AUTHORIZATION TO DISCHARGE UNDER THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of the Federal Clean Water Act, as amended, (33 U.S.C. §§1251 et seq.; the "CWA"), and the Massachusetts Clean Waters Act, as amended, (M.G.L. Chap. 21, §§ 26-53)

Weaver's Cove Energy, LLC

is authorized to discharge from the facility located at

One New Street
Fall River, MA 02720

to receiving water named **Taunton River (MA62-04),** a Class SB water, in accordance with effluent limitations, monitoring requirements and other conditions set forth herein.

This permit shall become effective on the first day of the calendar month following sixty (60) days after the date of signature. This permit supersedes the permit issued on November 20, 1978.

This permit and the authorization to discharge expire at midnight, five (5) years from the last day of the month preceding the effective date.

This permit consists of 12 pages in Part I including effluent limitations and monitoring requirements, and 25 pages in Part II including General Conditions and Definitions.

Signed this 25th day of March, 2013

/s/SIGNATURE ON FILE

Ken Moraff, Acting Director
Office of Ecosystem Protection
Environmental Protection Agency
Region I
Boston, MA

David Ferris, Director
Massachusetts Wastewater Management Program
Department of Environmental Protection
Commonwealth of Massachusetts
Boston, MA

PART I.A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. During the period beginning on the effective date and lasting through expiration the permittee is authorized to discharge treated stormwater runoff from **Outfall Serial Number 001** to the Taunton River. Such discharge shall be limited and monitored by the permittee as specified below and apply during wet weather conditions[1]:

Effluent Characteristic	Units	Discharge Limitation		Monitoring Requirements [1]	
		Average Monthly	Maximum Daily	Measurement Frequency	Sample Type
Flow	MGD	*****	0.36 [2]	1/Quarter	Estimate
pH range [3, 4]	s.u.	6.0- 8.5		1/Quarter	Grab
Total Suspended Solids (TSS)	mg/L	Report	Report	1/Quarter	Grab
Oil and Grease [5]	mg/L	*****	15	1/Quarter	Grab
Fecal coliform bacteria	cfu/100ml	*****	Report	1/Quarter[6]	Grab
Enterococcus bacteria	cfu/100ml	*****	Report	1/Quarter[6]	Grab
Total Petroleum Hydrocarbons	mg/l	*****	Report	1/Year	Grab
Total BTEX	mg/l	*****	Report	1/Year	Grab
Naphthalene	mg/l	*****	Report	1/Year	Grab
Ethylene Dibromide	mg/l	*****	Report	1/Year	Grab
Methyl-tert-butyl ether (MtBE)	ug/l	*****	Report	1/Year	Grab
Total Group I Polycyclic Aromatic Hydrocarbons(PAH)	ug/l	*****	Report	1/Year	Grab
Total Group II Polycyclic Aromatic Hydrocarbons(PAH)	ug/l	*****	Report	1/Year	Grab
Arsenic, Total	ug/l	****	Report	1/Year	Grab
Chromium III, Trivalent	ug/l	*****	Report	1/Year	Grab
Chromium VI, Hexavalent	ug/l	*****	Report	1/Year	Grab
Iron, Total	ug/l	*****	Report	1/Year	Grab
Lead, Total	ug/l	*****	Report	1/Year	Grab
Nickel, Total	ug/l	*****	Report	1/Year	Grab
Zinc, Total	ug/l	*****	Report	1/Year	Grab

Footnotes are on Page 3.

Footnotes:

1. Sampling in compliance with the monitoring requirements specified above shall be conducted at the outlet of the Oil/Water (O/W) Separator and shall be taken during wet weather conditions. Wet weather conditions are defined as periods with effluent resulting from a storm event that is greater than 0.10 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.10 inch rainfall) storm event. Wet weather sampling shall be conducted within the first 60 minutes after water is discharged from the O/W separator, if feasible, or as soon as practicable after 60 minutes has elapsed. In the latter case, the permittee shall submit with the monitoring report a description of why the collection of the grab sample(s) during the first sixty minutes was impracticable. When the permittee is unable to collect grab sample(s) due to adverse climatic conditions, the permittee must submit, in lieu of sampling data, a description of why the grab sample(s) could not be collected, including available documentation of the event. A no discharge (NODI) code of "9" shall be reported on the discharge monitoring report (DMR) for any sampling periods in which there is no discharge. Any change in sampling location must be reviewed and approved in writing by EPA and MassDEP, unless otherwise specified in this permit. All samples shall be tested using the analytical methods found in 40 CFR §136, or alternative methods approved by EPA in accordance with the procedures in 40 CFR §136. The permittee shall submit the results to EPA of any additional testing, if it is conducted in accordance with EPA approved methods consistent with the provisions of 40 CFR § 122.41(l)(4)(ii).

2. For Flow, the maximum daily limit represents the estimated maximum daily flow that would pass through the O/W Separator for each day that stormwater is discharged during the reporting period, based on the flow rate of 250 gallons per minute (gpm).

3. The pH of the effluent shall not be less than 6.0 standard units (s.u.), nor greater than 8.5 s.u. at any time, unless these values are exceeded due to natural causes. The pH shall be no more than 0.2 units outside the natural background range. If the pH results of the discharge are outside the range of 6.0 – 8.5 s.u. due to background conditions, the pH must be within 0.2 s.u. of the rainfall's pH level. There shall be no change from natural background conditions that would impair any use assigned to this Class.

4. Required for State Certification.

5. EPA Method 1664A shall be used as defined at 40 CFR Part 136 for the determination of the Oil and Grease parameter.

6. Bacteria sampling shall be conducted once per calendar quarter. If the results of the first four consecutive samples are below 88 organisms per 100 ml for fecal coliform and below 104 cfu for *Enterococcus*, the permittee may request that monitoring be required only annually thereafter. This change will occur upon EPA's written approval.

PART I.A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

2. During the period beginning on the effective date and lasting through expiration the permittee is authorized to discharge untreated stormwater runoff from **Outfall Serial Number 004** to the Taunton River. Such discharge shall be limited and monitored by the permittee as specified below and apply during wet weather conditions:

Effluent Characteristic	Units	Discharge Limitation		Monitoring Requirements [1]	
		Average Monthly	Maximum Daily	Measurement Frequency	Sample Type
Flow	MGD	*****	Report	1/Quarter	Estimate
pH range [2, 3]	s.u.	6.0 - 8.5		1/Quarter	Grab
Total Suspended Solids (TSS)	mg/L	Report	Report	1/Quarter	Grab
Oil and Grease [4]	mg/L	*****	15	1/Quarter	Grab
Fecal coliform bacteria	cfu/100 ml	*****	Report	1/Quarter[5]	Grab
Enterococcus bacteria	cfu/100 ml	*****	Report	1/Quarter[5]	Grab
Total Petroleum Hydrocarbons	mg/l	*****	Report	1/Year	Grab
Total BTEX	mg/l	*****	Report	1/Year	Grab
Naphthalene	mg/l	*****	Report	1/Year	Grab
Ethylene Dibromide	mg/l	*****	Report	1/Year	Grab
Methyl-tert-butyl ether (MtBE)	ug/l	*****	Report	1/Year	Grab
Total Group I Polycyclic Aromatic Hydrocarbons (PAH)	ug/l	*****	Report	1/Year	Grab
Total Group II Polycyclic Aromatic Hydrocarbons (PAH)	ug/l	*****	Report	1/Year	Grab
Arsenic, Total	ug/l	****	Report	1/Year	Grab
Chromium III, Trivalent	ug/l	*****	Report	1/Year	Grab
Chromium VI, Hexavalent	ug/l	*****	Report	1/Year	Grab
Iron, Total	ug/l	*****	Report	1/Year	Grab
Lead, Total	ug/l	*****	Report	1/Year	Grab
Nickel, Total	ug/l	*****	Report	1/Year	Grab
Zinc, Total	ug/l	*****	Report	1/Year	Grab

Footnotes are on Page 5.

Footnotes**:**

1. Sampling in compliance with the monitoring requirements specified above shall be conducted before the effluent is discharged to the Taunton River and taken during wet weather conditions as defined in Footnote 1 on Page 2. Wet weather sampling shall be conducted within the first 60 minutes after water is discharged from this outfall, or as soon as practicable after 60 minutes has elapsed. In the latter case, the permittee shall submit with the monitoring report a description of why the collection of the grab sample(s) during the first sixty minutes was impracticable. When the permittee is unable to collect grab sample(s) due to adverse climatic conditions, the permittee must submit, in lieu of sampling data, a description of why the grab sample(s) could not be collected, including available documentation of the event. A no discharge (NODI) code of "9" shall be reported on the DMR for any sampling periods in which there is no discharge. Any change in sampling location must be reviewed and approved in writing by EPA and MassDEP, unless otherwise specified in this permit. All samples shall be tested using the analytical methods found in 40 CFR §136, or alternative methods approved by EPA in accordance with the procedures in 40 CFR §136. The permittee shall submit the results to EPA of any additional testing, if it is conducted in accordance with EPA approved methods consistent with the provisions of 40 CFR § 122.41(l)(4)(ii).

2. The pH of the effluent shall not be less than 6.0 standard units (s.u.), nor greater than 8.5 s.u. at any time, unless these values are exceeded due to natural causes. The pH shall be no more than 0.2 units outside the natural background range. If the pH results of the discharge are outside the range of 6.0 – 8.5 s.u. due to background conditions, the pH must be within 0.2 s.u. of the rainfall's pH level. There shall be no change from natural background conditions that would impair any use assigned to this Class.

3. Required for State Certification.

4. EPA Method 1664A shall be used as defined at 40 CFR Part 136 for the determination of the Oil and Grease parameter.

5. Bacteria sampling shall be conducted once per calendar quarter. If the results of the first four consecutive samples are below 88 organisms per 100 ml for fecal coliform and below 104 cfu for *Enterococcus*, the permittee may request that monitoring be required only annually thereafter. This change will occur upon EPA's written approval.

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (continued)

3. The discharge shall not cause a violation of the water quality standards of the receiving waters.

4. The discharge shall not cause objectionable discoloration to the receiving waters.

5. The discharge shall not contain a visible oil sheen, foam, or floating solids as any time.

6. The effluent shall not contain materials in concentrations or in combinations which are hazardous or toxic to aquatic life or which would impair the uses designated by the classification of the receiving waters.

7. The discharges shall not impart color, taste, turbidity, toxicity, radioactivity or other properties which cause those waters to be unsuitable for the designated uses and characteristics ascribed to their use.

8. The permittee shall not discharge any sludge and/or bottom deposits from storage tanks, basins and/or diked areas to the receiving water. Examples of storage tanks and/or basins include, but are not limited to primary catch basins and any Oil/Water (O/W) Separator.

9. The permittee shall notify the EPA and MassDEP in writing of any changes in the operations at the facility, including the use of chemical additives and changes which have the potential to cause the maximum design flow rate through the O/W Separator to be exceeded, that may have an effect on the permitted discharge of storm water from the facility.

10. The permittee shall, at a minimum, remove sediment from the O/W Separator associated with Outfall 001 whenever it has accumulated to a depth that would diminish the effectiveness of the separator or cause such sediment to be discharged to the Taunton River.

11. The permittee shall inspect, maintain and operate the O/W Separator associated with Outfall 001 in order to minimize the discharge of oil and solids to assure that the effluent limitations and conditions of this permit are met.

12. At least once per month, the permittee shall inspect the drainage system line to the O/W separator associated with Outfall 001 and Outfall 004 for any dry weather flow. This inspection shall be conducted and recorded at least 48 hours after a previously measurable (greater than 0.10 inch rainfall) storm event. If dry weather flow is observed or evidence of dry weather flow is obtained at any time at either of these locations, the permittee shall record and submit the following information with that month's DMR:

    - Date and time of observation
    - Explanation, if any, of the occurrence of this flow
    - Time since last storm event greater that was greater than 0.1 inches in magnitude
    - Whether flow was observed or if there was evidence of flow

13. All existing manufacturing, commercial, mining and silvicultural dischargers must notify the Director as soon as they know or have reason to believe (40 CFR § 122.42):

    a. That any activity has occurred or will occur which would result in the discharge, on a routine basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

        (1) One hundred micrograms per liter (100 µg/l);

        (2) Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrite; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

(3) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 C.F.R.§122.21(g)(7); or

(4) Any other notification level established by the Director in accordance with 40 C.F.R.§122.44(f).

b. That any activity has occurred or will occur which would result in the discharge, on a non-routine or infrequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

(1) Five hundred micrograms per liter (500 µg/l);

(2) One milligram per liter (1 mg/l) for antimony;

(3) Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 C.F.R.§122.21(g)(7);

(4) Any other notification level established by the Director in accordance with 40 C.F.R.§122.44(f).

c. That they have begun or expect to begin to use or manufacture as an intermediate or final product or byproduct any toxic pollutant which was not reported in the permit application.

14. Toxics Control

a. The permittee shall not discharge any pollutant or combination of pollutants in toxic amounts.

b. Any toxic components of the effluent shall not result in any demonstrable harm to aquatic life or violate any state or federal water quality standard which has been or may be promulgated. Upon promulgation of any such standard, this permit may be revised or amended in accordance with such standards.

B. UNAUTHORIZED DISCHARGES

1. The permittee is authorized to discharge only in accordance with the terms and conditions of this permit and only from the outfalls listed in Part I A.1. and 2. of this permit. The permittee is not authorized to discharge from these outfalls during dry weather. Discharges of wastewater or stormwater from any other point sources not authorized by this permit shall be reported in accordance with Part II (Standard Conditions), Section D.1.e.(1) of this permit (Twenty-four hour reporting).

C. STORMWATER POLLUTION PREVENTION PLAN

1. The permittee shall prepare and implement a Stormwater Pollution Prevention Plan (SWPPP) that will be designed to reduce, or prevent, the discharge of pollutants in stormwater to the receiving waters identified in this permit. The SWPPP shall be a written document and be consistent with the terms of this permit. The permittee shall comply with the terms of its SWPPP.

2. The SWPPP shall be prepared and signed by the Permittee within 90 days after the effective date of this permit. The Permittee shall certify that the SWPPP meets the requirements of the permit. The certification shall be signed in accordance with the requirements identified in 40 CFR §122.22. A copy of this certification shall be sent to EPA and MassDEP within one hundred and twenty (120) days of the effective date of the Permit.

3. The SWPPP shall be consistent with the general provisions for SWPPPs included in the most current version of the Multi-Sector General Permit (MSGP) for Stormwater Discharges Associated with Industrial Activities. (The current version of the MSGP was issued on September 29, 2008) The SWPPP shall include best management practices (BMPs) for on-site activities that will minimize the discharge of pollutants in stormwater to waters of the United States. The permittee shall use the benchmark values provided in the MSGP in conjunction with the ongoing stormwater sampling results to determine whether it is effectively minimizing the discharge of these parameters in its stormwater.

4. The SWPPP shall be revised as necessary to be in accordance with good engineering practices, to identify potential sources of pollution that may reasonably be expected to affect the quality of stormwater discharges, and to describe and ensure implementation of practices which will be used to reduce the pollutants and assure compliance with this permit. Specifically, the SWPPP shall contain the elements listed below:

    a. A pollution prevention team responsible for developing, implementing, maintaining, revising and ensuring compliance with the SWPPP.
    b. A site description which includes a list of activities at the facility; a site map showing drainage areas and direction of stormwater flows; receiving waters and outfall location; the location of industrial activities, storage, disposal, material handling; and all structural controls.
    c. A summary of all pollutant sources which includes all areas where spills have occurred or could occur. For each source, identify the expected drainage and the corresponding pollutant.
    d. A summary of any existing stormwater discharge sampling data.
    e. A description of all stormwater controls, both structural and non-structural. BMPs must include good housekeeping measures, preventative maintenance programs, spill prevention and response procedures, runoff management practices, and proper handling of salt or materials containing salt that are used for deicing activities. The SWPPP shall describe how the BMPs are appropriate for the facility. All BMPs shall be properly maintained and be in effective operating condition.

5. All areas identified in the SWPPP shall be inspected, at least on an annual basis. A tracking or follow-up procedure must be used to ensure that all appropriate actions have been taken in response to such inspection. Records documenting significant observations made and actions taken during and after inspections must be retained as part of the SWPPP for a minimum of five (5) years.

6. The permittee shall amend and update the SWPPP within 14 days for any changes at the facility affecting the SWPPP. Changes which may affect the SWPPP include, but are not limited to, the following activities: a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the waters of the United States; a release of a reportable quantity of pollutants as described in 40 CFR §302; or a determination by the permittee or EPA that the SWPPP appears to be ineffective in achieving the general objectives of controlling pollutants in storm water discharges associated with industrial activity. Any amended or new versions of the SWPPP shall be re-certified by the Permittee. Such re-certifications also shall be signed in accordance with the requirements identified in 40 CFR §122.22.

7. If any effluent samples exceed the MSGP's benchmark value for TSS of 100 mg/l, the permittee shall review the selection, design, installation, and implementation of the site's control measures to determine what modifications are necessary to address these effluent levels. The permittee shall either, (1) make the necessary modifications and continue quarterly monitoring until there have been 4 additional quarters of monitoring conducted for which the average TSS value does not exceed the benchmark; or (2) make a determination that no further pollutant reductions are technologically available and economically practicable and achievable in light of best industry practice to meet the benchmark value. The permittee must also document its rationale for concluding that no further pollutant reductions are achievable, and retain all records related to this documentation with its SWPPP. If after modifying its control measures and conducting 4 additional quarters of monitoring, the average TSS value still exceeds the benchmark (or if an exceedance of the benchmark by the 4 quarter average is mathematically certain prior to conducting the full 4 additional quarters of monitoring), the permittee must again review its control measures and take one of the two actions above.

8. The permittee shall certify at least annually that the previous year's inspections and maintenance activities were conducted, results were recorded, records were maintained, and that the facility is in compliance with the SWPPP. If the facility is not in compliance with any aspect of the SWPPP, the annual certification shall state the non-compliance and the remedies which are being undertaken. Such annual certifications also shall be signed in accordance with the requirements identified in 40 CFR §122.22. The permittee shall keep a copy of the current SWPPP and all SWPPP certifications (initial certification, re-certifications, and annual certifications) signed during the effective period of this permit at the facility and shall make them available for inspection by EPA and MassDEP.

9. The permittee shall conduct an investigation to determine whether there is groundwater infiltration of the stormwater drainage system. Within three (3) months after the effective date of the permit (EDOTP), the permittee shall submit to the Agencies a plan for conducting this investigation. This investigation shall be completed within one year after the EDOTP and its

results shall be submitted to the Agencies within eighteen (18) months after the EDOTP. The permittee shall use video inspection of the storm drainage system, dry weather monitoring and sampling of Outfalls 001 and 004, and any other techniques it believes to be feasible and effective to determine whether and to what extent groundwater is infiltrating the stormwater drainage system and eventually discharging through Outfalls 001 and/or 004. The permittee shall sample any groundwater infiltration that is found and analyze such sample for the parameters in the table on Page 2 of this permit, with the exception of the two (2) bacteria parameters. The study should be designed to assure that the influence of precipitation is minimized.

D. REOPENER CLAUSE

1. This permit shall be modified, or alternately, revoked and reissued, to comply with any applicable standard or limitation promulgated or approved under sections 301(b)(2)(C) and (D), 304(b)(2), and 307(a)(2) of the Clean Water Act, if the effluent standard or limitation so issued or approved:

   a. Contains different conditions or is otherwise more stringent than any effluent limitation in the permit; or
   b. Controls any pollutants not limited in the permit.

E. MONITORING AND REPORTING

1. **For a period of one year from the effective date of the permit**, the permittee may either submit monitoring data and other reports to EPA in hard copy form or report electronically using NetDMR, a web-based tool that allows permittees to electronically submit discharge monitoring reports (DMRs) and other required reports via a secure internet connection. Specific requirements regarding submittal of data and reports in hard copy form and for submittal using NetDMR are described below:

   a. Submittal of Reports Using NetDMR

      NetDMR is accessed from: http://www.epa.gov/netdmr. **Within one year of the effective date of this permit**, the permittee shall begin submitting DMRs and reports required under this permit electronically to EPA using NetDMR, unless the facility is able to demonstrate a reasonable basis, such as technical or administrative infeasibility, that precludes the use of NetDMR for submitting DMRs and reports ("opt-out request").

