

## **ATTACHMENT 5**

Draft NPDES Permit No. NH0100447, April 10, 2024 and Fact Sheet (“Draft Permit”)

**AUTHORIZATION TO DISCHARGE UNDER THE  
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**

In compliance with the provisions of the Federal Clean Water Act as amended, 33 U.S.C. §§ 1251 et seq. (the "CWA"),

**City of Manchester, New Hampshire**

is authorized to discharge from the facility located at

**Manchester Wastewater Treatment Facility  
300 Winston Street  
Manchester, NH 03103**

**and 15 Combined Sewer Overflow (CSO) Outfalls**

to receiving waters named

**Merrimack River (NHRI700060803-14-02 and NHIMP700060802-04)  
Piscataquog River (NHRI700060607-22)  
Baker Brook (NHRI700060803-08)  
Rays Brook (NHRI700060802-15)  
Unnamed Brook (NHRI700060803-17)**

**Merrimack River watershed – All Class B**

in accordance with effluent limitations, monitoring requirements and other conditions set forth herein.

The Towns of Goffstown, Bedford and Londonderry, New Hampshire are Co-permittees for: Part I.B, Unauthorized Discharges; Part I.C, Operation and Maintenance of the Treatment and Control Facilities (which include conditions regarding the operation and maintenance of the collection systems owned and operated by the Towns); and Part I.D, Alternate Power Source. The permit number assigned to the Towns for purposes of reporting (using NetDMR through EPA's Central Data Exchange, as specified in Part I.I below) in accordance with the requirements in Parts I.B, I.C, and I.D of this permit are as follows: Bedford: **NHC010447**; Goffstown: **NHC020447**; and Londonderry: **NHC030447**.

Operation and maintenance of the sewer system shall be in compliance with the General Requirements of Part II and the terms and conditions of Parts I.B, I.C, and I.D of this permit. The Permittee and Co-permittees are severally liable under Parts I.B, I.C, and I.D for their own activities and required reporting under Part I.I with respect to the portions of the collection system that they own or operate. They are not liable for violations of Parts I.B, I.C, and I.D committed by others relative to the portions of the collection system owned and operated by others. Nor are they responsible for any reporting under Part I.I that is required of other Permittees under Parts I.B, I.C, and I.D. The responsible departments for the Co-permittees are:

Town of Goffstown Goffstown Sewer Commission 16 Main Street Goffstown, NH 03045	Town of Bedford 24 North Amherst Road Bedford, NH 03110	Town of Londonderry 268 B Mammoth Road Londonderry, NH 03053
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This permit shall become effective on the first day of the calendar month immediately following 60 days after signature.<sup>1</sup>

This permit expires at midnight, five years from the last day of the month preceding the effective date.

This permit supersedes the permit issued on February 11, 2015.

This permit consists of **Part I** including the cover page(s), **Attachment A** (Freshwater Acute Toxicity Test Procedure and Protocol, February 2011), **Attachment B** (Freshwater Chronic Toxicity Test Procedure and Protocol, March 2013), **Attachment C** (Reassessment of Technically Based Industrial Discharge Limits), **Attachment D** (Industrial Pretreatment Program Annual Report); **Attachment E** (PFAS Analyte List); **Attachment F** (Combined Sewer Overflow Outfalls) and **Part II** (NPDES Part II Standard Conditions, April 2018).

Signed this        day of

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Ken Moraff, Director  
Water Division  
Environmental Protection Agency  
Region 1  
Boston, MA

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<sup>1</sup> Pursuant to 40 Code of Federal Regulations (CFR) § 124.15(b)(3), if no comments requesting a change to the Draft Permit are received, the permit will become effective upon the date of signature. Procedures for appealing EPA's Final Permit decision may be found at 40 CFR § 124.19.

**PART I****A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

1. During the period beginning on the effective date and lasting through the expiration date, the Permittee is authorized to discharge treated effluent through Outfall Serial Number 001 to the Merrimack River. The discharge shall be limited and monitored as specified below; the receiving water and the influent shall be monitored as specified below.

<b>Effluent Characteristic</b>	<b>Effluent Limitation</b>			<b>Monitoring Requirements<sup>1,2,3</sup></b>	
	<b>Average Monthly</b>	<b>Average Weekly</b>	<b>Maximum Daily</b>	<b>Measurement Frequency</b>	<b>Sample Type<sup>4</sup></b>
Rolling Average Effluent Flow <sup>5</sup>	34 MGD <sup>5</sup>	---	---	Continuous	Recorder
Effluent Flow <sup>5</sup>	Report MGD	---	Report MGD	Continuous	Recorder
CBOD <sub>5</sub>	25 mg/L 7,090 lb/day	40 mg/L 11,350 lb/day	45 mg/L 12,770 lb/day	2/Week	Composite
CBOD <sub>5</sub> Removal <sup>6</sup>	≥ 85 %	---	---	1/Month	Calculation
TSS	30 mg/L 8,510 lb/day	45 mg/L 12,770 lb/day	50 mg/L 14,190 lb/day	2/Week	Composite
TSS Removal <sup>6</sup>	≥ 85 %	---	---	1/Month	Calculation
pH Range <sup>7</sup>	6.5 - 8.0 S.U.			1/Day	Grab
Total Residual Chlorine <sup>8,9</sup>	130 µg/L	---	220 µg/L	3/Day	Grab
Escherichia coli <sup>8,9</sup>	126/100 mL	---	406/100 mL	3/Week	Grab
Total Phosphorus <sup>10</sup> (April 1 – October 31)	236 lb/day	---	Report lb/day	2/Month	Composite
Total Phosphorus <sup>10</sup>	Report mg/L	---	Report mg/L	2/Month	Composite
Total Aluminum <sup>11</sup>	118 µg/L	---	Report µg/L	2/Month	Composite
Total Copper	24 µg/L	---	Report µg/L	2/Month	Composite
Total Ammonia Nitrogen (May 1 – October 31) <sup>11</sup>	10.4 mg/L	---	Report mg/L	2/Week	Composite

Effluent Characteristic	Effluent Limitation			Monitoring Requirements <sup>1,2,3</sup>	
	Average Monthly	Average Weekly	Maximum Daily	Measurement Frequency	Sample Type <sup>4</sup>
Total Kjeldahl Nitrogen <sup>12</sup> (April 1 – October 31) (November 1 – March 31)	Report mg/L Report mg/L	---	Report mg/L Report mg/L	1/Week 1/Month	Composite Composite
Nitrate + Nitrite <sup>12</sup> (April 1 – October 31) (November 1 – March 31)	Report mg/L Report mg/L	---	Report mg/L Report mg/L	1/Week 1/ Month	Composite Composite
Total Nitrogen <sup>12</sup>	Report mg/L Report lb/day	---	Report mg/L	1/Month	Calculation
PFAS Analytes <sup>13</sup>	---	---	Report ng/L	1/Quarter	Grab
Adsorbable Organic Fluorine <sup>14</sup>	---	---	Report ng/L	1/Quarter	Grab
<b>Whole Effluent Toxicity (WET) Testing<sup>15,16</sup></b>					
LC <sub>50</sub>	---	---	≥ 100 %	1/Quarter	Composite
C-NOEC	---	---	≥ 8.5 %	1/Quarter	Composite
Hardness	---	---	Report mg/L	1/Quarter	Composite
Ammonia Nitrogen	---	---	Report mg/L	1/Quarter	Composite
Total Aluminum	---	---	Report mg/L	1/Quarter	Composite
Total Cadmium	---	---	Report mg/L	1/Quarter	Composite
Total Copper	---	---	Report mg/L	1/Quarter	Composite
Total Nickel	---	---	Report mg/L	1/Quarter	Composite
Total Lead	---	---	Report mg/L	1/Quarter	Composite
Total Zinc	---	---	Report mg/L	1/Quarter	Composite
Total Organic Carbon	---	---	Report mg/L	1/Quarter	Composite

Ambient Characteristic <sup>17</sup>	Reporting Requirements			Monitoring Requirements <sup>1,2,3</sup>	
	Average Monthly	Average Weekly	Maximum Daily	Measurement Frequency	Sample Type <sup>4</sup>
Hardness	---	---	Report mg/L	1/Quarter	Grab
Ammonia Nitrogen	---	---	Report mg/L	1/Quarter	Grab
Total Aluminum	---	---	Report mg/L	1/Quarter	Grab
Total Cadmium	---	---	Report mg/L	1/Quarter	Grab
Total Copper	---	---	Report mg/L	1/Quarter	Grab
Total Nickel	---	---	Report mg/L	1/Quarter	Grab
Total Lead	---	---	Report mg/L	1/Quarter	Grab
Total Zinc	---	---	Report mg/L	1/Quarter	Grab
Total Organic Carbon	---	---	Report mg/L	1/Quarter	Grab
Dissolved Organic Carbon <sup>18</sup>	---	---	Report mg/L	1/Quarter	Grab
pH <sup>19</sup>	---	---	Report S.U.	1/Quarter	Grab
Temperature <sup>19</sup>	---	---	Report °C	1/Quarter	Grab
Total Phosphorus <sup>20</sup> (April 1 - October 31)	---	---	Report mg/L	1/Month	Grab

Influent Characteristic	Reporting Requirements			Monitoring Requirements <sup>1,2,3</sup>	
	Average Monthly	Average Weekly	Maximum Daily	Measurement Frequency	Sample Type <sup>4</sup>
CBOD <sub>5</sub>	Report mg/L	---	---	2/Month	Composite
TSS	Report mg/L	---	---	2/Month	Composite
PFAS Analytes <sup>13</sup>	---	---	Report ng/L	1/Quarter	Grab
Adsorbable Organic Fluorine <sup>14</sup>	---	---	Report ng/L	1/Quarter	Grab

Sludge Characteristic	Reporting Requirements			Monitoring Requirements <sup>1,2,3</sup>	
	Average Monthly	Average Weekly	Maximum Daily	Measurement Frequency	Sample Type <sup>4</sup>
PFAS Analytes <sup>13</sup>	---	---	Report ng/g	1/Quarter	Grab <sup>21</sup>

**PART I****A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (Continued)**

2. During the period beginning on the effective date of the permit and lasting through the expiration date, the Permittee is authorized to discharge storm water and wastewaters into the Merrimack River from Combined Sewer Outfalls serial numbers 011, 018, 031, 043, 044, 045, 046, 047, 050, 052, 053, 054, and 055, and into the Piscataquog River from Outfalls serial numbers 039 and 051. These discharges are authorized only during wet weather. Such discharges shall be monitored by the Permittee as specified below. Samples specified below shall be taken at a location that provides a representative analysis of the effluent. Additionally, monitoring results based on Parts I.H.5 below shall be reported in the monthly Discharge Monitoring Report (DMR) for Outfalls 011, 018, 031, 039, 043, 044, 045, 046, 047, 050, 051, 052, 053, 054, and 055.

<b>Effluent Characteristic<sup>22</sup></b>	<b>Discharge Limitation</b>	<b>Monitoring Requirement</b>	
	<b>Wet Weather Event Maximum</b>	<b>Measurement Frequency</b>	<b>Sample Type<sup>4</sup></b>
<i>Escherichia coli</i>	1,000/100 ml	1/Year	Grab

## Footnotes:

1. All samples shall be collected in a manner to yield representative data. A routine sampling program shall be developed in which samples are taken at the same location, same time and same days of the week each month. Occasional deviations from the routine sampling program are allowed, but the reason for the deviation shall be documented as an electronic attachment to the applicable discharge monitoring report. The Permittee shall report the results to the Environmental Protection Agency Region 1 (EPA) and NHDES ("the State") of any additional testing above that required herein, if testing is in accordance with 40 CFR Part 136.
2. In accordance with 40 CFR § 122.44(i)(1)(iv), the Permittee shall monitor according to sufficiently sensitive test procedures (i.e., methods) approved under 40 CFR Part 136 or required under 40 CFR chapter I, subchapter N or O, for the analysis of pollutants or pollutant parameters (except WET). A method is "sufficiently sensitive" when: 1) The method minimum level (ML) is at or below the level of the effluent limitation established in the permit for the measured pollutant or pollutant parameter; or 2) The method has the lowest ML of the analytical methods approved under 40 CFR Part 136 or required under 40 CFR chapter I, subchapter N or O for the measured pollutant or pollutant parameter. The term "minimum level" refers either to the sample concentration equivalent to the lowest calibration point in a method or a multiple of the method detection limit (MDL), whichever is higher. Minimum levels may be obtained in the following ways: they may be published in a method; they may be based on the lowest acceptable calibration point used by a laboratory; or they may be calculated by multiplying the MDL in a method, or the MDL determined by a laboratory, by a factor.
3. When a parameter is not detected above the ML, the Permittee must report the data qualifier signifying less than the ML for that parameter (e.g., < 50 µg/L, if the ML for a parameter is 50 µg/L). For reporting an average based on a mix of values detected and not detected, assign a value of "0" to all non-detects for that reporting period and report the average of all the results.
4. A "grab" sample is an individual sample collected in a period of less than 15 minutes. A "composite" sample is a composite of at least twenty-four (24) grab samples taken during one consecutive 24-hour period, either collected at equal intervals and combined proportional to flow or continuously collected proportional to flow.
5. The limit is a rolling annual average, reported in million gallons per day (MGD), which will be calculated as the arithmetic mean of the monthly average flow for the reporting month and the monthly average flows of the previous eleven months. Also report monthly average and maximum daily flow in MGD.

Bypasses shall not occur below influent flows of 34 MGD. When bypass occurs, the blended effluent shall be subject to the end-of-pipe effluent limitations in Part I.A.1.a above and all bypasses shall be reported by the Permittee to EPA and NHDES pursuant to Part I.I.6 below.

A bypass of secondary treatment is subject to the requirements of Part II.B.4. and Part II.D.1.e. of this permit. The following information shall be reported as an electronic attachment to each March DMR summarizing each day there was a bypass of secondary treatment for the previous calendar year: date and time of initiation of bypass flow, influent flow at time of initiation (MGD), date and time of termination of bypass flow, influent flow at time of termination (MGD), duration of bypass (hrs), and total volume of bypass flow (MG).

6. The minimum monthly average of 85 percent removal of both  $CBOD_5$  and TSS applies only during dry weather. Dry weather is defined as any calendar day on which there is less than 0.1 inches of rainfall and no snow melt. The percent removal shall be calculated using the average monthly influent and effluent concentrations for samples collected during dry weather days. The Permittee shall attach to its discharge monitoring reports the daily precipitation from the nearest National Weather Service gage, or a gage accepted by the permitting authority.
7. The pH shall be within the specified range at all times. The minimum and maximum pH sample measurement values for the month shall be reported in standard units (S.U.). See Part I.G.1 below for a provision to modify the pH range.
8. The Permittee shall minimize the use of chlorine while maintaining adequate bacterial control. Monitoring for total residual chlorine (TRC) is only required for discharges which have been previously chlorinated or which contain residual chlorine. If chlorine is not utilized during a particular monitoring period, TRC monitoring is not necessary and the Permittee may enter "NODI" code 9 (i.e., conditional monitoring) in the relevant discharge monitoring report.

Chlorination and dechlorination systems shall include an alarm system for indicating system interruptions or malfunctions. Any interruption or malfunction of the chlorine dosing system that may have resulted in levels of chlorine that were inadequate for achieving effective disinfection, or interruptions or malfunctions of the dechlorination system that may have resulted in excessive levels of chlorine in the final effluent shall be reported with the monthly DMRs. The report shall include the date and time of the interruption or malfunction, the nature of the problem, and the estimated amount of time that the reduced levels of chlorine or dechlorination chemicals occurred.

9. The monthly average limit for *Escherichia coli* (*E. coli*) is expressed as a geometric mean. *E. coli* monitoring shall be conducted concurrently with TRC monitoring, if TRC monitoring is required.
10. Monthly average effluent loading shall be calculated as the average of the daily discharge concentrations times the average daily flow for the month, as shown below.

Total Phosphorus (lb/day) = [(average monthly Total Phosphorus (mg/L) \* total monthly effluent flow (Millions of Gallons (MG)) / # of days in the month] \* 8.34

11. See Part I.G.2 for the compliance schedules applicable to the total aluminum and ammonia limits.
12. Total Kjeldahl nitrogen and nitrate + nitrite samples shall be collected concurrently. The results of these analyses shall be used to calculate both the concentration and mass loadings of total nitrogen, as follows.

Total Nitrogen (mg/L) = Total Kjeldahl Nitrogen (mg/L) + Nitrate + Nitrite (mg/L)

Total Nitrogen (lb/day) = [(average monthly Total Nitrogen (mg/L) \* total monthly effluent flow (Millions of Gallons (MG)) / # of days in the month] \* 8.34

13. Report in nanograms per liter (ng/L) for effluent and influent samples; report nanograms per gram (ng/g) for sludge samples. Until there is an analytical method approved in 40 CFR Part 136 for PFAS, monitoring shall be conducted using Method 1633. Report in NetDMR the results of all PFAS analytes required to be tested in Method 1633, as shown in Attachment E. This reporting requirement for the listed PFAS parameters takes effect the first full calendar quarter following six months after the effective date of the permit.
14. Report in nanograms per liter (ng/L) for effluent and influent samples. Until there is an analytical method approved in 40 CFR Part 136 for Adsorbable Organic Fluorine, monitoring shall be conducted using Method 1621. This reporting requirement takes effect the first full calendar quarter following six months after the effective date of the permit.
15. The Permittee shall conduct acute toxicity tests (LC50) and chronic toxicity tests (C-NOEC) in accordance with test procedures and protocols specified in Attachment A and B of this permit. LC50 and C-NOEC are defined in Part II.E. of this permit. The Permittee shall test the daphnid, *Ceriodaphnia dubia*, and the fathead minnow, *Pimephales promelas*. Toxicity test samples shall be collected during the same weeks each time of calendar quarters ending March 31<sup>st</sup>, June 30th, September 30th, and December 31st.

The complete report for each toxicity test shall be submitted as an attachment to the DMR submittal which includes the results for that toxicity test.

16. For Part I.A.1., Whole Effluent Toxicity Testing, the Permittee shall conduct the analyses specified in **Attachment A and B**, Part VI. CHEMICAL ANALYSIS for the effluent sample. If toxicity test(s) using the receiving water as diluent show the receiving water to be toxic or unreliable, the Permittee shall follow procedures outlined in **Attachment A and B**, Section IV., DILUTION WATER. Minimum levels and test methods are specified in **Attachment A and B**, Part VI. CHEMICAL ANALYSIS.
17. For Part I.A.1., Ambient Characteristic, the Permittee shall conduct the analyses specified in **Attachment A and B**, Part VI. CHEMICAL ANALYSIS for the receiving water sample collected as part of the WET testing requirements. Such samples shall be taken from the receiving water at a point immediately upstream of the permitted discharge's zone of influence at a reasonably accessible location, as specified in **Attachment A and B**. Minimum levels and test methods are specified in **Attachment A and B**, Part VI. CHEMICAL ANALYSIS.
18. Monitoring and reporting for dissolved organic carbon (DOC) are not requirements of the Whole Effluent Toxicity (WET) tests but are additional requirements. The Permittee may analyze the WET samples for DOC or may collect separate samples for DOC concurrently with WET sampling.
19. A pH and temperature measurement shall be taken of each receiving water sample at the time of collection and the results reported on the appropriate DMR. These pH and temperature measurements are independent from any pH and temperature measurements required by the WET testing protocols.
20. See Part I.G.3 for special conditions regarding ambient phosphorus monitoring.
21. Sludge sampling shall be as representative as possible based on guidance found at <https://www.epa.gov/sites/production/files/2018-11/documents/potw-sludge-sampling-guidance-document.pdf>.
22. The Permittee shall sample CSO Outfalls 011, 018, 031, 039, 043, 044, 045, 046, 047, 050, 051, 052, 053, 054, and 055 at least once per calendar year. All attempts must be made to begin sampling during the first half hour after the outfall starts discharging. If this is not possible, a sample shall be collected as soon as possible after the discharge commences. The "event maximum" values for *Escherichia coli* shall be reported on the appropriate DMR for the year sampled for each CSO outfall.

**Part I.A., continued.**

3. The discharge shall not cause a violation of the water quality standards of the receiving water.
4. The discharge shall be free from substances in kind or quantity that settle to form harmful benthic deposits; float as foam, debris, scum or other visible substances; produce odor, color, taste or turbidity that is not naturally occurring and would render the surface water unsuitable for its designated uses; result in the dominance of nuisance species; or interfere with recreational activities.
5. Tainting substances shall not be present in the discharge in concentrations that individually or in combination are detectable by taste and odor tests performed on the edible portions of aquatic organisms.
6. The discharge shall not result in toxic substances or chemical constituents in concentrations or combinations in the receiving water that injure or are inimical to plants, animals, humans or aquatic life; or persist in the environment or accumulate in aquatic organisms to levels that result in harmful concentrations in edible portions of fish, shellfish, other aquatic life, or wildlife that might consume aquatic life.
7. The discharge shall not result in benthic deposits that have a detrimental impact on the benthic community. The discharge shall not result in oil and grease, color, slicks, odors, or surface floating solids that would impair any existing or designated uses in the receiving water.
8. The discharge shall not result in an exceedance of the naturally occurring turbidity in the receiving water by more than 10 NTUs.
9. Pollutants introduced into the POTW by a non-domestic source (user) shall not pass through the POTW or interfere with the operation or performance of the works.

**B. UNAUTHORIZED DISCHARGES**

1. This permit authorizes discharges only from the outfall listed in Part I.A.1, and CSO Outfalls listed in Attachment F, in accordance with the terms and conditions of this permit. Discharges of wastewater from any other point sources, including sanitary sewer overflows (SSOs), are not authorized by this permit. The Permittee must provide verbal notification to EPA within 24 hours of becoming aware of any unauthorized discharge and a report within 5 days, in accordance with Part II.D.1.e (24-hour reporting). See Part I.I below for reporting requirements.
2. The Permittee must provide notification to the public within 24 hours of becoming aware of any unauthorized discharge, except SSOs that do not impact a surface water or the public, on a publicly available website, and it shall remain on the website for a minimum of 12

months. Such notification shall include the location (including latitude and longitude) and description of the discharge; estimated volume; 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.

## C. OPERATION AND MAINTENANCE OF THE TREATMENT AND CONTROL FACILITIES

### 1. Adaptation Planning

- a. *Adaptation Plan.* Within the timeframes described below, the Permittee and Co-permittee(s) shall develop an Adaptation Plan for the Wastewater Treatment System (WWTS)<sup>2</sup> and/or sewer system<sup>3</sup> that they own and operate. Additional information on the procedures and resources to aid permittees in development of the Adaptation Plan is provided on EPA's Region 1 NPDES website at <https://www.epa.gov/npdes-permits/npdes-water-permit-program-new-england>. The Adaptation Plan shall contain sufficient detail for EPA to evaluate the analyses.

*Component 1: Identification of Vulnerable Critical Assets.* Within 24 months of the effective date of the permit, the Permittee and Co-permittee(s) shall develop and sign, consistent with the signatory requirements in Part II.D.2 of this Permit, an identification of critical assets<sup>4</sup> and related operations<sup>5</sup> within the WWTS and/or sewer system which they own and operate, as applicable, that are most vulnerable due to major storm and flood events<sup>6</sup> under baseline conditions<sup>7</sup> and under future conditions.<sup>8</sup> This information shall be provided to EPA upon

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<sup>2</sup> "Wastewater Treatment System" or "WWTS" means any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It does not include sewers, pipes and other conveyances to the wastewater treatment facility.

<sup>3</sup> "Sewer System" refers to the sewers, pump stations, manholes and other infrastructure use to convey sewage to the wastewater treatment facility from homes or other sources.

<sup>4</sup> A "critical asset" is an asset necessary to ensure the safe and continued operation of the WWTS or the sewer system and ensure the forward flow and treatment of wastewater in accordance with the limits set forth in this permit.

<sup>5</sup> "Asset related operations" are elements of an asset that enable that asset to function. For example, pumps and power supply enable the operation of a pump station.

<sup>6</sup> "Major storm and flood events" refer to instances resulting from major storms such as hurricanes, extreme/heavy precipitation events, and pluvial, fluvial, and flash flood events such as high-water events, storm surge, and high-tide flooding, including flooding caused by sea level change. "Extreme/heavy precipitation" refers to instances during which the amount of rain or snow experienced in a location substantially exceeds what is normal according to location and season.

<sup>7</sup> "Baseline conditions" refers to the 100-year flood based on historical records.

<sup>8</sup> "Future conditions" refers to projected flood elevations using one of two approaches: a) Climate Informed Science Approach (CISA): The elevation and flood hazard area that result from using the best-available, actionable hydrologic and hydraulic data and methods that integrate current and future changes in flooding based on climate science. These shall include both short term (10-25 years forward-looking) and long term (25-70 years forward-

request. For these critical assets and related operations, the Permittee and Co-permittee(s) shall assess the ability of each to function properly in the event of impacts<sup>9</sup> from major storm and flood events in terms of effluent flow (e.g., bypass, upset or failure), sewer flow (e.g., overflow, inflow and infiltration), and discharges of pollutants (e.g., effluent limit exceedance).

*Component 2: Adaptative Measures Assessment.*<sup>10</sup> Within 36 months of the effective date of the permit, the Permittee and Co-Permittee(s) shall develop and sign, consistent with the signatory requirements in Part II.D.2 of this Permit, an assessment of adaptive measures,<sup>11</sup> and/or, if appropriate, the combinations of adaptive measures that minimize the impact of future conditions on the critical assets and related operations of the WWTS and/or sewer system(s). This information shall be provided to EPA upon request. The Permittee and Co-permittee(s) shall identify the critical assets and related operations at the highest risk of not functioning properly under such conditions and, for those, select the most effective adaptation measures that will ensure proper operation of the highest risk critical assets and the system as a whole.

*Component 3: Implementation and Maintenance Schedule.* Within 48 months of the effective date of the permit, the Permittee and Co-Permittee(s) shall submit to EPA a proposed schedule for implementation and maintenance of adaptive measures. The Implementation and Maintenance Schedule shall summarize the general types of significant risks<sup>12</sup> identified in Component 1, including the

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looking) relative to the baseline conditions and must include projections of flooding due to major storm and flood events using federal, state and local data, where available; b) Freeboard Value and 500-year floodplain Approach: The flood elevations that result from adding an additional 2 feet to the 100-year flood elevation for non-critical actions and by adding an additional 3 feet to the 100-year flood elevation for critical actions compared to the flood elevations that result from 500-year flood (the 0.2% -annual-chance flood) and selecting the higher of the two flood elevations.

9 “Impacts” refers to a strong effect on an asset and/or asset-related operation that may include destruction, damage or ineffective operation of the asset and/or asset operation. Impacts may be economic, environmental, or public health related.

10 The Permittee and Co-permittee(s) may complete this component using EPA’s Climate Resilience Evaluation and Awareness Tool (CREAT) Risk Assessment Application for Water Utilities, found on EPA’s website Creating Resilient Water Utilities (CRWU) (<https://www.epa.gov/crwu>), or methodology that provides comparable analysis.

11 “Adaptive Measures” refers to physical infrastructure or actions and strategies that a utility can use to protect their assets and mitigate the impacts of threats. They may include but are not limited to: building or modifying infrastructure, utilization of models (including but not limited to: flood, sea-level rise and storm surge, sewer/collection system, system performance), monitoring and inspecting (including but not limited to: flood control, infrastructure, treatment) and repair/retrofit.

12 In light of security concerns posed by the public release of information regarding vulnerabilities to wastewater infrastructure, the Permittee shall provide information only at a level of generality that indicates the overall nature of the vulnerability but omitting specific information regarding such vulnerability that could pose a security risk.

methodology and data used to derive future conditions<sup>13</sup> used in the analysis and describe the adaptive measures taken (or planned) to minimize those risks from the impact of major storm and flood events for each of the critical assets and related operations of the WWTS and the sewer system and how those adaptive measures will be maintained, including the rationale for either implementing or not implementing each adaptive measure that was assessed and an evaluation of how each adaptive measure taken (or planned) will be funded.

- b. *Credit for Prior Assessment(s) Completed by Permittee and/or Co-permittee(s).* If the Permittee and/or Co-permittee(s) has/have undertaken assessment(s) that were completed within 5 years of the effective date of this permit, or is [are] currently undertaking an assessment that address some or all of the Adaptation Plan components, such prior assessment(s) undertaken by the Permittee and/or Co-permittee(s) may be used (as long as the reporting time frames (set forth in Part I.C.1.a) and the signatory requirements (set forth in Part II.D.2 of this permit) are met) in satisfaction of some or all of these components, as long as the Permittee and/or Co-permittee(s) explains how its prior assessments specifically meet the requirements set forth in this permit and how the Permittee and/or Co-permittee(s) will address any permit requirements that have not been addressed in its prior or ongoing assessment(s).
- c. *Adaptation Plan Progress Report.* The Permittee and Co-Permittee(s) shall submit an Adaptation Plan Progress Report on the Adaptation Plan for the prior calendar year that documents progress made toward completing the Adaptation Plan and, following its completion, any progress made toward implementation of adaptive measures, and any changes to the WWTF or other assets that may impact the current risk assessment. The first Adaptation Progress Report is due the first March 31 following completion of the Identification of Critical Vulnerable Assets (*Component 1*) and shall be included with the annual report required in Part I.C.3 below each year thereafter. The Adaptation Plan shall be revised if on- or off-site structures are added, removed, or otherwise significantly changed in any way that will impact the vulnerability of the WWTS or sewer system.

## 2. Sewer System

Operation and maintenance (O&M) of the sewer system shall be in compliance with 40 CFR § 122.41 (d) and (e) and the terms and conditions of the Part II Standard Conditions, B. Operation and Maintenance of Pollution Controls which is attached to this Permit. The

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<sup>13</sup> See footnote 8.

Permittee and Co-permittee shall complete the following activities for the collection system which it owns:

a. Maintenance Staff

The Permittee and Co-permittee(s) shall provide an adequate staff to carry out the operation, maintenance, repair, and testing functions required to ensure compliance with the terms and conditions of this permit. Provisions to meet this requirement shall be described in the Sewer System O&M Plan required pursuant to Part I.C.2.e. below.

b. Preventive Maintenance Program

The Permittee and Co-permittee(s) shall maintain an ongoing preventive maintenance program to prevent overflows and bypasses caused by malfunctions or failures of the sewer system infrastructure. The program shall include an inspection program designed to identify all potential and actual unauthorized discharges. Plans and programs to meet this requirement shall be described in the Sewer System O&M Plan required pursuant to Part I.C.2.e. below.

c. Infiltration/Inflow

The Permittee and Co-permittee(s) shall control infiltration and inflow (I/I) into the sewer system as necessary to prevent high flow related unauthorized discharges from their collection systems and high flow related violations of the wastewater treatment plant's effluent limitations. Plans and programs to control I/I shall be described in the Sewer System O&M Plan required pursuant to Part I.C.2.e. below.

d. Sewer System Mapping

The Permittee and Co-permittee(s) shall maintain a map of the sewer collection system it owns. The map shall be on a street basemap of the community, with sufficient detail and at a scale to allow easy interpretation. The sewer system information shown on the map shall be based on current conditions and shall be kept up-to-date and available for review by federal, state, or local agencies. If any items listed below, such as the location of all outfalls, are not fully documented, the Permittee and Co-permittee(s) must clearly identify each component of the dataset that is incomplete, as well as the date of the last update of the mapping product. Such map(s) shall include, but not be limited to the following:

- (1) All sanitary sewer lines and related manholes;
- (2) All combined sewer lines, related manholes, and catch basins;

- (3) All combined sewer regulators and any known or suspected connections between the sanitary sewer and storm drain systems (e.g. combination manholes);
- (4) All outfalls, including the treatment plant outfall(s), CSOs, and any known or suspected SSOs, including stormwater outfalls that are connected to combination manholes;
- (5) All pump stations and force mains;
- (6) The wastewater treatment facility(ies);
- (7) All surface waters (labeled);
- (8) Other major appurtenances such as inverted siphons and air release valves;
- (9) A numbering system which uniquely identifies manholes, catch basins, overflow points, regulators and outfalls;
- (10) Interconnections with collection systems owned by other entities;
- (11) The scale and a north arrow; and
- (12) The pipe diameter, date of installation, type of material, distance between manholes, and the direction of flow.

e. Sewer System Operation and Maintenance Plan

The Permittee and Co-permittee(s) shall continue to implement a *Sewer System Operation and Maintenance Plan* for the portion of the system it owns. The Plan shall be available for review by federal, state and local agencies as requested.

- (1) A description of the collection system management goals, staffing, information management, and legal authorities;
- (2) A description of the collection system and the overall condition of the collection system including a list of all pump stations and a description of recent studies and construction activities; and
- (3) A preventive maintenance and monitoring program for the collection system;
- (4) Description of sufficient staffing necessary to properly operate and maintain the sanitary sewer collection system and how the operation and maintenance program is staffed;

- (5) Description of funding, the source(s) of funding and provisions for funding sufficient for implementing the plan;
- (6) Identification of known and suspected overflows and back-ups, including manholes. A description of the cause of the identified overflows and back-ups, corrective actions taken, and a plan for addressing the overflows and back-ups consistent with the requirements of this permit;
- (7) A description of the Permittee's programs for preventing I/I related effluent violations and all unauthorized discharges of wastewater, including overflows and by-passes and the ongoing program to identify and remove sources of I/I. The program shall include an inflow identification and control program that focuses on the disconnection and redirection of illegal sump pumps and roof down spouts;
- (8) An educational public outreach program for all aspects of I/I control, particularly private inflow; and
- (9) An Overflow Emergency Response Plan to protect public health from overflows and unanticipated bypasses or upsets that exceed any effluent limitation in the permit.

### 3. Annual Reporting Requirement

The Permittee and Co-permittee(s) shall submit a summary report of activities related to the implementation of its O&M Plans during the previous calendar year. The report shall be submitted to EPA and the State annually by March 31. The summary report shall, at a minimum, include:

- a. A description of the staffing levels maintained during the year;
- b. A map and a description of inspection and maintenance activities conducted and corrective actions taken during the previous year;
- c. Expenditures for any collection system maintenance activities and corrective actions taken during the previous year;
- d. A map with areas identified for investigation/action in the coming year;
- e. A summary of unauthorized discharges during the past year and their causes and a report of any corrective actions taken as a result of the unauthorized discharges reported pursuant to the Unauthorized Discharges section of this permit;
- f. If the monthly average flow exceeded 80 percent of the facility's 34 MGD design flow

(27.2 MGD) for three consecutive months in the previous calendar year, or there have been capacity related overflows, the report shall include:

- (1) Plans for further potential flow increases describing how the Permittee will maintain compliance with the flow limit and all other effluent limitations and conditions; and
- (2) A calculation of the maximum daily, weekly, and monthly infiltration and the maximum daily, weekly, and monthly inflow for the reporting year.

g. The Adaptation Plan Progress Report described in Part I.C.1.c above (beginning the first March 31 following 24 months from the effective date of the permit).

#### **D. ALTERNATE POWER SOURCE**

In order to maintain compliance with the terms and conditions of this permit, the Permittee and Co-permittee(s) shall provide an alternative power source(s) sufficient to operate the portion of the publicly owned treatment works it owns and operates, as defined in Part II.E.1 of this permit.

#### **E. INDUSTRIAL USERS AND PRETREATMENT PROGRAM**

##### **1. Legal Authority**

The Permittee has been delegated primary responsibility for enforcing against discharges prohibited by 40 CFR 403.5 and applying and enforcing any national Pretreatment Standards established by the United States Environmental Protection Agency in accordance with Section 307 (b) and (c) of The Clean Water Act (Act), as amended by The Water Quality Act (WQA), of 1987.

The Permittee shall operate an industrial pretreatment program in accordance with the General Pretreatment Regulations found in 40 CFR Part 403 and the approved pretreatment program submitted by the Permittee. The pretreatment program was approved on February 27, 1985 and has subsequently incorporated substantial modifications as approved by EPA. The approved pretreatment program, and any approved modifications thereto, is hereby incorporated by reference and shall be implemented in a manner consistent with the following procedures, as required by 40 CFR Part 403.

The Permittee must have or develop a legally enforceable municipal code or rules and regulations to authorize or enable the POTW to apply and enforce the requirements of Sections 307(b) and (c) and 402(b)(8) and (9) of the Act and comply with the requirements of § 403.8(f)(1). At a minimum, this legal authority shall enable the POTW to:

- a. Deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTW by Industrial Users where such contributions

do not meet applicable Pretreatment Standards and Requirements or where such contributions would cause the POTW to violate its NPDES permit;

- b. Require compliance with applicable Pretreatment Standards and Requirements by Industrial Users;
- c. Control through Permit, order, or similar means, the contribution to the POTW by each Industrial User to ensure compliance with applicable Pretreatment Standards and Requirements. In the case of Industrial Users this control shall be achieved through permits or equivalent control mechanism identified as significant under § 403.3(v), as required by § 403.8(f)(1)(iii);
- d. Require (a) the development of a compliance schedule by each Industrial User for the installation of technology required to meet applicable Pretreatment Standards and Requirements and (b) the submission of all notices and self-monitoring reports from Industrial Users as are necessary to assess and assure compliance by Industrial Users with Pretreatment Standards and Requirements, including but not limited to the reports required in § 403.12;
- e. Carry out all inspection, surveillance and monitoring procedures necessary to determine, independent of information supplied by Industrial Users, compliance or noncompliance with applicable Pretreatment Standards and Requirements by Industrial Users. At a minimum, all significant industrial users shall be sampled and inspected at the frequency established in the approved IPP, but in no case less than once per year, and with adequate maintenance of records, Representatives of the POTW shall be authorized to enter any premises of any Industrial User in which a Discharge source or treatment system is located or in which records are required to be kept under § 403.12(o) to assure compliance with Pretreatment Standards. Such authority shall be at least as extensive as the authority provided under section 308 of the Act;
- f. Obtain remedies for noncompliance by any Industrial User with any Pretreatment Standard and Requirement. All POTW's shall be able to seek injunctive relief for noncompliance by Industrial Users with Pretreatment Standards and Requirements. All POTWs shall also have authority to seek or assess civil or criminal penalties in at least the amount of \$1,000 a day for each violation by Industrial Users of Pretreatment Standards and Requirements in accordance with § 403.8(f)(1)(vi)(A); and
- g. Comply with the confidentiality requirements set forth in § 403.14.

## 2. Implementation Requirements

The Permittee shall operate a pretreatment program in accordance with the General Pretreatment Regulations found in 40 CFR Part 403 and with the legal authorities, policies, procedures, and financial provisions of the approved Pretreatment program submitted by the Permittee. The approved Pretreatment program, and any approved modifications thereto, is hereby incorporated by reference and shall be implemented in a manner consistent with the following procedures, as required by 40 CFR Part 403:

- a. In accordance with 40 CFR § 122.44(j)(1), Identify, in terms of character and volume of pollutants contributed from Industrial Users discharging into the POTW subject to Pretreatment Standards under section 307(b) of CWA and 40 CFR Part 403.
- b. The Permittee must notify these identified Industrial Users of applicable Pretreatment Standards and any applicable requirements in accordance with 40 CFR § 403.8(f)(2)(iii). Pursuant to 40 CFR § 403.8(f)(6), prepare and maintain a list of significant industrial users and identify the criteria in 40 CFR § 403.3(v)(1) applicable to each industrial user.
- c. The Permittee must carry out inspection procedures and randomly sample and analyze the effluent from Industrial Users and conduct surveillance activities in accordance with 40 CFR § 403.8(f)(2)(v), which will determine independent of information supplied by the industrial user, whether the industrial user is in compliance with the Pretreatment Standards. At a minimum, all significant industrial users shall be sampled and inspected at the frequency established in the approved IPP but in no case less than once per year and maintain adequate records.
- d. The Permittee shall receive and analyze self-monitoring reports and other notices submitted by Industrial Users in accordance with the self-monitoring requirements in 40 CFR § 403.12; This must include timely and appropriate reviews of industrial user reports and notifications to identify all violations of the user's permit, the local ordinance, and federal pretreatment standards and requirements.
- e. The Permittee shall evaluate whether each SIU needs a plan to control Slug Discharges in accordance with 40 CFR § 403.8(f)(2)(vi). SIUs must be evaluated within 1 year of being designated an SIU. If required, the Permittee shall require the SIU to prepare or update, and implement a slug prevention plan that contains at least the minimum required elements in 40 CFR § 403.8(f)(2)(vi)(A-D) and incorporate the slug control requirements into the SIU's control mechanism;
- f. Pursuant to 40 CFR § 403.8(f)(2)(vii), the Permittee shall investigate instances of

non-compliance with Pretreatment Standards and requirements indicated in required reports and notices or indicated by analysis, inspection, and surveillance activities.

- g. The Permittee shall publish, at least annually, in a newspaper or newspapers of general circulation that provides meaningful public notice within the jurisdiction(s) served by the POTW, a list of all non-domestic users which, at any time in the previous 12 months, were in significant noncompliance as defined in 40 CFR § 403.8 (f)(2)(viii).
- h. The Permittee shall provide sufficient resources and qualified personnel to implement its Pretreatment program in accordance with 40 CFR § 403.8(f)(3);
- i. The Permittee shall enforce all applicable Pretreatment Standards and requirements and obtain remedies for noncompliance by any industrial user. The Permittee shall develop, implement, and maintain an enforcement response plan in accordance with 40 CFR § 403.8(f)(5); and
- j. Pursuant to 40 CFR § 403.8(g), the Permittee that chooses to receive electronic documents must satisfy the requirements of 40 CFR Part 3 – (Electronic reporting).

### 3. Local Limit Development

- a. The Permittee shall develop, continually maintain, and enforce, as necessary, local limits to implement the general and specific prohibitions in 40 CFR § 403.5(c)(1) which prohibit the introduction of any pollutant(s) which cause pass through or interference and the introduction of specific pollutants to the waste treatment system from any source of non-domestic discharge.
- b. The Permittee shall develop and enforce specific effluent limits (local limits) for Industrial User(s), and all other users, as appropriate, which together with appropriate changes in the POTW Treatment Plant's Facilities or operation, are necessary to ensure continued compliance with the POTW's NPDES permit or sludge use or disposal practices. Specific local limits shall not be developed and enforced without individual notice to persons or groups who have requested such notice and an opportunity to respond. Within 90 days of the effective date of the permit, the Permittee shall prepare and submit a written technical evaluation to EPA analyzing the need to revise local limits. As part of this evaluation, the Permittee shall assess how the POTW performs with respect to influent and effluent of pollutants, water quality concerns, sludge quality, sludge processing concerns/inhibition, biomonitoring results, activated sludge inhibition, worker health and safety and collection system concerns. In preparing this evaluation, the Permittee shall complete and submit the attached form (see

Attachment C – Reassessment of Technically Based Industrial Discharge Limits with the technical evaluation to assist in determining whether existing local limits need to be revised. Justifications and conclusions should be based on actual plant data if available and should be included in the report. Should the evaluation reveal the need to revise local limits, the Permittee shall complete the revisions within 120 days of notification by EPA and submit the revisions to EPA for approval. The Permittee shall carry out the local limits revisions in accordance with EPA's Local Limit Development Guidance (July 2004).

#### 4. Notification Requirements

- a. The Permittee must notify EPA of any new introductions or any substantial change in pollutants from any Industrial User within sixty (60) days following the introduction or change, as required in 40 CFR 122.42(b)(1-3). Such notice must identify:
  - (1) Any new introduction of pollutants from an Industrial User which would be subject to Sections 301, 306, and 307 of the Act if it were directly discharging those pollutants; or
  - (2) Any substantial change in the volume or character of pollutants being discharged by any Industrial User;
  - (3) For the purposes of this section, adequate notice shall include information on:
    - i. The identity of the Industrial User;
    - ii. The nature and concentration of pollutants in the discharge and the average and maximum flow of the discharge; and
    - iii. Any anticipated impact of the change on the quantity or quality of effluent to be discharged from or biosolids produced at such POTW.
- b. The Permittee must notify EPA as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required 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 pursuant to 40 CFR § 122.29 (b);
  - (2) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged; or
  - (3) The alteration or addition results in a significant change in the Permittee's sludge use or disposal practices.

- c. The Permittee must notify EPA if the POTW modifies or intends to modify its Pretreatment Program.
- d. The Permittee must notify EPA of any instance of pass through or interference, known or suspected to be related to a discharge from an Industrial User. The notification shall be attached to the DMR submitted EPA and shall describe the incident, including the date, time, length, cause, and the steps taken by the Permittee and Industrial User to address the incident.

## 5. Annual Report Requirements

The Permittee shall provide EPA with a hard copy annual report that briefly describes the POTW's program activities, including activities of all participating agencies, if more than one jurisdiction is involved in the local program. The report required by this section shall be submitted no later than one year after approval of the POTW's Pretreatment Program, and at least annually thereafter. The report must include, at a minimum, the applicable required data in Appendix A to 40 CFR Part 127, a summary of changes to the POTW's pretreatment program that have not been previously reported to EPA, and any other relevant information requested by EPA. Beginning on December 21, 2025, all annual reports submitted in compliance with this section must be submitted electronically by the POTW Pretreatment Program to EPA or initial recipient, as defined in 40 CFR § 127.2(b). Electronic submittals shall be in compliance with this section and 40 CFR Part 3 (including, in all cases, subpart D to Part 3), 40 CFR § 122.22(e), and 40 CFR Part 127 (Part 127 is not intended to undo existing requirements for electronic reporting). Prior to this date, and independent of 40 CFR Part 127, EPA may also require POTW Pretreatment Programs to electronically submit annual reports under this section if specified by a particular permit or if required to do so by state law.

The Permittee shall provide EPA with an annual report describing the Permittee's pretreatment program activities for the twelve (12) month period ending 60 days prior to the due date in accordance with 40 CFR § 403.12(i). The annual report shall be consistent with the format described in Attachment D (Industrial Pretreatment Program Annual Report) of this permit and shall be submitted by **August 1** of each year.

## 6. Beginning the first full calendar year after the effective date of the permit, the Permittee shall commence annual sampling of the following types of industrial discharges into the POTW:

- Commercial Car Washes
- Platers/Metal Finishers
- Paper and Packaging Manufacturers
- Tanneries and Leather/Fabric/Carpet Treaters

- Manufacturers of Parts with Polytetrafluoroethylene (PTFE) or teflon type coatings (e.g., bearings)
- Landfill Leachate
- Centralized Waste Treaters
- Known or Suspected PFAS Contaminated Sites
- Fire Fighting Training Facilities
- Airports
- Any Other Known or Expected Sources of PFAS

Sampling shall be conducted using Method 1633 for the PFAS analytes listed in Attachment E. The industrial discharges sampled, and the sampling results shall be summarized and included in the annual report (see Part I.E.5).

## **F. SLUDGE CONDITIONS**

1. The Permittee shall comply with all existing federal and state laws and regulations that apply to sewage sludge use and disposal practices, including EPA regulations promulgated at 40 CFR § 503, which prescribe "Standards for the Use or Disposal of Sewage Sludge" pursuant to § 405(d) of the CWA, 33 U.S.C. § 1345(d).
2. If both state and federal requirements apply to the Permittee's sludge use and/or disposal practices, the Permittee shall comply with the more stringent of the applicable requirements.
3. The requirements and technical standards of 40 CFR Part 503 apply to the following sludge use or disposal practices:
  - a. Land application - the use of sewage sludge to condition or fertilize the soil
  - b. Surface disposal - the placement of sewage sludge in a sludge only landfill
  - c. Sewage sludge incineration in a sludge only incinerator
4. The requirements of 40 CFR Part 503 do not apply to facilities which dispose of sludge in a municipal solid waste landfill. 40 CFR § 503.4. These requirements also do not apply to facilities which do not use or dispose of sewage sludge during the life of the permit but rather treat the sludge (e.g., lagoons, reed beds), or are otherwise excluded under 40 CFR § 503.6.
5. The 40 CFR Part 503 requirements include the following elements:
  - a. General requirements
  - b. Pollutant limitations

- c. Operational Standards (pathogen reduction requirements and vector attraction reduction requirements)
- d. Management practices
- e. Record keeping
- f. Monitoring
- g. Reporting

Which of the 40 CFR Part 503 requirements apply to the Permittee will depend upon the use or disposal practice followed and upon the quality of material produced by a facility. The EPA Region 1 guidance document, "EPA Region 1 - NPDES Permit Sludge Compliance Guidance" (November 4, 1999), may be used by the Permittee to assist it in determining the applicable requirements.

6. The sludge shall be monitored for pollutant concentrations (all Part 503 methods) and pathogen reduction and vector attraction reduction (land application and surface disposal) at the following frequency. This frequency is based upon the volume of sewage sludge generated at the facility in dry metric tons per year, as follows:

less than 290	1/ year
290 to less than 1,500	1 /quarter
1,500 to less than 15,000	6 /year
15,000 +	1 /month

Sampling of the sewage sludge shall use the procedures detailed in 40 CFR § 503.8.

7. Under 40 CFR § 503.9(r), the Permittee is a "person who prepares sewage sludge" because it "is ... the person who generates sewage sludge during the treatment of domestic sewage in a treatment works ...." If the Permittee contracts with another "person who prepares sewage sludge" under 40 CFR § 503.9(r) – i.e., with "a person who derives a material from sewage sludge" – for use or disposal of the sludge, then compliance with Part 503 requirements is the responsibility of the contractor engaged for that purpose. If the Permittee does not engage a "person who prepares sewage sludge," as defined in 40 CFR § 503.9(r), for use or disposal, then the Permittee remains responsible to ensure that the applicable requirements in Part 503 are met. 40 CFR § 503.7. If the ultimate use or disposal method is land application, the Permittee is responsible for providing the person receiving the sludge with notice and necessary information to comply with the requirements of 40 CFR § 503 Subpart B.
8. The Permittee shall submit an annual report containing the information specified in the 40 CFR Part 503 requirements (§ 503.18 (land application), § 503.28 (surface disposal), or § 503.48 (incineration)) by February 19 (see also "EPA Region 1 - NPDES Permit Sludge

Compliance Guidance"). Reports shall be submitted electronically using EPA's Electronic Reporting tool ("NeT") (see "Reporting Requirements" section below).

9. Compliance with the requirements of this permit or 40 CFR Part 503 shall not eliminate or modify the need to comply with applicable requirements under RSA 485-A and Env-Wq 800, New Hampshire Sludge Management Rules.

#### 10. Incinerator Conditions and Limitations

- a. Firing of sewage sludge shall not violate the requirements of the National Emission Standard for beryllium in 40 CFR Part 61, subpart C - 10 grams per 24-hour period.
- b. Firing of sewage sludge shall not violate the requirements in the National Emission Standard for mercury in 40 CFR Part 61, subpart E - 3200 grams per 24-hour period.
- c. The daily concentration of the metals in the sewage sludge fed to the incinerator shall not exceed the limits specified below (dry weight basis):

	<u>Maximum Daily</u>
Arsenic	8,573 mg/kg
Cadmium	43,416 mg/kg
Chromium	1,423,398 mg/kg
Lead	262,781 mg/kg
Nickel	213,643 mg/kg

- d. The exit gas from the sewage sludge incinerator stack shall be monitored continuously for carbon monoxide.
- e. The monthly average concentration of carbon monoxide in the exit gas from the sewage sludge incinerator, corrected for zero percent moisture and to seven percent oxygen, shall not exceed - **100 ppm on a volumetric basis**.
- f. The CO concentration shall be corrected to zero percent moisture using the correction factor below:

$$\text{Correction factor} = \frac{1}{(1-X)}$$

Where: X = decimal fraction of the percent moisture in the sewage sludge incinerator exit gas in hundredths.

