RESPONSE TO COMMENTS ON DRAFT NPDES PERMIT FOR COMMONWEALTH OIL REFINING COMPANY, INC. FOR ITS PEÑUELAS, PUERTO RICO FACILITY (PR0000345

On July 20, 2012, the United States Environmental Protection Agency (EPA) public noticed the preparation of a draft National Pollutant Discharge Elimination System (NPDES) permit (PR0000345) for Commonwealth Oil Refining Company, Inc. (CORCO) as permittee for the discharge to waters of the United States from its facility located at 600 State Road Number 127, Peñuelas, Puerto Rico, 00624. The public comment period for CORCO's draft NPDES permit expired on September 4, 2012. The draft NPDES permit includes requirements from the final Water Quality Certificate (WQC) issued by the Environmental Quality Board of Puerto Rico (EQB) on December 16, 2011.

EPA received a complete application (for Outfall 001 under cover letter dated January 31, 2004, and revised pages submitted under cover letter dated June 10, 2004, with additional information in a September 20, 2004 letter and for Outfalls 002 and 003 under cover letters dated November 10, 2006, and April 17, 2007) which is the basis for the public notice of the draft permit.

According to 40 Code of Federal Regulations (CFR) §124.17, at the time that any final permit decision is issued under §124.15, EPA shall issue a response to comments. This response shall (1) specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and (2) briefly describe and respond to all significant comments on the draft permit raised during the public comment period or during any hearing.

A comment pertaining to the draft permit (denoted as Comment 1 below) was received in a letter dated August 24, 2012 attached to an August 24, 2012 email from Mr. Kelly J. Whalen, P.E., NewFields, at the following address: 77 First Street, Melrose, Massachusetts 02176. The email was addressed to the permit writer and forwarded by the permit writer to the Clean Water Regulatory Branch chief. The CWRB chief is specified as the contact for written comments.

Comments pertaining to the draft permit (denoted as Comments 2.1 through 2.12) were received in a letter dated September 4, 2012 attached to a September 4, 2012 email from Mr. Kelly J. Whalen, P.E., NewFields, at the following address: 77 First Street, Melrose, Massachusetts 02176. The comments were submitted on behalf of CORCO. Also attached to the email was a September 4, 2012 letter from Rolando H. Mendez Betances of CORCO confirming that NewFields is authorized by CORCO to submit comments on its behalf for the draft NPDES permit and Factsheet.

The comments have been reviewed and considered in this final permit decision. A discussion and response to the comments received is included below in this attachment.

The provisions in the draft permit which have been changed in the final permit decision, and the reasons for those changes are included in Attachment II.

Comment 1: NewFields indicates that it has been directed by CORCO to respond to EPA on CORCO's behalf. NewFields refers to EPA's prohibition on discharge [through Outfall 001] until CORCO certifies that the proposed treatment plant is able to treat certain contaminants and that many of these contaminants appear to be in question due to relatively high detection limits of the original sampling rounds. NewFields indicates that CORCO believes that due to the inordinate amount of time that has expired between the application submission and the response from the EPA it needs to resample the wastewater to develop a current understanding of the contaminant profile prior to commenting on the NPDES permit itself. NewFields indicates that the resampling will also provide CORCO an opportunity to evaluate analytical interferences that increase detection limits given the unusually high salt concentration. NewFields also indicates that CORCO also intends to perform bench test treatability studies. Therefore, on behalf of CORCO NewFields requests that the comment period be extended 90 days for these above purposes.

Response 1: The regulations in 40 CFR §124.13 require all persons who believe that any condition of a draft permit is inappropriate to raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by the close of the public comment period under 40 CFR §124.10. Those regulations also specify that a comment period longer than 30 days may be necessary to give commenters a reasonable opportunity to comply with the requirements of this section (40 CFR §124.13), and that additional time shall be granted under 40 CFR §124.10 if a commenter who requests additional time demonstrates the need for the time. The commenter has requested additional time. However, EPA has determined that the commenter has not adequately demonstrated the need for the additional time as follows:

- According to 40 CFR §124.10, EPA is required to allow at least 30 days for public comment. EPA has allowed 45 days.

