

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
ONE CONGRESS STREET
BOSTON, MASSACHUSETTS 02114-2023**

FACT SHEET AND SUPPLEMENTAL INFORMATION

**DRAFT NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
GENERAL PERMIT FOR DEWATERING ACTIVITY DISCHARGES TO CERTAIN
WATERS OF THE COMMONWEALTH OF MASSACHUSETTS AND THE STATE OF
NEW HAMPSHIRE**

NPDES GENERAL PERMITS: MAG7000 AND NHG7000

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I. Coverage Under this Permit

A. Introduction

The Director of the Office of Ecosystem Protection, Region 1 EPA, is issuing the Dewatering General Permit (DGP), which is a re-issuance of the Construction Dewatering General Permit (CDGP), with expanded coverage for additional activities. This General Permit will be available for the discharge of dewatering and dewatering related activities to certain waters of the Commonwealth of Massachusetts and the State of New Hampshire. EPA is proposing the following changes to the expired Construction Dewatering General Permit:

- Expanding coverage to include flushing of potable water lines, short-term and long-term dewatering of foundation sumps, and pump testing of water wells;
- Changing the permit name to the Dewatering General Permit to reflect the expanded coverage;
- Adding additional exclusions for coverage to maintain consistency between NPDES General Permits;
- Limiting coverage for construction dewatering to construction sites which disturb less than one acre of land;
- Including Total Residual Chlorine limits for discharges that contain municipal water;
- Requiring that the results of certain sample analysis of the effluent be submitted with the applicant's Notice of Intent (NOI) if the discharge contains groundwater;
- Including suggested EPA NOI and Notice of Termination (NOT) forms; and,
- Modifying the requirements to ensure compliance with the Endangered Species Act (ESA) and National Historic Preservation Act.

B. Coverage of General Permits

Section 301(a) of the Clean Water Act (the Act) provides that the discharge of pollutants is unlawful except in accordance with a National Pollutant Discharge Elimination System (NPDES) permit unless such a discharge is otherwise authorized by the Act. Although such permits are generally issued to individual discharges, EPA's regulations authorize the issuance of "General Permits" to categories of discharges (see 40 CFR Section 122.28). Violations of a condition of a general permit constitute a violation of the Clean Water Act and subject the discharger to the penalties in Section 309 of the Act.

The Director of an NPDES permit program is authorized to issue a general permit if there are a number of point sources operating in a geographic area that:

- Involve the same or substantially similar types of operations;
- Discharge the same types of wastes;
- Require the same effluent limitations or operating conditions;
- Require the same or similar monitoring requirements; and
- In the opinion of the Director, are more appropriately controlled under a General Permit than under individual permits.

Based on these factors, EPA believes that dewatering related discharges warrant coverage under a general permit. First, all point sources covered under this general permit are located in the same geographic area (i.e., Massachusetts or New Hampshire). These point sources are all generated by substantially similar operations, which involve the temporary or infrequent removal or discharge of water (dewatering) that does not come into contact with any raw material or product. The wastewater generated from these point sources is similar in composition (i.e., the main pollutant of concern is total suspended solids) and therefore requires substantially similar effluent limitations and monitoring requirements. Finally, these point sources represent a large number of small, temporary projects that would not be able to be efficiently regulated under individual permits and therefore are more appropriately controlled under a general permit.

The similarity of discharges, based on the reasons described above, prompted EPA to issue the May 1, 1996 Construction Dewatering General Permits for Massachusetts and New Hampshire. These permits were reissued on September 23, 2002, and expired on September 23, 2007. When reissued, the Dewatering General Permits will enable facilities covered under the expired General Permits to maintain compliance with the Act; will extend environmental and regulatory controls to new permittees; will improve the efficiency of U.S. EPA in providing timely responses to the industries permitting needs; and, will help reduce the current backlog of individual permit applications.

C. Eligibility

Under this general permit, owners and operators in Massachusetts and New Hampshire may be granted authorization to discharge into waters of the respective states. The following *uncontaminated* discharges are covered by this general permit:

1. Construction dewatering of groundwater intrusion and/or storm water accumulation;
2. Flushing of potable water lines;
3. Short-term and long-term dewatering of foundation sumps; and,
4. Pump testing of water wells.

For the purposes of this General Permit, “uncontaminated” discharges are those that contain only the pollutants regulated by this permit. The principal pollutant of concern associated with these discharges is total suspended solids (TSS). Exposure to soil, rock, and man-made material create the potential for TSS in each of these discharges. Oil and grease may also be present from the pumping systems used in these processes. In addition, total residual chlorine is typically present as a disinfectant in potable water prior to dechlorination and could be present in discharges originating from a municipal source.