- g. The measured CO concentration shall be corrected to seven percent oxygen using the correction factor below:

$$\text{Correction factor} = \frac{14}{(21-Y)}$$

Where: Y = percent oxygen concentration in the sewage sludge incinerator stack exit gas (dry volume/dry volume).

- h. The measured CO value shall be multiplied by the correction factors in items **c** and **d**. The corrected CO value shall be used to determine compliance with paragraph b.

## 11. Incinerator Management Practices

- a. An instrument that continuously measures and records the carbon monoxide concentration in the sewage sludge incinerator stack exit gas shall be installed, calibrated, operated and maintained for each incinerator in accordance with the manufacturer's written instructions.
- b. An instrument that continuously measures and records the oxygen concentration in the sewage sludge incinerator stack exit gas shall be installed, calibrated, operated and maintained for each incinerator in accordance with the manufacturer's written instructions.
- c. An instrument that continuously measures and records information used to determine the moisture content in the sewage sludge incinerator stack exit gas shall be installed, calibrated, operated and maintained for each incinerator in accordance with the manufacturer's written instructions.
- d. An instrument that continuously measures and records combustion temperatures shall be installed, calibrated, operated and maintained for each incinerator in accordance with the manufacturer's written instructions.
- e. Upon completion of the testing to demonstrate compliance with the performance specifications, but not later than 90 days from the effective date of this permit, the operator of the incinerators shall submit to EPA - Region 1 a certification stating that the continuous emissions monitoring system meets the performance specifications detailed in the above referenced guidance.
- f. Operation of the incinerator shall not cause the operating combustion temperature for the incinerator to exceed the performance test combustion temperature by more than 20 percent.
- g. Any air pollution control devices shall be appropriate for the type of incinerator and operating parameters for the air pollution control device shall be adequate to indicate proper performance of the air pollution control device. For

incinerators subject to the requirements of 40 CFR subpart O, operation of the air pollution control device shall not violate the air pollution control device requirements of that part.

- h. Sewage sludge shall not be fired in an incinerator if it is likely to adversely affect a threatened or endangered species listed under Section 4 of the Endangered Species Act or its designated critical habitat.
- i. The permittee shall notify the EPA and NHDES if any continuous emission monitoring equipment is shut down or broken down for more than 72 hours while the incinerator continues to operate.
- j. Notification shall include the following:
  - (1) The reason for the shut down or break down;
  - (2) Steps taken to restore the system;
  - (3) Expected length of the down time; and
  - (4) The expected length of the incinerator operation during the down time of the monitoring system.
- k. Break downs or shut downs of less than 72 hours shall be recorded in the operations log along with an explanation of the event.
- l. Copies of all manufacturer's instructions shall be kept on file and be available during inspections.

## 12. Incinerator Monitoring Frequency

- a. The frequency of monitoring beryllium shall be as required in 40 CFR Part 61, subpart C.
- b. The frequency of monitoring mercury shall be as required in 40 CFR Part 61, subpart E.
- c. The pollutants in paragraph 2c shall be monitored at the following frequency - **bimonthly (6 times per year)**.
- d. After the sewage sludge has been monitored for the pollutants in paragraph 2c for two years at the frequency specified above, the permittee may request a reduction in the monitoring frequency.

- e. The operating parameters for the air pollution control devices shall be monitored at the following frequency - **1/day**.
- f. The CO concentration in the exit gas, the oxygen concentration in the exit gas, information from the instrument used to determine moisture content, and combustion temperatures shall be **continuously** monitored.

#### 13. Incinerator Sampling and Analysis

- a. The sewage shall be sampled at a location which is prior to entering the incinerator and provides a representative sample of the sewage sludge being incinerated.
- b. The sewage sludge shall be analyzed using "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA publication SW-846, Second Edition (1982) with Updates I (April 1984) and II (April 1985) and Third Edition (November 1986) with Revision I (December 1987).
- c. If emission testing is done for demonstration of NESHAPS, testing shall be in accordance with Method 101A in 40 CFR Part 60, Appendix B, "Determination of Particulate and Gaseous Mercury Emissions from Sewage Sludge Incinerators".
- d. Sewage sludge samples for mercury shall be sampled and analyzed using Method 105 in 40 CFR Part 61, Appendix B, "Determination of Mercury in Wastewater Treatment Plant Sewage Sludge".

#### 14. Incinerator Record Keeping Requirements

The permittee is required to keep records for the following:

- a. Report the maximum concentration of each pollutant listed in paragraph 2(c) above;
- b. Report the average monthly CO concentration in the exit gas from the incinerator stack;
- c. Information that demonstrates compliance with the National Emission Standard for beryllium;
- d. Information that demonstrates compliance with the National Emission Standard for mercury. If sludge sampling is used, include calculation for compliance demonstration;
- e. The operating combustion temperature for the sewage sludge incinerator;

- f. Report the average monthly operating values for the air pollution control devices operating parameters;
- g. The oxygen concentration and the information used to measure moisture content in the exit gas from the sewage sludge incinerator. Report the oxygen concentration and percent moisture results which were used to determine the CO values reported in paragraph 8b;
- h. Record the average daily and average monthly sewage sludge feed rate to the incinerator;
- i. The stack height of the incinerator;
- j. The dispersion factor for the site where the incinerator is located;
- k. The control efficiency for arsenic, lead, chromium, cadmium and nickel;
- l. A calibration and maintenance log for the instruments used to measure the CO concentration and the oxygen concentration in the exit gas; the information need to determine moisture content in the exit gas, and the combustion temperatures.

## **G. SPECIAL CONDITIONS**

### **1. Provision to Modify pH Range**

The pH range may be modified if the Permittee satisfies conditions set forth in Part I.J.5 below. Upon notification of an approval by NHDES, EPA will review and, if acceptable, will submit written notice to the Permittee of the permit change. The modified pH range will not be in effect until the Permittee receives written notice from EPA.

### **2. Compliance Schedules**

- a. The Total Aluminum monthly average limit of 118 µg/L will become effective 12 months from the effective date of the permit to allow time for the Permittee to optimize treatment and/or source reduction in order to come into consistent compliance with the effluent limits. During these initial 12 months, the Permittee shall monitor (2/month) and report monthly average and daily maximum Total Aluminum on each monthly DMR.
- b. Beginning the first May after the effective date of the permit, the Permittee shall evaluate and implement optimization measures to reduce the concentration of ammonia nitrogen in the discharge to achieve compliance with the ammonia limit (from May 1 through October 31). The monthly average ammonia limit shall go into

effect the first May following 24 months after the effective date of the permit.

### 3. Ambient Phosphorus Monitoring

Beginning in April of the first odd numbered year that occurs at least six months after permit issuance, and during odd numbered years thereafter, the Permittee shall collect monthly samples from April through October at a location in the receiving water upstream of the facility and analyze the samples for total phosphorus. Sampling shall be conducted on any calendar day that is preceded by at least 72 hours with less than or equal to 0.1 inches of cumulative rainfall. A sampling plan shall be submitted to EPA and the State (in accordance with Part I.I.2 and Part I.I.7, respectively) at least three months prior to the first planned sampling date. For the years that monitoring is not required, the Permittee shall report NODI code "9" (conditional monitoring not required).

## H. COMBINED SEWER OVERFLOWS

1. During wet weather (including snowmelt), the Permittee is authorized to discharge storm water/wastewater from the following CSO outfalls: 011, 018, 031, 039, 043, 044, 045, 046, 047, 050, 051, 052, 053, 054 and 055 (See Attachment F of this Permit).
2. The effluent discharged from these CSOs is subject to the following limitations:
  - a. The discharges shall receive treatment at a level providing Best Practicable Control Technology Currently Available ("BPT"), Best Conventional Pollutant Control Technology ("BCT") to control and abate conventional pollutants and Best Available Technology Economically Achievable (BAT) to control and abate non-conventional and toxic pollutants. The EPA has made a Best Professional Judgment ("BPJ") determination that BPT, BCT, and BAT for combined sewer overflow ("CSO") control includes the implementation of Nine Minimum Controls ("NMC") specified below. These Nine Minimum Controls and the Nine Minimum Controls Minimum Implementation Levels which are detailed further in Part I.H.3. are requirements of this permit.
    - (1) Proper operation and regular maintenance programs for the sewer system and the combined sewer overflows;
    - (2) Maximum use of the collection system for storage;
    - (3) Review and modification of the pretreatment program to assure CSO impacts are minimized;
    - (4) Maximization of flow to the POTW for treatment;
    - (5) Prohibition of dry weather overflows from CSOs;

- (6) Control of solid and floatable materials in CSOs;
- (7) Pollution prevention programs that focus on contaminant reduction activities;
- (8) Public notification to ensure that the public receives adequate notification of CSO occurrences and impacts;
- (9) Monitoring to effectively characterize CSO impacts and the efficacy of CSO controls.

b. The discharges shall not cause or contribute to violations of federal or state Water Quality Standards.

3. Nine Minimum Controls Minimum Implementation Levels

- a. The Permittee must implement the nine minimum controls in accordance with the documentation provided to EPA and NHDES or as subsequently modified to enhance the effectiveness of the controls. This implementation must include the controls identified in Part I.H.3.b-g of this permit plus other controls the Permittee can reasonably undertake as set forth in the documentation.
- b. Each CSO structure/regulator, pumping station and/or tidegate shall be routinely inspected, at a minimum of once per month, to ensure that they are in good working condition and adjusted to minimize combined sewer discharges (NMC # 1, 2 and 4). The following inspection results shall be recorded: the date and time of inspection, the general condition of the facility, and whether the facility is operating satisfactorily. If maintenance is necessary, the Permittee shall record: the description of the necessary maintenance, the date the necessary maintenance was performed, and whether the observed problem was corrected. The Permittee shall maintain all records of inspections for at least three years.
- c. **Annually, by March 31<sup>st</sup>,** the Permittee shall submit a certification to NHDES and EPA which states that the previous calendar year's monthly inspections were conducted, results recorded, and records maintained. NHDES and EPA have the right to inspect any CSO related structure or outfall at any time without prior notification to the Permittee. Discharges to the combined system of septage, holding tank wastes, or other material which may cause a visible oil sheen or containing floatable material are prohibited during wet weather when CSO discharges may be active (NMC # 3, 6, and 7).
- d. Dry weather overflows ("DWOs") are prohibited (NMC # 5). All dry weather sanitary and/or industrial discharges from CSOs must be reported to EPA and NHDES orally within 24 hours of the time the Permittee becomes aware of the circumstances and a written submission shall also be provided within 5 days of the time the Permittee becomes aware of the circumstances using NeT-Sewer Overflow as described in Part I.I.6 below. See also Paragraph D.1.e. of Part II of this permit.

e. The Permittee shall quantify and record all discharges from combined sewer outfalls (NMC # 9). Quantification shall be through direct measurement. The following information must be recorded for each combined sewer outfall for each discharge event, as set forth in Part I.H.5.:

- Duration (hours) of discharge;
- Volume (gallons) of discharge;
- National Weather Service precipitation data from the nearest gage where precipitation data is available. Cumulative precipitation per discharge event shall be calculated.

The Permittee shall retain records of CSO discharges for a period of at least 3 years from the date of the sample, measurement, report or application.

f. The Permittee shall install and maintain identification signs for all combined sewer outfall structures (NMC # 8). The signs must be located at or near the combined sewer outfall structures and easily readable by the public from the land and water. These signs shall be a minimum of 12 x 18 inches in size, with white lettering against a green background, and shall contain the following information:

CITY OF MANCHESTER  
WET WEATHER SEWAGE DISCHARGE  
OUTFALL (discharge serial number)

The Permittee shall place signs in English and include a universal wet weather sewage discharge symbol.

Where there are easements over property not owned by the Permittee that must be obtained to meet this requirement, the Permittee shall identify the appropriate landowners and obtain the necessary easements, to the extent practicable.

g. Public Notification Plan

(1) Within 180 days of the effective date of the permit, the Permittee shall submit to EPA and NHDES a Public Notification Plan describing the measures that will be taken to meet NMC#8 in Part I.H.2 of this permit (NMC #8). The public notification plan shall include the means for disseminating information to the public, including communicating the initial and supplemental notifications required in Part I.H.3.g.(2) and (3) of this permit, as well as procedures for communicating with public health departments, including downstream communities, whose waters may be affected by discharges from the Permittee's CSOs.

(2) Initial notification of a probable CSO activation shall be provided to the public as soon as practicable, but no later than, two (2) hours after becoming aware by monitoring, modeling or other means that a probable CSO discharge has occurred. In addition to posting this notification to a website, this information may also be communicated using other electronic means. The initial notification shall include the following information:

- Date and time of probable CSO discharge
- CSO number and location

(3) Supplemental notification shall be provided to the public as soon as practicable, but no later than, twenty-four (24) hours after becoming aware of the termination of any CSO discharge(s). In addition to posting this notification to a website, this information may also be communicated using other electronic means. The supplemental notification shall include the following information:

- CSO number and location
- Confirmation of CSO discharge
- Date, start time and stop time of the CSO discharge

(4) Annual notification - **Annually, by March 31<sup>st</sup>**, the Permittee shall post the annual report for the previous calendar year (described in Part I.H.4 below) on a publicly available website, and it shall remain on the website for a minimum of 24 months.

(5) The Public Notification Plan shall be implemented no later than 12 months following the effective date of the Permit.

#### 4. Nine Minimum Controls Reporting Requirement

**Annually, by March 31<sup>st</sup>**, the Permittee shall submit a report summarizing activities during the previous calendar year relating to compliance with the nine minimum controls. The annual report shall include information on the locations of CSOs, a summary of CSO outfall monitoring data required by Part I.H.5 of this permit, and the status and progress of CSO abatement work.

#### 5. Combined Sewer Overflow Outfall Monitoring

For each combined sewer overflow outfall listed in Part I.H.1 of this permit, the Permittee must monitor the following which shall be reported in each monthly DMR for each outfall:

Parameters	Reporting Requirements	Monitoring Requirements	
	Total Monthly	Measurement Frequency	Sample Type
Total Flow	Report MG/Month	Daily, when discharging	Continuous
Total Flow Duration (Duration of flow through CSO)	Report Hours	Daily, when discharging	Continuous
Number of CSO Discharge Events	Report Monthly Count	Daily, when discharging	Occurrences
Rainfall	Total precipitation (inches)	Daily, when discharging	Calculation

- a. For Total Flow, measure the total flow discharged from each CSO outfall during the month. For Total Flow Duration, report the total duration (hours) of discharges for each CSO outfall during the month. For Number of CSO Discharge Events, a single discharge event spanning more than one calendar day shall be reported as one discharge event.
- b. For those months when a CSO discharge does not occur, the Permittee must indicate "no discharge" for the outfall for which data was not collected.
- c. This information shall be submitted with each monthly DMR and submitted with the annual report required by Part I.H.4. of this permit.
- d. National Weather Service precipitation data from the nearest gage where precipitation data is available. Cumulative precipitation per discharge event shall be calculated.

## I. REPORTING REQUIREMENTS

Unless otherwise specified in this permit, the Permittee shall submit reports, requests, and information and provide notices in the manner described in this section.

### 1. Submittal of DMRs Using NetDMR

The Permittee shall continue to submit its monthly monitoring data in discharge monitoring reports (DMRs) to EPA and the State electronically using NetDMR no later than the 15th day of the month. When the Permittee submits DMRs using NetDMR, it is not required to submit hard copies of DMRs to EPA or the State. NetDMR is accessible through EPA's Central Data Exchange at <https://cdx.epa.gov/>.

### 2. Submittal of Reports as NetDMR Attachments

Unless otherwise specified in this permit, the Permittee and Co-permittee(s) shall electronically submit all reports to EPA as NetDMR attachments rather than as hard copies. This includes the NHDES Monthly Operating Reports (MORs). See Part I.I.7. for more information on State reporting. Because the due dates for reports described in this permit may not coincide with the due date for submitting DMRs (which is no later than the 15th day of the month), a report submitted electronically as a NetDMR attachment shall be

considered timely if it is electronically submitted to EPA using NetDMR with the next DMR due following the report due date specified in this permit.

### 3. Submittal of Industrial User and Pretreatment Related Reports

- a. Prior to 21 December 2025, all reports and information required of the Permittee in the Industrial Users and Pretreatment Program section of this permit shall be submitted to the Pretreatment Coordinator in EPA Region 1 Water Division (WD). Starting on 21 December 2025, these submittals must be done electronically as NetDMR attachments and/or using EPA's NPDES Electronic Reporting Tool ("NeT"), or another approved EPA system, which will be accessible through EPA's Central Data Exchange at <https://cdx.epa.gov/>. These requests, reports and notices include:
  - (1) Annual Pretreatment Reports,
  - (2) Pretreatment Reports Reassessment of Technically Based Industrial Discharge Limits Form,
  - (3) Revisions to Industrial Discharge Limits,
  - (4) Report describing Pretreatment Program activities, and
  - (5) Proposed changes to a Pretreatment Program

- b. This information shall be submitted to EPA WD as a hard copy at the following address:

**U.S. Environmental Protection Agency  
Water Division  
Regional Pretreatment Coordinator  
5 Post Office Square - Suite 100 (06-03)  
Boston, MA 02109-3912**

### 4. Submittal of Biosolids/Sewage Sludge Reports

By February 19 of each year, the Permittee must electronically report their annual Biosolids/Sewage Sludge Report for the previous calendar year using EPA's NPDES Electronic Reporting Tool ("NeTBIO"), which is accessible through EPA's Central Data Exchange at <https://cdx.epa.gov/>.

### 5. Submittal of Requests and Reports to EPA Water Division (WD)

- a. The following requests, reports, and information described in this permit shall be submitted to the NPDES Applications Coordinator in EPA Water Division (WD):

- (1) Transfer of permit notice;
- (2) Request for changes in sampling location;
- (3) Request for reduction in testing frequency;
- (4) Report on unacceptable dilution water / request for alternative dilution water for WET testing.

b. These reports, information, and requests shall be submitted to EPA WD electronically at [R1NPDESReporting@epa.gov](mailto:R1NPDESReporting@epa.gov).

6. Submittal of Sewer Overflow and Bypass Reports and Notifications

The Permittee and Co-permittee(s) shall submit required reports and notifications under Part II.B.4.c, for bypasses, and Part II.D.1.e, for sanitary sewer overflows (SSOs) electronically using EPA's NPDES Electronic Reporting Tool ("NeT"), which will be accessible through EPA's Central Data Exchange at <https://cdx.epa.gov/>.

7. State Reporting

Unless otherwise specified in this permit or by the State, duplicate signed copies of all reports, information, requests or notifications described in this permit, including the reports, information, requests or notifications described in Parts I.I.3 through I.I.6 shall also be submitted to the New Hampshire Department of Environmental Services, Water Division (NHDES-WD) electronically to the Permittee's assigned NPDES inspector at NHDES-WD or as a hardcopy to the following addresses:

**New Hampshire Department of Environmental Services**  
**Water Division**  
**Wastewater Engineering Bureau**  
**29 Hazen Drive, P.O. Box 95**  
**Concord, New Hampshire 03302-0095**

8. Verbal Reports and Verbal Notifications

- a. Any verbal reports or verbal notifications, if required in Parts I and/or II of this permit, shall be made to both EPA and to the State. This includes verbal reports and notifications which require reporting within 24 hours (e.g., Part II.B.4.c.(2), Part II.B.5.c.(3), and Part II.D.1.e).
- b. Verbal reports and verbal notifications shall be made to:

EPA ECAD at 617-918-1510

and

NHDES Assigned NPDES Inspector at 603-271-2985

#### **J. STATE 401 CERTIFICATION CONDITIONS**

1. The Permittee shall not at any time, either alone or in conjunction with any person or persons, cause directly or indirectly the discharge of waste into the said receiving water unless it has been treated in such a manner as will not lower the legislated water quality classification of, or interfere with the uses assigned to, said water by the New Hampshire Legislature (RSA 485-A:12).
2. This NPDES discharge permit is issued by EPA under federal law. Upon final issuance by EPA, the New Hampshire Department of Environmental Services-Water Division (NHDES-WD) may adopt this permit, including all terms and conditions, as a state permit pursuant to RSA 485-A:13.
3. EPA shall have the right to enforce the terms and conditions of this permit pursuant to federal law and NHDES-WD shall have the right to enforce the permit pursuant to state law, if the permit is adopted. 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 the permit as issued by the other agency.
4. Pursuant to New Hampshire Statute RSA 485-A:13,I(c), any person responsible for a bypass or upset at a wastewater facility shall give immediate notice of a bypass or upset to all public or privately owned water systems drawing water from the same receiving water and located within 20 miles downstream of the point of discharge regardless of whether or not it is on the same receiving water or on another surface water to which the receiving water is tributary. Wastewater facility is defined at RSA 485-A:2XIX as the structures, equipment, and processes required to collect, convey, and treat domestic and industrial wastes, and dispose of the effluent and sludge. The Permittee shall maintain a list of persons, and their telephone numbers, who are to be notified immediately by telephone. In addition, written notification, which shall be postmarked within 3 days of the bypass or upset, shall be sent to such persons.
5. The pH range of 6.5 to 8.0 Standard Units (S.U.) must be achieved in the final effluent unless the Permittee can demonstrate to NHDES-WD: 1) that the range should be widened due to naturally occurring conditions in the receiving water; or 2) that the naturally occurring receiving water pH is not significantly altered by the Permittee's discharge. The scope of any demonstration project must receive prior approval from NHDES-WD. In no case, shall the above procedure result in pH limits outside the range of 6.0 to 9.0 S.U., which is the federal effluent limitation guideline regulation for pH for secondary treatment and is found in 40 CFR § 133.102(c).
6. Pursuant to New Hampshire Code of Administrative Rules, Env-Wq 703.07(a):

Any person proposing to construct or modify any of the following shall submit an application for a sewer connection permit to the department:

- a. Any extension of a collector or interceptor, whether public or private, regardless of flow;
- b. Any wastewater connection or other discharge in excess of 5,000 gpd;
- c. Any wastewater connection or other discharge to a WWTP operating in excess of 80 percent design flow capacity or design loading capacity based on actual average flow or loading for 3 consecutive months;
- d. Any industrial wastewater connection or change in existing discharge of industrial wastewater, regardless of quality or quantity;
- e. Any sewage pumping station greater than 50 gpm or serving more than one building; or
- f. Any proposed sewer that serves more than one building or that requires a manhole at the connection.

7. Pursuant to Env-Wq 305.21, at a frequency no less than every five years, the Permittee shall submit to NHDES:

- a. A copy of its current sewer use ordinance if it has been revised without department approval subsequent to any previous submittal to the department or a certification that no changes have been made.
- b. A current list of all significant indirect dischargers to the POTW. At a minimum, the list shall include for each significant indirect discharger, its name and address, the name and daytime telephone number of a contact person, products manufactured, industrial processes used, existing pretreatment processes, and discharge permit status.
- c. A list of all permitted indirect dischargers; and
- d. A certification that the municipality is strictly enforcing its sewer use ordinance and all discharge permits it has issued.

8. When the effluent discharged for a period of three (3) consecutive months exceeds 80 percent of the 34 MGD design flow (27.2 MGD) or design loading capacity, the Permittee shall submit to the permitting authorities a projection of flows and loadings up to the time when the design capacity of the treatment facility will be reached, and a program for maintaining satisfactory treatment levels consistent with approved water quality

management plans. Before the design flow will be reached, or whenever treatment necessary to achieve permit limits cannot be assured, the Permittee may be required to submit plans for facility improvements.

**Attachment A - USEPA REGION 1 FRESHWATER  
ACUTE TOXICITY TEST PROCEDURE AND  
PROTOCOL**

**I. GENERAL REQUIREMENTS**

The permittee shall conduct acceptable acute toxicity tests in accordance with the appropriate test protocols described below:

- **Daphnid (Ceriodaphnia dubia) definitive 48 hour test.**
- **Fathead Minnow (Pimephales promelas) definitive 48 hour test.**

Acute toxicity test data shall be reported as outlined in Section VIII.

**II. METHODS**

The permittee shall use 40 CFR Part 136 methods. Methods and guidance may be found at:

<https://www.epa.gov/cwa-methods/whole-effluent-toxicity-methods>

The permittee shall also meet the sampling, analysis and reporting requirements included in this protocol. This protocol defines more specific requirements while still being consistent with the Part 136 methods. If, due to modifications of Part 136, there are conflicting requirements between the Part 136 method and this protocol, the permittee shall comply with the requirements of the Part 136 method.

**III. SAMPLE COLLECTION**

A discharge sample shall be collected. Aliquots shall be split from the sample, containerized and preserved (as per 40 CFR Part 136) for chemical and physical analyses required. The remaining sample shall be measured for total residual chlorine and dechlorinated (if detected) in the laboratory using sodium thiosulfate for subsequent toxicity testing. (Note that EPA approved test methods require that samples collected for metals analyses be preserved immediately after collection.) Grab samples must be used for pH, temperature, and total residual chlorine (as per 40 CFR Part 122.21).

Standard Methods for the Examination of Water and Wastewater describes dechlorination of samples (APHA, 1992). Dechlorination can be achieved using a ratio of 6.7 mg/L anhydrous sodium thiosulfate to reduce 1.0 mg/L chlorine. If dechlorination is necessary, a thiosulfate control (maximum amount of thiosulfate in lab control or receiving water) must also be run in the WET test.

All samples held overnight shall be refrigerated at 1- 6°C.

#### **IV. DILUTION WATER**

A grab sample of dilution water used for acute toxicity testing shall be collected from the receiving water at a point immediately upstream of the permitted discharge's zone of influence at a reasonably accessible location. Avoid collection near areas of obvious road or agricultural runoff, storm sewers or other point source discharges and areas where stagnant conditions exist. In the case where an alternate dilution water has been agreed upon an additional receiving water control (0% effluent) must also be tested.

If the receiving water diluent is found to be, or suspected to be toxic or unreliable, an alternate standard dilution water of known quality with a hardness, pH, conductivity, alkalinity, organic carbon, and total suspended solids similar to that of the receiving water may be substituted **AFTER RECEIVING WRITTEN APPROVAL FROM THE PERMIT ISSUING AGENCY(S).**

Written requests for use of ADW with supporting documentation must be sent electronically to the NPDES Applications Coordinator in EPA Water Division (WD) at the following email address:

[R1NPDESReporting@epa.gov](mailto:R1NPDESReporting@epa.gov)

Note: USEPA Region 1 retains the right to modify any part of the alternate dilution water policy stated in this protocol at any time. Any changes to this policy will be documented in the annual DMR posting.

*See the EPA Region 1 website at <https://www.epa.gov/aboutepa/epa-region-1-new-england> (click on NPDES, EPA Permit Attachments, Self-Implementing Alternate Dilution Water Guidance) for important details on alternate dilution water substitution requests.*

**EPA NEW ENGLAND EFFLUENT TOXICITY TEST CONDITIONS FOR THE  
DAPHNID, CERIODAPHNIA DUBIA 48 HOUR ACUTE TESTS<sup>1</sup>**

1. Test type	Static, non-renewal
2. Temperature (°C)	20 $\pm$ 1°C or 25 $\pm$ 1°C
3. Light quality	Ambient laboratory illumination
4. Photoperiod	16 hour light, 8 hour dark
5. Test chamber size	Minimum 30 ml
6. Test solution volume	Minimum 15 ml
7. Age of test organisms	1-24 hours (neonates)
8. No. of daphnids per test chamber	5
9. No. of replicate test chambers per treatment	4
10. Total no. daphnids per test concentration	20
11. Feeding regime	As per manual, lightly feed YCT and <u>Selenastrum</u> to newly released organisms while holding prior to initiating test
12. Aeration	None
13. Dilution water <sup>2</sup>	Receiving water, other surface water, synthetic water adjusted to the hardness and alkalinity of the receiving water (prepared using either Millipore Milli-Q <sup>R</sup> or equivalent deionized water and reagent grade chemicals according to EPA acute toxicity test manual) or deionized water combined with mineral water to appropriate hardness.
14. Dilution series	$\geq$ 0.5, must bracket the permitted RWC
15. Number of dilutions	5 plus receiving water and laboratory water control and thiosulfate control, as necessary. An additional dilution at the permitted effluent concentration (% effluent) is required if it is not included in the dilution series.

16. Effect measured	Mortality-no movement of body or appendages on gentle prodding
17. Test acceptability	90% or greater survival of test organisms in dilution water control solution
18. Sampling requirements	For on-site tests, samples must be used within 24 hours of the time that they are removed from the sampling device. For off-site tests, samples must first be used within 36 hours of collection.
19. Sample volume required	Minimum 1 liter

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Footnotes:

1. Adapted from EPA-821-R-02-012.
2. Standard prepared dilution water must have hardness requirements to generally reflect the characteristics of the receiving water.

**EPA NEW ENGLAND TEST CONDITIONS FOR THE FATHEAD MINNOW  
(PIMEPHALES PROMELAS) 48 HOUR ACUTE TEST<sup>1</sup>**

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1. Test Type	Static, non-renewal
2. Temperature (°C)	20 + 1 ° C or 25 + 1°C
3. Light quality	Ambient laboratory illumination
4. Photoperiod	16 hr light, 8 hr dark
5. Size of test vessels	250 mL minimum
6. Volume of test solution	Minimum 200 mL/replicate
7. Age of fish	1-14 days old and age within 24 hrs of each other
8. No. of fish per chamber	10
9. No. of replicate test vessels per treatment	4
10. Total no. organisms per concentration	40
11. Feeding regime	As per manual, lightly feed test age larvae using concentrated brine shrimp nauplii while holding prior to initiating test
12. Aeration	None, unless dissolved oxygen (D.O.) concentration falls below 4.0 mg/L, at which time gentle single bubble aeration should be started at a rate of less than 100 bubbles/min. (Routine D.O. check is recommended.)
13. dilution water <sup>2</sup>	Receiving water, other surface water, synthetic water adjusted to the hardness and alkalinity of the receiving water (prepared using either Millipore Milli-Q <sup>®</sup> or equivalent deionized and reagent grade chemicals according to EPA acute toxicity test manual) or deionized water combined with mineral water to appropriate hardness.
14. Dilution series	> 0.5, must bracket the permitted RWC

15. Number of dilutions	5 plus receiving water and laboratory water control and thiosulfate control, as necessary. An additional dilution at the permitted effluent concentration (% effluent) is required if it is not included in the dilution series.
16. Effect measured	Mortality-no movement on gentle prodding
17. Test acceptability	90% or greater survival of test organisms in dilution water control solution
18. Sampling requirements	For on-site tests, samples must be used within 24 hours of the time that they are removed from the sampling device. For off-site tests, samples are used within 36 hours of collection.
19. Sample volume required	Minimum 2 liters

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Footnotes:

1. Adapted from EPA-821-R-02-012
2. Standard dilution water must have hardness requirements to generally reflect characteristics of the receiving water.

## VI. CHEMICAL ANALYSIS

At the beginning of a static acute toxicity test, pH, conductivity, total residual chlorine, oxygen, hardness, alkalinity and temperature must be measured in the highest effluent concentration and the dilution water. Dissolved oxygen, pH and temperature are also measured at 24 and 48 hour intervals in all dilutions. The following chemical analyses shall be performed on the 100 percent effluent sample and the upstream water sample for each sampling event.

<u>Parameter</u>	Effluent	Receiving Water	ML (mg/l)
Hardness <sup>1</sup>	x	x	0.5
Total Residual Chlorine (TRC) <sup>2, 3</sup>	x		0.02
Alkalinity	x	x	2.0
pH	x	x	--
Specific Conductance	x	x	--
Total Solids	x		--
Total Dissolved Solids	x		--
Ammonia	x	x	0.1
Total Organic Carbon	x	x	0.5
Total Metals			
Cd	x	x	0.0005
Pb	x	x	0.0005
Cu	x	x	0.003
Zn	x	x	0.005
Ni	x	x	0.005
Al	x	x	0.02
Other as permit requires			

### Notes:

1. Hardness may be determined by:
  - APHA Standard Methods for the Examination of Water and Wastewater , 21st Edition
    - Method 2340B (hardness by calculation)
    - Method 2340C (titration)
2. Total Residual Chlorine may be performed using any of the following methods provided the required minimum limit (ML) is met.
  - APHA Standard Methods for the Examination of Water and Wastewater , 21st Edition
    - Method 4500-CL E Low Level Amperometric Titration
    - Method 4500-CL G DPD Colorimetric Method
3. Required to be performed on the sample used for WET testing prior to its use for toxicity testing.

## **VII. TOXICITY TEST DATA ANALYSIS**

### LC50 Median Lethal Concentration (Determined at 48 Hours)

Methods of Estimation:

- Probit Method
- Spearman-Karber
- Trimmed Spearman-Karber
- Graphical

See the flow chart in Figure 6 on p. 73 of EPA-821-R-02-012 for appropriate method to use on a given data set.

### No Observed Acute Effect Level (NOAEL)

See the flow chart in Figure 13 on p. 87 of EPA-821-R-02-012.

## **VIII. TOXICITY TEST REPORTING**

A report of the results will include the following:

- Description of sample collection procedures, site description
- Names of individuals collecting and transporting samples, times and dates of sample collection and analysis on chain-of-custody
- General description of tests: age of test organisms, origin, dates and results of standard toxicant tests; light and temperature regime; other information on test conditions if different than procedures recommended. Reference toxicant test data should be included.
- All chemical/physical data generated. (Include minimum detection levels and minimum quantification levels.)
- Raw data and bench sheets.
- Provide a description of dechlorination procedures (as applicable).
- Any other observations or test conditions affecting test outcome.

# **Attachment B - FRESHWATER CHRONIC TOXICITY TEST PROCEDURE AND PROTOCOL USEPA Region 1**

## **I. GENERAL REQUIREMENTS**

The permittee shall be responsible for the conduct of acceptable chronic toxicity tests using three fresh samples collected during each test period. The following tests shall be performed as prescribed in Part 1 of the NPDES discharge permit in accordance with the appropriate test protocols described below. (Note: the permittee and testing laboratory should review the applicable permit to determine whether testing of one or both species is required).

- **Daphnid (Ceriodaphnia dubia) Survival and Reproduction Test.**
- **Fathead Minnow (Pimephales promelas) Larval Growth and Survival Test.**

Chronic toxicity data shall be reported as outlined in Section VIII.

## **II. METHODS**

Methods to follow are those recommended by EPA in: Short Term Methods For Estimating The Chronic Toxicity of Effluents and Receiving Water to Freshwater Organisms, Fourth Edition. October 2002. United States Environmental Protection Agency. Office of Water, Washington, D.C., EPA 821-R-02-013. The methods are available on-line at <https://www.epa.gov/cwa-methods/whole-effluent-toxicity-methods>. Exceptions and clarification are stated herein.

## **III. SAMPLE COLLECTION AND USE**

A total of three fresh samples of effluent and receiving water are required for initiation and subsequent renewals of a freshwater, chronic, toxicity test. The receiving water control sample must be collected immediately upstream of the permitted discharge's zone of influence. Fresh samples are recommended for use on test days 1, 3, and 5. However, provided a total of three samples are used for testing over the test period, an alternate sampling schedule is acceptable. The acceptable holding times until initial use of a sample are 24 and 36 hours for on-site and off-site testing, respectively. A written waiver is required from the regulating authority for any hold time extension. All test samples collected may be used for 24, 48 and 72 hour renewals after initial use. All samples held for use beyond the day of sampling shall be refrigerated and maintained at a temperature range of 0-6° C.

All samples submitted for chemical and physical analyses will be analyzed according to Section VI of this protocol.

Sampling guidance dictates that, where appropriate, aliquots for the analysis required in this protocol shall be split from the samples, containerized and immediately preserved, or analyzed as per 40 CFR Part 136. EPA approved test methods require that samples collected for metals analyses be preserved immediately after collection. Testing for the presence of total residual chlorine (TRC) must be analyzed immediately or as soon as possible, for all effluent samples, prior to WET testing. TRC analysis may be performed on-site or by the toxicity testing laboratory and the samples must be dechlorinated, as necessary, using sodium thiosulfate prior to sample use for toxicity testing.

If any of the renewal samples are of sufficient potency to cause lethality to 50 percent or more of the test organisms in any of the test treatments for either species or, if the test fails to meet its permit limits, then chemical analysis for total metals (originally required for the initial sample only in Section VI) will be required on the renewal sample(s) as well.

#### **IV. DILUTION WATER**

Samples of receiving water must be collected from a location in the receiving water body immediately upstream of the permitted discharge's zone of influence at a reasonably accessible location. Avoid collection near areas of obvious road or agricultural runoff, storm sewers or other point source discharges and areas where stagnant conditions exist. EPA strongly urges that screening for toxicity be performed prior to the set up of a full, definitive toxicity test any time there is a question about the test dilution water's ability to achieve test acceptability criteria (TAC) as indicated in Section V of this protocol. The test dilution water control response will be used in the statistical analysis of the toxicity test data. All other control(s) required to be run in the test will be reported as specified in the Discharge Monitoring Report (DMR) Instructions, Attachment F, page 2, Test Results & Permit Limits.

The test dilution water must be used to determine whether the test met the applicable TAC. When receiving water is used for test dilution, an additional control made up of standard laboratory water (0% effluent) is required. This control will be used to verify the health of the test organisms and evaluate to what extent, if any, the receiving water itself is responsible for any toxic response observed.

If dechlorination of a sample by the toxicity testing laboratory is necessary a "sodium thiosulfate" control, representing the concentration of sodium thiosulfate used to adequately dechlorinate the sample prior to toxicity testing, must be included in the test.

If the use of an alternate dilution water (ADW) is authorized, in addition to the ADW test control, the testing laboratory must, for the purpose of monitoring the receiving water, also run a receiving water control.

If the receiving water diluent is found to be, or suspected to be toxic or unreliable an ADW of known quality with hardness similar to that of the receiving water may be substituted. Substitution is species specific meaning that the decision to use ADW is made for each species and is based on the toxic response of that particular species. Substitution to an ADW is authorized in two cases. The first is the case where repeating a test due to toxicity in the site dilution water requires an **immediate decision** for ADW use be made by the permittee and toxicity testing laboratory. The second is in the case where two of the most recent documented incidents of unacceptable site dilution water toxicity requires ADW use in future WET testing.

For the second case, written notification from the permittee requesting ADW use **and** written authorization from the permit issuing agency(s) is required **prior to** switching to a long-term use of ADW for the duration of the permit.

Written requests for use of ADW with supporting documentation must be sent electronically to the NPDES Applications Coordinator in EPA Water Division (WD) at the following email address:

[R1NPDESReporting@epa.gov](mailto:R1NPDESReporting@epa.gov)

Note: USEPA Region 1 retains the right to modify any part of the alternate dilution water policy stated in this protocol at any time. Any changes to this policy will be documented in the annual DMR posting.

*See the most current annual DMR instructions which can be found on the EPA Region 1 website at <https://www.epa.gov/aboutepa/epa-region-1-new-england> (click on NPDES, EPA Permit Attachments, Self-Implementing Alternate Dilution Water Guidance) for further important details on alternate dilution water substitution requests.*

## **V. TEST CONDITIONS AND TEST ACCEPTABILITY CRITERIA**

Method specific test conditions and TAC are to be followed and adhered to as specified in the method guidance document, EPA 821-R-02-013. If a test does not meet TAC the test must be repeated with fresh samples within 30 days of the initial test completion date.

### **V.1. Use of Reference Toxicity Testing**

Reference toxicity test results and applicable control charts must be included in the toxicity testing report.

If reference toxicity test results fall outside the control limits established by the laboratory for a specific test endpoint, a reason or reasons for this excursion must be evaluated, correction made and reference toxicity tests rerun as necessary.

If a test endpoint value exceeds the control limits at a frequency of more than one out of twenty then causes for the reference toxicity test failure must be examined and if problems are identified corrective action taken. The reference toxicity test must be repeated during the same month in which the exceedance occurred.

If two consecutive reference toxicity tests fall outside control limits, the possible cause(s) for the exceedance must be examined, corrective actions taken and a repeat of the reference toxicity test must take place immediately. Actions taken to resolve the problem must be reported.

#### V.1.a. Use of Concurrent Reference Toxicity Testing

In the case where concurrent reference toxicity testing is required due to a low frequency of testing with a particular method, if the reference toxicity test results fall slightly outside of laboratory established control limits, but the primary test met the TAC, the results of the primary test will be considered acceptable. However, if the results of the concurrent test fall well outside the established **upper** control limits i.e.  $\geq 3$  standard deviations for IC25 values and  $\geq$  two concentration intervals for NOECs, and even though the primary test meets TAC, the primary test will be considered unacceptable and must be repeated.

V.2. For the *C. dubia* test, the determination of TAC and formal statistical analyses must be performed using only the first three broods produced.

V.3. Test treatments must include 5 effluent concentrations and a dilution water control. An additional test treatment, at the permitted effluent concentration (% effluent), is required if it is not included in the dilution series.

## VI. CHEMICAL ANALYSIS

As part of each toxicity test's daily renewal procedure, pH, specific conductance, dissolved oxygen (DO) and temperature must be measured at the beginning and end of each 24-hour period in each test treatment and the control(s).

The additional analysis that must be performed under this protocol is as specified and noted in the table below.

<u>Parameter</u>	Effluent	Receiving Water	ML (mg/l)
Hardness <sup>1, 4</sup>	x	x	0.5
Total Residual Chlorine (TRC) <sup>2, 3, 4</sup>	x		0.02
Alkalinity <sup>4</sup>	x	x	2.0
pH <sup>4</sup>	x	x	--
Specific Conductance <sup>4</sup>	x	x	--
Total Solids <sup>6</sup>	x		--
Total Dissolved Solids <sup>6</sup>	x		--
Ammonia <sup>4</sup>	x	x	0.1
Total Organic Carbon <sup>6</sup>	x	x	0.5
Total Metals <sup>5</sup>			
Cd	x	x	0.0005
Pb	x	x	0.0005
Cu	x	x	0.003
Zn	x	x	0.005
Ni	x	x	0.005
Al	x	x	0.02
Other as permit requires			

**Notes:**

1. Hardness may be determined by:

- APHA Standard Methods for the Examination of Water and Wastewater, 21st Edition
  - Method 2340B (hardness by calculation)
  - Method 2340C (titration)

2. Total Residual Chlorine may be performed using any of the following methods provided the required minimum limit (ML) is met.

- APHA Standard Methods for the Examination of Water and Wastewater, 21st Edition
  - Method 4500-CL E Low Level Amperometric Titration
  - Method 4500-CL G DPD Colorimetric Method
- USEPA 1983. Manual of Methods Analysis of Water and Wastes
  - Method 330.5

3. Required to be performed on the sample used for WET testing prior to its use for toxicity testing

4. Analysis is to be performed on samples and/or receiving water, as designated in the table above, from all three sampling events.

5. Analysis is to be performed on the initial sample(s) only unless the situation arises as stated in Section III, paragraph 4

6. Analysis to be performed on initial samples only

## VII. TOXICITY TEST DATA ANALYSIS AND REVIEW

### A. Test Review

#### 1. Concentration / Response Relationship

A concentration/response relationship evaluation is required for test endpoint determinations from both Hypothesis Testing and Point Estimate techniques. The test report is to include documentation of this evaluation in support of the endpoint values reported. The dose-response review must be performed as required in Section 10.2.6 of EPA-821-R-02-013. Guidance for this review can be found at [www.epa.gov/cwa-methods/whole-effluent-toxicity-methods](http://www.epa.gov/cwa-methods/whole-effluent-toxicity-methods)

In most cases, the review will result in one of the following three conclusions: (1) Results are reliable and reportable; (2) Results are anomalous and require explanation; or (3) Results are inconclusive and a retest with fresh samples is required.

#### 2. Test Variability (Test Sensitivity)

This review step is separate from the determination of whether a test meets or does not meet TAC. Within test variability is to be examined for the purpose of evaluating test sensitivity. This evaluation is to be performed for the sub-lethal hypothesis testing endpoints reproduction and growth as required by the permit. The test report is to include documentation of this evaluation to support that the endpoint values reported resulted from a toxicity test of adequate sensitivity. This evaluation must be performed as required in Section 10.2.8 of EPA-821-R-02-013.

To determine the adequacy of test sensitivity, USEPA requires the calculation of test percent minimum significant difference (PMSD) values. In cases where NOEC determinations are made based on a non-parametric technique, calculation of a test PMSD value, for the sole purpose of assessing test sensitivity, shall be calculated using a comparable parametric statistical analysis technique. The calculated test PMSD is then compared to the upper and lower PMSD bounds shown for freshwater tests in Section 10.2.8.3, p. 52, Table 6 of EPA-821-R-02-013. The comparison will yield one of the following determinations.

- The test PMSD exceeds the PMSD upper bound test variability criterion in Table 6, the test results are considered highly variable and the test may not be sensitive enough to determine the presence of toxicity at the permit limit concentration (PLC). If the test results indicate that the discharge is not toxic at the PLC, then the test is considered insufficiently sensitive and must be repeated within 30 days of the initial test completion using fresh samples. If the test results indicate that the discharge is toxic at the PLC, the test is considered acceptable and does not have to be repeated.
- The test PMSD falls below the PMSD lower bound test variability criterion in Table 6, the test is determined to be very sensitive. In order to determine which treatment(s) are statistically significant and which are not, for the purpose of reporting a NOEC, the relative percent difference (RPD) between the control and each treatment must be calculated and compared to the lower PMSD boundary. See *Understanding and Accounting for Method Variability in Whole Effluent Toxicity Applications Under the NPDES Program*, EPA 833-R-1-003, June 2002, Section 6.4.2. This document can be located under Guidance Documents at the following USEPA website location: <https://www.epa.gov/aboutepa/epa-region-1-new-england> (click on NPDES, EPA Permit Attachments).

If the RPD for a treatment falls below the PMSD lower bound, the difference is considered statistically insignificant. If the RPD for a treatment is greater than the PMSD lower bound, then the treatment is considered statistically significant.

- The test PMSD falls within the PMSD upper and lower bounds in Table 6, the sub-lethal test endpoint values shall be reported as is.

## B. Statistical Analysis

### 1. General - Recommended Statistical Analysis Method

Refer to general data analysis flowchart, EPA 821-R-02-013, page 43

For discussion on Hypothesis Testing, refer to EPA 821-R-02-013, Section 9.6

For discussion on Point Estimation Techniques, refer to EPA 821-R-02-013, Section 9.7

### 2. *Pimephales promelas*

Refer to survival hypothesis testing analysis flowchart, EPA 821-R-02-013, page

79 Refer to survival point estimate techniques flowchart, EPA 821-R-02-013, page

80 Refer to growth data statistical analysis flowchart, EPA 821-R-02-013, page 92

### 3. *Ceriodaphnia dubia*

Refer to survival data testing flowchart, EPA 821-R-02-013, page 168

Refer to reproduction data testing flowchart, EPA 821-R-02-013, page 173

## **VIII. TOXICITY TEST REPORTING**

A report of results must include the following:

- Test summary sheets (2007 DMR Attachment F) which includes:
  - Facility name
  - NPDES permit number
  - Outfall number
  - Sample type
  - Sampling method
  - Effluent TRC concentration
  - Dilution water used
  - Receiving water name and sampling location
  - Test type and species
  - Test start date
  - Effluent concentrations tested (%) and permit limit concentration
  - Applicable reference toxicity test date and whether acceptable or not
  - Age, age range and source of test organisms used for testing
  - Results of TAC review for all applicable controls
  - Test sensitivity evaluation results (test PMSD for growth and reproduction)
  - Permit limit and toxicity test results
  - Summary of test sensitivity and concentration response evaluation

In addition to the summary sheets the report must include:

- A brief description of sample collection procedures
- Chain of custody documentation including names of individuals collecting samples, times and dates of sample collection, sample locations, requested analysis and lab receipt with time and date received, lab receipt personnel and condition of samples upon receipt at the lab(s)
- Reference toxicity test control charts
- All sample chemical/physical data generated, including minimum limits (MLs) and analytical methods used
- All toxicity test raw data including daily ambient test conditions, toxicity test chemistry, sample dechlorination details as necessary, bench sheets and statistical analysis
- A discussion of any deviations from test conditions
- Any further discussion of reported test results, statistical analysis and concentration-response relationship and test sensitivity review per species per endpoint

**EPA - New England**

**Attachment C - Reassessment of Technically Based Industrial Discharge Limits**

Under 40 CFR §122.21(j)(4), all Publicly Owned Treatment Works (POTWs) with approved Industrial Pretreatment Programs (IPPs) shall provide the following information to the Director: a written evaluation of the need to revise local industrial discharge limits under 40 CFR §403.5(c)(1).

Below is a form designed by the U.S. Environmental Protection Agency (EPA - New England) to assist POTWs with approved IPPs in evaluating whether their existing Technically Based Local Limits (TBLLs) need to be recalculated. The form allows the permittee and EPA to evaluate and compare pertinent information used in previous TBLLs calculations against present conditions at the POTW.

**Please read direction below before filling out form.**

**ITEM I.**

- \* In Column (1), list what your POTW's influent flow rate was when your existing TBLLs were calculated. In Column (2), list your POTW's present influent flow rate. Your current flow rate should be calculated using the POTW's average daily flow rate from the previous 12 months.
- \* In Column (1) list what your POTW's SIU flow rate was when your existing TBLLs were calculated. In Column (2), list your POTW's present SIU flow rate.
- \* In Column (1), list what dilution ratio and/or 7Q10 value was used in your old/expired NPDES permit. In Column (2), list what dilution ration and/or 7Q10 value is presently being used in your new/reissued NPDES permit.

The 7Q10 value is the lowest seven day average flow rate, in the river, over a ten year period. The 7Q10 value and/or dilution ratio used by EPA in your new NPDES permit can be found in your NPDES permit "Fact Sheet."

- \* In Column (1), list the safety factor, if any, that was used when your existing TBLLs were calculated.
- \* In Column (1), note how your bio-solids were managed when your existing TBLLs were calculated. In Column (2), note how your POTW is presently disposing of its biosolids and how your POTW will be disposing of its biosolids in the future.

## ITEM II.

- \* List what your existing TBLLs are - as they appear in your current Sewer Use Ordinance (SOU).

## ITEM III.

- \* Identify how your existing TBLLs are allocated out to your industrial community. Some pollutants may be allocated differently than others, if so please explain.

## ITEM IV.

- \* Since your existing TBLLs were calculated, identify the following in detail:
  - (1) if your POTW has experienced any upsets, inhibition, interference or pass-through as a result of an industrial discharge.
  - (2) if your POTW is presently violating any of its current NPDES permit limitations - include toxicity.

