

# EXHIBIT D

NPDES Permit No. NH0100790 issued by the EPA on August 24, 2007  
(the “2007 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"),

The City of Keene

is authorized to discharge from the Wastewater Treatment Plant located at

420 Airport Road  
Swanzy, New Hampshire 03446

to the receiving water named

Ashuelot River (Hydrologic Code; 01080201)

in accordance with effluent limitations, monitoring requirements, and other conditions set forth herein, including, but not limited to, conditions requiring the proper operation and maintenance of Keene's wastewater collection system.

The municipalities of Marlborough and Swanzy are Co-Permittees for activities required in Part I.B (Unauthorized Discharges), Part I.C (Operations and Maintenance of the Sewer System), and Part I.D (Alternate Power Source). The responsible Municipal Departments are:

Town of Marlborough	Swanzy Sewer Commission
Board of Selectmen	P.O. Box 10009
P.O. Box 487	Swanzy, New Hampshire 03446
Marlborough, NH 03455	

This permit will become effective on November 1, 2007

This permit and the authorization to discharge expires at midnight, five (5) years from the effective date.

This permit supersedes the permit issued on April 15, 1994.

This permit consists of 14 pages in Part I including effluent limitations and monitoring requirements: Attachment A (8 pages); Attachment B (72 pages); Attachment C (2 pages); and 25 pages in Part II including General Conditions and Definitions.

**Signed this 24<sup>th</sup> day of August, 2007**

**/S/ SIGNATURE ON FILE**

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Stephen S. Perkins, Director  
Office of Ecosystem Protection  
U.S. Environmental Protection Agency (EPA)  
Boston, Massachusetts

PART I. A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

- During the period from the effective date of this permit and through the expiration date, the permittee is authorized to discharge treated sanitary wastewaters from outfall Serial Number 001 (Keene Wastewater Treatment Plant) into the Ashuelot River. Such discharges shall be limited and monitored by the permittee as specified below. Samples taken in compliance with the monitoring requirements specified below shall be taken at a location that provides a representative analysis of the effluent.

Effluent Characteristic	Discharge Limitations						Monitoring Requirements <sup>11</sup>	
	Average Monthly	Average Weekly	Maximum Daily	Average Monthly	Average Weekly	Maximum Daily	Measurement Frequency	Sample Type
Flow, MGD	-----	-----	-----	Report	-----	Report	Continuous	Recorder <sup>1</sup>
CBOD <sub>5</sub>	1252 lbs/day	2003 lbs/day	2253 lbs/day	25 mg/l	40 mg/l	45 mg/l	2/Week <sup>2</sup>	24-Hour Composite
TSS	1502 lbs/day	2253 lbs/day	2504 lbs/day	30 mg/l	45 mg/l	50 mg/l	2/Week <sup>2</sup>	24-Hour Composite
Ammonia Nitrogen <sup>3</sup> as N: Summer	105 lbs/day	-----	155 lbs/day	2.1 mg/l	-----	3.1 mg/l	2/Week	24-Hour Composite
Ammonia Nitrogen <sup>3</sup> as N: Winter	600 lbs/day	-----	-----	12 mg/l	-----	-----	2/Week	24-Hour Composite
pH <sup>4</sup>	6.5-8.0 su						1/Day	Grab
Dissolved Oxygen <sup>4</sup>	Not Less Than 7.0 mg/l						1/Day	Grab

## PART I.A.1 (Continued)

Effluent Characteristic	Discharge Limitations		Monitoring Requirements <sup>11</sup>	
	Average Monthly	Maximum Daily	Measurement Frequency	Sample Type
<u>Escherichia coli</u> <sup>5</sup> (Colonies per 100 ml)	126	406	3/Week	Grab
Total Recoverable Aluminum, ug/l <sup>12</sup>	Report	Report	2/Month	24-Hour Composite
Total Recoverable Copper, ug/l <sup>13</sup>	5.9	7.9	2/Month	24-Hour Composite
Total Recoverable Lead, ug/l <sup>14</sup>	1.1	Report	2/Month	24-Hour Composite
Total Recoverable Zinc, ug/l	77	77	2/Month	24-Hour Composite
Total Phosphorus, mg/l (Apr. 1- Oct. 31)	0.2	Report	1/Week	24-Hour Composite
Total Phosphorus, mg/l (Nov. 1-Mar 31)	1.0	Report	1/Week	24-Hour Composite
Ortho-Phosphorus (Nov. 1-Mar. 31)	Report	Report	1/Week	24-Hour Composite

