

I. Response to Comments on the October 2004 Proposed Remediation General Permit

A. List of parties who submitted comments during the public comment period (November 2, 2004 - January 18, 2005):

1. Kendall Marra, Massachusetts Department of Environmental Protection (MA DEP), Bureau of Waste Site Cleanup (BWSC). Internal MA DEP memorandum from Kendall Marra to Paul Hogan of the MA DEP's Division of Watershed Management (DWM), dated December 6, 2004.
2. Anthony P. Giunta, Director, Waste Management Division, New Hampshire Department of Environmental Services. Letter dated December 14, 2004.
3. Donald R. Schregardus, Deputy Assistant Secretary of the Navy (Environment), Department of the Navy. Letter dated December 15, 2004.
4. Kathleen Keohane, Division of Watershed Management, Massachusetts Department of Environmental Protection. Email dated January 18, 2005.
5. George C. Berlandi, Sanitary Engineer, Wastewater Engineering Bureau, New Hampshire Department of Environmental Services. Letter dated January 4, 2005.
6. Katherine L. Pfennighaus, Staff Engineer; Paul Ormond, Senior Engineer; Elliot I. Steinberg, Vice President; Steve R. Kramer, Senior Vice President; Haley & Aldrich. Letter dated January 18, 2005. Elliot I. Steinberg, President, Massachusetts Licensed Site Professional Association. Letter dated January 19, 2005¹ supporting Katherine L. Pfennighaus' letter and comments.
7. Michelle L. Smith, Project Scientist, NewFields Princeton, LLC. Letter dated January 14, 2005.
8. David J. Brillhart, Assistant Commissioner, New Hampshire Department of Transportation. Letter dated January 18, 2005.
9. Utility company comment letters, including:
 - a) Sandra J. Little, Director, Environmental Affairs NSTAR Electric Gas. Letter dated January 18, 2005.
 - b) David Kanupke, Director, National Security Environment, & Safety, United States Telecom Association. Letter dated January 18, 2005.
 - c) Jacques' (sic) McCormick, Director, Environment Management, Verizon New England, Inc. Letter dated January 18, 2005.
 - d) Joseph G. Callanan, Manager of Environmental Affairs, National Grid. Letter dated January 14, 2005.
 - e) Theresa Pugh, American Public Power Association (APPA). Letter dated January 18, 2005.
 - f) Patricia McCullough, , Director, Environmental Management, Northeast Utilities. Letter dated January 18, 2005.
 - g) Eran Maher, Chairman, Utility Water Act Group, Nonpoint Source/Storm Water Committee. Letter dated January 18, 2005.
 - h) Alexander Taft, Director, Environmental Operations New England, Keyspan Energy Delivery. Letter dated January 18, 2005.
 - i) John M. Ross, Manager, Permits Environmental, Health & Safety, NiSource. Letter dated January 18, 2005.

¹ This letter was dated January 19, 2005, after the public comment period closed on January 18, 2005.

B. Comment areas and EPA Region I's response:

1. ***Kendall Marra, Massachusetts Department of Environmental Protection (MA DEP), Bureau of Waste Site Cleanup (BWSC)***

Comment 1.a. - General written comment on the proposed Remediation General Permit MAG910000 (RGP) concerning the need for clarity in the applicability and permit procedures sections of the general permit. Particularly, BWSC requested that the permit be clarified regarding the differences in permit coverage between sites that are subject to the regulations promulgated under 310 CMR 40.000 of the Massachusetts General Law, Chapter 21E, i.e., the Massachusetts Contingency Plan (MCP), versus those sites that are not regulated by the MCP. Because Massachusetts is not a delegated state for the National Pollutant Discharge Elimination System (NPDES) permit program, the RGP covers both types of sites in Massachusetts. However, under state law, 310 CMR 40.0041, General Provisions for the Management of Remedial Wastewater and/or Remedial Additives, provides that sites subject to the MCP are not subject to Massachusetts water permit and fee requirements.

The majority of the discharges potentially covered by the RGP in Massachusetts are covered under the MCP. Therefore, BWSC believes that it is essential that the general permit be clear as to under which circumstances applicants must submit Massachusetts' application forms (i.e., form BRPWM 12) for coverage and fees to the Commonwealth of Massachusetts. See Part I.B(8)(b)(1) of the proposed permit. Additionally, BWSC requests that the general permit and supporting materials clarify which agency signs off on the actual general permit as it applies to discharges covered under the MCP. The proposed RGP provides for signatures of both EPA and MA DEP. However, the permit does not require a signature from MA DEP if the discharge is covered by the MCP.

EPA Response: EPA has revised the general permit to clarify that discharges concurrently subject to the federal NPDES permitting program and the MCP regulations, 310 CMR 40.000, do not need to submit the Massachusetts general permit application BRPWM 12 or fees. Furthermore, the coversheet to the RGP has been modified to clarify that, as a matter of state law, the signature of Glenn Haas, Director of the Division of Watershed Management of the Commonwealth of Massachusetts, on the general permit only applies to discharges in Massachusetts that are **not** subject to the MCP and 310 CMR 40.000. However, under federal law, discharges covered by the MCP are required to be permitted under the NPDES program and could be covered by MAG910000.

2. ***Anthony P. Giunta, Director, Waste Management Division (WMD), New Hampshire Department of Environmental Services (NHDES), raised a number of concerns about the scope, costs, and implementation of the RGP as it applies to discharges in New Hampshire (NHG910000).***

Comment 2.a: Regarding the scope of the RGP, WMD supports the use of the RGP but only for long term and moderate term discharges, i.e., greater than 7 days. Conversely, WMD believes that use of the RGP for short-term discharges (i.e., 7 or fewer days) would cause significant problems and as such, the disbenefits outweigh any benefits that might result from changing the State's current system of issuing Temporary Surface Water Discharge Permits (TWSP). WMD warns against a "one-size fits all" general permit.

EPA Response: EPA understands that implementing the RGP for discharges lasting for fewer than 7 days may be more complicated than NH's current TWSP program. However, EPA disagrees that the issues presented by the implementation of a general permit for short term discharges will outweigh the benefits of permitting these discharges under the NPDES, rather than the state, program. As described in more detail in the responses below, there are numerous differences between the RGP and the current state requirements that will provide additional water quality protection, such as the limitation and monitoring of more discharges and more parameters, e.g., metals and temperature, as well as parameters with more stringent limitations, e.g., minimum levels below the current state requirements.

Regarding the use of a "one size fits all" general permit, EPA has considered short term discharges during the development of the permit. EPA has based the RGP largely on its experiences with more than 2,000 remediation and contaminated construction projects, many of which were of a short term nature. Further, the RGP has provisions that apply only to such short term discharges. For example, Part I.D.7 has unique sampling and testing requirements that apply solely to short term discharges.

Comment 2.b: WMD raised implementation concerns regarding the timing of the RGP application and approval process for individual projects. Under the current state system, NH DES has been able to issue expedited surface water permits within 24 hours of application. However, WMD is concerned that under the RGP, several weeks will be needed to prepare the application due to the required consultations and preparation of the Best Management Practices plan (BMPP). Additionally, WMD notes that the RGP provides for a 14 day holding period for all notices of intent (NOI), including a 7 day posting on the EPA's website of the NOI, before EPA can approve the discharge as covered by the general permit. WMD believes that this will create incentives to avoid the permitting process either legally, by not discharging to a water body of the US, or illegally, by illicitly discharging.

EPA Response: EPA is confident that the vast majority of the projects potentially

covered by the RGP can and will be able to apply for coverage well in advance of the time of discharge. After more than 2,000 remediation and contaminated construction projects, EPA has observed that most of the non-emergency contaminated construction and groundwater remediation related activities are planned months, or years, in advance of discharge. While there may be additional application requirements, including consultation on endangered species, essential fish habitat, and national historic places, as well as the development of a BMPP, the additional time that these processes need should not significantly delay a well-planned construction or remediation project since these can be done well in advance of the need to discharge.

For emergency cleanup activities, EPA recognizes 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 or toxic materials, EPA-NE'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 EPA at: National Response Center (NRC) (800-424-8802) or EPA-NE at: 617-918-1224 or 1236. Further, EPA-NE understands, and discusses in Section V.A.1.a of the Fact Sheet, that during the 14 day NOI processing period, unplanned circumstances may arise that could necessitate a discharge. In such cases, EPA-NE 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.

Comment 2.c: WMD raised concerns regarding the potential for additional costs resulting from the implementation of the RGP in lieu of the current state system. They believe that the RGP will raise costs due to: 1) the RGP's coverage of more discharges than the TWSP; 2) the RGP's requirements for additional analysis of chemicals currently not covered by the TWSP; 3) the RGP's application and compliance requirements associated with meeting federal laws concerning endangered species, essential fish habitat, and historic places; 4) the RGP's requirements for the development and implementation of BMPPs; and 5) potential delays in project activities during the RGP's 14 day NOI waiting period. Further, WMD is concerned that the time needed to apply for and receive approval for coverage under the RGP delay the construction and implementation of groundwater remediation "pump and treat" systems which are typically used when public and private water supplies are threatened.

Additionally, WMD asserts that without additional EPA outreach and dialogue, these potential additional costs represent an unfunded, intergovernmental mandate regulated under Section 204 of the Unfunded Mandates Reform Act (UMRA).

EPA Response: EPA recognizes that the permitting under federal law of previously unpermitted, or less stringently state-permitted, discharges will likely increase overall costs to the private and public sectors. However, regardless of the duration of a discharge or the costs incurred to meet NPDES requirements, all of the types of discharges specified

in the RGP that occur in New Hampshire require federal NPDES permits, either general or facility/discharge-specific. Therefore, the comparison should not be made between the current state permitting program and the federal, but rather, the difference in cost of a general versus individual NPDES permit. EPA does not believe that compliance with the general permit will be more costly than compliance with an individual facility NPDES permit. In fact, EPA strongly believes that the RGP represents a much less costly approach than issuing and complying with individual permits for short or long term discharges.

Regarding potential additional costs of complying with the RGP, many of the additional costs cited are due to essential NPDES permit requirements, including the applicability of the permit to any discharge to a water body of the US (regardless of duration), the protection of water quality standards (either through parameter limits or by best management practices), as well as consultation on endangered species, fish habitat, and historic places. As WMD's comments point out, the TWSP is less stringent than the RGP, for all of these requirements, for example, in terms of the numbers of discharges actually covered by a permit, the number and stringency of parameter limits, monitoring, and analysis requirements, as well as in terms of the types of the application documentation required. Therefore, it is understandable that a more comprehensive NPDES permit would incur additional costs. However, EPA is compelled by federal law to permit these types of discharges with NPDES permits, regardless of their current coverage by the state.

EPA also understands from WMD's comments that the TWSP program allows for unplanned or poorly planned projects to avoid delay by providing a rapid turnaround of applications or verbal requests. However, EPA is confident that the vast majority of the projects potentially covered by the RGP can and will be able to apply for coverage at least 14 days prior to the time of discharge. As EPA knows from its experience dealing with more than 2,000 remediation or contaminated construction discharge sites, most of the non-emergency activities are planned months, or years, in advance of the need to discharge. Under the RGP, project managers will need to assess the possibility that soil excavation or other activities might require NPDES coverage due to necessary dewatering, e.g., from contaminated run-off from rain or the presence or infiltration of contaminated groundwater. If they judge that the risk is great enough that they will need a permit, e.g., based on preliminary testing or the topography and geology of the site, they will be able to apply for the RGP or an individual NPDES permit well in advance of the need to discharge. The additional time that these processes need should not significantly delay a well-planned construction or remediation project anymore than current business contracting or local permitting requirements currently require.

For emergency cleanup activities, 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 or toxic materials, EPA-NE'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 EPA at: National Response Center (NRC) (800-424-8802) or EPA-NE at: 617-918-1224 or 1236. Additionally, EPA recognizes (and discusses in section V.A.1.a of the Fact Sheet) that during the 14 day NOI processing period, unplanned circumstances may arise that could necessitate a discharge. In such cases, EPA-NE 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.

Regarding WMD's assertion that the potential costs of NPDES permitting represent an unfunded, intergovernmental mandate regulated under Section 204 of the Unfunded Mandates Reform Act (UMRA), EPA strongly disagrees. First, as described in the Fact Sheet, section F, the general permit is not an unfunded mandate because it is not a rulemaking action. Section F states,

“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”.

Furthermore, the general permit represents a choice, rather than a mandate, for permittees. Operators of sites, including cleanup activities implemented by NH DES, are required to apply for and receive a NPDES permit prior to discharging to a water of the U.S. As stated numerous times throughout the Fact Sheet and permit, applicants have the choice of submitting an application for an individual NPDES permit or applying for the RGP.

Additionally, EPA communicated numerous times with NH DES during the general permit development process. On June 23, and August 26, 2004, NH DES was provided with drafts of the RGP. On July 15, and September 10, 2004, EPA received feedback on the drafts from NH DES. The October 19, 2004 proposal, as well as the final RGP, reflect numerous changes made in response to the comments sent by New Hampshire. Furthermore, the proposed permit had a 10 week public comment period that provided for all parties to provide input. While not all of NH DES' comments resulted in changes to the permit, including requests to create “de minimus” criteria for projects to avoid the 14 day NOI process or avoid consultation with other federal agencies, such comments were considered in the development and finalization of the RGP. EPA believes that its correspondences with NH DES prior to the public notice, as well as the lengthy comment period following public notice, represent sufficient consultation prior to the finalization of the general permit.

Comment 2.d: WMD believes that the RGP will result in adverse environmental impacts

and compliance issues if it continues to cover short term discharges. WMD explains that currently most soil excavation projects in New Hampshire proceed without a TSWP (or NPDES) application, even though most projects have the potential to need to discharge to a water of the U.S. due to contaminated rainfall runoff or groundwater infiltration at a site. WMD is concerned that if EPA requires a federal NPDES permit, more contaminated water will remain on-site untreated, delaying remediation site set up and ultimately site closures.

EPA Response: In addition to providing the legally-required NPDES permit coverage to short and long term discharges, EPA believes that the RGP will not result in adverse environmental impacts. In fact, EPA believes that use of the RGP to cover these sources will lead to numerous environmental benefits, including enhanced protection of water quality through enforceable coverage of discharges not currently permitted, the limitation and monitoring of more discharges and more parameters, e.g., metals and temperature, as well as limits with minimum levels below the current state requirements. Additionally, the RGP will protect endangered species and essential fish habitat better than the current state system which currently does not address these issues at all.

Comment 2.e: WMD points out that the State of New Hampshire has the most experience in issuing short-term discharge permits and asks EPA to assign responsibility for short-term discharge permits to the state. WMD suggests that EPA allow the state to implement this NPDES general permit. WMD asserts that it is less important to ensure that all permits are issued by EPA than to have remedial projects proceed smoothly and expeditiously. WMD recommends that EPA continue to issue NPDES exclusions for discharges of less than a week and let NH DES issue a TWSP in lieu of a NPDES permit.

EPA Response: EPA agrees with the State of New Hampshire that the state should be responsible for permitting discharges subject to the NPDES program. The state has more direct knowledge and expertise in regulating and permitting these types of facilities and discharges. However, while the state may currently have a strong state-enforceable permitting program, unfortunately, New Hampshire has not yet taken delegation of the NPDES program, leaving EPA with the responsibility as the NPDES permitting authority in New Hampshire. Until delegation of authority occurs, however, EPA remains committed to consulting closely with New Hampshire on the development of NPDES permits, as we have done so in the development of the RGP.

3. ***Donald R. Schregardus, Deputy Assistant Secretary of the Navy (Environment), Department of the Navy. In a letter dated December 15, 2004, the Department of Defense Clean Water Act Services Steering Committee (DoD) described a number of concerns with the proposed general permit.***

Comment 3a: DoD is concerned that the proposed RGP did not set a time limit for EPA's review of NOIs. They are concerned about delays in the authorization process. DoD recommends that EPA use a "notice and go" process, by which submission of the NOI is

sufficient without the EPA review and approval step.

EPA Response: Although EPA did not set a time limit for the review and approval of coverage of discharges under the RGP, the general permit does include a 14 day waiting period, including a 7 day posting of NOIs on EPA's website, for EPA, State, and public review of the NOIs. Based on EPA's experience with over 2,000 remediation dewatering projects over the past 20 years, we believe that for the vast majority of applicants, we will be able to respond to applicants immediately following the waiting period, i.e., 14 days from receipt of the NOI or application. EPA acknowledges, however, that a small number of NOIs may describe unusually complex or problematic situations which may require EPA or State review time. Given this possibility, EPA will not set a time limit for its review.

Comment 3. b: DoD asks EPA to exempt discharges made to a CERCLA remediation site under a signed Record of Decision and clarify procedural/administrative requirements. Further, they explain that the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) exempts remediation activities from the requirement to obtain permits, requiring only that substantive permit requirements of applicable relevant and appropriate regulations shall be satisfied. The proposed RGP under the NPDES for Discharges in Massachusetts and New Hampshire should acknowledge that, under 40 CFR 300.400(e)(1)² no permits are necessary for discharges relating to the portion of any removal or remedial action conducted entirely onsite under CERCLA, 42 U.S.C. § 9601 et seq., where such remedial action is selected and carried out in compliance with 42 U.S.C. § 9621(e). They suggest that it would be useful to clarify in the permit that procedural/administrative requirements, such as submission of the NOI and of reports, do not apply to discharges which fall within this exemption (CERCLA § 121(e)(1)), and to point out that while these requirements do not apply to such discharges, any substantive requirements which are Applicable or Appropriate and Relevant Requirements (ARARs) for the CERCLA action will apply. Additionally, they recommend that the RGP provide an exception in the list of discharges excluded from coverage (Paragraph I.A.3) stating that discharges being made at a remediation site under a signed Record of Decision are exempted from these general permit requirements and clarify that procedural and administrative requirements do not apply to discharges, which fall within the CERCLA exemption.

² 40 CFR 300.400(e)(1):

1. No federal, state, or local permits are required for on-site response actions conducted pursuant to CERCLA sections 104, 106, 120, 121, or 122. The term on-site means the area extent of contamination and all suitable areas in very close proximity to the contamination necessary for implementation of the response action.
2. Permits, if required, shall be obtained for all response activities conducted off-site.

EPA Response: EPA agrees with the comments and recommendations. The final RGP reflects these suggestions in Parts I.A and B, the Applicability and Application/Notice of Intent sections of the permit.

Comment 3. c: DoD feels that the RGP should not require the permittee to develop and implement a Best Management Practices Plan (BMPP) and also meet sampling, monitoring, reporting, and recordkeeping requirements. DoD believes that requiring the permittee to develop a BMPP and perform sampling, monitoring, reporting, and similar requirements is in essence double regulation of the discharge. They state that it will be very costly and time consuming for the permittee to meet both sets of requirements as provided in the draft RGP. When compared on a cost-to-cost (including direct and indirect costs) basis, DoD believes that it may make more sense for the permittee to apply for an individual permit, because he would only have to meet one set of requirements. Further, they state that most NPDES permits (individual and general) that require plans similar to the BMPP do so as an option for the permittee to meet the performance (limits) standards in lieu of sampling. Therefore, DoD recommends making preparation of the BMPP optional and, if a BMPP is developed and implemented, sampling requirements be significantly reduced or eliminated entirely.

