

Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0/9.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP-2002-0252. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

The Agency has issued REDs for the pesticide active ingredients listed in this document. Under the FIFRA, as amended in 1988, EPA is conducting an accelerated reregistration program to reevaluate existing pesticides to make sure they meet current scientific and regulatory standards. The data base to support the reregistration of each of the chemicals listed in this document is substantially complete, and each pesticide's risks have been mitigated so that it will not pose unreasonable risks to people or the environment when used according to its approved labeling. In addition, EPA is reevaluating existing pesticides and reassessing tolerances under the Food Quality Protection Act (FQPA) of 1996. The pesticides included in this notice also have been found to meet the FQPA safety standard.

All registrants of pesticide products containing one or more of the active ingredients listed in this document have been sent the appropriate REDs, and must respond to labeling requirements and product specific data requirements (if applicable) within 8 months of receipt. Products also containing other pesticide active ingredients will not be reregistered until those other active ingredients are determined to be eligible for reregistration.

The reregistration program is being conducted under Congressionally-mandated time frames, and EPA recognizes both the need to make timely reregistration decisions and to involve the public. Therefore, EPA is issuing these REDs as final documents with a 60-day comment period. Although the 60-day public comment period does not affect the registrant's response due date, it is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to

the REDs. All comments will be carefully considered by the Agency. If any comment significantly affects a RED, EPA will amend the RED by publishing the amendment in the **Federal Register**.

B. What is the Agency's Authority for Taking this Action?

The legal authority for these REDs falls under FIFRA, as amended in 1988 and 1996. Section 4(g)(2)(A) of FIFRA directs that, after submission of all data concerning a pesticide active ingredient, "the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration," before calling in product specific data on individual end-use products, and either reregistering products or taking "other appropriate regulatory action."

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: September 13, 2002.

Lois Ann Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

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ENVIRONMENTAL PROTECTION AGENCY

[FRL-02-014-7378-6]

Final Reissuance of NPDES General Permit for Construction Dewatering Activity Discharges in the States of Massachusetts and New Hampshire

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final NPDES general permits—MAG070000 and NHG070000.

SUMMARY: The Director of the Office of Ecosystem Protection, Environmental Protection Agency—New England (EPA-NE), is issuing the final National Pollutant Discharge Elimination System (NPDES) general permit for construction dewatering activity discharges to certain waters of the States of Massachusetts and New Hampshire and for Indian Country lands located in Massachusetts for the purpose of reissuing the general permit that expired on May 1, 2001. This NPDES general permit establishes Notice of Intent (NOI) requirements, effluent limitations, standards, prohibitions and management practices for construction dewatering activity discharges. Construction dewatering activity is defined as pumped or drained discharges of groundwater and/or stormwater from excavations or other

points of accumulation association with a construction activity.

Owners and/or operators of sites that discharge groundwater and/or stormwater from construction dewatering activities, including those currently authorized to discharge under the expired general permit, will be required to submit an NOI to EPA-NE to be covered by the appropriate general permit and will receive a written notification from EPA-NE of permit coverage and authorization to discharge under the general permit. *The limitations on coverage are discussed in detail under Section C.1.c. and the eligibility requirements are discussed in detail under Section C.2.b. of the permit. The reader is strongly urged to go to those sections before reading further.* This general permit does not cover new sources as defined under 40 CFR 122.2

DATES: The general permit shall be effective on September 23, 2002, and will expire five years from the effective date.

ADDRESSES: Notices of Intent to be authorized to discharge under the reissued permit should be sent to EPA-NE, Office of Ecosystem Protection (CMU), 1 Congress Street, Suite 1100, Boston, Massachusetts 02114-2023. The submittal of other information required under the permit or individual permit applications should also be sent to the above address. See also Part 1.D. of the general permit for State Agency notification requirements and mailing addresses.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the final permit may be obtained between the hours of 9 a.m. and 5 p.m. Monday through Friday excluding holidays from: Austine Frawley, Office of Ecosystem Protection, Environmental Protection Agency, 1 Congress Street, Suite 1100, Boston, MA 02114-2023; telephone: 617-918-1065; e-mail: frawley.austine@EPA.GOV.

SUPPLEMENTARY INFORMATION: The Final NPDES General Permit may be viewed over the Internet via the EPA-NE web site www.epa.gov/region01/topics/water/permits.html. To obtain a hard copy of the document, please call, e-mail or write to Ms. Frawley at the addresses listed above. The final general permit includes FACT SHEET AND SUPPLEMENTARY INFORMATION sections that set forth principal facts and the significant factual, legal and policy questions considered in the development of the permit. A reasonable fee may be charged for copying requests.

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Changes From the Previous Permit

- General permits for the States of Massachusetts and New Hampshire are presented separately.
- EPA-NE has modified slightly the requirements to obtain permit coverage to enhance the protection of historic properties so that the requirements are consistent with the September 30, 1998 modifications to the National Historic Preservation Act. The revised requirements are consistent with the requirements for coverage under other Regionally-issued NPDES General Permits.
- EPA-NE has modified the requirements to obtain permit coverage to enhance the protection of listed species in response to comments received by the Agency from Fish and Wildlife Services and the National

Marine Fisheries Services. The revised requirements are consistent with the requirements for coverage under other Regionally-issued NPDES General Permits.

- There is no General Permit for the State of Maine. EPA delegated NPDES permitting authority to the State of Maine on January 12, 2001, except for facilities located in Indian country. At this point NPDES permitting under the Clean Water Act is temporarily suspended in Indian country pursuant to section 402(c) of the Act; therefore, the general permit is not available to dischargers in Indian country in the State of Maine. See 66 FR 112792-93 (2/28/01).

- The State of New Hampshire does not allow discharges to Class A waters under this general permit.

- Notification by Permittees, Geographic Area and Administrative Aspects (request to be covered and eligibility to apply) transferred from Fact Sheet and Supplemental Information to Part I, Permit Section I.C.

- A provision has been added to the permit, in the event that the permit is not reissued prior to its expiration date, that will administratively continue the permit beyond its expiration date in accordance with the Administrative Procedures Act, and the permittee submits a new Notice of Intent. See Part I.C.2.c. of the final permit.

- All States—commingling of effluent from a construction dewatering facility is allowed as long as the effluent can be monitored before it mixes with other streams of wastewater.

Fact Sheet and Supplementary Information

I. Introduction

The Director of the Office of Ecosystem Protection, EPA-New England, is issuing final general permits for the discharge of groundwater and stormwater from construction dewatering activities to certain waters of the States of Massachusetts and New Hampshire. This document contains Part I, the final general NPDES permits, and Part II, Standard Conditions.

II. Coverage of General Permits

Section 301(a) of the Clean Water Act (the Act) provides that the discharge of pollutants is unlawful except in accordance with a National Pollutant Discharge Elimination System (NPDES) permit unless such a discharge is otherwise authorized by the Act. Although such permits are generally issued to individual discharges, EPA's regulations authorize the issuance of "general permits" to categories of

discharges (*see* 40 CFR 122.28). EPA may issue a single, general permit to a category of point sources located within the same geographic area whose discharges warrant similar pollution control measures.

A. The Director of an NPDES permit program is authorized to issue a general permit if there are a number of point sources operating in a geographic area that:

1. Involve the same or substantially similar types of operations;
2. Discharge the same types of wastes;
3. Require the same effluent limitations or operating conditions;
4. Require the same or similar monitoring requirements; and
5. In the opinion of the Director, are more appropriately controlled under a general permit than under individual permits.

Authorization under the general permit shall require prior submittal of certain facility information. Upon receipt of all required information, the permit issuing authority may allow or disallow coverage under the general permit.

B. The similarity of the discharges prompted EPA to issue the May 1, 1996 general permit. When reissued, this permit will enable facilities covered under the expired general permit to maintain compliance with the Act; will extend environmental and regulatory controls to new discharges; and, will avoid a backlog of individual permit applications. The re-issuing of this general permit in New Hampshire and Massachusetts is warranted by the similarity of environmental conditions; State regulatory requirements applicable to the discharges and receiving waters; and, the technology employed.

Violations of a condition of a general permit constitute a violation of the Clean Water Act and subjects the discharger to the penalties in section 309 of the Act.

III. Exclusions

Discharges of groundwater and stormwater associated with the construction of single family homes are not covered under this permit.

This permit does not authorize the discharge of stormwater associated with construction sites which disturb greater than 5 acres of land. These sites are required to have a separate NPDES permit for stormwater discharges in accordance with 40 CFR 122.26(b)(14)(x).

Discharges of stormwater runoff from construction sites less than 5 acres, which is not pumped or drained from excavations associated with construction activity, are not covered

under this NPDES permit. These sites are required to comply with 40 CFR 122.26(b)(5).

The State of New Hampshire does not allow discharges to Class A waters under this general permit.

EPA has determined that this general permit will not be available to "New Source" dischargers as defined in 40 CFR 122.2 due to the site specific nature of the environmental review required by the National Environmental Policy Act of 1969 (NEPA). 33 U.S.C. 4321 *et seq.* for those facilities. "New Sources" must comply with New Source Performance Standards (NSPS) and are subject to the NEPA process in 40 CFR 6.600. Consequently EPA has determined that it would be more appropriate to address "New Sources" through the individual permit process. ("New Sources" should not be confused with "New Dischargers", which are eligible for general permit coverage. Definitions may be found at 40 CFR 122.2).

EPA has determined that this general permit will not be available for discharge(s) into impaired waters on the Federal Clean Water Act section 303(d) list which are not attaining state water quality standards. Applicants may call EPA-NE or their State Agency for listing of impaired waters. See Final Permit, Section D, Monitoring and Reporting, for Agency contact information.

