



DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
(INSTALLATIONS AND ENVIRONMENT)
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DEC 15 2004

Mr. Roger A. Janson, Director, NPDES Permits Unit
Office of Ecosystem Protection (Mail Code: CPE)
US Environmental Protection Agency-New England
1 Congress St, Suite 1100,
Boston, Massachusetts 02114-2023

SUBJECT: DRAFT NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
GENERAL PERMITS FOR DISCHARGES FROM GROUNDWATER REMEDIATION AND
MISCELLANEOUS SURFACE WATER DISCHARGE ACTIVITIES IN THE STATES OF
MASSACHUSETTS AND NEW HAMPSHIRE; 69 FR 63531; 2 NOVEMBER 2004

Dear Sir:

The Department of Defense (DoD) Clean Water Act Services Steering Committee, which represents the Departments of the Navy, Air Force, and Army, as well as several other Defense components, has reviewed the proposed General Permits for Discharges from Groundwater Remediation and Miscellaneous Surface Water Discharge Activities in the States of Massachusetts and New Hampshire. DoD supports the concept of establishing a general permit for site remediation related discharges, but we have specific concerns related to the draft permit.

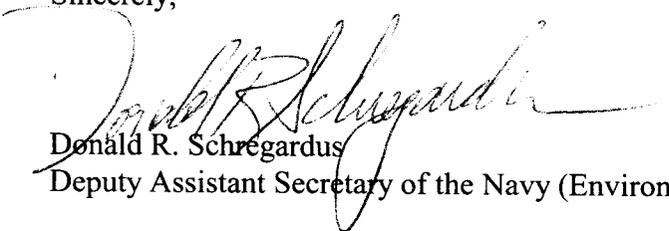
DoD's main concerns fall into the following areas:

1. Ensuring a timely review of permit notifications;
2. Exemption for discharges from on-site remediation projects conducted pursuant to Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); and
3. Clarifying and reducing repetitive sampling and analysis requirements.

A detailed discussion of these concerns and other comments are provided in the enclosed document for consideration in finalizing the general permits.

Thank you for providing an opportunity to comment on these draft permits. If you have any questions, our point of contact for this issue is Mr. Abe Nachabe at (202) 685-9315, or email at abe.nachabe@navy.mil.

Sincerely,


Donald R. Schregardus
Deputy Assistant Secretary of the Navy (Environment)

Enclosure (1): DoD CWASSC Comments on the Draft Remediation General Permits Under National Pollutant Discharge Elimination System (NPDES) for Discharges in Massachusetts and New Hampshire

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Mr. George Berlandi (New Hampshire Department of Environmental Services)

Mr. Paul Hogan (Massachusetts Department of Environmental Protection)

Mr. Steve Rapp (US Environmental Protection Agency-Region I)

**Comments on the
Draft Remediation General Permits Under National Pollutant Discharge Elimination System
(NPDES) for Discharges in Massachusetts and New Hampshire; Proposed Rule
69 FR 63531 (2 November 2004)**

1. Provide a time limit for EPA-NE review of notifications of intent

Comment: The Notice of Intent (NOI) to discharge under a general permit should be sufficient to authorize discharge in compliance with the general permit, without approval, after a reasonable time from notification. As proposed, coverage under the general permit will not be effective until the Environmental Protection Agency (EPA)-New England (NE) has reviewed the certification, made a determination and notified the owner/operator in writing. EPA-NE review and determination is required, but no time limit has been applied to this step of the notification process.

Discussion: Will there be a time limit on EPA-NE review? This provision, combined with the time necessary to gather and submit the required data and chemical analyses could result in considerable delay – which decreases the utility of the standardization implied by the “general permit” approach to regulation. As a minimum, the process should provide for an acknowledgement of receipt of application and a time limit on EPA-NE response. For example, New Jersey’s Industrial Stormwater General Permit contains the following language:

“The Department shall issue or deny authorization within a period of 90 days after submission of a complete Regulatory Flexibility Analysis (RFA) (except for automatic renewal ...). In the event that the Department fails to issue or deny authorization within such period, the authorization shall be deemed to have been issued.”

