



National Grid  
40 Sylvan Road  
Waltham, Massachusetts 02451

Former Gloucester Gas Light  
Company  
Manufactured Gas Plant  
Harbor Loop  
Gloucester, Massachusetts  
RTN 3-25126

File No. 25623.00  
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# Expanded Environmental Notification Form



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# SECTION 6

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ANTICIPATED PERMITS



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**1. REQUIRED PERMITS AND AUTHORIZATIONS**

Based upon the project location and the proposed work under the preferred alternative, the following environmental permits and reviews will be required to conduct this project.

**Federal**

- Section 404 Clean Water Act and Section 10 Rivers and Harbor Act approval - Army Corps of Engineers (ACOE)
- Section 106 Consultation (both Federal and State) – Project Notification Form (PNF) to Massachusetts Historical Commission (MHC)

**State**

- Massachusetts Contingency Plan Compliance
- Massachusetts Environmental Policy Act – Executive Office of Energy & Environmental Affairs
- Section 401 Water Quality Certification- MassDEP
- Federal Consistency Review – As administered by the MA Office of Coastal Zone Management (CZM)
- Chapter 91 Permit and Licenses - MassDEP

**Local**

- MA Wetlands Protection Act - Notice of Intent Application (as administered by Gloucester Conservation Commission)
- Gloucester Wetlands Ordinance - Notice of Intent Application (Gloucester Conservation Commission combined application with MA Wetlands Protection Act)
- Lowland Permit – City of Gloucester Special Permit (as administered by Gloucester City Counsel)

**2. DESCRIPTION OF ANTICIPATED PROJECT PERMIT COMPLIANCE**

The following is a brief description of each of the anticipated permits for this project, and the ability of the project to achieve compliance with the requirements for issuance of the permits.

**Federal**

**Section 404 Clean Water Act and Section 10 Rivers and Harbor Act Permits - Army Corps of Engineers (ACOE):** Any discharge of dredged or fill material into Waters of the United





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States requires a permit from ACOE under Section 404 of the Federal Clean Water Act. Any work conducted in navigable waters comes under Section 10 jurisdiction and hence requires ACOE approval, as administered by the New England District. Two applications will be filed with the ACOE, one for implementation of the remediation work and the other for the floating dock associated with National Grid and the City property. Based on pre-filing discussions with the ACOE, we anticipate that Category 2 applications will be appropriate under Navigable Waterways - (f) Miscellaneous, which allows “specific activities with impacts of any area required to affect the containment, stabilization, or removal of hazardous or toxic waste materials that are performed, ordered, or sponsored by a government agency of Licensed Site Professional with established legal or regulatory authority.”

The project approvals under these applicable laws and regulations are subject to development of the project methodology with appropriate impact avoidance, minimization and mitigation as has been done in this case. An ACOE permit review includes consultation with the State Historic Preservation Officer (see below), and Federally recognized Native American Tribes, CZM Federal consistency concurrence (see below), and MassDEP Section 401 Water Quality Certification (see above) in addition to coordination with federal resource agencies.

**Section 106 Consultation (both Federal and State) – Project Notification Form (PNF) to Massachusetts Historical Commission (MHC):** The Project is subject to review under Section 106 of the National Historic Preservation Act (NHPA) of 1966 (as amended), and its implementing regulations 36 CFR 800 and Massachusetts General Laws, Chapter 9, sections 26-27C (950 CMR 70-71), which governs the treatment of historic properties that may be affected by projects undertaken by state bodies, including review under the Massachusetts Environmental Policy Act (301 CMR 11). A Project Notification Form (PNF) was submitted to the Massachusetts Historical Commission (MHC) in July 2012. In written comments, the MHC noted that Burnham’s Marine Railway on the Maritime Gloucester property (MHC No. GLO.939, 1340 and 1341) is recorded in the Inventory of the Historic and Archaeological Assets of the Commonwealth (MHC Inventory) and may meet the criteria of eligibility (36 CFR 60) for listing in the National Register of Historic Places as an individual property. That railway, along with several other properties within the Harbor Loop, has been identified as a contributing resource within the Gloucester Harbor area (GLO.AU), which is also included in the MHC Inventory and has been evaluated by the MHC as potentially eligible for listing in the National Register as a historic district. A historic architectural survey is currently under way to identify historic properties within the Project’s Area of Potential Effects (APE) and make recommendations about potential Project effects on properties that are listed or eligible for listing in the National and/or State Registers. There are no listed or inventoried archaeological sites within the Project Area of Potential Effect. The project’s near and off-shore dredging area contains one unidentified shipwreck first charted in 1975 and confirmed by NOAA in 2003 using side scan sonar during their geophysical survey (NOAA Survey No. H11277) of Gloucester Harbor.

For the purposes of the NHPA Section 106 review, the ACOE, which will be issuing a Section 404 permit for the Project, will serve as the responsible federal agency. The ACOE and the Proponent will continue to consult with the MHC, the MBUAR, the Gloucester Historical





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Commission, and Maritime Gloucester concerning the identification of historic properties within the Project's APE; the impacts and effects of the proposed undertaking on properties that are listed or eligible for listing in the National Registry of Historic Places; and any measures that may be required to avoid, minimize, or mitigate adverse effects.

The Proponent has retained a cultural resources specialist to conduct reconnaissance historic architectural and archaeological surveys. The goals of these investigations are to: 1) review the project plans and make recommendations for establishing the APE for the Project; 2) identify any undisturbed areas within the recommended APE where potentially significant terrestrial and underwater archaeological resources (known and expected) may be present; 3) identify potentially significant historic aboveground resources within the APE; and 4) make recommendations about the potential of the Project to impact properties that are listed or eligible for listing in the National and/or State Registers. The results of the investigations are provided in Appendix F.

**State**

**Massachusetts Contingency Plan Compliance:** The Project is currently in MCP Phase IV, i.e., Implementation of a Selected Remedial Alternative under RTN 3-25126. An MCP Phase I Initial Site Investigation was completed in 2006, and the Site was issued Tier IC Permit Number W092029. Between 2007 and 2011, MCP Phase II Comprehensive Site Assessment (CSA) activities were conducted at the Site, and the Site was re-classified as a Tier IA Site effective January 29, 2011. A Phase II CSA Report was submitted to MassDEP in July 2011, and was followed in February 2012 by the submittal of a Phase III Remedial Action Plan. A Phase IV Remedy Implementation Plan will be submitted to MassDEP prior to the initiation of any proposed remediation activities. The Selected Remedial Action is designed to achieve a Permanent Solution (Class A RAO) within the Project Area.

**Massachusetts Environmental Policy Act Compliance:** The Massachusetts Environmental Policy Act (MEPA), as administered by the Executive Office of Energy & Environmental Affairs, is a state law that requires that state agencies study the environmental consequences of their actions, including permitting and financial assistance. It also requires agencies to take all feasible measures to avoid, minimize, and mitigate damage to the environment. While MEPA is not a permitting process, the documentation process requires public study, disclosure, and development of feasible mitigation for a proposed project. Other state permits may not be issued until the MEPA process is completed. The process, depending upon the threshold level of activities in multiple categories can typically require either an Environmental Notification Form (ENF) or an ENF and an Environmental Impact Report.

The Project falls within the jurisdiction of the Massachusetts Environmental Policy Act (MEPA) because it requires a Section 401 Water Quality Certification and Chapter 91 permits and licenses from the Massachusetts Department of Environmental Protection (MassDEP). The Project triggers an ENF because it exceeds wetland impact thresholds for an ENF. Additionally, because the Project will impact structures that are listed in the State Register of Historic Places a Determination of No Adverse Effect from or a Memorandum of Agreement with the



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Massachusetts Historical Commission (MHC) may also be needed. The Project does not categorically trip any threshold for a mandatory Environmental Impact Review (EIR). However, due to the complex nature of this Project and the Proponent's goal of obtaining a Secretary's certificate, we have elected to voluntarily file an expanded ENF to facilitate the environmental review by providing additional information and hopefully expediting the necessary remediation of the Project Site.

