

General NPDES Permit AK G70-0000:

Section 402 Modifications of Section 404 permits issued for LTFs prior to October 22, 1985

EPA Response to Comments

EPA proposed and solicited comments on the draft general permit for Log Transfer Facilities in Alaska in the Federal Register at 19 FR 5111-5112 (September 31, 1996), Anchorage Daily News, Ketchikan Daily News, The Seward Phoenix Log, The Valdez Vanguard, and The Cordova Times. The public comment period was extended by 21 days, notice of which was published in the Federal Register at 215 FR 57425 (November 6, 1996) as well as the Valdez Vanguard, Daily Sitka Sentinel, The Cordova Times, and The Seward Phoenix Log on November 7, 1996. EPA also convened a two-day meeting with all commenters on March 11 and 12, 1997, in order to clarify those comments received and allow commenters to hear each other's concerns.

The EPA received written comments from facility representatives, tribal representatives, concerned citizens, environmental groups, the U.S. Forest Service (USFS), U.S. Fish and Wildlife Service (USFWS), US Corp of Engineers (COE) and the State of Alaska. More specifically comments were received during the public comment period from Claire Johnson; Peter Hocson, Huna Totem Corporation; Paul Barter, Kinnetic Laboratories Inc.; Craig Sempert, Craig's Dive Center; Buck Lindekugel, Southeast Alaska Conservation Council (SEACC); Ellen Maling, Alaska Wilderness Recreation & Tourism Assoc. (AWRTA); Richard Harris and Kenneth Vaughan; Joseph Sebastian; David Voluck, Sitka Tribe of Alaska; Erik Lei-Neilsen; Geoffrey McNaughton, Koncor Forest Products Co.; Silliam Johnson, Cape Fox Corp; James Wolfe, United States Department of Agriculture (USDA); Gene Long, Chugachmiut; Clare Doig, Forest & Land Management Inc. (FLM); Chris Kent, Juneau National Audubon Society (NAS); James Senna, Shee Atika Inc; Casimero Aceveda, Organized Village of Kake; Bert Krages, Attorney at Law; Buck Lindekugel, SEACC; Irene Alexakos, Alaska Clean Water Alliance (ACWA); Nevin Holmberg, USFWS; Eric Hummel, Tongass Conservation Society (TCS); Clarence Clark, Shaanseet; Alaska Society of American Foresters (ASAF); Ketchikan Pulp Corporation (KPC) and Robert Loescher, Sealaska. The following is a summary of the substantive comments related to the draft permit and the EPA's responses:

A. General Comments

- A1. **Impacts on small entities.** The proposed general NPDES permit could have significant impacts on many small entities in Southeast Alaska that bid on timber sales through the independent timber sale program. This is not consistent with EPA's statement under the Regulatory Flexibility Act (USFS).

Response: The general NPDES permit is not a rule subject to the requirements of 5 USC 553(b) and is not subject to the Regulatory Flexibility Act. However, as a factual matter, the general NPDES permit (GP) for LTFs in Alaska should not have a significant impacts on small entities. The discharge of bark and woody debris from log transfer facilities (LTFs) is a discharge of a pollutant from a point source into waters of the U.S. and, thus, requires a permit under the Clean

Water Act (CWA). The GP should not significantly affect LTF dischargers which did not receive a Section 404 permit prior to October 22, 1985. These dischargers were previously subject to the requirements of individual NPDES permits. In fact, the GP provides administrative efficiency and predictability in the permitting process which was not available under the individual permit process. The GP recognizes the differences between low and high volume LTFs, and adjusts the reporting and monitoring requirements for lower volume operations. Therefore, the GP will increase the benefits to small entities that bid on timber through the independent timber sales program.

Likewise, the Section 402 modifications to Section 404 permits will not impose a significant burden on LTFs which received a Section 404 permit prior to October 22, 1985. The Section 402 modifications place uniform requirements on facilities discharging bark and wood debris into the marine waters of Alaska. The modifications will require those LTF permittees to meet the following “new” requirements: 1) compliance with best management practices, including development and implementation of a pollution prevention plan; 2) annual bark monitoring surveys; and 3) a zone of deposit for bark discharged into marine waters after these modifications are issued. These requirements have been applied to LTFs constructed and authorized after October 22, 1985, and therefore should not impose a competitive disadvantage to small entity permittees affected by the Section 402 modifications.

