



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Sent via email & certified Mail (dated as indicated on electronic signature)

ORDER FOR COMPLIANCE

Gary Merrill
Merrill Excavating, Inc.
NPDES Permit Number: NHR05J01N
38 School St.
Salem, NH 03079

RE: In the Matter of Merrill Excavating, Inc. NHR05J01N
Order for Compliance under Section 309 of the Clean Water Act (33 U.S.C. § 1319),
Docket No. CWA-AO-R01-FY25-28

Dear Permittee Contact:

This Order results from the failure of Merrill Excavating, Inc. NPDES ID NHR05J01N to meet its reporting obligations under its NPDES permit. Facilities subject to monitoring requirements are required to submit their sampling results to EPA electronically using EPA's NetDMR system no later than 30 days after receiving their complete laboratory results. Facilities which do not have a discharge or who are unable to obtain a sample during the monitoring period must similarly use NetDMR to submit their Discharge Monitoring Reports ("DMRs") with the appropriate "no data indicator" or "NODI" code to EPA no later than 30 days after the end of the monitoring reporting period.

Your facility known as Merrill Excavating, Inc. located at 126 Shannon Rd., Salem, NH 03079 has not submitted all DMRs that were due under the permit. The failure to submit DMRs as required by your NPDES permit prevents EPA and the public from knowing if permit-authorized discharges are meeting permit requirements established to ensure water quality in receiving waters is not unduly impacted by pollutants. Specifically, Merrill Excavating, Inc. has failed to submit the following DMRs:

Permit Name	NPDES ID	Monitoring Period End Date	Monitoring Period Start Date	Perm Feature ID	Limit Set Designator
Merrill Excavating, Inc.	NHR05J01N	12/31/2021	10/1/21	001	J1
Merrill Excavating, Inc.	NHR05J01N	03/31/2022	1/1/22	001	J1
Merrill Excavating, Inc.	NHR05J01N	06/30/2022	4/1/22	001	J1
Merrill Excavating, Inc.	NHR05J01N	09/30/2022	7/1/22	001	J1
Merrill Excavating, Inc.	NHR05J01N	12/31/2022	10/1/22	001	J1
Merrill Excavating, Inc.	NHR05J01N	03/31/2023	1/1/23	001	J1
Merrill Excavating, Inc.	NHR05J01N	06/30/2023	4/1/23	001	J1
Merrill Excavating, Inc.	NHR05J01N	09/30/2023	7/1/23	001	J1

Merrill Excavating, Inc.	NHR05J01N	12/31/2023	10/1/23	001	J1
Merrill Excavating, Inc.	NHR05J01N	03/31/2024	1/1/24	001	J1
Merrill Excavating, Inc.	NHR05J01N	06/30/2024	4/1/24	001	J1
Merrill Excavating, Inc.	NHR05J01N	09/30/2024	7/1/24	001	J1
Merrill Excavating, Inc.	NHR05J01N	12/31/2024	10/1/24	001	J1

Our records indicate that no representative for Merrill Excavating, Inc. has signed up for NetDMR in association with your permit NHR05J01N and as such, no DMRs have been submitted associated with your permit. Under Section 309(a)(3) of the Clean Water Act ("Act") the Administrator of the U.S. Environmental Protection Agency ("EPA"), has the authority to issue orders requiring persons to comply with Sections 301 and 308 of the Act and any permit condition or limitation implementing any NPDES permit. This authority has been delegated to the Director of the Enforcement and Compliance Assurance Division, EPA Region 1. Pursuant to Section 309(a)(5)(A) of the Act, 33 U.S.C. § 1319(a)(5)(A), the Order below provides a schedule for compliance determined to be reasonable.

ORDER

Merrill Excavating, Inc. is hereby ordered, pursuant to Section 309(a)(3) of the Act, 33 U.S.C. § 1319(a), to submit all missing DMRs, as required by the MSGP, as follows:

1. Within fourteen (14) days of receipt of this Order, provide the name and email address of the person who is/will be responsible for submitting DMR reports to EPA at NetDMR_R1@epa.gov. At a minimum, one authorized individual must sign-up for NetDMR. Please have the signatory authority (the individual(s) who will be signing the DMRs for the facility) add the NetDMR program service to their existing CDX account if they do not already have access to NetDMR. If they do have access to NetDMR, they can proceed to request access to your permit and request the signatory role. See attached Fact Sheets for instructions.
2. Within fourteen (14) days of receipt of this Order, Merrill Excavating, Inc. must complete and submit all overdue DMRs since the date the facility was authorized/obtained coverage. DMRs must be submitted to EPA using NetDMR for all relevant monitoring periods for which the facility was covered. NetDMR must also be used to report any failure to monitor during the regular reporting period using one of the available "no data indicator" codes (see Attachment).
3. Merrill Excavating, Inc. shall send an email to NetDMR_R1@epa.gov and to dever.mary@epa.gov, to notify EPA when all the missing monitoring results have been submitted.
4. Merrill Excavating, Inc. shall continue to complete and submit all DMRs by their required due dates under their permit.

This Order does not constitute a waiver or a modification of the terms and conditions of the permit. The permit remains in full force and effect. EPA reserves the right to seek any remedies available under Section 309 of the Act, 33 U.S.C. § 1319 for any violation cited in this Order. The Facility may seek federal judicial review of the Order pursuant to Chapter 7 of the Administrative

Procedure Act, 5 U.S.C. §§ 701-706. This Order shall become effective upon receipt by the Facility.

You may contact NetDMR_R1@epa.gov if you need help establishing an account in NetDMR or with submitting monitoring results through NetDMR.

If you have any questions regarding this Order, please contact Mary Dever-Putnam of my staff at 617-918-1717, or your attorney may contact Joshua Secunda, Senior Enforcement Counsel, at 617-918-1736.

Sincerely,

JAMES CHOW Digitally signed by JAMES CHOW
Date: 2025.02.10 16:35:06 -05'00'

James Chow, Director
Enforcement and Compliance Assurance Division

Electronic copy/copies

Mary Dever-Putnam, EPA
Joshua Secunda, EPA
Jeff Kopf, EPA
Alex Rosenberg, EPA
Teresa Ptak, NH DES

Attachment

EPA No Data Indicator Codes

Enclosures

NO DISCHARGE INDICATOR (NODI) CODES	
Code	Description
2	Operation Shutdown
3	Special Report Attached
7	No Influent
9	Conditional Monitoring - Not Required This Period
A	General Permit Exemption
B	Below Detection Limit/No Detection
C	No Discharge
E	Analysis Not Conducted/No Sample
F	Insufficient Flow for Sampling
I	Land Applied
N	Not Constructed
P	Lab Error or Invalid Test
Q	Not Quantifiable
R	Administratively Resolved
T	Environmental Conditions – Monitoring Not Possible
W	Dry Lysimeter/Well
X	Parameter/Value Not Reported