

**Response to Comments**

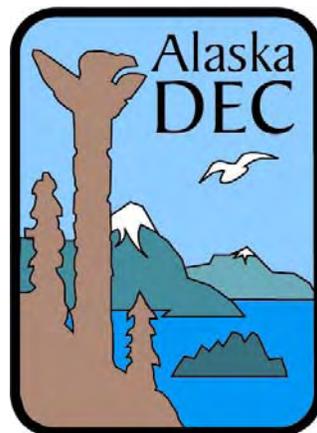
**For**

**Coeur Alaska, Inc.  
Kensington Gold Mine  
Juneau, Alaska**

**APDES Permit No. AK0050571**

**Public Noticed April 25, 2011 – June 9, 2011**

**July 2011**



Alaska Department of Environmental Conservation

Wastewater Discharge Authorization Program

555 Cordova Street

Anchorage, AK 99501

## 1.0 Introduction

### 1.1 Summary of Facility/Permit

The Alaska Department of Environmental Conservation (the department or ADEC) determined that it is appropriate to issue a permit to Coeur Alaska Inc., for the Kensington Gold Mine. The Kensington Gold Mine is an underground gold mine processing 1250 tons of ore per day. There are two discharges to State waters: Outfall 001 discharges treated mine drainage water to Sherman Creek, and Outfall 002 discharges treated tailings facility water to Slate Creek. Both creeks contain resident and anadromous fish.

### 1.2 Opportunities for Public Participation

The department proposed to issue an Alaska Pollutant Discharge Elimination System (APDES) wastewater discharge permit for the discharge of treated mine drainage and tailings facility water to Sherman Creek and Slate Creek, respectively. To ensure public, agency, and tribal notification and opportunities for participation the department:

- identified the permit on the Permit Issuance Plan posted online at: <http://www.dec.state.ak.us/water/wwdp/index.htm>;
- notified potentially affected tribes that the department would be working on this permit via letter, fax and/or email;
- posted a preliminary draft of the permit online for a 10-day potential permittee review November 30, 2010 and notified tribes and other agencies of this review period;
- formally published public notice of the draft permit on April 25, 2011 in the Juneau Empire, on the State of Alaska Online Public Notice System, and on the Department's public notice web page;
- held a formal public hearing on May 26, 2011 from 5 pm to 7 pm at the Centennial Hall in Juneau;
- sent email notifications via the APDES Program List Serve when the preliminary draft, draft, and proposed final permits were available for review.

The department received comments from 15 interested parties on the draft permit and supporting documents, including those from the Center for Science in Public Participation (CSP2) and the Southeast Alaska Conservation Council (SEACC). The department also received comments from Coeur Alaska, Inc., the Alaska Department of Fish and Game (ADF&G), the U.S. Fish and Wildlife Service (USF&WS), and the National Oceanic and Atmospheric Administration National Marine Fisheries Service (NOAA/NMFS).

This document summarizes the comments submitted and the justification for any action taken or not taken by the department in response to the comments.

### 1.3 Final Permit

The final permit was issued by the department on July 29, 2011. There were changes

between the public noticed draft permit and the final permit. Minor errors in spelling and punctuation were made but are not referenced in this document. Significant changes are identified in the response to comments and reflected in the final permit and fact sheet.

## **2.0 General Support and Opposition for the Permit**

### **2.1 Comment Summary**

Comments of support for the permit as a whole were received from 18 individuals. Comments related to specific parts, conditions, or limitations of the permit are addressed below.

## **3.0 General Comments on monitoring**

### **3.1 Comment Summary – objectives of the monitoring activities:**

The USF&WS (6/9/2011) commented that the aquatic resource monitoring plan does not have clear objectives or evaluation criteria and that the monitoring plan lacks meaningful mechanisms by which changes in environmental quality attributable to mine activities can be detected. The monitoring plan should outline remedial actions that will be taken to stop and reverse impacts, and the permit should contain the type of investigation to be undertaken in the event of an impact or exceedence.