A2. Separation of Section 402 modifications from GP. The draft GP is not clear about which requirements apply to the modified Section 404 permits (USFS, KPC). For clarity, EPA should develop two separate documents for new LTFs and for modification of pre-1985 Section 404 permits (USFS).

Response: In response to comments, EPA has separated the general NPDES permit for LTFs in Alaska (for LTFs which have not received a Section 404 permit prior to October 22, 1985) from the Section 402 modifications of Section 404 permits issued for LTFs prior to October 22, 1985. The separation into two general NPDES permits should facilitate clear communication of permit requirements to the affected public.

A3. Modification of Section 404 permits through the GP. The draft GP suggests that pre-1985 LTFs would be authorized under the GP; this does not meet the intent of Public Law 100-4 (USFS).

The language of the draft permit and fact sheet is inconsistent for Section 404 permit modifications. Several portions of the draft permit and fact sheet refer to the proposed “Section 404 permit modifications” as GP requirements (e.g., bark monitoring, pollution prevention plans, notification requirements, enforcement) (Sealaska, Koncor, Koniag). Pre-1985 LTF permits should not be modified and included in the GP (FLM).

Response: LTF dischargers which received a Section 404 permit prior to October 22, 1985 were authorized to discharge under their individual Section 404 permits unless EPA determined they were not complying with all applicable provisions of the Clean Water Act (CWA). Pursuant to Section 407 of Public Law 100-4 (the Water Quality Act of 1987), EPA has authority to modify a Section 404 permit where it has determined the Section 404 permit does not meet all applicable provisions of the CWA. The Section 402 modifications being implemented through this general

NPDES permit modify the requirements of the existing Section 404 permits.

On October 22, 1985, EPA and the Corps of Engineers entered into a Memorandum of Agreement (MOA) regarding coordination of permitting for LTFs. Section IV of the MOA sets out a process for modifying Section 404 permits. Section IV.D of the MOA provides that EPA will use the procedures in 40 CFR §124.11 and §124.12 to effect such modifications. These procedures apply to Section 402 permits, which include general permits (40 CFR §122.28(b)). Section IV.D of the MOA also provided that EPA may group consideration of more than one set of modifications or findings at a single hearing. Since approximately 225 LTFs were authorized under Section 404 prior to October 22, 1985, EPA determined that it would be more efficient and more protective of the environment to modify these permits collectively through a single general permit public comment process (see Comments A4 and A7).

A4. Agency Procedures. EPA did not follow agency procedures for permit modification at 40 CFR §124.5 and 33 CFR §233.36 (KPC). The Corps needs to be involved for modification of existing Section 404 permits (Huna Totem).

Nothing in the Corps or EPA regulations (40 CFR §124.5 or 33 CFR §233.36) allows EPA to modify individual Section 404 permits by issuing a general NPDES permit (KPC).

Response: EPA has complied with all applicable EPA regulations. EPA tentatively decided to modify the Section 404 permits and prepared a draft permit and Fact Sheet in accordance with 40 CFR §124.5 and §124.6. The use of a general permit to modify existing permits is not prohibited by Section 407 of Public Law 100-4, the CWA, or EPA's implementing regulations (see comments A3 and A7).

In addition Section 407 of Public Law 100-4 authorizes EPA (not the Corps of Engineers) to modify Section 404 permits issued for LTFs prior to October 22, 1985, in order to incorporate the applicable requirements of the CWA.

The basis for EPA's determination that Section 404 permits issued for LTFs prior to October 22, 1985 failed to satisfy the requirements of the CWA is set forth in the Fact Sheet (page 1) issued with the Draft General Permit and in the Administrative Record for this GP.

EPA met all of the requirements in processing the proposed Section 402 modifications. EPA coordinated extensively with federal review agencies, fully described the proposed permit modifications in the Fact Sheet and draft general NPDES permit (GP), and provided a 51-day opportunity for the public to comment and request a hearing. The public notice (and notice of a 20-day extension of the comment period) was published in the federal register and seven local newspapers, and was mailed to over 200 interested parties. The public notice, Fact Sheet, and draft GP was sent to all permittees identified by the Corps of Engineers who had received a Section 404 permit for an LTF prior to October 22, 1985. Public comment was taken on the draft GP and Section 402 modifications and EPA responded to the comments received. Thus, the decision to modify those permits and the procedures implemented to do so were consistent with agency regulations and Section 407 of P.L. 100-4.

- A5. **Need for Section 402 Modifications.** Existing LTFs should be excluded from the GP (Shaan-seet). The draft GP does not improve regulation of pre-1985 LTFs (Huna Totem). Pre-1985 LTF permits should not be modified and included in the GP (FLM).

