STATE – TRIBAL NPDES MEETING
Tuesday, February 19, 2002  2:00-4:30
Bangor City Hall Council Chambers
Bangor City Hall, 73 Harlow Street

PARTICIPANTS:
State – Gov. Angus S. King, Jr.
Attorney General G. Steven Rowe
Commissioner of Environmental Protection Martha Kirkpatrick
Assistant Attorney General Carol Blasi
Assistant Attorney General Jerry Reid
Evan Richert, Director of State Planning
Deputy Comm. of Environmental Protection Brooke Barnes
Wayne Douglas, Chief Legal Counsel to the Governor
Dave Wilby, Policy Advisor to the Governor

Tribes – Chief Barry L. Dana, Penobscot Indian Nation
Governor Richard Stevens, Passamaquoddy Tribe, Indian Township
Governor Richard M. Doyle, Passamaquoddy Tribe, Pleasant Point
Rep. Donna M. Loring, Penobscot Tribal Representative
Rep. Donald G. Soctomah, Passamaquoddy Tribal Representative
John Banks, Director of PIN Department of Natural Resources
Deirdre Whitehead, Passamaquoddy Department of Natural Resources
(Pleasant Point)
Trevor White, Passamaquoddy Department of Natural Resources (Indian Township)
Dan Kusnierz, PIN Department of Natural Resources
Kaighn Smith, Jr., tribal attorney, Drummond Woodsum & MacMahon
Richard Spencer, attorney, Drummond Woodsum & MacMahon

AGENDA:
2:00  Opening prayer – Chief Dana
     Introductions – All participants
2:05  Opening comments – Chief Dana, Gov. King, Gov. Doyle, Gov. Stevens
2:20  Concepts for NPDES resolution – Tribal representatives
2:40  State reaction – Gov. King and Attorney General Rowe
3:00  General discussion – All participants
4:10  Future action steps – All participants
4:20  Closing comments – Tribal and state leaders
Basic Precepts of Law Today

- Clear water is everyone's goal
- Tribe has special relationship with water/unique historic & cultural
- Relationship time immemorial/water in lifeblood
- Gov't & gov't relationship with tribes & states
  - States & tribes due to unique gov't & gov't relationship

- Willingness & recognition to trust not to trust with tribes

Find a way to ensure that State will equally preserve trust relationship.

Model: Trust relationship is founded on relationship

How are presently used w/ EPA process

- Consultation, review, & comment before general public
- EPA has Indian policy
- They no bound to respond to them w/ explanations
- Would have to find response to their logic
  - E.g., bald eagle protection / Lincoln pulp & paper (Oregon)
  - Tribe's use of resources in development contain
  - Recognize that uses a forest in issuing permit in absence of a
    trust relationship to demonstrate state's justification
      (The settlement between parties)

- Trust line
- Special Student
- Enforcement of standards are in place
Elements of an Agreement for the Tribes:

1. Agree, as well as truly believe, that the overall GOAL of NPDES and the Clean Water Act is clean water for all Tribal and Maine citizens for the many generations not yet born.

2. Acknowledge the unique relationship between the Tribes and the rivers.

3. Agree to address all issues regarding NPDES of the Tribe and the Nation in a manner consistent with Government-to-Government relations.

4. Agree to broaden the NPDES program to include consideration of Tribal water uses and cultural practices and adopt a more extensive ecosystem approach.

5. Acknowledgement of the Tribes’ existing Federal trust relationship and concerns regarding NPDES permitting as legitimate.

6. Agreement to develop a partnership between the State and the Tribe and the Nation in regards to NPDES permitting authority on Tribal Territory, to include:
   a. Development of Clean Water Standards that are scientifically defensible, that demonstratively protect water quality, and meet Tribal needs.
   b. Defining the content of permits issued that impact or have potential to impact Tribal Territories.
   c. Defining the content of permits issued that impact or have potential to impact Tribal Territories.
   d. A method of officially and legally including the Tribes in issuance, amendment and enforcement of NPDES permits that impact or have potential to impact Tribal Territories.
   e. Concurrent and equal decision authority.
   f. Shared responsibility for monitoring permits that affect Tribal Territories.
   g. Review and development of a NPDES enforcement policy and authority to include Tribal participation.