

**RESPONSE TO COMMENTS
REGARDING THE REISSUANCE OF THE FOLLOWING NPDES PERMIT
NASHUA NATIONAL FISH HATCHERY NH0023515**

Introduction:

The U.S. Environmental Protection Agency (EPA) solicited public comments from November 2, 2007 through December 1, 2007 on the draft National Pollution Discharge Elimination System (NPDES) permit to be issued to the Nashua National Fish Hatchery (NNFH). During the public-notice (comment) period EPA-New England received comments from the Protected Resources Division of NOAA's National Marine Fisheries Service (NMFS PRD) and the Nashua National Fish Hatchery (NNFH). Furthermore, in a letter dated January 13, 2009, EPA requested additional information from NNFH, pursuant to Section 308 of the Clean Water Act.

In accordance with the provisions of 40 C.F.R. §124.17, this document presents EPA's responses to comments (RTC) received on the Draft NPDES Permit (NH0023515) and details any changes made to the public noticed Draft Permit as a result of the comments. The information submitted by the facility in response to EPA's 308 request has been used by EPA to support provisions retained from the Draft Permit and changes made to the Final Permit. EPA's decision-making for this permit has benefited from the comments and information that were submitted and, as a result, EPA has improved certain permit requirements. Changes and improvements are summarized below and are reflected in the Final Permit. The analyses underlying these changes are explained in the responses to individual comments that follow.

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

1. The receiving water was changed from "wetland adjacent to the Nashua River" to the "Colrain Brook", which flows through the wetland adjacent to the Nashua River.
2. The monitoring frequency for flow was decreased from once (1) per day to once (1) per week.
3. The monitoring frequencies for TSS, BOD₅, and Total Phosphorus were decreased from once (1) per quarter to twice (2) per year.
4. The monitoring requirements for Total Nitrogen were removed.
5. The requisite number of grab samples that make up a composite sample were decreased from eight (8) grab samples to four (4) grab samples.
6. Requirements for monitoring temperature, dissolved oxygen, and dissolved oxygen saturation when formalin is believed absent were removed.
7. Part I.A.10 was modified for clarification from "Any change of the fish species to be raised at this facility or development stage to be attained will require written notification to EPA-New England and to the NHDES-WD and, possibly, a permit modification." to "The permittee shall notify EPA-New England and NHDES-WD in writing of the addition of any non-indigenous species, to be raised at this facility."
8. The length of time following the effective date of the permit in which the permittee has to certify in writing to EPA and NHDES-WD that the BMP plan has been developed in accordance with the permit was increased from 90 days to 180 days.

Comments from NOAA's National Marine Fisheries Service (NMFS PRD)

Comment No. 1

While several species of listed whales and sea turtles occur seasonally in waters off the New Hampshire coast, no listed species are known to occur in the Nashua River or its wetlands. As such, no further coordination with NMFS PRD is necessary. Should new information become available that changes the basis for this determination, or a new species be listed or critical habitat designated, further coordination with NMFS should be pursued. As you know, NMFS, U.S. Fish and Wildlife Service, and EPA are currently engaged in Section 7 consultations on EPA's aquatic life criteria (national 304(a) consultation). Those consultations may reveal effects of EPA's program that NMFS did not consider in this evaluation or they may change national water quality criteria and standards in ways that affect the water quality program for the State of New Hampshire. Either outcome might require NMDS to reconsider the conclusions reached in this letter.

Response to Comment No. 1:

EPA acknowledges that should project plans change or new information become available that coordination with NMFS might be necessary.

