

**Department of Environmental Conservation  
Response to Comments**

**For**

**Alaska Pollutant Discharge Elimination System**

**General Permit AKG332000 –**

**Facilities Related to Oil and Gas Exploration, Production, and  
Development in the North Slope Borough**

**Public Noticed from:  
November 23, 2016 to December 23, 2016**

**January 27, 2017**



**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 (DEC or Department) is reissuing Alaska Pollutant Discharge Elimination System (APDES) general permit AKG332000 – Facilities Related to Oil and Gas Exploration, Production, and Development in the North Slope Borough (Permit). The Permit regulates the industry specific discharges from oil and gas related facilities to freshwaters of the U.S. located in the North Slope Borough and marine waters offshore of the North Slope Borough and landward of the inner boundary baseline. The Permit was first issued by the EPA in 1997 and subsequently reissued in 2004 and 2012. This is the first reissuance of the Permit by the Department.

The Permit reissued by the Department reinstates graywater discharges that were removed during the 2012 reissuance and are currently authorized under AKG426000. During the effective period of the Permit, pollutants from the following discharges will be permitted to occur:

- Discharge 002 – Graywater
- Discharge 003 – Gravel Pit Dewatering
- Discharge 004 – Excavation Dewatering
- Discharge 005 – Hydrostatic Testing
- Discharge 006 – Storm Water
- Discharge 007 – Mobile Spill Response
- Discharge 008 – Secondary Containment

The Permit proposes to authorize a 200-foot radius chronic mixing zone for fecal coliform bacteria and residues from Graywater (Discharge 002) discharges.

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

To ensure public, agency, and tribal notification and opportunities for participation in the Permit reissuance process, 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 November 3, 2016 and notified tribes and other agencies;
- posted the public notice on the Department’s public notice web page November 23, 2016;
- formally published public notice of the draft permit in The Arctic Sounder on December 1, 2016;
- posted the proposed final permit on-line for a 5-day applicant review; and

- sent email notifications via the APDES Program List Serve when the preliminary draft, draft, and proposed final permits were available for review.

During the draft public comment period, the Department received comments from BP Exploration Alaska Inc. (BPXA), Hilcorp Alaska LLC (Hilcorp), Fish and Wildlife Service (FWS), and from the Environmental Protection Agency (EPA) on the draft permit and supporting documents. The Department also requested comments from the Department of Natural Resources (DNR), Department of Fish and Game (DF&G), the National Marine Fisheries Service (NMFS), Tribes, and local governments.

The Department issued a five-day notice for applicant review.

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 January 27, 2017. There were modifications to the Permit and Fact Sheet based on comments received during the 30-day public comment period. There were also modifications to the Permit and Fact Sheet based on comments received by applicants during the five-day notice of review. These modifications were in character with, and an outgrowth from, comments received during the public notice period. Significant changes resulting from comments received 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**

Comments in support of the Permit were received from the FWS who had no objections.

**Response:** The Department acknowledges FWS's review comments and is appreciative of the agency's assistance during the permit development and review process.

## **3 Comments on Effluent Limits and Monitoring Requirements**

### **3.1 Comment Summary**

Permit Section 1.3.6 – BPXA recommends removing this item from prohibitions section since requirements for this scenario are covered in Section 2.1.9. It seems unclear to list this activity as prohibited while also listing containment methods.

**Response:** The Department does not prohibit activities but may prohibit the discharge of pollutants resulting from activities. The intent of the discharge prohibition and Best Management Practices (BMP) requirements for maintenance waste is to call attention to proper waste

management practices that ensure maintenance waste from essential activities does not enter the receiving environment. The Permit has been modified by moving Section 2.1.9 into Section 1.3.5 (Draft Permit Section 1.3.6) so that the intent is clearer. The BMP discussion has been modified to require the capture of maintenance waste material to the extent practicable.

### 3.2 Comment Summary

Permit - Under the existing General Permit Fact Sheet, discussions of Secondary Containment Discharges (Discharge 008) highlight the definition of "uncontaminated" and indicate that such discharges can be included as part of the storm water management at the facility and discharged as such. There is currently no such discussion in the Draft General Permit (GP) or Fact Sheet, and Hilcorp seeks clarification on if these discharges are no longer considered storm water, and are therefore required to seek coverage and monitor/report these discharges as Secondary Containment in addition to Storm Water. Please note that a majority of these discharges are to existing gravel pad areas and are not necessarily directly to a waterbody and/or tundra.

**Response:** The North Slope GP issued in 1998 treated the discharge of accumulated water in secondary containment areas (SCAs) as storm water. The existing permit issued in 2011 determined that discharges from SCAs (Discharge 008) were distinctly separate from discharges of storm water (Discharge 006). EPA provided the following information regarding this determination:

*“EPA is proposing the addition of an outfall for the discharge of storm water and/or snow melt accumulated in secondary containment facilities. Previously these were regulated under the storm water section of the GP. The list of allowable non-storm water discharges in this GP was meant to mimic the list in the EPA’s Multi-Sector General Permit for Storm Water Discharges Associated with Industrial Activity (MSGP) which does not list secondary containment. The draft GP has removed this category from Outfall 006 and added Outfall 008 to the permit where contaminated water will be stringently limited while uncontaminated water will be regulated by BMPs and can be handled with the storm water discharges.”*

The proposed Permit (AKG332000) also requires a separate authorization for the discharge of SCA water (Discharge 008). Discharge monitoring and reporting must be conducted for flow, pH, and sheen from uncontaminated SCA water. If SCA water becomes contaminated, the sheen must be removed prior to discharge and monitoring and reporting for Total Aromatic Hydrocarbons (TAH) and Total Aqueous Hydrocarbons (TAqH) must also be conducted. As a matter of convenience, uncontaminated water from SCAs may be discharged through storm water conveyances (i.e., commingled with storm water after the point of permit compliance). The discharge of SCA water requires development and implementation of Specific BMPs to address the presence and removal of a sheen.

The Department has made no changes as a result of this comment.

### 3.3 Comment Summary

Permit Section 2.4.1 - Hilcorp recommends including a reference to Section 3.2.5.2 regarding what measures to take upon observation of a sheen.

