Agency

September 2006

TABLE of CONTENTS

I.	STATEMENT OF PURPOSE.....	1
II.	GUIDING PRINCIPLES	1
III.	APPLICABILITY	2
IV.	STATEMENT OF AUTHORITY	2
V.	ROLES AND RESPONSIBILITIES.....	2
A.	State Role	3
B.	EPA Role	3
C.	Role in Indian Country	3
D.	Role at Federal Facilities.....	4
VI.	LIMITATIONS ON RIGHTS	4
VII.	COLLABORATIVE PLANNING PROCESS	4
VIII.	INSPECTIONS	5
A.	Types of Inspections	5
1.	Independent Inspections:	5
2.	Joint Inspections:	5
3.	Compliance Inspections:.....	5
4.	Oversight Inspections:	6
5.	Training Inspections:	6
6.	Special Initiative Inspections:.....	6
B.	Compliance Monitoring Plans (previously Inspection Plans and Commitments).....	6
C.	Full Compliance Evaluations.....	7
1.	On-Site Visits	7
2.	Scope of Full Compliance Evaluations	8
3.	Asbestos NESHAPS 40 CFR Part 61	8
D.	Joint Inspection Requirements.....	9
E.	Inspections in Non-Delegated Programs.....	10
F.	Inspection Planning and Schedule.....	11

IX.	CONFLICT RESOLUTION	12
X.	OVERFILE PROCEDURES.....	12
XI.	TRAINING.....	12
XII.	UPDATING THE COMPLIANCE ASSURANCE AGREEMENT	13
XIII.	COMPLIANCE ASSISTANCE	13
XIV.	ENFORCEMENT RESPONSE	13
A.	High Priority Violations.....	14
B.	Penalties.....	14
XV.	RECORD KEEPING AND REPORTING	15
A.	HPV Communications.....	16
B.	Record Keeping and Reporting of NESHAP (Part 63) and NSPS (Part 60) Sources.....	18
C.	Compliance Evaluation Reports.....	18
D.	AFS Reports.....	19
XVI.	PERFORMANCE EVALUATION PROCESS	20
A.	Evaluation Process.....	20
B.	Evaluation Criteria.....	20
XVII.	PUBLIC INFORMATION	20
	APPENDIX A.....	21
	APPENDIX B.....	22
	APPENDIX C.....	23
	APPENDIX D.....	24
	APPENDIX E.....	25

Compliance Assurance Agreement

I. Statement of Purpose

The purpose of this Agreement is to define the roles and responsibilities of the U.S. Environmental Protection Agency Region 10 (EPA or EPA Region 10) and the Alaska Department of Environmental Conservation (ADEC), with respect to ensuring compliance of stationary sources with the Alaska State Implementation Plan (SIP) and federal air quality requirements.

This Agreement:

- To define the roles and responsibilities of EPA and ADEC in ensuring stationary source compliance with the Alaska SIP and federal air quality requirements and, in particular, to describe federal and State expectations with respect to implementation of delegated programs and to describe how and under what circumstances EPA's oversight authority will be exercised independent of the State agency. The term delegated program, as it applies to State Air Programs, refers to programs that EPA has either delegated or approved (as those terms are used in the Clean Air Act), whichever is appropriate.
- To describe the enforcement and compliance roles each party will take to ensure that High Priority Violations (HPVs) are addressed in accordance with State and federal laws and EPA's *Timely and Appropriate Response to High Priority Violations* (See Appendix B).
- To describe communication procedures that the parties will use regarding: identification of HPVs, and actions taken or pending to resolve HPV issues; feedback from EPA on oversight inspections; EPA's implementation of national, regional, or sector initiatives; and conflicts that may arise between the parties.
- To describe a process for EPA to inform ADEC of applicable new or amended national guidance and policies.

II. Guiding Principles

The following principles are to be used in implementing this Agreement and to emphasize a partnership approach to enforcement and compliance:

- Collaborative planning and coordinated strategies will be based on clear communication of expectations. This includes the concept of "no surprises" concerning enforcement activities, reporting requirements, and inspection results. EPA will collaborate with ADEC in setting national, regional, and sector initiatives and in the planning for appropriate roles and responsibilities.

- EPA and ADEC will discuss performance under this Agreement annually. The overall effectiveness of each agency's compliance/enforcement program will be addressed in the Performance Partnership Agreement.
- Accurate reporting of information is essential. Both agencies share responsibility for verifying data quality and exchanging information.

These principles are more fully described in the document *EPA/State Agency Agreement on Compliance Assurance Principles*, dated May 1997 (See Appendix B).

III. Applicability

This Agreement applies to the Alaska Department of Environmental Conservation (ADEC) and the Office of Compliance and Enforcement, EPA Region 10 (previously Office of Air Quality). The primary focus of this Agreement is to outline the procedures used to ensure compliance with federal and State air quality laws for sources that are subject to EPA's HPV Policy (i.e.: Title V major sources and all synthetic minor sources), and EPA's policy on "*Clean Air Act Stationary Source Compliance Monitoring Strategy (CMS), April 25, 2001*" (i.e.: Title V major sources and synthetic minor sources that emit or have the potential to emit at or greater than 80 percent of the Title V major source threshold) (Appendix F). This Agreement supersedes all previous Air Quality Program compliance assurance agreements.

