UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
NEW ENGLAND - REGION I
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FACT SHEET

Draft Remediation General Permit under the National Pollutant Discharge Elimination System (NPDES) for Discharges in Massachusetts and New Hampshire, 2010 Issuance

The Director of the Office of Ecosystem Protection, Environmental Protection Agency, Region I ("EPA" or "EPA-Region I"), is proposing to re-issue the general permit for point source discharges related primarily to the discharge of treated groundwater (and certain treated surface waters) from the activities listed in Section III of this Fact Sheet. This Remediation General Permit (RGP) covers discharges to certain waters in the Commonwealth of Massachusetts (MA), including both Commonwealth and Indian Country lands, and the State of New Hampshire (NH).

The following Fact Sheet provides background information and explains the basis of the RGP's limits and conditions. This document contains supporting information for Part I (Applicability and Conditions) and Part II (Standard Conditions) of the draft NPDES general permit, including Appendices.

I. Background and History

In September 2005, the Environmental Protection Agency, Region I issued the final Remediation General Permit (RGP). EPA believes the RGP has been very effective in controlling the discharge of pollutants resulting from the clean-up of contaminated groundwater sites in Massachusetts and New Hampshire. A small number of non-remediation activities (e.g., hydrostatic testing) have also been successfully regulated under the 2005 RGP.

The requirements contained in the draft RGP permit remain largely the same as the requirements contained in the current permit. Therefore, EPA is not repeating all of the rationale for any unchanged permit conditions in the body of this fact sheet. Instead, EPA is attaching the pertinent excerpts from the 2005 fact sheet as appendices to this fact sheet. Readers interested in the entire 2005 fact sheet may view it at EPA's website at http://www.epa.gov/NE/npdes/rgp.html or may obtain a copy by contacting Victor Alvarez at Alvarez.Victor@epa.gov or 617-918-1572

EPA has made some relatively minor changes to the draft permit. These changes are based on the knowledge and experience EPA (and the regulated community) has gained since the 2005 RGP issuance. Some of the changes are intended to make applying and re-certifying less burdensome while others are new, such as requiring permittees to monitor and report the levels of chloride in their discharge. The draft RGP now allows dilution factors for metals, in the less than 5 range, to be calculated using the actual dilution, rather then relying on the dilution tables provided in the current RGP. Also, the draft RGP attempts to reduce the regulatory burden for permittees that may have obtained coverage under the current RGP close to its expiration date. The draft RGP allows such discharges to maintain coverage under the existing permit for up to 90 days after expiration, rather than being required to re-apply under the new RGP. This mechanism is intended to allow discharges that are only expected to last several months to maintain coverage and presumably terminate their discharge, rather than having to re-apply for

coverage. This provision is expected to significantly reduce the potential administrative burden on permittees, while at the same time continuing to protect the environment. The basis for the new requirements is contained in this fact sheet. See section I.C below for a full list of proposed changes.

A. Universe of Dischargers Covered by this Permit

From October 1993 to June 2004, approximately 2,000 site remediation projects, with discharges to surface waters, were initiated in MA and NH. Since September 9, 2005, the effective date of the RGP, EPA has granted coverage to close to 500 activities under the RGP (approximately 80 to 120 per year).

EPA is requiring existing and new applicants to seek coverage under the RGP, unless EPA requires an individual permit. Permittees with current NPDES permits which would otherwise be eligible for coverage under the general permit may be transferred upon request and termination of their individual NPDES permit.

The universe of permittees that obtained coverage under the current RGP is shown in Table I below, broken down by discharge type. This list was compiled from the issuance of the current 2005 RGP to present.

Table I: Actual Universe by Dischargers Type Under the RGP (2005 to present)

Discharge Type	Approximate Number
Petroleum Pump & Treat operating longer than a few months	25
Non-Petroleum Pump &Treat operating longer than a few months	73
Petroleum and Non-Petroleum Pump & Treat operating less than a few months	300
Contaminated Construction Dewatering operating less than a few months	96
Hydrostatic Testing	3

B. Role of the Commonwealth of Massachusetts and the State of New Hampshire

1. 310 CMR 40.0000, Massachusetts Contingency Plan (MCP) and NPDES

The majority of activities covered by the current RGP are located in MA. In many cases, these discharges are a result of cleanup activities being conducted under MA General Laws, Chapter 21E, and the Massachusetts Contingency Plans (MCP) administered by

the Department of Environmental Protection (MassDEP), Bureau of Waste Site Cleanup (BWSC). The MCP establishes the state Superfund procedures that include notification of a release through final site cleanup and the filing of a Response Action Outcome.

Several important sections of the MCP regulations relate to the issuance of discharge permits and affect the usual procedures established between the EPA and MassDEP for issuance of NPDES permits. Section 40.0042 of the MCP establishes the requirements for "Remedial Wastewater Discharges to Surface Water." Specifically 40.0042(1) requires an EPA issued individual NPDES permit or a RGP permit. NOTE: EPA is the NPDES issuing authority in MA and until such time as the NPDES program is delegated to the state, Section 40.0042(2) provides an exemption from any state issued discharge permit to surface water. (See http://www.mass.gov/dep/cleanup/index.htm for additional information on the MassDEP waste site clean-up program).

For MCP cleanup site discharges expected to be covered by this general permit or an individual permit, the MassDEP retains several primary functions including:

1) Certification that the permit meets state promulgated water quality standards;
2) Conduct an antidegradation review as appropriate under the state/EPA antidegradation policy, (see Section VIII of the fact sheet);
3) Insuring compliance with the permit provisions of the MCP; and
4) General coordination and consultation on administrative and technical issues.

2. Joint issuance of Non-MCP Site NPDES Permits in MA

Under an Interagency Agreement established between the EPA and MassDEP on March 18, 1973, NPDES permits are jointly reissued by both agencies until such time as MassDEP is delegated the program. Several other general NPDES permits affecting the Commonwealth of MA are jointly issued and administered by EPA and MassDEP. This RGP is also being jointly issued, although some projects may be exempt from the state process, as allowed by the MCP. Applicants will be required to identify themselves in the Notice of Intent (NOI) application form as being exempt or non-exempt from a state permit under the MCP. All non-exempt dischargers will be subject to the joint administration of this general permit and any additional state requirements (e.g., state application form, fees, etc.).

3. NH Department of Environmental Services (NH DES), RSA 485-A: 13, I, Temporary Surface Water Discharge Permit

Under RSA 485-A: 13, I, NHDES is authorized to issue temporary surface water point source discharge permits to Class B waters of the State. Discharges to Class A waters are not allowed unless they meet the criteria of Env-Wq 1708.05(b). The statute requires the

applicant to file a form with NHDES to obtain this temporary permit.

Regardless of whether or not a temporary surface water discharge permit is issued by the state, owners or operators must still obtain coverage under the RGP. EPA has requested that the NHDES certify this general permit under section 402 of the Clean Water Act (see section X of this fact sheet).

A provision has been added to the draft permit that allows the NHDES to add additional water quality requirements if the NHDES determines such additional requirements are necessary to protect water quality ("water quality certification requirements"). The NHDES will supply any such condition to the permittee in writing.

4. Consideration of Specific Standards in MA and NH

Many of the discharges potentially covered by this general permit are the result of state underground storage tank and/or site remediation actions. In making permitting decisions at these sites, the states must consider a number of additional state requirements, including: state adopted surface water quality standards approved by EPA, groundwater standards, state specific Maximum Contaminant Levels (MCLs) for drinking water, state adopted site remediation standards for soil and water, and chemical specific limitations established where no other standard or water quality criteria has been adopted. Some of the state standards considered include:

1) 314 CMR 4.00, MA Surface Water Quality Standards;
2) 310 CMR 40.097(2), MA MCP groundwater and soil standards;
3) 314 CMR 6.00, MA Groundwater Quality Standards;
4) NH CHAPTER Env-Wm 1503.05(c) Ambient Groundwater Quality Standards; and
5) NH CHAPTER Env-Ws 1700 Surface Water Quality Regulations.

An important distinction exists, however, between the MA and NH adopted surface water standards. The State of NH has adopted numerical standards for freshwaters and marine waters for many of the priority pollutants for which EPA has not yet established final criteria. Prior EPA criteria publications established only "Lowest Observed Effects Levels" (LOEL's) for many pollutants. The MA Surface Water Standards (MSWS) do not contain numerical standards, however they refer to EPA published criteria. Since many of the pollutants found at remediation sites do not have EPA recommended numerical criteria, the distinction between the two states was evaluated when EPA established limitations for the current permit. For example, neither EPA, MassDEP, nor NHDES have established recommended surface water quality criteria for the common petroleum pollutant Methyl-tert-Butyl Ether (MtBE). The state groundwater standards for MtBE was 70.0 parts per billion (ppb) in MA and 13.0 ppb in NH at the time of the development of the 2005 RGP. Additionally, NH has recommended a discharge standard for Tert-Butyl Alcohol (TBA) another gasoline oxygenate, of 1,000 ppb, while MA has not yet set a similar requirement.

EPA may include additional, more stringent state requirements in NPDES permits to insure state certification of the permit. Therefore, EPA has considered state requirements in the development of this draft RGP.

C. Changes from the 2005 RGP

1. Addition of monitoring for Chloride

2. Revision of methods for calculating metals limits for Dilution Factors between 0 and 5

3. Reduction of the number of samples to be taken during start-up and extension of the timeline for recertification

4. Increase of the minimum number of consecutive months of laboratory data required for submittal to be eligible for reduction of influent and effluent monitoring

5. Revision of Notice of Intent sampling requirements – now based on sub-category

6. Clarification that influent and effluent monitoring requirements and limits are based on parameters identified in EPA authorization letter

7. Addition of applicability to cover Residential Non-business Remediation sites

8. Addition of language specifying that NHDES may add additional "water quality certification" requirements to the authorization to discharge letter for dischargers in New Hampshire

9. Reduction of the number of Best Management Practices Plan Annual Certification submittals to EPA and the State

10. Clarification of timeframes for re-applying for those covered under the 2005 RGP

11. Clarification of re-certification sampling requirements

These changes are discussed further in this fact sheet. Additionally, EPA made several minor grammatical and/or typographical corrections throughout the draft permit. These minor changes are not discussed further in this fact sheet.

II. Organization of the Remediation General Permit (RGP)

The organization of the draft RGP is largely the same of the organization of the current permit (see the table of contents of the draft RGP).

III. Applicability and Coverage of the Remediation General Permit (RGP)

The specific activities intended to be covered by the draft RGP are the same as the current RGP, except for the revision of one sub-category (Residential Non-Business discharges are added to Category I, Sub-Category B). Table II below outlines these activities by category and sub-category. A discussion of each sub-category follows.

Table II: Activities Covered by the RGP

Activity Category	Activity Sub-Category
I - Petroleum Related Site Remediation	A. Gasoline Only Sites B. Fuel Oils and Other Oil Sites (including Residential Non-Business Remediation Discharges) C. Petroleum Sites with Additional Contamination
II - Non Petroleum Site Remediation	A. Volatile Organic Compound (VOC) Only Sites B. VOC Sites with Additional Contamination C. Primarily Heavy Metal Sites
III - Contaminated Construction Dewatering	A. General Urban Fill Sites B. Known Contaminated Sites
IV - Miscellaneous Related Discharges	A. Aquifer Pump Testing to Evaluate Formerly Contaminated Sites B. Well Development/Rehabilitation at Contaminated/Formerly Contaminated Sites C. Hydrostatic Testing of Pipelines and Tanks D. Long-Term Remediation of Contaminated Non-residential Sumps and Dikes E. Short-term Contaminated Dredging Drain Back Waters (if not covered by 401/404 permit)

A. Category I: Petroleum Related Site Remediation Activities

1. Gasoline-Only Sites

The draft general permit continues to cover discharges resulting from the treatment of contaminated groundwater and remediation related wastewater where only gasoline was

released. This includes dewatering for underground storage tank (UST) removal or replacement, groundwater pump and treat systems, or other activities where gasoline is the only known contaminant. This also includes releases which may contain leaded gasoline.

2. Fuel Oils and Other Oil Sites, including Residential Non-business

The draft general permit continues coverage for discharges resulting from treatment of contaminated groundwater and remediation related wastewater where there has been a release of fuel oils such as kerosene, diesel fuel, jet fuel, #2 heating oil, and heavier residual fuel oils, and from other oils such as lube oils, machine oils, hydraulic fluids, mineral oils, and others products, with the exception of waste oil. This may include dewatering for underground storage tank (UST) removal or replacement, groundwater pump and treat systems, or other activities where oil is the only known contaminant.

The draft RGP covers a new category of dischargers resulting from the clean-up of leaking oil from residential non-business remediation sites (Residential Non-Business sub-category). EPA reviewed the laboratory analyses from non-business residential RGP applicants discharging groundwater contaminated with #2 heating oil. Since most of these residences are not at or near contaminated sites, the presence of other hazardous pollutants such as PAHs, PCBs, or VOCs etc, were typically not detected on the notices of the intent (NOI) that were filed.