## ITEM V.

- \* Using current sampling data, list in Column (1) the average and maximum amount of pollutants (in pounds per day) received in the POTW's influent. Current sampling data is defined as data obtained over the last 24 month period.

All influent data collected and analyzed must be in accordance with 40 CFR §136. Sampling data collected should be analyzed using the lowest possible detection method(s), e.g. graphite furnace.

- \* Based on your existing TBLLs, as presented in Item II., list in Column (2), for each pollutant the Maximum Allowable Headwork Loading (MAHL) values derived from an applicable environmental criteria or standard, e.g. water quality, sludge, NPDES, inhibition, etc. For more information, please see EPA's Local Limit Guidance Document (July 2004).

## Item VI.

- \* Using current sampling data, list in Column (1) the average and maximum amount of pollutants (in micrograms per liter) present your POTW's effluent. Current sampling data is defined as data obtained during the last 24 month period.

**(Item VI. continued)**

All effluent data collected and analyzed must be in accordance with 40 CFR §136. Sampling data collected should be analyzed using the lowest possible detection method(s), e.g. graphite furnace.

- \* List in Column (2A) what the Water Quality Standards (WQS) were (in micrograms per liter) when your TBLLs were calculated, please note what hardness value was used at that time. Hardness should be expressed in milligram per liter of Calcium Carbonate.

List in Column (2B) the current WQSs or "Chronic Gold Book" values for each pollutant multiplied by the dilution ratio used in your new/reissued NPDES permit. For example, with a dilution ratio of 25:1 at a hardness of 25 mg/l - Calcium Carbonate (copper's chronic WQS equals 6.54 ug/l) the chronic NPDES permit limit for copper would equal 156.25 ug/l.

**ITEM VII.**

- \* In Column (1), list all pollutants (in micrograms per liter) limited in your new/reissued NPDES permit. In Column (2), list all pollutants limited in your old/expired NPDES permit.

**ITEM VIII.**

- \* Using current sampling data, list in Column (1) the average and maximum amount of pollutants in your POTW's biosolids. Current data is defined as data obtained during the last 24 month period. Results are to be expressed as total dry weight.

All biosolids data collected and analyzed must be in accordance with 40 CFR §136.

In Column (2A), list current State and/or Federal sludge standards that your facility's biosolids must comply with. Also note how your POTW currently manages the disposal of its biosolids. If your POTW is planning on managing its biosolids differently, list in Column (2B) what your new biosolids criteria will be and method of disposal.

In general, please be sure the units reported are correct and all pertinent information is included in your evaluation. If you have any questions, please contact your pretreatment representative at EPA - New England.

**REASSESSMENT OF TECHNICALLY BASED LOCAL LIMITS  
(TBLLs)**

POTW Name & Address : \_\_\_\_\_

NPDES PERMIT # : \_\_\_\_\_

Date EPA approved current TBLLs : \_\_\_\_\_

Date EPA approved current TBLLs : \_\_\_\_\_

**ITEM I.**

In Column (1) list the conditions that existed when your current TBLLs were calculated. In Column (2), list current conditions or expected conditions at your POTW.

	Column (1) EXISTING TBLLs	Column (2) PRESENT CONDITIONS
POTW Flow (MGD)		
Dilution Ratio or 7Q10 (from NPDES Permit)		
SIU Flow (MGD)		
Safety Factor		N/A
Biosolids Disposal Method(s)		

**ITEM II.**

EXISTING TBLLs			
POLLUTANT	NUMERICAL LIMIT (mg/l) or (lb/day)	POLLUTANT	NUMERICAL LIMIT (mg/l) or (lb/day)

**ITEM III.**

Note how your existing TBLLs, listed in Item II., are allocated to your Significant Industrial Users (SIUs), i.e. uniform concentration, contributory flow, mass proportioning, other. Please specify by circling.

**ITEM IV.**

Has your POTW experienced any upsets, inhibition, interference or pass-through from industrial sources since your existing TBLLs were calculated?

If yes, explain.

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Has your POTW violated any of its NPDES permit limits and/or toxicity test requirements?

If yes, explain.

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## ITEM V.

Using current POTW influent sampling data fill in Column (1). In Column (2), list your Maximum Allowable Headwork Loading (MAHL) values used to derive your TBLLs listed in Item II. In addition, please note the Environmental Criteria for which each MAHL value was established, i.e. water quality, sludge, NPDES etc.

Pollutant	Column (1) Influent Data Analyses		Column (2) MAHL Values (lb/day)	Criteria
	Maximum (lb/day)	Average (lb/da y)		
Arsenic				
Cadmium				
Chromium				
Copper				
Cyanide				
Lead				
Mercury				
Nickel				
Silver				
Zinc				
Other (List)				

**ITEM VI.**

Using current POTW effluent sampling data, fill in Column (1). In Column (2A) list what the Water Quality Standards (Gold Book Criteria) were at the time your existing TBLLs were developed. List in Column (2B) current Gold Book values multiplied by the dilution ratio used in your new/reissued NPDES permit.

Pollutant	Column (1)		Columns (2A) (2B)	
	Effluent Data Analyses		Water Quality Criteria (Gold Book)	
	Maximum (ug/l)	Average (ug/l)	From TBLLs	Today (ug/l) (ug/l)
Arsenic				
*Cadmium				
*Chromium				
*Copper				
Cyanide				
*Lead				
Mercury				
*Nickel				
Silver				
*Zinc				
Other (List)				

\*Hardness Dependent (mg/l - CaCO<sub>3</sub>)

**ITEM VII.**

In Column (1), identify all pollutants limited in your new/reissued NPDES permit. In Column (2), identify all pollutants that were limited in your old/expired NPDES permit.

### ITEM VIII.

Using current POTW biosolids data, fill in Column (1). In Column (2A), list the biosolids criteria that was used at the time your existing TBLLs were calculated. If your POTW is planning on managing its biosolids differently, list in Column (2B) what your new biosolids criteria would be and method of disposal.

Pollutant	Column (1) Data Analyses	Columns (2A) (2B) Biosolids Criteria From TBLLs	
	Average (mg/kg)	New (mg/kg)	(mg/kg)
Arsenic			
Cadmium			
Chromium			
Copper			
Cyanide			
Lead			
Mercury			
Nickel			
Silver			
Zinc			
Molybdenum			
Selenium			
Other (List)			

## ATTACHMENT D

### Industrial Pretreatment Program Annual Report

The Permittee shall provide to the Approval Authority with an annual report that briefly describes the POTW's program activities, including activities of all participating agencies, if more than one jurisdiction is involved in the local program. The report required by this section shall be submitted no later than one year after approval of the POTW's Pretreatment Program, and at least annually thereafter, and must include, at a minimum, the applicable required data in appendix A to 40 CFR part 127. The report required by this section must also include a summary of changes to the POTW's pretreatment program that have not been previously reported to the Approval Authority and any other relevant information requested by the Approval Authority. As of December 21, 2025 all annual reports submitted in compliance with this section must be submitted electronically by the POTW Pretreatment Program to the Approval Authority or initial recipient, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to part 3), 40 CFR 122.22, and 40 CFR part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of part 127, the Approval Authority may also require POTW Pretreatment Programs to electronically submit annual reports under this section if specified by a particular permit or if required to do so by state law.

The permitted shall submit to Approval Authority and the state permitting authority a report that contains the following information requested by EPA:

1. An updated list of the POTW's Industrial Users by category as set forth in 40 C.F.R. 403.8(f)(2)(i), to include:
  - a. Names and addresses, or a list of deletions and additions keyed to a previously submitted list. The POTW shall provide a brief explanation of each deletion. This list shall identify which Industrial Users are subject to categorical Pretreatment Standards and specify which Standards are applicable to each Industrial User. The list shall indicate which Industrial Users are subject to local standards that are more stringent than the categorical Pretreatment Standards. The POTW shall also list the Industrial Users that are subject only to local Requirements. The list must also identify Industrial Users subject to categorical Pretreatment Standards that are subject to reduced reporting requirements under paragraph (e)(3), and identify which Industrial Users are Non-Significant Categorical Industrial Users.
  - b. Permit status. Whether each SIU has an unexpired control mechanism and an explanation as to why any SIUs are operating without a current, unexpired control mechanism (e.g. permit);
  - c. Baseline monitoring reporting requirements for newly promulgated industries
  - d. In addition, a brief description of the industry and general activities;

2. A summary of compliance and enforcement activities during the preceding year, including the number of:
  - a. significant industrial users inspected by POTW (include inspection dates for each industrial user),
  - b. significant industrial users sampled by POTW (include sampling dates for each industrial user),
  - c. compliance schedules issued (include list of subject users),
  - d. written notices of violations issued (include list of subject users),
  - e. administrative orders issued (include list of subject users),
  - f. criminal or civil suits filed (include list of subject users) and,
  - g. penalties obtained (include list of subject users and penalty amounts);
3. A narrative description of program effectiveness including present and proposed changes to the program, such as funding, staffing, ordinances, regulations, rules and/or statutory authority;
4. The Permittee shall prepare annually a list of industrial users, which during the preceding twelve (12) months have significantly violated Pretreatment Standards or requirements 40 C.F.R. 403.8(f)(2)(vii). This list is to be published annually in a newspaper of general circulation in the Permittee's service area.
5. A summary of all monitoring activities performed within the previous twelve (12) months. The following information shall be reported:

Total number of SIUs inspected; and  
Total number of SIUs sampled.

For all industrial users that were in Significant Non-Compliance during the previous twelve (12) months, provide the name of the violating industrial user; indicate the nature of the violations, the type and number of actions taken (administrative order, criminal or civil suit, fines or penalties collected, etc.) and current compliance status. Indicate if the company returned to compliance and the date compliance was attained. Determination of Significant Non-Compliance shall be performed.

6. A summary of all enforcement actions not covered by the paragraph above conducted in accordance with the approved Enforcement Response Plan.
7. A description of actions being taken to reduce the incidence of significant violations by significant industrial users.
8. A detailed description of all interference and pass-through that occurred during the past year.
9. A thorough description of all investigations into interference and pass-through during the past year.
10. A description of monitoring, sewer inspections and evaluations which were done during the past year to detect interference and pass-through, specifying parameters and frequencies;

11. The Permittee shall analyze the treatment facility influent and effluent at least Annually for the presence of the toxic pollutants listed in 40 CFR Part 122 Appendix D (NPDES Application Testing Requirements) Table III as follows:

Antimony, Arsenic, Beryllium, Cadmium, Chromium, Copper, Lead, Mercury, Nickel, Selenium, Silver, Thallium, Zinc, Cyanide, and Phenols

The sampling program shall consist of one 24-hour flow-proportioned composite and at least one grab sample that is representative of the flows received by the POTW. The composite shall consist of hourly flow-proportioned grab samples taken over a 24-hour period if the sample is collected manually or shall consist of a minimum of 48 samples collected at 30 minute intervals if an automated sampler is used. Cyanide shall be taken as a grab sample during the same period as the composite sample. Sampling and preservation shall be consistent with 40 CFR Part 136. All analytical procedures and method detection limits must be specified when reporting the results of such analyses.

12. The Permittee shall analyze the treatment facility sludge (biosolids) prior to disposal, for the presence of toxic pollutants listed above in 40 CFR 122 Appendix D (NPDES Application Testing Requirements) Table III at least once per year. If the Permittee does not dispose of biosolids during the calendar year, the Permittee shall certify to that in the Pretreatment Annual Report and the monitoring requirements in this paragraph shall be suspended for that calendar year.

The Permittee shall use sample collection and analysis procedures as approved for use under 40 CFR Part 503 or specified in the EPA Region 8 General Permit for biosolids.

13. The summary shall include an evaluation of influent sampling results versus threshold inhibitory concentrations for the Wastewater Treatment System and effluent sampling results versus water quality standards. Such a comparison shall be based on the sampling program described in the paragraphs above or any similar sampling program described in this Permit.
14. Identification of the specific locations, if any, designated by the Permittee for receipt (discharge) of trucked or hauled waste, if modified;
15. Information as required by the Approval Authority or state permitting authority on the discharge to the POTW from the following activities:
  - (A) Ground water clean-up from underground storage tanks;
  - (B) Trucked or hauled waste; and,
  - (C) Groundwater clean-up from RCRA or Superfund sites.
16. A description of all changes made during the previous calendar year to the Permittee's pretreatment program that were not submitted as substantial or non-substantial modifications to EPA.

17. The date of the latest adoption of local limits and an indication as to whether or not the Town is under a State or Federal compliance schedule that includes steps to be taken to revise local limits.

18. Results of all PFAS sampling conducted of industrial sectors in accordance with Section I.E.6 of the NPDES permit of the following pollutants:

PFAS Analytes per Method 1633

19. Any other information that may be deemed necessary by the Approval Authority.

## Attachment E: PFAS Analyte List

Target Analyte Name	Abbreviation	CAS Number
<b>Perfluoroalkyl carboxylic acids</b>		
Perfluorobutanoic acid	PFBA	375-22-4
Perfluoropentanoic acid	PPPeA	2706-90-3
Perfluorohexanoic acid	PFHxA	307-24-4
Perfluoroheptanoic acid	PFHpA	375-85-9
Perfluoroctanoic acid	PFOA	335-67-1
Perfluorononanoic acid	PFNA	375-95-1
Perfluorodecanoic acid	PFDA	335-76-2
Perfluoroundecanoic acid	PFUnA	2058-94-8
Perfluorododecanoic acid	PFDoA	307-55-1
Perfluorotridecanoic acid	PFTrDA	72629-94-8
Perfluorotetradecanoic acid	PFTeDA	376-06-7
<b>Perfluoroalkyl sulfonic acids</b>		
<b>Acid Form</b>		
Perfluorobutanesulfonic acid	PFBS	375-73-5
Perfluoropentanesulfonic acid	PPPeS	2706-91-4
Perfluorohexanesulfonic acid	PFHxS	355-46-4
Perfluoroheptanesulfonic acid	PFHpS	375-92-8
Perfluoroctanesulfonic acid	PFOS	1763-23-1
Perfluorononanesulfonic acid	PFNS	68259-12-1
Perfluorodecanesulfonic acid	PFDS	335-77-3
Perfluorododecanesulfonic acid	PFDoS	79780-39-5
<b>Fluorotelomer sulfonic acids</b>		
1H,1H, 2H, 2H-Perfluorohexane sulfonic acid	4:2FTS	757124-72-4
1H,1H, 2H, 2H-Perfluorooctane sulfonic acid	6:2FTS	27619-97-2
1H,1H, 2H, 2H-Perfluorodecane sulfonic acid	8:2FTS	39108-34-4
<b>Perfluoroctane sulfonamides</b>		
Perfluorooctanesulfonamide	PFOSA	754-91-6
N-methyl perfluorooctanesulfonamide	NMeFOSA	31506-32-8
N-ethyl perfluorooctanesulfonamide	NEtFOSA	4151-50-2
<b>Perfluoroctane sulfonamidoacetic acids</b>		
N-methyl perfluorooctanesulfonamidoacetic acid	NMeFOSAA	2355-31-9
N-ethyl perfluorooctanesulfonamidoacetic acid	NEtFOSAA	2991-50-6
<b>Perfluoroctane sulfonamide ethanols</b>		
N-methyl perfluorooctanesulfonamidoethanol	NMeFOSE	24448-09-7
N-ethyl perfluorooctanesulfonamidoethanol	NEtFOSE	1691-99-2
<b>Per- and Polyfluoroether carboxylic acids</b>		
Hexafluoropropylene oxide dimer acid	HFPO-DA	13252-13-6
4,8-Dioxa-3H-perfluororononanoic acid	ADONA	919005-14-4
Perfluoro-3-methoxypropanoic acid	PFMPA	377-73-1
Perfluoro-4-methoxybutanoic acid	PFMBA	863090-89-5
Nonafluoro-3,6-dioxaheptanoic acid	NFDHA	151772-58-6

Target Analyte Name	Abbreviation	CAS Number
<b>Ether sulfonic acids</b>		
9-Chlorohexadecafluoro-3-oxanonane-1-sulfonic acid	9Cl-PF3ONS	756426-58-1
11-Chloroeicosfluoro-3-oxaundecane-1-sulfonic acid	11Cl-PF3OUdS	763051-92-9
Perfluoro(2-ethoxyethane)sulfonic acid	PFEESA	113507-82-7
<b>Fluorotelomer carboxylic acids</b>		
3-Perfluoropropyl propanoic acid	3:3FTCA	356-02-5
2 <i>H</i> ,2 <i>H</i> ,3 <i>H</i> ,3 <i>H</i> -Perfluorooctanoic acid	5:3FTCA	914637-49-3
3-Perfluoroheptyl propanoic acid	7:3FTCA	812-70-4

**Attachment F****Combined Sewer Overflow Outfalls**

<b>Outfall</b>	<b>CSO Regulator Name</b>	<b>Receiving Water</b>	<b>Latitude</b>	<b>Longitude</b>
011	Schiller Street	Merrimack River	42° 58' 18.86" N	071° 28' 26.42" W
018	Turner/Ferry Streets	Merrimack River	42° 58' 52.84" N	071° 28' 10.17" W
031	Stark Brook (Elgin Ave.) Stark Brook (Sixth Ave.) Stark Brook (Eve Ave.)	Merrimack River	43° 01' 39.84" N	071° 28' 44.02" W
039	Third Street	Piscataquog River	42° 58' 45.12" N	071° 28' 24.93" W
043	Tannery Brook	Merrimack River	42° 58' 05.97" N	071° 28' 23.13" W
044	Cemetery Brook (Primary) Cemetery Brook (Secondary)	Merrimack River	42° 58' 52.88" N	071° 28' 02.40" W
045	Granite Street	Merrimack River	42° 59' 08.00" N	071° 28' 08.80" W
046	Bridge Street	Merrimack River	42° 59' 38.51" N	071° 28' 08.11" W
047	Penacook Street	Merrimack River	42° 59' 55.35" N	071° 28' 06.27" W
050	MH #1	Merrimack River	42° 56' 49.34" N	071° 27' 33.81" W
051	West Side Pump Station	Piscataquog River	42° 58' 41.64" N	071° 28' 16.87" W
052	MH #2	Merrimack River	42° 56' 57.36" N	071° 27' 40.80" W
053	Walnut/North Street Canal/W. Penacook	Merrimack River	43° 00' 02.43" N	071° 28' 09.46" W
054	Ray Brook	Merrimack River	43° 00' 30.53" N	071° 28' 17.16" W
055	Dunbar Street	Merrimack River	42° 57' 56" N	071° 28' 26" W

**NPDES PART II STANDARD CONDITIONS**  
(April 26, 2018)<sup>1</sup>

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<sup>1</sup> Updated July 17, 2018 to fix typographical errors.

## NPDES PART II STANDARD CONDITIONS

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### 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 (CWA or Act) and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

- a. The Permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Clean Water Act 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, or standards for sewage sludge use or disposal, even if the permit has not yet been modified to incorporate the requirement.
- b. Penalties for Violations of Permit Conditions: The Director will adjust the civil and administrative penalties listed below in accordance with the Civil Monetary Penalty Inflation Adjustment Rule (83 Fed. Reg. 1190-1194 (January 10, 2018) and the 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note. See Pub. L.114-74, Section 701 (Nov. 2, 2015)). These requirements help ensure that EPA penalties keep pace with inflation. Under the above-cited 2015 amendments to inflationary adjustment law, EPA must review its statutory civil penalties each year and adjust them as necessary.

##### (1) Criminal Penalties

- (a) *Negligent Violations.* The CWA provides that any person who negligently violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to criminal penalties of not less than \$2,500 nor more than \$25,000 per day of violation, or imprisonment of not more than 1 year, or both. In the case of a second or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than \$50,000 per day of violation or by imprisonment of not more than 2 years, or both.
- (b) *Knowing Violations.* The CWA provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act 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. In the case of a second or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than \$100,000 per day of violation, or imprisonment of not more than 6 years, or both.
- (c) *Knowing Endangerment.* The CWA provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 303, 306, 307, 308, 318, or 405 of the Act and who knows at that time that he or she is placing another person in imminent danger of death or serious bodily injury shall upon conviction be subject to a fine of not more than \$250,000 or by imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing

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endangerment violation, a person shall be subject to a fine of not more than \$500,000 or by imprisonment of not more than 30 years, or both. An organization, as defined in Section 309(c)(3)(B)(iii) of the Act, shall, upon conviction of violating the imminent danger provision, be subject to a fine of not more than \$1,000,000 and can be fined up to \$2,000,000 for second or subsequent convictions.

- (d) *False Statement.* The CWA 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. The Act further 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.
- (2) *Civil Penalties.* The CWA provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed the maximum amounts authorized by Section 309(d) of the Act, the 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, and 40 C.F.R. Part 19. *See* Pub. L.114-74, Section 701 (Nov. 2, 2015); 83 Fed. Reg. 1190 (January 10, 2018).
- (3) *Administrative Penalties.* The CWA provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to an administrative penalty as follows:
  - (a) *Class I Penalty.* Not to exceed the maximum amounts authorized by Section 309(g)(2)(A) of the Act, the 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, and 40 C.F.R. Part 19. *See* Pub. L.114-74, Section 701 (Nov. 2, 2015); 83 Fed. Reg. 1190 (January 10, 2018).
  - (b) *Class II Penalty.* Not to exceed the maximum amounts authorized by Section 309(g)(2)(B) of the Act the 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, and 40 C.F.R. Part 19. *See* Pub. L.114-74, Section 701 (Nov. 2, 2015); 83 Fed. Reg. 1190 (January 10, 2018).

## 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 any permit

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condition.

### 3. Duty to Provide Information

The Permittee shall furnish to the Director, within a reasonable time, any information which the Director 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 Director, upon request, copies of records required to be kept by this permit.

### 4. 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 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).

### 5. Property Rights

This permit does not convey any property rights of any sort, or any exclusive privilege.

### 6. Confidentiality of Information

- a. In accordance with 40 C.F.R. 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 C.F.R. Part 2 (Public Information).
- b. Claims of confidentiality for the following information will be denied:
  - (1) The name and address of any permit applicant or Permittee;
  - (2) Permit applications, permits, and effluent data.
- c. Information required by NPDES application forms provided by the Director under 40 C.F.R. § 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.

### 7. Duty to Reapply

If the Permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the Permittee must apply for and obtain a new permit. The Permittee shall submit a new application at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Director. (The Director shall not grant permission for applications to be submitted later than the expiration date of the existing permit.)

### 8. State Authorities

Nothing in Parts 122, 123, or 124 precludes more stringent State regulation of any activity

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covered by the regulations in 40 C.F.R. Parts 122, 123, and 124, whether or not under an approved State program.

### 9. Other Laws

The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulations.

## 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. 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 which are installed by a Permittee 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 (c) and (d) of this Section.

#### c. Notice

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- (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. As of December 21, 2020 all notices submitted in compliance with this Section must be submitted electronically by the Permittee to the Director or initial recipient, as defined in 40 C.F.R. § 127.2(b), in compliance with this Section and 40 C.F.R. Part 3 (including, in all cases, Subpart D to Part 3), § 122.22, and 40 C.F.R. Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, Permittees may be required to report electronically if specified by a particular permit or if required to do so by state law.
- (2) *Unanticipated bypass.* The Permittee shall submit notice of an unanticipated bypass as required in paragraph D.1.e. of this part (24-hour notice). As of December 21, 2020 all notices submitted in compliance with this Section must be submitted electronically by the Permittee to the Director or initial recipient, as defined in 40 C.F.R. § 127.2(b), in compliance with this Section and 40 C.F.R. Part 3 (including, in all cases, Subpart D to Part 3), § 122.22, and 40 C.F.R. Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, Permittees may be required to report electronically if specified by a particular permit or required to do so by law.

d. *Prohibition of bypass.*

- (1) Bypass is prohibited, and the Director 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 exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and
  - (c) The Permittee submitted notices as required under paragraph 4.c of this Section.
- (2) The Director may approve an anticipated bypass, after considering its adverse effects, if the Director 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 an unintentional and temporary noncompliance 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

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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; and
  - (3) The Permittee submitted notice of the upset as required in paragraph D.1.e.2.b. (24-hour notice).
  - (4) The Permittee complied with any remedial measures required under B.3. above.
- d. *Burden of proof.* In any enforcement proceeding the Permittee seeking to establish the occurrence of an upset has the burden of proof.

## C. MONITORING REQUIREMENTS

### 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 5 years (or longer as required by 40 C.F.R. § 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. This period may be extended by request of the Director 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 must be conducted according to test procedures approved under 40 C.F.R. § 136 unless another method is required under 40 C.F.R. Subchapters N or O.
- e. The Clean Water Act provides that any person who falsifies, tampers with, or

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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 Director, 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.

## D. REPORTING REQUIREMENTS

### 1. Reporting Requirements

- a. *Planned Changes.* The Permittee shall give notice to the Director 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 C.F.R. § 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 neither to effluent limitations in the permit, nor to notification requirements at 40 C.F.R. § 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 that are 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 Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

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- c. *Transfers.* This permit is not transferable to any person except after notice to the Director. The Director 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* 40 C.F.R. § 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 Director for reporting results of monitoring of sludge use or disposal practices. As of December 21, 2016 all reports and forms submitted in compliance with this Section must be submitted electronically by the Permittee to the Director or initial recipient, as defined in 40 C.F.R. § 127.2(b), in compliance with this Section and 40 C.F.R. Part 3 (including, in all cases, Subpart D to Part 3), § 122.22, and 40 C.F.R. Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, Permittees may be required to report electronically if specified by a particular permit or if required to do so by State law.
  - (2) If the Permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 C.F.R. § 136, or another method required for an industry-specific waste stream under 40 C.F.R. Subchapters N or O, the results of such monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Director.
  - (3) Calculations for all limitations which require averaging or measurements shall utilize an arithmetic mean unless otherwise specified by the Director 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 report shall also be provided within 5 days of the time the Permittee becomes aware of the circumstances. The written report 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. For noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events, these reports must include the data described above (with the exception of time of discovery) as well as the type of event (combined sewer overflows, sanitary sewer overflows, or bypass events), type of sewer overflow structure (e.g., manhole, combined sewer overflow outfall), discharge volumes untreated by the treatment works treating domestic sewage, types of human health and environmental impacts of the sewer overflow event, and whether the noncompliance was related to wet weather. As of December 21, 2020 all

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reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this section must be submitted electronically by the Permittee to the Director or initial recipient, as defined in 40 C.F.R. § 127.2(b), in compliance with this Section and 40 C.F.R. Part 3 (including, in all cases Subpart D to Part 3), § 122.22, and 40 C.F.R. Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, Permittees may be required to electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section by a particular permit or if required to do so by state law. The Director may also require Permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section.

(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 40 C.F.R. § 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 Director in the permit to be reported within 24 hours. *See 40 C.F.R. § 122.44(g).*

(3) The Director may waive the written report on a case-by-case basis for reports under paragraph D.1.e. of this Section 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. For noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events, these reports shall contain the information described in paragraph D.1.e. and the applicable required data in Appendix A to 40 C.F.R. Part 127. As of December 21, 2020 all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this section must be submitted electronically by the Permittee to the Director or initial recipient, as defined in 40 C.F.R. § 127.2(b), in compliance with this Section and 40 C.F.R. Part 3 (including, in all cases, Subpart D to Part 3), § 122.22, and 40 C.F.R. Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, Permittees may be required to electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section by a particular permit or if required to do so by state law. The Director may also require Permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this Section.

h. *Other information.* Where the Permittee becomes aware that it failed to submit any

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relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.

- i. *Identification of the initial recipient for NPDES electronic reporting data.* The owner, operator, or the duly authorized representative of an NPDES-regulated entity is required to electronically submit the required NPDES information (as specified in Appendix A to 40 C.F.R. Part 127) to the appropriate initial recipient, as determined by EPA, and as defined in 40 C.F.R. § 127.2(b). EPA will identify and publish the list of initial recipients on its Web site and in the FEDERAL REGISTER, by state and by NPDES data group (see 40 C.F.R. § 127.2(c) of this Chapter). EPA will update and maintain this listing.

2. Signatory Requirement

- a. All applications, reports, or information submitted to the Director shall be signed and certified. *See* 40 C.F.R. §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.6. 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 Director. As required by the CWA, effluent data shall not be considered confidential. Knowingly making any false statements on any such report may result in the imposition of criminal penalties as provided for in Section 309 of the CWA.

## E. DEFINITIONS AND ABBREVIATIONS

### 1. General Definitions

For more definitions related to sludge use and disposal requirements, see EPA Region 1's NPDES Permit Sludge Compliance Guidance document (4 November 1999, modified to add regulatory definitions, April 2018).

*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,” a “sewage sludge use or disposal practice,” or a related activity is subject under the CWA, including “effluent limitations,” water quality standards, standards of performance, toxic effluent standards or prohibitions, “best management practices,” pretreatment standards, and “standards for sewage sludge use or disposal” under Sections 301, 302, 303, 304, 306, 307, 308, 403 and 405 of the 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

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“approved States,” including any approved modifications or revisions.

*Approved program* or *approved State* means a State or interstate program which has been approved or authorized by EPA under Part 123.

*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.

*Bypass* see B.4.a.1 above.

*C-NOEC* or “*Chronic (Long-term Exposure Test) – No Observed Effect Concentration*” means the highest tested concentration of an effluent or a toxicant at which no adverse effects are observed on the aquatic test organisms at a specified time of observation.

*Class I sludge management facility* is any publicly owned treatment works (POTW), as defined in 40 C.F.R. § 501.2, required to have an approved pretreatment program under 40 C.F.R. § 403.8 (a) (including any POTW located in a State that has elected to assume local program responsibilities pursuant to 40 C.F.R. § 403.10 (e)) and any treatment works treating domestic sewage, as defined in 40 C.F.R. § 122.2, classified as a Class I sludge management facility by the EPA Regional Administrator, or, in the case of approved State programs, the Regional Administrator in conjunction with the State Director, because of the potential for its sewage sludge use or disposal practice to affect public health and the environment adversely.

*Contiguous zone* means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone.

*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* means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483 and Public Law 97-117, 33 U.S.C. 1251 *et seq.*

*CWA and regulations* means the Clean Water Act (CWA) and applicable regulations promulgated thereunder. In the case of an approved State program, it includes State program requirements.

*Daily Discharge* means the “discharge of a pollutant” measured during a calendar day or any

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other 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.

*Direct Discharge* means the “discharge of a pollutant.”

*Director* means the Regional Administrator or an authorized representative. In the case of a permit also issued under Massachusetts’ authority, it also refers to the Director of the Division of Watershed Management, Department of Environmental Protection, Commonwealth of Massachusetts.

*Discharge*

- (a) When used without qualification, *discharge* means the “discharge of a pollutant.”
- (b) As used in the definitions for “interference” and “pass through,” *discharge* means the introduction of pollutants into a POTW from any non-domestic source regulated under Section 307(b), (c) or (d) of the Act.

*Discharge Monitoring Report (“DMR”)* means the EPA uniform 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 a 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 limitation guidelines* means a regulation published by the Administrator under section 304(b) of CWA to adopt or revise “effluent limitations.”

*Environmental Protection Agency (“EPA”)* means the United States Environmental Protection

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Agency.

*Grab Sample* means an individual sample collected in a period of less than 15 minutes.

*Hazardous substance* means any substance designated under 40 C.F.R. Part 116 pursuant to Section 311 of CWA.

*Incineration* is the combustion of organic matter and inorganic matter in sewage sludge by high temperatures in an enclosed device.

*Indirect discharger* means a nondomestic discharger introducing “pollutants” to a “publicly owned treatment works.”

*Interference* means a discharge (see definition above) which, alone or in conjunction with a discharge or discharges from other sources, both:

- (a) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and
- (b) Therefore is a cause of a violation of any requirement of the POTW’s NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent State or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including title II, more commonly referred to as the Resources Conservation and Recovery Act (RCRA), and including State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the SDWA), the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research and Sanctuaries Act.

*Landfill* means an area of land or an excavation in which wastes are placed for permanent disposal, and that is not a land application unit, surface impoundment, injection well, or waste pile.

*Land application* is the spraying or spreading of sewage sludge onto the land surface; the injection of sewage sludge below the land surface; or the incorporation of sewage sludge into the soil so that the sewage sludge can either condition the soil or fertilize crops or vegetation grown in the soil.

*Land application unit* means an area where wastes are applied onto or incorporated into the soil surface (excluding manure spreading operations) for agricultural purposes or for treatment and disposal.

*LC<sub>50</sub>* means the concentration of a sample that causes mortality of 50% of the test population at a specific time of observation. The LC<sub>50</sub> = 100% is defined as a sample of undiluted effluent.

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

*Municipal solid waste landfill (MSWLF) unit* means a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under 40 C.F.R. § 257.2. A MSWLF unit also may receive other types of RCRA Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, very small quantity generator waste and industrial solid waste. Such a landfill may be

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publicly or privately owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit or a lateral expansion. A construction and demolition landfill that receives residential lead-based paint waste and does not receive any other household waste is not a MSWLF unit.

### *Municipality*

- (a) When used without qualification *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 tribal organization, or a designated and approved management agency under Section 208 of CWA.
- (b) As related to sludge use and disposal, *municipality* means a city, town, borough, county, parish, district, association, or other public body (including an intermunicipal Agency of two or more of the foregoing entities) created by or under State law; an Indian tribe or an authorized Indian tribal organization having jurisdiction over sewage sludge management; or a designated and approved management Agency under Section 208 of the CWA, as amended. The definition includes a special district created under State law, such as a water district, sewer district, sanitary district, utility district, drainage district, or similar entity, or an integrated waste management facility as defined in Section 201 (e) of the CWA, as amended, that has as one of its principal responsibilities the treatment, transport, use or disposal of sewage sludge.

*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 the 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 commences discharging into “waters of the United States” after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas exploratory drilling rig or a 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 developmental 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 Director in the issuance of a final permit to be in an area of biological concern. In determining whether an area is an area of biological concern, the Director shall consider the factors specified in 40 C.F.R. §§ 125.122 (a) (1) through (10).

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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 source, or
- (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.”

*Owner or operator* means the owner or operator of any “facility or activity” subject to regulation under the NPDES programs.

*Pass through* means a Discharge (see definition above) which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW’s NPDES permit (including an increase in the magnitude or duration of a violation).

*Pathogenic organisms* are disease-causing organisms. These include, but are not limited to, certain bacteria, protozoa, viruses, and viable helminth ova.

*Permit* means an authorization, license, or equivalent control document issued by EPA or an “approved State” to implement the requirements of Parts 122, 123, and 124.

“Permit” includes an NPDES “general permit” (40 C.F.R. § 122.28). “Permit” does not include any permit which has not yet been the subject of final agency action, such as a “draft permit” or “proposed permit.”

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

*Person who prepares sewage sludge* is either the person who generates sewage sludge during the treatment of domestic sewage in a treatment works or the person who derives a material from sewage sludge.

*pH* means the logarithm of the reciprocal of the hydrogen ion concentration measured at 25° Centigrade or measured at another temperature and then converted to an equivalent value at 25° Centigrade.

*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, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff (see 40 C.F.R. § 122.3).

*Pollutant* means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials

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(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 is used either to facilitate production or for disposal purposes is approved by the 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 C.F.R. Part 122.

*Privately owned treatment works* means any device or system which is (a) used to treat wastes from any facility whose operator is not the operator of the treatment works and (b) not a “POTW.”

*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.

*Publicly owned treatment works (POTW)* means a treatment works as defined by Section 212 of the Act, which is owned by a State or municipality (as defined by Section 504(4) of the Act). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plant. The term also means the municipality as defined in Section 502(4) of the Act, which has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

*Regional Administrator* means the Regional Administrator, EPA, Region I, Boston, Massachusetts.

*Secondary industry category* means any industry which is not a “primary industry category.”

*Septage* means the liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or a holding tank when the system is cleaned or maintained.

*Sewage Sludge* means any solid, semi-solid, or liquid residue removed during the treatment of municipal waste water or domestic sewage. Sewage sludge includes, but is not limited to, solids removed during primary, secondary, or advanced waste water treatment, scum, septage, portable toilet pumpings, type III marine sanitation device pumpings (33 C.F.R. Part 159), and sewage sludge products. Sewage sludge does not include grit or screenings, or ash generated during the incineration of sewage sludge.

*Sewage sludge incinerator* is an enclosed device in which only sewage sludge and auxiliary fuel are fired.

*Sewage sludge unit* is land on which only sewage sludge is placed for final disposal. This does

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not include land on which sewage sludge is either stored or treated. Land does not include waters of the United States, as defined in 40 C.F.R. § 122.2.

*Sewage sludge use or disposal practice* means the collection, storage, treatment, transportation, processing, monitoring, use, or disposal of sewage sludge.

*Significant materials* includes, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substance designated under Section 101(14) of CERCLA; any chemical the facility is required to report pursuant to Section 313 of title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

*Significant spills* includes, but is not limited to, releases of oil or hazardous substances in excess of reportable quantities under Section 311 of the CWA (see 40 C.F.R. §§ 110.10 and 117.21) or Section 102 of CERCLA (see 40 C.F.R. § 302.4).

*Sludge-only facility* means any “treatment works treating domestic sewage” whose methods of sewage sludge use or disposal are subject to regulations promulgated pursuant to section 405(d) of the CWA, and is required to obtain a permit under 40 C.F.R. § 122.1(b)(2).

*State* means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, or an Indian Tribe as defined in the regulations which meets the requirements of 40 C.F.R. § 123.31.

*Store or storage of sewage sludge* is the placement of sewage sludge on land on which the sewage sludge remains for two years or less. This does not include the placement of sewage sludge on land for treatment.

*Storm water* means storm water runoff, snow melt runoff, and surface runoff and drainage.

*Storm water discharge associated with industrial activity* means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant.

*Surface disposal site* is an area of land that contains one or more active sewage sludge units.

*Toxic pollutant* means any pollutant listed as toxic under Section 307(a)(1) or, in the case of “sludge use or disposal practices,” any pollutant identified in regulations implementing Section 405(d) of the CWA.

*Treatment works treating domestic sewage* means a POTW or any other sewage sludge or waste water treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices.

For purposes of this definition, “domestic sewage” includes waste and waste water from humans or household operations that are discharged to or otherwise enter a treatment works. In States where there is no approved State sludge management program under Section 405(f) of the CWA, the Director may designate any person subject to the standards for sewage sludge use and

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disposal in 40 C.F.R. Part 503 as a “treatment works treating domestic sewage,” where he or she finds that there is a potential for adverse effects on public health and the environment from poor sludge quality or poor sludge handling, use or disposal practices, or where he or she finds that such designation is necessary to ensure that such person is in compliance with 40 C.F.R. Part 503.

*Upset* see B.5.a. above.

*Vector attraction* is the characteristic of sewage sludge that attracts rodents, flies, mosquitoes, or other organisms capable of transporting infectious agents.

*Waste pile* or *pile* means any non-containerized accumulation of solid, non-flowing waste that is used for treatment or storage.

*Waters of the United States or waters of the U.S.* 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 purpose;
  - (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) through (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) through (f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 C.F.R. § 423.11(m) which also meet the criteria of this definition) are not waters of the United States. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of waters of the United States. Waters of the United States do not include prior converted cropland.

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Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

*Wetlands* means those areas that are inundated or saturated by surface or groundwater 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.

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

*Zone of Initial Dilution (ZID)* means the region of initial mixing surrounding or adjacent to the end of the outfall pipe or diffuser ports, provided that the ZID may not be larger than allowed by mixing zone restrictions in applicable water quality standards.

### 2. Commonly Used Abbreviations

BOD	Five-day biochemical oxygen demand unless otherwise specified
CBOD	Carbonaceous BOD
CFS	Cubic feet per second
COD	Chemical oxygen demand
Chlorine	
Cl <sub>2</sub>	Total residual chlorine
TRC	Total residual chlorine which is a combination of free available chlorine (FAC, see below) and combined chlorine (chloramines, etc.)
TRO	Total residual chlorine in marine waters where halogen compounds are present
FAC	Free available chlorine (aqueous molecular chlorine, hypochlorous acid, and hypochlorite ion)
Coliform	
Coliform, Fecal	Total fecal coliform bacteria
Coliform, Total	Total coliform bacteria
Cont.	Continuous recording of the parameter being monitored, i.e. flow, temperature, pH, etc.
Cu. M/day or M <sup>3</sup> /day	Cubic meters per day
DO	Dissolved oxygen

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kg/day	Kilograms per day
lbs/day	Pounds per day
mg/L	Milligram(s) per liter
mL/L	Milliliters per liter
MGD	Million gallons per day
Nitrogen	
Total N	Total nitrogen
NH <sub>3</sub> -N	Ammonia nitrogen as nitrogen
NO <sub>3</sub> -N	Nitrate as nitrogen
NO <sub>2</sub> -N	Nitrite as nitrogen
NO <sub>3</sub> -NO <sub>2</sub>	Combined nitrate and nitrite nitrogen as nitrogen
TKN	Total Kjeldahl nitrogen as nitrogen
Oil & Grease	Freon extractable material
PCB	Polychlorinated biphenyl
Surfactant	Surface-active agent
Temp. °C	Temperature in degrees Centigrade
Temp. °F	Temperature in degrees Fahrenheit
TOC	Total organic carbon
Total P	Total phosphorus
TSS or NFR	Total suspended solids or total nonfilterable residue
Turb. or Turbidity	Turbidity measured by the Nephelometric Method (NTU)
µg/L	Microgram(s) per liter
WET	“Whole effluent toxicity”
ZID	Zone of Initial Dilution

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**NEW ENGLAND - REGION 1**  
**5 POST OFFICE SQUARE, SUITE 100**  
**BOSTON, MASSACHUSETTS 02109-3912**

**FACT SHEET**

**DRAFT NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT TO  
DISCHARGE TO WATERS OF THE UNITED STATES PURSUANT TO  
THE CLEAN WATER ACT (CWA)**

**NPDES PERMIT NUMBER: NH0100447**

**PUBLIC NOTICE START AND END DATES: April 10, 2024 – May 10, 2024**

**NAME AND MAILING ADDRESS OF APPLICANT:**

City of Manchester 300 Winston Street Manchester, NH 03103	and	15 Combined Sewer Overflow (CSO) Outfalls
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**NAME AND ADDRESS OF FACILITY WHERE DISCHARGE OCCURS:**

Manchester Wastewater Treatment Facility  
300 Winston Street  
Manchester, NH 03103

The Towns listed below are co-Permittees for activities required in Part I.B. (Unauthorized Discharges), Part I.C. (Operation and Maintenance of the Sewer System) and Part I.D. (Alternate Power Source):

<b>NHC010447</b>	<b>NHC020447</b>	<b>NHC030447</b>
Town of Bedford 24 North Amherst Road Bedford, NH 03110	Town of Goffstown Goffstown Sewer Commission 16 Main Street Goffstown, NH 03045	Town of Londonderry 268 B Mammoth Road Londonderry, NH 03053

**RECEIVING WATERS AND CLASSIFICATION:**

Merrimack River (NHRIV700060803-14-02 and NHIMP700060802-04)  
Piscataquog River (NHRIV700060607-22)  
Baker Brook (NHRIV700060803-08)  
Rays Brook (NHRIV700060802-15)  
Unnamed Brook (NHRIV700060803-17)  
Merrimack River Watershed - All Class B

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## 1.0 Proposed Action

The above-named applicant (the Permittee) has applied to the U.S. Environmental Protection Agency (EPA) for reissuance of a National Pollutant Discharge Elimination System (NPDES) permit to discharge from the Manchester Wastewater Treatment Facility (the Facility) into the designated receiving waters shown on Page 1 of this Fact Sheet.

The permit currently in effect was issued on February 11, 2015 with an effective date of May 1, 2015 and expired on April 30, 2020 (the 2015 Permit). The Permittee filed an application seeking NPDES permit reissuance from EPA dated October 30, 2019, as required by 40 Code of Federal Regulations (CFR) § 122.6. Since the permit application was deemed timely and complete by EPA on March 3, 2020, the Facility's 2015 Permit has been administratively continued pursuant to 40 CFR § 122.6 and § 122.21(d). EPA and the State conducted a site visit on February 5, 2024.

The NPDES Permit is issued by EPA under federal law, New Hampshire construes Title L, Water Management and Protection, Chapters 485-A, Water Pollution and Waste Disposal, to authorize the NHDES to "consider" a federal NPDES permit to be a State surface water discharge permit. As such, all the terms and conditions of the permit may, therefore, be incorporated into and constitute a discharge permit issued by NHDES.

## 2.0 Statutory and Regulatory Authority for Setting NPDES Permit Requirements

Congress enacted the Federal Water Pollution Control Act, codified at 33 U.S.C. § 1251-1387 and commonly known as the Clean Water Act (CWA), "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." CWA § 101(a). To achieve this objective, the CWA makes it unlawful for any person to discharge any pollutant into the waters of the United States from any point source, except to the extent authorized under specific provisions of the CWA, one of which is § 402. See CWA §§ 301(a), 402(a). Section 402(a) established one of the CWA's principal permitting programs, the NPDES Permit Program. Under this section, EPA may "issue a permit for the discharge of any pollutant or combination of pollutants" on the condition that the discharge will comply with the standards specified in certain other provisions of the statute (e.g., CWA §§ 301, 306 and 403). CWA § 402(a)(1). NPDES permits generally contain discharge limitations and establish related monitoring and reporting requirements. See CWA § 402(a)(1) and (2). The regulations governing EPA's NPDES permit program are generally found in 40 CFR Parts 122, 124, 125, and 136.

"Congress has vested in the Administrator [of EPA] broad discretion to establish conditions for NPDES permits" in order to achieve the statutory mandates of Sections 301 and 402 of the CWA. *Arkansas v. Oklahoma*, 503 U.S. 91, 105 (1992). Technology-based effluent limitations (TBELs) represent the minimum level of pollutant discharge control that must be satisfied under Sections 301(b) and 402(a)(1) of the CWA. See also 40 CFR § 125.3(a). When limits more stringent than technology-based limits are needed to maintain or achieve compliance with state water quality standards (WQS), then NPDES permit must include water quality-based

effluent limits (QBELs). See CWA §§ 301(b)(1)(C) and 401; 40 CFR §§ 122.4(d), 122.44(d)(1) and (5), 124.53, and 124.55.

## **2.1 Technology-Based Requirements**

Technology-based limitations, generally developed on an industry-by-industry basis, reflect a specified level of pollutant reducing technology available and economically achievable for the type of facility being permitted. See CWA § 301(b). As a class, publicly owned treatment works (POTWs) must meet performance-based requirements based on available wastewater treatment technology. See CWA § 301(b)(1)(B). The performance level for POTWs is referred to as “secondary treatment.” Secondary treatment is comprised of technology-based requirements expressed in terms of biochemical oxygen demand (BOD<sub>5</sub>), total suspended solids (TSS) and pH. See 40 CFR Part 133.

Under CWA § 301(b)(1), POTWs must have achieved effluent limits based upon secondary treatment technology by July 1, 1977. Since all statutory deadlines for meeting various treatment technology-based effluent limitations established pursuant to the CWA have expired, when technology-based effluent limits are included in a permit, compliance with those limitations is from the date the issued permit becomes effective. See 40 CFR § 125.3(a)(1).

## **2.2 Water Quality-Based Requirements**

The CWA and federal regulations also require that permit effluent limits based on water quality considerations be established for point source discharges when such limitations are necessary to meet state or federal water quality standards that are applicable to the designated receiving water. This is necessary when less stringent TBELs would interfere with the attainment or maintenance of water quality criteria in the receiving water. See CWA § 301(b)(1)(C) and 40 CFR §§ 122.44(d)(1), 122.44(d)(5).

### **2.2.1 Water Quality Standards**

The CWA requires that each state develop water quality standards (WQSS) for all water bodies within the State. See CWA § 303 and 40 CFR § 131.10-12. Generally, WQSSs consist of three parts: 1) the designated use or uses assigned for a water body or a segment of a water body; 2) numeric or narrative water quality criteria sufficient to protect the assigned designated use(s); and 3) antidegradation requirements to ensure that once a use is attained it will not be degraded and to protect high quality and National resource waters. See CWA § 303(c)(2)(A) and 40 CFR § 131.12. The applicable State WQSSs can be found in the New Hampshire Code of Administrative Rules, Surface Water Quality Regulations, Chapter Env-Wq 1700, *et seq.* See also generally, N.H. Rev. Stat. Title L, Water Management and Protection, Chapters 485-A, Water Pollution and Waste Disposal.

As a matter of state law, state WQSSs specify different water body classifications, each of which is associated with certain designated uses and particular numeric and narrative water quality

criteria intended to help attain the designated uses. Then the state assigns one of the water body classifications to each water body in the state. When using chemical-specific numeric criteria to develop permit limitations, acute and chronic aquatic life criteria and human health criteria are used and expressed in terms of maximum allowable in-stream pollutant concentrations. In general, aquatic-life acute criteria are considered applicable to daily time periods (maximum daily limit) and aquatic-life chronic criteria are considered applicable to monthly time periods (average monthly limit). Chemical-specific human health criteria are typically based on lifetime chronic exposure and, therefore, are typically applicable to average monthly limits.

When permit effluent limitation(s) are necessary to ensure that the receiving water meets narrative water quality criteria, the permitting authority must establish effluent limits in one of the following three ways: 1) based on a “calculated numeric criterion for the pollutant which the permitting authority demonstrates will attain and maintain applicable narrative water quality criteria and fully protect the designated use,” 2) based on a “case-by-case basis” using CWA § 304(a) recommended water quality criteria, supplemented as necessary by other relevant information; or, 3) in certain circumstances, based on use of an indicator parameter. *See 40 CFR § 122.44(d)(1)(vi)(A-C).*

### **2.2.2 Antidegradation**

Federal regulations found at 40 CFR § 131.12 require states to develop and adopt a statewide antidegradation policy that maintains and protects existing in-stream water uses and the level of water quality necessary to protect these existing uses. In addition, the antidegradation policy ensures maintenance of high quality waters which exceed levels necessary to support propagation of fish, shellfish, and wildlife and to support recreation in and on the water, unless the State finds that allowing degradation is necessary to accommodate important economic or social development in the area in which the waters are located.

The New Hampshire Antidegradation Policy, found at Env-Wq 1708, applies to any new or increased activity that would lower water quality or affect existing or designated uses, including increased loadings to a water body from an existing activity. The antidegradation regulations focus on protecting high quality waters and maintaining water quality necessary to protect existing uses. Discharges that cause “significant degradation” are defined in NH WQS (Env-Wq 1708.09(a)) as those that use 20% or more of the remaining assimilative capacity for a water quality parameter in terms of either concentration or mass of pollutants or flow rate for water quantity. When NHDES determines that a proposed increase would cause a significant impact to existing water quality, the applicant must provide documentation to demonstrate that the lowering of water quality is necessary, that it will provide net economic or social benefit in the area in which the water body is located, and that the benefits of the activity outweigh the environmental impact caused by the reduction in water quality. *See Env-Wq 1708.10(b).*

This permit is being reissued with effluent limitations sufficiently stringent to satisfy the State's antidegradation requirements, including the protection of the existing uses of the receiving water.

