

Final Agency Action

Introduction

In accordance with the provisions of 40 Code of Federal Regulations (“C.F.R.”) §124.17, this document presents the United States Environmental Protection Agency’s (EPA) final issuance of the following draft National Pollutant Discharge Elimination System (“NPDES”) General Permits for Dewatering and Remediation Activity Discharges – the DRGP (“Final Permit”):

Massachusetts General Permit, Permit No. MAG910000

New Hampshire General Permit, Permit No. NHG910000

Connecticut General Permit, Permit No. CTG910000, Indian country lands only

Rhode Island General Permit, Permit No. RIG910000, Indian country lands only

Vermont General Permit, Permit No. VTG910000, Federal facilities only

This document explains and supports the determinations that form the basis for EPA’s decision to issue the final general permits. From April 26, 2022, to May 26, 2022, the United States Environmental Protection Agency (“EPA”) solicited public comments for the issuance of draft NPDES permits for the five general permits identified above (“Draft Permit”).

During the public comment period EPA received no significant comments. EPA did, however, receive requests for clarification and/or correction of typographical errors in the Draft Permit. The clarifications and corrections for these items are summarized below and are reflected in the Final Permit, where necessary. The Final Permit is nearly identical to the Draft Permit provided for public notice. Therefore, EPA is issuing the Final Permit without further notification on August 1, 2022, and the reissued DRGP is effective on August 31, 2022.

Regarding Section 7 of the Endangered Species Act (ESA), EPA made the determination that the federal action will have “no effect” on endangered species. In Appendix A of the Final Permit, EPA automatically designated operators as non-Federal representatives for the purpose of conducting ESA Section 7 formal or informal consultations with the United States Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) regarding determination of effects on endangered species. Each Notice of Intent (NOI) that is submitted must assess site-specific endangered species impacts using the mapping tools provided on each agency’s website. Based on the findings, the operator can either make a determination of impacts or if there are questions, seek input directly from the agency. Since each NOI is individually screened prior to authorization, ESA Section 7 consultation requirements will be satisfied for each operator. The single exception to this FWS approach is ESA Section 7 consultation relating to the northern long-eared bat (*Myotis septentrionalis*). EPA determined that the DRGP permit issuance is consistent with activities analyzed in the FWS January 5, 2016, Programmatic Biological Opinion (PBO) for this species. No further ESA consultation with FWS is needed for the northern long-eared bat.

Copies of the Final Permit and this corrections document will be posted on the EPA Region 1 web site: <https://www.epa.gov/npdes-permits/dewatering-and-remediation-general-permit-drgp>.

Copies of the Final Permit may be also obtained by writing or calling Shauna Little, U.S. EPA, 5 Post Office Square, Suite 100 (Mail Code: 06-1), Boston, MA 02109-3912; Telephone: (617) 918-1989; Email little.shauna@epa.gov.

Clarifications

Part 1.4.2: As a matter of *State law, but not Federal law* the DRGP does not apply to sites subject to 310 CMR 40.0000, the Massachusetts Contingency Plan (MCP). Therefore, the requirement to submit an application to the State and pay an application fee to the State, is not required when submitting application to EPA. This is not a change from the previous Remediation General Permit (RGP). To clarify, sites regulated under the MCP that generate remediation or dewatering discharges are required to obtain NPDES coverage from EPA to discharge to Waters of the United States. Such discharges occurring without a NPDES permit from EPA in the State of Massachusetts would constitute discharging without a permit in violation of the Clean Water Act.

Part 1.5: Coverage under the DRGP will be effective when EPA has reviewed the NOI, made a determination that coverage under the DRGP is authorized, and has notified the operator in writing of its determination, or 30 days following the submittal of a NOI to the EPA, unless the NOI is placed on hold by EPA.” The intent of this language is to provide clear timeframes for coverage under the DRGP. Coverage under the DRGP becomes effective automatically 30 days after submittal of a NOI to EPA, unless: 1) Emergency discharge coverage applies; 2) EPA issues written authorization sooner than 30 days following submittal of a NOI to EPA; or 3) EPA places a NOI on hold. If a hold is placed, EPA will inform the operator of the necessary steps to remove the hold; once removed, the 30-day review period continues from the day the hold was placed. For example, if EPA places a hold on Day 5 of 30 and the operator submits information requested by EPA 5 days later, EPA would release the hold and begin Day 6 of 30. EPA has adjusted the wording slightly for clarification.