EPA Response: EPA disagrees with DoD's comments. Most individual NPDES permits issued by EPA contain both effluent limits, including sampling, monitoring, reporting, and recordkeeping requirements, as well as requirements to develop BMPPs. It is true that some of the general permits issued by EPA have been largely based on Best Management Practices (BMPs), rather than enforceable limits. Yet, some general permits, like the Stormwater Multi-Sector General Permit contain both BMPs and sampling, monitoring, recordkeeping, and reporting requirements. The RGP was developed to protect surface waters from discharges from ground and surface waters contaminated with petroleum products, solvents, pesticides, industrial chemicals, and metals. Given the potential for these discharges to contain residual contamination, the RGP needs to contain enforceable effluent limits. Further, the RGP does not require the use of particular pollution control technology or system. Rather, it relies on the permittee to develop and implement a BMPP in order to operate consistent with good engineering practices and minimize violations with the terms of the permit. EPA believes that the BMPP is important for the proper operation and maintenance of the control equipment and the required elements are typical components of a well-run treatment system. Therefore, EPA considers it necessary to have both enforceable limits and BMPs.

Comment 3.d: DoD asks EPA to clarify what toxic pollutants require notification per 40 CFR 122.42. As proposed, the RGP, Section I.C.8.f (page 16) requires notification for any toxic pollutant as required in 40 CFR 122.42. This Section appears to intend reporting any of the list of some 65 chemicals and chemical compound categories at 40 CFR 401.15. DoD asks that if the list at 40 CFR 401.15 is being used to define "any toxic pollutant," then EPA should indicate that in the RGP.

EPA Response: EPA agrees with the request to clarify what is meant by toxic pollutants. While Part II.E.1 of both the proposal and the final permit defines “toxic pollutants” as the list in Sections 307(a)(1) or 405(d) of the Clean Water Act (CWA), the final RGP has been amended to clarify further. Part I.C.8.f of the final RGP now contains an explicit reference to 40 CFR 401.15 which consists of the list of 65 pollutants designated as toxic pollutants pursuant to section 307(a)(1) of the CWA.

Comment 3.e: DoD suggests that the RGP allow the use of existing data to determine potential pollutants during initial permit application. Allowance should be made for using knowledge of the site (i.e., knowledge of releases and previous analysis results) to determine potential pollutants rather than requiring repeated sampling for a broad suite of analytes. Additionally, the sampling requirement in Part I, Section C.8 that must accompany the permittee’s certification that a chemical is “Not present,” although only a single sample, can be costly due to the types of analysis that must be performed. Equivalent information can be obtained under the permit conditions set forth in State of New Hampshire permits, as appropriate for the site and activity.

As proposed, the RGP (Section I.C.8) requires monthly sampling for a suite of pollutants, based on the type of site. Re-sampling and analysis of pollutants certified not present is also required every six months. Initial startup requires more frequent sampling (Section I.D.2). DoD states that sampling and analysis costs are a significant factor in any site remediation effort and that unnecessary analysis wastes money and offers increased possibility of getting a false positive due to inadvertent contamination at the laboratory. After the initial characterization of the influent and effluent, it is typically obvious that one or two contaminants indicate the overall level of contamination in the effluent. For example at “Gasoline Cleanup Sites,” benzene, toluene, ethylbenzene and xylene (BTEX) would probably be a good indicator. Choosing the one or two indicators to be measured monthly could be done with State and/or EPA approval and put in the NOI.

Further, DoD believes that the initial startup sampling and laboratory analysis (Section I.D.2) should be limited to one or two key contaminants after the initial characterization (the first week at most), as with the monthly sampling. Any other analysis during the first month should be limited to field methods. Re-start sampling (Section I.D.5) should be limited to the one or two key contaminants already identified as such, similar to the monthly and startup sampling. Similarly, DoD suggests that hydrostatic testing effluent (Section I.D.8) should be limited to one or two indicator contaminants.

EPA Response: EPA agrees with the suggestion that existing data should be considered during the application and 6 month re-certification processes. Part I.C.8.a. of the final RGP has been revised to allow the use of historical data to certify that chemicals are believed absent if data were collected no more than 2 years prior to the effective date of the permit and obtained pursuant to: i. Massachusetts’ regulations 310 CMR 40.0000, the Massachusetts Contingency Plan (“Chapter 21E”); ii. New Hampshire’s Title 50 RSA 485-A: Water Pollution and Waste Disposal or Title 50 RSA 485-C: Groundwater

Protection Act; or iii. EPA permit exclusion letter issued pursuant to 40 CFR 122.3.

Regarding DoD's concerns with the potential for unnecessary analysis due to the monthly monitoring requirements following the startup sampling and testing, EPA does not agree with the comments. The RGP already limits the number of contaminants and frequency of testing in three ways. First, the RGP uses Benzene and BTEX as indicators for numerous other gasoline related compounds which are not specifically regulated by the permit. Second, Table V in Part I.C.8 limits the number of contaminants presumed to be in the influent by subcategory (e.g., gasoline related, oil related, VOC, etc.). And third, the RGP allows the applicant/permittee to demonstrate that chemicals are not present (revised to "believed absent," see response to comment 5.k.) after a single sample has been analyzed. Furthermore, to alleviate unnecessary sampling, after a year of monthly data, permittees may request a reduction in monitoring through a Notice of Change.

However, regarding DoD's suggestion for EPA and/or the State to use the NOI to choose one or two indicators to be measured monthly, EPA does not agree. As described above, during the development of the RGP, EPA has considered the use of indicator pollutants and minimizing monitoring frequency. EPA also recognizes that certain pollutants can serve as indicators for other contaminants. However, the general permit is meant to cover the typical situations at these types of dewatering activities and is designed to minimize the decision-making needed to allow a site coverage. Based on our experience with more than 2,000 sites with dewatering activities, we have learned that many of the sites contain numerous types of mixed contaminants. As the NPDES permitting authority, EPA believes that the effort to determine "one or two indicator contaminants" during the 14 day NOI-review period and in many cases, based on one set of sampling data, would not be possible or prudent. Such decisions are more suited to a site-specific NPDES permit application process.

Similarly, EPA does not agree that after the initial characterization (the first week at most), re-start sampling, or hydrostatic testing, monitoring should be limited to one or two contaminants or limited to field methods. EPA believes that the "shakedown" period for pollution control systems to optimize, particularly the types of field operated systems at the sites covered by the RGP, can take up to a month. Ongoing monitoring, including the requirement to re-test after 6 months for pollutants reported as "not present," (revised to "believed absent" (see response to comment 5.k.) is meant to ensure that as hydrogeologic or seasonal conditions change at a site, concentrations of chemicals are not affected. EPA recognizes that field methods may aid in proper system start-up but we do not agree that the data provided by such methods is sufficient to ensure compliance with the effluent limitations.

Comment 3.f: Repeated sampling of intake concentration to the treatment system should not be a permit requirement. As proposed, the RGP, Sections I.D.2.a (page 25) and I.D.5.a (page 27), require repeated sampling of both the intake water to a treatment system and effluent from the system. Sampling is required on the first, third, sixth days,

then weekly for a month, then monthly. Two sets of influent and effluent samples are required the first week after re-starting the system.

The permit should be principally concerned with what is discharged, not what is taken in to the treatment system. There is no apparent data objective for which the influent data is needed, other than the engineering operation of the treatment system. Determination of the need for influent sampling data and the frequency of such sampling is properly left to the designer/operator of the treatment system, rather than mandated in the general permit.

EPA Response: EPA believes that influent monitoring is necessary for the RGP. From our experience with over 2,000 waste-site, contaminated construction, and similar dewatering activities, EPA has determined that influent monitoring is critical for the proper optimization, operation and maintenance of water treatment systems, particularly the types of field operated systems during the first six months of operations. EPA agrees that influent monitoring can be reduced after a shakedown period. This is why Part I.C.8.g and Appendix V of the RGP allows permittees to reduce or eliminate influent monitoring after 6 consecutive months of data.

Comment 3.g: Reorganize permit to make state-specific differences and identical language easily identifiable. State-specific differences within the permit should be made as easy to identify as possible, leaving the remaining language identical.

Specifically, in the initial pages of the permit, the Massachusetts and New Hampshire pages should be as identical as possible, e.g., paragraph 2, sentence 2 should be identical in both. On page 6, the a and b subsections of section I.A.2 should lead off with the name of the state (and italics would make it similar to Section 3's format). Similar organization would improve Sections I.E.2.b (page 30) and I.G.3 (page 34). Section I.A.3 should be broken into three sections: Federal (common to both states), Massachusetts-specific, and New Hampshire-specific. Material in some of the appendices should be in paragraphs headed by the name of the state, for example, in Appendix VII Endangered Species, on page 1, Section I.A, the third paragraph should begin with the names of the states to designate them as containing state-specific material. Then the subparagraphs should be organized by state, not endangered species. (There is almost no overlap in the case of these particular states and species.).

EPA Response: EPA agrees with the majority of the suggested changes and has revised the RGP accordingly.

Comment 3.h: Part I.A.3 discharges excluded from coverage should include or reference all excluded discharges. Section I.B.6 (discharges affecting historic properties) would seem to be more logically placed with the exclusions of section I.A.3. The material of section I.B.4 (discharges excluded unless FWS consultation is obtained) would seem to be more logically placed behind section I.A.3 (excluded discharges) material.

EPA Response: EPA agrees with the suggested change and the final RGP has been revised accordingly.

Comment 3.i: As proposed, applicants with potential discharges to listed areas must consult with the U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) and obtain concurrence. A standardized form for obtaining the written concurrence required under section I.B.5.b should be included in the appendices of this general permit. Also, the distinction between formal and informal consultation (Section I.B.5.c) is confusing.

EPA Response: EPA recognizes that the distinction between formal and informal consultation may be confusing and has attempted to clarify these sections of the permit. Regarding the need for a standardized form for obtaining concurrence from FWS and NMFS, EPA worked with NMFS and FWS to develop Appendix VII of the RGP. While DoD may want to collaborate with those agencies on a different standard form, EPA believes that Appendix VII already provides a step-by-step checklist that can be used in the consultation process.

Comment 3.j: Either define "short-term" discharges under Specific Discharges Excluded from Coverage or add a reference to the definition given later in permit. Short-term has various meanings and interpretations. In this context, it must not be vague. DoD suggests after the word "discharges" add, "as defined on page 28, Part 1.D.7."

EPA Response: EPA agrees and has revised the permit accordingly.

Comment 3.k: Add page numbers to line items in Table of Contents. Without page numbers the permittee will find it difficult and time consuming to find those permit requirements with which he must comply. This could result in non-compliance and enforcement actions.

EPA Response: EPA agrees with the suggestion and has added page numbers to the table of contents of the final permit.

Comment 3.l: The RGP should add a reference to the Special NPDES Permit Conditions section to the statement excluding discharges to municipal separate storm sewer systems (MS4s) unless permitted or approved. The Permit states, at Part 1.A.3.h., that discharges to MS4s are excluded unless local permitting or approval under the Storm Water Management Plan (SWMP) is completed. However, it doesn't reference and/or state how approval is obtained. Part 1.F.1 provides more information/requirements and partially clarifies this issue.

EPA Response: EPA agrees with the suggestions and has added a reference in Part 1.A.3.h. to Part 1.F.1.

Comment 3.m: Sections 1. L & M are mislabeled. Text labels sections L and M, however, the Table of Contents labels them H and I.

EPA Response: EPA agrees with the comment and has relabeled Part I.1.L and 1.M to 1.H and 1.I.

Comment 3.n: The compliance objectives set forth in this newly proposed EPA-NE permit program are best achieved by judicious application and enforcement of the existing and newly proposed rules promulgated at the state level in New Hampshire, combined with the already existing US EPA NPDES Permit Programs. DoD specifies a number of regulations promulgated by the State of New Hampshire that they believe adequately cover the concerns that EPA-NE has referenced in their newly proposed permit program, including:

New Hampshire Env-Ws 415 - Permits for the Site Specific Program (Alteration of Terrain)

New Hampshire Env-Ws 421 - Best Management Practices for Preventing Groundwater Contamination

(Interim) - New Hampshire Env-C 700 - River Management & Protection Program

New Hampshire Env-Ws 1400 - Shoreland Protection Program Rules

New Hampshire Env-Wm 1401 - Underground Storage Tank Rules

New Hampshire Env-Wm 1402 - Aboveground Storage Tank Rules

New Hampshire Env-Wm 1403 - Groundwater Management and Groundwater Release Detection Permits

New Hampshire Env-Wm 1404 - VOCs, Gasoline Dispensing Facilities, Bulk Gasoline Plants and Cargo Trucks

New Hampshire Env-Ws 1500 - Groundwater Discharge Permit and Registration

New Hampshire Env-Wm 1600 - Standards for Reporting and Remediation of Oil Discharges

New Hampshire Env-Ws 1700 - Surface Water Quality Regulations

Additionally, DoD comments that before commencing work on any contaminated site or a site where there will be known discharges, there are already several permits required (both State and Federal) which serve to protect the groundwater and surface water and soil conditions on the site. For example, DoD has always ensured that it applies for an EPA Construction General Permit when required before any construction commences. When working on a contaminated site where pumping of contaminated or potentially contaminated groundwater is involved, NHARNG would obtain either a New Hampshire Groundwater Discharge Permit or New Hampshire Groundwater Management Permit (whichever is more appropriate) and comply with all of its conditions. In most cases, the conditions imposed under those permits are just as stringent as what is being proposed by EPA-NE, so a new set of federal rules would be unlikely to achieve any greater level of compliance or environmental protection.

As pointed out by EPA-NE, “nearly all of the discharges pursuant to remediation projects

in Massachusetts and New Hampshire have utilized off the shelf, economically viable, and proven treatment systems. This is clear demonstration that the types of sites and activities proposed for jurisdiction by EPA-NE are already being adequately addressed by appropriate technologies in active use employed by permittees under existing Federal and State permit programs.

EPA Response: EPA disagrees with DoD's comment that the compliance objectives of the RGP would best be achieved by judicious application and enforcement of the existing and newly proposed rules promulgated at the state level in New Hampshire, combined with the already existing US EPA NPDES Permit Programs. While EPA agrees that the State should be responsible for permitting discharges subject to the NPDES program, unfortunately, New Hampshire has not yet taken delegation of the NPDES program, leaving EPA with the responsibility as the sole NPDES permitting authority in New Hampshire. EPA recognizes that the State has more direct knowledge and expertise in regulating and permitting these types of facilities and discharges. EPA also recognizes that the State currently has state-enforceable regulations and a permitting program designed to address similar types of discharges. However, until New Hampshire takes formal delegation of the NPDES program, EPA cannot deem those regulations and permits as federally enforceable NPDES permits or their equivalent. Until such delegation of authority occurs, however, EPA remains committed to consulting closely with New Hampshire on the development of NPDES permits, as we have done so in the development of the RGP.

Additionally, EPA believes that currently there are numerous differences between the RGP and the current federally- and State-enforceable requirements, including those cited by DoD. Given such differences, EPA believes that the RGP will provide enhanced protection of water quality, including through federally-enforceable coverage of discharges and activities not currently permitted (including sites covered by EPA's Construction General Permit that does not cover discharges of contaminated waters), the limitation and monitoring of more discharges and parameters, e.g., metals and temperature, as well as parameters with more stringent limitations, e.g., minimum levels below the current state requirements. Also, the RGP will protect federally listed endangered species and essential fish habitat better than the current State system which does not address these issues.

Comment 3.o: DoD questions the need for the federally-enforceable effluent limitations and monitoring requirements in Part I.C. for sources in New Hampshire. They feel that the requirements are more than adequately addressed by New Hampshire Env-Ws 1500, and New Hampshire Env-Ws 1700, at a minimum. Secondly, it is unclear to DoD what benefit is achieved by collecting monthly samples at each outfall for analysis when the results will be merely kept on file on the site and no regulatory review will be performed. Such sampling can also be costly over time.

EPA Response: EPA recognizes that New Hampshire currently has state-enforceable regulations and a permitting program designed to address similar types of discharges. However, until New Hampshire takes formal delegation of the NPDES program, EPA cannot deem those regulations and permits as federally enforceable NPDES permits or their equivalent.

Regarding DoD's question of what benefits will be achieved by requiring permittees to collect costly monthly samples and keep the results on file, EPA believes that there are several important benefits to the monitoring requirements. First, monthly monitoring is essential to documenting the ongoing compliance of the discharge with the limitations of the permit as well as serving as a diagnostic tool for the proper operation and maintenance of the water treatment system. Second, DoD's comments fail to mention the requirements of Part I.D.4.b that the permittee report the results of monthly monitoring to EPA and the State if, "the results indicate that a violation of the effluent limitations of this permit has occurred," or, "EPA-NE or the State request such a report." Furthermore, as allowed in the Notice of Change requirements in Appendix V, after 12 consecutive month's of monitoring data demonstrating compliance with the limits, permittees may request a reduction in the monitoring frequency. Additionally, while EPA may not regularly receive the data reports, the existence of such data allows EPA to strategically target its review, and potentially enforcement, activities. EPA believes that the RGP has balanced the need for enforceable monitoring data while minimizing the number of samples needed and reports required.

Comment 3.p: Determination of the applicable effluent limitations for metals in freshwater (by a permit applicant), in Part I.C.7 - Consideration of Dilution Factors for Discharges of Metals, is difficult and cumbersome. Threshold limits can be more appropriately set forth in State permit conditions with a reasonable (quarterly or less) sampling requirement. If the permittee demonstrates there has been no exceedance of the effluent limit for 3 consecutive sampling periods, the sampling requirement should be then be dropped from the permit conditions.

EPA Response: EPA recognizes that the calculation of the metals limit with dilution may be confusing. This is why the permit requires that permittees/applicants in New Hampshire consult with the State in order to perform this calculation. However, EPA prefers this complexity to the alternative which would be to set the limits at zero dilution for all cases.

As described in responses to comments 3.n and 3.o above, while EPA agrees that the State should be responsible for permitting discharges subject to the NPDES program, unfortunately, New Hampshire has not yet taken delegation of the NPDES program, leaving EPA with the responsibility as the sole NPDES permitting authority in New Hampshire. EPA recognizes that the State has more direct knowledge and expertise in regulating and permitting these types of facilities and discharges. EPA also recognizes that the State currently has state-enforceable regulations and a permitting program

designed to address similar types of discharges. However, until New Hampshire takes formal delegation of the NPDES program, EPA cannot deem those regulations and permits as federally enforceable NPDES permits or their equivalent.

Regarding DoD's suggestions that the permit should have a reasonable (quarterly or less) sampling requirement and that if the permittee demonstrates that there has been no exceedance of the effluent limit for 3 consecutive sampling periods, the sampling requirement should then be dropped from the permit conditions. EPA does not completely agree with these suggestions. Given that the projects potentially covered by the RGP will range in duration from days to years, EPA believes that monthly monitoring is necessary. However, EPA believes that the RGP has balanced the need for enforceable monitoring data while minimizing the number of samples needed and reports required. For example, the Notice of Change requirements in Appendix V of the RGP allows permittees to request a reduction in the monitoring frequency (e.g., from monthly to quarterly or less) if they show monitoring data demonstrating compliance with the limits for 12 consecutive months.

