

**AUTHORIZATION TO DISCHARGE UNDER THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**

In compliance with the provisions of the Federal Clean Water Act as amended, 33 U.S.C. §§ 1251 et seq. (the "CWA"),

South Essex Sewerage District

is authorized to discharge from the facility located at

**South Essex Wastewater Treatment Facility
50 Fort Avenue
Salem, MA 01970**

to receiving water named

**Salem Sound (Segment MA95-56)
North Coastal Watershed**

in accordance with effluent limitations, monitoring requirements and other conditions set forth herein.

The municipalities of Beverly, Danvers, Marblehead, Peabody and Salem are Co-permittees for Part I.B, Unauthorized Discharges; Part I.C, Operation and Maintenance of the Treatment and Control Facilities (which include conditions regarding the operation and maintenance of the collection systems owned and operated by the Towns); and Part I.D, Alternate Power Source. The permit number assigned to the Municipalities for purposes of reporting (using NetDMR through EPA's Central Data Exchange, as specified in Part I.H below) in accordance with the requirements in Parts I.B, I.C, and I.D of this permit are as follows: Beverly, Massachusetts: **MAC010501**; Danvers, Massachusetts: **MAC020501**; Marblehead, Massachusetts: **MAC030501**; Peabody, Massachusetts: **MAC040501**; and Salem, Massachusetts, **MAC050501**.

Operation and maintenance of the sewer system shall be in compliance with the General Requirements of Part II and the terms and conditions of Part I.B, Part I.C and Part I.D of this permit. The Permittee and each Co-permittee are severally liable under Part I.B, Part I.C and Part I.D for their own activities and required reporting with respect to the portions of the collection system that they own or operate. They are not liable for violations of Part I.B, Part I.C and Part I.D committed by others relative to the portions of the collection system owned and operated by others. Nor are they responsible for any reporting that is required of other Permittees under Part I.B, Part I.C and Part I.D. The responsible departments for the Co-permittees are:

City of Beverly
c/o City Engineer
Beverly City Hall
191 Cabot Street
Beverly, MA 01915

Town of Danvers
c/o Town Engineer
Public Works Eng. Div.
1 Burroughs Street
Danvers, MA 01923

Town of Marblehead
c/o Superintendent
Water/Sewer Department
P.O. Box 1108
Marblehead, MA 01945

City of Peabody
c/o Mayor
24 Lowell Street
Peabody, MA 01960

City of Salem
c/o City Engineer
120 Washington Street, 4th Fl
Salem, MA 01970

This permit shall become effective on the first day of the calendar month immediately following 60 days after signature. ¹

This permit expires at midnight, five years from the last day of the month preceding the effective date.

This permit supersedes the permit issued on May 5, 2016.

This permit consists of **Part I** including the cover page(s), **Attachment A** (Marine Acute Toxicity Test Procedure and Protocol, July 2012), **Attachment B** (Reassessment of Technically Based Industrial Discharge Limits), **Attachment C** (NPDES Permit Requirement for Industrial Pretreatment Annual Report); **Attachment D** (PFAS Analyte List) and **Part II** (NPDES Part II Standard Conditions, April 2018).

Signed this day of

KENNETH
MORAFF

Digitally signed by
KENNETH MORAFF
Date: 2025.12.22
14:46:54 -05'00'

Ken Moraff, Director
Water Division
Environmental Protection Agency
Region 1
Boston, MA

¹ Procedures for appealing EPA's Final Permit decision may be found at 40 CFR § 124.19.

PART I**A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

1. During the period beginning on the effective date and lasting through the expiration date, the Permittee is authorized to discharge treated effluent through Outfall Serial Number 001 to Salem Sound. The discharge shall be limited and monitored as specified below; the receiving water and the influent shall be monitored as specified below.

Effluent Characteristic	Effluent Limitation			Monitoring Requirements ^{1,2,3}	
	Average Monthly	Average Weekly	Maximum Daily	Measurement Frequency	Sample Type ⁴
Rolling Average Effluent Flow ⁵	29.7 MGD ⁵	---	---	Continuous	Recorder
Effluent Flow ⁵	Report MGD	---	Report MGD	Continuous	Recorder
CBOD ₅	25 mg/L 6,194 lb/day	40 mg/L 9,911 lb/day	Report mg/L	1/Day	Composite
CBOD ₅ Removal	≥ 85 %	---	---	1/Month	Calculation
TSS	30 mg/L 7,433 lb/day	45 mg/L 11,150 lb/day	Report mg/L	1/Day	Composite
TSS Removal	≥ 85 %	---	---	1/Month	Calculation
pH Range ⁶	6.5 - 8.5 S.U.			1/Day	Grab
<i>Fecal coliform</i> ^{7,8,9}	88 organisms/ 100 mL	---	Report organisms/ 100 mL	2/Day	Grab
<i>Enterococci</i> ^{8,9}	35 cfu/100 mL	---	276 cfu/100 mL	2/Day	Grab
Total Residual Chlorine ^{9,9}	---	---	0.24 mg/L	2/Day	Grab
Total Kjeldahl Nitrogen ¹⁰					
April 1 – October 31	Report mg/L	---	Report mg/L	1/Week	Composite
November 1 – March 31	Report mg/L	---	Report mg/L	1/Month	Composite
Nitrate + Nitrite ¹⁰					
April 1 – October 31	Report mg/L	---	Report mg/L	1/Week	Composite
November 1 – March 31	Report mg/L	---	Report mg/L	1/Month	Composite

Effluent Characteristic	Effluent Limitation			Monitoring Requirements ^{1,2,3}	
	Average Monthly	Average Weekly	Maximum Daily	Measurement Frequency	Sample Type ⁴
Total Nitrogen ¹⁰	Report mg/L Report lb/day	---	Report mg/L	1/Month	Calculation
PFAS Analytes ¹¹	---	---	Report ng/L	1/Quarter	Grab
Adsorbable Organic Fluorine ¹²	---	---	Report ng/L	1/Quarter	Grab
Whole Effluent Toxicity (WET) Testing^{13,14}					
LC ₅₀	---	---	≥ 100 %	1/Quarter	Composite
Ammonia Nitrogen	---	---	Report mg/L	1/Quarter	Composite
Total Cadmium	---	---	Report mg/L	1/Quarter	Composite
Total Copper	---	---	Report mg/L	1/Quarter	Composite
Total Nickel	---	---	Report mg/L	1/Quarter	Composite
Total Lead	---	---	Report mg/L	1/Quarter	Composite
Total Zinc	---	---	Report mg/L	1/Quarter	Composite
Total Organic Carbon	---	---	Report mg/L	1/Quarter	Composite

Ambient Characteristic	Reporting Requirements			Monitoring Requirements ^{1,2,3}	
	Average Monthly	Average Weekly	Maximum Daily	Measurement Frequency	Sample Type ⁴
Salinity	---	---	Report mg/L	1/Quarter	Grab
Ammonia Nitrogen	---	---	Report mg/L	1/Quarter	Grab
Total Cadmium	---	---	Report mg/L	1/Quarter	Grab
Total Copper	---	---	Report mg/L	1/Quarter	Grab
Total Nickel	---	---	Report mg/L	1/Quarter	Grab
Total Lead	---	---	Report mg/L	1/Quarter	Grab
Total Zinc	---	---	Report mg/L	1/Quarter	Grab
Total Organic Carbon	---	---	Report mg/L	1/Quarter	Grab
pH ¹⁵	---	---	Report S.U.	1/Quarter	Grab
Temperature ¹⁵	---	---	Report °C	1/Quarter	Grab

Influent Characteristic	Reporting Requirements			Monitoring Requirements ^{1,2,3}	
	Average Monthly	Average Weekly	Maximum Daily	Measurement Frequency	Sample Type ⁴
BOD ₅	Report mg/L	---	---	2/Month	Composite
TSS	Report mg/L	---	---	2/Month	Composite
PFAS Analytes ¹¹	---	---	Report ng/L	1/Quarter	Grab
Adsorbable Organic Fluorine ¹²	---	---	Report ng/L	1/Quarter	Grab

Sludge Characteristic	Reporting Requirements			Monitoring Requirements ^{1,2,3}	
	Average Monthly	Average Weekly	Maximum Daily	Measurement Frequency	Sample Type ⁴
PFAS Analytes ¹¹	---	---	Report ng/g	1/Quarter	Grab ¹⁶

Footnotes:

1. All samples shall be collected in a manner to yield representative data. A routine sampling program shall be developed in which samples are taken at the same location, same time and same days of the week each month. Occasional deviations from the routine sampling program are allowed, but the reason for the deviation shall be documented as an electronic attachment to the applicable discharge monitoring report. The Permittee shall report the results to the Environmental Protection Agency Region 1 (EPA) and MassDEP ("the State") of any additional testing above that required herein, if testing is in accordance with 40 CFR Part 136.
2. In accordance with 40 CFR § 122.44(i)(1)(iv), the Permittee shall monitor according to sufficiently sensitive test procedures (i.e., methods) approved under 40 CFR Part 136 or required under 40 CFR chapter I, subchapter N or O, for the analysis of pollutants or pollutant parameters (except WET). A method is "sufficiently sensitive" when: 1) The method minimum level (ML) is at or below the level of the effluent limitation established in the permit for the measured pollutant or pollutant parameter; or 2) The method has the lowest ML of the analytical methods approved under 40 CFR Part 136 or required under 40 CFR chapter I, subchapter N or O for the measured pollutant or pollutant parameter. The term "minimum level" refers either to the sample concentration equivalent to the lowest calibration point in a method or a multiple of the method detection limit (MDL), whichever is higher. Minimum levels may be obtained in the following ways: they may be published in a method; they may be based on the lowest acceptable calibration point used by a laboratory; or they may be calculated by multiplying the MDL in a method, or the MDL determined by a laboratory, by a factor.
3. When a parameter is not detected above the ML, the Permittee must report the data qualifier signifying less than the ML for that parameter (e.g., < 50 µg/L, if the ML for a parameter is 50 µg/L). For reporting an average based on a mix of values detected and not detected, assign a value of "0" to all non-detects for that reporting period and report the average of all the results.
4. A "grab" sample is an individual sample collected in a period of less than 15 minutes.

A "composite" sample is a composite of at least twenty-four (24) grab samples taken during one consecutive 24-hour period, either collected at equal intervals and combined proportional to flow or continuously collected proportional to flow.
5. The limit is a rolling annual average, reported in million gallons per day (MGD), which will be calculated as the arithmetic mean of the monthly average flow for the reporting month and the monthly average flows of the previous eleven months. Also report monthly average and maximum daily flow in MGD.

6. The pH shall be within the specified range at all times. The minimum and maximum pH sample measurement values for the month shall be reported in standard units (S.U.).
7. The Permittee shall report the percent of maximum daily values that exceeded an MPN of 260 organisms per 100 ml and submit the sample results as an attachment with the discharge monitoring report. No more than 10% of the samples shall exceed 260 organisms/100 ml.
8. Permittee shall minimize the use of chlorine while maintaining adequate bacterial control. Monitoring for total residual chlorine (TRC) is only required for discharges which have been previously chlorinated or which contain residual chlorine. If chlorine is not utilized during a particular monitoring period, TRC monitoring is not necessary and the Permittee may enter "NODI" code 9 (i.e., conditional monitoring) in the relevant discharge monitoring report.

Chlorination and dechlorination systems shall include an alarm system for indicating system interruptions or malfunctions. Any interruption or malfunction of the chlorine dosing system that may have resulted in levels of chlorine that were inadequate for achieving effective disinfection, or interruptions or malfunctions of the dechlorination system that may have resulted in excessive levels of chlorine in the final effluent shall be reported with the monthly DMRs. The report shall include the date and time of the interruption or malfunction, the nature of the problem, and the estimated amount of time that the reduced levels of chlorine or dechlorination chemicals occurred.

9. The monthly average limit for *Fecal coliform* and *Enterococci* is expressed as a geometric mean. *Fecal coliform* and *Enterococci* monitoring shall be conducted concurrently with TRC monitoring, if TRC monitoring is required.
10. Total Kjeldahl nitrogen and nitrate + nitrite samples shall be collected concurrently. The results of these analyses shall be used to calculate both the concentration and mass loadings of total nitrogen, as follows.

Total Nitrogen (mg/L) = Total Kjeldahl Nitrogen (mg/L) + Nitrate + Nitrite (mg/L)

Total Nitrogen (lb/day) = [(average monthly Total Nitrogen (mg/L) * total monthly effluent flow (Millions of Gallons (MG)) / # of days in the month] * 8.34

11. Report in nanograms per liter (ng/L) for effluent and influent samples; report nanograms per gram (ng/g) for sludge samples. Until there is an analytical method approved in 40 CFR Part 136 for PFAS, monitoring shall be conducted using Method 1633A. Report in NetDMR the results of all PFAS analytes required to be tested in Method 1633A, as shown in Attachment D. This reporting requirement for the listed

PFAS parameters takes effect the first full calendar quarter following six months after the effective date of the permit.

12. Report in nanograms per liter (ng/L) for effluent and influent samples. Until there is an analytical method approved in 40 CFR Part 136 for Adsorbable Organic Fluorine, monitoring shall be conducted using Method 1621. This reporting requirement takes effect the first full calendar quarter following six months after the effective date of the permit.
13. The Permittee shall conduct acute toxicity tests (LC50) in accordance with test procedures and protocols specified in Attachment A of this permit. LC50 is defined in Part II.E. of this permit. The Permittee shall test the inland silverside, *Menidia beryllina* and mysid shrimp, *Americamysis bahia*. Toxicity test samples shall be collected during the same weeks each time of calendar quarters ending March 31st, June 30th, September 30th, and December 31st. The complete report for each toxicity test shall be submitted as an attachment to the DMR submittal which includes the results for that toxicity test.
14. For Part I.A.1., Whole Effluent Toxicity Testing, the Permittee shall conduct the analyses specified in **Attachment A**, Part VI. CHEMICAL ANALYSIS for the effluent sample. If toxicity test(s) using the receiving water as diluent show the receiving water to be toxic or unreliable, the Permittee shall follow procedures outlined in **Attachment A**, Section IV., DILUTION WATER. Minimum levels and test methods are specified in **Attachment A**, Part VI. CHEMICAL ANALYSIS.
15. For Part I.A.1., Ambient Characteristic, the Permittee shall conduct the analyses specified in **Attachment A**, Part VI. CHEMICAL ANALYSIS for the receiving water sample collected as part of the WET testing requirements. Such samples shall be taken from the receiving water at a point immediately outside of the permitted discharge's zone of influence at a reasonably accessible location, as specified in **Attachment A**. Minimum levels and test methods are specified in **Attachment A**, Part VI. CHEMICAL ANALYSIS.
16. A pH and temperature measurement shall be taken of each receiving water sample at the time of collection and the results reported on the appropriate DMR. These pH and temperature measurements are independent from any pH and temperature measurements required by the WET testing protocols.
17. Sludge sampling shall be as representative as possible based on guidance found at <https://www.epa.gov/sites/production/files/2018-11/documents/potw-sludge-sampling-guidance-document.pdf>.

B. UNAUTHORIZED DISCHARGES

1. This permit authorizes discharges only from the outfall listed in Part I.A.1, in accordance with the terms and conditions of this permit. Discharges of wastewater from any other point sources, including sanitary sewer overflows (SSOs), are not authorized by this permit. The Permittee must provide verbal notification to EPA within 24 hours of becoming aware of any unauthorized discharge and a report within 5 days, in accordance with Part II.D.1.e (24-hour reporting). Providing that it contains the information required in Part II.D.1.e, submission of the MassDEP SSO Reporting Form (described in Part I.B.3 below) may satisfy the requirement for a written report. See Part I.H below for reporting requirements.
2. The Permittee must provide notification to the public on a publicly available website within 24 hours of becoming aware of any of the following unauthorized discharges: (a) any discharge of partially treated wastewater, including blended wastewater; (b) any Sanitary Sewer Overflow that discharges through a wastewater outfall, either directly or indirectly, to a surface water of the Commonwealth; (c) any SSO that flows into a surface water of the Commonwealth and is the result of the sanitary sewer system surcharging under high flow conditions when peak flows cannot be conveyed to a POTW due to capacity constraints; and (d) any SSO that flows into a surface water of the Commonwealth and is the result of a failure of a wastewater pump station or associated force main designed to convey peak flows of one million gallons per day or greater. Such notification shall include the location and description of the discharge; the approximate dates and times the discharge or overflow began, and its duration; and the estimated volume. Fulfilling these requirements does not relieve the Permittee of the responsibility of complying with 314 CMR 16.00.
3. Notification of SSOs to MassDEP shall be made on its SSO Reporting Form (which includes MassDEP Regional Office telephone numbers). The reporting form and instruction for its completion may be found on-line at <https://www.mass.gov/how-to/sanitary-sewer-overflowbypassbackup-notification>.

C. OPERATION AND MAINTENANCE OF THE TREATMENT AND CONTROL FACILITIES**1. Sewer System**

Operation and maintenance (O&M) of the sewer system shall be in compliance with 40 CFR § 122.41 (d) and (e) and the terms and conditions of the Part II Standard Conditions, B. Operation and Maintenance of Pollution Controls which is attached to this Permit. The Permittee and Co-permittee(s) shall complete the following activities for the collection system which it owns:

a. Maintenance Staff

The Permittee and Co-permittee(s) shall provide an adequate staff to carry out the operation, maintenance, repair, and testing functions required to ensure compliance

with the terms and conditions of this permit. Provisions to meet this requirement shall be described in the Sewer System O&M Plan required pursuant to Part I.C.1.e. below.

b. Preventive Maintenance Program

The Permittee and Co-permittee(s) shall maintain an ongoing preventive maintenance program to prevent overflows and bypasses caused by malfunctions or failures of the sewer system infrastructure. The program shall include an inspection program designed to identify all potential and actual unauthorized discharges. Plans and programs to meet this requirement shall be described in the Sewer System O&M Plan required pursuant to Part I.C.1.e. below.

c. Infiltration/Inflow

The Permittee and Co-permittee(s) shall control infiltration and inflow (I/I) into the sewer system as necessary to prevent high flow related unauthorized discharges from their collection systems and high flow related violations of the wastewater treatment plant's effluent limitations. Plans and programs to control I/I shall be described in the Sewer System O&M Plan required pursuant to Part I.C.1.e. below.

d. Sewer System Mapping

The Permittee and Co-permittee(s) shall maintain a map of the sewer collection system it owns. The map shall be on a street basemap of the community, with sufficient detail and at a scale to allow easy interpretation. The sewer system information shown on the map shall be based on current conditions and shall be kept up-to-date and available for review by federal, state, or local agencies. If any items listed below, such as the location of all outfalls, are not fully documented, the Permittee and Co-permittee(s) must clearly identify each component of the dataset that is incomplete, as well as the date of the last update of the mapping product. Such map(s) shall include, but not be limited to the following:

- (1) All sanitary sewer lines and related manholes;
- (2) All combined sewer lines, related manholes, and catch basins;
- (3) All combined sewer regulators and any known or suspected connections between the sanitary sewer and storm drain systems (e.g. combination manholes);
- (4) All outfalls, including the treatment plant outfall(s), CSOs, and any known or suspected SSOs, including stormwater outfalls that are connected to

combination manholes;

- (5) All pump stations and force mains;
- (6) The wastewater treatment facility(ies);
- (7) All surface waters (labeled);
- (8) Other major appurtenances such as inverted siphons and air release valves;
- (9) A numbering system which uniquely identifies manholes, catch basins, overflow points, regulators and outfalls;
- (10) Interconnections with collection systems owned by other entities;
- (11) The scale and a north arrow; and
- (12) The pipe diameter, date of installation, type of material, distance between manholes, and the direction of flow.

e. Sewer System Operation and Maintenance Plan

The Permittee and Co-permittee(s) shall continue to update and implement a *Sewer System Operation and Maintenance Plan* it has previously submitted to EPA and the State for the portion of the system it owns. The Plan shall be available for review by federal, state and local agencies as requested. The Plan shall include:

- (1) A description of the collection system management goals, staffing, information management, and legal authorities;
- (2) A description of the collection system and the overall condition of the collection system including a list of all pump stations and a description of recent studies and construction activities;
- (3) A preventive maintenance and monitoring program for the collection system;
- (4) Description of sufficient staffing necessary to properly operate and maintain the sanitary sewer collection system and how the operation and maintenance program is staffed;
- (5) Description of funding, the source(s) of funding and provisions for funding sufficient for implementing the plan;

- (6) Identification of known and suspected overflows and back-ups, including manholes. A description of the cause of the identified overflows and back-ups, corrective actions taken, and a plan for addressing the overflows and back-ups consistent with the requirements of this permit;
- (7) A description of the Permittee's programs for preventing I/I related effluent violations and all unauthorized discharges of wastewater, including overflows and by-passes and the ongoing program to identify and remove sources of I/I. The program shall include an inflow identification and control program that focuses on the disconnection and redirection of illegal sump pumps and roof down spouts;
- (8) An educational public outreach program for all aspects of I/I control, particularly private inflow; and
- (9) An Overflow Emergency Response Plan to protect public health from overflows and unanticipated bypasses or upsets that exceed any effluent limitation in the permit.

2. Annual Reporting Requirement

The Permittee and Co-permittee(s) shall submit a summary report of activities related to the implementation of its O&M Plans during the previous calendar year. The report shall be submitted to EPA and the State annually by March 31 (as an electronic attachment to the DMR). The summary report shall, at a minimum, include:

- a. A description of the staffing levels maintained during the year;
- b. A map and a description of inspection and maintenance activities conducted and corrective actions taken during the previous year (including any related to reducing I/I);
- c. Expenditures for any collection system maintenance activities and corrective actions taken during the previous year (including any related to reducing I/I);
- d. A map with areas identified for investigation/action in the coming year;
- e. A summary of unauthorized discharges during the past year and their causes and a report of any corrective actions taken as a result of the unauthorized discharges reported pursuant to the Unauthorized Discharges section of this permit;
- f. If the average annual flow in the previous calendar year exceeded 80 percent of the facility's 29.7 MGD design flow (23.76 MGD), or there have been capacity related

overflows, the report shall include:

- (1) Plans for further potential flow increases describing how the Permittee will maintain compliance with the flow limit and all other effluent limitations and conditions; and
- (2) A calculation of the maximum daily, weekly, and monthly infiltration and the maximum daily, weekly, and monthly inflow for the reporting year.

D. ALTERNATE POWER SOURCE

In order to maintain compliance with the terms and conditions of this permit, the Permittee and Co-permittee(s) shall provide an alternative power source(s) sufficient to operate the portion of the publicly owned treatment works it owns and operates, as defined in Part II.E.1 of this permit.

E. INDUSTRIAL USERS AND PRETREATMENT PROGRAM

1. Legal Authority

The Permittee has been delegated primary responsibility for enforcing against discharges prohibited by 40 CFR 403.5 and applying and enforcing any national Pretreatment Standards established by the United States Environmental Protection Agency in accordance with Section 307 (b) and (c) of The Clean Water Act (Act), as amended by The Water Quality Act (WQA), of 1987.

The Permittee shall operate an industrial pretreatment program in accordance with the General Pretreatment Regulations found in 40 CFR Part 403 and the approved pretreatment program submitted by the Permittee. The pretreatment program was approved on **September 26, 1985** and has subsequently incorporated substantial modifications as approved by EPA. The approved pretreatment program, and any approved modifications thereto, is hereby incorporated by reference and shall be implemented in a manner consistent with the following procedures, as required by 40 CFR Part 403.

The Permittee must have or develop a legally enforceable municipal code or rules and regulations to authorize or enable the POTW to apply and enforce the requirements of Sections 307(b) and (c) and 402(b)(8) and (9) of the Act and comply with the requirements of § 403.8(f)(1). At a minimum, this legal authority shall enable the POTW to:

- a. Deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTW by Industrial Users where such contributions do not meet applicable Pretreatment Standards and Requirements or where such contributions would cause the POTW to violate its NPDES permit;
- b. Require compliance with applicable Pretreatment Standards and Requirements

by Industrial Users;

- c. Control through Permit, order, or similar means, the contribution to the POTW by each Industrial User to ensure compliance with applicable Pretreatment Standards and Requirements. In the case of Industrial Users this control shall be achieved through permits or equivalent control mechanism identified as significant under § 403.3(v), as required by § 403.8(f)(1)(iii);
- d. Require (a) the development of a compliance schedule by each Industrial User for the installation of technology required to meet applicable Pretreatment Standards and Requirements and (b) the submission of all notices and self-monitoring reports from Industrial Users as are necessary to assess and assure compliance by Industrial Users with Pretreatment Standards and Requirements, including but not limited to the reports required in § 403.12;
- e. Carry out all inspection, surveillance and monitoring procedures necessary to determine, independent of information supplied by Industrial Users, compliance or noncompliance with applicable Pretreatment Standards and Requirements by Industrial Users. At a minimum, all significant industrial users shall be sampled and inspected at the frequency established in the approved IPP, but in no case less than once per year, and with adequate maintenance of records, Representatives of the POTW shall be authorized to enter any premises of any Industrial User in which a Discharge source or treatment system is located or in which records are required to be kept under § 403.12(o) to assure compliance with Pretreatment Standards. Such authority shall be at least as extensive as the authority provided under section 308 of the Act;
- f. Obtain remedies for noncompliance by any Industrial User with any Pretreatment Standard and Requirement. All POTW's shall be able to seek injunctive relief for noncompliance by Industrial Users with Pretreatment Standards and Requirements. All POTWs shall also have authority to seek or assess civil or criminal penalties in at least the amount of \$1,000 a day for each violation by Industrial Users of Pretreatment Standards and Requirements in accordance with § 403.8(f)(1)(vi)(A); and
- g. Comply with the confidentiality requirements set forth in § 403.14.

2. Implementation Requirements

The Permittee shall operate a pretreatment program in accordance with the General Pretreatment Regulations found in 40 CFR Part 403 and with the legal authorities, policies, procedures, and financial provisions of the approved Pretreatment program submitted by the Permittee. The approved Pretreatment program, and any approved modifications

thereto, is hereby incorporated by reference and shall be implemented in a manner consistent with the following procedures, as required by 40 CFR Part 403:

- a. In accordance with 40 CFR § 122.44(j)(1), Identify, in terms of character and volume of pollutants contributed from Industrial Users discharging into the POTW subject to Pretreatment Standards under section 307(b) of CWA and 40 CFR Part 403.
- b. The Permittee must notify these identified Industrial Users of applicable Pretreatment Standards and any applicable requirements in accordance with 40 CFR § 403.8(f)(2)(iii). Pursuant to 40 CFR § 403.8(f)(6), prepare and maintain a list of significant industrial users and identify the criteria in 40 CFR § 403.3(v)(1) applicable to each industrial user.
- c. The Permittee must carry out inspection procedures and randomly sample and analyze the effluent from Industrial Users and conduct surveillance activities in accordance with 40 CFR § 403.8(f)(2)(v), which will determine independent of information supplied by the industrial user, whether the industrial user is in compliance with the Pretreatment Standards. At a minimum, all significant industrial users shall be sampled and inspected at the frequency established in the approved IPP but in no case less than once per year and maintain adequate records.
- d. The Permittee shall receive and analyze self-monitoring reports and other notices submitted by Industrial Users in accordance with the self-monitoring requirements in 40 CFR § 403.12; This must include timely and appropriate reviews of industrial user reports and notifications to identify all violations of the user's permit, the local ordinance, and federal pretreatment standards and requirements.
- e. The Permittee shall evaluate whether each SIU needs a plan to control Slug Discharges in accordance with 40 CFR § 403.8(f)(2)(vi). SIUs must be evaluated within 1 year of being designated an SIU. If required, the Permittee shall require the SIU to prepare or update, and implement a slug prevention plan that contains at least the minimum required elements in 40 CFR § 403.8(f)(2)(vi)(A-D) and incorporate the slug control requirements into the SIU's control mechanism;
- f. Pursuant to 40 CFR § 403.8(f)(2)(vii), the Permittee shall investigate instances of non-compliance with Pretreatment Standards and requirements indicated in required reports and notices or indicated by analysis, inspection, and surveillance activities.

- g. The Permittee shall publish, at least annually, in a newspaper or newspapers of general circulation that provides meaningful public notice within the jurisdiction(s) served by the POTW, a list of all non-domestic users which, at any time in the previous 12 months, were in significant noncompliance as defined in 40 CFR § 403.8 (f)(2)(viii).
- h. The Permittee shall provide sufficient resources and qualified personnel to implement its Pretreatment program in accordance with 40 CFR § 403.8(f)(3);
- i. The Permittee shall enforce all applicable Pretreatment Standards and requirements and obtain remedies for noncompliance by any industrial user. The Permittee shall develop, implement, and maintain an enforcement response plan in accordance with 40 CFR § 403.8(f)(5); and
- j. Pursuant to 40 CFR § 403.8(g), the Permittee that chooses to receive electronic documents must satisfy the requirements of 40 CFR Part 3 – (Electronic reporting).

3. Local Limit Development

- a. Pollutants introduced into the POTW or facility by a non-domestic source (user) shall not pass through the POTW or facility or interfere with the operation or performance of the works. The Permittee shall develop, continually maintain, and enforce, as necessary, local limits to implement the general and specific prohibitions in 40 CFR § 403.5(c)(1) which prohibit the introduction of any pollutant(s) which cause pass through or interference and the introduction of specific pollutants to the waste treatment system from any source of non-domestic discharge.
- b. The Permittee shall develop and enforce specific effluent limits (local limits) for Industrial User(s), and all other users, as appropriate, which together with appropriate changes in the POTW Treatment Plant's Facilities or operation, are necessary to ensure continued compliance with the POTW's NPDES permit or sludge use or disposal practices. Specific local limits shall not be developed and enforced without individual notice to persons or groups who have requested such notice and an opportunity to respond. Within 90 days of the effective date of the permit, the Permittee shall prepare and submit a written technical evaluation to EPA analyzing the need to revise local limits. As part of this evaluation, the Permittee shall assess how the POTW performs with respect to influent and effluent of pollutants, water quality concerns, sludge quality, sludge processing concerns/inhibition, biomonitoring results, activated sludge inhibition, worker health and safety and collection system concerns. In preparing this evaluation, the Permittee shall complete and submit the attached form (see

Attachment B – Reassessment of Technically Based Industrial Discharge Limits) with the technical evaluation to assist in determining whether existing local limits need to be revised. Justifications and conclusions should be based on actual plant data if available and should be included in the report. Should the evaluation reveal the need to revise local limits, the Permittee shall complete the revisions within 18 months of notification by EPA and submit the revisions to EPA for approval. The Permittee shall carry out the local limits revisions in accordance with EPA's Local Limit Development Guidance (July 2004).

4. Notification Requirements

- a. The Permittee must notify EPA within 60 days of the introduction of new pollutants from any new SIUs, new connections at a permitted SIU, or any amendment to an existing SIU permit. All other new permits will be reported in the annual pretreatment report, as required in 40 CFR 122.42(b)(1-3). Such notice must identify:
 - (1) Any new introduction of pollutants from an Industrial User which would be subject to Sections 301, 306, and 307 of the Act if it were directly discharging those pollutants; or
 - (2) Any substantial change in the volume or character of pollutants being discharged by any Industrial User;
 - (3) For the purposes of this section, adequate notice shall include information on:
 - i. The identity of the Industrial User;
 - ii. The nature and concentration of pollutants in the discharge and the average and maximum flow of the discharge; and
 - iii. Any anticipated impact of the change on the quantity or quality of effluent to be discharged from or biosolids produced at such POTW.
- b. The Permittee must notify EPA as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required when:
 - (1) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source pursuant to 40 CFR § 122.29 (b);
 - (2) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged; or
 - (3) The alteration or addition results in a significant change in the Permittee's

sludge use or disposal practices.

- c. The Permittee must notify EPA if the POTW modifies or intends to modify its Pretreatment Program.
- d. The Permittee must notify EPA of any instance of pass through or interference, known or suspected to be related to a discharge from an Industrial User. The notification shall be attached to the DMR submitted EPA and shall describe the incident, including the date, time, length, cause, and the steps taken by the Permittee and Industrial User to address the incident.
- e. The Permittee shall notify all Industrial Users of the users' obligations to comply with applicable requirements under Subtitles C and D of the Resource Conservation and Recovery Act (RCRA) and that Industrial Users shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical as well as their obligation to notify the EPA Regional Waste Management Division Director, in writing of any discharge into the POTW of a substance, which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. Such notification must include:
 - (1) the name of the hazardous waste as set forth in 40 CFR Part 261;
 - (2) the EPA hazardous waste number; and
 - (3) the type of discharge (continuous, batch, or other).

5. Annual Report Requirements

The Permittee shall provide EPA with an annual report that briefly describes the POTW's program activities, including activities of all participating agencies, if more than one jurisdiction is involved in the local program. The report required by this section shall be submitted no later than one year after approval of the POTW's Pretreatment Program, and at least annually thereafter. The report must include, at a minimum, the applicable required data in Appendix A to 40 CFR Part 127, a summary of changes to the POTW's pretreatment program that have not been previously reported to EPA, and any other relevant information requested by EPA. Beginning on March 1, 2025 all annual reports submitted in compliance with this section must be submitted electronically by the POTW Pretreatment Program to EPA or initial recipient, as defined in 40 CFR § 127.2(b). Electronic submittals shall be in compliance with this section and 40 CFR Part 3 (including, in all cases, subpart D to Part 3), 40 CFR § 122.22(e), and 40 CFR Part 127 (Part 127 is not intended to undo existing requirements for electronic reporting). Prior to this date, and independent of 40 CFR Part 127, EPA may also require POTW Pretreatment Programs to electronically submit annual

reports under this section if specified by a particular permit or if required to do so by state law.

The Permittee shall provide EPA with an annual report describing the Permittee's pretreatment program activities for the twelve (12) month period ending 60 days prior to the due date in accordance with 40 CFR § 403.12(i). The annual report shall be consistent with the format described in Attachment C (NPDES Permit Requirement for Industrial Pretreatment Annual Report) of this permit and shall be submitted by **March 15** of each year.

6. Beginning the first full calendar quarter following 6 months after the effective date of the permit, the Permittee shall collect or require annual sampling each calendar year for the following types of industrial discharges into the POTW:

- Commercial Car Washes
- Platers/Metal Finishers
- Paper and Packaging Manufacturers
- Tanneries and Leather/Fabric/Carpet Treaters
- Manufacturers of Parts with Polytetrafluoroethylene (PTFE) or teflon type coatings (*e.g.*, bearings)
- Landfill Leachate
- Centralized Waste Treaters
- Known or Suspected PFAS Contaminated Sites
- Fire Fighting Training Facilities
- Airports
- Any Other Known or Expected Sources of PFAS

Sampling shall be conducted using Method 1633 for the PFAS analytes listed in Attachment C. The industrial discharges sampled, and the sampling results shall be summarized and included in the annual report (see Part I.E.5).

F. SLUDGE CONDITIONS

1. The Permittee shall comply with all existing federal and state laws and regulations that apply to sewage sludge use and disposal practices, including EPA regulations promulgated at 40 CFR § 503, which prescribe “Standards for the Use or Disposal of Sewage Sludge” pursuant to § 405(d) of the CWA, 33 U.S.C. § 1345(d).
2. If both state and federal requirements apply to the Permittee’s sludge use and/or disposal practices, the Permittee shall comply with the more stringent of the applicable requirements.
3. The requirements and technical standards of 40 CFR Part 503 apply to the following sludge use or disposal practices:

- a. Land application - the use of sewage sludge to condition or fertilize the soil
 - b. Surface disposal - the placement of sewage sludge in a sludge only landfill
 - c. Sewage sludge incineration in a sludge only incinerator
4. The requirements of 40 CFR Part 503 do not apply to facilities which dispose of sludge in a municipal solid waste landfill. 40 CFR § 503.4. These requirements also do not apply to facilities which do not use or dispose of sewage sludge during the life of the permit but rather treat the sludge (e.g., lagoons, reed beds), or are otherwise excluded under 40 CFR § 503.6.
5. The 40 CFR Part 503 requirements include the following elements:
- a. General requirements
 - b. Pollutant limitations
 - c. Operational Standards (pathogen reduction requirements and vector attraction reduction requirements)
 - d. Management practices
 - e. Record keeping
 - f. Monitoring
 - g. Reporting

Which of the 40 CFR Part 503 requirements apply to the Permittee will depend upon the use or disposal practice followed and upon the quality of material produced by a facility.

6. The sludge shall be monitored for pollutant concentrations (all Part 503 methods) and pathogen reduction and vector attraction reduction (land application and surface disposal) at the following frequency. This frequency is based upon the volume of sewage sludge generated at the facility in dry metric tons per year, as follows:

less than 290	1/ year
290 to less than 1,500	1 /quarter
1,500 to less than 15,000	6 /year
15,000 +	1 /month

Sampling of the sewage sludge shall use the procedures detailed in 40 CFR § 503.8.

7. Under 40 CFR § 503.9(r), the Permittee is a “person who prepares sewage sludge” because it “is ... the person who generates sewage sludge during the treatment of domestic sewage

in a treatment works” If the Permittee contracts with another “person who prepares sewage sludge” under 40 CFR § 503.9(r) – i.e., with “a person who derives a material from sewage sludge” – for use or disposal of the sludge, then compliance with Part 503 requirements is the responsibility of both the Permittee and the contractor engaged for that purpose. If the Permittee does not engage a “person who prepares sewage sludge,” as defined in 40 CFR § 503.9(r), for use or disposal, then the Permittee remains responsible to ensure that the applicable requirements in Part 503 are met. 40 CFR § 503.7. If the ultimate use or disposal method is land application, the Permittee is responsible for providing the person receiving the sludge with notice and necessary information to comply with the requirements of 40 CFR § 503 Subpart B.

8. The Permittee shall submit an annual report containing the information specified in the 40 CFR Part 503 requirements (§ 503.10 (land application), § 503.20 (surface disposal), or § 503.40 (incineration)) by February 19 (see also “EPA Region 1 - NPDES Permit Sludge Compliance Guidance”). Reports shall be submitted electronically using EPA’s Electronic Reporting tool (“NeTBIO”) (see “Reporting Requirements” section below).

G. SPECIAL CONDITIONS

1. Ambient Monitoring

The permittee shall conduct periodic, annual ambient water quality monitoring at one station in Salem Sound.

a. Ambient Monitoring Plan

Within 180 days of the effective date of the Permit, the Permittee shall submit an Ambient Monitoring Plan to EPA and MassDEP. The plan shall consist of the following elements, at a minimum:

(1) Sampling Location

Ambient monitoring shall be conducted one sampling location. The station is located at latitude 42.51919° N, longitude 70.8065° W, which is located in Salem Sound and adjacent to Massachusetts Bay.

(2) Sampling Dates

Sampling shall be conducted nine times per year according to Table 1 below. These dates are consistent with other ambient sampling efforts in Massachusetts Bay.

Table 1: Sampling Dates

When	Target Week	Purpose
Early April	15	Later winter/spring bloom nutrients
Mid-May	20	Nutrient/water column conditions at the end of winter/spring
Mid-June	25	Early summer stratification and nutrients
Mid-July	30	Mid-summer stratification and nutrients
Mid-August	34	Mid-summer stratification and nutrients
September	38	Nutrients, etc. prior to overturn

(3) Monitoring Parameters

Ambient monitoring shall include monitoring of the parameters in Table 2.

Table 2: Monitoring Parameters

ANALYTE	DEPTH	PARAMETER
Hydro profile	Downcast data continuous, with upcast data at any sampled depth	Temperature pH Salinity Dissolved Oxygen Chlorophyll fluorescence Turbidity (or Transmissometry) PAR/Irradiance Depth of sensors
Water Chemistry	Three depths. Surface chlorophyll maximum and bottom.	Ammonium Nitrate Nitrite Total dissolved nitrogen Particulate nitrogen Phosphate Total dissolved phosphorus Particulate phosphorus Silicate Particulate organic carbon Chlorophyll-a
Phytoplankton	Near surface and chlorophyll maximum	Identification Enumeration
Zooplankton	Net Tow	Identification Enumeration

b. Quality Assurance Project Plan (QAPP)

Within 90 days from the from the approval of the Ambient Monitoring Plan, the Permittee shall prepare and submit a Quality Assurance Project Plan (QAPP) for the implementing the Ambient Monitoring Plan. The QAPP shall be submitted for MassDEP review and approval.

Additional information on the MassDEP QAPP Submittal and Approval Process can be found at: <https://www.mass.gov/doc/qapp-submittal-and-approval-process/download>.

No sampling shall take place until the QAPP has been approved. The Permittee shall begin sampling in the first February following the approval of the QAPP.

c. Annual Summary Report

The results of all monitoring required by the Ambient Monitoring Plan shall be reported to EPA and MassDEP on an annual basis by November 15th of the following year (e.g. An annual report for 2025 sampling results is due November 15, 2026). The recommended content, which is consistent with MassDEP external data submittal requirements, is as follows:

- (1) Cover letter. Provide a brief cover letter explaining what data are being submitted, project contact person(s), and a statement that the approved project QAPP was followed in generating the data.
- (2) Cover page. include project name/title, lead organization, author(s) and report date.
- (3) Introduction. Provide background information related to the monitoring, such as funding source(s), water quality-related issues of concern and objectives of the monitoring.
- (4) Methods Used. List all field and lab methods that were employed during the project. Reference Standard Methods, EPA, group SOPs, etc. as appropriate.
- (5) Locations Sampled. Provide detailed sampling station maps/tables showing or describing precise locations where samples were taken. If possible, include precise latitude-longitude coordinates.
- (6) Results. Provide tabular field measurement data and laboratory data, including that for quality control samples, in a clear and organized format. Include raw laboratory data reports, completed field sheets and completed chain-of-custody forms in appendices. Also provide important metadata, such as sample collection dates/times, analysis dates/times, exact station location descriptions, sample ID numbers, analytical method used with method

detection limits (MDLs) and reporting detection limits (RDLs), weather, field observations and measurement units.

- (7) Quality assurance, quality control and data validation (in main report or in an appendix). Discuss the extent to which the QAPP was implemented (e.g., were there any deviations from the approved QAPP? And if so, what were they, and what are the implications of the change(s), if any?). Consider including the following information in the QA/QC section of the report.

- Current contact information for project personnel, including project manager, quality control officer and database manager
- Type and number of QC samples taken during the project (e.g., field blanks, duplicates, etc.)
- QC results and discussion of both field and laboratory quality control sample results (including overall precision of field duplicates (as relative percent difference, or RPD), blank contamination (if any), analytical accuracy for known PE samples (if any), holding time exceedances, etc.)
- QC evaluation for any field or lab audits that may have been done
- Type, extent and dates of actual field equipment calibration and maintenance (with supporting documentation as appropriate)
- Discussion of how data validation process was implemented and how the results of validation affected the project data (e.g., were data quality objectives (DQOs) met, as outlined in the QAPP; were any identified QC problems applied to whole survey samples and/or analytical sample batches). Also, what were the specific data validation steps performed to accept, qualify, and censor project data. List data qualifier symbols used, if any (e.g., "J" for 'estimated' by laboratory).
- Data completeness (i.e., any missing data)
- Database management system employed
- Other project information as they may have affected sample data and lab QC data

- (8) Discussion. Data analyses and discussion of results can provide important information that should be included in the reports. Although EPA and MassDEP is mainly interested in the quality-assured tabular data, graphic displays of the data can also be helpful.

- (9) Conclusion(s). Summarize findings and provide recommendations for additional monitoring and/or remedial actions to improve water quality

- (10) Appendices. Include complete set or example completed copies of relevant appendices for raw laboratory data and raw field data (including survey dates), completed field sheets and completed sample chain-of-custody forms, as well as any other relevant documentation.

d. Data Submission

By November 15 of each year, the Permittee shall submit the previous year's ambient monitoring data to EPA and MassDEP using EPA's WQX online database.

Permittees should follow the process on MassDEP's website:

<https://www.mass.gov/guides/external-data-submittals-to-the-watershed-planning-program>. The following should be included with each submission:

- (1) Cover letter/email
- (2) Data files via EPA's WQX online database

Use the email address: WQData.Submit@mass.gov to notify DWM-WPP when data has been submitted. Please include with the notification email: a brief list of the data submitted, a copy of the approved QAPP (or cite title and approval date), all quality-control data that was not included in the WQX submission (e.g., field duplicates, blanks, instrument calibration check results).

- (3) Statement of Data Integrity

See <https://www.mass.gov/doc/statement-of-integrity/download>

- (4) Electronic copy of approved QAPP

2. Best Management Practices for Outfall

The Permittee shall operate the outfall according to the best management practices below:

- a. The outfall shall be maintained to ensure proper operation. Proper operation means that the outfall pipe and diffuser be intact, operating as designed, and have unobstructed flow. Maintenance may include dredging in the vicinity of the outfall, removal of solids/debris in the outfall, and repair/replacement.
- b. To determine if maintenance will be required, the Permittee shall inspect and videotape the operation of the outfall either remotely or using a qualified diver or marine contractor. At a minimum, the inspections and videotaping shall be performed once every five years with the first inspection occurring within twelve (12) months of the effective date of the permit. EPA and MassDEP shall be contacted at least seven days prior to a dive inspection.
- c. Any necessary maintenance dredging must be performed only during the marine construction season authorized by the Massachusetts Department of Marine Fisheries and only after receiving all necessary permits from the Massachusetts

Department of Environmental Protection, U.S. Coast Guard, U.S. Army Corps of Engineers, and other appropriate agencies.

- d. Copies of reports summarizing the results of each outfall inspection shall be submitted to EPA and MassDEP within 60 days of each inspection. Where it is determined that maintenance will be necessary, the Permittee shall provide the proposed schedule for the maintenance.

3. Notification of Massachusetts Division of Marine Fisheries

The Permittee shall notify the Massachusetts Division of Marine Fisheries within 4 hours of becoming aware of any emergency condition, plant upset, bypass, SSO discharges or other system failure which has the potential to violate bacteria permit limits and within 24 hours of becoming aware of a permit excursion or plant failure. The notification shall be sent to the following telephone number and email:

Division of Marine Fisheries
Shellfish Sanitation and Management Program
30 Emerson Avenue
Gloucester, MA 01930
(978) 282-0308
dmr.shellfish@mass.gov

4. Model or Dye Study

In the fifth year of this permit term, the Permittee must conduct a new model or dye study to determine a defensible dilution factor for their discharge. Each Permittee should coordinate with EPA and MassDEP in advance of conducting the model or dye study to confirm an appropriate methodology for this model or dye study. The results of this model or dye study must be submitted to EPA and MassDEP by the expiration date of the Final Permit.

H. REPORTING REQUIREMENTS

Unless otherwise specified in this permit, the Permittee shall submit reports, requests, and information and provide notices in the manner described in this section.

1. Submittal of DMRs Using NetDMR

The Permittee shall continue to submit its monthly monitoring data in discharge monitoring reports (DMRs) to EPA and the State electronically using NetDMR no later than the 15th day of the month. When the Permittee submits DMRs using NetDMR, it is not required to submit hard copies of DMRs to EPA or the State. NetDMR is accessible through EPA's Central Data Exchange at <https://cdx.epa.gov/>.

2. Submittal of Reports as NetDMR Attachments

Unless otherwise specified in this permit, the Permittee and Co-permittee(s) shall electronically submit all reports to EPA as NetDMR attachments rather than as hard copies. See Part I.H.7. for more information on State Reporting. Because the due dates for reports described in this permit may not coincide with the due date for submitting DMRs (which is no later than the 15th day of the month), a report submitted electronically as a NetDMR attachment shall be considered timely if it is electronically submitted to EPA using NetDMR with the next DMR due following the report due date specified in this permit.

3. Submittal of Industrial User and Pretreatment Related Reports

All reports and information required of the Permittee in the Industrial Users and Pretreatment Program section of this permit shall be submitted electronically as NetDMR attachments and/or using EPA's NPDES Electronic Reporting Tool ("NeT"), or another approved EPA system, which will be accessible through EPA's Central Data Exchange at <https://cdx.epa.gov/>. These requests, reports and notices include:

- (a) Annual Pretreatment Reports,
- (b) Pretreatment Reports Reassessment of Technically Based Industrial Discharge Limits Form,
- (c) Revisions to Industrial Discharge Limits,
- (d) Report describing Pretreatment Program activities, and
- (e) Proposed changes to a Pretreatment Program

4. Submittal of Biosolids/Sewage Sludge Reports

By February 19 of each year, the Permittee must electronically report their annual Biosolids/Sewage Sludge Report for the previous calendar year using EPA's NPDES Electronic Reporting Tool ("NeTBIO"), which is accessible through EPA's Central Data Exchange at <https://cdx.epa.gov/>.

5. Submittal of Requests and Reports to EPA Water Division (WD)

The following requests, reports, and information described in this permit shall be submitted to the NPDES Applications Coordinator in EPA Water Division (WD) electronically at R1NPDESReporting@epa.gov:

- (a) Transfer of permit notice;

- (b) Request for changes in sampling location;
- (c) Request for reduction in testing frequency;
- (d) Report on unacceptable dilution water / request for alternative dilution water for WET testing.

6. Submittal of Sewer Overflow and Bypass Reports and Notifications

The Permittee and Co-permittee(s) shall submit required reports and notifications under Part II.B.4.c, for bypasses, and Part II.D.1.e, for sanitary sewer overflows (SSOs) electronically using EPA's NPDES Electronic Reporting Tool ("NeT"), which will be accessible through EPA's Central Data Exchange at <https://cdx.epa.gov/>.

Region 1 will notify the Permittee and Co-permittees when an episodic waiver from electronic reporting is in effect. Region 1 may need to issue such episodic waivers in response to large scale emergencies involving catastrophic circumstances beyond the control of the Permittee and Co-permittees (e.g., floods) as well as prolonged electronic reporting system outages (i.e., outages longer than 96 hours). In accordance with 40 CFR 127.15(d)(4), this notification will include instructions on whether the Permittee, CSO-responsible Co-permittees and Co-permittees should delay their electronic submissions through NeT- SewerOverflow or if the Permittee, and Co-permittees should make a hardcopy (paper) submission of their sewer overflow and bypass event reports to Region 1.

7. State Reporting

Duplicate signed copies of all WET test reports shall be submitted to the Massachusetts Department of Environmental Protection, Division of Watershed Management, at the following address:

**Massachusetts Department of Environmental Protection
Bureau of Water Resources
Division of Watershed Management
8 New Bond Street
Worcester, Massachusetts 01606**

8. Verbal Reports and Verbal Notifications

- a. Any verbal reports or verbal notifications, if required in Parts I and/or II of this permit, shall be made to both EPA and to the State. This includes verbal reports and notifications which require reporting within 24 hours (e.g., Part II.B.4.c.(2), Part II.B.5.c.(3), and Part II.D.1.e).

- b. Verbal reports and verbal notifications shall be made to:

**EPA ECAD at 617-918-1510
and
MassDEP Emergency Response at 888-304-1133**

I. STATE 401 CERTIFICATION CONDITIONS

1. Pursuant to M.G.L. c. 21, §§ 26-53, and 314 CMR 3.00 and 4.00, including 314 CMR 3.11(2)(a)6., and in order to ensure the maintenance of surface waters free from pollutants in concentrations or combinations that are toxic to humans, aquatic life, or wildlife, in accordance with 314 CMR 4.05(5)(e), MassDEP has determined that it is necessary that beginning the first full calendar quarter following 6 months after the effective date of the final version of the 2025 draft NPDES Permit ("final NPDES Permit"), the Permittee shall collect, or require to be collected, annual samples of discharges from of all Significant Industrial Users discharging into the South Essex Wastewater Treatment Facility Publicly Owned Treatment Works ("POTW") using Method 1633.
2. Notwithstanding any other provision of the final NPDES Permit to the contrary, all PFAS monitoring results (influent; effluent; sludge; SIUs; and specific industries as specified in the final NPDES permit) and Adsorbable Organic Fluorine monitoring results shall be reported to MassDEP via the eDEP portal, or as otherwise specified in writing by MassDEP to the Permittee, within 30 days after the Permittee receives the sampling results, in addition to the final NPDES Permit reporting requirements. Information regarding the submittal of data via eDEP may be found at <https://www.mass.gov/how-to/submit-wastewaterresiduals-pfas-data-via-edep> .
3. Pursuant to M.G.L. c. 21, §§ 26-53, and 314 CMR 3.00 and 4.00, including 314 CMR 3.11(3), 314 CMR 3.19(1), and 314 CMR 4.05, MassDEP has determined that it is necessary to include the following conditions:
 - a. The discharge shall be free from pollutants in concentrations or combinations that settle to form objectionable deposits; float as debris, scum or other matter to form nuisances; produce objectionable odor, color, taste or turbidity; or produce undesirable or nuisance species of aquatic life.
 - b. The discharge shall be free from pollutants in concentrations or combinations that adversely affect the physical or chemical nature of the bottom, interfere with the propagation of fish or shellfish, or adversely affect populations of non-mobile or sessile benthic organisms.
 - c. The discharge shall be free from floating, suspended and settleable solids in concentrations and combinations that would impair any use assigned to the receiving water, that would cause aesthetically objectionable conditions, or that would impair the benthic biota or degrade the chemical composition of the bottom.

- d. The discharge shall be free from color and turbidity in concentrations or combinations that are aesthetically objectionable or would impair any use assigned to the receiving water.
- e. The discharge shall be free from oil, grease and petrochemicals that produce a visible film on the surface of the receiving water, impart an oily taste to the edible portions of aquatic life, coat the banks or bottom of the water course, or are deleterious or become toxic to aquatic life.
- f. The discharge shall be free from taste and odor in such concentrations or combinations that are aesthetically objectionable, that would impair any use assigned to the receiving water, or that would cause tainting or undesirable flavors in the edible portions of aquatic life.
- g. The discharge shall be free from pollutants in concentrations or combinations that are toxic to humans, aquatic life or wildlife.

