

**Department of Environmental Conservation
Final Permit - Response to Comments**

For

APDES Individual Permit

AKG320000 – Statewide Oil and Gas Pipelines

Public Noticed from:

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

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1 Introduction

1.1 Summary of Facility / Permit

The Alaska Department of Environmental Conservation (Department or DEC) is reissuing Alaska Pollutant Discharge Elimination System (APDES) General Permit AKG320000 – Statewide Oil and Gas Pipelines (Permit). The Permit regulates the discharge of pollutants from facilities and activities related to oil and gas pipeline construction and operation to freshwaters of the United States located in Alaska or dispose wastewater onto, or into, the lands in the State. The Permit was first issued by the Department in 2017. This is the first reissuance of the Permit by DEC.

The Permit has introduced a new discharge category “Discharge 008 – Contained Water (Formerly Part of Hydrostatic)” to better categorize the catchall discharges previously authorized under hydrostatic test water. Categorizing these discharges under Contained Water will streamline both reporting and enforcement. During the effective period of the Permit, pollutants from the following discharges will be permitted to occur:

- Discharge 001 – Drilling Fluids and Drill Cuttings
- Discharge 002 – Domestic Wastewater
- Discharge 003 – Gravel Pit Dewatering
- Discharge 004 – Excavation Dewatering
- Discharge 005 – Hydrostatic Test Water
- Discharge 006 – Stormwater
- Discharge 007 – Mobile Spill Response
- Discharge 008 – Contained Water (Formerly Part of Hydrostatic)

The Permit proposes to authorize a 500-foot chronic mixing zone for turbidity and residues in discharges from gravel pit and excavation dewatering, and inadvertent releases of drilling fluids and drill cuttings.

1.2 Opportunities for Public Participation

To ensure participation by the public, agencies, and tribal and local governments during Permit issuance, the Department:

- identified the Permit on the annual Permit Issuance Plan posted online at: <https://dec.alaska.gov/water/wastewater/>;
- notified potentially affected tribes that the Department would be working on the Permit via letter, fax and/or email on June 28, 2022.
- posted the Preliminary Draft Permit on-line for a 10-day applicant review on July 26, 2024 and notified tribes, local governments and other agencies;
- posted the public notice on the Department public notice web page August 21, 2024 for a 34-day public review on the Draft Permit and Fact Sheet;
- posted the Proposed Final Permit on-line for a five-day applicant review on October 17, 2024; 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 public comment period, the Department received comments on the Draft Permit and Fact Sheet from the U.S. Environmental Protection Agency (EPA), Jodie Nester, Naomi Kroyer, Margaret Tarrant, the Alaska Oil and Gas Association (AOGA), Glacier Oil and Gas Corporation (Glacier), the Alyeska Pipeline Service Company (APSC), and Hilcorp Alaska LLC (Hilcorp). The Department also requested comments from the Department of Natural Resources, Department of Fish and Game, Fish and Wildlife Service, the National Marine Fisheries Service, Tribes, and local governments although no other comments were received.

This document summarizes the comments submitted during the public review period and the justification for any action taken or not taken by DEC in response to each comment.

1.3 Final Permit

The Final Permit was adopted by the Department on [TBD, 2024]. There were modifications to the Permit and Fact Sheet based on comments received during the 30-day public comment period. Significant changes resulting from comments received are identified in the response to comments and reflected in the Final Fact Sheet and Permit. In this Response to Comment (RTC), additions are shown as bold and underlined and deletions are shown as bold with strikethrough. There were also minor modifications made to correct grammar and to clarify information.

2 Comments from EPA

2.1 Comment Summary: Require Visual Monitoring of Stormwater Discharges

Comment on Permit Section 3.5.12 and Fact Sheet Section 11.4.5: The EPA points out that Fact Sheet Section 11.4.5 requires visual observations by a qualified person for demonstrating compliance with the Permit and thereby the Alaska Water Quality Standards in 18 AAC 70 (WQS). However, there is no requirement to monitor stormwater discharges in the Permit and therefore, corrective actions are not required if turbid or otherwise polluted water is discharged. The EPA recommends requiring visual observation of stormwater discharges, conducted by a qualified person, at a defined frequency with required documentation in the Permit to maintain compliance with the WQS.

DEC Response:

The Department disagrees that the Permit does not protect water quality. The Permit is intended to comply with the DEC Construction Stormwater General Permit (CGP) and the Multi-sector General Permit (MSGP) as much as practicable. Permit Section 1.4.7 prohibits stormwater discharges that contribute to a violation of any water quality standard and Permit 3.5.12.1 requires inspections of designated areas, not just control measures. Corrective action is required per Permit Section 3.5.11.1, item iii when control measures are not observed to meet Permit requirements, water quality criteria (i.e., turbid or otherwise polluted discharges), or when sediment or residues have accumulated at locations that could result in impacts to control measures, stormwater conveyance, or equipment tracking (i.e., sediment or turbid water leaving the site). Further, the Permit does require inspections at a defined frequency based on rainfall for construction stormwater (See Permit Section 3.5.12.1 and Table 10) and semiannually with one

before and one after breakup for operational stormwater (See Permit Section 3.6.2), as well as documentation of each inspection (See Permit Section 3.5.12.3).

The Department has determined that there is no reasonable potential for discharge of turbid or otherwise polluted stormwater if the Permit is being followed including “planning, developing, implementing and maintaining appropriate stormwater BMPs as described in the Stormwater Pollution Prevention Plan (SWPPP). This is consistent with CGP Section 3.1.2 and MSGP Section 3.2.1.2. In addition, the SWPPP must be updated as necessary based on the observed effectiveness of Best Management Practices (BMPs) during routine and mandated inspections; additional BMPs may be added or revised based on observations. Monitoring of the BMPs occur during wet weather conditions as well as dry conditions. So long as the appropriate BMP is applied, water quality will be maintained without direct monitoring of the stormwater (e.g., sampling for turbidity).

The Department has specifically excluded stormwater discharges where additional monitoring would be required by the stormwater effluent limitation guidelines (ELGs) in Fact Sheet Section 6.5.1.1. Per Permit Section 1.2.1, the Department must determine if the information submitted by the applicant seeking coverage under this Permit is sufficient prior to authorization under this Permit. If the project includes sources not considered during Permit development (e.g., discharges from airports), the Department would not authorize the discharge under the Permit. Therefore, because there is no reasonable potential for the discharge of pollutants, compliance is based on maintaining BMPs and the SWPPP. However, the Department recognizes the inspection language in the Permit can be strengthened to be consistent with other DEC stormwater permits. DEC also adds clarifying statements addressing reasonable potential and other modifications in the Fact Sheet and the Permit. Therefore, the following changes have been made.

The Department has inserted the following subsection to Permit Section 3.5.12:

“3.5.12.2 Visual Monitoring Requirements: During conditions at the project in which a discharge is occurring, the permittee must:

- i. Observe and document the visual quality and characteristics of the discharge (e.g., Permit Section 2.1.5); and**
- ii. Document whether control measures are operating effectively or are in need of maintenance.”**

The subsequent subsections have been renumbered accordingly.

The Department has added the following subsection to Fact Sheet Section 5.3:

“5.3.6 Stormwater (Discharge 006)

For Stormwater, WQS are met by implementing and maintaining appropriate stormwater BMPs. In general, the stormwater controls planned, developed, implemented, maintained, and updated by the permittee that are consistent with the provisions of Permit Sections 3.5 and 3.6 are considered to meet the stringent requirements of the Permit to ensure that the discharges do not cause or contribute to an excursion above any WQS (18 AAC 70).”

The subsequent subsections have been renumbered accordingly. No other changes have been made based on this comment.

2.2 Comment Summary: Stormwater Treatment Chemicals Need DEC Approval

Comment on Permit Section 3.5 and Fact Sheet Section 11.4.2.3: The EPA points out that Fact Sheet Section 11.4.2.3 requires Department approval of treatment chemicals prior to use, yet the Permit does not have this same requirement. The EPA recommends requiring a written plan be submitted to the Department for approval prior to the use of treatment chemicals for stormwater discharges. EPA also recommends requiring trained personnel.