Comment 3.g:- The flow monitoring requirement of Part I.C.9 could be more appropriately addressed in Stormwater Pollution Prevention Plans (SWPPPs) that may already exist for that site or activity in state discharge permit conditions. However, this will require costly oversight.

EPA Response: Most site-specific NPDES permits require permittees to meet a flow limitation. However, EPA believes that for the type of activities potentially covered by this general permit, the design flow of each site's treatment equipment should serve as the maximum flow. The performance of treatment system components is generally rated for specific operational flow as well as for a total volume (i.e., flow multiplied by time) through the system. To the extent that a permittee is covered by another permit that requires the development and implementation of pollution prevention plans that include flow measurements, the permittee may reference such requirements in its BMPP, as allowed in Part I.E.1.c. For permittees that do not have such an enforceable requirement to monitor flow, the requirements of Part I.C.9 are necessary in order to ensure that the flow through the treatment system does not exceed the component in the treatment system with the most restricted flow (i.e., the design flow of the system). Similarly, the total flow requirement is necessary in order for the permittee to ensure the proper operation and maintenance of the effluent treatment system typically used at these sites.

Comment 3.r: The requirements of Part I.D.2.b - Analysis of samples with a 72-hour turn-around time, can be cumulatively costly.

EPA Response: EPA recognizes that the analysis during the first week of operation may be relatively costly, particularly with a 72 hour turnaround time. While the general permit was developed to cover a variety of activities, in all cases, during the first week, it is most critical for the proper operation of the treatment systems that the permittee

receive feedback regarding the ability of the system to meet the effluent limitations. Even with a 72-hour turnaround, since the samples taken on the first day will not be available to the permittee until the fourth day, there is some risk to the environment that the discharge would not be meeting the permit limits for the first two sampling periods (days 1 and 3). However, rather than requiring a shorter turnaround time (other than for re-start), EPA balanced this risk with the 72 hour turnaround for the first week. Based on EPA's experience with more than 2,000 remediation and construction dewatering projects over the past twenty years, EPA believes this requirement is reasonable both for the laboratories and relative to the costs of such clean up projects.

Comment 3.s: Part I, Section D, (2) (e) - This requirement will be overly burdensome in terms of contractual obligations the permittee will have in place with their respective contractor. Shut downs are extremely costly, especially if they are prolonged.

EPA Response: As described in the response to comment 3.r above, during the first week, it is most critical for the proper operation of the treatment systems that the permittee receive feedback regarding the ability of the system to meet the effluent limitations. Timely effluent analysis information is even more critical in cases where there has been a malfunction of greater than 10 percent. Based on EPA's experience with more than 2,000 remediation or contaminated construction dewatering projects over the past twenty years, EPA believes this requirement is reasonable both for the laboratories and relative to the costs of such clean up projects.

Comment 3.t: Part I, Section D, (2) (e) (4) - It is unclear what the permittee must do if it is unable to reach EPA-NE and the State in a timely manner; 48 hours is a very restrictive time period. As stated previously, prolonged shutdown of the permittee's contractor will be extremely costly.

EPA Response: EPA disagrees with DoD's comment that contacting EPA and the State within 48 hours is restrictive given the possibility that they would be unable to reach the agencies. The requirement of Part I.D.4.e allows the options of "telephone, fax, email, or other means." Therefore, while EPA understands that contacting the agencies by telephone, e.g., on a weekend, may be difficult, we believe that the other options would be readily available, e.g., by email or fax, at any time.

Comment 3.u: Part I, Section D, (3) - This requirement is best met under existing State of New Hampshire permit programs as appropriate

EPA Response: While EPA agrees that the State should be responsible for permitting discharges subject to the NPDES program, unfortunately, New Hampshire has not yet taken delegation of the NPDES program, leaving EPA with the responsibility as the sole NPDES permitting authority in New Hampshire. EPA recognizes that the State has more direct knowledge and expertise in regulating and permitting these types of facilities and discharges. EPA also recognizes that the State currently has State-enforceable

regulations and a permitting program designed to address similar types of discharges. However, until New Hampshire takes formal delegation of the NPDES program, EPA cannot deem those regulations and permits as federally enforceable NPDES permits or their equivalent. Until such delegation of authority occurs, however, EPA remains committed to consulting closely with New Hampshire on the development of NPDES permits, as we have done so in the development of the RGP.

Comment 3.v: Part I, Section D, (4) - As stated previously it is unclear how performing analysis and keeping the results on file at the site without regulatory review (except in the case of a violation) provides an environmental benefit. Analytical results submitted to State of New Hampshire Department of Environmental Services under already existing State of New Hampshire permit programs, with regulatory response as appropriate, would achieve the desired outcome intended here.

EPA Response: See responses to Comments 3.o and 3.u above.

Comment 3.w: Part I, Section D, (5) and (6) - It is unclear how doubling the number of influent and effluent laboratory samples taken during the first week after re-start of discharge will provide a greater environmental benefit than collection of a single set of samples. Again, analysis of samples with a 72-hour turn-around time can be cumulatively costly. As stated previously, prolonged shutdown of the permittee's contractor will be extremely costly.

EPA Response: As described in the response to Comments 3.r and 3.s above, during the first week, it is most critical for the proper operation of the treatment systems that the permittee receive feedback regarding the ability of the system to meet the effluent limitations. Timely effluent analysis information is even more critical in cases where there has been a malfunction or an interruption of more than 30 days. Based on EPA's experience with more than 2,000 remediation or contaminated construction dewatering projects over the past twenty years, EPA believes this requirement is reasonable both for the laboratories and relative to the costs of such clean up projects.

Comment 3.x: Part I, Section D, (8) - The desired level of environmental protection can be readily obtained (in lieu of sampling requirements) with the application and employment of best available technologies as referenced by US EPA. Tanks are already sampled as required by New Hampshire Env-Wm1401 - Underground Storage Tank Rules and New Hampshire Env-Wm 1402 - Aboveground Storage Tank Rules. The state regulator already has the right to require additional samples if deemed necessary under those existing rules.

EPA Response: EPA disagrees that only BMPs are necessary for ensuring that water quality standards are met. Therefore, the RGP continues to require hydrostatic testing waters to meet effluent limits. To the extent that the same sampling and analysis data is required and available due to other regulations, the RGP does not require that additional

samples be taken. EPA also recognizes that the State currently has State-enforceable regulations and a permitting program designed to address similar types of discharges. However, until New Hampshire takes formal delegation of the NPDES program, EPA cannot deem those regulations and permits as federally enforceable NPDES permits or their equivalent.

Comment 3.y: Part I, Section E & Part I, Section E, (2) - If a site already has an existing SWPPP or Spill Prevention, Control & Countermeasure Plan (SPCCP) that meets existing regulatory requirements under other permits or programs, a BMPP should not be required. Furthermore, these requirements are already incorporated under other permits or programs (with the possible exception of items (d., e. and f)). It is unclear how duplicating these requirements will provide any additional environmental protection.

EPA Response: As allowed in Part I.E.1.c, the BMPP may be a stand alone document or it may be incorporated into any other BMPP, pollution prevention, or spill control plan required by other permits. The final permit has been revised to clarify that, while the BMPP is still required, it can reference the requirements of other required plans.

Comment 3.z: Part I, Section E, (3) - These requirements are already met under one or more existing State of New Hampshire environmental rules, as referenced above in General Comment #1

EPA Response: See response to Comment 3.n.

Comment 3.aa: Part I, Section F, (1) - These requirements are already assumed by an EPA MS4 general permit or Multi-Sector Stormwater General Permit.

EPA Response: Although EPA understands that these requirements may already apply under the MS4 and Multi-Sector General Permits, there may be significant overlap of sites that are subject to more than one permit. Therefore, we have included these requirements in order to clarify the responsibilities of the permittee. Additionally, for sites that have not previously been covered by any NPDES permits, these permit conditions will alert them to the need to contact other appropriate permittees or permit authorities.

Comment 3.bb: Part I, Section F, (2) - These conditions are met by several already existing State of New Hampshire rules governing discharge of hydrostatic test water and need not be duplicated here.

EPA Response: See response to Comment 3.x above.

Comment 3.cc APPENDIX V- NOI Form - the requirements of completing this form are very costly, especially the requirement for signature and stamp of a professional engineer. If a permittee already has an existing SWPPP or SPCCP for the site that has

been reviewed and signed by a professional engineer, the permittee should not be required to provide the same for the RGP NOI.

EPA Response: EPA agrees with the comment. The applicant must continue to comply with any other regulatory requirements in New Hampshire applicable to these types of sites. EPA expects that the design, construction, and implementation of the water treatment systems for the types of sites covered by the RGP will likely involve the oversight of professional engineers in the process. Therefore, EPA has removed the requirement from the NOI form.

4. ***Kathleen Keohane, Division of Watershed Management, Massachusetts Department of Environmental Protection (MA DEP). Email dated January 18, 2005.***

Comment 4.a: The temperature limits for marine waters are missing in the proposed RGP. Pg. 15 , # 5 should read:

- a. 83 degrees Fahrenheit (° F) for inland warm water fisheries.
- b. 68 ° F for inland cold water fisheries.
- c. 85 ° F or to a maximum daily mean of 80 ° F.
- d. For sites in Massachusetts....

Additionally, Class SB in Table IV should be changed from “June to October” to “July to September.”

EPA Response: EPA has revised the RGP based on MA DEP’s comment.

5. ***George C. Berlandi, Sanitary Engineer, Wastewater Engineering Bureau, New Hampshire Department of Environmental Services (NH DES-WD). Letter dated January 4, 2005.***

Comment 5.a: Regarding Part I.A.3.c, Specific Discharges Excluded from Coverage, Discharges to Class A Waters, the phrase, “unless a variance is allowed in the water quality standards is granted by the State” should be deleted. NH’s water quality regulations do not include variance provisions. Discharges of sewage or waste to Class A waters is prohibited under RSA 485 A:8, I and Env-Ws 1708.06.

EPA Response: EPA has revised the final permit to remove the variance provisions from Part I.A.3.c.

Comment 5.b: Appendix III - Effluent Limitations, Parameters 16, 17, and 18 (Dichlorobenzenes) - The sum of the effluent limits for parameters 16, 17, and 18 exceeds the freshwater chronic criteria of 763 ug/L for total dichlorobenzene in NH Standards. This means that in low dilution receiving waters, it would be possible for a discharge to meet the effluent limits for the individual dichlorobenzenes but violate for

the total. Did EPA consider including an effluent limit for total dichlorobenzene?

EPA Response: In the development of the proposed permit, EPA set technology-based limits for individual species of dichlorobenzene (DCB) for discharges in both MA and NH. Based on the comment, for discharges in NH, the final permit now contains an additional total DCB limit based on the NH water quality criteria for total DCB.

Comment 5.c: Appendix III - Effluent Limitations, Parameter 45 (Mercury) - Of those parameters with limits that are not intended to be protective of public health criteria due to the short term nature of the permitted discharges, all but mercury are based on carcinogenicity. We believe that the effluent limit for mercury should be protective of human health because mercury accumulates in the environment and the relatively short term discharges under this permit can contribute to lifetime risk. Given the persistent nature of mercury and that many New Hampshire waters are impaired due to elevated mercury levels in fish tissue, NH DES-WD believes that discharges should be required to meet effluent limits based upon protection of human health (either NH's existing criteria or limits derived from the new EPA tissue residue criteria). These comments also apply to Table IV.

EPA Response: While EPA recognizes and appreciates NH DES' concern regarding the persistent nature of mercury, as discussed in the Fact Sheet, EPA believes that setting the limits based on human health criteria is not necessary for a number of reasons. First, human health-based standards are typically developed to achieve certain risk-based concentrations based on long-term (e.g., 70 year or lifetime) exposure to the toxic material (e.g., less than a one in a million additional cases of cancer drinking water ingested over a lifetime). Yet, the majority of discharges anticipated to be covered by the RGP are short duration (e.g., from a few days to 1-2 years). Second, the discharges covered by this permit are typically small volume discharges, designed with flow rates of a few gallons per minute up to about 30 gallons per minute (approximately 40,000 gpd). Therefore, EPA does not anticipate any discharges covered by the permit to expose individuals at concentrations of concern for a lifetime. Third, discharges to public drinking water supply (Class A waters) are essentially excluded from coverage under the permit. Although dilution is only being considered in setting the limits for discharges of metals, including mercury, EPA believes that human health risks will be effectively mitigated by the combination of the technology based limits and dilution found in typical receiving waters. And finally, based on historical data of these types of discharges, EPA projects that mercury will be rarely present in waste waters controlled under this permit. Therefore, EPA and the States can closely review the notices of intent (NOIs) for any discharges containing mercury, particularly if the discharge is projected to be longer than 1 - 2 years, and decide if human health criteria based limits are needed on a case-by-case basis. If needed such limits are needed, EPA will require the applicant to obtain an individual permit.

Comment 5.d: Consultation with Federal Services (Part I.B.5.a) - It appears that the reference to paragraphs 4.a. and 4.b. should also include a reference to 4.c. and 4.d.

EPA Response: Based on this and other comments, EPA has revised the RGP.

Comment 5.e: National Historic Preservation Act (Part I.B.6.b) - This paragraph appears to include a left over reference to the construction dewatering general permit.

EPA Response: While the RGP was developed to cover contaminated construction dewatering activities, EPA has revised the RGP to generalize the provisions.

Comment 5.f: Specific Pollutants to be Monitored (Part I.C.8.a.1) - includes a provision that allows permittees to certify that a chemical is “not present” based on laboratory data from a minimum of one sample demonstrating that the concentrations are below the limits set forth in the permit. However, the NHDES-WD believes that the paragraph should say that permittees can only certify that a chemical is “not present” if the sample demonstrates that the pollutant is “not present at the site or below the minimum level of the method used.”

EPA Response: EPA has revised the RGP based on the comment.

Comment 5.g: Table V - Chemical Effluent Limits and Monitoring Requirements by Sub-Category - The Table should indicate that the metal limits are in terms of total recoverable metals.

EPA Response: EPA has revised the RGP based on the comment.

Comment 5.h: Table V.4.C - Effluent Limits for Hydrostatic Testing of Pipelines and Tanks - Table V indicates that the benzene limit for hydrostatic testing discharges is 5.0 ug/L which conflicts with Appendix III and the Fact Sheet, which indicate a limit of 50 ug/L. Previous temporary surface water discharge permits issued by NHDES for hydrostatic testing discharges have included a benzene limit of 5.0 ug/L and NHDES would support such a limit in the RGP.

EPA Response: Table V.4.C inadvertently listed the limit incorrectly as 5.0 ug/L. EPA has revised the table to be consistent with Appendix III and the Fact Sheet. EPA appreciates NHDES’ support for a lower limit and will consider this information, along with monitoring data from discharges covered by the RGP, in future permitting.

Comment 5.i: Sampling, Testing, Recordkeeping, and Reporting Requirements (Part I.D.1) - This section of the permit indicates that samples shall be collected from the influent and effluent, but is not specific about the frequency and parameters required for influent monitoring. Fact Sheet Sections VIII.A. and B. indicate monthly influent monitoring requirements. Are permittees required to monitor the same parameters for

influent and effluent?

EPA Response: The proposed RGP inadvertently did not contain the specific frequency and parameters for influent monitoring. The final RGP has been revised to require monthly sampling of the same parameters as are required for effluent monitoring, sampling, and analysis unless otherwise specified in the permit, e.g., for pH.

Comment 5.j: Initial Treatment System Discharge Startup (Part I.D.2.e.2) - In the sentence: “If the problem has been corrected, the operator may resume with the regular sampling schedule,” the phrase “regular sampling schedule” should be defined.

EPA Response: The final RGP has been revised to clarify this requirement. Namely, “regular sampling schedule” refers to the provisions of Part I.D.2.a - d.

Comment 5.k: Appendix V.I.3, Contaminant Information - In the sentence, “In order to certify that the chemical is believed absent, the applicant must have laboratory analysis of at least *one sample from the site* to indicate that the chemicals are not present or below the minimum level of the method used,” the italicized phrase should be replaced with, “one untreated sample from the site.”

EPA Response: EPA has revised the RGP based on the comment to clarify that the sample must be untreated. Also, based on this comment, EPA has revised the permit to change the wording of the certification that chemicals are “not present” to “believed absent,” consistent with the suggested NOI form in Appendix V, Section B.3.b) and NPDES Form 2C.

Comment 5.l: Appendix V.I.3.b.1, Calculation of Dilution Factor - The variable “Qd” should be defined as the “Maximum flow rate of the discharge...” rather than “Permitted flow” because there appear to be no other references to “permitted flow” anywhere else in the permit. Also, some of the NH example dilution factor calculations in the Fact Sheet appear to be incorrect. Appendix V should make it clear that the dilution calculations apply only to freshwater (reference Part I.C.7 of the RGP).

EPA Response: EPA has revised the RGP based on the comment.

Comment 5.m: Appendix V.I.5, Receiving Surface Water Information - “Sensitive receptors” should be defined in paragraph V.I.5.c.2. Also, paragraph V.I.5.f should reference <http://www.epa.gov/NE/eco/tmdl/impairdh2o.html>.

EPA Response: EPA has revised the RGP based on the comment.

Comment 5.n: Appendix V.II.A.2.a.1, Notice of Change Form, Reduction in Certain Monitoring Requirements - The cited paragraph should be clarified, or perhaps divided into two paragraphs. The first sentence indicates that certain monitoring requirements may be reduced if the effluent no longer contains a limited parameter, but the third

sentence describes a reduction in effluent monitoring for a pollutant that is present in the discharge. Should the third sentence be a part of the second paragraph describing reductions that apply only to effluent monitoring?

EPA Response: In the final RGP, this paragraph has been revised by dividing it into two parts: influent and effluent monitoring. The revised paragraph also clarifies that the criteria for decreasing effluent monitoring are: 1) the permittee must submit 12 consecutive months of monitoring data showing that the chemical is at concentrations below the effluent limit or minimum level according to the requirements of Part I.D.1.c & d; and 2) the permittee submits data demonstrating that, where WET testing was required, there has been no toxicity indicated.

Comment 5.o: Appendix V.II.A.2.a, Notice of Change - In this paragraph, it appears that the “permitted flow” and the “maximum flow” are the same thing. Therefore, any increases in the maximum flow would inevitably cause the permitted flow to be exceeded. The permit should specify how the permitted flow is determined. This comment also applies to Item 2.b)2. of the Notice of Change Form.

EPA Response: The NOC instructions and form have been revised to clarify that the permit does not have a fixed “maximum flow” limit. Rather, the maximum flow rate (in gallons per minute) is limited by the design flow rate of the components of the treatment system. Therefore, the instructions and form now allow any change to the flow rate provided it remains below the design flow rate. For example, a change in treatment which changes the flow rate would be allowed (see Appendix V.II.A.2.a.3), provided that the new flow rate is not greater than the new design flow rate. However, for discharges containing metals, such a change would require a recalculation of the dilution factor. In such cases, the use of the NOC would only be allowed if the dilution factor after the change remained below 5 (i.e., the upper bound of the dilution range for which water quality criteria-based limits are set at the criteria).

