

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),

City of Haverhill, Massachusetts

is authorized to discharge from the facility located at

**City of Haverhill
Water Pollution Abatement Facility
40 South Porter Street
Bradford, MA 01835**

And

Combined Sewer Overflow (CSO) discharges at 13 locations

to receiving water named

**Merrimack River, Little River
Merrimack Watershed**

in accordance with effluent limitations, monitoring requirements and other conditions set forth in the permit issued on September 25, 2019, except as modified herein with new language in bold in footnote 8 to Part I.A.1. and deleted language in redline strikeout. The remainder of the provisions in the permit issued on September 25, 2019 are not being modified and are not subject to public comment. The full permit is available on EPA's website at <https://www3.epa.gov/region1/npdes/permits/2019/finalma0101621permit.pdf>.

This permit modification shall become effective on the first day of the calendar month immediately following 60 days after signature.¹

This permit expires at midnight, December 31, 2024.

This modified permit is issued pursuant to 40 C.F.R. §124.5, and revises and supersedes the permit that was issued on September 25, 2019.

Signed this day of 2020

Ken Moraff, Director
Water Division
Environmental Protection Agency
Region 1
Boston, MA

Lealdon Langley, Director
Division of Watershed Management
Department of Environmental Protection
Commonwealth of Massachusetts
Boston, MA

¹Pursuant to 40 Code of Federal Regulations (C.F.R.) § 124.15(b)(3), if no comments requesting a change to the Draft Permit Modification are received, the permit will become effective upon the date of signature.

Part I.A.1.

Footnotes:

8. The Permittee shall minimize the use of chlorine while maintaining adequate bacterial control. Monitoring for total residual chlorine (TRC) is only required for discharges which have been previously chlorinated or which contain residual chlorine. For the purposes of this permit, TRC analysis must be completed using a test method in 40 C.F.R. § 136 that achieves a minimum level no greater than 20 µg/L.

The Permittee may simulate the chlorine contact time in the outfall pipe prior to discharge into the Merrimack River by holding effluent samples in a dark environment before measuring TRC, enterococci and fecal coliform. The holding time shall be calculated based on effluent flow to determine the amount of time required for wastewater to pass between the point of collection and the outfall, ~~but at no time shall the holding time exceed 45 minutes.~~

The following formula is to be used to calculate the holding time:

$$\text{Contact time (in minutes)} = \frac{[0.488 \text{ MG (volume of the outfall pipe)}]}{[\text{effluent flow at time of sample collection (in MGD)}] * 1440 \text{ minutes/day}}$$

The effluent flow at the time of sample collection shall be recorded and a summary of these flows, along with the calculation used in the derivation of the holding time, shall be included as an electronic attachment to the discharge monitoring report (DMR) for each month in accordance with Reporting Requirements in Part I.I.2.

Chlorination and dechlorination systems shall include an alarm system for indicating system interruptions or malfunctions. Any interruption or malfunction of the chlorine dosing system that may have resulted in levels of chlorine that were inadequate for achieving effective disinfection, or interruptions or malfunctions of the dechlorination system that may have resulted in excessive levels of chlorine in the final effluent shall be reported with the monthly DMRs. The report shall include the date and time of the interruption or malfunction, the nature of the problem, and the estimated amount of time that the reduced levels of chlorine or dechlorination chemicals occurred.

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

STATEMENT OF BASIS

**DRAFT MODIFICATION TO NATIONAL POLLUTANT DISCHARGE ELIMINATION
SYSTEM (NPDES) PERMIT TO DISCHARGE TO WATERS OF THE UNITED
STATES PURSUANT TO
THE CLEAN WATER ACT (CWA)**

NPDES PERMIT NUMBER: MA0101621

PUBLIC NOTICE START AND END DATES: May 6, 2020 - June 4, 2020

NAME AND MAILING ADDRESS OF APPLICANT:

City of Haverhill
Water Pollution Abatement Facility
40 South Porter Street
Bradford, MA 01835