Therefore, EPA is proposing that non-business residential sites, not previously classified by MA or NH as contaminated sites, be included in this category and be required to analyze only for those parameters listed under the Subcategory B: "Fuel Oils and Other Oil Sites." Sampling and analysis for any of the other parameters listed in Appendix III is not required unless the permittee has reason to believe the site contains additional contaminants. Applicants may enter the code NA noting that such sampling is not applicable. This approach is consistent with the change made in this draft permit allowing permittees that fall into a particular subcategory from Appendix III of the draft permit to only test for the parameters listed for that subcategory (See section VII.A.2 of this fact sheet).

3. Petroleum Sites with Additional Contamination

The draft general permit continues to apply to discharges resulting from treatment of contaminated groundwater and remediation activities related to wastewater where the releases were primarily petroleum contaminants from mixed wastes. Typically, these are sites where petroleum product releases have been identified as the primary source, however, other contaminants have also been found at the site. These other contaminants often include waste solvents, heavy metals from industrial processes such as electroplating, or waste oils which may be co-mingled with other contaminants including

polychlorinated biphenyls (PCBs).

B. Category II: Non-Petroleum Site Remediation Activities

1. Volatile Organic Compound (VOC) Sites

The draft general permit covers discharges resulting from treatment of contaminated groundwater and remediation related wastewater where a release of VOC compounds is the primary source of contamination. These releases are typically related to improper disposal or spills of solvents, degreasers, cleaners, paint removers, etc., or from industrial operations, chemical blending, transportation, or other sources.

2. VOC Sites with Additional Contamination

The draft general permit continues to apply to discharges resulting from treatment of contaminated groundwater and remediation related wastewater where site characterization has identified VOC compounds as the primary source of contamination along with other contaminants in small amounts. For example, VOC contaminated sites might have minor amounts of petroleum hydrocarbons, metals, or other pollutants.

3. Primarily Heavy Metals Sites

The draft general permit continues to cover discharges resulting from treatment of contaminated groundwater and remediation related wastewater where release of heavy metals has been identified as the primary source of contamination. For example, while a sludge lagoon from a former metal plating shop may contain small amounts of other contaminants, the treatment process and discharge limitations are driven by the heavy metals present. The draft RGP includes a new way to calculate iron limits for discharges to receiving waters with available dilution in the 0-5 range. For such dischargers, the actual dilution will be used to calculate limits for iron and other metals as provided in Appendix IV, rather then than use the limit provided in Appendix III. See Appendix V of the draft permit for dilution calculation methodology.

C. Category III: Contaminated Construction Site Dewatering

1. Sites Contaminated by "Urban Fill" or Non-Specific Contamination

The draft RGP also continues to cover discharges resulting from treatment of contaminated groundwater and remediation related wastewater where construction dewatering activities are taking place. It is designed for locations where sub-surface site investigations and/or soil characterization for disposal has revealed various common

pollutants typically associated with past industrialization, power generation, incineration, or other activity and where no specific source of contamination is apparent. These sites typically may contain moderate concentrations of metals, polynuclear aromatic hydrocarbons (PAHs), or PCBs that require treatment prior to discharge.

2. Specific Contamination Sites

The draft general permit is designed to continue coverage for discharges resulting from treatment of contaminated groundwater and remediation related wastewater at known contaminated construction dewatering activities, other than UST removal or replacement (as discussed above). For example, where dewatering activities are undertaken in an area of known contamination or the contamination has been discovered as a result of the construction activity, e.g., where the water has a perceptible odor, color, sheen, or there is data from sampling. Sites may be listed on an EPA or state inventory of known releases, as is done with "Brownfields" site. These activities and resulting discharges are separate and distinct from discharges at the same or separate sites which may be covered under EPA's Dewatering General Permit (DWP), or EPA's national Construction General Permit (CGP), which are designed primarily for uncontaminated sites.

The draft RGP, as was the case of the current permit, is designed to cover sites/facilities where there are contaminants in such concentrations that the discharge would need prior treatment in order to meet the permit's limit(s). Dischargers with certain types of contamination such as construction activities where only suspended solids or oil and grease are present in the discharge might be eligible for coverage under one of the two construction permits referenced above. In the Notice of Intent (NOI) form, the applicant must indicate whether the site is covered by any other permit. Applicants should familiarize themselves with these other permits and if questions remain, should contact the state agency or EPA contacts listed in the permits and application information.

D. Category IV: Miscellaneous Discharges

1. Aquifer Pump Testing

As is the case of the current permit, this draft general permit applies to the discharge of treated water from short or long term groundwater pumping from distinct aquifers known to be contaminated.

2. Well Development and Rehabilitation

The draft general permit is designed to cover discharges of treated water from the

development or rehabilitation of monitoring wells at contaminated or formerly contaminated sites. For example, the permit could cover wells being evaluated for possible return to service after site remediation. The permit is not intended to cover, wastewater from wells that contain only naturally occurring substances or materials from the routine maintenance of the wells.

3. Hydrostatic Testing

The draft general permit continues to cover discharges from the hydrostatic (water) testing of pipelines, tanks, and other liquid or gas storage structures. These discharges often consist of high volume rates of flow over short periods of time. At a minimum, the permit requires application of Best Management Practices (BMPs), such as pre-cleaning of the structures before the hydrostatic test. In fact, this permit is designed for tanks and pipelines where thorough pre-cleaning has occurred. Although the RGP is primarily intended for management of groundwater and remediation related runoff, EPA has decided to continue the inclusion of hydrostatic test discharges in the draft RGP due to the nature of the contaminants, the relative infrequent number of applications received (approx. 10/yr.), and the intermittent, temporary discharges involved.

Discharges may result from construction of new facilities or repairs to existing facilities. Historically, the majority of applicants for hydrostatic test discharge permits in EPA are related to natural gas and petroleum operations including: pipelines, large storage tanks, and other incidental structures, typically at oil terminals and power plants. Due to the large volumes of water required, surface water supplies are utilized in most cases.

4. Contaminated Sumps and Dikes

In the past, EPA's NPDES program has received numerous inquiries regarding the appropriate permit mechanism for discharges from sumps or other structures utilized for collecting miscellaneous sources of water. Usually the collected waters are known or suspected of containing pollutants from leaching of contaminated ground water or storm water into a collection structure (i.e., a sump or dike). These discharges are occasionally part of site remediation projects.

It was not the intent of the EPA to capture all sump discharges in the RGP. These discharges can best be managed at the local level through municipal collections systems and pollution prevention plans. Residential dwelling sumps are not covered by the current RGP and are not included in the draft, although clean-up of residential hearing oil sites is covered as a new sub-category.

5. Contaminated Dredging Drain Back Waters (if not covered by 401/404 permit)

The draft general permit is designed to cover rare discharges where there is a need to discharge treated water as part of a short term pilot study or other activity associated with contaminated dredge drain back waters. Furthermore, this permit would only be used where the US Army Corps of Engineers (USACOE) does not intend to issue a formal permit under Section 404 (reference to 401/404 in Table I) of the CWA for the short term study activity.

IV. Specific Discharges Excluded from Coverage under the Remediation General Permit

1. The following discharges are excluded from coverage under this draft RGP:

a. Discharges to Outstanding Resource Waters in Massachusetts and New Hampshire:

i. as defined in Massachusetts by 314 CMR 4.06(3), including Public Water Supplies (314 CMR 4.06(1)(d)1) which have been designated by the state as Class A waters, unless a variance is granted by the Massachusetts Department of Environmental Protection (MassDEP) under 314 CMR 4.04(3)(b).

ii. as defined in New Hampshire under Env-Wq 1708.05(a), unless allowed by the New Hampshire Department of Environmental Services (NH DES) under Env-Wq 1708.05(b).

b. Discharges to Areas of Critical Environmental Concern (ACEC) in MA as defined by the Massachusetts Wetlands Protection Act c.131, Section 40, unless a variance as allowed in the water quality standards is granted by the State. See Appendix I of the RGP for a listing of ACECs by city and town in Massachusetts.

c. Discharges to Class A waters in New Hampshire in accordance with RSA 485-A: 8, I. and Env-Wq 1708.06. To determine if the proposed receiving water is a Class A water body, contact the NH DES at the address listed in Appendix V of this permit.

d. Discharges to designated areas under the Essential Fish Habitat Act (EFH) unless the requirements specified in the permit are fulfilled.

e. Discharges of pollutants which are specifically excluded by the State's published 303(d) lists of "non-attainment" segments of receiving waters in the Commonwealth of Massachusetts and the State of New Hampshire, as defined by the CWA and approved by EPA unless the discharge is at or below a concentration that meets water quality standards.

In other words, coverage under the general permit would be allowed if the site did not

have any of the contaminant for which the segment was not attaining the water quality standard. For example, coverage would be allowed if a segment was not attaining due to excessive nutrients (e.g., ammonia), which are not expected in the discharges covered by this permit. Similarly, the discharge would be allowed if the discharge contained the contaminants for which a segment was non-attainment (e.g., metals) but met the limits described in the general permit for those contaminants. For MA, the most updated integrated list of waters (CWA 303(d) and 305(b)) is available at http://www.mass.gov/dep/water/resources/tmdls.htm#info . For NH, the most updated integrated list of waters (CWA 303(d) and 305(b)) is available at http://des.nh.gov/organization/divisions/water/wmb/swqa/index.htm

f. Discharges to a Publicly Owned Treatment Works (POTW) which is permitted under Section 402 of the CWA (NPDES).

g. Discharges directly or indirectly to the ground.

h. Discharge of dredge drain back waters covered by CWA Section 401 and 404 and 40 CFR 330.5(a)(16) administered by the U.S. Army Corps of Engineers (USACE) where USACE intends to permit the discharge. Short term discharges (e.g., Pilot testing or other studies requiring discharge) may be covered under the RGP provided the USACE does not intend to permit the discharge.

i. Discharges of water supply or other well development or rehabilitation waste waters, except discharges of treated water from the development or rehabilitation of monitoring wells at contaminated or formerly contaminated sites. This permit does not cover wastewater from wells that contain naturally occurring substances or materials from only routine maintenance activities.

j. Uncontaminated construction dewatering discharges eligible for coverage under EPA Region I's General Permit for Construction Dewatering dated September 23, 2008, or non-storm water discharges covered by the EPA's national Construction General Permit (CGP) (effective June 30, 2008, modified January 20, 2010), and subsequent reissuances of these permits.

k. Short-term discharges from sumps or other similar water collection structures, e.g., discharges lasting less than one week (7 days) at residential properties.

l. "New Source" dischargers, as defined in 40 CFR § 122.2.

m. Discharges listed in an individual NPDES permit unless (1) the permit has expired; (2) EPA has terminated the existing permit; (3) the discharges are separate from the currently permitted discharges; or (4) the discharge is new and eligible for this permit

(e.g., an industry where the primary process waste discharge is covered by an individual permit but the facility is conducting groundwater remediation with separate treatment and discharge).

n. Discharges for which the Director makes a determination that an individual permit is required under 40 CFR § 122.28(b)(3).

o. Discharges of any commercial or industrial wastes to Ocean Sanctuaries in Massachusetts, as defined at 302 CMR 5.00.

p. Discharges to territorial seas, as defined by Section 502 of the Clean Water Act.

q. Discharges made from a CERCLA remediation site under a signed Record of Decision under 40 CFR § 300.400(e) (1).

V. Application Requirements and Notice of Intent

A. Notice of Intent prior to discharge

1. Notice of Intent (NOI)

General permits require the submission of a Notice of Intent (NOI) prior to the authorization of such discharges (see 40 CFR Section 122.28(b)(2)(i)). Appendix V of the draft RGP contains a suggested NOI form and provides instructions for requesting coverage under the RGP. The suggested format in Appendix V of the draft RGP is simplified to the extent possible and requires significantly less paperwork than the submission of an individual NPDES permit application. EPA has modified the NOI requirements for this draft permit, as discussed below.

The existing NOI instructions require that all permittees seeking coverage sample and analyze untreated water for all of the parameters listed in Appendix III of the current permit (see current permit Appendix V, part I.A.3). For this draft, EPA has attempted to simplify sampling requirements by only requiring untreated sampling for parameters applicable to the subcategory into which the remediation falls. For example, permittees responsible for the clean-up of gasoline sites are only required to provide sampling for the NOI for those parameters (Benzene, BTEX , Naphthalene, etc) listed in Category I, Subcategory A of Appendix III of the draft permit. However, EPA will require that permittees provide additional sampling results with the NOI if such sampling already exists, or if EPA has reason to believe the site contains additional contaminants not listed in Appendix III for that sub-category.

EPA has also attempted to clarify the instructions in the NOI that specify who must apply

for coverage (owner/operator). Currently the NOI instructions could be read or interpreted to mean that both owners and operators of clean-up sites must each apply for coverage and submit individual NOIs, effectively requiring two submittals for each clean-up. This was not the intent of the original RGP permit and in practice; EPA routinely receives one NOI for each clean-up, usually from the operator. Therefore, EPA has clarified that section of Appendix V to indicate that, in most cases, one NOI is sufficient to apply for permit coverage, and, in most cases, it is the "operator" who is responsible for applying (see 40 CFR Section 122.21(b)). This is consistent with the current permit's application requirements (see permit Part I.B.3.a). One exception to this is if both the owner and operator are designated as "co-permittees." In this case, both parties need to apply for coverage by submitting a properly executed signature requirements.

