MODIFICATION OF AUTHORIZATION TO DISCHARGE UNDER THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of the Federal Clean Water Act, as amended, (33 U.S.C. §§1251 et seq.; the "CWA"), and the Massachusetts Clean Waters Act, as amended, (M.G.L.Chap.21, §§ 26-53)

Massachusetts Bay Transportation Authority	**Keolis Commuter Services LLC**	**Delaware North Corporation**
10 Park Plaza	**470 Atlantic Avenue**	**100 Legends Way**
Boston, MA 02116-3974	**5th Floor**	**Boston, MA 02114**
	Boston, MA 02210	

are authorized to discharge from the facility located at

North Station Railroad Terminal
135 Causeway Street
Boston, MA 02116

to receiving water named

Charles River

in accordance with effluent limitations, monitoring requirements and other conditions set forth in the permit issued on June 15, 2018, **except as modified in bold in Part I.B.9 on Page 12**. Each co-Permittee is responsible for complying with all Parts of the Final Permit, unless otherwise noted.

This permit modification shall become effective on the first day of the calendar month following sixty (60) days after signature if comments are received.*

This permit and the authorization to discharge expire at midnight, September 30, 2023.
This modified permit is issued pursuant to 40 C.F.R. §124.19(j), and revises and supersedes the permit that was issued on June 15, 2018.

This Permit consists of 19 pages in Part I including effluent limitations, monitoring requirements, 8 pages in Attachment A – Freshwater Acute Toxicity Test Procedure and Protocol (February 28, 2011), 7 pages in Attachment B, Phosphorus Reduction Credits for Selected Enhanced Non-Structural BMPs, 70 pages in Attachment C, Methods to Calculate Phosphorus Load Reductions for Structural Stormwater Controls, and 25 pages in Part II, the Standard Conditions.

Signed this day of , 2019

Ken Moraff, Director	Lealdon Langley, Director
Office of Ecosystem Protection	Massachusetts Wetlands and Wastewater Programs
U.S. Environmental Protection Agency	Department of Environmental Protection
Region 1, Boston, MA	Commonwealth of Massachusetts, Boston, MA

* Pursuant to 40 C.F.R. 124.15(b)(3), if no comments requesting a change to the draft permit modification are received, the permit modification will become effective upon the date of signature.

PART I.

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. During the period beginning on the effective date and lasting through the expiration date, the Permittees are authorized to discharge treated stormwater runoff (from the MBTA commuter rail track area and the TD Garden roof), treated garage sump water (consisting of stormwater runoff from cars in the parking garage and groundwater), and treated non-stormwater discharges (discharges from emergency/unplanned firefighting activities, fire hydrant flushing, uncontaminated air conditioning condensate, routine external building wash down (with no detergents or hazardous cleaning products), wash water from periodic platform wash-downs (with no detergents or hazardous cleaning products), uncontaminated groundwater, wash water from track bay drain flushing, and foundation and footing drains where flows are not contaminated by contact with soils where spills or leaks of toxic or hazardous materials have occurred), through **Outfall Serial Number 001** to the Charles River. Such discharges shall be limited and monitored by all co-Permittees as specified below.

Effluent Characteristic	**Discharge Limitation**		**Monitoring Requirements [1,2,3,4]**	
	Average Monthly	**Maximum Daily**	**Measurement Frequency [5]**	**Sample Type**
Effluent Flow [6]	Report MGD	16 MGD	1/Month	Estimate
pH [7]	6.5 – 8.3 S.U.		1/Month	Grab
Oil & Grease	----------	15 mg/L	1/Month	Grab
Escherichia coli, dry weather [8]	----------	Report cfu/100 ml	1/Month	Grab
Escherichia coli	----------	Report cfu/100 ml	1/Quarter	Grab
Total Suspended Solids (TSS)	----------	100 mg/L	1/Month	Grab
Total Phosphorus	----------	Report mg/L	1/Month	Grab
Chemical Oxygen Demand (COD)	----------	Report mg/L	1/Quarter	Grab
Total Iron	----------	Report mg/L	1/Quarter	Grab
Total Magnesium	----------	Report mg/L	1/Quarter	Grab
Total Manganese	----------	Report mg/L	1/Quarter	Grab

See pages 5 and 6 for footnotes

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Effluent Characteristic	Discharge Limitation	Monitoring Requirements [1,2,3,4]	
	Maximum Daily	Measurement Frequency [5]	Sample Type
Whole Effluent Toxicity [9,10,11]			
Acute LC_{50}	Report %	1/year	Composite [12]
No Observed Acute Effect Level (NOAEL)	Report %	1/year	Composite [12]
Hardness	Report mg/L	1/year	Composite [12]
Total Residual Chlorine	Report mg/L	1/year	Grab
Alkalinity	Report mg/L	1/year	Composite [12]
pH	Report S.U.	1/year	Grab
Specific Conductance	Report µmhos/cm	1/year	Composite [12]
Total Solids	Report mg/L	1/year	Composite [12]
Ammonia	Report mg/L	1/year	Composite [12]
Total Organic Carbon	Report mg/L	1/year	Composite [12]
Cadmium, Total Recoverable	Report mg/L	1/year	Composite [12]
Lead, Total Recoverable	Report mg/L	1/year	Composite [12]
Copper, Total Recoverable	Report mg/L	1/year	Composite [12]
Zinc, Total Recoverable	Report mg/L	1/year	Composite [12]
Nickel, Total Recoverable	Report mg/L	1/year	Composite [12]
Aluminum, Total Recoverable	Report mg/L	1/year	Composite [12]
Total Dissolved Solids	Report mg/L	1/year	Composite [12]

See pages 5 and 6 for footnotes

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The receiving water shall be monitored by the Permittees as specified below as required by the Whole Effluent Toxicity (WET) testing requirement. This sample shall be taken at a point immediately upstream of the permitted discharge's zone of influence at a reasonably accessible location. Refer to WET protocol, Attachment A, Part VI.

Ambient Characteristic	Ambient Reporting Requirements	Monitoring Requirements [1,2,3,4]	
	Daily Maximum	Measurement Frequency [5]	Sample Type
Hardness	Report mg/L	1/year	Grab
Total Residual Chlorine	Report mg/L	1/year	Grab
Alkalinity	Report mg/L	1/year	Grab
pH	Report S.U.	1/year	Grab
Specific Conductance	Report µmhos/cm	1/year	Grab
Total Solids	Report mg/L	1/year	Grab
Ammonia	Report mg/L	1/year	Grab
Total Organic Carbon	Report mg/L	1/year	Grab
Cadmium, Total Recoverable	Report mg/L	1/year	Grab
Lead, Total Recoverable	Report mg/L	1/year	Grab
Copper, Total Recoverable	Report mg/L	1/year	Grab
Zinc, Total Recoverable	Report mg/L	1/year	Grab
Nickel, Total Recoverable	Report mg/L	1/year	Grab
Aluminum, Total Recoverable	Report mg/L	1/year	Grab
Total Dissolved Solids	Report mg/L	1/year	Grab

See pages 5 and 6 for footnotes

Footnotes:

1. Samples taken in compliance with the monitoring requirements specified above shall be taken from the final chamber of the oil/water separator, prior to mixing with the receiving water. All samples shall be tested in accordance with the procedures in 40 CFR 136, unless specified elsewhere in the permit.

