

filed a petition for rate approval pursuant to section 284.123(b)(2) of the Commission's regulations. In addition to proposing increases to its firm and interruptible transportation rates on its Mainline and Whistler Spur facilities, Bay Gas proposes firm and interruptible transportation rates on its newly constructed Transco Lateral.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 p.m. Eastern Time April 26, 2010.

**Kimberly D. Bose,**  
Secretary.

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL-9139-4]

### Notice of Availability of Draft National Pollutant Discharge Elimination System (NPDES) General Permit for Residually Designated Discharges in Milford, Bellingham and Franklin, MA; and Notice of Availability of Proposed Amendments to the Preliminary Residual Designation Issued by EPA on November 12, 2008

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of Availability of draft NPDES general permit.

**SUMMARY:** The Director of the Office of Ecosystem Protection, Environmental Protection Agency-Region 1 (EPA), is issuing this Notice of Availability of a draft NPDES general permit for storm water discharges in the Charles River watershed within Milford, Bellingham, and Franklin, Massachusetts, from sites that are proposed for final designation for NPDES permitting pursuant to EPA's residual designation authority, so called, provided by Section 402(p)(2)(E) and (6) of the Clean Water Act (CWA) as implemented through regulatory provisions at 40 CFR 122.26(a)(9)(i)(C) and (D).

Those sections provide that in states where there is no approved state program, the EPA Regional Administrator may designate a storm water discharge as requiring an NPDES permit where he determines that: "\* \* \* (C) storm water controls are needed for the discharge based on wasteload allocations that are part of total maximum daily loads that address the pollutants of concern, or (D) the discharge, or category of discharges within a geographic area, contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States." The storm water discharges subject to the draft permit are proposed for final designation for NPDES permitting because their control is necessary based on wasteload allocations in the Lower Charles River Phosphorus TMDL ("the TMDL") and because they are contributing to water quality standards violations.

On November 12, 2008, the Regional Administrator for EPA Region 1 made a preliminary determination that designated discharges, as defined in that preliminary designation determination and as described below, warranted NPDES permit coverage. That determination is documented in the EPA Region 1 Record of Decision (ROD)

dated November 12, 2008, that can be found on EPA Region 1's Web site at: <http://www.epa.gov/region1/npdes/stormwater>.

At the time of the preliminary determination, EPA invited comment on its decision until the close of the comment period on the permit discussed in this notice.

EPA is today proposing amendments, discussed below, to that Preliminary Residual Designation. EPA is also publishing a draft general permit that will cover those designated discharges. This draft NPDES general permit establishes Notice of Intent (NOI) requirements, prohibitions, and storm water management practices for storm water discharges from designated discharge sites. The draft general permit, appendices, and fact sheet are available at: <http://www.epa.gov/region1/npdes/stormwater>.

**DATES:** The public comment period is from April 20, 2010 to June 30, 2010. Interested persons may submit comments on the draft general permit to EPA-Region 1, at the address given below, no later than midnight June 30, 2010. Those comments will be placed in the administrative record for the designation and permit. The general permit shall be effective on the date specified in the **Federal Register** publication of the Notice of Availability of the final general permit. The final general permit will expire five years from its effective date.

**ADDRESSES:** Submit comments identified by Docket ID No. EPA-R01-OW-2010-0292 by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
- *E-mail:* [Voorhees.mark@epa.gov](mailto:Voorhees.mark@epa.gov).
- *Mail:* Mark Voorhees, US EPA—Region 1, 5 Post Office Square—Suite 100, Mail Code—OEP 06-4, Boston, MA 02109-3912.

No facsimiles (faxes) will be accepted.

The draft permit is based on an administrative record available for public review at EPA-Region 1, Office of Ecosystem Protection, 5 Post Office Square—Suite 100, Boston, Massachusetts 02109-3912. The following **SUPPLEMENTARY INFORMATION** section sets forth principal facts and the significant factual, legal, and policy questions considered in the development of the draft permit. A reasonable fee may be charged for copying requests.

*Public Meeting Information:* EPA—Region 1 will hold a public meeting to provide information on the draft general permit and its requirements. The public

meeting will include a brief presentation on the draft general permit and a brief question and answer session. Written, but not oral, comments will be accepted at the public meeting and will be placed into the administrative record. The public meeting will be held at the following time and location:

Tuesday, June 22, 2010

Tri-County Regional Vocational School Auditorium, 147 Pond Street, Franklin, MA 02038.

Time: 6 p.m.–7 p.m.

*Public Hearing Information:*

Following the public meeting, a public hearing will be conducted in accordance with 40 CFR 124.12 and will provide interested parties with the opportunity to provide written and/or oral comments for the official draft permit record. The public hearing will be held at the following time and location:

Tuesday, June 22, 2010

Tri-County Regional Vocational School Auditorium, 147 Pond Street, Franklin, MA 02038.

Time: 7:30 p.m.