D. Exclusions

The following categories are excluded from coverage under the Dewatering General Permit:

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

- a) as defined in Massachusetts by 314 CMR 4.06, including Public Water Supplies (314 CMR 4.06(1)(d)1) which have been designated by the state as Class A waters, unless a variance is granted by the Massachusetts Department of Environmental Protection (MassDEP) under 314 CMR 4.04(3)(b), or
 - b) as defined in New Hampshire under Env-Ws 1708.05(a), unless allowed by the New Hampshire Department of Environmental Services (NH DES) under Env-Ws 1708.05(b).
2. Discharges to Areas of Critical Environmental Concern (ACEC) in Massachusetts as defined by the Massachusetts Wetlands Protection Act c.131, Section 40, unless a variance as allowed in the water quality standards is granted by the State. See Appendix I of the Draft General Permit for a listing of ACEC's by city and town.
 3. Discharges to Class A waters in New Hampshire, in accordance with RSA 485A:8, I. and Env-Ws 1708.06. To determine if the proposed receiving water is a Class A waterbody, contact the New Hampshire Department of Environmental Services (NHDES) at the address listed in Part 5.3 of the Draft General Permit.
 4. Discharges to a river designated as a Wild and Scenic River. (As of 4/10/2008, the Wildcat Brook and Lamprey River in New Hampshire and the Westfield, Sudbury, Assabet and Concord Rivers in Massachusetts have been designated as Wild and Scenic Rivers. See <http://www.rivers.gov/wildriverslist.html#ma> for current designations and additional information.)
 5. Discharges to designated areas under the Essential Fish Habitat Act (EFH) unless the requirements specified in this permit are fulfilled. See Part IV.B of this Fact Sheet and Appendix II of the Draft General Permit for additional EFH information.
 6. Discharges to designated areas under the Endangered Species Act (ESA) unless the requirements specified in this permit are fulfilled. See Part IV.C of this Fact Sheet and Appendices III and IV of the Draft General Permit for additional ESA requirements.
 7. Discharges that contain pollutants which are specifically included in the states' published 303(d) lists of "non-attainment" segments of receiving waters in the Commonwealth of Massachusetts and the State of New Hampshire, as defined by the CWA and approved by EPA, unless the discharge is at or below a concentration that meets water quality standards.
 8. Discharges of stormwater associated with construction sites which disturb greater than one acre of land. These discharges, which are associated with small or large construction sites as defined at 40 CFR 122.26(15) and 40 CFR 122.26(b)(14)(x), may be eligible for coverage under the Construction General Permit.
 9. Discharges of water supply, well development, or well rehabilitation waste waters from the development or rehabilitation of monitoring wells at contaminated sites or from the rehabilitation of wells previously taken out of service due to contamination which have

since been remediated. These discharges should be covered by the Remediation and Miscellaneous Contaminated Sites General Permit (MAG910000 and NHG910000).

10. Discharges to a Publicly-Owned Treatment Works (POTW) which are permitted under Section 402 of the CWA (NPDES).
11. New Source dischargers, as defined in 40 CFR § 122.2 due to the site specific nature of the environmental review required by the National Environmental Policy Act of 1969 (NEPA), 33 USC 4321 et seq. for those facilities. “New Sources” must comply with New Source Performance Standards (NSPS) and are subject to the NEPA process in 40 CFR Section 6.600. Consequently EPA has determined that it would be more appropriate to address “New Sources” through the individual permit process. (“New Sources” should not be confused with “New Dischargers”, which are eligible for General Permit coverage. Definitions may be found at 40 CFR Section 122.2).
12. Discharges of any commercial or industrial wastes to Ocean Sanctuaries in Massachusetts, as defined at 302 CMR 5.00.
13. Discharges to territorial seas, as defined by Section 502 of the Clean Water Act.
14. Discharges which adversely affect properties listed or eligible for listing in the National Registry of Historic Places under the National Historic Preservation Act of 1966, 16 USC Sections 470 et seq. See Part IV.K. of the Fact Sheet and Appendix III of the Draft General Permit for additional requirements.
15. Discharges for which the Director makes a determination that an individual permit is required (see Part IV.E.1.).

II. Permit Basis: Statutory and Regulatory Authority

A. Statutory Requirements

The Clean Water Act (CWA) prohibits the discharge of pollutants to waters of the United States without a NPDES permit unless such a discharge is otherwise authorized by the CWA. The NPDES permit is the mechanism used to implement technology and water quality-based effluent limitations and other requirements including monitoring and reporting. This Draft NPDES General Permit was developed in accordance with various statutory and regulatory requirements established pursuant to the CWA and applicable State regulations.

During development, EPA considered the most recent technology-based treatment requirements, water quality-based requirements, and all limitations and requirements in the Existing Permit. The regulations governing the EPA NPDES permit program are generally found at 40 CFR Parts 122, 124, 125, and 136. The general conditions of the Draft Permit are based on 40 CFR §122.41 and consist primarily of management requirements common to all permits. The effluent monitoring requirements have been established to yield data representative of the discharge

under authority of Section 308(a) of the CWA in accordance with 40 CFR §122.41(j), §122.44(i) and §122.48.

B. Technology-based Effluent Limitations

Subpart A of 40 CFR §125 establishes criteria and standards for the imposition of technology based treatment requirements in permits under Section 301(b) of the CWA, including the application of EPA promulgated effluent limitations and case-by-case determinations of effluent limitations under Section 402(a)(1) of the CWA.

Technology-based treatment requirements represent the minimum level of control that must be imposed under Sections 301(b) and 402 of the CWA (See 40 CFR §125 Subpart A) to meet best practicable control technology currently available (BPT) for conventional pollutants and some metals, best conventional control technology (BCT) for conventional pollutants, and best available technology economically achievable (BAT) for toxic and non-conventional pollutants. In general, technology-based effluent guidelines for non-POTW facilities must be complied with as expeditiously as practicable but in no case later than three years after the date such limitations are established and in no case later than March 31, 1989 [See 40 CFR §125.3(a)(2)]. Compliance schedules and deadlines not in accordance with the statutory provisions of the CWA can not be authorized by a NPDES permit.