- The draft NPDES permit has already been prepared based on the conditions specified in the timely and complete application, including any wastewater characterization for the discharge from Outfall 001. At this juncture, since a draft permit has already been prepared and public noticed, any updated characterization (e.g., through sampling, etc.) or treatability studies would appropriately be used in the written certification specified in Part I.C, Item 1.b of the permit or possibly for permit modification after permit issuance (e.g., notice of planned change discussed in Part II.B.12.a, etc.). Submission of that written certification is separate from the comment period (as discussed in the bullet below). If sufficient information for the written certification is available prior to the close of the comment period then it could coincidentally be submitted, but it would be separate from timely comments, which are required to be submitted by the end of the comment period.

- The commenter associates the need for this re-sampling and treatability studies with CORCO's written certification that the proposed treatment plant is able to treat certain contaminants. This certification is included in the draft permit condition in Part I.C, Item 1.b "Prohibition until Adequate Written Certification Provided". It specifies (among other things) that the initial written certification must include the estimated level of each of the referenced parameters in the effluent and this estimate must be at or below the effluent limit of the water quality-based parameters in Table A-1. The permittee may use sampling results

in developing those estimates. The issue then is the time frame for providing these estimates as part of the initial written certification (i.e., whether the due date is specified in the draft permit/factsheet and whether that due date is during the comment period). As far as the timeframe for submitting this initial written certification, there is no due date specified in the draft permit or factsheet. The "Prohibition until Adequate Written Certification Provided" is open-ended and therefore certification could be provided any time from the beginning of the public notice comment period until anytime after permit issuance. Therefore, the commenter has not adequately demonstrated that this additional time is necessary to meet the requirement in Part I.C.1.b of the draft permit to provide estimates (including sampling results) as part of the submission of a written certification.

EPA did not grant the extension and the EPA permit writer notified the commenter of this decision in an email dated August 27, 2012 replying to the commenter's August 24, 2012 email and attached August 24, 2012 comment letter.

Comments 2.1 through 2.12: These comments are divided between comments on various sections of the factsheet and draft permit as follows:

Factsheet Comments:

Comment 2.1: Item II. Description of Facility: NewFields provided the following comment: CORCO installed stormwater conveyance systems in 2003 to divert the industrial areas (upper reaches) of the Outfall 002 to consolidate all industrial related discharges into Outfall 003. Therefore, in the present, all industrial areas normally discharge to Outfall 003. However, the industrial portion of the Outfall 002 drainage area could, with CORCO's intervention, discharge into the non-industrial section conveyance of Outfall 002. EPA describes this situation incorrectly. CORCO understands that should a portion of the industrial area discharge to Outfall 002 that Outfall 002 must meet certain effluent requirements and the water must be treated in the same manner as Outfall 003.

Response 2.1: EPA used the complete NPDES permit application for Outfalls 002 and 003 to provide the description of the facility. The complete application for these outfalls consists of the general Form 1 and Form 2F. Form 2F was submitted under cover letter dated November 10, 2006, but then a revised application was submitted under cover letter dated April 17, 2007. The comment has not discussed specifically how EPA's description is incorrect. EPA believes the comment is referring to CORCO's intervention to allow the discharge into the non-industrial conveyance of Outfall 002 of a portion of the industrial drainage areas (upper reaches) of Outfall 002, which was consolidated and diverted through Outfall 003.

In regard to the incorrect description, the factsheet refers to an emergency diversion and specifies: "The stormwater in Outfall 002 is normally not associated with industrial activity but during emergencies the applicant is proposing to divert part of the discharge from Outfall 003 through Outfall 002."

