

II. Suggested Format for the HYDRO General Permit Notice of Intent (NOI):

Request for General Permit Authorization to Discharge Wastewater Notice of Intent (NOI) to be covered by Hydroelectric Generating Facilities General Permit (HYDROGP) No. MAG360000 or NHG360000

Indicate Applicable General Permit for Discharge(s): MAG360000 NHG360000

A. Facility Information

1. Facility Location	Name: EASTMAN FALLS HYDROELECTRIC STATION	
	Street: 215 NORTH MAIN STREET	
	City: FRANKLIN	State: NEW HAMPSHIRE
	Zip: 03235	SIC Code: 4911
	Latitude: N° 43 26' 50.8"	Longitude: W° 71 39' 31.5"
	Type of Business: ELECTRIC POWER GENERATION	
2. Facility Mailing Address (if different from Location)	Street: 670 N. COMMERCIAL ST SUITE 204	
	City: MANCHESTER	State: NEW HAMPSHIRE
	Zip: 03101	
3. Facility Owner	Name: PATRIOT HYDRO, LLC	Email: SILLER@PATRIOTHYDRO.COM
	Street: 670 N. COMMERCIAL ST SUITE 204	Telephone: (603) 540 - 8238

	City: MANCHESTER	State: NEW HAMPSHIRE
	Contact Person: SEAN ILLER	Zip: 03101
4. Facility Operator (if different from above)	Name:	Email:
	Street:	Telephone:
	City:	State:
	Zip:	
5. Current Permit Status	Has prior HYDROGP coverage been granted for the discharge(s) listed in the NOI?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	Permit number (if yes): NHG360018	
	Is the facility covered under an Individual Permit?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Is there a pending NPDES application of file with EPA for the discharge(s)?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Date of Submittal (if yes): Click or tap to enter a date.	Permit Number (if known):
	Attach a topographic map indicating the locations. of the facility and outfall(s) to the receiving water	<input checked="" type="checkbox"/> Map Attached
	Number of turbines: 2	
	Combined turbine discharge (installed capacity) at:	Maximum capacity? 2780 cfs Minimum capacity? 410 cfs
	Is this facility operated as a pump storage project?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Appendix 4 – NPDES Hydroelectric Facilities General Permit

B. Discharge Information

1. Name of Receiving Water(s): PEMIGEWASSET RIVER		<input checked="" type="checkbox"/> Freshwater <input type="checkbox"/> Marine
2. Waterbody classification: <input type="checkbox"/> Class A <input checked="" type="checkbox"/> Class B <input type="checkbox"/> Class SA <input type="checkbox"/> Class SB		
3. Is the receiving water is listed in the State’s Integrated List of Waters (i.e., CWA Section 303(d))?		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
4. If the applicant answered yes to B.2, has the applicant identified the designated uses that are impaired, any pollutants indicated, and whether a final TMDL is available for any of the indicated pollutants in a separate attachment to the NOI?		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
5. Attach a line drawing or flow schematic showing water flow through the facility including location of intake(s), operations contributing to effluent flow, treatment units, outfalls, and receiving water(s).		<input checked="" type="checkbox"/> Line Drawing Attached
6. List each outfall (numbered sequentially) discharging effluent from the following categories and provide an estimate of the average monthly flow (in gallons per day) for each discharge type. See Parts 1.1 through 1.5 (for MA) or Parts 2.1 through 2.5 (for NH) for descriptions and permit conditions for each discharge type.		
Equipment-related cooling water	Outfalls: 001	770gpd
Equipment and floor drain water	Outfalls: 002	.054gpd
Maintenance-related water	Outfalls: 004, 005	.55gpd
Facility maintenance-related water during flood/high water events	Outfalls: 003	115,200gpd
Equipment-related backwash strainer water	Outfalls: 006	Unknown gpd