EPA has not promulgated National Effluent Guidelines for those discharges authorized by this General Permit. Therefore, as provided in Section 402(a)(1) of the Act, EPA has established technology-based limitations in this General Permit utilizing Best Professional Judgement (BPJ) to meet the above stated criteria for BAT/BCT described in Section 304(b) of the Act.

C. Water Quality Based Effluent Limitations

Water quality-based criteria are required in NPDES permits when EPA and the State determine that effluent limits more stringent than technology-based limits are necessary to maintain or achieve state or federal water-quality standards (See Section 301(b) (1)(C) of the CWA). Water quality-based criteria consist of three (3) parts: 1) beneficial designated uses for a water body or a segment of a water body; 2) numeric and/or narrative water quality criteria sufficient to protect the assigned designated use(s) of the water body; and 3) anti-degradation requirements to ensure that once a use is attained it will not be degraded. EPA regulations pertaining to permit limits based upon water quality standards and state requirements are contained in 40 CFR §122.44(d).

The effluent limits established in the Draft Permit assure that the surface water quality standards of the receiving water are protected, maintained, and/or attained. For those discharges which are not granted coverage under this permit because the discharge contains pollutants in quantities which represent reasonable potential to cause or contribute to violations of water quality standards, the discharger must either apply for an individual NPDES permit or for coverage under EPA's Remediation General Permit (RGP). The discharger may also seek authorization for the discharge from an EPA On-Scene Coordinator pursuant to 40 CFR Section 122.3(d).

D. Antidegradation Provisions

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

The Commonwealth of Massachusetts will conduct antidegradation reviews for notices of intent to discharge, under this General Permit, into Class A or SA waters. The State of New Hampshire does not authorize discharging to Class A waters under this General Permit. On a case-by-case basis, the Commonwealth of Massachusetts and the State of New Hampshire may conduct antidegradation reviews for notices of intent to discharge under this General Permit into Class B or SB waters, in accordance with appropriate State antidegradation implementation. EPA will not authorize discharges under the DGP without concurrence from the appropriate state.

E. Monitoring and Reporting Requirements

Effluent limitations and monitoring requirements which are included in the General Permit describe the requirements to be imposed on the facilities to be covered. Facilities covered by the Final General Permits will be required to prepare and keep on site, in a secure place, Discharge Monitoring Report (DMR) containing effluent data. The frequency of reporting is determined in accordance with each State's provisions (see the individual state permits).

The monitoring requirements have been established to yield data representative of the discharge under authority of Section 308(a) of the Act and 40 CFR Sections 122.41(j), 122.44(i) and 122.48, and as certified by the State.

III. Effluent Limitations

This section includes the numeric technology and water-quality based limits for all discharges authorized in this permit and non-numeric effluent limits (best management practices – BMPs) for construction dewatering discharges.

A. Total Suspended Solids

The Draft Permit contains monthly average and maximum daily Total Suspended Solids (TSS) limitations of 50 mg/l and 100 mg/l, respectively, as continued from the Existing Permit in accordance with anti-backsliding requirements found in 40 CFR Section 122.44(1). These limitations were established using best professional judgement (BPJ) pursuant to Section 402(a)(1) of the CWA. The limits are based upon the average TSS concentrations estimated to be achievable by different storm water best management practice (BMP) treatment methods. EPA believes that for uncontaminated discharges these limits are sufficient to achieve water quality standards under the terms of this General Permit. Coverage under the General Permit will not be granted for those discharges which EPA or the applicable State believe a more stringent water quality-based TSS limit is needed.

B. pH

The effluent limits for pH in the Draft Permit are established to be consistent with water quality standards in New Hampshire and Massachusetts. Based on these water-quality standards, the Draft Permit contains the following limits for the indicated waterbody classifications.

Massachusetts Class A and B: 6.5 – 8.3 standard units

Massachusetts Class SA and SB: 6.5 – 8.5 standard units

New Hampshire Class B: 6.5 – 8.0 standard units

MassDEP and NHDES, with EPA concurrence, may expand the pH range to the federal standard 6.0-9.0 s.u., on a case-by-case basis when conditions warrant it (see Parts 1.3 and 2.3 of the General Permit). Non-toxic chemicals may be used for pH neutralization and/or dechlorination.

C. Oil and Grease

The General Permit contains daily maximum oil and grease limits of 15 mg/l as continued from the Existing General Permit. The oil and grease limits are based on the Massachusetts narrative water quality standard of no visible sheen on the surface of the receiving water and the New Hampshire narrative water quality standard of no oil or grease in such concentrations that would impair any existing or designated uses of Class B waters. To ensure that the narrative water quality standards are protected, EPA has established a numeric guideline of 15 mg/l. EPA has historically used 15 mg/l to approximate the concentration at which a visible oil sheen is likely to occur. The Region believes that this standard is a reasonable target value and has previously imposed maximum daily oil and grease limits of 15 mg/l as a technology-based standard in permits at facilities (such as oil terminals) that have a reasonable potential for oil and grease discharge.

D. Total Residual Chlorine (TRC)

The Draft DGP has new discharge limitations for total residual chlorine. This change was made to ensure that discharges from municipal sources comply with water-quality standards for chlorine. Potable water sources typically are chlorinated to minimize or eliminate pathogens. 40 CFR Section 141.72 requires that a public water system's residual disinfection concentration cannot be less than 0.2 mg/l for more than 4 hours. The discharge of potable water from public water supplies has the potential to exceed water-quality standards for chlorine. Therefore, EPA is proposing limits on the concentrations of chlorine in discharges from facilities that use potable water. EPA does not believe that discharges from facilities using other water sources are likely to contain chlorine in concentrations sufficient to exceed water-quality standards.

