

**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”),

**Town of Palmer, Massachusetts**

is authorized to discharge from the facility located at

**Palmer Water Pollution Control Facility  
1 Norbell Street  
Three Rivers, MA 01080**

to receiving water named

**Chicopee River (Segment MA36-22)  
Chicopee River Watershed**

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

The Town of Monson is a Co-permittee for Part B, Unauthorized Discharges; Part C, Operation and Maintenance, which include conditions regarding the operation and maintenance of the collection system owned and operated by the Town; and Part D, Alternate Power Source. The permit number assigned to the Town of Monson for purposes of reporting in accordance with the requirements in Parts I.B, I.C, and I.D of this permit is **MAC011168**.

Operation and maintenance of the sewer systems shall be in compliance with the General Requirements of Part II and the terms and conditions of Part B, Part C and Part D of this permit. The Permittee and Co-permittee are severally liable under Part B, Part C and Part 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 B, Part C and Part 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 B, Part C and Part D. The responsible Town department is:

Town of Monson  
Water and Sewer Department  
198 WD Main Street, P.O. Box 3888  
Monson, MA 01057

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

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 January 21, 2011.

This permit consists of **Part I** including the cover page(s), **Attachment A** (Freshwater Acute Toxicity Test Procedure and Protocol, February 2011), **Attachment B** (Freshwater Chronic Toxicity Test Procedure and Protocol, March 2013), **Attachment C** (Reassessment of Technically Based Industrial Discharge Limits); **Attachment D** (NPDES Permit Requirement for Industrial Pretreatment Annual Report); **Attachment E** (PFAS Analyte List); and **Part II** (NPDES Part II Standard Conditions, April 2018).

Signed this            day of

**KENNETH** Digitally signed by  
**MORAFF** KENNETH MORAFF  
Date: 2023.09.28  
10:30:43 -04'00'

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

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<sup>1</sup> Procedures for appealing EPA's Final Permit decision may be found at 40 CFR § 124.19.

## 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 027 to the Chicopee 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 <sup>1,2,3</sup>	
	Average Monthly	Average Weekly	Maximum Daily	Measurement Frequency	Sample Type <sup>4</sup>
Rolling Average Effluent Flow <sup>5</sup>	5.6 MGD <sup>5</sup>	---	---	Continuous	Recorder
Effluent Flow <sup>5</sup>	Report MGD	---	Report MGD	Continuous	Recorder
BOD <sub>5</sub>	30 mg/L 1,400 lb/day	45 mg/L 2,100 lb/day	Report mg/L	2/Week	Composite
BOD <sub>5</sub> Removal	≥ 85 %	---	---	1/Month	Calculation
TSS	30 mg/L 1,400 lb/day	45 mg/L 2,100 lb/day	Report mg/L	2/Week	Composite
TSS Removal	≥ 85 %	---	---	1/Month	Calculation
pH Range <sup>6</sup>	6.0 - 8.3 S.U.			1/Day	Grab
Total Residual Chlorine <sup>7,8</sup>	0.16 mg/L	---	0.28 mg/L	3/Day	Grab
<i>Escherichia coli</i> <sup>7,8</sup> (April 1 – October 31)	126 cfu/100 mL	---	409 cfu/100 mL	2/Week	Grab
Total Lead	6.1 µg/L	---	Report	2/Month	Composite
Total Copper	34.9 µg/L	---	45.5 µg/L	1/Month	Composite
Total Phosphorus (May 1 – October 31)	1.0 mg/L	2.0 mg/L	---	2/Week	Composite
Total Phosphorus (November 1 – April 30)	1.0 mg/L	---	---	1/Month	Composite
Total Kjeldahl Nitrogen <sup>9</sup> (April 1 – October 31) (November 1 – March 31)	Report mg/L Report mg/L	---	Report mg/L ---	1/Week 1/Month	Composite

Effluent Characteristic	Effluent Limitation			Monitoring Requirements <sup>1,2,3</sup>	
	Average Monthly	Average Weekly	Maximum Daily	Measurement Frequency	Sample Type <sup>4</sup>
Nitrate + Nitrite <sup>9</sup> (April 1 – October 31) (November 1 – March 31)	Report mg/L Report mg/L	---	Report mg/L ---	1/Week 1/Month	Composite
Total Nitrogen <sup>9</sup> (April 1 – October 31)	Report mg/L Report lb/day	---	Report mg/L ---	1/Week	Calculation
Total Nitrogen <sup>9</sup> (November 1 – March 31)	Report mg/L Report lb/day	---	Report mg/L ---	1/Month	Calculation
Rolling Average Total Nitrogen <sup>10</sup>	374 lb/day	---	---	1/Month	Calculation
PFAS Analytes <sup>11</sup>	---	---	Report ng/L	1/Quarter	Grab
Adsorbable Organic Fluorine <sup>12</sup>	---	---	Report ng/L	1/Quarter	Grab
<b>Whole Effluent Toxicity (WET) Testing<sup>13,14</sup></b>					
LC <sub>50</sub>	---	---	≥ 100 %	2/Year	Composite
C-NOEC	---	---	≥ 7 %	2/Year	Composite
Hardness	---	---	Report mg/L	2/Year	Composite
Ammonia Nitrogen	---	---	Report mg/L	2/Year	Composite
Total Aluminum	---	---	Report mg/L	2/Year	Composite
Total Cadmium	---	---	Report mg/L	2/Year	Composite
Total Copper	---	---	Report mg/L	2/Year	Composite
Total Nickel	---	---	Report mg/L	2/Year	Composite
Total Lead	---	---	Report mg/L	2/Year	Composite
Total Zinc	---	---	Report mg/L	2/Year	Composite
Total Organic Carbon	---	---	Report mg/L	2/Year	Composite

Ambient Characteristic <sup>15</sup>	Reporting Requirements			Monitoring Requirements <sup>1,2,3</sup>	
	Average Monthly	Average Weekly	Maximum Daily	Measurement Frequency	Sample Type <sup>4</sup>
Hardness	---	---	Report mg/L	2/Year	Grab
Ammonia Nitrogen	---	---	Report mg/L	2/Year	Grab



Total Aluminum	---	---	Report mg/L	2/Year	Grab
Total Cadmium	---	---	Report mg/L	2/Year	Grab
Total Copper	---	---	Report mg/L	2/Year	Grab
Total Nickel	---	---	Report mg/L	2/Year	Grab
Total Lead	---	---	Report mg/L	2/Year	Grab
Total Zinc	---	---	Report mg/L	2/Year	Grab
Total Organic Carbon	---	---	Report mg/L	2/Year	Grab
Dissolved Organic Carbon <sup>16</sup>	---	---	Report mg/L	2/Year	Grab
pH <sup>17</sup>	---	---	Report S.U.	2/Year	Grab
Temperature <sup>17</sup>	---	---	Report °C	2/Year	Grab
Total Phosphorus <sup>18</sup> (April 1 - October 31)	---	---	Report mg/L	1/Month	Grab

Influent Characteristic	Reporting Requirements			Monitoring Requirements <sup>1,2,3</sup>	
	Average Monthly	Average Weekly	Maximum Daily	Measurement Frequency	Sample Type <sup>4</sup>
BOD <sub>5</sub>	Report mg/L	---	---	2/Month	Composite
TSS	Report mg/L	---	---	2/Month	Composite
PFAS Analytes <sup>11</sup>	---	---	Report ng/L	1/Quarter	Grab
Adsorbable Organic Fluorine <sup>12</sup>	---	---	Report ng/L	1/Quarter	Grab

Sludge Characteristic	Reporting Requirements			Monitoring Requirements <sup>1,2,3</sup>	
	Average Monthly	Average Weekly	Maximum Daily	Measurement Frequency	Sample Type <sup>4</sup>
PFAS Analytes <sup>11</sup>	---	---	Report ng/g	1/Quarter	Grab <sup>19</sup>

## Footnotes:

1. All samples shall be collected in a manner to yield representative data. 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. Occasional deviations from the routine sampling program are allowed, but the reason for the deviation shall be documented as an electronic attachment to the applicable discharge monitoring report. The Permittee shall report the results to the Environmental Protection Agency Region 1 (EPA) and MassDEP (the “State”) of any additional testing above that required herein, if testing is in accordance with 40 CFR Part 136.
2. In accordance with 40 CFR § 122.44(i)(1)(iv), the Permittee shall monitor according to sufficiently sensitive test procedures (i.e., methods) approved under 40 CFR Part 136 or required under 40 CFR 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 CFR Part 136 or required under 40 CFR chapter I, subchapter N or O for the measured pollutant or pollutant parameter. The term “minimum level” refers either to 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 the following 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.).

If the Permittee wishes to continue this lower pH range for future permit cycles, they must conduct a pH study and submit the results of said study to MassDEP at [massdep.npdes@mass.gov](mailto:massdep.npdes@mass.gov) within three years of the effective date of the Permit. For guidance on the study, the Permittee shall contact MassDEP at [massdep.npdes@mass.gov](mailto:massdep.npdes@mass.gov).

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. If chlorine is not utilized during a particular monitoring period, TRC monitoring is not necessary and the Permittee may enter "NODI" code 9 (i.e., conditional monitoring) in the relevant discharge monitoring report.

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. 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 *Escherichia coli* (*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] \* 8.34

10. The rolling annual total nitrogen limit is an annual average mass-based limit (lb/day), which shall be reported as a rolling 12-month average. The value will be calculated as the arithmetic mean of the monthly average total nitrogen for the reporting month and the monthly average total nitrogen for the previous 11 months. Report both the rolling annual average and the monthly average each month.

See Part I.G.1 for special conditions related to nitrogen.

11. Until there is an analytical method approved in 40 CFR Part 136 for PFAS, monitoring shall be conducted using Draft Method 1633. Report in NetDMR the results of all PFAS

analytes required to be tested in Method 1633, as shown in Attachment E. This reporting requirement for the listed PFAS parameters takes effect the first full calendar quarter following 6 months after the effective date of the permit.

12. Until there is an analytical method approved in 40 CFR Part 136 for Adsorbable Organic Fluorine, monitoring shall be conducted using Method 1621. This reporting requirement takes effect the first full calendar quarter following 6 months after EPA notifies the Permittee that Method 1621 has been multi-lab validated.
13. The Permittee shall conduct acute toxicity tests (LC50) and chronic toxicity tests (C-NOEC) in accordance with test procedures and protocols specified in Attachment A and B of this permit. LC50 and C-NOEC are defined in Part II.E. of this permit. The Permittee shall test the daphnid, *Ceriodaphnia dubia*. Toxicity test samples shall be collected during the same weeks each time of calendar quarters ending March 31<sup>st</sup> and 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.
14. For Part I.A.1., Whole Effluent Toxicity Testing, the Permittee shall conduct the analyses specified in **Attachment A and B**, 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 and B**, Section IV., DILUTION WATER. Minimum levels and test methods are specified in **Attachment A and B**, Part VI. CHEMICAL ANALYSIS.
15. For Part I.A.1., Ambient Characteristic, the Permittee shall conduct the analyses specified in **Attachment A and B**, 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 and B**. Minimum levels and test methods are specified in **Attachment A and B**, Part VI. CHEMICAL ANALYSIS.
16. 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.
17. 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.
18. See Part I.G.2 for special conditions regarding ambient phosphorus monitoring.

19. Sludge sampling shall be as representative as possible based on guidance found at <https://www.epa.gov/sites/production/files/2018-11/documents/potw-sludge-sampling-guidance-document.pdf>.

**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 pollutants in concentrations or combinations that, in the receiving water, settle to form objectionable deposits; float as debris, scum or other matter to form nuisances; produce objectionable odor, color, taste or turbidity; or produce undesirable or nuisance species of aquatic life.
4. The discharge shall be free from pollutants in concentrations or combinations that adversely affect the physical, chemical, or biological nature of the bottom.
5. The discharge shall not result in pollutants in concentrations or combinations in the receiving water that are toxic to humans, aquatic life or wildlife.
6. The discharge shall be free from floating, suspended and settleable solids in concentrations or combinations that would impair any use assigned to the receiving water.
7. The discharge shall be free from oil, grease and petrochemicals that produce a visible film on the surface of the water, impart an oily taste to the water or an oily or other undesirable taste to the edible portions of aquatic life, coat the banks or bottom of the water course, or are deleterious or become toxic to aquatic life.
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 CFR 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.
10. In accordance with 40 CFR § 122.44(j)(1) the Permittee must identify, in terms of character and volume, any Significant Industrial Users (SIUs) discharging into the POTW subject to

Pretreatment Standards under section 307(b) of CWA and 40 CFR Part 403. SIUs information shall be updated at a minimum of once per year or at that frequency necessary to ensure that all SIUs are properly permitted and/or controlled. The records shall be maintained and updated as necessary.

## **B. UNAUTHORIZED DISCHARGES**

1. 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. The Permittee must provide verbal notification to EPA within 24 hours of becoming aware of any unauthorized discharge and a report within 5 days, in accordance with Part II.D.1.e (24-hour reporting). Providing that it contains the information required in Part II.D.1.e, submission of the MassDEP SSO Reporting Form (described in Part I.B.3 below) may satisfy the requirement for a written report. See Part I.H below for reporting requirements.
2. The Permittee must provide notification to the public on a publicly available website within 24 hours of becoming aware of any of the following unauthorized discharges: (a) any discharge of partially treated wastewater, including blended wastewater; (b) any Sanitary Sewer Overflow that discharges through a wastewater outfall, either directly or indirectly, to a surface water of the Commonwealth; (c) any SSO that flows into a surface water of the Commonwealth and is the result of the sanitary sewer system surcharging under high flow conditions when peak flows cannot be conveyed to a POTW due to capacity constraints; and (d) any SSO that flows into a surface water of the Commonwealth and is the result of a failure of a wastewater pump station or associated force main designed to convey peak flows of one million gallons per day or greater. Such notification shall include the location and description of the discharge; the approximate dates and times the discharge or overflow began, and its duration; and the estimated volume. Fulfilling these requirements does not relieve the Permittee of the responsibility of complying with 314 CMR 16.00.
3. Notification of SSOs to MassDEP shall be made on its SSO Reporting Form (which includes MassDEP Regional Office telephone numbers). The reporting form and instruction for its completion may be found on-line at <https://www.mass.gov/how-to/sanitary-sewer-overflowbypassbackup-notification>. Notification to MassDEP and EPA shall not release the Permittee from the MassDEP public notification requirements of 314 CMR 16.00.

## **C. OPERATION AND MAINTENANCE OF THE TREATMENT AND CONTROL FACILITIES**

1. Adaptation Planning
  - a. *Adaptation Plan.* Within the timeframes described below, the Permittee and Co-permittee shall develop an Adaptation Plan for the Wastewater Treatment System

(WWTS)<sup>2</sup> and/or sewer system<sup>3</sup> that they own and operate. Additional information on the procedures and resources to aid permittees in development of the Adaptation Plan is provided on EPA's Region 1 NPDES website at <https://www.epa.gov/npdes-permits/npdes-water-permit-program-new-england>. The Adaptation Plan shall contain sufficient detail for EPA to evaluate the analyses.

*Component 1: Identification of Vulnerable Critical Assets.* Within 24 months of the effective date of the permit, the Permittee and Co-permittee shall develop and sign, consistent with the signatory requirements in Part II.D.2 of this Permit, an identification of critical assets<sup>4</sup> and related operations<sup>5</sup> within the WWTS and/or sewer system which they own and operate, as applicable, that are most vulnerable due to major storm and flood events<sup>6</sup> under baseline conditions<sup>7</sup> and under future conditions.<sup>8</sup> This information shall be provided to EPA upon request. For these critical assets and related operations, the Permittee and Co-permittee shall assess the ability of each to function properly in the event of impacts<sup>9</sup> from major storm and flood events in terms of effluent flow (e.g., bypass, upset or failure), sewer flow (e.g., overflow, inflow and infiltration), and discharges of pollutants (e.g., effluent limit exceedance).

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<sup>2</sup> "Wastewater Treatment System" or "WWTS" means any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It does not include sewers, pipes and other conveyances to the wastewater treatment facility.

<sup>3</sup> "Sewer System" refers to the sewers, pump stations, manholes and other infrastructure use to convey sewage to the wastewater treatment facility from homes or other sources.

<sup>4</sup> A "critical asset" is an asset necessary to ensure the safe and continued operation of the WWTS or the sewer system and ensure the forward flow and treatment of wastewater in accordance with the limits set forth in this permit.

<sup>5</sup> "Asset related operations" are elements of an asset that enable that asset to function. For example, pumps and power supply enable the operation of a pump station.

<sup>6</sup> "Major storm and flood events" refer to instances resulting from major storms such as hurricanes, extreme/heavy precipitation events, and pluvial, fluvial, and flash flood events such as high-water events, storm surge, and high-tide flooding, including flooding caused by sea level change. "Extreme/heavy precipitation" refers to instances during which the amount of rain or snow experienced in a location substantially exceeds what is normal according to location and season.

<sup>7</sup> "Baseline conditions" refers to the 100-year flood based on historical records.

<sup>8</sup> "Future conditions" refers to projected flood elevations using one of two approaches: a) Climate Informed Science Approach (CISA): The elevation and flood hazard area that result from using the best-available, actionable hydrologic and hydraulic data and methods that integrate current and future changes in flooding based on climate science. These shall include both short term (10-25 years forward-looking) and long term (25-70 years forward-looking) relative to the baseline conditions and must include projections of flooding due to major storm and flood events using federal, state and local data, where available; b) Freeboard Value and 500-year floodplain Approach: The flood elevations that result from adding an additional 2 feet to the 100-year flood elevation for non-critical actions and by adding an additional 3 feet to the 100-year flood elevation for critical actions compared to the flood elevations that result from 500-year flood (the 0.2% -annual-chance flood) and selecting the higher of the two flood elevations.

<sup>9</sup> "Impacts" refers to a strong effect on an asset and/or asset-related operation that may include destruction, damage or ineffective operation of the asset and/or asset operation. Impacts may be economic, environmental, or public health related.



*Component 2: Adaptive Measures Assessment.*<sup>10</sup> Within 36 months of the effective date of the permit, the Permittee and Co-Permittee shall develop and sign, consistent with the signatory requirements in Part II.D.2 of this Permit, an assessment of adaptive measures,<sup>11</sup> and/or, if appropriate, the combinations of adaptative measures that minimize the impact of future conditions on the critical assets and related operations of the WWTS and/or sewer system(s). This information shall be provided to EPA upon request. The Permittee and Co-permittee shall identify the critical assets and related operations at the highest risk of not functioning properly under such conditions and, for those, select the most effective adaptation measures that will ensure proper operation of the highest risk critical assets and the system as a whole.

*Component 3: Implementation and Maintenance Schedule.* Within 48 months of the effective date of the permit, the Permittee and Co-Permittee shall submit to EPA a proposed schedule for implementation and maintenance of adaptive measures. The Implementation and Maintenance Schedule shall summarize the general types of significant risks<sup>12</sup> identified in Component 1, including the methodology and data used to derive future conditions<sup>13</sup> used in the analysis and describe the adaptive measures taken (or planned) to minimize those risks from the impact of major storm and flood events for each of the critical assets and related operations of the WWTS and the sewer system and how those adaptive measures will be maintained, including the rationale for either implementing or not implementing each adaptive measure that was assessed.

- b. *Credit for Prior Assessment(s) Completed by Permittee and/or Co-permittee.* If the Permittee and/or Co-permittee have undertaken assessment(s) that were completed within 5 years of the effective date of this permit, or is [are] currently undertaking an assessment that address some or all of the Adaptation Plan components, such prior assessment(s) undertaken by the Permittee and/or Co-permittee may be used (as long as the reporting time frames (set forth in Part I.C.1.a) and the signatory requirements (set forth in Part II.D.2 of this permit) are met) in satisfaction of some or all of these components, as long as the Permittee and/or Co-permittee explains how its prior

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<sup>10</sup> The Permittee and Co-permittee may complete this component using EPA's Climate Resilience Evaluation and Awareness Tool (CREAT) Risk Assessment Application for Water Utilities, found on EPA's website Creating Resilient Water Utilities (CRWU) (<https://www.epa.gov/crwu>), or methodology that provides comparable analysis.

<sup>11</sup> "Adaptive Measures" refers to physical infrastructure or actions and strategies that a utility can use to protect their assets and mitigate the impacts of threats. They may include but are not limited to: building or modifying infrastructure, utilization of models (including but not limited to: flood, sea-level rise and storm surge, sewer/collection system, system performance), monitoring and inspecting (including but not limited to: flood control, infrastructure, treatment) and repair/retrofit.

<sup>12</sup> In light of security concerns posed by the public release of information regarding vulnerabilities to wastewater infrastructure, the Permittee shall provide information only at a level of generality that indicates the overall nature of the vulnerability but omitting specific information regarding such vulnerability that could pose a security risk.

<sup>13</sup> See footnote 8.

assessments specifically meet the requirements set forth in this permit and how the Permittee and/or Co-permittee will address any permit requirements that have not been addressed in its prior or ongoing assessment(s).

- c. *Adaptation Plan Progress Report.* The Permittee and Co-Permittee shall submit an Adaptation Plan Progress Report on the Adaptation Plan for the prior calendar year that documents progress made toward completing the Adaptation Plan and, following its completion, any progress made toward implementation of adaptive measures, and any changes to the WWTF or other assets that may impact the current risk assessment. The first Adaptation Progress Report is due the first March 31 following completion of the Identification of Critical Vulnerable Assets (*Component 1*) and shall be included with the annual report required in Part I.C.3 below each year thereafter. The Adaptation Plan shall be revised if on- or off-site structures are added, removed, or otherwise significantly changed in any way that will impact the vulnerability of the WWTS or sewer system.

## 2. Sewer System

Operation and maintenance (O&M) of the sewer system shall be in compliance with 40 CFR § 122.41 (d) and (e) and the terms and conditions of the Part II Standard Conditions, B. Operation and Maintenance of Pollution Controls which is attached to this Permit. The Permittee and Co-permittee shall complete the following activities for the collection system which it owns:

- a. 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 Sewer System O&M Plan required pursuant to Part I.C.2.e. below.

- b. 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 Sewer System O&M Plan required pursuant to Part I.C.2.e. below.

- c. 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 Sewer System O&M Plan required pursuant to Part I.C.2.e. below.

d. Sewer System Mapping

Within 30 months of the effective date of this permit, the Permittee and Co-permittee shall prepare a map of the sewer collection system it owns. The map shall be on a street basemap of the community, with sufficient detail and at a scale to allow easy interpretation. The sewer system information shown on the map shall be based on current conditions and shall be kept up-to-date. If any items listed below, such as the location of all outfalls, are not fully documented, the Permittee and Co-permittee must clearly identify each component of the dataset that is incomplete, as well as the date of the last update of the mapping product. Such map(s) shall include, but not be limited to the following:

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

e. Sewer System Operation and Maintenance Plan

The Permittee and Co-permittee shall develop and implement a *Sewer System Operation and Maintenance Plan* for the portion of the system it owns.

- (1) Within six (6) months of the effective date of the permit, the Permittee and Co-permittee shall submit to EPA and the State:
  - i. A description of the collection system management goals, staffing, information management, and legal authorities;
  - ii. 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
  - iii. A schedule for the development and implementation of the full *Sewer System Operation and Maintenance Plan* including the elements in Parts I.C.2.e.(2)(i) through (2)(viii) below.
  
- (2) The full Sewer System O&M Plan shall be completed, implemented and submitted to EPA and the State within twenty-four (24) months from the effective date of this permit. The Plan shall include:
  - i. The required submittal from Part I.C.2.e.(1) above, updated to reflect current information;
  - ii. A preventive maintenance and monitoring program for the collection system;
  - iii. Description of sufficient staffing necessary to properly operate and maintain the sanitary sewer collection system and how the operation and maintenance program is staffed;
  - iv. Description of funding, the source(s) of funding and provisions for funding sufficient for implementing the plan;
  - v. 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;
  - vi. 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;

- vii. An educational public outreach program for all aspects of I/I control, particularly private inflow; and
- viii. An Overflow Emergency Response Plan to protect public health from overflows and unanticipated bypasses or upsets that exceed any effluent limitation in the permit.

### 3. Annual Reporting Requirement

The Permittee and Co-permittee shall submit a summary report of activities related to the implementation of its O&M Plans during the previous calendar year. The report shall be submitted to EPA and the State annually by March 31. The first annual report is due the first March 31 following submittal of the Sewer System O&M Plan required by Part I.C.2.e.(2) of this permit. 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;
- f. If the average annual flow in the previous calendar year exceeded 80 percent of the facility's 5.6 MGD design flow (4.48 MGD), 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.
- g. The Adaptation Plan Progress Report described in Part I.C.1.c above.

**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 AND PRETREATMENT PROGRAM**

## 1. Legal Authority

The Permittee has been delegated primary responsibility for enforcing against discharges prohibited by 40 CFR 403.5 and applying and enforcing any national Pretreatment Standards established by the United States Environmental Protection Agency in accordance with Section 307 (b) and (c) of The Clean Water Act (Act), as amended by The Water Quality Act (WQA), of 1987.

The Permittee shall operate an industrial pretreatment program in accordance with the General Pretreatment Regulations found in 40 CFR Part 403 and the approved pretreatment program submitted by the Permittee. The pretreatment program was approved on **[October 14, 2005]** and has subsequently incorporated substantial modifications as approved by EPA. The approved pretreatment program, and any approved modifications thereto, is hereby incorporated by reference and shall be implemented in a manner consistent with the following procedures, as required by 40 CFR Part 403.

The Permittee must have or develop a legally enforceable municipal code or rules and regulations to authorize or enable the POTW to apply and enforce the requirements of Sections 307(b) and (c) and 402(b)(8) and (9) of the Act and comply with the requirements of § 403.8(f)(1). At a minimum, this legal authority shall enable the POTW to:

- a. Deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTW by Industrial Users where such contributions do not meet applicable Pretreatment Standards and Requirements or where such contributions would cause the POTW to violate its NPDES permit;
- b. Require compliance with applicable Pretreatment Standards and Requirements by Industrial Users;
- c. Control through Permit, order, or similar means, the contribution to the POTW by each Industrial User to ensure compliance with applicable Pretreatment Standards and Requirements. In the case of Industrial Users this control shall be achieved through permits or equivalent control mechanism identified as significant under § 403.3(v), as required by § 403.8(f)(1)(iii);
- d. Require (a) the development of a compliance schedule by each Industrial User for the installation of technology required to meet applicable Pretreatment Standards and Requirements and (b) the submission of all notices and self-monitoring

reports from Industrial Users as are necessary to assess and assure compliance by Industrial Users with Pretreatment Standards and Requirements, including but not limited to the reports required in § 403.12;

- e. Carry out all inspection, surveillance and monitoring procedures necessary to determine, independent of information supplied by Industrial Users, compliance or noncompliance with applicable Pretreatment Standards and Requirements by Industrial Users. At a minimum, all significant industrial users shall be sampled and inspected at the frequency established in the approved IPP, but in no case less than once per year, and with adequate maintenance of records, Representatives of the POTW shall be authorized to enter any premises of any Industrial User in which a Discharge source or treatment system is located or in which records are required to be kept under § 403.12(o) to assure compliance with Pretreatment Standards. Such authority shall be at least as extensive as the authority provided under section 308 of the Act;
- f. Obtain remedies for noncompliance by any Industrial User with any Pretreatment Standard and Requirement. All POTW's shall be able to seek injunctive relief for noncompliance by Industrial Users with Pretreatment Standards and Requirements. All POTWs shall also have authority to seek or assess civil or criminal penalties in at least the amount of \$1,000 a day for each violation by Industrial Users of Pretreatment Standards and Requirements in accordance with § 403.8(f)(1)(vii)(A); and
- g. Comply with the confidentiality requirements set forth in § 403.14.

## 2. Implementation Requirements

The Permittee shall operate a pretreatment program in accordance with the General Pretreatment Regulations found in 40 CFR Part 403 and with the legal authorities, policies, procedures, and financial provisions of the approved Pretreatment program submitted by the Permittee. The approved Pretreatment program, and any approved modifications thereto, is hereby incorporated by reference and shall be implemented in a manner consistent with the following procedures, as required by 40 CFR Part 403:

- a. In accordance with 40 CFR § 122.44(j)(1), Identify, in terms of character and volume of pollutants contributed from Industrial Users discharging into the POTW subject to Pretreatment Standards under section 307(b) of CWA and 40 CFR Part 403.
- b. The Permittee must notify these identified Industrial Users of applicable Pretreatment Standards and any applicable requirements in accordance with 40 CFR § 403.8(f)(2)(iii). Pursuant to 40 CFR § 403.8(f)(6), prepare and maintain a list of significant industrial users and identify the criteria in 40 CFR § 403.3(v)(1) applicable to each industrial user.

- c. The Permittee must carry out inspection procedures and randomly sample and analyze the effluent from Industrial Users and conduct surveillance activities in accordance with 40 CFR § 403.8(f)(2)(v), which will determine independent of information supplied by the industrial user, whether the industrial user is in compliance with the Pretreatment Standards. At a minimum, all significant industrial users shall be sampled and inspected at the frequency established in the approved IPP but in no case less than once per year and maintain adequate records.
- d. The Permittee shall receive and analyze self-monitoring reports and other notices submitted by Industrial Users in accordance with the self-monitoring requirements in 40 CFR § 403.12; This must include timely and appropriate reviews of industrial user reports and notifications to identify all violations of the user's permit, the local ordinance, and federal pretreatment standards and requirements.
- e. The Permittee shall evaluate whether each SIU needs a plan to control Slug Discharges in accordance with 40 CFR § 403.8(f)(2)(vi). SIUs must be evaluated within 1 year of being designated an SIU. If required, the Permittee shall require the SIU to prepare or update, and implement a slug prevention plan that contains at least the minimum required elements in 40 CFR § 403.8(f)(2)(vi)(A-D) and incorporate the slug control requirements into the SIU's control mechanism;
- f. Pursuant to 40 CFR § 403.8(f)(2)(vii), the Permittee shall investigate instances of non-compliance with Pretreatment Standards and requirements indicated in required reports and notices or indicated by analysis, inspection, and surveillance activities.
- g. The Permittee shall publish, at least annually, in a newspaper or newspapers of general circulation that provides meaningful public notice within the jurisdiction(s) served by the POTW, a list of all non-domestic users which, at any time in the previous 12 months, were in significant noncompliance as defined in 40 CFR § 403.8 (f)(2)(viii).
- h. The Permittee shall provide sufficient resources and qualified personnel to implement its Pretreatment program in accordance with 40 CFR § 403.8(f)(3);
- i. The Permittee shall enforce all applicable Pretreatment Standards and requirements and obtain remedies for noncompliance by any industrial user. The Permittee shall develop, implement, and maintain an enforcement response plan in accordance with 40 CFR § 403.8(f)(5); and
- j. Pursuant to 40 CFR § 403.8(g), the Permittee that chooses to receive electronic documents must satisfy the requirements of 40 CFR Part 3 – (Electronic



reporting).

### 3. Local Limit Development

- a. The Permittee shall develop, continually maintain, and enforce, as necessary, local limits to implement the general and specific prohibitions in 40 CFR § 403.5(c)(1) which prohibit the introduction of any pollutant(s) which cause pass through or interference and the introduction of specific pollutants to the waste treatment system from any source of non-domestic discharge.
- b. The Permittee shall develop and enforce specific effluent limits (local limits) for Industrial User(s), and all other users, as appropriate, which together with appropriate changes in the POTW Treatment Plant's Facilities or operation, are necessary to ensure continued compliance with the POTW's NPDES permit or sludge use or disposal practices. Specific local limits shall not be developed and enforced without individual notice to persons or groups who have requested such notice and an opportunity to respond. Within 90 days of the effective date of the permit, the Permittee shall prepare and submit a written technical evaluation to EPA analyzing the need to revise local limits. As part of this evaluation, the Permittee shall assess how the POTW performs with respect to influent and effluent of pollutants, water quality concerns, sludge quality, sludge processing concerns/inhibition, biomonitoring results, activated sludge inhibition, worker health and safety and collection system concerns. In preparing this evaluation, the Permittee shall complete and submit the attached form (see Attachment C – Reassessment of Technically Based Industrial Discharge Limits) with the technical evaluation to assist in determining whether existing local limits need to be revised. Justifications and conclusions should be based on actual plant data if available and should be included in the report. Should the evaluation reveal the need to revise local limits, the Permittee shall complete the revisions within 120 days of notification by EPA and submit the revisions to EPA for approval. The Permittee shall carry out the local limits revisions in accordance with EPA's Local Limit Development Guidance (July 2004).

### 4. Notification Requirements

- a. The Permittee must notify EPA of any new introductions or any substantial change in pollutants from any Industrial User within sixty (60) days following the introduction or change, as required in 40 CFR 122.42(b)(1-3). Such notice must identify:
  - (1) Any new introduction of pollutants from an Industrial User which would be subject to Sections 301, 306, and 307 of the Act if it were directly discharging those pollutants; or
  - (2) Any substantial change in the volume or character of pollutants being discharged by any Industrial User;

- (3) For the purposes of this section, adequate notice shall include information on:
  - i. The identity of the Industrial User;
  - ii. The nature and concentration of pollutants in the discharge and the average and maximum flow of the discharge; and
  - iii. Any anticipated impact of the change on the quantity or quality of effluent to be discharged from or biosolids produced at such POTW.
- b. The Permittee must notify EPA as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required 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 pursuant to 40 CFR § 122.29 (b);
  - (2) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged; or
  - (3) The alteration or addition results in a significant change in the Permittee's sludge use or disposal practices.
- c. The Permittee must notify EPA if the POTW modifies or intends to modify its Pretreatment Program.
- d. The Permittee must notify EPA of any instance of pass through or interference, known or suspected to be related to a discharge from an Industrial User. The notification shall be attached to the DMR submitted EPA and shall describe the incident, including the date, time, length, cause, and the steps taken by the Permittee and Industrial User to address the incident.
- e. The Permittee shall notify all Industrial Users of the users' obligations to comply with applicable requirements under Subtitles C and D of the Resource Conservation and Recovery Act (RCRA) and that Industrial Users shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical as well as their obligation to notify the EPA Regional Waste Management Division Director, in writing of any discharge into the POTW of a substance, which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. Such notification must include:
  - (1) the name of the hazardous waste as set forth in 40 CFR Part 261;
  - (2) the EPA hazardous waste number; and
  - (3) the type of discharge (continuous, batch, or other).

## 5. Annual Report Requirements

The Permittee shall provide EPA with a hard copy annual report that briefly describes the POTW's program activities, including activities of all participating agencies, if more than one jurisdiction is involved in the local program. The report required by this section shall be submitted no later than one year after approval of the POTW's Pretreatment Program, and at least annually thereafter. The report must include, at a minimum, the applicable required data in Appendix A to 40 CFR Part 127, a summary of changes to the POTW's pretreatment program that have not been previously reported to EPA, and any other relevant information requested by EPA. Beginning on December 21, 2025 all annual reports submitted in compliance with this section must be submitted electronically by the POTW Pretreatment Program to EPA or initial recipient, as defined in 40 CFR § 127.2(b). Electronic submittals shall be in compliance with this section and 40 CFR Part 3 (including, in all cases, subpart D to Part 3), 40 CFR § 122.22(e), and 40 CFR Part 127 (Part 127 is not intended to undo existing requirements for electronic reporting). Prior to this date, and independent of 40 CFR Part 127, EPA may also require POTW Pretreatment Programs to electronically submit annual reports under this section if specified by a particular permit or if required to do so by state law.

The Permittee shall provide EPA with an annual report describing the Permittee's pretreatment program activities for the twelve (12) month period ending 60 days prior to the due date in accordance with 40 CFR § 403.12(i). The annual report shall be consistent with the format described in Attachment D (NPDES Permit Requirement for Industrial Pretreatment Annual Report) of this permit and shall be submitted by **June 1<sup>st</sup>** of each year.

## 6. Beginning the first full calendar year after the effective date of the permit, the Permittee shall commence annual sampling of the following types of industrial discharges into the POTW:

- Commercial Car Washes
- Platers/Metal Finishers
- Paper and Packaging Manufacturers
- Tanneries and Leather/Fabric/Carpet Treaters
- Manufacturers of Parts with Polytetrafluoroethylene (PTFE) or teflon type coatings (e.g., bearings)
- Landfill Leachate
- Centralized Waste Treaters
- Known or Suspected PFAS Contaminated Sites
- Fire Fighting Training Facilities
- Airports
- Any Other Known or Expected Sources of PFAS

Sampling shall be conducted using Method 1633 for the PFAS analytes listed in Attachment E. The industrial discharges sampled, and the sampling results shall be summarized and included in the annual report (see Part I.E.3).

**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 CFR § 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 CFR 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 CFR Part 503 do not apply to facilities which dispose of sludge in a municipal solid waste landfill. 40 CFR § 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 CFR § 503.6.
5. The 40 CFR 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 CFR 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.

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 CFR § 503.8.

7. Under 40 CFR § 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 CFR § 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 CFR § 503.9(r), for use or disposal, then the Permittee remains responsible to ensure that the applicable requirements in Part 503 are met. 40 CFR § 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 CFR § 503 Subpart B.
8. The Permittee shall submit an annual report containing the information specified in the 40 CFR 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).

**G. SPECIAL CONDITIONS**

1. The Permittee shall continue to optimize the treatment facility operations relative to total nitrogen (TN) removal through measures and/or operational changes designed to enhance the removal of nitrogen in order to minimize the annual average mass discharge of total nitrogen.

The Permittee shall submit an annual report to EPA and the State, by **February 1st** of each year, that summarizes activities related to optimizing nitrogen removal efficiencies, documents the annual nitrogen discharge load from the facility, and tracks trends relative to the previous calendar year and the previous five (5) calendar years. If, in any year, the treatment facility discharges of TN on an average annual basis have increased, the annual report shall include a detailed explanation of the reasons why TN discharges have increased, including any changes in influent flows/loads and any operational changes. The report shall include all supporting data.

2. Ambient Phosphorus Monitoring

Beginning in April of the first even numbered year that occurs at least six months after permit issuance, and during even numbered years thereafter, the Permittee shall collect monthly samples from April through October at a location in the receiving water upstream of the facility and analyze the samples for total phosphorus. Sampling shall be conducted on any calendar day that is preceded by at least 72 hours with less than or equal to 0.1 inches of cumulative rainfall. A sampling plan shall be submitted to EPA and the State (in accordance with Part I.H.2 and Part I.H.7, respectively) at least three months prior to the first planned sampling date as part of a Quality Assurance Project Plan for review and State approval. For the years that monitoring is not required, the Permittee shall report NODI code "9" (conditional monitoring not required).

## 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 electronically using NetDMR no later than the 15th day of the month. 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. See Part I.H.7. 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 Industrial User and Pretreatment Related Reports

- a. Prior to 21 December 2025, all reports and information required of the Permittee in the Industrial Users and Pretreatment Program section of this permit shall be submitted to the Pretreatment Coordinator in EPA Region 1 Water Division (WD). Starting on 21 December 2025, these submittals must be done electronically as NetDMR attachments and/or 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/>. These requests, reports and notices include:

- (1) Annual Pretreatment Reports,

- (2) Pretreatment Reports Reassessment of Technically Based Industrial Discharge Limits Form,
  - (3) Revisions to Industrial Discharge Limits,
  - (4) Report describing Pretreatment Program activities, and
  - (5) Proposed changes to a Pretreatment Program
- b. This information shall be submitted to EPA WD as a hard copy at the following address:

**U.S. Environmental Protection Agency  
Water Division  
Regional Pretreatment Coordinator  
5 Post Office Square - Suite 100 (06-03)  
Boston, MA 02109-3912**

4. 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/>.

5. 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;
- b. These reports, information, and requests shall be submitted to EPA WD electronically at [R1NPDESReporting@epa.gov](mailto:R1NPDESReporting@epa.gov).

6. Submittal of Sewer Overflow and Bypass Reports and Notifications

The Permittee shall submit required reports and notifications under Part II.B.4.c, for bypasses, and Part II.D.1.e, for sanitary sewer overflows (SSOs) electronically using EPA's

NPDES Electronic Reporting Tool (“NeT”), which will be accessible through EPA’s Central Data Exchange at <https://cdx.epa.gov/>.

7. State Reporting

Duplicate signed copies of all WET test reports shall be submitted to the Massachusetts Department of Environmental Protection, Division of Watershed Management, at the following address:

**Massachusetts Department of Environmental Protection  
Bureau of Water Resources  
Division of Watershed Management  
8 New Bond Street  
Worcester, Massachusetts 01606**

8. 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  
MassDEP Emergency Response at 888-304-1133**

9. Submittal of Co-Permittee Reports to EPA Enforcement and Compliance Assurance Division (ECAD) in Hard Copy Form and Electronic Courtesy Copies via Email

- a. The following reports shall be signed and dated originals, submitted as hard copy, with a cover letter describing the submission:
  - (1) Collection System Operation and Maintenance Plan (from Co-permittee); and
  - (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**

- c. In addition, the Co-permittee shall send to EPA ECAD electronic courtesy copies of



hard copy reports via email to: [R1NPDESReporting@epa.gov](mailto:R1NPDESReporting@epa.gov).

## I. STATE 401 CERTIFICATION CONDITIONS

This Permit has received state water quality certification issued by the State under § 401(a) of the CWA and 40 CFR § 124.53. EPA incorporates the following state water quality certification requirements into the Final Permit.

1. Pursuant to M.G.L. c. 21, §§ 26-53, and 314 CMR 3.00 and 4.00, including 314 CMR 3.11 (2)(a)6., and in order to ensure the maintenance of surface waters free from pollutants in concentrations or combinations that are toxic to humans, aquatic life, or wildlife, in accordance with 314 CMR 4.05(5)(e), MassDEP has determined that it is necessary that beginning six (6) months after the effective date of the 2023 NPDES permit, the permittee shall commence annual monitoring of all Significant Industrial Users<sup>14,15</sup>, discharging into the POTW using Draft Method 1633. Notwithstanding any other provision of the 2023 NPDES permit to the contrary, PFAS monitoring results for the 2023 NPDES permit and for the 2023 Massachusetts Surface Water Discharge (“SWD”) Permit shall be reported to MassDEP’s electronic database (eDEP) in accordance with the information available at the following website: the <https://www.mass.gov/how-to/submit-wastewaterresiduals-pfas-data-via-edep>., or as otherwise specified, within 30 days after the permittee receives the sampling results.
2. On or before January 31, 2024, the permittee shall submit to MassDEP at [massdep.npdes@mass.gov](mailto:massdep.npdes@mass.gov) a listing of all industrial dischargers with their addresses to be sampled in accordance with both the 2023 NPDES permit and the 2023 SWD and shall include:
  - a. All industries included in the categories listed in the 2023 NPDES permit Section IE, Industrial Users, Paragraph 6; and
  - b. All Significant Industrial Users as required by Paragraph 6 of the 2023 SWD. The listing shall be maintained by the permittee and updated with any changes. Whenever necessary, a copy of the updated listing reflecting changes shall be forwarded to MassDEP at [massdep.npdes@mass.gov](mailto:massdep.npdes@mass.gov) on or before the next January 31.

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<sup>14</sup> Significant Industrial User (SIU) is defined at 40 CFR part 403: All industrial users subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR chapter I, subpart N; **and** any other industrial user that discharges an average of 25,000 GPD or more of process wastewater to the POTW, contributes a process wastestream that makes up 5% or more of the average dry weather hydraulic or organic capacity of the POTW, or designated as such by the POTW on the basis that the industrial users has a reasonable potential for adversely affecting the POTW’s operation or for violating any Pretreatment Standards or requirement.

<sup>15</sup> This requirement applies to all Significant Industrial Users and not just those within the sectors identified by EPA in the NPDES permit.

## 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:

<https://www.epa.gov/cwa-methods/whole-effluent-toxicity-methods>

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 ADW with supporting documentation must be sent electronically to the NPDES Applications Coordinator in EPA Water Division (WD) at the following email address:

[R1NPDESReporting@epa.gov](mailto:R1NPDESReporting@epa.gov)

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 EPA Region 1 website at <https://www.epa.gov/aboutepa/epa-region-1-new-england> (click on NPDES, EPA Permit Attachments, Self-Implementing Alternate Dilution Water Guidance) for important details on alternate dilution water substitution requests.*

**EPA NEW ENGLAND EFFLUENT TOXICITY TEST CONDITIONS FOR THE DAPHNID, CERIODAPHNIA DUBIA 48 HOUR ACUTE TESTS<sup>1</sup>**

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 <sup>2</sup>	Receiving water, other surface water, synthetic water adjusted to the hardness and alkalinity of the receiving water (prepared using either Millipore Milli-Q <sup>R</sup> 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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(updated links/addresses 2023)

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

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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 TEST<sup>1</sup>**

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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 <sup>2</sup>	Receiving water, other surface water, synthetic water adjusted to the hardness and alkalinity of the receiving water (prepared using either Millipore Milli-Q <sup>R</sup> 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   |

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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 <sup>1</sup>	x	x	0.5
Total Residual Chlorine (TRC) <sup>2, 3</sup>	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:

- 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)
- 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
- 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.

## Attachment B

# FRESHWATER CHRONIC TOXICITY TEST PROCEDURE AND PROTOCOL USEPA Region 1

## I. GENERAL REQUIREMENTS

The permittee shall be responsible for the conduct of acceptable chronic toxicity tests using three fresh samples collected during each test period. The following tests shall be performed as prescribed in Part 1 of the NPDES discharge permit in accordance with the appropriate test protocols described below. (Note: the permittee and testing laboratory should review the applicable permit to determine whether testing of one or both species is required).

- **Daphnid (Ceriodaphnia dubia) Survival and Reproduction Test.**
- **Fathead Minnow (Pimephales promelas) Larval Growth and Survival Test.**

Chronic toxicity data shall be reported as outlined in Section VIII.

## II. METHODS

Methods to follow are those recommended by EPA in: Short Term Methods For Estimating The Chronic Toxicity of Effluents and Receiving Water to Freshwater Organisms, Fourth Edition, October 2002. United States Environmental Protection Agency. Office of Water, Washington, D.C., EPA 821-R-02-013. The methods are available on-line at <https://www.epa.gov/cwa-methods/whole-effluent-toxicity-methods>. Exceptions and clarification are stated herein.

## III. SAMPLE COLLECTION AND USE

A total of three fresh samples of effluent and receiving water are required for initiation and subsequent renewals of a freshwater, chronic, toxicity test. The receiving water control sample must be collected immediately upstream of the permitted discharge's zone of influence. Fresh samples are recommended for use on test days 1, 3, and 5. However, provided a total of three samples are used for testing over the test period, an alternate sampling schedule is acceptable. The acceptable holding times until initial use of a sample are 24 and 36 hours for on-site and off-site testing, respectively. A written waiver is required from the regulating authority for any hold time extension. All test samples collected may be used for 24, 48 and 72 hour renewals after initial use. All samples held for use beyond the day of sampling shall be refrigerated and maintained at a temperature range of 0-6° C.

All samples submitted for chemical and physical analyses will be analyzed according to Section VI of this protocol.

Sampling guidance dictates that, where appropriate, aliquots for the analysis required in this protocol shall be split from the samples, containerized and immediately preserved, or analyzed as per 40 CFR Part 136. EPA approved test methods require that samples collected for metals analyses be preserved immediately after collection. Testing for the presence of total residual chlorine (TRC) must be analyzed immediately or as soon as possible, for all effluent samples, prior to WET testing. TRC analysis may be performed on-site or by the toxicity testing laboratory and the samples must be dechlorinated, as necessary, using sodium thiosulfate prior to sample use for toxicity testing.

If any of the renewal samples are of sufficient potency to cause lethality to 50 percent or more of the test organisms in any of the test treatments for either species or, if the test fails to meet its permit limits, then chemical analysis for total metals (originally required for the initial sample only in Section VI) will be required on the renewal sample(s) as well.

#### IV. DILUTION WATER

Samples of receiving water must be collected from a location in the receiving water body 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. EPA strongly urges that screening for toxicity be performed prior to the set up of a full, definitive toxicity test any time there is a question about the test dilution water's ability to achieve test acceptability criteria (TAC) as indicated in Section V of this protocol. The test dilution water control response will be used in the statistical analysis of the toxicity test data. All other control(s) required to be run in the test will be reported as specified in the Discharge Monitoring Report (DMR) Instructions, Attachment F, page 2, Test Results & Permit Limits.

The test dilution water must be used to determine whether the test met the applicable TAC. When receiving water is used for test dilution, an additional control made up of standard laboratory water (0% effluent) is required. This control will be used to verify the health of the test organisms and evaluate to what extent, if any, the receiving water itself is responsible for any toxic response observed.

If dechlorination of a sample by the toxicity testing laboratory is necessary a "sodium thiosulfate" control, representing the concentration of sodium thiosulfate used to adequately dechlorinate the sample prior to toxicity testing, must be included in the test.

If the use of an alternate dilution water (ADW) is authorized, in addition to the ADW test control, the testing laboratory must, for the purpose of monitoring the receiving water, also run a receiving water control.

If the receiving water diluent is found to be, or suspected to be toxic or unreliable an ADW of known quality with hardness similar to that of the receiving water may be substituted. Substitution is species specific meaning that the decision to use ADW is made for each species and is based on the toxic response of that particular species. Substitution to an ADW is authorized in two cases. The first is the case where repeating a test due to toxicity in the site dilution water requires an **immediate decision** for ADW use be made by the permittee and toxicity testing laboratory. The second is in the case where two of the most recent documented incidents of unacceptable site dilution water toxicity requires ADW use in future WET testing.

For the second case, written notification from the permittee requesting ADW use **and** written authorization from the permit issuing agency(s) is required **prior to** switching to a long-term use of ADW for the duration of the permit.

Written requests for use of ADW with supporting documentation must be sent electronically to the NPDES Applications Coordinator in EPA Water Division (WD) at the following email address:

[R1NPDESReporting@epa.gov](mailto:R1NPDESReporting@epa.gov)

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 <https://www.epa.gov/aboutepa/epa-region-1-new-england> (click on NPDES, EPA Permit Attachments, Self-Implementing Alternate Dilution Water Guidance) for further important details on alternate dilution water substitution requests.*

## **V. TEST CONDITIONS AND TEST ACCEPTABILITY CRITERIA**

Method specific test conditions and TAC are to be followed and adhered to as specified in the method guidance document, EPA 821-R-02-013. If a test does not meet TAC the test must be repeated with fresh samples within 30 days of the initial test completion date.

### **V.1. Use of Reference Toxicity Testing**

Reference toxicity test results and applicable control charts must be included in the toxicity testing report.

If reference toxicity test results fall outside the control limits established by the laboratory for a specific test endpoint, a reason or reasons for this excursion must be evaluated, correction made and reference toxicity tests rerun as necessary.

If a test endpoint value exceeds the control limits at a frequency of more than one out of twenty then causes for the reference toxicity test failure must be examined and if problems are identified corrective action taken. The reference toxicity test must be repeated during the same month in which the exceedance occurred.

If two consecutive reference toxicity tests fall outside control limits, the possible cause(s) for the exceedance must be examined, corrective actions taken and a repeat of the reference toxicity test must take place immediately. Actions taken to resolve the problem must be reported.

#### V.1.a. Use of Concurrent Reference Toxicity Testing

In the case where concurrent reference toxicity testing is required due to a low frequency of testing with a particular method, if the reference toxicity test results fall slightly outside of laboratory established control limits, but the primary test met the TAC, the results of the primary test will be considered acceptable. However, if the results of the concurrent test fall well outside the established **upper** control limits i.e.  $\geq 3$  standard deviations for IC25 values and  $\geq$  two concentration intervals for NOECs, and even though the primary test meets TAC, the primary test will be considered unacceptable and must be repeated.

V.2. For the *C. dubia* test, the determination of TAC and formal statistical analyses must be performed using only the first three broods produced.

V.3. Test treatments must include 5 effluent concentrations and a dilution water control. An additional test treatment, at the permitted effluent concentration (% effluent), is required if it is not included in the dilution series.

## VI. CHEMICAL ANALYSIS

As part of each toxicity test's daily renewal procedure, pH, specific conductance, dissolved oxygen (DO) and temperature must be measured at the beginning and end of each 24-hour period in each test treatment and the control(s).

The additional analysis that must be performed under this protocol is as specified and noted in the table below.

<u>Parameter</u>	Effluent	Receiving Water	ML (mg/l)
Hardness <sup>1, 4</sup>	x	x	0.5
Total Residual Chlorine (TRC) <sup>2, 3, 4</sup>	x		0.02
Alkalinity <sup>4</sup>	x	x	2.0
pH <sup>4</sup>	x	x	--
Specific Conductance <sup>4</sup>	x	x	--
Total Solids <sup>6</sup>	x		--
Total Dissolved Solids <sup>6</sup>	x		--
Ammonia <sup>4</sup>	x	x	0.1
Total Organic Carbon <sup>6</sup>	x	x	0.5
Total Metals <sup>5</sup>			
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
    - USEPA 1983. Manual of Methods Analysis of Water and Wastes
      - Method 330.5
  3. Required to be performed on the sample used for WET testing prior to its use for toxicity testing
  4. Analysis is to be performed on samples and/or receiving water, as designated in the table above, from all three sampling events.
  5. Analysis is to be performed on the initial sample(s) only unless the situation arises as stated in Section III, paragraph 4
  6. Analysis to be performed on initial samples only

## VII. TOXICITY TEST DATA ANALYSIS AND REVIEW

### A. Test Review

#### 1. Concentration / Response Relationship

A concentration/response relationship evaluation is required for test endpoint determinations from both Hypothesis Testing and Point Estimate techniques. The test report is to include documentation of this evaluation in support of the endpoint values reported. The dose-response review must be performed as required in Section 10.2.6 of EPA-821-R-02-013. Guidance for this review can be found at [www.epa.gov/cwa-methods/whole-effluent-toxicity-methods](http://www.epa.gov/cwa-methods/whole-effluent-toxicity-methods)

In most cases, the review will result in one of the following three conclusions: (1) Results are reliable and reportable; (2) Results are anomalous and require explanation; or (3) Results are inconclusive and a retest with fresh samples is required.

#### 2. Test Variability (Test Sensitivity)

This review step is separate from the determination of whether a test meets or does not meet TAC. Within test variability is to be examined for the purpose of evaluating test sensitivity. This evaluation is to be performed for the sub-lethal hypothesis testing endpoints reproduction and growth as required by the permit. The test report is to include documentation of this evaluation to support that the endpoint values reported resulted from a toxicity test of adequate sensitivity. This evaluation must be performed as required in Section 10.2.8 of EPA-821-R-02-013.

To determine the adequacy of test sensitivity, USEPA requires the calculation of test percent minimum significant difference (PMSD) values. In cases where NOEC determinations are made based on a non-parametric technique, calculation of a test PMSD value, for the sole purpose of assessing test sensitivity, shall be calculated using a comparable parametric statistical analysis technique. The calculated test PMSD is then compared to the upper and lower PMSD bounds shown for freshwater tests in Section 10.2.8.3, p. 52, Table 6 of EPA-821-R-02-013. The comparison will yield one of the following determinations.

- The test PMSD exceeds the PMSD upper bound test variability criterion in Table 6, the test results are considered highly variable and the test may not be sensitive enough to determine the presence of toxicity at the permit limit concentration (PLC). If the test results indicate that the discharge is not toxic at the PLC, then the test is considered insufficiently sensitive and must be repeated within 30 days of the initial test completion using fresh samples. If the test results indicate that the discharge is toxic at the PLC, the test is considered acceptable and does not have to be repeated.
- The test PMSD falls below the PMSD lower bound test variability criterion in Table 6, the test is determined to be very sensitive. In order to determine which treatment(s) are statistically significant and which are not, for the purpose of reporting a NOEC, the relative percent difference (RPD) between the control and each treatment must be calculated and compared to the lower PMSD boundary. See *Understanding and Accounting for Method Variability in Whole Effluent Toxicity Applications Under the NPDES Program*, EPA 833-R-1-003, June 2002, Section 6.4.2. This document can be located under Guidance Documents at the following USEPA website location: <https://www.epa.gov/aboutepa/epa-region-1-new-england> (click on NPDES, EPA Permit Attachments).

If the RPD for a treatment falls below the PMSD lower bound, the difference is considered statistically insignificant. If the RPD for a treatment is greater than the PMSD lower bound, then the treatment is considered statistically significant.

- The test PMSD falls within the PMSD upper and lower bounds in Table 6, the sub-lethal test endpoint values shall be reported as is.

