



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

Charles D. Baker
Governor

Karyn E. Polito
Lieutenant Governor

Bethany A. Card
Secretary

Martin Suuberg
Commissioner

July 1, 2022

Lynne Jennings, Water Permits Branch Chief
USEPA – New England
5 Post Office Square, Suite 100 (OEP06-1)
Boston, MA 02109-3912

RE: Massachusetts Clean Water Act Section 401 Certification for the Medium Wastewater Treatment Facility General Permit

Dear Ms. Jennings,

Enclosed please find as Attachment 1 the Commonwealth of Massachusetts' Clean Water Act (CWA) section 401 certification (State Certification) for the proposed 2022 National Pollutant Discharge Elimination System (NPDES) Medium Wastewater Treatment Facility General Permit (MA Permit No. MAG590000). MassDEP proposed a draft State Certification for public notice and comment on February 8, 2022. A copy of the public notice is enclosed as Attachment 2. The public comment period posted for the draft State Certification closed on April 26, 2022. MassDEP received several comments from advocacy organizations and municipalities regarding the state's Section 401 requirements. Enclosed please also find as Attachment 3 the Notice of Appeal Rights for the State Certification.

Please contact Dr. Laura Schiffman, MassDEP's NPDES Acting Section Chief, at (857) 208-8373 or laura.schiffman@mass.gov if you have any questions.

Sincerely,

Lealdon Langley, Director
Division of Watershed Management
Bureau of Water Resources

ecc:
Michael Cobb, EPA Region 1
David Cash, Regional Administrator, EPA Region 1

Claire Golden, MassDEP

Bob Boeri, Massachusetts Office of Coastal Zone Management

FINAL

Section 401 Water Quality Certification
For the Proposed 2022 NPDES General Permit
For Medium Wastewater Treatment Facilities in Massachusetts
Permit No. MAG590000

The Massachusetts Department of Environmental Protection (MassDEP), having examined and reviewed the United States Environmental Protection Agency (EPA) – Region 1’s draft 2022 NPDES General Permit for Medium Wastewater Treatment Facilities in Massachusetts (Permit No. MAG590000), issued February 8, 2022 (“2022 NPDES General Permit”), and having considered the public comments received on MassDEP’s draft Section 401 Water Quality Certification for the draft general permit, and in consideration of the relevant water quality considerations, hereby certifies:

1. that subject to the following condition, together with the terms and conditions contained in the 2022 NPDES General Permit, the proposed discharges will comply with the applicable provisions of the Federal Clean Water Act Sections 208(e), 301, 302, 303, 306, and 307 and with appropriate requirements of State law, including, without limitation, the Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 26-53, and the Massachusetts Surface Water Quality Standards published at 314 CMR 4.00:
 - a. Notwithstanding any other provision of the 2022 Federal NPDES Permit to the contrary, monitoring results of the influent, effluent, and sludge for PFAS compounds shall be reported to MassDEP electronically, at massdep.npdes@mass.gov, or as otherwise specified, within 30 days after they are received.
 - b. Pursuant to M.G.L. c. 21, §§ 26-53, and 314 CMR 3.00 and 4.00, including 314 CMR 3.11(2)(a)6., and in order to ensure the maintenance of surface waters free from pollutants in concentrations or combinations that are toxic to humans, aquatic life, or wildlife, in accordance with 314 CMR 4.05(5)(e), MassDEP has determined that it is necessary that the permittee commence annual monitoring of all Significant Industrial Users^{1,2} discharging into the POTW consistent with the 2022 NPDES General Permit in accordance with the table below. Notwithstanding any other provision of the 2022 NPDES General Permit to the contrary, monitoring results shall be reported to MassDEP electronically at massdep.npdes@mass.gov within 30 days after they are received.