Comment 5.p: Should the NOI and NOC forms include the certification statement specified in 122.22 (like the NOT form)?

EPA Response: EPA agrees that the NOI and NOC forms should include the certification statement specified in 122.22, as is found on the NOT form, and has revised the RGP accordingly.

Comment 5.q: Appendix VI - The total residual chlorine (TRC) ML needs to be added to the table. The table indicates an ML of 5 mg/L for TPH but the Fact Sheet references laboratory reporting levels of 0.2 - 0.5 g/L - which is correct? Units are not specified for PCB ML for the “other” method 1668a.

EPA Response: Regarding TRC, the comment appears to be a misstatement by the commenter because Appendix VI of the proposed RGP does not list the ML for TRC as 5

ug/l. However, inadvertently, EPA did not include the ML for TRC in the proposed Appendix VI. The final RGP has been revised to include the ML of 0.02 mg/l.

Regarding the ML for method 1668a for PCB, based on the comment, EPA has revised the entry to include the units of micrograms per liter (ug/l).

Comment 5.r: Appendix VII.I.D. (ESA Eligibility Criteria) - In order to meet criterion A, would the applicant need to verify that none of the four species of concern are present in the county, or that there are no endangered or threatened species of any type in the county?

EPA Response: EPA recognizes that by specifically listing the four species of particular concern, the proposal was not clear whether or not the requirements applied to all species. EPA has revised the final RGP to clarify that the ESA eligibility criteria apply to all endangered species in a county. Applicants are required to consult the FWS website or speak directly with FWS to ensure that no endangered species will be affected by a project.

Comment 5.s: Discharge Monitoring Reports NHDES-WD believes that pre-printed DMRs should be given to permittees to help ensure that they comply with the effluent limits and monitoring requirements applicable to their discharges.

EPA Response: While EPA agrees that it would facilitate compliance with the general permit if pre-printed forms were given to permittees, given that many of the discharges covered by the permit will be of short duration (e.g., from a few days to a few months), EPA will not be supplying the permittees with pre-printed DMR forms. Rather, when EPA sends an approval letter informing the applicant that they are now covered by the RGP, the letter will include a checklist form indicating which effluent limits and monitoring requirements of the RGP apply. Additionally, the letter will provide instructions to the permittee as to how and when to prepare the monthly data summaries on the form provided in Appendix VIII of the permit.

6. ***Katherine L. Pfennighaus, Staff Engineer; Paul Ormond, Senior Engineer; Elliot I. Steinberg, Vice President; Steve R. Kramer, Senior Vice President; Haley & Aldrich (H&A). Letter dated January 18, 2005. This comment letter was also supported and resubmitted on January 19, 2005 by Elliot I. Steinberg, President, Massachusetts Licensed Site Professional Association.***

Comment 6.a: H&A request that the permittees that are existing holders of NPDES exclusion letters, issued under 40 CFR 122.3, have 120 days to comply with the RGP. Based on their review of the proposed permit, the RGP effluent limits are more stringent than many of the limits set by EPA previously in exclusion letters. Typically, construction specifications have been designed and priced according to the specifications

of the previously issued letters. In order to comply with the RGP, water treatment systems may need to be redesigned, budgeted for, and rebuilt.

EPA Response: EPA recognizes that there are a number of discharges in Massachusetts and New Hampshire that are currently operating at approved site remediation projects. As described in section V.A. of the Fact Sheet, such existing dischargers will need to determine whether they will submit an NOI for coverage under the RGP or an application for an individual permit (Forms 1 and 2C) within **30 days** of the effective date of the final RGP. However, coverage under the RGP will not be effective until EPA-NE has reviewed the NOI or application information, made a determination that coverage under the RGP is appropriate, and notified the owner/operator in writing of this determination. The effective date of coverage will be the date of signature of the notification letter by the Director. Until the applicant receives a notification letter of permit coverage from EPA, these discharges will continue to be covered under their existing mechanisms. While EPA has not revised the final RGP based on the comment, given the anticipated number of NOIs from these types of sites that EPA will need to process, EPA will make every effort to provide these dischargers with sufficient transition time to make any necessary changes to treatment systems in order to comply with the RGP.

Comment 6.b: Part I.C.8.c - This paragraph indicates that certifications that permitted chemicals are “not present” must be signed in accordance with 40 CFR 122.22 and accompany the NOI or NOC. However, H&A believes that the certification language of 40 CFR 122.22 is too burdensome. They state that to certify implies a warranty or guarantee that a certain standard has been met. But warranties and guarantees are not insured under the terms of typical Professional Liability Insurance Policies. They believe that the concept of certification is too inclusive and requires a level of examination and effort beyond the professional “standard of care.” Furthermore, they believe that the “law” governing penalty is not clear. Therefore, they propose language used by the Massachusetts Department of Environmental Protection be substituted. They propose the following:

I attest under the pains and penalties of perjury (i) that I have personally examined...or incomplete information.

The alternative language does not require “certification” but rather “attestation.” Additionally, the proposed language defines the violation of the attestation as perjury.

EPA Response: EPA-NE does not have discretion to change the certification language of 40 CFR 122.22 which clearly requires that this certification be included along with any signature accompanying applications or reports (e.g., monitoring) required by the permit.

Comment 6.c: H&A raised concerns with the Effluent Limitations in Appendix III for cyanide. Appendix VI indicates that the detection limit for cyanide by EPA Method

335.2 is 10 ug/l, which is greater than 1.0 ug/l (salt water) or 5.2 ug/l (fresh water). Therefore, they state that cyanide requires a note similar to that for total residual chlorine, as follows:

“Although the maximum values for cyanide are 5.2 ug/l and 1.0 ug/l for freshwater and saltwater, respectively, the compliance limits are equal to the minimum level (ML) of the test method used as listed in Appendix VI (i.e., 10 ug/l).”

Furthermore, note 4 indicates that the effluent limitations are expressed as “free cyanide per liter.” Yet, Method 335.2 yields total cyanide. H&A ask for clarification as to which method should be used for free cyanide and whether that method can achieve detection limits lower than the effluent limitations

EPA Response: EPA agrees with the comment that Appendix III should contain a note specifying that the ML for Method 335.4 is the compliance limit. The final permit has been changed to correct the oversight.

Similarly, EPA recognizes that Appendix VI of the proposed RGP inadvertently contained the method and ML for cyanide in two different tables and was therefore unclear. In the first table, the test method is listed as Method 335.2 and the second table lists it as Method 335.4. EPA meant to cite Method 335.4 as the correct method. Also, regarding test methods for free versus total cyanide, Appendix III has been revised to recognize that although the water quality criteria are based on free cyanide, there is currently no approved test method for measuring free cyanide. EPA’s policy in this case, as articulated in the document “Quality Criteria for Water 1986” (EPA 440/5-86-081), is to apply the criteria based limit as demonstrated using the total recoverable cyanide method.

Comment 6.d: H&A raised concerns with the Effluent Limitations in Appendix III for Ethylene Dibromide (1,2-Dibromo-methane or EDB). Appendix VI indicates that the detection limit for EDB for EPA Test Methods range 0.01 ug/l to 1.0 ug/l, which may be greater than the limit of 0.05 ug/l, depending on the method used. Therefore H&A suggests that a note be added

“Although the maximum value for ethylene dibromide is 0.05 ug/l, the compliance limit is equal to the minimum level (ML) of the test method used as listed in Appendix VI.”

EPA Response: EPA disagrees with the comment. While it is correct that Methods 618, 524.2, and 1624 have minimum levels (MLs) which are higher than the effluent limit for EDB of 0.05 ug/l, Part I.D.1.d of the permit requires the permittee to use “test methods with minimum levels (MLs) at or below the limit where practicable.” Further, Part I.D.1.d.2 requires that, “where approved methods have MLs above permit limits, the

permittee must use the approved method with the lowest possible ML before the concentration can be considered non-detectable.” This means that EPA expects that Methods 618, 524.2, and 1624 can only be used if Method 504.1 is not practicable (e.g., the permittee can demonstrate that no laboratories in Massachusetts or New Hampshire have the ability to run the test method). Additionally, as required by Part I.D.1.d.2, the permittee would not be allowed to indicate that EDB was not detectable until the test method with the lowest ML was used (e.g., Method 504.1).

These requirements, however, do not mean that permittees must use the test method with the lowest ML all the time. Rather, after initial testing has been conducted, the permittee may decide that if concentrations in the influent is above the MLs of Methods 618, 524.2, and 1624, they could be used to accurately describe the influent concentration. For the effluent testing, however, Method 504.1 would need to be used.

Comment 6.e: H&A raised concerns with the Effluent Limitations in Appendix III for Tert-Butyl Alcohol (TBA) and Tert-Amyl Methyl Ether (TAME). H&A asked that EPA clarify whether special preservation is required for these compounds.

EPA Response: As described in the response to comment 7.y. below, regarding TBA and TAME, the final permit has been revised to also allow the use of the purge and trap method, Method 8260C with a heated purge. The heated purge is necessary with water soluble compounds. The preparation method for the samples must be Method 5030 prior to use of Method 8260C. EPA also advises that acid should not be used as a preservative.

Comment 6.f: H&A raised concerns with the Effluent Limitations in Appendix III for Benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, chrysene, dibenzo(a,h)anthracene, and ideno(1,2,3-cd)pyrene. H&A points out that the reference to footnote 7 is a typographical error. These compounds should be referencing note 8.

EPA Response: EPA has revised the final RGP to correct the error.

Comment 6.g: H&A raised concerns with the Effluent Limitations in Appendix III for Naphthalene. They recommend that note 6 be revised to read, "Naphthalene can be reported as both a purgeable (VOC) and extractable (SVOC) organic compound. The highest reported value should be used *unless laboratory QA/QC issues dictate otherwise.*"

EPA Response: EPA agrees with the comment that the endnote should be revised. However, the last sentence of the note in Appendix III for naphthalene in the final permit has been revised to read, "If both VOC and SVOC analyzed, the highest value must be used unless the QC criteria for one of the analyses is not met. In such cases, the value from the analysis meeting the QC criteria must be used."

Comment 6.h: H&A had 2 concerns with Appendix VI - Minimum Levels. First, they are concerned that Method 335.2 for Cyanide does not employ Flame Atomic Absorption (FAA). Therefore, the ML and test method listed should be listed in the “Other” column. Second, the test methods for chromium and mercury similarly do not employ FAA. Therefore, the MLs and test methods should be listed in the “Other” column.

EPA Response: EPA acknowledges that there were a number of errors in the tables of Appendix VI. Those tables in the final permit have been revised.

7. ***The following comments were submitted by Michelle L. Smith, Project Scientist, Newfields Princeton, LLC. Letter dated January 14, 2005.***

Comment 7.a: Part I, Section C.2. pH Limitations (page 14) - Tables II and III provide pH limitations for the states of Massachusetts and New Hampshire. The EPA should clarify the required sampling point(s) (i.e. raw influent and final effluent or only final effluent) and sample methodology (i.e. field or laboratory). Since the only concern is the quality of pH in the effluent of the permittee’s operation prior to discharge to the receiving water body, only final effluent pH sampling and reporting should be required. In addition, due to the relatively short holding time for pH, analysis should be conducted in the field by the permittee.

EPA Response: EPA agrees that pH should only be required for the final effluent prior to discharge. Regarding field testing, as stated in the EPA test method 150.1, which is an approved method under 40 CFR 136, field methods may be used to determine pH. The final RGP has been revised to reflect these changes.

Comment 7.b: Part I, Section C.2. pH Limitations (page 14) - Tables II and III provide pH limitations for the states of Massachusetts and New Hampshire. If the naturally occurring pH of the source water (e.g. groundwater entering the treatment system) is below the minimum or above the maximum limitation specified, the pH will be unaltered by the existing or proposed operation, and the groundwater naturally discharges to the surface water body, the EPA should recognize that pH monitoring is unwarranted for those permittees whose operations will not alter the pH.

EPA Response: EPA recognizes that, in many cases, the pH will not be altered by the operation of the water treatment system. However, this is not always the case, e.g., when additives are used or the underground plume changes due to pumping. The pH limits of the permit are based on the water quality requirements of the two states which require the monitoring to be done unless otherwise exempted. Part I.C.2 (note 9) of the RGP already allows permittees in Massachusetts to request that the pH range be widened to within 6 to 9 standard units (S.U.) or another range due to naturally occurring conditions in the receiving water.

In New Hampshire, however, the permit does not allow for variation due to natural causes. In order to demonstrate that the receiving stream pH is naturally outside the 6.5 to 8.0 range, a facility would need to do a significant amount of ambient monitoring. Typically, NH broadens the pH range limits in permits based on a facility's demonstration that the available dilution in the receiving stream is sufficient to prevent water quality violations. This dilution study generally takes up to one year, so it is not part of this general permit but rather an option for applicants requesting an individual facility permit.

Comment 7.c: Part I, Section C.5. Heat Limits (page 15) - Table IV specifies the daily maximum temperatures for warm and cold water fisheries and the maximum change in temperature for sites in Massachusetts. Temperature monitoring should not be required if the naturally occurring temperature of groundwater entering the treatment system will be unaltered by the existing or proposed operation, and the groundwater naturally discharges to the surface water body. Temperature monitoring should be required only if the proposed or existing permittee's operation contains a heating process which will alter the temperature. In addition, the EPA should clarify the sampling frequency, sample point(s), sample type and sample methodology.

EPA Response: EPA agrees that temperature limits should only apply if the water treatment contains a heating process that can alter the temperature of the discharge and therefore impact the receiving water body. However, depending on the flow of the discharge relative to the flow of the receiving water body, the use of frac tanks, settling ponds, air strippers, or any other equipment could potentially expose the discharge water to ambient air that is at a different temperature, as well as where there is an external heat source used, such as a steam stripper. Therefore, EPA will review each NOI and determine whether the discharge has the potential to affect the temperature sufficiently enough to require the monitoring. The authorization letter from EPA to the permittee will indicate if temperature limits will be required. Regarding sampling frequency, points, type and methodology, the RGP has been revised to specify those requirements.

Comment 7.d: Part I, Section C.7. Consideration of Dilution Factors for Discharges of Metals (pages 15-16) - This section allows dilution factors to be applied to dischargers of metals to **freshwater**. The EPA should provide justification for not allowing dilution factors for dischargers of metals to **saline water** under the General Permit. Since saline water bodies are not sources of drinking water, dilution factors are pertinent. Many of the existing discharges, currently permitted under EPA Permit Exclusions, are to saline water bodies. Requiring each of these dischargers to file an individual NPDES permit application will place an undue burden on the permittee and EPA permit writers.

EPA Response: EPA recognizes that many of the current and potential discharges are to saline waters. While for freshwater discharges, the applicant, EPA, and the States can utilize a readily available database of flow information. However, for saltwater discharges, neither EPA nor the States have readily available information sources pertaining to the flow of saltwater receiving bodies.

Based on the comment, however, EPA has revised the final RGP to allow dilution for discharges to saline waters, provided that a dilution factor has been approved by the State prior to submission of an NOI. Based on historical data, EPA does not anticipate a large number of applications from dischargers that cannot meet the saltwater metals effluent limits at zero dilution. In order to allow for a dilution calculation into saltwater receiving bodies, applicants will need to prepare site-specific data, e.g., flow modeling, which EPA and the State will need to review. The review of such complex, site-specific flow information could easily take longer than the 14 day NOI review period of the general permit and therefore must be completed prior to the submission of the NOI. If the State does not approve the dilution factor prior to the NOI process, the applicant will be asked to submit an individual permit application.

Comment 7.e: Part I, Section C.8. Specific Pollutants to be Monitored for Individual Sub-Categories (page 16) - This section specifies permittees can certify certain chemicals are “not present” in their discharge from a minimum of one initial sample and recertify “not present” status for that chemical every six (6) months. Many permittees have been operating groundwater treatment systems for several years under EPA Permit Exclusions. During the operational period, numerous influent and effluent samples have been collected with the results reported to the EPA on a monthly basis. Since the proposed Remediation General Permit will replace the EPA Permit Exclusion, permittees currently operating remediation systems for more than one year should be allowed to permanently certify the chemical(s) are “not present” in their discharge and not have to recertify “not present” status every six (6) months.

EPA Response: EPA agrees that dischargers that have been collecting **influent** data pursuant to: 1) Massachusetts’ regulations 310 CMR 40.0000, the Massachusetts Contingency Plan (“Chapter 21E”); 2) New Hampshire’s Title 50 RSA 485-A: Water Pollution and Waste Disposal or Title 50 RSA 485-C: Groundwater Protection Act; or 3) an NPDES permit exclusion letter issued pursuant to 40 CFR 122.3, may use that **influent** monitoring and testing data for their initial application and in-lieu of new sampling for the 6 month re-certification that chemicals are “believed absent” (see the response to comment 5.k. above regarding change from “not present” to “believed absent”). However, in order for the previously collected data to be used to re-certify every 6 months, the site must have been operating and collecting influent data for a minimum of 6 consecutive months prior to submission of the NOI. The permittee may use historical data as a substitute for the new sample for the NOI if the data was collected no more than 2 years prior to the effective date of the permit.

For purposes of recertifying that chemicals are not present in the discharge, the permittee must submit the data either with the NOI or within 30 days following the end of the first 6 month period. The permit has been revised to allow historical data only if the data is no more than 2 years old (i.e., the data was collected within two years when the recertification is due). While this revision does not allow permittees to recertify

permanently using historical data, as requested in the comment, this change will allow the majority of existing remediation and contaminated construction discharges to use historical data for both the NOI and the recertifications for the expected life of the project (the average remediation and contaminated construction discharge is one to two years).

For example, assuming that the permit becomes effective in September 2005, data that was collected during the 6 month period between March and August 2005 could be used to recertify for the three following six month periods (e.g., March and September 2006 and March 2007). If the discharge continued beyond August 2006 (approximately 2 years from the anticipated start date of the permit), the permittee would be required to analyze a new sample in order to recertify in September 2007. The permittee would also need to repeat the process for each six month period that the discharge continued.

Comment 7.f: Part I, Section C.8. Specific Pollutants to be Monitored for Individual Sub-Categories (page 16) - The EPA should clarify the sampling point(s) to certify “not present” status (e.g. raw influent or final effluent of existing remediation systems, a representative monitoring well).

EPA Response: The final RGP has been revised to indicate that certification that a chemical is “not present” (revised to be “believed absent,” see response to comment 5.k) must be based on sampling performed on an untreated sample at the site, in other words, at a point prior to any treatment of the water, i.e., raw influent.

Comment 7g: Part I, Section C.8. Table V (Chemical Effluent Limits and Monitoring Requirements by Sub-Category) (pages 17-23) - Many of the tables specify sampling for various metals (e.g. lead, iron, nickel, zinc, Trivalent Chromium III, Hexavalent Chromium IV). The EPA should provide clarification on whether the required metal sampling is total or dissolved.