## B. Statistical Analysis

### 1. General - Recommended Statistical Analysis Method

Refer to general data analysis flowchart, EPA 821-R-02-013, page 43

For discussion on Hypothesis Testing, refer to EPA 821-R-02-013, Section 9.6

For discussion on Point Estimation Techniques, refer to EPA 821-R-02-013, Section 9.7

### 2. *Pimephales promelas*

Refer to survival hypothesis testing analysis flowchart, EPA 821-R-02-013, page

79 Refer to survival point estimate techniques flowchart, EPA 821-R-02-013, page

80 Refer to growth data statistical analysis flowchart, EPA 821-R-02-013, page 92

### 3. *Ceriodaphnia dubia*

Refer to survival data testing flowchart, EPA 821-R-02-013, page 168

Refer to reproduction data testing flowchart, EPA 821-R-02-013, page 173

## VIII. TOXICITY TEST REPORTING

A report of results must include the following:

- Test summary sheets (2007 DMR Attachment F) which includes:
  - Facility name
  - NPDES permit number
  - Outfall number
  - Sample type
  - Sampling method
  - Effluent TRC concentration
  - Dilution water used
  - Receiving water name and sampling location
  - Test type and species
  - Test start date
  - Effluent concentrations tested (%) and permit limit concentration
  - Applicable reference toxicity test date and whether acceptable or not
  - Age, age range and source of test organisms used for testing
  - Results of TAC review for all applicable controls
  - Test sensitivity evaluation results (test PMSD for growth and reproduction)
  - Permit limit and toxicity test results
  - Summary of test sensitivity and concentration response evaluation

In addition to the summary sheets the report must include:

- A brief description of sample collection procedures
- Chain of custody documentation including names of individuals collecting samples, times and dates of sample collection, sample locations, requested analysis and lab receipt with time and date received, lab receipt personnel and condition of samples upon receipt at the lab(s)
- Reference toxicity test control charts
- All sample chemical/physical data generated, including minimum limits (MLs) and analytical methods used
- All toxicity test raw data including daily ambient test conditions, toxicity test chemistry, sample dechlorination details as necessary, bench sheets and statistical analysis
- A discussion of any deviations from test conditions
- Any further discussion of reported test results, statistical analysis and concentration-response relationship and test sensitivity review per species per endpoint



## ATTACHMENT C

### EPA - New England

#### Reassessment of Technically Based Industrial Discharge Limits

Under 40 CFR §122.21(j)(4), all Publicly Owned Treatment Works (POTWs) with approved Industrial Pretreatment Programs (IPPs) shall provide the following information to the Director: a written evaluation of the need to revise local industrial discharge limits under 40 CFR §403.5(c)(1).

Below is a form designed by the U.S. Environmental Protection Agency (EPA - New England) to assist POTWs with approved IPPs in evaluating whether their existing Technically Based Local Limits (TBLLs) need to be recalculated. The form allows the permittee and EPA to evaluate and compare pertinent information used in previous TBLLs calculations against present conditions at the POTW.

**Please read direction below before filling out form.**

#### ITEM I.

- \* In Column (1), list what your POTW's influent flow rate was when your existing TBLLs were calculated. In Column (2), list your POTW's present influent flow rate. Your current flow rate should be calculated using the POTW's average daily flow rate from the previous 12 months.
- \* In Column (1) list what your POTW's SIU flow rate was when your existing TBLLs were calculated. In Column (2), list your POTW's present SIU flow rate.
- \* In Column (1), list what dilution ratio and/or 7Q10 value was used in your old/expired NPDES permit. In Column (2), list what dilution ration and/or 7Q10 value is presently being used in your new/reissued NPDES permit.

The 7Q10 value is the lowest seven day average flow rate, in the river, over a ten year period. The 7Q10 value and/or dilution ratio used by EPA in your new NPDES permit can be found in your NPDES permit "Fact Sheet."

- \* In Column (1), list the safety factor, if any, that was used when your existing TBLLs were calculated.
- \* In Column (1), note how your bio-solids were managed when your existing TBLLs were calculated. In Column (2), note how your POTW is presently disposing of its biosolids and how your POTW will be disposing of its biosolids in the future.

## ITEM II.

- \* List what your existing TBLLs are - as they appear in your current Sewer Use Ordinance (SUO).

## ITEM III.

- \* Identify how your existing TBLLs are allocated out to your industrial community. Some pollutants may be allocated differently than others, if so please explain.

## ITEM IV.

- \* Since your existing TBLLs were calculated, identify the following in detail:
  - (1) if your POTW has experienced any upsets, inhibition, interference or pass-through as a result of an industrial discharge.
  - (2) if your POTW is presently violating any of its current NPDES permit limitations - include toxicity.

## ITEM V.

- \* Using current sampling data, list in Column (1) the average and maximum amount of pollutants (in pounds per day) received in the POTW's influent. Current sampling data is defined as data obtained over the last 24 month period.

All influent data collected and analyzed must be in accordance with 40 CFR §136. Sampling data collected should be analyzed using the lowest possible detection method(s), e.g. graphite furnace.

- \* Based on your existing TBLLs, as presented in Item II., list in Column (2), for each pollutant the Maximum Allowable Headwork Loading (MAHL) values derived from an applicable environmental criteria or standard, e.g. water quality, sludge, NPDES, inhibition, etc. For more information, please see EPA's Local Limit Guidance Document (July 2004).

## Item VI.

- \* Using current sampling data, list in Column (1) the average and maximum amount of pollutants (in micrograms per liter) present your POTW's effluent. Current sampling data is defined as data obtained during the last 24 month period.



**(Item VI. continued)**

All effluent data collected and analyzed must be in accordance with 40 CFR §136. Sampling data collected should be analyzed using the lowest possible detection method(s), e.g. graphite furnace.

- \* List in Column (2A) what the Water Quality Standards (WQS) were (in micrograms per liter) when your TBLLs were calculated, please note what hardness value was used at that time. Hardness should be expressed in milligram per liter of Calcium Carbonate.

List in Column (2B) the current WQSs or "Chronic Gold Book" values for each pollutant multiplied by the dilution ratio used in your new/reissued NPDES permit. For example, with a dilution ratio of 25:1 at a hardness of 25 mg/l - Calcium Carbonate (copper's chronic WQS equals 6.54 ug/l) the chronic NPDES permit limit for copper would equal 156.25 ug/l.

**ITEM VII.**

- \* In Column (1), list all pollutants (in micrograms per liter) limited in your new/reissued NPDES permit. In Column (2), list all pollutants limited in your old/expired NPDES permit.

**ITEM VIII.**

- \* Using current sampling data, list in Column (1) the average and maximum amount of pollutants in your POTW's biosolids. Current data is defined as data obtained during the last 24 month period. Results are to be expressed as total dry weight.

All biosolids data collected and analyzed must be in accordance with 40 CFR §136.

In Column (2A), list current State and/or Federal sludge standards that your facility's biosolids must comply with. Also note how your POTW currently manages the disposal of its biosolids. If your POTW is planning on managing its biosolids differently, list in Column (2B) what your new biosolids criteria will be and method of disposal.

In general, please be sure the units reported are correct and all pertinent information is included in your evaluation. If you have any questions, please contact your pretreatment representative at EPA - New England.



**ITEM II.**

EXISTING TBLs			
POLLUTANT	NUMERICAL LIMIT (mg/l) or (lb/day)	POLLUTANT	NUMERICAL LIMIT (mg/l) or (lb/day)

**ITEM III.**

Note how your existing TBLs, listed in Item II., are allocated to your Significant Industrial Users (SIUs), i.e. uniform concentration, contributory flow, mass proportioning, other. Please specify by circling.

**ITEM IV.**

Has your POTW experienced any upsets, inhibition, interference or pass-through from industrial sources since your existing TBLs were calculated?  
If yes, explain.

---

---

Has your POTW violated any of its NPDES permit limits and/or toxicity test requirements?

If \_\_\_\_\_ yes, \_\_\_\_\_ explain.

---

---

**ITEM V.**

Using current POTW influent sampling data fill in Column (1). In Column (2), list your Maximum Allowable Headwork Loading (MAHL) values used to derive your TBLLs listed in Item II. In addition, please note the Environmental Criteria for which each MAHL value was established, i.e. water quality, sludge, NPDES etc.

Pollutant	Column (1) Influent Data Analyses		Column (2) MAHL Values (lb/day)	Criteria
	Maximum (lb/day)	Average (lb/day)		
Arsenic				
Cadmium				
Chromium				
Copper				
Cyanide				
Lead				
Mercury				
Nickel				
Silver				
Zinc				
Other (List)				



**ITEM VI.**

Using current POTW effluent sampling data, fill in Column (1). In Column (2A) list what the Water Quality Standards (Gold Book Criteria) were at the time your existing TBLLs were developed. List in Column (2B) current Gold Book values multiplied by the dilution ratio used in your new/reissued NPDES permit.

Pollutant	Column (1)		Columns (2A) (2B)	
	Effluent Data Analyses		Water Quality Criteria (Gold Book)	
	Maximum (ug/l)	Average (ug/l)	From TBLLs Today (ug/l)	(ug/l)
Arsenic				
*Cadmium				
*Chromium				
*Copper				
Cyanide				
*Lead				
Mercury				
*Nickel				
Silver				
*Zinc				
Other (List)				

\*Hardness Dependent (mg/l - CaCO3)





**ITEM VIII.**

Using current POTW biosolids data, fill in Column (1). In Column (2A), list the biosolids criteria that was used at the time your existing TBLLs were calculated. If your POTW is planing on managing its biosolids differently, list in Column (2B) what your new biosolids criteria would be and method of disposal.

Pollutant	Column (1)	Biosolids	Columns (2A) (2B) Biosolids Criteria From TBLLs	
	Data Analyses  Average (mg/kg)		New (mg/kg) (mg/kg)	
Arsenic				
Cadmium				
Chromium				
Copper				
Cyanide				
Lead				
Mercury				
Nickel				
Silver				
Zinc				
Molybdenum				
Selenium				
Other (List)				

## ATTACHMENT D

### NPDES PERMIT REQUIREMENT FOR INDUSTRIAL PRETREATMENT ANNUAL REPORT

The information described below shall be included in the pretreatment program annual reports:

1. An updated list of all industrial users by category, as set forth in 40 C.F.R. 403.8(f)(2)(i), indicating compliance or noncompliance with the following:
  - baseline monitoring reporting requirements for newly promulgated industries
  - compliance status reporting requirements for newly promulgated industries
  - periodic (semi-annual) monitoring reporting requirements,
  - categorical standards, and
  - local limits;
2. A summary of compliance and enforcement activities during the preceding year, including the number of:
  - significant industrial users inspected by POTW (include inspection dates for each industrial user),
  - significant industrial users sampled by POTW (include sampling dates for each industrial user),
  - compliance schedules issued (include list of subject users),
  - written notices of violations issued (include list of subject users),
  - administrative orders issued (include list of subject users),
  - criminal or civil suits filed (include list of subject users) and,
  - penalties obtained (include list of subject users and penalty amounts);
3. A list of significantly violating industries required to be published in a local newspaper in accordance with 40 C.F.R. 403.8(f)(2)(vii);
4. A narrative description of program effectiveness including present and proposed changes to the program, such as funding, staffing, ordinances, regulations, rules and/or statutory authority;
5. A summary of all pollutant analytical results for influent, effluent, sludge and any toxicity or bioassay data from the wastewater treatment facility. The summary shall include a comparison of influent sampling results versus threshold inhibitory concentrations for the Wastewater Treatment System and effluent sampling results versus water quality standards. Such a comparison shall be based on the sampling program described in the paragraph below or any similar sampling program described in this Permit.

At a minimum, annual sampling and analysis of the influent and effluent of the Wastewater Treatment Plant shall be conducted for the following pollutants:

- |                    |                   |
|--------------------|-------------------|
| a.) Total Cadmium  | f.) Total Nickel  |
| b.) Total Chromium | g.) Total Silver  |
| c.) Total Copper   | h.) Total Zinc    |
| d.) Total Lead     | i.) Total Cyanide |
| e.) Total Mercury  | j.) Total Arsenic |

The sampling program shall consist of one 24-hour flow-proportioned composite and at least one grab sample that is representative of the flows received by the POTW. The composite shall consist of hourly flow-proportioned grab samples taken over a 24-hour period if the sample is collected manually or shall consist of a minimum of 48 samples collected at 30 minute intervals if an automated sampler is used. Cyanide shall be taken as a grab sample during the same period as the composite sample. Sampling and preservation shall be consistent with 40 CFR Part 136.

6. A detailed description of all interference and pass-through that occurred during the past year;
7. A thorough description of all investigations into interference and pass-through during the past year;
8. A description of monitoring, sewer inspections and evaluations which were done during the past year to detect interference and pass-through, specifying parameters and frequencies;
9. A description of actions being taken to reduce the incidence of significant violations by significant industrial users; and,
10. The date of the latest adoption of local limits and an indication as to whether or not the permittee is under a State or Federal compliance schedule that includes steps to be taken to revise local limits.

## Attachment E: PFAS Analyte List

Target Analyte Name	Abbreviation	CAS Number
<b>Perfluoroalkyl carboxylic acids</b>		
Perfluorobutanoic acid	PFBA	375-22-4
Perfluoropentanoic acid	PFPeA	2706-90-3
Perfluorohexanoic acid	PFHxA	307-24-4
Perfluoroheptanoic acid	PFHpA	375-85-9
Perfluorooctanoic acid	PFOA	335-67-1
Perfluorononanoic acid	PFNA	375-95-1
Perfluorodecanoic acid	PFDA	335-76-2
Perfluoroundecanoic acid	PFUnA	2058-94-8
Perfluorododecanoic acid	PFDoA	307-55-1
Perfluorotridecanoic acid	PFTTrDA	72629-94-8
Perfluorotetradecanoic acid	PFTeDA	376-06-7
<b>Perfluoroalkyl sulfonic acids</b>		
<b>Acid Form</b>		
Perfluorobutanesulfonic acid	PFBS	375-73-5
Perfluoropentanesulfonic acid	PFPeS	2706-91-4
Perfluorohexanesulfonic acid	PFHxS	355-46-4
Perfluoroheptanesulfonic acid	PFHpS	375-92-8
Perfluorooctanesulfonic acid	PFOS	1763-23-1
Perfluorononanesulfonic acid	PFNS	68259-12-1
Perfluorodecanesulfonic acid	PFDS	335-77-3
Perfluorododecanesulfonic acid	PFDoS	79780-39-5
<b>Fluorotelomer sulfonic acids</b>		
1 <i>H</i> ,1 <i>H</i> , 2 <i>H</i> , 2 <i>H</i> -Perfluorohexane sulfonic acid	4:2FTS	757124-72-4
1 <i>H</i> ,1 <i>H</i> , 2 <i>H</i> , 2 <i>H</i> -Perfluorooctane sulfonic acid	6:2FTS	27619-97-2
1 <i>H</i> ,1 <i>H</i> , 2 <i>H</i> , 2 <i>H</i> -Perfluorodecane sulfonic acid	8:2FTS	39108-34-4
<b>Perfluorooctane sulfonamides</b>		
Perfluorooctanesulfonamide	PFOSA	754-91-6
N-methyl perfluorooctanesulfonamide	NMeFOSA	31506-32-8
N-ethyl perfluorooctanesulfonamide	NEtFOSA	4151-50-2
<b>Perfluorooctane sulfonamidoacetic acids</b>		
N-methyl perfluorooctanesulfonamidoacetic acid	NMeFOSAA	2355-31-9
N-ethyl perfluorooctanesulfonamidoacetic acid	NEtFOSAA	2991-50-6
<b>Perfluorooctane sulfonamide ethanols</b>		
N-methyl perfluorooctanesulfonamidoethanol	NMeFOSE	24448-09-7
N-ethyl perfluorooctanesulfonamidoethanol	NEtFOSE	1691-99-2
<b>Per- and Polyfluoroether carboxylic acids</b>		
Hexafluoropropylene oxide dimer acid	HFPO-DA	13252-13-6
4,8-Dioxa-3 <i>H</i> -perfluorononanoic acid	ADONA	919005-14-4
Perfluoro-3-methoxypropanoic acid	PFMPA	377-73-1
Perfluoro-4-methoxybutanoic acid	PFMBA	863090-89-5
Nonafluoro-3,6-dioxaheptanoic acid	NFDHA	151772-58-6

Target Analyte Name	Abbreviation	CAS Number
<b>Ether sulfonic acids</b>		
9-Chlorohexadecafluoro-3-oxanonane-1-sulfonic acid	9Cl-PF3ONS	756426-58-1
11-Chloroeicosafluoro-3-oxaundecane-1-sulfonic acid	11Cl-PF3OUdS	763051-92-9
Perfluoro(2-ethoxyethane)sulfonic acid	PFEESA	113507-82-7
<b>Fluorotelomer carboxylic acids</b>		
3-Perfluoropropyl propanoic acid	3:3FTCA	356-02-5
2 <i>H</i> ,2 <i>H</i> ,3 <i>H</i> ,3 <i>H</i> -Perfluorooctanoic acid	5:3FTCA	914637-49-3
3-Perfluoroheptyl propanoic acid	7:3FTCA	812-70-4

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<sup>1</sup>Updated July 17, 2018 to fix typographical errors.

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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.

*LC<sub>50</sub>* means the concentration of a sample that causes mortality of 50% of the test population at a specific time of observation. The LC<sub>50</sub> = 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.



NPDES PART II STANDARD CONDITIONS  
(April 26, 2018)

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 <sub>2</sub>	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 <sup>3</sup> /day	Cubic meters per day
DO	Dissolved oxygen

NPDES PART II STANDARD CONDITIONS  
(April 26, 2018)

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 <sub>3</sub> -N	Ammonia nitrogen as nitrogen
NO <sub>3</sub> -N	Nitrate as nitrogen
NO <sub>2</sub> -N	Nitrite as nitrogen
NO <sub>3</sub> -NO <sub>2</sub>	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

**RESPONSE TO COMMENTS  
NPDES PERMIT NO. MA0101168  
PALMER WATER POLLUTION CONTROL FACILITY  
PALMER, MASSACHUSETTS**

The U.S. Environmental Protection Agency’s New England Region (EPA) is issuing a Final National Pollutant Discharge Elimination System (NPDES) Permit for the Town of Palmer Clean Water Facility (CWF) located in Three Rivers, Massachusetts. This permit is being issued under the Federal Clean Water Act (CWA), 33 U.S.C., §§ 1251 *et seq.*

In accordance with the provisions of 40 Code of Federal Regulations (CFR) §124.17, this document presents EPA’s responses to comments received on the Draft NPDES Permit # MA0101168 (“Draft Permit”). The Response to Comments explains and supports EPA’s determinations that form the basis of the Final Permit. From March 30, 2023 through May 12, 2023, EPA solicited public comments on the Draft Permit.

EPA received comments from:

- Town of Palmer, dated May 12, 2023
- Connecticut Department of Energy and Environmental Protection, dated May 5, 2023
- Connecticut River Conservancy, dated May 12, 2023
- The National Association of Clean Water Agencies (NACWA), dated May 12, 2023
- Massachusetts Water Resources Authority, dated May 10, 2023

Although EPA’s knowledge of the facility has benefited from the various comments and additional information submitted, the information and arguments presented did not raise any substantial new questions concerning the permit that warranted a reopening of the public comment period. EPA does, however, make certain clarifications and changes in response to comments. These are explained in this document and reflected in the Final Permit. Below EPA provides a summary of the changes made in the Final Permit. The analyses underlying these changes are contained in the responses to individual comments that follow.

A copy of the Final Permit and this response to comments document will be posted on the EPA Region 1 web site: [http://www.epa.gov/region1/npdes/permits\\_listing\\_ma.html](http://www.epa.gov/region1/npdes/permits_listing_ma.html).

A copy of the Final Permit may be also obtained by writing or calling Michele Duspiva, USEPA, 5 Post Office Square, Suite 100 (Mail Code: 06-4), Boston, MA 02109-3912; Telephone: (617) 918-1682; Email [duspiva.michele@epa.gov](mailto:duspiva.michele@epa.gov).

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**I. Summary of Changes to the Final Permit**

1. The first page of the Final Permit has been updated to include the receiving water Segment MA36-22. See Response 18.
2. EPA has modified footnote 12 of Part I.A. Table 1 of the Final Permit to indicate that monitoring for Adsorbable Organic Fluorine shall begin the first full calendar quarter following 6 months after EPA notifies the Permittee that Method 1621 has been multi-lab validated. See Response 29.
3. Part I.B.2 has been modified to align with state regulations at 314 CMR 16.00. See Response 30.
4. The Major Storm and Flood Events Plan (now renamed Adaptation Plan) requirements at Part I.C.1 of the Final Permit have been revised as described in Part B of the General Response.

**II. General Response to Comments on the Appropriateness of, and the Authority for, the Inclusion of the Wastewater Treatment System and Sewer System Adaptation Plan (“General Response”)**

EPA recognizes that the Major Storm and Flood Events Plan (in the Final Permit, and in this Response to Comments, that plan is now referred to as an “Adaptation Plan”) proposed in the Draft Permit and finalized here is a new requirement that builds on existing operation and maintenance practices.<sup>1</sup> EPA provides this General Response to further explain the basis for and importance of this provision. In so doing, EPA also responds to many of the comments raised regarding the Draft Permit.

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<sup>1</sup> For brevity, this Response to Comments document refers to “Permittee” throughout; however, this reference also includes all “Co-Permittee(s)” subject to the applicable permit requirements.

In Section A of the General Response, EPA discusses the necessity for requiring Adaptation Plans at wastewater treatment systems (“WWTS”) and sewer systems<sup>2</sup> and provides some examples of how major storm and flood events can impact facility operations. In Section B of the General Response, EPA discusses the various components and proper scope of the Adaptation Plans. In Section C of the General Response, EPA sets forth the legal basis for its decision to require wastewater treatment systems and sewer systems to develop Adaptation Plans.

#### **A. Necessity for Wastewater Treatment System and Sewer System Adaptation Planning**

Wastewater treatment systems and sewer systems are crucial in helping protect human health and the environment and providing critical services to the communities that they serve. Many wastewater treatment facilities and associated sewer system pump stations are located at low elevations (to maximize flow via gravity) within riverine or coastal floodplains and are at risk of increased flooding and other impacts from major storm events. As noted in a 2016 report by the New England Interstate Water Pollution Control Commission<sup>3</sup> wastewater systems are already facing severe effects due to major storm and flood events and need to better adapt to this new reality:

In the Northeast and throughout the world, extreme storm events are growing in frequency and force. Hurricanes and blizzards threaten the operation of wastewater infrastructure and in some cases the infrastructure itself. Consequently, wastewater facilities should be made more resilient through preparedness planning and physical upgrades.

In the Northeast in the last five years Hurricanes Irene (2011) and Sandy (2012), and winter blizzards such as the February 2013 northeaster, produced widespread economic harm. Sandy caused nearly 11 billion gallons of sewage to be released into coastal waters, rivers, and other bodies of water as power outages and storm surge overwhelmed wastewater-treatment plants. 94% of these releases were a result of flooding and storm surge as waters overwhelmed sewage-treatment plants.

As a result, addressing the ongoing challenges and the increasing risks faced by wastewater infrastructure systems nationwide - reduction or failure of system services resulting in discharges

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<sup>2</sup> The Clean Water Act authorizes EPA, as permit issuer, to issue permits for “publicly owned treatment works” (POTWs). CWA § 402. POTWs comprise wastewater treatment systems and sewer systems. 40 C.F.R. §§ 122.2, 403.3(q); *In re Charles River Pollution Control District*, 16 EAD 623, 635 (EAB 2015) (“POTW treatment plants, like the satellite sewage collection systems that convey wastewater to the plants, are components of a POTW.”) To more precisely and accurately describe the permit requirements, the Permit and this Response to Comments refer to “wastewater treatment system(s)” and “sewer system(s)” or, in some instances, both.

“Wastewater Treatment System” or “WWTS” means any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It does not include sewers, pipes and other conveyances to the wastewater treatment facility.

<sup>3</sup> “Preparing for Extreme Weather at Wastewater Utilities: Strategies and Tips, New England Interstate Water Pollution Control Commission” (September 2016) pg. 2, [https://www.neiwpcc.org/neiwpcc\\_docs/9-20-2016%20NEIWPCC%20Extreme%20Weather%20Guide%20for%20web.pdf](https://www.neiwpcc.org/neiwpcc_docs/9-20-2016%20NEIWPCC%20Extreme%20Weather%20Guide%20for%20web.pdf)

of untreated or partially treated sewage, flooding, physical damage to assets, impacts to personnel, to name just some of the possible outcomes - are a priority for EPA and a host of federal and state agencies, as well as regional and local governmental bodies. Addressing these challenges is also a priority for many wastewater treatment managers across the country. As noted in a 2019 study,<sup>4</sup> which surveyed wastewater treatment systems in Connecticut, 78% of wastewater managers had made adaptive changes that ranged from low-cost temporary adaptive changes to a few who described major changes that addressed redesign or the rebuilding of WWTPs; of those who had made changes, half “did so to improve resiliency to withstand the worst storm experienced by the wastewater system to date.”<sup>5</sup>

Flooding and other major storm events can lead to a variety of, and more frequent, WWTS and sewer system failures. One recent analysis suggests that one-third of 5,500 wastewater treatment plants analyzed from around the country would be at risk of flooding in the event of a major storm.<sup>6</sup> System failures, such as backups of untreated wastewater into the collection system and potentially into buildings and connections, bypasses of pollution treatment, and/or discharges of raw sewage into the environment are some of the potential impacts that may become more frequent.<sup>7</sup>

In New England, as well as elsewhere throughout the country,<sup>8</sup> storms and flooding have caused damage to, and in some cases total failure of, wastewater treatment systems and sewer systems. Implementing adaptive measures so that a wastewater treatment plant’s wastewater infrastructure may withstand increasingly frequent heavy precipitation and major storm and flood events is, therefore, a critical step in a system’s maintenance. Additionally, EPA notes that sometimes, mitigation measures based on adaptation/mitigation plans that were at one point sufficient and that were based on historic, local major storm and flood predictions, may now be insufficient

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<sup>4</sup> “Kirchhoff, C.J. and P.L. Watson. 2019. “Are Wastewater Systems Adapting to Climate Change?” *Journal of the American Water Resources Association*, 1-12. pg.1. <https://doi.org/10.1111/1752-1688.12748>. (Citations omitted in quote).

<sup>5</sup> *Id.* at pgs. 5, 8.

<sup>6</sup> “Rising Flood Risks Threaten Many Water and Sewage Treatment Plants Across the U.S.” (August 10, 2023), <https://apnews.com/article/climate-change-flood-risks-infrastructure-vermont-7bd953f513035468ee74f8f7c619bb8e>

<sup>7</sup> See EPA’s [Resilient Strategies Guide](#) (noting that “[u]tilities are increasingly recognizing that future extreme weather events, energy prices and ecological conditions may not be predictable based on historical observations. These shifts may require utilities to change how they operate and manage their resources.”) <https://www.epa.gov/crwu/resilient-strategies-guide-water-utilities#/resources/646>; EPA Memorandum, “Re-Instatement of Federal Flood Risk Management Standard for State Revolving Fund Programs,” Thompkins, Anita Maria and Stein, Raffael to Water Division Directors (April, 2022) <https://www.epa.gov/dwsrf/federal-flood-risk-management-standard-srf-programs> (noting that “[f]looding is one of the most common hazards in the United States accounting for roughly \$17 billion in damage annually between 2010-2018 according to [FEMA], and it will continue to be an ongoing challenge for water infrastructure” with impacts that “can include physical damage to assets, soil and streambank erosion and contamination of water sources, loss of power and communication, loss of access to facilities, saltwater intrusion, and dangerous conditions for personnel.”). See also, National Association of Clean Water Agencies (“NACWA”), “NACWA Principles on Climate Adaptation and Resiliency” (noting that “[f]or many clean water agencies, changing weather patterns have become a management reality and responsibility.”) [https://www.nacwa.org/docs/default-source/conferences-events/2018-ulc/nacwa-statement-of-principles-on-climate\\_.pdf?sfvrsn=2](https://www.nacwa.org/docs/default-source/conferences-events/2018-ulc/nacwa-statement-of-principles-on-climate_.pdf?sfvrsn=2)

<sup>8</sup> National Association of Clean Water Agencies (“NACWA”) Fact Sheet: “10 Extreme Rain and Flood Events in the US – All in 2022” (listing the “top 10 flood events of 2022” and their effects on water infrastructure from across the country, including the devastating impacts that include loss of life, estimated damages in the range of millions to billions of dollars, and extreme impacts to system services.)

given actual experience with major storms and flooding, the emergence of new data that was not previously available, and more recent projections. And while EPA also acknowledges that it may not always be possible to anticipate all future events (i.e., speed or direction of the wind, temperature fluctuations, the uprooting of trees, etc.) that can exacerbate, or alleviate, the outcomes of major storm and flood events, as illustrated in the examples below, it is important to ensure that existing adaptation plans reflect, as best as possible, all relevant data.

Many New England WWTSs have been negatively impacted by major storm and flood events in recent years. In one notable example from Rhode Island in 2010, historically high flood waters (known as “the Great Flood of 2010”) severely impacted several wastewater treatment facilities, including the Warwick Rhode Island Wastewater Treatment Facility.<sup>9</sup> After repetitive flood damages to the WWTS, the City of Warwick had constructed a protective berm, or levee, in the mid-1980s to protect the WWTS from future damages. The levee, originally designed for the 100-year flood at that time, plus three feet of freeboard, was breached by repeated heavy rain events in March 2010. The flooding caused catastrophic impacts to the WWTS which led to the “unthinkable” - the decision to evacuate the plant as the Pawtuxet River crested at 20.79 feet.<sup>10</sup> The impact to the treatment plant was extreme:

While the flood waters caused no structural damages to the facility’s tanks or buildings, anything electrical and everything that was not metal or concrete was ruined. It was at least two days before the river had subsided to the point where staff could begin to access the facility.<sup>11</sup>

With a tremendous amount of work and rebuilding, the facility was dewatered, and primary and then secondary treatment were restored. The facility was unable to achieve full compliance with its permit limits for a period of about 80 days.<sup>12</sup> Due to this flooding, the facility updated their flood protection plans based on local storm and flooding data and implemented improvements for the WWTS, including raising the levee to protect the WWTS from inundation caused by a 500-year flood event.<sup>13</sup>

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<sup>9</sup> Holbrook, Nicolas Q., The Flood Crews of 2010: A History of Rhode Island’s 2010 Floods as Told By The State’s Wastewater Collection and Treatment Operators, Rhode Island DEM, Office of Water Resources (2017) <https://dem.ri.gov/sites/g/files/xkgbur861/files/programs/benviron/water/pdfs/floodcrews2010.pdf>

<sup>10</sup> Id. at 13.

<sup>11</sup> Id.

<sup>12</sup> Burke, Janine L., Executive Director, Warwick Sewer Authority, “The Great Flood of 2010: A Municipal Response,” pg. 237 Journal NEWEA (September 2012) <https://www.warwicksewerauthority.com/pdfs/floodmitigation/NEWEA%20Journal%20Article%20on%20WSA%20Flood%20Response.pdf>

<sup>13</sup> Preliminary Design Report, Wastewater Treatment Facility Flood Protection and Mitigation Design, Warwick, Rhode Island (Prepared by AECOM for Warwick Sewer Authority, July 12, 2012) <https://www.warwicksewerauthority.com/pdfs/floodmitigation/Warwick%20Flood%20Mitigation%20PDR%207-24-12%20with%20Appendices.pdf>; Warwick Wastewater Treatment Facility – Climate Vulnerability Summary <https://dem.ri.gov/sites/g/files/xkgbur861/files/programs/benviron/water/pdfs/cvswarwick.pdf>



*Figure 1: The flooded Warwick wastewater facility on Wednesday, March 31, 2010. (State of Rhode Island)*

More recently, in July 2023, Vermont experienced a major storm and flooding event characterized by the National Weather Service as “catastrophic flash flooding and river flooding” with upwards of three to nine inches of rain falling in 48 hours, an amount that in some places of Vermont, amounted to the “greatest calendar day rainfall “since records began in 1948.<sup>14</sup> According to local reporting, operations at 33 wastewater treatment systems were disrupted, and several facilities, like those in the towns of Ludlow and Johnson, were rendered inoperable and will need significant reconstruction.<sup>15</sup> As one news outlet reported about the conditions in Ludlow:

[t]he facility that keeps the village’s drinking water safe was built at elevation and survived. But its sewage plant fared less well. Flooding tore through it, uprooting chunks of road, damaging buildings and sweeping sewage from treatment tanks into the river. Even [over three weeks after the storm event] the plant can only handle half its normal load.<sup>16</sup>

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<sup>14</sup> Banacos, Peter, “The Great Vermont Flood of 10-11 July 2023: Preliminary Meteorological Summary” National Oceanic and Atmospheric Administration, National Weather Service, pg. 2 (August 5, 2023) <https://www.weather.gov/btv/The-Great-Vermont-Flood-of-10-11-July-2023-Preliminary-Meteorological-Summary> (noting that damage “rivaled and in some areas exceeded – Tropical Storm Irene in 2011”)

<sup>15</sup> Robinson, Shaun, “Total Destruction:’ Flooding Knocks Out Johnson’s Wastewater Plant, Disrupts Operations Elsewhere” (July 18, 2023); <https://vtdigger.org/2023/07/18/total-destruction-flooding-knocks-out-johnsons-wastewater-plant-disrupts-operations-elsewhere/> (“Across Vermont, 33 wastewater treatment facilities were impacted by the flooding ...according to Michelle Kolb, a supervisor in the state Department of Environmental Conservation’s wastewater program.”)

<sup>16</sup> Naishadham, Suman, Peterson, Brittany, Fassett, Carnille, “Rising Flood Risks Threaten Many Water and Sewage Treatment Plants Across the US,” Vermont Public, <https://www.vermontpublic.org/local-news/2023-08-10/ludlow-vermont-rising-flood-risks-threaten-many-water-and-sewage-treatment-plants-across-the-us>





Figure 2: Ludlow Wastewater Treatment Plant (photo August 2, 2023, taken after July storm event)<sup>17</sup>

The wastewater treatment plant in Johnson, Vermont was similarly devastated with the Assistant Plant Manager reporting to a local news outlet, “Total destruction. The only thing we have left is the shell of a building.”<sup>18</sup>

According to officials from Vermont DEC, both the Ludlow and Johnson WWTs had some flood protections in place prior to this event: Ludlow built a new influent pump station designed to withstand a 500-year flood event in 2020-21.<sup>19</sup> While its plant was rendered inoperable immediately after the early July flood, it came back on-line in late July. For the Johnson Wastewater Treatment Plant, this was the 6<sup>th</sup> flooding event at the plant since it was built in 1995. In the assessment that occurred by state and federal officials after the most recent flood, long-term recommendations ranged from more minor fixes (i.e., replacing the gravity line with a pump station and force main) to undertaking an assessment that would compare the cost of moving the facility against the already-significant cost of just repair and construction, estimated to be at least \$2 million.<sup>20</sup> As the officials emphasized, short of relocating, or finding significant additional resources, for some of Vermont’s impacted facilities, there are no easy fixes and future adaptations might mean preparing “to-go bags,” and installing “redundant pipes,” submersible pumps, waterproof electrical boxes or, in some cases, possibly building a second story on an existing plant.

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<sup>17</sup> <https://apnews.com/article/climate-change-flood-risks-infrastructure-vermont-7bd953f513035468ee74f8f7c619bb8e> (picture captions: Joe Gaudiana, the Ludlow, VT. Chief Water and Sewer Operator, left, surveys damage with Elijah Lemieux, of the Vermont Rural Water Association, at the wastewater treatment plant following July flooding, Wednesday, Aug. 2, 2023, in Ludlow. (AP Photo/Charles Krpa))

<sup>18</sup>Robinson, Shaun, “Total Destruction: ‘Flooding Knocks Out Johnson’s Wastewater Plant, Disrupts Operations Elsewhere’” (July 18, 2023); <https://vtdigger.org/2023/07/18/total-destruction-flooding-knocks-out-johnsons-wastewater-plant-disrupts-operations-elsewhere/>

<sup>19</sup> Telephone conversation with Vermont Department of Conservation officials, Heather Collins and Michelle Kolb (September 25, 2023).

<sup>20</sup> Johnson Village Wastewater Post July 2023 Flood Treatment Plant Assessment Lamoille County, Vermont, NPDES Permit Number Vermont 0100901 (August 9, 2023)

Even more recently, in September 2023 the City of Leominster in central Massachusetts experienced a flash flooding event.<sup>21</sup> Previously, the city had identified a riverbank section of the North Nashua River, near the WWTS, that had eroded and was continuing to be eroded and was heading towards a buried sewer main. As detailed in the summary of work report,<sup>22</sup> “[l]eft unabated, the stream would likely carve a new path into the sewer line, potentially causing a break.” To mitigate this potential problem, the city completed a riverbank stabilization project under FEMA’s Hazard Mitigation Grant Program to protect the main sewer line that was identified as vulnerable to flooding and failure. That line was unimpacted by the recent flash flooding in September and the stabilization work is still intact while other infrastructure in the area suffered significant flood damages. In addition to illustrating the potential impacts of a recent flooding event on a WWTF, this example - of identifying a risk to increased flooding and consequent mitigation measure - exemplifies the process that EPA envisions for the Adaptation Plan.

EPA acknowledges and appreciates that many WWTSs and sewer systems are currently designed with some flood protections to combat the increasing frequency of major storm and flood events and the resulting impacts to wastewater treatment systems and sewer systems. To address the current and future risks associated with these more frequent and intense storms occurring in the region, EPA finds that the development of an Adaptation Plan is necessary in order to ensure the proper operation and maintenance of WWTSs and sewer systems.

## **B. Requirement to Develop an Adaptation Plan**

EPA received a variety of comments regarding the requirements in the Permit to develop an Adaptation Plan (referred to as a “Major Storm and Flood Events Plan” in the Draft Permit). These comments range from general concerns about the clarity, development, timing and scope of the Adaptation Plan itself, to more specific concerns about particular permit terms.

While EPA believes the proposed permit language was set forth with reasonable clarity, in the Final Permit the three components of the Adaptation Plan have been revised and re-organized to define the requirements even more clearly. The goal of these changes is to simplify and better-define the components of the required Adaptation Plan, discussed in more detail below, and to establish a standard of work that allows greater latitude for the Permittee to determine how to meet permit requirements (which includes allowing the Permittee to use qualifying prior assessments in satisfaction of some or all the Permit’s Adaptation Plan components.)

To support the Permittees’ development of an Adaptation Plan, EPA Region 1 has developed a companion document: *Recommended Procedures and Resources for the Development of Adaptation Plans* (“Recommended Procedures”)<sup>23</sup> to assist owners and operators of wastewater treatment systems and/or sewer systems to develop adaptation plans that meet the requirements included in Region 1 NPDES permits. The document provides recommendations and procedures

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<sup>21</sup> Derrick Bryson Taylor and Johnny Diaz, “Massachusetts Cities Declare Emergency After ‘Catastrophic’ Flash Flooding” <https://www.nytimes.com/2023/09/12/us/leominster-massachusetts-flash-flooding.html>

<sup>22</sup> *City of Leominster, North Nashua River Riverbank Stabilization Project: Summary of Work* (prepared by GZA GeoEnvironmental, Inc.) (February 2023)

<sup>23</sup> Available at: <https://www.epa.gov/npdes-permits/npdes-water-permit-program-new-england>

for the use of a free EPA tool developed specifically for water utilities. Permittees may use the recommended tool and the associated procedures or they may use other approaches providing comparable analyses, as discussed in more detail below, to satisfy permit requirements.

In the Final Permit the three components of the Adaptation Plan include the following (additional detail, including definitions of certain terms, is included in the Final Permit):

- Component #1: Requires the Permittee to develop and sign, within 24 months of the effective date of the permit, an identification of critical assets and related operations within the WWTS and/or sewer system which they own and/or operate that are most vulnerable to major storm and flood events under baseline and future conditions and to assess the ability of each to function properly in the event of major storm and flood events in terms of effluent flow, sewer flow, and discharges of pollutants;
- Component #2: Requires the Permittee to develop and sign, within 36 months of the effective date of the permit, an assessment of adaptive measures, and/or, if appropriate, the combination of adaptative measures that minimize the impact of future conditions on the critical assets and related operations of the WWTS and/or sewer system(s); and
- Component #3: Requires the Permittee to submit a proposed schedule for implementation and maintenance of adaptive measures within 48 months of the effective date of the permit.

As described above, the final requirements of the Adaptation Plan have been revised to address a variety of concerns raised by commenters. EPA explains its rationale for specific revisions and definitions in more detail below. EPA notes that while there have been several organizational changes and other edits to further clarify the three components of the Adaptation Plan, the framework proposed in the Draft Permit is maintained.<sup>24</sup>

- Commenters raised concerns about the ability of Permittees to implement all of the identified adaptive actions in the time frames set forth in the Draft Permit. EPA agrees with the concerns that were raised about the ability to implement all identified adaptive

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<sup>24</sup> The comments on the Draft Permit did not appear to raise substantial new questions on the Permit. 40 C.F.R. § 124.14(b). The commenters' critiques of the proposed permit requirements did not raise substantial new issues but rather, for example, question EPA's authority to impose the requirements, or express concern regarding particular timeframes included in the requirements. The changes made in response to these and other comments were foreseeable. *See In re Concord*, 16 E.A.D. 514, 532 (EAB 2014) ("[I]t was foreseeable that the Region might alter [a certain permit] limit in light of public comments questioning the Region's rationale for setting [that limit].") The comments did not result in EPA substantially changing the permit requirements, but rather prompted EPA to refine the requirements already proposed in the Draft Permit, as described in more detail below. *See In re Carlota Copper Company*, 11 E.A.D. 692, 730-731 (EAB 2004) (permit issuer reopened public comment period after comments received during the first comment period prompted the permit issuer to require, for the first time, site remediation and to authorize discharge from a new outfall.) Because the public already had an opportunity to comment on these proposed requirements during the public comment period, a second public comment period would not be appropriate. *See id.* at 729-730 ("A second public comment period... does not provide an opportunity to raise any new issues regarding the permit, but instead provides only an opportunity to submit comments on the issues that caused the reopening of the comment period."); 40 C.F.R. § 124.14(c) (Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening.)

measures within those time frames and has, therefore, modified the Final Permit to require the Permittee to develop an implementation schedule itself rather than specify a particular schedule for implementation. EPA notes that the Final Permit also requires that the Permittee report annually on “any progress made toward implementation of adaptive measures.” This leaves the Permittee free to evaluate other considerations when determining when and how to implement adaptive measures. EPA encourages Permittees to move forward with implementation actions that address the vulnerabilities identified as part of its Adaptation Plan in as timely a manner as possible and to prioritize addressing the most impactful vulnerabilities.<sup>25</sup>

- In an additional effort to clarify and simplify the Adaptation Plan requirements, the two previously separate wastewater treatment system and sewer system provisions have now been combined into one section in the Final Permit.
- Some commenters expressed that members of the regulated community already consider natural disasters and other emergencies as part of routine facilities planning. EPA acknowledges that in appropriate instances, prior or ongoing work completed by Permittees may satisfy some, or all, of the requirements to develop an Adaptation Plan as specified in the Final Permit. EPA is not opining at this time on which types of assessments will be found to meet permit terms as site-specific circumstances may dictate whether alternative approaches are suitable or not. Permittees who wish to comply with permit requirements through other means “must explain how its prior assessments specifically meet the requirements [of the] permit.” Further, EPA has revised certain minimum standards (e.g., use of FEMA Flood Standards) to ensure any Adaptation Plan work does not interfere with accessing funding sources such as the SRF.<sup>26</sup>

Thus, the requirement in the Final Permit has been updated to allow for the use of previous work as follows:

*Credit for Prior Assessment(s) Completed by Permittee [and/or Co-permittee(s)].*  
If the Permittee [and/or Co-permittee(s)] has [have] undertaken assessment(s) that were completed within 5 years of the effective date of this permit, or is [are] currently undertaking an assessment that address some or all of the Adaptation Plan components, such prior assessment(s) undertaken by the Permittee [and/or Co-permittee(s)] may be used (as long as the reporting time frames (set forth in

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<sup>25</sup> Commenters suggested that requiring implementation of the Adaptation Plan requirements was unreasonable since some mitigation measures might require regional planning and collaboration between surrounding communities. EPA agrees that there are many aspects involved in addressing adaptation planning and associated implementation measures, including regional considerations and that region-wide planning is appropriate. Permittees are encouraged to engage in regional planning and EPA understands this may impact proposed schedules for implementation measures. EPA expects, however, that for most Permittees there will be many implementation measures that do not require regional planning or collaboration. To the extent this is not the case, the Permittee may document its analysis supporting such a conclusion and base its implementation schedule accordingly. This does not negate the need or reasonableness for the Adaptation Plan requirement.

<sup>26</sup> “Re-Instatement of Federal Flood Risk Management Standard for State Revolving Fund Programs,” Thompkins, Anita Maria and Stein, Raffael to Water Division Directors (April, 2022) <https://www.epa.gov/dwsrf/federal-flood-risk-management-standard-srf-programs>

Part I.C.1.a) and the signatory requirements (set forth in Part II.D.2 of this permit) are met) in satisfaction of some or all of these components, as long as the Permittee [and/or Co-permittee(s)] explains how its prior assessments specifically meet the requirements set forth in this permit and how the Permittee [and/or Co-permittee(s)] will address any permit requirements that have not been addressed in its prior or ongoing assessment(s).

- Commenters expressed concerns that the phrase “at a minimum, worst-case data” was unclear in the Draft Permit which required Permittees to look at 3 categories of data:
  - 1) the data generated by the 13 federal agencies that conduct or use research on global change that contributed to the latest National Climate Assessment produced by the U.S. Global Change Research Program (USGCRP);
  - 2) climate data generated by the Commonwealth of Massachusetts; and
  - 3) resiliency planning completed by the municipality in which a given facility is located.

Using these sources, the Draft Permit required the Permittees to select projections relating to changes in precipitation, sea level rise, extreme weather events, coastal flooding, inland flooding, sewer flow and inflow and infiltration showing the worst-possible outcome. This data set was then to be used to determine vulnerabilities at the facility. This was the minimum requirement, but Permittees could supplement their analysis by using other worst-case data as available.

After reviewing the comments received, EPA has determined it is more appropriate at this time to use terminology that is defined in and consistent with the federal flood standards, to ensure eligibility for federal funding and to specify the data acceptable for use when conducting an assessment of vulnerable assets. Therefore, to clarify the conditions that must be considered in a vulnerability assessment, EPA has removed the phrase “at a minimum, worst-case data” from the Final Permit and instead, the Final Permit requires that the Permittee evaluate asset vulnerability using baseline conditions and future conditions, as explained below.

The Final Permit defines baseline conditions as the 100-year flood based on historical records and future conditions as projected flood elevations using one of two approaches consistent with the federal flood standards:

- a) Climate Informed Science Approach (CISA): The elevation and flood hazard area that result from using the best-available, actionable hydrologic and hydraulic data and methods that integrate current and future changes in flooding based on climate science. These shall include both short term (10-25 years forward-looking) and long term (25-70 years forward-looking) relative to the baseline conditions and must include projections of flooding due to major storm and flood events using federal, state and local data, where available;
- b) Freeboard Value and 500-year floodplain Approach: The flood elevations that result from adding an additional 2 feet to the 100-year flood elevation for non-critical

actions and by adding an additional 3 feet to the 100-year flood elevation for critical actions compared to the flood elevations that result from 500-year flood (the 0.2% - annual-chance flood) and selecting the higher of the two flood elevations.

This change in the Final Permit clearly defines what minimum conditions must be used to assess vulnerability under the Adaptation Plan, and EPA has provided tools and data references a Permittee may use to evaluate these conditions and meet the permit requirements. The flood elevations specified account for many of the storm and flood conditions that were listed in the Draft Permit; however, EPA notes that these data may not account for all potential instances of extreme precipitation. Currently, data sets or mapping tools that model changes to flood elevations in response to varying storm sizes are not readily available or simple to use. Therefore, EPA is not requiring facilities to identify or use such data in their analysis. However, EPA notes that there may be site-specific data available for use in a given municipality, and EPA encourages facilities to consider impacts from site-specific events for planning purposes if possible. One or more of the resources provided in the Recommended Procedures document, referenced in the Final Permit, may also account for impacts of extreme precipitation to an extent that is useful to facilities.

- In response to concerns expressed in comments, EPA has removed the requirement for an iterative planning process with re-evaluations “as data sources used for such evaluations are revised or generated.” EPA agrees that this requirement could create the constant need to check for new data, which would be costly and was not EPA’s intent. Instead, the Final Permit has been updated to require evaluating the vulnerability of assets once during the permit term (during the development of the Adaptation Plan). Additional revision of the Adaptation Plan during the permit term would only be required during the permit term if there has been a significant change to the infrastructure of the system to update the description of the assets removed or updated, to incorporate any new assets into the documentation, and describe any effects these changes have on the asset and/or system vulnerability. Specifically, the Final Permit states:

The Adaptation Plan shall be revised if on- or off-site structures are added, removed, or otherwise significantly changed in any way that will impact the vulnerability of the WWTS or sewer system.

- EPA agrees with concerns expressed by commenters regarding the security of documents generated in the adaptation planning process and has made the following revisions to the submission requirements.
  - EPA has removed the requirement to make a GIS system map publicly available online. EPA agrees with commenters that this requirement could create security concerns and other hardships for the regulated community. The Permittee is still required by Part I.C.2.d of the Permit to maintain such a map, but the map is not required to be in a GIS format, nor is it required to be posted online.
  - Furthermore, in response to comments about security-related issues, EPA is now requiring only that the Permittee submit to EPA an Implementation and

Maintenance Schedule under Component 3 of the Adaptation Plan. (In the Draft Permit, EPA required that the Permittee submit the entire Adaptation Plan to EPA.)

Specifically, as set forth in the Final Permit, the Permittee shall, as part of the requirement to submit an Implementation and Maintenance Schedule:

summarize the general types of significant risks [footnote omitted] identified in Component 1, including the methodology and data used to derive future conditions [footnote omitted] used in the analysis and describe the adaptive measures taken (or planned) to minimize those risks from the impact of major storm and flood events for each of the critical assets and related operations of the WWTS and the sewer system and how those adaptive measures will be maintained, including the rationale for either implementing or not implementing each adaptive measure that was assessed and an evaluation of how each adaptive measure taken (or planned) will be funded.

The Final Permit language notes in reference to the requirement to summarize “significant risks,” that “[i]n light of security concerns posed by the public release of information regarding vulnerabilities to wastewater infrastructure, the Permittee shall provide information only at a level of generality that indicates the overall nature of the vulnerability but omitting specific information regarding such vulnerability that could pose a security risk.”

Although this revision has narrowed the scope of documentation required to be submitted to EPA, the Final Permit also clarifies that the Permittee must still have clearly documented the work completed under Component 1 and 2 and keep that documentation on file and available for inspection or review by EPA upon request.

- Regarding timing, EPA agrees with the comments that 12-months may not be sufficient time to complete the Adaptation Plan, therefore, the Final Permit has been revised to allow additional time to complete the full Adaptation Plan. In the Final Permit, Component 1 is to be completed within 24 months of the effective date of the permit, Component 2 is to be completed within 36 months of the effective date of the permit, and Component 3 is due within 48 months of the effective date of the permit. EPA considers that this change will allow adequate time to initiate the necessary funding and procurement processes (which EPA understands must line-up with local requirements which can take place over many months or even years) in order to develop the plans (either in-house or through professional engineering services). EPA also considers this additional time will alleviate the impact to other ongoing municipal projects.
- Regarding annual reporting, and concerns that the requirements that such annual reports were excessive, EPA has modified this requirement and will now require a report “for the prior calendar year that documents any progress made toward implementation of adaptive

measures, and any changes to the WWTS or other assets that may impact the current risk assessment.” The first of those reports is now due on March 31 following the submission of Component #1 of the Adaptation Report. One commenter requested a 5-year reporting requirement rather than an annual reporting requirement. EPA has maintained the annual requirement. As described elsewhere in this General Response, flood and major storm events are a significant threat to water quality. An annual reporting requirement is therefore appropriate to facilitate Adaptation Planning and, ideally, the implementation of an Adaptation Plan occurring as promptly and as efficiently as possible.

- Regarding the cost of developing the Adaptation Plan, there are costs and other resources that Permittees must allocate to comply with all permit requirements. EPA considers proper operation and maintenance of the WWTS as well as the collection system to include addressing major storm and flood events that would impair operation of the system. EPA acknowledges that the Permittee will incur costs and other potential resource expenditures to develop a plan related to these events but considers these expenditures to be necessary in order to prevent impacts during such events (e.g., bypass, upset or failure of the WWTS, overflow, or increased inflow and infiltration in the sewer system, and discharges of pollutants that exceed effluent limits), which would adversely affect human health or the environment.

However, EPA appreciates the regulated community’s concerns regarding costs and has taken the commenter’s concern – that the Adaptation Plan requirements have “significant cost implications” – into consideration and has accordingly made changes to the permit as described below.

1. In order to minimize costs and provide additional clarity to Permittees, EPA has developed a companion document, *Recommended Procedures and Resources for the Development of Adaptation Plans for Wastewater Treatment Systems and/or Sewer Systems*, (“Recommended Procedures”), which a Permittee could elect to use to guide it through development of the Adaptation Plan. The document instructs Permittees on the use of EPA’s CREAT tool, which is free to use by Permittees and will help Permittees navigate through much of the analysis needed to develop an Adaptation Plan.<sup>27</sup> It is EPA’s intention that a Permittee could use these tools to develop an Adaptation Plan in an effort to reduce costs and possibly to eliminate or reduce the need to hire external contractors.
2. Additionally, EPA has removed the requirement that a “qualified person” conduct the assessment work, since this Draft Permit term created the misimpression that an outside contractor would be required to perform the work necessary to develop an Adaptation Plan. Rather, it is EPA’s expectation that a person knowledgeable and

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<sup>27</sup> As noted by at least one commenter, the guidance documents and risk assessment tools developed to support the use of this tool, “also consider a more reasonable shorter planning horizon, which would allow for a more realistic capital planning process. See MWRA Comments on Adaptation Plan requirements of Draft Permit; see also, NACWA, Climate Adaptation and Resiliency (listing CREAT tool, along with other resources, as examples of how “clean water agencies are innovating in energy efficiency and energy generation, water reuse, green infrastructure and watershed-based approaches”) <https://www.nacwa.org/advocacy-analysis/campaigns/climate-adaptation-resiliency>



familiar with the Permittee’s wastewater treatment system and/or sewer system undertake the assessments necessary to develop a meaningful and useful Adaptation Plan.

3. The provision of the Draft Permit that required that the plan be revised “as data sources used for such evaluations are revised or generated,” has been removed in the Final Permit.
4. A provision has been added to the Final Permit that allows credit for prior work to eliminate potentially costly duplication of efforts. Specifically, the new language says in Part I.C.1.b:

Credit for Prior Assessment(s) Completed by Permittee or Co-permittee. If the Permittee [and/or Co-permittee(s)] has [have] undertaken assessment(s) that were completed within 5 years of the effective date of this permit, or is [are] currently undertaking an assessment that address some or all of the Adaptation Plan components, such prior assessment(s) undertaken by the Permittee [and/or Co-permittee(s)] may be used (as long as the reporting time frames (set forth in Part I.C.1.a) and the signatory requirements (set forth in Part II.D.2 of this permit) are met) in satisfaction of some or all of these components, as long as the Permittee [and/or Co-permittee(s)] explains how its prior assessments specifically meet the requirements set forth in this permit and how the Permittee [and/or Co-permittee(s)] will address any permit requirements that have not been addressed in its prior or ongoing assessment(s).

It is EPA’s intention to provide Permittees with technical assistance for the development of the Adaptation Plan. EPA has many on-line training tools,<sup>28</sup> some of which have been utilized by New England WWTs<sup>29</sup> and also plans (in accordance with available funding and agency priorities) to offer: a New England-based virtual workshop training series for WWTs operators and others on the use of the CREAT tool which EPA expects will commence in early 2024 (which will be recorded to maximize its utility for those who may want to access the information at a later date); in-person technical assistance sometime in mid- 2024 and telephone assistance on the use of the CREAT tool. In recommending Permittees use this tool and by providing procedures for using it, EPA hopes to both enable Permittees to develop robust Adaptation Plans themselves, but also to reduce the costs, including the costs associated with outside contractors.

Additionally, EPA notes that there may be federal, state or local funding sources available to assist entities with adaptation planning.<sup>30</sup>

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<sup>28</sup> <https://www.epa.gov/crwu/training-and-engagement-center>; see also, the Resources Section in the Recommended Procedures for additional resources that Permittees might find useful.

<sup>29</sup> See [https://toolkit.climate.gov/sites/default/files/Manchester-by-the-Sea\\_March\\_2016.pdf](https://toolkit.climate.gov/sites/default/files/Manchester-by-the-Sea_March_2016.pdf); ]; see also, the Resources Section of the Recommended Procedures document for more New England case studies and other useful resources.

<sup>30</sup> EPA included a link to EPA’s website for Federal Funding for Water and Wastewater Utilities in National Disasters (Fed FUNDS). The website, while no longer listed in the Final Permit can be accessed at: <https://www.epa.gov/fedfunds>. Potential resources may also be available through the State of Massachusetts.