The intent of Congress was to create a one-stop permitting regime; the proposed “Section 404 permit modifications” would subject the pre-1985 LTFs to two regulatory programs (the Corps and EPA) (Sealaska, Koncor, Koniag).

Response: Section 407 of P. L. 100-4 recognized EPA’s authority under the CWA to regulate LTF discharges occurring at facilities constructed and operated under a Section 404 permit received prior to October 22, 1985. Section 404 permits issued prior to October 22, 1985, need to be modified because they do not satisfy the applicable requirements of Sections 301, 302, 306, 307, 308 and 403 of the CWA. The Section 402 modifications improve regulation of pre-1985 LTFs by adding uniform requirements, many of which stem from the 1985 ATTF Guidelines, and which EPA deems necessary for those dischargers to satisfy the applicable requirements of the CWA (see Comments A6 and A8).

- A6. **Demonstration that existing Section 404 permits do not satisfy CWA requirements.** Section 407 places the burden of proof on EPA to demonstrate that pre-1985 LTF permits do not meet the requirements of the CWA (USFS, Sealaska, Koncor, Koniag, Huna Totem). EPA failed to develop a factual basis for making this demonstration (Huna Totem, USFS).

The language in Section 407 implies that pre-1985 LTFs were adequately regulated under their existing Section 404 permits, and that non-complying permits would be the exception. The generalized treatment of all pre-1985 LTFs as “non-complying” offends the language and intent of Congress (Sealaska, Koncor, Koniag). The assumption that all pre-1985 LTFs violate the CWA standards is a violation of Section 407 (Cape Fox).

A “belief” (that pre-1985 LTF permits do not meet the requirements of the CWA) does not constitute a “demonstration,” especially where it is a categorical generalization. EPA should use the ATTF guidelines as a basis for supporting this demonstration. At least one pre-1985 Section 404 permit does include bark monitoring and reporting requirements (Sealaska, Koncor, Koniag).

Response: The Fact Sheet for the GP and Section 402 modifications included EPA’s tentative determination that the terms of the Section 404 permits issued for LTFs prior to October 22, 1985, failed to satisfy the applicable requirements of the CWA (see Page 1). This determination was substantiated by a thorough review of those Section 404 permits and the lack of any comments or facts presented to the contrary.

EPA initiated an intensive effort to review all Section 404 permits which would be modified by the proposed action. At EPA’s request, the Corps provided a computer-generated list of permits issued for timber-related activities. EPA conducted an extensive review of individual permit files and other available information in order to determine which of these permits would be affected by the proposed Section 402 modifications. As a result, EPA identified a total of 147 permits which authorized Section 404 discharges for LTFs prior to October 22, 1985. The “final” list of

permits should be considered a working document, and may be updated or corrected as new information becomes available to EPA.

Three EPA staff were temporarily stationed at the Corps office in Anchorage in order to obtain copies of these files. EPA was able to retrieve 67 of these 147 files. However, it is reasonable to assume that the 67 files are representative of other Section 404 permits for LTFs issued prior to October 22, 1985. Moreover, those files which were accessible probably represent most active or recently active LTFs (i.e., those files which required access).

The terms of each permit were evaluated to determine whether they satisfied the requirements of Section 301 (technology-based and water quality-based limitations) and Section 308 (monitoring requirements) of the Clean Water Act. The permits were found to vary widely in application of water quality-based, technology-based, and monitoring/reporting requirements. The majority of permits (92.5%) failed to include any water quality-based requirements at all. None of the available permits contained all of the technology-based requirements and monitoring/reporting requirements derived from the ATTF guidelines and which are incorporated in the Section 402 modifications to the Section 404 permits. Therefore, the available data clearly demonstrates that the terms of these Section 404 permits fail to satisfy several important requirements of the CWA. EPA's permit review results are contained in the Administrative Record for the Section 402 modifications contained this general permit.

A7. Case-by-case modification of Section 404 permits. Public Law 100-4 requires that EPA make a case-by-case determination for modifying Section 404 permits issued for LTFs prior to October 22, 1985. EPA did not conduct a case-by-case analysis (KPC, Sealaska, Koncor, Koniag, USFS, Huna Totem).

Section 407 refers to modification of an existing "permit" in the singular; this reflects Congress' intent that those Section 404 permits be examined on a case-by-case basis (Sealaska, Koncor, Koniag)

Pre-1985 Section 404 permits should be modified and reissued on a case-by-case basis (KPC, FLM). These permits should be negotiated on a case-by-case, site-specific basis (FLM).