EPA has added a new sampling requirement for chloride that must be submitted for each discharge with the NOI. EPA believes this relatively simple (and inexpensive) sampling requirement is warranted due to the widespread chloride contamination of groundwater due to salting and/or sanding of roadways in New Hampshire and Massachusetts. EPA will use this information to determine if a reasonable potential exists to exceed water quality standards (taking into account the dilution and the existing levels of chloride in the receiving water). If such a reasonable potential exists, EPA will include a permit limit for chloride in its authorization letter.

The current NOI directs permittees to use Appendix IV to determine limits that correspond to the range into which that the facility's dilution factor falls. For this draft permit, EPA has modified Appendix IV to allow a calculation of permit limits using the actual dilution factor (as opposed to a range) for dischargers where the dilution is less than 5.

The NOI can be submitted as either the suggested NOI application form in Appendix V of the permit or another official correspondence, such as NPDES Forms 1 & 2C. To be considered complete, the NOI must contain all of the information required by the NOI Instructions in Appendix V. 40 CFR Section 122.28(b)(2)(ii) specifies minimum NOI requirements and also provides that NOIs may require the submittal of information necessary for adequate program implementation. In summary, the NOI for the draft RGP, as with the current RGP, consists of:

1) General facility/site information;
2) Discharge information;
3) Contaminant information;
4) Treatment system information;
5) Receiving surface water(s) information;
6) ESA and NHPA Eligibility;

7) Supplemental information; and
8) Signature requirements.

EPA is allowing a 90 day "grace period" before permittees with existing coverage must re-apply. Coverage under the general permit will not be effective until EPA has reviewed the notice of intent and existing file information, made a determination in consultation with MassDEP and NH DES that coverage under the RGP is appropriate, and then has notified the owner/operator in writing of the determination. Until such time, existing dischargers are covered under the current permit. EPA will continue to post all NOIs on its NPDES website for at least 7 days prior to making its determination. The effective date of coverage is discussed below.

a. New Dischargers:

All new dischargers seeking coverage under the RGP must submit a NOI to be covered by the RGP to EPA at least **14 days** prior to the commencement of discharge. In many cases, the site cleanups and other activities which require a discharge permit are planned months or years prior to the need to discharge. EPA strongly recommends that applicants fill out and submit the NOI as early in the project planning process as possible. EPA and the states must have adequate notice to review the information submitted and make a determination of coverage or need for an individual permit, or to seek additional information from the applicant. If additional sampling or other data is required, the lead time for collection of this information can delay a project unless adequate lead time is planned for by the applicants. Based on EPA's experience with over 2,000 site remediation projects since the early 1990's, EPA has determined that under ordinary circumstances, it is reasonable for applicants to apply for coverage at least 14 days prior to the desired date of discharge.

EPA recognizes that during the 14 day NOI processing period, unplanned circumstances may arise that could necessitate a discharge. In such cases, EPA will make an attempt to notify the applicant as soon as possible after the seven day NOI posting period of the Director's decision regarding coverage under the permit. Further, EPA understands that some remediation activities are part of a response to an environmental emergency. In the case of emergencies, e.g., for the clean up of oil spills, EPA's Office of Site Remediation and Restoration (OSRR) will have the lead on all requests for emergency NPDES exclusions as provided by 40 CFR Section 122.3(d) and 40 CFR Part 300. In cases of emergency spills, applicants should contact the National Response Center (NRC) at 800-424-8802 or EPA at 617-918-1236.

The effective date of coverage will be the date of signature of the authorization letter by the Director.

b. Existing Dischargers (re-application)

EPA has considered the timeframes for when permittees with existing coverage under the current RGP must re-apply for coverage under the new RGP, after its effective date.

EPA's experience from the current RGP indicates that the vast majority of permittees that seek coverage do so for projects that are relatively short in duration (lasting only a few months). Therefore, in order to address projects that may be close to completion but are still ongoing at the time the new RGP becomes effective, EPA is allowing a 90 day "grace" period, from the new RGP effective date, for permittees to continue coverage under the expired permit before they are required to re-apply for coverage under the new RGP. In other words, permittees that have ongoing clean-ups that are expected to terminate within 90 days of the effective date of the new RGP are not required to re-apply for coverage under the new RGP. In effect, all permittees have continuing coverage under the expired RGP for 90 days, after which time they must either submit a Notice of Termination, or re-apply for coverage. This "grace period" is expected to reduce the regulatory burden of re-applying on permittees and is especially important for permittees that may have needed to obtain coverage under the current RGP just prior to expiration.

2. Filing with the State of New Hampshire, Commonwealth of Massachusetts, and Others

A copy of the NOI form filed with EPA must also be filed with the appropriate state agencies as directed in the NOI instructions in Appendix V of the RGP. The state agency may elect to develop a state specific form or other information requirements. Applicants must also comply with any other state provisions as required.

Applicants should also submit a copy of the NOI to the municipality in which the proposed discharge would be located. Additionally, operators who are utilizing a non-municipal storm sewer system at a facility covered by the EPA multi-sector storm water general permit for industrial activities must comply with any SWPPP developed under that permit. In many cases, the owner of the facility covered by the multi-sector permit and by this RGP may be the same. However, in the case of separate ownership and/or different operators, the owner/operator of the facility covered by the RGP is required to notify the facility covered by the multi-sector permit.

B. Endangered Species

The Endangered Species Act (ESA) of 1973 requires Federal Agencies such as EPA to ensure, in consultation with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries

Service (NOAA Fisheries) (also known collectively as "the Services"), that any actions authorized, funded, or carried out by the EPA (e.g., EPA issued NPDES permits authorizing discharges to waters of the United States) are not likely to jeopardize the continued existence of any Federally-listed endangered or threatened species or adversely modify or destroy critical habitat [1] of such species (see 16 U.S.C. 1536(a)(2), 50 CFR Section 402 and 40 CFR Section 122.49(c)).

As is the case with the current RGP, this draft permit contains conditions designed to protect human health and the environment including endangered species and critical habitat. The draft permit also insures the attainment and maintenance of state water quality standards, including those that have been subject to Section 7 consultation with the Services. In most cases, the discharges being regulated under this permit are the result of cleanup of past releases of toxic or hazardous materials to the environment, typically those that have been released or leached into the groundwater. While EPA supports the cleanup of these releases, the EPA does not want waters containing toxic amounts of materials simply transferred from one location (groundwater) to another (surface water).

The draft permit continues to contain very stringent effluent limitations which require a high degree of treatment for most pollutants which has been demonstrated to be both technologically and economically achievable. Numeric limitations and other permit conditions are designed to protect the most sensitive species in the receiving water. Additionally, for certain discharges, additional aquatic toxicity testing may be required using the Whole Effluent Toxicity (WET) test procedures to provide an overall assurance that the discharge will not cause toxicity in the receiving waters.

1. Consultation

Section 7 of the ESA provides for formal and informal consultation with the Services. For NPDES permits issued in MA and NH where EPA is the permit issuing Agency, draft NPDES permits and Fact Sheets are routinely submitted to the Services for informal consultation prior to issuance. This draft permit and accompanying Fact Sheet are being transmitted to the Services to initiate the consultation process. Based on working experience with the Services on numerous prior permits and identification of certain endangered species, general geographic areas of concern in the States and the potentially affected waters, including critical habitats, EPA has prepared this draft permit to insure

[1] There is currently only one area federally-designated as critical habitat in MA, i.e., for the Northern Redbelly Cooter in Plymouth County, MA, and none in NH.

adequate protection under the ESA.

In addition to the consultation being requested by EPA for the issuance of this permit, an optional type of informal consultation consists of the designation of a non-Federal representative (NFR) to determine whether a Federal action is likely to have an adverse impact on listed species or critical habitat. The ESA regulations provide for permit applicants, where designated, to carry out informal consultations as an NFR, which enables them to work directly with the Services (See 50 CFR Section 402.08). EPA is hereby designating applicants for this general discharge permit as NFR's for the purposes of carrying out informal consultation. Therefore, EPA expects that the applicants will contact the Services when consultation is needed. See Appendix VII of the RGP for additional guidance on consultation.

Before submitting a NOI for coverage by the draft permit, the permit requires applicants to determine whether they meet the ESA eligibility criteria by following the steps in Section D of this Appendix VII.

Proposed discharges that are located in areas in which listed endangered or threatened species may be present are not automatically covered under this permit. The following paragraphs identify a number of locations where endangered or threatened species have been identified. Applicants with planned discharges to those locations should contact the Services. In addition to the areas listed in the paragraphs below, permittees should also refer to the species/county list in Appendix II of the RGP to determine whether or not additional consultation with the Services is needed.

There are four species of concern for applicants applying for permit coverage, namely the dwarf wedgemussel, the shortnose sturgeon, the bog turtle, and the northern redbelly cooter. The shortnose sturgeon is listed under the jurisdiction of NMFS and the dwarf wedge mussel, the bog turtle and the northern red-bellied cooter are listed under the jurisdiction of the USFWS.

The Federally-listed endangered dwarf wedgemussel (*Alasmidonta heterodon*) is found in the following areas:

- Connecticut River from North Cumberland to Dalton, New Hampshire (Coos County)
- Connecticut River from Haverhill to Lyme, New Hampshire (Grafton County)
- Connecticut River from Lebanon to North Walpole, New Hampshire (Grafton and Sullivan Counties)
- Ashuelot River from the Surry Mountain Flood Control Project in Surry to Swanzey, New Hampshire (Cheshire County)
- South Branch of the Ashuelot River in East Swanzey, New Hampshire (Cheshire County)

- Mill River from Whately to Hatfield, Massachusetts (Hampshire County)
- Fort River in Amherst, Massachusetts (Hampshire County)
- Mill River south of State Route 10 in Northampton, Massachusetts (Hampshire County)

The Federally-listed endangered shortnose sturgeon (*Acipenser brevirostrum*) is found in the following areas in Massachusetts:

- Merrimack River from the Essex Dam in Lawrence, Massachusetts to the Merrimack River's mouth (Essex County)
- Connecticut River from Turner's Falls, Massachusetts (Franklin, Hampshire, and Hampden Counties) to the Connecticut River's mouth, Connecticut (Hartford, Middlesex and New London, Counties).

The federally-listed threatened bog turtle (Chemmys muhlenbergii) is found in the following areas of Massachusetts:

- Bodies of water in the Towns of Egremont and Sheffield (Berkshire County), Massachusetts

The federally-listed endangered northern red-bellied cooter (Pseudemys rubriventris) is found in the following areas in Massachusetts:

- Bodies of water occurring within the following boundaries of the Towns of Plymouth and Carver (Plymouth County), Massachusetts, west of Route 3 and north of Route 25; east of Router 58 and south of Route 44
- Bodies of water in the Towns of Bourne and Sandwich, MA (Barnstable County), and
- Bodies of water in the Town of Raynham, MA (Bristol County)

Information is available at: http://www.fws.gov/newengland/index.htm

When discharge activities would occur along these listed waterways, permit coverage is not automatic. Rather, permit coverage is available only if the permit applicant contacts the Services to determine:

1) if listed species are present in the vicinity of the project area and

2) whether the applicant's discharges and discharge related activities are likely to affect listed species and/or critical habitats.

Coverage under the general permit is available only if the applicant consults with the Services under Section 7 of the Endangered Species Act, and it is determined that the applicant's discharges will not affect listed species, or the consultation results in a written concurrence by the Service(s) on a finding that the applicant's discharges are not likely to

affect adversely listed species.

Applicants with discharges that would occur along or into the waterways subject to consultation requirements must conduct informal consultation with the Services as a non-Federal representative and must notify both EPA New England and the appropriate state office of the determination in writing. The draft RGP continues the requirement in the current RGP that applicants indicate that consultation is required and that they are eligible for coverage, and that they must submit a copy of any determination from the Services with the NOI as directed. Applicants who cannot certify compliance with the ESA requirements on the NOI form, should contact the EPA NPDES Unit to determine if eligibility for an individual NPDES permit is possible or to discuss possible other options for the proposed discharge.

2. Contact Information for U.S. Fish and Wildlife Service Offices

USFWS Endangered Species home page: http://endangered.fws.gov
ESA Section 7 Consultations: http://endangered.fws.gov/consultation/index.html

U.S. Fish and Wildlife Service
New England Field Office
U.S. Fish and Wildlife Services
70 Commercial Street, Suite 300
Concord, NH 03301-5087
(603) 223-2541

New England Field Office Endangered Species Review Streamlining Procedures:
http://www.fws.gov/newengland/EndangeredSpec-Consultation.htm

3. Contact Information for National Marine Fisheries Services

Website: http://www.nmfs.noaa.gov/pr/species/esa_species.htm
ESA Section 7 Consultations: http://www.nmfs.noaa.gov/pr/consultation

Northeast Regional Office:

National Marine Fisheries Service
Protected Resource Division
55 Great Republic Drive
Gloucester, MA 01930
(978) 281-9300

C. Essential Fish Habitat

1. Background

Under the 1996 Amendments (PL 104-267) to the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. Sections 1801 et seq. (1996)), EPA is required to consult with the National Marine Fisheries Service (NOAA Fisheries) if EPA's action or proposed actions that it funds, permits or undertakes, "may adversely impact any essential fish habitat." See 16 U.S.C. Section 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." See 16 U.S.C. Section 1802(10). Adverse impact means any impact which reduces the quality and-or quantity of essential fish habitat (see 50 CFR Section 600.910(a)). Adverse effects may include direct (e.g. contamination or physical disruption), indirect (e.g., loss of prey, reduction in fecundity), site-specific or habitat-wide impacts, including individual, cumulative or synergistic consequences of actions. An EFH designation is only available where a Federal Fisheries Management Plan exists (see 16 U.S.C. Section 1855(b) (1)(A). EFH designations for New England were approved by the US Department of Commerce on March 3, 1999. In a letter to EPA dated October 10, 2000, NOAA Fisheries agreed that for NPDES permit actions, EFH notification for purposes of consultation can be accomplished in the EFH Section of the permit Fact Sheet or Federal Register Notice.