¹ Significant Industrial User (SIU) is defined at 40 CFR part 403: All industrial users subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR chapter I, subpart N; **and** any other industrial user that: discharges an average of 25,000 GPD or more of process wastewater to the POTW, contributes a process wastestream that makes up 5% or more of the average dry weather hydraulic or organic capacity of the POTW, or designated as such by the POTW on the basis that the industrial users has a reasonable potential for adversely affecting the POTW’s operation or for violating any Pretreatment Standards or requirement.

² This requirement applies to all Significant Industrial Users and not just those within the sectors identified by EPA in the NPDES permit.

Parameter	Units	Measurement Frequency	Sample Type
Perfluorohexanesulfonic acid (PFHxS)	ng/L	Annual	24-hour Composite
Perfluoroheptanoic acid (PFHpA)	ng/L	Annual	24-hour Composite
Perfluorononanoic acid (PFNA)	ng/L	Annual	24-hour Composite
Perfluorooctanesulfonic acid (PFOS)	ng/L	Annual	24-hour Composite
Perfluorooctanoic acid (PFOA)	ng/L	Annual	24-hour Composite
Perfluorodecanoic acid (PFDA)	ng/L	Annual	24-hour Composite

2. that there is a reasonable assurance that the activity will be conducted in a manner which will not violate applicable state water quality standards.

To meet the requirements of Massachusetts laws, each of the conditions cited in the draft 2022 NPDES General Permit and this certification shall not be made less stringent unless new data or other information is presented and MassDEP determines modification of this certification is appropriate in consideration of the relevant water quality considerations.

Given a recent change in practice on Section 401 Water Quality Certifications for NPDES permits in Massachusetts, MassDEP is required by EPA to issue certifications based on draft NPDES permits. The purpose of this certification is to verify that the discharge(s) subject to the NPDES permit will comply with all applicable federal and state laws and regulations, including without limitation, the Massachusetts Surface Water Quality Standards. As MassDEP must make this determination before reviewing the final permit, if any condition in the draft 2022 NPDES General Permit is changed during EPA's review in any manner inconsistent with this certification, the Department reserves the right to modify this certification to ensure that the discharge(s) will comply with all applicable federal and state laws and regulations. In addition, the Department reserves the right to modify this certification if there is a change in the Massachusetts laws or regulations upon which this certification is based, or if a court of competent jurisdiction or the MassDEP Office of Appeals and Dispute Resolution stays, vacates or remands this certification, as provided by 40 C.F.R. § 124.55.

Signed this 1st day of July, 2022



Lealdon Langley, Director
Massachusetts Department of Environmental Protection
Bureau of Water Resources
Division of Watershed Management

PUBLIC NOTICE

Notice is hereby given that the Massachusetts Department of Environmental Protection (MassDEP), under authority granted by the Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 26 – 53, is proposing to: (1) issue a federal Clean Water Act (CWA) section 401 certification for the U.S. Environmental Protection Agency's (EPA) proposed 2022 Draft NPDES Dewatering and Remediation General Permit (Federal Permit) (MA Permit No. MAG910000); and (2) issue the 2022 Draft Massachusetts Permit to Discharge Pollutants to Surface Waters (State Permit) for the same discharges pursuant to the Massachusetts Clean Waters Act. The proposed section 401 certification, proposed State Permit, and proposed Federal Permit are all available at <https://www.mass.gov/service-details/massdep-public-hearings-comment-opportunities>. Alternatively a copy of the documents can be obtained by contacting Cathy Coniaris, MassDEP Surface Water Discharge Program, at 617-835-6693 or catherine.coniaris@mass.gov. Written comments on both the proposed section 401 certification and the proposed State Permit will be accepted until 5:00 p.m. on May 26, 2022. MassDEP strongly encourages written comments to be submitted by email to massdep.npdes@mass.gov; subject line: DRGP. If not possible, please send by mail to Cathy Coniaris, 1 Winter St., Boston, MA 02108.