Response: Public law 100-4 does not require a case-by-case review and modification of Section 404 permits. The use of a general permit is not prohibited by P.L. 100-4, the CWA, or EPA's implementing regulations. Given the number of LTFs that were permitted under Section 404 prior to October 22, 1985, a consolidated Section 402 modification process provides clear advantages in terms of taxpayer expense and effective use of government resources while maintaining the necessary public comment and public hearing opportunities. It is even more appropriate to use a general permit process to modify the Section 404 permits issued for LTFs prior to October 22, 1985, in light of Section 407 of P.L. 100-4, and its stated intent that administrative processing of permits for LTFs be streamlined (see Comment A3).

Case-by-case analysis would only be justified if such an analysis would result in substantially different permit provisions. However, EPA has determined that LTF dischargers require the same or similar effluent limitations, operating conditions, and monitoring requirements (see

Page 2 of Fact Sheet and Comment A8). However, any interested person, including a permittee, may request further modification of an individual Section 404 permit, in accordance with 40 CFR §124.5 (see Comment A9).

The use of a general permit to modify a category of individual permits is permitted by EPA's implementing regulations. 40 CFR Part 122 includes regulations for the issuance of general permits (40 CFR §122.28). 40 CFR Part 124, which contains the procedures for issuing and modifying permits, applies to both individual permits and general permits

Finally, the public had an opportunity to provide comments and request a hearing on EPA's Fact Sheet, Administrative Record, draft permit, and the proposed modifications. EPA responded to all comments received. Any appeal of the final decision regarding the Section 402 modifications will be through procedures established at 40 CFR Part 124 (40 CFR §124.71) and 33 USC §1369 (appeal of permit issuance is to the U.S. Circuit Court of Appeals). Therefore, the general permit procedures are not significantly different from the procedures permittees would have if the Section 402 modifications occurred on a case-by-case basis.

A8. Uniform permit requirements. EPA does not provide basis for its "belief" that the law requires application of uniform monitoring and reporting requirements, best management practices and zones of deposit. No federal law requires conditions in NPDES permits to be uniform (Sealaska, Koncor, Koniag).

Response: LTFs in Alaska comprise a category of discharges within a geographic area which involve the same or substantially similar types of operations, discharge the same types of wastes, require the same effluent limitations or operating conditions, and require the same or similar monitoring requirements (see Page 2 of the Fact Sheet). Data collected from LTFs with individual NPDES permits suggests that bark deposits at the post-1985 permitted LTFs were substantially smaller than those measured prior to 1976 (see page 3 of Fact Sheet and comment A11). These results are due in part to the application of the Alaska Timber Task Force (ATTF) Guidelines to post-1985 LTFs. These guidelines provide siting, construction, operation, and monitoring/reporting guidelines for minimizing the environmental impacts of LTFs. In fact, the EPA/Corps MOA regarding coordination of permitting for LTFs states that EPA will use the ATTF Guidelines in developing a list of normal conditions for LTF discharges. These conditions are incorporated into the Section 402 modifications and are considered necessary for those permits to meet the applicable requirements of the CWA, as provided in Section 407 of P.L. 100-4 (see Comment A5 and Cantor 1997).

A9. LTFs with specific problems. If an LTF has a specific problem, EPA and the operator should agree on the method and schedule for meeting the CWA standards (Cape Fox).

Response: These Section 402 modifications have been revised to allow permittees a period of six months to comply with the modifications. This six-month period should be adequate to allow affected parties to evaluate existing operations and make the necessary adjustments to comply with the new Section 402 modifications. Further modifications may be appropriate for specific LTFs. Any person, including a permittee, may request a modification to an individual Section 404 permit if one or more of the regulatory criteria for a permit modification contained in

40 CFR §124.5 applies (see Comments A7, C2, and D1).

A10. **Public hearings.** The following LTFs occur within OVK's subsistence use areas: Kake Portage, Little Hamilton Island, Saginaw Bay, Rowan Bay. These LTFs have had substantial impacts on the community. Logging activities impact fish and wildlife within OVK's customary and traditional use areas for gathering of subsistence food on and around Kupreanof and Kuiu Islands. EPA should hold hearings in Kake before allowing the modification or reuse of any LTFs in these areas (Village of Kake).