**Response:** Table 5, Note (h) provides monitoring requirements that must be met upon observation of a sheen. The Department has added the following text to the specific BMP requirements listed in Section 2.4.1 to address oily sheen observations and removal practices: “In addition, the permittee must develop BMPs to address procedures in the event of observing a sheen in the discharge (Section 3.2.5.2).”

### 3.4 Comment Summary

Permit Section 2.9.2 - For those samples taken in the field, such as pH, a lab provided sample bottle is not always provided or required. Hilcorp recommends removing this second portion of the statement or modifying it to indicate 'appropriate' sample bottles outlined in procedures provided by the laboratory, approved methods under 18 AAC 70.020(c), or the Quality Assurance Project Plan (QAPP).

**Response:** Section 2.9.2 addresses both field measurement and laboratory sample scenarios. The first part requires permittees to use “calibrated equipment,” when collecting field measurements (e.g., pH). The second part requires the permittee to use bottles and sampling procedures provided by a laboratory for samples which cannot be measured in the field and must be sent for laboratory for analysis.

The Department has made no changes as a result of this comment.

### 3.5 Comment Summary

Permit Section 2.10.6 – Minimum Level (ML) is not identified as an acronym in Appendix B. Hilcorp recommends including this acronym in Appendix B. Hilcorp also seeks clarification on the definition of ML and method detection limit under Appendix C.

**Response:** The Department has added the text “ML - minimum level” to the list of acronyms in Appendix B. An acronym has not been assigned for “method detection limit” in the Permit to avoid confusion with the acronym for maximum daily limit (MDL) which is used extensively in the Permit. The Department has also added the following text to Appendix C – Definitions:

Minimum Level (ML) - means the concentration at which the entire analytical system must give a recognizable signal and an acceptable calibration point. The ML is the concentration in a sample that is equivalent to the concentration of the lowest calibration standard analyzed by a specific analytical procedure, assuming that all the method-specified sample weights, volumes, and processing steps have been followed.

Method Detection Limit – is the minimum concentration of a substance (analyte) that can be measured and reported with 99 percent confidence that the analyte concentration is greater than zero and is determined from analysis of a sample in a given matrix containing the analyte.

### **3.6 Comment Summary**

Section 3.1.3 - Hilcorp would appreciate clarification if the MDL referenced in this section is the maximum daily limit or the method detection limit.

**Response:** The acronym for MDL applies to the maximum daily limit which is listed in Appendix B – Acronyms and defined in Appendix C – Definitions. The Department has added text to Section 2.2 to call out the first use of the acronym for maximum daily limit and provide further clarification. The text reads, “In addition to the restrictions set out in Section 2.1, the permittee must comply with the following maximum daily limits (MDL), average monthly limits (AML), monitoring requirements, and limitations.

## **4 Comments on QAPP Requirements Comment Summary**

Permit Section 3.1.2 - Hilcorp seeks clarification as to if a QAPP is required for Storm Water (Discharge 006). Per this section, the QAPP must be designed to assist in planning for the collection and analysis of effluent and receiving water samples. As no samples are collected for Storm Water and only visual observations/monitoring are required under Section 2.6.1.1, it seems superfluous to require a QAPP for such discharges.

**Response:** A QAPP for Storm Water (Discharge 006) is required by the Permit to establish appropriate and repeatable compliance observations during storm water inspections. Even though facilities permitted for Storm Water under AKG332000 are not required to provide laboratory analysis of the discharge, a QAPP is also used to define items such as the purpose, monitoring (inspection) sites, monitoring methods, monitoring frequencies, etc... Permittees may include the QAPP within the contents of the Storm Water Pollution Prevention Plan (SWPPP) but must clearly identify that section separately as a QAPP.

The Department has made no changes as a result of this comment.

## **5 Comments on BMP Plan Requirements**

### **5.1 Comment Summary**

Permit Section 3.2.4.4 - Hilcorp seeks clarification as to whether this section requires a log be maintained that tracks specific BMP plan modifications or a log of maintenance and repairs made to BMP control measures. Also, the reference to Section 3.2.7 seems duplicative if this log is already to be part of the BMP plan. If it is acceptable for the log to be maintained separately, then Hilcorp recommends indicating such and maintaining the reference to Section 3.2.7.

**Response:** The intent of the requirement is to have a log of maintenance and repairs for BMP controls measures. The Department has removed the word “Plan” from BMP Plan modifications in Section 3.2.4.4.

## 5.2 Comment Summary

Permit Section 3.2.4.9 - Hilcorp recommends modifying the statement "Use of local containment devices such as liners, dikes and drip pans where chemicals are being unpackaged and where wastes are being stored and transferred" to "Use of local containment devices such as liners, dikes and drip pans where chemicals, wastes, and other products are unpackaged, unloaded, stored, and transferred". There are items/processes outside of chemicals and wastes that warrant the need for such containment devices to ensure no contamination or pollutants become part of the waste stream.

**Response:** DEC agrees and has added “...wastes, and other products are unpackaged, unloaded...” to the text in Permit Section 3.2.4.9.

## 5.3 Comment Summary

Permit Section 3.2.4.9 - Hilcorp recommends modifying the statement "Apply chemical cleaning compounds..." to "Apply chemical compounds ..." as chemicals may be used for applications outside of cleaning.

**Response:** DEC agrees and has removed the word “cleaning” from the statement described above (Permit Section 3.2.4.9). The text reads, “Apply chemical compounds and disinfectants in accordance with manufacturer instructions and suggested application rates.”

## 5.4 Comment Summary

Permit Section 3.2.6 - Hilcorp recommends referencing that the requirements of Section 3.2.8.3 be included along with this submittal.

**Response:** DEC has determined that reporting changes to the BMP Plan with the annual certification is not required. The second sentence in Section 3.2.8.3 has been deleted.

## 5.5 Comment Summary

Permit Section 3.2.8.3 - This section currently references Section 3.2.3. Hilcorp is wondering if this should in fact reference Section 3.2, as there are multiple objectives and specific requirements outlined within the entire section that will need to be met.

**Response:** DEC agrees and has modified the reference in Permit Section 3.2.8.3 to read, “...Section 3.2.”

## **6 Comments on SWPPP Requirements Comment Summary**

Permit Section 3.3.1.1 - Hilcorp recommends modifying the statement "The North Slope GP requires that the narrative of the SWPPP also include..." to "The SWPPP must include a narrative that includes descriptions of the following items".