Whenever possible, however, the NOI should be sufficient without a review and approval. Ohio’s NPDES General Permit for Storm Water Discharges Associated With Construction contains only a requirement for an NOI 21 days in advance.

“Initial coverage: Operators who intend to obtain initial coverage for a storm water discharge associated with construction activity under this general permit must submit a complete and accurate NOI application form and appropriate fee at least 21 days prior to the commencement of construction activity.”

Recommendation: Provide for an acknowledgement of receipt of the NOI, and provide conditions to the extent possible, under which a notice of intent to discharge under the general permit is sufficient, without a review and approval step.

Reference:

- a. Massachusetts and New Hampshire Remediation General Permit, Section I.B.10, page 13
- b. Basic Industrial Stormwater General Permit – NJ0088315

<http://www.state.nj.us/dep/dwq/pdf/5g2.pdf>

c. Ohio NPDES General Permit for Storm Water Discharges Associated With Construction

http://www.epa.state.oh.us/dsw/permits/CGP_renewal_final_s.pdf

2. Exempt discharges made to a CERCLA remediation site under a signed Record of Decision and clarify procedural/administrative requirements

Comment: The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) exempts remediation activities from the requirement to obtain permits, requiring only that substantive permit requirements of applicable relevant and appropriate regulations shall be satisfied. It would be useful to clarify in the permit that procedural/administrative requirements, such as submission of the NOI and of reports, do not apply to discharges which fall within this exemption (CERCLA § 121(e)(1)), and to point out that while these requirements do not apply to such discharges, any substantive requirements which are Applicable or Appropriate and Relevant Requirements (ARARs) for the CERCLA action will apply.

Discussion: According to 40 CFR 300.400(e)(1):

- (1) No federal, state, or local permits are required for on-site response actions conducted pursuant to CERCLA sections 104, 106, 120, 121, or 122. The term on-site means the area extent of contamination and all suitable areas in very close proximity to the contamination necessary for implementation of the response action.
- (2) Permits, if required, shall be obtained for all response activities conducted off-site.

The proposed Remediation General Permit under the NPDES for Discharges in Massachusetts and New Hampshire should acknowledge that, under 40 CFR 300.400(e)(1) no permits are necessary for discharges relating to the portion of any removal or remedial action conducted entirely onsite under CERCLA, 42 U.S.C. § 9601 et seq., where such remedial action is selected and carried out in compliance with 42 U.S.C. § 9621(e).

Recommendation: Provide an exception in the list of discharges excluded from coverage (Paragraph I.A.3) stating that discharges being made at a remediation site under a signed Record of Decision are exempted from these general permit requirements and clarify that procedural/administrative requirements do not apply to discharges, which fall within the CERCLA exemption.

Reference:

- a. 40 CFR 300.400(e)(1)
- b. 42 U.S.C. § 9621(e)

3. Allow for optional development of a BMPP

Comment: The Remediation General Permit should not require the permittee to develop and implement a Best Management Practices Plan (BMPP) and also meet sampling, monitoring, reporting, and recordkeeping requirements. The Remediation General Permit should only require the permittee to meet the performance standards by one of these methods, sampling/reporting or preparation/implementation of a BMPP.

Discussion: Requiring the permittee to develop a BMPP and perform sampling, monitoring, reporting, and similar requirements is in essence double regulation of the discharge. It will be very costly and time consuming for the permittee to meet both sets of requirements as provided in the draft Remediation General Permit. When compared on a cost-to-cost (including direct and indirect costs) basis, it may make more sense for the permittee to apply for an individual permit, because he would only have to meet one set of requirements. Most NPDES permits (individual and general) that require plans similar to the BMPP do so as an option for the permittee to meet the performance (limits) standards in lieu of sampling.

Recommendation: Make preparation of the BMPP optional and, if a BMPP is developed and implemented, sampling requirements will be significantly reduced or eliminated entirely.

Reference:

- a. Remediation General Permit, Section 1.E. (pages 29-32).

4. Clarify what toxic pollutants require notification per 40 CFR 122.42

Comment: Clarify what toxic pollutants require notification per 40 CFR 122.42. As proposed, the Remediation General Permit, Section I.C.8.f (page 16) requires notification for any toxic pollutant as required in 40 CFR 122.42.

