

**MEMORANDUM OF UNDERSTANDING
BETWEEN
ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION
AND
MUNICIPALITY OF ANCHORAGE
FOR AIR QUALITY CONTROL**

I. Purpose

The purpose of this Memorandum of Understanding is to clarify the joint responsibilities for air pollution control and monitoring within the Municipality of Anchorage. The Alaska Department of Environmental Conservation (ADEC) and the Municipality of Anchorage (MOA) share responsibility and authority for air quality control in the Municipality of Anchorage. The parties to this Memorandum of Understanding recognize that clear lines of responsibility must be established and maintained to maximize the efficient utilization of available resources and to provide the greatest protection to health and safety.

In November 2012, local funding for the MOA air quality program was cut by \$221,000 for calendar year 2013. As a consequence, the MOA will be required to cut air quality program staff and work effort in 2013. Moreover, it will be unable to meet maintenance effort requirements for local funding outlined in 40 CFR 35.146. It will therefore be ineligible to receive direct grant funding from the U.S. Environmental Protection Agency (EPA) in 2013. This memorandum was prepared to address these issues.

II. Ambient Air Monitoring

The MOA will maintain and operate a criteria pollutant monitoring network (carbon monoxide (CO), coarse (PM-10) and fine particulate (PM-2.5), oxides of nitrogen (NO_x), sulfur dioxide (SO₂), ozone (O₃), and airborne lead) as applicable, to characterize air quality within the Municipality. The MOA air quality staff will review monitoring needs with ADEC and the EPA in consideration of resources available for the purpose of assigning monitoring priorities. The MOA will provide air quality reports and forecasts to the public each weekday (excluding holidays). ADEC will provide technical support and quality assurance related to the ambient air monitoring network.

Close communication and cooperation between state and local air agencies is necessary to share information on ambient air conditions to help determine the need for issuing an air quality advisory, or declaring an air episode due to anthropogenic or natural events.

ADEC concurs with the MOA decision to decommission a number of ambient air monitors in Anchorage, effective January 1, 2013. These include O₃ monitoring at Garden Street site in east Anchorage, PM-10, PM-2.5 and CO monitoring at the DHHS

site in downtown Anchorage and CO monitoring at the Eagle River site, pending approval of EPA.

A. ADEC will:

1. provide technical assistance to the MOA in the areas of ambient air monitoring science, instrument operation, and quality assurance;
2. function as the Primary Quality Assurance Organization (PQAO) for both agencies;
3. send to the MOA copies of correspondence and applicable materials associated with air quality monitoring work performed by ADEC within the MOA and air monitoring information received from EPA or other sources which may be of interest to the MOA;
4. notify the MOA of reporting requirements and due dates;
5. review and approve in writing monitoring site locations and installations as required;
6. provide, or facilitate in-state, technical assistance and training as time and funding allows;
7. perform start up and shut down audits for CO sampling sites and semiannual audits on the MOA's particulate matter monitoring network, as necessary;
8. assist MOA staff with field monitoring if requested, as time, staffing and funding allows;
9. operate and maintain monitoring sites in the Mat-Su Valley and on the Kenai Peninsula and include them in the Alaska Air Monitoring Network, subject to available funding;
10. provide technical assistance to MOA for submitting, quarterly, the MOA State Local Air Monitoring System (SLAMS) and Special Purpose Monitoring (SPM) data to the EPA's Air Quality Subsystem (AQS);
11. review and validate air monitoring data generated by MOA as required;
12. review MOA annual monitoring network plan and forward final decisions to EPA as part of the state's annual network plan for Alaska;
13. prepare five-year monitoring assessments as required by EPA and assist MOA in preparation of the Anchorage component of the assessment;

14. work cooperatively with MOA to further develop and upgrade the Alaska Air Monitoring Network (a web-based real-time air quality data acquisition and reporting system) to increase the utility of the system and encourage the expansion of the system to include Fairbanks and other communities; and
15. beginning January 1, 2013, assume primary responsibility for the operation of and support contract for the DR DAS system which provides data acquisition for the Alaska Air Monitoring Network and web-based access to air quality data from this network to the public. The contract will also provide the new capability to report AQS data through the EPA Exchange Node.

