



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1  
1 CONGRESS STREET, SUITE 1100  
BOSTON, MASSACHUSETTS 02114-2023

October 23, 2006

Doran Crouse, Assistant Commissioner  
City Of Marlborough  
Public Works Department  
135 Neil Street  
Marlborough, Massachusetts 01752

Re: NPDES Permit No. MA0100498

Dear Mr. Crouse:

Enclosed is your final National Pollutant Discharge Elimination System ("NPDES") permit modification issued pursuant to the Clean Water Act (the "Federal Act"), as amended, and the Massachusetts Clean Waters Act (the "State Act"), 21 M.G.L. §§43-45, as amended. The Environmental Permit Regulations, at 40 C.F.R. §124.15, 48 Fed. Reg. 14271 (April 1, 1983), require this permit modification to become effective on the date specified in the permit modification.

Also enclosed is a copy of the Massachusetts State Water Quality Certification for your final permit modification, the agencies' response to the comments received on the draft permit modification, and information relative to appeals and stays of NPDES permits. Should you desire to contest any provision of the permit modification, your petition should be submitted to the Environmental Appeals Board as outlined in the enclosure and an appeal may also be filed with the Director of the Office of Watershed Management in accordance with the provisions of the Massachusetts Administrative Procedures Act, the Division's Rules for the Conduct of Adjudicatory Proceedings and the Timely Action Schedule and Fee Provisions (see enclosure).

Should you have any questions concerning the permit, feel free to contact David Pincumbe at (617) 918-1695.

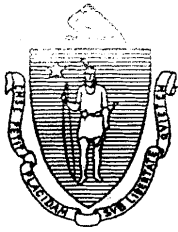
Sincerely,

A handwritten signature in black ink, appearing to read "Roger Janson".

Roger Janson, Manager  
Municipal Permits Branch

Enclosures

cc: MADEP, Division of Watershed Management  
All Interested Parties



COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

MITT ROMNEY  
Governor

ROBERT W. GOLLEDGE, Jr.  
Secretary

KERRY HEALEY  
Lieutenant Governor

ARLEEN O'DONNELL  
Commissioner

October 4, 2006

Brian Pitt, Chief  
NPDES Municipal Permit Program  
USEPA – New England  
1 Congress Street, Suite 1100  
Boston, MA 02114-2023

**Re: Water Quality Certification  
NPDES Permit MA0100498- modification  
City of Marlborough- Easterly WWTP**

Dear Mr. Pitt:

Your office has requested the Massachusetts Department of Environmental Protection to issue a water quality certification pursuant to Section 401(a) of the Federal Clean Water Act ("the Act") and 40 CFR 124.53 for the above referenced NPDES permit modification. The Department has reviewed the proposed permit modification and has determined that the conditions of the permit modification will achieve compliance with sections 208(e), 301, 302, 303, 306, and 307 of the Federal Act, and with the provisions of the Massachusetts Clean Waters Act, M.G.L. c. 21, ss. 26-53, and regulations promulgated thereunder. The permit modification conditions are sufficient to comply with the antidegradation provisions of the Massachusetts Surface Water Quality Standards [314 CMR 4.04] and the policy [October 6, 1993] implementing those provisions.

The Department hereby certifies the referenced permit modification.

Sincerely,

A handwritten signature in black ink, appearing to read "Glenn Haas".

Glenn Haas, Director  
Division of Watershed Management  
Bureau of Resource Protection

cc: Paul Hogan  
file

MODIFICATION OF AUTHORIZATION TO DISCHARGE UNDER THE  
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of the Federal Clean Water Act as amended, (33 U.S.C. §§ 1251 et seq.; "CWA"), and the Massachusetts Clean Waters Act, as amended, (M.G.L. Chap. 21, §§ 26-53),

**City of Marlborough  
Department of Public Works**

is authorized to discharge from the facility located at:

**Marlborough Easterly Wastewater Treatment Facility ("Facility")  
860 Boston Post Road  
Marlborough, Massachusetts 01752**

to an unnamed tributary to Hop Brook in accordance with effluent limitations, monitoring requirements and other conditions set forth in the permit issued on September 14, 2004, except as set forth herein and listed as follows:

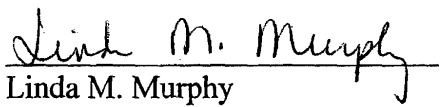
**Page 6 and 7.** Part I.A.1, Footnote No. 6

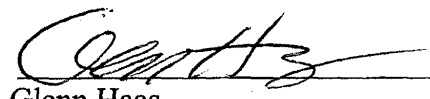
**Page 13.** Compliance Schedule

This permit shall become effective 60 days after date of signature.

This permit modification and the authorization to discharge expires at midnight, January 16, 2010.

Signed this 19 day of October, 2004

  
Linda M. Murphy  
Director  
Office of Ecosystem Protection  
Environmental Protection Agency  
Boston, MA

  
Glenn Haas  
Director  
Division of Watershed Management  
Department Environmental Protection  
Commonwealth of Massachusetts  
Boston, MA

Footnotes for Conditions I.A.1 and I.A.2:

6. The 0.1 mg/l limit is a 60 day rolling average limit and applies for the period of April through October. The 60 day average value for each day in a given month, beginning on the 60<sup>th</sup> day after April 1, must be calculated and the highest 60 day average value for that month must be reported on the monthly discharge monitoring report (DMR). In addition, the maximum daily value must be reported for each month. For the months of April and May, the 30 day average value shall be reported as a report only requirement.

The Permittee shall comply with the 0.1 mg/l limit in accordance with the schedule contained in Section E below. Upon the effective date of the permit modification, and until the date specified in Section E below for compliance with the limit of 0.1 mg/l, an interim 60 day rolling average total phosphorus limit of 0.5 mg/l shall be met for the period of April through October. Consistent with Section B.1 of Part II of the Permit, the Permittee shall properly operate and maintain the phosphorus removal facilities to obtain the lowest effluent concentration possible.

The 0.75 mg/l limit is a monthly average limit and applies for the period of November through March. The monthly average and maximum daily values shall be reported on each month's DMR report.

**E. COMPLIANCE SCHEDULE**

1. The Permittee and other interested parties are voluntarily participating in a feasibility study funded by MassDEP and conducted by the U.S. Army Corps of Engineers ("Corps") that will develop and evaluate effective and feasible alternative plans, and will present recommended options from among the alternative plans, to ensure compliance with water quality standards with respect to phosphorus in the Hop Brook ("Feasibility Study"). EPA and MassDEP will determine which recommended options, if any, will ensure compliance with water quality standards when implemented in combination with the total phosphorus effluent discharge limit contained in this permit ("Approved Options"). The Permittee shall review and comment on drafts of the Feasibility Study in a timely manner. EPA and MassDEP expect that the Feasibility Study will be completed by the Corps by April 2007.
2. The Permittee, the Town of Sudbury, and MassDEP will negotiate and enter into a Memorandum of Understanding ("MOU"). The MOU shall provide that the parties to the MOU will collaborate to develop a strategy and action plan concerning the implementation of the nonpoint source reductions associated with the Approved Option(s). The MOU shall not, however, create any legal rights or impose legal obligations on any party, or obligate the Permittee or any other party to take any actions concerning implementation of the Approved Option(s).
3. Within twelve (12) months of the effective date of the permit modification, the Permittee shall initiate planning of the Facility improvements required to achieve the total phosphorus effluent discharge limits originally set forth in this permit and submit a status report in connection thereto.

4. Within twenty-four (24) months of the effective date of the permit modification, the Permittee shall initiate design of the Facility improvements required to achieve the total phosphorus effluent discharge limits originally set forth in this permit and submit a status report in connection thereto.
5. Within thirty-six (36) months of the effective date of the permit modification, the Permittee shall submit to EPA and MassDEP a status report relative to design of the Facility improvements required to achieve the total phosphorus effluent discharge limits originally set forth in this permit.
6. Within forty-two (42) months of the effective date of the permit modification, the Permittee shall complete planning and design of the Facility improvements required to achieve the total phosphorus effluent discharge limits originally set forth in this permit. Design of the Facility improvements shall, to the extent practicable and to the extent approved by MassDEP, be consistent with the Approved Option(s).
7. Within forty-eight (48) months of the effective date of the permit modification, the Permittee shall initiate construction of the Facility improvements required to achieve the total phosphorus effluent discharge limits originally set forth in this permit.
8. Within sixty months (60) months of the effective date of the permit modification, the Permittee shall submit to EPA and MassDEP an initial status report relative to construction of the Facility improvements required to achieve the total phosphorus effluent discharge limits originally set forth in this permit.
9. Within seventy-two (72) months of the effective date of the permit modification, the Permittee shall submit to EPA and MassDEP a second status report relative to construction of the Facility improvements required to achieve the total effluent discharge phosphorus limits originally set forth in this permit.
10. Within seventy-eight (78) months of the effective date of the permit modification, the Permittee shall complete construction of the Facility improvements required to achieve the total phosphorus effluent discharge limits originally set forth in this permit and achieve such limits.
11. EPA shall reopen the permit prior to its expiration on January 16, 2010 and either modify or revoke and reissue the permit to include such limits and conditions (including a schedule of compliance) that are necessary to ensure compliance with water quality standards if EPA and MassDEP determine that the nonpoint source phosphorus reductions associated with selected Approved Option(s) have not been assured by October 1, 2009, either through voluntary agreements or activities and/or binding action or requirement of any governmental, regulatory or administrative body, agency or authority, or otherwise. Actual implementation of nonpoint source reductions by the reopener date is not required to demonstrate assurance.