### **Response Summary – objectives of the monitoring activities:**

The purpose of the aquatic resource monitoring plan is to document conditions of aquatic communities near the mine site. Results are compared to previous years' results and used to monitor biological assemblages over time. The state annually reviews aquatic resource data, water quality data, and project operations from the previous years to detect changes in aquatic ecosystems that could be attributed to the mine. Since changes in aquatic ecosystems can also result from natural events unrelated to the mine, such as the low pink salmon egg-to-fry survival that was observed during winter 2005 (prior to mine operation), it is important to also review other local information before making conclusions about potential impacts. In addition, the severity of an effluent exceedence is variable and dependent on many factors and must also be considered in reviewing the data. Until an exceedence occurs that poses a threat to aquatic life, or impacts are observed that can be directly attributed to the mine, the exact mechanism for remediation or correction is unknown and cannot be prescribed. For example, in 2010 unexpected high levels of manganese were observed in the outfall 001 effluent. Coeur commenced studies to formulate solutions for the issue and ADEC included a compliance schedule in the permit. If impacts to aquatic life are observed and confirmed to be due to mine activities, the issue will be dealt with appropriately either voluntarily, under a mutually agreed plan between the department and Coeur outside the permit, or through compliance actions that are regulated through the ADEC's Compliance and Enforcement program.

### **3.2 Comment Summary – Creeks impact Marine Mammals:**

NOAA/NMFS (5/24/2011) commented that the Magnuson-Stevens Fishery Conservation and Management Act (MSA) defines Essential Fish Habitat (EFH) as those waters or

substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. The stream reaches in Sherman, Slate and Johnson Creeks above anadromous barriers deliver water (and any effluent) into anadromous portions of the streams and into the marine environment.

**Response Summary – Creeks impact Marine Mammals:**

ADEC agrees.

**3.3 Comment Summary – monitoring Ophir Creek:**

CSP2 (6/8/2011) commented that the proposed permit did not require receiving water monitoring for the Ophir Creek drainage and that receiving water monitoring should be required at the existing site locations SH111 and SH103.

**Response Summary – monitoring Ophir Creek:**

These sites are monitored monthly under the Freshwater Monitoring Plan. Because discharges of pollutants to this creek are non-point sources from waste rock and not a treatment plant point discharge, monitoring requirements for these sites will be included in the Waste Management permit, which is scheduled to be issued in 2011.

**3.4 Comment Summary – monitoring exceedances:**

CSP2 (6/8/2011) commented that the official startup of the mine resulted in exceedances for ammonia and manganese, which was not shown in Table 3 of the fact sheet.

**Response Summary – monitoring exceedances:**

Table 3 is for permit limit exceedances. There were no limits for manganese in the 2005 permit, so exceedances are not shown in the table. However, there were limits for ammonia. The exceedance for ammonia occurred after July 31, 2010, the date of the last data reviewed in Table 3.

## **4.0 Comments on Metals monitoring and Effluent Limits**

**4.1 Comment Summary – Sulfate at Outfall 001:**

Coeur Alaska, Inc. (6/8/11) commented that the fact sheet incorrectly lists “Sulfate associated with Na & Mn” in tables 4-1, 8 and 9-1 and should be corrected to be “Sulfate associated with Na & Mg”

**Response– Sulfate at Outfall 001:**

The incorrect entries have been changed to “Sulfate associated with Na & Mg”.

**4.2 Comment Summary – monitoring for arsenic and silver at Outfall 001:**

Coeur Alaska, Inc. (6/8/11) commented that the draft permit Table 2 requires monitoring for arsenic and silver. Table 9-1 of the fact sheet does not show these metals needing to

be monitored at Outfall 001, and reasonable potential analysis does not show the potential to exceed water quality standards. Appendix B, Section X.h of the fact sheet states that arsenic monitoring will be removed from the permit at Outfall 001.

**Response— monitoring for arsenic and silver at Outfall 001:**

Upon further review, ADEC does require these metals to be monitored because there is no data on these metals during mining operations. Because there is no reasonable potential to exceed the water quality standards, no limits are included in the permit. The permit and fact sheet have been corrected to reflect these requirements.

## 5.0 Comments on Biomonitoring

### SEDIMENT MONITORING

#### 5.1 Comment Summary – sediment monitoring in Sherman Creek:

ADF&G (6/9/2011) recommended discontinuing sediment monitoring in Sherman Creek and Johnson Creek.