B. The MOA will:

1. operate and maintain the MOA criteria pollutant ambient air monitoring network as required in accordance with state and federal regulations, guidelines, and the yearly ADEC/MOA and MOA/EPA monitoring work plans;
2. complete a one-year ambient lead monitoring study at Merrill Field Airport as described in the work plan submitted to the EPA and shared with ADEC;
3. maintain and operate instruments to obtain accurate, precise, and valid ambient air quality data;
4. provide in writing, changes to or new monitoring site locations and installations as required;
5. provide ADEC with a copy of an annual air work plan for use by ADEC in working with MOA and EPA on air grant development, management, and tracking for the Anchorage air quality program. Should the MOA, in future years, again receive a direct grant with EPA for their air program, MOA will provide ADEC with a courtesy copy of their air work plan required under the Municipality's direct grant with EPA;
6. submit to ADEC, in writing, a request for approval of significant changes in the MOA monitoring network such as the decommissioning or commissioning of monitoring sites;
7. review documents provided by ADEC such as audit reports and Quality Assurance Project Plans (QAPP) developed by the State for monitoring projects in the Municipality;
8. develop QAPP when required by EPA monitoring rules;
9. participate in the state's quality assurance programs, operate all SLAMS and SPM monitoring sites according to the State's QAPP and submit required data to ADEC or EPA;

10. assist ADEC in air quality monitoring systems audits;
11. maintain trained staff capable of operating and maintaining monitoring equipment and coordinate training needs with ADEC to identify potential local and in-state training opportunities;
12. submit quarterly/annually SLAMS, National Air Monitoring System (NAMS), and SPM air quality monitoring data to EPA to meet AQS data submittal requirements. If requested, provide courtesy copies of other air monitoring data from SPM surveys and special studies to ADEC as it becomes available;
13. prepare Anchorage section for inclusion in ADEC's annual monitoring network plan and develop recommendations for any changes which may be necessary in coordination with the ADEC and EPA;
14. continue to implement the MOA's emergency episode plan for criteria air pollutants. When episodes are detected which occur due to natural events, provide documentation to ADEC in accordance with EPA's Exceptional Events Rule;
15. provide a daily recorded telephone message providing air quality information to the public each weekday morning (excluding holidays) that includes a summary report of the Air Quality Index (AQI) on the previous day and a forecast of the AQI for the next 24 hours;
16. issue air pollution alerts, warnings, and emergencies to the public in accordance with state regulations and local ordinance; and
17. work cooperatively with ADEC to continue to develop and upgrade the Alaska Air Monitoring Network to increase the utility of system and encourage the expansion of the system to include Fairbanks and other communities.

III. Permitting

For the purpose of this MOU, an ADEC air quality control permit also includes a pre-approved emission limit, letter of authorization for operation under an owner requested limit or general permit, as well as a minor permit, a construction permit, and an operating permit.

A. ADEC will:

1. upon request, provide ADEC procedures and guidelines on: permitting, enforcement, surveillance, inspection, ambient air quality monitor siting, and record keeping to MOA;
2. notify MOA in writing when it receives an application for an air quality control permit, permit renewal, or permit revision request in the MOA even if ADEC

determines the source does not require an ADEC permit. Upon written request from MOA, ADEC will send copies of correspondence and written documentation related to the application, renewal or request for revision within 5 working days of the request;

3. notify MOA in writing when the deadlines for a complete application determination and permit issuance have been set;
4. if requested by MOA, provide MOA with access to all methodology and procedures used in evaluating each ADEC air quality control permit application;
5. if deemed appropriate and germane to developing an air quality control permit, permit revision or permit renewal, send out a request for additional information based partially or wholly on the MOA's written request, if MOA submits the written request to ADEC in a timely manner;
6. for each stationary source, send a copy of the signed air quality control permit, permit revision or permit renewal to MOA;
7. if requested by MOA, after completion of training and adoption of new municipal air quality ordinances and associated documents, delegate permitting for all sources within the Municipality to MOA for which municipal ordinances are of equal to or greater stringency than ADEC requirements; and
8. after delegation to MOA, notify all ADEC-permitted sources within the boundaries of the Municipality affected by the delegation that the Department has granted responsibility for the permitting process to MOA.