**Response:** DEC agrees and has modified the language in Permit Section 3.3.1.1 to read, "The SWPPP must include a narrative that provides descriptions of the following items."

### **6.2 Comment Summary**

Permit Section 3.3.1.1 - Hilcorp recommends referencing Section 3.2 in the BMP Plan requirement.

**Response:** DEC agrees and has added the reference, "Section 3.2," to the final bullet in Permit Section 3.3.1.1.

### **6.3 Comment Summary**

Permit Section 3.3.2.1 - Hilcorp recommends modifying the statement "The permittee must update the SWPPP, site maps, within ..." to "The permittee must update the SWPPP and/or site maps within ..."

**Response:** DEC agrees and has modified the sentence to read "The permittee must update the SWPPP and site maps with any new relevant information, within..."

### **6.4 Comment Summary**

Permit Section 3.3.2.4 - Hilcorp recommends breaking this into two sections: one section that discusses documentation availability requirements similar to that of 3.2.7 for the BMP plan and a second section that discusses the documents and contents required to be incorporated in the SWPPP. This second section could in turn be combined with Section 3.3.1 to create a single "SWPPP Contents" section that discusses everything required to be incorporated within the SWPPP. This could help to maintain consistency of SWPPP requirements as they are outlined in a single section instead of within multiple sections of the GP.

**Response:** DEC agrees that these sections should be restructured and has moved the text from Draft Permit Sections 3.3.2.4.1-3.3.2.4.6 to Permit Sections 3.3.1.2-3.3.1.7 in order to create a single SWPPP Contents Section. To reflect these changes, bulleted text from the Draft Fact Sheet Section 11.3.3.1 has been moved to Fact Sheet Sections 11.3.2.2-11.3.2.7.

### **6.5 Comment Summary**

Permit Section 3.3.2.4 - Hilcorp recommends modifying the statement "In addition, the following documents must be kept with the SWPPP" to "In addition, the following must be incorporated in the SWPPP." All items listed under Section 3.3.2.4 are not documents.



**Response:** DEC agrees and the text “In addition, the following documents must be kept with the SWPPP” in Draft Permit Section 3.3.2.4, has been moved to Permit Section 3.3.1 and modified to read “The following must be incorporated in the SWPPP....”

## **7 Comments on Annual Reporting Requirements**

### **7.1 Comment Summary**

Permit Section 3.4 - Consider including this section under Section 2.10 so all monitoring and reporting requirements are in the same location within the permit.

**Response:** Based on this comment, DEC has modified Permit Section 3.4 title to read “Annual Reporting Requirements for Special Conditions” so it is clear that annual reporting applies to special conditions in Section 3.0.

### **7.2 Comment Summary**

Fact Sheet Section 12.2 - Annual reporting requirements are discussed in the GP. This reiteration of those requirements seems redundant. Hilcorp recommends removing this section from the Fact Sheet.

**Response:** It is not unusual to have sections that mirror each other in Fact Sheet and the Permit. The Fact Sheet is a document intended to provide supportive information used for permit development and to describe permit requirements (sometimes in greater detail).

No changes were made as a result of this comment.

## **8 Comments on Other Permit Requirements and Recommendations**

### **8.1 Comment Summary**

Permit – BPXA Recommends adding definitions for fresh water and marine water.

**Response:** At this time, 18 AAC 70 does not contain definitions for freshwater or marine water. However, 18 AAC 70.040 does describe how certain water quality criteria should be applied when a permittee is either: in a waterbody protected for more than one use class, at the boundary between waters protected for different use classes, or in an estuary where marine and freshwater criteria differ within the same use class. For the purposes of this Permit, the definitions below may be applied when determining whether marine water or freshwater limits are applicable. With the exception of dissolved oxygen water quality criteria (which is not a parameter of concern in the Permit), these definitions align with the intent of 18 AAC 70.040:

- (i) For waters in which the salinity is equal to or less than 1 part per thousand 95% or more of the time, and the biology of such a water body is dominated by freshwater

aquatic life and that freshwater criteria are more appropriate, the applicable limits are the freshwater limits.

(ii) For waters in which the salinity is equal to or greater than 10 parts per thousand 95% or more of the time and the biology of such a water body is dominated by marine aquatic life and that marine criteria are more appropriate, the applicable limits are the marine water limits; and

(iii) For waters in which the salinity is between 1 and 10 parts per thousand, the applicable limits are the more stringent of the freshwater or marine limits.

## 8.2 Comment Summary

Permit - Hilcorp has concerns relating to the GP's requirements for plan submittal for nondomestic wastewater treatment, including chemical treatment or process treatment (such as a scrubber unit). Under 18 AAC 72.500 and 18 AAC 72.600 for nondomestic wastewater, it discusses the need for submittal of engineering plans for review, however does not provide information on the plan review process specific to nondomestic wastewater systems, nor does it reference 18 AAC 72.220-18 AAC 72.240, which discusses the approval process for domestic wastewater. As such, it is unclear what the review and approval process for nondomestic wastewater includes. Hilcorp understands that there is such a process for nondomestic wastewater, however, seeks clarification as to the requirements for reviews set out under this section to provide consistency of such reviews.

**Response:** The requirements for submittal of information for non-domestic wastewater are less defined than those for domestic wastewater. Submittal requirements are typically dependent on the size and complexity of the treatment system or process being proposed. Permittees are expected to contact DEC to determine submittal requirements based on the proposed system or process and information available. Small scrubber units typically used to treat mobile spill response on the North Slope require submittal of information to reasonably demonstrate that free-phase and dissolved hydrocarbons will be adequately removed prior to discharge. The submittal could include a process/treatment system description, vendor cut sheets, statements of performance or confirmation data summaries, or other pertinent information.

No changes were made as a result of this comment.

## 8.3 Comment Summary

Permit Section 1.1.2 - Hilcorp is curious as to why existing permittees are required to reapply after the effective date of the reissued permit. If there are no changes from the Notice of Intent (NOI) submitted under Section V.5, Duty to Reapply of AKG-33-1000, is there a need to resubmit such information?