IV. Statement of Authority

As provided by State law, ADEC is authorized to regulate air quality in the State of Alaska. ADEC has the primary responsibility for enforcement of Alaska environmental regulations, and all delegated portions of the federal Clean Air Act. To obtain delegation of a program under the Clean Air Act, a State must demonstrate to EPA that it has the ability to administer and enforce the specific program. Delegation by EPA to the State of Alaska gives the State primacy over administering and enforcing the specific delegated program. The portions of the federal Clean Air Act that Alaska is authorized to implement are listed in Appendix E. The State of Alaska also has primacy for administering and enforcing its SIP found at 40 CFR 52.70-96. All parties acknowledge EPA's authority under the federal Clean Air Act for ensuring compliance with, and enforcement of, federal requirements. EPA's authority to enforce Alaska's SIP and federal laws is contained in Section 113 of the Clean Air Act, 42 U.S.C. 7413.

V. Roles and Responsibilities

To have an effective State/federal partnership, the following roles, as described below and as further described in *State/EPA Agreement on Compliance Assurance Principles* (Appendix B) -- have been agreed upon:

A. State Role

In delegated programs, the State role is that of primary enforcer or “front line” agency in program implementation. This includes helping to define EPA’s role in the regulated community for a given program.

B. EPA Role

The State has the primary responsibility for enforcing laws and regulations associated with delegated programs in Alaska. Nonetheless, there are occasional situations when EPA will be the lead agency as set forth in this agreement and its appendices. All EPA selections for lead inspections will be discussed and negotiated during the annual collaborative planning meeting. EPA will give due consideration to ADEC input, but retains the right to make final selections. If a conflict arises over the selection, EPA and ADEC will resolve the conflict according to the procedures in Section IX of this agreement. EPA also agrees to inform and consult with ADEC in advance on any enforcement action it plans to take with regard to such EPA lead facilities.

EPA will initiate an enforcement action as appropriate under the following circumstances:

- At ADEC’s request.
- If ADEC’s enforcement action is determined to be inadequate or inappropriate based on ADEC’s enforcement regulations and policies or EPA’s enforcement guidance and policy in effect at the time of this agreement. The parties will adhere to the “no surprises” principle and, if conflicts arise, will follow the conflict resolution section of this agreement.
- In inspections where EPA has the lead as agreed to during the annual collaborative planning process.

In non-delegated programs, EPA is the lead on compliance and enforcement issues. EPA will strive to keep ADEC informed of its activities in those programs, and to follow the “no surprises” principle. If EPA inspects a facility to determine compliance with a non-delegated program requirement, and the facility is one that ADEC regularly inspects for delegated program purposes, EPA will notify ADEC before EPA takes an enforcement action.

C. Role in Indian Country

Environmental issues in Indian Country are addressed in accordance with Indian treaties, the U.S. Constitution, case law, statutes, executive orders, and historical relations between the United States and Indian tribes. EPA and tribal governments are usually the only regulators on reservations. To date, EPA has not delegated any of the Clean Air Act programs to Indian tribes within the State of Alaska.

D. Role at Federal Facilities

For enforcement cases commencing after the effective date of this agreement, ADEC will take a lead role in dealing with federal facilities. EPA is prepared to take a lead role in dealing with federal facilities. EPA and ADEC agree to consult on individual federal facility enforcement cases in order to determine whether an EPA lead is in the best interest of the air compliance program in Alaska. Upon request of ADEC, EPA will take a lead role on individual federal facility enforcement cases. ADEC agrees to identify areas where a stronger federal enforcement presence is needed at federal facilities.

VI. Limitations on Rights

This Agreement creates no defenses or third party rights. This Agreement is not intended to, does not, and may not be relied upon to create a right or benefit, substantial or procedural, enforceable at law by any person or by the parties to this Agreement. This Agreement creates no limitations under federal or State law on ADEC or EPA.

VII. Collaborative Planning Process

Each year, managers from EPA and ADEC will meet or conduct a conference call to define workload needs and enforcement priorities for the upcoming year. That process and the agencies' commitments are described in *EPA/State Agency Agreement on Compliance Assurance Principles* (see Appendix B) and as follows:

- 1) EPA Region 10 will communicate with and seek input from ADEC on national, regional, and sector initiatives at the beginning of its Memorandum of Agreement (MOA) process with EPA headquarters (see time line for developing EPA Region 10/EPA headquarters MOA found in Appendix A).
- 2) After receipt and consideration of any State comments, EPA Region 10 will submit a draft MOA to EPA headquarters.
- 3) In August/September, EPA will contact, and conduct an annual planning meeting with, managers from ADEC. The purposes of the meeting will be to:
 - Discuss, identify, and finalize agency roles in implementing upcoming national, regional, and sector initiatives for that year, including discussing State proposals for EPA's role in the priority target areas identified by EPA.
 - Discuss State agency training plans for the upcoming year based on the previous year's program performance and other training needs.
 - Discuss State enforcement and compliance priorities.
 - Develop and finalize the upcoming year's inspection schedule.
 - Review the performance of EPA and ADEC compliance/enforcement programs as set forth in Section XVI of this Agreement.

