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January 7, 2004

The Honorable Mike Leavitt
Administrator
U.S. Environmental Protection Agency
Ariel Rios North, Room 3000
1200 Pennsylvania Avenue, NW
Washington, DC 20460



Dear Administrator Leavitt:

I am writing to bring to your attention an issue of vital importance in the execution of Environmental Protection Agency (EPA) programs in Alaska. I am concerned that the distribution of funds through the Indian Environmental General Assistance Program (GAP) is being conducted in a manner inconsistent with the laws relating to tribal authority in Alaska, as interpreted in court cases.

In the 2003 fiscal year, GAP grants in Alaska amounted to more than \$13.5 million - a considerable amount of money. This money was used for capacity building among tribal governments and raising awareness of environmental issues among tribes. Discussions between the Alaska Department of Environmental Conservation and EPA Region 10 have exposed a fundamental difference in the way the two agencies interpret the role of Alaska tribes and, consequently, how grants may be awarded.

In other parts of the United States, it is appropriate to build environmental, administrative, legal, and enforcement capacity so that tribes can establish and run their own environmental programs. Court rulings, notably the U.S. Supreme Court's *Venette* decision, have determined that Indian Country does not exist in Alaska (outside the Annette Island Reserve). Accordingly, Alaska tribes lack environmental regulatory and enforcement authority. In short, Alaska tribal governments do not have the authority to administer programs envisioned in capacity building GAP grants - that responsibility falls on the state government.

Further complicating this situation is the role of regional government in Alaska. In the rest of the U.S., regional governments are responsible for a number of environmental quality programs, such as trash collection and the delivery of safe drinking water. However, the existence of the unorganized borough in much of Alaska poses significant obstacles to effective delivery of

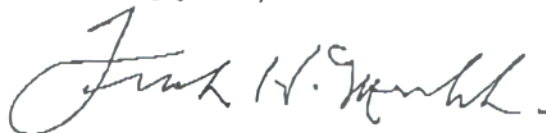
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these services, and the responsibility falls to the state to deliver such assistance. In a state as large and remote as Alaska, management of these programs is difficult, and the quality of service sometimes needs improvement. Yet, progress must come from responsive state government, rather than defusing the responsibility to tribes that lack the legal authority to administer such environmental programs.

EPA encouragement of capacity building in these areas runs counter to the law and undermines state authority. Therefore, EPA should discontinue funding of capacity building programs that are designed to allow tribal governments to take over state responsibilities relating to environmental quality.

I appreciate your attention to this matter and urge that you direct Region 10 to make the distinctions suggested here. Please give me a call if you would like to discuss this issue further.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Frank H. Murkowski".

Frank H. Murkowski
Governor