The State of New Hampshire's water-quality standards for chlorine, found at Chapter 1700, Surface Water Quality Regulations, Part Env-Ws 1703.21(b), is the same as the recommended federal water-quality criteria. The Commonwealth of Massachusetts' surface water-quality standards require the use of federal water-quality criteria where a specific pollutant could reasonably be expected to adversely effect existing or designated uses (314 CMR 4.05 (5)(e)). The Massachusetts Water Quality Standards Implementation Policy for the Control of Toxic

Pollutants in Surface Waters, dated February 23, 1990, states that waters shall be protected from unnecessary discharges of excess chlorine. The maximum effluent concentration of chlorine shall not exceed 1.0 mg/l TRC.

Based on these water-quality standards, EPA is proposing that the effluent limits for TRC be based on the federal water-quality criteria, which are listed below.

- Freshwater acute (Class A or B) = 19 ug/l (0.019 mg/l); use for daily maximum
- Freshwater chronic (Class A or B) = 11 ug/l (0.011 mg/l); use for average monthly
- Marine acute (Class SA or SB) = 13 ug/l (0.013 mg/l); use for daily maximum
- Marine chronic (Class SA or SB) = 7.5 ug/l (0.0075 mg/l); use for average monthly

In the Draft Permit, the maximum daily and average monthly concentration allowed in the effluent are based on the appropriate water-quality criterion and the available dilution in the receiving water. If the discharge contains municipal water, and therefore is expected to contain chlorine, the dilution factor and applicable chlorine limits will be approved by EPA and the appropriate state agency during review of the facilities' notice of intent (NOI). The permittee will be provided with these limits when notified of permit coverage. If EPA and the appropriate state agency determine that the receiving water affords no dilution, the limits for total residual chlorine will be the appropriate federal water-quality criterion listed above.

E. Whole Effluent Toxicity

Both Massachusetts and New Hampshire have narrative criteria in their water quality regulations (See Massachusetts 314 CMR 4.05(5)(e) and New Hampshire Part Env- Ws 1703.21) that prohibits toxic discharges in toxic amounts. Excepting non-toxic chemicals used for pH neutralization and/or dechlorination, the General Permit prohibits the addition of toxic materials or chemicals to the discharges and prohibits the discharge of pollutants in amounts that would be toxic to aquatic life. If the States and/or EPA suspect that a discharge has a reasonable potential to cause or contribute to an excursion above the State's narrative criterion for toxicity, they may request that one Whole Effluent Toxicity (WET) test result and/or priority pollutant scan of the water to be discharged be required as part of the Notice of Intent, as authorized at 40 CFR Section 122.44(d)(1)(v).

F. Best Management Practices (BMPs) for Construction Dewatering Discharges

BMPs for erosion control, sediment control, runoff control as well as other control measures that are technologically and economically practicable in light of best industry practice are recommended for construction dewatering discharges to reduce and/or eliminate, to the extent achievable, the discharge of pollutants and to ensure that the numeric effluent limits in Parts 1 and 2 of the General Permit are met. All control measures shall be used in accordance with good engineering practices and manufacturer's specifications and maintained in effective operating condition.

In selecting, designing, installing, and implementing appropriate control measures, permittees are encouraged to consult EPA's internet-based resources relating to BMPs, including the *National*

Menu of Storm water BMPs ([www.epa.gov/npdes/storm water/menuofbmps](http://www.epa.gov/npdes/storm%20water/menuofbmps)), and *National Management Measures to Control Nonpoint Source Pollution from Urban Areas* (www.epa.gov/owow/nps/urbanmm/index.html), and any similar state or tribal publications. The following BMPs must be used, as deemed necessary, to reduce and/or eliminate, to the extent achievable, the discharge of pollutants from construction dewatering discharges:

Erosion Control

- Compost blankets
- Dust control
- Geotextiles
- Gradient terraces
- Mulching
- Riprap
- Seeding
- Sodding
- Soil Retention
- Soil Roughening
- Temporary Slope Drain
- Temporary Stream Crossings
- Wind Fences and Sand Fences

Sediment Control

- Bag and/or Sand Filters
- Brush Barrier
- Compost Filter Berms and/or Socks
- Construction Entrances
- Dewatering Tanks
- Fiber Rolls
- Filter Berms
- Sediment Basins and/or Traps
- Sediment Filters and/or Chambers
- Rock Dams
- Silt Fences
- Storm Drain Inlet Protection
- Straw or Hay Bales
- Vegetated Buffers
- Weir Tanks

Runoff Control

- Check Dams
- Grass-Lined Channels
- Permanent Slope Diversions
- Temporary Diversion Dikes

IV. Application Requirements and Notice of Intent

A. Notice Prior to Discharge

1. Notice of Intent (NOI) Information

To obtain coverage under the DGP, owners or operators of facilities whose discharge or discharges are identified in Part I.C. of this Fact Sheet are required to submit Notices of Intent (NOI) to EPA and the appropriate State at the addresses listed in Appendix V of the General Permit. Submission of a complete and accurate NOI eliminates the need to apply for an individual permit for a regulated discharge, unless EPA specifically notifies the discharger that an individual permit application must be submitted. For purposes of this General Permit, the NOI consists of either the suggested NOI form in Appendix V of this permit or another form of

official correspondence containing all of the information required in the NOI instructions in Appendix V of this permit. This information includes:

- a. General facility information;
- b. Discharge information;
- c. Dewatering Source Water Information;
- d. Contaminant Information;
- e. Determination of Endangered Species Act Eligibility;
- f. Documentation of National Historic Preservation Act Requirements;
- g. Supplemental Information; and,
- h. Signature Requirements.

