

Response to Comments on Draft National Pollutant Discharge Elimination System (NPDES) Permit No. MA0003905 - General Electric Aviation (GE)

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Introduction

In accordance with the provisions of 40 C.F.R. §124.17, this document presents EPA’s and the Massachusetts Department of Environmental Protection’s (MassDEP)¹ responses to public comments received on the Draft NPDES Permit (MA0003905) for General Electric Aviation’s facility in Lynn, Massachusetts (GE). This response to comments (RTC) document not only provides responses public comments, but it also explains and supports the EPA and MassDEP determinations that underlie the Final Permit.

The public comment period on the GE Draft Permit began February 2, 2011, and was scheduled to end on March 3, 2011. At GE’s request, EPA extended the comment period by 90 days so that it ended on June 1, 2011. Comments on the Draft Permit were submitted to EPA by GE, MassDEP, and the National Marine Fisheries Service (NMFS) of the National Oceanic and Atmospheric Administration (NOAA). EPA also received comments from the Saugus River Watershed Council (SRWC) after the close of the extended public comment period. Responses to late-submitted comments are not required, but EPA reviewed and considered these comments and notes that they mainly supported the Draft Permit’s effluent limitations, monitoring requirements, and best management practices (BMPs).

EPA’s evaluation of the issues has benefited from the comments and new information submitted to the Agency. EPA has carefully considered these submissions and in some cases they have prompted EPA to undertake additional analysis in response. While the Final Permit largely takes the same fundamental approach as the Draft Permit, EPA has revised some of its analyses and

¹ For simplicity, the responses in this document refer to EPA as the agency articulating each response. MassDEP, however, has collaborated with EPA on various analyses supporting these responses and the Final Permit and has concurred with EPA on the substance of each of the responses in this document.

conclusions. As a result, the Agency has changed a number of the Draft Permit's conditions for the Final Permit. These changes are explained in this RTC document and are, of course, reflected in the Final Permit. In addition, EPA has made certain editorial and formatting changes throughout the Final Permit for purposes of clarity and internal consistency. A summary of the changes made from the Draft Permit to the Final Permit is presented below.

Changes to Draft Permit

Cover (page 1)

1. The phrase "If no comments are received, this permit shall become effective following signature" has been removed.
2. Attachment 1 has been changed to the Marine Acute Toxicity Test Procedure (2012), Attachment 2 has been changed to the Marine Chronic Toxicity Test Procedure (2013), the Outfalls/Intakes Map has been changed to Attachment 3, and Attachment 4 (Approved Additives) has been added.
3. The Director of the Office of Ecosystem Protection has been changed to Ken Moraff.

Part I.A.1: Outfalls 001, 007, 010, 019, 027B, 028, 030, and 031 (pages 2-8 in Draft Permit)

1. Part I.A.1.a has been removed.
2. Part I.A.1 (formerly I.A.1.b) has been changed to authorize the discharge of stormwater and commingled dry weather flows from the drainage system outfalls.
3. The phrase "(2) not cause a violation of applicable Massachusetts Surface Water Quality Standards" has been removed from Part I.A.1 (formerly I.A.1.b).
4. A requirement to report the estimated volume of dry weather flow pumped to the consolidated drains treatment system (CDTS) has been added.
5. The numeric limitations for total suspended solids have been removed and the limitation changed to report. The frequency of monitoring has been changed from monthly to quarterly.
6. The maximum daily numeric limitation for Total BTEX and benzene have been removed and the requirement changed to report. The frequency of monitoring has been changed from monthly to quarterly.
7. The maximum daily numeric limitation for total cyanide has been removed and the requirement changed to report. The frequency of monitoring has been changed from monthly to quarterly and monitoring for this parameter is limited to Outfall 001.
8. The frequency of monitoring for volatile organic compounds (VOCs), total residual chlorine, metals, total polycyclic aromatic hydrocarbons (PAHs), Group I PAHs, and total polychlorinated biphenyls (PCBs) has been changed from monthly to quarterly.
9. The requirement for chronic whole effluent toxicity (WET) testing has been removed.
10. The frequency of WET testing has been changed from quarterly to twice per year and the sample type has been changed from composite to grab.
11. The definition of wet weather in Footnote 1 has been changed to "Wet weather is defined as any time period that begins with the first opening of any drainage system outfall gate due to the addition of stormwater from a precipitation event to the drainage system and continues until two hours after the last closing of the last drainage system outfall gate

with the exception of Outfall 027B. Wet weather at Outfall 027B continues until forty-eight (48) hours after the last closing of the last drainage system outfall gate.”
References to hourly rainfall data have been removed.

12. Footnotes 2, 3, 4, and 5 of the Draft Permit have been removed.
13. Footnote 2 (formerly Footnotes 6 and 7) has been changed to specify monitoring “from the chamber immediately preceding the outfall gate at each of the Drainage System Outfalls the first time each outfall gate is opened (the first pulse of effluent) prior to mixing with the receiving water” and the requirement to sample during the first 30 minutes of discharge has been removed. The sentence “Samples shall be taken at during wet weather conditions, at least 72 hours from the previously measurable (greater than 0.1 inches of rainfall) wet weather event” has been changed to “Samples shall be collected at least seventy-two (72) hours after the last closing of the last outfall gate ending the previous wet weather event.”
14. Footnote 3 specifying reporting sample data below minimum levels has been added.
15. Footnote 6 specifying requirements to report the volume of dry weather flow pumped to the CDTs has been added.
16. Footnote 10 (“Required for state certification”) has been removed.
17. Footnote 7 (formerly Footnote 11) specifies monitoring for total cyanide at Outfall 001 only. Footnotes 12 and 13 have been removed.
18. Footnote 8 specifying reporting metals as total recoverable has been added.
19. Footnote 9 specifying minimum levels for reporting PAHs has been added.
20. Footnote 10 (formerly Footnote 14) has been changed to specify a minimum level for PCBs.
21. Footnote 11 authorizing the permittee to request a reduction in frequency of monitoring for PCBs has been added.
22. Footnote 12 (formerly Footnote 15) has been changed to specify acute WET testing and reference to chronic and modified acute WET testing has been removed. The test organism has been changed from the sea urchin (*Arbacia punctulata*) to the mysid shrimp (*Americamysis bahia*). Monitoring frequency has been changed from quarterly to twice per year. The definition of quarters as it applies to the WET requirements has been replaced with the definition of two yearly time periods.
23. Language authorizing the permittee to request a reduction in WET testing has been removed from Footnote 12 (formerly Footnote 15) and included as Footnote 13.
24. Footnote 17 has been removed.
25. Footnote 16 defining LC₅₀ has been added.

Part I.A.2. Outfall 027A (pages 9-15 in Draft Permit)

1. The phrase “treated non-stormwater flows and stormwater” has been changed to “treated effluent” and the phrase “(2) not cause a violation of applicable Massachusetts Surface Water Quality Standards” has been removed.
2. The average monthly numeric limit for PCBs has been removed and the requirement changed to reporting.
3. The numeric limit and monitoring requirement for MTBE has been removed.
4. The monitoring frequency for total cyanide has been changed from monthly to quarterly.
5. The monitoring frequency for metals has been changed from monthly to quarterly.

6. The monitoring frequency for WET testing has been changed from quarterly to twice per year.
7. Footnote 3 specifying reporting sample data at or below minimum levels has been added.
8. Footnote 4 (“Required for state certification”) has been removed.
9. Footnotes 5 and 6 regarding monitoring for PCBs have been combined and the requirement to report numerical results of all samples in an attachment to the discharge monitoring report (DMR) has been changed to “numeric results of individual aroclors for all quarters shall be reported in an attachment to the December DMR.”
10. Footnote 6 authorizing the permittee to request a reduction in frequency of PCB monitoring has been added.
11. Footnote 8 has been renumbered as Footnote 7.
12. Footnote 8 specifying reporting of total recoverable metals has been added.
13. The minimum levels for PAHs in Footnote 9 (formerly Footnote 7) have been changed to no greater than 1 µg/L for Group I and no greater than 10 µg/L for Group II. Approved methods in 40 C.F.R. Part 136 Table IC or 8270D have been specified.
14. Footnote 10 has been updated to reflect requirements for both chronic and acute WET testing and has removed reference to the modified acute WET test. The test organism mysid shrimp (*Americamysis bahia*) has been added for the acute WET test. Monitoring frequency has been changed from quarterly to twice per year. The definition of quarters as it applies to the WET requirements has been replaced with the definition of two yearly time periods. A reference to Attachment 2 has been added. The period of sampling prior to requesting a reduction in monitoring frequency has been changed from one year to two years.
15. Footnote 13 has been changed to state “Analyses conducted for WET testing may also be used to satisfy other monthly or quarterly sampling requirements in Part I.A.2 as long as the timing of sampling for the parameters coincides with WET testing for selected pollutants.
16. Footnotes 14 (defining LC₅₀) and 15 (defining C-NOEC) have been added.

Part I.A.3. Outfall 014 (pages 16-20 in Draft Permit)

1. The phrases “(commingled with minimal contaminated groundwater flows)” and “(2) not cause a violation of applicable Massachusetts Surface Water Quality Standards” have been removed from Part I.A.3.
2. The seasonal average monthly flow limit from March 1st to July 31st has been changed from 5 MGD to 18 MGD.
3. The average monthly temperature limit has been changed from report to 90°F and the maximum daily temperature limit has been changed from 90°F to 95°F.
4. The numeric effluent limits for total suspended solids have been removed and replaced with reporting requirements.
5. Monitoring requirements for total iron, total chromium, total lead, PCBs, PAHs, total VOCs, total BTEX, benzene, toluene, ethylbenzene, and total xylenes have been removed.
6. The frequency of WET testing has been changed from quarterly to twice per year and chronic WET testing has been removed.
7. Footnote 1 regarding stormwater discharges has been removed.

8. In Footnote 2 (formerly Footnote 3), sampling frequency for 2/year is defined in place of quarterly sampling frequency.
9. Footnote 4 (“Required for state certification”) has been removed.
10. Footnote 3 (formerly Footnote 5) specifies acute WET testing twice per year and references to the modified acute WET test have been removed. The test organism has been changed from the sea urchin (*Arbacia punctulata*) to the mysid shrimp (*Americamysis bahia*). The definition of quarters as it applies to the WET requirements has been replaced with the definition of two yearly time periods and the definition of LC₅₀ has been added. The period of sampling prior to requesting a reduction in monitoring frequency has been changed from one year to two years.
11. The sentence “These samples, taken in accordance with the WET testing requirements, may be used to satisfy other sampling requirements as specified in the table above” has been removed from Footnote 6 (formerly Footnote 8).

Part I.A.4 Outfall 018 (pages 21-25 in Draft Permit)

1. “Boiler filter backwash and ion exchange regeneration and backwash,” “commingled with minimal contaminated groundwater,” and “2) not cause a violation of applicable Massachusetts Surface Water Quality Standards” have been removed from Part I.A.4.
2. The average monthly temperature limit has been changed from report to 90°F and the maximum daily temperature limit has been changed from 90°F to 95°F.
3. The numeric effluent limits for total suspended solids have been removed and replaced with reporting requirements.
4. Monitoring requirements for PCBs, PAHs, total residual oxidants, metals, total VOCs, total BTEX, benzene, toluene, ethylbenzene, and total xylenes have been removed.
5. Monitoring frequency for WET testing has been changed from quarterly to twice per year.
6. Footnote 1 regarding minimal contaminated groundwater has been removed.
7. The requirement to sample during dry weather conditions has been removed from Footnote 1 (formerly Footnote 2).
8. In Footnote 2 (formerly Footnote 3), sampling frequency for 2/year is defined in place of quarterly sampling frequency.
9. Footnote 4 (“Required for state certification”) has been removed.
10. Footnote 3 (formerly Footnote 5) has been updated to reflect requirements for both chronic and acute WET testing and has removed reference to the modified acute WET test. The test organism mysid shrimp (*Americamysis bahia*) has been added for the acute WET test. Monitoring frequency has been changed from quarterly to twice per year. The definition of quarters as it applies to the WET requirements has been replaced with the definition of two yearly time periods. A reference to Attachment 2 has been added. The period of sampling prior to requesting a reduction in monitoring frequency has been changed from one year to two years.
11. The sentence “These samples, taken in accordance with the WET testing requirements, may be used to satisfy other sampling requirements as specified in the table above” has been removed from Footnote 6 (formerly Footnote 8).
12. Footnotes 13 (defining LC₅₀) and 14 (defining C-NOEC) have been added.

Part I.A.5 Outfall 018B (pages 26-30 in the Draft Permit)

1. Outfall 018B and any effluent limitations or monitoring requirements related to this outfall have been removed.

Part I.A.6 Outfall 018C (pages 31-32 in Draft Permit)

1. Part I.A.6 has been renumbered as Part I.A.5.
2. Footnote 2 regarding sampling during dry weather conditions has been removed.

Part I.A.7 Outfall 020 (pages 33-35 in Draft Permit)

1. Part I.A.7 has been renumbered as Part I.A.6.
2. The phrase “commingled with minimal contaminated groundwater infiltration” has been removed.
3. The numeric effluent limits for total suspended solids have been removed and replaced with reporting requirements.
4. Monitoring requirements for total VOCs, PCBs, PAHs, and metals have been removed.
5. Footnote 1 regarding minimal contaminated groundwater has been removed.
6. The sentence “Sampling frequency of 1/month is defined as the sampling of one (1) discharge event in each calendar month, when discharge occurs” has been removed from Footnote 2 (formerly Footnote 3).
7. Footnote 4 (“Required for state certification”) has been removed.

Part I.A (continued) (pages 36-38 in Draft Permit)

1. Part I.A.8 in the Draft Permit has been renumbered as Part I.A.7.
2. Part I.A.9 in the Draft Permit has been renumbered as Part I.A.8.
3. Part I.A.10 in the Draft Permit has been renumbered as Part I.A.9.
4. Parts I.A.11, 12, 13, 14, and 15 from the Draft Permit have been removed.
5. Part I.A.10 regarding authorization to use non-toxic, biodegradable dyes has been added.
6. Part I.A.11 regarding discharges to the Lynn Water and Sewer Commission has been added.
7. Part I.A.16 in the Draft Permit has been renumbered as Part I.A.12.
8. Part I.A.17 in the Draft Permit has been renumbered as Part I.A.13.
9. Part I.A.14 stating the Massachusetts Water Quality Standard for pH in Class SB water has been added.
10. Part I.A.18 in the Draft Permit has been renumbered as Part I.A.15 and has been updated to reflect the most recent version of the Massachusetts Water Quality Standard for solids.
11. Part I.A.19 in the Draft Permit has been renumbered as Part I.A.16 and has been updated to reflect the most recent version of the Massachusetts Water Quality Standard for oil and grease.
12. Part I.A.20 in the Draft Permit has been renumbered Part I.A.17.
13. Part I.A.21 in the Draft Permit regarding reporting sampling above required frequency has been removed.
14. Part I.A.22 in the Draft Permit has been renumbered Part I.A.18.

15. Part I.A.23 in the Draft Permit has been renumbered Part I.A.19.
16. Part I.A.24 in the Draft Permit has been renumbered Part I.A.20.
17. Part I.A.25 in the Draft Permit has been renumbered Part I.A.21.

Part I.B Stormwater Pollution Prevention Plan (SWPPP) (pages 38-43 in Draft Permit)

1. Part I.B in the Draft Permit has been replaced with Part I.B Best Management Practices (BMPs).
2. Part I.B.1.a through d specifying BMPs for the drainage system outfalls during dry weather have been added.
3. Parts I.B.1 and I.B.2 have been renumbered as Part I.B.2.
4. Part I.B.3 has been renumbered as Part I.B.2.a and its subparts a. through e. have been renumbered i. through v.
5. Part I.B.4 has been renumbered as Part I.B.2.b and its subparts a. through g. have been renumbered i. through vii.
6. Part I.B.5 has been renumbered as Part I.B.2.d.
7. Part I.B.6 has been renumbered as Part I.B.2.e.
8. Part I.B.7 has been renumbered as Part I.B.2.f and the reference to stormwater in the phrase “numerical or non-numerical stormwater effluent limits” has been changed to “wet weather.”
9. Parts I.B.8 and Part I.B.9 have been removed.
10. Part I.B.10 has been renumbered as Part I.B.2.c.
11. Part I.B.10.a and Part I.B.10.a.i have been removed.
12. Part I.B.10.a.ii specifying a requirement to keep vault tide gates closed has been renumbered as Part I.B.1.a and includes the phrase “except for minor weeping around the bottom edge of the gate due to hydrostatic pressure.”
13. Part I.B.10.b and its subparts i, ii, iv, and v have been removed. Part I.B.10.b.iii has been renumbered as Part I.B.1.b and states “Prior to a storm event forecasted to generate 0.1 inches or more of precipitation, operate the transfer pumps to lower the elevation of dry weather flows contained in the drainage system outfall vaults to no more than the “low alarm” level prior to the start of wet weather. The average volume of dry weather flow pumped to the CDTs prior to a storm event from each drainage system outfall during each month shall be reported on the discharge monitoring report (see Part I.A.1).”
14. Parts I.B.10.c, I.B.10.d, and I.B.10.e have been removed.
15. Part I.B.10.f has been renumbered as Part I.B.2.c.i and has been changed to “Inspect all stormwater collected within the secondary containment areas at the jet fuel farm, around tanks, in the truck unloading ramps, in the Outfall 032 drainage area, and from other areas for evidence of an oil sheen or other contamination prior to such water being discharged to the drainage system. In the event that a sheen is observed, the permittee shall eliminate the sheen prior to discharging the water from the containment area to the drainage system. Otherwise, water containing a sheen shall be discharged to the CDTs for treatment, or disposed of offsite.”
16. Part I.B.10.g has been renumbered as Part I.B.2.c.ii and has been changed to “Perform regular cleaning of the Drainage System pipelines. The term “regular cleaning” shall be defined by site-specific factors and described in the facility’s SWPPP and include a requirement to dispose of all solids offsite which are accumulated as a result of the

cleaning; minimize the amount of solids left behind in the storm drains and dispose of all collected solids off-site in a manner that complies with federal, state and local laws, regulations and ordinances; and ensure all drainage system cleaning water is disposed of offsite or goes directly to the CDTs for treatment.”

17. Part I.B.10.h has been renumbered as Part I.B.1.c and has been changed to include the phrase “except when required to operate at the “low alarm” level to minimize dry weather flow in the vault prior to a forecasted storm event consistent with Part I.B.1.b, above.”
18. Part I.B.10.i has been renumbered as Part I.B.1.d.
19. Part I.B.10.j has been renumbered as Part I.B.2.c.iii.
20. Part I.B.10.k has been renumbered as Part I.B.2.c.iv.
21. Part I.B.10.l has been renumbered as Part I.B.2.c.v and includes the phrase “non-approved additives.” Reference to a list of approved additives in Attachment 4 has been added.
22. Part I.B.10.m has been removed and replaced with stormwater best management practices to minimize contamination from fuel oil unloading areas (I.B.2.c.vi) and bulk fuel storage tanks (I.B.2.c.vii), and to minimize the potential for and oil or chemical spill (I.B.2.c.viii).
23. Part I.B.2.c.ix requiring continued testing of excavation dewatering has been added.

Part I.C Cooling Water Intake Structure Requirements (pages 43-44 in Draft Permit)

1. In Part I.C.1.a, requirements to improve the Test Cell CWIS’s existing coarse mesh traveling screen with new fiberglass fish lifting buckets, a low pressure spraywash, and separate fish and debris return troughs have been removed.
2. In Part I.C.1.b the average monthly flow limit from March 1 to July 31 has been changed from 5 MGD to 18 MGD.
3. Subparts a. and b. in Part I.C.2.b have been renumbered as subparts i, ii, and iii. Part I.C.2.b.ii requires a screen slot size larger than 0.5 mm “unless the permittee can demonstrate through a site-specific study that a larger slot size is as effective in reducing entrainment as 0.5 mm.”
4. The word “either” has been removed from Part I.C.2.b.
1. Part I.C.2.b(b) has been renumbered as Part I.C.3 and has been modified to state “As an alternative to the requirements in Part I.C.2, the permittee may at its option minimize entrainment and impingement at the Power Plant CWIS by maintaining a year-round maximum daily intake flow commensurate with the operation of a closed-cycle cooling system by no later than the final compliance schedule dates specified in Part I.C.5 of this permit.”
5. Part I.C.3 has been renumbered Part I.C.4.
6. Part I.C.5 (Compliance Schedule) has been added.

Part I.D Biological Monitoring (pages 44-47 of the Draft Permit)

1. Part I.D.1.a has been renumbered as Part I.D.1. Power Plant and the requirement in former Part I.D.1 to begin monitoring no later than ninety (90) days after the effective date of the permit has been removed.

2. Part I.D.1 requires that entrainment monitoring “commence no later than thirty (30) days from the date upon which both the wedgewire screens and variable frequency drives are fully operable” and entrainment monitoring has been changed from the duration of the permit to two (2) years.
3. The frequency of entrainment monitoring at Part I.D.1.a has been changed from weekly to twice per month during the months of March through October and from twice per month to once per month during the months of November through February. The number of samples per week has been changed from three to two and the requirement to collect a representative afternoon sample has been removed.
4. Part I.D.1.b regarding requirements for demonstrating compliance with the through-screen velocity and visual inspection of the wedgewire screens has been added.
5. Part I.D.1.b and I.D.1.b.i have been combined and renumbered as Part I.D.2. The requirement in former Part I.D.1 to begin monitoring no later than ninety (90) days after the effective date of the permit has been changed to “begin monitoring no later than thirty (30) days from the date that the new fish return trough is fully operational” and impingement monitoring has been changed from the duration of the permit to two (2) years.
6. Part I.D.1.b.ii has been renumbered as Part I.D.2.a.i.
7. Part I.D.2.a.ii (formerly I.D.1.b.iii) has been changed to require that latent mortality monitoring be limited to three (3) times per year.
8. Part I.D.1.b.iv has been renumbered as Part I.D.2.a.iii.
9. Part I.D.1.b.v has been renumbered as Part I.D.2.a.iv.
10. Part I.D.1.c regarding continuing biological monitoring for the duration of the permit has been removed.
11. Part I.D.1.d has been renumbered as Part I.D.3.
12. Part I.D.1.d.i has been renumbered as Part I.D.3.a.
13. Part I.D.1.d.ii has been renumbered as Part I.D.3.b.
14. Part I.D.1.e has been renumbered as Part I.D.4.
15. Part I.D.2 regarding a bioaccumulation study has been removed.

Part I.F Monitoring and Reporting (pages 47-49 in the Draft Permit)

1. The address at Part I.F.1.b for MassDEP has been changed from 627 Main Street, 2nd Floor, Worcester, MA 01608 to 1 Winter Street, 5th Floor, Boston, MA 02108.
2. The address at Part I.F.1.c for MassDEP NERO has been changed from 205 Lowell Ave to 205B Lowell Ave. The requirement to send duplicate copies to MassDEP Surface Water Discharge Permit Program in Worcester, MA has been removed.

Comment 1.1:

General Electric Aviation (“GE”) appreciates the opportunity to submit these comments on draft NPDES Permit No. MA0003905 for GE’s River Works facility in Lynn, Massachusetts (the “Facility”), released by the U.S. Environmental Protection Agency (“EPA”) and the Massachusetts Department of Environmental Protection (“MADEP”) for public comment on February 2, 2011 (the “Draft Permit”). GE has grave concerns about the manner in which the Draft Permit would affect Facility operations, most notably the Consolidated Drains Treatment System (“CDTS”), cooling water intake structures (“CWIS”) and thermal discharges. GE believes that the Draft Permit is predicated on a fundamental misunderstanding of the nature and impact of GE’s operations and discharges, including, without limitation, how those discharges affect water quality in the Saugus River. GE seeks to correct this misunderstanding in the comments that follow.

Beyond the CDTS, CWIS and thermal issues, GE is concerned about the extensive new requirements, including monitoring and management practices, proposed by the Agencies.² GE does not believe that these requirements are justified or appropriate, and GE urges the Agencies to make fundamental revisions and corrections to the Draft Permit before proceeding any further.

Response to Comment 1.1:

In this comment, GE indicates that the company has serious concerns about various aspects of the Draft Permit. GE’s concerns are presented here at a fairly general level, but are elaborated upon in subsequent comments. Consequently, EPA responds here in a general way, but responds more specifically to GE’s detailed comments later in this RTC document.

In developing the Final Permit, EPA has considered the concerns expressed by GE about the effect that the new permit could have on its operations and the company’s stated belief that the regulatory agencies misunderstand the nature of the facility’s effects on the Saugus River. EPA has based this permit on its interpretation of applicable legal requirements and the best available technical information. This information was gleaned from a variety of sources, including GE’s NPDES permit re-application, additional information submitted by GE in response to requests for information from EPA, correspondence between EPA and GE, and a variety of other documentation contained within EPA’s GE Lynn facility permit file. As a result of its review of this information, as well as GE’s comments on the Draft Permit, EPA is confident that it has an adequate understanding of the GE facility and its operations to support development of the Final Permit. Furthermore, EPA has revised certain permit conditions for the Final Permit in response to comments raised by GE.

² GE understands that the Draft Permit includes two separate and independent permit authorizations, one from EPA and the other from MADEP. However, recognizing that EPA has primary authority under the Clean Water Act for NPDES permitting actions in Massachusetts, GE commonly refers to EPA, instead of the Agencies, in these comments. Wherever relevant, GE intends for these references to EPA to include both permitting agencies.

EPA has concluded that the Final Permit's conditions are technically sound and meet the requirements of the CWA and, therefore, are justified and appropriate in order to protect water quality in the Saugus River.

2. Facility Background

Comment 2.1: Lynn Facility History and Operations

The Facility covers approximately 220 acres and is located on the east bank of the Saugus River in the City of Lynn, Essex County, Massachusetts. The Facility consists of a 45-building complex with associated storage areas, parking areas, and roadways. The Massachusetts Bay Transit Authority owns a railroad line which separates the site into two sections, referred to as River Works North facility and River Works South facility (also known as the Gear Plant).

Industrial manufacturing operations have been conducted at the Facility for approximately 112 years. Since the 1940s, the major industrial functions of the Facility have been the manufacture and testing of aircraft engines, the manufacture of turbine engines, generators, gear parts, and marine propulsion units. Current activities at the Facility include the design, manufacture, assembly and testing of aircraft engines and components. Manufacture of gearing for marine propulsion systems at the Gear Plant was discontinued as of December 2010.

Principal processes include machining, cleaning, descaling, coating, assembly and testing of engines and engine components. GE also operates a power plant to support its manufacturing operations that generates steam and electricity as well as compressed air. The GE Power Plant burns only natural gas; burning of oil was essentially discontinued in October 2009.³

The Saugus River is a tidally influenced, estuarine river from which GE withdraws water to use for cooling purposes. The Facility has three CWIS, designated as the Gear Plant CWIS, the Power Plant CWIS and the Test Cell CWIS. The Gear Plant CWIS has not been used in several years, and the Test Cell CWIS operates for an average of 25.2 hours per month or approximately 300 hours per year. The current permit limits for the Power Plant are 35.6 MGD and 45.0 MGD for the Test Cell. To reduce the Test Cell operation's withdrawals from the Saugus River, GE recently spent \$878,000 installing a mechanical draft cooling tower. EPA published a proposed rule on April 20, 2011 that when finalized in 2012 will apply national performance standards and other requirements to GE's operation of its CWIS, which may be different than those proposed by EPA in the Draft Permit.

Response to Comment 2.1:

EPA has reviewed and considered GE's description of the history of activities at the Lynn facility. EPA notes GE's statement that the Gear Plant cooling water intake structure (CWIS)

³ Since October 2009, the GE Power Plant operated on oil for less than 12 hours; this operation was performed for maintenance purposes. GE currently maintains the ability to burn oil for emergency use in the remote instance that natural gas supplies are interrupted. In the near future, it is likely GE will not be able to burn any oil in order to satisfy anticipated CAA requirements, such as the MACT Boiler rule.

has not operated in “several years,” that “[m]anufacture of gearing for marine propulsion systems at the Gear Plant was discontinued as of December 2010,” and that the Test Cell CWIS operates approximately 300 hours per year (*i.e.*, an average of 25.2 hours per month).

EPA acknowledges that, as stated in the comment, EPA published a proposed rule on April 20, 2011, under Section 316(b) of the Clean Water Act. On August 15, 2014, EPA published the Final Rule to establish requirements for cooling water intake structures at existing facilities, which will become effective on October 14, 2014. 79 Fed. Reg. 48300-48439 (August 15, 2014). The Final Rule speaks directly to the issue of permits issued prior to the Rule’s effective date and indicates that permitting should proceed and that BTA determinations should be made on a site-specific, Best Professional Judgment (BPJ) basis. As demonstrated in response to comment 11.1, EPA’s Final Permit is consistent with the New CWA § 316(b) Regulations, even though they do not constitute “applicable requirements” for GE’s Final Permit. *See* 40 C.F.R. § 122.43(b).

Comment 2.2: Economic Considerations

The Facility is a critical Department of Defense facility that provides the T700 turboshaft engine powering the Apache and Black Hawk helicopters and the F414 that powers the F/A-18E/F Super Hornet fighter jet. These aircraft are among the most vital and prominent in Operation Iraqi Freedom and Operation Enduring Freedom. The Facility also produces the CF34 regional/business jet engine and other power plant components that support the commercial aviation sector. GE employs 3,250 full-time workers with an average annual salary of nearly \$82,000 (not including overtime and benefits). The site generates a payroll tax base in excess of \$250 million. The workforce is comprised of production workers, engineers, planners, draftsmen, tradesmen, sales and marketing, and support roles. In addition, the Facility hired 125 college/university co-op students in 2010 plus dozens of part-time and contract hires. The Facility is GE’s most sizeable Massachusetts operation, and is one of the largest private employers on the North Shore and one of the Commonwealth’s leading manufacturing sites. GE procures millions of dollars in raw material, products and services, much of it from more than 25 Massachusetts vendors that support nearly 2,500 workers. Numerous second-tier vendors (restaurants, retail stores, gas stations/convenience stores, etc.) also benefit from the operation of the Facility and the activities of its employees.

GE in Lynn and its employees contributed approximately \$500,000 to charitable causes in 2010 through its Good Neighbor Fund, GE Volunteers Council, matching gifts program and community relations grants. In addition, thousands of employee volunteer hours (an estimated \$800,000 of company-sponsored volunteer time) directly supported 75 projects that benefitted a variety of local nonprofits. GE has also donated land parcels (for Habitat for Humanity), provided various other gifts-in-kind and partnered with Lynn schools to promote educational initiatives and several local agencies on a wide variety of environmental projects.

Response to Comment 2.2:

GE’s comment describes various economic facts associated with its operations at the Lynn facility and the role GE’s Lynn facility generally plays in the local community. Although EPA

recognizes and has considered GE's discussion of these points, EPA has also concluded that these facts do not bear on the terms and conditions of the Final Permit. Consequently, EPA provides no further response to these comments. To the extent that any of the points raised in these comments is pertinent to a permit condition or the analysis underlying a permit condition, EPA will address it in the discussion pertaining to that permit condition.

Comment 2.3: Environmental Good Citizen

The Facility's NPDES compliance record is excellent and its current estimated annual expenditure on environmental protection and enhancement programs is approximately \$2.1 million.

In 1999, GE voluntarily entered into an Administrative Consent Order with the MADEP and in consultation with EPA to construct the CDTs to collect and treat dry weather flows with a state-of-the-art granular activated carbon treatment system. Dry weather flows ("DWF") include non-contact cooling water, ion exchange regeneration and backwash, steam conduit water, as well as any residual stormwater remaining in and/or groundwater infiltrating the drain pipes. Since its startup in 2000, the CDTs system has treated approximately 1,314 million gallons of dry weather flow prior to discharge to the Saugus River.

The facility has achieved Phase V Remedy Operation Status ("ROS") under the Massachusetts Contingency Plan through various source removal activities and completed a Risk Characterization based on comprehensive groundwater, soil, surface water and sediment sampling that concluded a condition of "no significant risk of harm to the environment" exists under current conditions. Source removal activities include, but are not limited to: installation and operation of remedial systems that have removed over 27,000 gallons of LNAPL from the subsurface; removal of over 150 underground storage tanks and 5.7 miles of inactive underground fuel piping and another 1.3 miles cleaned and closed-in-place; and excavation and removal of well over 8,000 cubic yards of petroleum impacted soil during numerous excavation activities. GE has also achieved a Temporary Closure (i.e., Response Action Outcome Class C) under the MCP for two areas of the facility including the Building 33/35 Area through construction of a 200-foot long and 20-feet deep slurry cut-off wall to eliminate petroleum migration to the river together with manual LNAPL recovery and the Building 64 Area through installation of a LNAPL recovery system. GE will continue to conduct remedial activities until the LNAPL has been reduced to a level of 0.5-inch as measured in groundwater monitoring wells that will support permanent closure under the MCP. While there were substantial expenditures on tank removals and Phase I activities prior to 1997, since 1997, GE has spent more than \$20 million on site assessment and remediation/risk reduction measures and will continue to spend approximately \$500,000 (including \$100,000/year by GE Energy on Bldg. 64 area) annually on the operation and maintenance of active remediation systems and monitoring groundwater in selected areas for the next three to five years, depending upon when remedial objectives have been achieved. In addition, GE plans on investigating and remediating conditions (if necessary) beneath the 500,000 square foot Gear Plant building slated for demolition in 2011.

As discussed in more detail below, beginning in 2010 and with the approval of EPA, GE converted 500,000 sq. feet of paved area into green space to promote rainwater infiltration. GE

also constructed a two-acre stormwater retention pond and made drainage improvements that will allow solids suspended by turbulence during storm events to settle out before the stormwater is discharged to the Saugus River, reducing sedimentation and potential pollutant loading to the river. This green space construction project was completed as of January 2011 at an estimated overall cost of \$ 2.9 million.

Response to Comment 2.3:

GE's comment describes measures it has taken toward remediating and containing a variety of environmental problems at the Lynn facility, including: a) construction and implementation of the Consolidated Drains Treatment System (CDTS) to collect and treat dry weather process wastewater flows, stormwater, and contaminated groundwater; b) remedial actions conducted under Massachusetts state law to remedy contaminated groundwater; and c) a project to reduce stormwater discharges to the Saugus River.

EPA has considered GE's actions described in the comment. GE's comment does not, however, assert that any of the measures described indicate or establish that the Draft Permit's terms and conditions are unjustified or flawed in some technical or legal manner. Consequently, EPA provides no further specific response to this comment. That said, EPA has taken account of GE's environmental remediation measures in determining technology-based limits for the facility's new NPDES permit. Indeed, certain of these measures, such as the CDTS, have been incorporated as essential elements of the best available technology for controlling contaminated groundwater discharges from the facility's drainage system. As a result, some of GE's environmental remediation measures are discussed in detail below within this document.

Comment 2.4: Permitting History

The Facility's National Pollutant Discharge Elimination System (NPDES) permit (No. MA0003905) expired on September 29, 1998, and has been administratively continued by virtue of a timely and complete renewal application submitted on June 29, 1998 (following a 90-day extension granted by EPA). After submitting the 1998 application, GE made changes to the Facility and its discharges with the approval of the EPA and MADEP. In order to reflect these changes and address questions from EPA, GE has submitted revisions/updates to its renewal application and other responsive information. A chronological list of documents submitted to EPA following the 1998 renewal application is included as Technical Exhibit 1.

Despite nearly 13 years of cooperative dialogue on the details underlying GE's NPDES-related activities, EPA provided no advance notice to GE of its decision to develop or release a Draft Permit. Instead, EPA simply released the draft for public review and comment, initially providing only 30 days for this vitally important public process. The Draft Permit, if finalized in its present form, would force GE to substantially alter if not completely shut down many, if not all, of its manufacturing and testing operations at the Facility, with profound adverse consequences to both GE and the larger community.

Response to Comment 2.4:

GE's comment complains that EPA did not give GE "advance notice" of its decision to issue the Draft Permit. EPA notes that the NPDES permitting regulations governing permit issuance do not specify that EPA must provide any such advanced notice to a permittee. At the same time, however, EPA also notes that it had numerous communications with GE between the time that GE submitted an NPDES permit renewal application⁴ and the date the Draft Permit was issued. Those communications have included a site visit by EPA on January 29, 2009, CWA Section 308 information requests issued by EPA to GE about the Lynn facility, e-mail communications between EPA and GE representatives, and in-person discussions between EPA and GE representatives. Furthermore, EPA issued a new NPDES permit to the Wheelabrator-Saugus trash-to-energy plant in February 2010. This facility is directly across the river from GE and in the record for Wheelabrator permit, EPA noted its concern about the cumulative impact of the two facilities' on the Saugus River and its inhabitants. See Responses to Comments, Final NPDES Permit Wheelabrator Station (NPDES No. MA0028193) (February 12, 2010). It should have been clear to GE that EPA was working on its new permit and that a draft permit would be issued for review and comment. Indeed, GE submitted an NPDES permit renewal application to EPA, as required by EPA's regulations, and EPA's issuance of a Draft Permit was the proper response to that permit renewal application.

GE comments that EPA initially only provided a 30-day public comment period. A 30-day comment period is consistent with applicable regulations, see 40 C.F.R. § 124.10(b)(2), and EPA subsequently granted GE's request for a 90-day extension of the comment period. The intent of the comment period is to provide time for the permittee, and any other interested parties, to review a Draft Permit and submit comments. The 120-day public comment period provided by EPA provided ample time for GE and other interested parties to provide EPA with comments on the Draft Permit.

GE also comments that the requirements of the Draft Permit "would force GE to substantially alter if not completely shut down many, if not all, of its manufacturing and testing operations at the [Lynn] Facility." GE has not, however, provided concrete information to demonstrate, or enable EPA to assess, the accuracy of its claim. That said, EPA has considered GE's comments about the cost and technical difficulty of certain technology approaches to controlling pollutant discharges. Ultimately, the Final Permit reflects a number of changes that EPA has made to the provisions of the Draft Permit. EPA believes that the Final Permit no longer contains the provisions of the Draft Permit that GE appears to have found most objectionable. That is, the Final Permit retains the current permit's maximum daily temperature limits for the Test Cell and Power Plant outfalls, and removed the Draft Permit's requirement to eliminate to the maximum extent practicable the infiltration of groundwater into the drainage system as well as the requirement to treat the first 30 minutes of wet weather from the drainage system outfall vaults in the CDTs. The absence of these requirements in the Final Permit means the costs of compliance with the permit will be greatly reduced and it will not be necessary under the Final Permit to "dig up" large areas of the facility to address faulty drainage system piping, thereby eliminating any disruption to GE's operations that might have arisen from such work. The changes from the Draft Permit to the Final Permit resulted from EPA carefully and thoroughly considering GE's

⁴ NPDES Permit Renewal Application, June 29, 1998.

objections to certain provisions of the Draft Permit which GE characterized as impossible to comply with or unduly burdensome financially.

Comment 2.5: Recent Changes to Drainage at the Facility

As described in a letter to EPA dated October 7, 2010, GE reconfigured the Drainage System to separate the northern part of the Facility from the southern part of the Facility to facilitate the sale and redevelopment of the Gear Plant property.

Three stormwater outfalls are located in the Gear Plant area: Outfalls 028, 030, and 031. Outfalls 028 and 030 discharge stormwater runoff and groundwater infiltration from the Gear Plant area. GE re-routed stormwater from the northern part of the Facility flowing to Outfall 031 to Outfall 027. As part of this project GE converted 500,000 sq. ft. of existing paved area that drained to Outfall 031 into green space.

In addition, GE installed a two-acre stormwater detention pond that collects stormwater runoff from the green space and a parking lot. The new stormwater detention basin is designed to detain a 25 year, 24-hour storm with 0.5 feet of freeboard. The basin is designed with a low-level outlet control structure that drains the pond within 48 hours after a storm event. The reduction in impervious area and the addition of the stormwater detention basin results in a decrease in the net stormwater discharge to the Saugus River and any associated pollutant loading from the Facility.

The flow of non-stormwater from the northern part of the Facility was also rerouted from Outfall 031 to Outfall 027. Under dry weather conditions, non-contact cooling water and other types of dry weather flow from the northern part of the Facility continue to be discharged from Outfall 027 after treatment through the CDTs.

All operations at the Gear Plant ceased in December, 2010. As described previously to EPA, GE plans to remove infrastructure (e.g. pumps, overhead piping, and gates) associated with dry weather flow treatment for Outfalls 028, 030 and 031 as these outfalls only receive stormwater and possibly some incidental groundwater infiltration. This infrastructure must be removed as part of the demolition of the Gear Plant building because the building structure serves as support for the overhead piping that runs to the CDTs. Outfall 029 (salt water discharge) will be closed in accordance with Brown and Caldwell's letter to EPA, on behalf of GE, dated June 1, 2010. The end-of-line separators will remain in place during demolition activities and activities [sic], and all ground disturbance conducted in accordance with the required EPA Construction General Permit and Stormwater Pollution Prevention Plan ("SWPPP"). GE is currently evaluating whether the contribution of stormwater and potential groundwater infiltration from a catch basin located outside the fuel farm containment area can be rerouted to Outfall 027 as well, since GE intends to retain the portion of the property encompassing the fuel farm.

After demolition of the buildings, GE plans to conduct response actions as necessary to achieve a Response Action Outcome in accordance with the Massachusetts Contingency Plan at 310 CMR 40.0000, and potentially sell the Gear Plant property for redevelopment.

The Draft Permit is inconsistent with GE's plans for the Gear Plant. In particular, the prohibition on dry weather flows and other provisions based on a presumption that gates will remain in place at the vaults associated with Outfalls 028, 030 and 031 should be deleted from the Permit. GE informed the Agency of its plans in email and letter correspondence and in a meeting held with EPA on July 30, 2010. The Agency offered no objections to these plans.

Addendum to Comment 2.5:

In a letter to EPA submitted July 31, 2014, GE submitted additional comments regarding the impact of the recent operational changes that have taken place at the facility on GE's ongoing NPDES permit proceeding. Although GE submitted these additional comments after the close of the comment period on the Draft Permit, EPA has considered these comments in developing the Final Permit and responds to them below. In June 2014, GE entered into a contract to sell the Gear Plant Property (with the exception of an aboveground fuel tank farm and a small utility service/storage building "Building 7") with an anticipated closing date of September 2014. The Gear Plant Property sale includes three outfalls (028, 030, and 031) that discharge stormwater and infiltrated groundwater in accordance with GE's NPDES permit. According to GE, ownership and operation of these outfalls will transfer to the new owner upon finalization of the sale. The following are excerpts from GE's letter to EPA pertaining to the sale of the Gear Plant property and its impact on GE's new Final Permit.

The Gear Plant is served by three outfalls (028, 030, and 031) that are subject to GE's NPDES permit and were included in the draft renewal permit. GE intends to transfer ownership of these outfalls as part of the sale of the Gear Plant Property. As previously discussed with the EPA and outlined in detail below, due to the elimination of industrial uses of the Gear Plant Property, changes in Main Facility and Gear Plant Property drainage, and completion of remedial response actions under the Massachusetts Contingency Plan, EPA should delete from the Facility's renewal permit all requirements, including dry weather flow collection and treatment, related to the Gear Plant Property outfalls. GE believes that the transfer of ownership and deletion of these outfalls falls squarely within 40 C.F.R. 122.63(d) and (e)(2), which allow for simple "minor modification" of the permit in circumstances like these.

Termination of Gear Plant Operations. GE ceased all industrial operations at the Gear Plant Property, with the exception of the fuel farm and Building 7, and razed substantially all of the Gear Plant Property buildings in 2011. As a result of the termination of Gear Plant operations and subsequent changes to Gear Plant Property drainage detailed below, discharges from outfalls 028, 030, and 031 are currently limited to stormwater and incidental groundwater infiltration.

Facility Drainage Changes. As detailed in an October 7, 2010 letter to Nicole Kowalski of EPA Region 1, GE reconfigured the Facility's drainage system to hydraulically separate the Main Facility from the Gear Plant Property and to eliminate all industrial/operational sources of dry weather flow to Outfalls 028, 030, and 031. Currently, these outfalls continue to discharge only stormwater and incidental groundwater infiltration originating from the Gear Plant Property. Regarding Outfall 031, prior to implementation of drainage changes in 2010, storm and non-stormwater flows from both the Main Facility and the Gear Plant Property were discharged at this outfall. As communicated to EPA in 2010, all stormwater and dry weather flows originating

from the Main Facility were rerouted to discharge through Outfall 027 located at the Main Facility. As a result, no stormwater or dry weather flows originating at the Main Facility discharge from any of the Gear Plant Property outfalls. Outfall 031 discharges are currently limited to stormwater and incidental groundwater infiltration originating from the Gear Plant Property. In addition, in 2010 the former Gear Plant building roof drains were cut and capped at the storm drain manholes and between approximately 1992 and 2008 GE conducted a significant stormwater drainage system relining project under which GE relined the Facility's main stormwater sewer lines located below the water table in order to substantially reduce the likelihood of groundwater infiltration into the stormwater drainage system. There are no dry weather flow sources, except for some incidental groundwater, discharged from the current Gear Plant Property outfalls.

Remedial Site Closure. Dry weather flow discharged from Gear Plant Property outfalls 028, 030, and 031 is currently limited to incidental groundwater infiltration. As discussed with EPA in October 2013, groundwater at the Gear Plant Property has been assessed as part of a remedial program implemented by GE in accordance with the Massachusetts Contingency Plan ("MCP"). The Gear Plant Property achieved a Class A-3 Response Action Outcome as outlined in the "Site Assessment and Remediation Activities in Support of a Massachusetts Contingency Plan Class A-3 Partial Response Action Outcome Statement for Former Gear Plant and Saugus River Areas" ("RAO") which GE provided to both EPA and MassDEP in October 2013. As indicated in the RAO, no additional response actions (site assessment or remediation) are required at the portions of the Gear Plant Property that GE anticipates selling by September 2014. Based on the conclusions of the RAO (including the ecological risk assessment), the stormwater sewer relining efforts and the elevations and locations of Gear Plant Property sewer lines in relation to groundwater impacts, there are no indications that groundwater conditions at the Gear Plant Property negatively impact the Gear Plant Property drainage system or the Saugus River.

Building 7 Discharge. As noted above, GE intends to retain ownership of a small parcel of property that includes Building 7 (the "Building 7 Parcel"). The Building 7 Parcel will continue to be owned and operated by GE for utility and storage uses in support of Main Facility operations. GE anticipates that stormwater flow from the Building 7 Parcel will continue to discharge from Outfall 031. However, because ownership and operation of Outfall 031 will transfer during the sale of the Gear Plant Property, GE requests that, to the extent that an NPDES permit is required, a new discharge and compliance point be established for the Building 7 Parcel that reflects only discharges associated with the Building 7 Parcel.

Based on the contemplated sale of the Gear Plant Property, the significant changes to the Gear Plant Property drainage and elimination of all dry weather flows from the Gear Plant Property except incidental groundwater infiltration, GE respectfully submits that the requirements contemplated under the draft renewal permit to continue collection of dry weather flows from outfalls 028, 030, and 031 are unnecessary and should not be included in a final renewal permit.

Response to Comment 2.5:

In its comments on the Draft Permit and the addendum to those comments submitted on July 31, 2014, GE objects to permit conditions related to the discharge of stormwater and groundwater

from Outfalls 028, 030, and 031 on the basis that 1) GE has eliminated industrial uses of the Gear Plant Property, 2) drainage changes have eliminated discharges from the Main Property at these outfalls, and 3) remedial response actions under the Massachusetts Contingency Plan (MCP) have been completed. GE requests that all requirements associated with drainage system outfalls 028, 030, and 031, particularly those conditions related to the collection, conveyance, and treatment of dry weather flow, be removed from the Final Permit. For the reasons explained below, the Final Permit retains requirements for Outfalls 028, 030, and 031. EPA disagrees that it would be appropriate to remove all permit requirements associated with these outfalls. The Final Permit requires the permittee to continue to treat dry weather flows from these three outfalls at the CDTs and includes a best management practice (BMP) to minimize the discharge of dry weather flows commingled with stormwater during wet weather. See Attachment A: BPJ analysis, and Part I.B of the Final Permit (Best Management Practices).

First, EPA accepts GE's representations that since closure and demolition of the Gear Plant in December 2011, all industrial operations by the Gear Plant have ceased and its industrial process discharges to Outfalls 028, 030, and 031 have been eliminated. This does not, however, mean that all discharges from these outfalls have been eliminated. GE's comments indicate that discharges of stormwater and groundwater infiltration remain. Second, EPA takes no issue with the remedial site closure in accordance with the MCP or the Class A-3 Response Action Outcome (RAO) as outlined in the "Site Assessment and Remediation Activities in Support of a Massachusetts Contingency Plan Class A-3 Partial Response Action Outcome Statement for Former Gear Plant and Saugus River Areas" provided to EPA in October 2013. Having said that, remedial site closure under MCP does not guarantee that the point source discharges from Outfalls 028, 030 and 031 will not contain pollutants –indeed, EPA would expect that the discharges of stormwater and groundwater infiltration from these outfalls are likely to contain various pollutants – and it does not excuse such discharges from requiring authorization from an NPDES permit. Moreover, remedial site closure also does not guarantee that discharges from the outfalls will be protective of water quality as directed by the CWA and its implementing regulations. Thus, EPA evaluated available information, including monitoring data provided in the 2013 RAO, to determine if the discharge of stormwater commingled with groundwater infiltration would be consistent with technology- and water quality-based effluent limitations in compliance with NPDES regulations.

In its original comments on the Draft Permit, GE asserted that as part of its plans to demolish the Gear Plant and sell the property, it also planned to remove the outfall gates, vaults and overhead piping (connected to the building in question) associated with Outfalls 028, 030, and 031. Thus, GE commented that no treatment should be required for flows from this area. Subsequently, however, in its 2013 Site Assessment (p. 8), GE states that:

While a small amount of groundwater infiltration continues to occur into the drainage systems at the former Gear Plant Area, MassDEP and USEPA asked that GE continue to treat dry weather flow until data can be provided to justify elimination of treatment in compliance with a February 9, 1999 Administrative Consent Order (ACO-NE-99-1004) between GE and MassDEP. As a result, GE re-routed the conveyance piping that was supported on the roof of the Gear Plant on route to the CDTs located in Building 35 on River Works North so that building demolition activities could move forward. Plans are

in place to inspect and clean the end-of line vaults and catch basins prior to collecting data to justify dry weather flow elimination.”

Therefore, GE has infrastructure capable of conveying the dry weather flows from the drainage system outfalls on the Gear Plant property to the CDTs.

When GE calls for EPA to eliminate outfalls 028, 030 and 031 from the permit despite continuing discharges of stormwater and groundwater infiltration from these outfalls to the Saugus River, GE is suggesting that these discharges do not need to be regulated and do not require authorization from an NPDES permit. EPA does not agree. Despite GE’s assertions about the source and quality of the discharges, EPA believes that monitoring data from Outfalls 028, 030, and 031 and from groundwater monitoring wells located in the drainage system for these outfalls suggests that the discharges in question may contain pollutants originating from contaminated groundwater. In 2009, monitoring results of dry weather flow indicated elevated concentrations of residual chlorine, antimony, copper, iron, and lead at Outfall 028, elevated levels of residual chlorine, copper, iron, lead, vinyl chloride at Outfall 030, and elevated levels of residual chlorine, copper, iron, zinc, and indeno(1,2,3-cd) pyrene at Outfall 031. Each of these pollutants, with the exception of residual chlorine, has been determined through historical sampling to be in the contaminated groundwater at the Lynn facility.⁵ Monitoring conducted between 2007 and 2011 and reported as part of the 2013 Site Assessment and Remediation Activities⁶ indicates the presence of VOCs, metals, and PAHs in groundwater monitoring wells on the River Works South site in the vicinity of stormwater drains that lead to Outfalls 028, 030, and 031. Table 3-1 of the 2013 RAO indicates the elevated concentrations of 1,1 dichloroethane, chloroethane, and vinyl chloride in groundwater monitoring wells MW01-01 and MW01-11 (located in near Bay 9 at the former TCA tank area) which drain to Outfall 030 (RAO Figure 5). In light of these considerations, EPA continues to regard it to be appropriate to address these outfalls in GE’s new Final Permit.

In EPA’s view, GE’s proposed plan to disconnect Outfalls 028, 030 and 031 from the CDTs so that wastewater from these vaults is directly discharged without treatment or monitoring to the Saugus River, even during dry weather, would not satisfy CWA technology requirements or Massachusetts antidegradation requirements. See 314 CMR 4.04(3). In Attachment A and in response to GE’s comments, EPA has concluded that BAT for dry weather flows at the facility is to continue to transfer and treat them in the CDTs. This includes dry weather flows that collect in the vaults at Outfalls 028, 030, and 031. Disconnecting these outfalls from the CDTs will result in the direct discharge of flows previously conveyed to the CDTs directly to the Saugus River. This could constitute a “new or increased discharge” to an Outstanding Resource Water (ORW) under the Massachusetts antidegradation regulations and policy. See 314 CMR 4.04; *“Implementation Procedures for the Antidegradation Provisions of the Massachusetts Surface Water Quality Standards, 314 CMR 4.00”* (October 21, 2009) (“new or increased discharges to ORWs may be allowed only where both the discharge is determined by the Department to be for

⁵ Residual chlorine is unlikely to be present following the elimination of industrial discharges from these outfalls, as chlorine likely originated from city water that GE used in industrial processes.

⁶ Site Assessment and Remediation Activities in Support of an MCP Class A-3 Partial RAO Statement for Former Gear Plant and Saugus River. GE Aviation River Works Facility. MassDEP RTN 3—357. October 2013.

the express purpose and intent of maintaining or enhancing the resource for its designated use and an authorization is granted pursuant to 314 CMR 4.04(5).”).

Finally, GE comments that transfer of ownership and deletion of Outfalls 028, 030, and 031 “fall squarely within” the regulations for a minor modification at 40 C.F.R. §122.63(d) and (e)(2). These regulations state that the Director may, upon consent of the permittee, make a “minor modification” to a permit to make corrections to:

(d) Allow for a change in ownership or operational control of a facility where the director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Director.

(e)(2) Delete a point source outfall when the discharge from that outfalls is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits.

Based on present facts, EPA cannot agree that these two provisions of 122.63 apply in the case of GE’s drainage system outfalls on the Gear Plant property. GE has not submitted a written agreement between the current and new owner/operators of the facility that allocates responsibility for permit compliance between the two entities. See 40 C.F.R. 122.63(d). Indeed, it is unclear at this time whether the property has been transferred and, if so, who now owns it. Furthermore, a change in ownership (and/or operational control) is not the only permit change sought by GE. As discussed above, GE is also seeking to change the requirements applicable to Outfalls 028, 030 and 031. Finally, GE is not proposing to terminate discharges from these outfalls. Rather, these outfalls will continue, at a minimum, to discharge stormwater and infiltrated groundwater to the Saugus River. If EPA eliminated these outfalls from GE’s permit, however, then the discharges would not be authorized under the CWA and would not be subjected to proper controls under the statute.

In summary, EPA concludes that the three drainage system outfalls on the Gear Plant property (Outfalls 028, 030, and 031) cannot be removed from GE’s Final Permit. Available data suggests that, for the purposes of this NPDES permit, there is a potential for contaminated groundwater to infiltrate the stormwater drains and discharge directly to the Saugus River. Under the BAT analysis in support of the Final Permit limits, EPA determined that BAT for the drainage system outfalls, including the three outfalls on the River Works South property, is to continue to collect and convey dry weather flows to the CDTs for treatment and to pump down the drainage vaults prior to a storm event likely to trigger the tide gates (see Attachment A). If, in the future, sufficient information is available to support either the direct discharge of stormwater and/or infiltrated groundwater directly to the Saugus River from these outfalls consistent with the CWA and Massachusetts antidegradation requirements, or the transfer of responsibility for these outfalls to a new owner of the Gear Plant property, EPA would consider modifying the Final Permit to address these outfalls in a different manner.

3. EPA's Assumptions about Groundwater Contamination are not Accurate; as a Result, EPA's Limits and Conditions Derived from these Assumptions are not Appropriate.

Comment 3.1: EPA's Assumptions

EPA assumed that (1) contaminated groundwater infiltrates all of GE's drains and outfalls; (2) the contaminated groundwater contains any and all pollutants ever detected through the Facility's remedial activities at levels that present water quality problems; and (3) a significant but indeterminate amount of contaminated groundwater commingles and is discharged with stormwater. EPA relied on these assumptions to derive a host of different limits and conditions in the Draft Permit, including:

- a) Monitoring requirements for numerous parameters, including 14 VOCs, 7 PAHs, BTEX, PCBs, whole effluent toxicity (WET) and metals;
- b) Numeric and narrative limitations and conditions including those based on application of the RGP (VOCs, BTEX, TSS) and WQS (PAHs, metals);
- c) Prohibitions, limitations and prescriptive BMPs to control discharges of dry weather flows; and
- d) Bioaccumulation studies for PCBs and PAHs on blue mussels.

As described below, EPA's assumptions about contaminated groundwater are not accurate. Once these assumptions are corrected, the limits and conditions on which they are based are no longer supported or appropriate, and, in turn, should be removed.

Response to Comment 3.1:

GE's comment asserts that "EPA's assumptions about contaminated groundwater are not accurate" and that "[o]nce these assumptions are corrected, the limits and conditions [of the Draft Permit] on which they are based are no longer supported or appropriate, and, in turn, should be removed." More specifically, GE makes the following three specific points: "EPA assumed that (1) contaminated groundwater infiltrates all of GE's drains and outfalls; (2) the contaminated groundwater contains any and all pollutants ever detected through the Facility's remedial activities at levels that present water quality problems; and (3) a significant but indeterminate amount of contaminated groundwater commingles and is discharged with stormwater." Because GE's subsequent comments provide more detailed discussion of the general assertions made in Comment 3.1, EPA provides general information in response to Comment 3.1 here and provides more detailed responses later in response to GE's more detailed comments on the issues identified in Comment 3.1.

(1) Contaminated groundwater infiltrates GE's drainage system outfalls

Contrary to GE's comment, EPA's conclusions about the occurrence and potential for contaminated groundwater to infiltrate GE's drainage system and be discharged from the

drainage system outfalls were not based merely on assumptions. EPA's conclusions were, instead, based on a substantial amount of information. As outlined in Technical Exhibit 2⁷ to GE's comments on the Draft Permit, there are documented occurrences of contaminated groundwater discharging through drainage system outfalls at the Lynn facility. According to GE's Technical Exhibit 2, there are six active remedial areas (Building 66B, Building 32/41, Building 29GT, Building 33/35, Building 64, and Building 70 MNA) onsite where GE continues to conduct Massachusetts Contingency Plan (MCP) response actions related to contaminated groundwater. In October 2013, GE submitted a report entitled, "Site Assessment and Remediation Activities in Support of an MCP Class A-3 Partial RAO Statement for Former Gear Plant and Saugus River Areas," which describes closure of activities at the Gear Plant Bay 9 remedial area. Still, most of the facility is considered to be a disposal site under the MCP as a result of releases of oil and/or hazardous waste associated with historical facility operations. The Lynn facility site is listed under the MCP as RTN 3 – 0357, MCP Remedy Phase V Remedy Operation Status. Technical Exhibit 3⁸, submitted with GE's comments, indicates that while remediation treatment has resulted in overall decreasing trends in groundwater contamination, elevated concentrations of VOCs remain in some areas (e.g., total VOC concentrations higher than 60 µg/L in 2010 and 2011 at Building 32/41).

GE has also submitted information demonstrating that contaminated groundwater infiltration is discharged into the Saugus River through the Lynn facility's outfalls. In Technical Exhibit 14⁹ of GE's comments on the Draft Permit, GE states that "the drainage system serving each of the outfalls may receive groundwater that infiltrates through minor openings in pipe joints and drainage structures as the tidally influenced groundwater table fluctuates with each tidal cycle. Efforts to line and seal drainage lines and infrastructure have reduced rates of groundwater infiltration. Several of the outfalls (007, 010, 019, and 027) also receive process-related dry weather flows as described below:"

Outfall	Non-Stormwater Dry Weather Flows
001	Groundwater infiltration [and any dry weather flow routed to Outfall 007 vault]
007	Groundwater infiltration, steam heating and air conditioner condensate, steam conduit water, non-contact cooling water, dry weather flow from Outfall 001 vault
010	Groundwater infiltration, steam heating and air conditioner condensate, non-contact cooling water
019	Groundwater infiltration, steam heating and air conditioner condensate, non-contact cooling water ¹⁰
027B	Groundwater infiltration, treated water from CDTs (from Outfall 027A)

⁷ Chronological Summary of Response Actions Conducted at the GE Lynn River Works Facility to Minimize Groundwater Infiltration into the Storm Drain Network and Improve Site-wide Groundwater Quality

⁸ Remediation System Groundwater Concentration Trends.

⁹ GE Aviation River Works Dilution Evaluation of Drainage System Discharges to the Saugus River. Prepared by AECOM for GE Aviation. May 25, 2011.

¹⁰ Chronological Summary of Response Actions Conducted at the GE Lynn River Works Facility to Minimize Groundwater Infiltration into the Storm Drain Network and Improve Site-wide Groundwater Quality

028	Groundwater infiltration [dry weather flow routed to Outfall 030 vault]
030	Groundwater infiltration, dry weather flow from Outfall 028
031	Groundwater infiltration

In an attempt to quantify the extent of pollutants entering the drainage system just from dry weather flows, EPA asked GE to sample the contents of all of the outfall vaults during dry weather conditions, taken after 72 hours of dry weather (no precipitation).¹¹ The sampling results indicated that contaminated water is present in the vaults and the specific pollutants discovered in the contaminated water are consistent with pollutants that historically have been found in the contaminated groundwater at the Lynn facility, the results of which are summarized in Table 3-1. Sampling of the drainage system outfall vaults during dry weather indicates the presence of various metals and other toxic contaminants (residual chlorine, PCBs, vinyl chloride, PAHs) at levels in excess of the Remediation and Miscellaneous Contaminated Sites General Permit's (RGP)¹² technology-based limits. In EPA's view, the data supports the assertion that, as stated in the Fact Sheet (p.12) "it is reasonably possible that one or more of these contaminants could be present in any discharges of untreated groundwater."

Table 3-1. Concentrations of various contaminants identified in dry weather flows at the drainage system outfalls. Samples collected on June 29, 2009 a minimum of 72 hours after a storm.

	001	007	010	019	027	028	030	031	RGP
Antimony (mg/l)	0.0079					0.0098			0.0056
Copper (mg/l)	0.0186	0.008	0.0049	0.0109		0.0084	0.0061	0.0068	.0037
Iron (mg/l)	1.66	1.21	1.42			2.48	3.2	1.19	1.0
Lead (mg/l)						0.0097	0.01		0.0085
Nickel (mg/l)			0.11	0.019		0.0092		0.029	0.0082
Zinc (mg/l)	0.093					0.145		0.102	0.0856
Residual Chlorine ¹ (mg/l)		0.03		0.03	0.04	0.02	0.02	0.02	0.02
PCBs ¹ (µg/l)	*								
Vinyl chloride	2.6						2.0		2.0
PAHs ^{1, 2} (µg/l)	16, 18	*	*	*		*		*	5.0

* Denotes parameter detected but below minimum detection level (ML)

¹ RGP limit presented as compliance limit (equal to ML)

² dibenzo(a,h) anthracene, and indeno(1,2,3-cd)pyrene detected above ML at Outfall 001, benzo(k)fluoranthene detected below ML at Outfall 019 and Outfall 028, benzo(b)fluoranthene detected

¹¹ Response to Request for Information, Section 308(a) of the Clean Water Act (CWA), July 10, 2009, Table 2: Summary of Outfall Analytical Data.

¹² In writing the Draft Permit and Fact Sheet, EPA referred to the 2005 RGP and fact sheet. The 2010 RGP, effective September 10, 2010, used the same basis in deriving limits for each of the parameters as the 2005 RGP (see Attachment A to the 2010 RGP)

below ML at Outfall 028, and indeno (1,2,3-cd)pyrene detected below ML at Outfall 007, 010, 019, 028, and 031

EPA does not agree with GE that the Agency assumed “contaminated groundwater contains any and all pollutants ever detected through the Facility’s remedial activities at levels that present water quality problems.” As stated above, the contaminants identified in Table 3-1 were detected in dry weather flows in the drainage system outfall vaults in 2009. EPA is concerned about the potential discharge of these contaminants to the receiving water without treatment during storm events when stormwater accumulating in the vaults overwhelms the transfer pumps to the CDTs and triggers the vault gates to open. The Draft Permit included a combination of technology-based numeric limits, water quality-based numeric limits, monitoring requirements, and best management practices to address the potential for contaminated groundwater discharges to the receiving water.

In Attachment A hereto, EPA reevaluated the BAT analysis for the drainage system outfalls and determined that the BAT includes use of the existing CDTs, which was installed and is operated to treat dry weather flows, including infiltrated groundwater, prior to discharge through Outfall 027A. The technology-based limits for Outfall 027A in the Final Permit reflect the use of this technology. EPA also concluded that the BAT during wet weather is a BMP to minimize the volume of dry weather flow in the vaults when the gate is likely to be triggered due to a storm event. Because flows discharged from the vault outfalls during wet weather bypass the oil-water separator and the CDTs, numeric limits based on the use of these technologies are not appropriate for wet weather flows. Therefore, the Final Permit includes monitoring requirements for wet weather flows from the drainage system outfalls. In addition, only water quality-based limits carried forward from the current permit consistent with antibacksliding have been included for wet weather flows from the drainage system outfalls. See Attachment A for more discussion of the technology- and water quality-based limits at the drainage system outfalls.

(2) Contaminated groundwater commingles with stormwater and is discharged with the storm’s first flush, bypassing the treatment system specifically designed and installed to reduce contaminants in GE’s dry weather flow

Pursuant to an Administrative Consent Order (ACO) between MassDEP and GE, GE designed its drainage system to “substantially eliminate” dry weather discharges from the drainage system outfalls. To meet this standard, GE installed equipment enabling it to close these outfalls during dry weather and convey non-stormwater from the drainage system vaults to the CDTs for treatment prior to discharge through Outfall 027A.¹³ EPA summarized several ways in which dry weather flows could be commingled and discharged with wet weather flows in Part II.B.2 of the Draft Permit’s Fact Sheet.

¹³ GE Aviation Comments on Draft NPDES Permit Technical Exhibit 15. Technical Evaluation of Commingled Dry Weather Flow and Wet Weather Flow Discharges.

GE's technical exhibits (15 and 17¹⁴), as well as EPA's analysis based on figures of the drainage system vaults submitted at EPA's request in November 2013, further confirm that, when a vault gate is opened due to an accumulation of wet weather flow, the initial volume of effluent is likely to contain both dry weather flow (including infiltrated groundwater) and stormwater. The limited available sampling data for the drainage system outfalls, and the information discussed above regarding dry weather sampling, suggests that there is potential for dry weather flows to include contaminated groundwater, although it is not presently possible based on existing information for EPA to develop a precise estimate of the proportion of groundwater in the flow from each outfall. GE also has not provided such an estimate.

However, under a worst-case scenario, nearly 23,000 gallons of dry weather flow could be released directly to the Saugus River. The percent of dry weather flow released when the tide gate opens ranges from 45% to almost 66% of the total initial volume released through the outfall gate. There is potential to release a considerable volume of dry weather flow that would otherwise be treated in the CDTs prior to discharge. The Final Permit includes a BMP seeking to minimize the volume of dry weather flow that would be released during wet weather. Reducing the volume in the vaults to the "low alarm level" prior to a storm event predicted to generate sufficient precipitation to open the tide gates (0.1 inches or more) would likely reduce the volume of dry weather flow released directly to the Saugus River to less than 10,000 gallons. Depending on the outfall, dry weather flows at the low alarm level comprise 5% to 35% of the total volume when the tide gates open, compared to 45% to 66% for dry weather flows at the "pump on level." Compliance with the Final Permit would reduce the volume of dry weather flow discharged to the river by nearly 13,000 gallons (57%) compared to the worst-case condition ("pump on") and by nearly 10,000 gallons (51%) compared to average operating conditions at no cost to the permittee.

Based on the information provided by the permittee, including characterization of the drainage system in the permit application and subsequent submittals and recent monitoring data, EPA has concluded that contaminated groundwater has the potential to infiltrate GE's drainage system and that dry weather flow, including contaminated groundwater, is reasonably likely to commingle with stormwater and be discharged directly from the drainage system outfalls to the Saugus River during wet weather without being treated at the CDTs. EPA's updated analysis of permit limits was based on, among other things, consideration of the BAT factors and GE's comments (see Attachment A). EPA concluded that the specified BMP to minimize the discharge of commingled dry weather flows from the drainage system outfalls during wet weather is the BAT and that, combined with monitoring of the drainage system outfalls, this BMP is currently the best approach for handling pollutant discharges from the drainage system outfalls in the Final Permit. This approach would also generally be consistent with the standard to "substantially eliminate" dry weather discharges set in the ACO.

¹⁴ GE Aviation Comments on Draft NPDES Permit Technical Exhibit 17. Technical Evaluation of the Requirement to Collect, Convey, and Treat the First-Flush of Storm Water Commingled with Dry Weather Flow.

Comment 3.2: EPA's Assumptions Overlook GE's Extensive Pipe Relining and Replacement Effort

In describing its assumptions about the infiltration of contaminated groundwater, EPA mentions but then disregards the extensive drainage pipe relining and replacement efforts undertaken by GE. GE has relined or replaced 3.25 miles (26%) of the 12 miles of drainage pipe under its Facility at a cost of \$5.1 million. GE focused this effort in areas where the piping was located below the groundwater table or subject to tidal influences, and where groundwater had been adversely impacted by historic operations based on characterization data from a network of over 150 monitoring wells and prior to extensive remediation activities under the MCP. More specifically, GE focused its lining efforts on drains to Outfalls 001, 007, 010, 027, 028 and 031. As a result of these extensive efforts, EPA cannot legitimately assume -- and the data simply will not support the conclusion that -- significant amounts of contaminated groundwater infiltrate and discharge through GE's drainage systems and outfalls.

Response to Comment 3.2:

EPA recognizes that the drainage pipe relining and replacement efforts undertaken by GE in the past have likely reduced, to some extent, the problem of contaminated groundwater infiltrating the Lynn facility's drainage system. Nevertheless, as already discussed in this RTC document, recent monitoring data and other information (*see, generally, EPA's response to Comment 3.1*), demonstrates that contaminated groundwater continues to infiltrate the drainage system. EPA's concerns about this are not based on mere assumptions, as the comment suggests.

The Lynn facility's drainage system is extensive, providing a large area with a network of main and lateral piping which handles certain process wastewater, stormwater and groundwater infiltration. GE's comment above states that it has relined or replaced "3.25 miles (26%) of the 12 miles of drainage pipe under its Facility," which is consistent with GE's representation of relining completed in 1991 in Technical Exhibit 2 of its Comments on the Draft Permit. Part 2 of Technical Exhibit 5 to GE's comments on the Draft Permit¹⁵ indicates that the company has previously Insitu-lined 20% of the main pipes associated with the drainage system, but the laterals have not been lined. Given the distinctions in the terms used in these two statements, it is not entirely clear to EPA how these values relate to each other.¹⁶ Regardless, taking the larger value of 26% would still mean that 74% of the drainage system pipe has neither been relined nor replaced. Given that approximately 10% of the drainage system pipes lie above the water table -- and therefore should be unaffected by infiltration -- approximately 64% of the drainage system pipes lie below the water table but have neither been relined nor replaced.

The Draft Permit's condition calling for the relining and/or repiping of dry weather flows was meant to reduce or eliminate the direct discharge of dry weather flows to the receiving water. However, EPA has carefully considered GE's comments expressing concern that the Draft Permit's requirements for drainage system pipe rehabilitation to reduce the infiltration of contaminated groundwater would prove very expensive and, in some cases, technically infeasible. Based on current information, EPA has been persuaded that eliminating groundwater

¹⁵ May 18, 2011 Memo from CH2MHill IDC RE: Video Storm Water Piping.

infiltration to the drainage system might be infeasible in some areas of the facility and would be extremely expensive and difficult in other areas (see Attachment A to this Response to Comments). Thus, EPA has not included that BMP in the Final Permit. Rather, the Final Permit includes BMPs that require the permittee to treat dry weather flows from the drainage system in the CDTs, and to minimize the volume of dry weather flows released with the stormwater when the tide gates open.

Comment 3.3: EPA's Assumption about Contaminated Groundwater at Outfalls 014, 018 and 020 do not Reflect Key Changes to the Facility

EPA assumes that groundwater commingles with the discharge from Outfalls 014, 018 and 020 (apparently based on statements ascribed to GE but for which neither EPA nor GE has any record). Based on this assumption, EPA has developed conditions that would force GE to inspect, reline and/or replace all of the pipes leading to these outfalls in order to eliminate the possibility of groundwater infiltration (and thereafter certify the elimination of all groundwater, even if uncontaminated). However, EPA's assumption ignores key changes by GE that obviate the need for any new conditions at these outfalls.

Outfall 014 was lined in 2002, as GE previously described in its July 2009 submittal. The outfall was internally sand blasted and "then completely sealed with applied liquid sealant, sheets of fiberglass type material were secured and a final layer of liquid finish coating was applied over that."

Outfall 018 is a salt water discharge structure/tunnel conduit constructed of concrete (10-12 inches thick) and roughly square. The top of the tunnel is just below the ground surface and extends to about 10 feet below grade. During high tide, water from the river raises the level of water in the tunnel because there is no gate valve. During low tide the river water level is below the bottom of the tunnel at the discharge. Water flows through the tunnel continuously (except for one day out of the year for maintenance) at a typical rate of about 13,000 gallons per minute to support power plant operations. At low tide with two turbines running, the water level at the outfall is approximately 3 feet deep and higher further upstream in the tunnel. Approximately 155 feet of the structure (~75%) runs parallel and immediately adjacent to the river. Therefore, the structure is impacted greatly by river water and minimally (if at all) by groundwater given tidal effects on the structure and the high flow of cooling water discharged through the system.

Outfall 020 conveys only unused river water from the cooling water reservoir for the Power Plant. This reservoir is drained, cleaned and inspected annually by licensed power plant operators and shows no signs of cracking or deterioration that would allow groundwater infiltration. In addition, the reservoir is always full of river (salt) water and as a result, the static pressure within the reservoir is higher than the hydraulic pressure from groundwater on the outside wall of the containment structure. Therefore, if the integrity of the reservoir were ever compromised, the pressure would cause river water to enter into the ground as opposed to groundwater infiltrating the reservoir. The "pipe" to Outfall 020 is essentially a concrete trough that returns the overflow water to the river. Any integrity problems would be readily visible because it is located aboveground. No such problems have been observed. The same hydrostatic

pressure phenomena would apply to the trough to prevent groundwater infiltration if its integrity were compromised.

For these reasons, EPA's assumptions about groundwater infiltration into Outfalls 014, 018 and 020 cannot hold. The proposed conditions would, in effect, require GE to eliminate what has already been eliminated. Those conditions must be removed.

Response to Comment 3.3:

Upon review of additional information submitted by GE during the public comment period on the Draft Permit, and in response to GE's comment 3.3, EPA has revised its assessment of the potential for contaminated groundwater infiltration to drainage system pipes leading to Outfalls 014, 018, and 020. Accordingly, EPA has also revised the conditions applicable to Outfalls 014, 018 and 020, for the Final Permit.

GE comments that Outfalls 014, 018 and 020 do not experience groundwater infiltration, though GE also states that the outfall tunnel structure for Outfall 018 is affected "minimally (if at all)" by groundwater. GE's comment outlines different reasons why groundwater infiltration does not affect each of these outfalls. EPA has considered GE's comment in conjunction with a review of Figure 1 of GE's November 7, 2011, response to an EPA CWA Section 308 information request entitled "Underground Storm Drains and Active Remedial Areas," which further clarifies certain pipe lining efforts that GE has already completed. The figure also outlines the MCP-related active remedial areas (which contain contaminated groundwater) in relation to the Lynn facility's drainage system pipes.

Based on the new information provided by GE, EPA has concluded that the discharges from Outfalls 014, 018 and 020 are unlikely to receive contaminated groundwater infiltration. Specifically, Figure 1 (referenced above), shows that the drainage pipes associated with these three outfalls *do not* pass through locations at the Lynn facility identified as having groundwater attenuation or Light Non-Aqueous Phase Liquids (LNAPL) plumes. Additionally, these pipes are relatively short and do not protrude far into the site.

Based on GE's comment and the new information it submitted to EPA, the Final Permit has eliminated BMPs that would have required GE to, among other things, reline and/or replace pipes leading to Outfalls 014, 018, and 020. While the Draft Permit specifically authorized the discharge of minimal commingled contaminated groundwater from Outfalls 014, 018, and 020, the Final Permit authorizes only the discharge of process flows identified in the permit application consistent with the current permit and the permittee's comment regarding the absence of groundwater infiltration at these outfalls.

Comment 3.4: EPA's Assumptions about Groundwater Quality Overlook GE's Extensive Site Remediation Activities.

GE has been engaged in remediation activities for 28 years pursuant to Massachusetts General Law 21E and the Massachusetts Contingency Plan [MCP; 310 CMR 40.0000] promulgated in

1993, one of the most stringent state remediation programs in the country. Please refer to Technical Exhibit 2 for a chronology of these activities.

The majority of treated groundwater from the remediation systems is directed to the LWSC municipal sewer system for further treatment. Groundwater extracted from one remedial area (Building 29G/T) and any residual groundwater that infiltrates into the drainage system is directed to the CDTs for treatment via overhead piping. Any groundwater infiltration that escapes treatment in the CDTs during a storm event is *de minimis* in volume; is substantially buffered by the commingled stormwater in the drainage system; and is even further diluted once it mixes with the receiving water. Moreover, GE's ongoing remediation work has resulted in and will continue to cause continuous improvement of groundwater quality such that contaminant concentrations are expected to diminish over time to inconsequential levels under the MCP program.

Technical Exhibit 3 depicts the groundwater concentration trend graphs for key remedial areas of the site and show generally declining concentrations of contaminants from 2000 to present. With specific reference to the contaminants listed by EPA as requiring monitoring and/or numeric limits, the results of GE's extensive site groundwater monitoring and remediation confirm that the following constituents either have not been detected in site groundwater, have been detected at a low frequency and/or at low concentrations below relevant water quality criteria (such as Acute Ambient Water Quality Criteria or Tier II Secondary Acute Values), or are not considered constituents of concern (for example, because they are naturally occurring constituents in groundwater):

benzene, toluene, ethylbenzene, total xylenes, BTEX, Methyl tertiary butyl ether (MTBE), carbon tetrachloride, 1,4 dichlorobenzene, 1, 2 dichlorobenzene, 1,3 dichlorobenzene, 1,2 dichloroethane, 1,1 dichloroethylene, methylene chloride (dichloromethane), tetrachloroethylene, 1,1,2 trichloroethane, vinyl chloride, total VOCs, aluminum, antimony, arsenic, beryllium, cadmium, calcium, chromium, cobalt, copper, ferrous iron, iron, lead, magnesium, manganese, mercury, nickel, selenium, silver, sodium, thallium, titanium, and Group I and II PAH compounds.

In April 2001, GE conducted an Ecological Risk Assessment of the Saugus River as part of the MCP Phase II Comprehensive Site Assessment and concluded that a condition of *no significant risk of harm to the environment* existed. This assessment took into account historical facility operations and current site conditions including the potential for, and impact of, groundwater infiltration. In 2011, GE reevaluated and reconfirmed this *no significant risk* conclusion using the additional surface water data collected between 2000 and the present (Technical Exhibit 4). In short, groundwater conditions are not causing harm and continue to improve.

Even assuming some lingering potential for groundwater infiltration into certain drainage pipes, the amount of infiltration would be insignificant when compared to total flows in those pipes. The commingling of these flows would mitigate any water quality concerns at the point of discharge. And further mixing in the receiving river would render this a non-issue from a NPDES perspective. See Sections VI and IX.

For these reasons, GE disputes EPA's assumptions about contaminated groundwater and urges EPA to remove the monitoring requirements, limits and other conditions derived from them. Not only is EPA's approach inaccurate, it is also unreasonable.

For example, in Part I.B.9, EPA proposes that GE develop and implement a plan for controlling infiltration of groundwater...within six (6) months of the effective date of this permit, and thereafter submit a summary report annually. As described above, GE has already undertaken extensive effort to address groundwater where it has historically been a concern. Controlling the infiltration of *all* groundwater (even if uncontaminated) is simply untenable.

Historic drawings, circa 1910 indicate that there was a network of concrete roadways at the Facility that have been paved over. The roadways are 12-inches thick with two mats of rebar. In order to replace the drainage lines, the original concrete roadways would need to be removed. Taking into account site specific factors, the project to evaluate and replace just the lateral piping situated below the water table would be approximately \$30.75 million. (See Technical Exhibit 5).

Even if the goal of eliminating all groundwater infiltration was appropriate and achievable (which we dispute), the requirement to produce a plan for doing so within 6 months of permit reissuance clearly is not. It would take years for GE to establish baseline conditions, assess areas of impact (if any), and then design and install controls to address those areas (if necessary).

Moreover, EPA's annual reporting requirement would force GE to provide data that GE cannot meaningfully collect. It appears that EPA wants GE to calculate the annual average infiltration and inflow, as well as maximum monthly infiltration and inflow, of groundwater alone for each reporting year. However, it is not possible to make such a calculation. While GE can estimate its dry weather flows collected for treatment at the CDTs, it is not technically feasible to distinguish between groundwater infiltration, other flows generated by facility operations, residual rain water, and tidal influence that are discharged to the plant-wide drainage system. The Facility is not configured to support such a monitoring effort and there is no valid method for calculating infiltration alone.

Finally, even assuming for the sake of argument that GE should or could control and/or eliminate all groundwater infiltration, we note that groundwater will continue its natural flow to the Saugus River directly by groundwater transport through soil and via tidal influences. So even if EPA's assumptions about the threat posed by groundwater contamination were correct, its approach in the Draft Permit would result in less collection and treatment of contaminated groundwater by GE and more natural recharge between groundwater and the Saugus River via processes not regulated or monitored under the NPDES program. Such a result would be inconsistent with our shared goal of eliminating pollution in the Saugus River, and would not result in any environmental benefit.

Response to Comment 3.4:

GE has acknowledged, and the evidence indicates, that groundwater infiltrates the Lynn facility's drainage system from which some portion of it can then reasonably be expected to be discharged

to the Saugus River. During dry weather, this groundwater infiltration is expected to be treated at the CDTS prior to discharge, but during wet weather, some portion of it is expected to commingle with stormwater and be discharged to the river without treatment. Many of the pollutants listed above are *not* naturally occurring constituents in groundwater and *do* present environmental concerns. The above list of pollutants includes a variety of toxic compounds, including some known to bio-accumulate in aquatic organisms (e.g., mercury). As Table 3-1 illustrates, many of these contaminants have been detected in recent sampling of dry weather flows at the outfalls. At the same time, however, there is a dearth of monitoring data to characterize wet weather discharges from the drainage system outfalls. Moreover, the nature of the contaminated groundwater infiltration problem is that it is an uncontrolled situation that is likely to be subject to variability in terms of which contaminants are present in the groundwater at any particular time and at what concentrations. As a result, there is unavoidable uncertainty about how clean or how contaminated the flows in the drainage system vaults may be during wet weather.