7. For each outfall listed above, provide the following information (attach additional sheets if necessary). Outfalls may be eligible for alternative pH effluent limits. See Parts 1.8 and 2.8 of the permit for additional information. Contact MassDEP or NHDES to determine the required information and protocol to request alternative pH effluent limits.		
Outfall No. 001	Latitude: N 43° 26' 50.8"	Longitude: W 71° 39' 30.3"
	Discharge is: <input checked="" type="checkbox"/> Continuous <input type="checkbox"/> Intermittent <input type="checkbox"/> Seasonal	
	Maximum Daily Flow 770 GPD	Average Monthly Flow <770 GPD
	Maximum Daily Temperature Varies °F	Average Monthly Temperature Varies °F
	Maximum Daily Oil & Grease 15 mg/L	Average Monthly Oil & Grease <15 mg/L
	Maximum Monthly pH 8.0 s.u.	Minimum Monthly pH 6.50 s.u.
	Alternative pH limits requested? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	State approval attached? <input type="checkbox"/> Yes <input type="checkbox"/> No
Outfall No. 002	Latitude: N 43° 26' 51"	Longitude: W 71° 39' 30.5"
	Discharge is: <input type="checkbox"/> Continuous <input checked="" type="checkbox"/> Intermittent <input type="checkbox"/> Seasonal	
	Maximum Daily Flow .055 GPD	Average Monthly Flow < .055 GPD
	Maximum Daily Temperature Varies °F	Average Monthly Temperature Varies °F
	Maximum Daily Oil & Grease 15 mg/L	Average Monthly Oil & Grease >0 <15 mg/L
	Maximum Monthly pH 8.0 s.u.	Minimum Monthly pH 6.5 s.u.
	Alternative pH limits requested? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	State approval attached? <input type="checkbox"/> Yes <input type="checkbox"/> No

7. For each outfall listed above, provide the following information (attach additional sheets if necessary). Outfalls may be eligible for alternative pH effluent limits. See Parts 1.8 and 2.8 of the permit for additional information. Contact MassDEP or NHDES to determine the required information and protocol to request alternative pH effluent limits.			
Outfall No. 003	Latitude: N43° 26' 51.1"		Longitude: W71° 39' 30.8"
	Discharge is: <input checked="" type="checkbox"/> Continuous <input type="checkbox"/> Intermittent <input type="checkbox"/> Seasonal		
	Maximum Daily Flow	.115 MGD	Average Monthly Flow <.115 MGD
	Maximum Daily Temperature	Varies °F	Average Monthly Temperature Varies °F
	Maximum Daily Oil & Grease	15 mg/L	Average Monthly Oil & Grease >0 <15 mg/L
	Maximum Monthly pH	8.0 s.u.	Minimum Monthly pH 6.5 s.u.
	Alternative pH limits requested? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		State approval attached? <input type="checkbox"/> Yes <input type="checkbox"/> No
Outfall No. 004	Latitude: N43° 26' 50.5"		Longitude: W71° 39' 30.3"
	Discharge is: <input type="checkbox"/> Continuous <input checked="" type="checkbox"/> Intermittent <input type="checkbox"/> Seasonal		
	Maximum Daily Flow	.273 GPD	Average Monthly Flow <.273GPD
	Maximum Daily Temperature	Varies °F	Average Monthly Temperature Varies °F
	Maximum Daily Oil & Grease	15 mg/L	Average Monthly Oil & Grease >0 <15 mg/L
	Maximum Monthly pH	8.0 s.u.	Minimum Monthly pH 6.5 s.u.
	Alternative pH limits requested? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		State approval attached? <input type="checkbox"/> Yes <input type="checkbox"/> No

7. For each outfall listed above, provide the following information (attach additional sheets if necessary). Outfalls may be eligible for alternative pH effluent limits. See Parts 1.8 and 2.8 of the permit for additional information. Contact MassDEP or NHDES to determine the required information and protocol to request alternative pH effluent limits.		
Outfall No. 005	Latitude: N43° 26' 50.3"	Longitude: W71° 39' 30.8"
	Discharge is: <input type="checkbox"/> Continuous <input checked="" type="checkbox"/> Intermittent <input type="checkbox"/> Seasonal	
	Maximum Daily Flow .273GPD	Average Monthly Flow <..273 GPD
	Maximum Daily Temperature Varies °F	Average Monthly Temperature Varies °F
	Maximum Daily Oil & Grease 15 mg/L	Average Monthly Oil & Grease >0<15mg/L
	Maximum Monthly pH 8.0 s.u.	Minimum Monthly pH s.u. 6.5
	Alternative pH limits requested? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	State approval attached? <input type="checkbox"/> Yes <input type="checkbox"/> No
Outfall No. 006	Latitude: N43° 26' 50.8"	Longitude: W71° 39' 30.3"
	Discharge is: <input checked="" type="checkbox"/> Continuous <input type="checkbox"/> Intermittent <input type="checkbox"/> Seasonal	
	Maximum Daily Flow unknown MGD	Average Monthly Flow unknown MGD
	Maximum Daily Temperature Varies °F	Average Monthly Temperature Varies °F
	Maximum Daily Oil & Grease 15 mg/L	Average Monthly Oil & Grease >0 <15 mg/L
	Maximum Monthly pH 8.0 s.u.	Minimum Monthly pH 6.5 s.u.
	Alternative pH limits requested? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	State approval attached? <input type="checkbox"/> Yes <input type="checkbox"/> No

