

National Historic Preservation Act Review and Requirements

1. Background

Section 106 of the National Historic Preservation Act (NHPA) requires federal agencies to take into account the effects of Federal “undertakings” on historic properties that are either listed on, or eligible for listing on, the National Register of Historic Places. 16 USC§ 470 et seq. EPA’s reissuance of a National Pollutant Discharge Elimination System (NPDES) general permit is a federal undertaking. Therefore, remediation activity discharges covered under the Dewatering and Remediation General Permit (DRGP) must not adversely affect properties listed on or eligible for listing on the National Registry of Historic Places under the NHPA.

Operators seeking coverage under the DRGP must certify in the NOI submitted for a site that potential effects of their discharges and discharge-related activities on properties listed in or eligible for listing in the National Register of Historic Places have been appropriately considered and addressed. Operators seeking coverage under this general permit are required to coordinate with the State Historic Preservation Officer and/or Tribal Historic Preservation Officer and others, if necessary, regarding effects of their discharges on historic properties. Sites must also comply with applicable State, Tribal, and local laws concerning the protection of historic properties and places.

2. Determination of Potential Impact

Operators seeking coverage under the DRGP must determine whether remediation activity discharges from their sites or the implementation of best management practices (BMPs) to control such discharges, have adverse effects on a property or place that is either listed in or eligible for listing in the National Register of Historic Places. Historic properties as defined in the NHPA regulations include prehistoric or historic districts, sites, buildings, structures, or objects listed in, or are eligible for listing in, the National Register of Historic Places. This term includes artifacts, records, and remains related to and located within such properties. 36 CFR § 800.16(1). The term “adverse effects” includes but is not limited to damage, deterioration, alteration, or destruction of the historic property or place.

For operators with existing discharges whose activities and BMPs do not require construction activities (e.g., the treatment system is established and contained in a building or temporary structure), a simple visual inspection may be sufficient to determine whether historic properties are affected and to select one of the criteria in Section 3 of this appendix. EPA has reason to believe that the majority of activities authorized under this general permit will have no potential to affect historic properties because the DRGP typically authorizes discharges from existing sites and requires control of the pollutants discharged from the site. In addition, many sites covered under the reissuance of this general permit will be sites that are seeking renewal of previous permit authorization. Operators with existing discharges will have already addressed NHPA issues in the previous DRGP NOI process as they were required to certify that they were either not affecting historic properties or they had obtained written agreement from the applicable SHPO or THPO regarding methods of avoiding, minimizing, or mitigating potential impacts. However, for operators with new discharges, emergency discharges, and existing discharges for which construction activities related to treatment systems or BMPs are planned, operators must

conduct further inquiry to determine whether historic properties may be affected by the discharge or BMPs used to control the discharge. In such instances, operators seeking coverage should first determine whether there are any nearby historic properties or places listed in the National Register or if any nearby properties and places are eligible for listing in the register (e.g., they are “eligible for listing”).

EPA suggests that operators seeking coverage under the DRGP first search the National Register of Historic Places information available on the National Park Service’s website at <http://www.nps.gov/nr/>. Further information can be found in Section IV of this appendix. The relevant State and Tribal Historic Preservation Officers are listed in Sections V and VI of this appendix. Operators seeking coverage may also contact city, county or other local historical societies for assistance, especially when determining if a place or property is eligible for listing on the register.

3. Permit Eligibility Criteria

The following three criteria indicate how operators seeking coverage under the DRGP can meet the special eligibility requirements for protection of historic properties under this general permit. A discharge must meet one or more of the following three criteria (A-C) to be eligible for authorization under the DRGP:

Criterion A: No historic properties are present. The discharges and discharge-related activities (e.g., BMPs) do not have the potential to affect historic properties.

Criterion B: Historic properties are present. Discharges and discharge related activities do not have the potential to affect historic properties.

Criterion C: Historic properties are present. The discharges and discharge-related activities have the potential to affect or will have an adverse effect on historic properties. The operator has obtained and is in compliance with a written agreement with the State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officer (TPHO), or other tribal representative that outlines measures the operator will carry out to mitigate or prevent any adverse effects on historic properties.