## PART I.A.1 (Continued)

Effluent Characteristic	Discharge Limitations	Monitoring Requirements <sup>11</sup>	
		Measurement Frequency	Sample type
Whole Effluent Toxicity			
LC50 <sup>6,7</sup> , in percent	≥ 100	1/Year	24-Hour Composite
C-NOEC <sup>7,8,9</sup>	≥ 48	1/Year	24-Hour Composite
Ammonia Nitrogen as Nitrogen <sup>10</sup>	Report	1/Year	24-Hour Composite
Hardness, mg/l <sup>10</sup>	Report	1/Year	24-Hour Composite
Total Recoverable Cadmium <sup>10</sup>	Report	1/Year	24-Hour Composite
Total Recoverable Chromium <sup>10</sup>	Report	1/Year	24-Hour Composite
Total Recoverable Nickel <sup>10</sup>	Report	1/Year	24-Hour Composite

(Note: See pages 5-6 for footnotes)

## FOOTNOTES:

- (1) The effluent flow shall be continuously measured and recorded using a flow meter and totalizer.
- (2) The influent concentrations of both CBOD<sub>5</sub> and TSS shall be monitored twice per month (2/Month) using a 24-Hour Composite sample and the results reported as average monthly values.
- (3) Summer period is defined as the months June 1<sup>st</sup> - October 31<sup>st</sup> ; winter period is defined as November 1<sup>st</sup> - May 31<sup>st</sup>.
- (4) State Certification requirement.
- (5) The average monthly value for Escherichia coli shall be determined by calculating the geometric mean. Escherichia coli shall be tested using an approved method as specified in 40 CFR 136 (See list of Approved Biological Methods for Wastewater and Sewage Sludge). This monitoring shall be conducted concurrently with the TRC sampling described below.
- (6) LC50 is the concentration of wastewater (effluent) causing mortality to 50 percent (%) of the test organisms. The 100% limit is defined as a sample which is composed of 100% effluent (See Part I.A.1 and Attachment A of Part 1). Therefore, a 100 % limit means that a sample of 100% effluent shall cause no greater than a 50% mortality rate in that effluent sample.
- (7) The permittee shall conduct chronic (and modified acute) survival and reproduction, and survival and growth WET tests on effluent samples using two species, Daphnid (Ceriodaphnia dubia) and Fathead Minnow (Pimephales promelas), respectively, following the protocol listed in Attachment A (Freshwater Chronic and Modified Acute Toxicity Test Procedure and Protocol dated December 1995). WET tests shall be conducted annually for both Daphnid and Fathead Minnow. Toxicity test samples shall be collected and tests completed during the calendar quarter ending September 30<sup>th</sup>. Toxicity test results are to be submitted by the 15<sup>th</sup> day of the month following the end of the quarter tested.
- (8) C-NOEC (Chronic-No Observed Effect Concentration) is defined as the highest concentration of toxicant or effluent to which organisms are exposed in a life-cycle or partial life-cycle test which causes no adverse effect on growth, survival, or reproduction at a specific time of observation as determined from hypothesis testing where the test results (growth, survival, and/or reproduction) exhibit a linear dose-response relationship. However, where the test results do not exhibit a linear dose-response relationship, report the lowest concentration where there is no observable effect. See ATTACHMENT A (VII. TOXICITY TEST DATA ANALYSIS) on page A-8 for additional clarification.
- (9) The C-NOEC limit of "equal to or greater than 48%" is defined as a sample which is composed of 48% effluent. This is the minimum percentage of effluent at which no chronic effects will be observed.

