

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-8699-5]

**Notice of Availability of Final NPDES General Permits for Noncontact Cooling Water Discharges in the Commonwealth of Massachusetts (Including Both Commonwealth and Indian Country Lands) and the State of New Hampshire****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice of Availability of Final NPDES General Permits MAG250000 and NHG250000.

**SUMMARY:** The Director of the Office of Ecosystem Protection, EPA-New England, is today providing notice of availability of the final National Pollutant Discharge Elimination System (NPDES) general permits for noncontact cooling water (NCCW) discharges to certain waters of the Commonwealth of Massachusetts (including both Commonwealth and Indian country lands) and the State of New Hampshire.

The general permits replace the NCCW general permits which expired on April 25, 2005. The general permits establish permit eligibility conditions, Notice of Intent (NOI) requirements, effluent limitations, standards, prohibitions, and management practices for facilities discharging NCCW. Owners and/or operators of facilities discharging NCCW, including those currently authorized to discharge under the expired general permits, are required to submit an NOI to be covered by one of the general permits to both EPA-New England and the appropriate State agency. EPA and the State will review the NOI and the facility will receive written notification from EPA stating whether permit coverage and authorization to discharge under one of the general permits is approved. The eligibility requirements for coverage under the general permits are discussed in detail under Part 3 of the permits. The reader is strongly urged to go to that section of the general permits to determine eligibility. The general permits do not cover new sources as defined at 40 CFR 122.2.

**DATES:** The general permits shall be effective on July 31, 2008, and they will expire at midnight, five (5) years from the last day of the month preceding the effective date.

**ADDRESSES:** The required notification information to obtain permit coverage is provided for in the general permits. This information shall be submitted to both EPA and the appropriate State.

Notification information may be sent via USPS, email or fax to EPA at EPA-Region 1, Office of Ecosystem Protection (CMU), One Congress Street, Boston, Massachusetts, 02114-2023; e-mail address [NCCWGP@EPA.GOVRegion01](mailto:NCCWGP@EPA.GOVRegion01); or fax number (617) 918-2188.

Notification information shall be submitted to the appropriate State agency at the addresses listed in the general permits, Part 5.9. See also Appendix 6, State Agency Notification Requirements and Mailing Addresses.

**FOR FURTHER INFORMATION CONTACT:**

Additional information concerning the final general permits may be obtained between the hours of 9 a.m. and 5 p.m. Monday through Friday, excluding holidays, from Austine Frawley at [Frawley.Austine@EPA.GOV](mailto:Frawley.Austine@EPA.GOV) or (617) 918-1065.

**SUPPLEMENTARY INFORMATION:** The general permits may be viewed over the Internet at the EPA Web site <http://www.epa.gov/region1/npdes/nccwgp.html>. To obtain a paper copy of the general permits, please contact Ms. Frawley using the contact information provided above. A reasonable fee may be charged for copying requests.

Dated: July 24, 2008.

**Ira W. Leighton,***Acting Regional Administrator, Region 1.*

[FR Doc. E8-17599 Filed 7-30-08; 8:45 am]

**BILLING CODE 6560-50-P****ENVIRONMENTAL PROTECTION AGENCY**

[FRL-8697-3]

**Findings of Informal Review of the State of Michigan's Approved Clean Water Act Section 404 Program****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

**SUMMARY:** This Notice announces EPA's findings from its informal review of the state of Michigan's approved Clean Water Act (CWA) Section 404 program. EPA finds that, at this time, formal program withdrawal proceedings should not be initiated for Michigan's approved CWA Section 404 program. EPA's Final Report of this review is now available. EPA has identified several deficiencies in Michigan's approved CWA Section 404 program; those are identified in the Final Report along with corrective actions which Michigan has proposed to take and a schedule for implementing the corrective actions.

**FOR FURTHER INFORMATION CONTACT:** Sue Elston, Watersheds and Wetlands Branch, at the EPA address noted above

or by telephone at (312) 886-6115. The Final Report containing EPA's findings is available via the Internet at the following location: <http://www.epa.gov/region5/water/wshednps/notices.htm>. In addition, a hard copy of the information supporting today's notice is available for review at EPA Region 5, 77 West Jackson Boulevard, 16th floor, Chicago, Illinois and Library of Michigan, 702 Kalamazoo Street, Lansing, Michigan. To arrange for access to the docket materials in Chicago call (312) 886-6115 or in Lansing call (517) 373-1300.