Any owner or operator authorized by a general permit may request to be excluded from coverage of a general permit by applying for an individual permit. This request may be made by submitting a NPDES permit application together with reasons supporting the request. The Director may also require any person authorized by a general permit to apply for and obtain an individual permit. Any interested person may petition the Director to take this action. However, individual permits will not be issued for sources covered by the general permit unless it can be clearly demonstrated that inclusion under the general permit is inappropriate. The Director may consider the issuance of individual permits when:

1. The discharger is not in compliance with the terms and conditions of the general permit;
2. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;
3. Effluent limitations guidelines are subsequently promulgated for the point sources covered by the general NPDES permit;
4. A Water Quality Management Plan or Total Maximum Daily Load (TMDL)

containing requirements applicable to such point sources is approved;

5. Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;

6. The discharge(s) is a significant contributor of pollution or in violation of State Water Quality Standards for the receiving water.

In accordance with 40 CFR 122.28(b)(3)(iv), the applicability of the general permit is automatically terminated on the effective date of the individual permit.

IV. Permit Basis and Other Conditions of the General NPDES Permit

A. Types of Discharge

Under this general permit, owners and operators of construction dewatering sites in Massachusetts and New Hampshire may be granted authorization to discharge groundwater and stormwater generated wastewaters into waters of the respective states. Discharges authorized under this general permit must be treated in a settling basin or other treatment system designed to remove total suspended solids unless the State agency specifically waives that requirement for the individual applicant.

B. Effluent Limitations

1. *Statutory Requirements:* Section 301(a) of the Clean Water Act (CWA or the Act), 33 U.S.C. 1311(a), makes it unlawful to discharge pollutants to waters of the United States without a permit. Section 402 of the Act, 33 U.S.C. 1342, authorizes EPA to issue NPDES permits allowing discharges that will meet certain requirements, including CWA sections 301, 304, and 401 (33 U.S.C. 1331, 1314, and 1341). Those statutory provisions state that NPDES permits must include effluent limitations requiring authorized discharges to: (1) Meet standards reflecting specified levels of technology-based treatment requirements; (2) comply with State Water Quality Standards; and (3) comply with other state requirements adopted under authority retained by states under CWA Section 510, 33 U.S.C. 1370.

EPA is required to consider technology and water quality requirements when developing permit limits. 40 CFR part 25 subpart A sets the criteria and standards that EPA must use to determine which technology-based requirements, requirements under section 301(b) of the Act and/or

requirements established on a case-by-case basis under section 402(a)(1) of the Act, should be included in the permit.

The Clean Water Act requires that all discharges, at a minimum, must meet effluent limitations based on the technology-based treatment requirements for dischargers to control pollutants in their discharge. Section 301(b)(1)(A) of the Act requires the application of Best Practicable Control Technology Currently Available (BPT) with the statutory deadline for compliance being July 1, 1977, unless otherwise authorized by the Act. Section 301(b)(2) of the Act requires the application of Best Conventional Control Technology (BCT) for conventional pollutants, and Best Available Technology Economically Achievable (BAT) for non-conventional and toxic pollutants. The compliance deadline for BCT and BAT is as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated and in no case later than March 31, 1989.

2. Technology-based Effluent Limitations: EPA has not promulgated National Effluent Guidelines for construction dewatering discharges. Therefore, as provided in section 402(a)(1) of the Act, EPA has determined to establish technology-based limitations in this general permit utilizing Best Professional Judgement (BPJ) to meet the above stated criteria for BAT/BCT described in section 304(b) of the Act. Accordingly monthly average and maximum daily Total Suspended Solids (TSS) limitations of 50 mg/l and 100 mg/l, respectively, are established based upon best professional judgment pursuant to section 402(a)(1) of the CWA. The limitations in the final permit are also the same as the limitations in the existing permit in accordance with the anti-backsliding requirements found in 40 CFR 122.44(1).

EPA believes that for most discharges these limits are sufficient to achieve water quality standards. Coverage under the general permit will not be granted for those discharges which EPA or the applicable state believe a more stringent water quality-based TSS limit is needed.

3. Water Quality Based Effluent Limitations: Under section 301(b)(1)(C) of the Act, discharges are subject to effluent limitations based on water quality standards. Receiving stream requirements are established according to numerical and narrative standards adopted under state and/or federal law for each stream use classification. Section 401 of the CWA requires that EPA obtain State certification which ensures that all water quality standards

and other appropriate requirements of state law will be satisfied. Regulations governing State certification are set forth in 40 CFR 124.53 and 124.55.

The States of Massachusetts and New Hampshire have narrative criteria in their water quality regulations (*See* Massachusetts 314 CMR 4.05(5)(e) and New Hampshire Part Env-Ws 1703.21) that prohibits toxic discharge in toxic amounts. The permit does not allow for the addition of materials or chemicals which would produce a toxic effect to any aquatic life. If the States and/or EPA suspect that a discharge has a reasonable potential to cause or contribute to an excursion above the State's narrative criterion for toxicity, they may request that one Whole Effluent Toxicity (WET) test result and/or priority pollutant scan of the water to be discharged be required as part of the Notice of Intent, as authorized at 40 CFR 122.44(d)(1)(v).

Water quality standards applicable to construction dewatering activity discharges covered by this general permit include pH and oil and grease for both States. The pH limits are based upon the applicable numeric water quality criteria in each State. The pH limits in the final permit are the same as the limits in the existing permit in accordance with the anti-backsliding requirements found in 40 CFR 122.44(1). The oil and grease limits in the final permit are based on the Massachusetts narrative water quality standard of no visible sheen on the surface of the receiving water and the New Hampshire narrative water quality standard of no oil or grease in such concentrations that would impair any existing or designated uses of Class B waters. To ensure that the narrative water quality standards are protected, EPA has established a numeric guideline of 15 mg/l for this permit. EPA has historically used 15 mg/l to approximate the concentration at which a visible oil sheen is likely to occur. The Region believes that this standard is a reasonable target value and has previously imposed maximum daily oil and grease limits of 15 mg/l in permits at facilities (such as oil terminals) that have a reasonable potential for oil and grease discharge. At 40 CFR part 423, the technology-based guideline for oil and grease for Steam Electric Power Generating Point Sources are limited to 15 and 20 mg/l for average monthly and maximum daily values respectively. The oil and grease numeric limits in the final permit are more stringent than the narrative limits in the existing permit.

The final permit contains no other water quality based limits based on the assumption that the discharges to be

covered under this permit will consist of groundwater and/or stormwater which does not contain pollutants in amounts which would have reasonable potential to cause or contribute to violations of applicable State water quality standards. If, based on information submitted in the Notice of Intent or on other available information, it is determined by EPA or the applicable State that this assumption is not correct, the discharger will not be granted coverage under the general permit.

For those discharges which are not granted coverage under this permit because the discharge contains pollutants in quantities which represent reasonable potential to cause or contribute to violations of water quality standards, the discharger must apply for an individual NPDES permit. (EPA-New England is currently developing a general permit for the discharge of treated groundwater from remediation sites. When this permit is available it may be an alternative to an individual permit). The discharger may also seek authorization for the discharge from an EPA On-Scene Coordinator pursuant to 40 CFR 122.3(d).

C. Antidegradation Provisions

The conditions of the permit reflect the goal of the CWA and EPA to achieve and maintain water quality standards. The environmental regulations pertaining to the State Antidegradation Policies which protect the State's surface waters from degradation of water quality are found in the following provisions: Massachusetts Water Quality Standards 314 CMR Section 4.04 *Antidegradation Provisions*; and New Hampshire RSA 485-A:8, VI Part Env-Ws 1708.

This general permit does not apply to any new or increased discharge to receiving waters unless the discharge is shown to be consistent with the State's anti-degradation policies. This determination shall be made in accordance with the appropriate State antidegradation implementation procedures for this general permit. EPA will not authorize discharges under the general permit until it receives a favorable antidegradation review and certification from the States. (Concurrent to the publication of this final general permit in the **Federal Register**, EPA has formally requested each State to make an antidegradation certification determination). The Commonwealth of Massachusetts will conduct antidegradation reviews for notices of intent to discharge, under this general permit, into Class A or SA waters.

D. Monitoring and Reporting Requirements

Effluent limitations and monitoring requirements which are included in the general permit describe the requirements to be imposed on the facilities to be covered.

Facilities covered by the final general permits will be required to prepare and keep on site, in a secure place, Discharge Monitoring Report (DMR) containing effluent data. The frequency of reporting is determined in accordance with each State's provisions (see the individual State permits).

The monitoring requirements have been established to yield data representative of the discharge under authority of section 308(a) of the Act and 40 CFR 122.41(j), 122.44(i) and 122.48, and as certified by the State.

E. Endangered Species Act

Background: The general permit for construction dewatering activity discharges contains conditions to ensure that activities regulated by it are protective of species that are listed under the Endangered Species Act (ESA) as endangered or threatened (known as "listed species") and listed species habitat that is designated under the ESA as "critical habitat". Construction dewatering activity discharges occur when stormwater and/or groundwater from excavations or other points of accumulation are pumped or drained. The discharges are not from industrial processes, nor do they come in contact with any raw material, intermediate product, waste product or finished product. The general permit prohibits the addition of materials or chemicals in amounts that would be toxic to aquatic life and it prohibits any discharge from violating State or Federal water quality standards. Further, the permit contains provisions that require toxicity testing if EPA or the State believes it is warranted and to require individual permits be issued if actual environmental conditions (including the preservation of endangered species) are not adequately covered by the general permit. Except for the species and waterways listed below, the effluent limitations established in the permit ensures the protection of human health and aquatic life and the maintenance of the receiving water as an aquatic habitat.

