

03/27/2023 NDCAP IWG Q&A

1. George Papadopolous told Jim that he will write any amended EPA permit.
 - a. Who will write an amended state clean water permit? **Not yet determined.**
 - b. What state agency, and who at that agency, has ultimate responsibility for an amended state discharge permit? **MassDEP, NPDES Program.**
 - c. If you have not already given us their contact information, please do so. **Lealdon Langley is the DEP contact for the NPDES program, but any member of NDCAP should communicate through Seth Pickering, who is MassDEP's NDCAP representative.**

2. At the January NDCAP meeting you or Gerard said that the permit process will involve CZM, and that it will play a big role. Please tell us exactly what agencies (DEP, CZM, and any others) will be involved in the permit process, and (in some reasonable detail) what the role of each will be. Please give us contact information for those at these agencies who will be involved. **MassDEP has responsibility for issuance of Water Quality Certification, coordination with EPA on the NPDES permit, and issuance of the Surface Water Discharge Permit. CZM handles federal consistency review, and the MEPA Office would oversee MEPA review if it is needed.**

3. At the January NDCAP meeting, you or Gerard said that CZM were looking at the implications of the Ocean Sanctuary Act and “other applicabilities.”
 - a. What are the “other applicabilities?” **All applicable laws will be considered by the state if and when a permit application is filed. To the extent legal interpretations are requested, this implicates privileged communications with AGO.**

 - b. Do DEP, DPH or CZM believe that deciding what state laws dealing with discharges of waste are important and relevant to granting a discharge permit is their decision to make? **Yes.**

4. Are DEP, DPH and CZM aware of the Governor’s position that she is “damn sure, in whatever capacity I serve, that we’re not going to have radioactive waste dumped down here”, and that the state has the **authority** to stop the discharge based on a settlement agreement with Holtec, combined with state and federal law? I assume you know that the new EEA Secretary, Rebecca Tepper, was Chief of the AGO’s Energy and Environmental Bureau before she moved to the state house with Governor Healey.

Yes, we are aware of the Governor’s public statements.

5. The anti-deregulation regulations require Holtec to demonstrate that “The discharge is necessary to accommodate important economic or social development in the area in which the waters are located, and that “no less damaging alternative site for the activity, source for disposal, or method of elimination of the discharge is reasonably available or feasible,” (314 CMR 4.04(5)(a)). As you know, Holtec has said that it has at least three other options, evaporation, shipment to an existing low-level waste facility, and storing the water on site, all which appear to be both feasible and available.

- a. What is CZM's, DEP's and/or DPH's procedure for determining whether a discharge is necessary to accommodate important economic or social development? What, if any, standards are there?
- b. What is CZM's, DEP's and/or DPH's procedure for determining whether an alternative is reasonably available or feasible? What, if any, standards are there? As you know, Holtec has said that it has at least three other NRC-approved options - evaporation, shipment to an existing low-level waste facility, and storing the water on site.
- c. In enough detail so NDCAP can understand, what kind of evidence will CZM, DEP and/or DPH require Holtec to provide if Holtec contends that its desired discharge will accommodate economic or social development and/or that Holtec does not have any reasonably available and feasible alternatives? For example, what kind of evidence of supposed social or economic benefit, and what kind of evidence that Holtec's other NRC-approved alternatives might not be reasonable and feasible?
- d. Will those responsible for deciding whether to issue an amended permit consider Holtec's likely profit and the fact that all of that profit will come from money that users (not Holtec or any previous Pilgrim licensee) contributed to the decommissioning trust fund?

MassDEP will consider all applicable standards, including those set out in 314 CMR 4.04(5), in conducting anti-degradation review. Without an actual application before MassDEP, MassDEP cannot opine about the completeness of an application and its compliance with the applicable standards. But, in general, MassDEP expects applicants to submit the data, analysis, and material supporting that analysis necessary for MassDEP to apply applicable regulatory standards to the proposed activity.

6. The state clean water act defines a pollutant as "Pollutant" to be "any element or property of sewage, agricultural, industrial, or commercial waste, runoff, leachate, heated effluent, or other matter, in whatever form and whether originating at a point or major nonpoint source, which is or may be discharged, drained or otherwise introduced into any sewerage system, treatment works or waters of the commonwealth."
 - a. Nuclear Power Stations are not the only facilities that produce radioactive waste. In DEP's and DPH's view, does that the definition of "pollutant" definition in the clean water act include radioactive waste other than waste from a nuclear power station? As we all know, there are many other entities that produce radioactive waste.
 - b. Has the state has issued permits authorizing the discharge of water that contains radioactive materials (other than such a discharge from a nuclear power station)? Do those permits authorize the discharge of radioactive materials? Do they address such a discharge at all?
 - c. Does any state law or regulation require that a nuclear power station discharge permit not cover radioactive materials?