- 4) EPA will finalize and distribute the results of the collaborative meeting within 30 days of the meeting.

VIII. Inspections

Inspections are a primary tool in a compliance assurance program, serving important functions such as assessing facility compliance with air quality requirements, gathering evidence for case development and legal actions, providing technical assistance to regulated facilities, and maintaining communications among and between agencies and facility representatives.

Inspections also serve as opportunities for:

- Gathering data for area/industry-wide assessments of the adequacy of controls
- Promoting voluntary compliance through information and technology transfer
- Establishing a federal enforcement presence to promote compliance
- Supporting the permit issuance process
- Training EPA and State inspectors

A. Types of Inspections

1. Independent Inspections:

Independent compliance inspections by ADEC comprise the bulk of air quality inspections in the delegated portions of Alaska's program. EPA also conducts independent compliance inspections, without a State inspector, at facilities within the State of Alaska, in accordance with Section VII of this Agreement. Independent inspections by EPA typically occur in non-delegated programs and in Indian Country. Independent inspections by EPA could also occur in delegated programs as part of EPA's general oversight role or as a result of a special initiative. In delegated program, EPA will provide advance notice to the state for the purpose of allowing a state inspector to attend the independent inspection by EPA. Prior to initiating enforcement in a delegated program as a result of the independent inspection, EPA will notify the state. For independent inspections in non-delegated programs and Indian Country, EPA will provide notice to ADEC as provided for in Section V. B. of this Agreement.

2. Joint Inspections:

These are inspections conducted jointly by EPA and ADEC for the purpose of compliance determination, oversight, training, or special initiatives. Details of joint inspections will be worked out among the inspectors.

3. Compliance Inspections:

A compliance inspection is a joint inspection during which a team of EPA and ADEC inspectors visit a source to determine a source's compliance with federal and/or State air

quality laws, regulations, orders of approval, Air Operating Permits, or Permits to Construct.

4. Oversight Inspections:

An oversight inspection is a joint inspection in which an EPA inspector accompanies and evaluates the State inspector. Oversight inspections are performed according to the EPA/State Agreement on Compliance Assurance Principles (Appendix B). The principal reasons that EPA conducts oversight inspections are:

- a. To carry out portions of EPA's responsibility for oversight of the quality and effectiveness of the State program, by evaluating the procedural and technical aspects of the State agency's inspection, which includes evaluating facility compliance with federally enforceable air quality requirements.
- b. To increase the level of proficiency of EPA and State inspectors through constructive feedback and to identify needs and opportunities for strengthening both agencies' capability in conducting compliance monitoring activities.
- c. To strengthen EPA/State working relationships.

5. Training Inspections:

Joint inspections may be used as a training mechanism for staff or to familiarize staff with a particular source or source category. Training inspections are not considered oversight inspections.

6. Special Initiative Inspections:

EPA may conduct independent inspections or participate in joint inspections for purposes of national, regional, or sector initiatives. In some cases EPA will lead such an inspection. However, EPA-lead special initiative inspections are not considered oversight inspections. EPA will provide notice to ADEC of its intent to conduct a special initiative inspection according to the collaborative planning process outlined in Section VII of this Agreement. If any special initiatives arise outside of the collaborative planning process, EPA will confer with ADEC as outlined in Section VII.3 to describe the roles and reconcile any adjustments in the existing inspection plan caused by the new initiative.

B. Compliance Monitoring Plans (previously Inspection Plans and Commitments)

The State agrees to submit a biennial Compliance Monitoring Plan in accordance with the "*Clean Air Act Stationary Source Compliance Monitoring Strategy, April 25, 2001*" for discussion with and approval by EPA. The plan will include the following elements:

- A facility-specific list (including the AFS identification numbers) of all Title V major sources. The list should identify by federal fiscal year those facilities for which a Full Compliance Evaluation will be conducted. It should also identify those for which an on-site visit will be conducted.

- A facility-specific list (including the AFS identification numbers) of all at or greater than 80 percent synthetic minor sources. The list should identify by federal fiscal year those facilities for which a Full Compliance Evaluation will be conducted.
- A plan to assure the data submitted and maintained in AFS is complete and accurate.

If at the end of the first federal fiscal year, the State anticipates or knows that they will be unable to meet their two year commitments by the end of the second year, they should notify the Region and revise their CMS plan accordingly.

The State may develop with EPA approval alternatives to the recommended evaluation frequencies. Alternatives may be developed on a facility-by-facility basis, or for an entire source category. However, in determining whether an alternative frequency is appropriate, the following factors should be considered:

- Compliance history.
- Location of facility.
- Potential environmental impact.
- Operational practices (e.g.: whether operation is steady state or seasonal).
- Use of control equipment.
- Participation in Agency-sponsored voluntary programs (e.g.: Project XL).
- Identified deficiencies in the overall State compliance monitoring program.

C. Full Compliance Evaluations

A Full Compliance Evaluation (FCE) may include onsite and/or offsite compliance assessments of a facility's emission units, records, and self-monitoring reports to determine compliance status.

