



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I  
5 POST OFFICE SQUARE SUITE 100  
BOSTON, MASSACHUSETTS 02109-3912**

**VIA ELECTRONIC MAIL - READ RECEIPT REQUESTED**

June 15, 2020

Amy McHugh, Superintendent  
Town of Marblehead  
Water and Sewer Commission  
P.O. Box 1108  
Marblehead, MA 01945

Re: NPDES Permit No. MA0100374  
for the Sargent Road Pump Station

Dear Ms. McHugh,

The Environmental Protection Agency ("EPA") Region 1 and the Massachusetts Department of Environmental Protection ("MassDEP") have determined to deny the Town of Marblehead's permit application for renewal of NPDES Permit MA0100374, in accordance with respective federal and state authorities.

Enclosed is the EPA and MassDEP's response to public comments received on the draft Notice of Intent to Deny a Permit Application. EPA is also issuing a Findings of Violation and Order for Compliance under Part 22, consistent with 40 C.F.R. § 124.5(d)(2), to effectuate the termination. EPA has closely consulted with MassDEP on the terms of the Order.

EPA has appreciated the Town's constructive efforts to resolve this matter in a reasonable and mutually-agreeable manner. If you have any questions concerning EPA's decision to deny your application to renew this permit, feel free to contact Michele Barden at (617) 918-1539.

Sincerely,

Signed this 15th day of June, 2020

/S/SIGNATURE ON FILE  
Ken Moraff, Director  
Water Division  
Environmental Protection Agency  
Region 1

/S/SIGNATURE ON FILE  
Lealdon Langley, Director  
Division of Watershed Management  
Department of Environmental Protection  
Commonwealth of Massachusetts

Enclosures: Response to Comments

cc: MassDEP, Division of Watershed Management

**RESPONSE TO COMMENTS  
NPDES PERMIT NO. MA0100374  
SARGENT ROAD PUMP STATION  
MARBLEHEAD, MASSACHUSETTS**

The U.S. Environmental Protection Agency Region 1 (EPA) and the Massachusetts Department of Environmental Protection (MassDEP) have determined to deny the permit renewal application for a National Pollutant Discharge Elimination System (NPDES) Permit for the Sargent Road Pump Station located in Marblehead, Massachusetts. This permit application is being denied and the existing permit (the “1994 Permit” or the “Permit”) terminated under the Federal Clean Water Act (CWA), 33 U.S.C. §§ 1251 et. seq., and the Massachusetts Clean Water Act, M.G.L. Ch. 21, §§ 26-35, and implementing regulations. Additionally, MassDEP has determined that it cannot issue a CWA § 401 certification for this discharge. EPA is issuing a Findings of Violation and Order for Compliance under Part 22, consistent with 40 C.F.R. § 124.5(d)(2), to effectuate the termination. EPA appreciates the fact that the Town has constructively engaged with EPA Region 1’s Enforcement and Compliance Assurance Division over the terms of this order.

From September 5, 2019 to October 4, 2019, EPA and MassDEP (together, the “Agencies”) solicited public comments on the Draft Permit Denial. EPA and MassDEP received comments from F. Carlton Siegel, Chairman, Town of Marblehead, Water and Sewer Commission (the “Permittee” or the “Town”), dated October 3, 2019.

In accordance with the provisions of 40 C.F.R. §124.17, this document presents EPA and MassDEP’s responses to comments received on the Draft NPDES Notice of Intent to Deny a Permit Renewal Application and Statement of Basis for Permit No. MA0100374 (“Draft NOI”). The Response to Comments explains and supports EPA and MassDEP’s determinations that form the basis of the denial and termination. EPA will generally present responses to comments as EPA’s and MassDEP’s, even where the reference is only to EPA.

Although the Agencies’ knowledge of the facility has benefited from the various comments and additional information submitted, the information and arguments presented did not raise any substantial new questions concerning the denial of the permit application and termination of the Permit that warranted the Agencies to exercise their discretion to reopen the public comment period. The Agencies did, however, make certain clarifications in response to comments. These improvements and changes are explained in this document.

This response to comments document will be posted on the EPA Region 1 web site:

[http://www.epa.gov/region1/npdes/permits\\_listing\\_ma.html](http://www.epa.gov/region1/npdes/permits_listing_ma.html).

