

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION
OFFICE OF THE COMMISSIONER

SEAN PARNELL, GOVERNOR

410 Willoughby Avenue, Suite 303
Post Office Box 111800
Juneau, Alaska 99811-1800
Phone: 907-465-5066
Fax: 907-465-5070
www.dec.state.ak.us

March 2, 2011

Dennis McLerran, Regional Administrator
U.S. Environmental Protection Agency, Region 10
Regional Administrator's Office, RA-140
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Re: Unalaska Sewage Treatment and Waivers

Dear Mr. McLerran:

I am writing about the permit for the City of Unalaska treated sewage discharge and the more general topic of sewage treatment waivers in Alaska. You and I have discussed these related topics a number of times. Although we have covered much of what follows in our conversations, I write to provide additional detail and to make the State's views as clear as possible. I also reiterate our offer for the Alaska Department of Environmental Conservation (DEC) to assume a lead role in addressing enforcement of all outstanding permit violations.

As you know, the National Pollutant Discharge Elimination System (NPDES) permit for the Unalaska sewage treatment plant discharge was effective in 2004. We certified the permit under Section 401 of the Clean Water Act at the time of issuance. Upon our certification, the permit also became a legally enforceable state permit under state law.

Under the terms of our 2008 NPDES Memorandum of Agreement (MOA), authority for the permit transferred to DEC on October 31, 2008 (recognizing that EPA retains authority to enforce Clean Water Act violations upon satisfying certain procedural obligations). The permit was subsequently administratively extended.

While the permit was still under EPA jurisdiction between 2004 and 2008, the City reported apparent violations of the permit effluent limits and EPA has a pending enforcement action to address the apparent violations.

As part of settlement discussions, EPA has indicated that the City could seek to reduce monetary aspects of the settlement by proposing to upgrade its sewage treatment level from primary treatment to enhanced primary or secondary

treatment. At the same time, EPA has advised us generally that it envisions a change in its policy of waiving secondary treatment requirements for Unalaska and certain other Alaskan communities.

In our view, there are two issues. There is the specific issue of addressing the apparent Unalaska permit violations and the much broader issue of whether to change the EPA policy that allows Unalaska and other Alaskan communities to provide less than secondary treatment of their domestic wastewater.

As for the narrower issue of the permit violations, I reiterate my proposal that EPA suspend its pending enforcement action and allow DEC to assume responsibility for enforcing violations of the state permit prior to October 31, 2008 and for subsequent violations of the NPDES permit under state jurisdiction. We see several advantages to this approach.

First, DEC will be able to achieve our shared goal of full compliance with the permit faster than EPA. EPA has yet to contend with apparent violations that occurred seven years ago and we are very concerned that the current enforcement efforts may not lead to an efficient and timely result.

Second, we can address all permit violations between 2004 and the present in a single enforcement action whereas the EPA can only address violations occurring before October 31, 2008 when the permit was under federal jurisdiction without invoking procedural requirements for enforcing the terms of a state NPDES permit.

Third, we have years of experience and a deep understanding of the situation in Unalaska. As you know, the facilities program in our Division of Water has been funding and overseeing construction of hundreds of water and sewer projects throughout rural Alaska for the last thirty years. That knowledge will enable us to fashion a response to the violations that is timely, effective and reasonable.

Fourth, facility improvements stemming from our enforcement action will almost certainly be financed in part through DEC programs. We can work with our state Legislature and others on needed funding priorities. DEC's role will not begin and end with an enforcement action. We will be engaged every step of the way until improvements have been completed and are operating.

Fifth, we assume EPA would prefer to avoid the expense and uncertainty of potential litigation if a responsible settlement can be reached. For the reasons already stated, we believe DEC is in a better position to negotiate such a resolution.

Given an opportunity, we are prepared to develop and offer to the City within the next three weeks a state Compliance Order by Consent (COBC) that would settle

all past and ongoing permit violations and require sewage treatment facility upgrades to allow the City to reliably comply with the terms of the 2004 permit.

The terms we would propose include:

- A proposed monetary penalty calculated in accordance with procedures specified in the 2008 MOA.
- A requirement that the community complete, in accordance with a reasonable yet aggressive schedule, specified planning, design and construction steps to upgrade the wastewater treatment facility so that it can reliably meet the 2004 effluent limits.
- Any interim measures we might identify that the City could take to improve the quality of the discharge pending completion of upgrades or to monitor impacts on the receiving environment.

In our view, EPA has nothing to lose in allowing the State an opportunity to address the permit violations. Should EPA find DEC's actions inadequate in the end, EPA retains the ability to pursue a separate enforcement action.

As we have discussed, the larger question of whether to continue to provide waivers of secondary treatment requirements for the City of Unalaska and other Alaskan communities involves many fiscal, environmental, health and policy questions that warrant an open, deliberative process with the state and its communities. We also expect EPA would wish to consult with Alaska tribes.

As made clear in the 1979 Federal Register notice, establishing the current EPA policy for wastewater treatment in rural Alaska communities, Congress had acknowledged that the communities have more immediate needs for providing human health protection than providing secondary treatment of wastewater. Today these communities still face immense challenges stemming from energy costs that are unheard of elsewhere in the U.S., tremendous diseconomies of scale, unparalleled construction costs due to short construction seasons and the cost of transporting materials to truly remote locations, and declining financial aid. At the same time, these communities are contending with mounting requirements to upgrade not just wastewater treatment facilities but all forms of environmental infrastructure including drinking water and solid waste management systems. In many respects, the situation has not changed. The communities are still forced to choose among competing health and environmental priorities in light of limited financial resources. EPA still needs to be able to exercise discretion to assure that highest priority needs are met first.

Certainly, a broader discussion is indicated before EPA starts moving in a new direction on allowing secondary treatment waivers. We are prepared to work with you and all stakeholders on developing an inclusive and informed process for such

Dennis McLerran,
Regional Administrator

4

March 2, 2011

a discussion. We also need to recognize the possibility of policymaking through federal legislation.

I would appreciate your further consideration of the two courses of action I outline above. Please do not underestimate the importance of EPA's actions in Unalaska to the State of Alaska and its communities. We remain concerned that EPA's actions to date are not the most effective means to achieve clean water goals. We stand ready to work with you but we need some indication that EPA is willing to consider our input and alternative paths.

Sincerely,

A handwritten signature in cursive script, appearing to read "Larry Hartig", with a long horizontal flourish extending to the right.

Larry Hartig
Commissioner