Comments from Nashua National Fish Hatchery

Comment No. 2:

Page 4 of fact sheet #NH0023515 identifies an exclusion from classification as a concentrated aquatic animal production (CAAP) facility if less than 20,000 lbs. of harvestable weight of fish is produced in a given year and if less than 5,000 lbs. of food were used during the calendar month of maximum feeding. As previously identified, NNFH's production is far below the threshold used to classify a facility as CAAP, as defined in 40 Code of Federal Regulations (CFR) Section 122, Appendix C. If EPA decides to use Best Professional Judgment to classify NNFH as a CAAP facility after receiving these comments, given our levels of production relative to the thresholds identified in the publically reviewed documents (Appendix C to Part 122—Criteria for Determining a Concentrated Aquatic Animal Production Facility), it would seem to undermine the public review process and the decision to provide exclusions as defined in 40 Code of Federal Regulations Section 122. I believe that exclusions were identified due to the low levels of pollutants from facilities that are producing harvestable fish below the threshold levels and other analysis (economic, etc.) which should have been used to classify NNFH as a non-CAAP facility.

Page 5 of fact sheet #NH0023515 states that EPA has made a case-by-case determination as allowed in 40 CFR 122.24(c) that NNFH is a significant contributor of pollutants to waters of the United States. I disagree with that statement given our production levels are far from the threshold used to identify a facility as a CAAP facility. A memo dated April 4, 2005, from Linda Murphy, EPA, to Dave Costas, NNFH, states that, "due to current and future levels of fish production, operational practices and treatment at the Nashua hatchery, no Federal NPDES permit is required. Nothing has changed since that memo to cause NNFH to be a significant contributor of pollutants to waters of the United States. The only reason that NNFH reapplied for

a new NPDES permit is because, in the memo, EPA identified that, “if in the future, the hatchery anticipates: (1) using pharmaceuticals, medicated feeds, therapeutic and or sanitizing agents such as formalin and chlorine . . . the hatchery will need to file an application with EPA-New England for an NPDES permit” as was done on October 23, 2006. NNFH only has two permanent employees to complete the requirements identified in the draft permit during the five years of the permit, and those requirements would substantially increase an already extremely heavy workload for a facility trying to restore anadromous, depleted, native species to interjurisdictional waters of NH and MA. Since EPA used an economic analysis in its evaluation of whether it should limit the application of the national limitation and standards by size of production, then it stands to reason that this facility should not be classified as a CAAP facility.

Response to Comment No. 2:

EPA maintains that NNFH is a significant contributor of pollutants, and thus classifiable as a concentrated aquatic animal production (CAAP) facility, despite not meeting the threshold values. Pursuant to 40 CFR §122.24(c)(1)(i) and §122.24(c)(1)(iii), the location and quality of the receiving water and the nature of the pollutants can be used to classify a facility as a CAAP on a case-by-case basis when the threshold values are not met. EPA communicated to NNFH in a memo on April 4, 2005 that an NPDES permit would be required if the facility were to anticipate the use of sanitizing agents. NNFH subsequently submitted an application to EPA on October 23, 2006 to receive permit coverage for using sanitizing agents, including formaldehyde and chlorine, at the facility. In addition, NNFH discharges to the Colrain Brook, which is a small tributary of the Nashua River that flows through a wetland and provides no dilution for the discharge. Both the Colrain Brook and the adjacent wetland have the potential to be impacted by pollutants from NNFH, even at low levels. Based on the use of formaldehyde and the discharge into the Colrain Brook, EPA maintains that NNFH is a significant contributor of pollutants and therefore classifiable as a CAAP.

The memo issued to NNFH on April 4, 2005 also states that NNFH did not previously require a NPDES permit because “the hatchery uses a ‘flow-through type rearing system’ that minimizes solids build-up in the effluent and has recently set aside at least two raceways as settling basins to treat the hatchery’s cleaning-water discharges prior to discharge. The hatchery plans to clean these raceways on a routine basis and to land apply the solids on local agricultural land....” The memo then concludes that “if in the future the hatchery anticipates...ceasing treatment (raceways as settling devices) the hatchery will need to file an application with EPA – New England for an NPDES permit.” According to the facility, NNFH’s current practice is to vacuum the accumulated solids from the quiescent zone between each raceway, and dilute the cleaning water with the mainline raceway effluent before directly discharging to the Colrain Brook. This practice not only does not match the description included in the aforementioned memo, but also does not provide any treatment to the cleaning water prior to discharge. As stated in the memo, ceasing the treatment of the discharge via settling basins requires the facility to file an application with EPA.