      DMRs shall be submitted electronically to EPA no later than the 15th day of the month following the completed reporting period. All reports required under the permit shall be submitted to EPA as an electronic attachment to the DMR. Once a permittee begins submitting reports using NetDMR, it will no longer be required to submit hard copies of DMRs or other reports to EPA and will no longer be required to submit hard copies of DMRs to MassDEP. However, permittees shall continue to send hard copies of reports other than DMRs to MassDEP until further notice from MassDEP.

b. Submittal of NetDMR Opt-Out Requests

Opt-out requests must be submitted in writing to EPA for written approval at least sixty (60) days prior to the date a facility would be required under this permit to begin using NetDMR. This demonstration shall be valid for twelve (12) months from the date of EPA approval and shall thereupon expire. At such time, DMRs and reports shall be submitted electronically to EPA unless the permittee submits a renewed opt-out request and such request is approved by EPA. All opt-out requests should be sent to the following addresses:

Attn: NetDMR Coordinator
U.S. Environmental Protection Agency, Water Technical Unit
5 Post Office Square, Suite 100 (OES04-1)
Boston, MA 02109-3912

and

Massachusetts Department of Environmental Protection
Surface Water Discharge Permit Program
627 Main Street, 2nd Floor
Worcester, Massachusetts 01608

c. Submittal of Reports in Hard Copy Form

Monitoring results shall be summarized for each calendar month and reported on separate hard copy Discharge Monitoring Report Form(s) (DMRs) postmarked no later than the 15th day of the month following the completed reporting period. All reports required under this permit shall be submitted as an attachment to the DMRs. Signed and dated originals of the DMRs, and all other reports or notifications required herein or in Part II shall be submitted to the Director at the following address:

U.S. Environmental Protection Agency
Water Technical Unit (OES04-SMR)
5 Post Office Square - Suite 100
Boston, MA 02109-3912

Duplicate signed copies of all reports or notifications required above shall be submitted to the State at the following address:

MassDEP – Southeast Region
Bureau of Waste Prevention (Industrial)
20 Riverside Drive
Lakeville, MA 02347

Any verbal reports, if required in **Parts I** and/or **II** of this permit, shall be made to both EPA and to MassDEP.

F. STATE PERMIT CONDITIONS

1. This authorization to discharge includes two separate and independent permit authorizations. The two permit authorizations are (i) a federal National Pollutant Discharge Elimination System permit issued by the U.S. Environmental Protection Agency (EPA) pursuant to the Federal Clean Water Act, 33 U.S.C. §§1251 et seq.; and (ii) an identical state surface water discharge permit issued by the Commissioner of MassDEP pursuant to the Massachusetts Clean Waters Act, MGL c. 21, §§ 26-53, and 314 CMR 3.00. All of the requirements contained in this authorization, as well as the standard conditions contained in 314 CMR 3.19, are hereby incorporated by reference into this state surface water discharge permit.

2. This authorization also incorporates the state water quality certification issued by MassDEP under § 401(a) of the Federal Clean Water Act, 40 CFR 124.53, MGL c. 21, § 27 and 314 CMR 3.07. All of the requirements (if any) contained in MassDEP's water quality certification for the permit are hereby incorporated by reference into this state surface water discharge permit as special conditions pursuant to 314 CMR 3.11.

3. Each agency shall have the independent right to enforce the terms and conditions of this permit. Any modification, suspension or revocation of this permit shall be effective only with respect to the agency taking such action, and shall not affect the validity or status of this permit as issued by the other agency, unless and until each agency has concurred in writing with such modification, suspension or revocation. In the event any portion of this permit is declared invalid, illegal or otherwise issued in violation of state law such permit shall remain in full force and effect under federal law as a NPDES Permit issued by the U.S. Environmental Protection Agency. In the event this permit is declared invalid, illegal or otherwise issued in violation of federal law, this permit shall remain in full force and effect under state law as a permit issued by the Commonwealth of Massachusetts.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
NEW ENGLAND - REGION I
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MASSACHUSETTS 02109-3912

FACT SHEET

DRAFT NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT TO DISCHARGE TO WATERS OF THE UNITED STATES PURSUANT TO THE CLEAN WATER ACT (CWA)

NPDES PERMIT NUMBER: MA0004871

PUBLIC NOTICE START AND END DATES: May 3, 2011 – June 1, 2011

NAME AND MAILING ADDRESS OF APPLICANT:

Weaver's Cove Energy, LLC
1 New Street
Fall River, MA 02720

NAME AND ADDRESS OF FACILITY WHERE DISCHARGE OCCURS:

Weaver's Cove Energy, LLC
1 New Street
Fall River, MA 02720

RECEIVING WATER: Taunton River
(USGS Hydrologic Code #01090004 – Narragansett Bay Watershed)

RECEIVING WATER CLASSIFICATION(S): Class SB - Warm water fishery, shellfishing (restricted), CSO

SIC CODES: 8748 - Business Consulting Services; 8711 - Engineering Services
8741 - Management Services; 8742 - Management Consulting Services

Table of Contents

I. Proposed Action, Type of Facility and Discharge Location

Weaver's Cove Energy, LLC ("Weaver's Cove") is the current owner of this approximately 73 acre site, which is situated along the banks of the Taunton River in Fall River, Massachusetts and is characterized as a brownfields site. This site is currently operating as an engineering and project development office in preparation for the construction of a Liquefied Natural Gas (LNG) offloading, processing, and sendout facility. This site had formerly been owned by the Shell Oil Company and operated as a bulk petroleum storage facility with multiple storage tanks. Petroleum products including gasoline, distillate oil, kerosene, and naphtha were delivered to this site by ocean-going tanker or barge, stored in an array of on-site tanks, and then transported to market by truck, pipeline, and rail. Prior to Shell's purchase of the site in the 1920's, the New England Oil and Refining Company conducted petroleum refining and storage operations at the site. This site is permitted for the storage of up to 64 million gallons of petroleum product, but most of these operations were discontinued in the late 1990's, as the decommissioning and dismantling of storage tanks occurred. All petroleum products were removed from the storage tanks on this site and all but 8 of these storage tanks have been removed from the property. The permittee is planning to remove all remaining storage tanks and associated piping as well as a pier structure after all permitting for the proposed LNG project is complete and major site work begins.

There is currently a groundwater remediation system on site treating contaminated groundwater that is being operated by Shell Oil, a former owner of this site. This cleanup is being conducted under the Massachusetts Contingency Plan (MCP) guidelines and Shell Oil is currently the responsible party for the operation and maintenance of this treatment system. This discharge of treated groundwater, through Outfall 001A, is permitted and limited separately by EPA's Remediation General Permit (RGP).

In 1978, NPDES permit #MA0004871, specifically authorizing the storm water discharge from Outfalls 001 and 004, was issued to Shell Oil. This permit was transferred to Jay Cashman, Inc. in 2003, and was subsequently transferred to Weaver's Cove in 2007. This permit expired on November 20, 1983, but was administratively continued at that time, due to Shell Oil's submittal of a completed NPDES re-application in 1983. As a result, Weaver's Cove remains subject to the existing (1978) permit until EPA issues a new one.

The permittee plans to construct a state-of-the-art LNG Terminal, which will include LNG transfer piping, a 200,000 cubic meter LNG storage tank, vaporization equipment, an LNG truck loading area, and other ancillary equipment. Other improvements will also be made to the site relative to the waterfront area. This terminal is expected to provide about 20% of the area's natural gas supply.

Since large LNG ships are prohibited by the presence of the old Brightman Street bridge from navigating the Taunton River to and from this location, Weaver's Cove has applied to the Federal Energy Regulatory Commission (FERC) for approval to construct, own, and operate an offshore berth in Mount Hope Bay in Massachusetts

waters; as well as an approximately 4.25-mile-long LNG transfer system, which will include buried submarine LNG transfer lines. It is proposed that LNG delivered by LNG ships will be unloaded at the offshore berth and transferred through the LNG transfer system to the LNG storage tank at the LNG terminal site in Fall River. The project will include development of a turning basin, to accommodate LNG tanker turning maneuvers where the tankers leave the existing federal navigation channel and enter a proposed new approach channel providing access to the offshore berth site.

This proposed permit does not cover discharges associated with the planned LNG terminal but rather covers the discharge of storm water that may contain pollutants associated with the previous and current site uses.

See **Figure 1** for a map of the site location and outfalls and **Figure 2** for a map showing the drainage areas for these outfalls, which will be authorized by this draft permit.

II. Description of Treatment System and Discharges

Outfall 001

As shown in Figures 1 and 2, Outfall 001 is located on the north side of the property and collects storm water from the portion of the site labeled “Area 3”. This outfall comprises storm water runoff which is treated through an oil/water (O/W) separator prior to being discharged to the Taunton River. The current site is characterized primarily by sand and gravel around the previous and existing tank farm areas, vegetation around most of the perimeter of the site, and paved areas near the entrance to the site where the offices are located. According to the permittee, all storm water from the portion of the property labeled “Area 2” either runs off the site or infiltrates into the ground, with no discrete outfalls.

Outfall 004

As seen in the attached figures, Outfall 004 is located on the south side of this property and collects storm water from the portion of the site labeled “Area 1”. Previously, Outfall 004 was located closer to the southern edge of the property and included treatment through a now abandoned O/W separator.

III. Receiving Water Description

Under the state water use classification system, the Massachusetts Department of Environmental Protection (MassDEP) has designated this stretch of the Taunton River, classified as Segment MA62-04, as a Class SB water warm fishery, with shellfishing (Restricted) and combined sewer overflow (CSO) discharges. Shellfishing is restricted in this vicinity due to elevated bacteria levels.

Class SB waters are designated as a habitat for fish, other aquatic life and wildlife and for primary and secondary contact recreation. In approved areas they shall be suitable for shellfish harvesting with depuration (Restricted Shellfish Areas). These waters shall have consistently good aesthetic value (314 CMR 4.05(4)(b)).

Restricted shellfishing areas are designated as "(R)". These waters are subject to more stringent regulation in accordance with the rules and regulations of the Massachusetts Division of Marine Fisheries pursuant to M.G.L. c. 130, § 75. These include applicable criteria of the National Shellfishing Sanitation Program.

Sections 305(b) and 303(d) of the CWA require that States complete a water quality inventory and develop a list of impaired waters. Specifically, Section 303(d) of the CWA requires States to identify those water bodies that are not expected to meet surface water quality standards after the implementation of technology-based controls, and as such, require the development of a Total Maximum Daily Load (TMDL) for each pollutant that is prohibiting a designated use(s) from being attained. In Massachusetts, these two evaluations have been combined into an Integrated List of Waters. The integrated list format provides the status of all assessed waters in a single, multi-part list. The MassDEP submitted to EPA its Final 2008 Integrated List of Waters, also called the "303(d) list", which was approved by EPA on May 4, 2009. This stretch of the Taunton River does not always meet the state water quality standards prescribed for Class SB waters, and is included on the 2008 303(d) list of impaired waters for organic enrichment/low dissolved oxygen, pathogens, as well as from unknown causes. See *Final Massachusetts Year 2008 Integrated List of Waters*[1] and on the *Proposed Massachusetts Year 2010 Integrated List of Waters*[2] which list this segment as a Category 5 waterbody: "Waters requiring a TMDL."

MassDEP is required under the CWA to develop a TMDL for a waterbody once it is identified as impaired. A TMDL is essentially a pollution budget designed to restore the health of a water body. A TMDL first identifies the source(s) of the pollutant from direct and indirect discharges in order to next determine the maximum amount of pollutant (including a margin of safety) that can be discharged to a specific water body while maintaining water quality standards for designated uses. It then outlines a plan to meet the goal. As of the date of this Draft Permit, no TMDLs have been drafted or finalized for the Taunton River watershed. Since this segment of the Taunton River is impaired for bacteria, the draft permit has established quarterly bacteria sampling for the first year of the permit and annual sampling thereafter to assess whether this discharge may be contributing to this water quality impairment.

IV. Limitations and Conditions

The effluent limitations and all other requirements described in Part VI of this Fact Sheet may be found in the draft permit.

[1] http://www.mass.gov/dep/water/resources/08list2.pdf
[2] http://www.mass.gov/dep/water/resources/10list3.pdf

V. Permit Basis: Statutory and Regulatory Authority

General Requirements

The Clean Water Act (CWA) prohibits the discharge of pollutants to waters of the United States without a National Pollutant Discharge Elimination System (NPDES) permit unless such a discharge is otherwise authorized by the CWA. The NPDES permit is the mechanism used to implement technology and water quality-based effluent limitations and other requirements including monitoring and reporting. This draft NPDES permit was developed in accordance with various statutory and regulatory requirements established pursuant to the CWA and any applicable State regulations. The regulations governing the EPA NPDES permit program are generally found at 40 CFR Parts 122, 124, 125, and 136.

When developing permit limits, EPA must consider the most recent technology-based treatment and water quality-based requirements. Subpart A of 40 CFR Part 125 establishes criteria and standards for the imposition of technology-based treatment requirements in permits under Section 301(b) of the CWA, including the application of EPA-promulgated effluent limitations and case-by-case determinations of effluent limitations under Section 402(a)(1) of the CWA. EPA is required to consider technology and water quality-based requirements as well as all limitations and requirements in the existing permit when developing permit limits.

Technology-Based Requirements

Technology-based treatment requirements represent the minimum level of control that must be imposed under Sections 301(b) and 402 of the CWA (see 40 CFR §125 Subpart A) to meet best practicable control technology currently available (BPT) for conventional pollutants and some metals, best conventional control technology (BCT) for conventional pollutants, and best available technology economically achievable (BAT) for toxic and non-conventional pollutants. Although previous owners of the Weaver's Cove property were operating a bulk petroleum storage terminal, most of the oil tanks on this site have been removed and the 8 remaining tanks have been emptied. There are currently no plans to use the remaining tanks again and they will eventually be dismantled during the preparation of the site for LNG operations. Therefore, this facility is not subject to any effluent limitation guidelines (ELGs).

In general, the statutory deadline for non-POTW, technology-based effluent limitations must be complied with as expeditiously as practicable but in no case later than three years after the date such limitations are established and in no case later than March 31, 1989 (see 40 CFR §125.3(a)(2)). Compliance schedules and deadlines not in accordance with the statutory provisions of the CWA can not be authorized by a NPDES permit.

In the absence of published technology-based effluent guidelines, the permit writer is authorized under Section 402(a)(1)(B) of the CWA to establish effluent limitations on a case-by-case basis using best professional judgment (BPJ).

The effluent monitoring requirements have been established to yield data representative of the discharges under the authority of Section 308(a) of the CWA, according to regulations set forth at 40 CFR § 122.41(j), 122.44(i) and 122.48. The monitoring program in the permit specifies routine sampling and analysis which will provide continuous information on the reliability and effectiveness of the installed pollution abatement equipment. The approved analytical procedures are to be found in 40 CFR 136 unless other procedures are explicitly required in the permit.

Water Quality-Based Requirements

Water quality-based limitations are required in NPDES permits when EPA and the State determine that effluent limits more stringent than technology-based limits are necessary to maintain or achieve state or federal water quality standards (WQS). See Section 301(b)(1)(C) of the CWA.

Receiving water requirements are established according to numerical and narrative standards adopted under state law for each water quality classification. When using chemical-specific numeric criteria to develop permit limits, both the acute and chronic aquatic-life criteria, expressed in terms of maximum allowable in-stream pollutant concentration, are used. Acute aquatic-life criteria are considered applicable to daily time periods (maximum daily limit) and chronic aquatic-life criteria are considered applicable to monthly time periods (average monthly limit). Chemical-specific limits are allowed under 40 CFR § 122.44(d)(1) and are implemented under 40 CFR § 122.45(d).

A facility's design flow is used when deriving constituent limits for daily and monthly time periods as well as weekly periods where appropriate. Also, the dilution provided by the receiving water is factored into this process where appropriate. Narrative criteria from the state's water quality standards are often used to limit toxicity in discharges where (a) a specific pollutant can be identified as causing or contributing to the toxicity but the state has no numeric standard; or (b) toxicity cannot be traced to a specific pollutant.

EPA regulations require NPDES permits to contain effluent limits more stringent than technology-based limits where more stringent limits are necessary to maintain or achieve state or federal WQS. The permit must address any pollutant or pollutant parameter (conventional, non-conventional, toxic and whole effluent toxicity) that is or may be discharged at a level that causes or has "reasonable potential" to cause or contribute to an excursion above any water quality criterion. See 40 CFR Section 122.44(d)(1). An excursion occurs if the projected or actual in-stream concentration exceeds the applicable criterion. In determining reasonable potential, EPA considers (a) existing controls on point and non-point sources of pollution; (b) pollutant concentration and variability in the effluent and receiving water as determined from the permit application, monthly

Discharge Monitoring Reports (DMRs), and State and Federal Water Quality Reports; (c) sensitivity of the species to toxicity testing; (d) known water quality impacts of processes on wastewater; and, where appropriate, (e) dilution of the effluent in the receiving water.

WQS consist of three parts: (a) beneficial designated uses for a water body or a segment of a water body; (b) numeric and/or narrative water quality criteria sufficient to protect the assigned designated use(s); and (c) antidegradation requirements to ensure that once a use is attained it will not be degraded. The Massachusetts Surface Water Quality Standards (MA SWQS), found at 314 CMR 4.00, include these elements. The state will limit or prohibit discharges of pollutants to surface waters to assure that surface water quality standards of the receiving waters are protected and maintained or attained. These standards also include requirements for the regulation and control of toxic constituents and require that EPA criteria, established pursuant to Section 304(a) of the CWA, shall be used unless a site-specific criterion is established. The conditions of the permit reflect the goal of the CWA and EPA to achieve and then to maintain WQS.

Antibacksliding

A permit may not be renewed, reissued or modified with less stringent limitations or conditions than those contained in the previous permit unless in compliance with the anti-backsliding requirements of the CWA [see Sections 402(o) and 303(d)(4) of the CWA and 40 CFR §122.44(l)(1 and 2)]. EPA's antibacksliding provisions prohibit the relaxation of permit limits, standards, and conditions except under certain circumstances. Effluent limits based on BPJ, water quality, and state certification requirements must also meet the antibacksliding provisions found at Section 402(o) and 303(d)(4) of the CWA. The only parameter of this permit that is being made less stringent is the lower end of the pH range to account for the low pH storm water that is occasionally discharged through the outfalls. This change is allowed consistent with the “new information” exception of the antibacksliding regulations.

Antidegradation

Federal regulations found at 40 CFR Section 131.12 require states to develop and adopt a statewide antidegradation policy which maintains and protects existing instream water uses and the level of water quality necessary to protect the existing uses, and maintains the quality of waters which exceed levels necessary to support propagation of fish, shellfish, and wildlife and to support recreation in and on the water. The Massachusetts Antidegradation Regulations are found at Title 314 CMR 4.04. There are no new or increased discharges being proposed with this permit reissuance. Therefore, EPA does not believe that the MassDEP is required to conduct an antidegradation review regarding this permit reissuance.

State Certification

Under Section 401 of the CWA, EPA is required to obtain certification from the state in which the discharge is located that all water quality standards or other applicable requirements of state law, in accordance with Section 301(b)(1)(C) of the CWA, are satisfied. EPA permits are to include any conditions required in the state's certification as being necessary to ensure compliance with state water quality standards or other applicable requirements of state law. See CWA Section 401(a) and 40 CFR §124.53(e). Regulations governing state certification are set out at 40 CFR §124.53 and §124.55. EPA regulations pertaining to permit limits based upon water quality standards and state requirements are contained in 40 CFR §122.44(d).

VI. Explanation of Permit's Effluent Limitations

The discharge monitoring report (DMR) data for Outfalls 001 and 004 for the reporting period of January 2004 to June 2010 were reviewed for this permit reissuance. This time span covers discharges authorized to the former permittee, Jay Cashman, as well as to Weaver's Cove. There were many months where there were no data reported, either when the permittee indicated there was no flow, or in other instances when no DMRs were submitted. These data were taken into consideration when determining whether the existing permit limits need to be maintained, reduced, or eliminated. In the following discussion, this period is referred to as the "monitoring period". The current permit that was issued in 1978 required flow monitoring, once per month pH sampling, and oil & grease sampling four times each during two or more storm events per month. Due to the fact that all industrial activity on this site has ceased, EPA has determined that the frequency of monitoring in the 1978 permit is no longer appropriate. Therefore, monitoring under this reissued permit is proposed for once per quarter. However, this permit has added a total suspended solids (TSS) monitoring requirement, as well as sampling for various constituents associated with the former operations at the site, for which the rationale is provided below.

