



Advocacy & Accountability

Representing over 3 million people in Massachusetts since 1985

November 28, 2023

Michele Barden
U.S. Environmental Protection Agency –
Region 1
5 Post Office Square, Suite 100 (06-1)
Boston, MA 02109
barden.michele@epa.gov

Claire Golden
Surface Discharge Program
Massachusetts Department of Environmental
Protection
150 Presidential Way
Woburn, MA 01801
massdep.npdes@mass.gov

RE: Comments on Draft Permit No. MA0103284 for the MWRA Deer Island Treatment Plant

Dear Ms. Barden and Ms. Golden:

The Massachusetts Water Resources Authority Advisory Board (the Advisory Board or the Board) appreciates the opportunity to comment on the draft National Pollutant Discharge Elimination System (NPDES) Permit No. MA0103284 (the Draft Permit) for the Massachusetts Water Resources Authority (MWRA) Deer Island Treatment Plant (DITP). The U.S. Environmental Protection Agency – Region 1 (EPA or the Region) noticed the Draft Permit for comment on May 31, 2023. That same day, the Massachusetts Department of Environmental Protection (MassDEP) also issued a 2023 Draft Massachusetts Permit to Discharge Pollutants to Surface Waters for DITP (the State Permit) that incorporates by reference Parts I.A-K and Part II of the Draft Permit. This letter similarly comments on the State Permit.

The Advisory Board, formed by the same legislation that created MWRA, represents and submits these comments on behalf of the communities served by MWRA.¹ MWRA ratepayers live in those communities and bear the costs associated with operating DITP and MWRA's sewer system. The Draft Permit attempts to regulate four of these communities (Boston (through the Boston Water and Sewer Commission (BWSC))), Cambridge, Chelsea and Somerville) that own and operate combined sewer systems (the CSO-responsible Co-permittees), and thirty-nine communities that own and operate sanitary sewer system (the Co-permittees).²

The Advisory Board harbors substantial concerns about how the Draft Permit (and, by extension, the State Permit) would inappropriately regulate DITP and the communities. The Draft Permit relies on generic prohibitions against violating water quality standards that, contrary to law, fail to define how MWRA and the communities must assure the protection of receiving water quality. The inclusion of forty-three communities as co-permittees exceeds EPA's authority in several respects and, in many instances, is inadequately explained in the Fact Sheet. Turning DITP's permit into a quasi-regional general permit for collection systems also creates the risk that the communities could incur liability for conduct for which they are not responsible. Unless EPA and MassDEP clarify the communities' and MWRA's responsibilities, DITP's permit could upset the longstanding and successful relationship among MWRA and the communities.

The Advisory Board also has substantial concerns about the Draft Permit's imposition of novel requirements to develop and implement major storm and flood event plans. These requirements mark a

¹ See Acts of 1984 ch. 372, § 23, 1984 Mass. Acts 805.

² Those thirty-nine Co-Permittees are listed in pages 1-4 of Appendix B to the Draft Permit and in Appendix B to the State Permit.



2 Griffin Way, Suite A, Chelsea, MA 02150



(617) 788-2050



mwra.ab@mwraadvisoryboard.com

mwraadvisoryboard.com

Matthew A. Romero
Executive Director



momentous change in NPDES permit requirements and have the potential to burden the communities' budgets and capital planning processes. Yet Neither EPA nor MassDEP has provided much of any explanation for these major new programmatic requirements. Moreover, both agencies have failed to explain how they have statutory authority to impose long-term resiliency planning and capital project implementation obligations through this permit.

This failure to identify legal authority is unsurprising because none exists. These planning requirements attempt to regulate facilities and assets untethered to any specific discharge, are inconsistent with the NPDES permit's five-year term and the certainty Congress intended to afford NPDES permittees. In addition, EPA has failed provide permittees and the general public with a cost-benefit analysis of these novel and substantial requirements, which will take far longer than the 12-month deadlines that the Draft Permit gives MWRA and the communities to develop and begin to implement major storm and flood plans. EPA should also assess whether communities' existing planning efforts address or could be adapted to address the issues EPA seeks to remedy through the major storm and flood event planning requirements in the Draft Permit.

Finally, requirements for permittees and co-permittees to develop adaptation plans that have appeared in NPDES permits issued subsequent to issuance of the Draft Permit suffer from many of the same legal infirmities identified above with respect to major storm and flood event planning.

I. The Draft Permit's Generic Prohibitions Against Violating Water Quality Standards Violate the Act and EPA's Regulations.

The Draft Permit's vague, open-ended requirements to meet water quality standards (WQS) without specifying *how* MWRA and the communities are supposed to do so violates the Clean Water Act (CWA or the Act). Rather than prescribe concrete pollutant limits or operational requirements to protect water quality, Parts I.A.2, I.B.2.a, and I.B.2.f (collectively, the Generic Prohibitions) make water quality standards directly enforceable against MWRA and the CSO-responsible Co-Permittees. In doing so, the Generic Prohibitions will force MWRA and the communities to guess about how to meet applicable water quality standards, all while remaining exposed to an after-the-fact enforcement action if EPA or a citizen plaintiff disagrees.

The Act and EPA's regulations do not allow the Region to place MWRA and the communities in this untenable position and the Generic Prohibitions must be removed from the final permit. To the extent that permit terms in addition to technology-based effluent limitations (TBELs) are needed to attain WQS,³ the CWA demands that NPDES permits set limitations—distinct from the WQS themselves—that the Agency has determined to be adequate to protect WQS. Consistent with the statute, the NPDES permitting regulations require the Region to translate applicable WQS into concrete permit limits rather than make them directly applicable to dischargers. The Generic Prohibitions are also inconsistent with the *Combined Sewer Overflow (CSO) Control Policy*, 59 Fed. Reg. 18688 (Apr. 19, 1994) (the CSO Policy), which specifically requires permit writers to derive permit limits to protect water quality using EPA's regulatory process for translating WQS into

³ The Advisory Board supports the use of narrative—rather than numerical—TBELs for the CSOs authorized under the Draft Permit as described in MWRA's separate comments.





discharger-specific limitations if limits in addition to TBELs are needed. Retaining the Generic Prohibitions in the final DITP permit would violate these requirements.⁴

A. The Act Does Not Allow EPA to Make Water Quality Standards Directly Enforceable Against MWRA and The Communities.

The Region’s inclusion of the Generic Prohibitions in the Draft Permit disregards its obligation under the Act to tell MWRA and the communities *how* they must control their discharges to ensure attainment of WQS. Section 301(b)(1) of the Act requires EPA to set “limitation[s] ... necessary to meet water quality standards.” This language draws an explicit distinction between “limitations” that EPA may impose in permits and the WQS they protect. The Generic Prohibitions, however, erase this distinction by making whether receiving waters meet WQS the basis for determining whether the Permittee and Co-Permittees are complying with the Permit. The Region may not ignore the Act’s directive to protect WQS using concrete “limitations” by making WQS directly enforceable.

To the extent that the Region believes the Generic Prohibitions are necessary to ensure the attainment of WQS, they are also incapable of serving this function and invalid under the CWA. In *NRDC v. EPA*, the Second Circuit invalidated a provision in the Vessel General Permit that—like the Generic Prohibitions—imposed a general duty to meet applicable WQS. 808 F.3d 556, 568 (2d Cir. 2015) (permit required control of discharges “as necessary to meet applicable water quality standards in the receiving water body”). The court found that a general mandate not to violate WQS “is insufficient to give [dischargers] guidance as to what is expected or to allow any permitting authority to determine whether a [discharger] is violating [WQS].” *Id.* at 578. This lack of guidance—a failure to specify pollutants limits or other specific requirements—led the court to conclude that the generic prohibition failed to meet the Act’s “requirement that NPDES permits ensure compliance with the CWA.” *Id.* at 580. The Generic Prohibitions provide no guidance to MWRA or the communities as to how they must protect WQS, such that they suffer from the same failure to provide direction that was fatal to the Vessel General Permit.

B. The NPDES Permitting Regulations Do Not Allow the Region to Abandon Its Obligation to Set Discharger-Specific Limits Translated from WQS.

By imposing the Generic Prohibitions, EPA also failed to follow its own rules that prescribe only one mechanism for NPDES permits to supplement TBELs to protect water quality standards: setting discharger-specific water quality-based effluent limitations (WQBELs). See 40 C.F.R. § 122.44(d)(1)(i)-(vii). Under those regulations, EPA must follow a two-step process for setting limits to protect water quality:

- **First Step:** Determine whether a WQBEL is needed by conducting a reasonable potential analysis. This analysis entails an assessment of whether discharges, taking into account existing permit limits and other sources of pollution, “will cause, have the reasonable potential to cause, or contribute to an

⁴ EPA and MassDEP have also failed entirely to explain or justify the Generic Prohibitions’ inclusion in the Draft Permit and State Permit, respectively. Neither the Fact Sheet nor the Supplemental Fact Sheet explain the reason for the Generic Prohibitions’ inclusion or how either agency possesses authority to impose them. In failing to do so, both agencies violated their obligations to explain the legal and substantive basis for permit terms. See 40 C.F.R. § 124.8 (fact sheet must include a summary “of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record.”); 314 CMR 2.05(3)(c) (fact sheet must include a “brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions”).





excursion above any State water quality standard ...” 40 C.F.R. § 122.44(d)(1)(i). This analysis entails characterization of “both the effluent discharged by the facility ... and the receiving water for that discharge,” and often involves modeling or using other analytic methods that must be documented in the record. EPA, *NPDES Permit Writers’ Manual* (“*NPDES Manual*”) pp. 6-12, -30 (Sep. 2010).

- **Second Step:** If reasonable potential exists, the permit writer develops one or more WQBELs for pollutants that could cause WQS exceedances. The regulations direct permit writer to set each WQBEL at a level that is “derived from, and comply with all applicable” WQS. 40 C.F.R. § 122.44(d)(1)(vii)(A). EPA guidance specifies that deriving and setting a WQBEL requires an analysis of data and other relevant information. *See NPDES Manual* p. 6-35.

The CSO Policy, which the Region is obliged to follow in writing the Draft Permit’s provisions addressing combined sewers,⁵ makes clear that EPA must follow this process when it sets limits in NPDES permits that regulate CSOs. In writing a Phase II permit like the Draft Permit, the Policy requires the Region to supplement the permit’s TBELs by writing WQBELs “under 40 C.F.R. 122.44(d)(1),” the regulation that requires EPA to conduct a reasonable potential analysis and derive discharger-specific limits. CSO Policy § IV.B.2.c., 59 Fed. Reg. at 18696. The Policy further expects that these limits will be not be open-ended mandates. *See id.*

The region’s proposal of the Generic Prohibitions, however, reflects a failure to follow the CSO Policy’s and regulations’ requirement that they follow these procedures for setting WQBELs if limits beyond the permit’s TBELs are required. The record is devoid of any analysis—or any substantive justification whatsoever—identifying the need for the Generic Prohibitions. The Region conducted no reasonable potential analysis to support these broad prohibitions, nor are they in any way “derived from” applicable WQS. The Region has done no analysis or other work to translate WQS into a discharger-specific limit, which is what EPA’s guidance has long understood deriving a WQBEL to mean. In total, the Region’s inclusion of the Generic Prohibitions reflects a failure to heed its permit writing obligations concerning water quality.

C. The Generic Prohibitions’ Inclusion in the State Permit is Inconsistent with MassDEP’s Regulations.

For these reasons, MassDEP’s incorporation of the Generic Prohibitions in the State Permit violates the regulations for Surface Water Discharge Permits. MassDEP may not issue a permit if its “conditions ... do not provide for compliance with the applicable requirements of ... the Clean Water Act ... and the NPDES regulations at 40 CFR Part 122.” 314 CMR 3.07(1). The Draft Permit, as explained above, runs afoul of the CWA’s and the NPDES regulations’ requirement to protect WQS using only concrete, discharger-specific permit requirements.

The Generic Prohibitions’ inclusion in the State Permit further conflicts with MassDEP’s obligations under its own regulations to the extent that MassDEP believes they are necessary to protect WQS. MassDEP may not issue a permit in instances where “the imposition of conditions cannot ensure compliance with the applicable water quality requirements in all affected States.” 314 CMR 3.07(4); *see also* 314 CMR 3.11(3) (“all permits shall contain limits which are adequate to assure the attainment and maintenance of the water quality

⁵ *See* 33 U.S.C. § 1342(q)(1).





standards”). As explained above and as held by the Second Circuit, the Generic Prohibitions’ lack of concrete requirements for protecting water quality make them—per se—incapable of meeting this requirement.

MassDEP also failed to comply with its regulations’ requirements for considering site- and discharger-specific information when setting permit limits to protect water quality. The regulations command MassDEP to set permit limits to protect water quality after taking into consideration “natural background conditions, existing discharges, the protection of existing downstream uses, and the attainment and maintenance of beneficial uses in downstream waters.” 314 CMR 3.11(3). The Generic Prohibitions circumvent these mandatory analyses by making WQS directly applicable to dischargers. MassDEP cannot rely on these broad, vague provisions to shirk its obligations to set tailored limits that apprise MWRA and the communities of their compliance obligations.

II. Inclusion of Sanitary Sewer Communities as Co-Permittees

For the first time, EPA and MassDEP are attempting to regulate the thirty-nine sanitary sewer communities by subjecting them to regulation under DITP’s permit. This radical change to these communities’ regulatory obligations exceeds both agencies’ authority and, as explained in Section IV below, threatens to disrupt the longstanding relationships between MWRA and the communities it serves. The agencies have also sought to impose this new regime without the communities’ consent by unlawfully waiving their permit application requirements.

More troublingly, MassDEP has provided no explanation for its decision to regulate the Co-permittees under the State Permit. The Supplemental Fact Sheet supporting the State Permit provides no justification at all for MassDEP’s decision to regulate the sanitary sewer communities as Co-permittees. MassDEP has an obligation to provide a “summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions” in its fact sheets but has provided none for including these Co-Permittees in the State Permit. 314 CMR 2.05(3)(c). In order for the Advisory Board and the communities to have an adequate opportunity to comment on the State Permit, it is critical that MassDEP explain its reasons for this major action and open a new comment period.

A. The Agencies’ Lack of Jurisdiction to Regulate the Communities

1. The Federal Draft Permit

The Draft Permit’s inclusion of the sanitary sewer communities as Co-permittees exceeds the Region’s jurisdiction. The Act and case law limit EPA’s authority under the NPDES program to regulating “the discharge of [a] pollutant.” 33 U.S.C. § 1311(a). In the absence of such a discharge, these communities are “neither statutorily obligated to comply with EPA regulations for point source discharges, nor are they statutorily obligated to seek or obtain an NPDES permit.” *Waterkeeper Alliance, Inc. v. EPA*, 399 F.3d 486, 504 (2d Cir. 2005); *Nat’l Pork Producers Council v. EPA*, 635 F.2d 738, 751 (5th Cir. 2011) (“There must be an actual discharge into navigable waters to trigger the CWA’s requirements and the EPA’s authority.”).

The communities’ conveyance of flows downstream to DITP, however, is not a discharge that triggers EPA’ jurisdiction. A regulated discharge requires an “addition of any pollutant to navigable waters from [a] point source” 33 U.S.C. § 1362(12)(A); 40 C.F.R. § 122.2. The communities’ sanitary sewer systems, however, add no pollutants to navigable waters. Instead, they add pollutants only to MWRA’s treatment works, as EPA concedes in the Fact Sheet. Fact Sheet 20 (“The Massachusetts municipalities in Appendix A own and





operate wastewater collection systems that *discharge flows to the DITP*” (emphasis added)). The only addition of pollutants to navigable waters occurs far downstream, when DITP discharges treated effluent from Outfall T01.⁶

EPA’s rules reinforce the conclusion that the communities do not have discharges that trigger the Region’s CWA authority. The regulatory definition of a “discharge of a pollutant” explains that the term encompasses releases “through pipes, sewers, or other conveyances owned by a State, municipality, or other person *which do not lead to a treatment works*” 40 C.F.R. § 122.2. This language would only be necessary if the obverse is true: flows conveyed through municipally-owned sewers that *do* lead to a treatment works are not discharges.

The handful of cases holding “that persons who discharge pollutants through conveyances owned by another entity may be subject to NPDES permit requirements” provides no cure of EPA’s lack of jurisdiction. *In re Charles River Pollution Control Dist.*, 16 EAD 623, 636 (EAB 2015). In each of these cases, the alleged discharges passed through point sources that were not treatment works and provided no treatment prior to discharge.⁷ By contrast, the communities’ flows receive treatment at DITP—a treatment works—prior to MWRA discharging to Massachusetts Bay. Under the Act and EPA’s regulations, the communities’ flows are not discharges that EPA may regulate.

2. The State Permit

For these reasons, MassDEP regulation of the Co-permittees in the State Permit is inconsistent with the regulations governing Surface Water Discharge Permits. The Surface Water Discharge Permit regulations, like CWA, generally tie their permit requirement to persons who “discharge pollutants to surface waters” 314 CMR 3.03(1). And much like the federal program, the regulations define a “discharge” as an “addition of any pollutant to waters of the Commonwealth,” and explain that a discharge includes “discharges through ... sewers, or other conveyances owned by a ... municipality ... which do not lead to a POTW.”

The sanitary systems’ conveyance of flows to DITP involves no addition of pollutants to any waters of the Commonwealth. They add flows only to the downstream POTW, a circumstance that the regulations indicate is not a discharge that requires a permit.

B. The Co-Permittees Cannot Be Regulated by Deeming Them Part of the Same POTW as DITP.

1. The Federal Draft Permit

⁶ The Region’s assertion that satellite sewer systems’ lack of proximity to the “the ultimate discharge point is not material to the question of whether it ‘discharges’” is inconsistent with the Supreme Court’s interpretation of the Act. Fact Sheet, Appendix D at 13. In *County of Maui v. Hawaii Wildlife Fund*, the Court explained that “[t]ime and distance traveled are obviously important” to determining whether a regulated discharge has occurred. 140 S. Ct. 1462, 1476 (2020).

⁷ See *United States v. Ortiz*, 427 F. 1278, 1280 (10th Cir. 2005) (discharges conveyed through a storm sewer); *San Francisco Baykeeper v. W. Bay Sanitary Dist.*, 791 F. Supp. 2d 719,769-70 (N.D. Cal. 2011) (sanitary sewer overflows discharged through a storm sewer); *United States v. Velsicol Chem. Corp.*, 438 F. Supp. 945, 946-47 (W.D. Tenn. 1976) (alleged discharges conveyed through a storm sewer).





The Region cannot cure its lack of jurisdiction by lumping the sanitary sewer communities in with the larger facility—the publicly-owned treatment works (POTW) that includes DITP—covered by the Draft Permit.⁸ EPA’s regulations define a POTW to be “a treatment works ... which is owned by a *State or municipality*—expressed only in the singular. 40 C.F.R. § 403.3(q) (emphasis added). Similarly, the definition uses only the singular to refer to “*the municipality* ... which has jurisdiction over Indirect Discharges to and discharges from such a treatment works.” *Id.* (emphasis added). This deliberate use of the singular means that a POTW can only be owned by a single municipality, such that the communities’ sewer systems cannot be part of same POTW as DITP.

The regulatory definition of a “discharge” confirms that the Region has improperly expanded the definition of POTW to span multiple communities’ sewer systems. That definition covers “discharges through pipes, sewers, or other conveyances owned by ... a municipality ... which do not lead to a treatment works.” 40 C.F.R. § 122.2. If a satellite collection system could be part of a POTW, there would never be circumstance where a municipally-owned sewer could “lead to a treatment works.” Instead, this provision would refer to municipally-owned sewers “which are not *part of* a treatment works.” The Region’s attempt to make the Co-Permittees part of the same POTW as DITP cannot be reconciled with its own regulations.

Even if the Co-permittees’ systems were part of the same POTW as DITP, this conclusion would not empower EPA to regulate these communities in the absence of a discharge. When a facility requires an NPDES Permit, the Region’s authority extends only to its actual discharges. *See NRDC v. EPA*, 859 F.2d 156, 170 (D.C. Cir. 1988) (“the CWA does not empower the agency to regulate point sources themselves; rather, EPA’s jurisdiction ... is limited to regulating the discharge of pollutants.”). Even if the communities’ sewers systems were part of the same POTW as DITP, EPA lacks authority to regulate their non-discharging activities.

2. The State Permit

MassDEP similarly cannot deem the communities’ sewer systems part of the same POTW as DITP under its permitting regulations. The Surface Water Discharge Permit regulations—like their federal counterpart—define a POTW by reference to a single public entity rather than several. *See* 314 CMR 3.02 (“any device or system used in the treatment ... of municipal sewage ... which is owned by a *public entity*.” (emphasis added)). Having chosen to define a POTW by reference to a single owner, MassDEP cannot include satellite systems owned by thirty-nine communities in the same POTW as DITP.

C. Permit Application Requirements Cannot Be Waived In Toto.

Even if EPA and MassDEP could regulate the Co-permittees in DITP’s permit, issuance of a permit to thirty-nine communities that never submitted permit applications would violate their respective permitting regulations. EPA’s rules specify that “[a]ny person who discharges ... must submit a complete application” 40 C.F.R. § 122.21(a)(1). The Region then “shall not issue a permit before receiving a complete application for a permit” Without any permit applications from the sanitary sewer communities in hand, EPA cannot issue a permit imposing conditions on them.

⁸See Fact Sheet, App’x D at 10 (EPA may regulate satellite communities because they are part of “facilities subject to the NPDES program”); *id.* (“NPDES regulations similarly identify the ‘POTW’ as the entity subject to regulation.”).





EPA may not sidestep this limit on its authority by waiving application requirements for the Co-permittees. *See* Fact Sheet 12, 21. EPA’s March 8, 2023 letters to the sanitary sewer communities claimed that 40 C.F.R. § 121.21(j) authorized the Region to waive permit application requirements in their entirety. *See* Attachment A (Sample Waiver Letter). The Region’s waiver authority under this provision, however, extends only “to any requirement under this paragraph [*i.e.*, the POTW-specific requirements in § 122.21(j)].” 40 C.F.R. § 122.21(j). Thus, EPA only could have waived discrete information requirements for treatment works, not the fundamental requirement that a regulated entity submit a permit application. *Accord* 64 Fed. Reg. 42434, 42440 (Aug. 4, 1999) (“EPA proposed the introductory paragraph of § 122.21(j) to allow the Director to waive any requirement in *paragraph (j)*” (emphasis added)). The Region violated its own regulations by attempting to waive the sanitary sewer communities’ obligation to submit applications.

MassDEP similarly violated its regulations by seeking to regulate the Co-permittees in the State Permit without having received permit applications from them. The Surface Water Discharge Permit rules specify that “[a]ny person required to obtain a permit ... shall complete and submit the appropriate application form(s).” 314 CMR 3.10(1); *see also* 314 CMR 2.03(1) “Any person required to obtain an individual permit ... shall apply to the Department.”). MassDEP then “shall not issue a permit before receiving a complete application ...” 314 CMR 3.10(4); *see also* 314 CMR 3.02(2) “The Department shall not issue an individual permit ... before receiving a complete application.”).

Under this framework, MassDEP cannot issue a permit that regulates the Co-permittees. None of them have submitted applications for Surface Water Discharge Permits. MassDEP’s regulations, moreover, do not offer the department *any* authority to waive permit application requirements.

III. Inclusion of Combined Sewer Communities as CSO-Responsible Co-Permittees.

A. Failure to Justify the Combined Sewer Communities’ Inclusion.

The Draft Permit and State Permit take the momentous step of making BWSC, Cambridge, Chelsea, and Somerville CSO-responsible Co-permittees without their consent or any substantive justification. Rather than explain the decision to include these communities in the Draft Permit, the Fact Sheet simply declares that their inclusion implements a “general practice ... to integrate treatment plant and connected CSO authorizations into a single permit.” Fact Sheet at 109, 128. The Fact Sheet, however, provides neither documentation nor examples of this so-called practice, particularly in situations where the treatment plant and combined sewers are operated by different municipalities or authorities.

Additionally, Appendix D provides no justification for the CSO-responsible Co-permittees’ inclusion in the Draft Permit. The document only addresses co-permitting *sanitary* sewer systems. *See, e.g.*, Fact Sheet Appx. D at 4-7 (discussing sanitary sewer systems at length). Additionally, its central justification—that co-permitting satellite sewer systems is necessary to ensure that they are controlled under NPDES permits—is inapplicable to combined sewer systems. *See, e.g., id.* at 17 (“the addition of the satellite systems as co-permittees is necessary to ensure collection system operation and maintenance”). The CSO-responsible Co-permittees have historically been regulated under individual NPDES permits, and the Region has provided no explanation for why combining their permits with DITP’s is beneficial to the four CSO-responsible Co-permittees, the environment, or the general public. Without any explanation in the Fact Sheet, the Advisory Board and its member communities lose a meaningful opportunity to comment on the Draft Permit.





The Supplemental Fact Sheet supporting the State Permit provides even less justification for MassDEP's decision to consolidate the CSO-responsible Co-Permittees' authorizations into DITP's permit. MassDEP has an obligation to provide a "summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions" in its fact sheets. 314 CMR 2.05(3)(c). Having provided none for including the CSO-responsible Co-Permittees in the State Permit, MassDEP has deprived the Advisory Board and the communities of a meaningful opportunity to comment on the State Permit and violated its regulations.

It is particularly critical that the agencies justify their decisions to force BWSC, Cambridge Chelsea, and Somerville into a co-permittee arrangement because this action departs from EPA guidance on writing permits for CSOs. Since 1995, EPA guidance has allowed permit writers to regulate under a single NPDES permit treatment plants and combined sewer systems (named as co-permittees) operated by different municipalities. EPA, *Combined Sewer Overflows – Guidance for Permit Writers* p. 2-8 to-9 (Sep. 1995). The guidance, however, cautions that "[s]uch co-permittee arrangements are subject to consent by the respective co-permittees." *Id.* at p. 2-9. The agencies must either obtain the CSO-responsible Co-permittees consent to being covered under the Draft Permit and State Permit or explain why they have decided to depart from longstanding, national guidance on this issue.

B. EPA's Regulations Do Not Allow the Region to Consolidate the Combined Sewer Communities' NPDES Permits with DITP's.

In addition to being inadequately explained, the Region's inclusion of the combined sewer communities in the Draft Permit is inconsistent with EPA's permitting regulations. The NPDES permitting rules allow for the consolidation of permit applications, but only under specific circumstances: (1) "[w]henever a facility or activity requires a permit under more than one statute," or (2) "whenever a facility or activity requires permits from both EPA and an approved State" 40 C.F.R. § 124.4(a)(1), (c)(2).

These circumstances do not exist here. The Region is attempting to consolidate multiple *federal* permits all issued under the same statute, rather than consolidate permits issued under multiple statutes or multiple jurisdictions. Moreover, the combined sewer communities' CSOs are not part of the same "facility or activity" as DITP. These discharges are distinct from DITP's and are not, by definition, part of the same POTW as DITP. See *Montgomery Env'tl Coalition v. Costle*, 646 F.2d 568, 592 (D.C. Cir. 1980) (EPA appropriately interpreted the definition of treatment works to exclude CSOs).

IV. The Draft Permit and State Permit Do Not Define the Responsibilities of MWRA, the CSO-responsible Co-permittees and the Co-permittees with Adequate Clarity.

Even if EPA and MassDEP could lawfully structure DITP's permit to include both the CSO-responsible Co-Permittees and the Co-Permittees, neither the Draft Permit nor the State Permit define these parties' obligations with clarity sufficient to ensure that they are not held liable for conduct or events over which they have no control. The Advisory Board appreciates the attention that the Region has dedicated to this issue, as evidenced by the language appearing at the beginning of Part I.E.2 and the Region's invitation for comments on "the clarity of the several liability of" MWRA and the communities. Fact Sheet 21.

The Draft Permit and the State Permit, however, are not sufficiently clear about MWRA's and the communities' respective responsibilities and the potential liability that would flow from non-compliance. Part I.B and the Draft Permit's cover page, for instance, do not explain that MWRA and the CSO-responsible Co-





permittees are severally liable for their own activities and sewer systems. For example, one community should not be liable for another's failure to implement its Nine Minimum Controls, but the Draft Permit does not make this clear. Attachment B contains proposed revisions to the Draft Permit, including the cover page and Part I.B, that provide adequate clarity concerning MWRA's and the CSO-responsible Co-permittees' respective responsibilities and liabilities.

The cover page and Part I.E.2 must also be revised to provide MWRA and the communities with absolute clarity that MWRA is not responsible for the communities' noncompliance and vice versa. Any final permit issued by EPA and MassDEP must make clear that the communities cannot be held liable for violations of permit requirements applicable to DITP; the Draft Permit and State Permit fail to do this. Language in Part C, Part D, and Part E must also be clarified further to remove any ambiguity regarding the several liability of MWRA, the CSO-responsible Co-permittees, and the Co-permittees. Attachment B contains proposed revisions to the Draft Permit, and Attachment C contains proposed revisions to the State Permit to resolve these remaining ambiguities.

It is particularly critical that EPA and MassDEP clearly delineate these responsibilities to avoid disrupting the longstanding relationship between MWRA and the communities, and among the communities themselves. Each community and MWRA have their own responsibilities with respect to wastewater treatment, and collection system management and compliance.⁹ Under its organic statute, MWRA must be accountable to the communities, rather than a manager or regulator of the satellite sewer systems it serves. An NPDES permit or Surface Water Discharge Permit that could make MWRA liable for the communities' conduct—or vice versa—could threaten that relationship.

Even if MWRA and the communities did not have this unique relationship, basic principles of fairness would demand that the agencies avoid confusion over MWRA's and the communities' respective obligations and liability. Noncompliance with an NPDES permit can result in both criminal and civil liability under federal law, and even private actors can sue to enforce an NPDES permit.¹⁰ See 33 U.S.C. § 1319 (providing for federal enforcement of NPDES permits); *id.* § 1365 (providing for citizen enforcement). Against this backdrop, EPA's guidance for permit writing specifies “[e]ach permit must be written clearly and unambiguously so that compliance can be tracked effectively and the permit can be enforced if violations occur.” *NPDES Manual* p. 11-21.

V. EPA Should Eliminate or Significantly Modify the Draft Permit's Major Storm and Flood Events Planning Requirements.

As representatives of the ratepayers subject to climate change challenges, the Advisory Board understands the need for resilient practices to address those challenges. The Advisory Board has long advocated for policies and practices that are both environmentally sound and ratepayer equitable – “Green and Fair.” To that end, we look forward to working with state and federal regulators and other stakeholders to address climate preparedness in a technically-sound, legally-compliant, and economically-fair manner. Our

⁹ See Acts of 1984 ch. 372, § 26(d), 1984 Mass. Acts 809 (each local body served by MWRA has “the charge and control of the respective water, waterworks and sewer works owned and used by said local body and not in the ownership, possession and control of [MWRA].”).

¹⁰ Failure to comply with a Surface Water Discharge Permit can similarly result in civil and criminal liability under the Massachusetts Clean Waters Act. See M.G.L. c. 21, § 42.





Advocacy & Accountability

Representing over 3 million people in Massachusetts since 1985

shared goal is protecting invaluable public resources while providing affordable, reliable wastewater and sewer services into the future.

That said, Part I.E.1.a and I.E.2.(e)(2) (the Major Events Planning Provisions) of the Draft Permit impose novel and onerous long-term obligations to develop and implement resiliency plans that would effectively hijack the communities' long-term planning efforts and burden their capital budgets. Far beyond requiring adequate operation and maintenance of existing facilities and sewer systems, these new provisions could require permittees to relocate existing assets or even construct new ones.

Part I.E. requires MWRA and the communities to prepare major storm and flood events plans for their wastewater treatment facilities and sewer systems, respectively, that will culminate in implementation of mitigation projects. These plans, which the Draft Permit requires to be updated every five years, must include (1) an asset vulnerability evaluation; (2) a systematic vulnerability evaluation, and (3) a mitigation measures alternatives analysis, and they must take into consideration future conditions, "specifically the midterm (i.e., 20-30 years) and long-term (i.e., 80-100 years) and, in the case of sea level change, the plan must consider sea level change." Draft Permit Part I.E.1.a, 2.e.(2). The Draft Permit requires that these plans will be implemented and contemplates that they will materially impact MWRA's and the communities' capital budgets. *See, e.g.*, Draft Permit at 35 n. 16.

The Advisory Board would expect that such a momentous, potentially burdensome new program would be well explained and amply justified in the Fact Sheet and Supplemental Fact Sheet. It is not. To be clear, the Advisory Board understands and appreciates the importance of addressing climate change and its impacts on Massachusetts communities and beyond. But those efforts must take place within the appropriate statutory and regulatory frameworks.¹¹ In announcing these new programmatic requirements, EPA has provided only a conclusory justification, and MassDEP has provided none. In order to give the Advisory Board and the communities an informed opportunity to comment, the agencies need to explain how they have statutory authority to impose the Major Events Planning Provisions. In addition, the Advisory Board and the public deserve a cost-benefit analysis of these novel and substantial requirements, which will take far longer than the Draft Permit's 12-month deadlines to develop and implement. Finally, EPA should assess whether existing planning efforts address or could be adapted to remedy the issues EPA seeks to address through the Major Events Planning Provisions.¹²

A. The Fact Sheet Provides Inadequate Support for These New Programmatic, Capital Planning Obligations.

In announcing new requirements that will impact MWRA's and the communities' planning and capital budgeting processes, EPA and MassDEP failed to provide the public with the information they need to make

¹¹ For example, EPA cites to a recent City of Leominster riverbank stabilization project as an example of the process that EPA envisions for plans to address climate change through the addition of these new requirements. Response to Comments, NPDES Permit No. MA010818 at 8 (Sept. 27, 2023). While that project may prove helpful in addressing climate change impacts, it is not a project undertaken as an NPDES permit requirement. That project took place under a FEMA Hazard Mitigation Grant Program that the municipality used to protect a main sewer line it had identified as vulnerable to flooding and failure. *Id.* For the reasons set forth herein, requiring capital improvements of this type would be inappropriate in an NPDES permit, and there are other programs more well-suited for those changes.

¹² Such an assessment would also help EPA and MassDEP articulate to the public what is missing from the Fact Sheet and Supplemental Fact Sheet: the objectives and basic reasons for creating this new program in DITP's permit.





informed comments. In writing a fact sheet, EPA must address “the significant factual, legal, methodological and policy questions considered in preparing the draft permit.” 40 C.F.R. § 124.8(a). With respect to the Major Events Planning Provisions, the Fact Sheet falls far short of meeting this requirement, offering only conclusory assertions that these new planning and mitigation project requirements are needed “to ensure the proper operation and maintenance of” of DITP and regional sewers. Fact Sheet at 102-03.

These conclusions cannot be squared with the Draft Permit’s requirements and leave the reader to wonder what “factual, legal, methodological, and policy questions” EPA considered when it developed these new risk mitigation provisions. The Major Events Planning Provisions go far beyond “proper operation and maintenance” of a treatment plant and sewers; they call for the potential to relocate facilities or even build entirely new infrastructure. EPA’s justification cannot support the requirement it seeks to impose.

The Fact Sheet’s terse explanation also leaves the public to wonder what methodological and policy questions informed EPA’s decision to create these new planning obligations. Among other policy questions and factual issues, EPA must explain why NPDES permits are the appropriate vehicle for imposing climate change resiliency requirements on regional sewer systems, why the plans must consider long-term risks as far as 100 years out (more than twenty times longer than the term of any NPDES permit), and why plans must consider “extreme sea level change.” EPA’s regulations require it to address these and other important policy and methodological issues associated with these burdensome new planning obligations. The agency has failed to do so here, thereby depriving the Advisory Board, the communities, and the public of a meaningful opportunity to comment on these new permit terms.

MassDEP similarly failed even to provide the cursory explanation that the Fact Sheet offers. The Supplemental Fact sheet provides no explanation for why MassDEP believes it would be appropriate to impose these planning and implementation obligations in Surface Water Discharge Permit. By failing to do so, MassDEP violated its own obligation to describe “the significant factual, legal, methodological and policy questions considered in preparing the draft permit.” 314 CMR 2.05(3).

B. The Draft Permit’s Major Events Planning Provisions Improperly Regulate Facilities and Assets, Not Discharges.

The Fact Sheet also fails to explain how the CWA authorizes EPA to use an NPDES permit to impose planning obligations that could culminate in MWRA or the communities having to relocate infrastructure or even build new facilities. In its cursory explanation for these new programmatic obligations, EPA does not once cite the statute or describe how the CWA empowers the agency to impose these wide-ranging requirements as part of the NDPEs program. *See* Fact Sheet 101-03.

The Advisory Board can only surmise that EPA provided no explanation because the CWA does not authorize the Major Events Planning Provisions. The CWA allows NPDES permits to impose only those conditions necessary to ensure compliance with the CWA’s requirements for discharge quality.¹³ Courts have

¹³ *See* 33 U.S.C. § 1342(a)(2) (limiting EPA authority to impose permit requirements to those terms “that assure compliance with the requirements of paragraph (1) of this section,” referring to 33 U.S.C. §§ 1311, 1312, 1326, 1317, 1318, and 1343).





Advocacy & Accountability

Representing over 3 million people in Massachusetts since 1985

repeatedly held that the CWA limits EPA’s authority to only regulating discharges; EPA cannot use NPDES permits to regulate other aspects of a discharging facility.¹⁴

The Major Events Planning Provisions, however, reach well beyond EPA’s authority to regulate discharge quality. The Draft Permit’s provisions for broad ranging evaluations of asset location and vulnerability—and the implementation of potentially costly capital projects to address them—has no apparent relationship to assuring compliance with applicable effluent limitations. Moreover, the Major Events Planning Provisions even contemplate that MWRA or the communities may need to construct “remote locations” or “[r]elocate facilities to higher elevations.” Draft Permit Part I.E.2.e.(2)i.(c)(ii), (iv). Such requirements at their heart seek to regulate MWRA’s and the communities’ facilities (and capital planning processes), not their discharges. EPA’s authority to issue NPDES permits does not extend this far, and the Major Events Planning Provisions should be removed from any final permit.¹⁵

EPA cannot cure its lack of authority to impose these major storm and flood event requirements by invoking 40 C.F.R. § 122.41(d) and (e). *See* Fact Sheet 101. These regulations do not confer on EPA authority it otherwise lacks, and nothing in either regulation authorizes a permit writer to impose the types of long-term planning and capital project development that the Major Events Planning Provisions impose. 40 C.F.R. §122.41(d) requires a permittee to take all reasonable steps to minimize or prevent any discharge in violation of the permit with a reasonable likelihood of adversely affecting human health or the environment. This provision applies only where there is a discharge in violation of the permit, which is not at issue here.