Therefore, it makes sense for the Final Permit's requirements to address discharges from the drainage system outfalls with technology-based limits and to try to ensure that an appropriate amount of dry weather flow from the drainage system is sent to the CDTS for treatment prior to discharge to the river. Furthermore, it makes sense to monitor the wet weather discharges to develop data to help to characterize this flow. Even assuming that efforts to remedy the groundwater contamination at the Lynn facility have resulted in improvement, it simply does not follow that no contaminated groundwater infiltrates the drainage system or that the amounts that do so are inconsequential. Moreover, it does not establish that the Final Permit's technology-based requirements are inappropriate or inconsistent with the requirements of the CWA.

GE's comment appears to object to the following requirements in the Draft Permit: 1) the requirement that GE reduce to the maximum extent practicable the infiltration of contaminated groundwater into the drainage system (along with related monitoring requirements); 2) the monitoring requirements, limits, and other conditions related to discharges of groundwater; and 3) the requirement that during wet weather conditions GE treat in the CDTS the first flush of commingled stormwater and dry weather flows (including groundwater).

In response, and as has been noted a number of times elsewhere in this RTC document, EPA's Final Permit has not retained the Draft Permit's requirement that GE eliminate, to the maximum extent practicable, the infiltration of contaminated groundwater into the Lynn facility's drainage system. (EPA's Draft Permit did not require the elimination of "all groundwater infiltration," as GE's comment suggests.) The Final Permit also has not retained a requirement that during wet weather the first flush from the drainage system be sent to the CDTS for treatment. EPA has dropped these conditions on the grounds of technical infeasibility and high cost. (EPA is not persuaded by GE's comments that potential discharges of contaminated groundwater infiltration pose no environmental concern for the Saugus River.) In addition, EPA has dropped any requirement for GE to attempt to measure and report the amount of groundwater infiltration that is occurring. In making that change for the Final Permit, EPA has considered and is persuaded by GE's comments about the practical difficulties of trying to satisfy such a monitoring requirement.

GE also comments that if groundwater infiltration into the drainage system was prevented, groundwater would still continue its natural flow to the Saugus River directly by groundwater transport through soil and via tidal influences. GE comments, therefore, that even if EPA's assumptions about the threat posed by groundwater contamination were correct, its approach in the Draft Permit would result in less collection and treatment of contaminated groundwater by GE and more transmission of contaminated groundwater to the Saugus River via natural processes not regulated or monitored under the NPDES program.

GE does not provide quantitative data to demonstrate that its prediction regarding groundwater travel to the river is correct. Moreover, that groundwater may travel through the ground to the river is not by itself a reason not to try to prevent it from infiltrating the drainage system from where it will be discharged directly to the river without treatment during wet weather. Nevertheless, there is a logic to GE's argument that instead of trying to preclude all groundwater infiltration, it might be better to allow it because at least some of that infiltration will receive treatment at the CDTs. In any event, GE's comment is no longer relevant because it was based on the Draft Permit's requirement to eliminate, to the extent practicable, the infiltration of contaminated groundwater into the Lynn facility's drainage system, and that requirement was not retained in the Final Permit. Instead, groundwater infiltration into the drainage system will be addressed by the Final Permit's requirement that the dry weather flows continue be treated at the CDTs, and that the volume of dry weather flow in the drainage system vaults be minimized prior to a storm event. These requirements should help to minimize any effect of groundwater infiltration into the drainage system on water quality in the river (albeit in a different manner than proposed in the Draft Permit). As noted earlier, this change was made in order to accommodate GE's concerns about the cost and feasibility of the BMPs contained in the Draft Permit, while also ensuring that the Saugus River's water quality is protected and that available technology is implemented by GE.

As to GE's other two objections in this comment, EPA's view is that the CWA and its NPDES permitting requirements require, at a minimum, that GE's point source discharges of contaminated wastewater (made up of commingled stormwater, groundwater infiltration and certain process waters) from the drainage system outfalls must satisfy applicable technology and water quality standards. GE is not excused from these requirements because it mixes the contaminated groundwater with stormwater, or because it has conducted its own site assessment and concluded that the site does not pose significant environmental hazards under the Massachusetts Contingency Plan.

The NPDES permitting program is designed to be "technology-forcing." In a general sense, the statute calls for EPA to consider available technology (and BMPs) that can be implemented by permittees to reduce or eliminate pollutant discharges to waters of the United States and to set permit limits that are, at a minimum, based on the use of these treatment technologies (or BMPs). As explained elsewhere in this RTC document, the record shows that groundwater infiltrates the Lynn facility's drainage system and GE itself has acknowledged this fact in its comments on the Draft Permit and various other documents submitted to EPA. Monitoring data indicates that this groundwater may contain contaminants such as hydrocarbons and VOCs. Indeed, this contamination led to GE being required to implement contaminated groundwater remediation activities under the ACO. During dry weather, groundwater infiltration into the drainage system

collects in the drainage system vaults and is transferred to the CDTs for treatment and discharge through Outfall 027A. However, during wet weather, the current outfall drainage system is unable to convey all these flows to the CDTs. Instead, wet weather flows overwhelm the system's capacity to pump wastewater flow to the CDTs, the tide gates open and the commingled flows in the vaults and drainage system are discharged directly to the Saugus River through the vault outfalls while the gates remain open. This occurs for approximately one hour each time that inflow exceeds the transfer pump capacity and the gates open. During wet weather, the flow discharged to the river includes dry weather flows (including groundwater infiltration), particularly during the first flush of wet weather flow, during which the outfall gates open and any flow accumulated in the vault prior to the storm is discharged.

For GE's drainage system outfalls, EPA has determined that the BAT for treating dry weather flows, including infiltrated groundwater, is the continued use of the CDTs system, which GE supports in its comments. Therefore, the Final Permit retains the technology-based effluent limitations for Outfall 027A based on the use of activated carbon treatment at the CDTs. (See Attachment A to this RTC document for a more detailed explanation of the CWA's BAT and BCT requirements and the determinations made by EPA applying these standards on the basis of best professional judgment.) However, based on the operation of the vaults, this technology does not provide treatment for the dry weather flows, including infiltrated groundwater, during wet weather.

The Draft Permit's conditions calling for treatment of the first flush of wet weather flow at the CDTs, and to which GE objects in the comment, have been eliminated from the Final Permit (see Attachment A for discussion of the technology-based limits in the Final Permit). The Final Permit meets the technology-based requirements of the CWA by requiring GE to: 1) convey flows from the outfall vaults during dry weather to the CDTs for treatment; and 2) minimize the volume of dry weather flows left in the drainage system outfalls vaults prior to the onset of a storm forecasted to trip the outfall gates. In short, GE is being required to, and should be able to, implement BMPs to operate the drainage system vaults to maximize the use of the current CDTs to treat dry weather flows and minimize the discharge of untreated pollutants into the Saugus River.

GE comments that the commingling of stormwater with dry weather flows will mitigate any water quality concerns and that further mixing with the receiving water would render this a non-issue from a NPDES perspective. EPA does consider the issue of receiving water dilution (or stormwater dilution) and the predicted effects of particular pollutant discharges on the water quality of the receiving water when establishing water quality-based effluent limits, but these are not pertinent considerations when setting the technology-based limits that constitute the minimum requirements that must be met by every discharger. See 40 C.F.R. § 125.3(f).

In this case, EPA expects that the discharge of dry weather flows will be minimized through the technology-based requirements in the Final Permit, which EPA believes will also satisfy water quality standards. The Final Permit retains only those water quality-based limitations at the drainage system outfalls that are needed to comply with antibacksliding regulations. In addition, the Final Permit includes limited monitoring for wet weather discharges from the drainage system outfalls to ensure that the BMPs adequately minimizes discharges from the outfall vaults

and to obtain data to confirm the permittee's statements that there is no reasonable potential for the wet weather discharges from the drainage system outfalls to cause or contribute to water quality impairments.

Finally, notwithstanding the points discussed by EPA above, GE comments that "any groundwater infiltration that escapes treatment in the CDTs during a storm event is *de minimis* in volume ...," and that "[e]ven assuming some lingering potential for groundwater infiltration into certain drainage pipes, the amount of infiltration would be insignificant" GE also comments that contaminant concentrations in the groundwater "are expected to diminish over time to inconsequential levels," and that contaminated groundwater infiltrating the drainage system will be "buffered" by other wastewater and "diluted" by flows in the Saugus River.

Under the worst-case scenario, EPA estimates that nearly 23,000 gallons of dry weather flow per rainstorm could be released directly to the Saugus River. The percent of dry weather flow released when the tide gate opens ranges from 45% to almost 66% of the total initial volume released through the outfall gate. While the precise proportion of contaminated groundwater and process wastewater in the dry weather flow is uncertain, EPA believes that this potential volume of untreated dry weather flows (including process water and infiltrated groundwater) is not *de minimis*, as GE claims.

Further, the CWA and its implementing regulations do not expressly allow for the discharge of pollutants into waters of the United States in "de minimis" and/or "insignificant" amounts. Indeed, the statute states that "it is the national goal that the discharge of pollutants into the navigable waters be eliminated by 1985;" 33 U.S.C. § 1251(a)(1), and that the discharge of any pollutant except in compliance with various statutory provisions is unlawful. 33 U.S.C. § 1311(a). Such pollutant discharges must satisfy federal technology standards at a minimum, as well as any more stringent state water quality standards-based requirements that apply.

Even if EPA read an implied exception to these CWA requirements for *de minimis* discharges of pollutants – an issue which EPA need not, and does not, take a position on here – we would not do so in this case. GE has neither explained on a technical basis the volume of groundwater that it regards to be *de minimis* or insignificant, nor has it demonstrated that the amount of groundwater currently infiltrating the drainage system is below such a level. Furthermore, pollutant discharges are not excused from regulation under the CWA because it is suggested that contaminant levels might become "inconsequential" *at some time in the future*. Moreover, GE has not defined what it considers inconsequential levels of contamination or demonstrated that infiltrating pollutants are below those levels now or will be at any particular time in the future. This is not surprising, of course, because the data demonstrates that groundwater infiltrates the drainage system and gets discharged from the drainage system outfalls, and that this wastewater stream is by its nature variable and unpredictable.

4. Numeric Limits Applied to Wet Weather Flows are not Appropriate.

Comment 4.0:

EPA proposes to impose numeric limits on wet weather flows from a number of GE outfalls. See Part I.A.1 (pH, Oil & Grease, TSS, BTEX, Benzene and Cyanide); Part I.A.5 (pH, Oil & Grease, TSS). EPA attempts to justify these limits on the basis of both water quality and technology considerations. See Fact Sheet at pp. 28-48 (Drainage System Outfalls); pp. 63-70 (Outfall 018B). But EPA's justification is infirm. On the water quality side, numeric limits are not feasible or necessary and, in any event, are premature. On the technology side, EPA's references to standards in other sectors and settings (i.e., steam electric effluent guidelines and remediation general permit) are inapposite. And EPA has not otherwise considered the factors necessary to support a BPJ determination.

Response to Comment 4.0:

GE comments that the numeric limits contained in Table Part I.A.1 and Table Part I.A.5 of the Draft Permit are inappropriate and EPA has not adequately justified them. GE's comment 4.0 states its objections somewhat generally but provides more detailed comments in subsequent comments. Accordingly, EPA's Response to Comment 4.0 is somewhat brief and general in comparison to the Agency's later responses to GE's more detailed comments.

As described elsewhere in this RTC document and in Attachment A, the Final Permit relies primarily on technology-based effluent limits for discharges from the CDTs and technology-based best management practices (BMPs) to address the discharges from GE's drainage system outfalls to the Saugus River. These requirements include a prohibition on discharges from those outfalls during dry weather and a requirement that the level of dry weather flow in drainage system outfall vaults be minimized prior to forecasted wet weather conditions.

The Final Permit does also include water quality-based, numeric effluent limits for pH (monthly average and maximum daily limits) and Oil & Grease (O&G) (monthly average limit) that apply to discharges from the drainage system outfalls, but these limits are based on the anti-backsliding requirements of the CWA and EPA's NPDES permitting regulations. The Final Permit's numeric daily maximum limit for O&G is also consistent with the narrative requirement in both GE's current NPDES permit¹⁷ and the Massachusetts Surface Water Quality Standards pertaining to discharges of oil and grease,¹⁸ which prohibit discharges that would cause, among other things, a visible sheen or film on the water's surface. (Effluent data also suggests that GE can meet these limits with its existing technology.)

¹⁷ "There shall be no discharge of floating solids, oil sheen, or visible foam in other than trace amounts." See, e.g., 1993 GE NPDES Permit, §§ I.A.1.c; I.A.11.c.

¹⁸ 314 CMR 4.05(4)(b)(7) states for Oil and Grease, "These waters shall be free from oil, grease and petrochemicals that produce a visible film on the surface of the water, impart an oily taste to the water or an oily or other undesirable taste to the edible portions of aquatic life, coat the banks or bottom of the water course, or are deleterious or become toxic to aquatic life."

Elsewhere in its comments on the Draft Permit, GE states that there is no wet weather discharge through Outfall 018B. Accordingly, the Draft Permit limits at Part I.A.5 (Outfall 018B) have been eliminated, including the effluent limitations and monitoring requirements for that outfall.

GE also comments that EPA's references to standards used for other industrial sectors and settings (i.e., steam electric effluent guidelines and remediation general permit) are inapposite. EPA disagrees. In the Agency's view, we have made appropriate use of these (and other) materials. EPA explained the manner in which it was using these materials in the record for the Draft Permit. Moreover, these issues are discussed in more detail in Attachment A hereto as well as in other responses to GE's comments, such as the response to comment 4.2.2 concerning the application of the Steam Electric ELGs and the response to comment 4.2.3 concerning application of the RGP.

Finally, GE comments that "[o]n the water quality side, numeric limits are not feasible or necessary" Yet, neither technical nor economic feasibility are factors to be considered in determining water quality-based permit limits needed to comply with CWA 301(b)(1)(C). *See, e.g., In re Town of Westborough and Westborough Treatment Plant Board*, 10 E.A.D. 297, 312 (EAB 2002).

Comment 4.1: Numeric Water Quality-based Limits are not Feasible or Necessary and in any Event are not Justified Here.

Before imposing new, water quality-based effluent limits, EPA must first perform a "reasonable potential" analysis, and then determine and document the need for such limitations on the basis of this analysis. EPA's record does not reflect any such analysis or determination.

The mandate to perform a "reasonable potential" analysis derives from 40 C.F.R. §122.44(d)(1)(i), which requires EPA to determine whether a discharge "will cause, have the reasonable potential to cause, or contribute to, an excursion above any State water quality standard." In making this determination, EPA must "use procedures which account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the dilution of the effluent in the receiving water. 40 C.F.R. §122.44(d)(1)(ii).

In this proceeding, the factors that EPA must consider include: (1) control of point source discharges through the CDTs, (2) control of nonpoint source discharges through the remedial activities under the MCP, (3) the extensive buffering of the effluent with stormwater or noncontact cooling water, and (4) the mixing capacity of the receiving waterbody. As described elsewhere in these comments and supporting technical exhibits, EPA has failed to consider these factors.

As part of this NPDES renewal, GE provided EPA with effluent data that preceded the installation of the CDTs and, therefore, are no longer representative. *See* Section V. GE also provided, at EPA's request, data from sampling dry weather flows entering the drainage system prior to treatment. These limited data are also not representative, because they do not reflect (1)

treatment, (2) reconfiguration of portions of the drainage system, (3) dilution and mixing, or (4) continuing reduction in concentrations as a result of the MCP-related activities. See Sections II.C and III.D. Absent representative data for the commingled flows from GE's outfalls, EPA cannot legitimately conduct a reasonable potential analysis or assign water quality-based limits. Rather, EPA must allow GE to perform reasonable and representative monitoring so that EPA has an adequate basis to conduct a reasonable potential analysis in the next permit renewal or as part of a re-opener.

Even if EPA determines that a water quality-based limit is required as a result of a reasonable potential analysis (which arguably is premature), the Agency must document this determination. See *In the Matter of Broward County, Florida*, 4 EAD 705, 713 (EAB 1993) (“[EPA] must provide a detailed explanation of the factual basis for concluding that [the permittee’s] effluent has the reasonable potential for causing or contributing to a violation of [water quality standards], thus requiring regulation in accordance with 40 C.F.R. §122.44(d)(1).”). The lack of a documented reasonable potential analysis (including the evaluation of effluent variability) is in itself “clear error and grounds for a remand.” In *re Wash. Aqueduct Water Supply Sys.*, 11 EAD 565, 585 (EAB 2004).

Numeric Water Quality-based Limits are not Feasible.

Site-specific constraints render numeric limits infeasible given the size, nature and cost of a treatment system capable of capturing, collecting and treating all stormwater discharges to achieve end-of-pipe numeric targets. See Section IX.E and the accompanying Technical Exhibit.

Numeric Water Quality-based Limits are not Necessary. Non-numeric Limits (i.e., BMPs) are Adequate to meet Water Quality Requirements. EPA Lacks any Basis in Fact, or in the Permit Record, to Refute this.

As required by its existing NPDES permit, GE has developed a Stormwater Pollution Prevention Plan (“SWPPP”) and implemented a range of best management practices designed to minimize the impacts of its wet weather discharges. These practices are complimented by others maintained under GE’s remedial program and other voluntary environmental management systems. GE respectfully submits that its BMP-based approach is successful in achieving compliance with existing permit requirements, as well as meeting any future water quality- or technology-based expectations. Technical Exhibit 6 describes GE’s current suite of BMPs.

The use of BMPs in lieu of numeric limits is explicitly authorized by federal law and is consistent with EPA’s long-standing approach to water quality based effluent limitations in stormwater permits. Section 502 of the Clean Water Act defines “effluent limitations” generally as a “restriction,” thereby offering permit writers the flexibility to impose non-numerical limitations like BMPs. EPA has long endorsed this flexibility, both as a matter of regulation and policy. See Questions and Answers Regarding Implementation of An Interim Permitting Approach for Water Quality-Based Effluent Limitations in Stormwater Permits, Guidance for Fiscal Year 1997, 61 Fed. Reg. 57,425, 57,426 (Nov. 6, 1996):

Section 502 defines “effluent limitation” to mean any restriction on quantities, rates, and concentrations of constituents discharged from point sources. The CWA does not say that effluent limitations need be numeric. As a result, EPA and States have flexibility in terms of how to express effluent limitations. EPA has, through regulation, interpreted the statute to allow for non-numeric limitations (e.g., “best management practices” or BMPs, see 40 C.F.R. § 122.2) to supplement or replace numeric limitations in specific instances that meet the criteria specified at 40 C.F.R. § 122.44(k).... [Also] EPA has defended use of BMPs as a substitute for numeric limitations in litigation involving stormwater discharges....

The validity of the BMP-based approach has also been confirmed by case law. *See, e.g., NDRC v. Costle*, 568 F.2d 1369 (D.C. Cir. 1977) (prompting EPA’s promulgation of 40 C.F.R. 122.44(k)); *In re: Arizona Municipal Stormwater NPDES Permits for City of Tucson, Pima County, City of Phoenix, City of Mesa, and City of Tempe*, NPDES Appeal No. 97-3 (EAB 1998) (upholding permit writer’s decision not to impose numeric limits on grounds of infeasibility, in particular due to the unique nature of stormwater discharges) (subsequently appealed and decided on other grounds).

GE is aware of EPA’s recent revisions to a 2002 Agency memorandum entitled, “*Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Stormwater Sources and NPDES Permit Requirements Based on Those TMDLs*.” GE notes that the revisions are in flux as a result of a recent public comment process and EPA’s commitment to take action by August 15, 2011, to either retain the memorandum without change, to reissue it with revisions, or to withdraw it. Until then, it would be premature for EPA to apply the memorandum, as revised. In any event, GE does not believe that the memorandum is directly relevant to this proceeding. Nor does GE believe that the memorandum disrupts EPA’s longstanding approach to, and support for, BMPs where numeric limits are shown to be infeasible. That is clearly the case here, where numeric limits are infeasible due to site constraints and GE’s BMP-based approach is demonstrated to be effective in lieu of such numeric limits.

Numeric Water Quality-based Limits are Premature.

EPA cannot calculate or confirm the need for numeric stormwater limits until “background” conditions are established, and those conditions will not be known until the ongoing remediation work is completed. As described in Section II.C and III.D, this work proceeds apace with continuing progress toward the applicable remedial goals and endpoints, all of which have the potential to affect water quality conditions. Until the remediation is complete, any decision on numeric limits is premature. Deferring this decision is consistent with other relevant NPDES permit decisions involving ongoing remediation work within EPA Region 1.

Response to Comment 4.1:

This comment by GE raises several objections to the inclusion in the permit of any water quality-based effluent limits on discharges from the drainage system outfalls. First, the Draft Permit included numeric limits for pH and Oil and Grease for discharges from the drainage system outfalls consistent with the CWA’s antibacksliding requirements, *see* 33 U.S.C. § 1342(o) and 40 C.F.R. § 122.44(l), though EPA confirmed that these limits are also consistent with water quality

standards. The Draft Permit did include numeric, water quality-based limits at the drainage system outfalls for total suspended solids (consistent with the narrative requirement in the water quality standards) and total cyanide at Outfall 001 (consistent with the acute national water quality criteria for cyanide) (Fact Sheet p. 36-37 and 40-41). All other numeric limits for drainage outfalls in the Draft Permit were technology-based and are discussed in response to Comments 4.2 (below) and in Attachment A.

Regarding the few numeric, water quality-based limits in the Draft Permit, EPA responds that in both cases, application of a water quality-based limit was based on analysis of wet weather sampling data submitted by GE in support of its application for renewal of its NPDES permit. In both cases, the data indicated a potential to exceed limits based on narrative (for TSS) or numeric (for cyanide) water quality criteria. Having said that, EPA has eliminated new numeric, water quality-based limits at the drainage system outfalls from the Final Permit based on GE's comments, supporting information, and more recent wet weather monitoring data. The Final Permit retains only those water quality-based limits included to satisfy the anti-backsliding requirements of the statute and regulations. See 33 U.S.C. § 1342(o)(1); 40 C.F.R. § 122.44(l). These anti-backsliding-based requirements are also discussed in Response to Comment 4.0, above.

For reasons discussed elsewhere in this RTC document and in Attachment A, the water quality-based effluent limits from the Draft Permit not based on anti-backsliding have not been included in the Final Permit and have been replaced by monitoring requirements. EPA has determined based on current information that the Final Permit's technology-based BMP requirements should be effective for reducing the levels of pollutants discharged and meeting water quality standards. Monitoring data collected for the wet weather discharges from the outfalls will support a more rigorous analysis of reasonable potential in the future. Authority for the monitoring requirements is provided by CWA §§ 308(a) and 402(a)(2), 33 U.S.C. §§ 1318(a) and 1342(a)(2), and 40 C.F.R. §§ 122.44(i) and 122.48. GE's comments emphasize that the water quality data it has submitted is not representative of current discharge conditions. GE was in the best position to be aware of ongoing changes to the treatment system and other circumstances at the Lynn facility and it could have taken action to collect and submit timely data representative of discharges from the drainage system outfalls under varying weather conditions. In the absence of such data, however, it makes sense for EPA to impose monitoring requirements in the permit to try to ensure that such data will be collected in the future. Indeed, GE's comments state that "EPA must allow GE to perform reasonable and representative monitoring so that EPA has an adequate basis to conduct a reasonable potential analysis in the next permit renewal or as part of a re-opener."

Having obviated GE's concerns regarding numeric water quality-based limits for the drainage system outfalls, EPA responds to two additional points raised by GE.

(1) Numeric Water Quality-based Limits are not Feasible

As explained previously, the Final Permit has taken a primarily technology-based approach to addressing drainage system discharges to the Saugus River. That technology-based approach calls for a prohibition on dry weather discharges from the drainage system outfalls, treatment of

dry weather flows at the CDTs, and a requirement that drainage system outfall volumes be minimized prior to a precipitation event that is forecasted to trigger the opening of the tide gates. As also noted earlier, EPA has carefully considered GE's comments about cost and feasibility with regard to the full suite of technology-based BMPs contained in the Draft Permit (see Attachment A). That said, and as explained above, neither cost nor technological or economic feasibility are factors to be considered in determining whether water quality-based effluent limits would be appropriate in a particular permit. *See, e.g., In re Town of Westborough*, 10 E.A.D. at 312. Therefore, EPA disagrees with GE's comment to the extent that it argues that water quality-based effluent limits should not be included in the permit because it would be infeasible to meet them.

(2) Numeric Water Quality-based Limits are Premature

GE also comments that "EPA cannot calculate or confirm the need for numeric stormwater limits until 'background' conditions are established, and those conditions will not be known until the ongoing remediation work is completed." Assuming that such water quality-based limits were at issue here – which they are not – EPA disagrees that it could issue an NPDES permit without limits needed to satisfy state water quality standards on the grounds that the results of an ongoing remediation project should be assessed once it is completed at some time in the future. CWA § 301(b)(1)(C), 33 U.S.C. § 1311(b)(1)(C), plainly requires that a permit include any requirements needed to satisfy state water quality requirements. *See also* 33 U.S.C. § 1341(a)(1) (state water quality certification requirements). In the NPDES permitting context, background pollutant concentrations refer to those found in ambient conditions of the receiving water at the time of permit development.

Finally, EPA agrees with GE's comments regarding the use of BMPs in lieu of technology-based numeric limits. Indeed, EPA has largely relied upon BMP requirements in the Final Permit to address the discharges from the drainage system outfalls. EPA believes that transferring flows to the CDTs for treatment during dry weather, combined with minimizing the volume of dry weather flow in the vault released with stormwater when the outfall gate is triggered, meets the BAT standard for the discharges from the drainage system outfalls. The Final Permit includes monitoring during wet weather to ensure that the BMPs are sufficient to meet water quality standards.

Comment 4.2: EPA Lacks a Legitimate Technical Basis to Derive or Impose Numeric Technology-Based Limits.

Where, as here, a limit is not required by EPA's national effluent guidelines, then a case-by-case technology-based limit, based on best professional judgment ("BPJ"), may be imposed only if the permit writer performs the analysis required in 40 C.F.R. § 125.3. Under that regulatory provision, the permit writer must consider the factors in § 125.3(c):

- (i) The appropriate technology for the category or class of point sources of which the applicant is a member, based upon all available information; and
- (ii) Any unique factors related to the applicant.

The permit writer also must consider the factors in § 125.3(d), which are different for BPT, BCT or BAT requirements. For example, the factors for BPT requirements are:

- (i) The total cost of application of technology in relation to the effluent reduction benefits to be achieved from such application;
- (ii) The age of the equipment and facilities involved;
- (iii) The process employed;
- (iv) The engineering aspects of the application of various types of control techniques;
- (v) Process changes; and
- (vi) Non-water quality environmental impact (including energy requirements).¹⁹

When conducting the required § 125.3 analysis, the permit writer must look at both the industry as a whole and the particular facility.²⁰ In other words, before imposing a BPJ limit on GE, EPA must conduct a reasoned analysis of control technologies available for pollutant removal at jet engine manufacturing facilities in general, and at the Lynn Facility in particular. Moreover, that analysis must be included in the fact sheet for the Draft Permit. Here, it was not. Rather, EPA simply assumed, without any supporting analysis, that the proposed technology-based limits would be technically and economically feasible.

Notwithstanding the absence of the required BPJ analysis, EPA proposes to impose a number of new technology-based numeric effluent limits on wet weather discharges from the Facility. For example, EPA says that “consistent with the RGP and individual permit effluent limits for contaminated groundwater discharges and combined discharges at similar facilities in Massachusetts, EPA has on a BPJ basis established limits for benzene of 5.0 µg/L and total BTEX of 100 µg/L in wet weather discharges from the Drainage System outfalls.” EPA claims that these technology limits are “based on treatability using carbon adsorption, a proven technology capable of removing benzene and other petroleum hydrocarbons from water.” The fundamental flaw in EPA’s analysis is that the technology basis for the proposed limits is active treatment, which does not currently exist for wet weather discharges from the Facility. As EPA states in its Fact Sheet, such a system is infeasible/cost prohibitive to install.

Response to Comment 4.2:

GE comments that because there is no NELG that applies directly to pollutant discharges from the facility’s drainage system, any technology-based requirements imposed in the NPDES permit by EPA must be based on a BPJ application of the relevant technology standards. GE also points

¹⁹ 40 C.F.R. § 125.3(d)(1).

²⁰ See *U.S. Steel Corp. v. Train*, 556 F.2d 822, 844 (7th Cir. 1977); *Alabama v. EPA*, 557 F.2d 1101, 1110 (5th Cir. 1977).

to the criteria to be applied in such a BPJ determination, as per EPA regulations at 40 C.F.R. §§ 125.3(c) and (d). EPA agrees with GE's comment up to this point. It is consistent with EPA's explanation of how technology standards would be applied for the GE permit, as presented in Part I.V.B.1 of the Fact Sheet to the Draft Permit (*see pp. 16 – 23*). As EPA has also explained, the Agency may also look to a variety of other sources (e.g., NELGs for other analogous industries, permit limits for other analogous facilities) to support its development of site-specific limits on a BPJ basis.

GE's comment goes on, however, to state that EPA "simply assumed, without any supporting analysis," that the proposed technology-based limits could be met at GE. EPA disagrees with this comment. EPA provided its BPJ determination of technology-based permit limits for both dry weather and wet weather pollutant discharges from the drainage system outfalls in the Fact Sheet for the Draft Permit (*see pp. 28-48*), and the Agency's conclusions were not based on mere assumptions. Moreover, after considering the comments and supporting information received on the Draft Permit, EPA has revised and improved its BPJ analysis and appended it as Attachment A to this document.

GE also comments that EPA's BPJ determination of technology-based requirements for its facility must include an investigation of other *jet engine facilities* as well as an assessment of the facts of the GE facility, itself. As to the latter point, EPA agrees that it must consider the relevant factors for determining technology-based requirements, such as cost and engineering issues, in terms of the specific facts of the GE facility. EPA clearly has done so in the Fact Sheet and the revised analyses supporting the Final Permit. As to the former point, EPA also agrees with GE that in determining technology-based limits on a BPJ basis, it is appropriate to consider approaches to controlling pollution used by, and effluent limits set for, other facilities that are similar or analogous in pertinent ways to the subject facility. At the same time, however, EPA disagrees that it was required to investigate other jet engine facilities in order to develop technology-based limits for this permit on a BPJ basis. EPA explained, and GE has agreed, that there are no NELGs directly applicable to the GE facility's drainage system discharges. EPA also explained its view that in determining limits for GE, it was relevant to consider requirements in place for other facilities dealing with similar water pollution issues to those presented at GE's facility, such as the management of contaminated groundwater that has potentially been commingled with process wastewater and/or stormwater prior to discharge. EPA identified a number of such facilities and discussed them in its analysis. In setting limits to control this type of discharge of pollutants, EPA regards these facilities to be more relevant to the BPJ analysis than would be a jet engine facility without similar pollution problems. Furthermore, while EPA would gladly have considered a pertinent jet engine facility, the Agency is not aware of another jet engine facility presenting similar pollutant discharge problems as those presented at GE and the company has not identified one that it believes EPA should evaluate.

EPA also explained its view that it made sense to consider the NELGs for Steam Electric Power Plants, 40 C.F.R. Part 423, given the similarities between GE and Steam Electric Power Plants associated with equipment containing fuel oil and/or the leakage associated with the storage of oil. EPA has provided these explanations in the Fact Sheet as well as in Attachment A hereto.

GE goes on to comment that “[n]otwithstanding the absence of the required BPJ analysis, EPA proposes to impose a number of new technology-based numeric effluent limits on wet weather discharges from the Facility.” Upon further review of all relevant information, however, EPA’s Final Permit makes a number of changes to the numeric effluent limits that were proposed in the Draft Permit to control drainage system discharges during wet weather. As explained in Attachment A hereto, EPA has determined that the BAT and BCT for managing the commingled flow of stormwater, groundwater, and process wastewater that discharges through the Drainage System Outfalls is a package of BMPs that require GE to continue to transfer and treat flows at the CDTs during dry weather and to take steps to minimize the volume of dry weather flow contained in the vaults prior to a forecasted precipitation event.

The Final Permit includes numeric, technology-based limits for dry weather flows from Outfall 027A following treatment in the CDTs. These BPJ-based numeric limits are consistent with technology-based limits for activated carbon treatment at the CDTs (see Attachment A). These effluent limits are already in the existing NPDES permit and GE has not opposed retaining them in the new permit. The Final Permit, however, eliminates technology-based numeric limits for wet weather discharges from the drainage system outfalls, including the Draft Permit’s proposed technology-based effluent limits for discharges of BTEX and benzene. As GE comments, “active treatment ... does not currently exist for wet weather discharges from the Facility.” Because even minor stormwater flows overwhelm the vaults’ transfer pumps and trigger the tide gates to discharge commingled stormwater and dry weather flows to the Saugus River in a relatively short period (from 2 to 24 minutes depending on the outfall and drainage pipe flow), these discharges do not receive treatment either at the CDTs or through the oil water separator. As a result, GE may, as its comment indicates, not be able to meet the limits that were proposed Draft Permit. Therefore, EPA has concluded that the numeric, technology-based effluent limits contained in the Draft Permit that were based on treatment with an oil water separator and/or activated carbon should not be applied for wet weather discharges from the drainage system outfalls. The Final Permit includes monitoring requirements for BTEX and benzene, among other constituents, in place of the Draft Permit’s technology-based numeric effluent limits for the Drainage System Outfalls. Monitoring is necessary to confirm that the BMPs in the Final Permit address wet weather discharges from the Drainage System Outfalls in a way that is adequate to meet water quality standards. See Attachment A for the BAT analysis for the drainage system outfalls.

Comment 4.2.1: EPA is Required to Regulate Similar Facilities Similarly but has Failed to do so Here.

EPA indicates that GE’s Drainage System Outfalls are in many ways similar to Conoco Phillips Stormwater Outfall 001 and ExxonMobil Outfall 01A; however, monitoring requirements for the GE Drainage System Outfalls are in many ways more stringent. Examples include:

- Monitoring frequency for most GE parameters is monthly as compared to quarterly for Conoco Phillips and ExxonMobil;
- Total BTEX (100 µg/L) and benzene (5 µg/L) limits in the Draft Permit are more stringent than those for the other two facilities;

- Draft Permit requires quarterly chronic WET testing, whereas no WET testing is required for either Conoco Phillips 001 or ExxonMobil 01A;
- Draft Permit requires monitoring for PCBs, Total VOCs, 14 specific VOC parameters and 8 specific metals parameters, whereas there are no similar monitoring requirements for Conoco Phillips 001 and ExxonMobil 01A.

With regard to total BTEX and benzene, we note that in the ExxonMobil proceeding, EPA initially proposed technology limits on commingled discharges dominated by stormwater using a treatment technology developed to treat low-flow discharges of contaminated groundwater (i.e., similar to what EPA proposes here). However, ExxonMobil appealed those limits on grounds that EPA failed to determine that the technology was feasible at its facility for the particular commingled flows at issue. Based on this appeal, EPA later withdrew the contested limits.

We urge EPA to be consistent in its approach to similar facilities and discharges. Toward that end, EPA should remove the proposed limits for both total BTEX and benzene. Furthermore, we urge EPA to revisit the need for, types of, and frequency of the monitoring requirements for the other parameters noted above to ensure consistency among similar facilities.

Response to Comment 4.2.1:

In this comment, GE agrees that it makes sense for EPA to look to the Exxon/Mobil and Conoco Phillips permits in conducting the BPJ analysis, but, according to GE, the Draft Permit's requirements are inconsistent with NPDES permit requirements applied to those facilities. GE comments that EPA should rectify this problem first by removing the Draft Permit's proposed numeric limits for total BTEX and benzene in drainage system outfall discharges of groundwater commingled with stormwater. The Final Permit satisfies GE's comment in this regard because EPA has, for the reasons described above, removed these numeric effluent limits for wet weather discharges from the drainage system outfalls in the Final Permit. (While numeric effluent limits for these constituents are retained in the Final Permit for dry weather discharges from the CDTs (Outfall 027A), GE does not object to those limits.)

GE also asks EPA to "revisit the need for, types of, and frequency of the monitoring requirements for ... [a variety of] parameters ... to ensure consistency among similar facilities." GE points to a variety of monitoring requirements in the Draft Permit that it suggests are more stringent than, and inconsistent with, the NPDES permits issued to the ExxonMobil and Conoco Phillips facilities. Consistent with these permits, GE urges that the Draft Permit's conditions calling for monthly monitoring for a variety of constituents in wet weather discharges from the Drainage System Outfalls should be revised for the Final Permit to require only quarterly monitoring. EPA considered the ExxonMobil and Conoco Phillips permits during its development of the GE Draft Permit and has considered them again in response to GE's comments and to aid in the development of GE's Final Permit. EPA has also considered GE's comments regarding the relationship of its permit to the permits for these other facilities.

At the outset, EPA notes that there is no requirement that monitoring requirements for different, though similar, facilities must be identical. Monitoring requirements should be reasonable in light of the facts of each case and this standard allows for reasonable variation between the

requirements for similar facilities. Moreover, even similar facilities may have differences that lead to different monitoring requirements or effluent limits. EPA has properly developed the monitoring requirements for the GE, ExxonMobil and Conoco Phillips permits on a case-by-case basis. EPA includes the monitoring requirements in the Final Permit under the authority provided by CWA §§ 308(a) and 402(a)(2), 33 U.S.C. §§ 1318(a) and 1342(a)(2), and 40 C.F.R. §§ 122.44(i) and 122.48.

In the case of the permit for GE, the monitoring frequencies were set in an effort to produce sufficient data to reasonably characterize the discharges from the drainage system outfalls without imposing an overly burdensome monitoring program. The monitoring requirements in NPDES permits are always important, but they are particularly important with regard to GE's drainage system outfalls for several reasons. First, the wastewater in the drainage system consists of a mixture of process water, potentially contaminated groundwater infiltration, and stormwater and the latter two flows are variable in quality and uncontrolled prior to entry into drainage system. In other words, the wastewater in the drainage system can contain a changeable mixture of contaminants. Additional representative monitoring data will help EPA better characterize the identity and concentration of pollutants in the discharge. This will enable a determination of whether there is a reasonable potential to violate, or contribute to a violation, of water quality standards to be made with greater confidence. Second, sampling of the infiltrated groundwater has revealed a wide range of pollutants that may be present, including a number of toxic constituents. Monitoring data will help reveal whether any discharges of these toxins are occurring during wet weather. Third, while the Final Permit requires BMPs both to eliminate drainage system outfall discharges during dry weather and to minimize discharges of dry weather flows during wet weather, which EPA believes collectively meet technology-based standards and will protect water quality, untreated commingled flows from the drainage system outfalls will discharge to the Saugus River during wet weather (see Attachment A). Therefore, further characterization of this wastewater is needed and monitoring is critical to ensure that the BMPs sufficiently address wet weather discharges.

That said, GE comments that the monitoring requirements for the drainage system outfalls are more stringent than similar outfalls at Conoco Phillips and Exxon Mobil, which EPA agrees are similar in that outfalls at all three facilities discharge stormwater commingled with groundwater and have similar constituents of concern (e.g., VOCs and PAHs). Despite this similarity, there are also, however, substantial differences between the discharges from the three facilities which affect the monitoring requirements. Most importantly, both ExxonMobil and Conoco Phillips capture and treat stormwater and commingled groundwater up to and including the 10-year, 24-hour storm prior to discharge. In contrast, GE treats flows in its CDTs only during dry weather, while wet weather flows, which include a portion of dry weather flows (i.e., commingled infiltrated groundwater and process water), are discharged untreated to the Saugus River. Thus, while effluent monitoring is very important at all three facilities, it is of heightened importance at GE. While EPA has concluded based on current information that the BMP approach required by the Final Permit for wet weather discharges from the drainage system outfalls will meet technology- and water quality-based standards, further monitoring is required to characterize this wastewater and demonstrate whether water quality standards are being satisfied.

At the same time, consistent with the thrust of GE's comment, EPA has reconsidered the number of samples for both the effluent and the receiving water necessary to increase the data quality, reduce the standard deviation (i.e., variability), and increase the confidence level of the data set. In general, a larger sample size results in a greater confidence level that the sample collected is representative of the actual concentration of a parameter in the effluent at any given time. EPA's *Technical Support Document for Water Quality-based Toxics Control* recommends 8 to 12 samples for a chemical-specific effluent characterization process. However, because wet weather discharges from GE's drainage system outfalls are intermittent and likely to be highly variable, EPA believes that a higher number of samples is warranted to reduce uncertainty and more accurately characterize the effluent. Over a five-year permit term, quarterly sampling will yield 20 data points, rather than the 60 data points that would be collected from the monthly sampling proposed in the Draft Permit.

After reconsidering the issue, EPA has reduced the monitoring to a quarterly requirement, as GE requested, because the 20 data points will likely be sufficient to characterize the effluent and enable a robust analysis of the "reasonable potential" for a discharge to cause "an excursion above any State water quality standard" 40 C.F.R. § 122.44(d)(1)(i). The Final Permit has changed the Draft Permit's monthly monitoring requirements to quarterly monitoring requirements (*without* effluent limits) for wet weather discharges from the Drainage System Outfalls for TSS, BTEX, benzene, toluene, ethylbenzene, total xylenes, VOCs, individual VOCs, TRC, total PAHs, individual Group I PAHs, metals, and PCBs. In addition, in the Final Permit, EPA has dropped the Draft Permit's numeric limits for wet weather discharges, including the limits for BTEX and benzene, with the exception that the Final Permit has retained the effluent limits for the conventional pollutants pH and O&G, which are carried forward consistent with anti-backsliding (quarterly monitoring is also required for these constituents).

With regard to the whole effluent toxicity (WET) testing requirements for the drainage system outfalls at GE, WET testing requirements have been reduced to two per year and limited to the static 48-hour acute WET test. Due to the intermittent nature of the discharges during wet weather, EPA has dropped the requirements for chronic WET testing from these outfalls. This monitoring frequency is consistent with both the Conoco Phillips permit, which requires twice yearly acute WET tests for discharges from Outfall 001 (treated effluent), and the ExxonMobil permit, which requires twice yearly acute WET tests for discharges from Outfall 01C (continuous treatment effluent).

Regarding the other parameters that GE mentions in its comment (PCBs, total VOCs, individual VOCs, metals), EPA responds again that there is limited data representative of wet weather discharges from the drainage system outfalls at GE, but the data that is available indicates that these constituents may be present (see response to Comment 3.1). In response to GE's concerns, however, EPA has reduced the monitoring frequency in the Final Permit for these parameters to quarterly.

Comment 4.2.2: In the Absence of any Directly Applicable Effluent Guidelines, EPA Borrows from the Steam Electric Industry Sector based on a Comparison that is not Borne out by the Facts.

GE is a jet engine manufacturer. None of the wastewater streams at issue in this permit proceeding are subject to national effluent limitations guidelines (NELGs). Absent any directly applicable NELGs, EPA proposes to borrow from the steam electric NELGs. EPA's proposal extends beyond GE's Power Plant to other outfalls that have nothing to do with power generation. Even at the Power Plant, application of the steam electric NELGs would be inappropriate.

At the time EPA developed the steam electric NELGs, the Agency was aware that many manufacturing plants generated power for their operations, but EPA specifically decided to exclude them from coverage under the rule by focusing on facilities primarily engaged in the generation of electricity for distribution and sale. As a result, EPA did not develop any kind of record of evaluation for manufacturers like GE.

GE's Power Plant is distinguishable from commercial power production facilities because electricity generation is not its primary mission. The GE Power Plant is more aptly termed the "GE Steam Plant" because it was designed primarily to produce various levels of steam pressure for site operations, including 650 psig steam needed for specialized and intermittent aircraft engine and component testing. Due to the critical nature of process steam at the site as well as operational issues relating to starting boilers and time to reach required pressure/temperature, the GE Power Plant operates a minimum of two boilers at all times.

The boilers produce significantly more steam than is required to support site steam consumption external to the GE Power Plant, and in order to avoid venting excess steam, the GE Power Plant uses the excess steam to produce electricity. Thus, electrical generation at the GE Power Plant frequently is driven by the need to condense steam generated by boilers operating at minimum turndown. It does not produce all the electrical power needed at the Facility, and GE purchases the other electrical power it needs from the local grid at a lower cost.

The GE Power Plant serves an ancillary and support function for the manufacturing operations; it covers only 1.4 % of the space at the Facility. For the last two years, GE has received essentially zero revenue from selling or exporting electric power to the local grid.

In the steam electric NELGs, EPA predicated the numeric limits for total suspended solids (TSS) and oil and grease on data from many facilities in the industry that burn coal and oil to produce steam, which in turn produces fly ash and bottom ash that may contaminate various wastewaters. By contrast and as noted previously, the GE Power Plant essentially burns only natural gas.

Low volume waste streams considered in the steam electric NELGs included boiler blowdown, wet air scrubber pollution control systems, ion exchange water treatment system discharges, water treatment evaporation blowdown, laboratory and sampling waste streams, floor drains, cooling tower basin cleaning wastes, and discharges from house service water systems. By

contrast at GE, many of these wastestreams are not present or, alternatively, discharge to the LWSC, which is the local POTW.

The only wastewater streams discharged by the GE Power Plant that fit the steam electric NELGs profile are boiler blowdown and ion exchange regeneration water that discharge through Outfall 018 and Outfall 019, respectively. Outfall 019 also receives a stormwater component, so it and all of GE's other wastewater and stormwater streams are fundamentally dissimilar discharges from those contemplated by EPA in adopting the NELGs.

In EPA's 2009 detailed study of the steam electric industry, the Agency found that the steam electric NELGs are rarely applied as BPJ to facilities such as the GE Power Plant. *Steam Electric Point Source Category: Final Detailed Study Report* (EPA 821-R.-09-008), p. 7-19 Oct. 2009. As a part of its study, EPA reviewed a category of facilities it terms "industrial non-utilities" which includes "cogenerators, small power plants, and other non-utility generators [that] generally do not produce electric power for distribution and/or sale." *Id.* at 7-10. This group of facilities included NAICs 336 (Transportation Equipment Manufacturing) among many other types of manufacturing categories. *Id.*, Table 7-3, p. 7-14. Thus, EPA's consideration of industrial non-utilities likely included the GE Power Plant.

In summary, there is no requirement to -- and no justification for -- applying the steam electric NELGs through BPJ to the GE Power Plant (let alone any of the other outfalls at the Facility).²¹ Any BPJ application of the guidelines would be grossly inappropriate because the nature and kind of discharges from this facility are not at all analogous to the discharges contemplated by the Part 423 guidelines, as demonstrated above. Additionally, EPA has determined that a similar group of plants rarely has BPJ steam electric limits applied, which demonstrates that it would be unfair to apply them to the Facility.

Finally, EPA is planning to revise the existing steam electric NELGs, and has agreed to propose its revisions by July 2012. As a part of that rule, EPA may clarify regulation of small power plants at industrial non-utilities. EPA's focus on industrial non-utilities in the 2009 detailed study shows that EPA is aware of the issue and is very likely to address it. In the meantime, it would be premature to apply the existing steam electric NELGs.

Response to Comment 4.2.2:

GE comments that the Draft Permit's requirements were improperly based upon the National Effluent Limitations Guidelines for the Steam Electric Power Generating Point Source Category, 40 C.F.R. Part 423 (Steam Electric NELGs). GE's comment argues that the Power Plant (which GE now suggests would be better labeled as the "GE Steam Plant"), and its discharges, are different from those that EPA developed the Steam Electric NELGs to address. For example, GE states that unlike the facilities addressed by the Steam Electric NELGs, its Power Plant does not sell electric power to a significant degree (noting that it has received no revenue from any such sales for the prior two years), serves only a supporting, subsidiary role at the GE Aviation facility, occupies only a small fraction of the total space at the facility, and provides only a

²¹ This conclusion applies in equal measure to the steam electric BMPs that EPA borrowed from the MSGP for this proceeding.

portion of the overall facility's power needs. GE also argues that EPA applied the Steam Electric NELGs beyond GE's Power Plant to support permit requirements for discharges from other outfalls that have nothing to do with power generation.

GE states that at the time EPA developed the Steam Electric NELGs, the Agency was aware that many manufacturing plants generated power for their own operations, but that EPA specifically decided to exclude those manufacturing plants from coverage under the NELG, deciding, rather, to focus on facilities primarily engaged in the generation of electricity for distribution and sale to other parties. Moreover, GE suggests that EPA "may clarify," and "is very likely to address," the regulation of power plants at industrial non-utilities when it updates the Steam Electric NELGs in July 2012, and that EPA should not apply these NELGs to GE prior to reviewing the updated regulations. In addition, GE also argues that the waste streams that the Steam Electric NELGs were designed to address, such as discharges of TSS from coal-burning power plants, are different from the waste streams that its natural gas-burning facility produces.

While EPA agrees with certain aspects of GE's comment, the Agency disagrees with other aspects of the comment as well as its overall thrust. EPA has been clear that there is no ELG that strictly applies to GE's facility and dictates the new NPDES permit's limits.²² As a result, and as was explained in the Fact Sheet for the Draft Permit, EPA considered the requirements contained in certain NELGs and NPDES permits for similar or analogous types of facilities or industries that could reasonably inform the development of NPDES permit conditions for GE's Lynn facility.

For example, the Steam Electric NELGs address certain pollutants commonly discharged by the Steam Electric Power Generating Point Source Category, *see* 40 C.F.R. Part 423, but these NELGs do not strictly apply to GE's Lynn facility. The Steam Electric NELGs are "applicable to discharges resulting from the operation of a generating unit by an establishment *primarily engaged in the generation of electricity* for distribution and sale which results primarily from a process utilizing fossil-type fuel ... in conjunction with a thermal cycle employing the steam water system as the thermodynamic medium," 40 C.F.R. § 423.10 (emphasis added), but EPA expressly concluded in the Draft Permit's Fact Sheet that GE's Lynn facility is *not* primarily engaged in the generation of electricity for distribution and sale. Therefore, EPA also concluded that the GE permit's limits are not strictly governed by the Steam Electric ELGs. Nevertheless, EPA determined on a case-by-case, BPJ basis that it was reasonable to rely *in part* on the Steam Electric NELGs to help in the development of certain technology-based limits for GE's permit. This is because the discharges from the GE Power Plant raise largely the same water pollution control issues as those raised by facilities that *are* covered by the Steam Electric NELGs. Although GE Aviation is not "primarily engaged in the generation of electricity for distribution and sale,"²³ GE *does* operate an on-site steam-electric power plant (fired by natural gas) for the

²² EPA has not promulgated NELGs for manufacturers of Aircraft Engine and Engine Parts (SIC 3724) and Speed Changers, or of Industrial High-Speed Drives, and Gears (SIC 3566).

²³ Although not primarily engaged in the generation of electricity for distribution and sale, GE has at times distributed and sold some of the electricity it generates at the Lynn facility.

production of steam and electricity. In other words, the facility has pollutant “discharges resulting from the operation of a generating unit . . . engaged in the generation of electricity . . . which results primarily from a process utilizing fossil-type fuel . . . in conjunction with a thermal cycle employing the steam water system as the thermodynamic medium.”

As outlined in Chapter 7.2 of the Steam Electric Power Generating Point Source Category: Final Detailed Study Report:²⁴

The steam electric generating process used at industrial non-utilities is similar to that used by all steam electric plants, as described in Section 3.2. A boiler or Heat Recovery Steam Generator (HRSG) is used to generate steam that is in turn used (at least in part) to drive an electric generator or turbine. Finally, the steam is condensed through noncontact cooling before it is returned to the boiler. Additionally, some of the steam generated may be used by the plant for other process operations. Since the processes are similar, EPA expects that industrial non-utilities generate wastewater from the same sources as do steam electric plants regulated under the Steam Electric Power Generating effluent guidelines.

Wastewater generated by the steam electric processes at industrial non-utilities is not currently regulated by the Steam Electric Power Generating effluent guidelines, because the plants are not “...primarily engaged in the generation of electricity for distribution and sale...” With the exception of certain instances (e.g., certain subcategories of the Pulp, Paper and Paperboard effluent guidelines; see 40 C.F.R. Part 430.01(m)), steam electric wastewaters from industrial non-utilities are not directly regulated by effluent guidelines. Information that EPA obtained during the detailed study indicates that industrial plants operating steam electric generating units use a similar process as those plants currently regulated under the Steam Electric Power Generating effluent guidelines. These industrial plants use both fossil and non-fossil fuels to generate the steam to drive the turbines.

The electric generating units at industrial facilities are typically smaller than those at plants regulated under the Steam Electric Power Generating effluent guidelines. Additionally, the industrial non-utilities burning coal as the primary fuel source typically burn significantly less coal than the coal-fired steam electric plants regulated under the Steam Electric Power Generating effluent guidelines. Because industrial non-utilities tend to be smaller in terms of electric power production and coal usage, the relative volume of wastewater discharged by these plants associated with electricity generation is likely to be less than that discharged by steam electric plants regulated under the Steam Electric Power Generating effluent guidelines.

The information collected during the detailed study indicates that most industrial plants commingle the wastewaters associated with the electric generating units with the other plant process wastewaters. Because the wastewaters are commingled, they may be treated in the plant’s wastewater treatment system. These commingled wastewaters typically

²⁴ EPA 821-R-09-008

have permit limits based on the industry-specific effluent guidelines; the Steam Electric Power Generating effluent guidelines limits are typically not used to set BPJ-based limits.

Based in part on the above analysis, GE suggests that EPA should not use the Steam Electric NELGs to help inform its BPJ-based limits for the GE permit. Yet, EPA does not agree. First, EPA's observation that the Guidelines have not "typically" been used to set BPJ-limits at subsidiary power plants at industrial facilities does not legally bar EPA from doing so for this permit. In addition, EPA states that commingled wastewaters typical of industrial facilities have permit limits based on industry-specific effluent guidelines. As EPA has indicated in this response and elsewhere in this document, EPA has not promulgated NELGs for manufacturers of Aircraft Engine and Engine Parts and Speed Changers, or of Industrial High-Speed Drives, and Gears. Therefore, there is no alternative NELG that would take precedence over the Steam Electric NELGs. At the same time, EPA's analysis quoted above indicates the areas of similarity between the industrial processes and wastewater generated by steam electric power plants regulated by the Steam Electric NELG and the industrial processes and wastewater generated by the steam electric processes at industrial non-utilities. This suggests that it may make sense to consider the NELGs for the purpose of developing BPJ-based limits for industrial non-utilities with steam electric generating units.

Finally, GE comments that it is premature for EPA to apply the existing steam electric NELGs, and that EPA should wait for revisions to these NELGs. However, although EPA proposed revisions to the NELGs on June 7, 2013, these revisions have not been finalized and are not in effect. At present, EPA plans to sign a decision taking final action on the rulemaking by September 30, 2015. The additional time will allow EPA to respond to the large volume of public comments received on the rule. See <http://water.epa.gov/scitech/wastetech/guide/steam-electric/proposed.cfm>. Therefore, not only is a new Final Rule not yet in effect, but it is presently unclear what the terms of such a Final Rule will be. Therefore, EPA concludes that it should not rely on the Proposed Rule in developing this BPJ permit, but that the existing Steam Electric NELGs, which are still in effect, can reasonably inform the development of certain NPDES permit conditions for GE's Lynn facility.

Having said that, these NELGs were used only to inform the BPJ limits for pH, oil and grease, and total suspended solids (TSS) at Outfall 018C and the numeric, technology-based TSS limit at Outfall 027A. According to GE, discharges from Outfall 018C include boiler startup/soot blower drains/boiler draining for maintenance, de-aerator storage tanks, and boiler blowdown. As GE states, boiler blowdown is considered a low volume waste consistent with the Steam Electric ELGs. Therefore, EPA does not believe that the limited use of the Steam Electric ELGs to inform the BPJ numeric limits for Outfall 018C is improper. Contrary to the suggestion in GE's comment, the TSS and O&G standards are not applied only to coal-burning power plants. The technology-based numeric effluent limit for TSS at Outfall 027A was based not on the similarity of wastestreams, but on the identification of TSS as a potential pollutant due to the drainage associated with equipment containing fuel oil and/or the leakage associated with the storage of oil (USEPA, 1982). In developing effluent limits for Steam Electric Source Category, EPA considered the level of treatment that could be technologically achieved for TSS using an oil/water separator and set corresponding limits in the guidelines. Given that GE uses oil/water separator technology in the drainage system vaults to treat the flow accumulated therein prior to

conveying that flow to the CDTs for further treatment, EPA used the same TSS limits (BPT limits of 100 mg/L (daily maximum) and 30 mg/L (30-day average)) established for steam electric facilities for GE in the Draft Permit. Furthermore, the equalization tanks that GE uses in connection with the CDTs will also remove TSS. Indeed, if TSS levels were not adequately controlled, they could interfere with the effectiveness of the GAC units in the CDTs. In developing similar TSS limits for the RGP, EPA pointed out that TSS limits were particularly important for maintaining good operation of subsequent treatment units, such as carbon adsorption. EPA notes that the RGP's limits are consistent the TSS limits in GE's permit. The Final Permit retains this numeric, technology-based TSS limit at Outfall 027A. This TSS limit, and the consideration of the Steam Electric NELGs, is also consistent with NPDES permit issued to Conoco Phillips (NPDES Permit No. MA000406) (also see discussion of Final Permit limits for Outfall 027A in Attachment A). EPA is confident that GE will be able to meet the TSS limits in the Final Permit if it properly maintains and operates its existing treatment equipment.

EPA disagrees with GE's comment that the Agency applied or used the Steam Electric NELGs to develop limits for the numerous other discharges at the facility (e.g., the drainage system outfalls). As stated in the Fact Sheet, the numeric limits for pH and oil and grease at Outfalls 001, 007, 010, 014, 018B, 019, 027B, 028, 030, and 031 were based on water quality and/or carried forward consistent with anti-backsliding regulations.

Comment 4.2.3: Application of the RGP to the Facility's Discharges is Inappropriate.

EPA cites to the Remediation General Permit (RGP) as a basis for limits and monitoring conditions at a number of the Facility's wet weather outfalls based on the assumption that these outfalls "may discharge contaminated groundwater under certain circumstances." EPA used the RGP as justification to assign monitoring requirements and/or effluent limits for such parameters as TSS, BTEX (and specifically benzene), VOCs and PAHs.

The RGP provides NPDES permit coverage to sites discharging contaminated water (most often treated prior to discharge) associated with site remediation activities, construction dewatering of contaminated construction sites and "other miscellaneous contaminated discharges." Although remediation continues to occur at the Facility, as described in Sections II.C and III.D, the majority of wastewater from GE's remedial activities is routed to the LWSC municipal sewer system. Groundwater infiltration into the Facility's Drainage System is collected as dry weather flow and routed to the CDTs for treatment prior to discharge; therefore Outfall 027A is the only outfall that could be said to have a significant component of treated groundwater.

In spite of this, EPA chose to regulate other outfalls based on the RGP because minor quantities of dry weather flow are commingled with stormwater and discharged during storm events when the Drainage System gates are open. GE estimates that an inconsequential percentage of the wet weather discharge from the Drainage System Outfalls consists of dry weather flows over the course of any given wet weather event. These flows include not just groundwater but other authorized dry weather contributions. As a result, the percentage of groundwater is smaller than the percentage of dry weather flows, and the percentage of actually contaminated groundwater is even smaller (due to all of the pipe relining and replacement, as well as other remedial activities). In effect, EPA would require GE to achieve the technology standard for a 100% remedial

wastewater stream at outfalls that receive a minimal amount of impacted groundwater. This is neither feasible nor appropriate.

Furthermore, any application of the RGP to outfalls such as Outfall 014 or other drains where groundwater infiltration has been excluded by pipe rehabilitation or relining would be even less appropriate. These outfalls exhibit none of the flows or characteristics that would make the RGP relevant.

In summary, the quantity and quality of GE's discharge is not consistent with the characteristics of discharges from a remediation site typically associated with coverage under the RGP. Therefore, it is inappropriate to use the RGP parameter lists and associated effluent limits as a BPJ basis for assigning monitoring parameters and/or effluent limits for GE's wet weather outfalls.

Response to Comment 4.2.3:

The Remediation and Miscellaneous Contaminated Sites General Permit (RGP) provides NPDES permit coverage to sites discharging contaminated water (most often treated prior to discharge) associated with site remediation activities, construction dewatering of contaminated construction sites and "other miscellaneous contaminated discharges."

GE objects to EPA's use of the RGP to help justify assigning monitoring requirements and/or effluent limits in GE's permit for such parameters as TSS, BTEX (and specifically benzene), VOCs and PAHs. While noting that groundwater remediation continues to occur at GE's Lynn facility, GE states that "the majority of wastewater from GE's remedial activities is routed to the LWSC municipal sewer system." GE also states that "groundwater infiltration into the Facility's Drainage System is collected as dry weather flow and routed to the CDTS for treatment prior to discharge; therefore Outfall 027A is the only outfall that could be said to have a significant component of treated groundwater."

EPA does not agree with GE's objection to the Agency's use of the RGP, but, as explained below, changes made by EPA from the Draft to the Final Permit may resolve GE's concern. EPA did not rely solely or strictly on the RGP in developing requirements for GE's permit. The RGP was but one of many reference points, including NPDES permits for other facilities dealing with similar water pollution issues (such as Exxon/Mobil and Conoco Phillips), that EPA looked to in developing GE's permit limits on a BPJ basis. Given the RGP's application to discharges of contaminated groundwater from remediation sites, EPA continues to view it as an appropriate point of reference for GE's permit given that GE's site has contaminated groundwater that infiltrates the drainage system and which is reasonably likely to be discharged to the Saugus River during wet weather.

That said, while the Draft Permit established numeric effluent limits for BTEX and benzene at the drainage system outfalls based on BPJ, referencing the RGP and similar NPDES permits (specifically ExxonMobil), EPA has dropped these effluent limits from the Final Permit. Instead, the Final Permit includes only monitoring requirements for these contaminants. Moreover, the Final Permit has not retained the Draft Permit's proposed requirement to treat the

first flush of wet weather flow in the CDTS. Wet weather discharges do not receive treatment with activated carbon or an oil-water separator because the skimmer and transfer pumps to the CDTS are quickly overwhelmed by inflow during storms. Therefore, numeric limits based on these treatment technologies are not appropriate for wet weather drainage system discharges at GE (see Attachment A). EPA has determined that the BMPs in the Final Permit that are intended to minimize the amount of dry weather flow that is discharged from the drainage system vault outfalls during wet weather will meet the technology-based requirements of the CWA.

For the CDTS itself (Outfall 027A), however, the Final Permit retains the Draft Permit's effluent limitations based on BPJ, referencing the RGP and other sources of information, such as the ExxonMobil NPDES permit, for TSS, TPH, PAHs (Group I and Group II), BTEX, benzene, and various VOCs (See Attachment A). EPA considered the RGP,²⁵ and its supporting analysis, to assist in determining technology-based limits for the permit because the GE Lynn facility may discharge contaminated groundwater under certain circumstances. The RGP is therefore an appropriate source of information because the groundwater contaminants of concern at the GE Lynn facility are similar to those found in the groundwater at facilities surveyed in development of the RGP. Additionally, the activated carbon treatment technology and oil water separators that GE employs at the CDTS to treat its dry weather flows is similar to the technology upon which the RGP permit limits were based.

5. Monitoring Requirements are Burdensome and Unreasonable.

Comment 5.0:

Although GE is willing to conduct reasonable monitoring to demonstrate the quality of its discharges and the effectiveness of its treatment systems and controls, the monitoring regime proposed by EPA is unreasonable and should be revised. With respect to chemical parameters, EPA has assigned monitoring requirements that are not based on representative data, are not necessary, are impracticable or otherwise infeasible, are costly in comparison to any perceived benefits, and are not consistent with other relevant NPDES permits. Similarly, with respect to whole effluent toxicity, EPA's proposed testing parameters will not yield representative results, especially when based on wet weather flows; are otherwise unnecessary, impracticable and infeasible with disproportionate costs; and reflect dissimilar treatment of otherwise similar facilities. Finally, with respect to bioaccumulation, EPA's proposed study of blue mussels is inappropriate.

Response to Comment 5.0:

GE comments on the monitoring requirements in the Draft Permit, specifically for each parameter, WET testing, and bioaccumulation. EPA believes the monitoring requirements included in the Final Permit are reasonable, necessary and practicable to, as GE states, demonstrate the quality of the facility's effluent discharges and the effectiveness of its treatment

²⁵ In writing this fact sheet, EPA referred to the 2005 RGP and fact sheet. The 2010 RGP, effective September 10, 2010, used the same basis in deriving limits for each of the parameters as the 2005 RGP (see Attachment A to the 2010 RGP Fact Sheet for the applicable 2005 RGP Fact Sheet Excerpts: http://www.epa.gov/region1/npdes/remediation/RGP2010_FactSheet_AttachmentA.pdf)

systems. In particular, the wastewater in the drainage system can contain a changeable combination of contaminants from a mixture of process water, potentially contaminated groundwater infiltration, and stormwater. Additional representative monitoring data will help EPA better characterize the identity and concentration of pollutants in the discharge, which will in turn enable a determination of whether there is a reasonable potential to violate, or contribute to a violation of, water quality standards to be made with greater confidence. In addition, while the Final Permit requires BMPs both to eliminate drainage system outfall discharges during dry weather and to minimize discharges of dry weather flows during wet weather, which EPA believes collectively meet technology-based standards and will protect water quality, untreated commingled flows from the drainage system outfalls will discharge to the Saugus River during wet weather (see Attachment A). Therefore, further characterization of this wastewater is needed and monitoring is critical to ensure that the BMPs sufficiently address wet weather discharges.

In response to GE's comments, the Final Permit includes many changes to the monitoring requirements proposed in the Draft Permit, including a reduction in frequency for many parameters and elimination of many of the monitoring requirements to which GE objects. EPA does not believe that the Final Permit's monitoring requirements are inconsistent with other relevant NPDES permits or are costly in comparison to perceived benefits. EPA responds to each point raised by GE in the response to comments specific to each subject, below.

Comment 5.1: Chemical Monitoring.

Comment 5.1.1: EPA Relied on Non-Representative Data in Selecting the Parameters to be Monitored, Specifically, VOCs, Metals, PAHs, PCBs, TRC, BTEX and MTBE.

EPA assigned monitoring requirements based primarily on water quality data for dry weather and wet weather flows collected in February 1998; however, EPA failed to account for the fact that the operation and configuration of the dry weather and wet weather outfalls have changed significantly since these data were collected.

Most significantly, the February 1998 data set preceded the installation of the CDTs and Drainage System, vaults and gates. As a result, these data do not reflect the proven collection and treatment capabilities of the CDTs and related infrastructure.

In addition, several significant soil and groundwater remediation projects have been implemented at various locations across the GE property since 1998, resulting in significant improvements in groundwater quality, not to mention reductions in the quantity of contaminated groundwater infiltrating into the drainage system. As a result of these changes, the February 1998 wet weather and dry weather water quality data reflect much higher concentrations of constituents of concern than currently exist and are not representative of current conditions.

The February 1998 water quality data are also not representative of current conditions at the non-wet weather outfalls (014, 018 and 020). The infrastructure serving Outfall 014 (concrete vault and pipeline to the river) was lined and sealed in December 2002, and, in turn, receives minimal (if any) groundwater infiltration. In 1998, Outfall 020 received wet weather flow from a local

storm drain; however, flow from this drain was re-routed to Outfall 027 after 1998. At present, the Outfall 020 discharge consists solely of excess river water not used by the power plant cooling system. Outfall 018 currently does not receive wet weather flows. All of these changes affect the quality of the discharges from Outfalls 014, 018 and 020, and render the earlier February 1998 data non-representative of current conditions.

In addition to changes at the Facility since 1998, GE questions the quality of the 1998 dataset and the possibility that the analytical results may be biased high as a result of analytical interference or other possible sampling/analytical errors or anomalies.

A separate set of dry weather samples was collected at Outfalls 010, 018 and 019 in September 1998 as part of an “ultra clean” outfall monitoring study (this study was provided in Appendix C of GE’s May 2000 NPDES renewal application). Samples were analyzed for a subset of metals, with one group analyzed using the same conventional (EPA 200.7) method that was used in the February 1998 sample set. As indicated in Technical Exhibit 7 (dry weather samples), analytical results for metals in September 1998 were consistently and significantly less (typically by an order of magnitude) than the February 1998 results. A similar trend would have been expected for wet weather data. After reviewing the two data sets, GE believes that the differences may derive from errors in the February 1998 sampling or analysis.

There are also potential issues associated with “false positive” results due to interferences associated with analysis of certain parameters in a salt water sample. For example, copper and selenium are demonstrated to have the potential for “false positive” and/or elevated results due to matrix interference.²⁶ GE is concerned that both parameters were assigned limits at Outfall 018 in the Draft Permit, even though the basis for those limits may be “false positive” results in the application record.

“False positive” detection of cyanide is also a common occurrence, and GE believes that such a false positive detection occurred in the February 1998 Outfall 001 wet weather sample. As noted in EPA’s *Final Report: Low-Level Speciation of Cyanide in Waters* (EPA 2001), “EPA-approved methods for the determination of weak associated cyanide (and total cyanide) typically are not sensitive enough in routine operation to yield reliable analytical results in the low µg/l concentration range.” A presentation by William Telliard (retired from EPA) entitled *Past and Present Approaches in Dealing with Cyanide* (Telliard 2009) cites a 1994 report on cyanide

²⁶ Selenium and copper are considered “problem elements” whether done by furnace or hydride generation AA or traditional ICP and ICP MS techniques, and salt or brackish water can be a challenging matrix for the determination of metals. Elevated levels of sodium can make it difficult to accurately quantify metals present in trace quantities. However, chloride, sulfur, and calcium, in particular, can combine with the argon gas used in ICP determinations to form polyatomic ions with the same mass to charge ratio as various selenium isotopes to produce false positives. A similar effect can be seen with copper due to the combination of sodium with argon gas. EPA’s “Recommended Guidelines for Measuring Metals in Puget Sound Marine Water, Sediment and Tissue Samples” (EPA 1997) and Thermo Fisher Scientific’s “Rapid, Simple, Interference-free Analysis of Environmental Samples Using the XSERIES 2 ICP-MS with 3rd Generation CCTED (Thermo Fisher Scientific 2007), provided in Technical Exhibit 8 of these comments, provide supporting discussion of potential matrix interference issues associated with analysis of certain metals in a salt water matrix.

analysis that stated that there is “no sound” measurement technique for cyanide measurement. With consideration of these and other relevant factors, the February 1998 detection of cyanide at Outfall 001 was a false positive, potentially due to limitations of the analytical method used and/or laboratory error.

In addition, interferences due to the presence of bromine and manganese in a brackish water environment may cause “false positives” in total residual chlorine (“TRC”) samples. EPA noted levels of TRC in 2009 sample data provided by GE at various outfalls, including some to which potable water is not discharged.²⁷

Finally, GE questions EPA’s use of untreated dry weather flow data from July 2009 as the basis for selecting monitoring requirements for wet and commingled wet/dry weather flows. The majority of the dry weather flow that was monitored in July 2009 would be collected and conveyed to the CDTs for treatment prior to discharge from Outfall 027A. Moreover, as described in more detail in Section IX.F, based on a conservative analysis of commingled volumes and pollutant concentrations in the vaults, considerable mixing occurs in the drainage system prior to discharge, leaving all but one parameter (copper) below applicable criteria at the initial point of discharge, and all parameters below applicable criteria within a few minutes of the initial point of discharge. In short, GE’s existing data confirm that there are no water quality issues associated with discharges from the Drainage System Outfalls during wet weather. As a result, further monitoring of these discharges -- at the level and frequency proposed by EPA -- is neither necessary nor appropriate. Representative monitoring of a few indicator parameters at a few representative outfalls at regular quarterly or semi-annual intervals would be adequate to properly characterize and demonstrate the quality of these discharges.

Response to Comment 5.1.1:

GE’s comment suggests that the data available to EPA at the time of the Draft Permit (which was provided by GE in the permit application and several later supplemental submissions) is not representative of the effluent from GE’s outfalls. GE comments that EPA based its monitoring requirements on data from February of 1998 that is not representative because it does not account for changes in the operation and configuration of the outfalls, including the treatment capability of the CDTs (installed in 2000) and remediation projects that have decreased the infiltration as well as improved the quality of groundwater on the site.

First, EPA disagrees with GE’s comment that monitoring frequencies were based primarily of permit application data from 1998. EPA consulted numerous sources of monitoring data submitted by GE, including data submitted with the permit application, groundwater sampling data submitted in May 2000 as part of GE’s NPDES Permit Renewal Application Revision,²⁸ a list of constituents that have been detected in the groundwater at the site,²⁹ and wet weather and

²⁷ Oxidizing agents such as bromine in estuary and marine samples, oxidized forms of manganese as well as some other metals, peroxides, turbidity, and color are often found in wastewaters at levels that will interfere with residual chlorine analyses. <http://www.lagoononline.com/laboratory-articles/total-chlorine-residual-2.htm>.

²⁸ NPDES Permit Renewal Application Revision, May 2000.

²⁹ E-mail correspondence from Steven Lewis (GE Aviation) to Nicole Kowalski (EPA), March 25, 2009, Attachment: Complete list of constituents that have been detected in the groundwater at the site.

dry weather flow data collected by GE in 2009 pursuant to an EPA CWA Section 308 request for information. Moreover, the monitoring frequencies in the Draft Permit were set in an effort to produce sufficient data to reasonably characterize the discharges without imposing an overly burdensome monitoring program. EPA determined that a robust suite of monitoring requirements was particularly important with regard to GE's drainage system outfalls because the wastewater in the drainage system consists of a mixture of process water, potentially contaminated groundwater infiltration, and stormwater and the latter two flows are variable in quality and uncontrolled prior to entry into drainage system.

EPA agrees that the 1998 data would not be representative of treated effluent from the CDTs. However, the CDTs, as currently operated, does not eliminate the commingling of dry weather flows with the first flush of storm water flows for discharge through the Drainage System Outfalls during wet weather. When the inflow of stormwater to the drainage system vaults triggers the tide gates, the vaults discharge directly to the Saugus River. This wastewater can contain a changeable mixture of contaminants. Monitoring data will help EPA better characterize the identity and concentration of pollutants in the discharge. This will enable a determination of whether there is a reasonable potential to violate, or contribute to a violation, of water quality standards to be made with greater confidence.

In its comment, GE questions EPA's use of the 2009 dry weather flow data as a basis for wet weather monitoring requirements both because, according to GE, the majority of dry weather flow would be collected and treated in the CDTs and because considerable mixing in the drainage system prior to discharge would result in levels of all parameters below water quality criteria within a few minutes of the initial discharge. EPA acknowledges that there potential for considerable mixing of the first flush of commingled stormwater and dry weather flows prior to discharge, but believes that, at this time, there is not sufficient information to determine the magnitude of mixing and resulting effluent concentrations under the range of wet weather conditions that would trigger the tide gate. In response to GE's comment, EPA requested that GE submit additional monitoring results from three wet weather discharge events for each Drainage System Outfall. The additional data submitted by GE on May 31, 2012 in response to the information request dated October 19, 2011 indicates that the first flush of wet weather flow through Drainage System Outfalls may contain elevated levels of TSS, cyanide, and benzene. Furthermore, monitoring of dry weather flows in the outfall vaults indicates potentially elevated levels of TSS, antimony, copper, iron, lead, nickel, zinc, PAHs, vinyl chloride, and residual chlorine.³⁰ This limited monitoring confirms that a wide range of pollutants that may be present in the effluent that discharges from the drainage system outfalls to the Saugus River, including a number of toxic constituents. Additional monitoring will better characterize the wet weather discharges to confirm GE's claim that there are no water quality issues associated with discharges from the Drainage System Outfalls during wet weather.

Finally, in addition to ensuring that the discharge meets water quality standards, EPA is obligated to ensure that discharges from the drainage system are consistent with technology-based standards under BAT without consideration of any available dilution prior to discharge. As presented in Attachment A, the Final Permit requires BMPs both to eliminate drainage

³⁰ Response to Request for Information, Section 308(a) of the Clean Water Act (CWA), July 10, 2009.

system outfall discharges during dry weather and to minimize discharges of dry weather flows during wet weather, which EPA believes collectively meet technology-based standards and will protect water quality. Still, untreated commingled flows from the drainage system outfalls will discharge to the Saugus River during wet weather; therefore, further characterization of this wastewater is needed and monitoring is critical to verify EPA's assessment of the effectiveness of the BMPs for controlling drainage system discharges.

GE also comments that the 1998 data is not representative of the discharges from Outfalls 014, 018, and 020. In particular, in this and other comments on the Draft Permit, GE clarifies that pipe re-lining and re-routing has eliminated wet weather discharges from these non-drainage system outfalls. After considering GE's comments and reviewing the available information for these outfalls, EPA agrees that these outfalls are unlikely to have wet weather discharges. The Final Permit has eliminated monitoring requirements related to commingled stormwater and infiltrated groundwater from these outfalls. Also see Response to Comments 7.1 and 7.2.

Finally, GE questions the quality of the available data and suggest that analytical interference, sampling error, or "false positives" may inaccurately characterize the effluent. While this may be possible, it has not been proven. Moreover, the data that GE questions has not been replaced with sufficient alternative data. Thus, while GE's comment suggests that the limited available monitoring data may not adequately characterize wastewater discharges, the uncertainty of the existing, limited data reinforces, in EPA's view, the need for additional monitoring of wet weather discharges from the drainage system outfalls at GE.

After reconsidering the issue, EPA has reduced many of the monitoring requirements in the Final Permit. As stated above, EPA has removed monitoring requirements associated with wet weather discharges from Outfalls 014, 018, and 020. In addition, EPA has changed the Draft Permit's monthly monitoring requirements to quarterly monitoring requirements (*without* effluent limits) for wet weather discharges from the Drainage System Outfalls for the majority of parameters and reduced WET testing requirements and frequency. EPA believes that the remaining monitoring requirements in the Final Permit are necessary to adequately characterize the wastewater discharges from GE's outfalls.

Comment 5.1.2: EPA's Proposed Monitoring Regime is Unnecessary.

There are no sources of cyanide at the Facility. As a result, the requirement to monitor for cyanide is unnecessary and inappropriate. Cyanide was detected in wet weather flow at one outfall (Outfall 001) at a level of 15 µg/l during the February 1998 sampling event; however, cyanide was not detected in any of the other February 1998 results for any of the other wet weather or dry weather discharges. Cyanide was also not detected in either of the dry weather samples collected in September 1998 (Outfall 010 and 018) or in any of the samples collected in 1990. As noted above, GE believes that the one "hit" from February 1998 was a false positive and should be rejected from the data set used by EPA to assess the need for limits and monitoring conditions in the permit.

Like cyanide, the proposed monitoring for TRC in GE's wet weather discharges is unnecessary and inappropriate. Some of GE's outfalls receive dry weather flow that originates from a

municipal water supply system that may contain minor concentrations of chlorine. However, once commingled with other flows, chlorine is not a legitimate water quality concern at any of GE's outfalls. Moreover, not all of GE's outfalls receive municipal source water containing chlorine. Outfalls 001 and 030 fall into this category, as well as Outfalls 028 and 031 with the end of operations at the Gear Plant.

GE also questions EPA's decision to list the following, specific parameters for monitoring based on extremely limited or otherwise inappropriate data.

BTEX: The only recent analytical data for BTEX were collected in July 2009 and were non-detect (with detection limits in the range of 0.45 to 1.1 µg/l) at 7 of the 8 wet weather outfalls. The only exception was at Outfall 001, where BTEX was detected at a concentration of 3.1 µg/l (2.2 µg/l ethylbenzene and 0.96 µg/l benzene). The sample was collected from flow that would be diverted to the CDTs for treatment prior to discharge. Moreover, Outfall 001 drains a small area (~3.03 acres) comprised of storm catch basins and a small parking lot. The Outfall 001 sample had the highest concentration of TSS of all of the outfall samples collected (41.6 mg/l vs. <4 to 15.2 mg/l at the other outfalls), which suggests that the elevated BTEX concentration may have been anomalous. BTEX was not detected in any of the earlier sampling events at the Facility.³¹

MTBE: The only recent analytical data for MTBE were also collected in July 2009 at the same 8 wet weather outfalls. All results were non-detect (with a detection limit of 0.68 µg/l). MTBE is not a component of jet fuel, the primary petroleum product used and stored at the Facility, and there is no known source of MTBE elsewhere at the Facility, other than a small fuel station with one 10,000-gallon tank of diesel, and one 10,000-gallon tank of unleaded gasoline. The installation is a double-walled, poly tank, underground, and protected by continuous monitoring equipment, that signals an alarm in the event of any liquid detected within the interstitial spaces between the two walls. GE has uncovered no evidence of leakage, no loss of mass or volume, and nothing else to suggest a leak of any kind from this installation.

Metals: The Draft Permit would require GE to monitor for metals at the wet weather outfalls based on elevated metals concentrations reported in February 1998 (pre-CDTS) wet weather flow data and in the July 2009 dry weather data. Neither of these sets of data is representative of current wet weather flow conditions. The February 1998 data were collected prior to the implementation of the CDTs system and, therefore, over-represents the influence of dry weather flow (since this flow is now collected and treated at the CDTs). Likewise, the July 2009 data were collected prior to mixing with other wet weather flows and, in turn, over-represents the influence of dry weather flow at the point of discharge. Even if it were representative, examination of the original laboratory data shows EPA's analysis of the July 2009 metals data and associated conclusions about elevated metals levels to be inaccurate or overstated. See Technical Exhibit 9. In addition, as noted above, GE's comparison of February 1998 and September 1998 data suggests that analytical results for February 1998 may be biased high.

³¹ The only historical contamination issue with BTEX at the Facility involved Building 64, west end. See Technical Exhibit 10.

PCBs: The Draft Permit includes monitoring and reporting requirements for total PCBs based on a single detection of a single PCB congener in the July 2009 dry weather flow data for Outfall 001. This detection represents the sole exception at any outfall over the last 21 years (if not more). GE respectfully submits that EPA should not require monitoring and reporting in the face of this one exception.

Many of the parameters selected for monitoring in the Draft Permit were monitored in previous permit cycles and then discontinued due to consistent non-detects or other Facility changes. For example, EPA previously agreed to discontinue monitoring of BTEX, MTBE and PCBs based on GE's redirection of certain flows to the LWSC and a review of analytical results from hundreds of older samples. Technical Exhibit 10 recounts the sampling and analysis required in earlier permits but then discontinued for good cause.

Response to Comment 5.1.2:

The monitoring parameters in the Draft Permit for the drainage system outfalls were included to address EPA's concerns about the discharge of infiltrated groundwater and process water directly to the Saugus River during wet weather. GE's Technical Exhibit 14 confirms that infiltrated groundwater from the site continues to collect at the drainage system outfalls, and other comments (and supporting information) confirm that dry weather flows that collect in the drainage system outfalls are released, untreated, directly to the Saugus River during wet weather.

EPA responds below to GE's comments on EPA's decision to include specific parameters for monitoring based on extremely limited or otherwise inappropriate data.

Cyanide: According to GE, there are no sources of cyanide at the facility and the single "hit" from February 1998 was a false positive and should be rejected from the data set used by EPA to assess the need for limits and monitoring conditions in the permit. EPA responds that the 2012 wet weather monitoring data submitted in response to the information request dated October 19, 2011, also indicated elevated levels of cyanide at Outfall 001 on one of the three sampling dates. The presence of cyanide in effluent can be associated with industrial processes and is common in steel, aluminum smelting, chemical production, and electroplating industries (2010 RGP Attachment a, p. 9). Petroleum refineries that use catalytic cracking and coking can also be a source of cyanide production. GE Aviation is or has been involved in the manufacture and testing of aircraft engines, and the manufacture of turbine engines, generators, gear parts, and marine propulsion units. Principal processes include machining, cleaning, descaling, coating, assembly and testing of engines and engine components. GE does not appear to be involved in industrial processes typically associated with the presence of cyanide in effluent, and it remains unclear what the source of cyanide at GE might be. Still, the limited available data suggests that monitoring for this parameter is warranted at Outfall 001 and at Outfall 027A since it receives and discharges dry weather flow from Outfall 001. EPA believes that the CDTs will enhance the removal of any cyanide from the effluent, and monitoring data will confirm that the water quality criterion is met. The Final Permit retains a requirement for quarterly monitoring of cyanide at Outfall 001 and 027A.

