

July 26, 2007

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**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Ellen Weitzler, P.E.
Environmental Engineer
US EPA Region 1 (CIP)
One Congress Street
Boston, MA 02114

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Paul Hogan
Massachusetts Department of Environmental
Protection
627 Main Street
Worcester, MA 01608

Re: ExxonMobil Comments on May 31, 2007 Draft NPDES Permit MA0000833

Dear Ms. Weitzler and Mr. Hogan:

Enclosed please find the following in connection with the above-referenced matter:

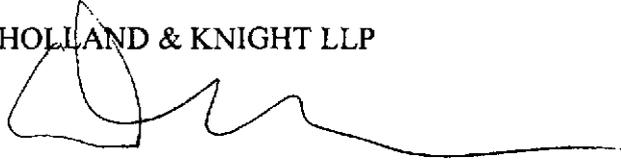
1. July 26, 2007 Letter from David McWilliams, ExxonMobil Area Manager
2. General Comments
3. Detailed Comments on the Draft Permit and Fact Sheet (Page-by-Page)
4. Petro-Chemical Associates, Inc., Inspection of the Flume Outfall at Exxon Bulk Storage Terminal, Everett, Massachusetts on June 25, 1985
5. Petro-Chemical Associates, Inc., Visual Inspection of 1,600-foot Flume Outfall at Exxon Bulk Storage Terminal, Everett, Massachusetts, February 4, 1985
6. Camp Dresser & McKee Inc., Site Plan Existing Storm Sewer Effluent Pipe, Exxon Company, USA-Everett Terminal, Everett, MA, October 23, 1986
7. February 27, 1987 Letter and enclosures previously submitted to EPA
8. June 4, 2003 Letter previously submitted to EPA
9. March 24, 1992 Letter from Camp Dresser & McKee Inc.
10. October 3, 1966 (Rev. February 3, 1967) Plan of Land in Everett-Chelsea-Mass., William S. Crocker, Inc.

July 26, 2007
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We appreciate your attention, and request the opportunity to meet with you and discuss these matters.

Sincerely,

HOLLAND & KNIGHT LLP

A handwritten signature in black ink, appearing to read 'Dianne R. Phillips', written over the firm name.

Dianne R. Phillips

Cc: ExxonMobil Corporation

ExxonMobil Pipeline Company
52 Beacham Street
Everett, Massachusetts 02149

ExxonMobil
Pipeline

Ellen Weitzler, P.E.
Environmental Engineer
US EPA Region 1 (CIP)
One Congress Street
Boston, MA 02114

Paul Hogan
Massachusetts Department of Environmental Protection
627 Main Street
Worcester, MA 01608

Re: ExxonMobil Comments on May 31, 2007 Draft NPDES Permit MA0000833

Dear Ms. Weitzler and Mr. Hogan:

It is Exxon Mobil Corporation's policy to conduct its business in a manner that is compatible with the balanced environmental and economic needs of the communities in which it operates. The Corporation is committed to continuous efforts to improve environmental performance throughout its operations.

Accordingly, the Corporation's policy is to:

- comply with all applicable environmental laws and regulations and apply responsible standards where laws and regulations do not exist;
- encourage concern and respect for the environment, emphasize every employee's responsibility in environmental performance, and foster appropriate operating practices and training;
- work with government and industry groups to foster timely development of effective environmental laws and regulations based on sound science and considering risks, costs, and benefits, including effects on energy and product supply;
- manage its business with the goal of preventing incidents and of controlling emissions and wastes to below harmful levels; design, operate, and maintain facilities to this end.

It is with this policy in mind that we submit comments on the Draft NPDES Permit, MA0000833. Accordingly, we would welcome the opportunity to continue the dialogue we have begun with EPA and DEP in an effort to cooperatively develop an effective permit and further our operational improvements.

Toward that end, we have begun a number of investigations which we believe will enhance our operations and address concerns previously raised by EPA and DEP. Specifically, we have initiated an investigation regarding the potential infiltration of NAPL into the drainage system, which as you know includes miles of drain lines. This investigation is in conjunction with the Notice of Audit Findings issued by DEP. We have also initiated an investigation of the treatment works design and ways to enhance its performance. We will share the results of these investigations with you when they are complete.

We look forward to continuing to build a positive working relationship with both agencies to resolve any outstanding issues. If at any time you would like to discuss these matters, please call me at (617) 381-2800.

Sincerely,

A handwritten signature in black ink, appearing to read "David J. McWilliams". The signature is fluid and cursive, with the first name "David" being the most prominent.

David J. McWilliams
NE Area Manager
Exxonmobil Pipeline Company

ExxonMobil Everett Terminal

52 Beachman Street, Everett MA 02149

Comments on May 31, 2007 DRAFT Permit and Fact Sheet submitted by ExxonMobil

NPDES Permit No. MA0000833

General Comments

1. Misapplication of Technology-Based Effluent Standards Based on Best Professional Judgment

EPA has improperly relied upon the Remediation General Permit and supporting Fact Sheet (MAG910000) published in the Federal Register September 9, 2005 (70 Fed. Reg. 53663) (hereinafter "RGP") as its sole reference to support its proposed technology-based effluent limits. These proposed limits affect the following contaminants: (a) oil and grease (reduced from the current limit of 15 mg/l to 5 mg/l); (b) benzene (reduced from its water-quality based limit of 40 µg/l to 5 µg/l); (c) total BTEX (newly proposed at 100 µg/l where previously the elements other than benzene were simply reported); and (d) Methyl-Tertiary-Butyl-Ether (MTBE) (newly proposed at 70 µg/l where none previously existed).

Subpart A of 40 CFR Part 125 establishes criteria and standards for the imposition of technology-based treatment requirements in permits under Section 301(b) of the federal Clean Water Act. Where a technology-based effluent limitation guideline does not exist for a facility or an industry, EPA may establish effluent limits on a case-by-case basis using Best Professional Judgment ("BPJ"). See 33 U.S.C. § 1342(a)(1)(B); 40 C.F.R. §§ 122.44(a)(1); 125.3(c)(2); see also 314 C.M.R. § 3.11(6)(b) (technology-based effluent limitations for non-POTWs developed on a case-by-case basis based on best professional judgment "will consider ... any technology or process *which has been demonstrated to be achievable* in the experience of the Department for the class or category of discharger")(emphasis supplied). Here, EPA has not promulgated technology-based National Effluent Limitation Guidelines ("ELG") for discharges from petroleum bulk storage and distribution terminals (Standard Industrial Code 5171), although it has promulgated such ELGs for the Petroleum Refining industry, 40 CFR Part 419.¹ The Everett Terminal is a former refinery and, as described below, reasonable analogies exist which were ignored by EPA in consideration of its exercise of BPJ.

In creating effluent limits using BPJ, permit writers must consider the following:

- (i) The appropriate technology for the category or class of point sources of which the applicant is a member, based on all available information; and
- (ii) Any unique factors relating to the applicant.

¹ Additionally, EPA did promulgate a general permit, known as the Multi-Sector General Permit (MSGP) (reissued October 30, 2000 in 65 Fed. Reg. 64801), which included bulk storage facilities as an industrial activity eligible for coverage. However, the Everett Terminal was previously issued an individual permit developed on a case-by-case basis and thus the MSGP is inapplicable to the discharges at issue here.

40 C.F.R. § 125.3(c)(2); see also Office of Wastewater Management, U.S. Environmental Protection Agency NPDES Permit Writers' Manual ("NPDES Permit Writers' Manual" or "Manual") 69 (Dec. 1996). In addition, the regulations set forth additional requirements based on whether Best Practicable Control Technology ("BPT"), Best Conventional Control Technology ("BCT") or Best Available Control Technology ("BAT") applies. 40 C.F.R. § 125.3(d).

Where BAT applies,² the permit writer must consider the following:

- (i) The age of the equipment and facilities involved;
- (ii) The processes employed;
- (iii) The engineering aspects of the application of various types of control techniques;
- (iv) Process changes;
- (v) The cost of achieving such effluent reduction; and
- (vi) Non-water quality environmental impact (including energy requirements).

40 C.F.R. § 125.3(d)(3). With respect to applying BPJ to BCT,³ the permit writer must consider factors (i) – (iv) and (vi) as identified for BAT and, in addition, "[t]he reasonableness of the relationship between the costs of attaining a reduction in effluent and the effluent reduction benefits derived . . ." among other things. 40 C.F.R. § 125.3(d)(2).

The NPDES Permit Writers' Manual notes that BPJ allows permit writers considerable case-by-case flexibility. See, e.g., NPDES Permit Writers' Manual at 69. Nonetheless, the Manual also suggests that permit writers must strive to make permits based on BPJ "technically sound and reasonable" so as to withstand scrutiny. It defines "technically sound permit conditions" as "conditions that are achievable with existing technology." Id. at 70 (emphasis added). Further, it defines "reasonable" as "conditions that are achievable at a cost that the facility can afford." Id. The Manual also states that "permit writers must consider the costs to comply when establishing BPJ permit limits for toxic and nonconventional pollutants." Id. at 73. In summary, BPJ limits must be carefully drafted to withstand scrutiny and must be technically sound, economically reasonable, based on unimpeachable information, and derived logically from the data through established procedures. Id. at 205. Failure to consider any one of the statutory and regulatory factors constitutes an abuse of discretion. See Texas Oil & Gas Ass'n v. U.S. Evtl. Protection Agency, 161 F.3d 923, 934 (5th Cir. 1998).

EPA's misapplication of BPJ is twofold in that it is both factually and legally flawed. From a factual perspective, EPA's misapplication of BPJ begins with its mischaracterization of the storm sewer system at the Everett Terminal, as a "de facto groundwater collection and treatment system" which contributes "a constant flow of oil to the treatment works." See Fact

² The EPA has classified benzene, toluene and ethylbenzene as a toxic pollutants, which are subject to BAT. See 33 U.S.C. § 1317(a)(2); 40 C.F.R. § 401.15. Xylene and MTBE are nonconventional pollutants, which are also subject to BAT. See 33 U.S.C. § 1311(b)(2)(F).

