Department of Environmental Conservation
Response to Comments

For

GENERAL PERMIT FOR DISCHARGES FROM LARGE AND SMALL CONSTRUCTION ACTIVITIES
(Construction General Permit)

APDES Permit No. AKR100000

Public Noticed October 16, 2020 to November 16, 2020

December 17, 2020

Alaska Department of Environmental Conservation
Wastewater Discharge Authorization Program
555 Cordova Street
Anchorage, AK 99501

1 Introduction

1.1 Summary of Facility / Permit

The Alaska Department of Environmental Conservation (Department or DEC) proposes to reissue an Alaska Pollutant Discharge Elimination System (APDES) Construction General Permit (CGP) for discharges from large and small construction activities. The permit authorizes and sets conditions on the discharge of pollutants from construction projects to waters of the United States. To ensure protection of water quality and human health, the permit describes control measures that must be used to control the types and amounts of pollutants discharged from construction sites with one acre or more of land disturbance. The CGP was issued in years 2003, 2008, 2016, and with the current CGP issued on December 29, 2015 with an expiration date of January 31, 2021.

1.2 Opportunities for Public Participation

The Department of Environmental Conservation proposed to issue an Alaska Pollutant Discharge Elimination System (APDES) wastewater discharge permit for Construction General Permit activities. To ensure public, agency, and tribal notification and opportunities for participation the Department:

- identified the permit on the annual Permit Issuance Plan posted online at: http://www.dec.state.ak.us/water/wwdp/index.htm
- notified potentially affected tribes that the Department would be working on this permit via letter, fax and/or email
- posted a preliminary draft of the permit on-line for a 10-day applicant review *9/14/2020* and notified tribes and other agencies
- formally published public notice of the draft permit on *October 16, 2020* in the Anchorage Daily News, Fairbanks Daily Newsminer, and the Juneau Empire, and posted the public notice on the Department's public notice web page
- posted the proposed final permit on-line for a 5-day applicant review
- sent email notifications via the APDES Program List Serve when the preliminary draft, draft, and proposed final permits were available for review

The Department received comments from *six* interested parties on the draft permit and supporting documents. The Department also requested comment from the Departments of Natural Resources (DNR) Fish and Game (DFG), the National Marine Fisheries Service, the U.S. Fish and Wildlife Service, and the U.S. Environmental Protection Agency.

This document summarizes the comments submitted and the justification for any action taken or not taken by DEC in response to the comments.

1.3 Final Permit

The final permit was adopted by the Department on December 17, 2020. There were changes from the public noticed permit. Significant changes are identified in the response to comments and reflected in the final fact sheet for the permit.

2 General Support and Opposition for the Permit

2.1 Comment Summary

The Department received comments of general support to the permit regarding the change in signage requirements for main entrance and for the definition of treatment chemicals to exclude tackifiers and soil binders as treatment chemicals.

Response:

Comments noted.

3 Authorization under the General Permit

3.1 Comment Summary

A commenter requested if a modification of Notice of Intent (NOI) is required to be submitted if the Storm Water Pollution Prevention Plan (SWPPP) location is available electronically? The commenter's intent is that the movement to electronic records will enable the SWPPP to be accessed from any location and made available for review upon request at any time or place. This would be efficient and minimize two modification NOIs for each project should they go in and out of winter shutdown.

Response:

A modification NOI would not be required to be submitted if the SWPPP location and the contact information has not changed from what is on file in the NOI. Note, see Permit Part 2.7 for additional information on what other criteria would necessitate a modification NOI to be submitted.

No change to the permit was made based on this comment.

3.2 Comment Summary

A commenter requested that for on-going permitted projects the threshold for submitting a new NOI be extended from 90 days to 120 or 200 days of the effective date of the permit to allow those projects that are waiting for final stabilization to be achieved.

Response:

DEC finds that 90 days is sufficient time to allow for on-going permittees to submit a new NOI for this new permit period. This allows for the permittee to update any necessary contact information, refine estimated project completion dates, and to evaluate if they can submit a Notice of Termination (NOT). Resubmission of the SWPPP with the new NOI is not required for on-going permitted projects.

No change to the permit was made based on this comment.

3.3 Comment Summary

A commenter asked if the written date of authorization from DEC is required prior to construction activity or to soil-disturbing activities?