Discussion: This Section appears to intend reporting any of the list of some 65 chemicals and chemical compound categories at 40 CFR 401.15.

Recommendation: Clarify what toxic pollutants require notification per 40 CFR 122.42. If the list at 40 CFR 401.15 is being used to define “any toxic pollutant,” then EPA should indicate that in the Remediation General Permit.

Reference:

- a. Remediation General Permit, Section I.C.8.f, page 16.

5. Allow use of existing data to determine potential pollutants during initial permit application

Comment: Allowance should be made for using knowledge of the site (i.e., knowledge of releases and previous analysis results) to determine potential pollutants rather than requiring repeated sampling for a broad suite of analytes. As proposed, the Remediation General Permit (Section I.C.8) requires monthly sampling for a suite of pollutants, based on the type of site. Re-sampling and analysis of pollutants certified not present is also required every six months. Initial startup requires more frequent sampling (Section I.D.2).

Discussion: Sampling and analysis costs are a significant factor in any site remediation effort. Unnecessary analysis wastes money and also offers increased possibility of getting a false positive due to inadvertent contamination at the laboratory. After the initial characterization of the influent and effluent, it is typically obvious that one or two contaminants indicate the overall level of contamination

in the effluent. For example at “Gasoline Cleanup Sites,” benzene, toluene, ethylbenzene and xylene (BTEX) would probably be a good indicator. Choosing the one or two indicators to be measured monthly could be done with State and/or EPA approval and put in the NOI.

The initial startup sampling and laboratory analysis (Section I.D.2) should be limited to one or two key contaminants after the initial characterization (the first week at most), as with the monthly sampling. Any other analysis during the first month should be limited to field methods. Re-start sampling (Section I.D.5) should be limited to the one or two key contaminants already identified as such, similar to the monthly and startup sampling. Hydrostatic testing effluent (Section I.D.8) should be limited to one or two indicator contaminants.

Recommendation: Provide for use of site knowledge and previously performed analyses upon initial application. Provide for reducing the suite of analyses and/or frequency from those in the general permit. Limit repetitive monitoring to a few key indicator contaminants.

Reference:

a. Remediation General Permit, Section I.D.

6. Clarify purpose for requiring sampling of influent to treatment

Comment: Repeated sampling of intake concentration to the treatment system should not be a permit requirement. As proposed, the Remediation General Permit, Sections I.D.2.a (page 25) and I.D.5.a (page 27) requires repeated sampling of both the intake water to a treatment system and effluent from the system. Sampling is required on the first, third, sixth days, then weekly for a month, then monthly. Two sets of influent and effluent samples are required the first week after re-starting the system.

Discussion: The permit should be principally concerned with what is discharged, not what is taken in to the treatment system. There is no apparent data objective for which the influent data is needed, other than the engineering operation of the treatment system. Determination of the need for influent sampling data and the frequency of such sampling is properly left to the designer/operator of the treatment system, rather than mandated in the general permit.

Recommendation: Influent sampling should not be a requirement of the general permit.

Reference:

a. Remediation General Permit, Sections I.D.2.a (page 25) and I.D.5.a (page 27).

7. Reorganize permit to make state-specific differences and identical language easily identifiable

Comment: State-specific differences within the permit should be made as easy to identify as possible, leaving the remaining language identical.

Discussion: In the initial pages of the permit, the Massachusetts and New Hampshire pages should be as identical as possible, e.g., paragraph 2, sentence 2 should be identical in both.

State-specific differences could be made to stand out better, leaving the remaining language identical. For example, on page 1, instead of:

“In compliance with the provisions of the Federal Clean Water Act, as amended¹, and the Massachusetts Clean Waters Act, as amended², the following permit authorizes discharge of water from four general categories, including: 1) site remediation primarily related to petroleum contamination; 2) site remediation activities where petroleum is not the primary contaminant; 3) contaminated construction site dewatering; and 4) miscellaneous contaminated discharges. Such discharges are authorized at sites located in Massachusetts (including both Commonwealth and Indian Country lands) to all classes of waters designated in the Massachusetts Water Quality Standards, 314 CMR 4.00 et seq., unless otherwise restricted, in accordance with effluent limitations, monitoring requirements, and other conditions set forth herein.”

