

**AUTHORIZATION TO DISCHARGE UNDER THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**

In compliance with the provisions of the Federal Clean Water Act, as amended, (33 U.S.C. §§1251 et seq.; the "CWA"),

The City of Concord, New Hampshire

is authorized to discharge from the facility located at

**Penacook Wastewater Treatment Facility
7 Penacook Street
Penacook, NH 03303**

to receiving water named

Merrimack River (Hydrologic Basin Code: 01070002)

in accordance with effluent limitations, monitoring requirements and other conditions set forth herein.

The Town of Boscawen is a co-permittee for Part I.B, Unauthorized Discharges; Part I.C, Operation and Maintenance, which include conditions regarding the operation and maintenance of the collection systems owned and operated by the Towns; and Part I.D, Alternate Power Source.

Operation and maintenance of the sewer system shall be in compliance with the General Requirements of Part II and the terms and conditions of Part I.B, Part I.C and Part I.D of this permit. The Permittee and Co-permittee are severally liable under Part I.B, Part I.C and Part I.D for their own activities and required reporting with respect to the portions of the collection system that they own or operate. They are not liable for violations of Part I.B, Part I.C and Part I.D committed by others relative to the portions of the collection system owned and operated by others. Nor are they responsible for any reporting that is required of other Permittees under Part I.B, Part I.C and Part I.D. The responsible Town department is:

Boscawen Board of Selectmen
116 North Main Street
Boscawen, New Hampshire 03303

This permit shall become effective upon the date of signature.

This permit expires at midnight, five years from the last day of the month preceding the effective date.

This permit supersedes the permit issued on July 27, 2012.

This permit consists of **Part I** including the cover page(s), **Attachment A** (Freshwater Acute Toxicity Test Procedure and Protocol, February 2011), and **Part II** (NPDES Part II Standard Conditions, April 2018).

Signed this 31st day of August, 2020

/S/SIGNATURE ON FILE

Ken Moraff, Director
Water Division
Environmental Protection Agency
Region 1
Boston, MA

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. During the period beginning on the effective date and lasting through the expiration date, the Permittee is authorized to discharge treated effluent through Outfall Serial Number 001 to Merrimack River. The discharge shall be limited and monitored as specified below; the receiving water and the influent shall be monitored as specified below.

Effluent Characteristic	Effluent Limitation			Monitoring Requirements ^{1,2,3}	
	Average Monthly	Average Weekly	Maximum Daily	Measurement Frequency	Sample Type ⁴
Rolling Average Effluent Flow ⁵	2.37 MGD ⁵	---	---	Continuous	Recorder
Effluent Flow ⁵	Report MGD	---	Report MGD	Continuous	Recorder
BOD ₅	30 mg/L 593 lb/day	45 mg/L 890 lb/day	50 mg/L 989 lb/day	2/week	Composite
BOD ₅ Removal	≥ 85 %	---	---	---	Calculation
TSS	30 mg/L 593 lb/day	45 mg/L 890 lb/day	50 mg/L 989 lb/day	2/week	Composite
TSS Removal	≥ 85 %	---	---	---	Calculation
pH Range ⁶	6.5 - 8.0 S.U.			1/day	Grab
Total Residual Chlorine ^{7,8}	1 mg/L	---	1 mg/L	1/day	Grab
<i>Escherichia coli</i> ^{7,8}	126/100 mL	---	406/100 mL	3/week	Grab
Total Kjeldahl Nitrogen ⁹ (April 1 - October 31)	Report mg/L	---	Report mg/L	1/week	Composite
Total Kjeldahl Nitrogen ⁹ (November 1 - March 31)	Report mg/L	---	Report mg/L	1/month	Composite
Nitrate + Nitrite ⁹ (April 1 - October 31)	Report mg/L	---	Report mg/L	1/week	Composite
Nitrate + Nitrite ⁹ (November 1 - March 31)	Report mg/L	---	Report mg/L	1/month	Composite
Total Nitrogen ⁹ (April 1 - October 31)	Report mg/L Report lb/day	---	Report mg/L	1/week	Composite

Effluent Characteristic	Effluent Limitation			Monitoring Requirements ^{1,2,3}	
	Average Monthly	Average Weekly	Maximum Daily	Measurement Frequency	Sample Type ⁴
Total Nitrogen ⁹ (November 1 - March 31)	Report mg/L Report lb/day	---	Report mg/L	1/month	Composite
Whole Effluent Toxicity (WET) Testing^{10, 11}					
LC ₅₀	---	---	≥ 50 %	1/year	Composite
Hardness	---	---	Report mg/L	1/year	Composite
Ammonia Nitrogen	---	---	Report mg/L	1/year	Composite
Total Aluminum	---	---	Report mg/L	1/year	Composite
Total Cadmium	---	---	Report mg/L	1/year	Composite
Total Copper	---	---	Report mg/L	1/year	Composite
Total Nickel	---	---	Report mg/L	1/year	Composite
Total Lead	---	---	Report mg/L	1/year	Composite
Total Zinc	---	---	Report mg/L	1/year	Composite
Total Organic Carbon	---	---	Report mg/L	1/year	Composite

Ambient Characteristic ¹³	Reporting Requirements			Monitoring Requirements ^{1,2,3}	
	Average Monthly	Average Weekly	Maximum Daily	Measurement Frequency	Sample Type ⁴
Hardness	---	---	Report mg/L	1/year	Grab
Ammonia Nitrogen	---	---	Report mg/L	1/year	Grab
Total Aluminum	---	---	Report mg/L	1/year	Grab
Total Cadmium	---	---	Report mg/L	1/year	Grab
Total Copper	---	---	Report mg/L	1/year	Grab
Total Nickel	---	---	Report mg/L	1/year	Grab
Total Lead	---	---	Report mg/L	1/year	Grab
Total Zinc	---	---	Report mg/L	1/year	Grab
Total Organic Carbon	---	---	Report mg/L	1/year	Grab
Dissolved Organic Carbon ¹²	---	---	Report mg/L	1/year	Grab
pH ¹⁴	---	---	Report S.U.	1/year	Grab
Temperature ¹⁴	---	---	Report °C	1/year	Grab

Influent Characteristic	Reporting Requirements			Monitoring Requirements ^{1,2,3}	
	Average Monthly	Average Weekly	Maximum Daily	Measurement Frequency	Sample Type ⁴
BOD ₅	Report mg/L	---	---	2/month	Composite
TSS	Report mg/L	---	---	2/month	Composite

Footnotes:

1. Effluent samples shall yield data representative of the discharge. A routine sampling program shall be developed in which samples are taken at the same location, same time and same days of the week each month. The Permittee shall report the results to the Environmental Protection Agency Region 1 (EPA) and the State of any additional testing above that required herein, if testing is in accordance with 40 C.F.R. Part 136.
2. In accordance with 40 C.F.R. § 122.44(i)(1)(iv), the Permittee shall monitor according to sufficiently sensitive test procedures (i.e., methods) approved under 40 C.F.R. Part 136 or required under 40 C.F.R. chapter I, subchapter N or O, for the analysis of pollutants or pollutant parameters (except WET). A method is “sufficiently sensitive” when: 1) The method minimum level (ML) is at or below the level of the effluent limitation established in the permit for the measured pollutant or pollutant parameter; or 2) The method has the lowest ML of the analytical methods approved under 40 C.F.R. Part 136 or required under 40 C.F.R. chapter I, subchapter N or O for the measured pollutant or pollutant parameter. The term “minimum level” refers to either the sample concentration equivalent to the lowest calibration point in a method or a multiple of the method detection limit (MDL), whichever is higher. Minimum levels may be obtained in several ways: They may be published in a method; they may be based on the lowest acceptable calibration point used by a laboratory; or they may be calculated by multiplying the MDL in a method, or the MDL determined by a laboratory, by a factor.
3. When a parameter is not detected above the ML, the Permittee must report the data qualifier signifying less than the ML for that parameter (e.g., < 50 µg/L, if the ML for a parameter is 50 µg/L). For reporting an average based on a mix of values detected and not detected, assign a value of “0” to all non-detects for that reporting period and report the average of all the results.
4. A “grab” sample is an individual sample collected in a period of less than 15 minutes.

A “composite” sample is a composite of at least twenty-four (24) grab samples taken during one consecutive 24-hour period, either collected at equal intervals and combined proportional to flow or continuously collected proportional to flow.

5. The limit is a rolling annual average, reported in million gallons per day (MGD), which will be calculated as the arithmetic mean of the monthly average flow for the reporting month and the monthly average flows of the previous eleven months. Also report monthly average and maximum daily flow in MGD.

6. The pH shall be within the specified range at all times. The minimum and maximum pH sample measurement values for the month shall be reported in standard units (S.U.). See Part I.G.1 below for a provision to modify the pH range.
7. The Permittee shall minimize the use of chlorine while maintaining adequate bacterial control. Monitoring for total residual chlorine (TRC) is only required for discharges which have been previously chlorinated or which contain residual chlorine.

Chlorination and dechlorination systems shall include an alarm system for indicating system interruptions or malfunctions. Any interruption or malfunction of the chlorine dosing system that may have resulted in levels of chlorine that were inadequate for achieving effective disinfection, or interruptions or malfunctions of the dechlorination system that may have resulted in excessive levels of chlorine in the final effluent shall be reported with the monthly DMRs and in accordance with any more frequent reporting requirements in accordance with Part II Standard Conditions. The report shall include the date and time of the interruption or malfunction, the nature of the problem, and the estimated amount of time that the reduced levels of chlorine or dechlorination chemicals occurred.

8. The monthly average limit for *E. coli* is expressed as a geometric mean. *E. coli* monitoring shall be conducted concurrently with TRC monitoring, if TRC monitoring is required.
9. Total Kjeldahl nitrogen and nitrate + nitrite samples shall be collected concurrently. The results of these analyses shall be used to calculate both the concentration and mass loadings of total nitrogen, as follows.

Total Nitrogen (mg/L) = Total Kjeldahl Nitrogen (mg/L) + Nitrate + Nitrite (mg/L)

Total Nitrogen (lb/day) = [(average monthly Total Nitrogen (mg/L) * total monthly effluent flow (Millions of Gallons (MG)) / # of days in the month] * 8.345

10. The Permittee shall conduct acute toxicity tests (LC₅₀) in accordance with test procedures and protocols specified in **Attachment A** of this permit. LC₅₀ is defined in Part II.E. of this permit. The Permittee shall test the daphnid, *Ceriodaphnia dubia*, and the fathead minnow, *Pimephales promelas*. Toxicity test samples shall be collected and tests completed during the same weeks each time of the calendar quarter ending September 30th. The complete report for each toxicity test shall be submitted as an attachment to the DMR submittal which includes the results for that toxicity test.

11. For Part I.A.1., Whole Effluent Toxicity Testing, the Permittee shall conduct the analyses specified in **Attachment A**, Part VI. CHEMICAL ANALYSIS for the effluent sample. If toxicity test(s) using the receiving water as diluent show the receiving water to be toxic or unreliable, the Permittee shall follow procedures outlined in **Attachment A**, Section IV., DILUTION WATER. Minimum levels and test methods are specified in **Attachment A**, Part VI. CHEMICAL ANALYSIS.
12. Monitoring and reporting for dissolved organic carbon (DOC) are not requirements of the Whole Effluent Toxicity (WET) tests but are additional requirements. The Permittee may analyze the WET samples for DOC or may collect separate samples for DOC concurrently with WET sampling.
13. For Part I.A.1., Ambient Characteristic, the Permittee shall conduct the analyses specified in **Attachment A**, Part VI. CHEMICAL ANALYSIS for the receiving water sample collected as part of the WET testing requirements. Such samples shall be taken from the receiving water at a point immediately upstream of the permitted discharge's zone of influence at a reasonably accessible location, as specified in **Attachment A**. Minimum levels and test methods are specified in **Attachment A**, Part VI. CHEMICAL ANALYSIS.
14. A pH and temperature measurement shall be taken of each receiving water sample at the time of collection and the results reported on the appropriate DMR. These pH and temperature measurements are independent from any pH and temperature measurements required by the WET testing protocols.

Part I.A. continued.

2. The discharge shall not cause a violation of the water quality standards of the receiving water.
3. The discharge shall be free from substances in kind or quantity that settle to form harmful benthic deposits; float as foam, debris, scum or other visible substances; produce odor, color, taste or turbidity that is not naturally occurring and would render the surface water unsuitable for its designated uses; result in the dominance of nuisance species; or interfere with recreational activities.
4. Tainting substances shall not be present in the discharge in concentrations that individually or in combination are detectable by taste and odor tests performed on the edible portions of aquatic organisms.
5. The discharge shall not result in toxic substances or chemical constituents in concentrations or combinations in the receiving water that injure or are inimical to plants, animals, humans or aquatic life; or persist in the environment or accumulate in aquatic organisms to levels that result in harmful concentrations in edible portions of fish, shellfish, other aquatic life, or wildlife that might consume aquatic life.
6. The discharge shall not result in benthic deposits that have a detrimental impact on the benthic community. The discharge shall not result in oil and grease, color, slicks, odors, or surface floating solids that would impair any existing or designated uses in the receiving water.
7. The discharge shall not result in an exceedance of the naturally occurring turbidity in the receiving water by more than 10 NTUs.
8. The Permittee must provide adequate notice to EPA-Region 1 and the State of the following:
 - a. Any new introduction of pollutants into the POTW from an indirect discharger which would be subject to Part 301 or Part 306 of the Clean Water Act if it were directly discharging those pollutants or in a primary industry category (see 40 C.F.R. Part 122 Appendix A as amended) discharging process water; and
 - b. Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.
 - c. For purposes of this paragraph, adequate notice shall include information on:
 - (1) The quantity and quality of effluent introduced into the POTW; and
 - (2) Any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

9. Pollutants introduced into the POTW by a non-domestic source (user) shall not pass through the POTW or interfere with the operation or performance of the works.

B. UNAUTHORIZED DISCHARGES

This permit authorizes discharges only from the outfall listed in Part I.A.1, in accordance with the terms and conditions of this permit. Discharges of wastewater from any other point sources, including sanitary sewer overflows (SSOs), are not authorized by this permit in accordance with Part II.D.1.e.(1) (24-hour reporting). See Part I.H below for reporting requirements.

C. OPERATION AND MAINTENANCE OF THE SEWER SYSTEM

Operation and maintenance of the collection system owned and operated by the Town of Boscawen shall be in compliance with the General Requirements of Part II and the terms and conditions of Part I.C, Part I.D and Part I.E of this permit. The Town of Boscawen shall only be responsible under Part II, Part I.C, Part I.D and Part I.E of this permit for only its own infrastructure, activities and required reporting with respect to the portions of the collection system that it owns or operates.

Operation and maintenance of that portion of the collection system and the entirety of the treatment system owned and operated by the City of Concord shall be in compliance with the terms and conditions of Part I.C, Part I.D and Part I.E of this permit and the General Requirements of Part II. The City of Concord shall only be responsible under Part I.C, Part I.D and Part I.E of this permit and the General Requirements of Part II for its own infrastructure, activities and required reporting with respect to the portion of the collection and treatment system that it owns or operates. No Permittee shall be responsible for violations of Part I.C, Part I.D and Part I.E of this permit and/or the General Requirements of Part II committed by another Permittee relative to the portions of the collection system owned and operated by such other Permittee. In the event of any conflict between the above provisions and any other term or provision of this Permit, the above provisions shall control. The permittee and co-permittee are required to complete the following activities for the respective portions of the collection system which they operate:

1. Maintenance Staff

The Permittee and Co-permittee shall provide an adequate staff to carry out the operation, maintenance, repair, and testing functions required to ensure compliance with the terms and conditions of this permit. Provisions to meet this requirement shall be described in the Collection System O&M Plan required pursuant to Section C.5. below.

2. Preventive Maintenance Program

The Permittee and Co-permittee shall maintain an ongoing preventive maintenance program to prevent overflows and bypasses caused by malfunctions or failures of the sewer system infrastructure. The program shall include an inspection program designed to identify all

potential and actual unauthorized discharges. Plans and programs to meet this requirement shall be described in the Collection System O&M Plan required pursuant to Section C.5. below.

3. Infiltration/Inflow

The Permittee and Co-permittee shall control infiltration and inflow (I/I) into the sewer system as necessary to prevent high flow related unauthorized discharges from their collection systems and high flow related violations of the wastewater treatment plant's effluent limitations. Plans and programs to control I/I shall be described in the Collection System O&M Plan required pursuant to Section C.5. below.

4. Collection System Mapping

The Permittee and Co-permittee shall maintain a map of the sewer collection system it owns. The map shall be on a street map of the community, with sufficient detail and at a scale to allow easy interpretation. The collection system information shown on the map shall be based on current conditions and shall be kept up-to-date and available for review by federal, state, or local agencies. Such map(s) shall include, but not be limited to the following:

- a. All sanitary sewer lines and related manholes;
- b. All combined sewer lines, related manholes, and catch basins;
- c. All combined sewer regulators and any known or suspected connections between the sanitary sewer and storm drain systems (e.g. combination manholes);
- d. All outfalls, including the treatment plant outfall(s), CSOs, and any known or suspected SSOs, including stormwater outfalls that are connected to combination manholes;
- e. All pump stations and force mains;
- f. The wastewater treatment facility(ies);
- g. All surface waters (labeled);
- h. Other major appurtenances such as inverted siphons and air release valves;
- i. A numbering system which uniquely identifies manholes, catch basins, overflow points, regulators and outfalls;
- j. The scale and a north arrow; and
- k. The pipe diameter, date of installation, type of material, distance between manholes, and the direction of flow.

5. Collection System O&M Plan

The Permittee and Co-permittee shall continue to update and implement the Collection System O&M Plan it has previously submitted to EPA and the State. The plan shall be available for review by federal, state and local agencies as requested. The Plan shall include:

- a. A description of the collection system management goals, staffing, information management, and legal authorities;
- b. A description of the collection system and the overall condition of the collection system including a list of all pump stations and a description of recent studies and construction activities; and
- c. A preventive maintenance and monitoring program for the collection system;
- d. Description of sufficient staffing necessary to properly operate and maintain the sanitary sewer collection system and how the operation and maintenance program is staffed;
- e. Description of funding, the source(s) of funding and provisions for funding sufficient for implementing the plan;
- f. Identification of known and suspected overflows and back-ups, including manholes. A description of the cause of the identified overflows and back-ups, corrective actions taken, and a plan for addressing the overflows and back-ups consistent with the requirements of this permit;
- g. A description of the Permittee's programs for preventing I/I related effluent violations and all unauthorized discharges of wastewater, including overflows and by-passes and the ongoing program to identify and remove sources of I/I. The program shall include an inflow identification and control program that focuses on the disconnection and redirection of illegal sump pumps and roof down spouts;
- h. An educational public outreach program for all aspects of I/I control, particularly private inflow; and
- i. An Overflow Emergency Response Plan to protect public health from overflows and unanticipated bypasses or upsets that exceed any effluent limitation in the permit.

6. Annual Reporting Requirement

The Permittee and Co-permittee shall submit a summary report of activities related to the implementation of its Collection System O&M Plan during the previous calendar year. The report shall be submitted to EPA and the State annually by March 31. The summary report shall, at a minimum, include:

- a. A description of the staffing levels maintained during the year;

- b. A map and a description of inspection and maintenance activities conducted and corrective actions taken during the previous year;
- c. Expenditures for any collection system maintenance activities and corrective actions taken during the previous year;
- d. A map with areas identified for investigation/action in the coming year;
- e. A summary of unauthorized discharges during the past year and their causes and a report of any corrective actions taken as a result of the unauthorized discharges reported pursuant to the Unauthorized Discharges section of this permit; and
- f. If the monthly average flow exceeded 80 percent of the facility's 2.37 MGD design flow (1.9 MGD) for three consecutive months in the previous calendar year, or there have been capacity related overflows, the report shall include:
 - (1) Plans for further potential flow increases describing how the Permittee will maintain compliance with the flow limit and all other effluent limitations and conditions; and
 - (2) A calculation of the maximum daily, weekly, and monthly infiltration and the maximum daily, weekly, and monthly inflow for the reporting year.

D. ALTERNATE POWER SOURCE

In order to maintain compliance with the terms and conditions of this permit, the Permittee and Co-permittee shall provide an alternative power source(s) sufficient to operate the portion of the publicly owned treatment works it owns and operates, as defined in Part II.E.1 of this permit.

E. INDUSTRIAL USERS

The discharge of any IUs to the Penacook POTW are managed by the Concord POTW pretreatment program; and Concord is an EPA approved pretreatment POTW.

1. The Permittee shall submit to EPA, the City of Concord and the State the name of any Industrial User (IU) subject to Categorical Pretreatment Standards under 40 C.F.R. § 403.6 and 40 C.F.R. chapter I, subchapter N (Parts 405-415, 417-430, 432, 447, 449-451, 454, 455, 457-461, 463-469, and 471 as amended) who commences discharge to the facility after the effective date of this permit.

This reporting requirement also applies to any other IU who is classified as a Significant Industrial User which discharges an average of 25,000 gallons per day or more of process wastewater into the facility (excluding sanitary, noncontact cooling and boiler blowdown wastewater); contributes a process wastewater which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the facility; or is designated as such by the Control Authority as defined in 40 C.F.R. § 403.3(f) on the basis that the industrial user has a reasonable potential to adversely affect the wastewater treatment facility's

operation, or for violating any pretreatment standard or requirement (in accordance with 40 C.F.R. § 403.8(f)(6)).

2. In the event that the Permittee receives originals of reports (baseline monitoring reports, 90-day compliance reports, periodic reports on continued compliance, etc.) from industrial users subject to Categorical Pretreatment Standards under 40 C.F.R. § 403.6 and 40 C.F.R. chapter I, subchapter N (Parts 405-415, 417-430, 432-447, 449-451, 454, 455, 457-461, 463-469, and 471 as amended), or from a Significant Industrial User, the Permittee shall forward the originals of these reports within ninety (90) days of their receipt to the City of Concord, and copy EPA and the State.

F. SLUDGE CONDITIONS

1. The Permittee shall comply with all existing federal and state laws and regulations that apply to sewage sludge use and disposal practices, including EPA regulations promulgated at 40 C.F.R. Part 503, which prescribe “Standards for the Use or Disposal of Sewage Sludge” pursuant to § 405(d) of the CWA, 33 U.S.C. § 1345(d).
2. If both state and federal requirements apply to the Permittee’s sludge use and/or disposal practices, the Permittee shall comply with the more stringent of the applicable requirements.
3. The requirements and technical standards of 40 C.F.R. Part 503 apply to the following sludge use or disposal practices:
 - a. Land application - the use of sewage sludge to condition or fertilize the soil
 - b. Surface disposal - the placement of sewage sludge in a sludge only landfill
 - c. Sewage sludge incineration in a sludge only incinerator
4. The requirements of 40 C.F.R. Part 503 do not apply to facilities which dispose of sludge in a municipal solid waste landfill. 40 C.F.R. § 503.4. These requirements also do not apply to facilities which do not use or dispose of sewage sludge during the life of the permit but rather treat the sludge (e.g., lagoons, reed beds), or are otherwise excluded under 40 C.F.R. § 503.6.
5. The 40 C.F.R. Part 503 requirements include the following elements:
 - a. General requirements
 - b. Pollutant limitations
 - c. Operational Standards (pathogen reduction requirements and vector attraction reduction requirements)
 - d. Management practices
 - e. Record keeping

- f. Monitoring
- g. Reporting

Which of the 40 C.F.R. Part 503 requirements apply to the Permittee will depend upon the use or disposal practice followed and upon the quality of material produced by a facility. The EPA Region 1 Guidance document, “EPA Region 1 - NPDES Permit Sludge Compliance Guidance” (November 4, 1999), may be used by the Permittee to assist it in determining the applicable requirements.¹

6. The sludge shall be monitored for pollutant concentrations (all Part 503 methods) and pathogen reduction and vector attraction reduction (land application and surface disposal) at the following frequency. This frequency is based upon the volume of sewage sludge generated at the facility in dry metric tons per year, as follows:

less than 290	1/ year
290 to less than 1,500	1 /quarter
1,500 to less than 15,000	6 /year
15,000 +	1 /month

Sampling of the sewage sludge shall use the procedures detailed in 40 C.F.R. § 503.8.

7. Under 40 C.F.R. § 503.9(r), the Permittee is a “person who prepares sewage sludge” because it “is ... the person who generates sewage sludge during the treatment of domestic sewage in a treatment works” If the Permittee contracts with *another* “person who prepares sewage sludge” under 40 C.F.R. § 503.9(r) – i.e., with “a person who derives a material from sewage sludge” – for use or disposal of the sludge, then compliance with Part 503 requirements is the responsibility of the contractor engaged for that purpose. If the Permittee does not engage a “person who prepares sewage sludge,” as defined in 40 C.F.R. § 503.9(r), for use or disposal, then the Permittee remains responsible to ensure that the applicable requirements in Part 503 are met. 40 C.F.R. § 503.7. If the ultimate use or disposal method is land application, the Permittee is responsible for providing the person receiving the sludge with notice and necessary information to comply with the requirements of 40 C.F.R. § 503 Subpart B.
8. The Permittee shall submit an annual report containing the information specified in the 40 C.F.R. Part 503 requirements (§ 503.18 (land application), § 503.28 (surface disposal), or § 503.48 (incineration)) by **February 19** (*see also* “EPA Region 1 - NPDES Permit Sludge Compliance Guidance”). Reports shall be submitted electronically using EPA’s Electronic Reporting tool (“NeT”) (*see* “Reporting Requirements” section below).
9. Compliance with the requirements of this permit or 40 C.F.R. Part 503 shall not eliminate or modify the need to comply with applicable requirements under RSA 485-A and Env-Wq 800, New Hampshire Sludge Management Rules.

¹ This guidance document is available upon request from EPA Region 1 and may also be found at: <http://www.epa.gov/region1/npdes/permits/generic/sludgeguidance.pdf>

G. SPECIAL CONDITIONS

1. Provision to Modify pH Range

The pH range may be modified if the Permittee satisfies conditions set forth in Part I.I.5 below. Upon notification of an approval by NHDES, EPA will review and, if acceptable, will submit written notice to the Permittee of the permit change. The modified pH range will not be in effect until the Permittee receives written notice from EPA.

H. REPORTING REQUIREMENTS

Unless otherwise specified in this permit, the Permittee shall submit reports, requests, and information and provide notices in the manner described in this section.

1. Submittal of DMRs Using NetDMR

The Permittee shall continue to submit its monthly monitoring data in discharge monitoring reports (DMRs) to EPA and the State no later than the 15th day of the month electronically using NetDMR. When the Permittee submits DMRs using NetDMR, it is not required to submit hard copies of DMRs to EPA or the State. NetDMR is accessible through EPA's Central Data Exchange at <https://cdx.epa.gov/>.

2. Submittal of Reports as NetDMR Attachments

Unless otherwise specified in this permit, the Permittee shall electronically submit all reports to EPA as NetDMR attachments rather than as hard copies. This includes the NHDES Monthly Operating Reports (MORs). *See* Part I.H.6. for more information on State reporting. Because the due dates for reports described in this permit may not coincide with the due date for submitting DMRs (which is no later than the 15th day of the month), a report submitted electronically as a NetDMR attachment shall be considered timely if it is electronically submitted to EPA using NetDMR with the next DMR due following the report due date specified in this permit.

3. Submittal of Biosolids/Sewage Sludge Reports

By February 19 of each year, the Permittee must electronically report their annual Biosolids/Sewage Sludge Report for the previous calendar year using EPA's NPDES Electronic Reporting Tool ("NeT"), or another approved EPA system, which is accessible through EPA's Central Data Exchange at <https://cdx.epa.gov/>.

4. Submittal of Requests and Reports to EPA Water Division (WD)

- a. The following requests, reports, and information described in this permit shall be submitted to the NPDES Applications Coordinator in EPA Water Division (WD):
 - (1) Transfer of permit notice;

- (2) Request for changes in sampling location;
 - (3) Request for reduction in testing frequency;
 - (4) Report on unacceptable dilution water / request for alternative dilution water for WET testing.
 - (5) Report of new industrial user commencing discharge
- b. These reports, information, and requests shall be submitted to EPA WD electronically at R1NPDESReporting@epa.gov.
5. Submittal of Reports to EPA Enforcement and Compliance Assurance Division (ECAD) in Hard Copy Form
- a. The following notifications and reports shall be signed and dated originals, submitted as hard copy, with a cover letter describing the submission:
 - (1) Prior to 21 December 2020, written notifications required under Part II.B.4.c, for bypasses, and Part II.D.1.e, for sanitary sewer overflows (SSOs). Starting on 21 December 2020, such notifications must be done electronically using EPA's NPDES Electronic Reporting Tool ("NeT"), or another approved EPA system, which will be accessible through EPA's Central Data Exchange at <https://cdx.epa.gov/>.
 - (2) Report on annual activities related to O&M Plan (from Co-permittee)
 - b. This information shall be submitted to EPA ECAD at the following address:

U.S. Environmental Protection Agency
Enforcement and Compliance Assurance Division
Water Compliance Section
5 Post Office Square, Suite 100 (04-SMR)
Boston, MA 02109-3912

6. State Reporting

Unless otherwise specified in this permit or by the State, duplicate signed copies of all reports, information, requests or notifications described in this permit, including the reports, information, requests or notifications described in Parts I.H.3 through I.H.5 shall also be submitted to the New Hampshire Department of Environmental Services, Water Division (NHDES-WD) electronically to the Permittee's assigned NPDES inspector at NHDES-WD or as a hardcopy to the following addresses:

New Hampshire Department of Environmental Services
Water Division
Wastewater Engineering Bureau

29 Hazen Drive, P.O. Box 95
Concord, New Hampshire 03302-0095

7. Verbal Reports and Verbal Notifications

- a. Any verbal reports or verbal notifications, if required in Parts I and/or II of this permit, shall be made to both EPA and to the State. This includes verbal reports and notifications which require reporting within 24 hours (e.g., Part II.B.4.c.(2), Part II.B.5.c.(3), and Part II.D.1.e).
- b. Verbal reports and verbal notifications shall be made to:

EPA ECAD at 617-918-1510
and
NHDES Assigned NPDES Inspector at 603-271-2985

I. STATE PERMIT CONDITIONS

1. The Permittee shall not at any time, either alone or in conjunction with any person or persons, cause directly or indirectly the discharge of waste into the said receiving water unless it has been treated in such a manner as will not lower the legislated water quality classification of, or interfere with the uses assigned to, said water by the New Hampshire Legislature (RSA 485-A:12).
2. This NPDES discharge permit is issued by EPA under federal law. Upon final issuance by EPA, the New Hampshire Department of Environmental Services-Water Division (NHDES-WD) may adopt this permit, including all terms and conditions, as a state permit pursuant to RSA 485-A:13.
3. EPA shall have the right to enforce the terms and conditions of this permit pursuant to federal law and NHDES-WD shall have the right to enforce the permit pursuant to state law, if the permit is adopted. Any modification, suspension, or revocation of this permit shall be effective only with respect to the agency taking such action and shall not affect the validity or status of the permit as issued by the other agency.
4. Pursuant to New Hampshire Statute RSA 485-A:13, I(c), any person responsible for a bypass or upset at a *wastewater facility* shall give immediate notice of a bypass or upset to all public or privately owned water systems drawing water from the same receiving water and located within 20 miles downstream of the point of discharge regardless of whether or not it is on the same receiving water or on another surface water to which the receiving water is tributary. Wastewater facility is defined at RSA 485-A:2XIX as the structures, equipment, and processes required to collect, convey, and treat domestic and industrial wastes, and dispose of the effluent and sludge. The Permittee shall maintain a list of persons, and their telephone numbers, who are to be notified immediately by telephone. In addition, written notification, which shall be postmarked within 3 days of the bypass or upset, shall be sent to such persons.

5. The pH range of 6.5 to 8.0 Standard Units (S.U.) must be achieved in the final effluent unless the Permittee can demonstrate to NHDES-WD: 1) that the range should be widened due to naturally occurring conditions in the receiving water; or 2) that the naturally occurring receiving water pH is not significantly altered by the Permittee's discharge. The scope of any demonstration project must receive prior approval from NHDES-WD. In no case, shall the above procedure result in pH limits outside the range of 6.0 to 9.0 S.U., which is the federal effluent limitation guideline regulation for pH for secondary treatment and is found in 40 C.F.R. § 133.102(c).
6. Pursuant to New Hampshire Code of Administrative Rules, Env-Wq 703.07(a):
 - a. Any person proposing to construct or modify any of the following shall submit an application for a sewer connection permit to the department:
 - (1) Any extension of a collector or interceptor, whether public or private, regardless of flow;
 - (2) Any wastewater connection or other discharge in excess of 5,000 gpd;
 - (3) Any wastewater connection or other discharge to a WWTP operating in excess of 80 percent design flow capacity or design loading capacity based on actual average flow or loading for 3 consecutive months;
 - (4) Any industrial wastewater connection or change in existing discharge of industrial wastewater, regardless of quality or quantity;
 - (5) Any sewage pumping station greater than 50 gpm or serving more than one building; or
 - (6) Any proposed sewer that serves more than one building or that requires a manhole at the connection.
7. For each new or increased discharge of industrial waste to the POTW, the Permittee shall submit, in accordance with Env-Wq 305.10(a) an "Industrial Wastewater Discharge Request."
8. Pursuant to Env-Wq 305.15(d) and 305.16(f), the Permittee shall not allocate or accept for treatment more than 90 percent of the headworks loading limits of the facility.
9. Pursuant to Env-Wq 305.21, at a frequency no less than every five years, the Permittee shall submit to NHDES:
 - a. A copy of its current sewer use ordinance if it has been revised without department approval subsequent to any previous submittal to the department or a certification that no changes have been made.

- b. A current list of all significant indirect dischargers to the POTW. At a minimum, the list shall include for each significant indirect discharger, its name and address, the name and daytime telephone number of a contact person, products manufactured, industrial processes used, existing pretreatment processes, and discharge permit status.
 - c. A list of all permitted indirect dischargers; and
 - d. A certification that the municipality is strictly enforcing its sewer use ordinance and all discharge permits it has issued.
10. When the effluent discharged for a period of three (3) consecutive months exceeds 80 percent of the 2.37 MGD design flow (1.9 MGD) or design loading capacity, the Permittee shall submit to the permitting authorities a projection of flows and loadings up to the time when the design capacity of the treatment facility will be reached, and a program for maintaining satisfactory treatment levels consistent with approved water quality management plans. Before the design flow will be reached, or whenever treatment necessary to achieve permit limits cannot be assured, the Permittee may be required to submit plans for facility improvements.

ATTACHMENT A

USEPA REGION 1 FRESHWATER ACUTE TOXICITY TEST PROCEDURE AND PROTOCOL

I. GENERAL REQUIREMENTS

The permittee shall conduct acceptable acute toxicity tests in accordance with the appropriate test protocols described below:

- **Daphnid (Ceriodaphnia dubia) definitive 48 hour test.**
- **Fathead Minnow (Pimephales promelas) definitive 48 hour test.**

Acute toxicity test data shall be reported as outlined in Section VIII.

II. METHODS

The permittee shall use 40 CFR Part 136 methods. Methods and guidance may be found at:

http://water.epa.gov/scitech/methods/cwa/wet/disk2_index.cfm

The permittee shall also meet the sampling, analysis and reporting requirements included in this protocol. This protocol defines more specific requirements while still being consistent with the Part 136 methods. If, due to modifications of Part 136, there are conflicting requirements between the Part 136 method and this protocol, the permittee shall comply with the requirements of the Part 136 method.

III. SAMPLE COLLECTION

A discharge sample shall be collected. Aliquots shall be split from the sample, containerized and preserved (as per 40 CFR Part 136) for chemical and physical analyses required. The remaining sample shall be measured for total residual chlorine and dechlorinated (if detected) in the laboratory using sodium thiosulfate for subsequent toxicity testing. (Note that EPA approved test methods require that samples collected for metals analyses be preserved immediately after collection.) Grab samples must be used for pH, temperature, and total residual chlorine (as per 40 CFR Part 122.21).

Standard Methods for the Examination of Water and Wastewater describes dechlorination of samples (APHA, 1992). Dechlorination can be achieved using a ratio of 6.7 mg/L anhydrous sodium thiosulfate to reduce 1.0 mg/L chlorine. If dechlorination is necessary, a thiosulfate control (maximum amount of thiosulfate in lab control or receiving water) must also be run in the WET test.

All samples held overnight shall be refrigerated at 1- 6°C.

IV. DILUTION WATER

A grab sample of dilution water used for acute toxicity testing shall be collected from the receiving water at a point immediately upstream of the permitted discharge's zone of influence at a reasonably accessible location. Avoid collection near areas of obvious road or agricultural runoff, storm sewers or other point source discharges and areas where stagnant conditions exist. In the case where an alternate dilution water has been agreed upon an additional receiving water control (0% effluent) must also be tested.

If the receiving water diluent is found to be, or suspected to be toxic or unreliable, an alternate standard dilution water of known quality with a hardness, pH, conductivity, alkalinity, organic carbon, and total suspended solids similar to that of the receiving water may be substituted **AFTER RECEIVING WRITTEN APPROVAL FROM THE PERMIT ISSUING AGENCY(S)**. Written requests for use of an alternate dilution water should be mailed with supporting documentation to the following address:

Director
Office of Ecosystem Protection (CAA)
U.S. Environmental Protection Agency-New England
5 Post Office Sq., Suite 100 (OEP06-5)
Boston, MA 02109-3912

and

Manager
Water Technical Unit (SEW)
U.S. Environmental Protection Agency
5 Post Office Sq., Suite 100 (OES04-4)
Boston, MA 02109-3912

Note: USEPA Region 1 retains the right to modify any part of the alternate dilution water policy stated in this protocol at any time. Any changes to this policy will be documented in the annual DMR posting.

See the most current annual DMR instructions which can be found on the EPA Region 1 website at <http://www.epa.gov/region1/enforcement/water/dmr.html> for further important details on alternate dilution water substitution requests.

It may prove beneficial to have the proposed dilution water source screened for suitability prior to toxicity testing. EPA strongly urges that screening be done prior to set up of a full definitive toxicity test any time there is question about the dilution water's ability to support acceptable performance as outlined in the 'test acceptability' section of the protocol.

V. TEST CONDITIONS

The following tables summarize the accepted daphnid and fathead minnow toxicity test conditions and test acceptability criteria:

EPA NEW ENGLAND EFFLUENT TOXICITY TEST CONDITIONS FOR THE DAPHNID, CERIODAPHNIA DUBIA 48 HOUR ACUTE TESTS¹

1.	Test type	Static, non-renewal
2.	Temperature (°C)	20 ± 1°C or 25 ± 1°C
3.	Light quality	Ambient laboratory illumination
4.	Photoperiod	16 hour light, 8 hour dark
5.	Test chamber size	Minimum 30 ml
6.	Test solution volume	Minimum 15 ml
7.	Age of test organisms	1-24 hours (neonates)
8.	No. of daphnids per test chamber	5
9.	No. of replicate test chambers per treatment	4
10.	Total no. daphnids per test concentration	20
11.	Feeding regime	As per manual, lightly feed YCT and <u>Selenastrum</u> to newly released organisms while holding prior to initiating test
12.	Aeration	None
13.	Dilution water ²	Receiving water, other surface water, synthetic water adjusted to the hardness and alkalinity of the receiving water (prepared using either Millipore Milli-Q ^R or equivalent deionized water and reagent grade chemicals according to EPA acute toxicity test manual) or deionized water combined with mineral water to appropriate hardness.
14.	Dilution series	≥ 0.5, must bracket the permitted RWC
15.	Number of dilutions	5 plus receiving water and laboratory water control and thiosulfate control, as necessary. An additional dilution at the permitted effluent concentration (% effluent) is required if it is not included in the dilution

series.