NOAA/NMFS (5/24/2011) commented that data prior to 2011 constitutes baseline data and that data needs to be collected during mining to compare to baseline data. Sediment monitoring during mining operations is essential to understand whether sediment chemistry has changed. Monitoring both water and sediments provides a greater temporal coverage of contaminant loads.

USF&WS (6/9/2011) commented similarly to NMFS's comment and added that water quality monitoring may not detect a gradual buildup of metals in sediments that could bio-accumulate over time.

CSP2 (6/8/2011) commented similarly to NMFS's comment and added dust, water-related transport, and accidental spills could all be vectors for mine derived sediment to reach Sherman Creek.

#### Response Summary – sediment monitoring in Sherman Creek:

ADEC concurs that sediment monitoring should continue in middle and lower Sherman Creek during the mine operation period and has incorporated this monitoring requirement into the permit.

### BENTHIC (Macro)INVERTEBRATES

#### 5.2 Comment Summary – benthic macroinvertebrate monitoring – Johnson Creek:

ADF&G (6/9/2011) recommended discontinuing monitoring at Johnson Creek.

USF&WS (6/9/2011) commented that benthic macroinvertebrate monitoring (BMI) is commonly used to effectively monitor changes in stream ecosystems. Data prior to 2011 constitutes baseline data. Data needs to be collected during mining to compare to baseline data. Although there are no direct discharges to Johnson Creek, there are a variety of mine related structures and activities, including roads, bridges, mill waste rock

storage, personnel camp, office structures and equipment storage. BMI monitoring should be continued in Johnson Creek. Objectives and evaluation criteria should be developed for the benthic macroinvertebrate monitoring program.

CSP2 (6/8/2011) commented similarly to USF&WS comment and added that there is potential contamination from spills of materials and reagents used at the mine that are hauled on the road and the tailings slurry pipeline less than 1000 feet uphill from the creek. Water is extracted from Johnson Creek for the personnel camp, and levels run perilously close to, and sometimes below, minimum instream flows. Waste water from the camp discharges to this creek. For these reasons, monitoring should continue in this creek.

**Response Summary – benthic macroinvertebrate monitoring – Johnson Creek:**

ADEC concurs that this monitoring will indicate if there are any changes during the mining period and has incorporated this monitoring requirement for Johnson Creek in the permit.

**RESIDENT FISH MONITORING – POPULATION STATUS  
(abundance & condition)**

**5.3 Comment Summary – general:**

ADF&G (6/9/2011) recommended changing Permit Part 1.5.3.3.1 to allow other population survey methods and to require reporting of population estimates by reach (stratum) and not by habitat type.

**Response Summary – general:**

Permit part 1.5.3.3.1 has been modified to allow other population survey methods.

**5.4 Comment Summary – resident fish population status (abundance and condition) in Sherman Creek:**

ADF&G (6/9/2011) recommended discontinuing monitoring at Sherman Creek.

NOAA/NMFS (5/24/2011) commented that resident fish abundance is an index of stream health and water quality and that Outfall 001 comprises water from mine dewatering and waste rock. There were at least 24 water quality exceedances involving eight different parameters in the baseline monitoring period. The population of Dolly Varden during mining needs to be monitored and compared to data from the baseline period.

USF&WS (6/9/2011) commented similarly to NMFS and added that monitoring fish population abundance can indicate effects from cumulative and synergistic effects, which may not be detected by water quality, periphyton or invertebrate monitoring. Resident fish are also relatively long-lived and can provide a measure of environmental quality over longer time scales.

CSP2 (6/8/2011) commented similarly to NMFS and added that the official startup of the mine resulted in exceedences for ammonia and manganese. It would be pertinent to continue resident fish monitoring.

**Response Summary – resident fish population status (abundance and condition) in Sherman Creek:**

Outfall 001 to Sherman Creek is comprised of storm water and mine drainage water. Seepage from the waste rock pile also enters Sherman Creek. The waste rock is non-acid generating and has been shown to not leach any significant amounts of metals. Resident fish populations were monitored prior to and during mine development (during the years 1998-2002 and 2005-2009) and populations were similar between years in all reaches. Further monitoring is not necessary considering potential for adverse effects and current project operations. If changes in other biological communities (e.g. benthic macroinvertebrates) are observed that may be attributed to the mine, resident fish population monitoring may be required to provide additional information on aquatic life.