EPA Response: While Appendix IV of the proposed RGP indicates that the metals limits are “total recoverable” limits, the final RGP has been revised to clarify this in the tables in Part I.C.8 as well.

Comment 7.h: Part I, Section C.8. Table V (Chemical Effluent Limits and Monitoring Requirements by Sub-Category) (page 17-23) - The EPA is proposing to lower the limitation on certain parameters and impose additional sampling requirements and limitations for others. The sudden imposition of lower limits, or limits for parameters not previously limited, may cause existing dischargers to cease operation of groundwater treatment systems due to the risk of Notice of Violations (NOVs) and monetary penalties. The EPA should strongly consider employing compliance periods for those permittees whose treatment systems are currently permitted and in operation to avoid system shut

downs. Compliance periods would allow permittees to collect additional data, adjust treatment system components, research treatment operations, acquire capital dollars and pilot test, purchase and install new equipment without the risk of NOVs or monetary penalties. The State of New Jersey provides a compliance period of three years in their Surface Water General Permit.

EPA Response: See EPA's response to Comment 6.a above.

Comment 7.i: Part I, Section C.8. Table V (Chemical Effluent Limits and Monitoring Requirements by Sub-Category) (page 21) and Part I, Section D.7. Short-Term Discharges (page 28) - Tables V.3.A. and V.3.B. list the pollutants to be sampled for contaminated sites performing construction dewatering (pollutant list is found in Appendix III). The Appendix III pollutant list is substantial. Typical construction dewatering projects are short-term in duration, have an intermittent discharge and do not generate large amounts of water. Thus the permittee should be allowed to characterize the constituents present upon submittal of the NOI and then sample in accordance with Tables V.1.A-C or Tables V.2.A-C.

EPA Response: While EPA recognizes that many of the contaminated construction dewatering projects are related to either gasoline or oil contamination, discharges from such excavations may also be contaminated with other chemicals. However, applicants cannot assume that no other chemicals are present. Rather, EPA believes that in order to ascertain which effluent limits apply, applicants must sample the water in the excavation. Both Part I.C.8.a. and Appendix V, section I.A.3 allow permittees/applicants to certify that chemicals are "believed absent" based on laboratory data from at least one sample and thereby alleviate unnecessary subsequent monitoring for short term projects. Therefore, the final RGP continues to require a minimum of one sample for all of the pollutants in Appendix III prior to submission of the NOI.

Additionally, as discussed in the response to Comment 7.e. above, permittees that have been sampling and testing influent pursuant to: Massachusetts' regulations 310 CMR 40.0000, the Massachusetts Contingency Plan ("Chapter 21E"); New Hampshire's Title 50 RSA 485-A: Water Pollution and Waste Disposal or Title 50 RSA 485-C: Groundwater Protection Act; or an NPDES permit exclusion letter issued pursuant to 40 CFR 122.3 may substitute historical influent monitoring and testing data collected no more than 2 years prior to the effective date of this permit at a point prior to any treatment of the water, in order to make their initial application certification that chemicals are "believed absent."

Comment 7.j: Part I, Section C.8. Table V (Chemical Effluent Limits and Monitoring Requirements by Sub-Category) (page 21) and Part I, Section D.7. Short-Term Discharges (page 28) - Tables V.3.A. and V.3.B. list the pollutants to be sampled for

contaminated sites performing construction dewatering (pollutant list is found in Appendix III). The Appendix III pollutant list is substantial. The requirement to collect influent and effluent samples on the first day of discharge, last day of discharge and one additional day during the discharge period may not be feasible for all construction dewatering projects due to the short-term duration of the project, intermittent discharges and small amounts of water generated. Thus the permittee should be allowed to sample in accordance with Tables V.1.A-C or Tables V.2.A-C.

EPA Response: While EPA recognizes that many of the contaminated construction dewatering projects are related to short-term (fewer than 7 days) gasoline or oil contamination, discharges from such excavations may also be contaminated with other chemicals. However, applicants cannot assume that no other chemicals are present. Rather, EPA believes that in order to ascertain which effluent limits apply, applicants must sample the water in the excavation for all of the pollutants listed in Appendix III prior to submission of the NOI.

Regarding the feasibility of the requirements to collect influent and effluent samples on the first day of discharge, last day of discharge and one additional day during the discharge period, EPA disagrees with the comment. Such requirements have been included in NPDES exclusion letters and NH's discharge permits for many years. Furthermore, both Part I.C.8.a. and Appendix V, section I.A.3 Appendix V, section allow the applicant/permittee to certify that chemicals are "believed absent" based on laboratory data from just one sample of the chemicals listed in Appendix III. This one time sampling will alleviate unnecessary subsequent monitoring for short term projects. Therefore, the final RGP continues to require a minimum of one complete sample of untreated influent to determine which chemicals are present.

Additionally, as discussed in the response to Comment 7.e. above, permittees that have been sampling and testing influent pursuant to: Massachusetts' regulations 310 CMR 40.0000, the Massachusetts Contingency Plan ("Chapter 21E"); New Hampshire's Title 50 RSA 485-A: Water Pollution and Waste Disposal or Title 50 RSA 485-C: Groundwater Protection Act; or an NPDES permit exclusion letter issued pursuant to 40 CFR 122.3 may substitute historical influent monitoring and testing data in order to make their initial application certification that chemicals are "believed absent" if such is the case.

Comment 7.k: Part I, Section C.8. Table V (Chemical Effluent Limits and Monitoring Requirements by Sub-Category) (page 21) and Part I, Section D.7. Short-Term Discharges (page 28) - Tables V.4.A. and V.4.B. list the pollutants to be sampled for aquifer pump tests and well development or rehabilitation (pollutant list is found in Appendix III). The Appendix III pollutant list is substantial. Typical aquifer tests and well developments/ rehabilitation are short-term in duration, have intermittent discharge

and do not generate large amounts of water. Thus the permittee should be allowed to characterize the constituents present upon submittal of the NOI and sample in accordance with Tables V.1.A-C or Tables V.2.A-C.

EPA Response: While EPA recognizes that some aquifer pump tests and well development or rehabilitation projects are related to short-term gasoline or oil contamination cleanup activities, discharges from such excavations may also be contaminated with other chemicals. However, applicants cannot assume that no other chemicals are present. Rather, EPA believes that in order to ascertain which effluent limits apply, applicants must sample the water in the excavation for all of the pollutants listed in Appendix III prior to submission of the NOI. However, both Part I.C.8.a. and Appendix V, section I.A.3 allow permittees/applicants to certify that chemicals are “believed absent” based on laboratory data from just one sample of the chemicals listed in Appendix III. This one time sampling will alleviate unnecessary subsequent monitoring for short term projects. Therefore, the final RGP continues to require a minimum of one complete sample.

Additionally, as discussed in the response to Comment 7.e. above, permittees that have been sampling and testing influent pursuant to: Massachusetts’ regulations 310 CMR 40.0000, the Massachusetts Contingency Plan (“Chapter 21E”); New Hampshire’s Title 50 RSA 485-A: Water Pollution and Waste Disposal or Title 50 RSA 485-C: Groundwater Protection Act; or an NPDES permit exclusion letter issued pursuant to 40 CFR 122.3, may substitute historical influent monitoring and testing data in order to make their initial application certification that chemicals are “believed absent.”

Comment 7.1: Part I, Section C.8. Table V (Chemical Effluent Limits and Monitoring Requirements by Sub-Category) (page 21) and Part I, Section D.7. Short-Term Discharges (page 28) - Tables V.4.A. and V.4.B. list the pollutants to be sampled for aquifer pump tests and well development or rehabilitation (pollutant list is found in Appendix III). The Appendix III pollutant list is substantial. The requirement to collect influent and effluent samples on the first day of discharge, last day of discharge and one additional day during the discharge period may not be feasible for all aquifer pump tests and well development/ rehabilitations due to the short-term duration of the project, intermittent discharges and small amounts of water generated.

EPA Response: Regarding the feasibility of the requirements for operators of aquifer pump tests and well development or rehabilitation to collect influent and effluent samples on the first day of discharge, last day of discharge and one additional day during the discharge period, EPA disagrees with the comment. Such requirements have been included in NPDES exclusion letters and NH’s discharge permits for many years. Furthermore, both Part I.C.8.a. and Appendix V, section I.A.3 Appendix V, section allow the applicant/permittee to certify that chemicals are “believed absent” based on

laboratory data from just one sample of the chemicals listed in Appendix III. This one time sampling will alleviate unnecessary subsequent monitoring for short term projects. Therefore, the final RGP continues to require a minimum of one complete sample.

Additionally, as discussed in the response to Comment 7.e. above, permittees that have been sampling and testing influent pursuant to: Massachusetts' regulations 310 CMR 40.0000, the Massachusetts Contingency Plan ("Chapter 21E"); New Hampshire's Title 50 RSA 485-A: Water Pollution and Waste Disposal or Title 50 RSA 485-C: Groundwater Protection Act; or an NPDES permit exclusion letter issued pursuant to 40 CFR 122.3, may substitute historical influent monitoring and testing data in order to make their initial application certification that chemicals are "believed absent."

Comment 7.m: Part I, Section C.8. Table V (Chemical Effluent Limits and Monitoring Requirements by Sub-Category) (pages 17-23) - Some of the tables require sampling for Ethylene Dibromide and propose a limit of 0.05 ug/l. Appendix VI, which lists the required minimum levels (ML) and test methods for each compound, states 1.0 ug/l is the ML for method 618, 0.01 ug/l is the ML for method 504.1 and 0.1 ug/l is the ML for methods 524.2 and 1624. Imposing a limit of 0.05 ug/l would limit the permittee to utilize method 504.1. Five hundred series methods are typically use for potable well analysis.

Since the ML for the majority of the methods is greater than 0.05 ug/l (i.e. the proposed limit), it should be footnoted that the limitation should be set equal to the ML of the test method when the ML exceeds 0.05 ug/l. The EPA did specify the limitations for the Group I PAHs and Total Residue Chlorine were equal to the ML of the test method (see Appendix III).

EPA Response: See EPA Response to Comment 6.d above.

Comment 7.n: Part I, Section C.9. Flow Monitoring (page 24) - This section specifies the flow shall be monitored with a "continuous flow meter." The EPA should provide a definition for a "continuous flow meter". The majority of existing treatment systems are equipped with totalizer meters which record the instantaneous gpm and total gallons discharged. Will the EPA regard this as a continuous flow meter? If not, will the EPA allow a compliance period of one year for the purchase and installation of a "continuous flow meter" for existing dischargers?

EPA Response: EPA recognizes that the flow monitoring requirements were not clear in the proposed RGP. The final RGP has been revised to clarify that EPA will consider a "continuous flow meter" to mean a meter that records the instantaneous gallons per minute (gpm) and total gallons discharged. Therefore, no additional purchase and

installation time is needed.

Comment 7.o: Part I, Section D.1.b. and D.1.c. Sampling, Testing, Recordkeeping and Reporting Requirements (page 24) - All volatile organics, including but not limited to Total Xylenes, MTBE, TBA and TAME, are typically analyzed by industry using methods 602, 624 or 8260. A review of Appendix IV indicates that many, or all, of these methods are not listed for the volatile organic compounds. Will the EPA accept these methods for analyzing all VOCs including Total Xylenes, MTBE, TBA and TAME?

EPA Response: While the comment specifies that Appendix IV is missing information about Test Methods 602, 624, and 8260, it appears to be a typographical error and that the commenter meant Appendix VI. EPA agrees with the comment and Appendix VI has been revised to include some of these methods for some of the other VOCs, with the following specific conditions. First, Method 602 (with heated purge) and the most current version of Method 8260 (i.e., Method 8260C), but not Method 624 (which cannot use a heated purge), may be used for total xylenes. Second, for the water soluble fuel oxygenates, such as MTBE, TBA, and TAME, Method 602 or 8260C may be used provided the Methods are modified to include a heated purge. Anytime Method 8260C is used, the type of purge method must be noted with the required QA/QC results. The final RGP has been modified to allow for these changes. For further information regarding method substitutions, see the response to comment 7.y. below.

Comment 7.p: Part I, Section D.2. Initial Treatment System Discharge Startup (page 25) - The proposed Remediation General Permit will replace most of the existing EPA Permit Exclusions. Based on the fact that most of the treatment systems operating under the EPA Permit Exclusion have been discharging for several years, existing discharges should be exempt from the initial start-up sampling requirements found in this section.

EPA Response: EPA agrees that treatment systems operating under the EPA Permit Exclusion that have been discharging for several years, unless the system has been down for 45 days or more as of the date that the final RGP becomes effective, can be exempted from the initial start-up sampling requirements. Existing systems that have not been operational for 45 days or more as of the date that the final RGP becomes effective, are required to meet the requirements of Part I.D.5 and 6 of the RGP. The final RGP has been revised accordingly.

Comment 7.q: Part I, Section D.2.b. Initial Treatment System Discharge Startup (page 25) and Part I, Section D.5.b. Intermittent Operations and System Re-Start (page 27) - These sections specify samples must be analyzed within a 72-hr turnaround time (TAT). Laboratories apply a surcharge of 75-90% of original cost for an expedited TAT of 72-hrs. The standard TAT for most laboratories is 7 days on system samples and the typical procedure of the permittee is to sample early in the month. Thus the requirement for 72-

hr TAT would be financially onerous and is not warranted.

Page 94 of the Fact Sheet indicates that sampling after the first week can be on a 7-day TAT. This language was not present in Section D.5.b. of the draft permit conditions.

EPA Response: EPA agrees that a 7 day TAT is appropriate for samples subsequent to the first week's sampling. Part I.D.5.b in the final RGP has been revised accordingly.

Comment 7.r: Part I, Section D.5 and D.6 Intermittent and Extended System Shut Downs (pages 27-28) - These sections specify the increased sampling frequency if the discharge is interrupted for greater than 30 to 90 days and greater than 90 days. These sections do not specify if the increased sampling frequency is applicable to pH and temperature monitoring. Operational experience demonstrates an intermittent shut down period of 30 to 45 days is common for groundwater remediation systems, especially in cold weather climates such as Massachusetts and New Hampshire. The definition of an intermittent shut down period should be extended to a period between 45 consecutive days and less than 120 consecutive days.

EPA Response: The final RGP has been revised to clarify that the increased sampling frequency after intermittent and extended shutdowns is applicable to pH and temperature as well as the effluent limits. Regarding the length of the shutdown period, EPA agrees that the definition of an intermittent shut down period should be extended to a period between 45 consecutive days and fewer than 120 consecutive days. The RGP has been revised accordingly.

Comment 7.s: Part I, Section E.4.b. BMPP Deadlines (page 32) - This section specifies existing dischargers planning to operate for more than 180 days shall develop and implement a written BMP Plan within 30 days after receiving notification from EPA-NE that the general permit covers the site/facility. Thirty days is an insufficient time frame to develop and implement a written BMP Plan. Ninety days would be sufficient for the permittee/consultant to prepare a written plan, train facility personnel and post the BMP plan at the facility.

EPA Response: EPA believes that 30 days after receiving notification from EPA-NE that the general permit covers the site/facility is sufficient time to develop and implement a BMP plan. For existing projects, the BMP plan should reflect good engineering practices already occurring and not involve much new documentation. Furthermore, coverage under the RGP will not be effective until the applicant has prepared and submitted the NOI, EPA-NE has reviewed the NOI/application information and made a determination that coverage under the RGP is appropriate, and notified the applicant in writing of the determination. The effective date of coverage will be the date of signature of the

notification letter by the Director. While EPA has not revised the final RGP based on the comment, EPA believes that there will be sufficient transition time for the permittee/consultant to prepare a written plan, train facility personnel and post the BMP plan at the facility. If it is an existing discharge, until the applicant receives a notification letter of permit coverage from EPA, these discharges will continue to be covered under the existing legal mechanisms.

Comment 7.t: Part I, Section E.4.d. Annual Certifications of BMPPs(page 32) - This section requires the permittee to submit an annual certification to the State and EPA. The EPA should clarify the required format or form, contents and the qualifications of the individual completing the certification submittal.

EPA Response: EPA agrees that Part I, Section E.4.d. Annual Certifications of BMPPs should be clarified as to the format, contents, and qualifications of the individual completing the certification submittal. The final RGP has been revised to allow the annual certification to be in the form of a letter and/or a checklist that indicates which elements of the BMP plan have been implemented and which elements have not (including reasons why not). The certification must be completed and signed according to the requirements of 40 CFR 122.22 by the operator of the site.

Comment 7.u: Appendix III (Effluent Limitations) - Footnote #7 is referenced for the following compounds: Benzo(a)pyrene, Benzo(b)fluoranthene, Benzo(k)fluoranthene, Chrysene, Dibenzo(a,h)anthracene and Indeno(1,2,3-cd)pyrene. It appears footnote #8 should actually be referenced for these compounds since the maximum values specified are less than the ML of the test method referenced in Appendix VI.

EPA Response: The final RGP has been revised to correct this error.

Comment 7.v: Appendix V, Section I.3. Determination of Reasonable Potential and Allowable Dilution for Discharges of Metals - The calculation of dilution factors for applicants in MA and NH, found in step #2, states that if the intake (untreated) water concentrations are less than the limits in Appendix IV, there is no limitation or monitoring requirement and if the intake exceeds the limits in Appendix IV, the applicant must treat to less than the limit prior to discharge. The step does not indicate whether a limitation applies if the intake is equal to the limit found in Appendix IV. The step also does not address which limitation the applicant is subject to if the intake exceeds the limits in Appendix IV (i.e. the limitation listed in Appendix IV based on the calculated dilution factor, the limitation expressed in Tables V Part I, Section C.8, or the limitations found in Appendix III).

EPA Response: The final RGP has been revised to clarify that if the intake is **equal to or exceeds** the limits in Appendix IV, the applicant must treat to less than the limits at the corresponding dilution range in Appendix IV prior to discharge.

Comment 7.w:Appendix V (Notice of Intent) - Section I.A.3. of Appendix V of the permit conditions specify the procedures to indicate known present, believed present and believed absent chemicals in the Notice of Intent (NOI) Form. However it is unclear in the instructions, and on the NOI form, that the permittee is only required to sample the chemicals related to the category checked plus any other known or believed present chemical as specified in page 83 of the Fact Sheet. The EPA should provide clarification.

EPA Response: EPA disagrees with the comment that the Fact Sheet and NOI instructions only require the applicant to sample the chemicals related to the category checked plus any other known or believed present. The first sentence of Page 83 of the Fact Sheet states that, “Under the RGP, permittees must monitor their outfall discharge effluent and demonstrate compliance with the applicable parameters specified in Table XI below **and** Appendix III of the RGP” (emphasis added). This corresponds to the time period after coverage has been approved and and the **permittee’s** initial and monthly monitoring requirements have taken effect. This section of the Fact Sheet corresponds to the provisions of Part I.C.8. of the permit that allows the permittee to monitor for compliance with the limits for the applicable parameters listed for each sub-category, unless the permittee certifies that the chemicals are “not present” (revised to be “believed absent” see response to comment 5.k. above) based on testing that was done prior to submitting the NOI. Furthermore, in order for the permittee to have known which parameters were applicable from Appendix III, they would have had to perform a minimum of one test on untreated effluent prior to submitting the NOI.