Try:

“In compliance with the provisions of the laws listed below (as amended), the following permit authorizes discharge of water from four general categories, including: 1) site remediation primarily related to petroleum contamination; 2) site remediation activities where petroleum is not the primary contaminant; 3) contaminated construction site dewatering; and 4) miscellaneous contaminated discharges.

- Federal Clean Water Act¹; and
- Massachusetts Clean Waters Act².

Such discharges are authorized at sites located in Massachusetts (including both Commonwealth and Indian Country lands) to all classes of waters designated in the Massachusetts Water Quality Standards, 314 CMR 4.00 et seq., unless otherwise restricted, in accordance with effluent limitations, monitoring requirements, and other conditions set forth herein.”

On page 6, the a and b subsections of section I.A.2 should lead off with the name of the state (and italics would make it similar to Section 3’s format), i.e.:

- a. *Massachusetts*.
All of the discharges...
- b. *New Hampshire*.
All of the discharges...

Similar organization would improve Sections I.E.2.b (page 30) and I.G.3 (page 34).

Section I.A.3 should be broken into three sections: Federal (common to both states), Massachusetts-specific, and New Hampshire-specific.

Material in some of the appendices should be in paragraphs headed by the name of the state, for example, in Appendix VII Endangered Species, on page 1, Section I.A, the third paragraph should begin with the names of the states to designate them as containing state-specific material. Then the subparagraphs should be organized by state, not endangered species. (There is almost no overlap in the case of these particular states and species.)

Recommendation: Consider revising the permit text to improve its readability, ease of identifying state-by-state differences, and its usefulness as a model that can readily be adapted for other states.

Reference:

a. Remediation General Permit, Sections I.A.2., I.E.2.b (page 30), and I.G.3 (page 34).

8. Provide one complete listing of all excluded and conditional excluded discharges

Comment: Part I.A.3 discharges excluded from coverage should include or reference all excluded discharges.

Discussion: Section I.B.6 (discharges affecting historic properties) would seem to be more logically placed with the exclusions of section I.A.3. The material of section I.B.4 (discharges excluded unless FWS consultation is obtained) would seem to be more logically placed behind section I.A.3 (excluded discharges) material.

Recommendation: Consider grouping all the excluded or conditionally excluded discharges together.

Reference:

a. Remediation General Permit, Sections I.A.3, I.B.4, and I.B.6.

9. Provide a standardized form for obtaining concurrence from FWS and NMFS

Comment: A standardized form for obtaining the written concurrence required under section I.B.5.b should be included in the appendices of this general permit. As proposed, applicants with potential discharges to listed areas must consult with the U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) and obtain concurrence.

Discussion: The distinction between formal and informal consultation (Section I.B.5.c) is confusing.

Recommendation: Provide a standardized form in the appendices of this permit for obtaining the written concurrence required under Section I.B.5.b. Clarify the distinction between formal and informal consultation in Section I.B.5.c.

Reference:

a. Remediation General Permit, Section I.B.5.

10. Define short-term discharges

Comment: Either define "short-term" discharges under Specific Discharges Excluded from Coverage or add a reference to the definition given later in permit.

Discussion: Short-term has various meanings and interpretations. In this context, it must not be vague.

Recommendation: After word discharges add, "as defined on page 28, Part 1.D.7."

Reference:

a. Remediation General Permit, Section 1.A.3.n., (page 7).

11. Add page numbers to the Table of Contents

Comment: Add page numbers to line items in Table of Contents

Discussion: Without page numbers the permittee will find it difficult and time consuming to find those permit requirements with which he must comply. This could result in non-compliance and enforcement actions.

Recommendation: Add page numbers to Table of Contents

Reference:

a. Remediation General Permit, pages 3 and 4.

12. Add reference for discharges to MS4s

Comment: The Remediation General Permit should add a reference to the Special NPDES Permit Conditions section to the statement excluding discharges to municipal separate storm sewer systems (MS4s) unless permitted or approved.