**FOR FURTHER INFORMATION CONTACT:**

Additional information concerning the draft permit may be obtained between the hours of 9 a.m. and 5 p.m. Monday through Friday excluding holidays from: Mark Voorhees, Office of Ecosystem Protection, Environmental Protection Agency, 5 Post Office Square—Suite 100, Boston, MA 02109–3912; telephone: 617–918–1537; e-mail: [Voorhees.mark@epa.gov](mailto:Voorhees.mark@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**Background of Proposed Permit**

As stated previously, the Director of the Office of Ecosystem Protection, EPA–Region 1, is proposing to issue a National Pollutant Discharge Elimination System (“NPDES”) general permit for residually designated discharges in the upper portions of the Charles River watershed. The permit is: MARRD0000—General Permit for Designated Discharges in the Charles River Watershed within the Municipalities of Milford, Bellingham, and Franklin, Massachusetts.

For purposes of the fact sheet and draft permit, a designated discharge is defined as follows:

A Designated Discharge is two or more acres of impervious surfaces located: (1) In the Charles River watershed; (2) in part or in whole in the municipalities of Milford, Bellingham, or Franklin, Massachusetts; and (3) on a single lot or two or more contiguous lots aggregated as follows: when measuring the impervious surfaces to determine if

they meet the two acre threshold, the following impervious surfaces shall not be included:

Any impervious surfaces associated solely with any of the following land uses:

- a. Sporting and recreational camps;
- b. Recreational vehicle parks and campsites;
- c. Manufactured housing communities;
- d. Detached single-family homes located on individual lots; and
- e. Stand-alone multi-family houses with four or fewer units; and
- f. Any property owned by a local, state or federal government unit where the property discharges wholly into an MS4 system operated by that local, state or federal government unit that has a valid NPDES permit.

For the purpose of defining “designated discharge,” a stand-alone multi-family house with four or fewer units does not include any multi-family house that is part of a condominium, cooperative, apartment complex, townhouse, or other residential or mixed-use development with more than four dwelling units, or any multi-family houses that share private access roads, driveways or parking areas with contiguous lots containing additional dwelling units where the total number of units served by the shared access road, driveway or parking area is more than four.

When measuring impervious surfaces to determine if they meet the two acre threshold for a designated discharge, the impervious surfaces on contiguous lots shall be included provided that:

- (1) The contiguous lots are owned by the same person; or
- (2) The footprint of the same building, structure, low impact development techniques or structural storm water best management practice spans the contiguous lots owned by different persons.

EPA may require that impervious surfaces on contiguous lots that do not meet the requirements above be included for purposes of determining whether they meet the two acre threshold for a designated discharge if it finds that ownership of the contiguous lots asserted to be in separate ownership was arranged to circumvent the requirements of the permit, including evidence that on or after the publication date of this notice, two or more owners of contiguous lots have acted in concert to acquire or dispose of contiguous lots to avoid the requirements of the permit.

For purposes of the draft permit, the Charles River watershed includes all areas that discharge directly to the Charles River or its tributaries or

indirectly to the Charles River or its tributaries through a municipal separate storm sewer system (MS4) or other private or public conveyance systems, including structural storm water best management practices.

On November 12, 2008, EPA issued for public comment a document entitled “Preliminary Residual Designation.” The definition of “designated discharge” in the preliminary residual designation is being amended in the proposed final residual designation of today in three ways:

1. The preliminary residual designation stated that a designated discharge is a storm water discharge from two or more acres of impervious surfaces that are located on a single lot or two or more contiguous lots aggregated in accordance with 314 CMR 21.05. This element of the definition was based on draft Massachusetts regulations that were under development at the time the preliminary residual designation was made.

The proposed final designation issued today changes the aggregation rules to combine impervious surfaces where they are on contiguous lots owned by the same person; or where the footprint of the same building, structure, low impact development techniques or structural storm water best management practice spans the contiguous lots owned by different persons.

2. The preliminary residual designation stated that in aggregating impervious surfaces to determine if they constitute a designated discharge, impervious surfaces owned or operated by a local government unit, the Commonwealth of Massachusetts or the federal government should not be included. The definition of designated discharge in today’s proposed final designation does not contain that exclusion. The proposed final designation does, however, exclude any property owned by a local, state or federal government unit where the property discharges wholly into an MS4 system operated by that local, state or federal government unit and that unit holds a valid NPDES permit.

3. The original designation stated that where a property containing a designated discharge is owned by one person but is operated by another person, the operator of the property is required to obtain the NPDES permit. The proposed final designation requires any owner of part or all of a designated discharge to file an NOI within 180 days of the effective date of the permit and to obtain authorization to discharge under the permit. (A different filing schedule applies to designated discharges that come into existence after

the effective date of the permit.) EPA expects that in some instances, the owner of a designated discharge may not control or have the right to control all of the activities whose control are necessary to assure compliance with the permit. In such an instance, the owner must identify in its NOI what activities it does not control or have the right to control, the specific provisions of the permit that require their control and the identity of each person who has the control or the right to control such activity. EPA may request that such a person submit an NOI or an application for an individual permit. EPA may subsequently authorize that person to discharge subject to its compliance with the applicable provisions of the relevant permit. Once authorized under this permit, that person would be a co-permittee.