TRC: As stated in the Fact Sheet to the Draft Permit, at Part V.C.1.i, sampling results of non-stormwater flows in the Drainage System outfall vaults³² indicate TRC concentrations in the vaults at Outfalls 007, 019, 027, 028, 030, and 031 greater than 13 µg/L, the acute saltwater National Recommended Water Quality Criteria for aquatic life. According to the Fact Sheet and confirmed in GE's comment, TRC may be present in city water used for cleaning the drainage system outfalls. Discharges from the drainage system cleaning collect in the outfalls and, although they are typically transferred to the CDTs for treatment during dry weather, may combine with stormwater and discharge, untreated, to the Saugus River during wet weather. GE proposes that levels of TRC are not a "legitimate water quality concern" but offers no data to support this claim. In fact, the data collected under the Final Permit will provide representative data to confirm that the Final Permit's BMPs to eliminate drainage system outfall discharges during dry weather and to minimize discharges of dry weather flows during wet weather collectively meet technology-based standards and protect water quality.

BTEX: As stated in the Fact Sheet to the Draft Permit, the traditional approach for limiting effluents contaminated with gasoline or other light distillates is to place limits on the individual BTEX compounds and/or the sum of total BTEX compounds. Since many petroleum spills involve gasoline or diesel fuel, a traditional approach for such spills has been to place limits on the individual BTEX components and/or the sum of total BTEX compounds.

GE asserts that, for the drainage system outfalls, there has been only one instance where BTEX has been detected (Outfall 001), and moreover, that the sample was collected from flow that would be diverted to the CDTs for treatment prior to discharge and had an elevated TSS concentration, which GE suggests could cause the elevated BTEX concentration to be anomalous. First, GE offers no support or explanation for its comment that elevated TSS would cause an anomalous value for BTEX. Second, as has been discussed at length in EPA's responses to GE's comments on the Draft Permit, although flows representative of the July 2009 samples are typically transferred to the CDTs during dry weather, these flows are also commingled and released, untreated, with stormwater from the drainage vaults during wet weather. EPA disagrees that this sample was collected from flow that would be diverted to the CDTs for treatment prior to discharge under every circumstance. Finally, EPA points to the need for monitoring at the drainage system outfalls for multiple reasons, including to provide sufficient representative data to enable EPA to confirm that the BMPs for the drainage system outfalls in the Final Permit collectively meet technology-based standards and protect water quality.

MtBE: The Draft Permit included a maximum daily limit of 100 µg/L for MtBE at Outfall 027A. No effluent limit or monitoring was required for MtBE at the drainage system outfalls, however, including Outfall 027B. According to the Draft Permit's Fact Sheet, the MtBE limit was continued from the current permit due to the anti-backsliding regulations at 40 C.F.R. § 122.44(l)(2)(i) and because monitoring for the contaminant would confirm whether it was present or absent in the effluent from Outfall 027A. In response to GE's comment questioning the appropriateness of this limit under existing conditions, EPA reevaluated the basis for the current limit and new information that has become available since the limit was first applied.

³² *Response to Request for Information, Section 308(a) of the Clean Water Act (CWA)*, July 10, 2009.

The Fact Sheet for GE's 1993 permit indicates that the numeric limit for MtBE at Outfall 027D was specified by EPA as an addendum to the previous permit, and that it was retained in the current permit. A letter from David W. Tordoff (EPA On-scene Coordinator) to David A. Roberts (GE) dated June 10, 1991, confirms that the numeric limit for MtBE was applied as a condition of an emergency authorization to allow intermittent discharges of non-contact cooling water and wastewater from a sump collection system in the vicinity of a recovery and treatment system operation in Building 64 to Outfall 027. Subsequently, a letter from David Johnston (GE) to George Harding (EPA) dated April 16, 1999, confirmed that the discharge line from the Building 64 treatment system to Outfall 027D was capped and the discharge re-piped to the Bennett Street Sewer, which discharges to the Lynn Water and Sewer Commission's Wastewater Treatment Facility. In addition, GE stated that analytical results for the treatment system effluent sampling would no longer be reported on discharge monitoring reports (DMRs) at Outfall 027D. The permittee was directed by Robin Neas (EPA) to use the no discharge code "C" on the DMRs for Outfall 027D.

In addition, EPA agrees with GE's assertion that MtBE is not a component of jet fuel –which GE stores and uses on-site – and, to EPA's knowledge, the only potential source of MtBE expected at the facility would be the two fuel tanks described in GE's comment. A review of historic groundwater monitoring data from 1998 through 2008 indicated nine instances of MtBE in groundwater at the site, of which all were below the current numeric limit of 100 µg/L. Eight of the samples were below the 2010 RGP technology-based numeric limit of 20 µg/L and the most recent samples (in 2007) were less than 2 µg/L.

EPA concludes that because effluent discharges from the Building 64 treatment system, on which the current numeric limit for MtBE was originally based, have been eliminated and there is no other likely source of MtBE from the manufacturing facility, the MtBE limit should be eliminated from the limits for Outfall 027A in the Final Permit. Eliminating this permit limit is appropriate under an exception to the CWA's anti-backsliding requirements because the re-routing of the effluent from the treatment system in 1999 is a material alteration to the permitted facility that occurred after issuance of the existing permit. *See* 40 C.F.R. § 122.44(l)(1).

EPA notes that the other parameters associated with the batch discharge of effluent from the Building 64 treatment system (benzene and BTEX) are associated with jet fuel, and have at times been detected in the groundwater at the site at levels substantially above numeric limits. For these and other reasons discussed in response to GE's comments, EPA has retained the numeric limits at Outfall 027A for these constituents and applied monitoring requirements at the drainage system outfalls for these parameters.

Metals: First, GE is incorrect in assuming that EPA did not convert the National Recommended Water Quality Criteria to total recoverable metals. EPA did, in fact, convert these criteria to total recoverable metals to correctly compare these values with the results of GE's monitoring data. Second, the non-stormwater flow samples taken in 2009 from the individual outfall vaults are an indication of the quality of the dry weather flows that commingle with wet weather flows and are discharged through the Drainage System Outfalls when the tide gates open during wet weather. In response to GE's comments, the metals monitoring frequency at the Drainage System Outfalls has been reduced from monthly to quarterly, as EPA believes that frequency will generate

sufficient data to enable EPA to confirm that the BMPs for the drainage system outfalls in the Final Permit collectively meet technology-based standards and protect water quality.

PCBs: Sampling results of non-stormwater flows in the Drainage System outfall vaults³³ (which are expected to commingle with the first flush of stormwater flows during wet weather) indicated a PCB concentration at the Outfall 001 vault of 0.11 µg/L, which is greater than EPA's National Recommended Water Quality Criteria (saltwater CCC) for PCBs of 0.03 µg/L. The monitoring results which support this determination are non-stormwater flow samples taken in 2009 from the individual outfall vaults. This data is representative of the quality of the dry weather flows that commingle with wet weather flows for discharge through the outfalls during wet weather. In response to GE's comments, monitoring frequency has been reduced from monthly to quarterly, as EPA believes that frequency will generate sufficient data to enable EPA to confirm that the BMPs for the drainage system outfalls in the Final Permit collectively meet technology-based standards and protect water quality.

Finally, GE states that "many of the parameters selected for monitoring in the Draft Permit were monitored in previous permit cycles and then discontinued due to consistent non-detects or other Facility changes. For example, EPA previously agreed to discontinue monitoring of BTEX, MTBE and PCBs based on GE's redirection of certain flows to the LWSC and a review of analytical results from hundreds of older samples. Technical Exhibit 10 recounts the sampling and analysis required in earlier permits but then discontinued for good cause." It is EPA's understanding that Technical Exhibit 10 describes the successful treatment and discharge of treated groundwater from the Building 64 Water Treatment System. Neither the Draft nor Final Permit includes any effluent limitations or monitoring requirements specific to the Building 64 treatment system to Outfall 027A, nor does EPA dispute the discontinuation of monitoring for discharges from the Building 64 treatment system to the Lynn POTW.

However, contrary to GE's assertions, EPA has never eliminated the monitoring requirements at Outfall 027D referenced by GE. The letter from GE to EPA³⁴ states that "the Building 64 treatment system effluent was re-piped to discharge to the LWSC, and that the analytical results from the treatment system effluent sampling [dry weather sampling from Outfall 027 (Outfall 027A in the Draft Permit)] will no longer be reported on NPDES Discharge Monitoring Reports (DMRs) for dry-weather flow at Outfall 027." GE goes on to state that a no discharge code of "C" will be reported for each of these sampling parameters. As discussed above, to the extent that re-piping of the discharge from the Building 64 treatment system was completed such that discharges to Outfall 027 from this system were, in fact, eliminated, this would be the correct procedure. However, Outfall 027 continues to receive dry weather and wet weather flows from other wastestreams and areas, therefore the reporting of "no discharge" is not consistent with GE's current permit. In addition, a permit modification would be required to remove the monitoring requirements for Outfall 027D for benzene, BTEX, MTBE, and PCBs from GE's current permit. As EPA has no record of a permit modification or request for a modification regarding these parameters, the monitoring requirements and effluent limitations at Outfall 027D have been administratively continued until a new permit is issued.

³³ *Response to Request for Information, Section 308(a) of the Clean Water Act (CWA)*, July 10, 2009.

³⁴ Letter from David G. Johnson (GE) to George Harding (EPA), Re: Discharge Modification – NPDES Outfall 027, April 16, 1999.

Comment 5.1.3: Monitoring is Impracticable and Infeasible.

GE is concerned that the monitoring regime proposed by EPA will be impossible to implement due to the frequency of monitoring and the sheer number of outfalls to be monitored after each and every qualifying wet weather event. These concerns are grounded in issues of staffing, access and safety, and sample holding times. The Draft Permit would require monthly wet weather sampling at all eight wet weather outfalls. This stands in stark contrast to the MSGP, which EPA cites as a relevant reference, and which only requires quarterly wet weather sampling at selected, representative outfalls.

If monthly wet weather sampling is required at all eight wet weather outfalls, then GE will need to enlist large crews to prepare, mobilize, execute, demobilize and document each and every sampling event over the course of the year.

EPA's *Industrial Stormwater Monitoring and Sampling Guide* (EPA 2009) encourages the use of representative outfalls where two or more outfalls are "substantially identical." EPA defines this phrase to mean "two or more outfalls that you believe discharge substantially identical effluents, based on the similarities of the general industrial activities and control measures, exposed materials that may significantly contribute pollutants to stormwater, and runoff coefficients of their drainage areas...." (Part 6.1.1 of MSGP-2008). Based on an evaluation of the types of flows that drain to each Drainage System Outfall (as shown in Technical Exhibit 14, Table 1-1) and even assuming a worst case scenario, GE respectfully submits that Outfalls 019, 027B, 007 and 030 are representative of all of the other wet weather outfalls, and are suitable for quarterly monitoring to characterize the wet weather discharges from the Facility.

Response to Comment 5.1.3:

GE states that "Outfalls 019, 027B, 007 and 030 are representative of all of the other wet weather outfalls, and are suitable for quarterly monitoring to characterize the wet weather discharges from the Facility ... [b]ased on an evaluation of the types of flows that drain to each Drainage System Outfall (as shown in Technical Exhibit 14, Table 1-1)"

Technical Exhibit 14, Table 1-1 shows that Outfalls 019, 027B, 007, and 030 are listed as discharging similar non-stormwater dry weather flows as the other Drainage System Outfalls (001, 010, 028, and 031). Although EPA's 2008 Multi-Sector General Permit (MSGP) for Stormwater Discharges Associated with Industrial Activity does provide for limited monitoring of substantially identical outfalls as discussed in Part 6.1.1, the MSGP goes on to state, "The allowance for monitoring only one of the substantially identical outfalls is not applicable to any outfalls with numeric effluent limitations. You are required to monitor each outfall covered by a numeric effluent limit." Because the Final Permit has retained numeric effluent limitations for pH and O&G at the Drainage System Outfalls, GE shall be required to monitor each outfall individually for those parameters. Therefore, EPA does not consider it a significant additional burden to collect additional grab samples for other parameters on a quarterly basis at the drainage system outfalls.

EPA is not convinced that (in GE's words) "the monitoring regime proposed by EPA will be impossible to implement due to the frequency of monitoring and the sheer number of outfalls to be monitored after each and every qualifying wet weather event." First, monitoring is not required after "each and every qualifying wet weather event." The highest frequency of monitoring at the Drainage System Outfalls is quarterly, with the exception of reporting of flow, (a daily estimate), gate openings (a continuous count), and the volume of dry weather flow pumped to the CDTs (a continuous estimate). Therefore, GE does not have to monitor after "each and every qualifying wet weather event," only after one (1) qualifying wet weather event each quarter. EPA's view is that a requirement to monitor each of the eight (8) Drainage System Outfalls once every quarter is reasonable, justified, and not overly burdensome.

Second, as stated in an earlier response to one of GE's comments, monitoring for these parameters at each Drainage System Outfall is required in the Final Permit to assist EPA in evaluating the reasonable potential of these discharges to cause or contribute to exceedances of water quality standards. Thus, it is important that samples are representative of the commingled dry weather and wet weather flows discharged with the first flush from the drainage system outfalls. Given that, depending on the severity of the storm event, the vault gates can be triggered and emptied in a relatively short time frame (GE estimates within 2 to 24 minutes), automating the sampling of the outfall vaults would likely be the most feasible option. In this case, GE has already estimated the cost of automated sampling equipment for the drainage system outfalls (Technical Exhibit 13). This equipment should be capable of collecting grab samples from the first flush of wastewater discharged from the tidal gate during wet weather. Representative samples should be collected from the first flush of commingled stormwater and dry weather flow prior to discharging to the Saugus River. While automating sample collection will result in capital costs for equipment (GE estimates automatic samplers with enclosures at \$5,000 for each of 8 drainage outfalls at a cost of \$40,000), the automated equipment should reduce staffing costs for sample collection.

In response to GE's comments, and consistent with other similar NPDES permits,³⁵ the Final Permit has changed the Draft Permit's monthly monitoring requirements to quarterly monitoring requirements (*without* effluent limits) for wet weather discharges from the Drainage System Outfalls for TSS, BTEX, benzene, toluene, ethylbenzene, total xylenes, VOCs, individual VOCs, TRC, total PAHs, individual Group I PAHs, metals, and PCBs. In addition, in the Final Permit, EPA has dropped the Draft Permit's numeric limits for wet weather discharges, including the limits for BTEX and benzene, with the exception that the Final Permit has retained the effluent limits for the conventional pollutants pH and O&G, which are carried forward consistent with anti-backsliding requirements (quarterly monitoring is also required for these constituents). The Final Permit has also reduced toxicity requirements to twice yearly acute WET testing and only requires monitoring for cyanide at Outfall 001.

Comment 5.1.4: The Costs of Monitoring far Outweigh any Perceived Benefits.

The number of samples requiring laboratory analysis under the Draft Permit is more than 18 times higher than the existing permit. The sample count would increase from 96 to 1,748

³⁵ Final Permit for ConocoPhillips Company, signed August 25, 2006, MA0004006.

samples per year and the analytical cost alone would increase from \$4,020 to \$224,110 per year. An itemized analytical cost table is presented in Technical Exhibit 11.

In addition, to simultaneously complete the required monthly wet weather sampling within 30-minutes of discharge at eight wet weather outfalls, as well as to conduct the increased dry weather sampling and WET testing sampling requirements, GE would be required to hire contract staff at an annual cost of \$161,460. The itemized manpower estimate is presented in Technical Exhibit 12.

Several of the proposed analytical requirements require instantaneous field measurement, including pH, specific conductance, temperature, and dissolved oxygen. To properly perform the wet weather sampling would, therefore, require purchase of handheld instruments for each of the eight wet weather outfalls. Furthermore, to collect the required composite samples for the proposed WET testing sampling would require purchase of 11 automatic samplers with refrigerated enclosures. The total cost to purchase the additional field instruments and the automatic samplers is itemized in Technical Exhibit 13 and is estimated to be \$70,650.

GE submits that the extent and cost of sampling, as proposed by EPA, is not at all in line with the nature of the Facility or discharges as GE estimates that the total annual cost of sampling would be \$385,570 along with a one-time cost of \$70,650 for additional equipment.

Response to Comment 5.1.4:

EPA has broad authority to impose reasonable monitoring requirements on a case-by-case basis in light of the type of pollutant discharges at issue and in order to assess permit compliance and to produce sampling data that is representative of the discharges at issue. *See* 33 U.S.C. §§ 1318(a) and 1342(a)(2); 40 C.F.R. §§ 122.44(i) and 122.48(b). There is no specific economic or cost test that applies in the design of a permit's monitoring requirements. Again, the requirements should be reasonable under the facts of the matter at hand.

In prescribing the monitoring requirements for GE's permit, EPA was driven by several considerations. These have been discussed previously in these responses to comments and the Fact Sheet for the Draft Permit. EPA is concerned about GE's wet weather discharges from the Drainage System Outfalls to the Saugus River, within a state-designated ACEC, of untreated commingled stormwater, process wastewater and contaminated groundwater infiltration. The nature of this combined wastewater is that is uncontrolled and likely to be of variable quality. At the same time, site data indicates that the groundwater infiltration could contain a variety of toxic contaminants. Yet, the existing permit's monitoring requirements did not require monitoring for such contaminants from these discharges. In this regard, EPA's view is that the existing permit's monitoring requirements are not adequate. This is why the Agency has included more extensive monitoring in GE's new permit.

Having said that, EPA has taken GE's comments into account and has reduced the monitoring requirements for the Final Permit as compared to the Draft Permit. GE commented that EPA should reduce the monitoring of wet weather discharges from the Drainage System Outfalls from a monthly to a quarterly frequency. GE urged that doing so would be consistent with

requirements in other permits. EPA has responded to these comments elsewhere in this document, but suffice to say that EPA has written the Final Permit to require quarterly monitoring for the discharges from the drainage system outfalls and reduced the frequency of WET testing at all outfalls. As explained in the response to Comment No. 4.2.1, EPA has determined that the number of samples produced by quarterly sampling should be sufficient to characterize the discharges from the drainage system outfalls and to support an assessment of the reasonable potential of such discharges to cause violations of water quality standards. (In the future, once these discharges have been better characterized, it may be possible to reduce the frequency of monitoring.)

As indicated above, the suite and frequency of monitoring requirements in the Final Permit have been substantially reduced compared to the Draft Permit. The Final Permit requires 578 analyses, which is less than half of the 1,768 analyses per year that GE estimated the Draft Permit required. The total analytical costs have been reduced from \$224,110 per year (according to GE) to approximately \$60,683 per year based on the analytical cost estimates provided in Technical Exhibit 11. Approximately half of this cost is associated with whole effluent toxicity (WET) testing. The Final Permit eliminated chronic WET requirements at the drainage system outfalls and Outfall 014, and reduced the frequency from quarterly to twice per year for all outfalls. The frequency, and therefore cost, of WET testing may be reduced further after two years and four consecutive sets of WET test results demonstrating no toxicity.

Regarding the additional contractor and manpower costs, it is unclear, and GE has not provided sufficient explanation, why it believes collecting wet weather samples would require 16 man-hours at each outfall (8 hours per outfall for each of the grab and composite samples). Each outfall is required to be sampled, at most, once per month with the exception of Outfall 027, which must be sampled in both dry and wet weather. EPA sees no reason why each grab sample would require 8 hours to collect and prepare for shipment for analysis. Collecting data with the proposed handheld instruments (e.g., pH and temperature) is relatively instantaneous and should take no more than 5 to 10 minutes per outfall. In addition, GE has included the cost of additional equipment capable of automating sampling, which may be used to automate grab sampling during wet weather at the drainage system outfalls, or composite sampling at outfalls sampled during dry weather. Use of the automated sampling equipment should decrease manpower even further, as staff would only be required to retrieve the collected samples from the equipment once sampling is complete. Therefore, while the one-time equipment cost of about \$71,000 may be accurate, EPA believes that GE has largely overestimated manpower at an additional \$161,000.

EPA believes that the monitoring in question will provide important benefits as it will allow EPA to better ensure protection of the Saugus River ecosystem by better characterizing the untreated wet weather discharges from the Drainage System Outfalls and enabling EPA to conduct a reasonable potential analysis with confidence, using appropriate statistical analysis. While EPA believes that GE overstated the costs of the Draft Permit's monitoring provisions, as explained above, GE did not establish that it could not afford those costs or that they were otherwise unreasonable. Moreover, EPA has reduced the monitoring requirements in the Final Permit, thus significantly lowering the costs of complying with the permit.

Comment 5.1.5: EPA's Proposed Monitoring Regime for GE Deviates from Monitoring Regimes Allowed for Similar Facilities.

The Draft Permit is much more stringent in terms of both monitoring parameters and monitoring frequency than the ConocoPhillips Everett Terminal and the ExxonMobil East Boston Terminal, both of which are referenced by EPA as relevant comparisons. GE urges EPA to treat similar facilities similarly by reducing the number of monitoring parameters to those reasonably expected to be present at detectable levels in GE's discharges and reducing the typical sampling frequency to quarterly.

Response to Comment 5.1.5:

The monitoring parameters and monitoring frequency contained in the NPDES Permits for ConocoPhillips and ExxonMobil are comparable to those contained in GE's Final Permit. Moreover, unlike those two facilities, which collect and treat all flows up to and including the 10-year, 24-hour storm, GE discharges untreated process and infiltrated groundwater flows from the drainage system outfalls directly to the receiving water (in GE's case, the Saugus River) during wet weather. Still, in consideration of GE's comments on costs and feasibility as discussed above, the monitoring requirements contained in the Draft Permit have been reduced in the Final Permit to frequencies that EPA believes will generate sufficient data to develop a characterization of each outfall, while at the same time not being unduly burdensome on GE.

The ExxonMobil NPDES permit, issued September 29, 2008, requires that the majority of stormwater flow be treated through an oil/water separator. Flows up to 280 gpm are treated via an oil/water separator and carbon. Flows from 280 gpm – 4000 gpm are treated via an oil/water separator and stored for eventual treatment with carbon. Flows > 4,000 gpm, but <13,600 gpm (10 year, 24 hour storm) are stored for eventual treatment through an oil/water separator. If the storage tank capacity of 2.1 million gallons is exceeded due to too many back-to-back storms, the water bypasses treatment.

The ExxonMobil NPDES permit allows the discharge of treated effluent from Outfall 001, comprised of storm water, groundwater, hydrostatic test water, boiler condensate, fire testing water, truck wash water and effluent pond water. The permit includes effluent limitations for TSS, O&G, pH, Whole Effluent Toxicity, each individual Group I PAH, each individual Group II PAH, benzene, BTEX, and MTBE, and sampling for flow rate, available cyanide, total aluminum, cadmium, chromium, copper, lead, mercury, nickel, zinc, hardness, total solids, ammonia, calcium, magnesium, total organic carbon, toluene, ethylbenzene, total xylenes, and ethanol. The Permit also requires an extensive SWPPP Plan, based on site specific conditions.

The ConocoPhillips NPDES Permit, issued August 25, 2006, allows the discharge of treated effluent through Outfall 001. The discharge is comprised of ground water from Outfall 002, stormwater and infrequent flows of hydrostatic test water. All of these waters are treated and the permit includes effluent limits for TSS, O&G, pH, PAHs (Group I, Group II, and the sum of all PAHs), Benzene, and Whole Effluent Toxicity. The permit also requires monitoring for flow rate, total flow, toluene, ethylbenzene, total xylenes, and ethanol. The Permit also requires an extensive BMP/SWPPP Plan, based on site specific conditions.

The Final Permit for GE includes effluent limitations at the Drainage System Outfalls for pH and O&G, monitored quarterly. In addition, as GE requests, the Final Permit also shifts to quarterly monitoring (without limits) at the Drainage System Outfalls for TSS, BTEX, benzene, toluene, ethylbenzene, and total xylenes, and quarterly monitoring (without limits) for VOCs, individual VOCs, TRC, total PAHs, individual Group I PAHs, metals, and PCBs. The rationale for the change to quarterly monitoring is explained above in the response to Comment 4.2.1.

As fully explained elsewhere in this RTC document, EPA has concluded that the Final Permit requirement to minimize the discharge of dry weather flow commingled with stormwater from the Drainage System Outfalls during wet weather, and zero discharge during dry weather, is reasonable and meets the technology- and water quality-based requirements of the CWA and its implementing NPDES permitting regulations (see Attachment A).

Comment 5.2: WET Testing.

Comment 5.2.1: The Wet Weather Toxicity Testing Proposed by EPA will not Yield Representative Results.

Whole Effluent Toxicity (“WET”) tests are conducted by exposing test organisms to effluent for 48 hours or longer (for example, the chronic testing specified by EPA in the Draft Permit for inland silverside has a 7-day exposure time). However, storm events typically last only a few hours. In turn, any adverse effects observed in WET tests conducted on stormwater “effluent” are not representative of the effects that actually occur in the receiving waters over the course of the actual discharge event. In short, WET testing conducted on a composite stormwater sample (albeit commingled with dry weather flow over the first few minutes of discharge) collected over the few hours that stormwater discharges generally occur is not representative of instream aquatic life exposure for 48 hours or longer.

In storm events, the composite sample that is collected is representative of the average discharge quality experience over the limited duration (e.g., typically 2 to 12 hours) storm event. Even if organisms in the receiving water are exposed to elevated pollutant concentrations for only a few minutes or hours, organisms used in the WET test will be exposed to those concentrations for 2 or more days. Any adverse effects observed in such a test are not relevant to predicting instream effects. In other words, no valid inference can be drawn by exposing test organisms to the worst case stormwater quality for 48 hours (or longer), when the actual duration of a particular Drainage System discharge is not likely to exceed a few minutes, or a few hours at most.

Requiring 7-day chronic WET testing for a stormwater discharge is expected to result in a violation of the sample holding times required by EPA as described in “Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms” (EPA 2002). For the chronic test with inland silverside (*Menidia beryllina*), fresh samples are required on days 1, 3, and 5 for renewal of test solutions, and samples must be first used within 36 hours of collection. A single stormwater event would not likely allow for collection of three samples. If, for example, a stormwater event was sampled on a Monday and used to initiate the toxicity test on Tuesday, unless the rain event continued well into that week, the initial sample would be needed in the final renewal on day 6 (168 hours after collection and

144 hours after first use). Although EPA allows permittees to request a variance from sample holding times, according to the methods document, “in no case should more than 72 hours elapse between collection and first use of the sample” (EPA 2002).

Response to Comment 5.2.1:

In consideration of GE’s comment, EPA has reviewed the need for chronic WET tests of the wet weather discharges from the Drainage System Outfalls. Because the first flush of wet weather from the Drainage System Outfalls includes stormwater commingled with dry weather flows, EPA believes some WET testing is appropriate. However, GE correctly points out that storm events are intermittent (lasting hours or days), and in particular, the volume of dry weather flow, including infiltrated groundwater, would be greatest in the first flush of wastewater from the outfalls. Finally, EPA has carefully considered GE’s concerns regarding the substantial costs of WET testing. The Final Permit eliminates the requirement for chronic WET testing at the Drainage System Outfalls and has reduced the frequency of the static, 48-hour acute testing from quarterly to twice per year. Sampling for WET testing at the drainage system outfalls has also been changed from a composite sample to a grab sample collected from the first flush of commingled stormwater and dry weather flows released at the first opening of the tidal gate. EPA believes this will be a representative sample of commingled stormwater and groundwater on which to conduct toxicity testing.

The Final Permit includes chronic and acute WET testing for the other outfalls from which discharges are not expected to be intermittent (Outfalls 018 and 027A) at a reduced frequency (twice per year) and has removed the requirement for chronic testing for twice yearly WET testing at Outfall 014 as discharges from this outfall are also largely intermittent and do not frequently last more than a few consecutive days.

Comment 5.2.2: Stormwater may be too Pure to Sustain WET Test Organisms.

Stormwater samples used for WET testing may not contain the basic metabolites (e.g., ionic balance) necessary for the survival of the test organisms (in other words, the samples may be too “pure”). As such, any adverse effects observed in the WET tests are not representative of the effects that actually occur when organisms are exposed to stormwater after mixing with the receiving waters.

The sea urchin (*Arbacia punctulata*) fertilization test proposed by EPA is a very sensitive test and negative outcomes would not necessarily be related to toxicity in the discharge but rather the turbid nature of stormwater. Recommended test salinities for inland silverside and sea urchin are 5-32 ppt and 30 ppt, respectively. While the wide range of salinities recommended for the inland silverside would likely capture the salinity of the stormwater discharge, it is unlikely that the 30 ppt recommended for sea urchin exposures would or could be achieved.

Response to Comment 5.2.2:

The Draft Permit requires chronic and acute WET testing for the discharges from the Drainage System Outfalls. As discussed above, the chronic WET testing requirements at the Drainage

System Outfalls have been removed from the Final Permit. The revised protocol for the Marine Acute Toxicity Test, available at <http://www.epa.gov/region1/npdes/permits/generic/marinewateracutetoxtest-rev.pdf> and included as Attachment 1 to the Final Permit, specifies test conditions for toxicity testing, including a salinity of 25 parts per thousand (ppt) 10 percent for all dilutions by adjusting with dry ocean salts. This adjustment is necessary for precisely the reasons that GE raises in its comment, and has been effective for toxicity testing for a host of facilities, including WET testing requirements for the stormwater discharges from the Conoco Phillips and ExxonMobil NPDES permits previously discussed as having similar discharges to GE elsewhere in this Response to Comments. Consistent with the protocol for the marine acute toxicity test, the test organism has been changed from the sea urchin to the mysid shrimp (*Americamysis bahia*).

Comment 5.2.3: WET Testing is not Appropriate for Discharges from Outfalls 014, 018A or 018B.

We note, at the outset, that there is no wet weather component at Outfall 018; therefore, there is no need for an Outfall 018B. In the fact sheet, EPA determines that WET testing is appropriate at Outfalls 014 and 018A “*based on the possibility of toxicity in the discharge...resulting from groundwater.*” However, as discussed elsewhere in these comments, EPA’s determination is not accurate.

The Outfall 014 infrastructure was lined in 2002 and, in addition, the length of pipeline from Building 29G to the river is relatively short (approximately 120 feet). For these reasons, groundwater infiltration to Outfall 014 is expected to be negligible.

Outfall 018 is a salt water discharge structure/tunnel conduit constructed of concrete (10-12 inches thick) and roughly square. The structure is impacted greatly by river water and minimally (if at all) by groundwater given tidal effects on the structure and the high flow of water through the system.

Response to Comment 5.2.3:

As stated in Part V.C.3 of the Fact Sheet, “Non-stormwater flows through Outfall 014 consist of NCCW from aircraft engine test facility heat exchangers, condensate blowdown, and engine and compressor test facility NCCW.” As stated in Part V.C.4 of the Fact Sheet, non-stormwater flows through Outfall 018A consist of “NCCW (river water) from power plant generating equipment, turbine condensate, boiler startup/soot blower drains/boiler draining for maintenance, boiler filter backwash, ion exchange regeneration and backwash, de-aerator storage tanks, steam condensate return from steam users, and boiler blowdown.” These non-stormwater flows currently discharge directly to the receiving water without treatment.

EPA remains concerned that there is a potential for the process water discharges through Outfalls 014 and 018 to cause toxicity to the Saugus River. GE, in its comments on the Draft Permit, has clarified that neither outfalls receives infiltrated groundwater flows, and in response, the Final Permit has removed the monitoring requirements associated with infiltrated groundwater. However, industrial process flows, particularly of mixed waste streams like that discharged from

Outfalls 014 and 018, have the potential to result in toxicity regardless of any component from contaminated groundwater. Industrial NPDES permits commonly require WET testing for process flows, and WET testing is recommended by the *Technical Support Document for Water Quality-based Toxics Control* (EPA 1991) as a useful parameter for assessing and protecting against impacts upon water quality and designated uses caused by the aggregate toxic effect of the discharge of pollutants. In this case, no WET testing has been performed at GE's outfalls under the current permit.

The Final Permit has retained the option to reduce frequency of WET testing "after submitting one year and a minimum of four consecutive sets of WET test results, all of which demonstrate no toxicity, the permittee may request a reduction in the WET testing requirements." In consideration of GE's comments, the WET testing frequency has been reduced in the Final Permit from quarterly to twice a year, therefore the above provision in the Final Permit is allowed after two years and a minimum of four consecutive sets of WET test results. In addition, the requirement to conduct chronic toxicity testing at Outfall 014 has been removed in the Final Permit given the intermittent nature of the discharge from this outfall.

Comment 5.2.4: WET Testing is not Appropriate for Discharges from the Drainage System Outfalls.

In this permit proceeding, EPA has assumed that stormwater from the Facility "*can contribute toxic pollutants to receiving water*" based on commingling with contaminated groundwater and, in turn, EPA proposes to require WET testing at GE's Drainage System Outfalls. As noted elsewhere in these comments, the data on which EPA relies are not representative of discharges from these outfalls because they predate the installation of the CDTs or otherwise fail to account for mixing that occurs within the Drainage System and the receiving waterbody.

While some quantity of dry weather flow commingled with stormwater is discharged during storm events when the gates to the Drainage System Outfalls are open, the volume of this commingled flow in the vault and drainage system is relatively small (estimated to range from 7,000 to 126,000 gallons) and the duration of discharge is brief (estimated to range from approximately 2 to 24 minutes). In proper context, it is evident (and demonstrated in GE's Technical Exhibits) that discharges from these outfalls do not cause or contribute to toxicity in the receiving water body. Consequently, consistent with EPA's approach in other relevant permit proceedings, WET testing should not be required for discharges from the Drainage System Outfalls.

Response to Comment 5.2.4:

As discussed in Response to Comment 5.2.1, the requirement to perform chronic WET testing at the Drainage System Outfalls has been removed from the Final Permit. The Final Permit includes a requirement to conduct acute toxicity testing at a reduced frequency (from quarterly to twice yearly). There is currently no available WET data or sufficient representative data for these discharges to support GE's comment that the discharges do not cause or contribute to toxicity in the receiving water. EPA has established elsewhere in these responses to comments that, although flows may be transferred to the CDTs for treatment during dry weather, a portion

of these same flows are discharged without treatment with stormwater during even minor precipitation events (accumulation of 0.1 inch or more of precipitation).

EPA believes that the requested monitoring will help to ensure that the Final Permit's requirement to minimize the amount of dry weather flows that become commingled with stormwater during wet weather conditions and discharge directly to the receiving water without treatment adequately addresses the potential for toxicity from commingled process, groundwater, and stormwater discharges. The Final Permit authorizes the permittee to request a further reduction in the frequency WET testing after two years and four consecutive tests indicating no toxicity.

Comment 5.2.5: EPA's WET Testing Requirements may be Infeasible to Implement.

Collecting samples for WET testing at eight stormwater and two non-stormwater outfalls may be infeasible due to the nature of stormwater sampling (i.e., the need to collect a first-flush sample early in the event), the large volumes of water needed for analysis and renewal, and the large size of the sampling crew required to execute such an effort. Consistent with GE's comments on EPA's chemical monitoring requirements, the Agency should recognize the representative status of certain outfalls and otherwise moderate its test requirements and frequencies to ensure that they can be implemented.

Response to Comment 5.2.5:

EPA does not agree with GE that WET sampling at the non-stormwater outfalls (027A, 018A, and 014) at the Lynn facility would be impacted by the "nature of stormwater sampling." Neither the Draft nor Final Permits identify stormwater as an authorized discharge through Outfall 014 or 018A. Additionally, the Draft Permit did not contain sampling requirements tied to wet weather conditions at Outfall 027A, as it is a batch treatment process.

Therefore, because the Final Permit does not authorize the discharge of stormwater from these outfalls, WET testing in connection with these outfalls in the Final Permit does not specify weather conditions. As noted earlier in this RTC document, however, the frequency of WET testing has been reduced in the Final Permit to twice a year, one test during each of the time periods October 1st - March 31st and April 1st - June 30th, which allows GE some flexibility in scheduling when samples would be collected.

EPA disagrees that sample volumes would be so large as to render sampling infeasible. According to EPA's Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms (http://water.epa.gov/scitech/methods/cwa/wet/disk2_index.cfm), one gallon of effluent is generally sufficient for testing. GE's drainage system outfalls, when the tide gate opens, discharge variable quantities of effluent but all are on the order of thousands of gallons, while Outfalls 014, 018, and 020 generally discharge on the order of millions of gallons per day. Clearly all of GE's outfalls generate sufficient effluent for WET testing when monitoring is required (i.e., when Outfall 014 is operating or when the tide gates for the drainage system outfalls are triggered). As discussed in response to Comment 5.1.4, GE has included the cost of

additional equipment capable of automating sampling, which may be used to automate sampling for WET testing at drainage system outfalls during wet weather. Use of the automated sampling equipment should decrease manpower even further, as staff would only be required to retrieve the collected samples from the equipment once sampling is complete.

Comment 5.2.6: The Costs of WET Testing far Outweigh any Perceived Benefits.

Analytical costs for the WET testing specified in the Draft Permit would be significant. These costs would be approximately \$2,350 per outfall. Analytical costs for WET testing of 11 outfalls (eight wet weather plus Outfalls 014, 018A and 027A) four times per year would total more than \$100,000 per year (these costs are included in the estimate shown in Technical Exhibit 11). Note that these represent analytical costs only and do not include labor and other direct costs associated with the actual execution of the quarterly sampling proposed by EPA (these costs are included in Technical Exhibits 12 and 13). These costs are excessive in comparison to the limited utility/applicability of the test results and GE's demonstrated concerns about their representativeness to the discharges and impacts at issue in this proceeding.

Response to Comment 5.2.6:

As explained earlier in this RTC document, the Final Permit requires WET testing during dry weather conditions for Outfalls 014, 018A, and 027A and during the first flush of stormwater at the drainage system outfalls. However, in response to GE's concerns about the burden and cost of WET testing, while ensuring that sufficient WET data is collected to support future permit requirements, the Final Permit requires chronic testing only at Outfall 018 and 027A, and has reduced the frequency of WET testing from quarterly to twice per year. Accordingly, the costs associated with the WET testing required by the Final Permit will be substantially less than under the Draft Permit. Finally, the Final Permit includes a condition that allows GE to request a further reduction in frequency of WET testing at all outfalls following two years and four consecutive tests exhibiting no toxicity.

Comment 5.3: Bioaccumulation Study.

The Draft Permit would require GE to conduct a "bioaccumulation study to examine the bioaccumulation of metals, polycyclic aromatic hydrocarbons (PAHs), and polychlorinated biphenyls (PCBs) in blue mussels (*Mytilus edulis*) resulting from the discharge of stormwater commingled with infiltrated groundwater."

EPA cites to GE's July 2009 data set to justify this study, but the data do not support EPA's proposal. The July 2009 data were derived from sampling dry weather flows that were later sent to the CDTs for treatment prior to discharge. The data did not include any wet weather component. As a result, they are not representative of the commingled flows actually discharged from the Drainage System Outfalls during wet weather conditions.

In any event, the available data for PAHs and PCBs do not support EPA's concerns. PCBs have been detected in only one sample over time, and then at low levels. Elevated PAHs have not been detected in any of GE's wet weather samples. Absent a record of detections and

exceedances, it is inappropriate for EPA to require further study, especially when the pollutants of interest are ubiquitous in the environment and likely derive, if at all, from background sources like asphalt paved roads and atmospheric deposition.

EPA's NPDES Permit Writers' Manual (EPA, 2010) addresses if and when to require bioaccumulation studies as special conditions in NPDES permits. However, none of the grounds for such studies are present in this proceeding. Moreover, there is no precedent for such studies in relevant EPA Region 1 NPDES permitting actions. In the MWRA NPDES proceeding, EPA Region 1 required a bioaccumulation study of discharges from the Deer Island Wastewater Treatment Plant. The flows from this plant are 450 million gallons per day on average with peak flows approaching a billion gallons per day. This plant is in no way comparable to the Facility. EPA also required a bioaccumulation study as part of the Brayton Point Power Plant NPDES proceeding. Brayton Point is the largest fossil fuel plant in New England and is in no way comparable to the Facility. EPA has not imposed bioaccumulation study requirements in proceedings more similar to this one, such as the NPDES proceedings for Logan Airport, Mirant Canal Station, Mirant Kendall Station, or the bulk petroleum storage facilities in Chelsea, Massachusetts.

Moreover, due to the tidal nature of the Saugus River, it is not possible to attribute bioaccumulation, if any, to a specific GE outfall for the following reasons:

- a) Wet weather discharges are by nature episodic events, and measurement of bioaccumulation by nature requires long-term, continuous exposure such that biological tissue reaches a dynamic equilibrium with the ambient water quality. This cannot happen with a wet weather discharge.
- b) The receiving waters are tidal with a large reversing flow. Thus any in situ testing exposes animals to flows from both up-stream and down-stream sources. This exposure is much greater than any episodic wet weather exposure. Thus, measurement of bioaccumulation at a wet weather outfall and not at an upstream control does not demonstrate that the wet weather outfall is the source (it could be coming from a different downstream source). The same is true for a downstream control.
- c) There are numerous other potential sources of contamination in the immediate vicinity of the GE outfalls, including runoff from industrial and urbanized paved surfaces (which typically include PAHs and metals) and RESCO, which is located directly across the river. Thus it is not possible to attribute elevated concentrations in mussels to any single source.
- d) The Saugus River has a history of over 100 years of industrial activity (U.S. National Park Service, *Environmental assessment/Environmental Impact Report for Restore Saugus River Turning Basin and Dock* (October 2006)); Massachusetts Division of Marine Fisheries, *Technical Report TR-30, Rainbow smelt (*Osmerus mordax*) spawning habitat on the Gulf of Maine coast of Massachusetts* (Chase, 1992); New England Natural Resources Center and Massachusetts Public Interest Research Group, *Baseline Assessment of the Saugus River Basin Massachusetts* (Tashiro et al., 1991). The footprint of this activity is likely preserved in the sediments, and the residue would be expected to periodically re-suspend in the water column. This would occur with the top few centimeters at peak monthly tidal flows, during storm events, and due to boat prop-wash.

Mussels feed by filtering particles from the water column, thus they ingest the re-suspended historic sediment particles and any contaminants associated with those particles. It would be impossible to distinguish between a particular wet weather discharge and re-suspended sediment as the source of any accumulation in the mussel tissue.

Response to Comment 5.3:

GE's comment opposes the Draft Permit's requirement for a bioaccumulation study to help assess the effects of wet weather discharges from the drainage system vaults. After considering this comment, in conjunction with other comments and in light of other provisions to be included in the Final Permit, EPA has decided to drop the bioaccumulation study requirement from the Final Permit. The Final Permit requires steps to minimize discharges of dry weather from the drainage system vaults during wet weather. This requirement should minimize the discharge of the pollutants of concern during the wet weather conditions that would have been assessed in the bioaccumulation study. At the same time, required monitoring and reporting of any discharges of PCBs, PAHs, and metals from these outfalls during wet weather events will enable EPA to determine if the effluent contains these contaminants of concern at concentrations that pose a threat to aquatic life. As a result, EPA decided that the bioaccumulation study could be left out of the Final Permit. If, however, monitoring of wet weather effluent discharges suggests that pollutants that bioaccumulate in aquatic organisms are present at levels presenting a concern to aquatic life or human health, EPA may require a bioaccumulation study in the future.

Dropping the bioaccumulation study requirement at this time meets GE's concern, in effect, and will contribute to reducing the overall cost of permit compliance. Having said that, EPA does not agree with the entire line of analysis presented in GE's comment. EPA explains its views below.

As explained in the Fact Sheet (see pp. 11, 12, 42-46), EPA has reason to suspect that contaminated groundwater at the site contains heavy metals (e.g., mercury), polychlorinated biphenyls (PCBs), and polycyclic aromatic hydrocarbons (PAHs), which are pollutants that bioaccumulate in the tissue of aquatic organisms. This contaminated groundwater can infiltrate the facility's drainage system and could end up being discharged from the drainage vaults to the Saugus River. Monitoring results representative of dry weather discharges from the drainage system outfalls in 2009 detected PCBs at Outfall 001, some outfalls with concentrations of PAHs above the technology-based limits in the 2010 Remediation and Miscellaneous Contaminated Sites General Permit (RGP), and some outfalls with concentrations of metals higher than RGP limits. The Draft Permit required wet weather effluent monitoring in an effort to determine if any of these pollutants are being discharged with wet weather flows and, as explained in the Fact Sheet (at p. 85), the bioaccumulation study was included to support this effluent monitoring by identifying potential biological impacts from any discharge of bioaccumulating pollutants.

EPA's 2010 NPDES Permit Writers Manual (Chapter 9) indicates that special conditions, such as additional monitoring studies, are included in permits in order to supplement numeric effluent limitations or to support future permit development activities. Specifically, the Permit Writers Manual indicates that bioaccumulation studies "might be required in a permit to determine

whether pollutants contained in wastewater discharges bioaccumulate in aquatic organisms...” (p. 9-2). At GE, several pollutants known to bioaccumulate in aquatic tissues have been reported in effluent from the drainage system vaults. Thus, the study was included to determine if wet weather discharges at GE contained metals, PCBs, or PAHs at levels resulting in bioaccumulation in the test organisms. EPA believes that GE makes a fair point when it suggests that if bioaccumulation was found in the test organisms in the proposed *in situ* study, it might have been impossible to determine with certainty whether the pollutants came from the facility’s discharges or from other pollutant discharges to the river, or from exposure to re-suspended sediments containing pollutants from past pollutant discharges from other sources.³⁶ At the same time, however, the permit did not make it a violation if bioaccumulation tests were positive, and test results, whether positive or negative, could provide useful information when considered in conjunction with effluent monitoring data and other information. Thus, EPA concludes that requiring a bioaccumulation study in the Draft Permit was not inconsistent with the guidance included in the Permit Writers’ Manual.

Nevertheless, for the reasons outlined above, EPA has dropped the bioaccumulation test requirement from the Final Permit.

6. EPA’s Assumption that there is no Available Dilution in the Receiving Water is Overly Conservative and not Supported Factually.

Comment 6.0:

In determining the need for water quality-based limits, EPA “conservatively assumed no dilution” based on “the tidal nature of the receiving water and the dearth of flow available at low tide, the value of the resource, and the assumption that non-allowable, non-stormwater discharges receive internal dilution via commingling with stormwater in the Drainage System.” See Fact Sheet at p. 24. GE respectfully submits that EPA’s assumption is overly conservative. Dilution occurs as a matter of physical fact in the river. Accounting for this dilution is authorized by applicable federal law and is not prohibited by applicable state law. From both a qualitative and quantitative perspective, such an accounting is appropriate in this proceeding.

EPA’s regulations specifically allow for dilution to be considered in the reasonable potential analysis and, as a matter of Agency practice, it is commonplace for EPA to do so. EPA’s Technical Support Document for Water Quality-Based Toxics Control (March 1991) (TSD) provides in-depth Agency perspective on dilution and mixing zones. The TSD sets forth specific conditions under which denial of mixing zones would be appropriate, but none of these conditions has been articulated by EPA here. Moreover, the TSD specifically acknowledges that dilution in marine and estuarine systems may be greater due to large and/or complex mixing than most freshwater systems. This potential for greater mixing and dilution is borne out by AECOM’s evaluation, which is included as Technical Exhibit 14.

³⁶ Of course, any sediment contamination might also have resulted from discharges by the GE facility, which is undoubtedly one of the significant historical sources of contamination to this part of the Saugus River.

MADEP follows an older Implementation Policy for Mixing Zones (MADEP 1993). This policy describes circumstances where mixing zones may or may not be appropriate.³⁷ Two of these circumstances may be relevant here. The first is for shellfish harvest waters (Class SA and SB), where mixing zones are not authorized “unless it is affirmatively demonstrated that the mixing zone does not encompass important shellfish harvest areas and will not adversely diminish the established pollution of shellfish in this segment.” GE’s affirmative demonstration is presented below and in the accompanying Technical Exhibit. The second is for Areas of Critical Environmental Concern (ACECs) and other refuges, sanctuaries and special habitats, where mixing zones are not authorized without a case-specific determination. Again, GE’s affirmative demonstration is presented below and in the accompanying Technical Exhibit.³⁸

With this demonstration, GE encourages EPA to account for the dilution that is, in fact, occurring in the receiving water without any adverse impact to shellfish waters or other ACECs.

Response to Comment 6.0:

GE objects to the fact that EPA did not account for dilution in the Saugus River in determining the Draft Permit’s water quality based effluent limitations for the Lynn facility’s Drainage System Outfalls.

For reasons explained earlier in this RTC document, the Final Permit does not contain water quality-based effluent limitations, except where necessary to satisfy the anti-backsliding requirements of the CWA and its implementing NPDES regulations. As dilution is a relevant factor only in relation to development of water quality-based effluent limitations, not technology-based effluent limitations, GE’s Comment 6.0 is no longer pertinent. The water quality-based limits contained in the Draft Permit have been replaced in the Final Permit with a requirement to monitor for specific pollutants without numeric effluent limitations, for the reasons discussed elsewhere in this RTC document and its attachments.

Comment 6.1: Qualitative Assessment Supports Allowance for Dilution and Mixing.

Wet and dry weather discharges from the Facility are subject to physical mixing and dilution within the Saugus River. The entire stretch of river is designated by MassDMF as a shellfish growing area (part of area N26.0) and has been assigned a “shellfish” qualifier as part of its MADEP Class SB water quality classification for segment MA93-44. However, the only local area where commercial shellfish harvesting is allowed (albeit conditionally restricted) is along

³⁷ MADEP defines a “mixing zone” as “an area or volume of a waterbody in the immediate vicinity of a discharge where the initial dilution of the discharge occurs. Within a mixing zone excursions from certain water quality criteria may be tolerable, provided they do not interfere with the existing or designated uses of the segment. Water quality criteria apply at the boundary of the mixing zone. Where mixing zones are not permitted, water quality criteria apply at the outfall structure.”

³⁸ It is important to note that MADEP interprets its policy to apply to the relevant portion of a critical use area. “For the purpose of this policy a critical use may include all or a discrete portion of a segment. For example, a bathing beach in a Class B segment or a shellfish bed in a Class SA segment may be deemed critical while other areas of the same segment are eligible for mixing zones.”

the Pines River. While tidal reversals do bring Saugus River water into the Pines River, due to the location of the outfalls, pollutants potentially present in the Facility's discharges will be subject to significant physical mixing such that any "mixing zone" associated with those discharges would not be expected to "encompass" the Pines River shellfish harvest area or "adversely diminish the established population of shellfish in the segment."

Moreover, the most significant concern related to shellfish contamination and the closure of local shellfish harvest areas has been bacterial contamination (e.g., fecal coliform) associated with stormwater runoff and, to a greater degree, local CSO discharges. A 2006 sanitary survey report for area N26.1 (MassDMF, 2006) indicated that historic bacterial contamination in this area was due to degraded water quality from rain runoff transported to the area by the Saugus River, Town Line Brook and Diamond Creek. The report indicated that the Saugus River Watershed Council had documented that "the most significant contributors of this pollution to the Saugus River are Shute Brook in Saugus, the Town of Saugus Pump Station at Lincoln Street and [LWSC] CSO #003 (Summer Street Overflow in Lynn). The 2006 sanitary survey indicated that metals and PCBs concentrations in shellfish in area N26.1 had been evaluated in 2005 and that significant levels were not encountered. The report indicated that both MassDMF and the Massachusetts Department of Public Health reviewed the analytical results of these studies and determined that "results were below US Food and Drug Administration's Action and/or Guidance Levels for Poisonous or Deleterious Substances in Seafood."

As EPA is well aware, GE is not a source of fecal coliform or other bacterial contaminants, and its discharges have not been shown to adversely affect the relevant shellfish harvest area. As a result, GE would not be precluded from a mixing zone under the state's implementation policy.

GE is also not precluded from a mixing zone due to the presence of the Rumney Marshes ACEC. These marshes are located in Saugus and Revere, beginning south of the Saugus side of the river (opposite the Facility) and extending to the south and southwest. The Pines River runs through the Rumney Marshes and supports shellfish beds. In establishing the ACEC, MADEP extended the northern boundary across the Saugus to the north bank (on the Lynn side). Although the river has tidal flats that could possibly serve as suitable habitat for shellfish, GE believes that the extension of the ACEC to the full width of the river was likely made in recognition of the tidal nature of the river and the fact that tidal flows infringe on the Pines River and Rumney Marshes. The Gear Plant portion of the Facility abuts salt marshes that are included in the ACEC; however, the Gear Plant is shut down and GE's other, remaining discharges are not expected to impact the marshes because of their characteristics, fate, transport and physical mixing in the river. GE submits that EPA should account for this mixing and dilution based on the affirmative demonstration presented below and in the accompanying Technical Exhibit, supported by the qualitative assumption that GE's outfalls are sufficiently far removed from the critical portions of the ACEC (thus allowing for segmentation as provided in MADEP's policy).

Response to Comment 6.1:

Dilution is only taken into consideration when developing water quality-based effluent limitations. The water quality-based effluent limitations in the Final Permit have been retained based on anti-backsliding. All other water quality-based limits have been replaced with a

requirement to monitor without effluent limitations, for reasons discussed elsewhere in this response to comments document and Attachment A.

In the case of this receiving water, EPA conservatively assumed no dilution in evaluating the water quality-based criteria for toxic and non-conventional pollutants for the Draft Permit, given the tidal nature of the receiving water and the dearth of flow available at low tide, the value of the resource, and the assumption that non-allowable non-stormwater discharges receive internal dilution via commingling with stormwater in the Drainage System (Part V.B.2 of the Fact Sheet).

After reviewing the CORMIX model and resultant dilution proposed by GE in Technical Exhibit 14, EPA is still not convinced that the discharges from GE warrant any dilution for the following reasons.

Model calibration was not demonstrated

Site specific field measurements of discharge and ambient parameters were not used to calibrate the model. Examples of these parameters include channel geometry at the outfalls, ambient current velocity for worst case scenarios, the duration of slack tide, an ambient density profile, and instantaneous discharge flow rates.

Unsteady analysis was not completed

The near field mixing zone at the facility is in an unsteady environment. Steady state discharge conditions may apply in some instances but limitations of the steady state modeling assumptions of discharge induced mixing used in CORMIX become less applicable as steady state conditions break down.

Discontinuous, variable discharges and tidal ambient conditions do not warrant evaluation exclusively in CORMIX 1 using the steady-state mode. In addition, the unsteady analysis tool in CORMIX (which was not utilized) was developed in later versions of CORMIX not supported by EPA. In general, unsteady coastal environment conditions typically require a sophisticated 3-dimensional ocean-circulation type model or computational fluid dynamics model with the capacity to solve 3-dimensional and time critical unsteady condition equations in worst case slack conditions.

Complete worst case conditions were not evaluated

The discharge scenarios considered demonstrate adequate sensitivity analysis; however, the worst case scenario near-field mixing zone case was not demonstrated. The worst case mixing zone scenario in a tidal environment typically occurs just after slack tide, when ambient current velocity is 0 cm/s. When this occurs, steady state assumptions become less applicable and the CORMIX interface issues warnings regarding the instability of the discharge and the unreliability of steady state predictive factors such as dilution. The duration of slack tides were also not considered.

A single, worst case dilution factor was not presented

A range of mixing-based dilution is not applicable. The combined dilution factor presented in regard to the overall facility discharge flow is accompanied by no justification. In addition the worst case ambient flow is not the combined average tidal flow rate and freshwater flow rate. For analyses at the acute and chronic boundaries in tidally-influenced water, it is acceptable to use the critical 10th percentile and 50th percentile current velocities, respectively, derived from a cumulative frequency distribution analysis.

CORMIX assumes steady state is reached by the end of the near-field boundary. Since worst case conditions were not presented, it is unclear if the discharge duration is greater than or equal to the time it takes for the discharge plume to reach the near field boundary. If the discharge duration is less, the dilution factor is not reliable.

Depth limitations were not fully evaluated

CORMIX must be used advisedly when the depth is less than 5 times the plume diameter. In addition, in the case of shallow ambient depth (low slack tide), the ambient depth for one or more outfalls is less than 3 times the height of the discharge pipe. Under this condition, CORMIX will not execute. Intentional changes in dimensional parameters to force CORMIX to execute, even relatively small in magnitude, can greatly affect the mixing zone properties and resulting dilution factor.

Water quality based limitations have been removed from the Final Permit except where retained consistent with anti-backsliding regulations. Still, EPA does not accept the estimated dilution factors presented in the CORMIX evaluation. Please refer to EPA 823-R-06-003, and CORMIX documentation provided by Mixzon Inc. for additional technical information. An updated mixing evaluation depicting dilution under worst-case conditions would be required to consider dilution in the calculation of water quality-based numeric effluent limitations for future permit issuance.

Comment 6.2: Quantitative Evaluation Supports Allowance for Dilution and Mixing.

GE retained AECOM to evaluate the dilution of commingled dry weather flow and stormwater from the Drainage System Outfalls. AECOM's evaluation is presented as Technical Exhibit 14. This evaluation demonstrates that discharges from the outfalls are both brief in duration and subject to significant mixing-based dilution within the river. Predicted "effective dilution" factors are substantial -- for worst case surface discharges in a low current velocity environment they range from 4.2:1 (at Outfall 031) to 20.5:1 (at Outfall 001). Effective dilutions are even greater during higher current velocity environments and submerged outfall scenarios.

The "effective dilution" concept takes into account the limited volume and associated limited time duration of the commingled water discharge. When vault gates open, commingled water is discharged from the Drainage System to the Saugus River over a 2 to 24 minute period (varies by outfall and discharge scenario). EPA's Technical Support Document for Water Quality-Based Toxics Control (EPA 1991) indicates that acute ambient water quality criteria are based on a 1-hour average exposure time. The effective dilution factors noted above represent the dilution

of commingled water in the discharge as it relates to a 1-hour average instream exposure time, in order to enable direct comparison to acute ambient water quality criteria.

When these dilution factors above are applied to estimated water quality data from the commingled flows within the vaults (as presented in Technical Exhibit 15), it is clear that any potential for an exceedance of the 1-hour average acute ambient water quality criteria is very small (in fact, it is predicted that such exceedances do not occur). While GE believes that chronic instream criteria are not applicable to the discrete, brief duration commingled water discharges, it is clear that the combination of commingling-based dilution within the Drainage System and instream dilution upon discharge to the Saugus River obviate any potential for exceedance of the 4-day average chronic criteria.

GE's affirmative demonstration affects the manner in which EPA assessed the need for, and in fact derived limits, conditions and prohibitions in the Draft Permit, all of which need to be revisited in order to properly account for the demonstrated effects of mixing and dilution in the receiving water. In addition, GE's demonstration directly affects EPA's narrative prohibition on discharges that "cause a violation of applicable Massachusetts Surface Water Quality Standards." (Part I.A.1.b; Part I.A.2; Part I.A.3; Part I.A.4; Part I.A.5; Part I.A.6; Part I.A.7). EPA cannot legitimately impose such a prohibition end-of-pipe but rather must allow for a mixing zone.

Response to Comment 6.2:

Dilution is considered only for water quality-based effluent limitations. As explained elsewhere in this response to comments document, the only water quality-based effluent limitations retained in the Final Permit for the drainage system outfalls are based on the anti-backsliding permitting requirements of the CWA and its implementing NPDES regulations (pH and oil and grease). All other water quality-based limits at the Drainage System Outfalls from the Draft Permit have been eliminated and replaced with monitoring requirements.

For the reasons provided in RTC 6.1, an acceptable evaluation of dilution representative of worst-case conditions has not been provided at this time. Therefore, the water quality-based limits for pH and oil and grease from commingled dry weather flow and stormwater must be met end of pipe, prior to dilution by the receiving water. In the future, the numeric, water quality-based limits for pH and oil and grease at the drainage system outfalls may account for dilution provided that a state-approved mixing zone is authorized.

The requirement that the discharge "shall not cause or contribute to the violation of a water quality standard" is retained in the Final Permit. If monitoring completed through the Final Permit suggests that the effluent from the drainage system outfalls may contribute to or cause a violation of water quality standards, EPA and MassDEP would consider dilution through an approved mixing zone when determining reasonable potential provided that sufficient information is available to evaluate dilution in the receiving water.

7. EPA must Correct Errors in its Approach to Assigning Limits and Monitoring Conditions on GE's Noncontact Cooling Water and Unused River Water Discharges.

Comment 7.1: Outfall 018 does not Discharge Stormwater and, in Turn, Should not be Assigned Wet Weather Limits or Conditions.

EPA relied on outdated information suggesting that Outfall 018 has a stormwater component, which it does not. Consequently, there is no need for “wet weather” discharge Outfall 018B.

In addition to noncontact cooling water (NCCW), EPA assumed that Outfall 018 receives dry weather flows such as boiler filter backwash and ion exchange regeneration and backwash, which it does not. The only flows other than NCCW to Outfall 018 are turbine condensate (intermittent), boiler startup/soot blower drains/boiler draining for maintenance (intermittent), discharges from deaerator storage tanks (intermittent), steam condensate return from steam users (seasonal) and boiler blowdown. Except for boiler blowdown, all of these flows are either intermittent (related to a specific maintenance activity) or seasonal. Assigning a single internal outfall (018C) is both unnecessary (due to the intermittent and infrequent nature of the discharges) and impracticable (no single monitoring point exists that would capture these various wastestreams). Monitoring of Outfall 018 (combined NCCW and other wastestreams) will effectively capture the quality of the discharge to the river.

Response to Comment 7.1:

As explained earlier in this response to comment, in consideration of the fact that GE has provided information indicating that storm water discharges do not occur at Outfall 018B, the Final Permit has eliminated Outfall 018B, including wet weather limits and conditions. The Final Permit does not authorize stormwater discharges from Outfall 018A.

GE additionally comments that flows to Outfall 018 other than NCCW should not be required to be monitored internally because these flows are intermittent and no single point exists that would capture the various waste streams. First, EPA disagrees that an internal outfall would be unnecessary because flows are intermittent. The dry weather flows to Outfall 018 are similar in nature to the “low volume waste sources” in the Steam Electric effluent limitations guidelines, defined at 40 C.F.R. §423.11(b) to be “taken collectively as if from one source, wastewater from all sources except those for which specific limitations are otherwise established in this part. Low volume wastes sources include, but are not limited to: wastewaters from wet scrubber air pollution control systems, ion exchange water treatment system, water treatment evaporator blowdown, laboratory and sampling streams, boiler blowdown, floor drains, cooling tower basin cleaning wastes, and recirculating house service water systems. Sanitary and air conditioning wastes are not included.” Given the similarity in these waste streams, both the Draft and Final Permits include BPJ-based effluent limitations for these waste streams informed by the technology-based standards in the Steam Electric ELGs. These limitations apply prior to mixing with NCCW, and therefore must be monitored internally. Monitoring of these flows is required on a monthly basis, and should be timed to capture peak flows, including intermittent discharges. At a minimum, boiler blowdown (a continuous discharge) will be monitored.

Regarding the monitoring location, the flow diagram for Outfall 018 provided with the 1998 permit application (Figure 3-7) indicates that there would be a single monitoring location just prior to mixing with NCCW that would capture all these internal waste streams. GE has not, in its subsequent submissions nor in its comments on the Draft Permit, provided any information to contradict the flow diagram or to support its claim that waste streams at Outfall 018 cannot be monitored internally.

Comment 7.2: Any Groundwater Infiltration into Outfalls 014, 018 and 020 is *de minimis*.

Even assuming that contaminated groundwater could be present at Outfalls 014, 018 and 020 (which we dispute), the amount of infiltration would be *de minimis* in comparison to the main source of flow. The pipes leading to these outfalls are lined, sealed, inspected or otherwise used in a manner that precludes the potential for significant infiltration. In addition, there are no stormwater connections into these pipes. GE submits that it was inappropriate for EPA to impose numeric limits and monitoring requirements in the absence of any data or analysis to suggest that discharges from these outfalls in fact cause or contribute to an exceedance of applicable water quality standards.

The situation at Outfall 020 is perhaps the most extreme. Outfall 020 discharges unused river water that is collected in a reservoir that is drained, cleaned and inspected annually by licensed power plant operators. The reservoir shows no signs of cracking or deterioration, and GE does nothing to the water other than pump it in and then allow the water to overflow back to the Saugus River. No limits or monitoring requirements should be imposed on this activity.

Response to Comment 7.2:

GE comments that “it was inappropriate for EPA to impose numeric limits and monitoring requirements [on Outfalls 014, 018, and 020] in the absence of any data or analysis to suggest that discharges from these outfalls in fact cause or contribute to an exceedance of applicable water quality standards” on the basis that groundwater infiltration at these outfalls, if any, is *de minimis*. The Final Permit has eliminated the monitoring requirements related to the discharge of infiltrated groundwater at Outfalls 014, 018, and 020 on the basis that these outfalls do not receive these flows. The Final Permit authorizes only discharges of flows specified by the permittee in the permit application and comments for these outfalls.

Comment 7.3: The Copper and Selenium Limits at Outfall 018 limits are not Appropriate.

GE presented information in Section V.A above that calls into question earlier sampling results for copper and selenium. Even if these results were accurate (which we dispute), EPA cannot derive limits without factoring in the presence of these pollutants in the Facility’s intake water.

The table in Technical Exhibit 16 provides river water quality samples collected in September 1998 (west of the Route 1A bridge) and September 2000 (approximately midway between the power plant and test cell intakes), as well as samples collected in September 1998 at Outfall 018.

The copper concentration observed in the river in September 2000 was almost half of the acute criterion.

Per the discussion above, even if imposition of these numeric limits could be justified, EPA failed to provide a “credit” for pollutants not added by the Facility, which EPA should have done by expressing the limits on a net basis. As EPA is well aware, under the Clean Water Act, the permit writer may regulate only “discharges of pollutants,” which are defined as “any addition of any pollutant to navigable water.” CWA §§301(a) and 502(12). Moreover, courts have held that constituents occurring naturally in navigable waters or occurring as a result of other permittees’ discharges do not constitute an addition of pollutants. See *National Wildlife Federation v. Gorsuch*, 693 F.2d 156, 173-75 (D.C. Cir. 1982); *Appalachian Power Co. v. Train*, 545 F.2d 1351, 1377 (D.C. Cir. 1976). EPA’s regulations specifically allow credit for intake pollutants in setting technology-based effluent limits. 40 C.F.R. 122.45(g). And EPA has opined that permit writers “may take into account the presence of intake water pollutants” in setting water quality-based effluent limits, as well. 49 Fed. Reg. 38,050, 38,027 (Sept. 26, 1984). This opinion underlies EPA’s Water Quality Guidance for the Great Lakes System, and has served as a model for permit decisions all around the country. See generally 40 C.F.R. Part 132, App. F. Importantly, EPA has allowed the consideration of intake pollutants both in determining the need for limits and deriving those limits. EPA should do no less here.

Response to Comment 7.3:

As discussed earlier in this RTC document, the numeric effluent limitations for copper and selenium at Outfall 018A have been eliminated in the Final Permit. EPA has made this change in consideration of the fact that the information demonstrating that elevated levels of these metals were present in the discharge from Outfall 018A was derived from monitoring data gathered in 1998, while more recent sampling data submitted by GE in response to an EPA CWA Section 308 information request indicated that these metals were non-detect in the discharge. Limited monitoring for copper will be conducted and reported twice per year as part of the WET testing requirements. This data will enable EPA to determine the reasonable potential for the discharge to cause or contribute to an exceedence of water quality standards for these metals.

Technical Exhibit 16 indicates that slightly elevated concentrations of metals were observed at the sampling location between the Power Plant and Test Cell intakes, but not west of the Route 1A Bridge. The sampling location between the intakes is not precisely defined, but EPA notes that Outfall 018 also discharges at a location between the Power Plant and Test Cell intakes. The sampling data provided does not appear to rule out the possibility that the elevated copper and selenium levels are due to the discharge from Outfall 018 and not to background concentrations in the river. A more representative sample of the presence of background metals in the intake would be collected from the intake to the Power Plant (i.e., “bathtub”). EPA agrees that, where warranted based on representative data, credit for pollutants present in intake water can impact technology-based effluent limits. In this case, the existing data is insufficient to support the application of intake credits and is not applicable because the Final Permit does not include numeric limits for either parameter.

8. Antidegradation Authorization is Neither Necessary nor Appropriate for this NPDES Renewal Proceeding.

Comment 8.0:

EPA references the State's antidegradation policy in support of several of the proposed limits and conditions in the Draft Permit, and provides a detailed analysis of the State's policy and implementation procedures in the Fact Sheet. *See* Fact Sheet at pp. 24-26, 29 (relating to the prohibition on dry weather discharges), and 33 (relating to the combination of permit conditions targeting non-allowable, non-stormwater flows). However, it is not clear from the record whether EPA is in fact recommending that the discharges undergo the State's antidegradation authorization process.

GE notes that EPA specifically requested an antidegradation study in connection with the last NPDES renewal proceeding in 1992-93. The resulting study concluded that the thermal discharges associated with the Facility do not result in an impairment of existing water quality and are protective of indigenous aquatic life. Thermal discharges have decreased since the time of the study due to the inactivity of the Gear Plant intake and associated discharge at Outfall 029.

Based on the prior record and the fact that the Facility is an existing source that has been in place for over 100 years with no changes in operations or discharges that would lead to degradation, GE submits that additional antidegradation authorization at this time is neither necessary nor appropriate. Moreover, even if antidegradation authorization was purely a discretionary decision under the State's antidegradation implementation procedures, that decision would nevertheless need to be justified and explained in the permit record. Nothing of the sort has been done here.

Response to Comment 8.0:

GE's comment points to passages from the Fact Sheet in which EPA generally discussed the antidegradation provisions of the state's water quality standards, as well as passages in which EPA explained that it had concluded that the limits in the Draft Permit would satisfy the state's water quality standards, including the antidegradation provisions. GE also comments that "it is not clear from the record whether EPA is in fact recommending that the discharges undergo the State's antidegradation authorization process." Furthermore, GE comments that an antidegradation review was conducted by the state in 1993 with regard to thermal discharges and that the state concluded that thermal discharges would not impair water quality or harm indigenous life in the water body. Moreover, GE states that thermal discharges have decreased since that time. GE further states that "the Facility is an existing source that has been in place for over 100 years with no changes in operations or discharges that would lead to degradation." Finally, GE states that even if the state's antidegradation procedures were entirely discretionary, an antidegradation review could not be undertaken by the state without some justification being provided in the record for doing so, and no such justification has been provided.

EPA does not agree with several aspects of this comment. GE's comment seems to suggest that unless it has increased or otherwise changed its discharges, state antidegradation requirements do not apply to its discharges. This is incorrect. Thus, while GE's statement that it has made no

changes in its operations or discharges for over 100 years that would lead to degradation of water quality strains credulity – and certainly GE has not documented this claim – EPA’s response to this comment does not turn on this point.³⁹

NPDES permit limits issued by EPA must satisfy not only federal technology standards, but also state water quality standards. *See, e.g.*, 33 U.S.C. § 1311(b)(1)(C). Part of this is satisfying the antidegradation provisions which are part of the state’s water quality standards. *See* 40 C.F.R. §§ 131.12(a). In Massachusetts, the state’s antidegradation regulations and procedures apply to existing discharges undergoing NPDES permit renewal under certain circumstances, including in this case. *See* 40 C.F.R. § 4.04(1), (3)(a), and (6). *See also* Massachusetts Department of Environmental Protection (MassDEP), “Implementation Procedures for the Antidegradation Provisions of the Massachusetts Surface Water Quality Standards, 314 CMR 4.00” (Oct. 21, 2009) (MassDEP’s 2009 Antidegradation Procedures), p. 1 (“Finally, as explained below, in certain circumstances, these procedures apply to existing discharges undergoing the permit renewal process.”). EPA explained this in the Fact Sheet for the Draft Permit, at pp. 24-26.

GE discharges pollutants into a segment of the Saugus River that is part of the state-designated Rumney Marshes Area of Critical Environmental Concern (ACEC). As a result, these waters are considered to be outstanding resource waters (ORW). As EPA explained in the Fact Sheet (at p. 24):

The State’s antidegradation requirements restrict both new (or increased) and existing discharges of pollutants to ORWs. While GE Aviation is not proposing new or increased pollutant discharges, its existing discharges still must satisfy the antidegradation requirements.

See also 40 C.F.R. § 4.04(3)(a); MassDEP’s 2009 Antidegradation Procedures, pp. 6-7. In addition, the antidegradation requirements also apply to the review of existing discharges to ensure the protection of existing uses of a water body. *See* 40 C.F.R. § 4.04(1); MassDEP’s 2009 Antidegradation Procedures, pp. 3. While GE points to a prior antidegradation analysis concerning thermal discharges, a prior analysis exempts neither continued thermal discharges nor discharges from the drainage system from the antidegradation requirements applicable to existing discharges to an ORW. Of course, this is not to say that a prior analysis could not be used in an antidegradation assessment to the extent that it remained scientifically appropriate.

Under the state’s antidegradation requirements, new, increased and existing discharges must not cause a violation of “existing uses.” *Id.* Furthermore, the state’s requirements specify with regard to ORWs, that:

³⁹ While EPA does not have direct knowledge of all the changes that may been made in GE’s discharges and other operations in over a century of industrial activity at the company’s site along the Saugus River, EPA is aware that discharges from the CDTs and the Drainage System Outfalls began within the last 100 years. EPA also suspects that other new discharges commenced, or new pollutants have been added to existing discharges, within the last century. As GE states in its Comment 13.2.4, “... the vaults are centralized collection points for a large complex drainage system in a manufacturing facility where things can change.”

The quality of these waters shall be protected and maintained.

- (a) Any person having an existing discharge to these waters shall cease said discharge and connect to a Publicly Owned Treatment Works (POTW) unless it is shown by said person that such a connection is not reasonably available or feasible. Existing discharges not connected to a POTW shall be provided with the highest and best practical method of waste treatment determined by the Department as necessary to protect and maintain the outstanding resource water.

In the Fact Sheet for the Draft Permit, EPA specifically concluded that the permit limits on GE's thermal discharges and dry and wet weather drainage system discharges would satisfy the state's water quality standards, including its antidegradation provisions. *See* Fact Sheet at pp. 29, 33. As EPA explained for the Draft Permit, the Agency's authorization of thermal discharges pursuant to a CWA § 316(a) variance, is deemed to satisfy the state's water quality standards in their entirety, including the antidegradation provisions. *Id.* at pp. 24-26, 79 n. 70. While the thermal discharge limits in the Final Permit are less stringent than those in the Draft Permit, they are still authorized under CWA § 316(a) and, in EPA's view, they still satisfy antidegradation requirements. With regard to the drainage system outfall discharges, EPA explained for the Draft Permit that the permit's requirements were based on BAT and BCT and that, as a result, these discharges to the ORW could continue under the antidegradation provisions. Fact Sheet, at pp. 29, 33. Again, although the Final Permit's requirements for these discharges are less stringent in some respects than the Draft Permit's requirements, the permit's limits are still based on BAT and BCT standards and EPA concludes that these discharges may continue under the antidegradation provisions.

While GE's comment complains that it is unclear whether EPA is requesting MassDEP to perform an antidegradation assessment, this comment does not identify any infirmity in EPA's NPDES permit. In fact, EPA did not ask MassDEP to perform an antidegradation assessment. EPA appropriately considered the antidegradation issue itself – given the Agency's obligation to ensure that its NPDES permit limits satisfy state water quality standards – and explained its conclusion that the antidegradation requirements were satisfied. Thus, EPA disagrees with GE's comment that undertaking such a consideration of the antidegradation requirements was unnecessary and inappropriate, and also disagrees with GE's comment that EPA failed to explain or justify why it was considering the state antidegradation requirements. MassDEP determined that the Final Permit conditions are sufficient to comply with the antidegradation provisions in the context of its certification under CWA § 401(a). 33 U.S.C. § 1341(a).

9. The Draft Permit would Result in Redundant and Internally Inconsistent Requirements that do not Reflect best Professional Judgment, are not Necessary in Order to Achieve Water Quality Objectives, and are Infeasible to Implement.

Comment 9.0:

EPA's approach to the Drainage System Outfalls is predicated on:

- a prohibition on discharges during dry weather conditions;

- a prohibition on discharges during the first 30 minutes of wet weather conditions; and
- a limited authorization to discharge stormwater and “allowable non-stormwater” (commingled with “minimal non-stormwater flows of other types”) after the first 30 minutes of wet weather conditions, qualified by a requirement to eliminate “non-allowable non-stormwater discharges” to the “maximum extent practicable” (MEP).

EPA repeats these prohibitions at least three times in the Draft Permit (Part I.A.1.a, Part I.A.11 and Part I.B.10). EPA also repeats the MEP requirement at least four times in the Draft Permit (Part I.A.1.b, Part I.A.15, Part I.B.9 and Part I.B.10.b).

Both the prohibitions and the MEP requirement are predicated on definitions and assumptions that EPA contrived for this particular proceeding, but that are flatly inconsistent with conditions at the Facility, not to mention relevant precedent. The fundamental problem with EPA’s approach is that it cannot be implemented and, even if it could be, it is not necessary.

Response to Comment 9.0:

GE’s Comment 9.0 contains certain statements that are more fully explicated in GE’s subsequent Comments 9.1 through 9.6, below. Accordingly, EPA’s response to Comment 9.0 is a general one, and EPA later responds, in greater detail, to GE’s Comments 9.1 through 9.6. GE asserts that the provisions of the Draft Permit regulating discharges from the Lynn facility’s drainage system outfalls “are predicated on definitions and assumptions that EPA contrived for this particular proceeding, but that are flatly inconsistent with conditions at the Facility, not to mention relevant precedent” and that “[t]he fundamental problem with EPA’s approach is that it cannot be implemented and, even if it could be, it is not necessary.”

In essence, the Final Permit contains BMPs designed to ensure that: 1) untreated flows (including infiltrated contaminated groundwater) are not discharged into the Saugus River during dry weather; and 2) that dry weather flows which, during wet weather conditions, commingle with stormwater and are released, untreated, from the drainage system into the Saugus River, are minimized prior to a precipitation event. See Attachment A for a more detailed discussion of the technology-based requirements of the Final Permit.

Comment 9.1: Wet and Dry Weather Flows.

EPA defines “wet weather” in *Part I.A.1 footnote 1* as “any time period that begins with an hour that received 0.1 inches or more of rainfall (or equivalent precipitation) and continues until two hours past the last hour that precipitation is recorded.” EPA defines “dry weather” as “any time which is not wet weather.”

GE urges EPA to revise these definitions to more accurately and fairly reflect the nature of stormwater controls that are already in place at the site. Those controls affect both “how” and “how long” wet weather discharges occur.

For Outfall 027B, runoff from the newly installed retention pond can continue for up to 48 hours after a measurable storm event. Moreover, for all of the Drainage System Outfalls, the design

and operation of the stormwater outfall gates dictate the occurrence and duration of wet weather discharges.

As a matter of both design and operation, an outfall gate begins to open when the accumulation of stormwater flow in the vault causes the water to reach a designated “gate open” level. The gate slowly rises (opens) over a 5-minute period, gradually releasing accumulated water so as not to create excessive turbulence and stir up water in the vault during the release. After 5 minutes, the gate is completely open and remains this way for a 1-hour period. After an hour, the gate rapidly closes and remains closed until the “gate open” level is again triggered. If the vault begins to refill with stormwater, the transfer pumps will turn on and will route the accumulated water to the CDTs until such a time as water level either drops to the “pump off” level or rises to the “gate open” level.

Based on the manner in which the stormwater outfall gates operate, discharges from the vaults are related to runoff flow rates into the vaults instead of when precipitation begins or ends. For this reason, it would be more appropriate to define “wet weather” in Part I.A.1 footnote 1 as “*any time period that begins with an hour that received 0.1 inches or more of measurable rainfall (or equivalent precipitation, including snowmelt) and continues until two hours past the closing of the last of the outfall gates (excluding Outfall 027B due to the upgradient stormwater detention pond, which can take up to 48 hours to fully drain).*”

Response to Comment 9.1:

EPA notes that the definition of “wet weather” in the Draft Permit is based on actual weather conditions, not on the way in which GE currently operates the Drainage System Outfall gates. Under the Draft Permit, the permittee was required to transfer all flows during the first 30 minutes of wet weather to the CDTs for treatment. For this reason, it was important to define when “wet weather” would begin and end as a function of actual weather conditions. The Final Permit has eliminated the requirement to treat the first 30 minutes of wet weather flows in the CDTs. The Final Permit includes BMPs to reduce the volume of dry weather flows in the vault prior to a forecasted storm event likely to trigger the vaults, and to eliminate the discharge of dry weather flows with the exception of weeping around the bottom of the gate (see BAT analysis in Attachment A for a more detailed discussion of this permit requirement). For the purposes of the Final Permit, the operation of the gate (and likelihood of the vault gate being opened and discharging to the receiving water) is the critical factor.

Therefore, Part I.A.1, footnote 1 of the Final Permit states:

For the purposes of this permit, at any one time, weather conditions are considered either “wet weather” conditions or “dry weather” conditions. “Wet weather” is defined as any time period that begins with the first opening of any drainage system outfall gate due to the addition of stormwater to the drainage system and continues until two hours after the last closing of the last drainage system outfall gate with the exception of Outfall 027B. “Wet weather” at Outfall 027B continues until 48 hours after the last closing of the last drainage system outfall gate. “Dry weather” is defined as any period of time that does not meet the definition of “wet weather.” The

permittee may either collect rainfall data at the facility, or use rainfall data from a nearby source, however, the data source shall be consistent throughout the effectiveness of the permit.

Comment 9.2: Allowable and Non-Allowable Stormwater.

EPA defines “allowable non-stormwater discharges” as “uncontaminated groundwater, steam condensate, turbine condensate, and condensate from air receivers.” By contrast, EPA defines “non-allowable non-stormwater flows” as “contaminated groundwater, cooling water, condensate blowdown, steam conduit blowdown, boiler startup/soot blower drains/boiler draining for maintenance (intermittent), boiler filter backwash, ion exchange regeneration and backwash, de-aerator storage tanks (intermittent), boiler blowdown, building 64-A sump (intermittent), steam conduit water, cooling tower blowdown, stormwater collected in the secondary containment dikes and truck loading areas, test cell washdown water (intermittent), hydrant testing, sprinkler system testing water, potable water used upon NCCW system failure, drain cleanouts (including drainage system cleaning), roof mounted air conditioner wash water (no detergent), excavation dewatering, and stormwater dye tracing.” For “non-allowable non-stormwater flows,” EPA has proposed (a) a number of additional control measures, (b) a novel MEP standard for eliminating the discharge of these flows, and (c) numeric effluent limits and monitoring requirements for any non-allowable non-stormwater discharges that cannot be fully eliminated.

EPA justifies these definitions in the Fact Sheet on the basis of the MSGP. However, the MSGP is not a valid point of differentiation. The MSGP was developed as a “general permit” to accommodate thousands of permittees in different regions of the country operating in a range of different industrial sectors. The “allowable non-stormwater” discharges identified in the MSGP simply reflect the most common and recurring types of non-stormwater discharges within that large class of general permittees deemed to be acceptable by EPA. Many facilities elect individual permit coverage over the MSGP and hold permits that authorize different and/or additional “allowable non-stormwater” discharges. In short, the MSGP does not set a floor or ceiling for these types of discharges. Rather, it provides a convenient permitting vehicle with terms and conditions designed to accommodate common conditions among thousands of permittees. GE has not sought coverage under the MSGP here and, in turn, there is no basis to differentiate GE’s discharges pursuant to the MSGP.