2. All samples (with the exception of dry weather sampling for *Escherichia coli* and sampling for WET testing) shall be taken during wet weather, during the first thirty (30) minutes of the discharge. Wet weather discharges are those resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least seventy-two (72) hours from the previously measureable (greater than 0.1 inch rainfall) storm event. Hourly rainfall depth for the 24-hour period preceding sampling events and any conditions that resulted in sufficient or insufficient flow for sampling shall be reported and supplied with appropriate sampling results. If collection of grab sample(s) during the first thirty minutes is impracticable, grab sample(s) shall be taken as soon after thirty (30) minutes as possible, and the Permittees shall submit with the monitoring report a description of why the collection of the grab sample(s) during the first thirty minutes was impracticable.

3. In accordance with 40 C.F.R. § 122.44(i)(1)(iv), the Permittees shall use sufficiently sensitive test procedures (i.e., methods) approved under 40 C.F.R. Part 136 or required under 40 C.F.R. Chapter I, Subchapter N or O, for the analysis of pollutants or pollutant parameters limited in this permit (except WET limits). A method is considered "sufficiently sensitive" when either (1) the method minimum level (ML) is at or below the level of the effluent limit established in this permit for the measured pollutant or pollutant parameter; or (2) the method has the lowest ML of the analytical methods approved under 40 C.F.R. Part 136 or required under 40 C.F.R. Chapter I, Subchapter N or O for the measured pollutant or pollutant parameter. The ML is not the minimum level of detection, but rather the lowest level at which the test equipment produces a recognizable signal and acceptable calibration point for a pollutant or pollutant parameter, representative of the lowest concentration at which a pollutant or pollutant parameter can be measured with a known level of confidence.

4. When a parameter is not detected above the minimum level of detection the Permittees must report the data qualifier signifying less than the minimum level of detection for that parameter (i.e. <50 µg/L, if the minimum level of detection for a parameter is 50 µg/L). For the purposes of this permit, the minimum level of detection is the lowest concentration that can be reliably measured within specified limits of precision and accuracy for a specific laboratory analytical method during routine laboratory operating conditions (i.e., the level above which an actual value is reported for an analyte, and the level below which an analyte is reported as non-detect).

5. Sampling frequency of 1/month is defined as the sampling of <u>one</u> (1) discharge event in each calendar month, when a discharge occurs. Sampling frequency of quarterly is defined as the sampling of one (1) discharge event in each calendar quarter (January to March; April to June; July to September; and October to December), when a discharge occurs. Sampling frequency of 1/year is defined as sampling of <u>one</u> (1) discharge event in each calendar year, when a discharge occurs. The Permittees shall submit the results to EPA of any additional testing done to that required herein, if it is conducted in accordance with EPA approved methods consistent with the provisions of 40 C.F.R. §122.41(l)(4)(ii). If no sampling result can be reported during one or more of the measurement frequencies defined above, the Permittees must report the appropriate No Data Indicator Code (e.g., "C" for "No Discharge").

6. Effluent flow shall be estimated for each monitoring event using accepted engineering techniques.

7. The pH of the effluent shall not be less than 6.5 standard units (S.U.) nor greater than 8.3 SU at any time. For effluent samples which fall outside the permitted pH range, the Permittees may collect stormwater samples from the same storm event from rain water or a site location not subject to contamination and record the pH. This will provide data documenting the pH of the stormwater, and potentially demonstrate pH exceedences due to sources other than the Permittees. If this sampling is performed, documentation of such conditions must be submitted by the Permittees with the discharge monitoring reports (DMRs).

8. *Escherichia coli* shall be sampled once per month during dry weather conditions. Dry weather conditions are defined as any time when there is no precipitation and no snow melt, and that is at least 48 hours after a storm event that was greater than 0.1 inches in magnitude. Also see Part B.6 below.

9. The Permittees shall conduct one WET test annually during the month of May, if practicable. WET test sampling shall be conducted during dry weather conditions, which are defined in footnote 8. The Permittees shall test the daphnid, Ceriodaphnia dubia, and the fathead minnow, Pimephales promelas. Toxicity test samples shall be collected during the month of May. The test results shall be submitted with the July DMR, which is due by August 15th. If this WET test indicates toxicity (i.e.; LC50 < 100%), the Permittees shall conduct another WET test no later than the end of the following calendar quarter which ends on September 30th and the results shall be reported with the October DMR which is due by November 15th. In the event there is no dry weather discharge during the month of May or sampling in May is impracticable for another reason, the Permittees shall sample during the following calendar quarter which ends on September 30th and the results shall be reported with the October DMR, along with a statement attached to the DMR of why earlier WET sampling was impracticable. WET testing must be performed in accordance with test procedures and protocols specified in Attachment A of the permit (Freshwater Acute Toxicity Test Procedure and Protocol).

10. If the toxicity test uses receiving water as diluent and the receiving water is found to be toxic or unreliable, the Permittees shall follow procedures outlined in Section IV (Dilution Water) of Attachment A in order to obtain permission to use an alternate dilution water. In lieu of individual approvals for alternate dilution water required in Attachment A, EPA-New England has developed a Self-Implementing Alternative Dilution Water Guidance document (called "Guidance Document") which may be used to obtain automatic approval of an alternate dilution water, including the appropriate species for use with that water. This guidance may be found at:
https://www3.epa.gov/region1/npdes/permits/generic/Alternatedilutionwaterguidance.pdf.
If this Guidance Document is revoked, the Permittees shall revert to obtaining approval as outlined in Attachment A. However, at any time, the Permittees may choose to contact EPA-New England directly using the approach outlined in Attachment A.

11. For each WET test, the Permittees shall report on the appropriate DMR the concentrations of the Hardness, Total Residual Chlorine, Alkalinity, pH, Specific Conductance, Total Solids, Total Dissolved Solids, Ammonia, Total Organic Carbon, Total Cadmium, Total Lead, Total Copper, Total Zinc, Total Nickel, and Total Aluminum found in the 100 percent effluent sample and the receiving water sample. Metals shall be reported as total recoverable concentrations. The Permittee should note that all chemical parameter results must still be reported in the appropriate toxicity report.

12. A composite sample shall consist of at least four (4) equal volume grab samples collected at 15 to 30 minute intervals, from the final chamber of the oil/water separator, during a normal discharge.

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (continued)

2. The discharge shall not cause a violation of the water quality standards of the receiving water.

3. The discharge shall not contain floating, suspended or settleable solids.

4. The discharge shall not cause objectionable color or turbidity, or taste or odor.

5. The discharge shall be free from oil, grease, and petrochemicals that produce a visible film on the surface of the water.

6. The discharge shall not contain pollutants in concentrations or combinations that are toxic to humans, aquatic life, or wildlife.

7. The discharge of stormwater runoff from the orange line MBTA track area is prohibited.

8. The Permittees shall properly operate and maintain the pollution control equipment, including the removal of solids from the oil/water separator, catch basins, and other structures as warranted, at a frequency which will ensure proper operation at all times.

9. The Permittees shall not use fungicides or slimicides containing trichlorophenol or pentachlorophenol.

10. Routine external building wash down and wash water from periodic platform wash downs shall contain no detergents or added hazardous cleaning products (e.g., those containing bleach, hydrofluoric acid, muriatic acid, sodium hydroxide, or nonylphenols).

11. All existing manufacturing, commercial, mining and silvicultural dischargers must notify the Director as soon as they know or have reason to believe (40 C.F.R. §122.42):

    a. That any activity has occurred or will occur which would result in the discharge, on a routine basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

        (1) One hundred micrograms per liter (100 µg/l);
        (2) Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrite; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
        (3) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 C.F.R. §122.21(g)(7); or
        (4) Any other notification level established by the Director in accordance with 40 C.F.R. §122.44(f).

b. That any activity has occurred or will occur which would result in the discharge, on a non-routine or infrequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

(1) 500 μg/l;
(2) One milligram per liter (1 mg/l) for antimony;
(3) Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 C.F.R.§122.21(g)(7);
(4) Any other notification level established by the Director in accordance with 40 C.F.R. § 122.44(f).