Response:

The written date of the authorization is required prior to soil-disturbing activities related to construction activities. See Appendix C – Commencement of Construction Activity - For the purposes of this permit, means the initial disturbance of soils associated with clearing that disturbs the vegetative map/grubbing, grading, or excavating activities or other construction-related activities (e.g., stockpiling of fill material, establishment of staging areas, or development of project-specific material sources).

No change to the permit was made based on this comment.

3.4 Comment Summary

A commenter asked if when an Operator changes, is a fee required with the NOI, and does the SWPPP need to be re-submitted for large construction projects?

Response:

Yes, the permit fee will be required per Permit Part 2.3.1 and the SWPPP for a large construction project (5 acres or more) will need to be submitted with the NOI if there is a change in the Operator. See Permit Part 2.4.3 – Change of Permittee for an Authorized Ongoing Project. A permittee of an ongoing project who transfers ownership of the project, or a portion thereof, to a different operator, the new operator will be required to submit a complete and accurate new NOI for a new project in accordance with Part 2.3.1 and the original permittee must file a NOT in accordance with Part 2.7.5. Coverage is not transferrable.

Note, that a change of Operator does not mean when a corporate officer of the organization changes while the organization continues with the project. In that instance, a modification NOI would be the appropriate course of action.

No changes were made to the Permit based on this comment.

3.5 Comment Summary

Contact information regarding Fort Wainwright MS4 was provided.

Response:

Comment noted, and Permit Parts 2.1.2.8 and 2.1.4.7 were updated.

4 Comments on Control Measures

4.1 Comment Summary

A commenter expressed a concern regarding clarification to Permit Part 4.2.5.1 regarding flooding and or erosion offsite when diverting storm water around the site.

Response

Permit Part 4.2.5.1 was revised to add a clarifying statement that "diverting storm water around the site can be effective measure as long as it does not cause flooding and/or erosion offsite)".

4.2 Comment Summary

Part 4.2.5.3 uses the term "active floodplains".

Response

Comment noted. A river or stream floods when it crosses the bank-full stage. An active floodplain is an area on either side of a stream/river which is regularly flooded on a periodic basis. A typical hydrological criterion to designate an active floodplain in a given reach is the 2.33 year return period of flood.

No change of the permit was made based on this comment.

4.3 Comment Summary

Part 4.2.5.5 refers to the installation of permanent storm water management controls. The commenter expressed that installation of the controls be installed following engineering plans and specifications, and that the long-term performance of certain storm water management controls, such as infiltration basins, can be adversely affected if installed prior to construction site improvements.

Response.
Comment noted. Installation of controls should be installed following engineering plans and specifications along with considering the manufacturers installation information. The Fact Sheet Section 4.4.2 Erosion Control Measures subpart Control Storm Water Discharges and Flow Rates (Part 4.2.5) was updated to reflect the commenters comment.

4.4 Comment Summary

A commenter requested a change for Permit Part 4.3.7 Soil Stockpile to be more inclusive of stockpile management regarding material stockpiles that have fine sediment attached to have sediment control measures installed. Example being stockpiles of gravel/rock blasted from a hillside that contains rock dust causing turbid water to run off the piles.

Response
Material stockpiles that have fine sediment releases should have sedimentation controls measures installed. Permit Part 4.3.7 heading was changed from Soil Stockpiles to Stockpile Management.

4.5 Comment Summary

A commenter stated they were unclear what the requirement is for the Pesticide General Permit or Pesticide-Use Permit when construction occurs on a site if pesticides or fertilizer is applied in accordance with the approved labeling.

Response:
It is unlikely that a permittee under the CGP will need to obtain such additional authorizations, and each of these permits have their own permit eligibility requirements; therefore, the CGP Permit Part 4.8.5.2 requirement is removed. Note, pesticides applied directly to a surface water will require a wastewater discharge permit authorization under the APDES Pesticide General Permit (AKG870000) and a Pesticide-Use Permit from DEC Division of Environmental Health.

4.6 Comment Summary

A commenter proposed the following scenario for a urban street project, where a contractor broached concerns that during the winter shutdown period, leaving inlet protection devices (temporary BMPs) in over the winter could cause clogging of storm drain inlets (from snow and ice) and in turn create ponding/icing conditions in the roadway.

Such a scenario would be a major safety hazard to the traveling public and maintaining the temporary BMPs or correcting ponding/icing issues would be very difficult in the winter.