DEC Response:

Permit Section 1.5.1.5 requires plan reviews be submitted to the Department with the Notice of Intent (NOI) when necessary (i.e., use of treatment chemicals or systems). For stormwater, this would typically consist of treatment chemicals for chemical assisted flocculation or filtration treatment systems. Per 18 AAC 72, all treatment systems and use of treatment chemicals require a plan review, and therefore Department approval. Additionally, the Department has included a question regarding the use of treatment systems or chemicals in the NOI in order to help determine when plan reviews may be necessary. However, the Department agrees this requirement can be clarified for stormwater discharges and has updated the second to last sentence of Permit Section 3.4.4.3 has been modified to read:

“Specific BMPs developed for sedimentation, erosion, and thermokarst controls may be developed using appropriate components of guidance referenced in Section 3.5, **including chemical assisted flocculation for sedimentation basins and/or filtration systems (See Permit Section 1.5.1.5).**”

Permit Section 3.4.4.3 requires the development of BMPs for sedimentation control using the appropriate SWPPP guidance in referenced in Permit Section 3.5, which includes employee training. Records of employee training for stormwater discharges is required by Permit Section 3.5.10.2 (ix). Therefore, no changes to the Permit were made based on this portion of the comment. However, as an outgrowth of the comment, the Department has updated the SWPPP guidance link to be consistent with the Fact Sheet. Permit Section 3.5 has been modified to read:

“A SWPPP shall be developed and submitted to the Department with the NOI for review and comment (Section 1.5.1.2) in general accordance with the most current version of Developing Your Stormwater Pollution Prevention Plan – A Guide for Industrial Operators (~~February 2009, EPA 833-B-09-002~~) (**March 2021, EPA 833-B-09-002**). For Alaska-specific requirements, refer to the Alaska Storm Water Guide. <http://dec.alaska.gov/water/wnpspc/stormwater/Guidance.html> https://www.epa.gov/sites/default/files/2021-03/documents/swppp_guide_industrial_2021_030121.pdf.”

No other changes have been made to the Permit or Fact Sheet as a result of this comment.

2.3 Comment Summary: Require SWPPP Development by a Qualified Person

Comment on Permit Section 3.5 and Fact Sheet Sections 11.4 and 11.4.1: The EPA points out that Fact Sheet Section 11.4 states that the SWPPP will be developed by a qualified person and that other plans may be accepted in lieu of a SWPPP if determined by the Department to be

equivalent. The EPA also points out that Fact Sheet Section 11.4.1 outlines the SWPPP Roles and Responsibilities, including recommended experience or training for the SWPPP Preparer. The EPA recommends including the requirement that the SWPPP be developed and revised by a qualified person in the Permit. EPA also recommends clarifying in the Permit that alternative plans may be accepted in place of a SWPPP.

DEC Response:

The Department agrees that Permit omitted the requirement for the SWPPP to be developed by a qualified person and has added the following to the end of Permit Section 3.5:

“The following must be incorporated within the SWPPP, which must be developed by a qualified person (See Appendix C – Definitions).”

The Department disagrees that the Permit needs to clarify alternative stormwater plans may be accepted as they would still need to meet the same requirements. During the previous permit development, DEC coordinated with industry and federal agencies with overlapping requirements (i.e., Federal Energy Regulatory Commission). Integrating similar plans for federal and state requirements would eliminate the need for multiple plans for large scale pipeline construction projects. In this case, early coordination would be needed and the SWPPP, or alternative plan, will be submitted to the Department prior to construction for review and comment per Permit Section 1.5.1.2. No changes to the Permit were made based on this portion of the comment.

3 Comments from APSC

3.1 Comment Summary: Contaminated Sites Information is Unnecessary

Comment on Permit Table 1: APSC believes the requirement to submit information for contaminated site plumes is unnecessary due to limited applicability to APSC because there are few contaminated sites along the Trans-Alaska Pipeline System (TAPS) where dewatering would occur. APSC believes that the requirement to contact the ADEC Contaminated Sites Program (CSP) if dewatering is to occur within 1,500 feet of an existing contaminated site has worked well in the past and is sufficiently protective of the environment.

DEC Response:

The requirement to submit contaminated sites information as applicable is based on coordination with DEC Contaminated Sites Program (CSP) and Department of Natural Resources State Pipeline Coordinators Office (SPCO) and is included in Table 1: Schedule of Submissions based on the requirements of Permit Section 1.5.1.7. See Response to Comments (RTC) Section 3.5.

No changes to the Permit or Fact Sheet have resulted from this comment.

3.2 Comment Summary: APSC Supports Retaining Annual Certifications on Site

Comment on Permit Table 1: APSC supports eliminating the submittal requirement for annual QAPP and BMP Plan certifications and instead retaining annual certification onsite.

DEC Response:

DEC appreciates APSC support for retaining annual certifications onsite.
No changes to the Permit or Fact Sheet have resulted from this comment.

3.3 Comment Summary: APSC Supports Annual Reporting

Comment on Permit Table 1: APSC supports reporting on an annual basis through the Environmental Database System (EDMS) and notes APSC has had a positive experience using EDMS for other permits.

DEC Response:

DEC appreciates APSC support for transitioning to annual reporting in EDMS.
No changes to the Permit or Fact Sheet have resulted from this comment.

3.4 Comment Summary: Automatic Land Disposals Should be Allowed

Comment on 2018 Permit: APSC objects to the removal of automatic land disposals in the Permit and requests that they continue be included because APSC believes they are low environmental impact and the elimination of automatic disposals significantly burdens APSC support activities. APSC indicates they utilize land disposals approximately 50 times per year and describes three common scenarios for utilizing land disposals: 1) conservative permitting of projects that could reach receiving water but often do not (i.e., submitting NOIs for discharges to water and pre-authorization of land disposals for each outfall location); 2) routine dewatering from the contained water sources (e.g., valve vaults, LEFM corridors, and basements); and small projects such as excavations on pump station pads for concrete footings. APSC believes that allowing automatic authorization of land disposals is sufficiently protective of the environment while providing an efficient mechanism for tracking, without the burden of submitting applications.

APSC suggests reducing the monitoring requirements for land disposals by adding a note to the monitoring tables for gravel pit dewatering, excavation dewatering, hydrostatic test water, and contained water saying that pH, settleable solids, turbidity, TAH, and TAqH monitoring is not required for land disposals. APSC also suggests only requiring applications for land disposals that are greater than 500,000 gallons per day.

DEC Response:

The Department disagrees that automatic land disposals have been an effective mechanism for tracking and were not working as intended based on the general lack of reporting in accordance with the 2018 Permit (See Fact Sheet Section 4.2.2.2).

Not all the land disposal scenarios described by APSC were automatic, many were dual permitted projects where NOIs were submitted. The Department does not have a clear understanding of how many automatic land disposals actually occurred under the 2018 Pipeline GP because daily logs were only submitted by APSC for one year and did not include identification of automatic land disposals, despite both being requirements for automatic land disposal under the 2018 Pipeline GP. However, for the only year daily logs were submitted for, the vast majority included outfall ID's indicating that applications had been submitted for those land disposals. For the few that did not have outfall ID's, it was unclear if they were accidentally omitted or if they were automatic land disposals. Regardless, it is clear that the use of automatic

land disposals was limited, and the removal of automatic authorization will have minimal impact on the number of applications submitted.

Automatic authorizations appear to be open for very broad interpretation and there was some failure in self-reporting that led to concerns over accountability; DEC was not able to verify whether certain land disposals were valid and appropriate based on follow up reporting. In addition, including automatic authorization for land disposals would contradict the requirement to submit a plan for approving land disposal locations only to areas appropriate for infiltration to groundwater. Given the observed deficiencies in implementation and the desire to limit land disposal approvals, DEC is concerned that applicants may take liberty and shortcut appropriate planning to ensure a disposal location will not result in site runoff thereby transitioning to a discharge instead of disposal to groundwater. The Department disagrees that applications should only be required for projects greater than 500,000 gallons per day because this would not resolve the issues with automatic land disposals. See RTC Section 3.10 for discussion on the dual permitting of projects to both land and water.

Permit Tables 4, 5, 6, and 8 are for monitoring discharges to water only and thus are not applicable to land disposals. Monitoring requirements for land disposals are included in Table 9, and with the exception of settleable solids on a case-by-case basis for excavation dewatering, do not include the parameters listed by APSC. The Department reiterates that the Permit uses the term “discharge” specifically for discharges to water and “disposal” for land disposals (See Permit Sections 1.1.2 and 1.1.3).