- With regards to the cost of implementing adaptation measures, the selection and deadlines for implementing specific adaptation measures are not included as requirements in the permit since those will only be known after the completion of the Adaptation Plan. EPA expects that the Permittee will begin implementation of those measures in the coming years. However, since the Permittee will be setting the prioritizations and scheduling for implementing the measures based on their own risks and vulnerabilities to major storm and flood events, they may incorporate affordability and funding availability into their considerations.

EPA notes, that in developing the Adaptation Plan, the Permittee may, as part of the process, be comparing the potential economic costs of the baseline condition, or “no action alternative,” with those of possible adaptation measures, under current and predicted risks of major storm and flood events. This option is available in the use of the adaptation planning approach as outlined in the companion document to this Final Permit entitled *Recommended Procedures and Resources for the Development of Adaptation Plans for Wastewater Treatment Systems and/or Sewer Systems*. Depending on site-specific circumstances, the Permittee may find that the cost of not implementing adaptation measures is greater than the cost of implementing them.

### C. Legal Authority

The Adaptation Plan permit conditions are necessary to further the overarching goal of the CWA<sup>31</sup> “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters” and derive from the same authorities as all other standard operation and maintenance requirements. CWA § 101(a), 40 C.F.R. §§ 122.41(d), (e), (n). The Adaptation Plan requirements are an iterative update to EPA’s standard O&M permit provisions and intend to address serious and increasingly prevalent threats to Permittees’ compliance with permit effluent limitations. As illustrated by the recent examples detailed in Section A, major storm and flood events can gravely impact discharges from WWTSs and thus water quality. That is, plant and/or sewer system failure due to storms, increased precipitation/floods, storm surge, and sea level rise can and do lead to bypasses, upsets, and violations of some or all of the permit limits, including water quality-based limits and limits based on secondary treatment standards. The Adaptation Plan is designed to reduce and/or eliminate noncompliant discharges that result from impacts of major storm or flood events through advanced planning and adaptation measures and is authorized by both EPA regulations and the CWA.

A comment expressed concerns that the issues caused by major storm and flood events must be addressed at a community- or region-wide level, not just by the Permittee, and that such wide scale action is beyond the scope of an NPDES permit proceeding. EPA recognizes that larger

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<sup>31</sup> Congress has recently expressly affirmed that natural hazard adaptation measures for POTWs appropriately fall within the scope of the CWA: Congress added section 223 to the CWA via the Infrastructure Investment and Jobs Act, creating a grant program to support, *inter alia*, “the modification or relocation of an existing publicly owned treatment works, conveyance, or discharge system component that is at risk of being significantly impaired or damaged by a natural hazard[.]” Pub. L. 117-58, 135 Stat. 1162 (codified at 33 U.S.C. § 1302a(c)(4))(2021).

scale planning may be necessary to address some issues and agrees that requiring the same would be beyond the scope of this NPDES permit. This NPDES permit does not intend to address all issues caused by major storm and flood events. To the contrary, the Adaptation Plan O&M requirements intend to address one specific issue that EPA has witnessed in New England, as described in Section A: the operability of the WWTS and/or sewer system during and after major storm and flood events. This issue is appropriate for an NPDES permit because it is central to the Permittee's compliance with the Permit's effluent limitations and other Permit conditions, and thus central to EPA's obligation to issue permits that assure compliance with Water Quality Standards and other applicable laws. For the reasons described in this Section, EPA is well within its CWA-based authority to impose the Adaptation Plan requirements.

EPA's O&M regulations authorize EPA to impose the Adaptation Plan requirement. 40 C.F.R. § 122.41(e) ("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 of the permitted facilities and systems inherently includes adaptation planning. As illustrated in the examples in Section A, if a WWTS is unable to operate properly as designed due to impacts from a major storm or flood event, the discharge of pollutants in violation of both its permit and applicable water quality standards is highly likely to occur and with increasing frequency. In other words, the Permittee cannot satisfy its obligation to operate properly "at all times" if it cannot do so during and after major storms or flooding events. The new Adaptation Plan requirements are an iterative extension of the previous permit's requirements that "The permittee will maintain an ongoing preventative maintenance program to prevent overflows and bypasses caused by malfunctions or failures of the sewer system infrastructure."<sup>32</sup> Major storm and flood events represent an increasing cause of WWTS malfunctions and failures and thus EPA added the Adaptation Plan requirements to the O&M requirements to more specifically address this issue.

EPA is well within its CWA-based authority to include these permit conditions which are necessary to reduce the frequency or likelihood of bypass or upset and otherwise achieve compliance with the permit's effluent limits, and thus also assure compliance with water quality standards and other CWA requirements. CWA § 402(a)(2) ("[EPA] shall prescribe conditions for [NPDES] permits to assure compliance with the [applicable CWA] requirements...as he deems appropriate."); CWA §§ 301(b)(1)(C), 401(a)(1)-(2); *see also* 40 C.F.R. § 122.4(d) ("No permit may be issued... When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected States"); *See also* 40 C.F.R. § 122.44(d)(1). The provisions are reasonable measures rooted in the permitting requirements to properly operate and maintain all facilities and the duty to take all reasonable steps to minimize or prevent any discharge in violation of the permit. 40 C.F.R. § 122.41(d), (e).

The Agency relied on the same CWA-based authority when it promulgated the O&M regulations:

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<sup>32</sup> NPDES Permit No. MA0101168 issued to City of Palmer, Jan. 21, 2011 (available at: <https://www3.epa.gov/region1/npdes/permits/2011/finalma0101168permit.pdf>)

Many commenters expressed doubt whether EPA is legally authorized to require proper operation and maintenance of facilities. This requirement is clearly authorized for NPDES permittees by section 402(a)(2) of CWA which requires the Administrator to prescribe permit conditions which will assure compliance with the requirements of CWA section 402(a)(1).

45 Fed. Reg. 33290, 33303-04 (May 19, 1980). In 1980 and now, the proper operation and maintenance of a facility – including the Adaptation Plan requirements – effectuates the permit limits on all addressed pollutants and protects all applicable water quality standards, as they assure that such limits will be met, even in times of major storms or during flood events. CWA § 402(a)(2). It is well-established that EPA may include specific permit conditions that ensure the preconditions or assumptions underlying EPA’s pollutant effluent flow calculations remain constant, thus ensuring the permit, as a whole, assures compliance with WQS and other applicable CWA requirements. *See In re: City of Lowell*, 2020 WL 3629979 at \*35,18 E.A.D. 115, 156 (EAB 2020) (affirming effluent flow limit as a proper exercise of the Agency’s 40 C.F.R. § 122.41(e) authority in part on the basis that the permit’s pollutant effluent limits were calculated based on a presumed maximum wastewater effluent discharge from the facility, and thus “If flow limits exceed the assumed maximum flow, ... then the Region may have erroneously concluded that a pollutant did not have a reasonable potential to cause or contribute to an exceedance of water quality standards or that the permit’s pollutant effluent limits assure compliance with Massachusetts’ water quality standards.”) Likewise, The Adaptive Plan O&M requirements ensure the basic, necessary preconditions (i.e., the plant’s operability) to compliance with the permit’s effluent limits and other requirements of the CWA. Given the importance of WWTS and sewer system operability to compliance with this NPDES permit, it is not unreasonable for EPA to impose the Adaptation Plan O&M requirements. *Cf. In re Avon Custom Mixing Services, Inc.*, 17 E.A.D. 700, 709 (EAB 2002) (“Given the importance of monitoring to the integrity of NPDES permits, and the broad authority the CWA confers on the Region to impose monitoring requirements in NPDES permits, it does not strike us as unreasonable that the Region has decided to include new monitoring requirements in the reissued permit.”)

The EAB has affirmed the Agency’s authority to require the preparation and submission of a plan as part of the Operation & Maintenance requirements of an NPDES permit. *In Re City of Moscow, Idaho*, 10 E.A.D. 135, 169-172 (EAB 2001) (affirming O&M permit provision that required development and submission of a quality assurance project plan, “[t]he primary purpose of [which] shall be to assist in planning for the collection and analysis of samples in support of the permit...”<sup>33</sup> under the O&M regulations, stating “it seems plain that the CWA and its implementing regulations authorize the Region to include permit requirements like the QAPP here in conjunction with the ultimate goal of assuring compliance with the CWA.”). Like the O&M planning requirement in *Moscow*, the primary purpose of the Adaptation Plan in this permit is to assist in planning for compliance with the permit – in this instance, by ensuring the

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<sup>33</sup> NPDES Permit issued to City of Moscow, Idaho, Part I.E (March 12, 1999) (available at: <https://www2.deq.idaho.gov/admin/LEIA/api/document/download/15509>)

facility remains operable even during flooding or other major storm events – and the ultimate goal of the requirement is to assure compliance with the CWA.

40 C.F.R. § 122.41(d) also authorizes EPA to impose the Adaptation Plan requirement. (“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.”) It is a reasonable step for EPA to require a Permittee to create an Adaptation Plan to minimize facility disruptions during major storm and flood events. For example, if a Permittee identifies that an asset critical to its WWTS is extremely vulnerable to a major storm and that loss of the asset would result in the inoperability of the WWTS and thus discharges in violation of permit limits, then mitigating those risks reasonably minimizes or prevents harmful discharges in violation of the permit.

EPA also has broad authority for data and information collection, reporting, and “such other requirements as [the delegated permit authority] deems appropriate” to carry out the objectives of the Act.” CWA § 402(a)(2). *See also In re Moscow*, 10 E.A.D. at 171. Components 1 and 2 of the Adaptation Plan require the Permittee to collect and report to EPA data and information that are appropriate to carry out the objectives of the CWA. This information and data will allow the Permittee to identify assets which are vulnerable to flooding and adaptive measures appropriate to address those vulnerabilities. As described elsewhere in this General Response, facility vulnerabilities threaten compliance with permit requirements and thus CWA objectives. Conversely, information about appropriate adaptive measures will facilitate compliance with both.

Comments stated it was inappropriate to impose provisions that require consideration of discharges occurring 100 years from now. First, EPA notes the changes made to the permit with regard to these provisions. See Part B of the General Response defining “future conditions”. Second, EPA notes that although the CWA limits the terms of NPDES permits to five years, CWA § 402(b)(1)(B), such a limitation does not logically constrain the permitting authority from requiring the Permittee to consider future conditions beyond the five-year term. Third, EPA expects Permittees to fully comply with the Adaptation Plan provision within the five-year term of the permit, meaning it does not impose any obligations on the Permittee beyond the five-year permit term. Fourth, the comments provide no authority for the proposition that a five-year permit term limitation was intended to prevent permit authorities from considering time-frames greater than five years in permitting. The lack of authority is not surprising as the concept of permit terms that require long-term planning or timeframes greater than five years is a familiar and accepted one. One directly relevant example for WWTSs are Combined Sewer Overflow Long-Term Control Plans (LTCs). The CSO Policy, 59 Fed. Reg. 18688 (April 19, 1994), which Congress expressly incorporated directly into the CWA at § 402(q), requires the development of LTCs to ultimately come into compliance with the Act, recognizing that such schedules will (and have) in many instances span multiple permit terms. That Congress directly amended the CWA to require compliance with the CSO Policy, including its long-term permitting approaches, demonstrates that the Act does not constrain permitting authorities from considering timeframes outside of the five-year permit term. Another example of permissible permit timeframes that extend beyond the five-year permit term are compliance schedules, which may go beyond the expiration date of the permit if consistent with applicable state law. *See In Re*

*Moscow*, 10 E.A.D. at 153 (“...a Region’s authority to provide for compliance schedules in EPA-issued permits is limited to those circumstances in which the State’s water quality standards or its implementing regulations ‘can be fairly construed as authorizing a schedule of compliance.’”) (citations omitted). The WWTS Adaptation Plan reasonably also requires *consideration* of long-term horizons as the planning and actions needed to address increasing major storms and flood events will be in many instances long-term as well.

Further, EPA does not agree that the expected life or design life alone is the appropriate recurrence interval to consider future risks. Namely, while a particular facility can be designed initially for an expected period of operation and the design storm at a given point in time, material changes often occur over time to operate and maintain a facility, thus extending its design life, and with the impacts of increased severity and frequency of major storm and flood events, the original design storm may no longer represent likely discharge conditions. EPA asserts that a forward-looking evaluation of the risks to a facility relative to its current operational state is important to selection and implementation of the control measures necessary to minimize discharges that result from impacts of major storm and flood events.

One commenter described the Adaptation Plan requirement as an unfunded mandate. EPA interprets the reference to “unfunded mandate” as a reference to the requirements of the Unfunded Mandate Reform Act of 1995 (UMRA), which is inapplicable to this permitting action. The UMRA applies to rulemaking, and not individual NPDES permit decisions. 2 U.S.C. § 1555 (“... for purposes of this subchapter the term ‘Federal mandate’ means any provision in **statute or regulation or any Federal court ruling** that imposes an enforceable duty upon State, local, or tribal governments...” (emphasis added); 2 U.S.C. § 1501(7) (the purpose of the UMRA is, *inter alia*, “to assist Federal agencies in their consideration of proposed **regulations** affecting State, local, and tribal governments...” (emphasis added)<sup>34</sup>; *See also* H.R. Rep. No. 10476, at 39 (1995), reprinted in 1995 U.S.C.C.A.N. 64 (Congress contemplated that rules subject to UMRA would “follow the requirements of section 553 of title 5, United States Code [Administrative Procedure Act] \* \* \* .”), and NPDES permit proceedings are not subject to the requirements of that section.); *In re City of Blackfoot Wastewater Treatment Facility*, NPDES Appeal No. 00-32, at \*18-19 (EAB September 17, 2001) (Order Denying Petition for Review)<sup>35</sup>(denying in part because “The Unfunded Mandate Reform Act of 1995 is Inapplicable to NPDES Permit Decisions”, finding that “Facility-specific NPDES permits... are not regulations, but rather are licenses.”.)

Commenters suggest that the Adaptation Plan requirements should be removed from the permit because other avenues of resiliency planning would be more appropriate. EPA acknowledges that there are many possible approaches and that there are other programs that require resiliency planning. However, because adaptation planning is a critical step in complying with the permit’s

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<sup>34</sup> *See also* 2 U.S.C. § 1532 (“... before promulgating any **general notice of proposed rulemaking** that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more... in any 1 year, and before promulgating **any final rule for which a general notice of proposed rulemaking was published**, the agency shall...” (emphases added).

<sup>35</sup> Order available online at:

[https://yosemite.epa.gov/oa/EAB\\_Web\\_Docket.nsf/Published%20and%20Unpublished%20Decisions/FDA156ABE18B7BD385257069005F7D3B/\\$File/blackfoot.pdf](https://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/Published%20and%20Unpublished%20Decisions/FDA156ABE18B7BD385257069005F7D3B/$File/blackfoot.pdf)

effluent limitations, EPA has determined that it is appropriate to include the Adaptation Plan requirements in the Permit itself even if similar requirements also derive from other obligations. Major storm and flood events are of urgent concern, and EPA does not believe it would be sufficient to rely entirely on non-Permit obligations to address these threats to the proper operation and maintenance of WWTs and/or sewer systems, especially because not all Permittees may otherwise be obligated to engage in adaptation planning, or may not be required to do so at this time. EPA has determined that planning for major storm and flood events must be done by all facilities now to avoid negative impacts. In recognition of the fact that Permittees may complete similar assessments to satisfy other obligations, the Final Permit allows the Permittee to use qualifying assessments done for other programs or obligations to satisfy some or all of the components of the Adaptation Plan requirements. EPA considers its approach to be appropriate and reasonable to ensure consistent operation and maintenance of permitted facilities. Therefore, EPA will require Adaptation Plans be developed under NPDES permits for all wastewater treatment plants in Massachusetts. *Cf. In re Springfield Water and Sewer Commission*, 18 E.A.D. 430, 475 (EAB 2020) (finding no clear error “when a permitting authority agrees to a permit applicant’s request for relief but decides on a different vehicle than the one proposed to provide that relief.”)

### **III. Responses to Comments**

Comments are reproduced below as received; they have not been edited.

#### **A. Comments from Austin Weidner, PE, Tighe & Bond on behalf of the Town of Palmer:**

##### **Comment 1**

##### **Co-Permittees**

The Draft Permit lists the Town of Monson as a co-permittee relating to the operation and maintenance of the portion of the collection system that is owned and operated by the Town of Monson. The Fact Sheet correctly states that a portion of the WWTF’s collection system is owned and operated by the Town of Belchertown; however, the Town of Belchertown is not listed as Co-Permittee, because, as stated in the Fact Sheet, that portion of the collection system is governed by a separate NPDES Permit issued to the Town of Belchertown (MA0102148).

First, it is our understanding that as of April 1, 2023, the permit MA0102148 has been superseded by an authorization under the General Permit for Medium Sized WWTF’s (MAG590015). We believe this reference should be updated in the Fact Sheet.

Second, the Fact Sheet states that adding Town of Belchertown as a Co-Permittee is unnecessary because the requirements would be duplicative. Upon comparison of the requirements within each permit, we believe this statement is incorrect. Namely, the Draft Permit requires Sewer System Major Storm and Flood Events Plan per Paragraph C.2.e.(2), which is not listed as a requirement in MAG590015. Please clarify why some owners of the collection system have this requirement while others do not.

## Response 1

Regarding Belchertown, EPA acknowledges that their individual permit has been superseded by the Medium WWTF General Permit. This included here for the record, but the Fact Sheet has not been updated because it supports the Draft Permit.

EPA acknowledges that Belchertown's current permit does not include the Sewer System Major Storm and Flood Events Plan given that their permit (*i.e.*, the Medium WWTF General Permit) was issued before EPA began implementing this new requirement in permits. Therefore, EPA will apply any new requirements (such as this one) in the next reissuance of Belchertown's permit.

## Comment 2

### Dilution Factor

According to Page 16 of 51 of the Fact Sheet, the calculated dilution factor is 14.6, which represents a slight decrease compared to the previous permit of 14.8. Since the dilution factor impacts the effluent discharge limits for total residual chlorine, phosphorus, copper, lead, and toxicity, it is important that the dilution factor is calculated accurately. We request clarification regarding the basis for the following items used in the calculation of the dilution factor:

- The 7Q10 flow in MGD is reported in the Fact Sheet as 118.7 cfs. Is this flow at the gage or at the WWTF?
- Replicating the calculation of the dilution factor as stated in the Fact Sheet  $[(76.7 \text{ MGD} + 5.6 \text{ MGD}) / 5.6 \text{ MGD}]$  yields a dilution factor of 14.7, not 14.6. Please clarify. If the differing result can be explained by a rounding error, then please provide further information on the calculations used.

## Response 2

Regarding the 7Q10, MassDEP determined the 7Q10 at the WWTF was 118.7 cfs. This was based on the 7Q10 of 126.6 cfs at gage number 01177000 downstream of the WWTF and then adjusting based on the watershed ratio between the gage (689 sqmi) and the WWTF (646 sqmi).

Regarding the dilution factor calculation, EPA confirms the difference between 14.6 and 14.7 is based on rounding. MassDEP converted the design flow from 5.6 MGD to 8.7 cfs, resulting in a dilution factor of 14.6 [based on  $(118.7 \text{ cfs} + 8.7 \text{ cfs}) / 8.7 \text{ cfs}$ ]. The calculation presented in the Fact Sheet converts each term to MGD and results in 14.7 as described in the comment.

Finally, EPA notes that the rounding difference in the dilution factor would not have any impact on phosphorus, copper or lead given that those calculations are based on a mass balance equation (presented in Appendix B of the Fact Sheet) and not on the dilution factor. While the calculations for the total residual chlorine and chronic toxicity limits are based on the dilution factor, this minor rounding error does not have any impact on the limits in the permit.



### **Comment 3**

#### **Copper Effluent Limit**

The permit Fact Sheet (pg 39 of 51) states that the more stringent effluent limits for copper that take effect are 45.5 ug/L on an monthly average basis and 34.9 ug/L on a maximum daily basis. These values conflict with the Table in Part I of the Draft Permit. It appears these are typographical errors and should be updated accordingly.

#### **Response 3**

EPA acknowledges that the Fact Sheet at 39 transposed the values for monthly average and maximum daily, although they are presented correctly in the Draft Permit as well as in Appendix B of the Fact Sheet. EPA notes this typographical error on page 39 of the Fact Sheet for the record, but the Fact Sheet has not been updated because it supports the Draft Permit.

### **Comment 4**

#### **PFAS Monitoring at the WWTF**

The Draft Permit requires that the WWTF monitor PFAS compounds on a quarterly basis in the influent, effluent and sludge of the WWTF. We understand that because PFAS chemicals are very persistent in the environment and in the human body, and that exposure to PFAS chemicals can lead to adverse human health effects, there is an increased desire to better understand the flow of PFAS both into and out of the WWTF. However, this additional sampling and reporting requirement comes at a significant cost to the Town. Our understanding is that local laboratories charge \$500-\$600 per sample, which reflects a minimum annual cost of \$6,000. To help reduce the burden of this additional sampling, we ask EPA to reconsider the sampling frequency of quarterly samples and reduce the frequency to twice per year. This frequency is then consistent with the frequency of the whole effluent toxicity testing required in the Draft Permit, so it can be more easily coordinated within our operations schedule and with the necessary laboratories.

#### **Response 4**

As PFAS contamination is an urgent public health and environmental issue, the Permit requires quarterly monitoring as recommended in an EPA memo dated December 5, 2022, called *Addressing PFAS Discharges in EPA-Issued NPDES Permits and Expectations Where EPA is the Pretreatment Control Authority*<sup>36</sup>. EPA recognizes that this new PFAS monitoring requirement entails increased cost. However, EPA maintains that the monitoring frequency should be at least quarterly to ensure that there are adequate data to assess the presence and concentration of PFAS in discharges. These data will enable EPA to obtain comprehensive and representative information on the sources and quantities of PFAS discharges and EPA will use these data in the future to inform its actions.

### **Comment 5**

#### **Adsorbable Organic Fluorine**

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<sup>36</sup> [https://www.epa.gov/system/files/documents/2022-12/NPDES\\_PFAS\\_State%20Memo\\_December\\_2022.pdf](https://www.epa.gov/system/files/documents/2022-12/NPDES_PFAS_State%20Memo_December_2022.pdf)

The Draft Permit requires that the Permittee conduct monitoring for adsorbable organic fluorine in the WWTF influent and effluent using Draft Method 1621. According to Section 1.7 of the Draft Method, "...EPA has classified this procedure as a screening method that may be used to estimate the aggregate contributions of the organofluorine compounds present in the sample. As such, data users are advised that the numerical results generated by this method are not expected to be as accurate or precise as those from targeted methods for PFAS."

Since EPA considers this method a screening method, the resulting data has limited value in determining quantitative concentrations of pollutants. EPA cites in the Permit Fact Sheet that the purpose of this monitoring is to make a determination about quantitative effluent limit in future permit cycles. If that is the goal, we question how data from a screening level method will be used to determine quantifiable effluent limits.

Moreover, the Draft Method has not yet been finalized. Unlike Draft Method 1633, Draft Method 1621 has not yet been validated by multi-laboratory testing. Following a similar timeline that was followed for Draft Method 1633, it could be assumed that this method will not be finalized for over a year at the earliest. We understand that private laboratories are reluctant to invest in developing new methods until the method is closer to being finalized, so we are very concerned that there will not be a laboratory available that will offer this testing method by the date required by the permit, and if they do, they would be at a large cost to the Town.

Last, we have reviewed recent Massachusetts NPDES permits finalized over the past few years, including individual permits and the Medium Sized WWTF General Permit. All of these permits had similar requirements for the sampling of PFAS compounds as the Draft Permit, but they did not include the requirement for adsorbable organic fluorine. Adding this requirement to Palmer's permit is not consistent with the precedent set by EPA. If this was an important parameter to understanding the fate and transport of PFAS through POTWs, then it should be listed in other permits. Since it was not, it further suggests that this parameter is not valuable.

For the reasons stated above, we strongly request that this monitoring requirement be removed from the Draft Permit altogether.

### **Response 5**

Regarding Method 1621, EPA is authorized to require monitoring of Adsorbable Organic Fluorine (AOF) by § CWA 308(a). Further, EPA's national guidance recommends the use of the draft Adsorbable Organic Fluorine Method 1621, as appropriate.<sup>37</sup> EPA is requiring this monitoring condition because WWTFs are known sources of PFAS, which is a subcategory of AOF; however, the magnitude and frequency of PFAS and AOF in their wastewater discharges is unknown and needs to be further characterized. These compounds are not naturally occurring and the research on their toxicity is rapidly

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<sup>37</sup> Radhika Fox, Assistant Administrator, EPA to Water Division Directors, EPA Regions 1-10, December 5, 2022, Subject: "Addressing PFAS Discharges in EPA-Issued NPDES Permits and Expectations Where EPA is the Pretreatment Control Authority." Available at: [https://www.epa.gov/system/files/documents/2022-12/NPDES\\_PFAS\\_State%20Memo\\_December\\_2022.pdf](https://www.epa.gov/system/files/documents/2022-12/NPDES_PFAS_State%20Memo_December_2022.pdf)

evolving.<sup>38</sup> As described in the documentation for the method, “Method 1621 is for use in the Clean Water Act (CWA) as a *screening method* to estimate the concentration of adsorbable organic fluorine (AOF) in aqueous matrices by combustion ion chromatography (CIC).” See Section 1.1 of Draft Method 1621.<sup>39</sup> As such, EPA plans to use this method as described, as a way of screening facilities for further analysis in the future if elevated levels of AOF are detected.

Regarding timing associated with multi-lab validation of the method and lab availability, see Response 29.

Regarding the recent addition of AOF monitoring, this new monitoring requirement was added based on the same December 2022 memo discussed above. Permits issued prior to national guidance recommending the use of Method 1621 did not include Method 1621.

## **Comment 6**

### **PFAS Testing for Industrial Discharges**

In addition to the influent, effluent, and sludge PFAS sampling discussed in the comments above, paragraph C.3 of the Draft Permit requires that the WWTF conduct annual sampling of PFAS compounds for all industrial dischargers that are associated with specific industry types listed in the permit. The identification and subsequent sampling of PFAS compounds at an unidentified (and possibly unbounded) number of industrial discharges across the collection system places an unfair cost and significant labor burden on the Town. Not only does this sampling effort require time to conduct the sampling, but it also relies heavily on cooperation with the industrial users for access to their facilities for sample collection, assuming a convenient sampling location that isolates their flow even exists. The provided list of industries is broadly defined, especially the last bullet which states “Any Other Known or Expected Sources of PFAS”, which means additional time spent by Town staff to identify these practices. Lastly, CWA § 308(a) states that “the owner or operator of any point source [shall be required to] ... sample such effluents (in accordance with such methods, at such locations, at such intervals, and in such manner as the Administrator shall prescribe).” Based on this quote, it is our understanding that the onus should be placed on the industrial users themselves, rather than the WWTF, to conduct annual PFAS sampling at the industrial locations. For these reasons, we request that this requirement be removed in its entirety from the Draft Permit.

### **Response 6**

EPA acknowledges this comment and agrees that the onus to conduct annual sampling of each relevant industrial user should not necessarily be placed on the Permittee. EPA recognizes that Permittees have regulatory avenues (*e.g.*, local limits, pretreatment programs, industrial discharge permits, and/or sewer use ordinances) to require such monitoring and the annual monitoring requirement may be implemented through any of those regulatory avenues. Thus, the Permittee may transfer all or part of the monitoring cost associated with this monitoring to the industrial user, as it deems appropriate.

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<sup>38</sup> See EPA’s current PFAS research for examples of recent science: <https://www.epa.gov/chemical-research/research-and-polyfluoroalkyl-substances-pfas>.

<sup>39</sup> Available at [https://www.epa.gov/system/files/documents/2022-04/draft-method-1621-for-screening-aof-in-aqueous-matrices-by-cic\\_0.pdf](https://www.epa.gov/system/files/documents/2022-04/draft-method-1621-for-screening-aof-in-aqueous-matrices-by-cic_0.pdf).

EPA does not directly regulate these industrial dischargers given that they are indirect dischargers via the POTW. Therefore, EPA considers it appropriate to require monitoring of industrial discharges through this NPDES permit.

#### **Comment 7**

##### **DOC Testing**

Page 38 of the Fact Sheet states that dissolved organic carbon (DOC) testing has been added to each WET test because aluminum testing is included in the WET test, and DOC is a water chemistry parameter that impacts aluminum toxicity based on the EPA's 2018 *National Recommended Water Quality Criteria*.

Based on information shared by MassDEP in February 2019 (<https://www.des.nh.gov/sites/g/files/ehbemt341/files/documents/2020-01/201902-madeep-314cmr4-pres.pdf>), we understand that MassDEP's approved water quality standards for aluminum include default aluminum criteria for each of the major watersheds in the Commonwealth. The default criteria were established using DOC data from within the watershed. Since this approach has been approved by both MassDEP and EPA, we anticipate that the default criteria will be used for all future permits. Therefore, we question the value of collecting DOC data and request that EPA remove it from the permit.

##### **Response 7**

EPA clarifies that the watershed default criteria were designed to be used if site-specific data were unavailable to determine a site-specific criterion. The DOC monitoring requirement is designed to provide sufficient data for EPA to calculate a site-specific criterion in the next permit reissuance.

#### **Comment 8**

##### **Nitrogen Optimization Report**

Part I, Section 6.1 of the Draft Permit stipulates that the Town submit an annual report to EPA and MassDEP, that summarizes activities related to optimizing nitrogen removal efficiencies, documents the annual nitrogen discharge load from the facility, and tracks trends relative to the previous calendar year and the previous five (5) calendar years. Since the Draft Permit includes effluent limitations for total nitrogen that are required to be met, the additional requirement to optimize nitrogen removal and document the annual trends is excessive in light of the new requirements. The WWTF was not designed for nitrogen removal so operational strategies to optimize nitrogen removal are limited outside of capital investments. We ask that this reporting requirement be removed.

##### **Response 8**

EPA disagrees that the requirement to optimize nitrogen removal and document trends, in addition to the nitrogen effluent limit, is excessive. This optimization requirement is independent of the nitrogen limit and requires the optimization of nitrogen removal from the facility regardless of whether the nitrogen limit is being met. The intention of these requirements is to ensure the overall out-of-basin load of nitrogen in the LIS watershed does not increase. See Responses 12 and 14.

## **Comment 9**

### **Ambient Phosphorus Monitoring**

Page 20 of the Draft Permit includes new ambient phosphorus monitoring requirements in the receiving water immediately upstream of the facility. Although, the Town understands the importance of available data in-stream data to determine environmental water quality in the receiving water, the Town believes it is not their responsibility to collect this data especially given the effort and cost associated with sample collection.

If the total phosphorus concentrations in the receiving water upstream of the WWTF is shown to have increased, it could only be a function of discharges in the upstream watershed, including other POTWs— not a result of the Palmer WWTF itself. However, under such a scenario, the Palmer WWTF may face the prospect of a more stringent total phosphorus effluent limitation in a future permit cycle.

Moreover, the costs in both money and time to the Town to conduct the required sample collection and analysis of the samples as well as to develop the QAPP required will not be minimal. The development and approval of the QAPP is especially burdensome since it is being requested with very little direction on what it should include. We anticipate needing outside assistance to develop a QAPP, which will require additional costs. Moreover, similar ambient water quality sampling required for toxicity testing does not require a QAPP.

For these reasons, we request that the ambient phosphorus monitoring requirement be removed from the Draft Permit. At the very least, we request removal of the requirement to develop and provide a QAPP for the ambient phosphorus sampling.

### **Response 9**

EPA has broad authority under the CWA and NPDES regulations to prescribe the collection of data and reporting requirements in NPDES Permits. See, e.g., CWA § 308. In this case EPA has determined that ambient phosphorus data is necessary to ensure the continued protection of water quality standards in the future.

Regarding the potential increase in upstream phosphorus, EPA agrees that an upstream increase would likely be due to other sources of phosphorus and not a result of the Palmer WWTF itself. EPA also agrees that such a scenario could result in a more stringent phosphorus limit in the future. Nevertheless, EPA must assess the site-specific factors in each permit reissuance to ensure the continued protection of water quality standards. EPA will conduct the same assessment for all upstream permits to ensure they are not discharging above their allowable load as well.

Regarding development of a QAPP, MassDEP is available to provide technical assistance as well as a QAPP template to facilitate the development of the QAPP. The Permittee may reach out to MassDEP at [MassDEP.NPDES@mass.gov](mailto:MassDEP.NPDES@mass.gov) to request the QAPP template. The commenter is correct that ambient monitoring for WET testing does not require a QAPP. This distinction is because the WET testing ambient data is not intended for water quality assessment purposes, whereas the phosphorus monitoring is intended to be used both in the next permit reissuance as well as for assessment purposes.

Therefore, this comment does not result in any change to the Final Permit.

## **Comment 10**

### **Updates to the Industrial Pretreatment Program.**

Page 43 of the Fact Sheet states that the Permittee shall update its Industrial Pretreatment Program (IPP) to match new federal standards that have been enacted since the last time the Town's existing IPP has been approved. The Fact Sheet states this needs to be completed within 180 days of the permit's effective date. However, this deadline is not stated within the Draft Permit, which calls into question when this requirement shall be met. Please confirm.

Given the involved nature of the changes required to the IPP to meet the new federal requirements, we request additional time to complete this requirement.

### **Response 10**

The comment is correct that this reference to 180 days in the Fact Sheet is an error because this requirement is not included in the permit and EPA confirms that there is no 180-day deadline. However, EPA encourages all facilities to keep their Industrial Pretreatment Programs up-to date with all federal standards. EPA notes Part I.E.4.c. of the permit says, "(t)he Permittee must notify EPA if the POTW modifies or intends to modify its Pretreatment Program." Therefore, the Permittee should notify EPA of any planned changes to the Industrial Pretreatment Program.

## **Comment 11**

### **Major Storm and Flood Events Plans for Collection Systems and WWTF**

Sections C.1 and C.2 of the Draft Permit require the development of a Major Storm & Flood Events Plan for both the WWTF and the Sewer Collection System. The Fact Sheet states that "EPA has determined that these additional requirements are necessary to ensure the proper operation and maintenance of the wastewater treatment facility." What is the basis for this determination, especially since the WWTF has no history of flooding at the site? Moreover, what is the regulatory driver for requiring the Town to develop this plan?

We believe this requirement is overly burdensome to the Town. Not only because the value of such a plan seems limited given the historic observations at the site, but also because the required evaluations, as listed in the Draft Permit, appear excessive to meet the intent of the Plan itself. Developing such a Plan will require an extensive amount of time and come at a large cost to the Town, since it will have to be completed by third-party consulting engineers. Appropriating funding and securing an engineer to complete the Plan alone may take more than the 12 months, given Town funding schedules. Such an undertaking seems more fitting to be a part of Comprehensive Wastewater Management Plan, when all aspects of the entire wastewater system can be evaluated holistically to meet the community's needs, including the impacts from Major Storm and Flooding Events, into the future.

While we understand the impact climate change and associated sea level rise may have on infrastructure and utilities, we understand that not all sites face the same challenges. The requirement appears to be a one-size fits all solution that is more apt for coastal communities or sites where flooding has historically occurred. We strongly request that these two requirements be removed from the Draft Permit.

### **Response 11**

See the General Response.

The comment suggests that a “one-size-fits-all” approach is not appropriate. EPA agrees that the plans for each municipality should and will likely be unique. However, to ensure fairness and because of the commonality of the general threats posed by increased flooding and storm events, the permit requirements to guide the development of those unique plans can and should be consistent for similar facilities. As described in the General Response, EPA has changed the Final Permit requirements in a way which will allow permittees more leeway to develop their own Adaptation Plans within the general parameters of the permit requirements.

The comment presupposes that the Permittee’s facilities are at relatively lower risk of flooding compared to coastal communities or sites where flooding has historically occurred, but in fact fulfillment of the Adaptation Plan requirements is a way for permittees and EPA to ascertain the risk to WWTSs and/or sewer systems. Additionally, although the Adaptation Plan requirements will be the same for all permits, the individual plans developed under those requirements will necessarily be tailored to site-specific conditions and may require less planning for facilities at relatively lower risk of flooding or other adverse impacts from major storm events, for example if fewer critical assets are vulnerable. Notably, the impacts that must be considered are not limited to flooding-impacts as the comment implies, but also storm events other than flooding which may adversely impact systems (e.g., collection pipes overwhelmed by heavy inflow, etc.).

**B. Comments from Nisha Patel, P.E., Director, Water Planning and Management Division, Bureau of Water Protection and Land Reuse, Connecticut Department of Energy and Environmental Protection:**

**Comment 12**

The Connecticut Department of Energy and Environmental Protection (CTDEEP) is providing comment on the draft NPDES permit for the Palmer water pollution control facility referenced above. The draft permit authorizes discharges of treated wastewater to the Chicopee River in Massachusetts which subsequently flows through Connecticut to Long Island Sound (LIS).

As a downstream state, Connecticut has a keen interest in WWTP discharges and potential impacts to both the major receiving tributaries and LIS. LIS is affected by hypoxic conditions, which occur annually in the summer. Hypoxia in LIS has been well documented to result from excessive amounts of nitrogen. Discharges from wastewater treatment plants contribute to the nitrogen loading and subsequent hypoxic conditions in LIS.

In response to the occurrence of hypoxia in LIS, Connecticut and New York jointly developed a Total Maximum Daily Load (TMDL) for nitrogen which was approved by the Federal Environmental Protection Agency (EPA) in April 2001. In addition to a number of nitrogen reduction efforts required of Connecticut and New York, the TMDL specified a 25% reduction in the baseline nitrogen load from WWTPs located upstream of Connecticut with discharges that ultimately flow to LIS (MA, NH, and VT). At that time, nitrogen monitoring data was not available and the baseline load for the upstream state’s WWTPs was determined using design flows and an average discharge concentration (15 mg/L). It is important to note that very few, if

any, WWTPs were operating at design flow capacity at that time. Because of this, the baseline load provided in the TMDL for WWTPs located upstream of Connecticut was grossly overestimated.

Nitrogen loads from the upstream state's WWTPs were later determined using 2004-2005 monitoring data and average flows. In cases where nitrogen monitoring data were not available, an assumed concentration was used that varied based on the level of treatment. Based on this analysis, it was stated that the upstream states "are meeting" the TMDL target nitrogen load. However, little if any actual nitrogen removal efforts were implemented at that time. The total nitrogen load estimate was used as a "not to exceed" cap in WWTP discharge permits. We believe the 2004-2005 nitrogen load estimate more accurately reflects actual total nitrogen discharges from WWTP's located in the upstream states. As such, this estimate represents the baseline load from which a 25% reduction target should be established in accordance with the TMDL. Additionally, it is a misrepresentation to state or infer that the upstream states are meeting the LIS TMDL.

### **Response 12**

EPA acknowledges that there is uncertainty with regards to the actual load of nitrogen being discharged in 1998. In developing its approach to nitrogen effluent limits in the Connecticut River watershed, along with 2004-2005 estimate, referenced by the commenter, EPA considered the scientific papers published after the completion of the TMDL that cast doubt on the 1998 21,672 lb/day out-of-basin baseline point source loading from which a 25% reduction in nitrogen was assumed in the TMDL. These later estimates suggest that the baseline loading may have been significantly lower than assumed in the TMDL which, in turn, casts doubt on claims of out-of-basin point source load reductions achieved so far.

For example, in 2013 the United States Geological Survey (USGS) published an estimation of the total nitrogen load to LIS from Connecticut and contributing areas to the north for October 1998 to September 2009.<sup>40</sup> Available total nitrogen and continuous flow data from 37 water-quality monitoring stations in the LIS watershed, for some or all of these years, were used to compute total annual nitrogen yields and loads. In order to extract the non-point source loadings from the total nitrogen measured, the authors relied on point source estimates from the SPARROW model of nutrient delivery to waters in the Northeastern and Mid-Atlantic states in 2002, including the Connecticut River, that was published by Moore and others in 2011.<sup>41</sup> The SPARROW model estimated that 1,776.7 metric tons per year (MT/yr) (or annual average 10,820 lb/day) of total nitrogen was discharged to the Connecticut River from Massachusetts, New Hampshire and Vermont in 2002.<sup>42</sup> These estimates were based on an approach by Maupin and Ivahnenko,

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<sup>40</sup> Mullaney, J.R., and Schwarz, G.E., 2013, Estimated Nitrogen Loads from Selected Tributaries in Connecticut Draining to Long Island Sound, 1999–2009: U.S. Geological Survey Scientific Investigations Report 2013–5171, 65

<sup>41</sup> Moore, Richard B., Craig M. Johnston, Richard A. Smith, and Bryan Milstead, 2011. Source and Delivery of Nutrients to Receiving Waters in the Northeastern and Mid-Atlantic Regions of the United States. *Journal of the American Water Resources Association (JAWRA)* 47(5):965-990. DOI: 10.1111/j.1752-1688.2011.00582.x

<sup>42</sup> Extrapolated from Moore, et.al 2011, Table 3 on page 977 which estimated that for 2002 an 33.2 % of the total 4,553 MT/yr Massachusetts nitrogen load was from point sources, 2.5% of the total 3,795 MT/yr Vermont nitrogen



published the same year, which used discharge monitoring data available from EPA's Permit Compliance System (PCS) database for 2002.<sup>43, 44</sup> Where no data was available, an estimated typical pollutant concentration (TPC) and flow was used to approximate nitrogen loading from point sources according to their industrial category.<sup>45</sup>

Uncertainty regarding to the out-of-basin load assumed in the TMDL can never be removed because there is very little out-of-basin point source nitrogen effluent data from 1998. Rather than attempting to recalculate or refine the baseline, EPA has determined that the imposition of the TN effluent limitations is consistent with requirements and assumptions of the TMDL by imposing (for the first time) enforceable load restrictions on the facility to prevent the discharge from increasing and contributing to further degradation of LIS. Capping the aggregate out-of-basin load while allowing the receiving waters to respond to significant in-basin reductions is a reasonable approach to meeting EPA's obligations under Section 301 of the Act. LIS is subject to extensive monitoring, and the impact of nutrient reductions on water bodies can take time to manifest. EPA will be evaluating the receiving water response over this permit cycle and will take this information into account when determining the need, if any, for more stringent TN effluent limitations. For this reason, despite the irreducible uncertainty regarding the 1998 out-of-basin load, EPA will implement the TMDL as described in the Fact Sheet, including the effluent limit and the optimization requirement for Palmer as proposed in the Draft Permit.

### **Comment 13**

The states of Connecticut and New York met the TMDL target reductions for nitrogen in 2014 and 2017, respectively. Additionally, Connecticut's WWTPs discharged 5.8 mg/l of nitrogen in aggregate, based on a five-year average (2018-2022). This includes WWTPs that have not pursued technology upgrades for nitrogen removal. Connecticut continues to work on additional reductions in nitrogen at WWTPs for the betterment of our receiving waters and ultimately LIS.

As Connecticut continues to achieve greater nitrogen reductions at its WWTPs, the load from the upstream states consequently becomes a greater portion of the total load to LIS and warrants full attention. A study of nitrogen loading trends to LIS from New England states found that approximately 50% of the nitrogen load to LIS comes from areas north of Connecticut (Mullaney and Schwarz, 2013). This study was based on 10 years (1999-2009) of data and compared computed nitrogen loads from four gaging stations located along the Connecticut-Massachusetts border to the total nitrogen load computed from gages (and estimates) within Connecticut.

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load was from point sources and 6.1 percent of the total 2,790 MT/yr New Hampshire nitrogen load was from point sources.

<sup>43</sup> Moore (2011), page 968.

<sup>44</sup> Maupin, Molly A. and Tamara Ivahnenko, 2011. Nutrient Loadings to Streams of the Continental United States From Municipal and Industrial Effluent. *Journal of the American Water Resources Association (JAWRA)* 47(5):950-964.

<sup>45</sup> Maupin (2011), page 954.

### **Response 13**

EPA acknowledges this comment.

### **Comment 14**

CTDEEP notes that the draft Palmer permit includes a total nitrogen limit in pounds per day which is to be reported as the rolling annual average. This total nitrogen limit of 374 pounds per day exceeds the monthly average loading of 87 pounds per day based on 2017-2022 data (Appendix A FS). This equates to an allowable increase of roughly three times the total nitrogen load to LIS. It has been assumed that this permit limit will not result in an increase of total nitrogen above the target load. However, as stated in the above paragraphs, the TMDL baseline total nitrogen load for upstream states was overestimated and therefore, the TMDL target for plants such as this, is an overestimate. WWTPs located in the upstream states have initiated little nitrogen removal efforts, none of which would result in a 25% reduction. Any increase in total nitrogen loading from the WWTP likely represents an actual total nitrogen increase since the TMDL was established in 2001, and such increased load has the potential to adversely impact LIS.

### **Response 14**

EPA acknowledges that the nitrogen limit of 374 lb/day is above Palmer's 2017-2022 annual average load. However, EPA is adopting a systemic permitting approach that includes continued optimization with effluent limits that provides assurance that long term loads will not increase. The permit allocates the current TN load so that: the aggregate out-of-basin TN load does not increase; effluent limits are annual average mass-based; consistent with the assumptions of the TMDL, no individual facility is left with an effluent limit that is not achievable using readily available treatment technology at the facility's design flow; and smaller facilities can achieve their limits through optimization. Under this systemic permitting approach, nitrogen effluent limits and/or optimization will be pursued for all facilities in the LIS watershed and is designed so that nitrogen loadings to LIS will not increase. This aggregate, gross-level approach is appropriate given the large number of facilities whose discharges contribute to TN loading into LIS and the geographic expanse in which they are situated.

### **Comment 15**

The draft permit contains a special condition (Part I.G.1) for the WWTP to continue to optimize treatment in order to achieve the greatest performance of nitrogen removal and minimize the annual average mass discharge of nitrogen. This condition also includes a requirement for WWTP to report annually on the nitrogen load discharged from the facility and track changes in the load relative to the previous year and past five years. We note that if annual average total nitrogen increases, the permittee must include an explanation for this increase. We concur with this condition and request that it remains in the final permit.

### **Response 15**

EPA acknowledges this comment.

### **Comment 16**

While we greatly appreciate the initial steps taken by EPA to include an enforceable nitrogen load limit, we have concerns that any allowable increase in nitrogen loads will exceed the actual nitrogen load that was occurring at the time the TMDL was developed. Because any increase in nitrogen loads will impact LIS, we request that EPA carefully execute Part I.G.1 of the permit to optimize performance and monitor and track nitrogen loading to ensure that no increase in total nitrogen loads from the upstream states is allowed.

As always, we are available to meet to discuss our comments and achieve our common goal of providing the best possible protection for the environment.

#### **Response 16**

EPA acknowledges this comment and is making efforts to reduce nitrogen loading in LIS from upstream states, as evidenced by the watershed-wide permitting approach presented in new LIS permits in both Massachusetts and New Hampshire. This is discussed in more detail in Section 5.1.9.1 of the Fact Sheet.

Also see Response 14.

### **C. Comments from Kelsey Wentling, Connecticut River Conservancy:**

#### **Comment 17**

I am submitting comments on the revised draft National Pollutant Discharge Elimination System (NPDES) permits for the Palmer Water Pollution Control Facility (WPCF) on behalf of the Connecticut River Conservancy (CRC), formerly the Connecticut River Watershed Council. CRC is an environmental nonprofit dedicated to protecting the entire Connecticut River valley through initiatives that support clean waters, healthy habitats and thriving communities. The Palmer WPCF discharges into the Chicopee River, a direct tributary of the Connecticut River, and so is of interest to our organization. CRC congratulates the Town of Palmer on the elimination of its historic CSOs and the progress made to reduce nutrient loading from the facility.

#### **Response 17**

EPA acknowledges this comment.

#### **Comment 18**

The first page of the draft permit does not list the segment for the receiving waters (Segment MA36-22), which is included in other permits and would be helpful to include here.

#### **Response 18**

EPA agrees and has included the segment in the Final Permit.

#### **Comment 19**

##### **Nitrogen**

The 2011 WPCF permit special conditions to optimize operations relative to total nitrogen are very similar to the 2023 draft permit requirements. It is not clear from the fact sheet or draft permit if any nitrogen removal activity was undertaken since the issuance of the last permit, and it would be helpful if relevant updates were included in the fact sheet.

CRC understands EPA's approach to holding nitrogen limits, but we are concerned that this strategy does not go far enough to reduce future nitrogen loading from this and other MA facilities, which EPA acknowledges are the source of continued impairments in LIS. While the required annual report will provide information on optimization activities and relevant data, the requirement to minimize is not defined numerically, other than holding the cap of 374 lb/day. It would be useful to establish measurable benchmarks for the facility to minimize nitrogen discharge over the life of the permit, which could result in a more substantial reduction in nitrogen loading. However, we also recognize that voluntary incentives, while they can be helpful, have not proven to be consistently effective in reducing nutrient loading to LIS.

In 2015 NEIWPCC commissioned a report to compile information on low-cost nitrogen removal projects at 29 treatment plants in the upper LIS watershed. In 2021, an update to this report found that, in most cases, nutrient removal actions were voluntary, as the facilities were largely meeting the requirements of their NPDES permits. The report concluded that 'little incentive exists to perform voluntary upgrades,' and that the majority of facilities did not take any actions to remove nitrogen.<sup>1</sup> The Palmer WPCF was included in this study<sup>2</sup> and was identified as a facility that was likely doing very little nitrogen optimization but had high potential for nitrogen removal given their excess capacity and unused tankage. However, since this was written in 2015 it does seem as though some nitrogen removal activity has taken place, based on the DMR data available on the ECHO website as well as the nitrogen data Appendix A. There appears to be a substantial decrease in nitrogen total lbs/year and monthly mg/L between 2019 and the subsequent years and if this was the result of a nitrogen optimization activity, we would appreciate this context being more readily available on the ECHO website or if resources were included in the fact sheet related to how we can find information related to optimization activity.

Given that the WPCF has operated well under capacity, if the facility were to increase nitrogen loading to its total nitrogen limit of 374 lb/day, this would represent a substantial increase in actual nitrogen entering the watershed. In 2015, a primary goal of the CCMP was to further reduce nitrogen loading from more distant sources such as wastewater facilities in Massachusetts. We believe this permit does not go far enough to include actionable, specific or measurable goals to reduce the WPCF nitrogen discharges below actual loading and allows for possible increases to 374 lbs/day. The final permit should specific goals associated with optimization activities to reduce nitrogen loading below the 374 lbs/day limit at a minimum, but preferably below the annual average of 146 lbs/day.

<sup>1</sup> <https://neiwpc.org/2021/06/01/assessing-nitrogen-removal-retrofits/>

<sup>2</sup> <http://neiwpc.org/wp-content/uploads/2020/08/LIS-Low-Cost-Retrofit-Appendix-B-Tech-Memo.pdf>

## **Response 19**

First, the comment suggests that nitrogen optimization benchmarks would be useful. EPA determined that the nitrogen limit in combination with an optimization requirement is sufficient to ensure the out-of-basin load does not increase. See Responses 12 and 14.

Given that the facility has been required to optimize TN removal for many years based on their 2011 Permit, EPA does not expect significant reductions in the TN concentration based on further optimization resulting from this permit reissuance. Therefore, optimization benchmarks are not warranted. Although the report referenced in the comment suggests that Palmer may have a high potential for nitrogen removal through low-cost retrofits, EPA notes that such facility upgrades are not required in the permit as part of the current LIS permitting approach. As noted in the Fact Sheet at 33, nitrogen limits may need to be lower in the future and the Permittee should consider these low-cost retrofits.

Second, the comment requests easy access to the annual nitrogen optimization reports. While EPA does not include these documents in the Fact Sheets or in ECHO, any such documents submitted by the Permittee are available upon request by any interested party.

Finally, EPA reviewed the 2019 optimization report and notes that the Permittee began using two aeration basins with cycling on and off to create alternating aerobic and anoxic conditions for nitrogen removal. Prior to that time, they were operating one aeration basin with fine bubble diffusers. Therefore, EPA confirms that the substantial decrease in nitrogen load described in the comment was a result of optimization efforts and is a good example of the effectiveness of this permitting strategy.

## **Comment 20**

### **pH**

Several wastewater treatment facilities in the Connecticut River watershed, including the Palmer WCPF, have an expanded pH range of 6.0 - 8.3 instead of the state-wide standard of 6.5 - 8.3 S.U. The permit allows for the WCPF to undertake a study to determine if they want to continue this expanded range in the next permit. We realize that some facilities may opt to undertake the study while others may not. This will create inconsistent standards for facilities throughout the watershed and so we prefer that the pH range for this and other facilities with the same permit conditions be reduced to come into compliance with the MA WQS range of 6.5 - 8.3 S.U.

### **Response 20**

EPA acknowledges that some discharges are allowed an expanded pH range, whereas others are not. EPA disagrees that this results in “inconsistent standards” but considers that this site-specific allowance is appropriate and is applied consistently throughout the state of Massachusetts. Only discharges that can be demonstrated to not result in a violation of water quality standards are allowed an expanded range. EPA considers this expanded range to be protective of water quality standards and has maintained the expanded range in this permit term along with an allowance for a pH study that will be evaluated in the next permit reissuance. Therefore, this comment does not result in any change to the Final Permit.

## **Comment 21**

### **Phosphorus**

CRC supports the requirement to conduct ambient monitoring for phosphorus, but we believe monitoring should take place April – October, as is required under 2021 NPDES permit for the Chicopee Water Pollution Control Facility. I assume that the transition to ambient monitoring is the reason why ortho-phosphorus monitoring is not included in the draft permit, but it would be helpful to have mention of this change in the fact sheet. We note that the data in Table 4 of the fact sheet is from 2008 and so we support the use of more recent information in the next permitting cycle.

### **Response 21**

EPA acknowledges the support for the ambient monitoring requirement and notes that the requirement is for April through October as requested. EPA is unclear regarding the reference to the Chicopee permit given that it does not include ambient phosphorus monitoring at all.

Regarding the removal of ortho-phosphorus monitoring, EPA's intention in requiring winter ortho-phosphorus monitoring was to verify the assumption that the vast majority of the phosphorus discharges would be in the dissolved phase. It was EPA's determination at the time that the non-particulate ortho-phosphorus would pass through the river system and not accumulate in the sediments. However, EPA has since determined that winter phosphorus loadings are more likely to accumulate in the sediment<sup>46</sup>. Given that both dissolved and particulate phosphorus may contribute to water quality impairments, EPA has determined that total phosphorus is the appropriate focus and thus it is no longer necessary to continue monitoring ortho-phosphorus.

### **Comment 22**

#### **Copper and lead**

It is well documented that copper can be acutely toxic to many aquatic species, and so we support the more stringent monthly and daily copper limits of 45.5µg/L and 34.9 µg/L, respectively, to protect WQS. We likewise support the addition of a monthly average lead limit for the same reasons.

### **Response 22**

EPA acknowledges this comment.

### **Comment 23**

#### **Essential Fish Habitat**

The Chicopee River where the WPCF discharges is designated as EFH for Atlantic Salmon. Given that native population of Atlantic salmon in the Connecticut River have been extirpated and federal efforts to reintroduce the species ended in 2013, we wonder if it would instead make sense to focus EFH precautions on shortnose sturgeon, a federally endangered species identified downriver in the Connecticut River on the NOAA ESA

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<sup>46</sup> This study showed that phosphorus discharged from wastewater treatment plants during the winter was likely to be taken up by sediments and subsequently released to fuel aquatic plant growth in the next growing season. Assabet River Massachusetts: Sediment and Dam Removal Feasibility Study, US Army Corps of Engineers, September 2010.

Section 7 Mapper.<sup>3</sup> This may not change the permit conditions but seems a more relevant species to consider when taking steps to protect and preserve EFH.

<sup>3</sup> <https://noaa.maps.arcgis.com/apps/webappviewer/index.html?id=a85c0313b68b44e0927b51928271422a>

### **Response 23**

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

As indicated in the comment, the receiving water of the Palmer Clean Water Facility (CWF) is the Chicopee River. As a major tributary of the Connecticut River, the Chicopee River has been designated as EFH for Atlantic salmon<sup>47</sup>. Once this EFH designation is confirmed, EPA must consult with NOAA Fisheries regarding the Atlantic salmon EFH. EPA has no flexibility to substitute shortnose sturgeon or other species as part of the EFH consultation. EPA initiated EFH consultation with NOAA Fisheries Habitat and Ecosystem Services Division on June 1, 2023. NOAA Fisheries responded on June 1, 2023, acknowledging that the permit action “*may adversely affect essential fish habitat, however the permit conditions provided adequately minimize adverse effects and we [NOAA Fisheries] have no conservation recommendations to provide.*” This concluded EFH consultation for the Palmer CWF.

EPA Region 1 also reviewed the “action area” of the Facility’s discharge to determine whether federally protected species protected under the Endangered Species Act overlapped with this discharge area. According to NOAA Fisheries<sup>48</sup>, no threatened or endangered species are present in the action area. Life stages of the endangered shortnose sturgeon can be found far downstream, well outside the action area of the Facility, therefore, no ESA section 7 consultation was required. Therefore, EPA Region 1 is unable to specifically consider shortnose sturgeon when taking steps to protect and preserve EFH and ESA. However, the pollutant limits and requirements included in the Palmer CWF NPDES permit will meet state water quality standards and are designed to protect all aquatic species, including the shortnose sturgeon. EPA Region 1 makes all EFH and ESA documents available upon request as part of the Administrative Record of the Palmer CWF.