In its 1983 re-application, Shell Oil estimated that there was groundwater infiltrating into the storm sewer system. In preparation for initiation of the groundwater remediation system at this site, Shell Oil redirected the contaminated groundwater flows to its treatment system location, which is within the portion in Figure 2 designated as "Area 3". However, due to the significant portions of the site that drain to Outfalls 001 and 004, there may still be groundwater at the site which infiltrates into subsurface storm drains and then to Outfalls 001 and 004.

Pursuant to a Section 308(a) information request letter from EPA in 2009, the permittee conducted sampling for Outfalls 001 and 004 and analyzed for the parameters in EPA's Form 2C application. The parameters that were detected for Outfall 001 were oil & grease (6.9 mg/l), zinc (55 ug/l), and MtBE (1.2 ug/l). For Outfall 004, oil & grease (2 mg/l) and lead (15 ug/l) were detected.

Based on these limited data, EPA has made the determination that there is no reasonable potential for the discharge of these parameters to cause or contribute to WQS violations in the receiving water. However, in order to assess whether there are still contaminants being discharged from this site that are associated with the previous activities of this site (loading, unloading, and transfer of a variety petroleum products), this permit has established annual monitoring for certain pollutants. The list of pollutants for which monitoring has been established is consistent with the relevant list found in EPA's Remediation General Permit (RGP), which was issued on September 10, 2010. The products that were previously stored at this site are consistent with those listed in Category I of Appendix III of the RGP, which covered Petroleum Related Site Remediation. Within this Category, both Sub-Category A listing the appropriate parameters for "Gasoline-Only Sites" and Sub-Category B listing the appropriate parameters for "Fuel Oils and Other Oils" apply. When the first RGP was issued in 2005, EPA drew upon years of monitoring results from a variety of remediation sites to determine which parameters were likely to be present for specific categories of remediation. This data set formed the basis in the RGP for which lists of parameters needed to be monitored in the influent and limited in the effluent of these remediation systems. The parameters for which there are limits in the RGP for these 2 Sub-Categories are included in this permit and shall be monitored once per year for both outfalls. Based upon the results of this monitoring, the permit may be reopened to either include permit limits or other requirements.

In order to confirm that only stormwater is being discharged through Outfalls 001 and 004, the draft permit has established a monthly dry weather monitoring and recording requirement. Since the O/W separator associated with Outfall 001 collects stormwater and discharges to Outfall 001 periodically based on the level of water in the separator, the permittee shall inspect the drainage system line that discharges to the O/W separator for the presence of dry weather flow. For Outfall 004, the actual outfall point shall be inspected.

Outfall 001

Flow

The 1978 permit required flow monitoring only. The permittee has noted that the capacity of the O/W separator is 40,000 to 60,000 gallons and that flow from this outfall has been estimated to be up to 250 gallons per minute (gpm). Water is discharged near the bottom of the separator by gravity and the separator discharges when there is sufficient flow generated by a storm event. DMR data shows flows estimated at between 10,000 and 360,000 gallons per day (gpd). The draft permit has established a daily maximum flow limit of 360,000 gpd, or 0.36 million gallons per day (MGD). This is the maximum amount of water that can be discharged from the O/W separator, at a rate of 250 gpm, and is consistent with the design specifications of the O/W separator.

pH

The pH range of the previous permit was limited to the Class SB range of 6.5 to 8.5 standard units (su) which is the range required by the MA SWQS and which can be found at 314 CMR 4.05(4)(b)(3). During the monitoring period, the pH range was between 6.3 and 7.82 s.u., with 3 readings below the limit of 6.5 s.u. As noted in the anti-backsliding discussion, the lower end of the pH range has been changed to 6.0 s.u. as the permittee has provided documentation that background levels of pH have often been below 6.0 s.u. Although this level is lower than the State standard of 6.5 s.u., there is considerable dilution available to the effluent in the receiving water which would be expected to result in the water in the immediate vicinity of the outfall to be in compliance with the State standard. Thus, EPA does not believe lowering the pH range to 6.0 would have any measurable impact on the pH in the receiving water.

If an effluent sampling result for pH were to show a pH level below 6.0 s.u., the permittee could sample the rainfall pH at the same time to ascertain whether the effluent pH is within 0.2 s.u. of the rainfall pH and therefore in compliance with the permit language, which is reflective of the State WQS.

Oil and Grease

The DMRs for the period of January 2004 to June 2010 have shown oil and grease levels to be below the detection level of 4 to 5 mg/l, up to a recorded reading of 9 mg/l, all within the limit of 15 mg/l.

The oil and grease maximum daily limit of 15 mg/l for is derived from the narrative water quality criteria in the state water quality standards [see 314 CMR 4.05(3)(b)(7) and (4)(b)7]. For discharges to Class SB waters in Massachusetts, the narrative criteria require, among other things, that no oil and grease is present that would produce a visible film on the surface of the receiving water. The Region interprets this narrative criterion as prohibiting a discharge to these waters that would cause an oil sheen. EPA has maintained the oil and grease limit of 15 mg/l for this draft permit for both outfalls based on the Region's long standing use of the 15 mg/l standard to represent the concentration at which a visible oil sheen is likely to occur. This limit will ensure the narrative water quality standard for oil and grease is protected.

Total Suspended Solids (TSS)

This Draft Permit establishes a TSS monitoring requirement for Outfall 001. This monitoring is consistent with the requirement to meet the narrative standard which requires that "the discharge shall not contain a visible oil sheen, foam, or **floating solids** at any time." Heavy metals and hydrocarbons are readily adsorbed onto particulate matter and the release of these compounds into the environment can be reduced by regulating the amount of suspended solids discharged. Due to the history of this site as a petroleum storage facility, the ongoing remediation at the site, and the presence of some

metals (lead, zinc) and hydrocarbons (oil & grease, MtBE) in recent sampling, EPA has determined that it is appropriate to establish this TSS monitoring requirement. The presence of high TSS levels may also signal the necessity to clean out the solids that have settled at bottom of the O/W separator and require that the permittee review its site conditions and practices, to assure that excessive solids are not being discharged from the O/W separator.

To determine whether the levels of TSS in the effluent are high enough to warrant more frequent sampling or limits, EPA's multi-sector general permit (MSGP) for storm water was reviewed for guidance. The MSGP was reissued in 2008 and established "benchmark values" for certain parameters in storm water discharges, which were established based on a variety of factors, including water quality criteria, hardness values and historical storm water data. For TSS, the benchmark value is 100 mg/l. EPA determined that concentrations of pollutants in storm water above these "benchmark values" represented a level of concern. Therefore, these benchmark values were seen as levels above which could impairments to water quality could be occurring. Essentially, the benchmark values have been used as surrogates to determine whether a facility's storm water pollution prevention plan (SWPPP) measures are being adequately implemented. These values were not seen as limits but rather as levels above which further monitoring and an evaluation of the efficacy of storm water controls was required. Therefore, this benchmark value will be one measure against which to assess whether the discharge of solids from this outfall is being adequately controlled and the SWPPP will require the permittee to assess its storm water controls and make necessary modifications if an effluent TSS level of 100 mg/l is exceeded.

Bacteria

As noted earlier, the receiving water is currently impaired for pathogens and also has restricted shellfishing use. The entire stretch of the Taunton River in Fall River is currently prohibited for shellfishing. Therefore, EPA has determined that limited bacteriological monitoring with no effluent limits will be established in order to assure that discharges from this site are not contributing to this impairment. The State's water quality standards (WQS) for Class SB waters have different indicator bacteria for recreational uses and for shellfishing use. See 314 CMR 4.05(4)(b).

For Class SB waters, fecal coliform is the applicable standard for shellfishing uses. The State WQS limit fecal coliform to a geometric mean MPN (most probable number) of 88 organisms per 100 ml and to not more than 10% of the samples exceeding an MPN of 260 organisms per 100 ml. These levels are typically used as monthly average and daily maximum limits in NPDES permits.

The *Enterococcus* bacteria criteria replaced the former fecal coliform criteria as the preferred indicator for recreational uses. These bacteria criteria were promulgated by the Commonwealth on December 29, 2006 and the EPA approved these criteria on September 19, 2007. For Class SB waters, the Commonwealth of Massachusetts criteria for *Enterococcus* are expressed as "no single enterococci sample shall exceed 104 colony

forming units (cfu) per 100 ml and the geometric mean of all of the samples taken during the most recent six months typically based on a minimum of five samples shall not exceed 35 cfu per 100 ml."

Monitoring for fecal coliform and *Enterococcus* bacteria shall be conducted quarterly. If the results of the first four consecutive samples are below 88 organisms per 100 ml for fecal coliform and below 104 cfu for *Enterococcus*, the permittee may request that monitoring be required only annually thereafter. This change will occur upon EPA's written approval. These are monitor only requirements with no limits.

Outfall 004

Flow

The 1978 permit had a monitor only requirement for flow and flows have ranged between 10,000 and 170,000 gallons per day (GPD) during the monitoring period. The flow will continue to be estimated during storm events that are sampled, which now will be at a frequency of once per quarter.

pH

The pH range in the 1978 permit was limited to the Class SB range of 6.5 to 8.5 standard units (su) similar to Outfall 001. During the monitoring period, the pH has ranged between 6.33 – 7.76 s.u., with one exceedence below 6.5 s.u. Similar to the revised pH limit range for Outfall 001, this permit has changed the lower end of the pH range to 6.0 s.u. to account for the occasionally low pH storm water that has been measured by the permittee.

Oil and Grease

The DMRs for the period of January 2004 to June 2010 have shown oil and grease levels to be below the detection level of 4 and up to a recorded reading of 17 mg/l, which represents the only violation of the 15 mg/l limit. The limit of 15 mg/l will remain in this permit, due to the occasional detection of this parameter, the history of the site and since there is no O/W separator at this outfall. The rationale for this limit is the same as for the Outfall 001 limit.

Total Suspended Solids

This Draft Permit establishes a TSS monitoring requirement for Outfall 004. The rationale provided for the TSS monitoring for Outfall 001 applies to Outfall 004. This TSS monitoring requirement will provide an indication of whether the narrative standard is being met and whether additional controls on the site would be necessary to limit the discharge of solids from this outfall.

Bacteria

Similar to the requirement for Outfall 001 detailed above, monitoring for fecal coliform and *Enterococcus* has been established for this outfall as well. If the results of the first four consecutive samples are below 88 organisms per 100 ml for fecal coliform and below 104 cfu for *Enterococcus*, the permittee may request that monitoring be required only annually thereafter. This change will occur upon EPA's written approval. These are monitor only requirements with no limits.

Other Conditions

The remaining conditions of the permit are based on the NPDES regulations, 40 CFR Parts 122 though 125, and consist primarily of management requirements common to all permits.

VII. Storm Water Pollution Prevention Plan (SWPPP)

This facility had previously engaged in activities which have been shown to result in the discharge of pollutants to waters of the United States either directly or indirectly through storm water runoff. These operations included at least one of the following in an area potentially exposed to precipitation or storm water: material storage, in-facility transfer, material processing, material handling, or loading and unloading. To control the activities and operations which could contribute pollutants to waters of the United States, potentially violating the State's WQS, the Draft Permit requires the permittee to implement and maintain a SWPPP containing best management practices (BMPs) appropriate for this facility (See Sections 304(e) and 402(a)(1) of the CWA and 40 CFR §125.103(b)). Although loading and unloading of petroleum products in no longer occurring at this site, leftover infrastructure, unknown sources of residual contamination, and operations related to the on-site groundwater remediation may still be contributing pollutants to the receiving water in storm water runoff.

The goal of the SWPPP is to reduce, or prevent, the discharge of pollutants through the storm water drainage system. The SWPPP requirements in the Draft Permit are intended to provide a systematic approach by which the permittee shall at all times, properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit. The SWPPP shall be prepared in accordance with good engineering practices and identify potential sources of pollutants, which may reasonably be expected to affect the quality of storm water discharges associated with industrial activity from the facility. The SWPPP, upon implementation, becomes a supporting element to any numerical effluent limitations in the Draft Permit. Consequently, the SWPPP is an enforceable element of this permit.

Implementation of the SWPPP involves the following four main steps:

(1) Forming a team of qualified facility personnel who will be responsible for developing and updating the SWPPP and assisting the site manager in its implementation;

(2) Assessing the potential storm water pollution sources;
(3) Selecting and implementing appropriate management practices and controls for these potential pollution sources; and
(4) Periodically re-evaluating the effectiveness of the SWPPP in preventing storm water contamination and in complying with the various terms and conditions of the Draft Permit.

As noted in the TSS discussion above, this permit will assess whether the TSS levels in the permitted discharges are below the benchmark value of 100 mg/l. If there is a sampling result that exceeds this level, the permittee shall review the selection, design, installation, and implementation of the site's control measures to determine what modifications are necessary to address these effluent levels.

To minimize preparation time of the SWPPP, the permittee may, for example, reflect requirements for Spill Prevention Control and Countermeasure (SPCC) plans [under Section 311 of the CWA and 40 CFR Part 112], Corporate Management Practices, etc.; and may incorporate any part of such plans into the SWPPP by reference. Provided these references address specific pollution prevention requirements and the goals of the SWPPP, they can be attached to the SWPPP for review and inspection by EPA and MassDEP personnel. Although relevant portions of other environmental plans, as appropriate, can be built into the SWPPP, ultimately however, it is important to note that the SWPPP should be a comprehensive, stand-alone document.

Pursuant to Section 304(e) of the CWA and 40 CFR §125.103(b), best management practices (BMP) may be expressly incorporated into a permit on a case-by-case basis where necessary to carry out Section 402(a)(1) of the CWA.

Generally, BMPs should include processes, procedures, schedules of activities, prohibitions on practices, and other management practices that prevent or reduce the discharge of pollutants in storm water runoff. A copy of the most recent SWPPP shall be kept at the facility and be available for inspection by EPA and MassDEP. The draft permit requires the permittee to continue to implement the current SWPPP and revise it as necessary no later than ninety (90) days after the permit's effective date. The SWPPP is a supporting element to any numerical effluent limitations which minimizes the discharge of pollutants through the proper operation of the facility. Consequently, the SWPPP is as equally enforceable as the numerical limits and other requirements of this permit. See **Part I.C.** of the permit for specific SWPPP requirements.

VIII. Essential Fish Habitat Determination (EFH)

"Under the 1996 Amendments (PL 104-267) to the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1801 et seq. (1998)), EPA is required to consult with the National Marine Fisheries Service (NMFS) if EPA's actions or proposed actions that it funds, permits, or undertakes, may adversely impact any essential fish habitat, such as: waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity (16 U.S.C. § 1802(10)). "Adversely impact" means any impact which

reduces the quality and/or quantity of EFH (50 C.F.R. § 600.910(a)). Adverse effects may include direct (e.g., contamination or physical disruption), indirect (e.g., loss of prey, reduction in species' fecundity), site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions.

Essential fish habitat is only designated for species for which federal fisheries management plans exist (16 U.S.C. §1855(b)(1)(A)). EFH designations for New England were approved by the U.S. Department of Commerce on March 3, 1999. Although the Taunton River in the vicinity of these discharges is not covered by the EFH designation for riverine systems, the Taunton River is tributary to Narragansett Bay, which is considered EFH for the following species:

Species	Eggs	Larvae	Juveniles	Adults
Atlantic cod *(Gadus morhua)*				
haddock *(Melanogrammus aeglefinus)*		X		
pollock *(Pollachius virens)*				
whiting *(Merluccius bilinearis)*				
red hake *(Urophycis chuss)*		X	X	X
white hake *(Urophycis tenuis)*				
redfish *(Sebastes fasciatus)*	n/a			
witch flounder *(Glyptocephalus cynoglossus)*				
winter flounder *(Pleuronectes americanus)*	X	X	X	X
yellowtail flounder *(Pleuronectes ferruginea)*				
windowpane flounder *(Scopthalmus aquosus)*	X	X	X	X
American plaice *(Hippoglossoides platessoides)*		X	X	X
ocean pout *(Macrozoarces americanus)*				
Atlantic sea scallop *(Placopecten magellanicus)*				
Atlantic sea herring *(Clupea harengus)*		X	X	X
monkfish *(Lophius americanus)*				
bluefish *(Pomatomus saltatrix)*			X	X

long finned squid *(Loligo pealei)*	n/a	n/a		
short finned squid *(Illex illecebrosus)*	n/a	n/a		
Atlantic butterfish *(Peprilus triacanthus)*				
Atlantic mackerel *(Scomber scombrus)*	X	X	X	X
summer flounder *(Paralicthys dentatus)*		X	X	X
scup *(Stenotomus chrysops)*	X	X	X	X
black sea bass *(Centropristus striata)*	n/a		X	X
surf clam *(Spisula solidissima)*	n/a	n/a		
ocean quahog *(Artica islandica)*	n/a	n/a		
spiny dogfish *(Squalus acanthias)*	n/a	n/a		
tilefish *(Lopholatilus chamaeleonticeps)*				
king mackerel *(Scomberomorus cavalla)*	X	X	X	X
Spanish mackerel *(Scomberomorus maculatus)*	X	X	X	X
cobia *(Rachycentron canadum)*	X	X	X	X

It is well established and documented that Mount Hope Bay and the Taunton River provide valuable habitat for a diverse assemblage of finfish and invertebrates. Winter flounder and many diadromous fish species use all or part of the Taunton River for passage, spawning, nursery, and forage habitat, in turn providing forage for other predatory species and helping to support important recreational fisheries. Various life stages of numerous other finfish species transit and/or inhabit the river during the year.

As described earlier, the only discharge from this site is storm water runoff. This permit has established additional monitoring requirements for bacteria and pollutants associated with petroleum storage operations in addition to requiring the implementation of a SWPPP for the entire site. These requirements are expected to result in discharges that would not adversely impact any listed species. Therefore, EPA has determined that EFH consultation with NMFS is not required.

IX. Endangered Species Act (ESA)

Section 7(a) of the Endangered Species Act (ESA) of 1973, as amended grants authority to and imposes requirements upon Federal agencies regarding endangered or threatened species of fish, wildlife, or plants (“listed species”) and habitat of such species that has

been designated as critical (a "critical habitat"). The ESA requires every Federal agency, in consultation with and with the assistance of the Secretary of Interior, to insure that any action it authorizes, funds, or carries out, in the United States or upon the high seas, is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat. The United States Fish and Wildlife Service (USFWS) typically administers Section 7 consultations for bird, terrestrial, and freshwater aquatic species. NMFS typically administers Section 7 consultations for marine species and anadromous fish.

EPA has reviewed the listing of federal endangered or threatened species of fish, wildlife, and plants to see if any such listed species might potentially be impacted by the reissuance of this NPDES permit and has not found any such listed species. Therefore, EPA does not need to formally consult with NMFS or USFWS in regard to the provisions of the ESA. During the public comment period, EPA has provided a copy of the Draft Permit and Fact Sheet to both NMFS and USFWS.

X. State Certification Requirements

EPA may not issue a permit unless the State Water Pollution Control Agency with jurisdiction over the receiving waters certifies that the effluent limitations contained in the permit are stringent enough to assure that the discharge will not cause the receiving water to violate State WQS. The staff of MassDEP has reviewed the draft permit and advised EPA that the limitations are adequate to protect water quality. EPA has requested permit certification by the State pursuant to 40 CFR 124.53 and expects that the draft permit will be certified.

XI. Public Comment Period, Public Hearing, and Procedures for Final Decision

All persons, including applicants, who believe any condition of the Draft Permit is inappropriate must raise all issues and submit all available arguments and all supporting material for their arguments in full by the close of the public comment period, to George Papadopoulos, U.S. EPA, Office of Ecosystem Protection**,** Industrial Permits Branch, Mailcode OEP 06-1, 5 Post Office Square, Suite 100, Boston, Massachusetts 02109-3912. Any person, prior to such date, may submit a request in writing for a public hearing to consider the Draft Permit to EPA and the State Agency. Such requests shall state the nature of the issues proposed to be raised in the hearing. A public meeting may be held if the criteria stated in 40 C.F.R. § 124.12 are satisfied. In reaching a final decision on the Draft Permit, the EPA will respond to all significant comments and make these responses available to the public at EPA's Boston office.

Following the close of the comment period, and after any public hearings, if such hearings are held, the EPA will issue a Final Permit decision and forward a copy of the final decision to the applicant and each person who has submitted written comments or requested notice. Within 30 days following the notice of the Final Permit decision, any interested person may submit a petition for review of the permit to EPA's Environmental Appeals Board consistent with 40 C.F.R. § 124.19.

