RESPONSE TO COMMENTS

City of Fairbanks, City of North Pole, University of Alaska-Fairbanks and Alaska Department of Transportation & Public Facilities Municipal Separate Storm Sewer Systems (MS4s)

NPDES Permit #AKS-053406

April 2005

On October 18, 2004, the U.S. Environmental Protection Agency (EPA) issued a public notice in the *Fairbanks News Miner* of the proposed draft National Pollutant Discharge Elimination System (NPDES) permit for discharges from the municipal separate storm sewer systems (MS4s) owned and operated by the City of Fairbanks, City of North Pole, University of Alaska-Fairbanks and Alaska Department of Transportation & Public Facilities (ADOT&PF), NPDES Permit No. AKS-053406 (Fairbanks Permit). Concurrently, EPA also proposed a separate draft NPDES permit for discharges from the MS4s owned and operated by the Fairbanks North Star Borough, NPDES Permit No. AKS-053414 (FNSB Permit). The 45-day comment period for both permits expired on December 2, 2004.

This *Response To Comments* provides a summary of the comments received on the Fairbanks Permit and provides corresponding EPA responses. Where indicated, EPA has made changes to the final Fairbanks Permit.

Comments were received from:

- City of Fairbanks,
- ADOT&PF,
- Raymond Plummer;
- National Oceanic and Atmospheric Administration (NOAA) Fisheries,
- U.S. Fish and Wildlife Service (USFWS),
- Yukon River Intertribal Watershed Council (YRITWC), and
- Nenana Native Council

In some of the comments, the commenter provided comments relevant to both the Fairbanks Permit and the FNSB Permit. Since EPA would like to establish consistent requirements for all the MS4 operators in the Fairbanks Urban Area, EPA has revised the final permit language in both the Fairbanks Permit and the FNSB Permit to maintain that consistency.

General Issues

1. **Comment (ADOT&PF):** Is Beaver Springs really an existing receiving water body in the urbanized area?

Response: Yes. The application submitted by the co-permittees states that the City of North Pole's MS4 "...generally discharges to the Beaver Springs/Chena Slough drainage." Thus, EPA has included this water body as a receiving water in the Fairbanks Permit.

2. **Comment (Raymond Plummer [Plummer])**: The commenter observes that, because of the desert-like climate conditions of Fairbanks, managing storm water using the "one-size-fits all" permitting approach found in the Phase II storm water regulations presents unique challenges.

Response: EPA believes that the unique local conditions of the Fairbanks area have been reasonably accommodated through this NPDES permitting process. The Phase II regulations provide a consistent national framework to control storm water discharges from MS4s to the maximum extent practicable (MEP), and allow the MS4 operator a great deal of flexibility in how the MS4 discharges are authorized by providing various options for obtaining permit coverage and satisfying the required minimum measures.

As described in the Phase II regulation preamble, EPA has allowed the MS4 operator "...maximum flexibility.... to optimize reductions in storm water pollutants on a location-by-location basis... considering factors such receiving water condition, local concerns, MS4 size, climate, hydrology, geology and capacity to perform operation and maintenance.....The pollutant reductions that represent MEP may be different for each small MS4, given the unique local hydrologic and geologic concerns that may exist and the differing possible pollutant control strategies...each permittee will determine appropriate [best management practices] to satisfy the six minimum measures through an evaluative process. Permit writers may evaluate a small MS4 operator's proposed storm water management controls to determine whether reduction of pollutants to the MEP can be achieved with the identified BMPs." (64 FR 68754, December 8, 1999).

Part I. Applicability

3. **Comment: (USFWS)**: USFWS is concerned that a number of MS4 outfalls owned or maintained by the co-permittees may lie outside the stated permit boundaries. Specifically, USFWS notes that the permit boundaries, which are defined by the Year 2000 Decennial Census, do not include an industrial area south of Fairbanks. According to USFWS, it is unclear where the storm water discharge points in this light industrial area are located; however, USFWS believes that this area may contribute to water quality problems if storm water discharges are not managed effectively. Thus, USFWS recommends that EPA consider expanding the NPDES permit boundaries to include the

industrial area south of Fairbanks. USFWS also suggests that EPA clarify how the boundaries relate to MS4 outfalls owned and operated by the applicants.

Response: A small MS4 is regulated under the Phase II storm water regulations if: (1) the "small MS4 is located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census . . ." or (2) the small MS4 has been "designated by the NPDES permitting authority." 40 C.F.R. § 122.32(a). Here, the industrial area south of Fairbanks is not within the Fairbanks Urbanized Area as defined by the Year 2000 Decennial Census, thus, it is not within the permit boundaries. In addition, at this time, EPA does not believe there is sufficient information to designate the area south of Fairbanks as part of the regulated small MS4.