## RESPONSE TO PUBLIC COMMENTS

From August 18, 2006 until September 16, 2006, the United States Environmental Protection Agency ("Region") and the Massachusetts Department of Environmental Protection ("MassDEP") solicited public comments on a draft modification of National Pollutant Discharge Elimination System ("NPDES") permit number MA0100498, which authorizes effluent discharges from the Marlborough Easterly Wastewater Treatment Facility ("Marlborough WWTF"), located in Marlborough, Massachusetts. The draft modification was limited to (i) the compliance schedule to achieve the final summer seasonal phosphorus effluent limit of 0.1 mg/l ("Phosphorus Limit") and (ii) the averaging period used to measure compliance with the interim seasonal phosphorus limit. The Environmental Appeals Board had remanded the Phosphorus Limit and the use of a seasonal averaging period with the interim seasonal phosphorus limit. In re City of Marlborough Easterly Wastewater Treatment Facility, NPDES Appeal No. 04-13, 12 E.A.D. \_\_\_\_ (August 11, 2005). After reviewing the comments received, EPA has decided to issue the final permit modification. The following describes and responds to comments.

A copy of the final permit may be obtained by writing David Pincumbe, United States Environmental Protection Agency, 1 Congress Street, Suite 1100 (CPE), Boston, Massachusetts, 02114-2023, or by calling (617) 918-1695. A copy may also be obtained from <http://www.epa.gov/region1/npdes/index.html>.

Comments submitted by Peter Shelley, Esq., John A. Pike, Esq. and John L. Davenport, Esq. of the Conservation Law Foundation:

Comment A1. The Environmental Appeals Board, in its August 11, 2005 decision on the Town of Sudbury's appeal of the September 16, 2004 NPDES permit, remanded the permit because the record in the case was clear that its 0.1 mg/l summertime phosphorus effluent limitation, by itself and without any requirement for remediation of the phosphorus recycling into the water column from the bottom sediments, would not "ensure" compliance with the applicable water quality standards as required by 40 C.F.R. § 122.4(d) and § 301(b)(1)(C) of the Clean Water Act. This requirement for assurance is unqualified; cost and technological considerations may not be considered in establishing the water-quality based permit limitations required by § 301(b)(1)(C), In re Westborough and Westborough Treatment Plant Board, 10 E.A.D. 297 at 312 (2002).

The proposed permit modification is EPA Region 1's response to the EAB remand. The permit as proposed to be modified still fails to "ensure" compliance with the applicable water quality standards because it does not obligate the permittee, the Commonwealth of Massachusetts or anyone else to implement whatever bottom sediment remediation measures are necessary, in combination with the 0.1 mg/l effluent limitation, for attainment of those standards. In fact the proposed modification goes out of its way to avoid any such commitment by expressly providing that the Memorandum of Understanding referred to in paragraph 2 of Part E about implementation of the sediment reductions determined by the Army Corps of Engineering to be necessary "shall not. . .

create any legal rights or impose legal obligations on any party, or obligate the Permittee or any other party to take any actions concerning implementation of the Approved Option(s).” In addition, there is no due date by which the permittee, the Town of Sudbury and MADEP are required to enter into the Memorandum of Understanding, and no penalty or other consequence for their failure to do so.

Response A1: The proposed modification of the permit ensures compliance with water quality standards in accordance with Section 301(b)(1)(C) of the Clean Water Act without apportioning legal responsibility for sediment phosphorus load reductions. As modified, the permit initially imposes an effluent limitation and sets forth a framework for identifying and ensuring sediment remediation which, in combination with the effluent limit, will result in attainment of water quality standards. If the anticipated sediment remediation measures are not assured by October 1, 2009, then the reopener provision of the permit is automatically triggered and the Region will modify or revoke and reissue the permit to include whatever phosphorus effluent limitation is necessary to comply with standards prior to expiration of the permit after adjusting for any nonpoint source reductions that have been assured as of October 1, 2009. Whether the permit legally obligates a party to reduce sediment phosphorus loading is not the determinative question for purposes of assessing compliance with CWA § 301(b)(1)(C). Nor is the lack of a deadline by which to enter into an MOU to address such reductions. In the Region’s view, the dispositive question instead turns on whether the permit as written accounts with sufficient certainty for the possible failure of sediment load reductions to occur. This position accords with the remand, in which the EAB states:

[T]he Permit does not contain any provisions requiring that Marlborough study or otherwise address the potential for phosphorus releases from the sediment in the Hop Brook ponds during the term of this Permit; nor does the Permit contain any provisions requiring further action, evaluation, or modification in the event that water quality standards are not achieved despite compliance with the 0.1 mg/l phosphorus limitation. n20.

n20 The Permit itself does not clearly require modification if water quality standards are not met by the end of the Permit’s four-year compliance schedule, but rather states that the Permit may be modified upon a demonstration that a presumably lower “alternative permit limit will achieve water quality standards.” Permit Cond. I.A.1 and .2 n.6.

City of Marlborough, slip opinion at 22-23. The proposed reopener provision falls squarely within the terms of the remand by clearly requiring modification by a date certain depending on the occurrence and extent of sediment phosphorus remediation.

Comment A2. The permit reopener clause in the proposed permit modification does not provide the degree of certainty of attainment of water quality standards that 40 C.F.R. § 122.4(d), § 301(b)(1)(C) and the EAB decision require. The reopener clause only applies if the phosphorus sediment reductions “associated with” the Approved Options derived from the Army Corps of Engineers feasibility study have not been “assured” by the October 1, 2009 reopener date. Actual achievement of those sediment reductions by that

date, or any other date, is expressly not required. In addition, if the sediment reductions “associated with” the Approved Options, even when implemented, turn out to be insufficient, in combination with an effluent limitation no more stringent than the permit’s current 0.1 mg/l, for the attainment of water quality standards, the reopener clause will nevertheless not be triggered and the violation of the water quality standards for Hop Brook will continue unabated.

Response A2. The reopener clause in the proposed modified permit will result in compliance with water quality standards, either through a combination of the phosphorus effluent limit and assured nonpoint source reductions or through a more stringent phosphorus effluent limit. We believe the framework established in the permit provides sufficient incentives for impacted parties to vigorously and cooperatively pursue sediment phosphorus reduction efforts. The fact that the Feasibility Study has not yet been completed and that legal, technical and logistical complexities will accompany efforts to address phosphorus sediment loading complicates the task of establishing of a meaningful date certain for implementation of sediment phosphorus reductions at this time. An implementation schedule based on more complete information about these issues could be considered for inclusion in a future permit reissuance or modification. The commenter points to the possibility that full implementation of an Approved Option consistent with a phosphorus effluent limit of 0.1 mg/l would not result in attainment of standards. Any Approved Option would be based on the best available technical and scientific understanding of the nutrient impairment in the Hop Brook. In the event that full implementation of approved sediment remediation efforts and the phosphorus effluent of 0.1 mg/l in fact is not sufficient to attain water quality standards, the Region will have an opportunity to impose a more stringent limit based on its refined understanding of the impairment.

Comment A3. Furthermore (and most problematic), although the reopener clause in the modification states that, if the reopener is triggered, EPA will modify the permit to include “such limits and conditions” (not by such terms limited to effluent limits) that are necessary to ensure compliance with water quality standards, the Fact Sheet accompanying the permit modification limits EPA’s recourse to reduction of the phosphorus effluent limitation. However, the record (e.g. the ENSR Supplement Nutrient Loading Evaluation) is clear that even an effluent limitation more stringent than 0.1 mg/l will fail to ensure attainment of water quality standards without sufficient reduction of the sediments. By limiting the action that EPA can take in the event the reopener is triggered to tightening the effluent limitation, the permit modification effectively “ensures” that water quality standards will not be met.

40 C.F.R. § 122.4(d), § 301(b)(1)(C) of the Clean Water Act and the EAB decision require that the permit mandate implementation, by a date certain, of whatever sediment reductions and more stringent effluent limitations that the Army Corps of Engineers, EPA and MADEP determine to be necessary for the attainment of the applicable water quality standards. Although the Region is apparently concerned that the EPA may not have jurisdiction under the Clean Water Act to require sediment remediation because it is uncertain that the sediment is a “point source,” the EAB in its decision exhibited no such



concern (presumably relying on subsection (C) of § 301(b)(1)), remanding the permit specifically for its failure to require the permittee "to address the potential for phosphorus releases from the sediment." In any event, we are aware of no such limitation on MADEP's jurisdiction under the Massachusetts Clean Waters Act.

