Response to Comments
AKG-33-1000 (formerly AKG-33-0000)

This General Permit is renumbered as AKG-33-1000 to differentiate it from the previous permit. Each facility that had previous coverage will be automatically covered by this permit and will keep the last 3 digits of their permit number as their identifier.

The General Permit for Facilities Related to Oil and Gas Extraction, AKG-33-0000 (2004 GP), expired on January 2, 2009. On July 2, 2009, the U.S. Environmental Protection Agency (EPA) issued a draft permit for reissuance for public comment. The comment period expired on August 17, 2009. Based on the comments received during the comment period, EPA made a number of changes to the permit. As a result, on August 1, 2011, EPA public noticed a new draft permit for public comment. Since the new draft general permit addressed comments received on the old draft permit, EPA requested in the Fact Sheet, Part III.F. that new comments be submitted on this new action. As such, EPA is only responding to those comments received during this public notice.

Comments were received from the following:

1. ConocoPhillips Alaska (Conoco);
2. Alaska Oil and Gas Association (AOGA); and,
3. Alyeska Pipeline Service Company (Alyeska).

This document addresses the concerns raised in the comments received during the comment period. At the outset, it is important to clarify that a Fact Sheet provides background information for the development of a draft permit; it is a final document when it is made public during the public comment period. As such, EPA does not correct or revise the Fact Sheet in response to comments that are received during the comment period. Where appropriate, EPA will acknowledge in this Response to Comments document any errors or corrections to the information in the Fact Sheet. This Response to Comments document serves as a supplement to and, in some cases, a correction to the Fact Sheet.

The State of Alaska Department of Environmental Conservation (ADEC) provided a final certification for this project on December 19, 2011.

EPA received species list under Endangered Species Act (ESA) from the National Marine Fisheries Service (NMFS) on February 14, 2011. EPA provided the draft permit package with the determination of “should not adversely affect listed species” (page 24 of the Fact Sheet) to NMFS as well as the US Fish & Wildlife Service (USFWS) in correspondence dated July 28, 2011.

In a September 9, 2011, letter the USFWS determined that "No impacts to listed eiders or polar bear critical habitat are anticipated provided the proposed NPDES general permit requirements are met." NMFS provided no further correspondence on this issue.

1. Comment (AOGA, Alyeska): EPA should remove the pipeline corridors from the GP due to differences in operations and projects.

   Response: After reviewing the comments received on this general permit (GP) and discussing the issue with ADEC, EPA agrees with the commentors. ADEC has expressed a desire to prepare a pipeline specific GP with the intent of soliciting public comment on the permit soon after the transition of Phase 4 of the NPDES program to the State of Alaska in late October 2012.

   Many comments were received on the applicability of the GP to the pipeline corridors. Since EPA has decided not to extend coverage to these corridors, the comments are moot and will not be addressed in this Response to Comments document.

2. Comment (AOGA): Include a provision in the Best Management Practices Plan (BMP Plan) to sample impounded secondary containment water prior to discharge for comparison with the effluent limitation guidelines to avoid inadvertent discharge of pollutants.

   Response: EPA believes that this is a good idea and has included a recommendation to do this type of sampling in Permit Part II.F.4. (sampling prior to discharge is recommended but cannot substitute for effluent sampling However, the NPDES permit is applicable to the discharge and that is where the limitations apply so the sampling of impounded water cannot substitute for effluent sampling since the sampling may not be representative of the water being discharged.

3. Comment (Conoco): Clarify that "activities related to oil and gas extraction" include drillsites, flowlines, oil processing and topping plants and other facilities such as camps necessary to support oil and gas extraction activities.

   Response: EPA agrees that discharges from the facilities listed by the commentor could be authorized by the GP; however, EPA also believes that the phrase "activities related to oil and gas extraction" should not be limited to only those activities. First, all of the permitted discharges (*e.g*. gravel pit dewatering) are not included in the list provided by the commentor. Second, EPA wants to maintain some flexibility to determine whether a facility is related to oil and gas extraction for purposes of permit authorization.

4. Comment (AOGA, Conoco): Refine the statement made in the Fact Sheet that "It is not the intent of EPA in this GP to cover construction storm water or industrial storm water discharges except for industrial activities within the North Slope Borough" to make clear that the GP covers discharges from oil and gas industry-related construction activities.

   A related comment requests clarification that construction activity that occurs in the summer months would be covered under the field-wide Storm Water Pollution Prevention Plan (SWPPP).

   Response: EPA regrets any confusion resulting from this statement. As previously stated, EPA does not make changes to the Fact Sheet at this stage of the permitting process. However, EPA clarifies that the statement should have said "It is the intent of EPA in this GP to cover only industrial storm water discharges within the North Slope Borough. This GP does not cover construction storm water discharges."

   Oil and Gas construction activities are conditionally exempt from requirements for NPDES permitting for storm water discharges. 40 CFR 122.26(c)(1)(iii) states that "The operator of an existing or new discharge composed entirely of storm water from an oil or gas exploration, production, processing, or treatment operation, or transmission facility is not required to submit a permit application in accordance with paragraph (c)(1)(i) of this section, unless the facility…" The section goes on to describe when a permit would be necessary which would include having a storm water discharge that resulted in a reportable quantity pursuant to 40 CFR 117.21 or 40 CFR 110.6 or a discharge that contributes to a violation of a water quality standard. If a facility does not qualify from the conditional exemption and, as a result, must seek permit coverage for construction storm water discharges, the facility should seek permit coverage under the Storm Water Construction General Permit (CGP) that is administered by ADEC.

   The comment concerning a field-wide SWPPP is moot because this permit does not cover construction storm water discharges.

5. Comment (Alyeska):Clarify that hydrostatic testing of existing tanks as well as new tanks is allowed under the provisions of the permit.

   Response: Permit Part II.C.1.h. has been revised to clarify that discharges from the hydrostatic testing of existing tanks are allowed provided they meet the eligibility provisions of the permit. Part II.C.1.g applies to new tanks.

6. Comment (AOGA): Further clarify the definition of secondary containment preferably to include just fixed tank containments of a specific size and above.

Response: EPA expects that portable containments such as drip pans are handled through a set of standard operating procedures that do not include a discharge to waters of the US of any contaminated water so the permit will apply to fixed containments. However, the Clean Water Act does not provide for exemptions from its requirements based on the size of a facility. Any containment holding contaminated water cannot be discharged without meeting the requirements of the permit.

7. Comment (Conoco): In an effort to reduce hardcopy paperwork files, a request was made to be allowed to submit the annual certification of bi-annual storm water inspections electronically.

Response: The Office of Enforcement and Compliance, NPDES Compliance Unit states that currently, reports still need an original signature so electronic submission is not an option.