The factsheet wording is taken from the "Form 2F Attachment" in the application submitted under April 17, 2007 cover letter and is shown here:

- Page 1, Third paragraph:

  In the event of emergency runoff conditions associated with heavy tropical rainfall events, CORCO may divert some of the discharge from outfall 003 to outfall 002 by means of a valve at the head of the diversion structure to protect the integrity of the diversion structure or buildings at the facility. Therefore, CORCO proposes to maintain outfall 002 as a discharge point and to perform hand monitoring of outfall 002 in the event of discharge associated with industrial activity.

- Page 4, Section VII, Second Paragraph:

  As described in the introduction section, outfall 002 does not have any discharge associated with industrial activity. However, in a heavy flood condition, CORCO may elect to divert some of the storm water runoff from outfall 003 to outfall 002 on a temporary basis. If this condition occurs, CORCO will initiate sampling of outfall 002. Since October 2005 no diversion has occurred, and therefore no data has been collected for outfall 002 since then.

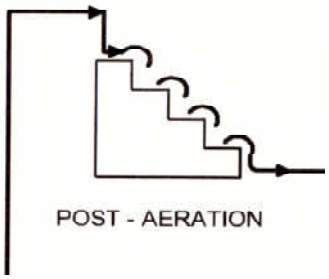
Therefore, EPA's factsheet adequately describes the emergency diversion as specified in the application, which is the basis for the draft permit. EPA does not agree with the commenter's assertion that this situation is described incorrectly.

Comment 2.2: Item II. Description of Facility, End of first Paragraph: NewFields provided the following comment: Strike the words "(step aeration)." Diffused air is used for post-aeration.

Response 2.2: EPA used the complete NPDES permit application for Outfall 001 to provide the description of the facility in the factsheet. The complete application consists of Form 1 and Form 2C. Form 2C was submitted under cover letter dated January 31, 2004, revised pages submitted under cover letter dated June 10, 2004, and additional information submitted under September 20, 2004 cover letter. The June 10, 2004 application continues to show "step aeration" in Form 2C, Item II.B3.a as follows:

1. OUTFALL NUMBER (list)	2. OPERATION(S) CONTRIBUTING FLOW		3. TREATMENT	
	a. OPERATION (list)	b. AVERAGE FLOW (include units)	a. DESCRIPTION	b. LIST CODES FROM TABLE 2C-1
001	Tank and Line Product Displacement Water	40 gpm	Corrugate plate separator	1-H
	Kuwait Water	65 gpm	Trickling filter biological treatment	3-H
	Groundwater from Product Recovery	3 gpm	Flocculator	1-G
	Lab Sink Drain Water	2 gpm	Continuous backwash filter	1-R
	Oily Sewer Dock Sump Water	2 gpm	Sand drying bed	5-H
	RCRA Unit Closure Water	4 gpm	Surface water discharge	4-A
	Tank and Line Testing Water	40 gpm	Pre-Aeration (if surfactant limit < 1 ppm)	3-E
	Tank and Line Cleaning Water	40 gpm	Post-Aeration (step aerator)	N/A

It also shows step aeration in the flow diagram:



The September 20, 2004 letter does not provide an update for Item II.B.3.a in Form 2C.

EPA did not find any overriding wording in the application that shows diffused air instead of step aeration. Therefore, an amendment is not appropriate and the draft permit is based on the use of step aeration. However, although step aeration is specified in the application, equivalent treatment may be used to ensure the permit limits are met. After a permit is issued and upon renewal of that permit, the renewal application should be submitted with up-to-date information on treatment units.

Comment 2.3: Item II. Description of Facility, Second Bullet: NewFields provided the following comment:

Storm water that accumulates in the former wastewater treatment lagoons does not normally discharge into the Effluent Channel, nor does it discharge through the former API separator. The lagoons are hydraulically isolated. However, it is theoretically possible that the ponds could overflow to the effluent channel if extraordinary rain events occur in close succession resulting in a water level accumulation above normal.

The former API separator is now connected to the Outfall 003 storm water sewer from portions of the facility and the discharge pipe is normally closed. The curbed area of the Truck Loading Rack also drains into the former API separator. Prior to opening the discharge pipe of the former API separator, the water surface is inspected for oil presence, and any oil removed.

