

**RESPONSE TO COMMENTS**  
**REGARDING THE RESISSUANCE OF THE FOLLOWING NPDES PERMIT**  
**CORNELL-DUBILIER ELECTRONICS INC. MA0003930**

**Introduction:**

The U.S. Environmental Protection Agency (EPA) and the Massachusetts Department of Environmental Protection (MassDEP) solicited public comments from March 7, 2008 through April 5, 2008 on the draft National Pollution Discharge Elimination System (NPDES) permit to be issued to Cornell-Dubilier Electronics Corporation (CDE).

The Draft NPDES Permit is for the discharge of storm water. The facility discharges to Outer New Bedford Harbor.

During the public-notice (comment) period EPA-New England received comments from Foley and Hoag, LLP, on behalf of CDE.

In accordance with the provisions of 40 C.F.R. §124.17, this document presents EPA's responses to comments received on the draft NPDES permit and any appropriate changes made to the public-noticed draft permit as a result of the comments. The final permit is substantially similar to the draft permit that was available for public comment. EPA did, however, improve certain requirements in the permits as a result of the comments raised. These changes are summarized below and are reflected in the Final Permit.

**Changes Made to the Final Permit as a Result of Public Comments**

1. The units for PCBs on the table in Part I.A.1 of the permit have been changed from mg/L to  $\mu\text{g/L}$ .
2. Paragraph I.B.4.b has been revised to require that the site description include "...the location of all industrial activities, storage, disposal, and material handling that are exposed to precipitation; and all storm water management structural controls."
3. The first sentence in paragraph I.B.4.c has been revised to require "A summary of all pollutant sources which includes all areas where spills have occurred or could occur and result in the discharge of pollutants to storm water."
4. Paragraph I.B.4.f.ii has been revised to allow cracks or signs of deterioration to be repaired "as soon as practicable".
5. The language in paragraph I.B.4.f.iii has been revised to require that if the parking lot is repaved, the thickness of the cap layers must be maintained (12 inches of stone dust covered by 3 inches of asphalt).
6. The language in paragraph I.B.4.f.iii has been revised to permit sealing, coating or replacing the asphalt cap to be done in sections, so long as all sections of the cap are sealed or replaced at least once every 15 years.
7. "Signed copies" in Part I.C has been replaced with "copies of signed originals".
8. Paragraph I.A.1 has been revised to include the discharge of fire sprinkler test water.

9. Paragraphs I.B.5 and I.B.6 have been added to Part I.B of the permit to include requirements for maintaining and updating the Storm Water Pollution Prevention Plan (SWPPP), certifying that this has been done, and for certifying, at least annually, that the facility has followed the procedures described in the SWPPP.

#### **COMMENT NO. 1**

##### **A Permit Is Not Required**

**CDE believes, under the circumstances described above, that an individual NPDES permit for storm water discharge from the facility is not required under the federal or Massachusetts Clean Water Act. The Facility's discharge does not include any "storm water discharge associated with industrial activity" as defined in 40 CFR § 122.26(b)(14). All manufacturing operations at the Facility were ceased in 1991 and no manufacturing operations are currently performed at the site. Part of the facility is used for warehousing and distributing CDE's products, which are manufactured in other CDE plants and imported from offshore sources. The Facility also includes a space for a CDE customer service office, capacitor engineering offices and a capacitor life testing facility. The balance of the Facility is unoccupied.**

**There is no storage of manufactured products, raw materials or waste products anywhere outside of the Facility. No chemicals that may be present at the Facility are exposed to storm water. CDE believes that the normal operation of the Facility does not pose any more of a significant threat of storm water pollution than would other warehouse and distribution activities. In light of all these facts, CDE does not believe that either the federal or Massachusetts Clean Water Act requires CDE to have a NPDES permit for its storm water discharge.**

**As CDE has previously indicated to EPA, if EPA wishes to continue NPDES permitting for the Facility, CDE would be amenable to transferring its individual permit to the NPDES Storm Water Multi Sector Permit for Industrial Activities (MSGP) program. CDE understands that the existing MSGP expired in 2005 and, though it was expected to be reissued in the summer of 2006, to CDE's knowledge the MSGP has not yet been reissued. CDE further understands that, while it cannot now apply for coverage under the existing MSGP, once the MSGP is reissued CDE may apply for coverage under the reissued MSGP and, if coverage is granted, any individual permit that may be issued covering the Facility would then be terminated. Because CDE believes that an individual NPDES permit is not required for the facility, CDE request that EPA defer reissuance of an individual NPDES permit until the MSGP is reissued and CDE has had the opportunity to apply for coverage under that permit. In the alternative, CDE requests that EPA promptly consider any application that CDE may make for coverage under the MSGP once it is reissued. CDE understands that the reissued MSGP will likely include a SWPPP component that CDE has already implemented and that could be modified to meet the MSGP requirements.**