**SUPPLEMENTARY INFORMATION:****I. Background**

On October 16, 1984, EPA approved the regulatory permitting program that the state of Michigan had submitted pursuant to the requirements and guidelines contained in Subsections 404(g) and 404(h) of the CWA. 33 U.S.C. 1344(g) and (h) (See 49 FR 38947, October 2, 1984.) In that notice of approval, EPA noted that the Administrator was required to approve a program submitted by a state pursuant to Subsection 404(g) of the CWA unless that program does not meet the requirements of Subsection 404(h) of the CWA. EPA stated in the notice that it had determined the program submitted by the state of Michigan met those statutory requirements. The components of the approved CWA Section 404 program are stated at 40 CFR 233.70.

The Michigan state agency authorized in 1984 to administer the approved CWA Section 404 program was the Department of Natural Resources. Later the state of Michigan reorganized its agencies and transferred authority to administer the approved CWA Section 404 program to the Department of Environmental Quality (MDEQ). EPA approved this transfer on November 14, 1997 (62 FR 61173, November 14, 1997).

On February 4, 1997 EPA received a request to review claims that Michigan's approved CWA Section 404 program had serious deficiencies and to either insist Michigan take specific remedial measures or withdraw Michigan's administration of CWA Section 404. EPA decided to treat the request as a petition to withdraw program approval and to informally review all aspects of Michigan's approved CWA Section 404 program. The EPA Regional Administrator of Region 5 informed the Director of MDEQ of the commencement of the CWA Section 404 program review in a letter dated January 22, 1998.

**II. Overview of EPA Review of Michigan's CWA Section 404 Program**

The scope of EPA's informal review included MDEQ permit processing,

decision making, and enforcement of Section 404 permits; and a comprehensive review of the adequacy of Michigan's current legal authorities which establish Michigan's CWA Section 404 program. EPA's review included materials submitted by MDEQ between June 1999 and the date of this Notice. Those materials included an updated program description (40 CFR 233.11); a new Michigan Attorney General statement confirming that state laws and regulations provide adequate authority to administer the CWA Section 404 program and addressing the other subjects mentioned at 40 CFR 233.12; and a compilation of all current, relevant Michigan laws and regulations. During its program review EPA reviewed hundreds of permitting files, enforcement files, and citizen complaint files that MDEQ generated between 1995 and 1999. Additionally, EPA reviewed MDEQ written decisions issued in contested permitting cases between January 1994 and early 1999. The contested case decisions represent final agency action by MDEQ in matters involving individual permits processed under the approved CWA Section 404 program. Also as part of the program review, EPA consulted with offices of the U.S. Fish and Wildlife Service (USFWS) and the U.S. Army Corps of Engineers (Corps) which interact with MDEQ during its administration of the program. Finally, during January and May of 1999, EPA held four availability sessions to receive comments from interested persons.

In November 2002, EPA completed its preliminary review and analysis of all materials and concluded that the review findings did not warrant a recommendation to the Administrator to initiate formal program withdrawal proceedings, but did warrant corrective actions by the state of Michigan. EPA's preliminary findings and the necessary corrective actions were identified in the document titled *Results of the U.S. Environmental Protection Agency Region 5 Review of Michigan Department of Environmental Quality's Section 404 Program (Preliminary Report)*. EPA announced its preliminary findings in a **Federal Register** Notice published on January 7, 2003 (68 FR 772, January 7, 2003). EPA invited public comment, for a period of sixty (60) days, on that notice and the Preliminary Report. In a November 7, 2003 letter to the EPA Regional Administrator of Region 5, the Director of MDEQ responded to the content of EPA's Preliminary Report and proposed a series of corrective actions to be undertaken by the state in order to

achieve and maintain full consistency with the CWA Section 404 program requirements. EPA completed its review of the submitted public comments, communicated further with Michigan, and performed additional analysis both as prompted by public comments and as considered appropriate by EPA. EPA has also completed its review and analysis of the corrective actions proposed by MDEQ. EPA's final findings are presented in the document titled—*Results of the U.S. Environmental Protection Agency Region 5 Review of Michigan Department of Environmental Quality's Section 404 Program (Final Report)*.