2. NOI Timeframes

- a. Proposed New Discharges: Facilities that were not permitted under the Existing Construction Dewatering General Permit, which expired on September 23, 2007, that are seeking coverage under this General Permit must submit an NOI to EPA and the respective State, post-marked at least 21 days prior to the commencement of discharge.
- b. Existing Permitted Discharges: Facilities with existing coverage under the Existing Construction Dewatering General Permit, which expired on September 23, 2007, and that wish to seek coverage under this General Permit, must file an NOI to EPA and the respective State for coverage under this General Permit within 60 days of the effective date of this permit. For enforcement purposes, failure to submit a NOI within 60 days of the effective date of the General Permit for an existing permitted discharge will be considered to be discharging without a permit. An NOI is not required if the permittee submits a Notice of Termination (NOT – see Part 6) of discharge before the 60 day time frame expires.

B. Essential Fish Habitat

Background: Under the 1996 Amendments (PL 104-267) to the Magnuson-Stevens Fishery Conservation and Management Act (16 USC Sections 1801 et seq. (1998)), EPA is required to consult with NOAA Fisheries Service if EPA's actions or proposed actions that it funds, permits or undertakes, "may adversely impact any essential fish habitat." 16 USC Section 1855(b). The amendments broadly define "essential fish habitat" (EFH) as "waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity." 16 USC Section 1802(10). Adverse impact means any impact which reduces the quality and/or quantity of EFH 50 CFR Section 600.910(a). Adverse effects may include direct (e.g., contamination or physical disruption), indirect (e.g., loss of prey, reduction in species' fecundity), site-specific or habitat-wide impacts, including individual, cumulative or synergistic consequences of actions.

An EFH designation is only available where a Federal Fisheries Management Plan exists (see 16 U.S.C. Section 1855(b)(1)(A)). EFH designations for New England were approved by the US Department of Commerce on March 3, 1999. In a letter to EPA-New England dated October 10, 2000, NOAA Fisheries Service agreed that for NPDES permit actions, EFH notification for

purposes of consultation can be accomplished in the EFH section of the permit's Fact Sheet or Federal Register Notice.

Proposed Action: EPA is reissuing the National Pollutant Discharge Elimination System (NPDES) General Permit for dewatering activity discharges (DGP), formerly known as the Construction Dewatering General Permit. This General Permit provides coverage to facilities located in Massachusetts and New Hampshire whose discharge consists of construction dewatering of groundwater intrusion and/or storm water accumulation, flushing of potable water lines, short-term and long-term dewatering of foundation sumps, and/or pump testing of water wells. Please refer to Part I of this Fact Sheet for a more detailed explanation of the proposed changes to the expired General Permit.

Resources: Part I.D. of this Fact Sheet lists the specific discharges excluded from coverage, including discharges to ocean sanctuaries, territorial seas, wild and scenic rivers, and designated areas under the Essential Fish Habitat Act unless the requirements specified in this General Permit are fulfilled. The General Permit does not however specifically exclude facilities that discharge into other tidal waters. Therefore, EPA's EFH assessment considers all 40 federally managed species with designated EFH in the coastal and inland waters of Massachusetts and New Hampshire (see Appendix II).

Analysis of Effects: As described above, the Dewatering General Permit covers a variety of potential discharges which could occur anywhere in Massachusetts and New Hampshire, except into those waters excluded in Part I.D. Discharges authorized by this General Permit do not come into contact with any raw material, intermediate product, waste product, or finished product and should not contain pollutants in toxic amounts. For facilities whose discharge contains municipal water, the permit establishes Total Residual Chlorine (TRC) limits that are adequate to protect aquatic-life criteria for chlorine based on the States' water quality standards. Excepting non-toxic chemicals used for pH neutralization and/or dechlorination, the General Permit prohibits the addition of toxic materials or chemicals to the discharges and prohibits the discharge of pollutants in amounts that would be toxic to aquatic life. It also prohibits any discharge that violates State or Federal water quality standards. Further, EPA may require that a facility conduct toxicity testing where needed to verify that the discharge is not having toxic impacts on sensitive species.

EPA's Opinion of Potential Impacts: EPA believes that the discharges authorized under the General Permit will have minimal adverse effects to EFH for a number of reasons, including:

- This is a re-issuance of an existing permit;
- Discharges authorized under the DGP are not from an industrial process nor do they come in contact with any raw material, intermediate product, waste product or finished product;
- The General Permit prohibits the addition of materials or chemicals in amounts that would be toxic to aquatic life;
- The effluent limitations established in this permit ensure protection of aquatic life and maintenance of the receiving water as an aquatic habitat; and,

- The proposed limits in this General Permit are sufficiently stringent to assure that state and federal water quality standards will be met.

EPA concludes that the effluent limitations, conditions, and monitoring requirements contained in the Draft General Permit minimize adverse effects to aquatic organisms, including EFH species, as well as their habitat and forage species. With this draft permit, EPA is contacting NOAA Fisheries under Section 305(b)(2) of the Magnuson-Stevens Act regarding this assessment and requests any additional recommendations that NOAA Fisheries may have to protect EFH.