All requirements included in the Draft Permit are similar to those included in permits for both Massachusetts and New Hampshire CAAP facilities. Best management practices (BMPs) were based on the effluent limitation guidelines (ELGs) applicable to CAAP facilities (40 CFR Part 451) and are retained in the Final Permit. Monitoring requirements for total suspended solids

(TSS), biochemical oxygen demand (BOD), total phosphorus, and total nitrogen were included to provide data regarding the concentration of these pollutants in the discharge. In a letter dated January 13, 2009, EPA requested sampling results for these pollutants from NNFH, pursuant to Section 308 of the Clean Water Act. The multiple sampling results indicate the presence of BOD (0 – 4mg/l), TSS (0-11mg/l), and total phosphorus (0-0.26 mg/l) in the discharge; however, only one of ten samples detected a measurable concentration of TKN. It should be noted that actual pollutant concentrations in the cleaning water discharge are expected to be higher, as the aforementioned results reflect the cleaning water after it has comingled with the mainline raceway effluent, and therefore received excessive dilution. NNFH’s response estimates the vacuuming flow rate to be 25 gpm, which, when compared to the facility’s discharge rate of 1,528 gpm (equivalent to 2.2 MGD), results in a dilution factor of 62.

$$\text{Dilution Factor} = \frac{(25 \text{ gpm} + 1,528 \text{ gpm})}{(25 \text{ gpm})} = 62$$

As stated above, dilution is not an acceptable form of treatment, and, based on the presence of pollutants in the discharge, the Final Permit retains the technology-based narrative provision prohibiting the direct discharge of cleaning water from any rearing unit, included in Part I.A.4. of the Draft Permit. This provision is supported by Part 7.3.11 of EPA’s Effluent Guidelines Technical Development Document for the Concentrated Aquatic Animal Production Industry (available on-line at <http://www.epa.gov/guide/aquaculture/tdd/index.htm>), which states that “Cleaning of the quiescent zones...creates a highly concentrated waste stream that should be treated before it is discharged into a receiving water body.” In NNFH’s response to EPA’s 308 request, the facility recommended a feasible treatment method for the cleaning water discharge, involving routing the discharge to settling tanks and then discharging the decanted water via Outfall 001 while trucking the solids to the septage facility at the Nashua Wastewater Treatment Facility. This recommended form of treatment includes transporting the cleaning water using a grinder pump, and NNFH should note that a trash pump would increase the efficiency of sedimentation basins, as it would minimize the breakdown of particles into smaller sizes (see EPA Technical Development Document). Additional forms of treatment, which are described in Part 7 of the Technical Development Document, include, but are not limited to, microscreening, constructed wetlands, and infiltration ditches. In selecting and designing a treatment system, the permittee should reference Chapter 9 (Solids Control) in EPA’s “Guidance for Aquatic Animal Production Facilities to Assist in Reducing the Discharge of Pollutants”, which is located at <http://www.epa.gov/waterscience/guide/aquaculture/guidance>.

The installation of settling tanks or an alternative form of treatment is expected to decrease the concentration of BOD, TSS, and nutrients in both the cleaning water and overall discharge. Based on the analytical results submitted by NNFH and the expected decrease in concentrations, EPA has removed the monitoring requirements for total nitrogen and decreased the monitoring frequency for BOD, TSS, and total phosphorus in the Final Permit. The Final Permit requires monitoring for these three parameters twice (2) per year, with samples collected at least three (3) months apart.

Additionally, based on the site-specific circumstances at NNFH, including low levels of production and feeding amounts, EPA has chosen to modify several of the other requirements for the Final Permit. These modifications include: decreasing the monitoring frequency for flow

from once per day to once per week; decreasing the requisite number of grab samples for a composite from eight grab samples to four grab samples; removing the monitoring requirements for dissolved oxygen, dissolved oxygen saturation, and temperature when formalin is believed absent; and increasing the length of time the permittee has to certify in writing to EPA and NHDES-WD that the BMP plan has been developed in accordance with the permit from 90 days to 180 days.