1. On-Site Visits

In most cases, an on-site visit is necessary to complete an FCE. The on-site visit should include a review of records and log books on source operations, observations of the facility in operation including control equipment and performance parameters (e.g.: water flow rates, water pressure, static pressure drop, and control equipment power levels), visible emission observations, and an evaluation of compliance with permit conditions. Daily logbooks and continuous emission/parameter monitoring recording data sheets should be spot-checked for any apparent aberrations.

Not all the emission units require observation to qualify as an on-site visit. It depends on the size and type of facility. For smaller facilities with a few/some emission units, all the units should be observed during the on-site visit. For large facilities with many similar or identical emission

units, a number of the units may be observed and coupled with other information (e.g.: Environmental Management System reports), an FCE may still be determined for the facility.

2. Scope of Full Compliance Evaluations

Generally, records at the regulatory agency and records maintained at the facility should be reviewed from the time of the last inspection or last full compliance evaluation. Records include CEM and continuous parameter monitoring reports, malfunction reports, excess emission reports, deviation reports, operation logbooks, inspection reports, compliance and enforcement documents, and correspondence.

3. Asbestos NESHAPS 40 CFR Part 61

ADEC implements the NESHAPS regulations of 40 CFR Part 61 related to asbestos abatement, renovation, and demolition at major sources through the Title V permits. For sources not subject to ADEC Title V permit requirements, EPA has primary implementation and enforcement responsibility.

10-day notifications: A permittee conducting asbestos activities at a Title V major source operating under a Title V permit is required to submit NESHAPS notifications to both ADEC and EPA. ADEC will evaluate compliance with NESHAPS notification requirements as part of ADEC's full compliance evaluations at Title V major sources.

Complaint response/inspections: ADEC will take the lead to investigate complaints regarding asbestos activities covered by Title V. As needed, ADEC will request EPA assistance for on-site inspections that involve specialized asbestos inspection capabilities.

EPA will focus its routine inspections on sources not covered by Title V permits. When EPA identifies an interest in asbestos activity at a Title V major source operating under a Title V permit, EPA will communicate and coordinate with ADEC.

EPA will provide technical assistance for on-site asbestos inspections that require specialized inspection capabilities.

Respective agency contacts:

➤ For EPA, Region 10:

Asbestos Program Manager
Office of Compliance and Enforcement
Seattle, Washington.

EPA Air Coordinator
Alaska Operations Office
Anchorage, Alaska

- For ADEC:
Air Permits Program Title V Manager
Juneau, Alaska

D. Joint Inspection Requirements

All joint inspections will be subject to the following requirements:

- The AFS database is to be updated at least monthly according to Section XV, and used by both agencies to help generate the annual inspection schedule according to Section VII.
- Specific arrangements between the State and federal inspectors will be agreed upon prior to inspection. Whenever a change in the scheduling of an inspection is anticipated, the appropriate agency will be notified by the agency requesting the change. Final arrangements will generally be made no later than two weeks prior to the scheduled inspection. Each inspection will include a pre-planning and scoping discussion between/among the participating inspectors.
- Joint oversight inspections, i.e.: those with an EPA evaluation of a State inspector, will also be subject to the following provisions:
 - EPA's goal is to conduct at least one oversight inspection each federal fiscal year with each State Air Program inspector.
 - Oversight inspections will be conducted by experienced, knowledgeable EPA inspectors who will review files, plans, and permits, and adequately familiarize themselves with the facility prior to conducting the oversight inspection. The State inspector will be the lead during an oversight inspection. Oversight evaluation and feedback discussions will occur after the inspection is completed and the inspectors have left the facility. Written evaluation and feedback will be provided according to the information in the next three bullets.
 - Within 30 days after an oversight inspection, the State inspector will transmit a copy of his or her inspection report to the EPA inspector, unless both parties agree upon a different time frame. For inspections involving laboratory reports, a follow-up report containing the laboratory results will be provided when the results are available.
 - Within 60 days after an oversight inspection or 30 days after EPA receives the State inspector's report, whichever is later, EPA will transmit a copy of the EPA inspector's evaluation and inspection report to the State agency, unless a different time frame is agreed upon by both parties. EPA's reports will be sent to the inspector's immediate supervisor.
 - Either party may transmit preliminary findings in lieu of a final report if additional information is needed in order to complete that party's compliance determination. A final

report will be submitted within a reasonable time frame after the additional information is received.

- Inspection reports and findings shall be transmitted for oversight inspections even where no violations are detected, no additional information is needed, and no further action is deemed necessary.
- EPA's written evaluation of an oversight inspection will include, but is not limited to, the following information:
 - 1) An evaluation report discussing the adequacy of the State inspection, using Level 2 inspection criteria and other factors as appropriate to evaluate strengths or weaknesses of the inspection procedures. For areas of weakness, the report may suggest ideas for altering inspection procedures or ideas for training opportunities.
 - 2) An inspection report containing a factual account of the inspection and EPA's compliance analysis or preliminary findings.
- Information from the oversight evaluation reports will be used to develop training plans during the collaborative planning process described in Section VII.

When appropriate, EPA will provide guidance, either programmatically or on a case-by-case basis, to assist ADEC with its compliance inspection programs.