No changes to the Permit or Fact Sheet have resulted from this comment.

3.5 Comment Summary: Submittal of Contaminated Sites Information is Unnecessary

Comment on Permit Section 1.5.1.7: APSC reiterates the requirement to submit information for contaminated site plumes is unnecessary since there is limited applicability to APSC and requirement to contact CSP if dewatering is to occur within 1,500 feet of an existing contaminated site is sufficient.

DEC Response:

DEC disagrees that this provision is not necessary as DEC is aware of at least two contaminated site plumes in close proximity to TAPS. Permit Section 1.5.1.7 requires the permittee to inform Permitting if CSP requires additional actions as a result of coordination [i.e., BMPs] and requires the submittal of additional information only as applicable based on coordination with CSP. While these requirements may not be required for many projects; some near known contaminated plumes deserve heightened attention and the requirements in the Permit align with requirements from CSP and DNR. Hence, the required submittals will be also required by other agencies and there is significant synergism. Furthermore, while there may be few known contaminated sites along TAPS, this comment assumes that all contaminated sites are known which is not the case. The Permit covers pipelines throughout the state, as well as potential new pipelines, and thus must consider contaminated sites throughout the state, not those limited to the TAPS corridor. If this requirement has limited applicability to APSC, then there will be little to no impact to APSC.

No changes to the Permit or Fact Sheet have resulted from this comment.

3.6 Comment Summary: APSC Supports Flexibility in Fecal Coliform Methods

Comment on Permit Section 2.3.1 and Table 3: APSC appreciates allowing reporting of fecal coliform results in fecal count per 100 milliliters (FC/100 mL) when the laboratories report in most probable numbers (MPN) per 100 milliliters (MPN/100 mL) when using the Colilert 18 laboratory method.

DEC Response:

The Department appreciates APSC support for flexibility in reporting fecal coliform results as FC/100 mL when laboratories report using MPN when using methods allowed under 40 CFR 136.

No changes to the Permit or Fact Sheet have resulted from this comment.

3.7 Comment Summary: Daily Turbidity and Settleable Solids Monitoring is Unnecessary for Excavation Dewatering

Comment on Permit Section 2.5.1 and Table 5: APSC requests that ADEC retain the current frequency of weekly turbidity and settleable solids monitoring as this frequency provides quality data that is representative of the discharge and is sufficient to prevent exceedances of permit limitations. This is supported by the fact that APSC only had one exceedance for settleable solids, indicating that APSC treatment methods generally prevent exceedances. APSC also points out that weekly monitoring is consistent with General Permit Number AKG0020000 for Excavation Dewatering.

APSC objects to daily monitoring because this requires having trained personnel on the job site every day. APSC expresses safety concerns with requiring daily monitoring of background turbidity because projects are often in remote locations, require two people for bear safety, and at times require travel over dangerous terrain such as uneven frozen slippery terrain near the water's edge.

DEC Response:

The Department disagrees that weekly monitoring of turbidity and settleable solids has been sufficient to prevent exceedances of permit limitations. Historically, APSC was required to monitor turbidity and settleable solids daily and the 2018 Permit reduced the monitoring frequency to weekly based on a long history of compliance and the assumption it would not result in violations of the WQS. However, based on the compliance history described in Fact Sheet Section 4.2.1.2, this has not been the case. While APSC points out that they had only one exceedance of settleable solids, there were numerous exceedances from various permittees throughout the permit term and all exceedances must be considered when establishing monitoring frequencies under a general permit. Requiring daily monitoring of settleable solids helps to enforce proper pump operation and other BMPs.

APSC expressed safety concerns over requiring daily monitoring of background turbidity. Background turbidity monitoring is only applicable to discharges reaching surface waters to protect waterbodies. Some turbidity exceedances appeared to be related to not establishing a target performance prior to discharging. In these cases, it appears there was a predetermination of BMPs, then a discharge, then measurement of the background turbidity. Receiving water turbidity can vary daily and the permittee must know the receiving water turbidity and resulting

criteria in order to select appropriate BMPs prior to discharge. The Department also reminds permittees that mixing zones are available and may have eliminated most, if not all, of the turbidity exceedances, but were not widely used by permittees. In addition, in many cases discharges can be planned and controlled such that background turbidity monitoring is not required. Historically, APSC was able to safely conduct daily monitoring under their individual permit and should be able to do so under this Permit. DEC also believes that historically there was more environmental oversight that appears to have been recently reduced and shifted to contractors that may not appropriately trained or diligent with respect to environmental compliance.

APSC cites a burden to operations with needing to have trained personnel on site daily during discharge. Regardless of the monitoring frequency, permittees should ensure field personnel have experience with equipment used to measure turbidity in the field and at a minimum to modify and implement BMP's as needed based on field observations. Historically the Department understands this was the case, and in recent years it appears leaving the contractor responsible for environmental matters has been ineffective. Further, APSC indicates support for using the 4-day average for turbidity (See RTC Section 3.8), and therefore should be prepared to have trained personnel onsite on any given day.

Regarding AKG002000, that general permit has much broader statewide application and are typically smaller scale (e.g., small construction projects not qualifying for coverage under other permits) whereby weekly monitoring may be deemed prudent. Whereas, the PLGP discharges are confined to a better defined range of industrial applications and sites. Hence, the PLGP may diverge from AKG002000 on this issue for good cause based on the compliance history and nature of excavation dewatering activities associated with oil and gas pipelines, including large-scale construction.

No changes to the Permit or Fact Sheet have resulted from this comment.

3.8 Comment Summary: Four-Day Turbidity Average is Consistent with 18 AAC 70

Comment on Permit Section 2.5.1 and Table 5: Alyeska supports using the four-day average turbidity results and concurs this is consistent with the WQS.

DEC Response:

The Department appreciates APSC support for using the four-day average turbidity results to demonstrate compliance with the Permit.

3.9 Comment Summary: pH and Turbidity Monitoring for Contained Water

Comment on Permit Section 2.8.1 and Table 8: APSC concurs that the Contained Water category is appropriate and is a better mechanism for managing these miscellaneous wastewaters. However, because this discharge is composed of clean groundwater, APSC does not see the value in requiring turbidity and pH monitoring, especially on a daily basis. APSC acknowledges there were two turbidity exceedances under the 2017 Pipeline GP for what will now be contained water discharges, but believes these values were not representative of actual water quality because the check valve from which the discharge occurred has hard piped permanent suction piping elevated above the vault bottom so it is unlikely that suction placement resulted high turbidity.

DEC Response:

The Department appreciates APSC support for recategorizing discharges.

DEC agrees that the nature of APSC discharges under the contained water category have consisted of groundwater, however, contained water is a broad discharge category and not all sources of contained water considered under the Permit are clean water. Sources consisting of clean groundwater (i.e., valve vault dewatering) are one end of the spectrum. On the other side, this category allows for sediment laden and/or chemically treated water that may be discharged to surface waters and the Department must apply limits to capture the worst-case scenarios (e.g., sedimentation basin with chemical additions). The alternative would be to limit the contained water category, which could leave permittees unable to obtain timely authorization for projects previously considered under hydrostatic test water. As part of the discharge reorganization, the Department determined settleable solids monitoring is not necessary for contained water discharges, reducing the monitoring burden for contained water sources. Turbidity and pH monitoring provide efficient and effective checks on water quality that can easily be conducted in the field.

Based on historical discharges, the Department assumes APSC will primarily use contained water for valve vault dewatering where discharges have occurred over a single day. Therefore, reducing the monitoring frequency to daily would not reduce the monitoring requirements for the vast majority of APSC discharges of contained water. The Department also reiterates that turbidity is only applicable when going directly to a receiving water. Upon collecting data from all permittees for contained water, the Department may reconsider in next permit reissuance.

The Department acknowledges that suction placement may not have been the cause of the exceedance but maintains the position that it is unlikely only effluent turbidity would have been biased high or monitored incorrectly while the receiving water reading was correct on both occasions. Regardless, Permit Section 2.10.3 requires that samples and measurements are representative of a broad range of discharges to ensure water quality protection.