### **Comment 24**

#### **PFAS**

CRC supports the efforts of EPA and DEP to characterize PFAS inputs to river systems. We support the quarterly influent, effluent, and sludge testing requirement. We understand that WWTPs are not yet equipped to limit or treat PFAS and support EPA’s intent to use these data to ensure the future permits will continue to protect designated uses.

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<sup>47</sup> Final Omnibus Essential Fish Habitat Amendment 2 Volume 2: Table 31: Section 2.2.8, Table 31, pp 179-181. Updated December 8, 2016.

<sup>48</sup> ESA Mapper: <https://www.fisheries.noaa.gov/resource/map/greater-atlantic-region-esa-section-7-mapper>

#### **Response 24**

EPA acknowledges this comment.

#### **D. Comments from Emily Remmel, NACWA's Director of Regulatory Affairs:**

##### **Comment 25**

The National Association of Clean Water Agencies (NACWA) appreciates the opportunity to provide comments to the U.S. Environmental Protection Agency (EPA) Region 1's draft National Pollutant Discharge Elimination System (NPDES) permits issued to various Publicly-Owned Wastewater Treatment Works (POTWs) operating in Massachusetts.

NACWA represents the interests of over 350 municipal clean water utilities of all sizes across the United States including municipal wastewater utilities in Massachusetts. Our members are anchor institutions in their communities that everyday provide essential service of treating billions of gallons of our nation's wastewater and stormwater in a manner that ensures the continued protection of public health and the environment – this includes taking various voluntary steps to improve their overall climate resiliency.

We object to the EPA Region 1's National Pollutant Discharge Elimination System (NPDES) permit issued for the Palmer Water Pollution Control Facility and Co-permittee Town of Monson, Massachusetts. We object to the permit's new requirements set forth in Section C (1)(a) that mandates a utility develop, submit, and begin to implement a *Wastewater Treatment Major Storm and Flood Events Plan* as well as the requirements set forth in Section C(2)(e)(x) mandating utilities to develop, submit, and begin implementing a *Sewer System Major Storm and Flood Events Plan* as an element of the *Sewer System Operations and Maintenance Plan*.

NACWA recognizes and supports the comments made by the Massachusetts Water Resources Authority in a separate but similar individual permit issued by EPA Region 1 (*i.e.*, the draft Northampton Wastewater Treatment Plant NPDES Permit MA0101818) as they apply to the permit at issue.

#### **Response 25**

EPA acknowledges this comment and notes that the comments submitted by MWRA on the draft Northampton permit (MA0101818) have also been submitted by MWRA on this Draft Permit. EPA has responded to the relevant comments submitted by MWRA below.

#### **E. Comments from David W. Coppes, P.E., Chief Operating Officer, Massachusetts Water Resources Authority:**

##### **Comment 26**

The Massachusetts Water Resources Authority (MWRA) appreciates the opportunity to comment on the U.S. Environmental Protection Agency's (EPA) draft National Pollutant Discharge Elimination System (NPDES) permit number MA0101168 for the Palmer Water Pollution Control Facility (WPCF) and the accompanying fact sheet (Draft Permit), which were



noticed on March 30, 2023, and the Massachusetts Department of Environmental Protection's draft NPDES Surface Water Discharge Permit MA 0101168. MWRA is providing the following comments in accordance with 40 C.F.R. §124.13.

**Response 26**

EPA acknowledges this comment.

**Comment 27**

**Comments on inclusion of Co-permittees in the draft NPDES permit**

The draft permit includes the Town of Monson as a Co-permittee. MWRA does not believe the Clean Water Act and EPA's NPDES program authorize EPA to include municipalities that do not discharge to waters of the U.S. as Co-permittees in the draft NPDES permit. Further, the inclusion of Co-permittees creates unacceptable liability risks for Permittees and Co-permittees. MWRA respectfully requests that EPA remove the co-permittee requirements from the draft permit.

**Response 27**

The Environmental Appeals Board (EAB)<sup>49</sup> has previously upheld the Region's approach to co-permitting of satellite communities. *In re Charles River Pollution Control Dist.*, 16 EAD 623, 24 (EAB 2015). Neither the CWA nor the NPDES regulations prohibit the Region from regulating the satellite communities under a single NPDES permit with a regionally integrated plant. The record in this case supports applying the legal reasoning in Charles River to the Region's permit decision here. *See also In re Springfield Water & Sewer Comm'n*, 18 E.A.D. 430, 514-516 (same). The specific legal rationales identified by the Board in upholding EPA co-permittee approach, and those set forth in Fact Sheet, Appendix D, encompass and dispose of the commenter's objections and are incorporated here.

**Comment 28**

**Comments on Section A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

**PFAS**

MWRA is pleased to see that the quarterly influent, effluent, and sludge sampling for PFAS calls for grab samples rather than composite samples, which is consistent with the requirements of Method 1633.

**Response 28**

EPA acknowledges this comment.

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<sup>49</sup> For more information on the EAB, please see [https://yosemite.epa.gov/oa/EAB\\_Web\\_Docket.nsf/General+Information/Frequently+Asked+Questions?OpenDocument#1](https://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/General+Information/Frequently+Asked+Questions?OpenDocument#1)

## Comment 29

### **Adsorbable Organic Fluorine monitoring of influent and effluent**

MWRA is concerned that monitoring of Adsorbable Organic Fluorine (AOF) is untested and the data may be impossible to interpret. MWRA recognizes the value of a measurement would cover all of the thousands of possible PFAS compounds as a class. However, the method is not ready for use in NPDES monitoring. The justification in the Fact Sheet does not address any of several issues with the method.

Draft Method 1621 (dated April 2022) states “This document represents a draft of an AOF method currently under development by the EPA Office of Water, Engineering and Analysis Division (EAD). **This method is not approved for Clean Water Act compliance monitoring until it has been proposed and promulgated through rulemaking.**”

Conversely, EPA issued a memo allowing permit writers to include Draft Method 1633 in permits even though it has not been finalized and promulgated. As far as MWRA is aware, no such memo has been issued with respect to Draft Method 1621 and there are some good reasons not to do so.

AOF in aqueous matrices by combustion ion chromatography (CIC) is a “method-defined parameter” defined solely by the method used to determine the analyte. Any changes to the method necessitated by the results of the multi-laboratory validation study or public comments on the method should invalidate any prior data collected using the draft procedure.

EPA is adding this method to permits without having completed the multi-laboratory validation study. There is no way to know what to expect when multiple labs are employed to meet the permit required testing in terms of precision, accuracy, comparability or repeatability.

By requiring measurement of AOF using Method 1621 in the draft NPDES permit, EPA is side-stepping the requirements of the Paperwork Reduction Act instead of following the information collection procedures required by that Act.

The current detection limits are on the order of 5,000 ng/L as F. In addressing concerns about the presence of PFAS at ng/L levels, the analysis will not produce useful results, even aside from questions about precision, accuracy, comparability or repeatability noted above.

MWRA estimates a cost for this analysis of about to \$300 - \$400 per sample. Permittees may not be able to find laboratories to do this analysis, as there is currently a shortage of labs currently set up to perform this test. At a minimum there would be additional cost related to sample handling and shipping. This cost is an unreasonable burden to put on permittees, especially because the data generated prior to Method 1621 being approved are likely to be unusable for decision-making.

MWRA recommends that the requirement to monitor and report on Adsorbable Organic Fluorine be deleted from the permit. At a minimum, it should be deferred until an available approved method is promulgated.

## **Response 29**

EPA issued a memo on December 6, 2022 related to *Addressing PFAS Discharges in NPDES Permits and Through the Pretreatment Program and Monitoring Programs*. That memo indicates that “The draft Adsorbable Organic Fluorine CWA wastewater method 1621 can be used in conjunction with draft method 1633, if appropriate.” EPA’s website<sup>50</sup> currently indicates that multi-lab validation will take place in the summer of 2023. While EPA considers it appropriate to use Method 1621 in conjunction with Method 1633, EPA also agrees with the comment that there are benefits to waiting until Method 1621 is multi-lab validated. Given the expectation that it will be multi-lab validated in the near future, EPA has modified the Final Permit to indicate that monitoring for Adsorbable Organic Fluorine shall begin 6 months after EPA notifies the Permittee that Method 1621 has been multi-lab validated. EPA expects that this additional time will also allow laboratories time to set up to perform this test.

Also, see Response 5.

## **Comment 30**

### **Comments on section B. UNAUTHORIZED DISCHARGES**

#### **Unauthorized discharge – public notifications**

MWRA agrees with notification of SSOs, however recommends these reporting requirements be consistent with recently implemented MA regulations 314 CMR 16.00. In particular, MWRA suggests that EPA align Part I.B.2 with 314 CMR 16.00.

## **Response 30**

EPA acknowledges the commenter’s support for SSO notifications and agrees that Part I.B.2 of the permit should align with the state regulations found at 314 CMR 16.00 to streamline the public notification process. Therefore, EPA has revised Part I.B.2 to reflect the requirements found in 314 CMR 16.00: NOTIFICATION REQUIREMENTS TO PROMOTE PUBLIC AWARENESS OF SEWAGE POLLUTION. The public notification requirement at Part I.B.2 simply requires the basic information identified regarding the unauthorized discharge to be posted on a publicly available website within 24 hours of becoming aware of the discharge. Therefore, EPA clarifies that fulfilling the requirements of 314 CMR 16.00 would also fulfill the requirements of this permit provision. However, EPA notes that simply fulfilling the requirements of this permit provision does not fulfill all the requirements of 314 CMR 16.00. The Permittee must meet all additional requirements of 314 CMR 16.00 based on state regulations beyond the scope of this permit. Please contact [massdep.sewagenotification@mass.gov](mailto:massdep.sewagenotification@mass.gov) with questions related to this requirement.

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<sup>50</sup> <https://www.epa.gov/cwa-methods/cwa-analytical-methods-and-polyfluorinated-alkyl-substances-pfas>

### **Comment 31**

#### **Comments on section C. OPERATION AND MAINTENANCE OF THE TREATMENT AND CONTROL FACILITIES**

##### **Major Storm and Flood Events Plan**

The draft permit contains several new requirements relating to planning for flooding events (Sections C.1.a, C.2.e, C.3.g, C.3.h), as well as new requirements for publishing sewer system maps (C.2.d), which MWRA opposes. While MWRA appreciates the importance of planning for climate change and resiliency of the wastewater system, these requirements will impact the ability of utilities to balance investments in the system to ensure its reliable operation.

MWRA, like all utilities, considers natural disasters and other emergencies as part of routine facilities planning. We believe a critical part of these planning efforts is adapting to the impacts of climate change, such as installing flood protection measures at our facilities vulnerable to sea level rise. However, as detailed below, these requirements are onerous and go beyond what is needed for useful, pragmatic planning for climate change. Any new requirements should encourage and support thoughtful development of locally-relevant plans for each permittee, rather than requiring a hasty, expensive, “one size fits all” approach.

The draft permit Fact Sheet section on Operation and Maintenance notes that “*The requirements of 40 CFR § 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.”*

MWRA asserts that the steps EPA has required in the referenced sections are not reasonable. Moreover, EPA has not explained wherefrom it derives the authority to require extensive planning for extreme events. In addition, the requirements are unduly burdensome, raise serious security concerns, and represent an expensive, unfunded mandate. Finally, the requirements are also confusing, inflexible, and not consistent with EPA guidance. An alternative approach similar to emergency planning for drinking water systems in the American Water Infrastructure Act of 2018 (AWIA) would be more appropriate.

##### **Response 31**

See the General Response.

### **Comment 32**

#### **The requirements are unduly burdensome.**

As the requirement has been inserted into a draft permit, rather than promulgated as a regulation, EPA has not had to calculate the financial burden on permittees. MWRA strongly urges EPA to make this calculation, and publish it for public comment. As written, the development of the plan would require hundreds of staff hours – thousands, in the case of a large or complex system – and is likely to have significant cost implications.

Few, if any, permittees and co-permittees will have the in-house resources to develop the extensive plan described. This will require procuring professional engineering services, at a significant cost, and the number of available firms with expertise in climate change planning is limited.

The costs associated with developing such an extensive plan could result in deferring important projects with a more immediate need. For larger facilities, these costs may be absorbed, but for smaller facilities, the development of a plan on this scale and in the proposed timeframe could have immediate impacts on the permittee's ability to fund other projects. Any rate impacts will be felt by the most vulnerable populations served by the permittee or co-permittee.

Finally, the draft permit's 12 month timeline to develop the plan is much too short. Even aside from the time to complete the plan, municipalities will need time to obtain funding – which may take a year, even assuming rapid approval by Town Meeting or City Council – and then procure the professional services, which adds several more months. If the requirement is retained, a minimum of **36 months** should be provided (24 months for the asset vulnerability evaluation and another 12 months for the mitigation alternatives analysis) to complete the *Wastewater Treatment Facility Major Storm and Flood Events Plan* and the *Sewer System Major Storm and Flood Events Plan*. Additional time will be required to implement a plan.

### **Response 32**

See the General Response for EPA's response on cost, including an explanation of how changes in the Final Permit based on this and other comments may reduce cost. Although EPA has carefully considered cost throughout this permitting process, EPA is not, as the commenter correctly implies, required to formally calculate the cost burden on permittees.

Also see the General Response regarding timing.

### **Comment 33**

#### *The requirements raise security concerns.*

The draft permit requires permittees and co-permittees to make a sewer system “map available online in a downloadable Geographic Information System (GIS) format, available to the public, in a manner where the system's performance can be independently assessed and analyzed.” No basis is given in the Fact Sheet for this requirement, and there is no explanation of how the permittee can judge whether the map will allow an independent assessment or analysis of system performance. MWRA notes that its security posture towards sensitive data would prohibit making such information generally available. The risk that malicious actors will target utility infrastructure cannot be ignored, as we know from recent news reports about vandalism attacks on electrical equipment.

MWRA notes that America's Water Infrastructure Act (AWIA) of 2018 required drinking water utilities to develop or update risk assessments and emergency response plans (ERPs)<sup>1</sup>. However this requirement differs from this draft permit requirement in several ways:

- The drinking water providers conducted the risk assessment and developed the ERP, but did not submit it to EPA; rather, there is a process for drinking water providers to certify the plans.
- Sensitive information was therefore kept confidential and secure within the utility.
- The requirement was a specific new statutory requirement from Congress, and subject to public comment.
- The ERP was not required to be complete until six months after the risk assessment.
- EPA provided workshops, training and other resources, including online tools, checklists, and template plans.

<sup>1</sup> <https://www.epa.gov/waterresilience/awia-section-2013>

### **Response 33**

See the General Response.

### **Comment 34**

*The requirements represent an unfunded mandate.*

The draft permit requires permittees to identify sources of funding. Rather than require permittees to apply for grant funding that may not be provided, EPA should provide guaranteed sufficient funding to create the plans and implement them. In the absence of a dedicated funding source, at a minimum, EPA should conduct the risk assessments for each municipality and regional wastewater utility.

### **Response 34**

Regarding the commenter's concern that these permit requirements represent an unfunded mandate, see the General Response.

EPA has removed the specific requirement for permittees to identify sources of funding for the Adaptation Plan. Creating a funding program is beyond the scope of this NPDES permit proceeding. The permittee may, of course, seek any EPA or other funding or technical assistance that is available and appropriate for this work. Indeed, EPA created its procedures document and encourages use of its CREAT tool to allow permittees to conduct this work at minimal cost.

With regard to EPA conducting the assessments itself, EPA is not in a position to conduct risk assessments for each municipality and regional wastewater utility. It does not have the necessary detailed information regarding the facilities nor the familiarity regarding such infrastructure that would allow for the plans to be as useful as possible. Moreover, it is practically unfeasible for EPA to conduct these plans for all municipalities it permits. EPA has determined these plans are necessary to carry out the goals of the CWA, it would be inappropriate for EPA to wait until it had the resources itself to carry out the work on behalf of the permittee.

For EPA's general response to issues concerning cost and information about possible funding, see the General Response.

### Comment 35

*The requirements are confusing, inflexible, and not consistent with EPA guidance.*

Wastewater utilities and public works departments consider natural disasters and other emergencies as part of routine facilities planning. Using local expertise, plans are tailored to the particular circumstances of their municipality and region. The requirement in the draft permit is a “one size fits all” approach that will result in wasted resources.

EPA cites flood resiliency guidance<sup>2</sup> and risk assessment tools in its Creating Resilient Water Utilities program<sup>3</sup>. The guidance documents cited are more reasonable than the language in the permit.

The language of the requirements is confusing. In one of the many footnotes, EPA directs permittees to use “at a minimum, the worst-case data” which makes little sense; the same footnote requires using a variety of climate projection sources, which very likely conflict (particularly for more distant dates) and are subject to change over time. The same footnote requires “Evaluation must be completed by a qualified person”, without defining who is a qualified person.

There is a requirement to revise plans “as data sources used for such evaluations are revised or generated” which is beyond the control of the permittee, and could result in nearly constant (costly) reevaluation.

Requiring a permitting horizon of 40 years and beyond is unreasonable; there is too much uncertainty in climate predictions to adequately assess risk and propose mitigation measures in longer time frames. NPDES permits are five year permits; the draft permit requires permittees to plan out 80-100 years. The expected life of many wastewater assets is closer to 20 years. This exercise is misplaced as part of a 5-year permit.

Additionally, the requirement to develop a flood events plan and mitigation measures for 80-100 years in the future ignores that adaptation planning for the extremes of climate change possible in 2100 and beyond requires iterative collaboration between the surrounding municipalities. The decisions a permittee makes to protect against extreme sea level rise, for example, are directly related to the measures taken by the entire region. A facility might be protected from rising waters, but if the adjacent communities fail to build adaptive infrastructure, the areas outside the facility would be flooded, making it inaccessible. While facility-specific mitigation measures like flood barriers are pragmatic for mid-term planning, long-term planning requires a region-wide approach, which goes beyond the scope of this permit.

Annual reporting, besides being subject to the same security concerns mentioned above, is excessive for long-term planning. If progress reporting is required, a five-year cycle seems more appropriate.

<sup>2</sup>[https://www.epa.gov/sites/default/files/2015-08/documents/flood\\_resilience\\_guide.pdf](https://www.epa.gov/sites/default/files/2015-08/documents/flood_resilience_guide.pdf)

<sup>3</sup><https://www.epa.gov/crwu>

### **Response 35**

See the General Response and Response 11.

Additionally, the comment suggests that a “one-size-fits-all” approach is not appropriate because each municipality or region is unique. EPA agrees that the plans for each municipality should and will likely be unique. However, to ensure fairness and because of the commonality of the general threats posed by increased flooding and storm events, the permit requirements to guide the development of those unique plans can and should be consistent for similar facilities. As described in the General Response, EPA has changed the Final Permit requirements in a way which will allow permittees more leeway to develop their own Adaptation Plans within the general parameters of the permit requirements.

### **Comment 36**

*A more well thought out approach would be more effective.*

Examples of a less prescriptive, more effective approach are available, for example:

- State Revolving Fund loans require utilities to develop an asset management program.
- AWIA Risk and Resilience Assessments and Emergency Response Plans are kept on file at the utilities to protect security-sensitive information that could be exposed if plans are submitted to EPA.
- Community water systems may use any standards, methods or tools provided risk and resilience assessment and emergency response plan fully address AWIA requirements.

Rather than require the same onerous procedures for all municipalities as part of a NPDES permit, EPA should work collaboratively with those permittees whose systems are at highest risk from flooding under present and future climate conditions.

In summary, given the MWRA’s interest in NPDES permit requirements established by EPA and the Commonwealth, we appreciate the opportunity to comment on the Draft Permit issued for the Palmer WPCF.

### **Response 36**

Regarding alternative approaches, see the General Response.

EPA will require Adaptation Plans be developed under NPDES permits for all wastewater treatment plants in Massachusetts because, as described in the General Response, resilience planning is an important aspect of operation & maintenance and compliance with effluent limitations. The comment presupposes that certain facilities are at relatively lower risk of flooding and therefore should not be subject to Adaptation Plan requirements, but in fact fulfillment of the Adaptation Plan requirements is a way for permittees and EPA to ascertain the risk to WWTSs and/or sewer systems. Additionally, although the Adaptation Plan requirements will be the same for all permits, the individual plans developed under those requirements will necessarily be tailored to site-specific



conditions and may require less planning for facilities at relatively lower risk of flooding or other adverse impacts from major storm events, for example if fewer critical assets are vulnerable. Notably, the impacts that must be considered are not limited to flooding-impacts as the comment implies, but also storm events other than flooding which may adversely impact systems (e.g., collection pipes overwhelmed by heavy inflow, etc.).

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY – REGION 1 (EPA)  
WATER DIVISION  
5 POST OFFICE SQUARE  
BOSTON, MASSACHUSETTS 02109

MASSACHUSETTS DEPARTMENT OF  
ENVIRONMENTAL PROTECTION (MASSDEP)  
COMMONWEALTH OF MASSACHUSETTS  
1 WINTER STREET  
BOSTON, MASSACHUSETTS 02108

EPA **EXTENSION OF 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), AS AMENDED, AND MASSDEP PUBLIC NOTICE OF EPA REQUEST FOR STATE CERTIFICATION UNDER SECTION 401 OF THE CWA.

**PUBLIC NOTICE PERIOD: March 30, 2023 – April 28, 2023**

**PUBLIC NOTICE EXTENDED TO: May 12, 2023**

**NAME AND MAILING ADDRESS OF APPLICANT:**

Town of Palmer  
4417 Main Street  
Palmer, MA 01069

**NAME AND ADDRESS OF THE FACILITY WHERE DISCHARGE OCCURS:**

Palmer Water Pollution Control Facility  
1 Norbell Street  
Three Rivers, Massachusetts 01080

**RECEIVING WATER AND CLASSIFICATION:**

Chicopee River (Class B)

**PREPARATION OF THE DRAFT PERMIT AND EPA REQUEST FOR CWA § 401 CERTIFICATION:**

EPA is issuing for public notice and comment the Draft NPDES Permit for the Palmer WPCF, which discharges treated domestic, industrial and commercial wastewater. Sludge from this facility is transported off-site by Synagro Northeast Inc. for incineration. The effluent limits and permit conditions have been drafted pursuant to, and assure compliance with, the CWA, including EPA-approved State Surface Water Quality Standards at 314 CMR 4.00. MassDEP cooperated with EPA in the development of the Draft NPDES Permit. MassDEP retains independent authority under State law to publish for public notice and issue a separate Surface Water Discharge Permit for the discharge, not the subject of this notice, under the Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 26-53.

In addition, EPA has requested that MassDEP grant or deny certification of this Draft Permit pursuant to Section 401 of the CWA and implementing regulations. Under federal regulations governing the NPDES program at 40 Code of Federal Regulations (CFR) § 124.53(e), state certification shall contain conditions that are necessary to assure compliance with the applicable provisions of CWA sections 208(e), 301, 302, 303, 306, and 307 and with appropriate requirements of State law, including any conditions more stringent than those in the Draft Permit that MassDEP finds necessary to meet these requirements. Furthermore, MassDEP may provide a statement of the extent to which each condition of the Draft Permit can be made less stringent without violating the requirements of State law.

## INFORMATION ABOUT THE DRAFT PERMIT:

The Draft Permit and explanatory Fact Sheet may be obtained at no cost at <https://www.epa.gov/npdes-permits/massachusetts-draft-individual-npdes-permits> 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  
Email: [duspiva.michele@epa.gov](mailto:duspiva.michele@epa.gov)

Following U.S. Centers for Disease Control and Prevention (CDC) and U.S. Office of Personnel Management (OPM) guidance and specific state guidelines impacting our regional offices, EPA's workforce has been directed to telework to help prevent transmission of the coronavirus. While in this workforce telework status, there are practical limitations on the ability of Agency personnel to allow the public to review the administrative record in person at the EPA Boston office. However, any electronically available documents that are part of the administrative record can be requested from the EPA contact above.

## PUBLIC COMMENT AND REQUESTS FOR PUBLIC HEARINGS:

All persons, including applicants, who believe any condition of this Draft Permit is inappropriate must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by **May 12, 2023**, which is the close of the public comment period. Comments, including those pertaining to EPA's request for CWA § 401 certification, should be submitted to the EPA contact at the address or email listed above. Upon the close of the public comment period, EPA will make all comments available to MassDEP. All commenters who want MassDEP to consider their comments in the state decision-making processes (i.e., the separate state permit and the CWA § 401 certification) must submit such comments to MassDEP during the state comment period for the state Draft Permit and CWA § 401 certification. For information on submitting such comments to MassDEP, please follow the instructions found in the state public notice at: <https://www.mass.gov/service-details/massdep-public-hearings-comment-opportunities>.

Any person, prior to the close of the EPA public comment period, may submit a request in writing to EPA for a public hearing on the Draft Permit under 40 CFR § 124.10. 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 this Draft Permit, the Regional Administrator will respond to all significant comments and make the responses available to the public.

Due to the COVID-19 National Emergency, if comments are submitted in hard copy form, please also email a copy to the EPA contact above.

## 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 notify the applicant and each person who has submitted written comments or requested notice.

KEN MORAFF, DIRECTOR  
WATER DIVISION  
UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY – REGION 1

LEALDON LANGLEY, DIRECTOR  
DIVISION OF WATERSHED MGMT  
MASSACHUSETTS DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

**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”),

**Town of Palmer, Massachusetts**

is authorized to discharge from the facility located at

**Palmer Water Pollution Control Facility  
1 Norbell Street  
Three Rivers, MA 01080**

to receiving water named

**Chicopee River  
Chicopee River Watershed**

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

The Town of Monson is a Co-permittee for Part B, Unauthorized Discharges; Part C, Operation and Maintenance, which include conditions regarding the operation and maintenance of the collection system owned and operated by the Town; and Part D, Alternate Power Source. The permit number assigned to the Town of Monson for purposes of reporting in accordance with the requirements in Parts I.B, I.C, and I.D of this permit is **MAC011168**.

Operation and maintenance of the sewer systems shall be in compliance with the General Requirements of Part II and the terms and conditions of Part B, Part C and Part D of this permit. The Permittee and Co-permittee are severally liable under Part B, Part C and Part 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 B, Part C and Part 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 B, Part C and Part D. The responsible Town department is:

Town of Monson  
Water and Sewer Department  
198 WD Main Street, P.O. Box 3888  
Monson, MA 01057

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

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 January 21, 2011.

This permit consists of **Part I** including the cover page(s), **Attachment A** (Freshwater Acute Toxicity Test Procedure and Protocol, February 2011), **Attachment B** (Freshwater Chronic Toxicity Test Procedure and Protocol, March 2013), **Attachment C** (Reassessment of Technically Based Industrial Discharge Limits); **Attachment D** (NPDES Permit Requirement for Industrial Pretreatment Annual Report); **Attachment E** (PFAS Analyte List); and **Part II** (NPDES Part II Standard Conditions, April 2018).

Signed this        day of

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

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<sup>1</sup> Pursuant to 40 Code of Federal Regulations (CFR) § 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 CFR § 124.19.

## 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 027 to the Chicopee 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 <sup>1,2,3</sup>	
	Average Monthly	Average Weekly	Maximum Daily	Measurement Frequency	Sample Type <sup>4</sup>
Rolling Average Effluent Flow <sup>5</sup>	5.6 MGD <sup>5</sup>	---	---	Continuous	Recorder
Effluent Flow <sup>5</sup>	Report MGD	---	Report MGD	Continuous	Recorder
BOD <sub>5</sub>	30 mg/L 1,400 lb/day	45 mg/L 2,100 lb/day	Report mg/L	2/Week	Composite
BOD <sub>5</sub> Removal	≥ 85 %	---	---	1/Month	Calculation
TSS	30 mg/L 1,400 lb/day	45 mg/L 2,100 lb/day	Report mg/L	2/Week	Composite
TSS Removal	≥ 85 %	---	---	1/Month	Calculation
pH Range <sup>6</sup>	6.0 - 8.3 S.U.			1/Day	Grab
Total Residual Chlorine <sup>7,8</sup>	0.16 mg/L	---	0.28 mg/L	3/Day	Grab
<i>Escherichia coli</i> <sup>7,8</sup> (April 1 – October 31)	126 cfu/100 mL	---	409 cfu/100 mL	2/Week	Grab
Total Lead	6.1 µg/L	---	Report	2/Month	Composite
Total Copper	34.9 µg/L	---	45.5 µg/L	1/Month	Composite
Total Phosphorus (May 1 – October 31)	1.0 mg/L	2.0 mg/L	---	2/Week	Composite
Total Phosphorus (November 1 – April 30)	1.0 mg/L	---	---	1/Month	Composite
Total Kjeldahl Nitrogen <sup>9</sup> (April 1 – October 31)	Report mg/L	---	Report mg/L	1/Week	Composite
(November 1 – March 31)	Report mg/L	---	---	1/Month	Composite

Effluent Characteristic	Effluent Limitation			Monitoring Requirements <sup>1,2,3</sup>	
	Average Monthly	Average Weekly	Maximum Daily	Measurement Frequency	Sample Type <sup>4</sup>
Nitrate + Nitrite <sup>9</sup> (April 1 – October 31) (November 1 – March 31)	Report mg/L Report mg/L	---	Report mg/L ---	1/Week 1/Month	Composite
Total Nitrogen <sup>9</sup> (April 1 – October 31)	Report mg/L Report lb/day	---	Report mg/L ---	1/Week	Calculation
Total Nitrogen <sup>9</sup> (November 1 – March 31)	Report mg/L Report lb/day	---	Report mg/L ---	1/Month	Calculation
Rolling Average Total Nitrogen <sup>10</sup>	374 lb/day	---	---	1/Month	Calculation
PFAS Analytes <sup>11</sup>	---	---	Report ng/L	1/Quarter	Grab
Adsorbable Organic Fluorine <sup>12</sup>	---	---	Report ng/L	1/Quarter	Grab
<b>Whole Effluent Toxicity (WET) Testing<sup>13,14</sup></b>					
LC <sub>50</sub>	---	---	≥ 100 %	2/Year	Composite
C-NOEC	---	---	≥ 7 %	2/Year	Composite
Hardness	---	---	Report mg/L	2/Year	Composite
Ammonia Nitrogen	---	---	Report mg/L	2/Year	Composite
Total Aluminum	---	---	Report mg/L	2/Year	Composite
Total Cadmium	---	---	Report mg/L	2/Year	Composite
Total Copper	---	---	Report mg/L	2/Year	Composite
Total Nickel	---	---	Report mg/L	2/Year	Composite
Total Lead	---	---	Report mg/L	2/Year	Composite
Total Zinc	---	---	Report mg/L	2/Year	Composite
Total Organic Carbon	---	---	Report mg/L	2/Year	Composite

Ambient Characteristic <sup>15</sup>	Reporting Requirements			Monitoring Requirements <sup>1,2,3</sup>	
	Average Monthly	Average Weekly	Maximum Daily	Measurement Frequency	Sample Type <sup>4</sup>
Hardness	---	---	Report mg/L	2/Year	Grab
Ammonia Nitrogen	---	---	Report mg/L	2/Year	Grab

Total Aluminum	---	---	Report mg/L	2/Year	Grab
Total Cadmium	---	---	Report mg/L	2/Year	Grab
Total Copper	---	---	Report mg/L	2/Year	Grab
Total Nickel	---	---	Report mg/L	2/Year	Grab
Total Lead	---	---	Report mg/L	2/Year	Grab
Total Zinc	---	---	Report mg/L	2/Year	Grab
Total Organic Carbon	---	---	Report mg/L	2/Year	Grab
Dissolved Organic Carbon <sup>16</sup>	---	---	Report mg/L	2/Year	Grab
pH <sup>17</sup>	---	---	Report S.U.	2/Year	Grab
Temperature <sup>17</sup>	---	---	Report °C	2/Year	Grab
Total Phosphorus <sup>18</sup> (April 1 - October 31)	---	---	Report mg/L	1/Month	Grab

Influent Characteristic	Reporting Requirements			Monitoring Requirements <sup>1,2,3</sup>	
	Average Monthly	Average Weekly	Maximum Daily	Measurement Frequency	Sample Type <sup>4</sup>
BOD <sub>5</sub>	Report mg/L	---	---	2/Month	Composite
TSS	Report mg/L	---	---	2/Month	Composite
PFAS Analytes <sup>11</sup>	---	---	Report ng/L	1/Quarter	Grab
Adsorbable Organic Fluorine <sup>12</sup>	---	---	Report ng/L	1/Quarter	Grab

Sludge Characteristic	Reporting Requirements			Monitoring Requirements <sup>1,2,3</sup>	
	Average Monthly	Average Weekly	Maximum Daily	Measurement Frequency	Sample Type <sup>4</sup>
PFAS Analytes <sup>11</sup>	---	---	Report ng/g	1/Quarter	Grab <sup>19</sup>



## Footnotes:

1. All samples shall be collected in a manner to yield representative data. 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. Occasional deviations from the routine sampling program are allowed, but the reason for the deviation shall be documented as an electronic attachment to the applicable discharge monitoring report. The Permittee shall report the results to the Environmental Protection Agency Region 1 (EPA) and MassDEP (the “State”) of any additional testing above that required herein, if testing is in accordance with 40 CFR Part 136.
2. In accordance with 40 CFR § 122.44(i)(1)(iv), the Permittee shall monitor according to sufficiently sensitive test procedures (i.e., methods) approved under 40 CFR Part 136 or required under 40 CFR 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 CFR Part 136 or required under 40 CFR chapter I, subchapter N or O for the measured pollutant or pollutant parameter. The term “minimum level” refers either to 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 the following 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.).

If the Permittee wishes to continue this lower pH range for future permit cycles, they must conduct a pH study and submit the results of said study to MassDEP at [massdep.npdes@mass.gov](mailto:massdep.npdes@mass.gov) within three years of the effective date of the Permit. For guidance on the study, the Permittee shall contact MassDEP at [massdep.npdes@mass.gov](mailto:massdep.npdes@mass.gov).

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. If chlorine is not utilized during a particular monitoring period, TRC monitoring is not necessary and the Permittee may enter "NODI" code 9 (i.e., conditional monitoring) in the relevant discharge monitoring report.

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. 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 *Escherichia coli* (*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.

$$\text{Total Nitrogen (mg/L)} = \text{Total Kjeldahl Nitrogen (mg/L)} + \text{Nitrate} + \text{Nitrite (mg/L)}$$
$$\text{Total Nitrogen (lb/day)} = [(\text{average monthly Total Nitrogen (mg/L)} * \text{total monthly effluent flow (Millions of Gallons (MG))} / \# \text{ of days in the month}] * 8.34$$

10. The rolling annual total nitrogen limit is an annual average mass-based limit (lb/day), which shall be reported as a rolling 12-month average. The value will be calculated as the arithmetic mean of the monthly average total nitrogen for the reporting month and the monthly average total nitrogen for the previous 11 months. Report both the rolling annual average and the monthly average each month.

See Part I.G.1 for special conditions related to nitrogen.

11. Until there is an analytical method approved in 40 CFR Part 136 for PFAS, monitoring shall be conducted using Draft Method 1633. Report in NetDMR the results of all PFAS

analytes required to be tested in Method 1633, as shown in Attachment E. This reporting requirement for the listed PFAS parameters takes effect the first full calendar quarter following 6 months after the effective date of the permit.

12. Until there is an analytical method approved in 40 CFR Part 136 for Adsorbable Organic Fluorine, monitoring shall be conducted using Draft Method 1621. This reporting requirement takes effect the first full calendar quarter following 6 months after the effective date of the permit.
13. The Permittee shall conduct acute toxicity tests (LC50) and chronic toxicity tests (C-NOEC) in accordance with test procedures and protocols specified in Attachment A and B of this permit. LC50 and C-NOEC are defined in Part II.E. of this permit. The Permittee shall test the daphnid, *Ceriodaphnia dubia*. Toxicity test samples shall be collected during the same weeks each time of calendar quarters ending March 31<sup>st</sup> and September 30<sup>th</sup>. 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.
14. For Part I.A.1., Whole Effluent Toxicity Testing, the Permittee shall conduct the analyses specified in **Attachment A and B**, 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 and B**, Section IV., DILUTION WATER. Minimum levels and test methods are specified in **Attachment A and B**, Part VI. CHEMICAL ANALYSIS.
15. For Part I.A.1., Ambient Characteristic, the Permittee shall conduct the analyses specified in **Attachment A and B**, 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 and B**. Minimum levels and test methods are specified in **Attachment A and B**, Part VI. CHEMICAL ANALYSIS.
16. 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.
17. 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.
18. See Part I.G.2 for special conditions regarding ambient phosphorus monitoring.

19. Sludge sampling shall be as representative as possible based on guidance found at <https://www.epa.gov/sites/production/files/2018-11/documents/potw-sludge-sampling-guidance-document.pdf>.

**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 pollutants in concentrations or combinations that, in the receiving water, settle to form objectionable deposits; float as debris, scum or other matter to form nuisances; produce objectionable odor, color, taste or turbidity; or produce undesirable or nuisance species of aquatic life.
4. The discharge shall be free from pollutants in concentrations or combinations that adversely affect the physical, chemical, or biological nature of the bottom.
5. The discharge shall not result in pollutants in concentrations or combinations in the receiving water that are toxic to humans, aquatic life or wildlife.
6. The discharge shall be free from floating, suspended and settleable solids in concentrations or combinations that would impair any use assigned to the receiving water.
7. The discharge shall be free from oil, grease and petrochemicals that produce a visible film on the surface of the water, impart an oily taste to the water or an oily or other undesirable taste to the edible portions of aquatic life, coat the banks or bottom of the water course, or are deleterious or become toxic to aquatic life.
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 CFR 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.
10. In accordance with 40 CFR § 122.44(j)(1) the Permittee must identify, in terms of character and volume, any Significant Industrial Users (SIUs) discharging into the POTW subject to

Pretreatment Standards under section 307(b) of CWA and 40 CFR Part 403. SIUs information shall be updated at a minimum of once per year or at that frequency necessary to ensure that all SIUs are properly permitted and/or controlled. The records shall be maintained and updated as necessary.

## **B. UNAUTHORIZED DISCHARGES**

1. 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. The Permittee must provide verbal notification to EPA within 24 hours of becoming aware of any unauthorized discharge and a report within 5 days, in accordance with Part II.D.1.e (24-hour reporting). Providing that it contains the information required in Part II.D.1.e, submission of the MassDEP SSO Reporting Form (described in Part I.B.3 below) may satisfy the requirement for a written report. See Part I.H below for reporting requirements.
2. The Permittee must provide notification to the public within 24 hours of becoming aware of any unauthorized discharge, except SSOs that do not impact a surface water or the public, on a publicly available website, and it shall remain on the website for a minimum of 12 months. Such notification shall include the location (including latitude and longitude) and description of the discharge; estimated volume; 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.
3. Notification of SSOs to MassDEP shall be made on its SSO Reporting Form (which includes MassDEP Regional Office telephone numbers). The reporting form and instruction for its completion may be found on-line at <https://www.mass.gov/how-to/sanitary-sewer-overflowbypassbackup-notification>. Notification to MassDEP and EPA shall not release the Permittee from the MassDEP public notification requirements of 314 CMR 16.00.

## **C. OPERATION AND MAINTENANCE OF THE TREATMENT AND CONTROL FACILITIES**

### **1. Wastewater Treatment Facility**

Operation and maintenance (O&M) of the wastewater treatment facility<sup>2</sup> (WWTF) owned and/or operated by the Permittee shall be in compliance with 40 CFR § 122.41 (d) and (e) and the terms and conditions of the Part II Standard Conditions, B. Operation and Maintenance of Pollution Controls which is attached to this Permit.

- a. *WWTF Major Storm and Flood Events Plan.* Within 12 months of the effective date of this Permit, the Permittee shall develop and submit a *WWTF Major Storm and Flood*

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<sup>2</sup> Wastewater Treatment Facility means any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It does not include sewers, pipes and other conveyances to the wastewater treatment facility.

*Events Plan* and begin to implement mitigation measures consistent with the schedule contained in this paragraph. The Plan shall contain three components: (1) an asset vulnerability evaluation, (2) a systemic vulnerability evaluation<sup>3</sup> of the assets, and (3) a mitigation measures alternatives analysis. The Plan shall include resiliency and implementation planning informed by an evaluation of all WWTF vulnerabilities to major storm and flood events<sup>4</sup>. The planning process shall be iterative, and re-evaluations shall be conducted; (1) if on- or off-site structures are added, removed or significantly changed in any way that will impact the vulnerability of the WWTF; and (2) as data sources used for such evaluations are revised, or generated. At a minimum, the Plan must take future conditions into consideration, specifically the midterm (i.e., 20-30 years) and long-term (i.e., 80-100 years) and, in the case of sea level change, the plan must consider extreme sea level change. The Plan shall be updated at least every five (5) years from the effective date of this Permit and must take future conditions into consideration.<sup>5</sup>

- (1) *Component 1: Asset Vulnerability Evaluation.* This first component of the *WWTF Major Storm and Flood Events Plan* must assess the vulnerability of individual WWTF-related assets. The Permittee may find EPA’s guide: *Flood Resilience: A Basic Guide for Water and Wastewater Utilities*<sup>6</sup> and EPA’s website<sup>7</sup> *Creating Resilient Water Utilities (CRWU)* helpful for completing this component.

The *Asset Vulnerability Evaluation* shall include, at a minimum, the following:

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<sup>3</sup> To determine the vulnerabilities to the facilities from major storm and flood events, you must conduct the evaluation using, at a minimum, the worst-case data relating to changes in precipitation, sea level rise, extreme weather events, coastal flooding, inland flooding, sewer flow and inflow and infiltration and relevant to the facilities from: 1) the data generated by the 13 federal agencies that conduct or use research on global change that contributed to the latest National Climate Assessment produced by the U.S. Global Change Research Program (USGCRP); 2) climate data generated by the Commonwealth of Massachusetts; and 3) resiliency planning completed by the municipality in which a given facility is located (i.e., City of Boston) and incorporate the results of the evaluation in a manner that demonstrates that the control measures taken are precautionary and sufficiently protective. Evaluation must be completed by a qualified person on a five-year basis considering 1) historical observations from all years the Permittee has operated the facility prior to this permit’s term; 2) set midterm (i.e., 20-30 years) and long term (i.e., 80-100 years) ranges.

<sup>4</sup> “Major storm and flood events” refer to instances resulting from major storms such as hurricanes, extreme/heavy precipitation events, and pluvial, fluvial, and flash flood events such as high-water events, storm surge, and high-tide flooding. “Extreme/heavy precipitation” refers to instances during which the amount of rain or snow experienced in a location substantially exceeds what is normal. What constitutes a period of heavy precipitation varies according to location and season. “Extreme/heavy precipitation” does not necessarily mean the total amount of precipitation at a location has increased—just that precipitation is occurring in more intense or more frequent events.

<sup>5</sup> It will be advantageous to the permittee to consider low, medium, high and extreme levels of sea level change to determine priority assets and plan for increasingly protective mitigation measures.

<sup>6</sup> [https://www.epa.gov/sites/default/files/2015-08/documents/flood\\_resilience\\_guide.pdf](https://www.epa.gov/sites/default/files/2015-08/documents/flood_resilience_guide.pdf)

<sup>7</sup> <https://www.epa.gov/crwu>

- i. Description of planning priorities related to major storm and flood event vulnerabilities presented by the location of the WWTF (e.g., proximity to waterbodies which may cause flooding).
- ii. Identification of all assets related to the WWTF (e.g., buildings, laboratories and offices, WWTF, septage collection facilities, etc.), the elevation of each asset, and if the asset falls into the 100-year flood map or the 500-year flood map;<sup>8</sup>
- iii. Description of structural improvements, either completed or planned, and/or other mitigation measures<sup>9</sup> designed to minimize<sup>10</sup> the impacts of major storm and flood events to each specific asset identified above.

The Permittee shall consider, at a minimum, the following measures:

- (a) Construction of flood barriers to protect infrastructure or reinforce existing structures to withstand flooding and additional exertion of force;
- (b) Establish remote locations for operations, equipment, records and data backups;
- (c) Plan and establish alternative or on-site power supply<sup>11</sup>;
- (d) Relocate facilities and/or infrastructure to higher elevations;
- (e) Catalog emergency resources used during a major storm or flood event;
- (f) Develop emergency response plans;
- (g) Establish contracts for backup supplies of critical chemicals;
- (h) Establish mutual aid agreements with neighboring utilities;
- (i) Integrate long-term risks into capital improvement plans;
- (j) Participate in community planning and regional collaborations;
- (k) Conduct staff training for implementing your emergency procedures at regular intervals;

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<sup>8</sup> See [https://www.epa.gov/sites/default/files/2015-08/documents/flood\\_resilience\\_guide.pdf](https://www.epa.gov/sites/default/files/2015-08/documents/flood_resilience_guide.pdf) for a basic guide to flood resiliency for water and wastewater utilities.

<sup>9</sup> Mitigation measure can be, for example, an emergency planning activity, equipment modification/upgrade or new capital investment/construction project.

<sup>10</sup> For the purposes of this provision, the term “minimize” means to reduce and/or eliminate to the extent achievable the impacts to the facilities.

<sup>11</sup> The Permittee shall clearly document measures taken specifically to manage energy system disruptions, such as a general power outage, as well as document whether and, if so, to what extent, power supply adequate to ensure safe and reliable operations of the facility is threatened during a major storm or flood. They shall clearly document measures that have been taken to address any risks the facility faces of losing power during a major storm or flood in a manner that could result in environmental or public health impacts.



- (1) When designing new or replacement facilities, strive to locate facilities above the relative base flood elevation<sup>12</sup> for both the 1% (100-year) and 0.2 % (500-year) chance storm events.
  - iv. Identify the source of data used to assess vulnerabilities to major storm and flood events.
  - v. Identify potential funding sources<sup>13</sup> for resilience planning and implementation. (e.g., EPA, FEMA, MassDEP, capital planning, etc.).
- (2) *Component 2: Systemic Vulnerability Evaluation.* Upon completing assessment of the vulnerabilities of individual assets, the permittee shall evaluate the vulnerability of its WWTF system as a whole. This second component of the evaluation shall include, at a minimum, a systematic vulnerability evaluation for each asset identified in Part I.C.1.a.(1), including the following:
  - i. Define the criticality of the asset to overall treatment facility operations<sup>14</sup>.
  - ii. Identify the highest<sup>15</sup> priority assets for the facility/system and the measures taken (or planned) to reduce facility vulnerability to risks that could degrade overall system operations in a manner that would result in environmental or public health impacts.
- (3) *Component 3: Mitigation Measures Alternatives Evaluation.* Upon completing assessment of the vulnerabilities of the WWTF system as a whole, the Permittee shall provide an assessment of asset-specific mitigation measures, and/or, if appropriate, combinations of mitigation measures to minimize the impact of major storm and flood events. The Permittee shall then select the most effective mitigation measure(s) and include a schedule for implementation. This third component shall include, at a minimum, the following:

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<sup>12</sup> For activities proposed for MA facilities within Areas Subject to Protection under M.G.L. c. 131, § 40 or the 100-foot buffer zone, the Base Flood Elevation is defined at 310 CMR 10.04, Definitions of Special Flood Hazard Area, Velocity Zone, and Coastal High Hazard Area, Land Subject to Coastal Storm Flowage at 310 CMR 10.36 and Bordering Land Subject to Flooding, and Isolated Land Subject to Flooding at 310 CMR 10.57. Also refer to the Massachusetts State Building Code for any other required standards related to Base Flood Elevation.

<sup>13</sup> See <https://www.epa.gov/fedfunds>

<sup>14</sup> For example, an asset like a pumping station or headworks is often scored “high” for criticality, as the safe and reliable operation of many assets during a major storm or flood depend upon the continued operation of that particular asset. If a pump station is degraded or fails, many other assets operations can degrade or fail, resulting in environmental or public health impacts.

<sup>15</sup> Based on the combined assessment of asset-level vulnerability today and in the midterm (i.e., 20-30 years) and long-term (i.e., 80-100 years), the criticality of that asset’s performance to the operations of the system today and in the midterm (i.e., 20-30 years) and long-term (i.e., 80-100 years).

- i. An evaluation of mitigation measure alternatives including a cost-effectiveness analysis and a review of technical, environmental, and institutional factors.
  - ii. For each mitigation measure, quantitatively document (including assumptions and methodologies) the residual risk today, in the midterm (i.e., 20-30 years) and the long-term (i.e., 80-100 years). The evaluation should include estimates of which customers and geographic areas bear the residual risk after implementation of the mitigation measures. Residual risk is a term that refers to the risk remaining for an asset or system, after mitigation measures are taken.
  - iii. Selection of mitigation measures to be undertaken, including:
    - a. a schedule<sup>16</sup> of implementation for each selected mitigation measure<sup>17</sup>; and
    - b. a map showing the location of planned mitigation measure.
- (4) *Annual Report.* The Permittee shall submit an Annual Operation and Maintenance Report on the *WWTF Major Storm and Flood Events Plan* implementation and results for the prior calendar year including documenting any changes to the WWTF or other assets that may impact the current vulnerability evaluation. The first annual report is due the first March 31 following submittal of the *Wastewater Treatment Facility Major Storm and Flood Events Plan* and shall be included with the annual report required in Part I.C.3 below.

## 2. Sewer System

Operation and maintenance (O&M) of the sewer system shall be in compliance with 40 CFR § 122.41 (d) and (e) and the terms and conditions of the Part II Standard Conditions, B. Operation and Maintenance of Pollution Controls which is attached to this Permit. The Permittee and Co-permittee shall complete the following activities for the collection system which it owns:

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<sup>16</sup> In describing the schedule to implement mitigation measures, the Permittee shall clearly document which mitigation measures identified in the Plan have or have not been integrated into that system's capital planning process. A mitigation measure is integrated when a budget line item in that system's current and adopted capital plan clearly identifies the year of completion and expenditure that has been budgeted and approved to complete that mitigation measure.

<sup>17</sup> For all measures considered, the Permittee must document in the Plan the factual basis (i.e., the maps, data sets and calculations for the analysis), for either implementing or not implementing the measure. The factual basis and analysis must be presented in sufficient detail to allow EPA, the public, or an independent qualified person to evaluate the reasonableness of the decision. For measures already in place, including requirements from state, local or federal agencies, a description of the measures and how they meet the requirement(s) of this permit must be documented in the Plan.

## a. 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 Sewer System O&M Plan required pursuant to Part I.C.2.e. below.

## b. 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 Sewer System O&M Plan required pursuant to Part I.C.2.e. below.

## c. 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 Sewer System O&M Plan required pursuant to Part I.C.2.e. below.

## d. Sewer System Mapping

Within 30 months of the effective date of this permit, the Permittee and Co-permittee shall prepare a map of the sewer collection system it owns. The map shall be on a street basemap of the community, with sufficient detail and at a scale to allow easy interpretation for the general public. The sewer system information shown on the map shall be based on current conditions and shall be kept up-to-date. The Permittee shall make the map available online in a downloadable Geographic Information System (GIS) format, available to the public, in a manner where the system's performance can be independently assessed and analyzed. It should include as much information as listed below as possible, with full consideration given to concerns of security, where demonstrated. If any items listed below, such as the location of all outfalls, are not fully documented, the Permittee and Co-permittee must clearly identify each component of the dataset that is incomplete, as well as the date of the last update of the mapping product. Such map(s) shall include, but not be limited to the following:

- (1) All sanitary sewer lines and related manholes;
- (2) All combined sewer lines, related manholes, and catch basins;
- (3) All combined sewer regulators and any known or suspected connections

between the sanitary sewer and storm drain systems (e.g. combination manholes);

- (4) All outfalls, including the treatment plant outfall(s), CSOs, and any known or suspected SSOs, including stormwater outfalls that are connected to combination manholes;
- (5) All pump stations and force mains;
- (6) The wastewater treatment facility(ies);
- (7) All surface waters (labeled);
- (8) Other major appurtenances such as inverted siphons and air release valves;
- (9) A numbering system which uniquely identifies manholes, catch basins, overflow points, regulators and outfalls;
- (10) The scale and a north arrow; and
- (11) The pipe diameter, date of installation, type of material, distance between manholes, and the direction of flow.

e. Sewer System Operation and Maintenance Plan

The Permittee and Co-permittee shall develop and implement a *Sewer System Operation and Maintenance Plan* for the portion of the system it owns.

- (1) Within six (6) months of the effective date of the permit, the Permittee and Co-permittee shall submit to EPA and the State:
  - i. A description of the collection system management goals, staffing, information management, and legal authorities;
  - ii. 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
  - iii. A schedule for the development and implementation of the full *Sewer System Operation and Maintenance Plan* including the elements in Parts I.C.2.e.(3)(i) through (3)(viii) below.
- (2) Within 12 months of the effective date of this Permit, the Permittee and Co-permittee shall develop, submit and begin to implement a *Sewer System Major Storm and Flood Events Plan* as an element of the *Sewer System Operations and Maintenance Plan*. The Plan shall contain three components:

(1) an asset vulnerability evaluation, (2) a systemic vulnerability evaluation of the system and (3) an alternatives analysis. The Plan shall include resiliency planning and implementation informed by an evaluation<sup>18</sup> of all sewer system vulnerabilities to major storm and flood events<sup>19</sup>. The planning process shall be iterative, and re-evaluations shall be conducted; (1) if on- or off-site structures are added, removed or significantly changed in any way that will impact the vulnerability of the sewer system and (2) as data sources used for such evaluations are revised or generated. At a minimum, the Plan must take future conditions into consideration, specifically midterm (i.e., 20-30 years) and long-term (i.e., 80-100 years) and, in the case of sea level change, the plan must consider extreme sea level change. The Plan shall be updated every five (5) years from the effective date of this Permit.

- i. *Component 1: Asset Vulnerability Evaluation.* The first component of the *Sewer System Operation and Maintenance Plan* must assess the vulnerability of individual sewer system-related assets. The Permittee and Co-permittee may find EPA’s guide: *Flood Resilience: A Basic Guide for Water and Wastewater Utilities*<sup>20</sup> and EPA’s website<sup>21</sup> *Creating Resilient Water Utilities (CRWU)* helpful for completing this component.

The Asset Vulnerability Evaluation shall include, at a minimum, the following:

- (a) Description of planning priorities related to the location of the sewer system;

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<sup>18</sup> To determine the vulnerabilities to the facilities from major storm and flood events, you must conduct the evaluation using, at a minimum, the worst-case data relating to changes in precipitation, sea level rise, extreme weather events, coastal flooding, inland flooding, sewer flow and inflow and infiltration and relevant to the facilities from: 1) the data generated by the 13 federal agencies that conduct or use research on global change that contributed to the latest National Climate Assessment produced by the U.S. Global Change Research Program (USGCRP); 2) climate data generated by the Commonwealth of Massachusetts; and 3) resiliency planning completed by the municipality in which a given facility is located (i.e., City of Boston) and incorporate the results of the evaluation in a manner that demonstrates that the control measures taken are precautionary and sufficiently protective. Evaluation must be completed by a qualified person on a five-year basis considering 1) historical observations from all years the Permittee has operated the facility prior to this permit’s term; 2) set midterm (i.e., 20-30 years) and long term (i.e., 80-100 years) ranges.

<sup>19</sup> “Major storm and flood events” refer to instances resulting from major storms such as hurricanes, extreme/heavy precipitation events, and pluvial, fluvial, and flash flood events such as high-water events, storm surge, and high-tides flooding. “Extreme/heavy precipitation” refers to instances during which the amount of rain or snow experienced in a location substantially exceeds what is normal. What constitutes a period of heavy precipitation varies according to location and season. “Extreme/heavy precipitation” does not necessarily mean the total amount of precipitation at a location has increased-just that precipitation is occurring in more intense or more frequent events.

<sup>20</sup> [https://www.epa.gov/sites/default/files/2015-08/documents/flood\\_resilience\\_guide.pdf](https://www.epa.gov/sites/default/files/2015-08/documents/flood_resilience_guide.pdf)

<sup>21</sup> <https://www.epa.gov/crwu>

- (b) Identification of all assets (e.g., pump stations, pipes, etc...), the elevation of the asset, and if the asset falls into the 100-year flood map or the 500-year flood map<sup>22</sup>;
- (c) Description of structural improvements, and/or other mitigation measures<sup>23</sup> to minimize<sup>24</sup> the impacts of major storm and flood events to each specific asset identified in Part I.C.2.e.(2).i.(b) above.