#### **RESPONSE NO. 1**

EPA disagrees that the Facility's discharge does not include any "storm water discharge associated with industrial activity" as defined in 40 CFR §122.26(b)(14). The definition includes "*refuse sites*", "*sites used for residual treatment, storage, or disposal*", "*areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water*", and "*Hazardous waste treatment storage, or disposal facilities*"(40 CFR §122.26(b)(14)(iv)). The CDE site fits into this definition since residual PCB contamination which resulted from past industrial activities, remains buried on the site. The control of PCB laden discharges to New Bedford Harbor

via storm water is contingent upon the ongoing operation and maintenance of the stone dust and asphalt cap.

EPA has chosen not to delay this individual permit in anticipation of possible future coverage under the anticipated new MSGP. The MSGP is specifically intended for active industrial facilities and specifically refers, in paragraph 1.2.2.1.1, to those industrial activities listed in 40 CFR §122.26(b)(14)(i, ix and xi). Discharges associated with waste disposal and in areas where industrial activity has taken place in the past are not eligible for coverage under the expired Multi-Sector General Permit. Although it has not been issued yet, EPA believes that this condition will also be included in the new MSGP. The lack of current industrial activities at the CDE site may, therefore, prevent EPA from authorizing discharges under the MSGP. In any event, EPA has elected to authorize the CDE facility's storm water discharge associated with industrial activity with this individual permit rather than under a future MSGP.

## **COMMENT NO. 2**

### **Permit Term**

**CDE requests that the term of the permit begins on January 1 and ends on December 31 so that the first sampling period for the year occurs during the first quarter of the year and the last sampling period for the year occurs during the fourth quarter of the year.**

## **RESPONSE NO. 2**

EPA declines the request in the comment. EPA chooses not to wait until January of 2009 to reissue the permit due to our obligation to reissue expired permits as expeditiously as possible. The effective period of the permit, determined in accordance with 40 CFR §122.46, may not exceed 5 years. Therefore, EPA may issue a permit with an effective period of less than 5 years, allowing expiration on the last day of December prior to five years from the effective date of the permit. However this would create an administrative burden for EPA since it would require reissuing the permit sooner than otherwise necessary.

## **COMMENT NO. 3**

### **Grab Sample Protocol**

**EPA's proposed sampling protocol, which requires that samples be collected within the first hour of the start of the storm event (0.1 inches of rain) or discharge, is impractical at a facility which is normally only staffed between 8 a.m. and 5 p.m. on weekdays. Under the protocol in the Draft Permit, CDE would be unable to collect a sample unless a storm event of sufficient magnitude started after the facility opens on weekdays. Accordingly, CDE requests that footnote 3 on page 3 of the Draft Permit be amended to state that, "Sampling shall be conducted during significant storm events (greater than 0.1 inches total precipitation) and during normal work hours when qualified personnel are available."**

## **RESPONSE NO. 3**

EPA finds that the sampling requirements do not require "needless or burdensome monitoring"<sup>1</sup>. The sampling schedule, unchanged from the current permit, is only quarterly and consistent with requirements at other facilities in Massachusetts with similar staffing schedules as well as completely inactive facilities.

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<sup>1</sup> USEPA, Office of Water, *U.S. EPA NPDES Permit Writer's Manual*, EPA 833-B-96-003, December 1996, p.119.

#### **COMMENT NO. 4**

##### **PCB Reporting Units**

**(Table, page 2). The units listed for PCBs should be changed from mg/l to ug/l.**

#### **RESPONSE NO. 4**

EPA agrees. The units listed for PCBs in Part I.A.1 of the permit have been changed.

#### **COMMENT NO. 5**

##### **Description of Sampling Location**

**(Section I.A.4). Discharge Monitoring Reports for the Facility refer to the catch basin where samples are obtained as 002A. The sampling location should be referred to as such in the Draft Permit.**

#### **RESPONSE NO. 5**

The outfall number will be corrected in the Discharge Monitoring Reports. The outfall number (002) is consistent with the current permit.

