

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

STATEMENT OF BASIS

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) REVISED DRAFT 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: December 18, 2024 – February 3, 2025

NAME AND MAILING ADDRESS OF APPLICANT:

City of Manchester  
300 Winston Street  
Manchester, NH 03103                      and                      15 Combined Sewer Overflow (CSO) Outfalls

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):

NHC010447	NHC020447	NHC030447
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

On April 10, 2024, the Region 1 Office of the United States Environmental Protection Agency (“EPA” or the “Agency”) published for public notice an NPDES permit (the “2024 Draft Permit”) to the City of Manchester (“City” or “Permittee”) for discharges from the Manchester Wastewater Treatment Facility to the Merrimack River via Outfall 001 as well as 15 combined sewer overflow (CSO) outfalls. EPA has partially revised the 2024 Draft Permit with respect to certain requirements and has prepared a revised draft permit (“2024 Revised Draft Permit”) for public comment which proposes revisions to the 2024 Draft Permit.

EPA notes that the initial public notice period included comments on many portions of the 2024 Draft Permit. EPA is considering those comments and will also consider any additional comments received during this new public notice period. EPA may make changes to the Final Permit based on comments received during both comment periods beyond the changes presented in this 2024 Revised Draft Permit. Although EPA has only revised certain provisions of the Draft Permit which have been highlighted in **red bold font** in the 2024 Revised Draft Permit, EPA is soliciting comments at this time on any provision of the Draft Permit including the supporting material found in this Statement of Basis for the 2024 Revised Draft Permit as well as the 2024 Fact Sheet supporting the original 2024 Draft Permit.

The legal and technical basis for these revisions is described in this Statement of Basis below. The legal and technical basis for all other provisions already included in the original 2024 Draft Permit is included in the 2024 Fact Sheet which continues to be available on EPA’s publicly available website<sup>1</sup> for review.

### 2.0 BASIS OF THE REVISED DRAFT PERMIT

The 2024 Draft Permit included a narrative provision that discharges “shall not cause or contribute to violations of federal or state water quality standards.” EPA has removed this narrative provision (and other similar narrative provisions from Part I.A.3-8 of the 2024 Draft Permit) and has incorporated several alternate provisions to ensure the discharge continues to protect water quality standards. The legal and technical basis for these changes is described below.

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<sup>1</sup> Available at: <https://www.epa.gov/nh/public-notice-draft-permit-manchester-wastewater-treatment-facility-and-co-permittees-bedford>

### **2.1.1 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 permits must include water quality-based limitations. *See* CWA §§ 301(b)(1)(C) and 401; 40 CFR §§ 122.4(d), 122.44(d)(1) and (5), 124.53, and 124.55.

### **2.1.2 Water Quality Standards**

The CWA and federal regulations also require that permit 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).

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, WQSs 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 WQSs 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 WQSs 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).

To ensure compliance with applicable narrative water quality standards, the Region has included numeric water quality-based effluent limitations and monitoring requirements in lieu of certain narrative limitations, as described in greater detail below. *See* Sections 2.1.4 to 2.1.7. These more specific requirements related to WET testing, pollutant scans, benthic studies, and visual inspections of the receiving water provide more direction to the Permittee as to how to ensure compliance with the respective narrative water quality standards. EPA may remove or reduce these new requirements in the future and/or implement an alternative permitting approach if EPA finds that the additional data are no longer necessary to protect these water quality standards.

### **2.1.3 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).

Given that EPA guidance<sup>2</sup> directs that these reasonable potential analyses be based on critical conditions, EPA uses the pollutant concentrations based on all available information provided to EPA during the development of the permit. As discussed in more detail in the pollutant-specific sections below, this information includes data from the Permittee's most recent application, DMR data during the review period, and any other available information included in the administrative record.

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).

If the permitting authority determines that the discharge of a pollutant will not cause, have the reasonable potential to cause, or contribute to an excursion above WQSs, the permit does not need to contain WQBELs for that pollutant. However, EPA must ensure that the discharge of that pollutant does not increase during the permit term to the point that would violate water quality standards. Therefore, Part I.B.1 (Unauthorized Discharges) of the permit includes the following provision to ensure that EPA's reasonable potential analyses (for all pollutants) remain protective throughout the life of the permit, and which would also clearly articulate the scope of the protections afforded to the Permittee pursuant to CWA section 402(k):

“Any pollutant loading greater than the proposed discharge (the “proposed discharge” is based on the chemical-specific data and the facility's design flow as described in the permit application, or any other information provided to EPA during the permitting process) is not authorized by this permit.”