Response A3: The commenter correctly articulates the jurisdictional issue confronting the Region with respect to mandating nonpoint source reductions through an NPDES permit. The release of phosphorus from accumulated sediment lying on the river bed into the water column would not itself be from a "discernable, confined and discrete conveyance" and therefore not from a point source, the existence of which is a necessary element to EPA's assertion of jurisdiction under the CWA. CWA § 502(14), 33 U.S.C. § 1362(14). In the Region's view, the Board's directive that the Region "address the potential for phosphorus releases from the sediment" does not represent a determination that EPA has the authority to regulate nonpoint sources, but rather instructs the Region to take account of the releases from the sediment when establishing the requisite effluent limitation on the point source, which in this case is the Marlborough Easterly POTW. This can be done through the imposition of more stringent phosphorus effluent limits on the point source. In this case, an extremely stringent phosphorus effluent limit – such as EPA's guidance criterion or a numeric criterion adopted by Massachusetts applied end-of-pipe – would ensure that the POTW itself is not causing or contributing to a violation of water quality standards, and would allow for the attainment of the standards over a long period of time, likely decades, as the sediment phosphorus recycling gradually abated.

Although EPA and MADEP are not aware of any instance where the Massachusetts Clean Waters Act has been extended to regulate phosphorus releases from the sediments, in some situations, nonpoint source phosphorus loadings have been addressed through the development and implementation of a Total Maximum Daily Load.

Comments submitted by the Francis T. Lyons of the Hop Brook Protection Association:

Comment B1. While I have a major concern about parts of the permit that have not changed, specifically the fact that the permit does not put a requirement on the percentage of the phosphorous that must be dissolved phosphorous during the winter months when the Total Phosphorous limit is set to 0.75 mg/l, I realize no further comments can be made on that issue.

Regarding the most recent Draft Modification of the Permit which I received via email on 24 August 2006, my comments are related to the compliance schedule.

The Draft Modification calls for a compliance schedule of 78 months. I believe that is too long and should be modified as follows:

The compliance schedule calls for planning and design to be completed in 42 months from the effective date of the modification which seems excessive, but with the date for the reopener approximately 36 months from the effective date of the modification, I recognize that changes related to the reopener could take some time to implement in

planning and design phase.

If the planning and design are allowed to consume 42 months, construction should start immediately after the 42 month planning and design period, not 6 months later.

The amount of time allowed for construction is 30 months. I believe this is excessive. This construction period could and should be reduced to 18 months.

These two changes to the compliance schedule would reduce it from 78 months to 60 months which is more than adequate.

In support of these changes we need to recognize that this permit is already 13 years over due. During these 13 years a lot of damage has been done to the Hop Brook watershed. There is no justification in delaying a remedy for another 6 1/2 years if it can be implemented in 5 years — and it can be.

Also, from the perspective of the City of Marlborough, delaying the implementation of the upgrade makes it more expensive at a minimum through inflation and potentially with a higher interest rate for bonding. During the time that they spent appealing this permit, the Federal Reserve raised the discount rate 14 times. This delay has not served them well nor is it likely that a future delay will be to their benefit.

Response B1: Under implementing NPDES regulations, a schedule leading to compliance with CWA requirements may be used “when appropriate,” but must require compliance “as soon as possible.” 40 C.F.R. § 122.47; see also, 314 C.M.R. § 4.03(1) (authorizing discretionary use of compliance schedules in Massachusetts); see further, In re Star-Kist Caribe, Inc., 3 E.A.D. 172, 175 (Adm'r. 1990), modification denied, 4 E.A.D. 33 (EAB 1992). While the Region shares the commenter's concern over the long delay in issuing the permit, it also believes the proposed compliance schedule in the modification is appropriate. Marlborough is currently conducting a major, multi-million dollar upgrade on its Westerly wastewater treatment plant. Introducing a delay of six months after the planning and design of the Easterly plant will not only allow Marlborough to fully adapt to any adjustments resulting from the Feasibility Study and MOU, but will also enable Marlborough to complete construction on the Westerly facility prior to initiating construction on the Easterly Plant. As noted in the Fact Sheet, “The agencies believe that sequencing the two schedules will allow Marlborough to more efficiently direct its resources to the successful and timely completion of each respective upgrade.” As to the length of time provided for construction, the Region typically allows approximately two years to complete a major facility upgrade. In this instance, the Region has provided slightly more time because the upgrade will be extensive, entailing not only new phosphorus controls but also other plant-wide improvements.

Nothing in the permit modification prevents Marlborough from completing the plant upgrade ahead of schedule to take advantage of the beneficial market conditions identified by the commenter.

Comments submitted by E. Michael Thomas, Esq., on behalf of the Town of Sudbury, Massachusetts were withdrawn by the Town on October 4, 2006.

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(September 1, 1993)

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## PART II

### 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 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 requirements.
- b. The CWA provides that any person who violates Section 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 knowingly violates such requirements is subject to a fine of not less than 45,000 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, 306,308, 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 notifications 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

## PART II

authorized under the CWA in order to bring all discharges into compliance with the CWA.

For any permit issued to a treatment works treating domestic sewage (including "sludge-only facilities"), the Regional Administrator or Director shall include a reopener clause to incorporate any applicable standard for sewage sludge use or disposal promulgated under Section 405 (d) of the CWA. The Regional Administrator or Director may promptly modify or revoke and reissue any permit containing the reopener clause required by this paragraph if the standard for sewage sludge use or disposal is more stringent than any requirements for sludge use or disposal in the permit, or contains a pollutant or practice not limited in the permit.

Permit modification or revocation will be conducted according to 40 CFR §122.62, 122.63, 122.64, and 124.5.

### 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 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:
  - (1) The name and address of any permit applicant or permittee;
  - (2) 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 t least 180

## PART II

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. Right of Appeal

Within thirty (30) days of receipt of notice of a final permit decision, any interested person, including the permittee, may submit a request to the Regional Administrator for an Evidentiary hearing under Subpart E, or a Non-Adversary Panel Hearing under Subpart E, or a Non-Adversary Panel hearing under subpart F, of 40 CR Part 124, to reconsider or contest that decision. The request for a hearing must conform to the requirements of 40 CFR §124.74.

### 10. 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.

### 11. Other Laws

The issuance of a permit does not authorize any injury to persons or property or envision 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 operator 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

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- (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 provision 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

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.

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 by-pass, 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 judgement 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

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### 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 for 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 a 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

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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 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 authorize 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, or operations regulated or required under this permit; and

## PART II

- 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 neither to pollutants which are subject to the effluent limitations in the permit nor to the notification requirements at 40 CFR §122.42(2)(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 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

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- (3) in the DMR or sludge reporting form specified by the Regional Administrator.
- (4) 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

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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 the Section 309 of the CWA.

## SECTION E. OTHER CONDITIONS.

### 1. DEFINITIONS FOR INDIVIDUAL NPDES PERMITS INCLUDING STORM WATER REQUIREMENTS.

For purposes of this permit, the following definitions shall apply.

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", a "sewage sludge use or disposal practice", or a related activity is subject to, including "effluent limitations", water quality standards, standards of performance, toxic effluent standards or prohibitions, "Best management practices", pretreatment standards, and "standards for sewage sludge use and disposal" under Sections 301, 302, 303, 304, 306, 307, 308, 403, and 405 of CWA.

Application means that the EPA standard national forms for apply 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 and Escherichia coli, the average shall be the geometric mean.

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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 technology based standard based on an evaluation of the available technology to achieve a particular pollutant reduction and other factors set forth in 40 CFR §125.3 (d).

Class I Sludge Management Facility means any POTW identified under 40 CFR §403.8(a) as being required to have an approved pretreatment program (including such POTWs located in a state that has elected to assume local program responsibilities pursuant to 40 CFR §403.10(e)) and any other treatment works treating domestic sewage classified as a “Class I sludge Management Facility” by the Regional Administrator, or, in the case of approved State programs, the Regional Administrator in conjunction with the State Director, because of the potential for its sludge use or disposal practices to adversely affect public health and the environment.

Coal pile runoff means the rainfall runoff from or through any coal storage pile.

Composite Sample A sample consisting of a minimum of eight grab samples collected at equal intervals during a 24-hour period (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.

Construction Activities The following definitions apply to construction activities.

- (a) Commencement of Construction is the initial disturbance of soils associated with clearing, grading, or excavating activities or other construction activities.
- (b) Dedicated portable asphalt plant is a portable asphalt plant located on or contiguous to a construction site and that provides asphalt only to the construction site that the plant is located on or adjacent to. The term dedicated portable asphalt plant does not include facilities that are subject to the asphalt emulsion effluent limitation guideline at 40 CFR Part 443.
- (c) Dedicated portable concrete plant is a portable concrete plant located on or contiguous to a construction site and that provides concrete only to the construction site that the plant is located on or adjacent to.