List of Species and Waterway¹, by County and State, Subject to Consultation: The Fish and Wildlife Service has requested that the Service

review and comment on all proposed discharges that may affect the federally-listed endangered dwarf wedgemussel (*Alsmidonta heterodon*), in Massachusetts in the Fort River, Amherst (Hampshire County); the Mill River in Easthampton (Hampshire County); and the Mill River in Wheately (Franklin County), which is a different Mill River than the Easthampton Mill River; and in New Hampshire in the Ashuelot River in Surry to Swanzey (Cheshire County); and in the South Branch of the Ashuelot River in Swanzey (Cheshire County).

The National Marine Fisheries Service has requested that it review and comment on all proposed discharges that may adversely affect the federally-listed endangered shortnose sturgeon (*Acipenser brevirostrum*) in certain sections of the Merrimack and Connecticut River in Massachusetts.

Section 7 Consultations: Section 7 of the ESA requires that Federal agencies consult with the Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS) (known collectively as the Services) to insure that any Agency action, including the issuance of NPDES permits, is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat. The ESA regulations provide for two types of consultation, formal and informal. Informal consultation is an optional process that includes discussion, correspondence, etc. between the Services and a Federal Agency or a designated non-Federal representative (NFR) to determine whether a Federal action is likely to have an adverse effect on listed species or critical habitat. Federal permit applicants frequently play a key role in informal consultation. The ESA regulations provide for permit applicants, where designated, to carry out informal consultations as an NFR, which enables them to work directly with the Services (See 50 CFR 402.08). EPA has designated applicants for this construction dewatering activity discharge general permit a non-Federal representatives for the purpose of carrying out informal consultation. See Section 1.C.1.c.(2), Limitations on Coverage.

Applicants with discharges that would occur along the waterways subject to consultation must conduct informal consultation as a non-Federal representative and must notify both EPA-New England and the appropriate Service office in writing of that decision.

Conditions to Protect Listed Species: The Region has had informal

consultations with the Services on the adoption of this General Permit. The Services concur that this general permit for construction dewatering activity discharges is unlikely to adversely affect any threatened or endangered species or its critical habitat except for discharges to the waterways identified above (See List of Species and Waterways, by County and State, Subject to Consultation) where the dwarf wedgemussel and shortnose sturgeon, both listed species, are known to occur.² When construction dewatering activities would occur along these waterways, permit coverage is not automatic. Rather, permit coverage is available only if the permit applicant contacts the Services to determine: (1) If the construction dewatering activities would occur in designated critical habitat; (2) if listed species are present in the vicinity of the project area; and, (3) whether the applicant's discharges and discharge related activities are likely to affect listed species and/or critical habitats. Coverage under the general permit is available only if informal consultation with the Services under section 7 of the Endangered Species Act has been concluded which addresses the effects of the applicant's construction dewatering activity discharges on listed species and critical habitat and the consultation results in a written concurrence by the Service(s) on a finding that the applicant's construction dewatering activity discharges are not likely to adversely affect listed species and critical habitat. Permit applicants must submit a copy of the Service's written concurrence with their Notice of Intent submittal. Applications are required to certify eligibility for coverage under the General Permit on their Notice of Intent Submittal (See Section 1.C.1.d, Notification by Permittee) and to maintain any supporting documentation for that determination. Permit applicants that cannot certify compliance with the ESA requirements, where applicable, must submit individual permit applications to the permitting authorities. See Section C.1.c., Limitations on Coverage.

Services Contact Information: USFWS, New England Field Office, 70 Commercial Street, Suite 300, Concord, NH 03301-5087; Telephone 603/223-2541; NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930-2298; Telephone: 978/281-9112.

¹ The Services have identified the areas where listed endangered species may be present but have not designated these areas as "critical habitat".

² The Service states that construction dewatering activity discharges located on the Connecticut River in areas where the dwarf wedgemussel does occur are not likely to adversely affect the species.

F. Essential Fish Habitat

Under the 1996 Amendments (Pub. L. 104-267) to the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.* (1998)), EPA is required to consult with National Marine Fisheries Service (NMFS) if EPA's action or proposed actions that it funds, permits or undertakes, "may adversely impact any essential fish habitat." 16 U.S.C. 1855(b). The Amendments broadly define "essential fish habitat" (EFH) as "waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity." 16 U.S.C. 1802(10). Adverse impact means any impact which reduces the quality and/or quantity of EFH 50 CFR 600.910(a). Adverse effects may include direct (e.g., contamination or physical disruption), indirect (e.g., loss of prey, reduction in species' fecundity) site-specific or habitat-wide impacts, including individual, cumulative or synergistic consequences of actions. Essential Fish Habitat is only designated for fish species for which federal Fisheries Management Plans exist. 16 U.S.C. 1855(b)(1)(A). EFH designations for New England were approved by the U.S. Department of Commerce on March 3, 1999. In a letter address to EPA-NE and dated October 10, 2000, NMFS confirmed that for projects authorized through the NPDES permit process, notification for purposes of EFH consultation can be accomplished in the EFH Section of the permit fact sheet or **Federal Register** notice.

Resources: The general permit is not available to any new or increased discharge into territorial seas, however, it does not specifically exclude facilities that discharge into other tidal waters. Therefore, our EFH assessment considers all 39 federally managed species with designated EFH in the coastal and inland waters of Massachusetts and New Hampshire. Under the expired general permit, 26 facilities were authorized to discharge into marine waters (18 facilities into Boston Harbor; 4 in to Quincy Bay; one each into Salem Harbor, Edgartown Harbor and the Atlantic Ocean in MA and NH).

Analysis of Effects and EPA's Opinion of Potential Impacts: Construction dewatering activity discharges are not from an industrial process nor do the discharges come in contact with any raw material, intermediate product, waste produce or finished product. The general permit prohibits the addition of materials or chemicals in amounts that would be toxic to aquatic life. The proposed limits for this general permit

are sufficiently stringent to assure that state water quality standards will be met. The effluent limitations established in this permit ensure protection of aquatic life and maintenance of the receiving water as an aquatic habitat. The Region finds that reissuance of the proposed general permit will not adversely affect any fish or shellfish currently listed with a Fisheries Management Plan or its habitat. EPA will seek written concurrence from the National Marine Fisheries Service on this assessment.

Proposed Mitigation: Mitigation for unavoidable impacts associated with reissuance of the permit is not warranted at this time because it is EPA's opinion that impacts will be negligible if permit conditions are followed. Authorization to discharge under the general permit can be revoked if any adverse impacts to Federally managed or protected species or their habitats do occur either as a result of noncompliance or from unanticipated effects from this activity. Further, the general permit contains provisions that require the applicant to perform toxicity testing if EPA or the State believes it is warranted and/or require that an individual permit be issued if actual environmental conditions are not adequately covered by the general permit. Should new information become available that changes the basis for EPA's assessment, then consultation with NMFS under the appropriate statute(s) will be reinitiated.

G. Standard Permit Condition

40 CFR 122.41 and 122.42 establish requirements which must be in all NPDES permits. Part II of the general permit includes these requirements.

H. Section (401) Certifications

Section 401 of the CWA provides that no Federal license or permit, including NPDES permits, to conduct any activity that may result in any discharge into navigable waters shall be granted until the State in which the discharge originates certifies that the discharge will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of the CWA. The section 401 certification process is complete in both the States of Massachusetts and New Hampshire. In addition, EPA and the Commonwealth of Massachusetts will jointly issue the final permit. For lands held by federally recognized tribes in Massachusetts, EPA has provided the necessary certification. Currently, the only federally recognized tribe is the Wampanoag Tribe of Gay Head (Aquinnah) on the Island of Martha's Vineyard.

I. The Coastal Zone Management Act

The Coastal Zone Management Act (CZMA), 16 U.S.C. 1451 *et seq.*, and its implementing regulations (15 CFR part 930) require that any federally licensed activity affecting a state's coastal zone be consistent with the enforceable policies of approved state management programs. In the case of general permits, EPA has the responsibility for making the consistency certification and submitting it to the State for concurrence. As EPA requested, the Executive Office of Environmental Affairs, Massachusetts CZM, 251 Causeway Street, Suite 900, Boston, MA 02114; and the Office of State Planning, New Hampshire Coastal Program, 2½ Beacon Street, Concord, NH 03301, have reviewed EPA's consistency certification for the proposed general permit. Each State's coastal program office has confirmed to EPA that the general permit is consistent with its coastal zone management program.

J. Environmental Impact Statement Requirements

The general permits do not authorize discharges from any new sources as defined under 40 CFR 122.2. Therefore, the National Environmental Policy Act, 33 U.S.C. 4321 *et seq.*, does not apply to the issuance of these general NPDES permits.

K. National Historical Preservation Act of 1966, 16 U.S.C. 470 *et seq.*

Facilities which adversely affect properties listed or eligible for listing in the National Registry of Historic Places under the National Historic Preservation Act of 1966. 16 U.S.C. 470 *et seq.* are not authorized to discharge under this permit. Applicants must determine whether their construction dewatering activity discharges has the potential to affect a property that is either listed or eligible for listing on the National Register of Historic Places. Applicants must comply with applicable State, Tribal and local laws concerning the protection of historic properties and places and applicants are required to coordinate with the State Historic preservation Officer and/or Tribal Historic Preservation Officer and others regarding effects of their construction dewatering discharges on historic properties. Electronic listing of national and State Registers of Historic Places are maintained by the National Park Service (www.nr.nps.gov/nrishome.htm), the Massachusetts Historical Commission (www.state.ma.us/sec/mhcc) and the New Hampshire Historical Commission (www.state.nh.us/nhdhr). Addresses for State Historic Preservation Officers and

Tribal Historic Preservation Officer are: Judith McDonough, Massachusetts State Historic Preservation Officer, MA Historical Commission, 220 Morrissey Boulevard, Boston, MA 02125 TEL: 617/727-8470; Fax: 617/727-5128; email: *Judy.McDonald@sec.state.ma.us.*; Matthew Vanderhoop, Tribal Historic Preservation Officer, Wampanoag Tribe of Gay Head (Aquinnah), 20 Black Brook Road, Aquinnah, MA 02535-9701; Tel: 508/645-9265; FAX: 508/645-3790; and James

d. Under Fact Sheet, Section K, National Historic Preservation Act, Part 1.C.1.c.(1), Limitations on Coverage-Construction Dewatering Activity Discharges with Effects on Historic Properties; and part 1.C.1.d, Notification by Permittees, language is added to modify the requirements to obtain permit coverage to enhance the protection of historic properties so that the requirements are consistent with the requirements for coverage under EPA's Multi-Sector General Permit for Industrial Activities, 65 FR 64746 (October 30, 2000) and other Regionally-issued NPDES General permits.

