

**RESPONSE TO COMMENTS FROM THE MASSACHUSETTS HISTORIC COMMISSION (MHC) AND THE
ADVISORY COUNCIL ON HISTORIC PRESERVATION (ACHP) CONCERNING THE EPA REGION 1 NATIONAL
POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) CONSTRUCTION DEWATERING GENERAL
PERMIT**

From July 17, 2014, through August 18, 2014, the United States Environmental Protection Agency, Region 1 (EPA or the Region) solicited public comments on the draft NPDES General Permit authorizing discharges associated with dewatering activities in the Commonwealth of Massachusetts and the State of New Hampshire. In accordance with the provisions of 40 CFR §124.17, this document presents EPA's response to comments received on the draft NPDES General Permit for discharges from dewatering activities. Each particular response explains and supports the EPA determinations that form the basis of the final permit.

After a review of the comments received, EPA has made a final decision to issue this General Permit authorizing these discharges. The final General Permit is substantially identical to the draft General Permit that was available for public comment.

Although EPA's decision-making process has benefitted from the comments and additional information submitted, the information and arguments presented did not raise any substantial new questions concerning the permit. EPA did, however, make some minor changes to the final permit in response to comments. Any changes between the draft and final permit are explained in this response and are reflected in the final permit.

In particular, EPA received comments from the MHC and the ACHP during the public comment period for the NPDES Dewatering General Permit for Massachusetts and New Hampshire. Below is the Region's response to these comments. Note that for the sake of brevity, the comments have been summarized and if similar, combined. The full text of comments received is available at <http://www.epa.gov/region1/npdes/dewatering.html>.

Comment 1: EPA Region 1 should enter into a Programmatic Agreement (PA) with the MHC and ACHP prior to the issuance of this General Permit.

Response to Comment 1: The Region appreciates the commenter's interest in a PA and is aware that EPA Headquarters has coordinated with the ACHP and with State and Tribal Historic Preservation Officers on the development of a draft PA for the NPDES General Permits for discharges associated with construction activity and industrial activity as well as on the development of permit screening procedures to consider potential impacts on historic properties. In light of those discussions, the Region has included the procedures described in Appendix III of the General Permit, which will ensure that the potential effects of any subsurface disturbances related to the installation of management practices to control dewatering discharge activities authorized by the permit on historic properties are adequately considered. The Region believes that these procedures are an appropriate means to ensure consideration of potential impacts on historic properties and that further efforts separate from the prior Headquarters interactions would be an inefficient and duplicative use of its limited resources.

Comment 2: Authorization of each project-specific Notice of Intent (NOI) under the proposed General Permit are separate federal agency undertakings.

Response to Comment 2: EPA does not consider the submission of an individual NOI seeking coverage under the General Permit to be a separate federal undertaking. Rather, it is the initial issuance of the

General Permit that is the relevant federal action. Site-specific information about project locations and potential impacts of covered activities only become available to EPA as applicants seek coverage under the General Permit by submission of an NOI to EPA. The General Permit covers the permitted activities 15 days after the submission of a complete and accurate NOI. As a result, the Region considers the procedures described in Appendix III as the most appropriate means to require applicants to assess and work with historic preservation authorities to avoid, minimize or mitigate impacts to historic properties before an NOI is submitted to the Agency.

Comment 3: The draft procedures in Appendix III do not follow the ACHP regulations at 36 CFR Part 800. For example, identification of historic properties and adverse effect findings must be made in consultation with SHPOs, THPOs must be included in this process, and EPA should be part of the written agreement to resolve adverse effects.

Response to Comment 3: As stated previously, EPA does not consider submission of individual NOIs seeking coverage under a General Permit to be separate federal undertakings. As an appropriate means of addressing potential impacts on historic properties associated with issuance of the permit, the Region has included permit procedures that require applicants to assess and work with historic preservation authorities to avoid, minimize or mitigate impacts to historic properties before submission of an NOI to the Agency. In addition, the Region has modified the proposed Appendix III procedures to better address the ACHP's and MHC's concerns. In particular, in rare instances when the applicant's dewatering controls involve subsurface ground disturbances, the procedures require applicants to provide written certification that either (1) the SHPO/THPO agrees that the disturbances will have no effect or (2) work with the SHPO/THPO to identify historic properties that may be affected. If the proposed activity has the potential to affect historic properties, the applicant must reach agreement with the SHPO/THPO to resolve any effects, and EPA will be part of the consultation process. The procedures also include an expanded discussion of the role of THPOs in the Section 106 process.

Moreover, the Region has made the following changes from the draft to the final General Permit to address these concerns:

Appendix III – The historic properties review process has been modified to address the comments raised by MHC and ACHP, and to include a paragraph concerning the role of Tribal Historic Preservation Officers.

Appendix V – Suggested NOI format was modified. Question 5b was changed to read: "Have State **or Tribal** historic preservation officers been consulted in this determination?" A new question, 5d, has been added. The new question reads: "***Is the project located on a property of religious or cultural significance to an Indian Tribe? If yes, provide the name of the Indian Tribe associated with the property.***" The purpose of this change is to ensure the inclusion of Tribal Historic Preservation Officers in historic property reviews.