EPA found both strengths and deficiencies in Michigan's legal authorities establishing the approved CWA Section 404 program and in the program's administration by MDEQ. EPA has concluded that program withdrawal proceedings should not be initiated at this time. However, this Notice and the Final Report are not EPA's final action on the petition to withdraw. Within 36 months of the date of this notice, EPA will review all corrective actions completed by Michigan and determine whether initiating formal withdrawal proceedings is warranted. A summary of the major program deficiencies identified by EPA and the corrective actions proposed by the state follow; a more detailed analysis is contained in the Final Report. EPA considers the schedule for completion of the corrective actions to be reasonable and has adopted it in the Final Report.

### III. Deficiencies in Michigan's CWA Section 404 Program and Proposed Corrective Actions

#### A. CWA Jurisdiction

EPA had concerns that the scope of jurisdiction provided by Michigan law was not as broad as federal CWA Section 404 jurisdiction. One major concern was that Michigan had not completed its wetland inventories and Michigan law did not extend jurisdiction over non-contiguous wetlands in any county in Michigan that had a population of less than 100,000 residents unless a wetland inventory was performed. Michigan made the commitment to perform wetland inventories in all counties with less than 100,000 residents. In January 2007, Michigan certified that MDEQ had completed the statewide wetland inventory.

During EPA's program review the U.S. Supreme Court issued two decisions which address jurisdiction over waters of the United States under the CWA.

*Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001) (SWANCC); *Rapanos v. United States*, 547 U.S. 715 (2006). EPA considered those decisions when reviewing Michigan's CWA Section 404 program.

EPA completed its review of the jurisdictional scope of Michigan's approved CWA Section 404 program, considering the fact Michigan completed its statewide wetland inventory, the recent U.S. Supreme Court decisions and additional factors outlined in the Final Report. EPA finds the scope of jurisdiction provided by Michigan law is at least as broad as the scope of federal CWA Section 404 jurisdiction.

#### B. Exemptions From CWA Jurisdiction

Michigan law appears to exempt a broader range of activities than does the CWA under Subsection 404(f), including exemptions for discharges occurring as part of certain agricultural activities; discharges related to drain creation and improvement; and discharges associated with iron and copper mining tailings basins. There is no federal exemption for these activities. MDEQ has agreed to seek amendment of Part 303, the state's Wetlands Protection Act, to: (1) Limit the exemptions available under M.C.L. Section 324.30305(2)(e) to areas of established agricultural or silvicultural operations in accordance with federal law; (2) delete the exemption of agricultural drainage under M.C.L. Section 324.30305(2)(j); (3) amend M.C.L. Section 324.30305(2)(h) to delete mention of straightening, widening or deepening; (4) eliminate the exemption for iron and copper mining tailings basins under M.C.L. Section 324.30305(2)(o); and (5) delete exemption for utility and maintenance activities found at M.C.L. Sections 324.30305(2)(l) and (m) to the extent these activities are regulated under CWA Section 404. MDEQ has committed to initiating these corrective actions within 6 months of the date of this Notice and completing these corrective actions within 36 months of the date of this Notice.

#### C. Minor Permits Under Part 301

EPA is concerned that Part 301's provisions for minor permits do not ensure that each minor permit category will cause only minimal adverse environmental effects when performed separately and will have only minimal cumulative adverse effects on the environment as required under the federal law. MDEQ has agreed to promulgate a new Part 301 rule

requiring the consideration of cumulative impacts before new minor permit categories are established. MDEQ has agreed to promulgate the rule within 24 months of the date of this Notice.