Response 2.3: This comment should really refer to the first bullet in the factsheet in Item II. "Description of Facility" instead of the second bullet. The first bullet in Item II of the factsheet says:

> Stormwater that is stored in the former wastewater treatment lagoons (east, west, aeration, and oxidation) and that does not evaporate drains through the oil separator box (formerly the API separator but without skimmers (dismantled)), and then drains through the main stormwater ditch to the effluent channel (after drain valve is opened, but only after inspection for and removal of any oil that may be present).

EPA used the complete NPDES permit application for Outfalls 002 and 003 to provide the above description of the facility which is also referenced in this comment. EPA checked as to where this factsheet wording was obtained. The following wording, taken from "Item IV. Narrative Description of Pollutant Sources" in the attachment titled "Form 2F Attachment" in the April 17,

2007 application for Outfalls 002 and 003, agrees with the above factsheet language:

> Former Wastewater Treatment Lagoons and Former API Separator - The former wastewater treatment lagoons and former API separator are shown in the storm water figure. The former wastewater lagoons include the east cooling lagoon, the west cooling lagoon, the aeration lagoon and the oxidation lagoon. The former API separator skimmers were dismantled and the remaining vessel is used as an oil separator box for storm water. All lagoons as well as the API separator are hydraulically isolated flow into the effluent channel for storm water drainage. These lagoons are large enough to provide sufficient storage for storm water while sufficient freeboard is normally maintained at the former API separator. Rainfall that may be collected in these lagoons typically evaporates. The drain valve from the main storm water ditch is normally closed and is only opened to allow storm water discharge to the effluent channel after inspection for and removal of any oil that may be present.

This comment makes various statements, but does not specify any changes to the factsheet or permit.

The following statement in the comment does not necessarily agree with the description provided in the application: "Storm water that accumulates in the former wastewater treatment lagoons does not normally discharge into the Effluent Channel… ." Without the clarification provided in the comment, the following application wording could be read to indicate that the lagoons do discharge to the effluent channel: "All lagoons as well as the API separator are hydraulically isolated **flow into the effluent channel** for storm water drainage." The updated description provided in the comment is considered part of the administrative record for this permit.

EPA agrees with the following statement in the comment: "… nor does it [the storm water from the lagoons] discharge through the former API separator." EPA incorrectly understood from the above-referenced application wording that the lagoons discharge to the former API separator and then the API separator discharges to the effluent channel. Instead, from the comment, EPA understands that the lagoons do not discharge to the former API separator. The factsheet accompanying a permit is used to document EPA's decisionmaking up to the time of issuance of a draft permit. Therefore, EPA will not change the factsheet. However, this comment and response will document this change and are considered part of the administrative record for this permit.

Comment 2.4: Item II. Description of Facility, Third Bullet: NewFields provided the following comment: Strike the words "and truck loading racks south of highway 127." The containment for the truck loading racks are separate from the pipeline/pump stations. The truck loading rack is discussed clearly in the next bullet item.

Response 2.4: The third bullet in Item II of the factsheet says:

> For the pipelines and pump stations transporting hydrocarbon products to/from the marine terminal and truck loading racks south of highway 127, the pump stations are contained within dikes and the main pipeline and associated pump stations are hydraulically isolated. Any spilled or leaked material is routed through underground piping to an oil trap box before discharge to the effluent channel. Guillotine valves are immediately downstream of the oil trap box discharge point in the effluent channel.