B. MOA will:

1. send to ADEC's Air Permits Anchorage Office copies of correspondence and written documentation of contact with applicants seeking a renewal of an existing permit for a stationary source located in the Municipality, if the applicant's source would require an ADEC permit as a result of modifications proposed by the applicant. MOA will send copies in a timely manner after contact or receipt of written documentation. If an ADEC air quality control permit is necessary, MOA will not write a municipal permit;
2. review ADEC air quality control permit provisions with ADEC;
3. if requested by ADEC, submit to ADEC copies of correspondence and written documentation of permits issued by MOA;
4. schedule time for MOA staff training in permitting; and
5. maintain air quality ordinances consistent with ADEC air quality control regulations.

IV. Stationary Source Inspection and Enforcement

A. ADEC will:

1. maintain oversight of those stationary sources under an ADEC air quality control permit;
2. conduct on-site and full compliance evaluations of those stationary sources under an ADEC air quality control permit in accordance with the department's compliance monitoring schedule, with MOA invited to join ADEC on selected on-site compliance evaluations;
3. give appropriate advance notice to MOA on selected on-site compliance evaluations and any changes in the scheduled evaluations;
4. take enforcement action on an ADEC-permitted stationary source, if a unit at that source is found to be in violation of ADEC air quality control regulations; and
5. collaborate with the MOA to provide in-state EPA Method 9 opacity training and certification if private sector providers do not provide adequate service to Alaska industry and regulators.

B. MOA will:

1. maintain oversight of those stationary sources under a MOA air quality control permit;
2. conduct on-site and full compliance evaluations of those stationary sources under a municipal air quality control permit with ADEC invited to join MOA on selected on-site compliance evaluations;
3. give appropriate advance notice to ADEC of selected on-site compliance evaluations and any changes in the scheduled evaluations;
4. take enforcement action on a MOA-permitted stationary source, if a unit at that source is found to be in violation of state or municipal air quality control regulations; and
5. collaborate with the ADEC to provide in-state EPA Method 9 opacity training and certification, if private sector providers do not provide adequate service to Alaska industry and regulators.

V. Open Burn

A. ADEC will:

1. review and issue open burn approvals to stationary sources in the Municipality that are regulated under AS 46.14.130(b);
2. inform stationary sources regulated under AS 46.14.130(b) that they are also obliged to meet open burn ordinance requirements contained in Anchorage Municipal Code Section 15.35.100 and that this may entail obtaining open burn permits from the MOA for certain activities not regulated by ADEC;
3. work with MOA to develop consistency in the permitting process and the terms and conditions applied to open burn permits within the Municipality;
4. prior to issuing an open burn approval for a prescribed fire, significant land clearing operation or fire training exercise within the Municipality, notify MOA that an application has been received. If requested by MOA, send a copy of the permit application and draft permit to solicit input from MOA on the terms and conditions of the permit. ADEC will provide a copy of all open burning permits issued within the Municipality to the MOA; and
5. develop and implement a system to provide notice to the MOA when applications for open burning in the Mat-Su and Kenai Borough are received if those activities have a reasonable potential to affect air quality in the Municipality. This notification system will be implemented as soon as possible based on available resources. Until then, ADEC will continue to provide the MOA with copies of all open burning approvals issued in the Mat Su and Kenai.

B. MOA will:

1. take the primary role in the issuance of open burn approvals within the Municipality for open burning activities on properties or stationary sources not regulated under AS 46.14.130(b);
2. take primary role issuing MOA open burn permits for open burning activities regulated under MOA ordinance except those that meet ADEC open burn minimum size thresholds described under 18 AAC 50.065 at a stationary source regulated under AS 46.14.130(b);
3. develop and/or maintain local open burning regulations consistent with requirements in State statutes and ADEC regulations;
4. work with ADEC to develop consistency in the permitting process and the terms and conditions applied to open burn permits within the Municipality;

5. prior to issuing an open burn approval for a prescribed fire, significant land clearing operation, or fire training exercise, notify ADEC that an application has been received. If requested by ADEC, send a copy of the permit application and draft permit to solicit input from ADEC on the terms and conditions of the permit; and
6. if requested, provide ADEC with copies of open burning permits issued within five working days of request.