Response
Comment noted. BMPs that will be ineffective or create hazards as described in the above scenario should be removed. See Permit Part 4.12 Winter Considerations. A permittee who plans to cease construction during the winter and resume construction the next summer must plan for winter shutdown and prepare their site to manage storm water flows until construction activities resume. See Permit Part 4.12.1.1 and 4.12.1.2 which relates to the proper installation of erosion and sediment control measures in anticipation of spring thaw and where temporary stabilization is precluded by snow cover or frozen ground conditions, stabilization measures must be initiated as soon as practicable following the actual spring thaw.

No changes were made to the Permit based on this comment.

5 Comments on Storm Water Pollution Prevention Plan (SWPPP)

5.1 Comment Summary

When certifying the SWPPP, should the date be recorded when it is signed and certified?

Response

Yes, the Permit Parts 5.1.2.4 and 5.10.4 was changed to include the date.

6 Comments on Inspections

6.1 Comment Summary

Commenters expressed clarification on Permit Part 6.2.1 for Case-by-Case Reductions in Inspection Frequency in what the acceptable duration between monthly inspections is when interpreting the statement "…reduce the frequency of inspections to at least once every month (minimum of 14 days separation between inspections)…". Recommendations were to clarify either calendar month or every 30 days (on or before the same calendar day of each month).

Response

The permit Part 6.2.1 was changed to "…reduce the frequency of inspections to at least once every *calendar* month (minimum of *7* days between separation between inspections) and within two business days of the end of a storm event at actively staffed sites that resulted in a discharge from the site."

The intent of the 7 days of separation between inspections is to preclude back to back inspections when bordering calendar months.

6.2 Comment Summary

Commenters requested to have a reduced inspection frequency to once every 30 days for projects that are still active during winter.

Response:

See Permit Part 6.2.4 for Case-by-Case Reductions in Inspection Frequency. If the project is undergoing winter construction the inspection frequency can be reduced to once per month if runoff is unlikely due to continuous frozen conditions that are likely to continue at the site for at least three (3) months based on historic seasonal averages. If unexpected weather conditions (such as above freezing temperatures or rain events) make discharges likely, the permittee must immediately resume a regular inspection frequency.

No changes were made to the Permit based on this comment.

6.3 Comment Summary

CGP Section 6.2.4 – Reduced Inspection Frequency for Winter Construction

The second part of section 6.2.4 states "If unexpected weather conditions (such as above freezing temperatures or rain events) make discharges likely, the permittee must immediately resume a regular inspection frequency;" It is unclear how long regular inspections must continue after such an event. If there is warm weather or a rain event that warrants resuming regular inspection frequency, can the schedule go back to monthly as soon as the weather drops below freezing again?

When may a permittee return to monthly inspection during winter construction after discharge events occur that require regular inspections?

Response

Once the temperature falls back below 32 degrees Fahrenheit and will likely persist beyond the regular inspection frequency, the permittee may return to monthly inspection during winter construction.

No change to the Permit was made based on this comment.

6.4 Comment Summary

Commenter requested stabilization requirements for terminating permit authorization for projects north of latitude 66.5 or Brooks Range/Arctic Circle. Commenter suggested that an exemption be added into Section 4.5.2 of the permit for arid, arctic regions similar to the EPA Arid, semi-arid, and drought-stricken CGP Part 2.2.14.iii.b.iii.(a). This is an area where it takes multiple years (3-5) to meet the requirements in Section 4.5.2 and achieve final stabilization. The commenter suggested that the "for erodible soils use erosion controls (e.g., mulch, RECP) with a minimum 18-month longevity by the manufacturer, combined with an appropriate seed base would be considered as Final Stabilization in areas above 66.5 or N of the Brooks Range."

Response

Projects north of latitude 66.5 or Brooks Range/Arctic Circle are considered an arid and semi-arid area. Such a condition already exists; see Appendix C, Final Stabilization definition, Parts 1, 2, and 3. Parts 1 and 2 relate to the percentage of the native background vegetative cover and condition when background native vegetation will cover less than 100 % of the ground (arid areas). Part 3 - In arid and semi-arid areas only, all soil disturbing activities at the site have been completed and both of the following criteria have been met:

a. Temporary erosion control measures (e.g., degradable rolled erosion control product) are selected, designed, and installed along with an appropriate seed base to provide erosion control for at least three years without active maintenance by the permittee;
b. The temporary erosion control measures are selected, designed, and installed to achieve 70 percent vegetative coverage within three years.

No change was made to the Permit based on this comment.