Moreover, as applied to this particular proceeding, EPA’s definitions would have the effect of prohibiting certain non-allowable non-stormwater flows that GE cannot feasibly eliminate and, in any event, do not result in any water quality impacts that would necessitate elimination. These flows are addressed in more detail in Section XIII of these comments.

Response to Comment 9.2:

In response to GE’s assertion that it was inappropriate for EPA to use the MSGP for the purpose of defining different kinds of flows regulated under the permit, EPA notes that the MSGP was only used as reference to determine which non-stormwater flows should be allowed under the permit to be discharged with commingled stormwater. As indicated in numerous places in this RTC document, the approach taken by EPA in the Final Permit is to regulate the discharges at

the Drainage System Outfalls by a requirement to implement best management practices as opposed to establishing water quality-based numeric effluent limits.

The intent behind the Draft Permit as a whole was to require GE to reconfigure the Lynn facility's drainage system in order to remedy the current problem whereby "non-allowable non-storm water flows" are being discharged into the Saugus River without treatment due to the fact that the capacity of the facility's drainage system pumps cannot accommodate stormwater flows. That is, during wet weather events, dry weather flows (including "non-allowable, non-stormwater flows" as defined in the Draft Permit) commingle with stormwater flows, and the added volume exceeds the capacity of the transfer pumps, resulting in a bypass of the CDTs. The flows characterized as non-allowable non-stormwater flows in the Draft Permit are those flows for which the CDTs was specifically designed and installed to treat prior to discharge.

During the course of its comments on the Draft Permit, GE has stated that it is not possible to meet the requirements relating to the elimination of infiltrated groundwater into the Lynn facility's drainage system. As indicated elsewhere in this RTC document and based on GE's comments and supporting documentation, the Final Permit has made substantial changes to the technology-based, BMP approach to addressing commingled dry weather and wet weather flows from the drainage system vaults. In particular, the Final Permit has eliminated the requirement to treat the first flush of stormwater at the CDTs (see Attachment A). EPA expects that the proposed BMPs to minimize the discharge of dry weather flows will ensure the majority of dry weather flows are collected and treated at the CDTs.

However, because the Final Permit authorizes the discharge of minimal dry weather flows comingled with stormwater, there is no longer any need to make a distinction between "allowable" and "non-allowable" non-stormwater flows. The Final Permit has effluent limitations and monitoring requirements for the drainage system outfalls that apply during wet weather and limitations and requirements for treated effluent from Outfall 027A during dry weather. The Final Permit eliminates the definitions of non-stormwater flows to which GE objects in its comment.

Comment 9.3: MEP.

EPA's MEP requirement is entirely novel in this permitting context. It is true that Section 402(p) of the Clean Water Act sets out a similarly worded MEP standard for discharges from municipal separate storm sewer systems. However, this standard is not carried forward to industrial discharges, like GE, in either the statute or EPA's regulations. EPA has not defined MEP as it would apply to the Facility, and in fact has conceded that it "is presently unable to determine all the specific steps that should be taken to reduce [let alone eliminate] the non-allowable non-stormwater flows of concern comingled with stormwater."

Instead of imposing a new, *ad hoc* and entirely subjective standard to address a perceived problem for which EPA has no known or ready solution, EPA must provide GE with the opportunity to investigate the source(s) of any flows of concern, monitor the impacts of those flows, and implement reduction/mitigation measures where feasible. This, in fact, is already occurring through the clean-up and restoration work being conducted under authority of the

Massachusetts Contingency Plan, as described in Sections II.C and III.D above. Moreover, as demonstrated elsewhere in these comments, the flows subject to the prohibitions and MEP requirement do not present water quality concerns at the point of discharge, let alone when mixed with the receiving waterbody. In short, EPA would have GE chase a problem that does not exist.

Response to Comment 9.3:

As noted earlier in this RTC document, including in response to Comment 9.2, the Final Permit does not require the elimination of non-allowable non-stormwater flows, including groundwater infiltration, to the maximum extent practicable, but instead prohibits the discharge of such flows through the Drainage System Outfalls during dry weather with minimal exceptions as defined by GE (“weeping around the bottom edge of the vault due to hydrostatic pressure”).

Because the Draft Permit conditions that included to “maximum extent practicable,” were eliminated from the Final Permit, this phrase, to which GE objects in its comment, was also eliminated from the Final Permit. (EPA notes that it continues to believe that “to the maximum extent practicable” may be an appropriate permit condition for describing BMPs under certain circumstances, although for the purposes of this permit, EPA chose instead to implement alternative BMPs to minimize the discharge of dry weather flow.) Additionally, the requirement to develop and implement a plan “for controlling infiltration of groundwater and inflow of non-allowable non-stormwater flows to the Drainage System,” is not included in the Final Permit. Removal of these requirements alleviates many of the cost and feasibility concerns raised by GE in its comments on the Draft Permit in relation to eliminating the infiltrated groundwater.

Comment 9.4: During Dry Weather Conditions, the CDTS Reflects Best Available Technology and is Protective of Water Quality.

Following the opportunity for review by EPA and approval by MADEP, GE installed the CDTS in 1999 at a cost of \$3.1 million. The CDTS collects and treats dry weather flows with a state-of-the-art granular activated carbon treatment system. The vaults and gates associated with the collection system help to minimize the potential for untreated dry weather discharges. However, the gates are not hermetically sealed. As a result, some incidental dry weather discharge (i.e., weeping) is possible.

In other relevant permit proceedings, EPA has cited to the CDTS as a “model” for other permittees to follow. For example, in the 2008 NPDES renewal proceeding for ExxonMobil, EPA reported as follows:

Other industrial facilities in the area are in the process of, or have completed renovations to their stormwater collection and treatment systems to prevent untreated contaminated groundwater from co-mingling with stormwater, as shown by the following examples...At General Electric in Lynn... dry weather flows, which include groundwater infiltration and process (cooling) water are collected and treated in the consolidated drains treatment system, which includes carbon adsorption capability. In addition, various sections of storm drain and other buried gravity discharge pipes have been lined to prevent contaminated groundwater infiltration.

The CDTS continues to reflect the best available technology. It has proven to be effective at collecting and treating dry weather flows, as well as any residual stormwater and groundwater captured in the drainage system. However, since the gates are not hermetically sealed and some incidental dry weather discharge is possible, EPA cannot simply prohibit all dry weather discharges. To do so would set GE up for failure based on a design that EPA has held out as a model for others.

Given the manner in which the CDTS was designed, EPA's prohibition cannot stand. Instead, EPA should focus on that which GE can meaningfully control -- operation of the gates. Toward that end, we recommend that EPA revise the prohibition in Part I.A.1.a to read: *"The gates for the Drainage System Outfalls (except outfalls 028, 030, and 031) shall remain closed during dry weather conditions."* We also urge EPA to remove the redundant prohibitions in Part I.A.11 and Part I.B.10.

Response to Comment 9.4:

EPA issues NPDES permits that meet technology- and water quality-based requirements of the CWA and the NPDES regulations. EPA agrees that the CDTS, as currently designed and operated, reflects the "best available technology" for treatment of contaminated groundwater and other dry weather flows. Attachment A provides a detailed BAT analysis in which EPA concludes that BAT for dry weather flows is the CDTS.

However, as noted in earlier responses to GE's comments on the Draft Permit and summarized in Attachment A, the CDTS provides for treatment of process water and infiltrated groundwater only during periods of dry weather. During wet weather, stormwater accumulates in the Lynn facility's drainage system and quickly exceeds the capacity of the transfer pumps to the CDTS. The vault gates open and untreated dry weather flow, comingled with stormwater, is discharged directly to the Saugus River without treatment. Under some conditions, EPA concludes that dry weather flows, including infiltrated groundwater, could comprise a substantial portion of the volume of effluent initially discharged to the river (See Attachment A and response to comment 3.1). To address these comingled flows, the Final Permit requires the permittee to reduce the volume of dry weather flows in the drainage system outfall vaults down to the "low alarm" elevation prior to a storm event, thereby substantially decreasing the volume that would be discharged to the river when the gate opens.

The Final Permit retains the proposed BMP to eliminate the discharge of dry weather flows during dry weather but, in response to GE's comments, provides an exception for minor weeping that results from the vaults not being hermetically sealed. Compliance with this BMP will ensure that the majority of dry weather flows are treated in the CDTS, which both GE and EPA agree is BAT, while allowing very minor leakage due to the vault design as defined by GE.

Comment 9.5: The CDTS is not Designed to Handle Wet Weather Flows.

The CDTS was designed to treat dry weather flows up to a capacity of 300 gpm, and is currently operated to treat a maximum average of 250 gpm. In order to capture and treat the first 30 minutes of wet weather flows (and, in turn, comply with the prohibition against discharging such

flows from the Drainage System Outfalls), GE would need to fundamentally redesign and expand the system. The capital costs of such an undertaking would range from \$5.7 and 37.9 million, and the schedule for doing so would extend from 3 to 4 years, all as more particularly described in Technical Exhibits 17 and 22.

Response to Comment 9.5:

EPA agrees with GE that the current configuration of drainage system outfalls and CDTs are not designed to handle wet weather flows. In response to GE's comment, the Final Permit does not include any requirement to treat wet weather flows in the CDTs. Instead, the BMPs contained in the Final Permit will likely ensure that the operation of drainage system outfall vaults and the CDTs transfer pumps effectively minimize the discharge of untreated dry weather flows to the Saugus River.

GE's comment also notes certain costs and a schedule for implementation of a redesign and expansion of the CDTs. It is not clear from the wording of GE's comment precisely what concern GE intends. However, as explained elsewhere in this RTC document, the Draft Permit's requirement to develop and implement site specific BMPs to eliminate groundwater infiltration has been eliminated from the Final Permit. The Final Permit requires the elimination of untreated discharges during dry weather and also requires that the volume of dry weather flow is minimized prior to the first flush of wet weather, as outlined in Attachment A. This change in regulatory approach will significantly reduce the costs associated with compliance with the Final Permit.

Comment 9.6: Neither the Prohibition nor the MEP Requirement is Necessary to Achieve Water Quality Objectives.

EPA's approach to the Drainage System Outfalls assumes that dry weather flows will adversely affect water quality if discharged during dry weather conditions or the first 30 minutes of wet weather conditions. This assumption is not accurate. Based on a conservative analysis of commingled volumes and pollutant concentrations in the vaults just prior to discharge, as set forth in Exhibit 15, only copper could be expected to exceed the acute saltwater criterion at the initial point of discharge from four of the outfalls; concentrations of all pollutants, including copper, would be expected to decrease substantially during the first 30 minutes of a wet weather event; and after the first hour, no pollutants in the discharge would be expected to exceed any of the applicable water quality standards at any of the outfalls. We note, as well, that this analysis does not account for any mixing in the receiving water, which as described in Exhibit 14, is expected to be substantial (i.e., ranging from approximately 4.2:1 to 33.2:1 for various outfalls and discharge scenarios).

Response to Comment 9.6:

EPA evaluated the dry weather samples submitted by GE from each Drainage System outfall vault and determined the requirements necessary to meet technology- and water quality- based limits. In Exhibit 15, GE provides estimations of commingled volumes and pollutant concentrations in the vaults just prior to discharge compared to water quality standards. While

EPA generally agrees with the GE's methods in Exhibit 15, GE's comment applies to the application of water quality-based numeric limitations, all of which have been eliminated from the Final Permit with the exception of those few that have been carried forward consistent with anti-backsliding. The Final Permit implements a technology-based BMP approach to the discharges from the drainage system outfalls and includes monitoring requirements to ensure that water quality is protected.

10. EPA's Proposed Thermal Limits for Outfalls 018 and 014 are more Stringent than Warranted by Applicable Law.

Comment 10.1: Overview of EPA's Approach to Deriving the Proposed Thermal Limits.

According to the Fact Sheet, pp. 74-80, EPA arrived at the proposed thermal limits in three steps. First, using its "best professional judgment" ("BPJ") the Agency made a "technology-based" determination that retrofitting wet closed-cycle cooling represents the "best available technology" ("BAT") for reducing the thermal discharge.⁴⁰ As discussed in Section XI, that determination must be reconsidered because EPA did not collect adequate information with which to support its evaluation of the technical feasibility, affordability, or cost-effectiveness of closed-cycle cooling for the Facility,⁴¹ nor did it adequately evaluate site-specific information bearing on any of the other statutorily required factors, such as the age of the Facility or energy and non-water quality impacts. Instead, the Fact Sheet indicates that EPA reached its conclusion based primarily on the fact that some other facilities, including the Brayton Point Station (a 1,500-MW steam electric power plant located on Mount Hope Bay for which EPA performed exhaustive site-specific analyses) have retrofitted closed-cycle cooling. Relying on the results projected for the Brayton Point Station, EPA concluded that retrofitting a closed-cycle cooling system for both the Power Plant and Test Cell would reduce the heat load at the Facility by 95% or more. Fact Sheet, p. 75.

⁴⁰ As EPA notes, there are no "applicable" technology-based requirements for the Facility, but the statute authorizes permit writers to establish technology-based limits on a case-by-case basis, using best professional judgment. Notably, however, neither the statute nor EPA's regulations require a permit writer to make a BPJ determination for each pollutant that is discharged but not subject to effluent guidelines. *See, e.g.,* CWA § 402(a)(1) (authorizing the Administrator to establish BPJ limits that she "determines are necessary"); 45 Fed. Reg. 68,329, citing *NRDC v. Train*, 8 ERC 2120 (DDC 1976), modified at 12 ERC 1833 (DDC 1979). Rather, the decision to make a BPJ determination is a matter of discretion. This is the first time that EPA has deemed it appropriate to make such a determination for the Facility, and EPA nowhere explains the reason for this change.

⁴¹ EPA did consider some of the relevant site-specific factors in evaluating whether retrofitting closed-cycle cooling would qualify as the "best technology available" ("BTA") for purposes of § 316(b) of the Clean Water Act, which pertains to cooling water intake structures. For the reasons discussed in Section XI of these comments, however, EPA's analysis of site-specific factors in that context is inadequate and cannot be used to support the Agency's proposed conclusion that closed-cycle cooling would be BAT for the thermal discharge.

Second, EPA examined the Massachusetts Water Quality Standards applicable to the Saugus River in the vicinity of the Facility's discharge. Because the Agency concluded that its proposed technology-based limits would be more stringent than those required by applicable water quality standards for temperature, EPA chose not to derive water quality-based limits that account for an appropriate mixing zone. Fact Sheet, p. 76.

Third, recognizing (correctly) that GE intended to request renewal of the alternate thermal limits included in the Facility's current permit, which were established pursuant to the thermal variance provision in § 316(a) of the Clean Water Act, EPA developed alternate thermal limits. Instead of renewing the thermal limits included in the current permit, however, EPA developed more stringent limits based on "additional monitoring and modeling studies pertaining to GE's thermal discharges." Fact Sheet, pp. 77-79.

As the following discussion demonstrates, EPA's threshold determination that closed-cycle cooling represents BAT for the Facility's thermal discharge is unsupported and incorrect. Equally important, the Agency's determination that a 5°F reduction in the current thermal limit (reducing the maximum discharge limit from 95°F to 90°F) is necessary to satisfy § 316(a) is based on a flawed analysis and must be reconsidered.

Response to Comment 10.1

GE's comment does several things. It characterizes EPA's analytical path for developing the Draft Permit's thermal discharge limits, it alleges certain flaws in EPA's analysis, and it provides GE's interpretation of certain CWA requirements. While GE's description of EPA's analysis and various relevant legal requirements is accurate in some respects, it is also incomplete and incorrect in other respects. Moreover, EPA does not agree that its analysis for the Draft Permit was flawed in the ways that GE suggests. EPA's detailed response is set forth below.

EPA's Fact Sheet for the Draft Permit, *see* pp. 17-28, details the standards and criteria applied to determine an NPDES permit's effluent limits (and cooling water intake requirements). EPA explained that, in general, technology standards are the minimum requirements that must be met. *Id.* at 18. EPA further explained that technology-based permit requirements are derived either from the terms of an applicable National Effluent Limitation Guideline (NELG) or, if no NELG applies, then from a case-by-case, Best Professional Judgment (BPJ) application of the technology standard. *Id.* at 21-22. In addition, EPA explained that beyond technology-based requirements, an NPDES permits must also include any more stringent water quality-based requirements that apply to the discharge(s) in question. *Id.* at pp. 18 and 23. Finally, EPA also explained that a NPDES permit can specify less stringent limits for discharges of waste heat (also referred to as "thermal discharges") based on a variance from technology-based and/or water quality-based requirements, if the criteria of CWA § 316(a) are satisfied. *Id.* at 26-27.

GE is correct in stating that EPA evaluated technology-based requirements for the control of the facility's waste heat discharges based on a case-by-case, BPJ application of the BAT standard. In the Fact Sheet, EPA established that the BAT standard applies to discharges of heat, *id.* at 19, 74, 76, and that there are no NELGs applicable to the GE facility's waste heat discharges. *Id.* at

22, 74. EPA explained that, as a result, technology-based limits for these discharges would be developed on a case-by-case, BPJ basis. *Id.* at 21-22, 74-76.

GE's comment acknowledges both that there are no NELGs governing its thermal discharges and that the CWA authorizes EPA to set limits on a BPJ basis. GE goes on, however, to state that EPA is *not required* by law or regulation to set BPJ-based technology standards, that doing so is a matter of EPA's discretion, and that EPA did not explain why it chose for the first time to develop BPJ-based limits for controlling discharges of waste heat by GE's facility.

These comments do not undermine the validity of EPA BPJ decision regarding the BAT for controlling thermal discharges by the GE facility. To begin with, GE's comment recognizes that EPA has, at a minimum, the discretion to develop BPJ limits. In addition, EPA disagrees that it did not explain why it was determining technology-based thermal discharge limits on a BPJ basis as part of developing the Draft Permit. Furthermore, while EPA may under certain circumstances have discretion not to develop BPJ-based thermal discharge limits in a particular case, this discretion is more circumscribed than GE's comment seems to imply.

The CWA makes point source discharges of pollutants to the waters of the United States unlawful unless authorized by an NPDES permit. *See* 33 U.S.C. § 1311(a) and 1342(a). CWA § 402(a) provides EPA discretion as to whether or not to issue such NPDES permits, stating only that EPA "may" do so. The statute also constrains this discretion, however, by stating that permits may be issued "upon condition" that the discharge will satisfy either (A) NELGs, among other requirements, or (B) "prior to the taking of necessary implementing actions related to all such requirements, such conditions as the Administrator determines are necessary to carry out the provisions of this chapter." 33 U.S.C. §§ 1342(a)(1)(A) and (B). The latter condition refers to the determination of BPJ-based discharge limits. This does not mean that EPA may simply ignore technology standards in the absence of applicable NELGs; BPJ-standards should be applied where they are "necessary to carry out the [technology standard] provisions of this chapter." *Id.* Furthermore, EPA's regulations specify that "[t]echnology-based treatment requirements ... represent the minimum level of control that must be imposed in a permit ... [and] permits shall contain the following technology-based treatment requirements in accordance with the following statutory deadlines; ... [f]or all pollutants which are neither toxic nor conventional pollutants, effluent limitations based on BAT" 40 C.F.R. § 125.3(a) and (a)(2)(v). The regulations go on to dictate that technology-based requirements may be imposed based on NELGs or, in the absence of applicable NELGs, on a case-by-case basis. 40 C.F.R. § 125.3(c)(1) and (2). *See also* 40 C.F.R. §§ 122.43(a) and 122.44(a)(1). EPA explained all of this in the Fact Sheet. Consistent with the legal requirements discussed above, the NPDES Permit Writers' Manual (Chapter 5, Section 5.2.3) indicates that developing case-by-case effluent limits based on best professional judgment (BPJ) is generally appropriate for pollutants when (a) there are no NELGs governing discharges of the pollutants for the point source category at issue, and (b) the pollutant is present, or expected to be present, in the discharge in amounts that can be treated or otherwise removed.

In this case, heat is a non-conventional pollutant that is present in GE's wastewater from the Test Cell and Power Plant. Furthermore, discharges of heat via Outfalls 018 and 014 have the potential to harm aquatic life in the Saugus River. Therefore, EPA's decision to develop BAT

limits for GE's discharge of waste heat based on a case-by-case, BPJ analysis was also consistent with the NPDES Permit Writers' Manual.

Although the CWA generally calls upon EPA to apply applicable technology standards on a BPJ basis in the absence of an applicable NELG, EPA agrees that under certain circumstances it has the discretion to decide not to do so. For example, when considering discharges of waste heat, EPA might decide not to develop technology-based limits on a case-by-case, BPJ basis in a case in which the discharger has requested permit limits – either for an initial permit or a renewal permit – based on a variance from any such technology standards under CWA § 316(a) and EPA agrees that the requested variance should be granted.⁴² In such a case, EPA could reasonably regard it to be unnecessary to develop the technology-based requirements when it had already decided, and the applicant had requested, that any such technology-based limits would be set aside in favor of the variance-based limits requested by the discharger.⁴³ See *In The Matter Of Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 and 2)*, 1 EAD 332, 338 (Adm'r 1977) (cited hereafter as *Public Service*); *Status of the Initial Decision of Regional Administrator Where Appeal is Pending*, EPA GCO 77-1 (Jan. 11, 1977) (cited hereafter as *Status of the Initial Decision*). Cf. *In re Dominion Energy Brayton Point, LLC (Formerly USGEN New England, Inc.), Brayton Point Station*, 12 EAD 490, 537-539 (2006) (cited hereafter as *In re Dominion Brayton Point*).

While EPA might not need to develop BPJ limits under such circumstances, these were not the circumstances prevailing in this case, as EPA explained in the Fact Sheet. GE's permit application requested renewal of the thermal discharge limits in its existing permit, but the application neither expressly requested renewal of the CWA § 316(a) nor included the type of substantive demonstrations required by the regulations to obtain renewal of a § 316(a) variance. See Fact Sheet at 77. See also 40 C.F.R. §§ 125.72(c); 125.73(c). While EPA ultimately decided to interpret GE's permit application to be seeking renewal of the prior CWA § 316(a) variance, the Agency could not be sure at the time that GE would agree with this interpretation. See *id.* (In its comments, GE does now concur with EPA's interpretation.)

Furthermore, EPA could not be sure that it would ultimately decide to grant GE a CWA § 316(a) variance, or a variance with the limits requested by GE, once it had considered all the relevant information, including information outside of GE's permit application. Indeed, for this Draft Permit, EPA decided to base the thermal discharge limits on a CWA § 316(a) variance with limits more stringent in certain respects than GE had requested. See Fact Sheet at 77-79. When a CWA § 316(a) decision may be contested, as appeared possible in this case, developing the technology-based requirements may be necessary to provide thermal discharge limits in case the variance is set aside or as part of justifying the variance decision. See *In re Dominion Brayton*

⁴² EPA also might not need to develop technology-based limits if, for example, it was able to conclude that water quality-based limits would necessarily be more stringent and would govern the permit. This would plainly be the case if, for example, water quality requirements barred a particular discharge.

⁴³ This scenario posits that EPA and the discharger agree on variance-based limits. Of course, if a third party commenter persuaded EPA that the variance-based limits were insufficiently stringent, then EPA might need to go back and develop technology-based limits.

Point, 12 E.A.D. at 500 n. 13, 537-539; *Status of the Initial Decision*, EPA GCO 77-1 (Jan. 11, 1977).

For the reasons described above, EPA was well within its discretion to develop BAT limits on a case-by-case, BPJ basis for the control of GE's discharges of waste heat to the Saugus River.

GE asserts that EPA must reconsider its BAT determination because the Agency neither collected adequate information in support of its evaluation of the technical feasibility, affordability, and cost-effectiveness of using closed-cycle cooling at the GE facility, nor adequately evaluated site-specific information bearing on the other statutorily required considerations, such as the age of the facility or energy and non-water quality impacts. GE states that "the Fact Sheet indicates that EPA reached its conclusion based primarily on the fact that some other facilities, including the Brayton Point Station ... have retrofitted closed-cycle cooling." According to GE, EPA relied on the results projected for Brayton Point Station to conclude that retrofitting a closed-cycle cooling system for both the Power Plant and Test Cell would reduce the waste heat discharges to the Saugus River by GE by 95% or more. Moreover, although GE acknowledges that EPA "considered some of the relevant site-specific factors in evaluating whether retrofitting closed-cycle cooling would qualify as the 'best technology available' ('BTA') for purposes of § 316(b) of the Clean Water Act, which pertains to cooling water intake structures ...," the company argues that "EPA's analysis of site-specific factors in that context is inadequate and cannot be used to support the Agency's proposed conclusion that closed-cycle cooling would be BAT for the thermal discharge."

EPA disagrees with these comments. The Agency identified and then considered the relevant factors for determining on a BPJ basis the BAT for controlling the GE facility's discharges of waste heat to the Saugus River. See Fact Sheet at 18-22, 74-76, Attachment J. EPA considered the facts of *GE's* waste heat discharges to help specifically evaluate technologies that might work to address issues *at the GE facility* and to help identify materials relevant for informing EPA's BPJ analysis (e.g., which NELGs and other permits and facilities might be pertinent). *Id.* at 3-4, 16, 59-60, 63-66, and 74-76. While GE seems to question EPA's consideration of other facilities that have converted their cooling systems from open-cycle to closed-cycle technology, EPA explained that *a starting point* for determining the BAT is to identify the pertinent facilities that best control discharges of the pollutants in question. See Fact Sheet at p. 20 and Att. J, pp. 4-5. EPA also explained that a BPJ analysis can be informed by sources such as permits issued to other facilities, as well as knowledge about technologies used at other facilities. See *id.* See also NPDES Permit Writers' Manual at p. 5-48, Exhibit 5-22. Furthermore, when EPA used this type of information, it explained how it was being used. See Fact Sheet at p. 20-22 and Att. J, pp. 4-5. At the same time, EPA was clear that the BAT for GE would have to be a technology that was actually available for use *at GE*. In other words, EPA stated that a technology used elsewhere but infeasible at GE could not be the BAT for this permit. See Fact Sheet at Att. J, p. 7.

An important part of EPA's BPJ determination of the BAT for thermal discharge control is provided in portions of Attachment J to the Fact Sheet. EPA expressly incorporated the relevant portions of the Attachment J analysis into its BPJ determination. Fact Sheet at 76. While Attachment J presents EPA's BPJ analysis of the Best Technology Available (BTA) for controlling adverse effects of cooling water intake structure operations under CWA § 316(b), this

analysis also expressly includes consideration of technologies for controlling thermal discharges and the factors that must be considered for determining the BAT for achieving such control. Fact Sheet, Attachment J at 3-5, 7-8, 21-23.

Converting from open-cycle to closed-cycle cooling is the most effective technology for reducing *both* a cooling system's thermal discharges *and* its entrainment and impingement of aquatic organisms. See Fact Sheet Att. J, p. 23. From the outset, EPA understood the potential relationship between methods of reducing cooling water withdrawal effects and thermal discharge effects. Therefore, when EPA sent GE an information request letter under CWA § 308 on October 25, 2007, EPA specifically asked GE for information related to the potential application of closed-cycle cooling at GE, including the thermal discharge reductions that it could achieve (see item 6.b). EPA also asked for information from GE relevant for considering the BAT factors in connection with closed-cycle cooling. *Id.* (Items 5 and 6). GE provided the requested information in the Cooling Water Intake Structure Information Document and the Cooling Tower Analysis Technology and Biological Assessment Information Items 5(a) and 6, prepared for GE by CH2MHill and submitted in February 2008. EPA then considered this information in its analysis.

GE is correct that EPA referenced Brayton Point Station as a facility for which it was estimated that converting to closed-cycle cooling would result in an approximately 96% reduction in heat load. Assuming the other thermal parameters remain the same, the estimated reduction in heat load results in large part from the reduction in the overall volume of heated cooling water being discharged.⁴⁴ This estimate was also consistent with general estimates of the thermal discharge reductions possible from converting from open-cycle to closed-cycle cooling and results at other facilities as well. See, e.g., EPA, Technical Development Document for the Proposed Section 316(b) Phase II Existing Facilities Rule § 6.2.3 (March 28, 2011) (available on EPA website at www.epa.gov/waterscience/316b). Cf. 76 Fed. Reg. 22,246 (April 20, 2011) (Proposed Rule – CWA § 316(b) Requirements for Existing Facilities) (“Most retrofit installations of cooling towers at electric generating facilities have been required by NPDES permits for the sole purpose of reducing thermal discharges.”). EPA regards these estimates to provide a reasonable and appropriate basis for a general estimate of what could be achieved with regard to thermal discharge reduction at GE.

Moreover, GE estimated that if mechanical draft cooling towers were used at the Power Plant, the required make-up water volume would be 1.2 million gallons per day (MGD), which represents greater than a 96% reduction in cooling water volume compared to maximum daily discharge limits in the current permit (35.9 MGD) (p. 23 in Attachment J to the Fact Sheet).

⁴⁴ A closed-cycle cooling system runs cooling water in a loop between the condensers, where waste heat is transferred from process steam to the cooling water, and one or more cooling technologies, where waste heat is then transferred from the heated cooling water to the atmosphere. As a result, the cooling water is chilled and may be reused for condensing steam. In a closed-cycle system, the cooling technologies must be applied at a scale sufficient to chill the cooling water to a temperature allowing the water to be reused for condensing process steam. A closed-cycle cooling system will typically reduce a generating plant's thermal discharge (and cooling water withdrawals) by more than 90% of what the facility would discharge using an open-cycle cooling system. The specific reductions achieved may vary over the course of a year and will depend on the specific cooling technologies chosen and a variety of other factors (e.g., chloride concentrations and water quality standards, meteorological conditions).

Thus, EPA based the estimated reduction in heat load of “95 % or more” on what it expects would result from retrofitting a closed-cycle cooling system at the GE Power Plant (as well as at the GE Test Cell) based on information specific to GE (e.g., reduced cooling water volumes estimated for GE specifically) and in light of the results achieved at other facilities that have converted from open-cycle to closed-cycle cooling systems for condensing process steam. EPA’s estimate was not based solely on a blind application of the results from the Brayton Point Station facility to GE. Fact Sheet at 75. Furthermore, GE itself indicated that the thermal discharge from a closed-cycle system at the facility would be reduced to such a small volume that it could be discharged to the local POTW instead of to the Saugus River. EPA concurred with this conclusion. *Id.* at 76.

Turning from the technology-based analysis to the evaluation of water quality-based requirements, GE is correct that EPA evaluated the applicable state water quality standards-based requirements but did not prepare water quality-based limits based on a mixing zone. Of course, EPA would look to the Massachusetts Department of Environmental Protection (MassDEP) in the first instance to prepare any mixing zone that it deemed appropriate under its water quality standards. MassDEP’s 1993 *Implementation Policy for Mixing Zones* specifies that “to protect swimming and drifting organisms the in-zone quality must be such that these organisms can pass through the mixing zone without acute exposure to toxicants.” MassDEP concluded that temperatures, delta temperatures (delta Ts), and durations similar to those which resulted in acute toxicity for juvenile alewife in Otto et al. (1976) were observed at specific monitoring stations in August 2001 at low slack tide in the Saugus River. As a result, GE’s thermal discharges would not be authorized under Massachusetts Water Quality Standards, even taking into account the state’s mixing zone policy. Therefore, MassDEP did not designate a mixing zone for GE’s waste heat discharges.⁴⁵ In any event, as GE states, undertaking that type of analysis would have been unnecessary given that other evaluations indicated that the technology-based requirements would be more stringent than, and would therefore take precedence over, water quality-based requirements. In addition, conducting a separate mixing zone analysis would have been superfluous given that EPA ultimately designated thermal discharge limits based on a CWA § 316(a) variance and such variance-based limits are deemed to satisfy the state’s water quality standards. See 314 CMR 4.05(4)(b)(2)(c).

Finally, as GE’s comment recognizes, the numeric temperature limits in the current permit and the new Draft Permit are both based on a CWA § 316(a) variance from technology-based and water quality-based requirements. Although GE did not expressly request renewal of its existing CWA § 316(a) variance, EPA interpreted GE’s permit application – which sought reissuance of a permit with the same permit limits – as intending to do so, despite the inadequacy of the company’s application for that purpose. GE’s comment confirms the accuracy of EPA’s interpretation.

⁴⁵ In response to GE’s comments, MassDEP prepared an analysis of thermal impacts and concluded that the thermal discharge from Outfalls 014 and 018 would not meet the requirements for a mixing zone under Massachusetts Surface Water Quality Standards Implementation Policy for Mixing Zones and no mixing zone would be granted. See MassDEP’s Summary of Thermal Concerns Relative to the General Electric Aviation, Lynn NPDES Draft Permit.

More specifically, EPA reviewed the thermal surveys and modeling submitted under the last permit issuance, as well as new data and models submitted since the last permit issuance in association with reissuance of the Wheelabrator Saugus NPDES permit. EPA also considered information on the effects of thermal discharges on the species of fish that use the Saugus River for habitat. Fact Sheet at pp. 77-79. From this information, EPA concluded that the current maximum daily temperature limit on 95°F from Outfalls 014 and 018, in combination with the thermal impacts of the heated effluent from the Wheelabrator Saugus discharge, “would not reasonably assure the protection and propagation of the BIP as required by CWA Section 316(a).” Fact Sheet, at p. 78.

Rather than simply rejecting the idea of § 316(a) variance, however, the Agency identified a more stringent set of variance-based limits that it concluded would assure the protection and propagation of the BIP and included these limits in the Draft Permit. More specifically, EPA determined that “a maximum daily temperature limit of 90°F at Outfalls 014 and 018 is more consistent with the near-field modeling that supported the 1993 Section 316(a) variance in the current permit” and concluded that “a 90°F effluent limit poses a threat of only limited thermal impact to the BIP and, as a result, will assure the BIP’s protection and propagation” (p. 79 of the Fact Sheet). For the Final Permit, however, EPA has decided to make certain adjustments to these requirements after considering GE’s comments and other relevant information. These adjustments are discussed below.

Comment 10.2: EPA’s Proposed Determination that Retrofitting Closed-Cycle Cooling Reflects BAT for the Facility is Fundamentally Flawed.

EPA based its proposed determination that retrofitting closed-cycle cooling is BAT for the Facility on the flawed analogy it drew between the Facility, which manufactures and tests jet engines, and steam electric power plants, which are engaged primarily in the generation and distribution of electricity for sale to others (see 40 C.F.R. § 423.10 (2010)). That analogy cannot withstand scrutiny.

To understand why that analogy is inapposite, it is important to understand why the Facility produces steam and electricity. The Power Plant (Building 99) provides steam and electrical power for the entire GE site, which includes 3.4 million square feet of buildings on 220 acres. The Power Plant was designed specifically to produce steam at 650 pounds-force per square inch gauge (psig) and 850°F for a variety of Test Cell users. All five existing boilers produce superheated steam at 650 psig, and steam is distributed to meet site needs at three different pressure levels – 650 psig, 200 psig, and 3 psig. Steam is reduced via pressure-reducing stations or extraction from steam turbines to provide steam for medium- and low-pressure applications. Site thermal loads met by the existing steam generation system include heating, process, and test steam. Site steam demand is greatest from late October to mid-April.

The Power Plant’s ability to reliably provide superheated test steam at 650 psig pressure to drive steam turbines at the Test Cell (Building 29G) is critical to the readiness, simulation precision, and cost-competitive performance of GE’s aircraft engine and engine component testing business. Steam turbines provide the rotational power source for testing engine components. The Test Cell is a specialized “boutique style” engine and component testing and diagnostic facility.

GE's customers for this unique facility include military, regulatory, commercial, and research and development entities, each having its own exacting specifications and requirements for the final outcome of testing. Target flight conditions must be precisely simulated on the ground to achieve certain flight ambient conditions (*e.g.*, extreme temperatures), strength or endurance parameters, or lift, power, and thrust targets. All of these conditions must be achieved within the Test Cell via flight simulation protocol. Achieving and accommodating these simulated conditions create the need for:

- Critical volumes of steam at exact temperature, pressure, and humidity conditions that are precisely metered and monitored to achieve the requisite conditions for successful flight simulation, and
- Critical volumes of non-contact cooling water at carefully controlled temperatures that are essential for lowering the temperatures of dynamometers, intake air, bearings, rotating shafts, exhaust, and other test equipment.

Based on the outcomes of testing, GE customers determine whether aircraft engines and components can safely be returned to service to fulfill the needs of military and commercial customers. All water, steam, and air sources must be available when needed in evaluating the potential success of a simulated flight.

Over the past several decades, the electrical and thermal loads of the Facility have declined. Due to the critical nature of process steam at the site as well as operational issues relating to starting boilers and time to reach required pressure/temperature, the Power Plant operates a minimum of two boilers at all times. The boilers produce significantly more steam than is required to support site steam consumption external to the Power Plant, and in order to avoid venting excess steam, the Power Plant uses the excess steam to produce electricity. Thus, electrical generation at the Power Plant frequently is driven by the need to condense steam generated by boilers operating at minimum turndown.

Imposing the high costs of retrofitting the Power Plant with closed-cycle cooling would drive up the costs of steam and electric power production for the entire Facility, impair the economic competitiveness of the specialized Test Cell operations, and reduce the incentive for using the excess steam for power generation instead of venting it. As evaluated in GE's cooling tower analysis, imposing a closed-cycle cooling system for the Power Plant would be economically unreasonable and would impose a significant burden on GE operations.

Even if this were not the case, EPA's analogy is inapposite given the vast differences in scale of these two facilities and the seasonal nature of thermal discharges from the Test Cell, both of which bear on the cost-effectiveness of using closed-cycle cooling to reduce the thermal discharge.⁴⁶ Cost estimates developed by EPA indicate that retrofitting closed-cycle cooling at

⁴⁶ EPA has declined to weigh the costs and benefits of imposing closed-cycle cooling as BAT for the Facility, arguing that cost-benefit considerations are not contemplated by the BAT provisions of the statute (Fact Sheet, p. 76). But the Agency also failed to perform any analysis of the cost-effectiveness of closed-cycle cooling. Such an analysis involves evaluating the cost-per-unit of pollutant removed. As a matter of longstanding policy and practice,

the GE Power Plant would be far less cost-effective in reducing cooling water flow and any associated heat load than retrofitting a closed-cycle cooling system at a large steam electric plant like Brayton Point Station. EPA estimated that costs of constructing closed-cycle cooling at the GE Power Plant as of 2010 would be \$36,491,000 (Fact Sheet, Attachment J, pp. 22-23). Based on a design cooling tower duty of 257.4 million British thermal units (MBTU) per hour (MBTU/hr) (“Cooling Tower Analysis Technology and Biological Assessment Information, Items 5(a) and 6” (CH2M HILL, 2008)), the cost of closed-cycle cooling at the GE Power Plant would be on the order of \$141,768 per MBTU/hr. In contrast, the unit cost of closed-cycle cooling at Brayton Point Station, the largest fossil-fuel burning power plant in New England, would be much smaller. Based on a maximum station heat load of 7,360 MBTU/hr at Brayton Point (Brayton Point Fact Sheet, p. 29) and EPA’s 2002 cost estimate of \$68.385 million for closed-cycle cooling for the entire station (*Clean Water Act NPDES Permitting Determinations for Thermal Discharge and Cooling Water Intake from Brayton Point Station in Somerset, MA*, EPA, 2002; Table 7.4-11, Column 3 [EPA/Abt 20 years 0% plume], p. 7-101), the cost of closed-cycle cooling at Brayton Point would be on the order of about \$9,291 per MBTU/hr. Thus, the costs per MBTU/hr of retrofitting closed-cycle cooling at the GE Power Plant are an order of magnitude higher than the costs per MBTU/hr at Brayton Point.

In short, the fact that a few large steam electric plants⁴⁷ have converted or are converting from once-through to closed-cycle cooling does not demonstrate that retrofitting closed-cycle cooling would be feasible and affordable for a manufacturing facility like this one, with a small power plant designed specifically to produce steam for aircraft engine testing and other site purposes. In fact, our prior submission and these comments provide ample evidence to the contrary. See Section XI.

In addition, EPA’s determination that retrofitting closed-cycle cooling is technically feasible for the Test Cell and the Power Plant is at odds with the facts. As GE’s “Cooling Tower Analysis Technology and Biological Assessment Information, Items 5(a) and 6” (CH2M HILL, February 2008) demonstrates, retrofitting the Test Cell with closed-cycle cooling would be infeasible, in light of given space limitations due to existing infrastructure. EPA has not questioned this conclusion, nor has it performed any independent evaluation to show that these limitations can

EPA has considered cost-effectiveness in selecting BAT. See, e.g., *Riverkeeper, Inc.*, 358 F.3d 174, 195 (2004). EPA provided no explanation for its failure to consider cost-effectiveness in this instance.

⁴⁷ The Fact Sheet, p. 75, refers to several large steam electric power plants, including Brayton Point that have retrofitted closed-cycle cooling. None of these facilities serves a primary purpose other than generating electric power for transmission or sale to another entity for transmission. None supports specialized, on-site, seasonal testing operations like the GE Power Plant, and none operate at a generation capacity nearly as low as the GE Power Plant (35 MW that use once-through cooling water system). It is inappropriate to treat power plants with generating capacities 7 to 44 times larger than GE’s as proof of the efficacy, practicability, and affordability of retrofitting closed-cycle at the GE Power Plant, when clearly their differences in critical respects do not support such a conclusion. And, as recent announcements by the owners of the Salem Harbor Station in Massachusetts and the Oyster Creek Station in New Jersey illustrate, even large power plants often cannot absorb the substantial costs of retrofitting closed-cycle cooling. See “Dominion sets Schedule to Close Salem Harbor Power Station, Dominion News, May 11, 2011, <http://dom.mediaroom.com/index.php?s=43&item=988>”; <http://dailycaller.com/2010/12/09/epa-regulations-force-power-plant-out-of-business-more-to-follow/>.

be overcome. With respect to the Power Plant, as we discuss in Section XI of these comments, EPA did not resolve crucial uncertainties before reaching the conclusion that closed-cycle cooling is BAT. GE respectfully requests that EPA withhold its determination until these uncertainties have been resolved.

As EPA itself appears to recognize, the fact that the Agency has made a BPJ determination requiring a different facility in a different industry category with different economics and different site-specific circumstances to retrofit closed-cycle cooling does not relieve the Agency of responsibility for making a BPJ determination for the Facility based on adequate, site-specific information. Although EPA says it has made such a determination for the Facility (albeit in the context of evaluating cooling water intake structure technologies),⁴⁸ for the reasons discussed below, its evaluation and the resulting determination are not adequately supported. Indeed, as discussed Section XI.G of these comments, EPA bases its conclusions more on what is absent from the record than on specific facts adequate to support reasonable conclusions. Thus, before EPA can justify a determination that closed-cycle cooling is BAT, it must develop facts sufficient to resolve important uncertainties. GE believes that those uncertainties weigh conclusively against such a determination.

In any case, GE submits that it is unnecessary for EPA to undertake (or require GE to undertake) the substantial studies needed to make a well-supported determination regarding the technological feasibility, performance, cost, and affordability of closed-cycle cooling for the Facility. As noted above, in the absence of applicable effluent limitations guidelines, the permit writer has discretion to decide whether or not to establish BPJ limits for a given constituent. In this case, GE is requesting, and EPA already has proposed to establish, an alternative limit under § 316(a). Although GE disagrees with the alternative limit EPA has proposed, we submit that further analysis should focus on refinement of that limit.

Response to Comment 10.2

The GE facility uses an open-cycle (or “once-through”) cooling system as part of its process for generating steam for engine testing and generating electricity. As part of this industrial process, GE, in essence, uses the Saugus River, a public natural resource, as a heat sink. The company takes water from the river at ambient temperatures and uses it to condense its process steam as a prelude to additional steam generation, and to meet other cooling needs. GE then disposes of its waste heat by discharging the heated river water back into the river. Under the CWA, EPA is concerned with both GE’s withdrawal of river water for cooling and its disposal of waste heat in the river. In this part of the permit, EPA is addressing the facility’s discharges of waste heat.

GE comments that “it is important to understand why the Facility produces steam and electricity” in order to understand why GE believes that EPA has incorrectly analogized the facility to a steam-electric power plant. Yet, having considered this comment, EPA continues to find the

⁴⁸ See Fact Sheet, p. 76 (incorporating results of site-specific BTA analysis in Appendix J for purposes of BAT rationale).

analogy to be apt. This is so for both the Power Plant and the Test Cell despite the differences between the two facilities.

As is well evident in the Fact Sheet, *see* pp. 3-4, 33-34, 74-76, EPA understands that GE is not *primarily* engaged in the business of generating electricity for sale and distribution. EPA explained that the GE facility “manufactures, tests, and assembles jet turbine engines and associated components” as its primary business.” *Id.* at 3. EPA also explained that:

GE Aviation also operates an oil-fired steam electric power plant onsite (12 – 45 MW) for the production of steam, electricity, and compressed air. This electricity is primarily for GE Aviation’s onsite needs, but at times the facility sells excess electricity to the local power grid.

Id. at 4. Thus, EPA clearly understood that the facility’s power plant was not identical to a major steam-electric power plant that is primarily engaged in producing electricity for sale and distribution. *See, e.g., id.* at p. 4. Nevertheless, EPA also explained that the process by which GE’s Power Plant (Outfall 018) produces steam to drive steam turbines – whether for power generation in the Power Plant or for engine testing purposes in the Test Cell – and the intake and effluent streams associated with the facility’s open-cycle cooling systems are the same or similar to those used by a steam-electric power plant regulated under the Steam-Electric NELGs. *See id.* at 4, 74-75. *See also* 40 C.F.R. Part 423.

EPA has also recognized the similarity between steam-electric power plants and manufacturing facilities with on-site power plants on a national level in its review and development of effluent limitations guidelines for steam-electric facilities. EPA considered “industrial non-utilities” (defined as “industrial plants that generate electric power using steam to drive a turbine, but that are not primarily engaged in distributing and/or selling that electric power”) in the Steam Electric Power Generating Point Source Category: Final Detailed Study Report (October 2009). According to that report, the electrical generating process of industrial non-utilities is similar or the same as that of steam-electric power plants; both generate steam to drive a turbine and use non-contact cooling water to condense the steam. Thus, the manner in which both types of facilities generate process steam, and use cooling water to condense that steam as a precursor to further steam generation, is equivalent or analogous. Moreover, the manner in which both types of facilities generate and dispose of heated wastewater is essentially the same.

As GE comments, the facility’s Power Plant continuously operates two boilers to be ready to provide superheated steam within the time constraints of testing. While electrical generation is not the primary activity at GE, it is financially beneficial to the company and the activity results from GE’s understandable desire to make profitable use of the steam generated at the facility. By using steam to generate electricity, GE can meet its own facility’s electrical needs and, at times, sell electricity to the grid. As GE states, permit requirements that would necessitate expenditures to control thermal discharges would, among other things, “reduce the incentive for using the excess steam for power generation instead of venting it.” Thus, it is evident that generating electricity on-site is economically beneficial to GE, but EPA does not have the information to identify its full value.

In any event, the facility's cooling needs are the same whether the steam is used for testing, electrical generation or other on-site processes. In other words, even though generating electricity may not be the primary purpose of generating steam at GE, as it would be for a typical steam-electric power plant, the processes involved and the resulting waste heat effluent, which is the focus of the technology-based effluent limit, are the same or comparable in both cases. Moreover, while EPA recognizes that the Test Cell is not directly generating its own steam – it obtains it from the Power Plant – EPA also sees that after the steam is used to drive the turbines in the Test Cell, GE then condenses that steam with an open-cycle cooling system that uses water from the Saugus River. The facility then discharges the water back to the river along with the facility's waste heat. An open-cycle cooling system at a steam-electric power plant works in essentially the same way and raises the same water pollution control issues.

Moreover, the same technologies that can reduce waste heat discharges at a steam-electric power plant can also be applied at GE's facilities. Therefore, the same technologies should be considered in developing a technology-based effluent limit for restricting waste heat discharges for both types of facilities. For example, a closed-cycle cooling system, once operational, would enable both a steam-electric power plant and a manufacturing facility with a subsidiary steam-generating power plant, like GE, to reduce its waste heat discharges while permitting the processes of generating and condensing steam.

EPA also explained in the Fact Sheet that when developing technology-based standards, the Agency is not restricted to considering technologies used at *identical* types of facilities. EPA may also consider "transfer technologies;" that is, technologies used by different industries and different types of facilities that are nevertheless potentially suitable for the type of facility in question to help control pollutant discharges. *See id.* at p. 22 and Att. J at pp. 4-5. Thus, even if steam-electric power plants were not closely analogous to GE's Power Plant and Test Cell – and EPA thinks they are – EPA concludes that it still would have been appropriate to look at steam-electric power plants in developing technology-based limits for waste heat discharges from GE's Power Plant and Test Cell because of the applicability of the same types of cooling technologies.

EPA determined that closed-cycle cooling is an available technology for the Power Plant and the Test Cell based on the site-specific information that GE submitted upon EPA's request. This information addressed the engineering aspects of converting to that technology as well as other considerations. EPA also concluded that converting to closed-cycle cooling would constitute the best performing technology for reducing thermal discharges. GE's own analysis concluded that mechanical draft cooling towers at the Power Plant were "technically feasible from an engineering standpoint" (Cooling Tower Analysis Technology and Biological Assessment Information, Items 5(a) and 6, February 2008). At the same time, GE has not argued that there is a superior or even competitive method of limiting waste heat discharges. Rather, GE previously argued that converting to closed-cycle cooling "while "technically feasible, would be economically impractical," but it neither provided a detailed economic analysis supporting the latter conclusion nor clearly defined what it meant by economically "impractical." GE's

comment above argues, in sum, that converting to closed-cycle cooling would be economically detrimental to the company, but stops short of stating that it would be infeasible.⁴⁹

GE estimated the cost of construction and engineering at \$31,864,000 for retrofitting closed-cycle cooling at the facility. Using GE's estimate, EPA then estimated a nominal, after tax cost of \$36,491,000 (2010 dollars), including annual operation and maintenance costs, additional costs to purchase replacement power during a two-month construction outage (using GE's estimate of \$2.2 million for additional electrical costs and revenue loss), and the cost of additional power generation due to auxiliary power requirements and efficiency losses. Neither estimate included additional costs for any abatement technologies that might be needed to address potentially problematic water vapor plumes, salt drift, and/or sound emissions. Whether such abatement equipment or outages would be needed has yet to be defined. GE also estimated a loss of \$15 to \$20 million for production shutdown costs due to a lack of steam for tests and auxiliary systems for manufacturing, but does not provide information showing how this estimate was derived. EPA is uncertain to what degree plant operation would be impacted based on GE's own conclusion that "conversion of the Power Plant to a closed-cycle recirculating water system could largely be accomplished during normal plant operations in an effort to minimize lost power generation and other interruptions to Facility operations" (CH2MHill Cooling Tower Analysis Assessment Information p. 2-4). Given that, according to GE, the Power Plant was designed to provide superheated test steam to drive steam turbines at the Test Cell, conversion of the Power Plant during periods when the Test Cell is also scheduled to be shutdown could likely be accommodated, given the Test Cell's annual capacity utilization of only 5%. *See also* EPA, Technical Development Document for the Proposed Section 316(b) Phase II Existing Facilities Rule (March 28, 2011) (available on EPA website at www.epa.gov/waterscience/316b), at pp. 8-27 to 8-28. Ultimately, EPA concluded that the costs for this option were affordable for GE and would achieve a very substantial reduction (around 95% or more) in waste heat discharges to the Saugus River.

GE comments that EPA "failed" to conduct a cost-effectiveness analysis of closed-cycle cooling in determining the BAT for the Draft Permit, and that EPA did so without explanation and contrary to the Agency's "longstanding practice and policy" of conducting such analyses when determining BAT. EPA disagrees with this comment and maintains that its approach was reasonable in this case and consistent with applicable law and Agency policy. The statute and regulations require EPA to consider cost when determining the BAT. EPA met this requirement, as discussed above. Neither the statute nor regulations require preparation of any particular type of cost assessment, such as a cost-effectiveness analysis, as part of the Agency's consideration of cost. *See* 33 U.S.C. § 1314(b)(2)(B) and 40 C.F.R. § 125.3(d)(3)(v). *See also* EPA Permit Writers' Manual at p. 5-46 (Exhibit 5-21). Nevertheless, contrary to the comment, and as discussed farther below, EPA did consider cost-effectiveness in this case. Ultimately, the Agency's overall consideration of costs satisfies all legal requirements.

EPA considers the cost of implementing a technology when determining the BAT. *See* 33 U.S.C. §§ 1311(b)(2) (requiring "application of the best available technology *economically achievable*" (emphasis added) to control the discharge of certain types of pollutants) and

⁴⁹ Economic forces will determine whether or not GE would be able to pass on to its customers any increased production costs resulting from requirements to reduce its disposal of waste heat in the Saugus River.

1314(b)(2) (when assessing BAT for a particular point source category or individual discharger, EPA must take “cost of achieving such effluent reduction” into account); 40 C.F.R. § 125.3(d)(3) (same). As one court has summarized, CWA §§ 301(b)(2) and 304(b)(2) require “EPA to set discharge limits reflecting the amount of pollutant that would be discharged by a point source employing the best available technology that the EPA determines to be *economically feasible* . . .” *Texas Oil & Gas Ass’n v. U.S. Environmental Protection Agency*, 161 F.3d 923, 928 (5th Cir. 1998) 161 F.3d at 928 (emphasis added). See also *BP Exploration & Oil, Inc. v. U.S. Environmental Protection Agency*, 66 F.3d 784, 790 (6th Cir. 1995) (“BAT represents, at a minimum, the best economically achievable performance in the industrial category or subcategory.”). Furthermore, CWA § 301(b)(2) also dictates that BAT limits “shall require the elimination of discharges of all pollutants if the Administrator finds, on the basis of information available to him . . ., that such elimination is . . . economically achievable.” This also, in effect, mandates consideration of cost.

The courts have also explained that the cost of effluent reduction must be considered within the context of the CWA’s express overarching goal of restoring and maintaining the chemical and biological integrity of the nation’s waters. See 33 U.S.C. § 1251(a). Thus, the United States Supreme Court has explained that treatment technology that satisfies the CWA’s BAT standard must “represent ‘a commitment of the maximum resources economically possible to the ultimate goal of eliminating all polluting discharges.’” *U.S. Environmental Protection Agency v. Nat’l Crushed Stone Ass’n*, 449 U.S. 64, 74 (1980). EPA must also keep in mind the purpose of the BAT provision itself (i.e., CWA § 301(b)(2)(A)) when assessing costs associated with BAT options. “The BAT standard reflects the intention of Congress to use the latest scientific research and technology in setting effluent limits, pushing industries toward the goal of zero discharge as quickly as possible.” *Kennecott v. U.S. EPA*, 780 F.2d 445, 448 (4th Cir. 1985), citing *A Legislative History of the Water Pollution Control Act Amendments of 1972*, 93d Cong., 1st Sess. (Comm. Print 1973), at 798. In light of this policy context, the courts have also confirmed that while costs must be “considered” in setting BAT limits, costs are not to be a consideration of “primary importance.” See, e.g., *FMC Corp.*, 539 F.2d at 978-79; *American Iron and Steel Inst. v. EPA*, 526 F.2d 1027, 1051-52 and n. 51 (3rd Cir. 1975) (“it is clear that for [BAT] standards, cost was to be less important than for the [BPT] standards, and that for even [BPT] standards cost was not to be given primary importance”).

Furthermore, the CWA gives EPA “considerable discretion” in determining what is economically achievable. *Natural Resources Defense Council*, 863 F.2d at 1426, citing *American Iron & Steel*, 526 F.2d at 1052. The Fourth Circuit Court of Appeals has stated that:

[t]he Act’s overriding objective of eliminating ... the discharge of pollution into the waters of our Nation indicates that Congress, in its legislative wisdom, has determined that the many intangible benefits of clean water justify vesting [EPA] with broad discretion, just short of being arbitrary or capricious, in his consideration of the cost of pollution abatement.

FMC Corp. v. Train, 539 F.2d 973, 978-79 (4th Cir. 1976), as quoted in *Reynolds Metals Co. v. U.S. EPA*, 760 F.2d 549, 566 (4th Cir. 1985) (discussing BPT cost analysis). The CWA does not require a precise calculation of the costs of complying with BAT limits. See *BP Exploration*, 66

F.3d at 803. EPA “need make only a reasonable cost estimate in setting BAT,” meaning that it must “develop no more than a rough idea of the costs the industry would incur.” *Id.* See also *Rybachek v. U.S. Environmental Protection Agency*, 904 F.2d 1276, 1290–91 (9th Cir. 1990); *Chemical Manufacturers*, 870 F.2d at 237–38. Moreover, CWA § 301(b)(2) does not specify any particular method of evaluating the cost of compliance with BAT limits or state how those costs should be considered in relation to the other BAT factors; it only directs EPA to consider whether the costs associated with pollutant reduction are “economically achievable.” *Chemical Manufacturers Ass’n v. U.S. Environmental Protection Agency*, 870 F.2d at 250, citing 33 U.S.C. § 1311(b)(2)(A). Similarly, CWA § 304(b)(2)(B) requires only that EPA “take into account” cost along with the other BAT factors. See *Reynolds*, 760 F.2d 549, 565 (4th Cir. 1985) (in setting BAT limits, “no balancing is required – only that costs be considered along with the other factors discussed previously”), citing *National Ass’n Metal Finishers v. U.S. Environmental Protection Agency*, 719 F.2d 624, 662–63 (3rd Cir. 1983); *Association of Pacific Fisheries v. U.S. Environmental Protection Agency*, 615 F.2d at 818 (in setting BAT limits, “the EPA must ‘take into account . . . the cost of achieving such effluent reduction,’ along with various other factors”), citing CWA § 304(b)(2)(B).

Not only did Congress give EPA considerable discretion in how to assess the BAT factors, such as cost, but it also gave EPA discretion to determine how to weigh the different factors together in determining the BAT. In the Fact Sheet, EPA explained as follows:

The CWA sets up a loose framework for assessing these statutory factors in setting BAT limits. It does not require their comparison, merely their consideration. [I]n enacting the CWA, Congress did not mandate any particular structure or weight for the many consideration factors. Rather, it left EPA with discretion to decide how to account for the consideration factors, and how much weight to give each factor. In sum, when EPA considers the statutory factors in setting BAT limits, it is governed by a standard of reasonableness. It has considerable discretion in evaluating the relevant factors and determining the weight to be accorded to each in reaching its ultimate BAT determination. One court has succinctly summarized the standard for judging EPA’s consideration of the statutory factors in setting BAT effluent limits: [s]o long as the required technology reduces the discharge of pollutants, our inquiry will be limited to whether the Agency considered the cost of technology, along with other statutory factors, and whether its conclusion is reasonable.

Fact Sheet, Att. J at pp. 7-8 (footnotes with citations omitted). Therefore, GE’s comment is incorrect to the extent that it suggests that EPA *must* consider costs in a particular way, such as by using a “cost-effectiveness” analysis or a particular type of cost-effectiveness analysis.

At the outset, it should be understood that the term “cost-effectiveness” can be used in more than one way. From one perspective, the most “cost-effective” option is the least expensive method of reaching a particular performance goal. From another perspective, the most cost-effective option could be the one that achieves the greatest pollutant loading reductions per unit of cost (e.g., pounds of pollutant discharge eliminated per dollar).

GE correctly points out that EPA often considers cost-effectiveness analyses in setting BAT standards. Yet, for good reasons, EPA does not, and is not required to, do so in every case. See e.g., EPA, Responses to Comments, Public Review of Brayton Point Station NPDES Permit No. MA0003654 (October 3, 2003), pp. VIII-14, VIII-28; EPA, Clean Water Act NPDES Permitting Determinations for the Thermal Discharge and Cooling Water Intake Structures at Merrimack Station in Bow, New Hampshire (NPDES Permit No. NH0001465), Sept. 29, 2011, pp. 129, 168 n. 58. As Second Circuit Court of Appeals stated in the context of determining the Best Technology Available under CWA § 316(b), “EPA is by no means required to engage in cost-effectiveness analysis.” *Riverkeeper, Inc. v. United States Environmental Protection Agency*, 475 F.3d 83, 100 n. 12 (2d Cir. 2007) (J. Sotomayor) (“*Riverkeeper II*”), *rev’d on other grounds, Entergy Corp. v. Riverkeeper, Inc.*, 129 S. Ct. 1498, 68 ERC 1001 (2009).

In the context of considering cost in a particular BAT decision, EPA might or might not decide that a comparative “cost-effectiveness” analysis of the available technology options would be useful. For example, cost-effectiveness analysis can provide a means of comparing technology options when multiple options are able to meet an applicable performance threshold. The most cost-effective option would be the least expensive method of attaining the necessary level of performance. See *Riverkeeper II*, 475 F.3d at 99-100. See also EPA’s Economic Analysis Guidelines, p. 178. Cost-effectiveness assessments may also, in some cases, provide a way to compare alternatives when the benefits of an action are difficult to monetize. Again, such an assessment would show some unit of performance per unit of cost (e.g., pounds of pollutant removed per dollar). In some instances, EPA has also used cost-effectiveness analysis as a means of comparing technology options from one policy context with technology options or decisions in other contexts by looking at the rates of pounds of pollutants removed per dollar in the different cases. GE’s comment uses this approach to compare using closed-cycle cooling at GE with its use at Brayton Point Station. At the same time, comparative cost-effectiveness analysis would not be helpful in a case in which only one technology reaches (or comes close to) a particular performance goal or threshold. Thus, where there are wide disparities in the performance of alternative technologies, an option might be rejected due to its poor performance on an absolute level despite having a lower cost-per-unit-of-performance.

Even when cost-effectiveness analysis may provide helpful information to consider, cost-effectiveness metrics are not by themselves determinative of the BAT. Many other factors must be considered as well, such as the significance of the differences in levels of environmental performance, energy effects, secondary environmental effects, and more. See *id.* at p. 178. As a result, an option might be the most cost-effective but still be rejected because, for example, it caused unacceptable air quality impacts.

In the instant case, GE states that EPA did not undertake a cost-effectiveness analysis and that this was inconsistent with Agency policy and practice. In support of this claim, GE cites to *Riverkeeper, Inc. v. United States Environmental Protection Agency*, 358 F.3d 174, 195 (2d Cir. 2004) (“*Riverkeeper I*”), as an example of a case in which GE believes the Agency suitably considered cost-effectiveness. *Riverkeeper I* involved judicial review of EPA regulations governing cooling water intake structures at new facilities under CWA § 316(b). The court’s opinion discusses EPA’s evaluation of closed-cycle cooling using “wet” cooling towers and “dry” cooling towers. Dry cooling was identified as a potentially feasible technology that could

achieve marginally greater reductions in intake flow – and corresponding marginally greater reductions in entrainment and impingement – than closed-cycle cooling with wet cooling towers, but which also would cost significantly more and impose higher “energy penalties.” *Id.* EPA ultimately selected closed-cycle cooling with wet cooling towers as the BTA for new facilities instead of dry cooling. In making this choice, EPA considered many of the different consequences that would accompany the use of each technology, including their relative costs and ability to reduce intake flows. *Id.* Thus, the court stated:

... comparing both closed-cycle cooling [with wet towers] and dry cooling to the baseline of once-through cooling adds a useful perspective on the marginal benefits of dry cooling. In other words, while it certainly sounds substantial that dry cooling is 95 percent more effective than closed-cycle cooling, it is undeniably relevant that that difference represents a relatively small improvement over closed-cycle cooling at a very significant cost.

Id. In this regard, EPA considered cost-effectiveness, but the Agency did not base its decision solely on cost-effectiveness, and the court neither mandated cost-effectiveness analysis nor made it “the fulcrum” of its own assessment. *See Riverkeeper II*, 475 F.3d at 100 nn. 11 and 12.

Contrary to GE’s comment, EPA’s analysis here for the Draft Permit is consistent with the analysis discussed in *Riverkeeper I* and cited with approval by GE. Just as it did for the regulations discussed in *Riverkeeper I*, EPA considered and rejected dry cooling as the BAT for the GE facility in part based on the same type of cost-effectiveness considerations discussed in *Riverkeeper I* and *Riverkeeper II*. In the Fact Sheet, at p. 75, EPA explained that it rejected dry cooling for a variety of reasons, including that it “...would likely achieve only a small marginal additional reduction over the high end of the reduction range for wet cooling towers and would be significantly more expensive.” Moreover, in doing so, EPA specifically relied upon the very Agency decision that GE cites with approval (i.e., the decision on cooling water intake structure regulations for new facilities under CWA § 316(b)).

GE also argues that converting to closed-cycle cooling at a smaller power plant like GE’s would be less cost-effective than at a very large power plant, like Brayton Point Station. GE provides some figures to suggest that the cost per unit of waste heat discharge reduction for GE would be an order of magnitude higher than that at Brayton Point Station. EPA has considered this comment and these figures (see footnote below).⁵⁰ EPA agrees that it may well be the case that

⁵⁰ EPA notes that the figures GE uses to calculate cost-effectiveness for Brayton Point Station should not be relied upon. First, GE uses a cost estimate developed for EPA’s draft permit for that facility, but this cost estimate was revised upward for the final permit. While GE cites to an estimate of \$68.4 million, the corresponding estimates for the final permit ranged from \$88.3 million to \$120.2 million, depending on the scenario being assessed. A value of \$104.25 million would represent the mid-point between these two values and would be a better figure to use than the \$68.4 million figure. (This leaves aside the fact that Brayton Point Station later decided to use a different type of cooling tower.) Second, GE uses a figure that it states represents “the maximum station heat load” at Brayton Point Station rather than “the design cooling tower duty” which it uses to calculate a cost-effectiveness value for its own facility. Since EPA estimated that closed-cycle cooling could reduce Brayton Point Station’s thermal discharges by approximately 95 percent, it would be appropriate to use a value at 95 percent of what GE cited (i.e., 7,360 MBTU/hr x 0.95 = 6992 MBTU/hr). Based on these values, a figure closer to \$14,910 per MBTU/hour (\$104.25

the cost per unit of heat reduction would be higher for GE than it would be for a much larger facility like Brayton Point Station, the largest fossil fuel burning plant in New England. Yet, this does not alter EPA's conclusion regarding closed-cycle cooling constituting the BAT for GE. It does not establish that the technology is either technologically infeasible or economically unaffordable for GE. Facilities of a range of sizes use closed-cycle cooling and have converted from open-cycle cooling to closed-cycle cooling. GE's comment also does not establish that thermal discharge reductions from closed-cycle cooling would not be appropriate for GE under the CWA BAT standard, or that there is an alternative technology that would be more cost-effective for reducing thermal discharges or that would be preferable as the BAT for GE for some other reason. Indeed, GE proposes no alternatives for reducing its discharges of waste heat to the Saugus River. It only proposes to retain its open-cycle cooling system.

EPA agrees with GE that the mere fact that other facilities have converted from open-cycle to closed-cycle cooling does not establish that such a conversion is feasible at GE. This was not, however, the sum of EPA's analysis. EPA's analysis was based on an evaluation of the facts at GE, as is discussed in the Fact Sheet and herein. In addition, GE's comment in part seems to suggest that because its facility is smaller, it is necessarily irrelevant that other larger power plants have converted to closed-cycle cooling. EPA disagrees with any such suggestion. Cooling system conversions at larger power plants shows that cooling system conversions are generally feasible for this type of operation and can be done at *even* larger facilities. Having established that, it then becomes necessary to consider the facts at the GE site specifically. EPA did so and responds to comments about those specific site considerations in this Response to Comments.

GE comments that it has demonstrated that "retrofitting the Test Cell with closed-cycle cooling would be infeasible, in light of given space limitations due to existing infrastructure." EPA is not persuaded by GE's comment. In its earlier submissions to EPA, GE stated that "space constraints associated with existing infrastructure would limit the technical feasibility of constructing a 2- to 3-cell mechanical draft cooling tower for the design intake flow adjacent to the Test Cell." As a result, GE stated that cooling towers for the Test Cell would need to be located in the parking lot area being considered for the Power Plant cooling towers. GE noted that using this site, which is 700 feet linear feet from the Test Cell, would result in additional difficulties, costs and risks associated with the project. GE then concluded that "the high cost and feasibility limitations of implementing a closed-cycle cooling tower system for the entire design intake flow of the Test Cell CWIS would not be commensurate with the limited potential benefits for reducing fish entrainment and impingement." Yet, these statements and GE's current comment do not establish that closed-cycle cooling would be infeasible for the Test Cell. Adding a 2 or 3 cell cooling tower to the parking lot area – where GE concluded a larger cooling tower installation could be placed for the Power Plant – would be a relatively small increase to the facility and ought to be feasible. Furthermore, 700 linear feet is a relatively modest distance, which would be sure to add some cost and difficulty to the cooling tower project, but GE has not established that it would render the project infeasible. In addition, GE's earlier analysis assessed

million/6992 MBTU/hr) would be more appropriate to use for the point GE is trying to make with regard to Brayton Point. This value is closer to, though still an order of magnitude less than, the value GE calculated for its own facility (i.e., \$141,768 per MBTU/hr). In any event, as EPA states above, this does not change its conclusion regarding BAT.

a cooling tower for “the entire design intake flow” of approximately 75 MGD, whereas the Test Cell is only permitted for its actual maximum daily flow of 45 MGD. Thus, a smaller cooling tower might be sufficient for the Test Cell and would reduce and/or perhaps obviate some of the technical and economic issues. In the Draft Permit analysis, EPA concluded that cooling towers would be feasible for the Test Cell and would constitute the BAT for controlling that operation’s thermal discharges. Fact Sheet at pp. 74-76; Att. J, p. 47 n. 29. EPA continues to hold that viewpoint after considering GE’s comments.

Finally, GE notes that the Draft Permit’s thermal discharge limits were ultimately based on a CWA § 316(a) variance and it comments, in essence, that it is therefore unnecessary to resolve all the issues regarding the BAT technology-based requirements. Specifically, GE comments that:

[i]n this case, GE is requesting, and EPA already has proposed to establish, an alternative limit under § 316(a). Although GE disagrees with the alternative limit EPA has proposed, we submit that further analysis should focus on refinement of that limit.

Despite this statement, GE did submit certain comments about EPA’s BAT determination and EPA has responded to those comments.

That said, EPA agrees, of course, that the Draft Permit’s thermal discharge limits for both the Power Plant and the Test Cell are based on a CWA § 316(a) variance. EPA has also based the Final Permit’s thermal discharge limits on a variance. EPA has made the limits less stringent for the Final Permit, as discussed elsewhere in these Responses to Comments. At the same time, EPA also has not determined closed-cycle cooling to be the BTA for either the Power Plant’s or the Test Cell’s CWISs under CWA § 316(b). Therefore, EPA would also expect that the most important parts of the analysis going forward will not focus on closed-cycle cooling. GE has, of course, commented on the appropriateness of the Draft Permit’s limits on thermal discharges and cooling water withdrawals set under CWA §§ 316(a) and 316(b), respectively. EPA responds to those comments below.⁵¹

⁵¹ We also note that GE’s comment includes references to web materials that GE suggests indicates that two larger power plants are closing because they cannot afford to convert to closed-cycle cooling. This comment does not offer strong support for GE’s objections to EPA’s determination that upgrading the GE facility to provide closed-cycle cooling represents the BAT for controlling waste heat discharges. First, the comment does not establish that the facts at the other two facilities are similar in important ways to the facts at GE. Second, it seems impossible that closed-cycle cooling costs would have had something to do with the decision to close the Salem Harbor power plant given that (1) the material cited to by GE does *not* say that the facility is closing for that reason; (2) EPA has not issued the Salem Harbor plant a permit requiring a conversion to closed-cycle cooling; and (3) there is no regulation in place that would necessarily mandate closed-cycle cooling for the facility. The owners of the Salem Harbor Station facility appear to have decided to close for other reasons. With regard to the Oyster Creek facility, EPA is uncertain of the reliability of the source cited by GE or of all the facts surrounding that facility. In any event, GE’s comment does not demonstrate that the facts surrounding the cost or economic or technical feasibility of converting to closed-cooling at a more than 40-year old nuclear power plant such as Oyster Creek would be identical or even similar in important ways to those at GE’s smaller, fossil fuel-burning facility. In general, EPA would expect there to be significant differences in the issues raised with regard to converting to closed-cycle cooling at a facility like

Comment 10.3: EPA's Determination that Alternative Thermal Limits of 90°F for Outfalls 018 and 014 are Necessary to Assure the Protection and Propagation of a Balanced, Indigenous Population in the Saugus River is Flawed.

Comment 10.3.1: Overview of EPA's Rationale for the Reducing the Maximum Daily Thermal Limit.

EPA justifies its proposal to reduce the current thermal limits for Outfalls 018 and 014 by 5°F by citing (1) additional monitoring and modeling studies pertaining to GE's thermal discharges, and (2) changes in the status of several resident and anadromous fish species in the Saugus River (specifically, striped bass, alewife, and winter flounder). Fact Sheet, pp. 77-79. Specifically, EPA claims:

- (1) Thermal tolerance data for those three species indicate that juvenile winter flounder, alewife, and striped bass may experience thermally induced sublethal and lethal adverse impacts at temperatures between 86° and 90°F, and temperatures above 90°F would "create completely unsuitable habitat" (Fact Sheet, p. 78 and Attachment K).
- (2) Thermal monitoring performed for purposes of setting thermal limits for the Wheelabrator Saugus facility on the opposite shore of the River suggests to EPA that river temperatures "in the vicinity of" GE Outfalls 018 and 014 can exceed 86°F around low slack tide during the hottest months of the year (Fact Sheet p. 78).
- (3) The maximum daily discharge temperature from GE's Outfall 018 in August, 2001 was 95°F, and that discharge overlapped with measured instream temperatures of 86°F or higher during August 7 to 25, 2001, suggesting that the currently permitted maximum discharge may contribute to river temperatures above some target level below 86°F (*id.*).⁵²
- (4) Based on a review of DMR data, the Outfall 018 effluent has not exceeded 90°F since August 2002. Therefore, EPA does not anticipate that major operational changes would result from the more stringent thermal limits included in the Draft Permit (Fact Sheet p. 79).

With respect to its proposed alternative, EPA says that it concluded that a limit of between 90°F (the highest temperature at which EPA says the Facility has discharged since August 2002) and 91°F (the temperature used for purposes of GE's 1993 near-field thermal modeling of the Power

Oyster Creek (i.e., a large nuclear power plant) versus doing so at a facility like GE (i.e., smaller, fossil-fuel burning facility).

⁵² EPA also notes in the Fact Sheet that this segment of the Saugus is listed as thermally impaired. However, a review of the listing document (Massachusetts 2010 Integrated List of Waters) reveals that the Facility was not listed as causing or contributing to the impairment, nor was any other specific cause identified. Based on the ASA 2004 report entitled "Temperature Mapping and Hydrothermal Model Calibration of the Lower Saugus River Estuary," the largest components of the temperature changes seen in the Saugus River system appear to be the result of cool offshore water entering the estuary and being warmed in the extensive, shallow, marshy, upper reaches of the estuary.

Plant) would produce more protective instream temperatures, and only a small portion of the river would reach maximum temperatures of potential concern for very short periods of time (Fact Sheet, pp. 78-79).

As the following discussion shows, the analyses supporting EPA's proposal to ratchet down the alternative thermal limit for discharges from the Power Plant and Test Cell are fundamentally flawed for several reasons.

Response to Comment 10.3.1

In the Draft Permit, EPA proposed limits on GE's waste heat discharges to the Saugus River that are more stringent than those in GE's current permit. EPA based the Draft Permit's limits on a CWA § 316(a) variance determination.

EPA's Final Permit is again based on a variance determination under CWA § 316(a), but EPA has decided to relax the Draft Permit's proposed limits after considering GE's comments and other available information, including biological information and ambient temperature monitoring. For Outfalls 018 and 014, the Draft Permit proposed year-round maximum discharge temperatures of 90°F. The Final Permit retains the current permit's maximum discharge temperature limit of 95°F at Outfalls 018 and 014. See Response to Comments 10.3.2 and 10.3.3 for discussion of GE's specific comments on maximum daily temperature limits at Outfalls 014 and 018.

Comment 10.3.2: EPA Failed to Account for, or Provide GE an Opportunity to Account for, Facility Changes that may Affect the Facility's Thermal Plume.

EPA's analysis also fails to account for changes that have occurred, and that have reduced the size and temperature profile of GE's thermal plume. Moreover, the Agency's preemptive determination affords GE no reasonable opportunity to evaluate the effect of those changes. For example, EPA has not taken into account the reduction in flow and heat load associated with GE's proposal to permanently close the Gear Plant, which was covered by the 1993 thermography study, or the addition of an auxiliary closed-loop cooling system for the Test Cell in 2008.

Moreover, EPA apparently did not consider the potential change in discharge temperatures likely to result from the Agency's proposal to require GE to reduce intake flow by an annual average of 20% for § 316(b) purposes. In its § 308 letter dated October 25, 2007, requesting information on the cooling water intake structure, the Agency gave no hint that it was considering changes to the applicable thermal limit; thus, GE has had no opportunity to collect data or perform modeling to assess the likely impact of flow reductions on its ability to meet the significantly reduced thermal limit EPA now proposes. To the extent EPA now proposes to reduce the discharge temperature, that change may make it impossible for the Facility to achieve the flow reductions imposed by other permit provisions. In its permit determination for Wheelabrator Saugus, EPA recognized this important trade-off and ensured that the limits it imposed were not fundamentally incompatible. See Fact Sheet, Attachment K, pp. 16-17. EPA should conduct the same analysis here.

Response to Comment 10.3.2

GE's comments that the following two changes at the facility have reduced the size and temperature profile of GE's thermal plume: (1) the retirement of the Gear Plant and elimination of thermal discharge at Outfall 029; and (2) the addition of an auxiliary closed-loop cooling system at the Test Cell (Outfall 014). GE indicates that it appears to the company that EPA failed to consider these changes in determining new waste heat discharge limits under CWA § 316(a). Contrary to this comment, however, EPA was aware of, and considered, these changes when it developed the permit's thermal discharge limits. Moreover, the Agency has considered them further in response to GE's comments.

Subsequent to issuance of the currently effective permit in 1993, GE permanently closed the Gear Plant and eliminated the discharge of heated effluent from Outfall 029. This development will likely benefit the resident and transient biological community present in the natural channel to which Outfall 029 formerly discharged. The 1993 thermal surveys and modeling of this outfall, however, indicated that water temperatures resulting from the discharge were highest in the small channel where the discharge occurred and that the plume quickly dissipated upon combining with the mainstem of the river. At high tide, surface temperatures at the confluence of the channel and river were 80°F or less, and at depths of 6 feet or more temperatures were below 80°F even within the channel. At low tide, water temperatures in the channel tended to be high, but dropped to 85°F or less within 80 feet from the opening of the channel. In their analysis of the thermal plume to support the determination of limits for the Draft Permit, EPA and MassDEP were concerned about temperatures during low slack tide more than 2000 feet upstream of this channel nearer to Outfalls 014 and 018. It is unlikely that the plume from Outfall 029 would have significantly influenced temperatures that far upstream during this period. Therefore, while the elimination of the plume from Outfall 029 will likely reduce thermal impacts on the aquatic community present in the channel, and EPA recognizes this step by GE to reduce the facility's overall adverse environmental effects and improve its efficiency by eliminating unnecessary discharges, eliminating this particular discharge of waste heat is not likely to materially improve the conditions that lead to potential adverse thermal effects upstream in the river as a result of discharges of waste heat through Outfalls 018 and 014. Therefore, EPA's maintains that this is not a reason to relax the Final Permit's thermal discharge limits.

With regard to the Test Cell, GE is now operating a recently installed auxiliary closed-loop cooling system to take the place of using the 1,500 gpm spraywash pump for cooling water purposes. According to GE, this pump formerly supplemented cooling water needs at the Test Cell. Given the Test Cell's average monthly permitted flow of 27 MGD, and its maximum daily permitted flow of 45 MGD (current permit limits), the 1,500 gpm closed-loop system has the potential to reduce flows at the Test Cell by between 5% and 8%. GE has not demonstrated what effect this relatively small flow reduction and new use of a closed-loop system will have on the heat load discharged to the river. Although a step in the right direction, the relatively small flow reductions that are associated with this change are likely to result in only a small decrease in thermal load from the Test Cell. Therefore, EPA concludes that this change, whether viewed by itself or in combination with other factors, is not a reason to relax the thermal discharge limits in the Final Permit.

GE also comments, in effect, that cooling water flow (i.e., volume) restrictions can affect a facility's ability to meet temperature limits. According to GE's comment, EPA recognized this "trade-off" in setting permit limits for the Wheelabrator power plant, but did not do so for the GE Draft Permit. GE also states that the Draft Permit's thermal discharge temperature limits (maximum temperature of 90°F) for the Power Plant "may make it impossible" for the company also to comply with the Draft Permit's cooling water withdrawal volume limits (20% reduction in average monthly flow). GE calls on EPA, therefore, to consider the trade-off between restrictions on thermal discharge temperatures and cooling water withdrawal volumes at the Power Plant.

EPA has considered GE's comment and responds below. To begin with, it should be understood that technological and economic practicability are not criteria applicable to determining whether thermal discharge limits less stringent than the CWA's otherwise applicable technology-based and water quality-based requirements will satisfy the biological standard of CWA § 316(a) and should be authorized under a § 316(a) variance. (These factors are, of course, important considerations when applying the BTA technology standard under CWA § 316(b).)⁵³ Therefore, EPA has made its CWA § 316(a) variance decision based on the biological criteria that apply under the statute and regulations, and not based on technological or economic concerns. Conversely, EPA has made its decisions on cooling water withdrawal requirements under the BTA standard of CWA § 316(b) based on a consideration of relevant factors, including technological feasibility and economic practicability.

Within this analytical context, and in response to GE's comments, EPA has further considered the potential impacts of a more stringent discharge temperature limit at Outfall 018 on the Facility's ability to meet other permit provisions that mandate a 20% reduction in average monthly flow at the Power Plant. As part of this work, EPA evaluated the March 20, 2012, technical memorandum prepared by CH2MHill for GE Aviation and entitled, "Power Plant Once-Through Cooling System Modeling of Flow and Discharge Temperature at Outfall 018." EPA also considered the accompanying model that GE submitted upon EPA's request for additional analysis of this issue.

According to the technical memorandum, achieving a 20% reduction in average monthly flow (from 35.6 MGD to 28.5 MGD) at a discharge temperature limit of 95°F would be technically feasible, but would require restricting Power Plant output by about 30% (from 35 MW to 25 MW) during summer (June 1 through September 30). Under these conditions, the maximum through-screen velocity would be 0.5 fps. However, according to GE, maintaining the same 30% reduction in power output is technically impracticable if the average monthly cooling flow at the Power Plant is reduced by 20% *and* the Draft Permit's maximum discharge temperature of 90°F is applied. Under these conditions, GE projects that it would exceed the average monthly and maximum daily flow limits, as well as the maximum through-screen velocity of 0.5 fps, on some occasions during the summer. GE concludes that in order to meet both the flow limit and the 90°F maximum discharge temperature limit, the output from the Power Plant would have to be

⁵³ These factors are also, of course, considerations when determining technology-based effluent limits under the BAT standard of CWA §§ 301(b)(2)(A) and (F) and 304(b)(2)(B).

reduced by 66% (to 11.8 MW). This would significantly restrict summer operation of both the Power Plant and other equipment that relies on electricity provided by the Power Plant.