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- (d) Final Stabilization means that all soil disturbing activities at the site have been completed, and that a uniform perennial vegetative cover with a density of 70% of the cover for unpaved areas and areas not covered by permanent structures has been established or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.
- (e) Runoff coefficient means the fraction of total rainfall that will appear at the conveyance as runoff.

Contiguous zone means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone.

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 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 is charged 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 normally means the person authorized to sign NPDES permits by EPA or the State or an authorized representatives. Conversely, it also could mean the Regional Administrator or the State Director as the context requires.

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 (See "Point Source" definition).

This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled 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.

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

Discharge Monitoring Report (DMR) means the EPA uniform 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 approve 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.

Effluent limitation means any restriction imposed by the Regional Administrator 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”

Flow-weighted composite sample means a composite sample consisting of a mixture of aliquots collected at a constant time interval, where the volume of each aliquot is proportional to the flow rate of the discharge.

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.

Indirect Discharge means a non-domestic discharger introducing pollutants to a publicly owned treatment works.

Interference means a Discharge which alone or in conjunction with a discharge or discharges from other sources, both:

- (a) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal: and
- (b) Therefore is a cause of a violation of any requirement of the POTW’s NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent State or local regulations): Section 405 of the Clean Water Act (CWA), the Solid Waste Disposal Act (SWDA) (including Title II, more commonly referred to as the Resources Conservation and Recovery Act (RCRA), and including State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the SWDA), and the Marine Protection Research and Sanctuaries Act.

Landfill means an area of land or an excavation in which wastes are placed for permanent disposal, and which is not land application unit, surface impoundment, injection well , or waste pile.



Land application unit means an area where wastes are applied onto or incorporated into the soil surface (excluding manure spreading operations) for treatment or disposal.

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Large and Medium municipal separate storm sewer system means all municipal separate storm sewer that are either: (i) located in an incorporated place (city) with a population of 100,000 or more as determined by the latest Decennial Census by the Bureau of Census (these cities listed in Appendices F and 40 CFR Part 122); or (ii) located in the counties with unincorporated urbanized populations of 100,000 or more, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties (these counties are listed in Appendices H and I of 40 CFR 122); or (iii) owned or operated by a municipality other than those described in Paragraph (i) or (ii) and that are designated by the Regional Administrator as part of the large or medium municipal separate storm sewer system.

Maximum daily discharge limitation means the highest allowable "daily discharge" concentration that occurs only during a normal day (24-hour duration).

Maximum daily discharge limitation (as defined for the steam Electric Power Plants only) when applied to Total Residual Chlorine (TRC) or Total Residual Oxidant (TRO) is defined as "Maximum Concentration or "Instantaneous Maximum Concentration" during the two hours of a chlorination cycle (or fractions thereof) prescribed in the Steam electric Guidelines, 40 CFR part 423. These three synonymous terms all mean "a value that shall not be exceeded" during the two-hour chlorination cycle. This interpretation differs from the specified NPDES Permit requirement, 40 CFR §122.2, where the two terms of "Maximum Daily discharge" and "Average Daily discharge" concentrations are specifically limited to the daily (24-hour duration) values.

Municipality means a city, town, borough, county, parish, district, association, or other public body created by or under State law and having jurisdiction over disposal of 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"; "site".
- (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 seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a "site"

for

which it does not have a permit; an 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

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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 source, or
- (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."

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

Pass through means a Discharge which exists the POTW into Waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation).

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, concentrate animal feeding operation, landfill leachate collection system, vessel, or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff. (See §122.2)

Pollutant means dredge 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

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- (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. 2129 (D.D.C. 1976, modified 12E.R.C. 1833 (D.D.C. 1979)); also listed in appendix A of 40 CFR Part 122.

Privately owned treatments works means any device or system which is (a) use to treat wastes from any facility whose operation is not the operator of the treatment works or (b) not a "POTW".

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.

Publicly Owned Treatment Works (POTW) means any facility or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial, wastes of a liquid nature which is owned by a "State" or "municipality."

This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

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

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

Second 313 water priority chemical means a chemical or chemical categories which are:

- (1) listed at 40 CFR §372.65 pursuant to Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) (also known as Title III of the superfund Amendments and Re-authorization Act (SARA) of 1986);
- (2) present at or above threshold levels at a facility subject to EPCRA Section 313 reporting requirements; and
- (3) satisfies at least one of the following criteria:
  - (i) are listed in Appendix D of 40 CFR Part 122 on either Table II (organic priority pollutants), Table III (certain metals, cyanides, and phenols) or Table V (certain toxic pollutants and hazardous substances);

- (ii) are listed as a hazardous substance pursuant to section 311(b)(2)(A) of the CWA at 40 CF §116.4; or
- (iii) are pollutants for which EPA has published acute or chronic water quality criteria.

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Septage means the liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system; or a holding tank when the system is cleaned or maintained.

Sewage Sludge means any solid, semisolid, or liquid residue removed during the treatment of municipal wastewater or domestic sewage. Sewage sludge includes, but is not limited to solids removed during primary, secondary, or advance wastewater treatment, scum, septage, portable toilet pumping, Type III Marine Sanitation Device pumping (33 CFR part 159), and sewage sludge products. Sewage sludge does not include grit or screening, or ash generated during the incineration of sewage sludge.

Sewage sludge use or disposal practices means the collection, storage, treatment, transportation, processing, monitoring, use, or disposal of sewage sludge.

Significant materials includes, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under section 101(14) of CERCLA; any chemical the facility is required to report pursuant to EPCRA; any chemical the facility is required to report pursuant to EPCRA Section 313; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

Significant spills includes, but is not limited to: releases of oil or hazardous substances in excess of reportable quantities under Section 311 of the Clean water Act (see 40 CFR §110.10 and CFR §117.21) or Section 102 CERCLA (see 40 CFR §302.4).

Sludge-only facility means any "treatment works treating domestic sewage: whose methods of sewage sludge use or disposal are subject regulations promulgated pursuant to Section 405(d) of the CWA, and is required to obtain a permit under 40 CFR §122.1(b)(3).

State means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands.

Storm Water means storm water runoff, snow melt runoff, and surface runoff drainage.

Storm Water discharge associated with industrial activity means the discharge from any conveyance with is use for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. (See 40 CFR §122.26(b)(14) for specifics of this definition).

Time-weighted composite means a composite sample consisting of a mixture of equal volume aliquots collected at a constant time interval.

Toxic pollutants means any pollutant listed as toxic under Section 307(a)(1) or, in the case of "sludge use or disposal practices", any pollutant identified in regulations implementing Section 405(d) of the CWA.

Treatment works treating domestic sewage means a POTW or any other sewage sludge or wastewater treatment devices or system, regardless of ownership (including federal facilities), used in the storage, treatment recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices.

For purposes of this definition, "domestic sewage" includes waste and wastewater from humans or

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household operations that are discharged to or otherwise enter a treatment works. In States where there is no approved State sludge management program under Section 405(f) of the CWA, the Regional Administrator may designate any person subject to the standards for swage sludge use and disposal in 40 CFR Part 503 as a "treatment works treating domestic sewage", where he or she finds that there is a potential for adverse effects on public health and the environment from poor sludge quality or poor sludge handling, use or disposal practices, or where he or she finds that such designation is necessary to ensure that such person is in compliance with 40 CFR Part 503.

Waste pile means any non-containerized accumulation of solid, non-flowing water that is used for treatment or storage.

Waters of the United States means:

- (b) All waters which are currently used, were used in the past, or may be susceptible to use interstate or foreign commerce, including
- (c) All interstate waters, including interstate "wetlands",
- (d) All other waters such as intrastate lakes, rivers streams (including intermittent streams), mud flats, sand flats, "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 shell fish are or could be taken and solid interstate or foreign commerce; or
  - (3) Which are used or could be used for industrial purposes by industries in interstate commerce;
- (e) All impoundments of waters otherwise defined as waters of the United States under this definition;
- (f) Tributaries of waters identified in Paragraphs (a) through (d) of this definition;
- (g) The territorial sea; and
- (h) "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in Paragraphs (a) through (f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR §423.11(m) which also meet the criteria of this definition) are not waters of the United States.

Whole Effluent Toxicity (WET) means the aggregate toxic effect of an effluent measured directly by a toxicity test. (See Abbreviations Section, following, for additional information.)

## PART II

Wetlands means those areas that are inundated or saturated by surface or ground water at a frequently 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. DEFINITIONS FOR NPDES PERMIT SLUDGE USE AND DISPOSAL REQUIREMENTS.

Active sewage sludge unit is a sewage sludge unit that has not closed.

Aerobic digestion is the biochemical decomposition of organic matter in sewage sludge into carbon dioxide and water by microorganisms in the presence of air.