A copy of the Response to Comments may be also obtained by writing or calling Michele Barden, USEPA, 5 Post Office Square, Suite 100 (Mail Code: 06-1), Boston, MA 02109-3912; Telephone: (617) 918-1539; Email [barden.michele@epa.gov](mailto:barden.michele@epa.gov).

## **I. Responses to Comments**

Comments are reproduced below as received; they have not been edited.

### **A. Comments from F. Carlton Siegel, Chairman, Town of Marblehead, Water and Sewer Commission, dated October 3, 2019:**

#### **Comment 1**

##### **I. Reporting Requirements**

EPA Region I states in its Notice that the Marblehead Water and Sewer Commission (the "Permittee") "has consistently failed to comply with existing permit requirements." The Town contests this assertion. The Permittee immediately provides the Massachusetts Department of Environmental Protection ("DEP") with verbal notification via telephone of emergency bypass discharges, followed by written notification as shown on the reporting forms attached hereto as Exhibit A. Additionally, as evidenced by the attached reports, telephone notification is provided to EPA Region 1, Marblehead Harbormaster, the Marblehead Conservation Commission, the Marblehead Shellfish Warden, and the Massachusetts Division of Marine Fisheries. The Marblehead Board of Health also receives notification. Written reports have always followed verbal notification within 5 days, as required by 40 C.F.R. Part 122.41. Thus, notwithstanding EPA Region 1's statement that the Permittee has never submitted a Discharge Monitoring Report ("DMR"), the Permittee has provided notification to the requisite agencies when an emergency bypass discharge occurs.

While the Permittee recognizes that it has the affirmative obligation to comply with the requirements of the Permit, it should be noted, that notwithstanding the consistent filing of written notices of emergency bypass discharges, not once did EPA or DEP advise the Permittee that a DMR was required instead of the Sanitary Sewer Overflow report that was filed. Further, pursuant to the direction provided by EPA in a November 27, 2000 letter attached hereto as Exhibit B, the Permittee's understanding was that the provided form was the report it was to use in the event of an emergency bypass discharge. The Permittee has consistently advised the DEP and EPA about activation of the Sargent Road outfall pipe, measured the amount of discharge by application of a calculation involving the pump activation time and flow rate, and accounted for the quality by treating the discharge with chlorine, which amounts were measured at the point of mixing.

The foregoing provides a good faith approach to compliance with the NPDES Permit and it results in a far superior outcome than the alternative, which would be to allow sewage to back up not only into the streets, backyards, and basements of a portion of the Town, but also sensitive areas such as the beaches, the Goldthwait salt marsh, and the Village School, resulting in damage to person and property and jeopardizing the health of the inhabitants and school children. The Permittee has openly used the Sargent Road outfall pipe in emergency situations only and reported said use to DEP and EPA, both verbally and in written communication.

## Response 1

The 1994 Permit specifically states that the “Town of Marblehead is **not authorized** [emphasis added] to discharge from the Sargent Road Pump Station.” The Permit also states that; “Emergency, upset, or bypass discharges are not authorized unless in accordance with the requirements of part II of this permit (General Requirements) and 40 CFR Part 122.41. The Permittee shall make special note of those conditions to include reporting requirements. Flow and total residual chlorine shall be monitored and reports during any emergency flow as follows:”

<b>Parameter</b>	<b>Limitation</b>	<b>Sample Type and Frequency</b>
Flow, mgd	Report	Continuous during emergency discharge
TRC, mg/l	Report	4/day during emergency discharge
Fecal Coliform	Report	2/day during emergency discharge

The Permittee has never submitted a DMR since the Permit was issued in 1994, and therefore, “has consistently failed to comply with existing permit requirements.”

Section 402(a) of the Clean Water Act established the NPDES Permit Program. Under this section, EPA may “issue a permit for the discharge of any pollutant or combination of pollutants” in accordance with certain conditions. Section 301 of the CWA provides for two types of effluent limitations to be included in NPDES permits; technology-based effluent limitations and water-quality based effluent limitations. *See CWA §§ 301, 304(d); 40 C.F.R. Parts 122, 125, 131.* Technology-based treatment requirements represent the minimum level of control that must be imposed under Sections 402 and 301(b) of the CWA. For publicly owned treatment works (POTWs), technology-based requirements are effluent limitations based on secondary treatment requirements of Section 301(b)(1)(B) of the CWA as defined at 40 C.F.R. 133.102.