Industrial facilities with storm water discharges have an independent obligation to obtain NPDES permit coverage as defined in 40 C.F.R. § 122.26(b)(14)(i-xi). EPA has issued an NPDES industrial storm water general permit for facilities in Alaska called the *NPDES Multi-Sector General Permit for Storm Water Discharges Associated with Industrial Activities*, NPDES Permit No. AKR05-0000. Questions or evidence of industrial storm water discharge problems from sites operated by a non-municipal entity can be referred to ADEC or EPA at the contact points listed in Part IV.D. of the Fairbanks Permit.

4. **Comment (City of Fairbanks):** The City of Fairbanks requests a change in the wording of Part I.D.1. (or at least written understanding from EPA) that will allow for the implementation schedule contained in the Fairbanks Permit at Part III to be implemented. The current permit appears to state that the non-storm water discharge conditions in Part I.D.1. take effect upon the effective date of the permit. However, the control measures to meet this section are not required to be implemented for one or more years after the effective date of the Fairbanks Permit.

Response: The schedule for full implementation of the storm water management program (SWMP) has been defined in the permit based on the application package submitted by the co-applicants and 40 CFR §§ 122.34(a) and (b) and 122.35(c). Requirements of 40 C.F.R. § 122.34(a) state that the permitting authority will ". . . specify the time period of up to 5 years from the date of permit issuance . . . [for MS4 operators] to fully develop and implement" the SWMP.

Part I.D.1. of the Fairbanks Permit sets forth the specific types of non-storm water discharges that are prohibited from entering the MS4s owned and operated by the co-permittees. Implementation of the SWMP, set forth in Part III, explains the process for complying with Part I.D.1. through a program that addresses illicit discharges implemented within the five year time period.

5. **Comment (Plummer):** Consideration should be given to the emergency nature of flooding in the Fairbanks area in Part I.D.1.b.2. Public safety should govern over MS4

permit requirements in an emergency situation.
Response: EPA agrees with this statement. Part I.D.1.b.2 of the Fairbanks Permit contemplates a situation where the co-permittees would have to discharge due to flooding.

6. **Comment (City of Fairbanks):** The City of Fairbanks requests clarification that the list in Part I.D.1.c.1. should not be treated as an exclusive list of acceptable discharges to the MS4. For example, the City of Fairbanks notes that cooling water is not included in the list of acceptable non-storm water discharges.

   Response: The list of non-storm water discharges included in Part I.D.c.1. **is** an exclusive list, and defines a set of non-storm water discharges that do not contain significant sources of contaminants. *See* 55 Fed. Reg. 48036-48037 (Nov. 16, 1990); *see also* 40 C.F.R. § 122.34(b)(3). Discharges which do not consist of storm water, as defined by 40 C.F.R. § 122.26(b)(13), and/or are not described in Part I.D.1. should not enter the regulated MS4. Cooling water discharges may contain residues of additives to prevent corrosion or other materials, thus, cooling water may not be discharged directly to a surface water body or discharged through the MS4 without a separate NPDES permit.

7. **Comment (Plummer):** Part I.D.1.c.1 should be modified such that non-stormwater discharges associated with pipe and other thawing conditions are allowed if they do not violate water quality standards.

   Response: EPA agrees with this statement. The co-permittees must exercise their professional judgement and discretion to meet the requirements of this permit when conducting maintenance activities within their jurisdiction. Non-stormwater discharges such as discharges associated with pipe and other thawing conditions are allowed as long as the conditions set forth in Part I.D.1.c.1 are met.

8. **(ADOT&PF):** ADOT&PF requests EPA to revise the statement "Causes excessive foam in the receiving water or contains floating and/or settleable solids" to "Causes excessive foam in the receiving water or contains *unacceptable quantities of* floating and or settleable solids." (emphasis added) (Part I.D.1.c.2.i.).

   Response: Part I.D.1.c.2. of the Fairbanks Permit sets forth what constitutes a discharge that is a source of pollution to waters of the United States. The items set forth in Parts I.D.1.c.2.(ii-v). include the phrase "in amounts sufficient to." This phrase indicates how much of any substance is to be considered a source of pollution to waters of the United States. This phrasing was derived in part from the Alaska Water Quality Standards for Fresh Water Uses, 18 AAC 70.020. (Alaska's water quality standards can be located on-line at: http://www.state.ak.us/dec/regulations/pdfs/70mas.pdf.) Therefore, to provide consistency with the Alaska Freshwater Water Quality Standards for residue, EPA will revise Part I.D.1.c.2.(i). as follows:

. . . .(A discharge is considered a source of pollution to waters of the United States if it . . .)

(i) Causes excessive foam in the receiving waters or contains floating and/or settleable solids in amounts sufficient to make the water unsafe or unfit for providing water supply or other beneficial uses.

As previously stated, EPA's goal is to provide consistency in the Phase II MS4 permits for the Fairbanks Urbanized Area. Therefore, this language has also been included in the FNSB Permit at Part I.C.1.c.2.(i).

9. **Comment (City of Fairbanks):** The City of Fairbanks could not locate the Alaska Anti-degradation Policy referenced in Part I.D.3.