Agricultural land is land on which a food crop, a feed crop, or a fiber crop is grown. This includes range land and land used as pasture.

Agronomic rate is the whole sludge application rate (dry weight basis) designed:

- (1) To provide the amount of nitrogen needed by the food crop, feed crop, fiber crop, cover crop, or vegetation grown on the land; and
- (2) To minimize the amount of nitrogen in the sewage sludge that passes below the root zone of the crop or vegetation grown on the land to the ground water.

Air pollution control device is one or more processes used to treat the exit gas from a sewage sludge incinerator stack.

Anaerobic digestion is the biochemical decomposition of organic matter in sewage sludge into methane gas and carbon dioxide by microorganisms in the absence of air.

Annual pollutant loading rate is the maximum amount of a pollutant that can be applied to a unit area of land during a 365 day period.

Annual whole sludge application rate is the maximum amount of sewage sludge (dry weight basis) that can be applied to a unit area of land during a 365 day period.

Apply sewage sludge or sewage sludge applied to the land means land application of sewage sludge.

Aquifer is a geologic formation, group of geologic formations, or a portion of a geologic formation capable of yielding ground water to wells or springs.

Auxiliary fuel is fuel use to augment the fuel value of sewage sludge. This includes, but is not limited to, natural gas, fuel oil, coal, gas generated during anaerobic digestion of sewage sludge, and municipal solid waste (not to exceed 30 percent of the dry weight of sewage sludge and auxiliary fuel together). Hazardous wastes are not auxiliary fuel together). Hazardous wastes are not auxiliary fuel.

Base flood is a flood that has a one percent change of occurring in any given year (i.e., a flood with a magnitude equaled once in 100 years).

## PART II

Bulk sewage sludge is sewage sludge that is not solid or given way in a bag or other container for application to the land.

Contaminate an aquifer means to introduce a substance that causes the maximum contaminant level for nitrate in to CFR §141.11 to be exceeded in ground water or that causes the existing concentration of nitrate in ground water to increase when the existing concentration of nitrate in the ground water exceeds the maximum contaminant level for nitrate in 40 CFR §141.11.

Class I sludge management facility is any publically owned treatments works (POTW), as defined in 40 CFR §403.8 (a) (including any POTW located in a State that has elected to assume local program responsibilities pursuant to 40 CFR §403.10 (e) and any treatment works treating domestic sewage, as defined in 40 CFR §122.2, classified as a Class I sludge management facility by the EPA Regional Administrator, or, in the case of approved State programs, the Regional Administrator in conjunction with the State Director, because of the potential for sewage sludge use or disposal practice to affect public health and the environmental adversely.

Control efficiency is the mass of a pollutant in the sewage sludge fed to an incinerator minus the mass of that pollutant in the exit gas from the incinerator stack divided by the mass of the pollutant in the sewage sludge fed to the incinerator.

Cover is soil or other material used to cover sewage sludge placed on an active sewage sludge unit.

Cover crop is a small grain crop, such as oats, wheat, or barley, not grown for harvest.

Cumulative pollutant loading rate is the maximum amount of an inorganic pollutant that can be applied to an area of land.

Density of microorganisms is the number of microorganisms per unit mas of total solids (dry weight) in the sewage sludge.

Dispersion factor is the ratio of the increase in the ground level ambient air concentration for a pollutant at or beyond the property line of the site where the sewage sludge incinerator is located to the mass emission rate for the pollutant from the incinerator stack.

Displacement is the relative movement of any two sides of a fault measured in any direction.

Domestic septage is either liquid or solid material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works that receives only domestic sewage. Domestic septage does not include liquid or solid material removed f rom a septic tank, cesspool, or similar treatment works that receives either cesspool, or similar treatment works that receives either commercial wastewater or industrial wastewater and does no include grease removed from a grease trap at

a restaurant.

Domestic Sewage is waste and wastewater from humans or household operations that is discharged to or otherwise enters a treatment works.

Dry weight basis means calculated on the basis of having been dried at 105 degrees Celsius (°C) until reaching a constant mass (i.e., essentially 100 percent solids content).

Fault is a fracture or zone of fractures in any materials along which strata on one side are displaced with

## PART II

respect to strata on the other side.

Feed crops are crops produced primarily for consumption by animals

Fiber crops are crops such as flax and cotton.

Final cover is the last layer of soil or other material placed on a sewage sludge unit at closure.

Fluidized bed incinerator is an enclosed device in which organic matter inorganic matter in sewage sludge are combusted in a bed of particles suspended in the combustion chamber gas.

Food crops are crops consumed by humans. These include, but are not limited to fruits, vegetables, and tobacco.

Forest is a tract of land thick with trees and underbrush.

Ground water is water below the land surface in the saturated zone.

Holocene time is the most recent epoch of the Quaternary period, extending from the end of the Pleistocene epoch to the present.

Hourly average is the arithmetic mean of all measurements, taken during an hour. At least two measurements must be taken during the hour.

Incineration is the combustion of organic matter and inorganic matter in sewage sludge by high temperatures in an enclosed device.

Industrial wastewater is wastewater generated in a commercial or industrial process.

Land application is the spraying or spreading of sewage sludge onto the land surface; the injection of sewage sludge below the land surface; or the incorporation of sewage sludge into the soil so that the sewage sludge can either condition the soil or fertilize crops or vegetation grown in the soil.

Land with a high potential for public exposure is land that the public uses frequently. This includes, but is not limited to, a public contact site and a reclamation site located in a populated area (e.g., a construction site located in a city).

Land with a low potential for public exposure is the land that the public uses infrequently. This includes, but is not limited to, agricultural land, forest and a reclamation site located in an unpopulated area (e.g., a



strip mine located in a rural area).

Leachate collection system is a system or device installed immediately above a liner that is designed, constructed, maintained, and operated to collect and remove leachate from a sewage sludge unit.

Liner is soil or synthetic material that has hydraulic conductivity of  $1 \times 10^{-7}$  centimeters per second or less.

Lower explosive limit for methane gas is the lowest percentage of methane gas in air, by volume, that propagates a flame at 25 degrees Celsius and atmospheric pressure.

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Monthly average (Incineration) is the arithmetic mean of the hourly averages for the hours a sewage sludge incinerator operates during the month.

Monthly average (Land application) is the arithmetic mean of all measurements taken during the month.

Municipality means a city, town, borough, county, parish, district, association, or other public body (including an intermunicipal Agency of two or more of the foregoing entities) created by or under State law; an Indian tribe or an authorized Indian Tribal organization having jurisdiction over sewage sludge management; or a designated and approved management Agency under section 208 of the CWA, as amended. The definition includes a special district created under State law, such as a water district, sewer district, sanitary district, utility district, drainage district, or similar entity, or an integrated waste management facility as defined in section 201(e) of the CWA, as amended, that has as one of its principal responsibilities the treatment, transport, use, or disposal of sewage sludge.

Other container is either an open or closed receptacle. This includes, but is not limited to, a bucket, a box, a carton, and a vehicle or trailer with a load capacity of one metric ton or less.

Pasture is land on which animals feed directly on feed crops such as legumes, grasses, grain stubble, or stover.

Pathogenic organisms are disease-causing organisms. These include, but are not limited to, certain bacteria, protozoa, viruses, and viable helminth ova.

Permitting authority is either EPA or a State with an EPA-approved sludge management program.

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

Person who prepares sewage sludge is either the person who generates sewage sludge during the treatment of domestic sewage in a treatment works or the person who derives a material from sewage sludge.

pH means the logarithm of the reciprocal of the hydrogen ion concentration. A measure of the acidity or alkalinity of a liquid or solid material.

Place sewage sludge or sewage sludge placed means disposal of sewage sludge on a surface disposal site.

Pollutant (as defined in sludge disposal requirements) is an organic substance, or inorganic substance, a

combination of organic and inorganic substances, or pathogenic organism, after discharge and upon exposure, ingestion, inhalation or assimilation into an organism either directly from the environment or indirectly by ingestion through the food chain, could on the basis of information available to the Administrator of EPA, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunction in reproduction) or physical deformations in either organisms or offspring of the organisms.

Pollutant limit (for sludge disposal requirement) is a numerical value that describes the amount of a pollutant allowed per unit amount of sewage sludge (e.g., milligrams per kilogram of total solids); the amount of pollutant that can be applied to unit area of land (e.g., kilogram per hectare); or the volume of a material that can be applied to a unit area of land (e.g., gallons per acre).

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Public contact site is a land with a high potential for contact by the public. This includes, but is not limited to, public parks, ball fields, cemeteries, plant nurseries, turf farms, and golf courses.

Qualified ground-water scientist is an individual with a baccalaureate or post-graduate degree in the natural sciences or engineering who has sufficient training and experience in ground-water hydrology and related fields, as may be demonstrated by State registration, professional certification, or completion of accredited university programs, to make sound professional judgement regarding ground-water monitoring, pollutant fate and transport, and corrective action.