**Response:** The reasons for reapplying are described in Fact Sheet Section 11.5.2. There have been changes and clarifications made to the NOI process and other housekeeping items that led to the decision to eliminate, consolidate, or modify existing authorizations. In addition, many

facilities have undergone changes in ownership or operations which should be considered with the new NOI submittals. Lastly, given the apparent difficulties observed in reporting, the Department believes reauthorizing each permittee could be an effective way to initiate necessary changes and begin with a better understanding of permit conditions that will hopefully result in fewer instances of reporting noncompliance and confusion.

#### **8.4 Comment Summary**

Permit Section 1.5.3 - Hilcorp suggests removing this Section. It is already assumed that DEC will make such a determination in their process of review of the NOI and all supporting documentation, and notice of such will be provided as outlined in Section 1.5.6.

**Response:** Per 18 AAC 83.210(f) – A general permit must specify when a discharger that is eligible for coverage under the permit and has submitted a complete and timely NOI in compliance with the general permit, is authorized to discharge under the permit. The permit may allow a discharge to begin upon the Department’s receipt of the NOI, after a waiting period specified in the general permit, on a date specified in the general permit, or when the Department notifies the discharger that it is covered by the permit. The reissuance of the existing Permit provided for automatic authorization and, in part, led to confusion. For example, some authorizations were maintained even though the permittee thought they had expired or were terminated and others were not certain about what discharges had been authorized. Reapplying eliminates this confusion moving forward and will allow DEC to clearly specify which discharges have been requested by the applicants in the NOI process. Also see comment response 8.3.

#### **8.5 Comment Summary**

Permit Section 1.5.5 - Hilcorp suggests removing this Section. It is already assumed that DEC will make such a determination in their process of review of the Mixing Zone Application required to be submitted along with the NOI for Graywater (Discharge 002) and notice of such will be provided as outlined in Section 1.5.6.

**Response:** See response to Comment 8.4.

#### **8.6 Comment Summary**

Permit Section 1.5.6.3 - Is it possible for DEC to require an applicant to apply for coverage under a separate GP? If so, such a discussion should be included in the GP or Fact Sheet.

**Response:** This scenario is possible if DEC denied an authorization request under a general permit and then required the applicant to submit an NOI for authorization under a more appropriate general permit. For example, an applicant could submit an NOI under AKG332000 for excavation dewatering for a pipeline project on the North Slope that includes horizontal direction drilling (HDD). Because AKG332000 does not cover inadvertent releases of drilling fluids from HDD, DEC could deny coverage and have the applicant submit a new NOI under AKG320000 – Statewide Pipeline GP that covers HDD. Therefore, DEC has modified this section to include “an NOI for another applicable general permit.”

## **8.7 Comment Summary**

Section 2.11 - Hilcorp recommends incorporating this section under Section 1.5.5.

**Response:** DEC disagrees that the sections should be combined. Permit Section 1.5.5 discusses Mixing Zone application requirements to be submitted with the NOI and Department Authorization Process. Permit Section 2.11 discusses the process for determining whether a mixing zone should be authorized based on the NOI submittal. While reviewing Permit Section 2.11, DEC realized that the title of the section was misleading so the title has been changed to read “Mixing Zone Determinations.”

## **8.8 Comment Summary**

Permit - The Department received comments from Hilcorp regarding three typographical errors in the Draft General Permit. The first error was found in Permit Table 6 where there is a reference to a note “jj” that should read “j”. The second error was found in Permit Section 3.2 which contains a statement that reads “...outline in section 3.2.8,” that should read “...outlined in section 3.2.8.” The third error was found in Permit Section 3.3.2.3 which contains a sentence that reads “...that the SWPPP has been review and revised as necessary ...” that should read “that the SWPPP has been reviewed and revised as necessary ...”

**Response:** DEC agrees with these corrections and reference text in Permit Table 6 has been corrected from “jj” to “j”; text in Permit Section 3.2 has been modified to read “...outlined in section 3.2.8”; and text in Permit Section 3.3.2.2 has been modified to read “that the SWPPP has been reviewed and revised as necessary ...”

## **Comment Summary**

Permit Section 2.6.1.1 - Hilcorp recommends removing the statement about a qualified person, as this is already stated in the referenced definition of Appendix C.

**Response:** DEC agrees and has removed the final sentence in Section 2.6.1.1 which defines qualified person as this definition is redundant and can be located in Appendix C – Definitions.

## 8.9 Comment Summary

Fact Sheet Section 1.2 - Hilcorp recommends including language on how a permittee covered under an Individual Permit can gain coverage under the GP, as discussed in Section 1.4.6 of the GP.

**Response:** The Department disagrees as Permit Section 1.2 specifically discusses the DEC authority to require an applicant to obtain an individual permit rather than vice versa (e.g., terminate the individual permit for a GP authorization). However, if an applicant has an individual permit and believes they may be eligible for coverage under the general permit, they may contact the Department for a determination, or submit an NOI and describe existing coverage and request in a cover letter to ensure all the facts (existing permit coverage vs potential new coverage) are considered.

No changes to the fact sheet as a result of this comment.

## 8.10 Comment Summary

Fact Sheet Section 2.1 - Hilcorp would like to suggest that lakes are also available water sources on the North Slope (See the last sentence of the first paragraph of this section). In addition, Hilcorp points out that freshwater treatment in addition to seawater treatment can be part of oil and gas development.

**Response:** DEC agrees and has added lakes as a source of water and freshwater treatment as part of the development phase of oil and gas to Section 2.11 – Industry Description.

## 8.11 Comment Summary

Fact Sheet Sections 11.2 - 11.4 - Hilcorp recommends revising these sections as much of this material is already iterated in the GP and seems duplicative.

**Response:** DEC disagrees and has made no changes to the fact sheet as a result of this comment (See Comment 7.2).

## 8.12 Comment Summary

Fact Sheet Section 11.5 - Hilcorp recommends that these NOI procedures be included as an attachment with the actual NOI forms in Attachment 2 of the GP and be removed from the Fact Sheet.

**Response:** DEC disagrees that this section should be removed from the Fact Sheet and relocated to the Permit. See response 7.2.

No changes were made as a result of this comment.