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| 16. Effect measured | Mortality-no movement of body or appendages on gentle prodding |
| 17. Test acceptability | 90% or greater survival of test organisms in dilution water control solution |
| 18. Sampling requirements | For on-site tests, samples must be used within 24 hours of the time that they are removed from the sampling device. For off-site tests, samples must first be used within 36 hours of collection. |
| 19. Sample volume required | Minimum 1 liter |

Footnotes:

1. Adapted from EPA-821-R-02-012.
2. Standard prepared dilution water must have hardness requirements to generally reflect the characteristics of the receiving water.

**EPA NEW ENGLAND TEST CONDITIONS FOR THE FATHEAD MINNOW
(PIMEPHALES PROMELAS) 48 HOUR ACUTE TEST¹**

1. Test Type	Static, non-renewal
2. Temperature (°C)	20 ± 1 ° C or 25 ± 1°C
3. Light quality	Ambient laboratory illumination
4. Photoperiod	16 hr light, 8 hr dark
5. Size of test vessels	250 mL minimum
6. Volume of test solution	Minimum 200 mL/replicate
7. Age of fish	1-14 days old and age within 24 hrs of each other
8. No. of fish per chamber	10
9. No. of replicate test vessels per treatment	4
10. Total no. organisms per concentration	40
11. Feeding regime	As per manual, lightly feed test age larvae using concentrated brine shrimp nauplii while holding prior to initiating test
12. Aeration	None, unless dissolved oxygen (D.O.) concentration falls below 4.0 mg/L, at which time gentle single bubble aeration should be started at a rate of less than 100 bubbles/min. (Routine D.O. check is recommended.)
13. dilution water ²	Receiving water, other surface water, synthetic water adjusted to the hardness and alkalinity of the receiving water (prepared using either Millipore Milli-Q ^R or equivalent deionized and reagent grade chemicals according to EPA acute toxicity test manual) or deionized water combined with mineral water to appropriate hardness.
14. Dilution series	≥ 0.5, must bracket the permitted RWC

- | | |
|----------------------------|--|
| 15. Number of dilutions | 5 plus receiving water and laboratory water control and thiosulfate control, as necessary. An additional dilution at the permitted effluent concentration (% effluent) is required if it is not included in the dilution series. |
| 16. Effect measured | Mortality-no movement on gentle prodding |
| 17. Test acceptability | 90% or greater survival of test organisms in dilution water control solution |
| 18. Sampling requirements | For on-site tests, samples must be used within 24 hours of the time that they are removed from the sampling device. For off-site tests, samples are used within 36 hours of collection. |
| 19. Sample volume required | Minimum 2 liters |

Footnotes:

1. Adapted from EPA-821-R-02-012
2. Standard dilution water must have hardness requirements to generally reflect characteristics of the receiving water.

VI. CHEMICAL ANALYSIS

At the beginning of a static acute toxicity test, pH, conductivity, total residual chlorine, oxygen, hardness, alkalinity and temperature must be measured in the highest effluent concentration and the dilution water. Dissolved oxygen, pH and temperature are also measured at 24 and 48 hour intervals in all dilutions. The following chemical analyses shall be performed on the 100 percent effluent sample and the upstream water sample for each sampling event.

<u>Parameter</u>	Effluent	Receiving Water	ML (mg/l)
Hardness ¹	x	x	0.5
Total Residual Chlorine (TRC) ^{2, 3}	x		0.02
Alkalinity	x	x	2.0
pH	x	x	--
Specific Conductance	x	x	--
Total Solids	x		--
Total Dissolved Solids	x		--
Ammonia	x	x	0.1
Total Organic Carbon	x	x	0.5
Total Metals			
Cd	x	x	0.0005
Pb	x	x	0.0005
Cu	x	x	0.003
Zn	x	x	0.005
Ni	x	x	0.005
Al	x	x	0.02
Other as permit requires			

Notes:

1. Hardness may be determined by:
 - APHA Standard Methods for the Examination of Water and Wastewater , 21st Edition
 - Method 2340B (hardness by calculation)
 - Method 2340C (titration)
2. Total Residual Chlorine may be performed using any of the following methods provided the required minimum limit (ML) is met.
 - APHA Standard Methods for the Examination of Water and Wastewater , 21st Edition
 - Method 4500-CL E Low Level Amperometric Titration
 - Method 4500-CL G DPD Colorimetric Method
3. Required to be performed on the sample used for WET testing prior to its use for toxicity testing.

VII. TOXICITY TEST DATA ANALYSIS

LC50 Median Lethal Concentration (Determined at 48 Hours)

Methods of Estimation:

- Probit Method
- Spearman-Karber
- Trimmed Spearman-Karber
- Graphical

See the flow chart in Figure 6 on p. 73 of EPA-821-R-02-012 for appropriate method to use on a given data set.

No Observed Acute Effect Level (NOAEL)

See the flow chart in Figure 13 on p. 87 of EPA-821-R-02-012.

VIII. TOXICITY TEST REPORTING

A report of the results will include the following:

- Description of sample collection procedures, site description
- Names of individuals collecting and transporting samples, times and dates of sample collection and analysis on chain-of-custody
- General description of tests: age of test organisms, origin, dates and results of standard toxicant tests; light and temperature regime; other information on test conditions if different than procedures recommended. Reference toxicant test data should be included.
- All chemical/physical data generated. (Include minimum detection levels and minimum quantification levels.)
- Raw data and bench sheets.
- Provide a description of dechlorination procedures (as applicable).
- Any other observations or test conditions affecting test outcome.

NPDES PART II STANDARD CONDITIONS
(April 26, 2018)¹

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¹Updated July 17, 2018 to fix typographical errors.

NPDES PART II STANDARD CONDITIONS
(April 26, 2018)

A. GENERAL REQUIREMENTS

1. Duty to Comply

The Permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act (CWA or Act) and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

- a. The Permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under Section 405(d) of the CWA within the time provided in the regulations that establish these standards or prohibitions, or standards for sewage sludge use or disposal, even if the permit has not yet been modified to incorporate the requirement.
- b. Penalties for Violations of Permit Conditions: The Director will adjust the civil and administrative penalties listed below in accordance with the Civil Monetary Penalty Inflation Adjustment Rule (83 Fed. Reg. 1190-1194 (January 10, 2018) and the 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note. See Pub. L. 114-74, Section 701 (Nov. 2, 2015)). These requirements help ensure that EPA penalties keep pace with inflation. Under the above-cited 2015 amendments to inflationary adjustment law, EPA must review its statutory civil penalties each year and adjust them as necessary.

(1) Criminal Penalties

- (a) *Negligent Violations.* The CWA provides that any person who negligently violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to criminal penalties of not less than \$2,500 nor more than \$25,000 per day of violation, or imprisonment of not more than 1 year, or both. In the case of a second or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than \$50,000 per day of violation or by imprisonment of not more than 2 years, or both.
- (b) *Knowing Violations.* The CWA provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not more than 3 years, or both. In the case of a second or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than \$100,000 per day of violation, or imprisonment of not more than 6 years, or both.
- (c) *Knowing Endangerment.* The CWA provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 303, 306, 307, 308, 318, or 405 of the Act and who knows at that time that he or she is placing another person in imminent danger of death or serious bodily injury shall upon conviction be subject to a fine of not more than \$250,000 or by imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing

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endangerment violation, a person shall be subject to a fine of not more than \$500,000 or by imprisonment of not more than 30 years, or both. An organization, as defined in Section 309(c)(3)(B)(iii) of the Act, shall, upon conviction of violating the imminent danger provision, be subject to a fine of not more than \$1,000,000 and can be fined up to \$2,000,000 for second or subsequent convictions.

- (d) *False Statement.* The CWA provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both. The Act further provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.
- (2) *Civil Penalties.* The CWA provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed the maximum amounts authorized by Section 309(d) of the Act, the 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, and 40 C.F.R. Part 19. *See* Pub. L.114-74, Section 701 (Nov. 2, 2015); 83 Fed. Reg. 1190 (January 10, 2018).
- (3) *Administrative Penalties.* The CWA provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to an administrative penalty as follows:
- (a) *Class I Penalty.* Not to exceed the maximum amounts authorized by Section 309(g)(2)(A) of the Act, the 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, and 40 C.F.R. Part 19. *See* Pub. L.114-74, Section 701 (Nov. 2, 2015); 83 Fed. Reg. 1190 (January 10, 2018).
- (b) *Class II Penalty.* Not to exceed the maximum amounts authorized by Section 309(g)(2)(B) of the Act the 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, and 40 C.F.R. Part 19. *See* Pub. L.114-74, Section 701 (Nov. 2, 2015); 83 Fed. Reg. 1190 (January 10, 2018).

2. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the Permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit

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condition.

3. Duty to Provide Information

The Permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The Permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

4. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the Permittee from responsibilities, liabilities or penalties to which the Permittee is or may be subject under Section 311 of the CWA, or Section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

5. Property Rights

This permit does not convey any property rights of any sort, or any exclusive privilege.

6. Confidentiality of Information

a. In accordance with 40 C.F.R. Part 2, any information submitted to EPA pursuant to these regulations may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, EPA may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in 40 C.F.R. Part 2 (Public Information).

b. Claims of confidentiality for the following information will be denied:

- (1) The name and address of any permit applicant or Permittee;
- (2) Permit applications, permits, and effluent data.

c. Information required by NPDES application forms provided by the Director under 40 C.F.R. § 122.21 may not be claimed confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

7. Duty to Reapply

If the Permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the Permittee must apply for and obtain a new permit. The Permittee shall submit a new application at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Director. (The Director shall not grant permission for applications to be submitted later than the expiration date of the existing permit.)

8. State Authorities

Nothing in Parts 122, 123, or 124 precludes more stringent State regulation of any activity

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covered by the regulations in 40 C.F.R. Parts 122, 123, and 124, whether or not under an approved State program.

9. Other Laws

The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulations.

B. OPERATION AND MAINTENANCE OF POLLUTION CONTROLS

1. Proper Operation and Maintenance

The Permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a Permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

2. Need to Halt or Reduce Not a Defense

It shall not be a defense for a Permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

3. Duty to Mitigate

The Permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

4. Bypass

a. Definitions

- (1) *Bypass* means the intentional diversion of waste streams from any portion of a treatment facility.
- (2) *Severe property damage* means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

- b. *Bypass not exceeding limitations*. The Permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs (c) and (d) of this Section.

c. Notice

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- (1) *Anticipated bypass.* If the Permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass. As of December 21, 2020 all notices submitted in compliance with this Section must be submitted electronically by the Permittee to the Director or initial recipient, as defined in 40 C.F.R. § 127.2(b), in compliance with this Section and 40 C.F.R. Part 3 (including, in all cases, Subpart D to Part 3), § 122.22, and 40 C.F.R. Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, Permittees may be required to report electronically if specified by a particular permit or if required to do so by state law.
- (2) *Unanticipated bypass.* The Permittee shall submit notice of an unanticipated bypass as required in paragraph D.1.e. of this part (24-hour notice). As of December 21, 2020 all notices submitted in compliance with this Section must be submitted electronically by the Permittee to the Director or initial recipient, as defined in 40 C.F.R. § 127.2(b), in compliance with this Section and 40 C.F.R. Part 3 (including, in all cases, Subpart D to Part 3), § 122.22, and 40 C.F.R. Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, Permittees may be required to report electronically if specified by a particular permit or required to do so by law.

d. *Prohibition of bypass.*

- (1) Bypass is prohibited, and the Director may take enforcement action against a Permittee for bypass, unless:
 - (a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - (b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and
 - (c) The Permittee submitted notices as required under paragraph 4.c of this Section.
- (2) The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in paragraph 4.d of this Section.

5. Upset

- a. *Definition.* *Upset* means an exceptional incident in which there is an unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the Permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or

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- improper operation.
- b. *Effect of an upset.* An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph B.5.c. of this Section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.
 - c. *Conditions necessary for a demonstration of upset.* A Permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - (1) An upset occurred and that the Permittee can identify the cause(s) of the upset;
 - (2) The permitted facility was at the time being properly operated; and
 - (3) The Permittee submitted notice of the upset as required in paragraph D.1.e.2.b. (24-hour notice).
 - (4) The Permittee complied with any remedial measures required under B.3. above.
 - d. *Burden of proof.* In any enforcement proceeding the Permittee seeking to establish the occurrence of an upset has the burden of proof.

C. MONITORING REQUIREMENTS

1. Monitoring and Records

- a. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
- b. Except for records of monitoring information required by this permit related to the Permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least 5 years (or longer as required by 40 C.F.R. § 503), the Permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time.
- c. Records of monitoring information shall include:
 - (1) The date, exact place, and time of sampling or measurements;
 - (2) The individual(s) who performed the sampling or measurements;
 - (3) The date(s) analyses were performed;
 - (4) The individual(s) who performed the analyses;
 - (5) The analytical techniques or methods used; and
 - (6) The results of such analyses.
- d. Monitoring must be conducted according to test procedures approved under 40 C.F.R. § 136 unless another method is required under 40 C.F.R. Subchapters N or O.
- e. The Clean Water Act provides that any person who falsifies, tampers with, or

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knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both.

2. Inspection and Entry

The Permittee shall allow the Director, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon presentation of credentials and other documents as may be required by law, to:

- a. Enter upon the Permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
- b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

D. REPORTING REQUIREMENTS

1. Reporting Requirements

- a. *Planned Changes.* The Permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:
 - (1) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 C.F.R. § 122.29(b); or
 - (2) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements at 40 C.F.R. § 122.42(a)(1).
 - (3) The alteration or addition results in a significant change in the Permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.
- b. *Anticipated noncompliance.* The Permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

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- c. *Transfers.* This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the Permittee and incorporate such other requirements as may be necessary under the Clean Water Act. *See* 40 C.F.R. § 122.61; in some cases, modification or revocation and reissuance is mandatory.
- d. *Monitoring reports.* Monitoring results shall be reported at the intervals specified elsewhere in this permit.
 - (1) Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Director for reporting results of monitoring of sludge use or disposal practices. As of December 21, 2016 all reports and forms submitted in compliance with this Section must be submitted electronically by the Permittee to the Director or initial recipient, as defined in 40 C.F.R. § 127.2(b), in compliance with this Section and 40 C.F.R. Part 3 (including, in all cases, Subpart D to Part 3), § 122.22, and 40 C.F.R. Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, Permittees may be required to report electronically if specified by a particular permit or if required to do so by State law.
 - (2) If the Permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 C.F.R. § 136, or another method required for an industry-specific waste stream under 40 C.F.R. Subchapters N or O, the results of such monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Director.
 - (3) Calculations for all limitations which require averaging or measurements shall utilize an arithmetic mean unless otherwise specified by the Director in the permit.
- e. *Twenty-four hour reporting.*
 - (1) The Permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the Permittee becomes aware of the circumstances. A written report shall also be provided within 5 days of the time the Permittee becomes aware of the circumstances. The written report shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. For noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events, these reports must include the data described above (with the exception of time of discovery) as well as the type of event (combined sewer overflows, sanitary sewer overflows, or bypass events), type of sewer overflow structure (e.g., manhole, combined sewer overflow outfall), discharge volumes untreated by the treatment works treating domestic sewage, types of human health and environmental impacts of the sewer overflow event, and whether the noncompliance was related to wet weather. As of December 21, 2020 all

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reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this section must be submitted electronically by the Permittee to the Director or initial recipient, as defined in 40 C.F.R. § 127.2(b), in compliance with this Section and 40 C.F.R. Part 3 (including, in all cases Subpart D to Part 3), § 122.22, and 40 C.F.R. Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, Permittees may be required to electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section by a particular permit or if required to do so by state law. The Director may also require Permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section.

- (2) The following shall be included as information which must be reported within 24 hours under this paragraph.
 - (a) Any unanticipated bypass which exceeds any effluent limitation in the permit. *See* 40 C.F.R. § 122.41(g).
 - (b) Any upset which exceeds any effluent limitation in the permit.
 - (c) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in the permit to be reported within 24 hours. *See* 40 C.F.R. § 122.44(g).
 - (3) The Director may waive the written report on a case-by-case basis for reports under paragraph D.1.e. of this Section if the oral report has been received within 24 hours.
- f. *Compliance Schedules.* Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.
- g. *Other noncompliance.* The Permittee shall report all instances of noncompliance not reported under paragraphs D.1.d., D.1.e., and D.1.f. of this Section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph D.1.e. of this Section. For noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events, these reports shall contain the information described in paragraph D.1.e. and the applicable required data in Appendix A to 40 C.F.R. Part 127. As of December 21, 2020 all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this section must be submitted electronically by the Permittee to the Director or initial recipient, as defined in 40 C.F.R. § 127.2(b), in compliance with this Section and 40 C.F.R. Part 3 (including, in all cases, Subpart D to Part 3), §122.22, and 40 C.F.R. Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, Permittees may be required to electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section by a particular permit or if required to do so by state law. The Director may also require Permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this Section.
- h. *Other information.* Where the Permittee becomes aware that it failed to submit any

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relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.

- i. *Identification of the initial recipient for NPDES electronic reporting data.* The owner, operator, or the duly authorized representative of an NPDES-regulated entity is required to electronically submit the required NPDES information (as specified in Appendix A to 40 C.F.R. Part 127) to the appropriate initial recipient, as determined by EPA, and as defined in 40 C.F.R. § 127.2(b). EPA will identify and publish the list of initial recipients on its Web site and in the FEDERAL REGISTER, by state and by NPDES data group (see 40 C.F.R. § 127.2(c) of this Chapter). EPA will update and maintain this listing.

2. Signatory Requirement

- a. All applications, reports, or information submitted to the Director shall be signed and certified. *See* 40 C.F.R. §122.22.
- b. The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

3. Availability of Reports.

Except for data determined to be confidential under paragraph A.6. above, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the State water pollution control agency and the Director. As required by the CWA, effluent data shall not be considered confidential. Knowingly making any false statements on any such report may result in the imposition of criminal penalties as provided for in Section 309 of the CWA.

E. DEFINITIONS AND ABBREVIATIONS

1. General Definitions

For more definitions related to sludge use and disposal requirements, see EPA Region 1's NPDES Permit Sludge Compliance Guidance document (4 November 1999, modified to add regulatory definitions, April 2018).

Administrator means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

Applicable standards and limitations means all, State, interstate, and federal standards and limitations to which a "discharge," a "sewage sludge use or disposal practice," or a related activity is subject under the CWA, including "effluent limitations," water quality standards, standards of performance, toxic effluent standards or prohibitions, "best management practices," pretreatment standards, and "standards for sewage sludge use or disposal" under Sections 301, 302, 303, 304, 306, 307, 308, 403 and 405 of the CWA.

Application means the EPA standard national forms for applying for a permit, including any additions, revisions, or modifications to the forms; or forms approved by EPA for use in

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“approved States,” including any approved modifications or revisions.

Approved program or *approved State* means a State or interstate program which has been approved or authorized by EPA under Part 123.

Average monthly discharge limitation means the highest allowable average of “daily discharges” over a calendar month, calculated as the sum of all “daily discharges” measured during a calendar month divided by the number of “daily discharges” measured during that month.

Average weekly discharge limitation means the highest allowable average of “daily discharges” over a calendar week, calculated as the sum of all “daily discharges” measured during a calendar week divided by the number of “daily discharges” measured during that week.

Best Management Practices (“BMPs”) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of “waters of the United States.” BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Bypass see B.4.a.1 above.

C-NOEC or “*Chronic (Long-term Exposure Test) – No Observed Effect Concentration*” means the highest tested concentration of an effluent or a toxicant at which no adverse effects are observed on the aquatic test organisms at a specified time of observation.

Class I sludge management facility is any publicly owned treatment works (POTW), as defined in 40 C.F.R. § 501.2, required to have an approved pretreatment program under 40 C.F.R. § 403.8 (a) (including any POTW located in a State that has elected to assume local program responsibilities pursuant to 40 C.F.R. § 403.10 (e)) and any treatment works treating domestic sewage, as defined in 40 C.F.R. § 122.2, classified as a Class I sludge management facility by the EPA Regional Administrator, or, in the case of approved State programs, the Regional Administrator in conjunction with the State Director, because of the potential for its sewage sludge use or disposal practice to affect public health and the environment adversely.

Contiguous zone means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone.

Continuous discharge means a “discharge” which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or similar activities.

CWA means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483 and Public Law 97-117, 33 U.S.C. 1251 *et seq.*

CWA and regulations means the Clean Water Act (CWA) and applicable regulations promulgated thereunder. In the case of an approved State program, it includes State program requirements.

Daily Discharge means the “discharge of a pollutant” measured during a calendar day or any

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other 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the “daily discharge” is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurements, the “daily discharge” is calculated as the average measurement of the pollutant over the day.

Direct Discharge means the “discharge of a pollutant.”

Director means the Regional Administrator or an authorized representative. In the case of a permit also issued under Massachusetts’ authority, it also refers to the Director of the Division of Watershed Management, Department of Environmental Protection, Commonwealth of Massachusetts.

Discharge

- (a) When used without qualification, *discharge* means the “discharge of a pollutant.”
- (b) As used in the definitions for “interference” and “pass through,” *discharge* means the introduction of pollutants into a POTW from any non-domestic source regulated under Section 307(b), (c) or (d) of the Act.

Discharge Monitoring Report (“DMR”) means the EPA uniform national form, including any subsequent additions, revisions, or modifications for the reporting of self-monitoring results by Permittees. DMRs must be used by “approved States” as well as by EPA. EPA will supply DMRs to any approved State upon request. The EPA national forms may be modified to substitute the State Agency name, address, logo, and other similar information, as appropriate, in place of EPA’s.

Discharge of a pollutant means:

- (a) Any addition of any “pollutant” or combination of pollutants to “waters of the United States” from any “point source,” or
- (b) Any addition of any pollutant or combination of pollutants to the waters of the “contiguous zone” or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any “indirect discharger.”

Effluent limitation means any restriction imposed by the Director on quantities, discharge rates, and concentrations of “pollutants” which are “discharged” from “point sources” into “waters of the United States,” the waters of the “contiguous zone,” or the ocean.

Effluent limitation guidelines means a regulation published by the Administrator under section 304(b) of CWA to adopt or revise “effluent limitations.”

Environmental Protection Agency (“EPA”) means the United States Environmental Protection

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Agency.

Grab Sample means an individual sample collected in a period of less than 15 minutes.

Hazardous substance means any substance designated under 40 C.F.R. Part 116 pursuant to Section 311 of CWA.

Incineration is the combustion of organic matter and inorganic matter in sewage sludge by high temperatures in an enclosed device.

Indirect discharger means a nondomestic discharger introducing “pollutants” to a “publicly owned treatment works.”

Interference means a discharge (see definition above) which, alone or in conjunction with a discharge or discharges from other sources, both:

- (a) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and
- (b) Therefore is a cause of a violation of any requirement of the POTW’s NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent State or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including title II, more commonly referred to as the Resources Conservation and Recovery Act (RCRA), and including State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the SDWA), the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research and Sanctuaries Act.

Landfill means an area of land or an excavation in which wastes are placed for permanent disposal, and that is not a land application unit, surface impoundment, injection well, or waste pile.

Land application is the spraying or spreading of sewage sludge onto the land surface; the injection of sewage sludge below the land surface; or the incorporation of sewage sludge into the soil so that the sewage sludge can either condition the soil or fertilize crops or vegetation grown in the soil.

Land application unit means an area where wastes are applied onto or incorporated into the soil surface (excluding manure spreading operations) for agricultural purposes or for treatment and disposal.

LC₅₀ means the concentration of a sample that causes mortality of 50% of the test population at a specific time of observation. The LC₅₀ = 100% is defined as a sample of undiluted effluent.

Maximum daily discharge limitation means the highest allowable “daily discharge.”

Municipal solid waste landfill (MSWLF) unit means a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under 40 C.F.R. § 257.2. A MSWLF unit also may receive other types of RCRA Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, very small quantity generator waste and industrial solid waste. Such a landfill may be

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publicly or privately owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit or a lateral expansion. A construction and demolition landfill that receives residential lead-based paint waste and does not receive any other household waste is not a MSWLF unit.

Municipality

- (a) When used without qualification *municipality* means a city, town, borough, county, parish, district, association, or other public body created by or under State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under Section 208 of CWA.
- (b) As related to sludge use and disposal, *municipality* means a city, town, borough, county, parish, district, association, or other public body (including an intermunicipal Agency of two or more of the foregoing entities) created by or under State law; an Indian tribe or an authorized Indian tribal organization having jurisdiction over sewage sludge management; or a designated and approved management Agency under Section 208 of the CWA, as amended. The definition includes a special district created under State law, such as a water district, sewer district, sanitary district, utility district, drainage district, or similar entity, or an integrated waste management facility as defined in Section 201 (e) of the CWA, as amended, that has as one of its principal responsibilities the treatment, transport, use or disposal of sewage sludge.

National Pollutant Discharge Elimination System means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under Sections 307, 402, 318, and 405 of the CWA. The term includes an “approved program.”

New Discharger means any building, structure, facility, or installation:

- (a) From which there is or may be a “discharge of pollutants;”
- (b) That did not commence the “discharge of pollutants” at a particular “site” prior to August 13, 1979;
- (c) Which is not a “new source;” and
- (d) Which has never received a finally effective NPDES permit for discharges at that “site.”

This definition includes an “indirect discharger” which commences discharging into “waters of the United States” after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas exploratory drilling rig or a coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a “site” for which it does not have a permit; and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979, at a “site” under EPA’s permitting jurisdiction for which it is not covered by an individual or general permit and which is located in an area determined by the Director in the issuance of a final permit to be in an area of biological concern. In determining whether an area is an area of biological concern, the Director shall consider the factors specified in 40 C.F.R. §§ 125.122 (a) (1) through (10).

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An offshore or coastal mobile exploratory drilling rig or coastal mobile developmental drilling rig will be considered a “new discharger” only for the duration of its discharge in an area of biological concern.

New source means any building, structure, facility, or installation from which there is or may be a “discharge of pollutants,” the construction of which commenced:

- (a) After promulgation of standards of performance under Section 306 of CWA which are applicable to such source, or
- (b) After proposal of standards of performance in accordance with Section 306 of CWA which are applicable to such source, but only if the standards are promulgated in accordance with Section 306 within 120 days of their proposal.

NPDES means “National Pollutant Discharge Elimination System.”

Owner or operator means the owner or operator of any “facility or activity” subject to regulation under the NPDES programs.

Pass through means a Discharge (see definition above) which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW’s NPDES permit (including an increase in the magnitude or duration of a violation).

Pathogenic organisms are disease-causing organisms. These include, but are not limited to, certain bacteria, protozoa, viruses, and viable helminth ova.

Permit means an authorization, license, or equivalent control document issued by EPA or an “approved State” to implement the requirements of Parts 122, 123, and 124. “Permit” includes an NPDES “general permit” (40 C.F.R § 122.28). “Permit” does not include any permit which has not yet been the subject of final agency action, such as a “draft permit” or “proposed permit.”

Person means an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof.

Person who prepares sewage sludge is either the person who generates sewage sludge during the treatment of domestic sewage in a treatment works or the person who derives a material from sewage sludge.

pH means the logarithm of the reciprocal of the hydrogen ion concentration measured at 25° Centigrade or measured at another temperature and then converted to an equivalent value at 25° Centigrade.

Point Source means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff (see 40 C.F.R. § 122.3).

Pollutant means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials

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(except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

- (a) Sewage from vessels; or
- (b) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well is used either to facilitate production or for disposal purposes is approved by the authority of the State in which the well is located, and if the State determines that the injection or disposal will not result in the degradation of ground or surface water resources.

Primary industry category means any industry category listed in the NRDC settlement agreement (*Natural Resources Defense Council et al. v. Train*, 8 E.R.C. 2120 (D.D.C. 1976), *modified* 12 E.R.C. 1833 (D.D.C. 1979)); also listed in Appendix A of 40 C.F.R. Part 122.

Privately owned treatment works means any device or system which is (a) used to treat wastes from any facility whose operator is not the operator of the treatment works and (b) not a “POTW.”

Process wastewater means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

Publicly owned treatment works (POTW) means a treatment works as defined by Section 212 of the Act, which is owned by a State or municipality (as defined by Section 504(4) of the Act). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plant. The term also means the municipality as defined in Section 502(4) of the Act, which has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

Regional Administrator means the Regional Administrator, EPA, Region I, Boston, Massachusetts.

Secondary industry category means any industry which is not a “primary industry category.”

Septage means the liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or a holding tank when the system is cleaned or maintained.

Sewage Sludge means any solid, semi-solid, or liquid residue removed during the treatment of municipal waste water or domestic sewage. Sewage sludge includes, but is not limited to, solids removed during primary, secondary, or advanced waste water treatment, scum, septage, portable toilet pumpings, type III marine sanitation device pumpings (33 C.F.R. Part 159), and sewage sludge products. Sewage sludge does not include grit or screenings, or ash generated during the incineration of sewage sludge.

Sewage sludge incinerator is an enclosed device in which only sewage sludge and auxiliary fuel are fired.

Sewage sludge unit is land on which only sewage sludge is placed for final disposal. This does

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not include land on which sewage sludge is either stored or treated. Land does not include waters of the United States, as defined in 40 C.F.R. § 122.2.

Sewage sludge use or disposal practice means the collection, storage, treatment, transportation, processing, monitoring, use, or disposal of sewage sludge.

Significant materials includes, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substance designated under Section 101(14) of CERCLA; any chemical the facility is required to report pursuant to Section 313 of title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

Significant spills includes, but is not limited to, releases of oil or hazardous substances in excess of reportable quantities under Section 311 of the CWA (see 40 C.F.R. §§ 110.10 and 117.21) or Section 102 of CERCLA (see 40 C.F.R. § 302.4).

Sludge-only facility means any “treatment works treating domestic sewage” whose methods of sewage sludge use or disposal are subject to regulations promulgated pursuant to section 405(d) of the CWA, and is required to obtain a permit under 40 C.F.R. § 122.1(b)(2).

State means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, or an Indian Tribe as defined in the regulations which meets the requirements of 40 C.F.R. § 123.31.

Store or storage of sewage sludge is the placement of sewage sludge on land on which the sewage sludge remains for two years or less. This does not include the placement of sewage sludge on land for treatment.

Storm water means storm water runoff, snow melt runoff, and surface runoff and drainage.

Storm water discharge associated with industrial activity means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant.

Surface disposal site is an area of land that contains one or more active sewage sludge units.

Toxic pollutant means any pollutant listed as toxic under Section 307(a)(1) or, in the case of “sludge use or disposal practices,” any pollutant identified in regulations implementing Section 405(d) of the CWA.

Treatment works treating domestic sewage means a POTW or any other sewage sludge or waste water treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices.

For purposes of this definition, “domestic sewage” includes waste and waste water from humans or household operations that are discharged to or otherwise enter a treatment works. In States where there is no approved State sludge management program under Section 405(f) of the CWA, the Director may designate any person subject to the standards for sewage sludge use and

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disposal in 40 C.F.R. Part 503 as a “treatment works treating domestic sewage,” where he or she finds that there is a potential for adverse effects on public health and the environment from poor sludge quality or poor sludge handling, use or disposal practices, or where he or she finds that such designation is necessary to ensure that such person is in compliance with 40 C.F.R. Part 503.

Upset see B.5.a. above.

Vector attraction is the characteristic of sewage sludge that attracts rodents, flies, mosquitoes, or other organisms capable of transporting infectious agents.

Waste pile or pile means any non-containerized accumulation of solid, non-flowing waste that is used for treatment or storage.

Waters of the United States or waters of the U.S. means:

- (a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- (b) All interstate waters, including interstate “wetlands;”
- (c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, “wetlands”, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
 - (1) Which are or could be used by interstate or foreign travelers for recreational or other purpose;
 - (2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - (3) Which are used or could be used for industrial purposes by industries in interstate commerce;
- (d) All impoundments of waters otherwise defined as waters of the United States under this definition;
- (e) Tributaries of waters identified in paragraphs (a) through (d) of this definition;
- (f) The territorial sea; and
- (g) “Wetlands” adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 C.F.R. § 423.11(m) which also meet the criteria of this definition) are not waters of the United States. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of waters of the United States. Waters of the United States do not include prior converted cropland.

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Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

Wetlands means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

Whole Effluent Toxicity (WET) means the aggregate toxic effect of an effluent measured directly by a toxicity test.

Zone of Initial Dilution (ZID) means the region of initial mixing surrounding or adjacent to the end of the outfall pipe or diffuser ports, provided that the ZID may not be larger than allowed by mixing zone restrictions in applicable water quality standards.

2. Commonly Used Abbreviations

BOD	Five-day biochemical oxygen demand unless otherwise specified
CBOD	Carbonaceous BOD
CFS	Cubic feet per second
COD	Chemical oxygen demand
Chlorine	
Cl ₂	Total residual chlorine
TRC	Total residual chlorine which is a combination of free available chlorine (FAC, see below) and combined chlorine (chloramines, etc.)
TRO	Total residual chlorine in marine waters where halogen compounds are present
FAC	Free available chlorine (aqueous molecular chlorine, hypochlorous acid, and hypochlorite ion)
Coliform	
Coliform, Fecal	Total fecal coliform bacteria
Coliform, Total	Total coliform bacteria
Cont.	Continuous recording of the parameter being monitored, i.e. flow, temperature, pH, etc.
Cu. M/day or M ³ /day	Cubic meters per day
DO	Dissolved oxygen

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kg/day	Kilograms per day
lbs/day	Pounds per day
mg/L	Milligram(s) per liter
mL/L	Milliliters per liter
MGD	Million gallons per day
Nitrogen	
Total N	Total nitrogen
NH ₃ -N	Ammonia nitrogen as nitrogen
NO ₃ -N	Nitrate as nitrogen
NO ₂ -N	Nitrite as nitrogen
NO ₃ -NO ₂	Combined nitrate and nitrite nitrogen as nitrogen
TKN	Total Kjeldahl nitrogen as nitrogen
Oil & Grease	Freon extractable material
PCB	Polychlorinated biphenyl
Surfactant	Surface-active agent
Temp. °C	Temperature in degrees Centigrade
Temp. °F	Temperature in degrees Fahrenheit
TOC	Total organic carbon
Total P	Total phosphorus
TSS or NFR	Total suspended solids or total nonfilterable residue
Turb. or Turbidity	Turbidity measured by the Nephelometric Method (NTU)
µg/L	Microgram(s) per liter
WET	“Whole effluent toxicity”
ZID	Zone of Initial Dilution

**AUTHORIZATION TO DISCHARGE UNDER THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**

In compliance with the provisions of the Federal Clean Water Act, as amended, (33 U.S.C. §§1251 et seq.; the "CWA"),

The City of Concord, New Hampshire

is authorized to discharge from the facility located at

**Penacook Wastewater Treatment Facility
7 Penacook Street
Penacook, NH 03303**

to receiving water named

Merrimack River (Hydrologic Basin Code: 01070002)

in accordance with effluent limitations, monitoring requirements and other conditions set forth herein.

The Town of Boscawen is a co-permittee for Part I.B, Unauthorized Discharges; Part I.C, Operation and Maintenance, which include conditions regarding the operation and maintenance of the collection systems owned and operated by the Towns; and Part I.D, Alternate Power Source.

Operation and maintenance of the sewer system shall be in compliance with the General Requirements of Part II and the terms and conditions of Part I.B, Part I.C and Part I.D of this permit. The Permittee and Co-permittee are severally liable under Part I.B, Part I.C and Part I.D for their own activities and required reporting with respect to the portions of the collection system that they own or operate. They are not liable for violations of Part I.B, Part I.C and Part I.D committed by others relative to the portions of the collection system owned and operated by others. Nor are they responsible for any reporting that is required of other Permittees under Part I.B, Part I.C and Part I.D. The responsible Town department is:

Boscawen Board of Selectmen
116 North Main Street
Boscawen, New Hampshire 03303

This permit shall become effective on the first day of the calendar month immediately following 60 days after signature.¹

This permit expires at midnight, five years from the last day of the month preceding the effective date.

This permit supersedes the permit issued on July 27, 2012.

¹ Pursuant to 40 Code of Federal Regulations (C.F.R.) § 124.15(b)(3), if no comments requesting a change to the Draft Permit are received, the permit will become effective upon the date of signature. Procedures for appealing EPA's Final Permit decision may be found at 40 C.F.R. § 124.19.

This permit consists of **Part I** including the cover page(s), **Attachment A** (Freshwater Acute Toxicity Test Procedure and Protocol, February 2011), and **Part II** (NPDES Part II Standard Conditions, April 2018).

Signed this day of

Ken Moraff, Director
Water Division
Environmental Protection Agency
Region 1
Boston, MA

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. During the period beginning on the effective date and lasting through the expiration date, the Permittee is authorized to discharge treated effluent through Outfall Serial Number 001 to Merrimack River. The discharge shall be limited and monitored as specified below; the receiving water and the influent shall be monitored as specified below.