The Permittee and Co-permittee shall consider, at a minimum, the following measures:

- (i) Construction of flood barriers to protect structure or reinforce existing structures to withstand flooding and additional exertion of force;
- (ii) Establish remote locations for operations, equipment, records and data backups;
- (iii) Plan and establish alternative or on-site power supply<sup>25</sup>;
- (iv) Relocate facilities and/or infrastructure to higher elevations;
- (v) Catalog emergency resources used during a major storm or flood event;
- (vi) Develop emergency response plans;
- (vii) Establish mutual aid agreements with neighboring utilities;
- (viii) Integrate long-term risks into capital improvement plans;
- (ix) Participate in community planning and regional collaborations;
- (x) Conduct staff training for implementing your emergency procedures at regular intervals;
- (xi) When designing new or replacement facilities, strive to locate facilities above the base flood elevation<sup>26</sup>

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<sup>22</sup> See [https://www.epa.gov/sites/default/files/2015-08/documents/flood\\_resilience\\_guide.pdf](https://www.epa.gov/sites/default/files/2015-08/documents/flood_resilience_guide.pdf) for a basic guide to flood resiliency for water and wastewater utilities.

<sup>23</sup> Mitigation measure can be an emergency planning activity, equipment modification/upgrade or new capital investment/construction project.

<sup>24</sup> For the purposes of this provision, the term “minimize” means to reduce and/or eliminate to the extent achievable the impacts to the facilities.

<sup>25</sup> The Permittee shall clearly document measures taken specifically to manage energy system disruptions, such as a general power outage, well as document whether and, if so, to what extent, power supply adequate to ensure safe and reliable operations of the facility is threatened during a major storm or flood. They shall clearly document measures that have been taken to address any risks the facility faces of losing power during a major storm or flood in a manner that could result in environmental or public health impacts.

<sup>26</sup> For MA facilities, For activities proposed within Areas Subject to Protection under M.G.L. c. 131, § 40 or the 100-foot buffer zone, the Base Flood Elevation is defined at 310 CMR 10.04, Definitions of Special Flood Hazard Area, Velocity Zone, and Coastal High Hazard Area, Land Subject to Coastal Storm Flowage at 310 CMR 10.36 and Bordering Land Subject to Flooding, and Isolated Land Subject to Flooding at 310 CMR 10.57. Also refer to the Massachusetts State Building Code for any other required standards related to Base Flood Elevation.

- (d) Identify the source of data used to assess vulnerabilities to major storm and flood events.
  - (e) Identify the potential funding sources<sup>27</sup> for resilience planning and implementation (e.g., EPA, FEMA, MassDEP, capital planning, etc.).
- ii. *Component 2: Systemic Vulnerability Evaluation.* Upon completing assessment of the vulnerabilities of individual assets, the Permittee and Co-permittee shall evaluate the vulnerability of its sewer system as a whole. This second component of the shall include, at a minimum, a systematic vulnerability evaluation for each asset identified in Part I.C.2.e.(2).i.(b), including the following:
    - (a) Define the criticality of each asset to the overall sewer system operations
    - (b) Identify the highest priority assets for the sewer system and measures<sup>28</sup> taken to reduce system vulnerability to risks that could degrade the overall system operations in a manner that would result in environmental or public health impacts
  - iii. *Component 3: Alternatives Evaluation.* Upon completing assessment of the vulnerabilities of the sewer system as a whole, the Permittee and Co-permittee shall provide an assessment of individual asset-specific, and/or, if appropriate, combinations of mitigation measures must be presented in order to determine the most effective mitigation measures to minimize the impact of major storm and flood events.

This third component shall include, at a minimum, the following with regard to alternative evaluation, at a minimum

- (a) An evaluation of alternatives including a cost-effectiveness analysis and a review of technical, environmental, and institutional factors. The alternatives analysis should conclude with the development of a recommended plan.
- (b) For each alternative, quantitatively document (including assumptions and methodologies) the residual risk today and for the midterm (i.e., 20-30 years) and long-term (i.e., 80-100 yrsrs). The evaluation should include estimates of which customers and geographic areas bear the

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<sup>27</sup> See <https://www.epa.gov/fedfunds>

<sup>28</sup> For example, an asset like a pumping station or headworks is often ranked “high” for criticality, as the safe and reliable operation of many assets during a major storm or flood depend upon the continued operation of that particular asset. If a pump station is degraded or fails, many other assets operations can degrade or fail, resulting in environmental or public health impacts.

residual risk from the approach to resiliency planning in that system. Residual risk is a term that refers to the risk remaining for an asset or system, after mitigation measures are taken.

- (c) For each asset, document the total projected alternatives for implementing all planned mitigation measures identified in the *Sewer System Major Storm and Flood Events Plan*.
  - (d) Selection of mitigation measures to be undertaken, including:
    - (i) a schedule to implement each selected mitigation measure; and
    - (ii) a map showing the location of planned mitigation measures.
- iv. *Annual Report*. The Permittee and Co-permittee shall submit an Annual Operation and Maintenance Report on the *Sewer System Major Storm and Flood Events Plan* implementation and results for the prior calendar year including documenting any changes to the sewer system or other assets that may impact the current vulnerability evaluation. The first annual report is due the first March 31 following submittal of the *Sewer System Major Storm and Flood Events Plan* and shall be included with the annual report required in Part I.C.3 below.
- (3) The full Sewer System O&M Plan shall be completed, implemented and submitted to EPA and the State within twenty-four (24) months from the effective date of this permit. The Plan shall include:
- i. The required submittal from Part I.C.2.e.(1) above, updated to reflect current information;
  - ii. A preventive maintenance and monitoring program for the collection system;
  - iii. Description of sufficient staffing necessary to properly operate and maintain the sanitary sewer collection system and how the operation and maintenance program is staffed;
  - iv. Description of funding, the source(s) of funding and provisions for funding sufficient for implementing the plan;
  - v. 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;
  - vi. 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;

- vii. An educational public outreach program for all aspects of I/I control, particularly private inflow; and
- viii. An Overflow Emergency Response Plan to protect public health from overflows and unanticipated bypasses or upsets that exceed any effluent limitation in the permit.

### 3. Annual Reporting Requirement

The Permittee and Co-permittee shall submit a summary report of activities related to the implementation of its O&M Plans during the previous calendar year. The report shall be submitted to EPA and the State annually by March 31. The first annual report is due the first March 31 following submittal of the O&M Plans required by Part I.C. of this permit. 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;
- f. If the average annual flow in the previous calendar year exceeded 80 percent of the facility's 5.6 MGD design flow (4.48 MGD), 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.
- g. The Annual Operation and Maintenance Report on the implementation and results of

the *WWTF Major Storm and Flood Events Plan* (beginning the first March 31 following submittal of this Plan) for the prior calendar year; and

- h. The Annual Operation and Maintenance Report on the implementation and results of the *Sewer System Major Storm and Flood Events Plan* (beginning the first March 31 following submittal of this Plan) for the prior calendar 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 AND PRETREATMENT PROGRAM**

##### **1. Legal Authority**

The Permittee has been delegated primary responsibility for enforcing against discharges prohibited by 40 CFR 403.5 and applying and enforcing any national Pretreatment Standards established by the United States Environmental Protection Agency in accordance with Section 307 (b) and (c) of The Clean Water Act (Act), as amended by The Water Quality Act (WQA), of 1987.

The Permittee shall operate an industrial pretreatment program in accordance with the General Pretreatment Regulations found in 40 CFR Part 403 and the approved pretreatment program submitted by the Permittee. The pretreatment program was approved on **[October 14, 2005]** and has subsequently incorporated substantial modifications as approved by EPA. The approved pretreatment program, and any approved modifications thereto, is hereby incorporated by reference and shall be implemented in a manner consistent with the following procedures, as required by 40 CFR Part 403.

The Permittee must have or develop a legally enforceable municipal code or rules and regulations to authorize or enable the POTW to apply and enforce the requirements of Sections 307(b) and (c) and 402(b)(8) and (9) of the Act and comply with the requirements of § 403.8(f)(1). At a minimum, this legal authority shall enable the POTW to:

- a. Deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTW by Industrial Users where such contributions do not meet applicable Pretreatment Standards and Requirements or where such contributions would cause the POTW to violate its NPDES permit;
- b. Require compliance with applicable Pretreatment Standards and Requirements by Industrial Users;
- c. Control through Permit, order, or similar means, the contribution to the POTW by each Industrial User to ensure compliance with applicable Pretreatment Standards and Requirements. In the case of Industrial Users this control shall be achieved

through permits or equivalent control mechanism identified as significant under § 403.3(v), as required by § 403.8(f)(1)(iii);

- d. Require (a) the development of a compliance schedule by each Industrial User for the installation of technology required to meet applicable Pretreatment Standards and Requirements and (b) the submission of all notices and self-monitoring reports from Industrial Users as are necessary to assess and assure compliance by Industrial Users with Pretreatment Standards and Requirements, including but not limited to the reports required in § 403.12;
- e. Carry out all inspection, surveillance and monitoring procedures necessary to determine, independent of information supplied by Industrial Users, compliance or noncompliance with applicable Pretreatment Standards and Requirements by Industrial Users. At a minimum, all significant industrial users shall be sampled and inspected at the frequency established in the approved IPP, but in no case less than once per year, and with adequate maintenance of records, Representatives of the POTW shall be authorized to enter any premises of any Industrial User in which a Discharge source or treatment system is located or in which records are required to be kept under § 403.12(o) to assure compliance with Pretreatment Standards. Such authority shall be at least as extensive as the authority provided under section 308 of the Act;
- f. Obtain remedies for noncompliance by any Industrial User with any Pretreatment Standard and Requirement. All POTW's shall be able to seek injunctive relief for noncompliance by Industrial Users with Pretreatment Standards and Requirements. All POTWs shall also have authority to seek or assess civil or criminal penalties in at least the amount of \$1,000 a day for each violation by Industrial Users of Pretreatment Standards and Requirements in accordance with § 403.8(f)(1)(vii)(A); and
- g. Comply with the confidentiality requirements set forth in § 403.14.

## 2. Implementation Requirements

The Permittee shall operate a pretreatment program in accordance with the General Pretreatment Regulations found in 40 CFR Part 403 and with the legal authorities, policies, procedures, and financial provisions of the approved Pretreatment program submitted by the Permittee. The approved Pretreatment program, and any approved modifications thereto, is hereby incorporated by reference and shall be implemented in a manner consistent with the following procedures, as required by 40 CFR Part 403:

- a. In accordance with 40 CFR § 122.44(j)(1), Identify, in terms of character and volume of pollutants contributed from Industrial Users discharging into the POTW subject to Pretreatment Standards under section 307(b) of CWA and 40 CFR Part 403.

- b. The Permittee must notify these identified Industrial Users of applicable Pretreatment Standards and any applicable requirements in accordance with 40 CFR § 403.8(f)(2)(iii). Pursuant to 40 CFR § 403.8(f)(6), prepare and maintain a list of significant industrial users and identify the criteria in 40 CFR § 403.3(v)(1) applicable to each industrial user.
- c. The Permittee must carry out inspection procedures and randomly sample and analyze the effluent from Industrial Users and conduct surveillance activities in accordance with 40 CFR § 403.8(f)(2)(v), which will determine independent of information supplied by the industrial user, whether the industrial user is in compliance with the Pretreatment Standards. At a minimum, all significant industrial users shall be sampled and inspected at the frequency established in the approved IPP but in no case less than once per year and maintain adequate records.
- d. The Permittee shall receive and analyze self-monitoring reports and other notices submitted by Industrial Users in accordance with the self-monitoring requirements in 40 CFR § 403.12; This must include timely and appropriate reviews of industrial user reports and notifications to identify all violations of the user's permit, the local ordinance, and federal pretreatment standards and requirements.
- e. The Permittee shall evaluate whether each SIU needs a plan to control Slug Discharges in accordance with 40 CFR § 403.8(f)(2)(vi). SIUs must be evaluated within 1 year of being designated an SIU. If required, the Permittee shall require the SIU to prepare or update, and implement a slug prevention plan that contains at least the minimum required elements in 40 CFR § 403.8(f)(2)(vi)(A-D) and incorporate the slug control requirements into the SIU's control mechanism;
- f. Pursuant to 40 CFR § 403.8(f)(2)(vii), the Permittee shall investigate instances of non-compliance with Pretreatment Standards and requirements indicated in required reports and notices or indicated by analysis, inspection, and surveillance activities.
- g. The Permittee shall publish, at least annually, in a newspaper or newspapers of general circulation that provides meaningful public notice within the jurisdiction(s) served by the POTW, a list of all non-domestic users which, at any time in the previous 12 months, were in significant noncompliance as defined in 40 CFR § 403.8 (f)(2)(viii).
- h. The Permittee shall provide sufficient resources and qualified personnel to implement its Pretreatment program in accordance with 40 CFR § 403.8(f)(3);
- i. The Permittee shall enforce all applicable Pretreatment Standards and

requirements and obtain remedies for noncompliance by any industrial user. The Permittee shall develop, implement, and maintain an enforcement response plan in accordance with 40 CFR § 403.8(f)(5); and

- j. Pursuant to 40 CFR § 403.8(g), the Permittee that chooses to receive electronic documents must satisfy the requirements of 40 CFR Part 3 – (Electronic reporting).

### 3. Local Limit Development

- a. The Permittee shall develop, continually maintain, and enforce, as necessary, local limits to implement the general and specific prohibitions in 40 CFR § 403.5(c)(1) which prohibit the introduction of any pollutant(s) which cause pass through or interference and the introduction of specific pollutants to the waste treatment system from any source of non-domestic discharge.
- b. The Permittee shall develop and enforce specific effluent limits (local limits) for Industrial User(s), and all other users, as appropriate, which together with appropriate changes in the POTW Treatment Plant's Facilities or operation, are necessary to ensure continued compliance with the POTW's NPDES permit or sludge use or disposal practices. Specific local limits shall not be developed and enforced without individual notice to persons or groups who have requested such notice and an opportunity to respond. Within 90 days of the effective date of the permit, the Permittee shall prepare and submit a written technical evaluation to EPA analyzing the need to revise local limits. As part of this evaluation, the Permittee shall assess how the POTW performs with respect to influent and effluent of pollutants, water quality concerns, sludge quality, sludge processing concerns/inhibition, biomonitoring results, activated sludge inhibition, worker health and safety and collection system concerns. In preparing this evaluation, the Permittee shall complete and submit the attached form (see Attachment C – Reassessment of Technically Based Industrial Discharge Limits) with the technical evaluation to assist in determining whether existing local limits need to be revised. Justifications and conclusions should be based on actual plant data if available and should be included in the report. Should the evaluation reveal the need to revise local limits, the Permittee shall complete the revisions within 120 days of notification by EPA and submit the revisions to EPA for approval. The Permittee shall carry out the local limits revisions in accordance with EPA's Local Limit Development Guidance (July 2004).

### 4. Notification Requirements

- a. The Permittee must notify EPA of any new introductions or any substantial change in pollutants from any Industrial User within sixty (60) days following the introduction or change, as required in 40 CFR 122.42(b)(1-3). Such notice must identify:
  - (1) Any new introduction of pollutants from an Industrial User which would be

subject to Sections 301, 306, and 307 of the Act if it were directly discharging those pollutants; or

- (2) Any substantial change in the volume or character of pollutants being discharged by any Industrial User;
  - (3) For the purposes of this section, adequate notice shall include information on:
    - i. The identity of the Industrial User;
    - ii. The nature and concentration of pollutants in the discharge and the average and maximum flow of the discharge; and
    - iii. Any anticipated impact of the change on the quantity or quality of effluent to be discharged from or biosolids produced at such POTW.
- b. The Permittee must notify EPA as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required 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 pursuant to 40 CFR § 122.29 (b);
  - (2) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged; or
  - (3) The alteration or addition results in a significant change in the Permittee's sludge use or disposal practices.
- c. The Permittee must notify EPA if the POTW modifies or intends to modify its Pretreatment Program.
- d. The Permittee must notify EPA of any instance of pass through or interference, known or suspected to be related to a discharge from an Industrial User. The notification shall be attached to the DMR submitted EPA and shall describe the incident, including the date, time, length, cause, and the steps taken by the Permittee and Industrial User to address the incident.
- e. The Permittee shall notify all Industrial Users of the users' obligations to comply with applicable requirements under Subtitles C and D of the Resource Conservation and Recovery Act (RCRA) and that Industrial Users shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical as well as their obligation to notify the EPA Regional Waste Management Division Director, in writing of any discharge into the POTW of a substance, which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. Such notification must include:

- (1) the name of the hazardous waste as set forth in 40 CFR Part 261;
- (2) the EPA hazardous waste number; and
- (3) the type of discharge (continuous, batch, or other).

#### 5. Annual Report Requirements

The Permittee shall provide EPA with a hard copy annual report that briefly describes the POTW's program activities, including activities of all participating agencies, if more than one jurisdiction is involved in the local program. The report required by this section shall be submitted no later than one year after approval of the POTW's Pretreatment Program, and at least annually thereafter. The report must include, at a minimum, the applicable required data in Appendix A to 40 CFR Part 127, a summary of changes to the POTW's pretreatment program that have not been previously reported to EPA, and any other relevant information requested by EPA. Beginning on December 21, 2025 all annual reports submitted in compliance with this section must be submitted electronically by the POTW Pretreatment Program to EPA or initial recipient, as defined in 40 CFR § 127.2(b). Electronic submittals shall be in compliance with this section and 40 CFR Part 3 (including, in all cases, subpart D to Part 3), 40 CFR § 122.22(e), and 40 CFR Part 127 (Part 127 is not intended to undo existing requirements for electronic reporting). Prior to this date, and independent of 40 CFR Part 127, EPA may also require POTW Pretreatment Programs to electronically submit annual reports under this section if specified by a particular permit or if required to do so by state law.

The Permittee shall provide EPA with an annual report describing the Permittee's pretreatment program activities for the twelve (12) month period ending 60 days prior to the due date in accordance with 40 CFR § 403.12(i). The annual report shall be consistent with the format described in Attachment D (NPDES Permit Requirement for Industrial Pretreatment Annual Report) of this permit and shall be submitted by **June 1<sup>st</sup>** of each year.

6. Beginning the first full calendar year after the effective date of the permit, the Permittee shall commence annual sampling of the following types of industrial discharges into the POTW:
  - Commercial Car Washes
  - Platers/Metal Finishers
  - Paper and Packaging Manufacturers
  - Tanneries and Leather/Fabric/Carpet Treaters
  - Manufacturers of Parts with Polytetrafluoroethylene (PTFE) or teflon type coatings (e.g., bearings)
  - Landfill Leachate
  - Centralized Waste Treaters
  - Known or Suspected PFAS Contaminated Sites
  - Fire Fighting Training Facilities
  - Airports

- Any Other Known or Expected Sources of PFAS

Sampling shall be conducted using Method 1633 for the PFAS analytes listed in Attachment E. The industrial discharges sampled, and the sampling results shall be summarized and included in the annual report (see Part I.E.3).

## 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 CFR § 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 CFR 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 CFR Part 503 do not apply to facilities which dispose of sludge in a municipal solid waste landfill. 40 CFR § 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 CFR § 503.6.
5. The 40 CFR 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 CFR 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.

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 CFR § 503.8.

7. Under 40 CFR § 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 CFR § 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 CFR § 503.9(r), for use or disposal, then the Permittee remains responsible to ensure that the applicable requirements in Part 503 are met. 40 CFR § 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 CFR § 503 Subpart B.
8. The Permittee shall submit an annual report containing the information specified in the 40 CFR 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).

**G. SPECIAL CONDITIONS**

1. The Permittee shall continue to optimize the treatment facility operations relative to total nitrogen (TN) removal through measures and/or operational changes designed to enhance the removal of nitrogen in order to minimize the annual average mass discharge of total nitrogen.

The Permittee shall submit an annual report to EPA and the State, by **February 1st** of each year, that summarizes activities related to optimizing nitrogen removal efficiencies, documents the annual nitrogen discharge load from the facility, and tracks trends relative to the previous calendar year and the previous five (5) calendar years. If, in any year, the treatment facility discharges of TN on an average annual basis have increased, the annual

report shall include a detailed explanation of the reasons why TN discharges have increased, including any changes in influent flows/loads and any operational changes. The report shall include all supporting data.

## 2. Ambient Phosphorus Monitoring

Beginning in April of the first even numbered year that occurs at least six months after permit issuance, and during even numbered years thereafter, the Permittee shall collect monthly samples from April through October at a location in the receiving water upstream of the facility and analyze the samples for total phosphorus. Sampling shall be conducted on any calendar day that is preceded by at least 72 hours with less than or equal to 0.1 inches of cumulative rainfall. A sampling plan shall be submitted to EPA and the State (in accordance with Part I.H.2 and Part I.H.7, respectively) at least three months prior to the first planned sampling date as part of a Quality Assurance Project Plan for review and State approval. For the years that monitoring is not required, the Permittee shall report NODI code "9" (conditional monitoring not required).

## 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 electronically using NetDMR no later than the 15th day of the month. 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. See Part I.H.7. 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 Industrial User and Pretreatment Related Reports

- a. Prior to 21 December 2025, all reports and information required of the Permittee in the Industrial Users and Pretreatment Program section of this permit shall be submitted to the Pretreatment Coordinator in EPA Region 1 Water Division (WD). Starting on 21 December 2025, these submittals must be done electronically as NetDMR attachments

and/or 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/>. These requests, reports and notices include:

- (1) Annual Pretreatment Reports,
  - (2) Pretreatment Reports Reassessment of Technically Based Industrial Discharge Limits Form,
  - (3) Revisions to Industrial Discharge Limits,
  - (4) Report describing Pretreatment Program activities, and
  - (5) Proposed changes to a Pretreatment Program
- b. This information shall be submitted to EPA WD as a hard copy at the following address:

**U.S. Environmental Protection Agency  
Water Division  
Regional Pretreatment Coordinator  
5 Post Office Square - Suite 100 (06-03)  
Boston, MA 02109-3912**

4. 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/>.

5. 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;
- b. These reports, information, and requests shall be submitted to EPA WD electronically

at [R1NPDESReporting@epa.gov](mailto:R1NPDESReporting@epa.gov).

6. Submittal of Sewer Overflow and Bypass Reports and Notifications

The Permittee shall submit required reports and notifications under Part II.B.4.c, for bypasses, and Part II.D.1.e, for sanitary sewer overflows (SSOs) electronically using EPA's NPDES Electronic Reporting Tool ("NeT"), which will be accessible through EPA's Central Data Exchange at <https://cdx.epa.gov/>.

7. State Reporting

Duplicate signed copies of all WET test reports shall be submitted to the Massachusetts Department of Environmental Protection, Division of Watershed Management, at the following address:

**Massachusetts Department of Environmental Protection  
Bureau of Water Resources  
Division of Watershed Management  
8 New Bond Street  
Worcester, Massachusetts 01606**

8. 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  
MassDEP Emergency Response at 888-304-1133**

9. Submittal of Co-Permittee Reports to EPA Enforcement and Compliance Assurance Division (ECAD) in Hard Copy Form and Electronic Courtesy Copies via Email

- a. The following reports shall be signed and dated originals, submitted as hard copy, with a cover letter describing the submission:
  - (1) Collection System Operation and Maintenance Plan (from Co-permittee); and
  - (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**

- c. In addition, the Co-permittee shall send to EPA ECAD electronic courtesy copies of hard copy reports via email to: [R1NPDESReporting@epa.gov](mailto:R1NPDESReporting@epa.gov).

**I. STATE 401 CERTIFICATION CONDITIONS**

1. This Permit is in the process of receiving state water quality certification issued by the State under § 401(a) of the CWA and 40 CFR § 124.53. EPA will incorporate appropriate State water quality certification requirements (if any) into the Final Permit.

## 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](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 TESTS<sup>1</sup>**

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 <sup>2</sup>	Receiving water, other surface water, synthetic water adjusted to the hardness and alkalinity of the receiving water (prepared using either Millipore Milli-Q <sup>R</sup> 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   |

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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 TEST<sup>1</sup>**

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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 <sup>2</sup>	Receiving water, other surface water, synthetic water adjusted to the hardness and alkalinity of the receiving water (prepared using either Millipore Milli-Q <sup>R</sup> 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   |

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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 <sup>1</sup>	x	x	0.5
Total Residual Chlorine (TRC) <sup>2, 3</sup>	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:

- 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)
- 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
- 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.

**ATTACHMENT B**  
**FRESHWATER CHRONIC**  
**TOXICITY TEST PROCEDURE AND PROTOCOL**  
**USEPA Region 1**

**I. GENERAL REQUIREMENTS**

The permittee shall be responsible for the conduct of acceptable chronic toxicity tests using three fresh samples collected during each test period. The following tests shall be performed as prescribed in Part 1 of the NPDES discharge permit in accordance with the appropriate test protocols described below. (Note: the permittee and testing laboratory should review the applicable permit to determine whether testing of one or both species is required).

- **Daphnid (Ceriodaphnia dubia) Survival and Reproduction Test.**
- **Fathead Minnow (Pimephales promelas) Larval Growth and Survival Test.**

Chronic toxicity data shall be reported as outlined in Section VIII.

**II. METHODS**

Methods to follow are those recommended by EPA in: Short Term Methods For Estimating The Chronic Toxicity of Effluents and Receiving Water to Freshwater Organisms, Fourth Edition, October 2002. United States Environmental Protection Agency. Office of Water, Washington, D.C., EPA 821-R-02-013. The methods are available on-line at <http://www.epa.gov/waterscience/WET/> . Exceptions and clarification are stated herein.

**III. SAMPLE COLLECTION AND USE**

A total of three fresh samples of effluent and receiving water are required for initiation and subsequent renewals of a freshwater, chronic, toxicity test. The receiving water control sample must be collected immediately upstream of the permitted discharge's zone of influence. Fresh samples are recommended for use on test days 1, 3, and 5. However, provided a total of three samples are used for testing over the test period, an alternate sampling schedule is acceptable. The acceptable holding times until initial use of a sample are 24 and 36 hours for on-site and off-site testing, respectively. A written waiver is required from the regulating authority for any hold time extension. All test samples collected may be used for 24, 48 and 72 hour renewals after initial use. All samples held for use beyond the day of sampling shall be refrigerated and maintained at a temperature range of 0-6° C.

All samples submitted for chemical and physical analyses will be analyzed according to Section VI of this protocol.

Sampling guidance dictates that, where appropriate, aliquots for the analysis required in this protocol shall be split from the samples, containerized and immediately preserved, or analyzed as per 40 CFR Part 136. EPA approved test methods require that samples collected for metals analyses be preserved immediately after collection. Testing for the presence of total residual chlorine (TRC) must be analyzed immediately or as soon as possible, for all effluent samples, prior to WET testing. TRC analysis may be performed on-site or by the toxicity testing laboratory and the samples must be dechlorinated, as necessary, using sodium thiosulfate prior to sample use for toxicity testing.

If any of the renewal samples are of sufficient potency to cause lethality to 50 percent or more of the test organisms in any of the test treatments for either species or, if the test fails to meet its permit limits, then chemical analysis for total metals (originally required for the initial sample only in Section VI) will be required on the renewal sample(s) as well.

#### IV. DILUTION WATER

Samples of receiving water must be collected from a location in the receiving water body 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. EPA strongly urges that screening for toxicity be performed prior to the set up of a full, definitive toxicity test any time there is a question about the test dilution water's ability to achieve test acceptability criteria (TAC) as indicated in Section V of this protocol. The test dilution water control response will be used in the statistical analysis of the toxicity test data. All other control(s) required to be run in the test will be reported as specified in the Discharge Monitoring Report (DMR) Instructions, Attachment F, page 2, Test Results & Permit Limits.

The test dilution water must be used to determine whether the test met the applicable TAC. When receiving water is used for test dilution, an additional control made up of standard laboratory water (0% effluent) is required. This control will be used to verify the health of the test organisms and evaluate to what extent, if any, the receiving water itself is responsible for any toxic response observed.

If dechlorination of a sample by the toxicity testing laboratory is necessary a "sodium thiosulfate" control, representing the concentration of sodium thiosulfate used to adequately dechlorinate the sample prior to toxicity testing, must be included in the test.

If the use of an alternate dilution water (ADW) is authorized, in addition to the ADW test control, the testing laboratory must, for the purpose of monitoring the receiving water, also run a receiving water control.

If the receiving water diluent is found to be, or suspected to be toxic or unreliable an ADW of known quality with hardness similar to that of the receiving water may be substituted. Substitution is species specific meaning that the decision to use ADW is made for each species and is based on the toxic response of that particular species. Substitution to an ADW is authorized in two cases. The first is the case where repeating a test due to toxicity in the site dilution water requires an **immediate decision** for ADW use be made by the permittee and toxicity testing laboratory. The second is in the case where two of the most recent documented incidents of unacceptable site dilution water toxicity requires ADW use in future WET testing.

For the second case, written notification from the permittee requesting ADW use **and** written authorization from the permit issuing agency(s) is required **prior to** switching to a long-term use of ADW for the duration of the permit.

Written requests for use of ADW must be mailed with supporting documentation to the following addresses:

Director  
Office of Ecosystem Protection (CAA)  
U.S. Environmental Protection Agency, Region 1  
Five Post Office Square, Suite 100  
Mail Code OEP06-5  
Boston, MA 02109-3912

and

Manager  
Water Technical Unit (SEW)  
U.S. Environmental Protection Agency  
Five Post Office Square, Suite 100  
Mail Code 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/enforcementandassistance/dmr.html> for further important details on alternate dilution water substitution requests.*

## **V. TEST CONDITIONS AND TEST ACCEPTABILITY CRITERIA**

Method specific test conditions and TAC are to be followed and adhered to as specified in the method guidance document, EPA 821-R-02-013. If a test does not meet TAC the test must be repeated with fresh samples within 30 days of the initial test completion date.

### **V.1. Use of Reference Toxicity Testing**

Reference toxicity test results and applicable control charts must be included in the toxicity testing report.

If reference toxicity test results fall outside the control limits established by the laboratory for a specific test endpoint, a reason or reasons for this excursion must be evaluated, correction made and reference toxicity tests rerun as necessary.

If a test endpoint value exceeds the control limits at a frequency of more than one out of twenty then causes for the reference toxicity test failure must be examined and if problems are identified corrective action taken. The reference toxicity test must be repeated during the same month in which the exceedance occurred.



If two consecutive reference toxicity tests fall outside control limits, the possible cause(s) for the exceedance must be examined, corrective actions taken and a repeat of the reference toxicity test must take place immediately. Actions taken to resolve the problem must be reported.

#### V.1.a. Use of Concurrent Reference Toxicity Testing

In the case where concurrent reference toxicity testing is required due to a low frequency of testing with a particular method, if the reference toxicity test results fall slightly outside of laboratory established control limits, but the primary test met the TAC, the results of the primary test will be considered acceptable. However, if the results of the concurrent test fall well outside the established **upper** control limits i.e.  $\geq 3$  standard deviations for IC25 values and  $\geq$  two concentration intervals for NOECs, and even though the primary test meets TAC, the primary test will be considered unacceptable and must be repeated.

V.2. For the *C. dubia* test, the determination of TAC and formal statistical analyses must be performed using only the first three broods produced.

V.3. Test treatments must include 5 effluent concentrations and a dilution water control. An additional test treatment, at the permitted effluent concentration (% effluent), is required if it is not included in the dilution series.

## VI. CHEMICAL ANALYSIS

As part of each toxicity test's daily renewal procedure, pH, specific conductance, dissolved oxygen (DO) and temperature must be measured at the beginning and end of each 24-hour period in each test treatment and the control(s).

The additional analysis that must be performed under this protocol is as specified and noted in the table below.

<u>Parameter</u>	Effluent	Receiving Water	ML (mg/l)
Hardness <sup>1,4</sup>	x	x	0.5
Total Residual Chlorine (TRC) <sup>2, 3, 4</sup>	x		0.02
Alkalinity <sup>4</sup>	x	x	2.0
pH <sup>4</sup>	x	x	--
Specific Conductance <sup>4</sup>	x	x	--
Total Solids <sup>6</sup>	x		--
Total Dissolved Solids <sup>6</sup>	x		--
Ammonia <sup>4</sup>	x	x	0.1
Total Organic Carbon <sup>6</sup>	x	x	0.5
Total Metals <sup>5</sup>			
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
    - USEPA 1983. Manual of Methods Analysis of Water and Wastes
      - Method 330.5
  3. Required to be performed on the sample used for WET testing prior to its use for toxicity testing
  4. Analysis is to be performed on samples and/or receiving water, as designated in the table above, from all three sampling events.
  5. Analysis is to be performed on the initial sample(s) only unless the situation arises as stated in Section III, paragraph 4
  6. Analysis to be performed on initial samples only

## **VII. TOXICITY TEST DATA ANALYSIS AND REVIEW**

### **A. Test Review**

#### **1. Concentration / Response Relationship**

A concentration/response relationship evaluation is required for test endpoint determinations from both Hypothesis Testing and Point Estimate techniques. The test report is to include documentation of this evaluation in support of the endpoint values reported. The dose-response review must be performed as required in Section 10.2.6 of EPA-821-R-02-013.

Guidance for this review can be found at

<http://water.epa.gov/scitech/methods/cwa/> . In most cases, the review will result in one of the following three conclusions: (1) Results are reliable and reportable; (2) Results are anomalous and require explanation; or (3) Results are inconclusive and a retest with fresh samples is required.

#### **2. Test Variability (Test Sensitivity)**

This review step is separate from the determination of whether a test meets or does not meet TAC. Within test variability is to be examined for the purpose of evaluating test sensitivity. This evaluation is to be performed for the sub-lethal hypothesis testing endpoints reproduction and growth as required by the permit. The test report is to include documentation of this evaluation to support that the endpoint values reported resulted from a toxicity test of adequate sensitivity. This evaluation must be performed as required in Section 10.2.8 of EPA-821-R-02-013.

To determine the adequacy of test sensitivity, USEPA requires the calculation of test percent minimum significant difference (PMSD) values. In cases where NOEC determinations are made based on a non-parametric technique, calculation of a test PMSD value, for the sole purpose of assessing test sensitivity, shall be calculated using a comparable parametric statistical analysis technique. The calculated test PMSD is then compared to the upper and lower PMSD bounds shown for freshwater tests in Section 10.2.8.3, p. 52, Table 6 of EPA-821-R-02-013. The comparison will yield one of the following determinations.

- The test PMSD exceeds the PMSD upper bound test variability criterion in Table 6, the test results are considered highly variable and the test may not be sensitive enough to determine the presence of toxicity at the permit limit concentration (PLC). If the test results indicate that the discharge is not toxic at the PLC, then the test is considered insufficiently sensitive and must be repeated within 30 days of the initial test completion using fresh samples. If the test results indicate that the discharge is toxic at the PLC, the test is considered acceptable and does not have to be repeated.
- The test PMSD falls below the PMSD lower bound test variability criterion in Table 6, the test is determined to be very sensitive. In order to determine which treatment(s) are statistically significant and which are not, for the purpose of reporting a NOEC, the relative percent difference (RPD) between the control and each treatment must be calculated and compared to the lower PMSD boundary. See *Understanding and Accounting for Method Variability in Whole Effluent Toxicity Applications Under the NPDES Program*, EPA 833-R-00-003, June 2002, Section 6.4.2. The following link: [Understanding and Accounting for Method Variability in Whole Effluent Toxicity Applications Under the NPDES Program](#) can be used to locate the USEPA website containing this document. If the RPD for a treatment falls below the PMSD lower bound, the difference is considered statistically insignificant. If the RPD for a treatment is greater than the PMSD lower bound, then the treatment is considered statistically significant.
- The test PMSD falls within the PMSD upper and lower bounds in Table 6, the sub-lethal test endpoint values shall be reported as is.

## B. Statistical Analysis

### 1. General - Recommended Statistical Analysis Method

Refer to general data analysis flowchart, EPA 821-R-02-013, page 43

For discussion on Hypothesis Testing, refer to EPA 821-R-02-013, Section 9.6

For discussion on Point Estimation Techniques, refer to EPA 821-R-02-013, Section 9.7

### 2. *Pimephales promelas*

Refer to survival hypothesis testing analysis flowchart, EPA 821-R-02-013, page 79

Refer to survival point estimate techniques flowchart, EPA 821-R-02-013, page 80

Refer to growth data statistical analysis flowchart, EPA 821-R-02-013, page 92

### 3. *Ceriodaphnia dubia*

Refer to survival data testing flowchart, EPA 821-R-02-013, page 168

Refer to reproduction data testing flowchart, EPA 821-R-02-013, page 173

## VIII. TOXICITY TEST REPORTING

A report of results must include the following:

- Test summary sheets (2007 DMR Attachment F) which includes:
  - Facility name
  - NPDES permit number
  - Outfall number
  - Sample type
  - Sampling method
  - Effluent TRC concentration
  - Dilution water used
  - Receiving water name and sampling location
  - Test type and species
  - Test start date
  - Effluent concentrations tested (%) and permit limit concentration
  - Applicable reference toxicity test date and whether acceptable or not
  - Age, age range and source of test organisms used for testing
  - Results of TAC review for all applicable controls
  - Test sensitivity evaluation results (test PMSD for growth and reproduction)
  - Permit limit and toxicity test results
  - Summary of test sensitivity and concentration response evaluation

In addition to the summary sheets the report must include:

- A brief description of sample collection procedures
- Chain of custody documentation including names of individuals collecting samples, times and dates of sample collection, sample locations, requested analysis and lab receipt with time and date received, lab receipt personnel and condition of samples upon receipt at the lab(s)
- Reference toxicity test control charts
- All sample chemical/physical data generated, including minimum limits (MLs) and analytical methods used
- All toxicity test raw data including daily ambient test conditions, toxicity test chemistry, sample dechlorination details as necessary, bench sheets and statistical analysis
- A discussion of any deviations from test conditions
- Any further discussion of reported test results, statistical analysis and concentration-response relationship and test sensitivity review per species per endpoint

## ATTACHMENT C

### EPA - New England

#### Reassessment of Technically Based Industrial Discharge Limits

Under 40 CFR §122.21(j)(4), all Publicly Owned Treatment Works (POTWs) with approved Industrial Pretreatment Programs (IPPs) shall provide the following information to the Director: a written evaluation of the need to revise local industrial discharge limits under 40 CFR §403.5(c)(1).

Below is a form designed by the U.S. Environmental Protection Agency (EPA - New England) to assist POTWs with approved IPPs in evaluating whether their existing Technically Based Local Limits (TBLLs) need to be recalculated. The form allows the permittee and EPA to evaluate and compare pertinent information used in previous TBLLs calculations against present conditions at the POTW.

**Please read direction below before filling out form.**

#### ITEM I.

- \* In Column (1), list what your POTW's influent flow rate was when your existing TBLLs were calculated. In Column (2), list your POTW's present influent flow rate. Your current flow rate should be calculated using the POTW's average daily flow rate from the previous 12 months.
- \* In Column (1) list what your POTW's SIU flow rate was when your existing TBLLs were calculated. In Column (2), list your POTW's present SIU flow rate.
- \* In Column (1), list what dilution ratio and/or 7Q10 value was used in your old/expired NPDES permit. In Column (2), list what dilution ration and/or 7Q10 value is presently being used in your new/reissued NPDES permit.

The 7Q10 value is the lowest seven day average flow rate, in the river, over a ten year period. The 7Q10 value and/or dilution ratio used by EPA in your new NPDES permit can be found in your NPDES permit "Fact Sheet."

- \* In Column (1), list the safety factor, if any, that was used when your existing TBLLs were calculated.
- \* In Column (1), note how your bio-solids were managed when your existing TBLLs were calculated. In Column (2), note how your POTW is presently disposing of its biosolids and how your POTW will be disposing of its biosolids in the future.



## ITEM II.

- \* List what your existing TBLLs are - as they appear in your current Sewer Use Ordinance (SUO).

## ITEM III.

- \* Identify how your existing TBLLs are allocated out to your industrial community. Some pollutants may be allocated differently than others, if so please explain.

## ITEM IV.

- \* Since your existing TBLLs were calculated, identify the following in detail:
  - (1) if your POTW has experienced any upsets, inhibition, interference or pass-through as a result of an industrial discharge.
  - (2) if your POTW is presently violating any of its current NPDES permit limitations - include toxicity.

## ITEM V.

- \* Using current sampling data, list in Column (1) the average and maximum amount of pollutants (in pounds per day) received in the POTW's influent. Current sampling data is defined as data obtained over the last 24 month period.

All influent data collected and analyzed must be in accordance with 40 CFR §136. Sampling data collected should be analyzed using the lowest possible detection method(s), e.g. graphite furnace.

- \* Based on your existing TBLLs, as presented in Item II., list in Column (2), for each pollutant the Maximum Allowable Headwork Loading (MAHL) values derived from an applicable environmental criteria or standard, e.g. water quality, sludge, NPDES, inhibition, etc. For more information, please see EPA's Local Limit Guidance Document (July 2004).

## Item VI.

- \* Using current sampling data, list in Column (1) the average and maximum amount of pollutants (in micrograms per liter) present your POTW's effluent. Current sampling data is defined as data obtained during the last 24 month period.

**(Item VI. continued)**

All effluent data collected and analyzed must be in accordance with 40 CFR §136. Sampling data collected should be analyzed using the lowest possible detection method(s), e.g. graphite furnace.

- \* List in Column (2A) what the Water Quality Standards (WQS) were (in micrograms per liter) when your TBLLs were calculated, please note what hardness value was used at that time. Hardness should be expressed in milligram per liter of Calcium Carbonate.

List in Column (2B) the current WQs or "Chronic Gold Book" values for each pollutant multiplied by the dilution ratio used in your new/reissued NPDES permit. For example, with a dilution ratio of 25:1 at a hardness of 25 mg/l - Calcium Carbonate (copper's chronic WQS equals 6.54 ug/l) the chronic NPDES permit limit for copper would equal 156.25 ug/l.

**ITEM VII.**

- \* In Column (1), list all pollutants (in micrograms per liter) limited in your new/reissued NPDES permit. In Column (2), list all pollutants limited in your old/expired NPDES permit.

**ITEM VIII.**

- \* Using current sampling data, list in Column (1) the average and maximum amount of pollutants in your POTW's biosolids. Current data is defined as data obtained during the last 24 month period. Results are to be expressed as total dry weight.

All biosolids data collected and analyzed must be in accordance with 40 CFR §136.

In Column (2A), list current State and/or Federal sludge standards that your facility's biosolids must comply with. Also note how your POTW currently manages the disposal of its biosolids. If your POTW is planning on managing its biosolids differently, list in Column (2B) what your new biosolids criteria will be and method of disposal.

In general, please be sure the units reported are correct and all pertinent information is included in your evaluation. If you have any questions, please contact your pretreatment representative at EPA - New England.





**ITEM II.**

EXISTING TBLs			
POLLUTANT	NUMERICAL LIMIT (mg/l) or (lb/day)	POLLUTANT	NUMERICAL LIMIT (mg/l) or (lb/day)

**ITEM III.**

Note how your existing TBLs, listed in Item II., are allocated to your Significant Industrial Users (SIUs), i.e. uniform concentration, contributory flow, mass proportioning, other. Please specify by circling.

**ITEM IV.**

Has your POTW experienced any upsets, inhibition, interference or pass-through from industrial sources since your existing TBLs were calculated?  
If yes, explain.

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Has your POTW violated any of its NPDES permit limits and/or toxicity test requirements?

If \_\_\_\_\_ yes, \_\_\_\_\_ explain.

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**ITEM V.**

Using current POTW influent sampling data fill in Column (1). In Column (2), list your Maximum Allowable Headwork Loading (MAHL) values used to derive your TBLLs listed in Item II. In addition, please note the Environmental Criteria for which each MAHL value was established, i.e. water quality, sludge, NPDES etc.

Pollutant	Column (1) Influent Data Analyses		Column (2) MAHL Values (lb/day)	Criteria
	Maximum (lb/day)	Average (lb/day)		
Arsenic				
Cadmium				
Chromium				
Copper				
Cyanide				
Lead				
Mercury				
Nickel				
Silver				
Zinc				
Other (List)				

**ITEM VI.**

Using current POTW effluent sampling data, fill in Column (1). In Column (2A) list what the Water Quality Standards (Gold Book Criteria) were at the time your existing TBLLs were developed. List in Column (2B) current Gold Book values multiplied by the dilution ratio used in your new/reissued NPDES permit.

Pollutant	Column (1)		Columns (2A) (2B)	
	Effluent Data Analyses		Water Quality Criteria (Gold Book)	
	Maximum (ug/l)	Average (ug/l)	From TBLLs Today (ug/l)	(ug/l)
Arsenic				
*Cadmium				
*Chromium				
*Copper				
Cyanide				
*Lead				
Mercury				
*Nickel				
Silver				
*Zinc				
Other (List)				

\*Hardness Dependent (mg/l - CaCO3)



**ITEM VIII.**

Using current POTW biosolids data, fill in Column (1). In Column (2A), list the biosolids criteria that was used at the time your existing TBLLs were calculated. If your POTW is planing on managing its biosolids differently, list in Column (2B) what your new biosolids criteria would be and method of disposal.

Pollutant	Column (1)	Biosolids	Columns	
	Data Analyses		(2A)	(2B)
	Average		Biosolids Criteria	From TBLLs
	(mg/kg)		New	
			(mg/kg)	(mg/kg)
Arsenic				
Cadmium				
Chromium				
Copper				
Cyanide				
Lead				
Mercury				
Nickel				
Silver				
Zinc				
Molybdenum				
Selenium				
Other (List)				

## ATTACHMENT D

### NPDES PERMIT REQUIREMENT FOR INDUSTRIAL PRETREATMENT ANNUAL REPORT

The information described below shall be included in the pretreatment program annual reports:

1. An updated list of all industrial users by category, as set forth in 40 C.F.R. 403.8(f)(2)(i), indicating compliance or noncompliance with the following:
  - baseline monitoring reporting requirements for newly promulgated industries
  - compliance status reporting requirements for newly promulgated industries
  - periodic (semi-annual) monitoring reporting requirements,
  - categorical standards, and
  - local limits;
2. A summary of compliance and enforcement activities during the preceding year, including the number of:
  - significant industrial users inspected by POTW (include inspection dates for each industrial user),
  - significant industrial users sampled by POTW (include sampling dates for each industrial user),
  - compliance schedules issued (include list of subject users),
  - written notices of violations issued (include list of subject users),
  - administrative orders issued (include list of subject users),
  - criminal or civil suits filed (include list of subject users) and,
  - penalties obtained (include list of subject users and penalty amounts);
3. A list of significantly violating industries required to be published in a local newspaper in accordance with 40 C.F.R. 403.8(f)(2)(vii);
4. A narrative description of program effectiveness including present and proposed changes to the program, such as funding, staffing, ordinances, regulations, rules and/or statutory authority;
5. A summary of all pollutant analytical results for influent, effluent, sludge and any toxicity or bioassay data from the wastewater treatment facility. The summary shall include a comparison of influent sampling results versus threshold inhibitory concentrations for the Wastewater Treatment System and effluent sampling results versus water quality standards. Such a comparison shall be based on the sampling program described in the paragraph below or any similar sampling program described in this Permit.

At a minimum, annual sampling and analysis of the influent and effluent of the Wastewater Treatment Plant shall be conducted for the following pollutants:

- |                    |                   |
|--------------------|-------------------|
| a.) Total Cadmium  | f.) Total Nickel  |
| b.) Total Chromium | g.) Total Silver  |
| c.) Total Copper   | h.) Total Zinc    |
| d.) Total Lead     | i.) Total Cyanide |
| e.) Total Mercury  | j.) Total Arsenic |

The sampling program shall consist of one 24-hour flow-proportioned composite and at least one grab sample that is representative of the flows received by the POTW. The composite shall consist of hourly flow-proportioned grab samples taken over a 24-hour period if the sample is collected manually or shall consist of a minimum of 48 samples collected at 30 minute intervals if an automated sampler is used. Cyanide shall be taken as a grab sample during the same period as the composite sample. Sampling and preservation shall be consistent with 40 CFR Part 136.

6. A detailed description of all interference and pass-through that occurred during the past year;
7. A thorough description of all investigations into interference and pass-through during the past year;
8. A description of monitoring, sewer inspections and evaluations which were done during the past year to detect interference and pass-through, specifying parameters and frequencies;
9. A description of actions being taken to reduce the incidence of significant violations by significant industrial users; and,
10. The date of the latest adoption of local limits and an indication as to whether or not the permittee is under a State or Federal compliance schedule that includes steps to be taken to revise local limits.

## Attachment E: PFAS Analyte List

Target Analyte Name	Abbreviation	CAS Number
<b>Perfluoroalkyl carboxylic acids</b>		
Perfluorobutanoic acid	PFBA	375-22-4
Perfluoropentanoic acid	PFPeA	2706-90-3
Perfluorohexanoic acid	PFHxA	307-24-4
Perfluoroheptanoic acid	PFHpA	375-85-9
Perfluorooctanoic acid	PFOA	335-67-1
Perfluorononanoic acid	PFNA	375-95-1
Perfluorodecanoic acid	PFDA	335-76-2
Perfluoroundecanoic acid	PFUnA	2058-94-8
Perfluorododecanoic acid	PFDoA	307-55-1
Perfluorotridecanoic acid	PFTTrDA	72629-94-8
Perfluorotetradecanoic acid	PFTeDA	376-06-7
<b>Perfluoroalkyl sulfonic acids</b>		
<b>Acid Form</b>		
Perfluorobutanesulfonic acid	PFBS	375-73-5
Perfluoropentanesulfonic acid	PFPeS	2706-91-4
Perfluorohexanesulfonic acid	PFHxS	355-46-4
Perfluoroheptanesulfonic acid	PFHpS	375-92-8
Perfluorooctanesulfonic acid	PFOS	1763-23-1
Perfluorononanesulfonic acid	PFNS	68259-12-1
Perfluorodecanesulfonic acid	PFDS	335-77-3
Perfluorododecanesulfonic acid	PFDoS	79780-39-5
<b>Fluorotelomer sulfonic acids</b>		
1H,1H, 2H, 2H-Perfluorohexane sulfonic acid	4:2FTS	757124-72-4
1H,1H, 2H, 2H-Perfluorooctane sulfonic acid	6:2FTS	27619-97-2
1H,1H, 2H, 2H-Perfluorodecane sulfonic acid	8:2FTS	39108-34-4
<b>Perfluorooctane sulfonamides</b>		
Perfluorooctanesulfonamide	PFOSA	754-91-6
N-methyl perfluorooctanesulfonamide	NMeFOSA	31506-32-8
N-ethyl perfluorooctanesulfonamide	NEtFOSA	4151-50-2
<b>Perfluorooctane sulfonamidoacetic acids</b>		
N-methyl perfluorooctanesulfonamidoacetic acid	NMeFOSAA	2355-31-9
N-ethyl perfluorooctanesulfonamidoacetic acid	NEtFOSAA	2991-50-6
<b>Perfluorooctane sulfonamide ethanols</b>		
N-methyl perfluorooctanesulfonamidoethanol	NMeFOSE	24448-09-7
N-ethyl perfluorooctanesulfonamidoethanol	NEtFOSE	1691-99-2
<b>Per- and Polyfluoroether carboxylic acids</b>		
Hexafluoropropylene oxide dimer acid	HFPO-DA	13252-13-6
4,8-Dioxa-3H-perfluorononanoic acid	ADONA	919005-14-4
Perfluoro-3-methoxypropanoic acid	PFMPA	377-73-1
Perfluoro-4-methoxybutanoic acid	PFMBA	863090-89-5
Nonafluoro-3,6-dioxaheptanoic acid	NFDHA	151772-58-6



Target Analyte Name	Abbreviation	CAS Number
<b>Ether sulfonic acids</b>		
9-Chlorohexadecafluoro-3-oxanonane-1-sulfonic acid	9Cl-PF3ONS	756426-58-1
11-Chloroeicosafluoro-3-oxaundecane-1-sulfonic acid	11Cl-PF3OUdS	763051-92-9
Perfluoro(2-ethoxyethane)sulfonic acid	PFEESA	113507-82-7
<b>Fluorotelomer carboxylic acids</b>		
3-Perfluoropropyl propanoic acid	3:3FTCA	356-02-5
2 <i>H</i> ,2 <i>H</i> ,3 <i>H</i> ,3 <i>H</i> -Perfluorooctanoic acid	5:3FTCA	914637-49-3
3-Perfluoroheptyl propanoic acid	7:3FTCA	812-70-4

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<sup>1</sup>Updated July 17, 2018 to fix typographical errors.

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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.

*LC<sub>50</sub>* means the concentration of a sample that causes mortality of 50% of the test population at a specific time of observation. The LC<sub>50</sub> = 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 <sub>2</sub>	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 <sup>3</sup> /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 <sub>3</sub> -N	Ammonia nitrogen as nitrogen
NO <sub>3</sub> -N	Nitrate as nitrogen
NO <sub>2</sub> -N	Nitrite as nitrogen
NO <sub>3</sub> -NO <sub>2</sub>	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:** MA0101168

**PUBLIC NOTICE START AND END DATES:** March 30, 2023 – April 28, 2023

**NAME AND MAILING ADDRESS OF APPLICANT:**

Town of Palmer  
4417 Main Street  
Palmer, MA 01069

The Town of Monson is a Co-permittee for specific activities described in Section 5.4 of this Fact Sheet and required in Parts I.B, I.C, and I.D of the Draft Permit, as well as reporting required in Part I.H of the Draft Permit. The Co-permittee number is MAC011168 and the responsible municipal department is:

Town of Monson  
Water and Sewer Department  
198 WD Main Street, P.O. Box 3888  
Monson, MA 01057

**NAME AND ADDRESS OF FACILITY WHERE DISCHARGE OCCURS:**

Palmer Water Pollution Control Facility  
1 Norbell Street  
Three Rivers, Massachusetts 01080

**RECEIVING WATER AND CLASSIFICATION:**

Chicopee River (MA36-22)  
Chicopee River Watershed  
Class B – Warm Water Fishery, and CSO Impacted

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## 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 Palmer Water Pollution Control Facility (the Facility) into the Chicopee River.

The permit currently in effect was issued on January 21, 2011 with an effective date of April 1, 2011 and expired on March 31, 2016 (the 2011 Permit). The Permittee filed an application for permit reissuance with EPA dated September 30, 2015, as required by 40 Code of Federal Regulations (CFR) § 122.6. Since the permit application was deemed timely and complete by EPA on March 29, 2016, the Facility's 2011 Permit has been administratively continued pursuant to 40 CFR § 122.6 and § 122.21(d). EPA and the State conducted a site visit on September 27, 2022.

## 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 CFR §§ 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 CFR §§ 122.4(d), 122.44(d)(1), and 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, and 304(d); 40 CFR 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 biochemical oxygen demand (BOD<sub>5</sub>), total suspended solids (TSS) and pH. *See* 40 CFR 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 CFR § 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 CFR §§ 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 CFR § 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 CFR § 131.12. The applicable State WQSs can be found in 314 of the Code of Massachusetts Regulations, Chapter 4 (314 CMR 4.00).

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 average monthly 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 CFR § 122.44(d)(1)(vi)(A-C).

### **2.2.2 Antidegradation**

Federal regulations found at 40 CFR § 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.

Massachusetts' statewide antidegradation policy, entitled "Antidegradation Provisions" is found in the State's WQSs at 314 CMR 4.04. Massachusetts guidance for the implementation of this policy is in an associated document entitled "Implementation Procedure for the Anti-Degradation Provisions of the State Water Quality Standards," dated October 21, 2009. According to the policy, no lowering of water quality is allowed, except in accordance with the antidegradation policy, and all existing in-stream uses, and the level of water quality necessary to protect the existing uses of a receiving water body must be maintained and protected.

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 CFR § 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 CFR § 122.44(d)(1)(vii)(B).

### **2.2.4 Reasonable Potential**

Pursuant to CWA § 301(b)(1)(C) and 40 CFR § 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 CFR § 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 CFR § 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 CFR § 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 CFR § 124.53 and § 124.55. EPA has requested permit certification by the State pursuant to 40 CFR § 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 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 EPA’s permit appeal procedures of 40 CFR 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 CFR § 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 WQSs and State requirements are contained in 40 CFR §§ 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 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.<sup>1</sup> 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 CFR §§ 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

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<sup>1</sup> EPA's regulations regarding "reasonable potential" require EPA to consider "where appropriate, the dilution of the effluent in the receiving water," *id* 40 CFR §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)

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 CFR § 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 CFR §§ 122.41(d), (e).

## **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 CFR 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 CFR §§ 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 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 CFR Part 122.

NPDES permits require that the approved analytical procedures found in 40 CFR 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*.<sup>2</sup> 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 CFR § 122.21(e)(3) (completeness), 40 CFR § 122.44(i)(1)(iv) (monitoring requirements) and/or as cross referenced at 40 CFR § 136.1(c) (applicability) indicate that an EPA-approved method is sufficiently sensitive where:

- The method minimum level<sup>3</sup> (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 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 CFR Part 136 or required under 40 CFR 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 15<sup>th</sup> 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 CFR §§ 122.41 and 403.12. NetDMR is accessible through EPA's Central Data

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<sup>2</sup> Fed. Reg. 49,001 (Aug 19, 2014).

<sup>3</sup> 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).

Exchange at <https://cdx.epa.gov/>. Further information about NetDMR can be found on EPA's NetDMR support portal webpage.<sup>4</sup>

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 CFR 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 CFR § 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 2011 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.