2. Proposed Action

EPA is proposing to issue general permits for point source discharges related primarily to the discharge of groundwater and related surface waters from four general categories of activities:

1) Site remediation primarily related to petroleum contamination; 2) site remediation activities where petroleum is not the primary contaminant; 3) contaminated construction site dewatering; and 4) miscellaneous contaminated discharges. The specific activities are described in Section II above. The general permits cover discharges to waters in the Commonwealth of Massachusetts (MA), including both Commonwealth and Indian Country lands, and the State of New Hampshire (NH).

3. Resources

The general permit is not available to any new or increased discharge into territorial seas (as defined by Section 502 of the Clean Water Act), however, it does not specifically

exclude discharges into tidal waters. Therefore, our EFH assessment considers all federally managed species with designated EFH in the coastal and inland waters of Massachusetts and New Hampshire. See the following website for list of species: http://www.nero.noaa.gov/hcd/webintro.html

4. Analysis of Effects

As described in Section II the draft RGP proposes to cover, as the current Remediation General Permit does, a variety of potential discharges which could occur anywhere in Massachusetts and New Hampshire, except into territorial seas as noted above. Based on EPA's experience with site remediation projects in the two states, many discharges resulting from cleanup of releases of toxic and hazardous wastes are to marine waters or near coastal waters. The discharges from cleanup of these releases, by their nature, typically occur in proximity to the source of contamination as the treatment systems are either mobile units brought to the site for short term operation, or constructed on-site for long term cleanups. While the ongoing discharges expected to be eligible for coverage under this permit are at identified locations, throughout the life of the permit, many additional "new dischargers" will become eligible due to cleanup getting underway at additional remediation sites, new construction discharge projects, or at one of the other Table II categories. Geographic locations of these discharges are not yet known.

The majority of the discharges are related to the management of groundwater that has been contaminated by human activities but in some instances from naturally occurring contaminants. The discharges contain one or more pollutants from common chemical groups, such as suspended solids, petroleum hydrocarbons, other volatile organic compounds, semi-volatile compounds, and metals. See Appendix III of the RGP for a complete listing of pollutants covered by this permit.

Given the variety of potential pollutants and broad geographic coverage of the permit, all federally managed species with designated EFH in the coastal and inland waters of Massachusetts and New Hampshire could be affected by the RGP.

5. EPA's Determination Regarding Impacts

EPA believes that the impacts from discharges authorized under this general permit will be negligible to EFH for a number of reasons.

First, the impacts will be negligible if the dischargers meet the stringent requirements specified in the permit. The general permit contains effluent limitations and other conditions, such as influent and effluent monitoring, to insure state water quality

standards are met for a wide variety of contaminants and discharge types. Because the general permit is designed for a variety of potential situations, the effluent limitations in the permit (other than for metals) have been set conservatively at zero dilution. For metals, permittees can consider dilution yet the concentration may not exceed a technology based ceiling value derived from industrial standards.

Additionally, although the permit does not require the use of specific treatment technologies, the treatment technology typically employed at these sites routinely produces high quality effluent, often at concentrations below laboratory quantification levels. Further, the permit requires permittees to implement best management practices (BMPs), including the basic requirements listed in Part I.E.1 of the draft permit, to minimize the impacts of the activities and discharges to the environment. The permittee is required under the RGP to certify the BMP plan annually, for the first two years, on the anniversary date of the EPA authorization letter.

Second, the majority of discharges anticipated to be covered by the RGP are low volume and short duration. The discharges covered by this permit are typically designed with flow rates of a few gallons per minute up to about 30 gallons per minute (approximately 40,000 gpd) and range from a few days to 2 years. EPA believes that these characteristics will help to minimize impacts on EFH.

In addition to the monthly monitoring requirements, as an additional safeguard, the draft permit allows EPA to require toxicity testing where needed to verify that the discharge is not having toxic impacts on sensitive species. Additionally, the general permit maintains EPA's ability to require an individual permit if applicants encounter particularly difficult pollutant control situations or where conditions described in the NOI indicate that expected impacts could be unacceptably increased. Similarly, EPA can revoke coverage under the general permit at any time if any adverse impacts to federally managed or protected species or their habitats occur either as a result of non-compliance or from unanticipated effects from this discharge. In such cases, EPA would reinitiate consultation with NOAA Fisheries based on this new information.

D. Historic Preservation

Facilities which adversely affect properties listed or eligible for listing in the National Registry of Historic Places under the National Historic Preservation Act of 1966, 16 USC Sections 470 et seq. are not authorized to discharge under this permit.

Applicants must determine whether the discharge, and the construction of any treatment devices or structures housing them, authorized under this RGP has the potential to affect a property that is either listed or eligible for listing on the National Register of Historic Places. Electronic listings of National and State Registers of Historic Places are maintained by the National Park

Service (http://www.nps.gov/nr/), the Massachusetts Historical Commission (http://www.sec.state.ma.us/MHC/) and the New Hampshire Division of Historical Resources (http://www.nh.gov/nhdhr/) For additional information regarding the requirements pertaining to historic places, see Appendix VII, Section II, of the RGP.

Applicants must comply with applicable State, Tribal and local laws concerning the protection of historic properties and places and applicants are required to coordinate with the State Historic Preservation Officer and/or Tribal Historic Preservation Officer and others regarding effects of any discharges covered by this permit on historic properties.

Addresses for State Historic Preservation Officers and Tribal Historic Preservation Officers may be found on the Advisory Council on Historic Preservation's website (http://www.achp.gov/programs.html). In instances where a Tribe does not have a Tribal Historic Preservation Officer, you should contact the appropriate Tribal government office when responding to this permit eligibility condition.

E. Requiring Coverage Under an Individual Permit or Other General Permit

1. When the Director May Require Application for an Individual NPDES Permit

The draft RGP provides that EPA may require an individual permit or recommend coverage under a separate general permit. This authority is contained in 40 CFR § 122.28(b)(3). These regulations also provide that any interested party may petition EPA to take such an action. The issuance of the individual permit or other general permit would be in accordance with 40 CFR Part 124 and would provide for public comment and appeal of any final permit decision. Circumstances under which the Director may require an individual permit are described in 40 CFR Section 122.28(b)(3)(i)(A-G).

The Director may require any person authorized by this permit to apply for and obtain an individual NPDES permit. Instances where an individual permit may be required include the following:

1) The discharge(s) is a significant contributor of pollution;
2) The discharger is not in compliance with the conditions of this permit;
3) A change has occurred in the availability of the demonstrated technology of practices for the control or abatement of pollutants applicable to the point source;
4) Effluent limitation guidelines are promulgated for point sources covered by this permit;
5) A Water Quality Management Plan or Total Maximum Daily Load containing requirements applicable to such point source is approved;
6) The discharge is to outstanding natural resource water;
7) The discharge causes or may cause violations to the water quality standards of the

receiving water or if actual or imminent harm to aquatic organisms is identified;
8) The discharge adversely impacts any federally managed species for which Essential Fish Habitat has been designated;
9) The discharge is into waters that are not attaining state water quality standards for the pollutants to be discharged;
10) The point source(s) covered by this permit no longer:

i) Involves the same or substantially similar types of operations;
ii) Discharges the same types of wastes;
iii) Requires the same effluent limitations or operating conditions;
iv) Requires the same or similar monitoring; or

11) In the opinion of the Director, the discharge is more appropriately controlled under an individual or different general permit.

If the Director requires an individual permit, the permittee will be notified in writing that an individual permit is required, and will be given a brief explanation of the reasons for this decision. When an individual NPDES permit is issued to an operator otherwise subject to this general permit, the applicability of this permit to that owner or operator is automatically terminated on the effective date of the individual permit.

F. EPA Determination of Coverage

Any applicant may request to be included under this general permit but the final authority rests with the EPA. Coverage under the general permit will not be effective until EPA has reviewed the notice of intent, existing file information, made a determination that coverage under the RGP is appropriate, and notified the owner/operator in writing of its determination.

VI. Effluent Limitations

A. Background

1. Statutory Requirements

Section 402 of the CWA, 33 USC 1342, authorizes EPA to issue NPDES permits allowing discharges that will meet certain requirements, including CWA Sections 301, 304, and 401 (33 USC 1331, 1314, and 1341). These statutory provisions state that NPDES permits must include effluent limitations requiring authorized discharges to: i) meet standards reflecting specified levels of technology-based treatment requirements; ii) comply with State water quality standards; and iii) comply with other state requirements adopted under authority retained under CWA Section 510, 33 USC 1370.

EPA is required to consider technology and water quality requirements when developing permit limits. 40 CFR Part 125, Subpart A, sets the criteria and standards that EPA must use to determine which technology-based requirements, requirements under Section 301(b) of the Act and/or requirements established on a case-by-case basis under Section 402(a)(1) of the Act, should be included in the permit.

The CWA requires that all discharges, at a minimum, must meet effluent limitations based on the technology-based treatment requirements for dischargers to control pollutants in their discharge. Section 301(b)(1)(A) of the CWA requires the application of Best Practicable Control Technology Currently Available (BPT) and Section 301(b)(2) of the CWA requires the application of Best Conventional Control Technology (BCT) for conventional pollutants, and Best Available Technology Economically Achievable (BAT) for non-conventional and toxic pollutants. BPT requirements were to be in effect by July 1, 1977 and BCT/BAT requirements by March 31, 1989. Thus for all dischargers covered by this general permit, BCT/BAT requirements apply.

EPA has been developing Effluent Limitations Guidelines (ELGs) for existing industrial activities for BPT and BAT as directed in the original Federal Water Pollution Control Act Amendments of 1972. Although many ELGs have been developed, no ELGs have as yet been developed which cover the types of discharges covered by this general permit. As provided in Section 402(a)(1) of the Act, EPA established the technology-based effluent limitations in the current RGP utilizing Best Professional Judgment (BPJ) to meet the requirements for BCT/BAT. EPA is reaffirming the technology based limits using BPJ in the reissuance of this draft RPG. It is important to note that the majority of pollutants being regulated by this general permit are Toxic Pollutants subject to BAT requirements.

Under Section 301(b)(1)(C) of the CWA, discharges are also subject to effluent limitations based on water quality standards. Section 303(c) of the CWA requires every state to develop water quality standards applicable to all water bodies or segments of water bodies which lie within the State. Waters within the State are classified according to use and numerical and/or narrative standards are adopted and approved by EPA. Permits issued by EPA must obtain state certification under Section 401 of the CWA that insures the water quality standards will be satisfied. Along with the technology-based effluent limitations described above, the water quality standards are used to establish water quality-based effluent limitations in this draft general permit as applicable.

B. Pollutants Associated with Regulated Activities

Discharges from the activities listed in Table II typically contain common pollutants or groups of pollutants. During the development of the current RPG, EPA evaluated the potential pollutants

from such discharges. This evaluation was based on many years of data from several sources including: 1) discharge monitoring reports (DMRs) from over 2,000 clean-up sites; 2) data from state NPDES permit programs 3) federal and state managed Superfund type programs; 4) Underground Storage Tank (UST) program; and, 5) Drinking Water programs.

The majority of the discharges covered by this permit are related to the management of groundwater that has been contaminated by human activities or, in some instances, from naturally occurring contaminants. Other discharges covered by this permit may include separate contaminated surface water and remediation-related runoff or mixed surface and ground water depending on the type of activity (e.g. construction sites, hydrostatic pipe tests, etc.).

Each of the categories listed in Tables II can usually be associated with "typical" pollutants or chemicals of concern (COCs). Based on historical data, the most common sources and types of pollutants or COC's are shown in Table III. Section VI of this Fact Sheet, Effluent Limitations, contains a discussion of the complete list of the COCs covered by the RGP.

Table III: Most Common Types of Sources and Pollutants Covered Under the RGP

Source	Pollutants (Chemicals of Concern)
1. Gasoline Leaks, Spills, & Discharges (Activity I, Table II)	Benzene, Toluene, & Ethylbenzene, Xylenes (BTEX), Naphthalene, Ethylene dibromide, Methyl-t-Butyl Ether (MtBE), tert-Butyl Alcohol, tert-Amyl Methyl Ether, Total Petroleum Hydrocarbons (TPH), Total Suspended Solids (TSS), Lead, Iron, Total Residual Chlorine
2. Fuel/Lube Oils Leaks, Spills, & Discharges (Activity I, Table II)	Acetone, Naphthalene, Polycyclic Aromatic Hydrocarbons (PAHs), Benzene, BTEX, Nickel, Chromium, Zinc, Iron, Miscellaneous Petroleum Hydrocarbons (TPH), Residual Chlorine
3. Industrial/Commercial Solvents Leaks and Spills (Activity II, Table II)	Chlorinated and non-Chlorinated Volatile Organic Compounds (VOC), Metals
4. Industrial Wastes, Coal Ash (Activity II and III, Table II)	Metals, PAHs, Polychlorinated Biphenyls (PCBs)
5. Naturally Occurring or Industry Related Discharges (Activity IV, Table II)	Metals

C. Summary of Options for Controlling Pollutants

In developing the 2005 NPDES RGP, EPA reviewed a broad spectrum of potential pollutants which are typically encountered at contaminated sites and considered the common technologies used to treat such contaminated sites. The majority of discharges contain common groups of pollutants, such as total suspended solids (TSS), petroleum hydrocarbons and/or other volatile organic compounds (VOC's) or semi-volatile compounds (PAH's). Nearly all of the discharges of remediation projects in MA and NH continue to use off-the-shelf, economically viable, and proven treatment systems including: 1) phase separation; 2) sedimentation; 3) filtration; 4) air stripping; and/or 5) carbon adsorption. Vapor phase carbon treatment is also typically utilized with air stripping for air emission control. For metals removal, typical controls include chemical addition, pH adjustment, and, in some cases, ion exchange units.