Effluent Characteristic	Effluent Limitation			Monitoring Requirements ^{1,2,3}	
	Average Monthly	Average Weekly	Maximum Daily	Measurement Frequency	Sample Type ⁴
Rolling Average Effluent Flow ⁵	2.37 MGD ⁵	---	---	Continuous	Recorder
Effluent Flow ⁵	Report MGD	---	Report MGD	Continuous	Recorder
BOD ₅	30 mg/L 593 lb/day	45 mg/L 890 lb/day	50 mg/L 989 lb/day	2/week	Composite
BOD ₅ Removal	≥ 85 %	---	---	---	Calculation
TSS	30 mg/L 593 lb/day	45 mg/L 890 lb/day	50 mg/L 989 lb/day	2/week	Composite
TSS Removal	≥ 85 %	---	---	---	Calculation
pH Range ⁶	6.5 - 8.0 S.U.			1/day	Grab
Total Residual Chlorine ^{7,8}	1 mg/L	---	1 mg/L	1/day	Grab
<i>Escherichia coli</i> ^{7,8}	126/100 mL	---	406/100 mL	3/week	Grab
Total Kjeldahl Nitrogen ⁹ (April 1 - October 31)	Report mg/L	---	Report mg/L	1/week	Composite
Total Kjeldahl Nitrogen ⁹ (November 1 - March 31)	Report mg/L	---	Report mg/L	1/month	Composite
Nitrate + Nitrite ⁹ (April 1 - October 31)	Report mg/L	---	Report mg/L	1/week	Composite
Nitrate + Nitrite ⁹ (November 1 - March 31)	Report mg/L	---	Report mg/L	1/month	Composite
Total Nitrogen ⁹ (April 1 - October 31)	Report mg/L Report lb/day	---	Report mg/L	1/week	Composite

Effluent Characteristic	Effluent Limitation			Monitoring Requirements ^{1,2,3}	
	Average Monthly	Average Weekly	Maximum Daily	Measurement Frequency	Sample Type ⁴
Total Nitrogen ⁹ (November 1 - March 31)	Report mg/L Report lb/day	---	Report mg/L	1/month	Composite
Whole Effluent Toxicity (WET) Testing^{10, 11}					
LC ₅₀	---	---	≥ 50 %	1/year	Composite
Hardness	---	---	Report mg/L	1/year	Composite
Ammonia Nitrogen	---	---	Report mg/L	1/year	Composite
Total Aluminum	---	---	Report mg/L	1/year	Composite
Total Cadmium	---	---	Report mg/L	1/year	Composite
Total Copper	---	---	Report mg/L	1/year	Composite
Total Nickel	---	---	Report mg/L	1/year	Composite
Total Lead	---	---	Report mg/L	1/year	Composite
Total Zinc	---	---	Report mg/L	1/year	Composite
Total Organic Carbon	---	---	Report mg/L	1/year	Composite

Ambient Characteristic ¹³	Reporting Requirements			Monitoring Requirements ^{1,2,3}	
	Average Monthly	Average Weekly	Maximum Daily	Measurement Frequency	Sample Type ⁴
Hardness	---	---	Report mg/L	1/year	Grab
Ammonia Nitrogen	---	---	Report mg/L	1/year	Grab
Total Aluminum	---	---	Report mg/L	1/year	Grab
Total Cadmium	---	---	Report mg/L	1/year	Grab
Total Copper	---	---	Report mg/L	1/year	Grab
Total Nickel	---	---	Report mg/L	1/year	Grab
Total Lead	---	---	Report mg/L	1/year	Grab
Total Zinc	---	---	Report mg/L	1/year	Grab
Total Organic Carbon	---	---	Report mg/L	1/year	Grab
Dissolved Organic Carbon ¹²	---	---	Report mg/L	1/year	Grab
pH ¹⁴	---	---	Report S.U.	1/year	Grab
Temperature ¹⁴	---	---	Report °C	1/year	Grab

Influent Characteristic	Reporting Requirements			Monitoring Requirements ^{1,2,3}	
	Average Monthly	Average Weekly	Maximum Daily	Measurement Frequency	Sample Type ⁴
BOD ₅	Report mg/L	---	---	2/month	Composite
TSS	Report mg/L	---	---	2/month	Composite

Footnotes:

1. Effluent samples shall yield data representative of the discharge. A routine sampling program shall be developed in which samples are taken at the same location, same time and same days of the week each month. The Permittee shall report the results to the Environmental Protection Agency Region 1 (EPA) and the State of any additional testing above that required herein, if testing is in accordance with 40 C.F.R. Part 136.
2. In accordance with 40 C.F.R. § 122.44(i)(1)(iv), the Permittee shall monitor according to sufficiently sensitive test procedures (i.e., methods) approved under 40 C.F.R. Part 136 or required under 40 C.F.R. chapter I, subchapter N or O, for the analysis of pollutants or pollutant parameters (except WET). A method is “sufficiently sensitive” when: 1) The method minimum level (ML) is at or below the level of the effluent limitation established in the permit for the measured pollutant or pollutant parameter; or 2) The method has the lowest ML of the analytical methods approved under 40 C.F.R. Part 136 or required under 40 C.F.R. chapter I, subchapter N or O for the measured pollutant or pollutant parameter. The term “minimum level” refers to either the sample concentration equivalent to the lowest calibration point in a method or a multiple of the method detection limit (MDL), whichever is higher. Minimum levels may be obtained in several ways: They may be published in a method; they may be based on the lowest acceptable calibration point used by a laboratory; or they may be calculated by multiplying the MDL in a method, or the MDL determined by a laboratory, by a factor.
3. When a parameter is not detected above the ML, the Permittee must report the data qualifier signifying less than the ML for that parameter (e.g., < 50 µg/L, if the ML for a parameter is 50 µg/L). For reporting an average based on a mix of values detected and not detected, assign a value of “0” to all non-detects for that reporting period and report the average of all the results.
4. A “grab” sample is an individual sample collected in a period of less than 15 minutes.

A “composite” sample is a composite of at least twenty-four (24) grab samples taken during one consecutive 24-hour period, either collected at equal intervals and combined proportional to flow or continuously collected proportional to flow.
5. The limit is a rolling annual average, reported in million gallons per day (MGD), which will be calculated as the arithmetic mean of the monthly average flow for the reporting month and the monthly average flows of the previous eleven months. Also report monthly average and maximum daily flow in MGD.

6. The pH shall be within the specified range at all times. The minimum and maximum pH sample measurement values for the month shall be reported in standard units (S.U.). See Part I.G.1 below for a provision to modify the pH range.
7. The Permittee shall minimize the use of chlorine while maintaining adequate bacterial control. Monitoring for total residual chlorine (TRC) is only required for discharges which have been previously chlorinated or which contain residual chlorine.

Chlorination and dechlorination systems shall include an alarm system for indicating system interruptions or malfunctions. Any interruption or malfunction of the chlorine dosing system that may have resulted in levels of chlorine that were inadequate for achieving effective disinfection, or interruptions or malfunctions of the dechlorination system that may have resulted in excessive levels of chlorine in the final effluent shall be reported with the monthly DMRs and in accordance with any more frequent reporting requirements in accordance with Part II Standard Conditions. The report shall include the date and time of the interruption or malfunction, the nature of the problem, and the estimated amount of time that the reduced levels of chlorine or dechlorination chemicals occurred.

8. The monthly average limit for *E. coli* is expressed as a geometric mean. *E. coli* monitoring shall be conducted concurrently with TRC monitoring, if TRC monitoring is required.
9. Total Kjeldahl nitrogen and nitrate + nitrite samples shall be collected concurrently. The results of these analyses shall be used to calculate both the concentration and mass loadings of total nitrogen, as follows.

Total Nitrogen (mg/L) = Total Kjeldahl Nitrogen (mg/L) + Nitrate + Nitrite (mg/L)

Total Nitrogen (lb/day) = [(average monthly Total Nitrogen (mg/L) * total monthly effluent flow (Millions of Gallons (MG)) / # of days in the month] * 8.345

10. The Permittee shall conduct acute toxicity tests (LC₅₀) in accordance with test procedures and protocols specified in **Attachment A** of this permit. LC₅₀ is defined in Part II.E. of this permit. The Permittee shall test the daphnid, *Ceriodaphnia dubia*, and the fathead minnow, *Pimephales promelas*. Toxicity test samples shall be collected and tests completed during the same weeks each time of the calendar quarter ending September 30th. The complete report for each toxicity test shall be submitted as an attachment to the DMR submittal which includes the results for that toxicity test.

11. For Part I.A.1., Whole Effluent Toxicity Testing, the Permittee shall conduct the analyses specified in **Attachment A**, Part VI. CHEMICAL ANALYSIS for the effluent sample. If toxicity test(s) using the receiving water as diluent show the receiving water to be toxic or unreliable, the Permittee shall follow procedures outlined in **Attachment A**, Section IV., DILUTION WATER. Minimum levels and test methods are specified in **Attachment A**, Part VI. CHEMICAL ANALYSIS.
12. Monitoring and reporting for dissolved organic carbon (DOC) are not requirements of the Whole Effluent Toxicity (WET) tests but are additional requirements. The Permittee may analyze the WET samples for DOC or may collect separate samples for DOC concurrently with WET sampling.
13. For Part I.A.1., Ambient Characteristic, the Permittee shall conduct the analyses specified in **Attachment A**, Part VI. CHEMICAL ANALYSIS for the receiving water sample collected as part of the WET testing requirements. Such samples shall be taken from the receiving water at a point immediately upstream of the permitted discharge's zone of influence at a reasonably accessible location, as specified in **Attachment A**. Minimum levels and test methods are specified in **Attachment A**, Part VI. CHEMICAL ANALYSIS.
14. A pH and temperature measurement shall be taken of each receiving water sample at the time of collection and the results reported on the appropriate DMR. These pH and temperature measurements are independent from any pH and temperature measurements required by the WET testing protocols.

Part I.A. continued.

2. The discharge shall not cause a violation of the water quality standards of the receiving water.
3. The discharge shall be free from substances in kind or quantity that settle to form harmful benthic deposits; float as foam, debris, scum or other visible substances; produce odor, color, taste or turbidity that is not naturally occurring and would render the surface water unsuitable for its designated uses; result in the dominance of nuisance species; or interfere with recreational activities.
4. Tainting substances shall not be present in the discharge in concentrations that individually or in combination are detectable by taste and odor tests performed on the edible portions of aquatic organisms.
5. The discharge shall not result in toxic substances or chemical constituents in concentrations or combinations in the receiving water that injure or are inimical to plants, animals, humans or aquatic life; or persist in the environment or accumulate in aquatic organisms to levels that result in harmful concentrations in edible portions of fish, shellfish, other aquatic life, or wildlife that might consume aquatic life.
6. The discharge shall not result in benthic deposits that have a detrimental impact on the benthic community. The discharge shall not result in oil and grease, color, slicks, odors, or surface floating solids that would impair any existing or designated uses in the receiving water.
7. The discharge shall not result in an exceedance of the naturally occurring turbidity in the receiving water by more than 10 NTUs.
8. The Permittee must provide adequate notice to EPA-Region 1 and the State of the following:
 - a. Any new introduction of pollutants into the POTW from an indirect discharger which would be subject to Part 301 or Part 306 of the Clean Water Act if it were directly discharging those pollutants or in a primary industry category (see 40 C.F.R. Part 122 Appendix A as amended) discharging process water; and
 - b. Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.
 - c. For purposes of this paragraph, adequate notice shall include information on:
 - (1) The quantity and quality of effluent introduced into the POTW; and
 - (2) Any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

9. Pollutants introduced into the POTW by a non-domestic source (user) shall not pass through the POTW or interfere with the operation or performance of the works.

B. UNAUTHORIZED DISCHARGES

This permit authorizes discharges only from the outfall listed in Part I.A.1, in accordance with the terms and conditions of this permit. Discharges of wastewater from any other point sources, including sanitary sewer overflows (SSOs), are not authorized by this permit in accordance with Part II.D.1.e.(1) (24-hour reporting). See Part I.H below for reporting requirements.

C. OPERATION AND MAINTENANCE OF THE SEWER SYSTEM

Operation and maintenance of the collection system owned and operated by the Town of Boscawen shall be in compliance with the General Requirements of Part II and the terms and conditions of Part I.C, Part I.D and Part I.E of this permit. The Town of Boscawen shall only be responsible under Part II, Part I.C, Part I.D and Part I.E of this permit for only its own infrastructure, activities and required reporting with respect to the portions of the collection system that it owns or operates.

Operation and maintenance of that portion of the collection system and the entirety of the treatment system owned and operated by the City of Concord shall be in compliance with the terms and conditions of Part I.C, Part I.D and Part I.E of this permit and the General Requirements of Part II. The City of Concord shall only be responsible under Part I.C, Part I.D and Part I.E of this permit and the General Requirements of Part II for its own infrastructure, activities and required reporting with respect to the portion of the collection and treatment system that it owns or operates. No Permittee shall be responsible for violations of Part I.C, Part I.D and Part I.E of this permit and/or the General Requirements of Part II committed by another Permittee relative to the portions of the collection system owned and operated by such other Permittee. In the event of any conflict between the above provisions and any other term or provision of this Permit, the above provisions shall control. The permittee and co-permittee are required to complete the following activities for the respective portions of the collection system which they operate:

1. Maintenance Staff

The Permittee and Co-permittee shall provide an adequate staff to carry out the operation, maintenance, repair, and testing functions required to ensure compliance with the terms and conditions of this permit. Provisions to meet this requirement shall be described in the Collection System O&M Plan required pursuant to Section C.5. below.

2. Preventive Maintenance Program

The Permittee and Co-permittee shall maintain an ongoing preventive maintenance program to prevent overflows and bypasses caused by malfunctions or failures of the sewer system infrastructure. The program shall include an inspection program designed to identify all

potential and actual unauthorized discharges. Plans and programs to meet this requirement shall be described in the Collection System O&M Plan required pursuant to Section C.5. below.

3. Infiltration/Inflow

The Permittee and Co-permittee shall control infiltration and inflow (I/I) into the sewer system as necessary to prevent high flow related unauthorized discharges from their collection systems and high flow related violations of the wastewater treatment plant's effluent limitations. Plans and programs to control I/I shall be described in the Collection System O&M Plan required pursuant to Section C.5. below.

4. Collection System Mapping

The Permittee and Co-permittee shall maintain a map of the sewer collection system it owns. The map shall be on a street map of the community, with sufficient detail and at a scale to allow easy interpretation. The collection system information shown on the map shall be based on current conditions and shall be kept up-to-date and available for review by federal, state, or local agencies. Such map(s) shall include, but not be limited to the following:

- a. All sanitary sewer lines and related manholes;
- b. All combined sewer lines, related manholes, and catch basins;
- c. All combined sewer regulators and any known or suspected connections between the sanitary sewer and storm drain systems (e.g. combination manholes);
- d. All outfalls, including the treatment plant outfall(s), CSOs, and any known or suspected SSOs, including stormwater outfalls that are connected to combination manholes;
- e. All pump stations and force mains;
- f. The wastewater treatment facility(ies);
- g. All surface waters (labeled);
- h. Other major appurtenances such as inverted siphons and air release valves;
- i. A numbering system which uniquely identifies manholes, catch basins, overflow points, regulators and outfalls;
- j. The scale and a north arrow; and
- k. The pipe diameter, date of installation, type of material, distance between manholes, and the direction of flow.

5. Collection System O&M Plan

The Permittee and Co-permittee shall continue to update and implement the Collection System O&M Plan it has previously submitted to EPA and the State. The plan shall be available for review by federal, state and local agencies as requested. The Plan shall include:

- a. A description of the collection system management goals, staffing, information management, and legal authorities;
- b. A description of the collection system and the overall condition of the collection system including a list of all pump stations and a description of recent studies and construction activities; and
- c. A preventive maintenance and monitoring program for the collection system;
- d. Description of sufficient staffing necessary to properly operate and maintain the sanitary sewer collection system and how the operation and maintenance program is staffed;
- e. Description of funding, the source(s) of funding and provisions for funding sufficient for implementing the plan;
- f. Identification of known and suspected overflows and back-ups, including manholes. A description of the cause of the identified overflows and back-ups, corrective actions taken, and a plan for addressing the overflows and back-ups consistent with the requirements of this permit;
- g. A description of the Permittee's programs for preventing I/I related effluent violations and all unauthorized discharges of wastewater, including overflows and by-passes and the ongoing program to identify and remove sources of I/I. The program shall include an inflow identification and control program that focuses on the disconnection and redirection of illegal sump pumps and roof down spouts;
- h. An educational public outreach program for all aspects of I/I control, particularly private inflow; and
- i. An Overflow Emergency Response Plan to protect public health from overflows and unanticipated bypasses or upsets that exceed any effluent limitation in the permit.

6. Annual Reporting Requirement

The Permittee and Co-permittee shall submit a summary report of activities related to the implementation of its Collection System O&M Plan during the previous calendar year. The report shall be submitted to EPA and the State annually by March 31. The summary report shall, at a minimum, include:

- a. A description of the staffing levels maintained during the year;

- b. A map and a description of inspection and maintenance activities conducted and corrective actions taken during the previous year;
- c. Expenditures for any collection system maintenance activities and corrective actions taken during the previous year;
- d. A map with areas identified for investigation/action in the coming year;
- e. A summary of unauthorized discharges during the past year and their causes and a report of any corrective actions taken as a result of the unauthorized discharges reported pursuant to the Unauthorized Discharges section of this permit; and
- f. If the monthly average flow exceeded 80 percent of the facility's 2.37 MGD design flow (1.9 MGD) for three consecutive months in the previous calendar year, or there have been capacity related overflows, the report shall include:
 - (1) Plans for further potential flow increases describing how the Permittee will maintain compliance with the flow limit and all other effluent limitations and conditions; and
 - (2) A calculation of the maximum daily, weekly, and monthly infiltration and the maximum daily, weekly, and monthly inflow for the reporting year.

D. ALTERNATE POWER SOURCE

In order to maintain compliance with the terms and conditions of this permit, the Permittee and Co-permittee shall provide an alternative power source(s) sufficient to operate the portion of the publicly owned treatment works it owns and operates, as defined in Part II.E.1 of this permit.

E. INDUSTRIAL USERS

The discharge of any IUs to the Penacook POTW are managed by the Concord POTW pretreatment program; and Concord is an EPA approved pretreatment POTW.

1. The Permittee shall submit to EPA, the City of Concord and the State the name of any Industrial User (IU) subject to Categorical Pretreatment Standards under 40 C.F.R. § 403.6 and 40 C.F.R. chapter I, subchapter N (Parts 405-415, 417-430, 432, 447, 449-451, 454, 455, 457-461, 463-469, and 471 as amended) who commences discharge to the facility after the effective date of this permit.

This reporting requirement also applies to any other IU who is classified as a Significant Industrial User which discharges an average of 25,000 gallons per day or more of process wastewater into the facility (excluding sanitary, noncontact cooling and boiler blowdown wastewater); contributes a process wastewater which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the facility; or is designated as such by the Control Authority as defined in 40 C.F.R. § 403.3(f) on the basis that the industrial user has a reasonable potential to adversely affect the wastewater treatment facility's

operation, or for violating any pretreatment standard or requirement (in accordance with 40 C.F.R. § 403.8(f)(6)).

2. In the event that the Permittee receives originals of reports (baseline monitoring reports, 90-day compliance reports, periodic reports on continued compliance, etc.) from industrial users subject to Categorical Pretreatment Standards under 40 C.F.R. § 403.6 and 40 C.F.R. chapter I, subchapter N (Parts 405-415, 417-430, 432-447, 449-451, 454, 455, 457-461, 463-469, and 471 as amended), or from a Significant Industrial User, the Permittee shall forward the originals of these reports within ninety (90) days of their receipt to the City of Concord, and copy EPA and the State.

F. SLUDGE CONDITIONS

1. The Permittee shall comply with all existing federal and state laws and regulations that apply to sewage sludge use and disposal practices, including EPA regulations promulgated at 40 C.F.R. Part 503, which prescribe “Standards for the Use or Disposal of Sewage Sludge” pursuant to § 405(d) of the CWA, 33 U.S.C. § 1345(d).
2. If both state and federal requirements apply to the Permittee’s sludge use and/or disposal practices, the Permittee shall comply with the more stringent of the applicable requirements.
3. The requirements and technical standards of 40 C.F.R. Part 503 apply to the following sludge use or disposal practices:
 - a. Land application - the use of sewage sludge to condition or fertilize the soil
 - b. Surface disposal - the placement of sewage sludge in a sludge only landfill
 - c. Sewage sludge incineration in a sludge only incinerator
4. The requirements of 40 C.F.R. Part 503 do not apply to facilities which dispose of sludge in a municipal solid waste landfill. 40 C.F.R. § 503.4. These requirements also do not apply to facilities which do not use or dispose of sewage sludge during the life of the permit but rather treat the sludge (e.g., lagoons, reed beds), or are otherwise excluded under 40 C.F.R. § 503.6.
5. The 40 C.F.R. Part 503 requirements include the following elements:
 - a. General requirements
 - b. Pollutant limitations
 - c. Operational Standards (pathogen reduction requirements and vector attraction reduction requirements)
 - d. Management practices
 - e. Record keeping

f. Monitoring

g. Reporting

Which of the 40 C.F.R. Part 503 requirements apply to the Permittee will depend upon the use or disposal practice followed and upon the quality of material produced by a facility. The EPA Region 1 Guidance document, “EPA Region 1 - NPDES Permit Sludge Compliance Guidance” (November 4, 1999), may be used by the Permittee to assist it in determining the applicable requirements.²

6. The sludge shall be monitored for pollutant concentrations (all Part 503 methods) and pathogen reduction and vector attraction reduction (land application and surface disposal) at the following frequency. This frequency is based upon the volume of sewage sludge generated at the facility in dry metric tons per year, as follows:

less than 290	1/ year
290 to less than 1,500	1 /quarter
1,500 to less than 15,000	6 /year
15,000 +	1 /month

Sampling of the sewage sludge shall use the procedures detailed in 40 C.F.R. § 503.8.

7. Under 40 C.F.R. § 503.9(r), the Permittee is a “person who prepares sewage sludge” because it “is ... the person who generates sewage sludge during the treatment of domestic sewage in a treatment works” If the Permittee contracts with *another* “person who prepares sewage sludge” under 40 C.F.R. § 503.9(r) – i.e., with “a person who derives a material from sewage sludge” – for use or disposal of the sludge, then compliance with Part 503 requirements is the responsibility of the contractor engaged for that purpose. If the Permittee does not engage a “person who prepares sewage sludge,” as defined in 40 C.F.R. § 503.9(r), for use or disposal, then the Permittee remains responsible to ensure that the applicable requirements in Part 503 are met. 40 C.F.R. § 503.7. If the ultimate use or disposal method is land application, the Permittee is responsible for providing the person receiving the sludge with notice and necessary information to comply with the requirements of 40 C.F.R. § 503 Subpart B.
8. The Permittee shall submit an annual report containing the information specified in the 40 C.F.R. Part 503 requirements (§ 503.18 (land application), § 503.28 (surface disposal), or § 503.48 (incineration)) by **February 19** (*see also* “EPA Region 1 - NPDES Permit Sludge Compliance Guidance”). Reports shall be submitted electronically using EPA’s Electronic Reporting tool (“NeT”) (*see* “Reporting Requirements” section below).
9. Compliance with the requirements of this permit or 40 C.F.R. Part 503 shall not eliminate or modify the need to comply with applicable requirements under RSA 485-A and Env-Wq 800, New Hampshire Sludge Management Rules.

² This guidance document is available upon request from EPA Region 1 and may also be found at: <http://www.epa.gov/region1/npdes/permits/generic/sludgeguidance.pdf>

G. SPECIAL CONDITIONS

1. Provision to Modify pH Range

The pH range may be modified if the Permittee satisfies conditions set forth in Part I.I.5 below. Upon notification of an approval by NHDES, EPA will review and, if acceptable, will submit written notice to the Permittee of the permit change. The modified pH range will not be in effect until the Permittee receives written notice from EPA.

H. REPORTING REQUIREMENTS

Unless otherwise specified in this permit, the Permittee shall submit reports, requests, and information and provide notices in the manner described in this section.

1. Submittal of DMRs Using NetDMR

The Permittee shall continue to submit its monthly monitoring data in discharge monitoring reports (DMRs) to EPA and the State no later than the 15th day of the month electronically using NetDMR. When the Permittee submits DMRs using NetDMR, it is not required to submit hard copies of DMRs to EPA or the State. NetDMR is accessible through EPA's Central Data Exchange at <https://cdx.epa.gov/>.

2. Submittal of Reports as NetDMR Attachments

Unless otherwise specified in this permit, the Permittee shall electronically submit all reports to EPA as NetDMR attachments rather than as hard copies. This includes the NHDES Monthly Operating Reports (MORs). *See* Part I.H.6. for more information on State reporting. Because the due dates for reports described in this permit may not coincide with the due date for submitting DMRs (which is no later than the 15th day of the month), a report submitted electronically as a NetDMR attachment shall be considered timely if it is electronically submitted to EPA using NetDMR with the next DMR due following the report due date specified in this permit.

3. Submittal of Biosolids/Sewage Sludge Reports

By February 19 of each year, the Permittee must electronically report their annual Biosolids/Sewage Sludge Report for the previous calendar year using EPA's NPDES Electronic Reporting Tool ("NeT"), or another approved EPA system, which is accessible through EPA's Central Data Exchange at <https://cdx.epa.gov/>.

4. Submittal of Requests and Reports to EPA Water Division (WD)

- a. The following requests, reports, and information described in this permit shall be submitted to the NPDES Applications Coordinator in EPA Water Division (WD):

- (1) Transfer of permit notice;

- (2) Request for changes in sampling location;
 - (3) Request for reduction in testing frequency;
 - (4) Report on unacceptable dilution water / request for alternative dilution water for WET testing.
 - (5) Report of new industrial user commencing discharge
- b. These reports, information, and requests shall be submitted to EPA WD electronically at R1NPDESReporting@epa.gov.
5. Submittal of Reports to EPA Enforcement and Compliance Assurance Division (ECAD) in Hard Copy Form
- a. The following notifications and reports shall be signed and dated originals, submitted as hard copy, with a cover letter describing the submission:
 - (1) Prior to 21 December 2020, written notifications required under Part II.B.4.c, for bypasses, and Part II.D.1.e, for sanitary sewer overflows (SSOs). Starting on 21 December 2020, such notifications must be done electronically using EPA's NPDES Electronic Reporting Tool ("NeT"), or another approved EPA system, which will be accessible through EPA's Central Data Exchange at <https://cdx.epa.gov/>.
 - (2) Report on annual activities related to O&M Plan (from Co-permittee)
 - b. This information shall be submitted to EPA ECAD at the following address:

U.S. Environmental Protection Agency
Enforcement and Compliance Assurance Division
Water Compliance Section
5 Post Office Square, Suite 100 (04-SMR)
Boston, MA 02109-3912

6. State Reporting

Unless otherwise specified in this permit or by the State, duplicate signed copies of all reports, information, requests or notifications described in this permit, including the reports, information, requests or notifications described in Parts I.H.3 through I.H.5 shall also be submitted to the New Hampshire Department of Environmental Services, Water Division (NHDES-WD) electronically to the Permittee's assigned NPDES inspector at NHDES-WD or as a hardcopy to the following addresses:

New Hampshire Department of Environmental Services
Water Division
Wastewater Engineering Bureau

29 Hazen Drive, P.O. Box 95
Concord, New Hampshire 03302-0095

7. Verbal Reports and Verbal Notifications

- a. Any verbal reports or verbal notifications, if required in Parts I and/or II of this permit, shall be made to both EPA and to the State. This includes verbal reports and notifications which require reporting within 24 hours (e.g., Part II.B.4.c.(2), Part II.B.5.c.(3), and Part II.D.1.e).
- b. Verbal reports and verbal notifications shall be made to:

EPA ECAD at 617-918-1510
and
NHDES Assigned NPDES Inspector at 603-271-2985

I. STATE PERMIT CONDITIONS

1. The Permittee shall not at any time, either alone or in conjunction with any person or persons, cause directly or indirectly the discharge of waste into the said receiving water unless it has been treated in such a manner as will not lower the legislated water quality classification of, or interfere with the uses assigned to, said water by the New Hampshire Legislature (RSA 485-A:12).
2. This NPDES discharge permit is issued by EPA under federal law. Upon final issuance by EPA, the New Hampshire Department of Environmental Services-Water Division (NHDES-WD) may adopt this permit, including all terms and conditions, as a state permit pursuant to RSA 485-A:13.
3. EPA shall have the right to enforce the terms and conditions of this permit pursuant to federal law and NHDES-WD shall have the right to enforce the permit pursuant to state law, if the permit is adopted. Any modification, suspension, or revocation of this permit shall be effective only with respect to the agency taking such action and shall not affect the validity or status of the permit as issued by the other agency.
4. Pursuant to New Hampshire Statute RSA 485-A:13,I(c), any person responsible for a bypass or upset at a *wastewater facility* shall give immediate notice of a bypass or upset to all public or privately owned water systems drawing water from the same receiving water and located within 20 miles downstream of the point of discharge regardless of whether or not it is on the same receiving water or on another surface water to which the receiving water is tributary. Wastewater facility is defined at RSA 485-A:2XIX as the structures, equipment, and processes required to collect, convey, and treat domestic and industrial wastes, and dispose of the effluent and sludge. The Permittee shall maintain a list of persons, and their telephone numbers, who are to be notified immediately by telephone. In addition, written notification, which shall be postmarked within 3 days of the bypass or upset, shall be sent to such persons.

5. The pH range of 6.5 to 8.0 Standard Units (S.U.) must be achieved in the final effluent unless the Permittee can demonstrate to NHDES-WD: 1) that the range should be widened due to naturally occurring conditions in the receiving water; or 2) that the naturally occurring receiving water pH is not significantly altered by the Permittee's discharge. The scope of any demonstration project must receive prior approval from NHDES-WD. In no case, shall the above procedure result in pH limits outside the range of 6.0 to 9.0 S.U., which is the federal effluent limitation guideline regulation for pH for secondary treatment and is found in 40 C.F.R. § 133.102(c).
6. Pursuant to New Hampshire Code of Administrative Rules, Env-Wq 703.07(a):
 - a. Any person proposing to construct or modify any of the following shall submit an application for a sewer connection permit to the department:
 - (1) Any extension of a collector or interceptor, whether public or private, regardless of flow;
 - (2) Any wastewater connection or other discharge in excess of 5,000 gpd;
 - (3) Any wastewater connection or other discharge to a WWTP operating in excess of 80 percent design flow capacity or design loading capacity based on actual average flow or loading for 3 consecutive months;
 - (4) Any industrial wastewater connection or change in existing discharge of industrial wastewater, regardless of quality or quantity;
 - (5) Any sewage pumping station greater than 50 gpm or serving more than one building; or
 - (6) Any proposed sewer that serves more than one building or that requires a manhole at the connection.
7. For each new or increased discharge of industrial waste to the POTW, the Permittee shall submit, in accordance with Env-Wq 305.10(a) an "Industrial Wastewater Discharge Request."
8. Pursuant to Env-Wq 305.15(d) and 305.16(f), the Permittee shall not allocate or accept for treatment more than 90 percent of the headworks loading limits of the facility.
9. Pursuant to Env-Wq 305.21, at a frequency no less than every five years, the Permittee shall submit to NHDES:
 - a. A copy of its current sewer use ordinance if it has been revised without department approval subsequent to any previous submittal to the department or a certification that no changes have been made.

- b. A current list of all significant indirect dischargers to the POTW. At a minimum, the list shall include for each significant indirect discharger, its name and address, the name and daytime telephone number of a contact person, products manufactured, industrial processes used, existing pretreatment processes, and discharge permit status.
 - c. A list of all permitted indirect dischargers; and
 - d. A certification that the municipality is strictly enforcing its sewer use ordinance and all discharge permits it has issued.
10. When the effluent discharged for a period of three (3) consecutive months exceeds 80 percent of the 2.37 MGD design flow (1.9 MGD) or design loading capacity, the Permittee shall submit to the permitting authorities a projection of flows and loadings up to the time when the design capacity of the treatment facility will be reached, and a program for maintaining satisfactory treatment levels consistent with approved water quality management plans. Before the design flow will be reached, or whenever treatment necessary to achieve permit limits cannot be assured, the Permittee may be required to submit plans for facility improvements.

ATTACHMENT A

USEPA REGION 1 FRESHWATER ACUTE TOXICITY TEST PROCEDURE AND PROTOCOL

I. GENERAL REQUIREMENTS

The permittee shall conduct acceptable acute toxicity tests in accordance with the appropriate test protocols described below:

- **Daphnid (Ceriodaphnia dubia) definitive 48 hour test.**
- **Fathead Minnow (Pimephales promelas) definitive 48 hour test.**

Acute toxicity test data shall be reported as outlined in Section VIII.

II. METHODS

The permittee shall use 40 CFR Part 136 methods. Methods and guidance may be found at:

http://water.epa.gov/scitech/methods/cwa/wet/disk2_index.cfm

The permittee shall also meet the sampling, analysis and reporting requirements included in this protocol. This protocol defines more specific requirements while still being consistent with the Part 136 methods. If, due to modifications of Part 136, there are conflicting requirements between the Part 136 method and this protocol, the permittee shall comply with the requirements of the Part 136 method.

III. SAMPLE COLLECTION

A discharge sample shall be collected. Aliquots shall be split from the sample, containerized and preserved (as per 40 CFR Part 136) for chemical and physical analyses required. The remaining sample shall be measured for total residual chlorine and dechlorinated (if detected) in the laboratory using sodium thiosulfate for subsequent toxicity testing. (Note that EPA approved test methods require that samples collected for metals analyses be preserved immediately after collection.) Grab samples must be used for pH, temperature, and total residual chlorine (as per 40 CFR Part 122.21).

Standard Methods for the Examination of Water and Wastewater describes dechlorination of samples (APHA, 1992). Dechlorination can be achieved using a ratio of 6.7 mg/L anhydrous sodium thiosulfate to reduce 1.0 mg/L chlorine. If dechlorination is necessary, a thiosulfate control (maximum amount of thiosulfate in lab control or receiving water) must also be run in the WET test.

All samples held overnight shall be refrigerated at 1- 6°C.

IV. DILUTION WATER

A grab sample of dilution water used for acute toxicity testing shall be collected from the receiving water at a point immediately upstream of the permitted discharge's zone of influence at a reasonably accessible location. Avoid collection near areas of obvious road or agricultural runoff, storm sewers or other point source discharges and areas where stagnant conditions exist. In the case where an alternate dilution water has been agreed upon an additional receiving water control (0% effluent) must also be tested.

If the receiving water diluent is found to be, or suspected to be toxic or unreliable, an alternate standard dilution water of known quality with a hardness, pH, conductivity, alkalinity, organic carbon, and total suspended solids similar to that of the receiving water may be substituted **AFTER RECEIVING WRITTEN APPROVAL FROM THE PERMIT ISSUING AGENCY(S)**. Written requests for use of an alternate dilution water should be mailed with supporting documentation to the following address:

Director
Office of Ecosystem Protection (CAA)
U.S. Environmental Protection Agency-New England
5 Post Office Sq., Suite 100 (OEP06-5)
Boston, MA 02109-3912

and

Manager
Water Technical Unit (SEW)
U.S. Environmental Protection Agency
5 Post Office Sq., Suite 100 (OES04-4)
Boston, MA 02109-3912

Note: USEPA Region 1 retains the right to modify any part of the alternate dilution water policy stated in this protocol at any time. Any changes to this policy will be documented in the annual DMR posting.

See the most current annual DMR instructions which can be found on the EPA Region 1 website at <http://www.epa.gov/region1/enforcement/water/dmr.html> for further important details on alternate dilution water substitution requests.

It may prove beneficial to have the proposed dilution water source screened for suitability prior to toxicity testing. EPA strongly urges that screening be done prior to set up of a full definitive toxicity test any time there is question about the dilution water's ability to support acceptable performance as outlined in the 'test acceptability' section of the protocol.

V. TEST CONDITIONS

The following tables summarize the accepted daphnid and fathead minnow toxicity test conditions and test acceptability criteria:

EPA NEW ENGLAND EFFLUENT TOXICITY TEST CONDITIONS FOR THE DAPHNID, CERIODAPHNIA DUBIA 48 HOUR ACUTE TESTS¹

1.	Test type	Static, non-renewal
2.	Temperature (°C)	20 ± 1°C or 25 ± 1°C
3.	Light quality	Ambient laboratory illumination
4.	Photoperiod	16 hour light, 8 hour dark
5.	Test chamber size	Minimum 30 ml
6.	Test solution volume	Minimum 15 ml
7.	Age of test organisms	1-24 hours (neonates)
8.	No. of daphnids per test chamber	5
9.	No. of replicate test chambers per treatment	4
10.	Total no. daphnids per test concentration	20
11.	Feeding regime	As per manual, lightly feed YCT and <u>Selenastrum</u> to newly released organisms while holding prior to initiating test
12.	Aeration	None
13.	Dilution water ²	Receiving water, other surface water, synthetic water adjusted to the hardness and alkalinity of the receiving water (prepared using either Millipore Milli-Q ^R or equivalent deionized water and reagent grade chemicals according to EPA acute toxicity test manual) or deionized water combined with mineral water to appropriate hardness.
14.	Dilution series	≥ 0.5, must bracket the permitted RWC
15.	Number of dilutions	5 plus receiving water and laboratory water control and thiosulfate control, as necessary. An additional dilution at the permitted effluent concentration (% effluent) is required if it is not included in the dilution

series.

- | | |
|----------------------------|---|
| 16. Effect measured | Mortality-no movement of body or appendages on gentle prodding |
| 17. Test acceptability | 90% or greater survival of test organisms in dilution water control solution |
| 18. Sampling requirements | For on-site tests, samples must be used within 24 hours of the time that they are removed from the sampling device. For off-site tests, samples must first be used within 36 hours of collection. |
| 19. Sample volume required | Minimum 1 liter |

Footnotes:

1. Adapted from EPA-821-R-02-012.
2. Standard prepared dilution water must have hardness requirements to generally reflect the characteristics of the receiving water.

**EPA NEW ENGLAND TEST CONDITIONS FOR THE FATHEAD MINNOW
(PIMEPHALES PROMELAS) 48 HOUR ACUTE TEST¹**

1. Test Type	Static, non-renewal
2. Temperature (°C)	20 ± 1 ° C or 25 ± 1°C
3. Light quality	Ambient laboratory illumination
4. Photoperiod	16 hr light, 8 hr dark
5. Size of test vessels	250 mL minimum
6. Volume of test solution	Minimum 200 mL/replicate
7. Age of fish	1-14 days old and age within 24 hrs of each other
8. No. of fish per chamber	10
9. No. of replicate test vessels per treatment	4
10. Total no. organisms per concentration	40
11. Feeding regime	As per manual, lightly feed test age larvae using concentrated brine shrimp nauplii while holding prior to initiating test
12. Aeration	None, unless dissolved oxygen (D.O.) concentration falls below 4.0 mg/L, at which time gentle single bubble aeration should be started at a rate of less than 100 bubbles/min. (Routine D.O. check is recommended.)
13. dilution water ²	Receiving water, other surface water, synthetic water adjusted to the hardness and alkalinity of the receiving water (prepared using either Millipore Milli-Q ^R or equivalent deionized and reagent grade chemicals according to EPA acute toxicity test manual) or deionized water combined with mineral water to appropriate hardness.
14. Dilution series	≥ 0.5, must bracket the permitted RWC

- | | |
|----------------------------|--|
| 15. Number of dilutions | 5 plus receiving water and laboratory water control and thiosulfate control, as necessary. An additional dilution at the permitted effluent concentration (% effluent) is required if it is not included in the dilution series. |
| 16. Effect measured | Mortality-no movement on gentle prodding |
| 17. Test acceptability | 90% or greater survival of test organisms in dilution water control solution |
| 18. Sampling requirements | For on-site tests, samples must be used within 24 hours of the time that they are removed from the sampling device. For off-site tests, samples are used within 36 hours of collection. |
| 19. Sample volume required | Minimum 2 liters |

Footnotes:

1. Adapted from EPA-821-R-02-012
2. Standard dilution water must have hardness requirements to generally reflect characteristics of the receiving water.

VI. CHEMICAL ANALYSIS

At the beginning of a static acute toxicity test, pH, conductivity, total residual chlorine, oxygen, hardness, alkalinity and temperature must be measured in the highest effluent concentration and the dilution water. Dissolved oxygen, pH and temperature are also measured at 24 and 48 hour intervals in all dilutions. The following chemical analyses shall be performed on the 100 percent effluent sample and the upstream water sample for each sampling event.

