



Department of Environmental Protection

Charles D. Baker
Governor

Karyn E. Polito
Lieutenant Governor

Bethany A. Card
Secretary

Martin Suuberg
Commissioner

June 27, 2022

Lynne Jennings, Water Permits Branch Chief
USEPA – New England
5 Post Office Square, Suite 100 (OEP06-1)
Boston, MA 02109-3912

RE: Massachusetts Clean Water Act Section 401 Certification for the Dewatering and Remediation General Permit

Dear Ms. Jennings,

Enclosed please find as Attachment 1 the Commonwealth of Massachusetts' Clean Water Act (CWA) section 401 certification (State Certification) for the proposed 2022 National Pollutant Discharge Elimination System (NPDES) Dewatering and Remediation General Permit (MA Permit No. MAG910000). MassDEP proposed a draft State Certification for public notice and comment on April 26, 2022. A copy of the public notice is enclosed as Attachment 2. The public comment period posted for the draft State Certification closed on May 26, 2022. MassDEP received one comment from the Massachusetts Water Works Association regarding the state's PFAS requirements. Enclosed please also find as Attachment 3 the Notice of Appeal Rights for the State Certification.

Please contact Ms. Susannah King, MassDEP's NPDES Section Chief, at (857) 300-3294 or susannah.king@mass.gov if you have any questions.

Sincerely,

Lealdon Langley, Director
Division of Watershed Management
Bureau of Water Resources

ecc: Shauna Little, EPA Region 1
David Cash, Regional Administrator, EPA Region 1

Cathy Coniaris, MassDEP

Bob Boeri, Massachusetts Office of Coastal Zone Management

FINAL
Clean Water Act Section 401 Certification
For the Proposed 2022 Federal NPDES Dewatering and Remediation General Permit

The Massachusetts Department of Environmental Protection (MassDEP), having reviewed the United States Environmental Protection Agency's (EPA) draft 2022 National Pollutant Discharge Elimination System (NPDES) Dewatering and Remediation General Permit issued April 26, 2022, and considered the public comments received on MassDEP's proposed Clean Water Section 401 Certification for the draft 2022 Federal NPDES Dewatering and Remediation General Permit, and in consideration of the relevant water quality considerations, hereby certifies:

1. that the following conditions, together with the terms and conditions contained in the proposed 2022 Federal NPDES Dewatering and Remediation General Permit, are necessary to assure compliance with the applicable provisions of the Federal Clean Water Act Sections 208(e), 301, 302, 303, 306, and 307 and with appropriate requirements of State law, including, without limitation, the Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 26-53 and the Massachusetts Water Quality Standards published at 314 CMR 4.00:

Pursuant to 314 CMR 3.11(2)(a), and in accordance with MassDEP's obligation to protect Outstanding Resource Waters under 314 CMR 4.04(3), applicants seeking coverage under the 2022 DRGP to discharge to Outstanding Resource Waters as identified in 314 CMR 4.06, shall submit to MassDEP for review a copy of the EPA NOI. Pursuant to 314 CMR 4.04(5), MassDEP may request additional information for the purpose of conducting an antidegradation review. For purposes of this review, the permittee shall submit these documents to MassDEP at the same time they are submitted to EPA. Instructions on how to submit the EPA NOI to MassDEP can be found here: <https://www.mass.gov/how-to/wm-15-npdes-general-permit-notice-of-intent>. The applicant shall not begin discharging to an Outstanding Resource Water until MassDEP has issued an antidegradation determination and authorization and EPA has issued an authorization under the DRGP.

- a. Pursuant to 314 CMR 3.11(2)(a)6., and in accordance with MassDEP's obligation under 314 CMR 4.05(5)(e) to maintain surface waters free from pollutants in concentrations or combinations that are toxic to humans, aquatic life, or wildlife, applicants that propose to discharge under the 2022 DRGP to certain waters as described below, shall follow the provisions below.
 - i. Applicants for sites and/or discharges with known or suspected per- and polyfluoroalkyl substances (PFAS) contamination shall test one sample of the influent as part of the application process, as outlined in the table below. For public water supplies proposing to discharge finished drinking water only, results of the most recent finished water sampling for PFAS can be provided in lieu of testing a new sample. If PFAS is detected, MassDEP will determine additional conditions to be included in the EPA DRGP authorization, which shall include testing of the influent and treated effluent, and may include installation of appropriate treatment for the removal of PFAS.
 - ii. Applicants for sites that propose to discharge to Public Water Supplies (314 CMR 4.06(1)(d)1.) shall also test one sample of the proposed dewatering discharge water for PFAS, as outlined in the table below. If any PFAS

compounds are detected, the applicant shall install appropriate treatment for the removal of PFAS and test the influent and treated effluent when the discharge commences. MassDEP may include additional sampling requirements in the EPA DRGP authorization.

- iii. All PFAS data shall be submitted to massdep.npdes@mass.gov with the subject header "DRGP" and the site name.

PFAS Testing Parameters ¹	
Perfluorohexanesulfonic acid (PFHxS), grab	Report ng/L
Perfluoroheptanoic acid (PFHpA), grab	Report ng/L
Perfluorononanoic acid (PFNA), grab	Report ng/L
Perfluorooctanesulfonic acid (PFOS), grab	Report ng/L
Perfluorooctanoic acid (PFOA), grab	Report ng/L
Perfluorodecanoic acid (PFDA), grab	Report ng/L

- b. that there is a reasonable assurance that the activity will be conducted in a manner which will not violate applicable state water quality standards.

To meet the requirements of Massachusetts laws, each of the conditions cited in the draft permit and this certification shall not be made less stringent unless new data or other information is presented and MassDEP determines modification of this certification is appropriate in consideration of the relevant water quality considerations.

If any condition in the draft 2022 Federal NPDES Dewatering and Remediation General Permit is changed during EPA's review in any manner inconsistent with this certification, the Department reserves the right to modify this certification in consideration of the relevant water quality considerations. In addition, the Department reserves the right to modify this certification if there is a change in Massachusetts law or regulation upon which this certification is based, or if a court of competent jurisdiction or MassDEP Office of Appeals and Dispute Resolution stays, vacates or remands this certification, as provided by 40 C.F.R. § 124.55.

Signed this 27th day of June, 2022



Lealdon Langley, Director
Massachusetts Department of Environmental Protection
Bureau of Water Resources

¹ PFAS testing shall follow established EPA methods 537, 537.1, or 533 for drinking water until the multi-laboratory validation of EPA Method 1633 is complete.

PUBLIC NOTICE

Notice is hereby given that the Massachusetts Department of Environmental Protection (MassDEP), under authority granted by the Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 26 – 53, is proposing to: (1) issue a federal Clean Water Act (CWA) section 401 certification for the U.S. Environmental Protection Agency's (EPA) proposed 2022 Draft NPDES Dewatering and Remediation General Permit (Federal Permit) (MA Permit No. MAG910000); and (2) issue the 2022 Draft Massachusetts Permit to Discharge Pollutants to Surface Waters (State Permit) for the same discharges pursuant to the Massachusetts Clean Waters Act. The proposed section 401 certification, proposed State Permit, and proposed Federal Permit are all available at <https://www.mass.gov/service-details/massdep-public-hearings-comment-opportunities>. Alternatively a copy of the documents can be obtained by contacting Cathy Coniaris, MassDEP Surface Water Discharge Program, at 617-835-6693 or catherine.coniaris@mass.gov. Written comments on both the proposed section 401 certification and the proposed State Permit will be accepted until 5:00 p.m. on May 26, 2022. MassDEP strongly encourages written comments to be submitted by email to massdep.npdes@mass.gov; subject line: DRGP. If not possible, please send by mail to Cathy Coniaris, 1 Winter St., Boston, MA 02108.

Following the close of the comment period, MassDEP will issue a final CWA section 401 certification and final State Permit and forward copies to the applicant and each person who has submitted written comments or requested notice.

For special accommodations, please call the MassDEP Diversity Office at 617-292-5751. TTY# MassRelay Service 1-800-439-2370. This information is available in alternate format upon request.

By Order of the Department

Martin Suuberg, Commissioner

NOTICE OF APPEAL RIGHTS
SECTION 401 CERTIFICATION of FEDERAL NPDES PERMIT

Within 21 days of the issuance of MassDEP's decision to grant or deny a water quality certification of EPA's NPDES permit pursuant to § 401 of the federal Clean Water Act, any person aggrieved may request an adjudicatory hearing concerning MassDEP's decision.

How should the request for an adjudicatory hearing be made?

A request for an adjudicatory hearing for DEP's § 401 water quality certification of the federal NPDES permit must be made within 21 days of the issuance of MassDEP's decision to grant or deny the water quality certification, in accordance with 310 CMR 1.01. 310 CMR 1.01(6)(b) establishes the required form and content of the request. Failure to meet the requirements of 310 CMR 1.01 may result in dismissal of the request or the requirement to file a more definite statement.

A person filing a request for an adjudicatory hearing must complete and mail a MassDEP Fee Transmittal Form for the appeal and send it with a valid check to the Commonwealth Master Lockbox, as instructed below, if a fee is required by 310 CMR 4.06. The MassDEP Fee Transmittal Form can be downloaded from:

<http://www.mass.gov/eea/agencies/massdep/service/approvals/transmittal-form-for-payment.html>.

The written notice requesting an adjudicatory hearing shall be delivered to MassDEP's Case Administrator together with (i) a photocopy of the decision being appealed, (ii) a photocopy of the completed MassDEP Fee Transmittal Form, if required, and (iii) a photocopy of the check used to pay any adjudicatory hearing filing fee due for the appeal under 310 CMR 4.06. The notice of claim should be made in writing and sent by email to Caseadmin.OADR@state.ma.us.

Please do not send the original of the completed MassDEP Fee Transmittal Form and check to the Case Administrator. Instead, please follow the instructions below for delivery of the original of the completed Fee Transmittal Form and check to the Commonwealth Master Lockbox.

A \$100 adjudicatory hearing filing fee must be paid, unless (i) a simplified hearing is requested for a reduced fee of \$25, (ii) the person requesting an adjudicatory hearing is a town, a municipal agency, a county or a municipal housing authority, in which case there is no fee, or (iii) the person requesting the hearing is seeking to have MassDEP waive the adjudicatory hearing filing fee because paying the fee will create an undue financial hardship.

A person who believes that payment of the fee would be an undue financial hardship shall file with the request for adjudicatory hearing a request for waiver of the fee together with an affidavit setting forth the facts the appellant believes constitute the undue financial hardship. For more information on the adjudicatory hearing filing fee and the grounds on which the Department may waive the fee, please see 310 CMR 4.06.

If a fee is required, the completed MassDEP Fee Transmittal Form and a valid check made payable to the Commonwealth of Massachusetts for the amount of the fee due must be mailed to:

Mass. Department of Environmental Protection

Commonwealth Master Lockbox
P.O. Box 4062
Boston, Massachusetts 02211

Failure to pay the adjudicatory hearing filing fee, if required, may be grounds for dismissal of the appeal.

In accordance with 314 CMR 2.08(5), any person, other than the permit applicant or permittee, who files a request for an adjudicatory hearing with the Department pursuant to 314 CMR 2.08(2) on an individual permit or general permit coverage, also shall simultaneously send a copy of the request by certified mail, return receipt requested, to the applicant or permittee. Any person who files a request for an adjudicatory hearing with the Department pursuant to 314 CMR 2.08(2) on a general permit also shall simultaneously send a copy of the request by certified mail, return receipt requested, to each permittee covered by the general permit.