## 3.0 Description of Facility and Discharge

### 3.1 Location and Type of Facility

The location of the treatment plant and outfall 027 to the Chicopee River are shown in Figure 1. The longitude and latitude of the outfall is 72° 22' 5" W, 42° 10' 48" N.

The Palmer Water Pollution Control Facility (WPCF) is an advanced wastewater treatment facility that is engaged in the collection and treatment of municipal and industrial wastewater. Currently, the Facility serves approximately 8,000 residents in the Town of Palmer (about 66% of the town's population), 2,000 residents in the Town of Monson (about 22% of the town's population), and 120 residents in the Town of Belchertown (about 0.8% of the town's population).

The Facility has a design flow of 5.6 MGD, the annual average daily flow reported in the 2015 application was 1.42 MGD and the median annual rolling average for the last 5 years was 1.7

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

MGD. As of 2012, the Town has completed separating all of the sewers and the system is now a separate system with no combined sewers. Therefore, there are no combined sewer overflow outfalls included for coverage under the Draft Permit, only Outfall 027 remains in the Draft Permit. Wastewater is comprised of mostly domestic sewage with some industrial wastewater, commercial sewage and some septage.

There are two significant industrial users (SIUs) that discharge to the POTW: (1) Rathbone Precision Metals, Inc., consisting of process (5,500 gpd) and non-process (1,400 gpd) wastewater which contributes an average of 6,900 gallons per day and (2) Profiles, Inc., consisting of process (4,000 gpd) and non-process (1,200 gpd) wastewater which contributes an average of 5,200 gallons per day. Pollutants introduced into POTWs by a non-domestic source shall not pass through the POTW or interfere with the operation or performance of the treatment works.

A quantitative description of the discharge in terms of effluent parameters, based on monitoring data submitted by the permittee from July 2017 through June 2022 is provided in Appendix A of this Fact Sheet.

Additionally, EPA is adding one co-permittee in the Draft Permit. The Town of Monson, Massachusetts owns and operates a sanitary wastewater collection system that discharge flows to the Palmer WPCF for treatment. The 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; with a letter sent November 2, 2022, EPA waived application requirements for the 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)<sup>5</sup>.

Further, the Town of Belchertown also owns and operates a sanitary wastewater collection system that discharge flows to the Palmer WPCF for treatment, however, the town has not been included as a co-permittee under this permit. Belchertown already has a permit (MA0102148) that requires proper O&M and mapping of all of the sewer system they own and operate. The requirements in their permit pertain to both the portions of the system that would go to their POTW and another POTW, therefore, including them as a co-permittee would create duplicative requirements and is unnecessary.

### 3.1.1 Treatment Process Description

The Palmer Water Pollution Control Facility treatment processes includes screening, primary clarification, activated sludge treatment, secondary clarification, tertiary clarifloculator, chlorine disinfection, and dechlorination before discharging to the Chicopee River. The discharge is

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<sup>5</sup> 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)

disinfected using chlorine seasonally from April 1<sup>st</sup> through October 31<sup>st</sup>. The facility's flow schematic is shown in Figure 2.

Waste sludge is pumped to gravity thickeners and dewatered using a two-meter belt filter press. The thickened liquid (approximately 3%) or cake (approximately 13-16%) is trucked off-site by Synagro Northeast Inc. for incineration. The Palmer WPCF generates approximately 308 dry metric tons of sludge each year.

### 3.1.2 Collection System Description

The Palmer WPCF 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. Palmer also takes septic waste from the surrounding community.

## 4.0 Description of Receiving Water and Dilution

### 4.1 Receiving Water

The Palmer WPCF discharges through Outfall 027 into the Chicopee River, a tributary of the Connecticut River, within Segment MA36-22. This segment is 2.8 miles in length and travels from the confluence of the Ware River and Quaboag River in Palmer, MA to the Red Bridge Impoundment Dam in Wilbraham/Ludlow, MA. The Chicopee River flows into the Connecticut River.

The Chicopee River is classified as a Class B warm water fishery in the Massachusetts WQSs, 314 Code of Massachusetts Regulations (“CMR”) 4.06(6)(b). The MA WQS at 314 CMR 4.05(3)(b) state that Class B, “waters are designated as a habitat for fish, other aquatic life, and wildlife, including for their reproduction, migration, growth and other critical functions, and for primary and secondary contact recreation. Where designated in 314 CMR 4.06(1)(d)6. and (6)(b) as a “Treated Water Supply”, they shall be suitable as a source of public water supply with appropriate treatment. Class B waters shall be suitable for irrigation and other agricultural uses and for compatible industrial cooling and process uses. These waters shall have consistently good aesthetic value.”

The Chicopee Rivers is listed in the final *Massachusetts Integrated List of Waters for the Clean Water Act 2018-2020 Reporting Cycle* (“303(d) List”) as a Category 5 “Waters Requiring a TMDL”.<sup>6</sup> The pollutants requiring a TMDL are *Escherichia Coli*, Mercury in fish tissue, and Eurasian Water Milfoil (*Myriophyllum Spicatum*). To date no TMDL has been developed for this segment for any of the listed impairments. The status of each designated use is presented in Table 1.

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<sup>6</sup> *Massachusetts 2018-2020 Integrated List of Waters for the Clean Water Act 2018/2020 Reporting Cycle*, MassDEP Division of Watershed Management Watershed Planning Program, Worcester, Massachusetts, December 2019.

**Table 1 – Summary of Designated Uses and Listing Status**

Designated Use	Status
Aquatic Life	Impaired (Eurasian Water Milfoil, <i>Myriophyllum Spicatum</i> )
Aesthetics	Good
Primary Contact Recreation	Impaired ( <i>E. Coli</i> )
Secondary Contact Recreation	Good
Fish Consumption	Impaired (Mercury in fish tissue)

According to the *Chicopee River Water Quality Assessment Report*<sup>7</sup>, this water body segment is attaining uses designated for secondary recreation and aesthetics, while designated uses for primary recreation, fish, other aquatic life and wildlife, and fish consumption are impaired.

#### 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 water<sup>8</sup>. The critical flow in rivers and streams is some measure of the low flow of that river or stream. State WQSs require that

(a) for rivers and streams, the lowest condition is the lowest mean flow for seven consecutive days, recorded once in 10 years, or 7-day 10-year low flow (7Q10). *See* 314 CMR 4.03(3)(a)

(b) in waters where flows are regulated by dams or similar structures, the lowest flow condition is the flow equaled or exceeded 99% of the time on a yearly basis, or another equivalent flow agreed upon by the State. The State has determined that the lowest flow in this case is the 7Q10. *See* 314 CMR 4.03(3)(b).

EPA calculated the 7Q10 for the Chicopee River based on data from the United States Geological Survey (USGS) low-flow frequency statistics for the nearest USGS gaging station to the Facility along the Chicopee River (Station Number 01177000<sup>9</sup>) based on the last 30 years of streamflow data (4/1/1992 to 3/31/2022). EPA determined the estimated drainage area for the Facility using the USGS StreamStats for Massachusetts watershed delineation tool.<sup>10</sup> The

<sup>7</sup> [https://mywaterway.epa.gov/waterbody-report/MA\\_DEP/MA36-22/2020](https://mywaterway.epa.gov/waterbody-report/MA_DEP/MA36-22/2020)

<sup>8</sup> EPA Permit Writer's Manual, Section 6.2.4

<sup>9</sup> USGS StreamStats National Data Collection Station Report for Station 01177000: <https://streamstatsags.cr.usgs.gov/gagepages/html/01177000.htm>.

<sup>10</sup> USGS StreamStats for Massachusetts Interactive Map: <http://water.usgs.gov/osw/streamstats.massachusetts.html>

dilution factor (DF) was calculated using the design flow ( $Q_e$ ) and the critical flow in the receiving water upstream of the discharge ( $Q_s$ ) as follows:

$$DF = (Q_s + Q_e)/Q_e$$

Where:

$$Q_s = 7Q_{10} \text{ in million gallons per day (MGD)} = 76.7 \text{ MGD [118.7 cfs]}$$

$$Q_e = \text{Discharge flow in MGD} = 5.6 \text{ MGD}$$

Therefore:

$$DF = (76.7 \text{ MGD} + 5.6 \text{ MGD}) / 5.6 \text{ MGD} = 14.6$$

EPA used this dilution factor (DF) in its quantitative derivation of WQBELs for pollutants in the Draft Permit.

## 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.

### 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 July 2017 to June 2022 (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*). The reasonable potential analysis is included in Appendix B and results are discussed in the sections below.

#### 5.1.1 Effluent Flow

The effluent flow limit in the 2011 Permit is 5.6 MGD, as a rolling annual average flow, based on the Facility’s design flow. The DMR data during the review period shows that there have been no exceedances of the flow limit.

The Draft Permit continues the 5.6 MGD flow limit from the 2011 Permit. 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 (BOD<sub>5</sub>)

##### 5.1.2.1 BOD<sub>5</sub> Concentration Limits

The BOD<sub>5</sub> limits in the 2011 Permit were based on the secondary treatment standards in 40 CFR § 133.102; the average monthly limit is 30 mg/L and the average weekly limit is 45 mg/L. The DMR data during the review period shows that there have been no violations of BOD<sub>5</sub> concentration limits.

The Draft Permit proposes the same BOD<sub>5</sub> concentration limits as in the 2011 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 BOD<sub>5</sub> Mass Limits

The mass-based limits of 1,400 lb/day (average monthly) and 2,100 lb/day (average weekly) were based on EPA's secondary treatment standards and the design flow of the Facility.

The DMR data from the review period shows that there have been no exceedances of BOD<sub>5</sub> mass limits.

Calculations of maximum allowable loads for average monthly and average weekly BOD<sub>5</sub> are based on the following equation:

$$L = C_d * Q_d * 8.34$$

Where:

L = Maximum allowable load in lb/day

C<sub>d</sub> = Maximum allowable effluent concentration for reporting period in mg/L  
(reporting periods are average monthly and average weekly)

Q<sub>d</sub> = Annual average design flow of Facility in MGD

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

Limits:

Average Monthly: 30 mg/L \* 5.6 MGD \* 8.34 = 1,400 lb/day

Average Weekly: 45 mg/L \* 5.6 MGD \* 8.34 = 2,100 lb/day

The Draft Permit proposes the same BOD<sub>5</sub> mass limits as in the 2011 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 Total Suspended Solids (TSS)

#### 5.1.3.1 TSS Concentration Limits

The TSS limits in the 2011 Permit were based on the secondary treatment standards in 40 CFR § 133.102; the average monthly limit is 30 mg/L and the average weekly limit is 45 mg/L. The DMR data during the review period shows that there have been no exceedances of TSS concentration limits.

The Draft Permit proposes the same TSS concentration limits as in the 2011 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 mass-based limits of 1,400 lb/day (average monthly) and 2,100 lb/day (average weekly) were based on EPA's secondary treatment standards and the design flow of the Facility.

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

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

$$L = C_d * Q_d * 8.34$$

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 and average weekly)

$Q_d$  = Annual average design flow of Facility in MGD

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

Limits:

Average Monthly:  $30 \text{ mg/L} * 5.6 \text{ MGD} * 8.34 = 1,400 \text{ lb/day}$

Average Weekly:  $45 \text{ mg/L} * 5.6 \text{ MGD} * 8.34 = 2,100 \text{ lb/day}$

The Draft Permit proposes the same TSS mass limits as in the 2011 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.

### 5.1.4 Eighty-Five Percent (85%) BOD<sub>5</sub> and TSS Removal Requirement

In accordance with the provisions of 40 CFR § 133.102(a)(3) and (b)(3), the 2011 Permit requires that the 30-day average percent removal for BOD<sub>5</sub> and TSS be not less than 85%. The DMR data during the review period shows that the median BOD<sub>5</sub> and TSS removal percentages are 96% and 99%, respectively. There were no exceedances of the 85% removal requirement for BOD<sub>5</sub> or TSS during that period.

The requirement to achieve 85% BOD<sub>5</sub> and TSS removal has been carried forward into the Draft Permit.



### 5.1.5 pH

The Massachusetts water quality standards specify that the pH of Class B waters shall be within the range of 6.5-8.3 Standard Units (S.U.), and within 0.5 S.U. of the natural background range (see 314 CMR 4.05(3)(b)(3)). The 2011 Permit includes a pH upper limit value of 8.3 S.U. consistent with this regulation. The 2011 Permit has an approved lower limit pH value of 6.0 S.U., which was determined to be protective of the receiving water given the amount of dilution under low flow conditions.

The DMR data during the review period shows that there have been no exceedances of the pH limits.

The expanded pH range in the 2011 Permit will be carried forward. An optional pH study (described in footnote 6 of Part I.A of the Permit) demonstrating that the instream pH is meeting MA WQS must be conducted within three years for this expanded limit to be carried forward in the next permitting cycle. If the Permittee chooses not to conduct the study, the pH limits in future permits will be aligned with the MA WQS (*i.e.*, 6.5-8.3 S.U.).

### 5.1.6 Bacteria

The 2011 Permit included effluent limitations for bacteria using fecal coliform bacteria as the indicator bacteria with a monthly limit of 200 colony forming units (cfu)/100 ml and a daily maximum limit of 400 cfu/100 ml. These limits were based on the applicable WQS at the time the previous permit was issued.

After one year (*i.e.*, beginning in 2012), the 2011 Permit was designed to switch to *E. Coli* limits, to be consistent with Massachusetts' updated 2007 bacteria criteria at 314 CMR 4.05(3)(b)(4), which were approved by EPA on September 19, 2007. The *E. Coli* limits are 126 colonies/100 ml as a geometric mean, and 409 colonies/100 ml as a maximum daily. The bacteria limits apply April 1 through October 31, and the monitoring frequency is twice (2x) per week.

There were no exceedances of the bacteria limits during the review period.

More recently, updated Massachusetts WQS with respect to bacteria were approved by EPA on March 31, 2022. Permit limits based on the new 2022 WQS for *E. Coli* would be 126 colonies/100 ml as a geometric mean (same as the current limit) and 410 colonies/100 ml as a maximum daily value (slightly less stringent than the current limit). Given that the more stringent limit of 409 colonies/100 ml (compared to 410 colonies/100 ml as described above) is already effective under the 2011 Permit, it will be carried forward based on anti-backsliding regulations discussed in Section 2.6 above. Therefore, the same *E. Coli* limits and monitoring frequency from the 2011 Permit are carried forward in the Draft Permit.

### 5.1.7 Total Residual Chlorine

The Permittee uses chlorine disinfection. The 2011 Permit includes effluent limitations for total residual chlorine (TRC) of 0.16 mg/L (average monthly) and 0.28 mg/L (maximum daily). The

DMR data during the review period show that there have been no exceedances of the TRC limitations.

The TRC permit limits are based on the instream chlorine criteria defined in *National Recommended Water Quality Criteria: 2002*, EPA 822R-02-047 (November 2002), as adopted by the MassDEP into the state water quality standards at 314 CMR 4.05(5)(e). 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:

Chronic criteria \* dilution factor = Chronic limit

11 ug/L \* 14.6 = 0.16 mg/L (average monthly)

Acute criteria \* dilution factor = Acute limit

19 ug/L \* 14.6 = 0.28 mg/L (maximum daily)

These limits are included in the Draft Permit and are the same as the limits in the 2011 Permit.

### 5.1.8 Ammonia

The 2011 Permit does not include ammonia limits, but the Permittee was required to monitor and report effluent and ambient ammonia concentrations on a quarterly basis as part of the Whole Effluent Toxicity (WET) testing.

Ambient data, taken upstream of the Palmer WPCF outfall in the Chicopee River, is presented in Appendix A and shows the median concentration for the warm weather period (April 1 through October 31) is 0 mg/L and for the cold weather period (November 1 through March 31) is 0 mg/L.

The ammonia criteria in EPA's *National Recommended Water Quality Criteria, 2002* (EPA 822-R-02-047) document are included by reference in the Massachusetts WQS (*See* 314 CMR 4.05(5)(e)). The freshwater acute criterion is dependent on pH, temperature and whether early life stages of fish are present in the receiving water and the freshwater chronic criterion is dependent on pH and temperature. The marine water quality criteria are dependent on pH and temperature.

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 (April through October) temperature of 25° C and a cold weather (November through March) temperature of 5° C. EPA used the ambient pH monitoring shown in Appendix A, which indicates that the median pH is 7.0 S.U. Additionally, the Chicopee River in the vicinity of the Palmer WPCF 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 to cause or contribute to an excursion of WQS, so the Draft Permit does not propose ammonia limits.

Effluent and ambient monitoring for ammonia will continue to be required in the 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 receiving water both are nutrients of concern evaluated below.

#### 5.1.9.1 Total Nitrogen

The Palmer WPCF discharges to the Chicopee River, which drains to Long Island Sound (LIS). The 2011 Permit required weekly monitoring for total Kjeldahl nitrogen, nitrate and nitrite, the sum of which provides the total nitrogen (TN) concentration. Using the TN concentration data and average monthly flow data, the calculated annual average total nitrogen loading from the Palmer facility ranged from 41 lb/day to 253 lb/day with a median of 90 lb/day during the review period. Using these monthly average loads to calculate a rolling annual average load, results in a range from 69 lb/day to 146 lb/day with a median of 87 lb/day.

As explained below, since 2019 EPA has adopted a systemic, state-by-state approach to control nitrogen pollution discharging from “out-of-basin” point sources in Massachusetts, New Hampshire and Vermont into tributaries of LIS, a severely impaired water body shared by New York and Connecticut. EPA’s methodology for establishing TN limitations for out-of-basin POTWs in Massachusetts and New Hampshire has been challenged in the United States Environmental Appeals Board (EAB) and the case has been resolved in EPA’s favor. EPA’s Response to the Petition was filed on December 11, 2020, and EPA incorporates that filing herein, inclusive of attachments (e.g., Exhibit S, Response to the Comments, as it relates to TN.<sup>11</sup>) EAB’s order denying review is dated May 17, 2021<sup>12</sup>

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<sup>11</sup>[https://yosemite.epa.gov/OA/EAB\\_WEB\\_Docket.nsf/Filings%20By%20Appeal%20Number/11443A888232A1C88525863B006D4491/\\$File/Springfield%20Response%20to%20Petition\\_Final\\_12\\_11\\_2020.pdf](https://yosemite.epa.gov/OA/EAB_WEB_Docket.nsf/Filings%20By%20Appeal%20Number/11443A888232A1C88525863B006D4491/$File/Springfield%20Response%20to%20Petition_Final_12_11_2020.pdf).

<sup>12</sup>

[https://yosemite.epa.gov/oa/EAB\\_Web\\_Docket.nsf/NPDES%20Permit%20Appeals%20\(CWA\)/61585EEC1C328394852586E20073D0FD/\\$File/Springfield%20Water%20&%20Sewer%20Commission.pdf](https://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/NPDES%20Permit%20Appeals%20(CWA)/61585EEC1C328394852586E20073D0FD/$File/Springfield%20Water%20&%20Sewer%20Commission.pdf)

In 2000, New York and Connecticut finalized a Total Maximum Daily Load<sup>13</sup> (TMDL) that addressed dissolved oxygen impairments in Long Island Sound due to excessive nitrogen loading. It was approved by EPA in 2001. While the TMDL included waste load allocations (WLAs) for point sources in Connecticut and New York, out-of-basin facilities were not assigned WLAs. However, the Connecticut and New York WLAs included in the TMDL were based on an assumption that out-of-basin point source loads of total nitrogen would be reduced in aggregate by 25% from the baseline through enforceable permit requirements imposed by permitting authorities in the out-of-basin states to protect downstream waters.

EPA implemented optimization requirements in many out-of-basin permits issued in the LIS watershed from 2007 through early 2019 in accordance with an agreement forged in 2012 among the five LIS watershed states, known as the “Enhanced Implementation Plan” (EIP).<sup>14</sup> However, concerns raised in recent public comments by the downstream state (Connecticut) and citizens highlighted the need for clearly enforceable, numeric, loading-based effluent limits to ensure that the annual aggregate nitrogen loading from out-of-basin point sources are consistent with the assumptions of the TMDL WLA of 19,657 lb/day and to ensure that current aggregate loadings do not increase. This is in accordance with the State of Connecticut’s antidegradation policy, which requires existing uses to be fully maintained and protected. These uses are already being compromised given the continued, severe nitrogen-driven impairments in LIS. After further review of federal and state requirements, EPA agreed with the concerns raised by the downstream affected state and the public and noted that optimization requirements, by themselves, do not prevent further increases in nitrogen due to population growth (and consequent flow increases) or new industrial dischargers.

#### Scientific, Statutory and Regulatory Implementation Considerations

As discussed in Section 2 of this Fact Sheet, statutory and regulatory requirements regarding the development of water quality-based effluent limits include: (1) consideration of applicable water quality requirements of downstream states, including provisions to prevent further degradation of receiving waters that are already impaired, pursuant to a state’s antidegradation policy, and provisions to implement other applicable water quality standards, including translation of narrative water quality criteria, and (2) provisions to ensure consistency with the assumptions of any available WLAs.

LIS covers about 1,300 square miles and borders Connecticut and New York. It drains a densely populated watershed area of over 16,000 square miles, including portions of Maine, Vermont, New Hampshire and Massachusetts. About 613 square miles of LIS fall within Connecticut. Connecticut classifies LIS as Class SA and Class SB and designates these waters as, *inter alia*, suitable for recreation and aquatic life habitat. R.C.S.A. § 22a-426-4(f), (j).

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<sup>13</sup> Connecticut Department of Environmental Protection and New York State Department of Environmental Conservation, *A Total Maximum Daily Load Analysis to Achieve Water Quality Standards for Dissolved Oxygen in Long Island Sound* (LIS TMDL), December 2000.

<sup>14</sup> Long Island Sound Study Steering Committee, NY, CT, MA, NH, VT, *Enhanced Implementation Plan for the Long Island Sound Total Maximum Daily Load*, 2012. Available at: <https://neiwpc.org/our-programs/pollution-control/lis-tmdl/>.

Connecticut regulations establish DO, biological condition, and nutrient criteria for each water class. For Class SA and SB waters, DO must not be less than 3 mg/L and may be less than 4.8 mg/L for only limited periods of time. R.C.S.A. § 22a-426-9(a)(1). Regarding biologic condition, “Surface waters... shall be free from...constituents...which...can reasonably be expected to...impair the biological integrity of aquatic or marine ecosystems...” *Id.* at § 22a-426-4(a)(5). “The loading of...nitrogen...to any surface water body shall not exceed that which supports maintenance or attainment of designated uses.” *Id.* at § 22a-426-9; *see also* § 22a-426-4(a)(11) (authorizing “imposition of discharge limitations or other reasonable controls... for point...sources of ...nitrogen...which have the potential to contribute to the impairment of any surface water, to ensure maintenance and attainment of existing and designated uses, restore impaired waters, and prevent excessive anthropogenic inputs of nutrients or impairment of downstream waters.”)

Connecticut regulations mandate protection of “existing” and “designated” uses. R.C.S.A. § 22a-426-8(a)(1). “Tier 1” antidegradation review provides:

The Commissioner shall determine whether the discharge or activity is consistent with the maintenance, restoration, and protection of existing and designated uses assigned to the receiving water body by considering all relevant available data and the best professional judgment of department staff. *All narrative and numeric water quality standards, criteria and associated policies contained in the Connecticut Water Quality Standards shall form the basis for such evaluation considering the discharge or activity both independently and in the context of other discharges and activities in the affected water body and considering any impairment listed pursuant to 33 USC 1313(d) or any Total Maximum Daily Load (TMDL) established for the water body.*

R.C.S.A. § 22a-426-8(f) (emphasis added). The standards further provide, “The procedures for review outlined in this policy apply to any discharge or activity that is affecting or *may affect* [emphasis added] water quality in Connecticut, including but not limited to any existing, new or increased activity or discharge requiring a permit, water quality certificate or authorization pursuant to chapters 439, 440, 445 or 446i to 446k, inclusive of the Connecticut General Statutes.”

Although nitrogen driven impairments in LIS have been reduced in recent years, they have not been eliminated, and they remain significant. In EPA’s technical and scientific judgment, the current quantity of nitrogen in LIS exceeds the narrative and numeric nutrient-related criteria applicable to LIS, and designated aquatic life uses are not being protected, based on analyses of water quality data and information in the administrative record.<sup>15</sup> While there have been significant reductions in the size of the hypoxic zone in LIS due largely to in-basin point source TN reductions, LIS continues to be impaired.<sup>16</sup> It is undisputed that significant amounts of nitrogen from out-of-basin facilities are discharged to the LIS watershed (as much as 6 million pounds per year, based on the sum of the maximum annual discharge from each out-of-basin

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<sup>15</sup> See e.g. Long Island Sound Report Card 2018, at <https://www.ctenvironment.org/wp-content/uploads/2018/09/ReportCard2018-BestView.pdf>

<sup>16</sup> Long Island Sound Study, *A Healthier Long Island Sound: Nitrogen Pollution*, 2019, page 2.

discharger from 2013 to 2017). The out-of-basin loads in the aggregate necessarily contribute, or have the reasonable potential to contribute, to these exceedances.

Since the LIS TMDL was approved by EPA in 2001, the study of water quality conditions in LIS and the nitrogen loadings that contribute to hypoxia and other impairments there has continued. Annual monitoring of hypoxia and dissolved oxygen conditions in Long Island continues, as most recently documented in the *2019 Long Island Sound Hypoxia Season Review*<sup>17</sup> which notes that while the area of hypoxia has been reduced, water quality standards have not yet been met.<sup>18</sup> In 2015, the Long Island Sound Study (LISS)<sup>19</sup> updated its Long Island Sound Comprehensive Conservation and Management Plan (CCMP)<sup>20</sup> which sets watershed targets, implementation actions to meet those targets, and monitoring strategies. One of the objectives of the CCMP is to improve water quality by further reducing nitrogen pollution from sources that are more distant from the Sound,<sup>21</sup> such as wastewater treatment plants in Massachusetts.

A study published in 2008 used both measurements and mass-balance modeling to evaluate the potential for nitrogen attenuation in the main stem of the Connecticut River in April and August 2005. One of the reaches studied was a 55 km stretch of the Connecticut River in Massachusetts and the other was a 66 km stretch of the Connecticut River along the New Hampshire/Vermont border. The study found no nitrogen loss in that reach either in April or August, most likely due to the depth and higher velocities in the main stem of the river compared to the shallower, slower tributaries where previous models and studies had demonstrated varying degrees of nitrogen attenuation.<sup>22</sup> For the New Hampshire reach, measured nitrogen loss occurred only in August 2005. This finding may be due to the presence of hydroelectric power dams on the Connecticut River, which significantly alter the natural character of the channel. Dams are present at the head and foot of both study reaches, but a greater length of deep, impounded water extends across the southern reach than the northern study reach which, by contrast, has substantially more shallow, gravelly pool-and-riffle sequences. It is possible that, by allowing greater interaction of the water column with a biologically active substrate, these shallow channel sections in the north provide an opportunity for attenuation of in-stream nitrogen that does not exist in the southern reach. As noted by Alexander et al. (2000)<sup>23</sup>, nitrogen removal by denitrification and settling is generally less in deeper channels where streamwater has less contact with benthic sediment.

In addition, subsequent studies refined the understanding of out-of-basin baseline nitrogen loading which suggest lower out-of-basin baseline point source loading to the Connecticut River

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<sup>17</sup> CTDEEP, Interstate Environmental Commission, EPA, *2019 Long Island Sound Hypoxia Season Review*, available at: [http://www.iec-nynjct.org/sites/default/files/2020-07/FINAL\\_LISound-Hypoxia-2019-Combined-Report\\_april2020.pdf](http://www.iec-nynjct.org/sites/default/files/2020-07/FINAL_LISound-Hypoxia-2019-Combined-Report_april2020.pdf)

<sup>18</sup> *2019 Long Island Sound Hypoxia Season Review* (page 13)

<sup>19</sup> The Long Island Sound Study (LISS) is a bi-state partnership, formed by EPA, New York and Connecticut in 1985, consisting of federal and state agencies, user groups, concerned organizations, and individuals dedicated to restoring and protecting the Long Island Sound. For more information see <https://longislandsoundstudy.net/>

<sup>20</sup> LISS, Long Island Sound Comprehensive Conservation and Management Plan 2015 Returning the Urban Sea to Abundance (CCMP), 2015.

<sup>21</sup> CCMP, page 19.

<sup>22</sup> Smith, Thor E., et al, *Nitrogen Attenuation in the Connecticut River, Northeastern USA; A Comparison of Mass Balance and N<sub>2</sub> Production Modeling Approaches*, *Biogeochemistry*, Mar., 2008, Vol. 87, No. 3 (Mar., 2008), pp. 311-323

<sup>23</sup> <https://link.springer.com/article/10.1007/s10533-008-9186-7#ref-CR1>

than the 21,672 lb/day assumed in the 2000 TMDL. In 2013, the United States Geological Survey (USGS) published an estimation of the total nitrogen load to Long Island Sound from Connecticut and contributing areas to the north for October 1998 to September 2009.<sup>24</sup> Available total nitrogen and continuous flow data from 37 water-quality monitoring stations in the LIS watershed, for some or all of these years, were used to compute total annual nitrogen yields and loads. In order to extract the non-point source loadings from the total nitrogen measured, the authors relied on point source estimates from the SPARROW model of nutrient delivery to waters in the Northeastern and Mid-Atlantic states in 2002, including the Connecticut River, that was published by Moore and others in 2011.<sup>25</sup> The SPARROW model estimated that 1,776.7 metric tons per year (MT/yr) (or annual average 10,820 lb/day) of total nitrogen was discharged to the Connecticut River from Massachusetts, New Hampshire and Vermont in 2002.<sup>26</sup> These estimates were based on an approach by Maupin and Ivahnenko, published the same year, which used discharge monitoring data available from EPA's Permit Compliance System (PCS) database for 2002.<sup>27,28</sup> Where no data was available, an estimated typical pollutant concentration (TPC) and flow was used to approximate nitrogen loading from point sources according to their industrial category.<sup>29</sup>

Finally, Long Island Sound continues to be listed as impaired on Connecticut's latest EPA-approved list of impaired waters and is experiencing ongoing effects of eutrophication, including low DO, although the system has experienced improvements since the TMDL was approved.

In light of the foregoing, EPA is establishing water quality-based effluent limitations for total nitrogen on three grounds: (1) to ensure compliance with the State of Connecticut's antidegradation provisions, a downstream affected state under 401(a)(2) of the Act and 40 CFR § 122.4(d); (2) to translate and fully implement the state's narrative water quality criterion for nutrients, pursuant to 40 CFR § 122.44(d)(1)(vi)(A); and (3) to ensure consistency with the assumptions and requirements of the available WLA, pursuant to 40 CFR § 122.44(d)(1)(vii)(B).

#### Compliance with Antidegradation Requirements of Downstream Affected State

One of the principal objectives of the CWA, articulated in CWA § 101(a) is to "maintain the chemical, physical and biological integrity of the Nation's waters." The antidegradation requirements in federal regulations at 40 CFR § 131.12 provide a framework for maintaining and protecting water quality that has already been achieved and require states to adopt provisions in

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<sup>24</sup> Mullaney, J.R., and Schwarz, G.E., 2013, Estimated Nitrogen Loads from Selected Tributaries in Connecticut Draining to Long Island Sound, 1999–2009: U.S. Geological Survey Scientific Investigations Report 2013–5171, 65

<sup>25</sup> Moore, Richard B., Craig M. Johnston, Richard A. Smith, and Bryan Milstead, 2011. Source and Delivery of Nutrients to Receiving Waters in the Northeastern and Mid-Atlantic Regions of the United States. *Journal of the American Water Resources Association (JAWRA)* 47(5):965-990. DOI: 10.1111/j.1752-1688.2011.00582.x

<sup>26</sup> Extrapolated from Moore, et.al 2011, Table 3 on page 977 which estimated that for 2002 an 33.2 % of the total 4,553 MT/yr Massachusetts nitrogen load was from point sources, 2.5% of the total 3,795 MT/yr Vermont nitrogen load was from point sources and 6.1 percent of the total 2,790 MT/yr New Hampshire nitrogen load was from point sources.

<sup>27</sup> Moore (2011), page 968.

<sup>28</sup> Maupin, Molly A. and Tamara Ivahnenko, 2011. Nutrient Loadings to Streams of the Continental United States From Municipal and Industrial Effluent. *Journal of the American Water Resources Association (JAWRA)* 47(5):950-964.

<sup>29</sup> Maupin (2011), page 954.

their water quality standards that prevent further degradation of both degraded waters and waters which are meeting or exceeding the water quality necessary to protect designated and existing uses. As noted above, antidegradation provisions of Connecticut’s water quality standards require that existing uses be fully maintained and protected. They expressly required consideration of any applicable TMDL, as well as narrative and numeric water quality criteria. EPA therefore undertakes Tier 1 review in light of the LIS TMDL, which has still not resulted in attainment of water quality standards in LIS, as well as Connecticut’s numeric water quality criteria for dissolved oxygen, which are routinely violated, and its narrative water quality criteria nutrients, which is likewise not being met. Authorizing a significantly increased nitrogen loading into an impaired water body that is suffering the ongoing effects of cultural eutrophication would further compromise receiving water conditions and uses and be inconsistent with applicable antidegradation requirements. In arriving at this conclusion, EPA also notes that Connecticut’s antidegradation procedures are precautionary in nature and apply to discharges that “may affect” water quality.

To ensure that the out-of-basin point-source load does not violate Connecticut’s antidegradation standards, the new total nitrogen loading limits (for dischargers with design flows greater than 1 MGD) along with the requirement to minimize nitrogen discharge by facility optimization (for all dischargers with design flow greater than 0.1 MGD) are intended to ensure that nitrogen loads are held at current loadings. As can be seen from the summary in Table 2, 92 % of this load is from POTWs with design flow > 1 MGD. The impact of the new TN effluent limits will be to cap that load at approximately the same average loading. Table 2 summarizes the five-year average out-of-basin loads generated by Massachusetts non-stormwater point sources, based on data provided in Appendix C. While the sum of effluent limited loads for POTWs with design flow greater than 1 MGD is somewhat higher than the average loads observed in recent years, actual effluent limited loads can be expected be lower than the limits in order to avoid permit exceedances. EPA will continue to track out-of-basin loads as new data becomes available and will re-evaluate permit requirements for nitrogen for all out-of-basin dischargers in future permit actions.

**Table 2 – Summary of Massachusetts Out-of-Basin Non-Stormwater Point Source Loads**

	Sum of Average Load 2017-2021 (lb/day)	Sum of Effluent Limited Loads (lb/day)
POTWs with design Flow > 1 MGD	9,877 (93.2%)	10,907
POTWs with design Flow 0.1 to 1 MGD	704 (6.6%)	
POTWs with design Flow < 0.1 MGD and Industrial Sources.	20 (0.2%)	

#### Translation of Narrative Nutrient Criteria

Using the TMDL as the “calculated numeric water quality criterion for the pollutant which the permitting authority demonstrates will attain and maintain applicable narrative water quality



criteria and will fully protect the designated use” under the regulatory provision used to translate narrative water quality criteria into numeric effluent limitations, 40 CFR § 122.44(d)(1)(vi)(A), EPA has determined that an effluent limitation is necessary to ensure compliance with the Massachusetts’s narrative water quality criterion for nutrients. In order to assure compliance with water quality standards, and fully implement and translate the states’ narrative nutrient and related criteria, out-of-basin loads in EPA’s judgment should not be increased, because water quality data indicates that the assimilative capacity for nitrogen has been reached in portions of LIS and cultural eutrophication, the impacts of which include hypoxia, is ongoing. It is reasonable, in EPA’s view, to issue permits to out-of-basin dischargers that hold loads constant and in so doing curtail the potential for these out-of-basin loadings to contribute to further impairment and degradation of a water that is already beyond its assimilative capacity for nitrogen. The TN effluent limits and optimization requirements are necessary to assure that the out-of-basin load does not cause or contribute to further violation of water quality criteria in the downstream LIS. Holding these loads level, in conjunction with significant nitrogen pollution reduction efforts being pursued by in-basin dischargers will, under EPA’s analysis, be sufficient to make a finding that the out-of-basin permits taken as a whole contain nutrient controls sufficient to ensure that the discharges comply with water quality standards under Section 301 of the Act, based on information in the record currently before EPA. EPA acknowledges the complexity of the system and the receiving water response, and EPA recognizes that work that is currently ongoing with regards to additional water quality modeling, point source load reductions and WWTP upgrades in other states, particularly New York and Connecticut. In order to ensure that water quality standards are met, EPA has determined that, at most, TN should be no greater than that resulting from nitrogen currently being discharged from all sources. Holding the load from out-of-basin sources, along with reductions resulting from the nitrogen optimization special condition, combined with other ongoing work to further reduce in-basin loadings, are in EPA’s judgment together sufficient to assure that the discharge is in compliance with standards.

#### Consistency with Assumptions of Available WLA

Finally, EPA is imposing an enforceable total nitrogen limitation to ensure consistency with the assumptions and requirements of the applicable WLA, which calls for out-of-basin loads to be capped at 25% of the baseline in fact at the time of TMDL approval. A WQBEL for a discharge must ensure compliance with WQS and be “consistent with the assumptions and requirements” of an available WLA. 40 CFR § 122.44(d)(1)(vii)(B). Capping the aggregate out-of-basin load at current levels will ensure that this requirement is met.

In sum, the permit conditions at issue here have been fashioned to ensure full implementation of CWA §§ 301(b)(1)(C), 401(a)(2) and 402, as well as consistency with the assumptions of the LIS WLA. A permitting authority has wide discretion to determine appropriate effluent limits for a permit. “Congress has vested in the Administrator [of EPA] broad discretion to establish conditions for NPDES permits” in order to achieve these statutory mandates of establishing effluent limitations, including narrative permit conditions, to attain and maintain water quality standards. *Arkansas v. Oklahoma*, 503 U.S. 91, 105 (1992). Section 402 provides that a permit may be issued upon condition “that such discharge will meet either all applicable requirements under sections 301, 302, 306, 307, 308 and 403 of this Act, or prior to taking of necessary implementing actions relating to all such requirements, such conditions as the Administrator

determines are necessary to carry out the provisions of this Act.” 33 U.S.C. §1342(a). “This provision gives EPA considerable flexibility in framing the permit to achieve a desired reduction in pollutant discharges.” *Id.* An increased discharge of nitrogen beyond current loads into nitrogen-degraded waters experiencing the effects of cultural eutrophication (e.g., DO impairments) under the circumstances here would not be consistent with the Act. Holding the load from these facilities will maintain and protect existing uses. This allows EPA to ensure that the nitrogen limits are applied fairly and in a technologically feasible manner while ensuring that antidegradation provisions of Connecticut’s water quality standards are being met.

EPA’s decision to cap the out-of-basin TN loads in the aggregate was consistent with a gross approach to pollutant control, which is appropriate here given the need to ensure reasonable further progress toward restoration of uses in LIS based on reductions that have already occurred and whose impact is still being realized. It is also appropriate in light of the fact that more sophisticated models to precisely define the exact level of pollutant controls needed are not available. EPA has explained that when permitting for nutrients, time is of the essence, because of the tendency of nutrients to recycle in the ecosystem and exacerbate existing impairments, as outlined in EPA’s Nutrient Technical Guidance Manual. Rather than wait for the development of that information, a daunting task because of the size and complexity of LIS and vast areal extent of loading, EPA determined that it would be reasonable to move forward. This decision is also reasonable because the permits for Palmer and many other contributing sources are long expired. The D.C. Circuit has described the CWA’s balance when confronted with a difficult situation and the obligation to eliminate water quality impairments: “EPA may issue permits with conditions designed to reduce the level of effluent discharges to acceptable levels. This may well mean opting for a gross reduction in pollutant discharge rather than the fine-tuning suggested by numerical limitations. *But this ambitious statute is not hospitable to the concept that the appropriate response to a difficult pollution problem is not to try at all.*” *Natural Resources Defense Council, Inc. v. Costle*, 568 F.2d 1369, 1380 (D.C. Cir. 1977) (emphasis added) (finding unlawful a rule that would have exempted certain discharges from permitting requirements based on the difficulty in setting limits).

### Derivation of Effluent Limits

As mentioned above, the TMDL did not assign each out-of-basin POTW a specific WLA but instead specifies an aggregate reduction target. Therefore, the task of allocating nitrogen loads among these facilities in a manner that ensures compliance with water quality standards, as required under Section 301 of the Act, falls to EPA. That EPA would implement any necessary reductions through the issuance and oversight of NPDES permits was expressly assumed by the TMDL. EPA notes that as much as 6 million pounds of nitrogen per year from out-of-basin facilities are discharged to the LIS watershed and that ongoing nitrogen-driven water quality impairments exist in LIS.

In developing allocations for Massachusetts and New Hampshire dischargers, EPA began with two facts: first, that significant amounts of nitrogen from out-of-basin facilities are discharged to the LIS watershed (as much as 6 million pounds per year, based on the sum of the sum of the maximum annual discharge from each out-of-basin discharger from 2013 to 2017) and, second, that ongoing nitrogen water quality impairments exist in LIS.

When confronting the difficult environmental regulatory problem of controlling or accounting for dozens of discharges into a complex water body like Long Island Sound, EPA was presented with a variety of potential permitting approaches. Long Island Sound is a nitrogen-impaired water body spanning 1,268 square miles that implicates the sometimes-divergent interests of five states, dozens of municipalities and numerous non-governmental organizations (NGOs), along with interested members of the public. In developing its overarching permitting approach, as well as each individual permit, EPA carefully considered, but ultimately rejected, several possible alternatives, on two principal grounds: (1) that they were not sufficiently protective to assure that all the applicable requirements of the Act would be met (*i.e.*, they lacked enforceable TN effluent limitations to *ensure* as a matter of law that nitrogen loads would be maintained at protective levels), or (2) that they would entail unwarranted uncertainty and delay (*i.e.*, they called for the development of new or revised TMDLs or for development of extensive new data collection or modelling in an attempt to refine or pinpoint necessary targets and loads, even though the permits at issue have long-since expired and water quality impairments are ongoing). Rather than approach this complex permitting task on an *ad hoc* basis, EPA instead fashioned a systemic permitting approach designed to comprehensively regulate nitrogen loading from out-of-basin nitrogen sources on a gross, basin-level scale. EPA addressed the existing TN loading to ensure achievement of the following overarching objectives:

- the overall out-of-basin TN load does not increase in accordance with antidegradation requirements, given that the LIS is already nitrogen impaired, through the imposition of enforceable effluent limits that are annual average mass-based, consistent with the assumptions of the TMDL;
- no individual facility is left with an effluent limit that is not achievable using readily available treatment technology at the facility's design flow; and
- smaller facilities can achieve their limits through optimization.

EPA's derivation of effluent limitations to implement these objectives, based on its best professional judgment and information reasonably available to the permit writer at the time of permit issuance, consists of three essential parts:

- First, EPA *identified* the existing aggregate load from all contributing facilities in a given state.
- Second, because Long Island Sound is already nitrogen impaired and failing to achieve applicable water quality standards,<sup>30</sup> EPA *capped* that load to avoid contributing to further impairments and fully protect existing uses.
- Third, EPA *allocated* the load according to a water quality-related consideration rationally related to achieving water quality standards in Long Island Sound and carrying out the objectives of the Act.

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<sup>30</sup> CTDEEP, Interstate Environmental Commission, EPA, *2019 Long Island Sound Hypoxia Season Review*, available at: [http://www.iec-nynjct.org/sites/default/files/2020-07/FINAL\\_LISound-Hypoxia-2019-Combined-Report\\_april2020.pdf](http://www.iec-nynjct.org/sites/default/files/2020-07/FINAL_LISound-Hypoxia-2019-Combined-Report_april2020.pdf)

In the case of Massachusetts and New Hampshire, that consideration was facility *size*, with loads distributed based on the design flow of the POTW treatment plants. In deriving design-flow-based effluent limitations, EPA utilized the following methodology:

- EPA estimated the current maximum out-of-basin annual point source load using data for the five years prior to the year of the Draft Permit, consistent with Region 1's ordinary practice of using the most recent five years of data in the derivation of effluent limits for permits, which is in accordance with the recommendation in EPA guidance to use three to five years and, by use of the longer timeframe, is intended to more fully capture a representative data set<sup>31</sup> (see estimate of recent effluent loadings in Appendix C);
- It prioritized effluent limits for major POTW facilities with design flow greater than 1 MGD, consistent with the definition of major facility in 40 CFR § 122.2;<sup>32</sup>
- It developed mass-based rolling annual average TN effluent limits based on design flow (consistent with 40 CFR § 122.45(b)(1)) and effluent concentrations that can be achieved by means of currently available nitrogen removal technology for all facilities and the design flow for each facility, where effluent limit (lb/day) = Concentration (mg/L) x Design Flow (MGD) x 8.34;
- EPA based limits on concentrations that can typically be achieved through optimization for POTW facilities with design flow less than 10 MGD, with more aggressive optimization expected for facilities with design flow greater than 5 MGD; and,
- For the four POTW facilities with design flow greater than 10 MGD (which together comprise more than half of the total Massachusetts load to LIS), EPA based limits on concentrations achievable through optimization or upgrades.

Although EPA considered caps for individual dischargers at their current loadings, that approach was rejected because these effluent limits are subject to statutory anti-backsliding requirements of CWA § 402(o) which would prevent a limit from being increased if flows increase due to new residential or industrial development. Therefore, a facility currently discharging well below its design flow, could be put in a position of having a load limit that is below the limit of technology at its design flow. For example, if a new industrial discharger was to tie in, even if that discharger was willing to invest in readily available treatment technology, the load would preclude the facility from operating at its design flow.

Instead, EPA examined out-of-basin loads across the watershed and developed effluent limits that are achievable through optimization or readily available treatment technologies for all facilities, even if they are operating at their design flow. EPA has determined that this approach will be protective of water quality and will carefully monitor receiving water response over the permit term and adjust as necessary. EPA recognizes that Connecticut and New York have very substantially reduced their nitrogen loadings into LIS and water quality conditions have improved, although LIS is not yet fully achieving water quality standards. Additional work is

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<sup>31</sup> NPDES Permit Writer's Manual, EPA-833-K-10-001, September 2010, page 5-30, available at: [https://www.epa.gov/sites/production/files/2015-09/documents/pwm\\_2010.pdf](https://www.epa.gov/sites/production/files/2015-09/documents/pwm_2010.pdf).

<sup>32</sup> NPDES Permit Writer's Manual, EPA-833-K-10-001, September 2010, page 2-17, available at: [https://www.epa.gov/sites/production/files/2015-09/documents/pwm\\_2010.pdf](https://www.epa.gov/sites/production/files/2015-09/documents/pwm_2010.pdf).

being undertaken in New York and Connecticut to further reduce nitrogen loadings into LIS. It will take time to allow the impact of these reductions to be fully realized and for designated uses to be fully restored. EPA believes that this approach reasonably balances the need to hold overall TN loadings constant to avoid exacerbating ongoing nitrogen-driven environmental degradation against the inherent scientific and technical uncertainty associated with receiving water response in a water body as complex as LIS. More stringent limitations on the out-of-basin dischargers are therefore not necessitated at this time.

Based on the approach described above, Table 3 summarizes the TN requirements implemented for this and other permits in the LIS watershed in Massachusetts since 2019. EPA is also working with the States of New Hampshire and Vermont to ensure that comparable requirements are included in NPDES permits issued in those states.

**Table 3 – Annual Average Total Nitrogen Limits for Massachusetts WWTP Dischargers to the Long Island Sound Watershed**

Facility Design Flow, $Q_D$ (MGD)	Number of Facilities	Annual Average TN Limit (lb/day)
$Q_D > 10$	4	$Q_D$ (MGD) * 5 mg/L * 8.34 + optimize
$5 < Q_D \leq 10$	5	$Q_D$ (MGD) * 8 mg/L * 8.34 + optimize
$1 \leq Q_D \leq 5$	20	$Q_D$ (MGD) * 10 mg/L * 8.34 + optimize
$0.1 \leq Q_D < 1$	17	Optimize
$Q_D < 0.1$	8	TN monitoring only

The basis for establishing mass-based effluent limits using facility design flow and 5, 8 and 10 mg/L as total nitrogen concentrations that facilities can meet by means of optimization or, for the four largest facilities, readily available treatment technology, meets the legal requirements of the CWA but was derived in order to balance the burden of treatment with the four largest facilities (currently generating more than half of the Massachusetts out-of-basin load) required to meet 5 mg/L concentration at design flow, and the remaining facilities with effluent limits that can be achieved through system optimization. In tiering the facilities, EPA considered the relative magnitude of flows from these facilities and observed that there was a significant divide between the four largest facilities and the remaining facilities (67 MGD for Springfield, 17.5 MGD for Holyoke, 17 MGD for Pittsfield and 15 MGD for Chicopee compared to the next largest at 8.6 MGD for Northampton). The four largest facilities contribute 53% of the design flow for the out-of-basin watershed. EPA also observed that three of these facilities are on the main stem of the Connecticut River and Pittsfield is on the mainstem of the Housatonic, so there is little or no attenuation of nitrogen. All these factors, in EPA's technical judgment, warranted the further additional assurance of meeting water quality standards provided by a more stringent numeric cap in loading that may necessitate a facility upgrade, as opposed to limits achievable through optimization only. EPA also notes that the four larger facilities will be able to spread the cost of any upgrade over a much larger user base.

Thus, in arriving at its tiering determination, EPA considered a series of technical and environmental factors within its expertise, and also took into account equitable considerations. EPA acknowledges that the chosen tiers are not the only way to divide the out-of-basin TN allocations, but was not presented with any alternatives that capped the existing load based on design flow through the imposition of enforceable permit limits.

For example, EPA considered, and rejected, the option to apply a limit based on 8 mg/L effluent limit for all facilities with design flow greater than 1 MGD (at their respective design flows) because that would result in an increase in the current loading and place a greater burden on facilities that service relatively small communities. The combined design flow for the 29 MA POTW facilities with design flow greater than 1 MGD is 196 MGD. Of this combined design flow, 60%, or 117 MGD consists of the design flow for the four largest POTWs. Under the selected permitting approach, the proportion of the permitted load from the four largest facilities will be 60% of the combined permitted load for all 29 MA facilities, consistent with the proportion of design flow. If all POTWs with design flow over 1 MGD had a concentration-based limit of 8 mg/L (or a load based limit based on 8 mg/L and design flow), the proportion of the permitted load coming from the four largest facilities would increase from 60% of the total permitted load to 90%, shifting the burden of treatment significantly from larger to smaller facilities. In addition, the total permitted TN loading from those 29 facilities would increase from 8,100 lb/day under the chosen approach to 8,600 lb/day.

In addition to the effluent limits described above, EPA is also requiring all POTWs with a design flow of 0.1 MGD or greater to optimize for nitrogen removal to ensure that the aggregate 25% reduction is maintained or increased. The optimization condition in the Draft Permit requires the Permittee to evaluate alternative methods of operating their treatment plant to optimize the removal of nitrogen, and to describe previous and ongoing optimization efforts. Specifically, the Draft Permit requires an evaluation of alternative methods of operating the existing wastewater treatment facility to control total nitrogen levels, including, but not limited to, operational changes designed to enhance nitrification (seasonal and year-round), incorporation of anoxic zones, septage receiving policies and procedures, and side stream management. This evaluation is required to be completed and submitted to EPA and MassDEP within one year of the effective date of the permit, along with a description of past and ongoing optimization efforts. The permit also requires implementation of optimization methods to ensure that the facility is operated in such a way that discharges of total nitrogen are minimized. The permit requires annual reports to be submitted that summarize progress and activities related to optimizing nitrogen removal efficiencies and track trends relative to previous years.

In addition to the rolling annual average total nitrogen effluent limit and optimization requirements, the Draft Permit includes weekly monitoring and average monthly reporting requirements for total nitrogen (TN), total Kjeldahl nitrogen (TKN), and total nitrite/nitrate nitrogen (NO<sub>2</sub>/NO<sub>3</sub>).

Since the design flow for the Palmer facility is less than 10 MGD but greater than 5 MGD (5.6 MGD), the annual loading TN limit calculated for the Draft Permit is:

$$5.6 \text{ MGD} * 8 \text{ mg/L} * 8.34 = 374 \text{ lb/day.}$$

As noted at the beginning of this section, the maximum value for the rolling annual average nitrogen load during the review period was 146 lb/day. Given that the Palmer WPCF is already in compliance with the proposed total nitrogen limit of 374 lb/day in the Draft Permit, EPA has determined that a compliance schedule is not appropriate, and one has not been included in the Draft Permit.

The limit is a 12-month rolling average limit calculated as the arithmetic mean of the monthly average total nitrogen load for each reporting month and the previous eleven months. Therefore, compliance will be measured beginning 12 months after the effective date of the permit and will be based on the arithmetic mean of the first 12 monthly average total nitrogen loads. Compliance will continue to be measured each month following.

### **Future Nitrogen Limits**

The new nitrogen annual loading limit in this Draft Permit is intended to meet the requirements of the 2001 LIS TMDL, which was developed to address hypoxic conditions in the bottom waters of LIS. In December 2015, EPA signed a letter detailing a post-TMDL EPA nitrogen reduction strategy for waters in the LIS watershed. The strategy recognizes that more work may need to be done to reduce nitrogen levels, further improve DO conditions, and attain other related water quality standards in LIS, particularly in coastal embayments and the estuarine portions of rivers that flow into the Sound. EPA is working to establish nitrogen thresholds for Western LIS and several coastal embayments, including the mouth of the Chicopee River. Documents regarding the EPA Nitrogen Reduction Strategy are available for public review on EPA's Long Island Sound website (<http://longislandsoundstudy.net/issues-actions/water-quality/nitrogen-strategy/>). Upon completion of establishing thresholds and assessing the water quality conditions of the estuarine waters of the Chicopee River, allocations of total nitrogen loadings may be lowered if further reductions are necessary. If further reductions are needed for the Palmer discharge, a lower water quality-based effluent limit will be added in a future permit action. If so, EPA anticipates exploring possible trading approaches for nitrogen loading in the Massachusetts portion of the Chicopee River watershed.

#### **5.1.9.2 Total 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 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;<sup>33</sup> 2) causing an unpleasant appearance and odor; 3)

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<sup>33</sup> "Algae" includes phytoplankton (microscopic algae measured by levels of chlorophyll a), macroalgae (commonly referred to as seaweed), and other plants stimulated by nutrient over-enrichment. Excessive algal growth contributes to low levels of dissolved oxygen through increased plant respiration and decomposition of dead plant matter. Notably, during the day, algae provide oxygen to the water as a by-product of photosynthesis. At night, however,

interfering with navigation and recreation, for instance, by fouling engines and propellers, making waters unappealing to swimmers, and interfering with fishing lures and equipment; 4) reducing water clarity; 5) reducing the quality and availability of suitable habitat for aquatic life; and 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. See generally, *Nutrient Criteria Technical Guidance Manual – Rivers and Streams*, EPA July 2000 [EPA-822-B-00-002], Chapters 1 and 3.

The MA WQS under 314 CMR 4.05(5)(c) requires that, unless naturally occurring, surface waters must be free from nutrients that cause or contribute to impairment of the existing or designated uses, and the concentration of phosphorus may not exceed site specific criteria developed in a TMDL. Nutrients are also prohibited in concentrations that would cause or contribute to cultural eutrophication. Cultural eutrophication also results in exceedances of other nutrient-related water quality standards such as low dissolved oxygen, decreased water clarity, objectionable odors, and surface scum. The MA WQS at 314 CMR 4.05(3)(b)(1) requires that dissolved oxygen not be less than 6.0 mg/L in cold water fisheries or 5.0 mg/L in warm water fisheries. Further, the MA WQS at 4.05(3)(b)(5), (6) and (8) state that waters must be free from “floating, suspended, and settleable solids,” free from “color and turbidity in concentrations or combinations that are aesthetically objectionable...”, and have no taste and odor “in such concentrations or combinations that are aesthetically objectionable, that would impair any use assigned to this Class, or that would cause tainting or undesirable flavors in the edible portions of aquatic life.” To prevent cultural eutrophication, the MA WQS at 4.05(5)(c) states that “Any existing point source discharge containing nutrients in concentrations that would cause or contribute to cultural eutrophication, including the excessive growth of aquatic plants or algae, in any surface water shall be provided with the most appropriate treatment as determined by the Department, including, where necessary, highest and best practical treatment (HBPT) for POTWs and best available technology economically achievable (BAT) for non POTWs, to remove such nutrients to ensure protection of existing and designated uses.” Also see Part 2.2.2 of this Fact Sheet above regarding antidegradation and existing uses which may be impacted by nutrient over-enrichment.

When permitting nutrient discharges, EPA analyzes available information from a reasonably conservative standpoint, as it regards one key function of a nutrient limit as preventative. This protective approach is appropriate because, once begun, the cycle of eutrophication can be difficult to reverse due to the tendency of nutrients to be retained in the sediments. For this reason, time is of the essence when permitting for nutrients, so EPA acts on the best information reasonably available when developing the draft permit, and does not generally delay permit issuance pending collection of new data or development of new models. This approach is also consistent with the requirement for NPDES permits to be revisited and reissued at regular intervals, with permit terms not to exceed five years.