Discussion: The Permit states, at Part 1.A.3.h., that discharges to MS4s are excluded unless local permitting or approval under the Storm Water Management Plan (SWMP) is completed. However, it doesn't reference and/or state how approval is obtained. Part 1.F.1 provides more information/requirements and partially clarifies this issue.

Recommendation: In Part 1.A.3.h., add a reference to Part 1.F.1.

Reference:

a. Remediation General Permit Sections 1 A.3.h.and 1.F.1.

13. Correct section heading format

Comment: Sections 1. L & M are mislabeled.

Discussion: Text labels sections L and M, however, the Table of Contents labels them H and I.

Recommendation: Relabel Sections 1.L and 1.M to 1.H and 1.I, as appropriate.

Reference:

- a. Remediation General Permit, Sections 1.L. and 1.M.

14. Comments specific to requirements pertaining to New Hampshire under the proposed permit

General Comment: The compliance objectives set forth in this newly proposed EPA-NE permit program are best achieved by judicious application and enforcement of the existing and newly proposed rules promulgated at the state level in New Hampshire, combined with the already existing USEPA NPDES Permit Programs. The below-referenced rules promulgated by the State of New Hampshire (at a minimum) more than adequately cover the concerns that EPA-NE has referenced in their newly proposed permit program:

- a. New Hampshire Env-Ws 415 - Permits for the Site Specific Program (Alteration of Terrain)
- b. New Hampshire Env-Ws 421 - Best Management Practices for Preventing Groundwater Contamination
- c. (Interim) - New Hampshire Env-C 700 - River Management & Protection Program
- d. New Hampshire Env-Ws 1400 - Shoreland Protection Program Rules
- e. New Hampshire Env-Wm 1401 - Underground Storage Tank Rules
- f. New Hampshire Env-Wm 1402 - Aboveground Storage Tank Rules
- g. New Hampshire Env-Wm 1403 - Groundwater Management and Groundwater Release Detection Permits
- h. New Hampshire Env-Wm 1404 -VOCs, Gasoline Dispensing Facilities, Bulk Gasoline Plants and Cargo Trucks
- i. New Hampshire Env-Ws 1500 - Groundwater Discharge Permit and Registration
- j. New Hampshire Env-Wm 1600 - Standards for Reporting and Remediation of Oil Discharges
- k. New Hampshire Env-Ws 1700 - Surface Water Quality Regulations

Discussion: Before commencing work on any contaminated site or a site where there will be known discharges, there are already several permits required (both State and Federal) which serve to protect the groundwater and surface water and soil conditions on the site. For example, DoD has always ensured that it applies for an EPA Construction General Permit when required before any construction commences. When working on a contaminated site where pumping of contaminated or potentially contaminated groundwater is involved, DoD would obtain either a New Hampshire Groundwater Discharge Permit or New Hampshire Groundwater Management Permit (whichever is more appropriate) and comply with all of its conditions. In most cases, the conditions imposed under those permits are just as stringent as what is being proposed by EPA-NE, so a new set of federal rules would be unlikely to achieve any greater level of compliance or environmental protection. As pointed out by EPA-NE, “nearly all of the discharges pursuant to remediation projects in Massachusetts and New Hampshire have utilized off the shelf, economically viable, and proven treatment systems including: 1) phase separation, 2) sedimentation, 3) filtration, 4) air stripping and/or 5) carbon adsorption. Vapor phase carbon treatment is also typically utilized with air stripping for air emission control. For metals removal, typical controls include chemical addition, pH adjustment, and possibly ion exchange type units.”

These facts provide a clear demonstration that the types of sites and activities proposed for jurisdiction by EPA-NE are already being adequately addressed by appropriate technologies in active use employed by permittees under existing Federal and State permit programs.