³ Oil and grease is a conventional pollutant subject to BCT. See 33 U.S.C. § 1311(b)(2)(E); 40 C.F.R. § 401.16.

Sheet at 11-12, 15. This characterization is apparently based upon the belief that the groundwater at the site is "generally contaminated" (without definition). See Fact Sheet at 12. ExxonMobil does not dispute that the site is a listed remediation site under the jurisdiction and regulation of M.G.L. c. 21E and the Massachusetts Contingency Plan, 310 CMR 40.0000 *et seq.* ("MCP"). Moreover, ExxonMobil acknowledges that there exist areas of soil and groundwater contamination within the 110-acre facility and that the oil-water separator ("OWS") is used regularly to separate residual oil from the combined flows into the OWS before it is ultimately discharged.⁴ There is no scientific basis, however, for the assertion that pollutants in excess of appropriate limits are routinely being discharged as claimed.

Furthermore, ExxonMobil disputes that "the storm water collection and discharge system is being utilized as a critical component of the remedial action to prevent off-site migration" simply because operation of the manual sump pumps within the diked, firebank areas affects the regional groundwater flow.⁵ The existence of the manually-operated sumps to remove stormwater from the diked areas after large precipitation events is an operational requirement to maintain the storage capacity of the diked areas in the event of a spill. It is expected that such intermittent sump operation could impact regional groundwater flow in the proximity of the pumps, especially where there exists a high water table. These facilities and their operational characteristics were present in 1991 and 2000 when the existing permit limits were established. Since then they have not been transformed into critical components of the "remedial action," which is fully regulated by applicable state law.⁶

Lastly, ExxonMobil is currently in compliance with the MCP requirements for managing such soil and groundwater contamination. To date, the site conditions have not justified design and construction of a groundwater collection and treatment system, and none has been required. Indeed, as described in reports filed with the DEP in compliance with MCP requirements, "active remedial alternatives such as pump and treat are not possible" in many of the areas of concern identified by EPA (Fact Sheet at 11) due to operating subsurface structures, including product pipelines. ExxonMobil, through its Licensed Site Professional ("LSP") will continue to evaluate remedial alternatives and related activities as necessary to maintain full compliance with site remediation requirements, and anticipates investigating the issues raised by EPA as part of the next MCP-required review due in October 2009.⁷ ExxonMobil is committed to investigating the concerns raised by EPA, including undertaking appropriate studies to determine if NAPL is infiltrating the storm sewer at levels which have the potential to cause, or contribute to an in-

⁴ ExxonMobil denies that "oily water is typically skimmed off twice per day" (Fact Sheet, p. 13) and "oil is skimmed off the oil/water separator at least daily" (Fact Sheet, p. 15). Rather, what ExxonMobil reported is that the treatment works are inspected at least twice per day and the manual skimmers are operated as needed in accordance with design specifications and good industry practice.

⁵ EPA relied upon a brief summary from a 1996 report and limited data filed in accordance with MCP requirements to reach its conclusions. However, absent specific data linking *elevated* levels of contaminated groundwater with areas of storm sewer drain infiltration, there is simply no way to confirm that "contaminated groundwater" (of an impermissible level) is improperly discharging through the drainage system. Monitoring data from the discharge points shows compliance with existing permit limits.

⁶ For example, if the sumps were a critical component of the remedial system, as alleged, the LSP would have been required to document such operation as part of the Phase III Remedial Action Plan through hydrogeologic testing, including pilot testing, drawdown, capture zone, transmissivity, yield, etc.

⁷ See *Notice of Audit Findings*, DEP, July 16, 2007 finding no violations of the applicable requirements of the MCP.

stream excursion above the (narrative) criterion within applicable state water quality standards.⁸ However, based on the current body of scientific evidence, ExxonMobil believes EPA's conclusions are simply not supported by the facts.

In ExxonMobil's view, EPA also failed to give due consideration to the complexity, site history, age and geographical extent of the Everett Terminal in developing draft permit limits and conditions that are substantially different than the limits and conditions in place since approximately 1990. The Everett Terminal discharge system consists of over 13,500 linear feet (almost 3 miles) of gravity drain lines and approximately 7,000 feet (over 1 mile) of forced mains ranging in size from less than 12 inches in diameter up to 60 inches in diameter and over 100 vertical structures constructed approximately 40 to 80 years ago which culminate at the treatment works before discharging into the Island End River, a Class SB water-body within a state "Designated Port Area" dedicated to water-dependent industrial uses.⁹

In addition to these factual problems, EPA's development of effluent limits using BPJ is legally flawed in that there is no evidence in the record that the regulatory factors were properly considered with respect to the Everett Terminal. Rather, ExxonMobil contends EPA blindly applied the effluent limits developed as part of the RGP without consideration of the site-specific characteristics and the required regulatory factors. Specifically, with regard to the basis for its BPJ decision, EPA states it "established technology based effluent limits using BPJ for contaminants in the groundwater based on review of commonly available and utilized groundwater treatment technologies at remediation sites." Fact Sheet, p. 14. Additionally "EPA reviewed a number of sources, including the substantial monitoring data being submitted pursuant to approved site remediation projects, reviewed a number of other EPA and state issued general permits and related effluent guidelines developed by EPA" citing the RGP issued in 2005. Fact Sheet, p. 16. Further, EPA considered "discharges at similar facilities in Massachusetts"¹⁰ and established technology-based effluent limits "based on treatability using

⁸ State water quality standards for Class SB water bodies are found in 314 CMR 4.05(4)(b) and present narrative criteria. With respect to issues most relevant here, the standard is as follows: "These waters shall be free from oil, grease and petrochemicals that produce a visible film on the surface of the water, impart an oily taste to the water or an oily or other undesirable taste to edible portions of aquatic life, coat the banks or bottom of the water course, or are deleterious or become toxic to aquatic life." References to taste of the water or aquatic life are inapplicable to the Island End River.

⁹ The Island End River is heavily contaminated from historic coal tar processing originating on property adjacent to the ExxonMobil Everett Terminal. According to a MassDEP Internal Briefing Memorandum, relied upon as a reference to EPA's Fact Sheet, as recently as 2006 before river sediment remediation was begun, "sheens continued to be produced by heavily contaminated sediments in the river bottom." Robertson, Stephen J., 2006, *MassDEP Internal Briefing memorandum to Edward Kunce, Arleen O'Donnell, Philip Griffiths, Janine Commerford, and Edward Coletta regarding EVERETT - Former Coal Tar processing Facility, Release Tracking No. 3-0309, Island End River Cleanup*, March 23, 2006, page 2. The river remediation project, which is expected to cost between \$45 and 47 million, includes enclosing approximately 1.9 acres of the most heavily contaminated sub-aqueous sediments and dredging an additional 72,000 cubic yards of sediments with concentrations of greater than 1% polycyclic aromatic hydrocarbons (PAH) which are believed to be causing the sheens. *Id.* at pp. 3-4. Although EPA reports the cleanup work of the most highly-contaminated sediments in the Island End River as "completed" (Fact Sheet, p. 6), that does not appear to be the case based on recent observations.

¹⁰ Comparisons to the so-called "Chelsea Creek" facilities, do not support EPA's BPJ determination here because, among other things, the lower, technology-based limits were imposed where existing groundwater pump and treat systems were already installed as required by the MCP and where prior NPDES "Exclusion letters" (the regulatory predecessor to the RGP) were already in place. See, e.g., Global Petroleum Corporation, NPDES Permit No. MA0003425 (Fact Sheet, p. 10); Global REVCO Terminal, LLC, NPDES Permit No. MA0003298 (Fact Sheet, p.

liquid phase carbon adsorption, a proven technology capable of removing benzene and other petroleum hydrocarbons from water to non-detectable levels." Fact Sheet, p. 19. Lastly, EPA concluded that "[m]onitoring reports from gasoline remediation sites in New England demonstrate that using best available technology (e.g. air stripping and/or carbon adsorption) a MTBE limit of 70 µg/L can be consistently met by a properly designed and maintained treatment system" citing the RGP. There is no discussion in the record to suggest that EPA relied upon anything other than the RGP (and other terminals where the RGP was applied to preexisting groundwater pump & treat systems required by the MCP) in establishing these technology-based limits for oil & grease, benzene, total BTEX and MTBE, and there is not a single mention of consideration of the regulatory factors enumerated in 40 C.F.R. § 125.3(d).

To comply with the regulations, EPA must first consider "the appropriate technology for the category or class of point sources of which the applicant is a member, based on all available information" as well as unique, site-specific factors. 40 C.F.R. § 125.3(c)(2). The Everett Terminal point source "category or class" is unique and consists of a commingled stream which includes process-related flows, storm runoff, and *assuming arguendo* "contaminated groundwater." This stream flow rate varies unpredictably from a low of approximately 60,000 gallons per day ("gpd") to over 6 million gpd and is collected over literally miles of conduits, much of it uncontrolled gravity-based piping, before reaching the treatment works. Additional factors including the age of the piping and the process employed (largely gravity-based conduits and required operational sumps in firebank diked areas) are also relevant. Likewise, EPA must consider "engineering aspects of the application of various types of control techniques" and necessary "process changes" before imposing a new technology-based requirement.

There is nothing within the entire RGP record to support the conclusion that the technology investigated for development of that limited scope, general permit is "appropriate" for the site-specific individual permit at issue here when considering the regulatory factors. As described in ExxonMobil's prior correspondence dated February 5, 2007 (incorporated herein by reference)¹¹, the RGP was conservatively developed for sites without an individual permit operating an on-going groundwater treatment system as required by the MCP. *See USEPA 2005 Fact Sheet, Proposed Remediation General Permit Under the National Pollutant Discharge Elimination System (NPDES) for Discharges in Massachusetts and New Hampshire* at 9-10, 16.