No changes to the Permit or Fact Sheet have resulted from this comment.

3.10 Comment Summary: Automatic Land Disposals Should be Allowed

Comment on Permit Section 2.9.1 and Table 9: APSC reiterates that automatic land disposals should be allowed under the reissued permit as they are low environmental impact and removing them is burdensome to APSC operations. APSC describes how they have historically double permitted projects for both land disposal and discharge to water in order to avoid project delays due to variable groundwater conditions. Due to the changes, APSC envisions having to submit duplicate applications for the same project, one for a land disposal and one for a discharge to water at the same location. APSC requests the Department allow for APSC requests the Department allow for one outfall number to be used for both land disposals and receiving water discharges for the same location to avoid ambiguity and misunderstanding in reporting.

APSC requests that settleable solids monitoring be removed for Excavation Dewatering land disposals to gravel pads citing the lack of apparent environmental benefit of monitoring this parameter for disposals on gravel surfaces.

DEC Response:

The Department recognizes that APSC has historically permitted many of their outfalls for both discharges to water and land disposal, however this has made tracking outfalls and whether a discharge occurred particularly difficult (See RTC Section 3.4). Based on the reporting history for land disposals it appears there is a need for better planning rather than seeing what happens in the field. The ambiguity APSC describes is exactly what happened under the 2018 Pipeline GP and, consistent with the Draft Permit, the Department is eliminating these dual permitting scenarios. Therefore, only one application will be required and only one outfall ID will be assigned per location. All land disposals will require a plan review and demonstration that wastewater will not reach surface water bodies, therefore applications for land disposals and discharges to water will differ. Note that plan reviews may require varying levels of information depending on the circumstances; the applicant should consult with DEC prior to submitting a disposal plan for DEC review per Permit Section 2.9.2. Land disposal will be authorized where disposals are not likely to reach surface waters. Under the 2018 Permit other permittees were confused on uplands versus waters (e.g., dry stream channels). Where it is possible wastewater may reach surface water, projects will be permitted and monitored as discharges to water and result in less ambiguous permitting.

The Department also questions who was making the determination in the field if a qualified person is not onsite daily as indicated by APSC comment in RTC Section 3.7. Conditions can change day to day (e.g., discharge volume) and the Department loses confidence when contractors are not required by contract to be qualified to oversee environmental compliance or are otherwise left unsupervised. Authorizing projects solely for discharge to water or land disposal eliminates this uncertainty.

Per Permit Table 9, Note 4, settleable solids monitoring is only required for excavation dewatering land disposals on a case-by-case basis. The Department will consider disposal locations (e.g., gravel pads) when determining if settleable solids monitoring is required. Under the 2017 Pipeline GP there were two discharges that did not reach surface waterbodies with turbidity results of 1,000 NTUs, indicating that turbidity, and in turn sedimentation, was not being controlled despite the requirement to do so regardless of the final effluent destination.

Additionally, not all discharges to gravel is land disposal as the surrounding area dictates (e.g., nexus to surface water). Further, based on APSC annual land disposal reports, many reported disposals were to vegetated uplands and the Permit requires protection of vegetation. Settleable solids monitoring is included on a case-by-case basis to demonstrate BMPs for sedimentation control are effective, to avoid siltation of the infiltration area, and to prevent adverse impacts to vegetation (See Permit Section 3.4.4.3).

See RTC Section 3.4 for additional discussion on land disposals.

No changes to the Permit or Fact Sheet have resulted from this comment.

3.11 Comment Summary: Categorical Summation Procedure is Accepted

Comment on Permit Attachment 2: APSC accepts the categorical summation procedure for total aromatic hydrocarbons (TAH) and total aqueous hydrocarbons (TAqH).

DEC Response:

The Department appreciates APSC support for the inclusion of the TAH/TAqH categorical summation procedure as an attachment to the Permit.

No changes to the Permit or Fact Sheet have resulted from this comment.

3.12 Comment Summary: Waters of the United States (WOTUS) Language Should be Changed or Removed

Comment on Fact Sheet Section 7.2: APSC recognizes that there is regulatory uncertainty regarding the definition of WOTUS, however the Draft Fact Sheet and Draft Permit should be updated to provide regulatory certainty for permittees. In particular, APSC finds the statement “when there may be discretion, ADEC will narrow the application of land disposal in lieu of expanding discharges to state waters” to be unclear.

DEC Response:

The Department agrees that there is regulatory uncertainty regarding the definition of WOTUS, however, in the lack of clear guidance on how determinations will be made by federal agencies with jurisdiction, regulatory certainty cannot be provided. However, projects can conservatively be permitted as discharges to WOTUS (See RTC Section 5.1). The referenced language was included in the 10-day applicant review, however, was updated in the Draft Fact Sheet to read “when there may be discretion, ADEC will narrow the application of land disposal in favor of expanding discharges to state waters.” As discussed in RTC Sections 3.4 and 3.10, the Department will no longer be permitting projects for both land disposal and discharge to water. A clear decision must be made by applicants prior to conducting work in the field, and if land disposal is requested, permittees must clearly demonstrate via a plan review how the requirements for land disposals in Permit Sections 2.9.1 and 2.9.2 will be met. Rather than expanding land disposals, when there may be discretion or uncertainty, the Department will permit these projects as discharges to water as a conservative approach. However, due to the regulatory uncertainty of the WOTUS definition, the second to last sentence of the first paragraph in Fact Sheet Section 7.2 had been updated to read:

“As discussed in Section 1.1.2, when there may be discretion, DEC will narrow the application of land disposal in favor of expanding discharges to ~~state~~ waters.”

3.13 Comment Summary: 1,500 Foot Setback for Land Disposals is Overly Restrictive

Comment on Fact Sheet 7.2: APSC finds the requirement for land disposal locations to not be within 1,500 feet of a well, wetland, or waterbody to be unduly burdensome as it would greatly restrict the use of land disposals.

DEC Response:

The reissued Permit was developed to intentionally limit the use of land disposals, however, the Department agrees this requirement is arbitrary and has updated the Fact Sheet accordingly (See RTC Section 5.2.).

3.14 Comment Summary: Errors in Turbidimeter and pH

Comment on Fact Sheet 7.2: APSC notes that there were errors in the referenced turbidimeter and pH meter readings in Section 7.2 such that they were not indicative of actual exceedances.

DEC Response:

The Department is unclear on which turbidity exceedances APSC is referring to. Regardless, Permit Section 2.10.3 requires that samples and measurements are representative of discharge and failure to provide representative monitoring is a violation of the Permit.

No changes to the Permit or Fact Sheet have resulted from this comment.

4 Comments from Hilcorp

4.1 Comment Summary: Change Land Disposal Language

Comment on Permit Page 1: Land disposal for language should be changed from “of the State of Alaska” to “in the State of Alaska” to clearly indicate that land disposal is not limited to state owned lands.

DEC Response:

In the Permit, authorizing disposal to land (i.e., groundwater) transcends ownership. Regardless of ownership, the Department has authority over land disposal to groundwater as described in 18 AAC 70 and 18 AAC 72. However, the Department agrees the suggested change can add clarity.

Page 1 of the Permit has been changed to read:

“Owners and operators of pipelines are authorized to discharge wastewater to waters of the United States and other waters of the state and are authorized to dispose of non-domestic wastewater onto lands (i.e., into groundwater) ~~of~~ in the State of Alaska in accordance with effluent limits, monitoring requirements, and other conditions set forth herein.”

As an outgrowth of this comment the Department has made the following modifications to the Permit.

Permit Section 1.1.1 has been modified to read:

“This Permit authorizes and sets conditions on pollutants from construction, operation, and maintenance activities for significant oil and gas pipelines discharged to waters of the United States (WOTUS), state water (non-WOTUS), or disposed to lands ~~of~~ in the State, with exception to the Denali National Park and Preserve and the Indian Reservation of Metlakatla.

Permit Section 1.1.3 has been modified to read:

“This Permit will authorize disposal into groundwater or onto lands ~~of~~ in the State per Alaska Statutes (AS) 46.03.100 – Waste Management and Disposal Authorization and Alaska Administrative Code (AAC) 18 AAC 72 – Wastewater Disposal. The term “dispose or disposal” and “Notice of Disposal (NOD)” are used specifically for land disposal.”