Range land is open land with indigenous vegetation.

Reclamation site is drastically disturbed land that is reclaimed using sewage sludge. This includes, but is not limited to, strip mines and construction sites.

Risk specific concentration is the allowable increase in the average daily ground level ambient air concentration for a pollutant from the incineration of sewage sludge at or beyond the property line of the site where the sewage sludge incinerator is located.

Runoff is rainwater, leachate, or other liquid that drains overland on any part of land surface and runs off the land surface.

Seismic impact zone is an area that has a 10 percent or greater probability that the horizontal ground level acceleration to the rock in the area exceeds 0.01 gravity once in 250 years.

Sewage sludge is a solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic septage; scum or solids removed in primary secondary, or advanced wastewater treatment processes; and a material derived from sewage sludge. Sewage sludge does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screening generated during preliminary treatment of domestic sewage in treatment works.

Sewage sludge feed rate is either the average daily amount of sewage sludge fired in all sewage sludge incinerators within the property line of the site where the sewage sludge incinerators are located for the number of days in a 365 day period that each sewage sludge incinerator operates, or the average daily design capacity for all sewage sludge incinerators within the property line of the site where the sewage sludge incinerators are located.

Sewage sludge incinerator is an enclosed device in which only sewage sludge and auxiliary fuel are fired.

Sewage sludge unit is land on which only sewage sludge is place for final disposal. This does not include land on which sewage sludge is either stored or treated. Land does not include waters of the United States, as defined in 40 CFR §122.2.

Sewage sludge unit boundary is the outermost perimeter of an active sewage sludge unit.

Specific oxygen uptake rate (SOUR) is the mass of oxygen consumed per unit time per unit mass of total solids (dry weight basis) in sewage sludge.

Stack height is the difference between the elevation of the top of a sewage sludge incinerator stack and the

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elevation of the ground at the base of the stack when the difference is equal to or less than 65 meters. When the difference is greater than 65 meters. When the difference is greater than 65 meters, stack height is the creditable stack height determined in accordance with 40 CFR §51.100(ii).

State is one of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Island, the Commonwealth of the North Mariana Islands, and an Indian Tribe eligible for treatment as a State pursuant to regulations promulgated under the authority of section 518(e) of the CWA.

Store or storage of sewage sludge is the placement of sewage sludge on land on which the sewage sludge remains for two years or less. This does not include the placement of sewage sludge on land for treatment.

Surface disposal site is an area of land that contains one or more active sewage sludge units.

Total hydrocarbons means the organic compounds in the exit gas from a sewage sludge incinerator stack measured using a flame ionization detection instrument referenced to propane.

Total solids are the materials in sewage sludge that remain as residue when the sewage sludge is dried at 103 to 105 degrees Celsius.

Treat or treatment of sewage sludge is the preparation of sewage sludge for final use or disposal. This includes, but is not limited to, thickening, stabilization, and dewatering of sewage sludge. This does not include storage of sewage sludge.

Treatment works is either a federally owned, publicly owned, or privately owned device or system use to treat (including recycle and reclaim) either domestic sewage or a combination of domestic sewage sludge unit. This includes, but is not limited to, land on which the soils are subject to mass movement.

Unstable area is land subject to natural or human-induced forces that may damage the structural components of an active sewage sludge unit. This includes, but is no limited to, land on which the soils are subject to mass movement.

Unstabilized solids are organic materials in sewage sludge that have not been treated in either an aerobic or anaerobic treatment process.

Vector attraction is the characteristic of sewage sludge that attracts rodents, flies, mosquitos, or other

organisms capable of transporting infectious agents.

Volatile solids is the amount of the total solids in sewage sludge lost when the sewage sludge is combusted at 550 degree Celsius in the presence of excess air.

Wet electrostatic precipitator is an air pollution control device that uses both electrical forces and water to remove pollutants in the exit gas from a sewage sludge incinerator stack.

Wet scrubber is an air pollution control device that uses water to remove pollutants in the exit gas from a sewage sludge incinerator stack.

3. THE COMMONLY USED ABBREVIATIONS ARE LISTED BELOW

PART II

BOD	Five-day biochemical oxygen demand unless otherwise specified
CBOD	Carbonaceous BOD
COD	Chemical oxygen demand
CFS	Cubic feet per second
Chlorine	
Cl <sub>2</sub>	Total residual chlorine
TRC	Total residual chlorine which is a combination of free available chlorine (FAC, see below) and combined chlorine (chloramines, etc)
TRO	Total residual chlorine in marine waters where halogen compounds are present FAC Free available chlorine (aqueous molecular chlorine, hypochlorous acid, and hypochlorite ion)
Coliform	
Coliform, Fecal	Total fecal coliform bacteria
Coliform, Total	Total coliform bacteria
Cont. (Continuous)	Continuous recording of the parameter being monitored, i.e.:flow, temperature, pH, etc.
Cu. M/day or M <sup>3</sup> /day	Cubic Meters per day
DO	Dissolved Oxygen
kg/day	Kilograms per day
lbs/day	Pounds per day
mg/l	Milligram(s) per liter

ml/l

Milliliter(s) per liter

MGD

Million gallons per day

## PART II

### Nitrogen

Total N

Total nitrogen

NH<sub>3</sub>-N

Ammonia nitrogen as nitrogen

NO<sub>3</sub>-N

Nitrate nitrogen as nitrogen

NO<sub>2</sub>-N

Nitrite nitrogen as nitrogen

NO<sub>3</sub>-NO<sub>2</sub>

Combined nitrate and nitrite nitrogen as nitrogen

TKN

Total Kjeldahl nitrogen as nitrogen

Oil & Grease

Freon extractable material

PCB

Polychlorinated biphenyl

pH

A measure of the hydrogen ion concentration. A measure of alkalinity of a liquid or solid material.

Surfactant

Surface-active agent

Temp. °C

Temperature in degrees Centigrade

Temp. °F

Temperature in degrees Fahrenheit

TOC

Total organic carbon

Total P

Total phosphorus

TSS or NFR

Total suspended solids or total nonfilterable residue

Turb. Or Turbidity

Turbidity measured by the Nephelometric method (NTU)

ug/l

Micrograms per liter

WET

“Whole Effluent Toxicity” is the total effect of an effluent measured directly with a toxicity test.

C-NOEC

“Chronic (Long-term Exposure Test)-No Observed Effect Concentration”. The highest tested concentration of an effluent or a toxicant at which no adverse effects are observed on the aquatic test organisms at a specific time of observation.

A-NOEC

“Acute (Short-term Exposure Test)-No Observed Effect Concentration”. See C-NOEC definition.

LC-50

LC-50 is the concentration of a sample that causes mortality

## PART II

Of 50% of the test population at a specific time of observation. The LC-50 = 100% is defined as a sample of undiluted effluent.

ZID

Zone of Initial Dilution means the region of initial mixing surrounding or adjacent to the end of the outfall pipe or diffuser ports.

**Information for Filing an Adjudicatory Hearing Request with the Commonwealth of  
Massachusetts Department of Environmental Protection**

Within thirty days of the receipt of this letter the adjudicatory hearing request should be sent to:

Docket Clerk  
Office of Administrative Appeals  
Department of Environmental Protection  
One Winter Street, Second Floor  
Boston, MA 02108

In addition, a valid check payable to the Commonwealth of Massachusetts in the amount of \$100 must be mailed to:

Commonwealth of Massachusetts  
Department of Environmental Protection  
P.O. Box 4062  
Boston, MA 02211

The hearing request to the Commonwealth will be dismissed if the filing fee is not paid, unless the appellant is exempt or granted a waiver.

The filing fee is not required if the appellant is a city, town (or municipal agency), county, district of the Commonwealth of Massachusetts, or a municipal housing authority. The Department may waive the adjudicatory hearing filing fee for a permittee who shows that paying the fee will create an undue financial hardship. A permittee seeking a waiver must file, along with the hearing request, an affidavit setting forth the facts believed to support the claim of undue financial hardship.

*April 17, 2002*

/NPDESappeal.wpd

## **APPEALING AN NPDES PERMIT**

If you wish to contest any of the provisions of this permit, you must petition the Environmental Appeals Board (EAB) within thirty (30) days. If you received notice of this permit via certified mail, the 30-day period begins on the date of receipt. If you were served by regular mail, the 30-day period begins the day after the date of mailing of the notice by EPA. Where notice is served by regular mail, note that an additional three days are added to the period within which to appeal in order to compensate for mail delay.

In order to be eligible to petition the EAB, you must have filed comments on the draft permit or participated in any public hearing that may have been held pertaining to this permit. In addition, the issues raised in the appeal must have been raised during the public comment period so long as they were reasonably ascertainable. Any person who failed to file comments or failed to participate in any public hearing on the draft permit may petition for administrative review only to the extent of changes from the draft to the final permit decision.