Some common pollutants are more difficult to treat than others due to their physical/chemical characteristics (including solubility, Henry's law constant, etc.). One example is Methyl-tert Butyl Ether (MtBE). To remove these types of contaminants, additional operation and maintenance (O&M) may be required. However, the vast majority of dischargers treat to very low effluent concentrations thereby meeting current standards. The most common VOC compounds such as the Benzene, Toluene, Ethylbenzene, Xylenes (BTEX) in petroleum hydrocarbon discharges and the chlorinated solvents such as Trichloroethylene (TCE) and Tetrachloroethylene (PCE) can typically be treated to below laboratory detection levels by available technologies.

As previously noted, this draft permit establishes effluent limitations identical to the current RGP, and continues to require the application of best management practices (BMP's) designed to minimize the environmental impacts of the remediation activity.

D. Derivation of Chemical Specific Effluent Limits

Chemical specific effluent limits are carried forward from the existing permit based on the ability of remediation sites to meet the discharge limits and antibacksliding requirements. The derivations of chemical specific effluent limits are not repeated here. However, for the reader's convenience, the pertinent language from the 2005 Fact Sheet is included as an attachment to this fact sheet (See Attachment A). Anyone interested in commenting on the derivation of these effluent limits is welcome to do so. If anyone believes certain limits should be relaxed, they should site the specific exceptions to backsliding that they believe applies. If any commenter believes more stringent limits should be applied, they should submit the rationale for lowering any such limit.

E. Applicability of Specific Chemical Effluent Limits

Permittees must demonstrate compliance with all of the applicable parameters specified in the draft permit. See Section VII.A.2 of this fact sheet.

F. Water Quality Related Requirements

Provisions in the MA and NH state surface water quality standards developed under Section 303(c) of the CWA and 40 CFR Part 131 provide minimum criteria to insure water quality standards are achieved and maintained for classes of waters designated by the state (see Section I.D.4. of this Fact Sheet). EPA has included certain criteria which are directly applicable to the types of discharges covered by the draft RGP as special conditions in the draft permit. The water quality criteria are found in 314 CMR 4.00, Massachusetts Surface Water Quality Standards and Chapter 1700, New Hampshire Surface Water Quality Regulations.

EPA required narrative water quality provisions in the 2005 RGP and has determined that it is appropriate to carry these provisions forward into the re-issuance of the RGP. Similar to the approach taken above in regard to chemical specific criteria, the derivation of the narrative water quality provisions are not repeated in the body of this Fact Sheet. However, the 2005 RGP justification for these conditions is included as Attachment II to this Fact Sheet. Anyone interested in submitting comments relating to these provisions is free to do so.

G. New Requirements

EPA has added several new, relatively minor requirements to the draft general permit. These new requirements are discussed below.

1. Chloride

EPA is requiring that applicants include chloride monitoring results in their NOI submittal. EPA believes this new, relatively minor monitoring requirement is justified due to the wide spread presence of chloride in groundwater both in MA and NH. This is especially true for sites near highways and salt sheds. In certain water bodies there may be a reasonable potential that the chronic water quality standard for chloride will be violated.

Similar to metals, the limits for chloride can be based on dilution. One exception to this is for chloride impaired waters in New Hampshire, where the limit would need to be equal to the water quality standard of 230 mg/l.

2. Calculation of effluent limits based on actual dilution for permittees that

discharge to receiving waters with a dilution in the 0-5 range

EPA has reviewed many treatment system operational reports and monitoring reports which outline common treatment system problems that may develop as a result of high levels of naturally occurring iron in groundwater in New England. Iron in groundwater (ferrous Fe^{+2}) will oxidize to insoluble ferric hydroxide (Fe^{+3}) upon mixing and exposure to air. As Fe^{+3}, it will foul the treatment units, cause growth of iron bacteria in the units, and may discolor the effluent or cause localized sediment deposits in storm drains or receiving waters.

Some operators add chemical sequestering agents specifically developed to keep the ferrous iron in solution through the treatment units and into the discharge due to the added expense of pre-treatment and iron removal. Since most of the discharges covered by the current RGP are from contaminated ground waters which may contain elevated iron concentrations, two issues affecting surface water quality need to be addressed: 1) transfer of high iron content ground water to the surface water (e.g. system pass-thru) and 2) impacts on treatment efficiency of the system being used to control the primary chemicals of concern in the discharge.

EPA recognizes that iron compounds are generally not toxic in the environment, however, excessive amounts may cause or contribute to violations of water quality standards including color, turbidity, solids, and odor, as well as fouling of the discharge treatment systems. The EPA criteria and State of NH freshwater chronic criteria for iron is 1,000 ug/l and the human health criteria for the consumption of water and organisms is 300 ug/l.

It has come to the Directors' attention that the limits established for RGP discharges with low dilution (i.e., 1,000 ug/L (1 mg/L) as the base limit) has caused treatment delays and interruptions. EPA has concluded that the iron limit in the RGP must also provide for the proper operation and maintenance of the kinds of pollution control systems that are anticipated at clean up activities covered by the permit.

Therefore, whereas the existing RPG sets limits at criteria for facilities that discharge in the range of 0- 5 (i.e., no dilution), this draft RGP sets limits based on actual dilution at these low ranges.

For ease of implementation and to provide consistency, this change applies to all limits, not just iron. An example calculation of an iron limit, at different dilution rates, is shown below.

Ex. (DF =1) 1000 ug/L x 1 = 1000 ug/L limit; (DF = 1.5) 1000 ug/L x 1.5 = 1500 ug/L limit; (DF = 2) 1000 ug/L x 2.0 = 2,000 ug/L limit, and so forth.

VII. Monitoring Recordkeeping, and Reporting Requirements

A. Common Requirements

1. General

Part I of the draft permit contains a number of general requirements that apply to all permittees covered under the general permit. For example, all facilities covered by the draft general permit are required to monitor pH, chloride, temperature, and flow. Additionally, all permittees are required to monitor their influent and effluent and summarize the data on a monthly basis. These records must be kept on site and available for inspection. Either EPA or the state may request copies of the data or summary sheets as well. Part II of the draft RGP continues the requirement from the current permit that records be maintained of: i) the date, exact location, and time of sampling or measurements; ii) the name of the individual(s) who performed the sampling or measurements; iii) the date the analyses were performed; iv) the name of the individual(s) who performed the analysis; v) the analytical techniques or methods used; and vi) the results of such analysis.

2. Category Specific Limits and Monitoring

Under the current RGP, permittees must monitor their outfall discharge effluent and demonstrate compliance with the applicable parameters. If the discharge continues for more than 6 months, the permittee must certify that the chemicals are not present by evaluating a minimum of one additional sample. These requirements are carried forward in the draft RGP. However, EPA is attempting to simplify the monitoring requirements in the draft permit. The draft permit now specifies that permittees that fall into a particular subcategory from draft permit Appendix III primarily test for the parameters listed for that sub-category and for all other parameters they believe present in addition to those of the subcategory.

Appendix III of the draft permit provides a matrix of the presumptive chemical effluent limits and monitoring requirements that permittees must comply with for the sub-categories covered by both the current RGP and this draft. Whereas in the existing permit, permittees were required to provide results for all chemicals listed in permit Appendix III, unless they certified them as “not present”, the draft permit only requires that permittees submit the results from its sub-category and any other subcategory pollutants are believed present in the influent. EPA will retain the option of requiring additional, site specific monitoring if it believes the site may have additional contamination. Also, some sub-categories require monitoring for all Appendix III chemicals (for example, sub-category I.C “Petroleum Sites Containing Other

Pollutants"). Applicants still have the option of certifying chemicals as "not present." If the site falls within more than one sub-category, the draft RPG requires the permittee to monitor for all sub-category specified pollutants unless certified as "not present" in the NOI.

If the site is known to contain additional chemicals not specified in the list of presumptive chemicals but listed in Appendix III of the RGP, the permittee is required to also monitor for the known chemicals. If the applicant believes that pollutants exist in addition to those listed in Appendix III of the RGP of the permit, the applicant must describe those contaminants on the NOI. Subsequently, the Director will decide if the RGP applies or if the individual permit is necessary. This requirement is contained in the draft RPG.

Regardless of any certification of chemicals not present, the current RGP provides that the Director may provide written notice to any facility, including those otherwise exempt, requiring monitoring of specific parameters. Any such notice will briefly state the reasons for the monitoring, parameters to be monitored, frequency and period of monitoring, sample types, and reporting requirements. Furthermore, as required in 40 CFR Section 122.42, in addition to reporting requirements specified in the permit, permittees must notify the Director as soon as they have reason to believe that any activity has occurred which would result in the discharge of any toxic pollutant which is not otherwise limited in the permit. This provision is maintained in the draft RGP.

Reference Appendix III of the draft permit for pollutants to be monitored by sub-category.

3. Flow Monitoring

Although there is no single flow limit that applies to all dischargers covered by this general permit, to ensure ongoing compliance with the effluent limits and proper operation and maintenance of treatment systems, the operator should monitor and comply with two site specific flow limits: the design flow limit and the total elapsed flow limit on any treatment components.

The individual components of wastewater treatment systems are designed and constructed within a margin of safety to allow for adequate treatment of the wastewater within certain limitations or "design flow." For the purposes of this draft RGP, the system's "design flow" limit is the flow capacity of the component or segment of the treatment train with the lowest capacity. In other words, the individual piece of equipment with the lowest design flow in the treatment system would set the design flow limit for the site. Similarly, in order to ensure proper operation and maintenance of the effluent treatment system, the operator needs to monitor total elapsed flow of the effluent.

Total flow measurement is needed because many components of treatment systems have a predicted performance life measured in terms of total gallons of wastewater throughput.

4. Sampling and Testing

The draft RGP continues, from the current RGP, to require that all samples be tested using the analytical methods found in 40 CFR §136, or alternative methods approved by EPA in accordance with the procedures in 40 CFR §136. As provided for in EPA's Model Permit for Discharges Resulting from the Cleanup of Gasoline From Underground Storage Tanks (June 1989), Method 8260, or an equivalent, may be used as a substitute for CWA Methods 602, 624, or 1624 for measuring volatile compounds. Permittees should note that any method changes must be accompanied by documented quality assurance/quality control (QA/QC) test results to prove that the analytical process can achieve the lower detection limits of Method 8260.

The monitoring requirements in the draft RGP, as with the current RGP, have been established to yield data representative of the discharge under authority of Section 308(a) of the Act and 40 CFR Sections 122.41(j), 122.44(i) and 122.48, and as certified by the State. The draft permit requires that monitoring be conducted according to the procedures approved under 40 CFR Part 136, unless other test procedures have been specified in the RGP; that samples taken in compliance with the monitoring requirements specified in the RGP be taken at a location that provides a representative analysis of the influent, as well as the effluent just prior to discharge to the receiving water or, if the effluent is commingled with another permitted discharge, prior to such commingling. The draft RGP specifies that monitoring results be summarized and kept on site and available for inspection.

However, the current RPG allows that certain monitoring requirements, such as frequency of sampling be reduced upon demonstration by ongoing sampling and analytical data that the influent or effluent either does not contain a limited parameter or does not demonstrate any toxicity in the case of whole effluent toxicity testing. This change requires prior approval by the Director. The draft RGP continues this provision.

5. Minimum Levels

The test method in 40 CFR 136 for each pollutant has a minimum level (ML) at which it can accurately quantify the chemical. Appendix VI of the RGP lists tests methods and the MLs for each pollutant limited in the permit. Where sample concentrations are above the ML, any of the methods listed for that pollutant in Appendix VI may be used. However, where approved methods have MLs above the permit limits, the permittee must use the approved method with the lowest possible ML before the concentration can be considered non-detectable. EPA has updated this appendix for the draft permit.

6. Acute Toxicity Testing and Monitoring

Massachusetts and New Hampshire both have narrative criteria in their water quality regulations (see Massachusetts 314 CMR 4.05(5)(e) and New Hampshire Part Env-Ws 1703.21) that prohibit toxic discharges in toxic amounts. The draft RGP does not allow for the addition of materials or chemicals which would produce a toxic effect to any aquatic life. If the states and/or EPA suspect that a discharge has a reasonable potential to cause or contribute to an excursion above the State's narrative criterion for toxicity, they may request that a Whole Effluent Toxicity (WET) test result and/or priority pollutant scan of the water to be discharged be required as part of the Notice of Intent, as authorized at 40 CFR Section 122.44(d)(1)(v).