USFS wants additional hearings for each of the exempted LTFs in accordance with Public Law 100-4. Many older LTFs do have a ZOD and monitoring requirements. USFS also has uniform BMPs consistent with State Forest Practices and other State Water Quality regulations. All LTFs are required to comply with the Stormwater Discharge General Permit requirements (USFS).

EPA must provide an opportunity for a hearing for any modifications of Section 404 permits (KPC, Sealaska, Koncor, Koniag, USFS, Huna Totem).

Response: In the public notice dated September 30, 1996, EPA provided an opportunity for the public to request a hearing on the "blanket" modification of Section 404 permits. EPA's regulations provide that the Director shall hold a public hearing whenever he or she finds, on the basis of requests, a significant degree of public interest in a draft permit. EPA may also hold a public hearing at its discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision (40 CFR §124.12).

EPA only received two specific requests for a public hearing on the proposed Section 402 modifications. Additionally, public comments were thorough and informative. Therefore, EPA decided that a public hearing was not warranted. EPA did convene a two-day meeting with all commenters on March 11 and 12, 1997, in order to clarify comments received and allow commenters to hear each other's concerns.

This permit action modifies all Section 404 permits issued for LTFs prior to October 22, 1985, to incorporate the applicable requirements of the CWA. The regulations provide that any interested person, including a permittee, may also request modification of individual permits, in accordance with the procedures outlined in 33 CFR §233.36 and 40 CFR §124.5. If that request is granted, procedures for modifying individual permits include public notice and an opportunity to comment and/or request a public hearing as well (see Comment A9).

A11. **Lack of information about pre-1985 LTFs.** No studies are available regarding effect of ATTF guidelines on pollutant discharges and other environmental impacts, and compliance with WQS. EPA admits they have "no information" on LTFs permitted under Section 404 prior to October 22, 1985 (SEACC, TCS, ASAF).

EPA should conduct a study to evaluate how much bark has accumulated at the following sites: Kake Portage LTF, Little Hamilton Island, Saginaw Bay, and Rowan Bay (Village of Kake).

Response: EPA has sufficient information in its Administrative Record to determine that Section 404 permits for LTFs issued prior to October 22, 1985, do not meet the applicable requirements of the CWA and, therefore, need to be modified (see Comments A5 and A6). The Section 402 modifications to the Section 404 permits will provide a mechanism for EPA to require notification, monitoring, and reporting for these LTFs. This information will enable EPA, for the first time, to evaluate the impacts and extent of bark accumulation occurring at pre-1985 LTFs.

A12. **Notification of permittees.** EPA has an obligation to notify all pre-October 22, 1985, LTF permittees of any Section 404 modifications (COE).

Response: The public notice list for the draft and final permit actions includes all parties who received a Section 404 permit for an LTF prior to October 22, 1985. An explanatory cover letter has also been provided with the public notice.

A13. **Draft Section 401 certification.** EPA should suspend further action on the proposed GP until the ZOD requirements are developed for pre-1985 LTFs. Before the GP and Section 404 modifications become final, the ZOD requirements for the pre-1985 sites should be developed through a collaborative process with the same parties who helped develop the GP. EPA, ADEC, USFS, and other interested parties should meet to develop discharge requirements and ZODs for pre-1985 LTFs (USFS).

Response: EPA may not issue a permit until a certification is granted or waived in accordance with Section 401 of the CWA. In the public notice for the draft permit and proposed modifications, EPA advised persons wishing to comment on the Section 401 Certification to submit their comments to ADEC within the public notice period.

After the comment period closed, EPA forwarded a copy of all comments received to ADEC, along with a summary of any comments relating to the ZOD. After reviewing comments received, ADEC decided to provide additional opportunities for the public to comment on the draft Section 401 certification. ADEC provided extensive stakeholder input into its 401 certification, particularly the ZOD issue. ADEC held two additional public comment periods on its draft Section 401 Certification: one from July 1 through August 8, 1997 and the second January 8 through February 8, 1999 .

B. Comments on Part III (Excluded Areas)

B1. Areas excluded from Section 402 modifications. Some pre-1985 LTFs may not meet all the requirements of Section III (excluded areas) of the draft GP (USFS).

The draft GP is not clear whether the ATTF siting provisions apply to pre-1985 LTFs. The GP should clearly state which provisions of Part III do not apply (USFS). GP should clarify how EPA will permit existing LTFs with expired permits in excluded areas (KPC).

Pre-1985 LTFs in excluded areas shouldn't be subject to the GP (KPC).