Outfall No.	Latitude:	Longitude:
	Discharge is: <input type="checkbox"/> Continuous <input type="checkbox"/> Intermittent <input type="checkbox"/> Seasonal	
	Maximum Daily Flow MGD	Average Monthly Flow MGD
	Maximum Daily Temperature °F	Average Monthly Temperature °F
	Maximum Daily Oil & Grease mg/L	Average Monthly Oil & Grease mg/L
	Maximum Monthly pH s.u.	Minimum Monthly pH s.u.
	Alternative pH limits requested? <input type="checkbox"/> Yes <input type="checkbox"/> No	State approval attached? <input type="checkbox"/> Yes <input type="checkbox"/> No

C. Best Technology Available for Cooling Water Intake Structures

Facilities that checked “equipment-related cooling” as one of the discharges in Part B. of this NOI are subject to the following requirements. Facilities that intake more than 2 MGD for use in the facility (i.e., not used in the turbines to generate power) and which use at least 25% of the intake volume exclusively for cooling are not eligible for permit coverage and must submit an individual permit application. See Part 3.3 of the HYDROGP.

1. Does the facility intake water for cooling purposes subject to the BTA Requirements at Part 4 of the HYDROGP?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If no, skip to Part D of this NOI.
2. If yes, indicate which technology employed to comply with the general BTA requirements at Part 4.1 of the HYDROGP:	
<input type="checkbox"/> A physical or behavioral barrier located at the first intake encountered by fish on the upstream side of the dam that directs fish towards a downstream passage which safely conveys fish over the dam without being exposed to the CWIS. Has the applicant attached a narrative description of the barrier and provided data to demonstrate that the downstream fish passage effectively transports live fish in a manner that minimizes the likelihood of becoming impinged or entrained at the cooling water intake? <input type="checkbox"/> Yes <input type="checkbox"/> No	

D. Chemical Additives

1.	Does the facility use or plan to use non-toxic chemicals for pH adjustment?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
2.	Does the facility use or plan to use chemicals for anti-freeze purposes?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
3.	If the answer to D.2 is yes, provide the following for EACH chemical additive used for anti-freeze:		
Chemical Name and Manufacturer:			
Maximum Dosage Concentration Used:		Average Dosage Concentration Used:	
Maximum Concentration in Discharge: mg/L		Average Concentration in Discharge: mg/L	
Material Safety Data Sheet (MSDS) or other toxicity documentation for each chemical attached? <input type="checkbox"/> Yes <input type="checkbox"/> No			

E. Endangered Species Act Certification

Appendix 2 to the HYDROGP explains the certification requirements related to threatened and endangered species and designated critical habitat. Indicate under which criteria the discharge is eligible for coverage under the HYDROGP:	
1. ESA eligibility for species under jurisdiction of USFWS	<p>Criterion A: No endangered or threatened species or critical habitat are in proximity to discharges or related activities or come in contact with the “action area.” See Appendix 2, Part B for documentation requirements. Documentation attached? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>
	<p><input checked="" type="checkbox"/> Criterion B: Formal or informal consultation with the USFWS under Section 7 of the ESA resulted in either a no jeopardy opinion (formal consultation) or a written concurrence by USFWS on a finding that the discharges and related activities are “not likely to adversely affect” listed species or critical habitat. Has the operator completed consultation with USFWS and attached documentation? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If no, is consultation underway? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>

	<p><input type="checkbox"/> Criterion C: Using the best scientific and commercial data available, the effect of the discharges and related activities on listed species and designated critical habitat have been evaluated. Based on those evaluations, a determination is made by EPA, or by the operator and affirmed by EPA, that the discharges and related activities will have “no effect” on any federally threatened or endangered species or designated critical habitat under the jurisdiction of the USFWS. Has the applicant attached documentation of the “no effect” finding? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>2. ESA eligibility for species under jurisdiction of NMFS</p>	<p>Is the facility located on: the Connecticut River between the Massachusetts/Connecticut state line and Turners Falls, MA; the Taunton River; the Merrimack River between Lawrence, MA and the Atlantic Ocean; the Piscataqua River including the Salmon Falls and Cocheco Rivers; or a marine water? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If yes, was the applicant authorized to discharge from the facility under the 2009 HYDROGP? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If the discharge is to one of the named rivers above or to a marine water <i>and</i> the facility was not previously covered under the 2009 HYDROGP, has there been any previous formal or informal consultation with NMFS? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Documentation of consultation attached? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>