Response: The Alaska Anti-Degradation Policy is contained in Alaska's Water Quality Standards at 18 AAC 70.015. The Anti-Degradation Policy can be found on-line through the ADEC website at http://www.state.ak.us/dec/regulations/pdfs/70mas.pdf. In addition, since universal resource locators (URLs) can change, the permit language refers the reader to contact Alaska Department of Environmental Conservation (ADEC) directly to obtain this information. EPA has included the full text of the Anti-Degradation Policy in Appendix A of this document.

10. **Comment (Plummer):** It is anticipated that ADEC will adopt a "zero tolerance" policy for the fecal coliform Total Maximum Daily Load (TMDL) in the Fairbanks area. With regard to Part I.D.4., explain how EPA is coordinating activities with ADEC and ensuring that reasonable efforts to reduce pollutants to the maximum extent practicable will be acceptable to all authorities having jurisdiction.

Response: EPA and ADEC coordinated on the development of this permit and will continue to work together to determine co-permittee compliance during the permit term. EPA and ADEC will review all Annual Reports and any proposals to revise the SWMP submitted by the co-permittees. In consultation with ADEC, EPA will approve or disapprove any such requests and may provide additional feedback as necessary, as outlined in Parts II.A.3 and II.C of the Fairbanks Permit. In the event that new information or new regulations (such as the approval of a TMDL) demonstrates the need for new or different permit conditions to ensure that Alaska Water Quality Standards are met, Part VII of the Fairbanks Permit allows EPA to reopen the permit to modify the terms and conditions as necessary.

11. **Comment (City of Fairbanks):** The SWMP has been incorporated into the Fairbanks Permit. According to the City of Fairbanks, Part I.D.4.b. incorporates by reference a document that no longer exists.

Response: Part 1.D.4.b requires the co-permittees to update the SWMP through the first

Annual Report by outlining how the SWMP controls pollutants of concern (*i.e.*, petroleum products, sediment, and debris). According to the procedures set forth in Part II.C., EPA and ADEC will review this update, and EPA will approve or deny, this update, the first Annual Report, and any subsequent Annual Reports. After approval by EPA, the Annual Reports become part of the approved Fairbanks SWMP and are considered incorporated by reference into the permit.

12. **Comment (ADOT&PF):** ADOT&PF suggests that EPA revise Part I..D.5 such that the first sentence reads: "Co-permittees are not authorized to dispose of snow directly to waters of the United States or directly to the MS4s *except in accordance with best management practices developed to assure that applicable water quality standards will not be violated*." (emphasis added).

Response: Part I.D.5. explicitly prohibits co-permittees from dumping accumulated snow directly into waters of the United States or into the MS4s. The second sentence in Part I.D.5. addresses the required use of best management practices (BMPs) to prevent polluted runoff from municipal snow disposal sites.

To clarify the intent of this language, EPA has revised the Fairbanks Permit as follows:

> Co-permittees are not authorized to dispose of snow directly to waters of the United States or directly to the MS4(s). Discharges from public snow disposal sites are authorized under this permit when such sites are operated using appropriate best management practices required in Part II.B.6. Such best management practices shall be designed to prevent pollutants in the runoff and to assure that applicable water quality standards are not violated.

As previously stated, EPA's goal is to provide consistency in the Phase II MS4 permits for the Fairbanks Urbanized Area. Therefore, this language has also been included in the FNSB Permit at Part I.C.5.

13. **Comment (City of Fairbanks):** The City of Fairbanks requests clarification on what "contribute to" means in Parts I.D.2. and I.A.4.a. in the Fairbanks Permit.

Response: A water quality standard is established by the state agency for in-stream concentrations of a particular pollutant. A storm water discharge from an outfall can contribute to an exceedance of a water quality standard if it is one of the traceable causes of the exceedance.

It is the responsibility of the co-permittee to control pollutants discharging from the outfalls owned by that permittee. EPA or ADEC may conduct in-stream water quality sampling to determine compliance with this or other NPDES permits, and on a case-by-case basis will take into account the pollutant contributions of all outfalls affecting the water body.

Part II: Storm Water Management Program

14. **Comment (City of Fairbanks):** There is no mention of the procedure for EPA approval of the many programs, plans and studies required by the permit. How can the co-permittees gain some assurance that the program they are implementing will be acceptable to EPA? Part II.A.1 states: "The SWMP must include BMPs [best management practices], control techniques, system design, engineering methods, and other provisions that the co-permittees or EPA determines appropriate for the control of pollutants..." Does this suggest that the co-permittees can determine that a measure is appropriate and, even without EPA agreement, still include the measure as a valid part of the SWMP? What is the procedure for EPA approval of a SWMP?

Response: Part II.C. describes the procedure for updating the SWMP. To add components, controls, goals or requirements to the SWMP, co-permittees may do so at any time upon written notification to EPA and ADEC. To delete ineffective or infeasible BMPs or goals, co-permittees must provide written notification to EPA and ADEC at any time or they may choose to submit changes with their Annual Report. All such changes must be accompanied by the analyses described in Part II.C.2.b. EPA will review the changes and, within sixty (60) days, may notify the co-permittees of its findings. If the co-permittees do not receive a response from EPA within sixty (60) days, they may consider the changes approved and may implement the changes.