VI. Air Quality Planning

The MOA will continue its efforts to maintain the national ambient air quality standards for CO and particulate matter (PM). This will include the study and possible implementation of reasonable, cost-effective strategies designed to further reduce ambient concentrations which will aid the MOA in maintaining the health standards. These strategies shall be identified in the State Implementation Plan (SIP) for air quality.

MOA and ADEC will work cooperatively to ensure that the air pollution emission control programs committed to in the SIP are fully-implemented. If a decision is made to modify any of the control programs identified in the SIP, the MOA and ADEC will work together to amend the SIP to reflect these changes.

A. ADEC will:

1. provide technical and administrative assistance to the MOA in the development and processing of SIP revisions for attainment and maintenance of the national ambient air quality standard for CO and PM;
2. assist the MOA in its dealings with EPA, particularly in the development of SIP revisions;
3. process locally-developed SIPs through the state regulatory process and submit state-approved plans to EPA for final federal approvals;
4. participate in the inter-agency consultation process to insure federally-funded projects within the MOA conform to the SIP; and
5. provide support for EPA Motor Vehicle Emission Simulator modeling efforts needed for conformity, and emission inventory development.

B. MOA will:

1. take the primary role, in conjunction with the Anchorage Metropolitan Area Transportation Solutions (AMATS) organization, for all CO and PM planning for areas within the Municipality;

2. prepare amendments to the SIP, as necessary, to reflect local or State decisions that substantially change air pollution emission control programs committed to in the SIP;
3. coordinate with AMATS, as necessary, to meet SIP deadlines for CO and PM;
4. continue its efforts to maintain the national ambient air quality standards for CO and PM;
5. continue to study, identify and implement additional strategies to further reduce ambient CO and PM as needed in the Municipality; and
6. participate in the inter-agency consultation process to ensure federally-funded projects within the MOA conform to the SIP.

VII. Response to Citizen Complaints about Air Quality within the Municipality

A. ADEC will:

1. take the primary role in responding to air quality complaints regarding facilities required to have an air quality control permit from ADEC;
2. refer air quality complaints from other sources, not permitted by ADEC, to the MOA; and
3. if requested, assist MOA in the response, investigation, and prosecution of air quality complaints regarding air pollution emissions that may be violations of both the Anchorage Municipal Code (AMC 15.35.070) and State regulations (18 AAC 50).

B. MOA will:

1. take the primary role in responding to air quality complaints unrelated to facilities required to have an air quality control permit from ADEC;
2. refer air quality complaints about sources permitted by ADEC to the ADEC; and
3. assume initial responsibility for the investigation of quality complaints about air pollution emissions not related to ADEC-permitted facilities that may be violations of AMC 15.35.070 or 18 AAC 50. MOA may request assistance from ADEC, if it believes its staff resources are insufficient to provide an adequate response to the complaint or prosecution of a violation.

VIII. Compensation

A. ADEC will:

1. provide to the MOA the Anchorage share of the EPA Region 10 Air 105 grant allocation each year that the conditions of this Memorandum of Understanding are met and funding is made available by the EPA. For calendar year 2013, the EPA grant funding is estimated at \$153,000. This funding must be finalized by EPA and the actual funding received for the Anchorage air program will be passed through to the MOA. The annual funding will be segregated into two parts to assist in addressing the differences between the municipal and state fiscal years. Half, (roughly \$76,500) will be provided to cover Anchorage air quality operations during state fiscal year 2013, from January 1 – June 30, 2013. The other half will be made available for state fiscal year 2014, from July 1 – December 31, 2013. Funding for both six month periods is contingent on ADEC receipt of federal funding from EPA for this purpose;
2. reimburse the MOA for activity from January 1, 2013 through December 31, 2013 under this MOU. No reimbursements will be provided for activity performed between January 1, 2014 and June 30, 2014. A renegotiation of funding will occur for the period after December 31, 2013 (see Section VIII, B 1) should MOA notify ADEC that it will not seek direct EPA Air 105 grant funding;
3. provide quarterly reimbursement payments to MOA within forty-five (45) days of receipt of a request for reimbursement from MOA. In order to receive a quarterly payment from ADEC, MOA must show that its share of total outlays is at least forty (40) percent of total expended funds. The final reimbursement payment will be provided to MOA upon completion of the work identified in the approved annual work plan for calendar year 2013 and the submission of a final financial status report which identifies the total program expenditures.