**5.5 Comment Summary – resident fish population status (abundance and condition) in Upper Slate Lake:**

ADF&G (6/9/2011) recommended monitoring at the inlet creek to Upper Slate Lake.

**Response Summary – Resident fish population status (abundance and condition) in Upper Slate Lake.**

Resident fish population status (abundance and condition) monitoring has been included into the permit for the inlet creek to Upper Slate Lake.

**5.6 Comment Summary – resident fish population status (abundance and condition) in East Fork Slate Creek:**

ADF&G (6/9/2011) recommended monitoring at East Fork Slate Creek.

USF&WS (6/9/2011) commented that Dolly Varden may be resident but potentially receive unknown numbers of immigrants from Upper Slate Creek. This will potentially bias results of population estimates in East Fork Slate Creek and likely mask any potential effects from mine activities.

**Response Summary – resident fish population status (abundance and condition) in East Fork Slate Creek:**

Dolly Varden in East Fork Slate Creek are resident as a falls barrier and cascades located downstream prevent upstream fish passage. They most likely originate from Upper Slate Lake as East Fork Slate Creek does not provide suitable overwintering habitat to support a long-term population. Resident fish monitoring in East Fork Slate Creek will provide information on presence/absence (since the number of fish present may be low and may not be sufficient to generate a reliable population estimate) and the natural outmigration rate of Dolly Varden from Upper Slate Lake, which will be useful information during reclamation stages of the Tailings Treatment Facility. During the last permit cycle, Dolly Varden captured near the diversion pipeline inlet were manually relocated to East Fork

Slate Creek to simulate natural outmigration, which renders the data useless to investigate the natural outmigration rate. The diversion pipeline has been open to fish passage since fall 2010, so resident fish population data collected during the next permit cycle will be valid.

#### **5.7 Comment Summary – resident fish population status (abundance and condition) in Lower Slate Creek:**

ADF&G (6/9/2011) recommended not monitoring at Lower Slate Creek.

NOAA/NMFS (5/24/2011) commented that Dolly Varden from upstream of the Tailings Treatment Facility can reach Lower Slate Creek and could be affected by discharges of treated water from this facility. It is understood that the Dolly Varden in Lower Slate Creek could come from nearby streams, and that the data could be biased. If data are collected then caveats should clearly state aspects that could compromise the significance of findings.

CSP2 (6/8/2011) commented that Dolly Varden and cutthroat trout utilized this reach from 2005 to 2009 and that monitoring should continue to examine their continued use of the reach, irrespective of where they may originate. Also, potential impacts from mine startup have not yet had sufficient time to be detected.

#### **Response Summary – resident fish population status (abundance and condition) in Lower Slate Creek:**

Because Dolly Varden in Lower Slate Creek could have originated from another nearby stream, data collected may not reflect a true resident population in this reach and may not detect impacts to the population from mine activities upstream. In addition, it is unknown if an isolated, resident Dolly Varden population exists in West Fork Slate Creek, which could further supplement the Lower Slate Creek population and bias the data. Accordingly, resident fish population status will not be monitored at this location.

#### **5.8 Comment Summary – resident fish population status (abundance and condition) in Johnson Creek:**

ADF&G (6/9/2011) recommended discontinuing monitoring at Johnson Creek.

NOAA/NMFS (5/24/2011) recommended continuing the monitoring scope and protocols specified in the 2005 National Pollutant Discharge Elimination System (NPDES) permit.

USF&WS (6/9/2011) commented that resident fish monitoring should be conducted in Johnson Creek since development is not negligible in Johnson Creek.

CSP2 (6/8/2011) commented that the 2008 Kensington Gold Mine Plan of Operations states that Johnson Creek is subject to the highest degree of risk for potential releases of hydrocarbons. Water quality monitoring alone would not measure the impacts of a spill or the impacts of low levels of contamination. Also, potential impacts from mine startup have not yet had sufficient time to be detected.