If toxicity testing is required, EPA will provide the permittee with a copy of the test procedure and detailed protocol. The WET test will consist of one chronic and modified acute toxicity screening test with one hundred percent effluent sample. Ceriodaphnia dubia for fresh water and Mysid shrimp for marine water shall be used as test organisms.

The 126 EPA Priority Pollutants are found at 40 CFR Section 423, Appendix A. All samples shall be tested using the analytical methods found in 40 CFR Section 136 or alternative methods approved by EPA in accordance with the procedures in 40 CFR Section 136. The permittee shall submit to EPA and the appropriate State Agency the results of all testing conducted, as required at 40 CFR Section 122.41(l)(4)(ii).

7. Recordkeeping and Reporting Requirements

In addition to the recordkeeping requirements found in Part II.C of the permit, the draft RGP continues the requirement from the current RGP that results of the sampling, monitoring, testing, and analysis be summarized monthly on the monthly summary form provided for in Appendix VIII of the permit and kept on-site or with the permittee and available for inspection by EPA or the State. However, if the results indicate that a violation of the effluent limitations of this permit has occurred, or upon request by EPA or the State, the permittee must submit a summary of the results to EPA and the State to addresses listed in Appendix VIII of the draft permit.

B. Special Monitoring & Reporting Requirements Common to All Dischargers

The following monitoring conditions are designed to provide a number of system checkpoints during startup and re-start after shutdown periods, including:

1. Influent Monitoring Required

The draft RGP continues the requirement in the current RGP for influent sampling. For over 15 years, EPA has routinely required monitoring of both influent (to the treatment system) and effluent (to the receiving water or drainage system) at projects pursuant to approved site remediation activities in MA and NH. After the issuance of over 2,000 discharge authorizations in MA and NH, EPA does not believe that influent sampling places an unnecessary burden on these types of projects. Although compliance with the effluent limitations in the permit is determined by the effluent sampling, sampling the influent to the treatment system provides critical information necessary for proper operation and maintenance of the treatment system, removal efficiencies, and other quality control factors. This type of data also provides the EPA and states with information about the amount of pollution being removed from the environment as the result of the permit.

Under the current RGP, permittees may apply for a reduction in the frequency of monitoring, including influent monitoring, by submitting a notice of change (NOC) (see Appendix V of the RGP). For example, after the first six months of testing, if influent monitoring results do not change significantly, the permittee may apply for a decrease in sampling by submitting an NOC. However, until EPA provides written confirmation allowing the change, the permittee must continue monitoring at the frequency required by the RGP. These same procedures are continued in the draft RGP.

2. Initial Treatment System Discharge Startup

To ensure proper operation of the treatment equipment and achievement of effluent limits during the initiation of discharge, the current RGP requires additional sampling and analysis during the first month of discharge. Laboratory samples (typically grab samples accompanied by appropriate chain-of-custody forms) must be obtained from the influent to treatment and from the effluent to the drainage system once each day for the first and third day of discharge. (Note: in cases where days fall on a holiday, Sunday, or other normal non-workday, the schedule may be adjusted to the next day before or after the off-day and noted on the monitoring report). This requirement is carried forward in this draft RGP.

Samples must be analyzed with a 72-hour turnaround time in order to minimize breakthrough of the pollutants through the control system. If the system is working properly and achieving effluent limits, sampling for the remainder of the first month shall be weekly and then monthly thereafter. Turnaround time for these additional samples shall insure that no more than seven (7) days pass between the sampling event and results received and reviewed by the operator.

During system startup, the operator may also utilize field monitoring and visual observations as appropriate (e.g. portable organic vapor analysis, pH, turbidity, or other tests) to aid in proper system startup. Any indication of system malfunction or violation of effluent limitations requires immediate shutdown of the system discharge until appropriate repairs or other actions can be implemented.

If the system is shut down during startup, due to system malfunction or violations of effluent limits, then field monitoring shall be initiated at re-start of treatment and discharge. The draft RGP requires that an additional laboratory sample be taken with a 24-hour turnaround time when results must be reviewed by the operator. If the problem has been corrected, the initial system start-up may resume. If the problem persists, the system must be shut down again and repairs made. EPA and the state contact must also be notified by telephone, fax, e-mail or other means within 48-hours of the need to shut down the treatment system and cease discharge a second time. Discharge may resume upon correction of the problem(s) and after initial system start-up as required in the draft permit at Part I.D.2.a-d.

3. Intermittent Operations and System Re-Start (shutdown between 45 and 120 days)

Intermittent operation of treatment systems is occasionally necessary due to seasonal fluctuations of water table elevations in groundwater extraction systems, climate conditions, ongoing aquifer tests, system repairs, or other circumstances. Prolonged system shutdown can adversely affect certain treatment units (for example, commonly used carbon adsorption systems if fresh carbon is not installed). Similar to the current RGP, the draft RGP establishes a requirement for additional monitoring during re-start if the discharge has been interrupted for greater than 45 consecutive days but fewer than 120 days. A minimum of two (2) sets of influent and effluent laboratory samples must be taken during the first week after re-start of discharge with a 72-hour turnaround time for review by the operator. If the system is operating properly and meeting the effluent limits, monitoring may resume on the monthly schedule as before shutdown. If any sample or other observation indicates that effluent quality exceeds limitations the same shutdown, repair, and notification requirements as required during initial startup apply.

4. Extended System Shutdown (shutdown greater than 120 days)

Treatment systems and discharges which are interrupted for greater than 120 consecutive days are considered extended shutdowns. Any system re-starts after this period shall revert to the monitoring requirements for initial system startup.

5. Short Term Discharges

Discharges lasting less than one week (7 days), such as: pump tests, discharge of temporarily containerized waters (excluding hydrostatic testing discharges), which are then terminated and are not planned to be re-started, are considered "short-term discharges" under the current RGP. For all short term discharges, the current RGP requires that a minimum of three (3) representative influent and effluent laboratory samples be analyzed. This draft RGP reduces the number of initial samples required from 3 to 2. This reduction in the number of samples is consistent with the sampling reduction made for other discharges.

EPA recognizes that due to the time requirements for samples to be sent to a laboratory, analyzed, and the results obtained, the discharge may have ceased or be nearly complete by the time the laboratory results are available to the operator. The permittee is required to apply appropriate BMPs and utilize available field screening techniques in concert with accepted treatment technology to assure compliance with the permit limitations under the current RGP.

VIII. Antidegradation Provisions

The conditions of the draft permit reflect the goal of the CWA and EPA to achieve and maintain water quality standards. The environmental regulations pertaining to the State Antidegradation Policies which protect the States' surface waters from degradation of water quality are found in the following provisions: Massachusetts Water Quality Standards 314 CMR 4.04Antidegradation Provisions and New Hampshire RSA 485-A:8, VI Part Env-Ws 1708 "Antidegradation."

As with the current RGP, this draft general permit does not apply to any new or increased discharge to receiving waters unless the discharge is shown to be consistent with the States' "Antidegradation" policies. This determination shall be made in accordance with the appropriate State antidegradation implementation procedures for this general permit. EPA will not authorize discharges under the general permit until it receives a favorable antidegradation review and certification of this general permit from the States. EPA has formally requested each state to make an antidegradation certification determination.

IX. New Dischargers to Water Quality-Impaired or Water Quality-Limited Receiving Waters

Upon issuance of this permit, all existing and new dischargers will be subject to review to determine whether the discharge is to a segment of receiving water which is water quality "impaired" or "limited". Under Section 303(d) of the CWA, the states are periodically required to list all state waters that are not currently meeting their water quality standards. These waters are considered "impaired". States may also be required to develop a "Total Maximum Daily

Load" or TMDL for a water body which is a mathematical approach to allocating pollutant loads among a number of dischargers along an impaired water, the sum of which is less than the maximum load allowed to ensure the standards are met. A water body where a TMDL is available or planned is considered water quality limited. The adopted water quality standards, approved by EPA, for MA are contained in 314 CMR 4.00 and NH in CHAPTER Env-Ws 1700.

The CWA Section 303(d) list for each State provides information on the water body or segment of a water body which is impaired along with the pollutant or class of pollutants for which the water is listed. Waters can also be listed for failing to meet minimum flow requirements to support a balanced species population. As part of the Notice of Intent for coverage under the current permit, applicants are required to determine whether the proposed receiving water or segment has been listed on the state's 303(d) list and whether any pollutant proposed to be discharged is indicated as a cause for listing (see the NOI instructions in Appendix V of the RGP of the NOI form). This requirement is continued in the draft permit.

EPA anticipates that due to the nature of the contaminants regulated by this permit, proposed discharges to impaired receiving waters typically will not contain the same contaminants causing the impairment (e.g. those causing low dissolved oxygen, nutrients, etc.). EPA further believes that compliance with the effluent limitations in this permit will not cause or significantly add to violation of any state water quality standard.

40 CFR Section 122.4(i) requires a new discharger or one who started discharging after August 13, 1979, to demonstrate compliance with this section for any TMDL which has been completed for the water quality-limited segment. Applicants will be required to indicate on the NOI whether a TMDL has been prepared and, if so, for which parameters. However, EPA believes that only in rare instances will the contaminants of concern covered by this permit be subject to a TMDL.

Further information regarding the MA and NH 303(d) listings, TMDLs, and water quality standards for receiving waters can be obtained from the state's web sites at: http://www.mass.gov/dep/brp/wm/tmdls.htm, for MA and http://des.nh.gov/organization/divisions/water/wmb/swqa/2008 for NH or by contacting the state agency as indicated in the NOI.

X. State Water Quality Certification (Section 401)

Section 401 of the CWA provides that no Federal license or permit, including NPDES permits, to conduct any activity that may result in any discharge into navigable waters shall be granted until the state in which the discharge is located certifies that the discharge will comply with the applicable provisions of Sections 301, 302, 303, 306, and 307 of the CWA. Upon receipt of all comments and finalization of this permit, EPA will request state certification from Massachusetts and New Hampshire that this permit will comply with these provisions. In addition, EPA and

the Commonwealth of Massachusetts will jointly issue the final permit. For lands held by federally recognized tribes, EPA has provided the necessary certification. Currently, the only federally recognized tribes are the Wampanoag Tribe of Gay Head (Aquinnah) on the island of Martha's Vineyard and the Wampanoag Mashpee Tribe.

XI. Best Management Practices and Requirements for BMP Plan

A. General

The draft RGP continues the requirements of the current RGP that insure Best Management Practices (BMPs) are implemented for the facility or site operations. EPA is authorized under 40 CFR Section 122.44(k)(4) to impose BMPs in NPDES permits when the Agency finds that BMPs are "reasonably necessary to carry out the purposes of the CWA." One of the key functions of a BMP is to prevent spills and other releases without treatment, bypass of treatment, or other permit violations from occurring.

EPA has routinely included BMP requirements in individual and general permits issued by the Region and at remediation sites. The variety of activities covered by the RGP make it impractical to prescribe standard BMPs or a plan for every discharger. Many covered discharges only occur for short time periods or may not have personnel on site at all times overseeing the operation. BMPs and/or a written BMP plan can be tailored to the requirements of the facility or site. EPA is, however continuing a number of specific BMPs in the draft RGP which are consistent with standard operating practices. Significant additional information on BMPs and pollution prevention (P2) plans can be found in several EPA nationwide general permits including the Storm Water Multi-Sector General Permit (FR/Vol. 65, No. 210/Monday, October 30, 2000).

B. Implementing BMPs and Development of BMP Plan

Under the current RGP, all permittees must implement BMPs, including any applicable BMPs in the permit and or other BMPs needed to minimize the discharge of pollutants to the environment during the life of the discharge or until submission of a notice of termination of discharge. BMP requirements are continued in the draft RGP.

All operators overseeing discharges (including existing discharges) which are or plan to continue for **greater than 180 days** (6 months) from approval of coverage under the RGP, are required to develop and implement a written BMP Plan (BMPP) within **30 days** after receiving notification from EPA of coverage under the RGP. The draft RGP requires that the BMPP be maintained on-site or at the location of the principal operator identified in the RGP and made available for inspection. Operators overseeing discharges of **less than 180 days**, are required under the draft RGP to demonstrate that BMPs are in place and being implemented prior to discharge.

The BMPP may be a stand alone document or may be incorporated into any other BMPP, Pollution Prevention (P2), or Spill Control and Counter Measures (SPCC) plan required under other permits or programs. The draft RGP requires that the BMPP address all of the specific RGP BMP requirements and include any other BMPs which may be necessary to minimize the discharge of pollutants. Consistent with the current RGP, the draft RGP states that the BMPP must be maintained on-site or at the location of the principal operator identified in the RGP and made available for inspection.

The draft RGP also continues the requirement that the permittee submit a written certification stating that the BMPP was followed during the previous calendar year. The certification must state whether or not the inspection and maintenance activities were conducted, the results recorded, that the records are maintained, and that the facility is in compliance with the BMP Plan developed during the initial start-up date. Under the draft RGP, the permittee must still certify that the BMPP was followed; however, such certification must be submitted to EPA in the states only during the first and second year of permit coverage. These two annual certifications should be submitted as a letter to the addresses listed in Appendix V. See Section XIV.D of this fact sheet for a further explanation of the BMP certification requirements.

