

## RESPONSE TO COMMENTS

### Fairbanks North Star Borough Municipal Separate Storm Sewer System (MS4)

NPDES Permit #AKS-053414

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 system (MS4) owned and operated by the Fairbanks North Star Borough (FNSB), NPDES Permit No. AKS-053414 (FNSB Permit). Concurrently, EPA also proposed a separate draft permit for discharges from the 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). The 45-day comment period for both permits expired on December 2, 2004.

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

Comments were received from:

- FNSB,
- 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 addition, in some of the comments to the Fairbanks Permit, the commenters provided comments that are 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 (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**

2. **Comment (USFWS):** USFWS is concerned that a number of MS4 outfalls owned or maintained by the permittee 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 applicant.

**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 as indicated in Part IV.D. of the FNSB Permit.

3. **Comment (Plummer):** Consideration should be given to the emergency nature of flooding in the Fairbanks area in Part I.C.1.b.2. Public safety should govern over MS4 permit requirements in an emergency situation.

**Response:** EPA agrees with this statement. Part I.C.1.b.2 of the FNSB Permit contemplates a situation where the permittee would have to discharge due to flooding.

4. **Comment (Plummer):** Part I.C.1.c.1 should be modified such that non-storm water 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 permittee must exercise their professional judgement and discretion to meet the requirements of this permit when conducting maintenance activities within their jurisdiction. Non-storm water discharges such as discharges associated with pipe and other thawing conditions are allowed as long as the conditions set forth in Part I.C.1.c.1 are met.

5. **Comment (Alaska Department of Transportation & Public Facilities [ADOT&PF]):** ADOT&PF requests EPA to revise the following statement in Part I.D.1.c.2.(i) of the Fairbanks Permit: “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).

**Response:** EPA’s goal is to provide consistency in the Phase II MS4 permits for the Fairbanks Urbanized Area. Therefore, EPA has chosen to revise Part I.C.1.c.2.(i). of the FNSB Permit so that it is consistent with the changes made to Part I.D.1.c.2.(i) of the Fairbanks Permit.

Similar to Part I.D.1.c.2.(i) of the Fairbanks Permit, Part I.C.1.c.2.(i) of the FNSB Permit sets forth what constitutes a discharge that is a source of pollution to waters of the United States. As explained in the *Response to Comments* for the Fairbanks Permit, the items set forth in Parts I.C.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 course of pollution to waters of the United States. This phrasing was derived 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.C.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.

6. **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.C.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 permittee compliance during the permit term. EPA and ADEC will review all Annual Reports and any proposals to revise the SWMP submitted by the permittee. 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 FNSB 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 FNSB Permit allows EPA to reopen the permit to modify the terms and conditions as necessary.

7. **Comment (ADOT&PF):** ADOT&PF suggests that EPA revise the following sentence in Part I.D.5. of the Fairbanks Permit: “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:** EPA’s goal is to provide consistency in the Phase II MS4 permits for the Fairbanks Urbanized Area. Therefore, EPA has chosen to revise Part I.C.5. of the FNSB Permit so that it is consistent with the changes made to Part I.D.5. of the Fairbanks Permit.

Part I.C.5. explicitly prohibits the permittee from dumping accumulated snow directly into waters of the United States or into the MS4s. The second sentence in Part I.C.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 FNSB Permit as follows:

The permittee is 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.

### **Legal Authority**

- 8. Comment (FNSB):** FNSB interprets all provisions of the draft FNSB Permit to allow it to take measures as appropriate in light of the Borough's governmental powers and fiscal responsibility.

**Response:** EPA concurs with this interpretation. As discussed in the preamble to the Phase II storm water regulations, “. . . EPA has no intention of directing state legislatures on how to allocate authority and responsibility under state law. . . . If state law prevents political subdivisions from controlling discharges through storm sewers, EPA anticipates common sense will prevail to provide MS4 operators with the ability to meet the requirements applicable for their discharges.” See 64 Fed. Reg. 68757 (Dec. 8, 1999).