E. Inspections in Non-Delegated Programs

For inspections in all non-delegated programs, EPA will provide reasonable advance notice to ADEC as provided for in Section V. B. of this Agreement.

F. Inspection Planning and Schedule

EPA:

Planning Meeting:

In August/September of each year, EPA will submit to ADEC a proposed inspection schedule for the upcoming federal fiscal year. The schedule will identify sources where EPA wants to conduct oversight inspections, proposes to take the lead role in inspecting, or intends to conduct an independent inspection. The schedule will disclose the criteria for selecting the oversight inspections and the purposes for other inspections

Coordination:

EPA will work directly with ADEC to coordinate inspection planning and scheduling.

Feedback:

EPA will provide written feedback to ADEC according to this Section. EPA will also provide inspection reports for EPA inspections.

Training:

EPA will assist with providing training, per Section XI, below, to help achieve the goal of having all inspectors qualified to conduct Level 2 inspections.

ADEC:

By the end of September of each year, ADEC will submit to EPA a proposed inspection schedule for the upcoming federal fiscal year. ADEC will meet with EPA to discuss and agree on a final inspection schedule. EPA recognizes that this schedule will be subject to reasonable change. Any disputes or disagreements regarding the proposed inspection list not resolved during this meeting will be addressed in accordance with the conflict resolution provision in this Agreement.

ADEC will provide a staff contact to participate in inspection planning and scheduling.

ADEC will provide inspection reports to EPA according to this Section and take appropriate action in response to EPA evaluative feedback. It is agreed that, upon request by EPA, the State will keep EPA inspection reports confidential within the constraints of Alaska public records laws.

ADEC will provide training to help achieve the goal of having all inspectors qualified to conduct at a minimum a Level 2 inspection, per Section XI, below.

IX. Conflict Resolution

EPA and ADEC recognize that disputes may occur. Both agencies will attempt to resolve these disputes promptly and at the lowest level. If disputes cannot be resolved within 10 business days, they will be referred to the next level of management. This management referral and resolution process will continue, if necessary, to the level of EPA Regional Administrator and ADEC Commissioner. Either EPA or ADEC, at the request of the other agency, will provide a written record of its specific position on the issue and the reasons for that position. If the issue involves a potential overfile action, the written record will be provided to the Commissioner or Administrator as appropriate prior to the initiation of any enforcement action. If the EPA Regional Administrator and the ADEC Commissioner are ultimately unable to reach resolution of the issue in dispute, they agree to subsequently examine the differences that led to the conflict with the objective of seeking possible revisions in this Agreement, in accordance with Section XII, which could preclude future such conflicts.

X. Overfile Procedures

Before carrying out an overfile of a pre-existing State enforcement action, it is expected that EPA and ADEC will discuss the matter. In any case, EPA will notify ADEC in writing of the EPA decision to overfile. EPA may decide to overfile if ADEC seeks penalties inconsistent with ADEC's penalty practices or if EPA believes the penalties are insufficient to provide an adequate deterrence for future violations. In general, The EPA threshold for penalties that provide sufficient deterrence are those that recover the economic benefits of noncompliance plus some appreciable portion reflecting the gravity of the violation. Criteria for direct federal enforcement in delegated or authorized States is found in the July 20, 1993, EPA Memo entitled *Oversight of State and Local Penalty Assessments: Revisions to the Policy Framework for State/EPA Enforcement Agreements*. EPA will give due consideration to ADEC's own penalty policies and the effectiveness of its overall enforcement program in achieving deterrence in making an overfile decision. In addition, EPA recognizes that ADEC may request EPA to overfile or become involved in an enforcement action, and EPA will provide such support as appropriate, and consistent with its existing resources, authorities, policies, and enforcement objectives.

XI. Training

The goal of EPA and ADEC is to have all inspectors qualified to conduct at a minimum Level 2 inspections in accordance with EPA's *Clean Air Act-Compliance/Enforcement Guidance Manual* 1987 revision and the Revised Compliance Monitoring Strategy (See Appendix B). ADEC agrees to provide training regarding State regulatory requirements. EPA commits to assist in providing adequate training to ADEC regarding enforcing federal New Source Performance Standard (NSPS) and National Emission Standard for Hazardous Air Pollutants (NESHAP) requirements. If EPA is the sole source training provider, EPA will commit training resources to support provision of the training. To achieve these training goals, EPA and ADEC will jointly identify training priorities on an annual basis as part of the Collaborative Planning Process outlined in Section VII of this Agreement, including considering training needs identified during oversight inspection activities and training that may be necessary for all State inspectors to be able to

able to conduct at a minimum a Level 2 inspection. The agencies will then jointly prepare an annual training plan designed to meet the identified training, and which reflects budget considerations.

EPA and ADEC agree to inform, and provide training to, their respective staffs regarding this Compliance Assurance Agreement.

XII. Updating the Compliance Assurance Agreement

The terms of this Agreement remain in effect until a new agreement is reached. The Agreement may be revised upon notification by either party to the other of the desire to revise the Agreement and the basis for the request, and after the parties agree upon any such revisions to the Agreement.