- (10) For each WET test the permittee shall report on the appropriate Discharge Monitoring Report (DMR) the concentrations of Ammonia Nitrogen as Nitrogen, Hardness, and Total Recoverable Aluminum, Cadmium, Chromium, Copper, Lead, Nickel and Zinc found in the 100 percent effluent sample. All these aforementioned chemical parameters shall be determined to at least the Minimum Quantification Level (MLs) shown in Attachment A on page A-7, or as amended. The permittee should also note that all chemical parameter results must still be reported in the appropriate WET test toxicity report. Total Aluminum, Copper, Lead and Zinc monitoring is required as noted on page three.
- (11) Effluent samples shall be taken after appropriate treatment and prior to discharge to Outfall 001. All sampling shall be representative of the effluent that is discharged through Outfall 001 to the Asheulot River. A routine sampling program shall be developed in which samples are taken at the same location, same time and same weekday(s) of every month. Any deviations from the routine sampling program shall be documented in correspondence appended to the applicable discharge monitoring report that is submitted to EPA. In addition, all samples shall be analyzed using the analytical methods found in 40 CFR §136, or alternative methods approved by EPA in accordance with the procedures in 40 CFR §136.
- (12) Aluminum sampling shall be conducted concurrently with phosphorus sampling, if and when used for phosphorus removal.
- (13) The minimum level (ML) for copper is defined as 3 ug/l. This value is the minimum level for copper using the Furnace Atomic Absorption analytical method (EPA Method 220.2). This method must be used to determine total copper. For effluent limitations less than 3 ug/l, compliance/non-compliance will be determined based on the ML. Sample results of 3 ug/l or less shall be reported as zero on the Discharge Monitoring Report.
- (14) The ML for lead is defined as 3 ug/l. This value is the minimum level for lead using the Furnace Atomic Absorption analytical method (EPA Method 220.2). This method must be used to determine total lead. For effluent limitations less than 3 ug/l, compliance/non-compliance will be determined based on the ML. Sample results of 3 ug/l or less shall be reported as zero on the Discharge Monitoring Report.

#### I.A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (continued)

2. The discharge shall not cause a violation of the water quality standards of the receiving water.
3. The permittee shall not discharge into the receiving water any pollutant or combination of pollutants in toxic amounts.
4. The discharge shall be adequately treated to insure that the surface water remains free from pollutants in concentrations or combinations that settle to form harmful deposits, float as foam, debris, scum or other visible pollutants. It shall be adequately treated to insure that the surface waters remain free from pollutants which produce odor, color, taste or turbidity in the receiving waters which is not naturally occurring and would render it unsuitable for its designated uses.
5. The permittee's treatment facility shall maintain a minimum of 85 percent removal of both CBOD<sub>5</sub> and

- TSS. The percent removal shall be based on a comparison of average monthly influent versus effluent concentrations.
6. When the effluent discharged for a period of three consecutive months exceeds 80 percent of the 6.0 MGD design flow (4.8 MGD), the permittee shall submit to the permitting authorities a projection of 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.
  7. All POTWs must provide timely and adequate notice to both EPA and the New Hampshire Department of Environmental Services, Water Division (NHDES-WD) of the following:
    - a. Any new introduction of pollutants into the POTW from an indirect discharger in a primary industry category (see 40 CFR §122 Appendix A as amended) discharging process water; and
    - b. Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.
    - c. For purposes of this paragraph, adequate notice shall include information on:
      - (1) the quantity and quality of effluent introduced into the POTW; and
      - (2) any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.
  8. Limitations for Industrial Users:
    - a. Pollutants discharged to the Wastewater Treatment Plant by a non-domestic source (user) shall not pass through the treatment plant or interfere with the operation or performance of the Treatment Plant.
    - 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.
  9. The Permittee shall submit to EPA and NHDES-WD the name of any Industrial User (IU) who commences discharge to the POTW after the effective date of this permit:
    - a. That are subject to Categorical Pretreatment Standards pursuant to 40 CFR §403.6 and



established in 40 CFR Chapter I, Subchapter N (Parts 405-415, 417-436, 439-440, 443, 446-447, 454-455, 457-461, 463-469, and 471 as amended).