EPA notes that this comment does not indicate (or demonstrate) that meeting these conditions would be impossible – GE’s comment only states that doing so “may” be impossible – but it clearly suggests that meeting the conditions would have a substantial adverse effect on facility operations during the summer. In its March 21, 2012, Response to EPA’s additional information request (Response to Items 1 and 2), GE states that “[i]t would be technically impracticable for GE Aviation to limit its Power Plant output by 66% during the summer months.” GE further explains:

[t]he size and age of the boilers make it difficult to sustainably operate at the low level of turndown corresponding to a power reduction significantly less than what GE Aviation has proposed above. In particular, Boiler #3 may not be able to operate at all due to its size if power is reduced by 66 percent.

In response to EPA’s request for additional analysis of the potential impacts of the Draft Permit limits requiring both a reduction in average monthly flow and a more stringent maximum temperature limit, GE, through CH2MHill, developed a once-through cooling system model for the Power Plant. The model’s “Case 5” conditions include a discharge temperature limit of 90°F and an average monthly flow limit of 35.6 MGD (equivalent to a more stringent temperature limit and no flow reduction). EPA compared the output of the Power Plant under these conditions to the output under “Case 2” conditions involving a maximum discharge temperature of 95°F with an average monthly flow limit of 28.5 MGD (equivalent to a maximum temperature limit consistent with the current permit and a 20% flow reduction). In both cases, GE has proposed a 30% reduction in power output during the summer.

EPA compared power output between “Case 5” and “Case 2” for the July 1 through September 30 time period, when biological impacts on the aquatic community from thermal discharge would be most likely to occur (Figure 10.3.1). Under Case 5, weekday power output is expected to be restricted further than GE’s proposed 30% reduction on approximately 25 days per year, and the average weekday power output is anticipated to be about 23 MW (34% reduction). This can be compared to an average weekday power output of 25 MW (a 29% reduction) under Case 2. In both cases, the weekend power output generally meets the required level (17.5 MW). For Case 5, the projected minimum output is about 13 MW (a 63% reduction), which occurs when the intake temperature is at its peak (greater than 81°F). This condition is expected to occur rarely; based on the recorded intake temperature between 2001 and 2004, the projected intake temperature would be anticipated to exceed 80°F on approximately two days per year. Based on analysis of GE’s operational model, the anticipated average daily output from the Power Plant under Case 5 (maximum temperature limit of 90°F) during the summer would not be expected to be substantially less than the expected average daily output during the summer for GE’s proposed operating conditions under Case 2, provided that GE is authorized to intake a higher volume of water equivalent to the maximum daily flow limit of 35.6 MGD with no reduction in average monthly flow during this period.

According to GE's model, the average daily output from the Power Plant on an extreme summer day (based on a Forecast from August 6, 2009) is 20.2 MW with a once-through cooling flow of 35.6 MGD. Under Case 5, the Power Plant output is expected to be less than 20.2 MW on only approximately 7 days per year. Operational profiles from GE indicate that the average hourly steam use during the summer (July to September) for heating, manufacturing, and test steam is less than 40,000 million pounds per hour (Mlb/hr) and generally less than 20,000 Mlb/hr (See Figure 10.3.1). This is consistent with GE's characterization of limited operations during the hottest months. During July through September, GE's plant operation profiles indicate that only the 200 psig steam is produced. From this assessment, EPA concludes that applying the more stringent temperature limit of 90°F during summer could be feasible if the facility were authorized to intake an average monthly flow limit of 35.6 MGD.

Nevertheless, EPA has concluded that, based on available information, a year-round discharge temperature of 95°F would reasonably assure protection and propagation of the BIP because the primary thermal impacts of concern appear to be limited in both size and duration and organisms would likely be able to avoid conditions that could result in acute toxicity. At a higher discharge temperature, the average monthly flow can be reduced by 20% year-round, including summer months when early life stages may be present, which will reduce mortality due to entrainment and impingement and further protect the BIP. Therefore, the Final Permit applies a year-round maximum discharge temperature limit of 95°F and an average monthly flow limit of 28.5 MGD at Outfall 018. In addition, according to GE, the steam requirements of the Test Cell are limited in summer, which should reduce the potential thermal impacts on those days when the ambient temperatures are likely to be highest.

Finally, in its comment, GE complains that it was not given a chance to evaluate the effects of its planned changes at the facility on its thermal discharges or to collect data on the effects of flow reductions on its ability to meet various thermal discharge requirements. EPA disagrees with this comment. If GE wanted to renew its CWA § 316(a) variance, it had the obligation to provide an adequate demonstration that it was entitled to such renewal. GE was in the best position to design its permit application to address whatever factors it believed would be relevant for EPA's evaluation. As discussed above, GE failed to submit an adequate demonstration under CWA § 316(a). As a result, for the Draft Permit, EPA and MassDEP assessed the relevant issues on their own, while considering whatever information GE did provide. Of course, GE has now had the opportunity to comment on the Draft Permit and EPA is considering these comments. Furthermore, as also discussed above, EPA sent GE an information request letter in 2007 that sought information from GE on technological modifications that could be undertaken to reduce entrainment and impingement effects, but that also requested GE to estimate the most stringent thermal discharge conditions that could be met in conjunction with the various intake technologies. Moreover, EPA asked GE to report as to whether it believed any particular technological approach would be infeasible and, if so, why. Thus, GE was invited by EPA to consider and submit information to EPA that evaluated the "trade-offs" between cooling water intake flow reduction and thermal discharge reductions. GE is incorrect when it comments that "EPA apparently did not consider the potential change in discharge temperatures likely to result from the Agency's proposal to require GE to reduce intake flow by an annual average of 20% for § 316(b) purposes" EPA did consider this issue and has further done so in these responses to comments.

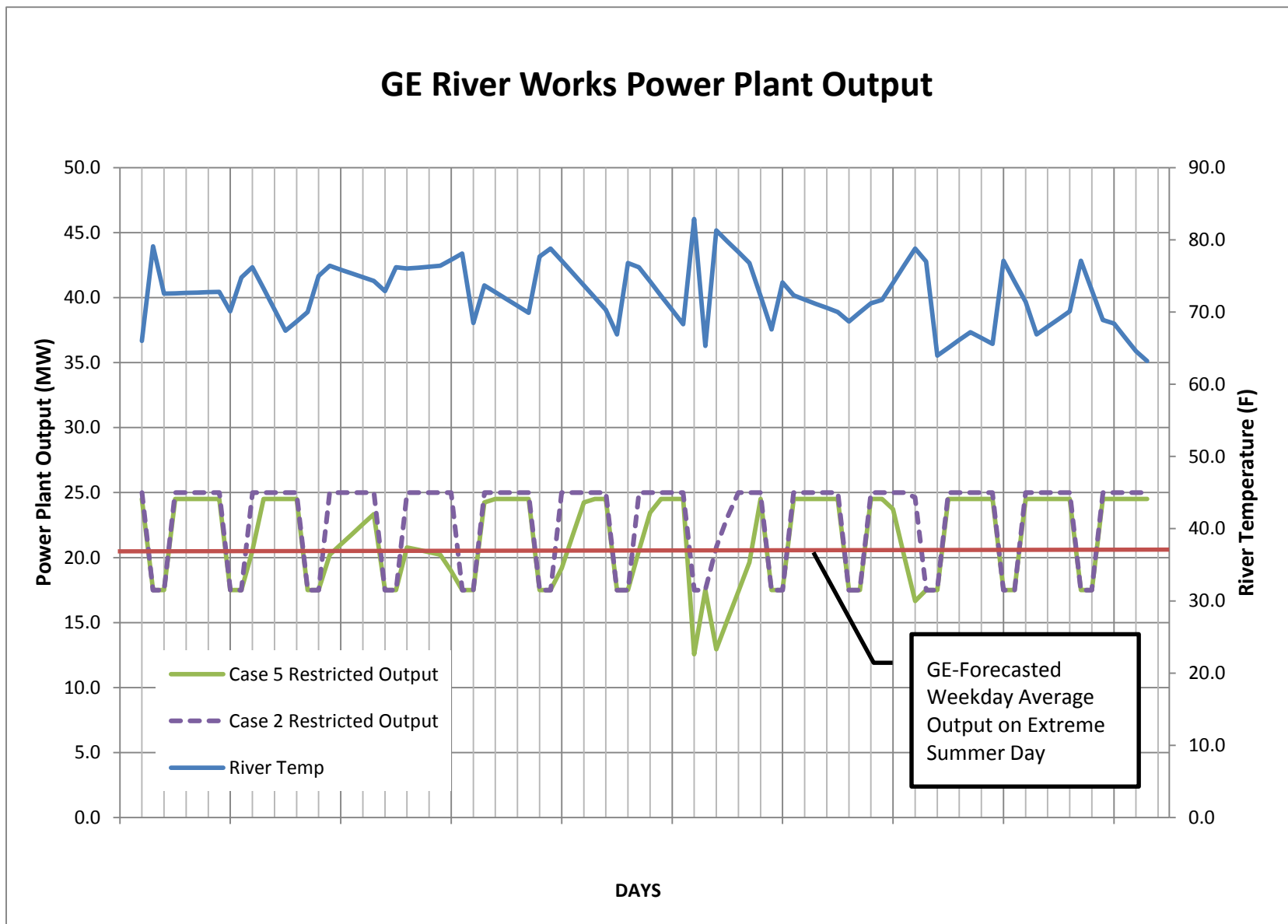


Figure 10.3.1 Comparison of GE's Case 5 and Case 2 modeling results including power generation, river flow, and intake flow for the period from July 1 through September 30.

Comment 10.3.3: The Biological Data on which EPA Relies do not Support the Agency's Decision to Reduce the Maximum Temperature Limit.

Equally important, the biological data on which EPA relies do not support the conclusion that resident species, including juvenile fish of the three species EPA says are of greatest concern (striped bass, winter flounder, and alewife), are likely to be harmed by the instream temperatures resulting from discharges by GE at the currently permitted levels.

Although the results of laboratory temperature testing provide some insight into thermal lethal and sublethal effects, laboratory testing usually involves immediate exposure of fish to temperatures much greater than the temperature to which they are acclimated. As the review and analysis provided in Technical Exhibit 18 to these comments show, the thermal studies relied upon by EPA reflect lethal and sublethal effects associated with tests in which juvenile organisms were acclimated to temperatures ranging from 9 to 30°F cooler than the temperatures at which the observed effects occurred. In addition, laboratory testing also does not usually allow the fish to avoid or swim away from the higher temperatures. In contrast, the temperature differential between ambient levels and temperatures within the thermal plume predicted by the 1993 ENSR modeling is at most 9.5°F at low water slack tide. Thus, fish in the Saugus River in the vicinity of the discharge would not be exposed to rapid temperature changes equivalent to those in the laboratory experiments. Instead, their exposure to the thermal plume would be more gradual, occurring over a greater surface area and depth. Although EPA says in its analysis of the Wheelabrator Saugus limits that “it is not possible to predict acclimation temperature or exposure time,” it is possible to say with some assurance that resident organisms are unlikely to experience the wide temperature differential and rapid exposure evaluated by those studies.

In addition, all of the studies on which EPA relies involved continuous exposures of juvenile organisms under conditions in which they were unable to avoid the undesirable temperatures and seek cooler refuge. Here, by contrast, the available modeling demonstrates that the entire thermal plume resulting from the Facility discharge, as defined by the cross-sectional area in which temperatures differ by 2°F or more from ambient, is less than 37.5% of the cross section of the Saugus River. See “Thermography Study General Electric River Works Facility” (ENSR, 1993), pp. 4-12. (As updated by CH2M HILL using the latest bathymetry data for the Saugus River collected by USACE in 2006.) Equally important, in only 9.5 % of that already small plume are temperatures likely to equal or exceed 4°F over ambient, and in only 1.8% of the plume are temperatures likely to equal or exceed 8°F over ambient. Furthermore, the available modeling demonstrates that the entire thermal plume resulting from the GE Power Plant discharge, as defined by the surface area in which temperatures differ by 9.5°F or more from ambient (or 84.5°F), is less than 3% of the surface area encompassed by the temperature isotherms of Outfall 018.

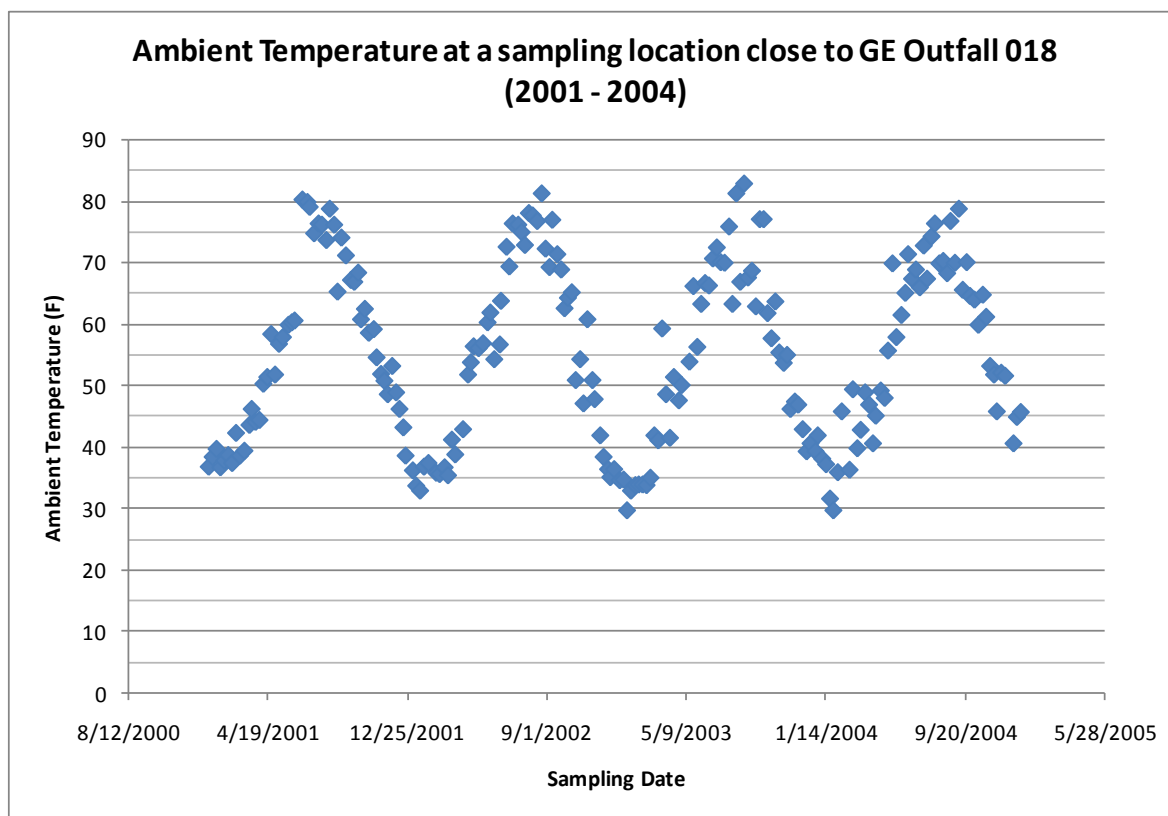
As demonstrated by the plan-view and cross-sectional figures of the modeled thermal plume in Technical Exhibit 18 to these comments, the Power Plant thermal plume projects away from the shoreline out into the deeper main channel of the river (Technical Exhibit 18, Figure 2.7). The lateral distance of the plume from Outfall 018 (following its trajectory as shown in Technical

Exhibit 18, Figure 2.7) and its depth below the surface during low-water slack tide (Technical Exhibit 18, Figure 2-3) show that (1) the plume does not extend across the river to the shallow-water and saltmarsh habitats near the southern shore of the river, and (2) a substantial zone of the river (in terms of both width and depth) is unaffected by the 2°F isotherm. Thus, even at low-water slack tide, a substantial zone of passage remains in the Saugus River in the vicinity of Outfall 018 for juvenile fish to avoid rapid exposure to and swim away from the relatively gradual change in temperature associated with the thermal plume. Moreover, these conditions represent the maximum extent of the plume under low-water slack tide. That condition persists for less than 30 minutes, further limiting the exposure of young fish to elevated temperatures.

Although EPA suggests that GE's 1993 modeling may not accurately reflect the temperature profile of the Facility's plume, there are good reasons to believe that the model provides a reasonably accurate representation of its dimensions. See "Thermal/Biological Impact Analysis – Outfall 014 General Electric River Works Facility" (ENSR, 1993b). The effluent temperature of 95°F was used as a model input for discharges for the Test Cell at Outfall 014. Based on the modeling results, the predicted thermal plume from Outfall 014 exceeding 84.4°F is about 20.5% of the total cross sectional area and 10% of the total surface area encompassed by temperature isotherms (when effluent temperature is 95°F). See "Thermal/Biological Impact Analysis – Outfall 014 General Electric River Works Facility" (ENSR, 1993), pp. 4-15 and 4-16. By way of analogy and extrapolation, it could reasonably be expected that Outfall 018 would observe a similar percentage increase when the effluent temperature is 95°F. It is important to note that 20.5% of total cross sectional area and 10% of the total surface area encompassed by temperature isotherms are still relatively small areas. Therefore, the incremental impact of the thermal plume on the BIP of fish in the Saugus River also would be relatively small.

Available ambient data support this conclusion. In its § 316(a) determination for the Wheelabrator Saugus facility, on which EPA relies heavily, the Agency concluded that available data indicate that no appreciable harm to balanced indigenous populations ("BIP") of fish has occurred from existing thermal discharges at Wheelabrator Saugus under conditions which included the existing thermal discharge from GE. Fact Sheet Attachment K, p. 16. Indeed, according to EPA, those conditions include at least some discharges by GE during August, 2001, at currently permitted discharge levels (Fact Sheet, p. 78).

Below is a summary of weekly ambient temperature for 2001-2004 at a sampling location close to GE Outfall 018 but outside the projected thermal plume impact zone, which includes data for the August 2001 time period cited by EPA. These ambient temperature records showed that EPA's *ad hoc* 85°F threshold was not exceeded in 2001 - 2004.



Based on DMR data in Attachment G to the Fact Sheet, the daily maximum effluent temperature reached 95 °F in August, 2001. However, the weekly ambient temperature records at this sampling location close to Outfall 018 were 73.7 °F (on 8/1/01), 78.8 °F (on 8/7/01), 76.2 °F (on 8/15/01), 65.3 °F (on 8/21/01) and 74.1 °F (on 8/28/01), respectively. Thus the ambient temperature records were below 85 °F, and in this particular time period below 80 °F, even when the effluent discharge temperature reached to 95 °F during the same month of the year. Although these ambient temperature data were collected outside the potential impact zone predicted by the 1993 model-generated thermal plume isotherms, they show that the size of the thermal plume was confined to a small surface area of the Saugus River projecting beyond the shoreline to the deeper portion of the channel, and did not extend along the shoreline downstream of Outfall 018.

Nor is it the case that the small area likely to be affected by GE's thermal discharge provides habitat of a type or amount likely to be necessary to or preferred by juvenile organisms of the species about which EPA has expressed concern. In contrast to the waters adjacent to the Wheelabrator Saugus discharge, which are located in shallow, tidal flats with abundant vegetation providing important nursery habitats for many estuarine species, the habitats located along the deeper northern shore next to the GE discharge are distinctly deeper and more open-water in character. The habitat in the vicinity of the GE Outfalls 018 and 014 discharges does not encompass intertidal or saltmarsh habitats preferred by many estuarine species, and they include a substantial zone of bottom habitat extending into the deeper main channel of the Saugus River that is unaffected by the thermal plume, even at low-water slack tide (see Technical Exhibit 18, Figures 2-3 and 2.7). The species about which EPA has expressed concern – alewife, rainbow

smelt, striped bass, and winter flounder – do not appear to inhabit these waters during the period of highest plume temperatures (July-August during low tide) or are unlikely to be exposed to the relatively small area with the highest temperatures for a duration that could result in lethal or sublethal effects (see Technical Exhibit 18).

Thus, there is no basis for suggesting that the thermal plume associated with maximum daily discharges of 95°F would have any material impact on available habitat or otherwise prevent juvenile organisms from avoiding temperatures outside their preferred range.

Response to Comment 10.3.3

GE presents a series of comments maintaining that with a maximum temperature limit of 95°F for thermal discharges from Outfalls 014 and 018, the thermal plume from its discharge will occupy only a small area of the Saugus River and neither aquatic life nor habitat quality will suffer to a significant degree. GE also comments that the data relied upon by EPA in its analysis does not support the conclusion that species of concern would be harmed by GE's discharge with a temperature limit of 95°F.

In responding to these comments, EPA begins by noting that GE appears to misunderstand the respective "burdens" that must be carried by the permit applicant and the permitting authority under CWA § 316(a). Under CWA § 316(a), and 40 C.F.R. §§ 125.71, 125.72 and 125.73, the permit applicant must demonstrate to the permitting authority's satisfaction that the variance-based waste heat discharge limits that it seeks will assure the protection and propagation of the BIP. This is so whether the applicant is seeking an initial § 316(a) variance or renewal of a variance. *See id.*

In this case, GE failed to carry its burden. Indeed, it submitted no CWA § 316(a) variance demonstration whatsoever. While EPA *interpreted* GE's permit application to be seeking renewal of its existing variance, as discussed above, the fact remains that GE did not provide EPA with a submission demonstrating that the facility qualified for variance-based thermal discharge limits. While EPA could have responded to GE's failure by imposing the otherwise applicable technology-based and water quality-based requirements, the Agency decided to consider whether in this case the data indicated that there was a set of thermal discharge limits that would satisfy CWA § 316(a). Although it was not required, it was not unreasonable for EPA to undertake this exercise. Further, GE cannot (and does not) complain that EPA has done so, since it has led to less stringent thermal discharge limits than otherwise would have applied under the technology-based and/or water quality-based requirements.

In setting "its own" § 316(a) variance-based limits, EPA's burden also is to establish that the limits in question will meet § 316(a)'s criterion of assuring the protection and propagation of the BIP. It is not EPA's burden to establish that the limits in the existing permit, or some other set of limits likely to be preferred by the discharger, will not be sufficiently protective, or that the limits proposed by the Agency are the least stringent set of limits that would satisfy CWA § 316(a).

That said, EPA has carefully considered GE's comments and responds to them below. EPA has considered whether, as GE urges, a less stringent set of thermal discharge limits than those

proposed in the Draft Permit would also satisfy CWA § 316(a). From this assessment, EPA has decided that, based on available information, the Final Permit's thermal discharge limits *can* be made less stringent than the limits included in the Draft Permit. GE's comments support and contribute to EPA's conclusion that the thermal discharge limits that it has included in the Final Permit (year-round discharge limits of 95°F) are likely sufficient to reasonably assure the protection and propagation of the BIP.

Comparison of Laboratory Versus Saugus River Conditions

GE comments that EPA and MassDEP rely on laboratory-based studies to support their concern that waste heat discharges of up to 95°F from the Power Plant (Outfall 018) and the Test Cell (Outfall 014) may harm fish in the Saugus River. According to GE, these laboratory studies "provide some insight" but are not persuasive evidence of potential harm from GE's waste heat discharges because the fish in the laboratory experiments experience conditions different from those experienced by fish in the portions of the Saugus River affected by GE's discharges. EPA disagrees with GE's attack on the Agency's use of laboratory studies in this case. EPA's view continues to be that these studies are one source of relevant information for assessing the threats that would be posed to fish in the Saugus River by giving GE a year-round thermal discharge limit of 95°F for the Power Plant and Test Cell. While EPA agrees that it is important to understand the differences between the conditions that prevail in the laboratory studies and the permitting context in question, GE overstates the difference between the thermal conditions in the laboratory studies and those prevailing in the Saugus River. Certainly, any suggestion that these studies should be disregarded would go too far, as GE's comment acknowledges that laboratory studies provide at least "some insight into thermal lethal and sublethal effects."

GE argues that "the temperature differential between ambient levels and temperatures within the thermal plume predicted by the 1993 ENSR modeling is at most 9.5°F at low water slack tide. Thus, fish in the Saugus River in the vicinity of the discharge would not be exposed to rapid temperature changes equivalent to those in the laboratory experiments." EPA disagrees that resident organisms in the Saugus River are unlikely to experience temperature differentials comparable to those used in the laboratory studies. In the thermal study conducted by Otto et al. (1976), the difference between the acclimation temperature and the exposure temperature ranged from about 14° to 22°F. Using ambient temperature monitoring data from August 2001 (ASA 2004), the agencies approximated potential acclimation temperatures based on water temperatures collected at stations upstream of the discharge (near the Route 107 Bridge and at the edge of the Wheelabrator Saugus intake channel) and exposure temperatures from stations in the vicinity of GE Outfalls 014 and 018. At low water slack tide, these temperature differentials (delta T) were as high as 14° to 23°F. Thus, temperature differentials consistent with the delta Ts studied in Otto et al. have been observed in the Saugus River. *See also* MassDEP's Summary of Thermal Concerns Relative to the General Electric Aviation, Lynn NPDES Draft Permit, p.15.

GE also states that the conditions representing the maximum extent of the plume under low-water slack tide persist for less than 30 minutes, further limiting the exposure of young fish to elevated temperatures. EPA and MassDEP maintain that ambient monitoring data from 2001 provides evidence that fish in the Saugus River could experience temperature differentials at exposure durations similar to those under which thermal toxicity for alewife was observed in the

referenced laboratory study. Otto et al. (1976) observed acute toxicity for young-of-year alewives at a delta T of 16.2°F with a median survival time of 14 minutes at a test temperature of 91.4°F, and at a delta T of 14.4°F with a median survival time of 76 minutes at a test temperature of 93.2°F. On August 16, 2001 at the monitoring station east of GE outfall 018 (inshore) (Station 22 in Figure 2-7, CH2M Hill's *Technical Support for Comments on Proposed Thermal Discharge Limits and Cooling Water Intake Structure Requirements*, Technical Exhibit 18), a delta T ranging from 15.3°F (maximum temperature of 88.7°F) to 22.5°F (maximum temperature of 96°F⁵⁴) persisted for over 90 minutes. While GE comments that elevated temperatures persist for less than 30 minutes, ambient temperatures at stations west of the GE outfall (inshore) on August 10 and 18 of 2001, and east of the GE outfall (inshore) on August 16, 2001, were elevated for longer than 30 minutes. Furthermore, median survival time for young-of-year alewife acclimated at 77°F was less than 30 minutes at exposure temperatures greater than 91.4°F and at a delta T greater than 16°F. Ambient temperature monitoring in and near the predicted plume from Outfalls 014 and 018 (ASA 2004) suggests that, at certain times, temperatures in the plume may be as high as or higher than 93°F and delta temperatures may be greater than 16°F. This, and other ambient monitoring data from 2001 (when the maximum reported discharge temperature at Outfall 018 was 95°F), supports the agencies' determination that conditions in the vicinity of the GE outfalls at a discharge temperature of 95°F may have the potential to cause some thermal toxicity from elevated temperatures that persist during limited periods surrounding low slack tide. At the same time, the size and duration of areas with elevated temperatures that could potentially result in toxicity is relatively limited.

Potential for Avoidance of the Thermal Plume

GE comments that fish in the laboratory experiments in question were immediately exposed to high temperatures without opportunity to avoid them, whereas fish exposure to elevated temperatures in the Saugus River would likely be more gradual and conditions could allow fish the opportunity to avoid the conditions that could result in toxicity. In response to GE's comment, EPA evaluated the potential for a swimming or drifting organism to avoid exposure to a rise in temperature for a duration that would result in thermal toxicity. A comparison of the delta T at the monitoring stations in the vicinity of GE's outfalls (using the Wheelabrator Saugus intake channel station as acclimation temperature) indicated that during periods when the temperature differential at one station (most often the inshore station closest to Outfall 018) was large enough to result in potential toxicity (more than 16°F for 14 minutes based on Otto et al.), the temperature differentials at nearby stations were substantially lower and unlikely to cause toxicity. As an example, a delta T of 22.5°F was observed at the station closest to Outfall 018 on August 16, 2001. At approximately the same time, the delta T at the three nearest stations (one about 15 feet away from the inshore station and two near the steambridge opening) was between 9° and 11°F, and the delta T at the stations near Outfall 014 were less than 5.5°F. In all cases in which the delta T at one station had the potential for acute toxicity, the temperature differential at most or all of the remaining stations near GE would be unlikely to cause toxicity. In other

⁵⁴ At some stations near GE's thermal discharges during low slack tide, instantaneous river temperatures measured during the 2001 ASA temperature study exceeded GE's existing permit limit of 95°F. Data is unavailable to ascertain if GE's effluent temperature exceeded 95°F or if the thermistor record was compromised (e.g., reading temperatures at or above the water surface), but this data suggests that monitoring effluent temperatures at Outfalls 018 and 014 more frequently than the Draft Permit's weekly or monthly grab samples is warranted.

words, although conditions consistent with those observed to result in acute toxicity for juvenile alewife in Otto et al. (1976) persisted at one monitoring station in August 2001, most of the river remained at temperatures that would likely be cool enough to assure the protection and propagation of the BIP. Therefore, based on the currently (albeit limited) available data, EPA agrees with GE that fish in the Saugus River would likely be able to avoid the undesirable temperatures and seek cooler refuge.

The agencies are concerned that available data (two weeks of ambient monitoring data from August 2001) may be insufficient to make an accurate characterization of the size of the thermal plume during different, critical times of the year. Nonetheless, the available data suggest that the extreme delta Ts that could potentially result in acute toxicity for juvenile alewife are limited in both duration and space such that a drifting or swimming organism traveling through the thermal discharge plume at low slack tide during summer– when thermal impacts from GE are expected to represent the worst case– would likely be able to avoid rapid increases in temperature and seek cooler refuge. Therefore, EPA presently concludes that maximum temperature limits of 95°F for GE's thermal discharges from Outfalls 014 and 018 will be likely to assure the protection and propagation of the BIP in the Saugus River.

However, while EPA agrees that most fish in the Saugus River will likely be able to avoid the facility's thermal discharge plume so as to ensure protection and propagation of the BIP at the higher discharge temperature, EPA does not agree with the updated analysis in GE's comment. According to GE, EPA relied on laboratory studies that involved continuous exposures of juvenile organisms under conditions in which they were unable to avoid the undesirable temperatures and seek cooler refuge. GE further comments that, in comparison to these laboratory conditions, exposure to the thermal plume in the Saugus River would be more gradual, occurring over a greater surface area and depth, which would allow organisms (including juvenile fish) to avoid undesirable temperatures. In support of this comment, GE provides an updated analysis of the modeled plume from Outfall 018 based on updated bathymetry data collected by U.S. Army Corps of Engineers (USACE) in 2008. This analysis indicates that the thermal plume (defined in the model by temperatures of 2°F or more above ambient) covers less than 37.5% of the cross-sectional area of the river at low water slack tide (Exhibit 18 to GE Comments), compared to GE's 1993 analysis, which predicted that the 2°F isotherm would cover 85% of the cross-sectional area of the river.

EPA has several problems, however, with the use of the updated bathymetry (presented in Figure 2-3 of Technical Exhibit 18). In the figure, the 4° and 2°F isopleths are shown to penetrate the bank, which is not possible. GE appears to have simply overlaid the existing 1993 isopleths on a plan depicting depth along the trajectory of the surface thermal plume using the updated bathymetry data from the USACE. It is not clear if the calculation of 37.5% of the cross-sectional area encompassed by the 2°F isopleths accounts for the discrepancy where the isopleths overlays the bank, but if so, it is likely that the heat transfer attributed to the bank area would actually be taken up by the water, which would increase the cross-sectional area of the plume.

Second, EPA is even more concerned that the updated bathymetry data depicted in Figure 2-3, and used to calculate the cross-section of the isopleths does not appear to match either the 2008 bathymetry map available from USACE or any other depiction of the Saugus River. GE's figure

shows a maximum depth of 13.2 feet below mean lower low water (MLLW) at a lateral distance 350 feet from the outfall. Soundings from the 2008 USACE survey of the Saugus River indicate that south of the navigation channel (about 225 feet from the outfall), depths quickly decrease to a maximum of 4 to 5 feet below MLLW. The agencies see no location 350 feet from the outfall where the depth would be more than 1 foot at MLLW based on the 2008 USACE survey data. A river depth of 13 feet is possible in the navigation channel in the area in front of and downstream of the Power Plant CWIS, which is downstream of Outfall 018 and the thermal discharge. Depths in the vicinity of the navigation channel near Outfall 018 appear to be in the range of only 9 to 11 feet below MLLW.

Finally, according to Technical Exhibit 18 (p. 2-2), bathymetric data from USACE “were converted to mean lower low water,” but the 2008 soundings, according to USACE, refer to the plane of mean lower low water 1983-2001 Tidal Epoch. It is not clear what conversion GE performed, but as the soundings are already depicted at MLLW, no conversion should have been necessary. Based on available information, EPA is disinclined to accept GE’s updated analysis based on the bathymetry depicted in Figure 2-3 of Technical Exhibit 18.

1993 ENSR Model Predictions

Based on predictions made using the 1993 ENSR model, GE maintains that the difference between ambient water temperatures and temperatures within the thermal plume is at most 9.5°F at low water slack tide. GE further maintains that there are “good reasons” to believe that the 1993 ENSR model provides a reasonably accurate representation of the dimensions of the facility’s thermal discharge plume.

EPA does not share GE’s assessment of the 1993 ENSR modeling results. Instead, the Agency questions the reliability of predictions based on the 1993 ENSR model and, as a result, EPA relied primarily on ambient monitoring data collected during August 2001 in making its determination under CWA §316(a). EPA is unable to have confidence in the accuracy of the model’s predictions of the temperature, location and depth of the thermal plume at a maximum discharge temperature of 95°F because the model’s predictions are at odds with the ambient temperature monitoring data. For example, ambient monitoring data from the Saugus River reveals delta Ts greater than the model’s predicted maximum of 9.5°F. In addition, as EPA stated in the Fact Sheet (p. 77-78), the 1993 model results do not appear to be representative of the profile and dimensions of the thermal plume at the currently permitted maximum of 95°F – *i.e.*, the model results likely understate the scope of the thermal plume at 95°F – possibly because the inputs to the model assumed maximum discharge temperatures of 91°F and 90°F at Outfalls 018 and 014, respectively. While GE comments that the predicted thermal plume from Outfall 014 in the 1993 model was based on a model input of 95°F and can be used to extrapolate a similar percentage increase for Outfall 018 at an effluent temperature is 95°F, EPA points out that the 1993 ENSR model input for Outfall 014 assumed a maximum delta T of 15°F and a maximum summer ambient temperature of 75°F, which equals a maximum effluent temperature of 90°F (not 95°F, as stated by GE).

Furthermore, EPA notes that the observed temperature differentials during 2001 do not correspond to the predicted isopleths from the 1993 model. For example, during August 2001,

ASA recorded limited periods of greatly elevated surface temperatures (in excess of 93°F) in the vicinity of the GE's Outfall 018 (Station 22 in Figure 2-7 of Technical Exhibit 18), which is located outside of the isotherms predicted by the 1993 model. At ASA Station 20 (north of the channel opening at the steam bridge), EPA calculated temperature differences at low slack tide throughout the water column ranging from 7°F to 14°F above ambient (measured at the mouth of the channel to the Wheelabrator Saugus intake). In comparison, the model predicts Station 20 to lie within the 4°F isopleths and that the 4°F isopleth in the vicinity of Station 20 would extend only to a depth of between 2 and 3 feet. This suggests, at a minimum, that the 1993 ENSR model should not be used to evaluate the cross-sectional area encompassed by the isopleths from the discharge at Outfall 018. EPA maintains that GE has not, either in the 1993 model or in its comments on the Draft Permit, demonstrated that the model accurately predicts the extent of the thermal plume at a maximum discharge temperature of 95°F at either outfall 018 or 014.

GE uses ambient weekly temperature records from "a sampling location close to GE Outfall 018" to support statements that "the size of the thermal plume was confined to a small surface area of the Saugus River projecting beyond the shoreline to the deeper portion of the channel, and did not extend along the shoreline downstream of Outfall 018," and that "EPA's *ad hoc* 85°F threshold was not exceeded in 2001-2004." In response, EPA first notes that it did not apply the threshold of 85°F on an "*ad hoc*" basis. Rather, that temperature was used based on the Massachusetts Class SB surface water quality standards for temperature at 314 CMR § 4.05(b)(2). EPA further notes that while GE did not disclose the sampling location it is referring to, except to say that it was "outside of the potential impact zone predicted by the 1993 model-generated thermal plume isotherms," EPA assumes that the location was inshore of ASA Station 22 as depicted in Figure 2-7 from Technical Exhibit 18. Moreover, in the text above, EPA has described instances in which temperatures at Station 22 exceeded 93°F for certain periods (30 to 90 minutes) during low slack tide in August 2001. Similar temperature spikes at GE's monitoring station would likely not be captured in GE's review of "weekly ambient temperature," which EPA assumes refers to *average* weekly ambient temperatures. The data GE provides in its comments suggest that weekly average temperatures in August 2001 were 80°F or less. However, the temperature differential over a single tidal cycle at Station 22 was typically 10°F or more. It is not surprising that a temperature spike occurring on one or two days for approximately 30 minutes twice per day does not substantially impact a weekly average temperature value given the twice-daily flood tide which brings an influx of cool water from Lynn Harbor into the lower Saugus River. Therefore, EPA is not persuaded that the average ambient data provided by GE is evidence that the thermal plume is not, at times, wider and deeper than predicted by the 1993 model. Nevertheless, GE's average weekly data, together with the 2001 ambient monitoring data, support EPA's conclusion, based on available data, that impacts from the thermal plume are likely to persist for a relatively short duration and that, taking into account the potential for fish to avoid high water temperatures caused by the facility's discharges, thermal discharge limits of 95°F would reasonably assure the protection and propagation of the BIP in the Saugus River.

Presence of Juvenile Fish

EPA disagrees with GE's comments arguing that the area of the lower Saugus River impacted by the facility's waste heat discharges from Outfalls 018 and 014 is "not likely to be necessary to or

preferred by juvenile organisms of the species about which EPA has expressed concern.” GE attempts to distinguish the location of its thermal plume, and the type of bottom habitat that it affects from the type of habitat affected by the Wheelabrator Saugus discharge. GE contrasts the deeper, more open water habitats next to the GE discharge with the habitat adjacent to the Wheelabrator Saugus discharge, which GE characterizes as “shallow, tidal flats with abundant vegetation providing important nursery habitats for many estuarine species.” This contrast contributes to GE’s conclusion that its discharges would not be likely to cause adverse thermal effects to fish.

Yet, GE’s argument based on this comparison is not persuasive. Wheelabrator Saugus discharges through a diffuser that is located on the river bottom at the north edge of the main channel of the Saugus River (at a depth of 20 feet) approximately 60% of the distance from the steam bridge to the railroad bridge. Contrary to GE’s suggestion, Wheelabrator’s discharge from the diffuser at the bottom of the main channel is unlikely to impact nursery habitats, such as vegetated intertidal or tidal flats. In addition, EPA set the maximum temperature limit for the Wheelabrator permit at 90°F with a delta T of 22°F. Indeed, the location of the Wheelabrator Saugus discharge in the deeper main channel was a major factor in EPA’s 316(a) evaluation for that permit reissuance, which states that the thermal discharge “at a maximum limit of 90°F and delta T of 22°F would only nominally affect the size, shape, and magnitude of the current plume.” (Fact Sheet for the Wheelabrator Saugus Draft NPDES Permit, p. 16). EPA also concludes that from July to September several of the species about which the agencies are concerned would be likely to be found in the open-water and shoal habitat near GE’s discharge, as opposed to shallow, vegetated flats. Juvenile river herring, for example, which emigrate during late summer and fall, occur in the upper levels of the water column (Able and Fahey 1998). As another example, rainbow smelt tend to prefer sandy shoals, such as those found on the northern shoreline of the Saugus River (Bigelow and Schroeder 1953).

Finally, according to MassDEP, extensive monitoring for alewife and blueback herring in the lower Charles River, as well as other rivers in Massachusetts, suggests that juvenile alewives would likely be found in the lower Saugus River from very late June through the fall. Alewives begin spawning in late March to mid-May, while blueback herring tend to spawn later into April and through June. Juveniles of both species use freshwater habitat as a nursery during the early to late summer and begin their migration to the ocean in July and continue through November. According to the Massachusetts Division of Marine Fisheries (MarineFisheries), and based on recent (within the past 10 years) documentation, the Saugus River provides a spawning run and habitat for alewife, blueback herring, rainbow smelt, and winter flounder. Alewife, in particular, would be expected to be migrating to the ocean from July through November in the Saugus River (MA DMF 2011). In addition, Wheelabrator Saugus impinged juvenile alewife in late July 2011 (Normandeau 2012). Life history factors, scientific literature, anecdotal observations of fisheries scientists, and recent monitoring data indicate that alewife are very likely to be present in the Saugus River during the late summer months when the potential for acute toxicity appears to be greatest. Thus, all of this information tends to contradict any suggestion that GE’s thermal discharge does not affect habitat likely to be preferred by juveniles of the species about which the agencies have expressed concern, or that these species would not inhabit the Saugus River during the period of highest plume temperatures.

Conclusion

In this case, thermal toxicity is the primary thermal impact of concern with regard to assuring the protection and propagation of the BIP in the segment of the Saugus River receiving GE's thermal discharge. As discussed above, the critical period for this concern as it relates to GE's thermal discharges is the 1.5-hour period surrounding low slack tide. In its comment, GE has not provided persuasive evidence that conditions that resulted in acute toxicity for juvenile alewife in laboratory studies would not occur in limited areas of the Saugus River at low slack tide, or that the 1993 model or GE's updated analysis can be used to predict with accuracy the magnitude and dimensions of the thermal plume at 95°F, or that the species that the agencies are concerned about (particularly alewife, which tends to be the most thermally sensitive species) would not be present in the Saugus River in areas affected by GE's discharges during periods when temperatures resulting in acute toxicity may occur.

Nevertheless, upon review of the limited, available information and in response to GE's comment, the agencies have determined that the potential for thermal impacts is likely limited to a relatively short period surrounding low slack tide during the hottest months of the year and at locations near the inshore habitat closest to the discharge. Outside of this period, lower ambient river temperatures during non-summer months and the tidally driven exchange of water during non-low slack tides are likely to minimize any potential for substantial thermal impacts. Moreover, even during low slack tide in the summer, conditions appear to be such that fish would likely be able to avoid elevated temperatures and seek cooler refuge. Because the potentially most serious impacts of the thermal plume can likely be avoided, EPA has determined that, based on available information, maximum temperature discharge limits of 95°F would reasonably assure the protection and propagation of the BIP. Therefore, whereas the Draft Permit included a year-round maximum daily temperature limit of 90°F, the Final Permit includes a maximum daily temperature limit of 95°F and an average monthly temperature limit of 90°F at Outfalls 014 and 018 consistent with the current permit. At the same time, the Final Permit adds protection for the BIP by requiring a reduction in flow to minimize entrainment mortality of early life stages in the Saugus River. Finally, given that the temperature data available to characterize the extent of the thermal plume and its potential impacts is relatively limited, and because the ASA thermistor data analyzed by EPA and MassDEP in development of this permits limits suggest that, at times, river temperatures may rise as high as or higher than 95°F, the Final Permit requires continuous temperature monitoring at Outfalls 018 and 014. Continuous temperature monitoring will provide data more representative of the actual range of effluent temperatures than the weekly (at 018) or monthly (at 014) grab samples that were required in the Draft Permit.

11. EPA's Proposed BTA Determination for the Facility's CWIS Require Reconsideration.

Comment 11.1: Background.

Although NPDES permits typically cover only discharges of pollutants to waters of the United States, the Clean Water Act also includes a unique provision, § 316(b), that applies to "cooling water intake structures." Section 316(b), 33 U.S.C. § 1326(b), provides:

Any standards established pursuant to section 1311 of this title or section 1316 of this title and applicable to a point source shall require that the location, design, construction and capacity of cooling water intake structures [CWIS] reflect the best technology available [BTA] for minimizing adverse environmental impact.

EPA first issued regulations implementing § 316(b) in 1976. Those regulations required selection of BTA case-by-case, following guidance provided separately by the Agency. The regulations were suspended by the United States Court of Appeals for the Fourth Circuit in 1977 on procedural grounds, after which they were withdrawn. From 1977 on, EPA and the states implemented § 316(b) on a best professional judgment (BPJ) basis, guided by case-specific decisions of the Administrator and reviewing courts, opinions issued by EPA's Office of General Counsel, and an EPA draft guidance document entitled "Guidance for Evaluating the Adverse Impact of Cooling Water Intake Structures on the Aquatic Environment: Section 316(b) P.L. 92-500" (May 1, 1977) ("1977 Draft Guidance"). As EPA has recognized, those sources of guidance emphasize the importance of considering impingement and entrainment losses in context, rather than in the abstract. For example, the 1977 Draft Guidance counsels that "[r]egulatory agencies should clearly recognize that some level of intake damage can be acceptable if that damage represents a minimization of environmental impact" (p. 3). Further, in evaluating whether "damage" from entrainment and impingement occurs, "the critical question is the magnitude of any adverse impact" (p. 11). Thus, the 1977 Draft Guidance (p. 34) instructs permit writers to relate individual losses to effects on local populations, taking into account life history information and species fecundity.

In 1995, EPA entered into a settlement agreement committing the Agency to conduct a phased § 316(b) rulemaking. The first phase, covering CWIS at new facilities, was completed in 2001. 66 Fed. Reg. 65,256 (Dec. 18, 2001), codified at 40 C.F.R. Pt. 125, subpart I. For purposes of those regulations, known as the "Phase I" rules, EPA chose a new, more uniform, more administratively streamlined approach to § 316(b) regulation that emphasize reducing individual organism losses. In doing so, however, EPA stressed that its decision to adopt this approach for new facilities was not binding with regard to existing facilities, which the Agency recognized faced more limited alternatives and higher costs. *See, e.g.*, 66 Fed. Reg. 65,285.

As EPA notes, in 2004 the Agency adopted so-called "Phase II" § 316(b) regulations for existing steam electric power generators designed to withdraw more than 50 MGD, and in 2006 EPA adopted § 316(b) regulations for "Phase III" facilities, including existing manufacturing facilities like the Facility. Fact Sheet, Attachment J, p. 2. For Phase II facilities, EPA determined that closed-cycle cooling was not BTA for a variety of reasons, including its high costs, potential incompatibility with existing site limitations, and adverse environmental implications for other environmental media. 69 Fed. Reg. 41,605-41,606 (July 9, 2001). Instead, the Phase II rule established performance standard ranges based on the Agency's estimate of what other technology alternatives could achieve. The Phase II rule anticipated that permittees would select the most cost-effective technology capable of achieving reductions within the range, but authorized permittees to obtain less stringent alternative standards if they could show that the costs of complying with the otherwise applicable standards would be significantly greater than the benefits. 69 Fed. Reg. 41,595-601. For Phase III facilities, EPA determined that no uniform standards were warranted, finding that the cost of any such standards

would be “wholly disproportionate” to the likely benefits. 71 Fed. Reg. 35,006-015 (June 16, 2006).

As EPA correctly notes (Fact Sheet, Attachment J, p. 2), the Phase II rule was suspended in July, 2007, after various portions of the rule (including the provision for alternative standards based on cost-benefit analysis) were remanded by the United States Court of Appeals for the Second Circuit. In 2009, the United States Supreme Court reversed the lower court’s decision on this score, upholding EPA’s authority to weigh costs and benefits in implementing § 316(b). Indeed, in the words of Justice Breyer, “every real choice requires a decision maker to weigh advantages against disadvantages, and disadvantages can be seen in terms of (often quantifiable) costs.” *Entergy Corp. v. Riverkeeper, Inc.*, 129 S. Ct. 1498, 1513 (2009) (Breyer, J., concurring in part). Because the Supreme Court’s decision resolved only one of several issues on which the Phase II rule was remanded, EPA has chosen to continue developing an alternative rule covering existing steam electric generating plants. Until that rulemaking is concluded, Phase II facilities are subject to § 316(b) implementation on a case-by-case basis.

Although the Phase III rule also was challenged by environmental interest groups, no court has ever opined on its validity. Rather, as it acknowledges (Fact Sheet, Attachment J, p. 2), EPA chose to seek a remand so that it could reconsider the Phase III rule in conjunction with its Phase II rulemaking. Because the Phase III rule contemplated case-by-case decision-making using BPJ, the remand of the Phase III did not affect the Agency’s approach to implementing § 316(b) for existing manufacturing facilities like the Facility.

EPA recently published proposed § 316(b) regulations for CWIS for all existing facilities, including manufacturing and steam electric plants, designed to withdraw more than 2 MGD of water, of which 25% or more is cooling water, from surface waters of the United States. See 76 Fed. Reg. 22,174, 22,280-81 (April 20, 2011). Those proposed regulations, if adopted, would require all covered facilities either to meet monthly average and annual average limits on mortality to impingeable-sized organisms, or to achieve a design or actual intake velocity of 0.5 fps or less. Although the impingement mortality standards apply to “all life stages of fish,” the rule also allows the permittee to propose, and the permit writer to approve, the selection of “species of concern” for purposes of compliance. 76 Fed. Reg. 22,287. For entrainment, the proposal requires permit writers to identify BTA on a case-by-case basis, taking into account a variety of factors, including whether the social benefits of alternative technologies justify the social costs. 76 Fed. Reg. 22,277-278. Only facilities with actual intake flows⁵⁵ greater than 125 MGD are required to submit extensive information in connection with entrainment standards selection, however. *Id.* Facilities below that threshold, like the Facility, are presumed to present far less risk and thus to warrant less onerous evaluation and regulation. EPA considered, but decided against proposing closed-cycle cooling as BTA for a number of reasons, including physical constraints, air emissions, energy impacts, and adverse implications for reliability. 76

⁵⁵ EPA proposes to define “actual intake flow” as the “average volume of water withdrawn on an annual basis by the cooling water intake structures over the past three calendar years.” 76 Fed. Reg. 22,281 (April 20, 2011).

Fed. Reg. 22,208-210. The proposal also expressly recognizes that permit writers may conclude that the existing CWIS is BTA. 76 Fed. Reg. 22,288.

EPA's proposal is just that – a proposal, having no regulatory effect. But the fact that EPA has once again declined to require closed-cycle cooling as BTA for entrainment is telling, as are its proposals to require consideration of whether the social benefits of entrainment reduction technologies justify their social costs, and to exempt facilities with relatively low flows from all or some portions of the regulation. Although some changes in the proposal can be expected, these aspects of EPA's proposal deserve weight because they are consistent with the Agency's longstanding guidance and with its previous determinations in the Phase II and III rulemaking. Thus, while GE does not believe that the Agency is either authorized or obliged to apply the rule before it becomes final, we believe that EPA's proposal in this regards is telling.

Nevertheless, we recognize that there is substantial uncertainty regarding the precise requirements of any final rule. In light of that uncertainty, and the fact that EPA has committed to finalize the rule by July 27, 2012,⁵⁶ GE submits that it should not be subject to a BPJ determination that may prove to be inconsistent with the final rule. Given the very short window of uncertainty remaining, GE requests that the Region either stay this permit renewal proceeding until § 316(b) rule for existing facilities becomes final, or reissue the permit without any new § 316(b) requirements, subject to permit modification when § 316(b) rulemaking is complete.

Addendum to Comment 11.1

In a letter to EPA submitted July 31, 2014, GE submitted additional comments regarding the impact of the Final 316(b) Rule on GE's ongoing NPDES permit proceeding. GE presented its views on how EPA should interpret and apply the Final Rule to the facility. GE believes that the Final Rule must be accounted for in the development of the final NPDES permit, and comments specifically on both the implementation of the rule and what requirements should be included in the Final Permit. The following are excerpts from GE's letter to EPA pertaining to the Final 316(b) Rule and its impact of GE's Final Permit.

For permits like the one at issue here, where the reissuance proceeding is already underway, the final 316(b) Rule contemplates that the permitting authority will wait at least one permit cycle before imposing substantive impingement mortality and entrainment requirements and will use the intervening time to gather all of the information necessary to make an informed determination about whether and how those requirements should be imposed (including any necessary schedule of compliance). As a result, GE believes that it would be premature for EPA to attempt to implement the final rule in the pending reissuance proceeding, especially since the public comment period on the draft permit closed years ago. If EPA declines to wait and instead proceeds with a determination of the "best technology available" standards for impingement mortality and entrainment, then, at a minimum, EPA must publish this determination in a revised draft permit for public review and comment.

⁵⁶ See Settlement Agreement Among the United States Environmental Protection Agency, Plaintiffs in *Cronin et al. v. Reilly*, 93 CIV. 314 (LTS) (SDNY) and Plaintiffs in *Riverkeeper, et al. v. EPA*, 06 CIV. 12987 (PKC) (SDNY).

Impingement Mortality Requirements. GE believes that the Facility qualifies for the *de minimis* provision in 40 C.F.R. §125.94(c)(11). The Facility (1) withdraws a total of less than 31 million gallons per day (MGD) actual intake flow (AIF) from its two active cooling water intake structures, (2) withdraws less than 3 percent of the tidal excursion volume during one complete tidal cycle of ebb and flood of the Saugus River, and (3) is not co-located with other facilities with CWISs such that it contributes to a larger share of withdrawals of the tidal excursion volume. As a result, the Facility appears to closely match the illustrative *de minimis* example presented on page 37 of the pre-publication version preamble. For purposes of this *de minimis* evaluation, GE submits that due to the tidal nature of the Saugus River in the vicinity of the Facility's CWIS, comparison of the Facility's withdrawals to tidal excursion volumes provides a more representative comparison of the Facility's withdrawals than the mean annual flow referenced in the EPA's illustrative example. In addition, the Facility's CWIS impacts are likely substantially less than in EPA's example due to the combination of technologies, management practices, and operational measures already in place or proposed by GE in prior submittals. GE believes that the necessary and proper next step is for EPA to issue a revised draft permit that includes the Regional Director's determination that no additional impingement controls are warranted, consistent with the process requirements set forth in 40 C.F.R. §125.94(c)(11).

Alternatively, if the Regional Director declines to make a *de minimis* determination, then, at a minimum, EPA would need to provide GE with the opportunity to conduct an impingement technology performance optimization study in support of alternative #6 in EPA's Best Technology Available (BTA) standards for impingement mortality, as provided in 40 C.F.R. §125.94(c)(6). As noted in our comments on the draft permit, GE has proposed various operational measures and technologies designed to ensure that any impacts to aquatic populations are minimal (e.g., using variable frequency drives to reduce both intake flows and through-screen velocities). Once optimized and documented, these measures and technologies should be more than adequate to meet the requirements of alternative #6.

Entrainment Mortality Requirements. GE believes that the Facility also qualifies for *de minimis* consideration regarding entrainment mortality. We recognize that EPA has not provided specific regulatory language for *de minimis* entrainment. However, EPA's explanation on page 302 of the pre-publication rule preamble appears to allow for both *de minimis* impingement mortality and entrainment in appropriate cases. Based on the substantial data and information already in the record, GE believes that the Facility presents just such a case.

If EPA disagrees and instead chooses to establish site-specific requirements for entrainment, then, at a minimum, EPA must conduct a thorough evaluation of the factors set forth in 40 C.F.R. §125.98(f)(2) and (3), and then document its determination in the fact sheet of a revised draft permit as provided in 40 C.F.R. §125.98(f)(1). Among other factors directly relevant to the Facility is credit for reductions in flow associated with retirement of units occurring within the past 10 years. As GE has already reported to EPA, the former Gear Plant CWIS was permanently retired in 2011 resulting in a 28.8 MGD reduction (33.5%) in the Facility's current total permitted average monthly CWIS flow (85.8 MGD) and a 54.7 MGD reduction (40.4%) in the Facility's total permitted daily maximum CWIS flow (135.3 MGD). In addition to the retirement of the former Gear Plant CWIS, GE has implemented or committed to undertake

reductions in flow at both the Power House and the Test Cell CWIS as explained in Section 11.B of GE's June 2011 draft renewal permit comments. Regarding the Power House, due to reductions in cooling water flow previously realized and GE's proposal for an additional reduction of withdrawals by an average of 20% of the current permitted level annually, GE will reduce the Power House CWIS flow by 51% compared to the design capacity of the Power House condenser cooling pumps. With regard to the Test Cell, in approximately 1991 GE installed a closed-loop recirculating cooling tower system that reduces the Test Cell CWIS intake flow by 1,500 gallons per minute.

Schedule of Compliance. If and when EPA reaches a determination that additional impingement mortality and entrainment requirements are needed (a determination that GE would strongly oppose), EPA would need to provide GE with an opportunity to determine the schedule necessary to achieve compliance "as soon as practicable" and thereafter provide such a schedule in the renewal permit. Needless to say, some of the alternatives presented in the final rule would necessitate major investments in time and capital, and surely could not be implemented overnight. GE believes that EPA must give consideration to whether a schedule of compliance will be needed.

Response to Comment 11.1

In this comment, which GE labels as "Background," the company addresses two things. First, it provides GE's characterization of the evolution or history of EPA's regulatory approach to the application of CWA § 316(b) to NPDES permits. Second, after noting that on April 20, 2011, EPA had published a Proposed Rule applying CWA § 316(b) to existing facilities with cooling water intake structures (CWISs), and further noting that EPA was planning to issue a Final Rule on July 27, 2012, GE asks that EPA, "[g]iven the very short window of uncertainty remaining [with regard to § 316(b) regulations], ... either stay this permit renewal proceeding until § 316(b) rule for existing facilities becomes final, or reissue the permit without any new § 316(b) requirements, subject to permit modification when § 316(b) rulemaking is complete." EPA did not agree to stay the permit proceeding and as events have transpired, EPA was not able to issue either the Final Rule or GE's Final Permit by July 27, 2012.

Instead, EPA issued a pre-publication notice of the new Final CWA § 316(b) Rule on May 19, 2014. EPA published the new Final Rule in the Federal Register on August 15, 2014. 79 Fed. Reg. 48300 - 48439 (Aug. 15, 2014) ("Final Regulations to Establish Requirements for Cooling Water Intake Structures at Existing Facilities and Amend Requirements at Phase I Facilities; Final Rule") (the "New CWA § 316(b) Regulations"). The new regulations are not yet in effect, but are scheduled to become effective on October 14, 2014. See 79 Fed. Reg. 48300, 48358. While the comment period for GE's Draft Permit had closed on June 1, 2011, GE took the opportunity to review EPA's pre-publication copy of the New CWA § 316(b) Regulations and to submit to EPA additional comments presenting its views about the implications of the new Final Rule for GE's NPDES permit. GE's additional comments were presented in a letter dated July 31, 2014. Although submitted after the close of the comment period, EPA decided to consider and respond to GE's comments in light of the publication of the new regulations. These responses are presented below along with EPA's responses to GE's earlier comments on the Draft Permit.

At the outset, EPA must point out that the New CWA § 316(b) Regulations are not yet in effect and do not apply to GE's new Final Permit as a matter of law. See 40 C.F.R. § 122.43(b). Thus, the Final Permit's CWA § 316(b)-based requirements have been developed by EPA based on a BPJ determination of the facility-specific BTA. This is consistent with both the existing 40 C.F.R. § 125.90(b),⁵⁷ which currently remains in effect, and the new 40 C.F.R. § 125.94(a)(2), 79 Fed. Reg. 48433, which calls for the continued BPJ determinations of the BTA for permits issued prior to the new Rule's effective date of October 14, 2014, and provides as follows:

(2) Prior to *October 14, 2014*, the owner or operator of an existing facility with a cumulative design intake flow (DIF) greater than 2 mgd is subject to site-specific impingement mortality and entrainment requirements as determined by the Director on a case-by-case Best Professional Judgment basis. The Director's BTA determination may be based on consideration of some or all of the factors at § 125.98(f)(2) and (3) and the requirements of § 125.94(c). If the Director requires additional information to make the decision on what BTA requirements to include in the applicant's permit for impingement mortality and entrainment, the Director should consider whether to require any of the information at 40 C.F.R. 122.21(r).

Thus, it is clear that EPA intends that permits should continue to be issued prior to the new regulations becoming effective, and that such permits should include CWIS requirements based on a BPJ determination of the BTA. See also 79 Fed. Reg. 48358 ("... in the case of permit proceedings begun prior to the effective date of today's rule, and issued prior to July 14, 2018, the Director should proceed. See §§ 125.95(a)(2) and 125.98(g).").

In this case, EPA issued GE's Draft Permit prior to the April 2011 issuance of the new Proposed CWA § 316(b) Rule and, as explained in the Fact Sheet for the Draft Permit, the Agency determined the applicable BTA on a site-specific BPJ basis under 40 C.F.R. § 125.90(b). For the Final Permit, EPA has finalized its BTA determination on a BPJ basis after consideration of public comments. Even prior to publication of the New CWA § 316(b) Regulations, EPA's existing analysis had, in effect, considered the substance of many or all of the factors set forth in the new 40 C.F.R. § 125.98(f)(2) and (3) and many of the compliance options set forth in the new 40 C.F.R. § 125.94(c). In finalizing its BPJ determination and responding to comments for this Final Permit, EPA has given due consideration to all of these factors and requirements, although whether and how to do so is left to the Agency's discretion under the new 40 C.F.R. 125.94(a)(2), as spelled out above.⁵⁸ Finally, EPA's BPJ determination is based on substantial

⁵⁷ EPA notes that the New CWA § 316(b) Regulations, once they take effect, will amend 40 C.F.R. § 125.90(b) to require BPJ determinations of the BTA for facilities not covered by either new or existing regulatory standards. 79 Fed. Reg. 48430.

⁵⁸ With regard to the factors in the new § 125.94(f)(2), as the record plainly indicates, EPA considered the "numbers and types of organisms entrained," "impact of changes in particulate emissions or other pollutants associated with entrainment technologies," "land availability," and "quantified and qualitative social benefits and costs of available entrainment technologies when such information on both benefits and costs is of sufficient rigor to make a decision." 79 Fed. Reg. 48438 (40 C.F.R. § 125.98(f)(2)(i), (ii), (iii), and (v)). In addition, with regard to emissions of particulate matter and other pollutants, it should be noted that EPA's consideration was focused primarily on the issue of salt drift with regard to the possibility of using cooling towers. Using cooling towers at GE would not, in

information gathered from GE and other sources over a period of years and EPA does not require additional information, including any additional information specified under 40 C.F.R. § 122.21(r), to make its final BTA determination regarding the control of impingement mortality or entrainment for GE's Final Permit.

EPA further points out that in the case of a final permit issued after October 14, 2014, as part of an ongoing permit proceeding, the Agency can proceed to final permitting in much the same manner as discussed above for permits finalized before October 14, 2014. Thus, the new 40 C.F.R. § 125.98(g), 79 Fed. Reg. 48438-48439, further provides as follows:

(g) *Ongoing permitting proceedings.* In the case of permit proceedings begun prior to October 14, 2014 whenever the Director has determined that the information already submitted by the owner or operator of the facility is sufficient, the Director may proceed with a determination of BTA standards for impingement mortality and entrainment without requiring the owner or operator of the facility to submit the information required in 40 C.F.R. 122.21(r). The Director's BTA determination may be based on some or all of the factors in paragraphs (f)(2) and (3) of this section and the BTA standards for impingement mortality at § 125.95(c). In making the decision on whether to require additional information from the applicant, and what BTA requirements to include in the

EPA's view based on existing information, pose other significant issues the emission of particulates or other pollutants in light of the relatively small size of the power plant to be affected. Furthermore, the BTA selected by EPA, which entails a combination of steps including the use of VFDs and wedgewire screens rather than cooling towers, does not raise issues concerning the emission of particulates or other pollutants. EPA's has also considered the issue of the remaining useful plant life, *id.* (40 C.F.R. § 125.98(f)(iv)), in the sense that there is no indication that GE has any present intention or plan to close the generating units that utilize the cooling water intake structures on the grounds that they have a limited remaining useful life. Moreover, GE has not made any significant recent improvements to the cooling water intake structures for which a major investment has been made by the company that EPA ought to consider.

Turning to the factors set forth in the new 40 C.F.R. § 125.98(f)(3), EPA's analysis again, in effect, has considered the substance of these factors, including "(i) entrainment impacts on the water body; (ii) thermal discharge impacts; (iii) credit for reductions in flow associated with the retirement of units occurring within the ten years preceding October 14, 2014; (iv) impacts on the reliability of energy delivery within the immediate area; (v) impacts on water consumption; and (vi) availability of process water, gray water, waste water, reclaimed water, or other waters of appropriate quantity and quality for reuse as cooling water." 79 Fed. Reg. 48438. Additionally, EPA notes here that it does not expect any significant impact on energy delivery in the immediate area (or at GE, in particular) from making improvements at GE's cooling water intake structures because the cooling system changes under consideration will not preclude future energy production, installation of any new equipment (e.g., wedgewire screens, VFDs, or cooling towers) could potentially be accomplished without outages of any significance, *see Clean Water Act Permitting Determinations for Thermal Discharge and Cooling Water Intake from Brayton Point Station in Somerset, MA* (July 22, 2002), p. 7-56 (accessible at <http://www.epa.gov/region1/braytonpoint/pdfs/BRAYTONchapters7-8.PDF>), any outages that were needed to install new equipment could be timed to avoid disruptions at GE, and GE is not a major power supplier to the grid at large. Finally, EPA does not regard consumptive water use concerns to be a significant issue for the GE BTA determination. The preferred options will not increase any consumptive water use, and the cooling tower option could result in a small amount of evaporative water loss, but any such losses would be inconsequential in the tidal environment around GE.

applicant's permit for impingement mortality and site-specific entrainment, the Director should consider whether any of the information at 40 C.F.R. 122.21(r) is necessary.

Thus, the new regulations again make clear that EPA does not intend that ongoing permit proceedings be required to backtrack and go through the full process set out by the new regulations. See 79 Fed. Reg. 48358 (“... in the case of permit proceedings begun prior to the effective date of today’s rule, and issued prior to July 14, 2018, the Director should proceed. See §§ 125.95(a)(2) and 125.98(g).”). As appropriate, the procedures of the new regulations will be applied in such cases in future permit renewal proceedings.

In any event, as demonstrated below, EPA’s Final Permit is consistent with the New CWA § 316(b) Regulations, even though they do not constitute “applicable requirements” for GE’s Final Permit. See 40 C.F.R. § 122.43(b).

The first part of GE’s initial comments presents the company’s characterization of the evolution or history of EPA’s regulatory approach to the application of CWA § 316(b) to NPDES permits, as well as GE’s interpretation of certain of the policies and regulations that make up that history. In this comment, GE discusses these subjects largely in a “generic” sense, without addressing how they apply specifically to the GE permit. With regard to this generic discussion, EPA agrees with some of it and disagrees with some of it. (EPA discussed this regulatory background in the Fact Sheet at p. 27 and Att. J, pp. 3 – 4.) It is unnecessary, however, for the Agency to respond directly to GE’s generic discussion of § 316(b) law, regulation and policy, especially with regard to its characterization of regulations that are no longer in effect (*e.g.*, the Phase II and Phase III CWA § 316(b) regulations). Regulations that are no longer in effect are not determinative of the decisions that presently need to be made regarding GE’s permit. Therefore, EPA will respond to GE’s characterization of the law and policy only to the extent that it applies to the GE permit.

One place that GE connects these general comments to the GE permit is where it states that for EPA’s 2011 Proposed Rule applying CWA §316(b) to existing facilities, the Agency presumed that facilities withdrawing less than 125 million gallons per day (MGD) from a water body, “like the Facility, are presumed to present far less risk and thus to warrant less onerous evaluation and regulation.” EPA disagrees with GE’s suggestion that the Proposed Rule creates a presumption that facilities that withdraw less than 125 MGD, such as GE, present “far less risk and thus ... warrant less onerous evaluation and regulation.”

In EPA’s view, the New CWA § 316(b) Regulations create an *appropriate* (not “onerous”) scheme for developing the information needed to support decision-making about the requirements to be applied at individual facilities to reduce the adverse environmental effects of cooling water intake structures on public natural resources, as required by the Clean Water Act. In addition, neither the Proposed Rule nor the Final Rule indicate that less stringent technological requirements should necessarily be applied to facilities that withdraw less than 125 MGD of water for cooling. With regard to reducing impingement mortality, the Rule specifies various measures that apply for all facilities that withdraw more than 2 MGD. See 79 Fed. Reg. 48433 (40 C.F.R. §§ 125.94(a), With regard to reducing entrainment, the Rule calls for a case-

by-case determination of the Best Technology Available (BTA) at each facility.⁵⁹ While the Final Rule does specify more involved information submission requirements for facilities withdrawing more than 125 MGD, it does not mandate relaxed BTA requirements for facilities with smaller water withdrawal rates.⁶⁰ In fact, the preamble to the Final Rule specifically rejects the notion raised in some public comments that facilities withdrawing less than this threshold are not causing adverse environmental impacts.⁶¹

While EPA agrees that all other things being equal, a facility that withdraws less water is likely to kill and injure fewer aquatic organisms from impingement and entrainment, under certain circumstances, even smaller plants can impose serious adverse effects. For example, a facility with a cooling water intake structure located in a particularly sensitive ecosystem (e.g., a spawning and/or nursery area) could cause serious harm even if it withdraws a relatively smaller volume of water. Similarly, a facility with a relatively smaller withdrawal volume could contribute to serious adverse effects if located on a water body already being impacted by other

⁵⁹ With regard to closed-cycle cooling, GE's comment emphasizes that EPA did not find that technology to be the BTA on an industrial category-wide basis in the 2014 Final Rule, the 2011 Proposed Rule, or the 2004, but later-withdrawn, Phase II Rule. Yet, EPA has consistently recognized that closed-cycle cooling is likely to be the best performing technology for reducing entrainment and impingement mortality, and nothing in the Rule prevents closed-cycle cooling from being selected as the BTA at GE, or any other facility, on a case-by-case, BPJ basis depending on the results of the required case-by-case analyses. The Agency has recognized that closed-cycle cooling might be the appropriate BTA for some facilities. With regard to the GE permit, EPA found that closed-cycle cooling would be the best performing technology for reducing entrainment and impingement mortality at GE, see Fact Sheet, Att. J, p. 23, but did not mandate it as the BTA at the facility for other reasons. *Id.* at pp. 38-40. EPA did, however, include a condition in the Draft Permit making it clear that if GE were to *choose* to install closed-cycle cooling, it would be in compliance with the permit. See *id.* at p. 40; Fact Sheet at p. 85; Draft Permit § I.C.2.b.b. This condition makes sense because even better environmental performance would be achieved with closed-cycle cooling than with the combination of technologies EPA determined to be the minimum BTA for this facility, and no countervailing adverse environmental or energy impact has been identified that would lead EPA to reject closed-cycle cooling as a possible BTA at GE. EPA has modified this condition for the Final Permit (Part I.C.3) to be clear to authorize, but not require, closed-cycle cooling to minimize impingement and entrainment at the Power Plant CWIS. See Response to Comment 11.7.

⁶⁰ In the preamble to the Final Rule, EPA explained its decision about the information submission requirements as follows:

EPA has selected an administrative threshold of 125 MGD AIF for the submission of the entrainment study because this threshold will capture 90 percent of the actual flows but will apply to only 30 percent of existing facilities. Further, based on EPA's data there are no closed-cycle recirculating systems in use above this threshold. The 125 MGD threshold will significantly limit facility burden at more than two-thirds of the potentially affected facilities while focusing the Director on major cooling water withdrawals.

79 Fed. Reg. 48309-48310 (August 15, 2014) (Final Rule).

⁶¹ The preamble to the Final Rule states:

Contrary to a number of public comments, however, EPA is not implying or concluding that the 125 MGD threshold is an indicator that facilities withdrawing less than 125 MGD are 1) not causing any adverse impacts or 2) automatically qualify as meeting BTA. In other words, the threshold, while justified on a technical basis, does not result in exemptions from the rule.

79 Fed. Reg. 48310 (August 15, 2014).

cooling water intake structures.⁶² The Final Rule's requirement for a case-by-case determination of the BTA for entrainment mortality allows these types of site-specific factors to be considered.

EPA now turns to the second part of GE's comment and to the comments from the July 31, 2014 letter regarding how to proceed with the permit reissuance in light of the Final Rule. In its letter submitted July 31, 2014, GE comments that it would be premature for EPA to attempt to implement the Final Rule in the pending permit re-issuance proceeding, but argues that if EPA proceeds with a BTA determination, then the Agency must publish the determination in a revised draft permit for public review and comment. Since GE's comments on the pre-publication notice, the Final Rule was published in the Federal Register and will become effective on October 14, 2014. *See* 79 Fed. Reg. 48300 (August 15, 2014). The Final Rule establishes requirements for cooling water intake structures at existing facilities with design intake flows greater than 2 MGD and which use 25% or more of the intake water for cooling purposes, which includes GE.

EPA disagrees with GE's comments that the Agency should further delay, or should have further delayed, permit issuance until new CWA § 316(b) regulations are finalized. First, the new regulations *are* now finalized and an effective date has been set. Second, as discussed above, the Final Rule speaks directly to the issue of permits issued prior to the Rule's effective date and indicates that permitting should proceed and that BTA determinations should be made on a BPJ basis. Third, EPA is not, and has not been, prepared to purposefully delay the permit because in addition to the permit's cooling water intake structure (CWIS) requirements, there are also other important aspects of the NPDES permit that EPA does not believe should be delayed. For example, EPA believes that it is important to develop and put into effect new permit requirements for, among other things, GE's thermal discharges and drainage system outfall discharges. These issues are discussed in great detail in the Fact Sheet for the Draft Permit and in these Responses to Comments. Finally, EPA will not delay the permit until the regulations become effective because, as discussed above, the regulations indicate that permitting should proceed and indicate how to do so. Further, EPA must point out that delaying a permit to follow detailed procedures set forth in new regulations can be a mistake because the new regulations can themselves ultimately be delayed and derailed as a result of litigation. Indeed, this is what happened with the Phase II and Phase III § 316(b) regulations that EPA issued in 2004 and 2006 to address existing facilities. *See* 40 C.F.R. Part 125, Subparts J and N (no longer in effect, except for 40 C.F.R. § 125.90(b)). EPA notes that, as of this writing, multiple petitions challenging the New CWA § 316(b) Regulations have already been filed.

EPA also must reject GE's suggestion that the Agency could issue the permit by simply leaving the CWA § 316(b) requirements unchanged and then modify the requirements, as needed, to make them consistent with the Final Rule after it becomes effective. EPA understands GE to be proposing that the Agency leave the 316(b) requirements "as is," and issue the permit without conducting a BPJ analysis applying CWA § 316(b)'s requirements in light of any new facts. This would be contrary to both the New CWA § 316(b) Regulations, as discussed above, and pre-existing law, regulations and policy statements cited above. *See* 79 Fed. Reg. 48358, 48369,

⁶² Indeed, both GE's and Wheelabrator's cooling water intake structures take water from the same segment of the Saugus River, within the bounds of the Rumney Marshes ACEC, for their industrial cooling uses. These facts may be considered by EPA when determining the BTA for these facilities on a BPJ basis.

48433, and 48437. *See also* 33 U.S.C. § 1342(a)(1)(B); 40 C.F.R. §§ 122.43(a) and (b)(1) and 125.90(b); 72 Fed. Reg. 37107, 37108 (July 9, 2007) (notice suspending the Phase II Rule and indicating that CWA § 316(b) should be applied on BPJ basis until new regulations are in effect). The CWA limits NPDES permit terms to five years, 33 U.S.C. § 1342(b)(1)(B), and intends that permit terms be re-considered, and not simply “rolled over,” as part of developing a new permit. Certainly, permit requirements need not necessarily be changed in a new permit, but the decision about those requirements should be based on an updated analysis in light of current facts and law.

GE comments that “where the reissuance proceeding is already underway, the final 316(b) Rule contemplates that the permitting authority will wait at least one permit cycle before imposing substantive impingement mortality and entrainment requirements and will use the intervening time to gather all of the information necessary to make an informed determination about whether and how those requirements should be imposed.” Based on the discussion presented above, EPA disagrees with GE’s interpretation of how ongoing permit proceedings should (or must) be handled under the New CWA § 316(b) Regulations. The Final Rule at 40 C.F.R. 125.98(g) specifically authorizes EPA to proceed with a determination of BTA standards based on available information where permit proceedings have begun prior to the effective date of the Final Rule. GE’s permit reissuance clearly falls under this category. In this case, and as discussed above, the CWIS information submitted by GE in response to EPA’s October 25, 2007 Section 308 request for more information and the biological studies conducted by MRI are sufficient for a BTA determination, and additional information under 40 C.F.R. § 122.21(r) is not required. In addition, EPA’s proposed BTA determination provided with the Draft Permit (see Attachment J to the Fact Sheet) considered many of the factors specified in §125.98(f)(2) and (3), including but not limited to the number and types of organism entrained and the quantified and qualitative benefits and costs of available entrainment technologies, and provided GE a reasonable opportunity to comment to the Agency on the relevant issues.

In addition to its comments on implementation of the Final Rule, to which EPA has responded above, GE submitted a number of comments on what requirements should be included as BTA in the Final Permit. EPA considers and responds to these comments below.

Impingement Mortality Requirements: GE comments that the facility qualifies for the “de minimis rate of impingement” provision in the Final Rule at 40 C.F.R. § 125.94(c)(11). EPA does not agree. The preamble to the Final Rule at 79 Fed. Reg. 48309 states that:

... some low flow facilities that withdraw a small proportion of mean annual flow of a river may warrant special consideration by the Director. As an illustration, if a facility withdraws less than 50 MGD AIF, withdraws less than 5% of mean annual flow of the river on which it is located (if on a river or stream), and is not co-located with other facilities CWISs such that it contributes to a larger share of mean annual flow, the Director may determine that the facility is a candidate for consideration under the de minimis provision contained at 125.94(c)(11).

EPA acknowledges that GE’s actual intake flow is not more than 31 MGD (though the cumulative permitted flow from both CWISs is 80.9 MGD) and that GE’s CWISs withdraw less

than 3% of the tidal excursion volume. In fact, EPA considered that the Test Cell CWIS (permitted at 45 MGD) runs infrequently when determining the permit requirements for the Final Permit (see Response to Comment 11.2). Still, contrary to GE's statement, the facility is "co-located" with another CWIS. Wheelabrator Saugus (NDPES Permit No. MA0028193) is located on the opposite bank of the Saugus River approximately 400 feet upstream from the Test Cell CWIS and 900 feet upstream from the Power Plant CWIS. This facility's CWIS also runs year-round and is permitted at a maximum intake up to 60 MGD. Moreover, both facilities withdraw from the Saugus River, which is designated as an Outstanding Resource Water (ORW) and is part of the Rumney Marsh Area of Critical Environmental Concern (ACEC). Furthermore, GE's CWISs cause significant impingement effects, as discussed below in the Response to Comment 11.5. For these reasons, EPA has determined that the facility should not be considered under the de minimis provision of the Final Rule.

EPA disagrees with GE's comment that the facility needs the opportunity to conduct an impingement technology performance optimization study prior to the establishment of BTA requirements in the Final Permit. As explained above, EPA is proceeding with a case-by-case, BPJ-based BTA determination for minimizing impingement mortality. Having said that, EPA also believes that the impingement mortality requirements in the Final Permit at Part I.C are consistent with the Final Rule.

The Final Permit requirements for entrainment at the Power Plant CWIS require installation and operation of fine-mesh wedgewire screens with a design intake velocity of 0.5 fps or less. This design intake velocity qualifies as one of the possible "pre-approved" BTA options for impingement mortality under 125.94(c)(2). In compliance with the impingement mortality alternative under the Final Rule, the permittee must demonstrate that the maximum design intake velocity as water passes through the structural components of a screen measured perpendicular to the screen mesh does not exceed 0.5 fps under all conditions, including during minimum ambient source water surface elevations and during periods of maximum head loss across the screen during normal operation of the intake structure. See 40 C.F.R. 125.94(c)(2). In addition, the Final Rule requires that facilities conduct visual inspections or employ remote monitoring devices weekly to ensure that any technologies operated to comply with 125.94 are maintained and operated to function as designed. See 40 C.F.R. § 125.96(e). The impingement monitoring requirements in Part I.D.1 of GE's Final Permit are consistent with the Final Rule and require no additional biological monitoring.

The Final Permit requirements to reduce impingement mortality at the Test Cell CWIS include installation and operation of a new fish return trough. EPA believes that the BTA at the Test Cell is a combination of the existing traveling screens, upgraded fish return trough, and the low annual withdrawal and intermittent use of this CWIS. The Fact Sheet states that the capacity utilization of the Test Cell is about 300 hours per year and has ranged from 5% to 8%. Given the intermittent usage of this CWIS, EPA determined that upgrading the fish return trough would be sufficient to minimize impingement mortality. This BTA determination is consistent with 40 C.F.R. 25.94(c)(6) ("Systems of technologies as the BTA for impingement mortality"). In addition, the monitoring requirements for the Test Cell at Part I.D.1.b of the Final Permit are consistent with the impingement technology performance optimization study under 40 C.F.R. §

122.21(r)(6)(ii) and will confirm that, combined with the intermittent use and low annual withdrawals, the new fish return trough is optimized to minimize impingement mortality.

Entrainment: GE also comments that the facility qualifies for de minimis consideration regarding entrainment mortality. EPA agrees with GE that the Final Rule allows, in effect, for a “de minimis” determination for entrainment in that, through a case-by-case, BPJ-based determination, the Director may determine that no additional control requirements are necessary beyond what the facility is already doing.⁶³ See 40 C.F.R. § 125.98(f)(4). However, in this case, given the number of organisms entrained, the cumulative impacts of Wheelabrator Saugus’ CWIS, and because the source waterbody is both an ORW and ACEC, EPA has determined that entrainment impacts at GE are not de minimis. See Response to Comment 11.5, below.

GE comments that, should EPA establish site-specific requirements for entrainment, then EPA must conduct a thorough evaluation of the factors set forth in 40 C.F.R §125.98(f)(2) and (3), and then document its determination in the fact sheet of a revised draft permit as provided in 40 C.F.R. § 125.98(f)(1). EPA has already responded to this comment above.

Finally, GE comments that, under the Final Rule, EPA must consider credit for reductions in flow associated with the Test Cell and Power Plant CWISs, as well as the retirement of the Gear Plant. According to GE, credit for reductions in flow associated with retirement of units occurring within the past 10 years is directly relevant to the Facility because the Gear Plant was permanently retired in 2011. First, EPA considered flow reductions at both the Test Cell (by limiting average monthly flow during peak entrainment periods) and the Power Plant (through the operation of variable frequency drives) as part of its BTA determination for entrainment. See Attachment J of the Fact Sheet and Response to Comment 11.9. Second, while EPA agrees that, in 40 C.F.R. § 122.21(r)(8) under the Final Rule, EPA would consider the operational status of each unit, including schedules for decommissioning and retirements when making a case-by-case BTA determination for entrainment, EPA’s final BTA determination for GE has been completed before the effective date of the new regulations. That being said, EPA has understood that the Gear Plant has been retired and taken that into account in its overall BTA determination. Yet, in EPA’s view, the retirement of the Gear Plant does not obviate or reduce the need for the BTA measures to address GE’s remaining cooling water withdrawals. EPA notes that the Gear Plant CWIS has actually not been in use for more than 10 years (since 2002) and, therefore, EPA’s analysis of adverse environmental impact did not consider impingement or entrainment impacts from this unit (See Attachment J). In other words, EPA never considered the Gear Plant CWIS in its evaluation, either in terms of its adverse impacts or the environmental benefit from its retirement because the CWIS has essentially been decommissioned for more than a decade. EPA’s BTA determination for GE was based on the adverse impacts, requirements, and available technologies for each individual CWIS and the Gear Plant, because it was idle and scheduled to be retired, was not considered.