The petition shall include a statement of the reasons supporting that review, including a demonstration that any issues being raised were raised during the public comment period (including any public hearing) to the extent required by NPDES regulations and when appropriate, a showing that the condition in question is based on: (i) a finding of fact or conclusion of law which is clearly erroneous or (ii) an exercise of discretion or an important policy consideration which the EAB should review.

Procedures for appealing permits can be found at 40 CFR §§ 124.19, 124.20, and 124.60. Copies of the regulations are below. More information on the appeals process and EAB filing and service requirements can be found on the Internet at <http://www.epa.gov/eab/>. The Practice Manual can be found on the Internet at <http://www.epa.gov/eab/manual.htm>. The EAB website and the Practice Manual should be carefully reviewed prior to filing an appeal.

## **STAY OF NPDES PERMITS**

The effect of a properly filed appeal of an NPDES permit on the conditions and effective date of the permit can be found at 40 CFR §§ 124.16 and 124.60. Copies of these regulations are below.

## **FREQUENTLY ASKED QUESTIONS**

### **What is the Environmental Appeals Board?**

The Environmental Appeals Board (EAB) of the U.S. Environmental Protection Agency (EPA) is the final Agency decisionmaker on administrative appeals under all major environmental statutes that EPA administers. It is an impartial body independent of all Agency components outside the immediate Office of the Administrator. It was created in 1992 in recognition of the growing importance of EPA adjudicatory proceedings as a mechanism for implementing and enforcing the environmental laws. The EAB sits in panels of three and makes decisions by majority vote.

The EAB's caseload consists primarily of appeals from permit decisions and civil penalty decisions. The EAB has authority to hear permit and civil penalty appeals in accordance with regulations delegating this authority from the EPA Administrator. Appeals from permit decisions made by EPA's Regional Administrators (and in some cases, state permitting officials) may be filed either by permittees or other interested persons. A grant of review of a permit decision is at the EAB's discretion. Permit appeals are governed primarily by procedural regulations at 40 C.F.R. Part 124. Appeals of civil penalty decisions made by EPA's administrative law judges may be filed, as a matter of right, either by private parties or by EPA. Penalty appeals are governed primarily by procedural regulations at 40 C.F.R. Part 22.



**How can I contact the Board?**

The Board's telephone number is (202) 233-0122. The Board's fax number is (202) 233-0121.

**Where should I file a pleading in a matter before the Board?**

**a. EAB Mailing Address**

All documents that are sent through the U.S. Postal Service (except by Express Mail) **MUST** be addressed to the EAB's *mailing address*, which is:

*U.S. Environmental Protection Agency  
Clerk of the Board, Environmental Appeals Board (MC 1103B)  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460-0001*

Documents that are sent to the EAB's *hand-delivery address* (below) through the U.S. Postal Service (except by Express Mail) will be returned to the sender and shall not be considered as filed.

**b. Hand Delivery Address**

Documents that are hand-carried in person, delivered via courier, mailed by U.S. Postal Service Express Mail, or delivered by a non-U.S. Postal Service carrier (e.g., Federal Express or UPS) **MUST** be delivered to:

*U.S. Environmental Protection Agency  
Clerk of the Board, Environmental Appeals Board  
Colorado Building  
1341 G Street, N.W., Suite 600  
Washington, D.C. 20005*

Documents that are hand-carried may be delivered to the Clerk of the Board from 8:30 a.m. to 12:00 p.m. and from 1:00 p.m. to 4:30 p.m., Monday through Friday (excluding federal holidays).

**Is there a fee for filing a petition or an appeal with the EAB?**

No

**How many copies of each filing and each exhibit must I file?**

The Board requests one original and five copies of any filing. Where exhibits are more than 30 pages, the Board requests that three sets of exhibits be filed.

**Is a pleading timely if it is postmarked by the specified filing date or must it be actually received by the Board by the filing date?**

The postmark date of a pleading is not determinative. If the pleading has been mailed to the Board, it must be received in the EPA mail room by the specified filing date. The pleading is then date-stamped and forwarded to the Board. If the pleading is hand-delivered directly to the Board, it must be received at the Board's offices by the specified date. If the Board establishes a briefing schedule by order, any date the Board specifies for filing a pleading means the date by which it must be received, unless otherwise specified in the order.

**NOTE:** As previously stated, documents may be filed by hand-delivery with the Clerk of the Environmental Appeals Board only from 8:30 a.m. to 12:00 p.m. and from 1:00 p.m. to 4:30 p.m. Eastern Time Monday through Friday (excluding Federal holidays).

**May I fax my petition for review, notice of appeal, or brief, to the EAB?**

No. The Board will not accept petitions for review, notices of appeal, or briefs, for filing by facsimile.

**May I fax a motion to the EAB?**

Yes. The Board will consider motions that are faxed to the Board. However, if a motion is faxed to the Board, a copy of the motion should be placed in the mail or hand-delivered to the Board within 24 hours of faxing the motion. The copy need not be received by the Board within the 24 hour period. Copies of the motion should also be faxed to other parties.

**Is there a required format for a petition for review or notice of appeal?**

There is no required format for a petition for review or notice of appeal. However, the Board requests that these documents be typewritten and double-spaced on 8.5 x 11 paper. A petition for review should contain a caption that indicates the name of the case and the permit number. A notice of appeal in an enforcement matter should contain a caption that indicates the name of the case and the docket number. Both documents should contain the name, address, telephone number, and fax number (if any) of the person filing the pleading.

**Is there a required format for exhibits?**

There is no required format for exhibits. Each exhibit should be clearly marked with consecutive numbers or letters to distinguish it from other exhibits. Exhibits should be clearly referenced in the pleadings. If multiple exhibits are submitted, at least one complete set of exhibits should be rubber banded or clipped together, not spiral or "comb" bound.

**Can I find out when the Board will issue a decision in my case?**

No. The Board will take under consideration a motion for expedited consideration of a particular matter, based on unusual and compelling circumstances. The motion should clearly state why the party believes the case deserves expedited consideration. However, the Board will not routinely provide information as to when any particular matter will be decided.

**Additional Mailing Requirements - Case Name and Case Identifier on Envelope or Outside Packaging.**

Any envelope or other packaging containing documents sent to the EAB's mailing address or hand-delivery address, as prescribed above should bear a complete and accurate return address in the upper left hand corner. The envelope or packaging should also clearly state the case name and case identifier in the lower left hand corner.

In all instances, if an appeal has already been filed with the Clerk of the Board, the case name and case identifier are the name and appeal number assigned to the matter by the Clerk. If an appeal has not yet been filed, state the name of the permittee or facility and the permit number (e.g., NPDES Permit No. ID-0000-00). Other filing requirements are contained in the Environmental Appeals Board's Practice Manual.

**May I appeal the Board's decision to the Administrator?**

No. Decisions of the Board are final and may not be further appealed to the Administrator. However, the parties (other than EPA) have statutory rights of appeal to federal court.

**What is the procedure for withdrawing a petition that has been filed with the Board?**

The petitioner should file a motion requesting to withdraw the petition.

Whom may I call if I have additional questions that have not been answered here?

The Clerk of the Board is available to answer questions from 8:30 a.m. to 12:00 p.m. and from 1:00 p.m. to 4:30 p.m. Eastern Time Monday through Friday (excluding Federal holidays). Counsel to the Board are also available to answer general questions about the appeals process. Counsel will not discuss the merits or status of any matter before the Board. The Clerk of the Board and Counsel to the Board may be reached at (202) 233-0122.

## TITLE 40--PROTECTION OF ENVIRONMENT

### CHAPTER I--ENVIRONMENTAL PROTECTION AGENCY (CONTINUED)

#### PART 124--PROCEDURES FOR DECISIONMAKING--Table of Contents

##### Subpart A--General Program Requirements

#### **Sec. 124.16 *Stays of contested permit conditions.***

(a) Stays. (1) If a request for review of a RCRA, UIC, or NPDES permit under Sec. 124.19 of this part is filed, the effect of the contested permit conditions shall be stayed and shall not be subject to judicial review pending final agency action. Uncontested permit conditions shall be stayed only until the date specified in paragraph (a)(2)(i) of this section. (No stay of a PSD permit is available under this section.) If the permit involves a new facility or new injection well, new source, new discharger or a recommencing discharger, the applicant shall be without a permit for the proposed new facility, injection well, source or discharger pending final agency action. See also Sec. 124.60.

(2)(i) Uncontested conditions which are not severable from those contested shall be stayed together with the contested conditions. The Regional Administrator shall identify the stayed provisions of permits for existing facilities, injection wells, and sources. All other provisions of the permit for the existing facility, injection well, or source become fully effective and enforceable 30 days after the date of the notification required in paragraph (a)(2)(ii) of this section.