Section 1.5.1: The Draft Permit already proposed and the Final Permit establishes automatic written authorization 30 days following submittal of a NOI, unless the NOI is authorized earlier or put on hold by EPA. Provisional coverage, that is, coverage that is effective prior to written authorization, continues to apply to emergency discharges. Provisional coverage for emergency discharges is effective immediately upon initiation of discharge and is maintained so long as the notification requirements specified in the Final Permit are met.

Section 6.1 Massachusetts Permit Conditions: Although this was not a comment on an EPA permit condition, EPA is providing the following clarifications. Sampling for per- and poly-fluoroalkyl substances (“PFAS”) are required if requested by EPA or the State.

Should an operator already have the data necessary to assess PFAS levels in a proposed discharge, so long as these data meet the Existing Data Substitution requirements in Part 3.1.8, additional sampling is not necessary for EPA. Until EPA Method X is published in 40 CFR Part 136, in accordance with 40 CFR § 122.44(i)(1)(iv), Method 533, 537 or 537.1 for drinking water are acceptable test methods.

Appendix E, Section E: Regarding the Case-by-Case Limitations, the NOI sampling requirements have been reduced relative to the 2017 RGP to only those parameters listed in Part 2.1.1 by wastewater type, and those listed in the NOI instructions (e.g., hardness), including any required by EPA or the State, if requested for an individual NOI. The parameters listed in Appendix E apply only if, based on existing site information, which may include historic site characterization sampling data, a given parameter is known or believed present. Site characterization, including additional sampling, is not required for these parameters for the purposes of submitting an NOI, unless requested by EPA or the State for an individual NOI. Any such request will be provided directly to the operator.

Appendix A: Regarding the National Marine Fisheries Service (NMFS), EPA made the determination in the Draft Permit that the federal action “may affect, but is not likely to adversely affect” endangered species under their jurisdiction, but was not able to complete ESA section 7 consultation with NMFS before the final DRGP was issued. Because ESA consultation and requested concurrence from with NMFS was not completed, EPA has applied the same requirement for NMFS protected species that is used for FWS protected species, as specified in Appendix A. Instructions in Appendix A have been modified to reflect this approach.

Appendix D: The Environmental Justice Disclosure and Notification Requirements specifies that operators that select Environmental Justice Criterion B need to develop a public notification program including initial and supplemental notification to “potentially affected public entities, and the public”. EPA’s general expectation is that this notification would be to the municipality in which the site is located, and the contacts listed in Appendix D for EPA and the State in which the site is located. The municipality, EPA, and/or the State may provide additional contacts for city, county, or other local entities to which notification must be provided.

General Applicability: For linear utility installation projects where small volumes of water (<10,000 gallons per day) are required to be dewatered on a periodic basis (<30 days per year), dewatering discharges are considered an allowable non-stormwater discharge under the CGP if they are uncontaminated construction dewatering water discharged in accordance with Part 2.4 and Part 9 of that permit. Generally, if treatment other than solids removal is required to remove pollutants known or believed present in order to meet State Surface Water Quality Standards, this discharge is not allowable under this provision and individual or alternate general permit is required. The minimum applicable parameters to a groundwater source water are: pH, Total Suspended Solids, Turbidity, Total Nitrogen, Total Dissolved Solids, Chloride, Total Petroleum Hydrocarbons, Arsenic, Copper, Iron, Lead, and Cyanide.

Corrections

EPA corrected a number of typographical errors for spelling, punctuation, and grammar that do not result in a change to the intent of any permit requirement. These corrections are not discussed further.

Errata:

Attachment 2:

Corrected to provide the most up to date Standard Conditions provided on EPA's website, dated April 26, 2018.¹

Appendix A:

Page 2, The species list for Massachusetts should include the federally endangered rusty patched bumble bee (*Bombus affinis*).

Page 2, List of species for federal facilities in Vermont and Indian country in Connecticut and Rhode Island.

Page 3, The second paragraph states that consultation with the Services has been conducted as part of the final permit issuance.

Pages 5 and 6, Step 3 to determine if applicant meets Criterion C was mistyped.

Part 1.3:

The correct regulatory citation for Ocean Sanctuaries in Massachusetts is Ocean Sanctuaries in Massachusetts, as defined at 301 CMR 27.00, which begin at low mean water. Territorial seas as defined by Section 502 of the CWA are located between low mean water and 12 miles offshore.

¹ <https://www3.epa.gov/region1/npdes/permits/generic/npdes-permit-part-ii-final-2018-updated.pdf>.