15. **Comment (Plummer):** The SWMP submitted by the Fairbanks co-permittees does not identify a single point of responsibility. Part II.A.2 of the permit does not clearly state whether there is joint and several liability for the co-permittees in the event of an enforcement action.

Response: Part I.C. of the permit describes the compliance responsibilities of each co-permittee, and describes joint and several responsibilities of all co-permittees. Table III summarizes the required SWMP activities along with the responsible permittee.

16. **Comment (City of Fairbanks):** The City of Fairbanks notes that Part II.A.4.a. does not distinguish between existing discharges and new discharges. Thus, according to the City of Fairbanks, if there are any existing discharges, the co-permittees will be in violation as soon as the permit is implemented regardless of their efforts to be in compliance. As a result, the City of Fairbanks feels that the SWMP needs to be implemented before prohibiting any discharges.

Response: EPA does not believe that there will be non-compliance at the outset of the permit issuance. Part II.A.4.a. requires that "the co-permittees must implement a SWMP that provides BMPs . . . to ensure that . . . discharges do not cause or contribute to an exceedance of a . . . water quality standard." Part II.A.4. further requires that the

". . . implementation schedules . . . must provide for full implementation of a complete SWMP as soon as practicable, but no later than five years from the effective date of this permit." Implementation of the activities in the SWMP is the key component of this permit. The co-permittees should identify any known compliance problems and should address these problems to the maximum extent practicable early during the implementation of the SWMP.

17. **Comment (Plummer):** With regard to Part II.A.4, limited information on the adequacy of best management practices (BMPs) in arctic and subarctic climates currently exists. The commenter questions whether the co-permittees can reasonably provide research and development for specialized BMPs suitable for interior Alaska. Is the National Stormwater BMP Database sponsored by American Society of Civil Engineers and EPA an adequate resource, or is there a need for EPA additional research funding in this area?

Response: EPA acknowledges that operational information on certain structural BMPs in arctic climates is limited, and has provided grant funding to ADEC through Clean Water Act Section 104(b)(3) to support at least two projects evaluating storm water BMP effectiveness in interior Alaska; ADEC will provide the results of these projects to the public once the final reports are completed.

In the interim, existing guidance available through EPA and other sources (including the National Stormwater BMP database), as well as the experience of other MS4s operators in Anchorage and other areas of the country, provide the co-permittees with sufficient direction that will result in overall pollutant reduction. "Non-structural" BMPs, such as ordinances to prohibit erosion from construction sites and prohibitions of non-stormwater discharges to the MS4, are not climate dependent and can be implemented with available guidance and input from other MS4 communities subject to the Phase I and Phase II storm water regulations. Assessment and mapping of the storm drainage system is not climate dependent, and is a necessary first step to discerning the type of BMPs that are necessary.

18. **Comment (Plummer):** With regard to Part II.A.5, the commenter questions how EPA will deal with possible water quality standard violations as a result of storm water from the co-permittees' MS4s flowing through portions of the MS4 network connected to the Fairbanks North Star Borough MS4. Part II.A.5 appears to address the possibility of cooperation between all municipal NPDES permittees within the Fairbanks Urbanized Area.

Response: MS4 operators may share responsibilities to implement the minimum control measures as described in 40 C.F.R §122.35. Part II.A.5 addresses the opportunity for the MS4 co-permittees to work with other entities, including other MS4 operators or non-permitted entities, to accomplish the requirements of this permit. Part II.A.5 outlines the requirements that must be followed in order to do so.

EPA expects the co-permittees and Fairbanks North Star Borough to work cooperatively on implementing their respective SWMPs required under their respective permits. They may elect to work cooperatively in a formal or informal fashion. If water quality problems are identified as originating from any portion of the MS4s operated by the co-permittees or Fairbanks North Star Borough, both the Fairbanks Permit and the FNSB Permit require the operators to mitigate and eliminate the source(s) of those problems to the maximum extent practicable, using all available jurisdictional powers. While the parties may all work together, the MS4 operators remain responsible for accomplishing the various requirements contained within their respective permit(s).

19. **(YRITWC):** The YRITWC suggests changing the permit language in Part II.B.1. to require the following: "Labeling 100, or more, storm water inlets with the public outreach program; Compliance date: annually, July of each year; Responsibility: each permittee."

Response: EPA declines to specify the number of drains to be stenciled per year as the commenter suggests. Part II.B.2.f. requires that the co-permittees develop and implement a storm drain stenciling program within one year of the effective date of the permit. This requirement was included in the Fairbanks Permit because it was a specific activity set forth in the co-permittees' SWMP submitted with the permit application.