### **2.2.3 Assessment and Listing of Waters and Total Maximum Daily Loads.**

The objective of the CWA is to restore and maintain the chemical, physical and biological integrity of the Nation's waters. To meet this goal, the CWA requires states to develop information on the quality of their water resources and report this information to EPA, the U.S. Congress, and the public. To this end, EPA released guidance on November 19, 2001, for the preparation of an integrated "List of Waters" that could combine reporting elements of both § 305(b) and § 303(d) of the CWA. The integrated list format allows states to provide the status of all their assessed waters in one list. States choosing this option must list each water body or segment in one of the following five categories: 1) unimpaired and not threatened for all designated uses; 2) unimpaired waters for some uses and not assessed for others; 3) insufficient information to make assessments for any uses; 4) impaired or threatened for one or more uses but not requiring the calculation of a Total Maximum Daily Load (TMDL); and 5) impaired or threatened for one or more uses and requiring a TMDL.

A TMDL is a planning tool and potential starting point for restoration activities with the ultimate goal of attaining water quality standards. A TMDL essentially provides a pollution budget designed to restore the health of an impaired water body. A TMDL typically identifies the source(s) of the pollutant from point sources and non-point sources, determines the maximum load of the pollutant that the water body can tolerate while still attaining WQSs for the designated uses, and allocates that load among to the various sources, including point source discharges, subject to NPDES permits. See 40 CFR § 130.7.

For impaired waters where a TMDL has been developed for a particular pollutant and the TMDL includes a waste load allocation (WLA) for a NPDES permitted discharge, the effluent limitation in the permit must be "consistent with the assumptions and requirements of any available WLA". 40 CFR § 122.44(d)(1)(vii)(B).

### **2.2.4 Reasonable Potential**

Pursuant to CWA § 301(b)(1)(C), 33 U.S.C. § 1311(b)(1)(C), and 40 CFR § 122.44(d)(1), NPDES permits must contain any requirements in addition to TBELs that are necessary to achieve water quality standards established under § 303 of the CWA. In addition, permit limits "must control any pollutant or pollutant parameter (conventional, non-conventional, or toxic) which the permitting authority determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any water quality standard, including State narrative criteria for water quality." 40 CFR § 122.44(d)(1)(i). To determine if the discharge causes, or has the reasonable potential to cause, or contribute to an excursion above any WQS, EPA considers: 1) existing controls on point and non-point sources of pollution; 2) the variability of the pollutant or pollutant parameter in the effluent; 3) the

sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity); and 4) where appropriate, the dilution of the effluent by the receiving water. *See 40 CFR § 122.44(d)(1)(ii).*

If the permitting authority determines that the discharge of a pollutant will cause, has the reasonable potential to cause, or contribute to an excursion above WQSs, the permit must contain WQBELs for that pollutant. *See 40 CFR § 122.44(d)(1)(i).*

### **2.2.5 State Certification**

EPA may not issue a permit unless the State Water Pollution Control Agency with jurisdiction over the receiving water(s) either certifies that the effluent limitations contained in the permit are stringent enough to assure that the discharge will not cause the receiving water to violate the State WQSs, or the State waives, or is deemed to have waived, its right to certify. *See 33 U.S.C. § 1341(a)(1).* Regulations governing state certification are set forth in 40 CFR § 124.53 and § 124.55. EPA has requested permit certification by the State pursuant to 40 CFR § 124.53 and expects that the Draft Permit will be certified.

If the State believes that conditions more stringent than those contained in the Draft Permit are necessary to meet the requirements of either CWA §§ 208(e), 301, 302, 303, 306 and 307, or applicable requirements of State law, the State should include such conditions in its certification and, in each case, cite the CWA or State law provisions upon which that condition is based. Failure to provide such a citation waives the right to certify as to that condition. EPA includes properly supported State certification conditions in the NPDES permit. The only exception to this is that the permit conditions/requirements regulating sewage sludge management and implementing CWA § 405(d) are not subject to the State certification requirements. Reviews and appeals of limitations and conditions attributable to State certification shall be made through the applicable procedures of the State and may not be made through EPA's permit appeal procedures of 40 CFR Part 124.

In addition, the State should provide a statement of the extent to which any condition of the Draft Permit can be made less stringent without violating the requirements of State law. Since the State's certification is provided prior to final permit issuance, any failure by the State to provide this statement waives the State's right to certify or object to any less stringent condition.

It should be noted that under CWA § 401, EPA's duty to defer to considerations of State law is intended to prevent EPA from relaxing any requirements, limitations or conditions imposed by State law. Therefore, “[a] State may not condition or deny a certification on the grounds that State law allows a less stringent permit condition.” 40 CFR § 124.55(c). In such an instance, the regulation provides that, “The Regional Administrator shall disregard any such certification conditions or denials as waivers of certification.” *Id.* EPA regulations pertaining to permit limitations based upon WQSs and State requirements are contained in 40 CFR §§ 122.4(d) and 122.44(d).

## 2.3 Effluent Flow Requirements

Sewage treatment plant discharge is encompassed within the definition of “pollutant” and is subject to regulation under the CWA. The CWA defines “pollutant” to mean, *inter alia*, “municipal...waste” and “sewage...discharged into water.” 33 U.S.C. § 1362(6).

Generally, EPA uses a discharger’s effluent flow volume both to determine whether an NPDES permit needs certain effluent limitations and to calculate the limitations themselves. EPA practice is to use effluent flow as a reasonable and important worst-case condition in its reasonable potential and WQBEL calculations to ensure compliance with WQSs under CWA § 301(b)(1)(C). Should a facility’s effluent flow exceed the flow assumed in these calculations, the in-stream dilution would be reduced, and the calculated effluent limitations might not be sufficiently protective (i.e. might not meet WQSs). Further, pollutants that do not have the reasonable potential to exceed WQSs at a lower discharge flow may have a reasonable potential to do so at a higher flow due to the decreased dilution in the receiving water (which, conversely, means there will be a higher concentration of the pollutants). In order to ensure that the assumptions underlying EPA’s reasonable potential analyses and permit effluent limitation derivations remain sound for the duration of the permit, EPA may ensure the validity of its “worst-case” effluent flow assumptions through imposition of permit conditions for effluent flow.<sup>1</sup> In this regard, the effluent flow limitation is a component of an WQBELs because the WQBELs are premised on a maximum level flow. The effluent flow limit may also be necessary to ensure that other pollutants remain at levels that do not have a reasonable potential to exceed WQSs.

The limitation on wastewater effluent flow is within EPA’s authority to condition a permit to carry out the objectives of the Act. *See* CWA §§ 402(a)(2) and 301(b)(1)(C); 40 CFR §§ 122.4(a) and (d), 122.43 and 122.44(d). A condition on the discharge designed to ensure the WQBEL and reasonable potential calculations account for “worst case” conditions is encompassed by the references to “condition” and “limitations” in CWA §§ 402 and 301 and implementing regulations, as they are designed to assure compliance with applicable water quality regulations, including antidegradation. Regulating the quantity of pollutants in the discharge through a restriction on the quantity of wastewater effluent is consistent with the overall structure and purposes of the CWA.

Setting limits on effluent flow volumes is within EPA’s authority to condition a permit to carry out the objectives and satisfy the requirements of the CWA. *See* CWA §§ 402(a)(2) and 301(b)(1)(C); 40 CFR §§ 122.4(a) and (d), 122.43 and 122.44(d). Regulating the quantity of

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<sup>1</sup> EPA’s regulations regarding “reasonable potential” require EPA to consider “where appropriate, the dilution of the effluent in the receiving water,” *id* 40 CFR §122.44(d)(1)(ii). Both the effluent flow and receiving water flow may be considered when assessing reasonable potential. *In re Upper Blackstone Water Pollution Abatement Dist.*, 14 E.A.D. 577, 599 (EAB 2010). EPA guidance directs that this “reasonable potential: analysis be based on “worst-case” conditions. *See In re Washington Aquaduct Water Supply Sys.* 11 E.A.D. 565, 584 (EAB 2004).

pollutants in the discharge through a restriction on the quantity of effluent is also consistent with EPA's authorities under the CWA.

As provided in Part II.B.1 (Standard Conditions) of the proposed permit and 40 CFR § 122.41(e), the Permittee is required to properly operate and maintain all facilities and systems of treatment and control. Improper operation and maintenance may result in non-compliance with permit effluent limitations. Consequently, an effluent flow limit is a permit condition that relates to the Permittee's duty to mitigate (*i.e.*, minimize or prevent any discharge in violation of the permit that has a reasonable likelihood of adversely affecting human health or the environment) and to properly operate and maintain the treatment works. See 40 CFR §§ 122.41(d), (e).

EPA has also included the effluent flow limit in the permit to minimize or prevent infiltration and inflow (I/I) that may result in unauthorized discharges and compromise proper operation and maintenance of the facility. Improper operation and maintenance may result in non-compliance with permit effluent limitations. Infiltration is groundwater that enters the collection system through physical defects such as cracked pipes or deteriorated joints. Inflow is extraneous flow added to the collection system that enters the collection system through point sources such as roof leaders, yard and area drains, sump pumps, manhole covers, tide gates, and cross connections from storm water systems. Significant I/I in a collection system may displace sanitary flow, reducing the capacity available for treatment and the operating efficiency of the treatment works and to properly operate and maintain the treatment works.

Furthermore, the extraneous flow due to significant I/I greatly increases the potential for sanitary sewer overflows (SSOs) in separate systems. Consequently, the effluent flow limit is a permit condition that relates to the permittee's duty to mitigate (*i.e.*, minimize or prevent any discharge in violation of the permit that has a reasonable likelihood of adversely affecting human health or the environment) and to properly operate and maintain the treatment works. See 40 CFR §§ 122.41(d), (e).

## **2.4 Monitoring and Reporting Requirements**

### **2.4.1 Monitoring Requirements**

Sections 308(a) and 402(a)(2) of the CWA and the implementing regulations at 40 CFR Parts 122, 124, 125, and 136 authorize EPA to include monitoring and reporting requirements in NPDES permits.

The monitoring requirements included in this permit have been established to yield data representative of the Facility's discharges in accordance with CWA §§ 308(a) and 402(a)(2), and consistent with 40 CFR §§ 122.41(h), (j), and (l)(9), 122.43(a), 122.44(i) and 122.48. The Draft Permit specifies routine sampling and analysis requirements to provide ongoing, representative information on the levels of regulated constituents in the discharges. The monitoring program is needed to enable EPA and the State to assess the characteristics of the Facility's effluent,

whether Facility discharges are complying with permit limits, and whether different permit conditions may be necessary in the future to ensure compliance with technology-based and water quality-based standards under the CWA. EPA and/or the State may use the results of the chemical analyses conducted pursuant to this permit, as well as national water quality criteria developed pursuant to CWA § 304(a)(1), State water quality criteria, and any other appropriate information or data, to develop numerical effluent limitations for any pollutants, including, but not limited to, those pollutants listed in Appendix D of 40 CFR Part 122.

NPDES permits require that the approved analytical procedures found in 40 CFR Part 136 be used for sampling and analysis unless other procedures are explicitly specified. See 40 CFR § 122.41 (j)(4). Permits also include requirements necessary to comply with the *National Pollutant Discharge Elimination System (NPDES): Use of Sufficiently Sensitive Test Methods for Permit Applications and Reporting Rule*.<sup>2</sup> This Rule requires that where EPA-approved methods exist, NPDES applicants must use sufficiently sensitive EPA-approved analytical methods when quantifying the presence of pollutants in a discharge. Further, the permitting authority must prescribe that only sufficiently sensitive EPA-approved methods be used for analyses of pollutants or pollutant parameters under the permit. The NPDES regulations at 40 CFR § 122.21(e)(3) (completeness), 40 CFR § 122.44(i)(1)(iv) (monitoring requirements) and/or as cross referenced at 40 CFR § 136.1(c) (applicability) indicate that an EPA-approved method is sufficiently sensitive where:

- The method minimum level<sup>3</sup> (ML) is at or below the level of the effluent limitation established in the permit for the measured pollutant or pollutant parameter; or
- In the case of permit applications, the ML is above the applicable water quality criterion, but the amount of the pollutant or pollutant parameter in a facility's discharge is high enough that the method detects and quantifies the level of the pollutant or parameter in the discharge; or
- The method has the lowest ML of the analytical methods approved under 40 CFR Part 136 or required under 40 CFR chapter I, subchapter N or O for the measured pollutant or pollutant parameter.

#### **2.4.2 Reporting Requirements**

The Draft Permit requires the Permittee to report monitoring results obtained during each calendar month to EPA and the State electronically using NetDMR. The Permittee must submit

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<sup>2</sup> Fed. Reg. 49,001 (Aug 19, 2014).

<sup>3</sup> The term “minimum level” refers to either the sample concentration equivalent to the lowest calibration point in a method or a multiple of the method detection limit (MDL). Minimum levels may be obtained in several ways: They may be published in a method; they may be sample concentrations equivalent to the lowest acceptable calibration point used by a laboratory; or they may be calculated by multiplying the MDL in a method, or the MDL determined by a lab, by a factor. EPA is considering the following terms related to analytical method sensitivity to be synonymous: “quantitation limit,” “reporting limit,” “level of quantitation,” and “minimum level.” See Fed. Reg. 49,001 (Aug. 19, 2014).

a Discharge Monitoring Report (DMR) for each calendar month no later than the 15<sup>th</sup> day of the month following the completed reporting period.

NetDMR is a national web-based tool enabling regulated CWA permittees to submit DMRs electronically via a secure internet application to EPA through the Environmental Information Exchange Network. NetDMR has eliminated the need for participants to mail in paper forms to EPA under 40 CFR §§ 122.41 and 403.12. NetDMR is accessible through EPA's Central Data Exchange at <https://cdx.epa.gov/>. Further information about NetDMR can be found on EPA's NetDMR support portal webpage.<sup>4</sup>

With the use of NetDMR, the Permittee is no longer required to submit hard copies of DMRs and reports to EPA and the State unless otherwise specified in the Final Permit. In most cases, reports required under the permit shall be submitted to EPA as an electronic attachment through NetDMR. Certain exceptions are provided in the permit, such as for providing written notifications required under the Part II Standard Conditions.

## **2.5 Standard Conditions**

The Standard Conditions, included as Part II of the Draft Permit, are based on applicable regulations found in the EPA's NPDES permitting regulations. *See 40 CFR Part 122.41 See also, generally, 40 CFR Part 122.*

## **2.6 Anti-backsliding**

The CWA's anti-backsliding requirements prohibit a permit from being renewed, reissued or modified to include with less stringent limitations or conditions than those contained in a previous permit except in compliance with one of the specified exceptions to those requirements. *See CWA §§ 402(o) and 303(d)(4) and 40 CFR § 122.44(l).* Anti-backsliding provisions apply to effluent limits based on technology, water quality and/or state certification requirements.

All proposed limitations in the Draft Permit are at least as stringent as limitations included in the 2015 Permit unless specific conditions exist to justify relaxation in accordance with CWA § 402(o) or § 303(d)(4). Discussion of any less stringent limitations and corresponding exceptions to anti-backsliding provisions is provided in the sections that follow.

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<sup>4</sup> <https://netdmr.zendesk.com/hc/en-us/articles/209616266-EPA-Region-1-NetDMR-Information>

### 3.0 Description of Facility and Discharge

#### 3.1 Location and Type of Facility

The location of the treatment plant and Outfall 001 to Merrimack River are shown in Figure 1. The longitude and latitude of Outfall 001 are 42° 56' 22" N, 71° 27' 25" W.

This facility is engaged in the collection and treatment of domestic, commercial and industrial wastewaters from the City of Manchester (109,000 served) and three surrounding towns. The City's wastewater treatment facility (WWTF) is a 34 mgd conventional activated sludge facility.

EPA is including three co-permittees to the Draft Permit. The Towns of Londonderry (23,000 served), Bedford (6,000 served), and Goffstown (17,000 served) own and operate sanitary wastewater collection systems that discharge flows to the Manchester WWTF for treatment. These municipalities are co-permittees for certain activities pertaining to proper operation and maintenance of their respective collection systems (See Part I.C. and I.D of the Draft Permit). Adding them to the Draft Permit ensures that they comply with requirements to operate and maintain the collection systems so as to avoid discharges of sewage from the collection systems. These co-permittees did not apply for permit coverage; with letters sent February 6, 2024, EPA waived application requirements for the co-permittees. The legal basis for including municipal satellite collection systems as co-permittees is described in *In re Charles River Pollution Control District*, 16 E.A.D. 623 (EAB 2015)<sup>5</sup>.

According to the City's NPDES Application, there are 18 significant industrial users (including 6 categorical industrial users) discharging to the City's collection system. The total process wastewater flow from industries in Manchester is approximately 1 million gallons per day (mgd) and the wastewater flow from industries in the towns of co-permittees are an additional 1 mgd, comprising a total of approximately 2 mgd or 10 percent of the total average monthly flow to the treatment plant. Septage (sludge pumped from septic tanks and brought to the treatment plant by septage haulers) accounts for less than 0.1 percent of the total average treatment plant flow.

A quantitative description of the discharge in terms of effluent parameters, based on monitoring data submitted by the permittee from December 2018 through November 2023 is provided in Appendix A of this Fact Sheet.

##### 3.1.1 Treatment Process Description

The Manchester WWTF provides preliminary, primary, and secondary treatment of municipal wastewater. The first process is preliminary treatment. This step consists of screening which

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<sup>5</sup> The decision is available at:

[https://yosemite.epa.gov/oa/EAB\\_Web\\_Docket.nsf/Published%20and%20Unpublished%20Decisions/F89699D1A0710BCF85257DE200717A93/\\$File/Charles%20River%20Decision%20Vol%2016.pdf](https://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/Published%20and%20Unpublished%20Decisions/F89699D1A0710BCF85257DE200717A93/$File/Charles%20River%20Decision%20Vol%2016.pdf)

removes rags, sticks, and other large items from the wastewater stream by means of a bar rack. The next step is grit removal, as the wastewater enters the chamber the flow decreases to a rate of 2 feet per second (fps) which causes sand and other inorganic materials to settle out of the stream. The air from the grit blowers keeps organic materials, such as food wastes and human waste, in suspension where it progresses to the next treatment process: primary treatment. The grit is pumped out of the chamber then is removed by a mechanical classifier and disposed of in a landfill.

Primary treatment occurs in three circular 125 foot primary clarifiers. The wastewater from the grit chamber enters the primary clarifiers where it has a residence time of approximately 2 hours. During this process, solid materials settle due to gravity. The settled solids are collected by sweeping mechanisms at the bottom of the tanks where they are pumped to the gravity thickeners, which are part of the sludge handling process. Approximately 50 to 60% of the suspended solids are removed during primary clarification. From here, the wastewater begins the secondary treatment phase.

During secondary treatment, two processes occur. The first process is the activated sludge process. This occurs within aeration tanks where bacteria are grown and cultured. The bacteria use oxygen and feed on the remaining suspended solids and dissolved organic matter. Air is introduced to the aeration tanks to assure sufficient oxygen is available to allow the bacteria to survive. From here the wastewater enters the secondary clarifiers. Like the primary clarifiers, there are three circular 125 foot secondary clarifiers. The secondary clarification process allows the bacteria from the aeration basins to settle out via gravity. The solids from the secondary clarifiers are either returned to the aeration basin and/or transferred to the thickening centrifuges. At this point the wastewater is disinfected prior to discharge. During the disinfection process, the wastewater is chlorinated and dechlorinated.

Sodium hypochlorite is added to the wastewater and travels in a maze-like pattern in the chlorine contact chamber to allow for a minimum of one-hour contact time between the chlorine and the wastewater. Because chlorine can be harmful to aquatic life, the wastewater is dechlorinated prior to final discharge. Sodium bisulfite is added to the wastewater and a minimum of two-minutes contact is necessary to allow the chlorine to be neutralized into harmless salts. At this point the water becomes plant effluent and is discharged to the Merrimack River.

In September 2000, the City completed construction of a bypass of its existing secondary treatment works. This bypass allows the treatment plant to accept wet weather flows up to 70 MGD into the treatment plant, with flows up to 34 MGD receiving full secondary treatment and flows between 34 and 70 MGD receiving primary treatment (*i.e.*, primary clarification and removal of solids and floatables) and disinfection (Note that disinfection occurs in chlorine contact tanks after the bypassed flow is blended with the flow receiving secondary treatment).

This increase in wet weather flow capacity reduces the magnitude and frequency of untreated wastewater discharges through CSOs. The addition of this bypass was part of Phase 1 of the Long-Term Control Plan discussed in Section 5.6 of this Fact Sheet.

The biosolids collected in the primary and secondary clarifiers are transferred to the sludge handling process, which consists of thickening, dewatering, and eventual incineration in the Fluidized Bed Incinerator (FBI). The primary sludge is thickened in the gravity thickeners. The gravity thickeners consist of three tanks 50 feet in diameter. By means of gravity, further solid/liquid separation occurs to a point where the solids content in the thickeners is approximately 4% to 6% solids.

The waste activated sludge is sent to one of three thickening centrifuges. The sludge is thickened to approximately 3% to 4% solids. The thickened waste activated sludge and the thickened primary sludge are pumped to an inline mixer where they are blended. The blended thickened sludge is then pumped to one of three dewatering centrifuges for dewatering. A screw mechanism within the center of the spinning centrifuge moves the sludge as solids are separated from liquid. The sludge has a solids content of approximately 24% to 26% when it exits the centrifuge. At this point the sludge is sufficiently dewatered and it is sent to a Sludge Silo for storage. The stored dewatered sludge is then sent to the FBI for incineration once the level in the silo is 75% of its capacity. During occasional maintenance activities when the incinerator is not in operation, the sludge is then sent to sludge trailers for off-site disposal. In 2023, the facility generated 4,424 dry metric tons of biosolids.

### **3.1.2 Collection System Description**

The City of Manchester owns and operates a wastewater collection system comprised of 55 percent sanitary sewers, which carry domestic, industrial, and commercial wastewater; and 45 percent combined sewers, which carry domestic, industrial, and commercial wastewater plus stormwater runoff. Manchester's wastewater collection system consists of ten pumping stations and approximately 385 miles of sewers. The WWTF serves the majority of Manchester along with portions of Bedford, Goffstown and Londonderry. The Goffstown, Bedford and Londonderry have separate sewer systems. There are 15 CSO outfalls remaining in the Manchester wastewater collection system and interceptor network. Of the 15 remaining CSO outfalls, 2 discharge to the Piscataquog River (adjacent to Bass Island and immediately upstream of the river's confluence with the Merrimack River), 2 discharge to the Merrimack River from the west side of the city, and 11 discharge to the Merrimack River from the east side of the city (including Tannery Brook and Ray Brook). During certain wet weather events, discharges of untreated sanitary wastewater and stormwater occur from the City's 15 combined sewer overflow outfalls ("CSOs") into the Piscataquog and Merrimack Rivers, as listed below and shown in Appendix C.

## **4.0 Description of Receiving Water and Dilution**

#### 4.1 Receiving Water

The Manchester WWTF discharges through Outfall 001 into the Merrimack River, to AUID NHRIV700060803-14-02. The Merrimack River flows to the Plum Island Estuary in Newburyport, Massachusetts.

The Merrimack River is classified as a Class B water by the State of New Hampshire. According to New Hampshire's WQS (RSA 485-A:8), *"Class B waters shall be of the second highest quality and shall have no objectionable physical characteristics, shall contain a dissolved oxygen content of at least 75 percent of saturation, and shall contain not more than either a geometric mean based on at least 3 samples obtained over a 60-day period of 126 Escherichia coli per 100 milliliters, or greater than 406 Escherichia coli per 100 milliliters in any one sample; and for designated beach areas shall contain not more than a geometric mean based on at least 3 samples obtained over a 60-day period of 47 Escherichia coli per 100 milliliters, or 88 Escherichia coli per 100 milliliters in any one sample; unless naturally occurring. There shall be no disposal of sewage or waste into said waters except those which have received adequate treatment to prevent the lowering of the biological, physical, chemical or bacteriological characteristics below those given above, nor shall such disposal of sewage or waste be inimical to aquatic life or to the maintenance of aquatic life in said receiving waters. The pH range for said waters shall be 6.5 to 8.0 except when due to natural causes. Any stream temperature increase associated with the discharge of treated sewage, waste or cooling water, water diversions, or releases shall not be such as to appreciably interfere with the uses assigned to this class."*

The Merrimack River AUID NHRIV700060803-14-02 is listed in the final *New Hampshire Integrated List of Waters for the Clean Water Act 2020-2022 Reporting Cycle* ("303(d) List") as a Category 5 "Waters Requiring a TMDL.<sup>6</sup> The pollutants requiring TMDLs are aluminum and pH. In 2011, NHDES finalized a bacteria TMDL for segment NHRIV700060802-15, among other water body segments.

The 15 CSO outfalls discharge to seven receiving water segments. The impairments, if any, of each receiving water segment are presented in Table 1.

**Table 1: Receiving Water Impairments**

Outfall	Assessment Unit Name	Assessment Unit ID	Impaired Designated Use	Parameter Name
001, 011, 018, 044, 045, 046, 051, 052, 055,	Merrimack River	NHRI700060 803-14-02	Aquatic Life	Aluminum, pH, Phosphorus
			Primary Contact Recreation	E. coli
			Fish Consumption	Mercury
047, 053	Merrimack River – Amoskeag Dam Bypass	NHRI700060 803-14-01	Fish consumption	Mercury
031	Merrimack River – Amoskeag Dam	NHIMP70006 0802-04	Primary and Secondary Contact Recreation	E. coli
			Fish Consumption	Mercury
039	Piscataquog River	NHRI700060 607-22	Aquatic Life	pH
			Primary and Secondary Contact Recreation	E. coli
			Fish Consumption	Mercury
054	Rays Brook	NHRI700060 802-15	Aquatic Life	Chloride
			Fish Consumption	Mercury
043	Baker Brook	NHRI700060 803-08	Aquatic Life	Chloride
			Fish Consumption	Mercury
050	Unnamed Brook	NHRI700060 803-17	Fish consumption	Mercury

## 4.2 Ambient Data

A summary of the ambient data collected in the receiving water in the vicinity of the outfall that is referenced in this Fact Sheet can be found in Appendix A of this Fact Sheet.

## 4.3 Available Dilution

To ensure that discharges do not cause or contribute to violations of WQS under all expected conditions, WQBELs are derived assuming critical conditions for the receiving water<sup>7</sup>. The critical flow in rivers and streams is some measure of the low flow of that river or stream. State WQSs at Env-Wq 1705.2 require that:

<sup>7</sup> EPA Permit Writer's Manual, Section 6.2.4

(a) The flow used to calculate permit limits shall be specified in (b) through (d), below.

(b) For tidal waters, the flow condition shall be equivalent to the conditions that result in a dilution that is exceeded 99% of the time.

(c) For non-tidal rivers and streams, permit limits for all human health criteria for carcinogens shall be developed based on the long-term harmonic mean flow, which is the number of daily flow measurements divided by the sum of the reciprocals of the daily flows.

(d) For non-tidal rivers and streams, permit limits for all aquatic life criteria and human health criteria for non-carcinogens shall be based on the 7Q10 flow.

NHDES calculated the 7Q10 as follows:

#### 7Q10 Streamflow Analysis

The Manchester Wastewater Treatment Plant (WWTP) outfall is located just downstream of the USGS Merrimack River Near Goffs Falls, Below Manchester, NH Gage (01092000). Therefore, the 7Q10 at a location just upstream of the Manchester WWTP outfall was calculated using the gage data, and the Dingman ratio proration method<sup>8</sup> was not used. The calculated 7Q10 is 676 cfs.

#### Dilution Factor Calculation

The dilution factor for the Manchester WWTP outfall was calculated using the following equation:

$$\text{Dilution Factor} = 0.9 * (Q_S + Q_D) / Q_D$$

Where:  $Q_S$  = 7Q10 flow of the Merrimack River just upstream of outfall = 676 cfs  
 $Q_D$  = design flow of Manchester WWTP = 34 mgd = 52.6 cfs  
0.9 = factor to reserve 10% of the receiving water assimilative capacity

$$\text{Dilution Factor} = 0.9 * (676 + 52.6) / 52.6 = 12.5$$

#### **5.0 Proposed Effluent Limitations and Conditions**

The proposed effluent limitations and conditions derived under the CWA and State WQSSs are described below. These proposed effluent limitations and conditions, the basis of which are discussed throughout this Fact Sheet, may be found in Part I of the Draft Permit.

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<sup>8</sup> Dingman, S.L., and S.C. Lawlor, 1995. Estimating Low-Flow Quantiles from Drainage-Basin Characteristics in New Hampshire and Vermont, American Water Resources Association, Water Resources Bulletin, pp 243-256.

## 5.1 Effluent Limitations and Monitoring Requirements

In addition to the State and Federal regulations described in Section 2, data submitted by the permittee in its permit application, in monthly discharge monitoring reports (DMRs) and in WET test reports from December 2018 to November 2023 (the “review period”) were used to identify the pollutants of concern and to evaluate the discharge during the effluent limitations development process (See **Appendix A**). The reasonable potential analysis is included in Appendix B and results are discussed in the sections below.

### 5.1.1 Effluent Flow

The effluent flow in the 2015 Permit is a reporting requirement only. The DMR data during the review period show that the average monthly flow ranged from 12.37 MGD to 31.17 MGD.

The flow effluent limit reflects the design flow of the facility of 34 MGD.

The Draft Permit includes an average monthly flow limit of 34 MGD, reported as a rolling annual average. The Draft Permit requires that flow be measured continuously and that the rolling annual average flow, as well as the average monthly and maximum daily flow for each month be reported. The rolling annual average flow is calculated as the average of the flow for the reporting month and 11 previous months.

As noted in Section 3.1.1 above, the facility is able to bypass secondary treatment during period of high flow above 34 MGD. The permit requires that bypasses shall not occur below influent flows of 34 MGD. When bypass occurs, the blended effluent shall be subject to the end-of-pipe effluent limitations in Part I.A.1.a above and all bypasses shall be reported by the Permittee to EPA and NHDES pursuant to Part I.I.6 below. A bypass of secondary treatment is subject to the requirements of Part II.B.4. and Part II.D.1.e. of the permit. The following information shall be reported as an electronic attachment to each March DMR summarizing each day there was a bypass of secondary treatment for the previous calendar year: date and time of initiation of bypass flow, influent flow at time of initiation (MGD), date and time of termination of bypass flow, influent flow at time of termination (MGD), duration of bypass (hrs), and total volume of bypass flow (MG). This information may be used by EPA to evaluate the frequency and magnitude of bypasses of secondary treatment during the permit term.

### 5.1.2 Carbonaceous Biochemical Oxygen Demand (CBOD<sub>5</sub>)

#### 5.1.2.1 CBOD<sub>5</sub> Concentration Limits

The five-day carbonaceous biochemical oxygen demand (CBOD<sub>5</sub>) limits in the 2015 Permit were based on the secondary treatment regulations for POTWs found at 40 CFR § 133.102(a) and (b). The average monthly limit is 25 mg/L and the average weekly limit is 40 mg/L. The 2015 Permit also contains a maximum daily limitation of 45 mg/L for CBOD<sub>5</sub>.

The DMR data during the review period shows that there have been no violations of the CBOD<sub>5</sub> average monthly and average weekly concentration limits, and there has been one violation of the maximum daily limitation for CBOD<sub>5</sub>.

The Draft Permit proposes the same CBOD<sub>5</sub> concentration limits as in the 2015 Permit as no new WLAs have been established and there have been no changes to the secondary treatment standards. The monitoring frequency is twice per week.

#### **5.1.2.2 CBOD<sub>5</sub> Mass Limits**

The mass-based CBOD<sub>5</sub> limits in the 2015 Permit are based on the concentration limits noted above and calculated with the facility's design flow of 34 MGD. These are a monthly average of 7,090 lb/day, a weekly average of 11,350 lb/day, and a daily maximum of 12,770 lb/day

The DMR data from the review period shows that there have no exceedances of the average monthly or average weekly CBOD<sub>5</sub> mass limits, and that there has been one exceedance of the maximum daily limit.

These mass-based BOD<sub>5</sub> limits were calculated based on the design flow of the facility and the concentration limits shown above, as shown below.

CBOD<sub>5</sub> Mass Loading Calculations:

Calculations of maximum allowable loads for average monthly and average weekly CBOD<sub>5</sub> are based on the following equation:

$$L = C_d * Q_d * 8.345$$

Where:

L = Maximum allowable load in lb/day

C<sub>d</sub> = Maximum allowable effluent concentration for reporting period in mg/L  
(reporting periods are average monthly and average weekly)

Q<sub>d</sub> = Annual average design flow of Facility

8.34 = Factor to convert effluent concentration in mg/L and design flow in MGD to lb/day

Average Monthly: 25 mg/L \* 34 MGD \* 8.345 = 7,090 lb/day

Average Weekly: 40 mg/L \* 34 MGD \* 8.345 = 11,350 lb/day

Maximum Daily: 45 mg/L \* 34 MGD \* 8.345 = 12,770 lb/day

These mass-based CBOD<sub>5</sub> limits will be carried forward in the Draft Permit.

### 5.1.3 Total Suspended Solids (TSS)

#### 5.1.3.1 TSS Concentration Limits

The five-day TSS limits in the 2015 Permit were based on the secondary treatment regulations for POTWs found at 40 CFR § 133.102(a) and (b). The average monthly limit is 30 mg/L and the average weekly limit is 45 mg/L. The 2015 Permit also contains a maximum daily limitation of 50 mg/L for TSS.

The DMR data during the review period shows that there have been no violations of the TSS average monthly and average weekly concentration limits, and there has been two violations of the maximum daily limitation.

The Draft Permit proposes the same TSS concentration limits as in the 2015 Permit as no new WLAs have been established and there have been no changes to the secondary treatment standards. The monitoring frequency shall be twice per week.

#### 5.1.3.2 TSS Mass Limits

The mass-based TSS limits in the 2015 Permit are based on the concentration limits noted above and calculated with the facility's design flow of 34 MGD. These are a monthly average of 8,510 lb/day, a weekly average of 12,770 lb/day, and a daily maximum of 14,190 lb/day.

The DMR data from the review period shows that there have no exceedances of the average monthly or average weekly TSS mass limits, and there have been four exceedances of the maximum daily limit.

These mass-based TSS limits were calculated based on the design flow of the facility and the concentration limits above, as shown below.

TSS Mass Loading Calculations:

Calculations of maximum allowable loads for average monthly and average weekly TSS are based on the following equation:

$$L = C_d * Q_d * 8.345$$

Where:

$L$  = Maximum allowable load in lb/day

$C_d$  = Maximum allowable effluent concentration for reporting period in mg/L  
(reporting periods are average monthly and average weekly)

$Q_d$  = Annual average design flow of Facility

Average Monthly:  $30 \text{ mg/L} * 34 \text{ MGD} * 8.345 = 8,510 \text{ lb/day}$

Average Weekly:  $45 \text{ mg/L} * 34 \text{ MGD} * 8.345 = 12,770 \text{ lb/day}$

Maximum Daily:  $50 \text{ mg/L} * 34 \text{ MGD} * 8.345 = 14,190 \text{ lb/day}$

These mass-based TSS limits will be carried forward in the Draft Permit.

#### **5.1.4 Eighty-Five Percent (85%) BOD<sub>5</sub> and TSS Removal Requirement**

In accordance with the provisions of 40 CFR § 133.102(a)(4) and (b)(3), the 0001 Permit requires that the 30-day average percent removal for BOD<sub>5</sub> and TSS be not less than 85%. The DMR data during the review period shows that the median BOD<sub>5</sub> and TSS removal percentages are 98% and 98%, respectively. There were no exceedances of the 85% removal requirement for BOD<sub>5</sub> or TSS during that period.

The requirement to achieve 85% BOD<sub>5</sub> and TSS removal has been carried forward into the Draft Permit and will continue to apply only during dry weather.

#### **5.1.5 pH**

Consistent with the requirements of New Hampshire's WQS at RSA 485-A:8 II, "The pH for said (Class B) waters shall be 6.5 to 8.0 except when due to natural causes." The monitoring frequency is once per day. The DMR data during the review period show that there have been no exceedances of the pH limitations.

The pH requirements in the 2015 Permit are carried forward into the Draft Permit as there has been no change in the WQSs with regards to pH. The limitations are based on CWA 301(b)(1)(C) and 40 CFR § 122.44(d).

#### **5.1.6 Bacteria**

The 2015 Permit includes effluent limits for bacteria using *Escherichia coli* (*E. coli*) bacteria as the indicator bacteria to protect recreational uses. NH WQS at Env-Wq 1700, Appendix E require a monthly geometric mean of 126 *E. coli*/100 ml and a maximum daily limit of 406 *E. coli*/100 ml. The DMR data during the review period show that there have been no exceedances of the *E. coli* limitations.

The Draft Permit proposes maintaining the effluent limits for bacteria from the 2015 Permit. EPA has revised the units to reflect those in the NH WQS. The *E. coli* limits are a monthly geometric mean of 126 *E. coli*/100 ml and a maximum daily limit of 406 *E. coli*/100 ml. The sampling frequency for *E. coli* is three per week.

#### **5.1.7 Total Residual Chlorine**

The Permittee uses chlorine disinfection. The 2015 Permit includes effluent limitations for total residual chlorine (TRC) of 130 µg/L (average monthly) and 220 µg/L (maximum daily). The DMR

data during the review period show that there have been no exceedances of the TRC limitations.

The TRC permit limits are based on the instream chlorine criteria defined the New Hampshire Code of Administrative Rules, Env-Wq 1703.21 and Table 1703.1. These freshwater instream criteria for chlorine are 11 µg/L (chronic) and 19 µg/L (acute). Because the upstream chlorine is assumed to be zero in this case, the water quality-based chlorine limits are calculated as the criteria times the dilution factor, as follows:

$$\text{Chronic criteria} * \text{dilution factor} = \text{Chronic limit}$$

$$11 \mu\text{g/L} * 12.5 = 137.5 \mu\text{g/L} \text{ (average monthly)}$$

$$\text{Acute criteria} * \text{dilution factor} = \text{Acute limit}$$

$$19 \mu\text{g/L} * 12.5 = 237.5 \mu\text{g/L} \text{ (maximum daily)}$$

These limits are less stringent than those in the 2015 Permit. Therefore, to be consistent with the anti-backsliding requirements discussed in Section 2.6, the limits in the 2015 Permit are carried forward into the Draft Permit.

#### 5.1.8 Ammonia

The 2015 Permit does not include ammonia limits, but the Permittee was required to monitor and report effluent and ambient ammonia concentrations on a quarterly basis as part of the Whole Effluent Toxicity (WET) testing. Additionally, at EPA's request Manchester provided effluent ammonia data via email on February 13, 2024, that they had collected from 2019 through 2023 outside of WET testing. All monthly average ammonia data are summarized Table 2 below and have been incorporated into the reasonable potential analysis for ammonia (See Appendix B).

**Table 2: Effluent Monthly Average Ammonia Data (mg/L)**

Month	2019	2020	2021	2022	2023
January	---	---	13.00	15.00	9.40
February	12.00	15.00	17.50	11.00	13.00
March	---	---	16.00	12.00	12.00
April	13.00	---	14.00	11.50	9.90
May	---	11.50	18.00	16.00	14.00
June	---	17.00	16.00	14.00	12.50
July	---	12.1	5.30	8.6	9.00
August	---	3.6	11.00	6.20	6.40
September	15.00	19.0	6.80	3.7	4.00
October	8.70	8.25	4.90	15.00	7.30
November	---	11.00	11.00	9.10	12.00
December	---	12.00	5.70	13.00	8.20

Ambient data, taken upstream of the Manchester outfall in the Merrimack River, is presented in Appendix A and shows the median concentration for the warm weather period (May 1 through October 31) is 0.17 mg/L and for the cold weather period (November 1 through April 30) is 0.12 mg/L.

The freshwater ammonia criteria in the NH WQS (Env-Wq 1703.25 & 1703.26) are dependent on pH and temperature and the acute criterion is also dependent on whether Salmonids are present in the receiving water.

In determining whether the discharge has the reasonable potential to cause or contribute to excursions above the instream water quality criteria for ammonia, EPA used the mass balance equation presented in Appendix B for both warm and cold weather conditions to project the ammonia concentration downstream of the discharge. If there is reasonable potential, this mass balance equation is also used to determine the limit that is required in the permit.

To determine the applicable ammonia criteria, EPA assumes a warm weather (May through October) temperature of 25° C and a cold weather (November through April) temperature of 5° C. EPA used the ambient pH monitoring shown in Appendix A, which indicates that the median pH is 7.5 S.U. Additionally, the Merrimack River in the vicinity of the Manchester WWTF discharge is within Essential Fish Habitat (EFH) for Atlantic salmon (*Salmo salar*), so EPA has assumed that salmonids could be present in the receiving waters.

Based on the information and assumptions described above, Appendix B presents the applicable ammonia criteria, the details of the mass balance equation, the reasonable potential determination, and, if necessary, the limits required in the Draft Permit. As shown, EPA determined that there is reasonable potential to cause or contribute to an excursion of WQS for ammonia, so the Draft Permit proposes a new monthly average ammonia limit of 10.4 mg/L from May through October.

DMR data during the review period indicate that the facility has not been consistently below the proposed average monthly limit. As shown in Attachment A, the maximum average monthly discharge in the warm season was 19 mg/L (in September 2020) compared to the proposed limit of 10.4 mg/L. Therefore, the Draft Permit includes a two-year compliance schedule to allow for optimization of the treatment processes to meet the proposed limit.

### 5.1.9 Nutrients

Nutrients are compounds containing nitrogen and phosphorus. Although nitrogen and phosphorus are essential for plant growth, high concentrations of these nutrients can cause eutrophication, a condition in which aquatic plant and algal growth is excessive. Plant and algae respiration and decomposition reduces dissolved oxygen in the water, creating poor habitat for fish and other aquatic animals. Recent studies provide evidence that both phosphorus and nitrogen can play a role in the eutrophication of certain ecosystems. However, typically

phosphorus is the limiting nutrient triggering eutrophication in freshwater ecosystems and nitrogen in marine or estuarine ecosystems. Thus, for this receiving water phosphorus and nitrogen are the nutrients of concern evaluated below.

#### **5.1.9.1 Total Nitrogen**

The Merrimack River is a large and densely populated watershed including 40 POTW discharges in Massachusetts and New Hampshire. EPA estimates that approximately 15,000 lb/day of nitrogen is discharged by POTWs into the freshwater portion of the watershed and another 2,000 lb/day into the marine portion. Recent nitrogen data collected by CDM Smith in 2014 and 2016 in the estuarine portions of the Merrimack River indicates elevated total nitrogen and chlorophyll 'a' levels. High nutrient concentrations can lead to increased levels of chlorophyll 'a', therefore chlorophyll 'a' can be an indicator of elevated nutrient concentrations. In samples with salinity greater than 10 ppt, total nitrogen ranged from 0.442 to 1.67 mg/L while chlorophyll 'a' ranged from 4 to 42 ppt<sup>9</sup>. EPA also collected samples on the outgoing tide in 2017 in this area and found total nitrogen levels in the range of 0.62 mg/L to 1.3 mg/L and chlorophyll 'a' ranging from 2 to 11 ppt in samples with salinity greater than 10 ppt. EPA continued to collect ambient samples in 2018 and 2019 which demonstrated similar results. EPA is concerned about the impacts that these nitrogen levels may be having on aquatic life in the estuary as most of these results are outside the range typically found in healthy estuaries in Massachusetts<sup>10</sup>. However, more data is necessary to determine whether there is reasonable potential for nitrogen discharges from the facility to cause or contribute to a violation of the narrative nutrient criteria in the Merrimack River estuary, particularly data that characterizes aquatic life designated uses that may be affected in this area so that the narrative criteria can be interpreted numerically. In the meantime, EPA finds that quantifying the load of total nitrogen from this facility and others in the Merrimack River watershed is an important first step to understanding the nitrogen load from point sources and their potential impact on the estuary.

The Draft Permit includes weekly monitoring and reporting requirements for total nitrate plus total nitrite, total Kjeldahl nitrogen (TKN) and total nitrogen from April through October and monthly monitoring and reporting from November through March. The monitoring data will provide additional information on the fate of nitrogen through the treatment process and the impact to the Merrimack River in the estuary at the mouth of the river.

#### **5.1.9.2 Total Phosphorus**

While phosphorus is an essential nutrient for the growth of aquatic plants, it can stimulate rapid plant growth in freshwater ecosystems when it is present in high quantities.

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<sup>9</sup> CDM Smith/US Army Corps of Engineers New England District, Merrimack River Watershed Assessment Study - Phase III Final Monitoring Data Report August 2017, Appendix C.

<sup>10</sup> Howes, Brian, et al, Site-Specific Nitrogen Thresholds for Southeastern Massachusetts Embayments: Critical Indicators Interim Report, Massachusetts Estuaries Project, December 22, 2003.

The excessive growth of aquatic plants and algae within freshwater systems negatively impacts water quality and can interfere with the attainment of designated uses by: 1) increasing oxygen demand within the water body to support an increase in both plant respiration and the biological breakdown of dead organic (plant) matter;<sup>11</sup> 2) causing an unpleasant appearance and odor; 3) interfering with navigation and recreation, for instance, by fouling engines and propellers, making waters unappealing to swimmers, and interfering with fishing lures and equipment; 4) reducing water clarity; 5) reducing the quality and availability of suitable habitat for aquatic life; and 6) producing toxic cyanobacteria during certain algal blooms. Cultural (or accelerated) eutrophication is the term used to describe dense and excessive plant growth in a water body that results from nutrients entering the system as a result of human activities. Discharges from municipal and industrial wastewater treatment plants, agriculture runoff, and stormwater are examples of human-derived (*i.e.*, anthropogenic) sources of nutrients in surface waters. See generally, *Nutrient Criteria Technical Guidance Manual – Rivers and Streams*, EPA July 2000 [EPA-822-B-00-002], Chapters 1 and 3.

The New Hampshire Surface Water Quality Regulations contain a narrative criterion that limits phosphorus to the level that will not impair a water body's designated use. Specifically, Env-Wq 1703.14(b) states that, "Class B waters shall contain no phosphorus or nitrogen in such concentrations that would impair any existing or designated uses, unless naturally occurring." Env-Wq 1703.14(c), further states that, "Existing discharges containing either phosphorus or nitrogen which encourage cultural eutrophication shall be treated to remove phosphorus or nitrogen to ensure attainment and maintenance of water quality standards." Cultural eutrophication is defined in Env-Wq 1702.15 as, "... the human-induced addition of wastes containing nutrients which results in excessive plant growth and/or decrease in dissolved oxygen." Cultural eutrophication also results in violations of other nutrient-related water quality standards such as low dissolved oxygen, decreased water clarity, objectionable odors and surface scum. The NH WQS at Env-Wq 1703.07(b)(2) require that dissolved oxygen have an instantaneous minimum concentration of at least 5 mg/L in Class B waters. Further, NH WQS at Env-Wq 1703.12(b) states that Class B waters "shall contain no slicks, odors, or surface floating solids that would impair any existing or designated use, unless naturally occurring." Also see Part 2.2.2 of this Fact Sheet above regarding antidegradation and existing uses which may be impacted by nutrient over-enrichment.

When permitting nutrient discharges, EPA analyzes available information from a reasonably conservative standpoint, as it regards one key function of a nutrient limit as preventative. This protective approach is appropriate because, once begun, the cycle of eutrophication can be difficult to reverse due to the tendency of nutrients to be retained in the sediments. For this

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<sup>11</sup> "Algae" includes phytoplankton (microscopic algae measured by levels of chlorophyll a), macroalgae (commonly referred to as seaweed), and other plants stimulated by nutrient over-enrichment. Excessive algal growth contributes to low levels of dissolved oxygen through increased plant respiration and decomposition of dead plant matter. Notably, during the day, algae provide oxygen to the water as a by-product of photosynthesis. At night, however, when photosynthesis ceases but plant respiration continues, dissolved oxygen levels decline. Additionally, as these algae die, they are decomposed by bacteria that consume yet more oxygen. When dissolved oxygen levels are low, aquatic organisms become stressed and die, and overall aquatic health is degraded.

reason, time is of the essence when permitting for nutrients, so EPA acts on the best information reasonably available when developing the draft permit and does not generally delay permit issuance pending collection of new data or development of new models. This approach is also consistent with the requirement for NPDES permits to be revisited and reissued at regular intervals, with permit terms not to exceed five years.

When translating narrative phosphorus criteria into numeric values (and establishing WQBELs, if necessary), EPA looks to a wide range of materials, including nationally recommended criteria and other relevant materials, such as EPA nutrient technical guidance and information published under Section 304(a) of the CWA, peer-reviewed scientific literature and site-specific surveys and data to determine instream targets that are protective of water quality. See 40 CFR § 122.44(d)(1)(vi)(A), (B).

EPA has produced several guidance documents, described below, that recommend a range of total ambient phosphorus concentrations that are sufficiently stringent to control cultural eutrophication and other adverse nutrient-related impacts, with 0.1 mg/L representing the upper end of this range. These guidance documents recommend protective in-stream phosphorus concentrations based on two different analytical approaches. An effects-based approach provides a threshold value above which adverse effects (*i.e.*, water quality impairments) are likely to occur. This approach applies empirical observations of a causal variable (*i.e.*, phosphorus) and a response variable (*i.e.*, chlorophyll-a as a measure of algal biomass) associated with designated use impairments. Alternatively, reference-based values are statistically derived from a comparison within a population of rivers in the same ecoregion class. They are a quantitative set of river characteristics (physical, chemical and biological) that represent conditions in waters in that ecoregion that are minimally impacted by human activities (*i.e.*, reference conditions), and thus by definition representative of water without cultural eutrophication. Dischargers in Massachusetts and New Hampshire are located within either Ecoregion VIII, Nutrient-Poor, Largely Glaciated Upper Midwest and Northeast or Ecoregion XIV, Eastern Coastal Plains. The recommended total phosphorus criteria for these ecoregions are 10 µg/L and 31.25 µg/L, respectively. While reference conditions reflect in-stream phosphorus concentrations that are sufficiently low to meet the requirements necessary to support designated uses, they may also represent levels of water quality beyond what is necessary to support such uses.

EPA follows an effects-based approach. EPA's 1986 *Quality Criteria for Water* (the "Gold Book") recommends maximum threshold concentrations that are designed to prevent or control adverse nutrient-related impacts from occurring. Specifically, the Gold Book recommends in-stream phosphorus concentrations of no greater than 0.1 mg/L for any stream not discharging directly to lakes or impoundments 0.05 mg/L in any stream entering a lake or reservoir, and 0.025 mg/L within a lake or reservoir. In this case, EPA is applying a target concentration of 0.1 mg/L because the receiving water is a stream/river not discharging directly to a lake or impoundment.

As the Gold Book notes, there are natural conditions of a water body that can result in either increased or reduced eutrophic response to phosphorus inputs; in some waters more stringent phosphorus reductions may be needed, while in some others a higher total phosphorus threshold could be assimilated without inducing a eutrophic response. In this case, EPA is not aware of any site-specific factors relevant to the receiving water that would result in it being unusually more or less susceptible to phosphorus loading.