2. EPA received comments from both the Fish and Wildlife Service (F&WS), and the National Marine Fisheries Service (NMFS), hereafter referred to as the Services, in letters dated November 21, 2001 and March 5, 2002 respectively, on the potential impacts to federally listed, proposed threatened or endangered species and/or designated critical habitat for listed species specific to EPA's Draft NPDES General Permit for Construction Dewatering Activity discharges in MA and NH. Although EPA received the comments from the NMFS after the thirty day deadline period as required in the Public Notice, EPA has addressed their comments in the final permit under Fact Sheet, Section E., Endangered Species Act; Part 1.C.1.c., Limitations on Coverage; and part 1.C.1.d, Notification by Permittees.

Comment: The Services stated their concern that discharges under the General Permit may adversely affect (1) the federally-listed endangered dwarf wedgemussel (*Alsmidonta heterodon*), in Massachusetts in the Fort River, Amherst (Hampshire County); the Mill River in Easthampton (Hampshire County); and the Mill River in Wheately (Franklin County), which is a different Mill River than the Easthampton Mill River; and in New Hampshire in the Ashuelot River in Surry to Swanzey (Cheshire County); and in the South Branch of the Ashuelot River in Swanzey (Cheshire County); and (2) the shortnose sturgeon (*Acipenser brevirostrum*) in certain sections of the Merrimack and Connecticut Rivers in

Massachusetts. The Services requested that the draft permit be modified to require individual consultation on discharges where these species are known to occur. The Fish and Wildlife Service recommended that discharges that may adversely affect these species be excluded from the General Permit because larval and juvenile dwarf wedgemussels may be particularly sensitive to slight water quality perturbations including increased sedimentation, changes in pH or dissolved oxygen. The National Marine Fisheries Service recommended that permit coverage for discharges that may adversely affect these species not be automatic and that applicants with these discharges be required to consult with the Services.

Response: EPA-New England reviewed the requirements to protect endangered species in a number of recently issued National and Regional general permits, including the general permits for discharges under the Stormwater Multi-Sector General Permit for Industrial Activities (65 FR 64746, October 30, 2000) and Proposed NPDES General Permit to Discharge Storm Water Associated with Construction Activities in Indian County within the State of Wisconsin (www.epa.gov/r5/water). Rather than automatically excluding or including any discharge for coverage under the General Permit where listed species are known to occur, these permits require that an applicant meet the permit's endangered species eligibility criteria, implement consultation procedures, and certify compliance with these requirements prior to receiving coverage under the General Permit. If actual environmental conditions (including the preservation of endangered species) are not adequately covered by the general permit, the permits contain provisions that require an individual permit to be issued.

The Region has received the Services concurrence on the following revised procedures to ensure compliance with the Endangered Species Act. Specifically, the Fact Sheet discussion and General Permit requirements list the specific species and waterways subject to consultation, based on the information provided to EPA-NE by the Services; provides information on the ESA Section 7 consultation requirements, including a provision for permit applicants, when designated as a non-Federal representative, to carry out informal consultations with the Services. EPA has designated applicants for this construction dewatering activity discharge general permit a non-Federal representative for the purpose of

carrying out informal consultation with the Services. *See also* 50 CFR 402.08. Applicants who choose NOT to conduct informal consultation with the services on ESA requirements, where applicable, must submit an individual permit application to the permitting authorities.

The general permit states that when construction dewatering activities would occur in waterways subject to consultation, permit coverage is available only if: (1) The applicant contacts the Service to determine if the discharges are likely to occur in designated critical habitat and/or if listed species are present in the vicinity of the project area; and (2) informal consultation with the Services has been concluded and results in a written concurrence by the Services that the discharge is not likely to adversely affect listed species and critical habitat. Lastly, to be eligible for permit coverage under the general permit, applicants are required to submit a copy of the Service's written concurrence with the Notice of Intent and to certify on the Notice of Intent that they are in compliance with the permit's endangered species requirements. Applicants are required to maintain any supporting documentation used to make the eligibility determination.

Regardless of the above conditions, EPA may require that a permittee apply for an individual NPDES permit on basis of possible jeopardy to species or critical habitats. Where there is concern that coverage for a particular discharger is not sufficiently protective of listed species, the Services, as well as any other interested parties, may petition EPA to require that the discharger obtain an individual NPDES permit and conduct an individual Section 7 consultation as appropriate.

The recommended process allows for the broadest and most efficient coverage for the permittee while still providing for the most efficient protection of endangered species. The process will significantly reduce the number of dischargers that must be considered individually and therefore allow the Agency, the Services and the States to focus their resources on those discharges that are indeed likely to jeopardize listed species. Straightforward mechanisms such as these allow for more immediate access to permit coverage for most applicants and allow the Agencies to provide endangered species protection in a more expeditious manner.

VI. Other Legal Requirements

A. Executive Order 12866

EPA has determined that this general permit is not a “significant regulatory action” under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

The information collection requirements of this permit were previously approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and assigned OMB control number 2040–0086 (NPDES permit application) and 2040–0004 (Discharge Monitoring Reports).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that EPA prepare a regulatory flexibility analysis for rules subject to the requirements of 5 USC 553(b) that have a significant impact on a substantial number of small entities. The permit issued today, however, is not a “rule” subject to the requirements of 5 U.S.C. 553(b) and is therefore not subject to the Regulatory Flexibility Act.

D. Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, generally requires Federal agencies to assess the effects of their “regulatory actions” (defined to be the same as “rules” subject to the RFA) on tribal, state and local governments and

the private sector. The permit issued today, however, is not a “rule” subject to the RFA and is therefore not subject to the requirements of UMRA.

Dated: August 13, 2002.

James Owens,
Regional Administrator.

Part I—Final General Permits Under the National Pollutant Discharge Elimination System (NPDES)

Note: The following two general permits have been combined for purposes of this **Federal Register**. Part IA and Part IB contain general permits for the States of Massachusetts (both Commonwealth and Indian County Lands) and New Hampshire, respectively, Part IC–IE and Part II are common to both permits.

A. Massachusetts General Permit, Permit No. MAG070000

In compliance with the provisions of the Federal Clean Water Act, as amended, (33 U.S.C. 1251 *et seq.*; the “CWA”), and the Massachusetts Clean Waters Act, as amended, (M.G.L. chapter 21, sections 26–53), operators of facilities located in Massachusetts, which discharge groundwater and/or stormwater from construction dewatering activities to Class B and SB waters as designated in the Massachusetts Water Quality Standards, 314 CMR 4.00 *et seq.*, are authorized to discharge to all waters, unless otherwise restricted, in accordance with effluent limitations, monitoring requirements and other conditions set forth herein.

Discharges into Class A or SA waters need review and approval by MADEP.

This permit shall become effective when issued. The permit and the authorization to discharge expire at midnight, five years from the effective date, which is the date of publication in the **Federal Register** and supersedes the permit issued on May 1, 1996.

This General Permit consists of Part IA, Massachusetts General Permit; Parts IC–IE; and Part II, General Conditions.

Signed this 13th day of August, 2002.

Linda M. Murphy,
Director, Office of Ecosystem Protection, U.S. Environmental Protection Agency, Boston, MA.

Glenn Haas,
Director, Division of Watershed Protection, Bureau of Resource Protection, Massachusetts Department of Environmental Protection, Boston, MA.

Effluent Limitations and Monitoring Requirements

1. During the period beginning on the effective date and lasting through expiration, the permittee is authorized to discharge groundwater and/or stormwater from construction dewatering activities. All discharges shall pass through settling basins or other treatment system designed to remove total suspended solids unless specifically waived by the State.

a. Each outfall discharging effluent from construction dewatering activities shall be limited and monitored as specified below. Monitoring for each outfall shall be reported.

Effluent characteristics	Discharge limitations or other units (specify)		Monitoring requirements measurement ²	
	Avg. monthly	Max. daily	Frequency	Sample type
Flow (MGD)	Report	Report	1/week	Actual or Estimated.
TSS (mg/l)	50	100	1/week	Grab.
Oil and Grease (mg/l) ¹	(See Note 1.A.1.h)	15	1/week	Grab.
pH (s.u.) ¹	(See Part I.A.1.f. and g.) .....	.....	1/week	Grab.
LC ₅₀ & C–NOEC, %	(See Part I.A.1.j.) .....	.....	.....	24-hr. composite.

¹ Requirement for State Certification.

² Samples shall be taken only when discharging.

b. The discharge shall not cause a violation of the water quality standards.

c. The discharge shall not cause an objectionable discoloration of the receiving water.

d. There shall be no discharge of floating solids or visible foam in other than trace amounts.

e. Samples taken in compliance with the monitoring requirements specified above shall be taken at a location that provides a representative analysis of the effluent just prior to discharge to the receiving water or if the effluent is

commingled with another discharge, prior to such commingling.

f. The pH of the effluent for discharges to Class A and Class B waters shall be in the range of 6.5–8.3 standard units and not more than 0.5 units outside of the background range. There shall be no change from background conditions that would impair any uses assigned to the receiving water Class.

g. The pH of the effluent for discharges to Class SA and Class SB waters shall be in the range of 6.5–8.3 standard units and not more than 0.2 units outside of the background range.