NAME AND ADDRESS OF FACILITY WHERE DISCHARGE OCCURS:

City of Haverhill
Water Pollution Abatement Facility
40 South Porter Street
Bradford, MA 01835
and from 13 Combined Sewer Overflow Discharge Outfalls

RECEIVING WATER AND CLASSIFICATION:

Merrimack River Watershed – USGS Code: 01070002
Merrimack River (MA84A-04): Class B – Warm Water Fishery, CSO
Merrimack River (MA84A-05): Class SB – Restricted Shellfishing, CSO
Little River (MA84A-09): Class B – Warm Water Fishery, CSO

1.0 PROPOSED ACTION

Background and Procedural History

On September 25, 2019, Region 1 of the U.S. Environmental Protection Agency (“Region”) and the Massachusetts Department of Environmental Protection (“MassDEP”) issued an NPDES Permit (“Final Permit”) to the City of Haverhill, Massachusetts (“City” or “Permittee”) authorizing discharges from the Haverhill Water Pollution Abatement Facility (Facility”) and from thirteen Combined Sewer Overflow outfalls to the Merrimack and Little Rivers. The Final Permit superseded the prior permit issued on December 5, 2007.

On October 25, 2019, the City filed a Petition for Review (“Petition”) with the Environmental Appeals Board (“EAB” or “Board”), requesting review of the effluent limitation in Part I.A.1. of the Final Permit for Total Residual Chlorine (“TRC”); the calculation of the critical low flow used to derive the dilution-based TRC limit; and the 45-minute simulated chlorine holding time requirement (“Contested Condition”).

On November 8, 2019, the EPA issued a letter to the City 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 January 1, 2020.¹

The City and EPA filed a joint motion with the EAB on November 14, 2019, to stay the proceedings of the permit appeal in order to allow the parties an opportunity to negotiate a settlement of the appeal. The EAB granted this joint motion and stayed the proceedings.

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 April 6, 2020, the Region issued notice to the Board and interested parties pursuant to 40 C.F.R. § 124.19(j) that it was withdrawing a portion of Footnote 8 to Part I.A.1. of the Final Permit and commencing a permit modification proceeding to address the portion so withdrawn in order to resolve the issues raised in the City’s Petition as it relates to the required sample holding time. In particular, the Region agreed to modify Footnote 8 to Part I.A.1. to clarify the approach to calculate the chlorine contact holding time for TRC samples. The TRC limits in the Final Permit remain unchanged and in effect.

Upon motion by Haverhill, the Board dismissed the Petition. See Order Dismissing Petition for Review as Moot (April 28, 2020).

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 and until a final permit decision is rendered by the Regional Administrator, 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).

This Statement of Basis explains the basis for revisions to Footnote 8 to Part I.A.1. of the Final Permit regarding the required sample holding time, which was appealed and withdrawn as explained above. This proposed revision does not modify the numeric TRC limitations in the Final Permit, nor does it modify the calculation of the critical low flow used to derive the dilution-based TRC limits. Comments outside the scope of the aforementioned revisions and regarding any other aspects of the recently-issued and effective Final Permit will not be considered. *See In re Carlotta Copper Co.*, 11 E.A.D. 692, 729-32 (EAB 2004).

2.0 BASIS OF PERMIT MODIFICATION

The portion of Footnote 8 to Part I.A.1. of the Final Permit as it relates to the 45 minute TRC sample holding time reads as follows:

The Permittee may simulate the chlorine contact time in the outfall pipe prior to discharge into the Merrimack River by holding effluent samples in a dark environment before measuring TRC, enterococci and fecal coliform. The holding time shall be calculated based on effluent flow to determine the amount of time required for wastewater to pass between the point of collection and the outfall, but at no time shall the holding time exceed 45 minutes.

In its Petition, the City requested that EPA reevaluate the 45 minute maximum holding time, explaining that the chlorine contact time should be based on actual operations at the facility (that is, the dimensions and volume of the outfall pipe and the effluent flow rate at the time of sample collection).