EPA used the complete NPDES permit application for Outfalls 002 and 003 to provide the above bulleted wording. EPA checked where this factsheet wording was obtained. The following wording, taken from "Item IV. Narrative Description of Pollutant Sources" in the attachment titled "Form 2F Attachment" in the April 17, 2007 application for Outfalls 002 and 003, agrees with the above factsheet language:

> Pipelines and pump stations - The pipelines and pump stations north of highway 127 are used to transport hydrocarbon products to and from the main tank farm. The pipelines and pump stations within basin 003 drain to either the main storm water ditch or the former cooling water ditch. Both of these ditches have oil trap boxes installed that collect and separate hydrocarbon products from storm water. Any oil collected in these boxes is removed from the boxes by a vacuum truck and returned to tanks. The pipelines and pump stations south of highway 127 are used to transport hydrocarbon products to and from the marine terminal and the truck loading racks. Pump stations in this area are contained within dikes while the storm water drainage from the main pipeline to the docks and associated pumps stations is hydraulically isolated. Any spilled or leaked material would be routed through underground piping to an oil trap box before discharge to the effluent channel. There are also guillotine valves immediately downstream of the oil trap box discharge point in the effluent channel.

EPA's summary in bullet 3 did not say that the containment for the truck loading racks south of highway 127 is the same as for the pipeline/pump stations. This bullet merely describes the pipelines/pump stations as those that were transporting hydrocarbon products to the truck loading racks south of highway 127. However, the clarification provided in the comment is considered part of the administrative record for this permit.

Comment 2.5: Item III. Description of Discharge, Not a Renewal: NewFields provided the following comment: CORCO notes that the permit for Outfall 001 is not a renewal. The permit is being renewed for storm water Outfalls 002 and 003; Outfall 001 is being permitted under the reopener clause in the administratively extended permit in effect.

Response 2.5: A NPDES permit was previously issued on September 18, 1986, effective December 1, 1986 and expired November 30, 1991. The permit was modified on February 18, 1988 (effective April 1, 1988) to include the discharge through Outfall 001. Therefore, EPA believes it is appropriate to use the term "renewal."

Comment 2.6: Item III. Description of Discharge, Other Clean Waters: NewFields provided the following comment: CORCO notes that Outfalls 002 and 003 discharges may contain other "clean" waters as provided for in the facility Storm Water Pollution Prevention Plan, such as fire

hydrant flushing water.

Response 2.6: The April 17, 2007 application does not specify any non-storm water discharges as follows:

> **V. Non-Storm Water Discharges**
>
> Outfall 002 and Outfall 003 were visually inspected for the presence on non-storm water discharges on July 8-12, 2002, during dry weather conditions. During this inspection, no non-storm water discharges were found from either outfall. Please see worksheet 3 of CORCO's Storm Water Pollution Prevention Plan dated July 2002.

This comment has not specifically requested changes to the factsheet or permit to include these non-storm water discharges. Special Condition 2 in the final Water Quality Certificate date December 16, 2011 states: "The discharge from the Outfalls 002 and 003 will consist of waters composed entirely of stormwater." Also, Table A-2 of the WQC says: "During the period beginning on EDP and lasting through EDP + 5 years, the permittee is authorized to discharge from outfall serial numbers 002 and 003 to Bahia de Tallaboa, waters composed entirely of storm water."

EPA's multi-sector general permit (MSGP) does provide clarification on certain non-storm water discharges that may be included.

The MSGP can be found at: http://www.epa.gov/npdes/pubs/msgp2008_finalpermit.pdf. Section 1.1.3 provides a list of allowable non-stormwater discharges as follows:

> 1.1.3 Allowable Non-Stormwater Discharges.
> The following are the non-stormwater discharges authorized under this permit, provided the non-stormwater component of your discharge is in compliance with Part 2.1.2.10:
>
> - Discharges from fire-fighting activities;
> - Fire hydrant flushings;
> - Potable water, including water line flushings;
> - Uncontaminated condensate from air conditioners, coolers, and other compressors and from the outside storage of refrigerated gases or liquids;
> - Irrigation drainage;
> - Landscape watering provided all pesticides, herbicides, and fertilizer have been applied in accordance with the approved labeling;
> - Pavement wash waters where no detergents are used and no spills or leaks of toxic or hazardous materials have occurred (unless all spilled material has been removed);
> - Routine external building washdown that does not use detergents;
> - Uncontaminated ground water or spring water;
> - Foundation or footing drains where flows are not contaminated with process materials; and

- Incidental windblown mist from cooling towers that collects on rooftops or adjacent portions of your facility, but not intentional discharges from the cooling tower (e.g., "piped" cooling tower blowdown or drains).