EPA notes that since the 2015 Permit already contained a limit for phosphorus, EPA uses the mass balance equation presented in Appendix B to determine if a more stringent limit would be required to continue to meet WQS under current conditions. The limit is determined to be the more stringent of either (1) the existing limit or (2) the calculated effluent concentration ( $C_d$ ) allowable to meet WQS based on current conditions.

Sampling data from 2014-2016<sup>12</sup>, summarized in Table 3, reported three summer in-stream phosphorus concentrations collected at Station 14A-MER located approximately 5.2 miles upstream of the Manchester WWTP.

**Table 3: Instream total phosphorus concentrations (mg/L)**

Date	14-MER
6/25/2014	0.027
10/1/2015	0.097
8/1/2016	0.023

Based on the phosphorus criterion described above, the ambient data presented above, the upstream 7Q10 flow, and the design flow of the Facility, Appendix B presents the details of the mass balance equation, the determination of whether the existing limit needs to be more stringent to continue to protect WQS.

The 2015 Permit had a limit of 236 lb/day and EPA determined that this limit should be carried forward (applicable from April 1 through October 31) to continue to protect WQS as specified below.

#### *Mass-based limit analysis and comparison*

To ensure the revised mass-based limit is protective under the worst-case conditions, the limit is calculated using the lowest expected receiving water flow and effluent flow. Hence, the upstream 7Q10 receiving water flow (676 cfs or 436.7 MGD) and the lowest monthly average effluent flow during the review period (12.4 MGD, See Appendix A) are used. The numeric mass-based limit is determined based on the following equations:

$$Q_E C_E + Q_S C_S = Q_D C_D \times (0.90)$$

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<sup>12</sup> Reardon, Matthew, MassDEP, Division of Watershed Management, 2013, "Technical Memorandum: Big River Watershed 2008 DWM Water Quality Monitoring Data," DWM Control Number CN 323.1.

and

$$M_E = Q_E C_E \times 8.345$$

Substituting ( $Q_D C_D$ ) with ( $M_E/8.345$ ) in the first equation and solving for  $M_E$  results in:

$$M_E = (Q_D C_D \times 0.90) - Q_S C_S \times 8.345$$

where:

$M_E$  = mass-based phosphorus limit

$Q_E$  = effluent flow in MGD (lowest monthly average effluent flow = 12.4 MGD)

$C_E$  = effluent phosphorus concentration in mg/L

$Q_S$  = upstream 7Q10 flow (436.7 MGD)

$C_S$  = upstream median river phosphorus concentration (0.0267 mg/L)

$Q_D$  = downstream flow (449.1 MGD)

$C_D$  = downstream river phosphorus concentration (Gold Book target = 0.100 mg/L)

0.90 = factor to reserve 10% assimilative capacity

8.345 = factor to convert from MGD \* mg/L to lb/day

$$M_E = [(449.1)(0.1)(0.9) - (436.7)(0.0267)] \times 8.345 = 240 \text{ lb/day}$$

Solving for  $M_E$  gives the maximum allowable mass the facility may discharge without violating water quality standards. Given that the limit is less stringent than the current limit in the 2015 Permit, the Draft Permit proposes to carry forward the limit of 236 lb/day, applicable from April through October.

Additionally, the Draft Permit also includes an ambient monitoring requirement to ensure that current ambient phosphorus data are available to use in the reassessment of the total phosphorus effluent in the next permitting cycle. Note that this ambient data will be used in the next permit reissuance, along with any other relevant information available at that time, to reevaluate whether a more stringent limit may be necessary to protect WQS. EPA notes that this ambient monitoring is particularly necessary in this case in order to better characterize the receiving water given that the best available data used above was from over 7 years ago.

## 5.1.10 Metals

### 5.1.10.1 Applicable Metals Criteria

State water quality criteria for cadmium, copper, lead, nickel and zinc are established in terms of dissolved metals. However, many inorganic components of domestic wastewater, including metals, are in particulate form, and differences in the chemical composition between the effluent and the receiving water affects the partitioning of metals between the particulate and dissolved fractions as the effluent mixes with the receiving water, often resulting in a transition from the particulate to dissolved form (*The Metals Translator: Guidance for Calculating a Total*

*Recoverable Permit Limit from a Dissolved Criterion (USEPA 1996 [EPA-823-B96-007]).* Consequently, quantifying only the dissolved fraction of metals in the effluent prior to discharge may not accurately reflect the biologically-available portion of metals in the receiving water. Regulations at 40 CFR § 122.45(c) require, with limited exceptions, that effluent limits for metals in NPDES permits be expressed as total recoverable metals.

The criteria for cadmium, copper, lead, nickel and zinc are hardness-dependent using the equations in NH Env Wq-1703. The estimated hardness of the Merrimack River downstream of the treatment plant is calculated using the critical low flow (7Q10), the design flow of the treatment plant, and the median hardness for both the receiving water upstream of the discharge and the treatment plant effluent. Effluent and receiving water data are presented in Appendix A. Using the mass balance equation discussed in Appendix B, the resulting downstream hardness is 15.7 mg/L and the corresponding criteria are also presented in Appendix B. Since this downstream hardness is below 20 mg/L, the default value of 20 mg/L was used to determine the total recoverable metals criteria. See Env-Wq 1703.22(f).

#### **5.1.10.2 Acid-Soluble Aluminum Study**

In a letter from NHDES to EPA (dated July 1, 2014), NHDES stated that the aluminum criteria presented in the New Hampshire water quality regulations (Env-Wq-1700) should be applied in terms of acid-soluble aluminum. The letter goes on to say:

*New Hampshire's aluminum criteria are based on EPA's 1988 ambient water quality criteria document for aluminum. According to this document, acid-soluble aluminum is operationally defined as "[a]luminum that passes through a 0.45 um membrane filter after the sample has been acidified to a pH at between 1.5 and 2.0 with nitric acid." For the many reasons listed in the "Implementation" section of the EPA document, acid-soluble aluminum is considered a better measurement of the forms that are toxic to aquatic life or that can be readily converted to toxic forms under natural conditions.*

To express these criteria in terms of total recoverable aluminum, the fraction of acid-soluble to total recoverable aluminum in the receiving water must be determined. Based upon Manchester's 2008 permit (with a total recoverable aluminum limit of 87 µg/L) and EPA's subsequent Administrative Order (AO) in 2009, the City of Manchester was required to submit a report on the findings of one year of ambient aluminum and hardness data and a plan for either (a) filing a formal NPDES permit modification request of the limit; or (b) achieving and maintaining full compliance with the limit. The City of Manchester submitted this Aluminum Study Report (ASR) in February of 2011, requesting a formal permit modification of the aluminum limit. Based upon information presented in the ASR, EPA reevaluated the aluminum limit in terms of acid soluble consistent with the interpretation of the criteria by NHDES.

Based on the median ASA and TRA data, the fraction of acid-soluble to total recoverable aluminum in the receiving water was determined as 0.74 (64.8 / 88.0). Hence, the acid-soluble aluminum criteria of 750 µg/L (acute) and 87 µg/L (chronic) can be converted to total

recoverable criteria by dividing them by 0.74, resulting in total recoverable criteria of 1,014 µg/L (acute) and 118 µg/L (chronic). These criteria are applied in the analysis below.

### **5.1.10.3 Reasonable Potential Analysis and Limit Derivation**

To determine whether the effluent has the reasonable potential to cause or contribute to an exceedance above the in-stream water quality criteria for each metal, EPA uses the mass balance equation presented in Appendix B to project the concentration downstream of the discharge and, if applicable, to determine the limit required in the permit.

For any metal with an existing limit in the 2015 Permit, the same mass balance equation is used to determine if a more stringent limit would be required to continue to meet WQS under current conditions. The limit is determined to be the more stringent of either (1) the existing limit or (2) the calculated effluent concentration ( $C_e$ ) allowable to meet WQS based on current conditions.

Based on the information described above, the results of this analysis for each metal are presented in Appendix B.

As shown, there is no reasonable potential to cause or contribute to an excursion of WQS for cadmium, lead, nickel, and zinc, so the Draft Permit does not propose any new limits for these metals. However, EPA determined that there is reasonable potential to cause or contribute to an excursion of the chronic WQS for aluminum, so the Draft Permit proposes a new aluminum limit of 118 µg/L. Additionally, there is no need for a more stringent copper limit to continue to protect WQS so the existing monthly average limit of 24 µg/L is being carried forward for the reasons specified in Appendix B.

Given that the facility only had a small number of exceedances of the proposed limit for aluminum, EPA is proposing a 12-month compliance schedule. EPA considers that this time will allow optimization of the existing treatment facility to achieve the limits consistently. EPA notes that compliance schedules must achieve compliance “as soon as possible” based on 40 CFR 122.47(a)(1).

Effluent and ambient monitoring for each of these metals will continue to be required in the WET tests.

### **5.1.11 Whole Effluent Toxicity**

CWA §§ 402(a)(2) and 308(a) provide EPA and States with the authority to require toxicity testing. Section 308 specifically describes biological monitoring methods as techniques that may be used to carry out objectives of the CWA. Whole effluent toxicity (WET) testing is conducted to ensure that the additivity, antagonism, synergism and persistence of the pollutants in the discharge do not cause toxicity, even when the pollutants are present at low concentrations in the effluent. The inclusion of WET requirements in the Draft Permit will

assure that the Facility does not discharge combinations of pollutants into the receiving water in amounts that would be toxic to aquatic life or human health.

In addition, under CWA § 301(b)(1)(C), discharges are subject to effluent limitations based on WQSSs. Under CWA §§ 301, 303 and 402, EPA and the States may establish toxicity-based limitations to implement the narrative water quality criteria calling for “no toxics in toxic amounts”. *See also* 40 CFR § 122.44(d)(1). New Hampshire statute and regulations state that, “all surface waters shall be free from toxic substances or chemical constituents in concentrations or combination that injure or are inimical to plants, animals, humans, or aquatic life....” (N.H. RSA 485-A:8, VI and the N.H. Code of Administrative Rules, PART Env-Wq 1703.21(a)(1)).

National studies conducted by EPA have demonstrated that domestic sources, as well as industrial sources, contribute toxic constituents to POTWs. These constituents include metals, chlorinated solvents, aromatic hydrocarbons and others. Some of these constituents may cause synergistic effects, even if they are present in low concentrations. Because of the source variability and contribution of toxic constituents in domestic and industrial sources, reasonable potential may exist for this discharge to cause or contribute to an exceedance of the “no toxics in toxic amounts” narrative water quality standard.

In accordance with current EPA guidance, whole effluent chronic effects are regulated by limiting the highest measured continuous concentration of an effluent that causes no observed chronic effect on a representative standard test organism, known as the chronic No Observed Effect Concentration (C-NOEC). Whole effluent acute effects are regulated by limiting the concentration that is lethal to 50% of the test organisms, known as the LC<sub>50</sub>. This policy recommends that permits for discharges having a dilution factor of between 10 and 20 require acute and chronic toxicity testing four times per year for two species. Additionally, the C-NOEC effluent limit should be greater than or equal to the receiving water concentration and the LC<sub>50</sub> limit should be greater than or equal to 100%.

The chronic and acute WET limits in the 2015 Permit are C-NOEC greater than or equal to 8.5% and LC<sub>50</sub> greater than or equal to 100%, respectively, using the daphnid (*Ceriodaphnia dubia*) and the fathead minnow (*Pimephales promelas*) as the test species. The Facility has consistently met these limits (Appendix A).

Based on the potential for toxicity from domestic and industrial contributions, the state narrative water quality criterion, the dilution factor of 12.5, and in accordance with EPA national and regional policy and 40 CFR § 122.44(d), the Draft Permit continues the effluent limits from the 2015 Permit including the test organism and the testing frequency. Although the updated dilution factor would result in a limit of 8.0% (1/12.5), EPA notes that the limit of 8.5% is carried forward consistent with anti-backsliding regulations discussed in Section 2.6 above. Toxicity testing must be performed in accordance with the updated EPA Region 1 WET test procedures and protocols specified in Attachments A, *Freshwater Acute Toxicity Test Procedure*

*and Protocol* (February 2011) and Attachment B, *Freshwater Chronic Toxicity Test Procedure and Protocol* (March 2013) of the Draft Permit.

In addition, EPA's 2018 *National Recommended Water Quality Criteria* for aluminum are calculated based on water chemistry parameters that include dissolved organic carbon (DOC), hardness and pH. New Hampshire is in the process of adopting these aluminum criteria and therefore DOC hardness and pH data may be needed in the next permit reissuance to determine the appropriate aluminum criteria at that time. Since aluminum monitoring is required as part of each WET test, an accompanying new testing and reporting requirement for DOC, in conjunction with each WET test, is warranted in order to assess potential impacts of aluminum in the receiving water.

### **5.1.12 Per- and polyfluoroalkyl substances (PFAS)**

As explained at <https://www.epa.gov/pfas>, PFAS are a group of synthetic chemicals that have been in use since the 1940s. PFAS are found in a wide array of consumer and industrial products. PFAS manufacturing and processing facilities, facilities using PFAS in production of other products, airports, and military installations can be contributors of PFAS releases into the air, soil, and water. Due to their widespread use and persistence in the environment, most people in the United States have been exposed to PFAS. Exposure to some PFAS above certain levels may increase risk of adverse health effects.<sup>13</sup> EPA is collecting information to evaluate the potential impacts that discharges of PFAS from wastewater treatment plants may have on downstream drinking water, recreational and aquatic life uses.

#### Background Information for New Hampshire

On September 30, 2019, NH DES adopted Maximum Contaminant Levels (MCLs) and Maximum Contaminant Level Goals (MCLGs) for drinking water at Env-DW 705.06 and Ambient Groundwater Quality Standards (AGQs) at Env-Or 603 for the following PFAS:

	<u>MCLs/AGQs</u>	<u>MCLGs</u>
Perfluorohexanesulfonic acid (PFHxS)	18 ng/L	0
Perfluorononanoic acid (PFNA)	11 ng/L	0
Perfluorooctanesulfonic acid (PFOS)	15 ng/L	0
Perfluorooctanoic acid (PFOA)	12 ng/L	0

The September 2019 PFAS regulations were challenged in state court and are currently enjoined pending resolution of the litigation. On July 23, 2020, the New Hampshire legislature enacted legislation establishing MCLs and AGQs for these PFAS in State statute at the identical levels as the challenged regulations. The statutory MCLs and AGQs became effective on July 23, 2020.

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<sup>13</sup> EPA, *EPA's Per- and Polyfluoroalkyl Substances (PFAS) Action Plan*, EPA 823R18004, February 2019. Available at: [https://www.epa.gov/sites/production/files/2019-02/documents/pfas\\_action\\_plan\\_021319\\_508compliant\\_1.pdf](https://www.epa.gov/sites/production/files/2019-02/documents/pfas_action_plan_021319_508compliant_1.pdf)

Since PFAS chemicals are persistent in the environment and may lead to adverse human health and environmental effects, and consistent with recent EPA guidance,<sup>14</sup> the Draft Permit requires that the Facility conduct quarterly influent, effluent and sludge sampling for PFAS chemicals and annual sampling of certain industrial users. The quarterly monitoring shall begin the first full calendar quarter beginning six months after the effective date of the permit. The annual monitoring for certain industrial users shall begin the first full calendar year following the effective date of the permit.

The purpose of this monitoring and reporting requirement is to better understand potential discharges of PFAS from this facility and to inform future permitting decisions, including the potential development of water quality-based effluent limits on a facility specific basis. EPA is authorized to require this monitoring and reporting by CWA § 308(a), which states:

“SEC. 308. (a) Whenever required to carry out the objective of this Act, including but not limited to (1) developing or assisting in the development of any effluent limitation, or other limitation, prohibition, or effluent standard, pretreatment standard, or standard of performance under this Act; (2) determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance; (3) any requirement established under this section; or (4) carrying out sections 305, 311, 402, 404 (relating to State permit programs), 405, and 504 of this Act—

(A) the Administrator shall require the owner or operator of any point source to (i) establish and maintain such records, (ii) make such reports, (iii) install, use, and maintain such monitoring equipment or methods (including where appropriate, biological monitoring methods), (iv) sample such effluents (in accordance with such methods, at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (v) provide such other information as he may reasonably require;”.

(See 40 CFR § 122.21(e)(3)(ii) and 40 CFR § 122.44(i)(1)(iv)(B)).

In the absence of a final 40 CFR § 136 method for measuring PFAS in wastewater and sludge, the Draft Permit requires the use of Method 1633 which was finalized in January 2024. Monitoring should include each of the 40 PFAS parameters detectable by Method 1633 (see Draft Permit Attachment B for list of PFAS parameters) and the monitoring frequency is quarterly. Reporting of all 40 PFAS analytes is necessary to address the emerging understanding and remaining uncertainties regarding sources and types of analytes of PFAS in wastewater and

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<sup>14</sup> Radhika Fox, Assistant Administrator, EPA to Water Division Directors, EPA Regions 1-10, December 5, 2022, Subject: “Addressing PFAS Discharges in NPDES Permits and Through the Pretreatment Program and Monitoring Programs.” Available at: [https://www.epa.gov/system/files/documents/2022-12/NPDES\\_PFAS\\_State%20Memo\\_December\\_2022.pdf](https://www.epa.gov/system/files/documents/2022-12/NPDES_PFAS_State%20Memo_December_2022.pdf)

their impacts. While NHDES has currently adopted MCLs for only 4 of these analytes as described above, it is possible that MCLs, water quality criteria and/or effluent limitation guidelines could be adopted for many of the other 36 analytes measured by Method 1633 during the life of the permit. Therefore, EPA considers it prudent to require reporting for all 40 analytes that are measured using Method 1633 to ensure EPA has sufficient data to address each of these PFAS analytes in the future. This level of monitoring is recommended in EPA's *October 2021 PFAS Strategic Roadmap*<sup>15</sup> and in an EPA memo dated April 28, 2022, called *Addressing PFAS Discharges in EPA-Issued NPDES Permits and Expectations Where EPA is the Pretreatment Control Authority*<sup>16</sup>.

All PFAS results must be reported on DMRs (see 40 CFR § 122.41)(l)(4)(i). This approach is consistent with 40 CFR § 122.44(i)(1)(iv)(B) which states that in the case of pollutants or pollutant parameters for which there are no approved methods under 40 CFR Part 136 or methods are not otherwise required under 40 CFR chapter I, subchapter N or O, monitoring shall be conducted according to a test procedure specified in the permit for such pollutants or pollutant parameters.

Additionally, EPA has recently published Method 1621 to screen for organofluorines in wastewater. Organofluorines (molecules with a carbon-fluorine bond) are rarely naturally occurring and the most common source of organofluorines are PFAS and non-PFAS fluorinated compounds such as pesticides and pharmaceuticals. The Permittee shall monitor Adsorbable Organic Fluorine using Method 1621 once per quarter concurrently with PFAS monitoring to screen for a broader range of these types of emerging contaminants. This requirement also takes effect the first full calendar quarter following six months after the effective date of the permit.

All monitoring results may be used by EPA in the next permit reissuance to ensure the discharge continues to protect designated uses and meets water quality standards.

## 5.2 Industrial Pretreatment Program

The Permittee is required to administer a pretreatment program under 40 CFR Part 403. See also CWA § 307; 40 CFR § 122.44(j). The Permittee's pretreatment program received EPA approval on February 27, 1985 and, as a result, appropriate pretreatment program requirements were incorporated into the previous permit, which were consistent with that approval and federal pretreatment regulations in effect when the permit was issued.

The Federal Pretreatment Regulations in 40 CFR part 403 were amended in October 1988, in July 1990, and again in October 2005. Those amendments established new requirements for implementation of pretreatment programs. Upon reissuance of this NPDES permit, the permittee is obligated to modify its pretreatment program to be consistent with current

<sup>15</sup> [https://www.epa.gov/system/files/documents/2021-10/pfas-roadmap\\_final-508.pdf](https://www.epa.gov/system/files/documents/2021-10/pfas-roadmap_final-508.pdf)

<sup>16</sup> [https://www.epa.gov/system/files/documents/2022-04/npdes\\_pfas-memo.pdf](https://www.epa.gov/system/files/documents/2022-04/npdes_pfas-memo.pdf)

Federal Regulations. The activities that the permittee must address include, but are not limited to, the following: 1) develop and enforce EPA-approved specific effluent limits (technically-based local limits); 2) revise the local sewer-use ordinance or regulation, as appropriate, to be consistent with Federal Regulations; 3) develop an enforcement response plan; 4) implement a slug control evaluation program; 5) track significant noncompliance for industrial users; and 6) establish a definition of and track significant industrial users.

These requirements are necessary to ensure continued compliance with the POTW's NPDES permit and its sludge use or disposal practices.

In addition to the requirements described above, the Draft Permit requires the Permittee to submit to EPA in writing, within 180 days of the permit's effective date, a description of proposed changes to permittee's pretreatment program deemed necessary to assure conformity with current federal pretreatment regulations. These requirements are included in the Draft Permit to ensure that the pretreatment program is consistent and up to date with all pretreatment requirements in effect. Lastly, the Permittee must continue to submit, annually by August 1<sup>st</sup>, a pretreatment report detailing the activities of the program for the twelve-month period ending 60 days prior to the due date.

### **5.3 Sludge Conditions**

Section 405(d) of the Clean Water Act requires that EPA develop technical standards regarding the use and disposal of sewage sludge. On February 19, 1993, EPA promulgated technical standards. These standards are required to be implemented through permits. The conditions in the permit satisfy this requirement.

The City of Manchester owns and operates one fluidized bed incinerator. The incinerator has the following air pollution control devices: a venturi scrubber which removes particulate matter and volatile metals; a spray down scrubber which removes acid gases and additional metals; an electrodynamic venturi which removes fine particulates and metals. The City generates approximately 4,500 dry metric tons of sewage sludge annually. In addition to sewage sludge, the City also incinerates scum. The resulting ash is disposed off-site by private contract issued on an annual basis. At the present time ash removal and disposal is done by Resource Management Inc. Disposal of ash is not regulated by Part 503.

Subpart E of the Part 503 regulations outlines the standards for the incineration of sewage sludge. The permit contains general requirements, management practices, pollutant limitations, an operational standard, monitoring frequency, record keeping and reporting requirements implementing the provisions of the regulations. The basis of each provision is detailed below.

**Pollutant Limitations:**

The sludge standards regulate the following seven metals: mercury, beryllium, arsenic, cadmium, chromium, nickel and lead. The pollutant limits in the permit are based on the requirements in §503.43.

Mercury and beryllium are regulated by the National Emission Standard for Hazardous Air Pollutants (NESHAPs) found in 40 CFR Part 61. The permit requires that the firing of sewage sludge in the facility's incinerators does not cause the violation of the NESHAPs for mercury and beryllium. The NESHAP for beryllium applies to each incinerator. The NESHAP for mercury applies to the facility.

The allowable sludge concentrations for arsenic, cadmium, chromium, and nickel are calculated from Equation (5) in §503.43(d):

$$C = \frac{RSC \times 86,400}{DF \times (1 - CE) \times SF} \quad \text{Eq. (5)}$$

Where:

- C = Daily concentration of pollutant in sewage sludge in mg/kg of total solids (dry weight basis)
- CE = control efficiency for the incinerator - based on performance tests
- DF = dispersion factor in micrograms per cubic meter per gram per second
- RSC = risk specific concentration in micrograms per cubic meter
- SF = sewage sludge feed rate in metric tons per day (dry weight basis)

The parameters, with the exception of RSC, are site specific to the Manchester's incinerator. The RSC is derived for each pollutant based on a risk assessment.

The RSC is the allowable increase in the average daily ground level ambient air concentration for a pollutant above background levels that result from the firing of sewage sludge in an incinerator. It is equivalent to the amount of a pollutant that a person living near the incinerator can inhale with a probability of 1 in 10,000 that the person will contract cancer as a result of inhaling the pollutant. The RSC was calculated from the equation below, which is found in the *Technical Support Document for Sewage Sludge Incineration* (EPA 822/R-93-003, November 1992):

$$RSC = \frac{RL \times BW}{Q^* \times I_a} \times 10^3$$

Where:

- RL = Risk Level,  $10^{-4}$

- BW = body weight, 70 kg (154 lbs), this is the average weight of an adult male

$Q^*$  = allowable dose of a pollutant from EPA's Integrated Risk Information System database  
 $I_a$  = inhalation rate, 20 m/day, normal inhalation rate for an adult male.

The RSC calculated from this equation is intended to protect the "Highly Exposed Individual" (HEI). The HEI is a person who remains for an extended period of time, 70 years, at the point of maximum ground level pollutant concentration. The RSC values for the regulated metals are found in Tables 1 and 2 of § 503.43 and are presented below.

<u>Pollutant</u>	<u>RSC (ug/m<sup>3</sup>)</u>
Arsenic	0.023
Cadmium	0.057
Chromium	0.65*
Nickel	2.0

\*Chromium RSC based on fluidized bed with wet scrubber

The sludge feed rate, dispersion factor and control efficiency (based on performance stack test) are:

Sludge Feed Rate: 29.71 metric tons/day

Dispersion factor: 1.66 ug/m<sup>3</sup>/g/sec

<u>Pollutant</u>	<u>Control Efficiency (%)</u>
Arsenic	99.53
Cadmium	99.77
Chromium	99.92
Lead	99.90
Nickel	98.36

Based on the above parameters, the concentration limits for each pollutant are calculated below using Equation (5) in §503.43(d):

<u>Pollutant</u>	<u>Limit (mg/kg)</u>
Arsenic	8,573
Cadmium	43,416
Chromium	1,423,398
Nickel	213,643

The pollutant limit for lead is calculated using equation (4) of §503.43:

$$C = \frac{0.1 \times \text{NAAQS} \times 86,400}{DF \times (1 - CE) \times SF} \quad \text{Eq. (4)}$$

Instead of using an RSC, a percentage of the National Ambient Air Quality Standard (NAAQS) for lead was used. The NAAQS for lead (1.5 ug/m<sup>3</sup>) is found in 40 CFR § 50.12. Although lead is classified as a probable human carcinogen, the Clean Air Science Advisory Committee of the Science Advisory Board recommended that the NAAQS for lead be based on the noncarcinogenic effects. Developmental neurotoxicity is considered to be the most sensitive end point for lead exposure. The calculated concentration from equation (4) shown below also protects the HEI described above.

<u>Pollutant</u>	<u>Limit (mg/kg)</u>
Lead	262,781

The limits for arsenic, cadmium, chromium, nickel and lead are the same as in the 2015 Permit, given that the regulations have not changed and in accordance with anti-backsliding requirements found at 40 CFR § 122.44(l).

#### Operational Standard:

The Part 503 regulations have an operational standard for total hydrocarbons (THC). Hydrocarbons are simple organic compounds containing carbon and hydrogen. The standard is designed to regulate organic emissions from sewage sludge incinerators. THC represent a subset of organic compounds and is used in the regulation since it is impractical to attempt to monitor sludges or stack emissions for all organic compounds which may be present.

The THC value must be corrected to seven percent oxygen and zero percent moisture. The correction to seven percent oxygen is used because seven percent is the standard amount of oxygen used to reference measurements of pollutant limits expressed as concentration; it is also equivalent to 50 percent excess air (excess air is air added to a system above the amount of air needed for complete combustion to occur); and without the correction, inaccurate readings may occur because the presence of the additional oxygen may dilute the THC reading. Similarly, the correction for moisture is needed since the presence of moisture can also dilute the actual THC reading. THC is conventionally expressed in terms of a dry volumetric basis, hence the need to set the standard based on zero moisture.

On February 25, 1994, §503.40 was amended. The amendment allows facilities to monitor carbon monoxide (CO) instead of THC. A facility can monitor for CO if the facility can meet a monthly average concentration CO limit of 100 parts per million on a volumetric basis. This limit, like the THC limit, is corrected to seven percent oxygen and zero percent moisture. The City of Manchester monitors CO.

#### Management Practices:

The permit contains management practices based on §503.45 pertaining to the operation of the incinerator. The management practices include maintaining the instruments which monitor CO, oxygen and temperature; proper operation of all air pollution control devices; and

notification to EPA when the continuous monitoring equipment is not operational for a period of 72 hours or more.

The permit requires notification to EPA and the state if any monitoring equipment is broken or shut down for longer than 72 hours. It also prohibits adversely affecting a threatened or endangered species or their critical habitat. There are no known threatened or endangered species within the vicinity of the incinerator. Therefore, EPA has determined that the activity will not affect a threatened or endangered species.

The monitoring frequency is based on §503.46. The Permittee is required to monitor heavy metals 6 times per year. The monitoring for mercury and beryllium is at the frequency required by 40 CFR Part 61. The record keeping requirements are based on §503.47.

#### **5.4 Infiltration/Inflow (I/I)**

Infiltration is groundwater that enters the collection system through physical defects such as cracked pipes, or deteriorated joints. Inflow is extraneous flow entering the collection system through point sources such as roof leaders, yard and area drains, sump pumps, manhole covers, tide gates, and cross connections from storm water systems. Significant I/I in a collection system may displace sanitary flow, reducing the capacity and the efficiency of the treatment works and may cause bypasses to secondary treatment. It greatly increases the potential for sanitary sewer overflows (SSOs) in separate systems, and combined sewer overflows (CSOs) in combined systems.

The Draft Permit includes a requirement for the permittee to control infiltration and inflow (I/I) within the sewer collections system it owns and operates. The permittee shall develop an I/I removal program commensurate with the severity of I/I in the collection system. This program may be scaled down in sections of the collection system that have minimal I/I.

#### **5.5 Operation and Maintenance**

##### **5.5.1 Adaptation Planning for the Wastewater Treatment System (WWTS) and/or Sewer System**

The Draft Permit, in Part I.C.1. requires the Permittee and Co-permittee(s) to develop an Adaptation Plan to address major storm and flood events as part of their operation and maintenance planning for the part of the WWTS and/or sewer systems that they each own and operate. These requirements are new. EPA has determined that these additional requirements are necessary to ensure the proper operation and maintenance of the WWTS and/or sewer system and has included a schedule in the Draft Permit for completing these requirements.

See Appendix C for a further rationale regarding this Adaptation Plan.

### 5.5.2 Operation and Maintenance of the Sewer System

The standard permit conditions for 'Proper Operation and Maintenance', found at 40 CFR § 122.41(e), require the proper operation and maintenance of permitted wastewater systems and related facilities to achieve permit conditions. The requirements at 40 CFR § 122.41(d) impose a 'duty to mitigate' upon the permittee, which requires that "all reasonable steps be taken to minimize or prevent any discharge violation of the permit that has a reasonable likelihood of adversity affecting human health or the environment. EPA and MassDEP maintain that an I/I removal program is an integral component of ensuring permit compliance with the requirements of the permit under the provisions at 40 CFR § 122.41(d) and (e).

General requirements for proper operation and maintenance, and mitigation have been included in Part II of the permit. Specific permit conditions have also been included in Part I.C. and I.D. of the Draft Permit. These requirements include mapping of the wastewater collection system, preparing and implementing a collection system operation and maintenance plan, reporting of unauthorized discharges including SSOs, maintaining an adequate maintenance staff, performing preventative maintenance, controlling inflow and infiltration to separate sewer collection systems (combined systems are not subject to I/I requirements) to the extent necessary to prevent SSOs and I/I related effluent violations at the Wastewater Treatment Facility and maintaining alternate power where necessary. These requirements are included to minimize the occurrence of permit violations that have a reasonable likelihood of adversely affecting human health or the environment.

Some of the requirements in the Draft Permit are not included in the 2015 Permit. EPA has determined that this additional requirement is necessary to ensure the proper operation and maintenance of the collection system and has included schedules for completing these requirements in the Draft Permit.

Because the Towns of Goffstown, Bedford, and Londonderry own and operate a collection system that discharges to the Manchester WWTF, they have been included as Co-permittees for the specific permit requirements discussed in the paragraph above. The historical background and legal framework underlying this Co-permittee approach is set forth in Appendix D to this Fact Sheet, *EPA Region 1 NPDES Permitting Approach for Publicly Owned Treatment Works that Include Municipal Satellite Sewage Collection Systems*.

## 5.6 Combined Sewer Overflows

### Description and History

The City of Manchester owns and operates a wastewater collection system comprised of 55 percent sanitary sewers, which carry domestic, industrial, and commercial wastewater; and 45 percent combined sewers, which carry domestic, industrial, and commercial wastewater plus stormwater runoff. Manchester's wastewater collection system consists of ten pumping stations and approximately 385 miles of sewers. The WWTF serves the majority of Manchester

along with portions of Bedford, Goffstown and Londonderry. The Goffstown, Bedford and Londonderry have separate sewer systems. There are 15 CSO outfalls remaining in the Manchester wastewater collection system and interceptor network. Of the 15 remaining CSO outfalls, 2 discharge to the Piscataquog River (adjacent to Bass Island and immediately upstream of the river's confluence with the Merrimack River), 2 discharge to the Merrimack River from the west side of the city, and 11 discharge to the Merrimack River from the east side of the city (including Tannery Brook and Ray Brook). During certain wet weather events, discharges of untreated sanitary wastewater and stormwater occur from the City's 15 combined sewer overflow outfalls ("CSOs") into the Piscataquog and Merrimack Rivers, as listed in Table 1 below.

CSO discharge data summaries from 2018-2023 are shown in Appendix E.

The City submitted a Long-Term Control Plan (LTCP) in 1995 which identified the CSO controls necessary to comply with water quality standards and the NPDES permit in effect at that time. In March of 1999, the city and the EPA entered into a negotiated Compliance Order (CO) that established a 10-year \$58 million Phase I CSO abatement program (Phase I). The measures included in the Phase I CSO abatement program were completed, and the City subsequently submitted a revised Long-Term Control Plan in 2010 to address the remaining CSOs. On July 13, 2020, EPA and the City of Manchester entered into a Consent Decree which contains a schedule to complete the CSO abatement measures identified in the revised 2010 LTCP.

Consistent with the Consent Decree, the City has completed the following projects to reduce and/or eliminate discharges from CSOs: (1) Wastewater Treatment Plant Improvements: Increased primary and secondary treatment capacity to 42 MGD and increased primary treatment and disinfection of flows from 42 MGD – 72 MGD; (2) Program Assessment and Reporting: Semi-annual compliance report submittal (ongoing); (3) System Optimization With Real Time Controls: Completed study of system optimization with real time controls; (4) evaluation of inactive CSOs for permanent closure; (5) Cemetery Brook Separation Project: Drain Basis of Design Report submitted; Cemetery Brook drain tunnel design – 60% of the design submitted- The Cemetery Brook Drain Tunnel project will significantly reduce the impacts of CSO discharges by removing stormwater inflow from the collection system. The tunnel is anticipated to significantly reduce wet weather overflows; (6) Christian Brook Separation Project: Christian Brook Main Drain – flow redirected to the City's new drainage system; and (7) CSO discharge and notification program.

**Table 4: Manchester CSO Outfall Locations**

Outfall	CSO Regulator Name	Receiving Water	Latitude	Longitude
011	Schiller Street	Merrimack River	42° 58' 18.86" N	071° 28' 26.42" W
018	Turner/Ferry Streets	Merrimack River	42° 58' 52.84" N	071° 28' 10.17" W
031	Stark Brook (Elgin Ave.) Stark Brook (Sixth Ave.) Stark Brook (Eve Ave.)	Merrimack River	43° 01' 39.84" N	071° 28' 44.02" W
039	Third Street	Piscataquog River	42° 58' 45.12" N	071° 28' 24.93" W
043	Tannery Brook	Merrimack River	42° 58' 05.97" N	071° 28' 23.13" W
044	Cemetery Brook (Primary) Cemetery Brook (Secondary)	Merrimack River	42° 58' 52.88" N	071° 28' 02.40" W
045	Granite Street	Merrimack River	42° 59' 08.00" N	071° 28' 08.80" W
046	Bridge Street	Merrimack River	42° 59' 38.51" N	071° 28' 08.11" W
047	Penacook Street	Merrimack River	42° 59' 55.35" N	071° 28' 06.27" W
050	MH #1	Merrimack River	42° 56' 49.34" N	071° 27' 33.81" W
051	West Side Pump Station	Piscataquog River	42° 58' 41.64" N	071° 28' 16.87" W
052	MH #2	Merrimack River	42° 56' 57.36" N	071° 27' 40.80" W
053	Walnut/North Street Canal/W. Penacook	Merrimack River	43° 00' 02.43" N	071° 28' 09.46" W
054	Ray Brook	Merrimack River	43° 00' 30.53" N	071° 28' 17.16" W
055	Dunbar Street	Merrimack River	42° 57' 56" N	071° 28' 26" W

### Regulatory Framework

CSOs are point sources subject to NPDES permit requirements for both water-quality based and technology-based requirements but are not subject to the secondary treatment regulations applicable to publicly owned treatment works in accordance with 40 CFR §133.103(a). Section 301(b)(1)(C) of the Clean Water Act of 1977 mandated compliance with water quality standards by July 1, 1977. Technology-based permit limits must be established for best conventional pollutant control technology (BCT) and best available technology economically achievable (BAT) based on best professional judgment (BPJ) in accordance with Section 301(b) and Section 402(a) of the Water Quality Act Amendments of 1987 (WQA). The framework for compliance with Clean Water Act requirements for CSOs is set forth in EPA's National CSO Control Policy, 59 Fed. Reg. 18688 (1994). It sets the following objectives:

- 1) To ensure that if the CSO discharges occur, they are only as a result of wet weather;
- 2) To bring all wet weather CSO discharge points into compliance with the technology-based requirements of the CWA and applicable federal and state water quality standards;

and

3) To minimize water quality, aquatic biota, and human health impacts from wet weather flows.

Among the elements established to achieve these objectives, the CSO Policy set forth the minimum BCT/BAT controls (i.e., technology-based limits) that represent the BPJ of the Agency on a consistent, national basis. These are the Nine Minimum Controls (“NMCs”) defined in the CSO Policy and set forth in Part I.B. of the Draft Permit: 1) proper operation and regular maintenance programs for the sewer system and the combined sewer overflows; 2) maximum use of the collection system for storage; 3) review and modification of the pretreatment programs to assure CSO impacts are minimized; 4) maximization of flow to the POTW for treatment; 5) prohibition of dry weather overflows; 6) control of solid and floatable materials in CSOs; 7) pollution prevention programs which focus on contaminant reduction activities; 8) public notification to ensure that the public receives adequate notification of CSO occurrences and CSO impacts; and 9) monitoring to effectively characterize CSO impacts and the efficacy of CSO controls.

To reflect advances in technologies, the Draft Permit includes more specific public notification implementation level requirements to ensure that the public receives adequate notification of CSO occurrences and CSO impacts. The Draft Permit requires the permittee to develop a public notification plan to fulfill NMC #8. As part of this plan, notification shall be provided electronically to any interested party, and a posting made on the permittee’s website, of a probable CSO activation within two (2) hours of the initiation of any CSO discharge(s). Subsequently, within 24 hours of the termination of any CSO discharge(s), the permittee shall provide follow-up information on their website and in a follow-up electronic communication to any interested party. EPA invites comment on this new requirement during the public comment period with a goal of a workable public notification plan.

The CSO Policy also recommended that each community that has a combined sewer system develop and implement a long-term CSO control plan (“LTCP”) that will ultimately result in compliance with the requirements of the CWA. As discussed above, the City submitted a draft LTCP in 1995 and a revised draft LTCP in 2010.

#### Permit Requirements

In accordance with the National CSO Policy, the Draft Permit contains the following conditions for the CSO discharges:

- (i) Dry weather discharges from CSO outfalls are prohibited. Dry weather discharges must be immediately reported to EPA and MassDEP.
- (ii) During wet weather, the discharges must not cause any exceedance of water quality standards.
- (iii) The permittee shall meet the technology-based Nine Minimum Controls described above and shall comply with the implementation levels as set forth in Part I.B. of the Draft Permit.

(iv) The permittee shall review its entire NMC program and revise it as necessary. Documentation of this review and any resultant revisions made to the NMC program shall be submitted to EPA and MassDEP within 6 months of the effective date of the permit. An annual report shall be provided by April 30th of each year which describes any subsequent revisions made to the NMC program and shall also include monitoring results from CSO discharges, and the status of CSO abatement projects.

## 5.7 Standard Conditions

The standard conditions of the permit are based on 40 CFR §122, Subparts A, C, and D and 40 CFR § 124, Subparts A, D, E, and F and are consistent with management requirements common to other permits.

# 6.0 Federal Permitting Requirements

## 6.1 Endangered Species Act

Section 7(a) of the Endangered Species Act of 1973, as amended (ESA), grants authority and imposes requirements on Federal agencies regarding endangered or threatened species of fish, wildlife, or plants (listed species) and habitat of such species that has been designated as critical (a “critical habitat”).

Section 7(a)(2) of the ESA requires every Federal agency, in consultation with and with the assistance of the Secretary of Interior, to ensure that any action it authorizes, funds or carries out, in the United States or upon the high seas, is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat. The United States Fish and Wildlife Service (USFWS) administers Section 7 consultations for freshwater species. The National Oceanic and Atmospheric Administration Fisheries Service (NOAA Fisheries) administers Section 7 consultations for marine and anadromous species.

The Federal action being considered in this case is EPA’s proposed NPDES permit for the Manchester Wastewater Treatment Facility. The Draft Permit is intended to replace the 2015 Permit in governing the Facility. As the federal agency charged with authorizing the discharge from this Facility, EPA determines potential impacts to federally listed species, and initiates consultation, when required under Section 7(a)(2) of the ESA.

Regarding protected species under the jurisdiction of NOAA Fisheries, a number of anadromous and marine species and life stages are present in New Hampshire waters. Various life stages of protected fish, sea turtles and whales have been documented in New Hampshire’s coastal and inland waters, either seasonally or year-round. In general, adult and subadult life stages of Atlantic sturgeon (*Acipenser oxyrinchus*) and adult shortnose sturgeon (*Acipenser brevirostrum*) are present in coastal waters. These sturgeon life stages are also found in some river systems in

New Hampshire, along with early life stages of protected sturgeon and juvenile shortnose sturgeon.

Protected marine species, including adult and juvenile life stages of leatherback sea turtles (*Dermochelys coriacea*), loggerhead sea turtles (*Caretta caretta*), Kemp's ridley sea turtles (*Lepidochelys kempii*) and green sea turtles (*Chelonia mydas*) are found in coastal waters and bays. Adult and juvenile life stages of North Atlantic right whales (*Eubalaena glacialis*) and fin whales (*Balaenoptera physalus*) have also been documented in coastal waters and bays. Those coastal areas have been designated as critical habitat for North Atlantic right whale feeding.

In this case, the Facility's outfall and action area do not overlap with coastal waters where protected marine species are found. The Facility discharges directly into the Merrimack River, which travels through New Hampshire and then into Massachusetts and subsequently to an estuary system and out to the Atlantic Ocean. The facility is located approximately 35 miles upstream from the Essex Dam in Lawrence, Mass., which is the upstream limit for two species of anadromous fish, the shortnose sturgeon (*Acipenser brevirostrum*) and the Atlantic sturgeon (*Acipenser oxyrinchus*). In general, adult shortnose sturgeon (SNS) and adult Atlantic sturgeon (ATS) are present in coastal waters. Sturgeon species have not previously been reported in the vicinity of the action area and are unlikely to be present so far upstream of the Essex Dam.

On the basis of the evaluation, EPA's preliminary determination is that this action is not likely to adversely affect, the life stages of the protected species which are expected to inhabit the Merrimack River in the vicinity of the action area of the discharge. Therefore, EPA has judged that a formal consultation pursuant to section 7 of the ESA is not required.

For protected species under the jurisdiction of the USFWS, two listed species, the endangered northern long-eared bat (*Myotis septentrionalis*) and the threatened small whorled pogonia (*Isotria medeoloides*), were identified as potentially occurring in the action area of the Facility's discharges. According to the USFWS, the endangered northern long-eared bat is found in the following habitats based on seasons, "winter – mines and caves; summer – wide variety of forested habitats." The small whorled pogonia "grows in older hardwood stands of beech, birch, maple, oak, and hickory that have an open understory. Sometimes it grows in stands of softwoods such as hemlock. It prefers acidic soils with a thick layer of dead leaves, often on slopes near small streams." Neither of these species is considered aquatic.

Because the Facility's projected action area in Manchester, New Hampshire overlaps with the general ranges of these species, EPA submitted an evaluation on potential effects of the project to the Information for Planning and Consultation (IPaC) system provided by the USFWS. The USFWS system confirmed by letter on January 31, 2024 that, based on the specific project information submitted, the project would have "no effect" on the northern long-eared bat or small whorled pogonia<sup>17</sup>. This concluded EPA's consultation responsibilities for the Manchester

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<sup>17</sup> USFWS IPaC Project code: 2024-0043023 Letter dated 1/31/2024

WWTF NPDES permitting action under ESA section 7(a)(2). No ESA section 7 consultation is required with USFWS for these species.

At the beginning of the public comment period, EPA notified USFWS and NOAA Fisheries Protected Resources Division that the Draft Permit and Fact Sheet were available for review and provided a link to the EPA NPDES Permit website to allow direct access to the documents.

EPA finds that adoption of the proposed permit is not likely to adversely affect any threatened or endangered species or its critical habitat and informal consultation with NOAA Fisheries or USFWS under Section 7 of the ESA is required. Initiation of consultation is required and shall be requested by the EPA or by USFWS/NOAA Fisheries where discretionary Federal involvement or control over the action has been retained or is authorized by law and: (a) If new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered in the analysis; (b) If the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in this analysis; or (c) If a new species is listed or critical habitat designated that may be affected by the identified action. No take is anticipated or exempted. If there is any incidental take of a listed species, initiation of consultation would be required.

## 6.2 Essential Fish Habitat

Under the 1996 Amendments (PL 104-267) to the Magnuson-Stevens Fishery Conservation and Management Act (see 16 U.S.C. § 1801 *et seq.*, 1998), EPA is required to consult with the NOAA Fisheries 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 that 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), or site specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions.

EFH is only designated for fish species for which federal Fisheries Management Plans exist. See 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.

Essential fish habitat is only designated for 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. A New England Fishery Management Council's Omnibus Essential Fish Habitat Amendment in 2017 updated the descriptions.<sup>18</sup> In some cases, a narrative identifies rivers and other waterways that should be considered EFH

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<sup>18</sup> The information is included on the NOAA Fisheries website at: <https://www.fisheries.noaa.gov/national/habitatconservation/essential-fish-habitat>.

due to present or historic use by federally managed species. In a letter to EPA New England dated October 10, 2000, NOAA Fisheries agreed that for NPDES permit actions, EFH initial notification for purposes of consultation can be accomplished in the EFH section of the Draft Permit's supporting Fact Sheet.

The Federal action being considered in this case is EPA's proposed NPDES permit for the Manchester WWTF, which discharges through Outfall 001 and 15 CSOs to the Merrimack River and other waters identified in Table 1 in Section 4.1 of this document. A review of the relevant essential fish habitat information provided by NOAA Fisheries indicates that the outfall exists within designated EFH for one federally managed species, Atlantic salmon (*Salmo salar*). This is because the Manchester WWTF discharge to the Merrimack River. The Merrimack River system has been designated as EFH for Atlantic salmon. Therefore, consultation with NOAA Fisheries under the Magnuson-Stevens Fishery Conservation and Management Act is required. EPA has determined that actions regulated by the Draft Permit may adversely affect EFH. The Draft Permit has been conditioned in the following way to minimize any impacts that reduce the quality and/or quantity of EFH for Atlantic salmon.

The Draft Permit has been conditioned in the following way to minimize any impacts that reduce the quality and/or quantity of EFH.

- This Draft Permit action does not constitute a new source of pollutants. It is the reissuance of an existing NPDES permit;
- The Facility withdraws no water from the Merrimack River, so the EFH will not be reduced in quality and/or quantity through impingement or entrainment of EFH designated species or their prey;
- Acute and chronic toxicity tests will be conducted quarterly to ensure that the discharge does not exhibit toxicity;
- Total suspended solids, biochemical oxygen demand, pH, *Escherichia coli*, total phosphorus, total aluminum, total lead, total copper, and acute toxicity are regulated by the Draft Permit to meet water quality standards;
- The Draft Permit prohibits the discharge of pollutants or combination of pollutants in toxic amounts;
- The effluent limitations and conditions in the Draft Permit were developed to be protective of all aquatic life;
- The Draft Permit prohibits violations of the state water quality standards; and
- The Draft Permit requirements minimize any reduction in quality and/or quantity of EFH, either directly or indirectly.
- The Draft Permit requires monitoring for four Per- and Polyfluoroalkyl Substances (PFAS) in the influent, effluent, and sludge.

## 7.0 Public Comments, Hearing Requests and Permit Appeals

All persons, including applicants, who believe any condition of the Draft Permit is inappropriate must raise all issues and submit all available arguments and all supporting material for their arguments in full by the close of the public comment period, to the permit writer, Robin Johnson at the following email address: to [Johnson.Robin@epa.gov](mailto:Johnson.Robin@epa.gov).

Prior to the close of the public comment period, any person may submit a written request to EPA for a public hearing to consider the Draft Permit. Such requests shall state the nature of the issues proposed to be raised in the hearing. A public hearing may be held if the criteria stated in 40 CFR § 124.12 are satisfied. In reaching a final decision on the Draft Permit, EPA will respond to all significant comments in a Response to Comments document attached to the Final Permit and make these responses available to the public on EPA's website.

Following the close of the comment period, and after any public hearings, if such hearings are held, EPA will issue a Final Permit decision, forward a copy of the final decision to the applicant, and provide a copy or notice of availability of the final decision to each person who submitted written comments or requested notice. Within 30 days after EPA serves notice of the issuance of the Final Permit decision, an appeal of the federal NPDES permit may be commenced by filing a petition for review of the permit with the Clerk of EPA's Environmental Appeals Board in accordance with the procedures at 40 CFR § 124.19.

If for any reason, comments on the Draft Permit and/or a request for a public hearing cannot be emailed to the permit writer specified above, please contact them at telephone number: (617) 918-1045.

## 8.0 Administrative Record

The administrative record on which this Draft Permit is based may be accessed by contacting Robin Johnson at 617-918-1045 or via email to [Johnson.Robin@epa.gov](mailto:Johnson.Robin@epa.gov).