The discharges and technology studied as part of the RGP were identified as "low volume" typically designed with flow rates of a few gallons per minute up to about 40 gallons per minute for a maximum flow of approximately 40,000 gpd. *Id.* at 29, 37, 57. Thus, the maximum flow rate of the technology reviewed for the RGP is approximately two-thirds the rate of the *lowest* daily flow rate experienced at the Everett Terminal. Additionally, the discharges and technology reviewed for the RGP were of "short duration" ranging from a few days to 2 years. *Id.* The individual permit at issue here has been in place for decades and is in the process

7); Chelsea Sandwich, LLC, NPDES Permit No. MA0003280 (Fact Sheet, p. 8); *see also* Response to Comments, pp. 17-18 (EPA rejects commenter which urged requirement of groundwater treatment technology be imposed with lower, technology-based effluent limits at all terminals due to known contamination, not just those with preexisting pump & treat systems).

¹¹ EPA, in correspondence dated February 26, 2007, committed to taking "these [comments] into consideration as the draft permit and fact sheet are finalized" although neither ExxonMobil's correspondence or the issues raised are referenced in the Fact Sheet subsequently issued May 31, 2007.

of renewal for another 5-year term. Because the flows regulated by the RGP were the result of an operating groundwater treatment system (e.g. the technology which supports the BPJ determination), the flows were generally uniform and regular. At the Everett Terminal, the discharge flows vary widely and are unpredictable because the flow volume is dominated by precipitation. Any technology-based effluent limit imposed as part of the individual permit at issue here based on BPJ must be supported by technology which meets these unique, site-specific criteria. Nothing in the record supports application of the technology relied upon in the RGP to the site-specific, unique factors at issue in this case.¹²

Additionally, due to the scope and nature of the general permit process, including an acknowledged "very conservative" approach, the RGP effluent limits are inappropriate for application to an individual permit regulating a commingled discharge of an industrial facility into a Class SB water body located within a Designated Port Area, reserved for water-dependent industrial uses. The RGP permit effluent limits in many cases correspond with the Maximum Contaminant Level ("MCL") or other advisory guidelines for *drinking water* (e.g. benzene, MTBE). *Id.* at 34, 47, 50. In addition to applying a drinking water standard, "because a general permit is designed for a variety of potential situations, the effluent limitations (other than for metals) have been set conservatively at zero dilution." *Id.* at 38. Neither drinking water standards or an effluent limitation with zero dilution are appropriate in this case.

With respect to the proposed MTBE effluent limitation of 70 µg/l, the inappropriateness of that application to the Everett Terminal is especially pronounced. First, MTBE has never even been monitored on a regular basis in the discharge. EPA relies upon a single, pretreatment data point of a sample taken August 2, 2006 with results of 318 µg/l, completely ignoring the July 18, 2006 results which ranged from 32.4 µg/L to 49.6 µg/L. *See* Fact Sheet at 19-20.¹³ It is unreasonable to set an effluent limit based upon a single data point without first requiring a period of monitoring. This is especially true where MTBE is no longer used in any products stored at the Everett Terminal. Additionally, as described in the Response to Comments for the RGP (p. 47), "EPA recognizes that there is no federal water quality standard set for MTBE at this time and that preliminary studies have indicated that acute and chronic criteria for both fresh and marine waters could be substantially higher than the current groundwater and drinking water

¹² Indeed, the RGP Fact Sheet specifically states that where the "discharge under this permit indicates some unusual circumstances where the effluent limitation for benzene or the other BTEX compounds may be problematic or human health criteria based limits are needed, EPA-NE will issue an individual permit," presumably with limits higher than the RGP ultra-conservative limits and at the human health criteria limit (higher than the effluent limit for benzene in ExxonMobil's current permit). *Id.* at 47. Additionally, in its Response to Comments for the RGP, EPA again confirms that use of the ultra-conservative permit limitations via the RGP is a "choice, rather than a mandate" and that operators have the option of applying for a site-specific individual permit to address unique factors. *See, e.g.,* Response to Comments at 6.

¹³ At the Public Meeting, EPA acknowledged it had only a single data point but claimed there was "lots of groundwater data" showing historic MTBE in the groundwater. However, the area where residual MTBE is mostly found in soil and groundwater relates to an identifiable spill in September 2003 from Tank 171 which spill was addressed under MCP requirements. More importantly, the spill occurred in an area where no drainage structures were located so it is unlikely significant contaminated groundwater infiltration exists at a level to adversely impact the surface water quality standards of the Island End River.

limits in MA (70 µg/l).¹⁴ Furthermore, as recognized in the RGP Fact Sheet (p. 51) and Response to Comments (p. 46), MTBE is significantly more difficult to treat with the technology studied (and relied upon here) requiring more air capacity if using air stripper technology and additional carbon capacity with more frequent carbon change-outs if using carbon treatment technology. Both of these factors greatly increase the cost of system operation and maintenance. There is no evidence in the record that EPA considered, in any fashion, these additional factors. ExxonMobil is willing to investigate whether MTBE has the potential to cause or contribute to an in-stream excursion of state water quality standards as part of its Best Management Practices ("BMP") plan and its on-going work under the MCP, but disputes that EPA can reach that conclusion based on the information in the record.

With respect to the proposed oil & grease limit of 5 mg/L, EPA acknowledges that the long-standing petroleum industry standard is 15 mg/L based on existing OWS technology (as currently employed at the Everett Terminal). Fact Sheet, p. 15. See also 40 C.F.R. Part 419 (Effluent Limitation Guideline for Petroleum Refining Point Source Category). "Originally this effluent limit was established by EPA-Headquarters as guidance to, and as means of establishing a categorization within, the petroleum marketing terminals and oil-production-facilities categories." 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 No. MA0020869 (Sprague Energy), January 29, 2007, p. 10. Nevertheless, EPA proposes reducing the effluent limitation to 5 mg/L because oil is actually being captured by the existing oil-water separator and it appears to EPA that at least some of that oil is originating from the groundwater.¹⁵ Thus, EPA asserts that because the oil is coming from the groundwater as opposed to storm water runoff, it should apply technology-based treatment limits that are associated with groundwater pump and treat systems, and again cites the RGP as authority. Fact Sheet, p. 16.

As indicated above, ExxonMobil believes that the RGP standards are inappropriate for the Everett Terminal and EPA's proposed application here does not properly consider the required regulatory factors. Because oil & grease is a conventional pollutant, by regulation EPA was also required to consider "[t]he reasonableness of the relationship between the costs of attaining a reduction in effluent and the effluent reduction benefits derived . . ." among other things. 40 C.F.R. § 125.3(d)(2). As EPA failed to consider any cost associated with the treatment technology it reviewed and relied upon, it did not meet this additional regulatory criteria. Moreover, there is nothing to suggest that even if EPA considered the additional costs associated with this new technology-based limit, that the minimal effluent benefits derived from a reduction of 15 mg/L to 5 mg/L in the discharge to the Island End River would be justified under the circumstances.

¹⁴ Moreover, as described in the RGP Response to Comments (p. 46) MTBE is not bioaccumulative and therefore should not be subject to a zero dilution policy, as well as a conservative drinking water standard, especially here where there is only a single, isolated data point linking the presence of MTBE to the discharge flow.

¹⁵ Although ExxonMobil disputes that oil is skimmed "at least daily" as asserted by EPA (Fact Sheet, p. 15), even if it was, that does not change the fact that the existing OWS is working as designed and is actually capturing oil properly. As noted above (and as acknowledged by EPA), ExxonMobil has met its permit requirements, and only a single sample for the period 2002 to 2006 exceeded the lower proposed limit of 5 mg/L (September 2004, 7.2 mg/L). Fact Sheet, p. 16. This is strong evidence that the OWS, and treatment works generally are working properly and there is no need for further conditions or stricter effluent limits.

Furthermore, there is nothing in the record to suggest that EPA considered the analogy which can be found in the petroleum refining industry ELG promulgated by EPA, 40 C.F.R. Part 419. In that ELG, EPA specifically considers discharge limits for wastewater consisting of "contaminated runoff." "Contaminated runoff" is water which has come in direct contact with raw materials, free product, and related sources and likely to contain oil and oil-related pollutants, and means something more than "regular" storm runoff. See 40 C.F.R. § 419.11(g); 50 Fed. Reg. 28516, 28522 (July 12, 1985) (clarifying that the intention is to include the waste stream when there is direct contact with raw materials or petroleum products from spills, etc. and to distinguish it from more typical runoff, including in tank farm areas, where no direct contact with petroleum products occurs). EPA has determined the effluent limit for "wastewater consisting solely of contaminated runoff" (not commingled with any other process wastewater) to be an oil and grease limit of 15 mg/L recognizing that this limit is appropriate for water which has come in direct contact with petroleum products and is "contaminated" not unlike the situation at the Everett Terminal.

Moreover, there is no evidence that the standard of 15mg/L for oil and grease has the potential to cause a violation of the state water quality standards. Specifically, State water quality standards for Class SB water bodies are found in 314 CMR 4.05(4)(b) and present narrative criteria. With respect to oil and grease, the standard is as follows: "These waters shall be free from oil, grease and petrochemicals that produce a visible film on the surface of the water, impart an oily taste to the water or an oily or other undesirable taste to edible portions of aquatic life, coat the banks or bottom of the water course, or are deleterious or become toxic to aquatic life." Effluent limits of 15 mg/L will not produce a visible sheen, nor are they toxic to aquatic life. References to an oily taste are inapplicable to the Island End River as neither water nor shellfish are consumed.

