

ANDERSON KREIGER

MINA S. MAKARIOUS
mmakarios@andersonkreiger.com
T: 617-621-6525

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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 Town of Lexington appreciates the opportunity to comment on the National Pollutant Discharge Elimination System (“NPDES”) draft permit No. MA 0103284 (the “Draft Permit”) for the Massachusetts Water Resources Authority (the “MWRA”) Deer Island Treatment Plan (“Deer Island”). Lexington is one of the over four dozen communities that receives water from the MWRA and relies on the MWRA sewer system for secondary wastewater disposal and treatment.

We write to express Lexington’s complete concurrence with the concerns raised by the MWRA Advisory Board (the “Advisory Board”) on behalf of the communities served by the MWRA. For the reasons the Advisory Board explains, the Environmental Protection Agency (“EPA”) lacks the authority to include communities served by MWRA as co-permittees under the Draft Permit. EPA’s proposed permit risks making Lexington responsible for wastewater discharges by other MWRA communities over which it has no control, not to mention the final treatment and discharge at Deer Island, which Lexington neither owns or controls. Adopting the Draft Permit also would result in unknown, but likely significant, costs of compliance that upend the very purpose of the MWRA to efficiently manage wastewater at the regional level.

This approach represents a significant and unjustified departure from the MWRA’s prior permit. Notably, the 2000 Final Permit only mentions co-permitting twice, both times in Section 18 – Operation and Maintenance of the MWRA Sewer System as a *potential* enforcement mechanism to punish communities that have failed to cooperate with MWRA in MWRA’s management of its own permit:

Reopener: If at any time after June 2001, the EPA and/or the MADEP is not satisfied that (1) member communities are reporting all SSOs in accordance with 314 CMR 12.03(8) and/or (2) member communities are adopting and implementing effective SSO plans, then this permit may be reopened, utilizing permit modification procedures, to add requirements regarding MWRA regulation of the member communities and/or to add the member communities as co-permittees directly regulated under this permit.

EPA and DEP do not suggest that such enforcement is now necessary or required and cites no source of legal authority to support the imposition of co-permittee status on every community within the entire MWRA region. In fact, over the past twenty years, the MWRA, through its administration and operation of Deer Island, has made significant strides in pollutant control in the Massachusetts Bay area without imposing a co-permittee structure that may be sensible for smaller regional wastewater treatment collaboratives. The significant environmental improvements are reflected in the EPA's and DEP's updated effluent parameters and requirements under the Draft permit, including at least three environmental requirements that have been fully met.¹

Further, as the Advisory Board explains, DEP 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). For Lexington to have an adequate opportunity to comment on the state permit, it is critical that DEP explain its reasons for this major action and open a new comment period as well.

Treating communities like Lexington as co-permittees also imposes unknown costs to comply with the Draft Permit. For instance, the Draft Permit purports to impose at least eight more stringent effluent parameters and at least one additional ambient monitoring requirement. However, the costs of such compliance are not addressed. For Lexington to accurately anticipate and plan for implementation of these new requirements, EPA and DEP should provide estimates of the cost of compliance, or, at a minimum, specific methods of compliance that would be sufficient under the final permit.

Towns like Lexington must have this information well in advance of any requirements being put in place to incorporate costs into their budgets and to seek approvals from Town Meetings (which occur no more than once or twice a year) to finance those costs. And, of course, such costs must fit in with towns' other existing obligations to provide for education, public safety, road and infrastructure maintenance and other municipal services, all while maintaining tax rates consistent with limits imposed by state law. A sudden shift of a town's role from a recipient of MWRA services and MWRA member community, to a co-permittee, with all the legal and financial responsibilities that come with that role, is no small task. That task, of course, is made

¹ According to the EPA's and DEP's presentation regarding the Draft Permit, Deer Island has completed or rendered unnecessary the following measures: plume tracking; food web modeling; and the Outfall Monitoring Science Advisory Panel.

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even more difficult by the additional permit requirements that the Draft Permit imposes on the MWRA itself, as more fully detailed in the Advisory Board's letter.

Accordingly, Lexington respectfully requests that EPA and DEP accept all of the Advisory Board's comments regarding the Draft Permit, including, in particular, by removing MWRA member communities' status as co-permittees.

Thank you.

Sincerely,

/s/Mina S. Makarious

Mina Makarious

Town Counsel, Town of Lexington

cc: Jim Malloy, Town Manager, Town of Lexington