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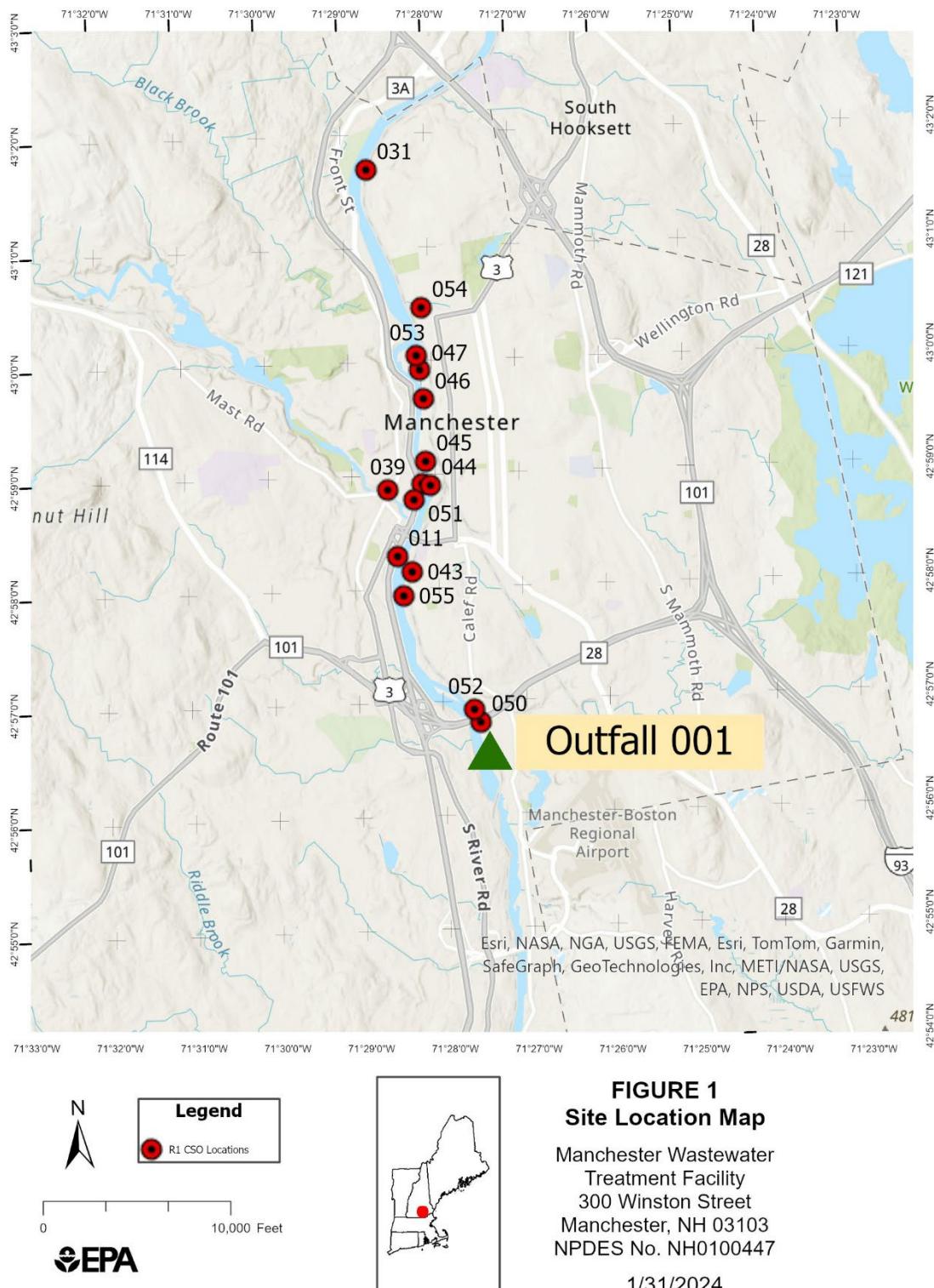
April 2024

Date

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Ken Moraff, Director  
Water Division  
U.S. Environmental Protection Agency

**Figure 1: Location Map**

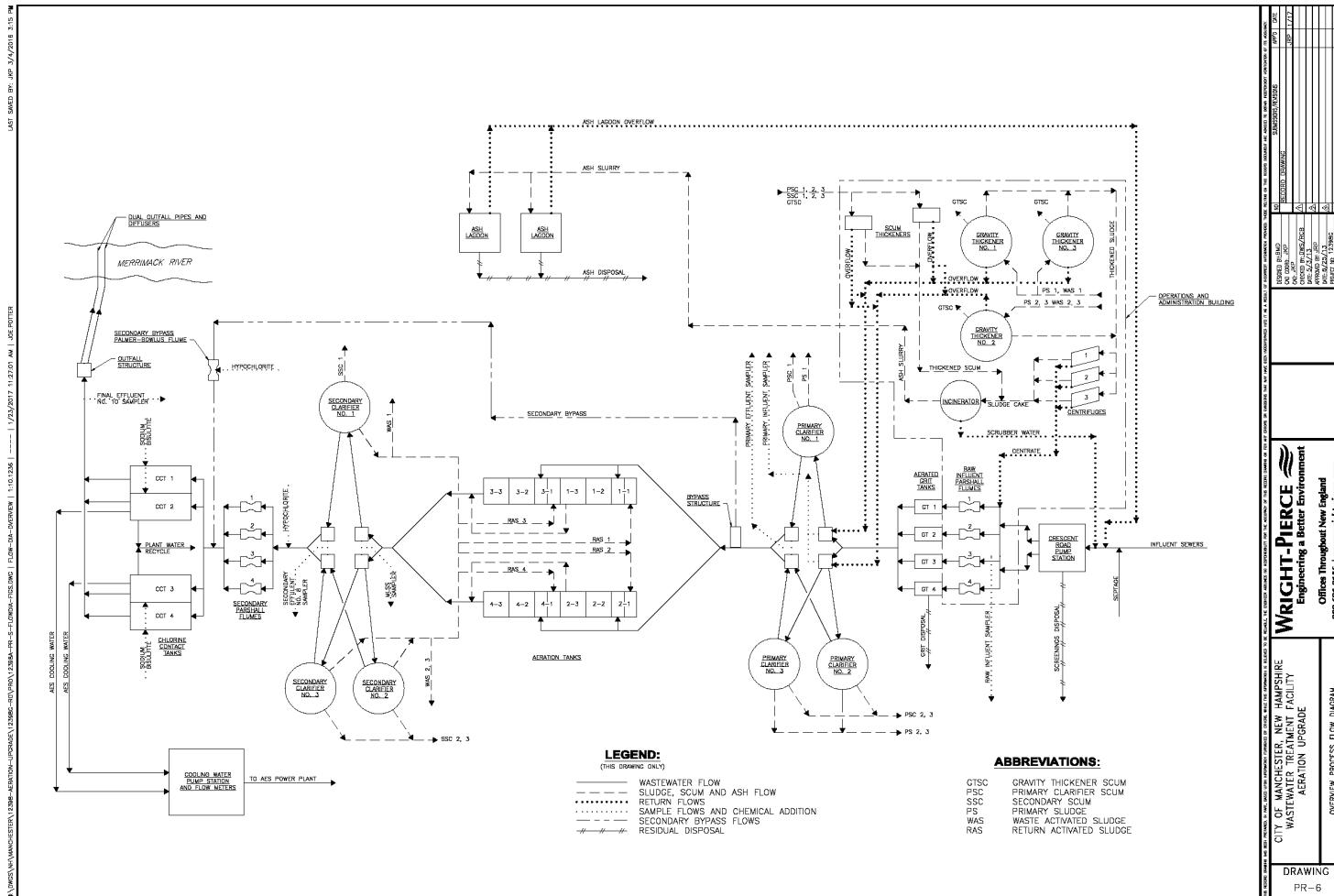


## FIGURE 1 Site Location Map

Manchester Wastewater  
Treatment Facility  
300 Winston Street  
Manchester, NH 03103  
NPDES No. NH0100447

1/31/2024

**Figure 2: Flow diagram**



## Outfall 001

Parameter	Flow	Flow	CBOD5	CBOD5	CBOD5	CBOD5	CBOD5	CBOD5
	Monthly Ave	Daily Max	Monthly Ave	Monthly Ave	Weekly Ave	Weekly Ave	Daily Max	Daily Max
Units	(MGD)	(MGD)	(lb/d)	(mg/L)	(lb/d)	(mg/L)	(lb/d)	(mg/L)
Effluent Limit	Report	Report	7090	25	11350	40	12770	45
Minimum	12.37	18.22	656	4.9	706	5.4	1228	8.1
Maximum	31.17	63.7	2091	11.1	3138	13.9	10746	49.5
Median	21.24	35.43	1116	6.4	1482	7.59	3345.5	12.85
No. of Violations	N/A	N/A	0	0	0	0	0	1
12/31/2018	29.98	54.16	1537	5.9	2612	7.3	6008	13.3
1/31/2019	24.7	51	1491	7.2	1899	8.43	4424	14
2/28/2019	23.2	35.2	1461	7.38	1473	8.13	3929	13.4
3/31/2019	21.75	33.13	2042	11.1	2712	13.9	3844	15.3
4/30/2019	26.3	55.8	1614	7.53	1905	9.29	3860	13
5/31/2019	25.72	34.79	1223	5.7	2256	10	2504	11.2
6/30/2019	22	39.8	1104	5.69	1431	7.34	3280	14.3
7/31/2019	17.5	40.38	966	6.3	1021	6.8	3738	11.9
8/31/2019	15.2	21.6	961	7.48	1207	8.83	2112	11.7
9/30/2019	14.7	18.8	1086	8.71	1275	9.32	1863	13.1
10/31/2019	15.5	38.7	984	7.33	1063	7.58	4097	12.7
11/30/2019	17.42	36.4	993	6.6	1322	10.9	3795	12.5
12/31/2019	24.16	57.6	1417	6.7	3074	9.7	5572	11.6
1/31/2020	21.95	33.8	1110	6	1277	7.2	2001	9.4
2/29/2020	22.1	41.6	1328	7.01	1350	7.06	3920	11.3
3/31/2020	23.59	36.47	1466	7.4	1550	7.8	3517	14.7
4/30/2020	29.29	44.49	2063	8.1	2609	9.2	4638	13.2
5/31/2020	22.35	36.37	1146	6.1	1529	7.5	3033	11.3
6/30/2020	14.58	20.54	884	7.2	1012	8.3	1473	10.8
7/31/2020	14.43	25.88	1149	9.5	1421	11.7	2525	13.3
8/31/2020	13.1	22.02	868	7.7	1601	11	2773	15.1
9/30/2020	12.91	19.4	656	6.1	755	7.3	1521	11.6
10/31/2020	15.5	31.3	744	5.31	997	6.2	2481	10.1
11/30/2020	16.2	31.7	1095	7.73	954	7.88	2869	13
12/31/2020	25.59	56.02	1415	6.3	1880	7.1	6167	13.2
1/31/2021	21.22	36.94	1054	5.9	1227	6.8	2526	9.4
2/28/2021	17.48	30.75	1033	6.9	1100	7.9	2693	10.5
3/31/2021	19.93	28.53	781	6.5	1249	7.3	1228	10.7
4/30/2021	20.65	34.26	1179	6.7	1429	8.2	2829	10.3
5/31/2021	20.43	29.87	1112	6.4	1235	6.7	2645	12.4
6/30/2021	16.12	21.52	809	6	848	6.6	1444	8.8
7/31/2021	28.2	44	1689	6.99	1797	8.56	3749	13.1

## Outfall 001

Parameter	Flow	Flow	CBOD5	CBOD5	CBOD5	CBOD5	CBOD5	CBOD5
	Monthly Ave	Daily Max	Monthly Ave	Monthly Ave	Weekly Ave	Weekly Ave	Daily Max	Daily Max
Units	(MGD)	(MGD)	(lb/d)	(mg/L)	(lb/d)	(mg/L)	(lb/d)	(mg/L)
Effluent Limit	Report	Report	7090	25	11350	40	12770	45
8/31/2021	22.01	35.39	1585	7.9	3138	10.9	10566	35.8
9/30/2021	24.25	45.62	1200	5.8	2044	6.8	3048	9.7
10/31/2021	18.65	43.92	1055	6.4	1499	7.7	3407	16
11/30/2021	22.41	29.69	1118	5.9	1290	6.5	2303	11.3
12/31/2021	21.26	29.39	1284	7.1	2387	7.6	2826	12.5
1/31/2022	20.76	32.63	1158	6.5	1503	7.8	2531	10.5
2/28/2022	28.3	49.2	2091	8.25	3068	11.64	8936	21.8
3/31/2022	25.28	33.79	1093	5.1	1491	6.1	2655	10.3
4/30/2022	24.81	39.26	1177	5.4	1387	6.3	3700	11.3
5/31/2022	20.34	29.82	857	5	922	5.4	1651	10.4
6/30/2022	18	31.49	815	5.3	1105	6.4	2547	9.7
7/31/2022	15.45	24.37	1114	8.4	1634	11.9	3110	21.6
8/31/2022	12.37	18.22	674	6	706	6.1	3987	26.9
9/30/2022	16.48	36.72	953	5.7	1635	7.5	7286	25.5
10/31/2022	17.28	35.47	767	5	1094	6.3	3239	18.8
11/30/2022	19.01	32.16	1073	6.5	1171	7.1	2473	11.6
12/31/2022	27	63.7	1570	6.08	2865	8.47	7807	14.7
1/31/2023	31.17	59.88	1712	6.2	2479	7.5	5230	13
2/28/2023	24.61	36	1106	5.4	1797	6.3	1831	8.1
3/31/2023	30.65	43.94	1576	6	2282	7.6	3591	9.8
4/30/2023	27.6	44.7	1717	7.27	1783	8.71	4473	12
5/31/2023	26.61	46.73	1402	5.9	2713	8.2	4677	14.1
6/30/2023	20.4	33.8	1246	6.69	2886	13.22	10746	49.5
7/31/2023	30.18	51.2	1784	6.6	2483	8.5	8668	21.7
8/31/2023	20.2	27.16	1094	6.2	1310	7.4	3284	14.5
9/30/2023	23.6	41.77	1290	6.2	1585	7.1	4157	17.2
10/31/2023	19.54	36.77	920	5.4	1153	5.7	4293	14
11/30/2023	18.88	33.93	810	4.9	1288	7	3792	13.4

## Outfall 001

Parameter	TSS	TSS	TSS	TSS	TSS	TSS	pH	pH
	Monthly Ave	Monthly Ave	Weekly Ave	Weekly Ave	Daily Max	Daily Max	Minimum	Maximum
Units	(lb/d)	(mg/L)	(lb/d)	(mg/L)	(lb/d)	(mg/L)	(SU)	(SU)
Effluent Limit	8510	30	12770	45	14190	50	6.5	8
Minimum	792	5.3	983	6.4	1378	10	6.5	7
Maximum	3186	15.9	7433	38.6	36992	170.4	605	7.7
Median	1516	8.5	2095	10.43	4823.5	17.6	6.75	7.2
No. of Violations	0	0	0	0	4	2	0	0
12/31/2018	2111	8.3	2727	11.8	6775	19	6.8	7
1/31/2019	2039	9.27	2768	10.46	6340	23.6	6.8	7.4
2/28/2019	1708	8.64	1878	9.89	4985	17	6.8	7.3
3/31/2019	2924	15.9	3603	18.5	5362	29.2	6.6	7.2
4/30/2019	2397	11.1	3041	13.7	10103	32.6	6.7	7.2
5/31/2019	1763	8.1	2332	10	4621	21.6	6.8	7.2
6/30/2019	1520	7.73	2013	10.2	5640	22.8	6.8	7.2
7/31/2019	1406	9	2092	10.8	6264	28	6.7	7.1
8/31/2019	965	7.5	1221	8.7	2815	15.6	6.8	7.1
9/30/2019	1301	10.49	1504	11.17	2787	19.6	6.8	7.4
10/31/2019	1334	9.59	1829	11.09	6774	21	6.8	7.4
11/30/2019	1356	9.1	1868	12.1	5222	20.6	6.9	7.2
12/31/2019	1867	8.5	3353	11.5	8070	20	6.7	7.1
1/31/2020	1444	7.7	1804	9.1	3413	13.4	6.9	7.1
2/29/2020	1809	9.58	2126	11	3885	17.4	6.8	7.2
3/31/2020	1950	9.8	2530	12.8	4670	19	6.9	7.2
4/30/2020	3166	12.6	4331	15.8	11803	35.3	6.9	7.3
5/31/2020	1552	8.1	2130	10.4	3640	13.8	6.9	7.2
6/30/2020	865	7.1	1082	8.7	1378	10	7	7.2
7/31/2020	1045	8.5	1333	10.1	2604	15.6	6.9	7.5
8/31/2020	988	7.9	2356	15.8	7952	43.3	6.8	7.3
9/30/2020	792	7.3	1004	9.8	1877	14.8	6.5	7.5
10/31/2020	842	5.9	1143	6.7	3065	14.8	6.5	7.2
11/30/2020	1108	7.52	2295	13.17	5241	19.8	6.5	7.1
12/31/2020	1303	5.6	2032	6.9	7662	16.4	6.5	7.3
1/31/2021	933	5.3	1007	6.4	2711	12.4	6.6	7.2
2/28/2021	1161	7.7	1596	9.8	4155	16.2	6.6	7.6
3/31/2021	1037	6.1	1033	6.5	2760	11.6	6.6	7.4
4/30/2021	1346	7.6	1773	9.8	4172	14.6	6.9	7.4
5/31/2021	1440	8.5	1674	9.9	2245	12.8	6.8	7.3
6/30/2021	933	6.9	983	7.3	1997	11.2	6.6	7.2
7/31/2021	3014	11.6	3596	15.6	13900	46.7	6.5	7.1

## Outfall 001

Parameter	TSS	TSS	TSS	TSS	TSS	TSS	pH	pH
	Monthly Ave	Monthly Ave	Weekly Ave	Weekly Ave	Daily Max	Daily Max	Minimum	Maximum
Units	(lb/d)	(mg/L)	(lb/d)	(mg/L)	(lb/d)	(mg/L)	(SU)	(SU)
Effluent Limit	8510	30	12770	45	14190	50	6.5	8
8/31/2021	2200	10.6	3959	16.4	20159	68.3	6.6	7.1
9/30/2021	1405	6.7	3619	11.5	3205	11.6	6.7	7.1
10/31/2021	1547	9.1	2947	15.2	6450	32.4	6.5	7.1
11/30/2021	1448	7.7	2098	10.5	2869	14.4	6.5	7.1
12/31/2021	1594	8.7	1844	9.4	4461	18.2	6.6	7.3
1/31/2022	1275	7.2	1613	8.4	2510	12	6.9	7.1
2/28/2022	3046	11.41	4371	14.66	17462	42.6	6.7	7.5
3/31/2022	1591	7.5	2222	9.2	4073	16.6	6.7	7.7
4/30/2022	1709	8	2009	8.7	4780	14.6	6.8	7.3
5/31/2022	1296	7.7	1399	8.4	2477	14	6.8	7.3
6/30/2022	1268	8.2	1669	9.4	3834	14.6	6.6	7.3
7/31/2022	1512	11.2	2072	15.2	5126	35.8	6.6	7.2
8/31/2022	1071	9.5	1171	10.7	6284	42.4	6.6	7.2
9/30/2022	1631	9.9	2844	13	13544	47.4	605	7.2
10/31/2022	1152	7.5	1510	8.5	4260	17.8	6.6	7.3
11/30/2022	1382	8.6	1498	9.3	2949	13.6	6.7	7.2
12/31/2022	2071	8.1	3214	9.9	11684	23.2	6.6	7.3
1/31/2023	2399	8.8	3537	11.1	7291	14.6	6.5	7.3
2/28/2023	1568	7.5	2512	8.8	2942	11	6.8	7.5
3/31/2023	2293	8.7	3032	10.3	4314	14.2	6.5	7.3
4/30/2023	2278	9.74	2441	10.46	6187	16.6	6.8	7.5
5/31/2023	2165	8.9	4342	13	7717	20.4	6.8	7.2
6/30/2023	2752	14	7433	38.6	36992	170.4	6.9	7.3
7/31/2023	3186	11.7	4611	16	17337	40.6	6.9	7.1
8/31/2023	1770	10	2463	13.7	7793	41	6.9	7.2
9/30/2023	2308	10.8	2959	12.5	7594	32.4	6.6	7.1
10/31/2023	1291	7.6	1589	8.3	4723	15.4	6.7	7.4
11/30/2023	1138	7	1673	9.1	4867	17.2	6.8	7.2

## Outfall 001

Parameter	E. coli	E. coli	E. coli	E. coli	TRC	TRC	TP	TP
	Monthly Geometric Mean	Monthly Geometric Mean		Daily Max	Daily Max	Monthly Ave	Daily Max	
Units	(CFU/100mL)	(CFU/100mL)	(CFU/100mL)	(CFU/100mL)	(mg/L)	(mg/L)	(mg/L)	(mg/L)
Effluent Limit	126	Report	406	Report	0.13	0.22	Report	Report
Minimum	2.26	2.16	10.7	5.2	0	0.05	0.28	0.29
Maximum	15.84	12.76	163.1	547.5	0.062	0.18	5.35	8.8
Median	6.01	4.33	36.4	37.3	0.0335	0.12	1.425	1.65
No. of Violations	0	N/A	0	N/A	0	0	N/A	N/A
12/31/2018	5.94		15.8		0.03	0.1	0.88	0.92
1/31/2019	4.01		41.7		0.01	0.07	1.4	1.4
2/28/2019	4.34		19.5		0.01	0.17	1.45	1.5
3/31/2019	6.01		22.8		0.057	0.11	1.53	2.2
4/30/2019	7.65		163.1		0.057	0.15	1.45	1.6
5/31/2019	2.67		24.3		0.041	0.13	1.15	1.3
6/30/2019	5.04		57.3		0	0.1	1.6	1.7
7/31/2019	3.77		30.9		0.039	0.1	1.65	2.4
8/31/2019	9.62		125.4		0.046	0.11	2.75	3
9/30/2019	10.95		125.9		0.06	0.14	2.95	3.4
10/31/2019	10.6		64.4		0.04	0.11	1.22	2
11/30/2019	2.26		10.7		0.035	0.11	2.05	2.8
12/31/2019	3.2		14.5		0.04	0.15	0.34	0.42
1/31/2020	7.58		48.1		0.04	0.13	0.28	0.29
2/29/2020	4.4		36.4		0.01	0.14	1.2	1.3
3/31/2020	5.8		29.4		0.04	0.14	2.1	2.1
4/30/2020	7.63		26.8		0.044	0.12	1.74	2.5
5/31/2020	9		47.9		0.03	0.11	2.7	3.3
6/30/2020	6.66		31.1		0.024	0.12	2.55	2.7
7/31/2020	12.57		103.9		0.035	0.11	2.55	4.3
8/31/2020	15.84		160.7		0.05	0.12	0.4	0.42
9/30/2020		10.46		78.9	0.037	0.11	1.49	2.5
10/31/2020		10.04		28.1	0.031	0.09	1.7	1.7
11/30/2020		4.33		24.2	0.032	0.09	0.91	1.3
12/31/2020		5.74		190.4	0.039	0.15	1.22	1.5
1/31/2021		3.66		22.3	0.03	0.08	0.81	1.4
2/28/2021		3.12		13	0.034	0.09	1.93	2.9
3/31/2021		2.52		16.8	0.025	0.08	0.99	1.5
4/30/2021		2.66		14.6	0.022	0.08	0.71	1
5/31/2021		12.76		137.3	0.03	0.12	1.18	1.5
6/30/2021		2.16		176.3	0.032	0.14	2.05	2.2
7/31/2021		4.12		70.6	0.048	0.18	0.625	0.75

## Outfall 001

Parameter	E. coli	E. coli	E. coli	E. coli	TRC	TRC	TP	TP	
	Monthly Geometric Mean	Monthly Geometric Mean		Daily Max	Daily Max	Monthly Ave	Daily Max	Monthly Ave	Daily Max
Units	(CFU/100mL)	(CFU/100mL)	(CFU/100mL)	(CFU/100mL)	(mg/L)	(mg/L)	(mg/L)	(mg/L)	
Effluent Limit	126	Report	406	Report	0.13	0.22	Report	Report	
8/31/2021		5.51		17.5	0.03	0.11	2.65	2.8	
9/30/2021		5.88		17.4	0.032	0.1	1.35	1.4	
10/31/2021		5.25		51.2	0.03	0.1	1.45	1.9	
11/30/2021		3.94		30.8	0.038	0.11	1.88	2.9	
12/31/2021		3.91		21.1	0.051	0.16	0.89	0.94	
1/31/2022		3.06		25.3	0.04	0.11	1.2	1.2	
2/28/2022		9.58		313	0.01	0.16	1.02	1.3	
3/31/2022		5.34		18.7	0.026	0.08	1.25	1.4	
4/30/2022		4.34		172	0.035	0.11	1.15	1.2	
5/31/2022		2.38		15.6	0.03	0.16	0.82	0.92	
6/30/2022		3.35		547.5	0.038	0.14	2.1	2.4	
7/31/2022		6		37.3	0.05	0.15	3	3.2	
8/31/2022		7.59		81.6	0.022	0.05	3.3	3.8	
9/30/2022		8.1		54.6	0.023	0.07	0.62	0.75	
10/31/2022		3.85		61.2	0.03	0.11	5.35	8.8	
11/30/2022		3.39		39.9	0.033	0.13	2.2	2.2	
12/31/2022		5.79		93.4	0.03	0.16	2.4	3.5	
1/31/2023		6.49		163.1	0.03	0.15	0.79	0.94	
2/28/2023		2.56		10.9	0.025	0.13	1.1	1.1	
3/31/2023		8.29		126	0.033	0.13	1.5	1.7	
4/30/2023		4.76		23.8	0.047	0.14	1.9	2	
5/31/2023		3.62		35	0.058	0.16	0.64	1	
6/30/2023		3.93		21.3	0.037	0.1	2.35	2.4	
7/31/2023		3.64		165	0.03	0.15	1.03	1.1	
8/31/2023		6.43		46.5	0.03	0.15	0.55	0.77	
9/30/2023		7.19		67	0.062	0.17	0.29	0.34	
10/31/2023		3.02		12.1	0.05	0.15	5	5.2	
11/30/2023		2.26		5.2	0.042	0.15	1.03	1.8	

## Outfall 001

Parameter	TP	TP	TP	Copper	Copper
	Monthly Ave	Monthly Ave	Daily Max	Monthly Ave	Daily Max
Units	(lb/d)	(lb/d)	(lb/d)	(ug/L)	(ug/L)
Effluent Limit	236	Report	Report	24	Report
Minimum	40.35	75	40.5	2.35	2.4
Maximum	748	891	1516	8.95	10
Median	290	199.5	267	4.675	5.15
No. of Violations	10	N/A	N/A	0	N/A
12/31/2018				4	5
1/31/2019				5.5	6
2/28/2019				5.8	5.9
3/31/2019				6.7	7.2
4/30/2019	318		373	5.2	6.4
5/31/2019	254		267	4.35	5.3
6/30/2019	264.5		276	4.6	5.5
7/31/2019	212		340	3.9	5.1
8/31/2019	306		334	8.1	9.5
9/30/2019	321		376	5.9	7.5
10/31/2019	195		125	3.55	3.9
11/30/2019				3.25	3.5
12/31/2019				2.75	2.8
1/31/2020				2.7	2.8
2/29/2020				3.5	4
3/31/2020				5.95	7.7
4/30/2020	368		542	5.2	6.2
5/31/2020	492		637	5.15	6.4
6/30/2020	295		316	5.15	5.3
7/31/2020	285		485	8.95	10
8/31/2020	40.35		40.5	6	6.1
9/30/2020		149	250	4.5	4.5
10/31/2020		199.5	206	5.2	5.2
11/30/2020				7.8	8.8
12/31/2020				5.45	5.9
1/31/2021				3.35	3.7
2/28/2021				5.7	6.5
3/31/2021				5.35	5.9
4/30/2021		123	177	4.85	5.8
5/31/2021		159	204	5.4	5.7
6/30/2021		251.5	263	3	3.3
7/31/2021		133	158	2.35	2.4

## Outfall 001

Parameter	TP	TP	TP	Copper	Copper
	Monthly Ave	Monthly Ave	Daily Max	Monthly Ave	Daily Max
Units	(lb/d)	(lb/d)	(lb/d)	(ug/L)	(ug/L)
Effluent Limit	236	Report	Report	24	Report
8/31/2021		636	826	3.3	3.4
9/30/2021		220	233	2.85	3.2
10/31/2021		178	237	3.7	3.7
11/30/2021				8.1	9
12/31/2021				6.2	6.4
1/31/2022				5.95	6.3
2/28/2022				4.9	5.7
3/31/2022				6.2	6.4
4/30/2022		228	241	4.95	5.1
5/31/2022		142	161	4.65	4.9
6/30/2022		316	349	4.7	4.9
7/31/2022		456	522	2.95	3
8/31/2022		317	344	3.95	4.1
9/30/2022		75	97	3.9	4.7
10/31/2022		891	1516	5.7	6.3
11/30/2022				4.05	4.1
12/31/2022				5.25	5.7
1/31/2023				3.9	4
2/28/2023				3.85	4.1
3/31/2023				3.1	3.2
4/30/2023		378	414	5.05	5.2
5/31/2023		124	192	2.55	2.8
6/30/2023		358	392	2.45	2.6
7/31/2023		189	196	2.85	3.5
8/31/2023		81	112	4.5	4.7
9/30/2023	70		78	3.05	3.3
10/31/2023	748		772	5.2	5.7
11/30/2023				4	4.3

## WET Effluent

Parameter	LC50 Acute Ceriodaphnia	C-NOEC Chronic Ceriodaphnia	LC50 Acute Pimephales	Noel Statre 7Day Chronic Pimephales	Ammonia	Aluminum	Cadmium
	Monthly Ave Min	Monthly Ave Min	Monthly Ave Min	Monthly Ave Min	Daily Max	Daily Max	Daily Max
Units	(%)	(%)	(%)	(%)	(mg/L)	(mg/L)	(mg/L)
Effluent Limit	100	8.5	100	8.5	Report	Report	Report
Minimum	100	50	100	50	1.2	0.026	0
Maximum	100	100	100	100	19	0.26	0
Median	100	100	100	100	12	0.0485	Non-Detect
No. of Violations	0	0	0	0	N/A	N/A	N/A
12/31/2018	100	100	100	100	7.9	0.043	< .0002
3/31/2019	100	100	100	100	12	0.068	< .0002
6/30/2019	100	100	100	100	13	0.042	< .0002
9/30/2019	100	50	100	100	13	0.044	< .0002
12/31/2019	100	100	100	100	8.7	0.042	< .0002
3/31/2020	100	50	100	100	15	0.026	< .0002
6/30/2020	100	100	100	100	12	0.028	< .0002
9/30/2020	100	100	100	50	19	0.069	< .0002
12/31/2020	100	100	100	100	7	0.052	< .0002
3/31/2021	100	50	100	100	17	0.053	< .0002
6/30/2021	100	100	100	100	13	0.045	< .0005
9/30/2021	100	100	100	100	4.1	0.059	< .0005
12/31/2021	100	100	100	100	5.7	0.03	< .0005
3/31/2022	100	50	100	100	12	0.059	< .0005
6/30/2022	100	50	100	100	13	0.042	< .0005
9/30/2022	100	100	100	100	1.2	0.077	< .0005
12/31/2022	100	100	100	100	13	0.036	< .0005
3/31/2023	100	100	100	100	8.8	0.24	< .0005
6/30/2023	100	100	100	100	7.8	0.26	< .0005
9/30/2023	100	50	100	100	9	0.054	< .0005

## WET Effluent

Parameter	Copper	Lead	Nickel	Zinc	Hardness
	Daily Max	Daily Max	Daily Max	Daily Max	Daily Max
Units	(mg/L)	(mg/L)	(mg/L)	(mg/L)	(mg/L)
Effluent Limit	Report	Report	Report	Report	Report
Minimum	0.0037	0	No Data	0.013	44
Maximum	0.012	0.0031	No Data	0.071	76
Median	0.0057	Non-Detect	No Data	0.0375	68
No. of Violations	N/A	N/A	N/A	N/A	N/A
12/31/2018	0.0066	< .001	< .005	0.071	67
3/31/2019	0.0078	< .001	< .005	0.04	76
6/30/2019	0.0077	< .001	< .005	0.04	68
9/30/2019	0.0055	< .001	< .005	0.037	62
12/31/2019	0.0051	< .001	< .005	0.026	76
3/31/2020	0.0039	< .001	< .005	0.028	65
6/30/2020	0.0055	< .001	< .0055	0.029	64
9/30/2020	0.0109	0.0006	< .005	0.025	71
12/31/2020	0.0057	< .0005	< .005	0.055	51
3/31/2021	0.0065	< .0005	< .005	0.049	69
6/30/2021	0.0057	< .0005	< .005	0.042	68
9/30/2021	0.0044	< .0005	< .005	0.025	52
12/31/2021	0.0037	< .0005	< .005	0.023	64
3/31/2022	0.0065	< .0005	< .005	0.038	68
6/30/2022	0.0058	< .0005	< .005	0.041	76
9/30/2022	0.0042	< .0005	< .005	0.024	74
12/31/2022	0.004	< .0005	< .005	0.0169	73
3/31/2023	0.012	0.002	< .005	0.064	70
6/30/2023	0.0114	0.0031	< .005	0.039	44
9/30/2023	0.0049	0.002	< .005	0.013	60

## WET Ambient

Parameter	pH	Alkalinity	Hardness	Total Organic Carbon	Ammonia	Aluminum	Cadmium	Copper
	Daily Max	Daily Max	Daily Max	Daily Max	Daily Max	Daily Max	Daily Max	Daily Max
Units	(mg/L)	(mg/L)	(mg/L)	(mg/L)	(mg/L)	(mg/L)	(mg/L)	(mg/L)
Effluent Limit	Report	Report	Report	Report	Report	Report	Report	Report
Minimum	0	0	0	0	0	0	0	0
Maximum	0.85	0.85	0.85	0.85	0.85	0.37	0	0
Median	0.12	0.12	0.12	0.12	0.12	0.12	Non-Detect	Non-Detect
Quarter Ending								
12/31/2018	7.2	16	11	6.5	0.12	0.16	<0.0002	<0.002
3/31/2019	7.2	8	20	2.9	0.11	0.12	<0.0002	<0.002
6/30/2019	7.1	12	10	4.8	0.13	0.21	<0.0002	<0.002
9/30/2019	7.5	20	11	4.3	0.21	0.3	<0.0002	<0.002
12/31/2019	7.4	20	20	3.9	<0.1	<0.02	<0.0002	<0.002
3/31/2020	7.2	16	13	2.55	<0.5	0.061	<0.0002	<0.002
6/30/2020	7.5	16	16	2.8	0.35	0.096	<0.0002	<0.002
9/30/2020	7.5	16	15	3.41	0.41	0.034	<0.0002	<0.002
12/31/2020	7.4	12	14	6	0.16	0.27	<0.0002	<0.002
3/31/2021	7.1	12	15	3.3	0.26	0.062	<0.0002	<0.002
6/30/2021	7.8	12	11	3.8	<0.08	0.12	<0.0005	<0.002
9/30/2021	7.4	12	16	9.7	0.85	0.3	<0.0005	<0.002
12/31/2021	7.7	20	24	4.2	0.093	0.063	<0.0005	<0.002
3/31/2022	7.5	24	14	4.6	0.16	0.24	<0.0005	<0.002
6/30/2022	7.8	20	16	4	0.074	0.11	<0.0005	<0.002
9/30/2022	7.5	32	17	3.1	0.45	0.031	<0.0005	<0.002
12/31/2022	7.8	20	11	7.8	0.12	0.37	<0.0005	<0.002
3/31/2023	7.7	28	9	4	0.09	0.15	<0.0005	<0.002
6/30/2023	7.6	16	11	4.9	0.11	0.37	<0.0005	<0.002
9/30/2023	7.5	20	13	5.1	<0.06	0.14	<0.0005	<0.002

## WET Ambient

Parameter	Lead	Nickel	Zinc
	Daily Max	Daily Max	Daily Max
Units	(mg/L)	(mg/L)	(mg/L)
Effluent Limit	Report	Report	Report
Minimum	0	No Data	0
Maximum	0.0007	No Data	0.071
Median	Non-Detect	No Data	Non-Detect
Quarter Ending			
12/31/2018	<0.001	<0.005	0.071
3/31/2019	<0.001	<0.005	<0.02
6/30/2019	<0.001	<0.005	<0.02
9/30/2019	<0.001	<0.005	<0.02
12/31/2019	<0.001	<0.005	<0.02
3/31/2020	<0.001	<0.005	<0.02
6/30/2020	<0.001	<0.005	<0.02
9/30/2020	<0.0005	<0.005	<0.005
12/31/2020	0.0007	<0.005	0.0056
3/31/2021	<0.0005	<0.005	<0.005
6/30/2021	<0.0005	<0.005	<0.005
9/30/2021	0.0007	<0.005	0.0053
12/31/2021	<0.0005	<0.005	<0.005
3/31/2022	<0.005	<0.005	0.0074
6/30/2022	<0.0005	<0.005	<0.005
9/30/2022	<0.0005	<0.005	<0.005
12/31/2022	0.0006	<0.005	0.0107
3/31/2023	0.0005	<0.005	<0.005
6/30/2023	0.0006	<0.005	0.005
9/30/2023	<0.0005	<0.005	<0.005

## CSO Monitoring

CSO Outfall	11	18	31	39	43	44	45	46	47	50
Parameter	E. coli									
	MAX									
Units	(CFU/100mL)									
Effluent Limit	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000
Minimum	2490	241960	No Data	No Data	2419.6	2400	1610	2400	1970	2419.6
Maximum	2490	241960	No Data	No Data	2419.6	241960	10462	86640	129970	241960
Median	Non-Detect	Non-Detect	No Data	No Data	Non-Detect	2490	2419.6	2490	2419.6	2419.6
No. of Violations	1	1	No Data	No Data	1	5	5	5	5	3
12/31/2018	NODI: E	241960	10462	86640	129970	241960				
12/31/2019	NODI: C	241960	NODI: E	NODI: C	NODI: C	241960	1610	5200	1970	241960
12/31/2020	2490	NODI: C	NODI: E	NODI: C	NODI: E	2490	2490	2490	2490	NODI: C
12/31/2021	NODI: C	NODI: C	NODI: E	NODI: C	NODI: E	2400	2400	2400	2400	NODI: C
12/31/2022	NODI: C		NODI: E	NODI: C	2419.6	2419.6	2419.6	2419.6	2419.6	2419.6

## CSO Monitoring

CSO Outfall	51	52	53	54	55
Parameter	E. coli				
	MAX	MAX	MAX	MAX	MAX
Units	(CFU/100m)	(CFU/100m)	(CFU/100m)	(CFU/100m)	(CFU/100mL)
Effluent Limit	1000	1000	1000	1000	1000
Minimum	No Data	64.8	2400	2400	No Data
Maximum	No Data	241960	2400	14136	No Data
Median	No Data	2419.6	Non-Detect	2490	No Data
No. of Violations	No Data	3	1	5	No Data
12/31/2018	NODI: C	241960	NODI: C	14136	NODI: E
12/31/2019	NODI: C	241960	NODI: C	3450	NODI: C
12/31/2020	NODI: C	NODI: C	NODI: C	2490	NODI: C
12/31/2021	NODI: C	64.8	2400	2400	NODI: C
12/31/2022	NODI: C	2419.6	NODI: C	2419.6	NODI: C

A reasonable potential analysis is completed using a single set of critical conditions for flow and pollutant concentration that will ensure the protection of water quality standards. To determine the critical condition of the effluent, EPA projects an upper bound of the effluent concentration based on the observed monitoring data and a selected probability basis. EPA generally applies the quantitative approach found in Appendix E of EPA's *Technical Support Document for Water Quality-based Toxics Control* (TSD)<sup>1</sup> to determine the upper bound of the effluent data. This methodology accounts for effluent variability based on the size of the dataset and the occurrence of non-detects (i.e., samples results in which a parameter is not detected above laboratory detection limits). For datasets of 10 or more samples, EPA uses the upper bound effluent concentration at the 95<sup>th</sup> percentile of the dataset. For datasets of less than 10 samples, EPA uses the maximum value of the dataset.

For freshwater discharges, EPA uses the calculated upper bound of the effluent data, along with a concentration representative of the parameter in the receiving water, the critical effluent flow, and the critical upstream flow to project the downstream concentration after complete mixing using the following simple mass-balance equation:

$$C_s Q_s + C_e Q_e = C_d Q_d$$

Where:

$C_s$  = upstream concentration (median value of available ambient data)

$Q_s$  = upstream flow (7Q10 flow upstream of the outfall)

$C_e$  = effluent concentration (95<sup>th</sup> percentile or maximum of effluent concentration)

$Q_e$  = effluent flow of the facility (design flow)

$C_d$  = downstream concentration

$Q_d$  = downstream flow ( $Q_s + Q_e$ )

Solving for the downstream concentration results in:

$$C_d = \frac{C_s Q_s + C_e Q_e}{Q_d}$$

When both the downstream concentration ( $C_d$ ) and the effluent concentration ( $C_e$ ) exceed the applicable criterion, there is reasonable potential for the discharge to cause, or contribute to an excursion above the water quality standard. See 40 C.F.R. § 122.44(d). When EPA determines that a discharge causes, has the reasonable potential to cause, or contribute to such an excursion, the permit must contain WQBELs for the parameter. See 40 C.F.R. § 122.44(d)(1)(iii). Limits are calculated by using the criterion as the downstream concentration ( $C_d$ ) and rearranging the mass balance equation to solve for the effluent concentration ( $C_e$ ). Refer to the pollutant-specific section of the Fact Sheet for a discussion of these calculations, any assumptions that must be made and other relevant permit requirements.

For any pollutant(s) with an existing WQBEL, EPA notes that the analysis described in 40 CFR § 122.44(d)(1)(i) has already been conducted in a previous permitting action demonstrating that there is reasonable potential to cause or contribute to an excursion of WQS. Given that the permit already contains a WQBEL based on the prior analysis and the pollutant(s) continue to be discharged from the facility, EPA has determined that there is still reasonable potential for the discharge of this pollutant(s) to cause or contribute to an excursion of WQS. Therefore, the WQBEL will be carried forward unless it is determined that a more stringent WQBEL is necessary to continue to protect WQS or that a less stringent WQBEL is allowable based on anti-backsliding regulations at CWA §§ 402(o) and 303(d)(4) and 40 CFR § 122.44(l). For these pollutant(s), if any, the mass balance calculation is not used to determine whether there is reasonable potential to cause or contribute to an excursion of WQS, but rather is used to determine whether the existing limit needs to be more stringent in order to continue to protect WQS.

From a technical standpoint, when a pollutant is already being controlled as a result of a previously established WQBEL, EPA has determined that it is not appropriate to use new effluent data to reevaluate the need for the existing limit because the reasonable potential to cause or contribute to an excursion of WQS for the uncontrolled discharge was already established in a previous permit. If EPA were to conduct such an evaluation and find no reasonable potential for the controlled discharge to cause or contribute to an excursion of WQS, that finding could be interpreted to suggest that the effluent limit should be removed. However, the new permit without the effluent limit would imply that existing controls are unnecessary, that controls could be removed and then the pollutant concentration could rise to a level where there is, once again, reasonable potential for the discharge to cause or contribute to an excursion of WQS. This could result in an illogical cycle of applying and removing pollutant controls with each permit reissuance. EPA's technical approach on this issue is in keeping with the Act generally and the NPDES regulations specifically, which reflect a precautionary approach to controlling pollutant discharges.

## Appendix B – Reasonable Potential and Limits Calculations

NPDES Permit No. NH0100447

The table below presents the reasonable potential calculations and, if applicable, the calculation of the limits required in the permit. Refer to the pollutant-specific section of the Fact Sheet for a detailed discussion of these calculations, any assumptions that were made and the resulting permit requirements.

<sup>1</sup>Median concentration for the receiving water just upstream of the facility's discharge taken from the WET testing data during the review period (see Appendix

<sup>2</sup>Values represent the 95<sup>th</sup> percentile (for  $n \geq 10$ ) or maximum (for  $n < 10$ ) concentrations from the DMR data and/or WET testing data during the review period (see Appendix A). If the pollutant already has a limit (for either acute or chronic conditions), the value represents the existing limit.

## APPENDIX C

### I. Rationale on the Appropriateness of, and the Authority for, the Inclusion of the Wastewater Treatment System and Sewer System Adaptation Plan Requirements

The adaptation planning requirements proposed in the Draft Permit are new requirements that build on existing operation and maintenance practices. EPA provides this appendix to further explain the basis for and importance of these provisions.

In Section A below, EPA discusses the necessity for requiring the development of Adaptation Plans at wastewater treatment systems (“WWTS”) and sewer systems<sup>1</sup> and provides some examples of how major storm and flood events can impact facility operations. In Section B below, EPA discusses the various components and proper scope of an Adaptation Plan. In Section C below, EPA sets forth the legal basis for its decision to require wastewater treatment systems and sewer systems to develop an Adaptation Plan.

#### A. Necessity for Wastewater Treatment System and Sewer System Adaptation Planning

Wastewater treatment systems and sewer systems are crucial in helping protect human health and the environment and providing critical services to the communities that they serve. Many wastewater treatment facilities and associated sewer system pump stations are located at low elevations (to maximize flow via gravity) within riverine or coastal floodplains and are at risk of increased flooding and other impacts from major storm events. As noted in a 2016 report by the New England Interstate Water Pollution Control Commission<sup>2</sup> wastewater systems are already facing severe effects due to major storm and flood events and need to better adapt to this new reality:

In the Northeast and throughout the world, extreme storm events are growing in frequency and force. Hurricanes and blizzards threaten the operation of wastewater infrastructure and in some cases the infrastructure itself. Consequently, wastewater facilities should be made more resilient through preparedness planning and physical upgrades.

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<sup>1</sup> The Clean Water Act authorizes EPA, as permit issuer, to issue permits for “publicly owned treatment works” (POTWs). CWA § 402. POTWs comprise wastewater treatment systems and sewer systems. 40 C.F.R. §§ 122.2, 403.3(q); *In re Charles River Pollution Control District*, 16 EAD 623, 635 (EAB 2015) (“POTW treatment plants, like the satellite sewage collection systems that convey wastewater to the plants, are components of a POTW.”) To more precisely and accurately describe the permit requirements, the Permit and this Response to Comments refer to “wastewater treatment system(s)” and “sewer system(s)” or, in some instances, both.

“Wastewater Treatment System” or “WWTS” means any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It does not include sewers, pipes and other conveyances to the wastewater treatment facility.

<sup>2</sup> “Preparing for Extreme Weather at Wastewater Utilities: Strategies and Tips, New England Interstate Water Pollution Control Commission” (September 2016) pg. 2, [https://www.neiwpcc.org/neiwpcc\\_docs/9-20-2016%20NEIWPCC%20Extreme%20Weather%20Guide%20for%20web.pdf](https://www.neiwpcc.org/neiwpcc_docs/9-20-2016%20NEIWPCC%20Extreme%20Weather%20Guide%20for%20web.pdf)

In the Northeast in the last five years Hurricanes Irene (2011) and Sandy (2012), and winter blizzards such as the February 2013 northeaster, produced widespread economic harm. Sandy caused nearly 11 billion gallons of sewage to be released into coastal waters, rivers, and other bodies of water as power outages and storm surge overwhelmed wastewater-treatment plants. 94% of these releases were a result of flooding and storm surge as waters overwhelmed sewage-treatment plants.

As a result, addressing the ongoing challenges and the increasing risks faced by wastewater infrastructure systems nationwide - reduction or failure of system services resulting in discharges of untreated or partially treated sewage, flooding, physical damage to assets, impacts to personnel, to name just some of the possible outcomes - are a priority for EPA and a host of federal and state agencies, as well as regional and local governmental bodies. Addressing these challenges is also a priority for many wastewater treatment managers across the country. As noted in a 2019 study,<sup>3</sup> which surveyed wastewater treatment systems in Connecticut, 78% of wastewater managers had made adaptive changes that ranged from low-cost temporary adaptive changes to a few who described major changes that addressed redesign or the rebuilding of WWTPs; of those who had made changes, half “did so to improve resiliency to withstand the worst storm experienced by the wastewater system to date.”<sup>4</sup>

Flooding and other major storm events can lead to a variety of, and more frequent, WWTS and sewer system failures. One recent analysis suggests that one-third of 5,500 wastewater treatment plants analyzed from around the country would be at risk of flooding in the event of a major storm.<sup>5</sup> System failures, such as backups of untreated wastewater into the collection system and potentially into buildings and connections, bypasses of pollution treatment, and/or discharges of raw sewage into the environment are some of the potential impacts that may become more frequent.<sup>6</sup>

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<sup>3</sup> “Kirchhoff, C.J. and P.L. Watson. 2019. “Are Wastewater Systems Adapting to Climate Change?” *Journal of the American Water Resources Association*, 1-12. pg.1. <https://doi.org/10.1111/1752-1688.12748>. (Citations omitted in quote).

<sup>4</sup> *Id.* at pgs. 5, 8.

<sup>5</sup> “Rising Flood Risks Threaten Many Water and Sewage Treatment Plants Across the U.S.” (August 10, 2023), <https://apnews.com/article/climate-change-flood-risks-infrastructure-vermont-7bd953f513035468ee74f8f7c619bb8e>

<sup>6</sup> See EPA’s Resilient Strategies Guide (noting that “[u]tilities are increasingly recognizing that future extreme weather events, energy prices and ecological conditions may not be predictable based on historical observations. These shifts may require utilities to change how they operate and manage their resources.”) <https://www.epa.gov/crwu/resilient-strategies-guide-water-utilities#/resources/646>; EPA Memorandum, “Re-Instatement of Federal Flood Risk Management Standard for State Revolving Fund Programs,” Thompkins, Anita Maria and Stein, Raffael to Water Division Directors (April, 2022) <https://www.epa.gov/dwsrf/federal-flood-risk-management-standard-srf-programs> (noting that “[f]looding is one of the most common hazards in the United States accounting for roughly \$17 billion in damage annually between 2010-1018 according to [FEMA], and it will continue to be an ongoing challenge for water infrastructure” with impacts that “can include physical damage to assets, soil and streambank erosion and contamination of water sources, loss of power and communication, loss of access to facilities, saltwater intrusion, and dangerous conditions for personnel.”). See also, National Association of Clean Water Agencies (“NACWA”), “NACWA Principles on Climate Adaptation and Resiliency” (noting that “[f]or many clean water agencies, changing weather patterns have become a management reality and responsibility.”) [https://www.nacwa.org/docs/default-source/conferences-events/2018-ulc/nacwa-statement-of-principles-on-climate\\_.pdf?sfvrsn=2](https://www.nacwa.org/docs/default-source/conferences-events/2018-ulc/nacwa-statement-of-principles-on-climate_.pdf?sfvrsn=2)

In New England, as well as elsewhere throughout the country,<sup>7</sup> storms and flooding have caused damage to, and in some cases total failure of, wastewater treatment systems and sewer systems. Implementing adaptive measures so that a wastewater treatment plant's wastewater infrastructure may withstand increasingly frequent heavy precipitation and major storm and flood events is, therefore, a critical step in a system's maintenance. Additionally, EPA notes that sometimes, mitigation measures based on adaptation/mitigation plans that were at one point sufficient and that were based on historic, local major storm and flood predictions, may now be insufficient given actual experience with major storms and flooding, the emergence of new data that was not previously available, and more recent projections. And while EPA also acknowledges that it may not always be possible to anticipate all future events (i.e., speed or direction of the wind, temperature fluctuations, the uprooting of trees, etc.) that can exacerbate, or alleviate, the outcomes of major storm and flood events, as illustrated in the examples below, it is important to ensure that existing adaptation plans reflect, as best as possible, all relevant data.