Numerical limitations for formaldehyde are water-quality based and were included in the Draft Permit to ensure that "all surface waters shall be free from toxic substances or chemical constituents in concentrations or combination that injure or are inimical to plants, animals, humans, or aquatic life;..." (N.H. RSA 485-A:8, VI and the N.H. Code of Administrative Rules, Chapter Env-Ws 1703.21(a)(1). These numerical limitations are retained in the Final Permit. EPA maintains that the Final Permit upholds the water quality of the receiving water.

Comment No. 3:

Page 5 of fact sheet #NH002315 states that factors used by the Agency in making the case-by-case determination are that the hatchery discharges: to a wetland adjacent to the Nashua River which has no available dilution; and effluent containing Formaldehyde solution, a toxic chemical, used to control external parasites on fish and eggs. I disagree with using either factor in making the case-by-case determination. As I've discussed via telephone, outfall 001 does not discharge to a natural wetland; most likely the only reason the area is maintained wet throughout the year is because of the hatchery discharge – otherwise the area may be dry during periods of below average rainfall. The area should be classified as a constructed wetland because it is manmade and treats the discharge through physical, chemical, and biological processes as described in EPA's Effluent Guidelines for the Aquatic Animal Production Industry, Final Technical Development Document, Best Management Practices and Treatment Technologies Considered (section 7.3.3). Formaldehyde is an approved drug for use in aquaculture by the Dept. of Health of Human Service, US Food and Drug Administration, Center for Veterinary Medicine (FDA/CVM), at the dosage regime identified. According to the Federal Register Notice dated August 23, 2004, 40 CFR Part 451, Effluent Limitations Guidelines and New Source Performance Standards for the Concentrated Aquatic Animal Production Point Source Category; Final Rule, EPA does not classify formaldehyde as a toxic pollutant, but instead classifies it as a nonconventional pollutant, and presumably this classification would only apply at levels above the FDA/CVM dosage regime which will be diluted many times further prior to discharge from the hatchery. Many of the other FDA/CVM approved drugs can be toxic if not applied at or below the dosage regime identified for each, but if the drugs are applied as directed and subsequently diluted to appropriate levels, the approved drugs should not be classified as toxic pollutants. No where can I find a publically reviewed document where EPA states that the request to use formaldehyde will cause a facility to be classified as CAAP facility. Formalin remains an over-the-counter drug for use by a lay-person. Adequate instructions have been provided for its safe and effective use for the label indications.

Response to Comment No. 3:

Pursuant to 40 CFR §122.24(c)(1)(i) and §122.24(c)(iii), a facility may be designated as a CAAP facility on a case-by-case basis in consideration of the location and quality of the receiving water

of the United States and the nature of the pollutants reaching waters of the United States when the threshold values are not met. Such a designation is based on the best professional judgment (BPJ) of the permit writer (see Response to Comment No. 2).

Regarding the receiving water, on Form 2B Part III.C.1 of the application submitted by NNFH on October 23, 2006 the facility indicated the receiving water for the discharge was a “wetland, then Nashua R.” EPA’s characterization of the receiving water was consistent with this description and would not be affected if the wetland were seasonal or one whose main water source was NNFH’s effluent. Additionally, the definition of a constructed wetland in Section 7.3.3 of EPA’s Effluent Guidelines Technical Development Document for the Concentrated Aquatic Animal Production Industry, does not apply to the wetland adjacent to the Nashua River. This document defines constructed wetlands as “...constructed on non-wetland sites...”; however, wetland into which NNFH discharges is located on a pre-existing wetland site, as evidenced by historic USGS maps from 1905, 1941, and 1953 in which a stream and wetland are visible in the vicinity of Outfall 001’s current location.

