

**Water Quality Certification #2022-001
Supplemental Conditions to U.S. E.P.A.
National Pollutant Discharge Elimination
System (NPDES) General Permit for
Dewatering and Remediation Discharges
Vermont Permit #VTG910000**



VERMONT DEPARTMENT OF
ENVIRONMENTAL CONSERVATION
**WATERSHED
MANAGEMENT DIVISION**

I. INTRODUCTION

On April 27, 2022, the United States Environmental Protection Agency (EPA) requested the Vermont Department of Environmental Conservation (VTDEC) review and grant certification under Section 401 of the Clean Water Act or waive its right to certify EPA's proposed draft National Pollutant Discharge Elimination System (NPDES) General Permit for Dewatering and Remediation Discharges – Vermont Permit #VTG910000. Pursuant to Section 13.11 of the Vermont Water Pollution Control Permit Regulations (February 26, 1974) (VWPCPR) and the Agency of Natural Resources' Section 401 Water Quality Certification Practice (October 22, 2014), the Secretary (Secretary) of the Vermont Agency of Natural Resources (Agency or ANR) has reviewed EPA's request. Pursuant to the VWPCPR §§ 13.11(c)-(f), the Agency provided public notice of its preliminary decision in this matter on June 27, 2022 and provided the opportunity to request a public meeting.

II. BACKGROUND

The EPA has jurisdiction over projects undertaken by Federal Operators in Vermont for purposes of permitting under the National Pollutant Discharge Elimination System (NPDES). The EPA is issuing the draft National Pollutant Discharge Elimination System (NPDES) general permits for discharges of pollutants to Waters of the United States in waste waters from certain dewatering and remediation-related activities. This Dewatering and Remediation General Permit (DRGP) covers discharges to certain waters in the Commonwealth of Massachusetts and the State of New Hampshire, sites in Connecticut and Rhode Island located on Indian Country lands, and federal facilities in Vermont. This DRGP is a combined reissuance of the Remediation General Permit (RGP) that became effective on April 8, 2017 and expires on April 8, 2022, and the Dewatering General Permit (DGP) that became effective on April 25, 2015 and expired on April 7, 2022.

III. CONDITIONS

The Secretary has reviewed EPA's proposed DRGP, and this decision is based upon an evaluation of the information contained within the proposed general permit and other requirements of state and federal law relevant to the Agency's responsibilities under Section 401 of the federal Clean Water Act. The Agency certifies that there is a reasonable assurance that discharges authorized under EPA's proposed general permit and in accordance with the following conditions will not cause a violation of the Vermont Water Quality Standards (VWQS) and will be in compliance with sections 208(e), 301, 302, 303, 306, and 307 of the federal Clean Water Act, 33 U.S.C. § 1341, as amended, and other appropriate requirements of state law. This certification is granted pursuant to the following conditions being applied to all regulated activities in Vermont:

- A. Discharges to Outstanding Resource Waters (ORWs) are prohibited unless the proposed discharge will improve water quality or is necessary for the maintenance of current environmental conditions; or the proposed discharge is temporary and it is expected that water quality in the receiving water will be equal to or better than that which existed prior to commencement of the

discharge. In order to be considered temporary, the duration of the discharge must typically occur over a period of days or months, not years.

B. Except as provided for in 10 V.S.A. § 1259 (d) and (f), the discharge of wastes other than nonpolluting wastes and stormwater runoff is prohibited in Class A(1) and A(2) waters regardless of the degree of treatment provided.

C. Noncompliance Notification

1. In the event the Permittee is unable to comply with any of the conditions of this permit due, among other reasons, to:

(a) Breakdown or maintenance of waste treatment equipment (biological and physical-chemical systems including all pipes, transfer pumps, compressors, collection ponds or tanks for the segregation of treated or untreated wastes, ion exchange columns, or carbon absorption units);

(b) Accidents caused by human error or negligence;

(c) Any unanticipated bypass or upset which exceeds any effluent limitation in the permit;

(d) Violation of a maximum day discharge limitation for any of the pollutants listed by the Secretary in this permit; or

(e) Other causes such as acts of nature,

the Permittee shall provide notice as specified in subdivisions 2, 3, and 4 of this subsection.