Many New England WWTSs have been negatively impacted by major storm and flood events in recent years. In one notable example from Rhode Island in 2010, historically high flood waters (known as “the Great Flood of 2010”) severely impacted several wastewater treatment facilities, including the Warwick Rhode Island Wastewater Treatment Facility.<sup>8</sup> After repetitive flood damages to the WWTS, the City of Warwick had constructed a protective berm, or levee, in the mid-1980s to protect the WWTS from future damages. The levee, originally designed for the 100-year flood at that time, plus three feet of freeboard, was breached by repeated heavy rain events in March 2010. The flooding caused catastrophic impacts to the WWTS which led to the “unthinkable” - the decision to evacuate the plant as the Pawtuxet River crested at 20.79 feet.<sup>9</sup> The impact to the treatment plant was extreme:

While the flood waters caused no structural damages to the facility’s tanks or buildings, anything electrical and everything that was not metal or concrete was ruined. It was at least two days before the river had subsided to the point where staff could begin to access the facility.<sup>10</sup>

With a tremendous amount of work and rebuilding, the facility was dewatered, and primary and then secondary treatment were restored. The facility was unable to achieve full compliance with its permit limits for a period of about 80 days.<sup>11</sup> Due to this flooding, the facility updated their flood protection plans based on local storm and flooding data and implemented improvements

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<sup>7</sup> National Association of Clean Water Agencies (“NACWA”) Fact Sheet: “10 Extreme Rain and Flood Events in the US – All in 2022” (listing the “top 10 flood events of 2022” and their effects on water infrastructure from across the country, including the devastating impacts that include loss of life, estimated damages in the range of millions to billions of dollars, and extreme impacts to system services.)

<sup>8</sup> Holbrook, Nicolas Q., The Flood Crews of 2010: A History of Rhode Island’s 2010 Floods as Told By The State’s Wastewater Collection and Treatment Operators, Rhode Island DEM, Office of Water Resources (2017)

<https://dem.ri.gov/sites/g/files/xkgbur861/files/programs/benviron/water/pdfs/floodcrews2010.pdf>

<sup>9</sup> Id. at 13.

<sup>10</sup> Id.

<sup>11</sup> Burke, Janine L., Executive Director, Warwick Sewer Authority, “The Great Flood of 2010: A Municipal Response,” pg. 237 Journal NEWEA (September 2012)  
<https://www.warwicksewerauthority.com/pdfs/floodmitigation/NEWWA%20Journal%20Article%20on%20WSA%20Flood%20Response.pdf>

for the WWTS, including raising the levee to protect the WWTS from inundation caused by a 500-year flood event.<sup>12</sup>



*Figure 1: The flooded Warwick wastewater facility on Wednesday, March 31, 2010. (State of Rhode Island)*

More recently, in July 2023, Vermont experienced a major storm and flooding event characterized by the National Weather Service as “catastrophic flash flooding and river flooding” with upwards of three to nine inches of rain falling in 48 hours, an amount that in some places of Vermont, amounted to the “greatest calendar day rainfall “since records began in 1948.<sup>13</sup> According to local reporting, operations at 33 wastewater treatment systems were disrupted, and several facilities, like those in the towns of Ludlow and Johnson, were rendered inoperable and will need significant reconstruction.<sup>14</sup> As one news outlet reported about the conditions in Ludlow:

[t]he facility that keeps the village’s drinking water safe was built at elevation and survived. But its sewage plant fared less well. Flooding tore through it, uprooting chunks of road, damaging buildings and sweeping sewage from treatment tanks into the river.

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<sup>12</sup> Preliminary Design Report, Wastewater Treatment Facility Flood Protection and Mitigation Design, Warwick, Rhode Island (Prepared by AECOM for Warwick Sewer Authority, July 12, 2012)

<https://www.warwicksewerauthority.com/pdfs/floodmitigation/Warwick%20Flood%20Mitigation%20PDR%207-24-12%20with%20Appendices.pdf>; Warwick Wastewater Treatment Facility – Climate Vulnerability Summary  
<https://dem.ri.gov/sites/g/files/xkgbur861/files/programs/benviron/water/pdfs/cvswarwick.pdf>

<sup>13</sup> Banacos, Peter, “The Great Vermont Flood of 10-11 July 2023: Preliminary Meteorological Summary” National Oceanic and Atmospheric Administration, National Weather Service, pg. 2 (August 5, 2023)

<https://www.weather.gov/btv/The-Great-Vermont-Flood-of-10-11-July-2023-Preliminary-Meteorological-Summary> (noting that damage “rivaled and in some areas exceeded – Tropical Storm Irene in 2011”)

<sup>14</sup> Robinson, Shaun, “Total Destruction:’ Flooding Knocks Out Johnson’s Wastewater Plant, Disrupts Operations Elsewhere” (July 18, 2023); <https://vtdigger.org/2023/07/18/total-destruction-flooding-knocks-out-johnsons-wastewater-plant-disrupts-operations-elsewhere/> (“Across Vermont, 33 wastewater treatment facilities were impacted by the flooding …according to Michelle Kolb, a supervisor in the state Department of Environmental Conservation’s wastewater program.”)

Even [over three weeks after the storm event] the plant can only handle half its normal load.<sup>15</sup>



Figure 2: Ludlow Wastewater Treatment Plant (photo August 2, 2023, taken after July storm event)<sup>16</sup>

The wastewater treatment plant in Johnson, Vermont was similarly devastated with the Assistant Plant Manager reporting to a local news outlet, “Total destruction. The only thing we have left is the shell of a building.”<sup>17</sup>

According to officials from Vermont DEC, both the Ludlow and Johnson WWTs had some flood protections in place prior to this event: Ludlow built a new influent pump station designed to withstand a 500-year flood event in 2020-21.<sup>18</sup> While its plant was rendered inoperable immediately after the early July flood, it came back on-line in late July. For the Johnson Wastewater Treatment Plant, this was the 6<sup>th</sup> flooding event at the plant since it was built in 1995. In the assessment that occurred by state and federal officials after the most recent flood, long-term recommendations ranged from more minor fixes (i.e., replacing the gravity line with a pump station and force main) to undertaking an assessment that would compare the cost of moving the facility against the already-significant cost of just repair and construction, estimated

<sup>15</sup> Naishadham, Suman, Peterson, Brittany, Fassett, Carnille, “Rising Flood Risks Threaten Many Water and Sewage Treatment Plants Across the US,” Vermont Public, <https://www.vermontpublic.org/local-news/2023-08-10/ludlow-vermont-rising-flood-risks-threaten-many-water-and-sewage-treatment-plants-across-the-us>

<sup>16</sup> <https://apnews.com/article/climate-change-flood-risks-infrastructure-vermont-7bd953f513035468ee74f8f7c619bb8e> (picture captions: Joe Gaudiana, the Ludlow, VT. Chief Water and Sewer Operator, left, surveys damage with Elijah Lemieux, of the Vermont Rural Water Association, at the wastewater treatment plant following July flooding, Wednesday, Aug. 2, 2023, in Ludlow. (AP Photo/Charles Krpa))

<sup>17</sup> Robinson, Shaun, ”Total Destruction: “Flooding Knocks Out Johnson’s Wastewater Plant, Disrupts Operations Elsewhere” (July 18, 2023); <https://vtdigger.org/2023/07/18/total-destruction-flooding-knocks-out-johnsons-wastewater-plant-disrupts-operations-elsewhere/>

<sup>18</sup> Telephone conversation with Vermont Department of Conservation officials, Heather Collins and Michelle Kolb (September 25, 2023).

to be at least \$2 million.<sup>19</sup> As the officials emphasized, short of relocating, or finding significant additional resources, for some of Vermont’s impacted facilities, there are no easy fixes and future adaptations might mean preparing “to-go bags,” and installing “redundant pipes,” submersible pumps, waterproof electrical boxes or, in some cases, possibly building a second story on an existing plant.

Even more recently, in September 2023 the City of Leominster in central Massachusetts experienced a flash flooding event.<sup>20</sup> Previously, the city had identified a riverbank section of the North Nashua River, near the WWTS, that had eroded and was continuing to be eroded and was heading towards a buried sewer main. As detailed in the summary of work report,<sup>21</sup> “[l]eft unabated, the stream would likely carve a new path into the sewer line, potentially causing a break.” To mitigate this potential problem, the city completed a riverbank stabilization project under FEMA’s Hazard Mitigation Grant Program to protect the main sewer line that was identified as vulnerable to flooding and failure. That line was unimpacted by the recent flash flooding in September and the stabilization work is still intact while other infrastructure in the area suffered significant flood damages. In addition to illustrating the potential impacts of a recent flooding event on a WWTF, this example - of identifying a risk to increased flooding and consequent mitigation measure - exemplifies the process that EPA envisions for the Adaptation Plan.

EPA acknowledges and appreciates that many WWTSSs and sewer systems are currently designed with some flood protections to combat the increasing frequency of major storm and flood events and the resulting impacts to wastewater treatment systems and sewer systems. To address the current and future risks associated with these more frequent and intense storms occurring in the region, EPA finds that the development of an Adaptation Plan is necessary in order to ensure the proper operation and maintenance of WWTSSs and sewer systems.

## B. Requirement to Develop an Adaptation Plan

To support the Permittee’s<sup>22</sup> development of an Adaptation Plan, EPA Region 1 has developed a companion document: *Recommended Procedures and Resources for the Development of Adaptation Plans* (“Recommended Procedures”)<sup>23</sup> to assist owners and operators of wastewater treatment systems and/or sewer systems to develop adaptation plans that meet the requirements included in Region 1 NPDES permits. The document provides recommendations and procedures for the use of a free EPA tool developed specifically for water utilities. Permittees may use the recommended tool and the associated procedures, or they may use other approaches providing comparable analyses, as discussed in more detail below, to satisfy permit requirements.

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<sup>19</sup> Johnson Village Wastewater Post July 2023 Flood Treatment Plant Assessment Lamoille County, Vermont, NPDES Permit Number Vermont 0100901 (August 9, 2023)

<sup>20</sup> Derrick Bryson Taylor and Johnny Diaz, “Massachusetts Cities Declare Emergency After ‘Catastrophic’ Flash Flooding” <https://www.nytimes.com/2023/09/12/us/leominster-massachusetts-flash-flooding.html>

<sup>21</sup> [City of Leominster, North Nashua River Riverbank Stabilization Project: Summary of Work \(prepared by GZA GeoEnvironmental, Inc.\)](#) (February 2023)

<sup>22</sup> For brevity, this document refers to “Permittee” throughout; however, this reference also includes all “Co-Permittee(s)” subject to the applicable permit requirements.

<sup>23</sup> Available at: <https://www.epa.gov/npdes-permits/npdes-water-permit-program-new-england>

In the permit, the three components of the Adaptation Plan include the following (additional detail, including definitions of certain terms, is included in the permit):

- Component #1: Requires the Permittee to develop and sign, within 24 months of the effective date of the permit, an identification of critical assets and related operations within the WWTS and/or sewer system which they own and/or operate that are most vulnerable to major storm and flood events under baseline and future conditions and to assess the ability of each to function properly in the event of major storm and flood events in terms of effluent flow, sewer flow, and discharges of pollutants;
- Component #2: Requires the Permittee to develop and sign, within 36 months of the effective date of the permit, an assessment of adaptive measures, and/or, if appropriate, the combination of adaptative measures that minimize the impact of future conditions on the critical assets and related operations of the WWTS and/or sewer system(s); and
- Component #3: Requires the Permittee to submit a summary of the work completed in Components #1 and #2 with a proposed schedule for implementation and maintenance of adaptive measures within 48 months of the effective date of the permit.

The rationale for specific revisions and definitions is provided in more detail below.

- The permit requires the Permittee to develop an implementation schedule rather than specify a particular schedule for implementation. EPA notes that the permit also requires that the Permittee report annually on “any progress made toward implementation of adaptive measures.” This leaves the Permittee free to evaluate other considerations when determining when and how to implement adaptive measures. EPA encourages Permittees to move forward with implementation actions that address the vulnerabilities identified as part of its Adaptation Plan in as timely a manner as possible and to prioritize addressing the most impactful vulnerabilities.<sup>24</sup>
- Permittees who wish to comply with this permit requirement through prior assessments must explain how its prior assessments specifically meet the requirements of the permit. The permit allows such assessments that were undertaken in the last 5 years to be used, as long as they meet certain conditions specified in the permit.
- EPA uses certain minimum standards (e.g., use of FEMA Flood Standards) and other terminology that is defined in and consistent with the federal flood standards, to ensure

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<sup>24</sup> EPA notes that there are many aspects involved in addressing adaptation planning and associated implementation measures, including regional considerations and that region-wide planning is appropriate. Permittees are encouraged to engage in regional planning and EPA understands this may impact proposed schedules for implementation measures. EPA expects, however, that for most Permittees there will be many implementation measures that do not require regional planning or collaboration. To the extent this is not the case, the Permittee may document its analysis supporting such a conclusion and base its implementation schedule accordingly.

eligibility for federal funding as well as SRF funding.<sup>25</sup> The permit requires that the Permittee evaluate asset vulnerability using “baseline conditions” and “future conditions.” The permit defines baseline conditions as the 100-year flood based on historical records and future conditions as projected flood elevations using one of two approaches consistent with the federal flood standards.

This clearly defines what minimum conditions must be used to assess vulnerability under the Adaptation Plan, and EPA has provided tools and data references a Permittee may use to evaluate these conditions and meet the permit requirements. The flood elevations specified account for many of the storm and flood conditions; however, EPA notes that these data may not account for all potential instances of extreme precipitation. Currently, data sets or mapping tools that model changes to flood elevations in response to varying storm sizes are not readily available or simple to use. Therefore, EPA is not requiring facilities to identify or use such data in their analysis. However, EPA notes that there may be site-specific data available for use in a given municipality, and EPA encourages facilities to consider impacts from site-specific events for planning purposes if possible. One or more of the resources provided in the Recommended Procedures document, referenced above, may also account for impacts of extreme precipitation to an extent that is useful to facilities.

- The permit requires evaluating the vulnerability of assets once during the permit term (during the development of the Adaptation Plan). Additional revisions of the Adaptation Plan during the permit term would only be required during the permit term if there has been a significant change to the infrastructure of the system to update the description of the assets removed or updated, to incorporate any new assets into the documentation, and describe any effects these changes have on the asset and/or system vulnerability.
- In light of security concerns posed by the public release of information regarding vulnerabilities to wastewater infrastructure, Permittees are not required to submit Component 1 and 2 and instead must keep that documentation on file and available for inspection or review by EPA upon request. In all other submittals (Component 3 and future annual reports), the Permittee shall provide information only at a level of generality that indicates the overall nature of the vulnerability but omitting specific information regarding such vulnerability that could pose a security risk.
- Regarding timing, EPA considers that the permit allows adequate time to initiate the necessary funding and procurement processes (which EPA understands must line-up with local requirements which can take place over many months or even years) in order to develop the plans (either in-house or through professional engineering services) without significantly impacting other ongoing municipal projects.

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<sup>25</sup> “Re-Instatement of Federal Flood Risk Management Standard for State Revolving Fund Programs,” Thompkins, Anita Maria and Stein, Raffael to Water Division Directors (April, 2022) <https://www.epa.gov/dwsrf/federal-flood-risk-management-standard-srf-programs>

- Regarding annual reporting, the first report is due on March 31 following the completion of Component 1 of the Adaptation Plan. As described above, flood and major storm events are a significant threat to water quality. An annual reporting requirement is therefore appropriate to facilitate Adaptation Planning and, ideally, the implementation of an Adaptation Plan occurring as promptly and as efficiently as possible.
- Regarding the cost of developing the Adaptation Plan, there are costs and other resources that Permittees must allocate to comply with all permit requirements. EPA considers proper operation and maintenance of the WWTS as well as the collection system to include addressing major storm and flood events that would impair operation of the system. EPA acknowledges that the Permittee will incur costs and other potential resource expenditures to develop a plan related to these events but considers these expenditures to be necessary in order to prevent impacts during such events (e.g., bypass, upset or failure of the WWTS, overflow, or increased inflow and infiltration in the sewer system, and discharges of pollutants that exceed effluent limits), which would adversely affect human health or the environment.

However, EPA appreciates the regulated community's concerns regarding costs as described below.

1. In order to minimize costs and provide additional clarity to Permittees, EPA has developed a companion document, *Recommended Procedures and Resources for the Development of Adaptation Plans for Wastewater Treatment Systems and/or Sewer Systems*, (“Recommended Procedures”), which a Permittee could elect to use to guide it through development of the Adaptation Plan. The document instructs Permittees on the use of EPA’s CREAT tool, which is free to use by Permittees and will help Permittees navigate through much of the analysis needed to develop an Adaptation Plan. It is EPA’s intention that a Permittee could use these tools to develop an Adaptation Plan in an effort to reduce costs and possibly to eliminate or reduce the need to hire external contractors.
2. As mentioned above, the permit that allows credit for prior work to eliminate potentially costly duplication of efforts.
3. It is EPA’s intention to provide Permittees with technical assistance for the development of the Adaptation Plan. EPA has many on-line training tools,<sup>26</sup> some of which have been utilized by New England WWTSs<sup>27</sup> and also plans (in accordance with available funding and agency priorities) to offer: a New England-based virtual workshop training series for WWTS operators and others on the use of the CREAT tool which EPA expects will commence in early 2024 (which will be recorded to maximize its utility for those who may want to access the information at a later date);

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<sup>26</sup> See <https://www.epa.gov/crwu/training-and-engagement-center>; see also, the Resources Section in the Recommended Procedures for additional resources that Permittees might find useful.

<sup>27</sup> See [https://toolkit.climate.gov/sites/default/files/Manchester-by-the-Sea\\_March\\_2016.pdf](https://toolkit.climate.gov/sites/default/files/Manchester-by-the-Sea_March_2016.pdf); ]; see also, the Resources Section of the Recommended Procedures document for more New England case studies and other useful resources.

in-person technical assistance sometime in mid-2024 and telephone assistance on the use of the CREAT tool. In recommending Permittees use this tool and by providing procedures for using it, EPA hopes to both enable Permittees to develop robust Adaptation Plans themselves, but also to reduce the costs, including the costs associated with outside contractors.

4. Additionally, EPA notes that there may be federal, state or local funding sources available to assist entities with adaptation planning.<sup>28</sup>
  - With regards to the cost of implementing adaptation measures, the selection and deadlines for implementing specific adaptation measures are not included as requirements in the permit since those will only be known after the completion of the Adaptation Plan. EPA expects that the Permittee will begin implementation of those measures in the coming years. However, since the Permittee will be setting the prioritizations and scheduling for implementing the measures based on their own risks and vulnerabilities to major storm and flood events, they may incorporate affordability and funding availability into their considerations.

EPA notes, that in developing the Adaptation Plan, the Permittee may, as part of the process, be comparing the potential economic costs of the baseline condition, or “no action alternative,” with those of possible adaptation measures, under current and predicted risks of major storm and flood events. This option is available in the use of the adaptation planning approach as outlined in the companion document to this permit entitled *Recommended Procedures and Resources for the Development of Adaptation Plans for Wastewater Treatment Systems and/or Sewer Systems*.<sup>29</sup> Depending on site-specific circumstances, the Permittee may find that the cost of not implementing adaptation measures is greater than the cost of implementing them.

## C. Legal Authority

The Adaptation Plan permit conditions are necessary to further the overarching goal of the CWA<sup>30</sup> “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters” and derive from the same authorities as all other standard operation and maintenance requirements. CWA § 101(a), 40 C.F.R. §§ 122.41(d), (e), (n). The Adaptation Plan requirements are an iterative update to EPA’s standard O&M permit provisions and intend to address serious and increasingly prevalent threats to Permittees’ compliance with permit effluent limitations. As illustrated by the recent examples detailed in Section A, major storm and flood events can

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<sup>28</sup> See EPA’s website for Federal Funding for Water and Wastewater Utilities in National Disasters (Fed FUNDS). <https://www.epa.gov/fedfunds>. Potential resources may also be available through the State of Massachusetts.

<sup>29</sup> Available at: <https://www.epa.gov/npdes-permits/npdes-water-permit-program-new-england>

<sup>30</sup> Congress has recently expressly affirmed that natural hazard adaptation measures for POTWs appropriately fall within the scope of the CWA: Congress added section 223 to the CWA via the Infrastructure Investment and Jobs Act, creating a grant program to support, *inter alia*, “the modification or relocation of an existing publicly owned treatment works, conveyance, or discharge system component that is at risk of being significantly impaired or damaged by a natural hazard[ ].” Pub. L. 117-58, 135 Stat. 1162 (codified at 33 U.S.C. § 1302a(c)(4))(2021).

gravely impact discharges from WWTSs and thus water quality. That is, plant and/or sewer system failure due to storms, increased precipitation/floods, storm surge, and sea level rise can and do lead to bypasses, upsets, and violations of some or all of the permit limits, including water quality-based limits and limits based on secondary treatment standards. The Adaptation Plan is designed to reduce and/or eliminate noncompliant discharges that result from impacts of major storm or flood events through advanced planning and adaptation measures and is authorized by both EPA regulations and the CWA.

EPA recognizes that larger scale planning may be necessary to address some issues and that requiring the same would be beyond the scope of this NPDES permit. This NPDES permit does not intend to address all issues caused by major storm and flood events. To the contrary, the Adaptation Plan O&M requirements intend to address one specific issue that EPA has witnessed in New England, as described in Section A: the operability of the WWTS and/or sewer system during and after major storm and flood events. This issue is appropriate for an NPDES permit because it is central to the Permittee's compliance with the Permit's effluent limitations and other Permit conditions, and thus central to EPA's obligation to issue permits that assure compliance with Water Quality Standards and other applicable laws. For the reasons described in this Section, EPA is well within its CWA-based authority to impose the Adaptation Plan requirements.

EPA's O&M regulations authorize EPA to impose the Adaptation Plan requirement. 40 C.F.R. § 122.41(e) ("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.") Proper operation and maintenance of the permitted facilities and systems inherently includes adaptation planning. As illustrated in the examples in Section A, if a WWTS is unable to operate properly as designed due to impacts from a major storm or flood event, the discharge of pollutants in violation of both its permit and applicable water quality standards is highly likely to occur and with increasing frequency. In other words, the Permittee cannot satisfy its obligation to operate properly "at all times" if it cannot do so during and after major storms or flooding events. The new Adaptation Plan requirements are an iterative extension of the previous permit's requirements that "The permittee will maintain an ongoing preventative maintenance program to prevent overflows and bypasses caused by malfunctions or failures of the sewer system infrastructure." Major storm and flood events represent an increasing cause of WWTS malfunctions and failures and thus EPA added the Adaptation Plan requirements to the O&M requirements to more specifically address this issue.

EPA is well within its CWA-based authority to include these permit conditions which are necessary to reduce the frequency or likelihood of bypass or upset and otherwise achieve compliance with the permit's effluent limits, and thus also assure compliance with water quality standards and other CWA requirements. CWA § 402(a)(2) ("[EPA] shall prescribe conditions for [NPDES] permits to assure compliance with the [applicable CWA] requirements...as he deems appropriate."); CWA §§ 301(b)(1)(C), 401(a)(1)-(2); *see also* 40 C.F.R. § 122.4(d) ("No permit may be issued... When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected States"); *See also* 40 C.F.R. § 122.44(d)(1). The provisions are reasonable measures rooted in the permitting requirements to properly operate

and maintain all facilities and the duty to take all reasonable steps to minimize or prevent any discharge in violation of the permit. 40 C.F.R. § 122.41(d), (e).

The Agency relied on the same CWA-based authority when it promulgated the O&M regulations:

Many commenters expressed doubt whether EPA is legally authorized to require proper operation and maintenance of facilities. This requirement is clearly authorized for NPDES permittees by section 402(a)(2) of CWA which requires the Administrator to prescribe permit conditions which will assure compliance with the requirements of CWA section 402(a)(1).

45 Fed. Reg. 33290, 33303-04 (May 19, 1980). In 1980 and now, the proper operation and maintenance of a facility – including the Adaptation Plan requirements – effectuates the permit limits on all addressed pollutants and protects all applicable water quality standards, as they assure that such limits will be met, even in times of major storms or during flood events. CWA § 402(a)(2). It is well-established that EPA may include specific permit conditions that ensure the preconditions or assumptions underlying EPA’s pollutant effluent flow calculations remain constant, thus ensuring the permit, as a whole, assures compliance with WQS and other applicable CWA requirements. *See In re: City of Lowell*, 2020 WL 3629979 at \*35,18 E.A.D. 115, 156 (EAB 2020) (affirming effluent flow limit as a proper exercise of the Agency’s 40 C.F.R. § 122.41(e) authority in part on the basis that the permit’s pollutant effluent limits were calculated based on a presumed maximum wastewater effluent discharge from the facility, and thus “If flow limits exceed the assumed maximum flow, … then the Region may have erroneously concluded that a pollutant did not have a reasonable potential to cause or contribute to an exceedance of water quality standards or that the permit’s pollutant effluent limits assure compliance with Massachusetts’ water quality standards.”) Likewise, the Adaptive Plan O&M requirements ensure the basic, necessary preconditions (i.e., the plant’s operability) to compliance with the permit’s effluent limits and other requirements of the CWA. Given the importance of WWTS and sewer system operability to compliance with this NPDES permit, it is not unreasonable for EPA to impose the Adaptation Plan O&M requirements. *C.f. In re Avon Custom Mixing Services, Inc.*, 17 E.A.D. 700, 709 (EAB 2002) (“Given the importance of monitoring to the integrity of NPDES permits, and the broad authority the CWA confers on the Region to impose monitoring requirements in NPDES permits, it does not strike us as unreasonable that the Region has decided to include new monitoring requirements in the reissued permit.”)

The EAB has affirmed the Agency’s authority to require the preparation and submission of a plan as part of the Operation & Maintenance requirements of an NPDES permit. *In Re City of Moscow, Idaho*, 10 E.A.D. 135, 169-172 (EAB 2001) (affirming O&M permit provision that required development and submission of a quality assurance project plan, “[t]he primary purpose of [which] shall be to assist in planning for the collection and analysis of samples in support of the permit...”<sup>31</sup> under the O&M regulations, stating “it seems plain that the CWA and its implementing regulations authorize the Region to include permit requirements like the QAPP here in conjunction with the ultimate goal of assuring compliance with the CWA.”). Like the

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<sup>31</sup> NPDES Permit issued to City of Moscow, Idaho, Part I.E (March 12, 1999) (available at: <https://www2.deq.idaho.gov/admin/LEIA/api/document/download/15509>)

O&M planning requirement in *Moscow*, the primary purpose of the Adaptation Plan in this permit is to assist in planning for compliance with the permit – in this instance, by ensuring the facility remains operable even during flooding or other major storm events – and the ultimate goal of the requirement is to assure compliance with the CWA.

40 C.F.R. § 122.41(d) also authorizes EPA to impose the Adaptation Plan requirement. (“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.”) It is a reasonable step for EPA to require a Permittee to create an Adaptation Plan to minimize facility disruptions during major storm and flood events. For example, if a Permittee identifies that an asset critical to its WWTS is extremely vulnerable to a major storm and that loss of the asset would result in the inoperability of the WWTS and thus discharges in violation of permit limits, then mitigating those risks reasonably minimizes or prevents harmful discharges in violation of the permit.

EPA also has broad authority for data and information collection, reporting, and “such other requirements as [the delegated permit authority] deems appropriate” to carry out the objectives of the Act.” CWA § 402(a)(2). *See also In re Moscow*, 10 E.A.D. at 171. Components 1 and 2 of the Adaptation Plan require the Permittee to collect and report to EPA data and information that are appropriate to carry out the objectives of the CWA. This information and data will allow the Permittee to identify assets which are vulnerable to flooding and adaptive measures appropriate to address those vulnerabilities. As described elsewhere in this Appendix, facility vulnerabilities threaten compliance with permit requirements and thus CWA objectives. Conversely, information about appropriate adaptive measures will facilitate compliance with both.

EPA notes that although the CWA limits the terms of NPDES permits to five years, CWA § 402(b)(1)(B), such a limitation does not logically constrain the permitting authority from requiring the Permittee to consider future conditions beyond the five-year term. EPA expects Permittees to fully comply with the Adaptation Plan provision within the five-year term of the permit, meaning it does not impose any obligations on the Permittee beyond the five-year permit term. One directly relevant example for WWTSs are Combined Sewer Overflow Long-Term Control Plans (LTCPs). The CSO Policy, 59 Fed. Reg. 18688 (April 19, 1994), which Congress expressly incorporated directly into the CWA at § 402(q), requires the development of LTCPs to ultimately come into compliance with the Act, recognizing that such schedules will (and have) in many instances span multiple permit terms. That Congress directly amended the CWA to require compliance with the CSO Policy, including its long-term permitting approaches, demonstrates that the Act does not constrain permitting authorities from considering timeframes outside of the five-year permit term. Another example of permissible permit timeframes that extend beyond the five-year permit term are compliance schedules, which may go beyond the expiration date of the permit if consistent with applicable state law. *See In Re Moscow*, 10 E.A.D. at 153 (“...a Region’s authority to provide for compliance schedules in EPA-issued permits is limited to those circumstances in which the State’s water quality standards or its implementing regulations ‘can be fairly construed as authorizing a schedule of compliance.’”) (citations omitted). The WWTS Adaptation Plan reasonably also requires *consideration* of long-term horizons as the planning and actions needed to address increasing major storms and flood events will be in many instances long-term as well.

Further, EPA does not consider the expected life or design life the appropriate recurrence interval to evaluate future risks. Namely, while a particular facility can be designed initially for an expected period of operation and the design storm at a given point in time, material changes often occur over time to operate and maintain a facility, thus extending its design life, and with the impacts of increased severity and frequency of major storm and flood events, the original design storm may no longer represent likely discharge conditions. EPA asserts that a forward-looking evaluation of the risks to a facility relative to its current operational state is important to selection and implementation of the control measures necessary to minimize discharges that result from impacts of major storm and flood events.

EPA acknowledges that there are many possible approaches and that there are other programs that require resiliency planning. However, because adaptation planning is a critical step in complying with the permit's effluent limitations, EPA has determined that it is appropriate to include the Adaptation Plan requirements in the permit itself even if similar requirements also derive from other obligations. Major storm and flood events are of urgent concern, and EPA does not believe it would be sufficient to rely entirely on non-Permit obligations to address these threats to the proper operation and maintenance of WWTSS and/or sewer systems, especially because not all Permittees may otherwise be obligated to engage in adaptation planning, or may not be required to do so at this time. EPA has determined that planning for major storm and flood events must be done by all facilities now to avoid negative impacts. In recognition of the fact that Permittees may complete similar assessments to satisfy other obligations, the permit allows the Permittee to use qualifying assessments done for other programs or obligations to satisfy some or all of the components of the Adaptation Plan requirements. EPA considers its approach to be appropriate and reasonable to ensure consistent operation and maintenance of permitted facilities. Therefore, EPA will require Adaptation Plans be developed under NPDES permits for all wastewater treatment plants in Massachusetts.

## Appendix D

### EPA REGION 1 NPDES PERMITTING APPROACH FOR PUBLICLY OWNED TREATMENT WORKS THAT INCLUDE MUNICIPAL SATELLITE SEWAGE COLLECTION SYSTEMS

This regional interpretative statement provides notice to the public of EPA Region 1's interpretation of the Clean Water Act ("CWA" or "Act") and implementing regulations, and advises the public of relevant policy considerations, regarding the applicability of the National Pollutant Discharge Elimination System ("NPDES") program to publicly owned treatment works ("POTWs") that include municipal satellite sewage collection systems ("regionally integrated POTWs"). When issuing NPDES permits to these types of sanitary sewer systems, it is EPA Region 1's practice to include and regulate the owners/operators of the municipal satellite collection systems through a co-permitting structure. This interpretative statement is intended to explain, generally, the basis for this practice. EPA Region 1's decision in any particular case will be made by applying the law and regulations on the basis of specific facts when permits are issued.

EPA has set out a national policy goal for the nation's sanitary sewer systems to adhere to strict design and operational standards:

"Proper [operation and maintenance] of the nation's sewers is integral to ensuring that wastewater is collected, transported, and treated at POTWs; and to reducing the volume and frequency of ...[sanitary sewer overflow] discharges. Municipal owners and operators of sewer systems and wastewater treatment facilities need to manage their assets effectively and implement new controls, where necessary, as this infrastructure continues to age. Innovative responses from all levels of government and consumers are needed to close the gap."<sup>11</sup>

Because ownership/operation of a regionally integrated POTW is divided among multiple parties, the owner/operator of the treatment plant many times lacks the means to implement comprehensive, system-wide operation and maintenance ("O&M") procedures. Failure to properly implement O&M measures in a POTW can cause, among other things, excessive extraneous flow (*i.e.*, inflow and infiltration) to enter, strain and occasionally overload treatment system capacity. This failure not only impedes EPA's national policy goal concerning preservation of the nation's wastewater infrastructure assets, but also frustrates achievement of the water quality- and technology-based requirements of CWA § 301 to the extent it results in sanitary sewer overflows and degraded treatment plant performance, with adverse impacts on human health and the environment.

In light of these policy objectives and legal requirements, it is EPA Region 1's permitting practice to subject all portions of the POTW to NPDES requirements in order to ensure that the treatment system as a whole is properly operated and maintained and that human health and

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<sup>1</sup> See Report to Congress: *Impacts and Control of CSOs and SSOs* (EPA 833-R-04-001) (2004), at p. 10-2. See also "1989 National CSO Control Strategy," 54 Fed. Reg. 37371 (September 8, 1989).

water quality impacts resulting from excessive extraneous flow are minimized. The approach of addressing O&M concerns in a regionally integrated treatment works by adding municipal satellite collection systems as co-permittees is consistent with the definition of “publicly owned treatment works,” which by definition includes sewage collection systems. Under this approach, the POTW in its entirety is subject to NPDES regulation as a point source discharger under the Act. This entails imposition of permitting requirements applicable to the POTW treatment plant along with a more limited set of conditions applicable to the connected municipal satellite collection systems.

The factual and legal basis for the Region’s position is set forth in greater detail in *Attachment A*.

## **Attachment A**

### **ANALYSIS SUPPORTING EPA REGION 1 NPDES PERMITTING APPROACH FOR PUBLICLY OWNED TREATMENT WORKS THAT INCLUDE MUNICIPAL SATELLITE SEWAGE COLLECTION SYSTEMS**

*Exhibit A* List of regional centralized POTW treatment plants and municipal satellite collection systems subject to the co-permittee policy

*Exhibit B* Analysis of extraneous flow trends for representative systems

*Exhibit C* Form of Regional Administrator's waiver of permit application requirements for municipal satellite collection systems

#### **Introduction**

On May 28, 2010, the U.S. EPA Environmental Appeals Board ("Board") issued a decision remanding to the Region certain NPDES permit provisions that included and regulated satellite collection systems as co-permittees. *See In re Upper Blackstone Water Pollution Abatement District, NPDES Appeal Nos. 08-11 to 08-18 & 09-06, 14 E.A.D. \_\_ (Order Denying Review in Part and Remanding in Part, EAB, May 28, 2010).*<sup>2</sup> While the Board "did not pass judgment" on the Region's position that its NPDES jurisdiction encompassed the entire POTW and not only the treatment plant, it held that "where the Region has abandoned its historical practice of limiting the permit only to the legal entity owning and operating the wastewater treatment plant, the Region had not sufficiently articulated in the record of this proceeding the statutory, regulatory, and factual bases for expanding the scope of NPDES authority beyond the treatment plant owner/operator to separately owned/operated collection systems that do not discharge directly to waters of the United States, but instead that discharge to the treatment plant." *Id., slip op.* at 2, 18. In the event the Region decided to include and regulate municipal satellite collection systems as co-permittees in a future permit, the Board posed several questions for the Region to address in the analysis supporting its decision:

- (1) Is the scope of NPDES authority limited to owners/operators of the treatment plant, or does the authority extend to owners/operators of the municipal satellite collection systems that comprise the wider POTW?
- (2) If the latter, how far up the collection system does NPDES jurisdiction reach, *i.e.*, where does the "collection system" end and the "user" begin?
- (3) Do municipal satellite collection systems "discharge [ ] a pollutant" within the meaning of the statute and regulations?

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<sup>2</sup> The decision is available on the Board's website via the following link:

[http://yosemite.epa.gov/oa/EAB\\_Web\\_Docket.nsf/30b93f139d3788908525706c005185b4/34e841c87f346d94852577360068976f!OpenDocument](http://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/30b93f139d3788908525706c005185b4/34e841c87f346d94852577360068976f!OpenDocument).

- (4) Are municipal satellite collection systems “indirect dischargers” and thus excluded from NPDES permitting requirements?
- (5) Is the Region’s rationale for regulating municipal satellite collection systems as co-permittees consistent with the references to “municipality” in the regulatory definition of POTW, and the definition’s statement that “[t]he term also means the municipality...which has jurisdiction over the Indirect Discharges to and the discharges from such a treatment works”?
- (6) Is the Region’s rationale consistent with the permit application and signatory requirements under NPDES regulations?

See *Blackstone, slip op.* at 18, 20, n. 17.

This regional interpretative statement is, in part, a response to the Board’s decision. It details the legal and policy bases for regulating as co-permittees publicly owned treatment works (“POTWs”) that include municipal satellite collection systems. Region 1’s analysis is divided into five sections. First, the Region provides context for the co-permitting approach by briefly describing the health and environmental impacts associated with poorly maintained sanitary sewer systems. Second, the Region outlines its evolving permitting practice regarding regionally integrated POTWs, particularly its attempts to ensure that such entity’s municipal satellite collection systems are properly maintained and operated. Third, the Region explains the legal authority to include municipal satellite collection systems as co-permittees when permitting regionally integrated POTWs. In this section, the Region answers the questions posed by the Board in the order presented above. Fourth, the Region sets forth the basis for the specific conditions to which the municipal satellite collection systems are subject as co-permittees. Finally, the Region discusses other considerations informing its decision to employ a co-permittee structure when permitting regionally integrated POTWs.

## I. Background

A sanitary sewer system (SSS) is a wastewater collection system owned by a state or municipality that is designed to collect and convey only sanitary wastewater (domestic sewage from homes as well as industrial and commercial wastewater).<sup>3</sup> The purpose of these systems is to transport wastewater uninterrupted from its source to a treatment facility. Developed areas that are served by sanitary sewers often also have a separate storm sewer system (e.g., storm drains) that collects and conveys runoff, street wash waters and drainage and discharges them directly to a receiving water (i.e., without treatment at a POTW). While sanitary sewers are not designed to collect large amounts of runoff from precipitation events or provide widespread drainage, they typically are built with some allowance for higher flows that occur

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<sup>3</sup> A combined sewer, on the other hand, is a type of sewer system that collects and conveys sanitary sewage and stormwater runoff in a single-pipe system to a POTW treatment plant. See generally Report to Congress: Impacts and Control of CSOs and SSOs (EPA 833-R-04-001) (2004), from which EPA Region 1 has drawn this background material.

during periods of high groundwater and storm events. They are thus able to handle minor and controllable amounts of extraneous flow (*i.e.*, inflow and infiltration, or I/I) that enter the system. Inflow generally refers to water other than wastewater—typically precipitation like rain or snowmelt—that enters a sewer system through a direct connection to the sewer. Infiltration generally refers to other water that enters a sewer system from the ground, for example through defects in the sewer.

Municipal sanitary sewer collection systems can consist of a widespread network of pipes and associated components (*e.g.*, pump stations). These systems provide wastewater collection service to the community in which they are located. In some situations, the municipality that owns the collector sewers may not provide treatment of wastewater, but only conveys its wastewater to a collection system that is owned and operated by a different municipal entity (such as a regional sewer district). This is known as a satellite community. A “satellite” community is a sewage collection system owner/operator that does not have ownership of the treatment facility and a specific or identified point of discharge but rather the responsibility to collect and convey the community’s wastewater to a POTW treatment plant for treatment. *See 75 Fed. Reg. 30395, 30400 (June 1, 2010).*

Municipal sanitary sewer collection systems play a critical role in protecting human health and the environment. Proper operation and maintenance of sanitary sewer collection systems is integral to ensuring that wastewater is collected, transported, and treated at POTW treatment plants. Through effective operation and maintenance, collection system operators can maintain the capacity of the collection system; reduce the occurrence of temporary problem situations such as blockages; protect the structural integrity and capacity of the system; anticipate potential problems and take preventive measures; and indirectly improve treatment plant performance by minimizing deterioration due to I/I-related hydraulic overloading.

Despite their critical role in the nation’s infrastructure, many collection systems exhibit poor performance and are subjected to flows that exceed system capacity. Untreated or partially treated overflows from a sanitary sewer system are termed “sanitary sewer overflows” (SSOs). SSOs include releases from sanitary sewers that reach waters of the United States as well as those that back up into buildings and flow out of manholes into city streets.

There are many underlying reasons for the poor performance of collection systems. Much of the nation’s sanitary sewer infrastructure is old, and aging infrastructure has deteriorated with time. Communities also sometimes fail to provide capacity to accommodate increased sewage delivery and treatment demand from increasing populations. Furthermore, institutional arrangements relating to the operation of sewers can pose barriers to coordinated action, because many municipal sanitary sewer collection systems are not entirely owned or operated by a single municipal entity.

The performance and efficiency of municipal collection systems influence the performance of sewage treatment plants. When the structural integrity of a sanitary sewer collection system deteriorates, large quantities of infiltration (including rainfall-induced infiltration) and inflow can enter the collection system, causing it to overflow. These extraneous flows are among the

most serious and widespread operational challenges confronting treatment works.<sup>4</sup>

Infiltration can be long-term seepage of water into a sewer system from the water table. In some systems, however, the flow characteristics of infiltration can resemble those of inflow, *i.e.*, there is a rapid increase in flow during and immediately after a rainfall event, due, for example, to rapidly rising groundwater. This phenomenon is sometimes referred to as rainfall-induced infiltration.

Sanitary sewer systems can also overflow during periods of normal dry weather flows. Many sewer system failures are attributable to natural aging processes or poor operation and maintenance. Examples include years of wear and tear on system equipment such as pumps, lift stations, check valves, and other moveable parts that can lead to mechanical or electrical failure; freeze/thaw cycles, groundwater flow, and subsurface seismic activity that can result in pipe movement, warping, brittleness, misalignment, and breakage; and deterioration of pipes and joints due to root intrusion or other blockages.

Inflow and infiltration impacts are often regional in nature. Satellite collection systems in the communities farthest from the POTW treatment plant can cause sanitary sewer overflows (“SSOs”) in communities between them and the treatment plant by using up capacity in the interceptors. This can cause SSOs in the interceptors themselves or in the municipal sanitary sewers that lead to them. The implication of this is that corrective solutions often must also be regional in scope to be effective.

The health and environmental risks attributed to SSOs vary depending on a number of factors including location and season (potential for public exposure), frequency, volume, the amount and type of pollutants present in the discharge, and the uses, conditions, and characteristics of the receiving waters. The most immediate health risks associated with SSOs to waters and other areas with a potential for human contact are associated with exposure to bacteria, viruses, and other pathogens.

Human health impacts occur when people become ill due to contact with water or ingestion of water or shellfish that have been contaminated by SSO discharges. In addition, sanitary sewer systems can back up into buildings, including private residences. These discharges provide a direct pathway for human contact with untreated wastewater. Exposure to land-based SSOs typically occurs through the skin via direct contact. The resulting diseases are often similar to those associated with exposure through drinking water and swimming (*e.g.*, gastroenteritis), but may also include illness caused by inhaling microbial pathogens. In addition to pathogens, raw sewage may contain metals, synthetic chemicals, nutrients, pesticides, and oils, which also can be detrimental to the health of humans and wildlife.

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<sup>4</sup> In a 1989 Water Pollution Control Federation survey, 1,003 POTWs identified facility performance problems. Infiltration and inflow was the most frequently cited problem, with 85 percent of the facilities reporting I/I as a problem. I/I was cited as a major problem by 41 percent of the facilities (32 percent as a periodic problem).

## II. EPA Region 1 Past Practice of Permitting POTWs that Include Municipal Satellite Collection Systems

EPA Region 1's practice in permitting regionally integrated POTWs has developed in tandem with its increasing focus on addressing I/I in sewer collection systems, in response to the concerns outlined above. Up to the early 1990s, POTW permits issued by Region 1 generally did not include specific requirements for collection systems. When I/I and the related issue of SSOs became a focus of concern both nationally and within the region in the mid-1990s, Region 1 began adding general requirements to POTW permits that required the permittees to "eliminate excessive infiltration and inflow" and provide an annual "summary report" of activities to reduce I/I. As the Region gathered more information and gained more experience in assessing these reports and activities, it began to include more detailed requirements and reporting provisions in these permits.

MassDEP also engaged in a parallel effort to address I/I, culminating in 2001 with the issuance of MassDEP Policy No. BRP01-1, "Interim Infiltration and Inflow Policy." Among other provisions, this policy established a set of standard NPDES permit conditions for POTWs that included development of an I/I control plan (including funding sources, identification and prioritization of problem areas, and public education programs) and detailed annual reporting requirements (including mapping, reporting of expenditures and I/I flow calculations). Since September 2001, these requirements have been the basis for the standard operation and maintenance conditions related to I/I.

Regional treatment plants presented special issues as I/I requirements became more specific, as it is generally the member communities, rather than the regional sewer district, that own the collection systems that are the primary source of I/I. Before the focus on I/I, POTW permits did not contain specific requirements related to the collection system component of POTWs. Therefore, when issuing NPDES permits to authorize discharges from regionally integrated treatment POTWs, EPA Region 1 had generally only included the legal entity owning and/or operating the regionally centralized wastewater treatment plant. As the permit conditions were focused on the treatment plant itself, this was sufficient to ensure that EPA had authority to enforce the permit requirements.

In implementing the I/I conditions, Region 1 initially sought to maintain the same structure, placing the responsibility on the regional sewer district to require I/I activities by the contributing systems and to collect the necessary information from those systems for submittal to EPA. MassDEP's 2001 Interim I/I Policy reflected this approach, containing a condition for regional systems:

((FOR REGIONAL FACILITIES ONLY)) The permittee shall require, through appropriate agreements, that all member communities develop and implement infiltration and inflow control plans sufficient to ensure that high flows do not cause or contribute to a violation of the permittees effluent limitations, or cause overflows from the permittees collection system.

As existing NPDES permittees, the POTW treatment plants were an obvious locus of regulation. The Region assumed the plants would be in a position to leverage preexisting legal and/or contractual relationships with the satellite collection systems they serve to perform a coordinating function, and that utilizing this existing structure would be more efficient than establishing a new system of direct reporting to EPA by the collection system owners. The Region also believed that the owner/operator of the POTW treatment plant would have an incentive to reduce flow from contributing satellite systems because doing so would improve treatment plant performance and reduce operation costs. While relying on this cooperative approach, however, EPA Region 1 also asserted that it had the authority to require that POTW collection systems be included as NPDES permittees and that it would do so if it proved necessary. Indeed, in 2001 Region 1 acceded to Massachusetts Water Resources Authority's ("MWRA") request that the contributing systems to the MWRA Clinton wastewater treatment plant ("WWTP") be included as co-permittees, based on evidence provided by MWRA that its specific relationship with those communities would not permit it to run an effective I/I reduction program for these collection systems. EPA Region 1 also put satellite collection systems on notice that they would be directly regulated through legally enforceable permit requirements if I/I reductions were not pursued or achieved.

In time, the Region realized that its failure to assert direct jurisdiction over municipal satellite dischargers was becoming untenable in the face of mounting evidence that cooperative (or in some cases non-existent) efforts on the part of the POTW treatment plant and associated satellites were failing to comprehensively address the problem of extraneous flow entering the POTW. The ability and/or willingness of regional sewer districts to attain meaningful I/I efforts in their member communities varied widely. The indirect structure of the requirements also tended to make it difficult for EPA to enforce the implementation of meaningful I/I reduction programs.

It became evident to EPA Region 1 that a POTW's ability to comply with CWA requirements depended on successful operation and maintenance of not only the treatment plant but also the collection system. For example, the absence of effective I/I reduction and operation/maintenance programs was impeding the Region's ability to prevent or mitigate the human health and water quality impacts associated with SSOs. Additionally, these excess flows stressed POTW treatment plants from a hydraulic capacity and performance standpoint, adversely impacting effluent quality. *See Exhibit B* (Analysis of extraneous flow trends for representative systems). Addressing these issues in regional systems was essential, as these include most of the largest systems in terms of flow, population served and area covered, and serve the largest population centers.

The Region's practice of imposing NPDES permit conditions on the municipal collection systems in addition to the treatment plant owner/operator represents a necessary and logical progression in its continuing effort to effectively address the serious problem of I/I in sewer collection systems.<sup>5</sup> In light of its past permitting experience and the need to effectively address

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<sup>5</sup> Although EPA Region 1 has in the past issued NPDES permits only to the legal entities owning and operating the wastewater

the problem of extraneous flow on a system-wide basis, Region 1 decided that it was necessary to refashion permits issued to regionally integrated POTWs to encompass all owners/operators of the treatment works (*i.e.*, the regional centralized POTW treatment plant and the municipal satellite collection systems).<sup>6</sup> Specifically, Region 1 determined that the satellite systems should be subject as co-permittees to a limited set of O&M-related conditions on permits issued for discharges from regionally integrated treatment works. These conditions pertain only to the portions of the POTW collection system that the satellites own. This ensures maintenance and pollution control programs are implemented with respect to all portions of the POTW.

Accordingly, since 2005, Region 1 has generally included municipal satellite collection systems as co-permittees for limited purposes, in addition to the owner/operator of the treatment plant as the main permittee subject to the full array of NPDES requirements, including secondary treatment and water-quality based effluent limitations. The Region has identified 36 permits issued by the Region to POTWs in New Hampshire and Massachusetts that include municipal satellite collection systems as co-permittees. *See Exhibit A.* The 36 permits include a total of 81 satellite collection systems as co-permittees.

### III. Legal Authority

The Region's prior and now superseded practice of limiting the permit only to the legal entity owning and/or operating the wastewater treatment plant had never been announced as a regional policy or interpretation. Similarly, the Region's practice of imposing NPDES permit conditions on the municipal collection systems in addition to the treatment plant owner/operator has also never been expressly announced as a uniform, region-wide policy or interpretation. Upon consideration of the Board's decision, described above, EPA Region 1 has decided to supply a clearer, more detailed explanation regarding its use of a co-permittee structure when issuing NPDES permits to regionally integrated POTWs. In this section, the Region addresses the questions posed by the Board in the *Upper Blackstone* decision referenced above.

*(1) Is the scope of NPDES authority limited to owners/operators of the treatment plant, or does the authority extend to owners/operators of the municipal satellite collection systems that comprise the wider POTW?*

The scope of NPDES authority extends beyond the owners/operators of the treatment plant to include to owners/operators of portions of the wider POTW, for the reasons discussed below.

