

of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes") published on February 9, 1996. The EPA has developed a WIPP compliance application guidance document that is intended to be a companion to and based upon the WIPP compliance criteria. The EPA hereby announces that the WIPP compliance application guidance document is available to the public. The guidance document summarizes and, in some instances, provides non-binding interpretations of the final WIPP compliance criteria. In developing the guidance document, the EPA considered public comments on the draft compliance application guidance document that was announced on October 18, 1995.

ADDRESSES: Copies of the compliance application guidance document are available to the public at EPA Docket No. A-93-02 (Category II-B) maintained at the following addresses: (1) room 1500 (first floor in the Waterside Mall near the Washington Information Center), U.S. Environmental Protection Agency, Air Docket, 401 M Street, S.W., Washington, D.C. 20460 (open from 8:00 a.m. to 4:00 p.m. on weekdays); (2) EPA's docket in the Government Publications Department of the Zimmerman Library of the University of New Mexico located in Albuquerque, New Mexico (open from 8:00 a.m. to 9:00 p.m. on Monday through Thursday, 8:00 a.m. to 5:00 p.m. on Friday, 9:00 a.m. to 5:00 p.m. on Saturday, and 1:00 p.m. to 9:00 p.m. on Sunday); (3) EPA's docket in the Fogelson Library of the College of Santa Fe, located at 1600 St. Michaels Drive, Santa Fe, New Mexico (open from 8:00 a.m. to 12:00 midnight on Monday through Thursday, 8:00 a.m. to 5:00 p.m. on Friday, 9:00 a.m. to 5:00 p.m. on Saturday and 1:00 p.m. to 9:00 p.m. on Sunday); and (4) EPA's docket in the Municipal Library of Carlsbad, New Mexico, located at 101 South Halegueno (open from 10:00 a.m. to 9:00 p.m. on Monday through Thursday, 10:00 a.m. to 6:00 p.m. on Friday and Saturday, and 1:00 p.m. to 5:00 p.m. on Sunday). As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying docket materials.

FOR FURTHER INFORMATION CONTACT: Agnes Ortiz, U.S. Environmental Protection Agency, Office of Radiation and Indoor Air (6602J), 401 M Street, S.W., Washington, D.C. 20460; (202)233-9310.

SUPPLEMENTARY INFORMATION: The Department of Energy is proposing to use the Waste Isolation Pilot Plant (WIPP), located in Eddy County, New Mexico, as a deep geologic repository for the disposal of transuranic

radioactive waste generated by nuclear defense activities. The 1992 Waste Isolation Pilot Plant Land Withdrawal Act (Pub. L. No. 102-579) calls for EPA to perform several regulatory activities for the WIPP, including: (1) issuing radioactive waste disposal standards; (2) establishing criteria for EPA to determine whether the WIPP complies with the radioactive waste disposal standards; and (3) certifying whether DOE's WIPP facility complies with the disposal standards, based on a DOE submitted compliance certification application. See section 8 of the WIPP Land Withdrawal Act. The WIPP Land Withdrawal Act prohibits DOE from commencing the emplacement of transuranic waste for underground disposal at the WIPP until EPA certifies that the facility will comply with EPA's radioactive waste disposal standards. See section 7(b) of the WIPP Land Withdrawal Act.

EPA issued final radioactive waste disposal standards, which are codified at 40 CFR part 191. See 58 FR 66398 (Dec. 20, 1993). EPA also issued final criteria, to be codified at 40 CFR part 194, for certifying whether the WIPP facility will comply with EPA's radioactive waste disposal standards. See 61 FR 5224 (Feb. 9, 1996) "Criteria for the Certification and Recertification of the Waste Isolation Pilot Plant's Compliance with the 40 CFR Part 191 Disposal Regulations". The public is referred to the Federal Register notices of December 20, 1993, and February 9, 1996, for more detailed information about the EPA's regulatory activities at the WIPP.

The compliance application guidance (CAG), the subject of this notice, is a guidance document for the final compliance criteria 40 CFR part 194. The final compliance criteria provide that EPA's evaluation for certifying, by rule, whether WIPP is in compliance with the radioactive waste disposal standards will be initiated after EPA determines that DOE has submitted a complete compliance certification application. See, e.g., 61 FR 5238. The CAG summarizes and interprets the final criteria related to the contents of the compliance certification application and is intended to guide EPA's assessment of whether the DOE compliance application is complete. Because it is a non-binding, interpretive document, the CAG is not subject to the notice-and-comment rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553.

As noted, the CAG will guide EPA's assessment of whether DOE's compliance certification application is complete. If the compliance certification

application is found to be complete, EPA will subsequently determine, by rule, whether the WIPP facility is in compliance with the EPA's radioactive waste disposal standards. See section 8 (d) of the WIPP Land Withdrawal Act. EPA's certification decision will be made only after EPA reviews DOE's compliance certification application based on the final compliance criteria, and conducts a WIPP certification proceeding in accordance with the Administrative Procedure Act rulemaking requirements at 5 U.S.C. 553. Thus, before the Administrator of EPA makes any final WIPP certification decision, EPA will issue a proposed decision in the Federal Register and provide an opportunity for public comment on the proposal. The subsequent final certification decision by the Administrator will consider the comments received in response to the proposal and be accompanied with a reply to significant public comments.

Dated: April 23, 1996.

Richard Wilson,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 96-10815 Filed 4-30-96; 8:45 am]

BILLING CODE 6560-50-P

[FRL-5465-6]

National Pollutant Discharge Elimination System (NPDES); Preparation of Final General Permit for the States of Maine, Massachusetts, and New Hampshire

AGENCY: Environmental Protection Agency.

ACTION: Notice; Preparation of Final NPDES General Permits—MAG070000, MEG070000, and NHG070000.

SUMMARY: The Regional Administrator of the six states of New England is issuing Notice of a Final National Pollutant Discharge Elimination System (NPDES) General Permit for construction dewatering facilities in certain waters of the States of Maine, Massachusetts, and New Hampshire. This General Final NPDES Permit establishes notice of intent (NOI) requirements, effluent limitations, standards, prohibitions and management practices for the construction dewatering discharges.

Owners and/or operators of facilities discharging effluent from construction dewatering facilities will be required to submit to EPA, Region I, a notice of intent (NOI) to be covered by the appropriate general permit and will receive a written notification from EPA

of permit coverage and authorization to discharge under the general permit.

The following **FACT SHEET AND SUPPLEMENTARY INFORMATION** section sets forth principal facts and the significant factual, legal, and policy questions considered in the development of the final permits.

DATES: This general permit shall be effective when issued and will expire five years from the effective date. The authorization to discharge shall become effective upon notification by EPA that the operator is covered under this permit.

ADDRESSES: Notices of intent to be authorized to discharge under these permits should be sent to: U.S. Environmental Protection Agency, Municipal Assistance Section (CMU) J.F.K. Federal Building, Boston, MA 02203.

The submittal of other information required under these permits or individual permit applications should be sent to the above address.

FOR FURTHER INFORMATION CONTACT: Suproakash Sarker, Office of Ecosystem Protection, Massachusetts State Program, Environmental Protection Agency, J.F. Kennedy Federal Building, Boston, Massachusetts 02203, Telephone (617) 565-4878.

FACT SHEET AND SUPPLEMENTARY INFORMATION:

I. Introduction

The Regional Administrator of the six states of New England is issuing final general permit for effluent discharges from construction dewatering facilities to certain waters of the States of Maine, Massachusetts, and New Hampshire. This notice contains two sets of appendices. Appendix A summarizes EPA's response to major comments received on the draft general permits published on December 6, 1995 (60 FR 62456). Appendix B contains the final general NPDES permit including Part II, Standard Conditions.

II. 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. Although such permits to date have generally been issued to individual discharges, EPA's regulations authorize the issuance of "general permits" to categories of discharges. (See 40 CFR § 122.28 48 FR 14146, April 1, 1983.) EPA may issue a single, general permit to a category of point sources located within the same geographic area whose

permits warrant similar pollutant control measures.

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:

1. Involve the same or substantially similar types of operations;
2. Discharge the same types of wastes;
3. Require the same effluent limitations or operating conditions;
4. Require the same or similar monitoring requirements; and
5. In the opinion of the Regional Administrator, are more appropriately controlled under a general permit than under individual permits.

Violations of a condition of a general permit constitutes a violation of the Clean Water Act and subjects the discharger to the penalties in Section 309 of the Act.

Any owner or operator authorized by a general permit may be excluded from coverage of a general permit by applying for an individual permit. This request may be made by submitting a NPDES permit application together with reasons supporting the request. The Director may require any person authorized by a general permit to apply for and obtain an individual permit. Any interested person may petition the Director to take this action. However, individual permits will not be issued for sources discharging effluent from construction dewatering facility covered by this general permit unless it can be clearly demonstrated that inclusion under the general permit is inappropriate.

The Director may consider the issuance of individual permits when:

1. The discharge is a significant contributor of pollution;
2. The discharge is not in compliance with the terms and conditions of the general permit;
3. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;
4. Effluent limitations guidelines are subsequently promulgated for the point sources covered by the general permit;
5. A Water Quality Management plan containing requirements applicable to such point sources is approved; or
6. Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;
7. If endangered species are present.

In accordance with 40 CFR 122.28(b)(3)(iv), the applicability of the

general permit is automatically terminated on the effective date of the individual permit.

Under this general permit, owners and operators of construction dewatering sites in Massachusetts, Maine and New Hampshire may be granted authorization to discharge groundwater and stormwater generated wastewaters into waters of the respective States. Dewatering associated with the construction of single family homes is not required to have a permit. This permit does not authorize the discharge of stormwater associated with construction sites which disturb greater than 5 acres of land. These sites are required to have a separate NPDES permit for stormwater discharges in accordance with 40 CFR 122.26(b)(14)(x). Authorization under the permit shall require prior submittal of certain facility information. Upon receipt of all required information, the permit issuing authority may allow or disallow coverage under the general permit.

The following list shows the criteria which will be used in evaluating whether or not an individual permit may be required instead of a general permit.

1. Evaluation of wastewater samples for one whole effluent toxicity-test or one priority pollutant scan if required by the States and EPA.
2. Preservation of high quality waters and fisheries;
3. Facilities with an effluent discharge flow of over 100 gpm and up to 690 gpm.
4. Production of effluent at the facility other than groundwater, seepage, and stormwater run-off.
5. History of land use.

The similarity of the discharges has prompted EPA to prepare this final general permit. When issued, this permit will enable facilities to maintain compliance with the Act and will extend environmental and regulatory controls to a large number of discharges and reduce some permit backlog. The issuance of this general permit for the geographic areas described below is warranted by this similarity of (a) environmental conditions; (b) State regulatory requirements applicable to the discharges and receiving waters; and (c) technology employed.

III. Conditions of the General NPDES Permit

A. Geographic Areas

Maine (Permit No. MEG070000)—All of the discharges to be authorized by the general NPDES permit for the State of Maine from dischargers are limited to

Class B,C,SB and SC waters of the State, except lakes. The drainage areas must be more than 10 square miles.

Massachusetts (Permit No. MAG070000)—All of the discharges to be authorized by the general NPDES permit for the Commonwealth of Massachusetts dischargers are limited to Class B, and SB waters as designated in Massachusetts Water Quality Standards, 314 CMR 4.00 *et seq.* Discharges into Class A water needs review and approval by MADEP.

New Hampshire (Permit No. NHG070000)—All of the discharges to be authorized by the general NPDES permit for the State of New Hampshire dischargers are into all waters of the State of New Hampshire unless otherwise restricted by the State Water Quality Standards, New Hampshire RSA 485-A:8. (or as revised).

B. Notification by Permittees

Operators of facilities whose discharge, or discharges, are described in Section II and whose facilities are located in the geographic areas described in Section III. A. above may submit to the Regional Administrator, of New England, and each State, a notice of intent to be covered by the appropriate general permit. This written notification must include the owner's or operator's legal name and address; the facility name and address; the type of facilities to be covered; the number of discharge points including the anticipated duration, volume, and rate of discharge for each outfall; a topographic map (or other map if a topographic map is not available) indicating the facility locations; a description of any wastewater treatment; storage of petroleum and chemicals on site; history of land use of the site; and the names of the receiving waters into which discharge will occur. In addition one Whole Effluent Toxicity (WET) test result and/or one priority pollutant scan of the water to be discharged may be required, on a case by case basis by the States and/or EPA. The whole effluent toxicity test will consist of one chronic and modified acute toxicity screening test with one hundred percent sample. The Ceriodaphnia dubia for fresh water and sea-urchin for marine water shall be used as test organism. A copy of the test procedure and detailed protocol will be provided by EPA. The results of the chronic biological test (C-NOEC) or the priority pollutant scan will be forwarded to the State and EPA when required.

A determination is required as to whether or not the facility's discharge will adversely affect a listed or proposed

to be listed endangered or threatened species or its critical habitat (see Part F).

The facilities authorized to discharge under a final general permit will receive written notification from EPA within 30 days with State concurrence where necessary upon receipt of the complete application including necessary sampling data. The permit will be automatically effective after 30 days of the complete notification if EPA or State fail to issue or deny the permit within this period.

C. Effluent Limitations

1. Statutory Requirements

The Clean Water Act (the Act) prohibits the discharge of pollutants to waters of the United States without a National Pollutant Discharge Elimination System (NPDES) permit unless such a discharge is otherwise authorized by the Act. The NPDES Permit is the mechanism used to implement technology and water quality based effluent limitations and other requirements including monitoring and reporting. The NPDES permit was developed in accordance with various statutory and regulatory authorities established pursuant to the Act. The regulations governing the EPA NPDES Permit program are generally found at 40 CFR parts 122, 124, 125 and 136.

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

The Clean Water Act requires that all discharges, at a minimum, must meet effluent limitations based on the technological capability of dischargers to control pollutants in their discharge. Section 301(b)(1)(A) of the Act requires the application of Best Practicable Control Technology Currently Available (BPT) with the statutory deadline for compliance being July 1, 1977, unless otherwise authorized by the Act. Section 301(b)(2) of the Act requires the application of Best Conventional Control Technology (BCT) for conventional pollutants, and Best Available Technology Economically Achievable (BAT) for non-conventional and toxic pollutants. The compliance deadline for BCT and BAT being March 31, 1980.

2. Technology-based Effluent Limitations

EPA has not promulgated National Effluent Guidelines for construction dewatering facilities. For a category where Guidelines have been promulgated, the issuance of an individual permit for the discharges would be more appropriate (See 40 CFR 122.28(b)(3)(i)(C)). Therefore, as provided in Section 402(a)(1) of the Act, EPA has determined to issue this general permit utilizing Best Professional Judgement (BPT) to meet the above stated criteria for BAT/BCT described in Section 304(b) of the Act. Accordingly monthly average and maximum daily Total Suspended Solids (TSS) limitation are established based upon best professional judgement pursuant to Section 402(a)(1) of the CWA.

Water Quality Based Effluent Limitations

Under Section 301(b)(1)(C) of the Act, discharges are subject to effluent limitations based on water quality standards and to the conditions of State certification under Section 401 of the Act. Receiving stream requirements are established according to numerical and narrative standards adopted under state and/or federal law for each stream use classification. The CWA requires that EPA obtain State certification which states that all water quality standards will be satisfied. Regulations governing State certification are set forth in 40 CFR § 124.53 and 124.55.

Section 101(a)(3) of the Act specifically prohibits the discharge of toxic pollutants in toxic amounts. The States of Maine, Massachusetts, and New Hampshire have similar narrative criteria in their water quality regulations (See Maine Title 38, Article 4-A, section 420 and section 464.4.A.(4); Massachusetts 314 CMR 4.05(5)(e); and New Hampshire Part Env-Ws 432.02(c)(4) that prohibits such discharges). The permit does not allow for the addition of materials or chemicals in amounts which would produce a toxic effect to any aquatic life.

The effluent from the construction dewatering facilities may contain toxic pollutants and oil and grease in the underground water and stormwater runoff. Water Quality Standards and State certification requirements applicable to these discharges have been reviewed by EPA.

D. Antidegradation Provisions

The conditions of the permit reflect the goal of the CWA and EPA to achieve and maintain water quality standards.

The environmental regulations pertaining to the State Antidegradation Policies which protect the State's surface waters from falling below State standards for water quality are found in the following provisions: Maine Title 38, Article 4-A, Section 464.4.F.; Massachusetts Water Quality Standards 314 CMR 4.04 Antidegradation Provisions; and New Hampshire policy RSA 485-A;8, VI Part Env-Ws 437.01 and Env-Ws 437.02.

Compliance with the antidegradation provisions of this general permit for class B, C, SB, and SC for the State of Maine, Class B and SB for Massachusetts and all waters of New Hampshire unless otherwise restricted by the State Water Quality Standards, are expected to result in insignificant effect to the receiving water. No further antidegradation review will be required. For the State of Massachusetts discharges in the Class A water needs antidegradation review.

E. Monitoring and Reporting Requirements

Effluent limitations and monitoring requirements are included in the general permit describing requirements to be imposed on facilities to be covered.

Facilities covered by the final general permits will be required to prepare a Discharge Monitoring Report containing effluent data and shall be kept on site in a secured place.

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 §§ 122.41(j), 122.44(i), and 122.48, and as certified by the State.

F. Endangered Species

Discharges that may adversely affect a listed or proposed species, or its critical habitat, are not authorized under this general permit. The EPA has consulted with the Fish and Wildlife Service, and the National Marine Fisheries Service, for listed species.

The Fish and Wildlife Service has indicated that the dwarf wedge mussel (*Alsmidonta heterodon*), a Federally listed endangered species, is now known to occur in the Ashlot River in Keene and Surry, New Hampshire; the South Branch of the Ashuelot River in East Swanzey, New Hampshire; the mainstem of the Connecticut River from North Lancaster south to Dalton, New Hampshire; from Lebanon New Hampshire South to Weathersfield Bow, Vermont; the Mill River in Easthampton, Massachusetts; the Mill River in Whately, Massachusetts (a different Mill River). Permittees with discharges that may affect the dwarf

wedgemussel should contact the New England Field Office of the Fish and Wildlife Service, 22 Bridge Street, Unit #1, Concord, New Hampshire 03301-4986. The above list may change time to time. The U.S. Fish and Wildlife Service and the National Marine Fisheries Service will notify EPA for any new listings.

The National Marine Fisheries Service has indicated that the endangered shortnose sturgeon (*Acipenser brevirostrum*) inhabits certain sections of the Penobscot, Kennebec and Androscoggin Rivers in Maine, and the Merrimack and Connecticut Rivers in Massachusetts. Any facility whose discharge may adversely effect the sturgeon, or any other threatened or endangered species or its habitat, is required to contact the National Marine Fisheries Service at the following address: United States Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Habitat and Protected Resources Division, One Blackburn Drive, Gloucester, Massachusetts 01903-2298.

A distinct population segment of Atlantic Salmon in seven Maine rivers has been proposed for threatened status under the ESA. That proposed rule was published jointly by the NMFS and the FWS on September 29, 1995. The Atlantic salmon populations proposed for listing are present in the Sheepscot, Ducktrap, Narraguagus, Pleasant, Machias, East Machias, and Dennys Rivers. Either NMFS (Mary Colligan, 508-291-9116) or FWS can serve as point of contact for that species.

G. Other Requirements

The remaining conditions of the permit are based on the NPDES regulations 40 CFR Parts 122 through 125 and consist primarily of management requirements common to all permits.

IV. State Certification

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. The section 401 certification is under process for all States. In addition the State of Massachusetts and EPA jointly issue the final permit.

V. Administrative Aspects

A. Request To Be Covered

A facility is not covered by any of these general permits until it meets the following requirements. First, it must send a notice of intent to EPA and the appropriate State indicating it meets the requirements of the permit and wants to be covered. And second, it must be notified in writing by EPA that it is covered by this general permit.

Any facility operating under any effective individual NPDES permit may request that the individual permit be revoked and that coverage under the general permit be granted, as outlined in 40 CFR 122.28(b)(3)(v). If EPA grants coverage under the general permit, EPA will so notify the facility and revoke the individual permit.

Facilities with expired individual permits that have been administratively continued in accordance with § 122.6, may apply for coverage under this general permit. When coverage is granted, the expired individual permit automatically will cease being in effect.

B. The Coastal Zone Management Act

The Coastal Zone Management Act (CZMA), 16 U.S.C. §§ 1451 *et seq.*, and its implementing regulations [15 CFR Part 930] requires that any federally licensed activity affecting the coastal zone with an approved Coastal Zone Management Program (CZMP) be determined to be consistent with the CZMP. EPA, New England Region, has determined that these general NPDES permits are consistent with the CZMP. EPA has sent copies of the draft general NPDES permits to the Massachusetts, Maine, and New Hampshire coastal zone agencies for a determination that they are consistent with their respective State policies.

C. The Endangered Species Act

EPA, New England Region, has concluded that the discharges to be covered by the general NPDES permits will not affect any listed endangered or threatened species or designated critical habitat. The U.S. Fish and Wildlife Service and the National Marine Fisheries will notify the EPA of any new listings, reclassifications or new locations within the permit area, as they occur. At that point additional consultation will be performed with these services. The permit may be reopened in accordance with 40CFR 122.44(c) to accommodate the changes if necessary. U.S. Fish and Wildlife and the National Marine Fisheries have concluded that these discharges are not likely to adversely affect the protected species.

D. Environmental Impact Statement Requirements

The general permits do not authorize the construction of any water resources project or the impoundment of any water body or have any effect on historical property, and are not major Federal activities needing preparation of any Environmental Impact Statement. Therefore, the Wild and Scenic Rivers Act, 16 U.S.C. §§ 1273 *et seq.*, the National Historic Preservation Act of 1966, 16 U.S.C §§ 470 *et seq.*, the Fish and Wildlife Coordination Act, 16 U.S.C. §§ 661 *et seq.*, and the National Environmental Policy Act, 33 U.S.C. §§ 4321 *et seq.*, do not apply to the issuance of this general NPDES permit.

E. This Permit Does Not Constitute Authorization Under 33 U.S.C. § 1344 (Section 404 of the Clean Water Act) of Any Stream Dredging or Filling Operation

VI. Other Legal Requirements

A. Economic Impact (Executive Order 12291)

EPA has reviewed the effect of Executive Order 12291 on this draft general permit and has determined that it is not a major rule under that order. This regulation was submitted previously to the Office of Management and Budget for review as required by Executive Order 12291. The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12291 pursuant to Section 8(b) of that Order.

B. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities by these NPDES permits under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The information collection requirements of these permits have already been approved by the Office of Management and Budget under submissions made for the NPDES permit program under the provisions of the Clean Water Act. No comments from the

Office of Management and Budget or the public were received on the information collection requirements in these permits.

C. The Regulatory Flexibility Act

After review of the facts presented in the notice printed above, I hereby certify, pursuant to the provisions of 5 U.S.C. § 605(b), that this permit does not have a significant impact on a substantial number of small entities. Moreover, the draft permit will reduce a significant administrative burden on regulated sources.

Dated: April 19, 1996.

John P. DeVillars,
Regional Administrator.

Appendix A—Summary of Responses to Public Comments on the December 6, 1995 Draft General Permit

Based on comments from the State of Massachusetts under Section II, the criteria of flow has been added up to 690 gpm. Based on comments of the U.S. Fish and Wildlife and National Marine Fisheries under section III F and V6, some portions have been revised and some portions are added to fulfill their requirements. Although EPA has received the comments from the National Marine Fisheries after the thirty day deadline period as required in the Public Notice, EPA has coordinated their comments in the final permit.

Appendix B—Final General Permit Under the National Pollutant Discharge Elimination System (NPDES)

Note: The Following general NPDES permit is a combination of three permits for purposes of this Federal Register notice in order to eliminate duplication of material common to all permits for the individual states.

1. Massachusetts, Maine and New Hampshire General Permit

In *compliance* with the provisions of the Federal Clean Water Act, as amended, (33 U.S.C. 1251 *et seq.* the "CWA") operators of facilities may discharge groundwater and stormwater from construction dewatering facilities into waters of the respective states in accordance with effluent limitations,

monitoring requirements and other conditions set forth herein. This permit does not authorize to discharge stormwater associated with Industrial activities from construction sites which disturb greater than 5 acres of land [40 CFR 122.26(b)(14)(x)].

This permit shall become effective on the day it is published in the Federal Register.

This permit and the authorization to discharge expire at midnight, five years from the effective date of the Federal Register Publication.

This permit consists of Part I below including effluent limitations, monitoring requirements etc. and Part II General Requirements.

Operators of facilities within the general permit area who fail to notify the Director of their intent to be covered by this general permit and receive no written notification of permit coverage or those who are denied by the Director are not authorized under this general permit to discharge from those facilities to the receiving waters.

Signed this 12th day of April 1996.

David A. Fierra,

Director, Office of Ecosystem Protection,
Environmental Protection Agency, Region I,
Boston, Massachusetts.

Andrew Gottlieb,

Director, Office of Watershed Management,
Department of Environmental Protection,
Commonwealth of Massachusetts, Boston,
MA.

Part I

A. Effluent Limitations and Monitoring Requirements

1. During the period beginning effective date and lasting through expiration, the permittee is authorized to discharge from each outfall effluent from construction dewatering facilities to the receiving waters of the respective States.

a. Such discharges shall be limited and monitored by the permittee as specified below:

Effluent characteristic	Discharge limitations		Monitoring requirements—measurement ²	
	Avg. monthly	Max. daily	Frequency	Sample type
Flow (MGD)	Report		1/week	Instantaneous or continuous.
TSS (mg/l)	50	100	1/week	Grab.
Oil and Grease(mg/l) ¹	See note A.1.h.		1/week	Grab.
pH ¹	See note A.1.g.		1/week	Grab.

Footnotes:

¹ Requirement for the State Certification.

² Samples shall be taken only when discharging.

b. Massachusetts and Maine

The discharge shall not cause objectionable discoloration of the receiving waters.

New Hampshire

The discharge shall not cause any discoloration of Class A receiving waters or any visible and objectionable discoloration of Class B receiving waters.

C. There shall be no discharge of floating solids or visible foam. The discharge shall be adequately treated to insure that the effluent remains free from pollutants in concentrations or combinations that settle to form harmful deposits, float as foam, debris, scum or other visible pollutants. In addition for the State of New Hampshire the discharge shall not cause the naturally occurring turbidity in Class A receiving waters to change or cause the naturally occurring turbidity in Class B waters to be increased by more than 10 NTU.

d. The effluent limitations are based on the state water quality standard and are certified by the states.

e. Samples taken in compliance with the monitoring requirements specified above shall be taken at the point of discharge.

f. All discharges as designated in Section II of Supplementary Information shall pass through settling basins or interceptor structures or other approved treatment system and meet the effluent limitations in Part I.A.1.a. prior to discharge to waters of the states.

g. pH.

Massachusetts

The pH of the effluent shall not be less than nor greater than the range given for the receiving water classifications, unless these values are exceeded due to natural causes. The following table specifies ranges for Massachusetts:

Classification	Range
B	6.5–8.3
SB	6.5–8.5

Maine

The pH range in both freshwater and saltwater is 6.0 to 8.5 su. unless established on a case-by-case basis (By State Policy).

New Hampshire

The pH of the effluent shall not be less than 6.5 standard units (su) nor greater than 8.0 su at any time unless these values are exceeded due to natural causes.

h. Sampling for oil and grease should only be required if a periodic inspection

of the discharge indicates the presence of a visible sheen.

i. A discharge structure shall be constructed if necessary to protect the erosion of the bank of the water body.

*B. Monitoring and Reporting**Maine, Massachusetts and New Hampshire*

Monitoring results obtained during the previous month shall be summarized on separate Discharge Monitoring Report Form(s) and shall be kept on-site in a secured place. The reports should be readily available for review at any time during the working hours by the EPA and State Officials. The following are the EPA and state addresses for any notification and communication.

a. NPDES Program (SPA), Office of Environmental Stewardship, Environmental Protection Agency, Post Office Box 8127, Boston, MA 02114

b. Massachusetts Division of Water Pollution Control

(1) The Regional offices:
Massachusetts Department of Environmental Protection,
Massachusetts Division of Water Pollution Control, Western Regional Office, 436 Dwight St., Suite 402, Springfield, MA 01101
Massachusetts Department of Environmental Protection,
Massachusetts Division of Water Pollution Control, Southeastern Regional Office, 20 Riverside Drive Lakeville, MA 02346

Massachusetts Department of Environmental Protection
Massachusetts Division of Water Pollution Control, Northeastern Regional Office, 10 Commerce Way, Woburn, MA 01801

Massachusetts Department of Environmental Protection,
Massachusetts Division of Water Pollution Control, Central Regional Office, 75 Grove Street, Worcester, Massachusetts 01605

(2) Massachusetts Department of Environmental Protection, Office of Watershed Management, 40 Institute Road, North Grafton, MA 01536.

c. Maine Department of Environmental Protection

State of Maine Department of Environmental Protection, Operation and Maintenance Division, State House, Station 17. Augusta, ME 04333.

d. New Hampshire Department of Environmental Services

New Hampshire Department of Environmental Services, Water Supply

and Pollution Control Division, Permits and Compliance Section; P.O. Box 95, Concord, New Hampshire 03302–0095.

*C. Additional General Permit Conditions.**1. Notification Requirements*

a. Written notification of commencement of operations including the legal names and addresses of the owners and operator and the locations, number and type of facilities and/or operations covered shall be submitted.

(1) For existing discharges within 180 days after the effective date of this permit, by operators whose facilities and/or operations are discharging into the general permit area on the effective date of the permit; or

(2) For new or substantially increased discharges 30 days prior to commencement of the discharge by operators whose facilities and/or operations commence discharge subsequent to the effective date of this permit.

b. Operators of facilities and/or operations within the general permits area who fail to notify the Director of their intent to be covered by this general permit and do not obtain written authorization of coverage are not authorized under this general permit to discharge from those facilities into the named receiving waters.

2. Termination of Operations

Operators of facilities and/or operators authorized under this permit shall notify the Director upon the termination of discharges. The notice must contain the name, mailing address, and location of the facility for which the notification is submitted, the NPDES permit number for the water treatment facility discharge identified by the notice, and an indication of whether the operator of the discharge has changed. The notice must be signed in accordance with the signatory requirements of 40 CFR 122.22.

3. Renotification

Upon reissuance of a new general permit, the permittee is required to notify the Director of the intent to be covered by the new general permit.

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

a. The Director may require any person authorized by this permit to apply for and obtain an individual NPDES permit. Any interested person may petition the Director to take such action. Instances where an individual permit may be required include the following:

(1) The discharge(s) is a significant contributor of pollution;

(2) The discharger is not in compliance with the conditions of this permit;

(3) A change has occurred in the availability of the demonstrated technology of practices for the control or abatement of pollutants applicable to the point source;

(4) Effluent limitation guidelines are promulgated for point sources covered by this permit;

(5) A Water Quality Management Plan containing requirements applicable to such point source is approved; or

(6) The point source(s) covered by this permit no longer:

(a) Involves the same volume or substantially similar types of operations;

(b) Discharges the same type of wastes;

(c) Requires the same effluent limitations or operating conditions;

(d) Requires the same or similar monitoring; and

(e) In the opinion of the Director is more appropriately controlled under a general permit than under an individual NPDES permit.

b. The Director may require an individual permit only if the permittee authorized by the general permit has been notified in writing that an individual permit is required, and has been given a brief explanation of the reasons for this decision.

5. When an Individual NPDES Permit is issued to an operator otherwise subject to this general permit, the applicability of this permit to that owner or operator is automatically terminated on the effective date of the individual permit.

Part II, Standard Conditions

Section A. General Requirements

1. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

a. The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the CWA for toxic pollutants and with standards for sewage sludge use or disposal established under Section 405(d) of the CWA within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

b. The CWA provides that any person who violates Sections 301, 302, 306, 307, 308, 318, or 405 of the CWA or any permit condition or limitation implementing any of such sections in a permit issued under Section 402, or any requirement imposed in a pretreatment program approved under Sections 402(a)(3) or 402(b)(8) of the CWA is subject to a civil penalty not to exceed \$25,000 per day for each violation. Any person who *negligently* violates such requirements is subject to a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than 1 year, or both. Any person who *knowingly* violates such requirements is subject to a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not more than 3 years, or both. Note: See 40 CFR § 122.41(a)(2) for additional enforcement criteria.

c. Any person may be assessed an administrative penalty by the Administrator for violating Sections 301, 302, 306, 307, 308, 318, or 405 of the CWA, or any permit condition or limitation implementing any of such sections in a permit issued under Section 402 of the CWA. Administrative penalties for Class I violations are not to exceed \$10,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed \$25,000. Penalties for Class II violations are not to exceed \$10,000 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed \$125,000.

2. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

3. Duty To Provide Information

The permittee shall furnish to the Regional Administrator, within a reasonable time, any information which the Regional Administrator may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Regional Administrator, upon request, copies of records required to be kept by this permit.

4. Reopener Clause

The Regional Administrator reserves the right to make appropriate revisions to this permit in order to establish any

appropriate effluent limitations, schedules of compliance, or other provisions which may be authorized under the CWA in order to bring all discharges into compliance with the CWA.

5. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the CWA, or Section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

6. Property Rights

The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges.

7. Confidentiality of Information

a. In accordance with 40 CFR Part 2, any information submitted to EPA pursuant to these regulations may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, *EPA may make the information available to the public without further notice*. If a claim is asserted, the information will be treated in accordance with the procedures in 40 CFR Part 2 (Public Information).

b. Claims of confidentiality for the following information *will* be denied:

(i) The name and address of any permit applicant or permittee;

(ii) Permit applications, permits, and effluent data as defined in 40 CFR § 2.302(a)(2).

c. Information required by NPDES application forms provided by the Regional Administrator under § 122.21 may not be claimed confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

8. Duty To Reapply

If the permittee wishes to continue an activity regulated by this permit after its expiration date, the permittee must apply for and obtain a new permit. The permittee shall submit a new application at least 180 days before the expiration date of the existing permit, unless permission for a later date has

been granted by the Regional Administrator. (The Regional Administrator shall not grant permission for applications to be submitted later than the expiration date of the existing permit.)

9. State Authorities

Nothing in Part 122, 123, or 124 precludes more stringent State regulation of any activity covered by these regulations, whether or not under an approved State program.

10. Other Laws

The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, nor does it relieve the permittee of its obligation to comply with any other applicable Federal, State, and local laws and regulations.

Section B. Operation and Maintenance of Pollution Controls

1. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit and with the requirements of storm water pollution prevention plans. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when the operation is necessary to achieve compliance with the conditions of the permit.

2. Need to Halt or Reduce Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

3. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

4. Bypass

a. Definitions.

(1) "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

(2) "Severe property damage" means substantial physical damage to property,

damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

b. Bypass not exceeding limitations.

The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Paragraphs B. 4.c and 4.d of this section.

c. Notice.

(1) Anticipated bypass.

If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

(2) Unanticipated bypass.

The permittee shall submit notice of an unanticipated bypass as required in Paragraph D.1.e (24-hour notice).

d. Prohibition of bypass.

(1) Bypass is prohibited, and the Regional Administrator may take enforcement action against a permittee for bypass, unless:

(a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(c)(i) The permittee submitted notices as required under Paragraph 4.c of this section.

(ii) The Regional Administrator may approve an anticipated bypass, after considering its adverse effects, if the Regional Administrator determines that it will meet the three conditions listed above in Paragraph 4.d of this section.

5. Upset

a. *Definition.* "Upset" means an exceptional incident in which there is unintentional and temporary non-compliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate

treatment facilities, lack of preventive maintenance, or careless or improper operation.

b. *Effect of an upset.* An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of Paragraph B.5.c of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

c. *Conditions necessary for a demonstration of upset.* A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) An upset occurred and that the permittee can identify the cause(s) of the upset;

(2) The permitted facility was at the time being properly operated;

(3) The permittee submitted notice of the upset as required in Paragraphs D. 1.a and 1.e (24-hour notice); and

(4) The permittee complied with any remedial measures required under B.3. above.

d. *Burden of proof.* In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

Section C. Monitoring and Records

1. Monitoring and Records

a. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

b. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by 40 CFR Part 503), the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application *except for the information concerning storm water discharges which must be retained for a total of 6 years.* This retention period may be extended by request of the Regional Administrator at any time.

c. Records of monitoring information shall include:

(1) The date, exact place, and time of sampling or measurements;

(2) The individual(s) who performed the sampling or measurements;

(3) The date(s) analyses were performed;

(4) The individual(s) who performed the analyses;

(5) The analytical techniques or methods used; and

(6) The results of such analyses.

d. Monitoring results must be conducted according to test procedures approved under 40 CFR Part 136 or, in the case of sludge use or disposal, approved under 40 CFR Part 136 unless otherwise specified in 40 CFR Part 503, unless other test procedures have been specified in the permit.

e. The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both.

2. Inspection and Entry

The permittee shall allow the Regional Administrator, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon presentation of credentials and other documents as may be required by law, to:

a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

Section D. Reporting Requirements

1. Reporting Requirements

a. *Planned changes.* The permittee shall give notice to the Regional

Administrator as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

(1) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR § 122.29(b); or

(2) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject to the effluent limitations in the permit, nor to the notification requirements under 40 CFR § 122.42(a)(1).

(3) The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition or change may justify the application of permit conditions different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

b. *Anticipated noncompliance.* The permittee shall give advance notice to the Regional Administrator of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

c. *Transfers.* This permit is not transferable to any person except after notice to the Regional Administrator. The Regional Administrator may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Clean Water Act. (See § 122.61; in some cases, modification or revocation and reissuance is mandatory.)

d. *Monitoring reports.* Monitoring results shall be reported at the intervals specified elsewhere in this permit.

(1) Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Regional Administrator for reporting results of monitoring of sludge use or disposal practices.

(2) If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR Part 136 or, in the case of sludge use or disposal, approved under 40 CFR Part 136 unless otherwise specified in 40 CFR Part 503, or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge

reporting form specified by the Regional Administrator.

(3) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Regional Administrator in the permit.

e. *Twenty-four hour reporting.*

(1) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances.

A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

(2) The following shall be included as information which must be reported within 24 hours under this paragraph.

(a) Any unanticipated bypass which exceeds any effluent limitation in the permit. (See § 122.41(g))

(b) Any upset which exceeds any effluent limitation in the permit.

(c) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Regional Administrator in the permit to be reported within 24 hours. (See § 122.44(g))

(3) The Regional Administrator may waive the written report on a case-by-case basis for reports under Paragraph D.1.e if the oral report has been received within 24 hours.

f. *Compliance Schedules.* Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

g. *Other noncompliance.* The permittee shall report all instances of noncompliance not reported under Paragraphs D.1.d, D.1.e and D.1.f of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in Paragraph D.1.e of this section.

h. *Other information.* Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Regional

Administrator, it shall promptly submit such facts or information.

2. Signatory Requirement

a. All applications, reports, or information submitted to the Regional Administrator shall be signed and certified. (See § 122.22)

b. The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

3. Availability of Reports

Except for data determined to be confidential under Paragraph A.8. above, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the State water pollution control agency and the Regional Administrator. As required by the CWA, effluent data shall not be considered confidential. Knowingly making any false statement on any such report may result in the imposition of criminal penalties as provided for in Section 309 of the CWA.

Section E. Other Conditions.

1. *Definitions* for purposes of this permit are as follows:

Administrator means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

Applicable standards and limitations means all State, interstate, and Federal standards and limitations to which a "discharge" or a related activity is subject to, including water quality standards, standards of performance, toxic effluent standards or prohibitions, "best management practices," and pretreatment standards under sections 301, 302, 303, 304, 306, 307, 308, 403, and 405 of CWA.

Application means the EPA standard national forms for applying for a permit, including any additions, revisions or modifications to the forms; or forms approved by EPA for use in "approved States," including any approved modifications or revisions.

Average—The arithmetic mean of values taken at the frequency required for each parameter over the specified period. For total and/or fecal coliforms, the average shall be the geometric mean.

Average monthly discharge limitation means the highest allowable average of

"daily discharges" over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

Average weekly discharge limitation means the highest allowable average of "daily discharges" over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

Best Management Practices (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of "waters of the United States." BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Best Professional Judgement (BPJ) means a case-by-case determination of Best Practicable Treatment (BPT), Best Available Treatment (BAT) or other appropriate standard based on an evaluation of the available technology to achieve a particular pollutant reduction.

Composite Sample—A sample consisting of a minimum of eight grab samples collected at equal intervals during a 24-hour period (or lesser period as specified in the section on Monitoring and Reporting) and combined proportional to flow, or a sample continuously collected proportionally to flow over that same time period.

Continuous Discharge means a "discharge" which occurs without interruption throughout the operating hours of the facility except for infrequent shutdowns for maintenance, process changes, or similar activities.

CWA or "The Act" means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Pub. L. 92-500, as amended by Pub. L. 95-217, Pub. L. 95-576, Pub. L. 96-483 and Pub. L. 97-117; 33 U.S.C. §§ 1251 *et seq.*

Daily Discharge means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurements, the daily discharge is calculated as the average measurement of the pollutant over the day.

Director means the person authorized to sign NPDES permits by EPA and/or the State.

Discharge Monitoring Report Form (DMR) means the EPA standard national form, including any subsequent additions, revisions, or modifications, for the reporting of self-monitoring results by permittees. DMRs must be used by "approved States" as well as by EPA. EPA will supply DMRs to any approved State upon request. The EPA national forms may be modified to substitute the State Agency name, address, logo, and other similar information, as appropriate, in place of EPA's.

Discharge of a pollutant means:

(a) Any addition of any "pollutant" or combination of pollutants to "waters of the United States" from any "point source," or

(b) Any addition of any pollutant or combination of pollutants to the waters of the "contiguous zone" or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channelled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances leading into privately owned treatment works.

This term does not include an addition of pollutants by any "indirect discharger."

Effluent limitation means any restriction imposed by the Director on quantities, discharge rates, and concentrations of "pollutants" which are "discharged" from "point sources" into "waters of the United States," the waters of the "contiguous zone," or the ocean.

Effluent limitations guidelines means a regulation published by the Administrator under Section 304(b) of CWA to adopt or revise "effluent limitations."

EPA means the United States "Environmental Protection Agency."

Grab Sample—An individual sample collected in a period of less than 15 minutes.

Hazardous Substance means any substance designated under 40 CFR Part 116 pursuant to Section 311 of CWA.

Maximum daily discharge limitation means the highest allowable "daily discharge."

Municipality means a city, town, borough, county, parish, district, association, or other public body created

by of under State law and having jurisdiction over disposal or sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribe organization, or a designated and approved management agency under section 208 of CWA.

National Pollutant Discharge Elimination System means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of CWA. The term includes an "approved program."

New discharger means any building, structure, facility, or installation:

- (a) From which there is or may be a "discharge of pollutants";
- (b) That did not commence the "discharge of pollutants" at a particular "site" prior to August 13, 1979;
- (c) Which is not a "new source"; and
- (d) Which has never received a finally effective NPDES permit for discharges at that "site".

This definition includes an "indirect discharger" which commences discharging into "waters of the United States" after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a "site" for which it does not have a permit; and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979, at a "site" under EPA's permitting jurisdiction for which it is not covered by an individual or general permit and which is located in an area determined by the Regional Administrator in the issuance of a final permit to be an area of biological concern. In determining whether an area is an area of biological concern, the Regional Administrator shall consider the factors specified in 40 CFR 125.122.(a) (1) through (10).

An offshore or coastal mobile exploratory drilling rig or coastal mobile developmental drilling rig will be considered a "new discharger" only for the duration of its discharge in an area of biological concern.

New source means any building, structure, facility, or installation from which there is or may be a "discharge of pollutants," the construction of which commenced:

(a) After promulgation of standards of performance under Section 306 of CWA which are applicable to such.

(b) After proposal of standards of performance in accordance with Section 306 of CWA which are applicable to such source, but only if the standards are promulgated in accordance with Section 306 within 120 days of their proposal.

NPDES means "National Pollutant Discharge Elimination System."

Non-Contact Cooling Water is water used to reduce temperature which does not come in direct contact with any raw material, intermediate product, a waste product or finished product.

Owner or operator means the owner or operator of any "facility or activity" subject to regulation under the NPDES programs.

Permit means an authorization, license, or equivalent control document issued by EPA or an "approved State."

Person means an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof.

Point source means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel, or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

Pollutant means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

- (a) Sewage from vessels; or
- (b) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if the State determines that the injection or disposal will not result in the degradation of ground or surface water resources.

Primary industry category means any industry category listed in the NRDC settlement agreement (*Natural Resources Defense Council et al. v. Train*, 8 E.R.C. 2120 (D.D.C. 1976),

modified 12 E.R.C. 1833 (D.D.C. 1979)); also listed in Appendix A of 40 CFR Part 122.

Process wastewater means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

Regional Administrator means the Regional Administrator, EPA, Region I, Boston, Massachusetts.

State means any of the 3 States of Maine, Massachusetts and New Hampshire.

Secondary Industry Category means any industry category which is not a "primary industry category."

Toxic pollutant means any pollutant listed as toxic in Appendix D of 40 CFR Part 122, under Section 307(a)(1) of CWA.

Uncontaminated storm water is precipitation to which no pollutants have been added and has not come into direct contact with any raw material, intermediate product, waste product or finished product.

Waters of the United States means:

(a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(b) All interstate waters, including interstate "wetlands."

(c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

- (1) Which are or could be used by interstate or foreign travelers for recreational or other purposes;
- (2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(3) Which are used or could be used for industrial purposes by industries in interstate commerce;

(d) All impoundments of waters otherwise defined as waters of the United States under this definition;

(e) Tributaries of waters identified in paragraphs (a)-(d) of this definition;

(f) The territorial sea; and

(g) "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a)-(f) of this definition.

Whole Effluent Toxicity (WET) means the aggregate toxic effect of an effluent measured directly by a toxicity test.

Wetlands means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

2. Abbreviations when used in this permit are defined below:

cu. M/day or M3/day—cubic meters per day

mg/l—milligrams per liter

ug/l—micrograms per liter

lbs/day—pounds per day

kg/day—kilograms per day

Temp. °C—temperature in degrees Centigrade

Temp. °F—temperature in degrees Fahrenheit

Turb.—turbidity measured by the Nephelometric Method (NTU)

pH—a measure of the hydrogen ion concentration

CFS—cubic feet per second

MGD—million gallons per day

Oil & Grease—Freon extractable material

ml/l—milliliter(s) per liter

Cl₂—total residual chlorine

[FR Doc. 96-10813 Filed 4-30-96; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2128]

Petitions for Reconsideration, Clarification and Stay of Actions in Rulemaking Proceedings

April 17, 1996.

Petitions for reconsideration, clarification and stay have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857-3800. Opposition to this petition must be filed May 7, 1996. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Petition for Declaratory Ruling by the Inmate Calling Services Providers Task Force (RM-8181). Number of Petitions Filed: 2.

Subject: Amendment of Section 73.202(b), Table of Allotments, FM

Broadcast Stations. (Farmington, Grass Valley, Jackson Linden, Placerville and Fair Oaks, California and Carson City and Sun Valley, Nevada) (MM Docket No. 90-189, RM-6904, RM-7114, RM-7186, RM-7415, RM-7298). Number of Petitions Filed: 1.

Subject: Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992—Rate Regulation (MM Docket No. 93-215). Adoption of a Uniform Accounting System for Provision of Regulated Cable Service (CS Docket No. 94-28). Number of Petitions Filed: 2.

Subject: Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Band (CC Docket No. 92-166). Number of Petitions Filed: 3.

Subject: Streamlining the Commission's Antenna Structure Clearance and Revision of Part 17 of the Commission's Rules Concerning Construction, Marking, and Lighting of Antenna Structures (WT Docket No. 95-5). Number of Petitions Filed: 2.

Subject: Toll Free Service Access Codes (CC Docket No. 95-155). Number of Petitions Filed: 1.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96-9746 Filed 4-30-96; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made final findings of scientific misconduct in the following case:

Andrew Friedman, M.D., Harvard Medical School

Based on a report from Harvard Medical School and Dr. Friedman's admission, ORI found that Andrew Friedman, M.D., former Harvard Medical School Associate Professor of Obstetrics, Gynecology, and Reproductive Biology at the Brigham and Women's Hospital, committed scientific misconduct by falsifying and fabricating data in research supported in

part by a Public Health Service (PHS) grant to the Brigham and Women's Hospital General Clinical Research Center.

Between 1992 and 1995, Dr. Friedman altered and fabricated information in permanent patient medical records and notes by changing dates, changing and adding text, and fabricating notes for clinical visits that did not occur. Dr. Friedman admitted that he had falsified and fabricated approximately 80 percent of the data in research reports published in *Fertility and Sterility* (Friedman, A.J. and Thomas, P.P. "Gonadotrophin-releasing hormone agonist plus estrogen-progestin 'add-back' therapy for endometriosis-related pelvic pain." *Fertility and Sterility* 30:236-41, 1993.), in *Obstetrics and Gynecology* (Friedman, A.J. and Thomas P.P. "Does low-dose combination oral contraceptive use affect uterine size or menstrual flow in premenopausal women with leiomyomas?" *Obstetrics and Gynecology*, pp. 631-635, 1995.), and in an unpublished manuscript.

Dr. Friedman has entered into a Voluntary Exclusion Agreement with ORI in which he has voluntarily agreed:

(1) To exclude himself from any contracting or subcontracting with any agency of the United States Government and from eligibility for, or involvement in, nonprocurement transactions (e.g., grants and cooperative agreements) of the United States Government, as defined in 45 C.F.R. Part 76 and 48 C.F.R. Subparts 9.4 and 309.4

(Debarment Regulations) for a period of three (3) years beginning April 19, 1996;

(2) That for a period of two (2) years immediately following the three (3) year voluntary exclusion above, any institution that submits an application for PHS support for a research project on which Dr. Friedman's participation is proposed or that uses him in any capacity on PHS supported research must concurrently submit a plan for supervision of his duties; the supervisory plan must be designed to ensure the scientific integrity of Dr. Friedman's research contribution, and the institution must submit a copy of the plan to ORI; and

(3) To exclude himself from serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant for a period of three (3) years beginning April 19, 1996.

The voluntary exclusion in (1) above shall not apply to Dr. Friedman's future training or practice of clinical medicine whether as a medical student, resident, fellow, or licensed practitioner, as the