<u>Parameter</u>	Effluent	Receiving Water	ML (mg/l)
Hardness ¹	x	x	0.5
Total Residual Chlorine (TRC) ^{2, 3}	x		0.02
Alkalinity	x	x	2.0
pH	x	x	--
Specific Conductance	x	x	--
Total Solids	x		--
Total Dissolved Solids	x		--
Ammonia	x	x	0.1
Total Organic Carbon	x	x	0.5
Total Metals			
Cd	x	x	0.0005
Pb	x	x	0.0005
Cu	x	x	0.003
Zn	x	x	0.005
Ni	x	x	0.005
Al	x	x	0.02
Other as permit requires			

Notes:

1. Hardness may be determined by:
 - APHA Standard Methods for the Examination of Water and Wastewater , 21st Edition
 - Method 2340B (hardness by calculation)
 - Method 2340C (titration)
2. Total Residual Chlorine may be performed using any of the following methods provided the required minimum limit (ML) is met.
 - APHA Standard Methods for the Examination of Water and Wastewater , 21st Edition
 - Method 4500-CL E Low Level Amperometric Titration
 - Method 4500-CL G DPD Colorimetric Method
3. Required to be performed on the sample used for WET testing prior to its use for toxicity testing.

VII. TOXICITY TEST DATA ANALYSIS

LC50 Median Lethal Concentration (Determined at 48 Hours)

Methods of Estimation:

- Probit Method
- Spearman-Kärber
- Trimmed Spearman-Kärber
- Graphical

See the flow chart in Figure 6 on p. 73 of EPA-821-R-02-012 for appropriate method to use on a given data set.

No Observed Acute Effect Level (NOAEL)

See the flow chart in Figure 13 on p. 87 of EPA-821-R-02-012.

VIII. TOXICITY TEST REPORTING

A report of the results will include the following:

- Description of sample collection procedures, site description
- Names of individuals collecting and transporting samples, times and dates of sample collection and analysis on chain-of-custody
- General description of tests: age of test organisms, origin, dates and results of standard toxicant tests; light and temperature regime; other information on test conditions if different than procedures recommended. Reference toxicant test data should be included.
- All chemical/physical data generated. (Include minimum detection levels and minimum quantification levels.)
- Raw data and bench sheets.
- Provide a description of dechlorination procedures (as applicable).
- Any other observations or test conditions affecting test outcome.

NPDES PART II STANDARD CONDITIONS
(April 26, 2018)¹

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¹Updated July 17, 2018 to fix typographical errors.

NPDES PART II STANDARD CONDITIONS
(April 26, 2018)

A. GENERAL REQUIREMENTS

1. Duty to Comply

The Permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act (CWA or Act) and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

- a. The Permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under Section 405(d) of the CWA within the time provided in the regulations that establish these standards or prohibitions, or standards for sewage sludge use or disposal, even if the permit has not yet been modified to incorporate the requirement.
- b. Penalties for Violations of Permit Conditions: The Director will adjust the civil and administrative penalties listed below in accordance with the Civil Monetary Penalty Inflation Adjustment Rule (83 Fed. Reg. 1190-1194 (January 10, 2018) and the 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note. See Pub. L. 114-74, Section 701 (Nov. 2, 2015)). These requirements help ensure that EPA penalties keep pace with inflation. Under the above-cited 2015 amendments to inflationary adjustment law, EPA must review its statutory civil penalties each year and adjust them as necessary.

(1) Criminal Penalties

- (a) *Negligent Violations.* The CWA provides that any person who negligently violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to criminal penalties of not less than \$2,500 nor more than \$25,000 per day of violation, or imprisonment of not more than 1 year, or both. In the case of a second or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than \$50,000 per day of violation or by imprisonment of not more than 2 years, or both.
- (b) *Knowing Violations.* The CWA provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not more than 3 years, or both. In the case of a second or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than \$100,000 per day of violation, or imprisonment of not more than 6 years, or both.
- (c) *Knowing Endangerment.* The CWA provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 303, 306, 307, 308, 318, or 405 of the Act and who knows at that time that he or she is placing another person in imminent danger of death or serious bodily injury shall upon conviction be subject to a fine of not more than \$250,000 or by imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing

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endangerment violation, a person shall be subject to a fine of not more than \$500,000 or by imprisonment of not more than 30 years, or both. An organization, as defined in Section 309(c)(3)(B)(iii) of the Act, shall, upon conviction of violating the imminent danger provision, be subject to a fine of not more than \$1,000,000 and can be fined up to \$2,000,000 for second or subsequent convictions.

- (d) *False Statement.* The CWA provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both. The Act further provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.
- (2) *Civil Penalties.* The CWA provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed the maximum amounts authorized by Section 309(d) of the Act, the 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, and 40 C.F.R. Part 19. *See* Pub. L.114-74, Section 701 (Nov. 2, 2015); 83 Fed. Reg. 1190 (January 10, 2018).
- (3) *Administrative Penalties.* The CWA provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to an administrative penalty as follows:
- (a) *Class I Penalty.* Not to exceed the maximum amounts authorized by Section 309(g)(2)(A) of the Act, the 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, and 40 C.F.R. Part 19. *See* Pub. L.114-74, Section 701 (Nov. 2, 2015); 83 Fed. Reg. 1190 (January 10, 2018).
- (b) *Class II Penalty.* Not to exceed the maximum amounts authorized by Section 309(g)(2)(B) of the Act the 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, and 40 C.F.R. Part 19. *See* Pub. L.114-74, Section 701 (Nov. 2, 2015); 83 Fed. Reg. 1190 (January 10, 2018).

2. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the Permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit

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condition.

3. Duty to Provide Information

The Permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The Permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

4. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the Permittee from responsibilities, liabilities or penalties to which the Permittee is or may be subject under Section 311 of the CWA, or Section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

5. Property Rights

This permit does not convey any property rights of any sort, or any exclusive privilege.

6. Confidentiality of Information

a. In accordance with 40 C.F.R. Part 2, any information submitted to EPA pursuant to these regulations may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, EPA may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in 40 C.F.R. Part 2 (Public Information).

b. Claims of confidentiality for the following information will be denied:

- (1) The name and address of any permit applicant or Permittee;
- (2) Permit applications, permits, and effluent data.

c. Information required by NPDES application forms provided by the Director under 40 C.F.R. § 122.21 may not be claimed confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

7. Duty to Reapply

If the Permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the Permittee must apply for and obtain a new permit. The Permittee shall submit a new application at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Director. (The Director shall not grant permission for applications to be submitted later than the expiration date of the existing permit.)

8. State Authorities

Nothing in Parts 122, 123, or 124 precludes more stringent State regulation of any activity

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covered by the regulations in 40 C.F.R. Parts 122, 123, and 124, whether or not under an approved State program.

9. Other Laws

The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulations.

B. OPERATION AND MAINTENANCE OF POLLUTION CONTROLS

1. Proper Operation and Maintenance

The Permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a Permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

2. Need to Halt or Reduce Not a Defense

It shall not be a defense for a Permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

3. Duty to Mitigate

The Permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

4. Bypass

a. Definitions

- (1) *Bypass* means the intentional diversion of waste streams from any portion of a treatment facility.
- (2) *Severe property damage* means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

- b. *Bypass not exceeding limitations.* The Permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs (c) and (d) of this Section.

c. Notice

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- (1) *Anticipated bypass.* If the Permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass. As of December 21, 2020 all notices submitted in compliance with this Section must be submitted electronically by the Permittee to the Director or initial recipient, as defined in 40 C.F.R. § 127.2(b), in compliance with this Section and 40 C.F.R. Part 3 (including, in all cases, Subpart D to Part 3), § 122.22, and 40 C.F.R. Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, Permittees may be required to report electronically if specified by a particular permit or if required to do so by state law.
- (2) *Unanticipated bypass.* The Permittee shall submit notice of an unanticipated bypass as required in paragraph D.1.e. of this part (24-hour notice). As of December 21, 2020 all notices submitted in compliance with this Section must be submitted electronically by the Permittee to the Director or initial recipient, as defined in 40 C.F.R. § 127.2(b), in compliance with this Section and 40 C.F.R. Part 3 (including, in all cases, Subpart D to Part 3), § 122.22, and 40 C.F.R. Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, Permittees may be required to report electronically if specified by a particular permit or required to do so by law.

d. *Prohibition of bypass.*

- (1) Bypass is prohibited, and the Director may take enforcement action against a Permittee for bypass, unless:
 - (a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - (b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and
 - (c) The Permittee submitted notices as required under paragraph 4.c of this Section.
- (2) The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in paragraph 4.d of this Section.

5. Upset

- a. *Definition.* *Upset* means an exceptional incident in which there is an unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the Permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or

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- improper operation.
- b. *Effect of an upset.* An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph B.5.c. of this Section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.
 - c. *Conditions necessary for a demonstration of upset.* A Permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - (1) An upset occurred and that the Permittee can identify the cause(s) of the upset;
 - (2) The permitted facility was at the time being properly operated; and
 - (3) The Permittee submitted notice of the upset as required in paragraph D.1.e.2.b. (24-hour notice).
 - (4) The Permittee complied with any remedial measures required under B.3. above.
 - d. *Burden of proof.* In any enforcement proceeding the Permittee seeking to establish the occurrence of an upset has the burden of proof.

C. MONITORING REQUIREMENTS

1. Monitoring and Records

- a. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
- b. Except for records of monitoring information required by this permit related to the Permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least 5 years (or longer as required by 40 C.F.R. § 503), the Permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time.
- c. Records of monitoring information shall include:
 - (1) The date, exact place, and time of sampling or measurements;
 - (2) The individual(s) who performed the sampling or measurements;
 - (3) The date(s) analyses were performed;
 - (4) The individual(s) who performed the analyses;
 - (5) The analytical techniques or methods used; and
 - (6) The results of such analyses.
- d. Monitoring must be conducted according to test procedures approved under 40 C.F.R. § 136 unless another method is required under 40 C.F.R. Subchapters N or O.
- e. The Clean Water Act provides that any person who falsifies, tampers with, or

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knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both.

2. Inspection and Entry

The Permittee shall allow the Director, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon presentation of credentials and other documents as may be required by law, to:

- a. Enter upon the Permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
- b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

D. REPORTING REQUIREMENTS

1. Reporting Requirements

- a. *Planned Changes.* The Permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:
 - (1) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 C.F.R. § 122.29(b); or
 - (2) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements at 40 C.F.R. § 122.42(a)(1).
 - (3) The alteration or addition results in a significant change in the Permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.
- b. *Anticipated noncompliance.* The Permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

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- c. *Transfers.* This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the Permittee and incorporate such other requirements as may be necessary under the Clean Water Act. *See* 40 C.F.R. § 122.61; in some cases, modification or revocation and reissuance is mandatory.
- d. *Monitoring reports.* Monitoring results shall be reported at the intervals specified elsewhere in this permit.
 - (1) Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Director for reporting results of monitoring of sludge use or disposal practices. As of December 21, 2016 all reports and forms submitted in compliance with this Section must be submitted electronically by the Permittee to the Director or initial recipient, as defined in 40 C.F.R. § 127.2(b), in compliance with this Section and 40 C.F.R. Part 3 (including, in all cases, Subpart D to Part 3), § 122.22, and 40 C.F.R. Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, Permittees may be required to report electronically if specified by a particular permit or if required to do so by State law.
 - (2) If the Permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 C.F.R. § 136, or another method required for an industry-specific waste stream under 40 C.F.R. Subchapters N or O, the results of such monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Director.
 - (3) Calculations for all limitations which require averaging or measurements shall utilize an arithmetic mean unless otherwise specified by the Director in the permit.
- e. *Twenty-four hour reporting.*
 - (1) The Permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the Permittee becomes aware of the circumstances. A written report shall also be provided within 5 days of the time the Permittee becomes aware of the circumstances. The written report shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. For noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events, these reports must include the data described above (with the exception of time of discovery) as well as the type of event (combined sewer overflows, sanitary sewer overflows, or bypass events), type of sewer overflow structure (e.g., manhole, combined sewer overflow outfall), discharge volumes untreated by the treatment works treating domestic sewage, types of human health and environmental impacts of the sewer overflow event, and whether the noncompliance was related to wet weather. As of December 21, 2020 all

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reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this section must be submitted electronically by the Permittee to the Director or initial recipient, as defined in 40 C.F.R. § 127.2(b), in compliance with this Section and 40 C.F.R. Part 3 (including, in all cases Subpart D to Part 3), § 122.22, and 40 C.F.R. Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, Permittees may be required to electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section by a particular permit or if required to do so by state law. The Director may also require Permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section.

- (2) The following shall be included as information which must be reported within 24 hours under this paragraph.
 - (a) Any unanticipated bypass which exceeds any effluent limitation in the permit. *See* 40 C.F.R. § 122.41(g).
 - (b) Any upset which exceeds any effluent limitation in the permit.
 - (c) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in the permit to be reported within 24 hours. *See* 40 C.F.R. § 122.44(g).
 - (3) The Director may waive the written report on a case-by-case basis for reports under paragraph D.1.e. of this Section if the oral report has been received within 24 hours.
- f. *Compliance Schedules.* Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.
- g. *Other noncompliance.* The Permittee shall report all instances of noncompliance not reported under paragraphs D.1.d., D.1.e., and D.1.f. of this Section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph D.1.e. of this Section. For noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events, these reports shall contain the information described in paragraph D.1.e. and the applicable required data in Appendix A to 40 C.F.R. Part 127. As of December 21, 2020 all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this section must be submitted electronically by the Permittee to the Director or initial recipient, as defined in 40 C.F.R. § 127.2(b), in compliance with this Section and 40 C.F.R. Part 3 (including, in all cases, Subpart D to Part 3), §122.22, and 40 C.F.R. Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, Permittees may be required to electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section by a particular permit or if required to do so by state law. The Director may also require Permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this Section.
- h. *Other information.* Where the Permittee becomes aware that it failed to submit any

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relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.

- i. *Identification of the initial recipient for NPDES electronic reporting data.* The owner, operator, or the duly authorized representative of an NPDES-regulated entity is required to electronically submit the required NPDES information (as specified in Appendix A to 40 C.F.R. Part 127) to the appropriate initial recipient, as determined by EPA, and as defined in 40 C.F.R. § 127.2(b). EPA will identify and publish the list of initial recipients on its Web site and in the FEDERAL REGISTER, by state and by NPDES data group (see 40 C.F.R. § 127.2(c) of this Chapter). EPA will update and maintain this listing.

2. Signatory Requirement

- a. All applications, reports, or information submitted to the Director shall be signed and certified. *See* 40 C.F.R. §122.22.
- b. The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

3. Availability of Reports.

Except for data determined to be confidential under paragraph A.6. above, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the State water pollution control agency and the Director. As required by the CWA, effluent data shall not be considered confidential. Knowingly making any false statements on any such report may result in the imposition of criminal penalties as provided for in Section 309 of the CWA.

E. DEFINITIONS AND ABBREVIATIONS

1. General Definitions

For more definitions related to sludge use and disposal requirements, see EPA Region 1's NPDES Permit Sludge Compliance Guidance document (4 November 1999, modified to add regulatory definitions, April 2018).

Administrator means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

Applicable standards and limitations means all, State, interstate, and federal standards and limitations to which a "discharge," a "sewage sludge use or disposal practice," or a related activity is subject under the CWA, including "effluent limitations," water quality standards, standards of performance, toxic effluent standards or prohibitions, "best management practices," pretreatment standards, and "standards for sewage sludge use or disposal" under Sections 301, 302, 303, 304, 306, 307, 308, 403 and 405 of the CWA.

Application means the EPA standard national forms for applying for a permit, including any additions, revisions, or modifications to the forms; or forms approved by EPA for use in

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“approved States,” including any approved modifications or revisions.

Approved program or *approved State* means a State or interstate program which has been approved or authorized by EPA under Part 123.

Average monthly discharge limitation means the highest allowable average of “daily discharges” over a calendar month, calculated as the sum of all “daily discharges” measured during a calendar month divided by the number of “daily discharges” measured during that month.

Average weekly discharge limitation means the highest allowable average of “daily discharges” over a calendar week, calculated as the sum of all “daily discharges” measured during a calendar week divided by the number of “daily discharges” measured during that week.

Best Management Practices (“BMPs”) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of “waters of the United States.” BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Bypass see B.4.a.1 above.

C-NOEC or “*Chronic (Long-term Exposure Test) – No Observed Effect Concentration*” means the highest tested concentration of an effluent or a toxicant at which no adverse effects are observed on the aquatic test organisms at a specified time of observation.

Class I sludge management facility is any publicly owned treatment works (POTW), as defined in 40 C.F.R. § 501.2, required to have an approved pretreatment program under 40 C.F.R. § 403.8 (a) (including any POTW located in a State that has elected to assume local program responsibilities pursuant to 40 C.F.R. § 403.10 (e)) and any treatment works treating domestic sewage, as defined in 40 C.F.R. § 122.2, classified as a Class I sludge management facility by the EPA Regional Administrator, or, in the case of approved State programs, the Regional Administrator in conjunction with the State Director, because of the potential for its sewage sludge use or disposal practice to affect public health and the environment adversely.

Contiguous zone means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone.

Continuous discharge means a “discharge” which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or similar activities.

CWA means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483 and Public Law 97-117, 33 U.S.C. 1251 *et seq.*

CWA and regulations means the Clean Water Act (CWA) and applicable regulations promulgated thereunder. In the case of an approved State program, it includes State program requirements.

Daily Discharge means the “discharge of a pollutant” measured during a calendar day or any

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other 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the “daily discharge” is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurements, the “daily discharge” is calculated as the average measurement of the pollutant over the day.

Direct Discharge means the “discharge of a pollutant.”

Director means the Regional Administrator or an authorized representative. In the case of a permit also issued under Massachusetts’ authority, it also refers to the Director of the Division of Watershed Management, Department of Environmental Protection, Commonwealth of Massachusetts.

Discharge

- (a) When used without qualification, *discharge* means the “discharge of a pollutant.”
- (b) As used in the definitions for “interference” and “pass through,” *discharge* means the introduction of pollutants into a POTW from any non-domestic source regulated under Section 307(b), (c) or (d) of the Act.

Discharge Monitoring Report (“DMR”) means the EPA uniform national form, including any subsequent additions, revisions, or modifications for the reporting of self-monitoring results by Permittees. DMRs must be used by “approved States” as well as by EPA. EPA will supply DMRs to any approved State upon request. The EPA national forms may be modified to substitute the State Agency name, address, logo, and other similar information, as appropriate, in place of EPA’s.

Discharge of a pollutant means:

- (a) Any addition of any “pollutant” or combination of pollutants to “waters of the United States” from any “point source,” or
- (b) Any addition of any pollutant or combination of pollutants to the waters of the “contiguous zone” or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any “indirect discharger.”

Effluent limitation means any restriction imposed by the Director on quantities, discharge rates, and concentrations of “pollutants” which are “discharged” from “point sources” into “waters of the United States,” the waters of the “contiguous zone,” or the ocean.

Effluent limitation guidelines means a regulation published by the Administrator under section 304(b) of CWA to adopt or revise “effluent limitations.”

Environmental Protection Agency (“EPA”) means the United States Environmental Protection

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Agency.

Grab Sample means an individual sample collected in a period of less than 15 minutes.

Hazardous substance means any substance designated under 40 C.F.R. Part 116 pursuant to Section 311 of CWA.

Incineration is the combustion of organic matter and inorganic matter in sewage sludge by high temperatures in an enclosed device.

Indirect discharger means a nondomestic discharger introducing “pollutants” to a “publicly owned treatment works.”

Interference means a discharge (see definition above) which, alone or in conjunction with a discharge or discharges from other sources, both:

- (a) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and
- (b) Therefore is a cause of a violation of any requirement of the POTW’s NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent State or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including title II, more commonly referred to as the Resources Conservation and Recovery Act (RCRA), and including State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the SDWA), the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research and Sanctuaries Act.

Landfill means an area of land or an excavation in which wastes are placed for permanent disposal, and that is not a land application unit, surface impoundment, injection well, or waste pile.

Land application is the spraying or spreading of sewage sludge onto the land surface; the injection of sewage sludge below the land surface; or the incorporation of sewage sludge into the soil so that the sewage sludge can either condition the soil or fertilize crops or vegetation grown in the soil.

Land application unit means an area where wastes are applied onto or incorporated into the soil surface (excluding manure spreading operations) for agricultural purposes or for treatment and disposal.

LC₅₀ means the concentration of a sample that causes mortality of 50% of the test population at a specific time of observation. The LC₅₀ = 100% is defined as a sample of undiluted effluent.

Maximum daily discharge limitation means the highest allowable “daily discharge.”

Municipal solid waste landfill (MSWLF) unit means a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under 40 C.F.R. § 257.2. A MSWLF unit also may receive other types of RCRA Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, very small quantity generator waste and industrial solid waste. Such a landfill may be

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publicly or privately owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit or a lateral expansion. A construction and demolition landfill that receives residential lead-based paint waste and does not receive any other household waste is not a MSWLF unit.

Municipality

- (a) When used without qualification *municipality* means a city, town, borough, county, parish, district, association, or other public body created by or under State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under Section 208 of CWA.
- (b) As related to sludge use and disposal, *municipality* means a city, town, borough, county, parish, district, association, or other public body (including an intermunicipal Agency of two or more of the foregoing entities) created by or under State law; an Indian tribe or an authorized Indian tribal organization having jurisdiction over sewage sludge management; or a designated and approved management Agency under Section 208 of the CWA, as amended. The definition includes a special district created under State law, such as a water district, sewer district, sanitary district, utility district, drainage district, or similar entity, or an integrated waste management facility as defined in Section 201 (e) of the CWA, as amended, that has as one of its principal responsibilities the treatment, transport, use or disposal of sewage sludge.

National Pollutant Discharge Elimination System means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under Sections 307, 402, 318, and 405 of the CWA. The term includes an “approved program.”

New Discharger means any building, structure, facility, or installation:

- (a) From which there is or may be a “discharge of pollutants;”
- (b) That did not commence the “discharge of pollutants” at a particular “site” prior to August 13, 1979;
- (c) Which is not a “new source;” and
- (d) Which has never received a finally effective NPDES permit for discharges at that “site.”

This definition includes an “indirect discharger” which commences discharging into “waters of the United States” after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas exploratory drilling rig or a coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a “site” for which it does not have a permit; and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979, at a “site” under EPA’s permitting jurisdiction for which it is not covered by an individual or general permit and which is located in an area determined by the Director in the issuance of a final permit to be in an area of biological concern. In determining whether an area is an area of biological concern, the Director shall consider the factors specified in 40 C.F.R. §§ 125.122 (a) (1) through (10).

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An offshore or coastal mobile exploratory drilling rig or coastal mobile developmental drilling rig will be considered a “new discharger” only for the duration of its discharge in an area of biological concern.

New source means any building, structure, facility, or installation from which there is or may be a “discharge of pollutants,” the construction of which commenced:

- (a) After promulgation of standards of performance under Section 306 of CWA which are applicable to such source, or
- (b) After proposal of standards of performance in accordance with Section 306 of CWA which are applicable to such source, but only if the standards are promulgated in accordance with Section 306 within 120 days of their proposal.

NPDES means “National Pollutant Discharge Elimination System.”

Owner or operator means the owner or operator of any “facility or activity” subject to regulation under the NPDES programs.

Pass through means a Discharge (see definition above) which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW’s NPDES permit (including an increase in the magnitude or duration of a violation).

Pathogenic organisms are disease-causing organisms. These include, but are not limited to, certain bacteria, protozoa, viruses, and viable helminth ova.

Permit means an authorization, license, or equivalent control document issued by EPA or an “approved State” to implement the requirements of Parts 122, 123, and 124. “Permit” includes an NPDES “general permit” (40 C.F.R § 122.28). “Permit” does not include any permit which has not yet been the subject of final agency action, such as a “draft permit” or “proposed permit.”

Person means an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof.

Person who prepares sewage sludge is either the person who generates sewage sludge during the treatment of domestic sewage in a treatment works or the person who derives a material from sewage sludge.

pH means the logarithm of the reciprocal of the hydrogen ion concentration measured at 25° Centigrade or measured at another temperature and then converted to an equivalent value at 25° Centigrade.

Point Source means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff (see 40 C.F.R. § 122.3).

Pollutant means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials

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(except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

- (a) Sewage from vessels; or
- (b) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well is used either to facilitate production or for disposal purposes is approved by the authority of the State in which the well is located, and if the State determines that the injection or disposal will not result in the degradation of ground or surface water resources.

Primary industry category means any industry category listed in the NRDC settlement agreement (*Natural Resources Defense Council et al. v. Train*, 8 E.R.C. 2120 (D.D.C. 1976), *modified* 12 E.R.C. 1833 (D.D.C. 1979)); also listed in Appendix A of 40 C.F.R. Part 122.

Privately owned treatment works means any device or system which is (a) used to treat wastes from any facility whose operator is not the operator of the treatment works and (b) not a “POTW.”

Process wastewater means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

Publicly owned treatment works (POTW) means a treatment works as defined by Section 212 of the Act, which is owned by a State or municipality (as defined by Section 504(4) of the Act). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plant. The term also means the municipality as defined in Section 502(4) of the Act, which has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

Regional Administrator means the Regional Administrator, EPA, Region I, Boston, Massachusetts.

Secondary industry category means any industry which is not a “primary industry category.”

Septage means the liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or a holding tank when the system is cleaned or maintained.

Sewage Sludge means any solid, semi-solid, or liquid residue removed during the treatment of municipal waste water or domestic sewage. Sewage sludge includes, but is not limited to, solids removed during primary, secondary, or advanced waste water treatment, scum, septage, portable toilet pumpings, type III marine sanitation device pumpings (33 C.F.R. Part 159), and sewage sludge products. Sewage sludge does not include grit or screenings, or ash generated during the incineration of sewage sludge.

Sewage sludge incinerator is an enclosed device in which only sewage sludge and auxiliary fuel are fired.

Sewage sludge unit is land on which only sewage sludge is placed for final disposal. This does

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not include land on which sewage sludge is either stored or treated. Land does not include waters of the United States, as defined in 40 C.F.R. § 122.2.

Sewage sludge use or disposal practice means the collection, storage, treatment, transportation, processing, monitoring, use, or disposal of sewage sludge.

Significant materials includes, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substance designated under Section 101(14) of CERCLA; any chemical the facility is required to report pursuant to Section 313 of title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

Significant spills includes, but is not limited to, releases of oil or hazardous substances in excess of reportable quantities under Section 311 of the CWA (see 40 C.F.R. §§ 110.10 and 117.21) or Section 102 of CERCLA (see 40 C.F.R. § 302.4).

Sludge-only facility means any “treatment works treating domestic sewage” whose methods of sewage sludge use or disposal are subject to regulations promulgated pursuant to section 405(d) of the CWA, and is required to obtain a permit under 40 C.F.R. § 122.1(b)(2).

State means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, or an Indian Tribe as defined in the regulations which meets the requirements of 40 C.F.R. § 123.31.

Store or storage of sewage sludge is the placement of sewage sludge on land on which the sewage sludge remains for two years or less. This does not include the placement of sewage sludge on land for treatment.

Storm water means storm water runoff, snow melt runoff, and surface runoff and drainage.

Storm water discharge associated with industrial activity means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant.

Surface disposal site is an area of land that contains one or more active sewage sludge units.

Toxic pollutant means any pollutant listed as toxic under Section 307(a)(1) or, in the case of “sludge use or disposal practices,” any pollutant identified in regulations implementing Section 405(d) of the CWA.

Treatment works treating domestic sewage means a POTW or any other sewage sludge or waste water treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices.

For purposes of this definition, “domestic sewage” includes waste and waste water from humans or household operations that are discharged to or otherwise enter a treatment works. In States where there is no approved State sludge management program under Section 405(f) of the CWA, the Director may designate any person subject to the standards for sewage sludge use and

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disposal in 40 C.F.R. Part 503 as a “treatment works treating domestic sewage,” where he or she finds that there is a potential for adverse effects on public health and the environment from poor sludge quality or poor sludge handling, use or disposal practices, or where he or she finds that such designation is necessary to ensure that such person is in compliance with 40 C.F.R. Part 503.

Upset see B.5.a. above.

Vector attraction is the characteristic of sewage sludge that attracts rodents, flies, mosquitoes, or other organisms capable of transporting infectious agents.

Waste pile or pile means any non-containerized accumulation of solid, non-flowing waste that is used for treatment or storage.

Waters of the United States or waters of the U.S. means:

- (a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- (b) All interstate waters, including interstate “wetlands;”
- (c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, “wetlands”, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
 - (1) Which are or could be used by interstate or foreign travelers for recreational or other purpose;
 - (2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - (3) Which are used or could be used for industrial purposes by industries in interstate commerce;
- (d) All impoundments of waters otherwise defined as waters of the United States under this definition;
- (e) Tributaries of waters identified in paragraphs (a) through (d) of this definition;
- (f) The territorial sea; and
- (g) “Wetlands” adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 C.F.R. § 423.11(m) which also meet the criteria of this definition) are not waters of the United States. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of waters of the United States. Waters of the United States do not include prior converted cropland.

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Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

Wetlands means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

Whole Effluent Toxicity (WET) means the aggregate toxic effect of an effluent measured directly by a toxicity test.

Zone of Initial Dilution (ZID) means the region of initial mixing surrounding or adjacent to the end of the outfall pipe or diffuser ports, provided that the ZID may not be larger than allowed by mixing zone restrictions in applicable water quality standards.

2. Commonly Used Abbreviations

BOD	Five-day biochemical oxygen demand unless otherwise specified
CBOD	Carbonaceous BOD
CFS	Cubic feet per second
COD	Chemical oxygen demand
Chlorine	
Cl ₂	Total residual chlorine
TRC	Total residual chlorine which is a combination of free available chlorine (FAC, see below) and combined chlorine (chloramines, etc.)
TRO	Total residual chlorine in marine waters where halogen compounds are present
FAC	Free available chlorine (aqueous molecular chlorine, hypochlorous acid, and hypochlorite ion)
Coliform	
Coliform, Fecal	Total fecal coliform bacteria
Coliform, Total	Total coliform bacteria
Cont.	Continuous recording of the parameter being monitored, i.e. flow, temperature, pH, etc.
Cu. M/day or M ³ /day	Cubic meters per day
DO	Dissolved oxygen

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kg/day	Kilograms per day
lbs/day	Pounds per day
mg/L	Milligram(s) per liter
mL/L	Milliliters per liter
MGD	Million gallons per day
Nitrogen	
Total N	Total nitrogen
NH ₃ -N	Ammonia nitrogen as nitrogen
NO ₃ -N	Nitrate as nitrogen
NO ₂ -N	Nitrite as nitrogen
NO ₃ -NO ₂	Combined nitrate and nitrite nitrogen as nitrogen
TKN	Total Kjeldahl nitrogen as nitrogen
Oil & Grease	Freon extractable material
PCB	Polychlorinated biphenyl
Surfactant	Surface-active agent
Temp. °C	Temperature in degrees Centigrade
Temp. °F	Temperature in degrees Fahrenheit
TOC	Total organic carbon
Total P	Total phosphorus
TSS or NFR	Total suspended solids or total nonfilterable residue
Turb. or Turbidity	Turbidity measured by the Nephelometric Method (NTU)
µg/L	Microgram(s) per liter
WET	“Whole effluent toxicity”
ZID	Zone of Initial Dilution

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

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 NUMBER: NH0100331

PUBLIC NOTICE START AND END DATES: June 24, 2020 – July 23, 2020

NAME AND MAILING ADDRESS OF APPLICANT:

City of Concord, New Hampshire
City Manager
41 Green Street
Concord, NH 03301

NAME AND ADDRESS OF FACILITY WHERE DISCHARGE OCCURS:

Penacook Wastewater Treatment Facility
Wastewater Treatment Plant Supt.
7 Penacook Street
Penacook, NH 03303

NAME AND MAILING ADDRESS OF CO-PERMITTEE

Boscawen Board of Selectmen
116 North Main Street
Boscawen, New Hampshire 03303

RECEIVING WATER AND CLASSIFICATION:

Merrimack River (Hydrologic Basin Code: 01070002)
Class B

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Appendices

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Appendix B – Reasonable Potential and Limits Calculations

Appendix C – EPA Region 1 NPDES Permitting Approach for Publicly Owned Treatment
Works That Include Municipal Satellite Sewage Collection Systems

1.0 Proposed Action

The above-named applicant (the “Permittee”) has applied to the U.S. Environmental Protection Agency (EPA) for reissuance of a National Pollutant Discharge Elimination System (NPDES) permit to discharge from the Penacook Wastewater Treatment Facility (the “Facility”) into the designated receiving water.

The permit currently in effect was issued on July 27, 2012 with an effective date of October 1, 2012 and expired on September 30, 2017 (the “2012 Permit”). The Permittee filed an application for permit reissuance with EPA dated March 20, 2017, as required by 40 Code of Federal Regulations (C.F.R.) § 122.6. Since the permit application was deemed timely and complete by EPA, the Facility’s 2012 Permit has been administratively continued pursuant to 40 C.F.R. § 122.6 and § 122.21(d).

The NPDES Permit is issued by EPA under federal law, New Hampshire construes Title L, Water Management and Protection, Chapters 485-A, Water Pollution and Waste Disposal, to authorize the New Hampshire Department of Environmental Services (NHDES) to “consider” a federal NPDES permit to be a State surface water discharge permit. As such, all the terms and conditions of the permit may, therefore, be incorporated into and constitute a discharge permit issued by NHDES.

2.0 Statutory and Regulatory Authority

Congress enacted the Federal Water Pollution Control Act, codified at 33 U.S.C. § 1251-1387 and commonly known as the Clean Water Act (CWA), “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” CWA § 101(a). To achieve this objective, the CWA makes it unlawful for any person to discharge any pollutant into the waters of the United States from any point source, except as authorized by specific permitting sections of the CWA, one of which is § 402. *See* CWA §§ 301(a), 402(a). Section 402(a) established one of the CWA’s principal permitting programs, the NPDES Permit Program. Under this section, EPA may “issue a permit for the discharge of any pollutant or combination of pollutants” in accordance with certain conditions. CWA § 402(a). NPDES permits generally contain discharge limitations and establish related monitoring and reporting requirements. *See* CWA § 402(a)(1) and (2). The regulations governing EPA’s NPDES permit program are generally found in 40 C.F.R. §§ 122, 124, 125, and 136.

“Congress has vested in the Administrator [of EPA] broad discretion to establish conditions for NPDES permits” in order to achieve the statutory mandates of Section 301 and 402. *Arkansas v. Oklahoma*, 503 U.S. 91, 105 (1992). *See also* 40 C.F.R. §§ 122.4(d), 122.44(d)(1), 122.44(d)(5). CWA §§ 301 and 306 provide for two types of effluent limitations to be included in NPDES permits: “technology-based” effluent limitations (TBELs) and “water quality-based” effluent limitations (WQBELs). *See* CWA §§ 301, 304(d); 40 C.F.R. Parts 122, 125, 131.

2.1 Technology-Based Requirements

Technology-based limitations, generally developed on an industry-by-industry basis, reflect a specified level of pollutant reducing technology available and economically achievable for the type of facility being permitted. *See* CWA § 301(b). As a class, publicly owned treatment works (POTWs) must meet performance-based requirements based on available wastewater treatment technology. *See* CWA § 301(b)(1)(B). The performance level for POTWs is referred to as “secondary treatment.” Secondary treatment is comprised of technology-based requirements expressed in terms of BOD₅, TSS and pH. *See* 40 C.F.R. Part 133.

Under CWA § 301(b)(1), POTWs must have achieved effluent limits based upon secondary treatment technology by July 1, 1977. Since all statutory deadlines for meeting various treatment technology-based effluent limitations established pursuant to the CWA have expired, when technology-based effluent limits are included in a permit, compliance with those limitations is from the date the issued permit becomes effective. *See* 40 C.F.R. § 125.3(a)(1).

2.2 Water Quality Based Requirements

The CWA and federal regulations also require that permit effluent limits based on water quality considerations be established for point source discharges when such limitations are necessary to meet state or federal water quality standards that are applicable to the designated receiving water. This is necessary when less stringent TBELs would interfere with the attainment or maintenance of water quality criteria in the receiving water. *See* CWA § 301(b)(1)(C) and 40 C.F.R. §§ 122.44(d)(1), 122.44(d)(5).

2.2.1 Water Quality Standards

The CWA requires that each state develop water quality standards (WQSs) for all water bodies within the State. *See* CWA § 303 and 40 C.F.R. § 131.10-12. Generally, WQSs consist of three parts: 1) the designated use or uses assigned for a water body or a segment of a water body; 2) numeric or narrative water quality criteria sufficient to protect the assigned designated use(s); and 3) antidegradation requirements to ensure that once a use is attained it will not be degraded and to protect high quality and National resource waters. *See* CWA § 303(c)(2)(A) and 40 C.F.R. § 131.12. The applicable State WQSs can be found in the New Hampshire Code of Administrative Rules, Surface Water Quality Regulations, Chapter Env-Wq 1700, *et seq.* *See also generally*, N.H. Rev. Stat. Title L, Water Management and Protection, Chapters 485-A, Water Pollution and Waste Disposal.

As a matter of state law, state WQSs specify different water body classifications, each of which is associated with certain designated uses and numeric and narrative water quality criteria. When using chemical-specific numeric criteria to develop permit limitations, acute and chronic aquatic life criteria and human health criteria are used and expressed in terms of maximum allowable in-stream pollutant concentrations. In general, aquatic-life acute criteria are considered applicable to daily time periods (maximum daily limit) and aquatic-life chronic criteria are considered applicable to monthly time periods (average monthly limit). Chemical-specific human health

criteria are typically based on lifetime chronic exposure and, therefore, are typically applicable to monthly average limits.

When permit effluent limitation(s) are necessary to ensure that the receiving water meets narrative water quality criteria, the permitting authority must establish effluent limits in one of the following three ways: 1) based on a “calculated numeric criterion for the pollutant which the permitting authority demonstrates will attain and maintain applicable narrative water quality criteria and fully protect the designated use,” 2) based on a “case-by-case basis” using CWA § 304(a) recommended water quality criteria, supplemented as necessary by other relevant information; or, 3) in certain circumstances, based on use of an indicator parameter. *See* 40 C.F.R. § 122.44(d)(1)(vi)(A-C).

2.2.2 Antidegradation

Federal regulations found at 40 C.F.R. § 131.12 require states to develop and adopt a statewide antidegradation policy that maintains and protects existing in-stream water uses and the level of water quality necessary to protect these existing uses. In addition, the antidegradation policy ensures maintenance of high quality waters which exceed levels necessary to support propagation of fish, shellfish, and wildlife and to support recreation in and on the water, unless the State finds that allowing degradation is necessary to accommodate important economic or social development in the area in which the waters are located.

The New Hampshire Antidegradation Policy, found at Env-Wq 1708, applies to any new or increased activity that would lower water quality or affect existing or designated uses, including increased loadings to a water body from an existing activity. The antidegradation regulations focus on protecting high quality waters and maintaining water quality necessary to protect existing uses. Discharges that cause “significant degradation” are defined in NH WQS (Env-Wq 1708.09(a)) as those that use 20% or more of the remaining assimilative capacity for a water quality parameter in terms of either concentration or mass of pollutants or flow rate for water quantity. When NHDES determines that a proposed increase would cause a significant impact to existing water quality, the applicant must provide documentation to demonstrate that the lowering of water quality is necessary, that it will provide net economic or social benefit in the area in which the water body is located, and that the benefits of the activity outweigh the environmental impact caused by the reduction in water quality. *See* Env-Wq 1708.10(b).

This permit is being reissued with effluent limitations sufficiently stringent to satisfy the State’s antidegradation requirements, including the protection of the existing uses of the receiving water.