Additionally, according to the New Hampshire Department of Transportation, the stream visible in the historic maps is the Colrain Brook, which is currently piped under the F.E. Everett Turnpike in the city of Nashua. The discharge from NNFH leaves the facility in a pipe which connects to two storm water drainage lines and the pipe containing Colrain Brook before ultimately discharging into the wetland system adjacent to the Nashua River. In fact, the NH DOT Nashua Welcome Center Mitigation Plan Report refers to this area as the “wetland associated with Colrain Brook.” Based on this information, EPA has modified the Draft Permit to show that the receiving water is in fact the Colrain Brook.

Despite the receiving water no longer being classified as the wetland, the lack of dilution in the Colrain Brook combined with the potential toxicity in the discharge from Outfall 001 continues to justify a case-by-case CAAP classification. NH DES estimates that the 7Q10 of the Colrain Brook is 0.027 cubic feet per second (cfs), or 17,450.556 gallons per day (GPD) and the State regulations require a 10% reserve of the river’s assimilative capacity (Env-Ws 1705.01) when calculating dilution. Therefore, according to the following calculations, the dilution factor using this 7Q10 value and the maximum daily flow limit of 2,200,000 gpd is only 0.907.

$$\text{Dilution Factor} = \frac{(\text{DailyMaxFlowLimit} + 7Q10)}{\text{DailyMaxFlowLimit}} * 0.9$$
$$0.907 = \frac{(2200000 \text{gpd} + 17450.556 \text{gpd})}{2200000 \text{gpd}} * 0.9$$

This dilution factor demonstrates that not only does the Colrain Brook provide no available dilution for the discharge from NNFH, but also that the flow from NNFH exceeds the natural flow of the brook. The comparison between the flow rate from NNFH to the 7Q10 of the Colrain Brook evidences the sensitive nature of the receiving waterbody and the potential to be impacted by the discharge from NNFH.

Regarding the nature of the pollutants, the permittee is correct that the preamble to the CAAP ELGs characterizes formaldehyde as a “non-conventional” pollutant. However, that classification does not mean that formaldehyde is not toxic. On the contrary, there is ample information available that indicates that, in certain circumstances, formaldehyde is toxic to aquatic life^{1,2,3}. Formaldehyde toxicity has been shown to vary with species, concentration, exposure time, and water quality characteristics such as pH and temperature⁴. In fact, formaldehyde is listed as a hazardous pollutant in 40 CFR Part 122, Appendix D, Table V, and must be identified in any application for an NPDES permit if it is present in the discharge. This is also noted in the Environmental Precautions section of the Parasite-S product label (one of only three brands of formalin approved for use at CAAP facilities) (see http://www.wchemical.com/PDFs/Parasite-S_Package_%20Insert.pdf).

EPA recognizes that the FDA/CVM guidelines contain specific dosage regimes and recommend additional dilution before the effluent containing formalin is discharged to the receiving water. However, these guidelines and recommendations do not necessarily ensure that water quality standards -- including the need to prevent toxicity to aquatic life in the receiving water -- will be met under all circumstances. Given the absence of dilution in the receiving water for the discharge from NNFH, and the potential for toxicity depending on the concentration of formaldehyde in the discharge, it is appropriate for EPA to require an NPDES permit and to establish an effluent limit that will protect aquatic life.

Comment No. 4:

According to 40 CFR 122.24(c) which was used to make the case-by-case determination that NNFH should be classified as a CAAP facility, “a permit application shall not be required from a concentrated aquatic animal production facility designated under this paragraph until the Director has conducted on-site inspection of the facility and has determined that the facility should and could be regulated under the permit program.” Without a site visit, NNFH cannot be classified as a CAAP facility unless it produces at least 20,000 lbs. of harvestable weight of fish in a given year and if more than 5,000 lbs. of food were used during the calendar month of maximum feeding.

Response to Comment No. 4:

The regulations at 40 CFR 122.24(c) require EPA to ensure that a facility “could and should be regulated under the permit program,” despite not meeting the threshold values for CAAP classification, prior to requiring the submission of a permit application to be covered as a CAAP facility. The premise of the inspection requirement is that the facility is one that EPA has had no prior knowledge of or past involvement with. In the case of NNFH, however, EPA issued the

¹ Bills, T.D., Marking, L.L., Howe, G.E., 1993. Sensitivity of Juvenile Striped Bass to Chemical Used in Aquaculture. US Fish and Wildlife Service. Resource Publication 192. Washington, DC.