Proposed Mitigation: Mitigation for unavoidable impacts associated with re-issuance of the permit is not warranted at this time because it is EPA's opinion that impacts will be negligible if permit conditions are followed. If adverse impacts to EFH do occur, either as a result of non-compliance or from unanticipated effects from this activity, authorization to discharge under the General Permit can be revoked.

Furthermore, the General Permit contains provisions that require the applicant to perform toxicity testing and/or a priority pollutant scan if EPA or the State believes it is warranted and/or to require that an individual permit be issued if actual environmental conditions are not adequately covered by the General Permit. Should new information become available that changes the basis for EPA's assessment, then consultation with NMFS under the appropriate statute(s) will be reinitiated.

C. Endangered Species

The Endangered Species Act (ESA) of 1973 requires federal agencies such as EPA to ensure, in consultation with the U.S. Fish and Wildlife Service (FWS) and the National Oceanic & Atmospheric Administration Fisheries Service (NOAA Fisheries), also known collectively as "the Services", that any actions authorized, funded, or carried out by the EPA (e.g., EPA issued NPDES permits authorizing discharges to waters of the United States) are not likely to jeopardize the continued existence of any Federally-listed endangered or threatened species or adversely modify or destroy critical habitat of such species (see 16 U.S.C. 1536(a)(2), 50 CFR Section 402 and 40 CFR Section 122.49(c)).

Section 7 Consultations

Section 7 of the ESA provides for formal and informal consultation with the Services. For NPDES permits issued in Massachusetts and New Hampshire where EPA is the permit issuing agency, draft NPDES permits and Fact Sheets are routinely submitted to the Services for informal consultation prior to issuance. EPA will initiate coordination with the Services through the Draft Permit and Fact Sheet during the General Permit's public comment period. Based on EPA's working experience with the Services on numerous prior permits and identification of certain endangered species, general geographic areas of concern in the States and the potentially affected waters, including critical habitats, EPA has prepared this Draft General Permit to insure adequate protection under the ESA.

The discharges authorized under this General Permit are described in Part I.C. of this Fact Sheet. The General Permit specifically excludes coverage to facilities whose discharge(s) are likely to jeopardize the continued existence of listed threatened or endangered species or the critical habitat of such species. The proposed permit limits are sufficiently stringent to assure that water quality standards protect both aquatic life and human health. The effluent limitations established in the General Permit ensure protection of aquatic life and maintenance of the receiving water as an aquatic habitat. Further, the General Permit contains provisions that require toxicity testing if EPA or the State believes it is warranted and to require individual permits be issued if actual environmental conditions (including the preservation of endangered species) are not adequately covered by the General Permit. The requirements in this General Permit are consistent with information previously provided by the Services to EPA during the development of other recently issued general permits. Therefore, the Region finds that adoption of this General Permit is not likely to adversely affect any threatened or endangered species or its critical habitat.

In addition to EPA's coordination with the services for the issuance of this permit, an optional type of informal consultation consists of the designation of a non-Federal representative (NFR) to determine whether a Federal action is likely to have an adverse effect on listed species or critical habitat. The ESA regulations provide for permit applicants, where designated, to carry out informal consultations as an NFR, which enables them to work directly with the Services (See 50 CFR 402.08). EPA is hereby designating applicants for this General Permit as NFR's for the purposes of carrying out informal consultation. Therefore, EPA expects that the applicants will contact the Services to determine whether additional consultation is needed. See Appendix III, Endangered Species Act Review and Requirements, of the General Permit for additional guidance on consultation.

Discharges that are located in areas in which listed endangered or threatened species may be present are not automatically covered under this General Permit. Appendix IV of the Draft General Permit lists a number of locations where endangered or threatened species have been identified. Applicants with discharges to those locations must contact the Services to determine whether or not additional consultation with the Services is needed.

Similarly, NOAA Fisheries has requested that it review and comment on all discharges that may adversely affect the federally-listed endangered shortnose sturgeon (*Acipenser brevirostrum*). Discharges into certain sections of the Merrimack and Connecticut Rivers in Massachusetts have the potential to affect the federally-listed endangered shortnose sturgeon, including: the Merrimack River, from the Essex Dam in Lawrence, Massachusetts to the mouth of the Merrimack River (Essex County); and the Connecticut River, from the Massachusetts border with Connecticut to Turners Falls, Massachusetts (Hampshire, Hampden, and Franklin Counties).

When discharge activities would occur along these listed waterways, permit coverage is available only if the permit applicant contacts the Services to determine (1) if listed species are present in the vicinity of the project area; and, (2) whether the applicant's discharges and discharge related activities are likely to affect listed species and/or critical habitats.

Coverage under the Dewatering General Permit is available only if the applicant determines that there are no species present in the action area or the applicant receives written concurrences from the Services that the applicant's discharges are not likely to affect listed species.

Applicants with discharges that would occur along or into the waterways subject to ESA requirements must initiate contact with the Services as a non-Federal representative and must notify both EPA-New England and the appropriate state office of the determination in writing. The applicant must indicate in the space provided on the Notice of Intent (NOI) form used for applying for coverage (see Appendix V of the General Permit) what level of contact with the Services is necessary and that they are eligible for coverage. Applicants must submit a copy of any communication from the Services with the NOI as directed. Applicants who cannot certify compliance with the ESA requirements on the NOI form must contact EPA to determine if eligibility for an individual NPDES permit is possible or to discuss other possible options for the proposed discharge.