6.5 Comment Summary

A commenter stated there are multiple 7 or 14-day requirements within CGP to initiate stabilization and inspection schedules. The commenter recommended going to one schedule, 7 or 14 days, regardless of the mean annual precipitation amounts. Doing so will help to prevent confusion and misinterpretation by permittees, as well as ensure critical permit deadlines are not missed by establishing uniform requirements.

Response

Alaska has many ecoregions with varying climates and precipitation and recognizes a one size fits all approach may not be appropriate for all regions, and therefore allows for flexibility in the inspection and stabilization schedules.

No change was made to the Permit based on this comment.

6.6 Comment Summary

A commenter commented that in Section 8.2.1.3 states "If a discharge occurs during a local 2-year, 24-hour storm event, a corrective action must be initiated the day after the storm event ends as described in Part 8.1.1…" Recommend changing the deadline in 8.2.1.3 to more closely match the deadline description in 8.2.1.1.

Response
Comment noted. Permit Part 8.2.1.3 was changed as follows: If a discharge occurs during a local 2-year, 24-hour storm event, a corrective action as described in Part 8.1.1 must be initiated within 24 hours from the time of discovery of a discharge from the storm event;

6.7 Comment Summary
Notice of Termination: In accordance with 18 AAC 83.130(k), procedure to terminate a permit, an additional statement is required by the permittee when submitting an action to terminate their permit authorization which states that the permittee must certify that the permittee is not subject to any pending state or federal enforcement actions, including citizen suits brought under state or federal law.

Response
The permit condition (Permit Part 10.2.2) was added and the certification statement was updated on the Notice of Termination (NOT) form to reflect the requirements of 18 AAC 83.130(k).

7 Appendix C – Definitions

7.1 Comment Summary
A commenter noted that the NOAA webpage www.wrcc.dri.edu/summary/climsmak.html was no longer being updated, and that a new NOAA weather station data webpage http://xmacis.rcc-acis.org was available. The mention of the WRCC webpage occurs in five definitions in Appendix C, C-1 Arid Areas, C-4 Fall Freeze-up, C-6 Mean Annual Precipitation, C-14 Semi-Arid Areas, C-15 Spring Thaw.

Response
Comment noted, and hyperlinks to the webpage was updated. In Fall Freeze-up and Spring Thaw definitions, both websites are provided with the following addition: Alternatively, the Fall Freeze-up and Spring Thaw can be estimated by using the 5-year moving average from the First/Last dates where the minimum temperature below a threshold of 32.5 degrees Fahrenheit will occur on or after the given date for the weather station closest to the site on the website xmacis.rcc-acis.org.

7.2 Comment Summary
A commenter inquired that in the definition for a qualified person, Table 4 – Training Requirements for 1 to less than 5 acres, why a storm water lead/SWPPP Manager and Storm Water Inspector are not required to be AK-CESL certified.

Response
This is based on the difference between small and large construction projects.

No change to the Permit was made based on this comment.

7.3 Comment Summary
A commenter commented that in Table 4 of the Qualified Person definition recommends the SWPPP preparer take a course in SWPPP Preparation for projects of 5 acres to <20 acres and for those >20 acres. The SWPPP Preparer or SWPPP preparation courses are no longer being widely offered in the State of Alaska. Unless there are plans to reinvigorate a statewide and AK-CESCL program recognized SWPPP preparation course, recommend removing references to taking a SWPPP preparation course.

Response
Comment noted. The Associated General Contractors (AGC) of Alaska usually offers a SWPPP writing course every spring. However, COVID cancelled many of the 2020 courses. There are other training and

certifications offered by EnvirCert International, Inc. or CISEC, Inc. that may substitute until more SWPPP preparation courses are more readily available in Alaska. To access more information regarding storm water training courses, see the DEC Storm Water Training website at http://dec.alaska.gov/water/wastewater/stormwater/construction/sw-training.

7.4 Comment Summary

Does "Maintenance" include disturbing soil in order to perform maintenance on a subsurface utility, where the site will be restored to the original line and grade, hydraulic capacity of conveyance channels, or original purpose of the site?

Response

Yes. See definition Maintenance - Activities performed to maintain the original line and grade, hydraulic capacity of conveyance channels, or original purpose of the site. For the purposes of this permit, means projects that repair, rehabilitate, or replace existing structures or facilities, provided that the maintenance activity does not change the original purpose of the structure or facility. Maintenance may include minor deviations in the configuration of the structure or facility due to changes in materials, construction methods, or current construction codes or safety standards.

No change was made to the Permit based on this comment.