² Jung, S.H., Kim, J.W., Jeon, I.G., Lee, Y.H., 2001. Formaldehyde residues in formalin-treated olive flounder (*Paralichthys olivaceus*), black rockfish (*Sebastes schlegeli*), and seawater. Aquaculture. 194, 253-262

³ Tisler, T., Zagorc-Koncan, J., 1997. Comparative Assessment of Toxicity of Phenol, Formaldehyde, and Industrial Wastewater to Aquatic Organisms. Water, Air, & Soil Pollution. 97 (3-4), 315-322

⁴ (Masters, A. “A Review of Methods for Detoxification and Neutralization of Formalin in Water.” North American Journal of Aquaculture 66 (2004) 325-333

facility's first NPDES permit (NH0000639) in 1974. In 2005, after thirty years of coverage, EPA terminated this NPDES permit based on the reduced levels of production and the operational practices and treatment used at the facility. However, EPA did make it clear to NNFH that an NPDES permit would again be required upon certain operational changes, such as anticipating the use of sanitizing agents including formalin and chlorine. NNFH subsequently submitted an application to EPA on October 23, 2006 after choosing to incorporate sanitizing agents into facility operations. An on-site inspection is unnecessary where the facility had previously been regulated and EPA had ample information, based on the history of NNFH, the previous NPDES permit, and the information submitted in the permit application, to determine that NNFH should be classified as a CAAP facility and regulated by an NPDES permit. A telephone interview, in place of an on-site inspection, was conducted in June of 2007 to gain additional information and satisfy questions concerning the current operations at NNFH. Additionally, EPA conducted an on-site inspection of NNFH on Friday December 5, 2008. This visit provided no new information that had not already been included in the permit application or telephone interview. Specifically, the site visit provided no new information that would alter EPA's determination.

Comment No. 5:

As identified on page 12 of fact sheet #NH0023515, many of the requirements identified for NNFH in the draft permit "have been incorporated in similar permits such as Berlin State Fish Hatchery (NH0000621) and Twin Mountain State Fish Hatchery (NH0000744) and the Agency believes they are needed to protect the receiving waters from release of non-indigenous species and to better understand the full range of aquaculture drugs and chemicals used in the treatment of pathogens at this facility and their potential for discharge to the environment." NNFH does not work with non-indigenous species – species already identified in the fact sheet include Atlantic salmon and American shad – nor are there plans to work with non-indigenous species in the future. The need to understand the full range of aquaculture drugs and chemicals used in the treatment of pathogens at NNFH and their potential for discharge to the environment is both understandable and environmentally responsible. Understand that NNFH and the US Fish and Wildlife Service's Northeast Region Fisheries Program strive to always pursue the environmentally responsible course of action, and we believe we have the track record to back up that statement. But erroneously classifying NNFH as a CAAP facility and creating requirements imposed on hatcheries producing non-indigenous species, especially given NNFH's low level of production and feed usage, is without a doubt an unnecessarily burdensome regulatory requirement. NNFH can easily provide a list of aquaculture drugs and chemicals used on-site, and the only drugs ever used will be those approved by FDA/CVM, Investigative New Animal Drugs (INADs), or drugs approved by a licensed veterinarian for extra-label use. Reporting is not required for any INAD or extra-label drug use that has been previously approved by the FDA for a different species or disease if the INAD or extra-label use is at or below the approved dosage and involves similar conditions of use.

Response to Comment No. 5:

EPA acknowledges that NNFH and the US Fish and Wildlife Service's Northeast Region Fisheries Program "strive to always pursue the environmentally responsible course of action." However, the requirements in the best management practices plan (BMP), as well as those in addition to the plan, are not designed to 'burden' the facility but rather to provide EPA with

complete information concerning activities that could impact the discharge and thereby the quality of the receiving water. In most cases, these requirements do not necessitate notification to EPA or action by NNFH unless a change has occurred that has the potential to impact the discharge.