- 9. Comment (FNSB):** FNSB Ordinances 1.02.040 B.1 and 1.02.060 B.5 allow FNSB to provide "water pollution control" on an area wide or non-area wide basis. It is unclear how far this power will go to allow FNSB to establish a "program" to "detect and eliminate" illicit discharges as required by the FNSB Permit.

**Response:** The preamble to the Phase II storm water regulations states:

Today's rule recognizes that the operators of some small MS4s might not have the authority under State law to implement one or more of the measures using, for example, an ordinance or other regulatory mechanism. To address these situations, each minimum measure in § 122.34(b) that would require the small MS4 operator to develop an ordinance or other regulatory mechanism states that the operator is only required to implement that requirement to “the extent allowable under State, Tribal or local law. See § 122.34(b)(3)(ii) (illicit discharge elimination), § 122.34(b)(4)(ii) (construction runoff control) and § 122.34(b)(5)(ii) (post-construction storm water management). This regulatory language does not mean that a operator of a small MS4 with ordinance making authority can simply fail to pass an ordinance necessary for a § 122.34(b) program. The reference to “the extent allowable under \* \* \* local law” refers to the local laws of *other* political subdivisions to which the MS4 operator is subject. Rather, a small MS4 operator that seeks to implement a program under section § 122.34(b) may omit a requirement to develop an ordinance or other regulatory mechanism only to the extent its municipal charter, State constitution or other legal authority prevents the operator from exercising the necessary authority. Where the operator cannot obtain the authority to implement any activity that is only required to “the extent allowable under State, Tribal or local law,” the operator may satisfy today's rule by administering the remaining § 122.34(b)

requirements.

*See* 64 Fed. Reg. 68766 (Dec. 8, 1999).

### **Guidance vs. the Permit Writer's Best Professional Judgement**

- 10. Comment (FNSB):** As a general matter, FNSB objects to all requirements in the draft permit that go beyond the requirements of the federal regulations. For example, as stated in 40 C.F.R. § 122.35, FNSB agrees that binding written agreements should, where possible, be "encouraged" and should be entered into if entities choose to share responsibility to implement any specific minimum control measures. However, Part II.A.5.c. of the permit provides that "a legally binding written acceptance of this obligation is required."

**Response:** EPA Region 10 has used its discretion to require, rather than to merely suggest, certain actions to be carried out through the implementation of the Storm Water Management Program (SWMP). While EPA acknowledges that the development of a SWMP initially presents some challenges to a municipal organization such as FNSB, EPA does not believe it is onerous to "require" certain elements rather than to merely "encourage" their use.

The permit does not require FNSB to share responsibility to accomplish one or more of the SWMP's minimum measures. Instead, it states that if such arrangements are made, there must be a written agreement of work to be accomplished between the parties and the agreement must be binding on both parties. EPA does not anticipate that voluntary agreements between the permittee and another party will necessarily have to be tested through the legal process. However, EPA feels it is beneficial that any written agreement be formalized between FNSB and an outside organization conducting work on behalf of the Borough so that FNSB has some certainty that the work will be accomplished in accordance with the permit.

- 11. Comment (FNSB):** FNSB objects to Part II.B.3.f. of the FNSB Permit because it goes beyond the federal regulations. Part II.B.3.f. requires FNSB to begin "dry weather field screening for non-storm water flows from all outflows." In contrast, 40 C.F.R. § 122.34(b)(3)(iv) merely "recommends visual screening outfalls during dry weather . . . as part of the procedures for locating priority areas" in the illicit discharge detection and elimination program.

Provisions that change EPA "guidance" into permit requirements goes beyond the federal regulations and should not be required for permit compliance. Instead, these guidance statements could be used as alternative ways to meet the program development component. Last, there may be other instances of this type of expansion in the draft permit that FNSB is not specifically mentioning here. For the purposes of this comment, FNSB objects to all such expansions.

**Response:** As stated in Response 6, above, EPA is using its discretion to require, rather

than to suggest, that particular actions be carried out through the implementation of the SWMP.