#### **Response Summary – resident fish population status (abundance and condition) in**

**Johnson Creek:**

ADEC does not think it's necessary to continue resident fish population monitoring in Johnson Creek since there is little impact from the mine and mill. Spills are unlikely from the mill since there is secondary containment. If spills do occur, from any source, and pose a threat to aquatic life in Johnson Creek, monitoring may be required to resume, the results of which can then be compared to baseline data.

**RESIDENT FISH - WHOLE BODY METAL ANALYSIS****5.9 Comment Summary – resident fish whole-body metals analysis in Sherman Creek:**

USF&WS (6/9/2011) commented that whole-body metals analysis is useful to detect potential impacts from mine activities, particularly with the discharge to Sherman Creek. Resident whole fish monitoring should be conducted in Sherman Creek.

**Response Summary – resident fish whole-body metals analysis in Sherman Creek:**

Effluent from Outfall 001 will not have elevated metals unless exceedences occur; water quality standards are to be met at the point of discharge. The waste rock pile near the Comet portal is non-acid generating and has been shown not to leach any significant amounts of metals. Therefore, monitoring whole-body metals concentrations in Sherman Creek is not necessary.

**5.10 Comment Summary – resident fish whole-body metals analysis in Slate Creek:**

ADF&G (6/9/2011) recommended monitoring at three locations at Slate Creek.

NOAA/NMFS (5/24/2011) commented that the sample collection design is flawed because Dolly Varden in Lower Slate Creek could be transient and the study results could be biased, statistically insignificant and incorrect. If data are collected, then caveats should clearly state aspects that could compromise the significance of findings.

USF&WS (6/9/2011) commented similar to NMFS and added that the interaction of resident populations in the various reaches of Slate Creek should be evaluated to determine the effectiveness of monitoring fish populations. Objectives and evaluation criteria should be developed for fish whole-body metal analysis.

CSP2 (6/8/2011) commented that bioaccumulation has been added for Middle Slate Creek not been for Lower Slate Creek because fish may not be true residents. Monitoring should continue for at least 5 years after mining operations cease.

**Response Summary – resident fish whole-body metals analysis in Slate Creek:**

It is agreed that this study may be compromised by collecting fish in Lower Slate Creek, which may have originated from another stream, and in East Fork Slate Creek as residency time will be unknown for fish collected in both reaches. However, sampling near the upper limit of the anadromous reach will improve confidence for residency time in Lower Slate Creek and increase the sample size for fish collected downstream of the Tailings Treatment Facility. In lieu of testing fish tissues, macroinvertebrate tissue sampling was considered. However, macroinvertebrates can retain higher concentrations

of metals than fish, and some invertebrate structures cannot be digested by fish. Accordingly, fish will be sampled and the need for this study will be re-assessed after a three-year trial period because of the possible complications with collection methods. Only juveniles (2-3 year old fish) will be sampled to reduce the likelihood of collecting anadromous fish. Post-closure monitoring requirements are in a separate post-closure fresh water monitoring plan as the APDES permit will not be in effect during the post-closure period.

#### **5.11 Comment Summary – resident fish whole-body metals analysis in Johnson Creek:**

USF&WS (6/9/2011) commented that resident whole-fish monitoring should be conducted in Johnson Creek.

#### **Response Summary – resident fish whole-body metals analysis in Johnson Creek:**

There are no discharges to this stream and no significant sources of metals; therefore, whole-body metals analysis is not required in this creek.

### **ANADROMOUS FISH MONITORING**

#### **5.12 Comment Summary – anadromous fish in Sherman Creek:**

ADF&G (6/9/2011) recommended discontinuing Pink salmon escapement, fry outmigration, and egg-to-fry survival rate sampling in Sherman Creek.

Coeur Alaska, Inc. (6/8/11) commented that the fact sheet, Table 9-4 includes monitoring pink salmon escapement, fry migration and estimation of egg-to-fry survival rate; however, in the Justification for Change column, the reasons are provided to not conduct this biomonitoring. Also, the draft permit does not require this biomonitoring in Sherman Creek.

NOAA/NMFS (5/24/2011) commented that data prior to 2011 constitutes baseline data. Data needs to be collected during mining to compare to baseline data. NMFS recommended continuation of the scope and protocols in the 2005 permit (abundance and quality of spawning substrate) for salmonids in Sherman Creek because mining operations may impact salmon, a prey species for marine mammals.