EPA acknowledges that the second sentence in the second paragraph on page 83 may have caused confusion, however, stating, “On the NOI, applicants must indicate which of the sub-categories their discharges fall within and monitor all of the chemicals related to that category, unless the chemical is certified as “not present”” (now “believed absent,” see response to Comment 5.k). However, the following paragraph provides further clarification that, “If the site falls within one of the categories but is known to contain additional chemicals not specified in the list of presumptive chemicals but listed in Appendix III of the RGP, the permittee must also monitor for the known chemicals.” This means that the chemicals are “known” by the applicant and later the permittee based on the initial screening.

The proposed Section I.A.3 of Appendix V, the NOI instructions, indicated that the **applicant** must conduct a minimum of one sample of influent to indicate which chemicals and sub-categories apply. The proposed NOI instructions stated,

“Based on the results of a minimum of one influent sample for all of the

parameters in listed in Appendix III, the applicant must indicate which chemicals the applicant believes are present and which of the sub-categories listed in Table V of Part I.C of the RGP the discharge falls within.”

EPA has clarified the final RGP NOI instructions, and the NOI form, to help clarify that that the initial sampling is for **all** of the Appendix III parameters.

Comment 7.x: Appendix V (Notice of Change) - Section II.A.2. of Appendix V specifies the permittee can request a reduction in influent and effluent monitoring for certain parameters. To be eligible for a reduction in influent monitoring, the permittee must provide 6 months of data. The EPA should clarify the criteria that must be met for a reduction in influent monitoring (e.g. demonstrating parameter has been non-detect in influent for 6 months) and whether the data must be 6 consecutive months.

EPA Response: EPA agrees with the comment and has clarified the RGP to specify the criteria that must be met for a reduction in influent monitoring. In order to reduce influent monitoring, the permittee must submit data from sampling pursuant to the RGP showing that for 6 consecutive months influent has been successfully monitored. EPA believes that influent monitoring during the first six months provides critical information to the operator concerning the operation of the pollution control equipment during the shakedown period. After six consecutive months of operation, the influent monitoring may be reduced to less frequently than monthly and still provide information as to whether or not the system is running as intended.

Comment 7.y: Appendix VI (Minimum Levels) - Appendix VI specifies Naphthalene is to be analyzed by methods 612, 601 or 601 HPLC. Method 601 is listed as a GC/MS method which is incorrect. Furthermore, Method 612 is a method for the determination of chlorinated hydrocarbons and not an appropriate method for naphthalene analysis. Based on the footnote 8 and 11 on Table V Part 1 Section C.8 (pp. 17 and 18), it should be clarified that naphthalene may be analyzed by methods 624, or 625.

Appendix VI specifies PAHs are to be analyzed by methods 610 GC, 625 or 610 HPLC.

Appendix VI specifies MTBE is to be analyzed by method 524.2. The EPA should clarify if Methods 624 or 8260 are acceptable substitutes.

Appendix VI specifies TBA is to be analyzed by method 1666. Availability of EPA Method 1666 (“Volatile Organic Compounds Specific to the Pharmaceutical Manufacturing Industry by Isotope Dilution GC/MS – for the Purge-and Trap Analysis”) is unknown. The EPA should clarify if Methods 624 or 8260 are acceptable substitutes.

Appendix VI specifies Ethylene Dibromide is to be analyzed by methods 618, 504.1,

524.2 or 1624. The EPA should clarify if Methods 624 or 8260 are acceptable substitutes.

Appendix VI specifies Total Xylenes are to be analyzed by 1624. The EPA should clarify if methods 624 or 8260 are acceptable substitutes

Appendix VI does not specify any analytical methods for TAME. The EPA should clarify if Methods 624 or 8260 are acceptable.

Appendix VI specifies Acetone is to be analyzed by 524.2 or 1624. The EPA should clarify if Methods 624 or 8260 are acceptable substitutes.

Appendix VI specifies Hexavalent Chromium is to be analyzed by Flame Atomic Absorption. The EPA should clarify if method 7196 is an acceptable substitute.

Appendix VI does not specify any analytical methods for Trivalent Chromium. The EPA should clarify if Methods 200.7 or 6010 are acceptable substitutes.

Appendix VI does not specify any analytical methods for Total Recoverable Iron. The EPA should clarify if Methods 6010b and 200.7 are acceptable.

EPA Response: Based on the comment, the final RGP has been revised to make the following changes:

Appendix VI has been corrected for Naphthalene. The permit now allows naphthalene to be analyzed by Methods 610, 610 HPLC, or 625, but not 612 as previously written. Further, based on the comment concerning the footnote on Table V of the permit, Appendix VI has been revised to allow Methods 524.2 or 625 to be used for naphthalene analysis.

Regarding MTBE, TBA, TAME, total Xylenes, and acetone, the permit has been revised to also allow the use of Methods 602 (with heated purge) and 8260C but not Method 624 because it cannot be used with a heated purge that is necessary with water soluble compounds. Any use of Method 8260C, however, must be preceded by the sample preparation Method 5030.

Regarding Ethylene Dibromide, Methods 624 may not be used as a substitute due to the inability to achieve similar MLs as the methods listed in Appendix VI. Method 8260C may be used as a substitute provided the lowest ML can be met (i.e., 0.01 ug/l).

Regarding hexavalent chromium, EPA agrees that Method 7196a is a possible substitute but is not pre-approving its use in all cases at this time. Rather, to use this method, permittees will need to request it individually as an alternative test procedure. The permit has been revised, however, to allow Method 218.6 or Method 1636 (which are already NPDES- approved) to be used a substitute for analyzing hexavalent chromium

Regarding trivalent chromium, Method 6010 may not be used and Method 200.7 may not be used by itself. There are currently no NPDES-approved test methods approved for measuring directly trivalent chromium. Rather, to determine trivalent chromium, permittees must analyze the sample for total chromium using one of the following test methods, Methods: 200.15, 200.7, 200.8, 200.9, 218.1, or 1620, and hexavalent chromium using either Method 218.6 or 1636. Trivalent chromium is determined by subtracting the hexavalent from the total.

Regarding the methods for analyzing total iron, the permit has been revised to allow Methods 6010b and 200.7 provided that the SW-846 digestion method 3010 for the sample preparation is described in the data that is collected and analyzed.

Comment 7.z: Part I, Section D.1.b. (Sampling and Testing) - The EPA specifies 8260 is an acceptable substitute for 602, 624 or 1624 for volatile organic compounds. The EPA should clarify if Method 8270 is an acceptable substitute for method 625 in analyzing base neutral/ acid extractable compounds.

EPA Response: EPA recognizes that Method 8270D is EPA-approved for certain regulatory activities for determining concentrations of semi-volatiles. Forty CFR 136.3(c) authorizes the Regional Administrator to approve the use of alternative methods of analysis for additional pollutants or parameters, including when an approved method is unable to achieve the limits or minimum levels required by the permit and an alternate method is able to achieve it. In response to the comment, the Regional Administrator has approved Method 8270D as an alternative test procedure for measuring semi-volatile organic compounds, as a substitute for Methods 610, 625, or 1625. Method 8270D must be preceded by Method 3535 or Method 3520C as the sample preparation method. In either case, the quality control requirements of Method 3500B must be taken into account. The sample preparation method must be specified with data analysis records. Method 8270D may be modified to provide lower detection and quantitation limits using Selected Ion Monitoring (SIM). 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 8270D.

Comment 7.aa: Appendix VIII (Monthly Summary Form for Remediation General Permit) The instructions for completing the monthly summary form do not specify if both the influent and effluent samples are to be reported. If both the influent and effluent

samples are to be reported, instructions should be provided on where to designate the sample location.

EPA Response: The final RGP and Appendix III have been revised to clarify that the summary form should contain summaries of both the influent and effluent data. The form and instructions in Appendix VIII have also been modified to require the location of both the influent and effluent sampling at the top of the form.

Comment 7.bb: General Comments on Proposed MTBE Limitation in MA - The EPA is proposing to lower the MTBE limit in Massachusetts from 70 ug/l to 20 ug/l based upon the current advisory which establishes a concentration of 20-40 ug/l of MTBE in drinking water. The advisory concentration of 20-40 ug/l is a threshold value for taste and odor in drinking water.

The General Permit should consider a risk-based approach to water quality protection. A risk-based approach is premised upon exposure to a chemical, the effects of exposure to a chemical and the probability of the occurrence of an exposure. The exposure is premised upon the concentrations of MTBE at the source and hence the NPDES discharge point, and the receptor is based upon the designated use of the receiving water body. If the receiving water body is designated aquatic life use and aquatic habitat, drinking water, human health contact, etc.; these uses should be considered in setting a water quality standard for MTBE. If the receiving water body is marine water, an aquatic life use and aquatic habitat alone should be considered in setting a water quality standard for MTBE.

Within the risk assessment the pathway between the source and receptor may change the concentration of the chemical through fate processes or dilution and mixing. Physical and chemical factors that affect the exposure concentration of each chemical should be included within the risk-based evaluation.

The General Permit should first consider the designated use of the receiving water and if the receiving water use is for aquatic life only, the MTBE data used to calculate a criterion should be used (Refs.). If the receiving water were marine and/or saline, the marine aquatic life MTBE value would apply, since drinking water use is not applicable. The designated use for freshwater would be the existing standard in the receiving water. However the site-specific permit may be derived to include dilution of the discharge and technology based treatment considerations.

Although the USEPA does not yet have promulgated Ambient Water Quality Criteria for MTBE, an EPA defensible data set and draft criteria document have been prepared meeting EPA requirements. The results have been peer-reviewed and published in the scientific literature and are being used in many US jurisdictions and in Europe. The

freshwater criteria for acute and chronic exposure effect protection have been calculated at 151 and 51 mg-MTBE/L, respectively. Calculated preliminary marine criteria for acute and chronic exposure effect protection are 53 and 18 mg-MTBE/L, respectively. (Mancini, et al. , 2002; Rausina, et al., 2002; Wong, et al., 2001).

MTBE Treatability - MTBE treatment is difficult relative to benzene treatment. MTBE is about 10 times less volatile than Benzene when moving from the dissolved phase in water to a vapor phase due to the lower Henry's law constant (e.g. air stripping). MTBE is also much less likely to absorb to organic carbon due to a lower Koc than benzene. Using air stripper technology, significantly more air capacity is required to strip MTBE from the water. Using carbon treatment, additional carbon capacity is necessary and more frequency carbon change-outs are required. Both of these factors greatly increase the cost of system operation and maintenance for the permittee.

Typical treatment systems operating at sites impacted with gasoline, fuel oils and other oils contain air strippers and granular activated carbon units as the primary treatment units. These systems were not designed to treat MTBE to less than 20 ug/l. If imposed with a 20 ug/l discharge limitation, permittees would be forced to turn off, and subsequently upgrade, their treatment systems. System upgrades typically take one to two years to complete and cause delays in clean-up time frames.

Receiving Streams and Mixing zones - Effluent mixing zones have long been recognized and accepted as zones of transition where the fate processes begin to act on pollutants and inception of dilution diminishes the effective concentration that may affect aquatic life and drinking water concentrations. MTBE is not a bioaccumulative chemical as evidenced by log partitioning coefficients for octanol (Log Kow). Typically for bioaccumulative pollutants dilution is not specifically considered since a tissue-based limit may be more appropriate. However, for non-bioaccumulative the chemical's dilution characteristics and consideration of fate processes is advised. Therefore, dilution of discharge concentrations is a realistic method of assuring safe concentrations wherever drinking water is one of the receiving system designated uses.

Ambient Water Quality Criteria for MTBE - The EPA is basing the proposed Massachusetts freshwater and saline water MTBE limitation of 20 ug/l on the current advisory which establishes a concentration of 20-40 ug/l of MTBE in drinking water as a threshold value for taste and odor. The 20 ug/l is based upon zero (0) dilution since the purpose of the General Permit is to regulate MTBE discharges for all types of surface water bodies. The proposal of a MTBE limitation of 20 ug/l based upon zero dilution to all permittees is unjustified.

Conclusion - Surface water designated as drinking water sources should have a MTBE limitation established that is protective of human health. Surface water designated as

non-drinking water sources should have a MTBE limitation based upon the calculated chronic exposure effect protection of 51 mg/l for freshwater and 18 mg/l for saline water.

Proposed Effluent Limitations for MTBE based on receiving water criteria:

MTBE MA – Freshwater (Drinking Water Sources where the MA7CD10 values at the point of intake are less than 14 cfs) – 20 ug/l daily maximum after mixing zone dilution determined on site-specific basis – based on current advisory for taste and odor threshold,

MTBE MA – Freshwater (Drinking Water Sources where the MA7CD10 values at the point of intake are greater than or equal to 14 cfs) – 20 ug/l daily maximum after mixing zone dilution determined on site-specific basis or 85% removal monthly average minimum, whichever is least restrictive – protective of human health,

MTBE MA – Freshwater (Non-Drinking Water Sources) – 51 mg/l daily maximum after mixing zone dilution determined on site-specific basis – based on calculated chronic exposure effect protection, and

MTBE MA – Saline (All) – 18 mg/l daily maximum after mixing zone dilution determined on site-specific basis or 85% removal monthly average minimum – based on calculated chronic exposure effect protection.

EPA Response: EPA recognizes that there is no federal water quality standard set for MTBE at this time and that preliminary studies have indicated that acute and chronic criteria for both fresh and marine waters could be substantially higher than the current groundwater and drinking water limits in MA (70 ug/L). However, EPA is not setting a risk-based limit for MtBE in this general permit at this time. Nor is EPA setting a limit for MTBE that allows for dilution. Based on a review of the data submitted from hundreds of remediation sites over the past 20 years, EPA proposed a technology limit of 20 ug/L in the draft RGP. Analysis of a subset of influent and effluent data from gasoline spill site remediation projects in Massachusetts shows that both the mean and median effluent concentrations were consistently at or below 20 ug/L, with mean and median control efficiencies ranging from 90 - 99% using air stripping and/or carbon adsorption. However, greater than 95% of the data reports in Massachusetts indicate that the current treatment technologies consistently achieve effluent concentration of MtBE lower than 70 ug/L. Therefore, considering the information raised in the comment and our further analysis of the existing data set, EPA agrees with the comment that it is premature to require a limit of 20 ug/L. Rather, the final RGP has been revised to set a best professional judgement (BPJ) technology-based limit of 70 ug/L in all waters in MA.

Comment 7.cc: General Comments on Proposed MTBE Limitation in NH - The EPA is proposing to maintain a MTBE limitation of 13 ug/l in New Hampshire based upon the State's primary drinking water standard. The following factors should be considered in establishing a MTBE limit: Receiving streams which allow for dilution effects at the point of intake, Surface water bodies designated as non-drinking water sources, and

Ambient Water Quality Criteria for MTBE.

Receiving Streams Which Allow for Dilution - As an alternative to imposing only a concentration limitation for MTBE, the EPA could impose a percent removal limitation on receiving streams that are saline and those freshwater receiving streams which allow dilution effects at the point of intake. The current State of New Jersey's Discharge to Surface Water General Permit places an 85% removal (monthly average minimum limitation) or 70 ug/l limitation, the drinking water standard (daily maximum limitation) on MTBE for a majority of the receiving streams (i.e. water bodies where the MA7CD10 values at the point of intake are greater than 14 cfs). A concentration, as well as a percent removal limit, is imposed since permittees with low influent MTBE concentrations cannot meet the percent removal limitation.

Receiving streams which do not allow for dilution effects at the point of intake only have an MTBE concentration limit of 70 ug/l. A percent removal limit, along with a concentration limit, for saline and freshwater receiving streams which allow dilution effects at the point of intake, are still protective of human health and the environment.

Ambient Water Quality Criteria for MTBE - The EPA is basing the proposed New Hampshire freshwater and saline water MTBE limitation of 13 ug/l on the State's primary drinking water standard. The 13 ug/l is based upon zero (0) dilution since the purpose of the General Permit is to regulate MTBE discharges for all types of surface water bodies. The proposal of a MTBE limitation of 13 ug/l based upon zero dilution to all permittees is unjustified.

For surface water designated as non-drinking water use, Ambient Water Quality Criteria protective of aquatic species and their use are appropriate. The EPA does not yet have promulgated Ambient Water Quality Criteria for MTBE. EPA scientists and industry have, however, collected data consistent with that required for development of Ambient Water Quality Criteria for MTBE. For MTBE, preliminary freshwater criteria for acute and chronic exposure effect protection have been calculated at 151 and 51 mg-MTBE/L, respectively. Calculated preliminary marine criteria for acute and chronic exposure effect protection are 53 and 18 mg-MTBE/L, respectively. (Mancini, et al., 2002; Rausina, et al., 2002; Wong, et al., 2001).

Conclusion - Surface water designated as drinking water sources should have a MTBE limitation established that is protective of human health. Surface water designated as non-drinking water sources should have a MTBE limitation based upon the calculated chronic exposure effect protection of 51 mg/l for freshwater and 18 mg/l for saline water.

Proposed Effluent Limitations for MTBE:

MTBE NH – Freshwater (Drinking Water Sources where the MA7CD10 values at the point of intake are less than 14 cfs) – 13 ug/l daily maximum – based on current primary drinking water standard,

MTBE NH – Freshwater (Drinking Water Sources where the MA7CD10 values at the point of intake are greater than or equal to 14 cfs) – 13 ug/l daily maximum or 85% removal monthly average minimum, whichever is least restrictive – protective of human health,

MTBE NH – Freshwater (Non-Drinking Water Sources) – 51 mg/l daily maximum based on calculated chronic exposure effect protection, and

MTBE NH – Saline (All) – 18 mg/l daily maximum or 85% removal monthly average minimum – based on calculated chronic exposure effect protection.

EPA Response: EPA recognizes that there is no federal water quality standard set for MtBE at this time and that preliminary studies have indicated that acute and chronic criteria for both fresh and marine waters could be substantially higher than the drinking water and groundwater limits in effect in NH (13 ug/L and 70 ug/L, respectively). However, EPA is not setting a risk-based limit for MtBE in this general permit. Nor is EPA setting a limit for MTBE that allows for dilution.

Based on a review of the data submitted from remediation sites over in New Hampshire, EPA proposed a technology-based limit of 13 ug/L in the draft RGP. However, EPA noted that at this level, the control systems required additional carbon adsorption capacity and more frequent carbon changeouts than ordinarily needed at similar sites. Therefore, based on the comment and upon further consideration of the available data and technology, EPA believes that the best professional judgement (BPJ) technology-based limit is 70 ug/l. The final RGP has been revised to reflect this change.

