



TOWN OF BURLINGTON

Department of Public Works

November 27, 2023

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Claire Golden
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RE: Town of Burlington / Comments on Draft Permit No. MA0103284 for the MWRA Deer Island Treatment Plant

Dear Ms. Barden and Ms. Golden:

The Town of Burlington 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), which the U.S. Environmental Protection Agency – Region 1 (EPA or the Region) noticed for comment on May 31, 2023.¹ As one of the entities subject to the terms of the Draft Permit once they are finalized, The Town of Burlington writes to express its support for the comments submitted by the Massachusetts Water Resources Authority Advisory Board (Advisory Board), which are incorporated by reference as if set forth herein, and also to write separately to articulate and highlight issues of particular concern to our community.

Generally, the Town of Burlington is compelled to point out the obvious that there is likely to be extensive costs incurred both directly to the Town and indirectly in pass-through wastewater assessments for higher costs to MWRA. Significant and untold amount of money will be spent on annual reporting and testing rather than investing in physical, tangible construction to address actual concerns of the permitting authority with quantifiable results. Of utmost concern is the lack of specificity under the Draft Permit of what actual physical actions

¹ On May 31, 2023, the Massachusetts Department of Environmental Protection (MassDEP) also issued a draft 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.



shall be made by the Town or any other Co-Permittee. The Draft Permit is actually structured which suggests that a Permittee or Co-Permittee gather information, research, and propose course of actions for subjective approval of the EPA. Because of this significant flaw in the Draft Permit, no Permittee or Co-Permittee could reasonably project and plan for capital costs.

Beyond the foregoing overarching concern, the Town of Burlington has substantial concerns about the Draft Permit's imposition of a novel requirement to develop and implement a major storm and flood event plans for its sewer system. This requirement will impose significant financial and resource burdens on communities like the Town of Burlington. The extent of these burdens is unknown because neither EPA nor MassDEP has conducted any cost-benefit analysis of this new requirement. The Town of Burlington also has significant concerns about the Draft Permit's directive to complete and begin implementing a plan within twelve months of the effective date of the final permit. Our community is also concerned that the mandate to modify its plan whenever new data are generated or discovered threatens to cast aside local planning priorities in favor of a federally mandated, perpetual planning cycle.

The Town of Burlington has other significant concerns with the Draft Permit discussed in detail below. In particular, the Draft Permit and State Permit inappropriately regulate communities like the Town of Burlington as co-permittees and have failed to define their obligations with adequate clarity. As the Advisory Board has commented, unless EPA and MassDEP clarify the communities' and MWRA's responsibilities, the DITP's permit could upset the longstanding and successful relationship among MWRA and the communities.

I. MAJOR STORM AND FLOOD EVENTS PLANNING REQUIREMENTS

Part I.E.2.(e)(2) of the Draft Permit (the Major Events Planning Provisions) would impose on the Town of Burlington and other towns novel and onerous long-term obligations develop and implement plans to address sewer systems climate change resiliency. 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.2.(e)(2).

This requirement could strains the Town of Burlington's resources beyond their breaking point and disrupt its broader capital planning process. The Draft Permit also gives the Town of Burlington insufficient time to complete its plan. Worse yet, EPA lacks the authority to impose this new planning and project development obligation in DITP's NPDES permit, and both EPA and MassDEP have failed entirely to justify this new set of obligations.

A. EPA Failed to Evaluate the Costs that The Town of Burlington and Other Communities Will Bear.

Complying with the Major Events Planning Provisions will impose substantial costs on the Town of Burlington. 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 time and the

engagement of outside consultants. These costs could pale in comparison to the potential capital costs that the Town of Burlington may incur in order to implement mitigation measures that could even require relocating existing facilities or building new ones.

The associated financial burdens on communities like the Town of Burlington are unknown but certain to be substantial. The Town of Burlington will need to assess whether it must hire more staff or engage consultants to comply with the Major Events Planning Provisions. Based on its planning efforts, the Town of Burlington will then have to modify its capital plans and budget for resiliency projects. These additional costs will ultimately impact other parts of the Town of Burlington's budget, resulting in lower spending on other critical infrastructure or other community needs

EPA and MassDEP must evaluate these costs before finalizing the Major Events Planning Provisions. At the very minimum, before issuing a final permit, EPA or MassDEP should provide the Town of Burlington and the public more generally 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.

B. The Major Events Planning Provisions Do Not Provide Sufficient Time for Compliance.

The Major Events Planning Provisions provide the Town of Burlington inadequate time to develop a plan that must accomplish the following: (1) analyze sewer system-related assets and assess vulnerabilities, (2) conduct a systemic vulnerability evaluation of each individual system and develop an alternatives analysis, and (3) begin implementing mitigation measures. Draft Permit Part I.E.2.(e)(2). The Draft Permit affords the Town of Burlington and its peer communities only 12 months to accomplish these tasks, an amount of time that is obviously insufficient to (a) retain the necessary staff or consultants and (b) complete the tasks required by the Draft Permit.

If EPA and MassDEP insist on including the Major Events Planning Provisions, the agencies must provide the Town of Burlington and other communities a reasonable deadline to complete this major undertaking. Any final permit should allow the communities at least sixty months to develop and begin implementing major storm and flood events plans.

C. The Agencies Should Explore Whether Existing Programs Achieve the Objectives of the Major Events Planning Provisions.

Before requiring the Town of Burlington to expend the significant resources necessary to comply with the onerous Major Events Planning Provisions, the agencies should assess the extent to which existing efforts or programs address or could be adapted to address the interests EPA seeks to protect through the Major Events Planning Provisions. For example, wastewater utilities in Massachusetts regularly seek funding from the Commonwealth's Clean Water State Revolving Fund (CWSRF), and this program already requires applicants to comply with planning and asset management requirements in order to receive funding. The agencies may find that the CWSRF is a better tool to address long-term planning obligations than an NDPEs permit that is limited to governing specific discharges over a five-year term.

D. EPA and MassDEP Failed to Justify These Planning Requirements.

In addition to the foregoing issues, the Town of Burlington is concerned that it has not had an adequate opportunity to comment on the Major Events Planning Provisions because EPA and MassDEP have failed to show their work. Both agencies' fact sheets must address "the significant factual, legal, methodological and policy questions considered in preparing the draft permit." 40 C.F.R. § 124.8(a); 314 CMR 2.05(3). For a set of programmatic requirements as important and sweeping as the Major Events Planning Provisions, one would expect substantial discussions of the various "factual, legal, methodological and policy questions" each agency considered.

EPA, however, justified the Major Events Planning Provisions by simply declaring them "necessary to ensure proper operation and maintenance" of wastewater treatment infrastructure.² Fact Sheet at 102-03. This explanation fails short of what EPA's regulations require, but it at least provides *some* indication of EPA's views. MassDEP, by contrast, failed entirely to discuss the Major Events Planning Provisions in its Supplemental Fact Sheet. If the Town of Burlington and the public are to have a meaningful opportunity to comment on the Draft Permit, the agencies must better explain the Major Events Planning provisions and allow for additional public comment.

The Town of Burlington suspects that EPA may have failed to justify the Major Events Planning Provisions because it lacks authority to impose them under the Clean Water Act (CWA). The statute limits EPA's authority under the NPDES program to regulating discharges, not the wider facility (or facilities) that discharge. *See, e.g., 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."). The Major Events Planning Provisions, however, reach far beyond regulating discharges by potentially regulating the location of permittees' facilities or even requiring the construction of additional infrastructure. Because the Major Events Planning Provisions exceed EPA's jurisdiction under the CWA, they should be removed from any final permit.