#### *D. CWA 401(b)(1) Guidelines*

EPA is concerned that Michigan law fails to incorporate the CWA Section 404(b)(1) Guidelines into its permit decision making process. One element of EPA's concern is the absence from Michigan law of a clear prohibition on the issuance of permits that will jeopardize the continued existence of a threatened or endangered (T & E) species or their critical habitat, as required by the CWA Section 404(b)(1) Guidelines. During the course of this program review, MDEQ developed administrative rules under Part 303 which have addressed some of EPA's concerns regarding the application of a feasible and prudent alternatives analysis, water dependency analysis, and burdens of proof. MDEQ has now proposed to implement a more comprehensive corrective action by promulgating administrative rules for Parts 301 and 303 that will incorporate the federal Section 404(b)(1) Guidelines by reference. MDEQ has agreed to promulgate these rules within 24 months of the date of this Notice.

#### *E. Public Participation in Permitting Process*

A state that is administering a CWA Section 404 program must provide an opportunity for public participation in the state's enforcement process by fulfilling the requirements of either 40 CFR 233.41(e)(1) or (e)(2). While MDEQ has stated that it will comply with 40 CFR 233.41(e)(2), EPA finds that Michigan's laws and rules do not clearly require the state to observe two of the three public participation requirements of 40 CFR 233.41(e)(2). To correct this situation, MDEQ has agreed to work with EPA to revise the EPA-MDEQ Memorandum of Agreement to contain two additional commitments: (1) MDEQ will not oppose intervention by any citizen when permissive intervention in a state enforcement action is authorized by Michigan law, and (2) MDEQ will ensure that all proposed settlement agreements of enforcement actions filed in state court are publicly noticed with a 30-day public comment period provided.

#### *F. General Administration of CWA Section 404 Program*

The program review found that in general, MDEQ is doing a good job of administering its CWA Section 404 program, however, EPA did identify

several problems. EPA identified the need for MDEQ to modify its procedures for providing public notice of certain permit-related actions to make these procedures consistent with 40 CFR 233.32. EPA alerted MDEQ that it needs to ensure that interested persons receive public notices of permitting actions with enough time to provide comment, and that it needs to ensure that all adjacent property owners receive copies of the public notices. During this program review, MDEQ addressed the first problem by developing an internet-based system that makes public notices more readily available to the public. MDEQ has addressed the second problem by providing public notices to all adjacent landowners, not just riparian landowners.

#### *G. Endangered Species Act*

EPA found that coordination under the federal Endangered Species Act (ESA) is effective for larger projects. Yet our review found that it was not clear that minor permit projects were being effectively screened for potential impacts on T & E species. MDEQ has worked with the USFWS and EPA to develop procedures for screening minor and walk-in permits for the potential to impact T & E species and their critical habitat. These procedures will be finalized within 6 months of the date of this Notice.

#### *H. Enforcement*

The program review concludes that MDEQ has maintained a satisfactory enforcement program. MDEQ has designed the enforcement program to identify un-permitted activities and initiates enforcement responses in a timely manner. Overall, Michigan's enforcement program achieves appropriate injunctive relief through wetland restoration and wetland mitigation and seeks and obtains adequate penalties.

#### **IV. Summary of Comments Received and EPA Response**

While not required to do so according to the 404 state program regulations at 40 CFR part 233, EPA chose to invite public comment on EPA's January 2003 notice and Preliminary Report. In response to the notice (68 FR 772), EPA received 26 comment letters or e-mail responses. Commenters included two federal agencies (USFWS and the U.S. Forest Service (USFS)); the Grand Traverse Band of Ottawa and Chippewa Indians; two county drain commissioners; two representatives of the Michigan Drain Code Coalition; a member of the Indian Mission Conservation Club; and 19 individual

citizens. In addition, the Michigan Wetland Action Coalition representing 52 conservation organizations provided extensive comments.

The majority of commenters agreed with the findings of EPA's Preliminary Report and were supportive of the proposed corrective actions. Four commenters stated that Michigan should continue to administer the CWA Section 404 program since they felt the state program was more stringent than the federal program and the state was doing a better job of protecting the Great Lakes than would the federal government if it administered the program under federal law. A summary of the comments received and EPA responses follow.