Comment 7.dd: General Comments on Proposed TBA Limitation in NH - The USEPA has set a technology-based limit of 1,000 ug/l for TBA in NH based upon NH's current advisory level in drinking water. Rather than technology-based, we propose the TBA limit should be risk-based, i.e., based on risk to human health and the environment. Sufficient TBA mammalian and aquatic toxicity testing data are available to permit this approach. The U.S. National Toxicology Program (NTP, 1995) has conducted and published a 2-year drinking water TBA bioassay in male and female rats and mice. Several states have developed Reference Dose (RfD) values based on these data, which in turn are used to set TBA concentration limits for drinking water. For example the Michigan Department of Environmental Quality (MDEQ) derived an RfD for TBA of 0.5 mg/kg-day based on this NTP study. A TBA drinking water limit may be calculated from this in a straightforward manner using standard EPA assumptions for body weight and daily drinking water intake. Such a risk-based approach also permits tailoring TBA limits

to non-potable water sources. For example, concentrations of chemicals in groundwater undergo significant dilution/attenuation during the transport process and attenuate significantly prior to potential drinking water well impacts. A risk-based approach can account for this phenomenon with no increase in risk to human health or the environment.

Finally we note this NTP bioassay reported elevated incidences of kidney tumors in male rats and thyroid follicular cell tumors in female mice. While neither finding was judged by NTP to represent “clear evidence” of carcinogenetic activity, additional work is underway particularly the American Petroleum Institute to evaluate the potential relevance of these data to human health risk assessment. In numerous tests TBA has been found not to be a genetic toxicant. Existing evidence strongly suggest the kidney tumors observed by NTP in male rats occurred by a mechanism that USEPA agrees is unique to male rats and not relevant to humans. USEPA has developed risk assessment procedures for thyroid follicular cell tumors (USEPA, 1998). The thyroid tumors observed in this TBA bioassay likely occurred by an epigenetic mechanism that involves disturbance of the thyroid-pituitary axis. Supporting documents are not yet available but are likely to be completed soon.

EPA Response: Given the lack of water quality standards or conclusive research on TBA, EPA believes that it would not be appropriate to set a risk-based limit for TBA at this time. Furthermore, based on the comment and the scarcity of data on the performance of typical removal technologies at the types of activities covered by the permit, EPA has decided to remove the TBA limit in New Hampshire. The final RGP has been revised to require permittees to “monitor only” TBA. EPA will evaluate the monitored data during the reissuance of the permit in 5 years.

Comment 7.ee: Part I, Section C.8. Table V.1.B (Fuel Oils (and Other Oils) Sites) (page 18) - Table V.1.B. specifies the pollutants, effluent limitations, limit type and sample type for sites impacted with fuel oil and other oils. Two of the parameters included in the sampling requirements are Chromium III and Chromium VI. The basis for this proposed requirement is not clear; fuel oils do not contain significant chromium. Crude oils typically contain less than 1 ppm Cr. Used lubricating oils and residual heavy oils contain <3 ppm Chromium. NewFields would like to note USEPA IRIS literature does not identify any evidence that there is no (sic) indication of carcinogenicity of trivalent chromium by any route of exposure. Further, trivalent Chromium is an essential nutrient. The Federal MCL for total chromium in drinking water is 100 ug/l (56 CFR 3526 – January 30, 1991). The EPA should provide a basis and justification for Chromium sampling to assist in evaluating the purpose of the sampling and effluent limitations.

However, if sampling for Chromium is maintained in the permit, it is recommended that Total Chromium first be analyzed against a Total Chromium limit (e.g. North Carolina,

total Chromium is analyzed, and a ratio of 1:6 CrVI:CrIII is assumed). Hexavalent and Trivalent Chromium analysis might then be required only if the Total Chromium limit is exceeded.

EPA Response: Regardless of the carcinogenicity of trivalent chromium, EPA has included both trivalent and hexavalent chromium limits in the RGP because they are both priority pollutants for which the Agency has set water quality criteria. While EPA recognizes that crude oils *typically* contain less than 1 ppm and used lubricating oils and residual heavy oils less than 3 ppm, the general permit was developed to cover a variety of situations, including sites where metals may have accumulated in the groundwater due to long-term historical activity. As described in Part I.C.8, the RGP would allow applicants/permittees to demonstrate that chemicals are believed absent based on a single sample or historical data showing that the influent concentration is below the effluent limit. Therefore, in cases where trivalent chromium in the influent is at concentrations below the applicable effluent limits of Appendix IV, no further monitoring and testing would be required for that chemical, unless the discharge continued for longer than 6 months. Additionally, to certify that chemicals are “**believed absent**,” in lieu of re-certification, the permittee may submit historic laboratory data obtained pursuant to: 1) Massachusetts’ regulations 310 CMR 40.0000, the Massachusetts Contingency Plan (“Chapter 21E”); 2) New Hampshire’s Title 50 RSA 485-A: Water Pollution and Waste Disposal or Title 50 RSA 485-C: Groundwater Protection Act; or 3) EPA permit exclusion letter issued pursuant to 40 CFR 122.3.(see Part I.C.8).

Comment 7.ff: Appendix IV (Total Recoverable Metals Limitations at Selected Dilution Ranges and Technology Based Ceiling Limitations for Facilities Located in Massachusetts and New Hampshire for discharges to freshwater) - The limitations for metals treatability (ceiling value, Appendix IV) exceed the individual zero dilution allowable concentrations. The proposed low discharge concentrations for the metals may thus be unattainable or at a minimum impose an undue treatment burden upon the permittees. Based on a review of current treatment technologies, the proposed levels of metal discharges are beyond the capability to achieve. These technologies, such as granular carbon adsorption (ix), metal specific absorbents (x), and chemical precipitation (xi), are all limited to discharge level of 10’s to 100’s of ppb. We believe that some of the extracted groundwater at remediation sites will have background metal concentrations higher than the low discharge concentration limits. This will place the regulated communities in an impossible position where on the one hand there is no technical way to accomplish these stringent limits and on the other hand the groundwater needs to be remediated before impacting potential receptors.

EPA Response: EPA recognizes that the metals limits of the general permit may require the use of additional control systems in cases where remediation projects have high concentrations of metals in the contaminated groundwater and the potential discharge is to low flow or zero dilution receiving waters. The limits in the RGP, however, were

based on the current water quality criteria for those metals. If there is reasonable potential to discharge those chemicals, EPA cannot avoid setting the criteria-based limits. Based on the thousands of remediation projects for which EPA has issued temporary exclusion letters, however, we believe that these cases will be atypical. In such cases where there is no dilution available, the operator may need to apply for an individual NPDES permit.

Based on the comment, however, EPA has revised the final RGP to allow dilution for discharges to saline waters, provided that a dilution factor has been approved by the State prior to submission of an NOI. As discussed above, EPA does not anticipate a large number of applications from dischargers that cannot meet the saltwater metals effluent limits at zero dilution. In order to allow for a dilution calculation into saltwater receiving bodies, applicants will need to prepare site-specific data, e.g., flow modeling, which EPA and the State will need to review. The review of such complex, site-specific flow information could easily take longer than the 14 day NOI review period of the general permit and therefore must be completed prior to the submission of the NOI. If the State does not approve the dilution factor prior to the NOI process, the applicant will be asked to submit an individual permit application.

Comment 7.gg: General Comments on Metal Limits in MA and NH Based on Hardness -
The USEPA is proposing to base the metal limitations on hardness, assuming 25 mg/l CaCO₃ in NH and 50 mg/l CaCO₃ in MA. Instead, the EPA should impose metal limitations based on site-specific hardness.

Ambient Water Quality Criteria for Metals - Hardness adjusted criteria have been developed by USEPA in understanding that toxicity of metals increases in lower hardness and decreases in higher hardness. For those metals that are hardness affected which includes copper, lead, zinc, EPA has provided adjusted criteria that were experimentally derived at different hardness conditions. In EPA criteria development and reference tables, a hardness of 100 mg/L CaCO₃ is usually cited as an indicator value although criteria are specifically set for site-specific hardness conditions. In addition EPA recognizes that bioavailability of metals is dependent upon receiving water conditions such as solids in the form of TDS, TSS and DOC which may decrease bioavailability and thus decrease the toxicity of metals. With that consideration, EPA has adjusted criteria values after hardness adjustment for a “translator” function that is metal specific. So, criteria are developed for acute and chronic permit limits and for adjustment of hardness and bioavailability. (See: <http://www.epa.gov/waterscience/pc/revcom.pdf>).

The hardness based criteria for zinc in NH and MA should be based upon site-specific hardness, rather than 25 and 50 mg/L CaCO₃ as in the draft permit. To simplify the General permit on a state/border basis is not justified. Receiving water hardness is site specific and depends upon the source geological and soil conditions originating from

receiving waters. If a reference or example hardness is used such as the reference shown at 100 mg/L hardness in EPA criteria document, the following formula which is cited in USEPA Ambient Water Quality Criteria for Zinc, should be used:

Freshwater:

Acute = CMC (dissolved) = $\exp\{m_A [\ln(\text{hardness})] + b_A\}$ (CF),

Chronic = CCC(dissolved) = $\exp\{m_A [\ln(\text{hardness})] + b_A\}$ (CF)

$m_A = 0.8473$; $b_A = 0.884$

As shown in Appendix B, for hardness-adjusted values to 100 mg/L hardness EPA has set specific criteria for zinc and other metals (USEPA, 2002). The criterion is hardness based and adjusted for bioavailability using conversion factors.

EPA Response: EPA recognizes that hardness of the receiving water varies by location and that therefore, the limits for hardness dependent metals, including cadmium, trivalent chromium, copper, lead, nickel, silver, and zinc, could vary by location. However, EPA has set the hardness dependent limits for metals at an assumed 25 mg/l CaCO₃ in New Hampshire and 50 mg/l CaCO₃ in Massachusetts based on the states' recommendations. While these presumptive hardness values may not reflect the actual hardness of each and every receiving water body in the two States, for purposes of developing a general permit, EPA and the States believe that these assumed values are appropriate for typical discharges. In fact, the hardness value of 25 for NH is required by the state water quality standards. In cases where the potential discharger feels that a different hardness value of the receiving water body must be used, the owner may apply for an individual NPDES permit.

Comment 7.hh: General Comments on Proposed Lead Limitations in NH and MA - The proposed lead limit is unreasonable and will cause an undue treatment burden upon the permittees. Lead (Pb) can be a corrosion product of brass fixtures or lead soldering in piping systems conveying aggressive waters. Several cities, such as Washington DC, had significant corrosion problems. The Pb content of their potable waters could not meet the Drinking Water MCL of 15 ppb. (i) Pb is also present in urban storm runoffs in concentration as high as several hundreds of ppb. (ii) Although most groundwaters contain very little Pb, there are natural background Pb concentration as high as 10s ppb (iii).

With these high background levels, it seems that the proposed low discharge concentration for Pb (as low as 0.5 ppb) is unreasonable. Furthermore, based on review of current treatment technologies, this level of Pb discharge is beyond their capability to achieve. These technologies, such as granular carbon adsorption (ix), metal specific

absorbents (x), and chemical precipitation (xi), are all limited to discharge level of 10s to 100s of ppb. We believe that some of the extracted groundwaters at remediation sites will have background Pb concentration higher than 1.0 ppb. This will place the regulated communities in an impossible position where on the one hand there is no technical way to accomplish this stringent Pb limit and on the other hand the groundwater needs to be remediated before impacting potential receptors.

EPA Response: As described in the Fact Sheet, EPA has established the lead limits based on EPA's water quality criteria, adjusted for the assumed average hardness values in each State. EPA recognizes that the metals limits of the general permit may require the use of additional control systems in cases where remediation projects have high concentrations of metals in the contaminated groundwater and the potential discharge is to low flow or zero dilution receiving waters. Based on the thousands of remediation projects for which EPA has issued temporary exclusion letters, EPA believes that these cases will be atypical.

Based on the comment, however, EPA has revised the final RGP to allow dilution for discharges to saline waters, provided that a dilution factor has been approved by the State prior to submission of an NOI. As discussed above, EPA does not anticipate a large number of applications from dischargers that cannot meet the saltwater metals effluent limits at zero dilution. In order to allow for a dilution calculation into saltwater receiving bodies, applicants would need to prepare site-specific data, e.g., flow modeling, which EPA and the State will need to review. The review of such complex, site-specific flow information could easily take longer than the 14 day NOI review period of the general permit and therefore must be completed prior to the submission of the NOI. If the State does not approve the dilution factor prior to the NOI process, the applicant will be asked to submit an individual permit application.

8. ***David J. Brillhart, Assistant Commissioner, New Hampshire Department of Transportation. Letter dated January 18, 2005.***

Comment 8. a. Page 2, "4) miscellaneous contaminated discharges": Is this a blanket statement for anything that could possibly be considered contamination? EPA should provide a clear definition of this.

EPA Response - The proposed permit, Part I.A.1.d., contains a definition of "miscellaneous contaminated discharges." This subsection reads,

"d. de-watering of miscellaneous contaminated discharge sites, such as non-emergency pump out of contaminated utility vaults and manholes, long-term cleanup of contaminated sumps, and short-term contaminated dredge drain back waters (if not covered by Section 401/404 permit), aquifer pump testing to evaluate remediation of formerly contaminated sites, well

development/rehabilitation at contaminated or formerly contaminated sites, and hydrostatic testing of pipelines and tanks.”

Additionally, section III.D. of the Fact Sheet contains descriptions of the types of contaminants typically found at these activities.

Comment 8.b. Pages 5-6 “Table I: Activities Covered by the Remediation General Permit” does not include unknown contamination. How will this be addressed?

EPA Response: EPA assumes that the commenter is referring to contamination that is not known prior to excavation work. See response to comment 8.c. below.

Comment 8.c. Page 5, Table I, Category III (Contaminated Construction Dewatering) notes that this permit is for “Known Contamination Sites” but does not address the ones that may be discovered during construction. Is it EPA’s intention for this permit to cover **all** contaminated discharges whether it is known ahead of time or discovered during construction? EPA should provide a clear definition for “General Urban Fill Sites”.

EPA Response: The RGP is designed to handle both sites where the contamination is known as well as where it is discovered during construction/excavation activities. Section III.C.1 of the Fact Sheet describes contaminated construction dewatering and explains EPA’s expectation when contamination is discovered at such sites:

“1. Specific Contamination Sites: The general permit is designed to cover 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, for example, a “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-NE’s General Permit for Construction Dewatering or EPA’s national Construction General Permit (Phase I & II), which are designed primarily for uncontaminated sites.”

Furthermore, while EPA’s Construction General Permit covers discharges associated with construction activity and certain non-storm water discharges, including uncontaminated ground water, seepage, and trench dewatering, the CGP does not cover these sources if they are contaminated. Similarly EPA’s Construction Dewatering General Permit covers pumped or drained discharges of uncontaminated groundwater and/or stormwater from excavations or other points of accumulation associated with

construction activities at sites that disturb less than one acre of land. If these discharges are contaminated, the RGP can cover these types of discharges.

Regarding the definition for “General Urban Fill Sites,” section III.C.2. of the Fact Sheet describes sites contaminated by “urban fill” or non-specific contamination. In response to the comment, EPA has added the following to Part I.A.1.c. of the permit:

“...including 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.”

Comment 8.d. Page 9, Section 3 (a): “...must submit a NOI to EPA-NE post-marked at least **14 days** prior to the commencement of discharge.” The approval time for the NOI is not clearly defined. Will it be greater than 14 days? If approval of the NOI causes delays to DOT projects, it would become extremely costly. Also, what happens if there is an accidental discharge or if one is discovered on a site? Does the project need to stop work and wait for the RGP? The proposed RGP assumes that the contamination is known *prior to* project advertisement. The *RGP Fact Sheet* (page 20) notes that EPA has determined that under ordinary circumstances, 14 days is a reasonable time for applicants to apply for coverage. What about the extraordinary circumstances? And what is the turnaround time from EPA on these submissions?

EPA Response: Regarding the timing of EPA’s authorization, see response to comment 2.b. and 3.a. above.

Comment 8.e. page 10, Section 4: This part of the permit addresses “endangered and threatened species and/or critical habitat”. It is assumed this references **Federally-listed species**, however it is not specific relative to State or Federally-listed species.

EPA Response: As described in section V.B. of the Fact Sheet, the Endangered Species Act of 1973 requires federal agencies to ensure that their actions do not jeopardize any federally listed endangered or threatened species.

Comment 8.f., Page 12, Section 7: “...the NOI must be signed and stamped by a professional engineer”. Why is this a requirement?

EPA Response: EPA agrees with the comment. The applicant must continue to comply with any other regulatory requirements in New Hampshire applicable to these types of sites. EPA expects that the design, construction, and implementation of the water treatment systems for the types of sites covered by the RGP will likely involve the oversight of professional engineers in the process. Therefore, EPA has removed the

requirement from the NOI form.

Comment 8.g., Page 12, Section 7: There is legal question regarding who is the owner and who can sign the permit. This is a particular problem for transportation agencies that have easements on properties for construction and maintenance activities. The terms owner and operator need to be defined, as in the CGP.

EPA Response: While the comment questions “who can sign the permit,” EPA interprets the comment to be referring to who can sign the permit application or NOI. EPA recognizes that the proposed RGP was unclear with regard to the signature responsibilities, particularly where the cleanup work at a property will be done through a second party (e.g., a contractor) rather than by the property owner. Similarly, the permit was not clear about these responsibilities where transportation agencies (or municipalities) are working on another party’s property under an easement. Based on the comment, EPA has revised the permit and NOI instructions, as well as the NOI, NOC, and NOT forms to require the signature of the “operator.”

According to 40 CFR 122.21(b), the “operator” is responsible for applying for the permit, and therefore signing the application. Consistent with EPA’s Construction General Permit (CGP), each party must apply, and therefore sign the NOI, if it meets either part of the definition of “Operator.” The final RGP has been revised to define “operator” as the person who has operational control over plans and specifications or the person who has day-to-day supervision and control of activities occurring at the site, namely: a) the owner (including an easement holder on the property), or contractor, if that entity is performing all the work related to complying with this permit, or b) both the owner and the contractor (as co-permittees) if a contractor has been hired to perform some of the work related to complying with this permit.

This means that a person, company, or agency should apply for coverage under the RGP if it has operational control over either the project site plans and specifications, including the ability to make modifications to those plans and specifications (e.g., owner or developer of property), **or** has day-to-day operational control of those activities at a project which are necessary to ensure compliance with permit conditions (e.g., general contractor). Where a party’s activity is part of a larger common plan of development or sale, that party is only responsible for applying for the portions of the project for which the party meets the definition of “operator.”

In many instances, there may be more than one party at a site performing tasks related to “operational control” and hence, more than one operator must submit an NOI. Depending on the site and the relationship between the parties (e.g., owner, developer, contractor), there can either be a single party acting as site operator and consequently be

responsible for obtaining permit coverage, or there can be two or more operators all needing permit coverage. Exactly who is considered an operator is largely controlled by how the “owner” of the property chooses to structure the contracts with the “contractors” hired to design and implement the project plans.