2.2.3 Assessment and Listing of Waters and Total Maximum Daily Loads.

The objective of the CWA is to restore and maintain the chemical, physical and biological integrity of the Nation’s waters. To meet this goal, the CWA requires states to develop information on the quality of their water resources and report this information to EPA, the U.S. Congress, and the public. To this end, EPA released guidance on November 19, 2001, for the preparation of an integrated “List of Waters” that could combine reporting elements of both § 305(b) and § 303(d) of the CWA. The integrated list format allows states to provide the status

of all their assessed waters in one list. States choosing this option must list each water body or segment in one of the following five categories: 1) unimpaired and not threatened for all designated uses; 2) unimpaired waters for some uses and not assessed for others; 3) insufficient information to make assessments for any uses; 4) impaired or threatened for one or more uses but not requiring the calculation of a Total Maximum Daily Load (TMDL); and 5) impaired or threatened for one or more uses and requiring a TMDL.

A TMDL is a planning tool and potential starting point for restoration activities with the ultimate goal of attaining water quality standards. A TMDL essentially provides a pollution budget designed to restore the health of an impaired water body. A TMDL typically identifies the source(s) of the pollutant from point sources and non-point sources, determines the maximum load of the pollutant that the water body can tolerate while still attaining WQSs for the designated uses, and allocates that load among to the various sources, including point source discharges, subject to NPDES permits. *See* 40 C.F.R. § 130.7.

For impaired waters where a TMDL has been developed for a particular pollutant and the TMDL includes a waste load allocation (WLA) for a NPDES permitted discharge, the effluent limitation in the permit must be “consistent with the assumptions and requirements of any available WLA”. 40 C.F.R. § 122.44(d)(1)(vii)(B).

2.2.4 Reasonable Potential

Pursuant to CWA § 301(b)(1)(C) and 40 C.F.R. § 122.44(d)(1), NPDES permits must contain any requirements in addition to TBELs that are necessary to achieve water quality standards established under § 303 of the CWA. *See also* 33 U.S.C. § 1311(b)(1)(C). In addition, limitations “must control any pollutant or pollutant parameter (conventional, non-conventional, or toxic) which the permitting authority determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any water quality standard, including State narrative criteria for water quality.” 40 C.F.R. § 122.44(d)(1)(i). To determine if the discharge causes, or has the reasonable potential to cause, or contribute to an excursion above any WQS, EPA considers: 1) existing controls on point and non-point sources of pollution; 2) the variability of the pollutant or pollutant parameter in the effluent; 3) the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity); and 4) where appropriate, the dilution of the effluent by the receiving water. *See* 40 C.F.R. § 122.44(d)(1)(ii).

If the permitting authority determines that the discharge of a pollutant will cause, has the reasonable potential to cause, or contribute to an excursion above WQSs, the permit must contain WQBELs for that pollutant. *See* 40 C.F.R. § 122.44(d)(1)(i).

2.2.5 State Certification

EPA may not issue a permit unless the State Water Pollution Control Agency with jurisdiction over the receiving water(s) either certifies that the effluent limitations contained in the permit are stringent enough to assure that the discharge will not cause the receiving water to violate the State WQSs, the State waives (or is deemed to have waived), its right to certify. *See* 33 U.S.C.

§ 1341(a)(1). Regulations governing state certification are set forth in 40 C.F.R. §§ 124.53 and 124.55. EPA has requested permit certification by the State pursuant to 40 C.F.R. § 124.53 and expects that the Draft Permit will be certified.

If the State believes that conditions more stringent than those contained in the Draft Permit are necessary to meet the requirements of either CWA §§ 208(e), 301, 302, 303, 306 and 307 or the applicable requirements of State law, the State should include such conditions in its certification and, in each case, cite the CWA or State law provisions upon which that condition is based. Failure to provide such a citation waives the right to certify as to that condition. EPA includes properly supported State certification conditions in the NPDES permit. The only exception to this is that the permit conditions/requirements regulating sewage sludge management and implementing CWA § 405(d) are not subject to the State certification requirements. Reviews and appeals of limitations and conditions attributable to State certification shall be made through the applicable procedures of the State and may not be made through the EPA permit appeal procedures of 40 C.F.R. Part 124.

In addition, the State should provide a statement of the extent to which any condition of the Draft Permit can be made less stringent without violating the requirements of State law. Since the State's certification is provided prior to final permit issuance, any failure by the State to provide this statement waives the State's right to certify or object to any less stringent condition.

It should be noted that under CWA § 401, EPA's duty to defer to considerations of state law is intended to prevent EPA from relaxing any requirements, limitations or conditions imposed by state law. Therefore, "[a] State may not condition or deny a certification on the grounds that State law allows a less stringent permit condition." 40 C.F.R. § 124.55(c). In such an instance, the regulation provides that, "The Regional Administrator shall disregard any such certification conditions or denials as waivers of certification." *Id.* EPA regulations pertaining to permit limitations based upon WQS and State requirements are contained in 40 C.F.R. §§ 122.4 (d) and 122.44(d).

2.3 Effluent Flow Requirements

Sewage treatment plant discharge is encompassed within the definition of "pollutant" and is subject to regulation under the CWA. The CWA defines "pollutant" to mean, *inter alia*, "municipal...waste" and "sewage...discharged into water." 33 U.S.C. § 1362(6).

Generally, EPA uses effluent flow both to determine whether an NPDES permit needs certain effluent limitations and to calculate the limitations themselves. EPA practice is to use effluent flow as a reasonable and important worst-case condition in EPA's reasonable potential and WQBEL calculations to ensure compliance with WQSs under § 301(b)(1)(C). Should the effluent flow exceed the flow assumed in these calculations, the in-stream dilution would be reduced, and the calculated effluent limitations may not be sufficiently protective (i.e. might not meet WQSs). Further, pollutants that do not have the reasonable potential to exceed WQSs at the lower discharge flow may have reasonable potential at a higher flow due to the decreased dilution. In order to ensure that the assumptions underlying the EPA's reasonable potential analyses and permit effluent limitation derivations remain sound for the duration of the permit,

EPA may ensure the validity of its “worst-case” wastewater effluent flow assumptions through imposition of permit conditions for effluent flow.¹ In this regard, the effluent flow limitation is a component of WQBELs because the WQBELs are premised on a maximum level flow. The effluent flow limit is also necessary to ensure that other pollutants remain at levels that do not have a reasonable potential to exceed WQSs.

The limitation on wastewater effluent flow is within EPA’s authority to condition a permit to carry out the objectives of the Act. *See* CWA §§ 402(a)(2) and 301(b)(1)(C); 40 C.F.R. §§ 122.4(a) and (d); 122.43 and 122.44(d). A condition on the discharge designed to ensure the WQBEL and reasonable potential calculations account for “worst case” conditions is encompassed by the references to “condition” and “limitations” in CWA §§ 402 and 301 and implementing regulations, as they are designed to assure compliance with applicable water quality regulations, including antidegradation. Regulating the quantity of pollutants in the discharge through a restriction on the quantity of wastewater effluent is consistent with the overall structure and purposes of the CWA.

In addition, as provided in Part II.B.1 of this permit and 40 C.F.R. § 122.41(e), the permittee is required to properly operate and maintain all facilities and systems of treatment and control. Operating the facilities wastewater treatment systems as designed includes operating within the facility’s design wastewater effluent flow.

EPA has also included the effluent flow limit in the permit to minimize or prevent infiltration and inflow (I/I) that may result in unauthorized discharges and compromise proper operation and maintenance of the facility. Improper operation and maintenance may result in non-compliance with permit effluent limitations. Infiltration is groundwater that enters the collection system through physical defects such as cracked pipes or deteriorated joints. Inflow is extraneous flow added to the collection system that enters the collection system through point sources such as roof leaders, yard and area drains, sump pumps, manhole covers, tide gates, and cross connections from storm water systems. Significant I/I in a collection system may displace sanitary flow, reducing the capacity available for treatment and the operating efficiency of the treatment works and to properly operate and maintain the treatment works.

Furthermore, the extraneous flow due to significant I/I greatly increases the potential for sanitary sewer overflows (SSOs) in separate systems. Consequently, the effluent flow limit is a permit condition that relates to the permittee’s duty to mitigate (*i.e.*, minimize or prevent any discharge in violation of the permit that has a reasonable likelihood of adversely affecting human health or the environment) and to properly operate and maintain the treatment works. *See* 40 C.F.R. §§ 122.41(d), (e).

¹ EPA’s regulations regarding “reasonable potential” require EPA to consider “where appropriate, the dilution of the effluent in the receiving water,” *id* 40 C.F.R. §122.44(d)(1)(ii). *Both* the effluent flow and receiving water flow may be considered when assessing reasonable potential. *In re Upper Blackstone Water Pollution Abatement Dist.*, 14 E.A.D. 577, 599 (EAB 2010). EPA guidance directs that this “reasonable potential: analysis be based on “worst-case” conditions. *See In re Washington Aquaduct Water Supply Sys.* 11 E.A.D. 565, 584 (EAB 2004)

2.4 Monitoring and Reporting Requirements

2.4.1 Monitoring Requirements

Sections 308(a) and 402(a)(2) of the CWA and the implementing regulations at 40 C.F.R. Parts 122, 124, 125, and 136 authorize EPA to include monitoring and reporting requirements in NPDES permits.

The monitoring requirements included in this permit have been established to yield data representative of the Facility's discharges in accordance with CWA §§ 308(a) and 402(a)(2), and consistent with 40 C.F.R. §§ 122.41(j), 122.43(a), 122.44(i) and 122.48. The Draft Permit specifies routine sampling and analysis requirements to provide ongoing, representative information on the levels of regulated constituents in the wastewater discharges. The monitoring program is needed to enable EPA and the State to assess the characteristics of the Facility's effluent, whether Facility discharges are complying with permit limits, and whether different permit conditions may be necessary in the future to ensure compliance with technology-based and water quality-based standards under the CWA. EPA and/or the State may use the results of the chemical analyses conducted pursuant to this permit, as well as national water quality criteria developed pursuant to CWA § 304(a)(1), State water quality criteria, and any other appropriate information or data, to develop numerical effluent limitations for any pollutants, including, but not limited to, those pollutants listed in Appendix D of 40 C.F.R. Part 122.

NPDES permits require that the approved analytical procedures found in 40 C.F.R. Part 136 be used for sampling and analysis unless other procedures are explicitly specified. Permits also include requirements necessary to comply with the *National Pollutant Discharge Elimination System (NPDES): Use of Sufficiently Sensitive Test Methods for Permit Applications and Reporting Rule*.² This Rule requires that where EPA-approved methods exist, NPDES applicants must use sufficiently sensitive EPA-approved analytical methods when quantifying the presence of pollutants in a discharge. Further, the permitting authority must prescribe that only sufficiently sensitive EPA-approved methods be used for analyses of pollutants or pollutant parameters under the permit. The NPDES regulations at 40 C.F.R. § 122.21(e)(3) (completeness), 40 C.F.R. § 122.44(i)(1)(iv) (monitoring requirements) and/or as cross referenced at 40 C.F.R. § 136.1(c) (applicability) indicate that an EPA-approved method is sufficiently sensitive where:

- The method minimum level³ (ML) is at or below the level of the effluent limitation established in the permit for the measured pollutant or pollutant parameter; or
- In the case of permit applications, the ML is above the applicable water quality criterion, but the amount of the pollutant or pollutant parameter in a facility's discharge is high

² Fed. Reg. 49,001 (Aug 19, 2014).

³ The term "minimum level" refers to either the sample concentration equivalent to the lowest calibration point in a method or a multiple of the method detection limit (MDL). Minimum levels may be obtained in several ways: They may be published in a method; they may be sample concentrations equivalent to the lowest acceptable calibration point used by a laboratory; or they may be calculated by multiplying the MDL in a method, or the MDL determined by a lab, by a factor. EPA is considering the following terms related to analytical method sensitivity to be synonymous: "quantitation limit," "reporting limit," "level of quantitation," and "minimum level." See Fed. Reg. 49,001 (Aug. 19, 2014).

enough that the method detects and quantifies the level of the pollutant or parameter in the discharge; or

- The method has the lowest ML of the analytical methods approved under 40 C.F.R. Part 126 or required under 40 C.F.R. chapter I, subchapter N or O for the measured pollutant or pollutant parameter.

2.4.2 Reporting Requirements

The Draft Permit requires the Permittee to report monitoring results obtained during each calendar month to EPA and the State electronically using NetDMR. The Permittee must submit a Discharge Monitoring Report (DMR) for each calendar month no later than the 15th day of the month following the completed reporting period.

NetDMR is a national web-based tool enabling regulated CWA permittees to submit DMRs electronically via a secure internet application to EPA through the Environmental Information Exchange Network. NetDMR has eliminated the need for participants to mail in paper forms to EPA under 40 C.F.R. §§ 122.41 and 403.12. NetDMR is accessible through EPA's Central Data Exchange at <https://cdx.epa.gov/>. Further information about NetDMR can be found on the EPA NetDMR support portal webpage.⁴

With the use of NetDMR, the Permittee is no longer required to submit hard copies of DMRs and reports to EPA and the State unless otherwise specified in the Draft Permit. In most cases, reports required under the permit shall be submitted to EPA as an electronic attachment through NetDMR. Certain exceptions are provided in the permit, such as for providing written notifications required under the Part II Standard Conditions.

2.5 Standard Conditions

The standard conditions, included as Part II of the Draft Permit, are based on applicable regulations found in the Code of Federal Regulations. *See generally* 40 C.F.R. Part 122.

2.6 Anti-backsliding

The CWA's anti-backsliding requirements prohibit a permit from being renewed, reissued or modified to include with less stringent limitations or conditions than those contained in a previous permit except in compliance with one of the specified exceptions to those requirements. *See* CWA §§ 402(o) and 303(d)(4) and 40 C.F.R. § 122.44(l). Anti-backsliding provisions apply to effluent limits based on technology, water quality and/or state certification requirements.

All proposed limitations in the Draft Permit are at least as stringent as limitations included in the 2012 Permit unless specific conditions exist to justify relaxation in accordance with CWA § 402(o) or § 303(d)(4). Discussion of any less stringent limitations and corresponding exceptions to anti-backsliding provisions is provided in the sections that follow.

⁴ <https://netdmr.zendesk.com/hc/en-us/articles/209616266-EPA-Region-1-NetDMR-Information>

3.0 Description of Facility and Discharge

3.1 Location and Type of Facility

The location of the treatment plant and the outfall 001 to the Merrimack River are shown in Figure 1. The latitude and longitude of the outfall is 43.28329° N, 71.58579° W.

The Penacook Wastewater Treatment Facility (WWTF) is a secondary wastewater treatment facility that is engaged in the collection and treatment of municipal wastewater. Currently, the Facility serves approximately 2,500 residents in the Town of Penacook and 1,200 residents in the Town of Boscawen. The Facility has a design flow of 2.37 MGD, the annual average daily flow reported in the 2017 application was 0.33 MGD and the median monthly average flow for the last 5 years has been 0.385 MGD. The system is a separate system with no combined sewers. Wastewater is comprised of mostly domestic sewage with some commercial sewage and some septage.

The Permittee reports all industrial program activity to the City of Concord. The Permittee does not have any major industries contributing industrial wastewater to the WWTF.

A quantitative description of the discharge in terms of effluent parameters, based on monitoring data submitted by the permittee from March 2015 through February 2020 is provided in Appendix A of this Fact Sheet.

Additionally, the Draft Permit includes one co-permittee. The town of Boscawen, New Hampshire owns and operates sanitary wastewater collection systems that discharge flows to the Penacook WWTF for treatment. This municipality is a co-permittee for certain activities pertaining to proper operation and maintenance of their respective collection systems (*See Part I.C. and I.D of the Draft Permit*). Adding them to the Draft Permit ensures that they comply with requirements to operate and maintain the collection systems so as to avoid discharges of sewage from the collection systems. The co-permittee did not apply for permit coverage; however, EPA waived application requirements for the one co-permittee. The legal basis for including municipal satellite collection systems as co-permittees is described in *In re Charles River Pollution Control District*, 16 E.A.D. 623 (EAB 2015)⁵.

3.1.1 Treatment Process Description

The Penacook Wastewater Treatment Facility (WWTF) is a secondary treatment plant. Wastewater flows to the treatment plant where it is screened. After screening the wastewater enters the sequencing batch reactors (SBRs). SBRs are a batch treatment process that combine biological treatment and sedimentation in the same tank. In order to maintain appropriate treatment times in the SBRs during high flows, surge tanks are provided upstream of the SBRs.

⁵ The decision is available at:

[https://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/Published%20and%20Unpublished%20Decisions/F89699D1A0710BCF85257DE200717A93/\\$File/Charles%20River%20Decision%20Vol%2016.pdf](https://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/Published%20and%20Unpublished%20Decisions/F89699D1A0710BCF85257DE200717A93/$File/Charles%20River%20Decision%20Vol%2016.pdf)

Treated effluent from the SBRs is discharged to equalization tanks, followed by disinfection in chlorine contact tanks. Disinfection is provided by sodium hypochlorite, which is injected into the flow equalization tank discharge. Treated effluent is discharged through a three-port diffuser to the Merrimack River. A flow diagram of the Treatment Facility is shown in Figure 2.

Waste activated sludge produced during treatment of the wastewater is pumped to aerated sludge storage tanks. Polymer may be added to the tank to increase sludge solids concentration. A decant system allows supernatant to be pumped back to the facility headworks. Thickened sludge from the sludge holding tanks is pumped to a tank truck that transports the material to the Hall Street WWTF for dewatering and stabilization.

3.1.2 Collection System Description

The Penacook WWTF is served by a separate sewer system. A separate sanitary sewer conveys domestic, industrial and commercial sewage, but not stormwater. It is part of a “two pipe system” consisting of separate sanitary sewers and storm sewers. The two systems have no interconnections; the sanitary sewer leads to the wastewater treatment plant and the storm sewers discharge to a local water body.

4.0 Description of Receiving Water and Dilution

4.1 Receiving Water

The Penacook WWTF discharges through Outfall 001 into the Merrimack River, within segment NHRIV700060302-23. This segment is 2.2 miles in length. The Merrimack River is part of the Merrimack River Watershed, which discharges to the Atlantic Ocean.

The Merrimack River is classified as Class B by the State of New Hampshire. According to New Hampshire’s WQS (RSA 485-A:8), *“Class B waters shall be of the second highest quality and shall have no objectionable physical characteristics, shall contain a dissolved oxygen content of at least 75 percent of saturation, and shall contain not more than either a geometric mean based on at least 3 samples obtained over a 60-day period of 126 Escherichia coli per 100 milliliters, or greater than 406 Escherichia coli per 100 milliliters in any one sample; and for designated beach areas shall contain not more than a geometric mean based on at least 3 samples obtained over a 60-day period of 47 Escherichia coli per 100 milliliters, or 88 Escherichia coli per 100 milliliters in any one sample; unless naturally occurring. There shall be no disposal of sewage or waste into said waters except those which have received adequate treatment to prevent the lowering of the biological, physical, chemical or bacteriological characteristics below those given above, nor shall such disposal of sewage or waste be inimical to aquatic life or to the maintenance of aquatic life in said receiving waters. The pH range for said waters shall be 6.5 to 8.0 except when due to natural causes. Any stream temperature increase associated with the discharge of treated sewage, waste or cooling water, water diversions, or releases shall not be such as to appreciably interfere with the uses assigned to this class.”*

EPA notes that the State of New Hampshire adopted new criteria into their state water quality standard regulations in December 2016 and submitted them to EPA for review and approval.

Although the new criteria have not yet been approved by EPA, where the new criteria are more stringent than the EPA-approved criteria, the Draft Permit is being proposed with effluent limits derived to meet the new criteria in anticipation of a state certification to do so.

The Merrimack River is listed in the final *New Hampshire Year 2018 Integrated List of Waters* (“303(d) List”) as a Category 3-PAS Likely Good (Insufficient information - potentially full supporting).⁶ The status of each designated use is presented in Table 1.

Table 1: Summary of Designated Uses and Listing Status

Designated Use	Status
Aquatic Life	Likely good, Insufficient Information
Potential Drinking Water Supply	Full Support, Good
Primary Contact Recreation	Full Support, Marginal
Secondary Contact Recreation	Full Support, Good
Fish Consumption	Poor (mercury)

4.2 Ambient Data

A summary of the ambient data collected in the receiving water in the vicinity of the outfall that is referenced in this Fact Sheet can be found in Appendix A of this Fact Sheet.

4.3 Available Dilution

To ensure that discharges do not cause or contribute to violations of WQS under all expected conditions, WQBELs are derived assuming critical conditions for the receiving water⁷. In accordance with New Hampshire’s Water Quality Standards, (RSA-A:8, Env-Wq 1705.2: (d)), the available dilution for non-tidal rivers and streams is based on a known or estimated value of the lowest average flow which occurs for seven (7) consecutive days with a recurrence interval of once in ten (10) years (7Q10 flow). The 7Q10 is used for aquatic life and human health criterial for non-carcinogens, while the long-term harmonic mean flow is used for human health (carcinogens only) in the receiving water. Furthermore, ten percent of the receiving water’s assimilative capacity is held in reserved for future needs in accordance with New Hampshire’s Surface Water Quality Regulations Env-Wq 1705.01.

The 2012 permit had a 7Q10 flow of 664.5 cfs and a DF of 164. For the 2012 Permit, the 7Q10 was calculated using flow data from 2 upstream United States Geological Survey (USGS) gaging stations (Station Number 01088000 and 01081500). One of these gaging stations (Station Number 01088000) has not recorded any new flow data since 1977. Therefore, for this Draft Permit, NHDES calculated the 7Q10 for this segment of the Merrimack River based on data from one gaging station upstream of the POTW (Station Number 01081500 at Franklin Junction,

⁶ New Hampshire 2018 Watershed Report Card.
https://www2.des.state.nh.us/onestoppub/SWQA/010700060302_2018.pdf

⁷ EPA Permit Writer’s Manual, Section 6.2.4

NH⁸) and an empirical equation developed by Dingman.⁹ EPA & NHDES typically use a 30-year period of record for flow data. However, gaging station number 01081500 has a gap in the recorded flow data during the thirty-year period of record, therefore, a shortened period of record was used as shown in Table 2. The Dingman equation gives estimates of 7Q10 flow in un-gaged, unregulated streams based on watershed (basin) area, mean basin elevation, and the percent of the basin underlain by coarse-grained stratified drive in contact with streams. Using this data, the 7Q10 flow (downstream of the WWTF) was calculated as shown below.

Table 2: Summary of 7Q10 Calculations

Stream Flow Component	Flow (cfs)	Comments
A. 7Q10 flow at upstream USGS Gage 01081500	473	Period of record: 4/1/2001 – 3/31/2019 7Q10 calculated using US EPA DFlow program (v3.1b)
B. Dingman Estimated 7Q10 for river segment between upstream gage and WWTF	65	Calculated using the Dingman equation
7Q10 Downstream of Penacook WWTF Outfall	538	7Q10 = A+B

The dilution factor (DF) was calculated using the design flow (Q_d) and the critical flow in the receiving water downstream of the discharge (Q_s) as follows:

$$DF = 0.9 * Q_s / Q_d$$

Where:

$$Q_s = 7Q10 \text{ in million gallons per day (538 cfs = 347.5 MGD)}$$

$$Q_d = \text{Discharge flow in MGD}$$

Therefore:

$$DF = 0.9 * 347.5 \text{ MGD} / 2.37 \text{ MGD} = 132$$

5.0 Proposed Effluent Limitations and Conditions

The proposed effluent limitations and conditions derived under the CWA and State WQSs are described below. These proposed effluent limitations and conditions, the basis of which are discussed throughout this Fact Sheet, may be found in Part I of the Draft Permit.

⁸ USGS StreamStats National Data Collection Station Report for Station 01081500; <https://streamstatsags.cr.usgs.gov/gagepages/html/01081500.htm>

⁹ Dingman, S.L. and S.C. Lawlor, 1995. Estimating Low-Flow Quantiles from Drainage Basin Characteristics in New Hampshire and Vermont, American Water Resources Association, Water Resources Bulletin, pp. 243-256.

5.1 Effluent Limitations and Monitoring Requirements

In addition to the State and Federal regulations described in Section 2, data submitted by the permittee in its permit application, in monthly discharge monitoring reports (DMRs) and in WET test reports from March 2015 to February 2020 (the “review period”) were used to identify the pollutants of concern and to evaluate the discharge during the effluent limitations development process (*See Appendix A*). Reasonable Potential Analysis is included in Appendix B and results are discussed in the sections below.

5.1.1 Effluent Flow

There was no effluent flow limit in the 2012 Permit, rather, there was an effluent flow reporting requirement. The Penacook WWTF has a design flow of 2.37 MGD, as per their application.

The Draft Permit implements a flow limit of 2.37 MGD. The Draft Permit requires that flow be measured continuously and that the rolling annual average flow, as well as the average monthly and maximum daily flow for each month be reported. The rolling annual average flow is calculated as the average of the flow for the reporting month and 11 previous months.

5.1.2 Biochemical Oxygen Demand (BOD₅)

5.1.2.1 BOD₅ Concentration Limits

The year-round BOD₅ limits in the 2012 Permit were based on the secondary treatment standards in 40 C.F.R. § 133.102; the average monthly limit is 30 mg/L and the average weekly limit is 45 mg/L. The daily maximum concentration of 50 mg/L was based on Best Professional Judgement.

The DMR data during the review period shows that there has been one violation of the maximum daily BOD₅ concentration limit.

The Draft Permit proposes the same BOD₅ concentration limits as in the 2012 Permit as no new WLAs have been established and there have been no changes to the secondary treatment standards. The monitoring frequency remains twice per week.

5.1.2.2 BOD₅ Mass Limits

The year-round mass-based BOD₅ limits in the 2012 Permit of 593 lb/day (average monthly) and 890 lb/day (average weekly) were based on EPA’s secondary treatment standards and the design flow of the Facility. The 989 lb maximum daily limit was based on Best Professional Judgement.

The DMR data from the review period shows that there have been no violations of BOD₅ mass limits.

The mass-based BOD₅ limits are calculated as shown below.

BOD₅ Mass Loading Calculations:

Calculations of maximum allowable loads for average monthly and average weekly BOD₅ are based on the following equation:

$$L = C_d * Q_d * 8.345$$

Where:

L = Maximum allowable load in lb/day

C_d = Maximum allowable effluent concentration for reporting period in mg/L
(reporting periods are average monthly, average weekly, and daily maximum)

Q_d = Annual average design flow of the Facility

8.345 = Factor to convert effluent concentration in mg/L and design flow in MGD to lb/day

Average Monthly: 30 mg/L * 2.37 MGD * 8.345 = 593 lb/day

Average Weekly: 45 mg/L * 2.37 MGD * 8.345 = 890 lb/day

Daily Maximum 50 mg/L * 2.37 MGD * 8.345 = 989 lb/day

The mass-based limits from the 2012 permit are carried forward, as is the sampling frequency of twice per week.

5.1.3 Total Suspended Solids (TSS)

Solids could include inorganic (e.g. silt, sand, clay and insoluble hydrated metal oxides) and organic matter (e.g. flocculated colloids and compounds that contribute to color). Solids can clog fish gills, resulting in an increase in susceptibility to infection and asphyxiation. Suspended solids can increase turbidity in receiving waters and reduce light penetration through the water column or settle to form bottom deposits in the receiving water. Suspended solids also provide a medium for the transport of other adsorbed pollutants, such as metals, which may accumulate in settled deposits that can have a long-term impact on the water column through cycles of re-suspension.

5.1.3.1 TSS Concentration Limits

The year-round TSS limits in the 2012 Permit were based on the secondary treatment standards in 40 C.F.R. § 133.102; the average monthly limit is 30 mg/L and the average weekly limit is 45 mg/L. The daily maximum concentration of 50 mg/L was based on Best Professional Judgement.

The DMR data during the review period shows that there have been no violations of TSS concentration limits.

The Draft Permit proposes the same TSS concentration limits as in the 2012 Permit as no new WLAs have been established and there have been no changes to the secondary treatment standards. The monitoring frequency remains twice per week.

5.1.3.2 TSS Mass Limits

The year-round mass-based TSS limits in the 2012 Permit of 593 lb/day (average monthly) and 890 lb/day (average weekly), were based on EPA's secondary treatment standards and the design flow of the Facility. The 989 lb maximum daily limit was based on Best Professional Judgement.

The DMR data during the review period shows that there have been no violations of TSS mass limits.

The mass-based TSS limits are calculated as shown below.

TSS Mass Loading Calculations:

Calculations of maximum allowable loads for average monthly and average weekly TSS are based on the following equation:

$$L = C_d * Q_d * 8.345$$

Where:

L = Maximum allowable load in lb/day

C_d = Maximum allowable effluent concentration for reporting period in mg/L
(reporting periods are average monthly, average weekly, and daily maximum)

Q_d = Annual average design flow of the Facility

8.345 = Factor to convert effluent concentration in mg/L and design flow in MGD to lb/day

Average Monthly: 30 mg/L * 2.37 MGD * 8.345 = 593 lb/day

Average Weekly: 45 mg/L * 2.37 MGD * 8.345 = 890 lb/day

Daily Maximum 50 mg/L * 2.37 MGD * 8.345 = 989 lb/day

The mass-based limits from the 2012 permit are carried forward, as is the sampling frequency of twice per week.

5.1.4 Eighty-Five Percent (85%) BOD₅ and TSS Removal Requirement

In accordance with the provisions of 40 C.F.R. § 133.102(a)(3) and (b)(3), the 2012 Permit requires that the 30-day average percent removal for BOD₅ and TSS be not less than 85%. The DMR data during the review period shows that BOD₅ and TSS removal percentages averaged 94.6% and 96.7%, respectively. There were 3 violations of the 85% removal requirement for BOD₅, and no violations of TSS removal percentage, during that period.

The requirement to achieve 85% BOD₅ and TSS removal has been carried forward into the Draft Permit.

5.1.5 pH

The hydrogen ion concentration in an aqueous solution is represented by the pH using a logarithmic scale of 0 to 14 standard units (S.U.). Solutions with pH 7.0 S.U. are neutral, while those with pH less than 7.0 S.U. are acidic and those with pH greater than 7.0 S.U. are basic. Discharges with pH values markedly different from the receiving water pH can have a detrimental effect on the environment. Sudden pH changes can kill aquatic life. pH can also have an indirect effect on the toxicity of other pollutants in the water.

Consistent with the requirements of New Hampshire's WQS at RSA 485-A:8 II, "The pH for said (Class B) waters shall be 6.5 to 8.0 except when due to natural causes." The monitoring frequency is once per day. The DMR data during the review period show that there has been one violation of the pH limitations.

The pH requirements in the 2012 Permit are carried forward into the Draft Permit as there has been no change in the WQSs with regards to pH. The limitations are based on CWA 301(b)(1)(C) and 40 C.F.R. § 122.44(d).

5.1.6 Bacteria

The 2012 Permit includes effluent limits for bacteria using *Escherichia coli* (*E. coli*) bacteria as the indicator bacteria to protect recreational uses. NH WQS at Env-Wq 1700, Appendix E require a monthly geometric mean of 126 *E. coli* /100 ml and a maximum daily limit of 406 *E. coli*/100 ml. The DMR data during the review period shows two violations. There were no violations of the monthly geometric mean and two violations of the maximum daily limit during the review period.

The Draft Permit proposes maintaining the effluent limits for bacteria in the 2012 Permit. The sampling frequency for *E. coli* is three times per week. These limits and sampling frequency are the same as in the 2012 Permit.

5.1.7 Total Residual Chlorine

The Permittee uses chlorine disinfection. The 2012 Permit includes effluent limitations for total residual chlorine (TRC) of 1 mg/L (monthly average) and 1 mg/L (maximum daily). The DMR data during the review period show that there have been no violations of the TRC limitations.

The TRC permit limits are based on the New Hampshire Code of Administrative Rules, Env-Wq 1703.21 and Table 1703.1. These freshwater instream criteria for chlorine are 11 ug/L (chronic) and 19 ug/L (acute). Because the upstream chlorine is assumed to be zero in this case, the water quality-based chlorine limits are calculated as the criteria times the dilution factor, as follows:

$$\begin{aligned} \text{Chronic criteria} * \text{dilution factor} &= \text{Chronic limit} \\ 0.011 \text{ mg/L} * 132 &= 1.45 \text{ mg/L (average monthly)} \end{aligned}$$

Acute criteria * dilution factor = Acute limit
 $0.019 \text{ mg/L} * 132 = 2.51 \text{ mg/L}$ (maximum daily)

These calculated values are higher than the limits in the 2012 permit. However, due to anti-backsliding requirements found at CWA §§ 402(o) and 303(d)(4) and 40 C.F.R. § 122.44(l), the limits of 1 mg/L (chronic) and 1 mg/L (acute) are carried forward in this Draft Permit with a sampling frequency of once per day.

5.1.8 Ammonia

Nitrogen in the form of ammonia can reduce the receiving stream's dissolved oxygen concentration through nitrification and can be toxic to aquatic life, particularly at elevated temperatures.

The 2012 Permit does not include ammonia limits, but the Permittee was required to monitor and report effluent and ambient ammonia concentrations on a yearly basis as part of the Whole Effluent Toxicity (WET) testing. Ambient data, taken upstream of the Penacook outfall in the Merrimack River, is presented in Appendix A and shows the median concentration for the warm weather period (May 1 through October 31) is 0 mg/L.

The freshwater ammonia criteria in the NH WQS (Env-Wq 1703.25 & 1703.26) are dependent on pH and temperature and the acute criterion is also dependent on whether Salmonids are present in the receiving water.

In determining whether the discharge has the reasonable potential to cause or contribute to excursions above the instream water quality criteria for ammonia, EPA used the mass balance equation presented in Appendix B for both warm and cold weather conditions to project the ammonia concentration downstream of the discharge. If there is reasonable potential, this mass balance equation is also used to determine the limit that is required in the permit.

To determine the applicable ammonia criteria, EPA assumes a warm weather temperature of 25° C and a cold weather temperature of 5° C. EPA used the ambient pH monitoring shown in Appendix A, which indicates that the median pH is 6.89 S.U. Additionally, the Merrimack River in the vicinity of the Penacook WWTF discharge is within Essential Fish Habitat (EFH) for Atlantic salmon (*Salmo salar*), so EPA has assumed that salmonids could be present in the receiving waters.

Based on the information and assumptions described above, Appendix B presents the applicable ammonia criteria, the details of the mass balance equation, the reasonable potential determination, and, if necessary, the limits required in the Draft Permit. As shown, there is no reasonable potential, so the Draft Permit does not require ammonia limits. Effluent and ambient monitoring for ammonia will continue to be required in the yearly WET tests.

5.1.9 Nutrients

Nutrients are compounds containing nitrogen and phosphorus. Although nitrogen and

phosphorus are essential for plant growth, high concentrations of these nutrients can cause eutrophication, a condition in which aquatic plant and algal growth is excessive. Plant and algae respiration and decomposition reduces dissolved oxygen in the water, creating poor habitat for fish and other aquatic animals. Recent studies provide evidence that both phosphorus and nitrogen can play a role in the eutrophication of certain ecosystems. However, typically phosphorus is the limiting nutrient triggering eutrophication in freshwater ecosystems and nitrogen in marine or estuarine ecosystems. Thus, for this permit, phosphorus and nitrogen are both nutrients of concern in the discussion below.

5.1.9.1 Total Nitrogen

The Merrimack River is a large and densely populated watershed including 40 POTW discharges in Massachusetts and New Hampshire. EPA estimates that approximately 15,000 lb/day of nitrogen is discharged by POTWs into the freshwater portion of the watershed and another 2,000 lb/day into the marine portion. Recent nitrogen data collected by CDM Smith in 2014 and 2016 in the estuarine portions of the Merrimack River indicates elevated total nitrogen and chlorophyll 'a' levels. High nutrient concentrations can lead to increased levels of chlorophyll 'a', therefore chlorophyll 'a' can be an indicator of elevated nutrient concentrations. In samples with salinity greater than 10 ppt, total nitrogen ranged from 0.442 to 1.67 mg/L while chlorophyll 'a' ranged from 4 to 42 ppt¹⁰. EPA also collected samples on the outgoing tide in 2017 in this area and found total nitrogen levels in the range of 0.62 mg/L to 1.3 mg/L and chlorophyll 'a' ranging from 2 to 11 ppt in samples with salinity greater than 10 ppt. EPA is concerned about the impacts that these nitrogen levels may be having on aquatic life in the estuary as most of these results are outside the range typically found in healthy estuaries in Massachusetts¹¹. However, more data is necessary to determine whether there is reasonable potential for nitrogen discharges from the facility to cause or contribute to a violation of the narrative nutrient criteria in the Merrimack River estuary, particularly data that characterizes aquatic life designated uses that may be affected in this area so that the narrative criteria can be interpreted numerically. In the meantime, EPA finds that quantifying the load of total nitrogen from this facility and others in the Merrimack River watershed is an important first step to understanding the nitrogen load from point sources and their potential impact on the estuary.

The Draft Permit includes new weekly monitoring and reporting requirements for total nitrate plus total nitrite, TKN and total nitrogen from April through October and monthly monitoring and reporting from November through March. The monitoring data will provide additional information on the fate of nitrogen through the treatment process and the impact to the Merrimack River in the estuary at the mouth of the River.

5.1.9.2 Phosphorus

While phosphorus is an essential nutrient for the growth of aquatic plants, it can stimulate rapid plant growth in freshwater ecosystems when it is present in high quantities. The excessive growth of aquatic plants and algae within freshwater systems negatively impacts water quality

¹⁰ CDM Smith/US Army Corps of Engineers New England District, *Merrimack River Watershed Assessment Study - Phase III Final Monitoring Data Report August 2017*, Appendix C.

¹¹Howes, Brian, et al, *Site-Specific Nitrogen Thresholds for Southeastern Massachusetts Embayments: Critical Indicators Interim Report*, Massachusetts Estuaries Project, December 22, 2003.

and can interfere with the attainment of designated uses by: 1) increasing oxygen demand within the water body to support an increase in both plant respiration and the biological breakdown of dead organic (plant) matter; 2) causing an unpleasant appearance and odor; 3) interfering with navigation and recreation; 4) reducing water clarity; 5) reducing the quality and availability of suitable habitat for aquatic life; 6) producing toxic cyanobacteria during certain algal blooms. Cultural (or accelerated) eutrophication is the term used to describe dense and excessive plant growth in a water body that results from nutrients entering the system as a result of human activities. Discharges from municipal and industrial wastewater treatment plants, agriculture runoff, and stormwater are examples of human-derived (i.e. anthropogenic) sources of nutrients in surface waters.

The 2012 Permit includes a monthly average and daily maximum report requirement in the warm months (April 1 to October 31). Review of the monitoring data in the DMRs from 2015 to 2020, provided in Appendix A, shows that the median concentration of phosphorus for the warm weather period was 2.5 mg/L (range 0.6 to 7.8 mg/L).