Lastly, there is no logical distinction between oil from one source versus another. The Everett Terminal flow discharge consists of a commingled stream of process-related flows, storm water runoff, and groundwater infiltration (which arguably is a source of oil for purposes of this discussion). We can find no precedent for applying a lower technology-based effluent limit for one of several different sources/process streams to an entire commingled stream (especially without some sort of weighted apportionment based on flow volume). In addition to the reasons why the RGP should not be applied to the Everett Terminal described above, EPA has not adequately supported its decision, which effectively applies one technology-based effluent limit for oil and grease to the contaminants coming from storm water (15 mg/L) and a different technology-based effluent limit when the contaminant comes from groundwater (5 mg/L). This is simply illogical and unsupported.¹⁶

2. Monitoring and Analytical Issues

In addition to its challenges relating to BPJ, ExxonMobil also contends that EPA's monitoring and analytical requirements are problematic with respect to ethanol, cyanide, PAHs

¹⁶ Additionally, by proposing to set the compliance limit for conventional pollutant, oil & grease, at the detection limit of EPA-approved Method 1664A, it has concluded essentially that ExxonMobil is not permitted to discharge oil & grease at all, effectively overruling years of EPA policy and regulation of the petroleum industry.

and mercury. With respect to monitoring requirements for ethanol and available cyanide, ExxonMobil knows of no certified Massachusetts laboratory which performs the EPA methods required.¹⁷ Specifically, the only method for analyzing available cyanide listed in 40 C.F.R. Part 136 with "a detection limit less than or equal to 2.0 µg/l" as required by footnote 5 of the draft permit is OIA 1677. According to Lisa J. Toucet, Laboratory Certification Officer for the Massachusetts Department of Environmental Protection, there is no certification currently offered for the analysis of available cyanide using method OIA 1677. Because ExxonMobil must use a Massachusetts-certified lab and methodology to comply with the jointly-issued permit, it does not appear they will be able to meet this reporting requirement as written.

With respect to ethanol, according to Ms. Toucet, Massachusetts does not offer certification for either EPA method 1666 or method 1671 either. Additionally, EPA did not specify which method was required to be used which is typically required pursuant to 40 C.F.R. § 122.48.

Next, the Permit requires ExxonMobil to achieve analytical minimum levels (MLs) for seven Group II PAH chemicals that are not achievable using an approved analytical method in 40 CFR Part 136 by a certified laboratory in Massachusetts. The following table compares the ML in the proposed permit to the ML for each regulated PAH that is achievable with EPA Method 610 (HPLC), the Part 136 method with the lowest MLs for these chemicals.¹⁸ Additionally, these MLs are inconsistent with MLs used by EPA for PAHs in other recent permits for petroleum bulk storage facilities. See, e.g., 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 No. MA0020869 (Sprague Energy), January 29, 2007, p. 12 (identifying the Group I PAH MLs as ranging from 2.0 µg/L to 10.0 µg/L well in excess of the draft permit MLs here).

¹⁷ ExxonMobil also disputes the factual basis for imposition of the new monitoring requirements for cyanide and mercury, neither of which are used in current products stored on-site. ExxonMobil does not believe the single, pretreatment sample results identifying these contaminants justifies these entirely new obligations. Rather, ExxonMobil suggests that it investigate, through implementation of its BMP plan and follow-up requirements of the MCP, whether either of these chemicals has the potential to cause or contribute to an in-stream excursion of a state water quality criterion.

¹⁸ Note that all of these MLs for Method 610 are calculated; the method reports method detection limits (MDLs) that must be multiplied by 3.18 and rounded to the nearest 1, 2, or 5ⁿ, where n is an integer. See EPA Revised Assessment of Detection and Quantification Approaches, EPA 821-B-04-005 (Oct. 2004). EPA's description in the Fact Sheet (p. 17) referring to "the practical quantitative level (PQL)" as the basis for setting the permit limits for PAHs ignores the confusion which arises when precise "Minimum Levels" (ML) are not used to describe compliance limits. See, e.g., Technical Support Document for Water Quality-based Toxics Control, EPA/505/2-90-001 (March 1991) at 111-12 (discouraging use of PQL or MDL as a means of setting compliance limits).

Constituent	PAH Group	Permit ML (µg/L)	EPA Method
			610 ML (µg/L)
Benzo(a)anthracene	I	0.05	0.05
Benzo(a)pyrene	I	2	0.05
Benzo(b)fluoranthene	I	0.1	0.05
Benzo(k)fluoranthene	I	2	0.05
Chrysene	I	5	0.50
Dibenzo(a,h)anthracene	I	0.1	0.10
Indeno(1,2,3-cd)pyrene	I	0.15	0.10
Acenaphthene	II	0.5	
Acenaphthylene	II	0.2	
Anthracene	II	2	2.00
benzo(ghi)perylene	II	0.1	
Fluoranthene	II	0.5	0.50
Fluorene	II	0.1	
Naphthalene	II	0.2	
Phenanthrene	II	0.05	
Pyrene	II	0.05	

Shaded cells where Permit ML < Method 610 ML

ExxonMobil requests that EPA identify the approved method in 40 CFR Part 136 (i.e., EPA Method 610, as reflected in the current permit, see Part I.A.3.g) which can be used to achieve any ML required by the permit. Furthermore, EPA must coordinate with the Massachusetts DEP to assure that any method that it identifies can be certified by the DEP for laboratories in Massachusetts.

ExxonMobil also requests that the permit allow the use of "zero" for reporting results for non-detection versus "<MDL" so that the DMR is not misinterpreted for non-compliance with the PCS database which ignores the "<" symbol.¹⁹ This is standard reporting protocol in many EPA Regions. This is especially important where compliance limits are set at what is essentially lab detection and reporting limits.

With respect to Whole Effluent Toxicity (WET) testing, none of the results have indicated a reasonable potential to cause or contribute to an excursion above the State's water quality criterion, including toxicity. Indeed, as suggested in the current permit (Footnote 6), "[a]fter submitting 4 consecutive satisfactory toxicity test results for each outfall . . . , the permittee may request a reduction in the frequency of required toxicity testing" which was done by letter dated June 4, 2003 (copy enclosed).²⁰ Based on these results, ExxonMobil believes that performing this analysis twice a year for the next five years is unnecessary and should be eliminated or reduced. Any reasonable potential to cause or contribute to an in-stream excursion above the state's narrative criterion are addressed by the chemical-specific limits which are sufficient to attain and maintain applicable state water quality standards and, therefore, WET

¹⁹ This issue is evidenced by EPA's factual misstatement (p. 17) erroneously indicating that "all sixteen priority pollutant PAHs were detected in effluent samples from Outfall 001" during the last three sampling events of 2006 when in reality these were reported as "<" (less than) the detection limit but the less than symbol could not be read by the PCS system.

²⁰ To date, EPA has not acted on ExxonMobil's request.

testing is not required. See 40 C.F.R. § 122.44(d)(1)(v); see also Permit Writers' Manual, p. 100. As described in the Manual, "WET tests are relatively expensive. Therefore, the test frequency should be related to the probability of any discharger having whole effluent toxicity." *Id.* at 131-32.

In summary, ExxonMobil believes there should be no change in its permit requirements related to PAHs. Additionally, for cyanide, mercury and MTBE, ExxonMobil proposes to investigate through its BMP plan and any on-going MCP compliance requirements whether these contaminants have a potential to cause or contribute to an in-stream excursion of a state water quality criterion. For ethanol, because there is no Massachusetts certified lab capable of performing the required analysis, ExxonMobil proposes to monitor this potential pollutant through implementation of its BMP Plan.

3. Proposed Operational Restrictions

The Everett Terminal, in excess of 110 acres and located in a historically industrial area, is comprised of both a North and South Tank Farm as well as marine facilities. It was formerly an operating refinery. The method of managing water discharge has undergone changes since its operation as a refinery, including many upgrades to its wastewater treatment system. During the late 1980s a completely new treatment works was designed and constructed to eliminate use of an effluent holding pond as a means of managing storm water and other discharges. These facilities consist of an API OWS and associated facilities, which were subject to full NPDES permitting in the 1990-91 time frame, and satisfactorily renewed in 2000. From at least 1990, groundwater infiltration as a result of the age of the drain lines was an acknowledged portion of the discharge flow, which also included storm water and process-related wastewater. The existence of historic contamination, not unusual with refinery operations, was also evident from this time period having been identified and reported on August 21, 1986 and first listed as a Confirmed Disposal Site under Release Tracking Number ("RTN") 3-00310 on January 15, 1987 (according to the DEP release tracking database). At the time of ExxonMobil's 1990 permit application, the Island End River was classified as a Class SC water-body suitable for industrial use.

As described in the accompanying detailed page-by-page comments, ExxonMobil believes EPA does not fully understand the operation of the treatment works and has erroneously characterized discharges through outfall 001B as a "bypass." As such, it incorrectly concluded that the "current permit prohibits bypasses of the OWS through outfall 001B 'except during naturally occurring precipitation from severe weather incidents like a hurricane'" (page 15). Rather, as evidenced by the current permit reference to permit limits and conditions for both outfalls, 001A and 001B (Part A.1 and A.2), these are separately permitted process streams with the process culminating in 001B "only authorized when the flow to the oil/water separator exceeds 3000 gpm." (Current Permit, p. 3). EPA erroneously quotes "boilerplate" language from Part 1.A.3.m as suggesting discharge through 001B is prohibited except in severe weather incidents. This misunderstanding is further illustrated by the Fact Sheet description that the "draft permit is intended to prevent frequent discharges of *untreated* storm water and groundwater" Fact Sheet, p. 15. Outfall 001B does not discharge untreated storm water and groundwater. Moreover, the process which includes Outfall 001B is an integral part of the entire treatment works.

The treatment system which was completely redesigned and constructed in 1989 to include these two process streams each with permitted effluent limits, was successfully permitted in 1991 and renewed in 2000 and complies with all applicable "bypass" requirements found in standard permit conditions and regulations. See also 314 C.M.R. § 3.19 (13) (State Standard Permit Conditions allowing a "bypass" of any portion of a treatment works where effluent limitations are not exceeded and it is necessary "to assure efficient operation of treatment facilities" as in ExxonMobil's case). The only issue which came up as part of the original permitting of the system was EPA's request to increase the pump size for the pump which was discharging to Tank 140 (and thus Outfall 001A) from 1,900 gpm to 3,500 gpm to ensure the proper flow through that process stream. Subsequently, in 1992, after the pumping change, Camp Dresser & McKee Inc., the system designer, indicated that "[i]ncreasing the separator capacity to match the third pump performance would appear to be a prudent course of action for Exxon and would allow treatment of additional stormwater."²¹ Moreover, ExxonMobil is required under the existing permit and applicable regulations, 40 C.F.R. § 122.41(e), to properly operate the treatment works within their design parameters, which include the interconnected nature of the entire system.