No other annual certification is required to be submitted to the states or EPA under the draft RGP, although the certification must be kept on site and available for inspection. The requirement that the owner or operator keep a properly executed BMPP plan at the site ready for inspection by the State or EPA is retained in the draft RGP. The draft permit specifies that the plan at the time of the inspection should demonstrate which elements of the BMP plan have been implemented or not implemented, or modified during the unreported time.

As is the case with the current general permit, the draft RGP requires that the certification be completed and signed according to the requirements of 40 CFR 122.22, either by the permittee or the operator(s) of the treatment system.

The draft RGP states that certifications not submitted for the first and/or second year may result in permit termination and associated penalties imposed by the State or EPA or both.

In addition to prevention and reporting of releases, the draft RGP continues to require that BMPs include, but not be limited to:

1. Site Security

Typically, treatment systems are brought to a site or facility as mobile units and remain on site for the duration of the discharge or treatment facilities are constructed on site in either temporary or permanent arrangements. Some permanent or semi-permanent treatment systems are often automated and do not require qualified personnel to be

present on a regular basis (for example, a gasoline station with a small system extracting contaminated groundwater over several years). Other temporary systems only have personnel on-site during regular work hours (for example, construction sites). For this reason, EPA is recommending a special condition regarding site security specific to the systems integral to maintaining the quality of the discharge authorized by the RGP.

Operators who have separate security provisions should either insure that the security for the treatment and other systems related to the NPDES discharge is either incorporated into the overall site security plan or has separate site security provisions as part of a BMP plan. Site security provisions will insure that system failure, vandalism, or other incidents shall be addressed in a timely manner, preventing the discharge of oil or hazardous materials exceeding the requirements of this permit. BMPs may include; security fencing, lighting, local or remote equipment failure alarms transmitted to a manned location, automatic shutdown systems, routine inspection and maintenance schedules, and other measures.

2. Management of Generated Wastes

Activities associated with the proper operation and maintenance of treatment or other systems associated with the discharge(s) authorized by the current RGP generate solid and/or hazardous wastes which are regulated under federal, state, and local laws, regulations, or other requirements. The draft RGP continues to contain a special condition requiring operators of facilities covered by this permit to adhere to proper waste management practices as part of the BMPP for the facility. Typically, solid wastes generated from facilities covered by this permit can include:

i) spent activated carbon from both water and air pollution units containing removed contaminants;
ii) solids and sludge from sedimentation tanks and filtration units (including waste filters);
iii) collected “free product” or other concentrated non-aqueous phase contaminants such as oil or gasoline from an oil/water separator;
iv) collected waste from cleaning pipes and tanks before hydrostatic testing;
v) waste treatment chemical additives and spent chemicals used for sampling and analytical purposes; and
vi) other miscellaneous wastes.

Solid and hazardous wastes are regulated under the Resource Conservation and Recovery Act (RCRA) 40 CFR Part 261. Under RCRA, EPA has authorized the Commonwealth of Massachusetts and the State of New Hampshire to manage the solid and hazardous waste programs. In Massachusetts, solid wastes generated at sites listed under the MA

Contingency Plan (MCP) (314 CMR 40.0000) are termed 'Remediation Waste" and are required to be managed under 314 CMR 40.0030. These wastes, and wastes generated as a result of actions to comply with this RGP at any other Massachusetts facility or site not covered by the MCP, are also regulated under 310 CMR 30.000, "the Massachusetts Hazardous Waste Regulations."

In the State of New Hampshire, Part Env-Wm 412, Reporting and Remediation of Oil Discharges, and Env-Wm 100-1100, Hazardous Waste Rules are the primary regulations for waste management at facilities or sites covered by the RGP. All operators of systems generating solid and hazardous wastes under the RGP are expected to familiarize themselves with the appropriate federal, state, and local rules for proper handling and disposal of such wastes and to insure compliance with them. Submission of a Notice of Termination (NOT) of the NPDES discharge described in Section VI.A.5 of this Fact Sheet and Part I.J. of the RGP does not relieve the operator of any requirement for proper management of solid and hazardous waste generated as a result of complying with the RGP.

3. Prohibition of Discharge Exceeding Design Flow

Wastewater treatment facilities/systems and individual components within the facility/system are designed and constructed with a margin of safety to allow for adequate treatment of the wastewater within certain hydraulic limitations or "design flow" of the facility/system. The design of a facility/system utilized for many discharges covered by the RGP might not be site specific. For example, a mobile treatment system brought to a site or components assembled for the period of discharge may each have differing design flow capacities. For the purposes of the RGP, the "system design flow" is the unit operation or segment of the treatment train with the lowest capacity for adequate treatment.

In other words, when the control efficiency of the treatment system is calculated, the individual piece of equipment with the lowest design flow in the treatment system would set the design flow limit for the site. For example, if the control system consists of a settling tank with the anticipated control efficiency at a flow of 10,000 gallons per day attached to a carbon absorber with a anticipated control efficiency at a design flow of 5,000 gallons per day, the design flow of the system would be 5,000 gallons per day. Therefore, in order for the control system to work as needed to comply with the effluent limits in the general permit, the design flow of the system must be monitored with a continuous flow meter. The NOI instructions in Appendix V of the current RGP require inclusion of the treatment system design flow in the NOI. The current RGP prohibits discharge at a flow in excess of the system design flow of the facility/system. These requirements are carried forward in the draft RGP.

4. Preventative Maintenance Required

The current RGP, Part II, Section B., Operation and Maintenance of Pollution Controls, establishes the requirements for properly operating and maintaining water treatment equipment installed for compliance with this permit. Water treatment equipment installed for the purposes of complying with the RGP might or might not be manned full time or have trained personnel on-site at all times. Proper preventative maintenance is critical to insure compliance with the permit and prevention of bypass or upset of the water treatment equipment.

Specifically, the operator is required to develop and include with the BMP plan, a preventative maintenance plan (PMP) to insure a schedule is in place of regular activities to operate and maintain any water treatment equipment used at the site. For example, many remediation systems covered under this permit utilize activated carbon treatment typically enclosed in drums or tanks arrayed in series such that the first unit receives the bulk of the pollutant load until "breakthrough" occurs (usually a predetermined increase in pollutant in the effluent from the unit) with the second or third units serving as polishing units. At breakthrough, the first unit must be replaced or the flow reversed such that the last unit becomes the first unit, etc. until new or regenerated carbon is installed. Preventative measures include change out of carbon on a regular schedule based on operating experience to provide an added margin of safety between routine inspections and scheduled maintenance visits.

The preventative maintenance requirements are carried forward from the current RGP to the draft RGP.

5. Employee Training

Any BMP plan developed for the facility covered by the current RGP must include a program for informing personnel at all levels of responsibility of the requirements contained in the RGP and the BMP plan, including, but not limited to those requirements specifically addressed by the various Parts of the RGP. Where appropriate, contractor personnel should also be trained in relevant aspects of the BMP plan and the requirements of the RGP. A program for training new employees and for refresher training for other employees who have direct or indirect responsibility for insuring compliance with the RGP should be included in the BMP plan.

The training program may be tailored to the specific permit situation. For example, a consulting firm conducting a short-term pump test under the RGP must be able to

demonstrate that employees involved in the pump test, and subsequent treatment and discharge of water under the RGP, have adequate knowledge of the permit requirements and treatment system operations. For long term dischargers where constructed treatment facilities are maintained, and potential changes in operators and/or employee turnover, may occur, the owner and operator(s) should insure that transitional training is provided. In certain cases, the States require operators of water treatment equipment to be certified at a particular level to operate the system.

Training provisions are included in the draft RGP.

6. Management of Run-on and Runoff

Any BMP plan developed for the facility covered by the current RGP must include actions to control extraneous run-on and runoff of uncontaminated waters which may co-mingle with contaminated waters requiring treatment and discharge. EPA recognizes that in many circumstances, especially at contaminated construction sites, incidental storm water or groundwater may mix with contaminated flows, however the degree to which this occurs must be minimized to the greatest extent practicable. Use of structural controls such as berms, sheet piling, diversion channels, temporary covers over work areas, and other means should be considered. Minimization of the volumes of water needing treatment will reduce the size of treatment facilities needed, reduce the costs involved, and minimize the overall environmental impacts of the discharge. In cases where the site or facility is large and may be covered by other permit requirements (such as the EPA Phase I or II construction permit for storm water) the run-on/runoff controls may be integrated with the overall site requirements. These requirements are carried forward in the draft RGP.

7. Erosion, Scouring and Sediment Control

State adopted surface water quality standards contain requirements for solids, turbidity, and other factors for certain classes of waters. An important element of any BMP plan is to insure that the discharge(s) covered by the current RGP do not adversely affect existing water quality by preventing any erosion, stream scouring, or sedimentation caused directly or indirectly by the discharge. High volume pumping tests, large volume hydrostatic testing, contaminated construction dewatering and other activities covered by the RGP have the potential to cause water quality degradation. Structural and other controls such as energy dissipation techniques, controlled discharges, etc. can be implemented to minimize these impacts. Erosion control requirements are included in the draft RGP and are the same as the current RGP.

XII. Special Permit Conditions Common to All Categories of Discharges

A. Compliance with Multi-Sector General Permit (MSGP) Requirements

The draft permit requires operators who are utilizing a non-municipal storm sewer system at a facility covered by the EPA Multi-Sector General Permit (MSGP) for industrial activities to comply with any applicable Stormwater Pollution Prevention Plan (SWPPP) developed under the MSGP. In many cases, the owner of the facility covered by the MSGP and by the RGP may be the same. However, in the case of separate ownership and/or different operators, the owner/operator of the facility covered by the RGP must notify the owner/operator of the facility covered by the MSGP.

The sites authorized to discharge under the final RGP will receive written notification from EPA with State concurrence. It is important to note that an authorization to discharge under this general permit, where the activity discharges to a municipal or private storm drain owned by another party, does not convey any rights or authorization to connect to that drain.

B. Category specific requirements for hydrostatic testing dischargers

1. Background

Hydrostatic testing of pipes is performed by sealing the segments to be tested at both ends, filling the segment with water, pressurizing the segment, and then checking the integrity of the segments for some duration of time. Following the test, the pressure is released and the pipeline is dewatered. The test water discharges are, therefore, batch discharges. Since the test water discharges are batch discharges of short term duration, the limits in the current permit are in terms of daily maximum concentrations, as allowed by 40 CFR Sections 122.45 (e) and (f). This is continued in this draft RGP.

The fill water used in hydrostatic testing of pipelines may come from a wide range of sources. These sources include rivers, streams, lakes, ponds, wells, municipal water supplies and, for offshore portions of pipelines, marine waters. Often the hydrostatic test water is discharged back into the same water body from which it was taken. In these cases, the pollutants of concern are those added to the fill water during the hydrostatic test. Where the fill water is discharged into a different water body from which it was taken, the pollutants of concern are not only those added during the pipeline test, but also those contained in the fill water prior to the test.

New pipelines should be relatively free of pollutants that could be discharged along with the hydrostatic test water. Pollutants in the pipeline prior to the hydrostatic test may include construction debris, suspended solids from soil and welding solids, and

lubricating oil. Existing natural gas pipelines have the potential for containing contamination in the discharged hydrostatic test water, including hydrocarbon condensates and residues left by the natural gas. Hydrocarbons typically found in gas pipeline condensates which may contaminate the test water include benzene, toluene and xylenes. Large molecular weight petrochemicals in the gas pipeline tend to deposit on the internal pipeline walls due to retrograde gas condensation.

This draft RGP continues the hydrostatic test water requirements as contained in the current RGP.

2. Best Management Practices for Pipelines and Tanks

Conventional pollutants that might be discharged in the hydrostatic test water from new and existing natural gas pipelines are typically TSS, hydrocarbons, and pH. The current, widely practiced pollution control technology for discharges of hydrostatic test water from new pipelines consists of pre-cleaning, such as mechanical scouring, or "pigging," and/or rinsing with water or a detergent solution, of the pipeline segment(s) before hydrostatic testing. Additional treatment of hydrostatic test waters may or may not be needed depending on the situation and potential pollutants involved, e.g., depending if tank testing or pipeline testing. The necessity of additional treatment may also change depending on whether the testing is for existing pipe or new pipe construction.

The 1996 Gas Research Institute study gathered data on benzene, BTEX, oil and grease and total suspended solids (TSS) in hydrostatic test water both before and after treatment. The results of the information in the GRI study indicate pre-pigging to be the most effective way of lowering benzene, BTEX and oil and grease levels, as well as TSS levels, in the test water discharges. Although a pre-cleaning/rinse solution was not used in the actual tests, the study agreed that using a pre-cleaning/rinse solution would also enhance the lowering of these pollutants.

Wastewater from hydrostatic testing may contain a wide variety of toxic pollutants that were removed from the pipeline during the pre-cleaning or treatment operations. It should be noted that the current RGP prohibits the discharge of any sludge generated in the pre-cleaning nor any rinsing solutions used in the pre-cleaning of the pipelines. The RGP also prohibits the discharge of hydrostatic test water to which treatment chemicals, corrosion inhibitors or biocides have been added. Therefore, EPA expects that those wastewaters will be collected and shipped offsite for proper disposal. These prohibitions are continued in the draft RGP.

