

APPENDIX II

NATIONAL HISTORIC PRESERVATION ACT REVIEW & REQUIREMENTS

I. Background

Section 106 of the National Historic Preservation Act (NHPA) requires federal agencies to take into account the effects of Federal “undertakings” on historic properties that are either listed on, or eligible for listing on, the National Register of Historic Places. EPA’s reissuance of a National Pollutant Discharge Elimination System (NPDES) General Permit is a federal undertaking. Therefore, discharges from potable water treatment facilities covered under the PWTF General Permit must not adversely affect properties listed or eligible for listing in the National Registry of Historic Places under the National Historic Preservation Act (NHPA) of 1966, 16 USC§ 470 et seq. In addition, facilities must comply with applicable State, Tribal, and local laws concerning the protection of historic properties and places. Facilities seeking coverage under this General Permit are required to coordinate with the State Historic Preservation Officer and/or Tribal Historic Preservation Officer and others regarding effects of their discharges on historic properties.

II. Determination of Potential Impact

Facilities seeking coverage under the PWTF General Permit must determine whether their site's discharges or the implementation of best management practices (BMPs) to control such discharges, have adverse effects on a property or place that is either listed or eligible for listing on the National Register of Historic Places. The term “adverse effects” includes but is not limited to damage, deterioration, alteration, or destruction of the historic property or place.

For existing dischargers whose water treatment systems and BMPs do not require construction activities (e.g., the treatment system is contained in a trailer), a simple visual inspection may be sufficient to determine whether historic properties are affected and to select one of the criteria in Section III of this Appendix. In fact, EPA has reason to believe that the majority of activities authorized under the General Permit will have no potential to affect historic properties because the permit typically authorizes discharges from existing facilities and requires control of the pollutants discharged from the facility. In addition, many facilities covered under the reissuance of this permit will be facilities that are seeking renewal of previous permit authorization. These existing dischargers should have already addressed NHPA issues in the previous General Permit as they were required to certify that they were either not affecting historic properties or they had obtained written agreement from the applicable SHPO or THPO regarding methods of avoiding, minimizing, or mitigating potential impacts.

However, for sites which are new dischargers and for existing sites which are planning construction activities related to treatment systems or BMPs, facilities seeking coverage should conduct further inquiry to determine whether historic properties may be affected by

the discharge or BMPs to control the discharge. In such instances, facilities seeking coverage should first determine whether there are any nearby historic properties or places listed on the National Register or if any nearby properties and places are eligible for listing on the register (e.g., they are “eligible for listing”).

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

III. Permit Eligibility Criteria

The following three scenarios describe how facilities seeking coverage under the PWTF General Permit can meet the permit eligibility criteria for protection of historic properties under this permit:

- (1) If historic properties are not identified in the path of a site's discharges or where construction activities are planned to implement BMPs to control such discharges (e.g., diversion channels or retention ponds), then the applicant is eligible for coverage under this permit.
- (2) If historic properties are identified but it is determined that they will not be affected by the discharges or construction of BMPs to control the discharge, the applicant has met the NHPA eligibility criteria for coverage under this permit.
- (3) If historic properties are identified in the path of discharges or where construction activities are planned to implement BMPs to control such discharges, and it is determined that there is the potential to adversely affect the property, the applicant can still meet the NHPA eligibility criteria under this permit if the facility obtains and complies with a written agreement with the appropriate State or Tribal Historic Preservation Officer which outlines measures the applicant will follow to mitigate or prevent those adverse effects. The contents of such a written agreement must be included in the BMP Plan and available for review, if requested.

EPA encourages facilities seeking coverage to contact the appropriate State or Tribal Historic Preservation Officer as soon as possible in the event of a potential adverse effect to a historic property.

In situations where an agreement cannot be reached between an applicant and the State or Tribal Historic Preservation Officer, facilities seeking coverage should contact the Advisory Council on Historic Preservation listed in Section VII below for assistance.

Facilities seeking coverage are reminded that they must comply with applicable State, Tribal and local laws concerning the protection of historic properties and places.

IV. Online Information on the National Register of Historic Places

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

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

V. State Historic Preservation Officers (SHPO)

Massachusetts Historical Commission

220 Morrissey Boulevard

Boston, MA 02125

T: (617) 727-8470

TDD: 1-800-392-6090

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

New Hampshire State Historic Preservation Office

New Hampshire Division of Historical Resources Attention: Review and Compliance

19 Pillsbury Street

Concord, NH 03301-3570

T: (603) 271-8850

TDD: 1-800-735-2964

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

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

VI. Tribal Historic Preservation Officers (THPO)

Wampanoag Tribe of Gay Head-Aquinnah

Bettina Washington, THPO

20 Black Brook Road

Aquinnah, MA 02535-9701

T: 508.645.9265 x 175
F: 508.645.3790
Email: bettina@wampanoagtribe.net
<http://www.wampanoagtribe.net>

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

VII. Advisory Council on Historic Preservation

The Advisory Council on Historic Preservation (ACHP) is an independent federal agency that promotes the preservation, enhancement, and productive use of our Nation's historic resources and advises the President and Congress on national historic preservation policy.

The National Historic Preservation Act (NHPA) established ACHP in 1966 with the goal of having federal agencies act as responsible stewards of our Nation's resources when their actions affect historic properties. ACHP is the only entity with the legal responsibility to encourage federal agencies to factor historic preservation into federal project requirements.

As directed by NHPA, ACHP serves as the primary federal policy advisor to the President and Congress; recommends administrative and legislative improvements for protecting our Nation's heritage; advocates for the full consideration of historic values in federal decision making; and reviews federal programs and policies to promote effectiveness, coordination, and consistency with national preservation policies.

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