F. National Historic Properties Act Eligibility

<p>1. Indicate under which criterion the discharge(s) is eligible for covered under the HYDROGP:</p>
<p><input type="checkbox"/> Criterion A: No historic properties are present.</p>
<p><input checked="" type="checkbox"/> Criterion B: Historic properties are present. The discharges and related activities do not have the potential to impact historic properties.</p>
<p><input type="checkbox"/> Criterion C: Historic properties are present. The discharges and related activities have the potential to impact or adversely impact historic properties.</p>

2.	Has the applicant attached supporting documentation for NHPA eligibility described in Appendix 3, Part C of the HYDROGP? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
3.	Does supporting documentation include a written agreement from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or other tribal representative that outlines measures the operation will carry out to mitigate or prevent any adverse effects on historic properties? <input type="checkbox"/> Yes <input type="checkbox"/> No

G. Supplemental Information

Please provide any supplemental information, including antidegradation review information applicable to new or increased discharges. Attach any certifications required by the HYDROGP. Supplemental information attached? <input type="checkbox"/> Yes <input type="checkbox"/> No

H. Signature Requirements

1.	The NOI must be signed by the operator in accordance with the signatory requirements of 40 C.F.R. § 122.22, including the following certification:	
	<i>I certify under penalty of law that no chemical additives are used in the discharges to be authorized under this General Permit except for those used for pH adjustment or anti-freeze purposes and that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those directly responsible for gathering the information, I certify that the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I certify that I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.</i>	
2.	Notification provided to the appropriate State, including a copy of this NOI, if required?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	Signature: 	Date: Click or tap to enter a date. <i>04-25-2023</i>
	Print Name and Title: <i>Sean J. Iller , EHS Manager</i>	

**Public Service Company of New Hampshire
Eastman Hydro Station**

Combined Equipment and Floor Drain Water, Equipment - Related Cooling Water, and Maintenance - Related Water

Outfall	Description	Location	Contributing Operations	Average Flow	Total Average Flow	Occasional or Consistent Discharge	Discharging Water	Sample Location or Representative Outfall	Possible Annual Sampling
001	Wheel Pit Drain Generator 1	N 43° 26' 50.8" W 71° 39' 30.3"	Gate stem leakage	50 GPD	770 GPD (35 GPM Pump)	Consistent	Pemigewasset River	Grab sample from wheel pit	Yes
			Guide bearing cooling water	480 GPD					
			Guide bearing leakage	240 GPD					
			Manual filter backwash	0-100 GPY					

Equipment and Floor Drain Water

002	Tool Room Floor Drains	N 43° 26' 51" W 71° 39' 30.5"			0-20 GPY	Intermittent	Pemigewasset River	Grab sample from floor drain	Yes
			Floor drains	0-20 GPY					

Combined Equipment and Floor Drain Water, Equipment - Related Cooling Water, and Facility Maintenance - Related Water during Flood/High Water Events