## **Part II. Storm Water Management Program**

- 12. 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. Plummer questions whether the permittee 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 FNSB 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 Phase I and Phase II MS4 communities. 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.

- 13. 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 FNSB system flowing through portions of the MS4 network connected to the other Fairbanks area MS4s. 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 FNSB 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 Fairbanks North Star Borough and the co-permittees subject to the Fairbanks Permit 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 FNSB or the Fairbanks co-permittees, both the FNSB Permit and the Fairbanks 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).

- 14. Comment (Plummer):** It seems inappropriate to provide FNSB 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 FNSB to develop and implement a broad-based community education program regarding storm water, by defining and targetting specific audiences with tailored information. EPA believes that a one year period is reasonable for FNSB to define their program's target audience(s) and to start this ongoing education effort. If FNSB chooses 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 industrial operator about the NPDES stormwater permitting requirements, and will continue to provide such outreach. The requirements in the FNSB 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.

- 15. Comment (FNSB):** FNSB has road powers in areas the public voted to tax as Road Service Areas. Within Road Service Areas the Borough can develop a program for illicit discharge and detection and elimination in the roadside ditches as required in Part II.B.3 of the FNSB Permit.

**Response:** EPA acknowledges the powers through which FNSB operates, and is confident that FNSB can implement this program requirement adequately. EPA encourages FNSB to fully examine the extent of its powers to investigate and eliminate any non-storm water discharges to the MS4s maintained by FNSB.

- 16. 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.

- 17. Comment (YRITWC):** YRITWC requests the following change to Part II.B.3.a. of the Fairbanks Permit: "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:** Although EPA declined to revise the language in the Fairbanks Permit as requested by YRITWC, EPA did decide to add a sentence to Part II.B.3.f. of the Fairbanks Permit in response to this comment. (See Comment #6 of the *Response to Comments* for the Fairbanks Permit # AKS-053406). Specifically, EPA decided to add 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. of the Fairbanks Permit requires all Annual Reports be made public, the map will be available to all interested permits.

Since EPA’s goal is to provide consistency in the Phase II MS4 permits for the Fairbanks Urbanized Area, this sentence has also been included in the comparable provision of the FNSB Permit at Part II.B.3.e.

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

**Response:** EPA’s goal is to provide consistency in the Phase II MS4 permits for the Fairbanks Urbanized Area. Therefore, EPA has chosen to revise Part II.B.3.d. and Table III.A. of the FNSB Permit so that it is consistent with the changes made to Part II.B.3.e. and Table III.A. of the Fairbanks Permit.

Part II.B.3.d. of the FNSB Permit requires the permittee 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 “[n]ot later than two years from the effective date of this permit” to the text of Part II.B.3.d. and Table III.A. This compliance date corresponds to the annual reporting requirement that begins with the submittal of the second Annual Report.

- 19. Comment (City of Fairbanks):** The City of Fairbanks commented that Part II.B.3.g. of the Fairbanks Permit is a new requirement that was not part of the SWMP submitted with the permit application. This provision requires screening of all of the outfalls in the Fairbanks area. According to the City of Fairbanks, this is not a practical requirement and the City requests a lower limit that would make compliance more practical.

**Response:** EPA’s goal is to provide consistency in the Phase II MS4 permits for the Fairbanks Urbanized Area. Therefore, EPA has chosen to revise Part II.B.3.f. and Table III.A. of the FNSB Permit so that it is consistent with Part II.B.3.g. and Table III.A. of the Fairbanks Permit.

This requirement is derived from the federal regulations at 40 C.F.R. § 122.34(b)(3)(iv). Since the storm sewer 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 the permit to require 50% of all outfalls to be screened by the end of the five year

permit term.

- 20. Comment (City of Fairbanks):** The City of Fairbanks requested revision to the compliance date in Part II.B.4.e. of the Fairbanks Permit. The City of Fairbanks 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's goal is to provide consistency in the Phase II MS4 permits for the Fairbanks Urbanized Area. Therefore, EPA has chosen to revise Part II.B.4.e. and Table II.A. of the FNSB Permit so that it is consistent with Part II.B.4.e. and Table III.A. of the Fairbanks Permit. EPA expects that the procedures for construction site inspection and enforcement will be developed jointly with the development of an ordinance or other regulatory mechanism.