12. This permit may be modified in accordance with 40 C.F.R. §122.62(a)(3) if the standards or regulations on which the permit is based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit is issued in accordance with 40 C.F.R. §122.62(a)(3).

13. The use of chemicals at the facility which have the potential to discharge to the stormwater drainage system leading to the oil/water separator and discharging to Outfall 001 is prohibited except for the following chemical applications and activities. The co-Permittees may switch between different brand name products within certain classes, such as different brand name formulations of potassium acetate-based deicing compounds:

a. Nitro Thermal Ice Melt® (potassium acetate-based) and/or other deicing compounds are applied to the platform areas during freezing weather conditions where build-up of ice or snow as a result of storm events may pose a safety hazard to passengers and operating personnel;
b. Application of sodium chloride-based chemicals, such as the product Environmelt® which is applied by TD Garden staff in its service areas;
c. Gasoline in five-gallon containers is stored temporarily on-site during the winter months for use in snow removal equipment;
d. Soytrak® is applied as a dry lubricant to track switches (replaced the use of graphite);
e. Platform areas are periodically washed down with water. The discharge from this activity is directed to the storm drain system;
f. Storage and unloading of solid waste and refuse associated with food service activities at TD Garden takes place in the site's northeast, ground-level loading/unloading area located inside the TD Garden building; and

A listing of the specific chemicals and products used in the chemical applications and activities listed above shall be included in the Stormwater Pollution Prevention Plan (SWPPP) described in Part I.B.3.d below. To the extent that the SWPPP does not include all of the information listed below for existing chemicals used on the site, it shall be revised to do so within ninety (90) days of the effective date of the permit. If the Permittees propose to use other chemicals at this facility which have the potential to discharge to the stormwater drainage system leading to the oil/water separator and discharging to Outfall 001, the Permittees must notify the EPA and the SWPPP plan shall be updated to include the following information about each chemical:

- Product name, chemical formula, and manufacturer of the material;
- Purpose or use of the material;
- Safety Data Sheet (SDS) and Chemical Abstracts Service (CAS) Registry number for each material;
- The frequency (e.g., hourly, daily), duration (e.g., hours, days), quantity (e.g., maximum and average), and method of application for the material;
- The vendor's reported aquatic toxicity (NOAEL and/or LC50 in percent for aquatic organism(s)), when available; and
- An explanation which demonstrates that the addition of such chemicals: 1) will not add any pollutants in concentrations which exceed permit effluent limitations; 2) will not exceed any applicable water quality standard; and 3) will not add any pollutants that would justify the application of permit conditions that are different from or absent in this permit; or 4) an operator may demonstrate through sampling and analysis using sufficiently sensitive test methods that each of the 126 priority pollutants in CWA Section 307(a) and 40 CFR Part 423.15(j)(1) are non-detect in discharges with the addition of chemicals and/or additives.

B. STORMWATER POLLUTION PREVENTION PLAN (SWPPP)

Two of the co-Permittees, MBTA and Keolis, shall continue to jointly implement a Stormwater Pollution Prevention Plan (SWPPP). A separate, new, or revised SWPPP shall be implemented by the third co-Permittee, Delaware North Corporation (DNC), for property under its control which drains to the oil/water separator and discharges to Outfall 001.

1. The Permittees shall continue to implement and maintain a SWPPP designed to reduce, or prevent, the discharge of pollutants in stormwater to the receiving water identified in this permit. The SWPPP shall be a written document that is consistent with the terms of this permit. Additionally, the SWPPP shall serve as a tool to document the Permittees compliance with the terms of this permit.

2. The SWPPP shall be updated and certified by the Permittees within ninety (90) days after the effective date of this permit. The permittees shall certify that their SWPPP has been updated as necessary and shall be signed in accordance with the requirements identified in 40 C.F.R. §122.22. A copy of this initial certification shall be sent to EPA and MassDEP within one hundred and twenty (120) days of the effective date of this permit.

3. The SWPPP shall be designed in accordance with good engineering practices and shall be consistent with the general provisions for SWPPPs included in the most current version of the MSGP. In the current MSGP (effective June 4, 2015), the general SWPPP provisions are included in Part 5. Additionally, the Permittees shall incorporate into the SWPPP all the specific pollution control activities and other requirements found in the MSGP's Industrial Sector P, Land Transportation and Warehousing, which apply to this site. Specifically, the SWPPP shall document the selection, design, and installation of control measures and contain the elements listed below:

a. A pollution prevention team with collective and individual responsibilities for developing, implementing, maintaining, revising and ensuring compliance with the SWPPP.
b. A site description which includes the activities at the facility; a general location map showing the facility, receiving waters, and outfall locations; and a site map showing the extent of significant structures and impervious surfaces, directions of stormwater flows, and locations of all existing structural control measures, stormwater conveyances, pollutant sources (identified in Part 3.c. below), stormwater monitoring points, stormwater inlets and outlets, and industrial activities exposed to precipitation such as, storage, disposal, material handling.
c. A summary of all pollutant sources which includes a list of activities exposed to stormwater, the pollutants associated with these activities, a description of where spills have occurred or could occur, a description of non-stormwater discharges, and a summary of any existing stormwater discharge sampling data.
d. A listing of all chemicals and products used on the site which have the potential to be discharged to the stormwater drainage system, with the information listed in Part I.A.13 above provided for each chemical and product.
e. A description of all stormwater controls, both structural and non-structural.
f. A schedule and procedure for implementation and maintenance of the control measures described above and for the quarterly inspections and best management practices (BMPs) described below.
g. Sector-specific SWPPP provisions included in Sector P- Land Transportation and Warehousing of the MSGP.

4. The SWPPP shall describe and document the BMPs implemented or to be implemented at the facility to comply with the provisions of Parts I.A.7, I.A.8, I.A.9, I.A.10, I.A.13, and I.B. of this permit to minimize the discharge of pollutants in stormwater to waters of the United States. At a minimum, these BMPs shall be consistent with the control measures described in the most current version of the MSGP. In the current MSGP (effective June 4, 2015), these control measures are described in Part 2.1.2. and Part 8.P. BMPs must be selected and implemented to satisfy the following effluent limitations:

   a. Minimize exposure of manufacturing, processing, and material storage areas to stormwater discharges.
   b. Implement good housekeeping measures designed to maintain areas that are potential sources of pollutants.
   c. Conduct routine preventative maintenance to avoid leaks, spills, and other releases of pollutants in stormwater discharged to receiving waters.
   d. Implement spill prevention and response procedures to ensure effective response to spills and leaks if or when they occur.
   e. Control erosion and sediment pollution by stabilizing exposed areas and containing runoff using structural and/or non-structural control measures to minimize onsite erosion and sedimentation, and the resulting discharge of pollutants.
   f. Implement runoff management practices to divert, infiltrate, reuse, contain, or otherwise reduce stormwater runoff.
   g. Implement proper handling procedures for salt, materials containing chlorides, or other commercial products that are used for snow and ice control.

h. Conduct training for all employees who work in areas where industrial materials or activities are exposed to stormwater, or who are responsible for implementing activities necessary to meet the conditions of this permit (e.g., inspectors, maintenance personnel).
i. Implement the sector specific BMPs included in Sector P – Land Transportation and Warehousing

5. All areas with industrial materials or activities exposed to stormwater and all structural controls used to comply with effluent limits in this permit shall be inspected, at least once per quarter, by qualified personnel with one or more members of the stormwater pollution prevention team. These shall include facility maintenance and seasonal activities. These inspections shall begin during the 1st full quarter after the effective date of this permit. EPA considers quarters to be the following: January to March; April to June; July to September; and October to December. Each inspection must include a visual assessment of stormwater samples from Outfall 001, which shall be collected within the first 30 minutes of discharge from a storm event, stored in a clean, clear glass or plastic container, and examined in a well-lit area for the following water quality characteristics: color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of pollution. The Permittees shall document the following information for each inspection and maintain the records along with the SWPPP:

   a. The date and time of the inspection and at which any samples were collected;
   b. The name(s) and signature(s) of the inspector(s)/sample collector(s);
   c. If applicable, why it was not possible to take samples within the first 30 minutes;
   d. Weather information and a description of any discharges occurring during the inspection;
   e. Results of observations of stormwater discharges, including any observed discharges of pollutants and the probable sources of those pollutants;
   f. Any control measures needing maintenance, repairs or replacement; and,
   g. Any additional control measures needed to comply with the permit requirements.