4.2 Comment Summary: Clarification on Four Consecutive Samples

Comment on Permit Sections 1.4.8 and 2.8: Hilcorp requests clarification on the meaning of four consecutive months within Permit Section 1.4.8 and the definition for uncontaminated secondary containment area. Hilcorp notes that it is unclear on the timing of samples must be consecutive. If so, it is consecutive for spill history only, or is it consecutive months of spill history, visual sheen observations, and TAH/TAqH sampling? For example, if a spill occurs and is cleaned in a secondary containment area in August, only two to three monthly samples may be able to be collected prior to freeze. Is it still considered consecutive if the fourth sample is collected the following spring in May or June? Or will the permittee have to wait until the following spring to collect the 4 monthly samples prior to being able to discharge? If it is the latter, Hilcorp notes that this is inconsistent with the TAH and TAqH sampling frequency of once per event.

DEC Response:

For SCAs, the initial trigger for a determination of potential contamination in an SCA includes the narrative conditions for sheen, odor, or discoloration of the water or a spill to the SCA of any volume. Once the SCA is determined to be contaminated by observation of sheen or a spill, with supporting information such as odor or discoloration “in or on the water,” then the TAH and TAqH limitations are used as the definitive numeric criterion to comply with the limits, as well as determining when the SCA is no longer contaminated. Although a sheen would restart the determination of contamination, odor or discoloration would not. The determination that water is still contaminated is therefore based on exceeding criteria for TAH/TAqH once the spill and/or sheen has been mitigated. This is consistent with the definitions of contaminated and uncontaminated secondary containment areas in Appendix C of the Permit.

There appears to be some confusion regarding the sampling requirements for Contained Water. Demonstrating whether a contaminated source of water is no longer contaminated and can again be discharged with stormwater is separate from the TAH/TAqH sampling triggered per event referenced in Permit Section 2.8. The “per event” accounts for situations where a sheen, or contamination, is not anticipated. Note too that if an unexpected sheen is encountered “and” the TAH/TAqH criteria is also exceeded, that contained water is deemed contaminated such that additional TAH/TAqH monitoring would be required. If an SCA or other contained water becomes contaminated, it would be authorized under Contained Water (Discharge 008) as infrastructure known to be exposed to hydrocarbons and therefore require TAH/TAqH sampling per discharge until four consecutive samples demonstrate the water can again be discharged as stormwater. DEC acknowledges that samples cannot be collected during the winter conditions (i.e., NODI T - for “Environmental Conditions – Monitoring Not Possible”). In this scenario, the fourth consecutive sample would be at spring breakup and the previous samples collected during thawed conditions would be counted.

As an outgrowth of this comment, DEC has modified the limit tables for Excavation Dewatering, Hydrostatic Test, and Contained Water to include a requirement to notify DEC if a sheen is observed so that clear direction can be provided for specific instances. DEC has also updated the definition of Uncontaminated SCA.

Note 9 in Permit Tables 4 and 5 and Fact Sheet Tables 17 and 18 has been changed to read:

“An observation of a sheen triggers monitoring for TAH and TAqH. ~~P~~**The** permittee must **notify DEC and** collect one sample per event when an observation of a sheen has occurred or when required due to coordination with Contaminated Sites Program.”

Note 5 in Permit Table 6 and Fact Sheet Table 19 has been changed to read:

“Water from new oil and gas or non-oil and gas infrastructure is not anticipated to have dissolved hydrocarbons. However, an observation of a sheen triggers monitoring for TAH and TAqH. Permittee must collect one representative sample per event when an observation of a sheen has occurred **and notify DEC.**”

Note 6 in Permit Table 8 and Fact Sheet Table 21 has been changed to read:

“Contained Water from sources other than SCAs is not anticipated to have dissolved hydrocarbons. However, an observation of a sheen triggers monitoring for TAH and TAqH. ~~P~~**The** permittee must collect one representative sample per event when an observation of a sheen has occurred and notify DEC.”

The definition of Uncontaminated SCA in Permit Appendix C has been changed to:

“Means a secondary containment area (SCA) where a spill has not occurred in the SCA and a sheen, odor, or discoloration has not been observed in or on the water. After a source of hydrocarbon contamination has been removed/mitigated, a contaminated SCA may be deemed uncontaminated after four consecutive months ~~without a spill, observation of a sheen, or an~~ **of monitoring to demonstrate no** exceedance of TAH and TAqH criteria.

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

4.3 Comment Summary: Clarification on Discharge Monitoring Reports (DMRs)

Comment on Permit Section Sections 1.5.5, 2.11, and 2.11.1.9; Permit Table 2 Notes 1 and 3; Table 4 Note 4; Table 5 Note 4; Table 8 Note 3; and Attachment 2: Hilcorp request clarification on if DMRs are required to be maintained and submitted as part of the Annual Report (AR). Hilcorp additionally requests that the Permit include language that these reporting requirements take precedence over the reporting requirements in Appendix A.

DEC Response:

The ARs are a compilation of monthly DMRs for only those months when a discharge has occurred. The Department agrees clarification is appropriate.

Permit Section 2.11.1.1 is changed to read:

“Monitoring required in Section 2.2 Tables 2 through 9 shall be submitted in an AR **(i.e., a compilation of monthly discharge monitoring reports (DMRs) where a discharge has occurred)** within EDMS by January 31st of the following year or upon submittal of an NOT.”

In all other instances in the Permit, the Department has changed DMR to AR.

As an outgrowth of this comment, the following changes have been made to the Fact Sheet.

Fact Sheet Section 2.3.3.3 has been changed to read:

“The 2018 Pipeline GP required that total monthly volume be reported in the comment section of ~~annual report (AR) form~~ DMRs. The Department has included total monthly volume to the effluent limit table to clarify this requirement (see Section 6.1.4) **in the new Annual Report (AR) form (i.e., a complication of monthly DMRs where discharge occurred).**”

The following has been added to the end of Fact Sheet Section 12.2.1:

“The Department notes that DMRs and ARs are the same, however, AR is used throughout the Permit documents to highlight the annual reporting frequency.”

The Department also changed references to DMRs to AR in the notes of Fact Sheet Tables 17, 18, and 21.

Attachment 2 is the general guidance for reporting TAH/TAqH for the oil and gas section and also applies to individual permits where DMRs are used. This guidance should be applied to months where a discharge occurred (i.e., the monthly DMR) and then reported within the AR. The clarifications described above that AR’s are a compilation of monthly DMRs where a discharge occurred is sufficient to address any confusion caused by referencing DMRs in Attachment 2. No changes have been made to Attachment 2.

Permit Table 1, Note a) includes language that the reporting requirements in the Permit supersede inconsistent requirements in the Standard Conditions, however, the Department concurs that additional clarification is warranted and has added the following subsection to Permit Section 2.11:

“2.11.1.12 The Reporting requirements in this Permit supersede inconsistent requirements in Appendix A, Standard Conditions.”

The Reporting requirements in this Permit supersede inconsistent requirements in Appendix A, Standard Conditions.

4.4 Comment Summary: Permit and Fact Sheet Tables are Inconsistent

Comment on Permit Tables 2, 4, 5, and 7 and Fact Sheet Tables 15, 17, 18, and 20: Hilcorp points out that Permit Tables 2, 4, 5, and 7 do not align with respective Fact Sheet Tables 15, 17, 18, and 20 and should be updated to be consistent. Hilcorp specifically notes the following inconsistencies:

1. Fact Sheet Table 15 Note 3 does not align with Permit Table 2 Note 3.
2. Fact Sheet Table 17 Notes 2 and 3 do not reference the appropriate parameters.
3. The settleable solids frequency in Fact Sheet Table 18 is “weekly”, however in Permit Table 5 it is “daily”.
4. The volume sample type within Fact Sheet Table 20 is “estimate”, however Permit Table 7 is “24- hour estimate.” Per other tables within the permit, Hilcorp recommends that Permit Table 7 indicate “estimate” as the definition of “daily discharge” already indicates an expectation of a calendar day or 24-hour period.

DEC Response:

The Department concurs that there are inconsistencies in the referenced Tables and has updated the Permit and Fact sheet accordingly.

