

APPENDIX 3

NATIONAL HISTORIC PRESERVATION ACT SCREENING PROCESS

I. Background

Section 106 of the National Historic Preservation Act (NHPA) requires federal agencies to take into account the effects of Federal “undertakings” on historic properties that are either listed on, or eligible for listing on, the National Register of Historic Places. 16 USC§ 470 et seq. The term Federal “undertaking” is defined in the NHPA regulations to include a project, activity or program of a Federal agency including those carried out by or on behalf of a Federal agency, those carried out with Federal financial assistance, and those requiring a Federal permit, license or approval. See 36 CFR 800.16(y). Historic properties are defined in the NHPA regulations to include prehistoric or historic districts, sites, buildings, structures, or object that are included in, or eligible for inclusion in, the National Register of Historic Places. This term includes artifacts, records, and remains that are related to and located within such properties. See 36 CFR 800.16(l).

EPA’s reissuance of a National Pollutant Discharge Elimination System (NPDES) General Permit is a federal undertaking within the meaning of NHPA regulations. To address any issued relating to historic properties in connection with the issuance of the permit, EPA has included criteria for applicants to certify that potential impacts of their covered activities on historic properties have been appropriately considered and addressed. Although individual applications for coverage under the general permit do not constitute separate Federal undertakings, the screening criteria and certifications provide an appropriate site-specific means of addressing historic property issues in connection with the issuance of the permit. Applicants seeking coverage under the HYDROGP are thus required to make certain certifications regarding the potential effects of their authorized discharges on properties listed or eligible for listing on the National Register of Historic Places.

II. Determination of Potential Impact

Operators seeking coverage under the HYDROGP must determine whether the discharges from their facilities or the implementation of their facility’s best management practices (BMP) Plan to control such discharges, may have adverse effects on a property or place that is either listed or eligible for listing on the National Register of Historic Places. The term “adverse effects” includes but is not limited to damage, deterioration, alteration, or destruction of the historic property or place.

For operators with existing discharges from sites which are not undergoing any construction activity, a simple visual inspection may be sufficient to determine whether historic properties are affected and to select one of the criteria in Section III of this Appendix. In fact, EPA has reason to believe that the majority of activities authorized under this general permit will have no potential to affect historic properties because the HYDROGP typically authorizes discharges from existing facilities and requires control of the pollutants discharged from the site. In

addition, many sites covered under the reissuance of this permit will be sites that are seeking renewal of previous permit authorization.

However, for operators with new discharges and existing discharges for which construction activities related to treatment systems or BMPs are planned or ongoing, operators must conduct further inquiry to determine whether historic properties may be affected by the discharge or discharge-related activities. In such instances, operators seeking coverage should first determine whether there are any nearby historic properties or places listed on the National Register or if any nearby properties and places are eligible for listing on the register (e.g., they are “eligible for listing”).

Activities With Potential to Affect Historic Properties

Under the ongoing, typical operations of these facilities, EPA does not believe that discharges or discharge-related activities would have the potential to affect historic properties. However, if the permittee undertakes construction or rehabilitation of any of its facilities, intake structures, or associated structures such as dams, which may affect historic properties, it will need to ensure that (1) historic properties will not be affected by their activities and/or (2) it is in compliance with a written agreement with the SHPO, THPO (if appropriate) or, if the Tribe does not have a THPO, other tribal representative, that outlines all measures the applicant will implement to avoid, minimize or mitigate any adverse effects on historic properties.

EPA suggests that operators seeking coverage under the HYDROGP first search the National Register of Historic Places information available on the National Park Service’s website at <http://www.nps.gov/nr/>. Further information can be found in Section IV of this appendix. The relevant State and Tribal Historic Preservation Officers are listed in Sections V and VI of this appendix. Operators seeking coverage may also contact city, county or other local historical societies for assistance, especially when determining if a place or property is eligible for listing on the register.

III. Permit Eligibility Criteria

The following three criteria indicate how facilities seeking coverage under the HYDROGP can meet the special eligibility requirements for protection of historic properties under this general permit. An applicant must meet one or more of the following three criteria (A-C) to be eligible for authorization under the RGP:

Criterion A: No historic properties are present. The discharges and discharge-related activities (e.g., BMP Plans) do not have the potential to affect historic properties.

Criterion B: Historic properties are present. Discharges and discharge-related activities do not have the potential to affect historic properties.

