

**Department of Environmental Conservation  
Response to Comments**

**For**

**Joint Base Elmendorf-Richardson**

**APDES Permit No. AKS053651**

**Public Noticed May 23, 2019 – June 24, 2019**

**August 22, 2019**



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

## **1 Introduction**

### **1.1 Summary of Facility / Permit**

JBER operates a Municipal Separate Storm Sewer System (MS4). The storm water from the facility is proposed to be discharged to Knik Arm at the Port of Anchorage and into Ship Creek adjacent to the base.

### **1.2 Opportunities for Public Participation**

The Department of Environmental Conservation proposed to issue an Alaska Pollutant Discharge Elimination System (APDES) wastewater discharge permit to Joint Base Elmendorf-Richardson. 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://dec.alaska.gov/water/wastewater/>
- 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 March 21, 2019 to April 5, 2019, and notified tribes and other agencies
- formally published public notice of the draft permit on May 23, 2019 in the Anchorage Daily News 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 two 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: but did not receive comment from any of them.

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 August 22, 2019. There were no 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 Comment on the Permit

### 2.1 Comment Summary

The Department received one comment about concern with the monitoring, detection and determination of the extent and fate, then subsequent remediation of contaminants in ground and surface water at JBER generated from the utilization of Aqueous Fire Fighting Foams (AFFF) and Aircraft Deicing and anti-icing Fluids. AFFFs on JBER are utilized during training, testing and actual firefighting emergencies at JBER since creation, development and operation of JBER. It is documented that AFFF contaminants have been detected in soils throughout JBER facilities. The commenter listed twenty-two sites on the base with contamination that they are concerned about. The commenter requests DEC along with the concurrence of JBER Command and JBER/AFCEC include specific language in the MS4 permit for the monitoring, detection and determination of the extent and fate, then subsequent remediation of contaminants in groundwater and storm water at JBER generated from the utilization of AFFFs.

#### **Response:**

Storm water runoff affected by AFFFs is presently not addressed by the MS4 permit nor by the Multi-Sector General Permit, specifically Sector S Air Transportation. The individual sites with contamination are addressed by DEC's Contaminated Sites Program. No change was made to the permit.

### 2.2 Comment Summary

The Department received one comment about concern with the monitoring, detection, control, best practices and remediation of disbursed aircraft de-icing and anti-icing fluids on the planes on JBER. The commenter requests that DEC include in the MS4 permit language that requires JBER develop a plan for reducing the use of glycol-based deicing/anti-icing chemicals at JBER, and include plans for installing appropriately sized open ended de-icing hangers with targeted infrared (IR) wave equipment to remove frost, snow and ice off of aircraft.

#### **Response:**

Storm water runoff affected by aircraft deicing fluid is addressed by the Multi-Sector General Permit, specifically Sector S Air Transportation, and not by the MS4 permit. No change was made to the permit.

## 3 Comments on Minimum Control Measures Comment Summary

In Permit Part 3.5.6 the Air Force requests the removal of all references to Engineering Technical Letter (ETL) 14-1 in the permit. ETL 14-1 provides guidance for storm water systems on Air Force installations, only. ETL 14-1 does not apply to non-Air Force facilities. For that reason, the inclusion of ETL 14-1 as a permit condition subjects JBER to more stringent standards than non-federal facilities. Per statutory law, the federal government is only subject to requirements under the Clean Water Act (CWA) to the extent it is treated in a non-discriminatory manner relative to other regulated entities. Under CWA Section 313(a), federal agencies are subject to "all Federal, State, interstate, and local requirements . . . respecting the control and abatement of water pollution in the same manner, and to the same extent as any non-governmental entity."