Response: The Section 402 modifications contained in this general permit are modifying existing Section 404 permits, therefore, the exclusions in Part III are not applicable. The provisions of Part III of the General NPDES Permit for LTFs in Alaska (AK G70-1000) apply only to LTF dischargers which have not received a Section 404 permit prior to October 22, 1985. In order to clarify which terms apply to LTFs which received a Section 404 permit before October 22, 1985, the final Section 402 modifications of those Section 404 permits have been issued as a separate general NPDES permit (see Comment A2).

C. Comments on Part III.A (Effluent Limitations)

C1. Pre-1985 LTFs with bark deposits exceeding the ZOD. Pre-1985 LTFs which do not comply with the “Section 402 modifications” would immediately become illegal (Sealaska, Koncor, Sheeatika, Koniag). USFS has approximately 69 pre-1985 LTFs. Many of these may be found to be out of compliance with the proposed ZOD after the first dive report is submitted (USFS).

USFS is concerned about the regulation of pre-1985 LTFs. EPA should either authorize existing deposits at pre-1985 LTFs or/until they develop standards for the cleanup of pre-1985 LTFs where bark accumulations exceed the ZOD (USFS).

The draft GP does not specify what happens when a pre-1985 LTF discovers that bark accumulations exceed the ZOD. Would the operator have to apply for an individual permit? Would EPA re-modify the Section 404 permit (USFS)?

Response: As a general principle, a NPDES permit applies to prospective discharges and what requirements are necessary for discharges authorized under such permit to be in compliance with the CWA. If bark residues or accumulation were authorized by federal or state law prior to the Section 402 modifications, then nothing in the modifications will affect the legal status of those discharges. However, if a LTF or its bark accumulation is not in compliance with any state or federal law or regulation, issuance of the GP modifying its Section 404 permit will not exonerate or shield such LTF from any appropriate enforcement action. The Section 402 modifications apply to discharges that occur after the modifications are effective, and do not address pre-existing bark accumulations. All permittees covered by these modifications must comply with the Section 402 modifications contained in this GP after its issuance or be subject to potential enforcement action. Permittees covered by these modifications shall be required to conduct a baseline survey of underwater bark accumulation in order to delineate bark deposits existing prior to this permit modification and the Section 401 Certification.

The decision to enforce any of the Section 402 modifications is discretionary and outside the scope of this permit action. Section 309 of the CWA (33 USC §1319) provides the enforcement authorities that EPA has for violations of the Act or a permit condition or limitation under the Act. In addition, these permit modifications do not affect the state’s independent authority to enforce its own water quality standards.

- C2. Case-by-case adjudication for LTFs where bark accumulations exceed the ZOD.** Case-by-case adjudication for pre-1985 LTFs would allow agencies to develop compliance schedules, and to recognize that in some cases, “remediation” does more harm than just increasing the size of the ZOD (Sealaska, Koncor, Sheeatika, Koniag).

Response: Bark accumulations existing at the LTF prior to this permit action are not covered by these Section 402 modifications (see Comment C1). Therefore, these Section 402 modifications should not trigger case-by-case adjudication to address existing bark accumulations which exceed the ZOD or the 1 acre/10 cm thickness. However, for pre-1985 LTFs discharging into waterbodies listed as “impaired” under Section 303(d) of the CWA, case-by-case evaluation may occur in the context of a Total Maximum Daily Load (TMDL) study. The TMDL process includes substantial public participation and would address water quality violations and potential remedies.

EPA regulations also allow permittees or any interested party to request case-by-case consideration and modification of permit conditions (40 CFR §124.5). Permits may only be modified, revoked and reissued, or terminated for the reasons specified in 40 CFR §122.62 or §122.64, 33 CFR §233.14 or §233.15. The request by the permittee to modify an existing Section 404 permit (other than a minor modification) shall be processed as a permit application in accordance with the requirements of 40 CFR §124.5 (see Comment A9).

In ADEC’s Section 401 Certification, ADEC reserved the right to rescind the ZOD in its certification after review of a particular LTFs’ Notification. Section IV.E has been modified accordingly. If ADEC exercises that right relative to a particular LTF, all other modifications contained in this GP would remain effective as to that LTF’s Section 404 permit.

- C3. Separate ZOD for pre-1985 LTFs.** The ZOD that is used for the newer LTFs (currently covered by Section 402 permits) should not be applied to the pre-1985 LTFs (USFS).

EPA should be flexible in regulating the pre-1985 LTFs as we move toward the requirements in the draft GP. The study of 13 inactive sites (Freese and O’Clair) was inconclusive relating to bark deposits, and EPA has not regulated the pre-1985 LTFs until now (USFS).