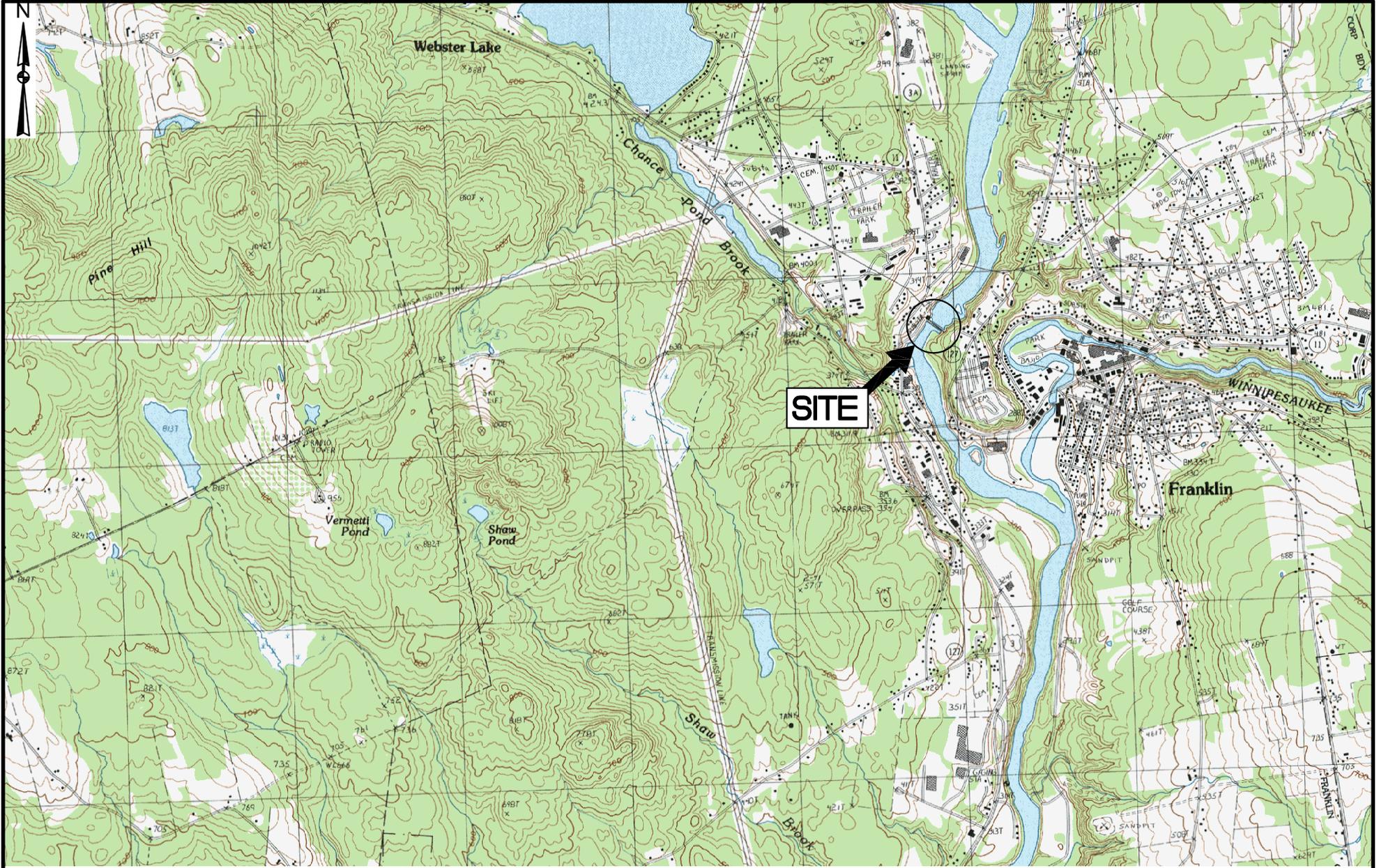
003	Generator 2 Sump (contributing operations via floor drains)	N 43° 26' 51.1" W 71° 39' 30.8"	Bearing seal cooling water	240 GPD	80 GPM pump	Consistent	Pemigewasset River	Grab sample from floor drain	Yes
			High water	0-100 GPY					
			Stem leakage	0-1 GPD					

Maintenance - Related Water

004	Penstock Drain Generator 1	N 43° 26' 50.5" W 71° 39' 30.3"	Scroll case drain	0-100 GPY	0-100 GPY	Intermittent	Pemigewasset River	Discharge inaccessible	No
005	Penstock Drain Generator 2	N 43° 26' 50.3" W 71° 39' 30.8"	Scroll case drain	0-100 GPY	0-100 GPY	Intermittent	Pemigewasset River	Discharge inaccessible	No

Equipment-Related Backwash Strainer Water

006	Automatic Backwash Strainer	N 43° 26' 50.8" W 71° 39' 30.3"	Automatic backwash strainer	?	?	Consistent	Pemigewasset River	Sampling not possible - closed system	No



SCALE IN MILES

PREPARED BY: **GZA GeoEnvironmental, Inc. Engineers and Scientists**
 380 HARVEY ROAD
 MANCHESTER, NEW HAMPSHIRE 03103
 (603) 623-3600

PREPARED FOR:
PUBLIC SERVICE OF NEW HAMPSHIRE

NPDES HYDROELECTRIC GENERATING FACILITIES GENERAL PERMIT EASTMAN HYDROSTATION

PUBLIC SERVICE OF NEW HAMPSHIRE
 NORTHMAIN STREET, FRANKLIN NEW HAMPSHIRE 03235

LOCUS PLAN

PROJ MGR:	KDB	DATE	FEB 2010
DESIGNED BY:	DSJ	PROJECT NO.	04.0024931.00
REVIEWED BY:	RAB	REVISION NO.	
DRAWN BY:	ma		
CHECKED BY:	KDB		
SCALE:	AS SHOWN		

FIGURE 1

SHEET NO.

conditions, notify the Commission of emergencies and other activities, and file amendment applications, as appropriate.