- b. That discharges an average of 25,000 gallons per day or more of process wastewater into the POTW (excluding sanitary, non-contact cooling and boiler blow-down wastewater).
- c. That contribute a process wastewater which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW.
- d. That is designated as an IU by the Control Authority as defined in 40 CFR §403.12(a) on the basis that the industrial user has a reasonable potential to adversely affect the waste water treatment facility's operation, or violate any pretreatment standard or requirement in accordance with 40 CFR §403.8(f)(6).

## B. UNAUTHORIZED DISCHARGES

The permit only authorizes discharges in accordance with the terms and conditions of this permit and only from the outfall listed in Part I A.1. of this permit. Discharges of wastewater from any other point sources, including sanitary sewer overflows (SSOs) are not authorized by this permit and shall be reported in accordance with Part II, Section D.1.e. (1) of the General Requirements of this permit (Twenty-four hour reporting).

## C. OPERATION AND MAINTENANCE OF THE SEWER SYSTEM

Operation and maintenance of the sewer system shall be in compliance with the General Requirements of Part II and the following terms and conditions. The permittee and co-permittees are required to complete the following activities for the collection system which it owns:

### 1. Maintenance Staff

The permittee and co-permittees 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.

### 2. Preventative Maintenance Program

The permittee and co-permittees shall maintain an ongoing preventative 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.

### 3. Infiltration/Inflow

The permittee and co-permittees shall control infiltration and inflow into their sewer systems 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.

The permittee and co-permittees shall each submit a summary report of all actions taken to minimize I/I during the previous calendar year to EPA and the NHDES by **February 28<sup>th</sup> of each year**. The report shall also

include a summary of unauthorized discharges during the previous calendar year which were caused by inadequate sewer system capacity, excessive I/I and operational/maintenance problems, including a status of action items necessary to eliminate the discharges. The information reported shall include the date, location, duration and volume of discharge as well as the cause of the overflow and the receiving water.

D. ALTERNATE POWER SOURCE

In order to maintain compliance with the terms and conditions of this permit, the permittee and co-permittees shall provide an alternate power source with which to sufficiently operate its publicly owned treatment works, as defined at 40 CFR §122.2, which references the definition at 40 CFR 403.3(o).

E. 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 and with the CWA Section 405(d) technical standards.
2. The Permittee shall comply with the more stringent of either State (Env-WS 800) or Federal (40 CFR Part 503) requirements.
3. The technical standards (Part 503 regulations) apply to facilities which perform one or more of the following 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. Fired in a sewage sludge incinerator.
4. The 40 CFR 503 conditions do not apply to facilities which place sewage sludge within a municipal solid waste landfill (MSWLF). Part 503 relies on 40 CFR Part 258 criteria, which regulates landfill disposal, for sewage sludge disposed in a MSWLF. These conditions also do not apply to facilities which do not dispose of sewage sludge during the life of the permit, but rather treat the sludge or are otherwise excluded under 40 CFR Part 503.6
5. The Permittee shall use and comply with the attached Sludge Compliance Guidance document to determine appropriate conditions. Appropriate conditions contain 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

Depending upon the quality of material produced by a facility, all conditions may not apply to the facility.