40 C.F.R. § 122.41(e) similarly cannot support the Draft Permit’s attempt to require MWRA and the communities to develop and implement plans that may ultimately necessitate, among other things, the relocation of existing infrastructure or the construction of entirely new facilities. This provision imposes an obligation only to operate and maintain the equipment and systems a permittee uses to comply with its NPDES permit. Nothing in that regulation authorizes EPA to direct a permittee to undertake capital construction projects or relocate equipment or systems that it uses to comply. Rather, that rule directs permittees to maintain equipment and systems they use to comply with express terms of their NPDES permits.¹⁶ EPA’s attempt to use this narrow regulation to justify requiring permittees to acquire or build new systems and equipment, perhaps in locations far from existing facilities or assets, simply cannot withstand scrutiny.

¹⁴ *See Waterkeeper All., Inc. v. U.S. E.P.A.*, 399 F.3d 486, 505 (2d Cir. 2005) (“[T]he Clean Water Act gives the EPA jurisdiction to regulate and control only *actual* discharges—not potential discharges, and certainly not point sources themselves.”); *Natural Resources Defense Council v. EPA*, 859 F.2d 156, 170 (D.C.Cir.1988) (“[T]he [Clean Water Act] does not empower the agency to regulate point sources themselves; rather, EPA’s jurisdiction under the operative statute is limited to regulating the discharge of pollutants.”); *see also Iowa League of Cities v. E.P.A.*, 711 F.3d 844, 877 (8th Cir. 2013) (“effluent limitations are restricted to regulations governing ‘discharges from point sources into navigable waters.’” (citing 33 U.S.C. § 1362(11))).

¹⁵ The Major Event Planning Provisions are also improper to the extent they will intrude on or govern the communities’ decisions concerning the siting of wastewater treatment and conveyance facilities. By doing so, they would represent EPA impinging—without clear statutory authority to do so—on land use questions typically reserved to states and local governments under the Constitution. *See, e.g., Rapanos v. United States*, 547 U.S. 715, 738 (“Regulation of land use ... is a quintessential state and local power.”) (Scalia, J., concurring); *Hess v. Port Auth. TransHudson Corp.*, 513 U. S. 30, 44 (1994) (“[R]egulation of land use [is] a function traditionally performed by local governments.”).

¹⁶ *See American Canoe Ass’n v. Dist. of Columbia Water and Sewer Auth.*, 306 F. Supp.2d 30, 46 (D.D.C. 2004) (citing NPDES Permit Writers’ Manual for proposition that 40 C.F.R. § 122.41(e) “only requires permittees to maintain equipment in order to comply with other *express* permit provisions”).





C. The Major Events Planning Provisions' Decades-Long Planning Horizons Are Inconsistent with the CWA's Five-Year Terms for NPDES Permits and the Certainty Provided by the CWA's Permit Shield.

The Clean Water Act sets a five-year term for NPDES permits.¹⁷ Although valid for only five years as a matter of law, the Major Events Planning Provisions impose significant obligations that require MWRA and Co-Permittees to consider and address hypothetical concerns that may or may not arise 20 to 30 years and 80 to 100 years after issuance of a final permit. EPA identifies no support in the CWA or its implementing regulations for including in a five-year permit obligations concerning hypothetical conditions decades past the permit's expiration, and there is none. *See Upper Blackstone Water Pollution Abatement Dist.*, 690 F.3d at 22 (rejecting permittee's argument for extension of an NPDES permit beyond five-year term because "neither the CWA nor EPA regulations allow the [permittee's] requested delay").

In addition to planning horizons that extend decades beyond the permit's five-year term, the Major Events Planning Provisions also purport to impose specific obligations more than five years from the permit's effective date. For example, the Draft Permit requires major storm and flood events plans to be updated "at least every five (5) years from the effective date . . . and must take future conditions into consideration." Draft Permit, Part I.E.1.a, I.E.2.e(2). Because NPDES permits are limited to five-year terms, an obligation to update these plans at least every five years will not arise during the term of the Draft Permit.

The Draft Permit's requirement for iterative planning, requiring updates on future conditions as data sources are revised or generated, over a decades-long planning horizon is inconsistent with the CWA Section 402(k), 33 U.S.C. § 1342(k). The CWA's "permit shield" provision protects permittees by deeming compliance with an NPDES permit as compliance with the CWA. This protection affords a permittee the certainty to know when the permit is issued what it must do to comply with its permit from the date of issuance through its five-year term. This certainty "insulate[s] permit holders from changes in various regulations during the period of a permit and to relieve permit holders of having to litigate the question of whether their permits are sufficiently strict. In short, Section 402(k) serves the purpose of giving permits finality." *E.I. du Pont de Nemours & Co. v. Train*, 430 U.S. 112 (1977).

The Major Events Planning Provisions requirements that a permittee modify plans pertaining to climate change projections spanning 80 to 100 years "as data sources used for such evaluations are revised or generated" contravenes and undermines the "finality" Congress intended Section 402(k) to afford. *See* Draft Permit Part I.E.1.a, I.E.2.e(2). Consequently, a permittee will not know when it receives the permit what it will need to do to comply through the duration of the permit's term. As a practical matter, the modification requirements threaten to place MWRA and its member communities in a perpetual, never-ending planning cycle without any certainty about their compliance obligations. This is improper because it will deprive MWRA and the communities of the certainty Congress intended to afford permittees when it enacted Section 402(k): the ability to plan for the full extent of their CWA obligations when EPA issues their permits.

¹⁷ 33 U.S.C. §§ 1342(a)(3), (b)(1)(B); 40 C.F.R. § 122.46(a); *Upper Blackstone Water Pollution Abatement Dist. v. EPA*, 690 F.3d 9, 22 (1st Cir. 2012); *Manasola-88 Inc. v. Thomas*, 799 F.2d 687, 688 n.1 (11th Cir. 1986) ("NPDES permits are issued for a fixed term not to exceed five years"); *see also* 314 CMR 3.11(8) (providing that discharge permits issued by Massachusetts "shall be effective for a fixed term not to exceed five years" but allowing MassDEP to issue a permit "for a lesser duration").





D. The Major Events Planning Provisions Impose Significant Cost Burdens, Particularly for Smaller Communities, Without the Benefit of a Cost-Benefit Analysis.

The financial and resource burdens of developing, implementing, and updating storm and flood event plans that the Major Events Planning Provisions require will be significant, especially for smaller communities with limited financial and staffing resources. The investments to undertake this work, including the up-front vulnerability and mitigation alternatives analysis and the significant implementation and ongoing re-evaluation requirements, will likely require thousands of hours of personnel or consultant time. These costs could pale in comparison to the potential capital costs that MWRA and the communities may incur in order to implement mitigation measures that could even require relocating existing facilities or building new ones. The associated financial burdens on MWRA and the communities are unknown but certain to be substantial. MWRA and the communities will likely need to adjust their investments in critical infrastructure and other improvements to meet these new requirements, and ratepayers will likely absorb any associated financial burdens in the form of increased rates.

These financial burdens are unknown because EPA and MassDEP are imposing them without having assessed the costs and associated benefits of the Major Events Planning Provisions. Moreover, most, if not all, utilities will likely need additional staffing resources to undertake these novel and substantial requirements. At the very minimum, before issuing a final permit, EPA or MassDEP should provide permittees, their ratepayers, and the public with a formal cost-benefit assessment that informs all interested parties of the cost burdens of implementing these novel and significant planning and implementation requirements along with the perceived benefits of the Major Events Planning Provisions so that they may understand how those perceived benefits compare to benefits of other capital projects, including projects that aim to improve water quality.

E. The Requirement to Develop and Begin Implementing Major Storm and Flood Plans Within One Year Is Unrealistic.

The Major Events Planning Provisions require MWRA and the communities to develop plans that analyze individual facility and sewer system-related assets and assess vulnerabilities, conduct a systemic vulnerability evaluation of each individual system and develop an alternatives analysis, and begin implementing mitigation measures, all within twelve months of permit issuance. Permittees of any size will need more than twelve months to plan and begin to implement these wide-ranging plans. If EPA insists on including major storm and flood planning requirements, the agency should allow MWRA and the communities at least thirty-six months to develop and begin implementing major storm and flood events plans for wastewater treatment facilities and sewer systems.

F. The Draft Permit Sets Forth Ambiguous Planning Standards for Major Storm and Flood Events Plans.

The Major Events Planning Provisions require MWRA and the communities to design and implement measures to mitigate impacts of major storm and flood events, but it does not articulate a clear standard for doing so. The Draft Permit requirements set forth both an obligation to develop measures to “minimize the impact of major storm and flood events” and an obligation to select measures that are “the most effective.” Draft Permit, Part I.E.1.a(1)iii, I.E.1.a(3), I.E.2.e(2)i.(c), I.E.2.e(2)iii. The Draft Permit defines “minimize” to mean “to reduce and/or eliminate to the extent achievable the impacts to the facilities.” Part I.E.1.a(1)iii and n.10, I.E.2.e(2)i.(c) and n.24. But the Draft Permit does not reconcile how the notion of achievability of





measures in the definition of “minimize” plays a role in determining which measures are “the most effective” for purposes of permit compliance.

The Major Events Planning Provisions also call for a permittee to undertake a cost effectiveness analysis for its mitigation measure alternatives, but they do not specify or provide any guidance as to what role costs—or affordability—may play in selecting mitigation measures. *See* Draft Permit Part I.E.1.a(3), I.E.2.e(2)iii. For all of the reasons set forth herein, EPA should jettison the Draft Permit’s novel Major Events Planning Provisions, but if EPA nevertheless retains these provisions in the final permit, the agency should clarify these ambiguities regarding the Major Events Planning Provisions’ planning standards.

G. EPA Should Explore Whether Existing Efforts to Address Climate Change Are Adequate to Address the Concerns EPA Seeks to Address Through the Major Events Planning Provisions.

Before requiring MWRA and the Co-Permittees to implement the onerous Major Events Planning Provisions, EPA should assess whether and to what extent existing efforts to address climate change address or could be adapted to address the concerns EPA seeks to address through those planning requirements. For example, wastewater utilities in Massachusetts regularly seek funding from the Commonwealth’s Clean Water State Revolving Fund (CWSRF) to obtain low interest loans for their asset management programs. The CWSRF requires all applicants to comply with a number of planning and asset management requirements as a prerequisite to obtaining funding under that program. EPA should assess whether and to what extent the existing CWSRF planning and asset management requirements provide the type of information and analysis EPA seeks through the Major Events Planning Provisions or could be adapted to provide that information. The CWSRF is a better tool to address long-term planning obligations than an NPDES permit that is limited to governing specific discharges over a five-year term.

VI. Adaptation Plan Requirements in Recently-Issued NPDES Permits in EPA Region 1 Suffer From Many of the Same Flaws as the Major Events Planning Provisions.

After making the Draft Permit available for public comment, EPA issued to municipalities in Massachusetts NPDES permits that require the development of “adaptation plans” that address climate change concerns and made public new agency guidance setting forth requirements for those plans (“Adaptation Plan Requirements”). The Adaptation Plan Requirements replace language in these permits that had been virtually identical to the Major Events Planning Provisions in the Draft Permit but fail to correct the flaws outlined above.

For example, as discussed above, the Clean Water Act sets a five-year term for NPDES permits.¹⁸ Like the Major Events Planning Provisions, the Adaptation Plan Requirements also require MWRA and Co-Permittees to consider and address hypothetical concerns that may or may not arise 20 to 30 years and 80 to 100 years after issuance of a final permit—decades after the permit will expire. EPA identifies no support in the CWA or its implementing regulations for including in a five-year permit obligations concerning hypothetical conditions decades past the permit’s expiration. *See Upper Blackstone Water Pollution Abatement Dist.*, 690 F.3d at 22 (rejecting permittee’s argument for extension of an NPDES permit beyond five-year term because “neither the CWA nor EPA regulations allow the [permittee’s] requested delay”).

¹⁸ *See* Section V.C., *supra*.





The Adaptation Plan Requirements also seek to regulate capital planning and activities beyond the permissible scope of any NPDES permit. As discussed at length above, the CWA allows NPDES permits to impose only those conditions necessary to ensure compliance with the CWA’s requirements for discharge quality.¹⁹ EPA cannot use NPDES permits to regulate the facility itself, which is precisely what the Adaptation Plan Requirements seek to do.²⁰

At the heart of the Adaptation Plan Requirements are directives to assess and prepare a plan for implementing “adaptive measures,” which EPA defines to include “building or modifying infrastructure,” among other measures. *See, e.g.,* City of Northampton, Massachusetts Authorization to Discharge under the National Pollutant Discharge Elimination System - 2023 Final Permit (“Northampton 2023 Final Permit”) at 13, n.9; *see also* EPA Region 1 Recommended Procedures and Resources for the Development of Adaptation Plans for Wastewater Treatment Systems and/or Sewer Systems at 9 (Sept. 27, 2023). As with the Major Events Planning Provisions, the Adaptation Plan Requirements’ directives to assess and potentially implement significant capital projects²¹ to address them bear no connection to the permissible scope of NPDES permit terms: assuring compliance with applicable effluent limitations. These requirements impermissibly seek to regulate MWRA’s and the communities’ facilities (and capital planning processes), not their discharges. They also threaten to encroach upon land use decisions reserved to states and local governments. Because they exceed EPA’s authority to issue NPDES permits, the Adaptation Plan Requirements should not be included in the final permit.

The Adaptation Plan Requirements’ failure to heed the distinction between permissibly regulating discharges and impermissibly regulating facilities in an NPDES permit is highlighted by their definition of the “impacts” of major storm and flood events that a permittee or co-permittee must assess:

“Impacts” refers to a strong effect on an asset and/or asset-related operation that may include destruction, damage or ineffective operation of the asset and/or asset operation. Impacts may be *economic, environmental, or public health related*.

Northampton 2023 Final Permit at 12, n.9 (emphasis added).

The Adaptation Plan Requirements direct permittees to assess the ability of their assets to function in the event of these impacts “in terms of effluent flow . . . and discharges of pollutants.” *Id.* at 12. While *environmental* impacts of major storm and flood events on assets and operations might relate to how major storm and flood events affect the quality of a facility’s discharge, *economic and public health impacts* of major storm and flood events have no bearing on whether a facility’s discharges meet applicable effluent limitations. In the absence of a connection between economic and public health impacts and the quality of effluent flow and

¹⁹ *See* Section V.B., *supra*.

²⁰ *See Waterkeeper All., Inc. v. U.S. E.P.A.*, 399 F.3d 486, 505 (2d Cir. 2005) (“[T]he Clean Water Act gives the EPA jurisdiction to regulate and control only *actual* discharges—not potential discharges, and certainly not point sources themselves.”); *Natural Resources Defense Council v. EPA*, 859 F.2d 156, 170 (D.C.Cir.1988) (“[T]he [Clean Water Act] does not empower the agency to regulate point sources themselves; rather, EPA’s jurisdiction under the operative statute is limited to regulating the discharge of pollutants.”); *see also Iowa League of Cities v. EPA*, 711 F.3d 844, 877 (8th Cir. 2013) (“effluent limitations are restricted to regulations governing ‘discharges from point sources into navigable waters.’” (citing 33 U.S.C. § 1362(11))).

²¹ *See, e.g.,* Northampton 2023 Final Permit at 14 (requiring revision of Adaptation Plan “if on- or off-site structures are added, removed, or otherwise significantly changed in any way that will impact the vulnerability of the WWTS or sewer”).





discharges, there is no basis for EPA to require assessment of those impacts. At a minimum, the requirement to consider economic and public health impacts of major storm and flood events on assets and asset-related operations should be removed from the final permit.

The three “Components” of the Adaptation Plan Requirements also raise the following concerns:

Component 1 requires a permittee to perform “an identification of critical assets and related operations ... *that are most vulnerable* due to major storm and flood events” Northampton 2023 Final Permit at 12 (emphasis added). As written, this provision suggests the need for the permittee to make a subjective judgment of which assets and asset-related operations are “most vulnerable” to major storm and flood events before moving on to assess whether “these critical assets and related operations” can function properly. Component 1 would provide more clear direction to permittees if it required only an identification of critical assets and related operations, without an initial assessment of their relative vulnerability. The second step would then consist of a vulnerability assessment—an analysis of whether those assets and operations can function properly.

Component 2 is ambiguous and confusing as drafted. Component 2 requires a permittee to undertake “an assessment of adaptive measures ... that minimize the impact of future conditions on the critical assets” Northampton 2023 Final Permit at 13. The sentence that follows requires a permittee to “select the most effective adaptation measures” for those critical assets “at the highest risk of not functioning under such conditions.” *Id.* In addition to introducing a new, undefined term – “adaptation measures” (as opposed to “adaptive measures,” which are defined) – this sentence also creates an internal inconsistency: Does this component require a permittee to assess all critical assets or just those assets that are at the highest risk of not functioning? To the extent the final permit includes the Adaptation Plan Requirements, this inconsistency should be clarified and resolved.

A permittee’s obligations under Component 3 are also ambiguous due to the inconsistencies in Component 2. Component 3 requires a permittee to develop a schedule for implementation and maintenance of adaptive measures “for each of the critical assets and related operations of the WWTS and sewer system” Northampton 2023 Final Permit at 13. This suggests that Component 3 requires a permittee to provide this schedule for *all* of its critical assets, but a reasonable interpretation of Component 2 suggests that a permittee need only identify adaptive measures for critical assets that are “at the highest risk of not functioning.” *Id.* EPA will need to resolve this ambiguity to the extent the final permit contains the Adaptation Plan Requirements.

In more recent permits, Component 3 also requires a permittee to include in its implementation and maintenance schedule “an evaluation of how each adaptive measure taken (or planned) will be funded.” Hoosac Water Quality District Authorization to Discharge under the National Pollutant Discharge Elimination System - 2023 Final Permit (“Hoosac 2023 Final Permit”) at 12. This addition is problematic because it requires a permittee to undertake a funding evaluation for measures that may not need to be taken for thirty or more years, if ever. Assessing funding for improvements that may not be implemented for decades would only be speculative and require municipalities to expend scarce ratepayer resources to conduct an evaluation that will be of little value to the permittee, regulators, or the public.

VII. Additional Issues in the Draft Permit that EPA Must Address





In addition to the foregoing, the Advisory Board has identified the following errors in the Draft Permit that must be corrected:

Part I.E.2.c.(4): This provision, which requires MWRA to submit an annual summary report concerning actions taken to reduce infiltration and inflow, appears to be incomplete. In its current form, this permit term provides summary and background information but does not appear to be drafted as formal permit language. EPA must revise this language and reissue the Draft Permit for public comment so that the Advisory Board and the communities can meaningfully comment on them.

Part I.E.2.c.(4): This provision, which “requires the Co-permittees to prepare and submit I/I Reduction Plans,” appears to be incomplete. In its current form, this permit term provides summary and background information but does not specify the substantive content of the required I/I Reduction Plans. EPA must specify what these plans include and re-issue the Draft Permit for public comment so that the Advisory Board and the communities can meaningfully comment on them.

Part I.E.2.(e)(3)(ii): This provision currently reads, “A preventive maintenance and monitoring program for the collection system; including resiliency evaluation and planning that the Permittee, Co-Responsible Co-permittees and Co-permittees owns and operates.” In its current form, this language is hard to follow and likely reflects drafting errors. The Board proposes that this provision be revised to read, “A preventive maintenance and monitoring program for the collection system that Permittee, CSO-responsible Co-Permittees, and Co-Permittees each own and operate.”

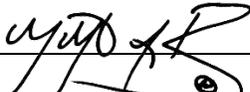
Part I.E.2.(e)(3)(iii): Although this provision applies to CSO-responsible Co-Permittees, it introduces confusion by referring to “the *sanitary* sewer collection system.” To eliminate this confusion, the Advisory Board requests that EPA delete the word “sanitary.”

Part I.E.2.(e)(3)(iv): This provision currently reads, “Description of funding, the source(s) of funding and provisions for funding sufficient for implementing the plan that the Permittee, CSO-responsible Co-permittees, and Co-permittees owns and operates plan.” In its current form, this language is hard to follow, a likely product of a drafting mistake. The Board proposes that this provision instead read, “Description of funding, the source(s) of funding and provisions for funding sufficient for implementing the Plan that the Permittee, CSO-Responsible Co-permittee, or Co-permittee has developed.”

VIII. Conclusion

The Advisory Board appreciates the opportunity to comment on the Draft Permit and State Permit. Please feel free to contact the Board’s Executive Director, Matthew Romero (Matthew.Romero@mwraadvisoryboard.com; 617-788-2054) if you have any questions or would like to arrange a meeting to discuss the resolution of the issues raised above.

Sincerely,


Matthew A. Romero

Executive Director | MWRA Advisory Board



Attachment A



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 1

5 Post Office Square, Suite 100

Boston, MA 02109-3912

VIA EMAIL - READ RECEIPT REQUESTED

March 8, 2023

Re: Waiver of Permit Application and Signatory Requirements for Municipal Satellite Sewage Collection System – co-permittees to the MWRA Deer Island Treatment Plant, NPDES No. MA0103284

Dear MWRA Deer Island Treatment Plant Satellite Collection System Member Community:

EPA Region 1 is currently developing a draft National Pollutant Discharge Elimination System (NPDES) discharge permit and an accompanying fact sheet that summarizes the significant facts, legal and policy questions considered in preparing the draft permit for the Massachusetts Water Resources Authority Deer Island Treatment Plant (MWRA DITP) including the collection systems from all member communities. The purpose of this letter is to inform you of our plans for incorporating communities with satellite collection systems that discharge into the MWRA DITP as co-permittees in the permit and any permit application requirements. Please be advised that your municipality will be included as a co-permittee in the forthcoming Draft NPDES discharge permit issued to the MWRA for the DITP.

The satellite collection system member communities of the MWRA DITP listed in Attachment A will all be included as co-permittees in the draft discharge permit issued for the DITP. Under NPDES regulations, all Publicly Owned Treatment Works (POTWs) must submit permit application information set forth in 40 CFR § 122.21(j) unless otherwise indicated. Where Region 1 of the Environmental Protection Agency (EPA) has “access to substantially identical information,” or such information is “not of material concern for a specific permit,” the Regional Administrator may waive permit application requirements for existing POTWs. *Id.* Pursuant to my authority under this regulation, I am waiving NPDES permit application and signatory requirements applicable to certain operators, including your system, of the municipal satellite collection systems that contribute to the MWRA DITP.

EPA regulations do not specifically address how NPDES permit coverage is to be obtained by satellite collection system components of POTWs. Ordinarily the treatment plant operator applies for the POTW’s NPDES permit, and discharges from the POTW, including those from the collection systems operated by others, are covered by the permit issued to the treatment plant. Satellite collection system operators have generally not submitted separate permit applications for coverage under the POTW permit, because the treatment plant operator generally submits the information necessary for the permit writer to write limits and conditions in the permit applicable to all components of the POTW on the basis of the treatment plant’s application. Receiving a single application from the operator of a portion of the discharging POTW is one reasonable way to structure the permit application process, particularly in the case of a regionally integrated treatment works where there is a centralized administrative entity responsible for operating the POTW Treatment Plant and coordinating wastewater flows from the multiple satellite collection system operators that all contribute to the final effluent discharge.

Although EPA has the authority to require operators of the municipal satellite collection systems to submit individual permit applications, in this case I find that requiring a single permit application executed by the regional POTW owner/operator will be sufficient, as I have been provided, or have access to, “substantially identical information” to what would have been provided to EPA by the collection system operator, or that the detailed information requirements of Form 2A are not otherwise material to

EPA's drafting of co-permittee requirements. Requiring a single application will also be less duplicative and less burdensome than requiring separate applications from each municipal satellite collection system owner/operator. Municipal satellite collection system owners/operators should consult with the regional POTW operators to ensure that any information provided to EPA about their respective entities is accurate and complete. If EPA requires additional information, it may use its information collection authority under CWA § 308. 33 U.S.C. § 1318.

As a general matter, EPA does not foresee the need to require individual permit applications from each municipal satellite collection system operator and anticipates that information in the POTW operator's permit application and other information in the administrative record will be sufficient to establish permit limits and conditions for the entire treatment works. In the future permitting cycles, EPA will indicate whether it will require additional material from those entities operating the outlying portions of the treatment works to render the permit application "complete" under 40 CFR § 124.3(c) after receiving and reviewing the re-application for the permit from the MWRA DITP.

This notice reflects my determination based on the specific facts and circumstances in this case. It is not intended to bind the agency in future determinations where a separate permit for municipal satellites would not be duplicative or immaterial.

Prior to issuing the draft permit and fact sheet for public notice, EPA Region 1 will hold a virtual informational session for MWRA and the co-permittees on March 28, 2023 from 1:00 pm to 2:00 pm ([Click here to join the meeting](#)). EPA will explain the draft permit's co-permittee requirements at this meeting and will answer questions pertaining to EPA Region 1's co-permitting strategy.

The co-permittees and MWRA will each receive a copy of the draft permit and the fact sheet when EPA publicly notices them. The public will then have at least 30 days to submit comments on the draft permit to EPA. Consistent with 40 CFR § 124.10, EPA's public notice will detail how the public may comment on the draft permit.

If you have any questions or would like to discuss this decision, do not hesitate to contact Michele Barden of my staff at (617) 918-1539 or barden.michele@epa.gov.

Sincerely,



David W. Cash
Regional Administrator
Office of the Regional Administrator

cc: Claire Golden, MassDEP
Frederick Laskey, MWRA

Attachment A
Co-permittees to NPDES Permit No. MA0103284
MWRA Deer Island Treatment Plant

| | |
|--|--|
| Town of Arlington Department of Public Works 51 Grove Street Arlington, MA 02476 | Town of Ashland Department of Public Works 20 Ponderosa Road Ashland, MA 01721 |
| Town of Bedford Department of Public Works 314 Great Road Bedford, MA 01730 | Town of Belmont Department of Public Works 19 Moore Street Belmont, MA 02478 |
| Town of Braintree Department of Public Works P.O. Box 850903 Braintree, MA 02185-0903 | Town of Brookline Town Engineer 333 Washington Street Brookline, MA 02445 |
| Town of Burlington Town Engineer 29 Center Street Burlington, MA 01803 | Town of Canton Department of Public Works 801 Washington Street Canton, MA 02021 |
| Town of Dedham Department of Public Works 55 River Street Dedham, MA 02026 | City of Everett Department of Public Works 19 Norman Street Everett, MA 02149 |
| City of Framingham Department of Public Works 100 Western Avenue Framingham, MA 01701 | Town of Hingham Department of Public Works 210 Central Street Hingham, MA 02043 |
| Town of Holbrook Department of Public Works 50 N. Franklin Street Holbrook, MA 02343 | Town of Lexington Department of Public Works 201 Bedford Street Lexington, MA 02420 |
| City of Malden Department of Public Works 200 Pleasant Street Malden, MA 02148 | City of Medford Town Engineer 85 George P. Hassett Drive Medford, MA 02155 |
| City of Melrose Department of Public Works 72 Tremont St. Melrose, MA 02176 | Town of Milton Department of Public Works 629 Randolph Avenue Milton, MA 02186 |
| Town of Natick Department of Public Works 75 West Street Natick, MA 01760 | Town of Needham Department of Public Works 470 Dedham Avenue Needham, MA 02492 |
| City of Newton Department of Public Works 1000 Commonwealth Avenue Newton, MA 02459 | Town of Norwood Department of Public Works 566 Washington Street Norwood, MA 02062 |
| City of Quincy Department of Public Works 55 Sea Street Quincy, MA 02169 | Town of Randolph Department of Public Works 41 South Main Street Randolph, MA 02368 |

| | |
|---|---|
| Town of Reading Department of Public Works 16 Lowell Street Reading, MA 01867 | City of Revere Department of PublicWorks 321 Rear Charger Street Revere, MA 02151 |
| Town of Stoneham Public Works Department 16 Pine Street Stoneham, MA 02180 | Town of Stoughton Department of PublicWorks 950 Central Street Stoughton, MA 02072 |
| Town of Wakefield Director of Public Works 1 Lafayette Street Wakefield, MA 01880 | Town of Walpole Department of PublicWorks 135 School Street Walpole, MA 02081 |
| City of Waltham Department of PublicWorks 165 Lexington Street Waltham, MA 02452 | Town of Watertown Department of PublicWorks 124 Orchard Street Watertown, MA 02472 |
| Town of Wellesley Department of PublicWorks 455 Worcester Street Wellesley, MA 02481 | Town of Westwood Department of PublicWorks 50 Carby Street Westwood, MA 02090 |
| Town of Weymouth Department of PublicWorks 120 Winter Street Weymouth, MA 02188 | Town of Wilmington Department of Public Works 121 Glen Road Wilmington, MA 01887 |
| Town of Winchester Department of PublicWorks 15 Lake Street Winchester, MA 01890 | Town of Winthrop Department of Public Works 100 Kennedy Drive Winthrop, MA 02152 |
| City of Woburn Public Works Sewer Division 50 North Warren Street Woburn, MA 01801 | |

NOTE: The Cities of Boston, Cambridge, Chelsea and Somerville have received separate letters as current permittees under NPDES Permit Nos. MA0101192, MA0101974, MA0101877 and MA0101982, respectively.

Attachment B

**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”),

Massachusetts Water Resource Authority (MWRA)

is authorized to discharge from the facility located at

**MWRA Deer Island Treatment Plant (DITP)
190 Tafts Avenue
Winthrop, MA 02152**

to the receiving water named

| Receiving Water | Segment | Outfall |
|-------------------|-----------------------------------|---------|
| Massachusetts Bay | Undefined, 314 CMR 4.06. Table 23 | T01 |

and

**Four (4) Combined Sewer Overflow (CSO) Treatment Facilities with 5 outfalls
to the receiving waters named**

| Receiving Water | Segment | CSO Treatment Facility Name | Outfalls |
|---------------------|---------|-----------------------------|----------|
| Boston Inner Harbor | MA70-02 | Prison Point | MWR203 |
| Boston Inner Harbor | MA70-02 | Union Park | MWR215 |
| Mystic River | MA71-03 | Somerville Marginal | MWR205 |
| Upper Mystic River | MA71-02 | Somerville Marginal | MWR205A |
| Charles River | MA72-38 | Cottage Farm | MWR201 |

and

Six (6) additional Combined Sewer Overflow (CSO) Outfalls (See Attachment A)

in accordance with effluent limitations, monitoring requirements and other conditions set forth herein.

NOTE: The former near shore DITP outfalls: 001, 002, 003, 004 and 005, are not authorized under the Permit. The Permit no longer requires the Permittee to maintain these nearshore Deer Island outfalls as a contingency option.

The Massachusetts municipalities listed below are identified as CSO-responsible Co-permittees responsible ~~for~~ for ensuring that their own discharges, infrastructure, activities, and required reporting with respect to the sewer system that each CSO-responsible Co-Permittee owns and operates comply with Part B., Combined Sewer Overflows, Part C., Unauthorized Discharges, Part D., Notice of Elimination, Part E., Operation and Maintenance, which includes conditions regarding

Attachment B
MWRA Advisory Board Comments

the operation and maintenance of the collection systems owned and operated by the municipalities; Part F., Alternate Power Source, and Part J., Reporting Requirements. The list of CSO outfalls, the CSO-responsible party, receiving waters and locations are found in **Attachment A**.

| MAC053284 | MAC093284 | MAC113284 | MAC293284 |
|---|--|---|---|
| City of Boston Boston Water and Sewer Commission 980 Harrison Avenue Boston, MA 02119 | City of Cambridge Department of Public Works 147 Hampshire Street Cambridge, MA 02139 | City of Chelsea Department of Public Works 380 Beacham Street Chelsea, MA 02150 | City of Somerville Department of Public Works 1 Franey Road Somerville, MA 02144 |

The Massachusetts municipalities in **Attachment B** are identified as Co-permittees ~~related to~~ responsible for ensuring that their own discharges, infrastructure, activities, and required reporting with respect to the sewer system that each Co-permittee operation and maintenance of the sewer systems in compliance owns and operates complies with the Standard Conditions of Part II and the terms and conditions of Part C., Unauthorized Discharges, Part E., Operation and Maintenance, which includes conditions regarding the operation and maintenance of the collection systems owned and operated by the municipality, Part F., Alternate Power Source, and Part J. Reporting Requirements.

The Permittee, CSO-responsible Co-permittees and each Co-permittee are severally liable for their own activities and discharges under the Standard Conditions of Part II, Parts B, C, E, F, and required reporting under Part J with respect to the portions of the sewer system that they each owns and/or operates. They are not liable for violations of the Standard Conditions of Part II, Parts B, C, E, F and Part J committed by others relative to the portions of the collection system owned and operated by others. ~~Nor are they responsible~~ They are also not liable for any other Permittee's, CSO-responsible Co-permittee's or Co-permittee's failure to provide for any reporting that is required of other Permittees under the Standard Conditions of Part II, Part C, Part E, Part F, and Part J. Moreover, CSO-responsible Co-permittees and Co-permittees are not liable for any violations of Parts A, D, G, H, I, J or K committed by the Permittee. The responsible municipal departments are found in **Attachment B**.

This Permit shall become effective on the first day of the calendar month immediately following 60 days after signature.-1

This Permit expires at midnight, five years from the last day of the month preceding the effective date.

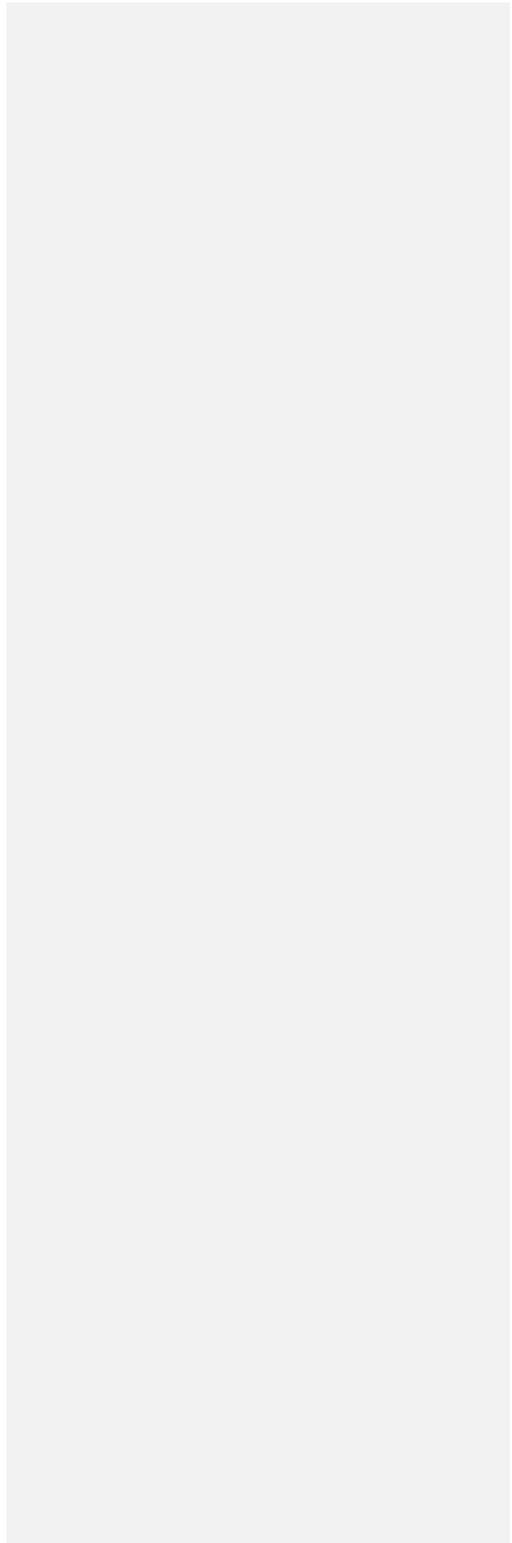
This Permit supersedes the NPDES Permit No. MA0103284 issued on May 20, 1999, and subsequently modified on July 10, 2000; NPDES Permit No. MA0101192 issued on March 28, 2003 and subsequently modified on April 10, 2007; NPDES Permit No. MA0101974 issued on September 30, 2009; NPDES Permit No. MA0101877 issued on November 26, 2013; and NPDES Permit No. MA0101982 issued on June 11, 2012.

This Permit consists of Part I including the cover page(s), **Attachment A** (Authorized CSO Outfalls and Responsible Parties), **Attachment B** (MWRA Member Communities named as Co-permittees),

Attachment B
MWRA Advisory Board Comments

Attachment C (Marine Acute Toxicity Test Procedure and Protocol, July 2012), **Attachment D** (Marine Chronic Toxicity Test Procedure and Protocol, November 2013), **Attachment E** (Freshwater Acute Toxicity Test Procedure and Protocol, February 2011), **Attachment F** (Reassessment of Technically Based Industrial Discharge Limits), **Attachment G** (Industrial Pretreatment Annual Report), **Attachment H** (PFAS Analyte List), **Attachment I** (Authorized Typical Year CSO

¹ Pursuant to 40 Code of Federal Regulations (CFR) § 124.15(b)(3), if no comments requesting a change to the Draft Permit are received, the permit will become effective upon the date of signature. Procedures for appealing EPA's Final Permit decision may be found at 40 CFR § 124.19.