Under these circumstances, ExxonMobil believes EPA's proposed permit conditions, eliminating outfall 001B and restricting flow through the OWS to 3,000 gpm, are entirely inappropriate and infeasible. As recognized by EPA, "[w]hile the NPDES permit will establish appropriate effluent limits, the NPDES program is not in a position to assess the feasibility of the many alternatives there are likely to exist to meet potential permit requirements."²² We know of no case where previously permitted outfalls were eliminated with the stroke of a pen, and similar operational restrictions were imposed without apparent regard for how the entire system operates, and without sufficient time to investigate and redesign the treatment works as needed.²³ ExxonMobil understands it is responsible for complying with the applicable regulations and effluent limits, but it should be permitted to determine, based upon its own operational needs and industry standards, how best to accomplish this, especially where permit limits were not exceeded. Eliminating outfall 001B and restricting flow to outfall 001A to 3,000 gpm will not accommodate the total volume of flow and the peak flow regularly experienced at the Everett Terminal.

Lastly, ExxonMobil agrees with concept of an emergency discharge²⁴ evidenced in the draft permit (Part 1.A.14) for extraordinary weather events, but believes that EPA's proposal as drafted is infeasible based on its existing facilities as described herein (including the requirement to manage "peak flow" as well as "total flow"). The "peak flow" requirement is entirely new, and inconsistent with prior permits and the original system design. To the extent EPA is seeking a system evaluation and/or redesign, ExxonMobil suggests that instruction be reflected in a

²¹ A copy of CDM's March 24, 1992 letter and calculations is included.

²² December 7, 2006 letter from Ellen B. Weitzler to Mr. Rosendo Cruz.

²³ The three month period to install a fixed flow control device is entirely insufficient to accommodate the system changes needed to effectuate this condition, especially when coupled with the complete elimination of outfall 001B. These requirements would necessitate a complete redesign of the system.

²⁴ Because the treatment works were designed to provide some level of treatment no matter what the flow volume, any emergency discharge provision or "overflow" should not be considered a bypass. The ELG's from other industries relied on by EPA refer to "*untreated overflow*." See, e.g., 40 C.F.R. § 423.12(b)(10).

requirement to investigate the situation and report to EPA as part of implementation of its BMP rather than infeasible and unnecessary operational restrictions.

4. Specific Response to Mystic River Watershed Association Comments

Representatives of the Mystic River Watershed Association ("MyRWA") made comments in the Public Hearing on July 11, 2007 and in writing. One area of concern expressed by MyRWA was the sheen at the outfall of the Island End River which reportedly has been observed multiple times and which was shown in pictures and video clips submitted.

Based on inspections and investigations performed in 1985-86, ExxonMobil understands that a number of discharge pipes (possibly as many as 10) are connected to the 1,600 foot-long outfall pipe between its exit at the Everett Terminal after the discharge monitoring point and before it reaches the river.²⁵ Any one of these other sources could easily have caused the sheens attributed to ExxonMobil. Although the outfall is colloquially known as "the ExxonMobil outfall," in reality a number of different flows from various and unknown sources infiltrate the outfall pipe before it reaches the river, not including the potential impact of infiltrating groundwater to this pipe itself. These inspections also indicated that there is a large volume of sediment and silt built up in the outfall pipe which could be contributing to the sheens. ExxonMobil does not operate or control this 1,600 outfall pipe.²⁶

In summary, records identified in ExxonMobil's files, some of which were previously submitted to EPA indicate that as many as 10 different pipes and conduits connect with the 1,600 pipe between where it leaves the Everett Terminal and its discharge at the Island End River. Additional copies of these records are submitted herewith, including the following:

1. Petro-Chemical Associates, Inc., *Inspection of the Flume Outfall at Exxon Bulk Storage Terminal, Everett, Massachusetts on June 25, 1985*
2. Petro-Chemical Associates, Inc., *Visual Inspection of 1,600-foot Flume Outfall at Exxon Bulk Storage Terminal, Everett, Massachusetts, February 4, 1985*
3. Camp Dresser & McKee Inc., *Site Plan Existing Storm Sewer Effluent Pipe, Exxon Company, USA-Everett Terminal, Everett, MA, October 23, 1986*

²⁵ Based on information recently discovered in ExxonMobil's files, it appears this information was provided to EPA (Mr. T. E. Landry) in connection with NPDES Permit No. MA0000833 by letter dated February 27, 1987. Another copy of these records and investigations is enclosed with these comments. A portion of these records were submitted to EPA in response to the Agency's April 14, 2006 Section 308(a) request by response letter dated May 24, 2006. However, additional documents responsive to this request item have recently been located and are among the records submitted herewith.

²⁶ One of the Chapter 91 Licenses (No. 4622 dated September 25, 1962) authorizing a "license to fill solid in Island End River" is based on the condition that the licensee "shall provide for by-pass drainage for all existing drains, drainage ditches, overflow sewer lines, etc., which now discharge into the area to be filled." Therefore, it appears the steel pipe which was added to the original box culvert, was installed in connection with these obligations and is owned by the successor to Eastern Gas and Fuel Associates, the Chapter 91 licensee. See also Chapter 569 of the Acts and Resolves of 1966 making irrevocable License no. 4962 "to fill solid an existing drainage ditch and to place and maintain pipe drains and appurtenant structures in Island End river." Based on ExxonMobil's records, it appears these documents were among those submitted to EPA in connection with its NPDES permit in 1987.

Therefore, it is impossible to conclude that any sheen observed at the Island End River originates with the Everett Terminal discharge. ExxonMobil will investigate whether discharge from the Everett Terminal is causing or contributing to the observed sheen at the Island End River as part of its BMP plan and in compliance with any MCP requirements, but its historic compliance with its discharge limits indicates the water leaving its facility does not contain contaminants at such a level so as to cause a visible sheen.

MyRWA also expressed concern that vegetation was coming out of the outfall. However, any speculation that the former effluent pond located at the Everett Terminal is the source of material discharging directly into the river is simply unsupported. There is no direct connection from the former effluent pond to the outfall as asserted by Roger Frymire in his comments at the Public Hearing, July 11, 2007. That connection was eliminated at the time the new OWS was commissioned in the 1989-1990 time frame. Currently, a manually-operated pump on the pond surface operates to skim rising volumes of storm water from the top of the pond so it will not overflow its banks during periods of heavy precipitation. This pump is piped to the head of the treatment works for processing before discharge. Thus, it is impossible for vegetation from the edge of the pond to be discharged through the outfall without first going through the entire treatment works, which would remove any such vegetation.

Additionally, although reported as collecting groundwater and rainwater (Fact Sheet, p. 12), the November 12, 1996 Phase II Report summary relied on by EPA elsewhere, clearly states "[h]olding pond cross-sections indicate that the area surrounding the current holding pond is minimally impacted by OHM suggesting that there is no direct hydraulic connection between the pond and groundwater." (p. ii). Therefore, operation of the manual pump transports recent storm water to the treatment works which is unlikely to be a source of contamination.

With regard to MyRWA's concerns related to the three (3) outfall pipes observed along the shoreline of the Mystic River (and shown on an aerial photo portion submitted by MyRWA), none of these outfalls are associated with the Everett Terminal (including its marine facilities). Enclosed is a plan of land of the area from 1966-67 prepared by William S. Crocker, Inc. which clearly shows that outfall EEx05 and EEx04 (as designated by MyRWA) are beyond the ExxonMobil property line (shown as 428.65') and the outfall labeled EEx03 originates on property northerly of the marine facilities (identified as Allied Concrete Corporation) and simply passes through the ExxonMobil parcel.

Conclusion

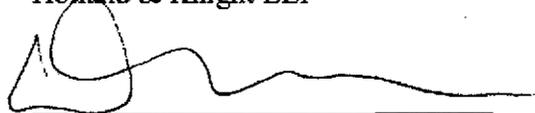
For the reasons stated herein and in the accompanying Draft Permit and Fact Sheet Comments, ExxonMobil does not believe the cited effluent limits and permit conditions are appropriate under the circumstances and asks EPA to modify the final permit and Fact Sheet accordingly. ExxonMobil requests the opportunity to meet and further discuss these issues in an effort to cooperatively develop an appropriate final permit which addresses EPA's concerns. ExxonMobil also suggests, in light of these voluminous comments and corrections identified in the enclosed detailed comments, that EPA consider reissuing a revised draft permit for public

comment before the final permit is issued.

EXXONMOBIL CORPORATION,

By its attorney,

Holland & Knight LLP

A handwritten signature in black ink, appearing to read "Dianne R. Phillips", written over a horizontal line.

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Dated: July 26, 2007

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ExxonMobil Everett Terminal
Comments on May 31, 2007 Draft NPDES Permit

DRAFT PERMIT COMMENTS

Comment 1: Part I.A.1. - Flow

EPA has added a requirement to report monthly total flow. The current permit required reporting of average monthly and daily maximum flow rates. Monthly total flow can be calculated from this information. EPA has not justified why it is necessary to present the same data in multiple formats. ExxonMobil requests EPA justify the need for this information or remove this requirement.

Comment 2: Part I.A.1 – Total Suspended Solids (TSS)

The monitoring requirements for TSS indicate the sample type shall be a composite sample. ExxonMobil believes this may be a typographical error as it differs from the current permit sample type for this parameter and from all other parameters in the Draft Permit. A grab sample is appropriate for this discharge because Tank 140 provides pollutant homogeneity. If we assumed incorrectly, ExxonMobil requests an explanation of this change, as no discussion of this is in the Fact Sheet.

Comment 3: Part I.A.1. – Oil and Grease (O&G)

The EPA has decreased the O&G limit currently set forth in the Everett Terminal's NPDES permit from 15 mg/L to 5 mg/L. As described in ExxonMobil's General Comments, EPA has not complied with the non-discretionary requirements of 40 CFR 125.3(c) and (d) to demonstrate that the 5 mg/L O&G limit is applicable here. Therefore, the proposed limit does not meet the regulatory requirements that EPA must adhere to for BPJ-based limits.