(ii) The Regional Administrator shall, as soon as possible after receiving notification from the EAB of the filing of a petition for review, notify the EAB, the applicant, and all other interested parties of the uncontested (and severable) conditions of the final permit that will become fully effective enforceable obligations of the permit as of the date specified in paragraph (a)(2)(i) of this section. For NPDES permits only, the notice shall comply with the requirements of Sec. 124.60(b).

(b) Stays based on cross effects. (1) A stay may be

granted based on the grounds that an appeal to the Administrator under Sec. 124.19 of one permit may result in changes to another EPA-issued permit only when each of the permits involved has been appealed to the Administrator and he or she has accepted each appeal.

(2) No stay of an EPA-issued RCRA, UIC, or NPDES permit shall be granted based on the staying of any State-issued permit except at the discretion of the Regional Administrator and only upon written request from the State Director.

(c) Any facility or activity holding an existing permit must:

(1) Comply with the conditions of that permit during any modification or revocation and reissuance proceeding under Sec. 124.5; and

(2) To the extent conditions of any new permit are stayed under this section, comply with the conditions of the existing permit which correspond to the stayed conditions, unless compliance with the existing conditions would be technologically incompatible with compliance with other conditions of the new permit which have not been stayed. [48 FR 14264, Apr. 1, 1983, as amended at 65 FR 30911, May 15, 2000]

#### **Sec. 124.19 *Appeal of RCRA, UIC, NPDES, and PSD Permits.***

(a) Within 30 days after a RCRA, UIC, NPDES, or PSD final permit decision (or a decision under 270.29 of this chapter to deny a permit for the active life of a RCRA hazardous waste management facility or unit) has been issued under Sec. 124.15 of this part, any person who filed comments on that draft permit or participated in the public hearing may petition the Environmental Appeals Board to review any

condition of the permit decision. Persons affected by an NPDES general permit may not file a petition under this section or otherwise challenge the conditions of the general permit in further Agency proceedings. They may, instead, either challenge the general permit in court, or apply for an individual NPDES permit under Sec. 122.21 as authorized in Sec. 122.28 and then petition the Board for review as provided by this section. As provided in Sec. 122.28(b)(3), any interested person may also petition the Director to require an individual NPDES permit [[Page 272]] for any discharger eligible for authorization to discharge under an NPDES general permit. Any person who failed to file comments or failed to participate in the public hearing on the draft permit may petition for administrative review only to the extent of the changes from the draft to the final permit decision. The 30-day period within which a person may request review under this section begins with the service of notice of the Regional Administrator's action unless a later date is specified in that notice. The petition shall include a statement of the reasons supporting that review, including a demonstration that any issues being raised were raised during the public comment period (including any public hearing) to the extent required by these regulations and when appropriate, a showing that the condition in question is based on:

(1) A finding of fact or conclusion of law which is clearly erroneous, or

(2) An exercise of discretion or an important policy consideration which the Environmental Appeals Board should, in its discretion, review.

(b) The Environmental Appeals Board may also decide on its own initiative to review any condition of any RCRA, UIC, NPDES, or PSD permit decision issued under this part for which review is available under paragraph (a) of this section. The Environmental Appeals Board must act under this paragraph within 30 days of the service date of notice of the Regional Administrator's action.

(c) Within a reasonable time following the filing of the petition for review, the Environmental Appeals Board shall issue an order granting or denying the petition for review. To the extent review is denied, the conditions of the final permit decision become final agency action. Public notice of any grant of review by the Environmental Appeals Board under paragraph (a) or (b) of this section shall be given as provided in Sec. 124.10. Public notice shall set forth a briefing schedule for the appeal and shall state that any interested person may file an amicus brief. Notice

of denial of review shall be sent only to the person(s) requesting review.

(d) The Regional Administrator, at any time prior to the rendering of a decision under paragraph (c) of this section to grant or deny review of a permit decision, may, upon notification to the Board and any interested parties, withdraw the permit and prepare a new draft permit under Sec. 124.6 addressing the portions so withdrawn. The new draft permit shall proceed through the same process of public comment and opportunity for a public hearing as would apply to any other draft permit subject to this part. Any portions of the permit which are not withdrawn and which are not stayed under Sec. 124.16(a) continue to apply.

(e) A petition to the Environmental Appeals Board under paragraph (a) of this section is, under 5 U.S.C. 704, a prerequisite to the seeking of judicial review of the final agency action.

(f)(1) For purposes of judicial review under the appropriate Act, final agency action occurs when a final RCRA, UIC, NPDES, or PSD permit decision is issued by EPA and agency review procedures under this section are exhausted. A final permit decision shall be issued by the Regional Administrator: (i) When the Environmental Appeals Board issues notice to the parties that review has been denied; (ii) When the Environmental Appeals Board issues a decision on the merits of the appeal and the decision does not include a remand of the proceedings; or (iii) Upon the completion of remand proceedings if the proceedings are remanded, unless the Environmental Appeals Board's remand order specifically provides that appeal of the remand decision will be required to exhaust administrative remedies.

(2) Notice of any final agency action regarding a PSD permit shall promptly be published in the Federal Register.

(g) Motions to reconsider a final order shall be filed within ten (10) days after service of the final order. Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Motions for reconsideration under this provision shall be directed to, and decided by, the Environmental Appeals Board. Motions for reconsideration directed to the administrator, [[Page 273]] rather than to the Environmental Appeals Board, will not be considered, except in cases that the Environmental Appeals Board has referred to the Administrator pursuant to Sec. 124.2 and in which the Administrator has issued the final order. A motion for reconsideration shall not stay the effective date of the

final order unless specifically so ordered by the Environmental Appeals Board. [48 FR 14264, Apr. 1, 1983, as amended at 54 FR 9607, Mar. 7, 1989; 57 FR 5335, Feb. 13, 1992; 65 FR 30911, May 15, 2000]

**Sec. 124.20 Computation of time.**

(a) Any time period scheduled to begin on the occurrence of an act or event shall begin on the day after the act or event.

(b) Any time period scheduled to begin before the occurrence of an act or event shall be computed so that the period ends on the day before the act or event.

(c) If the final day of any time period falls on a weekend or legal holiday, the time period shall be extended to the next working day.

(d) Whenever a party or interested person has the right or is required to act within a prescribed period after the service of notice or other paper upon him or her by mail, 3 days shall be added to the prescribed time.

**SUBPART D--SPECIFIC PROCEDURES  
APPLICABLE TO NPDES PERMITS**

**Sec. 124.60 Issuance and effective date and stays of NPDES permits.**

In addition to the requirements of Secs. 124.15, 124.16, and 124.19, the following provisions apply to NPDES permits:

(a) Notwithstanding the provisions of Sec. 124.16(a)(1), if, for any offshore or coastal mobile exploratory drilling rig or coastal mobile developmental drilling rig which has never received a final effective permit to discharge at a "[Page 281]" "site," but which is not a "new discharger" or a "new source," the Regional Administrator finds that compliance with certain permit conditions may be necessary to avoid irreparable environmental harm during the administrative review, he or she may specify in the statement of basis or fact sheet that those conditions, even if contested, shall remain enforceable obligations of the discharger during administrative review.

(b)(1) As provided in Sec. 124.16(a), if an appeal of an initial permit decision is filed under Sec. 124.19, the force and effect of the contested conditions of the final permit shall be stayed until final agency action under Sec. 124.19(f). The Regional Administrator shall notify, in accordance with Sec. 124.16(a)(2)(ii),

the discharger and all interested parties of the uncontested conditions of the final permit that are enforceable obligations of the discharger.

(2) When effluent limitations are contested, but the underlying control technology is not, the notice shall identify the installation of the technology in accordance with the permit compliance schedules (if uncontested) as an uncontested, enforceable obligation of the permit.

(3) When a combination of technologies is contested, but a portion of the combination is not contested, that portion shall be identified as uncontested if compatible with the combination of technologies proposed by the requester.

(4) Uncontested conditions, if inseverable from a contested condition, shall be considered contested.

(5) Uncontested conditions shall become enforceable 30 days after the date of notice under paragraph (b)(1) of this section.

(6) Uncontested conditions shall include: (i) Preliminary design and engineering studies or other requirements necessary to achieve the final permit conditions which do not entail substantial expenditures; (ii) Permit conditions which will have to be met regardless of the outcome of the appeal under Sec. 124.19; (iii) When the discharger proposed a less stringent level of treatment than that contained in the final permit, any permit conditions appropriate to meet the levels proposed by the discharger, if the measures required to attain that less stringent level of treatment are consistent with the measures required to attain the limits proposed by any other party; and (iv) Construction activities, such as segregation of waste streams or installation of equipment, which would partially meet the final permit conditions and could also be used to achieve the discharger's proposed alternative conditions.

(c) In addition to the requirements of Sec. 124.16(c)(2), when an appeal is filed under Sec. 124.19 on an application for a renewal of an existing permit and upon written request from the applicant, the Regional Administrator may delete requirements from the existing permit which unnecessarily duplicate uncontested provisions of the new permit. [65 FR 30912, May 15, 2000]