EPA notes that such increases may be allowable, but the Permittee must first submit a request to EPA to authorize such an increase. This request will allow EPA to conduct an updated reasonable potential analysis to reassess whether a WQBEL is needed for the newly proposed discharge. Permit modification or reissuance may be required before the proposed discharge would be authorized.

#### **2.1.4 Toxicity**

As discussed above, under CWA § 301(b)(1)(C), discharges are subject to effluent limitations based on WQSs, including not only numeric criteria but also both narrative criteria to protect

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<sup>2</sup> See 2010 NPDES Permit Writer's Manual, chapter 6 available at: [https://www.epa.gov/sites/default/files/2015-09/documents/pwm\\_chapt\\_06.pdf](https://www.epa.gov/sites/default/files/2015-09/documents/pwm_chapt_06.pdf)

designated uses. 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)).

#### Whole Effluent Toxicity Testing

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 2024 Revised Draft Permit will ensure 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.

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 State 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 (*i.e.*, 12.5 for Manchester) 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. These requirements were carried forward in the 2024 Draft Permit.

WET Re-Test and Toxicity Identification Evaluation and Toxicity Reduction Evaluation (TIE/TRE)

To ensure the receiving water is free from pollutants in concentrations or combinations that are toxic to humans, aquatic life or wildlife, throughout the permit term, EPA has incorporated additional WET requirements described below.

The Permittee shall conduct at least two accelerated re-tests at 14-day intervals which must be started within 14 days and 28 days of receiving the following results:

- any WET test results in a violation of any WET limit and the test acceptability criteria were met (only re-test for the species that failed); or
- the Permittee identifies or is provided notice of a sudden and significant death of large numbers of fish and/or shellfish in the vicinity of the discharge (test for all species identified in permit).

If the receiving water was used as the dilution water and is suspected to be toxic (e.g., based on results from the initial test), the Permittee shall conduct the accelerated WET tests using laboratory water as the dilution water with a similar pH and hardness as the receiving water. If the WET tests using laboratory water do not violate any WET limits, the Permittee shall return to a normal monitoring frequency but should request to continue to use laboratory water as the dilution water based on these results. If either accelerated WET test violates any WET limits (and the test acceptability criteria were met), the discharge is considered to have persistent toxicity and the Permittee must immediately initiate a Toxicity Identification Evaluation and Toxicity Reduction Evaluation (TIE/TRE) in accordance with subpart b below to resolve any toxic impacts on the receiving water.

The details of these requirements are presented in the Revised Draft Permit and were developed based on guidance available in EPA's *2024 NPDES WET Permit Writers' Manual*.<sup>3</sup> EPA notes that the results of the TIE/TRE might also lead to additional, future NPDES permit controls, such as additional WET permit limits, chemical-specific permit limits, or a compliance requirement to reduce or eliminate toxicity.

Annual Chemical Monitoring

As noted above, 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)).

Given that there are other sources of toxic effects (including to human health) that may not be captured by WET testing, EPA has included additional chemical monitoring in the Revised Draft Permit. To ensure that the Permittee and EPA are aware of any changes in the chemical

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<sup>3</sup> Available at: <https://www.epa.gov/system/files/documents/2024-06/npdes-wet-permit-writers-manual.pdf>

characteristics of the discharge that might merit a review of the water quality-based effluent limits, as authorized by Section 402(a)(2) of the CWA and 40 CFR § 122.48, the Revised Draft Permit proposes additional monitoring requirements for a broad range of contaminants. Specifically, EPA has included requirements for annual monitoring of both the effluent and the receiving water immediately upstream of the discharge (taken on the same day during the third calendar quarter to capture relatively low flow conditions) for all the pollutants in Attachment G of the permit (which is based on the current NPDES Application Form 2A Tables B and C). All effluent and ambient results shall be reported in NetDMR for the quarterly DMR report due by October 15 of each year.

These data will provide assurance that the pollutant loading from the WWTF outfall characterized in the most recent permit application, and the ambient conditions upon which the analyses in this permit reissuance were based, have not changed to a degree that would merit new or more stringent water quality-based effluent limits (WQBELs) during the permit term based on numeric or narrative WQs effective at that time.

