

APPENDIX III

NATIONAL HISTORIC PRESERVATION ACT REVIEW

Background

Section 106 of the National Historic Preservation Act (NHPA) requires federal agencies to take into account the effects of Federal “undertakings” on historic properties that are either listed on, or eligible for listing on, the National Register of Historic Places. The term federal “undertaking” as defined in the Advisory Council on Historic Preservation (ACHP) consultation procedures found at 36 CFR Part 800 include a project, activity, or program of a federal agency, including those carried out by or on behalf of a federal agency, those carried out with federal financial assistance, and those requiring a federal permit, license or approval. 36 CFR 800.16(y). These regulations define historic properties as prehistoric or historic districts, sites, buildings, structures, or objects that are included in, or are eligible for inclusion in, the National Register of Historic Places. The term includes objects, artifacts, records, and remains that are related to and located within such properties. 36 CFR 800.16(1).

EPA’s issuance of a National Pollutant Discharge Elimination System (NPDES) General Permit is a federal undertaking within the meaning of the ACHP regulations. In accordance with the regulations, EPA has determined that the activities to be carried out under the General Permit require review and consideration to ensure that the effects of the undertaking on historic properties are taken into account. As a result, EPA has included this screening process for applicants to identify whether properties listed or eligible for listing on the National Register of Historic Places are within the path of permit-related activities (including control measures, treatment systems, or any BMPs relating to the discharge or treatment process).

This screening process provides an appropriate site-specific means of addressing historic property issues related to EPA’s issuance of the General Permit. In certain instances described below, this process may require applicants seeking authorization under this General Permit to coordinate with the State Historic Preservation Officer (SHPO), and/or Tribal Historic Preservation Officer (THPO), and others to determine whether the activities covered by the General Permit have the potential to affect historic properties. Applicants must also comply with other applicable State, Tribal, and local laws concerning the protection of historic properties and places outside of the Section 106 regulations.

Activities with No Potential to Affect Historic Properties

EPA has reason to believe that the majority of activities authorized under the General Permit will have no potential to affect historic properties. These discharges are uncontaminated, temporary, infrequent, and relatively small (less than 0.5 MGD). This permit typically authorizes discharges from existing facilities and requires control of the pollutants discharged from the facility. EPA does not anticipate effects on historic

properties from authorized dewatering discharges. Thus, to the extent EPA's issuance of this General Permit authorizes discharges of pollutants confined to existing channels, outfalls or natural drainage areas, the permitting action does not have the potential to affect historic properties.

In addition, some sources covered under this permit will be facilities that seek renewal of previous permit authorization. These existing dischargers should have already addressed NHPA issues in the previous General Permit as they were required to certify that they were either not affecting historic properties or they had obtained written agreement from the applicable SHPO or THPO regarding methods of avoiding, minimizing or mitigating potential impacts. To the extent this permit authorizes renewal of prior coverage without relevant changes in operations, the discharge has no potential to affect historic properties.

A determination that a proposed activity covered under the permit will have no potential to affect historic properties fulfills Section 106 requirements.

Activities With Potential to Affect Historic Properties

EPA believes this permit may, in rare instances, have the potential to affect historic properties if the applicant undertakes the construction and/or installation of control measures that involve subsurface disturbance of less than 1 acre of land. (Note: Ground disturbances of 1 acre or more require coverage under the Construction General Permit.) Where there is disturbance of land through the construction and/or installation of measures to control dewatering activities, there is a possibility that artifacts, records, or remains associated with historic properties could be impacted.

As a result, if the applicant is establishing new or altering existing control measures to manage its discharge, it will need to ensure that (1) historic properties will not be affected by their activities and/or (2) it is in compliance with a written agreement with the SHPO, THPO (if appropriate) or, if the Tribe does not have a THPO, other tribal representative, and EPA that outlines all measures the applicant will implement to avoid, minimize or mitigate any adverse effects on historic properties.

Examples of Control Measures Which Involve Subsurface Disturbance

The type of control measures that are presumptively expected to cause subsurface ground disturbance include:

- Dikes
- Berms
- Catch basins, drainage inlets
- Ponds, bioretention areas
- Ditches, trenches, channels, swales
- Culverts, pipes

- Land manipulation; contouring, sloping, and grading
- Perimeter Drains
- Installation of manufactured treatment devices

EPA cautions applicants that this list is non-inclusive. Other control measures involving subsurface ground disturbing activities that are not on this list must also be examined for the potential to affect historic properties.

Tribal Historic Preservation Officers

If the applicant's permit related activity is on or adjacent to Indian Country, it must also include the THPO in the screening process described below. Moreover, if the dewatering activity may affect a tribe's resources, rights, or traditional way of life, the applicant must coordinate with the THPO to determine whether the activities covered by the General Permit have the potential to affect historic properties. Maps of tribal reservations in Massachusetts are available on EPA's website at:

<http://www.epa.gov/region1/npdes/dewatering.html> .

Keep in mind that actions within tribal usual and accustomed areas that could potentially affect a tribe's resources, rights, or traditional way of life, including properties of cultural or historical significance to a tribe, may be located beyond the current reservation boundaries on non-tribal lands for which a tribe may claim cultural affiliation from past inhabitation. Applicants seeking authorization under the General Permit should include the THPO(s) in the screening process if the possibility exists that permit-related activities on non-tribal lands could affect cultural or historical properties of significance to a tribe.