The CWA prohibits the “discharge of any pollutant by any person” from any point source to

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treatment plant (*i.e.*, only a portion of the “treatment works”), the Region's reframing of permits to include municipal satellite collection systems does not represent a break or reversal from its historical legal position. EPA Region 1 has never taken the legal position that the satellite collection systems are beyond the reach of the CWA and the NPDES permitting program. Rather, the Region as a matter of discretion had merely never determined it necessary to exercise its statutory authority to directly reach these facilities in order to carry out its NPDES permitting obligations under the Act.

<sup>6</sup> EPA has “considerable flexibility in framing the permit to achieve a desired reduction in pollutant discharges.” *Natural Resources Defense Council, Inc. v. Costle*, 568 F.2d 1369, 1380 (D.C.Cir.1977). (“[T]his ambitious statute is not hospitable to the concept that the appropriate response to a difficult pollution problem is not to try at all.”).

waters of the United States, except, *inter alia*, in compliance with an NPDES permit issued by EPA or an authorized state pursuant to Section 402 of the CWA. CWA § 301, 402(a)(1); 40 C.F.R. § 122.1(b). Where there is a discharge of pollutants, NPDES regulations require the “operator” of the discharging “facility or activity” to obtain a permit in circumstances where the operator is different from the owner. *Id.* § 122.21(b). “Owner or operator” is defined as “the owner or operator of any ‘facility or activity’ subject to regulation under the NPDES program,” and a “facility or activity” is “any NPDES ‘point source’ or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES program.” *Id.* § 122.2.

“Publicly owned treatment works” are facilities subject to the NPDES program. Statutorily, POTWs as a class must meet performance-based requirements based on available wastewater treatment technology. See CWA § 402(a)(1) (“[t]he Administrator may...issue a permit for the discharge of any pollutant....upon condition that such discharge will meet (A) all applicable requirements under [section 301]...”); § 301(b)(1)(B) (“In order to carry out the objective of this chapter there shall be achieved...for publicly owned treatment works in existence on July 1, 1977...effluent limitations based upon secondary treatment[.]”); *see also* 40 C.F.R. pt 133. In addition to secondary treatment requirements, POTWs are also subject to water quality-based effluent limits if necessary to achieve applicable state water quality standards. See CWA § 301(b)(1)(C). *See also* 40 C.F.R. § 122.44(a)(1) (“...each NPDES permit shall include...[t]echnology-based effluent limitations based on: effluent limitations and standards published under section 301 of the Act”) and (d)(1) (same for water quality standards and state requirements). NPDES regulations similarly identify the “POTW” as the entity subject to regulation. See 40 C.F.R. § 122.21(a), (requiring “new and existing POTWs” to submit information required in 122.21(j),” which in turn requires “all POTWs,” among others, to provide permit application information).

A municipal satellite collection system is part of a POTW under applicable law. The CWA and its implementing regulations broadly define “POTW” to include not only wastewater treatment plants but also the sewer systems and associated equipment that collect wastewater and convey it to the plants. Under NPDES regulations at 40 C.F.R. §§ 122.2 and 403.3(q), the term “Publicly Owned Treatment Works” or “POTW” means “a treatment works as defined by section 212 of the Act, which is owned by a State or municipality (as defined by section 502(4) of the Act).” Under section 212 of the Act,

“(2)(A) The term ‘treatment works’ means any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature to implement section 1281 of this title, or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, *sewage collection systems* [emphasis added], pumping, power, and other equipment, and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process (including land used for the storage of treated

wastewater in land treatment systems prior to land application) or is used for ultimate disposal of residues resulting from such treatment.

(B) In addition to the definition contained in subparagraph (A) of this paragraph, ‘treatment works’ means any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water runoff, or industrial waste, including waste in combined storm water and *sanitary sewer systems* [emphasis added]. Any application for construction grants which includes wholly or in part such methods or systems shall, in accordance with guidelines published by the Administrator pursuant to subparagraph (C) of this paragraph, contain adequate data and analysis demonstrating such proposal to be, over the life of such works, the most cost efficient alternative to comply with sections 1311 or 1312 of this title, or the requirements of section 1281 of this title.”

Under the NPDES program regulations, this definition has been interpreted as follows:

“The term *Publicly Owned Treatment Works* or *POTW* [emphasis in original]...includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a *POTW Treatment Plant*. The term also means the municipality as defined in section 502(4) of the Act, which has jurisdiction over the Indirect Discharges to and the discharges from such a treatment works.”

See 40 C.F.R. § 122.2, cross-referencing 403.3(q).

The statutory and regulatory definitions plainly encompass both the *POTW* treatment plant and municipal satellite collection systems. Municipal satellite collection systems are part of a *POTW* by definition (*i.e.*, they are “sewage collection systems” under section 212(A) and “sanitary sewer systems” under section 212(B)). They are also conveyances that send wastewater to a *POTW* treatment plant for treatment under 40 C.F.R. 403.3(q)). The preamble to the rule that created the regulatory definition of *POTW* supports the reading that the treatment plant comprises only a portion of the *POTW*. See 44 Fed. Reg. 62260, 62261 (Oct. 29, 1979).<sup>7</sup>

Consistent with EPA Region 1’s interpretation, courts have similarly taken a broad reading of the terms treatment works and *POTW*.<sup>8</sup>

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<sup>7</sup> “A new provision...defining the term ‘*POTW Treatment Plant*’ has been added to avoid an ambiguity that now exists whenever a reference is made to a *POTW* (publicly owned treatment works). ...[T]he existing regulation defines a *POTW* to include both the treatment plant and the sewer pipes and other conveyances leading to it. As a result, it is unclear whether a particular reference is to the pipes, the treatment plant, or both. The term “*POTW treatment plant*” will be used to designate that portion of the municipal system which is actually designed to provide treatment to the wastes received by the municipal system.”

<sup>8</sup> See, e.g., *United States v. Borowski*, 977 F.2d 27, 30 n.5 (1st Cir. 1992) (“We read this language [POTW definition] to refer to such sewers, pipes and other conveyances that are publicly owned. Here, for example, the City of Burlington’s sewer is

(2) *If the latter, how far up the collection system does NPDES jurisdiction reach, i.e., where does the “collection system” end and the “user” begin?*

NPDES jurisdiction extends beyond the treatment plant to the outer boundary of the municipally-owned sewage collection systems, which are defined as sewers whose purpose is to be a common carrier of wastewater for others to a POTW treatment plant for treatment, as explained below.

As discussed in response to Question 1 above, the term “treatment works” is defined to include “sewage collection systems.” CWA § 212. In order to define the extent of the sewage collection system for purposes of co-permittee regulation—*i.e.*, to identify the boundary between the portions of the collection system that are subject to NPDES requirements and those that are not—Region 1 is relying on EPA’s regulatory interpretation of the term “sewage collection system.” In relevant part, EPA regulations define “sewage collection system” at 40 C.F.R. § 35.905 as:

“ ....each, and all, of the common lateral sewers, within a publicly owned treatment system, which are primarily installed to receive waste waters directly from facilities which convey waste water from individual structures or from private property and which include service connection “Y” fittings designed for connection with those facilities. The facilities which convey waste water from individual structures, from private property to the public lateral sewer, or its equivalent, are specifically excluded from the definition....”

Put otherwise, a municipal satellite collection system is subject to NPDES jurisdiction under the Region’s approach insofar as its purpose is to be a common carrier of wastewater for others to a POTW treatment plant for treatment. The use of this primary purpose test (*i.e.*, common sewer installed as a recipient and carrier waste water from others) allows Region 1 to draw a principled, predictable and readily ascertainable boundary between the POTW’s collection system and user. This test would exclude, for example, branch drainpipes that collect and transport wastewater from fixtures in a commercial building or public school to the common lateral sewer. This type of infrastructure would not be considered part of the collection system, because it is not designed to be a common recipient and carrier of wastewaters from other users. Rather, it is designed to transport its users’ wastewater to such a common collection system at a point further down the sanitary sewer system.

EPA’s reliance on the definition of “sewage collection system” from outside the NPDES

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included in the definition because it conveys waste water to the Massachusetts Water Resource Authority’s treatment works.”); *Shanty Town Assoc. v. Env'tl. Prot. Agency*, 843 F.2d 782, 785 (4th Cir. 1988) (“As defined in the statute, a ‘treatment work’ need not be a building or facility, but can be any device, system, or other method for treating, recycling, reclaiming, preventing, or reducing liquid municipal sewage and industrial waste, including storm water runoff.”) (citation omitted); *Comm. for Consideration Jones Fall Sewage System v. Train*, 375 F. Supp. 1148, 1150-51 (D. Md. 1974) (holding that NPDES wastewater discharge permit coverage for a wastewater treatment plant also encompasses the associated sanitary sewer system and pump stations under § 1292 definition of “treatment work”).

regulations for interpretative guidance is reasonable as the construction grants regulations at 40

C.F.R. Part 35, subpart E pertain to grants for POTWs, the entity that is the subject of this NPDES policy. Additionally, the term “sewage collection systems” expressly appears in the definition of treatment works under section 212 of the Act as noted above. Finally, this approach is also consistent with EPA’s interpretation in other contexts, such as the SSO listening session notice, published in the Federal Register on June 1, 2010, which describes wastewater collection systems as those that “collect domestic sewage and other wastewater from homes and other buildings and convey it to wastewater sewage treatment plants for proper treatment and disposal.” See “Municipal Sanitary Sewer Collection Systems, Municipal Satellite Collection Systems, Sanitary Sewer Overflows, and Peak Wet Weather Discharges From Publicly Owned Treatment Works Treatment Plants Serving Separate Sanitary Sewer Collection Systems,” 75 Fed. Reg. 30395.<sup>9</sup>

*(3) Do municipal satellite collection systems “discharge [] a pollutant” within the meaning of the statute and regulations?*

Yes, because they are a part of the POTW, municipal satellite collection systems discharge pollutants to waters of the United States through one or more outfalls (point sources).

The “discharge of a pollutant,” triggers the need for a facility to obtain an NPDES permit. A POTW “discharges [ ] pollutant[s]” if it adds pollutants from a point source to waters of the U.S. (See 40 C.F.R. § 122.2, section (a) of the definition of “discharge of a pollutant.”) As explained above, municipal satellite collection systems are part of the POTW. The entire POTW is the entity that discharges pollutants to waters of the U.S. through point source outfalls typically located at the treatment plant but also occasionally through other outfalls within the overall system. The fact that a collection system may be located in the upstream portions of the POTW and not necessarily near the ultimate discharge point at the treatment plant is not material to the question of whether it “discharges” a pollutant and consequently may be subject to conditions of an NPDES permit issued for discharges from the POTW.<sup>10</sup>

“Discharge of a pollutant” at 40 C.F.R. § 122.2 is also defined to include “... discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person *which do not lead to a treatment works.*” (emphasis added). Some municipal collection systems have argued that this sentence means that only municipal discharges that do not lead to a “treatment plant” fall within the scope of “discharge of a pollutant.” They further argue that because discharges through satellite collection systems do lead to a treatment plant, such systems do not “discharge [] pollutant[s]” and therefore are not subject to the NPDES permit

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<sup>9</sup> That EPA has in the past looked for guidance from Part 35 when construing the NPDES permitting program, for instance, in the context of storm water permitting, provides further support to the Region that its practice in this regard is sound. See, e.g., “National Pollutant Discharge Elimination System Permit Application Regulations for Storm Water Discharges,” 55 Fed. Reg. 47990, 47955 (looking to the definition of “storm sewer” at 40 C.F.R. § 35.2005(b)(47) when defining “storm water” under the NPDES program).

<sup>10</sup> This position differs from that taken by the Region in the *Upper Blackstone* litigation. There, the Region argued that the treatment plant was the sole discharging entity for regulatory purposes. The Region has revised this view upon further consideration of the statute, regulations and case law and determined that the POTW as a whole is the discharging entity.

requirements. This argument is flawed in that it incorrectly equates “treatment works,” the term used in the definition above, with “treatment plant.” To interpret “treatment works” as it appears in the regulatory definition of “discharge of a pollutant” as consisting of only the POTW treatment plant would be inconsistent with the definition of “treatment works” at 40 C.F.R. § 403.3(q), which expressly includes the collection system. *See also* § 403.3(r) (defining “POTW Treatment Plant” as “*that portion* [emphasis added] of the POTW which is designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial waste”).

*(4) Are municipal satellite collection systems “indirect dischargers” and thus excluded from NPDES permitting requirements?*

No, municipal satellite collection systems are part of the POTW, not “indirect dischargers” to the POTW.

Section 307(b) of the Act requires EPA to establish regulatory pretreatment requirements to prevent the “introduction of pollutants into treatment works” that interfere, pass through or are otherwise incompatible with such works. Section 307 is implemented through the General Pretreatment Regulations for Existing and New Sources of Pollution (40 C.F.R. Part 403) and categorical pretreatment standards (40 C.F.R. Parts 405-471). Section 403.3(i) defines “indirect discharger” as “any non-domestic” source that introduces pollutants into a POTW and is regulated under pretreatment standards pursuant to CWA § 307(b)-(d). The source of an indirect discharge is termed an “industrial user.” *Id.* at § 403.3(j). Under regulations governing the NPDES permitting program, the term “indirect discharger” is defined as “a non-domestic discharger introducing ‘pollutants’ to a ‘publicly owned treatment works.’” 40 C.F.R. § 122.2. Indirect dischargers are excluded from NPDES permit requirements by the indirect discharger rule at 40 C.F.R. § 122.3(c), which provides, “The following discharges do not require an NPDES permit: . . . The introduction of sewage, industrial wastes or other pollutants into publicly owned treatment works by indirect dischargers.”

Municipal satellite collection systems are not indirect dischargers as that term is defined under part 122 or 403 regulations. Unlike indirect dischargers, municipal satellite collection systems are not “introducing pollutants” to POTWs under 40 C.F.R. § 122.2; they are, instead, part of the POTW by definition. Similarly, they are not a non-domestic source that introduces pollutants into a POTW within the meaning of § 403.3(j), but as part of the POTW collect and convey municipal sewage from industrial, commercial and domestic users of the POTW.

The Region’s determination that municipal satellite collection systems are not indirect dischargers is, additionally, consistent with the regulatory history of the term indirect discharger.

The 1979 revision of the part 122 regulations defined “indirect discharger” as “a non-municipal, non-domestic discharger introducing pollutants to a publicly owned treatment works, which introduction does not constitute a ‘discharge of pollutants’...” See National Pollutant Discharge Elimination System, 44 Fed. Reg. 32854, 32901 (June 7, 1979). The term “non-municipal” was removed in the Consolidated Permit Regulations, 45 Fed. Reg. 33290, 33421 (May 19, 1980) (defining “indirect discharger” as “a nondomestic discharger...”). Although the change was not explained in detail, the substantive intent behind this provision remained the same. EPA characterized the revision as “minor wording changes.” 45 Fed. Reg. at 33346 (Table VII: “Relationship of June 7[, 1979] Part 122 to Today’s Regulations”). The central point again is that under any past or present regulatory incarnation, municipal satellite collection systems, as POTWs, are not within the definition of “indirect discharger,” which is limited to dischargers that introduce pollutants to POTWs.

The position that municipal satellite collection systems are part of, rather than discharge to, the POTW also is consistent with EPA guidance. EPA’s 1994 Multijurisdictional Pretreatment Programs Guidance Manual, (EPA 833-B94-005) (June 1994), at p. 19, asserts that EPA has the authority to require municipal satellite collection systems to develop pretreatment programs by virtue of their being part of the POTW.

*(5) How is the Region’s rationale consistent with the references to “municipality” in the regulatory definition of POTW found at 40 C.F.R. § 403.3(q), and the definition’s statement that “[t]he term also means the municipality....which has jurisdiction over the Indirect Discharges to and the discharges from such a treatment works?”*

There is no inconsistency between the Region’s view that municipally-owned satellite collection systems are part of a POTW, and the references to municipality in 40 C.F.R. § 403.3(q), including the final sentence of the regulatory definition of POTW in the pretreatment regulations.

The Region’s co-permitting rationale is consistent with the first part of the pretreatment program’s regulatory definition of POTW, because the Region is only asserting NPDES jurisdiction over satellite collection systems that are owned by a “State or municipality (as defined by section 502(4) of the Act).” The term “municipality” as defined in CWA § 502(4) “means a city, town, borough, county, parish, district, association, or other public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes...” Thus, in order to qualify under this definition, a wastewater collection system need only be “owned by a State or municipality.” There is no requirement that the constituent components of a regionally integrated POTW, *i.e.*, the collection system and regional centralized POTW treatment plant, be owned by the same State or municipal entity.

Furthermore, there is no inconsistency between the Region’s view that a satellite collection system is part of a POTW, and the final sentence of the regulatory definition of POTW in the pretreatment regulations. As noted above, the sentence provides that “POTW” may “also” mean a municipality which has jurisdiction over indirect discharges to and discharges from the treatment works. This is not a limitation because of the use of the word “also” (contrast this

with the “only if” language in the preceding sentence of the regulatory definition).

*(6) How does the Region’s rationale comport with the permit application and signatory requirements under NPDES regulations?*

EPA’s authority to require municipal satellite collection systems to separately comply with the permit application requirements, or to provide waivers from these requirements where appropriate, is consistent with NPDES regulations, which provide that all POTWs must submit permit application information set forth in 40 C.F.R. § 122.21(j) unless otherwise directed, and municipal satellite collection systems are part of the POTW.

EPA has the authority to require municipal satellite collection systems to submit permit applications. These entities are operators of parts of the POTW. NPDES regulations characterize the operator “of the POTW” (which by definition includes the sewage collection system) as opposed to the operator “of the POTW treatment plant” as an appropriate applicant. *Id.* § 122.21(a), (requiring applicants for “new and existing POTWs” to submit information required in 122.21(j),” which in turn requires “all POTWs,” among others, to provide permit application information). This reading of the regulation is in keeping with the statutory text, which subjects the POTW writ large to the secondary treatment and water quality-based requirements. *See CWA § 301(b)(1)(B), (C).* In fact, the NPDES permit application for POTWs solicits information concerning portions of the POTW beyond the treatment plant itself, including the collection system used by the treatment works. *See 40 C.F.R. 122.21(j)(1).*

Notwithstanding that EPA could require applications for all the municipal satellite collection systems, requiring such applications may result in duplicative or immaterial information. The Regional Administrator (“RA”) may waive any requirement of this paragraph if he or she has access to substantially identical information. 40 C.F.R. § 122.21(j). *See generally, 64 Fed. Reg. 42440 (August 4, 1999).* The RA may also waive any application requirement that is not of material concern for a specific permit. Region 1 believes that it will typically receive information sufficient for NPDES permitting purposes from the POTW treatment plant operator’s application.

In most cases, EPA Region 1 believes that having a single permit application from the POTW treatment plant operator will be more efficient in carrying out the regulation’s intent than multiple applications from the satellite systems. (The treatment plant operator would of course be required to coordinate as necessary with the constituent components of the POTW to ensure that the information provided to EPA is accurate and complete). EPA Region 1 therefore intends to issue waivers to exempt municipal satellite collection systems from permit application and signatory requirements in accordance with 40 C.F.R. § 122.21(j). To the extent the Region requires additional information, it intends to use its information collection authority under CWA § 308.

IV. Basis for the Specific Conditions to which the Municipal Satellite Collection Systems are Subject as Co-permittees

The legal authority for extending NPDES conditions to all portions of the municipally-owned treatment works to ensure proper operation and maintenance and to reduce the quantity of extraneous flow into the POTW is Section 402(a) of the CWA. This section of the Act authorizes EPA to issue a permit for the “discharge of pollutants” and to prescribe permit conditions as necessary to carry out the provisions of the CWA, including Section 301 of the Act. Among other things, Section 301 requires POTWs to meet performance-based requirements based on secondary treatment technology, as well as any more stringent requirements of State law or regulation, including water quality standards. *See CWA § 301(b)(1)(B),(C).*

The co-permittee requirements are required to assure continued achievement of secondary treatment requirements and water quality standards in accordance with sections 301 and 402 of the Act and to prevent unauthorized discharges of sewage from collection systems. With respect to secondary treatment, the inclusion of the satellite systems as co-permittees is necessary because high levels of I/I dilute the strength of influent wastewater and increase the hydraulic load on treatment plants, which can reduce treatment efficiency (*e.g.*, result in violations of technology-based percent removal limitations for BOD and TSS due to less concentrated influent, or violation of other technology effluent limitations due to reduction in treatment efficiency), lead to bypassing a portion of the treatment process, or in extreme situations make biological treatment facilities inoperable (*e.g.*, wash out the biological organisms that treat the waste).

As to water quality standards, the addition of the satellite systems as co-permittees is necessary to ensure collection system operation and maintenance, which will reduce extraneous flow entering the system and free up available capacity. This will facilitate compliance with water quality-based effluent limitations—made more difficult by reductions in treatment efficiency and also reduce water quality standard violations that result from the occurrence of SSOs. *See Exhibits B* (Municipal satellite collection systems with SSOs) and C (Analysis of extraneous flow trends for representative systems). SSOs that reach waters of the U.S. are discharges in violation of section 301(a) of the CWA to the extent not authorized by an NPDES permit.

Subjecting portions of an NPDES-regulated entity upstream of the ultimate discharge point is consistent with EPA’s interpretation of the CWA in other contexts. For example, it is well established that EPA has the ability to apply discharge limitations and monitoring requirements to internal process discharges, rather than to outfalls, on the grounds that compliance with permit limitations “may well involve controls applied at points other than the ultimate point of discharge.” *See Decision of the General Counsel No. 27 (In re Inland Steel Company)*, August 4, 1975 (“Limitations upon internal process discharges are proper, if such discharges would ultimately be discharged into waters of the United States, and if such limitations are necessary to carry out the principal regulatory provisions of the Act.”). In the case of regionally integrated POTWs, placing conditions on satellite collection systems—though located farther up the

system than the point of discharge—is a logical implication of the regulations and serves to effectuate the statute.

Without imposing conditions on the satellite communities, standard permit conditions applicable to all NPDES permits by regulation cannot be given full effect. To illustrate, there is no dispute that the operator of the POTW treatment plant and outfall is discharging pollutants within the meaning the CWA and, accordingly, is subject to the NPDES permit program. NPDES permitting regulations require standard conditions that “apply to all NPDES permits,” pursuant to 40 C.F.R. § 122.41, including a duty to mitigate and to 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 the permit.” *Id.* at § 122.41(d), (e). EPA regulations also require additional conditions applicable to specified categories of NPDES permit, including “Publicly owned treatment works.” *See id.* at § 122.42(b). A municipal satellite collection system, as demonstrated above, falls within the regulatory definition of a POTW. In light of EPA’s authority to require appropriate operation and maintenance of collection systems necessary to achieve compliance with an NPDES permit, and because the operator of the POTW treatment plant may not own or operate a significant portion of the wider treatment works (*i.e.*, the collection systems that send flow to the POTW treatment plant), it is appropriate, and in some cases necessary, to extend pertinent, mandated standard conditions to all portions of the POTW, which is subject to regulation in its entirety.

The alternative of allowing state and local jurisdictional boundaries to place significant portions of the POTW beyond the reach of the NPDES permitting program would not only be inconsistent with the broad statutory and regulatory definition of the term POTW but would impede Region 1 from carrying out the objectives of the CWA. It would also, illogically, preclude the Region from imposing on POTWs standard conditions EPA has by regulation mandated for those entities.

#### Other Considerations Informing EPA Region 1’s Decision to Use a Co-permittee Permitting Structure for Regionally Integrated POTWs

In addition to consulting the relevant statutes, regulations, and preambles, Region 1 also considered other EPA guidance in coming to its determination to employ a co-permittee structure for regionally integrated POTWs. EPA’s 1994 Multijurisdictional Pretreatment Programs Guidance Manual, p. 19, asserts that EPA has the authority to include municipal satellite collection systems as co-permittees by virtue of their being part of the POTW:

If the contributing jurisdiction owns or operates the collection system within its boundaries, then it is a co-owner or operator of the POTW. As such, it can be included on the POTW’s NPDES permit and be required to develop a pretreatment program. Contributing jurisdictions should be made co-permittees where circumstances or experience indicate that it is necessary to ensure adequate pretreatment program implementation.

The same logic that led EPA to conclude it had authority to require municipal satellite collection systems to develop a pretreatment program pursuant to an NPDES permit supports EPA Region 1's decision to impose permit conditions on such facilities to undertake proper O & M and to reduce inflow and infiltration.

EPA Region 1 also took notice of federal listening session materials on the June 2010 proposed SSO rule and associated model permits and fact sheet. The position articulated by EPA in these model documents—specifically the application of standard NPDES conditions to municipal satellite collection systems—generally conform to Region 1's co-permitting approach.

Finally, in addition to federal requirements, EPA Region 1 considered the co-permittee approach in light of state regulations and policy pertaining to wastewater treatment works. The Region found its approach to be consistent with such requirements. Under Massachusetts law, "Any person operating treatment works shall maintain the facilities in a manner that will ensure proper operation of the facilities or any part thereof," where "treatment works" is defined as "any and all devices, processes and properties, real or personal, used in the collection, pumping, transmission, storage, treatment, disposal, recycling, reclamation or reuse of waterborne pollutants, but not including any works receiving a hazardous waste from off the site of the works for the purpose of treatment, storage or disposal, or industrial wastewater holding tanks regulated under 314 CMR 18.00" See 314 CMR 12.00 ("Operation and Maintenance and Pretreatment Standards for Wastewater Treatment Works and Indirect Dischargers"). MassDEP has also prioritized this area, issuing detailed operation and maintenance guidelines entitled "Optimizing Operation, Maintenance and Rehabilitation of Sanitary Sewer Collection Systems."

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**Exhibit A**

Permit Number	Permittee	Co-permittees	Issue Date with Co-permittees
MA0100404	Massachusetts Water Resources Authority – Clinton	Town of Clinton Lancaster Sewer District	September 27, 2000
MA0101010	City of Brockton	Town of Abington Town of Whitman	May 11, 2005
MA0100412	Westborough Wastewater Treatment Plant	Town of Westborough Town of Shrewsbury Town of Hopkinton	May 20, 2005
MA0100480	City of Marlborough	Town of Northborough	May 26, 2005
MA0100447	Greater Lawrence Sanitary District	City of Lawrence, Town of Andover, Town of North Andover, Town of Methuen, Town of Salem, NH	August 11, 2005
MA0100633	Lowell Regional Wastewater Utilities	Town of Chelmsford, Town of Dracut Town of Tewksbury Town of Tyngsborough	September 1, 2005
MA0100064	Pepperell Wastewater Treatment Plant	Town of Groton	December 22, 2005
MA0100439	Town of Webster Sewer Department	Town of Dudley	March 24, 2006
MA0100455	Town of South Hadley, Board of Selectmen	Town of Granby, Town of Chicopee	June 12, 2006
MA0100617	City of Leominster (NPDES Permit No. MA0100617)	Town of Lunenberg Town of Lancaster	September 28, 2006
MA0100510	Hoosac Water Quality District	Town of Williamstown Town of North Adams Town of Clarksburg	September 28, 2006
MA0101036	Board of Public Works, North Attleborough	Town of Plainville	January 4, 2007
NH0100544	Town of Sunapee	New London Sewer Commission	February 21, 2007
MA0100552	Lynn Water and Sewer Commission (NPDES Permit No. MA0100552)	Town of Nahant Town of Swampscott Town of Saugus	March 3, 2007

Permit Number	Permittee	Co-permittees	Issue Date with Co-permittees
NH0100331	City of Concord	Boscawen Board of Selectmen	June 29, 2007
NH0100790	City of Keene (NPDES Permit No. NH0100790)	Town of Marlborough, NH Swanzey Sewer Commission	August 24, 2007
NH0100625	Town of Hampton	Rye Sewer Commission	August 28, 2007
NH0100161	Town of Merrimack, NH	Town of Bedford	September 25, 2007
MA0101621	City of Haverhill	Town of Groveland	December 5, 2007
MA0101681	City of Pittsfield, Department of Public Works	Town of Dalton Town of Lenox Town of Hinsdale Town of Lanesborough Town of Richmond	August 22, 2008
NH0100447	City of Manchester	Town of Goffstown Town of Bedford Town of Londonderry	September 25, 2008
MA0100781	City of New Bedford	Town of Acushnet Town of Dartmouth	September 28, 2008
MA0101818	City of Northhampton	Town of Williamsburg	September 30, 2008
NH0100960	Winnipesaukee River Basin Program Wastewater Treatment Plant	Town of Belmont Town of Center Harbor City of Franklin Town of Gilford City of Laconia Town of Meredith Town of Northfield Town of Tilton	June 19, 2009
MA0101800	City of Westfield	Town of Southwick	September 30, 2009
MA0101231	Hull Permanent Sewer Commission	Cohasset Sewer Commission Hingham Sewer Commission	September 1, 2009
MA0100994	Gardner Department of Public Works	Town of Ashburnham	September 30, 2009
MA0102598	Charles River Pollution Control District	Town of Franklin Town of Medway Town of Millis Town of Bellingham	July 23, 2014

Permit Number	Permittee	Co-permittees	Issue Date with Co-permittees
MA0101702	MFN Region Wastewater District	Town of Mansfield Town of Norton Town of Foxboro	September 11, 2014
MA0100897	Taunton Wastewater Treatment Plant	Town of Raynham Town of Dighton	April 10, 2015
NH0100366	City of Lebanon, NH	Town of Enfield	September 30, 2015
NH0100099	Town of Hanover, NH	City of Lebanon	November 18, 2015
MA0100501	South Essex Sewerage District	City of Beverly, Town of Danvers Town of Marblehead City of Peabody City of Salem	May 5, 2016
NH0100471	Town of Milford, NH	Town of Wilton Sewer Commission	August 31, 2020
MA0101613	Springfield Regional Wastewater Treatment Facility	Town of Agawam Town of East Longmeadow Town of Longmeadow Town of Ludlow Town of West Springfield Town of Wilbraham	September 30, 2020
NH0101390	Town of Allenstown, NH	Town of Pembroke Sewer Commission	November 29, 2021
NH0100901	Town of Concord - Concord Hall Street Wastewater Treatment Facility	Town of Bow	July 1, 2022
MAG590000	2022 Medium Wastewater Treatment Facilities General Permit	(as authorized)	September 28, 2022

## **Exhibit B**

### **I/I Flow Analysis for Sample Regional Publicly Owned Treatment Works**

#### **I. Representative POTWS**

The **South Essex Sewer District (SESD)** is a regional POTW with a treatment plant in Salem, Massachusetts. The SESD serves a total population of 174,931 in six communities: Beverly, Danvers, Marblehead, Middleton, Peabody and Salem. The **Charles River Pollution Control District (CRPCD)** is a regional POTW with a treatment plant in Medway, Massachusetts. The CRPCD serves a total population of approximately 28,000 in four communities: Bellingham, Franklin, Medway and Millis. Both of these facilities have been operating since 2001 under permits that place requirements on the treatment plant to implement I/I reduction programs with the satellite collection systems, in contrast to Region 1's current practice of including the satellite collection systems as co-permittees.

#### **II. Comparison of flows to standards for nonexcessive infiltration and I/I**

Flow data from the facilities' discharge monitoring reports (DMRs) are shown in comparison to the EPA standard for nonexcessive infiltration/inflow (I/I) of 275 gpcd wet weather flow and the EPA standard for nonexcessive infiltration of 120 gallons per capita per day (gpcd) dry weather flow; the standards are multiplied by population served for comparison with total flow from the facility. See *I/I Analysis and Project Certification*, EPA Ecol. Pub. 97-03 (1985); 40 CFR 35.2005(b)(28) and (29).

Figures 1 and 2 show the Daily Maximum Flows (the highest flow recorded in a particular month) for the CRPCD and SESD, respectively, along with monthly precipitation data from nearby weather stations. Both facilities experience wet weather flows far exceeding the standard for nonexcessive I/I, particularly in wet months, indicating that these facilities are receiving high levels of inflow and wet weather infiltration.

**Figure 1. CRPCD Daily Maximum Flow Compared to Nonexcessive I/I Standard**

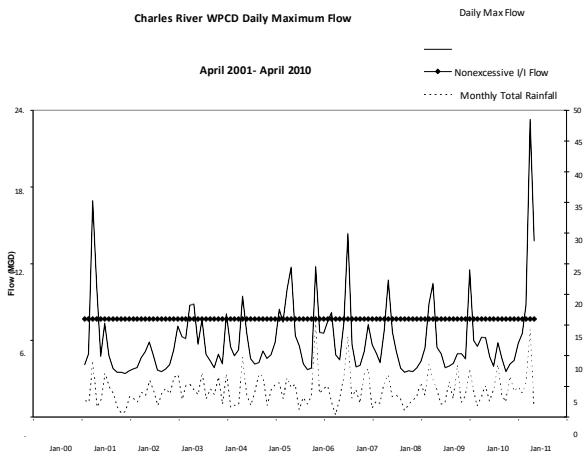
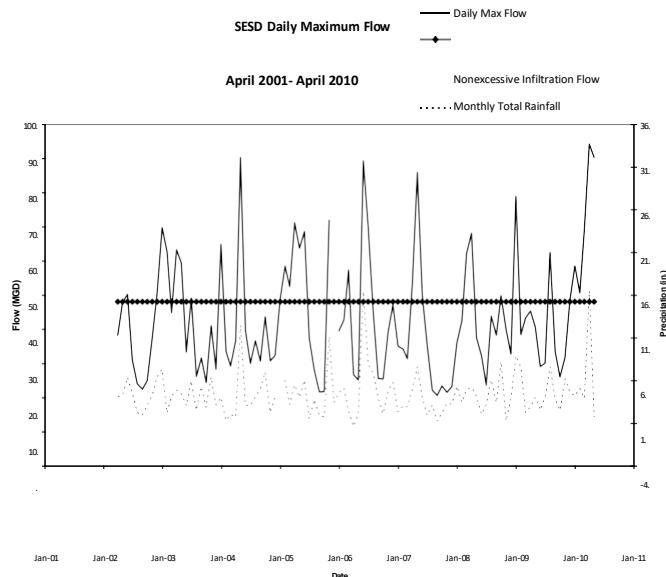


Figure 2. SESD Daily Maximum Flow Compared to Nonexcessive I/I Standard



Figures 3 and 4 shows the Average Monthly Flows for the CRPCD and SESD, which exceed the nonexcessive infiltration standard for all but the driest months. This indicates that these systems experience high levels of groundwater infiltration into the system even during dry weather.

Figure 3. CRPCD Monthly Average Flow Compared to Nonexcessive Infiltration Standard

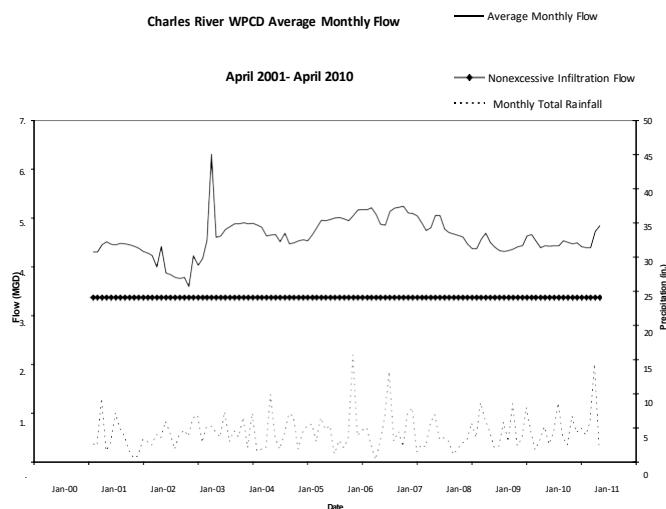
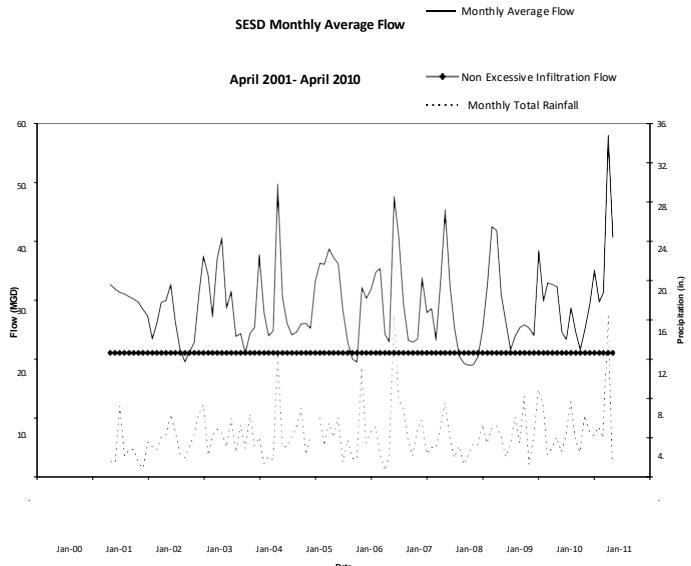


Figure 4. SESD Monthly Average Flow Compared to Nonexcessive Infiltration Standard



## II. Flow Trends

Figures 5 and 6 show the trend in Maximum Daily Flows over the period during which these regional facilities have been responsible for implementing cooperative I/I reduction programs with the satellite collection systems. The Maximum Daily Flow reflects the highest wet weather flow for each month. The trend over this time period has been of increasing Maximum Daily Flow, indicating that I/I has not been reduced in either system despite the permit requirements.

Figure 5. CRPCD Daily Maximum Flow Trend

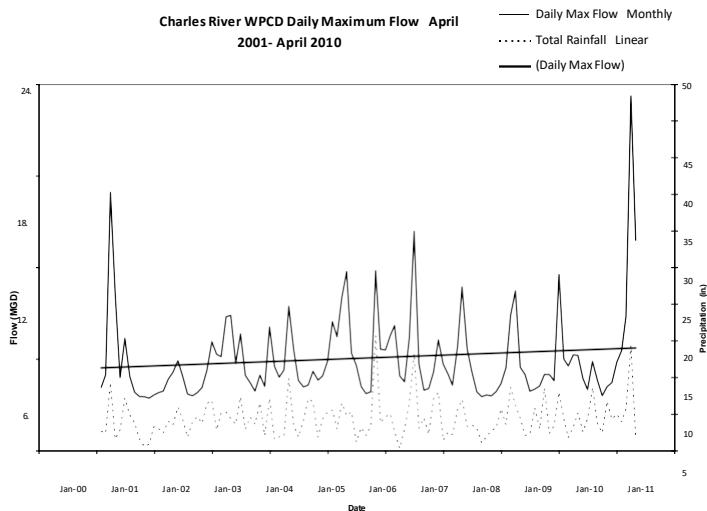
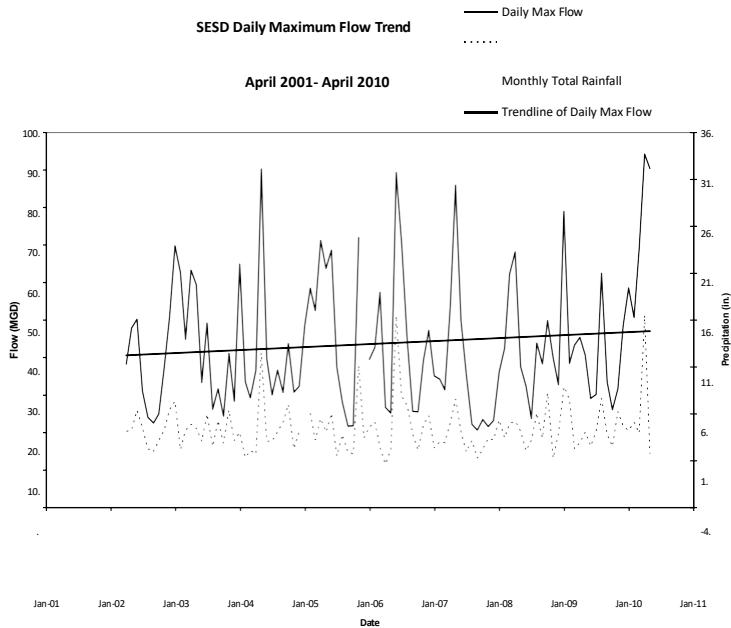


Figure 6. SESD Daily Maximum Flow Trend



### III. Violations Associated with Wet Weather Flows

Both the CRPCD and SESD have experienced permit violations that appear to be related to I/I, based on their occurrence during wet weather months when excessive I/I standards are exceeded. Figure 7 shows violations of CRPCD's effluent limits for CBOD (concentration) and TSS (concentration and percent removal). Twelve of the sixteen violations occurred during months when daily maximum flows exceeded the EPA standard.

Figure 7. CRPCD CBOD and TSS Effluent Limit Violations

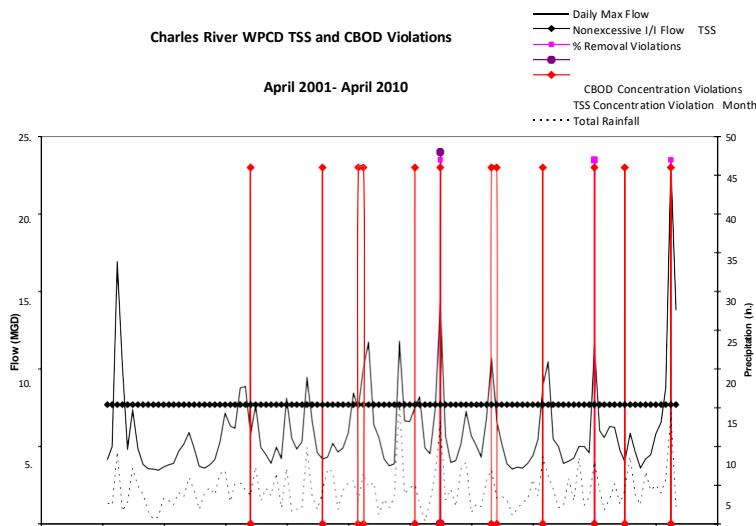
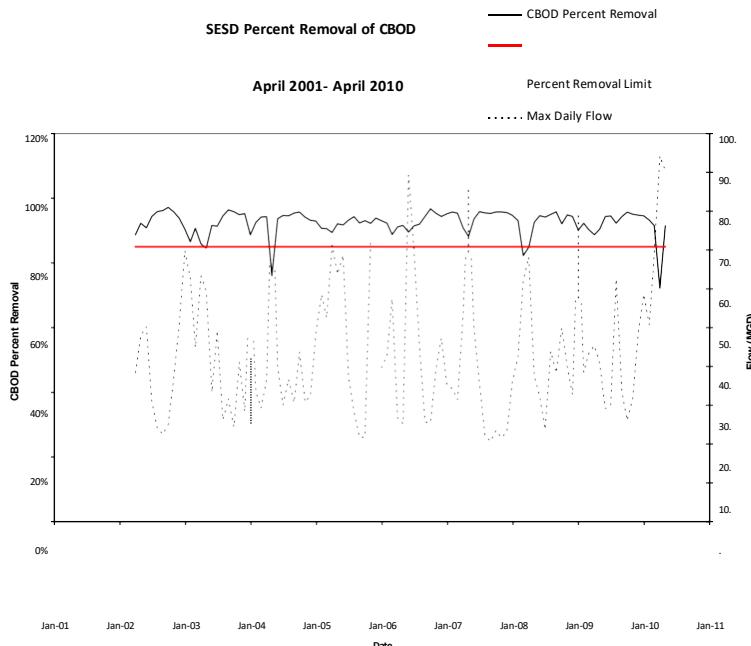


Figure 8 shows SESD's results for removal of CBOD, in percentage, as compared to maximum daily flow. SESD had three permit violations where CBOD removal fell below 85%, all during months with high Maximum Daily Flows.

Figure 8. SESD CBOD Percent Removal



In addition, both of these regional POTWs have experienced SSOs within the municipal satellite collection systems. In the SESD system, Beverly, Danvers, Marblehead and Peabody have reported SSOs between 2006 and 2008, based on data provided by MassDEP. In the CRPCD system, both Franklin and Bellingham have reported SSOs between 2006 and 2009.

**Exhibit C**

Form of Regional Administrator's waiver of permit application requirements  
for municipal satellite collection systems



**REGION 1**

BOSTON, MA 02109

**Re: Waiver of Permit Application and Signatory Requirements for [Municipal Satellite Sewage Collection System]**

Dear \_\_\_\_\_:

Under NPDES regulations, all POTWs must submit permit application information set forth in 40 C.F.R. § 122.21(j) unless otherwise directed. Where the Region has “access to substantially identical information,” the Regional Administrator may waive permit application requirements for new and existing POTWs. *Id.* Pursuant to my authority under this regulation, I am waiving NPDES permit application and signatory requirements applicable to the above-named municipal satellite collection systems.

Although EPA has the authority to require municipal satellite collection systems to submit individual permit applications, in this case I find that requiring a single permit application executed by the regional POTW treatment plant owner/operator will deliver “substantially identical information,” and will be more efficient, than requiring separate applications from each municipal satellite collection system owner/operator. Municipal satellite collection system owners/operators are expected to consult and coordinate with the regional POTW treatment plant operators to ensure that any information provided to EPA about their respective entities is accurate and complete. In the event that EPA requires additional information, it may use its information collection authority under CWA § 308. 33 U.S.C. § 1318.

This notice reflects my determination based on the specific facts and circumstances in this case. It is not intended to bind the agency in future determinations where a separate permit for municipal satellites would not be duplicative or immaterial.

If you have any questions or would like to discuss this decision, please contact [EPA Permit Contact] at <mailto:permit.writer@epa.gov> or 617-918-XXXX.

Sincerely,

Regional Administrator

## Manchester CSO Discharge Summary (2018-2023)

Outfall	2018		2019		2020		2021		2022		2023	
	Events (#)	Volume (MG)	Events (#)	Volume (MG)	Events (#)	Volume (MG)	Events (#)	Volume (MG)	Events (#)	Volume (MG)	Events (#)	Volume (MG)
011	2	0.1	0	0	0	0	0	0	0	0	2	0.1
018	3	0.39	0	0	0	0	0	0	0	0	0	0
031	42	16.81	40	8	39	7.2	42	11.7	47	15.5	42	36.6
039	3		0	0	0	0	0	0	0	0	2	0.1
043	2	0.1	0	0	4	0	1	0.2	2	0.1	6	0.8
044	55	298.31	57	142.1	49	137.8	56	190.3	61	308.9	56	781.6
045	6	2.21	2	0	3	0.1	0	0	1	0	4	2
046	7	9.52	6	0.1	4	0.7	4	0.3	49	9.5	43	16.6
047	31	23.43	28	8.8	31	7.5	35	13.8	46	12.3	39	23.9
050	3	1.86	0	0	0	0	0	0	15	5.3	8	4.1
051	0	0	0	0	0	0	0	0	0	0	0	0
052	3	1.86	0	0	0	0	1	<0.1	16	6.9	8	6.1
053	0	0	0	0	0	0	0	0	0	0	0	0
054	17	3	12	1.1	14	0.7	19	1	20	1.7	28	3
055	3	6	0	0	0	0	0	0	0	0	3	0.8
<b>TOTAL</b>	<b>177</b>	<b>364.2</b>	<b>145</b>	<b>160.1</b>	<b>144</b>	<b>154</b>	<b>158</b>	<b>217.7</b>	<b>257</b>	<b>360.2</b>	<b>241</b>	<b>875.7</b>

0 = &lt;0.1

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY-REGION 1 (EPA)  
WATER DIVISION  
5 POST OFFICE SQUARE  
BOSTON, MASSACHUSETTS 02109

NEW HAMPSHIRE DEPARTMENT OF  
ENVIRONMENTAL SERVICES (NHDES)  
WATER DIVISION  
P.O. BOX 95  
CONCORD, NEW HAMPSHIRE 03302-0095

JOINT EPA PUBLIC NOTICE OF A DRAFT NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT TO DISCHARGE INTO WATERS OF THE UNITED STATES UNDER SECTION 402 OF THE CLEAN WATER ACT (CWA), AS AMENDED; NHDES PUBLIC NOTICE OF EPA REQUEST FOR STATE CERTIFICATION UNDER SECTION 401 OF THE ACT; AND NHDES PUBLIC NOTICE OF ISSUANCE OF A STATE SURFACE WATER PERMIT UNDER NH RSA 485-A:13, I(a).

PUBLIC NOTICE PERIOD: April 10, 2024 – May 10, 2024

PERMIT NUMBER: **NH0100447**

NAME AND MAILING ADDRESS OF APPLICANT:

City of Manchester  
300 Winston Street  
Manchester, NH 03103

NAME AND LOCATION OF FACILITY WHERE DISCHARGE OCCURS:

City of Manchester  
300 Winston Street  
Manchester, NH 03103

RECEIVING WATER: Merrimack River, Class B

PREPARATION OF THE DRAFT PERMIT:

EPA is issuing for public notice and comment the Draft. Sludge from this facility is incinerated on site. The effluent limits and permit conditions imposed have been drafted pursuant to, and assure compliance with, the CWA, including EPA-approved State Surface Water Quality Standards at Env-Wq 1700 et seq. NHDES cooperated with EPA in the development of the Draft NPDES Permit. NHDES plans to adopt EPA's permit under Chapter 485-A of the New Hampshire Statutes (NH RSA 485-A:13, I(a)).

In addition, EPA has requested that NHDES grant or deny certification of this Draft Permit pursuant to Section 401 of the CWA and implementing regulations. Under federal regulations governing the NPDES program at 40 Code of Federal Regulations (CFR) § 124.53(e), state certification shall contain conditions that are necessary to assure compliance with the applicable provisions of CWA sections 208(e), 301, 302, 303, 306, and 307 and with appropriate requirements of State law, including any conditions more stringent than those in the Draft

Permit that NHDES finds necessary to meet these requirements. In addition, NHDES may provide a statement of the extent to which each condition of the Draft Permit can be made less stringent without violating the requirements of State law.

#### INFORMATION ABOUT THE DRAFT PERMIT:

The draft permit and explanatory fact sheet may be obtained at no cost at <https://www.epa.gov/npdes-permits/new-hampshire-draft-individual-npdes-permits> or by contacting:

Robin Johnson  
U.S. Environmental Protection Agency – Region 1  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912  
Telephone: (617) 918-1045  
[johnson.robin@epa.gov](mailto:johnson.robin@epa.gov)

Any electronically available documents that are part of the administrative record can be requested from the EPA contact above.

#### PUBLIC COMMENT AND REQUESTS FOR PUBLIC HEARING:

All persons, including applicants, who believe any condition of the Draft Permit is inappropriate must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by **May 10, 2024**, which is the close of the public comment period. Comments, including those pertaining to EPA's request for CWA § 401 certification and/or NHDES proposed issuance of a State Surface Water Permit, should be submitted to the EPA contact at the address or email address listed above. Upon the close of the public comment period, EPA will make all comments available to NHDES.

If comments are submitted in hard copy form, please also email a copy to the EPA contact above.

#### FINAL PERMIT DECISION:

Following the close of the comment period, and after a public hearing, if such hearing is held, the Regional Administrator will issue a final permit decision and notify the applicant and each person who has submitted written comments or requested notice.

KEN MORAFF, DIRECTOR  
WATER DIVISION  
UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY – REGION I

RENE PELLETIER, DIRECTOR  
WATER DIVISION  
NEW HAMPSHIRE DEPARTMENT OF  
ENVIRONMENTAL SERVICES