6. If the sludge disposal method requires monitoring, the Permittee shall monitor the pollutant concentrations, pathogen reduction and vector attraction reduction at the following frequency. This frequency is based upon the volume of sewage sludge generated at the facility in dry metric tons per year.
  - a. less than 290.....1/Year
  - b. 290 to less than 1,500.....1/Quarter
  - c. 1,500 to less than 15,000.....6/Year
  - d. 15,000 plus.....1/Month
7. The Permittee shall perform all required sewage sludge sampling using the procedures detailed in 40 CFR Part 503(h).
8. When the Permittee is responsible for an annual report containing the information specified in Attached B, Sludge Compliance Guidance document. Reports are due annually by February 19th. Reports shall be submitted to both addresses (EPA and NHDES-WD) contained in the reporting section of the permit.
9. Sludge monitoring is not required by the Permittee when the Permittee is not responsible for the ultimate sludge use or disposal or when sludge is disposed of in a MSWLF. The Permittee must be assured that any third party contractor is in compliance with appropriate regulatory requirements. In such cases, the Permittee is required only to submit an annual report by February 19<sup>th</sup> of each year containing the following information:
  - a. Name and address of the contractor responsible for sludge use and disposal.
  - b. Quantity of sludge in dry metric tons removed from the facility.

Reports shall be submitted to the address contained in the reporting section of the permit.

#### F. INDUSTRIAL PRETREATMENT

1. The Permittee shall implement the Industrial Pretreatment Program in accordance with the legal authorities, policies, procedures, and financial provisions described in the Permittee's approved Pretreatment Program, and the General Pretreatment Regulations, 40 CFR 403. At a minimum, the Permittee must perform the following duties to properly implement the Industrial Pretreatment Program (IPP):
  - a. Carry out inspection, surveillance, and monitoring procedures 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.

- b. Issue or renew all necessary industrial user control mechanisms within 90 days of their expiration date or within 180 days after the industry has been determined to be a significant industrial user.
  - c. Obtain appropriate remedies for noncompliance by any industrial user with any pretreatment standard and/or requirement.
  - d. Maintain an adequate revenue structure for continued implementation of the Pretreatment Program.
  - e. Within 90 days of the effective date of this permit, the permittee shall submit to NHDES-WD a copy of its current sewer use ordinance and current local limits. Submittal shall include adoption dates for the documents and a narrative indicating any anticipated changes.
  - f. Within 120 days of the effective date of this permit, the permittee shall submit to NHDES-WD a current list of all users discharging industrial waste to the municipal wastewater treatment plant. As a minimum, the list shall indicate the name and address of each industry, along with the following information: telephone number, contact person, facility description, production quantity, products manufactured, industrial processes used, chemicals used in processes, existing level of pretreatment, and type and class of existing discharge permit(s). Submittal shall include a blank or typical permit for each classification and a description of the classification system.
2. The Permittee shall provide the EPA and NHDES-WD with an annual report describing the Permittee's pretreatment program's activities in accordance with 40 CFR 403.12(i). The annual period is defined as October 1<sup>st</sup> - September 30<sup>th</sup>. The annual report shall be consistent with the format described in Attachment C of this permit and shall be submitted no later than November 1<sup>st</sup> of each year.
  3. The Permittee must obtain approval from EPA prior to making any significant changes to the industrial pretreatment program in accordance with 40 CFR 403.18(c).
  4. The Permittee must assure that applicable National Categorical Pretreatment Standards are met by all categorical industrial users of the POTW. These standards are published in 40 CFR 405 et. seq.
  5. The Permittee must modify its pretreatment program to conform to all changes in the Federal Regulations that pertain to the implementation and enforcement of the industrial pretreatment program. The permittee must provide EPA, in writing, within 180 days of this permit's effective date proposed changes to the Permittee's pretreatment program deemed necessary to assure conformity with current Federal Regulations. At a minimum, the permittee must address in its written submission the following areas: (1) Enforcement response plan; (2) revised sewer use ordinances; and (3) slug control evaluations. The permittee will implement these proposed changes pending EPA New England's approval under 40 CFR 403.18. This submission is separate and distinct from any local limits analysis submission described in Part I.A.8.c. of this permit.

**G. MONITORING AND REPORTING**

Monitoring results shall be summarized for each calendar month and reported on separate DMR form(s) postmarked no later than the 15th day of the month following the completed reporting period.

