

**U.S. Environmental Protection Agency  
Region 10**

**Response to Comments**

**On the Draft NPDES Permit for:**

**City of Kenai Wastewater Treatment Facility  
NPDES No. AK-002137-7**

**July 14, 2008**

**Introduction**

On July 23, 2007, the Environmental Protection Agency (EPA) issued a draft National Pollutant Discharge Elimination System (NPDES) permit for the City of Kenai Wastewater Treatment Facility (Kenai WWTF). The public comment period for the draft permit extended from July 23, 2007, through August 23, 2007.

The City of Kenai owns, operates, and maintains a complete mix modification of an activated sludge secondary treatment plant. The facility discharges treated municipal wastewater to Cook Inlet and sludge to the Soldotna landfill. The facility receives no significant industrial discharge, and the system has no combined sewers. The facility serves a resident population of 3600. As the City of Kenai is a tourist area, actual population is higher during summer months.

**Actions since the public comment period**

EPA has reconsidered the effects of the discharge on Endangered Species Act (ESA) species under the jurisdiction of the National Marine Fisheries Service (NMFS). After reevaluation of the potential effects and further discussion with NMFS, EPA determined that there would be no effect on the ESA species under NMFS' jurisdiction. This determination does not change the permit in any way. In the fact sheet, EPA had stated that the discharge was not likely to adversely affect ESA species under NMFS' jurisdiction.

On September 17, 2007, EPA received a letter from the US Fish and Wildlife Service (USFWS) concurring with EPA's determination that the discharge was not likely to adversely affect ESA species under the jurisdiction of USFWS.

On September 17, 2007, EPA received a copy of a letter from the Alaska Office of Project Management and Permitting stating that the project was consistent with the Alaska Coastal Management Program (ACMP).

On October 29, 2007, the State of Alaska Department of Environmental Conservation (ADEC) issued a final Section 401 Certification for the permit. The

certification resulting in the following changes to the permit: daily maximum and monthly average flow limits were placed in the permit, 1.44 mgd and 1.3 mgd, respectively; a requirement for shoreline signage was placed in the permit.

EPA has updated dates for metals monitoring and surface water monitoring to align with the permit issuance date.

### Comments

This document represents EPA's response to comments received during the comment period. EPA received comments from the following commenters only:

- Tom Murphy via email on August 10, 2007
- Mark Low via email on August 9 and 13, 2007

The comments are summarized below followed by EPA's response.

Comment #1: The commenter asked why there is no standard for nitrogen in the permit as there is in California permits.

Response: The Kenai WWTF permit is written to protect criteria in the State of Alaska. California permits are developed according to California water quality standards and criteria. Alaska does not have marine surface water criteria for nitrogen other than the criteria for ammonia toxicity. For the Kenai WWTF permit, EPA did an evaluation to determine whether there was reasonable potential for ammonia to exceed the criteria in the receiving water (see Appendix C and Spreadsheet 1 of the fact sheet). There was no reasonable potential demonstrated, so no ammonia limits were placed in the permit. Ammonia monitoring was included in the permit to provide data to evaluate reasonable potential during the next permit cycle.

Comment #2: The commenters stated that the goal of the NPDES permit program is to eliminate discharge and as such EPA does not have the authority to issue permits that allow discharge of any pollutants. Commenters based this opinion on USC Title 33 Chapter 26. Commenters asserted that requirements in the Code of Federal Regulations (CFRs) are substandard and that EPA is not authorized to administer the regulations.

Response: Title IV, Section 402 of the Clean Water Act requires EPA to both develop and implement the NPDES permit program.

Comment #3: Commenter stated that the federal statutes do not allow issuance of the permit if there is an alternative technology available that will eliminate the discharge of pollutants and commanded EPA to cease and desist moving forward on the permit. Commenter also stated that the technology is available from him.

Response: The Clean Water Act (CWA) does not authorize EPA to specify treatment technology.

Comment #4: Commenter cited USC 33 Chapter 26 Section 1370 STATE AUTHORITY and asserted that EPA may not apply limits less stringent than the “standard of performance under this chapter.”

Response: Section 1370 does not apply to EPA permits. This section applies to state authority for establishing requirements that must be at least as stringent as federal requirements.

Comment #5: Commenters asserted that USC 33 Chapter 26 Section 1316 NATIONAL STANDARDS OF PERFORMANCE requires a standard of performance for the Kenai WWTF.

Response: Section 1316 applies to industrial categories of dischargers, not to Publicly Owned Treatment Works (POTWs) such as the Kenai WWTF.

Comment #6: Commenter stated that his technology meets a standard of performance known as the Maximum Contaminant Level Goals (MCLGs), which define the quality of water containing no pollutants.

Response: The MCLGs are drinking water standards, which do not apply to a marine discharge such as the Kenai WWTF.

Comment #7: Commenter brought USC 33 Chapter 26 Section 1319 FEDERAL ENFORCEMENT to EPA’s attention.

Response: EPA is unclear how the comment applies to the Kenai WWTF permit. Section 1319 authorizes EPA and delegated states, territories and tribes to enforce the Clean Water Act.

Comment #8: Commenter stated that he reviewed the secondary treatment regulations at 40 CFR 133 and that it is evident that “Best Available Demonstrated Control Technology” is not being considered by EPA in its efforts to control the discharge of pollutants as required by USC 33 Chapter 26.

Response: There is no “Best Available Demonstrated Control Technology” standard for POTWs, so EPA is unclear how to respond to the comment.

Comment #9: Commenter cited USC 33 Chapter 26 Section 1251 CONGRESSIONAL DECLARATION OF GOALS AND POLICY and stated that the section defines what the USEPA has been mandated to administer.

Response: EPA agrees. The following language authorizing the NPDES discharge appears on page 1 of the Kenai WWTF permit and cites EPA’s authorities under the Clean Water Act: “In compliance with the provisions of the Clean Water Act, 33 U.S.C. § 1251 et seq., as amended by the Water Quality Act of 1987, P.L. 100-4, the “Act”,...”

Comment #10: Commenter cites USC 33 Chapter 26 Section 1342(o) ANTI-BACKSLIDING, but does not relate the section to the Kenai WWTF permit.

Response: Anti-backsliding provisions prohibit less stringent effluent limitations from being placed in a reissued permit, with limited exceptions. There is no instance of backsliding in the Kenai WWTF permit. In fact, water quality-based Total Residual Chlorine limitations were retained in the permit to comply with anti-backsliding requirements. See page 26 of the Fact Sheet for more information.

Comment #11: Commenter cited USC 33 Chapter 26 Section 1284(a)(6) and asserted that the law requires EPA to require the best available technology and to specify the technology by brand name or equal.

Response: USC 33 Chapter 26 Section 1284(a)(6) applies to prohibitions on specification for bids for treatment works built with federal grants. This section does not apply to the reissuance of the Kenai WWTF permit.

Comment #12: Commenter asserted that issuance of the permit is a violation of USC 33 Chapter 26 Section 1311 EFFLUENT LIMITATIONS.

Response: EPA believes that issuance of the permit is in full compliance with Section 1311, which states that, except as in compliance with 1311 and sections 1312, 1316, 1317, 1328, 1342, and 1344 of the same title, the discharge of any pollutant by any person shall be unlawful. Publicly owned treatment works (POTWs) must meet the applicable requirements in Section 1311, including 1311(b)(1)(B), which requires secondary treatment as defined by the Administrator, as well as Section 1311(b)(1)(c), which requires further treatment if necessary to meet water quality criteria, and 1342 NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMITS.