Part III.P Summary of Comments and EPA Responses

This "Response to Comments" document supports the issuance of NPDES general permits nos. MAG580000 and NHG580000 in Massachusetts and New Hampshire. On October 1, 2004, the U.S. Environmental Protection Agency ("EPA") published in the Federal Register a Notice of Availability of Draft National Pollutant Discharge Elimination System ("NPDES") General Permits for certain Publicly Owned Treatment Works ("POTWs") and other treatment works treating domestic sewage (collectively "facilities") in Massachusetts and New Hampshire and Indian Country Lands in the State of Massachusetts. The public comment period expired on November 1, 2004.

The permits establish effluent limitations, standards, prohibitions, permit eligibility criteria, and notification requirements for discharges to freshwater and marine waters. Coverage under these permits is available only to minor facilities in Massachusetts, and to major and minor facilities in New Hampshire. Only facilities that have a dilution factor equal to or greater than 50:1 in the receiving water are eligible for permit coverage. Specific eligibility requirements are provided in the general permits and associated attachments.

Two Massachusetts State Agencies submitted comments on the draft permit during the public comment period. Following are EPA's responses to these comments, including explanations of those provisions of the draft permit that have changed in the final permit.

During the process of developing general permits, EPA consults with both the U.S. Fish and Wildlife Service and the National Marine Fisheries Service under Section 7 of the Endangered Species Act of 1973 ("ESA"), as amended. This document summarizes the comments provided by these agencies during these consultations, and provides EPA's responses and explanations of changes made to the general permits as a result of these consultations.

These summaries of the comments received and EPA's responses complement the fact sheet and draft permit. The fact sheet was prepared to support the draft permit. This "Response To Comments" document is prepared in accordance with 40 CFR 124.17 and is a response to each significant written comment received by EPA. The reader will need to be familiar with the draft permit and fact sheet, the applicable federal NPDES permit (and general permit) regulations, and the pertinent State's surface water quality standards regulations and statutes to understand the comments and associated responses. The original written comments are included in the NPDES permit file.

Massachusetts Office of Coastal Zone Management

COMMENT NO. 1: A POTW discharging to the Massachusetts Ocean Sanctuaries, as defined at 302 CMR 5.00, needs to be excluded from coverage under this general permit. The Fact Sheet would include this exclusion in Section III Exclusions (page 2), eliminate the Shore Cliff Deaconess facility in Attachment A, and reduce the number of eligible facilities to 15 mentioned on page 4. The language in Part III.K.2 of the draft permit should include this Ocean Sanctuaries exclusion.

RESPONSE NO. 1: EPA agrees that treatment works discharging to Massachusetts Ocean Sanctuaries should not be eligible for coverage under this general permit. The final permit is revised to include, in the list of exclusions at Part III.K.2, facilities discharging to Massachusetts Ocean Sanctuaries. EPA has revised the list of minor facilities in Massachusetts eligible for general permit coverage by deleting the Shore Cliff Deaconess facility (see Attachment A to this document). According to EPA permit regulations, the Fact Sheet is prepared to support the draft permit and, therefore, it is not revised at the time of final permit issuance.

Massachusetts Department of Environmental Protection,
Division of Watershed Management

COMMENT NO. 2: The mass limitations in the draft permit for BOD_5, $CBOD_5$ and TSS on pages 3, 8, and 15 are not State Certification requirements. The calculation for the limits should be moved to a footnote, as in the New Hampshire draft permit.

RESPONSE NO. 2: The commenter correctly notes that BOD_5, $CBOD_5$, and TSS mass limitations are not State Certification requirements. The final permit has been revised to replace the reference to 'State Permit Condition I.D.1.c' in Parts I.A. and B. with Average Monthly and Average Weekly mass loading limits for each discharger, in accordance with 40 CFR 122.45(f). In addition, explanations of the mass loading limits in Part I.D.1.c have been moved to new footnotes in Parts I.A. and B. in the final permit.

COMMENT NO. 3: Add a new footnote 15 for freshwater Class B receiving waters on pages 3 and 6.

RESPONSE NO. 3: EPA agrees this additional footnote is needed for clarification. The final permit includes a new footnote (15) to identify the Fecal Coliform Bacteria limits in Part I.A that apply to freshwater class B receiving waters.

COMMENT NO. 4: Facilities using ultraviolet light are also eligible for seasonal chlorination since the Massachusetts water quality standards and policy allows for seasonal disinfection in segments designated for primary contact recreation. The reference footnote (5) on page 5 could be revised to say, "....and during the period when the chlorination or ultraviolet light system is operational." or "....and during the period when the disinfection system is operational."

RESPONSE NO. 4: The Massachusetts Surface Water Quality Standards at 314 CMR 4.00 allow only facilities discharging into certain classes of waters to conduct seasonal disinfection. Facilities discharging into Class A waters, Class C waters, Class SA waters designated for shellfishing, Class SB waters designated for shellfishing, and Class SC waters are required to conduct year-round disinfection (whether by chlorination or by ultraviolet light). Facilities discharging into Class B waters, Class SA waters not designated for shellfishing, and Class SB waters not designated for shellfishing may, at the discretion of MADEP, be allowed to conduct seasonal disinfection (whether by chlorination or by ultraviolet light). See 314 CMR 4.05. This latter category of facilities may, therefore, request written authorization from EPA and MADEP to conduct seasonal disinfection. In the final permit, EPA has revised the second paragraph of footnote (5) to read: "A facility seeking general permit coverage for discharges into Class B waters, Class SA waters not designated for shellfishing, or Class SB waters not designated for shellfishing may, upon receipt of written authorization from EPA and MADEP, comply with the Fecal Coliform limit on a seasonal basis, *i.e.*, from April 1 to October 31 (unless otherwise specified in the written authorization), and shall conduct seasonal disinfection by chlorination or ultraviolet light during the time that the Fecal Coliform limit applies. A

permittee with such written authorization to comply with the Fecal Coliform limit on a seasonal basis shall monitor Fecal Coliform from April 1 to October 31 and during any other period that EPA and MADEP determine the Fecal Coliform limit should be applied.

COMMENT NO. 5: The seasonal disinfection language in the paragraph at the end of footnote (6) on page 5 needs revision to be similar with the language in footnote (5).. Revise this paragraph to read: "A permittee with written authorization from EPA and MADEP to allow seasonal disinfection shall monitor Total Residual Chlorine (TRC) during the period April 1 to October 31, and during the period when the chlorination system is operational. Move this revised paragraph to above the preceding paragraph. During the remainder of the year, indicate "no discharge" for the TRC parameter on the monthly DMR."

RESPONSE NO. 5: As noted above, Massachusetts water quality standards allow for seasonal disinfection only in specified waterbodies. See Response #4 above. EPA agrees, however, with the commenter's suggestions for clarification of the TRC monitoring and reporting requirements. Accordingly, EPA has replaced the last two paragraphs in footnote (6), pg. 5 of the draft permit with the following language: "A facility seeking general permit coverage for discharges into Class B waters, Class SA waters not designated for shellfishing, or Class SB waters not designated for shellfishing may, upon receipt of written authorization from EPA and MADEP, conduct seasonal disinfection by chlorination or ultraviolet light. A permittee with written authorization to allow seasonal disinfection by chlorination shall monitor Total Residual Chlorine (TRC) from April 1 to October 31 and during any other period when a chlorination system is operational. A permittee with written authorization to allow seasonal disinfection by ultraviolet light shall monitor Total Residual Chlorine (TRC) during any period when chlorine is discharged. During the remainder of the year, the permittee shall indicate 'no discharge' for the TRC parameter on the monthly DMR."

COMMENT NO. 6: The dilution water guidance for the whole effluent toxicity tests is provided in footnote (9) on pages 6 and 11. The web location of the DMR instructions has been moved to http://www.epa.gov/region1/enforcementandassistance/dmr.html.

RESPONSE NO. 6: The draft permit did not provide a web location for the annual DMR instructions, referenced in footnote (9) on pages 6 and 11. The Fact Sheet, dated September 30, 2004, accompanying this draft permit provides the following web site in Attachment C on page 29: http://www.epa.gov/ne/enforcementandassistance/dmr.html. Either web address will direct the user to the pertinent web site. For convenience to the permittee, the final permit has been revised to include this website in footnote (9) on pages 6 and 11. Similarly, this change was also made in footnote (9)and (13) on pages 20 and 27, respectively, of the New Hampshire permit.

COMMENT 7: The seasonal disinfection language in the last paragraph of footnote (6) on page 10 needs to read as follows: "A permittee with written authorization from EPA and MADEP to allow seasonal disinfection shall monitor TRC during the period April 1 to October 31. During the remainder of the year, indicate "no discharge" for the TRC parameter on the monthly DMR." The ending sentence follows without change. Move this paragraph to above the preceding paragraph.

RESPONSE 7: As noted above, Massachusetts water quality standards allow for seasonal disinfection only in specified waterbodies. See Response #4 above. EPA agrees, however, with the commenter's suggestions for clarification of the TRC monitoring and reporting requirements. Accordingly, EPA has replaced the last two paragraphs in footnote (6), pg. 10 of the draft permit with the following language: "A facility seeking general permit coverage for discharges into Class B waters, Class SA waters not designated for shellfishing, or Class SB waters not designated for shellfishing may, upon receipt of written authorization from EPA and MADEP, conduct seasonal disinfection by chlorination or ultraviolet light. A permittee with written authorization to allow seasonal disinfection by chlorination shall monitor Total Residual Chlorine (TRC) from April 1 to October 31 and during any other period when a chlorination system is operational. A permittee with written authorization to allow seasonal disinfection by ultraviolet light shall monitor Total Residual Chlorine (TRC) during any period when chlorine is discharged. During the remainder of the year, the permittee shall indicate 'no discharge' for the TRC parameter on the monthly DMR."

COMMENT NO. 8: if a decision is made that one marine test species will be sufficient for the marine acute toxicity tests as specified in footnote (8) page 1, will the Massachusetts permit will be modified?

RESPONSE NO. 8: No. Part I.B of the draft permit requires permittees discharging to marine waters to conduct marine acute toxicity tests once per year on two test species to monitor compliance with the whole effluent toxicity (WET) requirements. During the preparation of the draft permit, EPA considered requiring such testing on only one test species but determined it was necessary to test two different species, one species specific to the marine environment and the second species specific to the estuarine environment.

COMMENT NO. 9: Add "and to Division of Watershed Management" to the reporting requirements for Massachusetts at the end of Part III.J.2.

RESPONSE NO. 9: Part III.J.2 of the final permit has been revised to provide that permittees must submit required reports to the Division of Watershed Management.

COMMENT NO. 10: The permit exclusion language for discharges to impaired waters is less flexible than in the preliminary draft permit. If a parameter is the same as what is causing the impairment, but the discharge is limited so as to meet the water quality standards, we should still be able to allow the discharge under the general permit. Suggest changing it to read "...where the discharge contains the pollutant/stressor resulting in the impairment according to the 303(d) listing, and not limited by the permit to meet water quality standards."

RESPONSE NO. 10: In general, EPA disagrees with the comment. The process for determining the necessary water quality-based effluent limitations for discharges to impaired waters is complex and site-specific, and any source discharging to such waters is required to obtain individualized water quality-based limits. For this reason, it is not appropriate under 40 CFR 122.28(a)(3) to allow facilities discharging into impaired waters to be covered by this general permit. EPA has made only two exceptions to this exclusion from coverage under this general permit (see Part III.K.2.n). First, the exclusion does not apply to facilities discharging to waters impaired due to bacteria, because the bacteria limits in the permit are the same as the applicable ambient water quality criteria. This is appropriate because a discharge of bacteria at a level equal to or less than the applicable water quality criteria cannot cause or contribute to a violation of those criteria. Second, the exclusion does not apply to facilities in New Hampshire discharging to waters impaired due to pH. This is appropriate because NHDES requested that permit coverage be allowed for these facilities and has specified in its state certification that pH range limits of 6.5 to 8.0 standard units, equal to the applicable ambient water quality, apply to these facilities. EPA has, accordingly, incorporated these pH effluent limitations into the New Hampshire portion of this general permit as state certification requirements.

COMMENT NO. 11: Reference to the Notice of Intent (NOI) form in Parts III.1.e and f should be deleted. It appears that the NOI form in the preliminary draft permit has been replaced by the NPDES Form 2A application and a letter with the additional information required. The simpler application requirements are better.

RESPONSE NO. 11: The notification requirements in Part III.M.1 for facilities in Massachusetts are revised to replace references to "NOI form" with "NOI" or "NOI submission." An official NOI form does not exist at this time.

COMMENT NO. 12: Facilities using chlorine or ultraviolet light may be allowed to utilize seasonal chlorination according to the Massachusetts water quality standards and policy. The language in the notification requirement concerning seasonal disinfection requests should be changed.

RESPONSE NO. 12: As noted above, Massachusetts water quality standards allow for seasonal disinfection only in specified waterbodies. See Response #4 above. Accordingly, EPA has revised subparagraph (j) on pg. 39 of the draft permit to read as follows: "A facility seeking general permit coverage for discharges into Class B waters, Class SA waters not designated for shellfishing, or Class SB waters not designated for shellfishing may request written authorization from EPA and MADEP to conduct seasonal disinfection by chlorination or ultraviolet light. Such

request shall be made in the NOI submission."

Endangered Species Act consultation

In accordance with the requirements of Section 7 of the Endangered Species Act, 16 USC § 1536, EPA Region I consulted with the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) to assess the potential impacts of this general permit on any listed threatened or endangered species or designated critical habitat. Both agencies submitted comments and subsequently concurred with the Region's determination that the proposed general permit is not likely to adversely affect any threatened or endangered species or critical habitat. The agencies' comments, and EPA's responses, are provided below.

U.S. Fish and Wildlife Service

COMMENT NO. 13: The U.S. Fish and Wildlife Service ("USFWS") indicates the areas in which discharges may affect the endangered dwarf wedgemussel (*Alasmidonta heterodon*) needs updating and provides the most current extant range of the dwarf wedgemussel in New Hampshire and Massachusetts. USFWS recommends identifying the river segments, where the federally-listed endangered shortnose sturgeon (*Acipenser brevirostrum*) is found, similar to the descriptions used for the dwarf wedgemussel.

RESPONSE NO. 13: EPA has revised Part III.K.4.b of the final permit and Section A of the Endangered Species Act Review at Attachment D ("ESA Attachment") to update the list of areas where the endangered dwarf wedgemussel are found, and to identify the river segments where the endangered shortnose sturgeon are found.

COMMENT NO. 14: Section B of the ESA Attachment indicates that before submitting a notice of intent ("NOI") for permit coverage, facilities must determine whether they meet the ESA eligibility criteria by following the steps in section D. Are any POTWs located on the river segments identified in section A covered by this section or do they automatically fall out? Since POTWs discharging to rivers within the dwarf wedgemussel range must consult with the Service, how are these POTWs are treated by sections B (Eligibility Process) and D (Eligibility Criteria)? The relationship between sections A, B, and D in the Endangered Species Act Review document (Attachment D) is confusing.

RESPONSE NO. 14: EPA has revised the ESA Attachment to clarify that *all* facilities seeking coverage under this general permit, including owners and operators of facilities discharging into any of the nine identified areas where the endangered dwarf wedgemussel and shortnose sturgeon are found, must determine whether they meet one or more of the ESA eligibility criteria before submitting an NOI. A facility that cannot meet any of the eligibility criteria must apply for an individual permit.

COMMENT NO. 15: Section D, Step 1 provides the information and guidance to met ESA eligibility Criterion A on page 3. Under the item 'Check for Listed Endangered Species in Your County' a POTW located close to the border of a county with listed species must consult a current species list. Specifically, what is the meaning of close: one mile, five miles?

RESPONSE NO. 15: EPA has revised the discussion under Criterion A of the ESA Attachment to clarify that a facility must determine whether endangered or threatened species or critical habitat are "in proximity" to its treatment works or wastewater discharges. The ESA Attachment provides a number of inquiries a facility should make to determine whether endangered or threatened species and/or critical habitat, including those in adjacent counties, are "in proximity" (see section C, Step 1). A facility that is uncertain about whether endangered or threatened species or critical habitat are "in proximity" to its discharges should consult with the appropriate office of the Services prior to submission of an NOI.

COMMENT NO. 16: Letters requesting endangered species consultation reviews should be sent to the Field Office in Concord, Hampshire to assure a quick response. We suggest removing the address for the Regional Office in

Hadley, Massachusetts shown in section F.

RESPONSE NO. 16: EPA has revised the USFWS's address in the ESA Attachment accordingly.

COMMENT NO. 17: The Fact Sheet in Attachment A provides a listing of the facilities eligible for general permit coverage in Massachusetts and New Hampshire. Two New Hampshire facilities are located within the range of the dwarf wedgemussel, namely the Charlestown POTW (NH0100765) and Northumberland Village POTW (NH0101206). Since these two facilities discharge to the Connecticut River in known endangered species habitat, both facilities should consult with the Service prior to determining their eligibility for general permit coverage according to the Endangered Species Act Review procedures (Attachment D) under this general permit.

RESPONSE NO. 17: EPA has revised the ESA review procedures (at Attachment D) by eliminating Criterion D from the list of criteria a facility can satisfy to demonstrate permit eligibility. This narrows the scope of facilities that can be eligible for coverage under this general permit. Any facility with a discharge in proximity to threatened or endangered species or critical habitat is excluded from permit coverage, unless it can demonstrate eligibility through a prior authorization that adequately addressed its discharge(s), the condition of the receiving waterbody, and the status of the relevant listed species and critical habitat. See "Steps to Determine ESA Eligibility," Attachment D, Section C. The two New Hampshire facilities identified by USFWS (the Charlestown POTW (NH0100765) and Northumberland Village POTW (NH0101206)) are, therefore, ineligible for coverage under this general permit and must submit applications for individual permits, unless they can demonstrate eligibility through one or more of the criteria in Attachment D. The Fact Sheet supports the draft permit and is not revised at the time of final permit issuance.

National Marine Fisheries Service

COMMENT NO. 18: The Endangered Species Attachment should note on page 1 that the dwarf wedge mussel is listed under the jurisdiction of USFWS and the shortnose sturgeon is listed under the jurisdiction of NMFS.

RESPONSE NO. 18: EPA agrees and has revised the ESA Attachment to clarify that the dwarf wedge mussel is listed under the jurisdiction of USFWS and the shortnose sturgeon is listed under the jurisdiction of NMFS. EPA has made the same clarification to the list of areas where these species are found in Part III.K.4.b of the final permit.

COMMENT NO. 19: The ESA Attachment provides five eligibility criteria to determine if a facility is eligible under the general permits. Criterion D of the Attachment states on page 3 that "...a determination is made by the permittee and affirmed after review by EPA that the wastewater discharges and discharge-related activity will not affect any federally threatened or endangered species..." However, the steps to determine if a facility can meet eligibility under Criterion D on page 6 questions if the operator "...determined that your treatment works' wastewater discharges and discharge-related activities are "not likely to adversely affect" listed species or critical habitat, and/or have you reached agreement with the USFWS on measures to avoid, eliminate, or minimize adverse affects? " Based on this assessment, it would be more appropriate that Criterion D state the determination has been made that the discharge "is not likely to adversely affect" any listed species rather than state it "will not affect" any listed species.

RESPONSE NO. 19: As discussed above, EPA has revised the ESA review procedures (at Attachment D) by eliminating Criterion D from the list of criteria a facility can satisfy to demonstrate permit eligibility. See Response #17 above. Therefore, this comment is no longer applicable.

COMMENT NO. 20: The eligibility question in Step 3 for Criterion D on page 6 should also include agreement with NMFS because an operator with a discharge to the Connecticut or Merrimack Rivers that may affect shortnose sturgeon must consult with NMFS and not with the USFWS. It may also be more appropriate to state that the operator has received concurrence from the appropriate Service with a "not likely to adversely affect" determination.

RESPONSE NO. 20: As discussed above, EPA has revised the ESA review procedures (at Attachment D) by

eliminating Criterion D from the list of criteria a facility can satisfy to demonstrate permit eligibility. See Response #17 above. Therefore, this comment is no longer applicable.

COMMENT NO. 21: The section concerning Criterion D on pages 6 and 7 should include NMFS in all appropriate places rather than mentioning only USFWS. The discussion for Step 4 concerning the Notice of Intent and Document Results submission should also reference NMFS throughout this Step.

RESPONSE NO. 21: As discussed above, EPA has revised the ESA review procedures (at Attachment D) by eliminating Criterion D from the list of criteria a facility can satisfy to demonstrate permit eligibility. See Response #17 above. Therefore, this comment is no longer applicable.

COMMENT NO. 22: The documentation required for ESA eligibility is provided for Criterion D in Step 4 (page 7). The Attachment states the operator must submit "Documentation on how you determined adverse effects on listed species and critical habitat were unlikely." It would be more appropriate for the operator to submit documentation of the appropriate Services's concurrence with the operator's determination that the discharges were not likely to adversely affect listed species.

RESPONSE NO. 22: As discussed above, EPA has revised the ESA review procedures (at Attachment D) by eliminating Criterion D from the list of criteria a facility can satisfy to demonstrate permit eligibility. See Response #17 above. Therefore, this comment is no longer applicable.

COMMENT NO. 23: The contact information in Section G of the ESA Attachment should be updated to eliminate the Protected Species Branch of Northeast Fisheries Science since correspondence to this address for Section 7 consultations is not appropriate. Operators should use the new website for NMFS's list of endangered species at http://www.nmfs.noaa.gov/pr/species/esa_species.htm.

RESPONSE NO. 23: EPA has revised the address and website in Section G accordingly.

COMMENT NO. 24: The proposed permit includes requirements for facilities discharging to areas of the Merrimack and Connecticut Rivers where shortnose sturgeon are present. NMFS assumes EPA is making the determination that discharges to the segments of the Connecticut and Merrimack Rivers where shortnose sturgeon are not known to be present (in either New Hampshire or Massachusetts) will have no effect to shortnose sturgeon that occur in the Massachusetts portions of these Rivers. NMFS notes, however, that where a facility and/or EPA believes that a discharge into an area of these Rivers (in New Hampshire or Massachusetts) has the potential to affect shortnose sturgeon found downstream, the facility and /or EPA should conduct informal section 7 consultation with NMFS to ensure that these discharges are not likely to have an adverse affect on shortnose sturgeon or critical habitat.

RESPONSE NO. 24: As discussed above, EPA has revised the ESA review procedures (at Attachment D) by eliminating Criterion D from the list of criteria a facility can satisfy to demonstrate permit eligibility. See Response #17 above. Therefore, a facility that discharges into any segment of the Connecticut and Merrimack Rivers "in proximity" to shortnose sturgeon and/or its critical habitat is not eligible for coverage under this general permit, unless it can demonstrate that a prior authorization adequately addressed its discharge(s), the condition of the receiving waterbody, and the status of the relevant listed species and critical habitat. See "Steps to Determine ESA Eligibility," Attachment D, Section C. Listed species and critical habitat are "in proximity" when they are located in the path of, or downstream from, the point of discharge. Given these required ESA Review procedures for this general permit, any facility with a discharge into an area of the Connecticut or Merrimack Rivers that may adversely affect shortnose sturgeon found downstream is ineligible for permit coverage and must apply for an individual permit.

Additional Permit Changes

A. During review of the New Hampshire section of the draft general permit, EPA and the New Hampshire Department of Environmental Services (NHDES) noticed that a maintenance requirement for effluent diffusers was inadvertently omitted from the requirements applicable to dischargers to marine waters. Similarly, the Fact Sheet omitted explanation of this requirement. A new Part II.E has been added to the final general permit requiring facilities in New Hampshire with effluent diffusers to comply with specific maintenance and reporting requirements, in accordance with 40 CFR §122.41(e).

Some facilities discharge to marine waters via a multiport or outfall diffuser to increase the dilution in the receiving water. Such outfall diffusers require periodic maintenance to ensure that they are functioning properly. Proper operation of effluent diffusers is important for two reasons: (1) the applicable effluent limitations for Total Residual Chlorine (TRC) and Whole Effluent Toxicity differ according to the dilution factor submitted in a facility's NOI, and (2) any facility with a dilution factor of less than 50:1 is ineligible for general permit coverage. Therefore, failure to achieve the dilution factor submitted in an NOI may lead to a violation of applicable TRC and WET limits, or require a facility to apply for an individual NPDES permit. Accordingly, this final permit includes a condition requiring any facility with an outfall diffuser to conduct periodic maintenance in accordance with the requirements in Part II.E. This new requirement is consistent with the standard permit conditions in Part IV.B.1 of the general permit.

B. During review of the Massachusetts section of the draft general permit, EPA and MADEP determined that the requirement (in Part I.C.2 of the draft permit) for facilities with chlorination systems to either install flow-paced chlorination systems or conduct continuous monitoring of TRC was onerous and unnecessary. In light of the fact that this general permit is available only to facilities with fairly high dilution factors and fairly high TRC limits, EPA and MADEP concluded that the Standard Permit Conditions in Part IV would be sufficient to assure compliance with the applicable TRC limits. EPA has therefore eliminated from the final permit the requirement for facilities with chlorination systems to either install flow-paced chlorination systems or conduct continuous monitoring of TRC.

C. During EPA's review of the draft permit, EPA noticed that the Whole Effluent Toxicity (WET) testing requirements in Parts I.A, I.B, II.A, and II.B. were erroneously expressed as maximum daily limits rather than minimum daily limits. The permit contains LC50 (lethal concentration 50 percent) acute whole effluent toxicity limits expressed as percent effluent in the sample (*i.e.*, a limit of 50 percent means that a sample consisting of 50 percent effluent shall cause no greater than 50 percent mortality of the test organisms). The limit is met if 50% mortality of the test organisms occurs at calculated test effluent concentrations of 50% or greater. If calculated test effluent concentrations of less than 50% effluent cause greater than 50% mortality, then the limit is violated. A limit of 100 percent means that a sample consisting of 100 percent effluent shall cause no greater than 50 percent mortality of the test organisms. The limit in this case is met only if 100% effluent does not cause greater than 50% mortality of the test organisms. If calculated test effluent concentrations of less than 100% effluent cause greater than 50% mortality, then the limit is violated. In other words, the more toxic the effluent, the greater the mortality at increasingly lower concentrations of the effluent. Therefore the limit is actually a minimum.

EPA has clarified this requirement in the final permit by listing the LC50 limits in Parts I.A., I.B, II.A and II.B of the final permit under "discharge limitation" rather than under "maximum daily" discharge limits. EPA has also revised the footnotes explaining the LC50 limits accordingly. These clarifications do not change any effluent limitations or other permit requirements.

D. Condition 1.d in Part I.D of the draft permit (Massachusetts State Permit Conditions) provided that discharges into Massachusetts Class A or SA waters require a State antidegradation review, and that MADEP may deny general permit coverage for such discharges following the antidegradation review. This language is potentially confusing. All discharges into state waters are subject to an antidegradation review to ensure that existing instream water uses and the level of water quality necessary to protect the existing uses are maintained and protected. 40 CFR 131.12. A state may deny general permit coverage for any discharge that it determines to be inconsistent with its antidegradation policy, regardless of the classification of the receiving waterbody. EPA has, therefore, eliminated this language pertaining to antidegradation review for Class A and SA waters from the final permit. This

clarification does not change any effluent limitations or other permit requirements.

E. NHDES notified EPA in its state certification letter, dated August 23, 2005, that discharges to receiving waters included on New Hampshire's CWA section 303(d) listing due to pH impairment must be required to meet the water quality standard for pH at the end of their discharge pipe, with no allowance for dilution in the receiving water. NHDES also noted that a pH standard of 6.5 to 8.0 standard units in such waters would ensure that such discharges do not contribute to any pH impairment. Accordingly, NHDES requested that the following state certification requirement be added to the effluent pH limitations in the general permit: "The pH of discharges to receiving waters included on New Hampshire's CWA section 303(d) listing due to pH impairment shall be within the range of 6.5 to 8.0 standard units." EPA has revised the effluent pH limitations in the general permit accordingly (see Parts II.A and II.B). EPA has also revised the "Permit Coverage, Exclusions, and Limitations" section at Part III.K.2.n of the general permit to allow facilities discharging into pH-impaired waters in New Hampshire to be eligible for general permit coverage, provided they comply with the pH effluent limitation of 6.5 to 8.0 standard units. The language at Part III.K.2.n has been revised to read as follows: "Any facility discharging to an impaired water included on the CWA section 303(d) listing for the state, where the discharge contains the pollutant/stressor causing the impairment according to the 303(d) listing. This exclusion does not apply to facilities discharging: (1) pollutants limited by the permit at a level equal to the applicable water quality criteria for bacteria, or (2) pH within the range of 6.5 to 8.0 standard units to receiving waters in New Hampshire." Facilities in Massachusetts that discharge into a pH-impaired waterbody are not eligible for coverage under this general permit.

F. EPA has revised the "National Historic Properties Review" attachment to ensure that activities regulated by this general permit do not adversely affect properties that are listed or eligible for listing on the National Register of Historic Places. Specifically, EPA has revised the NHPA attachment to require all facilities seeking coverage under this general permit – existing as well as new dischargers – to demonstrate that they meet one or more of the NHPA eligibility criteria (the draft general permit had required only facilities with new or increased discharges to demonstrate eligibility under the NHPA criteria). Existing dischargers for which EPA has already conducted an assessment of historic properties impacts can demonstrate NHPA eligibility by providing adequate documentation of that prior evaluation. Any facility, new or existing, that has *not* been evaluated for potential impacts on historic properties, however, must provide information about its discharges such that the permitting authorities can determine whether such discharge may adversely impact a historic property, and whether the facility is eligible for coverage under this general permit. EPA has also revised the general permit itself to require all facilities seeking permit coverage to certify in their NOI submissions that they have met one or more of the NHPA eligibility criteria. These revisions to the NHPA requirements for this general permit are consistent with EPA's obligations under the NHPA.

Attached is a revised list of facilities eligible for general permit coverage in Massachusetts and New Hampshire (Attachment A to the Fact Sheet dated September 30, 2004).

September 7, 2005

List of Massachusetts facilities eligible for the final NPDES General Permit in Massachusetts MAG580000. Revision to Attachment A on page 24 of the Fact Sheet for Draft NPDES General Permits MAG580000 and NHG580000, dated September 30, 2004.
***A* Facility is excluded from general permit coverage. Revised 02/03/05.**

ATTACHMENT A

FACILITIES ELIGIBLE FOR GENERAL PERMIT COVERAGE IN MASSACHUSETTS AND NEW HAMPSHIRE

MINOR FACILITIES IN MASSACHUSETTS

Facility Name	NPDES Permit Number	Expiration Date	Design Flow* (mgd)	Dilution Factor *	Receiving Water
Publicly Owned Treatment Works (POTWs)					
Charlemont Sewer District WWTP	MA0103101	09/30/2007	0.05	833:1	Deerfield River
Hadley WWTP	MA0100099	09/30/2005	0.54	2,049:1	Connecticut River
Hardwick WPC-Wheelwright	MA0102431	09/30/2005	0.043	222:1	Ware River
Hatfield WWTP	MA0101290	09/30/2005	0.5	2,189:1	Connecticut River
Huntington WWTP	MA0101265	09/29/2003	0.2	56:1	Westfield River
Merrimac WWTF	MA0101150	09/30/2006	0.45	1,358:1	Merrimack River
Northfield WWTF	MA0100200	09/30/2005	0.275	3,568:1	Connecticut River
Royalston Waste Water Treatment	MA0100161	09/30/2007	0.039	388:1	Millers River
Russell Village WWTF	MA0100960	09/29/2003	0.24	61:1	Westfield River
Shelburne Falls WWTF	MA0101044	09/30/2007	0.25	148:1	Deerfield River
Sunderland WWTF	MA0101079	09/30/2005	0.5	2,225:1	Connecticut River
Woronoco Village WWTF	MA0103233	09/30/2003	0.02	776:1	Westfield River
Treatment Facilities Treating Domestic Sewage					
Northfield Mt Hermon School	MA0032573	09/30/2005	0.45	2181:1	Connecticut River
River Terrace Health Care	MA0025763	11/11/2000	0.006	1,218:1	North Nashua River
Groton School	MA0033324	09/30/2005	0.07	425:1	Nashua River
Shore Cliff - Deaconess *A*	MA0027391	10/29/2004	0.004	100:1 E	Massachusetts Bay

List of New Hampshire facilities eligible for the final NPDES General Permit in New Hampshire NHG580000. Revision to Attachment A on page 25 of the Fact Sheet for Draft NPDES General Permits MAG580000 and NHG580000, dated September 30, 2004.
***C* Facility may not be eligible for general permit coverage because the discharge is to an area where endangered species are present. Revised 08/15/05.**

ATTACHMENT A

MINOR AND MAJOR FACILITIES IN NEW HAMPSHIRE

Facility Name	NPDES Permit Number	Expiration Date	Type	Design Flow * (mgd)	Dilution Factor *	Receiving Water
Allenstown POTW	NH0100714	01/29/2006	Major	1.05	362:1	Merrimack River
Antrim POTW	NH0100561	02/08/2001	Minor	0.21	57.6:1	Contoocook River
Bethlehem Village District POTW	NH0100501	07/29/1991	Minor	0.34	53.6:1	Ammonoosuc River
Bristol POTW	NH0100021	08/23/2004	Minor	0.5	166:1	Pemigewassett River
Charlestown POTW *C*	NH0100765	08/20/2004	Major	1.1	534:1	Connecticut River
Cheshire County Home WWTF	NH0100391	03/15/2000	Minor	0.04	15,130:1	Connecticut River
Gorham POTW	NH0100927	01/19/2000	Minor	0.75	1,070:1	Androscoggin River
Groveton POTW	NH0100226	03/05/1989	Minor	0.37	85.0:1	Upper Ammonoosuc River
Hanover POTW	NH0100099	10/14/2004	Major	2.3	198:1	Connecticut River
Hinsdale POTW	NH0100382	09/19/2004	Major	0.3	92.0:1	Ashuelot River
Hooksett POTW	NH0100129	10/02/2004	Major	1.1	342:1	Merrimack River
Hopkinton POTW	NH0100579	02/08/2000	Minor	0.12	193:1	Contoocook River
Lancaster Grange POTW	NH0101249	10/02/2004	Minor	0.0035	329:1	Otter Brook
Lisbon POTW	NH0100421	09/19/2000	Minor	0.32	85.0:1	Ammonoosuc River
Merrimack County WWTF	NH0100935	09/28/2000	Minor	0.08	4,005:1	Merrimack River
Newfields POTW	NH0101192	07/17/2001	Minor	0.117	100:1	Squamscott River
Newington POTW	NH0101141	10/30/2004	Major	0.29	100:1	Piscataqua River
Northumberland Village POTW *C*	NH0101206	07/20/1989	Minor	0.06	2,519:1	Connecticut River
Pease Development Authority	NH0090000	09/07/2005	Major	1.2	100:1	Piscataqua River
Piermont POTW	NH0101231	07/21/2004	Minor	0.007	100:1	Eastman Brook
Plymouth POTW	NH0100242	10/30/2004	Major	0.7	98.4:1	Pemigewassett River
Stratford Village POTW	NH0100536	04/12/2005	Minor	0.056	1,790:1	Connecticut River
Winchester POTW	NH0100404	12/24/1990	Minor	0.28	86.2:1	Ashuelot River
Woodsville POTW	NH0100978	05/28/2004	Minor	0.33	1,207:1	Connecticut River

* During processing and review of the facility's notification information, the Design Flow and Dilution Factor values may be updated to reflect new information. Design flow values are in million gallons per day (mgd).
E means estimated.