Services Contact Information

US Fish and Wildlife Service
New England Field Office
70 Commercial Street, Suite 300
Concord, NH 03301-5087
Tel. No. (603) 223-2541

NOAA Fisheries Service Northeast
Regional Office Protected Resources
Division One Blackburn Drive
Gloucester, MA 01930-2298
Tel. No. (978) 281-9112

D. National Historic Preservation Act of 1966, 16 USC Sections 470 et seq.

Facilities which adversely affect properties listed or eligible for listing in the National Registry of Historic Places under the National Historic Preservation Act of 1966, 16 USC Sections 470 et seq. are not authorized to discharge under this permit. Applicants must determine whether their discharge(s) have the potential to affect a property that is either listed or eligible for listing on the National Register of Historic Places. Applicants must comply with applicable State, Tribal and local laws concerning the protection of historic properties and places and applicants are required to coordinate with the State Historic Preservation Officer (SHPO) and/or Tribal Historic Preservation Officer (THPO) and others regarding effects of their discharge(s) on historic properties.

Electronic listings of National and State Registers of Historic Places are maintained by the National Park Service (<http://www.nps.gov/>), the Massachusetts Historical Commission (www.state.ma.us/sec/mhc) and the New Hampshire Historical Commission (www.state.nh.us/nhdhr). For additional information regarding the requirements pertaining to historic places, see Appendix III of the General Permit.

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

Addresses for Massachusetts State Historic Preservation Officers and Tribal Historic Preservation Officer are:

Massachusetts(SHPO)
Massachusetts Historical Commission
220 Morrissey Blvd.
Boston, MA 02125
Tel No. (617) 727-8470
Fax No. (617) 727-5128;

Tribal Historic Preservation Officer
Wampanoag Tribe of Gay Head (Aquinnah)
20 Black Brook Road
Aquinnah, MA 02535-9701
Tel No. (508) 645-9265
Fax No. (508) 645-3790

The address for the New Hampshire State Historic Preservation Officer is:

New Hampshire (SHPO)
New Hampshire Division of Historic Resources
P.O. Box 2043
Concord, NH 03302-2043
Tel. No. (603) 271-6435
Fax No. (603) 271-3433

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

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

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

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

- a. A determination under 40 CFR 122.28(b)(3);
- b. The discharge(s) is a significant contributor of pollution or is in violation of State Water Quality Standards for the receiving water;
- c. The discharger is not in compliance with the conditions of this permit;
- d. A change has occurred in the availability of the demonstrated technology of practices for the control or abatement of pollutants applicable to the point source(s);
- e. Effluent limitation guidelines are promulgated for the point source(s) covered by this permit;
- f. A Water Quality Management Plan or Total Maximum Daily Load containing requirements applicable to such point source(s) is approved and inconsistent with this permit;

- g. The point source(s) covered by this permit no longer:
 - i. Involves the same or substantially similar types of operations;
 - ii. Discharges the same types of wastes;
 - iii. Requires the same effluent limitations or operating conditions;
 - iv. Requires the same or similar monitoring; and/or,
 - v. In the opinion of the Director, is more appropriately controlled under an individual or alternate general permit.

If the Director requires an individual permit, the permittee will be notified in writing that an individual permit is required, and will be given a brief explanation of the reasons for this decision. When an individual NPDES permit is issued to an operator otherwise subject to this general permit, the applicability of this general permit to that owner or operator is automatically terminated on the effective date of the individual permit (see 40 CFR §122.28(b)(3)(iv)).

2. When an Individual NPDES Permit may be Requested

Any operator may request to be excluded from the coverage of this general permit by applying for an individual permit. When an individual NPDES permit is issued to an operator otherwise subject to this general permit, the applicability of this general permit to that owner or operator is automatically terminated on the effective date of the individual permit (see 40 CFR §122.28(b)(3)(iv)).

F. EPA Determination of Coverage

Any applicant may request to be included under this General Permit but the final authority rests with the EPA. Coverage under the General Permit will not be effective until EPA has reviewed the NOI, made a determination that coverage under the Dewatering General Permit is authorized, and has notified the operator in writing of its determination. The effective date of coverage will be the date of signature of the authorization letter by the EPA.

The sites authorized to discharge under the final general permit will receive written notification from EPA with State concurrence. Failure to submit to EPA a Notice of Intent to be covered and/or failure to receive from EPA written notification of permit coverage means that the facility is not authorized to discharge under this general permit. Sites who are denied permit coverage by EPA are not authorized under this general permit to discharge from those sites to the receiving waters.

V. Administrative Requirements

A. Termination of Coverage

1. Requirement to Notify

Permittees must submit a completed Notice of Termination (NOT) that is signed and certified when one or more of the following conditions have been met:

- 1) All discharges covered by the DGP have been terminated;
- 2) Coverage under an individual or alternative general NPDES permit has been obtained;
- 3) Another operator has assumed control over all discharges; or
- 4) For construction dewatering, final stabilization has been achieved on all portions of the site for which you are responsible or, for residential construction only, temporary stabilization has been completed and the residence has been transferred to the homeowner.