#### *A. Federal Agency Comments*

The USFWS provided comments on a number of issues addressed in the program review. With regard to Michigan's scope of jurisdiction, the USFWS expressed concern over the lack of a mechanism to ensure that the state's program will remain as rigorous as any program the Corps would administer, even as changes occur to CWA Section 404 jurisdiction, and to the federal Section 404 program, over time. The only remedy that EPA can identify to ensure that Michigan's CWA Section 404 program remains in compliance with the standards set forth at 40 CFR 233.1 is EPA's periodic review of the state's program and EPA's ongoing review of individual permits and cases.

The USFWS continues to have concerns with Michigan's Part 303 which provides that if MDEQ does not approve or disapprove a permit application within 90 days the application shall be considered approved. The USFWS asserts that this time constraint unduly limits the amount of time that federal agencies have to review projects. The USFWS would prefer to have the 90 day time frame deleted from state law or amend the law to make it explicit that if a permit is issued pursuant to the 90 day timeframe, the permit is considered to have been issued under state law only, and is not a CWA Section 404 permit. EPA agrees that MDEQ's 90 day time frame is not congruent with the time frames allowed under 40 CFR 233.50. However, EPA has concluded that, to date, MDEQ, EPA, and other reviewing federal agencies have been able to work to ensure that problems are resolved, or that a permit is denied, before the 90 day deadline is reached. MDEQ asserts that it will ensure that any future permits issued by MDEQ due to the existence of the 90 day deadline, without confirmation of compliance

with the CWA 404(b)(1) Guidelines, will have the legal status of a state-only permit, and not a CWA Section 404 permit. For this reason EPA does not find a corrective action is warranted.

The USFWS commented that EPA needs to submit the informal program review and EPA's review and approval of the state's corrective actions to the consultation requirements of Section 7 of the ESA. The USFWS argued that EPA is taking a federal action which imposes on EPA the obligation to formally consult with the USFWS pursuant to Section 7(a)(2) of the ESA, in order to ensure that these actions are not likely to jeopardize the continued existence of a listed species or the destruction or adverse modification of designated critical habitat. EPA disagrees with the USFWS' position on this issue. We do not intend to enter into formal consultation with the USFWS pursuant to Section 7(a)(2) of the ESA. EPA does not consider its conduct of performing this informal program review and its agreements with Michigan on corrective actions the state will implement to be a "Federal action" which triggers ESA Section 7 consultation. In March 2004, EPA shared its legal conclusions regarding the ESA Section 7 consultation issue with the East Lansing Field Office of the USFWS. EPA has emphasized that it is committed to working with USFWS and MDEQ to address concerns regarding whether the state's administration of the CWA Section 404 program is potentially jeopardizing T & E species or their critical habitat.

USFWS also expressed concerns that the MDEQ's process for screening proposed projects to ensure that they will not jeopardize T & E species or their critical habitat is inadequate. The USFWS offered its cooperation to remedy the shortcomings it perceived in MDEQ's review process. The USFWS also suggested that a Memorandum of Agreement between MDEQ, EPA and the USFWS be developed to address the issues the USFWS has raised with regard to T & E species issues. EPA will work with the USFWS and MDEQ on the development of a MOA to address these USFWS concerns. In addition, EPA, MDEQ and the USFWS have recently developed a new procedure for screening minor permit projects to ensure that impacts to T & E species are adequately assessed. Finally, other than the subjects discussed above, the USFWS commends the EPA's review of Michigan's CWA Section 404 program and Michigan's cooperation during the review and subsequent development of corrective actions.

The USFS indicated that it had concerns with how MDEQ is handling permitting on Wild and Scenic Rivers in Michigan. The USFS indicated that Michigan's assumption of the CWA Section 404 program did not waive the need for federal review of applications involving discharges within components of the National Wild and Scenic Rivers System. The USFS indicated that there have been instances of MDEQ staff either issuing a permit for activities for which the USFS has made an adverse finding due to Wild and Scenic River concerns, or issuing modifications to permits after a Section 7 determination was made by the USFS without coordinating with the USFS on the proposed modifications. The USFS requested EPA's support in improving coordination between the USFS and MDEQ. The MOA between EPA and the state currently requires all public notices of CWA Section 404 permit applications for projects proposed in Wild and Scenic Rivers be sent to the appropriate federal agencies for review. EPA notes that provisions in the federal regulations for federal review of CWA Section 404 permit public notices does not require EPA to provide the USFS with copies of the public notices. However, MDEQ does send the USFS public notices for projects proposed on Wild and Scenic Rivers. In the past, the USFS has not provided EPA with any comments on public notices for proposed projects that may involve Wild and Scenic Rivers issues for EPA to include in the federal comment letter that EPA sends to MDEQ pursuant to 40 CFR 233.50. EPA has informed the USFS that EPA is willing to include USFS comments which relate to CWA issues, in the federal comment letter EPA sends to MDEQ provided the USFS meets the time frames established by 40 CFR 233.50.