II. THE DRAFT PERMIT IMPERMISSIBLY INCLUDES SANITARY SEWER COMMUNITIES AS CO-PERMITTEES.

As the Advisory Board has emphasized in its comments, for the first time, EPA and MassDEP are attempting to regulate the Town of Burlington and thirty-eight other sanitary sewer communities under DITP's permit. This radical change to these communities' regulatory obligations exceeds both agencies' respective authorities and 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 Town of Burlington's consent by unlawfully waiving their permit application requirements.

² This explanation appears inconsistent with what the Major Events Planning Provisions require. They do far more than ensuring "proper operation and maintenance" by requiring the Town of Burlington and other towns to consider—and possibly pursue—relocating facilities or building entirely new ones. Draft Permit Part I.E.2.e.(2)i.(c)(ii), (iv).

Worse yet, MassDEP has provided no explanation at all for its decision to regulate the Co-permittees under the State 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 but has provided none in the Supplemental Fact Sheet for including these Co-Permittees in the State Permit. 314 CMR 2.05(3)(c). In order for the Town of Burlington to have an adequate opportunity to comment on the State Permit, MassDEP should explain its reasons and open a new comment period.

A. Neither EPA nor MassDEP Has Jurisdiction to Regulate Communities Like The Town of Burlington.

1. The Federal Draft Permit

The Draft Permit’s inclusion of the Town of Burlington as Co-permittee exceeds the EPA’s authority under the NPDES program. Under the CWA, EPA may only regulate “the discharge of [a] pollutant.” 33 U.S.C. § 1311(a). 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. Unless its sanitary sewer system adds a pollutant to navigable waters, the Town of Burlington is “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 Town of Burlington’s sanitary sewer system adds no pollutants to navigable waters. As EPA concedes in the Fact Sheet, it only adds pollutants to MWRA’s treatment works. 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 downstream from the Town of Burlington’s sewers, when DITP discharges treated effluent from Outfall T01.³

EPA rules reinforce 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*” 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.

2. The State Permit

For the reasons set forth above, MassDEP regulation of the Town of Burlington and the other Co-permittees in the State Permit is inconsistent with the regulations governing Surface

³ The Region’s assertion that a sewer system’s 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).

Water Discharge Permits. The Surface Water Discharge Permit regulations, like the CWA, generally impose the requirement to obtain a permit on 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.” 314 CMR 3.02.

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 make clear is not a discharge that requires a permit.

B. Communities like the Town of Burlington are not part of the Deer Island Publicly-Owned Treatment Works.

1. The Federal Draft Permit

EPA cannot cure its lack of jurisdiction by lumping the Town of Burlington and other sanitary sewer communities in with the larger publicly-owned treatment works (POTW) that includes DITP authorized under the Draft Permit.⁴ 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); *see also id.* (referring to “*the* municipality ... which has jurisdiction over Indirect Discharges to and discharges from such a treatment works.” (emphasis added)). The definition’s use of the singular means that a POTW can only be owned by a single municipal entity, such that the Town of Burlington’s sewer system cannot be part of same POTW as DITP.

EPA’s 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 contradicts and cannot be reconciled with its own regulations.

2. The State Permit

MassDEP similarly cannot deem the Town of Burlington’s sewer system part of the same POTW as DITP under its permitting regulations. Like their federal counterpart, the Surface Water Discharge Permit regulations 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

⁴*See* 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.”).

POTW by reference to a single owner, MassDEP cannot include satellite systems owned by thirty-nine communities in the same POTW as DITP.

C. The Town of Burlington Has Not Submitted An Application To EPA or MassDEP, and Neither Agency Has Authority To Waive The Requirement To Do So.

The Town of Burlington did not submit a permit application to either EPA or MassDEP. Even if the agencies could regulate the Co-permittees in DITP's permit, issuance of a permit to a community that never submitted a permit application 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 a permit application from the Town of Burlington, EPA cannot issue a permit imposing conditions on the Town of Burlington.

EPA cannot avoid this problem by waiving application requirements. *See* Fact Sheet 12, 21. EPA's March 8, 2023 letter to the Town of Burlington claimed that 40 C.F.R. § 121.21(j) authorized the Region to waive permit application requirements in their entirety. *See* Attachment A - The Town of Burlington's 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 Town of Burlington's obligation to submit an application.

MassDEP similarly violated its regulations by seeking to regulate the Town of Burlington in the State Permit without having received a permit application from the Town of Burlington. 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 "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."). Nothing in MassDEP's regulations offer the department *any* authority to waive permit application requirements. This framework dictates that MassDEP cannot issue a permit that regulates the Town of Burlington because the Town of Burlington has not submitted an application for a Surface Water Discharge Permit.

III. THE DRAFT PERMIT FAILS TO DEFINE WITH SUFFICIENT CLARITY THE RELATIVE RESPONSIBILITIES OF MWRA, CSO-RESPONSIBLE CO-PERMITTEES AND CO-PERMITTEES.

Even if EPA and MassDEP could lawfully structure DITP's permit to include the Town of Burlington and other communities, 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 cover page and Part I.E.2 must be revised to provide the communities and MWRA with absolute clarity that the communities are not responsible for MWRA's 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.

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.⁵ 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 the communities liable for MWRA's conduct—or vice versa—could threaten that relationship. Accordingly, the Town of Burlington supports the Advisory Board's proposed revisions to the Draft Permit's language that the Board submitted with its comments.

IV. THE FAILURE TO PROVIDE SPECIFIC EVIDENCE RELATED TO REQUIRING DISCHARGE TESTING RELATED TO PFAS.

MassDEP states that it has concerns about potential impacts that PFAS discharge from wastewater treatment plants may have on downstream receptors. For support thereof, MassDEP justifies their concern by citing to 314 CMR 4.05(5)(e):

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

And 314 CMR 4.05(5)(e)2(e):

“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.”

While it is true these regulations restrict discharges of pollutants in toxic concentrations or combinations to lifeforms but, immediately preceding these citations, MassDEP fails to

⁵ 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].”).

provide actual examples that PFAS is being discharged as part of wastewater effluent, rather MassDEP states they have a “*concern about potential*” impacts (emphasis added). Concerns are not evidence and potential indicates the concern may be unjustified. This is a further example of the overreaching of the Draft Permit which should focus on monitoring known hazards and prevent physical actions from occurring (i.e. discharges) but rather the Draft Permit proposes to require Permittees and Co-Permittees to conduct the research and analysis which should exist as the basis for new permit regulations. This potentially unnecessary testing is expected to significantly increase costs that are certain to be born by the Co-Permittees and their users.

V. REQUIRED PLAN SUBMITTAL TIME FRAMES ARE NOT ALIGNED WITH MASSACHUSETTS MUNICIPAL GOVERNMENT PROCESS AND ARE NOT ACHIEVABLE.

The Draft Permit requires that the Town of Burlington submit an O&M Plan to be funded, procured, analyzed and drafted within six (6) months of the effective date of the Permit. Many Town form of Governments rely on the meeting of their legislative body once or twice a year, and in some instances three times a year. In order to undertake this work the Town must obtain funding, which depending on when the Permit is issued, will not be available to the Town until its next annual or Special Town Meeting. This funding cycle together with the need to procure the services in order to undertake the development and analysis of the information makes it impossible for a municipality to meet this deadline. The deadline to develop a O&M plan and mapping is more realistically thirty months from the date of issuance of the Permit. Establishing unreasonable and unattainable deadlines in the Permit is not beneficial to any party.

Along these same lines, in section I.E.2.e.(2) provides as follows:

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. 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 evaluation ⁽¹⁸⁾ of all sewer system vulnerabilities to major storm and flood events ⁽¹⁹⁾. 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.

Similar to the comments in section I.B., and for the same reasons as set forth above related to the operations and funding cycle in municipal government and the need to properly procure services in order to meet this requirement, the deadline of 12

months is unrealistic and likely unattainable by many if not all town forms of government. The Authority must review the similar time frame set forth in section I.E.2.e.(2).iv related to the submission of an Annual Operation and Maintenance Report and the various components thereof. The timing requirement for this report is important given the funding cycle noted. A deadline of 60 months for the submission requirements under section I.E.2.e.(2) and a deadline of 72 months for the submission requirements under section I.E.2.e.(2).iv would be more realistic and attainable.

VI. WORST CASE STANDARD IS INAPPROPRIATE FOR VULNERABILITY ASSESSMENT

Section I.E.2.2(2) sets forth a worst case standard as follows:

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.

The foregoing standard is misplaced under this review. Instead, the Permit should use the "reasonable and highest level of confidence" standard. First, not all facilities are significant and important enough to plan for worst case date. Indeed, this over generalization, rather than a thoughtful standard being included will again, force unneeded costs upon the Permittee and Co-Permittees. Along these same lines it is unrealistic to believe, let alone require an analysis of all historical observations from all years the facility has been operated. Many facilities are more than fifty (50) years old. It is not at all realistic to expect all observations to be documented or accessible from 50 years ago nor would it be likely such documents are relevant if climate patterns are changing. Indeed, a much more reasonable approach would be to require a review of a 20-30 year period with an update every 5 years. Similarly, the requirement of a long-term (80-100 years) analysis does not reasonably make sense if the plan needs to be updated every 5 years i.e. after 5 years the next midterm (20-30 years) period can be analyzed so that a midterm plan is always 20-30 years out. The Permit, if it is to produce reliable results upon which local communities, the Commonwealth and the Federal Government can plan must be reasonable and thoughtful. The proposed Draft Permit is neither. This comment pertains to anywhere the Draft Permit requires an 80-100 year analysis.

VII. THE DRAFT PERMIT LACKS SPECIFICITY AND IS VAGUE AND AT TIME OVERLY BROAD

The Draft Permit fails to be exact or specific when specificity is needed the most. For Example, the Draft Permit defines “Extreme/heavy Precipitation” as instances during which the amount of rain or snow experienced in a *location substantially* exceeds what is *normal* (emphasis added). This definition has no basis in science nor is “substantial” or “normal” defined. These terms should be defined in numerical terms so all parties understand the standards. Another Example the Draft Permit states in Part I.F “...Co-permittees shall provide an alternative power source(s) *sufficient* to operate the portion of the publicly owned treatment works it owns and operates...” (emphasis added). The term “sufficient” is vague and should be further defined.

Again, the Draft Permit in section **I.E.2.e.(2).i.(c).(viii)** requires Permittees and Co-Permittees to “integrate long-term risks into capital improvement plans.” What is the standard here? What is EPA and DEP looking for specifically? Creating these plans and then recreating them because what the the Town of Burlington may think should be included is not what the Authority thinks should be included is expensive and counterproductive. Specific standards should be included in the Permit.

The Draft Permit section I.E.3.d requires a Co-Permittee to undertake significant investigation and action related to I/I programs. However, the Town of Burlington, has had an aggressive I/I program involving investigations and rehabilitations for 20+ years due in part to an Administrative Consent Order issued by MassDEP. A plan to investigate sewer subareas that have not been investigated was approved by MassDEP and is scheduled to be completed by 2028. The Town is concerned about the potential of the Permit to modify, change, or require repetitive work that would affect short-term capital planning and financing. The Permit should recognize the ongoing work of a Co-Permittee and not require repetitive spending or back tracking for the mere sake of meeting the Permit, rather it should recognize the on-going efforts.

VIII. CONCLUSION

The Town of Burlington appreciates the opportunity to comment on the Draft Permit and State Permit. Please feel free to contact Brian White, Director of Public Works, 781 270 1670, bwhite@burlington.org if you have any questions or would like to arrange a meeting to discuss the resolution of the issues raised above.

Sincerely,
The Town of Burlington

By: Brian White, PE
Director of Public Works

cc: Select Board
Town Administrator
Town Counsel

**ATTACHMENT A
TOWN OF BURLINGTON'S WAIVER
LETTER**



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.