2. NOT Forms and Information

NOTs must be completed using either the suggested form provided by EPA (found in Appendix VI of the Draft General Permit), or any other form of official correspondence that incorporates all of the information required in Appendix VI. NOT forms and attachments must be submitted to EPA and the appropriate State agency at the addresses listed in Appendix VI. NOTs provide EPA with a useful mechanism to track the status of projects which are actively covered by the permit. The NOT must include:

- 1) The name of the project and street address (or a description of location if no street address is available) of the facility or site for which the notification is submitted;
- 2) The name, address and telephone number of the operator addressed by the NOT;
- 3) The NPDES permit number assigned;
- 4) The basis for submission of the NOT, including: an indication that the discharge has been permanently terminated and the reason for the termination (i.e., completion of construction project, termination of temporary discharge or the reasons stated above); and
- 5) A certification statement signed and dated by an authorized representative according to 40 CFR 122.22 (see Appendix VI, NOT instructions).

The NOT must be completed and submitted within 30 days of the permanent cessation of the discharge(s) authorized by the DGP OR within 30 days after another operator assumes your liabilities. That new operator must submit an NOI for coverage consistent with Part IV of this Fact Sheet.

B. Continuation of the Expired General Permit

If this permit is not reissued prior to the expiration date, it will be administratively continued in accordance with the Administrative Procedures Act and remain in force and in effect as to any particular permittee. Any permittee granted coverage prior to the permit's expiration date will automatically remain covered by the continued permit until the earliest of:

1. Reissuance of this General Permit, at which time the permittee must comply with the NOI conditions of the new permit to maintain authorization to discharge;
2. The permittee terminating coverage by submitting a Notice of Termination;
3. Issuance of an individual permit for the permittee's discharges; or
4. A formal decision by EPA not to reissue the general permit, at which time the permittee must seek coverage under an alternative general permit or an individual permit.

However, should the permit expire prior to a replacement permit being issued, the existing permit will only cover those operators that submitted a complete and accurate NOI and met all the eligibility requirements prior to the expiration date of the permit. New projects requiring permit coverage after the expiration date of this permit are not eligible for coverage until a replacement permit is issued.

VI. Standard Permit Conditions

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

VII. Other Legal Requirements

A. Section 401 Certifications

Section 401 of the CWA provides that no Federal license or permit, including NPDES permits, to conduct any activity that may result in any discharge into navigable waters shall be granted until the State in which the discharge originates certifies that the discharge will comply with the applicable provisions of Sections 301, 302, 303, 306, and 307 of the CWA. EPA will request that the Commonwealth of Massachusetts and the State of New Hampshire conduct Section 401 reviews and issue State certifications. In addition, EPA and the Commonwealth of Massachusetts will jointly issue the final permit.

B. The Coastal Zone Management Act

The Coastal Zone Management Act (CZMA), 16 U.S.C. Sections 1451 *et seq.*, and its implementing regulations [15 CFR Part 930] require that any federally licensed activity affecting a State's coastal zone be consistent with the enforceable policies of approved state management programs. In the case of general permits, EPA has the responsibility for making the consistency certification and submitting it to the State for concurrence. EPA is in the process of seeking the state consistency certifications for this general permit from the Executive Office of Environmental Affairs, Massachusetts CZM, 251 Causeway Street, Suite 800, Boston, MA 02114; and the Federal Consistency Officer, New Hampshire Coastal Program, 50 International Drive, Suite 200, Portsmouth, NH 03801.

C. Environmental Impact Statement Requirements

The General Permits do not authorize discharges from any new sources as defined under 40 CFR Section 122.2. Therefore, the National Environmental Policy Act, 33 U.S.C. Sections 4321 *et seq.*, does not apply to the issuance of these general NPDES permits.

D. Section 404 Dredge and Fill Operations

This permit does not constitute authorization under 33 USC Section 1344 (Section 404 of the Clean Water Act) of any stream dredging or filling operations.

E. Executive Order 12866

EPA has determined that this General Permit is not a “significant regulatory action” under the terms of Executive Order 12866 and is therefore not subject to OMB review.

F. Paperwork Reduction Act

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

G. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the action will not have a significant economic impact on a substantial number of small entities. Although general permits are “adjudications” and not “rules”, EPA has examined the DGP using the RFA’s framework analysis and requirements and in accordance with EPA’s “Final Guidance for EPA Rulewriters”. For purposes of assessing the impacts of today’s proposed permit on small entities, small entity is defined as: (1) A small business based on Small Business Administration (SBA) size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the Guidance and the purpose of CWA general permits, EPA concludes that general permits affecting less than 100 small entities at any one time do not have a significant economic impact on a substantial number of small entities. An estimated 36 construction projects per year were authorized under the 2002 General Permits, a substantial number of which were not operated by small entities. The 2008 DGP includes expanded coverage for additional types of discharges; however, these discharges are temporary in nature. At any one time, fewer than 100 small entities are expected to be discharging and incurring costs. Furthermore, the costs associated with this permit are expected to be low because, except for the addition of total residual chlorine (TRC) limits for discharges from municipal sources, requirements in the draft 2008 DGP remain substantially similar to those in the 2002 General Permit. Therefore, EPA does not expect costs to be significant for any entity, including small entities, affected by this general permit. Hence, EPA concludes that this action will not have a significant economic impact on a substantial number of small entities.

EPA continues to be interested in the potential impacts of the proposed permit on small entities and welcomes any comments on issues related to such impacts.

H. Unfunded Mandates Reform Act

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

Stephen S. Perkins, Director
Office of Ecosystem Protection
U.S. Environmental Protection Agency