Furthermore, the following comments are provided in reference to particular sections of the Remediation General Permit:

1. Part I - Section C. Effluent Limitations and Monitoring Requirements - These requirements are more than adequately addressed by New Hampshire Env-Ws 1500, and New Hampshire Env-Ws 1700, at a minimum. It is unclear what benefit is achieved by collecting monthly samples at each outfall for analysis when the results will be merely kept on file on the site and no regulatory review will be performed. Such sampling can also be costly over time.
2. Part I, Section C, (7) - Consideration of Dilution Factors for Discharges of Metals - Determination of the applicable effluent limitations for metals in freshwater (by a permit applicant) is difficult and cumbersome. Threshold limits can be more appropriately set forth in state permit conditions with a reasonable (quarterly or less) sampling requirement. If the permittee demonstrates there has been no exceedances of the effluent limit for 3 consecutive sampling periods, the sampling requirement should be then be dropped from the permit conditions.
3. Part I, Section C, (8) - The sampling requirement that must accompany the permittee's certification that a chemical is "Not present," although only a single sample, can be costly due to the types of analysis that must be performed. Equivalent information can be obtained under the permit conditions set forth in State of New Hampshire permits, as appropriate for the site and activity.
4. Part I, Section C, (9) - Flow Monitoring could be more appropriately addressed in Stormwater Pollution Prevention Plans (SWPPPs) that may already exist for that site or activity in state discharge permit conditions. However, this will require costly oversight.
5. Part I, Section D, (2) (b) - Analysis of samples with a 72-hour turn-around time can be cumulatively costly.
6. Part I, Section D, (2) (e) - This requirement will be overly burdensome in terms of contractual obligations the permittee will have in place with their respective contractor. Shut downs are extremely costly, especially if they are prolonged.
7. Part I, Section D, (2) (e) (4) - It is unclear what the permittee must do if it is unable to reach EPA-NE and the State in a timely manner; 48 hours is a very restrictive time period. As stated previously, prolonged shutdown of the permittee's contractor will be extremely costly.
8. Part I, Section D, (3) - This requirement is best met under existing State of New Hampshire permit programs as appropriate.
9. Part I, Section D, (4) - As stated previously it is unclear how performing analysis and keeping the results on file at the site without regulatory review (except in the case of a violation)

provides an environmental benefit. Analytical results submitted to State of New Hampshire Department of Environmental Services under already existing State of New Hampshire permit programs, with regulatory response as appropriate, would achieve the desired outcome intended here.

10. Part I, Section D, (5) and (6) - It is unclear how doubling the number of influent and effluent laboratory samples taken during the first week after re-start of discharge will provide a greater environmental benefit than collection of a single set of samples. Again, analysis of samples with a 72-hour turn-around time can be cumulatively costly. As stated previously, prolonged shutdown of the permittee's contractor will be extremely costly.
 - a. Part I, Section D, (8) - The desired level of environmental protection can be readily obtained (in lieu of sampling requirements) with the application and employment of best available technologies as referenced by US EPA. Tanks are already sampled as required by New Hampshire Env-Wm1401 - Underground Storage Tank Rules and New Hampshire Env-Wm 1402 - Aboveground Storage Tank Rules. The state regulator already has the right to require additional samples if deemed necessary under those existing rules.
11. Part I, Section E - If a site already has an existing SWPPP or Spill Prevention, Control & Countermeasure Plan (SPCCP) that meets existing regulatory requirements under other permits or programs, a BMPP should not be required.
12. Part I, Section E, (2) - These requirements are already incorporated under other permits or programs (with the possible exception of items (d., e. and f)). It is unclear how duplicating these requirements will provide any additional environmental protection.
13. Part I, Section E, (3) - These requirements are already met under one or more existing State of New Hampshire environmental rules, as referenced above in General Comment #1.
14. Part I, Section F, (1) - These requirements are already assumed by an EPA MS4 general permit or Multi-Sector Stormwater General Permit.
15. Part I, Section F, (2) - These conditions are met by several already existing State of New Hampshire rules governing discharge of hydrostatic test water and need not be duplicated here.
16. APPENDIX V- NOI Form - the requirements of completing this form are very costly, especially the requirement for signature and stamp of a professional engineer. If a permittee already has an existing SWPPP or SPCCP for the site that has been reviewed and signed by a professional engineer, the permittee should not be required to provide the same for the Remediation General Permit NOI.