In addition to meeting the numerical limits and other general BMPs, hydrostatic testing dischargers must insure that certain BMPs are followed and certain minimum testing

requirements are met. The current RGP contains a number of BMPs as well as appropriate sampling and analysis requirements. For example, the RGP requires the following BMP's: 1) basic cleaning/removal of scale, soil, residues, etc.; 2) control of site source water vs. receiving water (i.e., concern with discharge of possible high volumes of low quality water to a higher quality water source); 3) identification and control of chemical additives; and 4) the use of de-watering structure to dissipate energy and control erosion. These requirements are contained in the draft RGP.

3. Hydrostatic Testing Discharge Sampling and Monitoring Requirements

EPA is establishing separate sampling requirements for hydrostatic test waters due to the unique nature of these activities. Historically, EPA has issued individual permits, including oil terminal permits, which contain requirements for monitoring of hydrostatic test discharges. Additionally, EPA has established monitoring policies for other hydrostatic tests including gas and oil pipeline construction and repair. These types of monitoring requirements are being carried forward in the draft RGP. *NOTE: Facilities for which hydrostatic testing is covered under an individual permit are not covered under the RGP unless requested and approved.*

Additional sampling and monitoring requirements contained in the draft RGP for these activities include:

i. *For New and Existing Tanks*: The operator must take a minimum of six (6) representative grab samples.

a) For influent sampling, the operator must take one (1) sample of the fill (source) water during the first 10% of the fill segment time and one (1) sample during the last 10% of the fill-segment time.
b) For in-process sampling, the operator shall take samples of the tank water following depressurization: one (1) at top and one (1) at bottom. The operator shall analyze and evaluate in-process samples prior to discharge and if the analysis demonstrates that the water quality is not consistent with the effluent limits established in this permit, the operator shall not discharge the effluent prior to treatment.
c) For effluent sampling, the operator must take one (1) sample of the discharge water during the first 10% of discharge and one (1) sample during the last 10% of the discharge. If at anytime the analysis demonstrates that the discharge water quality is not consistent with the effluent limits established in this permit, the operator shall cease discharging the effluent until further treatment achieves the effluent limits.
d) All effluent sampling shall be taken prior to the combination with wastewaters

of any type.

ii. *For New and Existing Pipelines*: The operator must take a minimum of six (6) representative grab samples.

a) For influent sampling, the operator must take one (1) sample of the fill (source) water during the first 10% and one (1) sample during the last 10% of the fill-segment time;
b) For in-process sampling, the operator shall take two (2) samples of the pipeline water following depressurization. The operator shall analyze and evaluate in-process samples prior to discharge and if the analysis demonstrates that the water quality is not consistent with the effluent limits established in this permit, the operator shall not discharge the effluent prior to treatment;
c) For effluent sampling, the operator must take one (1) sample of the discharge water during the first 10% of discharge and one (1) sample during the last 10% of discharge; and
d) All effluent sampling shall be taken prior to the combination with wastewaters of any type.

XIII. Administrative Requirements

A. Notification of Change of Conditions

The current RGP contains provisions for a change in certain conditions which do not require submission of a new NOI, but do require submission of a notice of change (NOC) to the EPA Director with a copy to the state agency (see Appendix V of the RGP). This is *not* a permit modification as allowed under 40 CFR Section 122.62. A general permit, due to its broad coverage, cannot be modified to accommodate changes for an individual permittee. However, EPA has identified several parts or conditions within the current RGP (and included here in the draft RGP) which allow for limited changes to be made by the operator upon submission of a NOC. These provisions are noted within the permit and consist of:

1. Reduction in certain monitoring requirements

Certain monitoring requirements may be reduced upon demonstration by ongoing sampling and analytical data that the effluent either no longer contains a limited parameter or does not demonstrate any toxicity in the case of whole effluent toxicity testing, where required. To be eligible for a reduction in **influent** monitoring, the permittee must provide 12 **months** of data. To be eligible for a reduction in **effluent** monitoring of a pollutant that is present in the discharge, the permittee must provide 24 **months** of data demonstrating compliance. This type of change requires prior approval

by the EPA Director. Prior to receiving written approval, the permittee must continue to monitor at the frequency specified in the RGP.

2. Change in flow conditions

A NOC can be used to notify of a change in flow conditions which may increase the daily average or maximum flow rate by more than twenty-five (25) percent, provided the permitted flow design capacity of the treatment system is not exceeded.

3. Change in treatment

An NOC can be used as notification of a change in treatment which: 1) affects the design flow of the system by either increasing or decreasing the design flow, and/or, 2) adds or removes any major operable unit of the system.

4. Chemical additives

The permittee may propose the use of chemical treatment additives (e.g., foam control, emulsifiers, chelating agents, flocculating agents, pH adjusting chemicals, etc.) to enhance the treatment system performance and demonstrate that the addition of such agents will not add any pollutants which may cause a violation of receiving water standards or cause the overall effluent to violate effluent limitations. The permittee must attach, with the NOC, the material safety data sheets (MSDS) for the chemical(s) proposed to be added and receive written approval from the EPA Director before use.

5. Change of discharge location

Providing that the receiving water information submitted with the original NOI (or for applicants covered by a prior application for individual permit) remains the same (for example, outfall moved from storm drain to drainage ditch, etc.), location of the discharge may be modified. For changes in receiving water, a new NOI is required.

6. Temporary cessation of discharge

For any temporary interruption or cessation of discharge planned to extend greater than 90 days, the permittee must submit a NOC including; i) the reasons for the interruption or cessation of discharge, ii) the estimated time frame when the discharge will cease and be

re-started, and iii) an acknowledgment that "start-up" monitoring will be resumed when the discharge is re-started as required the RGP. The EPA Director may notify the permittee in writing by certified mail, that the authorization to discharge under the RGP will be revoked on a certain date and provide the reasons for revocation. If authorization to discharge is revoked, a new NOI form or an application for individual permit must be submitted and discharge authorized prior to recommencing discharge.

7. Change in pH range in MA

In Massachusetts, the permittee may make a demonstration that the pH range may be widened due to naturally occurring conditions in the receiving water or the naturally occurring source water is unaltered by the permittee's operation. However, in no case can the permittee discharge with a pH outside of the range 6.0 - 9.0 s.u. The scope of any demonstration must receive prior approval from the MassDEP. An NOC must be submitted to the Director upon approval from the State.

8. Change to administrative information

Certain administrative information may be changed via an NOC, including:1) changes in addresses or contact information and 2) transfer of ownership according to 40 CFR Section 122.61(b) which requires: i) notice to the EPA Director at least 30 days prior to the transfer date; ii) inclusion of a written agreement between the new and existing permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them. The change in ownership shall be automatic unless the EPA Director notifies the existing and proposed new permittee of his or her intent to revoke coverage under the RGP.

9. NOC Forms

A copy of the suggested NOC form is included in Appendix V of the draft RGP. Either the suggested form or an official correspondence may be used providing it contains the information required by the NOC instructions.

B. Certification Requirements

EPA is continuing the requirement that permittee "certify" that certain chemicals are not present in the effluent if the discharge continues for more than 6 months. The RGP requires that permittees certify that any parameters originally believed to be absent (and therefore required no monitoring) continue to be absent from the discharge. The permittee should identify the

applicable Individual Sub-Category in Appendix III, and certify by letter, including the laboratory data, to EPA that any parameter not identified in EPA's original RGP authorization letter, continues to be believed absent.

The draft permit requires that certification be made between six months and 12 months from the date of EPA's authorization letter and additionally during each subsequent twelve (12) month period that the discharge continues; and certification of any parameter believed absent is required to be based on laboratory data from a minimum of one (1) new untreated influent sample taken within 30 days of the certification request. A permittee is allowed to certify sooner than 12 months if they so desire. EPA believes this change is warranted in light of the reduced initial monitoring required under the NOI in the draft NOI.

C. Notice of Termination

1. Requirement to Notify

Operators of facilities and/or operations authorized under the current permit shall notify the EPA Director of the termination of discharge(s) authorized under the current RGP. A copy of the suggested Notice of Termination (NOT) form and instruction for completing the suggested NOT are contained in Appendix V of the RGP. Either the suggested NOT or other official correspondence must be completed and submitted within **30 days** following cessation of discharge(s) authorized by the RGP, unless cessation is temporary as described in the NOC section above.

2. NOT Forms

Either the suggested NOT form in Appendix V of the draft RGP or alternative correspondence must include the following information:

1) Name, mailing address, and location of the site for which the notification is submitted;
2) Name, address and telephone number of the operator addressed by the NOT;
3) The NPDES permit number assigned;
4) An indication that the discharge has been permanently terminated;
5) Signature according to 40 CFR Section 122.22, including the following certification by the permittee:

I certify under penalty of law that all discharges from the identified facility that are authorized by the "Remediation General Permit" in Massachusetts and New Hampshire, the RGP, have been terminated. I understand that by submitting this Notice of Termination (NOT) I am no longer authorized to discharge waters covered by the RGP

and that discharging pollutants from the activity covered by the RGP is unlawful under the Clean Water Act where the discharge is not authorized by a permit. I also understand that the submission of this NOT does not release an owner/operator from liability for any violation of the RGP or the Clean Water Act.

D. Addresses for submittals

Completed NOC and NOT forms must be submitted to EPA at the following address as well as a copy to the State agency (see addresses in Appendix V of the permit):

NPDES.Generalpermits@epa.gov, or

U.S. Environmental Protection Agency
5 Post Office Square, Suite 100
Mail Code OEP06-4
Boston, MA 02109-3912
ATTN: Remediation General Permit

The RGP requires that all submittals to EPA also be submitted to the municipality in which the permitted discharge is located.

XIV. Standard Permit Conditions 40 CFR Sections 122.41 and 122.42

Permittees must meet the standard permit requirements of 40 CFR Sections 122.41 and 122.42, as applicable to their discharge activities. Specific language concerning these requirements is provided in Part II of the permit.

XV. Other Legal Requirements

A. Coastal Zone Management Act

The Coastal Zone Management Act (CZMA), 16 U.S.C. Sections 1451 et seq., and its implementing regulations [15 CFR Part 930] require that any federally licensed activity affecting a State's coastal zone be consistent with the enforceable policies of approved state management programs. In the case of general permits, EPA has the responsibility for making the consistency certification and submitting it to the State for concurrence. EPA is in the process of seeking the state consistency certifications for this general permit from the Executive Office of Environmental Affairs, Massachusetts CZM, 251 Causeway Street, Suite 800, Boston, MA 02114; and New Hampshire Coastal Program, located at the New Hampshire Department of Environmental Services, P.O. Box 95, Concord, NH 03302-0095.

B. Environmental Impact Statement Requirements

This general permit does not authorize discharges from any "new source" as defined under 40 CFR Section 122.2. Therefore, the National Environmental Policy Act, 33 U.S.C. Sections 4321 et seq., does not apply to the issuance of these general permits. Potential permittees and others reviewing this document should take careful note of the distinction between "new discharge" and "new source" (see definitions) since most discharges covered by this permit will be considered new discharges.

C. Executive Order 12866

EPA has determined that this general permit is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

D. Paperwork Reduction Act

The information collection requirements of this permit were previously approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act, 44 USC 3501 *et seq.* and assigned OMB control number 2040-0086 (NPDES permit application) and 2040-0004 (Discharge Monitoring Reports).

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 USC 601 et seq., requires that EPA prepare a regulatory flexibility analysis for rules subject to the requirements of 5 USC 553(b) that have a significant impact on a substantial number of small entities. The permit issued today, however, is not a "rule" subject to the requirements of 5 USC 553(b) and is therefore not subject to the Regulatory Flexibility Act.

F. Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104-4, generally requires Federal agencies to assess the effects of their "regulatory actions" (defined to be the same as "rules" subject to the RFA) on tribal, state and local governments and the private sector. The permit issued today, however, is not a "rule" subject to the RFA and is therefore not subject to the requirements of UMRA.

G. Executive Order 12898, Environmental Justice

Executive Order 12898 (59 Fed. Reg. 7629, February 11, 1994), entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" ("EJ Order"), requires federal agencies to identify and address environmental justice issues in all actions that, "substantially affect human health or the environment." EPA defines environmental

justice as the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair treatment means that no group of people, including any racial, ethnic, or socioeconomic group, should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies. EPA is committed to promoting and supporting environmental justice, and we encourage all the New England States to do the same.

One of the most effective ways to address environmental justice is to ensure that all communities have an opportunity for meaningful involvement in the regulatory process. To this end, EPA has worked with the States and many communities in New England to: (1) facilitate public access to information on the localized impacts and health risks associated with environmental programs, (2) enhance public outreach efforts to groups and coalitions most interested in local environmental quality issues, as well as to communities that may have less access to publicly available information (for example, due to language barriers or lack of access to the internet), and (3) utilize to the fullest extent existing mechanisms for public participation in the regulatory decision making process. In addition, EPA actively encourages the States to develop and implement environmental justice policies in their environmental programs.

EPA is today proposing to re-issue the remediation general permit (RGP). In the development of this permit, EPA worked to identify and to advance efforts and to implement directives to ensure fair and equitable treatment of all MA and NH citizens with respect to matters involving public health and the environment. EPA and both NH and MA have active EJ programs, including policies and activities that ensure that programs, permits, policies and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under such programs, policies and activities, because of their race, color, national origin or economic status.