Permit Table 2, Note 3 has been changed to be consistent with Fact Sheet Table 15 to read:

~~“3. If a mixing zone is not authorized, effluent turbidity may not exceed 5 NTU above ambient conditions at the point of emergence when the ambient turbidity is 50 NTU or less. When the ambient condition is greater than 50 NTU, turbidity shall not to exceed more than a 10 % increase up to a maximum increase of 15 NTU. Turbidity shall not exceed 5 NTU over natural conditions for all lake waters. Report downgradient turbidity on AR.”~~

If mixing zone is not authorized, effluent turbidity may not exceed 5 NTU above ambient conditions at the point of emergence when the ambient turbidity is 50 NTU or less. Turbidity may not exceed 5 NTU above ambient conditions when the ambient turbidity is 50 NTU or less; and shall not have more than a 10% increase in turbidity when the ambient condition is greater than 50 NTU (not to exceed a maximum increase of 15 NTU); and shall not exceed 5 NTU above ambient conditions for all lake waters (See Attachment 1 - Turbidity Criteria Figure). Report the receiving water value prior to discharge and to compare to the maximum value for effluent. The permittee must develop BMP and QAPP to address determining compliance with water quality criteria based on receiving water turbidity.”

The last sentence of Fact Sheet Table 15, Note 3 has been changed to read:

“3. If a mixing zone is not authorized, effluent turbidity may not exceed 5 NTU above ambient conditions at the point of emergence when the ambient turbidity is 50 NTU or less. When the ambient condition is greater than 50 NTU, turbidity shall not to exceed more than a 10% increase up to a maximum increase of 15 NTU. Turbidity shall not exceed 5 NTU over natural conditions for all lake waters **(See Attachment B, Figure 1).**”

Fact Sheet Table 17, Notes 2 and 3 has been changed to read:

~~“2. As measured using Imhoff Cone.”~~

~~3. The effluent limit for pH shall be no less than 6.5 or greater than 8.5. Report maximum and minimum for each month.~~

2. The effluent limit for pH shall be no less than 6.5 or greater than 8.5. Report maximum and minimum for each month.

3. As measured using Imhoff Cone.”

The monitoring frequency for Settleable Solids in Fact Sheet Table 18 has been changed to be consistent with Permit Table 5 and the monitoring frequency discussion in the Fact Sheet as follows:

“Weekly Daily”

The Department agrees that the use of “24-hour Estimate” in Permit Table 7 is repetitive of the daily monitoring requirement and has changed the Sample Type for Volume in Permit Table 7 to read:

~~“24-hour Estimate”~~

As an outgrowth of this comment, the Department corrected typographical errors in the referenced Tables.

The second sentence of Permit Table 2, Note 4 has been changed to read:

“When the ambient condition is greater than 50 NTU, turbidity shall not ~~to~~ exceed more than a 10 % increase up to a maximum increase of 15 NTU.”

Fact Sheet Table 15, Note 4 has been changed to read:

“When the ambient condition is greater than 50 NTU, turbidity shall not ~~to~~ exceed more than a 10% increase up to a maximum increase of 15 NTU.

As an outgrowth of this comment, the Department has also updated the Permit and Fact Sheet notes on turbidity to be consistent with the NSGP.

The following Notes in Permit Table 4 and Fact Sheet Table 17 have been changed to read:

“4. Receiving water monitoring must be performed prior to discharge as it provides a measurement of ambient conditions and the limits. If receiving water turbidity monitoring is not possible, **the limit is not applicable (N/A). In these situations,** record “NODI T” for “Environmental Conditions – Monitoring Not Possible” in the AR ~~on the DMR~~ and provide a comment indicating the reason an observation was not made (e.g., tundra, ice, or snow discharge).

5. Turbidity monitoring is not required for gravel pit water used to construct ice roads or pads or for dust suppression.

5. If a mixing zone is not authorized, the permittee must meet water quality criteria at the point of discharge. 6. The permittee must meet water quality criteria at the point of discharge or at the boundary of a 500 ft mixing zone, if authorized. Turbidity may not exceed 5 NTU above ambient conditions when the ambient turbidity is 50 NTU or less; and shall not have more than a 10% increase in turbidity when the ambient condition is greater than 50 NTU (not to exceed a maximum increase of 15 NTU); and shall not exceed 5 NTU above ambient conditions for all lake waters (See Attachment 1 - Turbidity Criteria Figure). **Report the receiving water value prior to discharge and maximum value for effluent. The permittee must develop BMP and QAPP to address determining compliance with water quality criteria based on receiving water turbidity.**

~~6. The permittee must meet water quality criteria at the point of discharge or at the boundary of a 500 ft mixing zone, if authorized. Turbidity may not exceed 5 NTU above ambient conditions when the ambient turbidity is 50 NTU or less; and shall not have more than a 10% increase in turbidity when the ambient condition is greater than 50 NTU (not to exceed a maximum increase of 15 NTU); and shall not exceed 5 NTU above ambient conditions for all lake waters (See Attachment 1 - Turbidity Criteria Figure).~~”

The following notes for Permit Table 5 and Fact Sheet Table 18 have been changed to read:

“4. Receiving water monitoring must be performed prior to discharge as it provides a measurement of ambient conditions and the limits. If receiving water turbidity monitoring is not possible, **the limit is N/A. In these situations,** record “NODI T” for “Environmental Conditions – Monitoring Not Possible” in the AR ~~on the DMR~~ and provide a comment indicating the reason an observation was not made (e.g., tundra, ice, or snow discharge).

5. The permittee must meet water quality criteria at the point of discharge or at the boundary of a 500 ft mixing zone, if authorized. If mixing zone is not authorized, the permittee must meet water quality criteria at the point of discharge. Turbidity may not exceed 5 NTU above ambient conditions when the ambient turbidity is 50 NTU or less; and shall not have more than a 10% increase in turbidity when the ambient condition is greater than 50 NTU (not to exceed a maximum increase of 15 NTU); and shall not exceed 5 NTU above ambient conditions for all lake waters (See Attachment 1 - Turbidity Criteria Figure). **Report the receiving water value prior to discharge and maximum value for effluent. The permittee must develop BMP and QAPP to address determining compliance with water quality criteria based on receiving water turbidity.**

~~6. The permittee must meet water quality criteria at the point of discharge or at the boundary of a 500 ft mixing zone, if authorized. Turbidity may not exceed 5 NTU above ambient conditions when the ambient turbidity is 50 NTU or less; and shall not have more than a 10% increase in turbidity when the ambient condition is greater than 50 NTU (not to exceed a maximum increase of 15 NTU); and shall not exceed 5 NTU above ambient conditions for all lake waters (See Attachment 1 – Turbidity Criteria Figure).”~~

The following notes for Permit Table 8 and Fact Sheet Table 21 have been changed to read:

“3. Receiving water monitoring must be performed prior to discharge as it provides a measurement of ambient conditions and the limits. If receiving water turbidity monitoring is not possible, **the limit is N/A. In these situations,** record “NODI T” for “Environmental Conditions – Monitoring Not Possible” in the AR ~~on the DMR~~ and provide a comment indicating the reason an observation was not made (e.g., tundra, ice, or snow discharge). DEC may also include SS based on plan review (section 2.8.1.3).

5. ~~If a mixing zone is not authorized, t~~**The permittee must meet water quality criteria at the point of discharge. Turbidity may not exceed 5 NTU above ambient conditions when the ambient turbidity is 50 NTU or less; and shall not have more than a 10% increase in turbidity when the ambient condition is greater than 50 NTU (not to exceed a maximum increase of 15 NTU); and shall not exceed 5 NTU above ambient conditions for all lake waters (See Attachment 1 Turbidity Criteria Figure). Report the receiving water value prior to discharge to compare to the maximum value for effluent. The permittee must develop BMP and QAPP to address determining compliance with water quality criteria based on receiving water turbidity.**”

The Department also removed references to mixing zones in Tables 8 and 21 because contained water discharges are not currently included for mixing zone authorization at this time.

All tables notes and note references within the table been updated accordingly.

No other changes to the Permit or Fact Sheet have resulted from this comment.

4.5 Comment Summary: Outfall Reactivation

Comment on Permit Section 1.5: Hilcorp requests concurrence that an NOI for authorization revision will need to be submitted to reactivate outfalls.