## 9 Comments from EPA

### 9.1 Comment Summary

Fact Sheet Section 1.1 – EPA recommends that the acronym punctuation in the text reading “...the discharge of pollutants to waters of the United States (U.S)...” should be corrected to read “(U.S.)”

**Response:** DEC agrees and has added the recommended punctuation to the acronym for the United States. Text now reads “(U.S.)”

### 9.2 Comment Summary

Fact Sheet Section 1.1 – EPA Recommends that the text reading “...the general permit will remain in force and effect via administrative extension should the Department be unable to reissue...” should include a statement regarding the permittees duty to reapply, consistent with Permit Part 1.6.1.4.

**Response:** DEC agrees and has added text “...and provided the permittee has met the reapplication requirements (Permit Section 1.6.1.4),” to last sentence in the final paragraph of this section.

### 9.3 Comment Summary

Fact Sheet Section 2.2.1 - EPA comments that the following sentence is incorrect: “To cover the resulting gap in coverage, the Department issued APDES general permits AKG426000 and AKG570000 for Graywater and Domestic Wastewater, respectively.” EPA provides the following information: “on the effective date of AKG331000, AKG570000 was an existing permit and was not issued due to the gap in coverage.”

**Response:** The Department received the same comment from EPA in the Preliminary Draft comment period and made a correction at that time. The Draft Fact Sheet text no longer matches the above description. The Draft Fact Sheet text reads, “When EPA reissued the existing Permit in 2012, they removed Graywater and Domestic Wastewater discharges because DEC had taken over primacy for domestic wastewater authority in 2008...”

No changes were made as a result of this comment.

### 9.4 Comment Summary

Fact Sheet Section 4.4.2 – EPA would like to know why there is no data to quantitatively characterize this and other mentioned discharges. EPA asks if there is no data due to non-submittals whether DEC has pursued the reporting violations.

**Response:** The narrative in the fact sheet communicates the known compliance history at the time of issuance of the Permit and does not speculate as to the causality of the reporting

noncompliance. The reissued Permit contains numerous conditions that are intended to correct this situation moving forward.

No changes were made as a result of this comment.

## 9.5 Comment Summary

Fact Sheet Section 4.5 – EPA asks if Fact Sheet Section 3.3 says that “non-contact” doesn't need permit coverage per the Clean Water Act. EPA also states that the list below (Department believes this is the list describing “allowable non-storm water discharges”) seems to describe storm water that has contacted contaminants or has the potential to.

**Response:** DEC received this comment from EPA during the 10-day applicant review and resulted in no changes at that time.

DEC is confused by EPA’s comment as Fact Sheet Section 3.3 discusses the applicability of the storm water exemption for oil and gas activities as well as when that exemption no longer applies. Fact Sheet Section 4.5 lists storm water and allowable non-storm water discharges under Storm Water (Discharge 006). It is intended to capture common types of facilities covered by the Permit and allowable non-storm water discharges (provided they have not come into contact with pollutants and violate water quality criteria).

Storm Water (Discharge 006) is intended for facilities that are no longer exempt from coverage (per section 3.3). However, permittees may also request discharge authorization for Storm Water (Discharge 006) despite exemption eligibility. Permittees are required to develop a SWPPP that ensures storm water does not come into contact with potential sources of pollution.

No changes were made as a result of this comment.

## 9.6 Comment Summary

Fact Sheet Section 5.2.2.1 – EPA states that this section is confusing because the Fact Sheet states that the limits will be determined using current technology. EPA believes this seems to imply that data from the current permit will be used. EPA also states that “limitations from the current data are calculated in Attachment C with no disclaimer that the limitations of AKG426000 would be the actual permit limits (this is found in buried in the last sentences of this section – right before calling attention back to Attachment C).”

**Response:** EPA provided a similar comment during the 10-day applicant review, which did not result in modifications to the Fact Sheet. DEC is confused by the comment because it does not appear to question a legal basis or the limits but rather the style and presentation of the determination of the limits. DEC provides the following discussion on the presentation of this topic in the Fact Sheet.

Most of these facilities have been using the same treatment technology “current technology” since AKG330000 for graywater discharges. The term, “Current Technology” is not intended to

imply that only data from the current permit is applicable to the treatment technology as the previously developed limits are as well. The last paragraph in Section 5.2.2.1 explains data was used from the currently active Graywater GP (AKG426000) and compared to data used to develop that permit (from AKG330000) to determine whether the limits in AKG426000 were still appropriate (e.g., appropriate and attainable). Those calculations, the methods used to evaluate each data set, and the data from the currently active permit are outlined in Attachment C. A similar attachment for the calculations used to develop limits for the current Graywater GP can be found in appendix section of AKG426000.

No changes were made as a result of this comment.

### 9.7 Comment Summary

Fact Sheet Section 5.2.2.3, Table 3 – EPA wonders why the average values of the data set are compared with maximum daily limitations (MDL).

**Response:** EPA provided a similar comment during the 10-day applicant review, which did not result in modifications to the Fact Sheet. DEC is confused by the comment because it does not appear to question a legal basis but rather the style and presentation of data summaries. DEC provides the following discussion on the presentation of this topic in the Fact Sheet:

When deciding how best to present and compare data to demonstrate the inapplicability of the existing permit limits DEC could either chose the average monthly limit (AML) or the MDL. Typically, DEC would chose the AML to be consistent with interim guidance for monitoring frequency reductions. However, some of the comparisons are for parameters that do not have AMLs (e.g., oil and grease and total organic carbon in Table 4). Therefore, DEC used the MDL and provided supplemental statistical information to support this selection.

No changes were made as a result of this comment.

### 9.8 Comment Summary

Fact Sheet Section 5.2.2.3 – EPA states that it does not matter whether the water quality based effluent limitations (WQBELs) are adequately protective. EPA also states that this is not the place to make this determination - this is a discussion on technology based effluent limitations (TBELs). The permit regulations require that a TBEL be developed in order to determine the more stringent of the two and the petroleum hydrocarbon limitations do not apply to all discharges so saying it is protective is misleading. The appropriate limitations should be the product of a BPJ analysis considering the requirements of 40 CFR 125.3(d) as adopted in 18 AAC 83.010(c)(3).