COASTAL ZONE MANAGEMENT ACT

31. Under section 307(c)(3)(A) of the Coastal Zone Management Act (CZMA),¹⁴ the Commission cannot issue a license for a project within or affecting a state's coastal zone unless the state CZMA agency concurs with the license applicant's certification of consistency with the state's CZMA program, or the agency's concurrence is conclusively presumed by its failure to act within six months of its receipt of the applicant's certification. By letter dated November 5, 2016, New Hampshire DES states that the project is not located within the state-designated coastal zone and the project will not affect New Hampshire's coastal resources. Therefore, a CZMA consistency certification is not required.

SECTION 18 FISHWAY PRESCRIPTION

32. Section 18 of the FPA¹⁵ provides that the Commission shall require the construction, maintenance, and operation by a licensee of such fishways as may be prescribed by the Secretary of the Interior or the Secretary of Commerce, as appropriate.

33. By letter filed January 23, 2017, Interior provided section 18 prescriptions that require PSNH to provide upstream and downstream passage for American eel at the Eastman Falls dam, prepare a fishway operation and maintenance plan, and prepare a fishway effectiveness monitoring plan. Interior's prescriptions are required by ordering paragraph (E) and attached to this order in Appendix B.

34. Interior also requested that the Commission reserve authority to prescribe fishways. Consistent with Commission policy, Article 402 of the license reserves the Commission's authority to require fishways that may be prescribed by Interior for the Eastman Falls Project.

THREATENED AND ENDANGERED SPECIES

35. Section 7(a)(2) of the Endangered Species Act of 1973 (ESA)¹⁶ requires federal agencies to ensure their actions are not likely to jeopardize the continued existence of

¹⁴ 16 U.S.C. § 1456(c)(3)(A) (2012).

¹⁵ 16 U.S.C. § 811 (2012).

¹⁶ 16 U.S.C. § 1536(a) (2012).

federally listed threatened and endangered species, or result in the destruction or adverse modification of their designated critical habitat.

36. In a letter dated June 22, 2016, Interior states that suitable habitat for the federally threatened northern long-eared bat exists within and adjacent to the project area. The EA found that, while there is northern long-eared bat habitat within and adjacent to the project area, northern long-eared bats are not known to inhabit the project area. In addition, there are no measures included in this license that would affect northern long-eared bat habitat. Based on this information, licensing the project will have no effect on the threatened northern long-eared bat. Therefore, no further action under the ESA is required.

NATIONAL HISTORIC PRESERVATION ACT

37. Under section 106 of the National Historic Preservation Act (NHPA)¹⁷ and its implementing regulations,¹⁸ federal agencies must take into account the effect of any proposed undertaking on properties listed or eligible for listing in the National Register of Historic Places (National Register), defined as historic properties, and afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking. This generally requires the Commission to consult with the State Historic Preservation Officer (SHPO) to determine whether and how a proposed action may affect historic properties, and to seek ways to avoid or minimize any adverse effects.

38. The Eastman Falls dam was constructed as a power source in 1903 by the Pemigewasset Power Company. Powerhouse 1 was built in 1937, while powerhouse 2, originally built in 1910, was retrofitted in 1983. By letter dated May 8, 2012, the New Hampshire SHPO indicated that the Eastman Falls facilities may be eligible for listing on the National Register. However, the New Hampshire SHPO concluded that issuing a license for the project would have “no potential to cause effects” on historic, architectural, or archaeological resources based on the applicant’s proposal.¹⁹ The EA concludes that because there are no known cultural resources within the project’s area of

¹⁷ Section 106 of the National Historic Preservation Act of 1966, as amended, 54 U.S.C. § 306108, Pub. L. No. 113-287, 128 Stat. 3188 (2014). (The National Historic Preservation Act was recodified in Title 54 in December 2014.)

¹⁸ 36 C.F.R. Part 800 (2016).

¹⁹ PSNH December 18, 2015 application, at Appendix A.

potential effect and no changes to the project's features or operation are proposed, issuing a license for the project would have no adverse effect on historic properties.²⁰

39. While the project will have no adverse effect on known historic properties, cultural resources could be discovered during the course of operating or maintaining the project. If cultural resources are inadvertently discovered during construction or operation of the project, PSNH must stop all land-disturbing activities and consult with the New Hampshire SHPO to determine the need for any cultural resource studies or measures. If no measures are needed, PSNH must file documentation of its consultation. If a discovered cultural resource is determined to be eligible for the National Register, the licensee must file for Commission approval a historic properties management plan. As required by Article 405, PSNH must not resume land-clearing or land-disturbing activities until informed by the Commission that the requirements of the article are met.