The New Hampshire Surface Water Quality Regulations contain a narrative criterion, which limits phosphorus to the level that will not impair a water body's designated use. Specifically, Env-Wq 1703.14(b) states that, "Class B waters shall contain no phosphorus or nitrogen in such concentrations that would impair any existing or designated uses, unless naturally occurring." Env-Wq 1703.14(c), further states that, "Existing discharges containing either phosphorus or nitrogen which encourage cultural eutrophication shall be treated to remove phosphorus or nitrogen to ensure attainment and maintenance of water quality standards." Cultural eutrophication is defined in Env-Wq 1702.15 as, "... the human-induced addition of wastes that contain nutrients to surface waters, resulting in excessive plant growth or a decrease in dissolved oxygen, or both."

In the absence of numeric criteria for phosphorus, EPA uses nationally recommended criteria and other technical guidance to develop effluent limitations for the discharge of phosphorus. EPA has published national guidance documents that contain recommended total phosphorus criteria and other indicators of eutrophication. EPA's 1986 *Quality Criteria for Water* (the "Gold Book") recommends that in-stream phosphorus concentrations not exceed 0.05 mg/L in any stream entering a lake or reservoir, 0.1 mg/L for any stream not discharging directly to lakes or impoundments, and 0.025 mg/L within a lake or reservoir. For this segment of the Merrimack River, 0.09 mg/L would apply downstream of the discharge, as New Hampshire regulations require 10% of the assimilative capacity be reserved in addition to the EPA standards.

More recently, EPA has released recommended Ecoregional Nutrient Criteria, established as part of an effort to reduce problems associated with excess nutrients in water bodies in specific areas of the country. The published criteria represent conditions in waters within ecoregions that are minimally impacted by human activities, and thus free from the effects of cultural eutrophication. Penacook is located within Ecoregion VIII, Nutrient Poor Largely Glaciated Upper Midwest and Northeast. The recommended total phosphorus criteria for this ecoregion, found in [Ambient Water Quality Criteria Recommendations: Information Supporting the Development of State and Tribal Nutrient Criteria, Rivers and Streams in Ecoregion VIII](#) (EPA 2001) is 10 µg/L (0.010 mg/L).

EPA uses the effects-based Gold Book threshold as a general target applicable in free-flowing streams. As the Gold Book notes, there are natural conditions of a water body that can result in either increased or reduced eutrophication response to phosphorus inputs; in some waters more stringent phosphorus reductions may be needed, while in some others a higher total phosphorus threshold could be assimilated without inducing a eutrophic response. In this case, EPA is not aware of any evidence that the Merrimack River is unusually susceptible to eutrophication impacts, so that the 90 µg/L threshold appears sufficient in this receiving water. EPA is not aware of evidence of factors that are reducing eutrophic response in the Merrimack River downstream of the discharge.

Elevated concentration of chlorophyll a, excessive algal and macrophyte growth, and low levels of dissolved oxygen are all effects of nutrient enrichment. The relationship between these factors and high in-stream total phosphorus concentrations is well documented in scientific literature, including guidance developed by EPA to address nutrient over-enrichment (Nutrient Criteria Technical Guidance Manual – Rivers and Streams, EPA July 2000 [EPA-822-B-00-002]). Sampling data from 2010 and 2012, summarized in Table 2, reported six in-stream phosphorus concentrations collected at Station 28A-MER located 488 feet upstream of the Penacook WWTF.

Table 3: Instream total phosphorus concentrations (mg/L)

	Station 28A-MER 488' upstream of WWTF
7/27/2010	0.032
7/27/2010	0.031
9/21/2010	0.017
5/17/2012	0.013
5/17/2012	0.004
5/17/2012	0.009

In determining whether the discharge has the reasonable potential to cause or contribute to excursions above the instream water quality criteria for phosphorus, EPA used the mass balance equation presented in Appendix B to project the phosphorus concentration downstream of the discharge. If there is reasonable potential, this mass balance equation is also used to determine the limit that is required in the permit.

Based on the ambient data presented above, the upstream 7Q10 flow, and the design flow of the Facility, it was determined that the downstream concentration is 54 µg/L. Since this does not exceed the instream target of 90 µg/L, the Draft Permit proposes no new phosphorus limits. Additionally, as no reasonable potential was shown, the seasonal (April 1- October 31) monthly monitoring and reporting requirement for phosphorus is removed in the Draft Permit. EPA notes that monitoring for total phosphorus will be required in the next permit application and such data may be used to reevaluate reasonable potential for a total phosphorus limit in the next permit reissuance.

5.1.10 Metals

Dissolved fractions of certain metals in water can be toxic to aquatic life. Therefore, there is a need to limit toxic metal concentrations in the effluent where aquatic life may be impacted. For the development of the Draft Permit, analyses were completed to evaluate whether there is reasonable potential for effluent discharges to cause or contribute to exceedances of the water quality criteria for aluminum, cadmium, copper, lead, nickel and zinc and/or to evaluate whether any existing limits in the 2012 Permit for these metals continue to be protective, given the updated upstream hydrologic and chemical characteristics of the receiving water. The 2012 Permit does not include effluent limits for metals. A summary of recent metals monitoring results is provided in Appendix A.

5.1.10.1 Applicable Metals Criteria

State water quality criteria for cadmium, copper, lead, nickel and zinc are established in terms of dissolved metals. However, many inorganic components of domestic wastewater, including metals, are in particulate form, and differences in the chemical composition between the effluent and the receiving water affects the partitioning of metals between the particulate and dissolved fractions as the effluent mixes with the receiving water, often resulting in a transition from the particulate to dissolved form (*The Metals Translator: Guidance for Calculating a Total Recoverable Permit Limit from a Dissolved Criterion* (USEPA 1996 [EPA-823-B96-007])). Consequently, quantifying only the dissolved fraction of metals in the effluent prior to discharge may not accurately reflect the biologically-available portion of metals in the receiving water. Regulations at 40 C.F.R. § 122.45(c) require, with limited exceptions, that effluent limits for metals in NPDES permits be expressed as total recoverable metals.

The criteria for cadmium, copper, lead, nickel and zinc are hardness-dependent using the equations in NH Env Wq-1703. The estimated hardness of the Merrimack River downstream of the treatment plant is calculated using the critical low flow (7Q10), the design flow of the treatment plant, and the median hardness for both the receiving water upstream of the discharge and the treatment plant effluent. Effluent and receiving water data are presented in Appendix A. Using the mass balance equation discussed in Appendix B, the resulting downstream hardness is 12.3 mg/L and the corresponding criteria are also presented in Appendix B. Since this downstream hardness is below 20 mg/L, the default value of 20 mg/L was used to determine the total recoverable metals criteria. See Env-Wq 1703.22(f).

New Hampshire aluminum criteria are not hardness dependent and should be applied in terms of acid-soluble aluminum (See Table 1703-1, Note S). However, without site-specific data showing the fraction of downstream aluminum in the acid-soluble form, EPA assumes that the ratio of acid soluble to total recoverable aluminum is 1:1.

5.1.10.2 Reasonable Potential Analysis and Limit Derivation

To determine whether the effluent has the reasonable potential to cause or contribute to an exceedance above the in-stream water quality criteria for each metal, EPA uses the mass balance equation presented in Appendix B to project the concentration downstream of the discharge and, if applicable, to determine the limit required in the permit.

The results of this analysis for each metal are presented in Appendix B. As shown in Appendix B, the Draft Permit includes no new limits for metals as no reasonable potential was shown. The Permittee will continue to be required to monitor for each of these metals as part of their whole effluent toxicity tests.

5.1.11 Whole Effluent Toxicity

CWA §§ 402(a)(2) and 308(a) provide EPA and States with the authority to require toxicity testing. Section 308 specifically describes biological monitoring methods as techniques that may be used to carry out objectives of the CWA. Whole effluent toxicity (WET) testing is conducted to ensure that the additivity, antagonism, synergism and persistence of the pollutants in the discharge do not cause toxicity, even when the pollutants are present at low concentrations in the effluent. The inclusion of WET requirements in the Draft Permit will assure that the Facility does not discharge combinations of pollutants into the receiving water in amounts that would be toxic to aquatic life or human health.

In addition, under CWA § 301(b)(1)(C), discharges are subject to effluent limitations based on WQSs. Under CWA §§ 301, 303 and 402, EPA and the States may establish toxicity-based limitations to implement the narrative water quality criteria calling for “no toxics in toxic amounts”. *See also* 40 C.F.R. § 122.44(d)(1). New Hampshire statute and regulations state that, "all surface waters shall be free from toxic substances or chemical constituents in concentrations or combination that injure or are inimical to plants, animals, humans, or aquatic life...." (N.H. RSA 485-A:8, VI and the N.H. Code of Administrative Rules, PART Env-Wq 1703.21(a)(1)). National studies conducted by the EPA have demonstrated that domestic sources, as well as industrial sources, contribute toxic constituents to POTWs. These constituents include metals, chlorinated solvents, aromatic hydrocarbons and others. Some of these constituents may cause synergistic effects, even if they are present in low concentrations. Because of the source variability and contribution of toxic constituents in domestic and industrial sources, reasonable potential may exist for this discharge to cause or contribute to an exceedance of the “no toxics in toxic amounts” narrative water quality standard.

In accordance with current EPA guidance, whole effluent chronic effects are regulated by limiting the highest measured continuous concentration of an effluent that causes no observed chronic effect on a representative standard test organism, known as the chronic No Observed Effect Concentration (C-NOEC). Whole effluent acute effects are regulated by limiting the concentration that is lethal to 50% of the test organisms, known as the LC₅₀. This policy recommends that permits for discharges having a dilution factor greater than 100 require acute toxicity testing twice per year for two species with an LC₅₀ limit of greater than or equal to 50% effluent.

The acute WET limit in the 2012 Permit is LC₅₀ greater than or equal to 50%, using the daphnid (*Ceriodaphnia dubia*) and the fathead minnow (*Pimephales promelas*) as the test species with frequency of once per year. The Facility has consistently met these limits (Appendix A).

Based on the potential for toxicity from domestic contributions, the state narrative water quality criterion, the dilution factor of 132, and in accordance with 40 C.F.R. § 122.44(d), the Draft Permit continues the effluent limits from the 2012 Permit including the test organism and the testing frequency. Toxicity testing must be performed in accordance with the updated EPA Region 1 WET test procedures and protocols specified in Attachments A, *Freshwater Acute Toxicity Test Procedure and Protocol* (February 2011) of the Draft Permit.

In addition, EPA's 2018 *National Recommended Water Quality Criteria* for aluminum are calculated based on water chemistry parameters that include dissolved organic carbon (DOC), hardness and pH. Since aluminum monitoring is required as part of each WET test, an accompanying new testing and reporting requirement for DOC, in conjunction with each WET test, is warranted in order to assess potential impacts of aluminum in the receiving water.

5.2 Sludge Conditions

Section 405(d) of the Clean Water Act requires that EPA develop technical standards regarding the use and disposal of sewage sludge. On February 19, 1993, EPA promulgated technical standards. These standards are required to be implemented through permits. The conditions in the permit satisfy this requirement.

5.3 Infiltration/Inflow (I/I)

Infiltration is groundwater that enters the collection system through physical defects such as cracked pipes, or deteriorated joints. Inflow is extraneous flow entering the collection system through point sources such as roof leaders, yard and area drains, sump pumps, manhole covers, tide gates, and cross connections from storm water systems. Significant I/I in a collection system may displace sanitary flow, reducing the capacity and the efficiency of the treatment works and may cause bypasses to secondary treatment. It greatly increases the potential for sanitary sewer overflows (SSOs) in separate systems, and combined sewer overflows (CSOs) in combined systems.

The Draft Permit includes a requirement for the permittee and co-permittee to control infiltration and inflow (I/I) within the sewer collections system it owns and operates. The permittee and co-permittee shall develop an I/I removal program commensurate with the severity of I/I in the collection system. This program may be scaled down in sections of the collection system that have minimal I/I.

5.4 Operation and Maintenance of the Sewer System

The standard permit conditions for 'Proper Operation and Maintenance', found at 40 C.F.R. § 122.41(e), require the proper operation and maintenance of permitted wastewater systems and related facilities to achieve compliance with permit conditions. The requirements at 40 C.F.R. § 122.41(d) impose a 'duty to mitigate,' which requires the permittee to "take all reasonable steps to minimize or prevent any discharge in violation of the permit that has a reasonable likelihood of adversely affecting human health or the environment. EPA maintain that an I/I

removal program is an integral component of ensuring permit compliance with the requirements of the permit under the provisions at 40 C.F.R. § 122.41(d) and (e).

General requirements for proper operation and maintenance, and mitigation have been included in Part II of the permit. Specific permit conditions have also been included in Part I.C. and I.D. of the Draft Permit. These requirements include mapping of the wastewater collection system, preparing and implementing a collection system operation and maintenance plan, reporting of unauthorized discharges including SSOs, maintaining an adequate maintenance staff, performing preventative maintenance, controlling inflow and infiltration to separate sewer collection systems (combined systems are not subject to I/I requirements) to the extent necessary to prevent SSOs and I/I related effluent violations at the Wastewater Treatment Facility, and maintaining alternate power where necessary. These requirements are included to minimize the occurrence of permit violations that have a reasonable likelihood of adversely affecting human health or the environment.

Because the municipality of Boscawen owns and operates a collection system that discharges to the Penacook WWTF, the municipality has been included as a co-permittee for the specific permit requirements discussed in the paragraph above. The historical background and legal framework underlying this co-permittee approach is set forth in Appendix C to this Fact Sheet, EPA Region 1 NPDES Permitting Approach for Publicly Owned Treatment Works that Include Municipal Satellite Sewage Collection Systems.

5.5 Standard Conditions

The standard conditions of the permit are based on 40 C.F.R. §122, Subparts A, C, and D and 40 C.F.R. § 124, Subparts A, D, E, and F and are consistent with management requirements common to other permits.

6.0 Federal Permitting Requirements

6.1 Endangered Species Act

Section 7(a) of the Endangered Species Act of 1973, as amended (ESA), grants authority and imposes requirements on Federal agencies regarding endangered or threatened species of fish, wildlife, or plants (listed species) and any habitat of such species that has been designated as critical under the ESA (a “critical habitat”).

Section 7(a)(2) of the ESA requires every federal agency, in consultation with and with the assistance of the Secretary of Interior, to ensure that any action it authorizes, funds or carries out, in the United States or upon the high seas, is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat. The United States Fish and Wildlife Service (USFWS) administers Section 7 consultations for freshwater species. The National Oceanic and Atmospheric Administration Fisheries Service (NOAA Fisheries) administers Section 7 consultations for marine and anadromous species.

The Federal action being considered in this case is EPA's proposed NPDES permit for the Facility's discharges of pollutants. The Draft Permit is intended to replace the 2012 Permit in governing the Facility. As the federal agency charged with authorizing the discharge from this Facility, EPA determines potential impacts to federally listed species and initiates consultation with the Services when required under § 7(a)(2) of the ESA.

EPA has reviewed the federal endangered or threatened species of fish, wildlife, and plants in the expected action area of the outfall to determine if EPA's proposed NPDES permit could potentially impact any such listed species. For protected species under the jurisdiction of the USFWS, four listed species, were identified as potentially occurring in the action area of the Penacook WWTF, namely the northern long-eared bat (*Myotis septentrionalis*), Karner blue butterfly (*Lycaeides melissa samuelis*), the northeastern bulrush (*Scirpus ancistrochaetus*) and the small whorled pogonia (*Isotria medeoloides*).¹²

According to the USFWS, the threatened northern long-eared bat is found in "winter – mines and caves, summer – wide variety of forested habitats". This species is not aquatic, so the Facility discharge will have no direct effect on this mammal. Further, the permit action is also expected to have no indirect effect on the species because it is not expected to impact insects, the primary prey of the northern long-eared bat. Therefore, the proposed permit action is deemed to have no impact on this listed species.

The endangered Karner blue butterfly can be found in a patchwork of pine and scrub oak scattered among open grassy areas.¹³ The identified habitat is not affected by the water quality of the Merrimack River. Therefore, the federal action will have no effect on this protected species.

The endangered northeastern bulrush has been described by the USFWS as a wetland obligate plant occurring in acidic to almost neutral wetlands including sinkhole ponds, wet depressions, vernal pools (collectively, seasonal or ephemeral wetlands), beaver flowages, and other riparian areas found in hilly country.¹⁴ The identified habitat is not affected by the water quality of the Merrimack River. Therefore, the federal action will have no effect on this protected species.

According to the USFWS, the threatened small whorled pogonia grows in mixed-deciduous or mixed-deciduous/coniferous forests.¹⁵ Again, this near-by habitat is not affected by the water quality of the Merrimack River. Therefore, the federal action will have no effect on this protected species.

Based on the review of the habitat of the four species under the jurisdiction of the USFWS listed above, EPA has determined that no federally protected species or their critical habitat overlap with the action area of the Facility. Therefore, ESA section 7 consultation with USFWS will not be required.

¹² See §7 resources for USFWS at <https://ecos.fws.gov/ipac/>.

¹³ <https://ecos.fws.gov/ecp0/profile/speciesProfile?slId=6656>

¹⁴ <https://ecos.fws.gov/ServCat/DownloadFile/166510>

¹⁵ https://ecos.fws.gov/docs/recovery_plan/921113b.pdf

In addition, there are no known federally listed threatened or endangered species or their critical habitat under the jurisdiction of NOAA Fisheries within the vicinity of the Penacook discharge.¹⁶ Therefore, ESA consultation with NOAA Fisheries will not be required for this discharge.

At the beginning of the public comment period, EPA notified USFWS and NOAA Fisheries Protected Resources Division that the Draft Permit and Fact Sheet were available for review and provided a link to the EPA NPDES Permit website to allow direct access to the documents.

Initiation of consultation is required and shall be requested by the EPA or by USFWS/NOAA Fisheries where discretionary Federal involvement or control over the action has been retained or is authorized by law and: (a) If new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered in the analysis; (b) If the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in this analysis; or (c) If a new species is listed or critical habitat designated that may be affected by the identified action. No take is anticipated or exempted. If there is any incidental take of a listed species, initiation of consultation would be required.

6.2 Essential Fish Habitat

Under the 1996 Amendments (PL 104-267) to the Magnuson-Stevens Fishery Conservation and Management Act (*see* 16 U.S.C. § 1801 *et seq.*, 1998), EPA is required to consult with the NOAA Fisheries if EPA's action or proposed actions that it funds, permits, or undertakes, "may adversely impact any essential fish habitat." 16 U.S.C. § 1855(b).

The Amendments broadly define "essential fish habitat" (EFH) as: "waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity." 16 U.S.C. § 1802(10). "Adverse impact" means any impact that reduces the quality and/or quantity of EFH 50 C.F.R. § 600.910(a). Adverse effects may include direct (e.g., contamination or physical disruption), indirect (e.g., loss of prey, reduction in species' fecundity), or site specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions. EFH is only designated for fish species for which federal Fisheries Management Plans exist. *See* 16 U.S.C. § 1855(b)(1)(A). EFH designations for New England were approved by the U.S. Department of Commerce on March 3, 1999.

According to the NOAA Fisheries, the Merrimack River is EFH for Atlantic salmon (*Salmo salar*). EPA has determined that the Draft Permit has been conditioned in such a way so as to minimize any adverse impacts on Atlantic salmon EFH for the following reasons:

- This Draft Permit action does not constitute a new source of pollutants. It is the reissuance of an existing NPDES permit.
- The Draft Permit prohibits the discharge to cause a violation of State water quality standards.
- The facility withdraws no water from the Merrimack River, so no life stages of EFH

¹⁶ See <https://www.fisheries.noaa.gov/resource/map/greater-atlantic-region-esa-section-7-mapper>

species are vulnerable to impingement or entrainment.

- The Draft Permit contains water quality-based limits for total residual chlorine and E. coli.
- The dilution factor is high (132).
- The Draft Permit prohibits the discharge of pollutants or combinations of pollutants in toxic amounts.
- The Draft Permit requires toxicity testing once per year to ensure that the discharge does not present toxicity problems.
- The discharge is rapidly mixed with a diffuser.
- The effluent limitations and conditions in the Draft Permit were developed to be protective of all aquatic life.

EPA believes the Draft Permit adequately protects EFH and therefore additional mitigation is not warranted. NOAA Fisheries Habitat Division will be notified and EFH consultation will be reinitiated if adverse impact to EFH are detected as a result of this permit action or if new information becomes available that changes the basis for these conclusions.

At the beginning of the public comment period, EPA notified NOAA Fisheries Habitat Division that the Draft Permit and Fact Sheet were available for review and provided a link to the EPA NPDES Permit website to allow direct access to the documents.

In addition to this Fact Sheet and the Draft Permit, information to support EPA's finding was included in a letter under separate cover and sent to the NOAA Fisheries Habitat Division during the public comment period.

7.0 Public Comments, Hearing Requests and Permit Appeals

All persons, including applicants, who believe any condition of the Draft Permit is inappropriate must raise all issues and submit all available arguments and all supporting material for their arguments in full by the close of the public comment period, to:

Michele Duspiva
EPA Region 1
5 Post Office Square, Suite 100 (06-4)
Boston, MA 02109-3912
Telephone: (617) 918-1682
Email: duspiva.michele@epa.gov

Prior to the close of the public comment period, any person, may submit a written request to EPA and the State Agency for a public hearing to consider the Draft Permit. Such requests shall state the nature of the issues proposed to be raised in the hearing. A public hearing may be held if the criteria stated in 40 C.F.R. § 124.12 are satisfied. In reaching a final decision on the Draft Permit, the EPA will respond to all significant comments in a Response to Comments document attached to the Final Permit and make these responses available to the public at EPA's Boston office and on EPA's website.

Following the close of the comment period, and after any public hearings, if such hearings are held, the EPA will issue a Final Permit decision, forward a copy of the final decision to the applicant, and provide a copy or notice of availability of the final decision to each person who submitted written comments or requested notice. Within 30 days after EPA serves notice of the issuance of the Final Permit decision, an appeal of the federal NPDES permit may be commenced by filing a petition for review of the permit with the Clerk of EPA's Environmental Appeals Board in accordance with the procedures at 40 C.F.R. § 124.19.

8.0 Administrative Record

The administrative record on which this Draft Permit is based may be accessed at EPA's Boston office by appointment, Monday through Friday from Michele Duspiva, EPA Region 1, 5 Post Office Square, Suite-100 (06-4), Boston, MA 02109-3912 or via email to duspiva.michele@epa.gov.

June 2020
Date

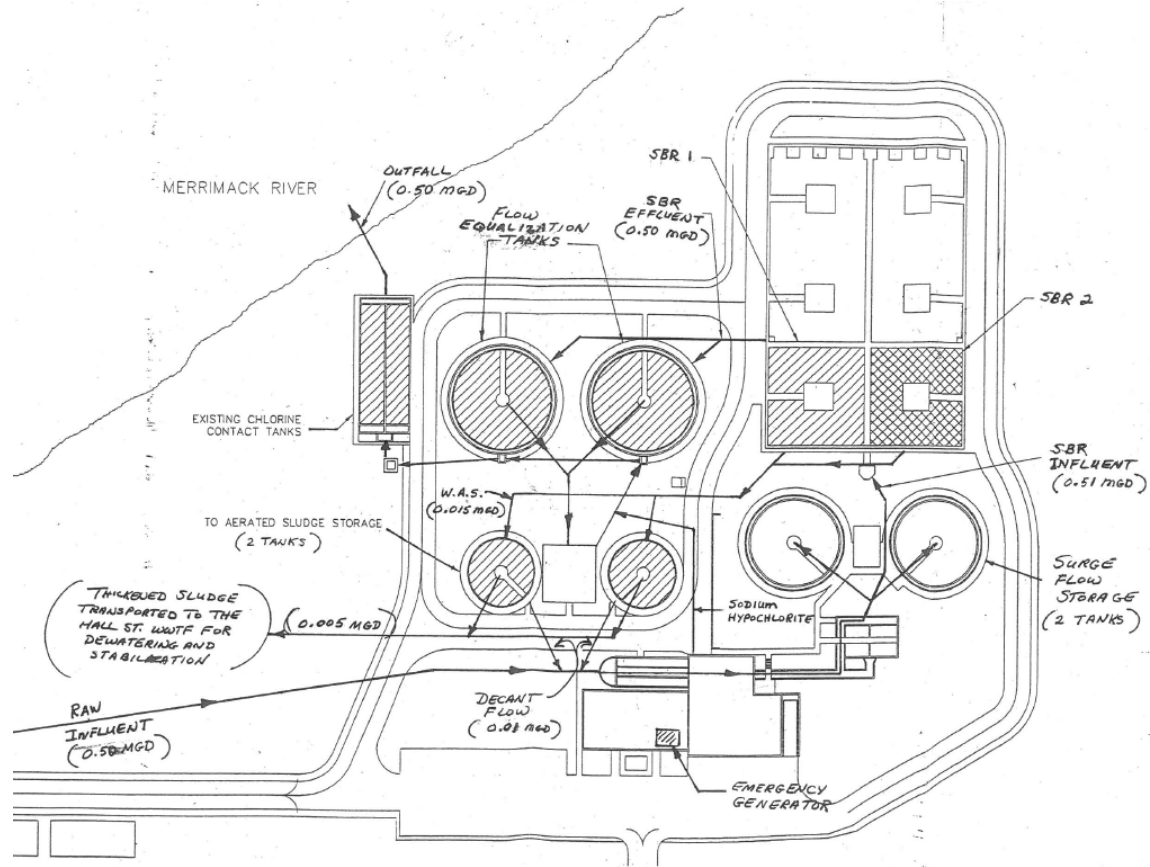
Ken Moraff, Director
Water Division
U.S. Environmental Protection Agency

Figure 1: Location of the Penacook WWTF



Aerial image obtained from Google Maps (<https://www.google.com/maps/>)

Figure 2: Penacook WWTF Flow Diagram



Outfall - Monitoring Location - Limit Set: 001 - 1 - A

Parameter	Flow	Flow	BOD5	BOD5	BOD5	BOD5	BOD5	BOD5
	Monthly Ave	Daily Max	Monthly Ave	Monthly Ave	Weekly Ave	Weekly Ave	Daily Max	Daily Max
Units	MGD	MGD	lb/d	mg/L	mg/L	lb/d	lb/d	mg/L
Effluent Limit	Report	Report	593	30	45	890	989	50
Minimum	0.0212	0.218	11	4	6	0	16	6
Maximum	0.956	1.741	98	23	36	184	252	54
Median	0.385	0.7205	30.5	10	12.5	43	53	15
No. of Violations	N/A	N/A	0	0	0	0	0	1
3/31/2015	0.438	0.8	59	17	23	64	72	24
4/30/2015	0.688	1.026	67	11	12	96	111	13
5/31/2015	0.358	0.531	42	14	15	50	62	17
6/30/2015	0.344	0.592	30	10	12	32	37	12
7/31/2015	0.382	1.071	22	8	10	29	36	14
8/31/2015	0.316	0.476	21	8	11	26	32	10
9/30/2015	0.308	1.044	18	7	8	20	24	8
10/31/2015	0.387	0.647	18	7	8	20	22	9
11/30/2015	0.413	0.751	28	8	8	32	44	9
12/31/2015	0.474	0.802	84	20	24	92	154	33
1/31/2016	0.489	0.847	52	13	28	145	65	16
2/29/2016	0.579	1.229	44	11	23	73	81	25
3/31/2016	0.631	1.086	48	9	17	96	112	18
4/30/2016	0.442	0.642	38	10	15	60	67	16
5/31/2016	0.38	0.531	42	13	16	56	61	17
6/30/2016	0.245	0.442	22	10	13	36	36	14
7/31/2016	0.194	0.239	16	10	12	18	18	12
8/31/2016	0.181	0.218	14	9	10	16	16	11
9/30/2016	0.18	0.247	18	11	12	20	21	13
10/31/2016	0.202	0.53	11	6	9	16	27	9
11/30/2016	0.212	0.274	15	9	10	17	25	12
12/31/2016	0.266	0.439	35	16	26	58	64	28
1/31/2017	0.306	0.422	37	14	20	60	74	21
2/28/2017	0.327	0.793	28	10	13	27	54	14
3/31/2017	0.406	0.78	25	7	10	48	49	11
4/30/2017	0.741	1.353	57	10	13	66	90	15
5/31/2017	0.606	1.056	95	18	24	130	178	27
6/30/2017	0.469	1.121	98	23	30	184	252	34
7/31/2017	0.306	0.405	28	11	19	62	52	24
8/31/2017	0.314	0.47	24	10	25	50	47	26
9/30/2017	0.315	0.549	41	17	28	61	81	43
10/31/2017	0.38	1.606	35	11	14	38	134	15

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Parameter	Flow	Flow	BOD5	BOD5	BOD5	BOD5	BOD5	BOD5
	Monthly Ave	Daily Max	Monthly Ave	Monthly Ave	Weekly Ave	Weekly Ave	Daily Max	Daily Max
Units	MGD	MGD	lb/d	mg/L	mg/L	lb/d	lb/d	mg/L
Effluent Limit	Report	Report	593	30	45	890	989	50
11/30/2017	0.47	0.793	81	23	36	100	141	54
12/31/2017	0.322	0.365	43	16	28	77	79	30
1/31/2018	0.402	0.776	30	9	15	40	58	15
2/28/2018	0.516	0.862	42	8	8	52	115	17
3/31/2018	0.589	1.172	34	7	12	76	76	16
4/30/2018	0.546	1.117	43	8	11	76	96	12
5/31/2018	0.361	0.591	29	10	15	36	43	18
6/30/2018	0.254	0.37	22	10	11	26	31	12
7/31/2018	0.0212	0.333	19	11	16	26	29	18
8/31/2018	0.44	0.786	14	4	6	14	17	6
9/30/2018	0.371	0.582	25	8	12	40	51	12
10/31/2018	0.458	0.607	21	5	6	27	30	7
11/30/2018	0.956	1.741	57	6	8	82	129	10
12/31/2018	0.625	1.117	39	9	14	72	74	18
1/31/2019	0.477	1.078	47	12	14	67	74	15
2/28/2019	0.403	0.697	31	9	11	39	39	11
3/31/2019	0.468	0.705	29	8	10	35	40	11
4/30/2019	0.717	1.51	47	8	8	48	60	10
5/31/2019	0.553	0.834	36	9	10	51	49	12
6/30/2019	0.367	0.556	34	12	15	44	41	16
7/31/2019	0.237	0.333	29	14	22	42	43	23
8/31/2019	0.247	0.353	16	8	12	22	25	10
9/30/2019	0.252	0.323	15	7	8	20	20	9
10/31/2019	0.302	0.531	23	9	12	30	43	15
11/30/2019	0.402	0.736	40	9	19	< 107	201	35
12/31/2019	0.544	1.388	30	7	9	35	54	15
1/31/2020	0.495	0.96	41	10	18	62	69	20
2/29/2020	0.383	0.829	30	10	12	35	36	13

Outfall - Monitoring Location - Limit Set: 001 - 1 - A

Parameter	BOD5	TSS	TSS	TSS	TSS	TSS	TSS	TSS
	Minimum	Monthly Ave	Monthly Ave	Weekly Ave	Weekly Ave	Daily Max	Daily Max	Minimum
Units	%	lb/d	mg/L	mg/L	lb/d	lb/d	mg/L	%
Effluent Limit	85	593	30	45	890	989	50	85
Minimum	74.3	8	3	0	0	10	3	88.5
Maximum	98.7	64	18	20	91	161	22	98.8
Median	94.6	18	5	7.5	24	28	8	96.65
No. of Violations	3	0	0	0	0	0	0	0
3/31/2015	89.8	64	18	20	76	92	22	88.7
4/30/2015	88.4	63	10	16	91	86	12	88.5
5/31/2015	91.7	34	11	14	54	37	15	92.7
6/30/2015	94.8	24	8	10	31	46	15	94.9
7/31/2015	95.5	14	5	6	24	23	9	97.1
8/31/2015	96.9	13	5	8	18	20	6	97.7
9/30/2015	97.2	11	4	6	16	21	7	98.5
10/31/2015	96.4	14	5	5	16	18	6	96.8
11/30/2015	95.9	17	5	6	24	38	6	96.5
12/31/2015	89.1	19	5	6	22	26	7	96.6
1/31/2016	90.8	28	7	8	38	38	9	93.9
2/29/2016	91.7	26	6	8	35	45	9	94.7
3/31/2016	94.9	22	4	4	22	34	6	97.4
4/30/2016	93	17	5	6	28	22	7	97.6
5/31/2016	92.8	19	6	8	23	27	9	96.9
6/30/2016	94.6	13	6	9	25	23	10	97.3
7/31/2016	96.2	8	5	9	14	10	6	98.2
8/31/2016	96.8	8	5	5	8	10	7	98.3
9/30/2016	97.1	16	10	11	18	21	12	97.5
10/31/2016	98.7	10	5	8	14	22	8	98.7
11/30/2016	96.7	9	5	8	16	23	11	97.9
12/31/2016	92.2	18	8	18	39	46	20	93.8
1/31/2017	92.3	26	10	13	40	49	14	93
2/28/2017	93.9	16	6	8	22	26	8	96.5
3/31/2017	93.9	15	5	5	22	27	6	96.6
4/30/2017	87.2	20	3	5	26	31	4	97.2
5/31/2017	74.3	16	3	3	22	25	3	94.6
6/30/2017	83.7	14	4	4	19	28	5	97.3
7/31/2017	94.6	14	6	4	14	39	18	96.9
8/31/2017	95.7	14	6	16	33	27	15	96.6
9/30/2017	94.1	24	9	15	39	50	16	95.7
10/31/2017	96.1	33	8	10	33	161	14	97.1

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Parameter	BOD5	TSS	TSS	TSS	TSS	TSS	TSS	TSS
	Minimum	Monthly Ave	Monthly Ave	Weekly Ave	Weekly Ave	Daily Max	Daily Max	Minimum
Units	%	lb/d	mg/L	mg/L	lb/d	lb/d	mg/L	%
Effluent Limit	85	593	30	45	890	989	50	85
11/30/2017	84.8	39	12	16	80	59	18	88.7
12/31/2017	90.3	19	7	16	45	39	14	95.2
1/31/2018	95.5	16	5	9	24	28	9	97.2
2/28/2018	94.2	18	4	5	26	34	6	95.6
3/31/2018	93.9	19	4	4	22	28	6	96.9
4/30/2018	92.8	33	7	8	70	104	13	93.6
5/31/2018	95.5	19	7	10	24	27	11	97.5
6/30/2018	96.7	26	11	12	28	40	14	97.9
7/31/2018	97.2	12	7	10	16	19	11	97.3
8/31/2018	98.2	14	4	4	16	17	4	97
9/30/2018	96.3	17	5	6	21	26	7	97
10/31/2018	97.6	17	4	5	20	20	5	97.6
11/30/2018	93.4	34	4	4	42	51	4	94.1
12/31/2018	92.9	22	4	5	34	37	5	95.7
1/31/2019	94.8	27	7	11	35	44	13	95.2
2/28/2019	94.9	19	6	6	21	28	8	95.5
3/31/2019	96.4	18	5	6	24	27	7	97.7
4/30/2019	92.5	28	5	5	31	48	6	94.3
5/31/2019	93.3	25	6	4	37	62	15	93.7
6/30/2019	93.4	22	7	12	44	41	16	95.7
7/31/2019	93.8	16	8	14	27	28	14	95.6
8/31/2019	96.8	9	4	7	14	17	6	97.9
9/30/2019	98.1	9	4	< 4	10	12	5	98.8
10/31/2019	95.8	11	4	4	13	16	5	97.9
11/30/2019	94.5	11	4	< 5	< 50	12	4	96.7
12/31/2019	95.1	19	4	4	22	29	4	95.8
1/31/2020	92.5	23	5	10	34	38	11	94.2
2/29/2020	95.1	13	4	5	19	19	6	96.1

Outfall - Monitoring Location - Limit Set: 001 - 1 - A

Parameter	pH	pH	E. coli	E. coli	TRC	TRC	TP	TP
	Minimum	Maximum	Monthly Geometric Mean	Daily Max	Monthly Ave	Daily Max	Monthly Ave	Monthly Ave
Units	SU	SU	CFU/100mL	CFU/100mL	mg/L	mg/L	lb/d	mg/L
Effluent Limit	6.5	8	126	406	1	1	Report	Report
Minimum	6.44	6.69	0	1	0.18	0.51	1	0.6
Maximum	7.06	7.3	83.3	2419.6	0.65	0.98	19	7.8
Median	6.78	7.06	Non-Detect	9.95	0.43	0.76	7	2.5
No. of Violations	1	0	0	2	0	0	N/A	N/A
3/31/2015	6.8	7.09	< 1.4	39.9	0.47	0.7		
4/30/2015	6.69	6.96	< 2.9	15.8	0.45	0.7	7	1.2
5/31/2015	6.8	7.17	< 4.2	344.8	0.44	0.69	8	2.1
6/30/2015	6.98	7.27	5.8	16.6	0.46	0.78	6	2
7/31/2015	6.81	7.23	18.3	45.2	0.43	0.76	10	2.5
8/31/2015	6.73	7.24	< 1.6	18.7	0.26	0.6	8	3.1
9/30/2015	6.74	6.91	< 1.8	51.2	0.18	0.62	10	3.8
10/31/2015	6.7	6.97	< 1	1	0.42	0.7	6	1.9
11/30/2015	6.79	6.94	< 1.1	2	0.49	0.85		
12/31/2015	6.77	7.08	< 1.1	2	0.5	0.69		
1/31/2016	6.88	7.05	< 1.4	3.9	0.42	0.72		
2/29/2016	6.8	7.09	< 1.2	3.1	0.5	0.85		
3/31/2016	6.78	6.96	< 1.6	7.5	0.43	0.66		
4/30/2016	6.8	7.01	< 1.2	6.3	0.38	0.55	3	0.6
5/31/2016	6.92	7.11	< 1.2	5.2	0.38	0.62	5	1.2
6/30/2016	7.06	7.3	< 3.9	20.1	0.43	0.79	7	2.7
7/31/2016	7.05	7.27	5.1	25.9	0.37	0.74	5	3.2
8/31/2016	6.89	7.16	< 2.1	13.2	0.33	0.54	8	4.6
9/30/2016	6.85	7.05	< 1.5	6.3	0.32	0.82	5	3.3
10/31/2016	6.77	6.92	< 1	1	0.4	0.84	6	4.3
11/30/2016	6.85	7.13	< 1.7	8.6	0.41	0.98		
12/31/2016	6.96	7.13	< 3.5	26.9	0.41	0.56		
1/31/2017	6.96	7.16	< 5.3	76.8	0.4	0.51		
2/28/2017	6.88	7.19	< 2.5	5.2	0.44	0.75		
3/31/2017	6.86	7.13	< 1.6	5.2	0.43	0.69		
4/30/2017	6.8	6.99	< 1.9	7.4	0.46	0.89	6	0.8
5/31/2017	6.79	7	< 2.1	7.4	0.45	0.6	9	1.7
6/30/2017	6.84	7.07	< 1.9	5.2	0.38	0.54	6	1.9
7/31/2017	6.73	7.14	< 1.9	5.2	0.4	0.86	8	2.5
8/31/2017	6.55	7	< 3.2	39.3	0.32	0.77	14	7.8
9/30/2017	6.59	7.18	< 3	16.6	0.46	0.92	5	2
10/31/2017	6.58	7.1	< 4.9	2419.6	0.32	0.79	1	0.6