Attachment B
MWRA Advisory Board Comments

NPDES Permit No. MA0103284

2023 Draft Permit
Page 3 of 68

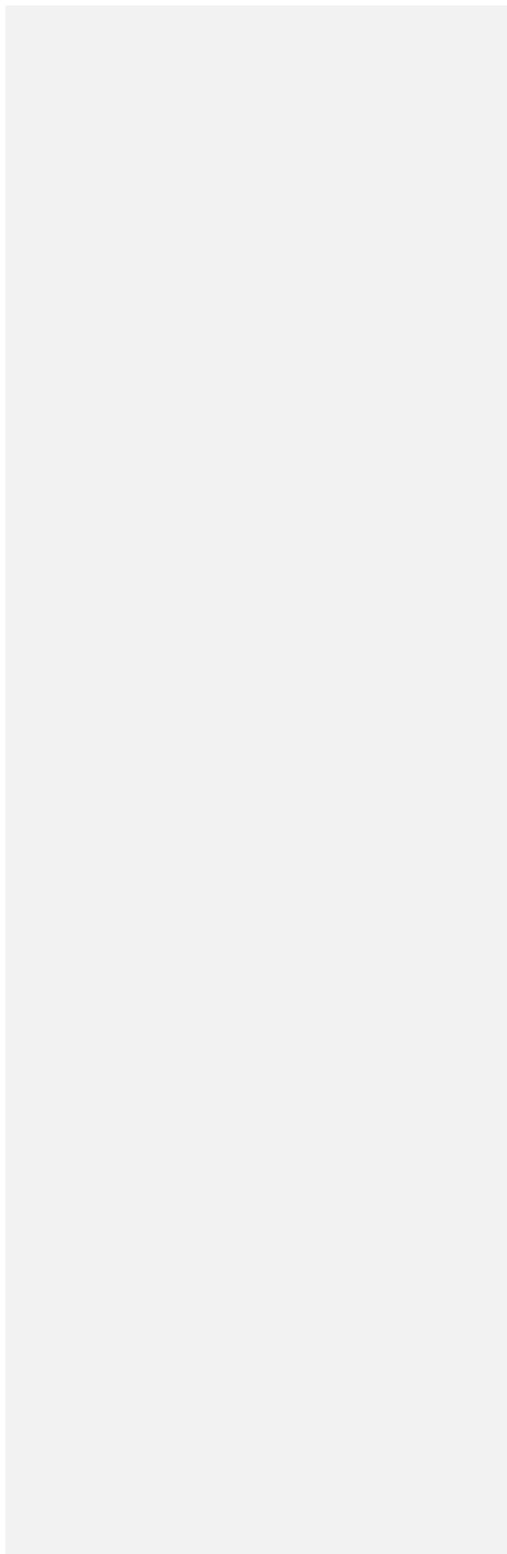
Discharge Activations and Volumes), **Attachment J** (Charles River Basin CSO Variance Determination), **Attachment K** (Alewife and Upper Mystic River Basin CSO Variance Determination) and Part II (NPDES Part II Standard Conditions, April 2018).

Signed this day of

Ken Moraff, Director
Water Division
Environmental Protection Agency

Attachment B
MWRA Advisory Board Comments

Region 1
Boston, MA



PART I

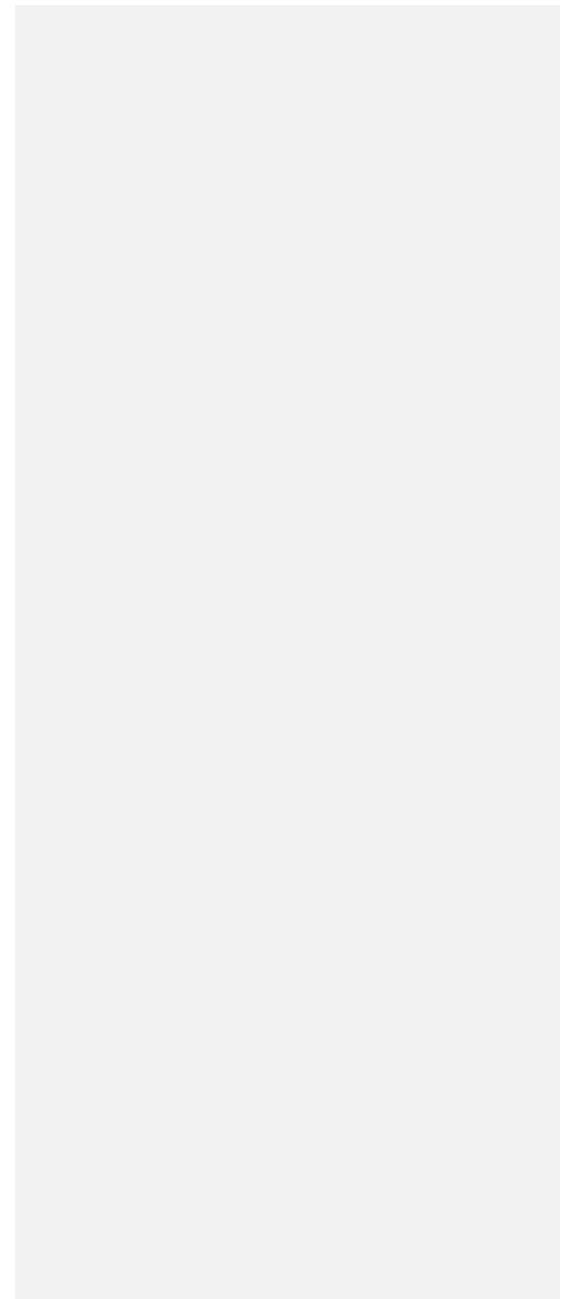
A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS FOR OUTFALL T01

1. During the period beginning on the effective date and lasting through the expiration date, the Permittee, MWRA, is authorized to discharge treated effluent through Outfall Serial Number T01 to Massachusetts Bay. The discharge shall be limited and monitored as specified below; the receiving water and the influent shall be monitored as specified below.

| Effluent Characteristic | Effluent Limitation | | | Monitoring Requirements ^{1,2,3} | |
|--|-----------------------|----------------|------------------------|--|--------------------------|
| | Average Monthly | Average Weekly | Maximum Daily | Measurement Frequency | Sample Type ⁴ |
| Rolling Average Effluent Flow ^{5,6} | 361 MGD ⁵ | --- | --- | Continuous | Recorder |
| Effluent Flow ^{5,6} | Report MGD | --- | Report MGD | Continuous | Recorder |
| CBOD ₅ | 25 mg/L | 40 mg/L | Report mg/L | 1/Day | Composite |
| CBOD ₅ Removal ⁷ | 2 85 % | --- | --- | 1/Month | Calculation |
| TSS | 30 mg/L | 45 mg/L | Report mg/L | 1/Day | Composite |
| TSS Removal ⁷ | 2 85 % | --- | --- | 1/Month | Calculation |
| pH Range ⁸ | 6.0 - 8.5 S.U. | | | 1/Day | Grab |
| Total Residual Chlorine ^{9,10} | 456 µg/L | --- | 631 µg/L | 3/Day | Grab |
| Fecal Coliform ^{9,10,11,12} | 980 organisms /100 mL | --- | 1,960 organisms/100 mL | 3/Day | Grab |
| <i>Enterococci</i> ^{9,10,12} (April 1 through October 31) | 2,450 cfu/100 mL | --- | 9,100 cfu/100 mL | 3/Day | Grab |
| Oil and Grease ¹³ | Non-detect mg/L | --- | --- | 1/Day | Grab |
| Ammonia Nitrogen ¹⁴ | Report mg/L | --- | Report mg/L | 1/Month | Composite |
| Total Kjeldahl Nitrogen ¹⁴ (April 1 through October 31) (November 1 through March 31) | Report mg/L | --- | Report mg/L | 1/Week 1/Month | Composite |
| Nitrate + Nitrite ¹⁴ (April 1 through October 31) (November 1 through March 31) | Report mg/L | --- | Report mg/L | 1/Week 1/Month | Composite |

Attachment B
MWRA Advisory Board Comments

| Total Nitrogen ¹⁴ (April 1 through October 31) | Report mg/L | --- | Report mg/L | 1/Week | Calculation |
|--|-------------|-----|-------------|--------|-------------|
|--|-------------|-----|-------------|--------|-------------|

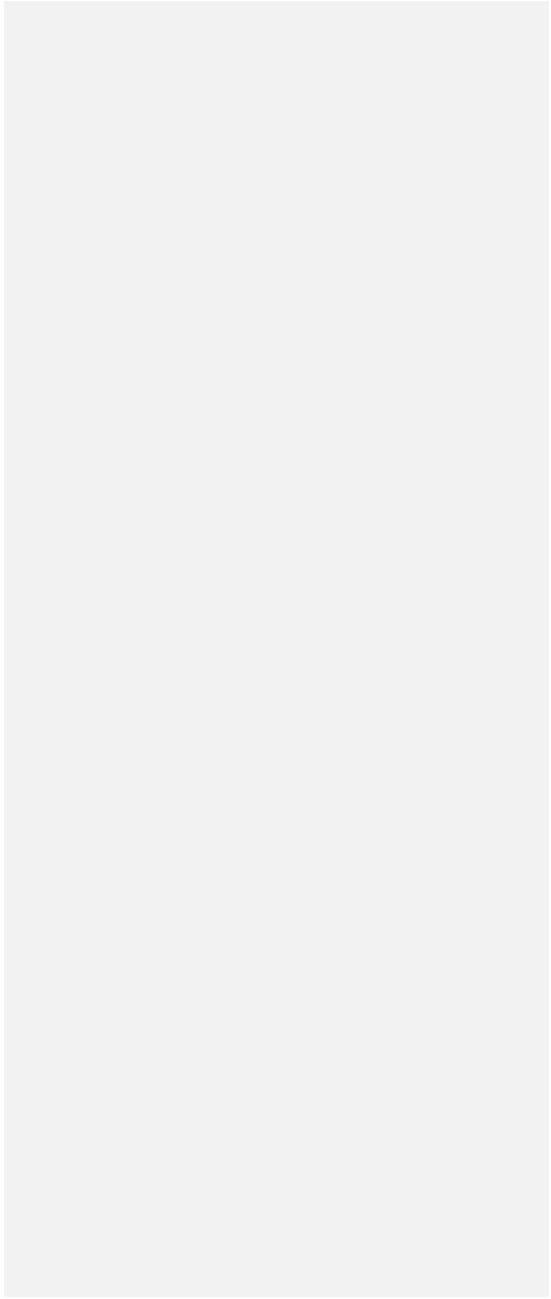


| Effluent Characteristic | Effluent Limitation | | | Monitoring Requirements ^{1,2,3} | |
|---|---------------------|----------------|---------------|--|--------------------------|
| | Average Monthly | Average Weekly | Maximum Daily | Measurement Frequency | Sample Type ⁴ |
| (November 1 through March 31) | | | | 1/Month | |
| PFAS Analytes ¹⁵ | --- | --- | Report ng/L | 1/Quarter | Grab |
| Adsorbable Organic Fluorine ¹⁶ | --- | --- | Report ng/L | 1/Quarter | Grab |

| Effluent Characteristic | Effluent Limitation | | | Monitoring Requirements ^{1,2,3} | |
|--|---------------------|----------------|---------------|--|--------------------------|
| | Average Monthly | Average Weekly | Maximum Daily | Measurement Frequency | Sample Type ⁴ |
| Whole Effluent Toxicity (WET) Testing^{17,18} | | | | | |
| LC ₅₀ | --- | --- | ? 100 % | 1/Quarter | Composite |
| C-NOEC | --- | --- | ? 1.5 % | 1/Quarter | Composite |
| Salinity | --- | --- | Report ppt | 1/Quarter | Composite |
| Ammonia Nitrogen | --- | --- | Report mg/L | 1/Quarter | Composite |
| Total Cadmium | --- | --- | Report mg/L | 1/Quarter | Composite |
| Total Copper | --- | --- | Report mg/L | 1/Quarter | Composite |
| Total Nickel | --- | --- | Report mg/L | 1/Quarter | Composite |
| Total Lead | --- | --- | Report mg/L | 1/Quarter | Composite |

Attachment B
MWRA Advisory Board Comments

| | | | | | |
|----------------------|-----|-----|-------------|-----------|-----------|
| Total Zinc | --- | --- | Report mg/L | 1/Quarter | Composite |
| Total Organic Carbon | --- | --- | Report mg/L | 1/Quarter | Composite |



| Ambient Characteristic ¹⁹ | Reporting Requirements | | | Monitoring Requirements ^{1,2,3} | |
|---|------------------------|----------------|-------------------------|--|--------------------------|
| | Average Monthly | Average Weekly | Maximum Daily | Measurement Frequency | Sample Type ⁴ |
| Fecal Coliform ^{11,12} – Surface | --- | --- | Report organisms/100 mL | 1/Month | Grab |
| Fecal Coliform ^{11,12} – Below pycnocline | --- | --- | Report organisms/100 mL | 1/Month | Grab |
| <i>Enterococci</i> ^{11,12} - Surface (April 1 through October 31) | --- | --- | Report cfu/100 mL | 1/Month | Grab |
| <i>Enterococci</i> ^{11,12} - Below pycnocline (April 1 through October 31) | --- | --- | Report cfu/100 mL | 1/Month | Grab |
| Salinity | --- | --- | Report ppt | 1/Quarter | Grab |
| Ammonia Nitrogen | --- | --- | Report mg/L | 1/Quarter | Grab |
| Total Cadmium | --- | --- | Report mg/L | 1/Quarter | Grab |
| Total Copper | --- | --- | Report mg/L | 1/Quarter | Grab |
| Total Nickel | --- | --- | Report mg/L | 1/Quarter | Grab |
| Total Lead | --- | --- | Report mg/L | 1/Quarter | Grab |
| Total Zinc | --- | --- | Report mg/L | 1/Quarter | Grab |
| Total Organic Carbon | --- | --- | Report mg/L | 1/Quarter | Grab |
| Dissolved Organic Carbon ²⁰ | --- | --- | Report mg/L | 1/Quarter | Grab |
| pH ²¹ | --- | --- | Report S.U. | 1/Quarter | Grab |

Attachment B
MWRA Advisory Board Comments

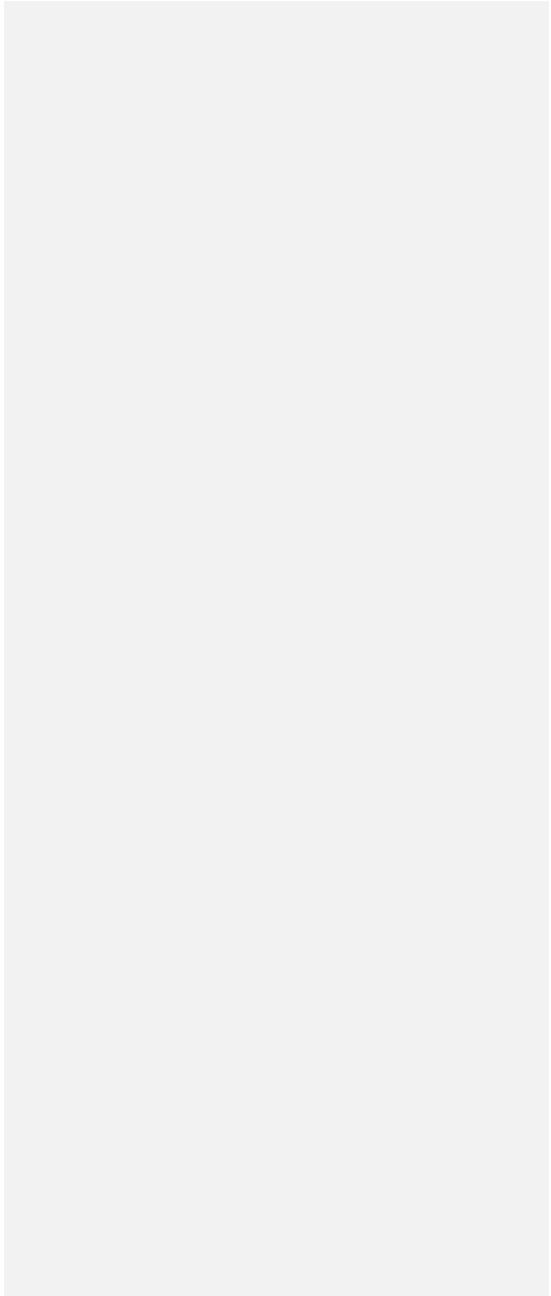
| | | | | | |
|---------------------------|-----|-----|-----------|-----------|------|
| Temperature ²¹ | --- | --- | Report °C | 1/Quarter | Grab |
|---------------------------|-----|-----|-----------|-----------|------|

| Influent Characteristic | Reporting Requirements | | | Monitoring Requirements ^{1,2,3} | |
|---|------------------------|----------------|---------------|--|--------------------------|
| | Average Monthly | Average Weekly | Maximum Daily | Measurement Frequency | Sample Type ⁴ |
| CBOD ₅ ⁷ | Report mg/L | --- | --- | 2/Month | Composite |
| TSS ⁷ | Report mg/L | --- | --- | 2/Month | Composite |
| PFAS Analytes ¹⁵ | --- | --- | Report ng/L | 1/Quarter | Grab |
| Adsorbable Organic Fluorine ¹⁶ | --- | --- | Report ng/L | 1/Quarter | Grab |

| | Reporting Requirements | Monitoring Requirements ^{1,2,3} |
|--|------------------------|--|
|--|------------------------|--|

Attachment B
MWRA Advisory Board Comments

| | Average Monthly | Average Weekly | Maximum Daily | Measurement Frequency | Sample Type⁴ |
|-----------------------------|----------------------------|---------------------------|--------------------------|----------------------------------|--------------------------------|
| PFAS Analytes ¹⁵ | --- | --- | Report ng/g | 1/Quarter | Grab ²¹ |



Attachment B
MWRA Advisory Board Comments

NPDES Permit No. MA0103284

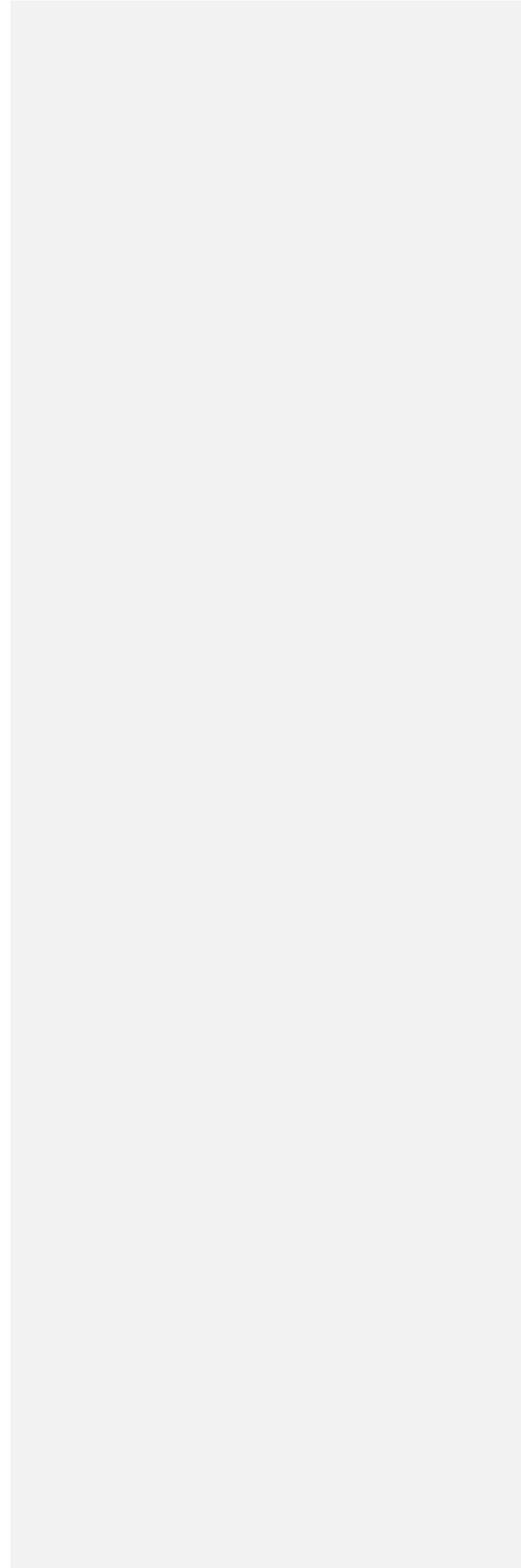
2023 Draft Permit
Page 8 of 68

Footnotes:

1. All samples shall be collected in a manner to yield representative data. A routine sampling program shall be developed in which samples are taken at the same location, same time and same days of the week each month. Occasional deviations from the routine sampling program are allowed, but the reason for the deviation shall be documented as an electronic attachment to the applicable discharge monitoring report. The Permittee shall report the results to the Environmental Protection Agency Region 1 (EPA) and the MassDEP of any additional testing above that required herein, if testing is in accordance with 40 CFR Part 136.
2. In accordance with 40 CFR § 122.44(i)(1)(iv), the Permittee shall monitor according to sufficiently sensitive test procedures (i.e., methods) approved under 40 CFR Part 136 or required under 40 CFR chapter I, subchapter N or O, for the analysis of pollutants or pollutant parameters (except WET). A method is “sufficiently sensitive” when: 1) The method minimum level (ML) is at or below the level of the effluent limitation established in the permit for the measured pollutant or pollutant parameter; or 2) The method has the lowest ML of the analytical methods approved under 40 CFR Part 136 or required under 40 CFR chapter I, subchapter N or O for the measured pollutant or pollutant parameter. The term “minimum level” refers either to the sample concentration equivalent to the lowest calibration point in a method or a multiple of the method detection limit (MDL), whichever is higher. Minimum levels may be obtained in the following ways: they may be published in a method; they may be based on the lowest acceptable calibration point used by a laboratory; or they may be calculated by multiplying the MDL in a method, or the MDL determined by a laboratory, by a factor.
3. When a parameter is not detected above the ML, the Permittee must report the data qualifier signifying less than the ML for that parameter (e.g., < 50 µg/L, if the ML for a parameter is 50 µg/L). For reporting an average based on a mix of values detected and not detected, assign a value of “0” to all non-detects for that reporting period and report the average of all the results.
4. A “grab” sample is an individual sample collected in a period of less than 15 minutes. A “composite” sample is a composite of at least twenty-four (24) grab samples taken during one consecutive 24-hour period, either collected at equal intervals and combined proportional to flow or continuously collected proportional to flow.
5. The 365-calendar day running average dry day flow shall not exceed 361 MGD. For this purpose, a “dry day” is defined as a day with 0.09 inches of precipitation or less and no snow melt, provided that the precipitation on the previous day is less than 0.3 inch, and the precipitation on the day two days prior to the day in question is less than 1.0 inch, and the

Attachment B
MWRA Advisory Board Comments

precipitation on the day three days prior to the day in question is less than 2.0 inches. A day with snow melt is defined as a day when there is snow on the ground and the air



Attachment B
MWRA Advisory Board Comments

NPDES Permit No. MA0103284

2023 Draft Permit
Page 9 of 68

temperature rises above 32 degrees Fahrenheit. Flow from the CSO storage facilities is not included in the dry day calculation.

Compliance with this flow limit will be determined each month by calculating the average dry day flow over the previous 365 calendar days. The once-a-month calculation shall include all dry day flow that occurred during the reporting month [Total dry day flow/total number of dry days].

6. Within 24 hours after the commencement of any diversions of wastewater around secondary treatment facilities at the DITP, the Permittee shall notify EPA by telephone or email of the commencement of the diversion of wastewater around secondary treatment facilities.

Within 5 days of the commencement of any diversion of wastewater around secondary treatment facilities at DITP, the Permittee shall provide EPA and MassDEP a written submission containing a description of the diversion, its cause and the period of the diversion, including its exact dates and times. If the diversion has not stopped by when the written submission is due, the written submission shall also include a statement as to the anticipated time it is expected to continue, and any steps taken or planned to reduce or eliminate the diversion.

A bypass of secondary treatment is subject to the requirements of Part II.B.4. and Part II.D.1.e. of this Permit.

Flows shall be measured using a meter. The requirement to measure flows which bypass secondary treatment using a meter shall take effect 6 months following the effective date of the Permit.

The Permittee shall not add septage to the waste stream at the treatment plant during activation of the secondary treatment bypass.

7. For the purposes of calculating CBOD₅ and TSS percent removal, the Permittee shall only use the data from dry days. The influent samples shall be taken on dry days.

A “dry day” is defined as a day with 0.09 inches of precipitation or less and no snow melt, provided that the precipitation on the previous day is less than 0.3 inch, and the precipitation on the day two days prior to the day in question is less than 1.0 inch, and the precipitation on the day three days prior to the day in question is less than 2.0 inches. A day with snow melt is defined as a day when there is snow on the ground and the air

Attachment B
MWRA Advisory Board Comments

temperature rises above 32 degrees Fahrenheit. Flow from the CSO storage facilities is not included in the dry day calculation.

Attachment B
MWRA Advisory Board Comments

NPDES Permit No. MA0103284

2023 Draft Permit
Page 10 of 68

8. The pH shall be within the specified range at all times. The minimum and maximum pH sample measurement values for the month shall be reported in standard units (S.U.). See Section I.K.2. of this Permit for additional State requirements.
9. The Permittee shall minimize the use of chlorine while maintaining adequate bacterial control. Monitoring for total residual chlorine (TRC) is only required for discharges which have been previously chlorinated, or which contain residual chlorine.

The Permittee may simulate the chlorine contact time in the outfall pipe prior to dechlorination by holding the sample in conditions similar to those that would be present at the outfall pipe, T01, before measuring the TRC, *Enterococcus* and fecal coliform.

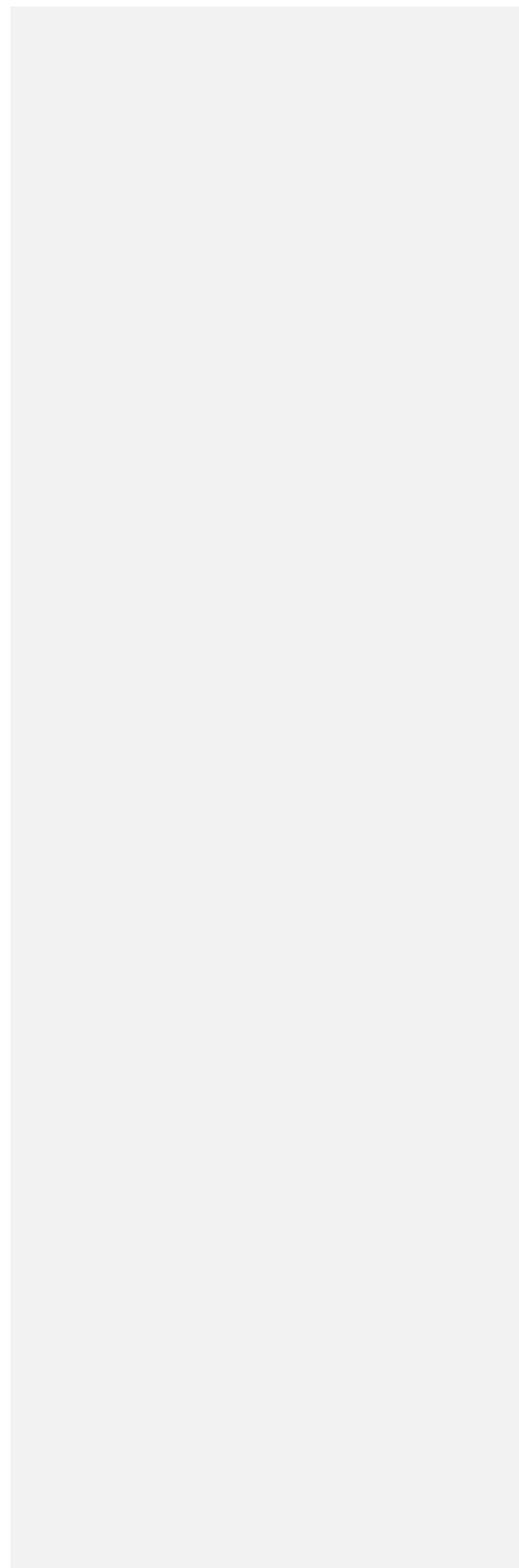
The holding time shall be calculated based on the effluent flow at the time of sample collection and time for disinfection. The holding time and supporting calculation shall be submitted as an attachment to the monthly DMRs. The Permittee may either use process software or manual means for calculation.

Chlorination and dechlorination systems shall include an alarm system for indicating system interruptions or malfunctions. Any interruption or malfunction of the chlorine dosing system that may have resulted in levels of chlorine that were inadequate for achieving effective disinfection, or interruptions or malfunctions of the dechlorination system that may have resulted in excessive levels of chlorine in the final effluent shall be reported with the monthly DMRs. The report shall include the date and time of the interruption or malfunction, the nature of the problem, and the estimated amount of time that the reduced levels of chlorine or dechlorination chemicals occurred.

10. The monthly average limits for fecal coliform and *Enterococcus* are expressed as a geometric mean. Fecal coliform and *Enterococcus* monitoring shall be conducted concurrently with TRC monitoring.
11. In addition to the effluent limits for bacteria, MWRA is required to update the existing Memorandum of Understanding (MOU) between the MWRA, the Massachusetts Division of Marine Fisheries (MA Marine Fisheries) and the US Food and Drug Administration (FDA) and implementation of the MOU and the attached monitoring plan is required by the Draft Permit (See Footnote 11). The updated Plan shall follow the same procedures and locations as documented in Attachments A & B of the MOU with the addition of station N21, located over the mid-point of the diffuser. The updated MOU and monitoring plan shall be submitted to the MA Marine Fisheries and the FDA for review and signature. The signed MOU and attached monitoring plan shall be submitted to EPA and MassDEP within 12 months of the effective permit. *Enterococcus* should also

Attachment B
MWRA Advisory Board Comments

continue to be monitored seasonally (April 1 through October 31) along with fecal coliform to ensure that MA WQS for bacteria are met.



Attachment B
MWRA Advisory Board Comments

NPDES Permit No. MA0103284

2023 Draft Permit
Page 11 of 68

The Permittee shall report the results of the monthly ambient fecal coliform and *Enterococcus* monitoring on their monthly DMRs for station N21. If the Bay is stratified at the time of sampling, the Permittee shall sample at the surface and below the pycnocline. If the Bay is not stratified, the Permittee should enter a NODI code = 9 for the below pycnocline DMR line. The ambient fecal coliform bacteria and *Enterococcus* monitoring results at the other sampling locations shall be submitted as an attachment to the monthly DMR. If an adverse-conditions monitoring event occurs, MWRA shall provide a letter summarizing the event and the sampling data collected as an attachment to the monthly DMR. Any updates or changes in the Ambient Bacteria Monitoring Plan shall be submitted to MA Marine Fisheries and the FDA for review. The signed MOU and plan shall be submitted to EPA.

12. If the MA DMF and/or the FDA determines in writing that the fecal coliform bacteria limit is inadequate to ensure protection of shellfish resources, and EPA concurs in writing, then the Permittee shall meet the following limits:

| Effluent Characteristic | Effluent Limitation | | | Monitoring Requirements | |
|---|---------------------|----------------|---------------|-------------------------|-------------|
| | Average monthly | Average Weekly | Maximum Daily | Measurement Frequency | Sample Type |
| Fecal Coliform Bacteria, (organisms/100 mL) | 14 | --- | 28 | 3/Day | Grab |

13. Oil and grease shall be tested using EPA Method 1664-n-Hexane Extractable Material (HEM; Oil and Grease) and Silica Gel Treated n-Hexane Extractable Material (SGT-HEM; Non-polar Material) by Extraction and Gravimetry Revision A or Method 1664 Revision B.

The Permittee shall have no detectable discharge of oil and grease. Compliance shall be measured at the minimum level (ML) of detection for the EPA approved test methods. The oil and grease ML is 5 mg/L using EPA Method 1664 (Revisions A and B), where the ML is the lowest point on the curve used to calibrate the test equipment for the pollutant of concern. If EPA approves a method under 40 CFR Part 136 for either, oil and grease that has a ML lower than 5 mg/L, the Permittee shall be required to use the improved method.

14. Ammonia Nitrogen, Total Kjeldahl nitrogen and nitrate + nitrite samples shall be collected concurrently. The results of these analyses shall be used to calculate both the concentration and mass loadings of total nitrogen, as follows.

$$\text{Total Nitrogen (mg/L)} = \text{Total Kjeldahl Nitrogen (mg/L)} + \text{Nitrate} + \text{Nitrite (mg/L)}$$

Attachment B
MWRA Advisory Board Comments

Total Nitrogen (lb/day) = [(average monthly Total Nitrogen (mg/L) * total monthly effluent flow (Millions of Gallons (MG)) / # of days in the month] * 8.34

Attachment B
MWRA Advisory Board Comments

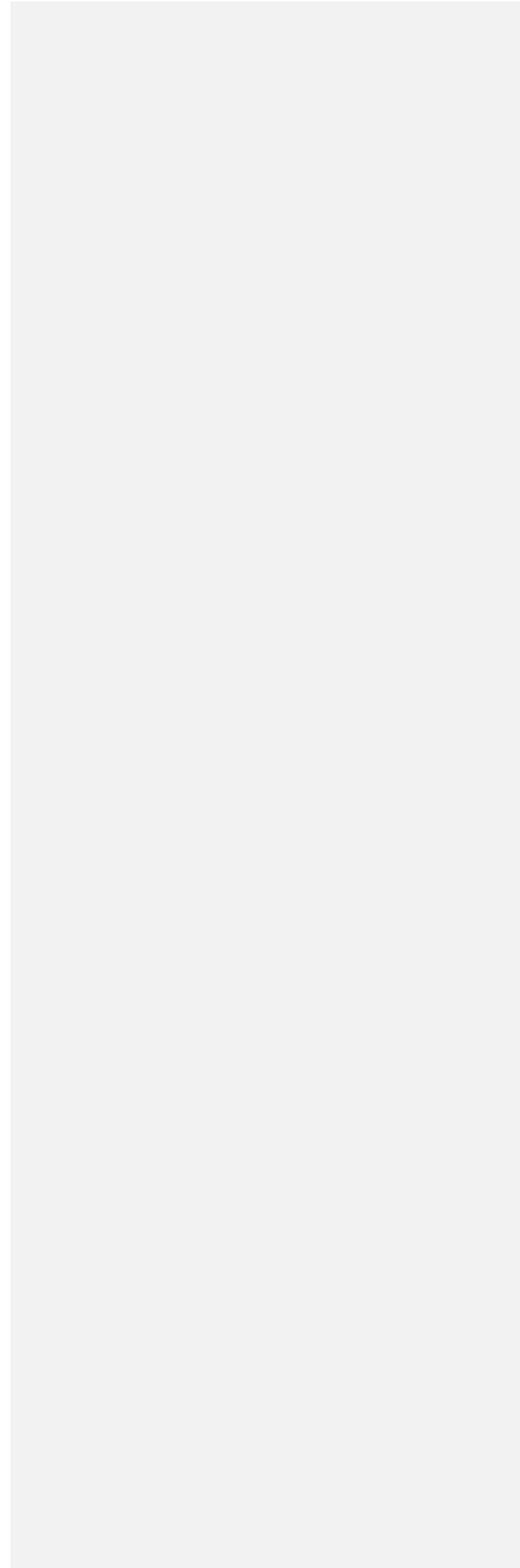
NPDES Permit No. MA0103284

2023 Draft Permit
Page 12 of 68

15. Report in nanograms per liter (ng/L) for effluent and influent samples; report nanograms per gram (ng/g) for sludge samples. Until there is an analytical method approved in 40 CFR Part 136 for PFAS, monitoring shall be conducted using Method 1633. Report in NetDMR the results of all PFAS analytes required to be tested in Method 1633, as shown in Attachment H. This reporting requirement for the listed PFAS parameters takes effect the first full calendar quarter following six months after the effective date of the Permit.
16. Report in nanograms per liter (ng/L) for effluent and influent samples; report nanograms per gram (ng/g) for sludge samples. Until there is an analytical method approved in 40 CFR Part 136 for Adsorbable Organic Fluorine, monitoring shall be conducted using Method 1621. This reporting requirement takes effect the first full calendar quarter following six months after the effective date of the Permit.
17. The Permittee shall conduct acute toxicity tests (LC50) and chronic toxicity tests (C-NOEC) in accordance with test procedures and protocols specified in **Attachment C and D** of this Permit. LC50 and C-NOEC are defined in Part II.E. of this Permit. The Permittee shall perform an acute toxicity test using the Inland Silverside (*Menidia beryllina*) and Mysid Shrimp (*Mysidopsis bahia*). The Permittee shall perform a chronic toxicity test using the 1-hour fertilization test with the Sea Urchin (*Arbacia punctulata*) in accordance with the test procedures and protocols specified in **Attachment D**. Toxicity test samples shall be collected during the same weeks each time of calendar quarters ending March 31st, June 30th, September 30th, and December 31st. The complete report for each toxicity test shall be submitted as an attachment to the DMR submittal which includes the results for that toxicity test.
18. For Part I.A.1., Whole Effluent Toxicity Testing, the Permittee shall conduct the analyses specified in **Attachment C and D**, Part VI. CHEMICAL ANALYSIS for the effluent sample. If toxicity test(s) using the receiving water as diluent show the receiving water to be toxic or unreliable, the Permittee shall follow procedures outlined in **Attachment C and D**, Section IV., DILUTION WATER. Minimum levels and test methods are specified in **Attachment C and D**, Part VI. CHEMICAL ANALYSIS.
19. For Part I.A.1., Ambient Characteristic, the Permittee shall conduct the analyses specified in **Attachment C and D**, Part VI. CHEMICAL ANALYSIS for the receiving water sample collected as part of the WET testing requirements. Such samples shall be taken from the receiving water at a point immediately outside of the permitted discharge's zone of influence at a reasonably accessible location, as specified in **Attachment C and D**. Minimum levels and test methods are specified in **Attachment C and D**, Part VI. CHEMICAL ANALYSIS.
20. Monitoring and reporting for dissolved organic carbon (DOC) are not requirements of the Whole Effluent Toxicity (WET) tests but are additional requirements. The Permittee may

Attachment B
MWRA Advisory Board Comments

analyze the WET samples for DOC or may collect separate samples for DOC concurrently with WET sampling.



Attachment B
MWRA Advisory Board Comments

NPDES Permit No. MA0103284

2023 Draft Permit
Page 13 of 68

21. A pH and temperature measurement shall be taken of each receiving water sample at the time of collection and the results reported on the appropriate DMR. These pH and temperature measurements are independent from any pH and temperature measurements required by the WET testing protocols.

Attachment B

MWRA Advisory Board Comments

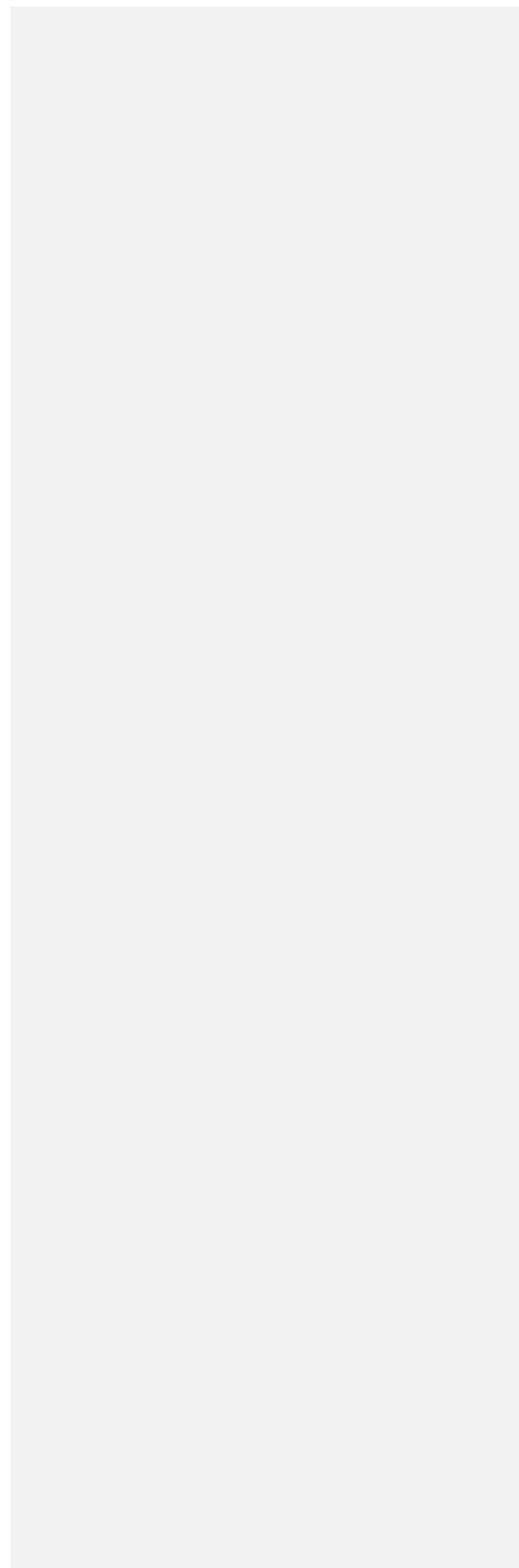
22. Sludge sampling shall be as representative as possible based on guidance found at <https://www.epa.gov/sites/production/files/2018-11/documents/potw-sludge-sampling-guidance-document.pdf>.

Part I.A., continued.

2. ~~The discharge shall not cause a violation of the water quality standards of the receiving water.~~
3. The discharge shall be free from pollutants in concentrations or combinations that, in the receiving water, settle to form objectionable deposits; float as debris, scum or other matter to form nuisances; produce objectionable odor, color, taste or turbidity; or produce undesirable or nuisance species of aquatic life.
4. The discharge shall be free from pollutants in concentrations or combinations that adversely affect the physical, chemical, or biological nature of the bottom.
5. The discharge shall not result in pollutants in concentrations or combinations in the receiving water that are toxic to humans, aquatic life, or wildlife.
6. The discharge shall be free from floating, suspended and settleable solids in concentrations or combinations that would impair any use assigned to the receiving water.
7. The discharge shall be free from oil and grease and petrochemicals.
8. The Permittee must provide adequate notice to EPA and MassDEP of the following:
 - a. Any new introduction of pollutants into the POTW from an indirect discharger which would be subject to Part 301 or Part 306 of the Clean Water Act if it were directly discharging those pollutants or in a primary industry category (*See* 40 CFR Part 122 Appendix A as amended) discharging process water; and
 - b. Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the Permit.
 - c. For purposes of this paragraph, adequate notice shall include information on:
 - (1) The quantity and quality of effluent introduced into the POTW; and
 - (2) Any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.
9. Pollutants introduced into the POTW by a non-domestic source (user) shall not pass through the POTW or interfere with the operation or performance of the POTW.
10. In accordance with 40 CFR § 122.44(j)(1) the Permittee must identify, in terms of character and volume, any Significant Industrial Users (SIUs) discharging into the POTW subject to

Attachment B
MWRA Advisory Board Comments

Pretreatment Standards under section 307(b) of CWA and 40 CFR Part 403. SIUs information shall be updated at a minimum of once per year or at that frequency necessary to



ensure that all SIUs are properly permitted and/or controlled. The records shall be maintained and updated as necessary.

B. COMBINED SEWER OVERFLOWS (CSOs)

Permittee and the CSO-responsible Co-Permittees are required to ensure that their respective discharges from combined sewer overflow (CSO) outfalls authorized under this Part and activities in relation to the sewer system that each owns and operates complies with the terms of this Part B and Part II. Neither Permittee nor any CSO-responsible Co-permittee shall be responsible for another's violations of this Part B or Part II. Moreover, in no event shall any Co-permittee be responsible any violation of Part A. In the event of any conflict between this paragraph and any other term or provision of this Permit, this paragraph shall control.

1. Beginning on the effective date, the Permittee, MWRA, and the CSO-responsible Co-permittees: Boston Water and Sewer Commission (BWSC), City of Cambridge, City of Chelsea, and City of Somerville, are authorized to discharge stormwater/wastewater from the combined sewer overflow (CSO) outfalls listed in **Attachment A** into the designated receiving waters. These discharges are authorized only during "wet weather" defined as any period in which there is greater than 0.1 inches of rain and /or snow melt.
2. ~~Permittee's and the CSO-responsible Co-permittee's respective discharges of The effluent discharged~~ from these CSO outfalls are subject to the following limitations:
 - a. ~~The discharges shall not cause or contribute to violations of federal or state Water Quality Standards.~~
 - b. The discharges shall receive treatment at a level providing Best Practicable Control Technology Currently Available (BPT), Best Conventional Pollutant Control Technology (BCT) to control and abate conventional pollutants and Best Available Technology Economically Achievable (BAT) to control and abate non-conventional and toxic pollutants. The EPA has made a Best Professional Judgment (BPJ) determination that BPT, BCT, and BAT for combined sewer overflow (CSO) control includes the implementation of Nine Minimum Controls (NMC) specified below. These Nine Minimum Controls and the Nine Minimum Controls Implementation Levels which are detailed further in Part I.B.2. are requirements of this Permit and include:
 - (1) Proper operation, and regular maintenance programs for the sewer system, and the CSOs.
 - (2) Maximum use of the collection system for storage of combined wastewater and stormwater in order to minimize CSO discharges.

Attachment B

MWRA Advisory Board Comments

- (3) Review and, as appropriate, modify the pretreatment program to minimize the adverse effects of CSO outfall discharges.
- (4) Maximization the proportion of the system's wastewater, and combined wastewater/stormwater, flow that is conveyed to the POTW for treatment.
- (5) Dry weather overflows from CSO outfalls are prohibited and must be eliminated.
- (6) Minimize the discharge of solid and floatable materials in CSO outfall discharges.

Attachment B
MWRA Advisory Board Comments

NPDES Permit No. MA0103284

2023 Draft Permit
Page 16 of 68

- (7) Implement pollution prevention programs that focus on contaminant reduction activities.
 - (8) Provide adequate notice to the public of CSO outfall occurrences and CSO outfall impacts.
 - (9) Monitor to effectively characterize CSO outfall impacts and the efficacy of CSO controls.
- c. The authorized typical year discharge activations and volumes for the Boston Inner Harbor CSO outfalls are limited as shown in **Attachment I**. Discharge frequencies and volumes are expected to vary from year to year as a function of rainfall.
- d. The authorized typical year discharge activations and volumes for the Charles River CSO outfalls are limited as shown in **Attachment I**. Discharge frequencies and volumes are expected to vary from year to year as a function of rainfall. CSO outfalls discharging to the Charles River Basin have been granted a variance under the Massachusetts Water Quality Standards (WQS) through August 31, 2024. A copy of this determination letter for the variance extension is included as **Attachment J**. The conditions of this variance are incorporated into and are enforceable elements of this permit.
- e. The authorized typical year discharge activations and volumes for the Alewife Brook and Upper Mystic River CSO outfalls are limited as shown in **Attachment I**. Discharge frequencies and volumes are expected to vary from year to year as a function of rainfall. CSO outfalls discharging to the Alewife Brook/Upper Mystic River Basin have been granted a variance under the Massachusetts Water WQS through August 31, 2024. A copy of this determination letter for the variance extension is included as **Attachment K**. The conditions of this variance are incorporated into and are enforceable elements of this Permit.
- f. The Permit's discharges must meet federal and state WQS subject to and consistent with any water quality standards variances or variance extensions issued by MassDEP and approved by EPA.

3. Nine Minimum Controls Implementation Levels

The Permittee, ~~MWRA~~, and CSO-responsible Co-permittees: BWSC, City of Cambridge, City of Chelsea and City of Somerville, shall continue to implement the Nine Minimum Control Program (NMC) for their respective CSO discharges and infrastructure that each owns and operates in accordance with the documentation provided to EPA and MassDEP or as subsequently modified to enhance the effectiveness of controls. This implementation

Attachment B
MWRA Advisory Board Comments

must include the controls identified in Part I.B.2.b.1-9 of this Permit plus other controls the Permittee and CSO-responsible Co-permittees can reasonably undertake with respect to their respective CSO discharges and infrastructure that each owns and operates as set forth in the documentation. Within 1 year of the effective date of the

permit, the Permittee and CSO-responsible Co-permittees shall each submit to EPA and MassDEP through NetDMR an updated NMC program that reflects the following requirements:-

- a. Permittee and the CSO-responsible Co-permittees shall routinely inspect ~~Each~~ CSO structure/regulator, pumping station and/or tide gate that they respectively own and operate shall be routinely inspected to ensure that they are in good working condition and adjusted to minimize combined sewer discharges and tidal surcharging. Such inspections shall occur monthly unless EPA approves a site-specific inspection program which has been determined by EPA to provide an equal level of effectiveness (NMC #1, 2 and 4).
- b. Permittee and CSO-responsible Co-permittees shall record ~~the~~ the following inspection results shall be recorded for each of their respective inspections: the date and time of the inspection, the general condition of the facility, and whether the facility is operating satisfactorily. If maintenance is necessary, the Permittee or CSO-responsible Co-permittees shall record: the description of the necessary maintenance, the date the necessary maintenance was performed, and whether the observed problem was corrected. The Permittee or CSO-responsible Co-permittee shall maintain all records of their respective inspections for at least three (3) years.
- c. **Annually, no later than March 31st**, the Permittee and CSO-responsible Co-permittees shall submit a certification to MassDEP and EPA which states that their respective previous calendar year's monthly inspections were conducted, results recorded, and records maintained.
- d. MassDEP and EPA have the right to inspect any CSO-related structure or outfall at any time without prior notification to the Permittee and CSO-responsible Co-Permittees.
- e. Discharges to the combined system of septage, holding tank wastes, or other material which may cause a visible oil sheen or containing floatable material are prohibited during wet weather when CSO outfalls may be active (NMC # 3, 6, and 7).
- f. Dry weather overflows (DWOs) are prohibited (NMC #5). All dry weather sanitary and/or industrial discharges from Permittees' and CSO-responsible Co-permittees' respective CSO outfalls must be reported to EPA and MassDEP within 24 hours in accordance with the reporting requirements for plant bypass (Paragraph D.1.e of Part II of this Permit).

Attachment B

MWRA Advisory Board Comments

- g. The Permittee and CSO-responsible Co-permittees shall quantify and record all discharges from their respective combined sewer outfalls (NMC #9). Quantification shall be through direct measurement or estimation. When estimating, the Permittee and CSO-responsible Co-permittees shall make reasonable efforts, (i.e., gaging, measurements) to verify the validity of the ir respective estimation techniques. The following information must be recorded for each combined sewer outfall for each discharge event:

- (1) Duration (hours) of discharge;
 - (2) Volume (gallons) of discharge; and
 - (3) National Weather Service precipitation data from the nearest gage where precipitation is available at daily (24-hour) intervals and the nearest gage where precipitation data at minimum of one-hour intervals is available to the Permittee or CSO-responsible Co-permittees.
 - (4) A description of whether the discharge activation and volume are in accordance with the MWRA Final CSO Facilities Plan or as amended.
- h. Cumulative precipitation per discharge event shall be calculated.
- i. The Permittee and CSO-responsible Co-permittees shall maintain all of their respective records of discharges from their respective CSO outfalls for at least six (6) years after the effective date of this Permit, as it is collected, on an ongoing basis.
- j. The Permittee and CSO-responsible Co-permittees shall install and maintain identification signs for all combined sewer outfall structures (NMC # 8). The signs must be located at or near the combined sewer outfall structures and be easily readable by the public from the land and water. These signs shall be a minimum of 12 x 18 inches in size, with white lettering against a green background, and shall contain the following information:

- (1) For CSO outfalls where MWRA is the responsible Permittee:

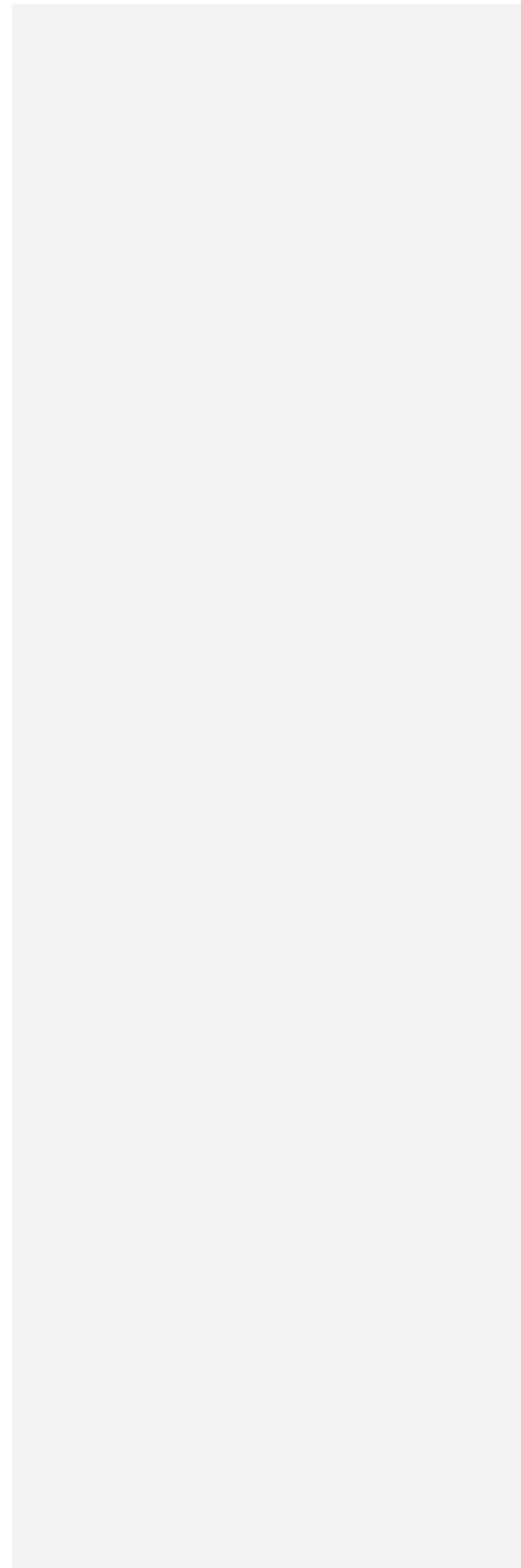
WARNING:*
MASSACHUSETTS WATER RESOURCES AUTHORITY
WET WEATHER
SEWAGE DISCHARGE
OUTFALL (discharge serial number)

- (2) For CSO outfalls where BWSC is the CSO-responsible Co-permittee:

WARNING:*
BOSTON WATER AND SEWER COMMISSION
WET WEATHER
SEWAGE DISCHARGE
OUTFALL (discharge serial number)

Attachment B
MWRA Advisory Board Comments

- (3) For CSO outfalls where the City of Cambridge is the CSO-responsible Co-permittee:



WARNING:*
CITY OF CAMBRIDGE
DEPARTMENT OF PUBLIC WORKS
WET WEATHER
SEWAGE DISCHARGE
OUTFALL (discharge serial number)

- (4) For CSO outfalls where the City of Chelsea is the CSO-responsible Co-permittee:

WARNING:*
CITY OF CHELSEA
DEPARTMENT OF PUBLIC WORKS
WET WEATHER
SEWAGE DISCHARGE
OUTFALL (discharge serial number)

- (5) For CSO outfalls where the City of Somerville is the CSO-responsible Co-permittee:

WARNING:*
CITY OF SOMERVILLE
DEPARTMENT OF PUBLIC WORKS
WET WEATHER
SEWAGE DISCHARGE
OUTFALL (discharge serial number)

*For existing signs which otherwise meet the requirements of this section, the word "Warning" need not be added.

Where easements over property not owned by the Permittee or CSO-responsible Co-permittees must be obtained to meet this requirement, the Permittee or CSO-responsible Co-permittees will use its best efforts to identify the appropriate landowners and obtain the necessary easements, to the extent practicable.

The Permittee and CSO-responsible Co-permittees, to the extent feasible, shall add a universal wet weather sewage symbol to each existing sign, or will place a sign with a universal wet weather sewage symbol that is visible from the land and water, unless there is already a warning sign written in a non-English language, or will place additional signs in languages other than English based on notification from the EPA. See Part I.K.3.

Attachment B
MWRA Advisory Board Comments

- k. In accordance with 314 CMR 16.05(3), each Permittee and CSO-responsible Co-permittee shall install and maintain signage at public access points to waters

Attachment B
MWRA Advisory Board Comments

NPDES Permit No. MA0103284

2023 Draft Permit
Page 20 of 68

affected by a potential discharge from the Permittee's or CSO-responsible Co-permittee's outfall by the date established in their respective approved CSO Public Notification Plans. The locations for the signage shall be established in the Permittee's or CSO-responsible Co-permittee's respective approved CSO Public Notification Plans based on consultation with boards of health or health departments in the municipalities directly impacted by the discharge. Each sign shall identify:

- (1) The existence of the outfall;
- (2) The permittee;
- (3) Information about weather events that may cause a discharge;
- (4) A warning of the potential threat to public health by recreating in, or using waters and shores affected by a discharge; and
- (5) Information for the public to subscribe to notifications about discharges in local area waters.

Signage shall be developed using a template provided by MassDEP and be able to provide timely information about ongoing discharges to allow municipal boards of health and health departments to meet the requirements of 314 CMR 16.09(5). For discharges directly affecting neighborhoods identified as environmental justice populations due to lacking English language proficiency, signage shall provide access to translations in the language(s) most appropriate for those neighborhoods and shall utilize universal symbols.

- l. The City of Cambridge may use the activation of Outfall CAM401B as a general indicator of the onset of CSO outfall discharges which would trigger the notice in accordance with 314 CMR 16.00, Notification Requirements to Promote Public Awareness of Sewage Pollution, unless there is evidence that a different CSO outfall activated before CAM401B. (NMC #8).

m. Public Notification Plan

The Permittee and CSO-responsible Co-permittees must implement their respective preliminary and final CSO Public Notification Plans as approved by MassDEP and shall meet all other applicable requirements of 314 CMR 16.00.

<https://www.mass.gov/doc/314-cmr-1600-notification-requirements-to-promote-public-awareness-of-sewage-pollution-1/download>

Attachment B
MWRA Advisory Board Comments

4. The Permittee and each CSO-responsible Co-permittee may consolidate CSO reports which are on similar reporting schedules.
5. Nine Minimum Controls Reporting Requirement

Attachment B
MWRA Advisory Board Comments

NPDES Permit No. MA0103284

2023 Draft Permit
Page 21 of 68

- a. **Annually, no later than April 30th**, the Permittee and each CSO-responsible Co-permittees shall submit a report into NetDMR which includes the following information:
- b. Activation frequency and discharge volumes for each CSO outfall listed on **Attachment A** for which Permittee or the CSO-responsible Co-permittee is responsible during the previous calendar year. For each day of an MWRA CSO discharge event, the MWRA Report shall include the daily flow at DITP and note whether there was a bypass of secondary treatment, and the volume bypassed.
- c. For any Permittee or CSO-responsible Co-permittees with CSO treatment facilities, a compilation of the data for CSO events for which sampling was conducted pursuant to section I.B.6 of this Permit.
- d. Precipitation during the previous year for each day, including total rainfall, peak intensity, and average intensity.
- e. Status of the implementation of CSO outfall abatement work for which the Permittee or CSO-responsible Co-permittees is directly responsible in accordance with the MWRA Final CSO Facilities Plan, the Federal Court Order, as amended and any related subsequent documents and the requirements of a CSO Variance. The authorized typical year CSO discharge activations and volumes can be found in **Attachment I**.
- f. For the outfalls listed in **Attachment A**, provide the following information in the Annual Report for year 3 and every two years thereafter using the updated MWRA model (or equivalent) for comparison:
 - (1) A comparison between the precipitation for the previous year and the precipitation in the typical year under future planned conditions used in the MWRA Final CSO Facilities Plan or “Notice of Project Change” document, or subsequent document, whichever is appropriate. This comparison shall include the number of events and size of events (including recurrence interval).
 - i. For each CSO outfall that the Permittee or CSO-responsible Co-permittee owns or operates, a comparison between the activation volume and frequency for the previous year and the volume and frequency expected during a typical year under future planned conditions.

Attachment B
MWRA Advisory Board Comments

- ii. For each CSO event from one or more outfalls that the Permittee or CSO-responsible Co-Permittee owns or operates, an estimate of the recurrence interval of the storm event, using the rainfall data collected and the information included in the NOAA Atlas 14, or other technical reference for defining storm event recurrence.

iii. An evaluation of whether the Permittee's or CSO-responsible Co-permittees' respective CSO outfall activation volumes and frequencies for the previous year are in accordance with the estimates in the MWRA Final CSO Facilities Plan or as amended by the Court, given the precipitation which occurred during the year, and the CSO outfall abatement activities which have been implemented. Where CSO outfall discharges are determined to be greater than the activation frequency or volume in either document above, the Permittee or CSO-responsible Co-permittees shall include their assessment of such result, a discussion of remaining CSO outfall abatement activities and an assessment of the impact of those projects on attaining the level of CSO outfall control identified in the relevant document, or any amendments thereto.

6. Combined Sewer Overflow Outfall Monitoring

For each combined sewer overflow outfall listed in **Attachment A** of this Permit, the Permittee or CSO-responsible Co-permittees must monitor the following for their respective outfalls:

| Parameters | Reporting Requirements | Monitoring Requirements | |
|--|------------------------|-------------------------|-------------|
| | Total Monthly | Measurement Frequency | Sample Type |
| Total Flow | Report Gallons | Daily, when discharging | Continuous |
| Total Flow Duration (Duration of flow through CSO discharge) | Report Hours | Daily, when discharging | Continuous |
| Number of CSO Discharge Events | Report Monthly Count | Daily, when discharging | Count |

- a. For Total Flow, measure the total flow discharged from each CSO outfall during the month. For Total Flow Duration, report the total duration (hours) of discharges for each CSO outfall during the month.
- b. For those months when a CSO discharge does not occur, the Permittee and responsible Co-permittees must indicate "no discharge" for the outfall for which data was not collected.

Attachment B
MWRA Advisory Board Comments

- c. This information shall be submitted with the annual report required by Part I.B.5 of this Permit.

7. Combined Sewer Overflow Outfalls Limitations and Monitoring for the MWRA CSO Treatment Facilities (Outfalls MWR201, MWR203, MWR205, MWR205A and MWR215)

Attachment B
MWRA Advisory Board Comments

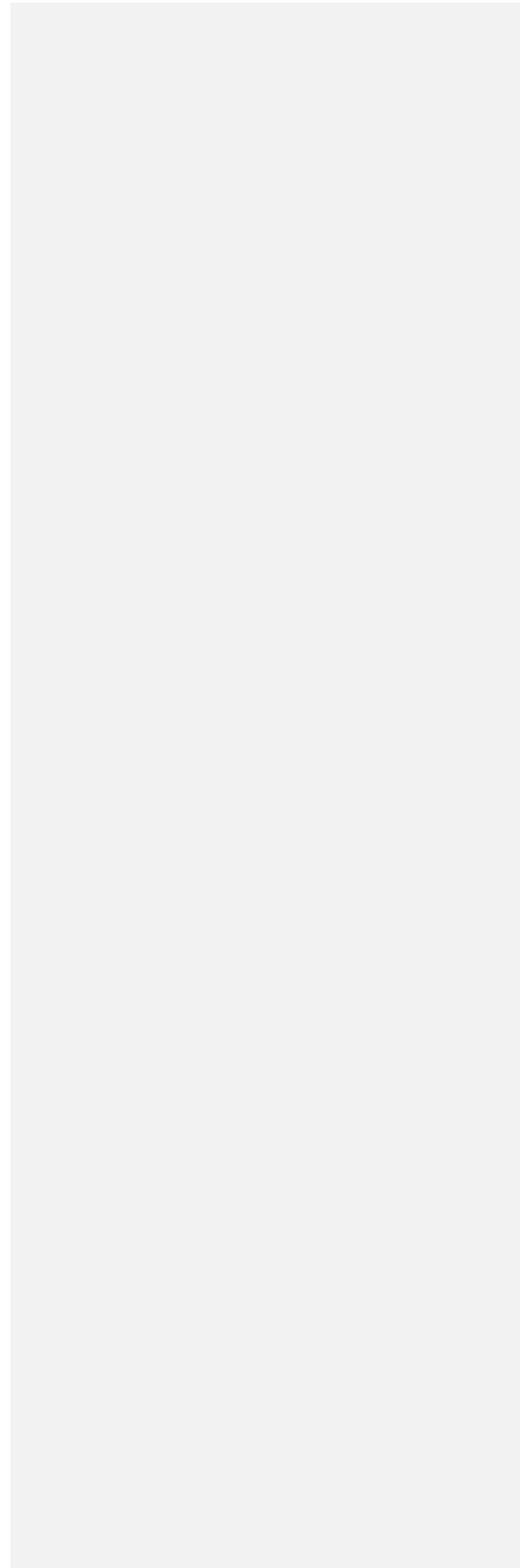
NPDES Permit No. MA0103284

2023 Draft Permit
Page 23 of 68

- a. In addition to the requirements for all CSO outfalls listed above, during the period beginning on the effective date, the Permittee is authorized to discharge treated effluent through Outfalls MWR201, MWR203, MWR205, MWR205A and MWR215. Outfalls MWR201 and MWR205A discharge to Class B waters with CSO variances. Outfalls MWR203, MWR205 and MWR215 discharge into Class SB(CSO) waters. These discharges are authorized only during wet weather (i.e., any period in which there is greater than 0.1 inches of rain and/or snow melt). The

Attachment B
MWRA Advisory Board Comments

discharge shall be limited and monitored as specified below; the receiving water and the influent shall be monitored as specified below.



b. CSO Effluent Limits

| Effluent Characteristic | Effluent Limitation | | Monitoring Requirements ^{22,23,24} | |
|--|---|--|---|---------------------------|
| | Average Monthly | Maximum Daily | Measurement Frequency | Sample Type ²⁵ |
| Flow ²⁶ | Report | Report | Per Discharge Event | Recorder |
| Rainfall/Precipitation ²⁷ | Report | Report | Per Discharge Event | Total |
| BOD ₅ Outfalls MWR201, MWR205A, MWR203, MWR205, MWR215 | Report mg/L and lb/day | Report mg/L and lb/day | 4/Year ²⁸ | Event Composite |
| TSS Outfalls MWR201, MWR205A, MWR203, MWR205, MWR215 | Report mg/L and lb/day | Report mg/L and lb/day | 4/Year ²⁸ | Event Composite |
| pH Range ²⁹ Outfalls MWR201, MWR205A Outfalls MWR203, MWR205, MWR215 | 6.5 - 8.3 S.U. 6.5 - 8.5 S.U. | | 4/Year ²⁸ | Grab |
| Total Residual Chlorine ³⁰ Outfall MWR201 Outfall MWR203 Outfall MWR205 Outfall MWR205A Outfall MWR215 | 0.055 mg/L 0.045 mg/L 0.075 mg/L 0.01 mg/L 0.015 mg/L | 0.1 mg/L 0.078 mg/L 0.13 mg/L 0.02 mg/L 0.026 mg/L | 4/Year ²⁸ | Grab |

Attachment B
MWRA Advisory Board Comments

| | | | | |
|--|----------------|----------------|----------------------|------|
| <i>E. coli</i> ³⁰ Outfalls MWR201, MWR205A | 126 cfu/100 mL | 410 cfu/100 mL | 4/Year ²⁸ | Grab |
|--|----------------|----------------|----------------------|------|

| Effluent Characteristic | Effluent Limitation | | Monitoring Requirements ^{22,23,24} | |
|-------------------------|---------------------|------------------|---|------------------------------|
| | Average Monthly | Maximum Daily | Measurement Frequency | Sample Type ²⁵ |

Attachment B
MWRA Advisory Board Comments

| | | | | |
|---|---------------|----------------|----------------------|------|
| <i>Enterococcus</i> ³⁰ Outfalls MWR203, MWR205 and MWR215 | 35 cfu/100 mL | 130 cfu/100 mL | 4/Year ²⁸ | Grab |
|---|---------------|----------------|----------------------|------|

| Whole Effluent Toxicity (WET) Testing | | | | |
|---|------------------|------------------|--------|--------------------|
| LC ₅₀ Outfalls MWR201, MWR205A ^{31,32} Outfalls MWR203, MWR205, MWR215 ^{33,34} | Report Report | Report Report | 2/Year | Event Composite |
| Salinity Outfalls MWR203, MWR205, MWR215 | --- | Report ppt | 2/Year | Event Composite |
| Ammonia Nitrogen | --- | Report mg/L | 2/Year | Event Composite |
| Total Cadmium | --- | Report mg/L | 2/Year | Event Composite |
| Total Copper | --- | Report mg/L | 2/Year | Event Composite |
| Total Nickel | --- | Report mg/L | 2/Year | Event Composite |
| Total Lead | --- | Report mg/L | 2/Year | Event Composite |
| Total Zinc | --- | Report mg/L | 2/Year | Event Composite |

Attachment B
MWRA Advisory Board Comments

| | | | | |
|----------------------|-----|-------------|--------|--------------------|
| Total Organic Carbon | --- | Report mg/L | 2/Year | Event Composite |
|----------------------|-----|-------------|--------|--------------------|

Footnotes:

22. All samples shall be collected in a manner to yield representative data. A routine sampling program shall be developed in which samples are taken at the same location, and same time frame. Occasional deviations from the routine sampling program are allowed, but the reason for the deviation shall be documented as an electronic attachment to the applicable discharge monitoring report. The Permittee shall report the results to the EPA and MassDEP of any additional testing above that required herein, if testing is in accordance with 40 CFR Part 136.
23. In accordance with 40 CFR § 122.44(i)(1)(iv), the Permittee shall monitor according to sufficiently sensitive test procedures (i.e., methods) approved under 40 CFR Part 136 or required under 40 CFR chapter I, subchapter N or O, for the analysis of pollutants or pollutant parameters (except WET). A method is "sufficiently sensitive" when: 1) The method minimum level (ML) is at or below the level of the effluent limitation established in the permit for the measured pollutant or pollutant parameter; or 2) The method has the lowest ML of the analytical methods approved under 40 CFR Part 136 or required under 40 CFR chapter I, subchapter N or O for the measured pollutant or pollutant parameter. The term "minimum level" refers to either the sample concentration equivalent to the lowest calibration point in a method or a multiple of the method detection limit (MDL), whichever is higher. Minimum levels may be obtained in several ways: They may be published in a method; they may be based on the lowest acceptable calibration point used by a laboratory; or they may be calculated by multiplying the MDL in a method, or the MDL determined by a laboratory, by a factor.
24. When a parameter is not detected above the ML, the Permittee must report the data qualifier signifying less than the ML for that parameter (e.g., < 50 µg/L, if the ML for a parameter is 50 µg/L). For reporting an average based on a mix of values detected and not detected, assign a value of "0" to all non-detects for that reporting period and report the average of all the results.
25. A "grab" sample, for the purposes of this section, is an individual sample collected in a period of less than 15 minutes. A grab sample will be taken within the first two hours of the start of a discharge, and every hour thereafter for the duration of the discharge.

A "composite" sample, for the purposes for this section, is a time-weighted composite sample. Sampling will begin within the first two hours of the start of a

Attachment B
MWRA Advisory Board Comments

discharge and aliquots taken no more than one hour apart for the duration of the discharge, not to exceed twenty-four (24) hours. The aliquots will be of equal

volume, comprising a time-weighted composite as defined in Part II Standard Conditions.

26. Report the peak flow rate, duration and volume for each discharge event.
27. Report the National Weather Service data for Boston per discharge event. Report intensity, duration and volume of each rain event.
28. Sampling shall be concentrated during the “critical” use periods. The Permittee shall sample one Spring event (March 1st – April 30th), two Summer events (May 1st – August 31st) and one Fall event (September 1st – October 31st). At least one of the sampled events shall include a period of discharge from MWR205A. The Permittee shall report “9” on its DMR during months when sampling is not conducted.
29. The pH shall be within the specified range at all times. The minimum and maximum pH sample measurement values for the month shall be reported in standard units (S.U.).
30. The Permittee shall minimize the use of chlorine while maintaining adequate bacterial control. Monitoring for total residual chlorine (TRC) is only required for discharges which have been previously chlorinated, or which contain residual chlorine.

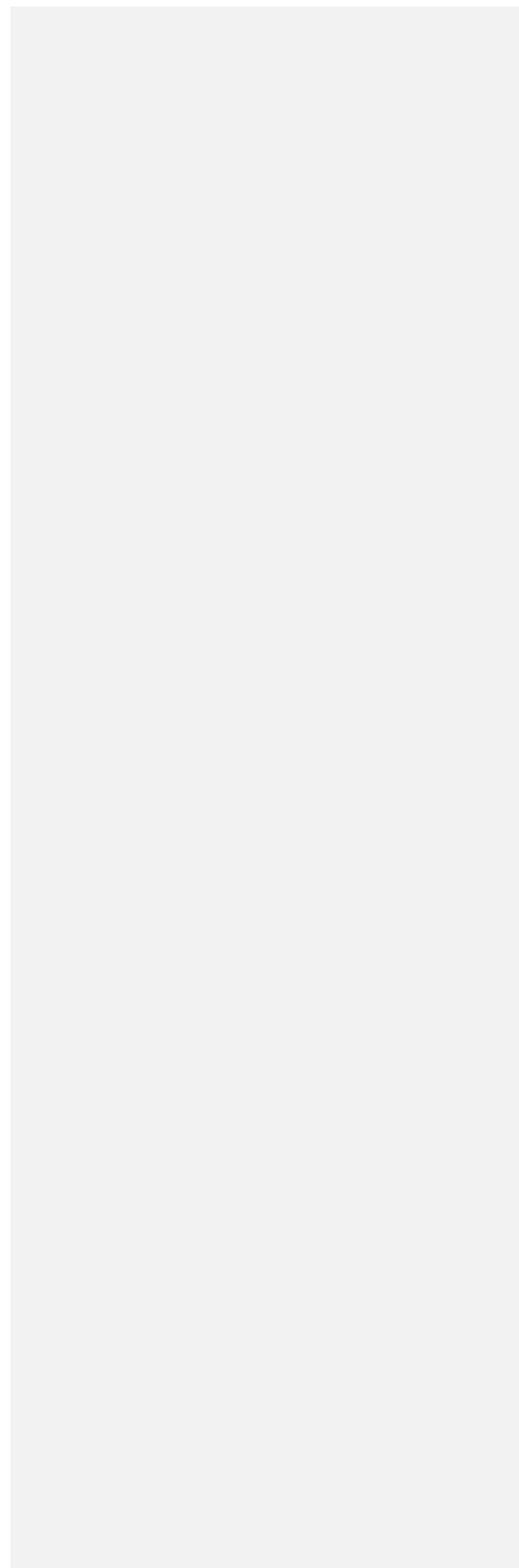
TRC samples must be collected concurrently with the *E.coli* and/or *Enterococcus* samples.

Chlorination and dechlorination systems shall include an alarm system for indicating system interruptions or malfunctions. Any interruption or malfunction of the chlorine dosing system that may have resulted in levels of chlorine that were inadequate for achieving effective disinfection, or interruptions or malfunctions of the dechlorination system that may have resulted in excessive levels of chlorine in the final effluent shall be reported with the monthly DMRs. The report shall include the date and time of the interruption or malfunction, the nature of the problem, and the estimated amount of time that the reduced levels of chlorine or dechlorination chemicals occurred.

Process Control TRC: For each discharge event, the Permittee must maintain a record of process control TRC before dechlorination, using the TRC analyzer (measured continuously) or with hourly grab samples).

Attachment B
MWRA Advisory Board Comments

The discharge event maximum is the hourly maximum during the discharge event.



31. The Permittee shall conduct acute toxicity tests (LC50) two times per year, once in Quarter 2 (April 1 - June 30), and once in Quarter 3 (July 1 - Sep 30). The LC50 is defined in Part II.E. of this Permit. The Permittee shall perform an acute toxicity test using the daphnid (*Ceriodaphnia dubia*) and the fathead minnow (*Pimephales promelas*). Toxicity test samples shall be collected during the first flush or as a composite over the duration of the overflow, not to exceed 24 hours. The tests must be performed in accordance with test procedures and protocols specified in **Attachment E** of this Permit.

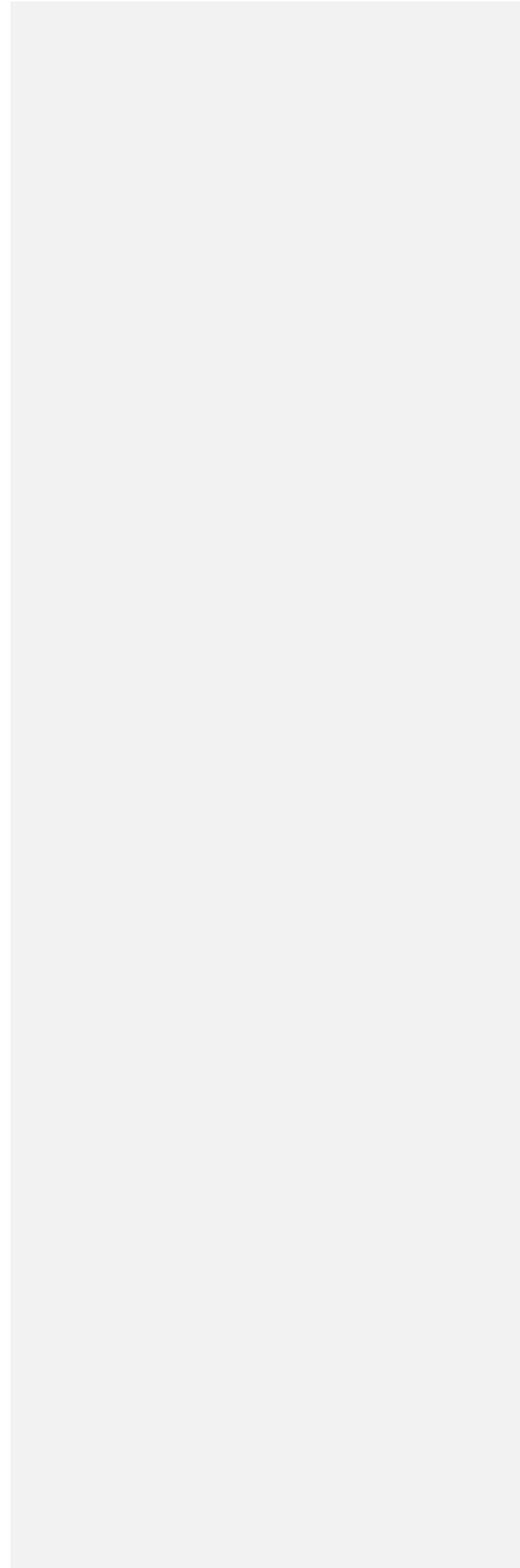
If the discharge fails an LC50 = 100% toxicity test, the Permittee will perform a second acute toxicity test within 30 days, or if weather does not permit, as soon as possible. If the discharge fails the second LC50 = 100% toxicity test, the Permittee will submit a report to EPA discussing the results of the first two toxicity tests and the concomitant priority pollutant testing.

The complete report for each toxicity test shall be submitted as an attachment to the DMR submittal which includes the results for that toxicity test.

32. For Part I.B.6., Whole Effluent Toxicity Testing, the Permittee shall conduct the analyses specified in **Attachment E**, Part VI. CHEMICAL ANALYSIS for the effluent sample. If toxicity test(s) using the receiving water as diluent show the receiving water to be toxic or unreliable, the Permittee shall follow procedures outlined in **Attachment E**, Section IV., DILUTION WATER. Minimum levels and test methods are specified in **Attachment E**, Part VI. CHEMICAL ANALYSIS.
33. The Permittee shall conduct acute toxicity tests (LC50) two times per year, once in Quarter 2 (April 1 - June 30), and once in Quarter 3 (July 1 - Sep 30). The LC50 is defined in Part II.E. of this Permit. The Permittee shall perform an acute toxicity test using the Inland Silverside (*Menidia beryllina*) and Mysid Shrimp (*Mysidopsis bahia*) in accordance with test procedures and protocols specified in **Attachment C** of this Permit. The Permittee shall perform a chronic toxicity test using the 1-hour fertilization test with the Sea Urchin (*Arbacia punctulata*) in accordance with test procedures and protocols specified in **Attachment D** of this Permit. . Toxicity test samples shall be collected during the first flush or as a composite over the duration of the overflow, not to exceed 24 hours.
34. The complete report for each toxicity test shall be submitted as an attachment to the DMR submittal which includes the results for that toxicity test. For Part I.B.6., Whole Effluent Toxicity Testing, the Permittee shall conduct the analyses specified in **Attachments C and D**, Part VI. CHEMICAL ANALYSIS for the

Attachment B
MWRA Advisory Board Comments

effluent sample. If toxicity test(s) using the receiving water as diluent show the receiving water to be toxic or unreliable, the Permittee shall follow procedures



outlined in **Attachments C and D**, Section IV., DILUTION WATER. Minimum levels and test methods are specified in **Attachment C and D**, Part VI. CHEMICAL ANALYSIS.

C. UNAUTHORIZED DISCHARGES

1. This Permit authorizes discharges only from the outfalls listed in Part I.A.1, **Attachment A** and Part I.B.1 in accordance with the terms and conditions of this Permit. Discharges of wastewater from any other point sources, including sanitary sewer overflows (SSOs), are not authorized by this Permit. The Permittee, CSO-responsible Co-permittees and Co-permittees must provide verbal notification to EPA and MassDEP within 24 hours of becoming aware of any unauthorized discharge from the infrastructure that they respectively own and operate, and submit a written report within 5 days, in accordance with Part II.D.1.e (24-hour reporting). Providing that it contains the information required in Part II.D.1.e, submission of the MassDEP SSO Reporting Form (described in I.C.3 below) may satisfy the requirement for a written report. See Part I.J below for reporting requirements.
2. The Permittee, CSO-responsible Co-permittees and Co-permittees must provide notification to the public within 24 hours of becoming aware of any unauthorized discharge from the infrastructure that they respectively own and operate, except SSOs that do not impact a surface water or the public, on a publicly-available website, and it shall remain on the website for a minimum of 12 months. Such notification shall include the location (including latitude and longitude) and description of the discharge; estimated volume; the period of noncompliance, including exact dates and times, and, if the noncompliance has not been corrected, the anticipated time it is expected to continue.
3. Written notification of SSOs to MassDEP shall be made on its SSO Reporting Form (which includes MassDEP Regional Office telephone numbers). The reporting form and instruction for its completion may be found on-line at <https://www.mass.gov/how-to/sanitary-sewer-overflowbypassbackup-notification>. For SSOs and discharges of partially treated wastewater that are defined in 314 CMR 16.03, the Permittee, CSO-responsible Co-permittees, and Co-permittees must meet all requirements of 314 CMR 16.00, including, but not limited to, public notification within two hours of discovery of the discharge, reporting into MassDEP's electronic reporting system, and posting on the Permittee's, CSO-responsible Co-permittee's, or Co-permittee's website.
4. Bypassing of wastewater flows is not authorized. Bypass is subject to enforcement discretion in situations where determined necessary to prevent loss of life or damage to the plant. The Clean Water Act ("CWA") and EPA's 1994 CSO Control Policy state that the intentional diversion of waste streams from any portion of a treatment facility, including secondary treatment, is a bypass. EPA regulations at 40 CFR 122.41 (m) further detail the conditions under which EPA will not initiate an enforcement action for bypasses, including: (1) that the

Attachment B
MWRA Advisory Board Comments

bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; and (2) there were no feasible alternatives to the bypass. Reporting of secondary bypass events shall be carried out as set forth in provisions of Section I.A.1, Footnote 6 of this permit.

D. NOTICE OF ELIMINATION

The Permittee and CSO-responsible Co-permittees shall give notice of elimination or change in status of any CSO outfall listed in **Attachment A** that they respectively own and operate as soon as possible in writing to EPA and MassDEP.

E. OPERATION AND MAINTENANCE

1. Wastewater Treatment Facility²

Operation and maintenance (O&M) of the wastewater treatment facility owned and/or operated by the Permittee shall be in compliance with 40 CFR § 122.41 (d) and (e) and the terms and conditions of the Part II. Standard Conditions, B. Operation and Maintenance of Pollution Controls which is attached to this Permit.

- a. *WWTF Major Storm and Flood Events Plan.* Within 12 months of the effective date of this Permit, the Permittee shall develop and submit a *WWTF Major Storm and Flood Events Plan* and begin to implement mitigation measures consistent with the schedule contained in this paragraph. The Plan shall contain three components: (1) an asset vulnerability evaluation, (2) a systemic vulnerability evaluation³ of the assets, and (3) a mitigation measures alternatives analysis. The Plan shall include resiliency and implementation planning informed by an evaluation of all WWTF vulnerabilities to major storm and flood events.⁴ The planning process shall be iterative, and re-evaluations shall be conducted: (1) if on- or off-site structures are added, removed or significantly changed in any way that will impact the vulnerability of the WWTF; and (2) as data sources used for such evaluations are revised, or generated. At a minimum, the Plan must take future conditions into consideration, specifically the midterm (i.e.,

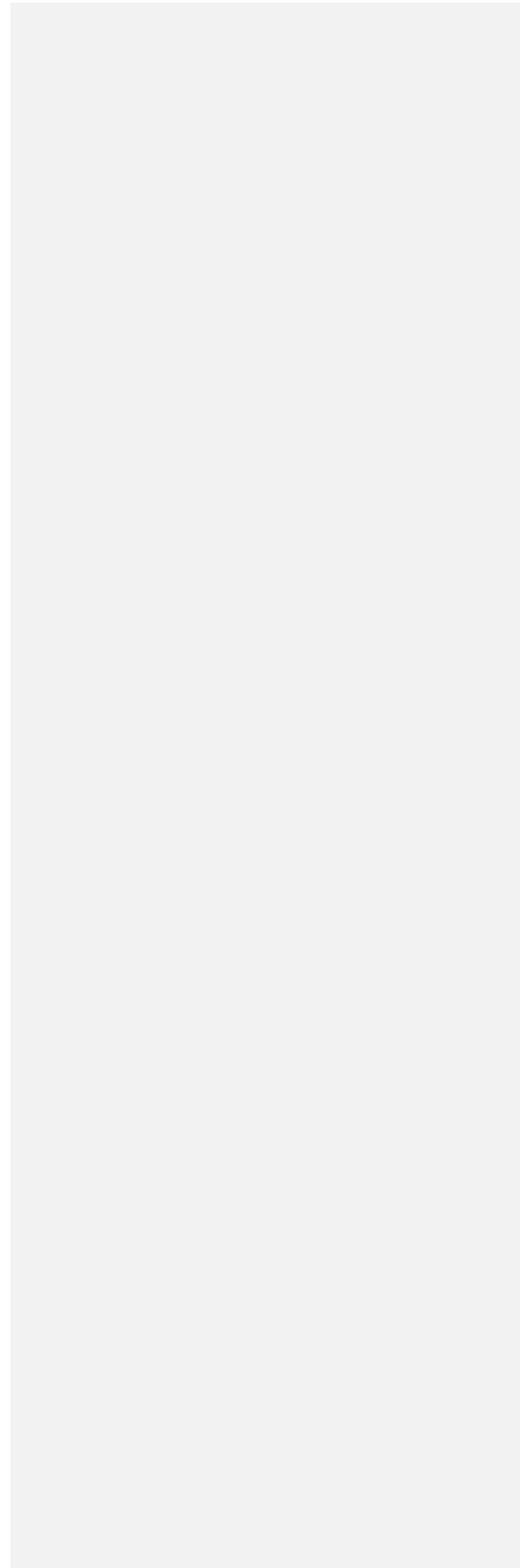
² Wastewater Treatment Facility means any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It does not include sewers, pipes and other conveyances to the wastewater treatment facility.

³ To determine the vulnerabilities to the facilities from major storm and flood events, you must conduct the evaluation using, at a minimum, the worst-case data relating to changes in precipitation, sea level rise, extreme weather events, coastal flooding, inland flooding, sewer flow and inflow and infiltration and relevant to the facilities from: 1) the data generated by the 13 federal agencies that conduct or use research on global change that contributed to the latest National Climate Assessment produced by the U.S. Global Change Research Program (USGCRP); 2) climate data generated by the Commonwealth of Massachusetts; and 3) resiliency planning completed by the municipality in which a given facility is located (i.e., City of Boston) and incorporate the results of the evaluation in a manner that demonstrates that the control measures taken are precautionary and sufficiently protective. Evaluation must be completed by a qualified person on a five-year basis considering: 1) historical observations from all years the Permittee has operated the facility prior to this permit's term; 2) set midterm (i.e., 20-30 years) and long-term (i.e., 80-100 years) ranges.

⁴ "Major storm and flood events" refer to instances resulting from major storms such as hurricanes, extreme/heavy precipitation events, and pluvial, fluvial, and flash flood events such as high-water events, storm surge, and high-tide flooding. "Extreme/heavy precipitation" refers to instances during which the amount of rain or snow experienced in a location substantially exceeds what is normal. What constitutes a period of heavy precipitation varies according to

Attachment B
MWRA Advisory Board Comments

location and season. “Extreme/heavy precipitation” does not necessarily mean the total amount of precipitation at a location has increased, but just that precipitation is occurring in more intense or more frequent events.



Attachment B
MWRA Advisory Board Comments

NPDES Permit No. MA0103284

2023 Draft Permit
Page 32 of 68

20-30 years) and long-term (i.e., 80-100 years) and, in the case of sea level change, the plan must consider extreme sea level change. The Plan shall be updated at least every five (5) years from the effective date of this Permit and must take future conditions into consideration.⁵

- (1) *Component 1: Asset Vulnerability Evaluation.* This first component of the *WWTF Major Storm and Flood Events Plan* must assess the vulnerability of individual WWTF-related assets. The Permittee may find EPA's guide: *Flood Resilience: A Basic Guide for Water and Wastewater Utilities*⁶ and EPA's website⁷ *Creating Resilient Water Utilities (CRWU)* helpful for completing this component.

The *Asset Vulnerability Evaluation* shall include, at a minimum, the following:

- i. Description of planning priorities related to major storm and flood event vulnerabilities presented by the location of the WWTF (e.g., proximity to waterbodies which may cause flooding).
- ii. Identification of all assets related to the WWTF (e.g., buildings, laboratories and offices, WWTF, septage collection facilities, etc.), the elevation of each asset, and if the asset falls into the 100-year flood map or the 500-year flood map;⁸
- iii. Description of structural improvements, either completed or planned, and/or other mitigation measures⁹ designed to minimize¹⁰ the impacts of major storm and flood events to each specific asset identified above.

The Permittee shall consider, at a minimum, the following measures:

⁵ It will be advantageous to the Permittee to consider low, medium, high and extreme levels of sea level change to determine priority assets and plan for increasingly protective mitigation measures.

⁶ https://www.epa.gov/sites/default/files/2015-08/documents/flood_resilience_guide.pdf

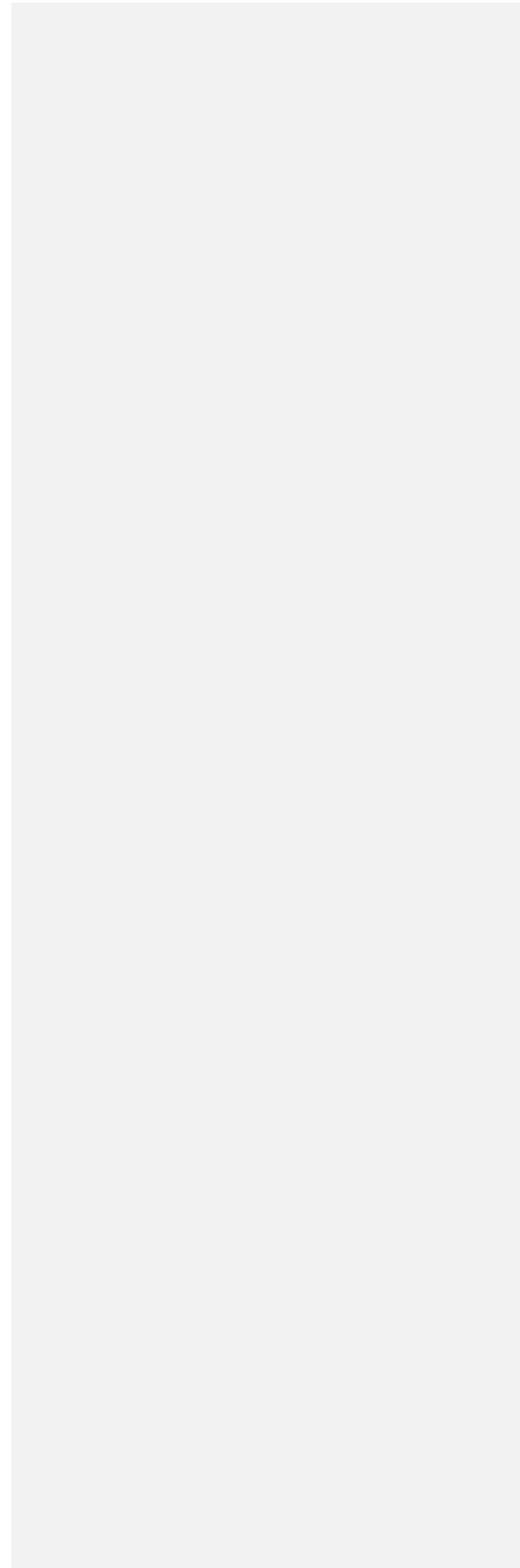
⁷ <https://www.epa.gov/crwu>

⁸ See https://www.epa.gov/sites/default/files/2015-08/documents/flood_resilience_guide.pdf for a basic guide to flood resiliency for water and wastewater utilities.

⁹ Mitigation measure can be, for example, an emergency planning activity, equipment modification/upgrade or new capital investment/construction project.

Attachment B
MWRA Advisory Board Comments

¹⁰ For the purposes of this provision, the term “minimize” means to reduce and/or eliminate to the extent achievable the impacts to the facilities.



Attachment B
MWRA Advisory Board Comments

NPDES Permit No. MA0103284

2023 Draft Permit
Page 33 of 68

- (a) Construction of flood barriers to protect infrastructure or reinforce existing structures to withstand flooding and additional exertion of force;
 - (b) Establish remote locations for operations, equipment, records and data backups;
 - (c) Plan and establish alternative or on-site power supply;¹¹
 - (d) Relocate facilities and/or infrastructure to higher elevations;
 - (e) Catalog emergency resources used during a major storm or flood event;
 - (f) Develop emergency response plans;
 - (g) Establish contracts for backup supplies of critical chemicals;
 - (h) Establish mutual aid agreements with neighboring utilities;
 - (i) Integrate long-term risks into capital improvement plans;
 - (j) Participate in community planning and regional collaborations;
 - (k) Conduct staff training for implementing your emergency procedures at regular intervals;
 - (l) When designing new or replacement facilities, strive to locate facilities above the relative base flood elevation¹² for both the 1% (100-year) and 0.2 % (500-year) chance storm events.
- iv. Identify the source of data used to assess vulnerabilities to major storm and flood events.
- v. Identify potential funding sources¹³ for resilience planning and implementation. (e.g., EPA, FEMA, MassDEP, capital planning, etc.).
- (2) *Component 2: Systemic Vulnerability Evaluation.* Upon completing assessment of the vulnerabilities of individual assets, the Permittee shall evaluate the vulnerability of its WWTF system as a whole. This second component of the evaluation shall include, at a minimum, a systematic

¹¹ The Permittee shall clearly document measures taken specifically to manage energy system disruptions, such as a general power outage, as well as document whether and, if so, to what extent, power supply adequate to ensure safe and reliable operations of the facility is threatened during a major storm or flood. They shall clearly document measures that have been taken to address any risks the facility faces of losing power during a major storm or flood in a manner that could result in environmental or public health impacts.

¹² For activities proposed for MA facilities within Areas Subject to Protection under M.G.L. c. 131, § 40 or the 100-foot buffer zone, the Base Flood Elevation is defined at 310 CMR 10.04, Definitions of Special Flood Hazard Area, Velocity Zone, and Coastal High Hazard Area, Land Subject to Coastal Storm Flowage at 310 CMR 10.36 and

Attachment B
MWRA Advisory Board Comments

Bordering Land Subject to Flooding, and Isolated Land Subject to Flooding at 310 CMR 10.57. Also refer to the Massachusetts State Building Code for any other required standards related to Base Flood Elevation.

¹³ See <https://www.epa.gov/fedfunds>

vulnerability evaluation for each asset identified in Part I.E.1.a.(1), including the following:

- i. Define the criticality of the asset to overall treatment facility operations.¹⁴
 - ii. Identify the highest¹⁵ priority assets for the facility/system and the measures taken (or planned) to reduce facility vulnerability to risks that could degrade overall system operations in a manner that would result in environmental or public health impacts.
- (3) *Component 3: Mitigation Measures Alternatives Evaluation.* Upon completing assessment of the vulnerabilities of the WWTF system as a whole, the Permittee shall provide an assessment of asset-specific mitigation measures, and/or, if appropriate, combinations of mitigation measures to minimize the impact of major storm and flood events. The Permittee shall then select the most effective mitigation measure(s) and include a schedule for implementation. This third component shall include, at a minimum, the following:
- i. An evaluation of mitigation measure alternatives including a cost-effectiveness analysis and a review of technical, environmental, and institutional factors.
 - ii. For each mitigation measure, quantitatively document (including assumptions and methodologies) the residual risk today, in the midterm (i.e., 20-30 years) and the long-term (i.e., 80-100 years). The evaluation should include estimates of which customers and geographic areas bear the residual risk after implementation of the mitigation measures. Residual risk is a term that refers to the risk remaining for an asset or system, after mitigation measures are taken.
 - _____ iii. Selection of mitigation measures to be undertaken, including:

¹⁴ For example, an asset like a pumping station or headworks is often scored “high” for criticality, as the safe and reliable operation of many assets during a major storm or flood depend upon the continued operation of that particular asset. If a pump station is degraded or fails, many other assets operations can degrade or fail, resulting in environmental or public health impacts.

Attachment B
MWRA Advisory Board Comments

¹⁵ Based on the combined assessment of asset-level vulnerability today and in the midterm (i.e., 20-30 years) and long-term (i.e., 80-100 years), the criticality of that asset's performance to the operations of the system today and in the midterm (i.e., 20-30 years) and long-term (i.e., 80-100 years).

Attachment B
MWRA Advisory Board Comments

NPDES Permit No. MA0103284

2023 Draft Permit
Page 35 of 68

- (a) a schedule¹⁶ of implementation for each selected mitigation measure;¹⁷ and
 - (b) a map showing the location of planned mitigation measure.
- (4) *Annual Report.* The Permittee shall submit an Annual Operation and Maintenance Report on the *WWTF Major Storm and Flood Events Plan* implementation and results for the prior calendar year including documenting any changes to the WWTF or other assets that may impact the current vulnerability evaluation. The first annual report is due the first March 31 following submittal of the *Wastewater Treatment Facility Major Storm and Flood Events Plan* and shall be included with the annual report required in Part I.E.3. below.

2. Sewer System

Operation and maintenance (O&M) of the sewer system owned and operated, respectively, by the Permittee, CSO-responsible Co-permittees: Boston Water and Sewer Commission (BWSC), City of Cambridge, City of Chelsea and City of Somerville; and each of the Co-permittee municipalities listed in **Attachment B** shall be in compliance with the terms and conditions of Part C, Part D, Part E, Part F and Part J of this Permit and the General Requirements of Part II, of this Permit for only its own infrastructure, activities and required reporting with respect to the portions of the collection system that it owns or operates.

No Permittee, CSO-responsible Co-permittee, or Co-permittee shall be responsible for violations of Part B, Part C, Part D, Part E, Part F and Part J of this Permit and/or the General Requirements of Part II committed by another Permittee, Permittee, CSO-responsible Co-permittee, or Co-permittee relative to the portions of the collection system owned and operated by such other Permittee, CSO-responsible Co-permittee, or Co-permittee. Permittee, CSO-responsible Co-permittees and Co-permittees are also not responsible for any violations of Parts A, D, G, H, I, J, or K committed by Permittee. In the event of any conflict between the above provisions and any other term or provision of this Permit, the above provisions shall control. As set forth below, the Permittee, CSO-responsible Co-permittees, and Co-permittees are required to complete the following activities for the respective portions of the collection system which they operate:

¹⁶ In describing the schedule to implement mitigation measures, the Permittee shall clearly document which mitigation measures identified in the Plan have or have not been integrated into that system's capital planning process. A mitigation measure is integrated when a budget line item in that system's current and adopted capital plan

Attachment B
MWRA Advisory Board Comments

clearly identifies the year of completion and expenditure that has been budgeted and approved to complete that mitigation measure.

¹⁷ For all measures considered, the Permittee must document in the Plan the factual basis (i.e., the maps, data sets and calculations for the analysis), for either implementing or not implementing the measure. The factual basis and analysis must be presented in sufficient detail to allow EPA, the public, or an independent qualified person to evaluate the reasonableness of the decision. For measures already in place, including requirements from state, local or federal agencies, a description of the measures and how they meet the requirement(s) of this Permit must be documented in the Plan.

a. Maintenance Staff

The Permittee, the CSO-responsible Co-permittees and Co-permittees shall provide an adequate staff to carry out the operation, maintenance, repair, and testing functions required to ensure compliance with the terms and conditions of this Permit that apply respectively, to the Permittee, CSO-responsible Co-permittees, or Co-permittees. Provisions to meet this requirement shall be described in the Sewer System O&M Plan required pursuant to Part I.E.2.e below.

b. Preventive Maintenance Program

The Permittee, CSO-responsible Co-permittees and Co-permittees shall maintain an ongoing preventive maintenance program to prevent overflows and bypasses caused by malfunctions or failures of the sewer system infrastructure that each owns and operates. The program shall include an inspection program designed to identify all potential and actual unauthorized discharges from the sewer system that each Permittee, CSO-responsible Co-permittee, and Co-permittee owns and operates. Plans and programs to meet this requirement shall be described in the Sewer System O&M Plan required pursuant to Part I.E.2.e. below.

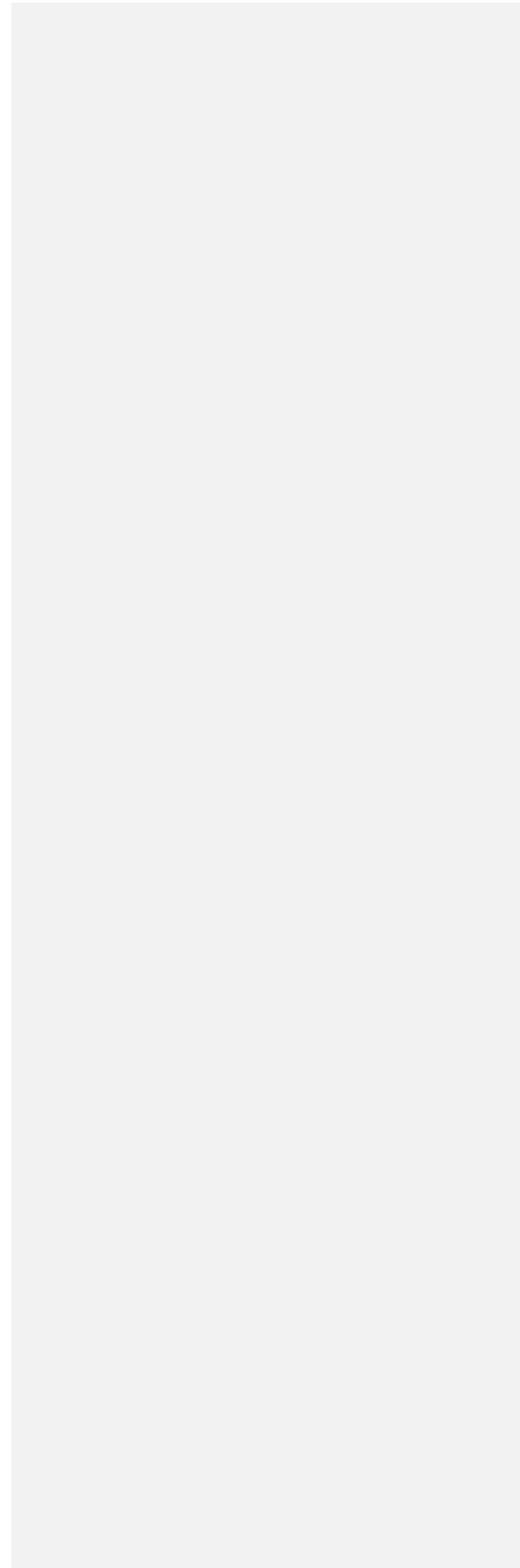
c. Infiltration/Inflow

- (1) The Permittee, CSO-responsible Co-permittees and Co-permittees shall control infiltration and inflow (I/I) into the sewer system that each owns and operates as necessary to prevent high flow related unauthorized discharges from their collection systems and high flow related violations of the wastewater treatment plant's effluent limitations. Plans and programs to control I/I shall be described in the Sewer System O&M Plan required pursuant to Part I.E.2.e. below.
- (2) The Permittee, ~~MWRA~~, shall update its existing I/I Reduction Plan. As part of the update, the Permittee must identify the goals and strategies of the 2002 Regional I/I Reduction Plan that have been completed and justify the goal or strategy be removed from the updated Plan. Additionally, the Permittee shall also consider new steps, strategies, and technologies to be implemented in addressing I/I. Finally, the Permittee shall include a discussion of historical SSO locations and upstream levels of I/I, with a specific proposal including the use of new strategies and technologies to reduce I/I in these contributing areas.

Specifically, for the portion of the regional sewer system operated by MWRA, the MWRA shall update their existing Sanitary Sewer Overflow

Attachment B
MWRA Advisory Board Comments

Plan, now renamed Sanitary Sewer Overflow Mitigation Plan, and submit to EPA and MassDEP within 1 year of the effective date of this Permit, and begin implementing an effective and updated plan consisting of the following:



Attachment B
MWRA Advisory Board Comments

NPDES Permit No. MA0103284

2023 Draft Permit
Page 37 of 68

- i. Identification of all SSO locations;
- ii. A program for periodic inspection and monitoring of overflows which occur during wet weather;
- iii. Identification of all SSOs that occur as a result of operational and maintenance deficiencies (e.g., sewer backups, pump failures) and a plan for improved operation and maintenance to prevent recurrences;
- iv. Updated procedures for notification of potentially affected entities (e.g., drinking water suppliers) and the public of overflows that may endanger human health.
- v. As part of the sewer system operation and maintenance plan required in I.E.2.e for the portion of the regional sewer system operated by the MWRA, which shall establish staffing and operations procedures at MWRA pump stations, headworks facilities, and at any critical conveyance structures (siphons, CSO regulators/facilities), which shall encompass the following goals:
 - (a) Maximizing conveyance of wastewater flows to Deer Island for treatment and discharge;
 - (b) Optimizing use of MWRA collection and transport facilities to manage any capacity restrictions and minimize risk of SSO impacts to public drinking water supplies, primary contact resource areas, or other areas where surcharging and/or overflow conditions will result in serious public health impacts; and
 - (c) At locations where SSO risk is significant, provisions for preemptive and response actions to mitigate the potential impacts of the discharge.

- (3) ~~The Draft Permit maintains the requirement for the Permittee, MWRA, to submit an annual summary report ("Annual Infiltration and Inflow (I/I) Reduction Report") of all actions taken to reduce I/I during the MWRA's past fiscal year by September 1st of each year. The Report shall continue to contain both estimated and actual Community Wastewater Flow Components Estimates for each of the MWRA member communities which shall be placed on the MWRA web page for public informational purposes. The Community Wastewater Flow Components Estimates table should differentiate between CSO and non-CSO communities.~~

Commented [A1]: Provision seems to summarize a possible permit requirement but is not written in actual permit language. As stated in the Advisory Board's comments, this provision needs to be re-written and the public afforded an additional opportunity to comment.

Attachment B
MWRA Advisory Board Comments

- (4) ~~The Draft Permit also requires the Co-permittees to prepare and submit I/I Reduction Plans. Massachusetts regulations at 314 CMR 12.04 (2) required municipalities to submit I/I Analysis Reports to MassDEP.~~

Attachment B
MWRA Advisory Board Comments

NPDES Permit No. MA0103284

2023 Draft Permit
Page 38 of 68

~~Municipalities were then required to conduct Sewer System Evaluation Surveys in accordance with their I/I Analysis Report. EPA notes that these reports can be the basis for I/I Plans to be developed and submitted by the Co-permittees to remove excessive I/I from the collection system that it owns and/or operates as required in I.E.2.e below.~~

Commented [A2]: Provision seems to summarize a possible permit requirement but is not written in actual permit language. As stated in the Advisory Board's comments, this provision needs to be re-written and the public afforded an additional opportunity to comment.

d. Sewer System Mapping

Within 30 months of the effective date of this Permit, the Permittee, CSO-responsible Co-permittees and Co-permittees shall prepare a map of the sewer collection system ~~that each~~ owns and operates. The map shall be on a street map of the community, with sufficient detail and at a scale to allow easy interpretation. The sewer system information shown on the map shall be based on current conditions and shall be kept up-to-date and available for review by federal, state, or local agencies upon request. Such map(s) shall include, but not be limited to the following:

1. All sanitary sewer lines and related manholes;
2. All combined sewer lines, related manholes, and catch basins;
3. All combined sewer regulators and any known or suspected connections between the sanitary sewer and storm drain systems (e.g., combination manholes);
4. All connection points where Co-permittee collection systems connect to the Permittee-owned collection system or the collection system of another community.
5. All outfalls, including the treatment plant outfall(s), CSOs, and any known or suspected SSOs, including stormwater outfalls that are connected to combination manholes;
6. All pump stations and force mains;
7. The wastewater treatment facility(ies);
8. All surface waters (labeled);
9. Other major appurtenances such as inverted siphons and air release valves;
10. A numbering system which uniquely identifies manholes, catch basins, overflow points, regulators and outfalls;
11. The scale and a north arrow; and
12. The pipe diameter, date of installation, type of material, distance between manholes, and the direction of flow.

e. Sewer System O&M Plan

The Permittee, CSO-responsible Co-permittees and Co-permittees shall develop and implement a Sewer System O&M Plan for the portion of the system it owns and operates.

Attachment B
MWRA Advisory Board Comments

- (1) Within six (6) months of the effective date of the Permit, the Permittee, CSO-responsible Co-permittees, and Co-permittees shall each submit to EPA and the State:

Attachment B
MWRA Advisory Board Comments

NPDES Permit No. MA0103284

2023 Draft Permit
Page 39 of 68

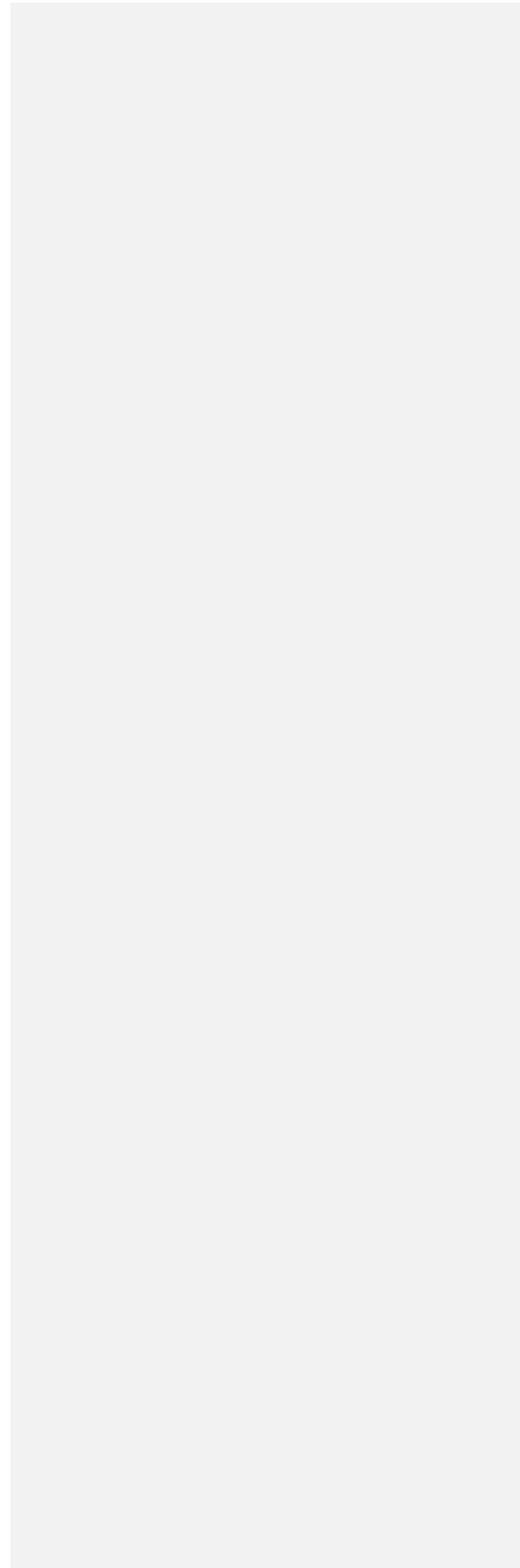
- i. A description of the collection system management goals, staffing, information management, and legal authorities;
 - ii. A description of the collection system and the overall condition of the collection system including a list of all pump stations and a description of recent studies and construction activities; and
 - iii. A schedule for the development and implementation of the full Sewer System Operation and Maintenance Plan including the elements in Parts I.E.2.e.(3)(i) through (3)(ix) below.
- (2) Within 12 months of the effective date of the Permit, the Permittee, CSO-responsible Co-Permittees and Co-permittees shall develop and implement a *Sewer System Flood Events Plan* as an element of the *Sewer System Operations and Maintenance Plan* that covers the sewer collection system that each owns and operates. The Plan shall contain three components: (1) an asset vulnerability evaluation, (2) a systemic vulnerability evaluation of the system and (3) an alternatives analysis. The Plan shall include resiliency planning and implementation informed by an evaluation¹⁸ of all sewer system vulnerabilities to major storm and flood events¹⁹. The planning process shall be iterative, and re-evaluations shall be conducted; (1) if on- or off-site structures are added, removed or significantly changed in any way that will impact the vulnerability of the sewer system and (2) as data sources used for such evaluations are revised or generated. At a minimum, the Plan must take future conditions into consideration, specifically midterm (i.e., 20-30 years) and long-term (i.e., 80-100 years) and, in the case of sea level change, the plan must consider **extreme** sea level change. The Plan shall be updated every five (5) years from the effective date of this Permit.