This list would also apply for the CORCO stormwater Outfalls 002 and 003.

Comment 2.7: Attachment II, Section II, p. 10/18, 2. Non-Antibacksliding Parameters (Outfall 001): NewFields provided the following comment: The permit imposes a limit on mercury that is stricter than the water quality standard. CORCO disagrees that a limit that is stricter than the water quality standard is justified and requests that EPA provide its reasoning for a stricter mercury limitation.

Response 2.7: The final WQC dated December 16, 2011 includes a water quality-based limit of 0.025 ug/l for Outfall 001. The draft permit has included this same limit based on the WQC. The commenter has not requested an alternate limit but only requested the reasoning for a stricter limit. The Environmental Quality Board of Puerto Rico (EQB) has included a stricter value in the WQC than what is specified in the Puerto Rico Water Quality Standards Regulations based on the National Toxics Rule. Information on this rule can be found at: http://water.epa.gov/lawsregs/rulesregs/ntr/ntr.cfm. Also, refer to the "Generalized Response" below concerning those comments, including Comment 2.7, which relate to requirements in the EQB WQC. It explains that concerns and comments regarding the WQC must be directed to EQB or to the Superior Court.

Comment 2.8: Attachment II, Section VI.2 & VI.3: NewFields provided the following comment: The draft permit includes reopeners for Endangered Species, Essential Fish Habitat, and for EEQ (Existing Effluent Quality) Limits for TOC and TSS limits for Outfall 003. CORCO reserves the right to comment on any material change to the permit due to Endangered Species, Essential Fish Habitat and EEQ that arise prior to the issuing the final discharge permit.

Response 2.8: Part I.C, Items 2, 4, and 6 of the draft permit include a "Reopener Clause for Endangered Species Protection," "Reopener Clause for Essential Fish Habitat Protection," and "Existing Effluent Quality Limit Reopener Clause," respectively. Items 2 and 4 specify that the permit may be modified or revoked and reissued, and Item 6 specifies that the permit may be modified. These conditions apply after the permit is issued. EPA has not made any changes to the permit from draft to final in these areas. Therefore, if EPA chooses to modify or revoke and reissue the permit after issuance to include any requirements applicable to these reopeners in the permit, this process would involve a public notice and a corresponding comment period at which point the commenter could provide comments on these matters.

Comment 2.9: Attachment III – (Analysis for TOC and TSS in Outfall 003): NewFields provided the following comment: The analysis of the total suspended solids data excluded high values of TSS (for example #13 May 2010 with a value of 945 mg/l was excluded from the data set). What technical basis was used to determine certain values were to be excluded from the data set?

Response 2.9: This comment asks a question, but has not specified any changes to the permit. To answer the question, the basis for excluding data is discussed in the table in the column titled

"Treatment Upset Reported in Cover Letter or ICIS database, or Nonrepresentative Values?".

Draft NPDES Permit Comments:

Comment 2.10: Whole Effluent Toxicity (WET) Requirements, pages 13 through 16 of 18: NewFields provided the following comment: CORCO notes that the treated effluent will be brackish water that originated as seawater but that has been subjected to various treatment technologies to remove petroleum products and various metals. The WET is based on sensitive fish species that may experience toxic effects simply due to the differing ratio of ions in the water rather than any toxic substances due to the lack of acclimation. Variation in the ion ratios may cause "false positive" toxic test results. This particular issue, among others, will be addressed in the Toxic Reduction Work Plan to be submitted to EPA Region 2.

Response 2.10: This comment has not requested a specific change to the permit. EPA notes your concern. The species and testing are based on the final Water Quality Certificate dated December 16, 2011. Also, refer to the "Generalized Response" below concerning those comments, including Comment 2.10, which relate to requirements in the EQB WQC. It explains that concerns and comments regarding the WQC must be directed to EQB or to the Superior Court.