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Parameter	pH	pH	E. coli	E. coli	TRC	TRC	TP	TP
	Minimum	Maximum	Monthly Geometric Mean	Daily Max	Monthly Ave	Daily Max	Monthly Ave	Monthly Ave
Units	SU	SU	CFU/100mL	CFU/100mL	mg/L	mg/L	lb/d	mg/L
Effluent Limit	6.5	8	126	406	1	1	Report	Report
11/30/2017	6.58	7.07	< 2	10.2	0.48	0.91		
12/31/2017	6.98	7.16	< 2.8	9.7	0.45	0.7		
1/31/2018	6.88	7.3	7.9	14.6	0.43	0.76		
2/28/2018	6.78	7.16	14.6	27.9	0.42	0.75		
3/31/2018	6.75	6.98	10.5	19.9	0.43	0.65		
4/30/2018	6.74	6.95	37.6	96	0.53	0.84	9	2.4
5/31/2018	6.81	7.16	83.3	201.4	0.51	0.9	6	1.2
6/30/2018	6.93	7.25	36.6	387.3	0.56	0.98	10	4.2
7/31/2018	6.62	6.98	< 1.6	11	0.37	0.87	5	3
8/31/2018	6.55	6.69	< 1	1	0.32	0.86	9	2.7
9/30/2018	6.55	6.85	< 1.1	2	0.43	0.94	4	1.7
10/31/2018	6.57	6.87	< 1.1	3.1	0.47	0.83	19	3.8
11/30/2018	6.51	6.8	< 2	20.4	0.39	0.93		
12/31/2018	6.59	6.84	< 1.7	7.3	0.48	0.75		
1/31/2019	6.64	7.04	< 2.6	22.8	0.43	0.73		
2/28/2019	6.85	7.05	< 1.9	7.5	0.42	0.61		
3/31/2019	6.76	7.07	< 1.2	5.2	0.43	0.59		
4/30/2019	6.7	6.89	< 2.6	18.9	0.45	0.7	7	1.1
5/31/2019	6.76	6.97	< 3.5	26.9	0.38	0.86	10	1.8
6/30/2019	6.86	7.13	22.3	37.3	0.41	0.57	7	1.5
7/31/2019	7	7.28	18.7	2419.6	0.43	0.94	8	3.1
8/31/2019	6.74	7.09	< 1.1	2	0.35	0.93	6	3.2
9/30/2019	6.65	6.95	< 1.1	2	0.52	0.87	8	3.2
10/31/2019	6.59	6.85	< 1.1	3.1	0.51	0.87	8	3
11/30/2019	6.54	6.78	< 1	1	0.65	0.94		
12/31/2019	6.44	6.89	1	3	0.57	0.83		
1/31/2020	6.67	6.9	2.9	18.7	0.45	0.75		
2/29/2020	6.8	7.03	4.4	8.5	0.47	0.79		

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Parameter	TP	TP
	Daily Max	Daily Max
Units	lb/d	mg/L
Effluent Limit	Report	Report
Minimum	1	0.6
Maximum	19	7.8
Median	7	2.5
No. of Violations	N/A	N/A
3/31/2015		
4/30/2015	7	1.2
5/31/2015	8	2.1
6/30/2015	6	2
7/31/2015	10	2.5
8/31/2015	8	3.1
9/30/2015	10	3.8
10/31/2015	6	1.9
11/30/2015		
12/31/2015		
1/31/2016		
2/29/2016		
3/31/2016		
4/30/2016	3	0.6
5/31/2016	5	1.2
6/30/2016	7	2.7
7/31/2016	5	3.2
8/31/2016	8	4.6
9/30/2016	5	3.3
10/31/2016	6	4.3
11/30/2016		
12/31/2016		
1/31/2017		
2/28/2017		
3/31/2017		
4/30/2017	6	0.8
5/31/2017	9	1.7
6/30/2017	6	1.9
7/31/2017	8	2.5
8/31/2017	14	7.8
9/30/2017	5	2
10/31/2017	1	0.6

Outfall - Monitoring Location - Limit Set: 001 - 1 - A

Parameter	TP	TP
	Daily Max	Daily Max
Units	lb/d	mg/L
Effluent Limit	Report	Report
11/30/2017		
12/31/2017		
1/31/2018		
2/28/2018		
3/31/2018		
4/30/2018	9	2.4
5/31/2018	6	1.2
6/30/2018	10	4.5
7/31/2018	5	3
8/31/2018	9	2.7
9/30/2018	4	1.7
10/31/2018	19	3.8
11/30/2018		
12/31/2018		
1/31/2019		
2/28/2019		
3/31/2019		
4/30/2019	7	1.1
5/31/2019	10	1.8
6/30/2019	7	1.5
7/31/2019	8	3.1
8/31/2019	6	3.2
9/30/2019	8	3.2
10/31/2019	9	3.8
11/30/2019		
12/31/2019		
1/31/2020		
2/29/2020		

Outfall - Monitoring Location - Limit Set: 001 - 1 - B

Parameter	LC50 Acute Ceriodaphnia	LC50 Acute Pimephales	Ammonia	Aluminum	Cadmium	Copper	Lead	Nickel
	Daily Min	Daily Min	Daily Max	Daily Max	Daily Max	Daily Max	Daily Max	Daily Max
Units	%	%	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L
Effluent Limit	50	50	Report	Report	Report	Report	Report	Report
Minimum	100	74.3	4.5	0	No Data	0.0043	0	0
Maximum	100	100	26	0.043	No Data	0.009	0.0008	0.0023
Median	100	100	25	0.014	No Data	0.0047	0.0007	0.0015
No. of Violations	0	0	N/A	N/A	N/A	N/A	N/A	N/A
9/30/2015	100	74.5	26	< .02	< .0005	0.009	0.0007	< .002
9/30/2016	100	100	26	0.043	< .0005	0.008	0.0008	< .002
9/30/2017	100	100	7.4	< .02	< .0001	0.0047	0.0006	0.0015
9/30/2018	100	100	4.5	0.02	< .0005	0.0045	0.0007	0.0023
9/30/2019	100	74.3	25	0.014	< .0005	0.0043	< .0005	0.0019

Outfall - Monitoring Location - Limit Set: 001 - 1 - B

Parameter	Zinc	Hardness
	Daily Max	Daily Max
Units	mg/L	mg/L
Effluent Limit	Report	Report
Minimum	0.042	42
Maximum	0.081	52
Median	0.06	49
No. of Violations	N/A	N/A
9/30/2015	0.042	52
9/30/2016	0.06	42
9/30/2017	0.06	49
9/30/2018	0.081	50
9/30/2019	0.06	47

WET Test - Ambient Monitoring

Parameter	pH	Ammonia	Aluminum	Cadmium	Copper	Lead	Nickel
	Daily Max	Daily Max	Daily Max	Daily Max	Daily Max	Daily Max	Daily Max
Units	S.U.	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L
Effluent Limit	Report	Report	Report	Report	Report	Report	Report
Minimum	6.71	0	0.055	0	0	0	0
Maximum	7.05	0.15	0.2	0	0.0009	0.0003	0
Median	6.89	Non-Detect	0.074	Non-Detect	Non-Detect	Non-Detect	Non-Detect
No. of Violations	N/A	N/A	N/A	N/A	N/A	N/A	N/A
9/30/2015	7.05	<0.1	0.2	<0.0005	<0.002	<0.0005	<0.002
9/30/2016	6.96	<0.1	0.055	<0.0005	0.0009	<0.0005	<0.002
9/30/2017	6.71	<0.1	0.072	<0.0001	0.0006	0.0003	<0.001
9/30/2018	6.71	0.15	0.074	<0.0005	<0.001	<0.0005	<0.001
9/30/2019	6.89	<0.05	0.082	<0.0005	<0.001	<0.0005	<0.001

WET Test - Ambient Monitoring

Parameter	Zinc	Hardness
	Daily Max	Daily Max
Units	mg/L	mg/L
Effluent Limit	Report	Report
Minimum	0	11
Maximum	0.005	17
Median	0.003	12
No. of Violations	N/A	N/A
9/30/2015	0.005	11
9/30/2016	0.003	12
9/30/2017	0.0034	11
9/30/2018	<0.005	15
9/30/2019	<0.005	17

Appendix B – Reasonable Potential and Limits Calculations

NPDES Permit No. NH0100331

A reasonable potential analysis is completed using a single set of critical conditions for flow and pollutant concentration that will ensure the protection of water quality standards. To determine the critical condition of the effluent, EPA projects an upper bound of the effluent concentration based on the observed monitoring data and a selected probability basis. EPA generally applies the quantitative approach found in Appendix E of EPA's *Technical Support Document for Water Quality-based Toxics Control (TSD)*¹ to determine the upper bound of the effluent data. This methodology accounts for effluent variability based on the size of the dataset and the occurrence of non-detects (i.e., samples results in which a parameter is not detected above laboratory detection limits). For datasets of 10 or more samples, EPA uses the upper bound effluent concentration at the 95th percentile of the dataset. For datasets of less than 10 samples, EPA uses the maximum value of the dataset.

EPA uses the calculated upper bound of the effluent data, along with a concentration representative of the parameter in the receiving water, the critical effluent flow, and the critical upstream flow to project the downstream concentration after complete mixing using the following simple mass-balance equation:-

$$C_s Q_s + C_e Q_e = C_d Q_d$$

Where:

- C_s = upstream concentration (median value of available ambient data)
- Q_s = upstream flow (7Q10 flow upstream of the outfall)
- C_e = effluent concentration (95th percentile or maximum of effluent concentration)
- Q_e = effluent flow of the facility (design flow)
- C_d = downstream concentration
- Q_d = downstream flow ($Q_s + Q_e$)

Solving for the downstream concentration results in:

$$C_d = \frac{C_s Q_s + C_e Q_e}{Q_d}$$

When both the downstream concentration (C_d) and the effluent concentration (C_e) exceed the applicable criterion, there is reasonable potential for the discharge to cause, or contribute to an excursion above the water quality standard. *See* 40 C.F.R. § 122.44(d). When EPA determines that a discharge causes, has the reasonable potential to cause, or contribute to such an excursion, the permit must

Appendix B – Reasonable Potential and Limits Calculations

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contain WQBELs for the parameter. *See* 40 C.F.R. § 122.44(d)(1)(iii). Limits are calculated by using the criterion as the downstream concentration (C_d) and rearranging the mass balance equation to solve for the effluent concentration (C_e). The table below presents the reasonable potential calculations and, if applicable, the calculation of the limits required in the permit. Refer to the pollutant-specific section of the Fact Sheet for a detailed discussion of these calculations, any assumptions that were made and the resulting permit requirements.

Pollutant	Q_s	C_s^1	Q_e	C_e^2		Q_d	C_d		Criteria * 0.9		Reasonable Potential		Limits				
	cfs	mg/L	cfs	Acute (mg/L)	Chronic (mg/L)	cfs	Acute (mg/L)	Chronic (mg/L)	Acute (mg/L)	Chronic (mg/L)	C_e & $C_d >$ Acute Criteria	C_e & $C_d >$ Chronic Criteria	Acute (mg/L)	Chronic (mg/L)			
Ammonia (Warm)	534.33	0.0	3.67	26.0	26.0	538.00	0.2	0.2	10.9	1.3	N	N	N/A	N/A			
Ammonia (Cold)		0.0		0.0	0.0		0.0	0.0	0.0	0.0	23.7	4.1	N	N	N/A	N/A	
Phosphorus		0.015		N/A	5.76		N/A	0.054	N/A	0.090	N/A	N	N/A	N	N/A	N/A	
		$\mu\text{g/L}$		$\mu\text{g/L}$	$\mu\text{g/L}$		$\mu\text{g/L}$	$\mu\text{g/L}$	$\mu\text{g/L}$	$\mu\text{g/L}$	$\mu\text{g/L}$	$\mu\text{g/L}$				$\mu\text{g/L}$	$\mu\text{g/L}$
Aluminum		74.0		43.0	43.0		73.8	73.8	675	78.3	N	N	N/A	N	N/A	N/A	
Cadmium		0.0		0.0	0.0		0.0	0.0	0.4	0.2	N	N	N/A	N	N/A	N/A	
Copper		0.0		9.0	9.0		0.1	0.1	2.8	2.1	N	N	N/A	N	N/A	N/A	
Lead		0.0		0.8	0.8		0.0	0.0	9.5	0.4	N	N	N/A	N	N/A	N/A	
Nickel		0.0		2.3	2.3		0.0	0.0	108.2	12.0	N	N	N/A	N	N/A	N/A	
Zinc		3.0		81.0	81.0		3.5	3.5	27.6	27.6	N	N	N/A	N	N/A	N/A	

¹Median concentration for the receiving water just upstream of the facility’s discharge taken from the WET testing data during the review period (see Appendix A).

²Values represent the 95th percentile (for $n \geq 10$) or maximum (for $n < 10$) concentrations from the DMR data and/or WET testing data during the review period (see Appendix A). If the metal already has a limit (for either acute or chronic conditions), the value represents the existing limit.

EPA REGION 1 NPDES PERMITTING APPROACH FOR PUBLICLY OWNED TREATMENT WORKS THAT INCLUDE MUNICIPAL SATELLITE SEWAGE COLLECTION SYSTEMS

This regional interpretative statement provides notice to the public of EPA Region 1's interpretation of the Clean Water Act ("CWA" or "Act") and implementing regulations, and advises the public of relevant policy considerations, regarding the applicability of the National Pollutant Discharge Elimination System ("NPDES") program to publicly owned treatment works ("POTWs") that include municipal satellite sewage collection systems ("regionally integrated POTWs"). When issuing NPDES permits to these types of sanitary sewer systems, it is EPA Region 1's practice to include and regulate the owners/operators of the municipal satellite collection systems through a co-permitting structure. This interpretative statement is intended to explain, generally, the basis for this practice. EPA Region 1's decision in any particular case will be made by applying the law and regulations on the basis of specific facts when permits are issued.

EPA has set out a national policy goal for the nation's sanitary sewer systems to adhere to strict design and operational standards:

"Proper [operation and maintenance] of the nation's sewers is integral to ensuring that wastewater is collected, transported, and treated at POTWs; and to reducing the volume and frequency of ...[sanitary sewer overflow] discharges. Municipal owners and operators of sewer systems and wastewater treatment facilities need to manage their assets effectively and implement new controls, where necessary, as this infrastructure continues to age. Innovative responses from all levels of government and consumers are needed to close the gap."¹

Because ownership/operation of a regionally integrated POTW is divided among multiple parties, the owner/operator of the treatment plant many times lacks the means to implement comprehensive, system-wide operation and maintenance ("O & M") procedures. Failure to properly implement O & M measures in a POTW can cause, among other things, excessive extraneous flow (*i.e.*, inflow and infiltration) to enter, strain and occasionally overload treatment system capacity. This failure not only impedes EPA's national policy goal concerning preservation of the nation's wastewater infrastructure assets, but also frustrates achievement of the water quality- and technology-based requirements of CWA § 301 to the extent it results in sanitary sewer overflows and degraded treatment plant performance, with adverse impacts on human health and the environment.

In light of these policy objectives and legal requirements, it is EPA Region 1's permitting practice to subject all portions of the POTW to NPDES requirements in order to ensure that the treatment system as a whole is properly operated and maintained and that human health and water quality impacts resulting from excessive extraneous flow are minimized. The approach of addressing O&M concerns in a regionally integrated treatment works by adding municipal

¹ See *Report to Congress: Impacts and Control of CSOs and SSOs* (EPA 833-R-04-001) (2004), at p. 10-2. See also "1989 National CSO Control Strategy," 54 Fed. Reg. 37371 (September 8, 1989).

satellite collection systems as co-permittees is consistent with the definition of “publicly owned treatment works,” which by definition includes sewage collection systems. Under this approach, the POTW in its entirety is subject to NPDES regulation as a point source discharger under the Act. This entails imposition of permitting requirements applicable to the POTW treatment plant along with a more limited set of conditions applicable to the connected municipal satellite collection systems.

The factual and legal basis for the Region’s position is set forth in greater detail in *Attachment A*.

Attachment A

ANALYSIS SUPPORTING EPA REGION 1 NPDES PERMITTING APPROACH FOR PUBLICLY OWNED TREATMENT WORKS THAT INCLUDE MUNICIPAL SATELLITE SEWAGE COLLECTION SYSTEMS

- Exhibit A* List of regional centralized POTW treatment plants and municipal satellite collection systems subject to the co-permittee policy
- Exhibit B* Analysis of extraneous flow trends for representative systems
- Exhibit C* List of municipal satellite collection systems that have had SSOs
- Exhibit D* Form of Regional Administrator's waiver of permit application requirements for municipal satellite collection systems

Introduction

On May 28, 2010, the U.S. EPA Environmental Appeals Board (“Board”) issued a decision remanding to the Region certain NPDES permit provisions that included and regulated satellite collection systems as co-permittees. *See In re Upper Blackstone Water Pollution Abatement District*, NPDES Appeal Nos. 08-11 to 08-18 & 09-06, 14 E.A.D. ___ (*Order Denying Review in Part and Remanding in Part*, EAB, May 28, 2010).² While the Board “did not pass judgment” on the Region’s position that its NPDES jurisdiction encompassed the entire POTW and not only the treatment plant, it held that “where the Region has abandoned its historical practice of limiting the permit only to the legal entity owning and operating the wastewater treatment plant, the Region had not sufficiently articulated in the record of this proceeding the statutory, regulatory, and factual bases for expanding the scope of NPDES authority beyond the treatment plant owner/operator to separately owned/operated collection systems that do not discharge directly to waters of the United States, but instead that discharge to the treatment plant.” *Id.*, slip op. at 2, 18. In the event the Region decided to include and regulate municipal satellite collection systems as co-permittees in a future permit, the Board posed several questions for the Region to address in the analysis supporting its decision:

- (1) Is the scope of NPDES authority limited to owners/operators of the treatment plant, or does the authority extend to owners/operators of the municipal satellite collection systems that comprise the wider POTW?

² The decision is available on the Board’s website via the following link:
http://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/30b93f139d3788908525706c005185b4/34e841c87f346d94852577360068976f!OpenDocument.

- (2) If the latter, how far up the collection system does NPDES jurisdiction reach, *i.e.*, where does the “collection system” end and the “user” begin?
- (3) Do municipal satellite collection systems “discharge [] a pollutant” within the meaning of the statute and regulations?
- (4) Are municipal satellite collection systems “indirect dischargers” and thus excluded from NPDES permitting requirements?
- (5) Is the Region’s rationale for regulating municipal satellite collection systems as co-permittees consistent with the references to “municipality” in the regulatory definition of POTW, and the definition’s statement that “[t]he term also means the municipality...which has jurisdiction over the Indirect Discharges to and the discharges from such a treatment works”?
- (6) Is the Region’s rationale consistent with the permit application and signatory requirements under NPDES regulations?

See *Blackstone, slip op.* at 18, 20, n. 17.

This regional interpretative statement is, in part, a response to the Board’s decision. It details the legal and policy bases for regulating as co-permittees publicly owned treatment works (“POTWs”) that include municipal satellite collection systems. Region 1’s analysis is divided into five sections. First, the Region provides context for the co-permitting approach by briefly describing the health and environmental impacts associated with poorly maintained sanitary sewer systems. Second, the Region outlines its evolving permitting practice regarding regionally integrated POTWs, particularly its attempts to ensure that such entity’s municipal satellite collection systems are properly maintained and operated. Third, the Region explains the legal authority to include municipal satellite collection systems as co-permittees when permitting regionally integrated POTWs. In this section, the Region answers the questions posed by the Board in the order presented above. Fourth, the Region sets forth the basis for the specific conditions to which the municipal satellite collection systems are subject as co-permittees. Finally, the Region discusses other considerations informing its decision to employ a co-permittee structure when permitting regionally integrated POTWs.

I. Background

A sanitary sewer system (SSS) is a wastewater collection system owned by a state or municipality that is designed to collect and convey only sanitary wastewater (domestic sewage from homes as well as industrial and commercial wastewater).³ The purpose of these systems is

³ A combined sewer, on the other hand, is a type of sewer system that collects and conveys sanitary sewage and stormwater runoff in a single-pipe system to a POTW treatment plant. See *generally* Report to Congress: Impacts and Control of CSOs and SSOs (EPA 833-R-04-001) (2004), from which EPA Region 1 has drawn this background material.

to transport wastewater uninterrupted from its source to a treatment facility. Developed areas that are served by sanitary sewers often also have a separate storm sewer system (*e.g.*, storm drains) that collects and conveys runoff, street wash waters and drainage and discharges them directly to a receiving water (*i.e.*, without treatment at a POTW). While sanitary sewers are not designed to collect large amounts of runoff from precipitation events or provide widespread drainage, they typically are built with some allowance for higher flows that occur during periods of high groundwater and storm events. They are thus able to handle minor and controllable amounts of extraneous flow (*i.e.*, inflow and infiltration, or I/I) that enter the system. Inflow generally refers to water other than wastewater—typically precipitation like rain or snowmelt—that enters a sewer system through a direct connection to the sewer. Infiltration generally refers to other water that enters a sewer system from the ground, for example through defects in the sewer.

Municipal sanitary sewer collection systems can consist of a widespread network of pipes and associated components (*e.g.*, pump stations). These systems provide wastewater collection service to the community in which they are located. In some situations, the municipality that owns the collector sewers may not provide treatment of wastewater, but only conveys its wastewater to a collection system that is owned and operated by a different municipal entity (such as a regional sewer district). This is known as a satellite community. A “satellite” community is a sewage collection system owner/operator that does not have ownership of the treatment facility and a specific or identified point of discharge but rather the responsibility to collect and convey the community’s wastewater to a POTW treatment plant for treatment. *See* 75 Fed. Reg. 30395, 30400 (June 1, 2010).

Municipal sanitary sewer collection systems play a critical role in protecting human health and the environment. Proper operation and maintenance of sanitary sewer collection systems is integral to ensuring that wastewater is collected, transported, and treated at POTW treatment plants. Through effective operation and maintenance, collection system operators can maintain the capacity of the collection system; reduce the occurrence of temporary problem situations such as blockages; protect the structural integrity and capacity of the system; anticipate potential problems and take preventive measures; and indirectly improve treatment plant performance by minimizing deterioration due to I/I-related hydraulic overloading.

Despite their critical role in the nation’s infrastructure, many collection systems exhibit poor performance and are subjected to flows that exceed system capacity. Untreated or partially treated overflows from a sanitary sewer system are termed “sanitary sewer overflows” (SSOs). SSOs include releases from sanitary sewers that reach waters of the United States as well as those that back up into buildings and flow out of manholes into city streets.

There are many underlying reasons for the poor performance of collection systems. Much of the nation’s sanitary sewer infrastructure is old, and aging infrastructure has deteriorated with time. Communities also sometimes fail to provide capacity to accommodate increased sewage delivery and treatment demand from increasing populations. Furthermore, institutional arrangements relating to the operation of sewers can pose barriers to coordinated action, because many

municipal sanitary sewer collection systems are not entirely owned or operated by a single municipal entity.

The performance and efficiency of municipal collection systems influence the performance of sewage treatment plants. When the structural integrity of a sanitary sewer collection system deteriorates, large quantities of infiltration (including rainfall-induced infiltration) and inflow can enter the collection system, causing it to overflow. These extraneous flows are among the most serious and widespread operational challenges confronting treatment works.⁴

Infiltration can be long-term seepage of water into a sewer system from the water table. In some systems, however, the flow characteristics of infiltration can resemble those of inflow, *i.e.*, there is a rapid increase in flow during and immediately after a rainfall event, due, for example, to rapidly rising groundwater. This phenomenon is sometimes referred to as rainfall-induced infiltration.

Sanitary sewer systems can also overflow during periods of normal dry weather flows. Many sewer system failures are attributable to natural aging processes or poor operation and maintenance. Examples include years of wear and tear on system equipment such as pumps, lift stations, check valves, and other moveable parts that can lead to mechanical or electrical failure; freeze/thaw cycles, groundwater flow, and subsurface seismic activity that can result in pipe movement, warping, brittleness, misalignment, and breakage; and deterioration of pipes and joints due to root intrusion or other blockages.

Inflow and infiltration impacts are often regional in nature. Satellite collection systems in the communities farthest from the POTW treatment plant can cause sanitary sewer overflows (“SSOs”) in communities between them and the treatment plant by using up capacity in the interceptors. This can cause SSOs in the interceptors themselves or in the municipal sanitary sewers that lead to them. The implication of this is that corrective solutions often must also be regional in scope to be effective.

The health and environmental risks attributed to SSOs vary depending on a number of factors including location and season (potential for public exposure), frequency, volume, the amount and type of pollutants present in the discharge, and the uses, conditions, and characteristics of the receiving waters. The most immediate health risks associated with SSOs to waters and other areas with a potential for human contact are associated with exposure to bacteria, viruses, and other pathogens.

Human health impacts occur when people become ill due to contact with water or ingestion of water or shellfish that have been contaminated by SSO discharges. In addition, sanitary sewer systems can back up into buildings, including private residences. These discharges provide a

⁴ In a 1989 Water Pollution Control Federation survey, 1,003 POTWs identified facility performance problems. Infiltration and inflow was the most frequently cited problem, with 85 percent of the facilities reporting I/I as a problem. I/I was cited as a major problem by 41 percent of the facilities (32 percent as a periodic problem). [BP: Is there anything more recent?]

direct pathway for human contact with untreated wastewater. Exposure to land-based SSOs typically occurs through the skin via direct contact. The resulting diseases are often similar to those associated with exposure through drinking water and swimming (*e.g.*, gastroenteritis), but may also include illness caused by inhaling microbial pathogens. In addition to pathogens, raw sewage may contain metals, synthetic chemicals, nutrients, pesticides, and oils, which also can be detrimental to the health of humans and wildlife.

II. EPA Region 1 Past Practice of Permitting POTWs that Include Municipal Satellite Collection Systems

EPA Region 1's practice in permitting regionally integrated POTWs has developed in tandem with its increasing focus on addressing I/I in sewer collection systems, in response to the concerns outlined above. Up to the early 1990s, POTW permits issued by Region 1 generally did not include specific requirements for collection systems. When I/I and the related issue of SSOs became a focus of concern both nationally and within the region in the mid-1990s, Region 1 began adding general requirements to POTW permits that required the permittees to "eliminate excessive infiltration and inflow" and provide an annual "summary report" of activities to reduce I/I. As the Region gathered more information and gained more experience in assessing these reports and activities, it began to include more detailed requirements and reporting provisions in these permits.

MassDEP also engaged in a parallel effort to address I/I, culminating in 2001 with the issuance of MassDEP Policy No. BRP01-1, "Interim Infiltration and Inflow Policy." Among other provisions, this policy established a set of standard NPDES permit conditions for POTWs that included development of an I/I control plan (including funding sources, identification and prioritization of problem areas, and public education programs) and detailed annual reporting requirements (including mapping, reporting of expenditures and I/I flow calculations). Since September 2001, these requirements have been the basis for the standard operation and maintenance conditions related to I/I.

Regional treatment plants presented special issues as I/I requirements became more specific, as it is generally the member communities, rather than the regional sewer district, that own the collection systems that are the primary source of I/I. Before the focus on I/I, POTW permits did not contain specific requirements related to the collection system component of POTWs. Therefore, when issuing NPDES permits to authorize discharges from regionally integrated treatment POTWs, EPA Region 1 had generally only included the legal entity owning and/or operating the regionally centralized wastewater treatment plant. As the permit conditions were focused on the treatment plant itself, this was sufficient to ensure that EPA had authority to enforce the permit requirements.

In implementing the I/I conditions, Region 1 initially sought to maintain the same structure, placing the responsibility on the regional sewer district to require I/I activities by the contributing systems and to collect the necessary information from those systems for submittal to EPA. MassDEP's 2001 Interim I/I Policy reflected this approach, containing a condition for regional systems:

((FOR REGIONAL FACILITIES ONLY)) The permittee shall require, through appropriate agreements, that all member communities develop and implement infiltration and inflow control plans sufficient to ensure that high flows do not cause or contribute to a violation of the permittees effluent limitations, or cause overflows from the permittees collection system.

As existing NPDES permittees, the POTW treatment plants were an obvious locus of regulation. The Region assumed the plants would be in a position to leverage preexisting legal and/or contractual relationships with the satellite collection systems they serve to perform a coordinating function, and that utilizing this existing structure would be more efficient than establishing a new system of direct reporting to EPA by the collection system owners. The Region also believed that the owner/operator of the POTW treatment plant would have an incentive to reduce flow from contributing satellite systems because doing so would improve treatment plant performance and reduce operation costs. While relying on this cooperative approach, however, EPA Region 1 also asserted that it had the authority to require that POTW collection systems be included as NPDES permittees and that it would do so if it proved necessary. Indeed, in 2001 Region 1 acceded to Massachusetts Water Resources Authority's ("MWRA") request that the contributing systems to the MWRA Clinton wastewater treatment plant ("WWTP") be included as co-permittees, based on evidence provided by MWRA that its specific relationship with those communities would not permit it to run an effective I/I reduction program for these collection systems. EPA Region 1 also put satellite collection systems on notice that they would be directly regulated through legally enforceable permit requirements if I/I reductions were not pursued or achieved.

In time, the Region realized that its failure to assert direct jurisdiction over municipal satellite dischargers was becoming untenable in the face of mounting evidence that cooperative (or in some cases non-existent) efforts on the part of the POTW treatment plant and associated satellites were failing to comprehensively address the problem of extraneous flow entering the POTW. The ability and/or willingness of regional sewer districts to attain meaningful I/I efforts in their member communities varied widely. The indirect structure of the requirements also tended to make it difficult for EPA to enforce the implementation of meaningful I/I reduction programs.

It became evident to EPA Region 1 that a POTW's ability to comply with CWA requirements depended on successful operation and maintenance of not only the treatment plant but also the collection system. For example, the absence of effective I/I reduction and operation/maintenance programs was impeding the Region's ability to prevent or mitigate the human health and water quality impacts associated with SSOs. *See Exhibit B* (Municipal satellite collection systems with SSOs). Additionally, these excess flows stressed POTW treatment plants from a hydraulic capacity and performance standpoint, adversely impacting effluent quality. *See Exhibit C* (Analysis of extraneous flow trends for representative systems). Addressing these issues in regional systems was essential, as these include most of the largest systems in terms of flow, population served and area covered, and serve the largest population centers.

The Region's practice of imposing NPDES permit conditions on the municipal collection systems in addition to the treatment plant owner/operator represents a necessary and logical progression in its continuing effort to effectively address the serious problem of I/I in sewer collection systems.⁵ In light of its past permitting experience and the need to effectively address the problem of extraneous flow on a system-wide basis, Region 1 decided that it was necessary to refashion permits issued to regionally integrated POTWs to encompass all owners/operators of the treatment works (*i.e.*, the regional centralized POTW treatment plant and the municipal satellite collection systems).⁶ Specifically, Region 1 determined that the satellite systems should be subject as co-permittees to a limited set of O&M-related conditions on permits issued for discharges from regionally integrated treatment works. These conditions pertain only to the portions of the POTW collection system that the satellites own. This ensures maintenance and pollution control programs are implemented with respect to all portions of the POTW. Accordingly, since 2005, Region 1 has generally included municipal satellite collection systems as co-permittees for limited purposes, in addition to the owner/operator of the treatment plant as the main permittee subject to the full array of NPDES requirements, including secondary treatment and water-quality based effluent limitations. The Region has identified 25 permits issued by the Region to POTWs in New Hampshire and Massachusetts that include municipal satellite collection systems as co-permittees. *See Exhibit A.* The 25 permits include a total of 55 satellite collection systems as co-permittees.

III. Legal Authority

The Region's prior and now superseded practice of limiting the permit only to the legal entity owning and/or operating the wastewater treatment plant had never been announced as a regional policy or interpretation. Similarly, the Region's practice of imposing NPDES permit conditions on the municipal collection systems in addition to the treatment plant owner/operator has also never been expressly announced as a uniform, region-wide policy or interpretation. Upon consideration of the Board's decision, described above, EPA Region 1 has decided to supply a clearer, more detailed explanation regarding its use of a co-permittee structure when issuing NPDES permits to regionally integrated POTWs. In this section, the Region addresses the questions posed by the Board in the *Upper Blackstone* decision referenced above.

⁵ Although EPA Region 1 has in the past issued NPDES permits only to the legal entities owning and operating the wastewater treatment plant (*i.e.*, only a portion of the "treatment works"), the Region's reframing of permits to include municipal satellite collection systems does not represent a break or reversal from its historical legal position. EPA Region 1 has never taken the legal position that the satellite collection systems are beyond the reach of the CWA and the NPDES permitting program. Rather, the Region as a matter of discretion had merely never determined it necessary to exercise its statutory authority to directly reach these facilities in order to carry out its NPDES permitting obligations under the Act.

⁶ EPA has "considerable flexibility in framing the permit to achieve a desired reduction in pollutant discharges." *Natural Resources Defense Council, Inc. v. Costle*, 568 F.2d 1369, 1380 (D.C.Cir.1977). ("[T]his ambitious statute is not hospitable to the concept that the appropriate response to a difficult pollution problem is not to try at all.")

(1) Is the scope of NPDES authority limited to owners/operators of the treatment plant, or does the authority extend to owners/operators of the municipal satellite collection systems that comprise the wider POTW?

The scope of NPDES authority extends beyond the owners/operators of the treatment plant to include to owners/operators of portions of the wider POTW, for the reasons discussed below.

The CWA prohibits the “discharge of any pollutant by any person” from any point source to waters of the United States, except, *inter alia*, in compliance with an NPDES permit issued by EPA or an authorized state pursuant to Section 402 of the CWA. CWA § 301, 402(a)(1); 40 C.F.R. § 122.1(b). Where there is a discharge of pollutants, NPDES regulations require the “operator” of the discharging “facility or activity” to obtain a permit in circumstances where the operator is different from the owner. *Id.* § 122.21(b). “Owner or operator” is defined as “the owner or operator of any ‘facility or activity’ subject to regulation under the NPDES program,” and a “facility or activity” is “any NPDES ‘point source’ or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES program.” *Id.* § 122.2.

“Publicly owned treatment works” are facilities subject to the NPDES program. Statutorily, POTWs as a class must meet performance-based requirements based on available wastewater treatment technology. *See* CWA § 402(a)(1) (“[t]he Administrator may...issue a permit for the discharge of any pollutant...upon condition that such discharge will meet (A) all applicable requirements under [section 301]..”); § 301(b)(1)(B) (“In order to carry out the objective of this chapter there shall be achieved...for publicly owned treatment works in existence on July 1, 1977...effluent limitations based upon secondary treatment[.]”); *see also* 40 C.F.R. pt 133. In addition to secondary treatment requirements, POTWs are also subject to water quality-based effluent limits if necessary to achieve applicable state water quality standards. *See* CWA § 301(b)(1)(C). *See also* 40 C.F.R. § 122.44(a)(1) (“...each NPDES permit shall include...[t]echnology-based effluent limitations based on: effluent limitations and standards published under section 301 of the Act”) and (d)(1) (same for water quality standards and state requirements). NPDES regulations similarly identify the “POTW” as the entity subject to regulation. *See* 40 C.F.R. § 122.21(a), (requiring “new and existing POTWs” to submit information required in 122.21(j),” which in turn requires “all POTWs,” among others, to provide permit application information).

A municipal satellite collection system is part of a POTW under applicable law. The CWA and its implementing regulations broadly define “POTW” to include not only wastewater treatment plants but also the sewer systems and associated equipment that collect wastewater and convey it to the plants. Under NPDES regulations at 40 C.F.R. §§ 122.2 and 403.3(q), the term “Publicly Owned Treatment Works” or “POTW” means “a treatment works as defined by section 212 of the Act, which is owned by a State or municipality (as defined by section 502(4) of the Act).” Under section 212 of the Act,

“(2)(A) The term ‘treatment works’ means any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid

nature to implement section 1281 of this title, or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, *sewage collection systems* [emphasis added], pumping, power, and other equipment, and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process (including land used for the storage of treated wastewater in land treatment systems prior to land application) or is used for ultimate disposal of residues resulting from such treatment.

(B) In addition to the definition contained in subparagraph (A) of this paragraph, ‘treatment works’ means any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water runoff, or industrial waste, including waste in combined storm water and *sanitary sewer systems* [emphasis added]. Any application for construction grants which includes wholly or in part such methods or systems shall, in accordance with guidelines published by the Administrator pursuant to subparagraph (C) of this paragraph, contain adequate data and analysis demonstrating such proposal to be, over the life of such works, the most cost efficient alternative to comply with sections 1311 or 1312 of this title, or the requirements of section 1281 of this title.”

Under the NPDES program regulations, this definition has been interpreted as follows:

“The term *Publicly Owned Treatment Works* or *POTW* [emphasis in original]...includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plant. The term also means the municipality as defined in section 502(4) of the Act, which has jurisdiction over the Indirect Discharges to and the discharges from such a treatment works.”

See 40 C.F.R. § 122.2, cross-referencing 403.3(q).

The statutory and regulatory definitions plainly encompass both the POTW treatment plant and municipal satellite collection systems. Municipal satellite collection systems are part of a POTW by definition (*i.e.*, they are “sewage collection systems” under section 212(A) and “sanitary sewer systems” under section 212(B)). They are also conveyances that send wastewater to a POTW treatment plant for treatment under 40 C.F.R. 403.3(q)). The preamble to the rule that created the regulatory definition of POTW supports the reading that the treatment plant comprises only a portion of the POTW. See 44 Fed. Reg. 62260, 62261 (Oct. 29, 1979).⁷

⁷ “A new provision...defining the term ‘POTW Treatment Plant’ has been added to avoid an ambiguity that now exists whenever a reference is made to a POTW (publicly owned treatment works). ...[T]he existing regulation defines a POTW to include both the treatment plant and the sewer pipes and other conveyances leading to it. As a result, it is unclear whether a particular reference is to the pipes, the treatment plant, or both. The term “POTW

Consistent with EPA Region 1's interpretation, courts have similarly taken a broad reading of the terms treatment works and POTW.⁸

(2) *If the latter, how far up the collection system does NPDES jurisdiction reach, i.e., where does the "collection system" end and the "user" begin?*

NPDES jurisdiction extends beyond the treatment plant to the outer boundary of the municipally-owned sewage collection systems, which are defined as sewers whose purpose is to be a common carrier of wastewater for others to a POTW treatment plant for treatment, as explained below.

As discussed in response to Question 1 above, the term "treatment works" is defined to include "sewage collection systems." CWA § 212. In order to define the extent of the sewage collection system for purposes of co-permittee regulation—*i.e.*, to identify the boundary between the portions of the collection system that are subject to NPDES requirements and those that are not—Region 1 is relying on EPA's regulatory interpretation of the term "sewage collection system." In relevant part, EPA regulations define "sewage collection system" at 40 C.F.R. § 35.905 as:

"... each, and all, of the common lateral sewers, within a publicly owned treatment system, which are primarily installed to receive waste waters directly from facilities which convey waste water from individual structures or from private property and which include service connection "Y" fittings designed for connection with those facilities. The facilities which convey waste water from individual structures, from private property to the public lateral sewer, or its equivalent, are specifically excluded from the definition...."