In addition, the broad range of pollutants in this new monitoring requirement includes many common toxic pollutants. This monitoring will ensure that the sublethal effects of pollutants that are present in the effluent can be considered by the Permittee and by EPA in future permitting decisions or, as necessary to support a TIE/TRE.

#### **2.1.5 Aesthetics, Solids and Oil & Grease**

New Hampshire surface water quality standards include several narrative requirements related to aesthetics, solids and oil & grease, as follows:

Env-Wq 1703.03(c)(1) – All surface waters shall be free from substances in kind or quantity that...

- a. Settle to form harmful benthic deposits;
- b. Float as foam, debris, scum or other visible substances;
- c. Produce odor, color, taste or turbidity that is not naturally occurring and would render the surface water unsuitable for its designated uses;

Env-Wq 1703.03(c)(3) – Tainting substances shall not be present in concentrations that individually or in combination are detectable by taste and odor tests performed on the edible portions of aquatic organisms.

Env-Wq 1703.09(b) – Class B waters shall contain no oil or grease in such concentrations that would impair any existing or designated uses.

Env-Wq 1703.10(b) – Class B waters shall contain no color in such concentrations that would impair any existing or designated uses, unless naturally occurring.



Env-Wq 1703.12(b) – Class B waters shall contain no slicks, odors, or surface floating solids that would impair any existing or designated use, unless naturally occurring.

Env-Wq 1703.11(b) Turbidity. Class B waters shall not exceed naturally occurring conditions by more than 10 NTUs.

To ensure compliance with these narrative water quality standards, Part I.A.1 of the Revised Draft Permit includes a reporting requirement for “Aesthetics” and a footnote which more specifically requires the following monitoring requirements.

Once per month, the Permittee shall conduct a visual inspection of the receiving water in the vicinity of the outfall and report any changes in the receiving water that may be caused by the discharge as follows:

- 1) any observable change in odor,
- 2) any visible change in color,
- 3) any visible change in turbidity,
- 4) the presence or absence of any visible floating materials, scum or foam,
- 5) the presence or absence of any visible settleable solids,
- 6) the presence or absence of any visible film or sheen on the surface of the water.

Although there is no objective means to measure the impact of the discharge on the taste of the receiving water, the Permittee shall report to EPA and NHDES any complaints it receives from the public regarding taste and/or odor and document what remedial actions, if any, it took to address such complaints.

The results do not need to be submitted each month. Rather, an annual summary of all 12 monthly results shall be submitted as an electronic attachment to the December DMR by each January 15<sup>th</sup> for the previous calendar year.

If an oily sheen is observed on the surface of the water in the vicinity of the outfall during the monthly visual inspection, the Permittee shall follow the procedures described in Part I.G.4 of the permit related to accelerated WET testing.

#### **2.1.6 Benthic Survey**

New Hampshire surface water quality standards address bottom pollutants at Env-Wq 1703.03(c)(1) which requires “All surface waters shall be free from substances in kind or quantity that: a. Settle to form harmful benthic deposits;” and at Env-Wq 1703.08(b) which states that Class B waters “shall contain no benthic deposits that have a detrimental impact on the benthic community, unless naturally occurring.”

To ensure compliance with these standards, the Revised Draft Permit requires a benthic survey to assess impacts from the discharge to aquatic life in the benthic environment. The Revised

Draft Permit proposes a requirement of one such survey this permit term during the third calendar quarter that begins at least 12 months from the effective date of the permit. The third calendar quarter represents the season of relatively low flow when the discharge has less dilution and is, therefore, more likely to impact the benthic population. The initial 12 months of the permit term allows the Permittee sufficient time to plan for this survey after permit issuance while ensuring results are available relatively soon in case further action is needed to protect the benthic population. The results of the benthic survey will assist EPA in the development of any future permit conditions needed to ensure compliance with the water quality standards referenced above.

The permit requires benthic grab samples to be taken at three locations sited along each of two transects (one immediately upstream/upgradient of the discharge at a location considered to be unimpacted by the discharge, and one downstream/downgradient of the discharge immediately outside of the estimated zone of initial dilution). Along each transect, duplicate samples shall be taken in the thalweg along with sites near each shoreline, for a total of six samples along each transect and 12 samples total. Organisms shall be sorted and identified to the lowest possible taxonomic level. Counts shall be standardized to densities per square meter of bottom. To characterize the bottom, grain size samples shall be collected at each grab site.