#### **COMMENT NO. 6**

##### **SWPPP Requirements**

**(Section B, page 4). CDE requests that EPA clarify the SWPPP requirements set forth at Subsections B.4.b-c. CDE understands that the Facility is required to maintain a SWPPP in order to reduce or prevent the discharge of pollutants in storm water from the Facility. In keeping with this purpose, Section B.4 requires the SWPPP to identify “potential sources of pollution that may reasonably be expected to affect the quality storm water discharges.” However, the SWPPP requirements set forth at Subsections B.4.b-c are not consistent with this requirement in that, given the board language of those Subsections, they could be read to impose much broader requirements, such as the identification of activities and materials at the Facility which do not have any potential to affect the quality of storm water discharges. Requiring the identification of such activities and materials would not further the purposes of the SWPPP and would be unduly burdensome to CDE. Furthermore, requiring such information would be inconsistent with Section D.2 of the SWPPP requirements under the Current Permit, which, consistent with Section B.4 of the Draft Permit, require the identification of activities and materials which could reasonably be expected to affect the quality of storm water discharges. CDE has put substantial efforts into ensuring that the SWPPP for the Facility is consistent with the requirements of the Current Permit. Accordingly, CDE requests that EPA clarify the SWPPP requirements set forth at Subsections B.4.b-c of the Draft Permit so that they are consistent with Section B.4 of the Draft Permit and Section D.2 of the SWPPP requirements under the Current Permit.**

**Specifically, Subsection B.4.b requires that the SWPPP contain a site description which includes a list of activities at the Facility and the location of industrial activities, storage, disposal and material handling. This requirement is unduly burdensome. CDE requests that the SWPPP requirements set forth at Subsection 4.b be made consistent with Section B.4 and with the SWPPP requirements for the Current Permit such that the locations of industrial activities, storage, disposal or material handling that are exposed to precipitation would be identified. CDE further requests that the reference to “structural controls” in this subsection be replaced with “storm water management structural controls.” In addition, Subsection B.4.c**

requires the SWPPP to contain a summary of all “pollutant sources which includes all areas where spills have occurred or could occur.” This requirement is unduly burdensome. CDE requests that the SWPPP requirements set forth at Section 4.c. be made consistent with Section B.4 and with the SWPPP requirements for the Current Permit such that “potential pollutant sources which may reasonably be expected to add significant amounts of pollutants to storm water discharges” would be identified, along with those areas where spills have occurred after the date three years prior to the effective date of the permit and those areas where spills are likely to occur in the future which are exposed to precipitation or otherwise drain to a storm water conveyance at the facility.

#### **RESPONSE NO. 6**

EPA agrees that Section I.B.4 should clearly refer to pollutant sources that could impact storm water quality and has made the following changes. Paragraph I.B.4.b has been revised to require that the site description include “...the location of all industrial activities, storage, disposal, and material handling that are exposed to precipitation; and all storm water management structural controls.” The first sentence in paragraph I.B.4.c has been revised to require “A summary of all pollutant sources which includes all areas where spills have occurred or could occur and result in the discharge of pollutants to storm water.”

#### **COMMENT NO. 7**

##### **Operation and Maintenance of the Cap**

(Section B, Paragraph 4.f., pages 4-5) The Draft Permit currently states that any identified cracks or signs of deterioration identified during the biannual inspection “shall be repaired immediately.” However, cracks or signs of deterioration cannot realistically be repaired properly at all times of the year, such as in the winter. In addition, a certain amount of time is required for CDE to obtain estimates and arrange for repair work to be conducted. This language should therefore be changed to state that repairs shall be made “as soon as practicable.”

In addition, the Draft Permit would require CDE to seal or coat the asphalt Cap or to repave the parking lot with a minimum of 3 inches of overlay asphalt at least every 15 years. This requirement should be revised to remove the language “or the parking lot shall be repaved with a minimum of 3 inches of overlay asphalt.” Repaving the parking lot with a minimum of 3 inches of asphalt would be impracticable as it would likely cause flooding of the Annex buildings. Seal coating of the parking lot, coupled with repair and replacement of cracked and deteriorating areas of the pavement is a more practicable and better maintenance procedure and is a procedure that CDE has been undertaking since the asphalt Cap was installed. CDE understands the requirement that the lot be sealed or coated at least every 15 years to represent an obligation going forward from the effective date of the permit. If this understanding is correct, Subsection 4.iii should state that the activity shall be undertaken “within 15 years of the effective date of the permit and at least every 15 years thereafter.” CDE further requests that EPA clarify that CDE may seal or coat the asphalt Cap in sections, so long as all sections of the Cap will have been sealed at least once within the 15 year period.