**Response:**

The JBER MS4 Annual Reports for 2016, 2017, and 2018 refer to the use of ETL 14-1 extensively. Specifically for Minimum Control Measure (MCM) 5 the 2017 Annual Report says, "(T)he manual containing structural and non-structural BMPs that all contractors are expected to follow for applicable construction and post-construction activities within the JBER MS4 is ETL 14-1." The Annual Report goes on to say, "JBER believes ETL 14-1 to be the most applicable and comprehensive BMP design manual to implement within the MS4 to reduce the potential water quality impacts from construction and associated activities." Since JBER for three years specified ETL 14-1 as their manual of choice in their previous permit, DEC continued with that choice in the current permit. No changes were made to the permit.

**3.2 Comment Summary**

The Air Force requests that you change the language of 3.5.6 to "Within the first year of the effective date of the permit, the permittee must develop a written strategy for development and redevelopment projects. The written strategy must address planning and constructing GI/LID projects on JBER. The strategy is to be included in the first year Annual Report. The strategy will discuss the advantages and disadvantages of using individual techniques, such as green roofs, rain gardens, rain barrels, bioswales, permeable piping, dry wells, or permeable pavement on JBER and provide guidance for inclusion of such techniques in future development and redevelopment projects."

**Response:**

DEC is retaining Part 3.5.6 as proposed. See the previous comment about retaining reference to ETL 14-1. No changes were made to the permit.

**3.3 Comment Summary**

The Air Force requests the removal of the requirements in 3.5.8 and its subsections and 3.5.9. 40 CFR 122.34 (adopted by reference in 18 AAC 83.010) contains permit requirements for regulated small MS4 permits. Subsection (b)(5) requires that the permittee address storm water runoff from new development and redevelopment and develop a strategy to do so, which includes structural and/or non-structural Best Management Practices (BMPs) appropriate for the community. This subsection also mandates that permits ensure controls are in place that would prevent or minimize water quality impacts. Requirements in the permit (3.5.8) to evaluate the performance of structural BMPs by monitoring, calculating, or modeling runoff quantities for the first project using Green Infrastructure/Low Impact Development (GI/LID) techniques/practices are outside the scope of these regulations and the CWA. Such requirements are conservation measures and not within the terms of Section 402 of the CWA, which provides that permits for discharges from municipal storm sewers "shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions . . . appropriate for the control of such pollutants." Furthermore, these permit conditions require by implication that JBER complete a project using GI/LID techniques during the permit term. A requirement to complete such a project during the permit term is outside the scope of the CWA Section 402 requirements for small MS4s.

**Response:**

Permit Part 3.5.8 is the same requirement from the second permit cycle City of Fairbanks MS4 permit, so JBER is being treated the same as other Alaska small MS4s. In terms of complying with Sec 122.34

(b)(5) the guidance with this section says, “(S)orm water technologies are constantly being improved, and EPA recommends that your requirements be responsive to these changes, developments or improvements in control technologies.” In a April 20, 2011 memo<sup>1</sup> EPA said the following, “(T)he United States Environmental Protection Agency (EPA) strongly encourages and supports the use of green infrastructure approaches to manage wet weather through infiltration, evapotranspiration, and rainwater harvesting. ...EPA recognizes that green infrastructure can be cost-effective, flexible, and environmentally-sound approach to reduce stormwater runoff and sewer overflows and to meet Clean Water Act (CWA) requirements.” Therefore, in adjusting to changes in “improvements in control technologies” it is perfectly appropriate to include structural and/or non-structural green infrastructure best management practices in the second cycle MS4 permit. JBER is not being singled out, nor treated different than non-military facilities. DEC is following EPA guidance and the wording of CFR Sec 122.34(b)(5) to write the JBER MS4 permit. Also, the permit says, “(t)he permittee must conduct an evaluation of the performance of GI/LID technique(s) or practice(s) of the first project built using GI/LID during the permit term....” This means if no project is built during this permit term, then no evaluation is required. No changes were made to the permit.

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<sup>1</sup> “Protecting Water Quality with Green Infrastructure in EPA Water Permitting and Enforcement Programs” signed by Nancy Stoner, Acting Assistant Administrator, Office of Water and Cynthia Giles, Assistant Administrator, Office of Enforcement and Compliance Assurance, on April 20, 2011.