**Response:** EPA provided a similar comment during the 10-day applicant review, which resulted in modifications to the Fact Sheet changing “technical error” to “technical mistake.” DEC disagreed, and still disagrees, that “the appropriate limitations should be the product of a BPJ analysis.” EPA’s comment is based on the premise that TBELs are required to be compared to



WQBELs in limitation derivation, when, they are only required to be compared if there are applicable TBELs available for comparison purposes.

18 AAC 83.430(a) states that, “An APDES permit must include conditions meeting the following requirements, if applicable, in addition to those set out in other sections of this chapter.”

18 AAC 83.430(a)(1) lists “technology-based effluent limitations and standards based on ...case-by-case effluent limitations determined under 33 U.S.C. 1342, or a combination of the three authorities in accordance with 40 CFR 125.3...”

DEC is making the determination that TBELs for SCA discharges are not applicable and that previously established TBELs using case-by-case BPJ were a technical mistake (unverified assumption refuted by new information). In addition, DEC calls attention to WQBELs as these permit conditions must be evaluated against any considered TBELs. EPA’s comment that the discussion on WQBELs does not pertain to this section is a matter of style and presentation rather than legal basis. DEC’s intent was to be explicit with respect to 18 AAC 83.430 that other permit conditions governed by 18 AAC 83 do apply and to segue to the next Fact Sheet section WQBELs. Nonetheless, DEC has deleted the last sentence in the last paragraph of Fact Sheet Section 5.2.2.3 as this is implied by 18 AAC 83.430 and replaced it with See Section 5.3.8 for WQBELs.

## 9.9 Comment Summary

Fact Sheet Section 5.3.1 – EPA recommends that the text reading “make the receiving water unsafe for unfit for existing uses” be corrected to read “...make the receiving water unsafe or unfit for existing uses...”

**Response:** DEC agrees and has corrected the text to read “...make the receiving water unsafe or unfit for existing uses.”

## 9.10 Comment Summary

Fact Sheet Section 5.3.2 – EPA states that water quality criteria listed in the Fact Sheet are the same as the National Recommended Criteria which for chlorine are adopted from the Gold Book (1986). The Gold Book specifies that “aquatic organisms and their uses should not be affected . . . if the 1-hour average concentration does not exceed 19 µg/L more than once every 3 years on the average.”

**Response:** DEC agrees and has modified this text be consistent with 18 AAC 70.020(b). The text now reads, “Acute criterion is based upon a 1-hour average concentration...”

### 9.11 Comment Summary

Fact Sheet Section 5.3.2 - Limitations overall are meant to be protective of both the acute and chronic criteria and are not labelled by the criterion. Why was the standard methodology not used to determine AMLs and MDLs for chlorine?

**Response:** DEC's WQBEL derivation guidance and the TSD provide discretion to set limits equal to water quality criteria. The method detection limit for this parameter is 100 µg/L using EPA approved analytical methods and is used as the compliance level for this parameter. As water quality criteria for total residual chlorine significantly lower than even the compliance level (set by the method detection limit), calculating even lower limits which cannot be detected using EPA approved analytical methods provides no value.

No changes were made as a result of this comment.

### 9.12 Comment Summary

Fact Sheet Section 7.2.2 - says little more than is in this section saying that a dilution factor of 10 is authorized and size of the mixing zone is 200m but there is no justification as to the size or dilution.

**Response:** The Department provides justification in Fact Sheet Section 7.2.1 - Mixing Zone Analysis where the Pollen Study discusses graywater discharges and observed dilution during spring thaw. These dilution observations indicate a dilution of 10 to 1 is typically achievable for all parameters evaluated at 200 meters from the discharge, and can be even greater for certain parameters. An extension of this section and the authorization of a mixing zone are discussed in Fact Sheet Section 7.2.2 - Mixing Zone Authorization. However, while reviewing mixing zone sections of the Permit and Fact Sheet, DEC found the units of measure were inconsistent between documents. Consistent with the mixing zone study, mixing zone size determination of the Fact Sheet and with the existing Graywater GP (AKG426000), the units of measure in Permit Sections 1.5.1.6, 1.5.5, 2.11.2, NOI Form Checklist (Attachment 2), Mixing Zone Application (Attachment 3) were changed to meters.

### 9.13 Comment Summary

Fact Sheet Section 5.3.2 - With this methodology, compliance is going to be difficult to track. Since only monthly samples are required, it would seem the results would have to be in compliance with the limitations as averages and maximums and the percentile calculations could be used as an affirmative defense of an exceedance if more sampling is done during the course of a month.

**Response:** EPA is correct that it can be difficult to achieve compliance with the average limits when only one monthly sample is required. However, water quality criteria for this parameter states that not more than 10 percent of the samples may exceed the MDL. To assist permittees with compliance the Department allows permittees to evaluate more than one sample (which can

be difficult in remote areas) or to determine compliance by calculating the 90<sup>th</sup> percentile and comparing to the MDL. The Permit states that the QAPP must contain methods and the calculations used and that the permittee should also include these details in the comments section of the discharge monitoring report (DMR).

No changes were made as a result of this comment.

#### **9.14 Comment Summary**

Fact Sheet Section 5.3.3 –There are inconsistencies regarding the reasonable potential analysis (RPA) determination for turbidity for gravel pit dewatering (Discharge 003)

**Response:** The Department has not determined there to be reasonable potential for turbidity in gravel pit dewatering operations. Instead the Department has included monitoring to provide more information for future permit development. The Department has corrected the typographic error listing turbidity with parameters of concern. Turbidity has been removed from the RPA determination and the text now reads, “...the Department finds there is reasonable potential to exceed or contribute to an exceedance, of numeric water quality criteria at the point of discharge for the following parameters: pH and sediment.”

#### **9.15 Comment Summary**

Fact Sheet Section 6.1 – The text “BMP controls must be developed to ensure solids accumulation does not exceed a depth of 1/8<sup>th</sup> inch...” is included in the draft Fact Sheet for graywater discharges. The preliminary draft Fact Sheet did not contain this language for graywater discharges but did include it for gravel pit dewatering. But the draft Fact Sheet does not contain this language for gravel pit dewatering. Why was it added to one discharge but removed from another?