6. A geometric mean of all *E. coli* samples taken within the most recent six months of 126 colony forming units (cfu) per 100 ml for *E.coli,* which is found in the Massachusetts State Water Quality Standards (MASWQS), shall serve as the benchmark to trigger additional source identification, source reduction and/or treatment to attempt to reduce the discharge levels of *E. coli*. Upon becoming aware of an exceedance of this *E. coli* benchmark, MBTA and Keolis must re-sample Outfall 001 for *E.coli* within three weeks, reassess the SWPPP within 30 days, and implement additional measures to further identify and/or reduce the effluent levels of *E. coli* within 60 days. By March 1 of each year, MBTA and Keolis shall submit as a DMR attachment a Bacteria Reduction Report, if an exceedance of the *E. Coli* benchmark is observed within the previous 12 months. The Bacteria Reduction Report is to include the following information, with the co-permittee DNC supporting the development and implementation of items I.B.6.c and d. for the portions of the site on which DNC conducts operations or controls:

a. All wet and dry weather sampling results for *E.coli* at the facility for the previous calendar year, including any sampling not conducted at Outfall 001.
b. An information summary of these sampling results, including monthly maximums and ranges, the geometric mean of all applicable samples taken at Outfall 001; any exceedances of the *E. coli* benchmark; trends within the previous calendar year and since the effective date of the permit.
c. The additional source identification, source reduction and/or treatment to attempt to reduce the discharge of *E. coli*.
d. An assessment of the results and effectiveness of possible additional source identification, source reduction, and/or treatment to attempt to reduce the discharge of *E. coli*.

7. The Permittees shall amend and update their SWPPP within fourteen (14) days of any changes at the facility that result in a significant effect on the potential for the discharge of pollutants to the waters of the United States. Such changes may include, but are not limited to: a change in design, construction, operation, or maintenance, materials storage, or activities or chemicals used at the facility; a release of a reportable quantity of pollutants as described in 40 CFR §302; or a determination by the Permittees or EPA that the BMPs included in the SWPPP are ineffective in achieving the general objective of controlling pollutants in stormwater discharges associated with industrial activity.

8. Any amended, modified, or new versions of the SWPPP shall be re-certified and signed by the Permittees in accordance with the requirements identified in 40 C.F.R. §122.22. The Permittees shall also certify, at least annually, that the previous year's inspections and maintenance activities were conducted, results recorded, records maintained, and that the facility is in compliance with this permit. If the facility is not in compliance with any aspect of this permit, the annual certification shall state the non-compliance and the remedies which are being undertaken. Such annual certifications also shall be signed in accordance with the requirements identified in 40 C.F.R. §122.22. The Permittees shall maintain at the facility a copy of their current SWPPP and all SWPPP certifications (the initial certification, re-certifications, and annual certifications) signed during the effective period of this permit and shall make these available for inspection by EPA and MassDEP upon request. In addition, the Permittees shall document in the SWPPP any violation of numerical or non-numerical stormwater effluent limits with a date and description of the corrective actions taken.

9. The Permittees shall develop and implement site specific BMPs, consistent with the sector specific BMPs in Sector P (Land Transportation and Warehousing) of the MSGP. **The Permittees shall on a monthly basis inspect and maintain the track mats in track areas where locomotives routinely stop (to capture incidental drips of oil from the trains) and the oil/water separator and shall take appropriate measures to ensure that the track mats stay in place and are replaced as needed to avoid the potential to introduce pollutants to stormwater runoff. In addition, the Permittees shall on a weekly basis visually inspect the track mats and the area of the discharge from the oil/water separator at Outfall 001. Weekly inspections of the track mats will not require physical access onto track areas and may be performed from a safe distance while trains are operational. The Permittees shall timely address any adverse findings that have the potential to introduce pollutants to stormwater runoff.**

C. Dry Weather Outfall and Stormwater Drainage System Screening

1. All outfalls and interconnections to the stormwater drainage system shall be inspected for the presence of dry weather flow within three (3) years of the effective date of the permit. This screening program and all relevant data and findings shall be summarized in a report and attached to the DMR for the particular month when it is completed, no later than three (3) years of the effective date of the permit.

2. The Permittees (MBTA and Keolis) shall develop an outfall and stormwater drainage system screening and sampling program within one (1) year of the permit's effective date. This program shall include procedures for sample collection, use of field kits, and storage and conveyance of samples, including relevant hold times. The co-Permittee DNC shall support this program for storm sewer lines under its control, such as those associated with the parking garage and parking lot catch basins.

3. Dry weather screening and sampling shall proceed only when no more than 0.1 inches of rainfall has occurred in the previous 48-hour period and no significant snow melt is occurring.

4. If an outfall or drainage system connection is inaccessible or submerged, the Permittees shall proceed to the first accessible upstream manhole or structure for the observation and sampling and report the location with the screening results.

5. If no flow is observed, but evidence of illicit flow exists, the Permittees shall revisit the outfall or connection during dry weather within one (1) week of the initial observation, if practicable, to perform a second dry weather screening and sample any observed flow.

6. Where dry weather flow is found at an outfall or connection, at least one (1) sample shall be collected and analyzed at a minimum for:
    - ammonia,
    - chlorine,
    - conductivity,
    - salinity,
    - *E. coli*,
    - surfactants (such as MBAS), and
    - temperature

    All analyses for these parameters, with the exception of *E. coli,* can be performed with field test kits or field instrumentation and are not subject to 40 CFR part 136 requirements. Sampling for *E. coli* shall be conducted using the analytical methods found in 40 C.F.R. §136, or alternative methods approved by EPA in accordance with the procedures in 40 C.F.R. §136. Sampling for ammonia and surfactants must use sufficiently sensitive methods to detect those parameters at or below the threshold indicator concentrations of 0.5 mg/L for ammonia and 0.25 mg/L for surfactants. Sampling for residual chlorine must use a method with a detection limit of 0.02 mg/L or 20 ug/L.

7. Upon detection of an illicit discharge, the Permittees shall locate, identify and eliminate the illicit discharge as expeditiously as possible. Upon identification of the illicit source, the Permittees shall notify any other responsible parties for any such discharge. The identified improper disposal practices shall cease immediately to the extent allowable by law and feasibility in accordance with such party's legal authority, if applicable. Where elimination of an illicit discharge within sixty (60) days of its identification as an illicit discharge is not possible, the Permittees shall establish an expeditious schedule for its elimination and report the dates of identification and schedule(s) for removal in the Permittees's report described in Part I.C.1, or as a NetDMR attachment. The Permittees shall immediately commence actions necessary for elimination and shall diligently pursue elimination of all illicit discharges.