#### *B. Public Comments*

With regard to the state's scope of jurisdiction several commenters expressed the desire for greater protection over small and isolated wetlands. Several commenters wanted the state's inventory of wetlands in counties with populations below 100,000 expedited. Other commenters were skeptical that the inventories would be completed or believed that the inventories would be of little use. Finally, one comment indicated that amending the Michigan statute to address the jurisdictional issue would be a more timely and cost effective action. EPA acknowledges that amending the statute may be more cost effective, however, the state has already completed the inventories for the

majority of the state and has committed to providing the necessary resources to complete the inventory during 2006. EPA continues to consider the performance of the wetland inventories to be an adequate corrective action.

A number of commenters concurred with EPA's findings that Michigan's exemptions for drainage, farming and construction of tailings basins for iron and copper mining were less stringent than the federal regulations and supported EPA's position that the statute needs to be amended. MDEQ has agreed to seek amendments to Part 303 to make state exemptions as stringent as the federal exemptions.

Several commenters supported the development of new rules to prescribe best management practices for certain utility work in wetlands. They also stated that if MDEQ could not provide enforcement of the best management practices, that the exemption found at M.C.L. Section 324.30305(l) and (m) should be deleted. MDEQ has agreed to limit these exemptions to activities not regulated under the CWA, to develop general permit categories to authorize the remainder of activities currently exempted, and to define best management practices for these types of utility crossings.

With regard to permitting authority issues, one group of commenters concurred with the EPA's concerns regarding Part 301 provisions for minor permits and agreed that rule changes were needed to ensure that cumulative adverse impacts will be considered before general permit categories are established. MDEQ has agreed to make the necessary rule changes.

One group of commenters disagreed with EPA's finding that the absence of an explicit recapture provision does not render the permitting program inadequate. EPA's position continues to be that part 301 has provisions that are at least as stringent as the recapture clause of the CWA Section 404(f)(2) and that the absence of an explicit recapture provision in part 303 does not render the state's CWA Section 404 permitting program inadequate because the strict application of the exemptions provisions in part 303 should prevent the need to rely on any type of recapture provision.

One group of commenters agreed with EPA's finding that there is a need to make sure that the Michigan permitting program is consistent with the Section 404(b)(1) Guidelines. These same commenters were concerned about EPA and MDEQ's contention that MDEQ can issue a state-only permit which may not adhere to the CWA Section 404(b)(1) Guidelines. These commenters felt that

the issuance of a state-only permit was confusing to the public and supports the notion that Michigan wetland permits are governed solely by Michigan law. EPA notes that Michigan permits are based on Michigan state law and agrees that the issuance of a state-only permit can be confusing in light of the fact that the Michigan program is supposed to be consistent with the CWA Section 404. It is EPA's expectation that once the proposed corrective actions are implemented, the Michigan program will be consistent with the federal program and MDEQ no longer will feel compelled by circumstances to issue state-only permits, except in cases where the 90-day timeframe for approval or disapproval has lapsed and the permit will be a state-only permit. The federal regulations do, however, recognize that there may be cases when the state neither satisfies EPA's objections nor denies the permit. In such an instance the regulations at 233.50(j) state that the Corps shall process the permit application.