**Response:** Gravel Pit Dewatering requires Specific BMPs to control sedimentation and erosion. In the specific BMP section you will find this the requirement to develop controls that ensure solids accumulation does not exceed 1/8 inch. Graywater discharges occur only in the winter and generate ice mounds that are not expected to cause sedimentation and erosion as they melt during spring break-up conditions. However, the Department does include a requirement to develop BMPs which ensure grit and sediment accumulation does not exceed 1/8 inch (consistent with the AKG426000 – Graywater GP).

No changes were made as a result of this comment.

#### **9.16 Comment Summary**

Fact Sheet Section 8.1.1 – EPA points out that the Draft Permit contains effluent limitations that do not meet secondary treatment standards yet the fact sheet only says a waiver from secondary standards “may be required.” There is no part of the NOI dedicated to applying for this waiver.

**Response:** Secondary treatment for graywater and waivers from secondary treatment are within the 18 AAC 72 Wastewater Disposal regulations. Language stemming from this state authority has traditionally been included in APDES permits or state certifications of permits to ensure these regulations are met by permittees who are issued an authorization through the APDES program. To avoid incompatibility between amendments of 18 AAC 72 and Permits issued through the APDES program, the Department is moving away from including direct references to individual regulations within 18 AAC 72, and instead stating that the most recent version of 18 AAC 72 must be complied with prior to obtaining an authorization.

The second part of this comment is regarding the NOI (Permit Attachment 2). DEC has included the requirement for permittees to submit waiver requests, plan submittals, or previously issued Department approvals as required by 18 AAC 72 to support their NOI application within Permit Sections 1.5.1.7 -1.5.1.8 and 1.6.1.2 as well as the NOI Checklist (Permit Attachment 2).

No changes were made as a result of this comment.

### **9.17 Comment Summary**

Fact Sheet Section 11.2.4.4 – Text within BMP section states that “... controls must include measures which ensure water quality criteria for temperature is met at the point of discharge and...” EPA asks if there is reasonable potential to exceed WQS why this parameter is not limited.

**Response:** DEC has not made a reasonable potential determination for temperature as there is currently no information to base this determination. Instead, BMPs are a requirement to ensure criteria is not exceeded if a discharge is heated and discharged.”

No changes have been made to the Fact Sheet based on this comment.

### **9.18 Comment Summary**

Fact Sheet Section 11.5.1 – EPA asks “If they have received a waiver under AKG426000, shouldn’t they be required to submit that, too?”

**Response:** The Department calls attention to Item 10 under Section 11.5 which includes all plan review requirements including waivers or previous approvals. These requirements are also addressed in Permit Sections 1.5.1.7 -1.5.1.8 and 1.6.1.2 and the NOI Checklist listing Additional Submittal Requirements and Supporting Documentation.

No changes were made as a result of this comment.

### **9.19 Comment Summary**

Permit Section 2.2.3 – Section 1.3.5 contains the same prohibition.

**Response:** DEC agrees and has deleted Section 1.3.5 from the Permit and retained 2.2.3 as the prohibition is specific to the graywater discharge.

## 9.20 Comment Summary

Permit Table 4, Note (c) – EPA noticed that a similar Note is included in Table 5. However, the Table 5 note includes additional clarifying information about receiving water monitoring requirements.

**Response:** Table 5 contains the correct information which was not copied in Table 4. The Department has modified Permit Table 4, Note (c) to be consistent with Table 5 with the additional text “Receiving water monitoring is required for freshwater discharges only and provides a measurement of ambient conditions prior to discharge.”

## 9.21 Comment Summary

Pre-draft Permit (pg. 19): EPA asked why a section was removed that stated, “Specific BMPs shall be developed and implemented which prevent sediment and erosion downstream of the discharge location (Section 3.2.5.1).” Other sections (2.3.3 and 2.4.2) contain specific provisions on sedimentation and erosion.

**Response:** The Department is unsure which discharge or section EPA intends this comment to apply to other than the comment applies to page 19. To be sure, the Department reviewed all the discharges between pages 17-20 of the Preliminary Draft and the Draft Permit. Specific BMPs from Preliminary Draft Sections 2.4.2, 2.5.1.3, 2.6.2, and 2.7.1 were compared to the Draft Permit Sections 2.5.2, 2.6.1.3, 2.7.2, and 2.8.1 and all sections contain similar requirements to develop Specific BMPs for sediment and erosion control (Permit Section 3.2.5.1) and have not been changed between drafts. Specific BMP requirements for Mobile Spill Response Discharges (Draft Permit Page 20 or Preliminary Draft Page 19) also have not been changed between drafts. However, Mobile Spill Response is the only discharge within these pages that does not require Specific BMPs for sediment and erosion control. These Discharges are from 55 gallon drum units and are not expected to be frequent, high volume, or high velocity discharges and are not anticipated to contribute to any significant sedimentation or erosion.

No changes were made as a result of this comment.

## 9.22 Comment Summary

Permit Appendix A: Standard Conditions – EPA asks if the Standard Conditions for Domestic Wastewater contain provisions that the Standard Conditions for Non-Domestic Wastewater do not.

**Response:** The Department has three sets of Standard Conditions one for Non-Domestic Permits that require DMRs, one for Non-Domestic Permits that do not require DMRs, and one for Domestic Publicly Owned Treatment Works (POTWs). The Standard Conditions used for AKG332000 is appropriately for Non-Domestic Permits that require DMRs. The Standard Conditions for Domestic Publicly Owned Treatment Works (POTWs) do not apply as the facilities authorized by the permit are small privately owned graywater treatment systems.

However, there are only three differences between these two Standard Condition Sets. The Standard Conditions for Domestic POTWs contain Section 1.6.3 which requires POTWs with 100 or more service connections serving 500 or more people to comply with 18 AAC 74 – Water and Wastewater Operator Certification and Training regulations. Finally Section 2.8 for Domestic POTWs and Non-Domestic Standard Conditions are different. Domestic POTWs Section 2.8 requires POTWs to provide a notice of New Introduction of Pollutants to a POTW system; whereas, Non-Domestic POTWs Section 2.8 requires Existing Manufacturing, Commercial, Mining, Silvicultural Discharges to provide notice as soon as they have reason to believe that any activity has occurred or will occur that would result in any toxic pollutants not monitored or limited by the Permit. The Department has used the appropriate Standard Conditions for this General Permit.