D. Source Identification and Reduction Plan (SIRP)

The Permittees (MBTA and Keolis) shall continue to implement the Source Identification and Reduction Plan (SIRP) that was required by the 2010 permit for the pollutants iron, magnesium, manganese, pathogenic bacteria, and COD. The co-permittee DNC shall develop and implement its own, separate SIRP for these pollutants specific to areas of the site that it controls and on which it conducts activities, such as parking lot sweeping, implementation of deicing and snow management BMPs, and cleaning of storm sewer lines under DNC control. Each SIRP can be part of the respective co-Permittee's SWPPP. The goal of each SIRP is to reduce, to the maximum extent possible, the discharge of these pollutants from the facility. The BMPs that were developed in conjunction with the SIRP shall continue to be implemented and are as follows, at a minimum:

1. The Permittees shall minimize the exposure of significant materials to stormwater. To the extent practicable, the Permittees shall store all material indoors or protect such material with weather resistant covers, to minimize exposure to rain and wind.

2. The Permittees shall clean all storm sewer lines and appurtenances discharging to Outfall 001 within one (1) year of the effective date of the permit and repeat as necessary during the permit term, with a minimum frequency of once every five (5) years. This includes the cleaning of pipes, culverts, catch basins, or other structures located along the entire alignment of the storm sewer system discharging to Outfall 001. The Permittees shall utilize equipment and methods designed to capture all liquids and solids generated during the cleaning process and dispose of all accumulated wastewater and solid waste in accordance with Massachusetts solid waste regulations. The Permittees shall maintain records detailing the accounting of the material removed from each cleaning operation.

3. The Permittees shall maintain the silt sacks that were installed into catch basins leading to the oil/water separator discharging to Outfall 001 or implement an equivalent measure which minimizes the discharge of solids to the storm drainage system leading to this discharge. The Permittees shall maintain records documenting the inspection, cleaning and replacement practices for the installed silt sacks or other measures that are employed.

4. The Permittees shall use vacuum equipment to sweep all paved or impervious areas of its property draining to Outfall 001 where solids deposition may occur, including roads, driveways, parking areas, sidewalks, and loading areas. At a minimum, sweeping shall be completed monthly during the months of March through November. During the months of December, January, and February, when weather conditions prevent fulfillment of the required minimum sweeping frequency, the Permittees may adjust or lengthen its scheduled frequency to accommodate sweeping during available periods of acceptable thaw. The Permittees shall ensure that sweepings collected at its facility are reused or disposed in a manner consistent with MassDEP's Policy #BWP-94-092: Reuse and Disposal of Street Sweepings.[1]

5. The Permittees shall use reasonable efforts to mitigate potential water quality impacts of deicing chemicals that may be discharged to the receiving water. This shall include, but not be limited to, reasonable adjustments to the type and application (i.e., materials, mode, and timing) of deicing chemicals, minimizing the use of deicing chemicals, and the placement of snow piles in accordance with MassDEP's Snow Disposal Guidance No. BRPG01-01.[2] The Permittees shall continue to implement, and revise as necessary, the deicing technical memorandum that was submitted by the Permittees pursuant to the 2010 permit and that was dated September 10, 2010.

E. Phosphorous Control Plan (PCP)

The Permittees shall develop and implement the following site-specific BMPs for phosphorus. Two of the co-Permittees, MBTA and Keolis, shall develop a PCP for the portions of the site which they control or on which they conduct operations and Delaware North shall develop a PCP for the portions of the site which it controls or on which it conducts operations. All co-Permittees shall work collaboratively to develop their independent PCPs. The PCPs require the following:

1. The Permittees shall estimate the average annual phosphorus load to the permitted outfall using the export rates that are provided in Attachment C.

2. The Permittees shall develop a Phosphorous Control Plan (PCP) and update the PCP as necessary during the permit term. The PCP shall describe measures the Permittees will undertake to reduce the average annual baseline phosphorus load (calculated above in Part E.1. above, using Attachment C) by at least 62%. The Permittees may propose verifiable phosphorus load reductions from other facilities which they own or operate within the Lower Charles River watershed that are subject to the phosphorus TMDL to use as credits for load reductions in this PCP. If so, the phosphorus load reductions cannot be double counted for both facilities, must be calculated using Attachment C, must be verifiable, and must include clear responsibilities for continuous operation and maintenance requirements.

[1] http://www.mass.gov/eea/docs/dep/recycle/laws/stsweep.pdf
[2] http://www.mass.gov/eea/agencies/massdep/water/regulations/snow-disposal-guidance.html

a. Non-structural controls: The Permittees shall describe the non-structural stormwater control measures to be implemented, in conjunction with the structural controls below, to support the achievement of the required phosphorus reductions. The description of non-structural controls shall include the planned measures, the areas where the measures will be implemented, and the annual phosphorus reductions that are expected to result from their implementation. Annual phosphorus reduction from non-structural BMPs shall be calculated consistent with Attachment B, Phosphorus Reduction Credits for Selected Enhanced Non-Structural BMPs.

b. Planned structural controls: The Permittees shall describe the structural stormwater control practices necessary to support achievement of the required phosphorus reduction, in conjunction with the non-structural controls above. The description of structural controls shall include the planned controls, the drainage areas tributary to where the controls will be implemented, and the annual phosphorus reductions in units of mass per year that are expected to result from their implementation. Annual phosphorus reduction from structural BMPs shall be calculated consistent with Attachment C.

3. Within one (1) year of the effective date of the permit, the Permittees shall complete the estimation of the average annual phosphorus load to the permitted outfall using the export rates that are provided in Attachment C, using the same method for calculating the BMP phosphorus load for all tributary drainage area discharging through Outfall 001. Within 1.5 years of the effective date of the permit, the Permittees shall complete the PCP. Within 2.5 years of the effective date of the permit, the Permittees shall complete implementation of the identified non-structural practices. Within 3.5 years of the effective date of the permit, the Permittees shall complete construction, installation and inspection of the structural practices. Within 4.5 years of the effective date of the permit, the Permittees shall begin certification of annual inspection and O&M associated with these practices. Within 5 years of the effective date of the permit, the Permittees shall submit a PCP Implementation Report to EPA and MassDEP detailing compliance with the requirements of the PCP and describing ongoing activities and schedules such as for those regarding annual inspections, O&M of BMPs, and updates of the annual phosphorus loading estimates for the permitted outfall.

F. REPORTING REQUIREMENTS

The monitoring program in the permit specifies sampling and analysis, which will provide continuous information on compliance and the reliability and effectiveness of the installed pollution abatement equipment. The approved analytical procedures found in 40 C.F.R. §136 are required unless other procedures are explicitly required in the permit. The Permittees are obligated to monitor and report sampling results to EPA and the MassDEP within the time frames specified within the permit.

Unless otherwise specified in this permit, the Permittees shall submit reports, requests, and information and provide notices in the manner described in this section.

1. Submittal of DMRs and the Use of NetDMR

   Beginning the effective date of the permit, the Permittees must submit their monthly monitoring data in discharge monitoring reports (DMRs) to EPA and MassDEP no later than the 15th day of the month following the completed reporting period using NetDMR. NetDMR is a web-based tool that allows Permittees to electronically submit DMRs and other required reports via a secure internet connection and can be accessed at: http://www.epa.gov/netdmr.

