

# Response to Comments

AK-004320-6

## Other Agency Correspondence:

In a letter dated March 31, 2005, ADEC provided their §401 Certification of the NPDES permit. They also found the project to be consistent with the Alaska Coastal Management Program (ACMP) under 11 AAC 110 which states, in part:

11 AAC 110.010(d): The specific aspects of an activity that are subject to authorization by the Department of Environmental Conservation under AS 46.40.040(b)(1) are excluded from the consistency review processes in this chapter. The issuance of authorizations by the Department of Environmental Conservation under AS 46.40.040(b)(1) establishes consistency with the Alaska coastal management program for those aspects.

EPA sent a letter on October 19, 2004, to the National Marine Fisheries Service (NMFS) containing EPA's determination on Essential Fish Habitat (EFH) and on the Endangered Species Act (ESA). This letter also requested an updated version of the ESA species list if any changes had been made. No response from NMFS has been received by EPA.

EPA sent a letter on October 19, 2004, to the US Fish and Wildlife Service (USFWS) containing EPA's determination on the Endangered Species Act (ESA). This letter also requested an updated version of the ESA species list if any changes had been made. No response from USFWS has been received by EPA.

## Response to Comments:

Comments were received during the public comment period from the Center for Science in Public Participation (CSP<sup>2</sup>), the Southeast Alaska Conservation Council (SEACC) and Kennecott Greens Creek Mining Company (KGCMC). The comment period initially was scheduled to run for 30 days after October 28, 2004, but EPA inadvertently excluded the draft §401 Certification from the draft permit package. A new public notice period was initiated on November 9 and ended on December 9, 2004.

1. Comment: CSP<sup>2</sup> states that the Best Management Practices (BMP) Plan should be updated to address the water quality exceedances from the stormwater outfalls.

In a related comment, SEACC questions whether EPA has the authority to issue this NPDES permit if KGCMC cannot show that BMPs will ensure compliance with Alaska's water quality standards according to 40 CFR 122.4(d).

Response: While the Fact Sheet states that the BMP Plan is required to be updated, the draft permit was more subtle, requiring that the BMP Plan be

prepared according to certain guidance. The previous permit required:

**D. Requirements.** The BMP Plan shall be consistent with the objectives in Part C. above and the general guidance contained in the publication entitled Guidance Manual for Developing Best Management Practices (EPA 833-B-93-004, October 1993) or any subsequent revisions to the guidance document. The BMP Plan shall include:

While the draft permit required:

**D. Elements of the BMP Plan.** The BMP Plan must be consistent with the objectives above and the general guidance contained in *Guidance Manual for Developing Best Management Practices* (EPA 833-B-93-004, October 1993) and *Storm Water Management For Industrial Activities, Developing Pollution Prevention Plans and Best Management Practices* (EPA 832-R-92-006) or any subsequent revision to these guidance documents. The BMP Plan must include, at a minimum, the following items:

Since Permit Part II.B. requires that “The permittee must develop and implement a BMP Plan which achieves the objectives and the specific requirements listed below.” and “A copy of the BMP Plan must be submitted to EPA and ADEC within 120 days of the effective date of the permit,” no additional requirements are included to update the BMP Plan.

Part V.C of the Fact Sheet stated: “Rather than developing numerical effluent limits for each storm water outfall, the permit includes:

- \* A general requirement that the storm water outfalls must not cause or contribute to a WQS violation.
- \* Requirements to develop a best management practices (BMP) plan and outfall-specific BMPs. The NPDES regulations allow for the use of BMPs where development of numerical effluent limits are infeasible (40 CFR 122.44(k)). See section VII.B., below for more information regarding the BMP requirements.”

Permit Parts I.C.2. and II.D.6.a. of the draft permit stated that discharges from the storm water outfalls “must not cause or contribute to a State water quality standards violation.” These provisions remain in the final permit.

Since the permit requires that water quality standards be met and any exceedence of water quality standards would be considered a violation of the permit, EPA sees no reason why the Prohibition language in 40 CFR

122.4(d) would apply.

2. Comment: CSP<sup>2</sup> comments that EPA should require a schedule for cleanup of the waste at the 960 and 1350 sites since these waste piles have been there for many years and have been generating contamination.

Response: The rock material at Site 960 was relocated underground during the summer and fall of 2004. Monitoring will continue at Outfall 008.

The rock material stored at Site 1350 remains in place but has been hydroseeded. Over the past 5 years, the native Spruce and Hemlock from the surrounding forest have begun to naturally reseed themselves. Monitoring will continue at Outfall 009.