Screening Process

Applicants or their consultants need to answer the questions and follow the appropriate procedures below in accordance with the ACHP regulations at 36 CFR 800.

Question 1: Is the facility an existing facility authorized by the previous permit or a new facility and if so, is the applicant avoiding any activity that involves subsurface land disturbance for the implementation of its dewatering activities?

YES - The applicant should certify that fact in writing and file the statement with the EPA. This certification must be maintained as part of the records associated with the permit. An applicant will certify eligibility for this permit using Criterion A (see below) on the NOI. The applicant does not need to contact the State Historic Commission or THPO. On the basis of this representation, EPA will document that the project has "no potential to cause effects" (36 CFR 800.3(a)(1)). The applicant has no further obligations under the Section 106 regulations.

NO - Unless the project proponent has previously verified with the appropriate historic preservation authority(ies) that the proposed permit-related dewatering activities have no

potential to affect historic properties, you must contact the appropriate State Historic Commission and THPO, provide relevant project information, and request the historic preservation authority's view. Note that the inquiry to the historic preservation authority(ies) must be given in advance of the submission of the NOI. After you have completed the following steps, go to Question 2.

The applicant or their consultant should prepare a complete information submittal to the SHPO/THPO. The submittal consists of:

- Completed Project Notification Form - forms available at <http://www.sec.state.ma.us/mhc/mhcform/formidx.htm> (for Massachusetts applications); and www.nh.gov/nhdhr/review (for New Hampshire applications);
- USGS map section with the actual project boundaries clearly indicated; and
- Scaled project plans showing existing and proposed conditions, including the location of the dewatering control measures that will cause subsurface earth disturbance clearly indicated.

Please note that the SHPOs do not accept email submittals for review. Instead, mail a paper copy of your submittal (Certified Mail, Return Receipt Requested) or deliver a paper copy of your submittal (and obtain a receipt) to:

Massachusetts projects:

State Historic Preservation Officer
Massachusetts Historical Commission
220 Morrissey Blvd.
Boston, MA 02125

New Hampshire projects:

NH Division of Historic Resources
State Historic Preservation Office
Attention: Review and Compliance
19 Pillsbury Street
Concord, NH 03301-3570

In addition, Massachusetts project proponents should mail (Certified Mail, Return Receipt Requested) a paper copy of the submittal to the following THPOs:

Wampanoag Tribe of Gay Head
Bettina Washington, Tribal Historic Preservation Officer
20 Black Brook Road
Aquinnah, MA 02535

Mashpee Wampanoag Tribe
Ramona Peters, Tribal Historic Preservation Officer

483 Great Neck Road S.
Mashpee, MA 02649

Narragansett Tribe
John Brown, Tribal Historic Preservation Officer
P.O. Box 268
Charlestown, RI 02813

Provide a copy of your submittal and the proof of MHC/THPO delivery showing the date the MHC/THPO received your submittal to:

NPDES Permit Branch Chief
US EPA Region 1
5 Post Office Square
Mail Code OEP06-1
Boston, MA 02109-3912

The SHPO/THPOs should comment within thirty (30) days of receipt of complete submittals, and may ask for additional information.

Question 2: Is the property listed in the National Register of Historic Places, or have prior surveys or disturbances revealed the existence of a historic property or artifacts, and/or has a historic preservation authority indicated that the permit-related dewatering control measure(s) has the potential to affect historic properties?

NO - The applicant or its consultant should certify that fact in writing and file the statement with EPA. This certification must be maintained as part of the records associated with the permit. On the NOI, the applicant will certify eligibility for this permit using Criterion B (see below). Based on that certification, EPA will document that the project has “no potential to cause effects” (36 CFR 800.3(a)(1)). The applicant has no further obligations under the Section 106 regulations.

YES - The applicant must engage in consultation with EPA, the SHPO, THPO (if appropriate) and other consulting parties. The steps in the ACHP regulations (e.g., 36 CFR 800.2 to 800.6) will proceed as necessary to conclude the Section 106 review for the proposed permit activity. Once the Section 106 review is completed and the applicant is in compliance with a written agreement with the SHPO, THPO (if appropriate), and EPA, the applicant will certify eligibility for this permit using Criterion C (see below) on the NOI.

Upon completion of the procedures in this Appendix, the applicant must certify one of the following on the NOI:

Criterion A: The discharges do not have the potential to cause effects on historic properties.

Criterion B: A historic survey was conducted in accordance with 36 CFR 800.4 and/or the appropriate SHPO/THPOs were contacted. If a survey was conducted, it concluded that no historic properties are present and the SHPO/THPO did not dispute this conclusion or did not respond within 30 days of the applicant's submission. If a survey was not conducted but the SHPO/THPO agrees that the proposed activity does not have the potential to affect historic properties or the SHPO/THPO did not respond within 30 days of receipt of the applicant's submittal, the discharges do not have the potential to affect historic properties.

Criterion C: The discharges and discharge related activities have the potential to affect historic properties. The applicant has obtained and is in compliance with a written agreement with the SHPO, THPO (if appropriate) that outlines measures the applicant will carry out to avoid, minimize or mitigate any adverse effects on historic properties. EPA will be part of this consultation process.