Response: Zones of Deposit that exceed an Alaska water quality standard can only be authorized by the State of Alaska. The state has issued a separate Section 401 Certification for the Section 402 modifications of Section 404 permits issued for LTFs prior to October 22, 1985. The 401 certification for pre-1985 LTFs is in large part the same as for post-1985 LTFs. The applicable provisions can be found in the general permit and in the 401 certification dated August 24, 1999. In ADEC’s Section 401 Certification, ADEC reserved the right to rescind the ZOD in its certification after review of a particular LTF’s Notification. Section IV.E has been modified accordingly. If ADEC exercises that right, all other modifications contained in the GP would remain effective as to that LTF, but not the ZOD. If ADEC exercises that right relative to a particular LTF, all other modifications contained in this GP would remain effective as to that LTF’s Section 404 permit.

D. Comments on Part IV. B (Best Management Practices)

- D1. **Log storage areas.** Existing log storage areas may not meet GP conditions (grounding at low tide, near sensitive areas). How will EPA address these facilities (USFWS)?

Response: One of the major objectives of this permit action is to bring older LTFs into compliance with current standards of pollution-control technology, in accordance with the requirements of the CWA. EPA expects that many LTFs will adjust their operational practices and facility layout to comply with the Section 402 modifications, and provides a six-month “grace period” for permittees to make those adjustments (see Part III.B of the Section 402 modifications). However, case-by-case consideration may be appropriate where permittees are unable to comply with the permit modifications. EPA regulations at 40 CFR §124.5 allow permittees or any interested party to request case-by-case consideration and modification of permit conditions (see Comment A9).

E. Comments on Part VI (Notification Requirements)

- E1. **Contents of Notification.** GP should establish criteria for plan drawings required in the Notification; sometimes drawings submitted to the Corps of Engineers are not adequate (USFWS). Notification should include a nautical chart showing the location of the LTF (USFWS, ACWA). Plan drawing in Notification should include location of catalogued fish streams, estuaries, and mudflats (USFWS). Notification should specify angle of ramp for low angle slides (USFWS). The scale of the map (in the Notification) is too large to show the exact location of the discharge (ACWA).

Total volume transferred over some of the older LTFs may not be known. Will EPA accept incomplete information or estimates for the notification requirements of Part VI (USFS)?

Response: EPA has modified the Notification Requirements to require a nautical chart showing the location of the LTF, the location of catalogued fish streams, estuaries, and mudflats, and the angle of the ramp for low angle slides.

EPA will revise the Notification Requirements to acknowledge that total volume transferred over some older LTFs may not be known.

- E2. **Consistency of notification with Section 407 of P. L. 100-4.** Notification Requirements (Part VI) are very similar to the Application Requirements (Part V). This is inconsistent with Section 407 of P.L. 100-4, which states that pre-1985 LTFs would not be required to apply for a new Section 402 permit (USFS).

Response: Section 407 of P.L. 100-4 authorizes EPA to modify certain existing Section 404 permits as an alternative to issuance of a separate new permit under Section 402 of the CWA. Administration and enforcement of these modifications is not possible without access to basic permittee information. The notification requirement under the Section 402 modifications is not an application for a permit, because the discharger already has a Section 404 permit. However,

notification is necessary to bring the discharger into compliance, in part, with Section 308 of the CWA and to provide EPA with accurate, up-to-date information from LTFs which received a Section 404 permit prior to October 22, 1985, and are actively discharging under the provisions of these Section 402 modifications.

Section 308 of the CWA authorizes EPA to “require the owner or operator of any point source to (I) establish and maintain such records, (ii) make such reports, (iii) install, use, and maintain such monitoring equipment or methods, (iv) sample such effluents, and (v) provide such other information as he may reasonably require” in order to carry out the objective of the Clean Water Act. In this case, notification is required in order to inform EPA who is discharging under the authority of these modifications, and which provisions of the modifications apply.

F. Other Comments

With the exception of Part I.A (Authorized Facilities), Part III (Areas Excluded from Authorization under this General NPDES Permit), and Part V (Application to be Permitted under this General NPDES Permit), the requirements of the General NPDES Permit for LTFs in Alaska (AK G70-1000) correspond to those of this GP. EPA’s response to comments on those parts can be found in the EPA Response to Comments for General NPDES Permit AK G70-1000.