There shall be no change from background conditions that would impair any uses assigned to the receiving water Class.

h. Sampling for oil and grease is required only if a periodic inspection of the discharge indicates the presence of a visible sheen, as defined in 40 CFR part 110. The discharge of a sheen of oil or gasoline constitutes an oil spill and must be reported immediately to the National Response Center (NRC) at 800/424–8802. Upon detection of a visible sheen, the discharge must stop immediately and the problem corrected.

The use of dispersants to treat the sheen is prohibited. This permit does not allow for the addition of any chemicals to treat the sheen.

i. A discharge structure shall be constructed if necessary to protect the bank of the water body from erosion.

j. Chronic (and modified acute) toxicity test(s) and/or priority pollutant scan shall be performed on the groundwater and/or stormwater discharge from construction dewatering activities by the permittee upon request by EPA and/or the MA DEP. See also, Section C.1.d. Testing shall be performed in accordance with EPA toxicity protocol to be provided at the time of the request. The test shall be performed on a 24-hour composite sample to be taken during normal facility operation. The result of the test(s) shall be forwarded to both the EPA and the State within 30 days after completion.

2. State Permit Conditions

1. This Discharge Permit is issued jointly by the U.S. Environmental Protection Agency (EPA) and the Massachusetts Department of Environmental Protection (MADEP) under Federal and State law, respectively. As such, all terms and conditions of this permit are hereby incorporated into and constitute a discharge permit issued by the Assistant Commissioner of the Massachusetts Bureau of Resource Protection pursuant to M.G.L. Chap. 21, Section 43.

2. Each Agency shall have the independent right to enforce the terms and conditions of this Permit. Any modification, suspension or revocation of this Permit shall be effective only with respect to the Agency taking such action, and shall not affect the validity or status of this Permit as issued by the other Agency, unless and until each Agency has concurred in writing with such modification, suspension or revocation. In the event any portion of this Permit is declared, invalid, illegal or otherwise issued in violation of State law such permit shall remain in full force and effect under Federal law as an NPDES Permit issued by EPA. In the event this Permit is declared invalid, illegal or otherwise issued in violation of Federal law, this Permit shall remain in full force and effect under State law as a Permit issued by the Commonwealth of Massachusetts.

B. New Hampshire General Permit, Permit No. NHG070000

In compliance with the provisions of the Federal Clean Water Act, as amended, (33 U.S.C. 1251 *et. seq.*; the "CWA"), operators of facilities located in New Hampshire that discharge groundwater and/or stormwater from construction dewatering activities are authorized to discharge to Class B waters, unless otherwise restricted by State Water Quality Standards, New Hampshire RSA 485-A:8, in accordance with effluent limitations, monitoring

requirements and other conditions set forth herein. The State of New Hampshire does not allow discharges to Class A waters under this general permit.

This permit shall become effective when issued. The permit and the authorization to discharge expire at midnight, five years from the effective date, which is the date of publication in the **Federal Register** and supersedes the permit issued on May 1, 1996.

This General Permit consists of Part 1B, New Hampshire General Permit; Parts 1C-1E; and Part II. General Conditions.

Signed this 13th day of August, 2002.

Linda M. Murphy,
Director, Office of Ecosystem Protection,
Environmental Protection Agency, Boston,
MA 02114.

Effluent Limitations and Monitoring Requirements

1. During the period beginning on the effective date and lasting through expiration, the permittee is authorized to discharge groundwater and/or stormwater from construction dewatering activities to the State's Class B receiving waters. All discharges shall pass through settling basins or other treatment systems designed to remove total suspended solids.

a. Each outfall discharging effluent from construction dewatering activities shall be limited and monitored as specified below. Monitoring for each outfall shall be reported.

Effluent characteristic	Discharge limitations or other units (specify)		Monitoring requirements measurement ¹	
	Avg. monthly	Max. daily	Frequency	Sample type
Flow (MGD)	Report	Report	1/week	Instantaneous or Continuous.
TSS (mg/l)	50	100	1/week	Grab.
Oil and Grease (mg/l) ²	See Note I.B.1.g	15	1/week	Grab.
pH (s.u.) ²	See Note I.B.1.f .....	.....	1/week	Grab.
LC ₅₀ & C-NOEC, %	(See Part I.B.1.i.) .....	.....	.....	24-hr composite.

¹ Samples shall be taken only when discharging.

² Requirement for State Certification.

b. The discharge shall not cause a violation of the water quality standards of the receiving water.

c. The discharge shall not cause any visible and objectionable discoloration of receiving waters.

d. The discharge shall be adequately treated to insure that the surface water remains free from pollutants in concentrations or combinations that settle to foam harmful deposits, float as foam, debris, scum or other visible pollutants. It shall be adequately treated to insure that the surface waters remain free from pollutants which odor, color, taste or turbidity in the receiving water

which is not naturally occurring and would render it unsuitable for its designated uses.

e. Samples taken in compliance with the monitoring requirements specified above shall be taken at a location that provides a representative analysis of the effluent just prior to discharge to the receiving water or, if the effluent is commingled with another permitted discharge, prior to such commingling.

f. The pH of the effluent shall not be less than 6.5 standard units (su) nor greater than 8.0 su at any time unless these values are exceeded due to natural causes.

g. Sampling for oil and grease is required only if a periodic inspection of the discharge indicates the presence of a visible sheen, as defined in 40 CFR part 110. The discharge of a sheen of oil or gasoline constitutes an oil spill and must be reported immediately to the National Response Center (NRC) at 800/424-8802. Upon detection of a visible sheen, the discharge must stop immediately and the problem corrected. The use of dispersants to treat the sheen is prohibited. This permit does not allow for the addition of any chemicals to treat the sheen.

h. A discharge structure shall be constructed if necessary to protect the bank of the water body from erosion.

i. Chronic (and modified acute) toxicity test(s) and/or priority pollutant scans shall be performed on the groundwater and/or stormwater discharge from construction dewatering activities by the permittee upon request by EPA and/or the NHDES. See also, Part C.1.d.

Testing shall be performed in accordance with EPA toxicity protocol to be provided at the time of the request. The test shall be performed on a 24-hour composite sample to be taken prior to any discharge of groundwater. The result of the test(s) shall be forwarded to both the EPA and the State prior to any discharge of groundwater.

2. State Permit Conditions

a. This NPDES Discharge Permit is issued by the U.S. Environmental Protection Agency under Federal and State law. Upon final issuance by the EPA, the New Hampshire Department of Environmental Services, Water Division, Concord, NH, 03302-0095, may adopt this Permit including all terms and conditions, as a state permit pursuant to RSA 485-A:13.

C. Common elements for All Permits

1. Conditions of the General NPDES Permit

a. *Geographic Areas: Massachusetts, both Commonwealth and Indian Country Lands* (Permit MAG070000). All of the discharges to be authorized by the general NPDES permit for dischargers in the Commonwealth of Massachusetts and/or Indian Country lands into all waters of the Commonwealth and/or Indian Country lands as specified in Part IA of this permit unless otherwise restricted by the Massachusetts Surface Water Quality Standards, 314 CMR 4.00 (or as revised), including 314 CMR 4.04(3) *Protection of Outstanding Resource Waters*.

New Hampshire (Permit No. NHG070000). All of the discharges to be authorized by the general NPDES permit for dischargers in the State of New Hampshire as specified in Part 1B of this permit are into Class B waters of the State of New Hampshire unless otherwise restricted by the State Water Quality Standards, New Hampshire RSA 485-A:8 (or as revised).

b. *Exclusions:* Discharges of groundwater and stormwater generated wastewater associated with the construction of single family homes are not covered under this permit.

This permit does not authorize the discharge or stormwater associated with

construction sites which disturb greater than 5 acres of land. These sites are required to comply with 40 CFR 122.26.

Discharges of stormwater runoff from construction sites less than 5 acres, which is not pumped or drained from excavations associated with construction activity, are not covered under this NPDES permit.

This permit is not available for discharges into impaired waters on the Federal Clean Water Act 303(d) list which are not attaining state water quality standards for the particular pollutants limited herein.

This general permit is not available to "New Source" dischargers as defined in 40 CFR 122.2.

c. *Limitations on Coverage:* Facilities seeking coverage under the Construction Dewatering Activity Discharges General Permit that cannot certify compliance with the National Historical Preservation Act and the Endangered Species Act (ESA) requirements, where applicable, must submit individual permit applications to the permitting authorities. Applicants who choose not to conduct informal consultations (See Section C.1.c.(2) below) with the Services on ESA requirements must submit an individual permit application to the permitting authorities.

(1) *Construction Dewatering Activity Discharges with Effects on Historic Properties.* In order to be eligible for coverage under this permit, the applicant must be in compliance with the National Historical Preservation Act. This permit authorized construction dewatering activity discharges if the proper coordination has been conducted according to the requirements below:

(i) Applicants are required to coordinate with the State Historic Preservation Officer (SHPO) and/or Tribal Historic Preservation Officer (THPO) and others regarding effects of their construction dewatering activity discharges on historic properties. See Section I.IV.K. of the Fact Sheet for information on the SHPO and THPO contacts).

(ii) The applicant must provide evidence of prior screening for the presence of historic properties and coordinate with the relevant official(s) to develop a mitigation plan, as needed, consistent with the procedures regarding coordination with local officials described at Sections 800.4-800.6 of the National Historical Preservation Act regulations.