MARINE ACUTE TOXICITY TEST PROCEDURE AND PROTOCOL

I. GENERAL REQUIREMENTS

The permittee shall conduct acceptable acute toxicity tests in accordance with the appropriate test protocols described below:

- **2007.0 - Mysid Shrimp (Americamysis bahia) definitive 48 hour test.**
- **2006.0 - Inland Silverside (Menidia beryllina) definitive 48 hour test.**

Acute toxicity data shall be reported as outlined in Section VIII.

II. METHODS

The permittee shall use the most recent 40 CFR Part 136 methods. Whole Effluent Toxicity (WET) Test Methods and guidance may be found at:

<https://www.epa.gov/cwa-methods/whole-effluent-toxicity-methods>

The permittee shall also meet the sampling, analysis and reporting requirements included in this protocol. This protocol defines more specific requirements while still being consistent with the Part 136 methods. If, due to modifications of Part 136, there are conflicting requirements between the Part 136 method and this protocol, the permittee shall comply with the requirements of the Part 136 method.

III. SAMPLE COLLECTION

A discharge and receiving water sample shall be collected. The receiving water control sample must be collected immediately upstream of the permitted discharge's zone of influence. The acceptable holding times until initial use of a sample are 24 and 36 hours for on-site and off-site testing, respectively. A written waiver is required from the regulating authority for any holding time extension. Sampling guidance dictates that, where appropriate, aliquots for the analysis required in this protocol shall be split from the samples, containerized and immediately preserved, or analyzed as per 40 CFR Part 136. EPA approved test methods require that samples collected for metals analyses be preserved immediately after collection. Testing for the presence of total residual chlorine¹ (TRC) must be analyzed immediately or as soon as possible, for all effluent samples, prior to WET testing. TRC analysis may be performed on-site or by the toxicity testing laboratory and the samples must be dechlorinated, as necessary, using sodium thiosulfate

¹ For this protocol, total residual chlorine is synonymous with total residual oxidants.

prior to sample use for toxicity testing. If performed on site the results should be included on the chain of custody (COC) presented to WET laboratory.

Standard Methods for the Examination of Water and Wastewater describes dechlorination of samples (APHA, 1992). Dechlorination can be achieved using a ratio of 6.7 mg/L anhydrous sodium thiosulfate to reduce 1 mg/L chlorine. If dechlorination is necessary, a thiosulfate control consisting of the maximum concentration of thiosulfate used to dechlorinate the sample in the toxicity test control water must also be run in the WET test.

All samples submitted for chemical and physical analyses will be analyzed according to Section VI of this protocol. Grab samples must be used for pH, temperature, and total residual chlorine (as per 40 CFR Part 122.21).

All samples held for use beyond the day of sampling shall be refrigerated and maintained at a temperature range of 0-6° C.

IV. DILUTION WATER

Samples of receiving water must be collected from a reasonably accessible location in the receiving water body immediately upstream of the permitted discharge's zone of influence. Avoid collection near areas of obvious road or agricultural runoff, storm sewers or other point source discharges and areas where stagnant conditions exist. EPA strongly urges that screening for toxicity be performed prior to the set up of a full, definitive toxicity test any time there is a question about the test dilution water's ability to achieve test acceptability criteria (TAC) as indicated in Section V of this protocol. The test dilution water control response will be used in the statistical analysis of the toxicity test data. All other control(s) required to be run in the test will be reported as specified in the Discharge Monitoring Report (DMR) Instructions, Attachment F, page 2, Test Results & Permit Limits.

The test dilution water must be used to determine whether the test met the applicable TAC. When receiving water is used for test dilution, an additional control made up of standard laboratory water (0% effluent) is required. This control will be used to verify the health of the test organisms and evaluate to what extent, if any, the receiving water itself is responsible for any toxic response observed.

If dechlorination of a sample by the toxicity testing laboratory is necessary a "sodium thiosulfate" control, representing the concentration of sodium thiosulfate used to adequately dechlorinate the sample prior to toxicity testing, must be included in the test.

If the use of alternate dilution water (ADW) is authorized, in addition to the ADW test control, the testing laboratory must, for the purpose of monitoring the receiving water, also run a receiving water control.

If the receiving water is found to be, or suspected to be toxic or unreliable, ADW of known quality with hardness similar to that of the receiving water may be substituted. Substitution is

species specific meaning that the decision to use ADW is made for each species and is based on the toxic response of that particular species. Substitution to an ADW is authorized in two cases. The first case is when repeating a test due to toxicity in the site dilution water requires an **immediate decision** for ADW use by the permittee and toxicity testing laboratory. The second is when two of the most recent documented incidents of unacceptable site dilution water toxicity require ADW use in future WET testing.

For the second case, written notification from the permittee requesting ADW use **and** written authorization from the permit issuing agency(s) is required **prior to** switching to a long-term use of ADW for the duration of the permit.

Written requests for use of ADW with supporting documentation must be sent electronically to the NPDES Applications Coordinator in EPA Water Division (WD) at the following email address:

R1NPDESReporting@epa.gov

Note: USEPA Region 1 retains the right to modify any part of the alternate dilution water policy stated in this protocol at any time. Any changes to this policy will be documented in the annual DMR posting.

See the EPA Region 1 website at: www.epa.gov/aboutepa/epa-region-1-new-england (click on NPDES, EPA Permit Attachments, Self-Implementing Alternate Dilution Water Guidance) for important details on alternate dilution water substitution requests.

V. TEST CONDITIONS AND TEST ACCEPTABILITY CRITERIA

EPA Region 1 requires tests be performed using four replicates of each control and effluent concentration because the non-parametric statistical tests cannot be used with data from fewer replicates. The following tables summarize the accepted Americamysis and Menidia toxicity test conditions and test acceptability criteria:

EPA NEW ENGLAND EFFLUENT TOXICITY TEST CONDITIONS FOR THE MYSID, AMERICAMYSIS BAHIA 48 HOUR TEST¹

1. Test type	48hr Static, non-renewal
2. Salinity	25ppt $\pm$ 10 percent for all dilutions by adding dry ocean salts
3. Temperature (°C)	20°C $\pm$ 1°C or 25°C $\pm$ 1°C, temperature must not deviate by more than 3°C during test
4. Light quality	Ambient laboratory illumination
5. Photoperiod	16 hour light, 8 hour dark
6. Test chamber size	250 ml (minimum)
7. Test solution volume	200 ml/replicate (minimum)
8. Age of test organisms	1-5 days, <u>< 24 hours age range</u>
9. No. Mysids per test chamber	10
10. No. of replicate test chambers per treatment	4
11. Total no. Mysids per test concentration	40
12. Feeding regime	Light feeding using concentrated <u>Artemia</u> naupli while holding prior to initiating the test
13. Aeration ²	None
14. Dilution water	5-30 ppt, +/- 10%; Natural seawater, or deionized water mixed with artificial sea salts
15. Dilution factor	≥ 0.5
16. Number of dilutions ³	5 plus a control. An additional dilution at the permitted effluent concentration (%)

effluent) is required if it is not included in the dilution series.

17. Effect measured	Mortality - no movement of body appendages on gentle prodding
18. Test acceptability	90% or greater survival of test organisms in control solution
19. Sampling requirements	For on-site tests, samples are used within 24 hours of the time that they are removed from the sampling device. For off-site tests, samples must be first used within 36 hours of collection.
20. Sample volume required	Minimum 1 liter for effluents and 2 liters for receiving waters

Footnotes:

- ¹ Adapted from EPA 821-R-02-012.
- ² If dissolved oxygen falls below 4.0 mg/L, aerate at rate of less than 100 bubbles/min. Routine D.O. checks are recommended.
- ³ When receiving water is used for dilution, an additional control made up of standard laboratory dilution water (0% effluent) is required.

**EPA NEW ENGLAND TOXICITY TEST CONDITIONS FOR THE INLAND
SILVERSIDE, MENIDIA BERYLLINA 48 HOUR TEST¹**

1. Test Type	48 hr Static, non-renewal
2. Salinity	25 ppt $\pm$ 10 % by adding dry ocean salts
3. Temperature	20°C $\pm$ 1°C or 25°C $\pm$ 1°C, temperature must not deviate by more than 3°C during test
4. Light Quality	Ambient laboratory illumination
5. Photoperiod	16 hr light, 8 hr dark
6. Size of test vessel	250 mL (minimum)
7. Volume of test solution	200 mL/replicate (minimum)
8. Age of fish	9-14 days; 24 hr age range
9. No. fish per chamber	10 (not to exceed loading limits)
10. No. of replicate test vessels per treatment	4
11. Total no. organisms per concentration	40
12. Feeding regime	Light feeding using concentrated <u>Artemia</u> nauplii while holding prior to initiating the test
13. Aeration ²	None
14. Dilution water	5-32 ppt, +/- 10% ; Natural seawater, or deionized water mixed with artificial sea salts.
15. Dilution factor	≥ 0.5
16. Number of dilutions ³	5 plus a control. An additional dilution at the permitted concentration (% effluent) is required if it is not included in the dilution series.
17. Effect measured	Mortality-no movement on gentle prodding.

18. Test acceptability	90% or greater survival of test organisms in control solution.
19. Sampling requirements	For on-site tests, samples must be used within 24 hours of the time they are removed from the sampling device. Off-site test samples must be used within 36 hours of collection.
20. Sample volume required	Minimum 1 liter for effluents and 2 liters for receiving waters.

Footnotes:

- ¹ Adapted from EPA 821-R-02-012.
- ² If dissolved oxygen falls below 4.0 mg/L, aerate at rate of less than 100 bubbles/min. Routine D.O. checks recommended.
- ³ When receiving water is used for dilution, an additional control made up of standard laboratory dilution water (0% effluent) is required.

V.1. Test Acceptability Criteria

If a test does not meet TAC the test must be repeated with fresh samples within 30 days of the initial test completion date.

V.2. Use of Reference Toxicity Testing

Reference toxicity test results and applicable control charts must be included in the toxicity testing report.

In general, if reference toxicity test results fall outside the control limits established by the laboratory for a specific test endpoint, a reason or reasons for this excursion must be evaluated, correction made and reference toxicity tests rerun as necessary as prescribed below.

If a test endpoint value exceeds the control limits at a frequency of more than one out of twenty then causes for the reference toxicity test failure must be examined and if problems are identified corrective action taken. The reference toxicity test must be repeated during the same month in which the exceedance occurred.

If two consecutive reference toxicity tests fall outside control limits, the possible cause(s) for the exceedance must be examined, corrective actions taken and a repeat of the reference toxicity test must take place immediately. Actions taken to resolve the problem must be reported.

V.2.a. Use of Concurrent Reference Toxicity Testing

In the case where concurrent reference toxicity testing is required due to a low frequency of testing with a particular method, if the reference toxicity test results fall slightly outside of laboratory established control limits, but the primary test met the TAC, the results of the primary test will be considered acceptable. However, if the results of the concurrent test fall well outside the established **upper** control limits i.e. ≥ 3 standard deviations for IC25s and LC50 values and $\geq$ two concentration intervals for NOECs or NOAECs, and even though the primary test meets TAC, the primary test will be considered unacceptable and must be repeated.

VI. CHEMICAL ANALYSIS

At the beginning of the static acute test, pH, salinity, and temperature must be measured at the beginning and end of each 24 hour period in each dilution and in the controls. The following chemical analyses shall be performed for each sampling event.

<u>Parameter</u>	<u>Effluent</u>	<u>Diluent</u>	<u>Minimum Level for effluent^{*1} (mg/L)</u>
pH	x	x	---
Salinity	x	x	ppt(o/oo)
Total Residual Chlorine ^{*2}	x	x	0.02
Total Solids and Suspended Solids	x	x	---
Ammonia	x	x	0.1
Total Organic Carbon	x	x	0.5
<u>Total Metals</u>			
Cd	x	x	0.0005
Pb	x	x	0.0005
Cu	x	x	0.003
Zn	x	x	0.005
Ni	x	x	0.005

Superscript:

^{*1} These are the minimum levels for effluent (fresh water) samples. Tests on diluents (marine waters) shall be conducted using the Part 136 methods that yield the lowest MLs.

^{*2} Either of the following methods from the 18th Edition of the APHA Standard Methods for the Examination of Water and Wastewater must be used for these analyses:

- Method 4500-Cl E Low Level Amperometric Titration (the preferred method);
- Method 4500-CL G DPD Photometric Method.

VII. TOXICITY TEST DATA ANALYSIS

LC50 Median Lethal Concentration

An estimate of the concentration of effluent or toxicant that is lethal to 50% of the test organisms during the time prescribed by the test method.

Methods of Estimation:

- Probit Method
- Spearman-Kärber
- Trimmed Spearman-Kärber
- Graphical

See flow chart in Figure 6 on page 73 of EPA 821-R-02-012 for appropriate method to use on a given data set.

No Observed Acute Effect Level (NOAEL)

See flow chart in Figure 13 on page 87 of EPA 821-R-02-012.

VIII. TOXICITY TEST REPORTING

A report of results must include the following:

- Toxicity Test summary sheet(s) (Attachment F to the DMR Instructions) which includes:
 - o Facility name
 - o NPDES permit number
 - o Outfall number
 - o Sample type
 - o Sampling method
 - o Effluent TRC concentration
 - o Dilution water used
 - o Receiving water name and sampling location
 - o Test type and species
 - o Test start date
 - o Effluent concentrations tested (%) and permit limit concentration
 - o Applicable reference toxicity test date and whether acceptable or not
 - o Age, age range and source of test organisms used for testing
 - o Results of TAC review for all applicable controls
 - o Permit limit and toxicity test results
 - o Summary of any test sensitivity and concentration response evaluation that was conducted

Please note: The NPDES Permit Program Instructions for the Discharge Monitoring Report Forms (DMRs) are available on EPA's website at: www.epa.gov/compliance/discharge-monitoring-reports-avoiding-common-mistakes

In addition to the summary sheets the report must include:

- A brief description of sample collection procedures;
- Chain of custody documentation including names of individuals collecting samples, times and dates of sample collection, sample locations, requested analysis and lab receipt with time and date received, lab receipt personnel and condition of samples upon receipt at the lab(s);
- Reference toxicity test control charts;
- All sample chemical/physical data generated, including minimum levels (MLs) and analytical methods used;
- All toxicity test raw data including daily ambient test conditions, toxicity test chemistry, sample dechlorination details as necessary, bench sheets and statistical analysis;
- A discussion of any deviations from test conditions; and
- Any further discussion of reported test results, statistical analysis and concentration-response relationship and test sensitivity review per species per endpoint.

ATTACHMENT B

EPA - New England

Reassessment of Technically Based Industrial Discharge Limits

Under 40 CFR §122.21(j)(4), all Publicly Owned Treatment Works (POTWs) with approved Industrial Pretreatment Programs (IPPs) shall provide the following information to the Director: a written evaluation of the need to revise local industrial discharge limits under 40 CFR §403.5(c)(1).

Below is a form designed by the U.S. Environmental Protection Agency (EPA - New England) to assist POTWs with approved IPPs in evaluating whether their existing Technically Based Local Limits (TBLLs) need to be recalculated. The form allows the permittee and EPA to evaluate and compare pertinent information used in previous TBLLs calculations against present conditions at the POTW.

Please read direction below before filling out form.

ITEM I.

- * In Column (1), list what your POTW's influent flow rate was when your existing TBLLs were calculated. In Column (2), list your POTW's present influent flow rate. Your current flow rate should be calculated using the POTW's average daily flow rate from the previous 12 months.
- * In Column (1) list what your POTW's SIU flow rate was when your existing TBLLs were calculated. In Column (2), list your POTW's present SIU flow rate.
- * In Column (1), list what dilution ratio and/or 7Q10 value was used in your old/expired NPDES permit. In Column (2), list what dilution ratio and/or 7Q10 value is presently being used in your new/reissued NPDES permit.

The 7Q10 value is the lowest seven day average flow rate, in the river, over a ten year period. The 7Q10 value and/or dilution ratio used by EPA in your new NPDES permit can be found in your NPDES permit "Fact Sheet."

- * In Column (1), list the safety factor, if any, that was used when your existing TBLLs were calculated.
- * In Column (1), note how your bio-solids were managed when your existing TBLLs were calculated. In Column (2), note how your POTW is presently disposing of its biosolids and how your POTW will be disposing of its biosolids in the future.

ITEM II.

- * List what your existing TBLLs are - as they appear in your current Sewer Use Ordinance (SUO).

ITEM III.

- * Identify how your existing TBLLs are allocated out to your industrial community. Some pollutants may be allocated differently than others, if so please explain.

ITEM IV.

- * Since your existing TBLLs were calculated, identify the following in detail:
 - (1) if your POTW has experienced any upsets, inhibition, interference or pass-through as a result of an industrial discharge.
 - (2) if your POTW is presently violating any of its current NPDES permit limitations - include toxicity.

ITEM V.

- * Using current sampling data, list in Column (1) the average and maximum amount of pollutants (in pounds per day) received in the POTW's influent. Current sampling data is defined as data obtained over the last 24 month period.

All influent data collected and analyzed must be in accordance with 40 CFR §136. Sampling data collected should be analyzed using the lowest possible detection method(s), e.g. graphite furnace.

- * Based on your existing TBLLs, as presented in Item II., list in Column (2), for each pollutant the Maximum Allowable Headwork Loading (MAHL) values derived from an applicable environmental criteria or standard, e.g. water quality, sludge, NPDES, inhibition, etc. For more information, please see EPA's Local Limit Guidance Document (July 2004).

Item VI.

- * Using current sampling data, list in Column (1) the average and maximum amount of pollutants (in micrograms per liter) present your POTW's effluent. Current sampling data is defined as data obtained during the last 24 month period.

(Item VI. continued)

All effluent data collected and analyzed must be in accordance with 40 CFR §136. Sampling data collected should be analyzed using the lowest possible detection method(s), e.g. graphite furnace.

- * List in Column (2A) what the Water Quality Standards (WQS) were (in micrograms per liter) when your TBLLs were calculated, please note what hardness value was used at that time. Hardness should be expressed in milligram per liter of Calcium Carbonate.

List in Column (2B) the current WQSs or "Chronic Gold Book" values for each pollutant multiplied by the dilution ratio used in your new/reissued NPDES permit. For example, with a dilution ratio of 25:1 at a hardness of 25 mg/l - Calcium Carbonate (copper's chronic WQS equals 6.54 ug/l) the chronic NPDES permit limit for copper would equal 156.25 ug/l.

ITEM VII.

- * In Column (1), list all pollutants (in micrograms per liter) limited in your new/reissued NPDES permit. In Column (2), list all pollutants limited in your old/expired NPDES permit.

ITEM VIII.

- * Using current sampling data, list in Column (1) the average and maximum amount of pollutants in your POTW's biosolids. Current data is defined as data obtained during the last 24 month period. Results are to be expressed as total dry weight.

All biosolids data collected and analyzed must be in accordance with 40 CFR §136.

In Column (2A), list current State and/or Federal sludge standards that your facility's biosolids must comply with. Also note how your POTW currently manages the disposal of its biosolids. If your POTW is planning on managing its biosolids differently, list in Column (2B) what your new biosolids criteria will be and method of disposal.

In general, please be sure the units reported are correct and all pertinent information is included in your evaluation. If you have any questions, please contact your pretreatment representative at EPA - New England.

POTW Name & Address : _____

Date EPA approved current TBLLs :

ITEM I.

In Column (1) list the conditions that existed when your current TBLs were calculated. In Column (2), list current conditions or expected conditions at your POTW.		
	Column (1) EXISTING TBLs	Column (2) PRESENT CONDITIONS
POTW Flow (MGD)		
Dilution Ratio or 7Q10 (from NPDES Permit)		
SIU Flow (MGD)		
Safety Factor		N/A
Biosolids Disposal Method(s)		

ITEM II.

EXISTING TBLLs			
POLLUTANT	NUMERICAL LIMIT (mg/l) or (lb/day)	POLLUTANT	NUMERICAL LIMIT (mg/l) or (lb/day)

ITEM III.

Note how your existing TBLLs, listed in Item II., are allocated to your Significant Industrial Users (SIUs), i.e. uniform concentration, contributory flow, mass proportioning, other. Please specify by circling.

ITEM IV.

Has your POTW experienced any upsets, inhibition, interference or pass-through from industrial sources since your existing TBLLs were calculated?

If yes, explain.

Has your POTW violated any of its NPDES permit limits and/or toxicity test requirements?

If yes, explain.

ITEM V.

Using current POTW influent sampling data fill in Column (1). In Column (2), list your Maximum Allowable Headwork Loading (MAHL) values used to derive your TBLLs listed in Item II. In addition, please note the Environmental Criteria for which each MAHL value was established, i.e. water quality, sludge, NPDES etc.

Pollutant	Column (1) Influent Data Analyses		Column (2)	Criteria
	Maximum (lb/day)	Average (lb/day)	MAHL Values (lb/day)	
Arsenic				
Cadmium				
Chromium				
Copper				
Cyanide				
Lead				
Mercury				
Nickel				
Silver				
Zinc				
Other (List)				

ITEM VI.

Using current POTW effluent sampling data, fill in Column (1). In Column (2A) list what the Water Quality Standards (Gold Book Criteria) were at the time your existing TBLLs were developed. List in Column (2B) current Gold Book values multiplied by the dilution ratio used in your new/reissued NPDES permit.

Pollutant	Column (1)		Columns (2A) (2B)	
	Effluent Data Analyses Maximum (ug/l)	Average (ug/l)	Water Quality Criteria (Gold Book) From TBLLs Today (ug/l) (ug/l)	
Arsenic				
*Cadmium				
*Chromium				
*Copper				
Cyanide				
*Lead				
Mercury				
*Nickel				
Silver				
*Zinc				
Other (List)				

*Hardness Dependent (mg/l - CaCO3)

ITEM VII.

In Column (1), identify all pollutants limited in your new/reissued NPDES permit. In Column (2), identify all pollutants that were limited in your old/expired NPDES permit.

[illegible]

ITEM VIII.

Using current POTW biosolids data, fill in Column (1). In Column (2A), list the biosolids criteria that was used at the time your existing TBLLs were calculated. If your POTW is planing on managing its biosolids differently, list in Column (2B) what your new biosolids criteria would be and method of disposal.

Pollutant	Column (1)	Biosolids	Columns	
	Data Analyses		(2A)	(2B)
	Average		Biosolids Criteria	
	(mg/kg)		From TBLLs	New
Arsenic				
Cadmium				
Chromium				
Copper				
Cyanide				
Lead				
Mercury				
Nickel				
Silver				
Zinc				
Molybdenum				
Selenium				
Other (List)				

ATTACHMENT C

NPDES PERMIT REQUIREMENT FOR INDUSTRIAL PRETREATMENT ANNUAL REPORT

The information described below shall be included in the pretreatment program annual reports:

1. An updated list of all industrial users by category, as set forth in 40 C.F.R. 403.8(f)(2)(i), indicating compliance or noncompliance with the following:
 - baseline monitoring reporting requirements for newly promulgated industries
 - compliance status reporting requirements for newly promulgated industries
 - periodic (semi-annual) monitoring reporting requirements,
 - categorical standards, and
 - local limits;
2. A summary of compliance and enforcement activities during the preceding year, including the number of:
 - significant industrial users inspected by POTW (include inspection dates for each industrial user),
 - significant industrial users sampled by POTW (include sampling dates for each industrial user),
 - compliance schedules issued (include list of subject users),
 - written notices of violations issued (include list of subject users),
 - administrative orders issued (include list of subject users),
 - criminal or civil suits filed (include list of subject users) and,
 - penalties obtained (include list of subject users and penalty amounts);
3. A list of significantly violating industries required to be published in a local newspaper in accordance with 40 C.F.R. 403.8(f)(2)(vii);
4. A narrative description of program effectiveness including present and proposed changes to the program, such as funding, staffing, ordinances, regulations, rules and/or statutory authority;
5. A summary of all pollutant analytical results for influent, effluent, sludge and any toxicity or bioassay data from the wastewater treatment facility. The summary shall include a comparison of influent sampling results versus threshold inhibitory concentrations for the Wastewater Treatment System and effluent sampling results versus water quality standards. Such a comparison shall be based on the sampling program described in the paragraph below or any similar sampling program described in this Permit.

At a minimum, annual sampling and analysis of the influent and effluent of the Wastewater Treatment Plant shall be conducted for the following pollutants:

- | | |
|--------------------|-------------------|
| a.) Total Cadmium | f.) Total Nickel |
| b.) Total Chromium | g.) Total Silver |
| c.) Total Copper | h.) Total Zinc |
| d.) Total Lead | i.) Total Cyanide |
| e.) Total Mercury | j.) Total Arsenic |

The sampling program shall consist of one 24-hour flow-proportioned composite and at least one grab sample that is representative of the flows received by the POTW. The composite shall consist of hourly flow-proportioned grab samples taken over a 24-hour period if the sample is collected manually or shall consist of a minimum of 48 samples collected at 30 minute intervals if an automated sampler is used. Cyanide shall be taken as a grab sample during the same period as the composite sample. Sampling and preservation shall be consistent with 40 CFR Part 136.

6. A detailed description of all interference and pass-through that occurred during the past year;
7. A thorough description of all investigations into interference and pass-through during the past year;
8. A description of monitoring, sewer inspections and evaluations which were done during the past year to detect interference and pass-through, specifying parameters and frequencies;
9. A description of actions being taken to reduce the incidence of significant violations by significant industrial users; and,
10. The date of the latest adoption of local limits and an indication as to whether or not the permittee is under a State or Federal compliance schedule that includes steps to be taken to revise local limits.

Attachment D: PFAS Analyte List

Target Analyte Name	Abbreviation	CAS Number
Perfluoroalkyl carboxylic acids		
Perfluorobutanoic acid	PFBA	375-22-4
Perfluoropentanoic acid	PFPeA	2706-90-3
Perfluorohexanoic acid	PFHxA	307-24-4
Perfluoroheptanoic acid	PFHpA	375-85-9
Perfluorooctanoic acid	PFOA	335-67-1
Perfluorononanoic acid	PFNA	375-95-1
Perfluorodecanoic acid	PFDA	335-76-2
Perfluoroundecanoic acid	PFUnA	2058-94-8
Perfluorododecanoic acid	PFDoA	307-55-1
Perfluorotridecanoic acid	PFTTrDA	72629-94-8
Perfluorotetradecanoic acid	PFTeDA	376-06-7
Perfluoroalkyl sulfonic acids		
Acid Form		
Perfluorobutanesulfonic acid	PFBS	375-73-5
Perfluoropentanesulfonic acid	PFPeS	2706-91-4
Perfluorohexanesulfonic acid	PFHxS	355-46-4
Perfluoroheptanesulfonic acid	PFHpS	375-92-8
Perfluorooctanesulfonic acid	PFOS	1763-23-1
Perfluorononanesulfonic acid	PFNS	68259-12-1
Perfluorodecanesulfonic acid	PFDS	335-77-3
Perfluorododecanesulfonic acid	PFDoS	79780-39-5
Fluorotelomer sulfonic acids		
1H,1H, 2H, 2H-Perfluorohexane sulfonic acid	4:2FTS	757124-72-4
1H,1H, 2H, 2H-Perfluorooctane sulfonic acid	6:2FTS	27619-97-2
1H,1H, 2H, 2H-Perfluorodecane sulfonic acid	8:2FTS	39108-34-4
Perfluorooctane sulfonamides		
Perfluorooctanesulfonamide	PFOSA	754-91-6
N-methyl perfluorooctanesulfonamide	NMeFOSA	31506-32-8
N-ethyl perfluorooctanesulfonamide	NEtFOSA	4151-50-2
Perfluorooctane sulfonamidoacetic acids		
N-methyl perfluorooctanesulfonamidoacetic acid	NMeFOSAA	2355-31-9
N-ethyl perfluorooctanesulfonamidoacetic acid	NEtFOSAA	2991-50-6
Perfluorooctane sulfonamide ethanols		
N-methyl perfluorooctanesulfonamidoethanol	NMeFOSE	24448-09-7
N-ethyl perfluorooctanesulfonamidoethanol	NEtFOSE	1691-99-2
Per- and Polyfluoroether carboxylic acids		
Hexafluoropropylene oxide dimer acid	HFPO-DA	13252-13-6
4,8-Dioxa-3H-perfluorononanoic acid	ADONA	919005-14-4
Perfluoro-3-methoxypropanoic acid	PFMPA	377-73-1
Perfluoro-4-methoxybutanoic acid	PFMBA	863090-89-5
Nonafluoro-3,6-dioxaheptanoic acid	NFDHA	151772-58-6

Target Analyte Name	Abbreviation	CAS Number
Ether sulfonic acids		
9-Chlorohexadecafluoro-3-oxanonane-1-sulfonic acid	9Cl-PF3ONS	756426-58-1
11-Chloroeicosafluoro-3-oxaundecane-1-sulfonic acid	11Cl-PF3OUdS	763051-92-9
Perfluoro(2-ethoxyethane)sulfonic acid	PFEESA	113507-82-7
Fluorotelomer carboxylic acids		
3-Perfluoropropyl propanoic acid	3:3FTCA	356-02-5
2 <i>H</i> ,2 <i>H</i> ,3 <i>H</i> ,3 <i>H</i> -Perfluorooctanoic acid	5:3FTCA	914637-49-3
3-Perfluoroheptyl propanoic acid	7:3FTCA	812-70-4

NPDES PART II STANDARD CONDITIONS
(April 26, 2018)¹

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¹ Updated July 17, 2018 to fix typographical errors.

NPDES PART II STANDARD CONDITIONS
(April 26, 2018)

A. GENERAL REQUIREMENTS

1. Duty to Comply

The Permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act (CWA or Act) and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

- a. The Permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under Section 405(d) of the CWA within the time provided in the regulations that establish these standards or prohibitions, or standards for sewage sludge use or disposal, even if the permit has not yet been modified to incorporate the requirement.
- b. Penalties for Violations of Permit Conditions: The Director will adjust the civil and administrative penalties listed below in accordance with the Civil Monetary Penalty Inflation Adjustment Rule (83 Fed. Reg. 1190-1194 (January 10, 2018) and the 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note. See Pub. L. 114-74, Section 701 (Nov. 2, 2015)). These requirements help ensure that EPA penalties keep pace with inflation. Under the above-cited 2015 amendments to inflationary adjustment law, EPA must review its statutory civil penalties each year and adjust them as necessary.

(1) Criminal Penalties

- (a) *Negligent Violations.* The CWA provides that any person who negligently violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to criminal penalties of not less than \$2,500 nor more than \$25,000 per day of violation, or imprisonment of not more than 1 year, or both. In the case of a second or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than \$50,000 per day of violation or by imprisonment of not more than 2 years, or both.
- (b) *Knowing Violations.* The CWA provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not more than 3 years, or both. In the case of a second or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than \$100,000 per day of violation, or imprisonment of not more than 6 years, or both.
- (c) *Knowing Endangerment.* The CWA provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 303, 306, 307, 308, 318, or 405 of the Act and who knows at that time that he or she is placing another person in imminent danger of death or serious bodily injury shall upon conviction be subject to a fine of not more than \$250,000 or by imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing

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endangerment violation, a person shall be subject to a fine of not more than \$500,000 or by imprisonment of not more than 30 years, or both. An organization, as defined in Section 309(c)(3)(B)(iii) of the Act, shall, upon conviction of violating the imminent danger provision, be subject to a fine of not more than \$1,000,000 and can be fined up to \$2,000,000 for second or subsequent convictions.

- (d) *False Statement.* The CWA provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both. The Act further provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.
- (2) *Civil Penalties.* The CWA provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed the maximum amounts authorized by Section 309(d) of the Act, the 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, and 40 C.F.R. Part 19. See Pub. L.114-74, Section 701 (Nov. 2, 2015); 83 Fed. Reg. 1190 (January 10, 2018).
- (3) *Administrative Penalties.* The CWA provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to an administrative penalty as follows:
 - (a) *Class I Penalty.* Not to exceed the maximum amounts authorized by Section 309(g)(2)(A) of the Act, the 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, and 40 C.F.R. Part 19. See Pub. L.114-74, Section 701 (Nov. 2, 2015); 83 Fed. Reg. 1190 (January 10, 2018).
 - (b) *Class II Penalty.* Not to exceed the maximum amounts authorized by Section 309(g)(2)(B) of the Act the 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, and 40 C.F.R. Part 19. See Pub. L.114-74, Section 701 (Nov. 2, 2015); 83 Fed. Reg. 1190 (January 10, 2018).

2. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the Permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit

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condition.

3. Duty to Provide Information

The Permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The Permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

4. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the Permittee from responsibilities, liabilities or penalties to which the Permittee is or may be subject under Section 311 of the CWA, or Section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

5. Property Rights

This permit does not convey any property rights of any sort, or any exclusive privilege.

6. Confidentiality of Information

a. In accordance with 40 C.F.R. Part 2, any information submitted to EPA pursuant to these regulations may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, EPA may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in 40 C.F.R. Part 2 (Public Information).

b. Claims of confidentiality for the following information will be denied:

- (1) The name and address of any permit applicant or Permittee;
- (2) Permit applications, permits, and effluent data.

c. Information required by NPDES application forms provided by the Director under 40 C.F.R. § 122.21 may not be claimed confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

7. Duty to Reapply

If the Permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the Permittee must apply for and obtain a new permit. The Permittee shall submit a new application at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Director. (The Director shall not grant permission for applications to be submitted later than the expiration date of the existing permit.)

8. State Authorities

Nothing in Parts 122, 123, or 124 precludes more stringent State regulation of any activity

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covered by the regulations in 40 C.F.R. Parts 122, 123, and 124, whether or not under an approved State program.

9. Other Laws

The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulations.

B. OPERATION AND MAINTENANCE OF POLLUTION CONTROLS

1. Proper Operation and Maintenance

The Permittee shall at all times 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 this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a Permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

2. Need to Halt or Reduce Not a Defense

It shall not be a defense for a Permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

3. Duty to Mitigate

The Permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

4. Bypass

a. Definitions

- (1) *Bypass* means the intentional diversion of waste streams from any portion of a treatment facility.
- (2) *Severe property damage* means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

- b. *Bypass not exceeding limitations.* The Permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs (c) and (d) of this Section.

c. Notice

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- (1) *Anticipated bypass.* If the Permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass. As of December 21, 2020 all notices submitted in compliance with this Section must be submitted electronically by the Permittee to the Director or initial recipient, as defined in 40 C.F.R. § 127.2(b), in compliance with this Section and 40 C.F.R. Part 3 (including, in all cases, Subpart D to Part 3), § 122.22, and 40 C.F.R. Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, Permittees may be required to report electronically if specified by a particular permit or if required to do so by state law.
- (2) *Unanticipated bypass.* The Permittee shall submit notice of an unanticipated bypass as required in paragraph D.1.e. of this part (24-hour notice). As of December 21, 2020 all notices submitted in compliance with this Section must be submitted electronically by the Permittee to the Director or initial recipient, as defined in 40 C.F.R. § 127.2(b), in compliance with this Section and 40 C.F.R. Part 3 (including, in all cases, Subpart D to Part 3), § 122.22, and 40 C.F.R. Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, Permittees may be required to report electronically if specified by a particular permit or required to do so by law.

d. *Prohibition of bypass.*

- (1) Bypass is prohibited, and the Director may take enforcement action against a Permittee for bypass, unless:
 - (a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - (b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and
 - (c) The Permittee submitted notices as required under paragraph 4.c of this Section.
- (2) The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in paragraph 4.d of this Section.

5. Upset

- a. *Definition.* *Upset* means an exceptional incident in which there is an unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the Permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or

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improper operation.

- b. *Effect of an upset.* An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph B.5.c. of this Section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.
- c. *Conditions necessary for a demonstration of upset.* A Permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - (1) An upset occurred and that the Permittee can identify the cause(s) of the upset;
 - (2) The permitted facility was at the time being properly operated; and
 - (3) The Permittee submitted notice of the upset as required in paragraph D.1.e.2.b. (24-hour notice).
 - (4) The Permittee complied with any remedial measures required under B.3. above.
- d. *Burden of proof.* In any enforcement proceeding the Permittee seeking to establish the occurrence of an upset has the burden of proof.

C. MONITORING REQUIREMENTS

1. Monitoring and Records

- a. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
- b. Except for records of monitoring information required by this permit related to the Permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least 5 years (or longer as required by 40 C.F.R. § 503), the Permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time.
- c. Records of monitoring information shall include:
 - (1) The date, exact place, and time of sampling or measurements;
 - (2) The individual(s) who performed the sampling or measurements;
 - (3) The date(s) analyses were performed;
 - (4) The individual(s) who performed the analyses;
 - (5) The analytical techniques or methods used; and
 - (6) The results of such analyses.
- d. Monitoring must be conducted according to test procedures approved under 40 C.F.R. § 136 unless another method is required under 40 C.F.R. Subchapters N or O.
- e. The Clean Water Act provides that any person who falsifies, tampers with, or

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knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both.

2. Inspection and Entry

The Permittee shall allow the Director, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon presentation of credentials and other documents as may be required by law, to:

- a. Enter upon the Permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
- b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

D. REPORTING REQUIREMENTS

1. Reporting Requirements

- a. *Planned Changes.* The Permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:
 - (1) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 C.F.R. § 122.29(b); or
 - (2) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements at 40 C.F.R. § 122.42(a)(1).
 - (3) The alteration or addition results in a significant change in the Permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.
- b. *Anticipated noncompliance.* The Permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

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- c. *Transfers.* This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the Permittee and incorporate such other requirements as may be necessary under the Clean Water Act. See 40 C.F.R. § 122.61; in some cases, modification or revocation and reissuance is mandatory.
- d. *Monitoring reports.* Monitoring results shall be reported at the intervals specified elsewhere in this permit.
 - (1) Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Director for reporting results of monitoring of sludge use or disposal practices. As of December 21, 2016 all reports and forms submitted in compliance with this Section must be submitted electronically by the Permittee to the Director or initial recipient, as defined in 40 C.F.R. § 127.2(b), in compliance with this Section and 40 C.F.R. Part 3 (including, in all cases, Subpart D to Part 3), § 122.22, and 40 C.F.R. Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, Permittees may be required to report electronically if specified by a particular permit or if required to do so by State law.
 - (2) If the Permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 C.F.R. § 136, or another method required for an industry-specific waste stream under 40 C.F.R. Subchapters N or O, the results of such monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Director.
 - (3) Calculations for all limitations which require averaging or measurements shall utilize an arithmetic mean unless otherwise specified by the Director in the permit.
- e. *Twenty-four hour reporting.*
 - (1) The Permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the Permittee becomes aware of the circumstances. A written report shall also be provided within 5 days of the time the Permittee becomes aware of the circumstances. The written report shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. For noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events, these reports must include the data described above (with the exception of time of discovery) as well as the type of event (combined sewer overflows, sanitary sewer overflows, or bypass events), type of sewer overflow structure (e.g., manhole, combined sewer overflow outfall), discharge volumes untreated by the treatment works treating domestic sewage, types of human health and environmental impacts of the sewer overflow event, and whether the noncompliance was related to wet weather. As of December 21, 2020 all

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reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this section must be submitted electronically by the Permittee to the Director or initial recipient, as defined in 40 C.F.R. § 127.2(b), in compliance with this Section and 40 C.F.R. Part 3 (including, in all cases Subpart D to Part 3), § 122.22, and 40 C.F.R. Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, Permittees may be required to electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section by a particular permit or if required to do so by state law. The Director may also require Permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section.

- (2) The following shall be included as information which must be reported within 24 hours under this paragraph.
 - (a) Any unanticipated bypass which exceeds any effluent limitation in the permit. *See* 40 C.F.R. § 122.41(g).
 - (b) Any upset which exceeds any effluent limitation in the permit.
 - (c) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in the permit to be reported within 24 hours. *See* 40 C.F.R. § 122.44(g).
 - (3) The Director may waive the written report on a case-by-case basis for reports under paragraph D.1.e. of this Section if the oral report has been received within 24 hours.
- f. *Compliance Schedules.* Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.
- g. *Other noncompliance.* The Permittee shall report all instances of noncompliance not reported under paragraphs D.1.d., D.1.e., and D.1.f. of this Section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph D.1.e. of this Section. For noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events, these reports shall contain the information described in paragraph D.1.e. and the applicable required data in Appendix A to 40 C.F.R. Part 127. As of December 21, 2020 all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this section must be submitted electronically by the Permittee to the Director or initial recipient, as defined in 40 C.F.R. § 127.2(b), in compliance with this Section and 40 C.F.R. Part 3 (including, in all cases, Subpart D to Part 3), §122.22, and 40 C.F.R. Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, Permittees may be required to electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section by a particular permit or if required to do so by state law. The Director may also require Permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this Section.
- h. *Other information.* Where the Permittee becomes aware that it failed to submit any

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relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.

- i. *Identification of the initial recipient for NPDES electronic reporting data.* The owner, operator, or the duly authorized representative of an NPDES-regulated entity is required to electronically submit the required NPDES information (as specified in Appendix A to 40 C.F.R. Part 127) to the appropriate initial recipient, as determined by EPA, and as defined in 40 C.F.R. § 127.2(b). EPA will identify and publish the list of initial recipients on its Web site and in the FEDERAL REGISTER, by state and by NPDES data group (see 40 C.F.R. § 127.2(c) of this Chapter). EPA will update and maintain this listing.

2. Signatory Requirement

- a. All applications, reports, or information submitted to the Director shall be signed and certified. See 40 C.F.R. §122.22.
- b. The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

3. Availability of Reports.

Except for data determined to be confidential under paragraph A.6. above, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the State water pollution control agency and the Director. As required by the CWA, effluent data shall not be considered confidential. Knowingly making any false statements on any such report may result in the imposition of criminal penalties as provided for in Section 309 of the CWA.

E. DEFINITIONS AND ABBREVIATIONS

1. General Definitions

For more definitions related to sludge use and disposal requirements, see EPA Region 1's NPDES Permit Sludge Compliance Guidance document (4 November 1999, modified to add regulatory definitions, April 2018).

Administrator means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

Applicable standards and limitations means all, State, interstate, and federal standards and limitations to which a "discharge," a "sewage sludge use or disposal practice," or a related activity is subject under the CWA, including "effluent limitations," water quality standards, standards of performance, toxic effluent standards or prohibitions, "best management practices," pretreatment standards, and "standards for sewage sludge use or disposal" under Sections 301, 302, 303, 304, 306, 307, 308, 403 and 405 of the CWA.

Application means the EPA standard national forms for applying for a permit, including any additions, revisions, or modifications to the forms; or forms approved by EPA for use in

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“approved States,” including any approved modifications or revisions.

Approved program or *approved State* means a State or interstate program which has been approved or authorized by EPA under Part 123.

Average monthly discharge limitation means the highest allowable average of “daily discharges” over a calendar month, calculated as the sum of all “daily discharges” measured during a calendar month divided by the number of “daily discharges” measured during that month.

Average weekly discharge limitation means the highest allowable average of “daily discharges” over a calendar week, calculated as the sum of all “daily discharges” measured during a calendar week divided by the number of “daily discharges” measured during that week.

Best Management Practices (“BMPs”) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of “waters of the United States.” BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Bypass see B.4.a.1 above.

C-NOEC or “*Chronic (Long-term Exposure Test) – No Observed Effect Concentration*” means the highest tested concentration of an effluent or a toxicant at which no adverse effects are observed on the aquatic test organisms at a specified time of observation.

Class I sludge management facility is any publicly owned treatment works (POTW), as defined in 40 C.F.R. § 501.2, required to have an approved pretreatment program under 40 C.F.R. § 403.8 (a) (including any POTW located in a State that has elected to assume local program responsibilities pursuant to 40 C.F.R. § 403.10 (e)) and any treatment works treating domestic sewage, as defined in 40 C.F.R. § 122.2, classified as a Class I sludge management facility by the EPA Regional Administrator, or, in the case of approved State programs, the Regional Administrator in conjunction with the State Director, because of the potential for its sewage sludge use or disposal practice to affect public health and the environment adversely.

Contiguous zone means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone.

Continuous discharge means a “discharge” which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or similar activities.

CWA means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483 and Public Law 97-117, 33 U.S.C. 1251 *et seq.*

CWA and regulations means the Clean Water Act (CWA) and applicable regulations promulgated thereunder. In the case of an approved State program, it includes State program requirements.

Daily Discharge means the “discharge of a pollutant” measured during a calendar day or any

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other 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the “daily discharge” is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurements, the “daily discharge” is calculated as the average measurement of the pollutant over the day.

Direct Discharge means the “discharge of a pollutant.”

Director means the Regional Administrator or an authorized representative. In the case of a permit also issued under Massachusetts’ authority, it also refers to the Director of the Division of Watershed Management, Department of Environmental Protection, Commonwealth of Massachusetts.

Discharge

- (a) When used without qualification, *discharge* means the “discharge of a pollutant.”
- (b) As used in the definitions for “interference” and “pass through,” *discharge* means the introduction of pollutants into a POTW from any non-domestic source regulated under Section 307(b), (c) or (d) of the Act.

Discharge Monitoring Report (“DMR”) means the EPA uniform national form, including any subsequent additions, revisions, or modifications for the reporting of self-monitoring results by Permittees. DMRs must be used by “approved States” as well as by EPA. EPA will supply DMRs to any approved State upon request. The EPA national forms may be modified to substitute the State Agency name, address, logo, and other similar information, as appropriate, in place of EPA’s.

Discharge of a pollutant means:

- (a) Any addition of any “pollutant” or combination of pollutants to “waters of the United States” from any “point source,” or
- (b) Any addition of any pollutant or combination of pollutants to the waters of the “contiguous zone” or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any “indirect discharger.”

Effluent limitation means any restriction imposed by the Director on quantities, discharge rates, and concentrations of “pollutants” which are “discharged” from “point sources” into “waters of the United States,” the waters of the “contiguous zone,” or the ocean.

Effluent limitation guidelines means a regulation published by the Administrator under section 304(b) of CWA to adopt or revise “effluent limitations.”

Environmental Protection Agency (“EPA”) means the United States Environmental Protection

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Agency.

Grab Sample means an individual sample collected in a period of less than 15 minutes.

Hazardous substance means any substance designated under 40 C.F.R. Part 116 pursuant to Section 311 of CWA.

Incineration is the combustion of organic matter and inorganic matter in sewage sludge by high temperatures in an enclosed device.

Indirect discharger means a nondomestic discharger introducing “pollutants” to a “publicly owned treatment works.”

Interference means a discharge (see definition above) which, alone or in conjunction with a discharge or discharges from other sources, both:

- (a) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and
- (b) Therefore is a cause of a violation of any requirement of the POTW’s NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent State or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including title II, more commonly referred to as the Resources Conservation and Recovery Act (RCRA), and including State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the SDWA), the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research and Sanctuaries Act.

Landfill means an area of land or an excavation in which wastes are placed for permanent disposal, and that is not a land application unit, surface impoundment, injection well, or waste pile.

Land application is the spraying or spreading of sewage sludge onto the land surface; the injection of sewage sludge below the land surface; or the incorporation of sewage sludge into the soil so that the sewage sludge can either condition the soil or fertilize crops or vegetation grown in the soil.

Land application unit means an area where wastes are applied onto or incorporated into the soil surface (excluding manure spreading operations) for agricultural purposes or for treatment and disposal.

LC₅₀ means the concentration of a sample that causes mortality of 50% of the test population at a specific time of observation. The LC₅₀ = 100% is defined as a sample of undiluted effluent.

Maximum daily discharge limitation means the highest allowable “daily discharge.”

Municipal solid waste landfill (MSWLF) unit means a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under 40 C.F.R. § 257.2. A MSWLF unit also may receive other types of RCRA Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, very small quantity generator waste and industrial solid waste. Such a landfill may be

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publicly or privately owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit or a lateral expansion. A construction and demolition landfill that receives residential lead-based paint waste and does not receive any other household waste is not a MSWLF unit.

Municipality

- (a) When used without qualification *municipality* means a city, town, borough, county, parish, district, association, or other public body created by or under State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under Section 208 of CWA.
- (b) As related to sludge use and disposal, *municipality* means a city, town, borough, county, parish, district, association, or other public body (including an intermunicipal Agency of two or more of the foregoing entities) created by or under State law; an Indian tribe or an authorized Indian tribal organization having jurisdiction over sewage sludge management; or a designated and approved management Agency under Section 208 of the CWA, as amended. The definition includes a special district created under State law, such as a water district, sewer district, sanitary district, utility district, drainage district, or similar entity, or an integrated waste management facility as defined in Section 201 (e) of the CWA, as amended, that has as one of its principal responsibilities the treatment, transport, use or disposal of sewage sludge.

National Pollutant Discharge Elimination System means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under Sections 307, 402, 318, and 405 of the CWA. The term includes an “approved program.”

New Discharger means any building, structure, facility, or installation:

- (a) From which there is or may be a “discharge of pollutants;”
- (b) That did not commence the “discharge of pollutants” at a particular “site” prior to August 13, 1979;
- (c) Which is not a “new source;” and
- (d) Which has never received a finally effective NPDES permit for discharges at that “site.”

This definition includes an “indirect discharger” which commences discharging into “waters of the United States” after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas exploratory drilling rig or a coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a “site” for which it does not have a permit; and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979, at a “site” under EPA’s permitting jurisdiction for which it is not covered by an individual or general permit and which is located in an area determined by the Director in the issuance of a final permit to be in an area of biological concern. In determining whether an area is an area of biological concern, the Director shall consider the factors specified in 40 C.F.R. §§ 125.122 (a) (1) through (10).

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An offshore or coastal mobile exploratory drilling rig or coastal mobile developmental drilling rig will be considered a “new discharger” only for the duration of its discharge in an area of biological concern.

New source means any building, structure, facility, or installation from which there is or may be a “discharge of pollutants,” the construction of which commenced:

- (a) After promulgation of standards of performance under Section 306 of CWA which are applicable to such source, or
- (b) After proposal of standards of performance in accordance with Section 306 of CWA which are applicable to such source, but only if the standards are promulgated in accordance with Section 306 within 120 days of their proposal.

NPDES means “National Pollutant Discharge Elimination System.”

Owner or operator means the owner or operator of any “facility or activity” subject to regulation under the NPDES programs.

Pass through means a Discharge (see definition above) which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW’s NPDES permit (including an increase in the magnitude or duration of a violation).

Pathogenic organisms are disease-causing organisms. These include, but are not limited to, certain bacteria, protozoa, viruses, and viable helminth ova.

Permit means an authorization, license, or equivalent control document issued by EPA or an “approved State” to implement the requirements of Parts 122, 123, and 124. “Permit” includes an NPDES “general permit” (40 C.F.R. § 122.28). “Permit” does not include any permit which has not yet been the subject of final agency action, such as a “draft permit” or “proposed permit.”

Person means an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof.

Person who prepares sewage sludge is either the person who generates sewage sludge during the treatment of domestic sewage in a treatment works or the person who derives a material from sewage sludge.

pH means the logarithm of the reciprocal of the hydrogen ion concentration measured at 25° Centigrade or measured at another temperature and then converted to an equivalent value at 25° Centigrade.

Point Source means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff (see 40 C.F.R. § 122.3).

Pollutant means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials

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(except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

- (a) Sewage from vessels; or
- (b) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well is used either to facilitate production or for disposal purposes is approved by the authority of the State in which the well is located, and if the State determines that the injection or disposal will not result in the degradation of ground or surface water resources.

Primary industry category means any industry category listed in the NRDC settlement agreement (*Natural Resources Defense Council et al. v. Train*, 8 E.R.C. 2120 (D.D.C. 1976), *modified* 12 E.R.C. 1833 (D.D.C. 1979)); also listed in Appendix A of 40 C.F.R. Part 122.

Privately owned treatment works means any device or system which is (a) used to treat wastes from any facility whose operator is not the operator of the treatment works and (b) not a “POTW.”

Process wastewater means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

Publicly owned treatment works (POTW) means a treatment works as defined by Section 212 of the Act, which is owned by a State or municipality (as defined by Section 504(4) of the Act). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plant. The term also means the municipality as defined in Section 502(4) of the Act, which has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

Regional Administrator means the Regional Administrator, EPA, Region I, Boston, Massachusetts.

Secondary industry category means any industry which is not a “primary industry category.”

Septage means the liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or a holding tank when the system is cleaned or maintained.

Sewage Sludge means any solid, semi-solid, or liquid residue removed during the treatment of municipal waste water or domestic sewage. Sewage sludge includes, but is not limited to, solids removed during primary, secondary, or advanced waste water treatment, scum, septage, portable toilet pumpings, type III marine sanitation device pumpings (33 C.F.R. Part 159), and sewage sludge products. Sewage sludge does not include grit or screenings, or ash generated during the incineration of sewage sludge.

Sewage sludge incinerator is an enclosed device in which only sewage sludge and auxiliary fuel are fired.

Sewage sludge unit is land on which only sewage sludge is placed for final disposal. This does

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not include land on which sewage sludge is either stored or treated. Land does not include waters of the United States, as defined in 40 C.F.R. § 122.2.

Sewage sludge use or disposal practice means the collection, storage, treatment, transportation, processing, monitoring, use, or disposal of sewage sludge.

Significant materials includes, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substance designated under Section 101(14) of CERCLA; any chemical the facility is required to report pursuant to Section 313 of title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

Significant spills includes, but is not limited to, releases of oil or hazardous substances in excess of reportable quantities under Section 311 of the CWA (see 40 C.F.R. §§ 110.10 and 117.21) or Section 102 of CERCLA (see 40 C.F.R. § 302.4).

Sludge-only facility means any “treatment works treating domestic sewage” whose methods of sewage sludge use or disposal are subject to regulations promulgated pursuant to section 405(d) of the CWA, and is required to obtain a permit under 40 C.F.R. § 122.1(b)(2).