#### **RESPONSE NO. 7**

EPA agrees that the language in the permit with regards to cap inspection and repair should allow time for obtaining estimates and arranging for repair work to be conducted. Paragraph I.B.4.f.ii has been revised to required that repairs be completed as soon as practicable. There is no requirement in the permit that the asphalt cap be inspected or repaired in the wintertime.

EPA's intention in paragraph I.B.4.f.iii is to require that if the parking lot is repaved, that the thickness of the cap layers be maintained (12 inches of stone dust covered by 3 inches of asphalt). The language has been expanded to clarify that intention.

EPA agrees that sealing, coating or replacing the asphalt cap in sections is acceptable practice, so long as all sections of the cap be sealed or replaced at least once every 15 years. The language in paragraph I.B.4.f.iii has been revised accordingly.

EPA disagrees that the 15 year period should begin with the effective date of the permit. In their comment letter, CDE informed EPA that maintenance records have been kept that document repairs to the asphalt cap (see comment 12). Therefore, EPA finds that it will not be overly burdensome to continue building on those records. If there are areas of the cap that have not been sealed or replaced in more than fifteen years, EPA expects that those areas will be sealed or replaced as soon as practicable.

#### **COMMENT NO. 8**

##### **Reporting Requirements**

**(Section C, page 5) The provisions requiring CDE to provide reporting information to the Massachusetts Department of Environmental Protection ("MassDEP"), as currently written, imply that each copy of the "monitoring reports and all other reports except toxicity reports" and "DMRs required by this Permit" sent to MassDEP must have an original signature. Reporting requirements should be consistent with the DMR reporting instructions which indicate that an original signed copy is to be sent to EPA, while photocopies can be sent to other agencies. Accordingly, CDE understands that a copy of the executed original sent to EPA may be submitted to MassDEP. If this understanding is correct, the provisions should begin with "One copy of all signed monitoring reports" and "One copy of all signed DMRs", respectively, rather than in their current form.**

#### **RESPONSE NO. 8**

The permit language in Section C has been clarified to allow photocopies of signed originals to be sent to MassDEP.

#### **COMMENT NO. 9**

##### **Description of Discharge Fact Sheet Discussion**

**(Section 2, Page 3) In addition to storm water runoff from the Facility's rooftops and paved areas, the discharge from Outfall 002 also includes small volumes of runoff from the grass covered capped area and small volumes of potable water that are discharged occasionally when fire sprinklers are tested. Appropriate corrections should be made to this section of the Fact Sheet to reflect these additional discharges.**

#### **RESPONSE NO. 9**

EPA notes the comment. The fact sheet will not be reviewed or reissued. This response to comments explains any changes to the draft permit and serves as an addendum to the fact sheet. Paragraph I.A.1 of the final permit has been revised to include fire sprinkler test water discharges to outfall 002.

## COMMENT NO. 10

### Facility Information Fact Sheet Discussion

(Section 6.1., Pages 6-7) On page 6 of the Fact Sheet the Facility is described as being on an approximately ten acres site bounded by David Street, Mott Street and Rodney French Boulevard. In fact, the Facility is bounded to the north by David Street, to the south by Mott Street, to the east by *East* Rodney French Boulevard and to the west by an approximately six acre grass-covered lot that runs between the Facility and Cleveland Street. The grass-covered lot is also owned by CDE. Appropriate corrections should be made to this section of the Fact Sheet.

Also on page 6, the Fact Sheet states that the system in the basement of Building A consists of nine sumps. In fact the system includes *eleven* sumps. The Fact Sheet should be changed to reflect the existence of eleven sumps.

The last sentence of this section on page 7 is incomplete. The sentence should be completed or stricken.

## RESPONSE NO. 10

EPA notes the comment. No changes to the final permit have been made as a result of this comment.

## COMMENT NO. 11

### pH Effluent Limits

(Section 6.3.2, Page 7) pH measurements over the past five years were taken at outfall 002, not at outfall 001 as stated in the Fact Sheet. The Fact Sheet should be corrected to reflect this fact.

## RESPONSE NO. 11

EPA notes the comment. No changes to the final permit have been made as a result of this comment.

## COMMENT NO. 12

### PCB Effluent Limits

(Section 6.3.4, Pages 8-9) In the third paragraph of this section “outfall 001” should be deleted and replaced by “outfall 002”. The Current Permit requires sample to be taken at outfall 002. The Fact Sheet should be corrected to reflect this fact.

