Response to Comments
AKG-37-0000

EPA public noticed the draft permits on April 24, 2005, for a 45 day comment period which ended on June 6, 2005. Comments were submitted by the Center for Science in Public Participation (CSP^2), the Alaska Miners Association, and Alaskans for Responsible Mining.

In a letter dated June 9, 2005, the National Marine Fisheries Service (NMFS) agreed with EPA's Endangered Species Act (ESA) determination that the issuance of these permits would result in no adverse effects on listed species. EPA determined and NMFS agreed that the issuance of AKG-37-0000 would have no adverse effect on Essential Fish Habitat (EFH).

In a letter dated August 9, 2005, the US Fish & Wildlife Service (USFWS) included this GP in the subject line, but did not provide additional comments on this GP.

The State issued their final §401 Certification of the permits on August 16, 2005.

1. Comment: CSP^2 comments that EPA should not relax the prohibition on facilities in Wild and Scenic Rivers because the only reason mining is allowed that the bed of the rivers are under control of the State of Alaska, which does not have responsibility for managing the waters designated for protection but does have an economic interest in exploitation of the minerals in the river bed. CSP^2 also notes that there are no mechanical operations currently in these areas so EPA was incorrect in stating that operations had received individual permits.

   ARM also urges EPA to reconsider the proposal to lift the prohibition on general permit coverage in the wild portions of rivers designated under the Wild and Scenic Rivers Act, because there is a special obligation to protect water quality in these areas.

   Response: EPA has decided to retain the prohibition on coverage in the "wild" portion of areas within the boundaries designated under the Wild and Scenic Rivers Act (WSRA). The intent of the WSRA is not to halt use of a river, but its goal is to preserve the character of a river. Uses compatible with the management goals of a particular river would be allowed. With at least 25 rivers designated under WSRA within the state of Alaska, it would not be prudent to assume that mining would be a management goal for each system.

2. Comment: CSP^2 requests that "wild" portions of Wild & Scenic Rivers be added to the list included in Permit Part I.E.2.c.(1) as an area where a land management agency may request that EPA deny coverage under the GP if the proposed change discussed in Comment 1 is made.

Response: See Response to Comment 1.

3. Comment: CSP^2 states that coverage under the GP should not be granted if a facility is in significant non-compliance so a land manager should not have to request that a permit be denied as is stated in Permit Part I.E.2.c.(2).

   Response: The general permit includes language as to when an individual permits may be required. Permit Part I.E.1.b. states that EPA may require an individual permit if, a discharger is not in compliance with the terms and conditions of the GP. Permit Part I.E.2.c.(2) includes an opportunity for a land management agency to provide "on-the-ground" information to EPA regarding compliance of a facility within their jurisdiction.

4. Comment: CSP^2 and AMA note that the Fact Sheet states that the monitoring will increase to three times per week for turbidity when, in fact, that became a requirement in the 2000 GP.

   Response: EPA regrets this error and thanks the commentors for their thorough review of the Fact Sheet.

5. Comment: AMA supports the decision to continue covering no discharge hydraulicking operation under the GP.

   Response: Comment noted.

6. Comment: CSP^2 states that EPA needs to improve its public notice distribution process by perhaps including electronic noticing through e-mail.

   Response: 40 CFR 124.10(c) describes the methods that EPA is required to use for public notifications of permit actions. While the public notice must appear in a daily or weekly newspaper within the area affected by a facility and EPA has attempted to keep an interested parties list for activities within a state, EPA has not fully explored using electronic means for notifications.

7. Comment: ARM requests that EPA re-evaluate its proposal to continue only limited and completely inadequate metals monitoring requirements in the general permit. ARM states that the monitoring in the 1997 GP (*EPA note: 1996*) contained less than adequate regular monitoring and in the 2000 reissuance, EPA, without adequate justification, included only an annual arsenic sample. ARM considers this to be a complete abdication of EPA's obligation to protect water quality in Alaska. ARM further states that EPA's reliance on a correlation between turbidity and metals is not supported by the EPA Metals Study for some metals including arsenic, antimony, and selenium. As such, ARM urges EPA to impose at least a

monthly monitoring requirement for all metals throughout the mining season plus a requirement to monitoring the first three discharges from any given mine.

Response: EPA provided justification for a change in the sampling regime for the 2000 permit in the Fact Sheet for that permit issuance, which has been used as the basis for continuing the monitoring requirements of the draft permit. The only inadequacy mentioned by ARM is EPA's reliance on turbidity as a surrogate for metals.

There are many ways that data can be correlated. EPA's Metals Study referenced by the commentor did determine there was a moderate to strong correlation between total recoverable metals and turbidity. EPA bases permit limitations on total recoverable metals. Water quality criteria in Alaska are now based on dissolved metals with most conversion factors being in the 90% or greater range. With this information in mind, EPA believes that the analysis done in "Permit Recommendations Resulting from the EPA Metals Study" for total recoverable metals would be protective of dissolved metals (a subset of total recoverable metals) even though the Study says that there was no correlation between dissolved metals and turbidity.

The analysis done in "Permit Recommendations Resulting from the EPA Metals Study" reviewed the data by comparing the turbidity levels and its corresponding water quality criterion in relation to metals and their corresponding water quality criteria. This relationship revealed that turbidity is a good indicator of the amount of metals in the effluent and that an effluent in compliance with turbidity limits is generally in compliance with water quality standards. One of the reasons that EPA chose to increase the turbidity monitoring is the ease in which a facility knows it is out of compliance and the proven methods of attaining compliance. If metals limits were instituted (sampling for "all" metals as suggested by ARM has never been contemplated), it would be impossible to know quickly whether a facility was out of compliance so nothing could or would be done to timely address the situation.

EPA relied on this analysis in the 2000 reissuance, increasing the turbidity monitoring as a result, and continues to rely on it for this 2005 reissuance. Since ADEC certified the 2000 permit as well as this one, EPA does not believe that it has abdicated its duty to protect water quality.

REFERENCES:

www.nps.gov/rivers/about.html - printed 8/12/2005