XII. EPA and MassDEP Contacts

Additional information concerning the draft permit may be obtained between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, excluding holidays, from the EPA and MassDEP contacts below:

George Papadopoulos, Industrial Permits Branch
5 Post Office Square - Suite 100 - Mailcode OEP 06-1
Boston, MA 02109-3912
Papadopoulos.george@epa.gov
Telephone: (617) 918-1579 FAX: (617) 918-1505

Cathy Vakalopoulos, Massachusetts Department of Environmental Protection
Division of Watershed Management, Surface Water Discharge Permit Program
1 Winter Street, 5th Floor, Boston, Massachusetts 02108
catherine.vakalopoulos@state.ma.us
Telephone: (617) 348-4026; FAX: (617) 292-5696

April 26, 2011
Date

Stephen S. Perkins, Director
Office of Ecosystem Protection
U.S. Environmental Protection Agency

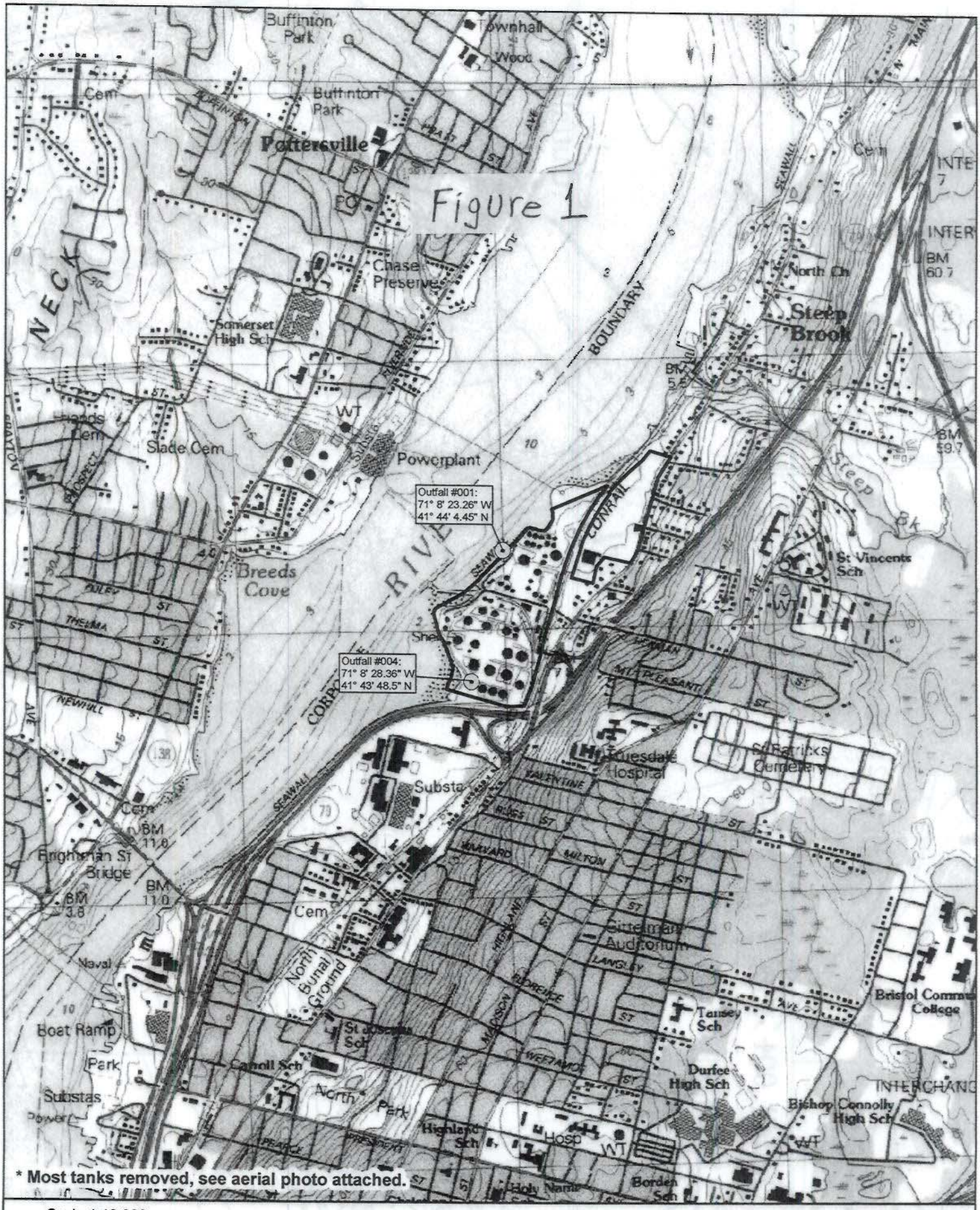
Figure 1
Outfall #001:
71° 8' 23.26" W
41° 44' 4.45" N
Outfall #004:
71° 8' 28.36" W
41° 43' 48.5" N
Powerplant
Chase Preserve
Somerset High Sch
Slade Cem
Breeds Cove
Steep Brook
St Vincents Sch
Fuesdale Hospital
Brighman St Bridge
Boat Ramp
Park
Substas
Durfee High Sch
Bishop Connolly High Sch
Bristol Community College
Tansey Sch
Carroll Sch
Highland Sch
Borden Sch
* Most tanks removed, see aerial photo attached.
Scale 1:18,000
1 inch = 1,500 feet
0 750 1,500
Feet
Project Site
Outfall Locations
Weaver's Cove Energy, LLC
Basemap: USGS Quadrangles, MassGIS
Epsilon
G:\Projects\Fall_Riv\79001\NPDES\FR_site_outfalls.mxd

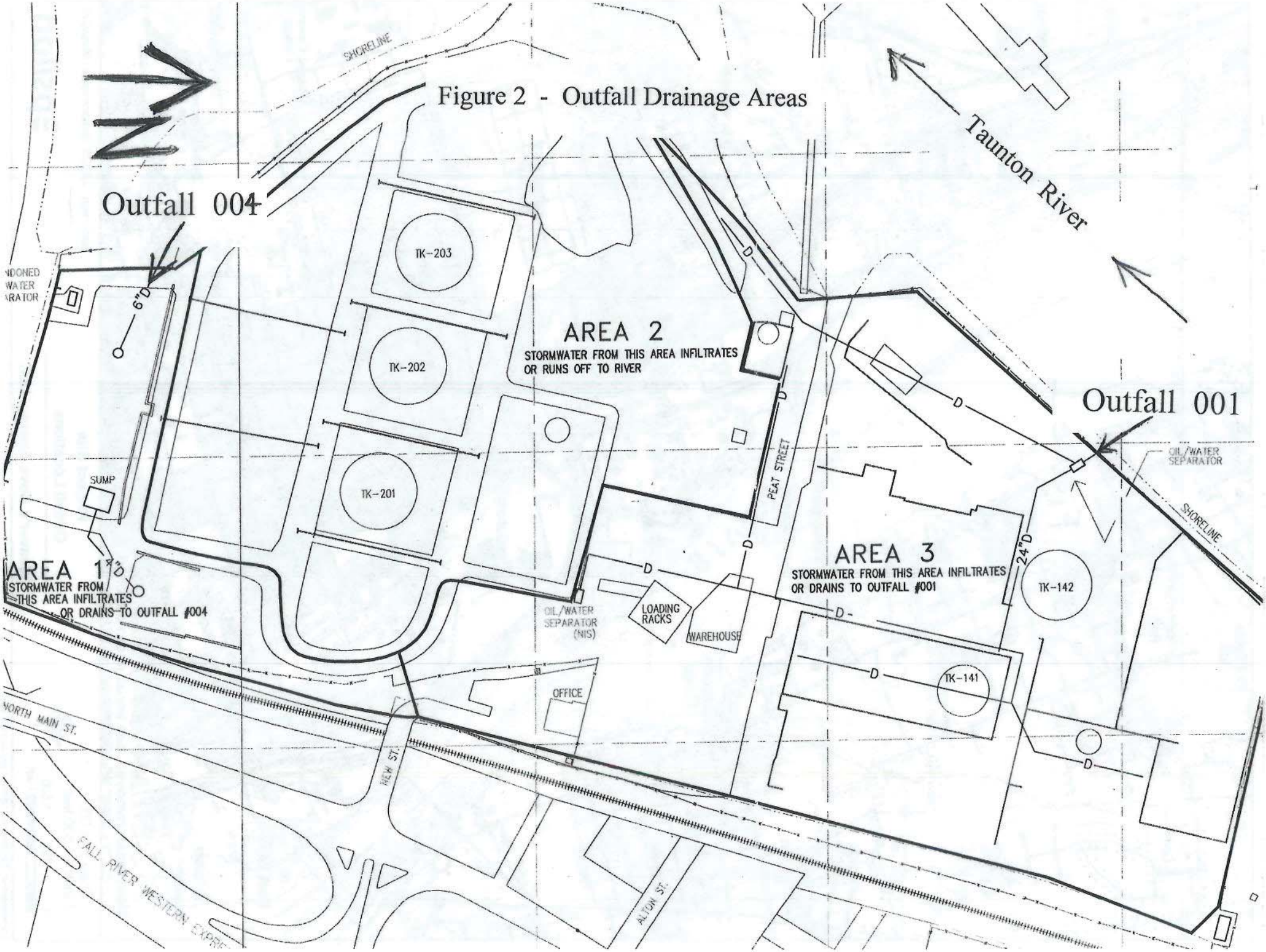
Figure 2 - Outfall Drainage Areas
Taunton River
Outfall 004
Outfall 001
SHORELINE
TK-203
TK-202
TK-201
AREA 2
STORMWATER FROM THIS AREA INFILTRATES OR RUNS OFF TO RIVER
PEAT STREET
SUMP
AREA 1
STORMWATER FROM THIS AREA INFILTRATES OR DRAINS TO OUTFALL #004
AREA 3
STORMWATER FROM THIS AREA INFILTRATES OR DRAINS TO OUTFALL #001
OIL/WATER SEPARATOR (NIS)
LOADING RACKS
WAREHOUSE
OFFICE
TK-142
TK-141
OIL/WATER SEPARATOR
SHORELINE
NORTH MAIN ST.
HEW ST.
ALTON ST.
FALL RIVER WESTERN EXPRE
6"D
24"D
D

Response to Public Comments

In accordance with the provisions of 40 C.F.R. §124.17, this document presents EPA's responses to comments received on the draft NPDES Permit, #MA0004871. The responses to comments explain and support the EPA determinations that form the basis of the final permit. From May 3, 2011 to June 18, 2011, the United States Environmental Protection Agency ("EPA") and the Massachusetts Department of Environmental Protection ("MassDEP") (together, the "Agencies") solicited public comments on a draft NPDES permit, #MA0004871, developed pursuant to a permit application from Weaver's Cove Energy, LLC ("WCE" or "the permittee") for the reissuance of a National Pollutant Discharge Elimination System ("NPDES") permit to discharge stormwater runoff from outfall serial numbers 001 and 004 to the Taunton River in Fall River, Massachusetts. The public comment period was reopened on April 24, 2012 and there was a public hearing conducted regarding the issuance of this permit on May 23, 2012. During this hearing, the public comment period was extended through June 27, 2012.

After a review of the comments received, EPA and MassDEP have made a final decision to issue this permit authorizing these discharges. Although EPA's decision-making process has benefitted from the various comments and additional information submitted, the information and arguments presented did not raise any substantial new questions concerning the permit. EPA did, however, make certain clarifications and changes in the final permit. These changes were a result of the comments received during the public comment period and during the public hearing testimony. The analyses underlying these changes are explained in the responses to individual comments that follow and are reflected in the final permit. A summary of the changes made in the final permit are listed below. Where applicable, relevant sections of the response document where these changes have been discussed have been included in parentheses at the end of each change.

On February 6, 2012, after the issuance of this draft permit, the National Marine Fisheries Service (NMFS) listed the Atlantic Sturgeon (*Acipenser oxyrinchus oxyrinchus*) as an endangered species under the Endangered Species Act (ESA). Under the ESA, EPA is required to consult with the NMFS or United States Fish & Wildlife Service to ensure that any federal action is not likely to adversely impact such species or their habitat. EPA-issued NPDES permits are federal actions that must undergo this consultation. In a letter to NMFS dated August 17, 2012, EPA determined that the discharges authorized by this permit are not likely to adversely affect this species. In a letter dated September 21, 2012 to EPA, NMFS concurred with EPA's determination, stating that any effects to this species would be insignificant. Therefore, no further consultation was required for the Atlantic Sturgeon regarding the reissuance of this permit.

Copies of the final permit may be obtained by writing or calling EPA's NPDES Industrial Permits Section (OEP 06-1), Office of Ecosystem Protection, 5 Post Office Square, Suite 100, Boston, MA 02109-3912; Telephone: (617) 918-1579.

Changes made to the draft permit:

1. A new requirement has been added to the final permit at Part I.C.9 to require the permittee to conduct an investigation to determine whether, and if so, to what extent, contaminated groundwater is infiltrating into the stormwater drainage system discharging to Outfalls 001 and 004. (**B1, B3, B5**)

2. Part I.A.12 has added the words "associated with Outfall 001" to make it clear where the dry weather screening needs to be conducted.

3. Once per year monitoring for total arsenic has been added to the final permit for Outfalls 001 and 004. (**B8**).

List of commenters for comments submitted during public comment period commencing on May 3, 2011 and ending on June 18, 2011.

A. Benjamin R. Frothingham - WCE, LLC

B. Dianne R. Phillips - Holland & Knight, LLP, on behalf of the City of Fall River

C. Cecile Scofield

D. Ronald M. Thomas

E. Elaine Rousseau, Normand Rousseau, and Helena F. Rocha

F. David M. Franco-Rocha

G. Marian R. and Robert W. LeComte

H. Gabrielle LeComte

I. Marilyn Sokole

List of commenters for comments submitted during the public hearing and up to the extended public comment closing date of June 27, 2012.

J. Dianne R. Phillips - Holland & Knight, LLP, on behalf of the City of Fall River

K. Pauline Rodrigues and Joyce Mello

L. Cecile Scofield

M. Ann Morrill, Kickemuit River Council

N. Priscilla Chapman

O. Frank Perry

P. Sarah Guilmette

Q. Kathleen C. Medeiros

R. Gail Welch

Comments submitted during public comment period commencing on May 3, 2011 and ending on June 18, 2011.

A. Comments submitted by Benjamin R. Frothingham of WCE, LLC:

Comments A1 and A2:

As with the original NPDES permit from 1978, the draft NPDES permit accurately identifies the facility address as One New Street in Fall River, MA. However, the Fact Sheet attached to the draft permit incorrectly identifies the site as approximately 73 acres. WCE in fact owns multiple parcels in the area, but the One New Street site that is the subject of this permit comprises approximately 50 acres.

The One New Street site is identified as Lot 1 on the Fall River Tax Map T-2 and matches the area of coverage correctly depicted on Figure 2 Outfall Drainage Areas. Figure 1 attached to the draft permit shows the One New Street property plus other lots that are owned by WCE but are not subject to the NPDES permit. The correct approximate outline of the property subject to the NPDES permit is provided on the attached revised Figure 1.

Response to Comments A1 and A2:

EPA acknowledges WCE's suggested clarification to the fact sheet, which is now part of the administrative record for the permit. However, because the fact sheet only serves to support the draft permit, and is not required as a part of the final permit decision, an updated fact sheet has not been prepared.

Comment A3:

Additional comments on Figure 1 and the text of Sections I and II of the Fact Sheet can be seen annotated in red (see document attached to this letter).

Response to Comment A3:

EPA acknowledges these comments, which are mainly related to the comments above and reiterates that an updated fact sheet has not been prepared. A copy of the permittee's comments are attached to this document, with specific comments provided by the permittee in text boxes.

B. **Comments submitted by Dianne R. Phillips of Holland & Knight, LLP, on behalf of the City of Fall River: [In an e-mail of June 25, 2012 to George Papadopoulos of EPA, Ted Gehrig of WCE submitted a marked up copy of Dianne Phillips' comment letter, with WCE's own comments. The City's comments and WCE's corresponding comments (when made) have been included below and have been considered by EPA and responded to as appropriate.]**

General Comment from Diane Phillips on behalf of the City of Fall River:

Fall River urges the EPA and the MassDEP to retract the Draft Permit and reissue a more comprehensive Draft Permit which adequately addresses the significant site history and site contamination which threatens the water quality of the receiving waters, the Taunton River, a river designated under the National Wild and Scenic Rivers System under 16 U.S. C. § 1271 *et seq.* and listed as impaired on the Commonwealth of Massachusetts' Clean Water Act § 303(d) list. Moreover, with Weaver's Cove's recent announcement abandoning plans to pursue its LNG terminal development project, it is more important than ever that the next NPDES Permit issued jointly by EPA and MassDEP adequately protect the Taunton River upon issuance and not wait for upgraded stormwater management systems Weaver's Cove promised with its proposed LNG terminal development.

Response to the City's General Comment:

EPA has considered the City's general comment and has determined that the final permit being issued properly addresses from both technical and legal standpoints all of the relevant circumstances at the permitted facility, including, but not limited to, the nature of and circumstances associated with the site, and the water quality of the receiving water, the Taunton River. EPA's responses below, to more specific individual comments, also contain additional information relevant to this general comment.

Comment B1 from the City of Fall River:

The current NPDES permit for the site was issued in 1978, over three decades ago, and has been administratively continued since then. However, this Draft Permit retains the identical single effluent limit for oil & grease and does not impose any additional effluent limits despite strong evidence that contaminated groundwater is infiltrating the storm drain system and may be discharging to the impaired Taunton River. Indeed, several known site contaminants are completely absent from the list of pollutants to be monitored under the Draft Permit. EPA must examine the complete record, and describe that site history in greater detail in the Fact Sheet before issuing a final permit. Given the long delay since the site was transferred to Weaver's Cove in 2007, during which it has only been required to comply with the antiquated 1978 permit, Fall River urges EPA and MassDEP to promptly evaluate existing groundwater data, and require additional data from Weaver's Cove, if warranted, to protect the public and the Taunton River.

Comment related to Comment B1 from WCE:

For clarity there are four discharges from the "Weaver's Cove" site to the Taunton River. This permit addresses two outfalls, outfall 001 and 004, both outfall operated by Weaver's Cove Energy. This permit does not address outfall 001A (Shell's permitted groundwater discharge). This permit also does not address discharges from the combined sewer outfall (CSO) which regularly discharges raw untreated sewage into the river under a permit issued to the City of Fall River. The following comments will show that there is no evidence that groundwater is infiltrating the stormwater system as that system is configured today.

This statement - this Draft Permit retains the identical single effluent limit for oil & grease and does not impose any additional effluent limits - is not true. The new permit mandates the monitoring of additional parameters.

Response to the City's Comment B1 and WCE's related comment:

In considering the submitted comments, EPA notes that it has reviewed and considered the entire record relating to the permitted facility in developing the final permit's terms and conditions.

EPA believes that it will be helpful here to describe certain aspects of the permitted facility's historical and present conditions because relevant changes have taken place at the facility since it was first permitted in 1978. The current owner of record is Weaver's Cove Energy, LLC, a subsidiary of Hess Energy, which has owned the site since 2007. The storage and distribution of petroleum products at the permitted facility was discontinued in the early 1990's. Due to the historical release of petroleum products on the site, Shell Oil, the former permittee, began pumping and treating contaminated groundwater on site in 1975. In 1994, this site was classified as a Tier 1B site under the Commonwealth of Massachusetts Contingency Plan (MCP), which is the program that sets out the requirements for reporting, assessing and cleaning up contaminated sites. Although Shell no longer owns any portion of this site, it remains responsible for continuing to pump and treat the contaminated groundwater. Therefore, licensed site professionals (LSPs) working on behalf of Shell retain a presence on this site to operate the groundwater remediation system.

Up until 2002, the combined flows of groundwater and stormwater were discharged to Outfall 001 after passing through an oil/water (O/W) separator. In 2002, Shell separated the flow of pumped groundwater from the stormwater drainage system. After separating these flows, Shell discharged the treated groundwater through a new Outfall, designated #001A, which is now authorized by a separate NPDES permit which regulates Shell's discharge. Outfall 001 continues to be authorized by this final permit issued to WCE and is comprised of stormwater runoff which still passes through an O/W separator prior to discharge to the Taunton River. The other outfall authorized by WCE's final permit, Outfall 004, continues to be active and discharges untreated stormwater runoff to the Taunton River.