40. Additionally, project maintenance activities that may be needed during the term of this license, but do not require Commission approval, could adversely affect cultural resources.²¹ Therefore, Article 406 requires the licensee to consult with the New Hampshire SHPO prior to conducting any project modifications to determine the effects of the activities and the need for protection measures.

RECOMMENDATIONS OF FEDERAL AND STATE FISH AND WILDLIFE AGENCIES PURSUANT TO SECTION 10(j) OF THE FPA

41. Section 10(j)(1) of the FPA²² requires the Commission, when issuing a license, to include conditions based on recommendations submitted by federal and state fish and wildlife agencies pursuant to the Fish and Wildlife Coordination Act²³ to “adequately and equitably protect, mitigate damages to, and enhance fish and wildlife (including related spawning grounds and habitat)” affected by the project.

42. In response to the April 26, 2016 public notice that the project was ready for environmental analysis, Interior filed seven recommendations under section 10(j).²⁴ Two

²⁰ EA at 37.

²¹ Activities could include modifications to the powerhouses, such as painting, roof repairs, or general landscaping. *Id.*

²² 16 U.S.C. § 803(j)(1) (2012).

²³ 16 U.S.C. §§ 661 *et seq.* (2012).

²⁴ Interior filed the recommendations on June 22, 2016.

of the recommendations are outside the scope of section 10(j) and are discussed in the next section. Three of the recommendations that are within the scope of section 10(j) and are included in this license require PSNH to: (1) operate the project in an instantaneous run-of-river mode (required by certification condition E-8a), (2) develop and implement an operation and flow monitoring plan (required by certification condition E-11), and (3) maintain the impoundment elevation at 307 feet msl \pm 0.2 foot (required by certification condition E-8b). The remaining two recommendations that are within the scope of section 10(j) are also included in this license, and are discussed below.

43. In the EA, Commission staff made an initial determination that Interior's recommendation to develop and implement a post-license water quality monitoring plan may be inconsistent with the comprehensive planning standard of section 10(a)(1) of the FPA. Staff did not recommend water quality monitoring because existing water quality meets New Hampshire state standards and the project would continue to operate in run-of-river mode.²⁵ However, because the water quality monitoring plan is included in the certification (see condition E-13), which is mandatory,²⁶ the water quality plan is required by the license.

44. In the EA, Commission staff made an initial determination that Interior's recommendation to implement an impoundment refill protocol that passes 90 percent of inflow downstream and uses 10 percent of inflow to refill the impoundment may be inconsistent with the comprehensive planning standard of section 10(a)(1) of the FPA. Staff did not recommend Interior's refill protocol because PSNH's proposed refill protocol (i.e., releasing the aquatic base flow (502 cfs) or 90 percent of inflow (whichever is less) when refilling the impoundment) would protect aquatic habitat while allowing PSNH to generate more power than Interior's refill protocol.²⁷ However, because the refill protocol is included in the certification (condition E-8c), which is mandatory, the impoundment refill protocol to pass 90 percent of inflow downstream and use 10 percent of inflow to refill the impoundment is required by the license.

SECTION 10(a)(1) OF THE FPA

45. Section 10(a)(1) of the FPA²⁸ requires that any project for which the Commission issues a license be best adapted to a comprehensive plan for improving or developing a

²⁵ EA at 49.

²⁶ See *American Rivers v. FERC*, 129 F.3d 99 (2nd Cir. 1997).

²⁷ EA at 49-50.

²⁸ 16 U.S.C. § 803(a)(1) (2012).

waterway or waterways for the use or benefit of interstate or foreign commerce; for the improvement and utilization of waterpower development; for the adequate protection, mitigation, and enhancement of fish and wildlife; and for other beneficial public uses, including irrigation, flood control, water supply, recreation, and other purposes.

A. Interior's Recommendation

46. Interior made one recommendation under section 10(a)(1). In addition, as noted above, Interior made two recommendations under section 10(j) that are not specific measures to protect, mitigate damages to, or enhance fish and wildlife. These recommendations are considered below under the broad public-interest standard of section 10(a)(1).

47. Interior recommends that the licensee be required to notify Interior if an amendment or appeal of any fish and wildlife-related license conditions, or extension of time is filed with the Commission (10(a) recommendation 1).

48. For significant amendments related to fish and wildlife resources, the Commission's regulations require licensees to consult with Interior while preparing an amendment application.²⁹ For other amendments, appeals, and requests for extensions of time, Interior can receive notification of any filings and issuances through the Commission's eSubscription service.³⁰ Therefore, there is no need to include Interior's recommendation as a requirement of this license.