3. Comment: CSP<sup>2</sup> recommends including a public comment period on the updated BMP Plan.

Response: The NPDES regulations do not require a public notice for review of the Best Management Practices (BMP) Plan. However, upon request, EPA can assist others in obtaining access to permitting information, including BMP Plans.

4. Comment: CSP<sup>2</sup> notes that Table 2 of the draft permit - Effluent Limitations for Outfall 002 - does not contain the requirements to monitor for BOD and fecal coliforms as stated in the Fact Sheet.

Response: The Fact Sheet in Part VI.A. discusses the monitoring that will be included in the permit. BOD and fecal coliforms are listed in Table 4 for Outfall 002. These were inadvertently left out of Table 2 of the draft permit and have been included in the final permit.

5. Comment: CSP<sup>2</sup> suggests that chlorine be monitored at Outfall 002.

Response: Since chlorine is utilized in the system, monitoring should occur. But the likelihood of a measurable discharge of chlorine from Outfall 002 is low since this is a combined discharge of a maximum of 6000 gallons per day from the domestic wastewater treatment plant and a maximum of up to 3.6 million gallons per day from the industrial discharge. EPA has included in the final permit, a quarterly monitoring schedule that shall be observed for the first two years of the permit. The schedule includes a provision that allows KGCMC to discontinue chlorine monitoring at Outfall 002 after this time if all measurements are found to be below the detection level. If the levels are ever found to be above the detection level, monitoring will continue until 8 consecutive quarters show below detection after which monitoring may be discontinued.

6. Comment: SEACC questions whether any of the stormwater outfalls are within the Monument boundaries and asks whether EPA can permit discharges that affect these “high quality waters constitute[ing] an outstanding National resource” according to 40 CFR 131.12(a)(3).

Response: According to the map included with the final permit showing the monitoring locations, all of the storm water sites are located within the Monument.

40 CFR 131.12(a)(3) states: “Where high quality waters constitute an outstanding National resource, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.”

Admiralty National Monument is not part of the National Park system but part of the National Forest System. While the regulation limits its examples of the waters which may be designated as Outstanding National Resource Waters (ONRWs) to the National Park, State Park or wildlife refuge system, these are only examples of waters that may be designated. The designation is a State process which occurs through the Antidegradation Policy of a State’s Water Quality Standards. There have been no ONRWs designated on Admiralty Island. According to an EPA memo regarding “Designation of Outstanding National Resource Waters” (EPA, 1989), it is not EPA’s practice to designate waters as ONRWs where a State does not do so.

7. Comment: KGCMC questions the basis for changing the pH limit for Outfalls 001 and 002 from a range of 6 to 9 to a range of 6.5 to 8.5.

Response: The pH range of 6.5 to 8.5 is based on the Alaska Water Quality Standards. In its § 401 Certification of the permit, the Alaska Department of Environmental Conservation has authorized a mixing zone for pH. The limits will be a range of 6 to 9 which are the same limits contained in the previous permit.

8. Comment: KGCMC states that Form 2F which was part of the NPDES application included information on the storm water sites and their receiving water that is different than that presented in the Fact Sheet.

Response: EPA realizes that the information is different but some of the locations where KGCMC listed as discharge points are not actually waters of the United States. The potential receiving waters for each discharge point has been interpreted from the information provided in the application.

9. Comment: KGCMC foresees problems with full compliance of the proposed program for storm water receiving water monitoring because the location

of some storm water sites are remote from receiving streams, some up to a mile away. KGCMC requests guidance for the conditions of Permit Part I.E. for when conditions preclude collection of the samples.

Response: EPA has changed the conditions of Permit Part I.E. to allow for annual ambient monitoring of the receiving waters downstream of the point of discharge. This will allow some flexibility so all stations will not have to be monitored both in the Spring and the Fall. There has also been a provision added that only those sites with a discharge to waters of the United States need to have ambient monitoring associated with them since KGCMC indicates that not every storm water event results in runoff that reaches the receiving water. A last provision was added to allow for justification for not sampling if safety factors become an issue.

## **References:**

EPA Designation of Outstanding National Resource Waters. (Memorandum from Acting Director, Criteria and Standards Division to Regional Water Management Division Directors; May 25, 1989.) Washington, DC.

<http://ipl.unm.edu/cwl/fedbook/anilca.html> printed 2/18/2005.

Water Quality Standards Handbook: Second Edition. August 1994. EPA-823-B-94-005a. August 1999.

Introduction to Water Quality Standards. EPA-823-F-99-020. October 1999.

Letter dated January 20, 2005 from KGCMC to EPA responding to a request for clarification issues which came up during the comment period.