Schedule of Compliance: EPA discusses schedules for compliance in additional detail in its Response to Comment 14, below. Here GE comments that EPA would need to provide GE with

⁶³ In the preamble to the Final Rule EPA specifies “Since the entrainment requirements are already determined by the Director for each site, EPA concluded that specific regulatory language for de minimis entrainment was unnecessary.” See 79 Fed. Reg. 48372.

an opportunity to determine the schedule necessary to achieve compliance with any impingement mortality and entrainment reduction requirements in the Final Permit. Yet, GE has already been provided that opportunity and, in fact, has supplied a compliance schedule to achieve compliance “as soon as practicable.” In its review of the Draft Permit, GE commented on achieving compliance with the proposed BTA requirements for the Power Plant and Test Cell CWISs and submitted a proposed compliance schedule as Technical Exhibit 22. EPA has incorporated GE’s proposed compliance schedule into the Final Permit for the Power Plant CWIS requirements.⁶⁴ The compliance schedule in Technical Exhibit 22 also includes upgrading the Test Cell CWIS with new fish buckets, a low pressure spraywash, and new fish return trough. EPA has also incorporated this compliance schedule into the Final Permit for the Test Cell CWIS requirements, which EPA notes have been reduced for the Final Permit to require only the installation of a new fish return trough.

Moving forward with GE’s Final Permit based on the Agency’s site-specific, BPJ-based BTA determination is consistent with existing legal requirements, as well as consistent with the terms of the New CWA § 316(b) Regulations, which are not yet in effect. EPA also notes that it presented a detailed BTA determination for the Draft Permit and that not only did GE comment on it extensively, but EPA carefully considered GE’s comments and, in some cases, made the Final Permit’s requirements less stringent in response to GE’s comments (see responses to comments below). In no case, are there new, more stringent requirements included in the Final Permit under CWA § 316(b). Therefore, EPA is proceeding with its final BTA determination and sees no reason to publish a revised draft permit for additional public review and comment.

Comment 11.2: GE’s Proposed Operational Measures.

Operational measures for the Power Plant CWIS.

Although GE does not believe that impingement and entrainment losses caused by the existing CWIS are sufficient to result in “adverse environmental impact” to the aquatic populations in the Saugus River, GE nevertheless has volunteered to pursue operational measures to reduce losses. In the Cooling Water Intake Structure Information Document (CH2M HILL, 2008), GE proposed operational measures for reducing cooling water flow. These measures would consist of operating the seawater pumps and condenser cooling water pumps with variable-frequency drives (VFDs) to reduce intake flow by an estimated average of 20 percent over the course of a year. The VFDs also would reduce through-screen velocities to 0.5 fps or less, on average, when they are operating. These operational measures would substantially reduce both the impingement and entrainment of fish at the Power Plant CWIS.

⁶⁴ EPA notes that it added additional time for data collection to GE’s schedule to take site preparation dates into account, and added some additional specifics to milestones in the schedule. EPA also notes that GE failed in its comments to take the opportunity to provide a specific schedule for installation of the Variable Frequency Drives (VFDs) that will be used to help reduce water withdrawal volumes. As a result, EPA has written the Final Permit’s compliance schedule to call for the VFDs to be installed as soon as practicable, consistent with the applicable legal deadline. See Response to Comment 14, below. It is EPA’s view that installation of the VFDs should be able to be completed no later than 12 months from the effective date of the permit based on experience at other facilities. See *In the Matter of the University of Massachusetts Boston, “Findings and Consented To Order for Compliance”* (Docket No. CWA-01-2013-0034).

As demonstrated by the site-specific impingement monitoring study (MRI, 1997), the existing fish collection and return system for the Power Plant CWIS already is highly effective in minimizing impingement mortality. The addition of operational measures that would allow the facility to reduce flows when conditions permit, thereby reducing through-screen velocities at the same time, would reduce the potential for both entrainment and impingement by a substantial amount.

As for entrainment, the Power Plant already has reduced its cooling water flow by 39%, compared to the total design capacity of the six condenser cooling pumps of 58.3 MGD. By instituting operational measures to reduce the total volume of water withdrawn annually by the Power Plant by an average of 20 % of the current permitted level annually, the Power Plant will in effect have reduced its flow by 51%, compared to the design capacity of its condenser cooling pumps. Moreover, by permanently retiring the Gear Plant CWIS, which has a current maximum daily discharge flow limit of 54.7 MGD, GE has committed to reducing total facility flow by as much as 46 % from currently permitted levels.⁶⁵ In short, the overall facility reduction in entrainment would be substantial, further minimizing any potential for adverse environmental impacts to the Saugus River estuary and its commercial and recreational fisheries resources. These operational and facility flow reduction measures offer the most practical and cost-effective combination of options constituting BTA for minimizing adverse environmental effects of entrainment.

These proposed operational measures are subject to one important caveat: their feasibility is based on continuation of the facility's current permitted thermal discharge limit of 95°F. GE has not had an opportunity to evaluate the technical feasibility, process changes, and costs associated with requirements both to reduce cooling water flow by 20% on average and meet a reduced thermal discharge limit of 90°F, as EPA has proposed. The record shows that EPA has not performed such an evaluation. Thus, before imposing requirements for annual average flow reductions achieved by using VFDs and lower thermal limits, EPA would need to determine, or provide GE an opportunity to determine, whether such reductions are technically and economically feasible.

Operational Measures for the Test Cell CWIS.

For the Test Cell CWIS, GE proposes a combination of operational measures and technology improvements as BTA for minimizing adverse environmental impact. The current infrequent, seasonal operation of the Test Cell reduces the potential for adverse environmental effects of fish entrainment and impingement at the Test Cell CWIS. GE believes that the most reasonable and cost-effective options for minimizing adverse impacts at the Test Cell CWIS would include operating the newly constructed closed-loop recirculating cooling tower to eliminate the use of

⁶⁵ Notably, EPA determined in the Final NPDES Permit for the Wheelabrator Saugus facility across the Saugus River that 28 percent flow reduction from its previously permitted levels from October 1 to May 31 (60 MGD to 43.2 MGD) minimized potential adverse impacts from entrainment and constituted BTA at that facility. It reached this conclusion even though the Wheelabrator Saugus CWIS is much closer to the shallow marsh nursery habitats of the Rumney Marshes Area of Critical Environmental Concern (ACEC) than the GE Power Plant CWIS.

spray pump water for minor cooling purposes and replacing and improving the existing debris/fish return system.

The newly installed closed-loop recirculating cooling tower system reduces intake flow by 1,500 gpm, incrementally reducing further fish entrainment as a result of seasonal Test Cell operation. GE also proposes to replace the existing debris/fish return system to improve the survival of impinged fish and prevent their entrapment as they are collected and transported back to the river. This proposal would include spray wash modifications, provisions for conveyance of water, a new return pipe, and pipe supports in the river to enable the safe return of fish at low tide, as evaluated in the Cooling Water Intake Structure Information Document (CH2M HILL, 2008). The new return trough would avoid high elevation drops and 90-degree turns to the extent practical in consideration of site-specific space constraints.

Response to Comment 11.2

GE's comment presents the company's views regarding the operational and equipment modifications which, when joined with certain existing equipment and practices, it believes would satisfy CWA § 316(b)'s BTA requirements for reducing entrainment and impingement mortality at both the Power Plant and the Test Cell.⁶⁶

Power Plant

Impingement Mortality Reduction. To begin with, EPA agrees that high initial survival of impinged individuals of the numerically dominant species was observed during the limited MRI study (1997) with continuous operation of the Power Plant's traveling screen and fish return system. In its comment, GE proposes to reduce impingement mortality by installing variable frequency drives (VFDs) for its Power Plant intake water pumps in order to reduce the volume of water withdrawals from the Saugus River by an average of 20% and reduce the through-screen velocity at the Power Plant to no greater than 0.5 fps. EPA agrees that these steps should help to minimize impingement mortality. When less water is withdrawn, fewer fish (or other aquatic organisms) should be drawn against the intake screens. Moreover, with a through-screen velocity of 0.5 fps or less, most species of fish should be able to swim away from the intake and avoid becoming impinged. See Fact Sheet p. 19.

⁶⁶ GE also mentions the permanent retirement of the Gear Plant and the termination of its cooling water intake withdrawals as part of the overall reduction in intake flows at the facility as compared to permitted levels which it argues collectively constitute the BTA. Consistent with GE's retirement of the Gear Plant, EPA's Draft Permit did not, and EPA's Final Permit does not, authorize cooling water withdrawals or pollutant discharges by the Gear Plant portion of GE's facility. See Fact Sheet at pp. 5, 16, 74. Moreover, EPA has not regarded the termination in Gear Plant withdrawals as somehow offsetting the amount of adverse impact reduction needed at the Power Plant or Test Cell. As EPA explained in the Fact Sheet, the Gear Plant has not operated in more than 10 years and GE had already planned its retirement quite apart from this permit proceeding. *Id.* See also Fact Sheet, Att. J at p. 17. Therefore, the BTA requirements for the Power Plant and Test Cell were determined based on the facts related to those facilities without consideration of the closure of the Gear Plant.

Thus, EPA agrees that a low through-screen velocity, coupled with the current operation of the traveling screen and fish return system, would satisfy the requirements of Section 316(b) for minimizing impingement at the Power Plant.

Entrainment Reduction. EPA chose to compare the reduction in entrainment by potential changes at GE to a baseline at the currently permitted flow rate, rather than at design flow rates, since the facility has not operated at the design flow at least since the current permit was issued in 1993. As a result, using the permitted flow levels provides a more meaningful comparison, while the design flow rates would provide at most a hypothetical point of comparison. EPA agrees that installing and operating VFDs to reduce intake flow at the Power Plant by 20% on an average monthly basis, as compared to the current permitted flow, will reduce entrainment mortality from current levels. All things being equal, a reduction in intake flow is reasonably assumed to yield a proportional reduction in entrainment. This may not be the case, however, for systems that experience strong seasonality in entrainment (such as the Saugus River) if periods when flow is reduced do not coincide with periods of peak ichthyoplankton density. In other words, GE's proposal to reduce the total volume of water withdrawn by the Power Plant by an average of 20% of the current permitted level *annually* may not result in a 20% annual reduction in entrainment if lesser flow reductions occur during periods of peak entrainment.

Although GE's comment complains that EPA did not adequately consider the interaction of intake flow limits and thermal discharge restrictions, EPA did consider this interaction in its work on the Draft Permit (just as it did for the Wheelabrator permit, as GE notes). Moreover, EPA has further considered this interaction in light of GE's comments and after reviewing additional analysis requested by EPA and provided by GE after the close of the public comment period. The interaction between limits on intake flow and thermal discharges is discussed above in responses to comments regarding the Final Permit's thermal discharges limits (see Response to Comment 10.3.2).

After considering the issues raised in GE's comments, EPA has adjusted the requirements for the Final Permit by allowing thermal discharges of up to 95°F year-round. (Again, this is discussed in detail in above responses to comments regarding the permit's thermal discharge limits.)

EPA's evaluation of the BTA for the Power Plant looks beyond the flow reductions to be provided by the VFDs. Section 316(b) of the Clean Water Act directs EPA to set permit requirements based on the best technology available to minimize adverse environmental impacts, not, as GE comments, the "most practical and cost-effective," though these factors may be considered. For GE's Power Plant, VFD flow reductions will reduce entrainment, but they are not the only available, nor necessarily the best, technology for doing so. EPA determined that the combination of a flow reduction with variable frequency drives *and* the operation of fine-mesh wedgewire screens is the best available option to minimize entrainment at the Power Plant. Both technologies are available and will minimize adverse impacts by reducing entrainment more in combination than either technology would independently. See Response to Comment 11.8 for discussion of the availability of wedgewire screens. The estimated percentages of

entrainment reduction achievable for these technologies are discussed in Attachment J (p. 39) to the Fact Sheet for the Draft Permit.⁶⁷

Test Cell

Impingement Mortality Reduction. EPA agrees that, as GE proposes, operating the closed-loop cooling tower and improving the fish return system are two components of BTA for the Test Cell. See Response to Comment 11.9. Operating the cooling tower will replace the 1,500 gpm cooling water volume previously supplied by the spraywash pump, which equates to about 5% of the maximum daily flow limit of 45 MGD. GE maintains that the entrainment potential from this cooling water intake structure is also minimized in light of the infrequent, seasonal operation of the Test Cell. According to GE, the Test Cell, with operation of the cooling tower, has a 5% capacity utilization rate, which EPA agrees reduces the potential for adverse environmental effects and should be a consideration in the BTA determination. However, without an enforceable flow limit during the peak entrainment season, the Test Cell is not prohibited from operating at higher flows inconsistent with minimizing the potential for entrainment. If the Test Cell were to operate at maximum permitted flows when ichthyoplankton density is greatest, adverse impacts could be on par with the Power Plant. In other words, EPA considered the generally low operational capacity of the Test Cell as a factor in minimizing adverse impacts from entrainment, but believes that it is not a valid component of BTA if it is not enforceable. The Draft Permit proposed a more stringent average monthly flow limitation at the Test Cell during peak entrainment season to assure that adverse impacts from entrainment are reduced. See Response to Comment 11.9 for GE's comments and EPA's response to the seasonal flow limit at the Test Cell.

Comment 11.3: EPA's Proposed BTA Determination.

Overview of EPA's Approach.

EPA says that it has concluded that "the current location, design, construction, and capacity of the Power Plant's CWIS do not reflect the BTA for minimizing adverse environmental impact." Fact Sheet, Attachment J, p. 38. The Agency apparently based this conclusion on its evaluation of (1) current levels of entrainment and impingement; (2) the Power Plant's existing CWIS technology; and (3) the availability of other technologies capable of reducing impingement and entrainment. *Id.* Having concluded that the existing Power Plant CWIS is not BTA, the Agency selected a combination of variable frequency drives (which GE had proposed to install on the two condenser cooling water pumps not already so equipped) and installation of fine mesh wedgewire screens.

⁶⁷ Specifically, EPA stated:

EPA concludes that the VFD option would achieve some benefit of significance at very little cost, but rejects it as the possible BTA because other options could perform substantially better at only a relatively small cost increase. Specifically, the option of combining wedgewire screens with the VFD plan could achieve a substantially greater reduction in entrainment (approximately 67%) at a reasonable cost that is only slightly greater than the costs of VFDs alone. In other words, EPA concludes that the costs of this option are warranted by the benefits to be achieved.

Fact Sheet, Att. J, pp.39-40.

The Agency's analysis of current entrainment and impingement levels involved counting the total number of organisms impinged or entrained and identifying the range of species covered, without evaluating whether those individual losses have had or are likely to have any material impact on the quality or sustainability of any particular species or on the aquatic community as a whole in the Saugus. Instead of following longstanding Agency guidance advocating assessment of the environmental significance of impingement and entrainment losses in terms of their likely effect on aquatic populations, it chose a different approach. Noting that "EPA has read CWA § 316(b) to intend that entrainment and impingement be regarded as 'adverse impacts' that must be minimized by application of BTA" (*id.*, p. 3), the Agency appears to have presumed that any impingement and entrainment occurring is adverse. In essence, EPA has elected to follow the approach the Agency employed in developing national standards for new sources. Having concluded that impingement and entrainment occurs, and that some individuals represent species that are experiencing population declines or are recreationally or commercially important, EPA made no further effort to assess whether the level of impingement and entrainment loss is material for any species.

GE requests that EPA reconsider this approach, which is neither required nor well-adapted to this proceeding. Here, the Agency is making a BPJ decision for a 100 plus-year old facility with relatively low withdrawals. Equally important, as discussed below, there is no evidence that the Facility's cooling water withdrawals have had any adverse impact on the species about which EPA expresses concern, or that further limiting impingement and entrainment would materially improve the health or sustainability of those species.

EPA's Proposed BTA Determination for the Power Plant CWIS.

EPA's evaluation of the Power Plant's existing CWIS technology cites three deficiencies in the existing structure.

First, the Agency says that the current through-screen velocity ("TSV") range of 1.0 to 1.61 feet per second ("fps") is too high to prevent impingement of juvenile and adult fish. Fact Sheet, Attachment J, p. 19. Although EPA acknowledges that "many species and life stages were able to swim against a TSV as high as 1.0 fps," it notes that EPA Headquarters selected a more conservative standard of 0.5 fps in setting a national standard for new facilities. *Id.* The Agency did not make any assessment of the species-specific swim speeds of the species in the Saugus. Such an assessment would be necessary to determine whether the species potentially vulnerable to the Power Plant CWIS are capable of avoiding it, assuming they are otherwise healthy.

Second, EPA concluded that "the traveling screens do not effectively protect fish that are impinged during transport." *Id.*, pp. 16, 19. EPA cited as deficiencies the use of a high pressure spray and the use of a single trough to return both impinged fish and debris to the waterbody, which the Agency said "could cause physical harm." *Id.*, p. 19. Although EPA recognized that facility-specific impingement studies for the Power Plant showed extremely high initial survival rates for impinged fish (ranging from 100% - 82.6%), it chose to discount those data, because the studies did not examine latent (*i.e.* ≥ 24 hour) survival. Instead of requiring further assessment to determine latent survival, the Agency assumed that latent impingement mortality would be high and on that basis concluded the screens were inadequate.

Third, EPA asserts that the once-through cooling system with 9.5-mm mesh on the existing CWIS is not adequate to minimize entrainment of fish eggs and larvae. *Id.* Here too, EPA did not consider whether the number of eggs and small larvae entrained is likely to be biologically significant, given the high natural fecundity of the species to which they belong, and the equally high natural mortality rates those very early life stages typically experience.⁶⁸ Instead, it appears to have assumed entrainment of a large number of individuals is equal to a high impact. As the discussion below shows, however, this is not the case.

EPA also offers its evaluation of alternative technologies as support for its conclusion that the existing CWIS is not BTA. EPA considered whether the alternative was available for use at the site (in the sense that site conditions are suitable for use of the technology); estimated the extent to which an alternative would further reduce impingement mortality and/or entrainment; in some cases, identified potential operating and maintenance issues; and estimated the technology's cost.

In addition, EPA provided a very general, qualitative assessment of the benefits of reducing impingement and entrainment. Lacking any basis for evaluating whether any particular level of reduction is likely to materially enhance the health or sustainability of the affected populations, EPA relied on two assumptions: (1) reducing impingement and entrainment will directly increase the number of organisms in the river, and (2) the more entrainment is reduced, the more likely it is that those reductions will contribute to increased populations of juvenile and adult fish. *Id.*, p. 35.

Based on these assumptions, and after evaluation of a number of alternative technologies, EPA concluded that BTA for the Power Plant includes both (1) reducing the monthly average intake flow by 20% and (2) retrofitting fine-mesh wedgewire screens with a slot or mesh size no greater than 0.5 mm and a pressurized system to clear debris from the screens.⁶⁹

EPA's Proposed BTA Determination for the Test Cell CWIS.

The approach EPA used in selecting BTA for the Test Cell CWIS (which withdraws flow only a few days a month, resulting in a monthly average flow rate of 1.5 MGD) largely followed the model used for the Power Plant CWIS. Because it lacked any impingement data for this CWIS, EPA chose to extrapolate using Test Cell flows and the impingement rates for the Power Plant CWIS. *Id.*, p. 47. Lacking entrainment data, EPA simply assumed that it would be appreciable during those months when eggs and larvae are most prevalent.

Because EPA recognized that it had no way of estimating how many more eggs might be saved by implementing further technology, the Agency instead decided to limit operation of the Test Cell CWIS, imposing an average monthly limit of 5 MGD from March 1 to July 21, and an

⁶⁸ See *Seacoast Anti-Pollution League v. Costle*, 597 F.2d 306, 309-11 (1st Cir. 1979) (citing the fecundity of fish in upholding EPA's use of population-level considerations in the Agency's administrative decisions).

⁶⁹ GE agrees with EPA's conclusion that moving the location of the CWIS, installing fine mesh traveling screens, and/or installing an aquatic filter barrier are not BTA. None of those technologies or measures are necessary or feasible for this Facility.

average monthly limit of 27 MGD from August 1 to February 28. For impingement, EPA determined that improving the existing coarse mesh traveling screens with new fiberglass fish buckets, a low pressure spray wash, and a new fish return system is BTA. The Draft Permit gives the facility the option of installing fine mesh wedgewire screens, which it said would also satisfy § 316(b).

Response to Comment 11.3

EPA's Assessment of Adverse Environmental Impacts from GE's CWISs. GE comments that “instead of following longstanding Agency guidance advocating assessment of the environmental significance of impingement and entrainment losses in terms of their likely effect on aquatic populations, {EPA} ... chose a different approach ...” and did not determine whether losses of eggs and larvae at GE's intakes would harm the affected species or the affected assemblage or community of species in a “material” way. GE also suggests that given the naturally high fecundity and mortality of early life stages of fish, losses from its cooling water intake structure may not be biologically significant. EPA disagrees with this comment. In the Agency's view, the comment suggests that GE has misread or misunderstood EPA's approach to these issues.

EPA considers the loss of, or injury to, aquatic organisms (including fish eggs and larvae, juvenile and adult fish, and other types of organisms) from being entrained or impinged by a CWIS to constitute adverse environmental impact under CWA § 316(b). Not only is this the case for this permit, but it is also EPA's view generally. At the same time, EPA also endeavors to consider these adverse impacts in broader ecological context to the extent possible based on the best, reasonably available information. For example, EPA considers whether the losses of the various life stages of a particular species can be shown to have, or not to have, an effect on the affected population of that species. EPA also considers whether the losses to one or more species might impact the health of the overall community of organisms in the affected ecosystem.

Of course, in many cases, the Agency will be unable to draw conclusions about these broader effects in light of the limits on available information and the difficulties of the science of fish population dynamics. Ultimately, EPA completes a reasonable assessment of the adverse impacts in light of the reasonably available information and then factors that into its determination of the BTA in each case, including the weighing of the costs and benefits of different BTA options. EPA's analysis for the GE Draft Permit, and now for the Final Permit, is consistent with these principles. See Fact Sheet, Att. J at pp. 11-50.

It should be understood that the term “adverse environmental impact” (“AEI”) as used in CWA § 316(b) is not defined in either the statute or existing regulations. As such, neither statute nor regulation expressly limits the extent of adverse environmental impact that may be considered.

Stated differently, neither statute nor regulation specifies an impact threshold above which a CWIS's effects must rise before the BTA requirement is triggered.⁷⁰

EPA has interpreted the entrainment and impingement of aquatic organisms to constitute AEI, without requiring a demonstration of broader-scale harm to populations of particular species or particular communities of organisms. As the Second Circuit explained in *Riverkeeper II*:

[i]n the Phase II Rule, as in the Phase I Rule, the EPA has interpreted the statutory directive of section 316(b) to minimize "adverse environmental impact" ("AEI") to require the reduction of "the number of aquatic organisms lost as a result of water withdrawals associated" with cooling water intake structures. 69 Fed. Reg. at 41,586.

475 F.3d 83, 123–24, *rev'd on other grounds*, *Entergy*, 129 S.Ct. 1498. The Second Circuit upheld EPA's interpretation in both *Riverkeeper I* and *Riverkeeper II*. In *Riverkeeper I*, the Second Circuit explained:

. . . the EPA's focus on the number of organisms killed or injured by cooling water intake structures is eminently reasonable. See Final Rule, 66 Fed. Reg. at 65,262–63, 65,292. As discussed above with respect to restoration measures, Congress rejected a regulatory approach that relies on water quality standards, which is essentially what UWAG urges here in focusing on fish populations and consequential environmental harm.

358 F.3d at 196. In *Riverkeeper II*, the court reaffirmed its earlier holding, stating, among other things, that “we are both persuaded and bound by our statements on this issue in *Riverkeeper I*.” 475 F.3d at 124–25 (footnote omitted). *See also id.* at 125 n. 36 (presenting the “additional observation” that the “statutory structure thus indicates that Congress did not intend to limit ‘adverse environmental impact’ in section 316(b) to population-level effects”).⁷¹

Consistent with this interpretation of the law, but long before promulgation of the Phase I and II Rules, EPA explained in a 1977 draft guidance document, which is still used today as a reference in § 316(b) determinations, that:

⁷⁰ As mentioned above, the legislative history behind CWA § 316(b) is sparse, but in the House Consideration of the Report of the Conference Committee for the final 1972 CWA Amendments, Representative Clausen stated that “Section 316(b) requires the location, design, construction and capacity of cooling water intake structures of steam-electric generating plants to reflect the best technology available for minimizing *any* adverse environmental impact” (emphasis added). 1972 Legislative History at 264. This language suggests, if anything, that *all* AEI should be considered and minimized, perhaps with the exception of *de minimis* effects.

⁷¹ *See also ConocoPhillips*, 612 F.3d at 840–42 (upholding BTA requirements based on likely AEI given presence of eggs and larvae in area of CWIS, without any necessity to evaluate AEI at the species population or biological community level); *Seabrook*, 1977 EPA App. LEXIS 16, at *20–*21 (CWA § 316(b) standard requiring that CWISs reflect BTA for minimizing adverse environmental impact differs from § 316(a) standard requiring that thermal discharge limitations protect balanced indigenous populations of fish, shellfish and wildlife, and § 316(b) may require further minimization of adverse impacts even if balanced indigenous populations would not be undermined). *Accord Cent. Hudson*, at 371, 382; *Brunswick*, at 197, 201–02.

[a]dverse aquatic environmental impacts occur whenever there would be entrainment or impingement damage as a result of the operation of a specific cooling water intake structure.

Guidance for Evaluating the Adverse Impact of Cooling Water Intake Structures on the Aquatic Environment: Section 316(b) P.L. 92-500 (DRAFT) (EPA) (May 1, 1977) (“May 1977 Draft § 316(b) Guidance”), p. 11. Similarly, EPA had also concluded, based on the language and structure of CWA § 316(b), that CWISs must reflect the BTA for minimizing AEI whether or not those adverse impacts were considered to be “significant.” *Decision of the General Counsel No. 41 (In Re Brunswick Steam Electric Plant)* (June 1, 1976), at 203 (“The [cooling water intake] structures must reflect the best technology available for minimizing . . . adverse environmental impact – significant or otherwise.”) (emphasis in original); *Decision of the General Counsel No. 63 (In re Central Hudson Gas and Electric Corporation, et al.)*, (July 29, 1977), at 381–82 (“Under Section 316(b), EPA may impose the best technology available . . . in order to minimize . . . adverse environmental impacts – significant or otherwise.”).

That said, EPA does, however, work to assess the scope and import of the adverse impacts as part of its ultimate determination of the BTA. Thus, EPA stated in the May 1977 Draft § 316(b) Guidance that “[t]he magnitude of an adverse impact should be estimated” with reference to the following factors: (1) “absolute damage,” (2) “percentage damage,” (3) absolute and percentage damage to any endangered species, (4) absolute and percentage damage to any “critical aquatic organism,” (5) absolute and percentage damage to commercially valuable and/or sport fisheries yield, and (6) “whether the impact would endanger (jeopardize) the protection and propagation of a balanced population of shellfish and fish in and on the body of water from which the cooling water is withdrawn (long-term impact).” Thus the guidance indicates that adverse impacts ought to be evaluated at all these levels, but does not suggest that adverse impacts are insignificant or immaterial if impacts are not able to be demonstrated at the overall population or community level. Of course, the significance or magnitude of the impacts may come into play when considering whether the cost of undertaking particular actions to further reduce impacts is unreasonable.⁷²

EPA’s consideration of the adverse environmental impacts caused by GE’s cooling water intake structures in the context of its BTA determinations for this permit have been both reasonable and consistent with applicable law and relevant Agency policy. Consistent with the law and policy discussed above, EPA evaluated impingement and entrainment at GE in terms of absolute number of individuals affected. EPA’s evaluation relied primarily on these figures because that was the best approach based on available data. To EPA’s knowledge, there is insufficient data to estimate local fish populations in the Saugus River to compare to losses from the cooling water intake structures. Yet, EPA also considered and discussed the entrainment and impingement losses from a variety of perspectives to the extent possible in light of the data limitations. For example, EPA discussed the overall condition of the species affected by entrainment and

⁷² GE comments that EPA took the approach that “any” entrainment or impingement is adverse and should not have done so. Yet, this is not a case of a fish or two being impinged, or a 10 or 20 eggs or larvae. The data indicates that GE’s CWISs entrain tens of millions of eggs and larvae and impinge thousands of juvenile and adult fish. See Fact Sheet, Att. J, pp. 14 – 16. EPA concludes that there is no serious question that entrainment and impingement in this case is sufficient to register as AEI to be appropriately minimized under § 316(b).

impingement, the types of species affected, whether affected species had particular commercial and/or recreational value, the significance of the losses in light of the importance of the affected ecosystem, and whether any species afforded special legal protection were being affected. *See, e.g.,* Fact Sheet, Att. J, pp. 12-16, 35-38, 41, 48. Finally, EPA also explained that the cumulative adverse impacts from entrainment and impingement at GE's and Wheelabrator's CWISs along the lower Saugus River are biologically significant because they present an additional, potentially avoidable source of mortality in an ecologically valuable estuary that provides a migratory pathway as well as spawning, feeding, and nursery habitat for a number of aquatic and terrestrial species.

GE also comments that EPA's approach is not appropriate for this permit because GE is a "100 plus-year old facility with relatively low withdrawals" from the Saugus River. EPA does not believe that the age of GE's facility is relevant to the assessment of adverse environmental impacts from GE's CWISs. EPA considers the age of the facility in the context of its assessment of the engineering aspects and cost of retrofitting new technology to an existing facility. Beyond that, the age of the facility might suggest, if anything, that an upgrade to the CWIS would be appropriate in keeping with the technology-forcing goals of the CWA. Conversely, if the age of the facility indicated that it would soon reach the end of its useful life and be closing, that might be a reason for not requiring new investment in pollution control equipment. GE has given no indication, however, of an intent to close the facility. As for the volume of GE's water withdrawals, they are relevant to the extent that they are reflected in the level of entrainment and impingement at the facility, which is also affected by the character of the ecosystem impacted by the CWISs (e.g., an ecosystem containing a spawning area is more likely to have eggs and larvae to be entrained).

EPA has carefully assessed the entrainment and impingement losses at GE, and has considered these losses in light of impacts from the nearby Wheelabrator facility and the nature of the Saugus River ecosystem. GE states that "there is no evidence that the Facility's cooling water withdrawals have had any adverse impact on the species about which EPA expresses concern," but EPA has already explained that adverse impacts have clearly been demonstrated, as discussed above and in the Fact Sheet, Att. J. GE also states that there is "no evidence ... that further limiting impingement and entrainment would materially improve the health or sustainability of those species," but EPA has explained how reduced entrainment and impingement will reduce adverse environmental impacts and could benefit these species and the Saugus River ecosystem. *See* Fact Sheet, Att. J, pp. 35-39.

Power Plant

BTA for Minimizing Impingement Mortality. GE's comment largely describes, but also seems intended to critique, EPA's conclusion that the Power Plant's existing technology does not meet the CWA § 316(b) BTA requirement for minimizing impingement mortality. EPA had several bases for this conclusion, at least some of which GE recounts in its comment. Having considered GE's comment, EPA maintains its initial conclusion that the Power Plant's existing CWIS does not satisfy the BTA standard of CWA § 316(b).

To begin with, EPA explained that GE's current intake had a through-screen velocity of 1.0 to 1.6 fps and that this would not adequately protect the adults and juveniles of the species impinged at GE. *See* Fact Sheet, Att. J, pp. 15 – 16, 19. As EPA explained, the Agency has identified a CWIS through-screen velocity (TSV) of 0.5 fps or less as being protective for most species. *Id.* at pp. 24-25 and n. 24. Furthermore, EPA explained that installation and use of VFDs would cost relatively little (and would even reduce energy costs). *Id.* Therefore, EPA based part of its BTA determination and permit limits on a TSV of 0.5 fps, given that it would be adequately protective, feasible, affordable and acceptable to GE, since the company has proposed installing specific technology capable of achieving it (i.e., VFDs). *See id.* at pp. 38-40, 49. EPA's permit condition pertaining to minimizing impingement mortality did not expressly mandate installation of VFDs, however, because certain other technologies would also be capable of achieving such an intake velocity (e.g., wedgewire screens or modified traveling screens). *See id.* at 26, 27, 49.

GE complains that EPA did not present a swim-speed analysis of the species of fish that are impinged at the facility, but EPA did not deem it necessary to present such an analysis because GE itself had proposed to install VFDs capable of reducing TSV to 0.5 fps or less, which EPA explained would be likely to protect the relevant fish species adequately. EPA notes that GE's comment does not identify that all (or any) specific species impinged at GE would be strong enough swimmers to resist a TSV ranging from 1.0 to 1.61 fps. While GE points to EPA's statement that some species of fish swim against a TSV of 1.0 fps, this changes nothing given that (a) the existing CWIS's TSV ranges up to 1.6 fps, (b) the fact that some individuals of some species may be capable of escaping a TSV of up to 1.0 fps, does not mean that all individuals of all affected species would be able to do so, and (c) it is undisputed that the Power Plant's CWIS impinges thousands of fish per year. (EPA estimated 64,000 fish impinged per year, while GE suggests a better estimate would be 20,530 impinged per year. *See* Comment 11.4, below.)

EPA acknowledges that TSVs higher than 0.5 fps may be adequately protective if coupled with traveling screens and fish return systems equipped with modern improvements designed to promote survival of impinged fish (e.g., low pressure spraywash, fish buckets, upgraded fish return system, according to EPRI 2007), but GE's CWISs do not currently incorporate such technologies. Thus, EPA pointed out in the Fact Sheet that the Power Plant's:

... travelling screens do not effectively protect fish that are impinged during transport. Fish are rinsed with a high pressure spray and deposited in the same return trough as debris and both practices could cause physical injury.

Id. at p. 19. In addition, EPA also explained in the Fact Sheet that:

Put simply, the facility's existing conventional screens are outdated and improved technologies are available to reduce impingement mortality. One such technology is known as "Ristroph screens" (named after the designer of the equipment). Ristroph screens improve fish survival following impingement and are now commonly used at power plants nationwide (EPRI 2007). While the Power Plant's current intake screens are not equipped with non-metallic fish buckets, improved seals, or smooth texture screen material, all of these features are

available on Ristroph-style screens. Moreover, a low pressure spray system would be more protective of impinged organisms and is generally considered a standard feature of Ristroph-style screens (EPRI 2007). Finally, providing separate troughs for organisms and debris removed from the intake screens would better protect the organisms in the fish return system and could be provided in conjunction with a new Ristroph screen system. In sum, installing a low-pressure spray wash, improved fish return trough, and upgrading the conventional screens consistent with Ristroph screens would likely improve the survival of impinged fish.

Id. at p. 30. GE's comment above acknowledges some of these points, but complains that despite data suggesting high levels of initial impingement survival at the facility, EPA did not regard this to establish that the adequacy of existing CWIS and its fish return system because of the absence of latent survival data. Furthermore, GE complains that EPA did not require or undertake latent survival studies at the facility prior to permitting.

Yet, none of this changes the reasonableness of EPA's conclusions regarding whether GE's existing intake technology could be upgraded in line with improvements within the industry to improve the survival of impinged fish. Moreover, EPA explained the importance of latent survival in the Fact Sheet, stating:

[w]hile it is important to understand an intake structure's potential to impinge organisms, it is also important to assess the capability of the intake system's design and operation to effectively return impinged organisms back to the receiving waters alive and uninjured. At the time of the MRI (1997) study, the impingement rates and initial survival of impinged organisms at the Power Plant CWIS were assessed by catching all materials washed off the collecting screens in a 1/4-inch mesh collecting pen attached to the end of the screenwash sluiceway. The initial reported survival of impinged fish following handling by the collecting screens was 99.7% for grubby and winter flounder, 100% for cunner, windowpane, and shorthorn sculpin, and 82.6% for all remaining species. The study did not address latent (e.g., >24 hours) survival. It is important to observe latent survival in impingement studies because injuries caused from impingement (e.g., loss of protective slime or de-scaling) may cause mortality even in individuals that initially survive.

Id. at Att. J, p. 16. GE's comment does not establish that the issue of latent survival should be ignored.

Furthermore, EPA bases its permit decisions on the best, reasonably available information and has substantial discretion regarding when to undertake, or require permittees to undertake, scientific studies or data collection in support of permit development. EPA chose not to require a latent survival study because variable frequency drives – as proposed by GE - will meet the requirement to minimize impingement mortality by reducing intake TSV without an additional study. Of course, nothing prevented GE from undertaking and submitting data from such a site-specific study to support its argument that the facility's *existing* technology adequately

minimizes impingement mortality, but it did not do so. The new permit does not require GE to upgrade the CWIS screens and fish return system because it requires that the CWIS's TSV be reduced to 0.5 fps or less, and this improvement will prevent most fish from being impinged in the first place.

BTA for Minimizing Entrainment. GE's comment notes that EPA found that the mesh size on GE's current screens is too large to minimize entrainment of eggs and larvae. EPA continues to conclude that this is true and GE's comment does not disagree.

GE goes on to state that EPA did not evaluate the biological impact of the entrainment losses in light of "the high natural fecundity of the species to which they belong, and the equally high natural mortality rates those very early life stages typically experience." Moreover, GE comments that EPA "appears to have assumed entrainment of a large number of individuals is equal to a high impact ... [but] this is not the case." GE also asserts that "EPA provided a very general, qualitative assessment of the benefits of reducing impingement and entrainment ...[, and that l]acking any basis for evaluating whether any particular level of reduction is likely to materially enhance the health or sustainability of the affected populations, EPA relied on two assumptions: (1) reducing impingement and entrainment will directly increase the number of organisms in the river, and (2) the more entrainment is reduced, the more likely it is that those reductions will contribute to increased populations of juvenile and adult fish."

EPA has considered these comments, but does not believe that they identify any flaw in the Agency's analysis or reason to change the Agency's conclusions regarding the BTA. As EPA explains above, the Agency continues to regard the millions of eggs and larvae needlessly taken from the Saugus River ecosystem and killed by the GE Power Plant's CWIS to constitute an adverse environmental impact that needs to be addressed under CWA § 316(b). To the extent that GE is arguing that there is no adverse environmental impact that needs to be minimized unless analysis demonstrates a significant population-level or community-level effect from the entrainment losses, EPA rejects that comment. See Response to Comment 11.2. (EPA also notes that GE has not provided a study demonstrating that entrainment losses at GE, combined with other adverse effects in the watershed, such as Wheelabrator's operations, have not had any population-level effect on the species in the Saugus River.) Certainly, EPA understands that the species affected have generally evolved to rely upon a reproductive strategy involving the production of very large numbers of eggs and larvae in likely reaction to high natural mortality from predators and other natural conditions. This does not necessarily mean that insertion of a large-scale anthropogenic source of mortality into the Saugus River ecosystem would have no effect on the species or community of aquatic organisms that reside in or transit the area.

No party has undertaken studies or analyses to try to specify the population-level and community-level effects of the Power Plant's annual entrainment of as many as 69 million eggs and larvae, in combination with other adverse impacts to the organisms from GE's operations and other stressors. It is not presently clear that such a study or analysis could be designed to provide results that could be relied upon with confidence, but any such analysis or study would undoubtedly be greatly time-consuming and expensive. EPA reasonably decided to move ahead with permitting based on the information that was presently available. What this information shows is that the Power Plant's CWIS takes a large number of eggs and larvae from biotic

community of the Saugus River. EPA discussed the import of reducing these losses in the Fact Sheet, stating, for example, that:

[r]educing impingement and entrainment by GE Aviation's CWIS's will directly increase the number of commercial, recreational, and forage fish (eggs, larvae, juveniles and adults), as well as other types of aquatic organisms found in the river (e.g., invertebrates). The more that entrainment is reduced, the more likely it is that those reductions will contribute to increased populations of juvenile and adult fish. But reducing the loss of eggs and larvae is valuable in and of itself because of the role they play at the base of the food web and other benefits that they provide, such as contributing to species' compensatory reserve. Reducing impingement directly contributes to increased abundance of adult fish.

Beyond these direct benefits to aquatic life, reducing entrainment and impingement will also likely result in additional indirect benefits to the ecosystem and the public's use and enjoyment of it. Examples of such indirect benefits include increasing recreational and educational opportunities, increasing or maintaining biological diversity, and increasing populations of resident and migratory birds and other terrestrial wildlife dependent on the estuary for food.

Id. at Att. J, p. 35. EPA disagrees with GE's comment that its analysis of the benefits of reduced entrainment and impingement mortality was "very general." While it is true that EPA neither attempted the difficult, time-consuming, expensive and controversial task of attempting to develop a monetized estimate of the benefits of reducing GE's entrainment and impingement, nor, as explained above, attempted to estimate the particular levels of population growth that might occur as a result of such reductions, that does not mean the analysis of benefits was "very general." The analysis considered and was tailored to the facts of the specific case and quantified the benefits of reduced entrainment and impingement in terms of organisms saved, while assessing qualitatively the societal benefits of achieving these savings. This approach is reasonable, technically sound and consistent with the typical practice of permitting agencies applying CWA § 316(b) on a case-by-case basis in which the benefits of reducing entrainment and impingement are considered on a qualitative basis.

GE comments that EPA *assumed* that "reducing impingement and entrainment will directly increase the number of organisms in the river." Yet, this is not an "assumption," it is a fact. If GE's Power Plant is modernized so that many of the millions of eggs and larvae that are currently entrained each year, and many of the thousands of adult and juvenile fish that are currently impinged each year escape entrainment and impingement, then the organisms will be left in the river to serve their various biological purposes. GE also comments that EPA assumed that "the more entrainment is reduced, the more likely it is that those reductions will contribute to increased populations of juvenile and adult fish." EPA did state this conclusion, but is based on common sense rather than a pure assumption. EPA stated that it is "more likely" that saving tens of millions of eggs and larvae from entrainment by the GE Power Plant's CWIS will result in increased populations of juvenile and adult fish, not that it is a certainty. We continue to think that our statement is reasonable based on the facts of this case. Certainly, GE's submissions have not established that the loss of 69 million eggs and larvae to entrainment has had no effect

on the numbers of juvenile and adult fish in the affected segment of the Saugus River. In fact, GE's analysis in support of its comments (Technical Exhibit 18) quantifies the potential benefits of impingement and entrainment analysis in terms of the number of equivalent age-1 individuals, which implies an increase in the number of fish in the Saugus River. In any event, EPA also explained that the eggs and larvae saved from entrainment also have value apart from whether the individual eggs and larvae grow up to become juvenile or adult fish.

Test Cell

BTA Determination. GE comments that EPA followed essentially the same methods to determine the BTA for the Test Cell as it did for the Power Plant. EPA agrees with this comment. The Agency determined the BTA on a BPJ basis using essentially the same approach. EPA tries to use consistent approaches and methods for all its permits, with reasonable adjustments based on the facts and circumstances of each case and the applicable law.

GE states that when faced with the absence of entrainment data for the Test Cell, EPA "simply assumed" there would be "appreciable" entrainment during the months when eggs and larvae are most prevalent. GE is correct that EPA did not have, and GE did not submit, any entrainment data for the Test Cell. (The limited available entrainment data (MRI 1997) did not include information collected from the Test Cell.) In the absence of Test Cell-specific data, EPA developed a reasonable approach to estimating entrainment at the Test Cell in light of the available information. Since both the Test Cell and the Power Plant CWISs withdraw from the same general area of the Saugus River, and neither has any technology to prevent the entrainment of eggs and larvae in the water taken from the river, EPA applied the geometric mean density of eggs and larvae per gallon of water taken by the Power Plant and applied that value for the Test Cell. EPA then estimated entrainment for the Test Cell based on this rate of entrainment per gallon and the Test Cell's water withdrawal volumes.

Given the low volume of water withdrawals by the Test Cell on an *annual* basis under existing operating conditions, EPA determined that "the magnitude of the entrainment impacts at the Test Cell CWIS do not warrant the expenditure that would be required to install and operate any of the available technologies for reducing entrainment." Fact Sheet, Att. J, p. 47. This is consistent with GE's comment, which states that "the Test Cell CWIS ... withdraws flow only a few days a month, resulting in a monthly average flow rate of 1.5 MGD"

The current permit conditions for the Test Cell do not, however, preclude GE from operating the Test Cell at a much higher rate. EPA explained in the Fact Sheet, Att. J, pp. 40-41, that:

[t]he Test Cell CWIS is equipped with two primary pumps that provide once-through cooling water for a test turbine. ... The seawater pumps each have a design capacity of approximately 38.2 MGD (26,500 gpm). An additional 1,500 gpm pump supplies a high pressure spray wash system that clears debris from the traveling screen, resulting in a total design capacity of 78.5 MGD at the Test Cell CWIS. ... The current permit limits the maximum daily flow of this CWIS to 45 MGD and average monthly flow to 27 MGD.

If the Test Cell operated at the maximum permitted water withdrawals year-round, then it would potentially entrain substantially greater numbers of eggs and larvae than the relatively low entrainment numbers that would be expected under existing operations.

GE has also maintained that “aircraft engine testing is scheduled most commonly during fall months (September to November).” Water withdrawals during these months do not pose the same entrainment threat because 97% of annual entrainment occurs during March through July. The existing permit, however, has no seasonal restrictions on water withdrawals. Thus, it would allow increased operations during March through July, when entrainment impacts could be relatively large compared to the overall annual water withdrawals and, depending on the overall withdrawal volume, could be comparable to the entrainment impacts at the Power Plant. Indeed, the highest monthly average flow (9.3 MGD) reported for the Test Cell was for April 2008, during the peak entrainment season.

In light of these facts, EPA determined that restricting intake flows using existing technology was the BTA for the Test Cell for reducing entrainment. EPA based these flow restrictions on both GE’s description of the Test Cell’s operations and an awareness of actual operations history at the facility. By setting a more stringent monthly average water withdrawal limit for the Test Cell from March through July, the permit includes enforceable operational limitations that minimize adverse environmental effects by assuring that the most intensive engine testing occurs primarily outside the peak entrainment period consistent with GE’s description of operations at the Test Cell. EPA developed a more stringent seasonal average monthly flow limit for the Draft Permit based on existing operating conditions at the Test Cell as reported in the facility’s discharge monitoring reports. EPA set an average monthly flow limit of 5 MGD for March through July, based on the 95th percentile of reported average monthly flows from February 2000 through June 2010. Without this more stringent limit, the permit would not ensure the seasonal operations profile of the Test Cell and it could not be considered a component of BTA for minimizing adverse impacts from entrainment. See Response to Comment 11.9 for further discussion of the Final Permit’s average monthly flow limit for the Test Cell.

With regard to impingement, GE similarly comments that in the absence of Test Cell-specific impingement data, EPA estimated Test Cell impingement by using Test Cell intake flow rates and the rate of impingement per gallon of intake flow for the Power Plant CWISs. EPA both agrees with this comment’s characterization of EPA’s analysis and maintains that this was a reasonable approach in this case. The rest of GE’s comment merely describes the substance of EPA’s BTA determination with regard to minimizing impingement mortality at the Test Cell. See Response to Comment 11.9 for further discussion of the Final Permit’s conditions related to minimizing impingement mortality at the Test Cell.

Comment 11.4: EPA’s Analysis Mischaracterizes the Impacts of the Existing Power Plant and Test Cell CWISs.

As the following discussion demonstrates, EPA’s analysis of the available impingement and entrainment studies for the Facility’s CWISs overstates the levels of impingement and entrainment mortality that those CWISs can reasonably be anticipated to cause based on current operations.

EPA's Impingement Mortality Characterization.

In Attachment J to Fact Sheet (p. 15), EPA estimates that Power Plant CWIS impinges approximately 64,000 adult and juvenile fish annually. Although EPA says that it based this estimate on the impingement data collected by MRI in 1994-1996 (MRI 1997) and average monthly flows at the Power Plant CWIS (*id.*, pp. 15-16; spreadsheet provided in May 16, 2011 email from N. Kowalaski/EPA to S. Lewis/GE), EPA's estimate is far higher than the MRI impingement study, properly applied, suggests is likely to occur. This is the case because EPA used arithmetic means, which exaggerated the effect of a single, unusually high sample value, rather than deriving annual impingement from monthly samples using geometric means, as indicated by the data distribution and justified by MRI (1997).

The site-specific impingement and entrainment monitoring study conducted by MRI (1997) estimated average annual impingement of 13,140 fish at the Power Plant CWIS. The estimate was based on a geometric mean impingement rate of 36 fish per 24 hours for the two-year study period (1994-1996) (36 fish per day x 365 days = 13,140 fish). MRI (1997) used the geometric mean because monthly means were highly skewed by an anomalously high number of fish impinged during a single impingement sampling event on October 25, 1996 (MRI, 1997; pages 9-10). In fact, National Weather Service historical data show that a major, record-setting storm event occurred in the days leading up to the sampling event on October 19-22, 1996, setting a single-day precipitation record in Boston on October 21⁷³ (Boston Weather, 2010; <http://www.boston-weather.us/boston-october-weather.html>). Cannon (2000) conducted a hydrometeorological assessment of the storm and characterized it as unique due to the extreme magnitude of precipitation and flooding, and rainfall totals on the order of a 500-year event at several locations in New England. The geometric mean is not as sensitive to a single large sample value as the arithmetic mean and is commonly used by fisheries managers, including the Atlantic States Marine Fisheries Commission, to calculate fish abundance. Based on the average monthly cooling water flow during the study (about 23 MGD), MRI (1997) estimated that 1.580 fish are impinged per million gallons of intake flow at the Power Plant CWIS.

Using the geometric mean of 1.580 fish per MGD derived by MRI (1997) and the maximum daily permitted cooling water flow limit of 35.6 MGD (Outfall 018), GE estimates that the Power Plant could impinge around 20,530 fish annually (35.6 MGD x 1.580 fish/MGD x 365 days = 20,530 fish).

Thus, EPA's estimate of Power Plant CWIS impingement (64,000 fish) is nearly five times higher than the MRI (1997) annual impingement estimate (13,140 fish) and three times higher than GE's impingement estimate based on the current permitted maximum daily flow volume (20,530 fish).

⁷³ Pages 9 and 10 of the MRI (1997) report discuss the impingement sampling event as occurring on October 25, 1996 and yielding an unusually large volume of fish. However, Table 3 in the same report shows a sampling date of October 18, 1996 (same day in month sampled in previous year [Table 2]). Nevertheless, review of NOAA buoy data for Station 44013 located 16 nautical miles east of Boston indicates that the storm was beginning to form by October 18 as indicated by falling air temperatures, increasing wind speeds and gusts, and shifting wind and mean wave direction, and these conditions would have been present during sampling.

In addition, EPA has substantially overestimated impingement *mortality* by assuming 100% mortality of fish impinged at the existing Power Plant CWIS, even though that CWIS already uses a fish collection and return system. EPA states that a through-screen velocity of 0.5 fps or less could save more than 60,000 juvenile and adult fish annually (94 percent of EPA's impingement estimate of 64,000 fish) at the Facility; however, that estimate does not appear to account for current impingement survival. To support its "100% impingement mortality" assumption, EPA notes that the fish are removed from the screens using a high pressure wash and returned to the waterbody in a fish/debris trough. Fact Sheet, Attachment J, p. 19. But site-specific monitoring and the results of a literature review indicate that the vast majority of fish impinged at the Power Plant CWIS are likely to initially survive impingement and passage through the collection and return system, and at least 76% are likely to survive for an extended period after their return to the Saugus River.

Specifically, the impingement studies conducted by MRI (1997) at the Power Plant CWIS from 1994 through 1996 reported high immediate impingement survival of the numerically dominant species. Immediate survival of impinged fish after passage through the screenwash sluiceway was 99.7% for grubby and winter flounder (the two species that numerically dominated impingement samples); 100% for cunner, windowpane, and shorthorn sculpin; and 82.6% for all remaining species combined (Fact Sheet, Attachment J, p. 16). MRI (1997) surmised that the good condition of impinged fish was due to continuous rotation of the traveling screens at the Power Plant CWIS. Thus, available site-specific data demonstrate that the vast majority of impinged fish initially survive impingement and passage through the existing fish return system to the Saugus River.

Trends and data from other studied sites with similar intake configurations provide further evidence that the majority of impinged fish at the Power Plant CWIS are likely to survive for an extended period after their return to the Saugus River. Latent impingement survival data collected at other power plant CWISs using similar conventional traveling screens and fish return systems (EPRI, 2003) show high latent (extended) survival rates for the same species that numerically dominated impingement samples at the GE Power Plant CWIS. For instance, average latent impingement survival of grubby and winter flounder at other sites was 76 percent and 87 percent, respectively (EPRI, 2003).

Applying the EPRI (2003) average latent survival rates for six of the top seven species impinged at GE (grubby, winter flounder, cunner, rainbow smelt, threespine stickleback, and shorthorn sculpin) to the MRI (1997) impingement estimate (20,530 fish), and using winter flounder survival as a surrogate for windowpane, current annual impingement mortality at the GE Power Plant CWIS is likely on the order of only 5,026 fish. See Technical Exhibit 18.

In summary, EPA appears to have substantially over-estimated the amount of impingement mortality likely to occur at the existing Power Plant CWIS. As a result, EPA's assessment of the need for further reductions and the potential benefits of requiring intake technology changes is fundamentally flawed.

EPA's Entrainment Characterization.

EPA's impact assessment and evaluation of the benefits of various technologies also appears to have relied on an inflated estimate of entrainment occurring at the Power Plant CWIS. EPA calculated that the Power Plant CWIS has the potential to entrain over 69 million fish eggs and larvae annually (Attachment J, p. 14; spreadsheet provided in May 16, 2011 email from N. Kowalaski/EPA to S. Lewis/GE). EPA based its estimate on the permitted flow volume of 35.6 MGD and the geometric mean number of eggs and larvae for the numerically dominant species reported in the site-specific impingement and entrainment monitoring study conducted by MRI (1997) for the two-year study period (1994-1996). Although EPA used the geometric mean density data from MRI (1997) for this calculation, it selected for each species only the maximum annual entrainment rate observed between the two study years (for some species the maximum occurred in 1994-1995 and others it occurred in 1995-1996), resulting in a composite worst-case estimate of entrainment that was 9% higher than the annual entrainment estimated for either of the two study years.

GE estimated annual entrainment at the Power Plant CWIS using the 1994-1995 and 1995-1996 geometric mean egg and larvae densities reported by MRI (1997) for each representative species, and the maximum daily permitted cooling water flow limit of 35.6 MGD. In the absence of site-specific data demonstrating survival of entrained fish eggs and larvae passing through the cooling water system, GE presumed 100% mortality of all entrained organisms, consistent with EPA's approach.

GE calculated annual fish (eggs and larvae) entrainment of 36,114,268 using the 1994-1995 data and 63,224,570 using the 1995-1996 data (Technical Exhibit 18). Mean annual entrainment for the two study years was 49,669,419. Despite the fact that GE adopted EPA's presumption of 100% entrainment mortality, the estimate derived was considerably lower than EPA's. Specifically, EPA's estimate of annual entrainment is 39% higher than average mean annual entrainment for the two study years and 9% higher than the maximum annual entrainment, calculated by GE.

As EPA is well aware, tiny eggs and larvae that are small enough to become entrained have very high natural mortality levels and, as a result, are highly unlikely to survive even absent an encounter with the Facility's intake.⁷⁴ For § 316(b) implementation purposes, the Agency has consistently recognized the importance of placing entrainment values in a more meaningful context by converting entrained individuals in age-1 equivalents. *Id.*; see also *infra* at Section XI.E.2.a. Indeed, in its most recent § 316(b) proposal, EPA reiterates the need to evaluate not just the number of individuals lost to entrainment, but their importance to the ecosystem, for purposes of assessing the value of entrainment reductions. See, e.g., 76 Fed. Reg. 22,285. In this case, EPA has not attempted to estimate how many of the eggs and larvae entrained by the

⁷⁴ See, e.g., *In re Pub. Serv. Co. of N.H. (Seabrook Station, Units 1 & 2)*, 1 E.A.D. 332, 1977 EPA App. LEXIS 16, at *62 (EPA June 7, 1977) (determining that combined entrainment mortality of 100 billion clam larvae - less than 5 % of the adult population - would have an "insignificant effect on adult [clam] populations."); *In re Pub. Serv. Co. of N.H.*, 1 E.A.D. 455, 1978 EPA App. LEXIS 17, at *43 (Aug. 4, 1978) (explaining that, although "[fish] eggs and larvae may be . . . subject to . . . entrainment in substantial numbers," for most species "the impact of either intake entrainment or thermal discharge will be insignificant.")

facility are likely to survive to age-1. GE's experts have made that calculation, however, and as the discussion in Section XI.E.2 below shows, that number is *de minimis*.

Response to Comment 11.4

Impingement

Using data from the MRI study (1997) and intake flow data for the Power Plant, EPA estimated that the Power Plant's CWISs impinged 64,000 fish per year. GE comments that EPA's estimate is "far higher than the MRI impingement study, properly applied, suggests is likely to occur." According to GE, this is the case because EPA's figure is based on an *arithmetic mean* which "exaggerated" the effect of a single, unusually high sample value, rather than deriving an annual impingement value from the monthly samples using *geometric means*. In other words, GE argues that use of a geometric mean is indicated by the distribution of data in MRI (1997), and that using a geometric mean would yield a lower estimate. Using geometric means, GE estimates that the Power Plant impinges 20,530 fish per year (approximately one-third of EPA's estimate).

In EPA's view, there is very limited data from which to characterize impingement by the GE Power Plant CWISs. That said, EPA uses the best available data, while taking into account its limitations, in making its permit determinations. As the comment notes, the primary data used in the analyses by GE and EPA was collected during 1994 through 1996 and is documented in MRI (1997). As noted above, EPA estimated 64,000 fish impinged per year based on the data in MRI (1997) using arithmetic means in its calculations, while GE estimated 20,530 fish impinged per year based on the same data but using geometric means in its calculations. In either case, EPA views this as a substantial, unnecessary amount of impingement of fish from the Saugus River as a result of the Power Plant's CWIS operations. EPA also notes that the species of fish represented include certain species of particular public concern that are currently receiving special protection from government authorities (e.g., winter flounder, rainbow smelt).

EPA does not agree that using an annual geometric mean is the only valid approach justified by the data, as GE argues. Calculating a geometric mean is appropriate for a distribution of data with wide variability, as the MRI impingement data certainly seems to be on its face. However, EPA is also concerned that a geometric mean, especially calculated annually, may under-represent rare, peak values in the dataset and the limited data available in this case leaves EPA unsure what the actual distribution of impingement values would be if a more robust data set was available. Therefore, EPA does not agree that GE's calculation of the geometric mean is the only appropriate way to assess the data at hand.

Looking at the available data, the relatively higher values for October 25, 1996, are the primary reason for the disparity between the annual mean estimates based on the arithmetic mean versus the geometric mean. (The footnote in GE's comment indicates that the sampling may actually have occurred on October 18, 1996.) On that day, GE reported impinging 2,555 fish during the study at a rate of 109.2 fish per million gallons of water withdrawn, including over 1,000 grubby, 760 winter flounder, 380 windowpane, and 235 rainbow smelt. The rate of impingement on this study date was approximately four times higher than the next highest impingement rate (25.7 fish

per million gallons in November 1995). GE characterizes this sample as “anomalously large” and suggests that a significant storm event may have been the cause of the relatively higher impingement values.

Yet, the available impingement data is simply too limited to determine if this type of event is truly an anomalous or uncharacteristic event in the sense that it is unlikely to occur again, or might occur only very rarely, such as less than once in 50 or 100 years. In EPA’s experience, impingement at CWISs is often characterized by relatively steady levels punctuated by periodic or occasional larger or even much larger impingement events, such as the one that occurred in October 1996 at GE (and the various unusual impingement events reported at Brayton Point Station in 2000, 2002, 2003, 2005, 2006, 2007, and 2008). While these unusually higher events may not occur very frequently, they can be expected to occur periodically due to a variety of circumstances (e.g., weather events that could lead to currents that push schools of fish toward CWISs, occasional atypically large schools of fish passing and being drawn into a CWIS). Indeed, because of this aspect of impingement, most Region 1 permits for facilities with CWISs, including GE, have specific reporting requirements for “unusual impingement events” (typically defined as time-limited observations of 100 to 150 fish impinged per 24 hours). The expectation of periodic higher impingement events could be contradicted if a facility has a long-term data set showing that it does not have such periodic events, but GE does not have such data.⁷⁵ In addition, if climate change leads to more frequent significant weather events, larger-scale impingement events could become more common in the future. Furthermore, it is also possible that steps to reduce fishing pressure and other sources of mortality and to enhance habitat quality could lead to greater numbers of fish being present in the Saugus River, which, in turn, could lead to greater impingement if improvements are not made to GE’s CWIS. See Fact Sheet, Att. J, pp. 13, 35-37.

EPA concludes that the GE data set is inadequate to establish that the high impingement event evidenced in the data is truly anomalous at GE. EPA further concludes that an annual geometric mean of 1.58 fish per million gallons may not capture other valid, albeit infrequent, high impingement events that may have occurred between October and December of 1996. At the same time, EPA acknowledges the possible validity of GE’s comment that using an arithmetic mean could potentially exaggerate the effect of the high impingement rate of October 1996. In an effort to respond to GE’s concern that an arithmetic mean may exaggerate the effect of a single high impingement event, while still accurately representing the variability in impingement, EPA calculated the geometric mean impingement rate (per million gallons) for each month. With the exception of October and November, mean monthly values were similar for arithmetic and geometric means. EPA estimated annual impingement of 28,917 fish based on the monthly geometric mean impingement rate. As stated above, in any case, EPA views

⁷⁵ While EPA agrees with the suggestion embedded in GE’s comment that weather conditions (e.g., wind, precipitation, extreme tides, storm surge) could contribute to higher impingement events, EPA is left with uncertainty regarding the results discussed in GE’s comment. According to the comment, there was a storm from October 19 to October 22, 1996, with record-setting precipitation on October 21. Yet, due to inconsistency in the reports, it is unclear whether the high impingement values were obtained on October 25 or October 18. Thus, while weather conditions may possibly have contributed to the high impingement value obtained after (or before) the storm, it has not been demonstrated that is the case. It also has not been established, more generally, that such higher impingement events are limited only to highly extreme weather conditions.

impingement of 20,000+ fish per year to be a substantial amount of potentially avoidable impingement of fish from the Saugus River as a result of the Power Plant's CWIS operations.⁷⁶

GE's comment also focuses on the question of impingement *mortality* (i.e., the degree to which fish are killed as a result of impingement). As presented in the comment, GE estimates that 5,076 fish are killed from impingement each year at the Power Plant. As the comment explains, GE's figure is derived from:

[a]pplying the EPRI (2003) average latent survival rates for six of the top seven species impinged at GE (grubby, winter flounder, cunner, rainbow smelt, threespine stickleback, and shorthorn sculpin) to the MRI (1997) impingement estimate (20,530 fish), and using winter flounder survival as a surrogate for windowpane, [to yield a] current annual impingement mortality at the GE Power Plant CWIS [that] is likely on the order of only 5,026 fish.

Thus, GE assumed impingement mortality of approximately 24% for the fish at issue. GE also points out that EPA, in effect, assumed 100% mortality for fish impinged at the Power Plant. GE deduces this from the fact that in the Fact Sheet, EPA estimated that 64,000 fish were impinged per year at the Power Plant, but that 60,000 could be *saved* by use of the VFDs, which EPA indicated would reduce impingement by 96%. GE argues that assuming 100% mortality for impinged fish is inappropriate in this case and, therefore, that EPA significantly overestimated impingement mortality.

As EPA explained in the Fact Sheet (at Att. J, p. 16) (emphasis added):

[w]hile it is important to understand an intake structure's potential to impinge organisms, it is also important to assess the capability of the intake system's design and operation to effectively return impinged organisms back to the receiving waters alive and uninjured. At the time of the MRI (1997) study, the impingement rates and initial survival of impinged organisms at the Power Plant CWIS were assessed by catching all materials washed off the collecting screens in a 1/4-inch mesh collecting pen attached to the end of the screenwash sluiceway. The initial reported survival of impinged fish following handling by the collecting screens was 99.7% for grubby and winter flounder, 100% for cunner, windowpane, and shorthorn sculpin, and 82.6% for all remaining species. *The study did not address latent (e.g., >24 hours) survival. It is important to observe latent survival in impingement studies because injuries caused from impingement (e.g., loss of protective slime or de-scaling) may cause mortality even in individuals that initially survive.*

Moreover, EPA also explained that:

[b]ased on review of existing technology and biological monitoring data, EPA concludes that under the current conditions the Power Plant CWIS does not

⁷⁶ It is also worth noting all of the various estimates of annual impingement, which range from 13,140 to 64,000, are of the same order of magnitude and constitute a significant amount of potentially avoidable impingement.

minimize adverse environmental impacts due to impingement and entrainment. The existing TSV of 1 to 1.61 fps does not adequately protect juvenile and adult fish from impingement. In addition, the traveling screens do not effectively protect fish that are impinged during transport. Fish are rinsed with a high pressure spray and deposited in the same return trough as debris and both practices could cause physical injury.

Id. at p. 19. In addition, EPA also explained in the Fact Sheet the following:

EPA evaluated the feasibility of upgrading the existing coarse mesh traveling screens at the Power Plant CWIS to reduce impingement mortality. Put simply, the facility's existing conventional screens are outdated and improved technologies are available to reduce impingement mortality. One such technology is known as "Ristroph screens" (named after the designer of the equipment). Ristroph screens improve fish survival following impingement and are now commonly used at power plants nationwide (EPRI 2007). While the Power Plant's current intake screens are not equipped with non-metallic fish buckets, improved seals, or smooth texture screen material, all of these features are available on Ristroph-style screens. Moreover, a low pressure spray system would be more protective of impinged organisms and is generally considered a standard feature of Ristroph-style screens (EPRI 2007). Finally, providing separate troughs for organisms and debris removed from the intake screens would better protect the organisms in the fish return system and could be provided in conjunction with a new Ristroph screen system. In sum, installing a low-pressure spray wash, improved fish return trough, and upgrading the conventional screens consistent with Ristroph screens would likely improve the survival of impinged fish.

Id. at p. 30. Based on these considerations, EPA was neither able to conclude that GE's existing technology represents the BTA with regard to minimizing impingement mortality under CWA § 316(b), nor able to quantify a particular rate of impingement survival. However, EPA also recognizes that, in the limited MRI study, initial survival was relatively high for some individuals, including many of the numerically dominant species such as grubby, winter flounder, and cunner. Therefore, it might have been more appropriate to characterize the benefits of VFDs in the Fact Sheet by saying that the technology would likely eliminate a certain degree of impingement, rather than saying it would save a certain percentage of fish, since it is likely that some percentage of the currently impinged fish would survive, though we do not know how many due to the absence of latent survival data and the generally limited amount of data overall.

GE's comment proposes that for numerically dominant species at GE, the assessment should assume latent survival rates at GE based on EPRI's evaluations of impingement survival for the same species impinged at other facilities. GE has not indicated, however, whether the EPRI data it used to estimate latent survival includes facilities with high or low pressure spray washes, separate or combined fish and debris return troughs to transport fish back to their habitat, modern Ristroph-type screen technology, or higher or lower intake velocities. (Aquatic organisms are

more likely to be harmed or killed by impingement if they are pulled against the intake screens by higher velocities.) Nonetheless, GE appears to have provided a fairly conservative estimate of impingement mortality compared to the ranges presented in the EPRI data, which suggests that the same species may experience relatively high latent survival at GE. In response to GE's comment, and based on the results of the site-specific initial survival study (MRI 1997) and latent survival observed at other facilities (EPRI 2003), EPA recognizes that the existing traveling screen and fish return trough, although not representative of the best performing examples of this technology (i.e., "Ristroph" screens), may adequately minimize impingement mortality for the numerically dominant species impinged at GE, with the possible exception of rainbow smelt, although a site-specific assessment of latent mortality would likely be required to support this conclusion.

Ultimately, however, EPA concludes that in this case the dispute over survival rates is not determinative of the BTA for impingement mortality reduction at the Power Plant in the Final Permit. This is because, as EPA explained in the Fact Sheet (at Att. J, p. 24), EPA concluded that using the VFDs would reduce through-screen intake velocity at the Power Plant's CWIS's to 0.5 feet per second or less, which would, in turn, reduce impingement (and therefore mortality) by 96%. (In addition, using the VFDs was estimated to reduce entrainment by 20%. *Id.* at p. 25.) Furthermore, as EPA also explained, installing and using VFDs would cost relatively little, require no additional study, and would produce energy cost savings. Moreover, as GE indicates in Comment 11.2, the company "has volunteered" to install and use VFDs. *See id.* at Att. J, pp. 24-25, 39-40. Whether one considers 60,000, 28,000, or 5,000 to be a better estimate of the number of fish killed each year as a result of being impinged by GE's Power Plant, EPA regards this to be a significant amount of avoidable mortality to fish from the Saugus River ACEC. This is especially so when one remembers (a) that these are only estimates and actual levels of mortality could be higher, (b) that certain especially important and vulnerable species are or may be affected (e.g., winter flounder, rainbow smelt), and (c) that impingement mortality is only one of many sources of stress to the organisms in question (along with entrainment, thermal discharges, overfishing, water pollution, etc.). In light of these considerations, EPA concludes that that VFDs represent the minimum BTA for impingement mortality reduction at the GE Power Plant's CWIS, whether one assumes an impingement mortality rate of 24% or 100%.

GE's comment does not address the Test Cell, but EPA notes that the Final Permit retains the Draft Permit's requirements for improvements to the CWISs' existing fish return trough. According to information supplied by GE, the fish return system currently deposits fish and other debris *on to the rip-rap above the low tide line*. Given this circumstance, it is reasonable for EPA to assume 100% impingement mortality for the Test Cell. As discussed in Comment/Response 11.3 above, there is no available data to identify the existing level of impingement at the Test Cell. In the Fact Sheet, EPA estimated that more than 4,000 fish per year could be impinged based on average monthly intake flow rates at the Test Cell and a monthly arithmetic mean impingement rate per million gallons of water withdrawn (based on data from the Power Plant). *See id.* at p. 47 and n. 30. Using the updated monthly geometric mean impingement rates, calculated in response to GE's comment, and average monthly intake flow at the Test Cell, EPA estimates annual impingement of about 1,300 fish at the Test Cell. GE has proposed to replace the existing debris/fish return trough, and given the obvious inadequacies of the Test Cell's current fish return trough and the unnecessary fish mortality that

it appears to cause, the Draft Permit's technology-based requirements to reduce impingement mortality were based in part on GE's proposed upgrades. See Response to Comment 11.9 for further discussion of the Final Permit conditions for the Test Cell.

Entrainment by the Power Plant's CWISs

GE comments that EPA developed and relied upon an "inflated" estimate of entrainment of fish eggs and larvae by the Power Plant's CWIS. The company also states that from the two study years, EPA used the "maximum annual entrainment rate observed between the two study years (for some species the maximum occurred in 1994-1995 and others it occurred in 1995-1996), resulting in a composite worst-case estimate of entrainment that was 9% higher than the annual entrainment estimated for highest of the two study years." GE notes that it calculated an annual fish (eggs and larvae) entrainment of 36,114,268 using the 1994-1995 data, and 63,224,570 using the 1995-1996 data (Technical Exhibit 18). It also calculated the arithmetic mean annual entrainment for the two study years to be 49,669,419 (fish eggs and larvae) and comments that EPA's estimate is 39% higher than this mean value.

EPA has considered GE's comments but concludes that the Agency's use of 69 million eggs and larvae entrained per year by the Power Plant represents a reasonable, albeit conservative estimate based on the limited data available in this case. Experience shows that entrainment numbers can vary from year to year at an individual facility. Indeed, while there are only two years of entrainment data available, substantial sample variability was observed both within and among years. For example, the geometric mean densities of Atlantic mackerel and cunner/tautog eggs entrained in 1996 was nearly twice that entrained in 1995. Therefore, as GE commented, EPA used maximum annual entrainment rates for each species from the two years to calculate its annual estimate. EPA believes this was a reasonable, "worst-case" estimate, not an inflated estimate. At the same time, EPA agrees that averaging the values from the two years, as GE did, could be another reasonable approach to deriving an estimate of annual entrainment from the data at hand. In any event, whether one looks at the value for 1994-1995 (36,114,268 eggs and larvae entrained), the value for 1995-1996 (63,224,570 eggs and larvae entrained), the average of the two years that GE calculated (49,669,419 eggs and larvae entrained), or EPA's more conservative estimate of 69,000,000 per year, all of the estimates indicate that GE likely takes a very large number (in the range of eight figures) of eggs and larvae from the Saugus River ecosystem each year and kills them in the process of operating the Power Plant's CWIS.

GE comments, however, that these entrainment losses should be regarded to be *de minimis* for two reasons. First, GE suggests that because fish eggs and larvae have very high natural mortality levels, most are unlikely to survive even apart from being entrained by the Facility's CWIS and, therefore, killing them via such entrainment is a *de minimis* adverse effect. EPA disagrees with this comment. The entrainment losses of tens of millions of eggs and larvae in this case are far from *de minimis*. The fact that most entrained eggs and larvae would not survive to become adult fish because of natural sources of mortality even absent entrainment does not render their loss as a result of entrainment ecologically inconsequential.⁷⁷ In fact, research

⁷⁷ GE's comment states that "in its most recent § 316(b) proposal, EPA reiterates the need to evaluate not just the number of individuals lost to entrainment, but their importance to the ecosystem, for purposes of assessing the value

suggests that moderate variability in mortality rates among early life stages may have measurable effects, even as high as an order-of-magnitude difference, on abundance of a cohort at recruitment (Houde 2002). In other words, small changes in mortality rates for eggs and early larval stages may directly affect the abundance of fish of a particular size class (cohort) entering the fishery or reproductive life stages. The large numbers of eggs and larvae generated in the Saugus River estuary by the affected species reflects survival strategies that have evolved over time; individuals produce huge quantities of eggs and larvae to account for high levels of natural mortality. Adding a high rate of anthropogenic mortality to this ecosystem (i.e., the entrainment of tens of millions of eggs and larvae from cumulative impacts at the GE and Wheelabrator Saugus CWISs) may reduce populations of adult fish directly or threaten the species' health by reducing or eliminating any "compensatory reserve" that the species had to weather unusually high mortality events from natural causes (e.g., extreme weather effects). Moreover, reduced populations of adult fish could result in reduced egg and larval abundance for the affected species, and so on.

Furthermore, the fish eggs and larvae in question are an important part of the food web and energy budget of the affected ecosystems. These issues are all of particular concern given the importance and sensitivity of the Saugus River estuary, a state-designated ACEC and a spawning area for fish, and given the fact that entrainment is a cumulative adverse effect on the species that combines with other adverse effects (e.g., GE's discharges of waste heat and other pollutants, impingement by GE, overfishing, the cooling system operations of the Wheelabrator power plant, spawning habitat degradation) to put pressure on these species. EPA further explains the various ecological values of the eggs and larvae in Response 11.3 and the Fact Sheet, Att. J, pp. 14-15, 35-38.

GE also argues that EPA should have put the entrainment figures better into context by "converting" the eggs and larvae entrained into "age-1 equivalents." GE then indicates, however, that it discusses its age-1 equivalent analysis in a separate comment. EPA does not agree that it needed to convert the eggs and larvae to age-1 equivalents in order to provide better context to the entrainment losses in this case. EPA will further address this issue in response to the comment 11.5 in which GE discusses the issue in greater detail.

Comment 11.5: EPA Incorrectly Assumed that Impingement and Entrainment from the CWIS, at the Levels Estimated by the Agency, would cause Adverse Environmental Impact.

All of the available evidence (including the site-specific impingement and entrainment monitoring study (MRI, 1997), information on the occurrence of rare, threatened, and endangered species, and fishery management plans and monitoring data for commercially and recreationally important fisheries) indicates that operation of the CWISs at the Facility has not resulted in material adverse environmental impact to the Saugus River ecosystem. Furthermore,

of entrainment reductions. See, e.g., 76 Fed. Reg. 22,285." It is not clear to EPA which passage from the referenced page of the Federal Register notice GE is pointing to in its comment. Nevertheless, even GE's comment seems to recognize that EPA has not stated that the loss of large numbers of individual organisms from an ecosystem is immaterial and should not be considered an adverse environmental impact. EPA does not believe its approach for this permit is inconsistent with the Agency's discussion or approach discussed in the Federal Register notice.

continued operation of the CWISs, with implementation of the existing CWIS technologies and the additional operational measures proposed by GE, is unlikely to adversely impact the balance or diversity of the ecosystem's overall assemblage of organisms into the future.

The CWISs do not Adversely Impact Rare, Threatened, or Endangered Species.

The Saugus River fish assemblage in the vicinity of the Facility includes a diverse mix of marine and estuarine species, euryhaline freshwater species, and anadromous and catadromous species. However, no federally threatened or endangered fish species are presently known to occur near the Facility or were collected in impingement or entrainment samples.

Anadromous species collected in impingement samples included rainbow smelt and two herring species collectively referred to as river herring – blueback herring and alewife. The National Oceanographic and Atmospheric Administration's ("NOAA's") National Marine Fisheries Service ("NMFS") has identified rainbow smelt and river herring as species of concern in the coastal waters of New England generally. Each species of river herring, which range widely along the Atlantic coast, was impinged during only a single impingement sampling event (out of 39 total impingement sampling events) during the two-year study by MRI (1997). Neither river herring species was reported in entrainment samples or in ichthyoplankton samples taken from the river adjacent to the facility.

Rainbow smelt, which provide an important recreational fishery, were collected as juveniles or adults in only four of 39 total impingement sampling events (MRI, 1997). Only three rainbow smelt larvae were collected during the entire two-year study, two from ichthyoplankton samples taken in the river (out of 60 total sampling events) and one in an entrainment sample (out of 60 total entrainment sampling events). Thus, the site-specific studies show that rainbow smelt and river herring occur in negligible numbers and frequencies in fish impingement and entrainment samples at the Power Plant CWIS.

Losses to the Fishery from Impingement and Entrainment are *de minimis*.

Several commercially and recreationally important fishes occur in the Saugus River estuary near the Facility; however, EPA has not provided any evidence indicating that current operation of the CWISs is adversely affecting populations of any of these species, particularly given that, as EPA has recognized, the proportional area and volume of the Saugus River affected by the GE Power Plant CWIS are very small. As a result, the total numbers of fish impinged and entrained are negligible when converted to adult equivalents and production foregone and placed in the context of total fishery populations in the local area and region.

Although EPA concludes that its estimates of fish impingement mortality and entrainment represent "large numbers" (Fact Sheet, Attachment J, p. 15), EPA has made no attempt to place those numbers in any context by which their environmental significance can be fairly judged. Instead, the Agency "concludes that the greater the reduction in these impacts, the greater the benefits that will be achieved," without citing any support for that proposition. *Id.*, p. 39. Indeed, the Agency concedes that it lacks the data from which to judge whether there is a threshold for impact reduction "below which ecological gains will be forfeited, or above which

there will be no difference.” *Id.* Equally important, the Agency did not attempt to quantify the incremental benefits of further reducing the relatively small numbers of fish lost by implementing the costly measures it proposes as “BTA.”

Further analysis shows that the total numbers of commercially and recreationally important fish species impinged or entrained at the Power Plant CWIS are relatively small in proportion to the total fishery resources in the source waterbody. This is the case because the hydraulic zone of influence (HZI) relative to the cross section of the river and the volume of cooling water withdrawn is small compared to the total volume of the water column in the Saugus River. As delineated in the Cooling Water Intake Structure Information Document (CH2M HILL, 2008), the maximum HZI for the Power Plant CWIS at its currently permitted flow rate is centered along the deeper northern shore of the Saugus River and does not extend beyond the middle of the river or to the shallow, intertidal habitats along the southern shore. Its maximum area is about 182,930 square feet, and its maximum hydraulic radius is about 343 feet. The HZI also does not intrude into the saltmarsh habitats of Rumney Marsh in the Bear Creek and Pines River estuaries. The volume of water pumped at the Power Plant CWIS under the maximum permitted flow represents only 3 percent of the tidal excursion volume over one tidal cycle of ebb and flow (CH2M HILL, 2008). In addition, the site-specific impingement and entrainment monitoring data collected by MRI (1997) demonstrate that in practical terms, very few commercially and recreationally important fish are affected by operation of the Power Plant CWIS. As discussed *supra* at Section XI.D.2, annual impingement mortality is likely on the order of only 5,036 juvenile and adult fish (Technical Exhibit 18). These include annual impingement mortality losses on the order of only 608 rainbow smelt; 535 winter flounder; 175 cunner; 154 windowpane flounder; 63 yellowtail flounder; 33 river herring; 31 Atlantic cod; and 7 Atlantic herring. To place these small numbers into perspective, 608 rainbow smelt are equivalent to the number of fish that twelve recreational fishermen would be allowed to catch and possess in a single day along the coast of Massachusetts (322 CMR 6.00: Regulation of Catches).

To further characterize the potential impacts of fish impingement and entrainment at the Power Plant CWIS on important commercial and recreational fisheries, GE’s experts quantified the estimated fish losses resulting from species-specific and life-stage specific impingement mortality and entrainment losses. These losses were quantified by calculating Age-1 equivalents (for entrained organisms), foregone fishery yield, and foregone biomass production (Technical Exhibit 18). The equations used in these biological models are described in detail in Chapter A5 of EPA’s Regional Analysis (EPA, 2004). Life history parameters, including natural mortality, fishing mortality, and weight for each life stage that are inputs to the three models were taken from Appendix C1, Life History Parameter Values Used to Evaluate I&E in the North Atlantic Region (EPA, 2004).

Age-1 Equivalents

An Equivalent Adult Model (“EAM”) was developed to express fish entrainment losses calculated from the MRI (1997) monitoring data as an equivalent number of Age-1 individuals (Technical Exhibit 18). An EAM was developed for each of the two monitoring years to assess the entrainment temporal variability. The total number of Age-1 equivalents from entrainment for both years ranged from 94,576 to 380,479 fish, with a mean of 237,528 individuals per year.

Forage species dominated the Age-1 equivalents, accounting for 98 percent of the mean Age-1 equivalents lost due to entrainment at the Power Plant CWIS. Two forage species, grubby and rock gunnel, comprised 90 percent of the Age-1 equivalents. The larvae of these two species were collected in the highest abundances in mid-March and April (MRI, 1997). Because March and April are cooler months with lower steam generation needs, the VFD's that GE has proposed to install most likely would be available to further reduce flow during this period, thereby further reducing the potential for entrainment.

The total number of fish lost annually from both entrainment and impingement mortality at the Power Plant CWIS is on the order of 242,554 fish. Fish lost due to entrainment account for over 98 percent of the total. Three forage species – American sand lance, grubby, and rock gunnel – account for 94 percent of the losses. These three species have no commercial or recreational value, nor are they otherwise in scarce supply as forage for more valued species. Five commercial species, including Atlantic herring, Atlantic mackerel, cunner, windowpane, and winter flounder (in descending order of relative abundance), collectively accounted for less than 4 percent of the total fish lost from operation of the Power Plant CWIS.

Foregone Fishery Yield

Direct losses to the fishery due to fish impingement mortality and entrainment at the Power Plant CWIS were evaluated by calculating the primary foregone fishery yield for the five numerically dominant commercially important species: Atlantic herring; Atlantic mackerel; cunner; windowpane; and winter flounder (Technical Exhibit 18). Primary foregone fishery yield is a measure of the pounds of commercially or recreationally important fish that are not harvested because the fish are lost to impingement and entrainment (EPA, 2004). The total primary lost yield for the five species was 235.9 pounds (lb.). Atlantic herring had the highest lost yield of 90.6 lb., followed by winter flounder (66.4 lb.), cunner (41.8 lb.), Atlantic mackerel (32.2 lb.), and windowpane (4.8 lb.). To help place the small size of these losses in perspective, average annual Massachusetts landings from 2005 to 2009 were 75,432,948 lb. for Atlantic herring; 4,535,635 lb. for winter flounder; 50,352,856 lb. for Atlantic mackerel; and 117,638 lb. for windowpane (National Marine Fisheries Service, 2011).

