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Dear Ms. Barden and Ms. Golden:

I thank you for the chance to give US EPA Region 1 and MassDEP my comments on the draft National Pollutant Discharge Elimination System (NPDES) permit issued to the Massachusetts Water Resources Authority (MWRA) Deer Island Treatment Plant and Combined Sewer Overflow (CSO) co-permittees.

I live in Arlington Massachusetts. My property abuts the Alewife Brook and is downstream from an MWRA CSO that discharges untreated sewage. The CSO discharges authorized by the permit are not abstractions to me. The Alewife often inundates the adjacent Department of Conservation and Recreation (DCR) Alewife Greenway and in the past has flooded my home. I can smell the sewage in the brook from my porch when the outfalls discharge during the summer.

The focus of my comments is permit requirements impacting Alewife Brook. If memory serves me, I have commented on every NPDES permit authorizing CSO discharges to the Alewife Brook, and every water quality variance for the last twenty years.

I recently testified in support of House Bill 886, which I helped draft, requiring treatment of all CSO discharges in the MWRA district. My comments are drawn from my first hand experience as a neighbor to the Alewife Brook. I cite legal authorities and arguments in the footnotes.

As a threshold matter I'm troubled by the regulatory complacency evidenced in the draft permit. When the Deer Island plant was built it was a source of civic pride and a symbol of what Massachusetts could accomplish. That narrative has been supplanted. The environmental progress the plant's opening heralded has been overtaken by an austerity driven vision of the future where waters like Alewife Brook are sacrificed for the short term benefit of the permittees. I am disappointed in EPA Region 1. I'd hoped they'd fight harder for waters like the Alewife. That disappointment is realized in the continuance of water quality variances for CSO impacted waters which underlies the effluent limitation of this permit.

## NO MORE VARIANCES

For almost a quarter of a century the safeguard of a water quality standard<sup>1</sup> that protects the health of the community surrounding the Alewife has been waived. It's reasonable for *any* community to insist that discharges be treated so that incidental contact does not pose a health risk. The open ended excursions from water quality standards authorized by this permit deny communities the meaningful protection of an enforceable standard. While aspirations for variance waters remain high, the reality is that these receiving waters could not meet the existing standard for safe human contact (class c) during wet weather. So they are reclassified. The justification for the reclassification is cost savings, and neither the burden, nor the benefit of these cost savings is shared equally among communities in the MWRA district.

### A. An Abused Regulation

Both federal and state regulations define a variance as a short term, temporary modification of a water quality standard.<sup>2</sup> The draft permit contemplates implementing another long term CSO control plan through additional variances.<sup>3</sup> The proposal renders the word "temporary" meaningless. The variance enables CSO discharges, including those with identified public health impacts, to continue in near perpetuity, without a clear path to elimination in derogation of the requirements of the Clean Water Act.<sup>4</sup>

### B. The Future of CSO Impacted Waters

In practice the reliance on water quality variances has created a two tiered system for CSO receiving waters in the MWRA district. CSO variances are for waters where public expectations remain high. Chasing an interim goal, the "highest attainable water quality," justifies waiving standards and the harsh reckoning that some communities will have to accept the localized impacts of continued CSO discharges. The second tier, partial use designations are sufficient for urban waters. Here the assumption is that current conditions will remain unchanged.<sup>5</sup> The public accepts that the current hierarchy of resource users will continue much as it has in the past. *It's always been a sewer, so it's OK to use it as a sewer.*

It's impossible to ignore the echoes of historic patterns of racial and economic discrimination in this approach. For any CSO impacted community, the expectation that discharges will be treated so that incidental contact does not pose a health risk is reasonable. That's the thrust of H886.<sup>6</sup> A uniform and achievable level of CSO treatment that protects the health of all communities. It's the MWRA that defined control for the 25 year storm as economically achievable CSO elimination.<sup>7</sup> That has to be the goal for all CSO impacted waters. The draft permit, and the agency that wrote it, needs to acknowledge that the variances fail to address the disparity in the level of CSO treatment in the MWRA district.

<sup>1</sup>Class B primary contact; draft permit Attachment J; Attachment K  
240 CFR 131.14; 314 CMR 4.03(4).

<sup>3</sup>Fact Sheet pg41.

<sup>4</sup>33 USC sec 1251

<sup>5</sup>Because of stormwater, or the highway, or port operations. Whatever other pollutant load justifies continuing sewage discharges.

<sup>6</sup><https://malegislature.gov/Bills/193/H886>

<sup>7</sup>Final CSO Post Construction Monitoring Program and Performance Assessment Report

Ending CSO variances is unpopular. Partial use designations for the Alewife, Mystic, or Charles would be a set-back in the restoration of these resources. However, the regulatory process provides a forum (a Use Attainability Analysis). It is transparent. Impacted communities can document health impacts of continued discharges. They can present evidence of existing uses. There is the possibility that the inclusion of community based data can create a fairer approach to the reclassification of CSO impacted waters. To borrow a quote from Elizabeth Warren, I'd rather there were "blood and teeth left on the floor" and fight for environmental equity for communities living with CSOs than acquiesce to a status quo whose only promise is that in some hazy future the condition of *some* of these waters will improve.