DEC Response:

Outfalls imply alphanumeric designations (e.g., 003A) that can only be used once per Permit term per authorization. The Department concurs that outfalls cannot be reactivated and an NOI for revision will be required to authorize a new outfall in the same location per Permit Section 1.6.2 but using a different alphanumeric designation (e.g., 003B). Note that if the discharge is regularly reoccurring, DEC would consider making the authorization long-term on a case-by-case basis.

No changes to the Permit or Fact Sheet have resulted from this comment.

4.6 Comment Summary: Define Large Construction Project

Comment on Permit Sections 1.1.5 and 1.6.1: Hilcorp requests clarification on what qualifies as a large construction project.

DEC Response:

Permit Sections 1.1.5 and 1.6.1 reference submitting an NOI 90-days or more prior to the anticipated start date to obtain coverage for a large new pipeline construction project. The NOI timeline will vary based on the scale and scope of the “construction” project requiring linear trenching for new pipelines. Alternatively, temporarily exposing sections of existing pipelines as a “maintenance” project does not require significant scoping. If a new pipeline construction project is proposed the applicant should communicate with the Department as soon as possible to coordinate the timeline for submitting an NOI.

No changes to the Permit or Fact Sheet have resulted from this comment.

4.7 Comment Summary: Noncompliance and Monitoring Data Reporting

Comment on Permit Section 2.1.9: Hilcorp requests clarification for noncompliance notifications and does not believe that the Permit requirements align with the Standard Conditions in Permit Appendix A Sections 3.4.3.3 and 3.5.

DEC Response:

Permit Section 2.1.9 clarifies the noncompliance reporting requirements in Section 3.4.3.3 of the Standard Conditions in Appendix A by stating that permittees must report all violations of maximum daily limits (MDLs) per Appendix A, Standard Conditions, Section 3.4 – 24-Hour Reporting. Whereas, violations of all other effluent limits, such as average monthly limits (AMLs), are to be reported per Appendix A, Standard Conditions, Section 3.5 – Other Noncompliance Reporting.

Appendix A, Standard Conditions, Sections 3.4.3.1 through 3.4.3.3 require 24-hour reporting for unanticipated bypasses that exceed a permit limitation; an upset that exceeds a permit limitation; and violations of an MDL. This is consistent with the clarification in the Permit that 24-hour

reporting is not required for AML exceedances as unanticipated bypasses and upsets do not automatically result in a violation of a permit limit because additional sampling can, and should, occur to potentially meet the AML. If additional sampling does not result in compliance with the AML, a follow up noncompliance report is required and the Department agrees clarification is needed for this situation, particularly with the change to annual reporting.

Hilcorp indicates that Appendix A Section 3.5 specifically references noncompliance reporting within DMRs, however this is not the case. Appendix A Section 3.2 discusses reporting monitoring data on DMRs and Appendix A Section 3.2.1 specifically says DMRs or an approved equivalent report (i.e., ARs). Therefore, all reporting requirements in Appendix A, including noncompliance notifications, apply regardless of the terminology used for reporting discharge monitoring data. Generally, noncompliance notifications is not tied to a DMR, rather a time frame after the permittee becomes aware of the noncompliance (e.g., 24-hour reporting). The exception to this is other noncompliance reporting in Appendix A Section 3.5 (e.g., AML exceedances).

For clarity, the Department is therefore adding AR to the definitions in Appendix C to the Permit and is also requiring follow up noncompliance notifications for AMLs to be submitted by the 28th of the following month to allow for time to compile additional monitoring results and to prepare the noncompliance report.

The following definition of Annual Report (AR) has been added to Appendix C to the Permit:

“For this Permit, AR is the Department approved equivalent of a compilation monthly discharge monitoring reports where a discharge occurred submitted on an annual basis.”

Permit Section 2.1.9 has been changed to read:

“The permittee must report all violations of maximum daily limits (MDLs) per Appendix A, Standard Conditions, Section 3.4 – 24-Hour Reporting. Violations of all other effluent limits, such as average monthly limits (AMLs), are to be reported per Appendix A, Standard Conditions, Section 3.5 – Other Noncompliance Reporting, **except that these noncompliance reports shall be submitted by the 28th of the following month via EDMS.”**

See RTC Section 4.4 for discussion on changes to the Permit clarifying that where there are inconsistencies, the reporting requirements in the Permit supersede the Standard Conditions.

No other changes to the Permit or Fact Sheet have resulted from this comment.

4.8 Comment Summary: Clarification on Permit Violation Reporting

Comment on Permit Section 2.11: Hilcorp requests clarification on reporting Permit limit violations as it is unclear without discussion of DMRs in Permit Section 2.11 because the Standard Conditions in Permit Appendix A Section 3.5 only references reporting within DMRs.

DEC Response:

The Department has clarified that annual reports consist of a compilation of monthly DMRs where discharge has occurred. See RTC Section 4.3.

No changes to the Permit or Fact Sheet have resulted from this comment.

4.9 Comment Summary: Not All Contained Water Discharges Contain Turbidity

Comment on Permit Table 8: Hilcorp notes that not all contained water discharges will contain turbidity.

DEC Response:

The Department agrees, however, Contained Water is a broad discharge category and limits must consider the worst-case scenarios considered by the Permit. See RTC Section 3.9 for further discussion on Contained Water limitations. DEC also reminds permittees that discharges that do not go directly to a receiving water do not require monitoring for turbidity.

No changes to the Permit or Fact Sheet have resulted from this comment.

4.10 Comment Summary: Monitoring Requirements Clarification

Comment on Permit Section 2.10.2: Hilcorp suggests updating the language in Permit Section 2.10.2 to read “may use sampling procedures provided by a laboratory when collecting samples for laboratory analysis.”

DEC Response:

DEC forewarns that the Quality Assurance Project Plan (QAPP) must include the sampling procedures whether dictated by the laboratory or not. Nonetheless, the Department concurs and has updated the last sentence of Permit Section 2.10.2 to read:

“The permittee shall use bottles and may use sampling procedures provided by a laboratory when collecting samples for laboratory analysis.”

4.11 Comment Summary: Case-by-Case Basis for Alternative Reporting

Comment on Permit Section 2.11.1.2: Hilcorp requests criteria be provided for when alternatives means to reporting through EDMS are allowed on a case-by-case basis.

DEC Response:

DEC Wastewater Discharge Authorization Program (WDAP) is in a transitional phase of moving all reporting to EDMS. Although adamant about transitioning completely to EDMS, WDAP cannot predict all situations that could pose problems during this transition so intends to make allowances for unique, unanticipated situations. Alternate submittal methods are technically allowed, but DEC wishes to streamline the process and promote consistency, as such alternate methods have not been stressed to discourage their use. After verification of the EDMS submittal process this limited allowance may be removed. To clarify this limited allowance, Permit Section 2.11.1.2 is modified to read:

“Submitting ARs via alternative means to EDMS may be considered temporarily on a case-by-case basis based on extenuating circumstances.”

No other modifications to the Permit or Fact Sheet have resulted from this comment.

4.12 Comment Summary: Permittees Must Request Electronic Reporting Waivers

Comment on Permit Section 2.11.1.3: In accordance with 40 CFR 127.15(b) electronic reporting (eReporting) waivers are not intended to be automatically applied in accordance with 40 CFR 127.15(b) but rather requested by the permittee.

DEC Response:

As discussed in Response 4.11, DEC is in a transitional period targeting sole use of EDMS in the near future. The Department is adamant about mandating reporting in EDMS by directly applying waiver provisions of 40 CFR 127.15(b)(2) without requests by the applicant with an ability for the applicant to contest the granting for good cause. Permittees have been operating under an informal eReporting waiver under the 2018 Pipeline GP by pdf reporting via email. Therefore, there is already precedence for Department issued waivers and the Department is seeking transparency and to formalize the automatic Reporting waiver. Reporting through EDMS is an improvement over pdf reporting and is one step closer to fully meeting the requirements of eReporting. The Department foresees the eReporting waivers being short term as EDMS is anticipated to fully replace NetDMR and the waivers will no longer be needed once EDMS is updated.

No changes to the Permit or Fact Sheet have resulted from this comment.