Foregone Biomass Production

The expected total amount of future growth of forage species lost as a result of impingement and entrainment at the Power Plant CWIS was estimated by calculating the foregone biomass production (Technical Exhibit 18). Foregone production was calculated for the three numerically dominant forage species at the Facility: American sand lance, grubby, and rock gunnel. The total lost production all three species was 3,374 lb. Rock gunnel had the highest foregone production of 1,531 lb., followed by grubby (1,510 lb.) and American sand lance (332 lb.).

The foregone production of forage species was then used to estimate the subsequent reduction in harvested species yield that results from a decrease in the food supply (EPA, 2004). Secondary and tertiary foregone yields were calculated to estimate the reduction in harvested species that result from loss of their prey base (Technical Exhibit 18). Secondary production is the portion of

total forage production that has high trophic transfer because it is directly consumed by the harvested species. Tertiary production has a low trophic transfer because it is not consumed directly by the harvested species but instead reaches harvest species indirectly after passage through other parts of the food web (EPA 2004). Total secondary and tertiary production foregone were 60.7 and 24.3 lb., respectively.

Summary of Fishery Losses

In summary, the total foregone annual fishery yield due to the operation of the GE Power Plant CWIS is on the order of 321 lb. (235.9 lb. + 60.7 lb. + 24.3 lb = 320.9 lb.). To help place the small size of these losses in perspective, 2009 commercial fishing landings of winter flounder were 1,972 metric tons in Massachusetts and 2,140 metric tons in all New England states (National Marine Fisheries Service, 2011). Thus, the annual loss of only 320 lb of fish across all species represents an insignificant impact. This *de minimis* loss is insufficient to justify the substantial changes EPA has proposed.

Another way of understanding the implications of these losses is by assessing their value in economic terms. EPA did not attempt any economic valuation, although the Agency guidance and the recently proposed § 316(b) rule for existing facilities suggest such an analysis is appropriate for § 316(b) purposes. See, e.g., EPA “Guidelines for Preparing Economic Analyses,” EPA 240-R-00-003 (Sept. 2000) (“EPA Economic Guidelines”); 77 Fed. Reg. 22,279, 22,288. GE’s experts have prepared a preliminary estimate of the economic value of the combined impingement and entrainment losses that the existing Power Plant CWIS reasonably may be expected to cause. Multiplying the total loss in of commercially or recreationally important fish pounds (320.9) by the most recent NMFS statistics on the average ex-vessel price for landings in Massachusetts of \$1.12 per pound⁷⁸ yields a total of \$ 359.41. As EPA has recognized in other contexts, this type of gross value reflects the upper boundary for the value of losses assuming that all of the fish lost would be caught by producers (*i.e.*, commercial fishermen), when in fact much will not. In the previous and current § 316(b) rulemakings, EPA has recognized that the actual change in “producer surplus” is likely to range from zero to 40% of the gross value of change in catch. Applying this range to the gross value of \$ 359.41 results in an anticipated value of between \$ 0 and \$ 143.76.⁷⁹

In addition, it is important to note that this value (and the underlying number of organisms lost and resulting fishery yield foregone) reflects current Facility operations, and does not account for the reductions that would be achieved by the operational and other measures GE has proposed will be achieved. When those reductions are factored in, there is even less reason to believe that

⁷⁸ NMFS, 2009. NMFS Landings Query Results.
http://www.st.nmfs.noaa.gov/pls/webpls/MF_ANNUAL_LANDINGS.RESULTS accessed on May 6, 2010

⁷⁹ It also is possible that some portion of the estimated foregone fishery yield would be allocated to the recreational fishery. When changes in recreational catch are sufficiently large, they can affect the value of the fishing experience on a given trip and, in some instances, how many trips recreational fishers will take. In this case, given the very small number of organisms relative to the size of the fishery, the anticipated losses are likely too small to affect recreational catches or participation in the recreational fishery. Thus, GE allocated all of the economic value to the commercial fishery.

the Facility CWISs are causing adverse environmental impact, or that the benefits of EPA's BTA proposal will justify their substantial costs.

Response to Comment 11.5

GE's comment begins by stating that the available evidence shows that "operation of the CWISs at the Facility has not resulted in material adverse environmental impact to the Saugus River ecosystem." EPA disagrees with this comment. In Response 11.3, EPA explains how the term "adverse environmental impact" is defined under CWA § 316(b) and describes how the relevant data clearly demonstrates that GE's CWISs have caused and are causing adverse environmental impacts. In the same response, EPA also discusses how it factors in the import or magnitude of the adverse environmental impacts in question as part of its BTA determination. EPA has considered the points in GE's comment No. 11.5, above, pertaining to the magnitude of the adverse environmental impacts caused by the Facility's CWISs. EPA responds to these comments below.

GE further comments that "continued operation of the CWISs, with implementation of the existing CWIS technologies and the additional operational measures proposed by GE, is unlikely to adversely impact the balance or diversity of the ecosystem's overall assemblage of organisms into the future." This comment raises more complex issues. To begin with, the BTA technology standard specified in CWA § 316(b) does not *per se* turn on whether or not future operations are likely to adversely affect the balance or diversity of the community of organisms that ought to inhabit that ecosystem. Rather, the effect on community balance and diversity is one of the many factors that EPA may consider in assessing the magnitude or import of the adverse environmental effects in question, which, in turn, is considered when determining the BTA. In this regard, EPA has carefully considered these comments by GE.

In EPA's judgment, no analysis or data has been produced to demonstrate whether or not it is likely that GE's CWISs, whether considered alone or in conjunction with other adverse effects (e.g., Wheelabrator Saugus's operations, GE's discharges of waste heat and other pollutants, others sources of pollution, fishing pressure, spawning habitat degradation for anadromous fish), has adversely affected, or will adversely affect, the balance or diversity of the affected ecosystem's assemblage of organisms. In addition, EPA has not assumed that such adverse effects would occur. For example, while EPA pointed out that entrainment and impingement by GE's CWISs "impact both resident and migrating fish, including species experiencing population declines and recreationally and commercially important species," Fact Sheet, Att. J, p. 16, EPA did not state that the balance or diversity of the assemblage of organisms in the affected portion of the Saugus River had been reduced by this entrainment and impingement. *See id.* at pp. 14-16, 35-38. Rather, EPA stated, and explained its reasons for stating, that "reducing entrainment and impingement will also likely result in additional indirect benefits to the ecosystem and the public's use and enjoyment of it ... [Including, among other things,] increasing or maintaining biological diversity" *Id.* at p. 35.

EPA also explained that increasing populations of fish in an aquatic ecosystem may bolster species and genetic diversity which, in turn, improves the health of that ecosystem. *Id.* at pp. 36-37. This is not the same thing as saying either that the existing operation had adversely affected

the diversity or balance of the community organisms, or that GE's proposed future operations would do so. After all, GE proposed using VFDs to *reduce* entrainment and impingement, just not by as much as the BTA selected by EPA would do. *See id.* at pp. 39-40 (explaining that while GE favors the VFDs-only plan, EPA prefers the VFDs-and-wedgewire screens plan as the BTA because it would achieve greater entrainment and impingement reductions at a reasonable and relatively small additional cost; EPA also rejected the substantially more expensive closed-cycle cooling option because, based on current information, the greater costs did not appear to be warranted by the demonstrable benefits).

GE's comment then goes on to discuss a variety of issues related to the assessment of the CWISs' adverse impacts on aquatic life in the Saugus River. These issues include the following: effects on rare, threatened or endangered species; whether the impacts should be considered *de minimis*; "Age 1 Equivalents" analysis; foregone fishery yield; foregone biomass production; and overall fishery losses. EPA responds to these comments below.

Effects on Species of Special Concern

GE comments that "no federally threatened or endangered fish species are presently known to occur near the Facility or were collected in impingement or entrainment samples." EPA agrees with this comment.

At the same time, GE acknowledges that impingement samples at GE have collected rainbow smelt and river herring (comprised of blueback herring and alewife), both of which have been identified as species of concern in the coastal waters of New England by the National Oceanographic and Atmospheric Administration's ("NOAA's") National Marine Fisheries Service ("NMFS") (now commonly referred to as "NOAA Fisheries"). GE further comments, however, that entrainment and/or impingement of river herring and rainbow smelt by the Facility's CWISs is negligible (in amounts and frequency). Yet, while it is true that rainbow smelt were only collected on four out of 39 sampling dates during the two-year MRI study, on a single date in October 1996 GE impinged an estimated 235 fish in 24 hours. GE also estimates annual impingement mortality of 608 rainbow smelt.

EPA agrees that the available data from GE neither evidences a high level of entrainment or impingement of rainbow smelt or river herring, nor indicates an abundance of the eggs and larvae of these species in ichthyoplankton samples from the Saugus River. EPA has considered this data concerning rainbow smelt and river herring and factored it into our assessment of the magnitude of the adverse impact from GE's CWISs. In EPA's view, the data does not evidence a severe impact on those species of fish, but several countervailing points also must be noted: (1) given that the type of estuarine habitat around GE's CWIS should be suitable for rainbow smelt and river herring, these species could be present in higher numbers at times that were not captured by the limited sampling that has been done (only two years of entrainment, impingement, and in-river ichthyoplankton data has been collected at GE from 1994 to 1996; (2) due to the limited data set EPA has less confidence that entrainment and impingement of these species has not occurred at higher levels during other years (we would have greater confidence if the same results were found over more years of sampling); (3) it is possible that the presence of these species could increase if their populations grow as a result of conservation measures being

taken by regulatory authorities (including environmental improvements implemented at Wheelabrator and GE under their new NPDES permits); and (4) the species could be adversely affected by losses of their prey to entrainment and impingement (e.g., zooplankton for larvae and small fish for adults).⁸⁰

Furthermore, regardless of the special status, or lack thereof, of the aquatic life entrained and impinged by GE's CWISs, it must be remembered that, as EPA discussed in the Fact Sheet, the portion of the Saugus River directly affected by GE's CWISs (and pollutant discharges) is designated as both an Outstanding Resource Water (ORW) and an Area of Critical Environmental Concern (ACEC) by the Commonwealth of Massachusetts based on the outstanding quality, uniqueness, and significance of its natural and cultural resources, including its biological community. The purpose of the ACEC program is "to preserve, restore, and enhance the critical environmental resources and resource areas of the Commonwealth of Massachusetts." The goals of the program include increasing protection for ACEC resources and to facilitate and support the stewardship of ACECs. Projects in ACECs are closely reviewed to avoid or minimize adverse environmental impacts. The affected segment of the Saugus River is also designated a class SB water under Massachusetts Water Quality Standards and, as a result, these waters are supposed to provide "a good quality, healthful fish habitat" and a recreational fishing resource. Fact Sheet, Att. J, p. 10. The special designations applied to the Saugus River in recognition of the especially important and high quality habitat that it ought to provide heighten the significance of losing large numbers of aquatic organisms from the river to entrainment and impingement by GE, and they also highlight the importance of minimizing adverse impacts from the CWISs.

In addition, while GE may not have entrained or impinged any federally-listed or state-listed endangered or threatened species, based on the available data, the facility *has* entrained and impinged species of particular direct importance for fishing. Furthermore, GE has also entrained or impinged species that provide prey for these species that are targeted for fishing.⁸¹ As EPA explained in the Fact Sheet:

[s]everal of the fishes noted in the studies [of entrainment and impingement by GE] are desired species for recreational and/or commercial fishermen (e.g., winter flounder, bay anchovy, Atlantic cod, tautog and Atlantic mackerel). In fact, of the 42 species or groups of species recognized as commercial fishery resources by the National Marine Fisheries Service Northeast Fisheries Science Center, at least 20 species are present near the facility according to the 1989 and/or 1997 MRI studies. In addition, 12 of the species sampled during the MRI studies have

⁸⁰ As EPA explained in the Fact Sheet, Att. J, p. 36:

[b]oth rainbow smelt and river herring have experienced declining populations in recent years, and minimizing adverse impacts to these populations is fundamental to their recovery. In fact, both rainbow smelt and river herring are listed as Species of Concern by the National Oceanographic and Atmospheric Administration (NOAA), and the Massachusetts Division of Marine Fisheries (MassDMF) provides further protection for river herring through a moratorium on the harvest, possession, and sale of river herring extended through 2011.

⁸¹ EPA recognizes that all species of fish have ecological importance because of their role in the food web. For example, forage fish may, among other ecological functions, provide sustenance for other species of more direct interest to humans.

fishery management plans or restrictions managed by the New England Fishery Management Council. Generally, these fishery management plans are designed to reduce fishing mortality and promote rebuilding of stocks to sustainable biomass levels in response to population declines resulting from overfishing. Several of the species subject to impingement and entrainment, including yellowtail flounder, American plaice, cod, white hake, and haddock, are overfished (meaning that stock biomass remains low compared to maximum sustainable yield biomass) and/or overfishing is currently occurring (meaning fishing mortality remains high compared to maximum sustainable yield). In addition to fishes, several species of invertebrates, including commercially and/or recreationally important species such as the horseshoe crab and American lobster, are present in the Saugus River.

Fact Sheet, Att. J, p. 13. EPA further explained that:

[s]everal commercially and recreationally important species are among the species commonly impinged or entrained, including winter flounder, windowpane flounder, Atlantic mackerel, and Atlantic herring. As stated in the discussion of entrainment impacts, fishery management plans are in place for many of these species which restrict fishing for them in order to help rebuild stocks. With fishermen facing tight controls on the beneficial harvest of, for example, adult groundfish, it would be anomalous to allow manufacturing facilities such as GE Aviation to systematically kill millions of groundfish eggs and larvae each year in the process of withdrawing cooling water from public waterways because their CWISs have not been adequately controlled by the use of available technology. Increases in forage fish and invertebrate populations (e.g., cunner, tautog, and grubby) may also benefit commercially and recreationally important fish species ... by increasing prey abundance.

Id. at p. 35. See also Massachusetts Division of Marine Fisheries – Species Profile: Tautog (as of 1/18/13, available at <http://www.mass.gov/dfwele/dmf/recreationalfishing/tautog.htm> (tautog is a popular inshore game fish). In sum, EPA regards GE's entrainment and impingement of the fish discussed above from the Saugus River to represent a serious adverse environmental effect.

Magnitude of Entrainment and Impingement Effects

In Technical Exhibit 18 (CH2M Hill 2011), GE estimated that the loss of age-1 equivalents from entrainment at the Power Plant ranged from 94,576 (1994-1995 data) to 380,479 individuals (1995-1996 data) with a mean of 237,528 individuals over the two years of the study. As discussed above in response to GE's comment, EPA considers the impacts from GE's CWIS adverse whether the individuals lost are of direct commercial or recreational importance, species of special concern, or whether they are purely elements of an ecologically valuable and productive estuary.

GE's primary argument that the impacts on the aquatic community are *de minimis* is that mortality of fish eggs and larvae at the Power Plant CWIS results in the loss of a negligible

amount of harvestable fish (321 pounds) and therefore, the economic benefits of any technology would be similarly limited (GE's estimate is between \$0 and \$144). An analysis based only on the estimated monetized economic value of estimated losses to commercial and recreational fishery resources, such as that provided by GE, represents a very narrow perspective on the valuation of biological resources and entirely ignores the "non-use benefits" provided by a biologically productive estuary like the Saugus River. At a minimum, the method used to quantify the benefits in Comment 11.5 completely disregards any uses or services other than 1) those provided in the form of age-1 fish, 2) the lost harvestable weight of fish and 3) the lost harvestable weight of fish resulting from loss of forage fish.

Metrics such as age-1 equivalent fish, foregone fishery yield, and production foregone ignore functions of eggs and larvae in the ecological system other than as precursors to adult fish. Predation is likely the single largest cause of mortality for early life stages of fish, which suggests that eggs and larvae are an important source of food (Miller 2002). None of the metrics used to evaluate impacts of entrainment mortality in Comment 11.5 consider impacts of the loss of eggs and larvae as a food source in the river. Within the known Saugus River fish assemblage, American sand lance, Atlantic silversides, stickleback, Atlantic herring, and Atlantic mackerel are known predators on fish eggs and larvae, as are jellies and other planktonic organisms. The metrics commonly used to quantify and/or monetize the benefits of reducing entrainment mortality make no attempt to quantify benefits of the ichthyoplankton, where impacts are more directly applicable than at the level of harvestable fish species.

GE is correct that age-1 equivalents, forgone fishery yield, and production foregone are among the metrics that EPA has used in assessing the impacts of impingement and entrainment for its national 316(b) rulemaking efforts. EPA found that these metrics were helpful to standardize regional and national estimates of mortality across years, facilities, and geographical regions, as well as to standardize losses of aquatic organisms across different life stages. EPA also found these metrics to be useful in support of both economic benefits analysis on a national scale and estimates of changes in mortality as a result of entrainment reductions on a national scale under alternative regulatory options. EPA did not specify that these metrics *must* be used for BTA analyses under CWA § 316(b), whether in support of national rulemakings or in support of individual permit development on a BPJ basis.

Entrainment at GE during the MRI study generally was dominated by fish eggs and by larvae of forage fish. Because eggs have to overcome immense natural mortality to survive to the larval stage, and then continue to overcome similarly high natural mortality to survive to the next stages, even fewer eggs than larvae will survive to age-1 in an equivalency model. In addition, forage fish contribute less to the most commonly used metrics because they are not directly harvested. GE estimated that entrainment at the Power Plant results in an average annual loss of 242,554 age-1 equivalent fish (89% of which are rock gunnel and grubby) and 3,374 pounds of forage fish (sand lance, rock gunnel, and grubby) based on the two years of study data. Because the species most impacted by entrainment during the study were forage species, GE's estimated benefits (presented as the economic value of the potential increase in commercially and recreationally important species) are extremely low. GE further comments that 97% of the fish saved due to implementation of additional technologies would be small, demersal forage fish that are abundant in the Saugus River, although GE provides no estimate of the forage fish

populations in the Saugus River. EPA does not agree that when conducting a site-specific BTA analysis, it is required to determine the best technology available based entirely on the estimated monetized benefits for commercial and recreational fish with no consideration of non-use benefits (see Response to Comment 11.6).

Finally, it is important to recognize that the area of the Saugus River in which GE is located is subject to impingement and entrainment impacts from multiple CWISs at the GE and Wheelabrator Saugus facilities. Wheelabrator Saugus impinges an estimated 4,300 fish annually (Normandeau 2012), many of which are individuals of the same species as the approximately 29,000 fish impinged at the Test Cell and Power Plant CWISs annually. Similarly, Wheelabrator Saugus entrained about 52.6 million fish eggs and larvae in 2011, which includes a high percentage of winter flounder larvae, rock gunnel larvae, labrid eggs, and windowpane eggs (Normandeau 2012). These same species of eggs and larvae also make up a relatively large proportion of the estimated 49 to 69 million eggs and larvae entrained at GE's CWISs annually. Therefore EPA considered the potentially substantial cumulative adverse impacts from impingement and entrainment at both facilities. The site-specific determination under CWA Section 316(b) for each facility is based on a host of factors unique to each individual CWIS, but in all cases EPA has required technology-based permit conditions that reflect the BTA for that particular facility. At the Wheelabrator Saugus CWIS, the location of the CWIS limited the availability of technologies and EPA determined that a combination of variable frequency drives and a new fish return system was the BTA. At GE's Power Plant, EPA determined that a combination of variable frequency drives and wedgewire screens is the BTA, while a more stringent annual monthly average flow and new fish return trough is the BTA at the Test Cell. The entrainment and impingement losses at GE (and Wheelabrator) are capable of being reduced by using available technology. EPA's BTA determinations reflect reasonable, feasible steps to achieve those reductions.

Comment 11.6: EPA's Assumption that Achieving the Predicted Reductions in Impingement and Entrainment will Produce Appreciable Benefits for the Saugus River is Unfounded.

In addition to the concerns EPA expresses about direct effects of the CWISs in terms of individual losses, the Agency posits that such losses

can substantially degrade the quality of the aquatic habitat by adding to the system a significant anthropogenic source of mortality to resident organisms. In addition to considering these adverse impacts directly, their effects as cumulative stressors in conjunction with other existing stressors on the species should also be considered. Furthermore, losses of particular species could contribute to a decrease in the balance and diversity of the ecosystems overall assemblage of organisms.

Fact Sheet, Attachment J, p.12.

But EPA never attempts to make any quantitative or qualitative linkages between the nature and amount of losses attributable to the Facility CWISs and any specific ecosystem services in the

Saugus River, nor does it attempt any assessment of the extent to which reducing losses will improve or enhance any ecosystem services.

Instead, EPA cites a few sources related to aquatic habitat, food sources for migratory waterfowl, increasing or maintaining biodiversity, and other ecosystem services. But those sources provide no support for the proposition that the impingement and entrainment losses caused by the Facility constitute “a significant anthropogenic source of mortality to resident organism” capable of individually or cumulatively causing substantial degradation to the quality of aquatic habitat. EPA cites Holmlund and Hammer (1999) as support for the principle that fish populations are related to other ecosystem services, such as growth of algae and macrophytes, regulation of food web dynamics, recycling nutrients, and maintaining species and genetic diversity. This may be the case, but in the absence of any quantitative or qualitative assessment of how changes in impingement and entrainment at the Facility may contribute to changes in ecosystem services in the Saugus River, this general statement of principle is essentially meaningless.

EPA also notes that low phenotypic diversity, “which can be a result of loss of a percentage of the fish population (such as mortality associated with a CWIS) can decrease equilibrium catch and effort levels used by regulatory agencies to set quotas for commercial fishing stocks.” It further cautions that “overestimating the maximum sustainable yield based on a conventional growth model in populations with low phenotypic variance may lead to overharvesting and potentially collapse the stock. (Akpalu, 2009)” (Fact Sheet, Appendix J, p. 37). But EPA made no attempt to show that the relatively *de minimis* impingement and entrainment losses associated with the Facility’s CWISs are likely to have any effect on the phenotypic diversity of the Saugus River. Indeed, EPA made no attempt to assess what percentage of the population of any species would be lost, or to assess the implications of that loss to the resulting population, much less to overall phenotypic diversity. As discussed above, even looking at an upper bound estimate of losses and assuming all of those losses would have consequences for commercially and recreationally important species, the total pounds fish affect (320.9) is vanishingly small compared to the overall 2009 Massachusetts catch of approximately 356 million pounds. The suggestion that the very small loss associated with the Facility’s CWIS is likely to adversely affect the overall ecosystem is implausible at best.

In addition, EPA cites Worm, et al. (2006) as support for the general principle that biodiversity is related to the resilience of marine ecosystems, thus protecting against the collapse of important fish species over time. But Worm et al. (2006) address the impacts of large changes in fish populations and diversity at a landscape scale. Thus, this paper does not support the conclusion for which EPA offers it, *i.e.*, that relatively small losses comprised primarily abundant forage species would affect either biodiversity or the resilience of the marine ecosystem.

Response to Comment 11.6

GE comments that while EPA points to a variety of adverse environmental effects that can result from habitat degradation associated with entrainment and impingement by CWISs, and cites to references supporting the notion that reduced biodiversity could contribute to undermining various ecosystem services, EPA does not demonstrate the GE’s entrainment and impingement is causing or will cause these problems. GE further argues that its entrainment and impingement

is causing only small losses which are unlikely to lead to the sort of larger scale or indirect adverse results pointed to by EPA.

EPA agrees with GE that the Agency's analysis in support of the BTA determination for the Draft Permit did not scientifically demonstrate that GE's entrainment and impingement have directly caused a loss of biodiversity or have undermined particular ecosystem services. That was not, however, the point of EPA's discussion in this regard. The first passage from EPA's analysis that GE quotes above is from a general discussion about the types of adverse effects that entrainment and impingement could individually cause or contribute to as a cumulative effect. Fact Sheet, App. J at p. 12. EPA sees no problem with its discussion taken in proper context.

Later in its analysis, EPA again discusses generally the type of ecological benefits that maybe provided as a result of maintaining an ecosystem's resident and migratory fish. See Fact Sheet, pp. 35-38. GE does not question the validity of the scientific sources cited by EPA, but argues that the Agency did not demonstrate that entrainment and impingement losses at GE are sufficient to cause the types of problems discussed in the referenced scientific papers. As a result, GE comments that EPA's discussion is, in effect, irrelevant (or "essentially meaningless") to the permit.

In EPA's view, GE's comment goes too far. EPA explained and documented the special public importance of the Saugus River ecosystem, the habitat it provides, and the aquatic organisms that inhabit it. Moreover, EPA explained and documented that, based on the limited available data, GE is taking millions of eggs and larvae and thousands of juvenile and adult fish from the Saugus River ACEC. Furthermore, EPA explained and documented its concern over the potential cumulative adverse effects of these losses on the affected ecosystem, when viewed together with other stressors such as GE's discharges of waste heat and other pollutants, Wheelabrator's cooling system operations (discharges and withdrawals), overfishing, habitat degradation, and other impacts. EPA then discussed the range of these adverse impacts, both ones that are clear (numbers of eggs and larvae entrained and fish impinged) and others that are not clear but are possible (localized population level effects), and considered these in the context of a qualitative assessment of the benefits and potential benefits of reducing entrainment and impingement. EPA stated as follows:

In summary, achieving substantial reductions in impingement and entrainment by GE Aviation's CWISs will increase the number of commercial, recreational, and forage fish (eggs, larvae, juveniles and adults) as well as invertebrate species in the Saugus River. These improvements are also likely to contribute to increased populations of adult fish. In turn, reducing adverse impacts from impingement and entrainment could provide a number of direct, indirect, and non-use benefits both within the Saugus River and at a regional scale. Benefits may include, for example, preservation of habitat for migratory birds and other terrestrial animals dependent on the salt marsh, enhanced recreational opportunities, including birdwatching, fishing, and kayaking, and preservation of Rumney Marsh, an outstanding resource water and ACEC with intrinsic biological value particularly worthy of protection, as indicated by the state's ACEC designation. While EPA has not developed a monetized estimate of these benefits, the value to the public

of the Saugus River ecosystem and its natural resources is evident from the federal, state and public commitment of limited financial resources and effort to protect these natural resources and the multiple special designations given these resources to promote their protection. Moreover, substantially reducing entrainment and impingement will contribute to “attainment of the objectives of the Act and § 316(b),” including (a) minimizing adverse environmental impacts from cooling water intake structures, (b) restoring and maintaining the physical and biological integrity of the Nation’s waters, (c) achieving, wherever attainable, water quality providing for the protection and propagation of fish, shellfish and wildlife, and (d) providing for recreation, in and on the water.

Fact Sheet, Att. J, p. 38. Taking all of this into account and considering it in relation to the costs of various technologies, EPA concluded that the costs of closed-cycle cooling were not warranted in this case, but that the costs of the VFD option coupled with wedgewire screens were warranted. *Id.*, pp. 38-40.

Comment 11.7: EPA’s Erred in Concluding that Retrofitting the Power Plant with Closed-Cycle Cooling is Technologically and Economically Available Cooling Water Intake Structure Technology for the Facility.

GE identified significant uncertainties, including uncertainties regarding the soil conditions, potential sources of interference, and other safety and environmental issues that require further evaluation before any determination that closed cycle cooling (“CCC”) is feasible for the Facility could be justified. Developing that information would require detailed studies that fall outside the scope of the Section 308 letter pursuant to which GE submitted the preliminary evaluation on which EPA relied. Instead of developing or requesting that GE develop the needed information, EPA assumed, without adequate support, that retrofitting CCC is technically feasible and economically reasonable. EPA’s assumption is incorrect, for the following reasons.

Soil.

As identified in GE’s cooling tower analysis (CH2M HILL, 2008), the conceptual site for new mechanical draft cooling towers in a recirculating cooling water system for the Power Plant would be located in a parking lot next to the river. This site formerly contained underground concrete bunker tanks, which GE properly decommissioned. The tanks were cleaned and filled with clean soil that was compacted. Holes were drilled in the concrete floors of the abandoned-in-place underground storage tanks (USTs) to allow equalization of groundwater pressure within the USTs. In accordance with the Massachusetts Contingency Plan at 310 Code of Massachusetts Regulations 40.1000, a release abatement measure (RAM) plan would need to be developed and implemented for any excavation activities associated with construction. Disposal or recycling of soils and groundwater management under the RAM would require further studies and measures that would at a minimum add substantially to the cost of the retrofit. EPA’s estimate of the cost of retrofitting closed-cycle cooling (which is already over \$36 million) did not consider these additional costs.

Sources of Interference.

EPA acknowledges the substantial site-specific technological and construction challenges and uncertainties, as well as the high costs of installing mechanical draft cooling towers at a 112-year old facility. Some of those challenges were identified by GE in the cooling tower analysis (CH2M HILL, 2008). These include interferences with critical existing facility infrastructure and disruptions to Power Plant operations, which increase risks to safety and the continuity of Power Plant and manufacturing/testing operations during construction. EPA recognized that data sufficient to resolve uncertainties and fully determine site-specific costs were lacking. But instead of collecting or providing GE an opportunity to collect the necessary information, EPA simply concluded, based on the absence of information, that the technology would be economically and technically achievable.

EPA may not so lightly avoid its responsibility to fully consider the potential costs and risks of constructing cooling towers where, as is the case here, those risks are obvious and significant. Clear and immediate sources of substantial risk include interference from overhead steam transmission lines, power transmission lines, and jet fuel distribution lines located adjacent to the cooling tower site. These lines are supported by stanchions to a height approximately 25 to 30 feet above the ground, and construction equipment would need to pass under these lines, while cranes and other heavy machinery would be operating adjacent to the lines, and increasing the risk of blackouts that could temporarily shut down manufacturing and testing processes. In addition, construction activities would need to be limited to summer months when steam is not needed to heat the Facility. It would be necessary to reduce steam from 650 psig to 200 psig and 3 psig to support processes throughout the Facility; however, in doing so there are some inherent risks. If GE lost the ability to de-superheat the steam, the expansion rate could be greater than the infrastructure (i.e. pipe support hangers) could handle potentially resulting in significant damage to downstream piping and related infrastructure as well as causing a risk to manufacturing operations and potentially life safety. Finally, engine and component test operations that utilize 650 psig steam could not be conducted. Even if these risks could be minimized, the cost of doing so would likely be substantial. That cost was not considered.

Environmental Issues.

EPA acknowledges that non-water quality related environmental impacts identified by GE, including vapor plumes, salt drift, and noise, would require careful evaluation and would likely necessitate abatement technologies to minimize impacts. But EPA has not collected, or asked GE to collect, information necessary to determine the significance of those impacts, the likelihood that they could be abated to acceptable levels, and the cost of such abatement.

In responding to EPA's information request pursuant to CWA § 308(a), GE provided a cooling tower analysis addressing the specific requirements for Technology and Biological Assessment Information, Items 5(a) and 6(a)-(h). EPA requested a detailed description of the non-water quality impacts (including energy, air pollution, noise, public safety), which GE provided. As an example, the cooling efficiency of CCC is limited by air temperature, and CCC is less effective than a once-through river water cooling system. Installation of the CCC will cause the Power Plant to be less energy efficient and increase greenhouse gas emissions. But EPA did not ask GE

to determine which non-water quality impacts would require abatement, identify appropriate technologies for abating those impacts, determine that the available technologies would achieve sufficient abatement to qualify for necessary permits and approvals, or calculate the costs of abatement. And EPA itself has presented no new site-specific information regarding the technical efficacy of abatement measures for mitigating non-water quality environmental impacts in this highly urban setting with three major transportation corridors and sensitive viewsheds (including Rumney Marshes ACEC) in close proximity, and Boston Logan International Airport located only 6 air miles south of the facility.

EPA chose not to pursue development of the requisite information, nor did it ask GE to do further studies of the issues identified in the § 308 response. Instead, EPA assumed adverse impacts could be abated to acceptable levels, and that the added cost of abatement would be reasonable and affordable. It did not base this conclusion on any information in the record. Instead, it relied on the absence of record evidence, noting that while GE commented on the huge cost of cooling towers, the company did not conclude that this technology would be unaffordable.⁸² Fact Sheet, Attachment J, p. 23. But it is no surprise that GE did not assess the affordability of towers, given that EPA's October 25, 2007 § 308 letter did not ask GE to provide one. Instead, EPA's § 308(a) letter specifically requested "an estimate for the cost for installing and operating each of these technologies" (item 6g), which GE provided. EPA neither requested nor provided GE an opportunity to assess the affordability of closed cycle cooling to the company.

That said, GE does not believe that further assessment of retrofitting closed-cycle cooling at the Facility is warranted, given that the analysis already provided demonstrates that this technology would be economically unreasonable, potentially detrimental to ongoing facility operations during construction, and would not achieve significant ecological benefits in a cost-effective manner. Should GE be required and provided the opportunity to assess the affordability of closed cycle cooling, such an assessment may indicate that certain manufacturing or testing operations would no longer be economically viable at the Facility. Until such an assessment is made, the true magnitude of the costs of cooling towers and the related impact on affordability are unknown.

Other Problems.

As GE's cooling tower analysis showed, vapor plumes originating from the cooling towers and drifting upriver toward the Test Cell could adversely affect jet engine testing, which is sensitive to ambient humidity levels. Excessive humidity, under certain atmospheric conditions, occasionally forces the cancellation of tests. Jet engines are tested using ambient air and must be tested according to Federal Aviation Administration and military specifications, including specific humidity. An increase in frequency of scrubbed tests would result in lost time and costs to the facility's testing business. EPA has not adequately considered this site-specific risk to the

⁸² Subsequent evaluations by GE of alternatives to replace its aging Power Plant indicate that GE would not retrofit CCC to its existing Power Plant as even the \$37.5 million of costs of retrofitting CCC presented by EPA (which GE considers to be an underestimate), would be more than half the cost of replacing the entire Power Plant.

reliability of facility testing operations, especially considering that the Draft Permit would require the Test Cell to curtail its seasonal operations to minimize fish entrainment.

Response to Comment 11.7

In its comment, GE identifies several uncertainties that, according to the facility, must be evaluated further before any determination that closed-cycle cooling is feasible at GE could be justified. GE comments that soil disposal and groundwater management under a release abatement measure would require further study and would add to the estimated cost of the retrofit. GE also comments that EPA did not provide it with an opportunity to adequately assess potential sources of interference, which may impact manufacturing and testing processes and would likely add to the cost of the retrofit. Similarly, GE comments that EPA did not provide it with an opportunity to adequately assess the significance of non-water quality impacts or the cost of abatement of any mitigation technologies. Finally, GE comments that EPA did not consider the impacts of vapor plumes from any cooling towers on the reliability of testing operations.

At the outset, EPA does not agree that GE was not provided an opportunity to offer its views on any of the issues that it mentions related either to the feasibility or difficulty of converting to closed-cycle cooling or to the costs, non-water quality environmental effects or business ramifications of such a conversion. First, when it was clear to GE that EPA was considering the option of closed-cycle cooling, GE was clearly free to provide any information or opinion to EPA that it chose to provide. Second, GE obviously has been given further opportunity to address these matters in its comments on the Draft Permit. Finally, GE's comment is simply incorrect given that on October 25, 2007, EPA sent GE an information request letter under CWA § 308(a) which expressly requested that GE provide EPA with the company's assessment of, among other things, the estimated cost of converting to closed-cycle cooling, whether converting the Facility to closed-cycle cooling would be technically and economically feasible, the facility modifications that would be required to accommodate such a conversion, and the non-water quality environmental effects that would accompany such a conversion. GE provided its response to the information request in a document entitled, Cooling Tower Analysis Technology and Biological Assessment Information (February 2008).

GE's comment also incorrectly states that EPA merely assumed that closed-cycle cooling would be feasible at the Facility. EPA, in fact, analyzed the issues independently and, as part of this work, considered material submitted by GE. In the Executive Summary of the Cooling Tower Analysis Technology and Biological Assessment Information (February 2008), GE concluded that closed-cycle cooling, "while technically feasible from an engineering perspective, would be economically impractical and would impose an onerous burden on GE operations" (p. 2-8). After reviewing the site-specific information and analysis provided by GE, EPA concurred with GE's assessment that converting to closed-cycle cooling using mechanical draft cooling towers would be feasible at GE, but that the additional costs of closed-cycle cooling would not be "reasonable in light of the margin of increased benefits that would be involved." (Fact Sheet Attachment J, p.39). Thus, for the Draft Permit, EPA determined that closed-cycle cooling is not the BTA at GE and EPA maintains that conclusion after its additional analysis based on consideration of comments received on the Draft Permit. EPA did not find closed-cycle cooling to be the BTA at this facility principally because the cost of the technology is not warranted by

the benefits that can be expected, based on existing information, to result from its implementation. Given that GE's comment relates primarily to factors that would increase the estimated cost or difficulty of a closed-cycle cooling retrofit (e.g., managing soils issues, potential impact abatement measures), if these comments were found valid, they would only bolster EPA's conclusion that the costs of converting to closed-cycle cooling are not warranted by the benefits for this facility.

While EPA concluded that converting to closed-cycle cooling was not the BTA for GE, EPA did specify in the Draft Permit that converting to closed-cycle cooling would meet the requirements of Section 316(b) of the Clean Water Act and, therefore, would be an acceptable technology should the facility pursue it. This provision has been modified in the Final Permit consistent with EPA's conclusions both in Attachment J to the Fact Sheet and in response to this comment. Part I.C.3 of the Final Permit authorizes, but does not require, GE to employ a year-round maximum daily intake rate commensurate with closed-cycle cooling to minimize impingement mortality and entrainment at the Power Plant CWIS. In other words, closed-cycle cooling would meet the Power Plant CWIS requirements but is a not required technology even in the event that the BTA (a combination of fine-mesh wedgewire screens and variable frequency drives) cannot be implemented as directed for some reason (e.g., the U.S. Army Corps of Engineers fails to approve installation of wedgewire screens in the Saugus River).

In response to the myriad issues related to implementing mechanical draft cooling towers at GE, including soil conditions, site interferences, and non-water quality impacts, EPA agrees that a more detailed, site-specific design analysis would likely be required if the facility were to pursue implementation of closed-cycle cooling to meet the technology-based requirements of CWA Section 316(b). There is nothing unusual about this, as EPA does not typically require a permittee to submit a full detailed design of new pollution control equipment at this stage of the permit process. GE has not, however, made a convincing argument to contradict its 2008 assessment or demonstrate that cooling towers are infeasible. GE previously argued that the cost of converting to closed-cycle cooling would be onerous and "economically impractical,"⁸³ and GE's present comments supplement its views in this regard.

While EPA acknowledges that GE has commented that various issues, such as soils composition and non-water quality environmental effects, could lead to ever greater expense for such a conversion, GE also commented that, for various reasons, "GE does not believe that further assessment of retrofitting closed-cycle cooling at the Facility is warranted." EPA essentially agrees with this comment based on current information. Because EPA has not required implementation of closed-cycle cooling as BTA in either the Draft or Final Permits, EPA agrees that further site-specific analysis of the potential complications for construction and installation of cooling towers is not warranted at this time.

⁸³ In using the phrase "impractical," EPA understands GE to be commenting that the required expenditures would not make sense. In other words, the costs would be unwarranted in light of the benefits to be achieved and the other negative ramifications of converting the cooling system to closed-cycle cooling. See *The American Heritage Dictionary (2d College Ed.)* (1982) (definitions of "impractical" and "impracticable" and Usage note distinguishing the two terms).

Comment 11.8: EPA's Proposal to Require the Power Plant CWIS to Retrofit fine Mesh Wedgewire Screens Ignored Technical Impediments and Significant Costs.

Technical Feasibility.

EPA lacks sufficient evidence to support its proposed determination that BTA for reducing entrainment by the Power Plant CWIS is a fine-mesh wedgewire screen with a slot or mesh size no greater than 0.5 mm and a pressurized system to clear debris from the screens. Fact Sheet, Attachment J, pp. 39-40. As the sole basis for this determination, EPA relied on a field study of 0.5-mm wedgewire screens in Narragansett Bay, Rhode Island, which the Agency concluded was representative of the performance of fine-mesh wedgewire screens in a similar tidal river setting (EPRI, 2005). But the Narragansett Bay field evaluation was conducted using a barge-mounted test facility consisting of much smaller wedgewire screen assemblies deployed near the surface of a much deeper waterbody than the Saugus River. The depth of Narragansett Bay at the EPRI test site was 15.7 m (52 ft) compared to only 19 feet at the Facility. Also, the test barge was deployed at a distance about 100 m from the shoreline in a large bay, compared to the shoreline intake location at the bottom of the river at the GE Power Plant CWIS. Therefore, the Narragansett test facility encountered none of the water body conditions, including widely fluctuating depth, debris loading, sedimentation, biofouling, and other conditions leading to maintenance issues and potential performance limitations of fine-mesh screens in a bottom intake location, close to the shoreline, in a highly fluctuating tidal river similar to the Saugus River. The study did not evaluate or address the site-specific preparation and maintenance issues that would challenge the technical feasibility and performance of a fine-mesh wedgewire screen system at this Facility.

Cost.

EPA also did not adequately evaluate the extent to which site-specific factors identified by GE would substantially increase the costs associated with their installation and maintenance of fine-mesh wedgewire screens. As GE's evaluation of this technology showed (CH2M HILL, 2008), the installation of wedgewire screens in the Saugus River could require extensive site preparation and dredging of the riverbed in the vicinity of the existing CWIS to assure adequate clearance in the water column above the screens. As EPA itself has recognized in technical development documents for § 316(b) rulemaking purposes, localized conditions of siltation and biofouling of wedgewire screens can be key limitations to their performance due to clogging and the creation of hot spots of increased through-screen velocity, and increase their maintenance costs (EPA, 2004). Maintenance of fine-mesh wedgewire screens in the Saugus River would likely be labor-intensive and problematic as a result of biofouling and clogging of the screens, sedimentation, and debris. Actual field testing of fine mesh wedgewire screens in brackish water of a proposed intake canal required the screens to be removed and cleaned as often as once every 3 weeks (EPA, 2011). Additional pump energy also would be required due to the increased head losses associated with the screening system. While acknowledging potential problems of biofouling and related effects on technology efficacy, and the possible need for manual cleaning (e.g., by scuba divers or a rail system and crane), EPA did not adequately evaluate the additional costs associated with the likelihood of substantial dredging and other feasibility constraints in its draft BTA determination.

Performance.

EPA lacks sufficient data on the performance of fine-mesh wedgewire screens for reducing entrainment in a tidal river setting comparable to the Saugus River to justify its selection as BTA at the Power Plant CWIS. Most available performance data for wedgewire screens are based on coarse-mesh slot sizes as well as on data collected during barge and laboratory studies. As evaluated by GE in the Cooling Water Intake Structure Information Document (CH2M HILL, 2008), a 0.5-mm slot size is considered to be experimental, especially for a tidal river. As assessed by EPA (2011), limited biological data are available on the performance of fine mesh wedgewire screens in use at actual facilities, and these facilities tend to have lower intake flows than the GE Power Plant.

Equally important, the efficacy of fine-mesh wedgewire screen technology for reducing entrainment mortality (that is, losses (rather than exclusion) of entrainable-sized organisms) is highly uncertain. As mesh size decreases, there is a risk that eggs and larvae that would have been entrained instead become impinged by the fine-mesh screen. As EPA recognized in the preamble to its recently proposed § 316(b) rule for existing facilities, using screens with finer mesh can convert entrainment mortality to impingement mortality without necessarily protecting any more aquatic organisms because many larvae may die as a result of the impact and impingement on fine mesh screens. 76 Fed. Reg. 22,186-22,188. As it further noted, the Agency “does not have data on the performance of fine mesh wedgewire screens on entrainment survival; therefore, EPA has only considered wedgewire screens for impingement mortality.” 76 Fed. Reg. 22,201.

Non-Water Quality Impacts.

Installation of fine-mesh wedgewire screens at the Power Plant CWIS also would introduce non-water quality impacts on the navigational channel of the Saugus River. EPA did not acknowledge or fully evaluate those impacts in making its BTA determination. This omission stands in marked contrast to the Agency’s approach with respect to the BTA determination for the Wheelabrator Saugus facility. There, EPA concluded that that wedgewire screens in the Saugus River likely would interfere with the use of the navigation channel, citing policies of the Army Corps of Engineers (U.S. ACOE, July 1996, AR#64) and the state (310 C.M.R. 9.35(2)(a)) (Wheelabrator Saugus Fact Sheet, pp. 45-46 (EPA, 2010)). In this case, however, EPA cites these same policies as being restrictive but refers to e-mail communication with the Army Corps of Engineers as evidence that those restrictions would not prevent permitting of the screens. Specifically, EPA notes that the ACOE email indicates that the Corps “would not be opposed to permitting structures in the river that do not impact the channel or increase shoaling.” Even a cursory review of the emails reveals that the emails on which EPA relies amount to nothing more than an acknowledgement that *if* impacts to the navigation channel can be avoided, the ACOE would be willing to consider permitting the screens. Indeed, the ACOE cautions that he would be concerned not just about direct effects on the navigation channel and possible shoaling, but with the “1 on 3 side slope area” as well. In short, the ACOE email provides no evidence that navigation effects can be avoided, nor does it suggest that a permit would be granted.

GE's analysis indicates that construction of wedgewire screens would require extensive site preparation and could require substantial dredging activity. EPA did not analyze the shoaling potential of wedgewire screens or fully consider other potential regulatory constraints to site preparation, including dredging, as part of its BTA determination. In addition, although the screens would not be visible from the surface, their footprint and presence along the deeper, more navigable northern side of the river could pose navigational hazards under low tide conditions to boating, commercial fishing, and other public uses of the river.

Dredging is prohibited under the Rumney Marshes ACEC designation unless specifically exempted from the designation (Rumney Marshes ACEC Designation, August 22, 1988). The Saugus River dredging project was specifically excluded from the designation based on its potential benefits to commercial fishing access. Installation of wedgewire screens in the river next to the Power Plant CWIS would potentially impact navigation, including commercial fishing access, through dredging for site preparation, regular manual cleaning operations to address biofouling or sedimentation of the screens, and displacement of benthic and pelagic fisheries habitat. Waivers to ACEC designations are not granted lightly and represent an added regulatory requirement to installing and maintaining wedgewire screens, one which would likely involve federal consistency review by the Massachusetts Office of Coastal Zone Management. EPA did not fully consider these issues and regulatory requirements or the associated permitting costs in its draft BTA determination.

In addition, site preparation and installation of fine-mesh wedgewire screens would displace benthic and pelagic aquatic habitat, thereby limiting potential benefits to the Saugus River ecosystem. EPA did not consider these impacts in its BTA determination.

Response to Comment 11.8

During development of the Draft Permit, EPA determined that the BTA for the GE Aviation Power Plant was a combination of reduced intake flows through the use of pumps with variable frequency drives and operation of fine mesh cylindrical wedgewire screens. EPA came to this determination after reviewing, among other things, GE's evaluation of wedgewire screen technology and other available information on the potential efficacy of placing such screens in the Saugus River to reduce adverse environmental impacts from GE's CWIS.

GE concluded that the feasibility of fine mesh wedgewire screens "would be limited by the screen configuration, mesh size openings, water body conditions, and potential for adverse impacts to the Saugus River" (Technology Evaluation p. 5-13). EPA evaluated the proposed size of the screens compared to the depth and area in front of the Power Plant CWIS, the potential sweeping flow, the size of the mesh compared to commonly entrained life stages at GE, and the potential impacts to habitat and navigation. EPA concluded that "the site-specific conditions at GE Aviation (sufficient sweeping flow, low intake volume, limited size of the installation, and adequate river depth and width at the proposed site) make wedgewire screens particularly well-suited for this facility" (p. 27 of Attachment J to the Fact Sheet). EPA has revisited its determination in response to GE's comment.

Technical Feasibility

GE comments that EPA used a field study in Narragansett Bay “as the sole basis for this determination.” EPA disagrees that the sole basis for determining that wedgewire screens are the BTA at GE is a single field study. EPA did rely on the Narragansett Bay field study to support the evaluation of adequate sweeping flow in the Saugus River and to estimate the potential reduction in entrainment mortality of eggs at the GE facility. In addition to the field study referenced in GE’s comment, EPA considered many site-specific factors including the size of the screens, the depth and area in front of the Power Plant CWIS, and site-specific entrainment data. Furthermore, EPA also considered the analysis provided by GE in response to EPA’s request for information (Cooling Water Intake Structure Information Document, February 2008) and other reports on wedgewire screen technology, including EPA’s analysis of wedgewire screen in preparation of the Final 316(b) Rule, analyses developed for the installation of wedgewire screens at other facilities (e.g., Indian Point Power Station), and other empirical studies. All of these factors contributed to EPA’s BTA determination.

EPA acknowledges that there are differences in the design and implementation of wedgewire screens between the field study and what would be installed at GE. EPA does not, however, believe that the fact that the screens in the field study were deployed near the surface in a deeper waterbody would cause the screens to be unavailable at GE. The field study was conducted in a tidal river that also experienced fluctuating water depth and with a biological community similar to that found in the Saugus River. In addition, other deployments of wedgewire screens have been bottom oriented or located closer to shore (e.g., IBM facility in Poughkeepsie, Charles Point Resource Recovery Facility, Bethlehem Energy Center, Brooklyn Navy Yard, *see* EPRI 2008 and HDR 2010). The manufacturers of wedgewire screens maintain that a minimum water depth equal to twice the diameter of the screens is required (Cook Legacy). According to GE’s evaluation of this technology and based on available water depth at the Power Plant CWIS, “the tee-screen diameter may be as large as 7.6 feet and still meet the design water depth requirements at mean low water.” GE has proposed screens with diameters ranging from 5 to 6 feet depending on mesh size, well within this maximum screen diameter. Therefore, GE has not presented a persuasive argument that differences between the conditions at the location of the field study and the conditions in the Saugus River would render wedgewire screens technically infeasible at GE.

Cost

GE comments that EPA did not consider the additional costs of site preparation and dredging in the initial cost estimate. EPA disagrees with this comment because EPA did consider such costs and GE has not established any error or inadequacy in EPA’s work in this regard. According to the permittee, “GE’s evaluation of this technology showed the installation of wedgewire screens in the Saugus River could require extensive site preparation and dredging of the riverbed in the vicinity of the existing CWIS to assure adequate clearance in the water column above the screens.” Yet, neither GE’s initial technology evaluation nor its comments on the Draft Permit provide any information to support the need for extensive site preparations and dredging. As stated above, GE’s evaluation concluded that screens with a diameter of 7.6 feet or less would meet the design water depth requirements at mean low water. GE’s proposed screen diameters

of 5 to 6 feet would meet this criterion. Therefore, it does not appear that extensive site preparation, including dredging, would be needed to ensure adequate screen clearance. GE's initial cost estimate for wedgewire screens was provided by GE in Appendix E of the Cooling Water Intake Structure Information Response, and it included \$200,000 for site preparation and dredging. EPA utilized these costs in its evaluation of the technology. GE has not demonstrated that dredging (or related cost) beyond what the company evaluated in 2008, and what EPA considered in its BTA determination, would be required.

Both GE and EPA, in evaluating wedgewire screens, acknowledge that fouling of the screens could interfere with screen performance and that the screening system would likely need to be equipped with technology, including an airburst system, to address the potential problem. GE included an estimate of \$46,000 per screen for the cost of an airburst system in the capital cost estimate for wedgewire screens. Screens coated with antifouling agents, such as screens made of copper-nickel alloy, have been used to reduce biofouling as compared to traditional stainless steel screens. Screens with an antifouling coating, however, are more expensive than the traditional screens evaluated by GE. Using the former would increase the capital cost for this technology as compared to GE's 2008 estimate based on traditional screens. To assess the potential extent of such a cost increase, EPA reviewed the cost estimates for 72-inch diameter screens with antifouling coating for the Indian Point Power Generating Facility on the Hudson River (Enercon 2010). EPA used this information to approximate the increase in costs for similar screens at GE, with the understanding that this estimate represents a general approximation and does not account for any site specific factors that could affect the cost of screens for GE. Based on this evaluation, EPA found that screens with an antifouling coating could increase capital costs by about 23%, but also may reduce expenditures and effort for maintenance (e.g., manual cleaning by divers) as compared to traditional screens. Even with the more expensive screens, the total capital cost of wedgewire screens at GE would be relatively low (less than \$3,000,000) as compared to the cost of closed-cycle cooling and would likely reduce entrainment mortality substantially more than the approximate 20% reduction achieved by using variable frequency drives alone.

Wedgewire screens have been used in other marine settings, including in Boston Harbor (see Gillette Final NPDES Permit No. MA0003832), and major maintenance issues that would result in their being technically infeasible have not been reported. In addition, wedgewire screens have been installed at several facilities with intake flows higher than GE's, including the Brooklyn Navy Yard Co-Generation Plant on the East River in New York (55 to 72 MGD), the Charles Point Resource Recovery Plant in Peekskill, New York (55 MGD), and the Oak Creek Power Facility in Lake Michigan (2.2 BGD). GE is correct that, to EPA's knowledge, there is no full-scale installation of 0.5 mm slot wedgewire screens in the United States, but EPA has explained that certain information indicates that such an installation would be available. *See* Fact Sheet, App. J, pp. 25-29.

Performance

EPA acknowledges that while there have been numerous studies on the efficacy of fine-mesh wedgewire screens to reduce entrainment of early life stages, few studies have reported survival of eggs and larvae that come into contact with the screens. In the preamble to the new proposed

CWA § 316(b) regulations, EPA notes that some technologies designed to exclude organisms from being entrained by a CWIS may result in very high entrainment reductions, but that the excluded organisms do not necessarily survive interactions with the exclusion technology (typically some type of screen) (76 Federal Register 22198, April 20, 2011). EPA considered this uncertainty about survival in its BTA determination for the GE NPDES permit, concluding that “results of the limited available survival data suggest that while larvae are unlikely to survive impingement on fine mesh screens, this technology may effectively reduce entrainment mortality for eggs and crustacean larvae” (p. 28 Attachment J to the Fact Sheet). In its analysis of potential reductions in entrainment mortality from wedgewire screens with a 0.5 mm slot size, EPA conservatively assumed that 95% of the eggs that would have been entrained would be excluded and would survive, while 0% of the larvae would. In other words, EPA assumed that all larvae that would have been entrained would suffer impingement mortality and any reduction in mortality for larvae identified by EPA was solely attributed to the use of variable frequency drives to reduce intake flow. Thus, EPA did consider the efficacy of fine-mesh screens for reducing mortality from either larval entrainment or impingement, but, as GE states in the Cooling Water Intake Structure Information Document, eggs comprised the majority of entrainment total at the power plant and, therefore, “reduction in egg entrainment is the most important metric in reducing overall entrainment” (p. 5-13).

There is some evidence suggesting that extremely low intake velocities can allow some egg and larval life stages to avoid the intake due to the hydrodynamic influences of the cross current (EPRI 2003). In one study of 0.5 mm to 2.0 mm wedgewire screens, striped bass yolk sac larvae were observed to orient into the sweeping current and actively swam against the through-slot current (Heuer and Tomljanovich 1978). In another study of 0.6 mm wedgewire screens, moderately sized larvae (about 8.5 mm) showed positive rheotaxis (swimming into current) and actively resisted impingement, while larger larvae (12 mm) propelled themselves along the screens and down the edge. For both size classes, most of the larvae tested became free of the screens within 3 minutes of being released (Karchesky and McDonald 2007).

In sum, there is some uncertainty about the efficacy of wedgewire screens for reducing entrainment mortality of early life stages. In this case, however, given the site specific conditions of the Saugus River, the limited number of screens needed, and the projected low slot velocity, EPA believes that fine-mesh wedgewire screens are an available technology that, in combination with the use of variable frequency drives, will likely reduce entrainment mortality as compared to the existing traveling screen.

Non-water Quality Impacts

GE comments that EPA did not consider the potential non-water quality impacts from the screens, including loss of benthic and pelagic habitat and impacts on the navigational channel. Impacts to benthic and pelagic habitat during preparation and installation time periods would likely be limited in duration. Further, the existing habitat at the intake would likely not be considered high quality because of the high risk of impingement and entrainment. Reducing this risk would outweigh the limited loss of habitat that might be associated with the installation and use of the BTA technologies.

EPA agrees with GE that wedgewire screens could have the potential to impact navigation in the Saugus River. Although GE estimates that few screens would be required and that they would likely be located towards the bottom and submerged at all tidal stages, the screens could conceivably impact travel in front of the Power Plant CWIS. As a result, EPA considered this issue carefully. GE attempts to contrast the Agency's approach for the BTA determination at the Wheelabrator Saugus facility, in which EPA determined that the screens would impact navigation, to the GE BTA determination in which EPA determined that navigation would not be affected to an unacceptable degree. Yet, although the two facilities are located on the same segment of the Saugus River, there are important differences between the two. GE's CWIS is located on the deeper, northern shore of the river where there is likely adequate area between the navigational channel and the shore to locate the limited number of screens to meet GE's flow requirements. The CWIS at the Wheelabrator Saugus facility is located on the southern shoreline, which is characterized by an expansive mudflat that extends from the shore nearly to the navigational channel. A narrow, dredged channel supplies water to the Wheelabrator Saugus CWIS at low tide. This intake channel is not large enough to support the number of screens required for Wheelabrator Saugus's flow. Therefore, the only location with adequate area to support a cylindrical wedgewire screen installation in the vicinity of the Wheelabrator Saugus CWIS is in the navigational channel. For this reason, EPA concluded that the screens would interfere with navigation if installed for Wheelabrator Saugus.

The screens may require a surface-oriented marker of some kind to notify boaters of the potential hazard. EPA acknowledges that any final design for wedgewire screens would be subject to approval by the Army Corps of Engineers (USACE). As GE correctly notes, installation of the screens would also be subject to restrictions on dredging in the Rumney Marsh ACEC and federal consistency review by the Massachusetts Office of Coastal Zone Management if the facility determines that dredging would be required. However, the impacts to the Saugus River would likely be limited to the construction period and the result of the screens would likely benefit the ecosystem by reducing the adverse impacts from the cooling water intake structure.

Summary

EPA applies technology-based requirements to minimize adverse environmental impact associated with cooling water intake structures under Section 316(b) of the Clean Water Act. Wedgewire screens have been employed since the 1970s to reduce impacts at CWISs and this technology continues to improve (e.g., use of new materials to reduce complications related to fouling). After reviewing GE's initial analysis of the availability of wedgewire screens, EPA's BTA determination for the Draft Permit, and GE's comments on the technical feasibility, cost, performance, and non-water quality impacts of wedgewire screens, EPA acknowledges that site-specific factors could affect the design of the technology and costs may be increased if antifouling coatings are required. However, GE has not demonstrated any factor that would cause this technology to be unavailable at GE.

In the evaluation of wedgewire screens, GE comments that "the feasibility would be limited by the screen configuration, mesh size openings, water body conditions, and the potential for adverse impacts to the Saugus River." Based on the available data provided by GE, EPA did not find any of these factors to be a barrier to the availability of wedgewire screens for the Saugus

River. However, EPA appreciates that the design and installation of this technology is subject to a host of site-specific factors, some of which may only become apparent during a more detailed design phase.

The Final Permit specifies parameters for the design of wedgewire screens to reduce entrainment, including a slot size of 0.5 mm. EPA acknowledges that site-specific factors may cause more or less fouling and debris loading, even with the use of the airburst system or antifouling coatings, and that these factors may not be fully understood until the design and installation of the technology. A slot size of 0.5 mm has not been widely used, but EPA has determined that, in conjunction with the VFDs, it is the BTA for reducing entrainment at GE. However, EPA also acknowledges there may be some benefit to balancing the biological and operational effectiveness of the screens. In other words, a slightly larger slot size may be as effective as or more effective than a 0.5 mm slot size if a larger slot size will better maintain the hydrodynamic characteristics of the screens and minimize fouling that would interfere with the screen's effectiveness, including maintaining the intake and approach velocities necessary to reduce entrainment and impingement mortality.⁸⁴ For this reason, the Final Permit allows the permittee some flexibility in the final slot size if the permittee can demonstrate through a comparative study of slot sizes, including biological monitoring, bench-scale testing, or other means, that an alternative slot size would provide a reasonably equivalent degree of biological protection, considering slot size, species behavior, and the ratio of slot velocity to current velocity, to that estimated to be provided by a 0.5 mm screen. In addition, design of the full scale screen installation will likely require identification of the optimal airburst frequency, antifouling coating material, and height off the river bottom to reduce the potential for siltation, among other site-specific factors.

The Final Permit maintains specific BTA requirements, but allows the permittee flexibility in the design and installation of the screens. The BTA requirements will be implemented over time according to a compliance schedule. See Part I.C.5 of the Final Permit and Responses to Comments 11.1 and 14, below. The Final Permit specifies a slot size of 0.5 mm, but, in response to GE's comment about the experimental nature of this mesh size and possible complications due to fouling, EPA would accept a larger slot size if the permittee can demonstrate, based on a site-specific study completed during the design phase, that the performance of the larger mesh is equivalent or superior to 0.5 mm screens. EPA understands that the installation of the technology is contingent upon receiving regulatory approval from other state and federal agencies. The compliance schedule allows time to pursue permitting and review with the appropriate state, federal, and local entities. If, during the design phase, it is determined that the technology is unavailable due to lack of regulatory approval (e.g., USACE requirements preclude the installation), then the technology-based permit conditions related to wedgewire screens may be modified. At present, EPA conversations with the USACE have not identified an impediment to wedgewire screen installation and, as discussed above, EPA has found that such an installation appears to be feasible without causing problems for navigation in the area.

⁸⁴ Fouling of the screens can result in occlusion of the screen openings, which, in turn, can lead to increased through-screen intake velocities.

Comment 11.9: EPA's Proposed BTA Determination for the Test Cell CWIS Requires Reconsideration.

EPA's proposed determination would require that the existing coarse-mesh traveling screen also be improved with new fish lifting buckets, a low pressure spraywash, and separate fish and debris return troughs. It also would require GE to reduce flow on a seasonal basis.

Although GE does not object to the proposed requirement to upgrade the fish return by replacing the current return trough with a new one, the remainder of the proposed requirements are unnecessary and unreasonable. As GE's evaluation (CH2M HILL, 2008) showed, the a modified Ristroph/Fletcher screening system in conjunction with the dual-flow screen configuration that currently exists at the Test Cell CWIS is unlikely to prove as effective at reducing impingement mortality as might be the case if applied to a traditional flow-through traveling screens. Fish and organisms impinged on the descending side of the screen would be exposed to intake velocities for twice as long they otherwise would be on a traditional screen and would not be held in water in the fish lifting buckets on the descending side because the buckets would be inverted. For this reason, the costs of improving the existing coarse-mesh dual-flow screen with fish lifting buckets, a low pressure spraywash, and separate fish and debris return troughs would not be justified by the limited potential impingement mortality reduction benefits. Therefore, GE requests that EPA modify its BTA determination to remove these requirements.

The seasonal flow reduction limits present business and operational problems for GE as the limitations would prevent or severely limit engine and component testing during March 1 through July 31st every year. The Test Cell serves two important purposes that support GE's business. First, it is a research and development facility that is used to develop new compressors for GE products. It is the only General Electric facility capable of performing certain types of tests, and by its nature, research and development does not progress according to a detailed or defined schedule. Test schedules may shift significantly during the compressor design and assembly phases. Once a compressor test rig arrives at the Facility, tests usually run 12 hrs/ day supplying engineering data on the design of the new compressor. Typical water usage during this period is approximately 25 MGD for durations up to 90 days and possibly longer. Reductions to the level proposed by EPA would restrict test operation to about 8 days per month during the March through July time period significantly increasing the time required to complete the test. These delays impact GE's ability to introduce and qualify new compressor designs and resolve problems for existing customers, including the U.S. Navy. Testing of the GeNX and F414 compressors expected in 2011 and 2012 could be adversely impacted by EPA's proposed limitations. The Test Cell's second mission is to supply RAM air for the F414 engine during qualification testing required by the US Navy. These tests run for two to three months, and are currently scheduled to occur annually over the next few years. These tests support redesigns for the F414 engine, which the US Navy has funded. The redesigns require qualification testing prior to deploying to the fleet. The tests could be delayed by EPA's proposed limitations, adversely affecting national security interests. In addition, GE did not account for EPA's seasonal limitations in negotiating its delivery contracts and schedule with the US Navy.

Response to Comment 11.9

GE comments that the dual-flow screen configuration at the Test Cell is incompatible with certain screening system improvements required in the Draft Permit, specifically fish-lifting buckets, a low pressure spraywash, and separate debris and fish return troughs. Yet, contrary to this comment, other facilities have operated dual-flow screens with Ristroph-style improvements with good results (e.g., Roseton Generating Station, Dunkirk Station, Arthur Kill Station) (EPRI 2007).

Nevertheless, in response to GE's comment, EPA has re-considered the limited operation of the traveling screen and low annual capacity at the Test Cell, which, if enforceable, would likely minimize the potential for impingement and entrainment. The intake velocity through the screen is 0.85 fps at a maximum operating flow of 40.3 MGD. Because the actual operating flow is generally much lower than 40.3 MGD, the through-screen velocity at the Test Cell on most days is less than 0.85 fps. At the currently permitted average monthly flow of 27 MGD, the through-screen velocity is 0.57 fps and at the maximum average monthly reported flow of 9.3 MGD (between 2000 and 2012) the through-screen velocity is 0.2 fps. In other words, although the through-screen velocity at the Test Cell is more than 0.5 fps (but less than 1 fps) during maximum daily permitted flow, the CWIS generally operates at the flow for a limited number of days each month. Thus, the operating through-screen velocity is typically less than 0.5 fps. EPA estimated impingement at the Test Cell to range between 1,300 to more than 4,000 fish per year, based on the impingement rate at the Power Plant and annual capacity at the Test Cell. A site-specific study at the Power Plant suggests that many of the species commonly impinged at GE exhibit high initial survival provided that the traveling screen is equipped with a fish return trough that transports impinged fish back to the receiving water at a location that minimizes the potential for re-impingement and discharges to submerged habitat.

Based on the low annual capacity and typically low through-screen velocity, EPA has eliminated the requirements to upgrade the traveling screen with fish-lifting buckets, low pressure spraywash, and separate fish from debris at this time, because it is unclear if the additional costs of these upgrades would be warranted by the marginal benefits they would provide above the required improvements to the fish return trough. The Final Permit requires the permittee to upgrade the existing fish return trough in order to minimize impingement mortality at the Test Cell. During this permit cycle, impingement monitoring during Test Cell operation will provide data to determine if any additional improvements are necessary to protect fish from impingement mortality.

The requirement to minimize entrainment mortality by reducing average monthly flows during peak entrainment season was based on GE's own statement that the seasonal operation of the Test Cell ("most commonly during the fall months of September to November") minimizes the potential for entrainment. Based on entrainment data collected at the Power Plant, eggs and larvae are most prevalent at the intake from March through July. If the operation of the Test Cell is generally limited to colder months when densities of eggs and larvae are relatively low, that would reduce the potential for entrainment mortality. However, in the current permit this factor cannot be considered BTA because it is not enforceable. GE maintains that operation is limited during those times when eggs and larvae would be most prevalent. However, nothing in the

current permit prohibits the facility from operating at much higher flows during this period, which would not necessarily minimize entrainment. A more stringent average monthly limit during the peak entrainment period would guarantee that the Test Cell continues to operate only for limited periods when the potential for entrainment is highest. This operational restriction, combined with the relatively low annual capacity of the Test Cell, will likely contribute to reducing the potential for entrainment mortality.

EPA based the Draft Permit average monthly flow limit of 5 MGD from March through July on reported flows at the Test Cell. The 90th percentile for average monthly flow at Outfall 014 from February 2000 through June 2012 is 4.8 MGD. Generally, DMR data reported for the Test Cell indicates that GE could meet a more stringent average monthly limit during the peak entrainment season as part of the requirements to reduce entrainment mortality at the Test Cell CWIS. In response to the above comment, EPA asked GE to evaluate the potential to reduce average monthly flow on a seasonal basis while maintaining viable operation of the Test Cell. In an October 15, 2012 email from Steven Lewis (GE) to Nicole Aquillano (EPA), GE proposed an average monthly flow limit of 18 MGD from March 1 through July 31, which represents a 33% reduction in flow compared to the currently average monthly flow limit of 27 MGD. Actual operational flows, based on DMR data, are likely to be less than 18 MGD. EPA is satisfied that limiting average monthly flows at the Test Cell to 18 MGD will ensure that the potential for entrainment continues to be minimized as a result of the limited capacity and that this more stringent flow limit will not unduly interfere with the GE's operation of the Test Cell. Therefore, the Final Permit includes an average monthly flow limit of 18 MGD from March 1 through July 30 and an average monthly flow limit of 27 MGD from August 1 through February 28.

Comment 11.10: The Proposed Monitoring Requirements for Impingement and Entrainment are Unreasonably Burdensome and Unnecessary to Ensure Proper Operation and Maintenance of BTA Technologies.

Entrainment Monitoring for the Power Plant CWIS.

a) Detailed Entrainment Monitoring is Unwarranted.

EPA proposes to require entrainment monitoring during operation of the Power Plant CWIS beginning no later than 90 days after the effective date of the permit. Weekly monitoring would be required for eight months, from March through October, and twice per month during the four remaining months. GE would be required to collect samples representing morning, afternoon, and nighttime entrainment, across three different days, from a representative location within the intake structure.

EPA has provided no justification for imposing such intensive entrainment monitoring requirements for the duration of the permit, nor has it explained how the monitoring results would be used to measure compliance. Intensive monitoring of entrainment is unnecessary to demonstrate compliance with a performance standard, because EPA has not imposed any standard, nor could it based on the record on which it relied. Nor is such monitoring justified in order to ensure that the technology is properly designed, operated and maintained. According to EPA, the entrainment reduction efficacy of wedgewire screens already has been well established

in the technical literature, and that performance depends primarily on the presence of sufficient ambient current (sweeping flows) to carry organisms to bypass the structure. Assuming for the sake of argument that EPA is correct, the primary factors determining performance of fine mesh wedgewire screens will be the site-specific placement of the screens in relation to ambient velocity vectors (which the Agency could review and approve before the screens were installed) and the effective routine maintenance and cleaning of the screens using either an airburst or brush-clean system. Assuming that the wedgewire screen system has been properly installed and is cleaned routinely according to specifications, there would be no performance-based justification for requiring any entrainment monitoring. Therefore, if, despite GE's requests for reconsideration, EPA retains the requirement for fine mesh wedgewire screens, the Agency should remove any requirement for entrainment monitoring of flow reduction measures or wedgewire screens from the final permit. Instead, appropriate monitoring would involve verifying that the screen system has been installed in accordance with the approved design and measures; measuring hydraulic conditions to ensure that the system meets these guidelines and criteria; and performing routine maintenance in accordance with manufacturer specifications.

b) In the Event EPA Determines that any Entrainment Monitoring is Warranted, EPA should Ensure that the Duration and Frequency of that Monitoring are Reasonable.

If EPA identifies a reasonable basis for imposing any entrainment monitoring requirements, those requirements should be reasonably tailored to the conditions at this site. EPA has not provided any justification for weekly entrainment monitoring for eight months of the year and twice-per-month monitoring the other four months of the year, nor has EPA justified the need for entrainment monitoring during non-consecutive periods or over periods of multiple days. The high costs of such an intensive monitoring program would not be warranted by the limited value of the monitoring data, especially considering the negligible impacts of current levels of entrainment to the fishery. GE requests that EPA consider reducing the frequency of any required entrainment monitoring to no more than once-per-month, with two entrainment samples collected each event to represent day and night.

GE also requests that any required entrainment monitoring be limited to a period of no more than two years following installation of the required BTA for reducing entrainment. Two years would provide an adequate period of time to characterize entrainment losses associated with the required BTA.

c) Entrainment Monitoring and Reporting should not be Required until GE has had a Reasonable Opportunity to Install the Technology and make sure it is Fully Operational.

Should any form of entrainment monitoring or reporting be required at the Power Plant CWIS, such requirements should become effective only after GE has had a reasonable opportunity to design, permit, install, and start-up the technology. As EPA has recognized in its prior Phase II rule and its recent § 316(b) proposed rule for existing facilities, nothing in the CWA prevents

EPA from affording a reasonable compliance schedule for implementing § 316(b) requirements.⁸⁵

Initiating entrainment monitoring prior to installation of any process changes or technologies required to operate and maintain the BTA for reducing impingement mortality would serve no meaningful purpose. Hence, impingement mortality monitoring should not be required until the required BTA is fully installed and operational.

Impingement Monitoring of the Test Cell CWIS.

a) Impingement Monitoring of the Test Cell CWIS is Unwarranted.

EPA proposes to require impingement monitoring during operation of the Test Cell CWIS beginning no later than 90 days after the effective date of the permit. GE would be required to perform impingement monitoring a minimum of once per week when the Test Cell is operating. To the extent practicable, a sampling event would consist of three, non-consecutive 4-hour collections that represent morning, afternoon, and night. Fewer than three samples and/or consecutive 4-hour collections may be conducted if the Test Cell CWIS does not operate long enough for three non-consecutive collections to be sampled.

GE disagrees with the need for any impingement monitoring of improvements made to the existing coarse-mesh traveling or fish return system at the Test Cell CWIS. The impingement reduction efficacy of coarse-mesh traveling screens combined with the use of a fish-friendly return system is well established in the technical literature, and EPA has not provided any justification for such an intensive impingement monitoring program, especially given the sporadic, seasonal operation of the Test Cell CWIS. The intensive effort, difficult logistics, and high costs of the required impingement monitoring program would not be justified by the very limited capacity utilization of the design intake flow and the likely negative impacts these requirements would have on the ability of the Test Cell to competitively perform its aircraft engine testing mission. Therefore, GE requests that EPA remove the requirement for impingement monitoring from the final permit.

Instead, GE proposes to verify that the technology improvements are installed in accordance with the approved design and construction measures; that elevation drops and turns in the return trough satisfy the design requirements; that the traveling screens are being rotated continuously during Test Cell CWIS operation; and that routine maintenance of the screens and debris/fish return system is being performed in accordance with good engineering practice, thereby enabling the safe return of fish at low tide to the Saugus River.

⁸⁵ See 69 Fed. Reg. 41,576, 41,596-97, 41,621 (July 9, 2004) (authorizing permittees to request up to 3.5 years to submit required information, including selection of compliance alternatives, leaving selection of deadline for installing compliance technology to discretion of permit writer, and authorizing permittees to submit a technology installation and operation plan for purposes of demonstrating compliance with standard); 76 Fed. Reg. 22,282 (proposing to establish compliance schedules of up to 8 years for impingement standards).

b) In the Event EPA Determines that any Impingement Monitoring is Warranted, EPA should Ensure that the Duration and Frequency of that Monitoring are Reasonable.

Assuming that any impingement monitoring at all can be justified, EPA has not provided any rationale for weekly monitoring during Test Cell CWIS operation and for requiring non-consecutive sampling periods that serve to extend effort, complicate logistics, and increase monitoring costs. The high costs of such an intensive monitoring effort would not be warranted by the limited value of the monitoring data, especially considering the infrequent operation of the Test Cell and low capacity utilization of the CWIS design capacity, which already minimizes the potential of adverse impacts due to impingement mortality. GE requests that EPA consider reducing the frequency of any required impingement monitoring to no more than once per month when the Test Cell is operating, with no more than two 4-hour collections representing day and night, and allowing these two collections to be made within a single 24-hour period. In addition, GE requests reducing the frequency of any latent survival testing to no more than three times per year.

GE also requests that any impingement monitoring requirements be less prescriptive in regard to the specific methods for collecting impingement samples to allow for due consideration of logistics, site access, safety, efficiency, and costs. For example, a practical alternative to placing stainless steel baskets into the return sluiceway could be diverting the return sluiceway flow through a flow-through holding pen with a 3/8-inch mesh net. GE would like to preserve such flexibility to adjust specific methods to site-specific conditions and allow opportunities for innovation and efficiency in achieving the monitoring objectives with the least amount of effort and costs.

GE further requests that any required impingement mortality monitoring be limited to a period of no more than two years following installation of the required BTA for reducing impingement mortality. Two years would provide an adequate period of time to characterize impingement mortality losses associated with the required BTA.

c) Impingement Monitoring and Reporting should not be Required until GE has had a Reasonable Opportunity to Install the Technology and make sure it is Fully Operational.

Should any form of entrainment monitoring or reporting be required at the Test Cell CWIS, such requirements should become effective only after GE has had a reasonable opportunity to design, permit, install, and start-up the technology. As EPA has recognized in its prior Phase II rule and its recent § 316(b) proposed rule for existing facilities, nothing in the CWA prevents EPA from affording a reasonable compliance schedule for implementing § 316(b) requirements. *See supra*, *n. 22*.

Initiating impingement monitoring prior to installation of any process changes or technologies required to operate and maintain the BTA for reducing impingement mortality would serve no meaningful purpose. Hence, impingement mortality monitoring should not be required until the required BTA is fully installed and operational.

Response to Comment 11.10

In response to GE's comments above, EPA has re-evaluated the entrainment and impingement monitoring requirements included in the Draft Permit and made certain changes to them for the Final Permit.

Power Plant Entrainment Monitoring

EPA has considered GE's comments and disagrees that entrainment monitoring is unwarranted. While the Final Permit's CWIS requirements are technology-based, these requirements are rooted in EPA's best professional judgment based on the limited available entrainment data, which is more than 15 years old. The additional entrainment data will help to confirm that these requirements are the BTA for the Power Plant in the next permit cycle.

However, EPA acknowledges GE's concerns about the frequency of monitoring and has reduced monitoring frequency in the Final Permit. The Final Permit includes requirements to monitor certain aspects of the screening system, including monthly monitoring of the through-screen velocity at each screen during maximum permitted flow, periodic visual inspections and routine cleaning of the screens, and scheduled operation of the air burst system. In addition, the Final Permit includes a requirement to monitor entrainment twice per month from March to September and once per month from October through February and has reduced the number of samples from three time periods to one night and one day sample per event. In addition, EPA has required monitoring to continue for two years beginning after the wedgewire screens are operational.

Test Cell Impingement Monitoring

GE comments that impingement monitoring should not be required at the Test Cell because the CWIS has low utilization capacity and seasonal, intermittent use and because the scientific literature establishes the impingement reduction efficacy of traveling screens combined with the use of a fish-friendly return system. While the literature may have established that, taken together, Ristroph-style traveling screens (including smooth mesh, low pressure spraywash, fish buckets, and a return designed to minimize predation and re-impingement) successfully minimize impingement mortality for many species (EPRI 2007), GE's Test Cell CWIS is not required to implement all of the improvements associated with Ristroph-style screens. In response to GE's comments, EPA has decided that, given the limited capacity and generally low through-screen velocity (though not less than 0.85 fps at maximum permitted capacity), the specified improvements to the fish return trough is the BTA for impingement mortality reduction at the Test Cell. The Final Permit requires the permittee to replace the existing fish return trough with one that returns fish to the water at all tidal stages while avoiding sharp drops or turns. Additional improvements to the traveling screen are not required at this time.

GE comments that the impingement monitoring requirements at the Test Cell should be reduced. However, EPA maintains that impingement monitoring will provide data to enable EPA to determine if the fish return system, including the new trough, sufficiently minimizes impingement mortality at the Test Cell in the next permit cycle. EPA fails to see, and GE has

not explained, how three, 4-hour sampling periods per week during the limited periods when the Test Cell is operating will have negative impacts on the ability of the Test Cell to competitively perform aircraft engine testing. Having said that, EPA has agreed to make some of GE's suggested changes. Since the impingement monitoring requirements are associated with assessment of the new fish return trough, the Final Permit delays monitoring until after the new fish return trough is fully functional. In addition, the Final Permit limits latent survival testing to three times per year (spring, fall, and winter).

12. EPA Needs to Correct and/or Clarify Certain Aspects of the Draft Permit.

Comment 12.0:

The phrase "periods leading up to forecasted wet weather" has significant compliance implications (e.g., an obligation to manually activate the pumps in the vaults during these periods to draw down water levels) but is not defined in the Draft Permit. To provide fair notice to GE of its compliance obligations, EPA must define this phrase. Absent a clear and rational definition, GE proposes that it be deleted from the Draft Permit.

In its WET testing requirements, EPA requires GE to report the concentrations of a number of chemical parameters, including total metals concentrations, in the effluent sample on the DMR. EPA states that "these samples, taken in accordance with WET testing requirements, may be used to satisfy other sampling requirements as specified in the table above." However, EPA has specified monthly grab samples for metals at the outfalls and quarterly composite samples for WET testing at the same outfalls, so one cannot be used in lieu of the other. GE has already commented that the frequency and number of sampling requirements needs to be reduced. EPA should eliminate the requirement in the Draft Permit for separate metals grab sampling at outfalls that are periodically WET tested.

In its requirements for analysis of PAHs, EPA requires specific numeric MLs, defined as the level at which the entire analytical system gives recognizable mass spectra and acceptable calibration points, for PAH compounds. EPA has erroneously specified MLs that are below the method detection levels for benzo[a]anthracene, benzo[b]fluoranthene, and benzo[k]fluoranthene. PAH analysis is also commonly impacted by matrix interferences, such as TSS levels, that will affect the MLs for a particular sample. Instead of specifying MLs, EPA should require that samples be analyzed for PAHs using approved Method 8270LL (lower limit).

As noted elsewhere in these comments, Outfall 018 does not receive stormwater flows and, as a result, there is no need for EPA's proposed Outfall 018B wet weather designation.

The requirements in Part I.B.8, related to the pollution prevention team, stormwater pollutant sources and best management practices, are duplicative of Parts I.B.3 and 7 and should be removed.

EPA's prohibition on foam or sheen is unreasonable in that it does not (1) acknowledge or conform with previous determinations by the Agency relating to the Facility, or (2) account for natural organic matter in the tidal estuary and in the intake water returned to the estuary. GE's

existing NPDES permit specifies that “there shall be no discharge or floating solids, oil sheen, or visible foam *in other than trace amounts.*” (emphasis added.) After GE requested clarification as to the definition of “trace amounts,” EPA confirmed and agreed that a trace sheen occurs where: 1) the source can be eliminated immediately and the extent of the sheen is clearly defined allowing it to be captured and removed immediately, or 2) conditions at the water surface quickly dissipate the sheen.⁸⁶

EPA cites the Massachusetts Water Quality Standards (314 CMR 4.05(4)(b)(7)) as justification for changing this provision in the Draft Permit to read: “the discharge shall not contain a visible oil sheen, foam, or floating solids at any time.” As EPA quotes in p. 15 of the Fact Sheet, the state standards provide that a Class SB water “shall be **free** from oil, grease, and petrochemicals that produce a visible film on the surface water, impart an oily taste to the water or an oily or other undesirable taste to the edible portions of aquatic life, coat the banks or bottom of the water course or are deleterious or become toxic to aquatic life.” (emphasis added). EPA’s previous interpretation of “free” as meaning that SB waters should be “unimpaired” or “unencumbered” by visible oil sheen, foam or solids took into account that trace amounts of sheen, film or foam that can be easily removed or that dissipate readily do not impair the designated uses of SB waters. Allowing trace amounts of sheen, film, or foam is reasonable, consistent with the intent of the regulations to protect designated uses, and practicable given GE’s experience with discharging salt water back into a tidal estuary.

The Facility does experience biological films and sheens in the warm spring season. This phenomenon may be caused by natural events such as the presence of iron, decomposition of organic matter, or the presence of certain types of bacteria. Naturally occurring sheens are usually silver or relatively dull in color and if disturbed, will break up into a number of small patches of sheen. Oil of a petrochemical nature produces a sheen oriented in rainbow-like lines, or streaks floating on the water surface, and GE agrees that this type of sheen is impermissible and should be prohibited. However, EPA’s language does not distinguish between this type of condition and vegetative scum and foam that are present in tidal convergence lines or “tidelines.” Sometimes called streaks, stringers, or fingers, they are commonly found floating in near-shore and offshore waters. They are usually just a collection of sea grasses, seaweeds and protein scum or foam that are moved around by the tides and wind. In addition, discharges into these bio-scums can produce a brief bubbling or foaming effect that readily dissipates.