Up until June 2011, Shell had been treating groundwater in a multi-phase treatment system as authorized by EPA's Remediation General Permit (RGP), #MAG910474. Beginning in July of 2011, Shell received authorization from the MassDEP to discharge its treated groundwater to an infiltration gallery, essentially back into the ground and upgradient of the recovery wells, per standard remediation procedures. Thus, there has been no treated groundwater discharged through Outfall 001A since that time, with the exception of a brief period in August or September of 2011 when Shell had to reconfigure this system of galleries. The RGP remains active should Shell determine that a surface water discharge of treated groundwater at Outfall 001A is necessary in the future.

Since 2002, WCE has asserted that only stormwater (i.e., not infiltrated contaminated groundwater) drainage from a certain portion of this site (as shown in Figure 2 in the Fact Sheet to the Draft Permit) has been discharged to the Taunton River through Outfalls 001 and 004. To EPA's knowledge, based on a review of all relevant information in the Agency's possession, neither Shell nor WCE has ever demonstrated by means of any type of dye study, video inspection of drain lines, or any other method, that only stormwater and no contaminated infiltrated groundwater is discharged through Outfall 001, or Outfall 004. It is true that some portions of the storm drainage system are very old and it appears that portions of it may be close to the groundwater table. There are still occasional detectable levels of oil & grease and other

parameters, including lead, zinc, and methyl tertiary butyl ether (MTBE), discharged from WCE's two stormwater outfalls (001 and 004), but the available data are limited. EPA has determined that these facts and all of the other relevant information in the record do not constitute a sufficient basis to conclude that contaminated groundwater is infiltrating the facility's stormwater drainage system and being discharged through the permittee's two outfalls into the Taunton River such that EPA can determine that there is a reasonable potential for the discharges in question to cause or contribute to exceedances of water quality standards.

During a site visit conducted by EPA and MassDEP on September 22, 2011, the Agencies observed a small but steady amount of flow being discharged from Outfalls 001 and 004. Although it had rained lightly during the previous night, there was no relevant information available or explanation offered by WCE as to why these outfalls were discharging flow several hours after precipitation had ceased. Accordingly, while EPA has determined that there is insufficient evidence at this time from which to conclude that contaminated groundwater is infiltrating the stormwater drainage system, there is some evidence that such infiltration *may* be occurring.

The Draft Permit established an annual screening for many parameters which would be associated with the past use of petroleum products on site, in order to determine whether any of those parameters are present in the discharges through Outfalls 001 and 004, and whether they are being discharged at levels which would cause or have the reasonable potential to cause or contribute to water quality standards violations. There has also been a monthly dry weather screening requirement for Outfalls 001 and 004 to try to determine whether there is any flow that would indicate groundwater infiltration of the storm drainage system, also referred to as "dry weather flow." These requirements have been retained in the final permit.

In addition, a new requirement has been added to the final permit at Part I.C.9 to require the permittee to conduct an investigation designed to demonstrate whether or not, and, if so, to what extent, contaminated groundwater is infiltrating the stormwater drainage system discharging to the Taunton River through Outfalls 001 and 004. This added requirement has been included in the final permit due to numerous public comments which raised the issue regarding whether or not there currently is contaminated groundwater infiltrating the facility's stormwater drainage system. The limited data available relating to the presence of metals and VOCs in the discharges through Outfalls 001 and 004 indicate the presence of these pollutants in some amounts, but EPA has determined that such information is insufficient to demonstrate whether these pollutants are originating from groundwater infiltration, surface runoff, or from residual contamination (associated with historical practices at the site) in the stormwater drainage system itself. The goal of the final permit's investigative study requirement is to demonstrate whether or not contaminated groundwater is infiltrating the stormwater drainage system on the site. EPA believes this requirement addresses the public comments provided on this issue by the City and by the permittee, and EPA specifically considered those comments in deciding to impose the requirement in question.

Comment B2 from the City of Fall River:

The Fact Sheet which accompanies the Draft Permit is woefully inadequate in describing the existing conditions. Although EPA acknowledges the April 21, 1983 re-application by Shell Oil where groundwater infiltration into the storm sewer system was identified (Fact Sheet, p. 9), it fails to mention the fact that Shell estimated the annual volume of infiltrated groundwater at 100 million gallons in that same re-application. That is a tremendous volume of contaminated groundwater discharging into the Taunton River. In addition, the February 28, 1992 renewal application also documented effluent being discharged through outfall 001 and 004 containing detectable, and sometimes significant, levels of contaminants including gasoline constituents like benzene and toluene, and metals like lead, arsenic, and copper. Groundwater contamination cannot be ruled out as contributing to these discharges based upon the commingled flow from the facility at the time.

Comment related to Comment B2 from WCE:

In 1983, Shell was pumping groundwater from under the site, treating it, and discharging it through a common outfall with stormwater through outfall 001. At the time, the discharge had a high in iron content and stained the rocks at the outfall over a period of many decades. These two water streams are no longer co-mingled. Stormwater continues to flow through outfall 001 under a permit issued to WCE. Today groundwater is discharged through outfall 001A under a separate permit issued to Shell.

Again, these measurements were taken when groundwater and stormwater were discharged through a common outfall. A practice discontinued over a decade ago. The site was distributing petroleum products at the time this data was collected, a practice that ceased in 1995 or 1996. The site was an active oil terminal with product stored, pumped and trucked offsite at the time this data was collected. These operations ceased a decade ago.

Response to the City's Comment B2 and WCE's related comment:

As noted in the response to Comment B1, there have been many changes on the site since the 1978 permit was issued. Although there have been low levels of metals and oil & grease detected in Outfalls 001 and 004 over the last 10 years as detailed in the Fact Sheet, EPA has determined (as indicated in EPA's responses to Comment B1) that these facts and the other available information do not constitute a sufficient basis to conclude that contaminated groundwater is infiltrating the facility's stormwater drainage system and being discharged through the permittee's two outfalls into the Taunton River. Again, it is not clear whether the detected pollutant levels in these two outfalls originate in the stormwater runoff from the site, residual contamination (associated with historical site practices) in the storm drain lines, or from ongoing infiltration of the stormwater drainage system by contaminated groundwater. In addition, as noted earlier in response to Comment B1, sampling for metals and other pollutants associated with past operations at the site is very limited. Therefore, the additional effluent

monitoring requirements contained in the final permit should serve to determine the levels of these pollutants that are being discharged through Outfalls 001 and 004. In addition, dry weather screening and the groundwater infiltration study requirements of the final permit should also provide evidence as to the sources of any pollutants discharging through the outfalls. Depending on what these findings show, WCE's final permit may be reopened to include additional effluent limitations and/or other conditions to address any pollutants detected in the discharge from Outfalls 001 and 004. (As noted in the response to Comment B1, Outfall 001A is currently inactive as Shell is discharging treated groundwater to a series of infiltration galleries.)

Additionally, there is another factor contributing to the earlier referenced uncertainties surrounding whether and to what extent contaminated groundwater is infiltrating the site's stormwater drainage system. The lowering of the local groundwater level due to site remediation activities being conducted by Shell *may* be contributing to the reduction or elimination of groundwater infiltration (to the extent it may exist) into the stormwater drainage system that discharges into the Taunton River through Outfalls 001 and 004 at the site. Shell has several extraction wells, including many near the shoreline, which serve to depress the water table and limit the migration of this contaminated groundwater directly to the Taunton River. Shell has continued to pump and treat this contaminated groundwater from these wells as described in the response to Comment B1.

Comment B3 from the City of Fall River:

There is no doubt that the groundwater is heavily contaminated with petroleum contaminants and metals. Shell Oil has been undertaking remediation since 1975 when a recovery well was installed in response to a mixture of kerosene, heating oil, and gasoline. MassDEP issued a Notice of Responsibility (NOR) on November 15, 1989 under the MCP 310 C.M.R. 40.0000 *et seq.* in RTN 4-0749. The site was classified as a Tier 1B site in 1994, where it remains currently in Remedy Operation Status since 2003. There is an extensive light non-aqueous phase liquid (LNAPL) plume covering substantial portions of the site on the water table, which is subject to tidal influence, creating a smear zone of approximately three feet thick. Despite recovering in excess of one million gallons of LNAPL since operations began, the problem persists and LNAPL is measured in feet in certain monitoring wells and has consistently been higher than the 2000 baseline level in several areas. Weaver's Cove analyzed the data in its October 18, 2005 Draft Phase IV Remedy Implementation Plan, submitted as Appendix 5-1 to the Second Supplemental Draft Environmental Impact ("SSDEIR") report filed with MEPA (EOEA No. 13061) and concluded that the LNAPL plume covered an area of approximately 30 acres. Moreover, Weaver's Cove calculated the "total estimated volume of petroleum in the subsurface at the site ... [at] 703,000 gallons" (SSDEIR, App. 5-1, p. 14).

Response to Comment B3:

EPA acknowledges that there is considerable LNAPL present in varying amounts in the groundwater and again points out that this contaminated groundwater continues to be pumped and treated by Shell and discharged in accordance with the MCP, currently to an on-site infiltration gallery. But this fact does not form the basis for a change to the terms and conditions of WCE's final permit as it is now written.

A valid EPA Remediation General Permit (RGP) for Outfall 001A exists for discharge of treated groundwater, but that outfall is no longer in use because of the infiltration gallery. This site cleanup is currently under the purview of the MCP, and the responsible party, Shell, has to meet certain clean up goals and timelines consistent with the MCP. WCE is considered a responsible party because it owns this site, where contamination has come to be located. But since Shell has assumed full responsibility for clean up of historic petroleum releases at the site, WCE is not currently involved with the ongoing MCP clean up.

In any event, and as discussed in EPA's responses to Comments B1 and B2, WCE's final NPDES permit contains conditions established to determine whether and to what extent any of the contaminated groundwater is infiltrating the stormwater drainage system and is being discharged to the Taunton River through Outfalls 001 and/or 004.

Comment B4 from the City of Fall River:

Periodically sheens are observed on the river. Most recently in April 2010 a substantial release of LNAPL to the river was discovered (RTN 4-22552) as a result of a high groundwater table from recent rains (increase in groundwater elevation averaging over 2 feet) causing LNAPL to infiltrate the existing, historic brick drain line in places where it lacked integrity. Although this release to the river was more extreme than the usual situation it demonstrates the reasonable potential for a discharge to cause or contribute to water quality standards violations in the receiving water which should be addressed now by EPA and MassDEP. Furthermore, EPA observed "a slight sheen ... in two of the oil water separators at outfall 001" during its November 27, 2007 site visit further confirming that site contamination (LNAPL) was entering the storm sewer system. There is no need to wait for additional data from monitoring as suggested in the Draft Permit.

Comment related to Comment B4 from WCE:

No sheens on the river have been attributed to flows from the stormwater system being permitted here. No sheens from stormwater discharges. Oil water separators associated with stormwater systems are designed to handle sheens. The system functioned. Sheens have been attributed to City owned and operated CSO discharge - not related to Weaver's Cove.

There is no evidence to show that the sheen was LNAPL from the water table. It is not at all unusual for a stormwater treatment system (such as the separator installed at this site) to show a sheen from stormwater runnoff associated with paved parking areas and paved roadways. The separator handled the situation as designed without any adverse impact on the river.

Response to the City's Comment B4 and WCE's related comment:

A meeting was held with MassDEP, the US Coast Guard, WCE, Shell and other parties on March 4, 2011 to address a visible oil sheen that appeared near the City of Fall River's Combined Sewer Overflow (CSO) outfall beginning in April of 2010. This outfall discharges near the dock structure of the property and is authorized by a separate NPDES permit, #MA0100382, issued to the City of Fall River. The Agencies understand that the US Coast Guard took samples of this sheen at the CSO and also at the on-site recovery tank associated with the ongoing remediation being conducted by Shell. These samples were analyzed, and found to match by fingerprint analysis. The sampling was conducted following the appearance of the sheen near the CSO outfall pipe. Based upon a consideration of the facts and the discussion between the various parties referenced above, it was determined that this sheen, which did not fully dissipate until October of 2010, was caused by rising levels of contaminated groundwater following a series of heavy rain storms in February and March of 2010 that likely infiltrated the City's CSO outfall pipe, or the trench surrounding this pipe, and that the pollutants in question were discharged through the City's outfall (not WCE's outfalls) into the Taunton River. (MassDEP Release Amendment Form – Allen Hemberger – March 7, 2011). MassDEP issued Notices of Responsibility (NORs) to WCE and Shell Oil on May 18, 2010 regarding this release. WCE received the NOR as owner of the site. Shell received the NOR as the responsible party overseeing the site remediation. The sheen was attributed to unusually high groundwater which infiltrated the CSO. The high groundwater was assumed to entrain residual petroleum contamination from smear zones in the soils underlying the site, and/or from staining within the CSO itself. It is EPA's understanding that Shell assumed responsibility for all follow up work required by the NOR.

Contrary to WCE's assertion, EPA believes that the amount and persistence of this sheen over a period of several months would not be attributable to "stormwater runoff associated with paved parking areas and roadways," especially because there is limited activity on the site.

While Shell is currently in compliance with the MCP regarding cleanup of the historic petroleum releases, according to the MassDEP, Shell scheduled a significantly enhanced groundwater remediation program that began in Autumn 2012. This work has included the lining of about 500 feet of the CSO pipe which was completed in December of 2012. This installation is referred to as "cured-in-place pipe" and is meant to minimize the infiltration of this CSO pipe by contaminated groundwater. It is important to note that these MCP cleanup activities related to the discharge from the CSO are independent of and not related to Outfalls 001 and 004 regulated under WCE's final NPDES permit for stormwater runoff. In addition, there have been several

rows of floating, sorbent booms that have been placed around the vicinity of this CSO outfall to help prevent any sheen from migrating beyond this area.

Comment B5 from the City of Fall River:

Additionally, the site plan provided by Shell in its 1992 renewal application clearly shows an extensive network of stormwater drainage system components which are absent from the figure provided with the Fact Sheet. Rather, the figure provided with the Fact Sheet focuses on geographic areas and infiltration failing to document adequately the existing storm drain system. Although the groundwater remediation and recovery wells were disconnected from the storm sewer system shown in the 1992 plan in 2002, there is no evidence in the record to suggest the remainder of the preexisting storm sewer system was dismantled. Indeed, at the EPA site visit conducted on September 19, 2007, EPA concluded that "the gravity operated stormwater system is in disrepair. Nevertheless, storm water does still discharge from outfalls 004 and 001." EPA and MassDEP should require Weaver's Cove to document and demonstrate the existing conditions, including the historic drainage system, and how it contributes to the discharge. Technology is readily available to record via video the interior of the storm drain system to evaluate where contaminated groundwater is entering.

Comment related to Comment B5 from WCE:

The commenter knows that the stormwater and groundwater flows were separated in 2002. Hence any data collected from outfall 001 and 004 prior to 2002 are not representative of today's conditions where all groundwater is discharged through outfall 001A which is permitted to and operated by Shell. There is no evidence showing groundwater flows to the river from outfalls 001 and 004. The oil water separator is in perfect working order today.

Response to the City's Comment B5 and WCE's related comment:

With regard to the City's comment about the stormwater system being in disrepair, EPA was referring mainly to the former infrastructure that had previously collected stormwater in the diked areas around the former petroleum storage tanks and directed this stormwater to one of the stormwater outfalls. As was previously noted, most of these tanks have been removed and it appears that stormwater that collects in these areas mainly infiltrates into the ground. In addition, WCE has made some improvements to the drainage and collection system leading to Outfall 004 since that EPA inspection was conducted. As EPA has already explained above in its responses to prior comments by the City and WCE, EPA has determined that there currently does not exist evidence sufficient to conclude one way or the other whether contaminated groundwater is infiltrating the stormwater drainage system leading to Outfalls 001 and 004, and the Agencies agree that further investigation is needed. Therefore, EPA has included a requirement in Part I.C.9 of the final permit for the permittee to conduct such an investigation, as detailed in EPA's response to Comment B1.

Comment B6 from the City of Fall River:

Next, EPA's dismissal in the Fact Sheet of the detectable contaminants found in Weaver's Cove's response to the Section 308(a) information request should be reversed. Sampling done by Weaver's Cove clearly showed the presence of contaminated groundwater in the effluent discharge resulting in detectable levels of oil & grease, MTBE, zinc, and lead being discharged to the Taunton River. Given that industrial activities at the site have ceased, these contaminants found in the effluent could only have come from contaminated groundwater infiltrating the discharge system.

This detection from the § 308(a) sampling certainly amounts to reasonable potential for the discharge to cause or contribute to violation of water quality standards warranting imposition of numeric effluent limits for the contaminants detected.

Comment related to Comment B6 from WCE:

This statement is not true. These parameters can be detected but are within acceptable limits.

Response to the City's Comment B6 and WCE's related comment:

See responses to Comments B1 and B2.

Comment B7 from the City of Fall River:

Lead, in particular, should have had a numeric effluent limit imposed as a pollutant designated as toxic by EPA in 40 C.F.R. § 401.15. The § 308(a) sample result of 15 ug/1 exceeds the effluent limit of 8.5 ug/1 set by EPA and MassDEP in the NPDES authorization (#MAG910474) issued to Shell Oil on April 22, 2011 for the very same site (outfall 001A). There is no valid legal rationale for imposing a technology-based limit of 8.5 ug/1 for effluent from outfall 001A and no limit whatsoever for outfall 004 from the very same site. Lead contamination in both soil and groundwater is extensive at the site. According to historic data, total lead of surficial soils has been detected as high as 22,500 mg/kg. Weaver's Cove should not be allowed to discharge lead contaminated effluent without any limits whatsoever especially when such discharge likely exceeds the relevant technology-based effluent limit.

Comment related to Comment B7 from WCE:

The commenter has the facts wrong. Outfall 001A is permitted to Shell and is used to discharge pumped groundwater. No storm water flows through outfall 001A. Weaver's Cove does not control outfall 001A. These are two separate outfalls, operating under two separate permits, and the parties responsible for these two outfalls are different. Shell operates outfall 001A and Weaver's Cove operates outfall 001. There is no evidence to support a view that outfall 001 is discharging groundwater.

Response to the City's Comment B7 and WCE's related comment:

Pursuant to EPA's Clean Water Act Section 308 sampling requirements, the permittee's sampling detected an effluent level of 15 ug/l for lead at Outfall 004. As discussed in the Draft Permit's Fact Sheet, the stormwater discharged at Outfall 004 is untreated. The City comments that the limit of 8.5 ug/l that was established for lead for Shell's RGP applicable to Outfall 001A should also be contained in WCE's NPDES permit. EPA responds that the limits for many parameters in Shell's RGP, including the 8.5 ug/l limit for lead, are technology-based limits, which are the effluent levels that typical groundwater remediation systems are designed to achieve. The effluent limit for lead in Shell's RGP is not based on the typical stormwater treatment system. The permittee is required by the final permit to sample the effluent for total lead at both outfalls (001 and 004) once per year. Sampling results required to be obtained by the permittee by the final permit, for lead and other monitored parameters, will be reviewed by EPA to determine whether specific effluent limits should subsequently be required based upon a reasonable potential analysis of whether the discharges cause or contribute to water quality standards violations. EPA has determined that insufficient data currently exist from which EPA may make a reasonable potential determination as to lead at this time.

Additionally, pursuant to the Final Permit, the permittee is requirement to develop and implement a Stormwater Pollution Prevention Plan (SWPPP), which is designed to reduce or prevent the discharge of pollutants associated with stormwater from this permitted facility. EPA expects the permittee to address in its SWPPP the known characteristics of the soils on the site and the potential for metals and other pollutants to be carried into the receiving water via stormwater runoff from these soils.

Comment B8 from the City of Fall River:

Indeed, EPA should have evaluated the data relied upon in connection with the NPDES authorization issued to Shell Oil (#MAG910474) just a month before this Draft Permit was published. The influent data submitted by Shell represents the current groundwater contamination which could be contributing to the Weaver's Cove discharge and accordingly identifies all the contaminants which should be subject to monitoring, if not numeric effluent limits. Conspicuously absent from the Draft Permit monitoring requirements are arsenic and copper, both of which are found in the contaminated groundwater. Indeed, high levels of arsenic were found in surficial soils (within 0 to 0.5 feet) in Area 3 in 2007 up to 110 mg/kg as reported in connection with RTN 4-19032. Although the arsenic contamination was determined to be a result of coal ash, and therefore not regulated under the MCP, its presence in high levels on the surface makes it especially susceptible to discharge as part of stormwater. It was error for EPA to neglect consideration of preexisting arsenic contamination when determining the monitoring requirements and effluent limits in this Draft Permit especially because arsenic is a pollutant designated as toxic by EPA in 40 C.F.R. § 401.15.