To determine whether historic properties are present at a site, an operator must review all reasonably ascertainable information and, if necessary, conduct a historic survey. Where historic properties are present, an operator must include documentation of the determination with the NOI for submitted to EPA so EPA can confirm that discharges and discharge-related activities do not have the potential to cause effects or will not have an adverse effect on historic properties. Where the operator believes or EPA determines that discharges or discharge-related activities have the potential to cause effects or will have an adverse effect on historic properties, an operator must complete consultation with the SHPO and/or TPHO before EPA can issue authorization to discharge under the DRGP. The NOI must include any terms and conditions that the operator must follow to mitigate or prevent adverse effects due to the activities regulated by this general permit resulting from evaluation and interaction with a SHPO and/or TPHO. These terms and conditions will be included in an operator’s authorization to discharge.

EPA encourages operators seeking coverage to contact the appropriate State or Tribal Historic Preservation Officer as early as possible in the event of a potential adverse effect to a historic property. In situations where an agreement cannot be reached between an operator and the State or Tribal Historic Preservation Officer, operators seeking coverage should contact the Advisory Council on Historic Preservation listed in Section 7, below, for assistance.

Operators are reminded that they must also comply with applicable State, Tribal, and local laws concerning protection of historic properties and should include documentation supporting the determination of permit eligibility in the BMP Plan for their sites.

4. Information on the National Register of Historic Places

The National Register of Historic Places is the Nation's official list of cultural resources worthy of preservation. Authorized under the National Historic Preservation Act of 1966, the National Register is part of a national program to coordinate and support public and private efforts to identify, evaluate, and protect our historic and archeological resources. Properties listed in the Register include districts, sites, buildings, structures, and objects that are significant in American history, architecture, archeology, engineering, and culture. The National Register is administered by the National Park Service, which is part of the U.S. Department of the Interior.

The National Park Service is currently in the process of digitizing their records of historic places. Listings of historic places based on the date they were listed can be found on the National Park Service web site at <https://www.nps.gov/subjects/nationalregister/index.htm>.

5. Massachusetts and New Hampshire Historic Preservation Officers (SHPO)

Massachusetts Historical Commission

220 Morrissey Boulevard

Boston, MA 02125

T: (617) 727-8470

TDD: 1-800-392-6090

<http://www.sec.state.ma.us/mhc/mhcidx.htm>

New Hampshire State Historic Preservation Office

New Hampshire Division of Historical Resources Attention: Review and Compliance

19 Pillsbury Street

Concord, NH 03301-3570

T: (603) 271-8850

TDD: 1-800-735-2964

http://www.nh.gov/nhdhr/programs/national_register.html

SHPO information can also be found online at

<https://www.nps.gov/subjects/nationalregister/state-historic-preservation-offices.htm>

6. Tribal Historic Preservation Officers (THPO)

Wampanoag Tribe of Gay Head-Aquinnah

Bettina Washington, THPO
20 Black Brook Road
Aquinnah, MA 02535-9701
T: 508.645.9265 x 175
F: 508.645.3790
Email: bettina@wampanoagtribe.net
<http://www.wampanoagtribe.net>

THPO information can also be found online at
<https://members.nathpo.org/thpodirectory/Search/eastern-274978>

7. Advisory Council on Historic Preservation

The Advisory Council on Historic Preservation (ACHP) is an independent federal agency that promotes the preservation, enhancement, and productive use of our Nation's historic resources and advises the President and Congress on national historic preservation policy. The National Historic Preservation Act (NHPA) established ACHP in 1966 with the goal of having federal agencies act as responsible stewards of our Nation's resources when their actions affect historic properties. ACHP is the only entity with the legal responsibility to encourage federal agencies to factor historic preservation into federal project requirements. As directed by NHPA, ACHP serves as the primary federal policy advisor to the President and Congress; recommends administrative and legislative improvements for protecting our Nation's heritage; advocates for the full consideration of historic values in federal decision making; and reviews federal programs and policies to promote effectiveness, coordination, and consistency with national preservation policies.

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