Put otherwise, a municipal satellite collection system is subject to NPDES jurisdiction under the Region's approach insofar as its purpose is to be a common carrier of wastewater for others to a POTW treatment plant for treatment. The use of this primary purpose test (*i.e.*, common sewer installed as a recipient and carrier waste water from others) allows Region 1 to draw a principled, predictable and readily ascertainable boundary between the POTW's collection system and user. This test would exclude, for example, branch drainpipes that collect and transport wastewater from fixtures in a commercial building or public school to the common lateral sewer. This type

treatment plant" will be used to designate that portion of the municipal system which is actually designed to provide treatment to the wastes received by the municipal system."

⁸ See, e.g., *United States v. Borowski*, 977 F.2d 27, 30 n.5 (1st Cir. 1992) ("We read this language [POTW definition] to refer to such sewers, pipes and other conveyances that are publicly owned. Here, for example, the City of Burlington's sewer is included in the definition because it conveys waste water to the Massachusetts Water Resource Authority's treatment works."); *Shanty Town Assoc. v. Envtl. Prot. Agency*, 843 F.2d 782, 785 (4th Cir. 1988) ("As defined in the statute, a 'treatment work' need not be a building or facility, but can be any device, system, or other method for treating, recycling, reclaiming, preventing, or reducing liquid municipal sewage and industrial waste, including storm water runoff.") (citation omitted); *Comm. for Consideration Jones Fall Sewage System v. Train*, 375 F. Supp. 1148, 1150-51 (D. Md. 1974) (holding that NPDES wastewater discharge permit coverage for a wastewater treatment plant also encompasses the associated sanitary sewer system and pump stations under § 1292 definition of "treatment work").

of infrastructure would not be considered part of the collection system, because it is not designed to be a common recipient and carrier of wastewaters from other users. Rather, it is designed to transport its users' wastewater to such a common collection system at a point further down the sanitary sewer system.

EPA's reliance on the definition of "sewage collection system" from outside the NPDES regulations for interpretative guidance is reasonable as the construction grants regulations at 40 C.F.R. Part 35, subpart E pertain to grants for POTWs, the entity that is the subject of this NPDES policy. Additionally, the term "sewage collection systems" expressly appears in the definition of treatment works under section 212 of the Act as noted above. Finally, this approach is also consistent with EPA's interpretation in other contexts, such as the SSO listening session notice, published in the Federal Register on June 1, 2010, which describes wastewater collection systems as those that "collect domestic sewage and other wastewater from homes and other buildings and convey it to wastewater sewage treatment plants for proper treatment and disposal." See "Municipal Sanitary Sewer Collection Systems, Municipal Satellite Collection Systems, Sanitary Sewer Overflows, and Peak Wet Weather Discharges From Publicly Owned Treatment Works Treatment Plants Serving Separate Sanitary Sewer Collection Systems," 75 Fed. Reg. 30395.⁹

(3) Do municipal satellite collection systems "discharge [] a pollutant" within the meaning of the statute and regulations?

Yes, because they are a part of the POTW, municipal satellite collection systems discharge pollutants to waters of the United States through one or more outfalls (point sources).

The "discharge of a pollutant," triggers the need for a facility to obtain an NPDES permit. A POTW "discharges [] pollutant[s]" if it adds pollutants from a point source to waters of the U.S. (See 40 C.F.R. § 122.2, section (a) of the definition of "discharge of a pollutant.") As explained above, municipal satellite collection systems are part of the POTW. The entire POTW is the entity that discharges pollutants to waters of the U.S. through point source outfalls typically located at the treatment plant but also occasionally through other outfalls within the overall system. The fact that a collection system may be located in the upstream portions of the POTW and not necessarily near the ultimate discharge point at the treatment plant is not material to the question of whether it "discharges" a pollutant and consequently may be subject to conditions of an NPDES permit issued for discharges from the POTW.¹⁰

⁹ That EPA has in the past looked for guidance from Part 35 when construing the NPDES permitting program, for instance, in the context of storm water permitting, provides further support to the Region that its practice in this regard is sound. See, e.g., "National Pollutant Discharge Elimination System Permit Application Regulations for Storm Water Discharges," 55 Fed. Reg. 47990, 47955 (looking to the definition of "storm sewer" at 40 C.F.R. § 35.2005(b)(47) when defining "storm water" under the NDPEs program).

¹⁰ This position differs from that taken by the Region in the *Upper Blackstone* litigation. There, the Region argued that the treatment plant was the sole discharging entity for regulatory purposes. The Region has revised this view upon further consideration of the statute, regulations and case law and determined that the POTW as a whole is the discharging entity.

“Discharge of a pollutant” at 40 C.F.R. § 122.2 is also defined to include “... discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person *which do not lead to a treatment works.*”(emphasis added). Some municipal collection systems have argued that this sentence means that only municipal discharges that do not lead to a “treatment plant” fall within the scope of “discharge of a pollutant.” They further argue that because discharges through satellite collection systems do lead to a treatment plant, such systems do not “discharge [] pollutant[s]” and therefore are not subject to the NPDES permit requirements. This argument is flawed in that it incorrectly equates “treatment works,” the term used in the definition above, with “treatment plant.” To interpret “treatment works” as it appears in the regulatory definition of “discharge of a pollutant” as consisting of only the POTW treatment plant would be inconsistent with the definition of “treatment works” at 40 C.F.R. § 403.3(q), which expressly includes the collection system. *See also* § 403.3(r) (defining “POTW Treatment Plant” as “*that portion* [emphasis added] of the POTW which is designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial waste”).

(4) Are municipal satellite collection systems “indirect dischargers” and thus excluded from NPDES permitting requirements?

No, municipal satellite collection systems are part of the POTW, not “indirect dischargers” to the POTW.

Section 307(b) of the Act requires EPA to establish regulatory pretreatment requirements to prevent the “introduction of pollutants into treatment works” that interfere, pass through or are otherwise incompatible with such works. Section 307 is implemented through the General Pretreatment Regulations for Existing and New Sources of Pollution (40 C.F.R. Part 403) and categorical pretreatment standards (40 C.F.R. Parts 405-471). Section 403.3(i) defines “indirect discharger” as “any non-domestic” source that introduces pollutants into a POTW and is regulated under pretreatment standards pursuant to CWA § 307(b)-(d). The source of an indirect discharge is termed an “industrial user.” *Id.* at § 403.3(j). Under regulations governing the NPDES permitting program, the term “indirect discharger” is defined as “a non-domestic discharger introducing ‘pollutants’ to a ‘publicly owned treatment works.’” 40 C.F.R. § 122.2. Indirect dischargers are excluded from NPDES permit requirements by the indirect discharger rule at 40 C.F.R. § 122.3(c), which provides, “The following discharges do not require an NPDES permit: . . . The introduction of sewage, industrial wastes or other pollutants into publicly owned treatment works by indirect dischargers.”

Municipal satellite collection satellite systems are not indirect dischargers as that term is defined under part 122 or 403 regulations. Unlike indirect dischargers, municipal satellite collection systems are not “introducing pollutants” to POTWs under 40 C.F.R. § 122.2; they are, instead, part of the POTW by definition. Similarly, they are not a non-domestic *source* that introduces pollutants into a POTW within the meaning of § 403.3(j), but as part of the POTW collect and convey municipal sewage from industrial, commercial and domestic users of the POTW.

The Region’s determination that municipal satellite collection systems are not indirect dischargers is, additionally, consistent with the regulatory history of the term indirect discharger.

The 1979 revision of the part 122 regulations defined “indirect discharger” as “a non-municipal, non-domestic discharger introducing pollutants to a publicly owned treatment works, which introduction does not constitute a ‘discharge of pollutants’...” See National Pollutant Discharge Elimination System, 44 Fed. Reg. 32854, 32901 (June 7, 1979). The term “non-municipal” was removed in the Consolidated Permit Regulations, 45 Fed. Reg. 33290, 33421 (May 19, 1980) (defining “indirect discharger” as “a nondomestic discharger...”). Although the change was not explained in detail, the substantive intent behind this provision remained the same. EPA characterized the revision as “minor wording changes.” 45 Fed. Reg. at 33346 (Table VII: “Relationship of June 7[, 1979] Part 122 to Today’s Regulations”). The central point again is that under any past or present regulatory incarnation, municipal satellite collection systems, as POTWs, are not within the definition of “indirect discharger,” which is limited to dischargers that introduce pollutants to POTWs.

The position that municipal satellite collection systems are part of, rather than discharge to, the POTW also is consistent with EPA guidance. EPA’s 1994 Multijurisdictional Pretreatment Programs Guidance Manual, (EPA 833-B94-005) (June 1994), at p. 19, asserts that EPA has the authority to require municipal satellite collection systems to develop pretreatment programs by virtue of their being part of the POTW.

(5) How is the Region’s rationale consistent with the references to “municipality” in the regulatory definition of POTW found at 40 C.F.R. § 403.3(q), and the definition’s statement that “[t]he term also means the municipality....which has jurisdiction over the Indirect Discharges to and the discharges from such a treatment works?”

There is no inconsistency between the Region’s view that municipally-owned satellite collection systems are part of a POTW, and the references to municipality in 40 C.F.R. § 403.3(q), including the final sentence of the regulatory definition of POTW in the pretreatment regulations.

The Region’s co-permitting rationale is consistent with the first part of the pretreatment program’s regulatory definition of POTW, because the Region is only asserting NPDES jurisdiction over satellite collection systems that are owned by a “State or municipality (as defined by section 502(4) of the Act).” The term “municipality” as defined in CWA § 502(4) “means a city, town, borough, county, parish, district, association, or other public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes...” Thus, in order to qualify under this definition, a wastewater collection system need only be “owned by a State or municipality.” There is no requirement that the constituent components of a regionally integrated POTW, *i.e.*, the collection system and regional centralized POTW treatment plant, be owned by the same State or municipal entity.

Furthermore, there is no inconsistency between the Region’s view that a satellite collection system is part of a POTW, and the final sentence of the regulatory definition of POTW in the pretreatment regulations. As noted above, the sentence provides that “POTW” may “also” mean a municipality which has jurisdiction over indirect discharges to and discharges from the treatment works. This is not a limitation because of the use of the word “also” (contrast this with the “only if” language in the preceding sentence of the regulatory definition).

(6) *How does the Region's rationale comport with the permit application and signatory requirements under NPDES regulations?*

EPA's authority to require municipal satellite collection systems to separately comply with the permit application requirements, or to provide waivers from these requirements where appropriate, is consistent with NPDES regulations, which provide that all POTWs must submit permit application information set forth in 40 C.F.R. § 122.21(j) unless otherwise directed, and municipal satellite collection systems are part of the POTW.

EPA has the authority to require municipal satellite collection systems to submit permit applications. These entities are operators of parts of the POTW. NPDES regulations characterize the operator "of the POTW" (which by definition includes the sewage collection system) as opposed to the operator "of the POTW treatment plant" as an appropriate applicant. *Id.* § 122.21(a), (requiring applicants for "new and existing POTWs" to submit information required in 122.21(j)," which in turn requires "all POTWs," among others, to provide permit application information). This reading of the regulation is in keeping with the statutory text, which subjects the POTW writ large to the secondary treatment and water quality-based requirements. *See* CWA § 301(b)(1)(B), (C). In fact, the NPDES permit application for POTWs solicits information concerning portions of the POTW beyond the treatment plant itself, including the collection system used by the treatment works. *See* 40 C.F.R. 122.21(j)(1).

Notwithstanding that EPA could require applications for all the municipal satellite collection systems, requiring such applications may result in duplicative or immaterial information. The Regional Administrator ("RA") may waive any requirement of this paragraph if he or she has access to substantially identical information. 40 C.F.R. § 122.21(j). *See generally*, 64 Fed. Reg. 42440 (August 4, 1999). The RA may also waive any application requirement that is not of material concern for a specific permit. Region 1 believes that it will typically receive information sufficient for NPDES permitting purposes from the POTW treatment plant operator's application.

In most cases, EPA Region 1 believes that having a single permit application from the POTW treatment plant operator will be more efficient in carrying out the regulation's intent than multiple applications from the satellite systems. (The treatment plant operator would of course be required to coordinate as necessary with the constituent components of the POTW to ensure that the information provided to EPA is accurate and complete). EPA Region 1 therefore intends to issue waivers to exempt municipal satellite collection systems from permit application and signatory requirements in accordance with 40 C.F.R. § 122.21(j). To the extent the Region requires additional information, it intends to use its information collection authority under CWA § 308.

IV. Basis for the Specific Conditions to which the Municipal Satellite Collection Systems are Subject as Co-permittees

The legal authority for extending NPDES conditions to all portions of the municipally-owned treatment works to ensure proper operation and maintenance and to reduce the quantity of extraneous flow into the POTW is Section 402(a) of the CWA. This section of the Act authorizes EPA to issue a permit for the “discharge of pollutants” and to prescribe permit conditions as necessary to carry out the provisions of the CWA, including Section 301 of the Act. Among other things, Section 301 requires POTWs to meet performance-based requirements based on secondary treatment technology, as well as any more stringent requirements of State law or regulation, including water quality standards. *See* CWA § 301(b)(1)(B),(C).

The co-permittee requirements are required to assure continued achievement of secondary treatment requirements and water quality standards in accordance with sections 301 and 402 of the Act and to prevent unauthorized discharges of sewage from collection systems. With respect to secondary treatment, the inclusion of the satellite systems as co-permittees is necessary because high levels of I/I dilute the strength of influent wastewater and increase the hydraulic load on treatment plants, which can reduce treatment efficiency (*e.g.*, result in violations of technology-based percent removal limitations for BOD and TSS due to less concentrated influent, or violation of other technology effluent limitations due to reduction in treatment efficiency), lead to bypassing a portion of the treatment process, or in extreme situations make biological treatment facilities inoperable (*e.g.*, wash out the biological organisms that treat the waste).

As to water quality standards, the addition of the satellite systems as co-permittees is necessary to ensure collection system operation and maintenance, which will reduce extraneous flow entering the system and free up available capacity. This will facilitate compliance with water quality-based effluent limitations—made more difficult by reductions in treatment efficiency and also reduce water quality standard violations that result from the occurrence of SSOs. *See Exhibits B* (Municipal satellite collection systems with SSOs) and *C* (Analysis of extraneous flow trends for representative systems). SSOs that reach waters of the U.S. are discharges in violation of section 301(a) of the CWA to the extent not authorized by an NPDES permit.

Subjecting portions of an NPDES-regulated entity upstream of the ultimate discharge point is consistent with EPA’s interpretation of the CWA in other contexts. For example, it is well established that EPA has the ability to apply discharge limitations and monitoring requirements to internal process discharges, rather than to outfalls, on the grounds that compliance with permit limitations “may well involve controls applied at points other than the ultimate point of discharge.” *See Decision of the General Counsel No. 27 (In re Inland Steel Company)*, August 4, 1975 (“Limitations upon internal process discharges are proper, if such discharges would ultimately be discharged into waters of the United States, and if such limitations are necessary to carry out the principal regulatory provisions of the Act.”). In the case of regionally integrated POTWs, placing conditions on satellite collection systems—though located farther up the system than the point of discharge—is a logical implication of the regulations and serves to effectuate the statute.

Without imposing conditions on the satellite communities, standard permit conditions applicable to all NPDES permits by regulation cannot be given full effect. To illustrate, there is no dispute

that the operator of the POTW treatment plant and outfall is discharging pollutants within the meaning of the CWA and, accordingly, is subject to the NPDES permit program. NPDES permitting regulations require standard conditions that “apply to all NPDES permits,” pursuant to 40 C.F.R. § 122.41, including a duty to mitigate and to properly operate and maintain “all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit.” *Id.* at § 122.41(d), (e). EPA regulations also require additional conditions applicable to specified categories of NPDES permit, including “Publicly owned treatment works.” *See id.* at § 122.42(b). A municipal satellite collection system, as demonstrated above, falls within the regulatory definition of a POTW. In light of EPA’s authority to require appropriate operation and maintenance of collection systems necessary to achieve compliance with an NPDES permit, and because the operator of the POTW treatment plant may not own or operate a significant portion of the wider treatment works (*i.e.*, the collection systems that send flow to the POTW treatment plant), it is appropriate, and in some cases necessary, to extend pertinent, mandated standard conditions to all portions of the POTW, which is subject to regulation in its entirety. The alternative of allowing state and local jurisdictional boundaries to place significant portions of the POTW beyond the reach of the NPDES permitting program would not only be inconsistent with the broad statutory and regulatory definition of the term POTW but would impede Region 1 from carrying out the objectives of the CWA. It would also, illogically, preclude the Region from imposing on POTWs standard conditions EPA has by regulation mandated for those entities.

Other Considerations Informing EPA Region 1’s Decision to Use a Co-permittee Permitting Structure for Regionally Integrated POTWs

In addition to consulting the relevant statutes, regulations, and preambles, Region 1 also considered other EPA guidance in coming to its determination to employ a co-permittee structure for regionally integrated POTWs. EPA’s 1994 Multijurisdictional Pretreatment Programs Guidance Manual, p. 19, asserts that EPA has the authority to include municipal satellite collection systems as co-permittees by virtue of their being part of the POTW:

If the contributing jurisdiction owns or operates the collection system within its boundaries, then it is a co-owner or operator of the POTW. As such, it can be included on the POTW’s NPDES permit and be required to develop a pretreatment program. Contributing jurisdictions should be made co-permittees where circumstances or experience indicate that it is necessary to ensure adequate pretreatment program implementation.

The same logic that led EPA to conclude it had authority to require municipal satellite collection systems to develop a pretreatment program pursuant to an NPDES permit supports EPA Region 1’s decision to impose permit conditions on such facilities to undertake proper O & M and to reduce inflow and infiltration.

EPA Region 1 also took notice of federal listening session materials on the June 2010 proposed SSO rule and associated model permits and fact sheet. The position articulated by EPA in these

model documents—specifically the application of standard NPDES conditions to municipal satellite collection systems—generally conform to Region 1’s co-permitting approach.

Finally, in addition to federal requirements, EPA Region 1 considered the co-permittee approach in light of state regulations and policy pertaining to wastewater treatment works. The Region found its approach to be consistent with such requirements. Under Massachusetts law, “Any person operating treatment works shall maintain the facilities in a manner that will ensure proper operation of the facilities or any part thereof,” where “treatment works” is defined as “any and all devices, processes and properties, real or personal, used in the collection, pumping, transmission, storage, treatment, disposal, recycling, reclamation or reuse of waterborne pollutants, but not including any works receiving a hazardous waste from off the site of the works for the purpose of treatment, storage or disposal, or industrial wastewater holding tanks regulated under 314 CMR 18.00” *See* 314 CMR 12.00 (“Operation and Maintenance and Pretreatment Standards for Wastewater Treatment Works and Indirect Dischargers”). MassDEP has also prioritized this area, issuing detailed operation and maintenance guidelines entitled “Optimizing Operation, Maintenance and Rehabilitation of Sanitary Sewer Collection Systems.”

Exhibit A

Name	Issue Date
Massachusetts Water Resources Authority – Clinton (NPDES Permit No. MA0100404)	September 27, 2000
City of Brockton (NPDES Permit No. MA0101010)	May 11, 2005
City of Marlborough (NPDES Permit No. MA0100480)	May 26, 2005
Westborough Wastewater Treatment Plant (NPDES Permit No. MA0100412)	May 20, 2005
Lowell Regional Wastewater Utilities (NPDES Permit No. MA0100633)	September 1, 2005
Town of Webster Sewer Department (NPDES Permit No. MA0100439)	March 24, 2006
Town of South Hadley, Board of Selectmen (NPDES Permit No. MA0100455)	June 12, 2006
City of Leominster (NPDES Permit No. MA0100617)	September 28, 2006
Hoosac Water Quality District (NPDES Permit No. MA0100510)	September 28, 2006
Board of Public Works, North Attleborough (NPDES Permit No. MA0101036)	January 4, 2007
Town of Sunapee (NPDES Permit No. 0100544)	February 21, 2007
Lynn Water and Sewer Commission (NPDES Permit No. MA0100552)	March 3, 2007
City of Concord (NPDES Permit No. NH0100331)	June 29, 2007
City of Keene (NPDES Permit No. NH0100790)	August 24, 2007
Town of Hampton (NPDES No. NH0100625)	August 28, 2007
Town of Merrimack, NH (NPDES No. NH0100161)	September 25, 2007
City of Haverhill (NPDES Permit No. MA0101621)	December 5, 2007
Greater Lawrence Sanitary District (NPDES Permit No. MA0100447)	August 11, 2005

City of Pittsfield, Department of Public Works (NPDES No. MA0101681)	August 22, 2008
City of Manchester (NPDES No. NH0100447)	September 25, 2008
City of New Bedford (NPDES Permit No. MA0100781)	September 28, 2008
Winnepesaukee River Basin Program Wastewater Treatment Plant (NPDES Permit No. NH0100960)	June 19, 2009
City of Westfield (NPDES Permit No. MA0101800)	September 30, 2009
Hull Permanent Sewer Commission (NPDES Permit No. MA0101231)	September 1, 2009
Gardner Department of Public Works (NPDES Permit No. MA0100994)	September 30, 2009

Exhibit B

I/I Flow Analysis for Sample Regional Publicly Owned Treatment Works

I. Representative POTWS

The **South Essex Sewer District (SESD)** is a regional POTW with a treatment plant in Salem, Massachusetts. The SESD serves a total population of 174,931 in six communities: Beverly, Danvers, Marblehead, Middleton, Peabody and Salem. The **Charles River Pollution Control District (CRPCD)** is a regional POTW with a treatment plant in Medway, Massachusetts. The CRPCD serves a total population of approximately 28,000 in four communities: Bellingham, Franklin, Medway and Millis. Both of these facilities have been operating since 2001 under permits that place requirements on the treatment plant to implement I/I reduction programs with the satellite collection systems, in contrast to Region 1's current practice of including the satellite collection systems as co-permittees.

II. Comparison of flows to standards for nonexcessive infiltration and I/I

Flow data from the facilities' discharge monitoring reports (DMRs) are shown in comparison to the EPA standard for nonexcessive infiltration/inflow (I/I) of 275 gpcd wet weather flow and the EPA standard for nonexcessive infiltration of 120 gallons per capita per day (gpcd) dry weather flow; the standards are multiplied by population served for comparison with total flow from the facility. See *I/I Analysis and Project Certification*, EPA Ecol. Pub. 97-03 (1985); 40 CFR 35.2005(b)(28) and (29).

Figures 1 and 2 show the Daily Maximum Flows (the highest flow recorded in a particular month) for the CRPCD and SESD, respectively, along with monthly precipitation data from nearby weather stations. Both facilities experience wet weather flows far exceeding the standard for nonexcessive I/I, particularly in wet months, indicating that these facilities are receiving high levels of inflow and wet weather infiltration.

Figure 1. CRPCD Daily Maximum Flow Compared to Nonexcessive I/I Standard

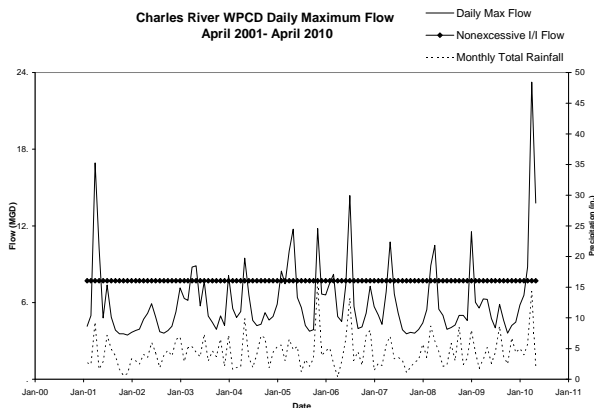
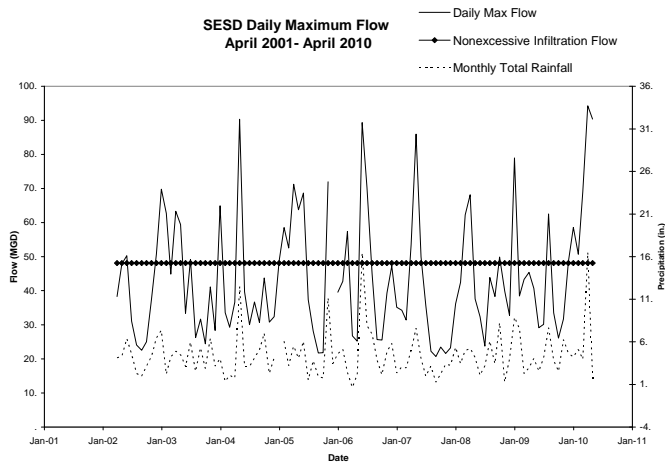


Figure 2. SESD Daily Maximum Flow Compared to Nonexcessive I/I Standard



Figures 3 and 4 shows the Average Monthly Flows for the CRPCD and SESD, which exceed the nonexcessive infiltration standard for all but the driest months. This indicates that these systems experience high levels of groundwater infiltration into the system even during dry weather.

Figure 3. CRPCD Monthly Average Flow Compared to Nonexcessive Infiltration Standard

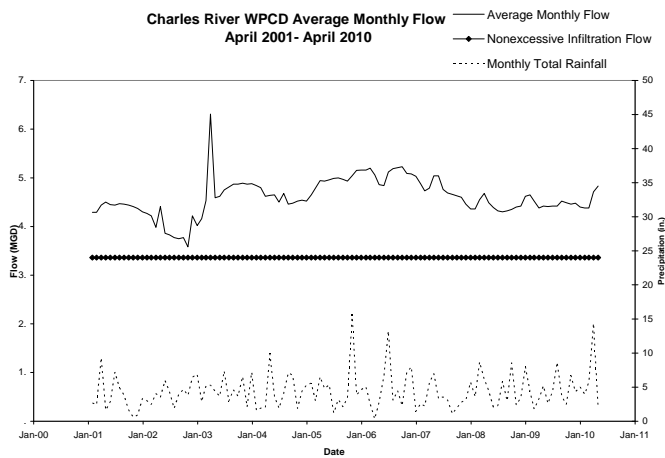
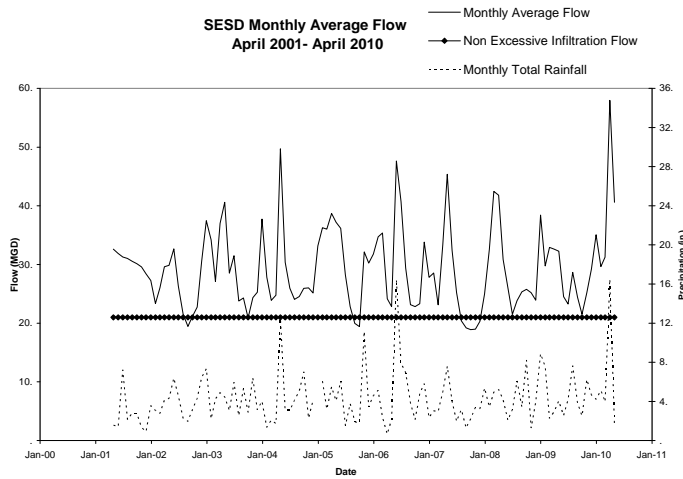


Figure 4. SESD Monthly Average Flow Compared to Nonexcessive Infiltration Standard



II. Flow Trends

Figures 5 and 6 show the trend in Maximum Daily Flows over the period during which these regional facilities have been responsible for implementing cooperative I/I reduction programs with the satellite collection systems. The Maximum Daily Flow reflects the highest wet weather flow for each month. The trend over this time period has been of increasing Maximum Daily Flow, indicating that I/I has not been reduced in either system despite the permit requirements.

Figure 5. CRPCD Daily Maximum Flow Trend

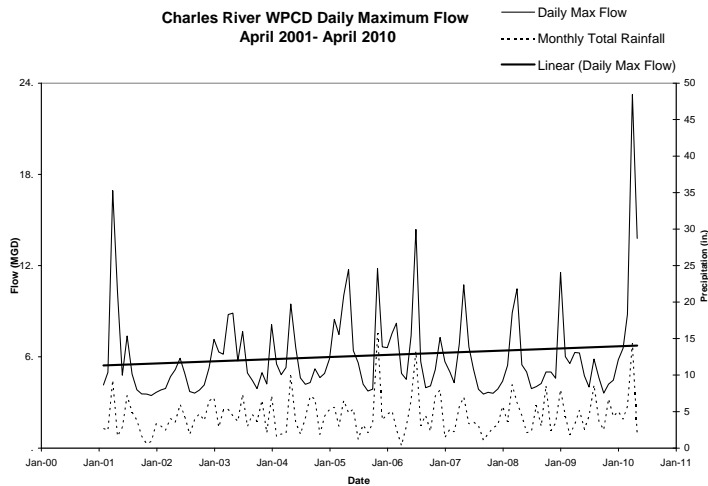
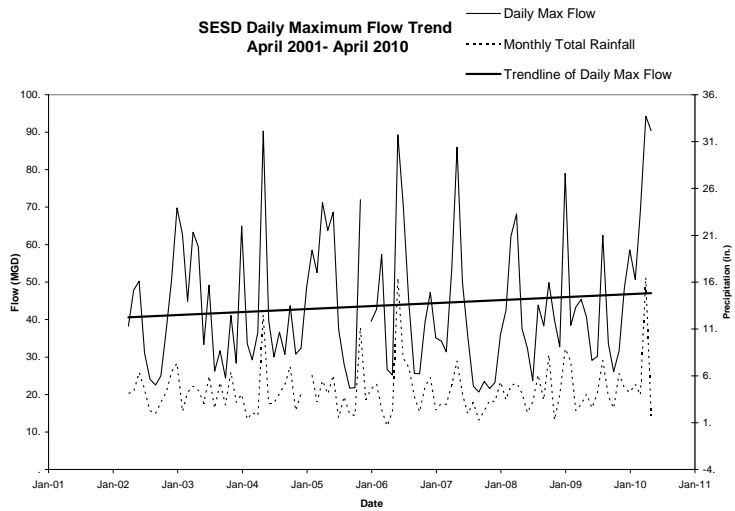


Figure 6. SESD Daily Maximum Flow Trend



III. Violations Associated with Wet Weather Flows

Both the CRPCD and SESD have experienced permit violations that appear to be related to I/I, based on their occurrence during wet weather months when excessive I/I standards are exceeded. Figure 7 shows violations of CRPCD’s effluent limits for CBOD (concentration) and TSS (concentration and percent removal). Twelve of the sixteen violations occurred during months when daily maximum flows exceeded the EPA standard.

Figure 7. CRPCD CBOD and TSS Effluent Limit Violations

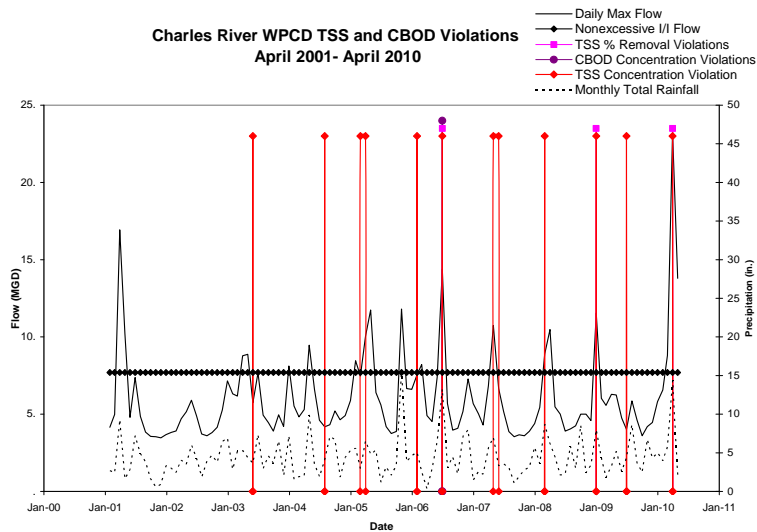
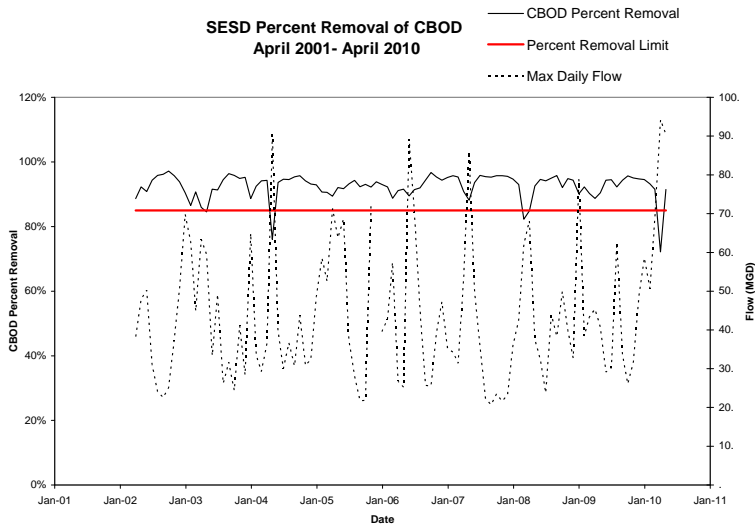


Figure 8 shows SESD's results for removal of CBOD, in percentage, as compared to maximum daily flow. SESD had three permit violations where CBOD removal fell below 85%, all during months with high Maximum Daily Flows.

Figure 8. SESD CBOD Percent Removal



In addition, both of these regional POTWs have experienced SSOs within the municipal satellite collection systems. In the SESD system, Beverly, Danvers, Marblehead and Peabody have reported SSOs between 2006 and 2008, based on data provided by MassDEP. In the CRPCD system, both Franklin and Bellingham have reported SSOs between 2006 and 2009.

Exhibit C

List of municipal satellite collection systems that have had SSOs

Exhibit D

Form of Regional Administrator's waiver of permit application requirements for
municipal satellite collection systems



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

Re: Waiver of Permit Application and Signatory Requirements for [Municipal Satellite Sewage Collection System]

Dear _____:

Under NPDES regulations, all POTWs must submit permit application information set forth in 40 C.F.R. § 122.21(j) unless otherwise directed. Where the Region has “access to substantially identical information,” the Regional Administrator may waive permit application requirements for new and existing POTWs. *Id.* Pursuant to my authority under this regulation, I am waiving NPDES permit application and signatory requirements applicable to the above-named municipal satellite collection systems.

Although EPA has the authority to require municipal satellite collection systems to submit individual permit applications, in this case I find that requiring a single permit application executed by the regional POTW treatment plant owner/operator will deliver “substantially identical information,” and will be more efficient, than requiring separate applications from each municipal satellite collection system owner/operator. Municipal satellite collection system owners/operators are expected to consult and coordinate with the regional POTW treatment plant operators to ensure that any information provided to EPA about their respective entities is accurate and complete. In the event that EPA requires additional information, it may use its information collection authority under CWA § 308. 33 U.S.C. § 1318.

This notice reflects my determination based on the specific facts and circumstances in this case. It is not intended to bind the agency in future determinations where a separate permit for municipal satellites would not be duplicative or immaterial.

If you have any questions or would like to discuss this decision, please contact [EPA Contact] at [Contact Info].

Sincerely,

Regional Administrator

NEW HAMPSHIRE DEPARTMENT OF
ENVIRONMENTAL SERVICES
WATER DIVISION
P.O. BOX 95
CONCORD, NEW HAMPSHIRE 03302-0095

U.S. ENVIRONMENTAL PROTECTION
AGENCY-REGION 1
WATER DIVISION
5 POST OFFICE SQUARE
BOSTON, MASSACHUSETTS 02109

JOINT PUBLIC NOTICE OF A DRAFT NATIONAL POLLUTANT DISCHARGE
ELIMINATION SYSTEM (NPDES) PERMIT TO DISCHARGE INTO WATERS OF THE
UNITED STATES UNDER SECTION 402 OF THE CLEAN WATER ACT ("CWA" or THE
"ACT"), AS AMENDED, AND STATE CERTIFICATION UNDER SECTION 401 OF THE
ACT, AND ISSUANCE OF A STATE SURFACE WATER PERMIT UNDER NH RSA 485-
A:13, I(a).

PUBLIC NOTICE PERIOD: June 24, 2020 – July 23, 2020

PERMIT NUMBER: **NH0100331**

PUBLIC NOTICE NUMBER: NH-018-20

NAME AND MAILING ADDRESS OF APPLICANT:

City of Concord, New Hampshire
City Manager
41 Green Street
Concord, NH 03301

NAME AND MAILING ADDRESS OF CO-PERMITTEE

Boscawen Board of Selectmen
116 North Main Street
Boscawen, New Hampshire 03303

NAME AND ADDRESS OF FACILITY WHERE DISCHARGE OCCURS:

Penacook Wastewater Treatment Facility
7 Penacook Street
Penacook, NH 03303

RECEIVING WATER AND CLASSIFICATION:

Merrimack River Class B

PREPARATION OF THE DRAFT PERMIT AND CWA § 401 CERTIFICATION:

The U.S. Environmental Protection Agency (EPA) and the New Hampshire Department of
Environmental Services, Water Division (NHDES-WD) have cooperated in the development of a

draft permit for the Penacook Wastewater Treatment Facility, which discharges treated domestic and commercial wastewater. Sludge from this facility is trucked to the Hall Street Wastewater Treatment Facility for dewatering and stabilization. The effluent limits and permit conditions imposed have been drafted to assure compliance with the CWA and State water quality standards in Chapter 485-A of the New Hampshire Statutes: Water Pollution and Waste Disposal, and the New Hampshire Surface Water Quality Regulations, Env-Wq 1700 et seq. In addition, EPA has requested that the State certify the draft permit pursuant to Section 401 of the CWA and NHDES has determined that the draft permit, with any additional state conditions included in the state certification, assures compliance with Sections 208(e), 301, 302, 303, 306 and 307 of the CWA and with State water quality requirements.

INFORMATION ABOUT THE DRAFT PERMIT:

The draft permit and explanatory fact sheet may be obtained at no cost at http://www.epa.gov/region1/npdes/draft_permits_listing_nh.html or by contacting:

Michele Duspiva
U.S. Environmental Protection Agency – Region 1
5 Post Office Square, Suite 100 (06-4)
Boston, MA 02109-3912
Telephone: (617) 918-1682
Duspiva.Michele@epa.gov

The administrative record containing all documents relating to this draft permit including all data submitted by the applicant may be inspected at the EPA Boston office by appointment, Monday through Friday, except holidays and during facility closures due to COVID-19. All data submitted by the applicant are available as part of the administrative record.

PUBLIC COMMENT AND REQUEST FOR PUBLIC HEARING:

All persons, including applicants, who believe any condition of the draft permit is inappropriate, must raise all issues and submit all available arguments and all supporting material for their arguments in full by **July 23, 2020**, to the EPA contact and address or email address listed above. Any person, prior to such date, may submit a request in writing to EPA and NHDES for a public hearing to consider this draft permit and CWA § 401 certification. Such requests shall state the nature of the issues proposed to be raised in the hearing. A public hearing may be held after at least thirty days public notice if the Regional Administrator finds that response to this notice indicates significant public interest. In reaching a final decision on the draft permit, the Regional Administrator will respond to all significant comments and make these responses available to the public at EPA's Boston office.

FINAL PERMIT DECISION:

Following the close of the comment period, and after a public hearing, if such hearing is held, the Regional Administrator will issue a final permit decision and forward a copy of the final decision to the applicant and each person who has submitted written comments or requested notice.

THOMAS E. O'DONOVAN, DIRECTOR
WATER DIVISION
NEW HAMPSHIRE DEPARTMENT OF
ENVIRONMENTAL SERVICES

KEN MORAFF, DIRECTOR
WATER DIVISION
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY – REGION I