Additionally, the permit limit of 5 mg/l is the detection limit for EPA Method 1664A. EPA must address the reporting and compliance implications for analytical results that are non detectable at this limit.

Comment 4: Part I.A.1. - Mercury

EPA has established a monthly monitoring/reporting requirement in the Draft Permit that is based on a data point measured on the influent to the Oil Water Separator (OWS) system and not representative of the final discharge. As described in ExxonMobil's General Comments, there is no evidence that mercury is a source material found in distribution terminals. ExxonMobil requests that this requirement be removed from the permit. If not, the final permit should include a monthly monitor and report-only requirement for a period of one year, through implementation of ExxonMobil's Best Management (BMP) plan, after which an evaluation of "reasonable potential" can be performed to assess the potential impacts on water quality and/or human health.

Comment 5: Part 1.A.1. - Available Cyanide

EPA has established a monthly monitoring/reporting requirement for Available Cyanide based on analysis of a sample that was collected from the influent to the OWS system and not representative of the discharge. As described in the General Comments, there is no evidence that available cyanide is a source material found in distribution terminals and the one sample measured total cyanide only. ExxonMobil requests that this requirement be removed from the permit. If not, the final permit should include a monthly monitor and report-only requirement for a period of one year, through implementation of ExxonMobil's Best Management (BMP) plan, after which an evaluation of "reasonable potential" can be performed to assess the potential impacts on water quality and/or human health.

Additionally, the permit requires a PQL of 2 ug/l which is not achievable using an approved analytical method in 40 CFR Part 136 that can be certified by the Massachusetts DEP.

Comment 6: Part 1.A.1 – Polynuclear Aromatic Hydrocarbons (PAHs)

With respect to contributing to Island End sediment Group II PAH concentrations, if the Everett Terminal discharges at the recommended water quality criteria there is no potential for the discharge to cause or contribute to the exceedance of a surface water quality criterion. EPA is not authorized to establish water quality-based effluent limits (WQBELs) for a pollutant unless there is a reasonable potential for that pollutant to cause or contribute to a water quality standards violation (40 CFR 122.44(d)(1)). EPA has not performed a reasonable potential analysis for these PAHs as required at 40 CFR 122.44(d)(1)(ii) and therefore cannot justify the WQBELs for these pollutants in the proposed permit.

ExxonMobil proposes that the EPA should first perform a proper reasonable potential analysis for the Group II PAHs following the procedures in the *Technical Support Document for Water Quality-based Toxics Control* (March 1991) to determine which, if any of these chemicals have a technically justified basis for WQBELs. Because several of the Group II PAHs have no water quality criteria, the limits for these chemicals must be deleted. For any PAHs that EPA determines have a reasonable potential to cause or contribute a water quality criterion exceedance, EPA should calculate the WQBELs using the appropriate water quality criterion from the Recommended National Water Quality Criteria (2004).

See also ExxonMobil's General Comments.

Comment 7: Part 1.A.1 – Volatile Organic Compounds – Benzene

The Draft Permit contains a new discharge limit for benzene. It has been reduced from 40 ug/L, which was a 1991 water quality based effluent limit, to 5 ug/L which EPA-Region I has established as a "technology-based" limit for groundwater remediation systems. As described in ExxonMobil's General Comments, ExxonMobil does not believe this proposed effluent limit is justified.

Comment 8: Part 1.A.1. – Volatile Organic Compounds – BTEX

The Draft Permit contains a new discharge limit of 100 ug/L for BTEX. For the same reasons provided in Comment 7 regarding benzene, ExxonMobil objects to the imposition of this limit and requests that a monitoring and reporting-only requirement be maintained within the permit. (See ExxonMobil's General Comments)

Also, to the extent EPA imposes an effluent limit for Total BTEX, ExxonMobil requests that a footnote be added to the Draft Permit for the summation of BTEX compounds, to allow for the use of “zero” for non-detection values versus using the laboratory’s Minimum Detection Limits, so that the total value is not overstated. This is standard reporting protocol in many EPA Regions.

Comment 9: Part 1.A.1 – Volatile Organic Compounds – Ethanol

EPA has established a monthly monitoring requirement for ethanol without developing a basis that it may have an impact on the water quality or human health. It appears that the basis in the Fact Sheet is to monitor because it is used in the facility. ExxonMobil requests that this requirement is removed from the Draft Permit. If not, the final permit should include a monthly monitor and report-only requirement for a period of one year through implementation of ExxonMobil’s Best Management (BMP) plan, after which an evaluation of “reasonable potential” can be performed to assess the potential impacts on water quality and/or human health. Additionally, the Draft Permit does not provide an analytical method for this compound. See also ExxonMobil's General Comments.

Comment 10: Part 1.A.1 – Volatile Organic Compounds – Methyl Tertiary-butyl Ether (MTBE)

The Draft Permit contains a new groundwater treatment-technology based discharge limit of 70 ug/L for MTBE. For the reasons stated in the General Comments, ExxonMobil requests that this requirement be removed from the Permit.

If not removed, the final permit should include a monthly monitor and report-only requirement for a period of one year, through implementation of ExxonMobil's Best Management (BMP) plan, after which an evaluation of “reasonable potential” can be performed to assess the potential impacts on water quality and/or human health.

Comment 11: Part 1.A.1 – Whole Effluent Toxicity (WET) testing and associated Chemical Analyses

EPA has continued WET testing in the Draft Permit at the frequency established in the current NPDES permit based on anti-backsliding requirements even though the previous tests have shown no reasonable potential to cause or contribute to an excursion above the State’s narrative criterion for toxicity. The current permit (Part I, Footnote 6, third paragraph) provides for reduced testing frequency after 4 consecutive satisfactory test results. ExxonMobil requested EPA reduce the test frequency in a letter dated June 4, 2003, and has not received a response from EPA. The Fact Sheet to this draft Permit does not address this issue. Based on 7 years of satisfactory test results, ExxonMobil requests that EPA reduce the frequency of this testing to annual and the same language

from Part I.A.1, Footnote 6 of the current permit be added to the Draft Permit under Footnote 9.

Comment 12: Foot Note 1

- 1) The language implies that there is a requirement to develop a "routine sampling program". The Fact Sheet and permit do not discuss the purpose or objectives for this new requirement. ExxonMobil suggests that EPA remove this requirement or provide guidance addressing the purpose and objectives of the program.
- 2) The permit requires all samples be analyzed per 40 CFR Part 136, or alternative methods approved by EPA. 40 CFR Part 136 does not specify methods for analyzing samples for xylene or MTBE. ExxonMobil requests EPA specify in the Permit that the methods used for benzene is also acceptable for MTBE and Xylene (i.e., EPA Method 602 as stated in the current permit for Xylene, see Part I.A.3.r(2)). The Permit also needs to specify the method for analyzing ethanol. Furthermore, EPA has not established sampling and handling requirements, acceptable detection limits, or QA/QC for the analysis.

Comment 13: Foot Note 4

ExxonMobil requests that "untreated" be deleted from the last sentence in Footnote 4 because the overflow does flow through the OWS system. As further detailed in ExxonMobil's General Comments and herein in comments 20, 21, and 22 on the Fact Sheet, the water discharged to currently permitted Outfall 001B flows through and receives treatment by the OWS system, including both the original and new OWS, but does not flow through Tank 140. Outfall 001B is only used to prevent overflow to the two separators during peak flow events (greater than ~ 3000 GPM). The existing OWS provides industry-standard treatment, and therefore the discharge during these events is not "untreated".

Comment 14: Foot Note 5

The Permit requires a PQL of 2 ug/l for analysis of Available Cyanide. As described in the General Comments, this is not achievable using an approved analytical method in 40 CFR Part 136 by a certified laboratory in Massachusetts.

Comment 16: Part I.A.8

ExxonMobil requests that "detergent laden" be added prior to "floor wash water to be consistent with the Fact Sheet, Section 6.4.2 As stated in ExxonMobils' Comment 36 on the Fact Sheet, both the Fact Sheet and Draft Permit prohibit the discharge of detergent laden floor washings to Outfall 001 which is consistent with the EPA's Multi-Sector General Permit for Storm Water Associated with Industrial Discharges. ExxonMobil interprets this to mean that floor washings free of detergents are approved for discharge to Outfall 001, which is not stated as such in the Permit, Part I.A.8.

Comment 16: Part I.A.13

This condition prohibits the discharge of sludge and/or bottom deposits from storage tank(s), basin(s), and/or diked area(s). ExxonMobil is concerned that this condition could be interpreted as excluding any existing sediments (e.g., erodible soils) from diked areas or the former effluent holding pond that are entrained with storm water. ExxonMobil requests that diked areas and basins be removed from this condition. If the intention is to prohibit the discharge (e.g., reinjection) of sludges and bottom deposits once they are physically removed from the collection and treatment system, then the condition should be stated as such.

Comment 17: Part I.A.14

EPA uses the term "overflow" in this condition, but this term is not defined within the Draft Permit, Fact Sheet, or Part II General Conditions accompanying the Draft Permit. Lacking definition of this term, it is unclear how this condition applies to the facility's discharge. ExxonMobil requests that "overflow" be defined as the excess storm water commingled with minimal amounts of non-storm water that exceeds the calculated 10-year, 24-hour storm event or equivalent precipitation volume, and is authorized for discharge as part of the final permit. We suggest adding "or equivalent" to the precipitation event to address consecutive storm events that may occur producing a comparable amount of rainfall.

Additionally, the Draft Permit states that the facilities must be designed, constructed and operated to treat the peak flow and total volume of storm water. The requirement to include peak flow in the design criteria is not consistent with the cited basis in 40 CFR §423.12(b)10 stating that "Any untreated overflow from the facility designed, constructed and operated to treat the volume" The requirement to design, construct and operate the facility for peak flow is a new requirement that is not in ExxonMobil's current permit [see Part I.B.2.a(2)] and the justification to include this requirement was not addressed in the Fact Sheet. ExxonMobil requests that EPA remove "peak flow" from the condition to be consistent with the current permit and the cited basis in 40 CFR 423.12(b)10.