State means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, or an Indian Tribe as defined in the regulations which meets the requirements of 40 C.F.R. § 123.31.

Store or storage of sewage sludge is the placement of sewage sludge on land on which the sewage sludge remains for two years or less. This does not include the placement of sewage sludge on land for treatment.

Storm water means storm water runoff, snow melt runoff, and surface runoff and drainage.

Storm water discharge associated with industrial activity means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant.

Surface disposal site is an area of land that contains one or more active sewage sludge units.

Toxic pollutant means any pollutant listed as toxic under Section 307(a)(1) or, in the case of “sludge use or disposal practices,” any pollutant identified in regulations implementing Section 405(d) of the CWA.

Treatment works treating domestic sewage means a POTW or any other sewage sludge or waste water treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices.

For purposes of this definition, “domestic sewage” includes waste and waste water from humans or household operations that are discharged to or otherwise enter a treatment works. In States where there is no approved State sludge management program under Section 405(f) of the CWA, the Director may designate any person subject to the standards for sewage sludge use and

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disposal in 40 C.F.R. Part 503 as a “treatment works treating domestic sewage,” where he or she finds that there is a potential for adverse effects on public health and the environment from poor sludge quality or poor sludge handling, use or disposal practices, or where he or she finds that such designation is necessary to ensure that such person is in compliance with 40 C.F.R. Part 503.

Upset see B.5.a. above.

Vector attraction is the characteristic of sewage sludge that attracts rodents, flies, mosquitoes, or other organisms capable of transporting infectious agents.

Waste pile or *pile* means any non-containerized accumulation of solid, non-flowing waste that is used for treatment or storage.

Waters of the United States or *waters of the U.S.* means:

- (a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- (b) All interstate waters, including interstate “wetlands;”
- (c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, “wetlands”, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
 - (1) Which are or could be used by interstate or foreign travelers for recreational or other purpose;
 - (2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - (3) Which are used or could be used for industrial purposes by industries in interstate commerce;
- (d) All impoundments of waters otherwise defined as waters of the United States under this definition;
- (e) Tributaries of waters identified in paragraphs (a) through (d) of this definition;
- (f) The territorial sea; and
- (g) “Wetlands” adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 C.F.R. § 423.11(m) which also meet the criteria of this definition) are not waters of the United States. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of waters of the United States. Waters of the United States do not include prior converted cropland.

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Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

Wetlands means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

Whole Effluent Toxicity (WET) means the aggregate toxic effect of an effluent measured directly by a toxicity test.

Zone of Initial Dilution (ZID) means the region of initial mixing surrounding or adjacent to the end of the outfall pipe or diffuser ports, provided that the ZID may not be larger than allowed by mixing zone restrictions in applicable water quality standards.

2. Commonly Used Abbreviations

BOD	Five-day biochemical oxygen demand unless otherwise specified
CBOD	Carbonaceous BOD
CFS	Cubic feet per second
COD	Chemical oxygen demand
Chlorine	
Cl ₂	Total residual chlorine
TRC	Total residual chlorine which is a combination of free available chlorine (FAC, see below) and combined chlorine (chloramines, etc.)
TRO	Total residual chlorine in marine waters where halogen compounds are present
FAC	Free available chlorine (aqueous molecular chlorine, hypochlorous acid, and hypochlorite ion)
Coliform	
Coliform, Fecal	Total fecal coliform bacteria
Coliform, Total	Total coliform bacteria
Cont.	Continuous recording of the parameter being monitored, i.e. flow, temperature, pH, etc.
Cu. M/day or M ³ /day	Cubic meters per day
DO	Dissolved oxygen

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kg/day	Kilograms per day
lbs/day	Pounds per day
mg/L	Milligram(s) per liter
mL/L	Milliliters per liter
MGD	Million gallons per day
Nitrogen	
Total N	Total nitrogen
NH ₃ -N	Ammonia nitrogen as nitrogen
NO ₃ -N	Nitrate as nitrogen
NO ₂ -N	Nitrite as nitrogen
NO ₃ -NO ₂	Combined nitrate and nitrite nitrogen as nitrogen
TKN	Total Kjeldahl nitrogen as nitrogen
Oil & Grease	Freon extractable material
PCB	Polychlorinated biphenyl
Surfactant	Surface-active agent
Temp. °C	Temperature in degrees Centigrade
Temp. °F	Temperature in degrees Fahrenheit
TOC	Total organic carbon
Total P	Total phosphorus
TSS or NFR	Total suspended solids or total nonfilterable residue
Turb. or Turbidity	Turbidity measured by the Nephelometric Method (NTU)
µg/L	Microgram(s) per liter
WET	“Whole effluent toxicity”
ZID	Zone of Initial Dilution

**RESPONSE TO COMMENTS
NPDES PERMIT NO. MA0100501
SOUTH ESSEX SEWERAGE DISTRICT
SALEM, MASSACHUSETTS**

The U.S. Environmental Protection Agency's New England Region (EPA) is issuing a Final National Pollutant Discharge Elimination System (NPDES) Permit for the South Essex Sewerage District located in Salem, Massachusetts. This permit is being issued under the Federal Clean Water Act (CWA), 33 U.S.C., §§ 1251 *et seq.*

In accordance with the provisions of 40 Code of Federal Regulations (CFR) §124.17, this document presents EPA's responses to comments received on the Draft NPDES Permit # MA0100501 ("Draft Permit"). The Response to Comments explains and supports EPA's determinations that form the basis of the Final Permit. From January 23, 2025 through February 24, 2025, and extended to April 10, 2025, EPA solicited public comments on the Draft Permit.

EPA received comments from:

- South Essex Sewerage District (SESD), dated April 10, 2025
- Commonwealth of Massachusetts, Executive Office of Energy and Environmental Affairs, Office of Coastal Zone Management, dated March 10, 2025.
- Salem Sound Coastwatch (SSCW), dated April 10, 2025
- Massachusetts Water Resources Authority (MWRA), dated April 10, 2025
- Massachusetts Coalition for Water Resources Stewardship (MCWRS), dated April 10, 2025

Although EPA's 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 permit that warranted a reopening of the public comment period. EPA does, however, make certain clarifications and changes in response to comments. These are explained in this document and reflected in the Final Permit. Below EPA provides a summary of the changes made in the Final Permit. The analyses underlying these changes are contained in the responses to individual comments that follow.

A copy of the Final Permit and this response to comments document will be posted on the EPA Region 1 web site: at <https://www.epa.gov/npdes-permits/massachusetts-final-individual-npdes-permits>.

A copy of the Final Permit may be also obtained by contacting Michele Barden at barden.michele@epa.gov or (617) 918-1539.

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I. Summary of Changes to the Final Permit

1. EPA has changed the fecal coliform limit (and footnote 7) in the Final Permit to account for the percent of samples exceeding the standard. See Response 3.
2. EPA updated Footnote 11 to reference the updated method 1633A. See Response 5.
3. The Adaptation Planning requirements have been removed from the Final Permit. See Response 7.
4. EPA has revised the deadline for completing revisions to local limits, should they be necessary, to 18 months. See Response 12.
5. EPA has reduced the number of sampling rounds required by the Ambient Monitoring Plan to 6, concentrated during the growing season. See Response 13.
6. EPA has updated Footnote 13 by removing the reference to C-NOEC and has corrected the second species for the acute toxicity test to mysid shrimp. See Response 20.
7. EPA has deleted the reference to Attachment B in Footnote 14. See Response 21.
8. EPA has corrected Part I.E.3.b to reference Attachment B. See Response 22.
9. EPA has corrected Part I.E.5 to reference Attachment C. See Response 23.
10. EPA has removed the phrase “hard copy” from Part I.E.5. See Response 26.
11. EPA has revised the requirement at I.E.4.a. See Response 40.

II. Responses to Comments

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

A. Comments from David Michelsen, P.E., Executive Director, South Essex Sewerage District.

Comment 1

The South Essex Sewerage District (SESD or District) respectfully submits the enclosed comments on the draft National Pollutant Discharge Elimination System (NPDES) permit (Draft Permit) issued by the United States Environmental Protection Agency (EPA) and Massachusetts Department of Environmental Protection (MassDEP), received on January 23, 2025, for the South Essex Wastewater Treatment Facility (WWTF). Due to the significant impact the Permit will have on future compliance strategies, capital investment, and overall affordability, the District developed the detailed comments below in order to provide its full perspective for the permit finalization process. In submitting the enclosed comments, the District does not agree that the revisions in the 2016 permit adequately address its comments on the 2013 Draft Permit and the District reserves all rights with respect to its comments on the 2013 Draft Permit. The District welcomes and appreciates any opportunity to work with EPA and MassDEP to resolve the questions and issues identified in these comments prior to the issuance of the final permit.

Response 1

EPA acknowledges receipt of the comments on the 2025 Draft NPDES Permit No. MA0100501 comments and has responded to these issues raised in more detail below. EPA's response will be limited to the 2025 Draft NPDES Permit work and not any comments submitted on the development of the prior 2016 Permit, which are outside the scope of this permitting action.

Comment 2

EXECUTIVE SUMMARY

SESD has submitted detailed comments on the draft NPDES permit (MA0100501) issued by the EPA and the draft Surface Water Discharge Permit and draft Section 401 Water Quality Certification issued by MassDEP for the South Essex WWTF. Two of the most concerning issues are the inconsistent bacteria limits and ambient monitoring requirements:

- SESD identifies discrepancies in the bacteria limits compared to the 2016 permit and advocates for the application of a mixing zone and seasonal limits to better reflect actual conditions and reduce unnecessary operational and cost burdens.
- SESD objects to the new ambient monitoring requirement, citing significant administrative and financial burdens, lack of scientific justification, and regulatory overreach.

SESD's response also highlights several key concerns, including objections to increased

nitrogen sampling frequency, the inclusion of PFAS and Adsorbable Organic Fluorine (AOF) testing due to the high costs and unpromulgated testing methods, end-result requirements, and requirements for flow reduction planning including Infiltration and Inflow assessment based on an 80% factor of an unfounded flow limit. Additionally, SESD challenges the requirement for adaptation planning and specific industrial discharge monitoring, citing regulatory overreach and financial burdens. SESD requests revisions to the draft permit to align with practical operational capabilities and existing regulatory frameworks, emphasizing the need for scientifically justified and economically feasible permit conditions.

BACKGROUND

The District owns and operates the South Essex Wastewater Treatment Facility which serves residents in the Cities of Salem, Peabody, and Beverly and the Towns of Danvers and Marblehead. The District owns and maintains approximately 29 miles of large diameter interceptor piping and forcemains, which convey wastewater from local communities to a District treatment facility in Salem. Currently, the WWTF is regulated by NPDES permit No. MA0100501 (issued May 5, 2016). When finalized, the new NPDES permit (MA0100501) will supersede the WWTF NPDES permit currently in effect.

COMMENTS

The District offers the following comments and proposed resolutions on the draft NPDES permit renewal MA0100501 (Draft Permit).

Response 2

EPA acknowledges receipt of these comments and has responded to these issues raised in more detail below. As noted in Response 1, EPA's response will be limited to the 2025 Draft NPDES Permit No. MA0100501 published for public comment by the EPA.

Comment 3

Bacteria Limits. The Draft Permit includes limits on fecal coliform of 88 cfu/100mL as a monthly geometric mean and a new reportable maximum daily value of 260 cfu/100mL (page 3 of 31). In the Fact Sheet (page 30 of 63) EPA states that in the 2016 Permit "a monthly geometric mean of 88 colony forming units (cfu) and a maximum daily limit of 260 cfu/100ml were established" and that "[t]he Draft Permit proposes maintaining the effluent limits for bacteria from the 2016 Permit." This is misleading as the 2016 Permit required reporting only of "the percent of samples exceeding 260 cfu per 100 ml on its discharge monitoring report." The full text of the maximum daily reporting requirement for fecal coliform is included in Part 1A, Footnote No. 6 (page 3 of 15) of the 2016 Permit:

Fecal coliform discharges shall not exceed a monthly geometric mean of 88 colony forming units (cfu) per 100 ml, and no more than 10 percent of the fecal coliform samples in any calendar month shall exceed 260 cfu per 100 ml. The permittee shall report the percent of samples exceeding 260 cfu per 100 ml on its discharge monitoring

report and submit the sample results with the discharge monitoring report.

The EPA states in the Draft Permit Fact Sheet (page 30 of 63) that of the fecal coliform results “[t]he DMR data during the review period shows that there have been...six exceedances of the maximum daily limit,” which is not a true statement: while there were six months that included a maximum day value of greater than 260 cfu per 100 ml, there were not six exceedances of more than 10 percent of the fecal coliform samples having maximum daily values greater than 260 cfu per 100 ml.

The 260 organisms per 100 mL maximum daily limit for fecal coliform as presented in the Draft Permit does not match the stated intention that the “limits and sampling frequency are the same as in the 2016 Permit” (Fact Sheet page 30 of 63). Additionally, the District notes that the maximum daily limits for fecal coliform as presented in the Draft Permit is inappropriate because it sets a maximum daily limit that is not included in the Massachusetts Water Quality Standards (MA WQS) for Class SB Waters. According to the MA WQS, at 314 CMR 4.05 (4)(b)4.a:

Bacteria.

a. Waters designated for shell fishing shall not exceed a fecal coliform median or geometric mean MPN of 88 organisms per 100 mL, **nor shall more than 10% of the samples exceed an MPN of 260 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.) [bold added for emphasis].

While the 2016 Permit requirement matches the MA WQS, the Draft Permit does not and is inconsistent with Massachusetts Water Quality Standards (MA WQS) for Class SB Waters. The maximum daily limit for fecal coliform bacteria in the Draft Permit without the inclusion of the “more than 10% of samples exceeding” qualifier is a change from the 2016 NPDES Permit for the WWTF which we believe is an error in the Draft Permit that does not match the stated intention of EPA.

Mixing Zone: EPA has previously acknowledged that “certain water quality-based effluent limits (i.e., – total residual chlorine) in the 2016 Permit were established with the use of a mixing zone” and that Massachusetts water quality regulations allow for such zones when specific conditions are met (314 CMR 4.03(2)). The SESD WWTF discharge location is approximately 2.3 miles offshore at a depth of 42 feet with a multiport diffuser system that meets the criteria for rapid initial dilution. The discharge outfall consists of a 54-inch diameter, 660-foot-long, multiport diffuser with 66 five-inch ports spaced ten feet apart, designed to ensure thorough dispersion of effluent into the receiving waters. Given that the mixing zone has been used for certain pollutants in past permits (i.e., total residual chlorine), it is inconsistent to not apply a mixing zone for bacteria when a

scientifically justified dilution model can demonstrate compliance with water quality standards at an appropriate boundary.

Furthermore, EPA has explicitly recognized the role of dilution and dispersion in regulating bacteria levels for offshore wastewater discharges, as reflected in the agency's analysis of the Deer Island WWTP outfall. According to the 2023 MWRA Deer Island WWTP Permit Fact Sheet, the permit limits for bacteria in the MWRA draft permit incorporate a 70:1 dilution factor (page 53 of 195, attached).

Moreover, the end-of-pipe discharge standard is not applicable for the District's outfall, as the diffuser system is functioning effectively to disperse effluent and facilitate bacterial decay. This is demonstrated in the Vella and Callaghan study from 2020, referenced on page 35 of 63 in the Fact Sheet, where the average TN concentration at the outfall was found to be 15.7 μM (0.22 mg/L), much lower than any nitrogen concentration at an end of pipe WWTP discharge. The current design of the existing outfall ensures that effluent is rapidly mixed, minimizing localized impacts and preventing any exceedance of water quality standards beyond the immediate discharge point. EPA has acknowledged the fact that the District's outfall diffuser is properly functioning in the 2025 Permit Fact Sheet (page 35 of 63), where it is stated that **"The SESD outfall seems to be doing a good job at dispersing the effluent"**, although more data are needed to provide a clearer picture" [bold emphasis added].

Additionally, a fecal coliform indicator bacteria limit is applicable for SB Waters (Approved for shellfishing with depuration) as per the Final TMDL for the North Coast (Final Pathogen TMDL for the North Coastal, page 84 of 148). According to the Water Quality Standards, at 314 CMR 4.05 (4)(b):

(b) Class SB. Those Coastal and Marine Waters so designated pursuant to 314 CMR 4.06; including, without limitation, 314 CMR 4.06(2) and certain surface waters designated in 314 CMR 4.06(6)(b). These waters are designated as a 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, habitat for fish, other aquatic life and wildlife may include, but is not limited to, seagrass. Where designated for shell fishing in 314 CMR 4.06(6)(b), these waters shall be suitable for shellfish harvesting with depuration (Restricted and Conditionally Restricted Shellfish Areas). These waters shall have consistently good aesthetic value.

As per this definition, the Shellfishing designation is applicable solely to areas classified as Restricted and Conditionally Restricted for shellfish harvesting. **The waters receiving discharge from the SESD WWTF are NOT classified as Restricted or Conditionally Restricted under the Massachusetts Shellfish Sanitation program; instead, they are designated as Prohibited.** Consequently, the fecal coliform limits outlined in the Water Quality Standards are not applicable, as these waters do not fall under the Restricted or Conditionally Restricted categories specified in the standards.

Given the demonstrated effectiveness of the diffuser and its functional equivalence to the Deer Island WWTP system, as well as the classification of the receiving water, bacterial limits should be measured at the boundary of the initial dilution zone (rather than the outfall itself), with scientifically validated dilution factors applied to reflect end of pipe dispersion. As EPA used an acute dilution factor of 18.6 in the 2016 permit, in this 2025 Draft Permit the average daily limit for fecal coliform should be 1,637 cfu/100 mL with a maximum of no more than 4,836 organisms/ 100 mL 10% of samples. The average daily limit for Enterococci should be 651 colonies/100mL and the maximum daily limit for Enterococci should be 5,134 colonies/100mL.

Seasonal Limit: The Draft Permit includes year-round limits for both Enterococci and Fecal coliform. The primary reason for imposing Enterococci limits is to protect public health by ensuring safe water quality for recreational activities. However, during winter, when recreational use is minimal, the risk to public health is substantially lower. Therefore, maintaining stringent limits year-round may not be necessary to achieve the intended public health protection. Imposing year-round limits is inconsistent with EPA's recent issuance of seasonal bacteria limits for Publicly Owned Treatment Works (POTWs) that discharge to Class SB water. For example, certain POTWs in Massachusetts and New Hampshire have been granted seasonal discharge limits under the National Pollutant Discharge Elimination System (NPDES) permits. This precedent demonstrates that regulatory agencies recognize the validity of adjusting limits based on seasonal variations in environmental conditions and usage patterns. The MWRA 2023 Fact Sheet serves as a precedent, allowing seasonal Enterococcus limits for the Deer Island Treatment Plant based on recreational exposure risk and hydrodynamic conditions. Given that the District's outfall discharges into a marine environment characterized by offshore discharge, strong tidal flushing and limited winter recreation, a seasonal bacteria limit is equally appropriate. Therefore, implementing seasonal fecal coliform and Enterococci limits for the SESD WWTF would align with practices already in place for other POTWs in the region. This consistency can help streamline regulatory processes and ensure that all facilities are held to similar standards based on actual risk and usage patterns.

The SESD WWTF is facing increased operational challenges and costs to meet stringent effluent limits. By adjusting the Enterococci and fecal coliform limits to be applied seasonally, the SESD WWTF could optimize its operations and reduce costs during the winter months when the public health risk is lower. While maintaining water quality is crucial, the environmental impact of WWTF operations should also be considered. Seasonal limits could help balance the need for environmental protection with the practicalities of WWTF operations, potentially reducing the environmental footprint of the treatment process during periods of low recreational use. This has been acknowledged by EPA's statement on minimizing chemical usage as in footnote #7 (Part 1.A, page 7 of 31) that the "Permittee shall minimize the use of chlorine while maintaining adequate bacterial control." The best way to minimize chlorine use, while also providing resources for other operations and maintenance costs, is to align the disinfection season with actual recreational exposure risks and implement a seasonal bacteria limit (April 1 – October 31) instead of a year-round disinfection requirement.

A seasonal standard would strike a balance, effectively protecting public health while reducing the environmental and economic burden of chemical use during colder months when bacterial viability and recreational exposure are significantly reduced. By reducing unnecessary chemical disinfection during winter months, the introduction of excess sodium hypochlorite and sodium bisulfite into the marine environment would be minimized, which would reduce potential ecological impacts and operational costs while maintaining water quality compliance.

Request: The District requests that the fecal coliform maximum daily limit be modified to reflect the requirement of the Massachusetts Water Quality Standards for Class SB Waters, and the stated EPA intention, by updating the 260 organisms per 100 ml fecal coliform maximum daily limit in the Draft Permit to match the limit in the 2016 Permit, which specifies **“no more than 10 percent of the fecal coliform samples in any calendar month shall exceed”** 260 organisms per 100 ml.

The District also requests that EPA correct the Fact Sheet (page 30 of 63) statement that there have been “six exceedances of the maximum daily limit,” which is incorrect, for the reasons stated above.

Further, the District requests that the same standard be applied to the District’s outfall as that of MWRA by adding a dilution factor to the bacteria limits. Applying the acute dilution factor of 18.6 results in an average daily limit for fecal coliform of 1,637 cfu/100 mL with a maximum of no more than 4,836 organisms/ 100 mL 10% of samples as well as an average daily limit for Enterococci of 651 colonies/100mL and a maximum daily limit for Enterococci of 5,134 colonies/100mL.

Lastly, to enhance the protection of the environment, the District requests that the change to the year-round bacterial limit apply only during the recreational season of April through October, thereby reducing the use and discharge of chemicals into the environment.

Response 3

Bacteria Limits

This portion of the comment identifies a mischaracterization in the Fact Sheet regarding the description of the fecal coliform bacteria limits in the 2016 SESD permit and compliance. Additionally, the commenter requests that EPA reconsider the proposed bacteria limits in the Draft Permit.

The commenter correctly recognizes that the 2016 Permit includes an average monthly limit of 88 cfu/100 ml and a maximum daily reporting requirement for fecal coliform bacteria. The 2016 permit footnote related to fecal coliform bacteria limit also requires, “and no more than 10 percent of the fecal coliform samples in any calendar month shall exceed 260 cfu per 100 ml. The permittee shall report the percent of maximum daily values exceeding 260 cfu per 100 ml on its discharge monitoring report and submit the sample results as an attachment with the discharge monitoring report.”

The commenter is also correct that there have been no violations of the maximum daily bacteria limit as it is only a reporting requirement in the 2016 Permit. EPA agrees that the maximum daily reported value is not a violation; rather, the limit was based on underlying percent of samples exceeding 260 cfu per 100 ml. EPA will work with Region 1's Enforcement and Compliance Assurance Division (ECAD) to address the error in ICIS to ensure that the maximum daily value is not flagged as a violation but the limit continues to be based on the underlying percentage.

The Massachusetts WQS for Class SB waters at 314 CMR 4.05(b)(4) require:

- a. Waters designated for shellfishing shall not exceed a fecal coliform median or geometric mean MPN of 88 organisms per 100 mL, nor shall more than 10% of the samples exceed an MPN of 260 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.); and
- b. For protection of primary contact recreation, surface waters shall meet the minimum criteria for bacteria set forth in 314 CMR 4.05(5)(f)2. and 3.

Based on this standard and as requested by the commenter, EPA has revised the maximum daily effluent limit for fecal coliform bacteria in the Final Permit. The maximum daily limit has been changed to a report only requirement (as in the 2016 Permit) and EPA has added a new Footnote 7 (the footnotes from the Draft Permit have been subsequently re-numbered in the Final Permit) which requires the Permittee to continue to report the percent of maximum daily values exceeding 260 cfu per 100 ml for the month on its discharge monitoring report and submit the sample results as an attachment with the monthly discharge monitoring report (DMR). Therefore, the permit limit in the Final Permit will require that no more than 10% of the samples each month may exceed 260 cfu per 100 ml.

Mixing Zone

The commenter requests that given the effectiveness of the diffuser and the functional equivalence of its facility to the Deer Island WWTP system, and the classification of the receiving waters that EPA should set bacteria limits with an allowance for a mixing zone.

First, the commenter states that EPA has previously acknowledged that "certain water quality-based effluent limits (i.e., – total residual chlorine) in the 2016 Permit were established with the use of a mixing zone" and that Massachusetts water quality regulations allow for such zones when specific conditions are met (314 CMR 4.03(2)).

Although the commenter is correct that the Massachusetts WQS allow for the implementation of a mixing zone for water quality based effluent limits, it has been EPA's policy, as expressed in the Water Quality Standard Handbook,¹ that mixing zones

¹ EPA-820-B-14-004, 2014, available at: <https://www.epa.gov/sites/default/files/2014-09/documents/handbook-chapter5.pdf>

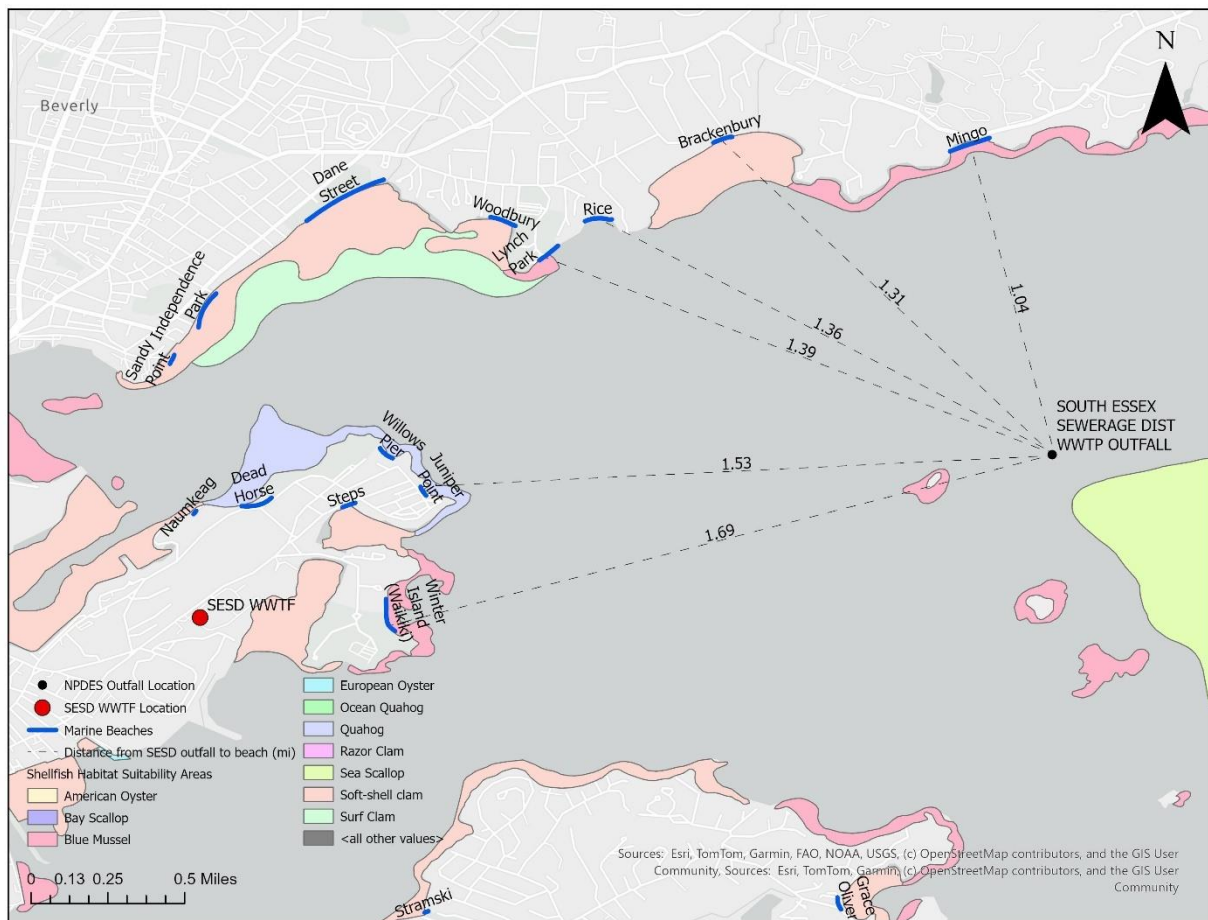
may not be appropriate in circumstances where they may cause significant human health risks (considering all likely pathways of exposure) or where they may endanger critical areas (e.g., shellfish beds, recreational areas). One such situation could be where mixing zones allow for elevated levels of pathogens or pathogen indicators in receiving waters designated for shellfishing and/or primary contact recreation.

Epidemiological studies have demonstrated that illness rates are higher when the criteria are exceeded compared to when those criteria are not exceeded. Therefore, people recreating in or through a bacteria mixing zone (where bacterial levels may be elevated above the criteria levels) may be exposed to greater risk of gastrointestinal illness than would otherwise be allowed by the state or tribal criteria from the protection of the recreational use. Given this presumption, EPA cautions careful evaluation whether to authorize a mixing zone that results in elevated levels of bacteria in a receiving water designated for primary contact recreation that will adversely affect the designated use. If so, then the mixing zone should not be authorized because it could result in significant human health risk. The same can be true for the designated use of shellfishing.

Second, the commenter's premise that the SESD WWTF system is functionally equivalent to the Massachusetts Water Resources Authority (MWRA) Deer Island WWTP system is incorrect. As of the date of SESD's Final Permit, EPA Region 1 has public noticed, but not yet issued, a NPDES Permit for the MWRA Deer Island Treatment Plant (DITP) with the use of a multiplying factor in setting bacteria limits. However, as detailed in the Fact Sheet for the MWRA DITP, the DITP outfall is unique in several ways: 1) the discharge, at a minimum, is approximately 5.6 miles from the nearest shoreline; 2) it is at a depth of 110 feet; 3) a portion of the 9.5-mile long outfall tunnel is used as part of the chlorine contact chamber and dechlorination occurs in the outfall tunnel; and 4) the Permittee has a long-term ambient monitoring program which documents that WQS for bacteria are met in the immediate vicinity of the outfall and the monitoring program is continued as a permit requirement in the MWRA Draft Permit.

In describing the SESD outfall, the commenter states that the SESD discharge location is approximately 2.3 miles offshore; however, that is not accurate. The outfall pipe from the SESD WWTF to the discharge location is approximately 2.3 miles long; however, the outfall diffuser is approximately 1 mile from the nearest shoreline and a public swimming beach. See Figure 1.

Figure 1: Location of the SESD Outfall relative to areas suitable for shellfish and distances to select local public swimming beaches.



The outfall diffuser is located in Salem Sound, a heavily used water body for fishing and primary and secondary recreation. Additionally, the outfall is surrounded by areas that have been identified as suitable habitat for shellfish by Massachusetts Division of Marine Fisheries.² Although the area is currently administratively classified as prohibited for shellfishing, EPA has an obligation to protect water quality standards that apply to the designated uses of the receiving water including shellfishing. The fecal coliform bacteria criteria are established to protect the designated use of shellfishing. The closest area suitable for shellfish habitat is approximately 660 feet from the diffuser.

In general, bacteria limits in NPDES permits are established as end-of-pipe limits. As previously stated, mixing zones that allow for elevated levels of bacteria in a receiving water, which is designated for shellfishing, are inconsistent with the designated use and should not be permitted.

² MassGIS Data: Shellfish Suitability Areas, May 2011. Available at: <https://www.mass.gov/info-details/massgis-data-shellfish-suitability-areas>

As defined in the Technical Support Document for Water Quality-based Toxics Control (USEPA, 1991), the “TSD”, a mixing zone is “an area where an effluent discharge undergoes initial dilution and is extended to cover the secondary mixing in the ambient waterbody. A mixing zone is an allocated impact zone where water quality criteria can be exceeded as long as acutely toxic conditions are prevented.” The TSD recommends that allowable mixing zone characteristics should be established to ensure that: mixing zones do not impair the integrity of the waterbody as a whole; are not lethal to organisms passing through the mixing zone; and there are no significant health risks, considering likely pathways of exposure.³

Effluent limitations established based on a mixing zone will increase the mass loading of the pollutant to the water body and decrease treatment requirements compared to limitations not based on mixing zones. Because of these and other factors, mixing zones must be applied carefully, so as not to impede progress toward the Clean Water Act goals of maintaining and improving water quality. See Water Quality Standards Handbook: Second Edition at 5-2; Technical Support Document for Water Quality-based Toxics Control (USEPA, 1991a) at 69-72.

In contrast to SESD, MWRA has collected a long-term record (since 1999) of ambient bacteria monitoring data at 11 stations in Massachusetts Bay. MWRA has been conducting monthly and adverse condition monitoring for both fecal coliform and *Enterococcus* bacteria since 1999.⁴ The MWRA draft permit requires MWRA to continue to conduct ambient monitoring for bacteria to assure that water quality standards are being met in the receiving waters.

Finally, EPA consulted with MassDEP on the issue of a mixing zone and MassDEP found that “the use of a mixing zone is inappropriate.” MassDEP recognizes the SESD is attempting to save chemical costs but finds that is it not appropriate at the expense of public and environmental safety.⁵

Seasonal Limit

The 2016 Permit included year-round limits for fecal coliform bacteria and enterococci. The Permittee has requested a seasonal limit for enterococci since it is expected that recreational use is minimal.

EPA consulted with MassDEP on this issue and MassDEP determined that a seasonal limit for enterococci would be backsliding from the 2016 Permit.⁶ The enterococci limit remains year-round.

³ US EPA. March 1991. “Technical Support Document for Water Quality-based Toxics Control,” EPA/505/2-90-001, Chapter 5, p. 3.

⁴ MWRA DITP Fact Sheet, 2023, p. 47-54. Available at: <https://www3.epa.gov/region1/npdes/mwra/pdf/2023/mwra-2023-fact-sheet.pdf>

⁵ Email. Claire Golden, MassDEP to Michele Barden, EPA. June 10, 2025. RE: SESD seasonal limit for enterococci.

⁶ Email. Claire Golden, MassDEP to Michele Barden, EPA. June 10, 2025. RE: SESD seasonal limit for enterococci.

In conclusion, this comment has resulted in a change to the fecal coliform bacteria limit in the Final Permit. The maximum daily limit is a reporting requirement and footnote 7 applies and states, "The Permittee shall report the percent of maximum daily values that exceeded an MPN of 260 organisms per 100 ml and submit the sample results as an attachment with the discharge monitoring report. No more than 10% of the samples shall exceed 260 organisms/100 ml."

Comment 4

Sampling Frequency for Nitrogen Species: The Draft Permit includes increased sampling and reporting of total Kjeldahl Nitrogen (TKN) and nitrite + nitrate. The District currently reports monthly nitrogen data and objects to the additional sampling for nitrogen species which are not a required permit limit. In the Fact Sheet (page 35 of 63) EPA states that "The SESD outfall seems to be doing a good job at dispersing the effluent, although more data are needed to provide a clear picture" [emphasis added]. And on page 36 of 63, that "EPA finds that there is not enough technical support to justify the establishment [sic] an effluent limitation for total nitrogen." Data from the referenced 2020 Vella and Callaghan study showed that the nitrogen levels near the SESD outfall (0.22 mg/L) are "below the range of 0.33 to 0.55 mg/L which the report indicates may be detrimental to eelgrass" (page 35 of 63). EPA acknowledges on page 36 of the Fact Sheet that "Although the Sound shows some signs of nutrient-induced effects, it is not clear that the SESD discharge is causing or contributing to those effects given the dispersion of the effluent and the low levels of nitrogen found in the Sound and even in the immediate vicinity of the outfall." While EPA claims to be continuing the effluent monitoring for total nitrogen in the Draft Permit, (Fact Sheet page 36 of 63), there is no reasoning or statement of acknowledgement justifying increased frequency of effluent total nitrogen monitoring. The costs of additional testing increases the cost burden to the District and the ratepayers for no apparent benefit.

The District takes great exception to the increased monitoring for the following reasons:

Existing levels of nitrogen from the SESD facility do not show cause or reasonable potential to exceed the water quality criteria in the Salem Sound.

First, the District notes that in accordance with Table 11 in the Fact Sheet (page 24 of 63), the MassDEP's 2022 Integrated List of Waters does not name nitrogen as a cause of impairment. Therefore, any reasonable conclusion would be that further evaluation and possible limitations for nitrogen are not indicated in accordance with EPA permitting procedures.

MassDEP provides narrative criteria for nutrients at 314 CMR 4.05 (5)(c) which states in part:

Unless naturally occurring, all surface waters shall be free from nutrients in concentrations that would cause or contribute to impairment of existing or designated uses and shall not exceed the site-specific criteria developed in a TMDL or as otherwise established by the Department pursuant to 314 CMR 4.00...

Any existing point source discharge containing nutrients in concentrations that would cause or contribute to cultural eutrophication, including the excessive growth of aquatic plants or algae, in any surface water shall be provided with the most appropriate treatment as determined by the Department, including, where necessary, highest and best practical treatment (HBPT) for POTWs and BAT for non POTWs, to remove such nutrients to ensure protection of existing and designated uses...

As EPA has failed to identify nitrogen as a nutrient that would cause or contribute to an impairment, the District does not understand how further expenditures and additional study of nitrogen is warranted.

Existing effluent data from the SESD WWTF is far and above more than is necessary for EPA to understand the impacts of nitrogen on the receiving water – particularly one in which EPA states that nitrogen is not impacting the designated uses and that *“Although the Sound shows some signs of nutrient-induced effect, it is not clear that the SESD discharge is causing or contributing to those effects given the dispersion of the effluent and the low levels of nitrogen found in the Sound and even in the immediate vicinity of the outfall.”*

There is already adequate effluent data to determine if nitrogen from the WWTF is causing or contributing to a water quality impairment – and there is no evidence that it is doing so; MassDEP does not have numeric criteria for nitrogen, and MassDEP has already concluded that a TMDL is not required for nitrogen in the Salem Sound and does not cause or contribute to an impairment of the water body.

The MassDEP narrative criteria, if indeed was being violated by the discharge from the WWTF (which it is not) requires that: “Any existing point source discharge containing nutrients in concentrations that would cause or contribute to cultural eutrophication, including the excessive growth of aquatic plants or algae, in any surface water shall be provided with the most appropriate treatment as determined by the Department, including, where necessary, highest and best practical treatment (HBPT) for POTWs... “

Therefore, prior to the imposition of any numeric limitations, EPA would first need to prove that the WWTF nitrogen effluent causes or contributes to cultural eutrophication, then EPA would need to determine HBPT for this facility. Finally, if HBPT is not sufficient, EPA can adopt a TMDL for nitrogen, which would assign numeric effluent limitation necessary to meet water quality – although again, since nitrogen has not been shown to be a cause of cultural eutrophication, is unclear what, if any, numeric limitations would be indicated.

Request: Remove the increased frequency of sampling and reporting nitrogen sampling.

Response 4

This comment requests that the frequency for monitoring and reporting nitrogen species in the effluent not be increased.

In general, EPA has broad authority under the CWA and NPDES regulations to prescribe the collection of data and reporting requirements in NPDES Permits. *See* CWA § 308(a)(A), 33 U.S.C. § 1318(a)(A) (specifying that permittees must provide records, reports, and other information EPA reasonably requires); CWA § 402(a)(2), 33 U.S.C. § 1342(a)(2) (requiring permittees to provide data and other information EPA deems appropriate); 40 C.F.R. § 122.41(h) (permittees shall furnish “any information” needed to determine permit compliance); 40 C.F.R. § 122.44(i) (permittees must supply monitoring data and other measurements as appropriate); *see also*, e.g., *In re City of Moscow*, 10 E.A.D. 135, 170-71 (EAB 2001) (holding that EPA has “broad authority” to impose information-gathering requirements on permittees); *In re Town of Ashland Wastewater Treatment Facility*, 9 E.A.D. 661, 671-72 (EAB 2001) (holding that CWA confers “broad authority” on permit issuers to require monitoring and information from permittees); *In re Avon Custom Mixing Services, Inc.*, 10 E.A.D. 700, 708 (EAB 2002) (“The Board has emphasized that monitoring data play a crucial role in fulfilling the objectives of the CWA and its implementing regulations.”); *Id.* at 709 (“where the monitoring relates to maintaining State water quality standards... nothing in the CWA or the implementing regulations constrain the Region’s authority to include monitoring provisions.”).

Since the last permit re-issuance in 2016, a new impairment was added to Segment MA93-56 (Salem Sound) in the Massachusetts Integrated List of Waters.⁷ Salem Sound is listed as impaired for “estuarine bioassessments” which is an impairment of the aquatic life use due to a substantial decline in eelgrass bed areal extent.⁸ As noted in the Fact Sheet (p. 32), this decline could be impacted by a number of pollutants, including nitrogen. The Massachusetts Estuaries Project⁹ states that “[l]osses of [eelgrass] bed area and/or thinning of beds (decreases in density) are generally both linked to nutrient enrichment.” The Project also found that as nitrogen levels rose above 0.40 mg/L eelgrass beds began declining.¹⁰ The 2016 Permit includes 1/Month monitoring year-round and the Draft Permit proposed increasing monitoring to 1/Week during the growing season and maintaining 1/Month monitoring frequency during the colder months. Given the potential variability of nitrogen throughout the month, EPA finds that more frequent monitoring of effluent nitrogen during the growing season is necessary to determine if the SESD’s discharge may cause or contribute to the eelgrass loss in Salem Sound.

⁷ <https://www.epa.gov/system/files/documents/2023-10/2022-ma-303d-list-report.pdf>

⁸ MassDEP. 2018. *Massachusetts Consolidated Assessment and Listing Methodology (CALM) Guidance Manual for the 2018 Reporting Cycle*, p. H2. Available at: <https://www.mass.gov/files/documents/2018/05/07/2018calm.pdf>

⁹ <https://www.mass.gov/doc/massachusetts-estuaries-project-interim-report-on-site-specific-nitrogen-thresholds-for/download>

¹⁰ *Ibid*, p. 21

The commenter states that “MassDEP has already concluded that a TMDL is not required for nitrogen in Salem Sound and [sic] does not cause or contribute to an impairment of the water body.” EPA presumes this statement intended to indicate that “SESD does not cause or contribute to an impairment of the water body.” In any case, EPA is unclear of the source of this statement as no reference is provided to demonstrate that MassDEP has made such a determination. On the contrary, as previously stated above and in the Fact Sheet, Salem Sound is listed as impaired for “estuarine bioassessments” and that impairment does require a TMDL as indicated in the Massachusetts 2022 Impaired Waters List where Salem Sound is listed in a table entitled, “Category 5 waters listed alphabetically by major watershed, The 303(d) List – ‘Waters requiring a TMDL’.”¹¹

Although Salem Sound is currently showing signs of nutrient-induced effects, the influence of the SESD discharge is unclear and more data are needed to provide a clearer picture. The Permit requires effluent monitoring for total nitrogen (i.e., nitrate + nitrite and total Kjeldhal nitrogen) but does not establish an effluent limitation at this time. The increased frequency of TKN, nitrate + nitrite and total nitrogen monitoring during the growing season will provide additional data that can be used by EPA to assess reasonable potential for the SESD WWTF to cause or contribute to the violations of WQS during the next permit reissuance.

Finally, EPA notes that in addition to the Model or Dye Study requirement in the Final Permit, Part I.G.4., EPA will consider conducting a separate dye study, in partnership with the Massachusetts Division of Marine Fisheries (Marine Fisheries), to evaluate the far-field influence of the SESD discharge on eelgrass beds throughout Salem Sound. Simultaneously, EPA would consider conducting updated nutrient monitoring in the vicinity of the eelgrass beds. This work, along with more frequent growing season effluent nitrogen monitoring and the ambient monitoring requirements (required in the permit), will provide the data necessary for EPA to evaluate the reasonable potential for SESD WWTF to cause or contribute to violations of the WQS.

This comment has not resulted in any changes to the Final Permit.

Comment 5

PFAS Testing of Influent, Effluent, Sludge: The addition of PFAS monitoring in the 2025 Draft Permit imposes a significant cost burden on the District and its ratepayers. Each sample analyzed for PFAS costs \$350 and with trip blanks and other quality control samples the financial impact quickly multiplies. Also, MassDEP has initiated a statewide study and will be collecting this information from facilities throughout the state; MassDEP is the appropriate entity to do the research on fate and transport of PFAS pollutants as opposed to wastewater treatment facility operators and administrators.”

¹¹ <https://www.epa.gov/system/files/documents/2023-10/2022-ma-303d-list-report.pdf>, p. 196

The District also takes issue with the proposed testing method. Test Method 1633 referenced in the Footnote 10 on page 7 of the Draft Permit, has still not been promulgated and is not published in the Federal Register. Further, Test Method 1633A, a revised version of Method 1633, was recently in the public comment period of review, and has not been promulgated. Thus, it is still subject to change, and in fact, changes have been proposed since the release for public comment. The District asserts that EPA should properly promulgate the method for PFAS testing prior to requiring it in NPDES permits as it is inappropriate, premature, and regulatory overreach for the EPA to include a testing method in NPDES Permits before the method is promulgated.

In addition, PFAS monitoring is an “end-result” requirement which assigns responsibility to the District for the quality of water in an area that could be impacted by pollution from other sources. In a recent U.S. Supreme Court case, the Court struck down end-result requirements and agreed with the permittee that the EPA is not authorized to impose “NPDES requirements that condition permit holders’ compliance on whether receiving waters meet applicable water quality standards”. See *City and County of San Francisco, California v. Environmental Protection Agency*, Docket No. 23-753, pages 9-10 of Slip Opinion (March 4, 2025). End-result requirements, such as the PFAS monitoring requirements, cannot stand after this important U.S. Supreme Court ruling.

Request: The District requests that EPA and MassDEP remove PFAS monitoring of the WWTF influent, effluent, and sludge from the Permits.

If PFAS sampling is maintained in the Final Permit, the District requests that the sampling and analysis not be required until a test method for PFAS in wastewater is promulgated and in effect.

If PFAS sampling is maintained in the Final Permit, the District requests that the sampling be limited to twice annually for the initial two (2) years with results allowing less frequent (annual) analysis thereafter.

In addition, the District requests that if any form of PFAS reporting requirements remains in the new Permit and the Permit is administratively continued after the five-year term expires, that the PFAS monitoring and reporting requirement be discontinued as EPA will have collected sufficient data for any future permitting requirements.

Response 5

First, the commenter expresses concerns regarding the cost burden to conduct the PFAS sampling and analysis. EPA acknowledges that there are costs and other resources that Permittees must allocate to comply with permit requirements. As with all water quality monitoring, EPA must balance the need for additional data with the associated cost and has decided that this monitoring is necessary to properly inform future permitting decisions that will be necessary to ensure the continued protection of water quality standards.

Secondly, this comment suggests that a sampling program from MassDEP is duplicative with the PFAS monitoring in this permit. MassDEP and other entities may pursue ongoing PFAS sampling efforts to better understand PFAS discharges. EPA contacted MassDEP regarding the scope of the sampling program described in this comment and determined that the program is designed to sample all 114 NPDES POTWs throughout Massachusetts “at least once, and twice for as many POTWs as possible.” In comparison, this Final Permit requires quarterly sampling throughout the life of the permit to provide a robust dataset to characterize the influent, effluent and sludge from the POTW as well as to track long-term trends. EPA appreciates the efforts of MassDEP to conduct a broad sampling effort which will capture at least some data from all POTWs but does not agree that this program will provide EPA with the same level of robust, site-specific information needed to ensure the continued protection of water quality standards in the next permit reissuance. However, EPA notes that the results of this study may be used to satisfy the PFAS monitoring requirement in the permit for the calendar quarter they are taken if they comply with the relevant permit requirements.

Thirdly, this comment takes issue with the proposed testing method. There is a distinction between the development of an analytical method and the promulgation of that method in 40 C.F.R. Part 136. As stated in 40 CFR § 122.44(i)(v)(B): “In the case of pollutants or pollutant parameters for which there are no approved methods under 40 C.F.R. part 136..., monitoring shall be conducted according to a test procedure specified in the permit for such pollutants or pollutant parameters....” *See also* 40 C.F.R. § 122.21(e)(3)(ii) (in an application for discharge, “[if] no analytical method... has been approved under 40 C.F.R. part 136... the applicant may use any suitable method....”). If Part 136 included analytical methods for these PFAS and AOF pollutants, the permit would automatically require the use of those methods. However, given that there are not any relevant methods in Part 136, the permit must clearly specify which analytical method to use. EPA also notes that Methods 1633 and 1621 are both final methods and already went through a rigorous multi-lab validation process of development, including multiple rounds of review and comment, and have well-documented accuracy and precision. Therefore, EPA confirms that although Methods 1633 and 1621 have not yet been promulgated in 40 C.F.R. Part 136,¹² both methods are suitable for use in NPDES permits so long as they are clearly specified in the permit.

Regarding Method 1633A, EPA released the final version of Method 1633 and the last volumes of the multi-laboratory study report on the Clean Water Act (CWA) Methods website¹³ on Wednesday, January 31, 2024. In response to comments from laboratories and others, the EPA developed Method 1633A. The changes between 1633 and 1633A are minor (mostly clarifications) and can be reviewed in the “Version History” section of

¹² On January 21, 2025, EPA proposed “Clean Water Act Methods Update Rule 22 for the Analysis of Contaminants in Effluent,” which proposes to add Methods 1633A (40 PFAS compounds), 1621 (adsorbable organic fluorine), and 1628 (PCB congeners) to the 40 C.F.R. Part 136 list of approved methods. *See* 90 Fed. Reg. 6967. As of the date of this permit issuance, EPA has not taken final action on this proposal.

¹³ <https://www.epa.gov/cwa-methods/cwa-analytical-methods-and-polyfluorinated-alkyl-substances-pfas>

the Method 1633A on Page ii. In any case, based on this comment the Final Permit has been updated to reference Method 1633A since it is now the most updated version of the method.

EPA disagrees with the commenter's characterization of the permit's PFAS monitoring provision as a prohibited "end result" permit condition. Monitor-only requirements are just that: an obligation to report on a discharge of pollutants, not a requirement that the discharge of a pollutant meet a certain numeric or narrative effluent limitation. EPA, as the permitting authority, has authority to impose monitoring requirements "regardless of whether pollutant discharges are restricted by an effluent limit." *E.g. In re Town of Concord*, 16 E.A.D. 514, 541-542 (EAB 2014). Data collected from a permit's monitoring requirements is critical in future permit cycles in determining the need for effluent limitations and, if appropriate, calculating effluent limitations. It is reasonable to require monitoring when there is "little data" otherwise available. *In re Avon Custom Mixing Services*, 10 E.A.D. 700, 709 (EAB 2002).

In *City and County of San Francisco v. EPA*, the Supreme Court addressed *effluent limits*, explicitly noting that it was not addressing monitoring requirements. 604 U.S. 334, 338 ("It is also common for permits to set out other steps that a discharger must take. These may include testing, record-keeping, and reporting requirements as well as requirements obligating a permittee to follow specified practices designed to reduce pollution. None of these so-called narrative requirements are at issue here."). The Court emphasized that EPA should utilize its information gathering tools to determine what is necessary to protect water quality, rather than include "end-result" requirements. *Id.* at 339 ("The EPA may itself determine what a facility should do to protect water quality, and the Agency has ample tools to obtain whatever information it needs to make that determination."). These monitoring requirements fit squarely within the framework articulated by the Court.

Finally, the comment requests a reduction in monitoring after 2 years or after 5 years. EPA considers that the quarterly monitoring is necessary throughout the life of the permit and will ensure that a robust, up-to-date PFAS dataset is available when this permit is next being reissued. Such a dataset will allow EPA to make informed permit decisions regarding PFAS discharges (in the effluent and/or sludge).

Comment 6

Adsorbable Organic Fluorine: The Draft Permit also includes sampling and measurement of influent and effluent for Adsorbable Organic Fluorine (AOF) using Method 1621, concurrent with the PFAS sampling. While the multi-laboratory validation study has been completed on this method, the January 2024 Method 1621 states that "This Method is not approved for Clean Water Act compliance monitoring until it has been proposed and promulgated through rulemaking." Method 1621 has not been promulgated. Thus, it is still subject to change. The District asserts that EPA should properly promulgate Method 1621 prior to requiring it in NPDES permits as it is inappropriate, premature, and regulatory overreach for the EPA to include Method 1621 in NPDES Permits at this time.

This requirement is also inconsistent with the purposes of the Paperwork Reduction Act. The testing creates an administrative burden on the District and forces the local entity to do the collection work which should be done by the federal government. Additionally, EPA is currently engaged in a national Information Collection Rule (ICR) study that will collect AOF data, which should provide the data that the EPA is seeking under this permit.

Additionally, the District notes that AOF is not a pollutant and has never been identified as a cause of water quality violations in any surface water. While AOF may prove useful as a better way to measure PFAS, the administrative and cost burden of the research to prove its utility as a surrogate in wastewater should not fall upon the District or other NPDES permittees; EPA should do its own research on the effectiveness of AOF as a surrogate parameter for PFAS.

Lastly, EPA's requirement for AOF monitoring imposes significant additional costs on the District without corresponding federal funding. This is an unfunded mandate, and the additional costs the District would incur places an undue financial burden on the District and local ratepayers. Thus, the requirement should be removed.

Request: The District requests that EPA remove Adsorbable Organic Fluorine monitoring of influent and effluent from the Permit.

If AOF sampling is maintained in the Final Permit, the District requests that the sampling and analysis not be required until a test method for AOF is promulgated and in effect.

If AOF monitoring is maintained in the Final Permit, the District requests that the sampling be limited to twice annually for the initial two (2) years with results allowing less frequent (annual) analysis thereafter

In addition, the City requests that if any form of AOF reporting requirements remains in the new Permit and the Permit is administratively continued after the five-year term expires, that the monitoring and reporting requirement be discontinued as EPA will have collected sufficient data for any future permitting requirements.