2. Submittal of Reports as NetDMR Attachments

   The Permittees shall electronically submit all reports to EPA as NetDMR attachments rather than as hard copies, unless otherwise specified in this permit. The Permittees shall continue to send hard copies of reports other than DMRs to MassDEP until further notice from MassDEP. (See Part I.F.5. below for more information on state reporting.) Because the due dates for reports described in this permit may not coincide with the due date for submitting DMRs (which is no later than the 15th day of the month), a report submitted electronically as a NetDMR attachment shall be considered timely if it is electronically submitted to EPA using NetDMR with the next DMR due following the particular report due date specified in this permit.

3. Submittal of Requests and Reports to EPA/Office of Ecosystem Protection (OEP)

   The following requests, reports, and information described in this permit shall be submitted to the EPA/OEP NPDES Applications Coordinator in the EPA's OEP:

   (1) Transfer of Permit Notice;

   (2) Request for changes in sampling location;

   (3) Report on unacceptable dilution water/request for alternative dilution water for WET testing.

   These reports, information, and requests shall be submitted to EPA/OEP electronically at R1NPDES.Notices.OEP@epa.gov or by hard copy mail to the following address:

U.S. Environmental Protection Agency
Office of Ecosystem Protection
EPA/OEP NPDES Applications Coordinator
5 Post Office Square - Suite 100 (OEP06-03)
Boston, MA 02109-3912

4. Submittal of Reports in Hard Copy Form

The following notifications and reports shall be signed and dated originals, submitted in hard copy, with a cover letter describing the submission:

(1) Written notifications required under Part II;

(2) Notice of unauthorized discharges.

This information shall be submitted to EPA/OES at the following address:

U.S. Environmental Protection Agency
Office of Environmental Stewardship (OES)
Water Technical Unit
5 Post Office Square, Suite 100 (OES4-SMR)
Boston, MA 02109-3912

5. State Reporting

Transfer or termination of permit notices shall be submitted to:

Massachusetts Department of Environmental Protection
Bureau of Water Resources
Wastewater Management Program
1 Winter Street, 5th Floor
Boston, MA 02108

Unless otherwise specified in this permit, duplicate signed copies of all reports, information, requests or notifications described in this permit, including the reports, information, requests or notifications described in Parts I.F.3, and I.F.4 also shall be submitted to the State at the following address:

Massachusetts Department of Environmental Protection
Northeast Regional Office
Bureau of Air and Waste
205B Lowell Street
Wilmington, Massachusetts 01887

Copies of WET test reports ONLY shall be submitted to:

Massachusetts Department of Environmental Protection
Watershed Planning Program
8 New Bond Street
Worcester, Massachusetts 01606

6. Verbal Reports and Verbal Notifications

Any verbal reports or verbal notifications, if required in Parts I and/or II of this permit, shall be made to both EPA and to MassDEP. This includes verbal reports and notifications which require reporting within 24 hours. (As examples, see Part II.B.4.c.(2), Part II.B.5.c.(3), and Part II.D.1.e.) Verbal reports and verbal notifications shall be made to EPA's Office of Environmental Stewardship at: **617-918-1510**

G. STATE PERMIT CONDITIONS

1. This authorization to discharge includes two separate and independent permit authorizations. The two permit authorizations are (i) a federal National Pollutant Discharge Elimination System permit issued by the U.S. Environmental Protection Agency (EPA) pursuant to the Federal Clean Water Act, 33 U.S.C. §§1251 et seq.; and (ii) an identical state surface water discharge permit issued by the Commissioner of the Massachusetts Department of Environmental Protection (MassDEP) pursuant to the Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 26-53, and 314 C.M.R. 3.00. All of the requirements contained in this authorization, as well as the standard conditions contained in 314 CMR 3.19, are hereby incorporated by reference into this state surface water discharge permit.

2. This authorization also incorporates the state water quality certification issued by MassDEP under § 401(a) of the Federal Clean Water Act, 40 C.F.R. 124.53, M.G.L. c. 21, § 27 and 314 CMR 3.07. All of the requirements (if any) contained in MassDEP's water quality certification for the permit are hereby incorporated by reference into this state surface water discharge permit as special conditions pursuant to 314 CMR 3.11.

3. Each agency shall have the independent right to enforce the terms and conditions of this permit. Any modification, suspension or revocation of this permit shall be effective only with respect to the agency taking such action, and shall not affect the validity or status of this permit as issued by the other agency, unless and until each agency has concurred in writing with such modification, suspension or revocation. In the event any portion of this permit is declared invalid, illegal or otherwise issued in violation of state law such permit shall remain in full force and effect under federal law as a NPDES permit issued by the U.S. Environmental Protection Agency. In the event this permit is declared invalid, illegal or otherwise issued in violation of federal law, this permit shall remain in full force and effect under state law as a permit issued by the Commonwealth of Massachusetts.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MASSACHUSETTS 02109-3912

STATEMENT OF BASIS

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT MODIFICATION TO DISCHARGE TO WATERS OF THE UNITED STATES

NPDES PERMIT NO.: **MA0028941**

PUBLIC NOTICE START AND END DATES: **March 1st – March 30, 2019**

NAMES OF APPLICANTS:

Massachusetts Bay Transportation Authority
Keolis Commuter Services LLC
Delaware North Corporation

NAME AND ADDRESS OF FACILITY WHERE DISCHARGE OCCURS:
North Station Railroad Terminal
135 Causeway Street
Boston, MA 02116

RECEIVING WATER: **Charles River**

CLASSIFICATION: **B**

1.0 PROPOSED ACTION

Background and Procedural History

On June 15, 2018, Region 1 of the U.S. Environmental Protection Agency ("Region") and the Massachusetts Department of Environmental Protection issued an NPDES Permit ("Final Permit") to the three (3) co-Permittees listed above for discharges from the North Station Railroad Terminal in Boston, MA. The discharge authorized by NPDES Permit MA0028941 is directed to the Charles River via Outfall 001. The Final Permit superseded the prior permit issued on April 7, 2010.

On July 18, 2018, the co-Permittee Keolis Commuter Services LLC ("Keolis") filed a Petition for Review ("Petition") with the Environmental Appeals Board (EAB), requesting review of a condition of the of the Final Permit at Part I.B.9 that requires the Permittees, as part of a Stormwater Pollution Prevention Plan ("SWPPP"), to "inspect and maintain the absorbent pads for track areas where locomotives stop (to capture incidental drips of oil from the trains) and the oil/water separator, both on a weekly basis" ("Contested Condition"). In particular, Keolis challenged the frequency of inspection and maintenance required under this condition.

Keolis and EPA filed a joint motion with the EAB on August 15, 2018, to stay the proceedings of the permit appeal in order to allow the parties to negotiate in an attempt to reach a settlement of the appeal. The EAB granted this joint motion and stayed the proceedings. During the stay, the EPA issued a letter to the co-Permittees notifying them that the Contested Condition would be stayed pending final agency action but that all other conditions of the permit would go into effect on October 1, 2018.[1]

Under the regulations governing the EAB appeals process, the Regional Administrator may, at any time prior to 30 days after filing the response to the Petition and upon notification to the Board, unilaterally withdraw portions of the permit and prepare a new draft permit under 40 C.F.R. § 124.6 addressing the portions so withdrawn. 40 C.F.R. § 124.19(j); *see also* 78 Fed. Reg. 5281, 5282 (Jan. 25, 2013). On October 15, 2018, the Region issued notice to interested parties pursuant to 40 C.F.R. § 124.19(j) that it was withdrawing Section I.B.9 of the Final Permit and commencing a new draft permit proceeding to address the portion so withdrawn in order to resolve the issues raised in Keolis' Petition. In particular, the Region agreed to modify Part I.B.9 to clarify that the required weekly inspections under Part I.B.9 would not require physical access onto track areas and could be performed from a safe distance while trains are operational. Upon motion by the Region, the Board dismissed the Petition as moot. *See* Order Dismissing Petition for Review as Moot (Oct. 24, 2018).