In the event there is an inadvertent discovery of a historic property on the site during construction, the permittee must immediately stop the construction activity and coordinate with the appropriate official(s) consistent with

the steps outlined in 36 CFR 800.13 of the National Historic Preservation Act regulations.

(2) *Endangered and Threatened Species and/or Critical Habitat:* Proposed construction dewatering activity discharges that are located in areas in which listed species may be present are not automatically covered under this Permit. Permit coverage under the construction dewatering activity general permit is only available for proposed construction dewatering activity discharges in areas that may affect the federally-listed endangered dwarf wedgemussel (*Alsmidonta heterodon*), in Massachusetts in the Fort River, Amherst (Hampshire County); the Mill River in Easthampton (Hampshire County); and the Mill River in Wheately (Franklin County), which is a different Mill River than the Easthampton Mill River; and in New Hampshire in the Ashuelot River in Surry to Swanzey (Cheshire County); and in the South Branch of the Ashuelot River in Swanzey (Cheshire County); and, the federally-listed endangered shortnose sturgeon (*Acipenser brevirostrum*) in certain sections of the Merrimack and Connecticut Rivers in Massachusetts, if the applicant complies with the following requirements:

(i) The permit applicant contacts the Services to determine: (1) If the construction dewatering activities would occur in designated critical habitat; (2) if listed species are present in the vicinity of the project area; and, (3) whether the applicant's discharges and discharge related activities are likely to affect listed species and/or critical habitats.

(ii) Coverage under the general permit is available only if informal consultation with the Services under section 7 of the Endangered Species Act has been concluded which addresses the effects of the applicant's construction dewatering activity discharges on listed species and critical habitat and the consultation results in a written concurrence by the Service(s) on a finding that the applicant's construction dewatering activity discharges are not likely to adversely affect listed species and critical habitat.

(iii) Permit applicants must submit a copy of the Service's written concurrence with their Notice of Intent submittal. Applicants are required to certify eligibility for coverage under the General Permit on their Notice of Intent Submittal (See Section 1.C.1.d, Notification by Permittee) and to maintain any supporting documentation for that determination.

(IV) Applicants who choose to conduct informal consultation to meet

the Endangered Species Act eligibility requirements of this general permit are automatically designated as no-Federal representatives under this permit. See 50 CFR 402.08. Applicants who choose to conduct informal consultation as a non-Federal representative must notify both EPA-New England and the appropriate Service office in writing of that decision.

d. Notification by Permittees:

Operators of sites whose discharge, or discharges, are effluent from construction dewatering activities and whose sites are located in the geographic areas described in Part I.C.1.a. above, may submit to the Regional Administrator, EPA-NE, a Notice of Intent to be covered by the appropriate general permit. Each site must also submit a copy of the Notice of Intent to each State authority as appropriate (see individual State permits for appropriate authority and address). Notifications must be submitted by permittees who are seeking coverage under this permit for the first time and by those permittees who received coverage under the permit issued May 1, 1996. This written notification must include for each individual site: (a) The owner's and/or operator's legal name, address and telephone number; (b) the site's name, address, contact name and telephone number; (c) the number of sites to be covered; (d) the site location(s); (e) the estimated construction start and completion dates; (f) the name(s) of the receiving waters into which discharge will occur; (g) a statement indicating if the site is located within Indian country; (h) a statement indicating whether any listed or proposed threatened or endangered species or designated critical habitat are in proximity to the construction dewatering activity discharges to be covered by this permit; (i) a statement indicating whether any historic property listed or eligible for listing on the National Register of Historic Places is located on the facility or in proximity to the discharge; (j) the number of discharge points and the anticipated frequency, duration, volume and rate of discharge for each outfall; (k) a topographic map (or other map if a topographic map is not available) indicating the site's location(s) and discharge point(s); (l) a description of any wastewater treatment; (m) storage of petroleum and chemicals on site; (n) history of land use of the site. In addition, for sites located in New Hampshire, the written notice must include, by designation on a map, the identification of groundwater

contamination within 1,000 feet of the site (Note: This information can be generated over the Internet via the NHDES web site www.des.state.nh.us (One Stop Data Retrieval, Remediation Sites Report.) The web site also provides e-mail access to an NHDES Site Remediation Contact to answer questions about using the Web site) Groundwater contamination within 1,000 feet of the site must be designated on a map submitted with the written notice of intent. Discharges into Massachusetts Class A or SA water need a State antidegradation review. See Section IV.C. of Fact Sheet. Each applicant must certify that each discharge for which it is seeking coverage under this general permit (1) consists solely of effluent from discharges from the construction dewatering activities; (2) must certify that the discharge is eligible under the ESA requirements and whether the FWS and NMFS was involved in making the determination of eligibility and must submit a copy of the Service's written concurrence, where applicable, with this Notice of Intent; and (3) must certify that the discharge is eligible under the National Historic Preservation Act and whether the State Historic Preservation Officer or Tribal Historic Preservation Officer was involved in the determination of eligibility. The notice must be signed in accordance with the signatory requirements of 40 CFR 122.22 and submitted to both EPA-NE and the appropriate State Agency.

In addition, one Whole Effluent Toxicity (WET) test result and/or one priority pollutant scan of the water to be discharged may be required as part of the Notice of Intent, on a case-by-case basis by the States and/or EPA as authorized at 40 CFR 122.44(d)(1)(v). If toxicity testing is required, EPA will provide the permittee with a copy of the test procedure and detailed protocol. The WET test will consist of one chronic and modified acute toxicity screening test with one hundred percent sample. The *Ceriodaphnia dubia* for fresh water and sea urchin for marine water shall be used as test organism. The 126 EPA Priority Pollutants are found at 40 CFR Part 423, Appendix A. All samples shall be tested using the analytical methods found in 40 CFR Part 136 or alternative methods approved by EPA in accordance with the procedures in 40 CFR Part 136. The permittee shall submit to EPA-NE and the appropriate State Agency the results of all testing conducted, as required at 40 CFR 122.41(l)(4)(ii).

An authorization to discharge under this general permit, where the construction dewatering activity

discharges to a municipal or private storm drain owned by another party, does not convey any rights or authorization to connect to that drain.

The sites authorized to discharge under the final general permit will receive written notification from EPA-NE with Senate concurrence. Failure to submit to EPA-NE a Notice of Intent to be covered and/or failure to receive from EPA-NE written notification of permit coverage means that the facility is not authorized to discharge under this general permit. Sites who are denied permit coverage by EPA-NE are not authorized under this general permit to discharge from those sites to the receiving waters.

2. Administrative Aspects

a. Request to be covered: A facility is not covered by any of these general permits until it meets the following requirements. First, it must send a Notice of Intent (NOI) to EPA-NE and the appropriate State indicating it meets the requirements of the permit and wants to be covered. And second, it must be notified in writing by EPA-NE that it is covered by this general permit.

b. Eligibility to Apply: Any facility operating under an effective (unexpired) individual construction dewatering activity NPDES permit may request that the individual permit be revoked and that coverage under the general permit be granted, as outlined in 40 CFR 122.28(b)(3)(v). If EPA revokes the individual permit, the general permit would apply to the discharge.

Facilities with expired individual construction dewatering activity permits that have been administratively continued in accordance with 40 CFR 122.6 may apply for coverage under this general permit. When coverage is granted the expired individual permit automatically will cease being in effect.

Proposed new dischargers may apply for coverage under this general permit and must submit the NOI at least 30 days prior to the initiation of discharge.

Facilities that were covered under the general permit that was issued on May 1, 1996 and that expired on May 1, 2001 need to apply for coverage under this general permit within 60 days from the effective date of this permit. Failure to submit a Notice of Intent within 60 days from the effective date of this permit for continuation of the discharge will be considered discharging without a permit as of May 1, 2001 for enforcement purposes. A Notice of Intent is not required if the permittee submits a Notice of Termination (see Part I.E.1) of discharge before the 60-day time frame expires.

c. *Continuation of this General Permit After Expiration:* If this permit is not reissued prior to the expiration date, it will be administratively continued in accordance with the Administrative Procedures Act and remain in force and in effect as to any particular permittee as long as the permittee submits a new Notice of Intent two (2) months prior to the expiration date in the permit. However, once this permit expires EPA cannot provide written notification of coverage under this general permit to any permittee who submits Notice of Intent to EPA are the permit's expiration date. Any permittee who was granted permit coverage prior to the expiration date will automatically remain covered by the continued permit until the earlier of:

(1) Reissuance of this permit, at which time the permittee must comply with the Notice of Intent conditions of the new permit to maintain authorization to discharge; or

(2) The permittees' submittal of a Notice of Termination; or

(3) Issuance of an individual permit for the permittee's discharges; or

(4) A formal permit decision by the Director not to reissue this general permit, at which time the permittee must seek coverage under an alternative general permit or an individual permit.

D. Monitoring and Reporting

Massachusetts and New Hampshire: Monitoring results obtained during the previous month shall be summarized for each month and recorded on separated Discharge Monitoring Report Form(s) that shall be kept on-site in a secured place. The reports should be readily available for review at any time during the working hours by EPA and State officials. All notifications and communications should be sent to both EPA-NE and the appropriate State office at the following addresses:

1. EPA-NE

U.S. Environmental Protection Agency,
New England Region, Municipal
Assistance Unit (CMU), One Congress
Street, Boston, MA 02114.

2. Massachusetts Department of Environmental Protection

a. The Regional Offices wherein the discharge occurs, shall receive a copy of all notifications and communications:

Massachusetts Department of
Environmental Protection, Bureau of
Resource Protection, Western
Regional Office, 436 Dwight Street,
Springfield, MA 01103.

Massachusetts Department of
Environmental Protection, Bureau of
Resource Protection, Southeastern

Regional Office, 20 Riverside Drive,
Lakeville, MA 02347.