In order to clarify EPA's intention that the simulated chlorine contact time be consistent with actual facility operations, EPA proposes to remove the following language from Footnote 8 to Part I.A.1.:

but at no time shall the holding time exceed 45 minutes.

and include the following language:

The sample holding time shall be calculated using the following equation:

*Contact time (in minutes) = [0.488 MG (volume of the outfall pipe)] / [effluent flow at the time of sample collection (in MGD)] * 1440 minutes/day*

The effluent flow at the time of sample collection shall be recorded and a summary of these flows, along with the calculation used in the derivation of the holding time, shall be included as an electronic attachment to the discharge monitoring report (DMR) for each month in accordance with Reporting Requirements in Part I.I.2.

3.0 FEDERAL PERMITTING REQUIREMENTS

A. Essential Fish Habitat

Under the 1996 Amendments (PL 104-267) to the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) (*see* 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". *See* 16 U.S.C. § 1855(b).

The Amendments broadly define "essential fish habitat" (EFH) as: "waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity". *See* 16 U.S.C. § 1802(10). "Adverse impact" means any impact that reduces the quality and/or quantity of EFH, 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. EFH is only designated for fish species for which federal Fisheries Management Plans exist. *See* 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. In some cases, a narrative identifies rivers and other waterways that should be considered EFH due to present or historic use by federally managed species.²

The Federal action being considered in this case is a permit modification to a single footnote of the NPDES permit for the City of Haverhill Water Pollution Abatement Facility issued on September 25, 2019. EPA consulted with NMFS on this recently issued permit and provided them with information to support the finding that the conditions in the permit are adequately protective of all aquatic life, including designated EFH species in the receiving water, and that further mitigation was not warranted. This permit modification affects only the holding time for certain effluent samples and does not affect any permit limits or any other permit requirement. EPA expects that this permit modification will not result in any adverse effects to EFH or its associated species. Therefore, EPA is not required to reinitiate consultation with NMFS.

B. Endangered Species Act

Section 7(a) of the Endangered Species Act of 1973, as amended (ESA), grants authority and imposes requirements on Federal agencies regarding endangered or threatened species of fish, wildlife, or plants (listed species) and habitat of such species that has been designated as critical (a "critical habitat").

Section 7(a)(2) of the ESA requires every Federal agency, in consultation with and with the assistance of the Secretary of Interior, to ensure that any action it authorizes, funds or carries out, in the United States or upon the high seas, is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat. The United States Fish and Wildlife Service (USFWS) administers Section 7 consultations for freshwater species. The National Marine Fisheries Service (NMFS) administers Section 7 consultations for marine and anadromous species.

² NOAA EFH Mapper available at <http://www.habitat.noaa.gov/protection/efh/efhmapper/>

The Federal action being considered in this case is a permit modification to a single footnote of the NPDES permit for the City of Haverhill Water Pollution Abatement Facility issued on September 25, 2019. EPA consulted with NMFS on this recently issued permit and received concurrence from NMFS on August 29, 2019. This permit modification affects only the holding time for certain effluent samples and does not affect any permit limits or any other permit requirement. EPA expects that this permit modification will not result in any potential impacts to any listed species or result in the destruction or adverse modification of critical habitat. Therefore, EPA is not required to reinitiate consultation with NMFS.

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 permit 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 being modified in the Draft Permit modification are necessary to meet the requirements of either the CWA §§ 208(e), 301, 302, 303, 306 and 307 or the 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 being modified in 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.

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 40 C.F.R. § 122.44(d).

5.0 Public Comments, Hearing Requests and Permit Appeals

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 Evan Lewis, U.S. EPA, Water Division, Municipal Permits Section, 5 Post Office Square, Suite 100 (06-4), Boston, Massachusetts 02109-3912 or via email to lewis.evan@epa.gov; and Jennifer Wood, MassDEP, Surface Water Discharge Permit Program, One Winter Street, 5th Floor, Boston, MA 02108 or via email to jennifer.wood@mass.gov.