Response to Comment B8:

Until WCE conducts an investigation as required by the final permit to determine whether contaminated groundwater is infiltrating the storm drainage system and being discharged through Outfalls 001 and/or 004, the Agencies cannot assume that the contaminated groundwater that Shell is pumping into its remediation system is also being discharged to either one or both of these stormwater outfalls by virtue of groundwater infiltration into the stormwater drainage system. As indicated above in EPA's responses to earlier similar comments by the City and WCE, the source of these metals concentrations (and other parameters) is not known at this time, but may be stormwater runoff from the surface at the site, residual contamination in the storm sewer system from historical activities, and/or contaminated groundwater infiltrating the storm drainage system. Contrary to the suggestion in the City's comment, and in consideration of that comment, EPA has not neglected to consider preexisting arsenic contamination when determining the monitoring requirements and effluent limits for the final permit. The final permit has included arsenic as a once per year effluent monitoring requirement for both of WCE's outfalls, based on its presence in the soils on site, its potential to be carried into the receiving water through the stormwater drainage system, and its low water quality criteria levels.

As to the City's comment about copper, copper is not a parameter typically associated with the remediation that Shell is undertaking on site. In addition, prior sampling that WCE conducted pursuant to a CWA Section 308 letter from EPA did not detect copper at either Outfall 001 or 004. Therefore, no monitoring requirement was established for copper in the final permit. Also see the response to Comment B7 regarding the SWPPP.

Comment B9 from the City of Fall River:

Iron is another contaminant of concern as EPA observed "substantial rust staining ... on the rocks at outfall 001" during the November 27, 2007 site visit. According to the recent data submitted by Shell Oil in connection with its NPDES permit application for outfall 001A, the concentration of iron in groundwater is 46,900 ug/1 whereas the applicable effluent limit in the authorization is only 1,000 ug/1. Where the iron concentration of the discharge is so high that it causes staining on the rocks at the outfall, there is surely a reasonable potential for the discharge to cause violation of water quality standards.

Comment related to Comment B9 from WCE:

References to data from outfall 001A have nothing to do with outfall 001.

Response to the City's Comment B9 and WCE's related comment:

In response to the City's comment, during a site visit conducted on September 22, 2011, EPA and MassDEP noted that there was rust colored staining in Outfall 004's outfall channel as well as in the vicinity of Outfall 001. Although it is not clear whether the staining was from past or current discharges, the monitoring for metals, including iron, in the final permit will provide an assessment of the current levels of several parameters, including iron, in the effluent. The permittee also is required to comply with the conditions of Parts I.A.4 and I.A.7 of the final permit relative to any discoloration of the effluent or the receiving water. EPA has determined that there is insufficient information from which to conclude that there is a reasonable potential for the discharge of iron to cause or contribute to a violation of water quality standards.

In response to WCE's comment related to the City's comment B9, EPA agrees that simply identifying levels of iron in the contaminated groundwater being treated by Shell is not by itself a sufficient basis to conclude that iron is currently being discharged to the Taunton River through outfalls 001 and/or 004. EPA also notes however that WCE's comment does not address the City's comment about iron stains on the surface at the site. But EPA's response above does respond to the City's comment on that point.

Comment B10 from the City of Fall River:

In summary, the Draft Permit is woefully inadequate and does not represent current practices with respect to contaminated groundwater infiltration into stormwater discharges. Technology-based effluent limits should be applied for all contaminants identified in the groundwater. This practice has been followed at other sites by EPA, including present and former bulk petroleum terminals (Permit numbers MA0000833, MA0003425, MA0003298), and it was improper for EPA not to apply those same limits in this case.

Comment related to Comment B10 from WCE:

The premise here is flawed. Groundwater is not infiltrating the stormwater system.

Response to the City's Comment B10 and WCE's related comment:

As EPA has already noted earlier in response to the City's and WCE's other comments, although the permittee contends that groundwater is not infiltrating the stormwater drainage system, EPA has determined that there is insufficient evidence from which to conclude one way or the other that such infiltration is or is not occurring. In this way, this site varies from the other permits which the City mentions in its comment, where contaminated groundwater was known to be infiltrating the storm drainage system and/or outfalls included discharges from a groundwater remediation system. Therefore, as indicated several times in response to other comments above, the permittee is required by the final permit to conduct an investigatory analysis of whether and

to what extent, groundwater is, in fact, infiltrating the stormwater drainage system. See e.g., EPA's response to Comment B1. The information obtained by this investigatory study, coupled with the monitoring of metals and VOCs required by the final permit and the dry weather screening of Outfalls 001 and 004, will enable the Agencies to determine in the future whether additional monitoring and/or effluent limits should be added to WCE's permit.

C. Comments submitted by Cecile Scofield:

Comment C1:

Neither Shell nor the USEPA nor FERC knew that Jay Cashman had flipped the Weaver's Cove property to Fall River Marine Terminal, LLC in March of 2001 for $1 (One Dollar) approximately three months after Jay Cashman, Inc. purchased the property from Shell.

Response to Comment C1:

WCE, LLC is the current "owner or operator" (as defined at 40 C.F.R. 122.2) of the facility being permitted under the final NPDES permit. Accordingly, WCE, LLC is the entity to which a permit should now be issued. Consistent with this explanation of the way in which EPA's NPDES permitting program is designed to be implemented, EPA has determined that the facts alleged in Comment C1 (even assumed to be true for the purpose of responding to this comment) do not alter the fact that WCE, LLC is, pursuant to EPA's NPDES regulations, the proper permittee.

Comment C2:

NPDES Permit #MA0004871 was transferred UNLAWFULLY from Shell Oil to Jay Cashman, Inc., in 2003 (since Jay Cashman, Inc., was not the "owner" of the property in 2003 as Shell Oil believed and so assured the EPA by letter dated March 12, 2003 (see excerpt below*). The real "current owner" in 2003 (Fall River Marine Terminal, LLC) had no legal or financial affiliation to Jay Cashman, Inc.

*LETTER DATED MARCH 12, 2003, FROM SHELL OIL TO USEPA: "Pursuant to Michael O'Brien's request, Shell is providing written documentation to the USEPA Region I that Jay Cashman, Inc., is the current owner and operator of the Fall River Marine Terminal and therefore is environmentally responsible for Outfalls 001 and 004." In that same letter, Shell also verified that the following information was accurate: "Thus, as we understand it, Shell is currently responsible for existing groundwater contamination and J. Cashman for the marine terminal discharges (001 and 004) and any potential future contamination."

So how can that NPDES Permit be transferred now to any prospective "new" owner? It would be like you finding the Title to my car and then selling my car to another party. The "other" party would not hold legal Title to my car - Right? Wouldn't the issue have to be resolved by a Court of appropriate jurisdiction?

Response to Comment C2:

As EPA noted earlier in response to Comment C1 above, although this site has changed ownership several times, WCE is the current "owner and operator" of the permitted facility and hence is the entity to whom an NPDES permit should be issued. It is EPA's understanding that WCE, LLC is the current title holder to the property being permitted and WCE, LLC has never asserted otherwise.

While not taking a position in this permitting context on the question of whether the factual allegations described by the commenter raise any law enforcement issues, EPA believes that any such enforcement-related implications, if they exist, do not alter the fact that WCE, LLC is the entity that should be the permittee for the facility in question.

Comment C3:

As far as I am concerned, Weaver's Cove Energy, LLC, has been discharging effluents into the Taunton River without a "lawful" NPDES Permit since 2007 - and Fall River Marine Terminal, LLC from 2003 to 2007. Jay Cashman, Inc. transferred a Permit to Weaver's Cove Energy, LLC, in 2007 without Cashman having a legal right to the Permit. The Permit was originally transferred from Shell to Cashman under false pretenses. Shell unwittingly misrepresented the facts to the USEPA.

Response to Comment C3:

See EPA's responses to Comments C1 and C2, above. In addition, EPA reiterates that WCE, LLC is the proper entity to which the final NPDES permit should be issued. Without taking a position in this permitting context on the question whether the factual allegations described by the commenter raise any law enforcement issues, EPA believes that any such enforcement-related implications, if they exist, do not alter the fact that WCE, LLC is the entity that should be the permittee for the facility in question.

Comment C4:

I haven't even gotten into all the Restrictive Development Covenants that were contained in the original Deed (Shell to Cashman) that Fall River Marine Terminal, LLC, and Weaver's Cove Energy, LLC, have since "modified" out of the original language. Please note that the original

language was drafted in such a way to protect Shell from liability from any future exacerbation of the contamination at the Weaver's Cove Site. That language is now all "gone." Yes, a company that held no legal or financial liability was somehow going to be responsible for future contamination at the Site, and the company that should have had the liability was a newly formed Limited Liability Corporation. I have a problem with that!

Response to Comment C4:

Shell is responsible for the ongoing cleanup of the contaminated groundwater on the property under the State's MCP and such discharges of treated groundwater, to the extent they may continue to occur, continue to be authorized by a separate EPA permit, #MAG910474, which is a Remediation General Permit for the treated groundwater. WCE retains the responsibility for the permitted stormwater discharges from the site through Outfalls 001 and 004, including a requirement to develop of a Stormwater Pollution Prevention Plan (SWPPP) designed to reduce or prevent the discharge of pollutants associated with stormwater from the permitted facility.

EPA believes that the allegations contained in Comment C4 (even assumed to be true for the purpose of this response) do not alter the fact that WCE, LLC is the "owner or operator" of the facility being permitted and hence is the proper permittee of the facility in question.

As discussed in the response to Comment B3 above, WCE is considered a responsible party by the Commonwealth of Massachusetts under the MCP because it owns a site where contamination has come to be located. However, cleanup activities of historic petroleum releases at the site are being conducted by the past owner, Shell. The site is currently in compliance with the MCP according to the MassDEP.

D. Comments submitted by Ronald M. Thomas:

Comment D1:

The existing permit was in effect for numerous years and the way technology has advanced it seems incomprehensible that the existing site remediation system is still allowing a documented release of oil into a Wild and Scenic River on several periods which have been traced to the site in question through chemical footprint forensic methods. If it is suspected that the system was allowing seepage from the surrounding area into the outfalls, a possible correction may be as simple as adding a plastic liner to the inner diameter of the outfall pipes.

Response to Comment D1:

The result of the groundwater infiltration study as well as the additional pollutant sampling that will be conducted under this reissued permit will allow the Agencies to evaluate whether or not these discharges are meeting WQS and whether additional effluent limits are required in the

future. Regarding the seepage of contaminated groundwater from the site, as noted in the response to Comment B4, it was believed that this oil sheen in 2010 was caused by the infiltration of the City of Fall River's CSO outfall pipe by contaminated groundwater. See responses to Comments B2 and B4 regarding seepage of contaminated groundwater into the Taunton River and a recent project involving the lining of a portion of this CSO pipe to reduce the likelihood of such a release to the Taunton River from reoccurring.

Comment D2:

If necessary, an inspection scope can be utilized to search for any undocumented connections in the outfall system. Even though they could return the reclaimed water back into the contaminated site, this does not mean that the contamination will not circumvent the barrier and still end up in the river. Please take these points into consideration before granting another permit. If the responsible party is not filing the required paperwork under the old permit, the fines and possible civil charges must be toughened up to force them to adhere to the conditions of the permit.

Response to Comment D2:

See responses to Comments B1, B2, and C2.

E. Comments submitted by Elaine Rousseau, Normand Rousseau, and Helena F. Rocha:

Comment E1:

Weaver's Cove failed to actively participate in a meeting held on March 4, 2011 with D. Crafton and A. Hemberger from the MassDEP, members of the U.S. Coast Guard, and Shell Oil Company to discuss the status of the release into the Taunton River on April 12, 2010 and the resulting visible oil sheen.

Response to Comment E1:

See Response to Comment B4. Representatives of WCE were at this meeting. It is not known to what extent they participated. As noted earlier, although this oil sheen emanated from the WCE property, the sheen is believed to have been discharged through and/or underneath Fall River's CSO outfall pipe. This sheen was believed to be comprised of contaminated groundwater from the site that continues to be Shell Oil's responsibility to address through pumping and treating as required by the State's MCP program. See response to Comment B4 regarding the corrective action performed under the MCP.

F. Comments submitted by David M. Franco-Rocha:

Comment F1:

The people running WCE seem to believe that they can move this project ahead without regard for the negative impacts that their project would have on the environment. They don't seem to think that they have to comply with regulations, e.g. their failure to formally notify Public Involvement Plan petitioners concerning the company's proposed NPDES permit. WCE must not be issued a license to destroy what many people have worked hard to improve and protect.

Response to Comment F1:

As noted earlier, WCE has abandoned its plans to build a LNG facility at this site and has offered this property for sale. In the meantime, WCE remains the permittee for this site and continues to be responsible for complying with the conditions of this permit. The Agencies believe that the increased monitoring requirements and other conditions such as dry weather screening and the groundwater infiltration study will better characterize the stormwater runoff from this facility. The Public Involvement Plan (PIP) process is related to the MCP program and does not apply to the NPDES program or permitting process. PIP sites are particular to the MCP, and are regulated under 310 CMR 40.1400 of the MCP. PIP sites, such as the former Shell Terminal in Fall River, require additional public involvement activities beyond the minimum requirements. MCP PIP activities, which include outreach and communication, are specific to sites being cleaned up under the State MCP program.

G. Comments submitted by Marian R. and Robert W. LeComte:

Comment G1:

I have many concerns regarding WCE and what appears to be their disregard for compliance to environmental regulations surrounding discharges into the Taunton River. Despite the legal restrictions outlined in the fact sheet, at their site there continue to be visible oil sheens on the river following heavy rains.

Response to Comment G1:

See responses to Comments B4, C2, and D1.

Comment G2:

WCE have been found guilty of failing to notify and/or consult with the proper agencies at various times throughout this process. The company also failed to file the required submittals regarding the April 12, 2010 release (RTN 4-22552). In spite of the fact that WCE is supposedly withdrawing their application for a permit to construct the LNG facility, I am sending this to you because I don't trust that they are really going away.

Response to Comment G2:

As mentioned in response to Comment F1, although WCE has withdrawn its plans for an LNG facility, WCE remains responsible for complying with its existing NPDES permit (MA0004871) for this site as long as it owns this property. As mentioned earlier, WCE was cited by the MassDEP for failing to provide adequate notification regarding the release in 2010. As discussed in the response to Comment B4 above, Notices of Responsibility (NOR) were issued by MassDEP to WCE and Shell on May 18, 2010. The NOR required certain response actions to address the sheen in order to maintain compliance with the MCP. Shell assumed responsibility for all follow-up work required by the NOR.

A Notice of Noncompliance (NON) was issued by MassDEP to Shell on November 18, 2010, for failure to submit an Immediate Response Action (IRA) Plan by the required deadline. Another NON was issued to Shell on January 27, 2012 requiring them to reevaluate the performance of the groundwater recovery program. The NON resulted in a more aggressive clean up schedule going forward. According to the MassDEP, this site is currently in compliance with the MCP.

H. Comments submitted by Gabrielle LeComte:

Comment H1:

Is WCE exempt from the Clean Water Act (CWA)? If not, then how come they are getting away with the discharges that produce a visible oil sheen on the Taunton River?

Response to Comment H1:

See the response to Comment B4. Although this sheen emanated from WCE's property, it was believed to be discharged through the City of Fall River's CSO pipe and comprised of contaminated groundwater as a result of rising water table levels following a series of heavy rainfall events. WCE is certainly not exempt from the CWA and is required by this permit to meet state and federal WQS as well as specific effluent limits and monitoring requirements.

I. Comments submitted by Marilyn Sokole:

Comment I1:

The following issues are of great concern to us: Weaver's Cove failed to actively participate in a meeting held on March 4, 2011 with D. Crafton and A. Hemberger from the MassDEP, members of the U.S. Coast Guard, and Shell Oil Company to discuss the status of the release into the Taunton River on April 12, 2010 and the resulting visible oil sheen.

Response to Comment I1:

See response to Comments B4 and E1.

Comment I2:

Arrogant opinion of WCE that the company has a mandate from the Federal Energy Regulatory Commission (FERC) to move forward with its project without regard to the negative impacts of its proposal on the environment. The failure of WCE to formally notify Public Involvement Plan petitioners concerning the company's proposed NPDES permit.

Response to Comment I2:

See response to Comment F1.

Comments submitted during the public hearing conducted on May 23, 2012 and up to the extended public comment closing date of June 27, 2012.

J. Testimony provided by Dianne Phillips representing the City of Fall River. Also provided and responded to below are related comments on Diane Phillips' testimony provided by Ted Gehrig of WCE:

Comment J1 from the City of Fall River:

It is the City's position that the Draft Permit which essentially continues the effluent limits from the 1978 permit without change is insufficient and not strict enough. The City acknowledges that monitoring requirements were added to the Draft Permit. But, it is the City's position that the proposed permit should be withdrawn and made more strict in accordance with their comments.

Comment related to Comment J1 from WCE:

This is a mis-statement of fact. The proposed effluent limits in the draft permit include many new monitored parameters when compared to the old permit. Just because a limit from the old permit is being carried over into the new permit does not demand that those old limits be reduced. The limits merely need to be protective of the environment. No evidence has been presented that the old limits were not and are not still protective of the environment. The new permit includes a host of new parameters that must be measured, monitored and reported.

Response to the City's Comment J1 and WCE's related comment:

EPA notes that the City's and WCE's comments above reiterate one or more of the themes contained in their written comments submitted on the Draft Permit. EPA has in essence responded already to those theme(s) and comments in its responses above to the City's Comments B1 and B2 and WCE's related comments. In any event, EPA notes here as well that the final permit has added monitoring for arsenic and a groundwater infiltration study, in addition to the requirements contained in the Draft Permit. Together with the other monitoring requirements of the final permit, the Agencies believe that the stormwater discharges from Outfalls 001 and 004 will be better characterized. Results of the groundwater infiltration study and additional monitoring required by the final permit may result in the reopening of the permit to establish additional permit limits if warranted, as previously described in the responses to the City's Comments B1 and B2 and WCE's related comments. The Agencies believe that there is not a sufficient technical basis to impose any additional monitoring or effluent limits in the final permit at this time.

Comment J2 from the City of Fall River:

The City believes that contaminated groundwater and petroleum products, LNAPLs, are infiltrating the storm sewer system and being discharged illegally through Outfall 001 and 004. This infiltrated groundwater, there is a large record of evidence of contamination in the groundwater going back decades. And I'm prepared to submit some of that information tonight. That infiltrated groundwater is co-mingling with the stormwater and being discharged directly into the river. And it is the City's position that EPA not only is authorized to set an effluent limit with respect to that co-mingled groundwater, but is obligated to.

In 1983, Shell Oil filed a renewal application for the permit and acknowledged that the storm water discharge included storm sewer infiltration, and estimated, in 1983, it has been determined that groundwater is infiltrating the plant underground storm water collection system and the flow diagram, in Part II of Form 2C, described the estimated quantities involved in their estimate of the volume of infiltrated groundwater, according to the Shell engineer in 1983 is 1000.0 million gallons per year. So, I'd like to submit that information for the record, documented since 1983,

the contaminated stormwater -- the contaminated groundwater has been infiltrating the storm water system.

Comment related to Comment J2 from WCE:

The commenter has presented no data to support the view that groundwater is being co-mingled with stormwater based on the stormwater system that is in place today and operated today. The system that is operating today is not the same system that operated years ago. Approved and permitted changes were made to the system.

For many decades Shell has pumped groundwater from underneath the site in order to control and remediate LNAPL that floats on the groundwater table underneath the site. For decades the water treatment facilities on the site were designed, built, operated and properly permitted to allow shell to comingle produced groundwater with stormwater runoff. The combined flow was discharged through outfall 001. To be clear, Shell continues to pump groundwater from under the site and to process it and discharge it back into the environment. Based on permit changes made and approved over a decade ago, shell no longer comingles its groundwater with any stormwater runoff. At the time that shell ceased owning the site (well over a decade ago), shell retained the responsibility to remediate the LNAPL on the site. To this day Shell retains this responsibility and has operated all remediation systems on the site. At the time that Shell sold the property (roughly a decade ago), Shell opted to redirect, pump, and treat groundwater from Outfall 001 to a new outfall, Outfall 001a, permitted to Shell and operated by Shell to this day. From the time this change was implemented, only stormwater has been discharged from Outfall 001. The fact that Outfall 001 discharged groundwater in the 1980's and 1990's is true, but this has no bearing on the current flows passing through Outfall 001. Historical data collected from the period that groundwater and stormwater were comingled and quoted by Dianne Phillips in her comments has no bearing on the current renewal application that is the subject of this proceeding nor is this ancient data in any way representative of today's flows from Outfall 001.