The current applicable EPA national guidance and policies referenced in this Agreement are listed in Appendix B. ADEC will commit to use all federal guidance or policies referenced in regulation. Non-binding guidance will be considered and used within the discretion of ADEC, the best interest of the State and the best interest of a healthy EPA/ADEC partnership for air quality compliance. ADEC understands state program performance may be evaluated by these policies whether or not they are adopted by ADEC. When new or revised guidance or policies are being developed or are issued, EPA Region 10 Office of Air Quality will ensure that ADEC is kept informed, especially about how new policies convey program performance expectations. If there are disagreements about the applicability or interpretation of guidance and policies, the parties agree to follow the conflict resolution process contained in this Agreement. New guidance or policies issued after the effective date of this agreement may be incorporated into this Agreement with the consent of both parties without changing the body of the Agreement.

XIII. Compliance Assistance

Both agencies recognize that compliance assistance is a valuable tool for reaching and maintaining compliance. The agencies also agree that compliance assistance activities will be taken into account when measuring overall program performance. The document *Pacific Northwest States and EPA Region 10 Compliance Assistance Strategy* describes the rationale for, benefits, and methods of implementation of compliance assistance. In some instances, compliance assistance may be the selected tool for reaching and maintaining compliance. When this selection conflicts with EPA's "Timely and Appropriate Policy" or the Revised Compliance Monitoring Strategy, the conflict resolution process in this Agreement will be used to resolve the issue.

XIV. Enforcement Response

ADEC will follow the terms of this Agreement, and the provisions of its Enforcement Manual, which describes enforcement response tools available to the Agency. These tools will be utilized in meeting the commitment to timely and appropriate enforcement response.

EPA's enforcement responsibilities under the Clean Air Act which are defined in EPA's policy entitled, *Timely and Appropriate Enforcement Response to High Priority Violations*, dated December 22, 1998, require EPA to track State actions on significant violators.

In order for cases to be considered handled in a timely manner, HPV sources must be addressed or resolved within 315 days of first receiving information concerning a federally enforceable violation (e.g.: date of inspection, stack test, or continuous emission monitoring system report). (See HPV Policy in Appendix B for applicable definitions.) In delegated programs, if the State has not taken action within that time, does not have agreement with EPA on a strategy for resolution, or has not made a convincing argument as to why EPA action is inappropriate, EPA may proceed with an enforcement action against an HPV after first providing the State with notification of the proposed action. EPA shall communicate its intent to take enforcement action to the State orally and in writing, and allow an opportunity for discussion prior to initiating an enforcement action against an HPV in a delegated program.

A. High Priority Violations

Sources having High Priority Violations are subject to the following time lines:

Day Zero: This establishes a starting point for tracking the process. Day Zero begins no later than 45 days after the discovering agency first receives information concerning a federally enforceable violation (e.g.: the date of inspection, stack test, or continuous emission monitoring system report). If further information is needed, Day Zero starts when the information is received, but no later than 90 days after the violation was initially discovered. Day Zero is the date that a violation is confirmed by the discovering agency.

Day 60: State issues notification of violation to the source.

Day 150: EPA and ADEC discuss case status and expectations; possible EPA action if timely and appropriate guidance will not be met.

Day 270: Violation must be resolved or addressed. (See Appendix B for the definition of an HPV, excerpted from EPA's *Policy on Timely and Appropriate Enforcement Response to High Priority Violations*, December 22, 1998).

B. Penalties

ADEC agrees to seek penalties consistent with State Law. ADEC agrees to seek penalties to recover economic benefit and an appropriate gravity component. ADEC will seek penalties it considers reasonable in providing a compliance incentive. When seeking penalties, ADEC will consider EPA's penalty policies; however, ADEC's resolution of a particular violation may differ from the policies employed by EPA. Should EPA disagree with a particular penalty amount sought by ADEC, EPA agrees to notify ADEC of the disagreement, stating why the penalty is inappropriate and what penalty amount EPA believes to be sufficient to deter noncompliance. In calculating economic benefit, ADEC may use, but is not limited to using, EPA's BEN model. In determining how EPA will carry out its oversight role concerning penalties in delegated programs, EPA will follow the July 20, 1993, memo entitled *Oversight of State and Local*

Penalty Assessments: Revisions to the Policy Framework for State/EPA Enforcement Agreements.

EPA accepts supplemental environmental projects (SEPs) for reducing the gravity component of an assessed civil penalty. EPA will follow the *Final Supplemental Environmental Projects Policy* dated May 1, 1998, in evaluating appropriate SEPs. This policy describes the conditions under which a SEP can be used to mitigate the gravity component of a civil penalty. ADEC will accept SEPs based on similar considerations or its own policies.

XV. Record keeping and Reporting

ADEC commits to maintaining the Air Information and Retrieval System (AIRS) Facility Subsystem (AFS) as a complete and accurate inventory of the air contaminant emissions and the compliance status of all major and synthetic minor sources as defined by 40 CFR Part 70 (Title V). ADEC agrees to work with EPA in updating the facility classifications in AFS. The minimum data elements required to be reported to EPA are listed in Appendix D and are based on EPA's guidance, *Minimum Data Requirements (MDRs) for Stationary Source Compliance*, December 23, 1993. In addition, the following will be provided:

~~Note~~ Table is located on next page.