B. MOA will:

1. MOA will notify ADEC by October 15, 2013 if it chooses to re-apply (and plans to continue to apply thereafter) for a direct EPA Air 105 grant of approximately \$153,000 for the period of January 1 – December 31, 2014. This would involve amending this MOU to add additional funding;
2. adhere to applicable sections of 40 CFR 30, 31, 32, 33, and 35, Subpart A, the principal "parts" of 40 CFR, Chapter 1, Subchapter B, Part 31 "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" and Part 32 "Debarment and Suspension Under EPA Assistance Programs";
3. comply with the requirements of the Single Audit Act (OMB Circular A128);

4. provide minimum local matching funding of 40 (forty) percent, up to \$102,000, for air quality program activities for the period January 1 – December 31, 2013. This matching funding must occur as expenditures are incurred where funding is provided;
5. file a quarterly financial status report and request for reimbursement within thirty (30) days of the end of each state fiscal quarter;
6. inventory and track all equipment purchased. Disposal shall be in accordance with current federal requirements. Purchase of equipment exceeding \$5,000 for a complete unit must be approved by DEC in advance of purchase;
7. when issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with grant money, clearly state (a) the percentage of the total cost of the program or project which will be funded with grant money, and (b) the dollar amount of grant funds for the project or program;
8. make a good faith effort to maintain a drug free work place by publishing a statement notifying employees that manufacturing, distributing, dispensing, possessing, or using a controlled substance in the work place is prohibited;
9. when issuing contracts, ensure all contractors and subcontractors have a valid Alaska business license;
10. provide for ADEC representation on committees reviewing RFPs and contract awards using ADEC pass-through or ADEC grant and MOA funds;
11. submit copies of signed subcontracts and purchase orders between MOA and minority/women construction and supply firms to ADEC on a quarterly basis;
12. ensure that no portion of this award may be used for lobbying or propaganda purposes as prohibited by 18 U.S.C. Section 1913 or Section 607(a) of Public Law 96-74;
13. ensure that the cost principles of OMB Circular A-87 are applied to this award. When indirect costs are included within the assistance budget, the recipient must be in compliance with A-87 and EPA regulations regarding allowable project costs. Actual indirect costs charged to this agreement may not exceed the final approved rates as negotiated annually between the State and the appropriate cognizant federal agency.

C. Both parties agree:

1. that MOA may provide funding to DEC for performing special projects negotiated under this agreement;

2. that future year awards will be authorized only upon receipt of federal funds and upon an approved annual work plan, which must include lawfully appropriate detailed budget information, project period, and signature blocks for both parties;
3. that an interim financial status report will be filed on or before March 31, 2013. The purpose is to determine if all grant funds will be expended by the end of the state fiscal year (June 30). If grant funds will not be fully expended, ADEC may restrict the amount of grant funds and reprogram the unexpended funds in accordance with EPA regulations;
4. that specific full-time equivalents listed for each task in the annual work plan are both parties' best estimate and only approximate; and
5. that amendments to this agreement may be proposed by either party and shall become effective upon approval of both parties.

IX. General Provisions

A. Term

This Agreement, when signed by both parties, shall commence on January 1, 2013 and be completed on June 30, 2014.