CSP2 (6/8/2011) commented that a change in instream flow in Sherman Creek due to diversion of water from the Jualin side of the project may affect salmon in Sherman Creek. Accordingly, monitoring of anadromous fish in Sherman Creek should continue.

#### **Response Summary – anadromous fish in Sherman Creek:**

Monitoring out-migrating pink salmon fry under the 2005 NPDES permit resulted in substantial numbers of fish kills, ranging from 2,300 to 5,400 fry during the years 2008-2010 (1-3%). Rapid increases in stream flow, debris jams in the fyke nets, and mark-recapture experiments each contributed to these known fatalities. Unknown mortalities caused by stress after release are also possible. In addition, the sample design is flawed as net mesh allows an unknown number of pink fry to pass undetected, the net does not cover the same percentage of stream in any 24-hour sampling period, and the mark-

recapture experiments may not represent true trap efficiency. Estimate egg-to-fry survival rates reported from 2006 to 2010 using the prescribed methods were generally much higher than expected for natural survival, another indicator that the methods do not result in accurate data. In addition, this study does not provide useful information to detect impacts from mining operations, unless a catastrophic event were to occur within a few months' time while eggs and alevins were in the gravel. Naturally, outmigration abundance is highly variable between years and correlated with natural stream conditions that may be unrelated to mine activities. ADEC does not support requiring anadromous fish monitoring in any of the streams. If other monitoring shows changes within the stream systems, the need for anadromous fish monitoring can be re-visited.

#### **5.13 Comment Summary – anadromous fish in Slate Creek:**

ADF&G (6/9/2011) recommended discontinuing Pink salmon escapement, fry outmigration, and egg-to-fry survival rate sampling in Slate Creek.

NOAA/NMFS (5/24/2011) commented that Johnson and Slate Creeks share the same drainage and would be influenced by similar regional processes. NMFS recommended continuation of the scope and protocols in the 2005 permit (abundance and quality of spawning substrate) for salmonids in Slate Creek. Instream abundance monitoring offers a valuable indicator of possible mining operation impacts on salmon while they are in the stream.

#### **Response Summary – anadromous fish in Slate Creek:**

See response to item 5.12.

#### **5.14 Comment Summary – anadromous fish in Johnson Creek:**

ADF&G (6/9/2011) recommended discontinuing Pink salmon escapement, fry outmigration, and egg-to-fry survival rate sampling in Johnson Creek.

NOAA/NMFS (5/24/2011) commented that Johnson and Slate Creeks share the same drainage and would be influenced by similar regional processes. NMFS Recommended continuation of the scope and protocols in the 2005 permit (abundance and quality of spawning substrate) for salmonids in Johnson Creek because it can be used as a control since mining activities are substantially different on the two Creeks.

CSP2 (6/8/2011) commented that a change in instream flow in Johnson Creek due to diversion of water from the Jualin side of the project may affect salmon in Johnson Creek. Accordingly monitoring of anadromous fish in Johnson Creek should continue.

#### **Response Summary – anadromous fish in Johnson Creek:**

See response to item 5.12.

#### **5.15 Comment Summary – anadromous fish – other biomonitoring parameters and water quality monitoring:**

NOAA/NMFS (5/24/2011) commented that weekly water quality sampling monitors discreet points in time and may not catch acute or chronic events between sampling. Weekly water quality monitoring and annual sampling of periphyton are not sufficient as indices of salmonid health. Annual sampling of either periphyton or aquatic invertebrates may not indicate an acute event because recolonization may have occurred after the acute event. Whole Effluent Toxicity (WET) tests are proposed for chronic toxicity detection. WET tests do not provide a direct correlation to salmonid viability. Yearly abundance monitoring of spawning and surviving embryonic salmon is the most direct measure of salmon health.

**Response Summary – anadromous fish – other biomonitoring parameters and water quality monitoring:**

Because of the volume of water in the Tailings Treatment Facility, the quality of intake water to the treatment plant does not vary rapidly. Therefore there are unlikely to be spikes in pollutants that would lead to acute or chronic effects, increased monitoring is not warranted, and weekly monitoring will indicate trends in levels of pollutants in the effluent, should they occur.