EPA:

ADEC:

Records/Files:

EPA will make available to ADEC copies of all compliance actions (e.g.: warning letters, notices of violation (NOVs), compliance orders, civil or criminal actions, follow-up actions, etc.) for Alaska facilities where EPA has the lead. Upon request, EPA will also share copies of draft compliance and enforcement documents with ADEC, subject to the understanding that these documents are enforcement confidential and can and will be withheld from disclosure.

Upon request, ADEC will provide to EPA copies of enforcement actions where ADEC has the lead. ADEC will maintain facility/permit files which contain documentation of inspections, results, any follow-up activities, and complete copies of source test reports. All active file reports will be available to EPA upon request. ADEC acknowledges that EPA draft documents involving such things as national enforcement initiatives may not be able to be shared with the State.

Additional Requests:

EPA may request either more specific or more frequent reporting for discrete time periods in response to Congressional or EPA management needs.

ADEC will make reasonable efforts to meet any additional requests.

Results/Reports:

EPA will share inspection results and other monitoring reports (e.g.: stack tests, CEMS) to the extent practicable.

ADEC will share inspection results and other monitoring reports (e.g.: stack tests, CEMS) to the extent practicable.

Mutual Support:

EPA personnel will support State enforcement proceedings if appropriate, and will follow procedures found in the federal Freedom of Information Act (FOIA).

State personnel are encouraged to provide evidence, including testimony, for federal proceedings.

It is also agreed that neither ADEC nor EPA waive their respective rights to withhold documents under the attorney-client privilege.

A. HPV Communications

ADEC and EPA agree that the main purpose of ongoing HPV communications is to encourage discussion on the status and handling of HPVs. It is ADEC's policy to formally track all major and synthetic minor sources, as defined by 40 CFR Part 70 (Title V), that violate one or more

federally enforceable requirements. In order to coordinate enforcement activities and tracking by EPA and ADEC, monthly HPV calls will be conducted as follows:

Preparation for Monthly HPV Calls:

EPA will conduct monthly conference calls and distribute an agenda and updated HPV List to ADEC at least ten days prior to the monthly call. The list will contain potential, current, addressed, and resolved significant violators.

ADEC agrees to provide written updates to the HPV List on the ongoing status of HPVs and will include written updates on potential HPVs to be discussed during the conference call. These updates will be sent at least one week prior to the scheduled call. ADEC agrees to provide a contact that is knowledgeable about the HPV which will be discussed during the conference call.

HPV List Content:

- To the extent that the information is available, the list shall contain the following on each source listed:
- The name of the source.
- The nature of the violation.
- The means by which the violation was identified.
- Which agency identified the violation.
- Day Zero, NOV, addressed and resolved dates
- the status of any enforcement actions

Purposes of HPV Calls:

EPA and ADEC will use the conference call as an opportunity to discuss:

- the compliance status of HPVs
- new HPVs to be confirmed or considered
- potential or current federal enforcement actions
- the status of State enforcement actions
- the status of national enforcement initiatives and their potential impacts on sources
- new developments in federal enforcement guidance or its interpretation

Other Responsibilities:

- EPA will provide updates of federal enforcement actions to ADEC.
- EPA will maintain HPV tracking status in AFS.

B. Record Keeping and Reporting of NESHAP (Part 63) and NSPS (Part 60) Sources

The following information pertains to all NESHAP standards promulgated under 40 CFR Part 63 that are either delegated to, or adopted by, ADEC. EPA needs, at a minimum, the following information to effectively oversee ADEC's implementation of the Part 63 NESHAP standards (or equivalent State standards) and enable EPA to effectively plan and implement its responsibilities for compliance assistance and enforcement.

Minimum information required under 40 CFR Part 63 NESHAP (i.e.: Maximum Available Control Technology (MACT) standards) pertaining to major and area (minor) sources, and reported per source category includes:

- Delegation status.
- Number of initial notifications received (i.e.: number of subject facilities).
- Number of compliance certifications received.
- Number of compliance extensions granted.
- Number of inspections (actual and projected).
- Number of sources not meeting emission requirements.

ADEC agrees to provide the above information to the Air Toxics Coordinator in EPA Region 10 by April 1st and October 1st of each year, either electronically or in a written report.

For major sources that are subject to MACT standards and/or NSPS, ADEC agrees to enter source-specific information directly into AIRS. For record keeping and reporting of source-specific information for area (minor) MACT and minor NSPS sources, EPA and ADEC agree to continue discussion of the specific reporting requirements under this section and to incorporate those requirements in subsequent revisions of the agreement. There are existing reporting requirements set out in specific delegation and approval documents for these programs which are hereby incorporated by reference. These documents are included in Appendix E of this agreement, and will be updated periodically.

C. Compliance Evaluation Reports

The State may format compliance evaluation reports as they deem appropriate; however, the following basic elements should be addressed in the reports:

- Facility information-facility name, location, mailing address, facility contact and phone number, Title V designation and mega-site designation.