The preliminary residual designation stated that the comment period on it would remain open until the close of the comment period on this draft permit. EPA is inviting additional comment on the proposed final designation it is issuing today. The agency will respond to all significant comments on the designation and the draft permit at the close of the comment period on this permit.

#### *EPA's NPDES Permitting Authority*

Section 301(a) of the CWA prohibits the discharge of pollutants into waters of the United States except in compliance with certain sections of the Act, including Section 402 of the Act. Section 402 of the Act provides that the Administrator of EPA may issue National Pollutant Discharge Elimination (NPDES) permits for discharges of any pollutant into waters of the United States according to such specific terms and conditions as the Administrator may require. EPA's regulations provide for the issuance of general permits to authorize one or more categories or subcategories of discharges, including storm water point source discharges within a geographic area, pursuant to 40 CFR 122.28(a)(1) and (2)(i). Section 402 of the CWA also authorizes EPA to issue NPDES permits allowing discharges that will meet certain specified requirements. The conditions in the draft permit are established pursuant to the CWA and 40 CFR Parts 122 and 124.

The draft permit establishes a series of storm water control requirements, mostly in the form of Best Management Practices (BMPs), to assure that storm water from a permittee's designated discharge do not cause or contribute to violations of Massachusetts water quality standards. Due to the variability

of pollutant loads from different sources associated with storm water, EPA believes the use of BMPs is the most appropriate method to regulate discharges of storm water authorized by this permit. Pursuant to 40 CFR 122.44(k), the permit requires the use of BMPs, including the development and implementation of a comprehensive storm water management plan and a phosphorus reduction plan, as the mechanisms to achieve the required pollutant reductions.

#### **Summary of Permit Conditions**

##### *Obtaining Authorization*

In order to obtain authorization to discharge, owners of property on which designated discharges are located are required to submit a complete and accurate NOI to EPA—Region 1. The contents of the NOI and the specific provisions governing by when and by whom an NOI must be filed, including in circumstances where a designated discharge has more than one owner, are provided in Appendix A to the draft permit and should be consulted by any person having an ownership interest in a designated discharge.

The NOI must be submitted within 180 days of the effective date of the final permit. The effective date of the final permit will be specified in the **Federal Register** publication of the Notice of Availability of the final permit. An owner of a designated discharge must meet the eligibility requirements of the draft permit prior to submission of its NOI. The owner of a designated discharge will be authorized to discharge under the permit upon written notice from EPA.

EPA—Region 1 will provide an opportunity for the public to comment on each NOI that is submitted. Following public comment, EPA—Region 1 will authorize the discharge, request additional information, or require the discharge owner to apply for an alternative permit or an individual permit.

##### *Technology Based Effluent Limitations*

All NPDES permits are required to contain technology-based limitations. When EPA has not promulgated effluent limitation guidelines for an industry, or if an operator is discharging a pollutant not covered by an effluent guideline, permit limitations may be based on the best professional judgment (“BPJ”) of the permit writer, pursuant to CWA Section 402 (a)(1) and 40 CFR 125.3(c). For this permit, the technology-based limits are based on BPJ because no effluent limitation guideline applies.

The BPJ limits in this permit are in the form of non-numeric control measures, also referred to as best management practices (“BMPs”). Non-numeric limits are employed under certain circumstances as provided in 40 CFR 122.44(k).

Section III of the permit requires the permittee to undertake activities to meet baseline performance standards. These include non-structural best management practices such as street sweeping; management of snow and deicing chemicals; management of solid waste and hazardous waste; management of landscaped areas and other good housekeeping measures.

##### *Water Quality Based Effluent Limitations*

Consistent with the wasteload allocation of the Lower Charles River Phosphorus TMDL, Part IV and Appendix D of the permit establish requirements to assure a phosphorus load reduction of 65% from each designated discharge. The reduction can be achieved by any one or combination of three methods: (1) Enhanced non-structural BMPs; (2) structural BMPs; and (3) participation in a Certified Municipal Phosphorus Program (“CMPP”). A CMPP is an entity that may be established by a government unit to organize the activities of the permittees covered by this permit, with the goal of achieving environmental and economic efficiencies. The fact sheet discusses criteria that EPA may consider in approving a CMPP under the permit. Appendix D of the permit and its attachments provide methods to calculate phosphorus loads from a designated discharge and the load reductions that can be achieved through the implementation of structural and non-structural BMPs.

Finally, the permit contains provisions requiring the proper operation and maintenance of BMPs, the submission of Annual Certifications of Compliance, and additional water quality based requirements, including those relating to attainment of Massachusetts water quality standards, new dischargers, and anti-degradation.

Dated: April 6, 2010.

**H. Curtis Spalding,**

*Regional Administrator, Region 1.*

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