At this time, the total number of outfalls that should be stenciled is unknown because a comprehensive MS4 map will not be complete until three years from the effective date of the Fairbanks Permit. Therefore, EPA is providing the co-permittees with the flexibility to define the extent of the drain stenciling program over the permit term. If all of the storm drains have not been stenciled by the permit expiration date, EPA will consider adding such a requirement in the next permit cycle.

20. **Comment (Plummer):** It seems inappropriate to provide the co-permittees a one year timeframe to begin educating the local construction industry about the requirements of the NPDES General Permit for Storm Water from Construction Activities (and the NPDES Multi-Sector General Permit for Storm Water Discharges from Industrial Activities) as reflected in Part II.B.1.a, given that EPA has been inspecting construction sites and issuing fines in the Fairbanks area.

Response: Part II.B.1 requires the co-permittees to develop and implement a broad-based community education program regarding storm water, by defining and targeting specific audiences with tailored information. EPA believes that a one year period is reasonable for the co-permittees to define their program's target audience(s) and to start this ongoing education effort. If the co-permittees choose to target the construction industry as a primary audience, EPA has a variety of compliance assistance materials that may bolster their efforts.

At this time, EPA and ADEC are the primary information sources to the construction

and/or industrial operator about the NPDES stormwater permitting requirements, and will continue to provide such outreach. The requirements of the Fairbanks Permit provide an additional source of information about the characteristics of storm water runoff, but do not replace EPA's education efforts for construction and industrial storm water facilities.

21. **(ADOT&PF):** ADOT&PF requests EPA to change the time line set forth in Part II.B.3.a. and Table III.A. to "three years from the effective date of this permit." ADOT&PF feels that the time line should be changed because it will be easier for the co-permittees to identify all roadway drainage structures at the same time they are mapping their MS4s. Further, it will take a good deal of coordination between the co-permittees to consolidate their respective data into a comprehensive MS4 map. Last, the co-permittees should be given enough time to cost-effectively contract for and execute a reliable hydrologic study while also dealing with the constraints of six (6) to seven (7) months of snow-covered ground per year.

Response: EPA acknowledges the complexity of conducting the hydrologic study of the co-permittees' MS4s. EPA also agrees that close coordination between the co-permittees is an important aspect of this activity. Thus, the compliance dates associated with Part II.B.3.a. and Table III.A of this permit have been revised to reflect this change.

22. **Comment (City of Fairbanks):** The draft Fairbanks Permit states that the hydrologic study must be completed within the first year of the Fairbanks Permit. The City of Fairbanks does not believe that the co-permittees, particularly ADOT&PF, can adequately look at and report on water flow characteristics over the entire urbanized area within a one year period. The City of Fairbanks is concerned that it will not be able to locate all the outfalls within such a short timeframe.

Response: EPA has corrected the time line for completing the hydrologic study of drainage structures to three years from the permit effective date. *See also* Part II-Storm Water Management Program, Response to Comment 4, above.

23. **Comment (YRITWC):** The YRITWC requests the following change to Part II.B.3.a.: "No later than three years from the effective date of this permit, the co-permittees must develop a comprehensive storm water sewer map, and make the GIS map, or GPS coordinates, available to the interested general public. (Retain all other language besides first sentence) Compliance: Within three years. Responsibility: Each Permittee."

Response: The substantive elements of the commenter's request already exist in the permit language. In the preamble to the Phase II storm water regulations, EPA explains that regulated small MS4 operators have the flexibility to determine the type and size of map which best meets the co-permittees' needs. Further, EPA encourages (but does not require) the use of Geographic Information Systems or Geographic Positioning Systems in the development of the comprehensive map. *See* 64 Fed. Reg. 68756 (Dec. 8, 1999).

EPA declines to revise the permit language as requested. However, EPA will clarify the requirement by adding a sentence to Part II.B.3.f. that requires a copy of the completed comprehensive map to be included in the Annual Report. Since Part II.B.2.b. requires all Annual Reports be made public, the map will be available to all interested parties.

As previously stated, EPA's goal is to provide consistency in the Phase II MS4 permits for the Fairbanks Urbanized Area. Therefore, this language has also been included in the FNSB Permit at Part II.B.3.e.

24. **Comment (YRITWC):** YRITWC requests the following change to Part II.B.3.c.: "Storm water monitoring plan created, initiated, coordinated with FNSB, Permit # AKS-053414, to detect and eliminate illicit discharges. Specifically, the program must incorporate detection, identification of the source, and removal of non-storm water discharges, including illegal dumping, into the storm sewer system. Each co-permittee must, as part of this activity, develop an information management system to track illicit discharges. Compliance: Within one year. Responsibility: Each Permittee. "

Response: The substantive elements of the commenter's request already exist in the permit language. EPA declines to revise the permit language as requested. Part II.B.3. describes the Illicit Discharge Detection and Elimination component of the SWMP. Specifically, Part II.B.3.b. requires the co-permittees to develop a program to detect, identify and remove non-storm water discharges from the MS4. The co-permittees are required to develop an information management system to track such illicit discharges within two years. In addition, Part II.B.3.g. requires the co-permittees to add a dry weather field screening component within three years of the permit's effective date. Since this permit requirement corresponds with other required SWMP activities, (such as completing the hydrologic study of the drainage system, finalizing the comprehensive map, and coordinating these efforts among the co-permittees), EPA believes that two years from the effective permit date is a reasonable amount of time to initiate such a program. Further, EPA continues to strongly encourage the Fairbanks co-permittees to coordinate closely with Fairbanks North Star Borough to implement any and all of the elements of their respective SWMPs.