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when photosynthesis ceases but plant respiration continues, dissolved oxygen levels decline. Additionally, as these algae die, they are decomposed by bacteria that consume yet more oxygen. When dissolved oxygen levels are low, aquatic organisms become stressed and die, and overall aquatic health is degraded.



When translating narrative phosphorus criteria into numeric values (and establishing WQBELs, if necessary), EPA looks to a wide range of materials, including nationally recommended criteria and other relevant materials, such as EPA nutrient technical guidance and information published under Section 304(a) of the CWA, peer-reviewed scientific literature and site-specific surveys and data to determine instream targets that are protective of water quality. See 40 CFR § 122.44(d)(1)(vi)(A), (B).

EPA has produced several guidance documents, described below, that recommend a range of total ambient phosphorus concentrations that are sufficiently stringent to control cultural eutrophication and other adverse nutrient-related impacts, with 0.1 mg/L representing the upper end of this range. These guidance documents recommend protective in-stream phosphorus concentrations based on two different analytical approaches. An effects-based approach provides a threshold value above which adverse effects (*i.e.*, water quality impairments) are likely to occur. This approach applies empirical observations of a causal variable (*i.e.*, phosphorus) and a response variable (*i.e.*, chlorophyll-a as a measure of algal biomass) associated with designated use impairments. Alternatively, reference-based values are statistically derived from a comparison within a population of rivers in the same ecoregion class. They are a quantitative set of river characteristics (physical, chemical and biological) that represent conditions in waters in that ecoregion that are minimally impacted by human activities (*i.e.*, reference conditions), and thus by definition representative of water without cultural eutrophication. Dischargers in Massachusetts and New Hampshire are located within either Ecoregion VIII, Nutrient-Poor, Largely Glaciated Upper Midwest and Northeast or Ecoregion XIV, Eastern Coastal Plains. The recommended total phosphorus criteria for these ecoregions are 10 µg/L and 31.25 µg/L, respectively. While reference conditions reflect in-stream phosphorus concentrations that are sufficiently low to meet the requirements necessary to support designated uses, they may also represent levels of water quality beyond what is necessary to support such uses.

EPA follows an effects-based approach. EPA's 1986 *Quality Criteria for Water* (the "Gold Book") recommends maximum threshold concentrations that are designed to prevent or control adverse nutrient-related impacts from occurring. Specifically, the Gold Book recommends in-stream phosphorus concentrations of no greater than 0.1 mg/L for any stream not discharging directly to lakes or impoundments 0.05 mg/L in any stream entering a lake or reservoir, and 0.025 mg/L within a lake or reservoir. In this case, EPA is applying a target concentration of 0.1 mg/L because the receiving water is a stream/river not discharging directly to a lake or impoundment.

As the Gold Book notes, there are natural conditions of a water body that can result in either increased or reduced eutrophic 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 site-specific factors relevant to the receiving water that would result in it being unusually more or less susceptible to phosphorus loading.

Prior to a consideration of site-specific information and data relevant to the discharge, EPA observes that its overall approaches to establishing both phosphorus and nitrogen effluent

limitations in NPDES permits have been extensively adjudicated over the past fifteen years, and they have been found to be reasonable and upheld by both the Environmental Appeals Board and the United States Court of Appeals for the First Circuit. Petitions for certiorari have twice been denied by the United States Supreme Court for Region 1 nutrient permitting (total phosphorus and total nitrogen) decisions under 40 CFR § 122.44(d)(1)(vi) in recent years. Should the public wish to review these decisions, they are available here:

*City of Taunton v. EPA* (EAB and First Circuit, Supreme Court cert. denied)

[https://yosemite.epa.gov/oa/EAB\\_Web\\_Docket.nsf/Case~Name/0A045314B61E682785257FA80054E600/\\$File/Denying%20Review%20Vol-17.pdf](https://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/Case~Name/0A045314B61E682785257FA80054E600/$File/Denying%20Review%20Vol-17.pdf)  
[https://yosemite.epa.gov/oa/eab\\_web\\_docket.nsf/A568248B44D1C63785258053005AEDD0/\\$File/Opinion%207.9.2018%20\(46%20pages\).pdf](https://yosemite.epa.gov/oa/eab_web_docket.nsf/A568248B44D1C63785258053005AEDD0/$File/Opinion%207.9.2018%20(46%20pages).pdf)

*Upper Blackstone Water Pollution Abatement Dist. v. EPA* (EAB and First Circuit, Supreme Court cert. denied)

[https://yosemite.epa.gov/oa/EAB\\_Web\\_Docket.nsf/Case~Name/A44361EC4C211B0685257865006EA1EC/\\$File/Upper%20Blackstone.pdf](https://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/Case~Name/A44361EC4C211B0685257865006EA1EC/$File/Upper%20Blackstone.pdf)  
[https://yosemite.epa.gov/oa/EAB\\_Web\\_Docket.nsf/2D0D249E441A18F185257B6600725F04/\\$File/October%2018%202017.pdf](https://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/2D0D249E441A18F185257B6600725F04/$File/October%2018%202017.pdf)

*In re City of Lowell, MA* (2020)

[https://yosemite.epa.gov/OA/EAB\\_WEB\\_Docket.nsf/Filings%20By%20Appeal%20Number/6D63DE203BB980D2852585960069906D/\\$File/City%20of%20Lowell.pdf](https://yosemite.epa.gov/OA/EAB_WEB_Docket.nsf/Filings%20By%20Appeal%20Number/6D63DE203BB980D2852585960069906D/$File/City%20of%20Lowell.pdf)

*In re Town of Newmarket Wastewater Treatment Plant* (2013)

[https://yosemite.epa.gov/oa/EAB\\_Web\\_Docket.nsf/Case~Name/97CCD304C9B7E58585257C3500799108/\\$File/Newmarket%20Decision%20Vol%2016.pdf](https://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/Case~Name/97CCD304C9B7E58585257C3500799108/$File/Newmarket%20Decision%20Vol%2016.pdf)

*In re City of Attleboro MA Wastewater Treatment Plant* (2009)

[https://yosemite.epa.gov/oa/EAB\\_Web\\_Docket.nsf/NPDES%20Permit%20Appeals%20\(CWA\)/D506EBEE22A1035E8525763300499A78/\\$File/Attleboro.pdf](https://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/NPDES%20Permit%20Appeals%20(CWA)/D506EBEE22A1035E8525763300499A78/$File/Attleboro.pdf)

EPA adheres to the overarching decision-making framework for nutrient permitting established by these precedents: administrative and judicial bodies have expressly found EPA's approach to be reasonable under the Act and, for its part, EPA has found the approach in its experience to be workable, expeditious, as well as demonstrably effective in addressing nutrient pollution, in a manner that is neither overly stringent, nor overly lax. While drawing on information from the scientific literature and national and regional EPA guidance, EPA also accounts for site-specific facts and circumstances surrounding the discharge and receiving waters in arriving at the permit result. EPA acknowledges that there are a range of alternative technical approaches and opinions

when permitting for nutrients to ensure that uses for the waters designated by the state for its citizens are achieved; while some of these may have merit, EPA's existing approach has been proven to have merit and provides predictability for the regulated community.

Sampling data from 2008<sup>34</sup>, summarized in Table 4, reported five summer in-stream phosphorus concentrations collected at Station W1014 located (located 1.1 miles upstream of the Palmer WPCF in the Ware River) and five samples collected at Station W1875 (located about 0.1 miles upstream of the Palmer WPCF in the Quaboag River). EPA notes that the Palmer discharge is just downstream of the confluence of the Ware River and Quaboag River.

**Table 4: Instream Total Phosphorus Concentrations (mg/L)**

	W1014 Ware River 1.1 mi upstream of WPCF	W1875 Quaboag River 0.1 mi upstream of WPCF
5/20/2008	0.029	0.032
6/17/2008	0.037	0.069
7/22/2008	0.028	0.033
8/19/2008	0.030	0.042
9/23/2008	0.027	0.033
Median	0.029	0.033

Given that the median upstream data from the Ware River and Quaboag River is 0.029 mg/L and 0.033 mg/L, respectively, EPA has chosen to apply the upstream value of 0.033 mg/L as a conservative assumption in the analysis described below.

EPA notes that since the 2011 Permit already contained a limit for phosphorus, EPA uses the mass balance equation presented in Appendix B to determine if a more stringent limit would be required to continue to meet WQS under current conditions. The limit is determined to be the more stringent of either (1) the existing limit or (2) the calculated effluent concentration ( $C_d$ ) allowable to meet WQS based on current conditions.

Based on the phosphorus criterion described above, the ambient data presented above, the upstream 7Q10 flow, and the design flow of the Facility, Appendix B presents the details of the mass balance equation, and the determination of whether the existing limit needs to be more stringent to protect WQS. As shown, there is no need for a more stringent limit to continue to protect WQS so the existing limit is being carried forward for the reasons specified in Appendix B.

Additionally, the Draft Permit also includes an ambient monitoring requirement to ensure that current ambient phosphorus data are available to better characterize the receiving water in the next permitting cycle. Note that this ambient data will be used in the next permit reissuance, along with any other relevant information available at that time, to reevaluate whether a more stringent limit may be necessary to protect WQS.

<sup>34</sup> Massachusetts Water Quality Program Monitoring Data: <https://www.mass.gov/guides/water-quality-monitoring-program-data>

## 5.1.10 Metals

### 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 CFR § 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 found at 314 CMR 4.06 Appendix C. The estimated hardness of the Chicopee 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 20.2 mg/L and the corresponding criteria are also presented in Appendix B.

Based on the 2022 MA WQS update, the aluminum criteria are dependent on hardness, pH and dissolved organic carbon (DOC) as described at 314 CMR 4.06 Table 29. Given that there is limited site-specific data available, the watershed default values are used in the analysis below.

### 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.

For any metal with an existing limit in the 2011 Permit, the same mass balance equation is used to determine if a more stringent limit would be required to continue to meet WQS under current conditions. The limit is determined to be the more stringent of either (1) the existing limit or (2) the calculated effluent concentration ( $C_e$ ) allowable to meet WQS based on current conditions.

Based on the information described above, the results of this analysis for each metal are presented in Appendix B.

As shown, there is no reasonable potential to cause or contribute to an excursion of WQS for aluminum, cadmium, nickel, and zinc, so the Draft Permit does not propose any new limits for these metals. However, EPA determined that there is reasonable potential to cause or contribute

to an excursion of WQS for lead, so the Draft Permit proposed a new monthly average lead limit of 6.1 µg/L. Finally, the 2011 Permit had a monthly average copper limit of 50.9 µg/L and a maximum daily copper limit of 69.1 µg/L. EPA determined that a more stringent monthly average copper limit of 45.5 µg/L and a more stringent maximum daily copper limit of 34.9 µg/L are necessary to continue to protect WQS for the reasons specified in Appendix B.

Given that the facility has been in consistent compliance with both the new lead limit and the more stringent copper limits in recent years, EPA has determined that a compliance schedule is not appropriate, and one has not been included in the Draft Permit.

Effluent and ambient monitoring for each of these metals will continue to be required in the WET 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 CFR § 122.44(d)(1). The Massachusetts WQSs at 314 CMR 4.05(5)(e) state, “All surface waters shall be free from pollutants in concentrations or combinations that are toxic to humans, aquatic life or wildlife.”

National studies conducted by 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 and State policy<sup>35</sup>, 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

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<sup>35</sup> *Massachusetts Water Quality Standards Implementation Policy for the Control of Toxic Pollutants in Surface Waters*. February 23, 1990.

the concentration that is lethal to 50% of the test organisms, known as the LC<sub>50</sub>. This policy recommends that permits for discharges having a dilution factor greater than 1 but less than 20 require acute and chronic toxicity testing four times per year for one species. Additionally, for discharges with dilution factors less than 20, the C-NOEC effluent limit should be greater than or equal to the receiving water concentration and the LC<sub>50</sub> limit should be greater than or equal to 100%.

The acute WET limit in the 2011 Permit is an LC<sub>50</sub> greater than or equal to 100%, using the daphnid (*Ceriodaphnia dubia*) as the test species. The Facility has consistently met this limit (See Appendix A).

Based on the potential for toxicity from domestic and industrial contributions, the state narrative water quality criterion, the dilution factor of 14.6, and in accordance with 40 CFR § 122.44(d), the Draft Permit will carry forward acute testing two times per year using (*Ceriodaphnia dubias*) as the test species. In addition, the Draft Permit will require chronic toxicity testing twice per year with a C-NOEC limit of 7% (based on 1/14.6). 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) and Attachment B, *Freshwater Chronic Toxicity Test Procedure and Protocol* (March 2013) 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.

#### **5.1.12 Per- and polyfluoroalkyl substances (PFAS)**

As explained at <https://www.epa.gov/pfas>, PFAS are a group of synthetic chemicals that have been in use since the 1940s. PFAS are found in a wide array of consumer and industrial products. PFAS manufacturing and processing facilities, facilities using PFAS in production of other products, airports, and military installations can be contributors of PFAS releases into the air, soil, and water. Due to their widespread use and persistence in the environment, most people in the United States have been exposed to PFAS. Exposure to some PFAS above certain levels may increase risk of adverse health effects.<sup>36</sup> EPA is collecting information to evaluate the potential impacts that discharges of PFAS from wastewater treatment plants may have on downstream drinking water, recreational and aquatic life uses.

On October 20, 2020, MassDEP published final regulations establishing a drinking water standard, or a Maximum Contaminant Level (MCL) of 20 parts per trillion (ppt) for the sum of the following six PFAS. See 310 CMR 22.00.

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<sup>36</sup> EPA, *EPA's Per- and Polyfluoroalkyl Substances (PFAS) Action Plan*, EPA 823R18004, February 2019. Available at: [https://www.epa.gov/sites/production/files/2019-02/documents/pfas\\_action\\_plan\\_021319\\_508compliant\\_1.pdf](https://www.epa.gov/sites/production/files/2019-02/documents/pfas_action_plan_021319_508compliant_1.pdf)

- Perfluorohexanesulfonic acid (PFHxS)
- Perfluoroheptanoic acid (PFHpA)
- Perfluorononanoic acid (PFNA)
- Perfluorooctanesulfonic acid (PFOS)
- Perfluorooctanoic acid (PFOA)
- Perfluorodecanoic acid (PFDA)

Although the Massachusetts water quality standards do not include numeric criteria for PFAS, the Massachusetts narrative criterion for toxic substances at 314 CMR 4.05(5)(e) states:

All surface waters shall be free from pollutants in concentrations or combinations that are toxic to humans, aquatic life or wildlife.

The narrative criterion is further elaborated at 314 CMR 4.05(5)(e)2 which states:

Human Health Risk Levels. Where EPA has not set human health risk levels for a toxic pollutant, the human health-based regulation of the toxic pollutant shall be in accordance with guidance issued by the Department of Environmental Protection's Office of Research and Standards. The Department's goal is to prevent all adverse health effects which may result from the ingestion, inhalation or dermal absorption of toxins attributable to waters during their reasonable use as designated in 314 CMR 4.00.

Since PFAS chemicals are persistent in the environment and may lead to adverse human health and environmental effects, the Draft Permit requires that the Facility conduct quarterly influent, effluent and sludge sampling for PFAS chemicals and annual sampling of certain industrial users. The quarterly monitoring shall begin the first full calendar quarter beginning six months after the effective date of the permit. The annual monitoring for certain industrial users shall begin the first full calendar year following the effective date of the permit.

The purpose of this monitoring and reporting requirement is to better understand potential discharges of PFAS from this facility and to inform future permitting decisions, including the potential development of water quality-based effluent limits on a facility specific basis. EPA is authorized to require this monitoring and reporting by CWA § 308(a), which states:

“SEC. 308. (a) Whenever required to carry out the objective of this Act, including but not limited to (1) developing or assisting in the development of any effluent limitation, or other limitation, prohibition, or effluent standard, pretreatment standard, or standard of performance under this Act; (2) determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance; (3) any requirement established under this section; or (4) carrying out sections 305, 311, 402, 404 (relating to State permit programs), 405, and 504 of this Act—

- (A) the Administrator shall require the owner or operator of any point source to (i) establish and maintain such records, (ii) make such reports, (iii) install, use, and maintain such monitoring equipment or methods (including where

appropriate, biological monitoring methods), (iv) sample such effluents (in accordance with such methods, at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (v) provide such other information as he may reasonably require;”.

On April 28, 2022, EPA issued a memorandum addressing PFAS discharges in EPA-issued NPDES Permits.<sup>37</sup> For POTWs, in the absence of a final 40 CFR § 136 method, use Method 1633 which was multi-lab validated in late 2022. (See 40 CFR § 122.21(e)(3)(ii) and 40 CFR § 122.44(i)(1)(iv)(B)). Monitoring should include each of the 40 PFAS parameters detectable by Method 1633 (see Draft Permit Attachment B for list of PFAS parameters) and the monitoring frequency is quarterly. All PFAS results must be reported on DMRs (see 40 CFR § 122.41(l)(4)(i)).

This approach is consistent with 40 CFR § 122.44(i)(1)(iv)(B) which states that in the case of pollutants or pollutant parameters for which there are no approved methods under 40 CFR Part 136 or methods are not otherwise required under 40 CFR chapter I, subchapter N or O, monitoring shall be conducted according to a test procedure specified in the permit for such pollutants or pollutant parameters.

Additionally, EPA has recently published Method 1621 to screen for organofluorines in wastewater. Organofluorines (molecules with a carbon-fluorine bond) are rarely naturally occurring and the most common source of organofluorines are PFAS and non-PFAS fluorinated compounds such as pesticides and pharmaceuticals. The Permittee shall monitor Adsorbable Organic Fluorine using Method 1621 once per quarter concurrently with PFAS monitoring to screen for a broader range of these types of emerging contaminants. This requirement also takes effect the first full calendar quarter following six months after the effective date of the permit.

All monitoring results may be used by EPA in the next permit reissuance to ensure the discharge continues to protect designated uses.

## 5.2 Industrial Pretreatment Program

The Permittee is required to administer a pretreatment program under 40 CFR Part 403. *See also* CWA § 307; 40 CFR § 122.44(j). The Permittee's pretreatment program received EPA approval on **October 14<sup>th</sup>, 2005** and, as a result, appropriate pretreatment program requirements were incorporated into the previous permit, which were consistent with that approval and federal pretreatment regulations in effect when the permit was issued.

The Federal Pretreatment Regulations in 40 CFR part 403 were amended in October 1988, in July 1990, and again in October 2005. Those amendments established new requirements for implementation of pretreatment programs. Upon reissuance of this NPDES permit, the permittee

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<sup>37</sup> Radhika Fox, Assistant Administrator, EPA to Water Division Directors, EPA Regions 1-10, April 28, 2022, Subject: “Addressing PFAS Discharges in EPA-Issued NPDES Permits and Expectations Where EPA is the Pretreatment Control Authority.” Available at: [https://www.epa.gov/system/files/documents/2022-04/npdes\\_pfas-memo.pdf](https://www.epa.gov/system/files/documents/2022-04/npdes_pfas-memo.pdf)



is obligated to modify its pretreatment program to be consistent with current Federal Regulations. The activities that the permittee must address include, but are not limited to, the following: 1) develop and enforce EPA-approved specific effluent limits (technically-based local limits); 2) revise the local sewer-use ordinance or regulation, as appropriate, to be consistent with Federal Regulations; 3) develop an enforcement response plan; 4) implement a slug control evaluation program; 5) track significant noncompliance for industrial users; and 6) establish a definition of and track significant industrial users.

These requirements are necessary to ensure continued compliance with the POTW's NPDES permit and its sludge use or disposal practices.

In addition to the requirements described above, the Draft Permit requires the Permittee to submit to EPA in writing, within 180 days of the permit's effective date, a description of proposed changes to permittee's pretreatment program deemed necessary to assure conformity with current federal pretreatment regulations. These requirements are included in the Draft Permit to ensure that the pretreatment program is consistent and up-to-date with all pretreatment requirements in effect. Lastly, the Permittee must continue to submit, annually by **June 1<sup>st</sup>**, a pretreatment report detailing the activities of the program for the twelve-month period ending 60 days prior to the due date.

### **5.3 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.

### **5.4 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 to control infiltration and inflow (I/I) within the sewer collections system it owns and operates. The 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.

## 5.5 Operation and Maintenance

The standard permit conditions for ‘Proper Operation and Maintenance’, found at 40 CFR § 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 CFR § 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.

General requirements for proper operation and maintenance, and mitigation have been included in Part II of the permit (See Part II.B.). Specific permit conditions have also been included in Part I.C.1. & 2. of the Draft Permit. These requirements are included to minimize the occurrence of permit exceedances and unauthorized discharges that have a reasonable likelihood of adversely affecting human health or the environment.

### 5.5.1 Operation and Maintenance of the Wastewater Treatment Facility

The Draft Permit, in Part I.C.1. requires the Permittee to address major storm and flood events as part of their wastewater treatment facility operation and maintenance planning. The major storm and flood plan addresses risks to the facility and its infrastructure from extreme weather events<sup>38</sup>. The Plan should address resiliency of the facility, evaluate<sup>39</sup>, and implement control measures to minimize<sup>40</sup> the impacts of major storm and flood events at the wastewater treatment facility. The plan’s requirements include: an asset vulnerability evaluation, systemic vulnerability evaluation, and alternative evaluation. These requirements are included to ensure the proper operation and maintenance of the wastewater treatment facility and to minimize the impacts of major storm and flood events.

These requirements are new. EPA has determined that these additional requirements are necessary to ensure the proper operation and maintenance of the wastewater treatment facility and has included schedules in the Draft Permit for completing these requirements.

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<sup>38</sup> “Major storm and flood events” refer to instances resulting from major storms such as hurricanes, extreme/heavy precipitation events, and pluvial, fluvial, and flash flood events such as high-water events, storm surge, and high-tide flooding. “Extreme/heavy precipitation” refers to instances during which the amount of rain or snow experienced in a location substantially exceeds what is normal. What constitutes a period of heavy precipitation varies according to location and season. “Extreme/heavy precipitation” does not necessarily mean the total amount of precipitation at a location has increased-just that precipitation is occurring in more intense or more frequent events.

<sup>39</sup> To determine the vulnerabilities to the facilities from major storm and flood events, you must conduct the evaluation using, at a minimum, the worst-case data relating to changes in precipitation, sea level rise, extreme weather events, coastal flooding, inland flooding, sewer flow and inflow and infiltration and relevant to the facilities from: 1) the data generated by the 13 federal agencies that conduct or use research on global change that contributed to the latest National Climate Assessment produced by the U.S. Global Change Research Program (USGCRP); 2) climate data generated by the Commonwealth of Massachusetts; and 3) resiliency planning completed by the municipality in which a given facility is located (i.e., City of Boston) and incorporate the results of the evaluation in a manner that demonstrates that the control measures taken are precautionary and sufficiently protective. Evaluation must be completed by a qualified person on a five-year basis considering 1) historical observations from all years the Permittee has operated the facility prior to this permit’s term; 2) the 25 to 100 years forward-looking from the review year to assess impacts that are likely to occur.

<sup>40</sup> For the purposes of this provision, the term “minimize” means to reduce and/or eliminate to the extent achievable the impacts to the facilities.

## 5.5.2 Operation and Maintenance of the Sewer System

The Draft Permit, in Part I.C.2. requires the Permittee and Co-permittee to address major storm and flood events as part of their sewer system operation and maintenance planning. The major storm and flood plan should address risks to the sewer system and its infrastructure from extreme weather events.<sup>41</sup> The Plan should address resiliency of the system, evaluate, and implement control measures to minimize the impacts of major storm and flood events throughout the sewer system. The requirements include; an asset vulnerability evaluation, systemic vulnerability evaluation, and alternative evaluation. These requirements are included to ensure the proper operation and maintenance of the sewer system and to minimize the impacts of major storm and flood events.

Several of these requirements are new. EPA has determined that these additional requirements are necessary to ensure the proper operation and maintenance of the wastewater treatment facility and has included schedules in the Draft Permit for completing these requirements.

Because the municipality of Monson owns and operates a collection system that discharges to the Palmer WPCF, these municipalities have been included as co-permittees 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 Attachment D to this Fact Sheet, EPA Region 1 NPDES Permitting Approach for Publicly Owned Treatment Works that Include Municipal Satellite Sewage Collection Systems.

## 5.6 Standard Conditions

The standard conditions of the permit are based on 40 CFR §122, Subparts A, C, and D and 40 CFR § 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 to 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,

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<sup>41</sup> “Major storm and flood events” refer to instances resulting from major storms such as hurricanes, extreme/heavy precipitation events, and pluvial, fluvial, and flash flood events such as high-water events, storm surge, and high-tide flooding. “Extreme/heavy precipitation” refers to instances during which the amount of rain or snow experienced in a location substantially exceeds what is normal. What constitutes a period of heavy precipitation varies according to location and season. “Extreme/heavy precipitation” does not necessarily mean the total amount of precipitation at a location has increased-just that precipitation is occurring in more intense or more frequent events.

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 Palmer WPCF's discharges of pollutants. The Draft Permit is intended to replace the 2011 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 in this section of the Chicopee River (MA36-22).

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 Palmer WPCF discharge.<sup>42</sup> Therefore, consultation with NOAA Fisheries under section 7 of the ESA is not required for this federal action.

For protected species under the jurisdiction of the USFWS, two threatened species were identified as potentially occurring in the action area of the Palmer discharge.<sup>43</sup> The first is the small whorled pogonia (*Isotria medeoloides*). According to the USFWS, the threatened small whorled pogonia grows in mixed deciduous or mixed-deciduous/coniferous forests.<sup>44</sup> This habitat is not affected by the water quality of the Chicopee River. Since there are no plausible routes of effects to the species from the discharge, the proposed permit action is deemed to have no impact on this listed species. ESA section 7 consultation with USFWS is not required for this species.

Therefore, the proposed permit action presents no plausible routes of effects to the species and is deemed to have no impact on this listed species. ESA consultation with USFWS for this plant is not required.

In addition, one terrestrial listed threatened species, the northern long-eared bat (*Myotis septentrionalis*) was identified as potentially occurring in the action area of the Palmer WPCF's discharge. According to the USFWS, the threatened northern long-eared bat is found in the following habitats based on seasons, "winter – mines and caves; summer – wide variety of forested habitats." This species is not considered aquatic. However, because the Facility's projected action area in the Chicopee River in Palmer overlaps with the general statewide range of the northern long-eared bat, EPA prepared an Effects Determination Letter for the Palmer WPCF NPDES Permit Reissuance and submitted it to USFWS. Based on the information submitted by EPA, the USFWS notified EPA by letter, dated October 27, 2022, that the permit

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<sup>42</sup> <https://noaa.maps.arcgis.com/apps/webappviewer/index.html?id=a85c0313b68b44e0927b51928271422a>

<sup>43</sup> <https://ipac.ecosphere.fws.gov/>

<sup>44</sup> [https://ecos.fws.gov/docs/recovery\\_plan/921113b.pdf](https://ecos.fws.gov/docs/recovery_plan/921113b.pdf)

reissuance is consistent with activities analyzed in the USFWS January 5, 2016, Programmatic Biological Opinion (PBO).<sup>45</sup> The PBO outlines activities that are excepted from “take” prohibitions applicable to the northern long-eared bat under the Endangered Species Act of 1973 (ESA) (87 Stat.884, as amended; 16 U.S.C. 1531 et seq.). The USFWS consistency letter concluded EPA’s consultation responsibilities for the Palmer WPCF NPDES permitting action under ESA section 7(a)(2) with respect to the northern long-eared bat.

At the beginning of the public comment period, EPA notified NOAA Fisheries and USFWS 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.

No further ESA consultation is required as a result of this permitting action. However, reinitiation 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 CFR § 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.

Based on available EFH information, including the NOAA Fisheries EFH Mapper,<sup>46</sup> EPA has determined that the Chicopee River in the vicinity of the discharge from the Palmer WPCF is designated as EFH for Atlantic salmon (*Salmo salar*). Therefore, consultation with NOAA Fisheries under the Magnuson-Stevens Fishery Conservation and Management Act is required. EPA has determined that the operation of this Facility, as governed by this permit action, may

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<sup>45</sup> USFWS Project Code: 2023-0009762, October 27, 2022.

<sup>46</sup> <https://www.habitat.noaa.gov/apps/efhmapper/>

adversely affect the EFH of the Atlantic salmon in the Chicopee River. The Draft Permit has been conditioned in the following way to minimize any impacts that reduce the quality and/or quantity of EFH:

- This Draft Permit action does not constitute a new source of pollutants. It is the reissuance of an existing NPDES permit;
- Total suspended solids, biochemical oxygen demand, total residual chlorine, *E. Coli* and pH are regulated by the Draft Permit to meet State water quality standards;
- EPA's evaluation indicates that there is no reasonable potential for the discharge to cause or contribute to an excursion above water quality criteria for aluminum, zinc, nickel, or cadmium, as the concentrations of these metals in the effluent were well below the maximum allowable concentrations that may be present in the discharge;
- The permit establishes a more stringent limits for copper and a new chronic limit for lead;
- The Draft Permit requires twice per year toxicity testing to ensure that the discharge does not present toxicity problems;
- The Facility withdraws no water from the Chicopee River, so no life stages of EFH species are vulnerable to impingement or entrainment;
- The Draft Permit prohibits the discharge to cause a violation of State water quality standards;
- The Draft Permit prohibits the discharge of pollutants or combinations of pollutants in toxic amounts;
- The effluent limitations and conditions in the Draft Permit were developed to be protective of all aquatic life; and
- The proposed Draft Permit requirements minimize any reduction in quality and/or quantity of EFH, either directly or indirectly.

EPA believes that the conditions and limitations contained within the Palmer WPCF Draft Permit adequately protect all aquatic life, as well as the essential fish habitat of Atlantic salmon. Further mitigation is not warranted. Should adverse impacts to EFH be detected as a result of this permit action, or if new information is received that changes the basis for EPA's conclusions, NOAA Fisheries Habitat and Ecosystem Services Division will be contacted and an EFH consultation will be reinitiated.

At the beginning of the public comment period, EPA notified NOAA Fisheries Habitat and Ecosystem Services 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 and Ecosystem Services 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](mailto:Duspiva.Michele@epa.gov)

Prior to the close of the public comment period, any person, may submit a written request to EPA 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 CFR § 124.12 are satisfied. In reaching a final decision on the Draft Permit, 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, 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 CFR § 124.19.

## 8.0 Administrative Record

The administrative record on which this Draft Permit is based may be accessed by contacting Michele Duspiva at 617-918-1682 or via email at [Duspiva.Michele@epa.gov](mailto:Duspiva.Michele@epa.gov).

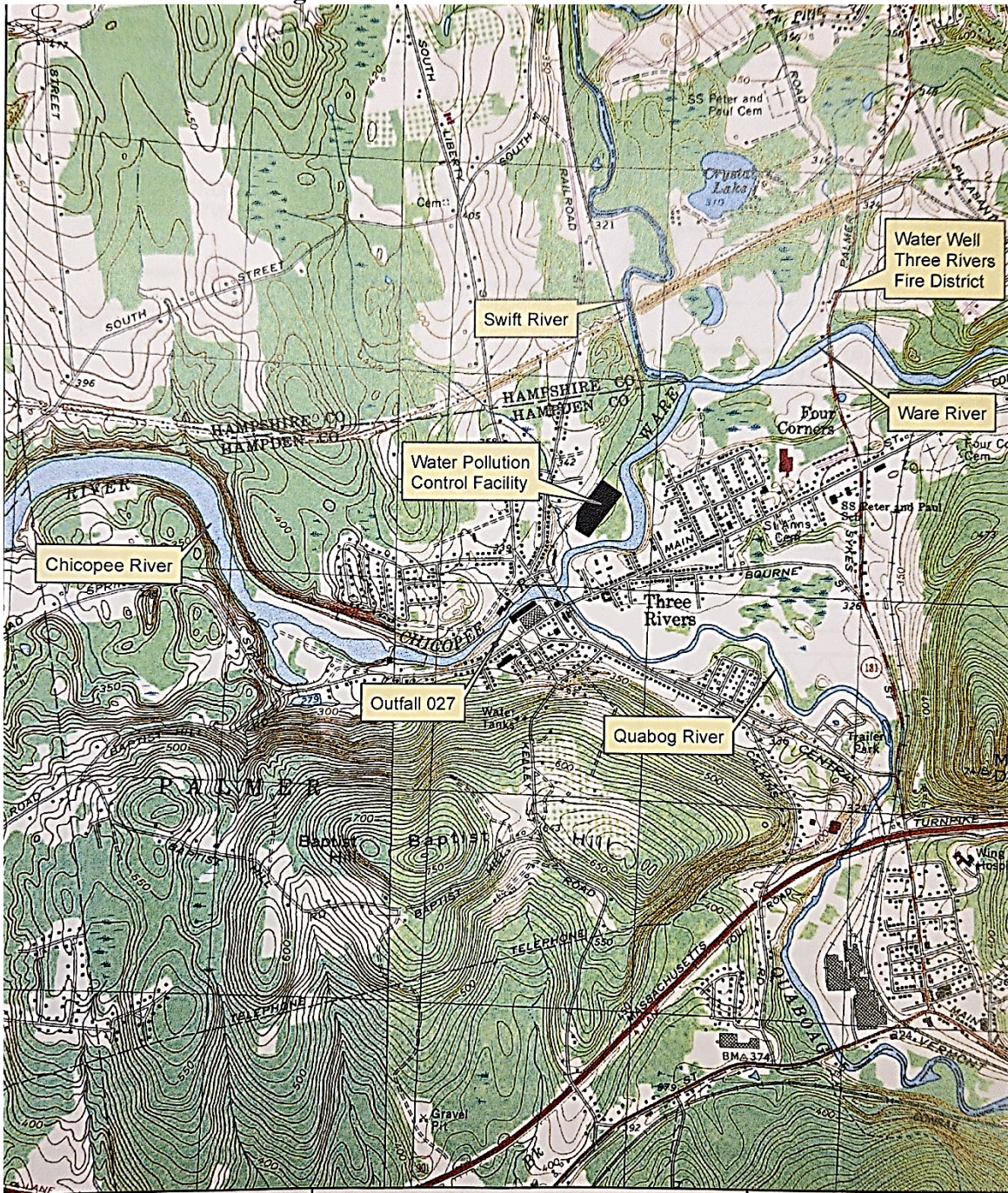
March 2023  
Date

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



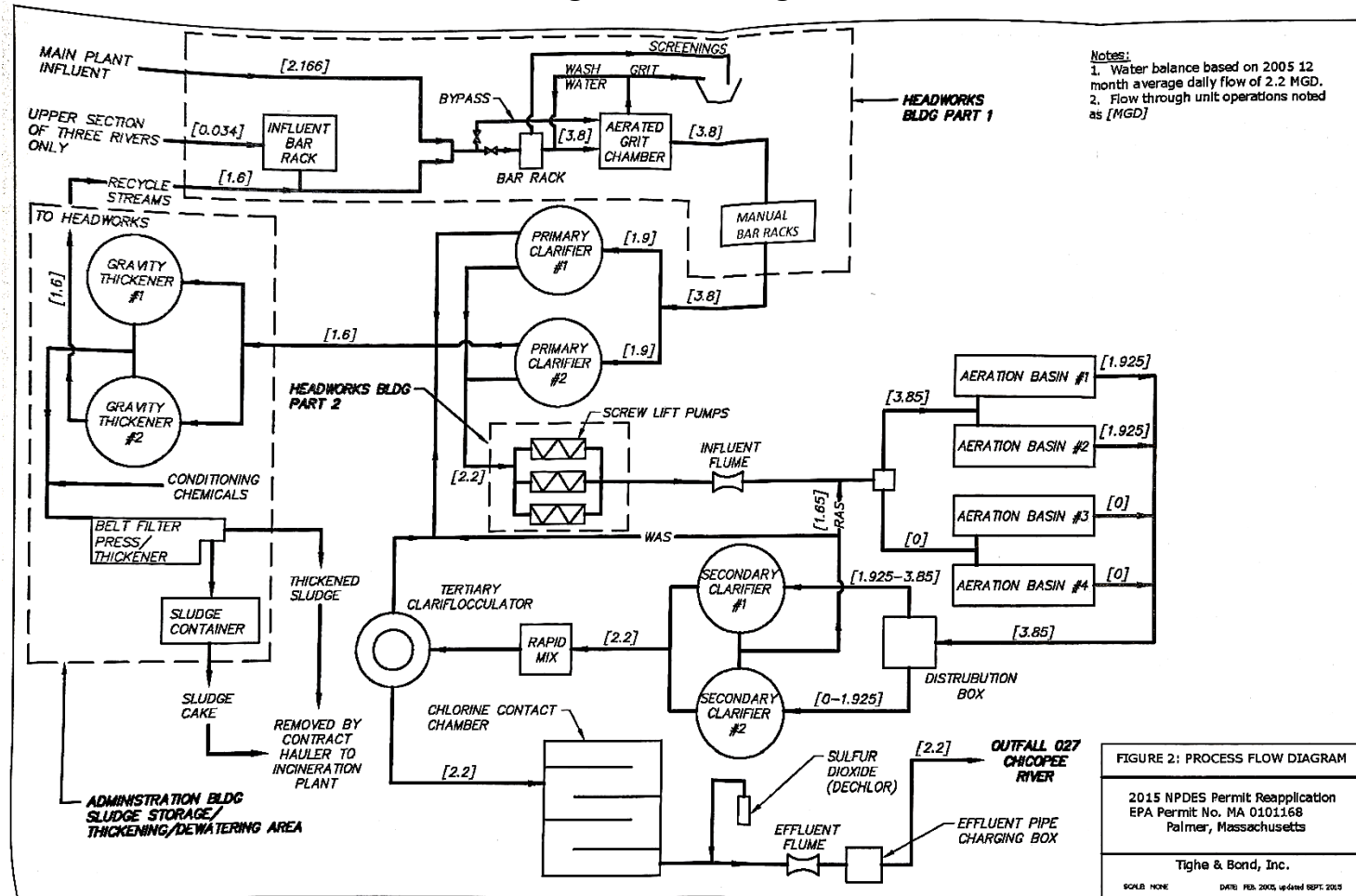
**Figure 1: Location of the Palmer WPCF**



	<p><b>FIGURE 1</b> <b>SITE LOCUS PALMER WPCF</b> <b>2015 NPDES PERMIT RENEWAL</b> <b>PERMIT No. MA0101168</b> Palmer, Massachusetts September 2015</p>	<p>0 2,000 Feet 1" = 2,000'</p> <p><b>NOTES</b> Data sources: Office of Geographic and Environmental Information (MassGIS), Commonwealth of Massachusetts Executive Office of Environmental Affairs.</p>
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Figure 2: Flow diagram



## Outfall 027

Parameter	Flow	Flow	Flow	BOD5	BOD5	BOD5	BOD5	BOD5
	Monthly Ave	Daily Max	Annual Rolling Ave	Monthly Ave	Monthly Ave	Monthly Ave Min	Weekly Ave	Weekly Ave
Units	MGD	MGD	MGD	lb/d	mg/L	%	lb/d	mg/L
Effluent Limit	Report	Report	5.6	1400	30	85	2100	45
Minimum	1	1.4	1.2	29	2.1	89	22	3
Maximum	2.8	5.2	2.5	257	15.6	99	373	24
Median	1.7	2.3	1.7	92	7.05	96	117.5	9.4
No. of Violations	N/A	N/A	0	0	0	0	0	0
7/31/2017	1.3	2	1.2	96	9.5	96	127	14.2
8/31/2017	1.1	2.1	1.2	73	7.8	98	98	10.1
9/30/2017	1	1.6	1.2	93	10	96	139	12
10/31/2017	1.4	3.4	1.3	75	5.7	98	171	8
11/30/2017	1.7	2.4	1.3	92	6.7	98	127	8.8
12/31/2017	1.5	1.9	1.4	164	12.3	97	272	19.3
1/31/2018	1.8	3	1.5	187	12.7	96	269	17.9
2/28/2018	2.2	3.6	1.5	210	11.7	93	320	20
3/31/2018	2.3	3	1.6	195	10.3	94	243	14
4/30/2018	2.3	3.5	1.7	174	9	95	198	9.4
5/31/2018	1.8	2.2	1.7	116	7.4	97	135	9.5
6/30/2018	1.3	2.1	1.6	147	15.6	93	194	20.5
7/31/2018	1.2	1.9	1.6	90	8.4	97	113	10.2
8/31/2018	1.4	2	1.7	82	7.1	97	110	9.5
9/30/2018	1.4	2.3	1.7	86	6.5	97	115	9.1
10/31/2018	1.8	2.5	1.7	102	6.5	97	208	14
11/30/2018	2.7	3.3	1.8	257	10.4	93	314	12.5
12/31/2018	2.4	3.1	1.9	210	10.6	93	266	14.2
1/31/2019	2.4	4.9	2.1	209	10.6	92	284	15.3
2/28/2019	2.3	2.6	1.9	253	13.6	89	373	20.9
3/31/2019	2.2	2.7	2.5	175	9.9	94	191	11.8
4/30/2019	2.8	5.2	2	169	7.9	94	22	11.1
5/31/2019	2.7	3.5	2.1	164	7.5	95	249	12.7
6/30/2019	1.7	2.1	2.1	74	5.2	97	81	5.8
7/31/2019	1.1	1.7	2.1	85	8.4	96	135	12.5
8/31/2019	1	1.5	2.1	51	5.8	98	80	9.2
9/30/2019	1	2	2	46	5.7	98	69	7.1
10/31/2019	1.2	2.4	2	102	9	95	152	11.5
11/30/2019	1.4	2.5	1.9	122	10.2	95	128	14.8
12/31/2019	2	2.9	1.8	218	12.5	91	313	15
1/31/2020	1.9	2.2	1.8	243	15.5	92	364	24
2/29/2020	1.7	2.1	1.7	130	8.9	94	160	11.2

## Outfall 027

Parameter	Flow	Flow	Flow	BOD5	BOD5	BOD5	BOD5	BOD5
	Monthly Ave	Daily Max	Annual Rolling Ave	Monthly Ave	Monthly Ave	Monthly Ave Min	Weekly Ave	Weekly Ave
Units	MGD	MGD	MGD	lb/d	mg/L	%	lb/d	mg/L
Effluent Limit	Report	Report	5.6	1400	30	85	2100	45
3/31/2020	1.7	2.1	1.7	105	7.2	95	146	9.6
4/30/2020	2	3	1.6	92	5.3	96	87	4.9
5/31/2020	1.8	2.4	1.5	98	7	96	178	13.8
6/30/2020	1.3	1.5	1.5	70	6.4	97	82	6.9
7/31/2020	1.1	1.4	1.5	64	6.7	97	68	7.9
8/31/2020	1	1.6	1.5	52	6.3	98	58	6.9
9/30/2020	1.1	1.5	1.5	39	3.9	98	51	5
10/31/2020	1.2	1.8	1.5	55	4.9	98	82	6.8
11/30/2020	1.3	2	1.6	66	6	97	102	8.4
12/31/2020	1.8	3	1.5	101	7.4	96	119	9.5
1/31/2021	1.7	2.3	1.5	107	7.7	94	126	9.4
2/28/2021	1.5	1.8	1.5	103	8.3	95	116	9
3/31/2021	1.6	1.9	1.5	98	7.5	96	115	9.2
4/30/2021	1.6	2	1.3	78	6	96	107	8.5
5/31/2021	1.7	2.3	1.4	70	4.8	98	86	5.2
6/30/2021	1.4	2.2	1.4	68	5.3	97	108	6.1
7/31/2021	2.3	4.9	1.5	100	5	96	149	5.9
8/31/2021	1.7	2.4	1.6	58	4.2	97	77	5.3
9/30/2021	1.9	3.7	1.6	68	4.1	98	106	6.1
10/31/2021	1.7	2.3	1.7	29	2.1	99	55	4.1
11/30/2021	1.7	3.9	1.7	37	2.7	98	58	4
12/31/2021	1.6	3	1.7	42	3.1	98	72	5.2
1/31/2022	1.5	1.9	1.7	41	3.3	97	66	5.6
2/28/2022	1.9	2.6	1.7	72	4.5	96	115	6.3
3/31/2022	2	2.2	1.8	91	5.5	95	152	9.6
4/30/2022	2	2.4	1.8	52	3.1	98	84	5.3
5/31/2022	1.6	3.3	1.8	31	2.4	98	34	3
6/30/2022	1.3	1.7	1.8	37	3.4	98	73	6.8

## Outfall 027

Parameter	BOD5	TSS	TSS	TSS	TSS	TSS	pH	pH
	Daily Max	Monthly Ave	Monthly Ave	Monthly Ave Min	Weekly Ave	Weekly Ave	Minimum	Maximum
Units	mg/L	lb/d	mg/L	%	lb/d	mg/L	SU	SU
Effluent Limit	Report	1400	30	85	2100	45	6	8.3
Minimum	4	12	1.1	94	15	1.4	6.07	6.81
Maximum	171	115	10.4	99	172	15.4	7.27	7.66
Median	11	39	2.95	99	56.5	4.05	6.775	7.22
No. of Violations	N/A	0	0	0	0	0	0	0
7/31/2017	17.36	43	4.3	98	71	7.9	6.71	7.12
8/31/2017	13	29	3.1	99	34	3.4	6.55	7.22
9/30/2017	171	35	3.38	99	55	4.7	6.44	7.18
10/31/2017	8.3	39	2.7	99	89	4.1	6.56	7.16
11/30/2017	9.7	51	3.6	99	71	5	6.46	7.09
12/31/2017	26.5	73	5.5	99	109	7.7	6.62	7.07
1/31/2018	18.4	87	6	98	125	6.8	6.5	7.01
2/28/2018	20	76	4.2	98	97	7.2	6.51	7.66
3/31/2018	14	65	3.5	98	84	4.7	6.41	7.14
4/30/2018	6.3	83	4.3	98	109	5	6.28	7
5/31/2018	9.7	45	2.8	99	61	3.8	6.33	6.95
6/30/2018	28.4	88	9.1	97	170	15.4	6.23	7
7/31/2018	15.9	40	3.7	99	61	4.7	6.16	7
8/31/2018	13.4	25	2.1	99	30	2.8	6.61	7.4
9/30/2018	12.9	38	2.6	99	71	4	6.46	7.08
10/31/2018	25.5	46	3	99	72	4.8	6.45	7.1
11/30/2018	12.9	100	10.4	97	117	12.5	6.31	6.98
12/31/2018	14.3	70	3.5	98	94	5	6.07	6.81
1/31/2019	16.7	80	4	98	112	5.9	6.07	7.38
2/28/2019	24.8	79	4.2	97	120	6.7	6.63	7.1
3/31/2019	14	106	6	96	172	10.3	6.42	7.04
4/30/2019	15.7	112	5.1	97	135	6.7	6.76	7.08
5/31/2019	13.7	115	5.1	97	135	5.5	6.64	7.22
6/30/2019	7.8	39	2.7	99	57	3.5	6.83	7.22
7/31/2019	13.3	51	5.2	98	78	7.3	6.8	7.17
8/31/2019	8.9	24	2.7	99	30	2.9	7.27	6.86
9/30/2019	9.7	18	2.1	99	30	3	6.95	7.24
10/31/2019	15.2	47	3.9	99	75	5.7	6.97	7.33
11/30/2019	15.7	45	3.8	98	78	7.1	6.92	7.53
12/31/2019	16.5	75	4.3	98	98	5.5	6.87	7.39
1/31/2020	26	70	4.6	98	89	5.7	6.94	7.4
2/29/2020	11	42	2.9	94	51	3.7	6.89	7.54

## Outfall 027

Parameter	BOD5	TSS	TSS	TSS	TSS	TSS	pH	pH
	Daily Max	Monthly Ave	Monthly Ave	Monthly Ave Min	Weekly Ave	Weekly Ave	Minimum	Maximum
Units	mg/L	lb/d	mg/L	%	lb/d	mg/L	SU	SU
Effluent Limit	Report	1400	30	85	2100	45	6	8.3
3/31/2020	11.3	38	2.6	98	43	2.8	6.72	7.26
4/30/2020	14.8	34	1.9	98	43	2.2	6.8	7.23
5/31/2020	14.9	56	3.9	97	63	4.4	6.81	7.11
6/30/2020	10.5	41	3.7	99	56	4.6	6.84	7.19
7/31/2020	11	32	3.3	98	44	4.5	7.05	7.29
8/31/2020	8.7	27	3.2	99	35	4.2	7.03	7.37
9/30/2020	6.8	15	1.5	99	22	2	6.99	7.3
10/31/2020	9.7	23	2.1	99	36	3	7	7.31
11/30/2020	10	24	2.1	99	40	3.2	6.77	7.46
12/31/2020	10.3	48	3.5	99	64	4.5	6.9	7.26
1/31/2021	11.2	41	2.9	97	56	3.7	6.97	7.19
2/28/2021	11	22	1.7	99	23	1.9	7.04	7.27
3/31/2021	9.6	25	1.9	99	39	2.5	6.9	7.35
4/30/2021	10.7	31	2.4	99	42	3.3	6.85	7.15
5/31/2021	6.2	36	2.5	99	48	3	6.78	7.17
6/30/2021	8.9	35	2.7	99	45	2.8	6.9	7.26
7/31/2021	7.3	71	3.5	98	110	5.5	6.81	7.17
8/31/2021	6	30	2.2	99	36	2.5	6.75	7.26
9/30/2021	9.4	24	1.4	99	25	1.6	6.73	7.31
10/31/2021	7	19	1.4	99	27	1.6	6.71	7.2
11/30/2021	4.3	25	1.8	99	29	2	6.45	7.28
12/31/2021	7	33	2.5	99	64	3.2	6.64	7.43
1/31/2022	8.8	30	2.4	99	46	3.6	6.92	7.27
2/28/2022	8.2	30	1.9	99	41	2.3	6.91	7.22
3/31/2022	10.3	36	2.2	99	49	2.9	6.82	7.27
4/30/2022	7.8	29	1.8	99	36	2.3	6.92	7.28
5/31/2022	4	20	1.5	99	34	2.3	6.91	7.26
6/30/2022	7.6	12	1.1	99	15	1.4	6.93	7.27

## Outfall 027

Parameter	E. coli	E. coli	TRC	TRC	Ammonia	Ammonia	TKN	TKN
	Daily Max	MOAV GEO	Monthly Ave	Daily Max	Monthly Ave	Daily Max	Monthly Ave	Daily Max
Units	CFU/100mL	CFU/100mL	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L
Effluent Limit	409	126	0.16	0.28	Report	Report	Report	Report
Minimum	0	0	0	0	0.64	0.7	1.5	1.7
Maximum	279	60	0	0	8.6	9.8	9.5	15
Median	5.2	1.2	0	0	1.7	2.45	3.05	4.1
No. of Violations	0	0	0	0	N/A	N/A	N/A	N/A
7/31/2017	4.4	1.9	0	0	6	9.7	8.3	13
8/31/2017	39.6	20.5	0	0	2.8	5.2	3.3	5.6
9/30/2017	125	60	0	0	6.9	9.4	7.9	13
10/31/2017	4	1.05	0	0	0.8	1.3	2.5	3.4
11/30/2017					0.7	0.84	2.8	3.4
12/31/2017					1.3	1.7	4.9	11
1/31/2018					1.46	2.9	2.7	4.1
2/28/2018					4.9	7.6	4.9	6.7
3/31/2018					2	2.5	2.5	3.2
4/30/2018	3.6	1.04	0	0	2.2	2.7	2.7	3.2
5/31/2018	0	0	0	0	1.9	2.6	3.8	5.6
6/30/2018	0.7	0	0	0	3.3	6.7	5.9	11
7/31/2018	1.6	0.98	0	0	1.7	2	3.4	4.7
8/31/2018	1.6	1.03	0	0	1.4	1.6	2.7	3.2
9/30/2018	4.4	0.528	0	0	1.4	1.9	2.2	3.4
10/31/2018	4.8	0.939	0	0	1.2	1.6	2	2.5
11/30/2018					2.1	2.5	3.3	4
12/31/2018					1.8	2.2	2.1	3
1/31/2019					2.2	3.5	3	4.1
2/28/2019					3.2	4.8	6.8	15
3/31/2019					8.6	9.8	9.5	11
4/30/2019	3.6	1.2	0	0	6.7	8.6	8.5	11
5/31/2019	74	2.28	0	0	2.2	3.7	3.1	3.7
6/30/2019	12.4	1.6	0	0	1.2	1.6	3.2	3.2
7/31/2019	7.2	1.14	0	0	0.95	1.6	2.2	3.2
8/31/2019	3.6	1.16	0	0	0.95	1.3	2.2	3.4
9/30/2019	14.8	1.6	0	0	1.3	2.5	2.2	3.2
10/31/2019	47	1.44	0	0	3.6	5.3	5.4	7.3
11/30/2019					5.5	9.8	7.8	11
12/31/2019					2.7	5.5	3.6	5.6
1/31/2020					3.6	5.8	4.7	6.4
2/29/2020					2.5	3.4	4.3	5.3

## Outfall 027

Parameter	E. coli	E. coli	TRC	TRC	Ammonia	Ammonia	TKN	TKN
	Daily Max	MOAV GEO	Monthly Ave	Daily Max	Monthly Ave	Daily Max	Monthly Ave	Daily Max
Units	CFU/100mL	CFU/100mL	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L
Effluent Limit	409	126	0.16	0.28	Report	Report	Report	Report
3/31/2020					2.3	2.9	3.7	4.3
4/30/2020	2.8	0.96	0	0	1	1.6	2.5	2.5
5/31/2020	4	1.4	0	0	1	1.2	1.5	2.5
6/30/2020	28	1.9	0	0	1.2	1.9	2.5	3.2
7/31/2020	0.8	0.308	0	0	1.1	1.4	2.4	3.4
8/31/2020	279	2.8	0	0	0.9	1.1	2.6	3.4
9/30/2020	114	1.5	0	0	1.1	1.7	2.3	3.4
10/31/2020	5.2	1.8	0	0	1.3	2.1	2.6	3.4
11/30/2020					1.7	2.3	3.9	6.7
12/31/2020					1.7	2.9	3.3	4.5
1/31/2021					1.9	2.4	3.9	5.9
2/28/2021					2.5	2.9	4	4.5
3/31/2021					2.7	4.4	4.7	5.9
4/30/2021	3.6	0.89	0	0	1.5	2.5	3.3	4.5
5/31/2021	5.2	1.01	0	0	1.2	1.6	2.9	3.2
6/30/2021	6.4	1.35	0	0	0.85	1.6	2.6	5.3
7/31/2021	36.8	5.8	0	0	0.78	0.98	2.4	3.4
8/31/2021	4.8	1.07	0	0	1.3	1.8	3	3.4
9/30/2021	6	2.7	0	0	0.64	0.84	2	2.2
10/31/2021	8	2.3	0	0	0.8	1.4	1.5	2.2
11/30/2021					0.65	0.7	1.7	2.2
12/31/2021					2	5.6	3.1	6.7
1/31/2022					2.9	4.3	3.5	4.3
2/28/2022					3.4	4.1	4.1	4.5
3/31/2022					4.7	5.6	5.3	6.2
4/30/2022	9.2	2	0	0	1.7	0.8	2.3	4.8
5/31/2022	6.4	1.09	0	0	0.9	1.4	1.5	1.7
6/30/2022	3.2	0.94	0	0	0.73	0.84	1.9	2.5