Signed and Dated original DMRs and all other reports or notifications required herein or in Part II shall be submitted to the Director at the following address:

U.S. Environmental Protection Agency  
Water Technical Unit (SEW)  
P.O. Box 8127  
Boston, Massachusetts 02114-8127

Duplicate signed copies of all written reports or notifications required herein or in Part II shall be submitted to the State at:

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

All verbal reports or notifications shall be made to both EPA and NHDES.

**H. STATE PERMIT CONDITIONS**

1. The permittee shall comply with the following conditions which are included as State Certification requirements.
  - a. Pursuant to State Law NH RSA 485-A:13 and the New Hampshire Code of Administrative Rules, Env-Ws 706.08(b) and Env-Ws 904.08, the following submission shall be made to the NHDES-WD by a municipality proposing to accept into its POTW (including sewers and interceptors):
    - (1) A "Sewer Connection Permit Request" for:
      - (a) Any proposed sewerage; whether public or private;
      - (b) Any proposed wastewater connection or other discharge in excess of 5,000 gallons per day;
      - (c) Any proposed wastewater connection or other discharge to a wastewater treatment facility operating in excess of 80% design flow;

- (d) Any proposed connection or other discharge of industrial wastewater, regardless of quality or quantity.
    - (2) An "Industrial Discharge Permit Request Application" for new or increased loadings of industrial wastewater, in accordance with Env-Ws 904.10.
  - b. 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 or interfere with the uses assigned to said water by the New Hampshire Legislature (RSA 485-A:12).
  - c. Any modifications of the Permittee's Sewer-Use Ordinance, including local limitations on pollutant concentrations, shall be submitted to the NHDES-WD for approval prior to adoption by the Permittee.
  - d. Within 90 days of the effective date of this permit, the permittee shall submit to NHDES-WD a copy of its current sewer-use ordinance, if it has been revised since any previously approved submittal.
  - e. Within 120 days of the effective date of this permit, the permittee shall submit to NHDES-WD a current list of all industries discharging industrial waste to the municipal wastewater treatment plant. At a minimum, the list shall indicate the name and address of each industry, along with the following information: telephone number, contact person, products manufactured, industrial processes used, existing level of pretreatment, and list of existing discharge permits with effective dates.
- 2. This NPDES Discharge Permit is issued by the EPA under Federal law. Upon final issuance by the EPA, the NHDES-WD may adopt this permit, including all terms and conditions, as a State permit pursuant to RSA 485-A:13.

Each Agency shall have the independent right to enforce the terms and conditions of this Permit. Any modification, suspension or revocation of this Permit shall be effective only with respect to the Agency taking such action, and shall not affect the validity or status of the Permit as issued by the other Agency, unless and until each Agency has concurred in writing with such modification, suspension or revocation.

#### I. REOPENER CLAUSE

This permit may be modified or revoked and reissued in accordance with 40 CFR § 122.62(a) (Causes for modification) or (b) (Causes for modification or revocation and reissuance). One basis for reopening and modifying the permit during its term is the receipt of information that was not available at the time of permit issuance and that would have justified the application of different permit conditions ("New Information"). See 40 CFR §122.62(a)(2). New Information may include, but is not limited to, an applicable final Total Maximum Daily Load ("TMDL"); other relevant water quality data or studies provided by any party; and the results of ESA Section 7 consultation with the U.S. Fish and

Wildlife Service and/or National Marine Fisheries Service. In addition to constituting New Information, the outcome of the ESA Section 7 consultation may also satisfy the requirements of 40 CFR § 122.62(b)(1).

J. SPECIAL CONDITION

The permittee may submit a written request to the EPA for a reduction in the frequency (to not less than once per year) of required toxicity testing, after completion of a minimum of four (4) successive toxicity tests, all of which must demonstrate compliance with the permitted limit(s) for whole effluent toxicity. Until written notice is received from the EPA that the whole effluent testing requirement(s) has been changed, the permittee is required to continue testing at the frequency specified in this permit.