Comment 2.11: Additional Requirements, 1. Prohibitions, pages 20 through 22 of 28: NewFields provided the following comment: CORCO reserves the right to comment on the requirements that are to be added to items 2 through 6, which were not included in the Draft Permit.

Response 2.11: Please refer to the response to comment 2.8 above.

Comment 2.12: Outfall 003 Monitoring Requirements: NewFields provided the following comment: Though Outfall 003 is occasionally controlled by tidal levels at the discharge point into Tallaboa Bay during significant rain events, it is not feasible to measure flow continuously at this point simply because there is no flow most of the time. Storm discharges are dependent on significant runoffs upstream to reach this point. Further, since the limits are concentration based instead of mass based it is not clear to CORCO how continuous flow monitoring would be relevant to the regulators. Continuous flow measurement requirement at this location should be removed from the permit and replaced with When Flow Occurs monitoring.

Response 2.12: The requirement for continuous flow measurement for Outfall 003 is based on the final Water Quality Certificate dated December 16, 2011. Refer to the "Generalized Response" below concerning those comments, including Comment 2.12, which relate to requirements in the EQB WQC. It explains that concerns and comments regarding the WQC must be directed to EQB or to the Superior Court.

Generalized Response: EPA is providing this generalized response to those comments (Comments 2.7, 2.10 and 2.12) that relate to requirements in the EQB WQC.

Section 301(b)(1)(C) of the CWA requires that effluent limitations necessary to assure that a discharge will meet applicable Water Quality Standards (WQS) be included where more

stringent than the technology-based effluent limitations required by Section 301(b)(1)(A) of the CWA. Section 401(a)(1) of the CWA requires that the State certify that the discharge will comply with the applicable provisions of sections 301, 302, 303, 306 and 307 of the CWA. Pursuant to Section 401(d) of the CWA, any certification shall set forth any effluent limitations and other limitations, and monitoring requirements necessary to assure that any applicant for a Federal permit will comply with any applicable effluent limitations and other limitations under section 301 or 302 of the CWA, and with any other appropriate requirement of State law set forth in such certification. Also, 40 CFR §122.44(d) requires that each NPDES permit shall include requirements which conform to the conditions of a State Certification under Section 401 of the CWA that meets the requirements of 40 C.F.R. §122.53 which, among other things, specifies that all Section 401(a)(1) State certifications must contain conditions that are necessary to assure compliance with the applicable provisions of CWA Sections 208(e), 301, 302, 303, 306, and 307 and with appropriate requirements of State law. However, 40 CFR §122.44(d)(5) requires the permit to incorporate any more stringent limitations, treatment standards, or schedules of compliance requirements established under Federal or State law or regulation in accordance with Section 301(b)(1)(C) of the CWA. Also, Federal regulations at 40 CFR §122.44(d)(1) require EPA and the delegated states to evaluate each NPDES permit for the potential to exceed state numeric or narrative water quality standards, including those for toxics, and to establish effluent limitations for those facilities with the "reasonable potential" to exceed those standards. These regulations require both chemical specific limits, based on the state numeric water quality standards or other criteria developed by EPA, and whole effluent toxicity effluent limits.

On December 16, 2011, EQB issued a final WQC certifying that pursuant to Section 401(a)(1) of the CWA, after due consideration of the applicable provisions established under Sections 208(e), 301, 302, 303, 304(e), 306 and 307 of the CWA concerning water quality requirements, there is reasonable assurance that the discharge will not cause violations to the applicable WQSs, provided that the effluent limitations set forth in the WQC are met by the facility.

The effluent limitations (where more stringent than technology-based effluent limitations), monitoring requirements and other appropriate requirements of State law (including footnotes, Special Conditions, etc. unless EPA criteria are more stringent) specified in the final WQC issued by the EQB were incorporated by EPA into the NPDES permit as required by Section 301(b)(1)(C) and 401(d) of the CWA and the applicable regulations. Therefore, concerns and comments regarding the WQC must be directed to EQB or to the Superior Court.