The following are three general “**operator**” scenarios (variations on any of these three are possible, especially as the number of owners and contractors increases):

- ▶ “*Owner*” as “*Operator*” - *sole permittee*. The property owner designs all of the structures and control systems for the site, develops and implements the BMPP, and serves as general contractor (or has an on-site representative with full authority to direct day-to-day operations). Under the definition of operator, the “Owner” would be considered the “operator” and therefore the only party that needs permit coverage. Everyone else working on the site may be considered subcontractors and do not need to apply for permit coverage.
- ▶ “*Contractor*” as “*Operator*” - *sole permittee*. The property owner hires a company (e.g., a contractor) to design the project and oversee all aspects, including preparation and implementation of the BMPP and compliance with the permit (e.g., a “turnkey” project). Here, the contractor would likely be the only party needing a permit. It is under this scenario that an individual having a personal residence built for his own use (e.g., not those to be sold for profit or used as rental property) would not be considered an operator. Similarly, EPA expects that homeowners hiring a contractor or consultant to perform groundwater remediation work (e.g., due to a leaking fuel oil tank) would come under this type of scenario. EPA believes that the contractor, being a professional in the industry, should be the responsible entity rather than the individual. The contractor is better equipped to meet the requirements of both applying for permit coverage and developing and properly implementing the plans needed to comply with the permit. However, property owners would meet the definition of “operator” and require permit coverage in instances if they perform any of the required tasks on their personal properties.
- ▶ “*Owner*” and “*Contractor*” as “*Operators*” - *co-permittees*. The owner retains control over any changes to site plans, BMPPs, or wastewater conveyance or control designs, but the contractor is responsible for conducting and overseeing the actual activities (e.g., excavation, installation and operation of treatment train, etc.) and daily implementation of BMPP and other permit conditions. In this case, which EPA expects is the most common scenario, **both** parties need to apply for coverage by submitting NOIs. In this case, only one set of records would need to be kept but available upon request from either party.

Furthermore, an individual/company would generally not be considered an “operator,” and subsequently would not need permit coverage, if: 1) it is a subcontractor hired by, and under the supervision of, the owner or a general contractor (e.g., if the contractor directs the subcontractor’s activities on-site, it is probably not an operator); or 2) the individual/company’s activities would otherwise result in the need for coverage under the RGP but another operator has assumed responsibility for the impacts of project activities. EPA anticipates that this will be the case for many, if not most, utility service line installations.

Comment 8.h., Page 13, Section 10: “Coverage under the general permit will not be effective until EPA-NE has reviewed the certification and the existing file information, made a determination that coverage under the RGP is appropriate, and notified the owner/operator in writing of its determination. The effective date of coverage will be the date of signature of the notification letter by the EPA-NE Director.” There is a great potential that this review process will not take place in a timely manner. Earlier in the permit it notes that an owner/operator must submit an NOI *at least 14 days prior* to the commencement of activities. Is the minimum response time to be 14 days and if not what will be the maximum time? This will create hardship on the Department relative to time and money, not to mention project delays. In addition, it is unclear how EPA requests for additional information will be handled relative to the timeframe.

EPA Response: See response to comments 2.b., 2.c., and 3.a. above.

Comment 8.i., Page 15, Section 3(b): There is a need for additional clarification and definition on this whole section. The current definition is impractical.

EPA Response: Regarding the narrative water quality standards, EPA has revised the final permit in response to the comment.

Comment 8.j., Page 15, Section 10, 5: “The discharge shall not exceed the following daily maximum temperatures.” This new requirement will mean additional monitoring, as this is not something we typically monitor, which will increase project costs.

EPA Response: As described in section VII.E. of the Fact Sheet, the RGP includes a daily maximum temperature limit based on the limits set in water quality standards and EPA-NE’s general permit for non-contact cooling water (FR 65, No. 80, pp. 24195, April 25, 2000) that was developed cooperatively with NH DES. Furthermore, as noted in the non-contact cooling water general permit, the temperature limits were determined by New Hampshire Fish and Game.

Comment 8.k., Page 16, section 8 (a): “Permittees must monitor all of the chemicals

related to the applicable sub-categories listed in Table V below on a monthly basis, unless the permittee certifies that a chemical is “**not present.**” Currently, the Department monitors tri-annually in contaminated areas. Why is monthly monitoring necessary?

EPA Response: See the response to comment 3.e. and 3.p. above.

Comment 8.l., Pages 17-23, Table V: The long list of chemicals to monitor for will require a significant effort and expense that does not seem warranted. The current standards already established by EPA are appropriate to the current work effort and should remain in effect.

EPA Response: EPA disagrees with the comment. Currently, there are no federally enforceable NPDES permits that cover the types of discharges potentially subject to the RGP. See the responses to comments 3.n., 3.o., 3.u., 3.x., and 3.aa.

Comment 8.m., Page 25, Section 2 imposes initial treatment system discharge startup requirements. Why is this necessary?

EPA Response: As described in section VIII.B.2. of the Fact Sheet, the RGP requires additional sampling and analysis during the first month of discharge to ensure proper operation of the treatment equipment and achievement of effluent limits during the initiation of discharge.

Comment 8.n. Page 26, Section 4(a): “In addition to the record keeping requirements found in Part II.C of this permit...shall be summarized monthly on the form provided...” Current wording in the permit indicates that New Hampshire must submit this information to the Mass. DEP.

EPA Response: The proposed RGP was inadvertently ambiguous regarding to which state the reports should be sent when required. The final RGP has been clarified to require only reports required by NH to be sent to NH and not MA.

Comment 8.o., Page 29, Section 1 requires development of a Best Management Practices Plan. Is this something that could be a blanket plan that covers the entire DOT?

EPA Response: To the extent that a BMP plan would apply to all of DOT’s activities that would be potentially subject to the RGP, it would be possible to develop and use one blanket plan. Such a plan would need to be available for inspection (see Part I.E.1.d).

Comment 8.p., Page 30, Section 1(c): “The BMPP may be a stand alone document or may be incorporated into any other BMPP...” It does not specifically note the CGP SWPPP. This should be an option because there are a lot of common components with the proposed RGP and the current CGP.

EPA Response: EPA agrees with the comment. Although the permit and the fact sheet do not specifically list the storm water pollution prevention plan (SWPPP), the BMPP plan for the RGP may be combined with it as long as the requirements of Part I.E. are met.

Comment 8.q., Page 30, Section 2 (a) “Security for the treatment and other systems related to the NPDES discharge should be either incorporated into the overall site security plan or as separate site security provisions as part of a BMP plan.” What kind of security is required? Are guards required for monitoring all the time?

EPA Response: The BMP requirements of the permit do not require security guards for monitoring all the time. In fact, EPA is not dictating to the permittee how they secure the site. Rather, EPA suggests a number of security elements that the permittee may include in the plan. As described in Section IX.B.1. of the Fact Sheet,

“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.”

Comment 8.r., Page 31, Section 2 (f) “Employee Training - The BMP plan must include 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.” This would definitely be a large expense, as well as extremely time-consuming. Would this require the Department to train any and all employees who would have the potential to become involved with any project that would require a RGP? If so, what level of training would be required?

EPA Response: As the comment describes, the RGP requires that the BMP include a program for training employees who have direct or indirect responsibility for insuring compliance with the RGP. Further, the Fact Sheet states that,

“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.”

Therefore, at a minimum, the BMP plan needs to describe how NH DOT will ensure that any employees working on a site for which NH DOT is applying for coverage under the RGP have been trained, formally or informally, regarding the applicable requirements of the permit. This does not necessarily mean that the NH DOT will need to train any and all employees who would have the **potential** to become involved with any project that would require coverage under the RGP. Who and how to train are decisions for NH DOT. However, the training should result in those employees understanding what they must do to comply with the conditions with the permit, including: applicable effluent limits, monitoring, sampling, recordkeeping, BMPs, etc.

Comment 8.s., Page 32, Section 1(a), “Discharges covered by the RGP who discharge indirectly into a surface water through an MS4 collection system must comply with local requirements for discharge to that system including any Storm Water Management Plan (SWMP) developed under EPA’s MS4 general permit.” This will require coordination up front with the MS4 community. In addition, this would require that all permittees contact the Department to make sure that they are consistent with our SWMP. This seems impractical and difficult to enforce.

EPA Response: This section of the RGP is a reflection of existing requirements under the MS4 general permit. Such coordination between NH DOT and the MS4 community should already be occurring and is critical for the proper management of the MS4. Failure to comply with such requirements in the future may result in violations of both the RGP and MS4 permits.

Comment 8.t., Page 32, Section 4 (d) “**Annual certification** - Annually, no later than February 15th, the permittee shall submit a certification to the State and EPA-NE which certifies that the previous calendar year's inspections and maintenance activities were conducted, results recorded, and records maintained and the facility is in compliance with the BMP Plan.” On a construction project that exceeds a year, as many of them do, this could pose additional expenses. Further clarification on the content of the “certification” is needed. It would be helpful to have this clearly identified in the permit language.

EPA Response: EPA agrees with the comment. The final RGP has been changed to clarify the certification requirements. Namely, the certification should state whether or not the inspections and maintenance activities were conducted, results recorded, and records maintained and the facility is in compliance with the BMP Plan. Further, the

annual certification shall be in the form of a letter with a checklist that indicates which elements of the BMP plan have been implemented and which elements have not, including reasons why not. And, the certification must be completed and signed according to the requirements of 40 CFR 122.22 by either the permittee or the operator of the treatment system.

Comment 8.u., NOI Page 1 “ In order to be covered by the remediation general permit (RGP), applicants must submit a written Notice of Intent (NOI)...” Electronic submissions similar to the eNOI for the CGP NOI would be a valuable tool in saving “time”.

EPA Response: EPA agrees that electronic submissions would help save time in the processing of NOIs. In response to the comment, EPA has developed NOI, NOC, and NOT forms that can be filled out electronically on our website. Applicants should check EPA’s NPDES final general permit websites at:

<http://www.epa.gov/region1/npdes/mass.html#figp>, for sites in MA, and

<http://www.epa.gov/region1/npdes/newhampshire.html#fgp>, for sites in NH.

After filling out the forms on-line, or downloading and filling out the forms, the signed forms can be electronically mailed to NPDES.Generalpermits@epa.gov, or faxed to the EPA Office at 617-918-0505 which will help expedite the processing of the application.

Comment 8.v., NOI Page 2, Section 1 (a-c) - It appears that only 1 entity (either the owner or operator) would need to submit an NOI? If so, who would bear this responsibility?

EPA Response: See response to comment 8.g. EPA recognizes that the proposed permit was unclear with regard to the responsibilities of transportation agencies working through contractors on sites under easements. As required by 40 CFR 122.21(b), the “operator” is responsible for applying for the permit. EPA has revised the NOI, NOC, and NOT forms to require the signatures of the “operator.”

Comment 8.w., In general, the NOI is very lengthy (consists of 9 pages).

EPA Response: While EPA recognizes that NH DOT considers the NOI lengthy, almost half of the pages are a list of the more than 50 chemical parameters that are potentially found in an untreated sample. Also, much of the remaining required information can be provided as answers to yes or no questions or one word answers (or by checking a box if the applicant uses the suggested form).

Comment 8.x., Who signs the NOI, owner or operator (or doesn't it matter)?

EPA Response: See the responses to comment 8.g. and 8.v.

Comment 8.y., Page 18, Section A, "Permittees covered under the CGP..." CGP should read **RGP**. There is an additional reference to CGP again on page 9, Section A.2 (a). 1. This needs to be changed.

EPA Response: The final RGP has been revised to correct these typographical errors.

Comment 8.z., Page 19, Section A.2 (a).4, "The permittee must attach, with the NOC.....for the chemical(s) proposed to be added and receive prior approval from the Director before use." We are concerned with the timeframe in which this approval will occur.

EPA Response: EPA recognizes the concern but the final permit has not been changed. Historically, as described in the Fact Sheet, EPA has a long experience with thousands of remediation sites and has processed these types of requests in a timely manner. Under the RGP, EPA will work closely with permittees to avoid unnecessary delays in processing these types of requests.

Comment 8.aa., NOC Page 19, Section A.2 (a).8(c), Again there is reference to the CGP not the **RGP**.

EPA Response: The final RGP has been revised to correct this typographical error.

Comment 8.bb., Page 25 (suggested NOT form), The signatory requirements require certification, however, a certification is not required in either the NOI or the NOC. In order to provide consistency it should either be noted on all forms or not at all.

EPA Response: EPA agrees with the comment. The final RGP has been revised to require a certification with the signature on any NOI, NOC, and NOT forms.

Comment 8.cc., Appendix VI Minimum Levels of Organics and Inorganics - There is a long list of parameters that would require analytical testing and this would prove costly to the Department. Many of them we do not currently test for, unless warranted, due to the high cost and low likelihood of encountering many of these parameters.

EPA Response: While the permit does require a minimum of one sample to determine reasonable potential of the chemicals listed, the NOI instructions and Part I.C.8. allow the applicant/permittee to certify that they believe that a chemical is absent based on the results of a single complete sample or historical data from another regulatory program. A minimum of one sample continues to be required in the final RGP because many of the excavation activities encounter a mix of chemicals in the water needing to be discharged. See the response to Comment 7.j.

Comment 8.dd., Appendix VII, Page 3, Section I.C., (Eligibility Criteria), In order to provide consistency with the current CGP, we recommend changing Criterion A-E to Criterion A-F. This would necessitate separating the RGP Criterion B into B&C (as addressed in the CGP).

EPA Response: EPA believes that Criterion B of Appendix VII of the RGP achieves the same result as the Criteria B and C in the CGP. Criterion B of the CGP refers to formal consultation and Criterion C refers to informal consultation with the federal services whereas Criterion B of the RGP refers to either formal **or** informal consultation. Since the same result is achieved combining the two, the RGP has not been changed.

Comment 8.ee., Page 11, Section I.H., (Natural Heritage Network), This agency is incorrectly identified as the New Hampshire Natural Heritage Inventory and should be noted as the New Hampshire Natural Heritage **Bureau**. In addition, the PO Box should be **1856** and zip code **03302-1856**

EPA Response: The final RGP has been revised to correct the typographical errors.

Comment 8.ff., Pages 11-14 (Historic Properties Guidance), There is no reference to the applicant that notes this determination shall be done *prior to* the submission of the NOI. Without clear guidance to the applicant, this issue may be overlooked or delayed. It should be noted in the permit guidance similar to the listed species guidance that states, “Before submitting a notice of intent (NOI) for coverage by this permit, applicants must determine whether they meet the ESA eligibility criteria....”.

EPA Response: The final RGP has been revised based on the comment in order to help clarify that consultation for endangered species and historic places must occur prior to submitting the NOI.

Comment 8.gg., The addition of federal-listed species and historic places to review will add a considerable amount of time to the process.

EPA Response: EPA recognizes that in certain cases, the review of federally-listed species and historic places may add time to the application process, however, these are requirements that must be included in a federally enforceable NPDES permit.

Comment 8.hh., Appendix III, IV, VI - We do not currently test for many of the parameters in this list, unless warranted. Testing for everything, all the time, will prove very costly.

EPA Response: While EPA recognizes that the minimum testing of one sample to determine reasonable potential of the chemicals listed may add cost compared to the current practice in New Hampshire, because many of the excavation activities encounter a mix of chemicals in the water needing to be discharged the final permit continues to require a minimum of a single test. However, the permit does not require that all the chemicals are tested for “all the time”. Rather, the NOI instructions and Part I.C.8. allow the applicant/permittee to certify that they believe that a chemical is absent based on the results of a single complete sample or historical data from another regulatory program. Also, see the response to Comment 7.j.

Comment 8.ii., Appendix V - The NOI requires a huge amount of information that would require great effort to compile, without apparent added value to water quality protection.

EPA Response: The information that is required by the applicant is the minimum information needed to ensure compliance with the NPDES regulations for these types of contaminated discharges. The level of effort and information required will be less than applying for an individual permit. Furthermore, almost half of the pages of the NOI consist of a table of the more than 50 chemical parameters that are potentially found in an untreated sample. As NH DOT’s other comments indicate, most of these chemicals are not expected to be found in its typical discharges and will therefore be simply reported as “believed absent” on the NOI. Much of the remaining NOI-required information can be provided as answers to yes or no questions or one word answers (or by checking a box if the applicant uses the suggested form).

9. Utilities: Although separate comment letters were submitted by the following companies, the letters expressed common themes. The utility commenters include:
Sandra J. Little, Director, Environmental Affairs NSTAR Electric Gas;
David Kanupke, Director, National Security Environment, & Safety, United States Telecom Association;
Jacque' McCormick, Director, Environment Management, Verizon New England, Inc.;
Joseph G. Callanan, Manager of Environmental Affairs, National Grid;
Theresa Pugh, American Public Power Association (APPA);
Patricia McCullough, Director, Environment Management, Northeast Utilities;
Eran Maher, Chairman, Utility Water Act Group, Nonpoint Source/Storm Water Committee;
Alexander Taft, Director, Environmental Operations New England, Keyspan Energy Delivery;
John M. Ross, Manager, Permits Environmental, Health & Safety, NiSource.

Comment 9.a., Part I.A.1.d., applicability of the general permit to certain types of “miscellaneous” contaminated discharges, including utility vaults, manholes, and hydrostatic testing of pipelines and storage tanks. Although separate comment letters were submitted by the various commenters, they all recommended that EPA consider developing a separate general permit for contaminated discharges from utility vaults and manholes. In the alternative, the commenters provided suggestions for changing specific elements of the permit to accommodate the different nature of these short-term (often less than one day), small quantity (often less than 1,000 gallons) discharges. Two commenters also recommended that EPA develop a separate general permit for the category of discharges from hydrostatic testing of pipelines and storage tanks.

EPA Response: In response to the comments, EPA has decided to develop a separate general permit for contaminated discharges from utility vaults and manholes. EPA recognizes that these types of discharges are sufficiently different in duration and volume from the other types of discharges covered by the RGP that they merit a separate general permit. Such differences in volume and duration of the discharge would make a number of elements of the RGP difficult to implement within the deadlines established in the permit. Similarly, these types of discharges differ from others covered by the permit in so far as they are rarely planned with sufficient lead time to facilitate characterizing what contamination is in each vault. Furthermore, EPA agrees with several of the commenters that the economic feasibility of control systems bears further study for these types of discharges. Over the coming months, EPA plans to convene an informational session in order to exchange data and ideas on how best to permit these discharges.

Based on the comments, EPA will not, however, develop a separate general permit for discharges from hydrostatic testing. Although often of short duration (less than a week), unlike vaults and manholes, hydrostatic testing discharges are often of a large volume (a

million gallons or more). Additionally, based on historical data, EPA knows that these types of discharges occur generally at either petroleum storage facilities or as part of a large pipeline construction that are planned well in advance of the discharge date. Therefore, rather than developing a separate general permit, or dramatically changing the RGP, to the extent that the RGP is not suitable for a particular situation, dischargers have the option of applying for a separate NPDES permit or including these potential discharges in an existing NPDES permit for the facility where they are located.

Comment 9.b., Part I.A.3., exclusion of discharges - The Utility Water Act Group (UWAG) asked for clarification that discharging to a tributary or MS4 which discharges to an impaired water, or otherwise excluded waterway, is not excluded from coverage under the RGP.

EPA Response: As discussed in Sections IV.A.g and h of the Fact Sheet, discharging to a tributary or MS4 which discharges to an impaired water, or otherwise excluded waterway, is not automatically excluded from coverage under the RGP, provided that the discharge does not cause or contribute to the noted impairment.