By changing its interpretation of “free” to mean “shall not contain,” EPA appears to be requiring the immediate reporting of all such events, and each event would constitute a permit violation. GE has no wish to administratively burden EPA or other agencies with unnecessary reporting that results in no environmental benefit. GE is also concerned with the impossibility of complying with the provision as written, and the potential for penalties and enforcement based upon a natural occurrence in the tidal estuary. GE proposes that the current NPDES permit language allowing trace amounts of visible sheen, foam or film be retained.

⁸⁶ See Technical Exhibit 19 [December 5, 2000 David Johnson (GE) to George Harding (EPA, Reg #1)].

Response to Comment 12.0:

In Comment 12.0, GE identifies a number of issues (not necessarily related to one another) regarding specific language in the Draft Permit. EPA responds separately below to each issue raised.

1. Wet Weather

GE requests EPA define the phrase “periods leading up to forecasted wet weather.” However, as discussed elsewhere in this RTC document, in consideration of GE’s objections about cost and feasibility of certain of the requirements contained in, and the overall approach of, the Draft Permit, this phrase is not contained in the Final Permit. The only BMP that requires the permittee to consider forecasted conditions specifies “Prior to a storm event forecasted to generate 0.1 inches or more of precipitation.” Part I.B.1.b of the Final Permit requires the permittee to use the National Weather Service’s Precipitation Forecast for the Boston area to determine when to operate the vaults at the “low alarm” level. One source of this precipitation forecast is <http://graphical.weather.gov/sectors/box.php>. EPA believes that the permittee’s requirements related to forecasted conditions specific to the BMP at Part I.B.1.b and discussed in Attachment A is sufficient for GE to meet compliance obligations.

2. Metals Sampling

GE states that because EPA has specified monthly grab samples for metals at the outfalls and quarterly composite samples for WET testing at the same outfalls, one cannot be used in lieu of the other. The Draft Permit included a provision in the footnotes for WET testing that stated “these samples, taken in accordance with the WET testing requirements, may be used to satisfy other sampling requirements as specified in the table above.” This provision explicitly authorized GE to use the quarterly composite (reduced to twice a year in the Final Permit) WET test sample results in lieu of requiring another metal grab sample for the same time period (reduced to quarterly in the Final Permit). Still, in consideration of GE’s comments regarding the nature of the discharges from the drainage system outfalls during wet weather, the Final Permit has changed the sample type from composite to grab for the WET testing in order to capture a representative sample of commingled wet and dry weather flows when the tide gate initially opens. The following clarification has been added to the Final Permit in the footnotes for WET testing requirements at Tables I.A.1 and I.A.2: “Analyses conducted for WET testing may also be used to satisfy the monthly or quarterly sampling requirements as long as the timing of sampling for the parameters coincides with WET testing for selected pollutants.”

In addition, the Final Permit has eliminated monitoring requirements for metals at Outfalls 014 and 018A with the exception of twice yearly monitoring in compliance with WET testing requirements.

3. PAHs

GE requests that instead of specifying MLs, EPA should require that samples be analyzed for PAHs using approved Method 8270LL (lower limit). The *Technical Support Document for*

Water quality-based Toxics Control (EPA 1991) defines minimum level is the level at which the entire analytical system gives a recognizable mass spectra and acceptable calibration points. This level corresponds to the lower points at which the calibration curve is determined based on the analysis of the pollutant(s) of concern in reagent water. NPDES permits commonly specify MLs, rather than identify a method for analysis. EPA reviewed NPDES permits with monitoring requirements or permit limits for PAHs issued to dischargers in Massachusetts and has found that these permits specify MLs similar to those in GE's Draft Permit.⁸⁷

Regarding the three pollutants that GE refers to in its comment, the MLs for benzo(a)anthracene, benzo(b)fluoranthene, and benzo(k)fluoranthene in the Draft Permit are 0.05 µg/L, which are consistent with the MLs using Method 610HPLC (0.013 µg/L, 0.023 µg/L, and 0.017, respectively) described in 40 C.F.R. Part 136 Appendix B. As such, EPA did not erroneously specified MLs that are below the method detection levels.

However, EPA acknowledges GE's assertion about the possibility of interferences that may affect MLs of a particular sample. In addition, the MLs under Method 610HPLC are substantially lower than the method detection limits necessary to comply with the numeric permit limits for PAHs at Outfall 027A or the reporting requirements for Group I PAHs at the drainage system outfalls. On the other hand, the lower limit of quantitation for PAHs with Method 8270 (the method requested by GE) in groundwater is 10 µg/L, which may be suitable for Group II PAHs and for reporting Group I PAHs in wet weather discharges at the drainage system outfall, but is not appropriate to meet the permit limit of 10 µg/L for Total Group I PAHs at Outfall 027A. The Total Group I PAH value is equal to the sum of the individual Group I PAHs. At a limit of 10 µg/L, each of the seven individual Group I PAHs must be less than 1.4 µg/L. Rather than requiring GE to use a specific method for analysis of PAHs, EPA has specified MLs that can be met either by the approved methods at 40 C.F.R. Part 136 (Method 610HPLC or Method 625) or, in some cases, by Method 8270. GE is authorized to use whichever method it chooses as long as the MLs are consistent with those specified in the permit.

Accordingly, the relevant footnote for the drainage system outfalls in the Final Permit states: "The minimum level (ML) for analysis of Polynuclear Aromatic Hydrocarbons (PAHs) shall be no greater than 10 µg/L. Analysis must be completed using an EPA approved method in 40 C.F.R. Part 136, Table IC – List of Approved Test Procedures for Non-Pesticide Organic Compounds or, alternatively, using EPA approved method 8270D."

The relevant footnote for Outfall 027A in the Final Permit states: "The minimum level (ML) for analysis of Group I Polynuclear Aromatic Hydrocarbons (PAHs) shall be no greater than 1 µg/L. Analysis must be completed using an EPA approved method in 40 C.F.R. Part 136, Table IC – List of Approved Test Procedures for Non-Pesticide Organic Compounds. The ML for analysis of Group II Polynuclear Aromatic Hydrocarbons (PAHs) shall be no greater than 10 µg/L. Analysis must be completed using an EPA approved method in 40 C.F.R. Part 136, Table IC –

⁸⁷ Examples include the ExxonMobil Final Permit Modification MA0000833, effective October 12, 2011, the Conoco Phillips Final Permit MA0004006, effective August 25, 2006.

List of Approved Test Procedures for Non-Pesticide Organic Compounds or, alternatively, using EPA approved method 8270D.”

4. Stormwater at Outfall 018

As stated previously in this RTC document, the Final Permit has eliminated all requirements relating to wet weather discharges through Outfall 018B. Authorized discharges through Outfall 018A include NCCW from power plant generating equipment, turbine condensate, steam condensate, boiler startup/soot blower drains/boiler draining for maintenance, de-aerator storage tanks, boiler blowdown, and flows from internal Outfall 018C.

5. Stormwater Pollution Prevention Plan

GE states in its comments that “[t]he requirements in Part I.B.8, related to the pollution prevention team, stormwater pollutant sources and best management practices, are duplicative of Parts I.B.3 and 7 and should be removed. The requirements at Part I.B.3 and I.B.7 are consistent with the MSGP effective in 2009 and include annual certification requirements not included in the site specific BMPs under Part I.B.8. EPA has eliminated the requirements contained in the Draft Permit Part I.B.8 from the Final Permit because these requirements will be satisfied by complying with other aspects of Part I.B of the Final Permit, including Parts I.B.1. and I.B.2.a through c.

6. Narrative Water Quality Standard for Foam and Sheen

GE comments that “EPA’s prohibition on foam or sheen is unreasonable in that it does not (1) acknowledge or conform with previous determinations by the Agency relating to the Facility, or (2) account for natural organic matter in the tidal estuary and in the intake water returned to the estuary. GE’s existing NPDES permit specifies that “there shall be no discharge or floating solids, oil sheen, or visible foam *in other than trace amounts*” (emphasis added). After GE requested clarification as to the definition of “trace amounts,” EPA confirmed and agreed that a trace sheen occurs where: 1) the source can be eliminated immediately and the extent of the sheen is clearly defined allowing it to be captured and removed immediately, or 2) conditions at the water surface quickly dissipate the sheen.”

During the course of developing the Final Permit, EPA reviewed the Massachusetts Surface Water Quality Standards at 314 CMR 4.05(4)(b) for Class SB waters, which contains requirements relating to solids and oil and grease. The standards provide that:

Solids: These waters shall be free from floating, suspended and settleable solids in concentrations or combinations that would impair any use assigned to this class, that would cause aesthetically objectionable conditions, or that would impair the benthic biota or degrade the chemical composition of the bottom.

Oil and Grease: These waters shall be free from oil, grease and petrochemicals that produce a visible film on the surface of the water, impart an oily taste to the water or an oily or other

undesirable taste to the edible portions of aquatic life, coat the banks or bottom of the water course, or are deleterious or become toxic to aquatic life.

There is no indication in the standards quoted above that a discharge of solids or oil and grease in “trace amounts” is acceptable. Rather, the standards indicate that Class SB waters shall be free from visible sheens or floating solids. The Final Permit has updated the language for the narrative requirements for solids at Part I.A.15 and oil and grease at Part I.A.16 to be consistent with the applicable Massachusetts Surface Water Quality Standards at 314 CMR 4.05(4)(b) for Class SB Waters.

13. Some of EPA’s Expectations and Assumptions Related to Operations and Practices at the Facility are not Accurate and Need to be Corrected.

Comment 13.1: Treatment by GAC Alone is more Effective than Treatment using both the GAC and DAF.

EPA assumes that “pollutant discharges would be reduced the most by operating the CDTs in the mode utilizing both DAF and GAC treatment.” Fact Sheet p. 8. However, this assumption is not correct. To fully understand this issue, it is critical to first address the original design philosophy of the CDTs, and to compare this design philosophy to GE’s actual operating experience over the last ten years.

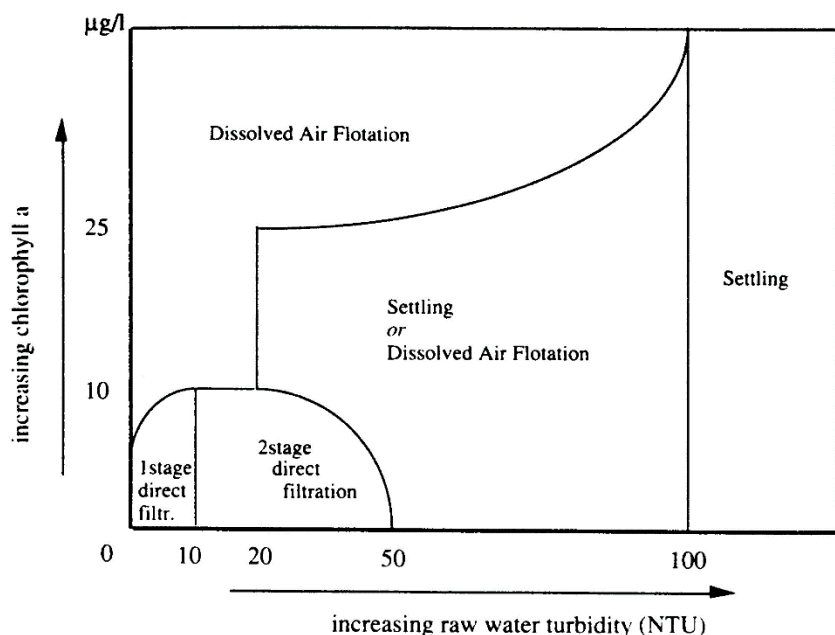
The design and installation of the CDTs was an element of GE’s comprehensive sheen reduction program. During the design process, GE’s understanding of the sheen issue was evolving. As a result, the CDTs design philosophy accommodated a wide range of influent characteristics and provided the operating flexibility necessary to achieve the discharge performance standards. In this regard, a key unknown was the amount of free product or floating oil and grease that would be present in the wastewater pumped from the respective drainage system vaults to the CDTs. To address this unknown, dissolved air flotation (DAF) technology was selected as an element of the treatment system to provide the capability for the removal of free product and floating oil and grease should these pollutants exist in sufficient quantity.

Other technologies (i.e., unit processes) utilized in the CDTs include influent equalization and skimming, and granular activated carbon (GAC) polishing. In addition, the system incorporated the existing skimmers and oil water separators associated with each respective drainage system vault. The system design was reviewed and approved by EPA and MADEP in the context that the proposed operating strategy would allow GE the flexibility to operate the desired unit processes as deemed necessary to achieve the discharge quality objectives.

Following start-up, operating experience quickly revealed that meaningful concentrations of floating product or oil and grease do not exist in the wastewater and therefore operation of the DAF system is unnecessary. Trace levels of floating materials are removed by the skimmers and oil water separators associated with each drainage system vault and the resulting influent wastewater received at the CDTs only requires polishing with the GAC system. Operation of the DAF, therefore, is not required.

To facilitate removal of colloidal suspended solids potentially present in the wastewater and flotation of free product and oil and grease, the DAF system was also equipped with chemical coagulation using polyaluminum chloride (PAC) and flocculation using an anionic emulsion polymer. However, it is important to understand that operation of the DAF system also creates adverse effects on the GAC system. That is, without the presence of sufficient colloidal solids (as discussed below), the coagulant and polymer will pass through the DAF system and impact the performance of the GAC system. Specifically, polymer that escapes the DAF system will tend to bind the carbon and potentially create short circuiting (i.e., rat holes), and polymer will also be adsorbed by the carbon thereby shortening the useful life of the carbon. PAC that escapes the DAF would not be adsorbed by the carbon and would be discharged to the Saugus River.

With respect to colloidal suspended solids, DAF technology would be an appropriate technology selection to remove solids created from the coagulation/flocculation process. The figure below provides a summary of when to utilize primary treatment processes to remove solids. As shown in the figure, at turbidities less than 20 NTU, a direct filtration process (e.g., GAC) is suitable for proper treatment without the need for primary treatment (e.g., DAF). DAF is typically used for moderate turbidity levels, high algal counts, and limited amounts of silty material. The primary clarification process provides better removal of larger sized coagulated particulates prior to filtration.



Source: "Treatment Process Selection for Particle Removal," AWWA Research Foundation. International Water Supply Association, 1998.

CDTS influent data do not show elevated suspended solids or turbidity, and turbidities are typically less than 20 NTU. In addition, the CDTS has been operating without the DAF system and additional or excessive headloss across the GAC system has not been observed – further

proof that primary treatment (i.e., DAF) for solids removal and oil and grease removal is not necessary.

It is further noted that the two GAC columns are operated in series and are routinely monitored between the two columns in order to identify breakthrough of the first column prior to exhausting the removal capacity of the second column. Monitoring occurs on a weekly basis and, on average, contaminant breakthrough of the first column occurs once every two years. Proper operation and maintenance, including the need for adequate back-up systems, necessitates that GE run the two GAC columns in series rather than parallel.

In summary, GE's engineering experience confirms that utilizing the DAF system in combination with the GAC system will not improve discharge quality and, in fact, will adversely affect the GAC performance. Moreover, the ten year operating history of the CDTs clearly demonstrates that primary treatment using the DAF system for dry weather flow is not required and the discharge quality obtained using the GAC system alone is excellent.

Response to Comment 13.1:

GE's comment provides a detailed explanation of how the company's operating experience at the CDTs indicates that better treatment is provided overall by not using the DAF units in light of the characteristics of the wastewater receiving treatment. Although it is not clear from the comment whether GE is objecting to a particular permit condition here, EPA notes that Part I.A.13 of the Draft Permit states, "the permittee shall properly operate and maintain all treatment systems." The Fact Sheet (p. 8) indicates that this condition was intended to require the permittee to operate both the DAF and GAC systems "given that pollutant discharges would be reduced the most by operating the CDTs in the mode utilizing both DAF and GAC treatment." While GE likely shared this view when it installed the DAF units, its comment indicates that it has since learned from experience, as described above, that better, more efficient treatment may be achieved at this time without using the DAF units. Therefore, to avoid any confusion, EPA has eliminated the above-mentioned condition (i.e., Draft Permit Part I.A.13) from the Final Permit. The Final Permit Part I.A.2 authorizes discharge of "treated effluent from the consolidated drains treatment system" and includes several technology-based numeric limits based on use of activated carbon. In addition, Part II of the Final Permit continues to contain standard permit condition II.B.1 ("Proper Operation and Maintenance"). *See also* 40 C.F.R. § 122.41(e). Thus, the Final Permit will require the permittee to continue to treat effluent at the CDTs in the manner that is most effective to remove pollutants and maintain the technology, which was the overarching intent of the permit condition in the Draft Permit.

Comment 13.2: GE has Concerns about the Feasibility, Effectiveness and Implementability of Specific SWPPP BMPs Proposed by EPA.

As mentioned previously, GE has already developed a SWPPP, which contains a comprehensive suite of site-specific BMPs to control and minimize the potential for pollutants in stormwater. GE shares EPA's position that successful stormwater management hinges on an ongoing and iterative process of developing, implementing, correcting, improving and replacing BMPs, consistent with site-specific needs, changes and constraints. However, GE is concerned that

certain BMPs proposed by EPA are too prescriptive and may not be feasible, effective or implementable. GE's specific concerns are presented below.

Response to Comment 13.2:

Because GE elaborates in subsequent comments immediately below on the general point articulated above in Comment 13.2, EPA responds specifically to those more detailed comments below.

Comment 13.2.1: Part I.B.10.a.i. *“The CDTs outfall gates shall open only during wet weather after the first flush of pollutants has been transferred to the CDTs for treatment.”*

GE has raised its concerns with this provision in other sections of these comments, including the manner in which “wet weather” and “first flush” are defined or interpreted for compliance purposes. GE notes that the gates must open whenever necessary to prevent flooding so as to protect both personnel and equipment, which is a good engineering practice. As GE has demonstrated, the minimal dry weather flow remaining in the vaults along with the “first flush” of stormwater do not have any reasonable potential to cause or contribute to an exceedance of applicable water quality standards. Moreover, GE cannot feasibly capture and treat this commingled flow without extensive changes to the CDTs.

Response to Comment 13.2.1:

EPA remains concerned about discharges of untreated dry weather flow from the Drainage System Outfalls directly to the Saugus River during wet weather conditions. The intent of the Draft Permit was to eliminate these discharges (and have this potentially contaminated wastewater treated at the CDTs) to the maximum extent practicable through a combination of the following available measures (some of which are already used at the facility to some extent):

- isolate contaminated groundwater through storm drain inspection and repair;
- collect and treat contaminated groundwater separately through an alternative groundwater extraction system (such as wells or trenches) and provide treatment prior to discharge to either the Drainage System outfall vaults or the Saugus River;
- treat commingled contaminated groundwater, stormwater, and other wastewater flows prior to their discharge to the receiving water; and/or
- isolate non-allowable non-stormwater discharges through re-piping directly to the CDTs.

The Draft Permit also included a narrative condition that called for GE to eliminate to the maximum extent practicable the discharge of untreated non-allowable non-stormwater flows (other than allowable non-stormwater discharges) commingled with stormwater, along with a list of BMPs designed to achieve this goal. The Final Permit has eliminated these BMPs, including the one that GE specifically objects to in the comment.

Instead, the Final Permit applies a technology-based, BMP approach to addressing the dry weather flows at the drainage system outfalls. First, the Final Permit requires that the drainage system outfall tide gates discharge only during wet weather (as defined in the Final Permit), with

the exception of minor weeping around the bottom edge of gates due to hydrostatic pressure. EPA believes that these permit conditions are consistent both with proper maintenance and control of the outfall gates, which are operated consistent with the Massachusetts Administrative Consent Order to “substantially eliminate” the discharge of dry weather flows to the Saugus River, and with GE’s comments.

Second, the Final Permit requires that the permittee minimize the volume of dry weather flow that is discharged, untreated, to the Saugus River during wet weather by lowering the elevation of the drainage vaults to the “low alarm” level prior to a storm event forecasted to generate 0.1 inches or more of precipitation (and thus trigger the tide gates to open). EPA believes this requirement is a feasible measure to reduce untreated pollutant discharges to the Saugus River, and is consistent with GE’s current operation of the vaults. More detailed discussion of these requirements is provided in Attachment A.

Comment 13.2.2: *Part I.B.10.a.ii. “The CDTs outfall gates shall remain closed and without leaks, during all periods of dry weather.”*

GE disputes the inclusion of a dry weather BMP in a wet weather SWPPP. Even if such a BMP were relevant in the stormwater context, it does not meet the “good engineering” standard. As discussed above, it is technically impracticable to hermetically seal mechanized steel outfall gates that operate on metal tracks. With routine inspection and maintenance, leaks around the gates are minimized in accordance with good engineering practice. In addition, the small amount of weeping around the bottom edges of gates due to the hydrostatic pressure created by the water behind the gates has no reasonable potential to affect the quality of the commingled discharge.

Response to Comment 13.2.2:

EPA acknowledges that this “dry weather” BMP was included in the SWPPP, since it directly related to the absence of wet weather flow and to the proper maintenance and operation of equipment designed to address both dry and wet weather flows. The Final Permit Part I.B. is titled more generally “Best Management Practices” and includes a section for site-specific best management practices for the operation of the drainage system outfalls and a separate section for the SWPPP. EPA believes this new format addresses GE’s comments regarding the inclusion of dry weather BMPs in a wet weather SWPPP.

GE states that the “weeping around the bottom edges of gates due to the hydrostatic pressure created by the water behind the gates has no reasonable potential to affect the quality of the commingled discharge.” In the event of a leaking gate, EPA is concerned with the discharge of dry weather flows directly to the receiving water, as stated in the above comment. While minor weeping may be technically impractical to eliminate, any dry weather discharge should be minimized.

Consistent with GE's comment above, the Final Permit Part I.B.1.a requires that

"The Drainage System Outfall gates shall remain closed without leaks, except for minor weeping around the bottom edge of the gate due to hydrostatic pressure, during all periods of dry weather."

EPA agrees that this BMP is consistent with good engineering practice while not requiring GE to address those leaks that may be technically infeasible to eliminate.

Comment 13.2.3: *Part I.B.10.b.iii. "Manually operate the transfer pumps from all eight vaults leading up to significant storm event to reduce the dry weather flows to a low level in the vaults, and as a result to help eliminate to the maximum extent practicable, the amount of non-allowable non-stormwater flows that are commingled with stormwater in the Drainage System vaults and discharged to the Saugus River."*

The provision is replete with definitional problems that have already been discussed. It appears that EPA's goal is to minimize the accumulation of dry weather flow in the vaults so that this flow is not discharged when the vaults open during a storm. However, this goal is inconsistent with Part I.B.10.b.i, which would require GE to reconfigure the vault system to ensure that during dry weather all flow in the Drainage System is transferred to the CDTs for treatment prior to discharge, which would include all dry weather flow in the vaults leading up to a storm and would require more than just reducing the dry weather flow to a low level. Further, in Part I.B.10.f, EPA would require GE to "ensure the sonic sensor in each outfall vault is operated normally so that the water level in the skimming chamber is never lower than the baffle designed to retain floating material for skimming." Reading these three, seemingly inconsistent provisions together, GE is left to wonder what EPA wants, and what it would take to comply -- is GE supposed to (1) capture as much dry weather flow in the vaults as possible for treatment, or (2) reduce as much dry weather flow in the vaults as possible to minimize or eliminate the potential for a commingled discharge during wet weather, or (3) maintain dry weather flow levels in the vaults so that the skimmer and baffle can retain floating materials? GE respectfully submits that each of these is internally inconsistent with the other, and must be reconciled before the permit is finalized.

Response to Comment 13.2.3:

As is evident in the Draft Permit and Fact Sheet, EPA's goal is and has been to minimize untreated discharges of polluted water from the Drainage System Outfalls to the Saugus River. EPA continues to regard this to be an entirely appropriate goal under the CWA. See 33 U.S.C. § 1251(a)(1); 1311(b)(2)(A). In this regard, EPA intended the permit provisions in question to, in the words of GE, "minimize the accumulation of dry weather flow in the vaults so that this flow is not discharged when the vaults open during a storm." The Final Permit requires that the volume of dry weather in the vaults is minimized prior to a storm event, but, as explained previously in these Responses to Comments, does not include a requirement to transfer the first thirty minutes of wet weather to the CDTs. The Final Permit retains the requirement to maintain the level in the skimming chamber above the baffle, but specifies "except when authorized to operate at the 'low alarm' level to minimize dry weather flow in the vault prior to a forecasted

storm event.” The Final Permit’s approach therefore addresses GE’s concerns regarding any potential inconsistencies.

Comment 13.2.4: Part I.B.10.b.v. *“Isolate each source of non-allowable non-stormwater flow, to the maximum extent practicable, and re-pipe it directly to the CDTs for treatment.”*

EPA’s suggested BMP is impracticable and does not represent good engineering practice. The drainage system collection vaults and oil skimmers are an integral element of the CDTs system and were designed to provide collection of all DWF sources within each respective drainage basin and to provide preliminary treatment prior to pumping to the CDTs; thus bypassing them is generally not a good idea. First, the vaults are centralized collection points for a large complex drainage system in a manufacturing facility where things can change. Using this approach, even though GE might not know the exact location where a source of “non-allowable, non-stormwater” flow is entering the drainage system, the flow can still be captured. The vault system facilitates collection of non-stormwater flows generated by activities that occur in different areas of the site [e.g. drain cleanouts, A/C roof washwater not containing detergents, excavation dewatering (after appropriate testing), and stormwater drain dye tracer water]. Equipment generating non-stormwater flows may relocate or may consist of many sump pumps that are distributed around the Facility, such as the steam conduit sump pumps. The second purpose of the vaults is to provide initial buffering and preliminary treatment for oil and grease removal. Without this preliminary treatment step, the downstream granular activated carbon treatment system at the CDTs would be exhausted more frequently and operating costs would increase.

Eight vaults currently collect flows from miles of drainage lines, a setup that minimizes the amount of overhead piping that runs directly to the CDTs and the number of pumps that need to be operated to convey wastewater to the CDTs for treatment. Additional overhead piping must be insulated, is expensive to construct and maintain, and needs to be minimized to prevent interferences with other overhead utility lines, shop operations, and vehicles moving around the facility. Smaller DWF sources located near the existing CDTs conveyance header could possibly utilize the existing overhead piping; however, larger DWF sources and sources not located near the existing header would require construction of new dedicated overhead piping conveyance systems at costs ranging from \$150 to \$250 per linear foot. Furthermore, isolating each DWF source would require a collection and automated pumping system, and would increase operations and maintenance costs. Pumping through overhead piping instead of using gravity to drain line to the vaults also increases energy usage.

To assess the infrastructure needs and capital costs required to isolate and convey three major DWF sources to the CDTs, including the steam conduit drains, the power house boiler blowdown, and the boiler water treatment system backwash waters, GE developed a preliminary planning-level cost estimate as presented in Technical Exhibit 20. For example, the facility maintains 36 steam conduit collection sump pumps that are spread out across the facility. The existing pumps are only designed to lift the conduit drain water to the closest available drain and are not sized to pump the drain water across the site through an overhead conveyance piping network. Therefore the pumps would require upgrade and replacement. The estimated capital cost to collect, convey and treat the aforementioned sources to the CDTs is \$6.8 million. The

estimate does not include the capital costs associated with the isolation, collection, and conveyance of the remaining non-allowable, non-stormwater flows.

With respect to the boiler blowdown, the CDTs is not the appropriate treatment technology for this wastewater. The primary constituents of concern for boiler blowdown are pH and temperature. The CDTs does not include a pH adjustment process nor a temperature quenching or cooling process. Thus, routing the boiler blowdown to the existing CDTs would serve no environmental benefit. Segregation, collection, conveyance, and treatment of boiler blowdown would require design and construction of new systems – estimated at a cost of \$2.4 million as shown in the Technical Exhibit. Treatment of boiler blowdown would require storage tanks to facilitate cooling, followed by pH adjustment including a chemical addition and control system.

Collection of the boiler water treatment backwash waters and conveyance to the CDTs for treatment is estimated at \$0.3 million.

Finally, GE has been operating the CDTs for over 10 years, and during that time period, GE has only identified one non-stormwater source where GE decided based on location, the amount of flow, and the characteristics of the flow that it was prudent to pipe a source of non-stormwater directly to the CDTs (the 29G/T groundwater treatment system). Again GE is in the best position to decide how to manage different flows at its Facility in relation to treatment in the CDTs.

Response to Comment 13.2.4:

As indicated elsewhere and throughout this RTC document, the Draft Permit's requirement to "[i]solate each source of non-allowable non-stormwater flow, to the maximum extent practicable, and re-pipe it directly to the CDTs for treatment" has not been retained in the Final Permit. The Final Permit includes BMPs designed to minimize the discharge of untreated dry weather flows to the Saugus River in both dry and wet weather.

Comment 13.2.5: Part B.10.c. *"During wet weather conditions, during periods leading up to forecasted wet weather conditions, and whenever any outfall gate is open, eliminate, to the maximum extent practicable, the generation of non-allowable non-stormwater flows that would be discharged from the Drainage System Outfalls. To satisfy this requirement the following discharges are prohibited..."*

"Intermittent Discharges Consisting of de-aerator Storage Tanks, Building 64-A Sump, Test Cell Washdown, Stormwater Collected in Secondary Containment Dikes and Truck Unloading Areas, Hydrant Testing, Sprinkler System Testing Water, Stormwater Dye Tracing." [Part B.10.c.i]

The Building 64-A sump water and test cell washdown water discharge to the LWSC municipal sewer system, not to the Drainage System, so this requirement is not applicable and should be removed from the Permit.

Stormwater collected in the secondary containment dike and in the truck unloading areas is not “non-stormwater.” GE cannot feasibly eliminate it during a storm event. And the prohibition would be the exception that swallows the rule, since in Part B.10.f, EPA has already prohibited the discharge of sheens (as opposed to all stormwater collected in the dikes and unloading area, most of which is uncontaminated).

GE has 361 sprinkler systems and drains that must be tested three times per year, along with 93 fire hydrants that must be tested once per year. Water is discharged onto the parking lots, and then flows to Drainage System. Hydrant testing and sprinkler system test water originates in the city’s water supply and is potable. GE does not use chemical additives in this water. By the time it is discharged and due to storage time in the pipes and flushing, any chlorine residual will have dissipated. These flows do not present water quality concerns, which is why EPA allows tens of thousands of industrial permittees to discharge these flows under the MGSP.

GE needs to conduct periodic dye tracer testing to maintain the integrity of its old and complex system of drains and outfalls. GE does not perform dye tracer testing during wet weather because the dye is not visible during such an event. GE does not believe that non-toxic, biodegradable dyes run afoul of applicable state water quality standards or are “aesthetically objectionable.” However, as drafted, the permit would prohibit the use of such dyes. Although GE has made a substantial progress over the last five years to map the entire Facility drain system, GE still must manage this system and remain vigilant to detect and prevent any unknown connections or failures in historic plugs or disconnects throughout the 112-year old Facility infrastructure. Tracing the location and drainage pathway of such pipes is necessary at times for maintenance and to verify the accuracy and availability of the Facility’s drawings. If the purpose of the exercise is to find out where a pipe discharges because it is unknown, it is difficult to prevent discharge until the dye makes the drainage pathway visible. Minimization may be reasonable but prohibition is impractical and ignores good engineering practice in utilizing non-toxic biodegradable tracer dyes designed to dissipate quickly. Rather than an absolute prohibition, EPA should require that only non-toxic, biodegradable dyes be used; that use be minimized in accordance with good engineering practice, and that EPA and MADEP be notified prior to the use of dyes in the stormwater drainage system at the Facility.

“Any Discharge of ‘Blowdown’ during Wet Weather and during Periods Leading up to Forecasted Wet Weather Conditions, to the Maximum Extent Practicable. Blowdown consists of Condensate Blowdown, Steam Conduit Blowdown, Boiler Blowdown and Cooling Tower Blowdown.” [Part B.10.c.iii]

The term “blowdown” is not applicable to GE’s steam conduit or condensate system as neither system produces blowdown. “Blowdown” is generally an automated feature of equipment, such as boilers and cooling towers, which need to control water chemistry (e.g. pH, conductivity, mineral content) in order to function effectively. These systems maintain concentration using a “bleed and feed” system. The concentration is electronically monitored and if the concentration increases to an unacceptable level, the system dumps (or blows down) the concentrated water and initiates a feed of clean water. These two actions work together to bring the water solution into optimal range. Unbalanced water chemistry can result in equipment malfunction, acidic discharges, corrosion and pathogen buildup leading to potential boiler equipment failure. Boiler

equipment failure and malfunctions can result in excessive air emissions and permit exceedances. Blowdown cannot be tied to the weather forecast without risking adverse consequences to the equipment that provide power and other utilities to the Facility. EPA's proposed BMP is technically infeasible, creates other potential environmental problems and does not reflect good engineering practice. Therefore, this BMP should be deleted in its entirety.

“Any Discharge from Routine Maintenance that Generates Wastewater Discharges during Wet Weather and Periods Leading up to Forecasted Wet Weather Conditions, to the Maximum Extent Practicable. Routine Maintenance Consists of: Boiler Startup/Soot Blower Drains/Boiler Draining for Maintenance (Intermittent), Boiler Filter Backwash, Ion Exchange Regeneration and Backwash.” [Part I.B.10.c.iv]

All flows generated in the Power Plant either discharge to Outfall 018 or 019. Outfall 018 does not contain a stormwater component, and BMPs in a SWPPP are not applicable to non-stormwater flows. EPA inconsistently seeks to impose numeric limitations for Outfall 018 based on the Steam Electric ELGs, which allow these types of flows, and at the same time to prohibit such discharges during wet weather. Outfall 019 does contain a stormwater component. During dry weather, the flows from routine maintenance are diverted to the CDTs for treatment; during wet weather, GE has demonstrated that there is no reasonable potential for these flows to affect water quality. In addition, the need for routine maintenance is not tied to the weather forecast but to conditions of the equipment; EPA's prohibition does not reflect good engineering practice. This BMP should be deleted in its entirety.

Prohibition on “any Discharge from any remaining non-allowable non-stormwater discharge flows during wet weather and during periods leading up to forecasted wet weather conditions, to the maximum extent practicable. These non-allowable non-stormwater flows include at a minimum, potable water used upon NCCW system failure, steam conduit water, excavation dewatering, contaminated groundwater and cooling water (not including discharges of NCCW through Outfall 014 and 018.) [Part I.B.10.c.v]

EPA seeks to insert a catch-all BMP relating to the elimination of all “non-allowable non-stormwater flows” during wet weather even though the generation of many of these flows is often directly related to wet weather. EPA also fails to consider the age and complexity of the drainage system. GE has already corrected EPA's assumptions regarding contaminated groundwater in Section III above. GE's other concerns are set forth below.

Water generated from excavation dewatering is either stormwater or groundwater that has infiltrated into the excavation. Any prohibition associated with such a discharge should be based on its water quality impacts, not the weather conditions at the point of discharge. As an existing BMP, GE tests water generated from the dewatering of excavations. Based on the test results, the flow is either 1) discharged to the CDTs equalization tanks for treatment; 2) discharged to the LWSC municipal sewer system with permission; 3) shipped offsite for disposal or 4) if the water is uncontaminated, discharged to the storm sewer system. This BMP is consistent with regulatory requirements, reflects good engineering practice, and should be maintained.

Steam conduit water is produced when water accumulates in the sumps in the underground concrete vaults surrounding the steam piping, some of this water could be considered stormwater, some could be considered groundwater. Either way, accumulation is likely to occur more frequently during wet weather. The sump pumps trigger automatically based on the water level not the weather forecast. EPA's BMP would force GE to allow its steam conduit to potentially flood and damage equipment rather than allow the pumps to discharge. This is not a good engineering practice and should be removed from the permit.

To the extent EPA is prohibiting the discharge of non-contact cooling water that originates in the city water supply, EPA has no basis for requiring this BMP as EPA allows for the continual discharge of this type of non-stormwater flow under the MGSP. For the Facility, such flows would be occasional and intermittent as GE would only discharge this water in the event that a cooling tower failure occurs and immediate shutdown of equipment being cooled is impracticable. Potable water would replace the recirculating water from the cooling tower to keep the heat exchangers from overheating until repairs or shutdown of cooled equipment could be accomplished. Since GE pays for potable water, GE has a built-in financial incentive to avoid long-term reliance on once-through cooling supplied by the municipal system. GE does not dispute that contact cooling water should not be discharged during any period where its collection and treatment in the CDTs cannot be assured.

Response to Comment 13.2.5:

GE's comments in this section essentially relate to Part I.B.10.c of the Draft Permit, which prohibits the generation of non-allowable, non-stormwater flows during wet weather and during periods leading up to forecasted wet weather conditions, including but not limited to blowdown, cleaning water, excavation dewatering, and stormwater dye tracing. Part I.B.10.c of the Draft Permit has been eliminated in the Final Permit. As noted earlier and throughout this RTC document, the Final Permit includes BMPs designed to minimize the discharge of untreated dry weather flows to the Saugus River.

GE states that dye tracer testing is not performed during wet weather because the dye is not visible during such an event. Therefore, any discharge of dye to the receiving water is an indicator of a discharge of dry weather flows. Consistent with GE's comments, EPA has added the following requirement to Part I.A.10 of the Final Permit: "The permittee is authorized to use non-toxic, biodegradable dyes during dry weather, in minimal amounts, in accordance with good engineering practice, with prior notification to EPA and MassDEP. Discharge of any dye directly to the receiving water shall be reported to EPA on the cover letter to the DMR of the month immediately following the discharge."

GE comments on the hydrant testing and sprinkler system test water. Fire hydrant flushing is listed as an allowable non-stormwater flow under the MSGP. Additionally "potable water, including water line flushings" is an allowable non-stormwater flow under the MSGP. GE also states that no chemical additives are added to this water. In consideration of GE's comments, the Final Permit does not contain any requirements related to hydrant testing and sprinkler system test water.

Stormwater collected in the secondary containment dike shall be inspected prior to discharge. Any collected water containing a visible sheen shall be disposed of offsite or transferred to the CDTs for treatment prior to discharge. After inspection and a determination that there is no visible sheen, the water may be discharged. Therefore, the prohibition of the discharge of this water during wet weather does not appear in the Final Permit and the BMP concerning this water has been revised (see Response to Comment 13.2.7, below).

GE states that eliminating blowdown discharges at the Facility is technically infeasible without risking adverse consequences to its equipment. Based on GE's comment and explanation, EPA has dropped the prohibition of the discharge of blowdown during wet weather and periods leading up to wet weather from the Final Permit, along with all of Part I.B.10.c.

GE states that as an existing BMP, GE tests water generated from the dewatering of excavations. Based on the test results, the flow is either 1) discharged to the CDTs equalization tanks for treatment; 2) discharged to the LWSC municipal sewer system with permission; 3) shipped offsite for disposal or 4) if the water is uncontaminated, discharged to the storm sewer system. Therefore, the prohibition of discharges of dewatering from excavations has been replaced with a BMP in Part I.B.2.c.ix of the Final Permit requiring GE to continue to test dewatering from excavations and discharge it to the CDTs equalization tanks, the LWSC municipal sewer system, or ship it offsite for disposal. The Final Permit does not authorize excavation dewatering to be discharged to the storm sewer system because EPA believes that this wastewater can be treated with the BAT for dry weather flows (the CDTs) or otherwise disposed of without needing to discharge to the drainage system.

Additionally, GE states that the Building 64-A sump water and test cell washdown water discharge to the LWSC municipal sewer system. Therefore the prohibition of these discharges is not applicable. Consistent with GE's comments, Part I.A.11 of the Final Permit includes a requirement that these waters continue to be discharged to the LWSC municipal sewer system.

GE states that all flows generated at the Power Plant either discharge to Outfall 018 or 019. EPA has addressed GE's comments on wet weather discharges from Outfall 018 in these responses to Comments. The Final Permit does not authorize discharges from Outfall 018 specific to wet weather. However, the information provided in the comment regarding Outfall 019 is new and EPA was not aware of this outfall when the Draft Permit was issued. Based on GE's permit application and supplemental information, EPA believed that all flows associated with the Power Plant discharged only through Outfall 018. GE submitted this new information in response to EPA's CWA information request dated October 19, 2011, stating that discharges generated at the Power Plant also discharge through Outfall 019 and consist of: water softener backwash and rinse (city water), water softener regeneration (city water and brine solution), and carbon filter backwash (city water). EPA believes the Final Permit requirements are consistent with the current operation of Outfall 019 as part of the drainage system outfalls. During dry weather, flows will continue to be transferred to the CDTs for treatment, while wet weather discharges will be monitored and reported consistent with the other drainage system outfalls.

Comment 13.2.6: *Part I.B.10.d. “In the event of any generation of non-allowable non-stormwater flows during wet weather conditions or during periods leading up to forecasted wet weather conditions, the permittee shall record the type of flow generated, the corresponding weather conditions, the reason the flow was generated during wet weather conditions and the fate of the non-stormwater flow in question. The permittee shall submit this information to EPA in an annual report, due by March 31st each year.”*

This recordkeeping BMP is arbitrary and capricious, unduly burdensome, and technically impracticable given the age of the Facility, the types of non-allowable non-stormwater flows of concern to EPA, and the complexity of the drainage system. There is no method for GE to detect and manage all non-allowable, non-stormwater flows of the types identified in Part I.B.10.c of the Draft Permit. For all the reasons stated above, EPA’s focus on elimination of these flows is not justified. In turn, tracking and recordkeeping of this magnitude is unnecessary. To underscore this point, GE cannot detect -- during wet weather, periods leading up to forecasted wet weather, or at any other time -- when some contaminated groundwater might infiltrate through a crack in a pipe somewhere in the 12 miles of drainage lines. As explained above, the age and complexity of the drainage system was one factor considered by GE in designing the CDTs system with vaults to collect flows from various upstream locations in the drainage system.

Response to Comment 13.2.6:

As previously discussed in this RTC document, the Final Permit requires BMPs to minimize the discharge of dry weather flows during wet weather by reducing the volume of dry weather flow in the vaults prior to the start of a storm event predicted to generate sufficient precipitation to trigger the tide gates. Accordingly, the Final Permit does not include any requirements related to the generation of “non-allowable, non-stormwater flows” and the BMP that is the subject of GE’s comment has been removed from the Final Permit.

The intent of the BMP in the Final Permit is to minimize the discharge of dry weather flow during the first flush of wet weather. To this end, and related to the reporting requirements at issue in GE’s comment, Parts I.A.1 and I.B.1.b of the Final Permit require the permittee to monitor and report the average monthly and daily maximum volume of dry weather flow pumped to the CDTs prior to a storm event at each of the drainage system outfalls. Reporting these flows will likely ensure that the permittee complies with the BMP but avoids the potentially burdensome requirements related to the type, source, and fate of dry weather flows to which GE objects.

Comment 13.2.7: *Part I.B.10.f. “Inspect all stormwater collected with the secondary containment areas at the jet fuel farm, around tanks, in the truck unloading ramps, in the Outfall 032 drainage area and from other areas for evidence of an oil sheen or other contamination prior such water being routed to the CDTs. In the event a sheen is observed, the permittee shall eliminate the sheen prior to discharging the water from the containment area or dispose of the water offsite.”*

GE objects to this requirement on several grounds. GE's wastewater treatment operators are in the best position to decide which flows can be treated in the CDTs and which should be excluded. The CDTs were designed and have operated effectively for over a decade treating wastewater with oily sheens; in fact, the elimination of sheens from GE's discharge to the Saugus River was one of the primary reasons for installation of the CDTs. EPA's exclusion has no technical basis. This BMP should be deleted in its entirety.

Response to Comment 13.2.7:

The Final Permit requires that stormwater collected in the secondary containment areas be inspected prior to discharge. Any collected stormwater containing a visible sheen shall be disposed of offsite or transferred to the CDTs for treatment prior to discharge. Therefore, Part I.B.2.c.i of the Final Permit has been revised as follows to authorize treatment in the CDTs:

Inspect all stormwater collected with the secondary containment areas at the jet fuel farm, around tanks, in the truck unloading ramps, in the Outfall 032 drainage area and from other areas for evidence of an oil sheen or other contamination prior to discharge to the drainage system. In the event a sheen is observed, the permittee shall eliminate the sheen prior to discharging the water from the containment area to the drainage system. Otherwise, water containing a sheen shall be discharged to the CDTs for treatment or disposed of offsite.

Comment 13.2.8: *Part I.B.10.g. "Perform regular cleaning of the Drainage System pipelines."*

It is unclear how EPA would interpret "regular cleaning" in a compliance or enforcement proceeding. Rather than subject GE to the risk of subjective interpretation and enforcement, EPA should allow GE to develop a site-specific BMP for drain cleaning as part of its updated SWPPP based on appropriate variables such as the extent of sand usage on roads during the winter season.

Response to Comment 13.2.8:

EPA agrees that "regular cleaning" should be defined based on site-specific factors, to be described in the SWPPP. Part I.B.2.c.ii of the Final Permit has been changed to state, "Perform regular cleaning of the Drainage System pipelines. The term 'regular cleaning' shall be defined based on site-specific factors and described in the facility's SWPPP, which shall include requirements for the disposal of all solids offsite which are accumulated as a result of the cleaning, the minimization of the amount of solids left behind in the storm drains, the disposal of all collected solids off-site in a manner that complies with federal, state and local laws, regulations and ordinances, and ensuring that all drainage system cleaning water is disposed of offsite or goes directly to the CDTs for treatment."

Comment 13.2.9: Part I.B.10.I. *“Discharge of any water containing additives (except cooling water to 014 and 018) is prohibited.”*

The cooling water discharged through Outfalls 014 and 018 is river water to which GE only adds heat, so the exception language makes no sense. The types of equipment requiring additives include cooling towers, boilers and water treatment systems like the DAF. If GE is required to run the DAF (which we have disputed elsewhere in these comments), then GE will need to use additives, such as coagulant and flocculent, in the treatment process. In addition, GE uses additives to maintain balanced water chemistry in its cooling towers and boilers. A complete list of these additives is included in Technical Exhibit 21. Additives allow for the continued recirculation and conservation of water. By way of example, closed cycle cooling towers favored by EPA could not function without the use of additives. The additives reduce corrosion of the equipment and prevent the growth of microorganisms. Without additives, metals oxidize and become soluble in water, thus increasing the potential for discharges of pollutants to the receiving water. Additives protect the life of equipment and reduce failures in utility and boiler systems, including boiler malfunctions that could lead to excessive air emissions. In addition, the use of additives is expensive, so GE has a built-in financial incentive to ensure that concentrations are kept as low as possible while still achieving the goal of appropriately controlling water chemistry.

Response to Comment 13.2.9:

The Final Permit’s BMP approach to addressing dry weather flows will not alter current operations or require GE to run the DAF and, therefore, to use additives such as coagulant and flocculent in the treatment process. Technical Exhibit 21, provided by GE with its comments on the Draft Permit, lists additives that are expected to be discharged. According to GE, only the additives used in the boilers are contribute to the NPDES discharge; all other additives are either not discharged or the discharged is captured as sludge and managed as solid waste, including the coagulant and flocculent. Part I.B.2.c.v of the Final Permit authorizes the use of approved additives listed in Technical Exhibit 21 and the prohibition of any discharge containing additives (Part I.B.10.I) in the Draft Permit has been eliminated. The requirements included in the Final Permit, in particular, the technology-based effluent limitations at Outfall 018C and twice yearly WET testing at Outfall 018 (both of which include discharges from the boiler), will ensure that water quality is maintained with the use of approved additives. Approved additives are only those listed in Exhibit 21, which is included as Attachment 4 to the Final Permit. Use of additional additives at the facility requires prior approval by EPA.⁸⁸

⁸⁸ In the course of its comment, GE refers to “closed cycle cooling towers [as being] favored by EPA” GE’s comment in this regard is not only immaterial to the permit terms at issue, but it is also incorrect or potentially misleading. While EPA has found in various contexts that of the various cooling system technology options, closed-cycle cooling can achieve the greatest reductions in entrainment, impingement and thermal discharges, and that it may be appropriate to require this technology in some cases, these technology decisions are presently made on a case-by-case basis. Contrary to the implication of GE’s comment, EPA has neither determined that closed-cycle cooling must be used on an industrial category-wide basis nor determined that closed-cycle cooling must be used at GE.

Comment 13.2.10: *Part I.B.10.m. “Develop and implement BMPs consistent with the sector specific BMPs included in Sector AB (Transportation equipment, industrial and commercial machinery) and Sector O (Steam Electric Generating Facilities) of the MSGP.”*

GE has not sought coverage under the MGSP. GE’s existing individual permit reflects site-specific SWPPP and BMP requirements, as does the proposed renewal permit. As a result, further cross-referencing of the MSGP is neither necessary nor appropriate.

Response to Comment 13.2.10:

Requiring BMPs consistent with those requirements imposed on facilities that are similar to the facility being permitted commonly occurs in individual NPDES permitting, pursuant to BPJ. However, EPA acknowledges that this facility is not a steam electric generation facility and the full suite of BMPs under that sector of the MSGP might not be appropriate for GE. Therefore, EPA has eliminated the BMP to which GE objects in its comment and Parts I.B.2.c.vi through viii of the Final Permit include site-specific BMPs related to the transport, storage, and use of fuel that EPA believes are appropriate for GE.

14. Even Assuming that Certain New Limits and Conditions are Necessary and Appropriate, EPA cannot Impose those Limits and Conditions without First Determining whether Schedules are Needed for GE to Achieve Compliance.

Comment 14.0:

To the extent that EPA continues to believe that it has the authority to impose the new limits, conditions and prohibitions set forth in the Draft Permit (including those disputed by GE in this comment document), it cannot do so without offering appropriate compliance schedules for each new provision. Such schedules are authorized by federal and state law, and are routinely granted by EPA in these circumstances.⁸⁹

In this permit proceeding, EPA retains primary responsibility to “prescribe conditions ... to assure compliance with the requirements of [§402(a)(1) of the Clean Water Act] and such other requirements as [it] deems appropriate.” 33 U.S.C. §1342(a)(2). While EPA has some measure of discretion here, that discretion is not unfettered. At a minimum, EPA must consider the need for “other requirements” in the permit, especially where, as here, EPA’s own guidance calls for such consideration. See EPA Permit Writers’ Manual, EPA 833-B-96-003 (noting that one justification for a special condition in a permit is “[t]o incorporate compliance schedules in situations that include new/revised water quality standards application,” as in the case here).

As EPA seems to acknowledge, GE simply cannot comply with many of the new limits, conditions and prohibitions on day one of the new permit cycle. For some of these limits and conditions, major capital investments, engineering, construction and/or process changes will be needed to achieve compliance. Examples include, without limitation, EPA’s proposed changes

⁸⁹ See 314 Mass. Code Regs. §4.03(1)(b)(2)(2008); *In the Matter of Star-Kist Caribe, Inc.*, 4 E.A.D. 33 (EPA Environmental Appeals Board, May 26, 1992).

to the Drainage System, CDTs and cooling water intake structures (see schedule for these projects in Technical Exhibit 22). EPA's failure to consider and allow schedules of compliance for GE to achieve compliance with substantial new requirements would amount to clear error.

Response to Comment 14.0:

EPA agrees with GE that when new permit conditions are issued that require installation of new equipment that will reasonably take some time to complete, a compliance schedule typically ought to be developed to provide a clear, enforceable timeline for achieving permit compliance. EPA has made this clear in many permit proceedings over the years. *See, e.g.,* EPA Region 1, "Responses to Comments, Public Review of Brayton Point Station NPDES Permit MA0003654" (Oct. 3, 2003), p. I-6 (accessible at <http://www.epa.gov/region1/braytonpoint/pdfs/finalpermit/sectionI.pdf>). The question that remains, however, is whether the compliance schedule should be included in the permit itself or in a separate enforceable instrument, such as an administrative compliance order under CWA § 309(a) (*i.e.*, a non-penalty scheduling order), or a consent decree.

Under 40 C.F.R. § 122.47(a)(1), a schedule for attaining future compliance with technology-based effluent limits whose statutory compliance deadline has already passed cannot be included in an NPDES permit. The deadline for compliance with BAT, BPT and BCT technology standards is 1989. *See* 40 C.F.R. § 125.3 (deadline for compliance with BAT, BPT and BCT technology standards is 1989); 33 U.S.C. § 1311(b)(2). Therefore, a schedule for attaining compliance with these standards would be included in an instrument outside of the permit. By the same token, EPA cannot put a compliance schedule in a permit for achieving compliance with water quality-based effluent requirements, unless the applicable state standards themselves provide for such future compliance. Otherwise, the statutory deadline of 1977 for achieving water quality standards compliance has already passed. *See* 33 U.S.C. § 1311(b)(1)(C). Thus, compliance schedules for achieving compliance with water quality-based effluent limits would also be handled outside the permit unless the state water quality standard at issue, itself, provided for compliance at some time in the future. *See In the Matter of Star-Kist Caribe, Inc.*, 4 E.A.D. 33, 34-36 (EAB 1992). In the latter case a compliance schedule could be included in the permit consistent with the terms of the water quality standards. It is not entirely clear to EPA whether GE's comment is consistent with the above discussion, or whether the company is suggesting that compliance schedules should be included in NPDES permits in all cases. If GE is making the latter argument, then EPA disagrees.

The Draft Permit's requirements for the drainage system would have necessitated some construction activity and, no doubt, helped to precipitate this comment by GE. The Final Permit, however, does not require proposed changes to the drainage system or CDTs that would require major capital investments, engineering, construction, and/or process changes. As described in more detail in Attachment A to this RTC, the Final Permit's requirements pertaining to the drainage system and the CDTs, which are primarily based on technology standards, can be complied with through operational steps that GE can implement immediately. As a result, EPA does not think a compliance schedule is needed for GE to achieve permit compliance. If GE disagrees after reviewing the changes that EPA made to the Final Permit, the company can

approach the Agency about the possibility of developing a compliance schedule outside the permit.

The situation with regard to cooling water intake structure requirements under CWA § 316(b) is somewhat more complicated and is discussed above in Response to Comment 11.1. GE's Final Permit does require certain improvements to the Facility's cooling water intake structures which will require some time to plan and install in order to achieve compliance. EPA gave GE the opportunity to comment as to an appropriate compliance timeline and GE submitted a proposed timeline with its comments on the Draft Permit. EPA previously interpreted CWA § 316(b) to incorporate the compliance deadlines from CWA § 301(b)(2) and, as a result, any compliance schedule would have been handled outside an NPDES permit. *See, e.g., Cronin v. Browner*, 898 F.Supp. 1052 (S.D.N.Y. 1995); *EPA General Counsel's Opinion No. 41* (1976). *See also* EPA Region 1, "Responses to Comments, Public Review of Brayton Point Station NPDES Permit MA0003654" (Oct. 3, 2003), p. I-6 (accessible at <http://www.epa.gov/region1/braytonpoint/pdfs/finalpermit/sectionI.pdf>). EPA has more recently changed its legal interpretation, however, and has now determined that because there is no stated compliance deadline within the "four corners" of CWA § 316(b), compliance with the BTA standard is due *as soon as practicable*. *See* 79 Fed. Reg. 48359.⁹⁰ As a result, a compliance schedule may be, but does not necessarily have to be, included in an NPDES permit to govern attainment of compliance with CWA § 316(b) requirements. *See* 79 Fed. Reg. 48433, 48438 (40 C.F.R. §§ 125.94(b)(1) and (2) ("The Director may establish interim compliance milestones in the permit."), and 125.98(c)). In this case, EPA has included a compliance schedule in the permit by which the permittee is to achieve compliance with the Final Permit's requirements under CWA § 316(b). This is discussed in more detail in EPA's Response to Comment 11.1, above.

15. Conclusion

Comment 15.0:

GE is fundamentally opposed to the Draft Permit and has grave concerns about the new limitations and conditions imposed therein. GE would welcome the opportunity to meet with the Agencies to review these comments and concerns, and to provide whatever additional information that the Agencies may request in order to properly revise and correct the Draft Permit.

Response to Comment 15.0:

EPA has undertaken a thorough review of a large body of information in developing the Final Permit. Much of that information was provided by GE over time at EPA's request. EPA and GE had numerous communications about the permit as it was being developed. Upon GE's request, EPA and GE met in October 2013 to clarify specific details regarding the operation of the drainage system outfalls in response to GE's comments and supplemental technical exhibits.

⁹⁰ Although the New CWA § 316(b) Regulations are not yet in effect, EPA has clearly stated its new legal interpretation and Region 1's practice conforms to this interpretation, just as our prior practice conformed to the earlier interpretation.

EPA appreciates GE's willingness provide the information that has assisted EPA's efforts to develop a NPDES Permit for the Lynn facility that complies with the technology-based and water quality-based requirements of the CWA and its implementing regulations.

16. Comment from National Marine Fisheries Service

These comments are offered by the Protected Resources Division of NOAA's National Marine Fisheries Service (NMFS). While several species of listed whales and sea turtles occur seasonally in waters off the Massachusetts coast and populations of the federally endangered shortnose sturgeon occur in the Connecticut and Merrimack Rivers, no listed species are known to occur in the Saugus River. As such, no further coordination with NMFS PRD is necessary.

Response to Comment 16:

No further coordination with NMFS is necessary.

17. Comment from Massachusetts Department of Environmental Protection

MassDEP comments that the correct address on page 49 of the permit should read 205B Lowell Street, not 205 Lowell Ave.

Response to Comment 17:

The address for Massachusetts Department of Environmental Protection – NERO, Bureau of Waste Prevention, has been revised.

18. Comments submitted by Saugus River Watershed Council Received After the Close of the Public Comment Period

Comments were submitted by Saugus River Watershed Council (SRWC) on August 12, 2011 after the close of the 90-day extension to the public comment period on June 1, 2011. SRWC submitted a number of comments focused on 1) the BMPs for wet and dry weather flows, 2) the effluent limitations and monitoring requirements at the drainage system outfalls and Outfall 027A (CDTS), and 3) the effluent limitations and permit conditions for the non-stormwater outfalls (014, 018, and 020). Although EPA is not required to respond to these comments because they were submitted after the close of the public comment period, EPA has chosen to consider the SRWC's comments on the Draft Permit as summarized below.

1) BMPs for wet and dry weather flows

- SRWC supports the proposed requirement to eliminate all dry weather discharges, including non-allowable non-stormwater flows, to the Saugus River. SRWC concurs that it is technologically feasible and economically achievable for GE to eliminate untreated dry weather pollutant discharges from the drainage outfalls. SRWC also supports the requirement that drainage pipes be inspected and the lining repaired to reduce groundwater infiltration. SRWC recommends a strict timeline for actions to address infiltrated groundwater discharges be included in the permit to ensure that the

discharge of contaminated groundwater to the Saugus River comes to an end as soon as possible.

- SRWC supports the proposed requirement to treat the first flush of stormwater in the CDTS prior to discharge.
- SRWC urges EPA to ensure that there are clear consequences for GE if any unlawful discharges of contaminated groundwater take place. SRWC maintains it is not clear from the permit what the consequences will be if the proposed BMPs are not successful at ensuring the discharge to the Saugus River meets water quality criteria.
- SRWC supports the requirements to develop site-specific BMPs to minimize infiltration of contaminated groundwater into the drainage system. SRWC requests that the SWPPP, any plan to address infiltrated groundwater, and annual reports summarizing actions taken be made available to the public.
- SRWC remains concerned that the language indicating that permit requirements must be met “to the maximum extent possible” leaves the door open for GE to continue not meeting the requirements of its NPDES permit without adequate consequences.
- SRWC remains concerned about GE’s inability to identify all pipes connected to the drainage system and believe that the company should be held accountable for further identifying historic pipes at the site so that their efforts to address contaminated groundwater infiltration will be as effective as possible.
- SRWC supports the requirements to pump excavation dewatering to the CDTS and to containerize and transfer this water to the Lynn WPCF or dispose offsite if the total petroleum hydrocarbons are 5.0 mg/L or greater; the prohibition of drainage system cleaning water; the prohibition of discharge of water containing additives to the Saugus River; and the prohibition of visible levels of dye used in stormwater tracing activities.

2) Effluent limitations and monitoring requirements at the drainage system outfalls and Outfall 027A (CDTS)

- SRWC supports the proposed requirement to utilize both the dissolved air flotation in addition to the granulated activated carbon in the CDTS.
- SRWC supports monitoring for total cyanide at Outfall 027A and recommends that a limit be established in the permit.
- SRWC comments that the purpose of reporting zero on the DMR is unclear and that detection amounts above a minimum detection level of 0.03 using Modified Method 8082 should be reported.
- Regarding the discharge of metals from the drainage system outfalls, SRWC recommends that the permit include specific language requiring how metals monitoring data will be used, a timeline for BMP implementation, and EPA review of monitoring results.
- SRWC supports the requirement to monitor metals at Outfall 027A (CDTS) and recommends limits for heavy metals detected in groundwater at the site. SRWC comments that the Draft Permit does not include any explanation as to why limits for metals are not part of the permit.

3) Non-stormwater Outfalls (014, 018, 020)

- SRWC supports requirements to inspect pipes at Outfalls 014, 018, and 020 to determine the extent of contaminated groundwater infiltration, to implement pipe lining projects to eliminate infiltration, and to reconfigure outfalls to eliminate the discharge of untreated non-allowable non-stormwater flows directly to the receiving water. SRWC also supports the effluent limitations and monitoring requirements related to the discharge of non-allowable non-stormwater through these outfalls.
- SRWC supports the monitoring requirements that will be used to evaluate the effectiveness of BMPs for the non-stormwater outfalls. SRWC comments that it is not clear what actions, if any, will be taken if the monitoring results show that these contaminants are still entering the river and recommends additional language to ensure that additional BMP actions can be added to the permit if needed.
- SRWC requests clarification on the draft permit limits for copper and selenium at Outfall 018A.
- SRWC recommends the addition of flow limits and an oil and grease limit of 15 mg/L for dry weather discharges from Outfall 018C.
- SRWC comments that although the proposed temperature limit of 90°F from Outfalls 014 and 018 is an improvement over the current permit, the receiving waters would be better protected if the permit implemented a requirement based on closed-cycle cooling as best available technology as described on page 76 of the Fact Sheet.
- SRWC supports the Draft Permit conditions to minimize impingement and entrainment at the CWISs and supports the addition of limits associated with fish migration periods as well as a bioaccumulation survey to support other permit requirements that limit contaminants in the effluent discharged to the river.

Response to Comment 18:

EPA recognizes SRWC's support of the Draft Permit limits and conditions and maintains that, while many of these requirements have been modified or removed in the Final Permit, EPA believes that the Final Permit conditions will meet the technology-based requirements of the CWA and also satisfy water quality standards. These permit conditions include requiring the permittee to continue to treat dry weather flow from all drainage system outfalls in the CDTs, implementing BMPs to minimize the discharge of untreated dry weather flows combined with monitoring of discharges from the drainage system outfalls, and effluent limitations and conditions at the non-stormwater outfalls.

1) BMPs for wet and dry weather flows

As is evident in the Draft Permit and Fact Sheet, and in the Final Permit and Response to Comments, EPA's goal is and has been to minimize untreated discharges of polluted water from the Drainage System Outfalls to the Saugus River. In its comments, SRWC generally voices support for the Draft Permit requirements that would eliminate dry weather discharges to the Saugus River, including the requirements to treat the first flush of wet weather in the CDTs and eliminate the generation of non-allowable, non-stormwater flows during wet weather. In

consideration of the comments on the Draft Permit and supporting data and analysis, EPA has revised its approach to wet and dry weather discharges in the Final Permit.

In Attachment A hereto, EPA reevaluated the BAT analysis for wet and dry weather flows based in part on recent monitoring data of dry and wet weather requested by EPA, and GE's comments on the Draft Permit, including an analysis of the feasibility and cost of eliminating dry weather discharges to the drainage system outfalls and treating the first flush of stormwater in the CDTs (GE Technical Exhibits 15 and 17). EPA determined that the BAT for dry weather flows is use of the existing CDTs prior to discharge through Outfall 027A. The technology-based limits for Outfall 027A in the Final Permit reflect the use of this technology. The Final Permit applies a technology-based, BMP approach to addressing the dry weather flows at the drainage system outfalls. First, the Final Permit requires that the drainage system outfall tide gates discharge only during wet weather (as defined in the Final Permit), with the exception of minor weeping around the bottom edge of gates due to hydrostatic pressure. EPA believes that these permit conditions are consistent both with proper maintenance and control of the outfall gates, which are operated consistent with the Massachusetts Administrative Consent Order to "substantially eliminate" the discharge of dry weather flows to the Saugus River, and with GE's comments. Second, the Final Permit requires that the permittee minimize the volume of dry weather flow that is discharged, untreated, to the Saugus River during wet weather by lowering the elevation of the drainage vaults to the "low alarm" level prior to a storm event forecasted to generate 0.1 inches or more of precipitation (and thus trigger the tide gates to open). EPA believes this requirement is a feasible measure to reduce untreated pollutant discharges to the Saugus River, and is consistent with GE's current operation of the vaults. EPA directs SRWC to Attachment A for a comprehensive discussion of its BAT analysis for wet and dry weather flows, as well as EPA's response to GE's comments 3.2 and 13.2.4.

EPA also concluded that the BAT during wet weather is a BMP to minimize the volume of dry weather flow in the vaults when the gate is likely to be triggered due to a storm event. Because flows discharged from the vault outfalls during wet weather bypass the oil-water separator and the CDTs, numeric limits based on the use of these technologies are not appropriate for wet weather flows.

As a result of EPA's BAT analysis, many of the Draft Permit's BMPs for dry and wet weather flows from the drainage system that SRWC supported have changed substantially or have been eliminated in the Final Permit. This includes the requirement to develop and submitting a plan for controlling infiltration of groundwater and inflow on non-allowable, non-stormwater flows to the drainage system outfalls, which SRWC had requested be made public. EPA believes that the specified BMP to minimize the discharge of combined dry weather flows from the drainage system outfalls during wet weather, combined with monitoring of the drainage system outfalls, is currently the best approach for handling pollutant discharges from the drainage system outfalls in the Final Permit. This approach would also generally be consistent with the standard to "substantially eliminate" dry weather discharges set in the ACO. The Final Permit retains the requirement to develop, implement, and maintain a SWPPP, and annual reports certifying compliance with the SWPPP will be available for inspection by EPA and MassDEP.

SRWC comments that the phrase “to the maximum extent practicable” (used in Parts I.B.10.b and c) “leaves the door open for GE continue not meeting the requirements of its NPDES permit without adequate consequences.” First, EPA points out that, to its knowledge and based on its discharge monitoring reports through June 2014, GE has not exceeded the effluent limitations of its current permit. Second, EPA believes that with the treatment of dry weather flows in the CDTs, GE will continue to meet the effluent limitations and conditions of the Final Permit. Finally, for the reasons summarized above and discussed at length in Attachment A and in responses to comment 3.2, the permit requirements that included the language “to the maximum extent practicable” (including eliminating the discharge of non-allowable, non-stormwater flows to the receiving water and eliminating the generation of non-allowable, non-stormwater flows during wet weather and leading up to wet weather) have been removed from the Final Permit and replaced with site-specific BMPs prohibiting discharges from the drainage system outfalls during dry weather, requiring that dry weather flows are treated at the CDTs prior to discharge, and minimizing the discharge of dry weather flows during wet weather. Therefore, the Final Permit has eliminated the phrase “to the maximum extent practicable.” EPA believes that the permittee will comply with the BMPs in the Final Permit under all conditions and requires the permittee to monitor and report both the number of gate openings and the estimated volume of dry weather flow transferred to the CDTs for each drainage system outfall.

SRWC supports the Draft Permit requirements related to discharges from excavation dewatering, drainage system cleaning, chemical additives, and stormwater dye tracing. EPA maintains that the discharge of these wastewaters continue to be limited in the Final Permit with minor changes in the requirements in response to comments on the Draft Permit as follows:

The Draft Permit required discharges from excavation dewatering to be eliminated (to the maximum extent practicable) during wet weather and periods leading up to wet weather. In Comment 13.2.5, GE demonstrated that water generated from excavation dewatering is tested and, based on the results, is either 1) discharged to the CDTs equalization tanks for treatment; 2) discharged to the LWSC municipal sewer system with permission; 3) shipped offsite for disposal or 4) if the water is uncontaminated, discharged to the storm sewer system. The Final Permit includes a BMP requiring GE to continue to test excavation dewatering and discharge either to the CDTs equalization tanks, the LWSC system, or ship offsite for disposal. The Final Permit does not authorize discharges of excavation dewatering to the storm sewer system.

The Draft Permit required regular cleaning of the drainage system pipelines. In Comment 13.2.8, GE maintains that it is unclear how EPA would interpret “regular cleaning” in a compliance or enforcement proceeding. EPA agrees that “regular cleaning” should be defined based on site-specific factors described in the SWPPP. The Final Permit condition at Part I.B.2.c.ii has been changed to state, “Perform regular cleaning of the Drainage System pipelines. The term “regular cleaning” shall be defined based on site-specific factors and described in the facility’s SWPPP, which shall include requirements for the disposal of all solids offsite which are accumulated as a result of the cleaning, the minimization of the amount of solids left behind in the storm drains, the disposal of all collected solids off-site in a manner that complies with federal, state and local laws, regulations and ordinances, and ensuring that all drainage system cleaning water is disposed of offsite or goes directly to the CDTs for treatment.”

The Draft Permit prohibited the discharge of water containing additives with the exception of cooling water through Outfalls 014 and 018. In comment 13.2.9, GE demonstrated that other additives are necessary to maintain balanced water chemistry, protect the life of equipment and reduce failures in utility and boiler systems, or properly operate the DAF. EPA considered this comment and agreed that prohibiting *any* water containing additives might restrict GE from properly maintain and operating equipment. GE submitted a complete list of these additives is with its comments on the Draft Permit (Technical Exhibit 21), which EPA incorporated into the Final Permit as Attachment 4. The Final Permit prohibits discharge of water containing non-approved additives.

The Draft Permit required discharges from stormwater dye tracing to be eliminated (to the maximum extent practicable) during wet weather and periods leading up to wet weather. Dye tracer testing to maintain the integrity the system of drains and outfalls and to detect any unknown connections or failures in historic plugs or disconnects. In Comment 13.2.5, GE demonstrated that dye tracer testing is not performed during wet weather because the dye is not visible during such an event. Part I.A.10 of the Final Permit authorizes the use of non-toxic, biodegradable dyes during dry weather, in minimal amounts, in accordance with good engineering practice, with prior notification to EPA and MassDEP. The Final Permit also requires that discharge of any dye directly to the receiving water shall be reported to EPA on the cover letter to the DMR of the month immediately following the discharge. EPA believes that these conditions will allow GE to continue to maintain its drainage system while ensuring that the water quality standards are met.

2) Effluent limitations and monitoring requirements at the drainage system outfalls and Outfall 027A

SRWC supports the use of the CDTS, specifically the Draft Permit requirement to operate the dissolved air flotation (DAF) in addition to the granulated activated carbon (GAC). EPA agrees that the CDTS, as currently designed and operated, reflects the “best available technology” for treatment of contaminated groundwater and other dry weather flows. Attachment A provides a detailed BAT analysis in which EPA concludes that BAT for dry weather flows is the CDTS. In Comment 13.1, GE provided a detailed explanation of how the company’s operating experience at the CDTS indicates that better treatment is provided overall by not using the DAF units in light of the characteristics of the wastewater receiving treatment. The Final Permit at Part I.A.2 authorizes discharge of “treated effluent from the consolidated drains treatment system” and includes several technology-based numeric limits based on use of activated carbon. In addition, Part II of the Final Permit continues to contain standard permit condition II.B.1 (“Proper Operation and Maintenance”). *See also* 40 C.F.R. § 122.41(e). Thus, the Final Permit requires the permittee to continue to treat effluent at the CDTS in the manner that is most effective to remove pollutants and maintain the technology, which was the overarching intent of the permit condition in the Draft Permit.

At Outfall 027A, the Draft Permit required reporting of numerical results for PCBs less than the minimum level of 0.065 (using Modified Method 8082) as zero in the DMR but reporting results in a separate attachment to the DMR. SRWC comments that the purpose of reporting zero on the DMR is unclear and that detection amounts above a minimum detection level of 0.03 using

Modified Method 8082 should be reported. EPA agrees that this reporting requirement is unclear. The Final Permit eliminates this language and replaces it with a reference to the EPA Region 1 NPDES Permit Program Instructions for the DMRs for guidance on sampling below the minimum level. The current version of this guidance directs permittees to report values less than the minimum level specified in the permit as zero in the DMR.

SRWC supports monitoring for total cyanide at Outfall 027A and recommends that a limit be established in the permit. The Final Permit includes monitoring (without limits) at Outfall 001 and Outfall 027A (which receives dry weather flows from Outfall 001). According to GE, there are no sources of cyanide at the facility and the single “hit” from February 1998 was a false positive and should be rejected from the data set used by EPA to assess the need for limits and monitoring conditions in the permit. EPA responds that the 2012 wet weather monitoring data submitted in response to the information request dated October 19, 2011 also indicated elevated levels of cyanide at Outfall 001 on one of the three sampling dates. GE does not appear to be involved in industrial processes typically associated with the presence of cyanide in effluent, and it remains unclear what the source of cyanide at GE might be. Still, the limited available data suggests that monitoring for this parameter is warranted at Outfall 001 and Outfall 027A because it receives dry weather flow from Outfall 001. EPA believes that the use of activated carbon at the CDTs will enhance the removal of cyanide from the effluent and ensure that the water quality criterion is met. See Response to Comment 5.1.1.

The Draft Permit required, and the Final Permit retains, monitoring for metals both for wet weather discharges from the drainage system outfalls and for treated effluent from the CDTs. SRWC comments that additional language should be added to indicate how monitoring data will be used, particularly if water quality criteria are exceeded. The current permit has no monitoring requirements for metals at any of GE’s outfalls, and monitoring data for metals in dry weather discharges representative of GE’s wastewater following the installation and operation of the CDTs is limited to a single sample of dry weather flows taken from each of the drainage system outfalls in 2009. The exceedances of water quality criteria for metals at the drainage system outfalls described in the Fact Sheet (pp.42-44) and referenced in SRWC’s comments were from data collected prior to the installation of the CDTs, additional site remediation projects, and pipe relining and may not be representative of the current wastewater. In the 2009 dry weather flow sample, only concentrations of copper were above metals water quality criteria. The monitoring requirements for the drainage system outfalls in the Final Permit are expected to be used during the next permit issuance to assess if the effluent from current operation of the drainage system outfalls has a reasonable potential to cause or contribute to an exceedence of water quality criteria and, if so, water-quality based limits for metals would be included in the new permit. EPA does not believe that additional permit language is needed to indicate how monitoring data will be used. EPA expects that the discharge of dry weather flows will be minimized through the technology-based requirements in the Final Permit, which EPA believes will also satisfy water quality standards. In the meantime, EPA has authority to modify a permit when new information is received that was not available at the time of permit issuance and would have justified the application of different permit conditions at the time of issuance. See 40 C.F.R. 122.62(a)(2).

In addition, SRWC recommends limits for heavy metals detected in groundwater at Outfall 027A. The current permit does not require monitoring for metals at Outfall 027D (now Outfall

027A, the CDTs) and no metals data exists for the discharges from the CDTs. The monitoring requirements for Outfall 027A in the Final Permit will be used during the next permit issuance to assess if the effluent from the CDTs has a reasonable potential to cause or contribute to an exceedance of water quality criteria and, if so, numeric water quality-based limits would be included in the new permit. In the meantime, the CDTs uses carbon adsorption to treat dry weather flows prior to discharge. Although the CDTs was installed primarily to treat contaminants related to the release of petroleum at the site, it also removes heavy metals from wastewater. According to the Remediation General Permit, carbon adsorption can routinely achieve water quality-based effluent limitations (including those set in the RGP) (RGP Fact Sheet, Attachment A p.35-36). The Final Permit requires monitoring for metals in treated effluent from Outfall 027D. EPA believes that the treatment of the effluent in the CDTs prior to discharge will achieve relatively low concentrations of metals regardless of the presence of numeric limits.

3) Non-stormwater Outfalls (014, 018, 020)

SRWC supports BMPs to inspect, reline, and rehabilitate drainage pipelines to reduce groundwater infiltration, and comments that GE should be held accountable to identify and address contaminated groundwater infiltration in its drainage system. The Draft Permit's BMPs to inspect and rehabilitate the pipeline specifically applied to Outfalls 014, 018, and 020 (Part I.B.10.(c)). In its comments, GE expressed concern that rehabilitating all of the drainage system pipes would prove very expensive and, in some cases, technically infeasible. Moreover, GE provided new information that indicates that the discharges from Outfalls 014, 018 and 020 are unlikely to receive contaminated groundwater infiltration (See Responses to Comments 3.3 and 7). First, GE demonstrated that the drainage pipes associated with these three outfalls *do not* pass through locations at the Lynn facility identified as having groundwater attenuation or Light Non-Aqueous Phase Liquids (LNAPL) plumes. More importantly, GE demonstrated that these outfalls have no groundwater infiltration. Outfall 014 was lined, internally sand blasted, and sealed in 2002. Outfall 018 is not impacted by groundwater due to the tidal effects on the structure and the high flow of cooling water discharged through the system. Finally, Outfall 020 is an above-ground concrete trough that returns the overflow water to the river and no integrity problems are visible. In addition, the reservoir that contains the unused river water discharged through Outfall 020 is drained, cleaned and inspected annually by licensed power plant operators and shows no signs of cracking or deterioration that would allow groundwater infiltration. Based on current information, EPA believes that GE has taken responsibility for these drainage pipes and EPA has removed BMPs requiring inspection and relining of the drainage pipes at Outfalls 014, 018, and 020 from the Final Permit.

Because GE established that these outfalls do not discharge groundwater infiltration in its comments on the Draft Permit, the Final Permit requirements for Outfalls 014, 018A, and 020 do not include monitoring or BMPs related to groundwater infiltration. In addition, in consideration of the fact that GE has provided information indicating that stormwater discharges do not occur at Outfall 018B, the Final Permit has eliminated Outfall 018B, including wet weather limits and conditions. The Draft Permit's authorization to discharge process flows (for Outfalls 014 and 018A) or unused river water (for Outfall 020) "commingled with minimal contaminated groundwater" for these three outfalls has been removed.

SRWC requests clarification on the draft permit limits for copper and selenium at Outfall 018A. The numeric effluent limitations for copper and selenium at Outfall 018A have been eliminated in the Final Permit. EPA has made this change in consideration of the fact that the information demonstrating that elevated levels of these metals were present in the discharge from Outfall 018A was derived from monitoring data gathered in 1998, while more recent sampling data submitted by GE in response to an EPA CWA Section 308 information request indicated that these metals were non-detect in the discharge. Limited monitoring for copper will be conducted and reported twice per year as part of the WET testing requirements. This data will enable EPA to determine the reasonable potential for the discharge to cause or contribute to an exceedence of water quality standards for these metals. See Response to Comment 7.3 for discussion of the copper and selenium limits.

SRWC recommends the addition of flow limits and an oil and grease limit of 15 mg/L for dry weather discharges from Outfall 018C. Outfall 018C is an internal outfall that includes intermittent and low volume discharges from the Power Plant and is monitored at a location representative of flows prior to mixing with other wastestreams at Outfall 018A. Ultimately the effluent from Outfall 018C discharges to the Saugus River commingled with other wastestreams through Outfall 018A. Both the Draft and Final Permit limits for this outfall, which are based on best professional judgment and informed by the technology-based national effluent limitations guidelines for low volume wastes from steam electric generating plants. The oil and grease limit of 15 mg/L applied at other outfalls in the Final Permit is a water quality-based limit designed to meet the narrative standard that the discharge from the facility will be free from oil, grease and petrochemicals that produce a visible film on the surface of the water, impart an oily taste to the water or an oily or other undesirable taste to the edible portions of aquatic life, coat the banks or bottom of the water course, or are deleterious or become toxic to aquatic life, consistent with the narrative water quality standard for Class SB waters at 314 CMR 4.05(4)(b)(7). The Final Permit includes a maximum daily oil and grease limit of 15 mg/L at Outfall 018A, which includes commingled discharges from Outfall 018C.

SRWC comments that although the proposed temperature limit of 90°F from Outfalls 014 and 018 is an improvement over the current permit, the receiving waters would be better protected if the permit implemented a requirement based on closed-cycle cooling as best available technology as described on page 76 of the Fact Sheet. In consideration of comments on the Draft Permit and review of the limited, available information, EPA determined that the potential for thermal impacts is likely limited to a relatively short period surrounding low slack tide during the hottest months of the year and at locations near the inshore habitat closest to the discharge, and that, outside of this period, lower ambient river temperatures and the tidally driven exchange of water are likely to minimize any potential for substantial thermal impacts. Moreover, even during low slack tide in the summer, conditions appear to be such that fish would likely be able to avoid elevated temperatures and seek cooler refuge. Because the potentially most serious impacts of the thermal plume can likely be avoided, EPA has determined that, based on available information, maximum temperature discharge limits of 95°F would reasonably assure the protection and propagation of the BIP. Therefore, whereas the Draft Permit included a year-round maximum daily temperature limit of 90°F, the Final Permit includes a maximum daily temperature limit of 95°F and an average monthly temperature limit of 90°F at Outfalls 014 and 018 consistent with the current permit. At the same time, the Final Permit adds protection for the

BIP by requiring a reduction in flow to minimize entrainment mortality of early life stages in the Saugus River. Finally, given that the temperature data available to characterize the extent of the thermal plume and its potential impacts is relatively limited, and because the ASA thermistor data analyzed by EPA and MassDEP in development of this permits limits suggest that, at times, river temperatures may rise as high as or higher than 95°F, the Final Permit requires continuous temperature monitoring at Outfalls 018 and 014. Continuous temperature monitoring will provide data more representative of the actual range of effluent temperatures than the weekly (at 018) or monthly (at 014) grab samples that were required in the Draft Permit. See Response to Comment 10.3.3 for discussion of the Final Permit's temperature limits.

SRWC supports the Draft Permit conditions to minimize impingement and entrainment at the CWISs and supports the addition of limits associated with fish migration periods. The Final Permit retains the requirements to minimize impingement and entrainment at the Power Plant CWIS. For the Test Cell CWIS, the Final Permit retains the requirement to improve the fish return trough and to reduce the average monthly flow compared to the current permit during the period of peak entrainment. After considering the low annual capacity and typically low through-screen velocity at this CWIS, EPA determined that, at this time, the additional costs to upgrade the traveling screen with fish-lifting buckets, low pressure spraywash, and to separate fish from debris may not be warranted by the marginal benefits they would provide above the required improvements to the fish return trough. During this permit cycle, impingement monitoring during Test Cell operation will provide data to determine if any additional improvements are necessary to protect fish from impingement mortality.

SRWC also supports the bioaccumulation survey included in the Draft Permit. The Final Permit's BMPs to treat dry weather flows in the CDTs and to minimize discharges of dry weather from the drainage system vaults during wet weather will likely minimize the discharge of the pollutants of concern that would have been assessed in the bioaccumulation study. At the same time, required monitoring and reporting of any discharges of PCBs, PAHs, and metals from these outfalls during wet weather events will enable EPA to determine if the effluent contains these contaminants of concern at concentrations that pose a threat to aquatic life. As a result, EPA decided that the bioaccumulation study could be left out of the Final Permit. If, however, monitoring of wet weather effluent discharges suggests that pollutants that bioaccumulate in aquatic organisms are present at levels presenting a concern to aquatic life or human health, EPA may require a bioaccumulation study in the future.