Under Section 301(b)(1)(C) of the CWA, discharges are in addition subject to effluent limitations based on water quality standards. EPA regulations require NPDES permits to contain effluent limits more stringent than technology-based limits where more stringent limits are necessary to maintain or achieve federal or state water quality standards. Federal regulations at 40 C.F.R. § 122.4(a) prohibit the issuance of an NPDES permit when conditions of the permit do not provide for compliance with the applicable requirements of the CWA, or regulations promulgated under the CWA.

As stated in the NOI at p.6, specific limits would be required for biochemical oxygen demand (BOD<sub>5</sub>), total suspended solids (TSS) and pH (see Table 1) and water quality-based limits for bacteria and a water-quality based total residual chlorine (TRC) limit would be required if the facility continued to disinfect the effluent with chlorine.

Table 1: Secondary treatment standards from U.S. EPA NPDES Permit Writers' Manual, Exhibit 5-2, September 2010

Parameter	30-day average	7-day average
BOD <sub>5</sub>	30 mg/L (or 25 mg/L CBOD <sub>5</sub> )	45 mg/L (or 40 mg/L CBOD <sub>5</sub> )
TSS	30 mg/L	45 mg/L
BOD <sub>5</sub> and TSS Removal (concentration)	Not less than 85%	---
pH	Within the limits of 6.0-9.0* (Note: MA WQS is more stringent. See below in citation of MA WQS for Class SA waters)	

\*unless the POTW demonstrates that (1) inorganic chemicals are not added to the waste stream as part of the treatment process; and (2) contributions from industrial sources do not cause the pH of the effluent to be less than 6.0 or greater than 9.0

mg/L = milligrams per liter

The Sargent Road Pump Station discharges to Massachusetts Bay, which is classified as a SA water in the Massachusetts Water Quality Standards (WQS) (314 CMR 4.06 Figure 23 and Table 23). The MA WQS for Class SA waters state that:

“These waters are designated as an excellent habitat for fish, other aquatic life and wildlife, including for their reproduction, migration, growth and other critical functions, and for primary and secondary contact recreation. In certain waters, excellent habitat for fish, other aquatic life and wildlife may include, but is not limited to, seagrass. Where designated in the tables to 314 CMR 4.00 for shellfishing, these waters shall be suitable for shellfish harvesting without depuration (Approved and Conditionally Approved Shellfish Areas). These waters shall have excellent aesthetic value.

1. Dissolved Oxygen. Shall not be less than 6.0 mg/l. Where natural background conditions are lower, DO shall not be less than natural background. Natural seasonal and daily variations that are necessary to protect existing and designated uses shall be maintained.

2. Temperature.

a. Shall not exceed 85°F (29.4°C) nor a maximum daily mean of 80°F (26.7°C), and the rise in temperature due to the discharge shall not exceed 1.5°F (0.8°C);

b. there shall be no change from natural background that would impair any uses assigned to this class including those conditions necessary to protect normal species diversity, successful migration, reproductive functions or growth of aquatic organisms...

3. pH. Shall be in the range of 6.5 and 8.5 standard units and not more than 0.2 standard units outside the natural background range. There shall be no change from natural background conditions that would impair any use assigned to this Class.