## **PERIPHYTON BIOMASS & COMMUNITY COMPOSITION**

### **5.16 Comment Summary – periphyton in Sherman Creek:**

ADF&G (6/9/2011) recommended periphyton monitoring in Sherman Creek.

#### **Response Summary – periphyton in Sherman Creek:**

Periphyton monitoring continues to be included in the final permit.

### **5.17 Comment Summary – periphyton in Slate Creek:**

ADF&G (6/9/2011) recommended periphyton monitoring in Slate Creek.

USF&WS (6/9/2011) commented that no baseline data exists and that a determination should be made as to whether Upper Slate Creek could be used as a reference reach.

#### **Response Summary – periphyton in Slate Creek:**

Baseline periphyton data was previously collected in several reaches throughout the Slate Creek system. The “Upper Slate Creek”, referred to as the inlet creek to Upper Slate Lake, has been determined to contain appropriate sites for sampling periphyton and has been included as one of four monitoring locations on Slate Creek.

### **5.18 Comment Summary – periphyton in Johnson Creek:**

USF&WS (6/9/2011) recommended that periphyton should also be monitored in Johnson Creek.

**Response Summary – periphyton in Johnson Creek:**

There are no discharges to Johnson Creek, major construction at the upper camp and mill bench is complete, and the waste rock pile near the Jualin portal is non-acid generating; therefore, additional monitoring of benthic invertebrates is not necessary as the potential risk to aquatic life is reduced during the operations phase.

**6.0 Miscellaneous****6.1 Comment Summary:**

Coeur Alaska, Inc. (6/8/11) commented that the draft permit contains incorrect references. In Section 2.3.2 the reference to “Parts 2.2.3 through 2.2.5” should be “Parts 2.3.3 through 2.3.6” and in Section 2.3.6.3 the reference to “Part 2.2.4.2” should be “Part 2.3.4.2”.

**Response Summary:**

Corrections were made to the Permit.

**6.2 Comment Summary:**

Coeur Alaska, Inc. (6/8/11) commented that the draft permit Table 1: Schedule of Submissions is inconsistent with Part 2.3 of the permit. Delete 2.3.2 and change 2.2.4.3.2 to 2.3.4.3.1 and make the language consistent with that item.

**Response Summary:**

Corrections were made to the Permit.

**6.3 Comment Summary:**

SEACC (6/8/2011) commented that the *Interim Antidegradation Implementation Methods (Interim methods)* adopted by ADEC on July 14, 2010 are unlawful. SEACC concurs with Coeur Alaska, Inc., on the draft permit, but does not waive its claim in *ACE et al., v. State of Alaska, Dept. of Environmental Conservation*, Case No. 3AN-11-7159CI (filed April 26, 2011) over ADEC’s decision to adopt these methods without going through public rulemaking.

**Response Summary:**

Case law supports the proposition that state agencies may use guidance to interpret and implement regulations without going through another rule-making procedure as long as guidance does not add any substantive requirement to the regulations. *Interim Methods* were conceived, developed, and implemented through legal means. While there is now a legal challenge to the guidance, the Court has not stayed their effect while that recent case is pending. In the absence of a stay, and until Interim Methods are determined to be illegal, ADEC will continue to use them. The antidegradation policy in regulation governs the implementing guidance. The guidance is simply a tool to help guarantee responsible and consistent application of the policy by ADEC staff.

**List of commenters**

Coeur Alaska, Inc.  
NOAA/NMFS (National Marine Fisheries Service)  
USF&WS (U.S. Fish & Wildlife Service)  
ADF&G (Alaska Department of Fish & Game)  
CSP2 (Center for Science in Public Participation)  
SEACC (Southeast Alaska Conservation Council)  
Scott Spickler  
BBC Human Resource Development Corporation  
Juneau Chamber of Commerce  
William A. Corbus  
Resource Development Council  
Elgee Rehfeld Mertz, LLC  
Southeast Conference  
Goldbelt  
Bruce Berryhill, B<sup>2</sup> Engineering, Inc.  
Juneau Chamber of Commerce  
Fred Morino, DJG Development  
Hyak Mining  
John Sandor  
Frank Bergstrom