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Ms. Michele Barden  
U.S. Environmental Protection Agency – Region 1  
5 Post Office Square, Suite 100 (06-1)  
Boston, MA 02109-3912

Submitted via electronic mail to: [barden.michele@epa.gov](mailto:barden.michele@epa.gov)

*Re: Comments of the National Association of Clean Water Agencies (NACWA) on the EPA Region 1 Draft NPDES Permit for the Massachusetts Water Resources Authority's (MWRA) Deer Island Treatment Plant (Permit MA0103284)*

Dear Ms. Barden:

The National Association of Clean Water Agencies (NACWA) appreciates the opportunity to provide comments to the U.S. Environmental Protection Agency (EPA) and Massachusetts Department of Environmental Protection (MassDEP) on EPA Region 1's draft Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) permit for the Massachusetts Water Resources Authority's (MWRA) Deer Island Treatment Plant (MA0103284) in Winthrop, Massachusetts.

NACWA represents the interests of nearly 350 municipal clean water utilities of all sizes across the United States, including MWRA and five other municipal wastewater utilities in Massachusetts.

NACWA's members are anchor institutions in their communities and provide the essential services of managing and treating billions of gallons of our nation's wastewater and stormwater every day in a manner that ensures the continued protection of public health and the environment. MWRA's service to the greater Boston metropolitan area is no different. NACWA has significant concerns, however, that several provisions in the draft Deer Island permit fall outside of the statutory authority provided by the CWA and will place unnecessary and costly burdens on MWRA and its member communities as it performs these vital public services.

Specifically, the onerous requirements of the *Wastewater Treatment Facility (WWTF) Major Storm and Flood Events Plan* (Part E.1.a.) and *Sewer System Operations and Maintenance Plan* (Part E.2.e.), the generic fiat that discharges not "cause a violation of the water quality standards of the receiving water" (Part I.A.2), and the proposed inclusion of co-permittees under a single permit are unlawful and should be removed before the permit is finalized.

The draft permit also contains a number of technical issues that should be remedied before finalization. In particular, EPA should, consistent with past practice, clarify in the final permit that bypassing secondary treatment for flows in excess of 700 MGD is not an unauthorized bypass, but is instead lawful under the CWA. EPA should likewise revise the ambient monitoring requirements for harmful algal blooms (HABs), and should remove the requirement for adsorbable organic fluorine monitoring for per- and polyfluoroalkyl substances (PFAS).

For the reasons outlined below, NACWA asks that EPA Region 1 remove these problematic provisions and make the necessary technical changes prior to finalizing the proposed permit, and to engage in meaningful dialogue with all interested stakeholders going forward. If there are questions regarding these comments, please contact NACWA's General Counsel, Amanda Aspatore, at [aaspatore@nacwa.org](mailto:aaspatore@nacwa.org) or NACWA's Senior Director of Regulatory Affairs, Emily Remmel, at [eremmel@nacwa.org](mailto:eremmel@nacwa.org).

## **The “Operations and Maintenance” Requirements Exceed EPA’s Statutory Authority and Are Overly Burdensome and Unnecessary**

Many NACWA members are grappling with the potential risks that increasingly intense storm events and flooding pose to their communities. As all levels of government become more involved in climate resiliency efforts, clean water utilities are often at the forefront of protecting critical infrastructure to ensure that our nation’s wastewater and stormwater systems will reliably provide vital human health and environmental services every day.

Public clean water agencies take climate change, natural disasters, flooding, and other emergencies into account as important components of their routine planning. Addressing these issues often involves not only major infrastructure investments, but also regional coordination among multiple local, state, and federal agencies and utilities.

NACWA’s members have also already invested billions of dollars to reduce their own climate footprints through a variety of methods, including rebuilding their aging infrastructure and moving from traditional “gray” infrastructure to more climate friendly “green” practices; transitioning from traditional fossil fuel energy sources to self-sustaining energy production via biogas generation; installing renewable energy sources like wind and solar; and repurposing tons of nutrient-rich municipally-derived biosolids into sustainable fertilizers.

Despite these efforts at adaptation and mitigation, however, the novel and overly prescriptive operation and maintenance (O&M) requirements related to the *WWTF Major Storm and Flood Events Plan* and *Sewer System Operations and Maintenance Plan* that EPA included in the draft permit not only imply that clean water utilities are not taking climate resiliency seriously, but also presume that it is EPA’s role in administering the NPDES program to require utilities to prepare for storm events now or a century from now. This is simply untrue.

Rather than including such burdensome and unlawful requirements in NPDES permits, EPA should instead work with its state and local partners to achieve resiliency goals in more

effective and appropriate contexts. Communities across the Commonwealth's 351 cities and towns are engaged in resiliency planning and are participating in the nation-leading Municipal Vulnerability Preparedness program, where all municipal infrastructure is being evaluated and resiliency projects are being implemented. EPA's narrow direction for one portion of that sector, clean water utilities, to conduct certain activities is misplaced at best.

## The Proposed O&M Requirements Exceed EPA's CWA Authority

The CWA provides EPA with authority over the "discharge of a pollutant" by "any person" from any "point source" to a "navigable water." 33 U.S.C. §§ 1311(a), 1342. While this authority is broad, "there must be an actual discharge into navigable waters to trigger the CWA's requirements and the EPA's authority." *Nat'l Pork Producers Council v. EPA*, 635 F.3d 738, 751 (5th Cir. 2011). In other words, "EPA [may] regulate through the NPDES permitting system...only the discharge of pollutants," not a source's activities generally. *Waterkeeper All., Inc. v. EPA*, 399 F.3d 486, 504 (2d Cir. 2005).

Requirements in a permit which is only valid for five years that force a utility to plan for and address hypothetical scenarios 20-30 years and even 80-100 years in the future on their face violate the plain language of the CWA. What actual discharge of a pollutant from a point source into a navigable water that is being authorized by the proposed permits is being addressed by such requirements? The draft permit unsurprisingly does not attempt to tie such requirements to an actual discharge; foreseeing the impacts that effluent coming out of a pipe 100 years from now may have on a receiving waterbody is impossible.

In defense of these provisions, EPA Region 1 points to its own regulations at 40 CFR § 122.41(d), which imposes a "duty to mitigate," that requires permittees to "take all reasonable steps to minimize or prevent any discharge in violation of the permit that has a reasonable likelihood of adversely affecting human health or the environment." Setting aside reasonableness for the moment, again NACWA asks, what "discharge in violation" of a permit whose term is statutorily limited to five years is occurring 100 years from now?

Region 1's reliance on 40 CFR § 122.41(e) provides little additional justification. That provision requires permittees to "properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee *to achieve compliance with the conditions of the permit*" (emphasis added). Yet EPA Region 1 has failed to point to even one express condition of the permit which will be served by these provisions.

Specifically, NACWA questions what effluent limitations—either technology- or water quality-based—the proposed requirements are intended to protect. Under CWA § 301(b)(1), NPDES permits for clean water utilities must include effluent limits based upon secondary treatment technology, which are in no way related to these flooding and resiliency plans. Presumably, then, EPA Region 1 considers these requirements to be necessary to achieve water quality-based effluent limitations, but it has failed to identify a single limitation that might be violated if these extensive provisions are not carried out.

NACWA does not dispute that EPA has authority to impose tailored requirements necessary to ensure that specific discharges do not exceed relevant, identified technology-based limits or those related to the water quality condition of a receiving waterbody. But that authority does not extend to the imposition of wide-ranging, costly, and infeasible mandates to predict and guard against any hypothetical worst-case flooding or disaster event under the guise of routine “operation and maintenance.”

Nor can EPA’s regulations be read outside of the statutory authority upon which they are based. Setting aside the glaring issue of not being tied to any discharge being authorized by the permit, which is required even by EPA’s own regulations, the proposed requirements also exceed EPA’s general authority to regulate discharges into navigable waters, as such authority does not extend into a permittee’s operations.

Region 1 appears to take the position that, under the umbrella of requiring proper “operation and maintenance” of a facility with a point source discharge, it can regulate anything and everything about that facility, including how it manages asset vulnerabilities, where and how it stores records and equipment, and how it should identify potential funding sources for resiliency projects. While NACWA reiterates that clean water agencies take all of these considerations seriously as part of sound utility management practices, they have little to do with what EPA has authority over pursuant to the NPDES program: the effluent discharges flowing from a facility’s pipes into navigable waters.

As the U.S. Court of Appeals for the Eighth Circuit has held, “effluent limitations are restricted to regulations governing ‘discharges from point sources into navigable waters.’” 33 U.S.C. § 1362(11). The EPA is authorized to administer more stringent “water quality related effluent limitations,” but the CWA is clear that the object of these limitations is still the “discharges of pollutants from a point source.” 33 U.S.C. § 1312(a). In turn, “discharge of pollutant” refers to the “addition of any pollutant to navigable waters.” § 1362(11).

Although the overall goal of increasing the resiliency of the nation’s infrastructure in the face of a changing climate is laudable – and one which NACWA’s members are constantly pursuing – the text of the CWA is clear. The goal of the NPDES program – which is likewise laudable, and central to the protection of human health and the environment – is the regulation of point source discharges of pollutants into “waters of the United States.” The strict liability regime long enforced by EPA and authorized state agencies through the CWA’s NPDES program must only be applied to what it was expressly designed for.

## **The Proposed O&M Requirements Are Arbitrary and Capricious**

The proposed *WWTF Major Storm and Flood Events Plan* and *Sewer System Operations and Maintenance Plan* requirements are also unreasonable, arbitrary, and capricious. As such, they are unlawful under the Administrative Procedure Act (APA), 5 U.S.C. § 706(2)(A), and do not comport with the regulations upon which EPA Region 1 relies to impose them, which limit operations and maintenance requirements to only “reasonable steps.”

The costs of developing the proposed plans, which EPA Region 1 did not consider, will be significant, and the proposed timeframes are simply not long enough to procure the

professional engineering and technical services which would be required to develop such plans.

It is also unreasonable to ask utilities to speculate about potential events 100 years from now. As EPA itself once stated in defense of Massachusetts' development of a total maximum daily load (TMDL), a party "can hardly be faulted for refraining from guessing about [climate change] impacts...particularly when...[it] cannot provide any meaningful analysis of whether—and certainly, how—climate change will alter" particular water quality conditions. *Conservation Law Foundation v. EPA*, EPA Memorandum in Support of Defendants' Motion for Summary Judgement (Filed September 21, 2012).

As noted above, utilities treat resiliency planning and mitigation as a central part of comprehensive utility management. However, EPA Region 1 should not require utilities to take these costly steps in the context of NPDES permitting in the manner proposed. Asking utilities to predict their own vulnerabilities 100 years from now in publicly available permitting processes subject to lawsuits and enforcement from outside groups is the definition of arbitrary and unreasonable.

EPA Region 1 should adhere to the limits of the NPDES program, and instead allow utilities to address the complex issues surrounding climate change and resiliency comprehensively and in the proper forums.

## **The Proposed Major Storm and Flood Events Requirements are Overly Prescriptive, Impracticable, and Unachievable**

### *Overly Prescriptive and Confusing Asks*

The draft permit asks MWRA to investigate and navigate through a wide variety of climate resources that often have variable projections. Climate projections well out into the distant future (e.g., 2100) are highly variable and likely to change as more data accumulates and in response to global efforts to mitigate greenhouse gases. The requirement to develop a flood events plan and mitigation measures for 80-100 years in the future also ignores that adaptation planning for the extremes of climate change possible in 2100 and beyond requires iterative collaboration between the surrounding municipalities.

The decisions a permittee makes to protect against extreme sea level rise, for example, are directly related to the measures taken by the entire region. Even the case studies cited by the latest National Climate Assessment by the U.S. Global Change Research Program (USGCRP), and that EPA's permit points to as a resource, are community and regionally-based (e.g., Norfolk, VA), and not specific to an individual utility. This demonstrates the need for a comprehensive approach to climate resiliency, which is not something any one utility can achieve singlehandedly through a permit. Further, the permit asks an undefined "qualified person" to sleuth through and evaluate vulnerabilities from every year the permittee has operated the utility to 80-100 years into the future. They are to evaluate "at a minimum, worst-case data," a phrase which is unclear in terms of what qualifies as worst case.

### *Unreasonably Short Compliance Time Period*



As currently written, the proposed permit language places overly prescriptive requirements on MWRA to develop a plan documenting the significant number of climate possibilities, both short and long-term, that could impact its operation, and to begin implementing mitigation measures quickly. The *WWTF Major Storm and Flood Events Plan* and *Sewer System Operations and Maintenance Plan* both include requirements for a POTW to assess its asset vulnerabilities, its systemic asset vulnerabilities, and to develop a comprehensive mitigation alternatives analysis within 12 months of the permit being finalized, and these documents must be updated every 5 years. If assets change, MWRA must continually re-evaluate and revisit their vulnerabilities in tandem with upgrades.

Further, MWRA and co-permittees are jointly required to develop a plan that looks at the individual sewer system-related assets and assess vulnerabilities, conduct a systemic vulnerability evaluation of the individual system and develop an alternatives analysis, and begin implementing mitigation measures within 12 months. This is a significant effort that cannot be understated or overlooked. The 43 co-permittees identified in the permit will have to individually evaluate their climate vulnerabilities under the proposed *WWTF Major Storm and Flood Events* and the *Sewer System Operations and Maintenance Plan*. This will take time and resources and will inevitably take away funding that would go to other infrastructure investments that could produce more immediate water quality benefits.

Clean water utilities, regardless of size, need more than 12 months to develop and implement plans of this granularity and magnitude. If, despite its lack of authority to do so, EPA insists on including these requirements in the final permit, MWRA should be afforded more time to implement. NACWA proposes EPA provide at least 36 months to complete both the *WWTF Major Storm and Flood Events* and the *Sewer System Operations and Maintenance Plan*.

### *Significant Cost Burdens to Implement*

NACWA has serious concerns with the amount of money a clean water utility would have to spend on preparing the *WWTF Major Storm and Flood Events* and the *Sewer System Operations and Maintenance Plan*, not to mention updating them when a change is made or at the turn of a permit cycle, as well as potentially defending against any subsequent legal challenges. The investment to do this type of work—hundreds if not thousands of hours of staff time and significant financial resource allocation—will come from the ever-shrinking amount of funding available that could be used for other critical infrastructure improvements that mitigate water quality impairments of concern to a community. Further, the significant costs incurred will be passed on to ratepayers, which will be felt by the most vulnerable populations within a community.

Significantly, EPA Region 1 has not assessed the cost burdens this would place on MWRA or other municipal clean water utilities. Few utilities are likely to have the in-house expertise and experience, let alone resources, to expend on this type of excessive climate forecasting and planning. The fact that EPA Region 1 is also slipping this novel language into permits for smaller utilities for the first time is even more disturbing, as the Region surely knows that these communities likely don't have the resources or staffing to address these new requirements.

NACWA urges EPA, before issuing final permits to MWRA or other Massachusetts utilities, to provide the regulated community and the public with a formal cost-benefit analysis and calculate the cost burden on municipal utilities to meet these new requirements. Permittees and the public should have the opportunity to weigh the net environmental and public health benefits of a climate planning mandate with the benefits that will be deferred or delayed for other water quality improvement projects.