Response 6

The comment suggests that the Adsorbable Organic Fluorine (AOF) Method 1621 has not been approved for use in CWA compliance monitoring. EPA notes that Method 1621 was completed in January 2024 and may be used in NPDES permits after the multi-lab validation process was completed.¹⁴ Also see Response 5 on the distinction between the development of an analytical method and the promulgation of that method in 40 C.F.R. Part 136.

¹⁴ Available at: <https://www.epa.gov/system/files/documents/2024-01/method-1621-mlvs-report-with-appendix-1-30-24.pdf>

The commenter states that AOF is not a pollutant and has never been identified as a cause of water quality violation in any surface water. EPA recognizes that Method 1621 for AOF is a screening method for wastewater and that there are not currently any water quality standards for AOF. However, EPA highlights that PFAS are emerging contaminants and the future water quality standards to protect human health and aquatic life from this type of pollutants is uncertain. Given the future regulatory uncertainty and that AOF monitoring will screen for a broader range of organofluorines, such as PFAS and other emerging contaminants, EPA considers it appropriate to monitor for AOF as well as PFAS to ensure the discharge is fully characterized with respect to these pollutants in the next permit reissuance.

EPA, as the permitting authority, has authority to impose monitoring requirements “regardless of whether pollutant discharges are restricted by an effluent limit.” *E.g. In re Town of Concord*, 16 E.A.D. 514, 541-542 (EAB 2014). Data collected from a permit’s monitoring requirements is critical in future permit cycles in determining the need for effluent limitations and, if appropriate, calculating effluent limitations. It is reasonable to require monitoring when there is “little data” otherwise available. *In re Avon Custom Mixing Services*, 10 E.A.D. 700, 709 (EAB 2002).

The Paperwork Reduction Act (PRA), 44 U.S.C. 35, governs how the federal government collects information. The PRA provides methods for federal agencies to obtain approval from the Office of Management and Budget (OMB) before collecting certain information from members of the public. *See generally* Office of Management and Budget, [pra.digital.gov](https://www.pra.digital.gov).

The comment avers that requiring the permittee to monitor and report on its AOF discharges violates the PRA by allegedly duplicating another EPA AOF information collection effort, and the comment suggests that EPA should use that AOF information, when available, instead of requiring the permittee to monitor and report on AOF as a condition of this permit. The commenter may be referring to the “Publicly Owned Treatment Works (POTW) Influent Per- and Polyfluoroalkyl Substances (PFAS) Study and National Sewage Sludge Survey,” which OMB is currently reviewing as of the date of this Final Permit. *See* Office of Information and Regulatory Affairs (OIRA) Information Collections Under Review, ICR Reference No. 202410-2040-006, available at [reginfo.gov](https://www.reginfo.gov). That ICR is unrelated and inapplicable to this draft permit’s AOF monitoring and reporting requirements.

Even if this is not the proposed ICR to which the commenter refers, NPDES permit monitoring and reporting requirements are authorized by the Office of Management and Budget-approved National Pollutant Discharge Elimination System (NPDES) Program Information Collection Request, ICR Reference No. 22201-2040-004. The NPDES Program ICR calculates the burden and costs that all NPDES permit applicants and permittees nationwide may bear while providing NPDES permitting authorities with wide-ranging information necessary for the NPDES permitting authority to develop,

issue, and enforce NPDES permits. The NPDES Program ICR specifically accounts for permittees' monitoring, reporting, and recordkeeping requirements.

Regarding cost, see the first paragraph of Response 5. EPA disagrees that the AOF monitoring requirement is an unfunded mandate. EPA interprets the reference to "unfunded mandate" as a reference to the requirements of the Unfunded Mandate Reform Act of 1995 (UMRA), which is inapplicable to this permitting action. The UMRA applies to rulemaking, and not individual NPDES permit decisions. 2 U.S.C. § 1555 ("... for purposes of this subchapter the term 'Federal mandate' means any provision in **statute or regulation or any Federal court ruling** that imposes an enforceable duty upon State, local, or tribal governments..." (emphasis added); 2 U.S.C. § 1501(7) (the purpose of the UMRA is, *inter alia*, "to assist Federal agencies in their consideration of proposed **regulations** affecting State, local, and tribal governments..." (emphasis added)¹⁵; see also H.R. Rep. No. 10476, at 39 (1995), reprinted in 1995 U.S.C.C.A.N. 64 (Congress contemplated that rules subject to UMRA would "follow the requirements of section 553 of title 5, United States Code [Administrative Procedure Act] * * * .", and NPDES permit proceedings are not subject to the requirements of that section); *In re City of Blackfoot Wastewater Treatment Facility*, NPDES Appeal No. 00-32, at *18-19 (EAB September 17, 2001) (Order Denying Petition for Review)¹⁶ (denying in part because "The Unfunded Mandate Reform Act of 1995 is Inapplicable to NPDES Permit Decisions," finding that "Facility-specific NPDES permits... are not regulations, but rather are licenses.").

This comment has not resulted in any changes to the Final Permit.

Comment 7

Adaptation Plan (Part 1.C.1): The District agrees with the importance of planning for future capital needs with an awareness and consideration of future conditions. The District is currently completing a Wastewater Management Facilities Plan, and a Collection System Capital Improvement Plan. These documents include assessments of the potential impacts of sea level rise and storm surge events. Capital Improvements to address these at the treatment plant and at the pump stations have been identified and are included in the capital plans. The District is currently developing an implementation plan and schedule to complete this work. The District is also aggressively searching for funding and relief from Massachusetts law, including M.G.L. c. 59, s. 20B, the so-called "Proposition 2 ½" which tightly constrains the District's budgetary flexibility and is critical for implementation of future capital improvements.

¹⁵ See also 2 U.S.C. § 1532 ("... before promulgating any **general notice of proposed rulemaking** that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more... in any 1 year, and before promulgating **any final rule for which a general notice of proposed rulemaking was published**, the agency shall..." (emphases added).

¹⁶ Order available online at:

[https://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/Published%20and%20Unpublished%20Decisions/FDA156ABE18B7BD385257069005F7D3B/\\$File/blackfoot.pdf](https://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/Published%20and%20Unpublished%20Decisions/FDA156ABE18B7BD385257069005F7D3B/$File/blackfoot.pdf)

In addition, the District is supporting efforts of its co-permittees in their resiliency work associated with pump stations, sewer pipe relocations, and sea wall improvements. The District has also completed an update to its Emergency Response Plan which included response actions for hurricanes and floods and other natural disasters. This includes steps to protect vulnerable assets from anticipated storm surge events.

The proposed Adaptation Planning studies will place an additional burden on the District and its co-permittees, leading to the expenditures of precious funds on regulatory required studies instead of on progressing identified capital improvements.

In addition, the District asserts that inclusion of Adaptation Planning in a NPDES permit is not appropriate and an overreach of the EPA's regulatory authority for several reasons. While the Clean Water Act (CWA) grants the EPA authority to ensure compliance with water quality standards, the specific mandate for Adaptation Plans goes beyond the traditional scope of operation and maintenance (O&M) requirements. The CWA's primary goal is to restore and maintain the chemical, physical, and biological integrity of the nation's waters. However, the specific requirement for Adaptation Plans extends beyond the traditional regulatory framework for NPDES Permits, which focuses on effluent limitations and water quality standards. The EPA's interpretation that adaptation planning is inherently part of proper O&M is not explicitly supported by the CWA. In the Fact Sheet (page 42 of 63) the EPA states that "EPA has determined that these additional requirements are necessary to ensure the proper operation and maintenance of the WWTS and/or sewer system and has included a schedule in the Draft Permit for completing these requirements." The EPA's logic that adaptation planning is a necessary component of O&M requirements for Publicly Owned Treatment Works (POTWs) is flawed. Proper O&M practices are designed to ensure the effective operation of treatment facilities under normal conditions. While resilience planning is important, it should not be conflated with standard O&M requirements. The adaptation planning requirements represent a new and separate set of obligations that does not fall under the category of Operations and Maintenance, rather it falls within the category of Capital Planning, which the District is currently engaged in; climate change planning is more appropriate when communities are undertaking significant planning efforts or when planning for major renovations to wastewater facilities. By imposing Adaptation Planning requirements, the EPA is attempting to regulate future potential conditions that may or may not materialize. These conditions are necessarily based on assumption or speculation. The CWA gives the EPA the authority to maintain the chemical, physical, and biological integrity of the nation's waters and ensure compliance with permit conditions, but it does not give the EPA the authority to regulate a hypothetical future circumstance and impose conditions related to the same presumed future condition. In addition, the timeline for implementing any changes that come from the Adaptation Planning requirements will likely exceed the life of the permit, particularly if funds are not available to assist with such implementation measures. While the free planning tools offered by the EPA may be useful, planning is not very useful or helpful if it is cost prohibitive to implement the real solutions. Additionally, the District notes that engineering design standards for major facility upgrades and renovations include updated provisions for flood damage prevention (NEIWPCC TR-16).

To the extent that the EPA is relying on the authority granted in Executive Order 140008 issued by then President Biden in 2021 to incorporate Adaptation Planning requirements into permits, this Executive Order has since been rescinded by Executive Order 14148 issued by President Trump on January 20, 2025. Not only does the rescission have an impact on the EPA's authority to incorporate Adaptation Planning requirements, but it may also have an impact on the availability of funding to assist the permittee in complying with the requirements. The District knows of no Federal funding source to assist in Adaptation Planning efforts. The Adaptation Planning requirements are an unfunded mandate which imposes significant additional costs on the District without corresponding federal funding. This places an undue financial burden on the District and local ratepayers. It is a waste of resources to require adaptation planning if it is not feasible to fund the work that is planned.

Lastly, given that the storm events and other matters of concern cited by the EPA are regional issues, Adaptation Planning should be handled and studied by MassDEP and EPA as a regional issue, not as a cost burden for each local entity to take on individually. Adaptation planning may be advantageous to the District for many reasons, but it should not be required by the NPDES Permit, and the EPA does not have the legal authority to make it a requirement.

Request: The District requests removal of the adaptation planning requirement in the final permit.

Response 7

The proposed Adaptation Planning requirements have been removed from the Final Permit. In response to the concerns of comments throughout this document, EPA considered whether the aims of the proposed requirements could be satisfied without imposing new requirements in the permit and determined, as described below, that existing, non-permit programs will provide permittees opportunity to conduct a comparable assessment of their flood risks. To that end, EPA notes that the permittee remains responsible for complying with all effluent limitations expressed in Part I.A.1 of the Permit, even in the event of a major storm or flood.

The commenter described that permittees already engage in flood prevention planning through various other mechanisms and argue therefore that the Adaptation provisions are duplicative. On the federal level, for example, municipalities must engage in flood risk assessment when utilizing the Clean Water Act State Revolving Fund,¹⁷ and the Federal Emergency Management Agency (FEMA) requires a hazard mitigation plan when municipalities apply for certain types of non-emergency disaster assistance.¹⁸ At the state level, the Commonwealth of Massachusetts has developed the Massachusetts Municipal Vulnerability Preparedness Program, which awards communities with funding to complete vulnerability assessments and develop action-oriented resiliency plans.¹⁹ Additionally, many municipalities and regional organizations have developed their own

¹⁷ <https://www.epa.gov/system/files/documents/2022-09/Federal%20Flood%20Risk%20Management%20Standard%20.pdf>.

¹⁸ <https://www.fema.gov/emergency-managers/risk-management/hazard-mitigation-planning/requirements>

¹⁹ <https://www.mass.gov/municipal-vulnerability-preparedness-mvp-program>

local flood risk tools and requirements.²⁰ As described in the Fact Sheet, the goal of the Draft Permit requirements was to reduce and/or eliminate noncompliant discharges that result from impacts of major storm and flood events through advanced planning and flood risk mitigation measures. EPA is persuaded that non-permit requirements, such as those described above, will provide permittees with a comparable assessment of their flood risks as the Draft Permit intended to generate and accordingly will accomplish the Draft Permit's objective of ensuring that effluent limitations are achieved even during major storm and flood events. EPA has thus decided to remove the Adaptation Planning requirements from the Final Permit to improve efficiency and reduce redundancy.

EPA's decision is consistent with the aims of Executive Order 14239, Achieving Efficiency Through State and Local Preparedness (March 18, 2025) ("Federal policy must rightly recognize that preparedness is most effectively owned and managed at the State, local, and even individual levels, supported by a competent, accessible, and efficient Federal Government"; "it is the policy of the United States that my Administration streamline its preparedness operations; update relevant Government policies to reduce complexity and better protect and serve Americans; and enable State and local governments to better understand, plan for, and ultimately address the needs of their citizens."). As stated above, removal of these provisions does not alter the requirement for the Permittee to ensure compliance with the permit limits.²¹ As detailed in the Fact Sheet, flood risk is a significant issue for POTWs in New England and the impacts in recent years are well-documented. It is EPA's expectation that municipalities will avail themselves of the various tools described above as well as available federal guidance²² to ensure risks to their POTWs are mitigated to allow for permit compliance. Additionally, should circumstances change such that flood planning requirements outside the scope of the permit are insufficient to protect Water Quality Standards, EPA may propose additional operation and maintenance flood planning requirements in subsequent permits.

Comment 8

Plans for Further Potential Flow Increases (Part 1.C.3.f):

In Part 1.A.1, the Draft Permit maintains a monthly rolling average flow limit of 29.7 MGD that was added to the 2016 Permit. The requirement in Part 1.C.2.c. of the Draft Permit is that the Permittees control infiltration and inflow (I/I) into the sewer collection system "to prevent high flow related unauthorized discharges from their collection systems and high flow related violations of the wastewater treatment plant's effluent limitations" and that they have an I/I

²⁰ See, e.g., Charles River Watershed Association *Charles River Flood Model*, <https://www.crwa.org/watershed-model>; Franklin Regional Council of Governments South River Risk Assessment, <https://frcog.org/redefining-our-river-corridors/>.

²¹ EPA notes that an "upset" "constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations [under certain circumstances]," but it does not apply to *water-quality* based permit effluent limitations. 40 C.F.R. § 122.41(n).

²² For example: <https://www.epa.gov/waterutilityresponse/flood-resilience-basic-guide-water-and-wastewater-utilities>.

program and sewer system O&M plan as laid out in Part 1.C.2.e. The sewer system O&M plan is to include “Plans for further potential flow increases describing how the Permittee will maintain compliance with the flow limit and all other effluent limitations and conditions” if the average annual flow in a previous year exceeded 80 percent of the 29.7 MGD design flow. The District objects to the inclusion of additional plans for further potential flow increases and the trigger of this planning if flow exceeds 80% of the 29.7 MGD design flow as it is not applicable to the SESD WWTF. The plant was designed, approved, and permitted while treating a flow of 28.8 MGD, which is 97% of the design flow. The approved planning documents from the 1990’s only predicted a small increase in flow over the life of the facilities, and the District has been steadily addressing I/I to maintain flows received at the WWTF.

When the WWTF was expanded to secondary treatment, the WWTF flow was already in excess of 80% of the proposed average day dry weather flow design capacity of 27.98 MGD as provided in the Final approved Facilities Plan. In addition, the approved Facilities Plan included increased capacity over time up to an ultimate average daily flow of 31.95 MGD and an average daily design flow of 29.7 MGD, with I/I reduction being conducted to reduce the I/I and allow peak flows to come down. The average daily plant flow rate in the 1990s when the plant upgrades were being designed was 28.8 MGD. Thus, EPA and MassDEP approved construction of a plant at an average daily flow greater than 80% of its design capacity, and the District has been reducing peak flows to the plant through I/I reduction, as originally intended; the District should not have to conduct studies now on how to reduce flows further beyond what they are already doing as part of the I/I removal program. This planning and reporting is an additional administrative and cost burden on the District.

The District is already engaged in a robust CMOM program and steadily reducing infiltration and inflow within the collection system, as well as conducting facility planning at the WWTF. Over the past four (4) years the District has invested more than \$10M in I/I removal projects within the collection system:

2024

- Completed CIPP Lining of four (4) precast concrete cylinder pipe in the WWTF.
- Prepared final report and prioritization of the Danvers/Beverly Force Main and Bass River Siphons Condition Assessment.
- Continued rehabilitation of pumps and mechanical equipment at pump stations.
- Ongoing assessment and upgrades of controls at pump stations.
- Completed engineering study and preliminary design to reduce I/I for Peabody Phase III I/I Project.
- Completed an investigation and condition assessment of the 84-inch Peabody/Salem Intercepting Sewer.
- Developed a draft of the 20-year Collection System Capital Improvement Plan.
- Continued the SSO Notification communications and procedures for the 314 CMR 16 regulation.

2023

- Initiated emergency CIPP Lining of Four (4) precast concrete cylinder pipes at

the WWTF.

- Completed field investigation and asset condition assessment for the Danvers/Beverly Force Mains and Bass River Siphons.
- Continued rehabilitation of pumps and mechanical equipment at pump stations.
- Ongoing assessment and upgrades of controls at pump stations.
- Began an engineering study to assess and reduce infiltration/inflow for Peabody Phase III Infiltration/Inflow Reduction.
- Preparation of a scope and grant application for the condition assessment of the 84-inch Peabody/Salem Intercepting Sewer.
- Preparation of a scope and fee proposal with a consultant for a 20-year Collection System Capital Improvement Plan.
- Continuation of monitoring and reporting for Sanitary Sewer Overflows (SSO's) to meet the requirements of the 314 CMR 16 regulation.

2022

- Completion of the Danvers Siphon Rehabilitation Construction Project, Contract 20-1.
- Developed an engineering study and asset condition assessment for the Danvers/Beverly Force Mains and Bass River Siphons.
- Continuation of Rehabilitation of Pumps and Mechanical Equipment at Pump Stations.
- Ongoing Assessment and Upgrades of Controls at Pump Stations.
- Began planning for an engineering study to assess and reduce I/I for Peabody Phase III I/I Reduction.
- Completed and submitted an SSO Notification Plan to MassDEP to meet the requirements of the new 314 CMR 16 regulation.

2021

- Completed Beverly Pump Station Bar Rack Replacement Project Contract 16-2.
- Continued rehabilitation of pumps and mechanical equipment at pump stations.
- Ongoing assessment and upgrades of controls at pump stations.
- Continued Danvers Siphon Rehabilitation Construction Phase, Contract 20-1.
- Completed a project to reduce I/I for Peabody Phase II I/I Reduction, Contract CP-19-2.
- Continued implementing a GIS-Based Collection System Asset Management Sustainability Program.

In addition to the efforts that the District is undertaking, each of the co-permittees has its own I/I removal and collection system upgrade program. All five of the co-permittees have an established multi-year I/I removal program and each invest approximately \$500,000 to \$1,000,000 per year on these activities, including flow monitoring, pipeline assessment, pipeline rehabilitation, and sump pump removal.

Additional planning requirements to remove more flow are likely to lead down a road of increased capital expenditures for little additional benefit beyond removing flow. The cost of additional I/I work would also require relief from Proposition 2 ½, meaning that funding of this work would require extraordinary effort and is not guaranteed.

Additionally, flow is not a 'pollutant' and it is therefore not permissible to regulate flow as pollutants are regulated, regardless of whether pollutant levels are present. The District disagrees with EPA's assertion that the flow of water is considered a pollutant per 33 U.S.C. §1362(6), which defines 'pollutant' as:

dredged spoil [sic], solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water...

Although the District agrees that municipal waste such as that discharged by the District qualifies as a pollutant, flow is not a pollutant. Nor does EPA's identification of 'non-conventional pollutants' as defined at 40 CFR § 439.1(n) identify flow as a parameter. The Clean Water Act allows the EPA to "prohibit the discharge of toxic pollutants in toxic amounts" (33 U.S.C. 1251), not to prohibit the flow of water. At least one federal court has rejected the argument that the EPA may regulate flow within a facility under an NPDES Permit. See e.g. *Iowa League of Cities v. EPA*, 711 F.3d 844 (8th Cir. 2013). Further, the attempt by the EPA to regulate flow is an end-result provision, similar to the *San Francisco, California v. Environmental Protection Agency*, Docket No. 23-753 (March 4, 2025).

Even if the District were to accept the assertion that flow is a pollutant, then the procedure for limiting the flow from a WWTP is to establish a pollutant TMDL from which a waste load would be allocated to the point source of the SESD WWTF. As pollutant loading is normally calculated as the permit concentration limit x flow, the institution of a flow limit in the Draft Permit is effectively applying a waste load allocation for all parameters discharged by the SESD WWTF with no TMDLs and no scientific basis. Even with TMDLs, the facility could still meet the waste load allocations by lowering the effluent concentrations with increased effluent flow. This would not be possible with a permitted flow limit.

Request: The District requests that the annual average flow limit (in Part 1A) and the requirement for additional planning based on flow (Part 1.C.3.f) be deleted, including any and all references to the 80 percent of the District facility's design flow value of 23.76 MGD, recognizing that the original approach to the sizing and permitting the facility did not include a flow limitation. Additionally, EPA should recognize that flow is not a regulated parameter because it is not a 'pollutant' and should not be included in the permit. The flow limitation in the permit (monthly rolling average limit of 29.7 MGD) should be removed or designated as a "report only" requirement.

Response 8

The comment raises several concerns about the effluent flow limit and the planning requirements when flows exceed 80% of the design flow. The comment also requests that the annual average flow limits and the requirement for additional planning based on flow be removed from the permit.

Regarding the planning requirement in Part I.C.3.f of the Draft Permit based on flows exceeding 80% of the design flow, EPA notes that the 2016 Permit required the Permittee to submit an annual summary report of activities related to the implementation of its Collection System O&M Plan during the previous year including a requirement that “If treatment plant flow has reached 80% of the design flow [23.77 mgd] or there have been capacity related overflows, submit a calculation of the maximum daily, weekly, and monthly infiltration and the maximum daily, weekly, and monthly inflow for the reporting year.” In the 2025 Draft Permit, this requirement is carried forward in Part I.C.3.f and slightly expanded to also include the following: “Plans for further potential flow increases describing how the Permittee will maintain compliance with the flow limit and all other effluent limitations and conditions.”

The comment seems to misconstrue this provision as a requirement to invest resources into plans to expand the facility, claiming that this requirement would be inappropriate and a waste of resources for SESD. EPA clarifies that this provision is simply intended to ensure that the Permittee is planning for long-term permit compliance given that a potential facility expansion can take many years and should be considered well before being in violation of the permit (*i.e.*, after exceeding 80% of the design flow). However, EPA recognizes that simply exceeding 80% of the design flow does not necessarily mean that the facility must expand in order to continue to comply with the permit. For example, the Permittee may pursue I/I removal efforts to ensure flows do not exceed the existing design flow. To account for this possibility, the permit provision includes the word “potential” flow increase. In the case of SESD, if the Permittee can demonstrate the ability to maintain compliance with the flow limit (and all other effluent limitations and conditions) through its I/I removal program (as suggested in the comment), EPA agrees that the annual report could simply describe those efforts along with an explanation of how those efforts will maintain permit compliance without a flow limit increase. In other words, the Permittee is not required to conduct a planning effort to expand the facility if they are able to demonstrate ongoing permit compliance without expanding the facility.

In any case, EPA commends the Permittee and the Co-permittees on the CMOM work already completed to reduce I/I throughout the SESD service area as summarized in the comment. However, EPA remains concerned about sanitary sewer overflows (SSOs), especially those occurring due to system surcharging under high flow conditions. EPA reviewed SSO notification forms that have been submitted to MassDEP from SESD and the co-permittees over the last 5 years to get an understanding about overflows caused by high flow conditions. EPA finds that the summary below highlights the need for additional work to be done to mitigate ongoing SSOs.

Table 1: Capacity-related Sanitary Sewer Overflows reported to MassDEP, May 2020-May 2025.

Date	Event Type	Permittee	Water Body	Volume of Event (Gallons, except where other units are specified. Most are an estimated calculation based on gallons per minute and the duration of the event)
01/10/2024	SSO – System Surcharging Under High Flow Conditions	SESD	Cat Cove / Salem Harbor	2,350
01/10/2024*	SSO – System Surcharging Under High Flow Conditions	SESD	Massachusetts Bay	326,400
01/10/2024*	Pump Station	Marblehead	Massachusetts Bay	350 GPM
12/11/2023	SSO – System Surcharging Under High Flow Conditions	SESD	Catch Basin To Hawthorne Pond, Marblehead	4,800
12/11/2023	SSO – System Surcharging Under High Flow Conditions	SESD	Catch Basin to Marblehead Harbor	(volume not reported)
09/28/2023	Partially Treated – Other	SESD	Salem Sound	72,000
7/25/2023	Pump Station	Marblehead		(volume not reported)
7/28/2022	Force Main	Marblehead	Marblehead Harbor	400
1/17/2022	Pump Station	Marblehead	Salem Harbor	1,500
10/17/2021	Pump Station	Marblehead	Salem Harbor	18,000
9/2/2021	Pump Station	Marblehead	Atlantic Ocean (Crown Way outfall)	476,000
9/2/2021	Pump Station	Marblehead	Atlantic Ocean (Sargent Road)	1,833,380
7/9/2021	Pump Station	Marblehead	Atlantic Ocean (Crown Way outfall)	585,000
7/9/2021	Pump Station	Marblehead	Atlantic Ocean (Sargent Road)	4,452,500
7/9/2021	Pump Station	Marblehead	Salem Harbor (Shorewood Road)	240,000
5/13/2021	Pump Station	Marblehead		500

* This maybe a single event reported by two parties.

Regarding the commenter's challenge to the flow limit itself, EPA provides several justifications below and notes that many of these were also included in Section 2.3 of the Fact Sheet and were not directly addressed in the comment.

EPA Region 1 has included limits on the wastewater effluent flow from POTWs, based on the design capacity of the facility, throughout Massachusetts (including the 2016 NPDES Permit issued to SESD) and New Hampshire. Moreover, States and other EPA Regions have issued over 3,750 NPDES permits to POTWs with similar limits in other parts of the country.

The inclusion of a wastewater effluent flow limit in the South Essex Sewerage District WWTF permit is authorized by the CWA § 402(a)(2), which provides that "[t]he Administrator shall prescribe conditions for such permits to assure compliance with the requirements of" CWA § 402(a)(1) – including, by reference, CWA § 301 – "and such other requirements as [she] deems appropriate." As discussed below, the South Essex Sewerage District wastewater effluent flow limit is an appropriate "operation and maintenance" requirement that assures compliance with the technology and water quality-based effluent limitations required by CWA § 301 and is "appropriate" pursuant to CWA § 402(a)(2).

40 C.F.R. §§ 122.41(d) and (e) require the permittee to (1) "take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment," and (2) "at all times 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." The design capacity-based wastewater effluent flow limit is authorized by section 402(a)(2) and appropriate in order to assure that SESD operates its facility to comply with its permit's technology- and water quality-based effluent limitations.

As stated in the Fact Sheet, using a facility's design flow in the derivation of pollutant effluent limitations, including conditions to limit wastewater effluent flow, is fully consistent with and anticipated by NPDES permit regulations. 40 C.F.R. § 122.45(b)(1) provides, "permit effluent limitations...shall be calculated based on design flow." POTW permit applications are required to include the design flow of the treatment facility. Id. § 122.21(j)(1)(vi).

The District incorrectly contends that EPA sought to limit wastewater effluent flow from the facility on the basis that flow, or quantity of water, was a "pollutant" whose discharge could be regulated under the Act. This is not the case. Establishing water quality-based effluent limitations that are sufficiently protective to meet in-stream water quality criteria requires EPA to account for both wastewater effluent and receiving water flows, as EPA explained in the Fact Sheet. Conditions imposed by EPA to limit wastewater effluent flows from the facility for the permit term are designed to assure that the facility's pollutant discharges do not result in excursions above in-stream

water quality criteria, in accordance with section 301(b)(1)(C) of the Act and implementing regulations. 40 C.F.R. §§ 122.4(d), 122.44(d)(1), 122.44(d)(1)(vii)(A), 122.44(d)(5). Most saliently, 40 C.F.R. § 122.4(d) prohibits issuance of an NPDES permit “[w]hen the imposition of conditions cannot **ensure** [emphasis added] compliance with the applicable water quality requirements of all affected States.” Section 122.44(d)(1) is similarly broad in scope and obligates the Region to include in NPDES permits “any requirements...necessary to: (1) Achieve water quality standards established under section 303 of the CWA, including State narrative criteria for water quality.” “Congress has vested in the Administrator [of EPA] broad discretion to establish conditions for NPDES permits” in order to achieve the statutory mandates of Section 301 and 402. *Arkansas v. Oklahoma*, 503 U.S. 91, 105 (1992). Under CWA section 402, EPA may issue NPDES permits “for the discharge of any pollutant, or combination of pollutants” if the permit conditions assure that the discharge complies with certain requirements, including those of section 301 of the CWA. The Act defines “pollutant” to mean, inter alia, “municipal . . . waste[]” and “sewage...discharged into water.” CWA § 502(6). EPA has implemented Sections 301(b)(1)(C) and 402 of the Act through numerous regulations, which specify when the Region must include specific permit conditions, water quality-based effluent limitations or other requirements in NPDES permits. The wastewater effluent flow limit is a condition designed to ensure that WQS will be met. More specifically, EPA based both its reasonable potential calculations and its permit effluent limitations for individual pollutants on a presumed maximum wastewater effluent discharge from the facility. EPA’s reasonable potential regulations require EPA to consider “where appropriate, the dilution of the effluent in the receiving water,” 40 C.F.R. § 122.44(d)(1)(ii), which is a function of both the wastewater effluent flow and receiving water flow. EPA guidance directs that this reasonable potential analysis be based on critical conditions. EPA, accordingly, is authorized to carry out its reasonable potential analysis by presuming that a plant is operating at its design flow during critical instream conditions (i.e., 7Q10) when assessing reasonable potential.²³

With regard to *City and County of San Francisco v. EPA*, EPA disagrees that the flow limit is an “end result” provision. The Supreme Court defined “end result” requirements as “provisions that do not spell out what a permittee must do or refrain from doing; rather, they make a permittee responsible for the quality of the water in the body of water into which the permittee discharges pollutants.” 604 U.S. at 338. The flow limit operates much differently; it clearly defines what the permittee must do and compliance is not based on post-discharge quality of the receiving water.

This comment does not result in any change to the Final Permit.

²³ USEPA, 2010, National Pollutant Discharge Elimination System (NPDES) Permit Writers’ Manual, EPA-833-K10-001, p. 6-17

Comment 9

Alternate Power Source (Part 1.D): The District notes the clarification in the Draft Permit that an alternate power source sufficient to operate the facility is required. The facility has full power redundancy at the facility through two independent feeds from the substation.

Response 9

There is a difference between redundancy and an alternate power source. An example of an alternate power source would be a generator(s) that are either powered by diesel, propane or natural gas and would provide power to a facility if an electrical substation failed. The Permittee should discuss this issue with EPA Region 1's Enforcement and Compliance Division (ECAD) to determine if they are in compliance with this requirement.

The comment may infer a misreading of the permit requirement at Part I.D. Part I.D. Alternate Power Source states the following:

In order to maintain compliance with the terms and conditions of this permit, the Permittee and Co-permittee(s) shall provide an alternative power source(s) sufficient to operate the portion of the publicly owned treatment works it owns and operates, as defined in Part II.E.1 of this permit.

Part II.E.1 of the Permit defines Publicly owned treatment works (POTW) as follows:

...a treatment works as defined by Section 212 of the Act, which is owned by a State or municipality (as defined by Section 504(4) of the Act). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plant. The term also means the municipality as defined in Section 502(4) of the Act, which has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

The alternate power source requirement is applicable to the entire publicly owned treatment works which includes the South Essex Sewerage District Wastewater Treatment Facility and the sewers, pipe and other conveyances conveying wastewater to the SESD WWTF. For Co-permittees, this requirement only requires back-up power for conveying flows (*e.g.*, pumping stations) from the collection system owned and operated by the co-permittee.

A similar requirement was included in the 2016 Permit at Part C.7.

This comment has resulted in no changes to the Final Permit.

Comment 10

PFAS Testing for Industrial Discharges

8A. PFAS Testing for Industrial Discharges in Federal NPDES Permit (Part 1.E.6):

The Draft EPA Permit requires that the District collect or require collection of discharges into the WWTF for PFAS measurements from various industrial discharges on an annual basis. The industrial facilities include commercial car washes, platers/ metal finishers, etc., airports, and “Any Other Known or Expected Sources of PFAS.” This is a large category that sets an inappropriate standard for the Pretreatment Program, requiring District staff to become PFAS experts and research assistants for EPA. While the District issues permits to many of the industrial facility types listed and can modify those permits, there are industrial users that are not issued permits due to the nature of the flow but that are included in the PFAS sampling program. Increasing the scope of the Pretreatment Program, to include facilities that are not currently permitted dischargers (such as airports, etc.) would require administrative and operational support at a cost to the District and the rate payers. Where adding facilities to the Pretreatment Program does not make sense, the District would have to collect and pay for sampling, an added burden and expense that would not improve treatment quality and would siphon limited funds from plant operations, maintenance and capital improvements to this unfunded mandate without providing any benefit to the environment or public health.

8B. PFAS Testing for Industrial Discharges in MassDEP Permit (Paragraphs 7 and 8):

The MassDEP Permit further requires that the District “shall commence annual monitoring of all Significant Industrial Users...discharging into the Permittee’s Publicly Owned Treatment Works (POTW) using Method 1633,” clarifying that “all Significant Industrial Users (SIUs) and not just those within the sectors identified by EPA in the NPDES permit” (DEP Permit, Condition 7, Footnote 5) are to be monitored, and defining SIUs as “[a]ll industrial users subject to Categorical Pretreatment Standards and any other industrial user that: discharges an average of 25,000 GPD or more of process wastewater to the POTW, contributes a process wastestream that makes up 5% or more of the average dry weather hydraulic organic capacity of the POTW, or designated as such by the POTW on the basis that the industrial users have a reasonable potential for adversely affecting the POTW’s operation...”. This is a large category that sets an inappropriate standard for the Pretreatment Program. Without knowing that PFAS through a WWTF is a problem MassDEP is requiring the District to monitor every SIU that discharges to the system, which is a large number of users. This is a general research requirement for which the burden to investigate and report on the presence of PFAS in SIU discharges should be that of MassDEP, not the District. The District should not be responsible for the development, funding, and administration of a research program that MassDEP wants to conduct. While the District issues permits to industrial facilities and can modify those permits, there are industrial users that are not currently issued permits due to the nature of the flow but that are included in the PFAS sampling program, which would require the District to increase the scope of the Pretreatment Program to include facilities that are not currently permitted dischargers at an administrative and operational support cost to the District and the rate payers, another example of a unfunded mandate. Where adding facilities to the Pretreatment Program does not make sense, the District would have to collect and pay for sampling, an added burden and expense that would not improve treatment quality and would siphon limited funds from plant

operations, maintenance and capital improvements to this unfunded mandate without providing any benefit to the environment or public health.

Additionally, some SIUs may already be required to sample for PFAS under the Massachusetts Contingency Plan, M.G.L. c. 21E, 310 CMR 40, meaning that the District's reports would likely be duplicative. Therefore, PFAS testing of industrial users beyond the categorical users included in the existing industrial pretreatment program should be removed from the MassDEP Permit.

Furthermore, since the PFAS testing methods have not been promulgated and published in the Federal Register, including test methods 1633 and 1633A, it is inappropriate, premature, and regulatory overreach to include a PFAS testing requirement for industrial users at this time. (See also comments in Section 3). Given that the testing methods have not been promulgated, if the EPA and MassDEP do not have the authority to cause compliance with testing, it follows that the District likewise does not have authority to force industrial users to comply with the testing requirements under the Industrial Pretreatment Program.

In addition to the issue of authority, the attempt to regulate the quality of water within the District's system and facilities, not the quality of water at the point of discharge, is an overreach beyond the authority conferred under the Clean Water Act. The D.C. Circuit Court endorsed this concept in *Am. Iron & Steel Inst. v. EPA*, 115 F.3d 979, 996 (D.C. Cir. 1997) ("The statute is clear: The EPA may regulate the pollutant levels in a waste stream that is discharged directly into the navigable waters of the United States through a 'point source'; it is not authorized to regulate the pollutant levels in a facility's internal waste stream."). The 8th Circuit Court endorsed the concept and cited this language in *Iowa League of Cities v. EPA*, 711 F.3d 844 (8th Cir. 2013) in deciding that the blending rule at issue in the case imposes secondary treatment regulations on flows within facilities, which exceeds the EPA's statutory authority.

Setting aside the regulatory overreach of both the EPA and the MassDEP Draft Permits, given the size of the area that discharges to the WWTF and the number of facilities that would have to be sampled, the six-month timeline for initiation of sampling does not provide enough time for the District to evaluate the list of users that must be sampled, plan for how the sampling will occur, and coordinate with the necessary parties. The District would need more time to coordinate this significant expansion of the Pretreatment Program and would need to fit the program into the existing budget at the time that the permit becomes effective: 6-months is not an adequate amount of time for such a large expansion of the program that would require additional District planning, resources and approval by the Board- a one (1) year compliance schedule would be more manageable.

Request: The District requests that EPA remove the annual sampling requirements for known or suspected sources of PFAS and that MassDEP remove the EPA requirement along with the annual sampling from all SIUs for PFAS. If these requirements remain in the permits the request is that the sampling requirement be removed for sites that are proven not to have PFAS after the first or second round of sampling.

If PFAS sampling is maintained in the Final Federal NPDES and MassDEP Permits, the District requests that the sampling and analysis not be required until a test method for PFAS in wastewater is promulgated and in effect.

In addition, the District requests that if any form of PFAS reporting requirements remains in the new Permit and the Permit is administratively continued after the five-year term expires, that the PFAS reporting requirement be discontinued as EPA and MassDEP will have collected sufficient data for any future permitting requirements.

The District also requests that if this expansion of the Industrial Pretreatment Program is expanded to include PFAS testing that a 1-year timeframe be provided instead of 6-months to allow the District the time to coordinate and obtain funding for the expanded program.

Response 10

The commenter raises several concerns addressed individually below:

Regarding all IUs, EPA notes that permittees have regulatory avenues to require that monitoring be conducted by SIUs and the annual monitoring requirement may be implemented through one of those regulatory avenues. Discharges to the wastewater collection system are controlled through local limits, pretreatment programs, industrial discharge permits, and sewer use ordinances. Therefore, the District may require that individual IUs conduct PFAS monitoring and provide the results to the District at the IUs' expense. Thus, the District may transfer all or part of the PFAS-associated monitoring cost to the industrial user, as it deems appropriate. This monitoring requirement does not require an expansion of the Pretreatment Program.

Regarding the MassDEP permit, the commenter objects to the requirement that all SIUs conduct PFAS testing compared to certain types of industrial users listed by EPA in Part I.E.6 of the Draft Permit. EPA notes this requirement is a water quality certification condition (under CWA 401) of the permit. MassDEP solicited comments on the draft certification through a separate public notice process from this Draft Permit published by EPA and EPA is not able to respond to this aspect of this comment in this Response to Comments document. Related to this comment, EPA clarifies that the category in the Draft Permit for "any other known or expected sources of PFAS" is intentionally vague to allow the Permittee to exercise its discretion in including any other IUs that may not be captured by the other categories, but the Permittee considers to be likely sources of PFAS. Alternately, the Permittee may, at its discretion, determine that no IUs fall into this category. EPA is not asking the permittees to become a "PFAS experts or research assistants."

Regarding the comment that some IUs may already be required to conduct monitoring under the Massachusetts Contingency Plan, EPA notes that the results of any such monitoring may also be submitted to satisfy the permit requirement as long as it meets the necessary permit conditions (using Method 1633, etc.).

Regarding Method 1633, see Response 5.

Regarding EPA's authority to include monitoring conditions, see Response 4.

The comment also suggests that EPA is attempting to regulate the quality of the water within the District's system and facility, not the quality of the water at the point of discharge. This is contrary to the explanation in the Fact Sheet (p. 39), "[t]he purpose of this monitoring and reporting requirement is to better understand potential discharges of PFAS from this facility and to inform future permitting decisions, including the potential development of water quality-based effluent limits on a facility specific basis." EPA highlights that the monitoring of PFAS in effluent from industrial users is simply a monitoring requirement and is not regulating the water quality from those industrial users in any way. Rather, EPA finds that this monitoring will provide information that is likely to be useful in the future to properly regulate the water quality at the point of discharge from the POTW (*e.g.*, by understanding which industrial users have the potential for significant source control).

Finally, the Permittee requests one year to initiate sampling given the size of the district's service area and the number of facilities that need to be sampled. EPA notes that the requirement indicates that annual monitoring must begin in "the first full calendar quarter following 6 months after the effective date of the permit." Based on the date of issuance, the Permittee has until the fourth calendar quarter of 2026 to initiate this monitoring. Given that this time is approximately one year from the date of issuance, EPA considers it unnecessary to make any change to the Final Permit based on this comment.

Comment 11

Industrial Users and Compliance (Part 1.E.4.e, page 21 of 31): In Part 1.E.4.e., the District is required to notify Industrial Users of their obligations to comply with federal laws, including the Resource Conservation and Recovery Act ("RCRA") and EPA Regional Waste Management Division Director in writing of any discharge into the POTW of a substance that would otherwise be classified as a hazardous waste. The District's authority to issue permits to Industrial Users as part of the Industrial Pretreatment Program does not authorize the District to direct or remind Industrial Users of their obligations to comply with various federal laws.

Request: Remove these notice requirements, as they are outside the scope of the District's industrial pretreatment program and the Clean Water Act, and the District does not have the authority to direct the Industrial Users to comply with laws outside of the Industrial Pretreatment Program.

Response 11

The requirement for an industrial user to notify the POTW of a potential discharge of hazardous waste is a direct industrial pretreatment program requirement found at 40 CFR 403.12(p)(1). Specifically, it states "The Industrial User shall notify the POTW, the

EPA Regional Waste Management Division Director, and State hazardous waste authorities in writing of any discharge into the POTW of a substance, which, if otherwise disposed of, would be a hazardous waste under [40 CFR part 261](#).”

The responsibility to inform the industrial user of this pretreatment requirement is a function of the POTW. Given that, the language will remain in place.

This comment has resulted in no changes to the Final Permit.

Comment 12

Local Limits (Part 1.E.3.b, page 19 of 31): The Draft Permit includes a requirement for reevaluation of the local limits, due within 90 days of the effective date of the permit, and states that if “the evaluation reveals the need to revise local limits, the Permittee shall complete the revisions within 120 days of notification by EPA and submit the revisions to EPA for approval.” This is an insufficient amount of time for the District to evaluate and revise the local limits, if needed. The District’s procurement process includes board approval for funding, preparation of request for proposal to select a consulting firm, and negotiation of contract with selected firm to start the work. This process typically takes 18-24 months. Further, the Commonwealth of Massachusetts procedures for bidding and procurement are extensive and require adequate time for each phase of the request for proposal, award, and implementation process. These procedures include but are not limited to budgeting and obtaining funding, procurement of engineering services to determine the needs for revision and the extent of revision required, initial proposal of local limits, stakeholder coordination meetings, public comments on the local limits, and finalizing of local limits – all of which must occur prior to completion of the revision.

There is no possibility the reevaluation can occur in 90 days and the local limits revised within a period of 120 days.

Request: The District requests a compliance deadline of 6 months for the reevaluation and 24 months for the District to revise local limits, if needed.

Response 12

The comment requests a change in the compliance deadlines related to the local limits requirements.

The permit only requires a reevaluation of the local limits and completion of an Attachment. There is no sampling involved with the reevaluation and the District may choose to begin that reevaluation immediately if it so chooses. EPA will therefore retain the 90-day deadline.

The revision of local limits is not mandatory and may possibly be a moot point with respect to timeframes. Regardless, EPA does understand the timeframe involved with a potential revision of local limits. Given that, should the District need to revise its local limits, EPA has extended the time allowed to 18 months in the Final Permit.

Comment 13

Ambient Monitoring: The Draft Permit includes a new Ambient Monitoring Special Condition (Part 1.G.1) that requires the District to conduct water quality monitoring in Salem Sound, adjacent to Massachusetts Bay. The sampling is to be conducted annually, nine (9) times per year for over 21 parameters, including in the winter months of February and March, and work is to include preparation of a QAPP, and preparation of a full annual report, including cover letter, introduction, methods, discussion, and conclusion. The District has sought quotations from environmental sampling companies to understand the cost implications of the work. The response from companies has been that this sampling program will require a large vessel to safely complete the work, especially in the winter months, and that there are a limited number of companies with an appropriate vessel, captain, equipment, and expertise that are capable of completing this work.

In the Fact Sheet (page 46 of 63) EPA asserts that it is authorized to include the Ambient Monitoring “[d]ue to the impairment of the aquatic life use in Salem Sound and concerns that nutrients could cause excessive algal blooms leading to high turbidity.” However, EPA rightly did not establish an effluent limitation for nitrogen (Fact Sheet page 36 of 63) based on the Vella and Callaghan (2020) results where it was found that

...station SS-GH01 (located above the SESD outfall near the center of Salem Sound) indicates an average the nitrogen TN concentration of 15.7 μM (which converts to 0.22 mg/L). The highest TN level among the next four closest stations which may also be impacted by the SESD discharge (i.e., SS-MG-1, SS-MI1, SS-BG1 in Salem Sound and SH-A at the border of Salem Harbor and Salem Sound) is station SH-A with a concentration of 21.6 μM (which converts to 0.30 mg/L). EPA highlights that these levels are below the range of 0.33 to 0.55 mg/L which the report indicates may be detrimental to eelgrass. **The only stations with TN levels in this range are much farther inland and not clearly impacted by the SESD discharge.** [bold emphasis added]

EPA’s assessment is also consistent with recent studies of Massachusetts estuaries of TN end point for aquatic health as summarized in Long Island Sound Nitrogen study¹ that shows a median TN end point value of 0.40 mg/L:

Summary of Endpoint Values for Total Nitrogen in Massachusetts Estuaries

TN (mg/L)		Assessment Endpoint	Location	Citation
0.49		Seagrass transplant survival > 50%	SE Massachusetts Estuaries	Benson et al. 2013 ^a
0.39		Seagrass transplant survival > 75%		
0.42		Healthy seagrass		
0.34		Seagrass survival		
0.31		Restoration of eelgrass	Massachusetts Estuaries	MEP 2017 ^{b,d}
0.49		Restoration of eelgrass		
0.30		Eelgrass present	SE Massachusetts Embayments	Howes et al. 2003 ^c
0.39		Eelgrass present		
Median	0.39	Summary for Seagrass Protection Endpoints (Used for Literature Line of Evidence for Embayments, N=8)		
Min	0.30			
Max	0.49			
0.40		Infaunal habitat protection	Massachusetts Estuaries	MEP 2017 ^d
0.60		Infaunal habitat protection		
0.41		Benthic habitat protection		
0.91		Benthic habitat protection		
0.50		Upper end of good/fair conditions and lower end of moderate impairment	SE Massachusetts Embayments	Howes et al. 2003 ^c
0.80		Severe ecological degradation begins		
0.30		No macroalgae		
0.50		Macroalgae might occur in some regions		
0.39		DO generally >5 mg/L		
0.50		DO generally >5 mg/L		

Median	0.41	Summary for All Endpoints
Min	0.30	(Values at or above the severe degradation endpoint of 0.80 were excluded, leaving a maximum of 0.6 – see narrative above; N=16)
Max	0.60	(Used for Literature Line of Evidence for Open Waters)
^a Long term tidally averaged value; ^b Long term average; ^c Long-term, ebb tide average		

The nitrogen concentration near the SESD outfall is significantly lower than the nitrogen thresholds identified in recent studies of Massachusetts estuaries. This strongly indicates that the aquatic life impairment in Salem Sound is unlikely to be caused by the SESD discharge. Instead, other sources, such as stormwater runoff, may be contributing to the observed issues, rather than the point source from the SESD wastewater treatment facility. Therefore, it is unreasonable that EPA imposes onerous ambient monitoring requirement when there is no reasonable potential for impairment from the SESD discharge.

Additionally, the design flow of 29.7 MGD represents just 5.8% of the total wastewater flow from POTWs into the Massachusetts Bay, with 436 MGD of the 509 MGD of permitted flow coming from the Deer Island WWTF. Indeed, the EPA acknowledges in the Fact Sheet (page 45 of 63) that “multiple permitted wastewater discharges to the Merrimack River also contribute a significant loading of nutrients at the northern end of the Bay system, and non-point source discharges contribute significant loading along the southern boundary of the Bay system”. Further, EPA states (Fact Sheet page 36 of 63) that “Although the Sound shows some signs of nutrient-induced effects, it is not clear that the SESD discharge is causing or contributing to those effects given the dispersion of the effluent and the low levels of nitrogen found in the

Sound and even in the immediate vicinity of the outfall.” Yet, EPA has added this Ambient Monitoring requirement to the Draft Permit because “additional ambient monitoring is necessary to obtain a clearer picture of the impact of the discharge in Salem Sound and any cumulative impacts beyond the Sound” (Fact Sheet page 36 of 63). Especially provided the evidence presented by EPA in the Fact Sheet and EPA’s own assertions that the SESD WWTF is not contributing significant nitrogen to the Salem Sound, there is no scientific or regulatory reason to include this requirement in the Permit, and it is an overreach of EPA’s authority to require the District to conduct an environmental research program. This requirement is an unfunded mandate and imposes a requirement on the District to collect data that should be the subject of a larger regional or national program, consistent with the purposes of the Paperwork Reduction Act.

From the Fact Sheet (page 47 of 63), the specific sampling location for the “[a]mbient sampling shall be conducted at a farfield site outside the immediate influence of the SESD discharge” (see Figure 1). This new requirement to conduct an ambient water quality monitoring program, outside of the WWTF’s discharge zone of influence, imposes significant administrative burdens and costs that are beyond the scope of the District’s purview: the District’s purpose and charge is to provide municipal wastewater services including treating wastewater, not conducting general environmental research for EPA.



Figure 1. SESD discharge (Outfall) and sampling location for the proposed Ambient Monitoring in the Massachusetts Bay. EPA selected station SSBG1 (latitude 42.51919° N, 70.8065° W) from the 2020 study of Salem Sound (Fact Sheet, page 47 of 63).

The EPA's authority under the Clean Water Act (CWA) to require the District (or any POTW) to collect ambient water quality data outside of the discharge zone is not clearly supported by the statutory language of the Clean Water Act (CWA) (33 U.S.C. §§ 1251–1387), which is primarily

focused on regulating point source discharges into navigable waters through National Pollutant Discharge Elimination System (NPDES) permits. The primary purpose of these permits is to ensure that discharges meet specific effluent limitations and water quality standards. Requiring POTWs to collect ambient water quality data outside their discharge zones goes beyond the intended scope of NPDES permits, which is to control and monitor the quality of the effluent being discharged, not to conduct extensive environmental studies.

While the EPA has broad authority to ensure compliance with water quality standards, it does not have unlimited authority to impose requirements that extend beyond the direct impact of the discharge. The EPA's authority under the CWA does not explicitly extend to mandating ambient water quality monitoring outside the zone of influence of a POTW's discharge.

It is clear that this is another “end-result” provision which assigns responsibility to the District for the quality of water in an area that could be impacted by pollution from other sources. The circumstances are similar to those described in the recent U.S. Supreme Court case, *City and County of San Francisco, California v. Environmental Protection Agency*, in which the Court struck down an end-result requirement that receiving waters meet applicable water quality standards. See *City and County of San Francisco, California v. Environmental Protection Agency*, Docket No. 23-753, (March 4, 2025). The ambient water quality monitoring requirement must be stricken, following this U.S. Supreme Court decision.

Administrative Burden and Costs: Requiring the District to conduct ambient water quality monitoring outside their discharge zone of influence also imposes significant administrative burdens and costs (estimated to be approximately \$200,000/year). The CWA does not provide clear statutory authority for the EPA to impose such extensive monitoring requirements, especially when they are primarily for the EPA's own rulemaking purposes rather than directly related to discharge compliance.

The EPA's requirement for Ambient Monitoring imposes significant additional costs on SESD without corresponding federal funding, which places an undue financial burden on the District and local ratepayers and is contrary to the spirit of the Unfunded Mandates Reform Act.

EPA should consider alternative approaches to gather the necessary data without imposing an undue and excessive cost burden on the District and the ratepayers. The EPA can utilize other mechanisms to gather ambient water quality data, such as collaborating with state environmental agencies, academic institutions, or other federal programs specifically designed for environmental monitoring and research. This approach would be more consistent with the cooperative federalism framework of the CWA, where states play a significant role in water quality management.

Request: Remove the Ambient Monitoring Special Condition in the Permit.

¹Tetra Tech, Inc. (2018). Establishing Nitrogen Endpoints for Three Long Island Sound Watershed Groupings: Embayments, Large Riverine Systems, and Western Long Island Sound Open Water. Subtasks F/G. U.S. Environmental Protection Agency Region 1 and Long Island Sound Office. Available at:

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[http://yosemite.epa.gov/OA/EAB_WEB_Docket.nsf/Verity%20View/DE93FF445FFADF1285257527005AD4A9/\\$File/Memorandum%20in%20Opposition%20...89.pdf](http://yosemite.epa.gov/OA/EAB_WEB_Docket.nsf/Verity%20View/DE93FF445FFADF1285257527005AD4A9/$File/Memorandum%20in%20Opposition%20...89.pdf).

Response 13

The commenter requests that the ambient monitoring requirement be removed because of the administrative burden and cost.