No changes were made as a result of this comment.

### **9.23 Comment Summary**

Permit Checklist – EPA asks, if 18 AAC 72.050(d) requires very specific information in order for DEC to grant a waiver, why isn't there a form for the waiver like there is for the mixing zone?

**Response:** The Department has chosen to address these requirements by stating that permittees must comply with 18 AAC 72 regulations prior to receiving authorization. Also, the NOI does include requirements for permittees to submit waiver requests, plan submittals, or Department letters of approval as required by 18 AAC 72 to support their NOI application. (1.5.1.7 -1.5.1.8 and 1.6.1.2 as well as the NOI Checklist listing Additional Submittal Requirements and Supporting Documentation...).

No changes were made as a result of this comment.

## **10 Comments Received by Applicants During Five-Day Review**

During the five-day applicant review, Hilcorp, CCI Industrial Services, LLC (CCI), CPAI and Peak Oilfield Services Company, LLC (Peak) provided comments. There were new comments presented not associated with comments received during the public notice period that did not result in modifications to the Final Permit. There were also comments received during the five-day applicant review that reiterated concerns and comments submitted during the Draft Permit public notice that did not initially result in DEC making changes to the Proposed Final Permit and Fact Sheet issued for five-day applicant review. DEC is modifying the Final Permit and Fact Sheet based on the comments that were in character with, and an outgrowth of, the original comments received during the Draft Public Notice of the Permit and Fact Sheet as discussed below.

## 10.1 Comment Summary

Peak and CCI provided a comment that the requirement to include storm water in the development of the QAPP is not necessary as these discharges do not require sample collection for analytical evaluation. Previously DEC disagreed with the comment indicating that there are comments of the QAPP that were applicable to conducting observations during storm water inspections (See Response 4.1).

**Response:** Upon review of the SWPPP requirements, DEC has concluded that there is adequate requirements in the SWPPP to cover the schedule, timing, and locations of the observations to satisfy similar requirements in the QAPP. Therefore, modifications to the Permit and Fact Sheet have been made to remove discharge 006 from the QAPP requirements. See Fact Sheet Sections 6.8 and 11.4 and Permit Sections 1.5.1.2 and 3.1.1, which have been modified to read “The permittee must develop a QAPP outlining sampling and monitoring requirements for discharges 002 – 005 and 007 – 008 in this Permit.”

## 10.2 Comment Summary

Hilcorp provided a follow-up comment concerning the applicability of uncontaminated SCA water being discharged as storm water versus being a separate wastewater source with an outfall designation that is managed with storm water (e.g., discharged through conveyances commingled with storm water). Hilcorp contends the intent of the existing Permit was that uncontaminated SCA water was storm water applicable to coverage under 006 and not applicable to coverage under discharge 008 for SCAs. The approach proposed by DEC would require unnecessary burden to monitor and submit DMRs for uncontaminated SCA water (See Response 3.2).

**Response:** DEC agrees with Hilcorp’s perspective that EPA’s intent was to consider uncontaminated SCA as storm water. DEC’s perspective is that the intent in the existing Permit and Fact Sheet was unclear because on no occasion did the existing Permit or Fact Sheet explicitly state that uncontaminated SCA water was storm water. Instead, the Permit and Fact Sheet used implicit statements that uncontaminated storm water could be “discharged with storm water” or “discharged as part of storm water management at the facility.” The existing Permit and Fact Sheet were silent on how implementation of this approach was to occur, which led to confusion on when to obtain authorizations for discharge 008 and when DMRs for authorizations needed to be completed and submitted. For example, the existing Permit states that “If there is no wastewater discharge, the permittee shall mark the DMR appropriately and submit the form as required above.” Given that there is no DMR for storm water, permittees that had authorizations for discharge 008 – SCA with no observed sheen would not submit a DMR for storm water but should have submitted a DMR for discharge 008 with the box checked for no discharge. As evident in the review of compliance for reissuing the Permit, this was not done presumably because the Permit was not explicit on the implementation strategy. DEC’s previous response in 3.2 attempted to make an explicit determination to help prevent this reoccurrence during the next Permit term.

Since receiving Hilcorp's comment during the five-day applicant review, DEC has elected to take a slightly different approach that is more aligned with the existing Permit and the comment. DEC makes an explicit determination that uncontaminated SCA water is storm water. Therefore, uncontaminated SCA water can be discharged as storm water and no DMR or additional authorization for 008 – SCA is needed unless the SCA encounters a spill or there is an observed sheen. Once there is a spill or an observation of a sheen, then an authorization for 008 – SCA can be obtained for discharging the SCA water under the Permit while abiding by the limits, monitoring requirements, and other permit conditions. This modification still does not absolve a permittee that has an authorization for 008 – SCA from submitting monthly DMRs even when there is no discharge of contaminated SCA water that occurs.

Based on this modification, the following Permit sections have been modified:

- Permit Section 2.8 has been modified to include provisions for when discharge 008 may be authorized and when an existing authorization of 008 may be inactivated in an authorization. In addition, this section clearly states that uncontaminated SCA water may be discharged as storm water and managed through controls developed in the SWPPP;
- Permit Section 3.3 has been modified to include contaminated and uncontaminated SCA as potential sources to be considered in the SWPPP;
- Permit Appendix C – Definitions has been modified to include a definitions for contaminated SCAs and uncontaminated SCAs; and
- Permit NOI Section 12 has been modified to explain that contaminated SCAs must be authorized and uncontaminated SCAs may be authorized but must be properly monitored and reported.

Based on this modification, the following Fact Sheet sections have been modified:

- Fact Sheet Sections 4.7 and 4.7.1 have been modified to describe the difference between contaminated versus uncontaminated SCAs;
- Fact Sheet Section 5.3.8 has been modified to provide definition of contaminated SCAs;
- Fact Sheet Section 6.7 has been modified to discuss monitoring and limits for contaminated SCAs, removal of coverage upon demonstration the SCA is no longer contaminated, and applicable BMP requirements; and
- Fact Sheet Section 11.5(f) provides direction on providing cross-references to contaminated and uncontaminated SCAs in SWPPP vicinity maps.