Comment 18: Part I.A.17

Compliance with this requirement to report "any size sheen attributable from the discharge" is difficult to evaluate, because there is no area post-treatment where open flow occurs that is exclusively water from the facility. As described in ExxonMobil's General Comments, observations of sheens at the Island End River cannot be linked to ExxonMobil's discharge. ExxonMobil requests this requirement be deleted or clarified to reflect the known conditions.

Comment 19: Part I.A.18

"Polycyclic" should be changed to Polynuclear to be consistent with Part I.A.1. ExxonMobil requests the compounds and method limits be presented as a table which also identifies the compounds as Group I or Group II PAHs. See also ExxonMobil's General Comments.

ExxonMobil also requests that the condition include the use of "zero" for reporting results for non-detection versus "<MDL" so that the data provided on the monthly

Discharge Monitoring Reports is not misinterpreted for non-compliance, as the Permit Compliance System database ignores the "<" symbol. This is standard reporting protocol in many EPA Regions.

Comment 20: Part I.A.19

The permit requires a copy of the laboratory case narrative, without specifying what information is expected in the narrative. ExxonMobil requests that EPA specify the components of the laboratory case narrative or allow the laboratories to follow standard NELAC protocol.

Comment 21: Part I.A.21.a

The permit requires flow control on the OWS within three months of the effective date of the permit. As described in ExxonMobil's General Comments, this requirement fails to consider the processes employed and the engineering aspects of the application of this type of control technique.

Comment 22: Part I.A.21.b

Regarding this requirement to provide notification to the EPA of any changes to the existing system, ExxonMobil is re-evaluating the design capacity of the entire OWS system, including the original OWS (also referred to as the Separation Flume) and what is referred to as the "new" Oil Water Separator. We hope to demonstrate the ability of both of these components to treat greater flow rates than currently represented in the permit renewal application. Note that this evaluation is being done to provide EPA with additional confidence regarding the design and operation of the oil water separators. We believe that the historic effluent monitoring data for TSS and O&G, which the separators are designed to treat, demonstrate that the treatment equipment is properly designed and operated and achieves exemplary performance for gravity oil-solids separators at all flows that are treated in the equipment. ExxonMobil will submit this evaluation to EPA for notification and approval.

Comment 23: Part I.B.3

The Draft Permit requires that the Storm Water Pollution Prevention Plan (SWPPP) be consistent with the most current Multi-Sector General Permit (MSGP) for Storm Water Discharges Associated with Industrial Activities (October 2000). The current MSGP requires a certification that no non-storm water discharges are included, which is inapplicable to the ExxonMobil combined discharge of storm water, groundwater, steam condensate, truck wash water, etc. ExxonMobil requests that the permit language include this exception to the MSGP.

Comment 24: Part I.B.5

The Draft Permit requires inspection of all "areas identified in the SWPPP" on a quarterly basis. ExxonMobil is unclear as to what the EPA means by "areas" and requests further clarification. The inspection frequency and areas to be inspected should be determined by ExxonMobil within the Best Management Practices section of the SWPPP, and therefore the specific inspection frequency should be removed from the permit.

Comment 26: Part I.B.6

The Draft Permit requires amendments or updates to the SWPPP within 14 days for any changes affecting the SWPPP. ExxonMobil objects to the short timeframe and refers to the MSGP which does not dictate any such timeframe for changes. Also, ExxonMobil notes that this requirement is not set forth within any of the so-called "Chelsea Creek" oil terminal NPDES permits issued by the EPA. ExxonMobil requests the removal of the specific 14-day timeframe from the Draft Permit.

FACT SHEET COMMENTS

Comment 1: Section 1, first paragraph – The discussion incorrectly describes the information submitted in the permit application and incorrectly describes the discharge from Outfall 001B.

- A) ExxonMobil applied for the re-issuance of a National Pollutant Discharge Elimination System (NPDES) permit to discharge storm water, groundwater infiltration, steam condensate, tank water bottoms, and potable water (used for garage floor washing, hydrostatic testing, truck washing, fire testing, landscape watering, and safety showers) through Outfall 001 into the Island End River following treatment in the oil/water separator (OWS) system (e.g., treatment works). ExxonMobil applied to retain both Outfalls 001A and 001B, which discharge to the final Outfall 001.
- B) The final sentence of the paragraph states, “The current permit also authorizes the direct discharge of the same discharges without treatment during heavy rain events through outfall 001B.” This statement is incorrect and does not reflect the information provided with the permit application and discussed during site visits with the permit writer. Comments provided herein include a correct description of Outfall 001B.

Comment 2: Section 1, second paragraph - ExxonMobil wishes to correct or update the list of fuels listed in the Fact Sheet. The Everett Terminal currently handles the following classes of products: gasoline; ethanol; light distillate fuel oils; heavy distillate fuel oils; and fuel additives.

Comment 3: Section 2.1, first paragraph – ExxonMobil wishes to clarify that some of the data summarized on the referenced tables in Attachment A of the draft permit materials (specifically PAHs in 2006), incorrectly includes laboratory detection limits reported with a “less than” symbol on the monthly Discharge Monitoring Reports (DMRs), as actual detectable concentrations in the effluent samples. These should be reported as ND.

Comment 4: Section 2.1, second paragraph, final sentence – “Dry weather flows were sampled on July 18, 2006.” ExxonMobil also submitted data from samples of “dry weather flow” collected on August 2, 2006.

Comment 5: Section 6.1, first paragraph second sentence - ExxonMobil would prefer that the Fact Sheet refer to the products stored in more generic terms. In this case, we recommend that this sentence should read, “The facility, which comprises approximately 110 acres (including Sprague Energy), consists of a marine bulk product receiving and shipping facility, known as the Marine Facility, a light fuel (gasoline and light distillates) storage area known as the North Tank Farm, and a heavy fuel oil and asphalt storage area known as the South Tank Farm. Figures 2 and 3 show the layouts of the North and South Tank Farms, all collectively comprising the bulk storage and distribution facility (the Everett Terminal).”

Comment 6: Section 6.1, General Comment - Section 6.1.3 indicates that transformers and electrical starters are located throughout the North Tank Farm. This equipment is also present at the Marine Facility described in Section 6.1.1 and at the South Tank Farm described in Section 6.1.2.

Comment 7: Section 6.1.3, second paragraph, last sentence - The first of the two buried tanks listed should identify the contents as being heating oil for the administration building.

Comment 8: Section 6.2, Table 1 -

- A) The components in the groundwater infiltration contribution are described as “Groundwater containing residual contamination from current and historical releases of oil and hazardous materials.” This appears to assert that all groundwater infiltration is contaminated. The Fact Sheet and draft permit do not set forth the criteria or definition that would allow the permittee to determine what groundwater is contaminated. This description may lead to the permittee treating or eliminating all infiltrating groundwater regardless of whether it meets or exceeds MassDEP GW-1, GW-2 or GW-3 standards or even the discharge limits of the RGP. As stated elsewhere, EPA, MassDEP and ExxonMobil should establish criteria for determining what infiltrated groundwater is contaminated, and should be eliminated or treated. In addition, ExxonMobil relies on its General Comments.
- B) The components listed for the groundwater infiltration contribution are described as “Groundwater containing residual contamination from current and historical releases of oil and hazardous materials.” This asserts that all groundwater infiltration is “contaminated”. ExxonMobil suggests this component description be changed to read “Groundwater, some containing residual contamination from historical releases of oil and hazardous materials.”
- C) The components in the former Effluent Holding Pond contribution are described as “Groundwater” containing residual contamination from current and historical releases of oil and hazardous materials.” As described in the General Comments, groundwater infiltration is not a significant source of water in the pond. The placement of the pump, near the surface of the pond and the lack of agitation in the pond indicate this flow is storm water from the surface of the pond.

Comment 9: Section 6.2.1, second paragraph – This paragraph is inaccurate. An accurate description of this storm water in context with the other paragraphs in section 6.2.1 would say, “Storm water falling in open paved areas and on building roofs in the North Tank Farm flow by gravity to the treatment works. Storm water falling on paved areas, building roofs, and mounded bunker tank roofs in the South Tank Farm flow by gravity

either to the North Tank Farm drainage system and the treatment works, or is pumped in forces mains to a gravity portion of the South Tank Farm drainage system that then flows by gravity to the North Tank Farm and the treatment works.”

Comment 10: Section 6.2.1, third paragraph, second sentence - This sentence is inaccurate. Rain water from the roof does not fall on to the loading rack pad. The loading rack roof has a system of gutters that drain water from the roof to downspouts running down alternating roof columns. The downspouts tie into the North Tank Farm drainage system.

Comment 11: Section 6.2.2 – As stated previously in our comments we believe EPA, MassDEP and ExxonMobil should establish a criteria for determining what infiltrated groundwater is contaminated.

Comment 12: Section 6.2.2, third paragraph – As described in ExxonMobil's General Comments, this paragraph contains many inaccuracies, errors, misrepresentations and baseless conclusions as follows:

- A) First and second sentences – The EPA contends that “groundwater infiltration contributes a constant flow of oil to the treatment system”. This statement has no technical basis or evidence to support it. Therefore the contention, in this Fact Sheet, that ExxonMobil is intentionally operating the OWS as a “de facto groundwater treatment system” is unfounded.

The Fact Sheet states "Contaminated groundwater infiltration into the collection system contributes a constant flow of oil to the treatment works." This statement is without basis and inconsistent with MCP status reports submitted to Mass DEP that we are aware of. ExxonMobil requests the EPA remove this statement from the Fact Sheet and re-evaluate any conclusions or conditions based on the statement that there is a “constant flow of oil to the treatment works”.

Our observations indicate that the oil we suspect is leaching into the drainage system from areas of soil contamination is dependent upon ground temperature, and possibly groundwater level. The flow of oil is affected by the temperature of the seasons, and is negligible in the late fall, winter and early spring.