25. **Comment (City of Fairbanks):** No date is given for compliance with Part II.B.3.e.

Response: Part II.B.3.e. requires co-permittees to inform the public and users of the MS4 about the hazards associated with illegal discharges and improper waste disposal. EPA has added a compliance date of "Not later than two years from the effective date of this permit" to the text of Part II.B.3.e. and Table III.A. This compliance date corresponds to the annual reporting requirement that begins with the submittal of the second Annual Report.

As previously stated, EPA's goal is to provide consistency in the Phase II MS4 permits for the Fairbanks Urbanized Area. Therefore, this language has also been included in the

FNSB Permit at Part II.B.3.d. and Table III.A.

26. **Comment (Plummer):** The term "privately operated snow disposal sites" in Part II.B.3.e is ambiguous.

Response: Snow disposal sites that are owned, operated and maintained by non-municipal entities are considered privately operated snow disposal sites.

27. **Comment (City of Fairbanks):** Part II.B.3.g. is a new requirement that was not part of the SWMP submitted with the permit application. This provision requires screening all of the outfalls in the Fairbanks area. This is not practical. A lower limit, perhaps 95% of the outfalls and all outfalls greater than a certain size, would make compliance more practical.

Response: This requirement is derived from the regulations at 40 CFR § 122.34(b)(3)(iv). Since the storm sewer system map will not be completed until three years from the effective date of the permit, EPA acknowledges that it is impractical to require dry weather screening of all outfalls by three years from the effective date of the permit. Therefore, EPA has revised this permit element (and the corresponding reference in Table III.A) to require 50% of all outfalls to be screened by the end of the five year permit term.

As previously stated, EPA's goal is to provide consistency in the Phase II MS4 permits for the Fairbanks Urbanized Area. Therefore, this language is also included in the FNSB Permit at Part II.B.3.f. and Table III.A.

28. **Comment (ADOT&PF) :** ADOT&PF suggests altering the last sentence of Part II.B.3.g. to replace the words "take action" with "initiate action." Thus, the sentence would read: "The co-permittees must investigate any illicit discharge within 15 days of its detection, and must *initiate action* to eliminate the source of the discharge within 45 days of its detection." (emphasis added).

Response: EPA believes that the current phrasing allows the co-permittees the flexibility to begin (or initiate) its procedures to remove the source of the illicit discharge within the specified time frame. Therefore, EPA declines to revise the permit language as requested.

29. **Comment (YRITWC):** YRITWC requests a revision to the compliance time frame in Part II.B.3.g. to "Within two years of the effective date of the permit; Responsibility: Co-permittees."

Response: EPA declines to revise the permit language as requested. Since dry weather screening corresponds with other required SWMP activities, EPA believes that three years from the effective date of the permit is a reasonable amount of time for the co-

permittees to initiate dry weather screening of the storm drain outfalls.

30. **Comment (City of Fairbanks):** The City of Fairbanks requests a revision to the compliance date in Part II.B.4.e. The City believes that inspections at construction sites should be required after the laws are implemented. Further, the inspections should only be of regulated construction sites.

Response: EPA has changed the compliance date for the start of construction site inspections to "Within three years from the effective date of the permit." It is expected that the procedures for construction site inspection and enforcement will be developed jointly with the development of an ordinance or other regulatory mechanism.

As previously stated, EPA's goal is to provide consistency in the Phase II MS4 permits for the Fairbanks Urbanized Area. Therefore, this language has also been included in the FNSB Permit at Part II.B.4.e. & Table III.A.

31. **Comment (City of Fairbanks):** There is an extra "not" in Part II.B.5.b. 2nd paragraph.

Response: EPA has corrected the error.

32. **Comment (Plummer):** In the event that the street cleaning operations are found to be inefficient during the evaluation conducted as required in Part II.B.6.b, explain whether the co-permittees must purchase equipment such as vactor trucks or high efficiency street sweepers.

Response: The co-permittees may choose the manner in which they address inefficient or inadequate street sweeping practices which may be discovered as a result of the evaluation of current practices. If municipal street cleaning is found to be contributing to or causing water quality problems, the co-permittees must change their practices to eliminate the impacts. The co-permittees will be in the best position to determine what kind of changes are appropriate.

33. **Comment** (**City of Fairbanks):** Regarding Part II.B.6.d., this requirement is new and we are not sure of the applicability. Many flood control or management projects are conducted at the state or federal level. This requirement implies that the co-permittees have control over the federal or state government. Does this requirement to "ensure" that the projects are assessed for water quality protection devices and practices extend to actually being responsible for conducting these assessments?