- General information-date, compliance evaluation category (i.e., FCE, Partial Compliance Evaluation (PCE), Investigation), and official submitting the report.
- Inventory and description of regulated emission units and processes.
- Information on previous compliance evaluations.
- Compliance monitoring activities-processes and emission units evaluated; applicable requirements evaluated; on-site observations; whether compliance assistance was provided and if so, the nature of assistance; any action taken by the facility to come back into compliance during on-site visit.
- Findings and recommendations relayed to the facility as a result of the compliance evaluation.

In providing the above information, the State should reference or attach other relevant documents as appropriate to avoid duplication. For example, the relevant section of a Title V permit could be attached to the compliance evaluation report rather than rewriting all of the applicable requirements. Compliance evaluation reports will be made available to EPA upon request.

D. AFS Reports

The State will maintain AFS (AIRS Facility Subsystem (AFS)) as a complete and accurate inventory of compliance and enforcement activities for all major and synthetic minor classified stationary sources of air pollution covered by this agreement. The State will update AFS with current information by the second Friday of every even numbered month. The updates will include the information requested in the EPA's guidance "*Minimum Data Requirements (MDRs) for Clean Air Act Stationary Source Compliance*," as updated by the Office of Management and Budget (OMB) effective October 1, 2005. (Appendix D).

All agencies share responsibility for entering MDRs into the EPA data system and verifying data quality. EPA will notify the State of any changes to the MDRs as a result of updates to the Information Collection Requests (ICR) at least six months prior to their effective date. EPA plans to update MDRs through rulemaking. The State agrees to negotiate the schedule to implement newly adopted MDRs through the PPA process. Any deviation in MDR implementation will be addressed in the State's annual work plan.

EPA will enter HPV flags (e.g. Day 0, Day Addressed, Day Resolved, Lead Changes) and change their overall compliance status in AFS. In the event AFS is modernized through the various EPA HQ software/hardware projects, EPA may renegotiate these AFS reporting activities.

XVI. Performance Evaluation Process

A. Evaluation Process

In August or September of each year, managers from EPA and ADEC will meet to review each agency's performance of the commitments contained in this Agreement, using the principles contained in subsection B below.

Prior to meeting, each agency will prepare a concise written list of its most significant areas of achievement for the year and any area(s) where they plan to make improvements. These lists will be exchanged for purposes of review and for suggestions for changes or additions. Following this written exercise, there will be a facilitated discussion to clarify the information in the written materials and to develop action plans for the areas of improvement.

B. Evaluation Criteria

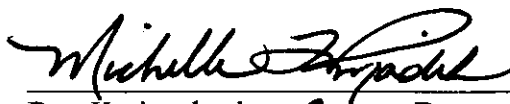
EPA and ADEC agree that the evaluation should include reviewing each agency's performance with respect to the commitments contained in this Agreement. In addition, criteria to be used in evaluating overall effectiveness and performance of State agency compliance and enforcement programs have been developed and agreed upon (See Appendix B, Compliance Assurance Evaluation Principles, March 24, 1998). Those principles address: frequency and types of evaluations; evaluation areas (performance and effectiveness; knowledge of the regulated community; targeting/inspections/monitoring; balanced use of tools; timely and appropriate response to violations; record keeping and reporting; enforceable requirements; relationships and partnerships; communications); the steps in the management of the evaluation process; and dispute resolution.

XVII. Public Information

EPA and ADEC are committed to account publicly for their compliance and enforcement programs, and to maximize opportunities for joint releases of information on compliance activities and enforcement actions. EPA and ADEC agree to adhere to the concept of "no surprises" concerning compliance activities and enforcement actions, particularly when such situations involve the media.

In some instances, as a result of agency policy or other requirements, EPA and ADEC may need to maintain the confidentiality of agency records. In doing so, each agency will handle confidential records in a mutually satisfactory manner, and consistent with federal and State law.

Signed and agreed to by:

 10/23/06

Ron Kreizenbeck *for* Date
Acting Regional Administrator
U.S. EPA Region 10

 11-28-06

Kurt Fredriksson Date
Commissioner
Department of Environmental Conservation

Appendix A

Timeline for Providing Comments on National, Regional or Sector Initiatives and EPA Region 10's ACS Commitments with its HQ Office.

Appendix B

EPA Guidance Documents or Appropriate Excerpts:

Minimum Data Requirements (MDRs) for Stationary Source Compliance, as updated by the Office of Management and Budget (OMB) effective October 1, 2005 (Appendix D).

Clean Air Act Compliance/Enforcement Guidance Manual 1987 revision, excerpted.

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

Compliance Assurance Program Evaluation Principles, March 24, 1998.

Oversight of State and Local Penalty Assessments: Revisions to the Policy Framework for State/EPA Enforcement Agreements, July 20, 1993.

Final Supplemental Environmental Projects Policy, effective May 1, 1998.

Clean Air Act Compliance Monitoring Strategy, dated April 2001.

Issuance of the Clean Air Act National Stack Testing Guidance, February 2, 2004.

Policy on Timely and Appropriate Enforcement Response to High Priority Violations, December 22, 1998.

Pacific Northwest States and EPA Region 10 Compliance Assistance Strategy, February 1999.

Appendix C

Definitions

Appendix D

Data Elements for AIRS Facility Subsystem (AFS)