A number of commenters criticized MDEQ's enforcement efforts in general. Other commenters disagreed with EPA's finding that MDEQ is adequately authorized to and is observing the federal requirements with regard to investigation of citizen complaints. Some commenters also expressed disagreement with EPA's findings that MDEQ conducts an adequate wetland enforcement program. Commenters expressed concern that MDEQ issues after-the-fact permits too often, rather than take an enforcement action. Commenters also stated that they did not think that MDEQ was adequately monitoring permittees' compliance with permit conditions. EPA agrees that an increase in MDEQ enforcement activity and monitoring of compliance with permit conditions would be beneficial to the resources and would strengthen Michigan's permitting program. EPA finds, however, that MDEQ's enforcement program as administered is adequate and effective. While EPA is not requiring that MDEQ implement any specific corrective actions with regard to its enforcement program, EPA has made a number of recommendations for improvement in the Final Report. EPA also notes that MDEQ is currently taking steps to increase the number of enforcement staff.

#### Summary of Findings

EPA's informal review of Michigan's CWA Section 404 program included consideration of all the information submitted by MDEQ and the comments received in response to the January 7, 2003 Federal Register Notice. EPA has

identified several deficiencies in Michigan's CWA Section 404 program. In order to remedy these deficiencies, MDEQ has proposed certain corrective actions and a timetable for completion of these actions. EPA agrees that the state's proposed corrective actions, once implemented, will address the deficiencies identified in Michigan's CWA Section 404 program. The deficiencies and the corrective actions proposed by the state of Michigan are contained in the Final Report and in documents located in the public docket that support this Notice. EPA has concluded that program withdrawal proceedings should not be initiated at this time. However, this Notice and the Final Report are not EPA's final action on the petition to withdraw. Within 36 months of the date of this notice, EPA will review all corrective actions completed by Michigan and determine whether initiating formal withdrawal proceedings is warranted.

Dated: July 22, 2008.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

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**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-8699-4]

### Proposed Past Cost Administrative Settlement Under Section 122(h)(1) of CERCLA for the Sterling Morton High School Superfund Site, Town of Cicero, Cook County, IL

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; Request for public comment.

**SUMMARY:** In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ((CERCLA), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement agreement pursuant to section 122(h)(1) of CERCLA for recovery of past response costs incurred by EPA in connection with the Sterling Morton High School Superfund Site, located in the Town of Cicero, Cook County, Illinois (the "Site"). The proposed settlement has been approved by the Deputy Section Chief of the Environmental Enforcement Section of the Environment and Natural Resources Division of the U.S. Department of Justice.

Under the terms of the proposed settlement agreement, within fifteen (15)

days of its effective date the following parties will pay \$550,000 to the Hazardous Substances Superfund: J. Sterling Morton High School District 201; Amphenol Corporation; Berkshire Investments LLC; Chemtura Corporation; CSX Transportation, Inc.; E.I. Du Pont de Nemours and Company; Getronics NV; Honeywell International Inc.; Total Logistics Control, LLC; and Vesper Holdings LLC. In each of the nine years subsequent to the effective date of the proposed agreement, J. Sterling Morton High School District 201 will pay an additional \$50,000. The settlement represents recovery of approximately 91% of the response costs incurred by the Agency in connection with the time-critical removal action conducted by EPA at the Site, plus interest. In exchange for payment, the United States covenants not to sue or take administrative action pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a), to recover past response costs. In addition, the settling parties are entitled to protection from contribution actions or claims for past response costs, as provided by sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. 9613(f)(2) and 9622(h)(4).

For thirty (30) days after the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement. The Agency will consider all comments received, and may withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

**DATES:** Comments on the proposed settlement must be submitted on or before September 2, 2008.

**ADDRESSES:** A copy of the proposed settlement agreement is available for public inspection at EPA's Record Center, 7th floor, 77 W. Jackson Blvd., Chicago, Illinois 60604. A copy may also be obtained from Eileen L. Furey, Chief, Multi-Media II, Section 3, U.S. EPA Region 5, 77 W. Jackson Blvd. (Mail Code C-14J), Chicago, Illinois 60604; telephone (312) 886-7950. Written comments on the proposed settlement should be addressed to Eileen Furey at the address specified above, and should reference the Sterling Morton High School Superfund Site, Town of Cicero, Cook County, Illinois, EPA Docket No. V-W-08-C-907.

**FOR FURTHER INFORMATION CONTACT:** Eileen Furey at the address and phone number specified above.

**Authority:** The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 et seq.