Response: This requirement is derived from 40 C.F.R. § 122.34(b)(6). This provision requires the co-permittees to assess any flood control projects occurring within their municipal jurisdictions and under their direct control for possible negative impact(s) on water quality. The co-permittees are not responsible for conducting the assessments over flood control or management projects that they have no ability to control. However, the

co-permittees should actively seek to contribute relevant information and expertise to the maximum extent practicable to such projects which may negatively impact water quality in their jurisdiction.

34. **Comment (Plummer):** It is unreasonable to require the co-permittees to educate all the industrial operators within the Fairbanks jurisdiction of their storm water permitting requirements within one year of the permit as described in Part II.B.6.e.6.

Response: EPA believes this comment reflects a misunderstanding of the requirement of Part II.B.6.e.6. As written, this part requires the co-permittees to provide, within one year of the effective date of the permit, a list of all industrial discharges *owned or operated by* the co-permittees, including those facilities which may be subject to the MSGP or individual NPDES permits. This part does not require the co-permittees to educate or list privately owned and operated industrial sites that discharge to their MS4.

Part IV: Monitoring Record keeping and Reporting Requirements

35. **Comment (ADOT&PF):** ADOT&PF suggests altering the reporting requirements in Part IV.A.2.c. as follows: ". . . and submitted annually for the previous 12-month period (except for the first year of the permit during which time discharge testing/monitoring will be limited to very incidental and intermittent sampling as the drainage structures and pathways are determined and tracked) along with . . ."

Response: EPA declines to revise the permit language as requested. Any monitoring data collected by the co-permittees during the permit term must be recorded on a Discharge Monitoring Report (DMR) form or equivalent and must be included with the Annual Report. The DMRs can include a notation regarding the intermittent or incidental basis of the sampling; however, any monitoring data collected must be submitted with the Annual Report.

36. **Comment: (ADOT&PF)**: ADOT&PF suggests replacing a sentence in Part IV.B.1. (*i.e.*, "This period may be extended at the request of the EPA at any time") with the following sentence: "The EPA may request that this three year period be extended for specific sample data sets, giving reasons for the requested extension, at any time."

Response: EPA declines to revise the permit language as requested. The permit language in Part IV.B.1. is standard language that is required to be included in all NPDES permits pursuant to 40 C.F.R. § 122.41(j)(2).

Part V: Compliance Responsibilities

37. **Comment: (ADOT&PF):** ADOT&PF requests alteration of the first sentence in Part V.A. as follows: "Co-permittees and the EPA must comply with all conditions of this permit."

Response: EPA declines to revise the permit language as requested. The permit language in Part V.A. is standard language that is required to be included in all NPDES permits pursuant to 40 C.F.R. § 122.41 (a).

38. **Comment (ADOT&PF):** ADOT&PF requests the addition of the following sentence at the end of Part V.F.: "The EPA will notify the co-permittees, in writing, of the establishment of any standards or prohibitions under Section 307(a) of the Act which would alter the co-permittees' responsibilities under this permit."

Response: EPA declines to revise the permit language as requested. The permit language in Part V.F. is standard language that is required to be included in all NPDES permits pursuant to 40 C.F.R. § 122.41(a)(1). EPA acknowledges the intent of this comment, and will (if necessary) notify the co-permittees of any new standards established by EPA under Section 307(a) of the Clean Water Act that may affect the co-permittees.

39. **Comment (ADOT&PF):** ADOT&PF requests EPA to remove the sentence "This notification applies to pollutants that are not subject to effluent limitations in the permit," because the potential interpretation of the word "pollutants" in this context is much too broad and over-reaching.

Response: EPA declines to revise the permit language as requested. The permit language in Part V.G.2. is standard language that is required to be included in all NPDES permits pursuant to 40 C.F.R. § 122.41(l)(1).

Part VI: General Provisions

40. **Comment (ADOT&PF):** ADOT&PF requests EPA to add a sentence to the end of Part VI.C. that states: "EPA must furnish to each of the co-permittees, within the time specified in their request, any information deemed by the co-permittees to be required from EPA in order to execute their responsibilities in complying with this permit."

Response: EPA declines to revise the permit language as requested. The permit language in Part VI.C. is standard language that is required to be included in all NPDES permits pursuant to 40 C.F.R. § 122.41(h). EPA is available to provide the co-permittees with any necessary information through all existing formal and informal channels. For example, EPA routinely updates the EPA websites dedicated to the NPDES storm water program, and periodically sends out messages regarding newly available materials. EPA can provide information as requested through phone calls or e-mails. In addition, the Freedom of Information Act (FOIA) provides the co-permittees and other interested parties with a formal process for requesting information from EPA.