¹⁸ To determine the vulnerabilities to the facilities from major storm and flood events, you must conduct the evaluation using, at a minimum, the worst-case data relating to changes in precipitation, sea level rise, extreme weather events, coastal flooding, inland flooding, sewer flow and inflow and infiltration and relevant to the facilities from: 1) the data generated by the 13 federal agencies that conduct or use research on global change that contributed to the latest National Climate Assessment produced by the U.S. Global Change Research Program (USGCRP); 2) climate data generated by the Commonwealth of Massachusetts; and 3) resiliency planning completed by the municipality in which a given facility is located (i.e., City of Boston) and incorporate the results of the evaluation in a manner that demonstrates that the control measures taken are precautionary and sufficiently protective. Evaluation must be completed by a qualified person on a five-year basis considering: 1) historical observations from all years the Permittee has operated the facility prior to this Permit's term; 2) set midterm (i.e., 20-30 years) and long-term (i.e., 80-100 years) ranges.

¹⁹ "Major storm and flood events" refer to instances resulting from major storms such as hurricanes, extreme/heavy precipitation events, and pluvial, fluvial, and flash flood events such as high-water events, storm surge, and high-tide flooding. "Extreme/heavy precipitation" refers to instances during which the amount of rain or snow experienced in a

Attachment B
MWRA Advisory Board Comments

location substantially exceeds what is normal. What constitutes a period of heavy precipitation varies according to location and season. "Extreme/heavy precipitation" does not necessarily mean the total amount of precipitation at a location has increased-just that precipitation is occurring in more intense or more frequent events.



- i. *Component 1: Asset Vulnerability Evaluation.* The first component of the *Sewer System Operation and Maintenance Plan* must assess the vulnerability of individual sewer system-related assets. The Permittee, CSO-responsible Co-permittees and Co-permittees may find EPA's guide: *Flood Resilience: A Basic Guide for Water and Wastewater Utilities*²⁰ and EPA's website²¹ *Creating Resilient Water Utilities (CRWU)* helpful for completing this component.

The Each Permittee's, CSO-responsible Co-permittee's, and Co-permittee's Asset Vulnerability Evaluation shall include, at a minimum, the following:

- (a) Description of planning priorities related to the location of the sewer system that each owns and operates;
- (b) Identification of all assets (e.g., pump stations, pipes, etc.) that each owns and operates, the elevation of the asset, and if the asset falls into the 100-year flood map or the 500-year flood map,²²
- (c) Description of structural improvements, and/or other mitigation measures²³ to minimize²⁴ the impacts of major storm and flood events to each specific asset identified in Part I.E.2.e.(2).i.(b) above.

The Permittee, CSO-responsible Co-Permittees, and Co-permittees shall consider, at a minimum, the following measures:

- (i) Construction of flood barriers to protect structure or reinforce existing structures to withstand flooding and additional exertion of force;
- (ii) Establish remote locations for operations, equipment, records and data backups;
- (iii) Plan and establish alternative or on-site power supply;²⁵

²⁰ https://www.epa.gov/sites/default/files/2015-08/documents/flood_resilience_guide.pdf

²¹ <https://www.epa.gov/crwu>

²² See https://www.epa.gov/sites/default/files/2015-08/documents/flood_resilience_guide.pdf for a basic guide to flood resiliency for water and wastewater utilities.

²³ Mitigation measure can be an emergency planning activity, equipment modification/upgrade or new capital investment/construction project.

²⁴ For the purposes of this provision, the term "minimize" means to reduce and/or eliminate to the extent achievable the impacts to the facilities.

Attachment B
MWRA Advisory Board Comments

²⁵ The Permittee shall clearly document measures taken specifically to manage energy system disruptions, such as a general power outage, well as document whether and, if so, to what extent, power supply adequate to ensure safe and reliable operations of the facility is threatened during a major storm or flood. They shall clearly document measures that have been taken to address any risks the facility faces of losing power during a major storm or flood in a manner that could result in environmental or public health impacts.

Attachment B
MWRA Advisory Board Comments

NPDES Permit No. MA0103284

2023 Draft Permit
Page 41 of 68

- (iv) Relocate facilities and/or infrastructure to higher elevations;
 - (v) Catalog emergency resources used during a major storm or flood event;
 - (vi) Develop emergency response plans;
 - (vii) Establish mutual aid agreements with neighboring utilities;
 - (viii) Integrate long-term risks into capital improvement plans;
 - (ix) Participate in community planning and regional collaborations;
 - (x) Conduct staff training for implementing your emergency procedures at regular intervals;
 - (xi) When designing new or replacement facilities, strive to locate facilities above the base flood elevation;²⁶
 - (xii) Identify the source of data used to assess vulnerabilities to major storm and flood events; and
 - (xiii) Identify the potential funding sources²⁷ for resilience planning and implementation (e.g., EPA, FEMA, MassDEP, capital planning, etc.).
- ii. *Component 2: Systemic Vulnerability Evaluation.* Upon completing assessment of the vulnerabilities of individual assets, the Permittee, CSO-responsible Co-permittees, and Co-permittees shall each evaluate the vulnerability of ~~its~~ the sewer system that each owns and operates as a whole. This second component of the plan shall include, at a minimum, a systematic vulnerability evaluation for each asset identified in Part I.E.2.e.(2).i.(b), including the following:
- (a) Define the criticality of each asset to the overall sewer system operations; and
 - (b) Identify the highest priority assets for the sewer system and measures²⁸ taken to reduce system vulnerability to risks that could degrade the overall system operations in a manner that would result in environmental or public health impacts.

²⁶ For MA facilities, for activities proposed within Areas Subject to Protection under M.G.L. c. 131, § 40 or the 100-foot buffer zone, the Base Flood Elevation is defined at 310 CMR 10.04, Definitions of Special Flood Hazard Area, Velocity Zone, and Coastal High Hazard Area, Land Subject to Coastal Storm Flowage at 310 CMR 10.36 and Bordering Land Subject to Flooding, and Isolated Land Subject to Flooding at 310 CMR 10.57. Also refer to the Massachusetts State Building Code for any other required standards related to Base Flood Elevation.

²⁷ See <https://www.epa.gov/fedfunds>

Attachment B
MWRA Advisory Board Comments

²⁸ For example, an asset like a pumping station or headworks is often ranked “high” for criticality, as the safe and reliable operation of many assets during a major storm or flood depend upon the continued operation of that particular asset. If a pump station is degraded or fails, the operations of many other assets can degrade or fail, resulting in environmental or public health impacts.

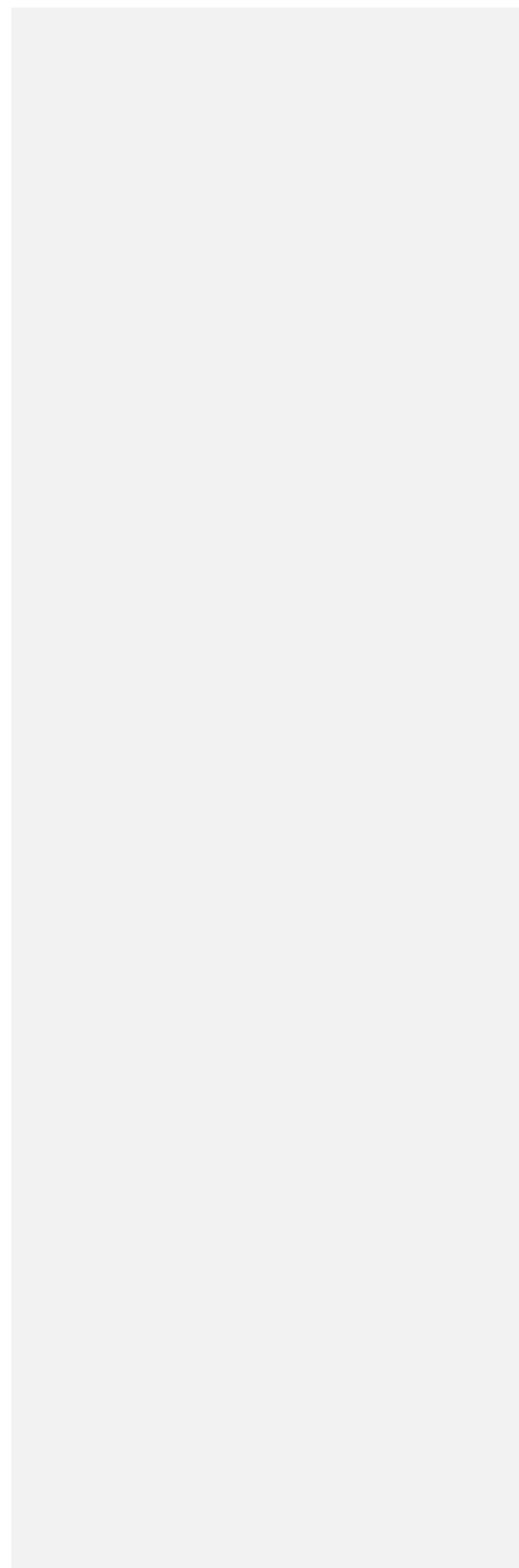
- iii. *Component 3: Alternatives Evaluation.* Upon completing assessment of the vulnerabilities of the sewer system as a whole, the Permittee, CSO-responsible Co-Permittees, and Co-permittees shall each provide an assessment of individual asset-specific, and/or, if appropriate, combinations of mitigation measures must be presented in order to determine the most effective mitigation measures to minimize the impact of major storm and flood events.

This third component shall include, at a minimum, the following with regard to alternative evaluation, at a minimum:

- (a) An evaluation of alternatives including a cost-effectiveness analysis and a review of technical, environmental, and institutional factors. The alternatives analysis should conclude with the development of a recommended plan.
- (b) For each alternative, quantitatively document (including assumptions and methodologies) the residual risk today and for the midterm (i.e., 20-30 years) and long-term (i.e., 80-100 years). The evaluation should include estimates of which customers and geographic areas bear the residual risk from the approach to resiliency planning in that system. Residual risk is a term that refers to the risk remaining for an asset or system, after mitigation measures are taken.
- (c) For each asset, document the total projected alternatives for implementing all planned mitigation measures identified in the *Sewer System Major Storm and Flood Events Plan*.
- (d) Selection of mitigation measures to be undertaken, including:
 - (i) a schedule to implement each selected mitigation measure;
and

Attachment B
MWRA Advisory Board Comments

- (ii) a map showing the location of planned mitigation measures.



- iv. *Annual Report.* The Permittee and each CSO-responsible Co-permittee and Co-permittee shall submit an Annual Operation and Maintenance Report on the *Sewer System Major Storm and Flood Events Plan* implementation and results for the prior calendar year including documenting any changes to the sewer system or other assets that may impact the current vulnerability evaluation. The first annual report is due the first March 31 following submittal of the *Sewer System Major Storm and Flood Events Plan* and shall be included with the annual report required in Part I.E.3 below.
- (3) The full Sewer System O&M Plan shall be completed, implemented, and submitted to EPA and to MassDEP within twenty-four (24) months from the effective date of this Permit. The Plan submitted by each Permittee, CSO-responsible Co-permittee and Co-permittee shall include:
- i. The required submittal from paragraph I.E.2.e.(1) above, updated to reflect current information;
 - ii. A preventive maintenance and monitoring program for the collection system; ~~including resiliency evaluation and planning~~ that the Permittee, CSO-responsible Co-permittees ~~and or~~ Co-permittees owns and operates;
 - iii. Description of sufficient staffing necessary to properly operate and maintain the ~~sanitary~~-sewer collection system that the Permittee, CSO-responsible Co-permittees, ~~and or~~ Co-permittees owns and operates and how the operation and maintenance program is staffed;
 - iv. Description of funding, the source(s) of funding and provisions for funding sufficient for implementing the plan that ~~the each~~ Permittee, CSO-responsible Co-permittees, ~~and or~~ Co-permittees ~~owns and operates plan~~ has developed;
 - v. Identification of known and suspected overflows and back-ups, including manholes, in the sewer system that Permittee, CSO-responsible Co-permittee, or Co-permittees each owns and operates. A description of the cause of the identified overflows and back-ups, corrective actions taken, and a plan for

Attachment B
MWRA Advisory Board Comments

addressing the overflows and back-ups consistent with the requirements of this permit that apply to the Permittee, CSO-responsible Co-permittees, and Co-permittees;

- vi. A description of the Permittee's, CSO-responsible Co-permittee's, or Co-permittee's programs for preventing I/I

related effluent violations and all unauthorized discharges of wastewater, including overflows and by-passes and the ongoing program to identify and remove sources of I/I. The program shall include an inflow identification and control program that focuses on the disconnection and redirection of illegal sump pumps and roof down spouts;

- vii. An educational public outreach program for all aspects of I/I control, particularly private inflow, for the sewer system that Permittee, CSO-responsible Co-permittees, or Co-permittee each owns and operates; and
- viii. An Overflow Emergency Response Plan to protect public health from overflows and unanticipated bypasses or upsets that exceed any effluent limitation in the Permit applicable to the sewer system owned and operated, respectively, by Permittee and each CSO-responsible Co-permittee and Co-permittee.
- ix. The resiliency evaluation and planning portion of the Sewer System O&M Plan shall be revised at least every five years. See Part I.E.2.e.(2).

3. Annual Reporting Requirement

The Permittee, CSO-responsible Co-permittees and Co-permittees shall each submit a summary report of activities related to the implementation of its O&M Plan during the previous calendar year. The report shall be submitted to EPA and to MassDEP annually by March 31. The first annual report is due on the first March 31 following submittal of the O&M Plan required by Part I.E. of this Permit. The summary report shall, at a minimum, include:

- a. A description of the staffing levels maintained during the year;
- b. A map and a description of inspection and maintenance activities conducted, and corrective actions taken during the previous year;
- c. Expenditures for any collection system maintenance activities and corrective actions taken during the previous year;
- d. A map with areas identified for investigation/action in the coming year;

Attachment B

MWRA Advisory Board Comments

- e. A summary of unauthorized discharges during the past year and their causes and a report of any corrective actions taken as a result of the unauthorized discharges reported pursuant to the Unauthorized Discharges section of this Permit; and
- f. If the average annual flow in the previous calendar year exceeded 80 percent of the facility's 361 MGD design flow (288.8 MGD), or there have been capacity related overflows, the report shall include:
 - (4) Plans for further potential flow increases describing how the Permittee will maintain compliance with the flow limit and all other effluent limitations and conditions; and

- (5) A calculation of the maximum daily, weekly, and monthly infiltration and the maximum daily, weekly, and monthly inflow for the reporting year.
- g. The Annual Operation and Maintenance Report on the implementation and results of the *WWTF Major Storm and Flood Events Plan* (beginning the first March 31 following submittal of this Plan) for the prior calendar year; and
- h. The Annual Operation and Maintenance Report on the implementation and results of the *Sewer System Major Storm and Flood Events Plan* (beginning the first March 31 following submittal of this Plan) for the prior calendar year.

F. ALTERNATE POWER SOURCE

In order to maintain compliance with the terms and conditions of this Permit, the Permittee, CSO-responsible Co-permittees and Co-permittees shall provide an alternative power source(s) sufficient to operate the portion of the publicly owned treatment works ~~that each #~~ owns and operates, as defined in Part II.E.1 of this Permit.

G. INDUSTRIAL USERS AND PRETREATMENT PROGRAM

1. The Permittee shall submit to EPA and the State the name of any Industrial User (IU) subject to Categorical Pretreatment Standards under 40 CFR § 403.6 and 40 CFR chapter I, subchapter N (Parts 405-415, 417-430, 432, 447, 449-451, 454, 455, 457-461, 463-469, and 471 as amended) who commences discharge to the facility after the effective date of this permit.

This reporting requirement also applies to any other IU who is classified as a Significant Industrial User (SIU) which discharges an average of 25,000 gallons per day or more of process wastewater into the facility (excluding sanitary, noncontact cooling and boiler blowdown wastewater); contributes a process wastewater which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the facility; or is designated as such by the Control Authority as defined in 40 CFR § 403.3(f) on the basis that the industrial user has a reasonable potential to adversely affect the wastewater treatment facility's operation, or for violating any pretreatment standard or requirement (in accordance with 40 CFR § 403.8(f)(6)).

2. In the event that the Permittee receives originals of reports (baseline monitoring reports, 90-day compliance reports, periodic reports on continued compliance, etc.) from industrial users subject to Categorical Pretreatment Standards under 40 CFR § 403.6 and 40 CFR chapter I, subchapter N (Parts 405-415, 417-430, 432-447, 449-451, 454, 455, 457-461, 463-469, and 471 as amended), or from a Significant Industrial User, the Permittee shall forward the originals of these reports within ninety (90) days of their receipt to EPA, and copy the State.

Attachment B
MWRA Advisory Board Comments

3. In accordance with 40 CFR § 122.44(j)(1) the Permittee must identify, in terms of character and volume, any SIUs discharging into the POTW or facility subject to Pretreatment Standards under section 307(b) of CWA and 40 CFR Part 403. SIUs information shall be

updated at a minimum of once per year or at that frequency necessary to ensure that all SIUs are properly permitted and/or controlled. The records shall be maintained and updated as necessary.

4. Beginning the first full calendar year after the effective date of the Permit, the Permittee shall commence annual sampling of the following types of industrial discharges into the POTW:
- Commercial Car Washes
 - Platers/Metal Finishers
 - Paper and Packaging Manufacturers
 - Tanneries and Leather/Fabric/Carpet Treaters
 - Manufacturers of Parts with Polytetrafluoroethylene (PTFE) or teflon type coatings (i.e., bearings)
 - Landfill Leachate
 - Centralized Waste Treaters
 - Known or Suspected PFAS Contaminated Sites
 - Fire Fighting Training Facilities
 - Airports
 - Any Other Known or Expected Sources of PFAS

Sampling shall be conducted using Method 1633 for the PFAS analytes listed in **Attachment H**. The industrial discharges sampled, and the sampling results shall be summarized and submitted to EPA and copy the State as an electronic attachment to the March discharge monitoring report due April 15 of the calendar year following the testing.

5. Legal Authority

The Permittee has been delegated primary responsibility for enforcing against discharges prohibited by 40 CFR § 403.5 and applying and enforcing any national Pretreatment Standards established by the United States Environmental Protection Agency in accordance with Section 307 (b) and (c) of The Clean Water Act (Act), as amended by The Water Quality Act (WQA), of 1987.

The Permittee shall operate an industrial pretreatment program in accordance with the General Pretreatment Regulations found in 40 CFR Part 403 and the approved pretreatment program submitted by the Permittee. The pretreatment program was approved on July 20, 1982 and has subsequently incorporated substantial modifications as approved by EPA. The approved pretreatment program, and any approved modifications thereto, is hereby incorporated by reference and shall be implemented in a manner consistent with the following procedures, as required by 40 CFR Part 403.

Attachment B
MWRA Advisory Board Comments

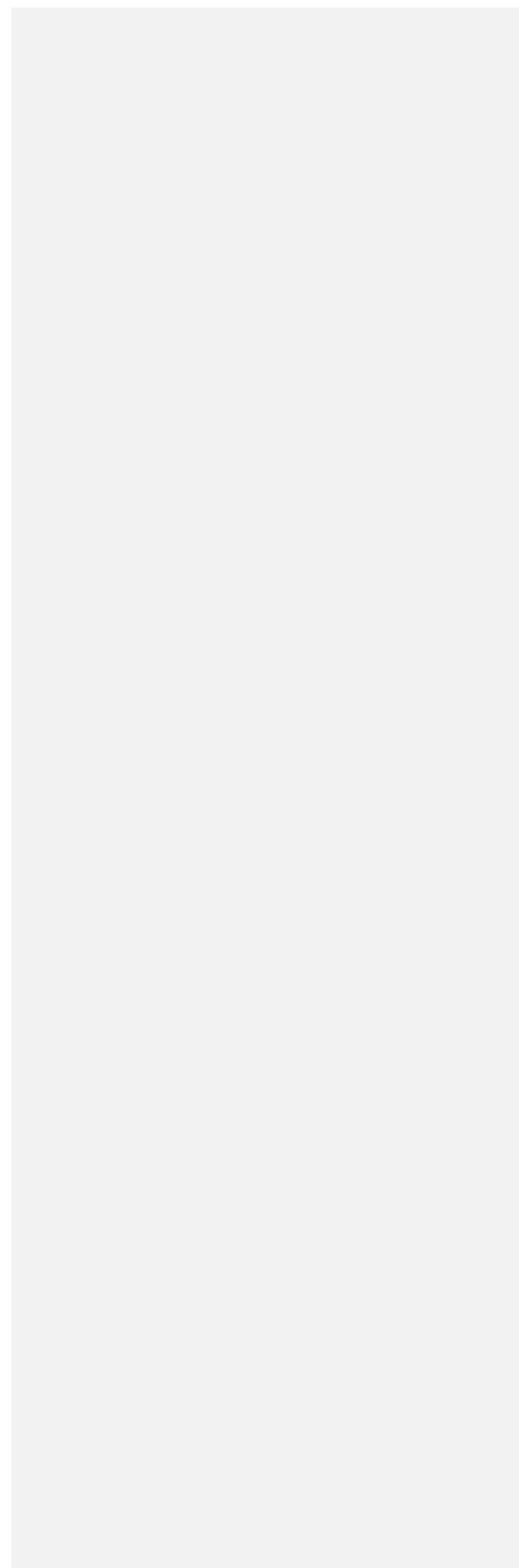
The Permittee must have or develop a legally enforceable municipal code or rules and regulations to authorize or enable the POTW to apply and enforce the requirements of Sections 307(b) and (c) and 402(b)(8) and (9) of the Act and comply with the

requirements of § 403.8(f)(1). At a minimum, this legal authority shall enable the POTW to:

- a. Deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTW by Industrial Users where such contributions do not meet applicable Pretreatment Standards and Requirements or where such contributions would cause the POTW to violate its NPDES Permit;
- b. Require compliance with applicable Pretreatment Standards and Requirements by Industrial Users;
- c. Control through permit, order, or similar means, the contribution to the POTW by each Industrial User to ensure compliance with applicable Pretreatment Standards and Requirements. In the case of Industrial Users this control shall be achieved through permits or equivalent control mechanism identified as significant under 40 CFR § 403.3(v), as required by § 403.8(f)(1)(iii);
- d. Require (a) the development of a compliance schedule by each Industrial User for the installation of technology required to meet applicable Pretreatment Standards and Requirements and (b) the submission of all notices and self-monitoring reports from Industrial Users as are necessary to assess and assure compliance by Industrial Users with Pretreatment Standards and Requirements, including but not limited to the reports required in § 403.12;
- e. Carry out all inspection, surveillance and monitoring procedures necessary to determine, independent of information supplied by Industrial Users, compliance or noncompliance with applicable Pretreatment Standards and Requirements by Industrial Users. At a minimum, all significant industrial users shall be sampled and inspected at the frequency established in the approved IPP, but in no case less than once per year, and with adequate maintenance of records, Representatives of the POTW shall be authorized to enter any premises of any Industrial User in which a Discharge source or treatment system is located or in which records are required to be kept under § 403.12(o) to assure compliance with Pretreatment Standards. Such authority shall be at least as extensive as the authority provided under section 308 of the Act;
- f. Obtain remedies for noncompliance by any Industrial User with any Pretreatment Standard and Requirement. All POTW's shall be able to seek injunctive relief for noncompliance by Industrial Users with Pretreatment Standards and Requirements. All POTW's shall also have authority to seek or assess civil or criminal penalties in at least the amount of \$1,000 a day for each violation by

Attachment B
MWRA Advisory Board Comments

Industrial Users of Pretreatment Standards and Requirements in accordance with §
403.8(f)(1)(vii)(A); and



- g. Comply with the confidentiality requirements set forth in § 403.14.

6. Implementation Requirements

The Permittee shall operate a pretreatment program in accordance with the General Pretreatment Regulations found in 40 CFR Part 403 and with the legal authorities, policies, procedures, and financial provisions of the approved Pretreatment program submitted by the Permittee. The approved Pretreatment program, and any approved modifications thereto, is hereby incorporated by reference and shall be implemented in a manner consistent with the following procedures, as required by 40 CFR Part 403:

- a. In accordance with 40 CFR § 122.44(j)(1), Identify, in terms of character and volume of pollutants contributed from Industrial Users discharging into the POTW subject to Pretreatment Standards under section 307(b) of CWA and 40 CFR Part 403.
- b. The Permittee must notify these identified Industrial Users of applicable Pretreatment Standards and any applicable requirements in accordance with 40 CFR § 403.8(f)(2)(iii). Pursuant to 40 CFR § 403.8(f)(6), prepare and maintain a list of significant industrial users and identify the criteria in 40 CFR § 403.3(v)(1) applicable to each industrial user.
- c. The Permittee must carry out inspection procedures and randomly sample and analyze the effluent from Industrial Users and conduct surveillance activities in accordance with 40 CFR § 403.8(f)(2)(v), which will determine independent of information supplied by the industrial user, whether the industrial user is in compliance with the Pretreatment Standards. At a minimum, all significant industrial users shall be sampled and inspected at the frequency established in the approved IPP but in no case less than once per year and maintain adequate records.
- d. The Permittee shall receive and analyze self-monitoring reports and other notices submitted by Industrial Users in accordance with the self-monitoring requirements in 40 CFR § 403.12; This must include timely and appropriate reviews of industrial user reports and notifications to identify all violations of the user's permit, the local ordinance, and federal pretreatment standards and requirements.
- e. The Permittee shall evaluate whether each SIU needs a plan to control Slug Discharges in accordance with 40 CFR § 403.8(f)(2)(vi). SIUs must be evaluated within 1 year of being designated an SIU. If required, the Permittee shall require the SIU to prepare or update and implement a slug prevention plan that contains at least the minimum required elements in 40 CFR § 403.8(f)(2)(vi)(A-D) and incorporate the slug control requirements into the SIU's control mechanism.

Attachment B
MWRA Advisory Board Comments

- f. Pursuant to 40 CFR § 403.8(f)(2)(vii), the Permittee shall investigate instances of non-compliance with Pretreatment Standards and requirements indicated in

required reports and notices or indicated by analysis, inspection, and surveillance activities.

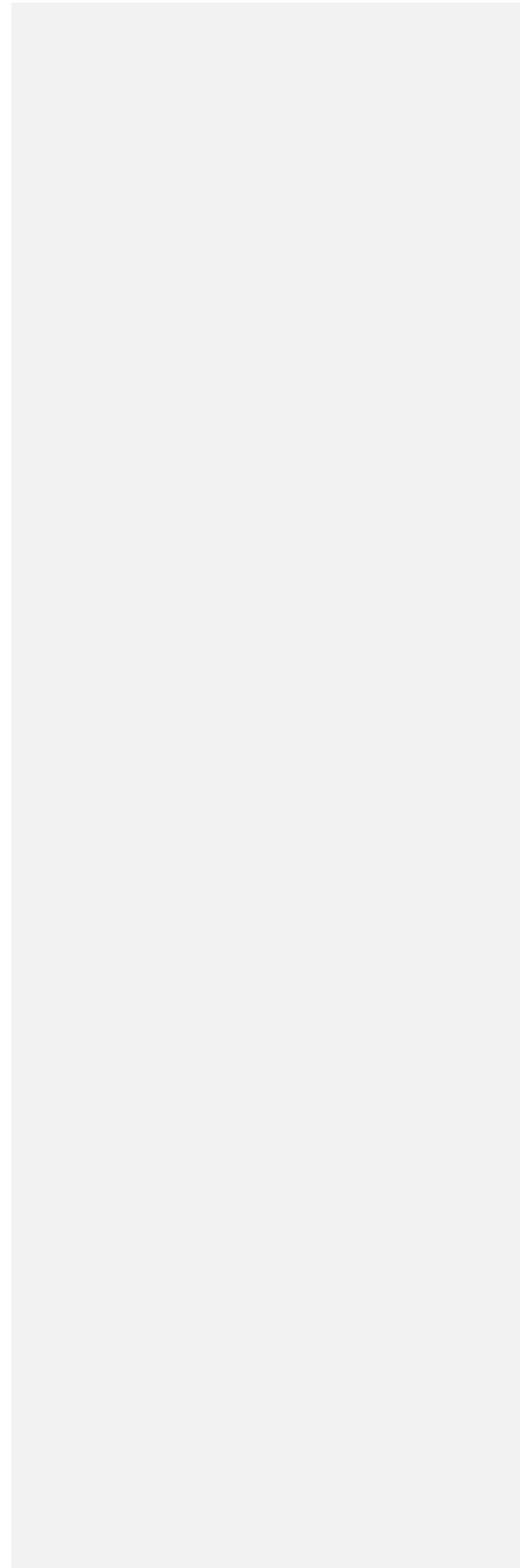
- g. The Permittee shall publish, at least annually, in a newspaper or newspapers of general circulation that provides meaningful public notice within the jurisdiction(s) served by the POTW, a list of all non-domestic users which, at any time in the previous 12 months, were in significant noncompliance as defined in 40 CFR § 403.8 (f)(2)(viii).
- h. The Permittee shall provide sufficient resources and qualified personnel to implement its Pretreatment program in accordance with 40 CFR § 403.8(f)(3);
- i. The Permittee shall enforce all applicable Pretreatment Standards and requirements and obtain remedies for noncompliance by any industrial user. The Permittee shall develop, implement, and maintain an enforcement response plan in accordance with 40 CFR § 403.8(f)(5).
- j. Pursuant to 40 CFR § 403.8(g), the Permittee that chooses to receive electronic documents must satisfy the requirements of 40 CFR Part 3 – (Electronic reporting).

7. Local Limit Development

- a. The Permittee shall develop, continually maintain, and enforce, as necessary, local limits to implement the general and specific prohibitions in 40 CFR § 403.5(c)(1) which prohibit the introduction of any pollutant(s) which cause pass through or interference and the introduction of specific pollutants to the waste treatment system from any source of non-domestic discharge.
- b. The Permittee shall develop and enforce specific effluent limits (local limits) for Industrial User(s), and all other users, as appropriate, which together with appropriate changes in the POTW Treatment Plant's Facilities or operation, are necessary to ensure continued compliance with the POTW's NPDES permit or sludge use or disposal practices. Specific local limits shall not be developed and enforced without individual notice to persons or groups who have requested such notice and an opportunity to respond. Within 90 days of the effective date of the Permit, the Permittee shall prepare and submit a written technical evaluation to EPA analyzing the need to revise local limits. As part of this evaluation, the Permittee shall assess how the POTW performs with respect to influent and effluent of pollutants, water quality concerns, sludge quality, sludge processing concerns/inhibition, biomonitoring results, activated sludge inhibition, worker health and safety and collection system concerns. In preparing this evaluation, the Permittee shall complete and submit the attached form (see **Attachment F**

Attachment B
MWRA Advisory Board Comments

(Reassessment of Technically Based Industrial Discharge Limits)) with the technical evaluation to assist in determining whether existing local limits need to



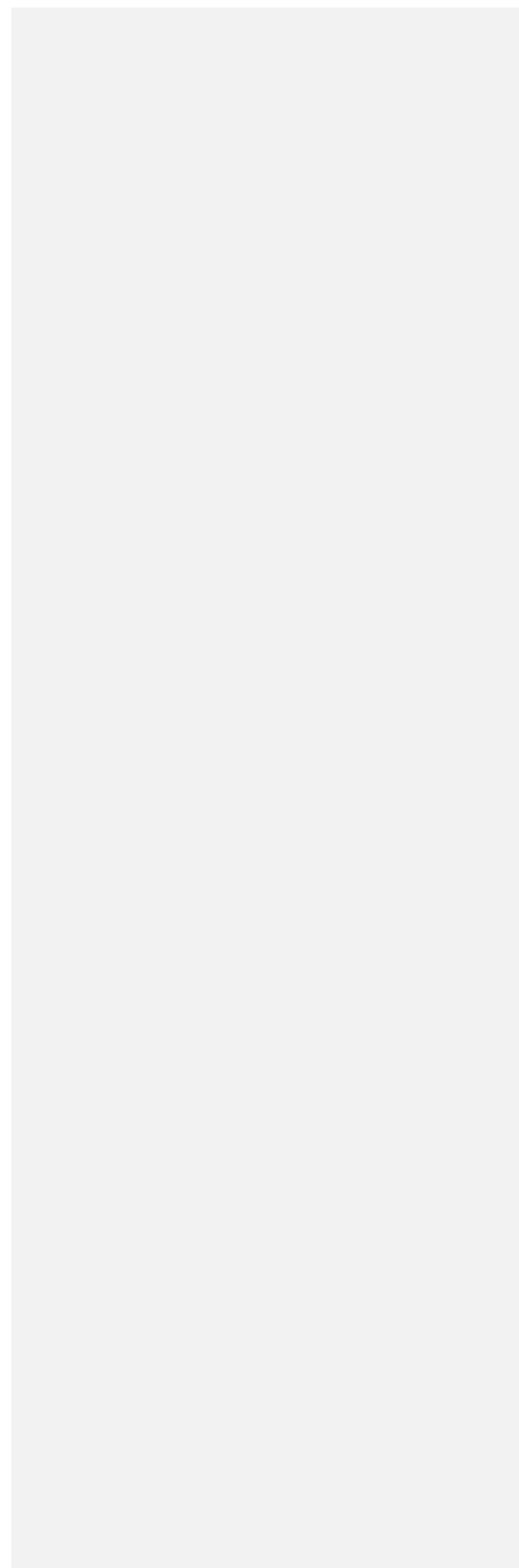
be revised. Justifications and conclusions should be based on actual plant data if available and should be included in the report. Should the evaluation reveal the need to revise local limits, the Permittee shall complete the revisions within 120 days of notification by EPA and submit the revisions to EPA for approval. The Permittee shall carry out the local limits revisions in accordance with EPA's Local Limit Development Guidance (July 2004).

8. Notification Requirements

- a. The Permittee must notify EPA of any new introductions or any substantial change in pollutants from any Industrial User within sixty (60) days following the introduction or change, as required in 40 § CFR 122.42(b)(1-3). Such notice must identify:
 - (1) Any new introduction of pollutants from an Industrial User which would be subject to Sections 301, 306, and 307 of the Act if it were directly discharging those pollutants; or
 - (2) Any substantial change in the volume or character of pollutants being discharged by any Industrial User;
 - (3) For the purposes of this section, adequate notice shall include information on:
 - i. The identity of the Industrial User;
 - ii. The nature and concentration of pollutants in the discharge and the average and maximum flow of the discharge; and
 - iii. Any anticipated impact of the change on the quantity or quality of effluent to be discharged from or biosolids produced at such POTW.
- b. The Permittee must notify EPA as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required when:
 - (1) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source pursuant to 40 CFR § 122.29 (b);
 - (2) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged; or
 - (3) The alteration or addition results in a significant change in the Permittee's sludge use or disposal practices.

Attachment B
MWRA Advisory Board Comments

- c. The Permittee must notify EPA if the POTW modifies or intends to modify its



Pretreatment Program.

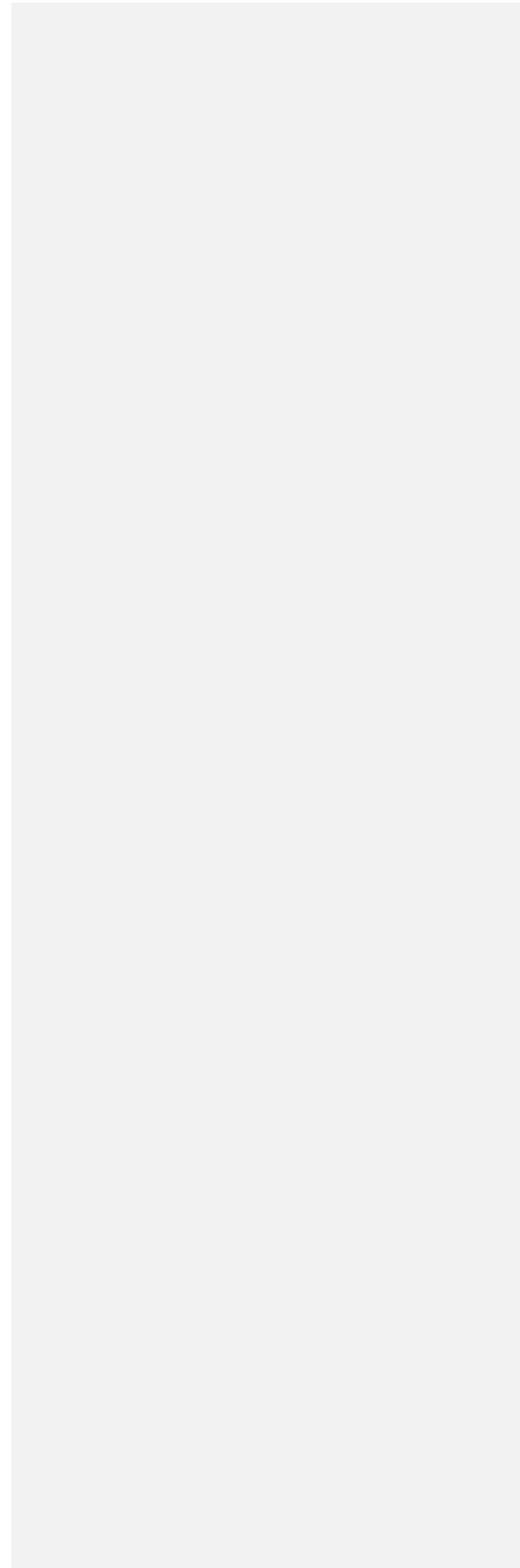
- d. The Permittee must notify EPA of any instance of pass through or interference, known or suspected to be related to a discharge from an Industrial User. The notification shall be attached to the DMR submitted EPA and shall describe the incident, including the date, time, length, cause, and the steps taken by the Permittee and Industrial User to address the incident.
- e. The Permittee shall notify all Industrial Users of the users' obligations to comply with applicable requirements under Subtitles C and D of the Resource Conservation and Recovery Act (RCRA) and that Industrial Users shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical as well as their obligation to notify the EPA Regional Waste Management Division Director, in writing, of any discharge into the POTW of a substance, which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. Such notification must include:
 - (1) the name of the hazardous waste as set forth in 40 CFR Part 261;
 - (2) the EPA hazardous waste number; and
 - (3) the type of discharge (continuous, batch, or other).

9. Annual Report Requirements

The Permittee shall provide EPA with a hard copy annual report that briefly describes the POTW's program activities, including activities of all participating agencies, if more than one jurisdiction is involved in the local program. The report required by this section shall be submitted no later than one year after approval of the POTW's Pretreatment Program, and at least annually thereafter. The report must include, at a minimum, the applicable required data in Appendix A to 40 CFR Part 127, a summary of changes to the POTW's pretreatment program that have not been previously reported to EPA, and any other relevant information requested by EPA. Beginning on December 21, 2025, all annual reports submitted in compliance with this section must be submitted electronically by the POTW Pretreatment Program to EPA or initial recipient, as defined in 40 CFR § 127.2(b). Electronic submittals shall be in compliance with this section and 40 CFR Part 3 (including, in all cases, subpart D to Part 3), 40 CFR § 122.22(e), and 40 CFR Part 127 (Part 127 is not intended to undo existing requirements for electronic reporting). Prior to this date, and independent of 40 CFR Part 127, EPA may also require POTW Pretreatment Programs to electronically submit annual reports under this section if specified by a particular permit or if required to do so by state law.

Attachment B
MWRA Advisory Board Comments

The Permittee shall provide EPA with an annual report describing the Permittee's pretreatment program activities for the twelve (12) month period ending 60 days prior to the



Attachment B
MWRA Advisory Board Comments

NPDES Permit No. MA0103284

2023 Draft Permit
Page 52 of 68

due date in accordance with 40 CFR § 403.12(i). The annual report shall be consistent with the format described in **Attachment G** (NPDES Permit Requirement for Industrial Pretreatment Annual Report) of this Permit and shall be submitted by **March 31st** of each year.

10. Beginning the first full calendar year after the effective date of the Permit, the Permittee shall commence annual sampling of the following types of industrial discharges into the POTW:

- Commercial Car Washes
- Platers/Metal Finishers
- Paper and Packaging Manufacturers
- Tanneries and Leather/Fabric/Carpet Treaters
- Manufacturers of Parts with Polytetrafluoroethylene (PTFE) or teflon type coatings (*e.g.*, bearings)
- Landfill Leachate
- Centralized Waste Treaters
- Known or Suspected PFAS Contaminated Sites
- Fire Fighting Training Facilities
- Airports
- Any Other Known or Expected Sources of PFAS

Sampling shall be conducted using Method 1633 for the PFAS analytes listed in Attachment H. The industrial discharges sampled, and the sampling results shall be summarized and included in the annual report (see Part I.G.9).

H. SLUDGE CONDITIONS

1. The Permittee shall comply with all existing federal and state laws and regulations that apply to sewage sludge use and disposal practices, including EPA regulations promulgated at 40 CFR § 503, which prescribe “Standards for the Use or Disposal of Sewage Sludge” pursuant to § 405(d) of the CWA, 33 U.S.C. § 1345(d).
2. If both state and federal requirements apply to the Permittee’s sludge use and/or disposal practices, the Permittee shall comply with the more stringent of the applicable requirements.
3. The requirements and technical standards of 40 CFR Part 503 apply to the following sludge use or disposal practices:
 - a. Land application - the use of sewage sludge to condition or fertilize the soil;
 - b. Surface disposal – the placement of sewage sludge in a sludge only landfill; and
 - c. Sewage sludge incineration in a sludge only incinerator.

Attachment B
MWRA Advisory Board Comments

4. The requirements of 40 CFR Part 503 do not apply to facilities which dispose of sludge in a municipal solid waste landfill. 40 CFR § 503.4. These requirements also do not apply to

facilities which do not use or dispose of sewage sludge during the life of the permit but rather treat the sludge (e.g., lagoons, reed beds), or are otherwise excluded under 40 CFR § 503.6.

5. The 40 CFR Part 503 requirements include the following elements:

- a. General requirements
- b. Pollutant limitations
- c. Operational Standards (pathogen reduction requirements and vector attraction reduction requirements)
- d. Management practices
- e. Record keeping
- f. Monitoring
- g. Reporting

Which of the 40 CFR Part 503 requirements apply to the Permittee will depend upon the use or disposal practice followed and upon the quality of material produced by a facility. The EPA Region 1 guidance document, “EPA Region 1 - NPDES Permit Sludge Compliance Guidance” (November 4, 1999), may be used by the Permittee to assist it in determining the applicable requirements.

6. The sludge shall be monitored for pollutant concentrations (all Part 503 methods) and pathogen reduction and vector attraction reduction (land application and surface disposal) at the following frequency. This frequency is based upon the volume of sewage sludge generated at the facility in dry metric tons per year, as follows:

| | |
|---------------------------|------------|
| less than 290 | 1/ year |
| 290 to less than 1,500 | 1 /quarter |
| 1,500 to less than 15,000 | 6 /year |
| 15,000 + | 1 /month |

Sampling of the sewage sludge shall use the procedures detailed in 40 CFR § 503.8.

7. Under 40 CFR § 503.9(r), the Permittee is a “person who prepares sewage sludge” because it “is ... the person who generates sewage sludge during the treatment of domestic sewage in a treatment works” If the Permittee contracts with another “person who prepares sewage sludge” under 40 CFR § 503.9(r) – i.e., with “a person who derives a material from sewage sludge” – for use or disposal of the sludge, then compliance with Part 503 requirements is the responsibility of the contractor engaged for that purpose. If the Permittee does not engage a “person who prepares sewage sludge,” as defined in 40 CFR § 503.9(r), for use or disposal, then the Permittee remains responsible to ensure that the applicable requirements in Part 503 are met. 40 CFR § 503.7. If the ultimate use or disposal method is land application, the Permittee is responsible for providing the person receiving the sludge with notice and necessary information to comply with the requirements of 40 CFR § 503 Subpart B.

Attachment B
MWRA Advisory Board Comments

8. The Permittee shall submit an annual report containing the information specified in the 40 CFR Part 503 requirements (§ 503.18 (land application), § 503.28 (surface disposal), or

§ 503.48 (incineration)) by February 19 (see also “EPA Region 1 - NPDES Permit Sludge Compliance Guidance”). Reports shall be submitted electronically using EPA’s Electronic Reporting tool (“NeT”) (see “Reporting Requirements” section below).

I. SPECIAL CONDITIONS

1. Best Management Practices (BMP) Plan

The Permittee, ~~MWRA~~, shall continue to implement the BMP Plan that was developed as a requirement of the 2000 Permit and approved by EPA and MassDEP. The Plan shall continue to reflect activities at Deer Island, all headworks facilities, all CSO Treatment Facilities, and the sludge pelletizing plant at Fore River. The Permittee shall maintain a copy of the current Plan at DITP.

Any change in the facility which materially increases the potential for the ancillary activities to result in a release of hazardous or toxic pollutants, the Permittee shall update the BMP Plan. Changes to the BMP Plan shall be submitted to EPA.

2. Pollution Prevention Plan

- a. The Permittee, ~~MWRA~~, shall update and continue to make available their Household Hazardous Waste booklet in both hard copy and on-line formats. The updates should include information on the sources and proper disposal of Pharmaceuticals and Personal Care Products (PPCPs), PFAS, and microplastics. MWRA shall make this information available on their website and in hard copy, upon request, to all the sewer member communities.
- b. The Permittee, ~~MWRA~~, shall continue to administer the school curriculum that covers the wastewater treatment process and the importance of individuals keeping the harbor clean by not polluting. The curriculum should be updated to include contaminants of emerging concern (CEC) including PFASs, PPCPs and microplastics.
- c. The Permittee, ~~MWRA~~, shall continue to provide outreach to schools and community groups concerning the Boston Harbor Cleanup and how they can practice pollution prevention at home through reducing their use of hazardous household products and the proper disposal of HHW and CEC.

3. Best Management Practices for Outfall

The Permittee, ~~MWRA~~, shall operate Outfall T01 according to the best management practices below:

Attachment B
MWRA Advisory Board Comments

- a. The outfall shall be maintained to ensure proper operation. Proper operation means that the outfall pipe be intact, operating as designed, and have unobstructed flow.

Attachment B
MWRA Advisory Board Comments

NPDES Permit No. MA0103284

2023 Draft Permit
Page 55 of 68

Maintenance may include dredging in the vicinity of the outfall, removal of solids/debris in the outfall header pipe, and repair/replacement.

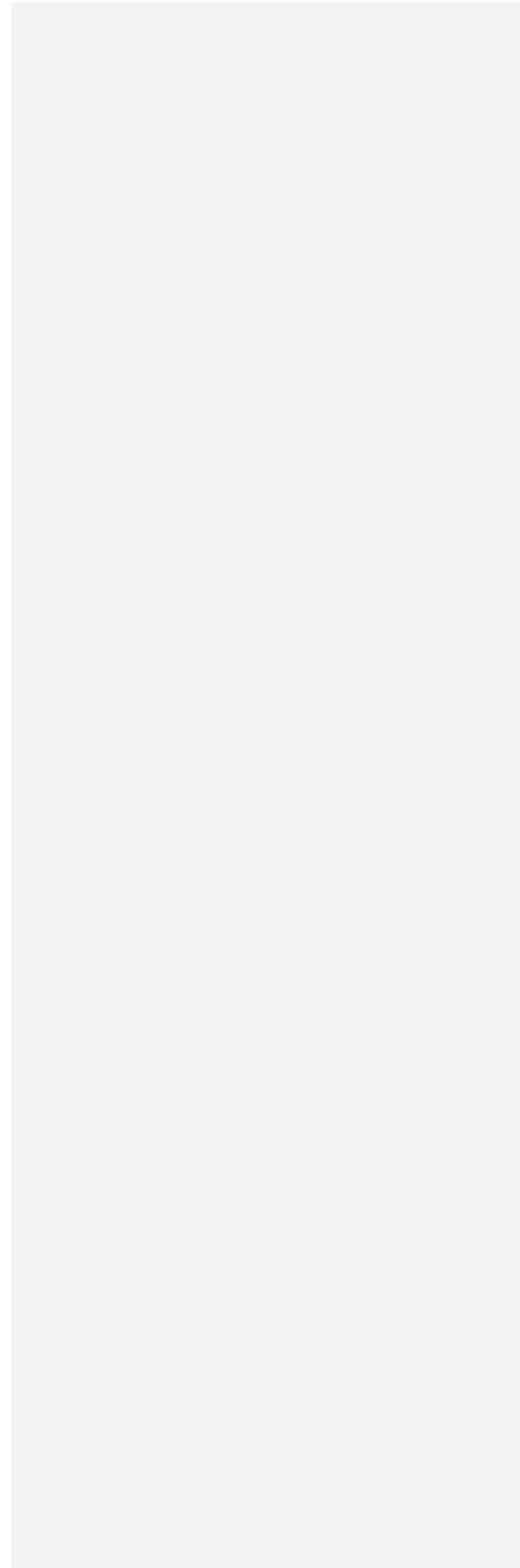
- b. To determine if maintenance will be required, the Permittee, ~~MWRA~~, shall inspect and videotape the operation of the outfall either remotely or using a qualified diver or marine contractor. At a minimum, the inspections and videotaping shall be performed once every five years with the first inspection occurring within twelve (12) months of the effective date of the permit. EPA and MassDEP shall be contacted at least seven days prior to a dive inspection.
 - c. Any necessary maintenance dredging must be performed only during the marine construction season authorized by the Massachusetts Department of Marine Fisheries and only after receiving all necessary permits from the Massachusetts Department of Environmental Protection, U.S. Coast Guard, U.S. Army Corps of Engineers, and other appropriate agencies.
 - d. Copies of reports summarizing the results of each outfall inspection shall be submit to EPA and MassDEP within 60 days of each inspection. Where it is determined that maintenance will be necessary, the Permittee shall provide the proposed schedule for the maintenance.
 - e. Attached to its monthly DMR report, the Permittee shall submit a monthly report to EPA that includes (1) ongoing performance of the diffusers as determined by the flow versus hydraulic head relationship, (2) number of risers and ports opened and closed, and (3) information available from any video inspections collected that month.
4. The Permittee, CSO-responsible Co-permittees and Co-permittees shall notify the Massachusetts Division of Marine Fisheries within 4 hours of becoming aware of any emergency condition, plant upset, bypass, SSO discharges or other system failure of the portion of the POTW that they own and operate which has the potential to violate bacteria permit limits and within 24 hours of becoming aware of a permit excursion or plant failure. The notification shall be sent to the following address and telephone number:

Division of Marine Fisheries
Shellfish Management Program
30 Emerson Avenue
Gloucester, MA 01930
(978) 282-0308

5. Pursuant to 40 § CFR 125.123(d)(4), this Permit shall be modified or revoked at any time if, on the basis of any new data, the Director determines that continued discharges may cause unreasonable degradation of the marine environment.

Attachment B
MWRA Advisory Board Comments

6. Ambient Monitoring Plan



Attachment B
MWRA Advisory Board Comments

NPDES Permit No. MA0103284

2023 Draft Permit
Page 56 of 68

Within 30 days of the effective date of the Permit, the Permittee shall submit a revised Ambient Monitoring Plan to EPA and MassDEP. The Permittee will continue to monitor as required in the 2021 Ambient Monitoring Plan, Revision 2.1²⁹ until the revised Ambient Monitoring Plan is approved. The plan must comply with applicable local, state and federal regulations and shall consist of the following elements, at a minimum:

- a. The Permittee may use elements of Ambient Monitoring Plan, Revision 2.1 as the basis for the revised Plan but focused on Water Column Monitoring requirements outlined below.
- b. The Permittee shall also prepare a Quality Assurance Project Plan for the approved Ambient Monitoring Plan for State review and approval.
- c. Survey Dates

Unless otherwise specified, surveys shall be conducted 9 times per year according to the following table:

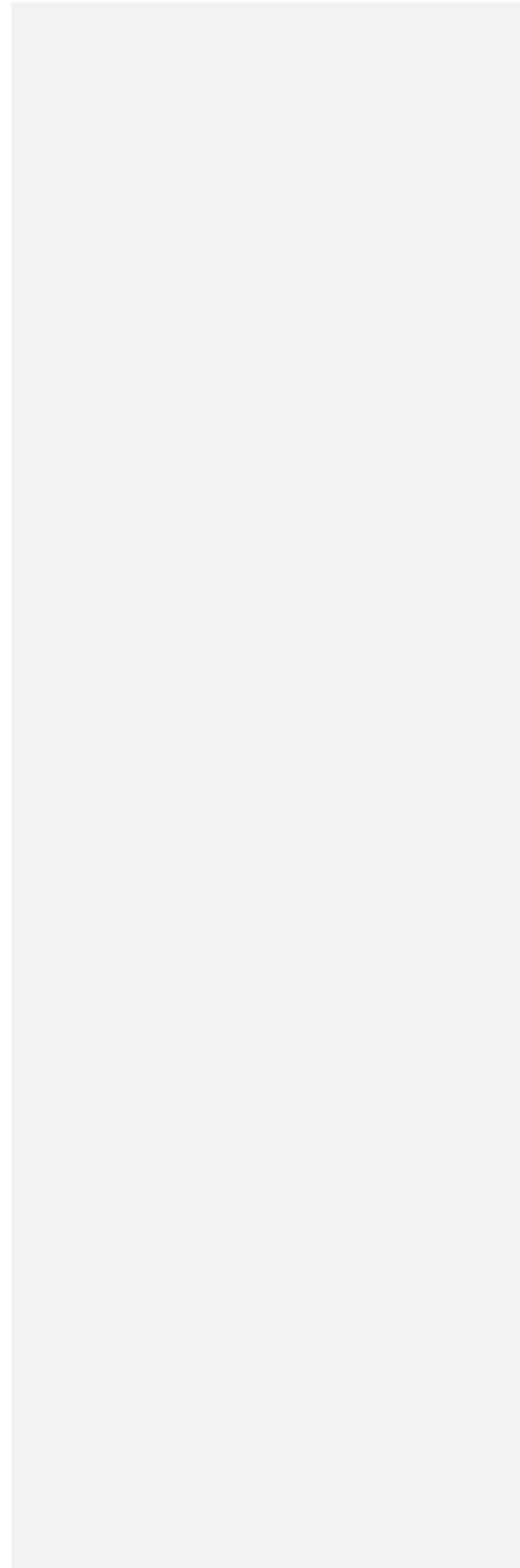
Table 1: Water Column Survey Schedule from Ambient Monitoring Plan, Revision 2.1.

| When | Target Week | Original Survey Number | Purpose |
|----------------|--------------------|-------------------------------|--|
| Early February | 6 | 1 | Nutrient conditions near the start of the spring bloom |
| March | 12 | 3 | Spring bloom |
| Early April | 15 | 4 | Capture <i>Phaeocystis</i> bloom. Later winter/spring bloom nutrients |
| Mid-May | 20 | 6 | Nutrient/water column conditions at the end of winter/spring, <i>Alexandrium</i> |
| Mid-June | 25 | 7 | Early summer stratification and nutrients. Mid-late <i>Alexandrium</i> season |
| Mid-July | 30 | 9 | Mid-summer stratification and nutrients |
| Mid-August | 34 | 11 | Mid-summer stratification and nutrients |
| September | 36 | 12 | Nutrients, etc. prior to overturn. |
| Late October | 43 | 14 | Mid-fall bloom nutrients, DO minima, etc. |

- d. Monitoring Stations

Attachment B
MWRA Advisory Board Comments

²⁹<https://www3.epa.gov/region1/npdes/mwra/omsap/pdfs/mwra-amp-rev-2-1-report-2021-08.pdf>



Attachment B
MWRA Advisory Board Comments

NPDES Permit No. MA0103284

2023 Draft Permit
Page 57 of 68

The Plan shall include the existing eleven (11) monitoring stations in Massachusetts Bay: F22, N04, N01, N21, N18, N07, F23, F15, F13, F10, and F06 and the existing three (3) monitoring stations in Cape Cod Bay: F29, F02 and F01. (See Ambient Monitoring Plan, Revision 2.1, Tables 3-2 and 3-3.)

e. Monitoring Parameters

The plan shall include the parameters shown below in Tables 2 & 3 (new requirements are in bold). Additional information can be found in MWRA’s Quality Assurance Project Plan (QAPP) for Water Column Monitoring 2020-2022, Tasks 4, 5, 6, 7 10.³⁰

Table 2: Water Column Parameters in Massachusetts Bay

| ANALYTE | DEPTH | PARAMETER |
|------------------------------|---|---|
| Hydro profile | Downcast data continuous, with upcast data at any sampled depth | Temperature pH Salinity Dissolved Oxygen Chlorophyll fluorescence Turbidity Transmissometry PAR/Irradiance Depth of sensors |
| Water Chemistry | Five depths. Surface, bottom, and three intermediate depths which includes the chlorophyll maximum | Ammonium Nitrate Nitrite Total dissolved nitrogen Particulate nitrogen Phosphate Total dissolved phosphorus Particulate phosphorus Silicate Particulate carbon |
| <i>Alexandrium catenella</i> | Two depths | Gene probe |
| Phytoplankton Zooplankton | Near surface Net Tow for Zooplankton Plankton will not be measured at station N21 because nearfield plankton is adequately characterized by data collected at the | Identification Enumeration |

³⁰ Libby PS, Whiffen-Mansfield AD, Nichols KB, Lescarbeau GR, Borkman DG, Turner JT, 2021, Quality Assurance Project Plan (QAPP) for water column monitoring 2020-2022: Tasks 4-7 and 10, Revision 1. Boston,

Attachment B
MWRA Advisory Board Comments

Massachusetts Water Resources Authority. Report 2021-01. 66p. <https://www.mwra.com/harbor/enquad/pdf/2021-01.pdf>

| ANALYTE | DEPTH | PARAMETER |
|---------|-------------------------------|-----------|
| | other four nearfield stations | |

Table 3: Water Column Parameters in Cape Cod Bay and Stellwagen NMS

| ANALYTE | DEPTH | PARAMETER |
|------------------------------|---|--|
| Hydro profile | Downcast data continuous, with upcast data at any sampled depth | Temperature pH Salinity Dissolved Oxygen Chlorophyll fluorescence Transmissometry PAR/Irradiance Depth of sensors |
| Water Chemistry | Two depths Near surface and near bottom | Ammonium Nitrate + nitrite Phosphate Total Nitrogen Total Phosphorus Extracted chlorophyll |
| <i>Alexandrium catenella</i> | Two depths | Gene probe |
| Phytoplankton Zooplankton | Near surface Net tow | Identification Enumeration |

f. Harmful algal blooms and nuisance algae

Identify and enumerate the following algal taxa: *Alexandrium catenella*, *Pseudo-nitzschia* spp., *Dinophysis* spp., *Phaeocystis pouchetii*, *Karenia mikimotoi*, and *Margalefidinium polykrikoides* as required in above in Tables 2 and 3.

(1) *Alexandrium catenella*

Alexandrium catenella shall continue to be enumerated using the gene probe method identified in the AMP, Revision 2.1., page 42 and the QAPP, Table B-4. MWRA shall conduct *Alexandrium* Rapid Response Study (ARRS) following the current *Alexandrium* Rapid Response Study Survey Plan, Revision 1³¹ and based on the following one or more of the following scenarios occurring:

Attachment B
MWRA Advisory Board Comments

³¹ Libby PS, Rex AC, Keay KE, Mickelson MJ. 2013. Alexandrium Rapid Response Study Survey Plan. Revision 1. Boston: Massachusetts Water Resources Authority. Report 2013-06. 13 p.
<https://www.mwra.com/harbor/enquad/pdf/2013-06.pdf>

- i. MWRA shall begin weekly surveys for *Alexandrium* when information suggests that:
 - (a) A bloom is present in Massachusetts Bay or imminent.
 - (b) If *Alexandrium* values exceed 100 cells/L.
 - (c) If high levels of paralytic shellfish poisoning (PSP) toxicity in blue mussels are reported as defined below:
 - a. If PSP toxicity in blue mussels at Cohasset, Scituate or Marshfield (MA DMF stations) exceeds 40 jig toxin per 100 g shellfish meat, MWRA will conduct a weekly ARRS survey.

Or

If PSP toxicity in blue mussels exceeds 40 jig at stations between Gloucester, MA and Cape Elizabeth, ME, assume that there is a bloom in the Gulf of Maine. MWRA will evaluate the likelihood that wind and currents will bring the bloom into Massachusetts Bay and staff will use professional judgement to decide whether to begin the weekly ARRS surveys.

- (d) MWRA shall monitor data on PSP toxicity results from the following sources:

Maine Department of Marine Resources (ME-DMR)
<https://www.maine.gov/dmr/fisheries/shellfish/closures>

New Hampshire Fish and Game
<https://www.wildlife.state.nh.us/marine/redtide.html>

Massachusetts Division of Marine Fisheries (MA-DMF)
<https://www.mass.gov/lists/biotxin-notices#2023-notices->

Northeast PSP Listserver
<http://mailman.who.edu/mailman/listinfo/northeastpsp>

Attachment B
MWRA Advisory Board Comments

- (e) Once MWRA begins an ARRS survey, it will continue weekly sampling for *Alexandrium* until the measured *Alexandrium* abundance decreases below 100 cell/L and the

toxicity data are no longer above closure levels (80 µg STX equiv./100 g).

- (f) If an ARRS is commenced, the Permittee shall submit a written report with the monthly DMR occurring 60 days following the completion of the survey.

(2) *Pseudo-nitzschia* spp.

Pseudo-nitzschia shall continue to be identified and enumerated using the screened, rapid-analysis method detailed in the 2021 QAPP³².

Pseudo-nitzschia abundance shall be reported as all *Pseudo-nitzschia* cells at the genus level regardless of assumed species or cell size, not just *Pseudo-nitzschia pungens* or *Pseudo-nitzschia multiseriis* type cells. When comparing *Pseudo-nitzschia* abundance across years, past abundances should be updated to reflect all *Pseudo-nitzschia* spp. cells when the historical monitoring dataset allows.

- i. A plankton sample to measure the toxin domoic acid that some species of *Pseudo-nitzschia* produce shall be collected during the routine water column sampling at each monitoring station. This sample shall be collected by passing at least 20 L of surface seawater through a 20 µm plankton net (equipped with a flow meter) or mesh screen (estimated by bucket or carboy volumes) and storing the concentrated sample chilled at 4 °C in the dark (fridge).

These samples shall be tested for the presence or absence of domoic acid using a Scotia Rapid Test, similar method to the Scotia Rapid Test, or liquid chromatography – tandem mass spectrometry, if one of the following are true:

(a) *Pseudo-nitzschia* spp. cell counts at the corresponding station exceed 15,000 *Pseudo-nitzschia* cells/L.

(b) *Pseudo-nitzschia australis* is possibly present in the corresponding station sample at elevated abundance deduced

³² Libby PS, Whiffen-Mansfield AD, Nichols KB, Lescarbeau GR, Borkman DG, Turner JT, 2021, Quality Assurance Project Plan (QAPP) for water column monitoring 2020-2022: Tasks 4-7 and 10, Revision 1. Boston,

Attachment B
MWRA Advisory Board Comments

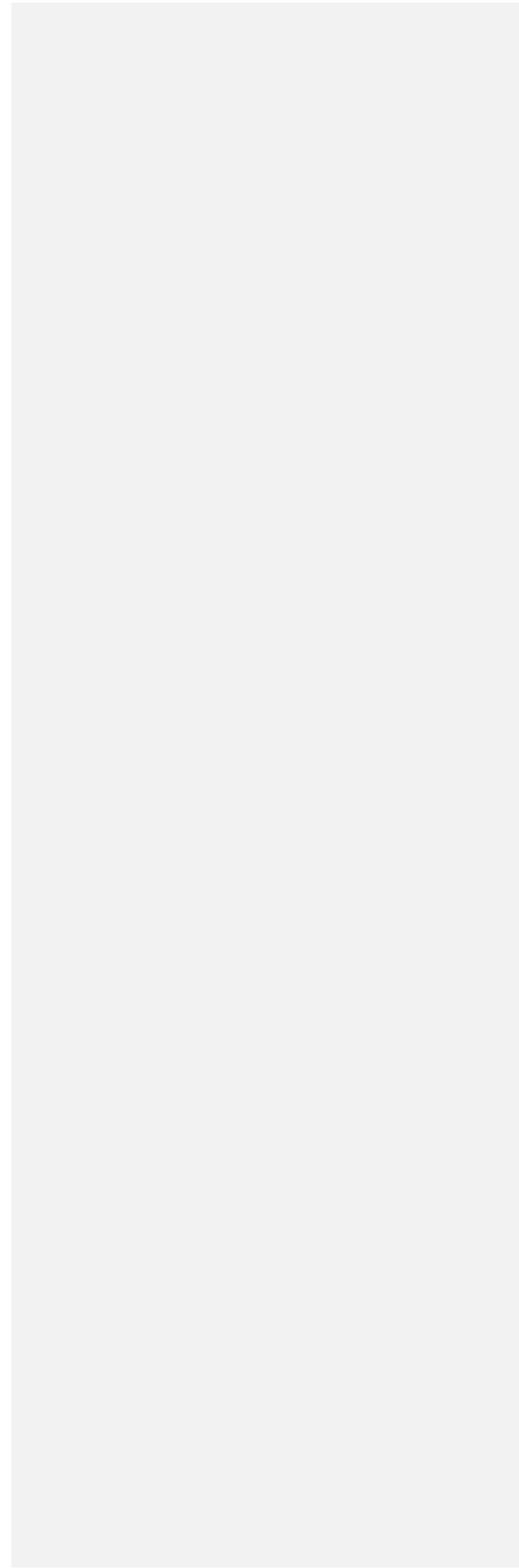
Massachusetts Water Resources Authority. Report 2021-01. 66p. <https://www.mwra.com/harbor/enquad/pdf/2021-01.pdf>

from the presence of over 2,000 cells/L of large *Pseudo-nitzschia* cells equal to or greater than 3 µm in width.

- (c) There is a co-occurring shellfish harvest closure due to domoic acid or elevated *Pseudo-nitzschia* cell abundance in Massachusetts Bay.
- ii. MWRA shall conduct *Pseudo-nitzschia* Rapid Response Study based on the following one or more of the following scenarios occurring:
 - (a) MWRA shall begin weekly surveys for *Pseudo-nitzschia* when the information suggests:
 - (i) If a bloom of *Pseudo-nitzschia* is present in Massachusetts Bay or possibly imminent from observations in waters north of Massachusetts Bay.
 - (ii) If *Pseudo-nitzschia* spp. cell counts exceed 15,000 cells/L and/or *P. australis* is likely present in samples and domoic acid is present in the 20 µm concentrated sample.
 - (iii) If domoic acid in blue mussels is over 1 mg toxin per 100 g shellfish meat in Cohasset, Scituate, or Marshfield MA DMF stations.
 - (iv) If domoic acid in blue mussels is equal to or exceeds 2 mg toxin per 100 g shellfish meat in any MA DMF stations.
 - (b) MWRA shall assess the availability of a species-specific DNA probe to confirm the presence of the highly toxic and problematic species *Pseudo-nitzschia australis* and, if available, MWRA shall implement this probe into routine

Attachment B
MWRA Advisory Board Comments

water column sampling and *Pseudo-nitzschia* Rapid Response
Sampling.



- iii. Once a *Pseudo-nitzschia* Rapid Response Study is initiated, it will continue weekly samples until all stations are below 15,000 cells/L and no domoic acid is present through the Rapid Scotia Test or equivalent method.
- iv. If a *Pseudo-nitzschia* Rapid Response Study is commenced, the Permittee shall submit a written report with the monthly DMR occurring 60 days following the completion of the survey.

(3) *Dinophysis* spp.

Dinophysis shall continue to be enumerated as previously described with the routine water column monitoring.

Dinophysis spp. shall be added to list of harmful or nuisance alga of interest reported from the screened, rapid-analysis samples on page 43 of the MWRA QAPP Water Column Monitoring 2020 – 2022.

If cell counts of *Dinophysis* exceeds 100,000 cells/L, then this shall be reported by the Permittee within 45 days with the next monthly DMR.

(4) *Phaeocystis pouchetii*

Phaeocystis pouchetii shall continue to be enumerated as previously described with the routine water column monitoring.

Phaeocystis pouchetii shall continue to be reported as part of the list of harmful or nuisance alga of interest from the screened, rapid-analysis samples on page 43 of the MWRA QAPP Water Column Monitoring 2020 – 2022.

- i. If *Phaeocystis pouchetii* cell counts exceed 6×10^6 cells/L, then this shall be reported by the Permittee within 45 days with the next monthly DMR. If *Phaeocystis pouchetii* cell counts exceed this threshold and there is a subsequent decrease in dissolved oxygen concentrations or nearby foam observed on beaches or other suspected environmental impacts from a *Phaeocystis pouchetii* bloom, then MWRA shall investigate the probable *Phaeocystis pouchetii* bloom further by collecting additional water samples.

(5) *Karenia mikimotoi*

Attachment B
MWRA Advisory Board Comments

Karenia mikimotoi shall continue to be enumerated as previously described with the routine water column monitoring.

Attachment B
MWRA Advisory Board Comments

NPDES Permit No. MA0103284

2023 Draft Permit
Page 63 of 68

Karenia mikimotoi shall be added to list of harmful or nuisance alga of interest reported from the screened, rapid-analysis samples on page 43 of the MWRA QAPP Water Column Monitoring 2020 – 2022.

- i. If *Karenia mikimotoi* cell counts exceed 10,000 cells/L, then this shall be reported by the Permittee within 45 days with the next monthly DMR. If *Karenia mikimotoi* cell counts exceed this threshold and there is a subsequent decrease in dissolved oxygen concentrations, then MWRA shall investigate the probably *Karenia mikimotoi* bloom further by collecting water samples throughout the water column, including the subsurface chlorophyll maximum and bottom, in order to enumerate the presence of *Karenia mikimotoi* which is able to vertically migrate through the water column.

- (6) *Margalefidinium polykrikoides* (formerly known as *Cochlodinium polykrikoides*)

Margalefidinium polykrikoides shall continue to be enumerated as previously described with the routine water column monitoring.

Margalefidinium polykrikoides shall be added to list of harmful or nuisance alga of interest reported from the screened, rapid-analysis samples on page 43 of the MWRA QAPP Water Column Monitoring 2020 – 2022.

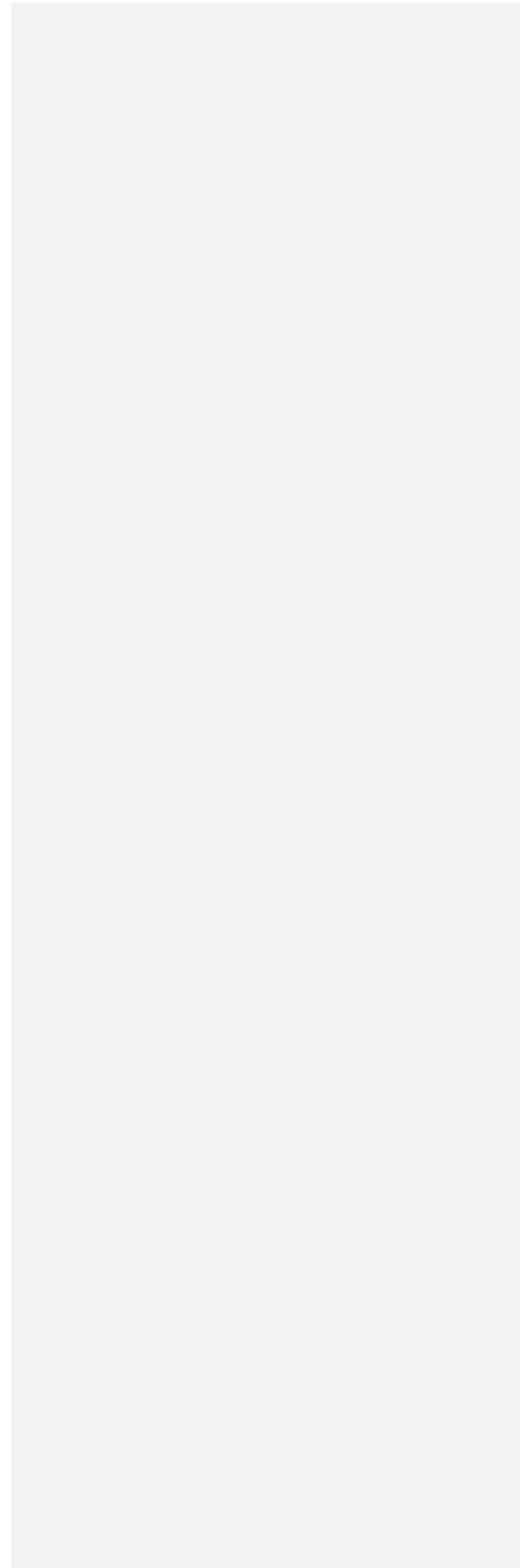
- i. If *Margalefidinium polykrikoides* cell counts exceed 1,000 cells/L, then this shall be reported by the Permittee within 45 days with the next monthly DMR. If *Margalefidinium polykrikoides* cell counts exceed this threshold and there is a subsequent decrease in dissolved oxygen concentrations, then MWRA shall investigate the probable *Margalefidinium polykrikoides* bloom further by collecting water samples throughout the water column, including the subsurface chlorophyll maximum and bottom, in order to enumerate the presence of *Margalefidinium polykrikoides* which is able to vertically migrate through the water column

- g. Continuous measurement of biological parameters

MWRA shall track data from the Northeastern Regional Association of Coastal Ocean Observing System (NERACOOS) monitoring buoy off Cape Ann, NERACOOS A01, and the NOAA weather buoy, 44013, just south of the outfall site.

Attachment B
MWRA Advisory Board Comments

- h. Remote sensing



Monitor sea surface temperature and chlorophyll through remote sensing via satellite imagery. Imagery can be used in the synthesis of water column monitoring and interpreting unusual events.

i. Floatables observations

The MWRA should continue floatables observations to ensure that the discharge continues to meet water quality standards for aesthetics.

j. Data Evaluation

Emphasize, identify and quantify trends and emerging issues or threats, trend analyses to receive additional focus including sophisticated analytical methods (e.g., general additive models).

k. Modifications to Ambient Monitoring Plan

By November 15 of each year, the Permittee or any member of the public shall submit a list of any proposed modifications to the ambient monitoring plan to EPA and MassDEP. These modifications shall become effective upon written approval by EPA and the MassDEP.

- (1) The Permittee or any member of the public may also propose modifications at any time. Such modifications will become effective thirty (30) days after the Permittee provides written notice to EPA and MassDEP, unless there is written objection from EPA or MassDEP. Such approvals will be effective until EPA and MassDEP take action on the Permittee's or the public's next annual request.

l. Annual Report

The results of all monitoring required by the Ambient Monitoring Plan shall be reported to EPA and MassDEP on an annual basis. Reporting on HABS and nuisance algae shall be reported as an attachment to the monthly DMR 60 days after the survey is concluded. Raw data shall be made available upon request by EPA, MassDEP, NMFS or any member of the public.

m. Special Studies

EPA and/or MassDEP may propose special studies in response to the Water Column Monitoring Results or other concerns in Massachusetts Bay. The special studies shall be specific to the MWRA discharge.

7. Dye studies for CSO Treatment Facilities discharge locations

Attachment B
MWRA Advisory Board Comments

The Permittee shall conduct a dye study at each of the CSO Treatment Facility discharge locations once during the 5-year permit term to determine the dilution at the point of

discharge during the applicable hydraulic condition in the WQS at 314 CMR 4.03(3). The Permittee should consult with MassDEP as to the applicable hydraulic condition for each discharge location. The completed dye studies must be submitted by MWRA six months before the end of the permit term (concurrent with NPDES application).

J. REPORTING REQUIREMENTS

Unless otherwise specified in this Permit, the Permittee, CSO-responsible Co-permittees, and Co-permittees shall submit reports, requests, and information and provide notices in the manner described in this section.

1. Submittal of DMRs Using NetDMR

The Permittee shall continue to submit its monthly monitoring data in discharge monitoring reports (DMRs) to EPA and the State electronically using NetDMR no later than the 15th day of the month. When the Permittee submits DMRs using NetDMR, it is not required to submit hard copies of DMRs to EPA or the State. NetDMR is accessible through EPA's Central Data Exchange at <https://cdx.epa.gov/>.

2. Submittal of Reports as NetDMR Attachments

Unless otherwise specified in this Permit, the Permittee and Co-permittees shall electronically submit ~~all~~ their respective reports to EPA as NetDMR attachments rather than as hard copies. See Part I.J.8. for more information on State reporting. Because the due dates for reports described in this Permit may not coincide with the due date for submitting DMRs (which is no later than the 15th day of the month), a report submitted electronically as a NetDMR attachment shall be considered timely if it is electronically submitted to EPA using NetDMR with the next DMR due following the report due date specified in this Permit.

3. Submittal of Industrial User and Pretreatment Related Reports

- a. Prior to 21 December 2025, all reports and information required of the Permittee in the Industrial Users and Pretreatment Program section of this Permit shall be submitted to the Pretreatment Coordinator in EPA Region 1 Water Division (WD). Starting on 21 December 2025, these submittals must be done electronically as NetDMR attachments and/or using EPA's NPDES Electronic Reporting Tool ("NeT"), or another approved EPA system, which will be accessible through EPA's Central Data Exchange at <https://cdx.epa.gov/>. These requests, reports and notices include:

- (1) Annual Pretreatment Reports,
- (2) Pretreatment Reports Reassessment of Technically Based Industrial Discharge Limits Form,

Attachment B
MWRA Advisory Board Comments

- (3) Revisions to Industrial Discharge Limits,
- (4) Report describing Pretreatment Program activities, and
- (5) Proposed changes to a Pretreatment Program.

- b. This information shall be submitted to EPA WD as a hard copy at the following address:

U.S. Environmental Protection Agency
Water Division
Regional Pretreatment Coordinator
5 Post Office Square - Suite 100 (06-03)
Boston, MA 02109-3912

4. Submittal of Biosolids/Sewage Sludge Reports

By February 19 of each year, the Permittee must electronically report their annual Biosolids/Sewage Sludge Report for the previous calendar year using EPA's NPDES Electronic Reporting Tool ("NeT"), or another approved EPA system, which is accessible through EPA's Central Data Exchange at <https://cdx.epa.gov/>.

5. Submittal of Requests and Reports to EPA Water Division (WD)

- a. The following requests, reports, and information described in this permit shall be submitted to the NPDES Applications Coordinator in EPA Water Division (WD):
- (1) Transfer of permit notice;
 - (2) Request for changes in sampling location;
 - (3) Request for reduction in testing frequency;
 - (4) Report on unacceptable dilution water / request for alternative dilution water for WET testing;
 - (5) Report of new industrial user commencing discharge; and
 - (6) Report received from existing industrial user.

- b. These reports, information, and requests shall be submitted to EPA WD electronically at R1NPDESReporting@epa.gov.

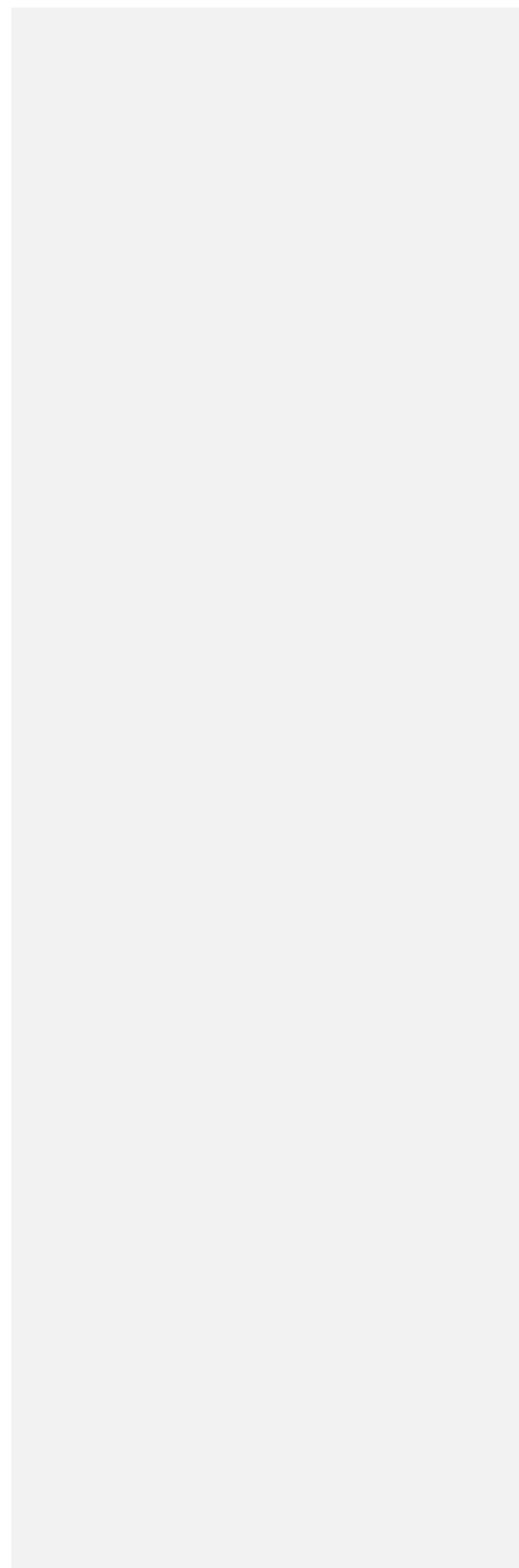
6. Submittal of Sewer Overflow and Bypass Reports and Notifications

- c. The Permittee shall submit required reports and notifications under Part II.B.4.c, for bypasses, and Part II.D.1.e, for sanitary sewer overflows (SSOs) electronically using EPA's NPDES Electronic Reporting Tool ("NeT"), which will be accessible through EPA's Central Data Exchange at <https://cdx.epa.gov/>.

7. State Reporting

Attachment B
MWRA Advisory Board Comments

Duplicate signed copies of all WET test reports shall be submitted to the Massachusetts Department of Environmental Protection, Division of Watershed Management, at the following address:



**Massachusetts Department of Environmental Protection
Bureau of Water Resources
Division of Watershed Management
8 New Bond Street
Worcester, Massachusetts 01606**

8. Verbal Reports and Verbal Notifications

- a. Any verbal reports or verbal notifications, if required in Parts I and/or II of this permit, shall be made to both EPA and to the State. This includes verbal reports and notifications which require reporting within 24 hours (e.g., Part II.B.4.c.(2), Part II.B.5.c.(3), and Part II.D.1.e).
- b. Verbal reports and verbal notifications shall be made to:

**EPA ECAD at 617-918-1510
and
MassDEP Emergency Response at 888-304-1133**

K. STATE 401 CERTIFICATION CONDITIONS

1. This Permit is in the process of receiving state water quality certification issued by MassDEP under § 401(a) of the CWA and 40 CFR § 124.53. EPA will incorporate appropriate State water quality certification requirements (if any) into the Final Permit.
2. MassDEP has approved a pH Adjustment Demonstration Project. The pH limits in the Permit are 6.0 to 8.5 S.U. and the following requirements must be met based on MassDEP's approval letter:
 - MWRA shall provide ambient pH monitoring both outside the area of discharge influence and within the area of discharge influence to confirm compliance with SWQS.
 - Minimum sampling frequency and duration shall be monthly for a period of six months immediately following the pH limit approval or as otherwise approved by MassDEP.
 - Measurements of pH shall be taken using probes calibrated just prior to each use and at documented and representative locations.
 - Whenever feasible, sampling should be conducted during dry weather conditions (little or no antecedent precipitation). Data shall be submitted to MassDEP's email portal on a monthly basis (wqdata.submit@state.ma.us).
 - Any and all exceedances of SWQS for pH shall be immediately reported to MassDEP via that same email portal.

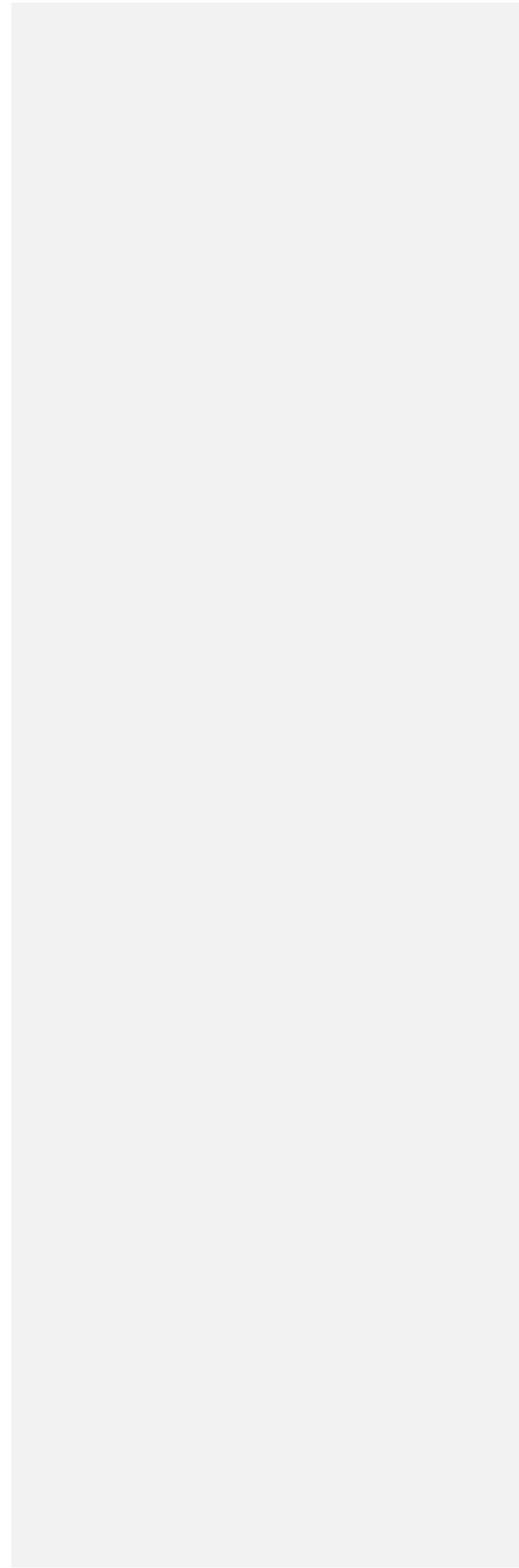
Attachment B
MWRA Advisory Board Comments

- Following the six-month period, MassDEP shall evaluate the submitted data to determine the need for additional monitoring and/or follow up.

Attachment B
MWRA Advisory Board Comments

NPDES Permit No. MA0103284

2023 Draft Permit
Page 68 of 68



Attachment B
MWRA Advisory Board Comments

3. The Permittee and CSO-responsible Co-permittees must implement their preliminary and final CSO Public Notification Plans as approved by MassDEP and shall meet all other applicable requirements of 314 CMR 16.00.

Attachment C

Attachment C
MWRA Advisory Board Comments

PUBLIC NOTICE

Notice is hereby given that the Massachusetts Department of Environmental Protection (MassDEP), under authority granted by the Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 26 – 53, is proposing to: (1) issue a federal Clean Water Act (CWA) section 401 certification for the U.S. Environmental Protection Agency’s (EPA) proposed 2023 Draft NPDES Permit (Federal Permit) (MA Permit No. MA0103284) to the Massachusetts Water Resources Authority (MWRA) for the Deer Island Treatment Plant’s pollutant discharges to Massachusetts Bay (“Other Waters under 314 CMR 4.00) and from four (4) Combined Sewer Overflow Treatment Facilities at 5 locations and from Combined Sewer Overflow Outfalls at 6 locations; and (2) issue the 2023 Draft Massachusetts Permit to Discharge Pollutants to Surface Waters (State Permit) for the same discharges pursuant to the Massachusetts Clean Waters Act. The Deer Island Treatment Plant is located at 190 Tafts Avenue in Winthrop, MA. The proposed section 401 certification, proposed State Permit, and proposed Federal Permit are all available at <https://www.mass.gov/service-details/massdep-public-hearings-comment-opportunities>. Alternatively, a copy of the documents can be obtained by contacting Claire Golden, MassDEP Surface Water Discharge Program, at 617-997-8874 or at claire.golden@mass.gov. Written comments on both the proposed section 401 certification and the proposed State Permit will be accepted until 5:00 p.m. on July 31, 2023. MassDEP strongly encourages written comments to be submitted by email to massdep.npdes@mass.gov; subject line: MWRA Deer Island. If not possible, please send by mail to Claire Golden, MassDEP, Surface Water Discharge Program, 150 Presidential Way, Woburn, MA 01801.

EPA and MassDEP are holding a virtual public meeting followed by a virtual public hearing on July 12, 2023. Information on the times and how to register will be provided at: <https://www.epa.gov/npdes-permits/epas-permit-massachusetts-water-resources-authority-mwra-outfall>.

Following the close of the comment period, MassDEP will issue a final CWA section 401 certification and final State Permit and forward copies to the applicant and each person who has submitted written comments or requested notice.

For special accommodations, please call the MassDEP Diversity Office at 617-292-5751. TTY# MassRelay Service 1-800-439-2370. This information is available in alternate format upon request.

By Order of the Department

Bonnie Heiple, Commissioner

Attachment C
MWRA Advisory Board Comments

MA Permit No. MA0103284

May 31, 2023

2023 DRAFT PERMIT

MASSACHUSETTS PERMIT TO DISCHARGE POLLUTANTS TO SURFACE WATERS

In compliance with the provisions of the Massachusetts Clean Waters Act, as amended (M.G.L. Chap. 21, §§ 26 - 53) and the implementing regulations at 314 CMR 3.00 and 4.00,

Massachusetts Water Resources Authority (MWRA)
Deer Island
33 Tafts Avenue
Boston, MA 02128

is authorized to discharge from the facility located at

MWRA Deer Island Treatment Plant (DITP)
190 Tafts Avenue
Winthrop, MA 02152
and
Four (4) Combined Sewer Overflow (CSO) Treatment Facilities with Five (5) outfalls
and
Six (6) additional Combined Sewer Overflow Outfalls

to receiving waters named:

| Receiving Water | Segment | Outfalls |
|------------------------|-------------------------------------|--|
| Massachusetts Bay | "Other waters", see 314 CMR 4.06(5) | Outfall Number T01 |
| Boston Inner Harbor | MA70-02 | CSO Treatment Facilities Outfall Numbers MWR203 and MWR215 |
| Charles River | MA72-38 | CSO Treatment Facility Outfall Number MWR201; CSO Outfall Numbers MWR010, MWR018, MWR019, MWR020, and MWR023 |
| Upper Mystic River | MA71-02 | CSO Treatment Facility Outfall Numbers MWRA205 and MWR205A |
| Little River | MA71-22 | CSO Outfall Number MWR003 |

in accordance with the following effluent limitations, monitoring requirements and additional conditions:

1. This permit shall become effective on [DATE].¹
2. ~~This permit shall expire five years after the effective date.~~

¹ If no comments objecting to the issuance or terms of the permit were received by the Department during the public comment period, then this permit shall be effective upon issuance. If comments objecting to the issuance or

Attachment C

MWRA Advisory Board Comments

the terms of the permit are received by the Department during the public comment period, then this permit shall become effective 30 days after issuance.

Attachment C
MWRA Advisory Board Comments

MA Permit No. MA0103284

May 31, 2023

2023 DRAFT PERMIT

3. This permit supersedes the permit issued on May 20, 1999, and subsequently modified on July 10, 2000.
4. This permit incorporates by reference: Part IA., Effluent Limitations and Monitoring Requirements for Outfall T01; Part IB., Combined Sewer Overflows (CSOs); Part IC., Unauthorized Discharges; Part ID., Notice of Elimination; Part IE., Operation and Maintenance; Part IF., Alternate Power Source, Part IG., Industrial Users and Pretreatment Program, Part IH., Sludge Conditions; Part II., Special Conditions; Part IJ., Reporting Requirements; Part IK., State 401 Certification Conditions; and Part II, Standard Conditions, as set forth in the 2023 Draft NPDES Permit No. MA0103284, issued by the United States Environmental Protection Agency (EPA), Region 1, issued to the Massachusetts Water Resources Authority (Permittee) on May 31, 2023 (the 2023 Draft NPDES Permit) and attached hereto by reference as Appendix A and available on EPA's website at <https://www.epa.gov/npdes-permits/massachusetts-draft-individual-npdes-permits>; provided, however:
 - a. that the notification required by Part IA.8 shall also be provided to MassDEP;
 - b. that the reporting required by Part IC.3 shall be in accordance with 314 CMR 3.19(20)(e) (24 hour reporting);
 - c. that a copy of the requests, reports, and information required by Part IJ.5 to be submitted to EPA shall also be submitted to MassDEP electronically to massdep.npdes@mass.gov;
 - d. that, if there is a conflict between the definitions in 314 CMR 3.02 and/or 314 CMR 4.00 and the definitions in Part IIE, the definitions in 314 CMR 3.02 and/or 314 CMR 4.00 shall control, as applicable;
 - e. that the notification required by 4.a. above shall be provided to massdep.npdes@mass.gov, or as otherwise specified.
5. This permit incorporates by reference the Standard Permit Conditions set forth in 314 CMR 3.19.
6. The ~~permittee~~ Permittee shall commence annual monitoring of all Significant Industrial Users^{2,3} discharging into the POTW using Draft Method 1633 within six (6) months of the effective date.
7. Notwithstanding any other provision of the 2023 Draft Federal NPDES permit to the contrary, all PFAS monitoring results (influent; effluent; sludge; SIUs; and specific industries as specified in the 2023 Draft Federal NPDES permit) shall be reported to MassDEP via the eDEP portal, or as otherwise specified, within 30 days after the ~~permittee~~ Permittee receives the sampling results, in addition to the 2023 Draft Federal NPDES Permit reporting requirements. Information regarding the submittal of data via eDEP may be found at <https://www.mass.gov/how-to/submit-wastewaterresiduals-pfas-data-via-edep>.
8. On or before January 31, 2024, the permittee shall submit to MassDEP at massdep.npdes@mass.gov a listing of all industrial dischargers and their addresses to be sampled in accordance with both the 2023 Draft Federal NPDES Permit and this permit and shall include:
 - a. All industries included in the categories listed Part IG, Industrial Users and Pretreatment Program, Paragraph 3 of the 2023 Draft Federal NPDES Permit; and
 - b. All Significant Industrial Users as required by Paragraph 6 of this permit.

² Significant Industrial User (SIU) is defined at 40 CFR part 403: All industrial users subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR chapter I, subpart N; **and** any other industrial user that: discharges an average of 25,000 GPD or more of process wastewater to the POTW, contributes a process wastestream that makes up 5% or more of the average dry weather hydraulic or organic capacity of the POTW, or designated as such by the POTW on the basis that the industrial users has a reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standards or requirement.

Attachment C

MWRA Advisory Board Comments

³ This requirement applies to all Significant Industrial Users and not just those within the sectors identified by EPA in the NPDES permit.

Attachment C
MWRA Advisory Board Comments

MA Permit No. MA0103284

May 31, 2023

2023 DRAFT PERMIT

The listing shall be maintained by the permittee and updated with any changes. Whenever necessary, a copy of the updated listing reflecting changes shall be forwarded to MassDEP at massdep.npdes@mass.gov on or before the next January 31.

The cities and towns listed in Appendices B and C are ~~co~~Co-permittee(s) ~~for subject to~~ Part IC., Unauthorized Discharges, Part IE., Operation and Maintenance of the Treatment and Control Facilities, and Part 1F., Alternative Power Source, as set forth in the 2023 draft Federal NPDES Permit ~~for the sewer collection system each owns and operates~~. In addition, these sections include conditions regarding the operation and maintenance of the collection systems owned and operated by the municipalities.

Operation and maintenance of the sewer system shall be in compliance with the General Requirements of Part II and the terms and conditions of Part IC., Part IE., and Part IF. of the 2023 draft Federal NPDES permit. The Permittee, ~~CSO-responsible Co-permittees~~, and ~~co~~Co-permittees are severally liable under Part IC., Part IE., and Part IF. for their own activities and required reporting with respect to the portions of the collection system that ~~each owns or operates~~. They are not liable for violations of Part IC., Part IE., and Part IF. committed by others relative to the portions of the collection system owned and operated by others. Nor are they responsible for ~~any other Permittee's, CSO-responsible Co-permittee's or Co-permittee's failure to provide any reporting that is required of other Permittees~~ under Part IB., Part IC., and Part ID. ~~Moreover, CSO-responsible Co-permittees and Co-permittees are not liable for any violations of Parts A, D, G, H, I, J, or K committed by the Permittee.~~ The responsible municipal departments are found in Appendices B (~~Co-permittees~~) and C (~~CSO-responsible Co-permittees~~).

Those cities listed in Appendix C are ~~also~~ CSO-responsible ~~co~~Co-permittees for Part 1B., Combined Sewer Overflows (CSOs), and Part 1D, Notice of Elimination. These communities are authorized to discharge stormwater/wastewater from the CSO outfalls listed in Attachment A of the 2023 draft Federal NPDES Permit. Operation and maintenance of the CSO structures shall be in compliance with the General Requirements of Part II and the terms and conditions of Part IB. of the 2023 draft Federal NPDES permit. The Permittee and ~~CSO-responsible co~~Co-permittees are severally liable under Part IB., Part IE., and Part IF. for their own activities and required reporting with respect to the CSOs that they own or operate. They are not liable for violations of Part IB., Part IE., and Part IF. committed by others relative to CSOs owned and operated by others. Nor are they responsible for ~~the Permittee's or any other CSO-responsible Co-permittee's failure to provide any reporting that is required of other Permittees~~ under Part IB. ~~The responsible municipal departments are found in Appendix C.~~

In addition, the ~~permittee~~ Permittee, and all ~~co~~Co-permittees, and ~~CSO-responsible Co-permittees~~ are ~~severally~~ responsible for all public notifications, public health warnings and all other applicable requirements of 314 CMR 16.00 as they relate to their own ~~respective~~ collection systems including any approved CSO Notification Plans and/or SSO Notification Plans.

Signed this ____ day of _____, 20__

Attachment C

MWRA Advisory Board Comments

Lealdon Langley, Director

Division of Watershed Management

Department of Environmental Protection

Attachment C
MWRA Advisory Board Comments

MA Permit No. MA0103284

May 31, 2023

2023 DRAFT PERMIT

APPENDIX B
CO-PERMITTEES

Town of Arlington
51 Grove Street
Arlington, MA 02476

Town of Ashland
20 Ponderosa Road
Ashland, MA 01721

Town of Bedford
314 Great Road
Bedford, MA 01730

Town of Belmont
19 Moore Street
Belmont, MA 02478

Town of Braintree
P.O. Box 850903
Braintree, MA 02185-0903

Town of Brookline
333 Washington Street
Brookline, MA 02445

Town of Burlington
29 Center Street
Burlington, MA 01803

Town of Canton
801 Washington Street
Canton, MA 02021

Town of Dedham
55 River Street
Dedham, MA 02026

City of Everett
19 Norman Street
Everett, MA 02149

City of Framingham
100 Western Avenue
Framingham, MA 01701

Town of Hingham
210 Central Street
Hingham, MA 02043

Town of Holbrook
50 N. Franklin Street
Holbrook, MA 02343

Town of Lexington
Water & Sewer Department
201 Bedford Street
Lexington, MA 02420

City of Malden
200 Pleasant Street
Malden, MA 02148

City of Medford
Department of Public Works
85 George P. Hassett Drive
Medford, MA 02155

City of Melrose
Department of Public Works
72 Tremont Street
Melrose, MA 02176

Town of Milton
629 Randolph Avenue
Milton, MA 02186

Town of Natick
75 West Street
Natick, MA 01760

Town of Needham
470 Dedham Avenue
Needham, MA 02492

City of Newton
1000 Commonwealth Avenue
Newton, MA 02459

Town of Norwood
566 Washington Street
Norwood, MA 02062

City of Quincy
Sewer & Water Department
55 Sea Street
Quincy, MA 02169

Town of Randolph
Department of Public Works
41 South Main Street
Randolph, MA 02368

Town of Reading
16 Lowell Street
Reading, MA 01867

City of Revere
Department of Public Works
321 Rear Charger Street
Revere, MA 02151

Town of Stoneham
Public Works Department
16 Pine Street
Stoneham, MA 02180

Town of Stoughton
Department of Public Works
950 Central Street

Town of Wakefield
1 Lafayette Street
Wakefield, MA 01880

Town of Walpole
Department of Public Works
135 School Street

Attachment C
MWRA Advisory Board Comments
Stoughton, MA 02072

Walpole, MA 02081

Attachment C
MWRA Advisory Board Comments

MA Permit No. MA0103284

May 31, 2023

2023 DRAFT PERMIT

APPENDIX B (cont'd)
CO-PERMITTEES

City of Waltham
Water, Sewer, Drain
165 Lexington Street
Waltham, MA 02452

Town of Watertown
124 Orchard Street
Watertown, MA 02472

Town of Wellesley
455 Worcester Street
Wellesley, MA 02481

Town of Westwood
Department of Public Works
50 Carby Street
Westwood, MA 02090

Town of Weymouth
Department of Public Works
120 Winter Street
Weymouth, MA 02188

Town of Wilmington
Water & Sewer Division
121 Glen Road
Wilmington, MA 01887

Town of Winchester
Department of Public Works
15 Lake Street

Town of Winthrop
Department of Public Works
100 Kennedy Drive

City of Woburn
Public Works Sewer Division
50 North Warren Street

Attachment C

MWRA Advisory Board Comments

Winchester, MA 01890

Winthrop, MA 02152

Woburn, MA 01801

Attachment C
MWRA Advisory Board Comments

2023 DRAFT PERMIT

MA Permit No. MA0103284

May 31, 2023

APPENDIX C
CSO-RESPONSIBLE CO-PERMITTEES

City of Boston
Boston Water and Sewer Commission
980 Harrison Avenue
Boston, MA 02119

City of Cambridge
Department of Public Works
147 Hampshire Street
Cambridge, MA 02139

City of Chelsea
Department of Public Works
380 Beacham Street

City of Somerville
Department of Public Works
1 Franey Road

Attachment C
MWRA Advisory Board Comments
Chelsea, MA 02150

Somerville, MA 02144

**Attachment C
MWRA Advisory Board Comments**

MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION

FACT SHEET SUPPLEMENT

MASSACHUSETTS PERMIT TO DISCHARGE POLLUTANTS TO SURFACE WATERS

MA PERMIT NUMBER: MA0103284

NAME AND MAILING ADDRESS OF APPLICANT:

Massachusetts Water Resources Authority (MWRA)
Deer Island
33 Tafts Avenue
Boston, MA 02128

NAME AND ADDRESS OF FACILITY WHERE DISCHARGE OCCURS:

MWRA Deer Island Treatment Plant (DITP)
190 Tafts Avenue
Winthrop, MA 02152
and
Four (4) Combined Sewer Overflow (CSO) Treatment Facilities with Five (5) outfalls
and
Six (6) additional Combined Sewer Overflow Outfalls

RECEIVING WATER AND CLASSIFICATION:

| Receiving Water | Segment | Outfalls |
|------------------------|-------------------------------------|--|
| Massachusetts Bay | "Other waters", see 314 CMR 4.06(5) | Outfall Number T01 |
| Boston Inner Harbor | MA70-02 | CSO Treatment Facilities Outfall Numbers MWR203 and MWR215 |
| Charles River | MA72-38 | CSO Treatment Facility Outfall Number MWR201; CSO Outfall Numbers MWR010, MWR018, MWR019, MWR020, and MWR023 |
| Upper Mystic River | MA71-02 | CSO Treatment Facility Outfall Numbers MWRA205 and MWR205A |
| Little River | MA71-22 | CSO Outfall Number MWR003 |

Attachment C MWRA Advisory Board Comments

PER – AND POLYFLUROALKYL SUBSTANCES

MassDEP is implementing a number of actions to address the potential health effects of exposure to per- and polyfluoroalkyl substances (PFAS).¹ According to the United States Environmental Protection Agency (EPA),² PFAS are a group of man-made chemicals that includes perfluorooctanoic acid (PFOA), perfluorooctane sulfonic acid (PFOS), GenX, and many other chemicals. PFAS have been manufactured and used in a variety of industries around the globe, including in the United States since the 1940s. PFOA and PFOS have been the most extensively produced and studied of these chemicals. Both chemicals are very persistent in the environment and in the human body – meaning they do not break down and they can accumulate over time. There is evidence that exposure to PFAS can lead to adverse human health effects.

PFAS can be found in:

- **Food** packaged in PFAS-containing materials, processed with equipment that used PFAS, or grown in PFAS-contaminated soil or water.
- **Commercial household products**, including stain- and water-repellent fabrics, nonstick products, polishes, waxes, paints, cleaning products, and fire-fighting foams (a major source of groundwater contamination at airports and military bases where firefighting training occurs).
- **Workplace**, including production facilities or industries (e.g., chrome plating, electronics manufacturing or oil recovery) that use PFAS.
- **Drinking water**, typically localized and associated with a specific facility (e.g., manufacturer, landfill, wastewater treatment plant, firefighter training facility).
- **Living organisms**, including fish, animals and humans, where PFAS have the ability to build up and persist over time.

Certain PFAS chemicals are no longer manufactured in the United States as a result of phase-outs including the PFOA Stewardship Program, in which eight major chemical manufacturers agreed to eliminate the use of PFOA and PFOA-related chemicals in their products and as emissions from their facilities. Although PFOA and PFOS are no longer manufactured in the United States, they are still produced internationally and can be imported into the United States in consumer goods such as carpet, leather and apparel, textiles, paper and packaging, coatings, rubber and plastics.

Given that PFAS are persistent in the environment and may lead to adverse human health and environmental effects, MassDEP has identified a comprehensive approach for addressing PFAS in wastewater discharges. Additionally, based on review of recent data for residuals produced from wastewater treatment and other processes, MassDEP has concerns regarding the levels of PFAS in residuals land applied in Massachusetts. All residuals products sold, distributed, and applied in Massachusetts are subject to an Approval of Suitability (AOS), which classifies residuals for different uses based on the chemical quality and treatment to reduce pathogens.

¹ To learn more about Per- and polyfluoroalkyl substances (PFAS) in the environment and what Massachusetts is doing to address them, go to: <https://www.mass.gov/info-details/per-and-polyfluoroalkyl-substances-pfas>.

² For basic information on PFAS provided by EPA, go to: <https://www.epa.gov/pfas/basic-information-pfas>

Attachment C
MWRA Advisory Board Comments

Therefore, MassDEP began including a requirement for PFAS testing in all new or renewed AOSs in January 2019, and as of July 2020, MassDEP began requiring all AOS holders to test their products for PFAS on a quarterly basis.

MassDEP is also concerned about the potential impacts PFAS discharges from wastewater treatment plants may have on downstream drinking water, recreational, and aquatic life uses. The Massachusetts Surface Water Quality Standards do not include numeric criteria for PFAS. However, the narrative criterion for toxic pollutants at 314 CMR 4.05(5)(e) states:

All surface waters shall be free from pollutants in concentrations or combinations that are toxic to humans, aquatic life or wildlife.

In addition, this narrative criterion is further elaborated on at 314 CMR 4.05(5)(e)2(e) which states:

Unlisted Pollutants; Combinations of Pollutants. Any pollutant or combination of pollutants within the meaning of 314 CMR 4.05(5)(e) for which 314 CMR 4.05(5)(e)1. does not establish a generally applicable criterion shall not be discharged to surface waters in a quantity or manner that would: i. exceed safe exposure levels for aquatic life as determined by toxicity testing using methods approved by MassDEP pursuant to 314 CMR 4.03(6); or ii. cause adverse human health effects due to the ingestion, inhalation or dermal absorption of such toxins attributable to such waters during their reasonable use as designated in 314 CMR 4.00; or iii. result in a human health excess lifetime cancer risk level greater than 10 for -6 individual carcinogens.

To assess whether PFAS discharges from the MWRA DITP are occurring and whether they may be contributing to a violation of the narrative toxics criteria, MassDEP is including conditions in the Massachusetts Surface Water Discharge Permit for the permittee to monitor its Significant Industrial Users' discharges for PFAS.

Attachment C
MWRA Advisory Board Comments

DRAFT

Section 401 Water Quality Certification
For the Proposed 2023 NPDES Permit
For the Massachusetts Water Resources Authority Deer Island Treatment Plant
Permit No. MA0103284

The Massachusetts Department of Environmental Protection (MassDEP), having examined Massachusetts Water Resources Authority (MWRA)'s National Pollutant Discharge Elimination System (NPDES) permit application for the Deer Island Treatment Plant, reviewed the United States Environmental Protection Agency (EPA) – Region 1's draft 2023 NPDES permit for the Deer Island Treatment Plant (Permit No. MA0103284), issued May 31, 2023 ("2023 NPDES permit"), and having considered the public comments received on MassDEP's draft Section 401 Water Quality Certification for the draft NPDES Permit for the Deer Island Treatment Plant, and in consideration of the relevant water quality considerations, hereby certifies:

1. that subject to the following conditions, together with the terms and conditions contained in the 2023 NPDES permit for the Deer Island Treatment Plant, the proposed discharge will comply with the applicable provisions of the Federal Clean Water Act Sections 208(e), 301, 302, 303, 306, and 307 and with appropriate requirements of State law, including, without limitation, the Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 26-53, and the Massachusetts Surface Water Quality Standards published at 314 CMR 4.00:
 - a. Pursuant to M.G.L. c. 21, §§ 26-53, and 314 CMR 3.00 and 4.00, including 314 CMR 3.11 (2)(a)6., and in order to ensure the maintenance of surface waters free from pollutants in concentrations or combinations that are toxic to humans, aquatic life, or wildlife, in accordance with 314 CMR 4.05(5)(e), MassDEP has determined that it is necessary that beginning six (6) months after the effective date of the 2023 NPDES permit, the permittee shall commence annual monitoring of all Significant Industrial Users^{1,2} discharging into the POTW using Draft Method 1633. Notwithstanding any other provision of the 2023 NPDES permit to the contrary, PFAS monitoring results for the 2023 NPDES permit and for the 2023 Massachusetts Surface Water Discharge ("SWD") Permit shall be reported to MassDEP's electronic database (eDEP) in accordance with the information available at the following website: the <https://www.mass.gov/how-to/submit-wastewater-residuals-pfas-data-via-edep>, or as otherwise specified, within 30 days after the permittee receives the sampling results.
 - b. On or before January 31, 2024, the permittee shall submit to MassDEP at massdep.npdes@mass.gov a listing of all industrial dischargers with their addresses to

¹ Significant Industrial User (SIU) is defined at 40 CFR part 403: All industrial users subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR chapter I, subpart N; **and** any other industrial user that: discharges an average of 25,000 GPD or more of process wastewater to the POTW, contributes a process wastestream that makes up 5% or more of the average dry weather hydraulic or organic capacity of the POTW, or designated as such by the POTW on the basis that the industrial users has a reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standards or requirement.

² This requirement applies to all Significant Industrial Users and not just those within the sectors identified by EPA in the NPDES permit.

Attachment C
MWRA Advisory Board Comments

be sampled in accordance with both the 2023 NPDES permit and the 2023 SWD and shall include:

- i. All industries included in the categories listed in the 2023 NPDES permit Section IG, Industrial Users and Pretreatment Program, Paragraph 4; and
 - ii. All Significant Industrial Users as required by Paragraph 6 of the 2023 SWD.
- The listing shall be maintained by the permittee and updated with any changes. Whenever necessary, a copy of the updated listing reflecting changes shall be forwarded to MassDEP at massdep.npdes@mass.gov on or before the next January 31.

2. that there is a reasonable assurance that the activity will be conducted in a manner which will not violate applicable state water quality standards.

To meet the requirements of Massachusetts laws, each of the conditions cited in the draft 2023 NPDES permit and this certification shall not be made less stringent unless new data or other information is presented and MassDEP determines modification of this certification is appropriate in consideration of the relevant water quality considerations.

If any condition in the draft 2023 NPDES permit for the Deer Island Treatment Plant is changed during EPA's review in any manner inconsistent with this [certification](#), the Department reserves the right to modify this certification to ensure that the discharge(s) will comply with all applicable federal and state laws and regulations. In addition, the Department reserves the right to modify this certification if there is a change in the Massachusetts laws or regulations upon which this [certification](#) is based, or if a court of competent jurisdiction or the MassDEP Office of Appeals and Dispute Resolution stays, vacates or remands this [certification](#), as provided by 40 C.F.R. [§ 124.55](#).

Signed this ____ day of _____, 20____

Lealdon Langley, Director
Massachusetts Department of Environmental Protection
Bureau of Water Resources
Division of Watershed Management