The Fact Sheet notes that maintenance records related to the asphalt cap were not available during EPA’s 2006 site visit. At the time of the site visit CDE was unable to locate the referenced maintenance records in its files. However, the maintenance records have since been located and are available at the Facility for EPA’s review.

The Fact Sheet states that “CDE has installed an over-the-grate filter (with oil absorbent filter media) at the central parking lot catch basin to capture residual PCB contamination.” The parenthetical “(with oil absorbent filter media)” should be stricken from this sentence because it does not accurately describe the filter media currently used by CDE. While CDE has installed an over-the-grate filter which uses a filter media designed to capture sediments and potential residual PCB contamination, CDE has not installed the oil absorbent filter media that accompanies the filter media used. CDE has not installed this oil absorbent filter media because CDE has long used and continues to use Pig Socks to capture any residual oil that may be present in stormwater from the Site, and thus the use of oil absorbent filter media would be

redundant and unnecessary. Further, the oil absorbent filter media referenced in the Fact Sheet is designed to fit over a manhole, and, as it does not cover the full width of the discharge, is too small to serve any useful purpose given the design of the catch-basin at the Facility. In contrast, the Pig Socks used by CDE straddle the full width of the discharge. Accordingly, the above-referenced parenthetical should be deleted.

#### **RESPONSE NO. 12**

EPA notes the comment and agrees with the new description of the filter media provided. The new description does not require changes to the permit. Therefore, no changes to the final permit have been made as a result of this comment.

#### **COMMENT NO. 13**

##### **SWPPP Fact Sheet Discussion**

CDE believes that the first paragraph of this section should be stricken as it does not apply to CDE. Section 304(e) of the Clean Water Act, 33 U.S.C. § 1314(e), permits the Administrator to publish supplemental regulations to “control plant site runoff... which the Administrator determines [is] associated with or ancillary to the industrial manufacturing process within [a] class or category of point sources and may contribute significant amounts of such pollution to navigable waters.” As noted above, CDE’s storm water discharge is not associated with or ancillary to any industrial manufacturing process nor is it likely to contribute significant amounts of pollutants to navigable waters. Therefore, any regulations promulgated pursuant to Section 304(e) would not apply to the Facility.<sup>2</sup> Nor are there any ancillary operations at the Facility which could result in significant amounts of toxic or hazardous pollutants reaching New Bedford Harbor. As previously noted, CDE’s operations at the Facility do not involve any manufacturing or storage of any manufactured, raw or waste products outside.

In addition, CDE notes that the SWPPP Fact Sheet discussion attributes certain requirements to the Draft Permit which do not actually appear in the Draft Permit. For example, the Fact Sheet indicates that the Draft Permit requires the permittee to maintain and update the SWPPP as changes occur at the Facility. It also indicates that the Draft Permit requires CDE to provide EPA and MassDEP with an annual certification related to SWPPP and to append a copy of the certification to the SWPPP. However, these requirements are not stated in the Draft Permit. CDE understands that enforceable terms of the permit are to be contained within the permit itself. Further, the Fact Sheet indicates that the annual certification must be sent to EPA and MassDEP and a copy appended to the SWPPP within 30 days of the annual anniversary of the effective date of the Draft Permit.” If these requirements are maintained, please clarify that the requirements should be undertaken within 30 days of the annual anniversary of the effective date of the final issuance of the permit. In addition, CDE notes that the reference to BMPP in the last paragraph of this section should be a reference to a “SWPPP”.

#### **RESPONSE NO. 13**

EPA disagrees with the opinion that Section 304(e) does not apply to storm water discharges from CDE. As discussed in greater detail in response 1, the CDE facility operation includes the ongoing operation and maintenance of a stone dust and asphalt cap to contain the PCB contamination which is

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<sup>2</sup> CDE has been unable to locate the regulation 40 CFR §125.103, cited by EPA as support for this paragraph in the current version of the Code of Federal Regulations.

ancillary to former industrial manufacturing at the site. EPA finds that it is prudent to rigorously maintain the contaminated soil cap and monitor the storm water quality from the area of covered soils.

EPA acknowledges the error referred to in the footnote to this comment. The correct reference is 40 CFR §122.44(k) not 40 CFR §125.103.

EPA agrees that there is a discrepancy between the fact sheet and the permit with regards to the annual certification of the SWPPP and also that enforceable terms of the permit must be stated in the permit itself, not the fact sheet. The permit has been revised to include requirements for maintaining and updating the SWPPP and certifying that this has been done and for certifying at least annually that the facility has followed the procedures described in the SWPPP.

EPA has confirmed that there are no references to a best management practices plan (BMPP) in the permit.