- B) The components listed for the groundwater infiltration contribution are described as “Groundwater containing residual contamination from current and historical releases of oil and hazardous materials.” This asserts that all groundwater infiltration is "contaminated" and that on-going (aka "current") releases exist, which is inaccurate. ExxonMobil suggests this component description be changed to read “Groundwater, some containing residual contamination from historical releases of oil and hazardous materials.”

- C) Sentence six of the Fact Sheet states "EPA finds, based on this information, that, although not initially constructed for this use, the storm water collection and discharge system is being utilized as a critical component of the remedial action to prevent off-site migration."

As described in its General Comments, ExxonMobil disagrees with this conclusion.

Comment 13: Section 6.2.2, fourth paragraph – As further detailed in Comment 12 on the Fact Sheet and ExxonMobil's General Comments, this paragraph misrepresents the groundwater flow and the impact of the secondary containment sumps on the groundwater.

Comment 14: Section 6.2.5 - ExxonMobil heats the No. 6 fuel oil tanks and transfer piping with steam generated by The Mystic Generating Station. Steam condensate from these operations drain to the site drainage system and is discharged at Outfall 001. Sprague heats the asphalt tanks with hot oil recirculation system from an onsite furnace. No intentional discharge occurs from those operations.

Comment 15: Section 6.2.6 - ExxonMobil has halted the practice of allowing truck wash water to enter the site drainage system. The truck washing services used onsite collect the wash water and haul it offsite for proper treatment and disposal.

Comment 16: Section 6.2.7 – Regarding hydrostatic test water sampling procedures, there is an incorrect reference to Part 1.A. 9 of the permit. It should refer to Part 1.A.3.r (3).

Comment 17: Section 6.2.8 - The description of ExxonMobil's management practices for storm water from dock secondary containment is inaccurate. The following is a more accurate description.

"The marine vessel dock has a steel drip pan located beneath each of the manifold areas where transfer lines connect to the manifold. ExxonMobil keeps these drip pans covered to exclude storm water, except during transfer operations. After transfer operations any product in the drip pans is pumped into the facility's transfer piping.

The greater area around each dock manifold is equipped with a larger area of secondary containment to manage possible leaks from flanges, valves and fittings during operation, construction or maintenance activities. Any spills to these areas are cleaned up immediately. However a small residue of oil may remain. Storm water that has come in contact with this residue is loaded onto a vacuum truck and discharged into the head of the treatment works."

Comment 18: Section 6.2.9, first paragraph – The first paragraph incorrectly references the original OWS as a "distributor chamber". It still functions as an OWS, providing oil and solids separation.

Comment 19: Section 6.2.9, third paragraph, second sentence - The treatment works are inspected twice per day. Oil is not skimmed off twice per day. Oil is skimmed off as needed.

Comment 20: Section 6.2.9, fourth paragraph, last sentence - The pumps in the first wet well chamber transfers water treated in the OWS system to Tank 140. What has been referred to in the past as “bypass” water does get treated by the OWS system but the treated water does not flow through (it is routed around) Tank 140.

Comment 21: Section 6.2.9, fifth paragraph - The discussion of the water in the second wet well chamber is incomplete. In the additional information submitted with the application, ExxonMobil provided the following information regarding Outfall 001B under the heading Storm Water Management. This information more accurately and completely describes Outfall 001B.

“During storm events with intense precipitation, the rising level of water in the wet well may threaten to exceed baffle heights. In the event that no other storm water control method can sufficiently manage the excess flow, [one or] two 11,500 vertical turbine pumps are manually activated to lift the excess flow directly to the 72” culvert (001B), routed around Holding Tank No. 140. It is necessary to prevent water from rising above the system baffles so the baffles retain oil.”

The water discharged to Outfall 001B flows through and receives treatment by the combined OWS system consisting of the original OWS and the “new” OWS”, but does not flow through Tank 140. Outfall 001B is only used to prevent overflow to the two separators during heavy rainfall events. The Fact Sheet tends to characterize this flow as untreated bypass. Flow from the second wet well chamber is characteristic of water that has passed through the OWS system at flow rates that exceed the current rated capacity of the conventional OWS only, and has not passed through Tank 140. Water from the second wet well chamber discharges to Outfall 001. The ability to achieve the current permit limits for O&G during these emergency discharge events demonstrates that the OWS systems are adequate.

Outfall 001B is in the existing permit to describe the flow-from-process path, and provide a representative sampling location. EPA has eliminated Outfall 001B and provided no discussion about a sampling location for flows from this part of the treatment process. In the past this has been Outfall 001B, which has been inaccurately labeled as a “bypass.”

Additionally ExxonMobil believes the referenced section should be 6.3.1.1 and not 6.3.3.1.

Comment 22: Section 6.2.9, sixth paragraph – see Comment 21.

Comment 23: Section 6.2.9, seventh paragraph - This paragraph appears to be trying to describe the flow of storm water from areas within containment. If this is so, the opening sentence should read "Flow from areas of the site that are within the secondary containment are collected and manually pumped, after inspection, to the treatment works at a controlled rate typically within 1 -7 days after each rain event."

If the sentence is describing storm water flows from areas outside secondary containment it should read, "Flow from areas that are outside secondary containment are collected, and either pumped or gravity flow to the treatment works as described in Section 6.2.1, and treated through the OWS during the rain event."

Comment 24: Section 6.3 third paragraph – As described in ExxonMobil's General Comments, EPA's rationale for basing these BPJ limits established in the 2005 RGP is unsupported.

Comment 25: Section 6.3.1 – The OWS system consists of two oil water separators. ExxonMobil believes that the operation of the separators was not fully explained in the permit renewal application and is further explained herein (as described orally during site visits and meetings). The original OWS (a corrugated plate separator (CPS)) is used for dry weather flows and first flush of storm water flows. Flows in excess of the original OWS' optimum design capacity are routed to the "new" OWS. The entire OWS system provides full treatment up to its combined optimum design capacity and partial treatment at higher flows. Storm water runoff from heavy rain events does not bypass the separator system.

As described in ExxonMobil's General Comments, the facility has the obligation and duty to operate the treatment equipment correctly (40 CFR 122.41(e)). EPA's assertion that the treatment equipment is hydraulically overloaded is contradicted by the historic operating data reported in the site's discharge monitoring reports (DMR). For example, all but one of the monthly average O&G concentrations for Outfall 001A shown in EPA's DMR Summary for the Everett Terminal were less than 5.1 mg/L; the one higher value was 7.2 mg/L which is well below the current permit limit of 15 mg/L. At Outfall 001B, the DMR data likewise demonstrate that all but one monthly average O&G concentration was less than 5.1 mg/L; that concentration was 13.2 mg/L which is below the permit limit. These monitoring data for Outfalls 001A and 001B do not support the Agency's contention that the Everett Terminal oil-water separation system is hydraulically overloaded and cannot be used to justify including flow limitations on the treatment system in the permit.

Any permit condition applied should not specify the flow rate and should allow flexibility in rating/re-rating the system for the optimum design flow, which is the approach used in the current permit. As indicated elsewhere, ExxonMobil is in the process of undertaking an investigation related to optimum design flow and will report the results when complete.

The last sentence referring to the Standard Bypass Conditions in Part II is not applicable since bypasses of the OWS system do not occur and the permit allows discharges of "overflows" under the conditions of Part I.A.14.

Comment 26: Section 6.3.1.1 - Outfall 001B is not a bypass discharge. As described in ExxonMobil's General Comments, the discharge from Outfall 001B first flows through and receives treatment from the OWS system but does not flow through Tank 140. This discharge is different from Outfall 001A and is recognized as an allowable "overflow" process stream. It is necessary to operate the system to prevent system flooding and to maintain the integrity of the treatment works during severe weather incidents.

Comment 27: Section 6.3.3, first sentence - See Comment 12.

Comment 28: Section 6.3.3 – See ExxonMobil's General Comments.

Comment 29: Paragraph 1 Sentence 4 - Infiltrating groundwater does not contribute a constant flow of free oil to the treatment works. See Comment 12 and ExxonMobil's General Comments.

Comment 30: Section 6.3.5 - See ExxonMobil's General Comments and DRAFT PERMIT COMMENTS, above.

Comment 31: Section 6.3.6 – See ExxonMobil's General Comments.

Comment 32: Section 6.3.6.2 – EPA is basing the inclusion of MTBE limits in the permit on a sample that was collected from the influent to the OWS and it is thus not representative of the final discharge. The fate of MTBE in the OWS and subsequent storage tank has not been determined and therefore in influent sample cannot be assumed to represent the discharge at the final outfall. The Everett Terminal no longer stores or dispenses MBTE. As described in ExxonMobil's General Comments, EPA has a non-discretionary duty to demonstrate that a BPJ-based permit limit is appropriate for the Everett Terminal considering the factors at 40 CFR 125.3(c) and (d). The only condition for MTBE in the permit should be a monthly monitor and report-only requirement implemented through ExxonMobil's BMP for a period of one year, after which an evaluation of "reasonable potential" can be performed to assess the potential impacts on water quality and/or human health.

Comment 33: Section 6.3.6.3 – See ExxonMobil's General Comments and DRAFT PERMIT COMMENTS.

Comment 34: Section 6.3.6.4 - See ExxonMobil's General Comments and DRAFT PERMIT COMMENTS.

Comment 35: Section 6.3.7 - See ExxonMobil's General Comments and DRAFT PERMIT COMMENTS.

Comment 36: Section 6.3.8 - See ExxonMobil's General Comments and DRAFT PERMIT COMMENTS.

Comment 37: Section 6.4.2 - The Fact Sheet and Draft Permit prohibit the discharge of detergent laden floor washings to Outfall 001 which is consistent with the Multi-Sector General Permit for Storm Water Associated with Industrial Discharges. ExxonMobil interprets this to mean that floor washings free of detergents are approved for discharge to Outfall 001, which is not stated as such in the Permit, Part I.A.8.

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