The Fact Sheet (p. 43) explains that Massachusetts Bay, of which Salem Sound is a part, is experiencing a shift in biological and oceanographic regimes.²⁴ Those changes have been documented by long-term ambient data (1992 to present) collected by the Massachusetts Water Resources Authority (MWRA) throughout Massachusetts Bay. The new biological regime is characterized by increased frequency and intensity of nuisance and harmful algal blooms (HABs), shifts in the seasonal and spatial distribution of harmful algae, and the emerging trophic and water quality impacts related to HABs. This regime shift increases the scientific uncertainty regarding the role of WWTF discharges in supporting nuisance algal blooms and HABs throughout Massachusetts Bay.

Additionally, as discussed previously and in the Fact Sheet (p. 24), Salem Sound is listed in the 2022 Massachusetts Integrated List of Waters²⁵ as impaired for “estuarine bioassessments.” The Massachusetts CALM²⁶ identifies “estuarine bioassessments” as a cause of impairment when eelgrass bed mapping data documents a substantial decline (more than 10% of the bed size or total loss of beds no matter their size). Aerial surveys conducted by MassDEP (1995-2012) and acoustic mapping conducted by Massachusetts DMF (2016) showed mixed observations of eelgrass condition across the Sound. Although some beds were found to be healthy and thriving (including one of the largest in Massachusetts, stretching along the coast from Beverly to Manchester), some areas suffered substantial losses, *e.g.*, Salem Harbor (81% loss from 1995-2012).²⁷

²⁴ Hagy, J., T. Gleason, A. Oczkowski, A. Tatters, and Y. Wan. 2022. Technical Memorandum: Recommendations to adapt Ambient Monitoring and Contingency Thresholds to monitor potential ecological risks to Massachusetts Bay resulting from the Deer Island Discharge. US Environmental Protection Agency, Office of Research and Development, Narragansett, RI. EPA/600/R-22/064. 6 pp.

²⁵ <https://www.epa.gov/system/files/documents/2023-10/2022-ma-303d-list-report.pdf>

²⁶ <https://www.mass.gov/files/documents/2018/05/07/2018calm.pdf>

²⁷ Vella and Callaghan.

Total nitrogen has been identified as a pollutant threatening eelgrass bed condition. Vella and Callaghan²⁸ report that total nitrogen (TN) concentrations higher than 0.33-0.55 mg/L are detrimental to eelgrass. A study of southeastern Massachusetts estuaries found that an average TN concentration of 0.39 mg/L is a threshold concentration at which eelgrass thrives.²⁹

In the Fact Sheet, EPA reviewed seasonal averages of TN as presented in Vella and Callaghan shown in Figure 2 of the Fact Sheet. The seasonal averages for TN were less than the threshold values. Data provided by MassBays, finds a maximum TN concentration of 0.57 mg/L directly over the SESD outfall on August 13, 2019, which is just above the threshold range suggested in Vella and Callaghan and it is also above the threshold of 0.39 mg/L recommended in the southeastern Massachusetts estuaries study.

The commenter states that the “EPA asserts that it is authorized to include the Ambient Monitoring “[d]ue to the impairment of the aquatic life use in Salem Sound and nutrients could cause excessive algal blooms leading to high turbidity.” EPA did not state that it is authorized to include ambient monitoring for that reason. EPA is simply stating that the impairment status is one of the reasons for the ambient monitoring requirement and the focus on nutrients. Another reason is to better understand the issue of eutrophication in Massachusetts Bay. EPA’s authority for including ambient monitoring can be found in Response 4.

EPA has an obligation to establish effluent limitations that will ensure the discharge does not violate WQS. Although SESD represents only 5.8% of the total wastewater to Massachusetts Bay, it is the second largest discharger to the Bay. EPA’s statements in the Fact Sheet (and cited in the comment above) make clear that EPA does not have the data necessary to determine if the SESD discharge is causing or contributing to the nutrient-induced effects including the impairment due to estuarine bioassessments in Salem Sound. The ambient monitoring requirement is not, as the commenter suggests, “for separate rulemaking purposes” or for a “research study,” but to provide additional data to support a more robust and accurate reasonable potential analysis for future iterations of this individual NPDES permit.

To have sufficient data for the next permit reissuance, EPA chose the site in Children’s Island Channel as the ambient monitoring location for SESD as it was the background site for the 2019 MassBays study and the 2020 Vella and Callaghan study. Continued monitoring at this site will continue the record of background data for this site and provide the data necessary to evaluate the reasonable potential for nutrients to cause or contribute to violations of WQS in the next reissuance of the SESD permit. Although the comment suggests that this site is inappropriate because it is not in the immediate vicinity of the SESD discharge, EPA was specifically looking for a background site outside

²⁸ Ibid,

²⁹ <https://www.sciencedirect.com/science/article/pii/S0301479713006336?via%3Dihub>

of the direct influence of the SESD outfall, the Manchester-by-the-Sea outfall, and the contributing rivers. The data from this site will be used to represent ambient conditions when evaluating reasonable potential during the next permit reissuance.

EPA recognizes the Permittee's concerns about the scope of the ambient monitoring plan and has decided to reduce the number of annual sampling dates to six. This revision removes the sampling rounds from the winter months and late October and focuses on the growing season period. The six remaining dates are shown below.

When	Target Week	Purpose
Early April	15	Later winter/spring bloom nutrients
Mid-May	20	Nutrient/water column conditions at the end of winter/spring
Mid-June	25	Early summer stratification and nutrients
Mid-July	30	Mid-summer stratification and nutrients
Mid-August	34	Mid-summer stratification and nutrients
September	38	Nutrients, etc. prior to overturn

With regard to the monitoring parameters, EPA reconsidered whether any of the 21 sampling parameters are unnecessary and could be eliminated. Among the parameters under "Hydro profile," EPA notes that at least six are *in situ* parameters that can be measured with a single appropriately configured probe. The water chemistry parameters were selected to focus on eutrophication concerns and get an understanding of the ratios of nutrients in the background environment of Salem Sound outside of the influence of the SESD and Manchester outfalls and the tributary rivers and streams. The enumeration and identification of phytoplankton and zooplankton is necessary to evaluate the potential changes in the biological regime of Salem Sound. The suite of parameters required by the ambient monitoring plan is necessary and will provide EPA with the data required to evaluate if nutrients from the SESD discharge are causing or contributing to violations of WQS and impairments in Salem Sound.

ANALYTE	DEPTH	PARAMETER
Hydro profile	Downcast data continuous, with upcast data at any sampled depth	Temperature pH Salinity Dissolved Oxygen Chlorophyll fluorescence Turbidity (or Transmissometry) PAR/Irradiance Depth of sensors
Water Chemistry	Three depths. Surface chlorophyll maximum and bottom.	Ammonium Nitrate Nitrite

ANALYTE	DEPTH	PARAMETER
		Total dissolved nitrogen Particulate nitrogen Phosphate Total dissolved phosphorus Particulate phosphorus Silicate Particulate organic carbon Chlorophyll-a
Phytoplankton	Near surface and chlorophyll maximum	Identification Enumeration
Zooplankton	Net Tow	Identification Enumeration

EPA disagrees with the commenter’s characterization of ambient monitoring as a prohibited “end result” permit condition. Monitor-only requirements are just that: an obligation to report on a discharge of pollutants, not a requirement that the discharge of a pollutant meet a certain numeric or narrative effluent limitation. EPA, as the permitting authority, has authority to impose monitoring requirements “regardless of whether pollutant discharges are restricted by an effluent limit.” *E.g. In re Town of Concord*, 16 E.A.D. 514, 541-542 (EAB 2014). Data collected from a permit’s monitoring requirements is critical in future permit cycles in determining the need for effluent limitations and, if appropriate, calculating effluent limitations. It is reasonable to require monitoring when there is “little data” otherwise available. *In re Avon Custom Mixing Services*, 10 E.A.D. 700, 709 (EAB 2002).

For EPA’s response to comments regarding *City and County of San Francisco* as applied to monitoring requirements, see Response 5.

For EPA’s response to comments regarding unfunded mandates and the Paperwork Reduction Act, see Response 6.

Comment 14

Best Management Practices for Outfall: The Draft Permit includes a new Special Condition that the District conduct outfall inspections and reporting within sixty (60) days of inspections. The District already inspects and maintains the outfall on a regular basis. The last inspection and cleaning of the diffusers was in 2021, and another inspection is planned for 2026. There is not an issue with the outfall, which is being regularly inspected and maintained; inclusion of this special provision is not needed in the NPDES Permit.

Additionally, the District believes inclusion of this requirement in the NPDES Permit is an overreach of the EPA’s Statutory Authority. The Clean Water Act (CWA) (33 U.S.C. §§ 1251–1387) primarily focuses on regulating point source discharges into navigable waters through National Pollutant Discharge Elimination System (NPDES) permits. The language in the CWA

emphasizes the control of pollutants at the source and does not grant the EPA authority under the CWA to mandate the timing and reporting of specific maintenance activities.

Request: The District requests that EPA remove the outfall inspection BMPs from the Permit.

Response 14

The “Best Management Practice for Outfalls” is a permit requirement applicable to outfalls and/or diffusers in marine waters. It was added to address the concerns that the design conditions that are considered when developing marine dilution factors continue to be accurate. The dilution factor underlays the reasonable potential analysis and is dependent on the outfall diffuser functioning as designed. In other words, if the diffuser is not functioning properly, the discharge would not receive as much dilution and the water quality-based effluent limitations would not be sufficiently protective of water quality standards.

The comment notes that “[t]he District already inspects and maintains the outfall on a regular basis” and has conducted inspection and maintenance in 2021 and has another inspection planned for 2026. Therefore, EPA finds that the requirements for the “Best Management Practices for Outfalls” does not pose a significant burden on the District and will allow EPA to ensure the water quality assumptions of the permit remain accurate throughout the permit term.

This comment has resulted in no change to the Final Permit.

Comment 15

Notification of Massachusetts Division of Marine Fisheries: At the request of the Massachusetts Division of Marine Fisheries (DMF) in comments on the 2008 Draft permit (see page 5 of 122 in the Final 2016 permit Response to Comments) the 2016 permit included a 24-hour notification requirement to the DMF within 24 hours of becoming aware of excursions for fecal coliform or if a plant failure occurs (Part 1.F.7). The Draft Permit changed the notification requirement such that the District must notify DMF of any emergency condition, bypass, SSO discharges or other failure that has the potential to violate bacteria limits within four (4) hours, and within twenty-four (24) hours of becoming aware of a permit excursion or plant failure. The addition of a four (4) hour notification requirement under emergency conditions is a burden to the District that could be difficult to administer. When there are emergency conditions, bypasses, SSO discharges or other failure occurrences that would trigger this notification, plant staff are in full response mode to fix the problem that caused the emergency condition, failure, bypass or SSO. These conditions can happen at any time and the 4-hour notification window could be in the middle of an emergency response with all staff working to address the issue, causing an undue burden on the responding staff, and possibly removing staff members from their work on the emergency response, with no clear benefit to the environment. Calls would be required to DMF at any time of day or night, and these calls may be made to an empty office. It is not clear from the Draft Permit and Fact Sheet what problem is attempted to be fixed with the significantly shortened notification window.

Request: Change all DMF notifications from the new four (4) hour notification requirement back to a twenty-four (24) hour requirement.

Response 15

The revised notification period was made at the request of Massachusetts Division of Marine Fisheries (DMF) who has a responsibility to assure that public health is protected from any emergency condition. Notification should be sent by telephone and email. With current technology, EPA expects that the Permittee should be able to quickly notify DMF to assure protection of the public within the 4-hour window.

This comment has resulted in no changes to the Final Permit.

Comment 16

Model or Dye Study: The Draft Permit includes a Specific [sic] Condition to conduct a model or dye study to determine a new dilution factor for the facility. Nothing significant has changed in the District's receiving water classification or outfall that would trigger this study. This requirement is not necessary and adds more administrative and cost burden to the District and the ratepayers.

Request: Remove the requirement that the District conduct a model or dye study to determine a new dilution factor for the discharge.

Response 16

The dilution factor in the current permit is based on modeling that was conducted by EPA in 2016 using characteristic data from a 2001 study³⁰ that used ambient conditions from July-September 1985. EPA considers that there may have been significant changes in the 40+ years since 1985 that may be identified through an updated model or dye study. Given that the dilution factor underlays the reasonable potential analysis, EPA considers it appropriate to ensure the dilution factor in the next permit reissuance is based on current conditions.

This comment has resulted in no change to the Final Permit.

Comment 17

Water Quality Standards in MassDEP Surface Water Discharge Permit (Paragraph 9) and Section 401 Water Quality Certification:

The water quality standards set forth in Paragraph 9.a. through 9.g. and repeated in the Section 401 Water Quality Certification are vague "end-result" requirements which assign responsibility to the District for the quality of water in an area that could be impacted by pollution from other sources. In *City and County of San Francisco, California v. Environmental Protection Agency*, the

³⁰ Kim, Hyun-Sook and Swanson, J. Craig, Applied Science Associates, for Christian Krahforst, Massachusetts Coastal Zone Management, December 2001. Fate and Transport Modeling of Contaminants in Salem Sound. Report to the Marine Monitoring and Research Technical Series, MMRTS-01-01.

U.S. Supreme Court struck down end-result requirements and agreed with the permittee that the EPA is not authorized to impose “NPDES requirements that condition permit holders’ compliance on whether receiving waters meet applicable water quality standards”. See *City and County of San Francisco, California v. Environmental Protection Agency*, Docket No. 23-753, pages 910 of Slip Opinion (March 4, 2025). It follows that MassDEP should eliminate end-result requirements and instead include requirements that are sufficiently specific to enable the District to comply with the terms of the permit. For example, as written, it is impossible for the District to determine whether discharge is “aesthetically objectionable”. The vague language leaves the District in a position similar to that of San Francisco in the Supreme Court case in that the standard for compliance is unclear and may be outside of the District’s control.

Request: Remove the requirements in Paragraphs 9.a. through 9.g from the MassDEP Surface Water Discharge Permit and Section 401 Water Quality Certification.

Response 17

This comment is specific to the MassDEP State Permit and 401 Water Quality Certification, and is not related to EPA’s Draft Permit. EPA is required to incorporate the requirements specified in a 401 certification in the Final Permit. 40 CFR 124.55(a); 40 CFR 122.44(d)(3); 40 CFR 121.3(b). Finally, “[r]eview and appeals of limitations and conditions attributable to State certification shall be made through the applicable procedures of the State and may not be made through the procedures in this part.” 40 CFR 124.55(d).

Comment 18

State 401 Certification Conditions (Draft Permit, Section I):

The Draft Permit contains language in Section I, State 401 Certification Conditions, regarding the State-issued water quality certification. The language in the Draft Permit states that the EPA will incorporate all State water quality certification requirements (if any) into the Final Permit. This language is different from other recent draft permits, which stated that the EPA will incorporate “appropriate State water quality certification requirements (if any) into the Final Permit.” The nuanced language is significant, implying that SESD’s permit will include all State water quality certification requirements, instead of only those that are appropriate.

Request: Remove the sentence, “EPA will incorporate all State water quality certification requirements (if any) into the Final Permit.” and replace with, “EPA will incorporate appropriate State water quality certification requirements (if any) into the Final Permit.”

Response 18

EPA has removed the above sentence entirely from the Final Permit and has included the water quality certification conditions from MassDEP in the Final Permit.

Pursuant to 40 CFR 121.3, which delineates the scope of 401 water quality certification conditions:

- (a) When a certifying authority reviews a request for certification, the certifying authority shall evaluate whether the activity will comply with applicable water quality requirements. The certifying authority's evaluation is limited to the water quality-related impacts from the activity subject to the Federal license or permit, including the activity's construction and operation.
- (b) Consistent with the scope of review identified in paragraph (a) of this section, a certifying authority *shall include* any conditions in a grant of certification necessary to assure that the activity will comply with applicable water quality requirements. (emphasis added)

EPA notes that this regulation limits the scope of what a certifying authority, such as MassDEP, may include as appropriate water quality certification conditions. If a certification condition is within this scope, EPA must include it in the Final Permit. Also see Response 19.

Comment 19

Potential Alternative Permit Conditions (Fact Sheet, Section 5.8):

The Potential Alternative Permit Conditions set forth in Section 5.8 of the Fact Sheet repeat the water quality standards found in the MassDEP Surface Water Discharge Permit and Section 401 Water Quality Certification. These requirements are vague “end-result” requirements which assign responsibility to the District for the quality of water in an area that could be impacted by pollution from other sources. In *City and County of San Francisco, California v. Environmental Protection Agency*, the U.S. Supreme Court struck down end-result requirements and agreed with the permittee that the EPA is not authorized to impose “NPDES requirements that condition permit holders’ compliance on whether receiving waters meet applicable water quality standards”. See *City and County of San Francisco, California v. Environmental Protection Agency*, Docket No. 23-753, pages 9-10 of Slip Opinion (March 4, 2025). The standard for compliance with these Potential Alternative Permit Conditions is unclear and may be out of the District’s control. Following the ruling in *City and County of San Francisco, California v. Environmental Protection Agency*, EPA must eliminate these water quality standards contained within the Potential Alternative Permit Conditions from the District’s NPDES Permit.

Section 5.8 of the Fact Sheet also contains additional alternative permit conditions and monitoring requirements that EPA states will be included in the Final Permit, if not incorporated into the final state Section 401 Water Quality Certification. These additional alternative permit conditions include Reasonable Potential Analyses, Toxicity, Annual Chemical Monitoring, Visual Inspection of the Receiving Water, and Benthic Survey. Based on the language in the Fact Sheet, it is unclear to the District which conditions will appear in the Final Permit.

Furthermore, the Potential Alternative Permit Conditions are hidden in the middle of the Fact Sheet. Permit conditions should be clearly included in the body of the Draft Permit so that they are clear and visible to all readers, including the permittee. EPA and MassDEP should discuss which conditions will be incorporated into the Draft Permit in advance and issue their respective draft permits accordingly so that the District is not forced to guess which conditions will be included in the Final Permit.

Request: Remove the Potential Alternative Permit Conditions from the Fact Sheet.

Response 19

Upon consideration of the comments received, EPA is not including the potential alternative permit conditions discussed in Section 5.7 of the Fact Sheet in the Final Permit. EPA clarifies that these potential alternative permit conditions were monitoring conditions, not water quality-based effluent limitations (WQBELs), and are not necessary to protect water quality standards regardless of the content of MassDEP's 401 certification of the Draft Permit. In the development of the Draft Permit, EPA conducted a thorough reasonable potential analysis on all pollutants of concern (*i.e.*, all pollutants identified in the past five years of monthly Discharge Monitoring Reports [DMRs] and in the most recent permit application) using all available information to ensure that all pollutants of concern were either already consistently below levels that may violate applicable water quality standards (WQS) or received a protective WQBEL in the permit if the data demonstrated the reasonable potential to cause or contribute to an excursion of WQS. Some of EPA's pollutant-specific reasonable potential calculations for specific pollutants of concern are shown in Appendix B of the Fact Sheet, though a reasonable potential analysis was conducted for all pollutants identified in the DMRs and/or permit application. Additionally, the Whole Effluent Toxicity (WET) testing limitations in the permit operate as a surrogate for other potential sources of toxicity and the recent DMR data show consistent compliance with these WET limits.

Based on this information, EPA has determined that the Final Permit is fully protective of all applicable water quality standards based on all currently available information, and that the additional monitoring requirements discussed in Section 5.7 of the Fact Sheet are not necessary at this time. Similarly, the narrative water quality-based requirements that were included in previous iterations of this permit (*e.g.*, "The discharge shall not cause a violation of the water quality standards of the receiving waters") are also not necessary given EPA's determination that the limits in this Final Permit are sufficient to meet WQS, and thus are not included in this Final Permit as requirements based on CWA Section 301(b)(1)(C).

EPA additionally clarifies that the water-quality based effluent limits included in the Final Permit satisfy EPA's independent obligation under Section 301(b)(1)(C) of the CWA. EPA has also included the provisions in the State's 401 certification in the Final Permit as required by Section 401 of the Act. EPA recognizes that the Supreme Court in *San Francisco v. EPA* held that "end-result requirements" are not authorized under Section 301(b)(1)(C) of the Act, and that the commenter asserts that the State's section

401 certification includes conditions that amount to an “end result” requirements. EPA confirms that it is not relying on the 401 certification provisions to satisfy its Section 301(b)(1)(C) obligations. EPA includes section 401 conditions in NPDES permits pursuant to section 401(d), which requires that any condition of a section 401 certification “shall become a condition on any Federal license or permit.” EPA’s inclusion of section 401 conditions in NPDES permits does not imply EPA endorsement or approval. Indeed, Federal agencies cannot approve or disapprove the substance of a State’s section 401 certification conditions. See 40 CFR 121.8; 88 FR 66618. Any challenge to certification conditions related to an EPA-issued NPDES permit must be made through applicable state procedures, and not through the EPA’s Environmental Appeals Board (EAB). 40 CFR 124.55(d).

Comment 20

ERRORS & INCONSISTENCIES:

WET Testing: In Part 1A, Footnote #12 it is noted that acute toxicity tests are required, however, chronic testing is not mentioned, other than a reference to C-NOEC in the first sentence. On page 38 of the Fact Sheet it is stated that “Based on the chronic dilution factor being above 20, chronic (C-NOEC) toxicity testing is not required in the Draft Permit.” In Footnote #12 it is also stated that testing is to be conducted with sea urchin (*Arbacia*) and inland silverside (*Menidia beryllina*). The sea urchin (*Arbacia*) is used in chronic testing, not acute testing. This is supported by Attachment A – Marine Acute Toxicity Test Procedure and Protocol, which specifies the use of inland silverside (*Menidia beryllina*) and mysid shrimp (*Americamysis bahia*), not *Arbacia*, for acute testing. We believe that the species to be used in the acute WET tests should be *Menidia beryllina* and *Americamysis bahia*.

Request: In Footnote #12 remove the reference to C-NOEC and correct the species to be tested in the acute test from sea urchin (*Arbacia*) to mysid shrimp (*Americamysis bahia*) in accordance with Attachment A.

Response 20

Footnote 12 in the Draft Permit is now Footnote 13 in the Final Permit. EPA has removed the reference to C-NOEC and has corrected the second species for the acute toxicity test to mysid shrimp (*Americamysis bahia*).

Comment 21

In Part 1A, Footnote #13, there is a reference in the last sentence to “Attachment A and B, Part VI. Chemical Analysis.” Attachment B in the Permit is the Reassessment of Technology Based Industrial Discharge Limits and should not be referenced in this footnote.

Request: Remove reference to Attachment B in Footnote #13.

Response 21

EPA has deleted the reference to Attachment B in Footnote 14 (previously Footnote 13 in the Draft Permit) of the Final Permit.

Comment 22

In Part 1.E.3.b the Reassessment of Technology Based Industrial Discharge Limits form is referenced as Attachment C. It is actually Attachment B.

Request: Correct the referenced Attachment from C to B.

Response 22

EPA has corrected the reference to Attachment B.

Comment 23

In Part 1.E.5, second paragraph, the reference to the NPDES Permit Requirement for Industrial Pretreatment Annual Report as Attachment D is incorrect, it is actually Attachment C.

Request: Correct the referenced Attachment from D to C.

Response 23

EPA has corrected the reference to Attachment C.

Comment 24

Fact Sheet, page 15 of 63, second paragraph, first sentence – reference to “seven” copermittees, when five are listed.

Request: Correct the reference to five co-permittees.

Response 24

Given that the Fact Sheet supports the Draft Permit, EPA cannot make edits to the Fact Sheet at this time. EPA agrees with the Permittee that there are only five co-permittees. This Response to Comments document serves as documentation of this correction.

Comment 25

Fact Sheet, page 40 of 63, first full paragraph (not lettered), second sentence – incorrect Attachment referenced for list of PFAS parameters. (“B” listed, should be “D”).

Request: Correct the referenced Attachment from B to D.

Response 25

Given that the Fact Sheet supports the Draft Permit, EPA cannot make edits to the Fact Sheet at this time. EPA agrees with the Permittee that the attachment listing the 40 PFAS parameters should be referenced as Attachment D. This Response to Comments document serves as documentation of this correction.

Comment 26

In Part I.E.5., the permittee is required to provide the EPA with a hard copy of the annual report, but later in the paragraph, it is stated that beginning on March 1, 2025 all annual reports must be submitted electronically.

Request: Please confirm that hard copies of reports will not be required and revise the paragraph accordingly.

Response 26

EPA agrees that these reports should now be submitted electronically and has updated Part I.E.5 accordingly.

Comment 27

Fact Sheet, page 21 of 63 - At the end of the first paragraph below Table 9, there is a statement that previous overflows range from thousands of gallons to millions of gallons of untreated wastewater. This is a gross exaggeration of the magnitude of overflows. Some releases have involved partially treated wastewater.

Request: Edit the sentence to refer to thousands of gallons of untreated or partially treated wastewater so that it is accurate.

Response 27

Given that the Fact Sheet supports the Draft Permit, EPA cannot make edits to the Fact Sheet at this time. However, EPA disagrees with the commenter that the statement below Table 9 is “a gross exaggeration of the magnitude of overflows.” The statement says the following: “Larger overflows to receiving waters were reported by SESD or the Town of Marblehead during high flow conditions. These overflows range from thousands of gallons to millions of gallons of untreated wastewater.”

EPA compiled Sanitary Sewer Overflow (SSO)/Bypass Notification Forms directly from MassDEP, and also through the Massachusetts Executive Office of Energy and Environmental Affairs (EEA) Data Portal.³¹ (See Attachment A of this Response to Comments document).

Many of the reported incidents are small and are the result of standard operations and maintenance issues (i.e., blockages, pipe breaks). Many of these smaller incidents do not result in discharges to receiving waters, but some result in backups of sewage into properties. On the other hand, there some significant events typically associated with high flow conditions in the Town of Marblehead that are discharged to receiving waters and, in some cases, also backup into properties.

The SSO reports for discharges in the Town of Marblehead are for untreated wastewater and many incidents range between hundreds of thousands of gallons to one incident

³¹ Available at: <https://eeaonline.eea.state.ma.us/portal/dep/cso-data-portal/>

discharging over 4.4 million gallons. As discussed in the Fact Sheet, the Town of Marblehead previously held NPDES Permit MA0100374 was terminated on June 15, 2020. The Town of Marblehead is currently under an administrative order with EPA. Under the Marblehead High Flow Management Plan, SESD notifies the Town of Marblehead that it has reached a total flow of 5.5 MGD which begins a process of monitoring flows within Marblehead. When the system is at a capacity and causing adverse public impacts, the Town of Marblehead starts the pump to send untreated wastewater via the Sargent Road Pump Station outfall offshore near Tinker's Island. Untreated flows at high volumes have been discharged at Crown Way.

In contrast, EPA only found a single report of a partially treated discharge to Salem Sound on September 28, 2023 which was caused by an issue at the WWTF. The incident resulted in 72,000 gallons of partially treated wastewater to be discharged to Salem Sound.

This clarification is noted here for the record.

Comment 28

Appendix D, Exhibit B, Part I. (page 23) has a typo in the permittee's name. The name of the permittee is "South Essex Sewerage District".

Request: Correct the typo so that the name reads "South Essex Sewerage District".

Response 28

EPA acknowledges this correction for the record.

Comment 29

The District reserves all rights including, but not limited to, the right to supplement its comments and to provide further information in support of the issues raised herein, the right to respond to issues raised by others, and all rights of appeal. The District respectfully requests that EPA and MassDEP revise the 2025 draft Permits as proposed herein, and looks forward to working with EPA and MassDEP to resolve the above issues and develop Final Permits that are protective of the environment and sustainable for the District and the ratepayers.

Response 29

EPA acknowledges this comment.

**B. Comments from Alison Brizius, CZM Director, Commonwealth of Massachusetts,
Executive Office of Energy and Environmental Affairs, Office of Coastal Zone Management**

Comment 30

The Massachusetts Office of Coastal Zone Management (CZM) is the lead policy, planning, and technical assistance agency on coastal and ocean issues within the Executive Office of Energy and Environmental Affairs (EEA) and implements the state's coastal program under the federal

Coastal Zone Management Act. Through the implementation of its coastal program policies, CZM seeks to balance the wise use and development of the coastal zone with the protection of its resources. Through its water quality and habitat programs, CZM provides technical assistance and leverages the work of various partners to ensure that point sources of pollution such as the South Essex Sewerage District's (SESD) treated wastewater effluent do not lead to water quality impairments, loss of keystone species such as eelgrass, and loss of state-designated uses in coastal waters. CZM offers the following comments on the U.S. Environmental Protection Agency's (USEPA) draft National Pollutant Discharge Elimination System (NPDES) permit for SESD.

Response 30

EPA acknowledges receipt of these comments.

Comment 31

Work done since 2001 by the Massachusetts Department of Environmental Protection (MassDEP), its partners, and its contractors on nitrogen loading to estuaries in southern Massachusetts (the "Estuaries Project"¹) has demonstrated that for most estuaries summer season total nitrogen (TN) concentrations of 0.40 milligrams per liter (mg/L) or less are protective of water quality and eelgrass. In 2019, CZM assisted the MassBays National Estuary Partnership (MassBays), Salem State University, and Salem Sound Coastwatch in updating an earlier Massachusetts Division of Marine Fisheries (DMF) assessment of water quality in Salem Sound.² The group assessed water quality at 15 survey stations throughout the Danvers River, Salem Harbor, and Salem Sound from July to September 2019 and observed season-averaged TN concentrations between 0.17 mg/L and 0.39 mg/L for these stations. While these station averages remained below 0.40 mg/L, the TN directly over the SESD outfall on 8/13/19 was 0.57 mg/L and at times concentrations elsewhere ranged as high as 0.64 mg/L (e.g., the western end of Salem Harbor). MassBays has shared these data with USEPA and they were reviewed during the drafting of this NPDES permit.

That the season-averaged TN at several stations approached 0.40 mg/L (Station 1 SESD outfall = 0.34 mg/L; Station E western Salem Harbor = 0.37 mg/L; Station 4 Danvers/Porter Rivers = 0.39 mg/L) speaks to the need to continue to monitor ambient water quality; to continue to monitor nitrogen loads from SESD, the Manchester-By-The-Sea wastewater treatment facility, and other sources; and to continue to track dissolved oxygen, plankton levels, and the health of the eelgrass beds across Salem Sound. Maintaining water quality and eelgrass to provide "habitat for fish, other aquatic life, and wildlife" is a designated use of class SB waters such as Salem Sound under the Massachusetts water quality standards at 314 CMR 4.05(4)(b)3 and is a key reason why the SESD NPDES permit is critical for the adequate protection of water quality in Salem Sound.

CZM supports the ambient monitoring required in section G Special Conditions in the 2025 Draft NPDES permit for SESD. Since the proposed monitoring spans several seasons (e.g., spring phytoplankton bloom, summer stratification of the water column, fall phytoplankton bloom) it can be used to determine if nutrients are enhancing phytoplankton growth and decreasing dissolved oxygen. Existing eelgrass monitoring efforts by DMF and MassDEP will augment these

studies. While CZM is supportive of the monitoring location at the mouth of Salem Sound to record background conditions, it is also important to have monitoring stations within the Sound, especially near or within the eelgrass beds in Salem and Beverly, to record nutrient concentrations most likely to reflect conditions affecting these important habitat formers. As the 2019 MassBays data show, concentrations can vary widely within the Sound, and having only one monitoring site at the seaward edge of the Sound might not adequately capture the water quality conditions that may put eelgrass health, or other designated uses, at risk.

Many Massachusetts estuaries are experiencing eutrophication, declining water quality, and impaired uses due to anthropogenic nitrogen loading to coastal waters. USEPA and MassDEP, the communities surrounding Salem Sound, and their partners should continue to monitor the conditions in the Sound and take appropriate and timely action to prevent losses of the healthy eelgrass beds in Beverly and Manchester-By-The-Sea and help preserve the remaining eelgrass in Salem Harbor. CZM looks forward to working with USEPA, MassDEP, SEDS, and others in assessing water quality and habitat in Salem Sound and discussing the management options necessary to ensure that the Sound continues to meet state water quality standards.

¹ The Massachusetts Estuaries Project and Reports | Mass.gov

² Chase, B.C., J. H. Plouff, and W. M. Castonguay. 2002. The marine resources of Salem Sound, 1997

Response 31

The commenter provides ambient data from recent studies in Salem Sound that suggests total nitrogen levels at several locations are close to the growing season average of 0.40 mg/L which is considered a threshold for protection of eelgrass. The commenter is supportive of EPA's approach to include the Ambient Monitoring requirement in the permit and requests additional ambient monitoring stations in the Sound, especially near or within the eelgrass beds. The comment also notes that ambient TN levels were above 0.40 mg/L in the vicinity of the SEDS outfall, but EPA highlights that there are no historic eelgrass beds in this vicinity of Salem Sound to these localized levels are not expected to impact eelgrass.

As discussed in Response 13, the Permittee has expressed concerns about the scope of the Ambient Monitoring requirement. EPA has reduced the number of annual sampling dates from nine to six, which removes the winter months and late October sampling rounds and focuses on the growing season.

EPA also recognizes CZM's interest additional ambient monitoring stations within Salem Sound to assess the impact of the SEDS discharge. Based on the data from the 2019 and 2020 studies, EPA does not find that additional monitoring near the outfall is reasonable at this time.

As noted in Response 4, EPA will consider conducting a separate dye study, in partnership with the Massachusetts Division of Marine Fisheries (Marine Fisheries), to evaluate the far-field influence of the SEDS discharge. Simultaneously, EPA would conduct nutrient monitoring in the eelgrass beds. This work, along with more frequent growing season effluent nitrogen monitoring and the ambient monitoring requirements,

will provide the data necessary for EPA to evaluate the reasonable potential for SEDS WWTF to cause or contribute to violations of the WQS.

C. Comments from Barbara Warren, Salem Sound Coastwatch and Lower North Shore MassBays Regional Coordinator, dated April 10, 2025.

Comment 32

Salem Sound Coastwatch (SSCW) was founded 35 years ago as Salem Sound 2000 Inc. with the mission to protect and improve the environmental quality of Salem Sound. Actions taken to reduce point and non-point sources of pollution have improved the embayment's water quality and maintained marine biodiversity. The water quality of the Salem Sound has greatly improved with the critical work of municipalities and South Essex Sewerage District (SESD). The SEDS NPDES permit is necessary for continued improvements and protection of water quality in Salem Sound.

Response 32

EPA acknowledges receipt of these comments.

Comment 33

To assure SEDS is operating as designed, SSCW supports the inclusion in the permit of monitoring requirements: videoing the outfall every five years, a dye study in the 5th year, and ambient water monitoring nine times a year with a yearly report. However, we question the sampling. Salem Sound with its harbors, rivers, and two wastewater treatment facilities (WWTF) is a complex coastal environment. Salem Sound is a vertically mixed drowned river estuary with semi-diurnal tides (2.75 m range), approximately 36.6 km² in area and relatively shallow, with a mean depth of 9.15 m. The Massachusetts Department of Marine Fisheries marine resources report determined the freshwater inflow averaged 1.10m³/s from the local wastewater treatment facility and 0.99 m³/s from rivers (Chase et al., 2002). As a result of the large tidal range and small fluvial input, approximately 70% of the water in Salem Sound is exchanged over the course of a tidal cycle (Jerome et al., 1967), which indicates a relatively rapid flushing rate - on the order of approximately two days (Chase et al., 2002).

SSCW working with Massachusetts Office of Coastal Zone Management (CZM), Salem State University (SSU), and MassBays National Estuary Partnership (MassBays) have been studying Salem Sound water quality since 2010. The proposed sampling site 42°31'09.1" N, 70°48'23.4" W in these studies was considered the background monitoring location since it is on the outer (seaward) boundary of the Sound. A location that is more representative of the influence SEDS outfall effluent may be having on Salem Sound waters would be better. In addition, to sample nutrient conditions and phytoplankton blooms, the sampling site should be within Salem Sound, not at the border.

Response 33

EPA selected the monitoring location at the Children's Island Channel as a background site removed from the influence of SEDS discharge, the Manchester-by-the-Sea WWTF discharge and the rivers. The data from this site will be used to represent ambient

conditions when evaluating reasonable potential during the next permit reissuance. The Final Permit also requires the Permittee to monitor and report effluent nitrite + nitrate and total Kjeldahl nitrogen (TKN), and to calculate total nitrogen.

Finally, as EPA notes in Response 4, EPA will consider conducting a separate dye study, in partnership with the Massachusetts Division of Marine Fisheries (Marine Fisheries), to evaluate the far-field influence of the SEDS discharge. Simultaneously, EPA would conduct nutrient monitoring in the eelgrass beds. This work, along with more frequent growing season effluent nitrogen monitoring and the ambient monitoring requirements, will provide the data necessary for EPA to evaluate the reasonable potential for SEDS WWTF to cause or contribute to violations of the WQS.

EPA will use the effluent and ambient background data to evaluate reasonable potential for total nitrogen at the time of the next permit reissuance. Also see Responses 13 and 31.

Comment 34

Concerned with declining eelgrass in Salem Harbor and seeking to protect the eelgrass meadows off the Beverly-Manchester coast, SSU and SSCW with funding from three MassBays Healthy Estuaries grants were able to constrain the high levels of TSS and turbidity to phytoplankton (Hubeny et al., 2017). Further research, *Phytoplankton and Turbidity: Toward an Environmental Solution for Salem Harbor Water Quality*, demonstrated that Salem Harbor is Phosphorus-limited. Lower N:P correlates to higher dinoflagellate biomass and is likely due to higher TP or phosphate inputs. Dinoflagellates, more specifically *Heterocapsa* spp., are found in nitrogen-limited or phosphorus-rich environments. Data and analyses seem to reiterate the significance of and linkages between phosphorus nutrient concentrations and red-tide-forming *Heterocapsa* blooms in the high turbidity events in Salem Harbor. Identification of these possible drivers of negative effects on the water clarity will allow for specific remediation strategies to improve Salem Sound's water quality (Veresh et al., Final Report 2022).

Hubeny JB, Kenney M, Warren B, Louisos J. Multi-faceted monitoring of estuarine turbidity and particulate matter provenance: Case study from Salem Harbor, USA. *Science of the Total Environment* 2017; 574: 629-641.

Chase BC, Plouff JH, Castonguay WM *The Marine Resources of Salem Sound*, 1997 Technical Report TR-6.

Veresh R, Hubeny B, Warren B, Borkman D, Costa A. *Phytoplankton and Turbidity: Toward an Environmental Solution for Salem Harbor Water Quality*. Final Report 1 March 2022

Response 34

In response to this comment and the recent research that demonstrates that Salem Sound may be phosphorus-limited, EPA has added effluent monitoring and reporting of total phosphorus from SEDS. Sampling should be concurrent with the nitrite + nitrate and total Kjeldahl nitrogen monitoring. EPA is particularly concerned with HABs, such as *Heterocapsa*, in Salem Sound and the potential impacts on designated uses.

EPA notes that the Ambient Monitoring requirement in the Final Permit already requires the Permittee to monitor both nitrogen and phosphorous species, as well as to identify and enumerate phytoplankton and zooplankton in the ambient waters.

D. Comments from David Coppes, Chief Operating Officer, Massachusetts Water Resources Authority (MWRA), data April 10, 2025.

Comment 35

The Massachusetts Water Resources Authority (“MWRA”) appreciates the opportunity to comment on the U.S. Environmental Protection Agency’s (EPA) draft National Pollutant Discharge Elimination System (“NPDES”) permit number MA0100501 (“Draft Permit”) for the South Essex Sewerage District (the “District”) and the accompanying Fact Sheet, which were noticed on January 23, 2025. MWRA is providing the following comments in accordance with 40 C.F.R. §124.13.

Response 35

EPA acknowledges receipt of these comments.

Comment 36

Comments on inclusion of Co-permittees in the draft NPDES permit

MWRA appreciates that EPA has included language that provides clarity about responsibilities among the Co-permittees. However, MWRA continues to have reservations about the inclusion of municipal entities that are not directly discharging to a water of the Commonwealth or the United States. MWRA remains concerned that the Co-permittee model is inconsistent with the intent of the Clean Water Act, 33 U.S.C. § 1251 et seq. (“CWA”) does not provide statutory authorization for EPA to take such actions in the Draft Permit. Moreover, even if it can be argued that the CWA provides discretionary authority for EPA to regulate the identified Co-permittees in a single NPDES permit, EPA’s actions nevertheless constitute an abuse of that discretion.

Response 36

EPA incorporates by reference Appendix D of the 2025 Draft Permit, which outlines EPA’s Clean Water Act authority for regulating co-permittees in one NPDES permit.

The question of whether municipal satellite collection systems are subject to the NPDES program because they fall within the definition of POTW and discharge pollutants to U.S. waters has been litigated before the Environmental Appeals Board and EPA’s interpretation of the Act and implementing regulations has been upheld. *See Charles River Pollution Control District*, 16 E.A.D. 623 (EAB 2015) and *In re Springfield Water & Sewer Comm’n*, 18 E.A.D. 430 (E.P.A. May 27, 2021).³² These decisions were not based

³² “Even if this issue were properly before the Board in this matter, we would reaffirm our legal conclusion in *Charles River* that neither the CWA nor the NPDES regulations prohibit the Region from regulating the satellite

on Region 1 guidance or EPA's discretion, but instead on the plain meaning of the Act and implementing regulations. Twice, the Board found the Region's permitting approach to be consistent with both the Act and regulations. EPA reaffirms the reasoning in those decisions here, and incorporates by reference the positions set forth in its principal briefs in those cases.

There can be no serious dispute that the satellite sewage collection systems owned by the District's towns fall within the language of the CWA section 212 definition of "treatment works." Under the NPDES permit regulations at 40 CFR § 122.2, a "POTW is defined at § 403.3 of this chapter." 40 CFR § 122.2. Section 403.3(q) in turn provides: "The term Publicly Owned Treatment Works or POTW means a treatment works as defined by section 212 of the Act, which is owned by a State or municipality (as defined by section 502(4) of the Act). This definition of [POTW] includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plant." *Id.* § 403.3(q). CWA section 212 states that the term "treatment works" includes "sewage collection systems, pumping, power and other equipment, and their appurtenances" and "sanitary sewer systems." CWA § 212(2)(A)-(B), 33 U.S.C. § 1292(2)(A)-(B). Nor is there any question whether the pipes and other conveyances that comprise the municipal satellite collection systems fall within the definition of point sources whose wastewater flows reach waters of the U.S.

Each of the District's towns owns and operates a satellite sewer collection system that contributes wastewater effluent to the SESD facility, where it is treated and discharged through SESD's permitted outfall. The CWA requires permits even for point source pollutants that "do not emit 'directly into' covered waters, but pass 'through conveyances' in between."). *Rapanos v. United States*, 126 S.Ct. 2208 (2006); *see also County of Maui v. Hawaii Wildlife Fund*, 590 US 165, 182 (2020) (CWA Section 402 "does not say 'directly' from or 'immediately' from ...its scope is not so limited.").

The Permittee and Co-permittees each are liable for complying with their respective obligations in the Final Permit, which are expressly delineated and set forth on the face of the permit. The language of the permit is clear on its face that the co-permittee towns are subject only to parts I.B, I.C., and I.D, and only then, to the portions of the collection system that each town owns. "The Permittee and each Co-permittee are severally liable under Part I.B, Part I.C and Part I.D for their own activities and required reporting with respect to the portions of the collection system that they own or operate. They are not liable for violations of Part I.B, Part I.C and Part I.D committed by others relative to the portions of the collection system owned and operated by others. Nor are they responsible for any reporting that is required of other Permittees under Part I.B, Part I.C and Part I.D." See Permit page 1.

communities under a single NPDES permit with a regionally integrated plant. The record in this case supports applying the legal reasoning in *Charles River* to the Region's permit decision here." *In re Springfield Water & Sewer Comm'n*, 18 E.A.D. 430, 515 (E.P.A. May 27, 2021).

EPA is retaining the co-permittee approach in the Final Permit.

Comment 37

Comments on Part I.A.1 Footnote 11 (Adsorbable Organic Fluorine)

MWRA is concerned that monitoring of Adsorbable Organic Fluorine (“AOF”) is untested and the data may be impossible to interpret. MWRA recognizes the value of a measurement that would cover all of the thousands of possible PFAS compounds as a class, however, the method is not ready for use in NPDES monitoring. The justification in the Fact Sheet does not address several issues with Method 1621.

Method 1621 (dated January 2024) explicitly states that “[t]his document represents the AOF method developed by the EPA Office of Water, Engineering and Analysis Division (EAD). *This method is not approved for Clean Water Act compliance monitoring until it has been proposed and promulgated through rulemaking.*” (emphasis supplied)

Conversely, EPA issued a memo (dated December 5, 2022) allowing permit writers to include then Draft Method 1633 in permits, even though it had not been finalized and promulgated. This memo indicated that *“The draft Adsorbable Organic Fluorine CWA wastewater method 1621 can be used in conjunction with draft method 1633, if appropriate.”* (emphasis supplied) MWRA believes that this is not appropriate at this time for a number of reasons.

AOF in aqueous matrices by combustion ion chromatography is a “method-defined parameter” defined solely by the method used to determine the analyte. Any changes to the method necessitated by the results of the multi-laboratory validation study or public comments on the method could invalidate any prior data collected using the procedure before promulgation.

EPA completed the multi-laboratory validation study in 2023 and published results in a report issued in January 2024. Upon review, MWRA found the inter-laboratory variability was very high across all types of samples and many results were reported as not detected. This further supports the concern that Method 1621 is simply not sensitive enough to produce usable data on wastewater samples.

By requiring measurement of AOF using Method 1621 in the Draft Permit, EPA is side-stepping the requirements of the Paperwork Reduction Act, instead of following the information collection procedures required by that Act. EPA is currently engaged in planning a national Information Collection Rule (“ICR”) study to collect the information that adding it to NPDES permits would accomplish. EPA should complete that process, and properly promulgate Method 1621 prior to requiring it in NPDES permits.

The current detection limits are on the order of 5,000 ng/L as F. In addressing concerns about the presence of PFAS at ng/L levels, the analysis may not produce useful results, even aside from questions about precision, accuracy, comparability, or repeatability noted above. EPA should complete the ICR study described above, and demonstrate what benefits AOF

measurements could contribute to NPDES PFAS monitoring programs before making it a permit requirement.

MWRA estimates a cost for this analysis of about \$300 - \$400 per sample. Other wastewater treatment plants have been quoted prices as high as \$1,200 per sample. The pricing situation may improve once EPA has fully promulgated Method 1621, but is not likely to improve before the method has been promulgated.

Permittees may not be able to find laboratories to do this analysis as, based on inquiries MWRA has made, there is currently a shortage of labs able to perform this test. At a minimum, there would be additional cost related to sample handling and shipping. This cost is an unreasonable burden to put on Permittees, especially because the data generated prior to Method 1621 being approved are likely to be unusable for decision-making.

Accordingly, MWRA recommends that the requirement to monitor and report on AOF be removed from the Draft Permit. At a minimum, it should be deferred until an available approved method is promulgated and EPA should modify Footnote 15 in the Draft Permit, as follows:

Report in nanograms per liter (ng/L) for effluent and influent samples. Until there is an analytical method approved in 40 CFR Part 136 for Adsorbable Organic Fluorine, monitoring shall be conducted using Method 1621. This reporting requirement takes effect the first full calendar quarter following six months after ~~the effective date of the authorization~~ EPA notifies the Permittee that Method 1621 has been promulgated.

Response 37

Regarding comments on the Paperwork Reduction Act, see Response 6.

Regarding Method 1621, EPA recognizes that this method is a screening method for wastewater as noted on page 40 of the Fact Sheet. Given the future regulatory uncertainty and that this AOF monitoring will screen for a broader range of organofluorines, such as PFAS and other emerging contaminants, EPA considers it appropriate to monitoring for AOF as well as PFAS to ensure the discharge is fully characterized with respect to these pollutants in the next permit reissuance. Therefore, this monitoring requirement will remain in the Final Permit. However, based on the comment about the detection limits of Method 1621, EPA considers it more appropriate to specify units of µg/L, so EPA has updated the Final General to include these units rather than ng/L.

Comment 38

Comments on Part I.C.1 (Adaptation Planning)

MWRA recommends that the five-year limit on the applicability of prior assessments be dropped. Placing the arbitrary condition of not applying prior assessments completed more than five years before the effective date of the Final Permit disregards critical work. Permittees

should not be penalized for completing assessments more than five years before a Final Permit is issued.

For example, between 2013-2016, MWRA assessed each of its coastal and near-coastal facilities to determine if the facility would be flooded in a 100-year storm (based on FEMA maps) with 2.5 feet of sea level rise, corresponding to roughly a 2050 to 2060 sea level rise benchmark. The result was a ranking of 16 facilities that could be impaired, most of which are part of the wastewater system. MWRA has installed flood protection measures at most facilities and is completing work at the remaining facilities – including walls around critical equipment, stop logs at windows and doors, and elevating critical equipment in facilities undergoing substantial rehabilitation projects. The assumed risk of 2.5 feet of sea level rise used in MWRA’s 2013-2016 facility assessment is still in line with the latest projections in Massachusetts’ Coastal Flood Risk Model and the Greater Boston Research Advisory Group Report¹ through the middle of the century – significantly mitigating the near- and mid-term risk to MWRA’s infrastructure. Permittees should be able to use any assessments, which still align with the latest projections, in order to comply with the relevant requirements of the Adaptation Plan.

¹ Douglas E. and Kirshen, P. 2022. Climate Change Impacts and Projections for the Greater Boston Area: Findings of the Greater Boston Research Advisory Group Report. Boston: University of Massachusetts, Boston, June 2022.

Response 38

See Response 7.

Comment 39

Comments on Part I.E.2.i (Pretreatment Enforcement)

Part I.E.2.i of the Draft Permit sets certain pretreatment enforcement obligations for the Permittees, including the requirement to “...enforce all applicable Pretreatment Standards and requirements and obtain remedies for noncompliance by any industrial user.” To ensure consistency with the terms of the existing NPDES permits, MWRA recommends that the word “appropriate” be added to the referenced clause in Part II.F.2.i, as follows:

“...enforce all applicable Pretreatment Standards and requirements and obtain **appropriate** remedies for noncompliance by any industrial user.”

Response 39

See Response 18.

Comment 40

Comments on Part I.E.4 (Notification Requirements)

Part I.E.4 of the Draft Permit is unclear. For example, Part I.E.4.a requires Permittees to notify EPA within 60 days of the introduction of new pollutants from any industrial user. If the issuance of a permit to a new industrial user is considered the introduction of new pollutants, reporting will be extremely frequent and perhaps not in accordance with EPA’s intent. For reference, in FY 2023, MWRA issued over 175 new permits, most of which were for “Category

10s” (low flow and low pollutant) and “Category D1s” (dental discharges), as defined in 360 CMR 10.101(2)(g). This would not include the number of permitted industries that change the processes to include a new pollutant. Accordingly, MWRA recommends that the language in Part I.E.4.a be limited to Significant Industrial Users (“SIUs”) and the Draft Permit language should be revised, as follows:

The Permittee shall notify EPA within 60 days of the introduction of new pollutants from any new SIUs, new connections at a permitted SIU, or any amendment to an existing SIU permit. All other new permits will be reported in the annual pretreatment report.

Response 40

EPA agrees with this proposed change and has updated the Final Permit accordingly.

Comment 41

Comments on Part I.G.1 (Ambient Monitoring)

Part I.G.1 of the Draft Permit introduces an ambient monitoring plan for the District’s discharge that appears to be modeled on MWRA’s ambient monitoring plan that has been in place since 2000. In 2000, when the MWRA’s Massachusetts Bay outfall was new, there were legitimate questions about the ecological impact of the outfall which justified the inclusion of a very extensive ambient monitoring plan.

The 1990 National Research Council report Managing Troubled Waters recommended that goals and objectives of a monitoring program be clearly articulated using questions that are meaningful to the public.² MWRA’s monitoring program followed this guidance and was designed around a number of questions. The ambient monitoring plan in the Draft Permit does not address the creation of monitoring questions to guide the design of the monitoring program.

Nonetheless, in the Draft Permit, the District is being asked to conduct a comprehensive water column monitoring that is functionally identical to MWRA’s program, down to the parameters to be sampled and the sampling schedule (Part I.G.1.a, sections (2) and (3)). The closest EPA comes to postulating a monitoring question is in the Fact Sheet (Sections 5.1.9.1 and 5.6), where EPA lays out the primary ecological issue in Salem Sound as eutrophication, and its attendant effects on eelgrass beds. However, Figure 2 of Section 5.1.9.1 shows that total nitrogen (TN) measurements near the District’s outfall are actually amongst the lowest in the study area as well as below the levels that EPA considers might impact eelgrass. The Fact Sheet also says, “The only stations with TN levels in this range are much farther inland and not clearly impacted by the SESD discharge.” (“Range” in the previous quote being the range of TN levels that would negatively impact eelgrass.) This implies that the nutrient loadings and potential impacts on eelgrass beds are likely from sources other than the District’s discharge.

Therefore, MWRA believes that the proposed ambient monitoring plan is far too comprehensive. EPA and the District should work together cooperatively to create monitoring

questions and then an appropriate monitoring plan. The Draft Permit has instead seemingly imposed MWRA's monitoring program on the District.

MWRA can attest to the value of the monitoring data that MWRA and its consultants have collected over the past 30 plus years. MWRA can also attest to the cost of the program (approximately \$1 million/year), which is in addition to the approximately 3.5 full-time equivalents that work on the MWRA program performing contract and project management; data review, management and analysis; and technical review of deliverables. However, this cost and staff time has been in support of a monitoring program with clearly defined questions, and therefore clear objectives. MWRA does not believe a one-size-fits-all paradigm for monitoring programs is appropriate, especially since public utilities are frequently resource limited.