2. Pursuant to 10 V.S.A. § 1295, notice for “untreated discharges,” defined as “(1) combined sewer overflows from a Wastewater Treatment Facility (WWTF); (2) overflows from sanitary sewers and combined sewer systems that are part of a WWTF during dry weather flows, which result in a discharge to waters of the State; (3) upsets or bypasses around or within a WWTF during dry or wet weather conditions that are due to factors unrelated to a wet weather storm event and that result in a discharge of sewage that has not been fully treated to waters of the State; and (4) discharges from a WWTF to separate storm sewer systems.”

(a) Public notice. For “untreated discharges” an operator of the WWTF or the operator’s delegate shall as soon as possible, but no longer than one hour from discovery of an untreated discharge from the WWTF, post on a publicly accessible electronic network, mobile application, or other electronic media designated by the Secretary an alert informing the public of the untreated discharge and its location, except that if the operator or his or her delegate does not have telephone or Internet service at the location where he or she is working to control or stop the untreated discharge, the operator or his or her delegate may delay posting the alert until the time that the untreated discharge is controlled or stopped, provided that the alert shall be posted no later than four hours from discovery of the untreated discharge.

(b) Secretary notification. For “untreated discharges” an operator of the WWTF shall within 12 hours from discovery of an untreated discharge from the WWTF notify the Secretary and the local health officer of the municipality where the facility is located of the untreated discharge. The operator shall notify the Secretary through use of the Department of Environmental Conservation’s online event reporting system. If, for any reason, the online event reporting system is not operable, the operator shall notify the Secretary via telephone or e-mail. The notification shall include:

(i) The specific location of each untreated discharge, including the body of water affected.

(ii) The date and approximate time the untreated discharge began.

(iii) The date and approximate time the untreated discharge ended. If the untreated discharge is still ongoing at the time of reporting, the entity reporting the untreated discharge shall amend the report with the date and approximate time the untreated discharge ended within three business days of the untreated discharge ending.

(iv) The approximate total volume of sewage and, if applicable, stormwater that was released. If the approximate total volume is unknown at the time of reporting, the entity reporting the untreated discharge shall amend the report with the approximate total volume within three business days.

(v) The cause of the untreated discharge and a brief description of the noncompliance, including the type of event and the type of sewer structure involved.

(vi) The person reporting the untreated discharge.

3. For any non-compliance not covered under this permit, an operator of the WWTF or the operator’s delegate shall notify the Secretary within 24 hours of becoming aware of such condition and shall provide the Secretary with the following information, in writing, within five days of becoming aware of such condition:

(a) Cause of non-compliance;

(b) A description of the non-complying discharge including its impact upon the receiving water;

(c) Anticipated time the condition of non-compliance is expected to continue or, if such condition has been corrected, the duration of the period of non-compliance;

(d) Steps taken by the Permittee to reduce and eliminate the non-complying discharge; and

(e) Steps to be taken by the Permittee to prevent recurrence of the condition of non-compliance.

4. For noncompliance events related to bypass events, these reports must include the data described above (with the exception of time of discovery) as well as the type of event (combined sewer overflows, sanitary sewer overflows, or bypass events), type of sewer overflow structure (e.g., manhole, combined sewer overflow outfall), discharge volumes untreated by the treatment works treating domestic sewage, types of human health and environmental impacts of the sewer overflow event, and whether the noncompliance was related to wet weather.

D. pH Limitations

pH Limitations for Discharges in Vermont¹

| Receiving Water Class | Effluent Limitations ^{2,3} |
|-----------------------|-------------------------------------|
| Class B | 6.5 to 8.5 SU |

Footnotes

¹ pH effluent limitations apply to all discharges.

² The limitation type for pH is range. The sample type required for pH is grab. Grab samples shall be analyzed using an EPA-approved method in 40 CFR §136.

³ The pH of the effluent shall be in the range of 6.5 to 8.5 standard units unless a different range is approved by the State.