In order to ensure scientifically defensible results, taxonomy must be performed by a professional freshwater macroinvertebrate taxonomist who, at a minimum, holds and maintains for the duration of the contract a certification from the Society of Freshwater Science for eastern genera in group 1 (Crustacea and Arthropods other than EPT and Chironomidae), group 2 (Ephemeroptera, Plecoptera, and Trichoptera nymphs and larvae only) and group 3 (Chironomidae larvae only).

A report summarizing the results and comparing the upstream and downstream benthic populations shall be submitted by the following January 15 as an electronic attachment to the DMR.

#### **2.1.7 Combined Sewer Overflow (CSO) Outfalls**

##### **Aesthetics**

To ensure that the CSO outfalls also comply with the New Hampshire narrative water quality standards presented in Section 2.1.5 above, the 2024 Revised Draft Permit includes two requirements below that apply to each CSO outfall.

1. The discharge shall not cause a change in color or odor or result in visible floating materials, grease, oil, scum, or foam in the receiving water in the vicinity of the outfall.
2. The discharge shall be free from oil, grease, or petrochemicals that produce a visible film on the surface of the receiving water in the vicinity of the discharge or coat the banks of the water course in the vicinity of the outfall.

Compliance with these requirements can be easily ascertained by direct observation of each outfall during a discharge event.

### *Toxicity*

EPA notes that CSO discharges not only have the potential to violate water quality standards related to bacteria but also contain a wide variety of toxic pollutants. To characterize the CSO outfalls with respect to toxic pollutants, the Revised Draft Permit includes a requirement that CSO outfalls 031, 044, 046, and 047 conduct annual sampling for the pollutants listed in Attachment G (List for Pollutant Scans) of the Revised Draft Permit. These four CSO outfalls were chosen because they represent approximately 95% of the total CSO volume (based on Appendix E of the 2024 Fact Sheet supporting the 2024 Draft Permit). Therefore, EPA considers that characterizing these four outfalls is sufficient to understand the pollutants in all of the CSO discharges from the City. EPA notes that these data may be used in a future permitting action to develop and establish additional water quality-based effluent limits for these toxic pollutants, as necessary to ensure that the permit is protective of water quality standards.

## **3.0 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 Revised Draft Permit are stringent enough to assure that the discharge will not cause the receiving water to violate the State WQSs or it is deemed that the state has waived its right to certify. 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 Revised Draft Permit will be certified.

If the State believes that any conditions more stringent than those contained in the Revised Draft Permit are necessary to meet the requirements of either the CWA §§ 208(e), 301, 302, 303, 306 and 307, and with appropriate requirements of State law, the State should include such conditions in the certification. The only exception to this is that the sludge conditions/requirements implementing Section 405(d) of the CWA are not subject to the Section 401 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 the applicable procedures of 40 CFR § 124.

In addition, the State may provide a statement of the extent to which any condition of the Revised Draft Permit can be made less stringent without violating the requirements of State law, including water quality standards.

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." See 40 CFR § 124.55(b). EPA regulations

pertaining to permit limits based upon water quality standards and state requirements are contained in 40 CFR § 122.4(d) and 40 CFR § 122.44(d).

Note that a draft state certification will be made available for public comment by the State separately from this Draft Permit as part of the permit reissuance process. EPA does not have authority to make changes to the state certification conditions. Any comments regarding the draft state certification conditions should be made directly to NHDES as part of their separate public notice.

#### **4.0 PUBLIC COMMENTS, HEARING REQUESTS AND PERMIT APPEALS**

All persons, including applicants, who believe any condition of the Revised 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, Meridith Finegan, at the following email address: [Finegan.Meridith@epa.gov](mailto:Finegan.Meridith@epa.gov).

Prior to the close of the public comment period, EPA will conduct a public hearing on the 2024 Revised Draft Permit pursuant to 40 CFR § 124.12.

In reaching a final decision on the 2024 Revised Draft Permit, EPA will respond to all significant comments (including those raised in the public hearing) 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, 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 2024 Revised Draft Permit cannot be emailed to the permit writer specified above, please contact them at telephone number: (617) 918-1533.

December 2024  
Date

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