² National Research Council. 1990. Managing Troubled Waters: The Role of Marine Monitoring. Washington, DC: National Academy Press. 125 pp

Response 41

EPA agrees that the ambient monitoring requirement for SEDS is similar to the water column monitoring requirements of the MWRA Deer Island monitoring plan but only requires monitoring at one background station. EPA has found that water column data collected by MWRA is useful to EPA when conducting reasonable potential analysis for MWRA and other dischargers. Given the complex and localized issues affecting the attainment of designated uses in Salem Sound, EPA finds that the collection of local ambient data is necessary. The synchronization of the sampling dates allows EPA to frame the data collected by SEDS into the broader context of the MWRA Massachusetts and Cape Cod Bays datasets.

The purpose of the ambient monitoring in the SEDS permit is to collect data to use in the reasonable potential analysis at the time of the next SEDS permit reissuance.

Also see Responses 13 and 31.

Comment 42

Comments on Part I.I (State Section 401 Certification Conditions)

MWRA has concerns with EPA's use of the state Section 401 water quality certification process, as a vehicle to include any vague, "end-result," and generic prohibitions into the permit, in light of the U.S. Supreme Court holding in *City & Cnty. of San Francisco, California v. Env't Prot. Agency*, 604 U. S. ____, 145 S. Ct. 704 (2025).

MWRA recommends that EPA return to previous language used in the State Section 401 Certification conditions of the permit and modify Part I.I as follows:

This permit is in the process of receiving state water quality certification issued by the State under § 401(a) of the CWA and 40 CFR § 124.53. EPA will incorporate ~~all~~ appropriate State water quality certification requirements (if any) into the Final Permit.

[NOTE: See Section 2.2.5 and 5.8 of the 2025 Fact Sheet for more details regarding the

~~State certification requirements.}~~

Response 42

See Responses 18 and 19. To be clear, EPA is not “using” the state 401 certification process to include these requirements. Rather, MassDEP has found these requirements necessary to ensure protection of state water quality standards and EPA is simply including them in the permit as state 401 certification conditions.

Comments on the Fact Sheet

Comment 43

Section 5.8 (Potential Alternative Permit Conditions)

In Section 5.8 of the Fact Sheet, EPA notes that the applicable alternative permit conditions and monitoring requirements will only be included in the Final Permit if some or all of the Massachusetts Department of Environmental Protection’s (“MassDEP”) proposed narrative conditions are not included in the final state 401 certification. However, EPA does not specify which narrative condition applies to which individual potential alternative permit condition. The Permittee is left to guess which alternative permit condition(s) will be included in the Final Permit.

Further, permit conditions do not belong in a Fact Sheet. If EPA intends to include additional permit conditions, EPA must coordinate with MassDEP and issue a revised Draft Permit. The revised Draft Permit must clearly state all of the conditions and not include potential alternative permit conditions in the Fact Sheet. A Permittee cannot adequately prepare for a Final Permit without clear conditions in a Draft Permit.

Reasonable Potential Analysis

The provision EPA intends to insert into Part I.B.1 of this Draft Permit to address the reasonable potential of the discharge to cause a violation of the water quality standards of the receiving water is confusing and contradicts the Effluent Limitations and Monitoring Requirements of Part I.A.1. The referenced provision is as follows:

For any pollutant without an effluent limitation in this permit, any pollutant loading greater than the proposed discharge (the “proposed discharge” is based on the chemical specific data and the facility’s design flow as described in the permit application, or any other information provided to EPA during the permitting process) is not authorized by this permit.

This subsection of the Fact Sheet provides additional explanation, stating:

If the permitting authority determines that the discharge of a pollutant will not cause, have the reasonable potential to cause, or contribute to an excursion above WQSs, the permit does not need to contain WQBELs for that pollutant. However, the permitting

authority must ensure that the discharge of that pollutant does not increase during the permit term to the point that would violate water quality standards. Therefore, Part I.B.1 (Unauthorized Discharges) of the permit may include the following provision...

MWRA believes that adding specificity to the Fact Sheet clarifies EPA's intent. Using copper as an example, MWRA has done so as follows:

If [EPA] determines that the discharge of [copper] will not cause, have the reasonable potential to cause, or contribute to an excursion above WQSs, the permit does not need to contain WQBELs for [copper]. However, EPA must ensure that the discharge of [copper] does not increase during the permit term to the point that would ~~violate cause~~ a violation of water quality standards. Therefore, Part I.B.1 (Unauthorized Discharges) of the permit may include the following provision...

... any [copper] loading greater than the proposed discharge (the "proposed discharge" is based on the chemical specific data and the facility's design flow as described in the permit application, or any other information provided to EPA during the permitting process) is not authorized by this permit.

MWRA interprets this provision to mean that EPA is assigning unspecified effluent limits, in contradiction of Part I.A.1 of the Draft Permit, to unnamed parameters that it has already determined do not require effluent limits. Further, if the Permittee exceeds these unspecified effluent limits, they are in violation of their permit.

EPA's explanation of a "proposed discharge" is also confusing. EPA does not explicitly state what a proposed discharge is, but rather, upon what it is based. MWRA believes the "proposed discharge" is the downstream concentration of a pollutant as calculated in EPA's reasonable potential analysis. But again, EPA does not include these proposed discharge loadings as effluent limits in Part I.A.1. Separately, MWRA is unclear if EPA uses the term "loading" in the referenced provision specifically as a pounds per day discharge limit or more generically.

Permittees must have clear and unequivocal notice of their compliance obligations. As such, MWRA recommends that EPA does not insert the referenced provision into Part I.B.1.

Response 43

See Response 19.

EPA appreciates the comment above regarding the potential alternative permit requirements described in the Fact Sheet and will consider this comment in drafting future permits, but notes that this comment is not related to any provision in this permit and does not warrant a response at this time. Neither the Fact Sheet for the SESD draft permit nor any other NPDES Fact Sheets contain enforceable permit conditions.

Comment 44

Toxicity

The toxicity subsection of Section 5.8 directs the Permittee to conduct at least two accelerated WET re-tests within 14 days and 28 days of:

- Any WET test result in violation of any WET limit and the test acceptability criteria were met; or
- The Permittee identifies or is provided notice of a sudden and significant death of large numbers of fish and/or shellfish in the vicinity of the discharge.

MWRA notes that this requirement departs from the current established WET testing frequencies specified in Region 1 NPDES permits. WET tests are expensive, ranging in the thousands of dollars per test. Further, EPA has not provided scientific and technical evidence supporting accelerated re-testing as more representative of the distribution of pollutants and concentrations of toxicity compared to monthly or quarterly WET testing frequencies.

The scenarios that would require a Permittee to begin accelerated WET re-tests are not clearly indicative of an effluent toxicity violation. Often, other factors are in play, including:

- A WET test failure caused by several confounding factors including additive, synergistic, or antagonistic effects of contaminants in effluent and receiving water, poor test organism health, or even inadequate laboratory practices, and
- Large-scale fish die-offs that are the result of low levels of dissolved oxygen in the receiving water caused by other stressors.

If one of the two of a Permittee's accelerated re-tests fails, Section 5.8 further instructs the Permittee to automatically begin a Toxicity Identification Evaluation and Toxicity Reduction Evaluation ("TIE/TRE"). The requirement to initiate a TIE/TRE after two WET test failures is overly punitive. TIE/TRE call for trained and experienced professionals that are scarce nationally. TIE/TREs can be long lasting, high in cost, and unsuccessful in identifying a definitive pollutant(s) or source(s) of toxicity. Including this requirement in the Final Permit would likely add significant cost burden without any corresponding increase in beneficial use protection.

Investigations of large-scale receiving water fish die-offs should be left to local/state fish and wildlife officials or environmental emergency responders rather than Permittees. In fact, EPA includes this approach in Part 9.1.1.d of the draft 2026 Pesticide General Permit.

Therefore, MWRA does not agree with requiring accelerated re-testing for the two outlined scenarios, as written. MWRA instead recommends that EPA continue the WET testing frequencies that were used in previously issued Region 1 NPDES permits. Additionally, the need and frequency of re-testing and additional investigations like a TIE/TRE should be determined by a toxicity and aesthetics response plan developed by the Permittee. Accordingly, MWRA recommends that EPA remove the toxicity subsection from Section 5.8. If EPA intends to include additional toxicity requirements, a revised Draft Permit should be issued that allows the Permittee to develop a toxicity and aesthetics response plan outlining actions the Permittee will take when WET test results are in violation of permit limits.

Response 44

See Responses 19 and 43.

Comment 45**Annual Chemical Monitoring**

MWRA does not object to the requirement that the Permittee must conduct an annual pollutant scan of both the effluent and the receiving water, though the requirement should be included in the Draft Permit and not the Fact Sheet. However, EPA should allow the Permittee to conduct their annual pollutant scans in accordance with the requirements of NPDES Application Form 2A for New and Existing Publicly Owned Treatment Works ("Form 2A").

As noted in this subsection, the parameters required in the annual pollutant scan are based on Form 2A Tables B and C. The Permittee is already required to submit a reapplication package that includes Form 2A to EPA at least 180 days before their NPDES permit expires. According to the Form 2A instructions, effluent data must be based on at least three samples that are representative of the seasonal variation in the discharge and taken within 4.5 years prior to the date of the permit application. The annual pollutant scan requires the Permittee to collect the Form 2A samples in the third calendar quarter every year. It is unnecessarily burdensome for the Permittee to conduct two additional effluent pollutant scans during the permit term to capture low flow conditions and seasonality in the same year. Conducting pollutant scans in accordance with the requirements of Form 2A will reduce unnecessary duplication of effort, make efficient use of available resources, and minimize costs.

Response 45

See Response 19 and 43.

Comment 46**Visual Inspection of the Receiving Water**

The presence of an oily sheen on the surface of the water in the vicinity of the outfall during the monthly visual inspection is not clearly indicative of an effluent toxicity violation and should not initiate accelerated WET testing. As mentioned in MWRA's toxicity subsection comments, often other factors are in play. For example, oil sheens in receiving waters might be the result of petroleum discharged from upstream stormwater outfalls or an oil spill, especially in navigable waters.

As such, MWRA reiterates its toxicity subsection comments here and recommends that EPA remove the toxicity retest requirements from this subsection.

Response 46

See Responses 19 and 43.

Comment 47**Benthic Survey**

The requirements included in this section apply to freshwater discharges and are irrelevant for assessing the impacts of a seafloor discharge in a highly flushed area.

MWRA supports the position outlined by New Hampshire's Department of Environmental Services in their draft water quality certification for the draft New Hampshire Medium Wastewater Treatment Facility Permit that requiring a benthic survey should be contingent upon clear evidence or strong suspicion that a discharge's benthic deposits harm downstream benthic communities, and that more in-depth data are needed to decide whether additional safeguards are required.

Benthic surveys come at a significant cost, ranging in the tens of thousands of dollars. MWRA believes that before adding the extra logistical and financial burden of organizing and conducting a once per permit term survey, EPA should provide evidence that the Permittee's discharge has a negative effect on the downstream benthic environment.

Response 47

See Responses 19 and 43.

Comment 48

In summary, given MWRA's interest in NPDES permit requirements established by EPA, we appreciate the opportunity to comment on the Draft Permit for the District. Please do not hesitate to contact David Wu with any questions.

Response 48

EPA acknowledges receipt of these comments.

E. Comments from Philip D. Guerin, Executive Director, Massachusetts Coalition for Water Resources Stewardship, dated April 10, 2025

Comment 49

The Massachusetts Coalition for Water Resources Stewardship (MCWRS) is a non-profit organization representing the interests of municipalities, districts and commissions in the world of wastewater, stormwater and drinking water. Members include municipal, district and commission wastewater, stormwater and drinking water utilities, engineering consultants, legal firms and stormwater coalitions.

MCWRS appreciates the opportunity to comment on the draft NPDES permit for the South Essex Sewerage District (SESD) Wastewater Treatment Facility. MCWRS offers the following for your consideration:

Response 49

EPA acknowledges receipt of these comments.

Comment 50

Adaptation Planning: As stated in comments submitted on numerous recent draft NPDES permits for wastewater treatment facilities, MCWRS believes that adaptation planning requirements are not appropriate for inclusion in a NPDES permit. Adaptation planning does not fall under the category of Operations and Maintenance, has no place in a five-year permit, is not related to a discharge, cannot be applied solely to Massachusetts and New Hampshire permittees and would be better received if it were offered through a funded federal program as directed by Congress.

Climate change planning is more appropriate when communities are undertaking significant planning efforts or when planning for major renovations to wastewater facilities. When designing renovations and major upgrades to wastewater facilities, engineers already follow protocols established by NEIWPCC that include updated provisions for flood damage prevention. The requirement for adaptation planning should be stricken from this permit.

Response 50

See Response 7.

Comment 51

PFAS: PFAS monitoring as required in the draft permit imposes a significant cost burden on SESD and its ratepayers. Each sample analyzed for PFAS costs \$350-\$500, and with trip blanks and other quality control samples, the financial impact quickly multiplies. PFAS sampling should be limited to twice annually for the initial two (2) years with results allowing less frequent (annual) analysis thereafter.

The draft permit also proposes that SESD take quarterly grab samples of influent and effluent and test for Adsorbable Organic Fluorine (AOF), using Method 1621, at the same time as samples are grabbed for PFAS Analytes. Method 1621 is a draft test method that has yet to be approved and promulgated for Clean Water Act compliance and is designed to capture all organic fluorine compounds in wastewater. AOF is not a pollutant and has never been identified as a cause of water quality violations in any surface water. Rather, AOF is a surrogate measure for PFAS. While it may prove useful as a better way to measure PFAS, the burden of proving its utility in this regard should not fall upon NPDES permittees. EPA should do its own research on the effectiveness of AOF as a surrogate parameter for PFAS and spare permittees the costs and responsibility for performing this testing. This proposed requirement should be removed from the permit.

Response 51

See Responses 5 and 6.

Comment 52

Potential Alternative Permit Conditions: The Potential Alternative Permit Conditions described in the Fact Sheet at 5.8 (beginning on page 47) are bewildering and undo decades of standard language and approaches used in past permits to demonstrate how the permit achieved compliance with narrative state water quality standards. To the best of our knowledge, past

permits were certified by the State of Massachusetts through the 401 Water Quality Certification process. This would indicate that the State, which establishes water quality standards, agreed that the previous and long-held language regarding narrative water quality standards was sufficient to comply with the narrative standards.

So, what has happened to cause this dramatic change in language? Did MassDEP suggest that the new language would be necessary now in order to receive Water Quality Certification going forward? The Fact Sheet provides no insight into why these dramatic changes are being suggested but only that they will be added to the final permit should Massachusetts not include the revised language in its Water Quality Certification. Has EPA notified all state agencies that NPDES permits must include the new language and requirements regarding narrative water quality standards as permits are renewed? Or is this yet another example of Region 1 “experimenting” with permits in New Hampshire and Massachusetts to determine what they might implement in terms of over the top, onerous, novel requirements? Is this the federal government once again targeting two states with costly requirements that will not be applied elsewhere?

The potential new narrative language and monitoring requirements are such a change to decades-long NPDES permitting practices that they warrant a rule making on their own rather than being made part of a NPDES permit. They certainly should not be hidden deep within a Fact Sheet (page 47) with the message that they will be added to the final permit if the State fails to include the language in the Water Quality Certification. If EPA opts to include the language and monitoring requirements in a permit that should be a revised draft permit subject to scrutiny and public comment. Fact Sheets are intended to explain the reasoning and basis for conditions and requirements that are in a NPDES permit; they are not the place to include potential final permit conditions. This approach is contrary to government transparency and is improper and rather underhanded. Significant changes to a draft NPDES permit as a result of public comment or other factors demands a new, revised draft permit for public comment.

Among the more disturbing new requirements that are included in the Potential Alternative Permit Conditions for SESD (and other permittees) are:

- **Benthic Macroinvertebrate surveys:** Once during the permit term SESD will have to evaluate benthic invertebrates upstream and downstream of its discharge by collecting 3 samples in duplicate across 2 transects of the receiving water. Under the Clean Water Act, the assessment of water quality and aquatic health is a state function that should not fall on a permittee. The level of effort and cost involved in doing such surveys will be significant. Only certified freshwater macroinvertebrate taxonomists are allowed to perform the analysis. How many such individuals are there in the region that could do this work, especially if this requirement is applied to all other permittees in New Hampshire and Massachusetts? The financial resources necessary to conduct such surveys are better spent on infrastructure improvements. If EPA and/or MassDEP want to assess benthic invertebrates in rivers, streams and bays across the Commonwealth they are free to do so. It is also puzzling how this monitoring would apply to a marine

discharge such as SESD's wastewater treatment facility. What constitutes upstream and downstream in a tidally influenced receiving water? Why must the analysis be performed by a certified freshwater macroinvertebrate taxonomist when the receiving water is a marine environment, not freshwater? The SESD outfall is in 42 feet of water over 2 miles offshore. Performing a benthic survey around such a location is a significant and costly undertaking and is not the permittee's responsibility.

- **Pollutant Scans on Ambient waters and Effluent:** Once per year, SESD must conduct a pollutant scan on ambient waters upstream of its outfall and its effluent. The pollutant scan is a multi-method analysis that essentially tests for everything that can be tested. The Fact Sheet offers that this is necessary, in addition to the long-standing toxicity testing requirement, because not all toxins may be "discovered" through toxicity testing. Once again, this is a drastic change from past permits and adds more new costs for compliance. Furthermore, permittees are responsible for the quality of their discharges (treated effluent) and not for broader monitoring of ambient water quality in rivers, lakes and bays. Ambient monitoring to assess conditions in surface waters is a state function.
- **Toxicity Testing Follow-up:** Following any failure of a standard toxicity test, SESD would have to conduct 2 accelerated retests within 14 and 28 days. The same would be required if there was a reported fish kill in the "vicinity" of the outfall. The term "vicinity" does not appear to be defined. If a fish kill were to occur it is expected that the MA Division of Marine Fisheries would investigate and, if they had probable cause to suspect the SESD Wastewater Treatment Facility as a source that would be the starting point for further investigation including possible additional testing at the outfall. Any fish kill somewhere near the outfall should not be justification for SESD to be assumed guilty and have to spend limited resources trying to prove otherwise.
- **Visual Inspection of Receiving Waters:** In order to demonstrate its compliance with various aesthetic state narrative water quality standards, SESD would have to perform monthly visual inspections of Salem Sound in the "vicinity" of its outfall. As previously noted, the outfall is 2 miles offshore and under 42 feet of water. It also utilizes a diffuser, so it is not a single point of discharge at the end of a pipe. This simple visual assessment thus becomes much more involved as it requires a boat, including during winter months, adding significant costs and efforts that do not appear to be justified by meaningful benefits. During much of the year, Salem Sound is heavily used by boaters. Any change in surface water aesthetics would be noted by those on the water and reported to local, state or federal authorities. Observing aesthetic changes and identifying why they occur and what party is responsible is an entirely different matter. Discolored water or an oily slick in the vicinity of an outfall does not implicate the wastewater treatment facility as there are a host of causes for such conditions. With the amount of infacility monitoring at the SESD plant, any variation in influent/effluent quality that could ultimately lead to aesthetic issues in Salem Sound would be noticed and corrected (and reported if necessary). The entirety of the visual inspection of

receiving waters and associated reporting is a costly waste of resources that produces no meaningful benefits and should not be considered further.

All of these changes in narrative criteria compliance would be a major shift from decades-long practices and NPDES permit language. These matters are far too drastic to first appear in a Fact Sheet for a draft permit. If EPA intends to make such sweeping changes to the NPDES program, that would require a national discussion including EPA, the States and the community of wastewater infrastructure managers, operators and advocates. The Potential Alternative Permit Conditions should not be included in the final permit. If EPA desires to move these changes forward in future permits it should start with an open conversation among all the key parties.

Response 52

See Responses 19 and 43.

Comment 53

Ambient Monitoring: The draft permit (1.G.1) requires SESD to conduct ambient monitoring of Salem Sound at a pre-selected location outside of the outfall's area of influence for nine (9) months of the year. This would be a costly and challenging endeavor for SESD with compliance costs estimated to exceed \$200,000 annually. While ambient monitoring may provide valuable data to better understand the dynamics of Salem Sound, assessing the water quality conditions in a receiving water is not a task that falls upon permittees under the Clean Water Act (CWA). Implementation of the CWA since its inception has followed a fairly straightforward approach:

- States establish water quality standards following EPA guidance
- States assess surface waters and identify those that do not meet water quality standards (impaired) and list them in reports to EPA
- Permitting authorities (EPA Region 1 in MA and NH) write NPDES permits that require permittees to reduce pollutants in their discharges so that receiving waters will achieve water quality standards and meet their assigned classifications.

With this draft permit and others, EPA Region 1 is making the permittee responsible for what is clearly a state task: assessing surface waters. The Fact Sheet at 2.4.1, Monitoring Requirements, states, "The monitoring requirements included in this permit have been established to yield data representative of the Facility's discharge in accordance with ...". Ambient monitoring of Salem Sound does not yield data representative of the facility's discharge. On Fact Sheet page 36, it states, "Ambient monitoring is necessary to obtain a clearer picture of the impact of the discharge on Salem Sound." It is not the permittee's responsibility to determine the impact of its discharge on the receiving water; that burden falls upon the states and NPDES permitting authority. In the recent ruling on *San Francisco v. EPA*, the SJC made abundantly clear that permittees are responsible for their discharge, and it is up to the states and permitting authorities to determine what must be controlled in a discharge in order for a receiving water to meet state water quality standards. Permittees have no responsibility for conducting surface water assessments or determining conditions within a receiving water.

The recent history of studies of Salem Sound cited in the draft permit and Fact Sheet (Setting the Baseline for Water Quality and Benthic Conditions in Salem Sound 2020; North Shore Coastal Watersheds 2002 Water Quality Assessment Report; Fate and Transport Modelling of Contaminants in Salem Sound) further support that it is a state responsibility to assess surface water conditions. The Massachusetts Office of Coastal Zone Management (CZM) and MassDEP were the lead agencies that pursued these studies. SESD may be willing to help fund such studies but that would be a choice they make, not a federal or state mandate. Permittees already have too much to do to comply with NPDES permits and should not be tasked with duties that clearly belong elsewhere. Ambient monitoring should be stricken from the permit.

Response 53

The Draft Permit proposes to require the Permittee to conduct ambient monitoring at one station at the boundary of Salem Sound away from the influences of the SESD discharge, the Manchester-by-the-Sea discharge and the contributing rivers. The sampling site was chosen to represent background conditions. It is no different than a Permittee discharging to a river being required to sample at an upstream location. The parameters that the Permittee is required to monitor are directly tied to evaluating the effect of nutrients and the relationship to the aquatic use impairment in the segment. Furthermore, a single ambient monitoring station would not be sufficient to assess Salem Sound.

EPA is not making it the Permittee's burden to determine the impact of the discharge on Salem Sound. EPA fulfills that role during every permit reissuance when it conducts its reasonable potential analysis and establishes effluent limitations, if necessary. EPA is also not obligating SESD to determine the impairment status of Salem Sound. Rather, MassDEP will continue to fulfill that role and may use the results of the Ambient Monitoring requirement supplemented by other monitoring efforts to perform updated assessments.

Also see Responses 13 and 41.

Comment 54

Local Limits Evaluation and Revisions: The timeframes to evaluate and revise local limits as described on page 19 of the draft permit are impractical. SESD should be given six (6) months from the permit effective date to complete an evaluation and 24 months from EPA notification to revise local limits as needed.

Response 54

See Response 12.

Comment 55

Bacterial Limits: The draft permit establishes year-round bacterial limits for Fecal Coliform and Enterococci in order to protect the health of those recreating in the waters of Salem Sound. Yet, during the winter months of November through March, direct contact with the waters of the Sound is rare. As has been applied to other coastal NPDES permits, a seasonal bacteria limit

would make sense. The proposed limits would apply from April through October and lesser limits could be considered for November through March. This approach would also assist SESD in meeting the intent of Footnote #7 on page 7 of the draft permit which directs the permittee to minimize the use of chlorine.

Response 55

See Response 3.

Sanitary Sewer Overflow/Bypass/Backup Notification Summary

South Essex Sewerage District and Co-permittees

[illegible]

**AUTHORIZATION TO DISCHARGE UNDER THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**

In compliance with the provisions of the Federal Clean Water Act as amended, 33 U.S.C. §§ 1251 et seq. (the “CWA”),

South Essex Sewerage District

is authorized to discharge from the facility located at

**South Essex Wastewater Treatment Facility
50 Fort Avenue
Salem, MA 01970**

to receiving water named

**Salem Sound (Segment MA95-56)
North Coastal Watershed**

in accordance with effluent limitations, monitoring requirements and other conditions set forth herein.

The municipalities of Beverly, Danvers, Marblehead, Peabody and Salem are Co-permittees for Part I.B, Unauthorized Discharges; Part I.C, Operation and Maintenance of the Treatment and Control Facilities (which include conditions regarding the operation and maintenance of the collection systems owned and operated by the Towns); and Part I.D, Alternate Power Source. The permit number assigned to the Municipalities for purposes of reporting (using NetDMR through EPA’s Central Data Exchange, as specified in Part I.H below) in accordance with the requirements in Parts I.B, I.C, and I.D of this permit are as follows: Beverly, Massachusetts: **MAC010501**; Danvers, Massachusetts: **MAC020501**; Marblehead, Massachusetts: **MAC030501**; Peabody, Massachusetts: **MAC040501**; and Salem, Massachusetts, **MAC050501**.

Operation and maintenance of the sewer system shall be in compliance with the General Requirements of Part II and the terms and conditions of Part I.B, Part I.C and Part I.D of this permit. The Permittee and each Co-permittee are severally liable under Part I.B, Part I.C and Part I.D for their own activities and required reporting with respect to the portions of the collection system that they own or operate. They are not liable for violations of Part I.B, Part I.C and Part I.D committed by others relative to the portions of the collection system owned and operated by others. Nor are they responsible for any reporting that is required of other Permittees under Part I.B, Part I.C and Part I.D. The responsible departments for the Co-permittees are:

City of Beverly
c/o City Engineer
Beverly City Hall
191 Cabot Street
Beverly, MA 01915

Town of Danvers
c/o Town Engineer
Public Works Eng. Div.
1 Burroughs Street
Danvers, MA 01923

Town of Marblehead
c/o Superintendent
Water/Sewer Department
P.O. Box 1108
Marblehead, MA 01945

City of Peabody
c/o Mayor
24 Lowell Street
Peabody, MA 01960

City of Salem
c/o City Engineer
120 Washington Street, 4th Fl
Salem, MA 01970

This permit shall become effective on the first day of the calendar month immediately following 60 days after signature.¹

This permit expires at midnight, five years from the last day of the month preceding the effective date.

This permit supersedes the permit issued on May 5, 2016.

This permit consists of **Part I** including the cover page(s), **Attachment A** (Marine Acute Toxicity Test Procedure and Protocol, July 2012), **Attachment B** (Reassessment of Technically Based Industrial Discharge Limits), **Attachment C** (NPDES Permit Requirement for Industrial Pretreatment Annual Report); **Attachment D** (PFAS Analyte List) and **Part II** (NPDES Part II Standard Conditions, April 2018).

Signed this day of

Ken Moraff, Director
Water Division
Environmental Protection Agency
Region 1
Boston, MA

¹ Pursuant to 40 Code of Federal Regulations (CFR) § 124.15(b)(3), if no comments requesting a change to the Draft Permit are received, the permit will become effective upon the date of signature. Procedures for appealing EPA's Final Permit decision may be found at 40 CFR § 124.19.

PART I**A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

1. During the period beginning on the effective date and lasting through the expiration date, the Permittee is authorized to discharge treated effluent through Outfall Serial Number 001 to Salem Sound. The discharge shall be limited and monitored as specified below; the receiving water and the influent shall be monitored as specified below.

Effluent Characteristic	Effluent Limitation			Monitoring Requirements ^{1,2,3}	
	Average Monthly	Average Weekly	Maximum Daily	Measurement Frequency	Sample Type ⁴
Rolling Average Effluent Flow ⁵	29.7 MGD ⁵	---	---	Continuous	Recorder
Effluent Flow ⁵	Report MGD	---	Report MGD	Continuous	Recorder
CBOD ₅	25 mg/L 6,194 lb/day	40 mg/L 9,911 lb/day	Report mg/L	1/Day	Composite
CBOD ₅ Removal	≥ 85 %	---	---	1/Month	Calculation
TSS	30 mg/L 7,433 lb/day	45 mg/L 11,150 lb/day	Report mg/L	1/Day	Composite
TSS Removal	≥ 85 %	---	---	1/Month	Calculation
pH Range ⁶	6.5 - 8.5 S.U.			1/Day	Grab
<i>Fecal coliform</i>	88 organisms/ 100 mL	---	260 organisms/ 100 mL	2/Day	Grab
<i>Enterococci</i> ^{7,8}	35 cfu/100 mL	---	276 cfu/100 mL	2/Day	Grab
Total Residual Chlorine ^{7,8}	---	---	0.24 mg/L	2/Day	Grab
Total Kjeldahl Nitrogen ⁹					
April 1 – October 31	Report mg/L	---	Report mg/L	1/Week	Composite
November 1 – March 31	Report mg/L	---	Report mg/L	1/Month	Composite
Nitrate + Nitrite ⁹					
April 1 – October 31	Report mg/L	---	Report mg/L	1/Week	Composite
November 1 – March 31	Report mg/L	---	Report mg/L	1/Month	Composite

Effluent Characteristic	Effluent Limitation			Monitoring Requirements ^{1,2,3}	
	Average Monthly	Average Weekly	Maximum Daily	Measurement Frequency	Sample Type ⁴
Total Nitrogen ⁹	Report mg/L Report lb/day	---	Report mg/L	1/Month	Calculation
PFAS Analytes ¹⁰	---	---	Report ng/L	1/Quarter	Grab
Adsorbable Organic Fluorine ¹¹	---	---	Report ng/L	1/Quarter	Grab
Whole Effluent Toxicity (WET) Testing^{12,13}					
LC ₅₀	---	---	≥ 100 %	1/Quarter	Composite
Ammonia Nitrogen	---	---	Report mg/L	1/Quarter	Composite
Total Cadmium	---	---	Report mg/L	1/Quarter	Composite
Total Copper	---	---	Report mg/L	1/Quarter	Composite
Total Nickel	---	---	Report mg/L	1/Quarter	Composite
Total Lead	---	---	Report mg/L	1/Quarter	Composite
Total Zinc	---	---	Report mg/L	1/Quarter	Composite
Total Organic Carbon	---	---	Report mg/L	1/Quarter	Composite

Ambient Characteristic	Reporting Requirements			Monitoring Requirements ^{1,2,3}	
	Average Monthly	Average Weekly	Maximum Daily	Measurement Frequency	Sample Type ⁴
Salinity	---	---	Report mg/L	1/Quarter	Grab
Ammonia Nitrogen	---	---	Report mg/L	1/Quarter	Grab
Total Cadmium	---	---	Report mg/L	1/Quarter	Grab
Total Copper	---	---	Report mg/L	1/Quarter	Grab
Total Nickel	---	---	Report mg/L	1/Quarter	Grab
Total Lead	---	---	Report mg/L	1/Quarter	Grab
Total Zinc	---	---	Report mg/L	1/Quarter	Grab
Total Organic Carbon	---	---	Report mg/L	1/Quarter	Grab
pH ¹⁵	---	---	Report S.U.	1/Quarter	Grab
Temperature ¹⁵	---	---	Report °C	1/Quarter	Grab

Influent Characteristic	Reporting Requirements			Monitoring Requirements ^{1,2,3}	
	Average Monthly	Average Weekly	Maximum Daily	Measurement Frequency	Sample Type ⁴
BOD ₅	Report mg/L	---	---	2/Month	Composite
TSS	Report mg/L	---	---	2/Month	Composite
PFAS Analytes ¹⁰	---	---	Report ng/L	1/Quarter	Grab
Adsorbable Organic Fluorine ¹¹	---	---	Report ng/L	1/Quarter	Grab

Sludge Characteristic	Reporting Requirements			Monitoring Requirements ^{1,2,3}	
	Average Monthly	Average Weekly	Maximum Daily	Measurement Frequency	Sample Type ⁴
PFAS Analytes ¹⁰	---	---	Report ng/g	1/Quarter	Grab ¹⁶

Footnotes:

1. All samples shall be collected in a manner to yield representative data. A routine sampling program shall be developed in which samples are taken at the same location, same time and same days of the week each month. Occasional deviations from the routine sampling program are allowed, but the reason for the deviation shall be documented as an electronic attachment to the applicable discharge monitoring report. The Permittee shall report the results to the Environmental Protection Agency Region 1 (EPA) and MassDEP ("the State") of any additional testing above that required herein, if testing is in accordance with 40 CFR Part 136.
2. In accordance with 40 CFR § 122.44(i)(1)(iv), the Permittee shall monitor according to sufficiently sensitive test procedures (i.e., methods) approved under 40 CFR Part 136 or required under 40 CFR chapter I, subchapter N or O, for the analysis of pollutants or pollutant parameters (except WET). A method is "sufficiently sensitive" when: 1) The method minimum level (ML) is at or below the level of the effluent limitation established in the permit for the measured pollutant or pollutant parameter; or 2) The method has the lowest ML of the analytical methods approved under 40 CFR Part 136 or required under 40 CFR chapter I, subchapter N or O for the measured pollutant or pollutant parameter. The term "minimum level" refers either to the sample concentration equivalent to the lowest calibration point in a method or a multiple of the method detection limit (MDL), whichever is higher. Minimum levels may be obtained in the following ways: they may be published in a method; they may be based on the lowest acceptable calibration point used by a laboratory; or they may be calculated by multiplying the MDL in a method, or the MDL determined by a laboratory, by a factor.
3. When a parameter is not detected above the ML, the Permittee must report the data qualifier signifying less than the ML for that parameter (e.g., < 50 µg/L, if the ML for a parameter is 50 µg/L). For reporting an average based on a mix of values detected and not detected, assign a value of "0" to all non-detects for that reporting period and report the average of all the results.
4. A "grab" sample is an individual sample collected in a period of less than 15 minutes.

A "composite" sample is a composite of at least twenty-four (24) grab samples taken during one consecutive 24-hour period, either collected at equal intervals and combined proportional to flow or continuously collected proportional to flow.
5. The limit is a rolling annual average, reported in million gallons per day (MGD), which will be calculated as the arithmetic mean of the monthly average flow for the reporting month and the monthly average flows of the previous eleven months. Also report monthly average and maximum daily flow in MGD.

6. The pH shall be within the specified range at all times. The minimum and maximum pH sample measurement values for the month shall be reported in standard units (S.U.).
7. The Permittee shall minimize the use of chlorine while maintaining adequate bacterial control. Monitoring for total residual chlorine (TRC) is only required for discharges which have been previously chlorinated or which contain residual chlorine. If chlorine is not utilized during a particular monitoring period, TRC monitoring is not necessary and the Permittee may enter "NODI" code 9 (i.e., conditional monitoring) in the relevant discharge monitoring report.

Chlorination and dechlorination systems shall include an alarm system for indicating system interruptions or malfunctions. Any interruption or malfunction of the chlorine dosing system that may have resulted in levels of chlorine that were inadequate for achieving effective disinfection, or interruptions or malfunctions of the dechlorination system that may have resulted in excessive levels of chlorine in the final effluent shall be reported with the monthly DMRs. The report shall include the date and time of the interruption or malfunction, the nature of the problem, and the estimated amount of time that the reduced levels of chlorine or dechlorination chemicals occurred.

8. The monthly average limit for *Fecal coliform* and *Enterococci* is expressed as a geometric mean. *Fecal coliform* and *Enterococci* monitoring shall be conducted concurrently with TRC monitoring, if TRC monitoring is required.
9. Total Kjeldahl nitrogen and nitrate + nitrite samples shall be collected concurrently. The results of these analyses shall be used to calculate both the concentration and mass loadings of total nitrogen, as follows.

Total Nitrogen (mg/L) = Total Kjeldahl Nitrogen (mg/L) + Nitrate + Nitrite (mg/L)

Total Nitrogen (lb/day) = [(average monthly Total Nitrogen (mg/L) * total monthly effluent flow (Millions of Gallons (MG)) / # of days in the month] * 8.34

10. Report in nanograms per liter (ng/L) for effluent and influent samples; report nanograms per gram (ng/g) for sludge samples. Until there is an analytical method approved in 40 CFR Part 136 for PFAS, monitoring shall be conducted using Method 1633. Report in NetDMR the results of all PFAS analytes required to be tested in Method 1633, as shown in Attachment D. This reporting requirement for the listed PFAS parameters takes effect the first full calendar quarter following six months after the effective date of the permit.
11. Report in nanograms per liter (ng/L) for effluent and influent samples. Until there is an analytical method approved in 40 CFR Part 136 for Adsorbable Organic Fluorine,

monitoring shall be conducted using Method 1621. This reporting requirement takes effect the first full calendar quarter following six months after the effective date of the permit.

12. The Permittee shall conduct acute toxicity tests (LC50) in accordance with test procedures and protocols specified in Attachment A of this permit. LC50 and C-NOEC are defined in Part II.E. of this permit. The Permittee shall test the sea urchin, *Arbacia punctulata*, and the inland silverside, *Menidia beryllina*. Toxicity test samples shall be collected during the same weeks each time of calendar quarters ending March 31st, June 30th, September 30th, and December 31st. The complete report for each toxicity test shall be submitted as an attachment to the DMR submittal which includes the results for that toxicity test.
13. For Part I.A.1., Whole Effluent Toxicity Testing, the Permittee shall conduct the analyses specified in **Attachment A**, Part VI. CHEMICAL ANALYSIS for the effluent sample. If toxicity test(s) using the receiving water as diluent show the receiving water to be toxic or unreliable, the Permittee shall follow procedures outlined in **Attachment A**, Section IV., DILUTION WATER. Minimum levels and test methods are specified in **Attachment A and B**, Part VI. CHEMICAL ANALYSIS.
14. For Part I.A.1., Ambient Characteristic, the Permittee shall conduct the analyses specified in **Attachment A**, Part VI. CHEMICAL ANALYSIS for the receiving water sample collected as part of the WET testing requirements. Such samples shall be taken from the receiving water at a point immediately outside of the permitted discharge's zone of influence at a reasonably accessible location, as specified in **Attachment A**. Minimum levels and test methods are specified in **Attachment A**, Part VI. CHEMICAL ANALYSIS.
15. A pH and temperature measurement shall be taken of each receiving water sample at the time of collection and the results reported on the appropriate DMR. These pH and temperature measurements are independent from any pH and temperature measurements required by the WET testing protocols.
16. Sludge sampling shall be as representative as possible based on guidance found at <https://www.epa.gov/sites/production/files/2018-11/documents/potw-sludge-sampling-guidance-document.pdf>.

B. UNAUTHORIZED DISCHARGES

1. This permit authorizes discharges only from the outfall listed in Part I.A.1, in accordance with the terms and conditions of this permit. Discharges of wastewater from any other point sources, including sanitary sewer overflows (SSOs), are not authorized by this permit. The Permittee must provide verbal notification to EPA within 24 hours of becoming aware of any unauthorized discharge and a report within 5 days, in accordance with Part II.D.1.e (24-hour reporting). Providing that it contains the information required in Part II.D.1.e, submission of the MassDEP SSO Reporting Form (described in Part I.B.3 below) may satisfy the requirement for a written report. See Part I.H below for reporting requirements.
2. The Permittee must provide notification to the public on a publicly available website within 24 hours of becoming aware of any of the following unauthorized discharges: (a) any discharge of partially treated wastewater, including blended wastewater; (b) any Sanitary Sewer Overflow that discharges through a wastewater outfall, either directly or indirectly, to a surface water of the Commonwealth; (c) any SSO that flows into a surface water of the Commonwealth and is the result of the sanitary sewer system surcharging under high flow conditions when peak flows cannot be conveyed to a POTW due to capacity constraints; and (d) any SSO that flows into a surface water of the Commonwealth and is the result of a failure of a wastewater pump station or associated force main designed to convey peak flows of one million gallons per day or greater. Such notification shall include the location and description of the discharge; the approximate dates and times the discharge or overflow began, and its duration; and the estimated volume. Fulfilling these requirements does not relieve the Permittee of the responsibility of complying with 314 CMR 16.00.
3. Notification of SSOs to MassDEP shall be made on its SSO Reporting Form (which includes MassDEP Regional Office telephone numbers). The reporting form and instruction for its completion may be found on-line at <https://www.mass.gov/how-to/sanitary-sewer-overflowbypassbackup-notification>.

C. OPERATION AND MAINTENANCE OF THE TREATMENT AND CONTROL FACILITIES

1. Adaptation Planning
 - a. *Adaptation Plan.* Within the timeframes described below, the Permittee and Co-permittee(s) shall develop an Adaptation Plan for the Wastewater Treatment System (WWTS) ² and/or sewer system³ that they own and operate. Additional information on the procedures and resources to aid permittees in development of the

² “Wastewater Treatment System” or “WWTS” means any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It does not include sewers, pipes and other conveyances to the wastewater treatment facility.

³ “Sewer System” refers to the sewers, pump stations, manholes and other infrastructure use to convey sewage to the wastewater treatment facility from homes or other sources.

Adaptation Plan is provided on EPA's Region 1 NPDES website at <https://www.epa.gov/npdes-permits/npdes-water-permit-program-new-england>. The Adaptation Plan shall contain sufficient detail for EPA to evaluate the analyses.

Component 1: Identification of Vulnerable Critical Assets. Within 24 months of the effective date of the permit, the Permittee and Co-permittee(s) shall develop and sign, consistent with the signatory requirements in Part II.D.2 of this Permit, an identification of critical assets⁴ and related operations⁵ within the WWTS and/or sewer system which they own and operate, as applicable, that are most vulnerable due to major storm and flood events⁶ under baseline conditions⁷ and under future conditions.⁸ This information shall be provided to EPA upon request. For these critical assets and related operations, the Permittee and Co-permittee(s) shall assess the ability of each to function properly in the event of impacts⁹ from major storm and flood events in terms of effluent flow (e.g., bypass, upset or failure), sewer flow (e.g., overflow, inflow and infiltration), and discharges of pollutants (e.g., effluent limit exceedance).

*Component 2: Adaptive Measures Assessment.*¹⁰ Within 36 months of the

4 A "critical asset" is an asset necessary to ensure the safe and continued operation of the WWTS or the sewer system and ensure the forward flow and treatment of wastewater in accordance with the limits set forth in this permit.

5 "Asset related operations" are elements of an asset that enable that asset to function. For example, pumps and power supply enable the operation of a pump station.

6 "Major storm and flood events" refer to instances resulting from major storms such as hurricanes, extreme/heavy precipitation events, and pluvial, fluvial, and flash flood events such as high-water events, storm surge, and high-tide flooding, including flooding caused by sea level change. "Extreme/heavy precipitation" refers to instances during which the amount of rain or snow experienced in a location substantially exceeds what is normal according to location and season.

7 "Baseline conditions" refers to the 100-year flood based on historical records.

8 "Future conditions" refers to projected flood elevations using one of two approaches: a) Climate Informed Science Approach (CISA): The elevation and flood hazard area that result from using the best-available, actionable hydrologic and hydraulic data and methods that integrate current and future changes in flooding based on climate science. These shall include both short term (10-25 years forward-looking) and long term (25-70 years forward-looking) relative to the baseline conditions and must include projections of flooding due to major storm and flood events using federal, state and local data, where available; b) Freeboard Value and 500-year floodplain Approach: The flood elevations that result from adding an additional 2 feet to the 100-year flood elevation for non-critical actions and by adding an additional 3 feet to the 100-year flood elevation for critical actions compared to the flood elevations that result from 500-year flood (the 0.2% -annual-chance flood) and selecting the higher of the two flood elevations.

9 "Impacts" refers to a strong effect on an asset and/or asset-related operation that may include destruction, damage or ineffective operation of the asset and/or asset operation. Impacts may be economic, environmental, or public health related.

10 The Permittee and Co-permittee(s) may complete this component using EPA's Climate Resilience Evaluation and Awareness Tool (CREAT) Risk Assessment Application for Water Utilities, found on EPA's website Creating Resilient Water Utilities (CRWU) (<https://www.epa.gov/crwu>), or methodology that provides comparable analysis.

effective date of the permit, the Permittee and Co-Permittee(s) shall develop and sign, consistent with the signatory requirements in Part II.D.2 of this Permit, an assessment of adaptive measures,¹¹ and/or, if appropriate, the combinations of adaptive measures that minimize the impact of future conditions on the critical assets and related operations of the WWTS and/or sewer system(s). This information shall be provided to EPA upon request. The Permittee and Co-permittee(s) shall identify the critical assets and related operations at the highest risk of not functioning properly under such conditions and, for those, select the most effective adaptation measures that will ensure proper operation of the highest risk critical assets and the system as a whole.

Component 3: Implementation and Maintenance Schedule. Within 48 months of the effective date of the permit, the Permittee and Co-Permittee(s) shall submit to EPA a proposed schedule for implementation and maintenance of adaptive measures. The Implementation and Maintenance Schedule shall summarize the general types of significant risks¹² identified in Component 1, including the methodology and data used to derive future conditions¹³ used in the analysis and describe the adaptive measures taken (or planned) to minimize those risks from the impact of major storm and flood events for each of the critical assets and related operations of the WWTS and the sewer system and how those adaptive measures will be maintained, including the rationale for either implementing or not implementing each adaptive measure that was assessed and an evaluation of how each adaptive measure taken (or planned) will be funded.

- b. *Credit for Prior Assessment(s) Completed by Permittee and/or Co-permittee(s).* If the Permittee and/or Co-permittee(s) has/have undertaken assessment(s) that were completed within 5 years of the effective date of this permit, or is [are] currently undertaking an assessment that address some or all of the Adaptation Plan components, such prior assessment(s) undertaken by the Permittee and/or Co-permittee(s) may be used (as long as the reporting time frames (set forth in Part I.C.1.a) and the signatory requirements (set forth in Part II.D.2 of this permit) are

¹¹ “Adaptive Measures” refers to physical infrastructure or actions and strategies that a utility can use to protect their assets and mitigate the impacts of threats. They may include but are not limited to: building or modifying infrastructure, utilization of models (including but not limited to: flood, sea-level rise and storm surge, sewer/collection system, system performance), monitoring and inspecting (including but not limited to: flood control, infrastructure, treatment) and repair/retrofit.

¹² In light of security concerns posed by the public release of information regarding vulnerabilities to wastewater infrastructure, the Permittee shall provide information only at a level of generality that indicates the overall nature of the vulnerability but omitting specific information regarding such vulnerability that could pose a security risk.

¹³ See footnote 8.

met) in satisfaction of some or all of these components, as long as the Permittee and/or Co-permittee(s) explains how its prior assessments specifically meet the requirements set forth in this permit and how the Permittee and/or Co-permittee(s) will address any permit requirements that have not been addressed in its prior or ongoing assessment(s).

- c. *Adaptation Plan Progress Report.* The Permittee and Co-Permittee(s) shall submit an Adaptation Plan Progress Report on the Adaptation Plan for the prior calendar year that documents progress made toward completing the Adaptation Plan and, following its completion, any progress made toward implementation of adaptive measures, and any changes to the WWTF or other assets that may impact the current risk assessment. The first Adaptation Progress Report is due the first March 31 following completion of the Identification of Critical Vulnerable Assets (*Component 1*) and shall be included with the annual report required in Part I.C.3 below each year thereafter. The Adaptation Plan shall be revised if on- or off-site structures are added, removed, or otherwise significantly changed in any way that will impact the vulnerability of the WWTS or sewer system.

2. Sewer System

Operation and maintenance (O&M) of the sewer system shall be in compliance with 40 CFR § 122.41 (d) and (e) and the terms and conditions of the Part II Standard Conditions, B. Operation and Maintenance of Pollution Controls which is attached to this Permit. The Permittee and Co-permittee(s) shall complete the following activities for the collection system which it owns:

- a. Maintenance Staff

The Permittee and Co-permittee(s) shall provide an adequate staff to carry out the operation, maintenance, repair, and testing functions required to ensure compliance with the terms and conditions of this permit. Provisions to meet this requirement shall be described in the Sewer System O&M Plan required pursuant to Part I.C.2.e. below.

- b. Preventive Maintenance Program

The Permittee and Co-permittee(s) shall maintain an ongoing preventive maintenance program to prevent overflows and bypasses caused by malfunctions or failures of the sewer system infrastructure. The program shall include an inspection program designed to identify all potential and actual unauthorized discharges. Plans and programs to meet this requirement shall be described in the Sewer System O&M Plan required pursuant to Part I.C.2.e. below.

c. Infiltration/Inflow

The Permittee and Co-permittee(s) shall control infiltration and inflow (I/I) into the sewer system as necessary to prevent high flow related unauthorized discharges from their collection systems and high flow related violations of the wastewater treatment plant's effluent limitations. Plans and programs to control I/I shall be described in the Sewer System O&M Plan required pursuant to Part I.C.2.e. below.

d. Sewer System Mapping

The Permittee and Co-permittee(s) shall maintain a map of the sewer collection system it owns. The map shall be on a street basemap of the community, with sufficient detail and at a scale to allow easy interpretation. The sewer system information shown on the map shall be based on current conditions and shall be kept up-to-date and available for review by federal, state, or local agencies. If any items listed below, such as the location of all outfalls, are not fully documented, the Permittee and Co-permittee(s) must clearly identify each component of the dataset that is incomplete, as well as the date of the last update of the mapping product. Such map(s) shall include, but not be limited to the following:

- (1) All sanitary sewer lines and related manholes;
- (2) All combined sewer lines, related manholes, and catch basins;
- (3) All combined sewer regulators and any known or suspected connections between the sanitary sewer and storm drain systems (e.g. combination manholes);
- (4) All outfalls, including the treatment plant outfall(s), CSOs, and any known or suspected SSOs, including stormwater outfalls that are connected to combination manholes;
- (5) All pump stations and force mains;
- (6) The wastewater treatment facility(ies);
- (7) All surface waters (labeled);
- (8) Other major appurtenances such as inverted siphons and air release valves;
- (9) A numbering system which uniquely identifies manholes, catch basins, overflow points, regulators and outfalls;
- (10) Interconnections with collection systems owned by other entities;

- (11) The scale and a north arrow; and
- (12) The pipe diameter, date of installation, type of material, distance between manholes, and the direction of flow.

e. Sewer System Operation and Maintenance Plan

The Permittee and Co-permittee(s) shall continue to update and implement a *Sewer System Operation and Maintenance Plan* it has previously submitted to EPA and the State for the portion of the system it owns. The Plan shall be available for review by federal, state and local agencies as requested. The Plan shall include:

- (1) A description of the collection system management goals, staffing, information management, and legal authorities;
- (2) A description of the collection system and the overall condition of the collection system including a list of all pump stations and a description of recent studies and construction activities;
- (3) A preventive maintenance and monitoring program for the collection system;
- (4) Description of sufficient staffing necessary to properly operate and maintain the sanitary sewer collection system and how the operation and maintenance program is staffed;
- (5) Description of funding, the source(s) of funding and provisions for funding sufficient for implementing the plan;
- (6) Identification of known and suspected overflows and back-ups, including manholes. A description of the cause of the identified overflows and back-ups, corrective actions taken, and a plan for addressing the overflows and back-ups consistent with the requirements of this permit;
- (7) A description of the Permittee's programs for preventing I/I related effluent violations and all unauthorized discharges of wastewater, including overflows and by-passes and the ongoing program to identify and remove sources of I/I. The program shall include an inflow identification and control program that focuses on the disconnection and redirection of illegal sump pumps and roof down spouts;
- (8) An educational public outreach program for all aspects of I/I control, particularly private inflow; and

- (9) An Overflow Emergency Response Plan to protect public health from overflows and unanticipated bypasses or upsets that exceed any effluent limitation in the permit.

3. Annual Reporting Requirement

The Permittee and Co-permittee(s) shall submit a summary report of activities related to the implementation of its O&M Plans during the previous calendar year. The report shall be submitted to EPA and the State annually by March 31 (as an electronic attachment to the DMR). The summary report shall, at a minimum, include:

- a. A description of the staffing levels maintained during the year;
- b. A map and a description of inspection and maintenance activities conducted and corrective actions taken during the previous year (including any related to reducing I/I);
- c. Expenditures for any collection system maintenance activities and corrective actions taken during the previous year (including any related to reducing I/I);
- d. A map with areas identified for investigation/action in the coming year;
- e. A summary of unauthorized discharges during the past year and their causes and a report of any corrective actions taken as a result of the unauthorized discharges reported pursuant to the Unauthorized Discharges section of this permit;
- f. If the average annual flow in the previous calendar year exceeded 80 percent of the facility's 29.7 MGD design flow (23.76 MGD), or there have been capacity related overflows, the report shall include:
 - (1) Plans for further potential flow increases describing how the Permittee will maintain compliance with the flow limit and all other effluent limitations and conditions; and
 - (2) A calculation of the maximum daily, weekly, and monthly infiltration and the maximum daily, weekly, and monthly inflow for the reporting year.
- g. The Adaptation Plan Progress Report described in Part I.C.1.c above (beginning the first March 31 following 24 months from the effective date of the permit).

D. ALTERNATE POWER SOURCE

In order to maintain compliance with the terms and conditions of this permit, the Permittee and Co-permittee(s) shall provide an alternative power source(s) sufficient to operate the

portion of the publicly owned treatment works it owns and operates, as defined in Part II.E.1 of this permit.

E. INDUSTRIAL USERS AND PRETREATMENT PROGRAM

1. Legal Authority

The Permittee has been delegated primary responsibility for enforcing against discharges prohibited by 40 CFR 403.5 and applying and enforcing any national Pretreatment Standards established by the United States Environmental Protection Agency in accordance with Section 307 (b) and (c) of The Clean Water Act (Act), as amended by The Water Quality Act (WQA), of 1987.