### **EPA Region 1 Failed to Consider Community Risks, Vulnerabilities and Security Sensitivities**

NACWA strongly urges EPA Region 1 to remove the requirement to make sewer system “map[s] available online in a downloadable Geographic Information System (GIS) format, available to the public, in a manner where the system’s performance can be independently assessed and analyzed.” This requirement to publish sensitive information online is well beyond the traditional O&M responsibilities of a POTW and would place municipally owned utilities—that are critical infrastructure themselves—at a greater risk of an attack from bad actors with malicious intents than the minimal benefits of having maps widely virtually available.

The inclusion of such a requirement demonstrates EPA Region 1’s failure to fully consider the community risks of publishing vulnerable assets in a forward-facing public manner, especially given the rising concerns over cybersecurity. NACWA recommends this sensitive information remain secure and not be published online for anyone to access but instead be made available by request in a manner consistent with the utilities’ policies on security best practices.

### **EPA Can Consider Major Storm and Flood Events Outside of the NPDES Permitting Program**

EPA has more appropriate and effective means by which to achieve the goals of the *WWTF Major Storm and Flood Events Plan* and *Sewer System Operations and Maintenance Plan*. Other programs, such as the Clean Water State Revolving Fund (CWSRF), require utilities seeking low-interest financing loans to develop an asset management program which includes many of the requirements to forecast and plan for climate resiliency. Mechanisms such as the CWSRF provide more efficient and effective means through which utilities can assess climate resiliency which do not carry the same unnecessary compliance and enforcement burdens that mandating such actions in an NPDES permit does.

If drafting and implementing local climate resiliency plans are part of EPA’s broader climate mitigation and adaptation strategies, EPA should provide the funding to state agencies and local communities to construct comprehensive climate impact and resiliency plans for extreme weather events, rather than placing a mandate on individual permittees to accomplish such goals on their own. Alternatively, EPA could do this work themselves with the authority they have to conduct their own risk assessments. Regardless, NACWA urges EPA, if it intends to move forward with climate and resiliency efforts, to do so outside of the NPDES permitting program, and in close coordination with all impacted stakeholders.

## **The Generic Requirement that Discharges Not Cause Violations of Water Quality Standards Runs Contrary to Both the CWA's Text and Legislative Intent**

EPA's proposed requirement that MWRA's discharges not "cause a violation of the water quality standards of the receiving water" runs contrary to the CWA's text, history, and purpose, guts the CWA's well-established permit shield, and deprives MWRA of fair notice, turning compliance into a moving target.

The proposed generic prohibition contravenes the CWA's text and Congressional intent by ignoring the statute's explicit distinction between enforceable "effluent limitations" and aspirational "water quality standards" found in CWA Section 301 (33 U.S.C. § 1311). Simply stated, water quality standards apply to waterbodies, effluent limitations apply to discharges. But the proposed permit requirement treats broadly applicable water quality standards themselves as specific "limitations" with which MWRA must comply.

Such a conflation of effluent limitations and water quality standards effectively revives the faulty approach to water quality protection that Congress intentionally abandoned in 1972. Congress's enactment of the CWA marked a dramatic shift away from prior water pollution control laws, whereby regulators had to await impairment in the quality of receiving waters before attempting to identify and retroactively address specific sources of pollution. In stark contrast, the CWA places the burden on permittees to apply for a permit before discharging, and on permit writers to establish discharger-specific effluent limitations that are sufficiently precise that permittees can readily determine whether individual discharges are compliant. The proposed generic requirement upends this procedure.

Such language also eviscerates the CWA's "permit shield" provision (33 U.S.C. § 1342(k)). Under the U.S. Supreme Court's and EPA's longstanding interpretations of that provision, a permittee in compliance with the terms of its NPDES permit is deemed to have fulfilled its CWA compliance obligations. If the permittee discloses all relevant information, it is the permit writer's obligation to include all the defined limits necessary to comply with the CWA, including ensuring the protection of applicable water quality standards.

The issuance of a permit is how permit writers provide clear and final notice to permittees of their compliance obligations. As the Supreme Court has stated, the permit shield "serves the purpose of giving permits finality." *E.I. du Pont de Nemours & Co. v. Train*, 430 U.S. 112, 138 n.28 (1977). If, however, permit writers can forgo their duties to craft discharger-specific limitations and instead include generic requirements such as "do not violate water quality standards," the permit shield is meaningless.

Such generic prohibitions turn CWA compliance into a moving target, stripping the permit of finality and leaving permittees exposed to enforcement actions from both regulators and third parties that allege violations of unstated and unknown control requirements, which are ultimately derived by reviewing courts outside of the permitting process.

For MWRA and other municipalities nationwide, such constant uncertainty is untenable. NACWA's members, on top of their indispensable role in protecting public health, are playing a vital role in addressing the risks posed by climate change, cyberattacks, aging



infrastructure, affordability challenges, and emerging contaminants such as PFAS. All these efforts, whether undertaken pursuant to the CWA or other laws and initiatives, require advanced planning, significant financial investment of limited public monies, and lengthy construction activities. Language in NPDES permits allowing regulators and outside parties to change the rules of CWA compliance at any time undermine these vital efforts and should be removed.

Importantly, removing this language from the draft permit would not in any way relieve MWRA of the need to ensure that its discharges meet all applicable CWA standards. Rather, it would clarify that, in accordance with the NPDES permit shield and CWA Section 301, EPA included all of the limits in the permit necessary to ensure that MWRA's discharges do just that.

### **The Proposed Inclusion of Co-Permittees Is Unlawful and Should be Removed**

NACWA incorporates by reference MWRA's comments concerning the fact that the CWA does not provide EPA with the authority to regulate the identified co-permittees in a single NPDES permit. NACWA also joins MWRA in asking that, should Region 1 continue to include co-permittees in the Deer Island permit, it should also include the following statement:

In no event shall the Permittee be liable under the CWA (including, but not limited to, any liability arising under 33 U.S.C. §§ 1319, 1321, & 1365), the Massachusetts Clean Waters Act, or otherwise be responsible for: (a) the acts or failure to act of Co-permittees; (b) the failure to properly operate or maintain any collection system or portion of a collection system that it does not own or operate; or (c) enforcing the terms of this Permit against any Co-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.

### **EPA Should Clarify That Bypassing Secondary Treatment in Certain Circumstances Is Lawful Under the CWA**

In compliance with EPA's *Combined Sewer Overflow (CSO) Control Policy*, which was incorporated into the text of the CWA at 33 U.S.C. § 1342(q), MWRA reduces CSO discharges by maximizing the amount of sewage flow for treatment through the maintenance of a "secondary process limit" of 700 MGD. Under its longstanding court order, bypasses of secondary treatment for flows in excess of that 700 MGD secondary process limit are not unauthorized bypass but are instead lawful and fully consistent with the CWA.

The proposed permit, however, is silent with respect to this lawful process. To provide much needed regulatory certainty, EPA should, consistent with the law and longstanding practice, clarify in the final permit that, subject to the process set forth in MWRA's 2008 Stipulation and Order, bypassing secondary treatment for flows in excess of the 700 MGD secondary process limit is not an unauthorized bypass.

### **EPA Should Revise the Ambient Monitoring Requirements for HABs**

NACWA understands the importance and need to protect human health and aquatic life from HABs. NACWA's members recognize that HABs have the potential to be a public health issue and can also cause negative economic impacts to a given region if a significant bloom occurs.

Many NACWA members, like MWRA, already implement effective and meaningful environmental monitoring programs for various algal species and have done so for decades. These ambient monitoring programs require significant investments in staffing and time, and while they provide fruitful data on marine phytoplankton occurrence and species diversity, EPA Region 1's proposed expansion of the HAB monitoring program deviates from what has been a thoughtful and scientifically accepted approach that can and has been used to inform policy decisions.

EPA's desire to collect *more* information particularly for *Pseudo-nitzschia* and other nuisance species is not well supported. EPA's own report concluded that MWRA's discharge "does not create a eutrophic condition in Massachusetts Bay," and that there was no evidence to conclude the observed increase in HABs is affecting marine mammals or that such impacts are likely in the future.<sup>1</sup> EPA should not require extensively broad marine monitoring for HABs and nuisance algal species, especially when there is no connection or tie to a given MWRA outfall.

A single public clean water agency should not bear the sole responsibility of carrying out a comprehensive monitoring scheme beyond what they already sample. If EPA seeks this increase in data off the coast of Massachusetts, it should collect it itself rather than include these specific monitoring requirements in MWRA's permit.

NACWA supports MWRA in its more specific comments on EPA Region 1's requirements to monitor HABs and nuisance algal species, and reiterates that this type of effort should be undertaken through a regional authority or aligned with the Massachusetts Division of Marine Fisheries program. It should not be conducted pursuant to a CWA NPDES permit.

## **EPA Should Not Require Adsorbable Organic Fluorine Monitoring for PFAS**

Many NACWA members are voluntarily, or through their NPDES permits, sampling influent, effluent, and biosolids for PFAS. While there is currently no CWA-approved methodology for quantifying PFAS in wastewater, Method 1633 can analyze up to 40 different PFAS chemicals and seems to be EPA's preferred analytical technique per EPA's December 2022 memorandum, *Addressing PFAS Discharges in NPDES Permits and Through the Pretreatment Program and Monitoring Programs*. NACWA continues to push EPA to finalize the multi-laboratory validation study for Method 1633 and begin the rulemaking process for

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<sup>1</sup> Hagy J, Gleason T, Oczkowski A, Tatters A, and Wan Y. 2022b. *Technical Memorandum: Review of MWRA Water Quality Monitoring Results to Address Potential for Harmful Effects of the Deer Island Discharge on Threatened and Endangered Species in Massachusetts Bay*. U.S. EPA, Washington, DC, EPA/600/R-22/063. Available at [https://cfpub.epa.gov/si/si\\_public\\_record\\_Report.cfm?dirEntryId=355407&Lab=CEMM](https://cfpub.epa.gov/si/si_public_record_Report.cfm?dirEntryId=355407&Lab=CEMM)

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promulgating this method before it begins to require sampling and disclosure of results in NPDES Discharge Monitoring Reports (DMRs).

However, in MWRA's permit, EPA is *requiring* the utility to also sample for PFAS using the adsorbable organic fluorine (AOF) technique using Method 1621. To the best of NACWA's knowledge, this is the first time an EPA Regional Office is requiring this methodology in an NPDES permit. Method 1621, like Method 1633, is also not through the multi-laboratory validation process and is not an approved method under the CWA. NACWA is concerned about the high cost of this method, upwards of \$1,000 or more per sample, and the little return investment since this methodology cannot identify a specific PFAS constituent. There are also reliability concerns regarding how accurate the method is in light of the fact that it can overestimate fluorine in a given sample due to pharmaceuticals or pesticides containing inorganic fluorine.

Further, EPA Office of Water's December 2022 memorandum stated that this method "*can be used in conjunction with draft method 1633, if appropriate,*" and is therefore not required. NACWA urges EPA Region 1 to remove the requirement to use AOF as a sampling parameter for PFAS. EPA should wait until it has the confidence that Method 1621 returns accurate and reliable PFAS data, and it should finalize the multi-laboratory validation and promulgate this methodology as a CWA-approved method before inserting this as a requirement in NPDES permits.

Sincerely,



Emily Remmel  
Senior Director of Regulatory Affairs

cc:

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