This Statement of Basis explains the basis for revisions to Part I.B.9 of the Final Permit regarding frequency of inspections, which was appealed and withdrawn as explained above. Comments outside the scope of the aforementioned revisions will not be considered. *See In re Carlotta Copper Co.*, 11 E.A.D. 692, 729-32 (EAB 2004).

[1] When a permit appeal is filed, EPA must issue a notification identifying which permit conditions are stayed as a result of the appeal and which permit conditions will go into effect. 40 C.F.R. § 124.16(a)(2)(i), (ii). While a permit appeal is pending, the contested permit conditions are stayed. *Id.* § 124.16(a)(1). Uncontested permit conditions that are "inseverable" from contested conditions are also considered to be contested and are stayed. *Id.* §§ 124.16(a)(2)(i), 124.60(b)(4). Uncontested permit conditions that are severable from contested conditions are not stayed and become enforceable conditions of the permit. *Id.* § 124.16(a)(2)(i), (ii).

2.0 BASIS OF PERMIT MODIFICATION

Part I.B.9 of the proposed Final Permit read as follows:

> *The Permittees shall develop and implement site specific BMPs, consistent with the sector specific BMPs in Sector P (Land Transportation and Warehousing) of the MSGP. At a minimum, the Permittees shall inspect and maintain the absorbent pads for track areas where locomotives stop (to capture incidental drips of oil from the trains) and the oil/water separator, both on a weekly basis.*

The prior permit had included an identical requirement, except that the required frequency was **monthly**.

In its Petition and during the negotiations, Keolis requested that EPA reevaluate the requirement to inspect and maintain *on a weekly basis*, explaining that

to "inspect and maintain" the absorbent pads alongside the tracks and the adjacent oil/water separator under the prior permit is a multi-day undertaking that necessitates track closures and affects already tight rail traffic and maintenance schedules both within and outside of Keolis' control.

In requiring more frequent inspections at the tracks and the oil/water separator under the Final Permit, EPA understood that these inspections could be performed visually without significantly impacting train and track operations, where the inspections revealed no adverse conditions that could introduce pollutants to stormwater runoff. EPA did not understand the process to require significant impacts to train and track operations, multiple days to complete, and replacement of track pads or other involved measures in every case.

In order to clarify EPA's intention that the more frequent weekly inspections be characterized as visual inspections, while still requiring appropriate visual inspection follow-up and the monthly inspection and maintenance requirement, EPA proposes to revise Part I.B.9 to read:

> *The Permittees shall develop and implement site specific BMPs, consistent with the sector specific BMPs in Sector P (Land Transportation and Warehousing) of the MSGP. The Permittees shall on a monthly basis inspect and maintain the track mats in track areas where locomotives routinely stop (to capture incidental drips of oil from the trains) and the oil/water separator and shall take appropriate measures to ensure that the track mats stay in place and are replaced as needed to avoid the potential to introduce pollutants to stormwater runoff. In addition, the Permittees shall on a weekly basis visually inspect the track mats and the area of the discharge from the oil/water separator at Outfall 001. Weekly inspections of the track mats will not require physical access onto track areas and may be performed from a safe distance while trains are operational. The Permittees shall timely address any adverse findings that have the potential to introduce pollutants to stormwater runoff.*

The term "absorbent pads" was changed to "track mats", which is the terminology used by the Permittees.

3.0 OTHER REQUIREMENTS

A. Essential Fish Habitat

Under the 1996 Amendments (PL 104-267) to the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. §1801 et seq. (1998)), EPA is required to consult with the National Marine Fisheries Service (NMFS) if EPA's action or proposed actions that it funds, permits, or undertakes, "may adversely impact any essential fish habitat". The Amendments broadly define essential fish habitat (EFH) as "waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity," 16 U.S.C. §1802(10). "Adversely impact" means any impact which reduces the quality and/or quantity of EFH. *See* 50 C.F.R. 600.910 (a). Adverse effects may include direct (e.g., contamination or physical disruption), indirect (e.g., loss of prey, reduction in species' fecundity), site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions. Id.

Essential fish habitat is only designated for species for which federal fisheries management plans exist (16 U.S.C. §1855(b)(1)(A)). EFH designations for New England were approved by the U.S. Department of Commerce on March 3, 1999.

A review of available EFH information indicates that the Charles River is designated EFH for several federally managed species included within the Massachusetts Bay area (found at https://www.greateratlantic.fisheries.noaa.gov/hcd/ma1.html). However, EPA has concluded that the limited scope of this Permit Modification, which pertains to inspection and maintenance requirements, is preventative, so as to minimize any adverse impacts to any EFH species that may be present.

If adverse effects are detected as a result of this permit action, NMFS will be notified and an EFH consultation will promptly be initiated. During the public comment period, EPA has provided a copy of the Draft Permit and Fact Sheet to NMFS.

B. Endangered Species Act

Section 7(a) of the Endangered Species Act (ESA) of 1973, as amended, grants authority to and imposes requirements upon federal agencies regarding endangered or threatened species of fish, wildlife, or plants, (i.e., listed species) and habitat of such species that have been designated as critical (i.e., critical habitat). EPA initiates consultation concerning listed species under their purviews with the United States Fish and Wildlife Service (USFWS) for freshwater species, and NMFS for marine species and anadromous fish.

EPA has reviewed the list of federal endangered or threatened species of fish and wildlife to see if any such listed species might potentially be impacted by the reissuance of this NPDES permit. The available ESA information indicates that there are no federally listed endangered species in the vicinity of the facility's discharge. The two endangered species of anadromous fish which occur in Massachusetts, shortnose sturgeon (*Acipenser brevirostrom*) and Atlantic sturgeon (*Acipenser oxyrinchus*), have not been identified in the Charles River.[2] Based on the expected normal distribution of these species, their presence in the vicinity of this discharge is not expected.

Therefore, consultation under Section 7 of the ESA with NMFS and USFWS is not required. During the public comment period, EPA has provided a copy of the Draft Permit Modidifcation and Statement of Basis to NMFS and USFWS.

4.0 STATE CERTIFICATION

EPA may not issue a permit unless the State Water Pollution Control Agency with jurisdiction over the receiving water(s) either certifies that the effluent limitations contained in the Draft Permit Modification are stringent enough to assure that the discharge will not cause the receiving water to violate the State WQSs or it is deemed that the state has waived its right to certify. Regulations governing state certification are set forth in 40 C.F.R. § 124.53 and § 124.55. EPA has requested permit certification by the State pursuant to 40 C.F.R. § 124.53 and expects that the Draft Permit Modification will be certified.

If the State believes that any conditions more stringent than those contained in the Draft Permit Modification are necessary to meet the requirements of either the CWA §§ 208(e), 301, 302, 303, 306 and 307, and with appropriate requirements of State law, the State should include such conditions and, in each case, cite the CWA or State law reference upon which that condition is based. Failure to provide such a citation waives the right to certify as to that condition. The only exception to this is that the sludge conditions/requirements implementing § 405(d) of the CWA are not subject to the § 401 State Certification requirements. Reviews and appeals of limitations and conditions attributable to State Certification shall be made through the applicable procedures of the State and may not be made through the applicable procedures of 40 C.F.R. § 124.

In addition, the State should provide a statement of the extent to which any condition of the Draft Permit Modification can be made less stringent without violating the requirements of State law. Since the State's certification is provided prior to permit issuance, any failure by the State to provide this statement waives the State's right to certify or object to any less stringent condition.