The Permittee shall operate an industrial pretreatment program in accordance with the General Pretreatment Regulations found in 40 CFR Part 403 and the approved pretreatment program submitted by the Permittee. The pretreatment program was approved on **September 26, 1985** and has subsequently incorporated substantial modifications as approved by EPA. The approved pretreatment program, and any approved modifications thereto, is hereby incorporated by reference and shall be implemented in a manner consistent with the following procedures, as required by 40 CFR Part 403.

The Permittee must have or develop a legally enforceable municipal code or rules and regulations to authorize or enable the POTW to apply and enforce the requirements of Sections 307(b) and (c) and 402(b)(8) and (9) of the Act and comply with the requirements of § 403.8(f)(1). At a minimum, this legal authority shall enable the POTW to:

- a. Deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTW by Industrial Users where such contributions do not meet applicable Pretreatment Standards and Requirements or where such contributions would cause the POTW to violate its NPDES permit;
- b. Require compliance with applicable Pretreatment Standards and Requirements by Industrial Users;
- c. Control through Permit, order, or similar means, the contribution to the POTW by each Industrial User to ensure compliance with applicable Pretreatment Standards and Requirements. In the case of Industrial Users this control shall be achieved through permits or equivalent control mechanism identified as significant under § 403.3(v), as required by § 403.8(f)(1)(iii);
- d. Require (a) the development of a compliance schedule by each Industrial User for the installation of technology required to meet applicable Pretreatment Standards and Requirements and (b) the submission of all notices and self-monitoring reports from Industrial Users as are necessary to assess and assure

compliance by Industrial Users with Pretreatment Standards and Requirements, including but not limited to the reports required in § 403.12;

- e. Carry out all inspection, surveillance and monitoring procedures necessary to determine, independent of information supplied by Industrial Users, compliance or noncompliance with applicable Pretreatment Standards and Requirements by Industrial Users. At a minimum, all significant industrial users shall be sampled and inspected at the frequency established in the approved IPP, but in no case less than once per year, and with adequate maintenance of records, Representatives of the POTW shall be authorized to enter any premises of any Industrial User in which a Discharge source or treatment system is located or in which records are required to be kept under § 403.12(o) to assure compliance with Pretreatment Standards. Such authority shall be at least as extensive as the authority provided under section 308 of the Act;
- f. Obtain remedies for noncompliance by any Industrial User with any Pretreatment Standard and Requirement. All POTW's shall be able to seek injunctive relief for noncompliance by Industrial Users with Pretreatment Standards and Requirements. All POTWs shall also have authority to seek or assess civil or criminal penalties in at least the amount of \$1,000 a day for each violation by Industrial Users of Pretreatment Standards and Requirements in accordance with § 403.8(f)(1)(vi)(A); and
- g. Comply with the confidentiality requirements set forth in § 403.14.

2. Implementation Requirements

The Permittee shall operate a pretreatment program in accordance with the General Pretreatment Regulations found in 40 CFR Part 403 and with the legal authorities, policies, procedures, and financial provisions of the approved Pretreatment program submitted by the Permittee. The approved Pretreatment program, and any approved modifications thereto, is hereby incorporated by reference and shall be implemented in a manner consistent with the following procedures, as required by 40 CFR Part 403:

- a. In accordance with 40 CFR § 122.44(j)(1), Identify, in terms of character and volume of pollutants contributed from Industrial Users discharging into the POTW subject to Pretreatment Standards under section 307(b) of CWA and 40 CFR Part 403.
- b. The Permittee must notify these identified Industrial Users of applicable Pretreatment Standards and any applicable requirements in accordance with 40 CFR § 403.8(f)(2)(iii). Pursuant to 40 CFR § 403.8(f)(6), prepare and maintain a list of significant industrial users and identify the criteria in 40 CFR § 403.3(v)(1)

applicable to each industrial user.

- c. The Permittee must carry out inspection procedures and randomly sample and analyze the effluent from Industrial Users and conduct surveillance activities in accordance with 40 CFR § 403.8(f)(2)(v), which will determine independent of information supplied by the industrial user, whether the industrial user is in compliance with the Pretreatment Standards. At a minimum, all significant industrial users shall be sampled and inspected at the frequency established in the approved IPP but in no case less than once per year and maintain adequate records.
- d. The Permittee shall receive and analyze self-monitoring reports and other notices submitted by Industrial Users in accordance with the self-monitoring requirements in 40 CFR § 403.12; This must include timely and appropriate reviews of industrial user reports and notifications to identify all violations of the user's permit, the local ordinance, and federal pretreatment standards and requirements.
- e. The Permittee shall evaluate whether each SIU needs a plan to control Slug Discharges in accordance with 40 CFR § 403.8(f)(2)(vi). SIUs must be evaluated within 1 year of being designated an SIU. If required, the Permittee shall require the SIU to prepare or update, and implement a slug prevention plan that contains at least the minimum required elements in 40 CFR § 403.8(f)(2)(vi)(A-D) and incorporate the slug control requirements into the SIU's control mechanism;
- f. Pursuant to 40 CFR § 403.8(f)(2)(vii), the Permittee shall investigate instances of non-compliance with Pretreatment Standards and requirements indicated in required reports and notices or indicated by analysis, inspection, and surveillance activities.
- g. The Permittee shall publish, at least annually, in a newspaper or newspapers of general circulation that provides meaningful public notice within the jurisdiction(s) served by the POTW, a list of all non-domestic users which, at any time in the previous 12 months, were in significant noncompliance as defined in 40 CFR § 403.8 (f)(2)(viii).
- h. The Permittee shall provide sufficient resources and qualified personnel to implement its Pretreatment program in accordance with 40 CFR § 403.8(f)(3);
- i. The Permittee shall enforce all applicable Pretreatment Standards and requirements and obtain remedies for noncompliance by any industrial user. The Permittee shall develop, implement, and maintain an enforcement response

plan in accordance with 40 CFR § 403.8(f)(5); and

- j. Pursuant to 40 CFR § 403.8(g), the Permittee that chooses to receive electronic documents must satisfy the requirements of 40 CFR Part 3 – (Electronic reporting).

3. Local Limit Development

- a. Pollutants introduced into the POTW or facility by a non-domestic source (user) shall not pass through the POTW or facility or interfere with the operation or performance of the works. The Permittee shall develop, continually maintain, and enforce, as necessary, local limits to implement the general and specific prohibitions in 40 CFR § 403.5(c)(1) which prohibit the introduction of any pollutant(s) which cause pass through or interference and the introduction of specific pollutants to the waste treatment system from any source of non-domestic discharge.
- b. The Permittee shall develop and enforce specific effluent limits (local limits) for Industrial User(s), and all other users, as appropriate, which together with appropriate changes in the POTW Treatment Plant's Facilities or operation, are necessary to ensure continued compliance with the POTW's NPDES permit or sludge use or disposal practices. Specific local limits shall not be developed and enforced without individual notice to persons or groups who have requested such notice and an opportunity to respond. Within 90 days of the effective date of the permit, the Permittee shall prepare and submit a written technical evaluation to EPA analyzing the need to revise local limits. As part of this evaluation, the Permittee shall assess how the POTW performs with respect to influent and effluent of pollutants, water quality concerns, sludge quality, sludge processing concerns/inhibition, biomonitoring results, activated sludge inhibition, worker health and safety and collection system concerns. In preparing this evaluation, the Permittee shall complete and submit the attached form (see Attachment C – Reassessment of Technically Based Industrial Discharge Limits) with the technical evaluation to assist in determining whether existing local limits need to be revised. Justifications and conclusions should be based on actual plant data if available and should be included in the report. Should the evaluation reveal the need to revise local limits, the Permittee shall complete the revisions within 120 days of notification by EPA and submit the revisions to EPA for approval. The Permittee shall carry out the local limits revisions in accordance with EPA's Local Limit Development Guidance (July 2004).

4. Notification Requirements

- a. The Permittee must notify EPA of any new introductions or any substantial change in pollutants from any Industrial User within sixty (60) days following the

introduction or change, as required in 40 CFR 122.42(b)(1-3). Such notice must identify:

- (1) Any new introduction of pollutants from an Industrial User which would be subject to Sections 301, 306, and 307 of the Act if it were directly discharging those pollutants; or
 - (2) Any substantial change in the volume or character of pollutants being discharged by any Industrial User;
 - (3) For the purposes of this section, adequate notice shall include information on:
 - i. The identity of the Industrial User;
 - ii. The nature and concentration of pollutants in the discharge and the average and maximum flow of the discharge; and
 - iii. Any anticipated impact of the change on the quantity or quality of effluent to be discharged from or biosolids produced at such POTW.
- b. The Permittee must notify EPA as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required when:
- (1) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source pursuant to 40 CFR § 122.29 (b);
 - (2) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged; or
 - (3) The alteration or addition results in a significant change in the Permittee's sludge use or disposal practices.
- c. The Permittee must notify EPA if the POTW modifies or intends to modify its Pretreatment Program.
- d. The Permittee must notify EPA of any instance of pass through or interference, known or suspected to be related to a discharge from an Industrial User. The notification shall be attached to the DMR submitted EPA and shall describe the incident, including the date, time, length, cause, and the steps taken by the Permittee and Industrial User to address the incident.
- e. The Permittee shall notify all Industrial Users of the users' obligations to comply with applicable requirements under Subtitles C and D of the Resource Conservation and Recovery Act (RCRA) and that Industrial Users shall certify that

it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical as well as their obligation to notify the EPA Regional Waste Management Division Director, in writing of any discharge into the POTW of a substance, which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. Such notification must include:

- (1) the name of the hazardous waste as set forth in 40 CFR Part 261;
- (2) the EPA hazardous waste number; and
- (3) the type of discharge (continuous, batch, or other).

5. Annual Report Requirements

The Permittee shall provide EPA with a hard copy annual report that briefly describes the POTW's program activities, including activities of all participating agencies, if more than one jurisdiction is involved in the local program. The report required by this section shall be submitted no later than one year after approval of the POTW's Pretreatment Program, and at least annually thereafter. The report must include, at a minimum, the applicable required data in Appendix A to 40 CFR Part 127, a summary of changes to the POTW's pretreatment program that have not been previously reported to EPA, and any other relevant information requested by EPA. Beginning on March 1, 2025 all annual reports submitted in compliance with this section must be submitted electronically by the POTW Pretreatment Program to EPA or initial recipient, as defined in 40 CFR § 127.2(b). Electronic submittals shall be in compliance with this section and 40 CFR Part 3 (including, in all cases, subpart D to Part 3), 40 CFR § 122.22(e), and 40 CFR Part 127 (Part 127 is not intended to undo existing requirements for electronic reporting). Prior to this date, and independent of 40 CFR Part 127, EPA may also require POTW Pretreatment Programs to electronically submit annual reports under this section if specified by a particular permit or if required to do so by state law.

The Permittee shall provide EPA with an annual report describing the Permittee's pretreatment program activities for the twelve (12) month period ending 60 days prior to the due date in accordance with 40 CFR § 403.12(i). The annual report shall be consistent with the format described in Attachment D (NPDES Permit Requirement for Industrial Pretreatment Annual Report) of this permit and shall be submitted by **March 15** of each year.

6. Beginning the first full calendar quarter following 6 months after the effective date of the permit, the Permittee shall collect or require annual sampling each calendar year for the following types of industrial discharges into the POTW:

- Commercial Car Washes
- Platers/Metal Finishers
- Paper and Packaging Manufacturers
- Tanneries and Leather/Fabric/Carpet Treaters
- Manufacturers of Parts with Polytetrafluoroethylene (PTFE) or teflon type coatings (e.g., bearings)
- Landfill Leachate
- Centralized Waste Treaters
- Known or Suspected PFAS Contaminated Sites
- Fire Fighting Training Facilities
- Airports
- Any Other Known or Expected Sources of PFAS

Sampling shall be conducted using Method 1633 for the PFAS analytes listed in Attachment D. The industrial discharges sampled, and the sampling results shall be summarized and included in the annual report (see Part I.E.5).

F. SLUDGE CONDITIONS

1. The Permittee shall comply with all existing federal and state laws and regulations that apply to sewage sludge use and disposal practices, including EPA regulations promulgated at 40 CFR § 503, which prescribe “Standards for the Use or Disposal of Sewage Sludge” pursuant to § 405(d) of the CWA, 33 U.S.C. § 1345(d).
2. If both state and federal requirements apply to the Permittee’s sludge use and/or disposal practices, the Permittee shall comply with the more stringent of the applicable requirements.
3. The requirements and technical standards of 40 CFR Part 503 apply to the following sludge use or disposal practices:
 - a. Land application - the use of sewage sludge to condition or fertilize the soil
 - b. Surface disposal - the placement of sewage sludge in a sludge only landfill
 - c. Sewage sludge incineration in a sludge only incinerator
4. The requirements of 40 CFR Part 503 do not apply to facilities which dispose of sludge in a municipal solid waste landfill. 40 CFR § 503.4. These requirements also do not apply to facilities which do not use or dispose of sewage sludge during the life of the permit but rather treat the sludge (e.g., lagoons, reed beds), or are otherwise excluded under 40 CFR § 503.6.
5. The 40 CFR Part 503 requirements include the following elements:

- a. General requirements
- b. Pollutant limitations
- c. Operational Standards (pathogen reduction requirements and vector attraction reduction requirements)
- d. Management practices
- e. Record keeping
- f. Monitoring
- g. Reporting

Which of the 40 CFR Part 503 requirements apply to the Permittee will depend upon the use or disposal practice followed and upon the quality of material produced by a facility.

6. The sludge shall be monitored for pollutant concentrations (all Part 503 methods) and pathogen reduction and vector attraction reduction (land application and surface disposal) at the following frequency. This frequency is based upon the volume of sewage sludge generated at the facility in dry metric tons per year, as follows:

less than 290	1/ year
290 to less than 1,500	1 /quarter
1,500 to less than 15,000	6 /year
15,000 +	1 /month

Sampling of the sewage sludge shall use the procedures detailed in 40 CFR § 503.8.

7. Under 40 CFR § 503.9(r), the Permittee is a “person who prepares sewage sludge” because it “is ... the person who generates sewage sludge during the treatment of domestic sewage in a treatment works” If the Permittee contracts with another “person who prepares sewage sludge” under 40 CFR § 503.9(r) – i.e., with “a person who derives a material from sewage sludge” – for use or disposal of the sludge, then compliance with Part 503 requirements is the responsibility of both the Permittee and the contractor engaged for that purpose. If the Permittee does not engage a “person who prepares sewage sludge,” as defined in 40 CFR § 503.9(r), for use or disposal, then the Permittee remains responsible to ensure that the applicable requirements in Part 503 are met. 40 CFR § 503.7. If the ultimate use or disposal method is land application, the Permittee is responsible for providing the person receiving the sludge with notice and necessary information to comply with the requirements of 40 CFR § 503 Subpart B.
8. The Permittee shall submit an annual report containing the information specified in the 40 CFR Part 503 requirements (§ 503.10 (land application), § 503.20 (surface disposal), or

§ 503.40 (incineration)) by February 19 (see also “EPA Region 1 - NPDES Permit Sludge Compliance Guidance”). Reports shall be submitted electronically using EPA’s Electronic Reporting tool (“NeTBIO”) (see “Reporting Requirements” section below).

G. SPECIAL CONDITIONS

1. Ambient Monitoring

The permittee shall conduct periodic, annual ambient water quality monitoring at one station in Salem Sound.

a. Ambient Monitoring Plan

Within 180 days of the effective date of the Permit, the Permittee shall submit an Ambient Monitoring Plan to EPA and MassDEP. The plan shall consist of the following elements, at a minimum:

(1) Sampling Location

Ambient monitoring shall be conducted one sampling location. The station is located at latitude 42.51919° N, longitude 70.8065° W, which is located in Salem Sound and adjacent to Massachusetts Bay.

(2) Sampling Dates

Sampling shall be conducted nine times per year according to Table 1 below. These dates are consistent with other ambient sampling efforts in Massachusetts Bay.

Table 1: Sampling Dates

When	Target Week	Purpose
Early February	6	Nutrient conditions near the start of the spring bloom
March	12	Spring bloom
Early April	15	Later winter/spring bloom nutrients
Mid-May	20	Nutrient/water column conditions at the end of winter/spring
Mid-June	25	Early summer stratification and nutrients
Mid-July	30	Mid-summer stratification and nutrients
Mid-August	34	Mid-summer stratification and nutrients
September	38	Nutrients, etc. prior to overturn
Late October	43	Mid-fall bloom nutrients, DO minima, etc.

(3) Monitoring Parameters

Ambient monitoring shall include monitoring of the parameters in Table 2.

Table 2: Monitoring Parameters

ANALYTE	DEPTH	PARAMETER
Hydro profile	Downcast data continuous, with upcast data at any sampled depth	Temperature pH Salinity Dissolved Oxygen Chlorophyll fluorescence Turbidity (or Transmissometry) PAR/Irradiance Depth of sensors
Water Chemistry	Three depths. Surface chlorophyll maximum and bottom.	Ammonium Nitrate Nitrite Total dissolved nitrogen Particulate nitrogen Phosphate Total dissolved phosphorus Particulate phosphorus Silicate Particulate organic carbon Chlorophyll-a
Phytoplankton	Near surface and chlorophyll maximum	Identification Enumeration
Zooplankton	Net Tow	Identification Enumeration

b. Quality Assurance Project Plan (QAPP)

Within 90 days from the from the approval of the Ambient Monitoring Plan, the Permittee shall prepare and submit a Quality Assurance Project Plan (QAPP) for the implementing the Ambient Monitoring Plan. The QAPP shall be submitted for MassDEP review and approval.

Additional information on the MassDEP QAPP Submittal and Approval Process can be found at: <https://www.mass.gov/doc/qapp-submittal-and-approval-process/download>.

No sampling shall take place until the QAPP has been approved. The Permittee shall begin sampling in the first February following the approval of the QAPP.

c. Annual Summary Report

The results of all monitoring required by the Ambient Monitoring Plan shall be reported to EPA and MassDEP on an annual basis by November 15th of the following year (e.g. An annual report for 2025 sampling results is due November 15, 2026). The recommended content, which is consistent with MassDEP external data submittal requirements, is as follows:

- (1) Cover letter. Provide a brief cover letter explaining what data are being submitted, project contact person(s), and a statement that the approved project QAPP was followed in generating the data.
- (2) Cover page. include project name/title, lead organization, author(s) and report date.
- (3) Introduction. Provide background information related to the monitoring, such as funding source(s), water quality-related issues of concern and objectives of the monitoring.
- (4) Methods Used. List all field and lab methods that were employed during the project. Reference Standard Methods, EPA, group SOPs, etc. as appropriate.
- (5) Locations Sampled. Provide detailed sampling station maps/tables showing or describing precise locations where samples were taken. If possible, include precise latitude-longitude coordinates.
- (6) Results. Provide tabular field measurement data and laboratory data, including that for quality control samples, in a clear and organized format. Include raw laboratory data reports, completed field sheets and completed chain-of-custody forms in appendices. Also provide important metadata, such as sample collection dates/times, analysis dates/times, exact station location descriptions, sample ID numbers, analytical method used with method detection limits (MDLs) and reporting detection limits (RDLs), weather, field observations and measurement units.
- (7) Quality assurance, quality control and data validation (in main report or in an appendix). Discuss the extent to which the QAPP was implemented (e.g., were there any deviations from the approved QAPP? And if so, what were they, and what are the implications of the change(s), if any?). Consider including the following information in the QA/QC section of the report.
 - Current contact information for project personnel, including project manager, quality control officer and database manager
 - Type and number of QC samples taken during the project (e.g., field blanks, duplicates, etc.)

- QC results and discussion of both field and laboratory quality control sample results (including overall precision of field duplicates (as relative percent difference, or RPD), blank contamination (if any), analytical accuracy for known PE samples (if any), holding time exceedances, etc.)
 - QC evaluation for any field or lab audits that may have been done
 - Type, extent and dates of actual field equipment calibration and maintenance (with supporting documentation as appropriate)
 - Discussion of how data validation process was implemented and how the results of validation affected the project data (e.g., were data quality objectives (DQOs) met, as outlined in the QAPP; were any identified QC problems applied to whole survey samples and/or analytical sample batches). Also, what were the specific data validation steps performed to accept, qualify, and censor project data. List data qualifier symbols used, if any (e.g., “J” for ‘estimated’ by laboratory).
 - Data completeness (i.e., any missing data)
 - Database management system employed
 - Other project information as they may have affected sample data and lab QC data
- (8) Discussion. Data analyses and discussion of results can provide important information that should be included in the reports. Although EPA and MassDEP is mainly interested in the quality-assured tabular data, graphic displays of the data can also be helpful.
- (9) Conclusion(s). Summarize findings and provide recommendations for additional monitoring and/or remedial actions to improve water quality
- (10) Appendices. Include complete set or example completed copies of relevant appendices for raw laboratory data and raw field data (including survey dates), completed field sheets and completed sample chain-of-custody forms, as well as any other relevant documentation.

d. Data Submission

By November 15 of each year, the Permittee shall submit the previous year’s ambient monitoring data to EPA and MassDEP using EPA’s WQX online database. Permittees should follow the process on MassDEP’s website:

<https://www.mass.gov/guides/external-data-submittals-to-the-watershed-planning-program>. The following should be included with each submission:

- (1) Cover letter/email
- (2) Data files via EPA’s WQX online database

Use the email address: WQData.Submit@mass.gov to notify DWM-WPP when data has been submitted. Please include with the notification email: a brief list of the data submitted, a copy of the approved QAPP (or cite title and approval date), all quality-control data that was not included in the WQX submission (e.g., field duplicates, blanks, instrument calibration check results).

(3) Statement of Data Integrity

See <https://www.mass.gov/doc/statement-of-integrity/download>

(4) Electronic copy of approved QAPP

2. Best Management Practices for Outfall

The Permittee shall operate the outfall according to the best management practices below:

- a. The outfall shall be maintained to ensure proper operation. Proper operation means that the outfall pipe and diffuser be intact, operating as designed, and have unobstructed flow. Maintenance may include dredging in the vicinity of the outfall, removal of solids/debris in the outfall, and repair/replacement.
- b. To determine if maintenance will be required, the Permittee shall inspect and videotape the operation of the outfall either remotely or using a qualified diver or marine contractor. At a minimum, the inspections and videotaping shall be performed once every five years with the first inspection occurring within twelve (12) months of the effective date of the permit. EPA and MassDEP shall be contacted at least seven days prior to a dive inspection.
- c. Any necessary maintenance dredging must be performed only during the marine construction season authorized by the Massachusetts Department of Marine Fisheries and only after receiving all necessary permits from the Massachusetts Department of Environmental Protection, U.S. Coast Guard, U.S. Army Corps of Engineers, and other appropriate agencies.
- d. Copies of reports summarizing the results of each outfall inspection shall be submitted to EPA and MassDEP within 60 days of each inspection. Where it is determined that maintenance will be necessary, the Permittee shall provide the proposed schedule for the maintenance.

3. Notification of Massachusetts Division of Marine Fisheries

The Permittee shall notify the Massachusetts Division of Marine Fisheries within 4 hours of becoming aware of any emergency condition, plant upset, bypass, SSO discharges or other

system failure which has the potential to violate bacteria permit limits and within 24 hours of becoming aware of a permit excursion or plant failure. The notification shall be sent to the following telephone number and email:

Division of Marine Fisheries
Shellfish Sanitation and Management Program
30 Emerson Avenue
Gloucester, MA 01930
(978) 282-0308
dmr.shellfish@mass.gov

4. Model or Dye Study

In the fifth year of this permit term, the Permittee must conduct a new model or dye study to determine a defensible dilution factor for their discharge. Each Permittee should coordinate with EPA and MassDEP in advance of conducting the model or dye study to confirm an appropriate methodology for this model or dye study. The results of this model or dye study must be submitted to EPA and MassDEP by the expiration date of the Final Permit.

H. REPORTING REQUIREMENTS

Unless otherwise specified in this permit, the Permittee shall submit reports, requests, and information and provide notices in the manner described in this section.

1. Submittal of DMRs Using NetDMR

The Permittee shall continue to submit its monthly monitoring data in discharge monitoring reports (DMRs) to EPA and the State electronically using NetDMR no later than the 15th day of the month. When the Permittee submits DMRs using NetDMR, it is not required to submit hard copies of DMRs to EPA or the State. NetDMR is accessible through EPA's Central Data Exchange at <https://cdx.epa.gov/>.

2. Submittal of Reports as NetDMR Attachments

Unless otherwise specified in this permit, the Permittee and Co-permittee(s) shall electronically submit all reports to EPA as NetDMR attachments rather than as hard copies. See Part I.H.7. for more information on State Reporting. Because the due dates for reports described in this permit may not coincide with the due date for submitting DMRs (which is no later than the 15th day of the month), a report submitted electronically as a NetDMR attachment shall be considered timely if it is electronically submitted to EPA using NetDMR with the next DMR due following the report due date specified in this permit.

3. Submittal of Industrial User and Pretreatment Related Reports

All reports and information required of the Permittee in the Industrial Users and Pretreatment Program section of this permit shall be submitted electronically as NetDMR attachments and/or using EPA's NPDES Electronic Reporting Tool ("NeT"), or another approved EPA system, which will be accessible through EPA's Central Data Exchange at <https://cdx.epa.gov/>. These requests, reports and notices include:

- (a) Annual Pretreatment Reports,
- (b) Pretreatment Reports Reassessment of Technically Based Industrial Discharge Limits Form,
- (c) Revisions to Industrial Discharge Limits,
- (d) Report describing Pretreatment Program activities, and
- (e) Proposed changes to a Pretreatment Program

4. Submittal of Biosolids/Sewage Sludge Reports

By February 19 of each year, the Permittee must electronically report their annual Biosolids/Sewage Sludge Report for the previous calendar year using EPA's NPDES Electronic Reporting Tool ("NeTBIO"), which is accessible through EPA's Central Data Exchange at <https://cdx.epa.gov/>.

5. Submittal of Requests and Reports to EPA Water Division (WD)

The following requests, reports, and information described in this permit shall be submitted to the NPDES Applications Coordinator in EPA Water Division (WD) electronically at R1NPDESReporting@epa.gov:

- (a) Transfer of permit notice;
- (b) Request for changes in sampling location;
- (c) Request for reduction in testing frequency;
- (d) Report on unacceptable dilution water / request for alternative dilution water for WET testing.

6. Submittal of Sewer Overflow and Bypass Reports and Notifications

The Permittee and Co-permittee(s) shall submit required reports and notifications under Part II.B.4.c, for bypasses, and Part II.D.1.e, for sanitary sewer overflows (SSOs) electronically using EPA's NPDES Electronic Reporting Tool ("NeT"), which will be accessible through EPA's Central Data Exchange at <https://cdx.epa.gov/>.

Region 1 will notify the Permittee and Co-permittees when an episodic waiver from electronic reporting is in effect. Region 1 may need to issue such episodic waivers in response to large scale emergencies involving catastrophic circumstances beyond the control of the Permittee and Co-permittees (e.g., floods) as well as prolonged electronic reporting system outages (i.e., outages longer than 96 hours). In accordance with 40 CFR 127.15(d)(4), this notification will include instructions on whether the Permittee, CSO-responsible Co-permittees and Co-permittees should delay their electronic submissions through NeT- SewerOverflow or if the Permittee, and Co-permittees should make a hardcopy (paper) submission of their sewer overflow and bypass event reports to Region 1.

7. State Reporting

Duplicate signed copies of all WET test reports shall be submitted to the Massachusetts Department of Environmental Protection, Division of Watershed Management, at the following address:

**Massachusetts Department of Environmental Protection
Bureau of Water Resources
Division of Watershed Management
8 New Bond Street
Worcester, Massachusetts 01606**

8. Verbal Reports and Verbal Notifications

- a. Any verbal reports or verbal notifications, if required in Parts I and/or II of this permit, shall be made to both EPA and to the State. This includes verbal reports and notifications which require reporting within 24 hours (e.g., Part II.B.4.c.(2), Part II.B.5.c.(3), and Part II.D.1.e).
- b. Verbal reports and verbal notifications shall be made to:

**EPA ECAD at 617-918-1510
and
MassDEP Emergency Response at 888-304-1133**

I. STATE 401 CERTIFICATION CONDITIONS

This permit is in the process of receiving state water quality certification issued by the State under § 401(a) of the CWA and 40 CFR § 124.53. EPA will incorporate all State water quality certification requirements (if any) into the Final Permit.

[NOTE: See Section 2.2.5 and 5.8 of the 2025 Fact Sheet for more details regarding the State certification requirements.]

Attachment A - MARINE ACUTE TOXICITY TEST PROCEDURE AND PROTOCOL

I. GENERAL REQUIREMENTS

The permittee shall conduct acceptable acute toxicity tests in accordance with the appropriate test protocols described below:

- **2007.0 - Mysid Shrimp (Americamysis bahia) definitive 48 hour test.**
- **2006.0 - Inland Silverside (Menidia beryllina) definitive 48 hour test.**

Acute toxicity data shall be reported as outlined in Section VIII.

II. METHODS

The permittee shall use the most recent 40 CFR Part 136 methods. Whole Effluent Toxicity (WET) Test Methods and guidance may be found at:

<https://www.epa.gov/cwa-methods/whole-effluent-toxicity-methods>

The permittee shall also meet the sampling, analysis and reporting requirements included in this protocol. This protocol defines more specific requirements while still being consistent with the Part 136 methods. If, due to modifications of Part 136, there are conflicting requirements between the Part 136 method and this protocol, the permittee shall comply with the requirements of the Part 136 method.

III. SAMPLE COLLECTION

A discharge and receiving water sample shall be collected. The receiving water control sample must be collected immediately upstream of the permitted discharge's zone of influence. The acceptable holding times until initial use of a sample are 24 and 36 hours for on-site and off-site testing, respectively. A written waiver is required from the regulating authority for any holding time extension. Sampling guidance dictates that, where appropriate, aliquots for the analysis required in this protocol shall be split from the samples, containerized and immediately preserved, or analyzed as per 40 CFR Part 136. EPA approved test methods require that samples collected for metals analyses be preserved immediately after collection. Testing for the presence of total residual chlorine¹ (TRC) must be analyzed immediately or as soon as possible, for all effluent samples, prior to WET testing. TRC analysis may be performed on-site or by the toxicity testing laboratory and the samples must be dechlorinated, as necessary, using sodium thiosulfate

¹ For this protocol, total residual chlorine is synonymous with total residual oxidants.

prior to sample use for toxicity testing. If performed on site the results should be included on the chain of custody (COC) presented to WET laboratory.

Standard Methods for the Examination of Water and Wastewater describes dechlorination of samples (APHA, 1992). Dechlorination can be achieved using a ratio of 6.7 mg/L anhydrous sodium thiosulfate to reduce 1 mg/L chlorine. If dechlorination is necessary, a thiosulfate control consisting of the maximum concentration of thiosulfate used to dechlorinate the sample in the toxicity test control water must also be run in the WET test.

All samples submitted for chemical and physical analyses will be analyzed according to Section VI of this protocol. Grab samples must be used for pH, temperature, and total residual chlorine (as per 40 CFR Part 122.21).

All samples held for use beyond the day of sampling shall be refrigerated and maintained at a temperature range of 0-6° C.

IV. DILUTION WATER

Samples of receiving water must be collected from a reasonably accessible location in the receiving water body immediately upstream of the permitted discharge's zone of influence. Avoid collection near areas of obvious road or agricultural runoff, storm sewers or other point source discharges and areas where stagnant conditions exist. EPA strongly urges that screening for toxicity be performed prior to the set up of a full, definitive toxicity test any time there is a question about the test dilution water's ability to achieve test acceptability criteria (TAC) as indicated in Section V of this protocol. The test dilution water control response will be used in the statistical analysis of the toxicity test data. All other control(s) required to be run in the test will be reported as specified in the Discharge Monitoring Report (DMR) Instructions, Attachment F, page 2, Test Results & Permit Limits.

The test dilution water must be used to determine whether the test met the applicable TAC. When receiving water is used for test dilution, an additional control made up of standard laboratory water (0% effluent) is required. This control will be used to verify the health of the test organisms and evaluate to what extent, if any, the receiving water itself is responsible for any toxic response observed.

If dechlorination of a sample by the toxicity testing laboratory is necessary a "sodium thiosulfate" control, representing the concentration of sodium thiosulfate used to adequately dechlorinate the sample prior to toxicity testing, must be included in the test.

If the use of alternate dilution water (ADW) is authorized, in addition to the ADW test control, the testing laboratory must, for the purpose of monitoring the receiving water, also run a receiving water control.

If the receiving water is found to be, or suspected to be toxic or unreliable, ADW of known quality with hardness similar to that of the receiving water may be substituted. Substitution is

species specific meaning that the decision to use ADW is made for each species and is based on the toxic response of that particular species. Substitution to an ADW is authorized in two cases. The first case is when repeating a test due to toxicity in the site dilution water requires an **immediate decision** for ADW use by the permittee and toxicity testing laboratory. The second is when two of the most recent documented incidents of unacceptable site dilution water toxicity require ADW use in future WET testing.

For the second case, written notification from the permittee requesting ADW use **and** written authorization from the permit issuing agency(s) is required **prior to** switching to a long-term use of ADW for the duration of the permit.

Written requests for use of ADW with supporting documentation must be sent electronically to the NPDES Applications Coordinator in EPA Water Division (WD) at the following email address:

R1NPDESReporting@epa.gov

Note: USEPA Region 1 retains the right to modify any part of the alternate dilution water policy stated in this protocol at any time. Any changes to this policy will be documented in the annual DMR posting.

See the EPA Region 1 website at: www.epa.gov/aboutepa/epa-region-1-new-england (click on NPDES, EPA Permit Attachments, Self-Implementing Alternate Dilution Water Guidance) for important details on alternate dilution water substitution requests.

V. TEST CONDITIONS AND TEST ACCEPTABILITY CRITERIA

EPA Region 1 requires tests be performed using four replicates of each control and effluent concentration because the non-parametric statistical tests cannot be used with data from fewer replicates. The following tables summarize the accepted Americamysis and Menidia toxicity test conditions and test acceptability criteria:

EPA NEW ENGLAND EFFLUENT TOXICITY TEST CONDITIONS FOR THE MYSID, AMERICAMYSIS BAHIA 48 HOUR TEST¹

1. Test type	48hr Static, non-renewal
2. Salinity	25ppt $\pm$ 10 percent for all dilutions by adding dry ocean salts
3. Temperature (°C)	20°C $\pm$ 1°C or 25°C $\pm$ 1°C, temperature must not deviate by more than 3°C during test
4. Light quality	Ambient laboratory illumination
5. Photoperiod	16 hour light, 8 hour dark
6. Test chamber size	250 ml (minimum)
7. Test solution volume	200 ml/replicate (minimum)
8. Age of test organisms	1-5 days, <u>< 24 hours age range</u>
9. No. Mysids per test chamber	10
10. No. of replicate test chambers per treatment	4
11. Total no. Mysids per test concentration	40
12. Feeding regime	Light feeding using concentrated <u>Artemia</u> naupli while holding prior to initiating the test
13. Aeration ²	None
14. Dilution water	5-30 ppt, +/- 10%; Natural seawater, or deionized water mixed with artificial sea salts
15. Dilution factor	≥ 0.5
16. Number of dilutions ³	5 plus a control. An additional dilution at the permitted effluent concentration (%)

effluent) is required if it is not included in the dilution series.

17. Effect measured	Mortality - no movement of body appendages on gentle prodding
18. Test acceptability	90% or greater survival of test organisms in control solution
19. Sampling requirements	For on-site tests, samples are used within 24 hours of the time that they are removed from the sampling device. For off-site tests, samples must be first used within 36 hours of collection.
20. Sample volume required	Minimum 1 liter for effluents and 2 liters for receiving waters

Footnotes:

- ¹ Adapted from EPA 821-R-02-012.
- ² If dissolved oxygen falls below 4.0 mg/L, aerate at rate of less than 100 bubbles/min. Routine D.O. checks are recommended.
- ³ When receiving water is used for dilution, an additional control made up of standard laboratory dilution water (0% effluent) is required.

**EPA NEW ENGLAND TOXICITY TEST CONDITIONS FOR THE INLAND
SILVERSIDE, MENIDIA BERYLLINA 48 HOUR TEST¹**

1. Test Type	48 hr Static, non-renewal
2. Salinity	25 ppt $\pm$ 10 % by adding dry ocean salts
3. Temperature	20°C $\pm$ 1°C or 25°C $\pm$ 1°C, temperature must not deviate by more than 3°C during test
4. Light Quality	Ambient laboratory illumination
5. Photoperiod	16 hr light, 8 hr dark
6. Size of test vessel	250 mL (minimum)
7. Volume of test solution	200 mL/replicate (minimum)
8. Age of fish	9-14 days; 24 hr age range
9. No. fish per chamber	10 (not to exceed loading limits)
10. No. of replicate test vessels per treatment	4
11. Total no. organisms per concentration	40
12. Feeding regime	Light feeding using concentrated <u>Artemia</u> nauplii while holding prior to initiating the test
13. Aeration ²	None
14. Dilution water	5-32 ppt, +/- 10% ; Natural seawater, or deionized water mixed with artificial sea salts.
15. Dilution factor	≥ 0.5
16. Number of dilutions ³	5 plus a control. An additional dilution at the permitted concentration (% effluent) is required if it is not included in the dilution series.
17. Effect measured	Mortality-no movement on gentle prodding.

18. Test acceptability	90% or greater survival of test organisms in control solution.
19. Sampling requirements	For on-site tests, samples must be used within 24 hours of the time they are removed from the sampling device. Off-site test samples must be used within 36 hours of collection.
20. Sample volume required	Minimum 1 liter for effluents and 2 liters for receiving waters.

Footnotes:

- ¹ Adapted from EPA 821-R-02-012.
- ² If dissolved oxygen falls below 4.0 mg/L, aerate at rate of less than 100 bubbles/min. Routine D.O. checks recommended.
- ³ When receiving water is used for dilution, an additional control made up of standard laboratory dilution water (0% effluent) is required.

V.1. Test Acceptability Criteria

If a test does not meet TAC the test must be repeated with fresh samples within 30 days of the initial test completion date.

V.2. Use of Reference Toxicity Testing

Reference toxicity test results and applicable control charts must be included in the toxicity testing report.

In general, if reference toxicity test results fall outside the control limits established by the laboratory for a specific test endpoint, a reason or reasons for this excursion must be evaluated, correction made and reference toxicity tests rerun as necessary as prescribed below.

If a test endpoint value exceeds the control limits at a frequency of more than one out of twenty then causes for the reference toxicity test failure must be examined and if problems are identified corrective action taken. The reference toxicity test must be repeated during the same month in which the exceedance occurred.

If two consecutive reference toxicity tests fall outside control limits, the possible cause(s) for the exceedance must be examined, corrective actions taken and a repeat of the reference toxicity test must take place immediately. Actions taken to resolve the problem must be reported.

V.2.a. Use of Concurrent Reference Toxicity Testing

In the case where concurrent reference toxicity testing is required due to a low frequency of testing with a particular method, if the reference toxicity test results fall slightly outside of laboratory established control limits, but the primary test met the TAC, the results of the primary test will be considered acceptable. However, if the results of the concurrent test fall well outside the established **upper** control limits i.e. ≥ 3 standard deviations for IC25s and LC50 values and $\geq$ two concentration intervals for NOECs or NOAECs, and even though the primary test meets TAC, the primary test will be considered unacceptable and must be repeated.

VI. CHEMICAL ANALYSIS

At the beginning of the static acute test, pH, salinity, and temperature must be measured at the beginning and end of each 24 hour period in each dilution and in the controls. The following chemical analyses shall be performed for each sampling event.

<u>Parameter</u>	<u>Effluent</u>	<u>Diluent</u>	<u>Minimum Level for effluent^{*1} (mg/L)</u>
pH	x	x	---
Salinity	x	x	ppt(o/oo)
Total Residual Chlorine ^{*2}	x	x	0.02
Total Solids and Suspended Solids	x	x	---
Ammonia	x	x	0.1
Total Organic Carbon	x	x	0.5
<u>Total Metals</u>			
Cd	x	x	0.0005
Pb	x	x	0.0005
Cu	x	x	0.003
Zn	x	x	0.005
Ni	x	x	0.005

Superscript:

^{*1} These are the minimum levels for effluent (fresh water) samples. Tests on diluents (marine waters) shall be conducted using the Part 136 methods that yield the lowest MLs.

^{*2} Either of the following methods from the 18th Edition of the APHA Standard Methods for the Examination of Water and Wastewater must be used for these analyses:

- Method 4500-Cl E Low Level Amperometric Titration (the preferred method);
- Method 4500-CL G DPD Photometric Method.

VII. TOXICITY TEST DATA ANALYSIS

LC50 Median Lethal Concentration

An estimate of the concentration of effluent or toxicant that is lethal to 50% of the test organisms during the time prescribed by the test method.

Methods of Estimation:

- Probit Method
- Spearman-Kärber
- Trimmed Spearman-Kärber
- Graphical

See flow chart in Figure 6 on page 73 of EPA 821-R-02-012 for appropriate method to use on a given data set.

No Observed Acute Effect Level (NOAEL)

See flow chart in Figure 13 on page 87 of EPA 821-R-02-012.

VIII. TOXICITY TEST REPORTING

A report of results must include the following:

- Toxicity Test summary sheet(s) (Attachment F to the DMR Instructions) which includes:
 - o Facility name
 - o NPDES permit number
 - o Outfall number
 - o Sample type
 - o Sampling method
 - o Effluent TRC concentration
 - o Dilution water used
 - o Receiving water name and sampling location
 - o Test type and species
 - o Test start date
 - o Effluent concentrations tested (%) and permit limit concentration
 - o Applicable reference toxicity test date and whether acceptable or not
 - o Age, age range and source of test organisms used for testing
 - o Results of TAC review for all applicable controls
 - o Permit limit and toxicity test results
 - o Summary of any test sensitivity and concentration response evaluation that was conducted

Please note: The NPDES Permit Program Instructions for the Discharge Monitoring Report Forms (DMRs) are available on EPA's website at: www.epa.gov/compliance/discharge-monitoring-reports-avoiding-common-mistakes

In addition to the summary sheets the report must include:

- A brief description of sample collection procedures;
- Chain of custody documentation including names of individuals collecting samples, times and dates of sample collection, sample locations, requested analysis and lab receipt with time and date received, lab receipt personnel and condition of samples upon receipt at the lab(s);
- Reference toxicity test control charts;
- All sample chemical/physical data generated, including minimum levels (MLs) and analytical methods used;
- All toxicity test raw data including daily ambient test conditions, toxicity test chemistry, sample dechlorination details as necessary, bench sheets and statistical analysis;
- A discussion of any deviations from test conditions; and
- Any further discussion of reported test results, statistical analysis and concentration-response relationship and test sensitivity review per species per endpoint.

ATTACHMENT B

EPA - New England

Reassessment of Technically Based Industrial Discharge Limits

Under 40 CFR §122.21(j)(4), all Publicly Owned Treatment Works (POTWs) with approved Industrial Pretreatment Programs (IPPs) shall provide the following information to the Director: a written evaluation of the need to revise local industrial discharge limits under 40 CFR §403.5(c)(1).

Below is a form designed by the U.S. Environmental Protection Agency (EPA - New England) to assist POTWs with approved IPPs in evaluating whether their existing Technically Based Local Limits (TBLLs) need to be recalculated. The form allows the permittee and EPA to evaluate and compare pertinent information used in previous TBLLs calculations against present conditions at the POTW.

Please read direction below before filling out form.

ITEM I.

- * In Column (1), list what your POTW's influent flow rate was when your existing TBLLs were calculated. In Column (2), list your POTW's present influent flow rate. Your current flow rate should be calculated using the POTW's average daily flow rate from the previous 12 months.
- * In Column (1) list what your POTW's SIU flow rate was when your existing TBLLs were calculated. In Column (2), list your POTW's present SIU flow rate.
- * In Column (1), list what dilution ratio and/or 7Q10 value was used in your old/expired NPDES permit. In Column (2), list what dilution ratio and/or 7Q10 value is presently being used in your new/reissued NPDES permit.

The 7Q10 value is the lowest seven day average flow rate, in the river, over a ten year period. The 7Q10 value and/or dilution ratio used by EPA in your new NPDES permit can be found in your NPDES permit "Fact Sheet."

- * In Column (1), list the safety factor, if any, that was used when your existing TBLLs were calculated.
- * In Column (1), note how your bio-solids were managed when your existing TBLLs were calculated. In Column (2), note how your POTW is presently disposing of its biosolids and how your POTW will be disposing of its biosolids in the future.

ITEM II.

- * List what your existing TBLLs are - as they appear in your current Sewer Use Ordinance (SUO).

ITEM III.

- * Identify how your existing TBLLs are allocated out to your industrial community. Some pollutants may be allocated differently than others, if so please explain.

ITEM IV.

- * Since your existing TBLLs were calculated, identify the following in detail:
 - (1) if your POTW has experienced any upsets, inhibition, interference or pass-through as a result of an industrial discharge.
 - (2) if your POTW is presently violating any of its current NPDES permit limitations - include toxicity.

ITEM V.

- * Using current sampling data, list in Column (1) the average and maximum amount of pollutants (in pounds per day) received in the POTW's influent. Current sampling data is defined as data obtained over the last 24 month period.

All influent data collected and analyzed must be in accordance with 40 CFR §136. Sampling data collected should be analyzed using the lowest possible detection method(s), e.g. graphite furnace.

- * Based on your existing TBLLs, as presented in Item II., list in Column (2), for each pollutant the Maximum Allowable Headwork Loading (MAHL) values derived from an applicable environmental criteria or standard, e.g. water quality, sludge, NPDES, inhibition, etc. For more information, please see EPA's Local Limit Guidance Document (July 2004).

Item VI.

- * Using current sampling data, list in Column (1) the average and maximum amount of pollutants (in micrograms per liter) present your POTW's effluent. Current sampling data is defined as data obtained during the last 24 month period.

(Item VI. continued)

All effluent data collected and analyzed must be in accordance with 40 CFR §136. Sampling data collected should be analyzed using the lowest possible detection method(s), e.g. graphite furnace.

- * List in Column (2A) what the Water Quality Standards (WQS) were (in micrograms per liter) when your TBLLs were calculated, please note what hardness value was used at that time. Hardness should be expressed in milligram per liter of Calcium Carbonate.

List in Column (2B) the current WQSs or "Chronic Gold Book" values for each pollutant multiplied by the dilution ratio used in your new/reissued NPDES permit. For example, with a dilution ratio of 25:1 at a hardness of 25 mg/l - Calcium Carbonate (copper's chronic WQS equals 6.54 ug/l) the chronic NPDES permit limit for copper would equal 156.25 ug/l.

ITEM VII.

- * In Column (1), list all pollutants (in micrograms per liter) limited in your new/reissued NPDES permit. In Column (2), list all pollutants limited in your old/expired NPDES permit.

ITEM VIII.

- * Using current sampling data, list in Column (1) the average and maximum amount of pollutants in your POTW's biosolids. Current data is defined as data obtained during the last 24 month period. Results are to be expressed as total dry weight.

All biosolids data collected and analyzed must be in accordance with 40 CFR §136.

In Column (2A), list current State and/or Federal sludge standards that your facility's biosolids must comply with. Also note how your POTW currently manages the disposal of its biosolids. If your POTW is planning on managing its biosolids differently, list in Column (2B) what your new biosolids criteria will be and method of disposal.

In general, please be sure the units reported are correct and all pertinent information is included in your evaluation. If you have any questions, please contact your pretreatment representative at EPA - New England.

POTW Name & Address : _____

Date EPA approved current TBLLs :

ITEM I.

In Column (1) list the conditions that existed when your current TBLs were calculated. In Column (2), list current conditions or expected conditions at your POTW.		
	Column (1) EXISTING TBLs	Column (2) PRESENT CONDITIONS
POTW Flow (MGD)		
Dilution Ratio or 7Q10 (from NPDES Permit)		
SIU Flow (MGD)		
Safety Factor		N/A
Biosolids Disposal Method(s)		

ITEM II.

EXISTING TBLLs			
POLLUTANT	NUMERICAL LIMIT (mg/l) or (lb/day)	POLLUTANT	NUMERICAL LIMIT (mg/l) or (lb/day)

ITEM III.

Note how your existing TBLLs, listed in Item II., are allocated to your Significant Industrial Users (SIUs), i.e. uniform concentration, contributory flow, mass proportioning, other. Please specify by circling.

ITEM IV.

Has your POTW experienced any upsets, inhibition, interference or pass-through from industrial sources since your existing TBLLs were calculated?

If yes, explain.

Has your POTW violated any of its NPDES permit limits and/or toxicity test requirements?

If yes, explain.

ITEM V.

Using current POTW influent sampling data fill in Column (1). In Column (2), list your Maximum Allowable Headwork Loading (MAHL) values used to derive your TBLLs listed in Item II. In addition, please note the Environmental Criteria for which each MAHL value was established, i.e. water quality, sludge, NPDES etc.

Pollutant	Column (1) Influent Data Analyses		Column (2)	Criteria
	Maximum (lb/day)	Average (lb/day)	MAHL Values (lb/day)	
Arsenic				
Cadmium				
Chromium				
Copper				
Cyanide				
Lead				
Mercury				
Nickel				
Silver				
Zinc				
Other (List)				

ITEM VI.

Using current POTW effluent sampling data, fill in Column (1). In Column (2A) list what the Water Quality Standards (Gold Book Criteria) were at the time your existing TBLLs were developed. List in Column (2B) current Gold Book values multiplied by the dilution ratio used in your new/reissued NPDES permit.

Pollutant	Column (1)		Columns (2A) (2B)	
	Effluent Data Analyses Maximum (ug/l)	Average (ug/l)	Water Quality Criteria (Gold Book) From TBLLs Today (ug/l) (ug/l)	
Arsenic				
*Cadmium				
*Chromium				
*Copper				
Cyanide				
*Lead				
Mercury				
*Nickel				
Silver				
*Zinc				
Other (List)				

*Hardness Dependent (mg/l - CaCO₃)

ITEM VII.

In Column (1), identify all pollutants limited in your new/reissued NPDES permit. In Column (2), identify all pollutants that were limited in your old/expired NPDES permit.

[illegible]

ITEM VIII.

Using current POTW biosolids data, fill in Column (1). In Column (2A), list the biosolids criteria that was used at the time your existing TBLLs were calculated. If your POTW is planing on managing its biosolids differently, list in Column (2B) what your new biosolids criteria would be and method of disposal.

Pollutant	Column (1)	Biosolids	Columns	
	Data Analyses		(2A)	(2B)
	Average		Biosolids Criteria	
	(mg/kg)		From TBLLs	New
Arsenic				
Cadmium				
Chromium				
Copper				
Cyanide				
Lead				
Mercury				
Nickel				
Silver				
Zinc				
Molybdenum				
Selenium				
Other (List)				

ATTACHMENT C

NPDES PERMIT REQUIREMENT FOR INDUSTRIAL PRETREATMENT ANNUAL REPORT

The information described below shall be included in the pretreatment program annual reports:

1. An updated list of all industrial users by category, as set forth in 40 C.F.R. 403.8(f)(2)(i), indicating compliance or noncompliance with the following:
 - baseline monitoring reporting requirements for newly promulgated industries
 - compliance status reporting requirements for newly promulgated industries
 - periodic (semi-annual) monitoring reporting requirements,
 - categorical standards, and
 - local limits;
2. A summary of compliance and enforcement activities during the preceding year, including the number of:
 - significant industrial users inspected by POTW (include inspection dates for each industrial user),
 - significant industrial users sampled by POTW (include sampling dates for each industrial user),
 - compliance schedules issued (include list of subject users),
 - written notices of violations issued (include list of subject users),
 - administrative orders issued (include list of subject users),
 - criminal or civil suits filed (include list of subject users) and,
 - penalties obtained (include list of subject users and penalty amounts);
3. A list of significantly violating industries required to be published in a local newspaper in accordance with 40 C.F.R. 403.8(f)(2)(vii);
4. A narrative description of program effectiveness including present and proposed changes to the program, such as funding, staffing, ordinances, regulations, rules and/or statutory authority;
5. A summary of all pollutant analytical results for influent, effluent, sludge and any toxicity or bioassay data from the wastewater treatment facility. The summary shall include a comparison of influent sampling results versus threshold inhibitory concentrations for the Wastewater Treatment System and effluent sampling results versus water quality standards. Such a comparison shall be based on the sampling program described in the paragraph below or any similar sampling program described in this Permit.

At a minimum, annual sampling and analysis of the influent and effluent of the Wastewater Treatment Plant shall be conducted for the following pollutants:

- | | |
|--------------------|-------------------|
| a.) Total Cadmium | f.) Total Nickel |
| b.) Total Chromium | g.) Total Silver |
| c.) Total Copper | h.) Total Zinc |
| d.) Total Lead | i.) Total Cyanide |
| e.) Total Mercury | j.) Total Arsenic |

The sampling program shall consist of one 24-hour flow-proportioned composite and at least one grab sample that is representative of the flows received by the POTW. The composite shall consist of hourly flow-proportioned grab samples taken over a 24-hour period if the sample is collected manually or shall consist of a minimum of 48 samples collected at 30 minute intervals if an automated sampler is used. Cyanide shall be taken as a grab sample during the same period as the composite sample. Sampling and preservation shall be consistent with 40 CFR Part 136.

6. A detailed description of all interference and pass-through that occurred during the past year;
7. A thorough description of all investigations into interference and pass-through during the past year;
8. A description of monitoring, sewer inspections and evaluations which were done during the past year to detect interference and pass-through, specifying parameters and frequencies;
9. A description of actions being taken to reduce the incidence of significant violations by significant industrial users; and,
10. The date of the latest adoption of local limits and an indication as to whether or not the permittee is under a State or Federal compliance schedule that includes steps to be taken to revise local limits.