- 21. Comment (FNSB):** With regard to Parts II.B.4. and II.B.5. of the FNSB Permit, FNSB has the ability to comment and provide information for new subdivision improvements which disturb over one acre of land per Title 17 of the FNSB Ordinance. FNSB can provide comments to direct the developer to contact EPA and follow EPA's Construction General Permit.

**Response:** EPA agrees that providing direct feedback to developers is a good way to initiate this educational process with the local building community. However, to the extent allowable under FNSB's jurisdiction, FNSB should strive to require developers to obtain NPDES permit coverage for any storm water discharges associated with construction activity disturbing one or more acres. EPA can assist the developer in obtaining the appropriate permit coverage, but FNSB should educate the developers as much as possible.

- 22. Comment (YRITWC):** YRITWC requests EPA to insert the following requirement in Part II.B.1.e. of the FNSB Permit: "The permittee must initiate a storm water stenciling program, labeling 100 intakes annually. Compliance: annually. Responsibility: permittee."

**Response:** EPA declines to revise the permit language as requested. EPA's Phase II storm water regulations do not require specific activities or BMPs. Instead, the Phase II storm water regulations give MS4 operators the flexibility to determine the mix of activities that will be accomplished during the permit term as part of the SWMP.

FNSB did not identify storm drain stenciling as part of their SWMP. Part II.B.3.e. requires a comprehensive MS4 map to be developed within three years of the effective date of the permit. The MS4 map will identify the number and location of storm drains that may warrant stenciling at a later date. If stenciling is warranted, the permittee may add storm drain stenciling as part of their SWMP during the current permit term or EPA may require stenciling in the next permit cycle.

- 23. Comment (YRITWC):** YRITWC requests EPA to revise Part II.B.3.a. of the FNSB

Permit as follows: “No later than 1 year from the effective date of the permit.  
Responsibility: permittee.”

**Response:** EPA declines to revise the permit language as requested. Establishing a new program to investigate and remove illegal discharges from the MS4 will necessarily require internal coordination among various FNSB departments. EPA believes two years is a reasonable amount of time to for FNSB to implement this provision. In addition, the time frame defined in the FNSB Permit is consistent with Part II.B.3.b of the Fairbanks Permit which allows for coordination between the various MS4 permittees.

24. **Comment (YRITWC):** YRITWC requests EPA to revise Part II.B.3.e. of the FNSB Permit as follows: “Locations of all privately operated snow disposal sites must also be indicated on the comprehensive map. Compliance: 3 years. Responsibility: Permittee.”

**Response:** EPA declines to revise the permit as requested. Part II.B.3.e. currently reads: “If available, locations of all privately operated snow disposal sites must also be indicated on the comprehensive map.” EPA believes this provision substantially requires the inclusion of such locations on the comprehensive map.

25. **Comment (YRITWC):** YRITWC requests EPA to revise the compliance date in Part II.B.5.a-c. to require compliance “within 3 years of the effective date of the permit. Responsibility: permittee.”

**Response:** EPA declines to revise the permit language as requested. The time line for implementation of the activities associated with post-construction storm water management is influenced by the time line submitted by FNSB in their NPDES permit application. EPA regulations allow the permittee flexibility to determine the sequence of implementation of the SWMP. EPA has determined that the time line laid out by FNSB is reasonable.

26. **Comment (Plummer):** It is unreasonable to require FNSB 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.d.6.

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

### **Endangered Species and Essential Fish Habitat**

27. **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 NOAA Fisheries does not offer any EFH conservation recommendations

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

### **Monitoring**

- 28. 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 River 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 permittee(s) are required to engage local citizens on storm water management issues through an advisory committee(s). In addition, permittee(s) must provide opportunity for public input concerning the SWMP(s). The Fairbanks 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 Shefchick 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 FNSB 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 FNSB permit, the permittee 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.