B. Amendment

This Agreement may only be amended, modified or changed in writing, and executed by authorized representatives of both parties. The only representatives authorized to amend, modify or change the terms of the Agreement are:

ADEC: Commissioner or Approved Designee
MOA: Mayor, Municipal Manager or Approved Designee

C. Notices

Any notice required pertaining to the subject matter of this agreement shall be personally delivered, sent via fax, e-mail, or mailed by prepaid first class registered or certified mail, return receipt requested to the following address:

Municipality of Anchorage
Director, Department of Health and Human Services
P.O. Box 196650
Anchorage, AK 99519-6650
FAX: 907-343-6740

Alaska Department of Environmental Conservation
Director, Air Quality

PO Box 111800
410 Willoughby Ave, Ste. 303
Juneau, AK 99811-1800
FAX: 907-465-5129

D. Jurisdiction

Any civil action arising from this agreement shall be brought in the Superior Court Third Judicial District of the State of Alaska at Anchorage. The laws of the State of Alaska shall govern the rights and duties of the parties under this agreement.

E. Integration

This agreement and all appendices and modifications hereto embody the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this agreement shall supersede all previous communications, representations or agreements, either oral or written, between the parties hereto.

F. Permits and Laws

The parties agree to acquire and maintain in good standing all permits, licenses, and other entitlements necessary to their performance under this Agreement. All actions taken by the parties under this Agreement shall comply with all applicable laws, statutes, ordinances, and rules and regulations.

G. Indemnification

Each party shall defend, indemnify, save and hold harmless the other party from and against any and all claims, lawsuits, or liability, including attorney fees and costs, allegedly arising out of, in connection with, or incident to any loss, damage or injury to persons or property or from any wrongful or negligent act, error or omission of indemnifying party or indemnifying party's agents, employees, contractors, subcontractors or representatives, occurring during the course of or as a result of the indemnifying party or indemnifying party's employees, contractors, subcontractors or representatives performance pursuant to this Agreement.

H. Termination

The Agreement may be terminated:

1. by mutual consent of the parties;
2. for convenience of one party, provided that the terminating party notifies the other party of its intent to terminate at least sixty (60) days prior to the effective date of the termination; or

3. for cause, by either party where the other party fails in any material way to perform its obligations under the Agreement. Termination is subject to the terminating party notifying the other party of its intent to terminate, stating with reasonable specificity the grounds therefore, and the other party fails to cure the default within thirty (30) days after receiving the notice.

I. Duties Upon Termination

All notes, data collected, and any draft reports shall be submitted to ADEC or MOA depending upon which party funded a specified project, within thirty (30) days of termination of this agreement by either party.

J. Funding

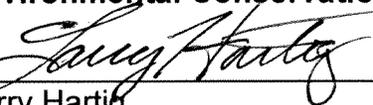
1. Payments under this Agreement will require funds from future appropriations and are therefore subject to future federal, state, and local appropriations. If sufficient funds are not appropriated for payments required under this Agreement, the Agreement shall terminate without penalty to ADEC and/or MOA and ADEC and/or MOA shall not be obligated to make payments under this Agreement beyond those which have previously been appropriated. Financial payments set out in this agreement shall not set precedent for any future agreement.
2. Nothing in this Agreement shall be construed as obligating ADEC and MOA to the expenditure of funds, or for the future payment of funds, in excess of that authorized by this agreement.
3. MOA or ADEC may provide additional funding to the other party for performing special projects negotiated under this Agreement after review and approval of a specific work plan and timeline. If this occurs, this Agreement must be amended to allow exchange of funds for special projects.

K. Equal Employment Opportunity

The parties shall not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age, sex or marital status or who is a "qualified individual with a disability," The parties shall comply with applicable equal employment opportunity requirements, including but not limited to those regarding recruiting, hiring, notice, affirmative action, and records retention.

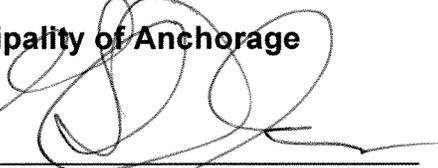
IN WITNESS WHEREOF, the parties have executed this Agreement.

**Alaska Department of
Environmental Conservation**

By 
Larry Hartig
Commissioner

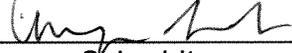
Date March 11th 2013

Municipality of Anchorage

By 
Mayor, Municipal Manager or
Authorized Designee

Date 2/4/13

**Alaska Department of
Environmental Conservation
Fund Certification**

By 
Chyenne Schmidt
Finance Officer

Date 2/26/13