## Outfall 027

Parameter	TN	TN	Nitrate	Nitrate	Nitrite	Nitrite	TP	TP
	Monthly Ave	Daily Max	Monthly Ave	Daily Max	Monthly Ave	Daily Max	Monthly Ave	Weekly Ave
Units	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L
Effluent Limit	Report	Report	Report	Report	Report	Report	1	2
Minimum	3.3	3.7	0.49	0.65	0	0	0.12	0.32
Maximum	11.75	28.2	7.5	19	1.8	3.1	0.98	1.2
Median	6.95	8.21	2.75	3.75	0.2	0.298	0.445	0.71
No. of Violations	N/A	N/A	N/A	N/A	N/A	N/A	0	0
7/31/2017	10.51	15.58	2.4	3.2	0.41	0.58	0.45	1
8/31/2017	8.22	10.18	4.6	7.2	0.28	0.4	0.34	0.41
9/30/2017	10.9	16.36	2.7	3.8	0.43	0.56	0.57	1.2
10/31/2017	7.23	9.08	4.7	6.8	0.09	0.13	0.25	0.39
11/30/2017	7.77	8.08	4.8	4.8	0.37	0.48	0.18	
12/31/2017	9.41	15.26	3.5	3.8	0.33	0.46	0.32	
1/31/2018	8.1	12.4	3.9	6.9	1.8	2.8	0.55	
2/28/2018	11.75	28.2	5.3	19	1.7	3.1	0.33	
3/31/2018	7.04	7.96	4.4	5.2	0.16	0.33	0.33	
4/30/2018	6.53	7.51	3.8	4.2	0.08	0.11	0.42	
5/31/2018	8.74	10.52	4.7	5.7	0.18	0.47	0.48	0.61
6/30/2018	9.78	11.34	3.6	7.1	0.26	0.36	0.54	0.86
7/31/2018	10.15	16.76	6.4	13	0.31	0.4	0.61	1.16
8/31/2018	6.22	7.87	4.2	5.1	0.097	0.15	0.32	0.38
9/30/2018	8.33	9.85	6	6.6	0.1	0.234	0.53	0.57
10/31/2018	6.48	8.22	4.3	6	0.12	0.28	0.32	0.39
11/30/2018	7.42	8.54	4	5.4	0.12	0.14	0.3	
12/31/2018	7.11	7.73	4.9	5.6	0.17	0.19	0.22	
1/31/2019	6.71	8.57	3	5	1.02	1.65	0.32	
2/28/2019	9.1	16.9	0.8	0.93	1.47	2.14	0.38	
3/31/2019	11.24	12.93	0.49	0.65	1.25	1.52	0.83	
4/30/2019	10.82	12.74	0.9	1.2	1.43	1.9	0.27	
5/31/2019	8.8	15	4.7	12.9	1.24	2.11	0.54	0.94
6/30/2019	6.86	8.03	4.3	4.7	0.15	0.296	0.3	0.32
7/31/2019	9.77	15.6	7.2	13	0.371	0.507	0.55	0.64
8/31/2019	10.35	13.6	7.5	9.3	0.614	0.898	0.48	0.61
9/30/2019	9.7	17.2	6.9	14	0.991	0.987	0.22	0.32
10/31/2019	7.3	7.8	2.2	3.2	0.32	0.43	0.59	1.19
11/30/2019	10.05	12.75	1.8	2.2	0.42	0.647	0.12	
12/31/2019	7.7	8.4	3.1	4.6	0.255	0.3	0.16	
1/31/2020	7.7	9.03	2.7	3.6	0.301	0.833	0.55	
2/29/2020	7	8.1	2.7	3.6	0	0	0.33	



## Outfall 027

Parameter	TN	TN	Nitrate	Nitrate	Nitrite	Nitrite	TP	TP
	Monthly Ave	Daily Max	Monthly Ave	Daily Max	Monthly Ave	Daily Max	Monthly Ave	Weekly Ave
Units	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L
Effluent Limit	Report	Report	Report	Report	Report	Report	1	2
3/31/2020	5.6	5.9	2	2.2	0	0	0.57	
4/30/2020	4.6	5.4	2.1	2.9	0	0	0.52	
5/31/2020	3.5	4.8	2.1	2.3	0.8	1.56	0.63	0.83
6/30/2020	3.9	4.6	2	3.8	0.03	0.106	0.48	0.73
7/31/2020	5.3	11.9	3.3	9.5	0.14	0.19	0.3	0.45
8/31/2020	4.9	5.6	2.2	2.6	0.14	0.19	0.73	0.91
9/30/2020	5	5.8	2.6	3.5	0.2	0.2	0.57	0.9
10/31/2020	8.36	13.2	5.7	4.6	0.1	0.1	0.53	0.69
11/30/2020	7.3	9.3	3.2	3.7	0.18	0.22	0.57	
12/31/2020	6.5	7.7	3.1	3.8	0.2	0.23	0.53	
1/31/2021	7	9.9	3	4	0.2	0.24	0.25	
2/28/2021	6.8	8.5	2	3.4	0.8	1	0.98	
3/31/2021	6.9	8.2	0.87	0.75	1.4	1.7	0.46	
4/30/2021	5.1	6.4	1.1	1.4	0.8	1.1	0.68	
5/31/2021	5.3	5.8	2.4	2.6	0.1	0.1	0.82	0.92
6/30/2021	4.5	7.6	1.9	2.3	0	0	0.53	0.96
7/31/2021	5.1	5.9	2.6	3.5	0.11	0.11	0.48	0.63
8/31/2021	5.8	7.9	2.1	2.4	0.1	0.14	0.31	0.39
9/30/2021	3.3	3.7	1.4	1.5	0	0	0.44	1.2
10/31/2021	4	5.4	2.5	3.2	0	0	0.43	0.79
11/30/2021	4.6	6.1	2.9	3.8	0.12	0.13	0.25	
12/31/2021	5.6	8.9	2.4	2.7	0.12	0.13	0.7	
1/31/2022	6.3	7.3	2.2	2.9	0.23	0.38	0.17	
2/28/2022	5.5	6.2	0.84	1.2	0.53	0.6	0.2	
3/31/2022	6.6	7.8	0.7	1.2	0.57	0.85	0.36	
4/30/2022	4.8	7	2.5	2.9	0.03	0.11	0.36	
5/31/2022	4.2	4.9	2.8	3.4	0	0	0.36	0.48
6/30/2022	4.4	5.3	2.3	2.8	0.09	0.1	0.66	0.84

## Outfall 027

Parameter	TP	Copper	Copper	Phosphorus, ortho	Phosphorus, ortho
	Daily Max	Monthly Ave	Daily Max	Monthly Ave	Daily Max
Units	mg/L	ug/L	ug/L	lb/d	lb/d
Effluent Limit	Report	50.9	69.1	Report	Report
Minimum	0.12	0	0	0.5	0.5
Maximum	1.65	27	27	17	17
Median	0.555	0	0	5	5
No. of Violations	N/A	0	0	N/A	N/A
7/31/2017	1.05	12	12		
8/31/2017	0.58	10	10		
9/30/2017	1.59	27	27		
10/31/2017	0.47	0	0		
11/30/2017	0.18	11	11	5	5
12/31/2017	0.32	6.6	6.6	2	2
1/31/2018	0.55	10	10	5	5
2/28/2018	0.33	10	10	4.4	4.4
3/31/2018	0.33	0.005	0.005	4	4
4/30/2018	0.42	0	0		
5/31/2018	0.67	6.4	6.4		
6/30/2018	1.08	0	0		
7/31/2018	1.65	0	0		
8/31/2018	0.57	0	0		
9/30/2018	0.62	0	0		
10/31/2018	0.42	0	0		
11/30/2018	0.3	6.4	6.4	3	3
12/31/2018	0.22	0.61	0.61	5	5
1/31/2019	0.32	1.3	1.3	2.5	2.5
2/28/2019	0.38	9	9	6	6
3/31/2019	1.13	9.8	9.8	17	17
4/30/2019	0.27	9.3	9.3		
5/31/2019	0.98	0	0		
6/30/2019	0.37	0	0		
7/31/2019	0.74	0	0		
8/31/2019	0.61	0	0		
9/30/2019	0.4	0	0		
10/31/2019	1.56	0	0		
11/30/2019	0.12	0	0	0.5	0.5
12/31/2019	0.16	0	0	1	1
1/31/2020	0.55	0	0	6	6
2/29/2020	0.33	0	0	4	4

## Outfall 027

Parameter	TP	Copper	Copper	Phosphorus, ortho	Phosphorus, ortho
	Daily Max	Monthly Ave	Daily Max	Monthly Ave	Daily Max
Units	mg/L	ug/L	ug/L	lb/d	lb/d
Effluent Limit	Report	50.9	69.1	Report	Report
3/31/2020	0.57	0	0	7	7
4/30/2020	0.52	0	0		
5/31/2020	0.87	0	0		
6/30/2020	0.77	0	0		
7/31/2020	0.5	0	0		
8/31/2020	1.04	0	0		
9/30/2020	0.97	NODI: B	NODI: B		
10/31/2020	0.73	0	0		
11/30/2020	0.57	0	0	5.6	5.6
12/31/2020	0.53	0	0	6	6
1/31/2021	0.25	0	0	3	3
2/28/2021	0.98	0.01	0.01	10	10
3/31/2021	0.46	0	0	5.7	5.7
4/30/2021	0.68	0	0		
5/31/2021	1.01	0	0		
6/30/2021	1	0	0		
7/31/2021	0.63	0	0		
8/31/2021	0.4	0	0		
9/30/2021	1.26	0	0		
10/31/2021	0.8	0	0		
11/30/2021	0.25	0	0	3	3
12/31/2021	0.7	0	0	9	9
1/31/2022	0.17	0	0	2	2
2/28/2022	0.2	0	0	3	3
3/31/2022	0.36	0	0	5	5
4/30/2022	0.36	0	0		
5/31/2022	0.56	0	0		
6/30/2022	0.98	0	0		

## WET Effluent

Parameter	LC50 Acute Ceriodaphnia	Ammonia	Aluminum	Cadmium	Copper	Lead	Nickel	Zinc	Hardness
	Daily Min	Daily Max	Daily Max	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	mg/L	mg/L
Effluent Limit	100	Report	Report	Report	Report	Report	Report	Report	Report
Minimum	100	0.53	0.053	0	0.0031	0	0	0.026	42
Maximum	100	4.5	0.27	0	0.019	0.023	0	0.05	68
Median	100	1.9	0.13	Non-Detect	0.0063	Non-Detect	Non-Detect	0.035	56.5
No. of Violations	0	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
8/31/2017	100	4.5	0.13	<0.0002	0.019	0.00059	<0.005	0.026	42
2/28/2018	100	3.3	0.2	<0.0002	0.0076	0.023	<0.005	0.035	54
8/31/2018	100	1.9	0.055	<0.0002	0.0034	0.0006	<0.005	0.028	57
2/28/2019	100	1.9	0.15	<0.0002	0.0058	<0.0005	<0.005	0.036	51
8/31/2019	100	0.53	0.11	<0.0002	0.0063	<0.0005	<0.005	0.035	59
2/29/2020	100	3.4	0.27	<0.0002	0.0087	<0.0005	<0.005	0.031	58
8/31/2020	100	1.3	0.084	<0.0002	0.0043	<0.0005	<0.005	0.05	68
2/28/2021	100	3.1	0.2	<0.0002	0.0096	<0.0005	<0.005	0.037	57
8/31/2021	100	0.56	0.053	<0.0002	0.0031	<0.0005	<0.0005	0.031	56
2/28/2022	100								51

## WET Ambient

Parameter	pH	Ammonia	Aluminum	Cadmium	Copper	Lead	Nickel	Zinc	Hardness
Units	SU	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L
Minimum	6.4	0	0	0	0	0	0	0	11
Maximum	7.6	0.53	0.084	0.00021	0.0011	0.00079	0	0.02	20
Median	6.95	Non-Detect	0.064	Non-Detect	Non-Detect	Non-Detect	Non-Detect	Non-Detect	17.5
8/31/2017	7.1	<0.3	0.071	0.00021	<0.001	0.00062	<0.005	0.02	13
2/28/2018	6.7	<0.3	0.075	<0.0002	<0.001	<0.0005	<0.005	<0.02	17
8/31/2018	7.3	<0.3	0.084	<0.0002	0.0011	0.00079	<0.005	<0.02	20
2/28/2019	6.4	<0.3	<0.05	<0.0002	<0.001	<0.0005	<0.005	<0.02	11
8/31/2019	7.3	<0.3	0.061	<0.0002	<0.001	<0.0005	<0.005	<0.01	18
2/29/2020	6.9	<0.3	0.076	<0.0002	<0.001	<0.0005	<0.005	<0.01	20
8/31/2020	7.6	0.53	<0.05	<0.0002	<0.001	<0.0005	<0.005	<0.01	16
2/28/2021	7	<0.3	0.056	<0.0002	<0.001	<0.001	<0.005	<0.01	18
8/31/2021	6.9	<0.3	0.064	<0.0002	<0.001	<0.001	<0.005	<0.01	18
2/28/2022	6.9								15

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)*<sup>1</sup> 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 95<sup>th</sup> 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<sub>s</sub> = upstream concentration (median value of available ambient data)
- Q<sub>s</sub> = upstream flow (7Q10 flow upstream of the outfall)
- C<sub>e</sub> = effluent concentration (95<sup>th</sup> percentile or maximum of effluent concentration)
- Q<sub>e</sub> = effluent flow of the facility (design flow)
- C<sub>d</sub> = downstream concentration
- Q<sub>d</sub> = downstream flow (Q<sub>s</sub> + Q<sub>e</sub>)

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<sub>d</sub>) and the effluent concentration (C<sub>e</sub>) 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

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 ( $C_e$ ).

For any pollutant(s) with an existing WQBEL, EPA notes that the analysis described in 40 CFR § 122.44(d)(1)(i) has already been conducted in a previous permitting action demonstrating that there is reasonable potential to cause or contribute to an excursion of WQS. Given that the permit already contains a WQBEL based on the prior analysis and the pollutant(s) continue to be discharged from the facility, EPA has determined that there is still reasonable potential for the discharge of this pollutant(s) to cause or contribute to an excursion of WQS. Therefore, the WQBEL will be carried forward unless it is determined that a more stringent WQBEL is necessary to continue to protect WQS or that a less stringent WQBEL is allowable based on anti-backsliding regulations at CWA §§ 402(o) and 303(d)(4) and 40 CFR § 122.44(l). For these pollutant(s), if any, the mass balance calculation is not used to determine whether there is reasonable potential to cause or contribute to an excursion of WQS, but rather is used to determine whether the existing limit needs to be more stringent in order to continue to protect WQS.

From a technical standpoint, when a pollutant is already being controlled as a result of a previously established WQBEL, EPA has determined that it is not appropriate to use new effluent data to reevaluate the need for the existing limit because the reasonable potential to cause or contribute to an excursion of WQS for the uncontrolled discharge was already established in a previous permit. If EPA were to conduct such an evaluation and find no reasonable potential for the controlled discharge to cause or contribute to an excursion of WQS, that finding could be interpreted to suggest that the effluent limit should be removed. However, the new permit without the effluent limit would imply that existing controls are unnecessary, that controls could be removed and then the pollutant concentration could rise to a level where there is, once again, reasonable potential for the discharge to cause or contribute to an excursion of WQS. This could result in an illogical cycle of applying and removing pollutant controls with each permit reissuance. EPA's technical approach on this issue is in keeping with the Act generally and the NPDES regulations specifically, which reflect a precautionary approach to controlling pollutant discharges.

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.

**Appendix B – Reasonable Potential and Limits Calculations**

**NPDES Permit No. MA0101168**

Pollutant	Conc. Units	Q <sub>s</sub> (MGD)	C <sub>s</sub> <sup>1</sup>	Q <sub>e</sub> (MGD)	C <sub>e</sub> <sup>2</sup>		Q <sub>d</sub> (MGD)	C <sub>d</sub>		Criteria		Reasonable Potential		Limits	
					Acute	Chronic		Acute	Chronic	Acute	Chronic	C <sub>e</sub> & C <sub>d</sub> > Acute Criteria	C <sub>e</sub> & C <sub>d</sub> > Chronic Criteria	Acute	Chronic
Aluminum	µg/L	76.68	64	5.6	270.0	270.0	82.28	78.0	78.0	290.0	170.0	N	N	N/A	N/A
Cadmium	µg/L	76.68	0	5.6	0.0	0.0	82.28	0.0	0.0	0.4	0.2	N	N	N/A	N/A
Copper	µg/L	76.68	0	5.6	69.1	50.9	82.28	4.7	3.5	3.1	2.4	<b>Y</b>	<b>Y</b>	<b>45.5</b>	<b>34.9</b>
Lead	µg/L	76.68	0	5.6	23.0	23.0	82.28	1.6	1.6	10.6	0.4	N	<b>Y</b>	N/A	<b>6.1</b>
Nickel	µg/L	76.68	0	5.6	0.0	0.0	82.28	0.0	0.0	121.0	13.5	N	N	N/A	N/A
Zinc	µg/L	76.68	0	5.6	50.0	50.0	82.28	3.4	3.4	30.8	30.8	N	N	N/A	N/A
Ammonia (Cold)	mg/L	76.68	0	5.6	6.1	6.1	82.28	0.4	0.4	25.1	4.4	N	N	N/A	N/A
Ammonia (Warm)	mg/L	76.68	0	5.6	4.1	4.1	82.28	0.3	0.3	11.6	1.4	N	N	N/A	N/A
Phosphorus	mg/L	76.68	0.033	5.6	N/A	1.0	82.28	N/A	0.10	N/A	0.1	N	<b>Y</b>	N/A	<b>1.0</b>

<sup>1</sup>Median 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).

<sup>2</sup>Values represent the 95<sup>th</sup> percentile (for n ≥ 10) or maximum (for n < 10) concentrations from the DMR data and/or WET testing data during the review period. If the pollutant already has a WQBEL (for either acute or chronic conditions), the value represents the existing limit.



APPENDIX C

NH, VT, MA Nitrogen Discharges to Long Island Sound Watershed

Summary of Massachusetts Out-Of-Basin Wastewater Treatment Plant and Industrial Discharger Total Nitrogen Effluent Data

Permit #	Name	Type	Design Flow (MGD)	2014-2018 Avg Flow (MGD)	2014 Average Load (lb/day)	2015 Average Load (lb/day)	2016 Average Load (lb/day)	2017 Average Load (lb/day)	2018 Average Load (lb/day)	2014-2018 Avg Load (lb/day)
<b>Total Massachusetts Out-of-Basin Load</b>			<b>262</b>	<b>146</b>	<b>11,528</b>	<b>11,215</b>	<b>9,767</b>	<b>10,557</b>	<b>10,631</b>	<b>10,740</b>
<b>Total Massachusetts Connecticut River Load</b>			<b>179.6</b>	<b>98</b>	<b>9,184</b>	<b>8,945</b>	<b>7,695</b>	<b>8,390</b>	<b>8,341</b>	<b>8,511</b>
MA0101613	SPRINGFIELD REGIONAL WTP	POTW	67.00	36.26	2,303	2,377	1,643	1,953	1,684	1,992
MA0101508	CHICOPEE WPC	POTW	15.50	7.83	2,220	2,092	1,854	1,872	1,895	1,987
MA0101630	HOLYOKE WPCF	POTW	17.50	8.05	584	644	687	747	593	651
MA0101214	GREENFIELD WPCF	POTW	3.20	3.23	436	467	460	386	482	446
MA0100994	GARDNER WWTF	POTW	5.00	2.89	413	470	377	455	404	424
MA0101818	NORTHAMPTON WWTP	POTW	8.60	3.85	489	412	355	393	453	420
MA0100218	AMHERST WWTP	POTW	7.10	3.76	456	411	335	342	377	384
MA0100455	SOUTH HADLEY WWTF	POTW	4.20	2.37	393	325	288	364	315	337
MA0101478	EASTHAMPTON WWTP	POTW	3.80	3.44	202	186	262	329	639	324
MA0101800	WESTFIELD WWTP	POTW	6.10	2.88	276	225	221	189	211	224
MA0110264	AUSTRALIS AQUACULTURE, LLC	IND	0.30	0.13	149	138	116	107	74	117
MA0101168	PALMER WPCF	POTW	5.60	1.47	142	92	84	100	125	109
MA0100137	MONTAGUE WWTF	POTW	1.80	0.84	107	78	55	215	78	107
MA0100099	HADLEY WWTP	POTW	0.54	0.38	73	76	65	109	67	78
MA0100889	WARE WWTP	POTW	1.00	0.55	62	89	87	72	78	77
MA0101257	ORANGE WWTP	POTW	1.10	0.98	72	62	58	91	91	75
MA0003697	BARNHARDT MANUFACTURING	IND	0.89	0.33	58	78	49	54	96	67
MA0103152	BARRE WWTF	POTW	0.30	0.19	77	81	50	50	49	61
MA0101567	WARREN WWTP	POTW	1.50	0.26	45	42	124	38	55	61
MA0000469	SEAMAN PAPER OF MASSACHUSETTS	IND	1.10	0.83	26	97	53	62	46	57
MA0100005	ATHOL WWTF	POTW	1.75	0.79	76	56	40	39	44	51
MA0101061	NORTH BROOKFIELD WWTP	POTW	0.62	0.32	62	51	40	47	50	50
MA0110043	MCLAUGHLIN STATE TROUT HATCHERY	IND	7.50	7.12	39	44	43	41	37	41
MA0100919	SPENCER WWTP	POTW	1.08	0.35	28	33	31	29	71	38

NH, VT, MA Nitrogen Discharges to Long Island Sound Watershed

Summary of Massachusetts Out-Of-Basin Wastewater Treatment Plant and Industrial Discharger Total Nitrogen Effluent Data

Permit #	Name	Type	Design Flow (MGD)	2014-2018 Avg Flow (MGD)	2014 Average Load (lb/day)	2015 Average Load (lb/day)	2016 Average Load (lb/day)	2017 Average Load (lb/day)	2018 Average Load (lb/day)	2014-2018 Avg Load (lb/day)
MA0100862	WINCHENDON WPCF	POTW	1.10	0.50	25	33	29	48	40	35
MA0101290	HATFIELD WWTF	POTW	0.50	0.17	51	37	28	28	27	34
MA0101052	ERVING WWTP #2	POTW	2.70	1.78	35	38	38	33	25	34
MA0100340	TEMPLETON WWTF	POTW	2.80	0.27	19	35	18	21	35	26
MAG580004	SOUTH DEERFIELD WWTP	POTW	0.85	0.37	15	33	18	18	27	22
MA0040207	CHANG FARMS INC	IND	0.65	0.22	22	15	34	20	20	22
MA0110035	MCLAUGHLIN/SUNDERLAND STATE FISH HATCHERY	IND	2.10	2.16	25	22	19	20	25	22
MA0102148	BELCHERTOWN WRF	POTW	1.00	0.36	61	13	11	11	5.6	20
MAG580002	SHELBURNE WWTF	POTW	0.25	0.16	15	13	17	17	21	17
MAG580005	SUNDERLAND WWTF	POTW	0.50	0.17	20	12	13	10	9.3	13
MAG580001	OLD DEERFIELD WWTP	POTW	0.25	0.068	13	14	13	12	12	13
MA0110051	MCLAUGHLIN/BITZER STATE TROUT HATCHERY	IND	1.43	1.70	23	12	12	8.2	8.2	13
MA0032573	NORTHFIELD MT HERMON SCHOOL WWTP	POTW	0.45	0.072	22	7.6	15	10	10	13
MA0100102	HARDWICK WPCF	POTW	0.23	0.12	8.2	5.9	13	4.3	17	10
MA0100200	NORTHFIELD WWTF	POTW	0.28	0.080	3.8	6.8	6.5	10	14	8.1
MA0101516	ERVING WWTP #1	POTW	1.02	0.14	7.2	6.1	3.7	10	7.5	6.9
MA0102776	ERVING WWTP #3	POTW	0.010	0.0049	6.1	2.9	6.9	8.0	7.5	6.3
MA0102431	HARDWICK WWTP	POTW	0.040	0.016	7.4	1.5	11	6.9	2.3	5.9
MAG580003	CHARLEMONT WWTF	POTW	0.050	0.016	7.5	4.2	4.8	4.8	4.8	5.2
MA0101265	HUNTINGTON WWTP	POTW	0.20	0.067	4.6	4.1	5.6	4.3	5.2	4.7
MA0100188	MONROE WWTF	POTW	0.020	0.013	<u>1.4</u>	1.4	1.2	2.3	1.7	1.6
MA0000272	PAN AM RAILWAYS YARD	IND	0.015	0.011	0.06	0.13	0.12	0.47	0.18	0.19
MA0001350	LS STARRETT PRECISION TOOLS	IND	0.025	0.014	0.03	0.0	0.08	0.07	0.04	0.05
MA0100161	ROYALSTON WWTP	POTW	0.039	0.01298	<u>0.9</u>	0.49	0.43	0.49	0.60	0.59
<b>Total Massachusetts Housatonic Load</b>			<b>29.4</b>	<b>18</b>	<b>1,667</b>	<b>1,605</b>	<b>1,509</b>	<b>1,612</b>	<b>1,707</b>	<b>1,626</b>
MA0101681	PITTSFIELD WWTF	POTW	17.00	10.55	1,179	1,176	1,145	1,245	1,319	1,213
MA0000671	CRANE WWTP	POTW	3.10	3.07	155	142	108	116	107	126

NH, VT, MA Nitrogen Discharges to Long Island Sound Watershed

Summary of Massachusetts Out-Of-Basin Wastewater Treatment Plant and Industrial Discharger Total Nitrogen Effluent Data

Permit #	Name	Type	Design Flow (MGD)	2014-2018 Avg Flow (MGD)	2014 Average Load (lb/day)	2015 Average Load (lb/day)	2016 Average Load (lb/day)	2017 Average Load (lb/day)	2018 Average Load (lb/day)	2014-2018 Avg Load (lb/day)
MA0101524	GREAT BARRINGTON WWTF	POTW	3.20	0.97	110	120	100	99	124	111
MA0100935	LENOX CENTER WWTF	POTW	1.19	0.61	49	67	59	71	78	65
MA0001848	ONYX SPECIALTY PAPERS INC - WILLOW MILL	IND	1.10	0.94	51	39	44	33	22	38
MA0005011	PAPERLOGIC TURNERS FALLS MILL(6)	IND	0.70	0.73	85	17	12	6.5	Term	30
MA0100153	LEE WWTF	POTW	1.25	0.64	18	17	14	15	35	20
MA0101087	STOCKBRIDGE WWTP	POTW	0.30	0.15	10	15	16	13	10	13
MA0103110	WEST STOCKBRIDGE WWWTF	POTW	0.076	0.014	<u>5.3</u>	<u>3.8</u>	4.3	5.0	3.7	4.4
MA0001716	MEADWESTVACO CUSTOM PAPERS LAUREL MILL	IND	1.5	0.34	4.3	7.9	5.7	7.2	7.8	6.6
<b>Total Massachusetts Thames River Load</b>			<b>11.8</b>	<b>6</b>	<b>677</b>	<b>666</b>	<b>564</b>	<b>556</b>	<b>583</b>	<b>609</b>
MA0100439	WEBSTER WWTF	POTW	6.00	2.97	389	393	328	292	344	349
MA0100901	SOUTHBRIDGE WWTF	POTW	3.77	1.97	<u>178</u>	149	154	151	130	152
MA0101141	CHARLTON WWTF	POTW	0.45	0.21	40	75	41	68	70	59
MA0100421	STURBRIDGE WPCF	POTW	0.75	0.51	44	21	18	19	20	24
MA0101796	LEICESTER WATER SUPPLY WWTF	POTW	0.35	0.19	24	27	22	26	19	24
MA0100170	OXFORD ROCHDALE WWTP	POTW	0.50	0.24	2.4	1.0	0.23	0.57	0.49	0.9

NOTES:

- 1) *italics* = estimated load based on average conc & flow from other years, or if no data for any years, assumed concentration of 19.6 mg/L.
- 2) The loads represent annual totals, based on annual daily average flow and daily average nitrogen concentration.
- 3) Term = Permit was terminated in that year
- 4) This summary only includes POTWs and Industrial sources for which there was nitrogen monitoring at the outfalls for treated effluent and/or process wastewater.

NH, VT, MA Nitrogen Discharges to Long Island Sound Watershed

Summary of New Hampshire Out-Of-Basin Wastewater Treatment Plant and Industrial Discharger Total Nitrogen Effluent Data

Permit #	Name	Type	Design Flow (MGD)	2014-2018 Avg Flow (MGD)	2014 Average Load (lb/day)	2015 Average Load (lb/day)	2016 Average Load (lb/day)	2017 Average Load (lb/day)	2018 Average Load (lb/day)	2014-2018 Avg Load (lb/day)
<b>Total New Hampshire Out-of-Basin Load</b>			<b>31.5</b>	<b>18.6</b>	<b>1,662</b>	<b>1,457</b>	<b>1,370</b>	<b>1,555</b>	<b>1,154</b>	<b>1,440</b>
NH0000621	BERLIN STATE FISH HATCHERY	IND	6.1	6.30	8.8	13	13	15	8.7	12
NH0000744	NH DES (TWIN MTN STATE FISH HATCHERY)	IND	1.0	0.78	2.0	5.8	6.2	5.5	5.1	4.9
NH0100099	HANOVER WWTF	POTW	2.3	1.30	<u>341</u>	<u>341</u>	313	350	361	341
NH0100145	LANCASTER WWTF	POTW	1.2	0.79	84	78	45	72	63	68
NH0100153	LITTLETON WWTP	POTW	1.5	0.69	32	36	24	31	45	34
NH0100200	NEWPORT WWTF	POTW	1.3	0.59	97	63	80	80	79	80
NH0100366	LEBANON WWTF	POTW	3.2	1.49	<u>136</u>	<u>136</u>	132	127	152	137
NH0100382	HINSDALE WWTP	POTW	0.3	0.19	<u>18</u>	17	11	20	16	16
NH0100510	WHITEFIELD WWTF	POTW	0.2	0.08	35	22	15	18	24	23
NH0100544	SUNAPEE WWTF	POTW	0.6	0.40	<u>32</u>	<u>32</u>	<u>32</u>	50	33	35
NH0100765	CHARLESTOWN WWTP	POTW	1.1	0.28	22	13	12	19	22	17
NH0100790	KEENE WWTF	POTW	6.0	2.89	<u>533</u>	<u>397</u>	<u>394</u>	<u>452</u>	<u>40</u>	363
NH0101052	TROY WWTF	POTW	0.3	0.08	23	15	12	13	25	18
NH0101150	WEST SWANZEY WWTP	POTW	0.2	0.07	6.1	6.4	7.8	7.8	15	8.7
NH0101168	MERIDEN VILLAGE WATER DISTRICT	POTW	0.1	0.03	0.53	2.5	1.4	2.9	1.3	1.7
NH0101257	CLAREMONT WWTF	POTW	3.9	1.51	<u>161</u>	<u>161</u>	<u>161</u>	163	146	158
NH0101392	BETHLEHEM VILLAGE WWTP (1)	POTW	0.3	0.21	25	26	25	29	25	26
NHG580226	GROVETON WWTP	POTW	0.4	0.12	18	13	10	12	14	13
NHG580315	COLEBROOK WWTP	POTW	0.5	0.22	26	23	21	31	31	26
NHG580391	CHESHIRE COUNTY MAPLEWOOD NURSING HOME	POTW	0.040	0.02	2.1	1.6	1.3	1.5	1.3	1.5
NHG580404	WINCHESTER WWTP	POTW	0.28	0.14	6.1	11	3.9	13	8.3	8.3
NHG580421	LISBON WWTF	POTW	0.3	0.12	26	23	19	17	17	20
NHG580536	STRATFORD VILLAGE SYSTEM	POTW	0.1	0.01	2.2	1.9	3.9	2.5	2.8	2.7
NHG580978	WOODSVILLE WWTF	POTW	0.3	0.19	22	15	19	19	13	18
NHG581206	NORTHUMBERLAND VILLAGE WPCF	POTW	0.1	0.04	2.7	3.3	3.5	2.6	3.1	3.0
NHG581214	STRATFORD-MILL HOUSE	POTW	0.0	0.01	1.4	1.5	2.2	1.8	2.3	1.8
NHG581249	LANCASTER GRANGE WWTP	POTW	0.0	0.00	0.45	0.53	0.45	0.49	0.44	0.47

NOTES:

- 1) *italics* = estimated load based on average conc & flow from other years, or if no data for any years, assumed concentration of 19.6 mg/L.
- 2) The loads represent annual totals, based on annual daily average flow and daily average nitrogen concentration.
- 3) Term = Permit was terminated in that year
- 4) This summary only includes POTWs and Industrial sources for which there was nitrogen monitoring at the outfalls for treated effluent and/or process wastewater.

NH, VT, MA Nitrogen Discharges to Long Island Sound Watershed

Summary of Vermont Out-Of-Basin Wastewater Treatment Plant and Industrial Discharger Total Nitrogen Effluent Data

Permit #	Name	Type	Design Flow (MGD)	2014-2018 Avg Flow (MGD)	2014 load (lb/day)	2015 load (lb/day)	2016 load (lb/day)	2017 load (lb/day)	2018 load (lb/day)	2014-2018 Avg Load (lb/day)
<b>Total Vermont Out-of-Basin Load</b>			<b>18.3</b>	<b>7.8</b>	<b>1,273</b>	<b>1,255</b>	<b>1,146</b>	<b>1,221</b>	<b>1,421</b>	<b>1,263</b>
VT0000019	WEIDMANN ELECTRICAL TECHNOLOGY INC	IND	0.25	0.15	2.4	1.4	1.4	1.2	1.7	1.6
VT0000108	PUTNEY PAPER COMPANY MILL & LAGOONS	IND	0.28	0.16	22	26	20	22	17	22
VT0000248	FIBERMARK	IND	2.00	1.06	117	82	89	106	92	97
VT0100013	BELLOWS FALLS WWTF	POTW	1.40	0.44	136	136	136	102	179	138
VT0100048	BETHEL	POTW	0.13	0.06	10.4	4.0	2.4	6.5	3.5	5.4
VT0100064	BRATTLEBORO WWTF	POTW	3.01	1.27	487	487	446	501	421	469
VT0100081	CHESTER MTP	POTW	0.19	0.16	16	5.0	4.5	5.6	7.6	7.6
VT0100145	LUDLOW WWTF	POTW	0.71	0.37	35	27	35	41	42	36
VT0100277	PUTNEY	POTW	0.09	0.05	16	16	11	16	21	16
VT0100285	RANDOLPH	POTW	0.41	0.17	23	23	21	20	28	23
VT0100374	SPRINGFIELD WWTF	POTW	2.20	0.98	133	133	133	120	130	130
VT0100447	WINDSOR-WESTON HEIGHTS	POTW	0.02	0.01	0.40	0.53	1.2	0.88	1.0	0.8
VT0100579	ST JOHNSBURY	POTW	1.60	0.83	34	23	13	24	146	48
VT0100595	LYNDON WWTP	POTW	0.76	0.15	21	21	16	24	21	20
VT0100625	CANAAN MTP	POTW	0.19	0.10	17	15	16	19	17	17
VT0100633	DANVILLE WPCF	POTW	0.07	0.03	2.9	3.5	7.6	4.4	4.3	4.5
VT0100706	WILMINGTON WWTP	POTW	0.15	0.08	3.8	15.9	10.0	4.7	17.2	10
VT0100731	READSBORO WPC	POTW	0.76	0.04	3.6	3.2	2.8	3.8	4.0	3.5
VT0100749	S. WOODSTOCK WWTF	POTW	0.06	0.01	1.9	1.9	0.7	1.2	3.9	1.9
VT0100757	WOODSTOCK WWTP	POTW	0.46	0.22	25	23	24	26	22	24
VT0100765	WOODSTOCK - TAFTSVILLE	POTW	0.02	0.00	0.32	0.24	0.20	0.55	0.87	0.44
VT0100803	BRADFORD WPCP	POTW	0.15	0.08	9.1	9.1	7.7	9.4	8.5	8.8
VT0100846	BRIDGEWATER WWTF	POTW	0.05	0.01	1.1	0.91	1.0	1.1	1.1	1.1
VT0100854	ROYALTON WWTF	POTW	0.08	0.02	5.2	4.6	4.7	7.7	5.0	5.4
VT0100862	CAVENDISH WWTF	POTW	0.16	0.06	15	10	9	11	15	12
VT0100919	WINDSOR WWTF	POTW	1.13	0.25	69	69	66	65	71	68
VT0100943	CHELSEA WWTF	POTW	0.07	0.02	8.2	8.2	4.8	8.9	9.9	8.0
VT0100951	RYEGATE FIRE DEPARTMENT .#2	POTW	0.01	0.00	0.55	1.1	1.9	2.1	0.76	1.3
VT0100978	HARTFORD - QUECHEE	POTW	0.31	0.22	24	53	12	12	10	22
VT0101010	HARTFORD WWTF	POTW	1.23	0.61	11	31	30	34	89	39
VT0101044	WHITINGHAM(JACKSONVILLE)	POTW	0.06	0.02	3.2	3.5	3.4	2.8	3.1	3.2
VT0101061	LUNENBURG FIRE DISTRICT #2	POTW	0.09	0.06	7.6	6.9	5.6	3.2	7.8	6.2
VT0101109	WHITINGHAM	POTW	0.02	0.01	1.2	1.4	1.5	1.2	3.0	1.7
VT0101141	SHERBURNE WPCF	POTW	0.31	0.08	8.9	8.3	7.7	10	16	10

NOTES:

- 1) *italics* = estimated load based on average conc & flow from other years, or if no data for any years, assumed concentration of 19.6 mg/L.
- 2) The loads represent annual totals, based on annual daily average flow and daily average nitrogen concentration.
- 3) Term = Permit was terminated in that year
- 4) This summary only includes POTWs and Industrial sources for which there was nitrogen monitoring at the outfalls for treated effluent and/or process wastewater.

## Appendix D

### 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."<sup>1</sup>

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

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<sup>1</sup> 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* 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).<sup>2</sup> 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?

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<sup>2</sup> 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](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).<sup>3</sup> The purpose of these systems is

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<sup>3</sup> 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

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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.<sup>4</sup>

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

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<sup>4</sup> 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).

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. Additionally, these excess flows stressed POTW treatment plants from a hydraulic capacity and performance standpoint, adversely impacting effluent quality. *See Exhibit B* (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.<sup>5</sup> 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).<sup>6</sup> 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 36 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 36 permits include a total of 81 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.

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<sup>5</sup> 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.

<sup>6</sup> 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).<sup>7</sup>

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<sup>7</sup> “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.<sup>8</sup>

(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

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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."

<sup>8</sup> 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.<sup>9</sup>

*(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.<sup>10</sup>

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<sup>9</sup> 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).

<sup>10</sup> 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.”

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**Exhibit A**

<b>Permit Number</b>	<b>Permittee</b>	<b>Co-permittees</b>	<b>Issue Date with Co-permittees</b>
MA0100404	Massachusetts Water Resources Authority – Clinton	Town of Clinton Lancaster Sewer District	September 27, 2000
MA0101010	City of Brockton	Town of Abington Town of Whitman	May 11, 2005
MA0100412	Westborough Wastewater Treatment Plant	Town of Westborough Town of Shrewsbury Town of Hopkinton	May 20, 2005
MA0100480	City of Marlborough	Town of Northborough	May 26, 2005
MA0100447	Greater Lawrence Sanitary District	City of Lawrence, Town of Andover, Town of North Andover, Town of Methuen, Town of Salem, NH	August 11, 2005
MA0100633	Lowell Regional Wastewater Utilities	Town of Chelmsford, Town of Dracut Town of Tewksbury Town of Tyngsborough	September 1, 2005
MA0100064	Pepperell Wastewater Treatment Plant	Town of Groton	December 22, 2005
MA0100439	Town of Webster Sewer Department	Town of Dudley	March 24, 2006
MA0100455	Town of South Hadley, Board of Selectmen	Town of Granby, Town of Chicopee	June 12, 2006
MA0100617	City of Leominster (NPDES Permit No. MA0100617)	Town of Lunenburg Town of Lancaster	September 28, 2006
MA0100510	Hoosac Water Quality District	Town of Williamstown Town of North Adams Town of Clarksburg	September 28, 2006
MA0101036	Board of Public Works, North Attleborough	Town of Plainville	January 4, 2007
NH0100544	Town of Sunapee	New London Sewer Commission	February 21, 2007
MA0100552	Lynn Water and Sewer Commission (NPDES Permit No. MA0100552)	Town of Nahant Town of Swampscott Town of Saugus	March 3, 2007
NH0100331	City of Concord	Boscawen Board of Selectmen	June 29, 2007

<b>Permit Number</b>	<b>Permittee</b>	<b>Co-permittees</b>	<b>Issue Date with Co-permittees</b>
NH0100790	City of Keene (NPDES Permit No. NH0100790)	Town of Marlborough, NH Swanzy Sewer Commission	August 24, 2007
NH0100625	Town of Hampton	Rye Sewer Commission	August 28, 2007
NH0100161	Town of Merrimack, NH	Town of Bedford	September 25, 2007
MA0101621	City of Haverhill	Town of Groveland	December 5, 2007
MA0101681	City of Pittsfield, Department of Public Works	Town of Dalton Town of Lenox Town of Hinsdale Town of Lanesborough Town of Richmond	August 22, 2008
NH0100447	City of Manchester	Town of Goffstown Town of Bedford Town of Londonderry	September 25, 2008
MA0100781	City of New Bedford	Town of Acushnet Town of Dartmouth	September 28, 2008
MA0101818	City of Northhampton	Town of Williamsburg	September 30, 2008
NH0100960	Winnepesaukee River Basin Program Wastewater Treatment Plant	Town of Belmont Town of Center Harbor City of Franklin Town of Gilford City of Laconia Town of Meredith Town of Northfield Town of Tilton	June 19, 2009
MA0101800	City of Westfield	Town of Southwick	September 30, 2009
MA0101231	Hull Permanent Sewer Commission	Cohasset Sewer Commission Hingham Sewer Commission	September 1, 2009
MA0100994	Gardner Department of Public Works	Town of Ashburnham	September 30, 2009
MA0102598	Charles River Pollution Control District	Town of Franklin Town of Medway Town of Millis Town of Bellingham	July 23, 2014
MA0101702	MFN Region Wastewater District	Town of Mansfield Town of Norton Town of Foxboro	September 11, 2014

<b>Permit Number</b>	<b>Permittee</b>	<b>Co-permittees</b>	<b>Issue Date with Co-permittees</b>
MA0100897	Taunton Wastewater Treatment Plant	Town of Raynham	April 10, 2015
		Town of Dighton	
NH0100366	City of Lebanon, NH	Town of Enfield	September 30, 2015
NH0100099	Town of Hanover, NH	City of Lebanon	November 18, 2015
MA0100501	South Essex Sewerage District	City of Beverly, Town of Danvers Town of Marblehead City of Peabody City of Salem	May 5, 2016
NH0100471	Town of Milford, NH	Town of Wilton Sewer Commission	August 31, 2020
MA0101613	Springfield Regional Wastewater Treatment Facility	Town of Agawam Town of East Longmeadow Town of Longmeadow Town of Ludlow Town of West Springfield Town of Wilbraham	September 30, 2020
NH0101390	Town of Allenstown, NH	Town of Pembroke Sewer Commission	November 29, 2021
NH0100901	Town of Concord - Concord Hall Street Wastewater Treatment Facility	Town of Bow	July 1, 2022
MAG590000	2022 Medium Wastewater Treatment Facilities General Permit	(as authorized)	September 28, 2022

## 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

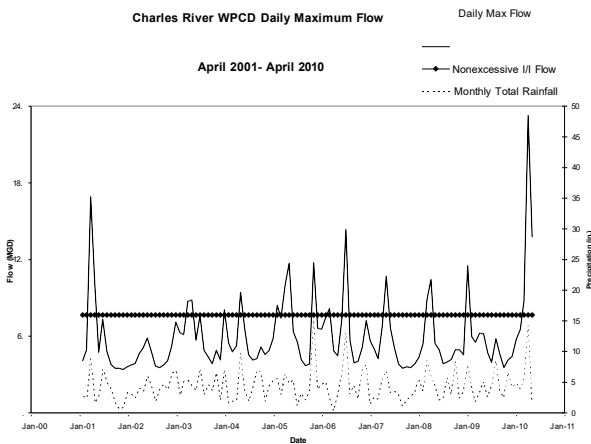
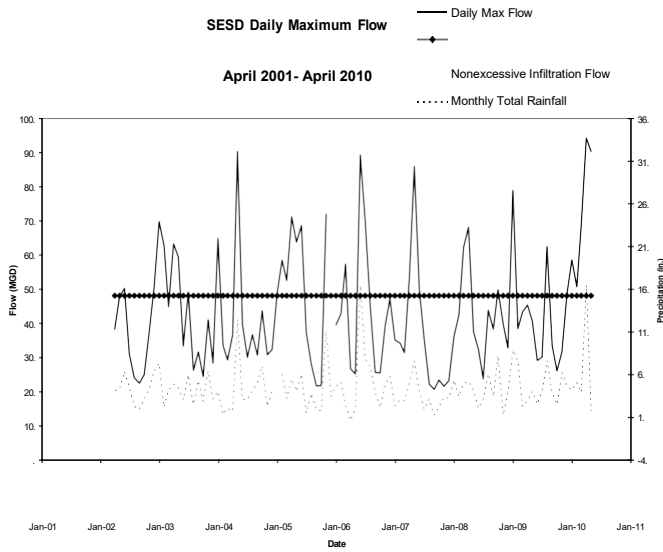


Figure 2. SESD Daily Maximum Flow Compared to Nonexcessive I/I Standard



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

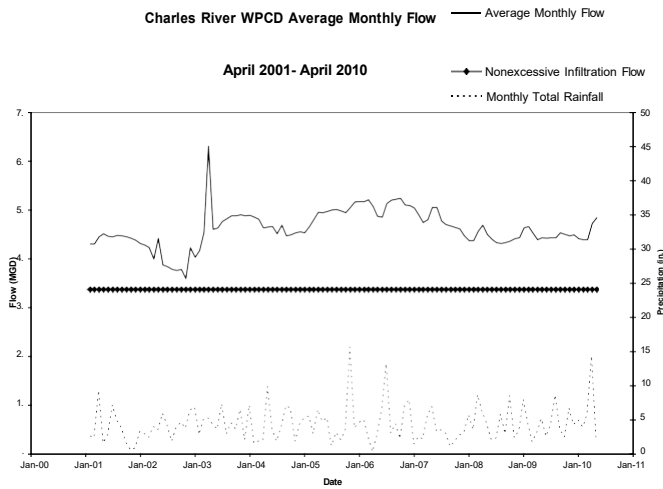
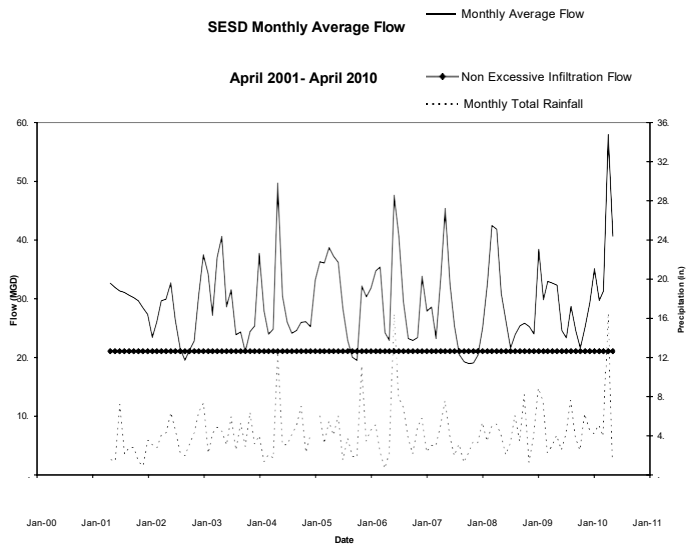


Figure 4. SESD Monthly Average Flow Compared to Nonexcessive Infiltration Standard



## 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

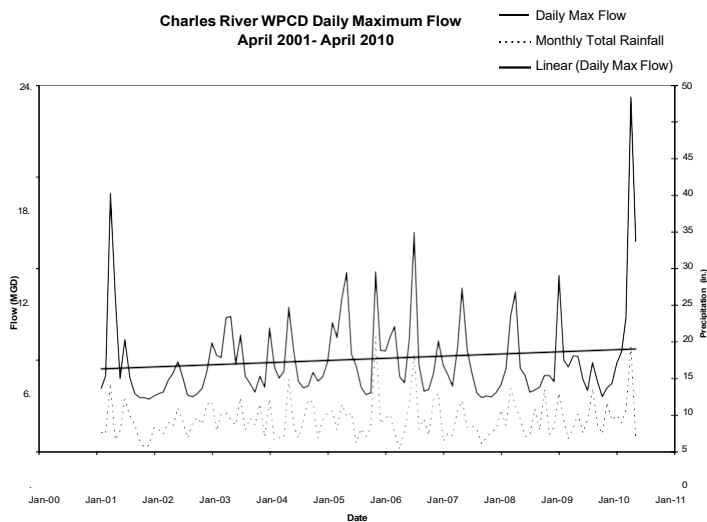
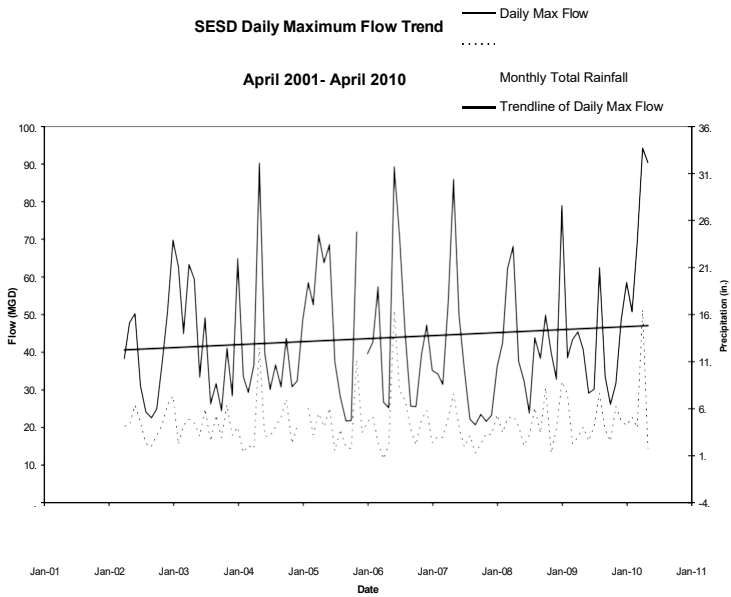


Figure 6. SESD Daily Maximum Flow Trend



### 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

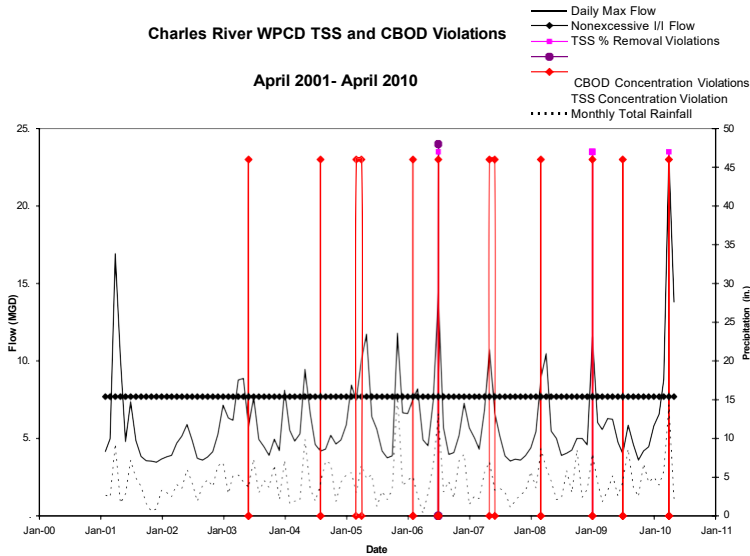
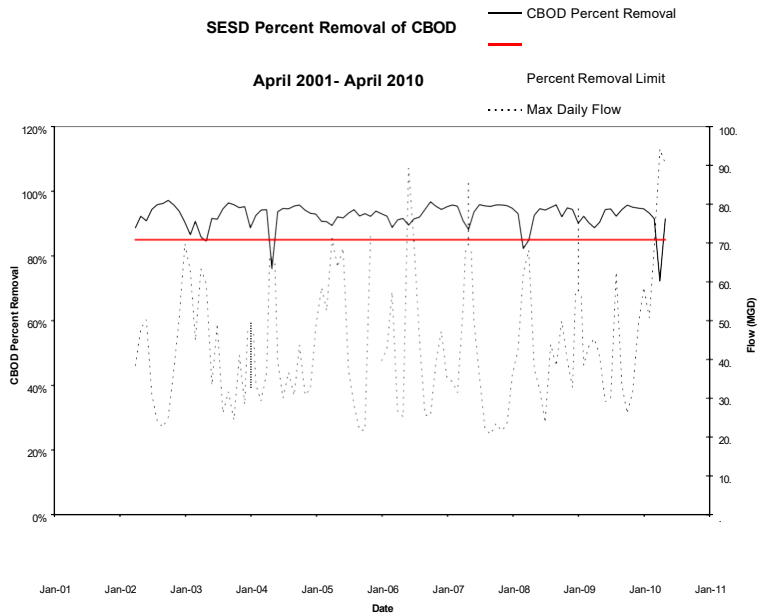


Figure 8 shows SESD's results for removal of CBOD, in percentage, as compared to maximum daily flow. SESD had three permit violations where CBOD removal fell below 85%, all during months with high Maximum Daily Flows.

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**

### 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 Permit Contact] at <mailto:permit.writer@epa.gov> or 617-918-XXXX.

Sincerely,

Regional Administrator

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY – REGION 1 (EPA)  
WATER DIVISION  
5 POST OFFICE SQUARE  
BOSTON, MASSACHUSETTS 02109

MASSACHUSETTS DEPARTMENT OF  
ENVIRONMENTAL PROTECTION (MASSDEP)  
COMMONWEALTH OF MASSACHUSETTS  
1 WINTER STREET  
BOSTON, MASSACHUSETTS 02108

EPA 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), AS AMENDED, AND MASSDEP PUBLIC NOTICE OF EPA REQUEST FOR STATE CERTIFICATION UNDER SECTION 401 OF THE CWA.

**PUBLIC NOTICE PERIOD: March 30, 2023 – April 28, 2023**

NAME AND MAILING ADDRESS OF APPLICANT:

Town of Palmer  
4417 Main Street  
Palmer, MA 01069

NAME AND ADDRESS OF THE FACILITY WHERE DISCHARGE OCCURS:

Palmer Water Pollution Control Facility  
1 Norbell Street  
Three Rivers, Massachusetts 01080

RECEIVING WATER AND CLASSIFICATION:

Chicopee River (Class B)

PREPARATION OF THE DRAFT PERMIT AND EPA REQUEST FOR CWA § 401 CERTIFICATION:

EPA is issuing for public notice and comment the Draft NPDES Permit for the Palmer WPCF, which discharges treated domestic, industrial and commercial wastewater. Sludge from this facility is transported off-site by Synagro Northeast Inc. for incineration. The effluent limits and permit conditions have been drafted pursuant to, and assure compliance with, the CWA, including EPA-approved State Surface Water Quality Standards at 314 CMR 4.00. MassDEP cooperated with EPA in the development of the Draft NPDES Permit. MassDEP retains independent authority under State law to publish for public notice and issue a separate Surface Water Discharge Permit for the discharge, not the subject of this notice, under the Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 26-53.

In addition, EPA has requested that MassDEP grant or deny certification of this Draft Permit pursuant to Section 401 of the CWA and implementing regulations. Under federal regulations governing the NPDES program at 40 Code of Federal Regulations (CFR) § 124.53(e), state certification shall contain conditions that are necessary to assure compliance with the applicable provisions of CWA sections 208(e), 301, 302, 303, 306, and 307 and with appropriate requirements of State law, including any conditions more stringent than those in the Draft Permit that MassDEP finds necessary to meet these requirements. Furthermore, MassDEP may provide a statement of the extent to which each condition of the Draft Permit can be made less stringent without violating the requirements of State law.

INFORMATION ABOUT THE DRAFT PERMIT:

The Draft Permit and explanatory Fact Sheet may be obtained at no cost at <https://www.epa.gov/npdes-permits/massachusetts-draft-individual-npdes-permits> 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  
Email: [duspiva.michele@epa.gov](mailto:duspiva.michele@epa.gov)

Following U.S. Centers for Disease Control and Prevention (CDC) and U.S. Office of Personnel Management (OPM) guidance and specific state guidelines impacting our regional offices, EPA's workforce has been directed to telework to help prevent transmission of the coronavirus. While in this workforce telework status, there are practical limitations on the ability of Agency personnel to allow the public to review the administrative record in person at the EPA Boston office. However, any electronically available documents that are part of the administrative record can be requested from the EPA contact above.

#### PUBLIC COMMENT AND REQUESTS FOR PUBLIC HEARINGS:

All persons, including applicants, who believe any condition of this Draft Permit is inappropriate must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by April 28, 2023, which is the close of the public comment period. Comments, including those pertaining to EPA's request for CWA § 401 certification, should be submitted to the EPA contact at the address or email listed above. Upon the close of the public comment period, EPA will make all comments available to MassDEP. All commenters who want MassDEP to consider their comments in the state decision-making processes (i.e., the separate state permit and the CWA § 401 certification) must submit such comments to MassDEP during the state comment period for the state Draft Permit and CWA § 401 certification. For information on submitting such comments to MassDEP, please follow the instructions found in the state public notice at: <https://www.mass.gov/service-details/massdep-public-hearings-comment-opportunities>.

Any person, prior to the close of the EPA public comment period, may submit a request in writing to EPA for a public hearing on the Draft Permit under 40 CFR § 124.10. 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 this Draft Permit, the Regional Administrator will respond to all significant comments and make the responses available to the public.

Due to the COVID-19 National Emergency, if comments are submitted in hard copy form, please also email a copy to the EPA contact above.

#### 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 notify the applicant and each person who has submitted written comments or requested notice.

KEN MORAFF, DIRECTOR  
WATER DIVISION  
UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY – REGION 1

LEALDON LANGLEY, DIRECTOR  
DIVISION OF WATERSHED MGMT  
MASSACHUSETTS DEPARTMENT OF  
ENVIRONMENTAL PROTECTION