Following the close of the comment period, MassDEP will issue a final CWA section 401 certification and final State Permit and forward copies to the applicant and each person who has submitted written comments or requested notice.

For special accommodations, please call the MassDEP Diversity Office at 617-292-5751. TTY# MassRelay Service 1-800-439-2370. This information is available in alternate format upon request.

By Order of the Department

Martin Suuberg, Commissioner

NOTICE OF APPEAL RIGHTS
SECTION 401 CERTIFICATION of FEDERAL NPDES PERMIT

Within 21 days of the issuance of MassDEP's decision to grant or deny a water quality certification of EPA's NPDES permit pursuant to § 401 of the federal Clean Water Act, any person aggrieved may request an adjudicatory hearing concerning MassDEP's decision.

How should the request for an adjudicatory hearing be made?

A request for an adjudicatory hearing for DEP's § 401 water quality certification of the federal NPDES permit must be made within 21 days of the issuance of MassDEP's decision to grant or deny the water quality certification, in accordance with 310 CMR 1.01. 310 CMR 1.01(6)(b) establishes the required form and content of the request. Failure to meet the requirements of 310 CMR 1.01 may result in dismissal of the request or the requirement to file a more definite statement.

A person filing a request for an adjudicatory hearing must complete and mail a MassDEP Fee Transmittal Form for the appeal and send it with a valid check to the Commonwealth Master Lockbox, as instructed below, if a fee is required by 310 CMR 4.06. The MassDEP Fee Transmittal Form can be downloaded from:

<http://www.mass.gov/eea/agencies/massdep/service/approvals/transmittal-form-for-payment.html>.

The written notice requesting an adjudicatory hearing shall be delivered to MassDEP's Case Administrator together with (i) a photocopy of the decision being appealed, (ii) a photocopy of the completed MassDEP Fee Transmittal Form, if required, and (iii) a photocopy of the check used to pay any adjudicatory hearing filing fee due for the appeal under 310 CMR 4.06. The notice of claim should be made in writing and sent by email to Caseadmin.OADR@state.ma.us.

Please do not send the original of the completed MassDEP Fee Transmittal Form and check to the Case Administrator. Instead, please follow the instructions below for delivery of the original of the completed Fee Transmittal Form and check to the Commonwealth Master Lockbox.

A \$100 adjudicatory hearing filing fee must be paid, unless (i) a simplified hearing is requested for a reduced fee of \$25, (ii) the person requesting an adjudicatory hearing is a town, a municipal agency, a county or a municipal housing authority, in which case there is no fee, or (iii) the person requesting the hearing is seeking to have MassDEP waive the adjudicatory hearing filing fee because paying the fee will create an undue financial hardship.

A person who believes that payment of the fee would be an undue financial hardship shall file with the request for adjudicatory hearing a request for waiver of the fee together with an affidavit setting forth the facts the appellant believes constitute the undue financial hardship. For more information on the adjudicatory hearing filing fee and the grounds on which the Department may waive the fee, please see 310 CMR 4.06.

If a fee is required, the completed MassDEP Fee Transmittal Form and a valid check made payable to the Commonwealth of Massachusetts for the amount of the fee due must be mailed to:

Mass. Department of Environmental Protection

Commonwealth Master Lockbox
P.O. Box 4062
Boston, Massachusetts 02211

Failure to pay the adjudicatory hearing filing fee, if required, may be grounds for dismissal of the appeal.

In accordance with 314 CMR 2.08(5), any person, other than the permit applicant or permittee, who files a request for an adjudicatory hearing with the Department pursuant to 314 CMR 2.08(2) on an individual permit or general permit coverage, also shall simultaneously send a copy of the request by certified mail, return receipt requested, to the applicant or permittee. Any person who files a request for an adjudicatory hearing with the Department pursuant to 314 CMR 2.08(2) on a general permit also shall simultaneously send a copy of the request by certified mail, return receipt requested, to each permittee covered by the general permit.