Endangered Species and Essential Fish Habitat

41. **Comment (NOAA Fisheries)**: Due to the inland location of the permit areas, threatened and endangered species under our jurisdiction will not occur in the vicinity of the [permitted area], and critical habitat for those listed species would not be affected. With regard to essential fish habitat regulated under the Magnuson-Stevens Fishery Conservation and Management Act, the information provided shows the permit(s) will not result in any adverse effect to Essential Fish Habitat (EFH). No EFH assessment is required and NMFS does not offer any EFH conservation recommendations.

Response: EPA appreciates NOAA Fisheries' input on these matters.

Monitoring

42. **Comment (Nenana Native Council):** The greater Fairbanks area is part of the Tanana river watershed and is traditionally considered to be Nenana territory. Due to ongoing concerns about environmental impacts on traditional subsistence resources, Nenana Native Council is interested in working with the municipal operators of the Fairbanks area to establish a water quality monitoring/management program in the Tanana Watershed.

Response: EPA encourages Nenana Native Council (and other interested parties) to work directly with the Fairbanks North Star Borough, City of Fairbanks, City of North Pole, University of Alaska, and Alaska Department of Transportation & Public Facilities on storm water management issues such as future monitoring. The municipal NPDES permittees are required to engage local citizens on storm water management issues through an advisory committee(s). In addition, co-permittees must provide opportunity for public input concerning the SWMP(s). The Fairbanks co-permittees have already organized such a group. EPA encourages the Nenana Native Council and other interested parties to build working relationships by participating in future meetings. Future meeting information can be obtained by contacting the Fairbanks City Engineer (Chris Haigh) at (907) 459-6748 or the Fairbanks North Star Borough (Bob Shefchik of the Mayor's Office) at (907) 459-1305. As discussed in the Phase II preamble, EPA encourages MS4s to participate in group monitoring programs undertaken by governmental and nongovernmental entities. *See* 64 Fed. Reg. 68769 (Dec. 8, 1999).

At this time, EPA is not including specific water quality monitoring requirements in the Fairbanks permit beyond that which helps to characterize the storm water discharges from the MS4 (*e.g.*, dry weather discharge sampling efforts). Before including specific water quality monitoring requirements in the Fairbanks permit, the co-permittees must first assess the physical extent of the storm drainage network and create a SWMP. The initial five-year term of this permit is a reasonable amount of time for accomplishing these initial tasks. During the next permit cycle, EPA may revisit the inclusion of specific water quality monitoring requirements in the permit.

Appendix A
Alaska Department of Environmental Conservation's Anti-degradation Policy

18 AAC 70.015. Antidegradation policy. (a) It is the state's antidegradation policy that

(1) existing water uses and the level of water quality necessary to protect existing uses must be maintained and protected;

(2) if the quality of a water exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality must be maintained and protected unless the department, in its discretion, upon application, and after compliance with (b) of this section, allows the reduction of water quality for a short-term variance under 18 AAC 70.200, a zone of deposit under 18 AAC 70.210, a mixing zone under 18 AAC 70.240, or another purpose as authorized in a department permit, certification, or approval; the department will authorize a reduction in water quality only after the applicant submits evidence in support of the application and the department finds that

(A) allowing lower water quality is necessary to accommodate important economic or social development in the area where the water is located;

(B) except as allowed under this subsection, reducing water quality will not violate the applicable criteria of 18 AAC 70.020 or 18 AAC 70.235 or the whole effluent toxicity limit in 18 AAC 70.030;

(C) the resulting water quality will be adequate to fully protect existing uses of the water;

(D) the methods of pollution prevention, control, and treatment found by the department to be the most effective and reasonable will be applied to all wastes and other substances to be discharged; and

(E) all wastes and other substances discharged will be treated and controlled to achieve

(i) for new and existing point sources, the highest statutory and regulatory requirements; and

(ii) for nonpoint sources, all cost-effective and reasonable best management practices;

(3) if a high quality water constitutes an outstanding national resource, such as a water of a national or state park or wildlife refuge or a water of exceptional recreational or ecological significance, the quality of that water must be maintained and protected; and

(4) if potential water quality impairment associated with a thermal discharge is involved, the antidegradation policy described in this section is subject to 33 U.S.C. 1326 (commonly known as sec. 316 of the Clean Water Act).

(b) An applicant for a permit, certification, or approval who seeks to reduce water quality as described in (a) of this section shall provide to the department all information reasonably necessary for a decision on the application, including the information and demonstrations required in (a) of this section and other information that the department finds necessary to meet the requirements of this section.

(c) An application received under (a) of this section is subject to the public participation and intergovernmental review procedures applicable to the permit, certification, or approval sought, including procedures for applications subject to the Alaska Coastal Management Program in AS 46.40 and 6 AAC 50, and applications subject to 18 AAC 15. If the department certifies a federal permit, the public participation and intergovernmental review procedures followed by the federal agency issuing that permit will meet the requirements of this subsection.

(Eff. 11/1/97, Register 143)

Authority: AS 46.03.010; AS 46.03.080; AS 46.03.110; AS 46.03.020; AS 46.03.090; AS 46.03.710; AS 46.03.050; AS 46.03.100; AS 46.03.720; AS 46.03.070