Massachusetts Department of
Environmental Protection, Division of
Water Pollution Control, Northeastern
Regional Office, 205A Lowell Street,
Wilmington, MA 01887.

Massachusetts Department of
Environmental Protection, Bureau of
Resource Protection, Central Regional
Office, 627 Main Street, Worcester,
Massachusetts 01608.

b. Copies of all notifications required by this permit shall also be submitted to the State at:

Massachusetts Department of
Environmental Protection, Division of
Watershed Management, 627 Main
Street, Worcester, MA 01608.

c. Copies of the State Form BRP WM 10, Request for General Permit coverage for Surface Water Discharge from a Construction Dewatering site, and the Transmittal Form for Permit Application and Payment, may be obtained at the DEP website at (www.state.ma.us/dep) by clicking on "Permit Applications" and "Watershed Management" by telephoning the DEP Info Service Center (Permitting) at 617-338-2255 or 1-800-462-0444 in 508, 413, 978 and 781 area codes; or from any DEP Regional Service Center located in each Regional Office.

A copy of the transmittal form, a copy of the check, and Form BRP WM 10 should be sent to Massachusetts Department of Environmental Protection, 627 Main Street, Worcester, MA 01608. A copy of the transmittal form and the \$250 fee should be sent to MADEP PO Box 4062, Boston, MA 02111. Municipalities are fee-exempt, but should send a copy of the transmittal form to that address for project tracking purposes. A copy of Form BRP WM 10 should be sent to EPA-New England, One Congress Street, Mail Code CMU, Boston, MA 02114-2023. Keep a copy of the transmittal form and a copy of the application package for your records.

3. New Hampshire Department of Environmental Services

Copies of all notifications and communications should be sent to:

New Hampshire Department of
Environmental Service, Water
Division, PO Box 95, 6 Hazen Drive,
Concord, NH 03302-0095.

E. Additional General Permit Conditions

1. Termination of Operations:

Operators of facilities and/or operations authorized under this permit shall notify the Director upon the termination of discharges. The notice must contain

the name, mailing address, and location of the facility for which the notification is submitted, the NPDES permit number for the construction dewatering activity discharge identified by the notice, and an indication of whether the construction dewatering activity discharge has been eliminated or the operator of the discharge has changed. The notice must be signed in accordance with the signatory requirements of 40 CFR 122.22. The notice must be sent to both EPA and the appropriate State agency via certified mail.

2. When the Director May Require Application for an Individual NPDES permit.

a. The Director may require any person authorized by this permit to apply for and obtain an individual NPDES permit. Any interested person may petition the Director to take such action. Instances where an individual permit may be required include the following:

(1) The discharge(s) is a significant contributor of pollution;

(2) The discharger is not in compliance with the conditions of this permit;

(3) A change has occurred in the availability of the demonstrated technology of practices for the control or abatement of pollutants applicable to the point source.

(4) Effluent limitation guidelines are promulgated for point sources covered by this permit;

(5) A Water Quality Management Plan or Total Maximum Daily Load containing requirements applicable to such point source is approved;

(6) Discharge to the territorial sea;

(7) Discharge to outstanding natural resource water; or

(8) The point source(s) covered by this permit no longer;

(a) Involves the same or substantially similar types of operations;

(b) Discharges the same types of wastes;

(c) Requires the same effluent limitations or operating conditions; and/or;

(d) Requires the same or similar monitoring.

b. The Director may require an individual permit only if the permittee authorized by the general permit has been notified in writing that an individual permit is required, and has been given a brief explanation of the reasons for this decision.

3. When an Individual NPDES Permit may be Requested.

a. Any operator may request to be excluded from the coverage of this general permit by applying for an individual permit.

b. When an individual NPDES permit is issued to an operator otherwise subject to this general permit, the applicability of this permit to that owner or operator is automatically terminated on the effective date of the individual permit.

Part II, Standard Conditions

Section A. General Requirements

1. *Duty to Comply:* The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

a. The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the CWA for toxic pollutants and with standards for sewage sludge use or disposal established under section 405(d) of the CWA within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirements.

b. The CWA provides that any person who violates sections 301, 302, 306, 307, 308, 318, or 405 of the CWA or any permit condition or limitation implementing any of such sections in a permit issued under section 402, or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of the CWA is subject to a civil penalty not to exceed \$25,000 per day for each violation. Any person who *negligently* violates such requirements is subject to a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than 1 year, or both. Any person who *knowingly* violates such requirements is subject to a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not more than 3 years, or both. (Note: See 40 CFR 122.41(a)(2) for additional enforcement criteria.)

c. Any person may be assessed an administrative penalty by the Administrator for violating sections 301, 302, 306, 307, 308, 318, 405 of the CWA, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of the CWA. Administrative penalties for Class I violations are not to exceed \$10,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed \$25,000. Penalties for Class II violations are not to exceed \$10,000 per day for each day during

which the violation continues, with the maximum amount of any Class II penalty not to exceed \$125,000.

2. *Permit Actions:* This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay and permit condition.

3. *Duty to Provide Information:* The permittee shall furnish to the Regional Administrator, within a reasonable time, any information which the Regional Administrator may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Regional Administrator, upon request, copies of records required to be kept by this permit.

4. *Reopener Clause:* The Regional Administrator reserves the right to make appropriate revisions to this permit in order to establish any appropriate effluent limitations, schedules of compliance, or other provisions which may be authorized under the CWA in order to bring all discharges into compliance with the CWA.

5. *Oil and Hazardous Substance Liability:* Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the CWA, or section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

6. *Property Rights:* The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges.

7. *Confidentiality of Information:*

a. In accordance with 40 CFR part 2, any information submitted to EPA pursuant to these regulations may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, *EPA may make the information available to the public without further notice.* If a claim is asserted, the information will be treated in accordance with the procedures in 40 CFR part 2 (Public Information).

b. Claims of confidentiality for the following information *will* be denied:

- (i) The name and address of any permit applicant or permittee;
- (ii) Permit applications, permits, and effluent data as defined in 40 CFR 2.302(a)(2).

c. Information required by NPDES application forms provided by the Regional Administrator under § 122.21 may not be claimed confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

8. *Duty to Reapply:* If the permittee wishes to continue an activity regulated by this permit after its expiration date, the permittee must apply for and obtain a new permit. The permittee shall submit a new notice of intent at least 60 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Regional Administrator. (The Regional Administrator shall not grant permission for applications to be submitted later than the expiration date of the existing permit.)

9. *State Authorities:* Nothing in part 122, 123, or 124 precludes more stringent State regulation of any activity covered by these regulations, whether or not under an approved State program.

10. *Other Laws:* The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, nor does it relieve the permittee of its obligation to comply with any other applicable Federal, State, and local laws and regulations.

Section B: Operation and Maintenance of Pollution Controls

1. *Proper Operation and Maintenance:* The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit and with the requirements of storm water pollution prevention plans. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when the operation is necessary to achieve compliance with the conditions of the permit.

2. *Need to Halt or Reduce Not a Defense:* It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to

maintain compliance with the conditions of this permit.

3. *Duty to Mitigate*: The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

4. *Bypass*:

a. *Definitions*.

(1) "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

(2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

b. *Bypass not exceeding limitations*. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Paragraphs B.4.c and 4.d of this section.

c. *Notice*.

(1) *Anticipated bypass*: If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

(2) *Unanticipated bypass*: The permittee shall submit notice of an unanticipated bypass as required in Paragraph D.1.e (24-hour notice).

d. *Prohibition of bypass*:

(1) Bypass is prohibited, and the Regional Administrator may take enforcement action against a permittee for bypass, unless:

(a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercised of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(c)(i) The permittee submitted notices as required under Paragraph 4.c of this section.

(ii) The Regional Administrator may approve an anticipated bypass after

considering its adverse effects, if the Regional Administrator determines that it will meet the three conditions listed above in Paragraph 4.d of this section.

5. *Upset*.

a. *Definition*. "Upset" means an exceptional incident in which there is unintentional and temporary non-compliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

b. *Effect of an upset*. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of Paragraph B.5.c of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

c. *Conditions necessary for a demonstration of upset*. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) An upset occurred and that the permittee can identify the cause(s) of the upset;

(2) The permitted facility was at the time being properly operated;

(3) The permittee submitted notice of the upset as required in Paragraphs D.1.a and 1.e (24-hour notice); and

(4) The permittee complied with any remedial measures required under B.3. above.

d. *Burden of proof*. If any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

Section C. Monitoring and Records

1. *Monitoring and Records*.

a. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

b. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by 40 CFR part 503), the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous

monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application *except for the information concerning storm water discharges which must be retained for a total of 6 years*. This retention period may be extended by request of the Regional Administrator at any time.

c. Records of monitoring information shall include:

(1) The date, exact place, and time of sampling or measurements;

(2) The individual(s) who performed the sampling or measurements;

(3) The date(s) analyses were performed;

(4) The individual(s) who performed the analyses;

(5) The analytical techniques or methods used; and

(6) The results of such analyses.

d. Monitoring results must be conducted according to test procedures approved under 40 CFR part 136 or, in the case of sludge use or disposal, approved under 40 CFR part 136 unless otherwise specified in 40 CFR part 503, unless other test procedures have been specified in the permit.

e. The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both.

2. *Inspection and Entry*: The permittee shall allow the Regional Administrator, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon presentation of credentials and other documents as may be required by law, to:

a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment),

practices, or operations regulated or required under this permit; and,

d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

Section D. Reporting Requirements

1. Reporting Requirements.

a. *Planned changes.* The permittee shall give notice to the Regional Administrator as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

(1) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR 122.29(b); or

(2) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject to the effluent limitations in the permit, not to the notification requirements under 40 CFR 122.42(a)(1).