4.13 Comment Summary: QAPP Certification Requirements Should be Consistent with the North Slope General Permit

Comment on Permit Section 3.1.6: Hilcorp recommends making the QAPP review and certification requirements consistent with the North Slope General Permit (NSGP).

DEC Response:

The QAPP review and certification requirements in the Pipeline GP are generally consistent with the NSGP, however, they are organized differently. Both permits require the QAPP to be amended when there is a modification in sample collection, sample analysis, or other procedure addressed by the QAPP, and also require review, revision if necessary, and annual certification of the QAPP. Permit Sections 3.1.5 and 3.1.6 are generally equivalent to the requirements located in Sections 3.1.1 and 3.1.6 of the NSGP. However, the Department agrees that the Permit should also contain the requirement to maintain a log of QAPP modifications to maintain consistency.

Permit Section 3.1.5 has been changed to read:

“The permittee must amend the QAPP whenever there is a modification in sample collection, sample analysis, or other procedure addressed by the QAPP **and maintain a log of modifications.**”

4.14 Comment Summary: BMP Certification Clarification

Comment on Permit Section 3.4.2.4: Hilcorp recommends changing the last sentence of Permit Section to clarify that the permittee must acknowledge that revision and recertification of the BMP is their responsibility in the annual report is due by January 31st of the following year and that it should reference Permit Section 2.11.1.1. instead of Permit Section 2.11.1.

DEC Response:

The Department concurs and the last sentence of Permit Section 3.4.2.4 is updated to read:

“The certification must be dated and signed by each BMP Committee member and be retained on site for DEC inspection. The permittee must acknowledge in the annual report submitted by January 31st of the following year that revision and recertification of the BMP is their responsibility per Section ~~2.11.1.~~ 2.11.1.1.”

5 Comments from Glacier

5.1 Comment Summary: Waters of the United States (WOTUS) vs State Waters

Comment on Permit Sections 1.1, 1.1.1, and 1.1.2: Glacier indicates that the Supreme Court decision in the case of Sackett v. EPA has not changed the United States Army Corps of Engineers (USACE) definition or jurisdictional wetlands. Glacier requests that the Department explain how it determined that most wetlands that were previously considered WOTUS are now state waters when there is no clear guidance on how WOTUS determinations will be made following the supreme court decision. Glacier requests that the Department provide the information allowing the Department to determine which agency has regulatory authority over the implementation of the Clean Water Act (CWA).

DEC Response:

The Department recognizes there is regulatory uncertainty at this time with respect to WOTUS determinations. Based on one interpretation of the Supreme Court decision, it appears that many waters previously considered WOTUS could be considered waters of the State. Glacier correctly indicates that the interpretation by the USACE may differ at this time, potentially leading to challenging implementation during the term of the Permit. Ultimately, DEC does not believe the impact will be significant given all waters receive the same level of protection via WQS and the primary difference between state waters versus WOTUS is whether reporting is to the state or EPA, respectively. DEC acknowledges that permittees are responsible for seeking a jurisdictional determination but in the absence of one, the Department intends to issue authorizations assuming WOTUS, unless otherwise requested by the applicant and supported by a jurisdictional determination or location with respect to existing wetland delineations. This approach is intended to minimize risk and liability associated with compliance as DEC has not typically inspected facilities discharging to state waters; compliance historically has focused on CWA permits. Hence, by assuming WOTUS there is less likely a violation with respect to misinterpreting jurisdiction. DEC also notes that all waters in the state are state waters, but only a portion of these are also WOTUS.

The first sentence of the second paragraph in Fact Sheet Section 1.1.2 has been changed to read:

“The Departments understanding of the implications of this ~~This~~ recent decision ~~means is that~~ many waters and wetlands that were previously categorized as WOTUS ~~are~~ could now be considered state waters. While the determination procedures remain in flux, the level of environmental protection remains the same regardless of whether waters are categorized as WOTUS or state waters.”

5.2 Comment Summary: Reconsider the 1,500-foot Setback to Land Disposal Locations

Comment on Fact Sheet Section 7.2: Glacier recommends removing the 1,500 foot setback requirement for land disposal from the Fact Sheet as it is arbitrary unless it can be demonstrated water will not infiltrate within this distance. This would be consistent with the recently reissued NSGP.

DEC Response:

DEC acknowledges that the 1,500-foot requirement may be arbitrary unless coupled with knowledge of the disposal such as volume and water quality. Therefore, DEC is restating plan submittal review item 3 in Fact Sheet Section 7.2 to read:

“Disposal location does **will not** have a well, wetland, or waterbody within 1,500 feet **result in an adverse effect to nearby sensitive receptors (e.g., water wells, wetlands, or waterbodies) or known contaminated groundwater.**”

5.3 Comment Summary: State Waters should be Defined in Appendix C to the Permit

Comment on Appendix C to the Permit: Glacier requests that State Waters also be defined in Appendix C to the Permit.

DEC Response:

The Department notes that all waters in the state are state waters, however, only a portion of these waters are also considered WOTUS. Currently there is too much regulatory uncertainty to clearly define which waters are solely state waters. At this time, the Department will err on the side of caution by issuing authorization to state waters when a jurisdictional determination has been obtained from the USACE, or other defensible information has been presented to DEC by the applicant (See RTC Section 5.1).

No changes to the Permit or Fact Sheet have resulted from this comment.

5.4 Comment Summary: Clarify Plan Review Requirements

Comment on Permit Sections 1.5.1.5 and 2.9.2: The plan review requirements should be clarified because requiring all land disposals undergo plan review is contrary to the applicant determining when a plan review may be necessary.

DEC Response:

The Department agrees Permit section 1.5.1.5 can be clarified to be consistent with Permit Section 2.9.2 and has changed this first sentence of this section to read:

“Plan Submittals: **All land disposals require plan review per Section 2.9.2.** If the applicant believes a plan review may be necessary **for a discharge to water**, they must contact DEC to confirm the requirement and scope of the submittal prior to submitting for review and approval.”

6 Comments from Alaska Oil and Gas Association (AOGA)

6.1 Comment Summary: Meeting Requested

General Comment: During the public comment period, AOGA contacted the Department to request a meeting to discuss the Draft Permit.

DEC Response:

The Department declined to meet to discuss the Permit while it was out for public notice due to our obligation to conduct public notices in a formal manner that is inclusive of all interests. While an industry meeting may have been beneficial, it may have resulted in DEC conducting a formal public hearing without providing the required 30-day public notice per 18 AAC 83.120(b). Instead, Alternatively, issuing a 30-day public notice for the hearing would have resulted in a delay to permit reissuance. For these reasons, the Department proposed meeting during the 5-day applicant review of the Proposed Final Permit. AOGA concurred and did not want to risk delaying the reissuance of the Permit.

No changes to the Permit or Fact Sheet have resulted from this comment.

7 Comments from Jodie Nester

7.1 Comment Summary: Environment has Been Destroyed

General Comment: This is the Last Frontier for a reason. The environment has been destroyed due to greed. We should be greedy with our land and allow it to grow rather than hindering it and poisoning ourselves.

DEC Response:

Thank you for your comment. This comment did not address a specific permit term or condition that illustrates the stated concern; therefore, no changes were made to the permit documents based on the comment.

8 Comments from Naomi Kroyer

8.1 Comment Summary: Waste Should be Properly Treated

General Comment: Giving corporations the ability to dump pollutants into the freshwater river ways is absolutely absurd. This will lead to contamination to the wildlife and potentially harm residents of the state as well. This broad open permit should not be allowed and it is completely unacceptable that the State of Alaska would even consider such a proposal. Companies should always be held accountable for their waste and properly treating it in a way that is safe for the environment. I refuse to subsidize company profits at the expensive of our wilderness, wildlife, and the environment. This insanity needs to stop here.

DEC Response:

The Department concurs that waste needs to be properly treated and the Permit includes requirements to ensure that effluent is treated to meet water quality criteria. This comment did not address a specific permit term or condition that illustrates the stated concern; therefore, no changes were made to the permit documents based on the comment.

9 Comments from Margaret Tarrant

9.1 Comment Summary: Stop Pollution

General Comment: I oppose the permits and the continued pollution of our lands, air, and water.

DEC Response:

Thank you for your comment. This comment did not address a specific permit term or condition that illustrates the stated concern; therefore, no changes were made to the permit documents based on the comment.