Any person, prior to the close of the public comment period, 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 final decision on the Draft Permit modification, the EPA will respond to all significant comments and make these responses available to the public at EPA's Boston office.

Following the close of the comment period, and after any public hearings, if such hearings are held, the EPA will issue a modified Final Permit, forward a copy of the final decision to the applicant, and provide a copy or notice of availability of the final decision to each person who has submitted written comments or requested notice. Within 30 days following the notice of the Final Permit, 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 and MassDEP Contacts

The administrative record on which this Draft Permit modification is based may be obtained by appointment between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, excluding holidays from:

Evan Lewis
EPA New England, Region 1
5 Post Office Square, Suite-100 (06-4)
Boston, MA 02109-3912
Telephone: (617) 918-1543, FAX: (617) 918-0543
Email: lewis.evan@epa.gov

Jennifer Wood
Massachusetts Department of Environmental Protection
Surface Water Discharge Permit Program
One Winter Street, 5th Floor
Boston, MA 02108
Telephone: (617) 654-6536
Email: jennifer.wood@state.ma.us

May 2020
Date

Ken Moraff, Director
Water Division
U.S. Environmental Protection Agency

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

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY
WATER DIVISION
REGION I
BOSTON, MASSACHUSETTS 02109

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

DATE OF NOTICE: May 6, 2020 – June 4, 2020

PERMIT NUMBER: **MA0101621**

PUBLIC NOTICE NUMBER: MA-08-20

NAME AND MAILING ADDRESS OF APPLICANT:

City of Haverhill
Haverhill Water Pollution Abatement Facility
40 South Porter Street
Bradford, MA 01835

NAME AND ADDRESS OF THE FACILITY WHERE DISCHARGE OCCURS:

City of Haverhill
Haverhill Water Pollution Abatement Facility
40 South Porter Street
Bradford, MA 01835

and 13 Combined Sewer Overflow Outfalls (CSOs)

RECEIVING WATER AND CLASSIFICATION:

Merrimack River (MA84A-04): Class B–Warm Water Fishery, CSO
Merrimack River (MA84A-05): Class SB–Restricted Shellfishing, CSO
Little River (MA84A-090): Class B-Warm Water Fishery

PREPARATION OF THE DRAFT PERMIT MODIFICATION:

The U.S. Environmental Protection Agency, (EPA) and the Massachusetts Department of Environmental Protection (MassDEP) have cooperated in the development of a permit modification for the above identified facility. The effluent limits and permit conditions imposed have been drafted to assure that State Water Quality Standards and provisions of the Clean Water Act will be met. EPA has formally 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:

A fact sheet or a statement of basis (describing a brief summary of the basis for the draft permit modification and significant factual, legal and policy questions considered in preparing this draft permit modification) may be obtained at no cost by writing or calling EPA's contact person named below:

Meridith Finegan
U.S. EPA
5 Post Office Square
Suite 100
Boston, MA 02109-3912
Telephone: (617) 918-1533

The administrative record containing all documents relating to this draft permit modification is on file and may be inspected by appointment 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 comments and all supporting material for their comments in full by **June 4, 2020** to the EPA contact and address listed above. Any person, prior to such date, may submit a request in writing to EPA and the State Agency 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 AND APPEALS:

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 modification decision and forward a copy of the final decision to the applicant and each person who has submitted written comments or requested notice. Within 30 days following the notice of the final permit modification decision any interested person may submit a request for a formal hearing to reconsider or contest the final decision.

LEALDON LANGLEY, DIRECTOR
DIVISION OF WATERSHED MGMT
MASSACHUSETTS DEPARTMENT OF
ENVIRONMENTAL PROTECTION

KEN MORAFF, DIRECTOR
WATER DIVISION
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY – REGION 1