Should, upon review, the Secretary consider that the EIR threshold is exceeded or that the project otherwise merits a higher level of review than an ENF, the Proponent respectfully requests consideration for the granting of a waiver of any requirement for an EIR. MEPA regulations state that in the case of a waiver of a mandatory EIR review threshold, the Secretary shall find that EIR review would not serve to avoid or minimize Damage to the Environment on a determination that:

1. "the Project is likely to cause no Damage to the Environment" (301CMR 11.11(3)(a)), and
2. "ample and unconstrained infrastructure facilities and services exist to support...those aspects of the Project within subject matter jurisdiction" (301 CMR 11.11(3)(b)).

Information regarding these two factors is provided in this Expanded ENF for the proposed environmental remediation Project to aid in the Secretary's determination. We believe that the project as designed and mitigated is likely to cause no Damage to the Environment in accordance with 301 CMR 11.11(3)(a). "Damage to the Environment" is defined by MEPA regulations as: "Any destruction or impairment (not including insignificant damage or impairment), actual or probable, to any of the natural resources of the Commonwealth including, but not limited to, air pollution, water pollution, improper sewage disposal, pesticide pollution, excessive noise, improper operation of dumping grounds, impairment and eutrophication of rivers, streams, flood plains, lakes, ponds or other surface or subsurface water resources, destruction of seashores, dunes, marine resources, underwater archaeological resources, wetlands, open spaces, natural areas, parks, or historic districts or sites" (301 CMR 11.02(2)). As discussed in the enclosed application package, this is an MCP remediation project that will substantially benefit the environment. While there is an inevitable alteration of natural resources as part of the Project, all of these alterations will be mitigated by the restoration of the natural and built environment itself.

As demonstrated in the EENF, the Project will result in a multitude of long-term benefits through remediation of the contaminant source and sediment within the harbor. Although short-term construction impacts may occur as described above, these do not constitute significant or permanent changes to the environment and have been significantly mitigated by the design approach. Therefore, the mitigated impacts do not constitute Damage to the Environment.

The proposed project would require issuance of several additional permits. The proposed project would meet the standards and conditions of these permits, will receive full public process under these permit processes, and the end result of the proposed activities would be a net benefit to local resources. No net, long-term impact to the natural resources would occur. Therefore, the additional public review and analysis that would accompany an EIR will, in effect, be



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accomplished as part of these public permit review processes and the additional requirement for an EIR would not serve to better protect the environment or provide public review.

As per the requirements of 301 CMR 11.11(3)(b), “ample and unconstrained infrastructure facilities and services exist to support. Those aspects of the Project within subject matter jurisdiction.” The proposed project would not require any new permanent infrastructure facilities or services upon completion.

In the event that the Secretary decides that the review thresholds for an EIR are applicable and cannot make a determination that a waiver can be issued for the requirement of an EIR, we request that the EENF be approved under the Single EIR process (301 CMR11.05(7)). Therefore, if the waiver is not granted, we respectfully request that the remaining MEPA documentation and review be processed as a Single EIR. To date and as documented herein, there has been extensive documentation developed and submitted as part of this ENF and the several years of consultation with public agencies and entities relative to the various alternatives associated with this project, combined with the additional environmental permitting required to allow this environmentally beneficial project to proceed. Therefore, we are confident that no additional public purpose would be served or environmental protection provided by requiring additional review through the full Draft EIR/Final EIR (DEIR/FEIR) processes.

**Section 401 Water Quality Certification- MassDEP Dredging & Fill/Excavation:**

This Certificate is applicable for projects which involve filling or dredging of areas covered by the Clean Water Act, including Land Under Water and Wetlands. Any project which must obtain a Section 404 permit from the Army Corps of Engineers (ACOE) must also obtain a 401 Water Quality Certification. Dredging and fill/excavation activities are permitted under two different application processes:

- BRP WW 10, 11 Major/Minor Fill and Excavation Projects (administered by the governing regional office of MassDEP - Northeast Regional Office, Wilmington, MA); and
- BRP WW 07, 08 Dredging for major and minor project with less than 5,000 cubic yards being classified as a minor project (administered by MassDEP Division of Wetlands and Waterways, Boston MA).

Although pending regulatory changes may unify these application processes, the project currently requires application under both procedures. For the “Dredging” WQC, sediment quality testing is required if a certain percentage of excavated sediments is fine grain material. The WQC has a 21-day comment period.

**Federal Consistency Review – As administered by the Massachusetts Office of Coastal Zone Management (CZM):** The project is entirely within the Coastal Zone, as defined in Massachusetts Coastal Zone Management/Federal Consistency Review (301 CMR 21.00). For all projects where the activity is proposed in the Massachusetts coastal zone and is subject to federal permitting or funded or led by a federal agency, federal consistency review from the Massachusetts Office of Coastal Zone Management (CZM) is required. Federal consistency



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review is the process required under the national Coastal Zone Management Act and federal regulations (15 CFR 930), that allows states with federally–approved Coastal Program Plans to review federal actions, licenses and permits to ensure that these actions, licenses and permits are consistent with state enforceable policies. Because the project requires authorization from the Army Corps of Engineers under Section 404 of the Clean Water Act, a Federal Consistency Determination will be required and will be submitted to CZM. The project has been planned and developed in accordance with applicable state and federal regulatory standards, particularly in terms of environmental protections that will be in place during the project, and is therefore consistent with the policies of the CZM. A Consistency Check List will be filed with the CZM detailing the projects conformance with the Massachusetts Oceans Policy Plan. Because the purpose and intent of the project is remediation of contamination with protection and restoration of various coastal features, we anticipate that the project, as designed and proposed, will be fully consistent with the OMP.

**Chapter 91 Permit and Licenses - MassDEP:** Chapter 91 regulates activities on coastal waterways, including construction, dredging and filling in tidelands, including previously filled tidelands. Within the Project Area there are two basic areas of geographical jurisdiction within which activities require Chapter 91 authorization:

- Flowed Tidelands – areas within, on, over or under tidal waters seaward of the mean high water (MHW) shoreline (extending seaward to the state territorial jurisdiction); and
- Filled Tidelands – areas filled downgradient of the historic MHW line within Designated Port Areas (note: the entire Inner Harbor and Project Area is within a Designated Port Area).

In essence for this project, the Chapter 91 regulated areas are all areas seaward of the historic MHW line. This regulated area for the Project includes the upland remediation areas, the seawall, previously constructed under Chapter 91 license, and the dredging and related work in all seaward areas. As summarize in Section 4: Impacts of Proposed Project, virtually all aspects of the Project will involve work with the regulated Flowed and Filled Tidelands under the jurisdiction of Chapter 91 (see Table 2, Section 4). Chapter 91 authorization is required for these jurisdictional activities for this project (310 CMR 9.05), which can be summarized as follows:

- Placement, construction or alteration of seawall and dock structures;
- Dredging of portions of the Inner Harbor;
- Placement of fill and unconsolidated material within the Inner Harbor as part of the replacement of sediments and capping activity after dredging;
- Changes in the dimensions of structures and fill (i.e., seawalls, docks and appurtenant facilities) from the specifications contained in the existing Chapter 91 authorizations; and
- Demolition, removal and/or replacement of fill and structures (i.e., seawalls, docks, maritime railway).

The various work elements for this total project fall into different license categories under Chapter 91, however, individual licenses are required for most of the elements, as follows:



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Under the Chapter 91 “Water Dependent License” (BRP WW 01) for water dependent uses, project elements that are licensed under this application include docks, piers, shoreline protection structures and facilities that promote the public use of the waterfront. As previously discussed, several of the docks and seawalls need to be removed and replaced as part of the Project, including facilities used for public access to the waterfront. The Project will result in significant ancillary benefits that are in keeping with Gloucester’s local and regional plans, including new waterfront infrastructure, development of additional water sheet for public use, additional draft for the Harbormaster’s vessel in key areas as requested by the City of Gloucester, increased public access to the waterfront, and enhanced landing facilities for Harbormaster and City use. All of these elements of the Project represent water-dependent uses as defined under 310 CMR 9.12.

Under Chapter 91 Waterways Permit (BRP WW 01), the dredging and in-water placement of the replacement sediment and cap can be permitted.

All of these elements are interrelated as part of a single project and need to be properly sequenced and coordinated if the Project is to proceed efficiently with a minimization of impact to the environment. The various activities to be implemented during the course of the Project cannot be reasonably incorporated into a single license; therefore, in accordance with 310 CMR 9.14(4), a Consolidated Written Determination (CWD) will be requested as part of the Chapter 91 application to allow these elements to be fully evaluated and considered as part of a single action.

All of these actions are potentially permissible under Chapter 91 regulations. Categorical Restrictions are listed in 310 CMR 9.32(1)(b) for “Tidelands Within Designated Port Areas (DPAs)” which allow for structures and fill as proposed on filled and flowed tidelands based either on replacement of existing use, the evaluation and lack of alternatives (for *de minimis* use of flowed tideland), and accommodation of public pedestrian access within the existing footprint of structures. Furthermore, 310 CMR 9.32(2) allows for exceptions to these restrictions based upon the provision of “reasonable measures...to avoid, minimize, and mitigate any encroachment in a waterway”, including for such reasons as rehabilitation of an existing shore protection structure and placement of utilities.

**Local**

**Massachusetts Wetlands Protection Act - Notice of Intent Application:** The Wetlands Protection Act (WPA) is administered by the Gloucester Conservation Commission (GCC) with support from the Massachusetts Department of Environmental Protection (MassDEP), and appeals of decisions subject to review by that office. The project will need to file a Notice of Intent (NOI) under the WPA with the GCC.

The project qualifies as a Limited Project (310 CMR 10.24(7)(c)6)) under the WPA regulations, because the proposed will be conducted as part of a Comprehensive Remedial Action Alternative to address a release of Oil and/or Hazardous Materials (OHM) following the completion of an MCP Phase III Remedial Action Plan as defined by Sections 310 CMR 40.0851 through 40.0869



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(cited collectively as Section 310 CMR 40.0850). In accordance with 310 CMR 10.24(7)(c)(6), the project meets the definition of a Limited Project:

*Assessment, monitoring, containment, mitigation, and remediation of, or other response to, a release or threat of release of oil and/or hazardous material in accordance with the provisions of 310 CMR 40.0000 and the following general conditions (although no such measure may be permitted which is designed in accordance with the provisions of 310 CMR 40.1020 solely to reduce contamination to a level lower than that which is needed to achieve "No Significant Risk" as defined in 310 CMR 40.0006[10]).*

As documented in Section 5, the remediation project has been designed and will be implemented, operated and maintained to first avoid, then limit, and finally mitigate impacts to the resource areas. Limited projects must also meet the performance standards identified in section 10.24(7)(c)(6) to the maximum extent practicable. The remedial actions being implemented through this project are to reduce levels to No Significant Risk and not to lower levels. Although it is recognized per section 10.24(7)(c)(6)a that a comprehensive remedial action alternative selected per the MCP provisions found in 310 CMR 40.0851 through 310 CMR 40.0869 is deemed to meet the requirements of the alternatives analysis, an alternatives analysis focusing on avoiding, limiting, and mitigating impacts to wetlands resource areas is included in Section 8 of the EENF. Appendix D provides a detailed discussion for how this project meets the Limited Project provision as well as the performance standards to the maximum extent practicable.

**Gloucester Wetlands Ordinance - Notice of Intent Application:** The City of Gloucester adopted a Wetlands Ordinance which requires permitting by the Conservation Commission. Application under this Ordinance is combined with application under the WPA. Generally requirements for approval are similar to the WPA with some additional buffer zone areas regulated (see Section 3). Based upon initial discussion with the Commission's agent, the project as designed should not present any significant challenge to approval under this process.

**Lowland Permit (Section 5.5 of the Zoning Ordinances – City of Gloucester Special Permit):** A Special Council Permit is issued under Section 5.5.4 of the Gloucester Zoning Ordinance, which states:

*5.5.4 No person shall remove, fill, dredge or build upon any bank, marsh, swamp, or flat bordering on coastal or inland waters or any other land subject to tidal action or coastal storm flowage without a Special Permit from the City Council. Such permit shall be issued only upon determination that the requirements of the Hatch Act (G.L. Ch. 131, Sec. 40) has been satisfied, and that such removal, filling, dredging or construction will not pose a hazard to health or safety, and will be so executed as to conserve the shellfish and other wildlife resources of the City. (Amended 10/26/99)*

Compliance with the requirements of the Hatch Act are presumed with the issuance of an Order of Conditions by the Gloucester Conservation Commission under the WPA (see above). Therefore, it is assumed that the project as designed will meet the requirements for the issuance of the Lowland Permit.