(3) The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition or change may justify the application of permit conditions different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

b. *Anticipated noncompliance.* The permittee shall give advance notice to the Regional Administrator of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

c. *Transfers.* This permit is not transferable to any person except after notice to the Regional Administrator. The Regional Administrator may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Clean Water Act. (See § 122.61; in some cases, modification or revocation and reissuance is mandatory.)

d. *Monitoring reports.* Monitoring results shall be reported at the intervals specified elsewhere in this permit.

(1) Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Regional Administrator

for reporting results of monitoring of sludge use or disposal practices.

(2) If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR part 136 or, in the sludge use or disposal, approved under 40 CFR part 136 unless otherwise specified in 40 CFR part 503, or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Regional Administrator.

(3) Calculations for all limitations which require averaging of measurement shall utilize an arithmetic mean unless otherwise specified by the Regional Administrator in the permit.

e. *Twenty-four hour reporting.*

(1) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

(2) The following shall be included as information which must be reported within 24 hours under this paragraph.

(a) Any unanticipated bypass which exceeds any effluent limitation in the permit. (See § 122.41(g))

(b) Any upset which exceeds any effluent limitation in the permit.

(c) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Regional Administrator in the permit to be reported within 24 hours. (See § 122.44(g))

(3) The Regional Administrator may waive the written report on a case-by-case, basis for reports under Paragraph D.1.e if the oral report has been received within 24 hours.

f. *Compliance Schedules.* Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

g. *Other noncompliance.* The permittee shall report all instances of noncompliance not reported under

Paragraphs D.1.d, D.1.e and D.1.f of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in Paragraph D.1.e of this section.

h. *Other information.* Where the permittee becomes aware that if failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Regional Administrator, it shall promptly submit such facts or information.

2. *Signatory Requirement.*

a. All applications, reports, or information submitted to the Regional Administrator shall be signed and certified. (see § 122.22)

b. The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

3. *Availability of Reports:* Except for data determined to be confidential under Paragraph A.8. above, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the State water pollution control agency and the Regional Administrator. As required by the CWA, effluent data shall not be considered confidential. Knowingly making any false statement on any such report may result in the imposition of criminal penalties as provided for in section 309 of the CWA.

Section E. Other Conditions

1. *Definitions* for purposes of this permit are as follows:

Administrator means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

Applicable standards and limitations means all State, interstate, and Federal standards and limitations to which a "discharge" or a related activity is subject to, including water quality standards, standards of performance, toxic effluent standards or prohibitions, "best management practices," and pretreatment standards under sections 301, 302, 303, 304, 306, 307, 308, 403, and 405 of CWA.

Application means the EPA standard national forms for applying for a permit, including any additions, revisions or modifications to the forms; or forms approved by EPA for use in "approved

States,” including any approved modifications or revisions.

Average means the arithmetic mean of values taken at the frequency required for each parameter over the specified period. For total and/or fecal coliform, the average shall be the geometric mean.

Average monthly discharge limitation means the highest allowable average of “daily discharges” over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

Average weekly discharge limitation means the highest allowable average of “daily discharges” over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

Best Management Practices (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of “waters of the United States.” BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Best Professional Judgement (BPJ) means a case-by-case determination of Best Practicable Treatment (BPT), Best Available Treatment (BAT) or other appropriate standard based on an evaluation of the available technology to achieve a particular pollutant reduction.

Composite Sample—A sample consisting of a minimum of eight grab samples collected at equal intervals during a 24-hour period (or lesser period as specified in the section on Monitoring and Reporting) and combined proportional to flow, or a sample continuously collected proportionally to flow over that same time period.

Continuous Discharge means a “discharge” which occurs without interruption throughout the operating hours of the facility except for infrequent shutdowns for maintenance, process changes, or similar activities.

CWA or “The Act” means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Pub. L. 92–500, as amended by Pub. L. 95–217, Pub. L. 95–576, Pub. L. 96–483 and Pub. L. 97–117; 33 U.S.C. 1251 *et seq.*

Daily Discharge means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants

with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurements, the daily discharge is calculated as the average measurement of the pollutant over the day.

Director means the person authorized to sign NPDES permits by EPA and/or the State.

Discharge Monitoring Report Form (DMR) means the EPA standard national form, including any subsequent additions, revisions, or modifications, for the reporting of self-monitoring results by permittees. DMRs must be used by “approved States” as well as by EPA. EPA will supply DMRs to any approved State upon request. The EPA national forms may be modified to substitute the State Agency name, address, logo, and other similar information, as appropriate, in place of EPA’s.

Discharge of a pollutant means:

(a) Any addition of any “pollutant” or combination of pollutants to “waters of the United States” from any “point source,” or

(b) Any addition of any pollutant or combination of pollutants to the waters of the “contiguous zone” or the ocean from any point source other than a vessel or other floating craft which is being used as means of transportation. This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances leading into privately owned treatment works. This term does not include an addition of pollutants by any “indirect discharger.”

Effluent limitation means any restriction imposed by the Director on quantities, discharge rates, and concentrations of “pollutants” which are “discharged” from “point sources” into “waters of the United States,” the waters of the “contiguous zone,” or the ocean.

Effluent limitations guidelines means a regulation published by the Administrator under section 304(b) of CWA to adopt or revise “effluent limitations.”

EPA means the United States “Environmental Protection Agency.”

Grab Sample—An individual sample collected in a period of less than 15 minutes.

Hazardous Substance means any substance designated under 40 CFR part 116 pursuant to section 311 of CWA.

Indian Country, as defined at 18 U.S.C. 1151 means: (a) All lands within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way- running through the reservation; (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. This definition includes all land held in trust for an Indian tribe.

Maximum daily discharge limitation means the highest allowable “daily discharge.”

Municipality means a city, town, borough, county, parish, district, association, or other public body created by or under State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribe organization, or a designated and approved management agency under section 208 of CWA.

National Pollutant Discharge Elimination System means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of CWA. The term includes an “approved program.”

New discharger means any building, structure, facility, or installation:

(a) From which there is or may be a “discharge of pollutants”;

(b) That did not commence the “discharge of pollutants” at a particular “site” prior to August 13, 1979;

(c) Which is not a “new source;” and

(d) Which has never received a finally effective NPDES permit for discharges at that “site”. This definition includes an “indirect discharger” which commence discharging into “waters of the United States” after August 13, 1979. It also includes any existing mobile point source (other than an offshore of coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a “site” for which it does not have a permit; and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas development drilling rig that

commences the discharge of pollutants after August 13, 1979, at a "site" under EPA's permitting jurisdiction for which it is not covered by an individual or general permit and which is located in an area determined by the Regional Administrator in the issuance of a final permit to be an area of biological concern. In determining whether an area is an area of biological concern, the Regional Administrator shall consider the factors specified in 40 CFR 125.122(a)(1) through (10).

An offshore or coastal mobile exploratory drilling rig or coastal mobile developmental drilling rig will be considered a "new discharger" only for the duration of its discharge in an area of biological concern.

New source means any building, structure, facility, or installation from which there is or may be a "discharge of pollutants," the construction of which commenced:

(a) After promulgation of standards of performance under section 306 of CWA which are applicable to such.

(b) After proposal of standards of performance in accordance with section 306 of CWA which are applicable to such source, but only if the standards are promulgated in accordance with section 306 within 120 days of their proposal.

NPDES means "National Pollutant Discharge Elimination System."

Non-Contact Cooling Water is water used to reduce temperature which does not come in direct contact with any raw material, intermediate product, a waste product or finished product.

Owner of operator means the owner or operator of an "facility or activity" subject to regulation under the NPDES programs.

Permit means an authorization, license, or equivalent control document issued by EPA or an "approved State."

Person means an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof.

Point Source means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel, or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

Pollutant means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as

amended (42 U.S.C. 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

(a) Sewage from vessels; or

(b) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if the State determines that the injection or disposal will not result in the degradation of ground or surface water resources.

Primary industry category means any industry category listed in the NRDC settlement agreement (*Natural Resources Defense Council et al. v. Train*, 8 E.R.C. 2120 (D.D.C. 1976), modified 12 E.R.C. 1833 (D.D.C. 1979)); also listed in Appendix A of 40 CFR part 122.

Process wastewater means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

Regional Administrator means the Regional Administrator, EPA-New England, Boston, Massachusetts.

State means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands.

Secondary Industry Category means any industry category which is not a "primary industry category."

Toxic pollutant means any pollutant listed as toxic in appendix D of 40 CFR part 122, under section 307(a)(1) of CWA.

Waters of the United States means:

(a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(b) All interstate waters, including interstate "wetlands";

(c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(1) Which are or could be used by interstate or foreign travelers for recreational or other purposes;

(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or,

(3) Which are used or could be used for industrial purposes by industries in interstate commerce;

(d) All impoundments of waters otherwise defined as waters of the United States under this definition;

(e) Tributaries of waters identified in paragraphs (a)-(d) of this definition;

(f) The territorial sea; and

(g) "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a)-(f) of this definition.

Whole Effluent Toxicity (WET) means the aggregate toxic effect of an effluent measured directly by a toxicity test.

Wetlands means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

2. Abbreviations when used in this permit are defined below:

cu. M/day or M3/day—cubic meters per day
 mg/l—milligrams per liter
 ug/l—micrograms per liter
 lbs/day—pounds per day
 kg/day—kilograms per day
 Temp. °C—temperature in degrees Centigrade
 Temp. °F—temperature in degrees Fahrenheit
 Turb.—turbidity measured by the Nephelometric Method (NTU)
 pH—a measure of the hydrogen ion concentration
 CFS—cubic feet per second
 MGD—million gallons per day
 Oil & Grease—Freon extractable material
 ml/l—milliliter(s) per liter
 Cl₂—total residual chlorine

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FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

September 12, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing