

**MASSACHUSETTS PERMIT TO DISCHARGE POLLUTANTS TO SURFACE WATERS**

In compliance with the provisions of the Massachusetts Clean Waters Act, as amended (M.G.L. Chap. 21, §§ 26 - 53) and the implementing regulations at 314 CMR 3.00 and 4.00,

New England Aquarium Corporation

is authorized to discharge from the facility located at

New England Aquarium Offsite Holding Facility  
551 South St  
Quincy, MA 02169

to receiving water named

Weymouth Fore River  
Weymouth and Weir River Basin

in accordance with the following effluent limitations, monitoring requirements and additional conditions:

1. This permit shall become effective on February 1, 2023.
2. This permit shall expire five years after the effective date.
3. This permit supersedes the permit issued on May 19, 2010.
4. This permit incorporates by reference Part IA., Effluent Limitations and Monitoring Requirements, Part IB., Unauthorized Discharges, Part IC., Special Conditions, Part ID. Reporting Requirements, and Part II., Standard Conditions, as set forth in the 2022 draft NPDES Permit No. MA0040380, issued by the United States Environmental Protection Agency (EPA), Region 1 to the New England Aquarium on November 14, 2022 (the 2022 Final NPDES Permit) and available at <https://www3.epa.gov/region1/npdes/permits/2022/finalma0040380permit.pdf>, however:
  - a. that the notification required by Part IA.8. shall also be provided to MassDEP;
  - b. that the reporting required by Part IB.1 shall be in accordance with 314 CMR 3.19(20)(e) (24 hour reporting);
  - c. that discharges of a new chemical or additive authorized under Part IC.3. are only authorized under this permit 30 days following written notification to MassDEP electronically to [massdep.npdes@mass.gov](mailto:massdep.npdes@mass.gov), unless otherwise notified in writing by MassDEP;
  - d. that a copy of the requests, reports, and information required by Part ID.3. to be submitted to EPA shall also be submitted to MassDEP electronically to [massdep.npdes@mass.gov](mailto:massdep.npdes@mass.gov);
  - e. that, if there is a conflict between the definitions in 314 CMR 3.02 and/or 314 CMR 4.00 and the definitions in Part IIE, the definitions in 314 CMR 3.02 and/or 314 CMR 4.00 shall control, as applicable;
  - f. that the notifications required by 4.a. and 4.c. above shall be provided to [massdep.npdes@mass.gov](mailto:massdep.npdes@mass.gov).
5. This permit incorporates by reference the Standard Permit Conditions set forth in 314 CMR 3.19.

Signed this 2<sup>nd</sup> day of January, 2023

A handwritten signature in black ink, appearing to read 'Lealdon Langley', written in a cursive style.

Lealdon Langley, Director

Division of Watershed Management  
Department of Environmental Protection

**RESPONSE TO COMMENTS****MA Permit No. MA0040380  
New England Aquarium Offsite Holding Facility  
Quincy, Massachusetts**

The Massachusetts Department of Environmental Protection (MassDEP or the "Department") is issuing a Surface Water Discharge (SWD) Permit to the New England Aquarium (the permittee) for the facility (the facility) located in Boston, Massachusetts. The permit is being issued under the Massachusetts Clean Waters Act, as amended (M.G.L. Chap. 21, §§ 26 - 53) and the implementing regulations at 314 CMR 3.00 and 4.00.

In accordance with the provisions of 314 CMR 2.09, MassDEP is obligated to prepare a response to comments received on the draft SWD Permit No. MA0040380 (the "Draft Permit"). The Response to Comments explains and supports MassDEP's determinations that form the basis of the final permit (the "Final Permit"). From July 12, 2022 through August 11, 2022, MassDEP solicited public comments on the Draft Permit for the reissuance of a permit to discharge wastewater from aquatic animal holding tanks through Outfall Serial Number 001 to Weymouth Fore River and the associated Draft WQC.

During the public comment period for the draft NPDES permit (July 12, 2022 through August 11, 2022), EPA received comments from:

1. Leigh Ann Clayton, Vice President of Animal Care and Nina Fischer, Environmental Quality Director, New England Aquarium, dated August 11, 2022.

MassDEP has reviewed EPA's Response to Comments, issued concurrent with the final NPDES permit on November 14, 2022, and concurs with their responses and the associated adjustments made to the final NPDES permit. MassDEP hereby incorporates by reference EPA's Response to Comments into this Response.

During the public comment period for the draft SWD Permit, MassDEP received comments from:

1. Leigh Ann Clayton, Vice President of Animal Care and Nina Fischer, Environmental Quality Director, New England Aquarium, dated August 11, 2022.

MassDEP's knowledge of the facility has benefited from the various comments and additional information submitted during the public comment period but the information and arguments presented did not raise any substantial new questions concerning the Permit that warranted MassDEP exercising the discretion to reopen the public comment period. MassDEP does, however, make certain clarifications in this response to comments. Any improvements and changes are explained in this document and are reflected in the Final Permit. Below, MassDEP provides a summary of the changes made in the Final Permit. The analyses underlying these changes are contained in the responses to individual comments that follow.

A copy of the Final Permit and this Response to Comments document will be posted on the MassDEP website: <https://www.mass.gov/info-details/massachusetts-final-individual-surface-water-discharge-permits-and-associated-documents>.

A copy of the Final Permit may be also obtained by writing or calling Cathy Coniaris, MassDEP, Surface Water Discharge Permitting Program, 100 Cambridge Street, Suite 800, Boston, MA 02114; telephone: 617-835-6693; email: [catherine.coniaris@mass.gov](mailto:catherine.coniaris@mass.gov).

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### I. Summary of Changes to the Final Permit

1. The PFAS evaluation and monitoring requirements in the Draft SWD Permit have been removed in the Final SWD Permit for the New England Aquarium's Offsite Holding Facility.

### II. Responses to Comments

Comments are reproduced below as received; they have not been edited, corrected or otherwise modified.

#### A. Comments from Leigh Ann Clayton, Vice President of Animal Care and Nina Fischer, Environmental Quality Director, New England Aquarium, dated August 11, 2022.

##### Comment 1

##### Per- and polyfluoroalkyl (PFAS) Substances

The Draft Permits require NEAq to conduct monitoring of the effluent for six different PFAS substances. NEAq requests that this condition is removed from the Draft Permits because we currently are unable to test for PFAS, do not have access to accurate data regarding PFAS concentrations of our intake water, and have demonstrated a commitment to the goals of the state's Surface Water Quality Standards (314 CMR 4):

- NEAq is unable to test for PFAS, so will need to outsource these samples twice a year.
- As further outlined below, NEAq lacks access to intake water sample data for concentrations of all six PFAS compounds the Draft Permit requires NEAq to report on. NEAq has concerns that these tests are required yet lack clear guidance in relation to interpretation and baseline data from our source water. As results are available to the general public, we want to ensure that reported data are meaningful and contextualized by intake data.
- By definition, NEAq is in the business of protecting aquatic life from toxic pollutants. As an ocean conservation organization, we work every day to meet the goals of the state's Surface Water Quality Standards (314 CMR 4), including maintaining our facilities' waters to be free of pollutants that are toxic to humans, aquatic life, or wildlife (314 CMR 4.05(5)(e)).

##### Response 1

MassDEP has made a policy determination to align with EPA and exempt surface water discharges to marine waters of less than 0.1 million (or 100,000) gallons per day from the state's PFAS evaluation and monitoring requirements unless PFAS is known or believed present. For example, see footnote 12 of the EPA NPDES General Permit for Small Wastewater Treatment Facilities:

<https://www3.epa.gov/region1/npdes/wwtf/final-wwtf-gp.pdf>. The New England Aquarium Offsite Holding Facility is permitted to discharge up to 30,000 gallons per day and so the PFAS requirements listed in the Draft SWD Permit for this facility have been removed.

## Comment 2

### Outsourcing

The Draft Permits require NEAq to increase the frequency and type of testing it conducts. NEAq currently does not possess the equipment to test for several effluent characteristics – including TN, PFAS, and some pharmaceuticals – or conduct the required dilution studies. The required equipment is priced at upwards of \$100,000. Because NEAq cannot complete many of the required tests on-site, we will need to find outside laboratories to analyze our water discharge to comply with the Draft Permits. This increased reliance on outsourcing increases the overall costs of our operations and presents new administrative challenges:

- *Operational Costs:* Because the Draft Permits increase the type and frequency of testing, the aggregate expense of outsourcing increase operational costs. For example, NEAq currently is required to conduct toxicity testing once during the duration of the permit for our Central Wharf Facility; however, the Draft Permit (No. MA0003123 only) increases the frequency to annually. We estimate that this change alone will cost approximately \$10,000 over the duration of the permit. In total, NEAq estimates that the required outsourcing will total at a minimum \$23,000 over the life of the permits. This estimate excludes the required dilution studies, for which a cost estimate is currently lacking.
- *Administrative Challenges:* Although testing will be completed off-site, outsourcing still substantially adds to staff workloads. Additional staff responsibilities include researching, hiring, and managing numerous outside vendors and appropriately packing, shipping, and tracking outsourced samples. NEAq currently employs two environmental quality employees, but as the institution continues to recover from the economic impacts of the COVID-19 pandemic, its ability to add to staff workloads or hire new environmental quality employees currently is limited.
- *Laboratories:* Environmental testing for sea water is not as widely available as for drinking water. To assist with NEAq's compliance of the Draft Permits, we request a list of laboratories that can conduct the required tests and meet the standards of the EPA or MassDEP.

## Response 2

In addition to EPA's Response to Comments here:

<https://www3.epa.gov/region1/npdes/permits/2022/finalma0003123permit.pdf>, see MassDEP's Response 1 above.

## Comment 3

### Water Intake Data

Intake water for NEAq's facilities comes from both Boston Harbor (No. MA0003123) and Quincy Bay (No. MA0040380). NEAq has limited knowledge of the concentrations of many regulated compounds in its intake water. To better understand the impacts of our operations, such as our contribution to TN or PFAS levels, NEAq needs to obtain baseline data for our water intake from Boston Harbor and Quincy

Bay. Currently, NEAq can research data from buoys that remotely measure, but these buoys do not measure all parameters.

NEAq requests assistance from EPA and/or MassDEP in obtaining more accurate intake data regarding concentrations of regulated compounds. Obtaining source data on TN, copper and PFAS, for instance, would help to contextualize our discharge concentrations, improve our operations, and facilitate compliance with the Draft Permit.

### **Response 3**

In addition to EPA's Response to Comments here:

<https://www3.epa.gov/region1/npdes/permits/2022/finalma0003123permit.pdf>, see MassDEP's Response 1 above.

**NOTICE OF APPEAL RIGHTS for  
STATE SURFACE WATER DISCHARGE PERMIT**

Within 30 days of the issuance of MassDEP's decision to grant or deny a Surface Water Discharge Permit pursuant to M.G.L. c. 21, § 43, and 314 CMR 3.00, any person aggrieved may request an adjudicatory hearing.

**How should the request for an adjudicatory hearing be made?**

A request for an adjudicatory hearing for the state Surface Water Discharge Permit must be made during the 30-day period following issuance of the state permit, in accordance with 314 CMR 2.08 and 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 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 must be made in writing and sent by email to [Caseadmin.OADR@state.ma.us](mailto: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.