E. Temperature Limitations

Temperature Limitations for Discharges in Vermont¹

| Receiving Water | | Seven-day mean of maximum daily water temperatures ² | Ambient Water Temperature | ΔT Limitation ^{3,4} |
|-----------------|---|---|---------------------------|------------------------------|
| Class B | Cold Water Fish Habitat | > 68°F | | ≤ 1°F |
| | | < 68°F | | none allowed |
| | Warm Water Fish Habitat Lakes, Ponds, and Reservoirs not including Riverine Impoundments | | > 60°F | ≤ 1°F |
| | | | Between 60°F and 50°F | ≤ 2°F |
| | | | < 50°F | ≤ 3°F |
| | | | > 66°F | ≤ 1°F |
| | Warm Water Fish Habitat Rivers, Streams, Brooks, Creeks, and River Impoundments | | Between 63°F and 66°F | ≤ 2°F |
| | | | Between 59°F and 62°F | ≤ 3°F |
| | | Between 55°F and 58°F | ≤ 4°F | |
| | < 55°F | ≤ 5°F | | |

Footnotes

¹ Temperature effluent limitations apply on a case-by-case basis if heat is indicated as a pollutant in the NOI submitted to EPA, or if EPA and/or the State determine a discharge is likely to contain residual heat.

² As a rolling seven-day mean of maximum daily water temperatures for the entire period from June 1 to September 30 of any year.

³ The limitation type for temperature is daily maximum. The sample type required for temperature is grab. Grab samples shall be analyzed using EPA Method 2550-B-2000 or other EPA-approved methods in 40 CFR §136.

⁴ Change in temperature from background shall be determined by subtracting the temperature of the effluent from the temperature of the receiving water measured a point immediately upstream of a discharge(s) zone of influence at a reasonably accessible location.

F. The discharge shall not cause or contribute to a violation of Vermont Water Quality Standards.

IV. BASIS FOR CONDITIONS MORE STRINGENT THAN EPA'S PROPOSED GENERAL PERMIT

The Secretary is authorized to implement a direct discharge permit program consistent with federal NPDES standards pursuant to 10 V.S.A. § 1259. The conditions proposed by the Secretary in III. A – F are deemed necessary by the Secretary to ensure compliance with the Vermont Water Quality Standards (VWQS). The Secretary's justification for the conditions in subsection III follow below.

- Condition A: Pursuant to VWQS § 29A-105 (d), where the Secretary so designates such waters for specific exceptional natural, recreational, cultural, or scenic values, their existing quality, associated with the values for which they have been designated, shall, at a minimum, be protected and maintained.
- Condition B: Pursuant to 10 V.S.A. § 1259 and VWQS § 29A-106 Discharge Policy.
- Condition C: Pursuant to 10 V.S.A 1295, public notice of untreated or partially treated sewage or wastewater discharges is required.
- Condition D: Pursuant to VWQS § 29A-303 (6), pH values shall be maintained within the range of 6.5 and 8.5. Both the change and the rate of change in pH values shall be controlled to ensure the full support of uses.
- Condition E: Pursuant to VWQS § 29A-302 (1)(A), the change or rate of change in temperature, either upward or downward, shall be controlled to ensure full support of aquatic biota, wildlife, and habitat uses.
- Condition F: Pursuant to 10 V.S.A. §§ 1259 and 1263, all permitted discharges must meet Vermont Water Quality Standards.

V. APPEALS

Pursuant to 10 V.S.A. Chapter 220, an aggrieved person shall not appeal this permit unless the person submitted to the Secretary a written comment during the applicable public comment period or an oral comment at the public meeting conducted by the Secretary. Absent a determination to the contrary, an aggrieved person may only appeal issues related to the person's comments to the Secretary as prescribed by 10 V.S.A. § 8504(d)(2).

Right to Appeal to Environmental Division. Any appeal of this permit must be filed with the clerk of the Environmental Division of the Superior Court within 30 days of the date of the decision. The notice of appeal must specify the parties taking the appeal and the statutory provision under which each party claims party status; must designate the act or decision appealed from; must name the Environmental Division; and must be signed by the appellant or the appellant's attorney. In addition, the appeal must give the address or location and description of the property, project, or facility with which the appeal is

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concerned and the name of the applicant or any permit involved in the appeal. The appellant must also serve a copy of the notice of appeal in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings. For further information, see the Vermont Rules for Environmental Court Proceedings available at www.vermontjudiciary.org. The address for the Environmental Division is: 32 Cherry Street; 2nd Floor, Suite 303; Burlington, VT 05401 Telephone #: 802-951-1740.

VI. EFFECTIVE DATE & EXPIRATION

This certification shall become effective on the date of signing and shall run for the duration of the federal permit. The conditions of this certification shall become conditions of the federal permit.

Dated this 26th day of July, 2022

Julia S. Moore, Secretary
Agency of Natural Resources

By _____
Peter LaFlamme, Director
Watershed Management Division