Criterion C: Historic properties are present. The discharges and discharge-related activities have the potential to affect or will have an adverse effect on historic properties. The applicant has obtained and is in compliance with a written agreement with the State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officer (TPHO), or other tribal representative that outlines measures the applicant will carry out to mitigate or prevent any adverse effects on historic properties.

To determine whether historic properties are present in the vicinity of a facility, an applicant must review all reasonably ascertainable information and, if necessary, conduct a historic survey. Where historic properties are present, an applicant must include documentation of the determination with the NOI submitted to EPA so EPA can confirm that discharges and discharge-related activities do not have the potential to cause effects or will have an adverse effect on historic properties. Where the applicant believes or EPA determines that discharges or discharge-related activities have the potential to cause effects or will have an adverse effect on historic properties, an applicant must contact the relevant SHPO and/or TPHO to determine the likelihood that artifacts, records, or remains are potentially present on your site. The NOI must include any terms and conditions that the applicant must follow to mitigate or prevent adverse effects due to the activities regulated by this general permit resulting from evaluation and interaction with a SHPO and/or TPHO. These terms and conditions will be included in an applicant's authorization to discharge.

EPA encourages sites seeking coverage to contact the appropriate State or Tribal Historic Preservation Officer as soon as possible in the event of a potential adverse effect to a historic property. In situations where an agreement cannot be reached between an applicant and the State or Tribal Historic Preservation Officer, sites seeking coverage should contact the Advisory Council on Historic Preservation listed in Section VII below for assistance.

Applicants are reminded that they must comply with applicable State, Tribal, and local laws concerning protection of historic properties and should include documentation supporting the determination of permit eligibility in the BMP Plan for their sites.

IV. Information on the National Register of Historic Places

The National Register of Historic Places is the Nation's official list of cultural resources worthy of preservation. Authorized under the National Historic Preservation Act of 1966, the National Register is part of a national program to coordinate and support public and private efforts to identify, evaluate, and protect our historic and archeological resources. Properties listed in the Register include districts, sites, buildings, structures, and objects that are significant in American history, architecture, archeology, engineering, and culture. The National Register is administered by the National Park Service, which is part of the U.S. Department of the Interior.

The National Park Service is currently in the process of digitizing their records of historic places. Listings of historic places based on the date they were listed can be found on the National Park Service web site at <http://www.nps.gov/nr/research/>.

V. State Historic Preservation Officers (SHPO)

Massachusetts Historical Commission

220 Morrissey Boulevard

Boston, MA 02125

T: (617) 727-8470

TDD: 1-800-392-6090

<http://www.sec.state.ma.us/mhc/mhcidx.htm>

New Hampshire State Historic Preservation Office

New Hampshire Division of Historical Resources Attention: Review and Compliance

19 Pillsbury Street

Concord, NH 03301-3570

T: (603) 271-8850

TDD: 1-800-735-2964

http://www.nh.gov/nhdhr/programs/national_register.html

SHPO information can also be found online at <http://www.nps.gov/nr/shpolist.htm>

VI. Tribal Historic Preservation Officers (THPO)

Wampanoag Tribe of Gay Head-Aquinnah

Bettina Washington, THPO

20 Black Brook Road

Aquinnah, MA 02535-9701

T: 508.645.9265 x 175

F: 508.645.3790

Email: bettina@wampanoagtribe.net

<http://www.wampanoagtribe.net>

THPO information can also be found online at <http://nathpo.org/wp/thpos/find-a-thpo/>

VII. Advisory Council on Historic Preservation

The Advisory Council on Historic Preservation (ACHP) is an independent federal agency that promotes the preservation, enhancement, and productive use of our Nation's historic resources and advises the President and Congress on national historic preservation policy. The National Historic Preservation Act (NHPA) established ACHP in 1966 with the goal of having federal agencies act as responsible stewards of our Nation's resources when their actions affect historic properties. ACHP is the only entity with the legal responsibility to encourage federal agencies to factor historic preservation into federal project requirements. As directed by NHPA, ACHP serves as the primary federal policy advisor to the President and Congress; recommends administrative and legislative improvements for protecting our Nation's heritage; advocates for the full consideration of historic values in federal decision making; and reviews federal programs and policies to promote effectiveness, coordination, and consistency with national preservation policies.

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