49. Interior recommends that the licensee develop and implement an invasive species management and monitoring plan (10(j) recommendation 5). This plan is required in the license by certification condition E-12.

50. Interior recommends that the Commission consult under section 7 of the Endangered Species Act if northern long-eared bat habitat will be affected by project activities (10(j) recommendation 6).

²⁹ If a licensee files a request to amend its license or to amend any fish and wildlife-related license condition, the licensee may need to consult with Interior pursuant to sections 4.38(a)(6) and 4.201(c) of the Commission's regulations. 18 CF.R. §§ 4.38(a)(6) and 4.201(c) (2016).

³⁰ The Commission's eSubscription service can be accessed at <http://www.ferc.gov/docs-filing/esubscription.asp>.

51. As discussed above and in the EA,³¹ operation of the project, as licensed herein, will have no effect on the threatened northern long-eared bat or its habitat. Therefore, there is no need for consultation or to include any measures addressing northern long-eared bats in this license.

B. Comments on the EA

52. Interior, PSNH, and the Merrimack Advisory Committee filed comments during the EA comment period. Interior's letter reiterates its recommendations for water quality monitoring, impoundment refill, and consultation on northern long-eared bat, but did not provide any specific comments on the EA. The Merrimack Advisory Committee's letter indicates its support for Interior's and New Hampshire DES's recommendations, conditions, and prescriptions and also did not provide any specific comments on the EA.

53. In its comments on the EA, PSNH states that the use of traps to collect juvenile American eel and the target number of eels collected in the traps could be determined as part of an upstream eel passage plan. In response to staff's statement in the EA³² that the only existing routes for downstream movement of American eel at the dam are over the spillway or through the turbines, PSNH states that the project also has a bottom-opening waste gate that could be used for passing out-migrating American eel. PSNH also states that biological triggers, based on upstream eel passage rates and eel life cycle, should be considered as part of any downstream eel passage measures, whether interim or permanent. While the EA did not address the potential development of an upstream passage plan, the use of the bottom-opening waste gate for downstream passage, or the use of biological triggers, we expect that each of these activities can be addressed during the consultation on upstream and downstream eel passage measures with Interior (and the New Hampshire Fish and Game Department) that is required by prescriptions 13.1 and 13.2.

C. Other Issues

Debris Management

54. Interior's prescription 12.4 requires PSNH to develop a fishway operation and maintenance plan that includes debris removal from any guidance channels and fishway entrances and exits. Removing debris from fish passage facilities will ensure the effectiveness of any passage facilities; however, prescription 12.4 does not address the

³¹ EA at 34.

³² EA at 25.

handling and disposal of removed debris. To ensure that inorganic trash is properly disposed of (i.e., recycled or sent to a landfill) and organic debris, that may provide valuable habitat for fish and macroinvertebrates, is reintroduced to the river, staff recommended in the EA that the plan be modified to include procedures for sorting, passing, or disposing of debris, as appropriate.³³ Therefore, Article 403 requires PSNH to describe procedures for handling and disposal of debris as part of the fishway operation and maintenance plan.

Recreation Facilities

55. As discussed above, the Eastman Falls Project includes three recreation facilities owned by PSNH: Eastman Falls Recreation area, portage trail, and the Franklin Public Boat Ramp. PSNH operates and maintains the Eastman Falls Recreation area and the portage trail, and the City of Franklin operates and maintains the Franklin Public Boat Ramp. While PSNH may enter into an agreement with the City to operate and maintain the Franklin Public Boat Ramp, PSNH, as the licensee is ultimately responsible for ensuring adequate operation and maintenance of the project's recreational facilities. Article 404 requires PSNH to continue to provide public access to and ensure adequate operation and maintenance of the three project recreation facilities.

ADMINISTRATIVE PROVISIONS

A. Annual Charges

56. The Commission collects annual charges from licensees for administration of the FPA. Article 201 provides for the collection of funds for administration of the FPA.

57. Section 10(e) of the FPA directs the Commission to assess licensees an annual charge to recompense the United States "for the use, occupancy, and enjoyment" of its lands.³⁴ As noted, the Eastman Falls Project boundary includes approximately 476 acres of federal land managed by the Corps, as part of the Franklin Falls Flood Control Dam.

58. PSNH filed documentation indicating that it has maintained prescriptive rights and deeded flowage rights entitling it to flow water over land managed by the Corps since before the federal government acquired the land for construction of the Franklin Falls Flood Control Dam.³⁵

³³ EA at 47-48.

³⁴ 16 U.S.C. § 803(e) (2012).

³⁵ PSNH April 3, 2013, Response to Request for Additional Information, (continued ...)