We acknowledge that there are differences in the definition of "pollutant" under the federal and state clean water acts. MassDEP will be evaluating the regulations under the state clean water act in reviewing the discharge permit application from Holtec, as well as any public comments received.

In response to the particular questions posed, MassDEP is not aware of any MassDEP permit that directly authorizes discharge of radioactive wastewater into a surface waterbody. We are aware that certain facilities like hospitals and universities discharge what is allowed by their sewer use permits to a wastewater treatment plant operated by a municipality or MWRA. DPH also issues a radioactive material license that could authorize the release of effluents (including liquid effluent) that meet regulatory standards. We are not aware of any state law or regulation that requires exclusion of radioactive material. We note that the Massachusetts Water Quality Standards regulations include a standard for radioactivity at 310 CMR 4.05(5)(d).

7. Sampling Procedure: We are a little confused about the sampling procedure to obtain DPH's and DEP's water samples. We think you said at the last meeting that you observed the protocol. But will you observe Holtec actually taking takes the samples that DEP and DPH will be given and that the state will analyze? Could you explain the exact procedure – from what systems and when will the samples be taken, the amount of each sample, and when were they received by DEP and DPH – immediately after they were taken?

Yes, MassDEP and DPH will observe the sampling. The samples will be taken from the Spent Fuel Pool, the Dryer Separator Pit and the Torus.

8. Can the discharge permit allow a discharge if OHM is over a reportable concentration established by the MCP?

There are some exceptions, but generally speaking, Chapter 21E does not require the submission of a release notification form to MassDEP for releases authorized by a water discharge permit.

9. Please let us know what category of water Cape Cod Bay is labeled. It is necessary to determine what review the modification application will receive.

THE MASSACHUSETTS SURFACE WATER QUALITY STANDARDS, 314 CMR 4.00 Effective date: 10/21/2009 Policy No.: Approved by: Glenn Haas, Acting Assistant Commissioner, BRP Supersedes: IMPLEMENTATION PROCEDURES FOR THE ANTIDegradation PROVISIONS OF THE MASSACHUSETTS SURFACE WATER QUALITY STANDARDS, 314 CMR 4.00, dated 12/29/06

Tiered review The federal regulations applicable to state water quality standards require state standards to contain at least three tiers of antidegradation review. Massachusetts also has adopted a Tier 2 1/2 review to protect its outstanding resource waters. The WQS, therefore, contain four tiers of review – Tier 1 protects existing uses in all waters; Tier 2 protects the quality of high quality waters, with limited degradation allowed where certain requirements are met; Tier 2 1/2 protects outstanding resource waters and prohibits new or increased discharges, except for the express purpose of maintaining or enhancing the resource for its designated use; and Tier 3 requires the quality of special resource waters to be maintained and protected, except where discharges result in temporary and short term changes in water quality, but still protect uses.

MassDEP Response

All surface waters in the Commonwealth are classified as either A, B, SA, or SB. Classes A and B are for inland waters and Classes SA and SB are for coastal and marine waters. In the Massachusetts Surface Water Quality Standards (314 CMR 4.00), surface waters are classified at 314 CMR 4.06(6)(b) *Figure A; Figures and Tables 1 through 27*, but these tables do not include all surface waters or waterbody segments; generally, only those with qualifiers (as indicated in 314 CMR 4.06(1)(d)) are listed. In addition, 314 CMR 4.06(5) states the following: “[u]nless otherwise designated in 314 CMR 4.06: *Classification, Figures, and Tables*, other waters are Class B, and presumed High Quality Waters for inland waters and Class SA, and presumed High Quality Waters for coastal and marine waters.”

Cape Cod Bay is not listed in the Massachusetts Surface Water Quality Standards at 314 CMR 4.06(6)(b) *Table 4: Cape Cod Coastal Drainage Area* and is therefore a Class SA, presumed High Quality Water pursuant to 314 CMR 4.06(5). Additionally, the portion of Cape Cod Bay that is within and adjacent (within 1,000 feet seaward of mean low water) to the Cape Cod National Seashore, as well as certain surface waters listed at 314 CMR 4.06(6)(b) *Table 4* that are within the Sandy Neck Barrier Beach and Inner Cape Cod Bay Areas of Critical Environmental Concern (ACECs) are Outstanding Resource Waters (ORWs).