Response to the City's Comment J2 and WCE's related comment:

EPA believes that it has already addressed the substantive aspects of these comments earlier in this response to comments document. See EPA's responses above to the City's Comments B1 through B4 and to any comments submitted by WCE related to those comments by the City.

Comment J3 from the City of Fall River:

And in 1992, when Shell filed a further renewal application, a consolidated application, the data submitted at that time showed high concentrations of gasoline contaminants in the effluent in 1992 from Outfall 001, including 7000 ppb of benzene, 2400 ppb of ethylbenzene, 4500 ppb of toluene, and 38,700 ppb of total iron.

Comment related to Comment J3 from WCE:

These data was collected when Shell was pumping groundwater from under the site and comingling that groundwater with storm water and then treating and then discharging this co-mingled stream into the river. As such the data presented above have no bearing on the operation of the stormwater system as it exists and is permitted to be operated today and as it is proposed to be operated under the terms of the new permit. The water quality data cited above were also collected when the petroleum distribution terminal was in active use. The terminal has not been in active use since the mid-1990's. To suggest that the site should be regulated as if it were an active oil terminal, as suggested by Ms. Phillips has no basis in fact or precedent. At the time the data referenced by the commenter were collected, ships bearing petroleum products were calling at the facility delivering product. Trucks were calling at the facility and hauling product away. The tanks were storing product. Pipes on the site were moving product. Valves on the site were controlling product. Today the operation of the site is drastically different. All the tanks on the site have certificates showing that they have been emptied and scrubbed cleaned of all petroleum products and are ready for demolition. Since the mid 1990's no petroleum products have been received by ship, removed by truck, or stored in the tanks located on the site. In addition Weaver's Cove has no right today to store petroleum products in the tanks on the site as all of the permits issued by federal and state authorities required to support the storage and handling of petroleum products expired and lapsed many years ago. All of the control systems associated with the terminal and much of the piping and valving have been removed. The dock would need to be rebuilt as it has rotted.

Response to the City's Comment J3 and WCE's related comment:

See EPA's responses above to the City's Comments B1 and B2 and to WCE's comments related to the City's comments. In those responses, EPA has already addressed very similar comments about the site conditions that existed in 1992 and the various issues and uncertainties associated with and surrounding the question of whether and to what extent contaminated groundwater is infiltrating the facility's stormwater drainage system and being discharged into the Taunton River through Outfalls 001 and 004. EPA also noted earlier in its responses to the City's comments that many changes have occurred at the facility since 1992. EPA acknowledges that most of the petroleum storage tanks formerly on this site have been removed and the few remaining tanks have been emptied of product and cleaned out. The final permit includes monitoring for the parameters noted by the commenter along with a groundwater infiltration study, which should provide evidence from which the Agencies will be able to determine whether WCE's permit would need to be reopened to address any such groundwater infiltration.

Comment J4 from the City of Fall River:

At the City's request, in September 2007, EPA made a site visit in connection with a permit transfer from the Cashman entity to Weaver's Cove. During that site visit, the EPA

representative took photos of the existing stormwater system, including the existing oil water separator at Outfall 001 and made visual observations that are noted in a trip report dated November 27, 2007. In that trip report, the EPA representative also indicated there was a sheen at Outfall 004 as well as sheens in both oil water separators. I'd like that information to be considered.

Comment related to Comment J4 from WCE:

The water quality data collected during the time period show that the terminal was in full compliance with permit requirements. Oil water separators are designed to handle sheens. EPA did not express any concerns with regards to the slight sheen observed. There is only one oil water separator on the site and this has been the case for the past two decades. The facts presented above are not credible.

Response to the City's Comment J4 and WCE's related comment:

During EPA's 2007 inspection, photographs were taken of a containment structure upstream of Outfall 004, which apparently was not an oil/water separator. The permittee is correct that the oil/water separator that had previously been in operation for Outfall 004 was dismantled many years ago. It appears that the containment structure was also removed a few years ago when the permittee replaced some of the drainage structures and altered the routing of some of the drainage lines in the Outfall 004 drainage area.

Regardless of the sheen that was present in the oil water separator (OWS) for Outfall 001, EPA would expect a properly operating OWS to minimize the discharge of any detectable levels of petroleum hydrocarbons to the river. There have been several occasions of detectable levels of oil and grease at both outfalls (001 and 004); therefore there still appears to be some residual contamination in the storm drainage lines, which may include surface runoff from the site and possibly contaminated groundwater infiltrating the storm drainage system. Therefore, as earlier explained in great detail in EPA's responses to the City's Comments, e.g., Comments B1 and B5, and to WCE's related comments, in addition to the existing monitoring requirements for parameters associated with petroleum hydrocarbons, the final permit requires that the permittee conduct an investigation to determine whether there is groundwater infiltration occurring in the stormwater drainage system.

Comment J5 from the City of Fall River:

In addition, in our written comments submitted -- dated June 17, 2011, we also made reference to a report prepared by WCE as part of their MEPA application for the LNG facility. It was their proposal for how they were going to manage the site contamination during construction of the proposed LNG terminal, which has been withdrawn. But, in that document, an analysis concluded that there was a plume of LNAPL floating on the water table at the site approximately

30 acres in size. As of the date of that, October 18, 2005, it was estimated that the total volume of petroleum product in subsurface at the site, was 703,000 gallons. This is notwithstanding the fact that Shell had already removed 1,000,000 gallons approximately of oil from the site. That is a public record and part of the MEPA file, so I want to be sure that you have access to that.

During the period that Weaver's Cove has owned the property, it was determined that there was surficial soil contamination including arsenic at levels of 110 milligrams per kilogram or ppm found in surficial soils within one half foot of the surface in an area noted as Zone 3 in their site. This is significant because, this high level of arsenic in the surficial soil is the area where rainwater would come in contact and could possibly be washed out. And arsenic is toxic as we know. I'd like to submit for the -- and EPA has determined that arsenic is toxic. I'd like to submit for the file a copy of the Phase 1 initial site investigation and response action outcome report for RTM 4-19032 for Weaver's Cove Energy dated May 5, 2008.

Comment related to Comment J5 from WCE:

This issue was fully addressed in the MCP process. That process addresses pathways for migration of contamination. The site was determined to be in compliance with regulatory standards.

Response to City's Comment J5 and WCE's related comment:

EPA notes that there are two separate issues or circumstances relevant here, 1) the contamination in the groundwater at the site and 2) the contaminants found on the surface of the site. EPA notes that both of these issues have been addressed in detail by EPA in its responses above to the City's Comments B1 through B10 and WCE's related comments, and that EPA considered all of the relevant information in the record in deciding which terms and conditions should be contained in WCE's final permit.

In addition, EPA notes here in response to the City's assertion about surface contamination that the final permit's stormwater pollution prevention plan (SWPPP) requirement, detailed in Part C of the permit, requires the permittee to reduce, or prevent the discharge of pollutants into the receiving water. Therefore, the permittee must account for and address the drainage area of the entire site in developing its SWPPP, not only those drainage areas that are associated with the permitted outfalls. To the extent that historical data shows pollutants in the soils which have the potential to be carried into the receiving water with stormwater runoff, the permittee is required to explain the actions it will take, such as the implementation of Best Management Practices (BMPs), to minimize the transport of such pollutants to the receiving water, regardless of whether or not these portions of the site are drainage areas for outfalls.

Comment J6 from the City of Fall River:

I am submitting a copy of the April 2011 immediate response action completion report regarding the sheen on the river that was a reportable release from April 2010. And it describes, again, the data, the site history, what was done, and where, at least, this is -- this was prepared by Shell's LSP, I believe, it was Shell who took responsibility for the LNAPL in the river.

Comment related to Comment J6 from WCE:

The discharge in question occurred from the site but was not associated with Outfall 001 or 004. This discharge was from a six foot diameter hand laid brick sewer outfall that is owned and operated by the city of Fall River. The City of Fall River during routine rain events discharges raw untreated sewage from this outfall into the river. When it rains, toilet paper can be seen freely flowing into the river. The outfall pipe associated with this CSO is exposed at the river and is flushed with salt water from the Taunton River during every tidal cycle. There is no oil water separator associated with this sewer pipe. The City CSO pipe mentioned here is the subject of another NPDES permit issued to the City of Fall River. The City of Fall River controls discharges from the CSO. Weaver's Cove has no control over the operation of the CSO, the very CSO that created the sheen in the river. None of the pipes associated with Outfall 001 and 004 are several feet in diameter or constructed from hand laid brick like the CSO pipe. None of the pipes associated with Outfall 001 and 004 are flushed during each tidal cycle as is the case with the CSO.

Response to City's Comment J6 and WCE's related comment:

EPA has already responded in detail above to the various issues and circumstances associated with the April 2010 sheen on the Taunton River. See EPA responses to the City's Comment B4 and to WCE's related comment. See also EPA's response to CommentD1 above submitted by Ronald M. Thomas.

Comment J7 from the City of Fall River:

EPA did issue to Shell a discharge permit, an NPDES discharge permit in April 2011 for Outfall 001A. Outfall 001A is the outfall that, at the time it was operating, that Shell was using to discharge treated groundwater. So, this is groundwater that Shell has extracted as part of their remediation system. It goes through a treatment system and then is allowed to be discharged because it goes through the treatment system. Even though it had gone through a treatment system and was being allowed to be discharged, EPA found that certain effluent limits should be required on that discharge because the groundwater that was being treated, the effluent of the groundwater had high levels of certain contaminants in it. This is the same groundwater that the City contends is infiltrating the storm sewer system. So, EPA imposed what are called technology based effluent limits, which means, the level that there is good technology to treat water down to -- to be sure to remove the contaminants, we believe that these technology based

effluent limits that were imposed for the exact same site for treated groundwater should be imposed on a discharge of groundwater -- infiltrated groundwater to Weaver's Cove. They include arsenic, at 36 ppb, chromium, antimony, copper, lead, mercury, nickel, zinc and iron. It is our position that these specific effluent limits are equally applicable here, and there is no legal justification for not imposing them in this case.

In its Fact Sheet, EPA has stated that the reason these effluent limits were not changed from the 1978 permit, the stated reason was they felt they did not have sufficient amount of data and evidence to demonstrate, one, that contaminated groundwater was getting into the sewer system and two, what those contaminants were and what was likely to be discharged. It is our position that there are sufficient data in the record. It goes back to Shell's own initial application from 1983 and the re-application in 1992.

Comment related to Comment J7 from WCE:

This is the outfall discussed in comments above. This is the new outfall that was created to handle groundwater pumped from under the site by Shell. The flow that passes through Outfall 001A (permitted to Shell) used to flow through Outfall 001 when the site was owned by Shell. Since Shell sold the site well over a decade ago, Shell's groundwater flows have been redirected from Outfall 001 to Outfall 001A. Hence, it is clear that Outfall 001 has not discharged groundwater for well over a decade.

In 1982 and 1992 Outfall 001A did not exist. At those times (1983 and the re-application in 1992) Shell was comingling groundwater with stormwater and discharging both flows into the Taunton River through Outfall 001. Over a decade ago the design and operation of Outfall 001 was dramatically altered. For roughly a decade all groundwater pumped by Shell now passes through Outfall 001A which is permitted to Shell. Outfall 001 only discharges stormwater during rain events. Dry weather flows do not occur from Outfall 001 today. The commenter's request to impose a standard for groundwater on what today is only a stormwater discharge is both misleading and misplaced.

Response to the City's Comment J7 and WCE's related comment:

EPA believes that these comments in essence reiterate the same points submitted by the City and WCE in other comments, and that EPA has addressed and responded properly to all of the issues raised by the City and WCE in those comments. See EPA's responses to the City's Comments B1, B2, B5, B7, and B8, and to WCE's related comments.

Comment J8 from the City of Fall River:

It also goes to the information that Weaver's Cove submitted at EPA's request as part of its application, specifically, its 308 response. And even though that response was only based on isolated sampling, a small sample size, when coupled with the other data that exist for the site, and is well known and documented, both by Weaver's Cove and Shell, there -- in combination, EPA and MassDEP should not wait until the next renewal term to issue stricter effluent limits. There is no reason that more monitoring is required. There is an adequate legal basis to issue the effluent limits with the potential to emit here. And, in our view, there is no justification for the effluent limits that we believe are not strict enough in the Draft Permit. We would urge EPA and MassDEP to evaluate the data we have pointed out here and impose a stricter NPDES permit.

Comment related to Comment J8 from WCE:

The premise of this argument is flawed. Outfall 001 now only discharges stormwater. The data cited by Diane Phillips above is in no way representative of flows from the stormwater system today. Pump and treat groundwater today is handled by Shell under a separate permit issued to Shell for Outfall 001A and that permit is designed to address groundwater not stormwater. The Weaver's Cove permit under discussion in this forum should be based on stormwater and not groundwater standards. The above conclusions are not based on the flow conditions that exist today and are therefore flawed and should be ignored.

Response to City's Comment J8 and WCE's related comment:

EPA believes that these comments in essence reiterate the same points submitted by the City and WCE in other comments, and that EPA has addressed and responded properly to all of the issues raised by the City and WCE in those comments. See EPA's responses to the City's Comments B1, B2, B5, B7, and B8, and to WCE's related comments.

K. Comments submitted by Pauline Rodrigues and Joyce Mello

Comment K1:

I support the position of the City of Fall River as presented by Attorney Dianne Phillips that Weaver's Cove Energy should be held to a higher standard for the extension of the NPDES permit.

Response to Comment K1:

See EPA's responses to Dianne Phillips (The City's) Comments J1 through J8 above and to the City's comments in B1 through B10 above.

L. Testimony provided by Cecile Scofield. Also provided and responded to below are related comments on Cecile Scofield's testimony provided by Ted Gehrig of WCE:

Comment L1:

According to the Fact Sheet provided by US EPA, NPDES MA0004871 was transferred to Jay Cashman Inc. in 2003 and subsequently transferred to Weaver's Cove Energy LLC in 2007. I am hereby requesting that any NPDES permit for Outfalls 001 and 004 issued by the US EPA to Weaver's Cove Energy be issued under the same terms and conditions under which the permit was transferred to Jay Cashman Inc in 2003 as outlined herein.

Response to Comment L1:

As explained earlier, the Final Permit contains additional permit limits and monitoring requirements in addition to those of the 1978 permit issued to Shell Oil. When the last change of property ownership was conducted in 2007, WCE became the entity responsible for complying with this NPDES permit, which was originally issued to Shell. Although this permit had an expiration date prior to 2007, the permit was still valid and in effect at that time (having been administratively continued)because Shell had timely submitted its NPDES permit reapplication package as required in 1983.

Comment L2 from Cecile Scofield:

I have a letter from Shell Oil to Jay Cashman Incorporated dated January 14, 2003. "In accordance with condition 3D of the second amendment to the agreement for sale and purchase between Shell Oil Company, seller, and Jay Cashman Inc., purchaser, dated August 3, 2000, this letter provides written notification to Jay Cashman Inc. that, on December 5, 2002, Shell Oil Company rerouted all remediation discharged from Outfall 001 to Outfall 001A. Thus, effective December 5, 2002, Shell Oil Company is discontinuing use of and all discharges to Outfall 001. Jay Cashman Inc. shall assume all sampling, monitoring, management and reporting responsibilities, including the cost thereof for Outfall 001 effective January 1, 2003 in accordance with NPDES permit MA0004871." "To date, Outfall 004 has been sampled, monitored, managed and reported on by Shell Oil Company on behalf of Jay Cashman Incorporated." "This letter provides written notification that effective June 1, 2003, Jay Cashman Inc. shall assume all sampling monitoring, management and reporting responsibilities, including the cost thereof, for Outfall 004 in accordance with NPDES permit MA0004871."

Comment related to Comment L2 from WCE:

The important point here is that contaminated groundwater has not been discharged from Outfall 001 for over a decade. The methods used to handle groundwater discharges should be addressed

in the permitting process for those outfalls – these permits have been issued to Shell. Weaver's Cove has no control over the processing and handling of groundwater pumped from under the site that is owned by Weaver's Cove.

Response to Comment L2 and WCE's related comment:

See responses to Comments C2 and C3.

Comment L3:

I have a letter dated February 10, 2003 from the US EPA to Shell Oil, which specifically references page 2 paragraph 2. "We understand that the terminal proper has been sold to Jay Cashman Inc. and is now known as Fall River Marine Terminal. This includes Outfalls 001 and 004 under NPDES permit 0004871." "Thus, as we understand it, Shell is currently responsible for existing groundwater contamination and Jay Cashman for the marine terminal discharges 001 and 004 and any future potential contamination. Please advise if this is not correct." Next month, March 12, 2003, letter from Shell Oil to US EPA. "This letter is in response to the US EPA letter dated February 10, 2003 addressed to Shell Oil. Pursuant to Michael O'Brien's request, Shell is providing written documentation to the US EPA region that Jay Cashman Inc. is the current owner and operator of the Fall River Marine Terminal and therefore is environmentally responsible for Outfalls 001 and 004. Shell also verifies that all the information contained in page 2 paragraph 2 of your letter dated February 10, 2003 is accurate." Therefore, the Draft Permit must also enclose verbiage to the effect that Weaver's Cove Energy will be responsible for any future potential contamination. And I believe that failure to include such verbiage would frustrate Shell Oil Company's clear intent under the terms of the purchase and sales agreement.

Response to Comment L3:

As explained in the response to Comments B1 and B2, Outfalls 001 and 004 are permitted to WCE and Outfall 001A, which formerly discharged treated groundwater, is permitted to Shell Oil. The Agencies believe that this delineation of responsibilities is appropriate. It is not clear what the intention of the term "future potential contamination" was. At this time, Weaver's Cove is responsible for what is discharged through Outfalls 001 and 004. Although other commenters believe that groundwater is infiltrating the storm drainage system and being discharged through Outfalls 001 and 004, this has not been definitively shown. If it is determined during this permit term that contaminated groundwater is infiltrating the stormwater drainage system based on additional parameter monitoring in conjunction with the groundwater infiltration study, then such discharge would be the responsibility of WCE. Depending on the number and level of contaminants found or degree to which groundwater is infiltrating the storm drainage system, the Agencies could reopen the permit and impose additional permit limits which WCE would be responsible for complying with.

Comment L4:

Jay Cashman Inc. was not, in fact, the current owner and operator of the Fall River Marine Terminal in 2003. Jay Cashman had flipped the property to a newly formed limited liability company, Fall River Marine Terminal LLC in 2001, approximately three months after purchasing the site from Shell. Are there legal ramifications for failing to inform the US EPA that the property had been sold? Well, I'm not an attorney. However, in December of 2011, a complaint was filed by the Massachusetts Attorney General, the Commonwealth as plaintiff, against a Frank M Ward, et al, defendants, for violations of the Massachusetts Oil and Hazardous Materials Release Prevention and Response Act and its implementing regulations known as Massachusetts Contingency Plan (MCP). According to the complaint, the defendants willfully ignored regulatory deadlines for achieving the level of no significant risk to public health and the environment. And at the same time, misled the Commonwealth about the actual owner and operator of the property. Thereby impeding the Commonwealth's oversight and enforcement authority under state law.

In an Osterville, Massachusetts case, MassDEP Commissioner Kimmell said, "failure to fulfill your legal obligation to clean up a contaminated site is a serious offense. Submitting inaccurate documents to a government agency, brings that offense to an even more serious level." While it was believed that Jay Cashman Inc. remained as the permitee as operator until its transfer to Weaver's Cove Energy in 2007, Fall River Marine Terminal LLC was actually listed as the permitee on the discharge monitoring reports that were submitted to MassDEP and the US EPA from November of 2003 to December of 2006 with the exception of DMR's submitted in January and February and March of 2004 where the permitee was listed as Jay Cashman Inc.

Response to Comment L4:

See EPA's responses to comments C1, C2, and C3, above. As already noted, WCE is the current owner of this property and the entity to which this final NPDES permit should be issued under EPA's regulations. To the extent that the comment raises law enforcement related issues or questions, EPA does not believe, as indicated in earlier responses, that such issues affect the entity to whom the final permit should be issued or the permit's terms and conditions.