[2]See documents for shortnose sturgeon and Atlantic sturgeon at http://www.mass.gov/eea/agencies/dfg/dfw/natural-heritage/species-information-and-conservation/mesa-list/list-of-rare-species-in-massachusetts.html

It should be noted that under CWA § 401, EPA's duty to defer to considerations of state law is intended to prevent EPA from relaxing any requirements, limitations or conditions imposed by state law. Therefore, "[a] State may not condition or deny a certification on the grounds that State law allows a less stringent permit condition." *See* 40 C.F.R. § 124.55(c). In such an instance, the regulation provides that, "The Regional Administrator shall disregard any such certification conditions or denials as waivers of certification." *Id.* EPA regulations pertaining to permit limits based upon water quality standards and state requirements are contained in 40 C.F.R. §§ 122.4(d) and 122.44(d).

5.0 ADMINISTRATIVE RECORD, PUBLIC COMMENT PERIOD, HEARING REQUESTS, AND PROCEDURES FOR FINAL DECISION

All persons, including applicants, who believe any condition of the Draft Permit Modification is inappropriate must raise all issues and submit all available arguments and all supporting material for their arguments in full by the close of the public comment period to: George Papadopoulos, U.S. EPA, Office of Ecosystem Protection, Industrial Permits Section, 5 Post Office Square, Suite 100 (OEP06-1), Boston, Massachusetts 02109-3912; or to: Papadopoulos.george@epa.gov.

Any person, prior to such date, may submit a request in writing for a public hearing to consider the Draft Permit Modification to EPA and the State Agency. Such requests shall state the nature of the issues proposed to be raised in the hearing. A public meeting may be held if the criteria stated in 40 C.F.R. §124.12 are satisfied. In reaching a decision on the Final Permit Modification, EPA will respond to all significant comments and make these responses available to the public on EPA's website and at EPA's Boston office. Comments outside the scope of the aforementioned revisions will not be considered. *See In re Carlotta Copper Co.*, 11 E.A.D. 692, 729-32 (EAB 2004).

Following the close of the comment period, and after any public hearings, if such hearings are held, the EPA will issue a decision regarding the proposed permit modification and forward a copy of the final decision to the Permittees and each person who has submitted written comments or requested notice. Within 30 days following the notice of the final permit decision, any interested person may submit a petition for review of the permit to EPA's Environmental Appeals Board consistent with 40 C.F.R. §124.19 and/or submit a request for an adjudicatory hearing to MassDEP's Office of Appeals and Dispute Resolution consistent with 310 CMR 1.00.

6.0 EPA & MASSDEP CONTACTS

Additional information concerning the Draft Permit Modification may be obtained between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, excluding holidays, from the EPA and MassDEP contacts below:

George Papadopoulos, Industrial Permits Section
5 Post Office Square - Suite 100 - Mailcode OEP 06-1
Boston, MA 02109-3912
Email: papadopoulos.george@epa.gov ; Telephone: (617) 918-1579; FAX: (617) 918-1505

Xiaodan Ruan, MassDEP
Division of Wastewater Management
Surface Water Discharge Permit Program
1 Winter Street, 5th Floor
Boston, Massachusetts 02108
Email: xiaodan.ruan@state.ma.us;
Telephone: (617) 654-6517; FAX: (617) 292-5696

February 22, 2019
Date

Ken Moraff, Director
Office of Ecosystem Protection
U.S. Environmental Protection Agency

MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION
COMMONWEALTH OF MASSACHUSETTS
1 WINTER STREET
BOSTON, MASSACHUSETTS 02108

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY – REGION 1
OFFICE OF ECOSYSTEM PROTECTION
5 POST OFFICE SQUARE
BOSTON, MASSACHUSETTS 02109

JOINT PUBLIC NOTICE OF A DRAFT NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT MODIFICATION TO DISCHARGE INTO WATERS OF THE UNITED STATES UNDER SECTIONS 301 AND 402 OF THE CLEAN WATER ACT, AS AMENDED, AND SECTIONS 27 AND 43 OF THE MASSACHUSETTS CLEAN WATERS ACT, AS AMENDED, AND REQUEST FOR STATE CERTIFICATION UNDER SECTION 401 OF THE CLEAN WATER ACT.

PUBLIC NOTICE PERIOD: **March 1, 2019 – March 30, 2019**

PERMIT NUMBER: **MA0028941**

PUBLIC NOTICE NUMBER: **MA-005-19**

NAME AND MAILING ADDRESS OF PERMITTEES:

Massachusetts Bay Transportation Authority
10 Park Plaza
Boston, MA 02116-3974

Keolis Commuter Services, LLC
470 Atlantic Avenue – 5th Floor
Boston, MA 02210

Delaware North Corporation
100 Legends Way
Boston, MA 02114

NAME AND ADDRESS OF THE FACILITY WHERE DISCHARGE OCCURS:

North Station Railroad Terminal
135 Causeway Street
Boston, MA 02116

RECEIVING WATER: **Charles River (Boston Harbor Watershed), Class B (CSO)**

The U.S. Environmental Protection Agency (EPA) and the Massachusetts Department of Environmental Protection (MassDEP) have cooperated in the development of a draft permit modification for the North Station Railroad Terminal, which discharges treated stormwater runoff, treated garage sump water, treated non-stormwater discharges, wash water from periodic platform wash-downs, uncontaminated groundwater, and wash water from track bay drain flushing through **Outfall Serial Number 001** to the Charles River. The effluent limits and permit conditions imposed have been drafted to assure compliance with the Clean Water Act, 33 U.S.C. sections 1251 et seq., the Massachusetts Clean Waters Act, G.L. c. 21, §§ 26-53, 314 CMR 3.00, and State Surface Water Quality Standards at 314 CMR 4.00. EPA has requested that the State certify this draft permit modification pursuant to Section 401 of the Clean Water Act and expects that the draft permit modification will be certified.

INFORMATION ABOUT THE DRAFT PERMIT MODIFICATION:

The draft permit modification and explanatory statement of basis may be obtained at no cost at http://www.epa.gov/region1/npdes/draft_permits_listing_ma.html or by contacting:

George Papadopoulos
U.S. Environmental Protection Agency – Region 1
5 Post Office Square, Suite 100 (OEP06-1)
Boston, MA 02109-3912
Telephone: (617) 918-1579
Papadopoulos.George@epa.gov

The administrative record containing all documents relating to this draft permit modification including all data submitted by the applicant may be inspected at the EPA Boston office mentioned above between 9:00 a.m. and 5:00 p.m., Monday through Friday, except holidays.

PUBLIC COMMENT AND REQUEST FOR PUBLIC HEARING:

All persons, including applicants, who believe any condition of this draft permit modification is inappropriate, must raise all issues and submit all available arguments and all supporting material for their arguments in full by **March 30, 2019**, to the address or email address listed above. Any person, prior to such date, may submit a request in writing to EPA and MassDEP for a public hearing to consider this draft permit modification. Such requests shall state the nature of the issues proposed to be raised in the hearing. A public hearing may be held after at least thirty days public notice whenever the Regional Administrator finds that response to this notice indicates significant public interest. In reaching a final decision on this draft permit modification, the Regional Administrator will respond to all significant comments and make the responses available to the public at EPA's Boston office.

FINAL PERMIT DECISION:

Following the close of the comment period, and after a public hearing, if such hearing is held, the Regional Administrator will issue a final permit decision and forward a copy of the final decision to the applicant and each person who has submitted written comments or requested notice.

LEALDON LANGLEY, DIRECTOR
WETLANDS AND WASTEWATER PROGRAM
MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION

KEN MORAFF, DIRECTOR
OFFICE OF ECOSYSTEM PROTECTION
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