Requirements concerning non-indigenous species, aquaculture drugs and chemicals, and settleable solids were included in the Draft Permit as recommended by New Hampshire Department of Environmental Services (NHDES) and based on best professional judgment (BPJ) as allowed by the ELGs at 40 CFR Part 451. Those targeted at non-indigenous species are included in permits for New Hampshire CAAP facilities not because these facilities produce non-indigenous species, as the comment suggest, but rather to account for changes at the facility which may result in future production of non-indigenous species. Although the current plans at NNFH do not include production of non-indigenous species, EPA is choosing to retain the requirements in the Final Permit in the event that these plans are modified in the future. The requirements do not necessitate notification to EPA or action from NNFH if non-indigenous species are not present at the facility. EPA has clarified Part I.A.10 to require notification to EPA of the addition of any non-indigenous species, to be raised at the facility, as opposed to notification of any change in fish species.

Regarding aquaculture drugs and chemicals, NNFH comments that “the only drugs ever used will be those approved by the FDA/CVM, Investigative New Animal Drugs (INADs), or drugs approved by a licensed veterinarian for extra-label use.” They further state that reporting is not required for such use, given certain circumstances. As explained in response to comment # 4 above, compliance with FDA usage requirements does not necessarily ensure compliance with water quality standards that apply to the receiving water. Therefore it is important for EPA to be informed about the drugs that are used. Accordingly, EPA has retained requirements related to use of drugs and chemicals in the Final Permit. Certification of the proper use of drugs and chemicals is only required once (1) per year as indicated by Part I.A.11. of the Final permit. Additional notification to EPA is only required in the event that new INADs or extra-label drugs are used that may lead to a discharge of such drug to waters of the United States. The requirements for maintaining a list of aquaculture drugs and chemicals used on-site in the best management practices plan, as required by Part B(4)(d)(vii), has also been retained in the Final Permit. NNFH indicated in its comments that it can easily provide such a list. The BMP plan in the Draft Permit is based on the technology-based ELGs for CAAP facilities at 40 CFR §451 and is also retained in the Final Permit.

Comment No. 6:

Taking into account the factors that should not have been used to make the case-by-case determination, the low level of harvestable production and feed usage, and absence of a site visit by the Director, I am requesting that NNFH should not have be required to submit a NPDES permit application to use FDA/CVM approved drugs for use in aquaculture at or below the dosage regimes that FDA/CVM has identified, especially given the diluted levels of approved drugs that would exist in the outfall to a “constructed wetland” prior to discharge to the Class B waters of the Nashua River.

If a determination is made that NNFH should still be required to submit a NPDES permit application to use FDA/CVM approved drugs (including formalin) for use in aquaculture at or below the dosage regimes that FDA/CVM has identified, I am requesting that NNFH not be classified as a CAAP facility and that only reporting requirements deemed appropriate for a non-CAAP facility, requesting permission to use FDA/CVM approved drugs (including formalin) for use in aquaculture at or below the dosage regimes that FDA/CVM has identified, be drafted for a NPDES permit, subject to another NNFH review and comment period.

Response to Comment No. 6:

As discussed in the above responses, EPA maintains that NNFH is a “significant contributor” of pollutants and thus requires an NPDES permit. The reporting requirements and provisions included in the Final Permit are based on gathering data concerning the effect of the discharge on the receiving water, the ELGs at 40 CFR §451, and BPJ, considering similar facilities and NNFH site-specific circumstances, including production levels/ maximum feeding amounts and analytical data collected pursuant to EPA’s Section 308 request. None of the conditions in the Final Permit are more stringent than those in the Draft Permit. NNFH had the opportunity to comment on these requirements during the public comment period from November 2, 2007 through December 1, 2007. EPA has carefully considered NNFH’s comments additional information and has reduced certain requirements in the Final Permit as a result. Based on these factors, EPA does not see a need for an additional public comment period.