Comment L5:

A research of all areas of the US EPA database found no documents for Fall River Marine Terminal LLC. Other troubling questions raised by the discharge monitoring reports include wrong outflows listed. They all read 001A, which I think we learned this evening actually is Shell Oil's outflow. We have registered principal executive officers for two of the entities, actually, failed to sign -- the registered principal executive officer for two entities failed to sign the DMR's. That would be the only person who was -- who was authorized under Massachusetts law to sign those DMR's on behalf of the LLC. He didn't sign them. We have corporate officers

of these corporations that are not registered with the Secretary of State's Office. The LSP license, one signatory had been suspended during the period of all the DMR submittals. Under the comments section, one discharge monitoring report since September 2005 states, "samples taken but not submitted, but no visual nor olfactory evidence of concern." Are you kidding? Violations for this permit from May of 2009 to November 2011 include 22 code RNC's, reportable non-compliance, 11 code D80's, DMR, overdue monitoring only required. 11 code D90's, DMR overdue with numeric limits. One code D90 effluent violation, 22 code K's, non-receipt violation, non-monthly. Not sure what that means. And 18 code Y's, manual TRC. I'm not sure what TRC is. I tried to find out. Couldn't find it.

Response to Comment L5:

As EPA has already stated, to the extent that the comment raises law enforcement related issues or questions, EPA does not believe that such issues affect the entity to whom the final permit should be issued or the permit's terms and conditions. Within EPA Region 1, NPDES permit compliance is among the responsibilities implemented by the Office of Environmental Stewardship. That office has been provided with information for its consideration so that it may determine what, if any, actions might be appropriate.

Comment L6 from Cecile Scofield:

I believe another important issue is Weaver's Cove Energy's track record for demonstrating a lack of involvement in any matters pertaining to environmental contamination of the site. The first red flag was found in a footnote to Michael Bingham's September 16, 2004 letter to FERC. "Although Weaver's Cove apparently expects to submit a revised Phase 4 RIP to MassDEP to address system modifications, Weaver's Cove has not discussed any of the proposed plans with myself, the LSP of record, or with Shell, the responsible party under the existing RTN. And Weaver's Cove does not have authorization to modify the existing remedy on its own behalf."

On May 18, 2010, Weaver's Cove Energy was named as a potentially responsible party for a release on April 12, 2010. And again, on August 9, 2011 for release on June 28, 2011 with liability under MGL's Chapter 21E Section 5, liability with joint several, meaning Weaver's Cove Energy could be liable for all response action costs regardless of the existence of any other liable parties. Pursuant to 310 CMR 40.0300, each notice of responsibility gave WCE one year from the initial date of notification to file with MassDEP a completed tier classification submittal, an RAO statement, or if applicable, a down gradient property status. As of this writing, MassDEP advised that WCE had failed to prepare the required responses to any of these NOR's. A notation from MassDEP's reportable petroleum release log form for the June 28, '11 reads, "6-28-11, 1:20 p.m., arrived at the site. Met with Sovereign Consulting personnel. Ben Frothingham of Hess had no knowledge of release." Mr. Frothingham's is the EHS manager for WCE and he is the signatory on discharge monitoring reports filed on behalf of WCE. As an aside, some of those DMR's in the name of Weaver's Cove from March, April and May of '07 were not even signed.

Comment related to Comment L6 from WCE:

The facts here are simple. The City of Fall River is responsible for reporting outflow from the combined sewer outfall that they own and operate. They are responsible for signing all permit documents (including DMRs if any) associated with this particular outfall. Weaver's Cove is merely a landowner. The City holds a legal right to maintain and operate the CSO that passes under land owned by Weaver's Cove Energy.

Response to Comment L6 and WCE's related comment:

See EPA's earlier responses to Comments B3, B4, C4, and G2.

Also, EPA notes its position that the facts alleged in this comment (assumed to be true only for the purpose of this response) would not be relevant to WCE's NPDES permit proceeding in that they do not affect the entity to whom the permit should be issued and do not affect the terms and conditions of the permit itself.

WCE is not involved with the cleanup of historic petroleum releases at the site because the former owner, Shell, has assumed all responsibility for current MCP cleanup activities at the site. In addition to groundwater cleanup, it is EPA's understanding that Shell is undertaking all response actions associated with any sheen observed in the vicinity of the CSO outfall pipe, including those response actions required by the Notice of Responsibility issued by MassDEP to WCE and Shell on May 18, 2010.

Comment L7 from Cecile Scofield:

A meeting was held on March 14, 2011 to discuss the status of the April 10th release and sheen. Notes from Mr. Andrew Jones of MassDEP, Bureau of Waste Site Cleanup state, "met at site with D. Crafton, M.A. Hemberger from MassDEP, members of the US Coast Guard, Weaver's Cove and Shell. I asked Mr. Jones who represented Weaver's Cove at the meeting. He said that he didn't know, but that representatives attended the meeting briefly to find out what was going on. And they left when they found out what it was about. They didn't stay long," he said.

A representative from MassDEP felt that WCE wasn't participating in anything to do with the remediation of the site in order to avoid any potential liability. The representative also explained that, "per contractual agreements between WCE and Shell, Shell was doing the cleanup and that the environmental issues of the site were worked out behind the scenes." This alleged agreement appears to run contrary to Shell's commitment to perform the required mediation of the site associated with Shell's historical use pursuant to a Massachusetts requirement as outlined in the purchase and sale agreement. That would be the purchase and sale between Shell and Jay

Cashman Incorporated, not Shell and Fall River Marine or Fall River Marine and Weaver's Cove or any of these other documents.

Comment related to Comment L7 from WCE:

Weaver's Cove neither owns nor operates the outfall addressed by Ms. Scofield in the above paragraphs.

Response to Comment L7 and WCE's related comment:

See EPA's earlier responses to comments B4 and E1.

Also, EPA notes its position that the facts alleged in this comment (assumed to be true only for the purpose of this response) would not be relevant to WCE's NPDES permit proceeding in that they do not affect the entity to whom the permit should be issued and do not affect the terms and conditions of the permit itself.

Comment L8:

I have some issues with the Fact Sheet that was prepared for this evening. Section 1 under proposed action type of facility and discharge location. "This site is permitted for the storage of up to 64,000,000 gallons of petroleum product." Well, Schedule D to the deed recorded in December, again, based on the purchase and sale, assumed to reflect current and future development restrictions, "use of the premises by occupants shall not include storage, fabrication, assembling, processing, packaging or transport of oil or hazardous material." I hereby request that the Draft Permit be notated accordingly.

Response to Comment L8:

See response to comment J3. Although the Fact Sheet cannot be changed after the public comment period, this clarification is made for the record to acknowledge that most of the storage tanks previously on site have been removed and the remaining tanks have been emptied of product and cleaned.

Comment L9:

Section 3, receiving water description. The Taunton River impacted by the permit is a federally designated Wild and Scenic River and is protected under the protection of the US Department of the Interior National Park Service. In his November 10, 2010 letter to the Federal Energy Regulatory Commission (FERC), concerning a proposed offshore berth proposal and onshore storage facility, Mr. Dennis Reidenbach, Regional Director of the National Park Service said,

"contrary to the impression that Mr. Shearer's July 9, 2010 letter may leave, Weaver's Cove Energy made no effort to contact or consult with the National Park Service prior to his designing the project in early 2008." Mr. Reidenbach further stated, "unfortunately, agency attempts at these meetings to engage the applicant in discussion of alternatives and impact avoidance met with little success, and any attempt to discuss the site of the storage facility was met with the standard response that Weaver's Cove Energy considered the storage facility already approved by the FERC." "Ultimately, the NPS concluded, as did other state and federal agencies, that the applicant's purpose in holding the meetings was principally to craft a mitigation plan that it could and did submit to the FERC as having been based on agency feedback."

Response to Comment L9:

The National Park Service is the agency that oversees the “Wild and Scenic Rivers” program. An e-mail notification of the public notice draft and the notification of public hearing for this permit were provided to the Boston office of the National Park Service (NPS). There were no comments provided by NPS during either comment period. As already noted, WCE has abandoned plans for a LNG facility at this site.

Comment L10:

Section 6, explanation of permit's effluent limitations. "The discharge monitoring report data for Outfalls 001 and 004 for the reporting period of January '04 to June 2010 were reviewed for this permit reissuance. This time span covers discharge authorized to the former permitee, Jay Cashman as well as to Weaver's Cove." Please note that eight of the 36 DMR's filed from 2003 to 2006 for the permit actually list Fall River Marine Terminal LLC as the permittee. Are we surprised?

Response to Comment L10:

The record shows that there have been several changes of ownership of this property since the last permit was issued to Shell in 1978. Since the last transfer took place in 2007, a portion of the monitoring period that was evaluated did coincide with ownership by a former entity, which was referred to on DMRs as Fall River Marine Terminal LLC. Also see response to comment L5.

M. Testimony and written comments provided by Ann Morrill:

Comment M1:

The Kickemuit River Council (KRC), is an all volunteer organization, formed in 1973, a member and represents approximately 350 families in Bristol & Warren on the salt water Kickemuit River that flows into Mount Hope Bay. You can see by the attached 1989 map & flow chart done by RI DEM that the flow from Fall River affects Rhode Island & the waters of RI to Matunuk, particularly the Kickemuit River & Bristol Harbor. The Citizens for Environmental Justice that have monitored the site of the brownfield cleanup think that the company that caused the brownfield problem should not & could not properly monitor the stormwater runoff from this site. The KRC agrees. The outfall has potentially serious pollutants. It is NOT in the public or the environment's best interests to let this continue. KRC recommends a bio-retention area & filters in the stormdrains for this water---and- Stormceptors with a schedule for cleaning and replacing the filters, Stormceptors & the bio-retention area. An independent firm chosen by EPA should handle this for WCE. WCE should pay for the firm for this and for analyzing the discharge on a regular schedule--reporting to EPA, MassDEP, & RIDEM.

Response to Comment M1: Although EPA has the authority to set specific effluent limits and other permit conditions in NPDES permits, it typically cannot dictate what measures the permittee must take to meet such permit conditions. Although the commenter's recommendations regarding treatment for stormwater may have merit for this site, it is ultimately up to the permittee to decide on specific measures in this regard. EPA recommends that the permittee take these commenter's suggestions into consideration, however.

The commenter also recommended that work on the site to comply with permit requirements be conducted by an independent firm chosen by EPA. The NPDES Program is designed to be implemented by permittees with the permittee accountable for all aspects of the work to ensure compliance, including the selecting of contractors, paying for the work that is performed, and ensuring that such work is conducted and properly reported to the Agencies. EPA is not making an exception to this practice for this permit. It should be noted that any falsification of information submitted under this permit is subject to civil and criminal penalties as provided in Part II.C.1.e. of the permit.

Also see responses to Comments B1, B2, and J5.

N. Testimony provided by Priscilla Chapman:

Comment N1:

This is a very important permit as I'm sure you realize. Stormwater has been identified as the leading cause of the remaining pollution of our waterways. And as previous speakers have pointed out, the Taunton River was designated a couple of years ago as a national Wild and Scenic River. It is classified as SB, which means the goal is to make it fishable and swimmable which it is probably not at this point. We know that it is impaired for pathogens. And I believe we need more information regarding some of the other pollutants. This site is very large, 73 acres. And so, there is obviously a great potential for storm water to impact the river.

Response to Comment N1:

EPA took into consideration the existing impairments of the Taunton River when developing this draft permit. As explained in the fact sheet, there were additional monitoring requirements established for several parameters, including bacteria, metals, and parameters associated with petroleum hydrocarbons. Based on the monitoring information collected under this permit, EPA may determine that the permit would need to be reopened to impose specific limits on any of these parameters were it found that they had the potential to cause or contribute to a WQS violation or to any ongoing impairment. In light of these and other comments, there has been a monitoring requirement established for arsenic as well as a requirement for the permittee to conduct a groundwater infiltration study. Also see responses to Comments B1, B2, J5, and L9.

Comment N2:

As many speakers have pointed out before, it is also a problem site because of the earlier contamination and the pump and treat system that Shell Oil was required to operate.
So, just having said that, I basically just have two comments. The Draft Permit would impose limits on flow, pH and oil and grease. It would require monitoring for total suspended solids polyaromatic hydrocarbons, bacteria, gasoline, constituents, metals and TPH.

I can't understand how we can expect the Taunton River to get cleaner by simply requiring monitoring. Monitoring is obviously a good thing, but, I would urge EPA to reconsider this permit and review the information that was presented by Fall River's attorney regarding the potential groundwater infiltration and to include limits on as many of those constituents as is reasonably possible. I think that that is the only way that we are going to improve the impacts on the Taunton River for storm water.

Response to Comment N2: See responses to comments B1, B2, and J5.

Comment N3:

The second point that I want to make, on page 4 of the Fact Sheet, under the paragraph that says Outfall 001, it says, "according to the permittee, all stormwater from the portion of the property labeled Area 2 either runs off the site or infiltrates into the ground with no discrete outfalls."

And if you look at the map that was included in the Draft Permit, it appears that Area 2 is actually quite a substantial portion of the site. Area 3 discharges through Outfall 001. Area 1 discharges through Outfall 004. And if I'm reading this correctly, this large area in the middle, the stormwater just runs off. Now, I understand that these permits are designed for specific discharge outflows. But, I also notice in the permit that there would be a requirement for the owner to create a stormwater pollution prevention plan. So, I am wondering if EPA could consider the possibility of requiring the owner to consider the stormwater that's running off Area 2 in the middle of the site as part of that stormwater prevention plan (SWPPP) and to come up with some recommendations for how the stormwater in that very large area could be treated.

Comment related to Comment N3 from WCE:

There is no evidence that "sheet flow" from the Weaver's Cove site flows into the Taunton River.

Response to Comment N3 and WCE's related comment:

On May 8, 2009, WCE submitted additional permit reapplication information to EPA as a result of an information request from EPA. This package of information included an attachment labeled "Site Map Existing Stormwater Drainage", which was also included in the fact sheet accompanying the Draft Permit and designated as Figure 2. This attachment segregates the site into three different drainage areas labeled Areas 1, 2, and 3. The description for Area 2 states "stormwater from this area infiltrates or runs off to the river". On a site visit to WCE conducted by EPA and MassDEP on September 22, 2011, the Agencies saw no pipe or other discrete conveyance discharging stormwater from Area 2 to the Taunton River. Also see response to Comment J5.

O. Testimony provided by Frank Perry:

Comment O1:

I have to go back to Mr. Firmin's comments at the beginning when he mentioned that it is illegal to discharge contaminants of any kind into any waterways. I picked up on that. And in other words, if I had a permit, I could dump anything I want in the river. That's pretty much basically what you're saying. I can do that and filter it through chemicals or whatever I have to do.

Response to Comment O1:

Bryant Firmin's testimony at the hearing was as follows :
"The Massachusetts Clean Waters Act, General Laws 21, Sections 26 through 53, and the Code of Massachusetts Regulations 314 CMR 3.00 prohibit the discharge of a pollutant to waters of the Commonwealth unless authorized by a permit issued by the Massachusetts Department of Environmental Protection." Therefore, NPDES permits, which are jointly issued in the Commonwealth of Massachusetts by EPA and MassDEP, do allow for discharges to receiving waters provided they are consistent with State and Federal laws and water quality standards. Permit requirements are established to assure that WQS are met and include effluent limits, monitoring requirements, and specific narrative requirements.

Comment O2:

My second comment on this is, for years, contaminated sites have been dug up and trucked and trailer dumps of all sorts, Pennsylvania and New York, and they are incinerated and redumped back into the sites where they came from. Why can't this be done? Why can't we hold Shell Oil, Weaver's Cove, Hess LNG accountable and hold their backs to the wall on this? It would be so much cheaper and inexpensive to bring in equipment and incinerate the soil right on site. And this could've been rectified years ago if this had been done. Why isn't it done? Why don't you people hold these people's backs to the walls and have it done? We wouldn't be talking about a discharge plant today sitting in this auditorium.

Response to Comment O2:

This comment focuses on the residual site contamination from former operations and several remediation alternatives. Site cleanup, or remediation, is currently under the direction of the State's MCP program as already discussed. During the MCP process, the residual contamination at the site is evaluated and the feasibility and effectiveness of remediation approaches, such as those raised by the commenter, are assessed. A groundwater cleanup program continues on a schedule set up by the MCP. The current site cleanup being conducted under the MCP focuses on groundwater remediation of historic petroleum impacts. Contaminated soils from the site have already been excavated and properly disposed of off site as part of initial source removal efforts conducted much earlier. The MCP does not dictate which specific technologies get used for site cleanup. As part of the MCP cleanup approval process, the responsible party (RP) must identify a range of remedial action alternatives which are evaluated based upon technical feasibility, cost/benefit, implementability, and effectiveness. The RP selects an appropriate remedy based upon the evaluation, in consultation with MassDEP. Note that the MCP cleanup activities underway at the site are separate from the NPDES permit for stormwater currently under review. The MassDEP has acknowledged that the site is currently in compliance with the MCP.

P. Comments submitted by Sarah Guilmette

Comment P1:

How can something like this happen to the river with the Taunton River as "Wild and Scenic" designations ? Do the correct thing, no dumping in this river! We in Fall River have installed a sewer overflow project, the City has taken out loans to pay for federally mandated cleanup projects and now a company wants a permit to dump something into our river, after all they could say they are dumping this and be dumping that. No dumping should be allowed, the taxpayers' money is being spent to help clean the river, by not dumping into it.

Response to Comment P1:

Regarding the Taunton River's designation as a "Wild and Scenic River", see response to Comment L9. EPA and MassDEP drafted this permit to contain conditions that would allow for a further characterization of the Outfall 001 and 004 discharges and to be consistent with State WQS and the Federal CWA. The project that the commenter mentions has to do with the City of Fall River's sewer separation project, which is resulting in the lower incidence of combined sewer overflows to the Taunton River and other receiving waters. As already noted, this permit is not authorizing any new discharges to the river, but rather continuing to permit and better characterize the ongoing stormwater discharges from these two outfalls. As noted in responses to Comments B1 and B2, this permit contains additional monitoring requirements to characterize the stormwater being discharged as well as a new requirement to conduct a groundwater infiltration study.

Q. Comments submitted by Kathleen C. Medeiros

Comment Q1: What are the current plans for the eight remaining tanks that are left at the site of the permittee (Weaver's Cove)? Have they been dismantled?

Response to Comment Q1: See response to comment J3.

Comment Q2:

What are the receiving water requirements? What are the effluent water requirements?

Response to Comment Q2:

The fact sheet that accompanied the draft permit provided a description of the receiving water and the State and Federal WQS that apply to these permitted discharges. The current status of the Taunton River was discussed, including the pollutants that the River was impaired for, which

formed the basis for some of the conditions in the permit. The fact sheet also included a description and rationale for all of the permit's effluent limits and monitoring requirements.

Comment Q3:

In the Outfall 004 pH paragraph, it references the pH ranged between 6.33 – 7.76 s.u. with one exceedance below 6.5 s.u. during the monitoring period. Can you explain how the 6.5 s.u. exceeds the requirement if it's within the range expected?

Response to Comment Q3:

The fact sheet summarized the pH values that had been reported by the permittee and noted that one of these values fell outside of the permitted range. The 1978 permit required that the effluent pH be within the range of 6.5 to 8.5 standard units and that one of these samples, recorded at 6.33 s.u., was outside of this range and represents a permit violation.

Comments submitted by Ronald Thomas (these were identical comments to those submitted during the original comment period, which are responded to above in Part D).

R. Comments submitted by Gail Welch

Comment R1: Bristol residents are very concerned about polluted water being discharged into Mount Hope Bay. Please enforce stringent requirements, including a bio-retention area and filters and stormceptors with frequent changes of the filters, with tests and test results available to EPA, RI DEM and MA DEM. Save the bay.

Response to Comment R1: EPA believes that the effluent limits, monitoring requirements, and new groundwater infiltration study requirement are the appropriate next steps to effectively further characterize discharges from this site and provide the information needed to determine if additional permit conditions are necessary to ensure compliance with water quality standards. We appreciate your suggestions for additional treatment technologies for the water being discharged from this site to surface water. However, as noted in the response to Comment M1 and consistent with the design of the NPDES Program, the permittee is responsible for determining how to comply with the permit limits in this situation.

Also see responses to Comments B1, B2, and J5.

March 25, 2013