G. ADEC Certification and DGC Consistency Determination

G1. Operational Practices. The Pollution Prevention Plan must identify specific operational practices that will be used to minimize the discharge quantity and area. Practices must include handling of logs out of water, method of transfer, handling of logs in water, and other operational elements.

These conditions have been included in the Pollution Prevention Section of the General Permit.

G2. Zone of Deposit Authorization. The Department authorizes a Zone of Deposit for the accumulation of bark and wood debris on the ocean bottom within the project area of a Log Transfer Facility authorized by EPA to operate under the NPDES General Permit. The Zone of Deposit may include continuous coverage, discontinuous coverage, and trace coverage by bark and wood debris.

The Zone of Deposit has been specified in Section III.A (Effluent Limitations) and Section XI (Definitions) as the project area.

G3. Zone of Deposit Rescission. The ADEC, upon review of a Notification, may determine that a Zone of Deposit representing the project area is not appropriate at the proposed location and is not authorized under 18 AAC 70.210. The ADEC will inform EPA of that decision within 30 days of receipt of the Notification, except that the ADEC, may extend such period (by written notice) for an additional time not to exceed 30 days.

The language has been included in Section IV.E of the General Permit.

- G4. **Notice of Exceedence.** The operator of an LTF shall notify ADEC and EPA if bark and wood debris exceeds the authorized Zone of Deposit.

The requirement to notify EPA and ADEC of any Zone of Deposit exceedences is contained in Section IX.C (Other Noncompliance Reporting) of the general permit.

- G5. **Contents of the Notification.** The notification of discharge must provide the following information:
- a) A map clearly delineating the project area, and a statement of the project area acreage
 - b) A demonstration that operation of the LTF constitutes important social or economic development in the area, and that a Zone of Deposit is necessary to accommodate operation of the LTF; and
 - c) A description of known existing uses of the marine water where the LTF is located, and a demonstration that those uses will be fully protected by the proposed operation of the LTF.

The notification requirements have been added to Section IV.D of the permit.

- G6. **Bark Monitoring Surveys.** A bark monitoring survey must determine the total area of continuous coverage by bark and wood debris, and the total area of discontinuous coverage by bark and wood debris, within the project area in water depths to 60 feet MLLW. If continuous coverage extends more than 15 feet beyond and perpendicular to the lateral transects that bound the two sides of the survey area, then additional transects must be established to determine the extent of continuous coverage beyond the lateral transects. An area of continuous or discontinuous coverage must be calculated as the area in acres enclosed by a line connecting the outermost measured points of continuous or discontinuous coverage, respectively, for that area on the transect array, or by another method approved by ADEC.

The requirements have been incorporated into Section V.C of the permit.

- G7. **Bark Monitoring Surveys.** If a bark monitoring survey indicates that continuous coverage by bark and wood debris is 0.9 acres or greater, and log transfer occurs in that year after that survey, an additional survey must be conducted either 1) in that year, after cessation of log transfer, or 2) in the following year, prior to any additional log transfer.

The preferred time period for conducting an annual bark monitoring survey in a given year is March through May, or prior to operation.

The condition that if the bark monitoring survey indicates continuous coverage of 0.9 acres or greater, an additional survey must be conducted after cessation of log transfer or the following year prior to any additional log transfer was included in the permit. The preference for monitoring March through May was added.

- G8. **Bark Monitoring Surveys.** Bark monitoring surveys must include still photographs that clearly depict the nature and coverage of bark and wood debris on the ocean bottom at representative sample plots along the transects, including at least half the sample plots.

The requirement has been included in the permit.

- G9. **Bark Monitoring Surveys.** The operator shall submit the results of a bark monitoring survey to ADEC and the Alaska Department of Natural Resources within 60 days of completion of the survey, unless a longer time is authorized by ADEC. The results of a survey must clearly state the area of continuous and discontinuous coverage by bark and wood debris.

The requirement to submit the survey to ADEC, EPA and Department of Natural Resources within 60 days has been included in Section V.C.9 of the permit. Enforcement discretion will be practiced if a reasonable longer period of time is needed of the permittee.

- G10. **Bark Monitoring Surveys.** If a bark monitoring survey shows that continuous coverage by bark and wood debris exceeds both 1.0 acre and a thickness of 10 centimeters at any point, the operator shall submit, along with the survey, a statement describing practices that will be used to minimize additional bark accumulation until such time as a Remediation Plan is approved by ADEC, and immediately shall incorporate those practices into the Pollution Prevention Plan for the LTF.

The requirement was added to the permit under Section V.C.7.

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