**The Public Notification Plan does not provide reasonable protection from the impacts of CSO discharges.**

"[M]inimizing... human health impacts from wet weather overflows," is a core tenet of EPA's CSO Control Policy and the standard by which implementation of minimum control measures,<sup>8</sup> including public notification provisions in the draft permit, must be judged. Over three million people live in the MWRA district. Less than 500 subscribe to the web based discharge notification system. The hybrid system of outfall signage, mailings and electronic notifications in the draft permit has been tried for over a decade. Region 1's judgment that the system provides "adequate notification"<sup>9</sup> ignores evidence that occurrences of CSO discharges do go unnoticed by the public and that this causes unreasonable health impacts for some communities.

A. Realistic expectations for the users of the Public Notification system are needed.

When untreated sewage is being discharged, the *least* sophisticated user of the notification system should reasonably expect to receive a warning. Contrast that expectation with the demands of the existing electronic notification system. To use the system on the Alewife

8 CSO Policy, FR, vol 59, pg 18691; implementing the Nine Minimum Controls(NMC).

9Response to Comments, NPDES Permit #0101982, City of Somerville, 2012 pg 91.

<https://www3.epa.gov/region1/npdes/permits/2012/finalma0101982permit.pdf>

you're expected to have a working phone, with subscriptions to Cambridge, MWRA and Somerville CSO alerts, to know the number and location of various CSO outfalls, what watershed the outfall is in (because notices cover multiple watersheds) and whether you're upstream, or downstream, of the discharge. Of course it will be raining while you do this. Such demands require a level of skill and user sophistication that's unreasonable to expect for access to a public warning system.



B. For users of the Public Notification system timely notification means actual notice.

I took this picture with my phone. It shows people in the area behind my house crossing water that was heavily contaminated with raw sewage. When asked, none of these people knew a CSO discharge occurred.

Before anyone will ignore a child, or drop their groceries, to pull out a phone, they must have a reasonable belief that there's an immediate health risk. Along the Alewife, and in other communities, the lack of a contemporaneous posting of untreated sewage discharges leaves people unaware of the health risks they're exposed to. Timely notification of sewage discharges means actual notice in those places where people are in close proximity to the discharge.<sup>10</sup>

C. Use appropriate notification technology to meet Clean Water Act requirements. For over 20 years our community, watershed groups, and town leaders have requested that NPDES permits for CSO discharges to Alewife Brook include additional public notification measures.<sup>11</sup> Our repeated requests for automated discharge warning lights for users of the MBTA Community Path and DCR Alewife Greenway is based on community knowledge of what's necessary for an "adequate" alert system. The single minded emphasis on web and phone based advisories obscures the fact that other, sometimes simpler, technologies can meet CWA requirements. A system of automated warning lights, that provides real time notice of discharges, is a reliable substitute for web/phone based notification without the corresponding staffing levels required by the current system. Massachusetts law specifies the use of email and text messages for notifications. The scope of public notification measures in the permit can be broader than those required by the state. The Fact Sheet's assertion that

<sup>10</sup>Other locations include the Charles River Esplanade, Magazine Beach, the bikeway adjacent to CAM005.

<sup>11</sup>Ibid, FN4

Public Notification provisions in the draft Permit reflect “advances in technologies” <sup>12</sup> lacks a corresponding requirement for a review of the effectiveness of that technology. People living along the Alewife must protect themselves from untreated sewage discharges that will continue, with no end in sight. The stubborn adherence to status quo measures for public notification smacks of a culture of indifference among regulators. It signals a preference for reducing costs for permittees over the mitigation of community health impacts caused by the CSO discharges authorized in the permit.



## SMELL SOMETHING, SAY SOMETHING

The reek of sewage stigmatizes a community. The odor says public resources can be denied in *this* place. Odors from combined sewers are a problem in communities throughout the MWRA district. It's a particular problem along the Alewife where 6 CSO outfalls and their related structures are a source of strong and persistent odors.

A culture of institutional indifference permeates the operation of combined sewer systems in the MWRA district. It normalizes sewer odors as the inevitable byproduct of living with an “old” sewer system. In practice this culture masks the diversion of public resources away from vulnerable communities to places where those resources buttress higher value private investment.

EPA's Environmental Justice Screening Tool puts the Alewife in the 90<sup>th</sup> percentile for wastewater impacts nationwide. The NPDES permit should incentivize changes in the institutional culture of public works departments to improve conditions for communities most



impacted by the operation of combined sewer systems authorized by the permit. EPA's Equity action plan for Executive Order 13985 directs the agency to integrate community science into program implementation. An assessment of links between system maintenance<sup>13</sup> and reports of ancillary nuisance conditions in the MWRA's combined sewer communities is long overdue. Community based odor reporting and the revision of inspection and annual NMC Plan updates would be a practical addition to the permit.<sup>14</sup> The addition of a telephone contact number to outfall signage for reporting maintenance issues, the practice of most other major metropolitan areas, is long overdue in the MWRA district.



### **Floatables Control at Alewife Brook CSO Outfall SOM001A/Tannery Brook**

Minimizing solid and floatable materials in CSO discharges is a long standing permit requirement.<sup>15</sup> What's lacking is a critical analysis, including public input, of the performance of this minimum control technology at outfalls where untreated CSO discharges are authorized. In these locations floatables control is the only treatment the discharges receive. When the technology fails, permitted sewer operations impose a disproportionate burden on the local community. The best available control technology should be in place and inspections must ensure the controls operate properly.

<sup>13</sup>NMC 1

<sup>14</sup>NPDES permit, Part I.B.3.b.

<sup>15</sup>NPDES permit, Part I. b. 2. b.(6); [NMC6]

The photo of Somerville's CSO outfall SOM 001A illustrates the localized impacts of an untreated CSO outfall. The performance of the existing floatables controls at this location is woefully inadequate. Following the recent August 8, 2023 storm both the Somerville Mayor's office and the Arlington Board of Health received complaints about toilet paper in trees around the outfall and persistent odor that indicated maintenance problems. There were press reports about it.<sup>16</sup>The inability of the permittee to provide current inspection reports compounded the problem.

A revised floatables control plan for SOM001A(to be incorporated in the permit)is currently under review by EPA and DEP. This review is part of a public process The open public review process must analyze:

- improved controls capable of completely eliminating sewage related material from the discharge;
- netting or similar screen installed on the outfall spillway to control discharge of sewage materials that escape initial treatment;
- the post discharge clean-up of sewage related materials from the area adjacent to the outfall.

The draft permit has a requirement for observation of floatables in discharges from DITP.<sup>17</sup> Monthly inspections at CSO outfalls should have a similar requirement. I expect that discharges from SOM001A/Tannery Brook will be eliminated or controlled to a 25 year event level in the new Long Term Control Plan.

<sup>16</sup><https://www.wbur.org/news/2023/10/23/massachusetts-combined-sewer-overflow-cso-climate-change>

<sup>17</sup>NPDES permit, Part I. i. [floatables observation]



**Massachusetts DCR should be listed as a co-permittee and included in minimum CSO control measures**

Part I B. 3. of the permit describes implementation levels for the Nine Minimum Controls. NMC 1 requires MWRA Cambridge and Somerville to maintain the CSO outfalls along the Alewife Brook. All of these outfall structures are located on land owned by DCR. At various times permittees have said that because the physical outfall structures are integral parts of the Alewife Brook's concrete channel, DCR is responsible for their maintenance, and the maintenance of adjacent areas. DCR's predecessor agency the Metropolitan District Commission did, in fact, maintain the outfalls, the channel of the Alewife Brook, and the surrounding land.

A combined sewer outfall is undoubtedly an element of a "treatment works."<sup>18</sup> NPDES permits for Cambridge and Somerville acknowledge that DCR maintenance impacts outfall operations.<sup>19</sup> As relics of the MDC sewer system, the Alewife CSO outfalls don't really fit the

1833 USC sec 1219(B); Fact Sheet Appendix D

19NPDES permit # 0101982 Part IC.1."The permittee shall forward to the Massachusetts Department of Conservation and Recreation ("DCR") its description of any conditions within DCR's control that impair the operation or maintenance of any of its CSO structures" Cambridge's NPDES permit has a similar requirement.



current system boundaries in the permit. For example, look at the picture above [SOM001]. Is the concrete spillway at the bottom of the image part of the outfall (Somerville) or part of the channel(DCR)?

EPA's argument for the inclusion of sanitary sewer communities as co-permittees (Fact Sheet, Appendix D) is applicable to DCR in the Alewife; more so, in that existing NPDES permits for CSO discharges already recognize DCR's obligations.<sup>20</sup>



Excess sediment and debris in the concrete channel, a direct result of DCR's deferred maintenance, degrades the ability of the Alewife Brook to transport or assimilate its CSO pollutant load. Maintaining the hydraulic performance of the Alewife Brook is a necessary condition for accurate comparison of thirty years of water quality data, the basis of permit compliance. The change in channel conditions since the 1990's is striking. Including DCR as a co-permittee, with a defined responsibility for maintenance around CSO outfalls and channel maintenance in the Alewife Brook would improve compliance with minimum controls in a neglected portion of the sewer system because all maintenance issues in the Alewife Brook could be addressed through the permit.

Thank you for the opportunity to make these comments. As always I look forward to your response.

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