4. Bacteria.

- a. Waters designated for shellfishing: fecal coliform shall not exceed a geometric mean Most Probable Number (MPN) of 14 organisms per 100 ml, nor shall more than 10% of the samples exceed an MPN of 28 per 100 ml, or other values of equivalent protection based on sampling and analytical methods used by the Massachusetts Division of Marine Fisheries and approved by the National Shellfish Sanitation Program in the latest revision of the *Guide For The Control of Molluscan Shellfish* (more stringent regulations may apply, see 314 CMR 4.06(1)(d)(5));
  - b. at bathing beaches as defined by the Massachusetts Department of Public Health in 105 CMR 445.010, no single enterococci sample taken during bathing season shall exceed 104 colonies per 100 ml, and the geometric mean of the five most recent samples taken within the same bathing season shall not exceed a geometric mean of 35 enterococci colonies per 100 ml. In non-bathing beach waters and bathing beach waters during non bathing season, no single enterococci samples shall exceed 104 colonies per 100 ml and the geometric mean of all samples taken within the most recent six months typically based on a minimum of five samples shall not exceed 35 enterococci colonies per 100 ml. These criteria may be applied on a seasonal basis at the discretion of the Department; and
  - c. consistent with Massachusetts Department of Public Health regulations for bathing beaches, the single sample maximum values in the primary contact recreation bacteria criteria in 314 CMR 4.05(4)(a)4.b. also are for use in the context of notification and closure decisions.
- 5. Solids. These waters shall be free from floating, suspended, and settleable solids in concentrations or combinations that would impair any use assigned to this class, that would cause aesthetically objectionable conditions, or that would impair the benthic biota or degrade the chemical composition of the bottom.
  - 6. Color and Turbidity. These waters shall be free from color and turbidity in concentrations or combinations that are aesthetically objectionable or would impair any use assigned to this class.
  - 7. Oil and Grease. These waters shall be free from oil and grease and petrochemicals.
  - 8. Taste and Odor. None other than of natural origin.”

The above criteria apply to the Sargent Road Pump Station discharge. The MA WQS also include additional minimum criteria that apply to all surface waters, 314 CMR 4.05(5). Those requirements include a limit on toxic pollutants such as chlorine. “For pollutants not otherwise listed in 314 CMR 4.00, the *National Recommended Water Quality Criteria: 2002, EPA 822-R-02-047, November 2002* published by EPA subsequent to Section 304(a) of the Federal Water Pollution Control Act...” This would include criteria for total residual chlorine.

EPA and MassDEP<sup>1</sup> cannot re-issue the NPDES Permit for the Sargent Road Pump Station without setting technology-based and water quality-based effluent limits as required by the MA WQS and the CWA. As can be determined from the discussion of the applicable technology-based standards and water quality-based criteria detailed above, the Sargent Road Pump Station cannot meet these requirements. The Town of Marblehead would need to construct a wastewater treatment facility in order to meet the regulatory requirements of the CWA. This was discussed in the NOI at (6). The Permittee did not address in its comments whether it intends to design and construct a wastewater treatment facility.

Instead, the Permittee states that it has provided “a good faith approach to compliance with the NPDES Permit” through the notification of the SSO discharge. EPA stated in the NOI that one of the three reasons for denying the permit reissuance was that the Permittee “has consistently failed to comply with existing permit requirements.” EPA detailed in section 2.0 of the NOI the monitoring requirements in the 1994 Permit. In the NOI at p. 4, EPA specifically states that “the Town substantially failed to comply with the monitoring and reporting requirements of the existing permit and has determined that this is an appropriate basis for denial of permit reissuance.”

The 1994 Permit expressly requires the Town of Marblehead to submit Discharge Monitoring Reports and all related reports to three (3) separate addresses and all notifications and reports to a fourth address. Marblehead is obligated to both be aware and to comply with *all* requirements of the permit. EPA rejects the claim that notifications via SSO reports constitutes “a good faith approach to compliance with the NPDES Permit,” where the permit expressly requires submittal of DMRs. Ignorance of applicable provisions of the permit does not excuse noncompliance.

EPA agrees that the Permittee has, in most cases, notified EPA, MassDEP, and the Massachusetts Division of Marine Fisheries of discharges from Sargent Road Pump Station. However, EPA has compiled the records from these agencies and found that the Town of Marblehead has *not* consistently notified all the agencies of every discharge, contrary to its representations (see Appendix A). In at least one case, the Massachusetts Division of Marine Fisheries was not notified of a discharge that occurred during the open season for the adjacent shellfish beds (3/30/2010) and the reported fecal coliform bacteria counts were higher than the water quality criteria (see Table 2), which is a significant human health risk. Recent information from the Permittee suggests that the fecal coliform data submitted by Permittee in its comments is not representative of the discharge. Part II, Section C, 1.a. of the 1994 Permit requires that “[s]amples and measurements taken for the purpose of monitoring shall be representative of the monitored activity. The collection of non-representative data makes it impossible to protect public health and ascertain the safety of the shellfish beds and the receiving waters.

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<sup>1</sup> Email from Susannah L. King, MassDEP to Ellen Weitzler, EPA, February 25, 2020, RE: Marblehead Termination Question

Table 2: Fecal Coliform Bacteria data reported in Exhibit A of Marblehead Comments.

Date	Sample ID	Colony Count (colonies per 100 ml)
3/2/2018	Marblehead Sample #1	<1000
	Marblehead Sample #2	<1000
	Marblehead Sample #3	<1000
	Marblehead Sample #4	600,000
	Marblehead Sample #5	<1000
12/10/2014	Marblehead	<100
10/23/2014	Marblehead Sample #1	580,000
	Marblehead Sample #2	570,000
	Marblehead Sample #3	100,000
	Marblehead Sample #4	550,000
	Marblehead Sample #5	510,000
4/1/2010	033010-#1	450,000
	033010-#2	310,000
	033110-#1	44,000
	033110-#2	48,000
	033110-#3	12,000
	033110-#4	220,000
3/15/2010	031510-001	190,000
	031510-002	140,000
	031510-003	N.T.
	031510-Fecal 1	TNTC (>200,000)
3/16/2010	Sample #2	17,000
	Sample #3	25,000
	Sample #4	8,900
	Sample #5	9,200
	Sample #6	27,000

Note: Massachusetts Bay in the vicinity of the Sargent Road Pump Station discharge is classified as Class SA, shellfishing waters. The water quality standard for fecal coliform bacteria is 14 colonies per 100 ml and 28 colonies per 100 ml. Based on the limited data submitted, this discharge endangers human health and the environment.

\*N.T. = No test, did not meet requirements

\*\* TNTC = Too numerous to count

The Permittee states; “Written reports have always followed verbal notification within 5 days as required by 40 C.F.R. Part 122.41.” However, 40 C.F.R. Part 122.41 is a multi-part regulation that identifies the many “conditions applicable to all permits.” The Permittee is only in compliance with 40 C.F.R. Part 122.41(l)(6), which is only a portion of the regulation cited. In fact, 40 C.F.R. § 122.41(a) states; “The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.” This is one reason for EPA’s denial of Marblehead’s permit renewal application.

The Permittee's own Exhibit A includes SSO reports that either do not list an EPA contact or explicitly state that EPA was not contacted (See SSO/Bypass Notification Form 12/12/08 where "No" is written on the EPA contact line).

The Permittee's Exhibit B is a letter from EPA to Permittees and municipal officials which reiterates the reporting requirements applicable to unauthorized discharges from publicly-owned wastewater treatment works and their associated collection systems. This is a reporting requirement in addition to the specific monitoring and reporting requirements of the NPDES permit issued to your wastewater treatment works. The letter in no way changed the specific requirements of NPDES Permit No. MA0100374.

The Permittee appears to be of the view that the existence of the permit by itself affords Marblehead protections, and that EPA's denial of the permit application would deprive it of its Clean Water Act permit shield. This is incorrect. Section 402(k) of the Clean Water Act, 33 U.S.C. § 1342(k), establishes the "permit shield" by stating "[c]ompliance with a permit issued pursuant to this section shall be deemed compliance" with section 301 (among other sections) of the CWA. In order to avail itself of the protections of section 402(k), a permittee—unlike Marblehead—must first be in compliance with all express terms of the permit. *See Ohio Valley Envtl. Coal. v. Fola Coal Co., LLC*, 845 F.3d 133, 142 (4th Cir. 2017) ("[A] permit shields its holder from liability as long as the permit holder complies with the express terms of the permit and with the Clean Water Act's disclosure requirements." (internal quotations omitted)).

As previously stated, EPA does not have the authority to issue an NPDES permit that does not meet the requirements of the CWA. In EPA's judgment, the SESD permit is the best permitting mechanism to address the Sargent Road Pump Station SSO and the overall capacity issues in the Marblehead collection system, the SESD collection system and the collection systems of the other SESD co-permittees.

Based on the record before it, EPA maintains its decision to deny the permit renewal application for NPDES Permit MA0100374.

## **Comment 2**

South Essex Sewerage District ("SESD")

EPA Region 1 suggests that the Town's individual NPDES permit is no longer necessary because the Town is part of the SESD. The Town has consistently maintained the SESD's success is dependent upon the Town's ability to release excessive wastewater flows during extreme weather events under the separate permit.

The NPDES permit issued to SESD includes the member communities of Beverly, Danvers, Marblehead, Peabody, and Salem as co-permittees. SESD has allocated target discharge rates for

each member community, based on its High Flow Allocation Policy, which sets a percentage for each community based on the funds expended by each member community.

The High Flow Allocation Policy is utilized when the SESD plant approaches its maximum capacity of 98.8 MGD. During extreme weather events or other situations where the SESD is at risk of reaching its capacity, SESD policy is to notify only Marblehead that the max capacity for their location will be strictly observed. Notably, the Permittee has been subject to a restricted discharge when SESD nears its capacity. It begs the question whether the Permittee is subject to said restriction specifically because SESD relies on the use of the Sargent Road outfall to avoid exceeding capacity at SESD facilities. At that point, the Permittee is faced with the choice of causing raw sewage to overflow into the Town or utilizing the outfall from the Sargent Road Pump Station. The emergency bypass discharge from the Sargent Road Pump Station is treated and monitored, with reports provided within 5 days. Without the permit, however, the discharge of pollutants would occur outside the conditions of a NPDES permit which is clearly at odds with the purpose of the CWA.

The Town has made significant efforts to reduce Infiltration/Inflow. The reports in Exhibit A reflect that follow-up to emergency bypass events included looking for I/I and handing out pamphlets at homes in the district to provide education on the regulations on illegal sump pump connections to the sanitary sewer. The Town has expended considerable amounts of money to update its aging collection system and pump stations in an ongoing effort to reduce I/I from cracked or aging pipes. The Town asks that EPA Region 1 take into consideration the continued efforts the Town has undertaken to reduce I/I, while recognizing that discharges at the Sargent Road outfall in emergency situations are necessary to prevent flooding the SESD plant.

## **Response 2**

An NPDES permit must meet the requirements of the CWA and cannot be issued for the discharge of untreated wastewater (See Response 1 above for a detailed discussion). The 1994 Permit specifically states, “Town of Marblehead is not authorized to discharge from the Sargent Road Pump Station.” Emergency upset and bypass discharges can only occur in accordance with the requirements of Part II and 40 C.F.R. 122.41. These same requirements are set forth in the SESD permit (See Part I.D).

Marblehead’s assertion that the “success” of SESD is dependent on an unauthorized discharge of sanitary wastewater to a receiving water is a clear violation of the CWA. SESD’s High Flow Allocation Policy does not carry any regulatory significance under the CWA and may not be used as a justification to violate applicable CWA requirements of either Marblehead or SESD’s permit. Marblehead’s assistance with the operations of the SESD treatment plant in order to enable *SESD* to avoid bypassing treatment processes does not excuse a violation of Marblehead’s permit. It is not at all apparent that the 40 C.F.R. § 122.41(m) is even relevant to the unauthorized discharges from Marblehead, as the bypass (or avoidance of a bypass) at issue here is with respect to SESD’s treatment facility. The discharge must be beyond the headworks of a WWTP for it to be considered a bypass. *See, e.g.,* EPA National CSO Control Policy. More fundamentally, the objective, consistent with the CWA, is for Marblehead to ensure compliance with *both*

permits. As the Permittee acknowledges, there is work to be done in both Marblehead and SESD to, for example, reduce I/I and increase capacity in the collection system, so that the facilities can fully comply with their respective permits. Resolving the Marblehead SSO discharge and overflows from other SESD co-permittees would be best addressed through co-permittee requirements and EPA Region 1's Enforcement and Compliance Assurance Division (ECAD).

As Marblehead notes, it discharges at the direction of SESD and pursuant to that entity's High Flow Allocation Policy. To the extent the circumstances of any SSO discharge need to be addressed and reevaluated in future, to ensure the optimal operation of the POTW as a whole, it is reasonable to have that occur within an enforcement framework, as well as through the co-permittee structure, rather than have the requirements of one NPDES permit (Marblehead's) impermissibly yield to another (SESD's). This way the underlying sewer system capacity problems can be dealt with comprehensively on a system-wide basis, as opposed to the ad hoc approach that currently exists. Additionally, it is unclear to EPA how the existing arrangement, which entails periodic violations of its permit in favor of SESD's, is advantageous to Marblehead. Finally, another factor counseling against reissuance of the permit is that its technology- and water quality-based limits will require major upgrades of the existing facility, which will entail a large expenditure to treat highly intermittent discharges.

According to EPA's understanding of the SESD's High Flow Allocation Policy, during wet weather conditions when flows at the SESD WWTP are at 80 MGD and rising (80 MGD is 81% of Plant Max Capacity of 98.8 MGD), Marblehead is strictly limited to a contributing flow to SESD of 8.1 MGD. (This was recently increased from the prior limit of 7.6 MGD). In several cases, it does not appear that SESD was at 80 MGD and yet an SSO from the Sargent Road Pump Station was activated to discharge into the Class SA waters of Massachusetts Bay (*See* Table 3). EPA is unclear if the operation of Sargent Road Pump Station is directed by SESD solely to manage flows coming to the SESD WWTP or if Marblehead is also using the discharge to manage flows in the portion of the collection system owned by Marblehead.

Table 3: SSO events and volumes and maximum daily flow values reported by SESD on DMRs and State Monthly Reports

<b>Date of SSO Discharge</b>	<b>Total Volume Reported</b>	<b>Maximum daily flow for Month reported by SESD on DMR</b>	<b>Maximum Daily Flow reported by SESD on State Monthly Report</b>
3/2/2018 – 3/5/2018	6.6 MG	61.43 MGD	3/2 - 40 MGD 3/3 - 70 MGD 3/4 - 55 MGD 3/5 - 48 MGD
4/1/2017	900,000	71.81 MGD	4/1 - 78 MGD
12/9/2014- 12/10/2014	2.0 MG	95.01 MGD	12/9 - 100 MGD 12/10 - 100 MGD
10/23/2014	1.0 MG	74.03 MGD	10/23 - 97 MGD
10/4/2011		87.72 MGD	*
3/30/2010	>1.0 MG	94.23 MGD	*
3/14/2010- 3/16/2010	>1.0 MG	94.23 MGD	*
12/12/2008	>100,000 - <1 MG	78.97 MGD	*
6/7/2006	100,000		*

\*State monthly reports are not available prior to 2014.

The Town of Marblehead has not met any of the SESD Permit submission deadlines for co-permittees. The SESD Permit required co-permittees including the Town of Marblehead to prepare a Collection System Operation and Maintenance Plan (See MA0100501, C.5.a) due February 1, 2017, a full Collection System Operation and Maintenance Plan (See MA0100501, C.5.b.) due August 1, 2018 and Collection System Mapping (See MA0100501, C.4) due February 1, 2019. Eventually a draft Collection System Operation and Maintenance Plan (O&M Plan) was submitted to EPA on November 15, 2019. A review of the draft O&M Plan indicates that SESD supplies the Town with sodium hypochlorite in batch, on request. SESD also provides laboratory services to Marblehead during these SSO events, as well as chains of custody forms and sampling bottles, although the Town collects the samples themselves. Therefore, again, it is unclear to EPA if the Sargent Road Pump Station is operated by SESD as part of the collection system permitted under the SESD permit or by the Town of Marblehead as an overflow for its portion of the collection system. EPA has determined that Marblehead has discharged from the Sargent Road Pump Station as an overflow for its portion of the collection system at flows well below the level at which the SESD High Flow Allocation Policy would apply. This is not in accordance with Marblehead’s description of when the pump station is used.

### **Comment 3**

For the reasons set forth above, the Town requests that its individual NPDES permit be revised and renewed to address this capacity situation in the interest of continued protection of human health. Alternatively, if EPA Region 1 does not revise and renew the NPDES permit, the Town requests that the permit be extended for a specific period of time to allow the Town to continue the development and implementation of the Collection System Operation and Maintenance Plan. Finally, because the co-permittee structure fails to account for the impact that any one of municipalities' system failures will have on the Town if the Town's separate NPDES permit is terminated, the Town's separate NPDES permit should be revised and renewed and remain unaffected by the SESD permit.

The Town would be pleased to answer any further questions and or meet with EPA and DEP to review and discuss these matters to reach an amicable and sound resolution. We look forward to your response.

### **Response 3**

As previously stated, EPA cannot reissue an NPDES permit that is not consistent with the CWA and its regulations. As discussed in detail in Response 1, a renewed permit would require technology-based effluent limitations based on the secondary treatment standards and water quality-based effluent limits to achieve the requirements of the Massachusetts Water Quality Standards and the Clean Water Act. EPA does not believe that issuance of an NPDES permit prohibiting the discharge of SSOs furthers the objectives of the Act. The goal under the Clean Water Act is the elimination of SSOs. Marblehead's permit does not contribute to this end. This goal could be accomplished through construction of a treatment facility sufficient to handle the flows, by Marblehead taking more vigorous steps to control I/I, which as evidenced by its noncompliance with the SESD permit provisions, it has not opted to do, or through an enforcement action. As mentioned above, EPA appreciates the fact that the Town has constructively engaged with EPA Region 1's Enforcement and Compliance Assurance Division over the terms of an enforcement order. By terminating this permit, which is effectuated through issuance of that order, the Town's pump station will now be regulated solely under the SESD permit, which will facilitate removal of I/I on a systemwide basis, in accordance with the goal of the Clean Water Act.

The co-permittee provisions in the SESD permit require all the co-permittees to prepare the above-mentioned reports and to properly operate and maintain their collection systems, among other requirements. EPA is unclear if the Permittee is implying that there are system failures by the other co-permittees that cause the SSO discharges in Marblehead. If Marblehead is suggesting that system failures by other co-permittees will cause the SSO discharges in Marblehead, such co-permittees would be at risk of enforcement under the SESD permit. Therefore, a separate individual permit for Marblehead is unnecessary. The submittal of the required reports will provide further insight on the point.

*Appendix A: Summary of Town of Marblehead SSO Notifications to MassDEP, Marine Fisheries and EPA compared to data from Exhibit A of Marblehead Comments.*

MassDEP <sup>1</sup>		Marine Fisheries <sup>2</sup>	EPA		Marblehead Comment Letter, October 3, 2019, Exhibit A					
Start	End	Date	DMR	SSO Reported	Event Date	Total Flow Reported	Form Used	Disinfection	Other Agencies Contacted	Additional information
3/2/2018	3/5/2018	3/2/2018	No	3/3/2018	3/3/2018	6.6 MG	DEP		DEP, EPA, BOH, ConCom, Harbormaster, Shellfish Warden, DMF	Fecal Coliform results
4/1/2017	4/1/2017	4/1/2017	No	4/1/2017	4/1/2017	900,000	DEP		DEP, EPA, BOH, ConCom, Harbormaster, Shellfish Warden, DMF	
12/9/2014	12/10/2014	12/9/2014	No		12/9/2014	2 MG	DEP		DEP, EPA, BOH, ConCom, Harbormaster, Shellfish Warden, DMF	Fecal Coliform results
		10/23/2014	No		10/23/2014	1 MG	DEP		DEP, EPA, BOH, ConCom, Harbormaster, Shellfish Warden, DMF	Fecal Coliform results
10/4/2011		10/4/2011	No							
3/30/2010			No		3/30/2010	> 1 MG	DEP	disinfection	DEP, EPA, BOH, Harbormaster, Shellfish Warden	Fecal Coliform results
3/14/2010	3/16/2010	3/14/2010	No		3/14/2010	> 1 MG	DEP	disinfection	DEP, EPA, BOH, Harbormaster, Shellfish Warden	Fecal Coliform results
12/12/2008			No		12/12/2008	>100,000 < 1MG	DEP		Harbormaster, SESD, ("NO" written in EPA contact line)	
6/7/2006		6/7/2006	No		6/7/2006	100,000	DEP	screen	DEP	
		5/13/2006	No		5/13/2006	Unknown	DEP	none	Marblehead BOH	
		10/15/2005	No		10/15/2005	Unknown	DEP	screen	Marblehead BOH	
			No		4/5/2004		DEP		Marblehead BOH, DEP,	
		12/15/2003	No		12/15/2003		DEP	Cl2 added		
		12/14/2002	No							
		3/22/2001	No							
		4/22/2000	No							
			No		12/17/2000	144,000	DEP		EPA (by letter 12/18/00)	
			No		10/11/1999	Unknown		Some	DEP (by letter)	
			No		9/16/1999	Unknown	DEP		EPA (by letter 9/20/99), Marblehead BOH	
					9/14/1999	Unknown	Letter		EPA (by letter 9/14/99)	
			No		6/13/1998	Unknown	DEP		Marblehead BOH	
			No		2/24/1998	Unknown	DEP		Marblehead BOH	
			No		10/20/1996	Unknown	DEP		EPA, Marblehead BOH	