Attachment D: PFAS Analyte List

Target Analyte Name	Abbreviation	CAS Number
Perfluoroalkyl carboxylic acids		
Perfluorobutanoic acid	PFBA	375-22-4
Perfluoropentanoic acid	PFPeA	2706-90-3
Perfluorohexanoic acid	PFHxA	307-24-4
Perfluoroheptanoic acid	PFHpA	375-85-9
Perfluorooctanoic acid	PFOA	335-67-1
Perfluorononanoic acid	PFNA	375-95-1
Perfluorodecanoic acid	PFDA	335-76-2
Perfluoroundecanoic acid	PFUnA	2058-94-8
Perfluorododecanoic acid	PFDoA	307-55-1
Perfluorotridecanoic acid	PFTTrDA	72629-94-8
Perfluorotetradecanoic acid	PFTeDA	376-06-7
Perfluoroalkyl sulfonic acids		
Acid Form		
Perfluorobutanesulfonic acid	PFBS	375-73-5
Perfluoropentanesulfonic acid	PFPeS	2706-91-4
Perfluorohexanesulfonic acid	PFHxS	355-46-4
Perfluoroheptanesulfonic acid	PFHpS	375-92-8
Perfluorooctanesulfonic acid	PFOS	1763-23-1
Perfluorononanesulfonic acid	PFNS	68259-12-1
Perfluorodecanesulfonic acid	PFDS	335-77-3
Perfluorododecanesulfonic acid	PFDoS	79780-39-5
Fluorotelomer sulfonic acids		
1H,1H, 2H, 2H-Perfluorohexane sulfonic acid	4:2FTS	757124-72-4
1H,1H, 2H, 2H-Perfluorooctane sulfonic acid	6:2FTS	27619-97-2
1H,1H, 2H, 2H-Perfluorodecane sulfonic acid	8:2FTS	39108-34-4
Perfluorooctane sulfonamides		
Perfluorooctanesulfonamide	PFOSA	754-91-6
N-methyl perfluorooctanesulfonamide	NMeFOSA	31506-32-8
N-ethyl perfluorooctanesulfonamide	NEtFOSA	4151-50-2
Perfluorooctane sulfonamidoacetic acids		
N-methyl perfluorooctanesulfonamidoacetic acid	NMeFOSAA	2355-31-9
N-ethyl perfluorooctanesulfonamidoacetic acid	NEtFOSAA	2991-50-6
Perfluorooctane sulfonamide ethanols		
N-methyl perfluorooctanesulfonamidoethanol	NMeFOSE	24448-09-7
N-ethyl perfluorooctanesulfonamidoethanol	NEtFOSE	1691-99-2
Per- and Polyfluoroether carboxylic acids		
Hexafluoropropylene oxide dimer acid	HFPO-DA	13252-13-6
4,8-Dioxa-3H-perfluorononanoic acid	ADONA	919005-14-4
Perfluoro-3-methoxypropanoic acid	PFMPA	377-73-1
Perfluoro-4-methoxybutanoic acid	PFMBA	863090-89-5
Nonafluoro-3,6-dioxaheptanoic acid	NFDHA	151772-58-6

Target Analyte Name	Abbreviation	CAS Number
Ether sulfonic acids		
9-Chlorohexadecafluoro-3-oxanonane-1-sulfonic acid	9Cl-PF3ONS	756426-58-1
11-Chloroeicosafluoro-3-oxaundecane-1-sulfonic acid	11Cl-PF3OUdS	763051-92-9
Perfluoro(2-ethoxyethane)sulfonic acid	PFEESA	113507-82-7
Fluorotelomer carboxylic acids		
3-Perfluoropropyl propanoic acid	3:3FTCA	356-02-5
2 <i>H</i> ,2 <i>H</i> ,3 <i>H</i> ,3 <i>H</i> -Perfluorooctanoic acid	5:3FTCA	914637-49-3
3-Perfluoroheptyl propanoic acid	7:3FTCA	812-70-4

NPDES PART II STANDARD CONDITIONS
(April 26, 2018)¹

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¹ Updated July 17, 2018 to fix typographical errors.

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A. GENERAL REQUIREMENTS

1. Duty to Comply

The Permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act (CWA or Act) and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

- a. The Permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under Section 405(d) of the CWA within the time provided in the regulations that establish these standards or prohibitions, or standards for sewage sludge use or disposal, even if the permit has not yet been modified to incorporate the requirement.
- b. Penalties for Violations of Permit Conditions: The Director will adjust the civil and administrative penalties listed below in accordance with the Civil Monetary Penalty Inflation Adjustment Rule (83 Fed. Reg. 1190-1194 (January 10, 2018) and the 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note. See Pub. L. 114-74, Section 701 (Nov. 2, 2015)). These requirements help ensure that EPA penalties keep pace with inflation. Under the above-cited 2015 amendments to inflationary adjustment law, EPA must review its statutory civil penalties each year and adjust them as necessary.

(1) Criminal Penalties

- (a) *Negligent Violations.* The CWA provides that any person who negligently violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to criminal penalties of not less than \$2,500 nor more than \$25,000 per day of violation, or imprisonment of not more than 1 year, or both. In the case of a second or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than \$50,000 per day of violation or by imprisonment of not more than 2 years, or both.
- (b) *Knowing Violations.* The CWA provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not more than 3 years, or both. In the case of a second or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than \$100,000 per day of violation, or imprisonment of not more than 6 years, or both.
- (c) *Knowing Endangerment.* The CWA provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 303, 306, 307, 308, 318, or 405 of the Act and who knows at that time that he or she is placing another person in imminent danger of death or serious bodily injury shall upon conviction be subject to a fine of not more than \$250,000 or by imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing

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endangerment violation, a person shall be subject to a fine of not more than \$500,000 or by imprisonment of not more than 30 years, or both. An organization, as defined in Section 309(c)(3)(B)(iii) of the Act, shall, upon conviction of violating the imminent danger provision, be subject to a fine of not more than \$1,000,000 and can be fined up to \$2,000,000 for second or subsequent convictions.

- (d) *False Statement.* The CWA provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both. The Act further provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.
- (2) *Civil Penalties.* The CWA provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed the maximum amounts authorized by Section 309(d) of the Act, the 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, and 40 C.F.R. Part 19. *See* Pub. L.114-74, Section 701 (Nov. 2, 2015); 83 Fed. Reg. 1190 (January 10, 2018).
- (3) *Administrative Penalties.* The CWA provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to an administrative penalty as follows:
 - (a) *Class I Penalty.* Not to exceed the maximum amounts authorized by Section 309(g)(2)(A) of the Act, the 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, and 40 C.F.R. Part 19. *See* Pub. L.114-74, Section 701 (Nov. 2, 2015); 83 Fed. Reg. 1190 (January 10, 2018).
 - (b) *Class II Penalty.* Not to exceed the maximum amounts authorized by Section 309(g)(2)(B) of the Act the 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, and 40 C.F.R. Part 19. *See* Pub. L.114-74, Section 701 (Nov. 2, 2015); 83 Fed. Reg. 1190 (January 10, 2018).

2. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the Permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit

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condition.

3. Duty to Provide Information

The Permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The Permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

4. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the Permittee from responsibilities, liabilities or penalties to which the Permittee is or may be subject under Section 311 of the CWA, or Section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

5. Property Rights

This permit does not convey any property rights of any sort, or any exclusive privilege.

6. Confidentiality of Information

a. In accordance with 40 C.F.R. Part 2, any information submitted to EPA pursuant to these regulations may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, EPA may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in 40 C.F.R. Part 2 (Public Information).

b. Claims of confidentiality for the following information will be denied:

- (1) The name and address of any permit applicant or Permittee;
- (2) Permit applications, permits, and effluent data.

c. Information required by NPDES application forms provided by the Director under 40 C.F.R. § 122.21 may not be claimed confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

7. Duty to Reapply

If the Permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the Permittee must apply for and obtain a new permit. The Permittee shall submit a new application at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Director. (The Director shall not grant permission for applications to be submitted later than the expiration date of the existing permit.)

8. State Authorities

Nothing in Parts 122, 123, or 124 precludes more stringent State regulation of any activity

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covered by the regulations in 40 C.F.R. Parts 122, 123, and 124, whether or not under an approved State program.

9. Other Laws

The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulations.

B. OPERATION AND MAINTENANCE OF POLLUTION CONTROLS

1. Proper Operation and Maintenance

The Permittee shall at all times 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 this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a Permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

2. Need to Halt or Reduce Not a Defense

It shall not be a defense for a Permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

3. Duty to Mitigate

The Permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

4. Bypass

a. Definitions

- (1) *Bypass* means the intentional diversion of waste streams from any portion of a treatment facility.
- (2) *Severe property damage* means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

- b. *Bypass not exceeding limitations.* The Permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs (c) and (d) of this Section.

c. Notice

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- (1) *Anticipated bypass.* If the Permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass. As of December 21, 2020 all notices submitted in compliance with this Section must be submitted electronically by the Permittee to the Director or initial recipient, as defined in 40 C.F.R. § 127.2(b), in compliance with this Section and 40 C.F.R. Part 3 (including, in all cases, Subpart D to Part 3), § 122.22, and 40 C.F.R. Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, Permittees may be required to report electronically if specified by a particular permit or if required to do so by state law.
- (2) *Unanticipated bypass.* The Permittee shall submit notice of an unanticipated bypass as required in paragraph D.1.e. of this part (24-hour notice). As of December 21, 2020 all notices submitted in compliance with this Section must be submitted electronically by the Permittee to the Director or initial recipient, as defined in 40 C.F.R. § 127.2(b), in compliance with this Section and 40 C.F.R. Part 3 (including, in all cases, Subpart D to Part 3), § 122.22, and 40 C.F.R. Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, Permittees may be required to report electronically if specified by a particular permit or required to do so by law.

d. *Prohibition of bypass.*

- (1) Bypass is prohibited, and the Director may take enforcement action against a Permittee for bypass, unless:
 - (a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - (b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and
 - (c) The Permittee submitted notices as required under paragraph 4.c of this Section.
- (2) The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in paragraph 4.d of this Section.

5. Upset

- a. *Definition.* *Upset* means an exceptional incident in which there is an unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the Permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or

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improper operation.

- b. *Effect of an upset.* An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph B.5.c. of this Section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.
- c. *Conditions necessary for a demonstration of upset.* A Permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - (1) An upset occurred and that the Permittee can identify the cause(s) of the upset;
 - (2) The permitted facility was at the time being properly operated; and
 - (3) The Permittee submitted notice of the upset as required in paragraph D.1.e.2.b. (24-hour notice).
 - (4) The Permittee complied with any remedial measures required under B.3. above.
- d. *Burden of proof.* In any enforcement proceeding the Permittee seeking to establish the occurrence of an upset has the burden of proof.

C. MONITORING REQUIREMENTS

1. Monitoring and Records

- a. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
- b. Except for records of monitoring information required by this permit related to the Permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least 5 years (or longer as required by 40 C.F.R. § 503), the Permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time.
- c. Records of monitoring information shall include:
 - (1) The date, exact place, and time of sampling or measurements;
 - (2) The individual(s) who performed the sampling or measurements;
 - (3) The date(s) analyses were performed;
 - (4) The individual(s) who performed the analyses;
 - (5) The analytical techniques or methods used; and
 - (6) The results of such analyses.
- d. Monitoring must be conducted according to test procedures approved under 40 C.F.R. § 136 unless another method is required under 40 C.F.R. Subchapters N or O.
- e. The Clean Water Act provides that any person who falsifies, tampers with, or

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knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both.

2. Inspection and Entry

The Permittee shall allow the Director, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon presentation of credentials and other documents as may be required by law, to:

- a. Enter upon the Permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
- b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

D. REPORTING REQUIREMENTS

1. Reporting Requirements

- a. *Planned Changes.* The Permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:
 - (1) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 C.F.R. § 122.29(b); or
 - (2) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements at 40 C.F.R. § 122.42(a)(1).
 - (3) The alteration or addition results in a significant change in the Permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.
- b. *Anticipated noncompliance.* The Permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

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- c. *Transfers.* This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the Permittee and incorporate such other requirements as may be necessary under the Clean Water Act. See 40 C.F.R. § 122.61; in some cases, modification or revocation and reissuance is mandatory.
- d. *Monitoring reports.* Monitoring results shall be reported at the intervals specified elsewhere in this permit.
 - (1) Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Director for reporting results of monitoring of sludge use or disposal practices. As of December 21, 2016 all reports and forms submitted in compliance with this Section must be submitted electronically by the Permittee to the Director or initial recipient, as defined in 40 C.F.R. § 127.2(b), in compliance with this Section and 40 C.F.R. Part 3 (including, in all cases, Subpart D to Part 3), § 122.22, and 40 C.F.R. Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, Permittees may be required to report electronically if specified by a particular permit or if required to do so by State law.
 - (2) If the Permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 C.F.R. § 136, or another method required for an industry-specific waste stream under 40 C.F.R. Subchapters N or O, the results of such monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Director.
 - (3) Calculations for all limitations which require averaging or measurements shall utilize an arithmetic mean unless otherwise specified by the Director in the permit.
- e. *Twenty-four hour reporting.*
 - (1) The Permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the Permittee becomes aware of the circumstances. A written report shall also be provided within 5 days of the time the Permittee becomes aware of the circumstances. The written report shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. For noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events, these reports must include the data described above (with the exception of time of discovery) as well as the type of event (combined sewer overflows, sanitary sewer overflows, or bypass events), type of sewer overflow structure (e.g., manhole, combined sewer overflow outfall), discharge volumes untreated by the treatment works treating domestic sewage, types of human health and environmental impacts of the sewer overflow event, and whether the noncompliance was related to wet weather. As of December 21, 2020 all

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reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this section must be submitted electronically by the Permittee to the Director or initial recipient, as defined in 40 C.F.R. § 127.2(b), in compliance with this Section and 40 C.F.R. Part 3 (including, in all cases Subpart D to Part 3), § 122.22, and 40 C.F.R. Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, Permittees may be required to electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section by a particular permit or if required to do so by state law. The Director may also require Permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section.

- (2) The following shall be included as information which must be reported within 24 hours under this paragraph.
 - (a) Any unanticipated bypass which exceeds any effluent limitation in the permit. *See* 40 C.F.R. § 122.41(g).
 - (b) Any upset which exceeds any effluent limitation in the permit.
 - (c) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in the permit to be reported within 24 hours. *See* 40 C.F.R. § 122.44(g).
 - (3) The Director may waive the written report on a case-by-case basis for reports under paragraph D.1.e. of this Section if the oral report has been received within 24 hours.
- f. *Compliance Schedules.* Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.
 - g. *Other noncompliance.* The Permittee shall report all instances of noncompliance not reported under paragraphs D.1.d., D.1.e., and D.1.f. of this Section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph D.1.e. of this Section. For noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events, these reports shall contain the information described in paragraph D.1.e. and the applicable required data in Appendix A to 40 C.F.R. Part 127. As of December 21, 2020 all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this section must be submitted electronically by the Permittee to the Director or initial recipient, as defined in 40 C.F.R. § 127.2(b), in compliance with this Section and 40 C.F.R. Part 3 (including, in all cases, Subpart D to Part 3), §122.22, and 40 C.F.R. Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, Permittees may be required to electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section by a particular permit or if required to do so by state law. The Director may also require Permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this Section.
 - h. *Other information.* Where the Permittee becomes aware that it failed to submit any

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relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.

- i. *Identification of the initial recipient for NPDES electronic reporting data.* The owner, operator, or the duly authorized representative of an NPDES-regulated entity is required to electronically submit the required NPDES information (as specified in Appendix A to 40 C.F.R. Part 127) to the appropriate initial recipient, as determined by EPA, and as defined in 40 C.F.R. § 127.2(b). EPA will identify and publish the list of initial recipients on its Web site and in the FEDERAL REGISTER, by state and by NPDES data group (see 40 C.F.R. § 127.2(c) of this Chapter). EPA will update and maintain this listing.

2. Signatory Requirement

- a. All applications, reports, or information submitted to the Director shall be signed and certified. See 40 C.F.R. §122.22.
- b. The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

3. Availability of Reports.

Except for data determined to be confidential under paragraph A.6. above, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the State water pollution control agency and the Director. As required by the CWA, effluent data shall not be considered confidential. Knowingly making any false statements on any such report may result in the imposition of criminal penalties as provided for in Section 309 of the CWA.

E. DEFINITIONS AND ABBREVIATIONS

1. General Definitions

For more definitions related to sludge use and disposal requirements, see EPA Region 1's NPDES Permit Sludge Compliance Guidance document (4 November 1999, modified to add regulatory definitions, April 2018).

Administrator means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

Applicable standards and limitations means all, State, interstate, and federal standards and limitations to which a "discharge," a "sewage sludge use or disposal practice," or a related activity is subject under the CWA, including "effluent limitations," water quality standards, standards of performance, toxic effluent standards or prohibitions, "best management practices," pretreatment standards, and "standards for sewage sludge use or disposal" under Sections 301, 302, 303, 304, 306, 307, 308, 403 and 405 of the CWA.

Application means the EPA standard national forms for applying for a permit, including any additions, revisions, or modifications to the forms; or forms approved by EPA for use in

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“approved States,” including any approved modifications or revisions.

Approved program or *approved State* means a State or interstate program which has been approved or authorized by EPA under Part 123.

Average monthly discharge limitation means the highest allowable average of “daily discharges” over a calendar month, calculated as the sum of all “daily discharges” measured during a calendar month divided by the number of “daily discharges” measured during that month.

Average weekly discharge limitation means the highest allowable average of “daily discharges” over a calendar week, calculated as the sum of all “daily discharges” measured during a calendar week divided by the number of “daily discharges” measured during that week.

Best Management Practices (“BMPs”) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of “waters of the United States.” BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Bypass see B.4.a.1 above.

C-NOEC or “*Chronic (Long-term Exposure Test) – No Observed Effect Concentration*” means the highest tested concentration of an effluent or a toxicant at which no adverse effects are observed on the aquatic test organisms at a specified time of observation.

Class I sludge management facility is any publicly owned treatment works (POTW), as defined in 40 C.F.R. § 501.2, required to have an approved pretreatment program under 40 C.F.R. § 403.8 (a) (including any POTW located in a State that has elected to assume local program responsibilities pursuant to 40 C.F.R. § 403.10 (e)) and any treatment works treating domestic sewage, as defined in 40 C.F.R. § 122.2, classified as a Class I sludge management facility by the EPA Regional Administrator, or, in the case of approved State programs, the Regional Administrator in conjunction with the State Director, because of the potential for its sewage sludge use or disposal practice to affect public health and the environment adversely.

Contiguous zone means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone.

Continuous discharge means a “discharge” which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or similar activities.

CWA means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483 and Public Law 97-117, 33 U.S.C. 1251 *et seq.*

CWA and regulations means the Clean Water Act (CWA) and applicable regulations promulgated thereunder. In the case of an approved State program, it includes State program requirements.

Daily Discharge means the “discharge of a pollutant” measured during a calendar day or any

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other 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the “daily discharge” is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurements, the “daily discharge” is calculated as the average measurement of the pollutant over the day.

Direct Discharge means the “discharge of a pollutant.”

Director means the Regional Administrator or an authorized representative. In the case of a permit also issued under Massachusetts’ authority, it also refers to the Director of the Division of Watershed Management, Department of Environmental Protection, Commonwealth of Massachusetts.

Discharge

- (a) When used without qualification, *discharge* means the “discharge of a pollutant.”
- (b) As used in the definitions for “interference” and “pass through,” *discharge* means the introduction of pollutants into a POTW from any non-domestic source regulated under Section 307(b), (c) or (d) of the Act.

Discharge Monitoring Report (“DMR”) means the EPA uniform national form, including any subsequent additions, revisions, or modifications for the reporting of self-monitoring results by Permittees. DMRs must be used by “approved States” as well as by EPA. EPA will supply DMRs to any approved State upon request. The EPA national forms may be modified to substitute the State Agency name, address, logo, and other similar information, as appropriate, in place of EPA’s.

Discharge of a pollutant means:

- (a) Any addition of any “pollutant” or combination of pollutants to “waters of the United States” from any “point source,” or
- (b) Any addition of any pollutant or combination of pollutants to the waters of the “contiguous zone” or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any “indirect discharger.”

Effluent limitation means any restriction imposed by the Director on quantities, discharge rates, and concentrations of “pollutants” which are “discharged” from “point sources” into “waters of the United States,” the waters of the “contiguous zone,” or the ocean.

Effluent limitation guidelines means a regulation published by the Administrator under section 304(b) of CWA to adopt or revise “effluent limitations.”

Environmental Protection Agency (“EPA”) means the United States Environmental Protection

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Agency.

Grab Sample means an individual sample collected in a period of less than 15 minutes.

Hazardous substance means any substance designated under 40 C.F.R. Part 116 pursuant to Section 311 of CWA.

Incineration is the combustion of organic matter and inorganic matter in sewage sludge by high temperatures in an enclosed device.

Indirect discharger means a nondomestic discharger introducing “pollutants” to a “publicly owned treatment works.”

Interference means a discharge (see definition above) which, alone or in conjunction with a discharge or discharges from other sources, both:

- (a) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and
- (b) Therefore is a cause of a violation of any requirement of the POTW’s NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent State or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including title II, more commonly referred to as the Resources Conservation and Recovery Act (RCRA), and including State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the SDWA), the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research and Sanctuaries Act.

Landfill means an area of land or an excavation in which wastes are placed for permanent disposal, and that is not a land application unit, surface impoundment, injection well, or waste pile.

Land application is the spraying or spreading of sewage sludge onto the land surface; the injection of sewage sludge below the land surface; or the incorporation of sewage sludge into the soil so that the sewage sludge can either condition the soil or fertilize crops or vegetation grown in the soil.

Land application unit means an area where wastes are applied onto or incorporated into the soil surface (excluding manure spreading operations) for agricultural purposes or for treatment and disposal.

LC₅₀ means the concentration of a sample that causes mortality of 50% of the test population at a specific time of observation. The LC₅₀ = 100% is defined as a sample of undiluted effluent.

Maximum daily discharge limitation means the highest allowable “daily discharge.”

Municipal solid waste landfill (MSWLF) unit means a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under 40 C.F.R. § 257.2. A MSWLF unit also may receive other types of RCRA Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, very small quantity generator waste and industrial solid waste. Such a landfill may be

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publicly or privately owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit or a lateral expansion. A construction and demolition landfill that receives residential lead-based paint waste and does not receive any other household waste is not a MSWLF unit.

Municipality

- (a) When used without qualification *municipality* means a city, town, borough, county, parish, district, association, or other public body created by or under State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under Section 208 of CWA.
- (b) As related to sludge use and disposal, *municipality* means a city, town, borough, county, parish, district, association, or other public body (including an intermunicipal Agency of two or more of the foregoing entities) created by or under State law; an Indian tribe or an authorized Indian tribal organization having jurisdiction over sewage sludge management; or a designated and approved management Agency under Section 208 of the CWA, as amended. The definition includes a special district created under State law, such as a water district, sewer district, sanitary district, utility district, drainage district, or similar entity, or an integrated waste management facility as defined in Section 201 (e) of the CWA, as amended, that has as one of its principal responsibilities the treatment, transport, use or disposal of sewage sludge.

National Pollutant Discharge Elimination System means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under Sections 307, 402, 318, and 405 of the CWA. The term includes an “approved program.”

New Discharger means any building, structure, facility, or installation:

- (a) From which there is or may be a “discharge of pollutants;”
- (b) That did not commence the “discharge of pollutants” at a particular “site” prior to August 13, 1979;
- (c) Which is not a “new source;” and
- (d) Which has never received a finally effective NPDES permit for discharges at that “site.”

This definition includes an “indirect discharger” which commences discharging into “waters of the United States” after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas exploratory drilling rig or a coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a “site” for which it does not have a permit; and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979, at a “site” under EPA’s permitting jurisdiction for which it is not covered by an individual or general permit and which is located in an area determined by the Director in the issuance of a final permit to be in an area of biological concern. In determining whether an area is an area of biological concern, the Director shall consider the factors specified in 40 C.F.R. §§ 125.122 (a) (1) through (10).

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An offshore or coastal mobile exploratory drilling rig or coastal mobile developmental drilling rig will be considered a “new discharger” only for the duration of its discharge in an area of biological concern.

New source means any building, structure, facility, or installation from which there is or may be a “discharge of pollutants,” the construction of which commenced:

- (a) After promulgation of standards of performance under Section 306 of CWA which are applicable to such source, or
- (b) After proposal of standards of performance in accordance with Section 306 of CWA which are applicable to such source, but only if the standards are promulgated in accordance with Section 306 within 120 days of their proposal.

NPDES means “National Pollutant Discharge Elimination System.”

Owner or operator means the owner or operator of any “facility or activity” subject to regulation under the NPDES programs.

Pass through means a Discharge (see definition above) which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW’s NPDES permit (including an increase in the magnitude or duration of a violation).

Pathogenic organisms are disease-causing organisms. These include, but are not limited to, certain bacteria, protozoa, viruses, and viable helminth ova.

Permit means an authorization, license, or equivalent control document issued by EPA or an “approved State” to implement the requirements of Parts 122, 123, and 124. “Permit” includes an NPDES “general permit” (40 C.F.R § 122.28). “Permit” does not include any permit which has not yet been the subject of final agency action, such as a “draft permit” or “proposed permit.”

Person means an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof.

Person who prepares sewage sludge is either the person who generates sewage sludge during the treatment of domestic sewage in a treatment works or the person who derives a material from sewage sludge.

pH means the logarithm of the reciprocal of the hydrogen ion concentration measured at 25° Centigrade or measured at another temperature and then converted to an equivalent value at 25° Centigrade.

Point Source means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff (see 40 C.F.R. § 122.3).

Pollutant means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials

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(except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

- (a) Sewage from vessels; or
- (b) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well is used either to facilitate production or for disposal purposes is approved by the authority of the State in which the well is located, and if the State determines that the injection or disposal will not result in the degradation of ground or surface water resources.

Primary industry category means any industry category listed in the NRDC settlement agreement (*Natural Resources Defense Council et al. v. Train*, 8 E.R.C. 2120 (D.D.C. 1976), *modified* 12 E.R.C. 1833 (D.D.C. 1979)); also listed in Appendix A of 40 C.F.R. Part 122.

Privately owned treatment works means any device or system which is (a) used to treat wastes from any facility whose operator is not the operator of the treatment works and (b) not a “POTW.”

Process wastewater means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

Publicly owned treatment works (POTW) means a treatment works as defined by Section 212 of the Act, which is owned by a State or municipality (as defined by Section 504(4) of the Act). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plant. The term also means the municipality as defined in Section 502(4) of the Act, which has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

Regional Administrator means the Regional Administrator, EPA, Region I, Boston, Massachusetts.

Secondary industry category means any industry which is not a “primary industry category.”

Septage means the liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or a holding tank when the system is cleaned or maintained.

Sewage Sludge means any solid, semi-solid, or liquid residue removed during the treatment of municipal waste water or domestic sewage. Sewage sludge includes, but is not limited to, solids removed during primary, secondary, or advanced waste water treatment, scum, septage, portable toilet pumpings, type III marine sanitation device pumpings (33 C.F.R. Part 159), and sewage sludge products. Sewage sludge does not include grit or screenings, or ash generated during the incineration of sewage sludge.

Sewage sludge incinerator is an enclosed device in which only sewage sludge and auxiliary fuel are fired.

Sewage sludge unit is land on which only sewage sludge is placed for final disposal. This does

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not include land on which sewage sludge is either stored or treated. Land does not include waters of the United States, as defined in 40 C.F.R. § 122.2.

Sewage sludge use or disposal practice means the collection, storage, treatment, transportation, processing, monitoring, use, or disposal of sewage sludge.

Significant materials includes, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substance designated under Section 101(14) of CERCLA; any chemical the facility is required to report pursuant to Section 313 of title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

Significant spills includes, but is not limited to, releases of oil or hazardous substances in excess of reportable quantities under Section 311 of the CWA (see 40 C.F.R. §§ 110.10 and 117.21) or Section 102 of CERCLA (see 40 C.F.R. § 302.4).

Sludge-only facility means any “treatment works treating domestic sewage” whose methods of sewage sludge use or disposal are subject to regulations promulgated pursuant to section 405(d) of the CWA, and is required to obtain a permit under 40 C.F.R. § 122.1(b)(2).

State means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, or an Indian Tribe as defined in the regulations which meets the requirements of 40 C.F.R. § 123.31.

Store or storage of sewage sludge is the placement of sewage sludge on land on which the sewage sludge remains for two years or less. This does not include the placement of sewage sludge on land for treatment.

Storm water means storm water runoff, snow melt runoff, and surface runoff and drainage.

Storm water discharge associated with industrial activity means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant.

Surface disposal site is an area of land that contains one or more active sewage sludge units.

Toxic pollutant means any pollutant listed as toxic under Section 307(a)(1) or, in the case of “sludge use or disposal practices,” any pollutant identified in regulations implementing Section 405(d) of the CWA.

Treatment works treating domestic sewage means a POTW or any other sewage sludge or waste water treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices.

For purposes of this definition, “domestic sewage” includes waste and waste water from humans or household operations that are discharged to or otherwise enter a treatment works. In States where there is no approved State sludge management program under Section 405(f) of the CWA, the Director may designate any person subject to the standards for sewage sludge use and

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disposal in 40 C.F.R. Part 503 as a “treatment works treating domestic sewage,” where he or she finds that there is a potential for adverse effects on public health and the environment from poor sludge quality or poor sludge handling, use or disposal practices, or where he or she finds that such designation is necessary to ensure that such person is in compliance with 40 C.F.R. Part 503.

Upset see B.5.a. above.

Vector attraction is the characteristic of sewage sludge that attracts rodents, flies, mosquitoes, or other organisms capable of transporting infectious agents.

Waste pile or *pile* means any non-containerized accumulation of solid, non-flowing waste that is used for treatment or storage.

Waters of the United States or *waters of the U.S.* means:

- (a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- (b) All interstate waters, including interstate “wetlands;”
- (c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, “wetlands”, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
 - (1) Which are or could be used by interstate or foreign travelers for recreational or other purpose;
 - (2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - (3) Which are used or could be used for industrial purposes by industries in interstate commerce;
- (d) All impoundments of waters otherwise defined as waters of the United States under this definition;
- (e) Tributaries of waters identified in paragraphs (a) through (d) of this definition;
- (f) The territorial sea; and
- (g) “Wetlands” adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 C.F.R. § 423.11(m) which also meet the criteria of this definition) are not waters of the United States. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of waters of the United States. Waters of the United States do not include prior converted cropland.

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Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

Wetlands means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

Whole Effluent Toxicity (WET) means the aggregate toxic effect of an effluent measured directly by a toxicity test.

Zone of Initial Dilution (ZID) means the region of initial mixing surrounding or adjacent to the end of the outfall pipe or diffuser ports, provided that the ZID may not be larger than allowed by mixing zone restrictions in applicable water quality standards.

2. Commonly Used Abbreviations

BOD	Five-day biochemical oxygen demand unless otherwise specified
CBOD	Carbonaceous BOD
CFS	Cubic feet per second
COD	Chemical oxygen demand
Chlorine	
Cl ₂	Total residual chlorine
TRC	Total residual chlorine which is a combination of free available chlorine (FAC, see below) and combined chlorine (chloramines, etc.)
TRO	Total residual chlorine in marine waters where halogen compounds are present
FAC	Free available chlorine (aqueous molecular chlorine, hypochlorous acid, and hypochlorite ion)
Coliform	
Coliform, Fecal	Total fecal coliform bacteria
Coliform, Total	Total coliform bacteria
Cont.	Continuous recording of the parameter being monitored, i.e. flow, temperature, pH, etc.
Cu. M/day or M ³ /day	Cubic meters per day
DO	Dissolved oxygen

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kg/day	Kilograms per day
lbs/day	Pounds per day
mg/L	Milligram(s) per liter
mL/L	Milliliters per liter
MGD	Million gallons per day
Nitrogen	
Total N	Total nitrogen
NH ₃ -N	Ammonia nitrogen as nitrogen
NO ₃ -N	Nitrate as nitrogen
NO ₂ -N	Nitrite as nitrogen
NO ₃ -NO ₂	Combined nitrate and nitrite nitrogen as nitrogen
TKN	Total Kjeldahl nitrogen as nitrogen
Oil & Grease	Freon extractable material
PCB	Polychlorinated biphenyl
Surfactant	Surface-active agent
Temp. °C	Temperature in degrees Centigrade
Temp. °F	Temperature in degrees Fahrenheit
TOC	Total organic carbon
Total P	Total phosphorus
TSS or NFR	Total suspended solids or total nonfilterable residue
Turb. or Turbidity	Turbidity measured by the Nephelometric Method (NTU)
µg/L	Microgram(s) per liter
WET	“Whole effluent toxicity”
ZID	Zone of Initial Dilution

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
NEW ENGLAND - REGION 1
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MASSACHUSETTS 02109-3912**

FACT SHEET

**DRAFT NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT TO
DISCHARGE TO WATERS OF THE UNITED STATES PURSUANT TO
THE CLEAN WATER ACT (CWA)**

NPDES PERMIT NUMBER: MA0100501

PUBLIC NOTICE START AND END DATES:

NAME AND MAILING ADDRESS OF APPLICANT:

South Essex Sewerage District
P.O. Box 989
Salem, MA 01970

The municipalities of Beverly, Danvers, Marblehead, Peabody, and Salem are Co-permittees for specific activities required by the permit, as set forth in Section 5.5 of this Fact Sheet and Sections I.B, I.C and I.D of the Draft Permit. These activities pertain to the operation and maintenance of the collection systems owned and operated by the co-permittees. The responsible municipal departments are:

City of Beverly
c/o City Engineer
Beverly City Hall
191 Cabot Street
Beverly, MA 01915

Town of Danvers
c/o Town Engineer
Public Works Eng. Div.
1 Burroughs Street
Danvers, MA 01923

Town of Marblehead
c/o Superintendent
Water/Sewer Department
P.O. Box 1108
Marblehead, MA 01945

City of Peabody
c/o Mayor
24 Lowell Street
Peabody, MA 01960

City of Salem
c/o City Engineer
120 Washington Street, 4th Fl
Salem, MA 01970

NAME AND ADDRESS OF FACILITY WHERE DISCHARGE OCCURS:

South Essex Wastewater Treatment Facility
50 Fort Avenue
Salem, MA 01970

RECEIVING WATER AND CLASSIFICATION:

Salem Sound (Segment MA 93-56)

North Coastal Watershed

Class SB

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Appendices

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Appendix B – Reasonable Potential and Limits Calculations

Appendix C – Rationale on the Appropriateness of, and the Authority for, the Inclusion of the Wastewater Treatment System and Sewer System Adaptation Plan Requirements

Appendix D – EPA Region 1 NPDES Permitting Approach for Publicly Owned Treatment Works that Include Municipal Satellite Sewage Collection Systems

Appendix E – List for Pollutant Scans

1.0 Proposed Action

The above-named applicant (the Permittee) has applied to the U.S. Environmental Protection Agency (EPA) for reissuance of a National Pollutant Discharge Elimination System (NPDES) permit to discharge from the South Essex Sewerage District Wastewater Treatment Facility (the Facility, SESD WWTF) into Salem Sound.

The permit currently in effect was issued on May 5, 2016 with an effective date of August 1, 2016 and expired on July 31, 2021 (the 2016 Permit). The Permittee filed an application seeking NPDES permit reissuance from EPA dated January 27, 2021 as required by 40 Code of Federal Regulations (CFR) § 122.6. Since the permit application was deemed timely and complete by EPA on February 11, 2021, the Facility's 2016 Permit has been administratively continued pursuant to 40 CFR § 122.6 and § 122.21(d). EPA and MassDEP conducted a virtual site visit on October 29, 2024.

2.0 Statutory and Regulatory Authority for Setting NPDES Permit Requirements

Congress enacted the Federal Water Pollution Control Act, codified at 33 U.S.C. § 1251-1387 and commonly known as the Clean Water Act (CWA), "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." CWA § 101(a). To achieve this objective, the CWA makes it unlawful for any person to discharge any pollutant into the waters of the United States from any point source, except to the extent authorized under specific provisions of the CWA, one of which is § 402. See CWA §§ 301(a), 402(a). Section 402(a) established one of the CWA's principal permitting programs, the NPDES Permit Program. Under this section, EPA may "issue a permit for the discharge of any pollutant or combination of pollutants" on the condition that the discharge will comply with the standards specified in certain other provisions of the statute (e.g., CWA §§ 301, 306 and 403). CWA § 402(a)(1). NPDES permits generally contain discharge limitations and establish related monitoring and reporting requirements. See CWA § 402(a)(1) and (2). The regulations governing EPA's NPDES permit program are generally found in 40 CFR Parts 122, 124, 125, and 136.

"Congress has vested in the Administrator [of EPA] broad discretion to establish conditions for NPDES permits" in order to achieve the statutory mandates of Sections 301 and 402 of the CWA. *Arkansas v. Oklahoma*, 503 U.S. 91, 105 (1992). Technology-based effluent limitations (TBELs) represent the minimum level of pollutant discharge control that must be satisfied under Sections 301(b) and 402(a)(1) of the CWA. See also 40 CFR § 125.3(a). When limits more stringent than technology-based limits are needed to maintain or achieve compliance with state water quality standards (WQS), then NPDES permit must include water quality-based limitations. See CWA §§ 301(b)(1)(C) and 401; 40 CFR §§ 122.4(d), 122.44(d)(1) and (5), 124.53, and 124.55.

2.1 Technology-Based Requirements

Technology-based limitations, generally developed on an industry-by-industry basis, reflect a specified level of pollutant reducing technology available and economically achievable for the type of facility being permitted. *See* CWA § 301(b). As a class, publicly owned treatment works (POTWs) must meet performance-based requirements based on available wastewater treatment technology. *See* CWA § 301(b)(1)(B). The performance level for POTWs is referred to as “secondary treatment.” Secondary treatment is comprised of technology-based requirements expressed in terms of biochemical oxygen demand (BOD₅), total suspended solids (TSS) and pH. *See* 40 CFR Part 133.

Under CWA § 301(b)(1), POTWs must have achieved effluent limits based upon secondary treatment technology by July 1, 1977. Since all statutory deadlines for meeting various treatment technology-based effluent limitations established pursuant to the CWA have expired, when technology-based effluent limits are included in a permit, compliance with those limitations is from the date the issued permit becomes effective. *See* 40 CFR § 125.3(a)(1).

2.2 Water Quality-Based Requirements

The CWA and federal regulations also require that permit limits based on water quality considerations be established for point source discharges when such limitations are necessary to meet state or federal water quality standards that are applicable to the designated receiving water. This is necessary when less stringent TBELs would interfere with the attainment or maintenance of water quality criteria in the receiving water. *See* CWA § 301(b)(1)(C) and 40 CFR §§ 122.44(d)(1), 122.44(d)(5).

2.2.1 Water Quality Standards

The CWA requires that each state develop water quality standards (WQSs) for all water bodies within the State. *See* CWA § 303 and 40 CFR § 131.10-12. Generally, WQSs consist of three parts: 1) the designated use or uses assigned for a water body or a segment of a water body; 2) numeric or narrative water quality criteria sufficient to protect the assigned designated use(s); and 3) antidegradation requirements to ensure that once a use is attained it will not be degraded and to protect high quality and National resource waters. *See* CWA § 303(c)(2)(A) and 40 CFR § 131.12. The applicable State WQSs can be found in Title 314 of the Code of Massachusetts Regulations, Chapter 4 (314 CMR 4.00).

As a matter of state law, state WQSs specify different water body classifications, each of which is associated with certain designated uses and particular numeric and narrative water quality criteria intended to help attain the designated uses. Then the state assigns one of the water body classifications to each water body in the state. When using chemical-specific numeric criteria to develop permit limitations, acute and chronic aquatic life criteria and human health criteria are used and expressed in terms of maximum allowable in-stream pollutant concentrations. In general, aquatic-life acute criteria are considered applicable to daily time

periods (maximum daily limit) and aquatic-life chronic criteria are considered applicable to monthly time periods (average monthly limit). Chemical-specific human health criteria are typically based on lifetime chronic exposure and, therefore, are typically applicable to average monthly limits.

When permit effluent limitation(s) are necessary to ensure that the receiving water meets narrative water quality criteria, the permitting authority must establish effluent limits in one of the following three ways: 1) based on a “calculated numeric criterion for the pollutant which the permitting authority demonstrates will attain and maintain applicable narrative water quality criteria and fully protect the designated use,” 2) based on a “case-by-case basis” using CWA § 304(a) recommended water quality criteria, supplemented as necessary by other relevant information; or, 3) in certain circumstances, based on use of an indicator parameter. See 40 CFR § 122.44(d)(1)(vi)(A-C).

2.2.2 Antidegradation

Federal regulations found at 40 CFR § 131.12 require states to develop and adopt a statewide antidegradation policy that maintains and protects existing in-stream water uses and the level of water quality necessary to protect these existing uses. In addition, the antidegradation policy ensures maintenance of high quality waters which exceed levels necessary to support propagation of fish, shellfish, and wildlife and to support recreation in and on the water, unless the State finds that allowing degradation is necessary to accommodate important economic or social development in the area in which the waters are located.

Massachusetts’ statewide antidegradation policy, entitled “Antidegradation Provisions” is found in the State’s WQSs at 314 CMR 4.04. Massachusetts guidance for the implementation of this policy is in an associated document entitled “Implementation Procedures for the Antidegradation Provisions of the Massachusetts Surface Water Quality Standards, 314 CMR 4.00.” dated October 21, 2009. According to the policy, no lowering of water quality is allowed, except in accordance with the antidegradation policy, and all existing in-stream uses, and the level of water quality necessary to protect the existing uses of a receiving water body must be maintained and protected.

This permit is being reissued with effluent limitations sufficiently stringent to satisfy the State’s antidegradation requirements, including the protection of the existing uses of the receiving water.

2.2.3 Assessment and Listing of Waters and Total Maximum Daily Loads.

The objective of the CWA is to restore and maintain the chemical, physical and biological integrity of the Nation’s waters. To meet this goal, the CWA requires states to develop information on the quality of their water resources and report this information to EPA, the U.S. Congress, and the public. To this end, EPA released guidance on November 19, 2001, for the preparation of an integrated “List of Waters” that could combine reporting elements of both

§ 305(b) and § 303(d) of the CWA. The integrated list format allows states to provide the status of all their assessed waters in one list. States choosing this option must list each water body or segment in one of the following five categories: 1) unimpaired and not threatened for all designated uses; 2) unimpaired waters for some uses and not assessed for others; 3) insufficient information to make assessments for any uses; 4) impaired or threatened for one or more uses but not requiring the calculation of a Total Maximum Daily Load (TMDL); and 5) impaired or threatened for one or more uses and requiring a TMDL.

A TMDL is a planning tool and potential starting point for restoration activities with the ultimate goal of attaining water quality standards. A TMDL essentially provides a pollution budget designed to restore the health of an impaired water body. A TMDL typically identifies the source(s) of the pollutant from point sources and non-point sources, determines the maximum load of the pollutant that the water body can tolerate while still attaining WQSs for the designated uses, and allocates that load among to the various sources, including point source discharges, subject to NPDES permits. *See* 40 CFR § 130.7.

For impaired waters where a TMDL has been developed for a particular pollutant and the TMDL includes a waste load allocation (WLA) for a NPDES permitted discharge, the effluent limitation in the permit must be “consistent with the assumptions and requirements of any available WLA”. 40 CFR § 122.44(d)(1)(vii)(B).

2.2.4 Reasonable Potential

Pursuant to CWA § 301(b)(1)(C), 33 U.S.C. § 1311(b)(1)(C), and 40 CFR § 122.44(d)(1), NPDES permits must contain any requirements in addition to TBELs that are necessary to achieve water quality standards established under § 303 of the CWA. In addition, permit limits “must control any pollutant or pollutant parameter (conventional, non-conventional, or toxic) which the permitting authority determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any water quality standard, including State narrative criteria for water quality.” 40 CFR § 122.44(d)(1)(i). To determine if the discharge causes, or has the reasonable potential to cause, or contribute to an excursion above any WQS, EPA considers: 1) existing controls on point and non-point sources of pollution; 2) the variability of the pollutant or pollutant parameter in the effluent; 3) the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity); and 4) where appropriate, the dilution of the effluent by the receiving water. *See* 40 CFR § 122.44(d)(1)(ii).

If the permitting authority determines that the discharge of a pollutant will cause, has the reasonable potential to cause, or contribute to an excursion above WQSs, the permit must contain WQBELs for that pollutant. *See* 40 CFR § 122.44(d)(1)(i).

2.2.5 State Certification

EPA may not issue a permit unless the State Water Pollution Control Agency with jurisdiction over the receiving water(s) either certifies that the effluent limitations contained in the permit are stringent enough to assure that the discharge will not cause the receiving water to violate the State WQSs, or the State waives, or is deemed to have waived, its right to certify. See 33 U.S.C. § 1341(a)(1). Regulations governing state certification are set forth in 40 CFR § 124.53 and § 124.55. EPA has requested permit certification by the State pursuant to 40 CFR § 124.53 and expects that the Draft Permit will be certified.

If the State believes that conditions more stringent than those contained in the Draft Permit are necessary to meet the requirements of either CWA §§ 208(e), 301, 302, 303, 306 and 307, or applicable requirements of State law, the State should include such conditions in its certification. The only exception to this is that the permit conditions/requirements regulating sewage sludge management and implementing CWA § 405(d) are not subject to the State certification requirements. Reviews and appeals of limitations and conditions attributable to State certification shall be made through the applicable procedures of the State and may not be made through EPA's permit appeal procedures of 40 CFR Part 124.

In addition, the State may provide a statement of the extent to which any condition of the Draft Permit can be made less stringent without violating the requirements of State law, including water quality standards.

It should be noted that under CWA § 401, EPA's duty to defer to considerations of State law is intended to prevent EPA from relaxing any requirements, limitations or conditions imposed by State law. Therefore, "[a] State may not condition or deny a certification on the grounds that State law allows a less stringent permit condition." 40 CFR § 124.55(b). EPA regulations pertaining to permit limitations based upon WQSs and State requirements are contained in 40 CFR §§ 122.4(d) and 122.44(d).

See Section 5.8 below for a detailed discussion of the expected state certification conditions and the potential impact to the permit. Note that the draft state certification will also be made available for public comment¹ by the State separately from this Draft Permit as part of the permit reissuance process. EPA does not have authority to make changes to the state certification conditions. Any comments regarding the draft state certification conditions should be made directly to MassDEP as part of that separate public notice.

¹ Once the public notice period for the MassDEP's draft 401 certification begins, it will be posted here: <https://www.mass.gov/info-details/massdep-permits-approvals-for-comment>. Following MassDEP's public notice period, the draft certification will be moved to here: <https://www.mass.gov/info-details/massachusetts-draft-individual-surface-water-discharge-permits-and-associated-documents>.

2.3 Effluent Flow Requirements

Sewage treatment plant discharge is encompassed within the definition of “pollutant” and is subject to regulation under the CWA. The CWA defines “pollutant” to mean, *inter alia*, “municipal...waste” and “sewage...discharged into water.” 33 U.S.C. § 1362(6).

Generally, EPA uses a discharger’s effluent flow volume both to determine whether an NPDES permit needs certain effluent limitations and to calculate the limitations themselves. EPA practice is to use effluent flow as a reasonable and important worst-case condition in its reasonable potential and WQBEL calculations to ensure compliance with WQSs under CWA § 301(b)(1)(C). Should a facility’s effluent flow exceed the flow assumed in these calculations, the in-stream dilution would be reduced, and the calculated effluent limitations might not be sufficiently protective (i.e. might not meet WQSs). Further, pollutants that do not have the reasonable potential to exceed WQSs at a lower discharge flow may have a reasonable potential to do so at a higher flow due to the decreased dilution in the receiving water (which, conversely, means there will be a higher concentration of the pollutants). In order to ensure that the assumptions underlying EPA’s reasonable potential analyses and permit effluent limitation derivations remain sound for the duration of the permit, EPA may ensure the validity of its “worst-case” effluent flow assumptions through imposition of permit conditions for effluent flow.² In this regard, the effluent flow limitation is a component of an WQBELs because the WQBELs are premised on a maximum level flow. The effluent flow limit may also be necessary to ensure that other pollutants remain at levels that do not have a reasonable potential to exceed WQSs.

The limitation on wastewater effluent flow is within EPA’s authority to condition a permit to carry out the objectives of the Act. *See* CWA §§ 402(a)(2) and 301(b)(1)(C); 40 CFR §§ 122.4(a) and (d), 122.43 and 122.44(d). A condition on the discharge designed to ensure the WQBEL and reasonable potential calculations account for “worst case” conditions is encompassed by the references to “condition” and “limitations” in CWA §§ 402 and 301 and implementing regulations, as they are designed to assure compliance with applicable water quality regulations, including antidegradation. Regulating the quantity of pollutants in the discharge through a restriction on the quantity of wastewater effluent is consistent with the overall structure and purposes of the CWA.

Setting limits on effluent flow volumes is within EPA’s authority to condition a permit to carry out the objectives and satisfy the requirements of the CWA. *See* CWA §§ 402(a)(2) and 301(b)(1)(C); 40 CFR §§ 122.4(a) and (d), 122.43 and 122.44(d). Regulating the quantity of pollutants in the discharge through a restriction on the quantity of effluent is also consistent with EPA’s authorities under the CWA.

² EPA’s regulations regarding “reasonable potential” require EPA to consider “where appropriate, the dilution of the effluent in the receiving water,” *id* 40 CFR §122.44(d)(1)(ii). *Both* the effluent flow and receiving water flow may be considered when assessing reasonable potential. *In re Upper Blackstone Water Pollution Abatement Dist.*, 14 E.A.D. 577, 599 (EAB 2010). EPA guidance directs that this “reasonable potential: analysis be based on “worst-case” conditions. *See In re Washington Aquaduct Water Supply Sys.* 11 E.A.D. 565, 584 (EAB 2004).

As provided in Part II.B.1 (Standard Conditions) of the proposed permit and 40 CFR § 122.41(e), the Permittee is required to properly operate and maintain all facilities and systems of treatment and control. Improper operation and maintenance may result in non-compliance with permit effluent limitations. Consequently, an effluent flow limit is a permit condition that relates to the Permittee's duty to mitigate (*i.e.*, minimize or prevent any discharge in violation of the permit that has a reasonable likelihood of adversely affecting human health or the environment) and to properly operate and maintain the treatment works. See 40 CFR §§ 122.41(d), (e).

EPA has also included the effluent flow limit in the permit to minimize or prevent infiltration and inflow (I/I) that may result in unauthorized discharges and compromise proper operation and maintenance of the facility. Improper operation and maintenance may result in non-compliance with permit effluent limitations. Infiltration is groundwater that enters the collection system through physical defects such as cracked pipes or deteriorated joints. Inflow is extraneous flow added to the collection system that enters the collection system through point sources such as roof leaders, yard and area drains, sump pumps, manhole covers, tide gates, and cross connections from storm water systems. Significant I/I in a collection system may displace sanitary flow, reducing the capacity available for treatment and the operating efficiency of the treatment works and to properly operate and maintain the treatment works.

Furthermore, the extraneous flow due to significant I/I greatly increases the potential for sanitary sewer overflows (SSOs) in separate systems. Consequently, the effluent flow limit is a permit condition that relates to the permittee's duty to mitigate (*i.e.*, minimize or prevent any discharge in violation of the permit that has a reasonable likelihood of adversely affecting human health or the environment) and to properly operate and maintain the treatment works. See 40 CFR §§ 122.41(d), (e).

2.4 Monitoring and Reporting Requirements

2.4.1 Monitoring Requirements

Sections 308(a) and 402(a)(2) of the CWA and the implementing regulations at 40 CFR Parts 122, 124, 125, and 136 authorize EPA to include monitoring and reporting requirements in NPDES permits.

The monitoring requirements included in this permit have been established to yield data representative of the Facility's discharges in accordance with CWA §§ 308(a) and 402(a)(2), and consistent with 40 CFR §§ 122.41(h), (j), and (l)(9), 122.43(a), 122.44(i) and 122.48. The Draft Permit specifies routine sampling and analysis requirements to provide ongoing, representative information on the levels of regulated constituents in the discharges. The monitoring program is needed to enable EPA and the State to assess the characteristics of the Facility's effluent, whether Facility discharges are complying with permit limits, and whether different permit conditions may be necessary in the future to ensure compliance with technology-based and

water quality-based standards under the CWA. EPA and/or the State may use the results of the chemical analyses conducted pursuant to this permit, as well as national water quality criteria developed pursuant to CWA § 304(a)(1), State water quality criteria, and any other appropriate information or data, to develop numerical effluent limitations for any pollutants, including, but not limited to, those pollutants listed in Appendix D of 40 CFR Part 122.

NPDES permits require that the approved analytical procedures found in 40 CFR Part 136 be used for sampling and analysis unless other procedures are explicitly specified. See 40 CFR § 122.41 (j)(4). Permits also include requirements necessary to comply with the *National Pollutant Discharge Elimination System (NPDES): Use of Sufficiently Sensitive Test Methods for Permit Applications and Reporting Rule*.³ This Rule requires that where EPA-approved methods exist, NPDES applicants must use sufficiently sensitive EPA-approved analytical methods when quantifying the presence of pollutants in a discharge. Further, the permitting authority must prescribe that only sufficiently sensitive EPA-approved methods be used for analyses of pollutants or pollutant parameters under the permit. The NPDES regulations at 40 CFR § 122.21(e)(3) (completeness), 40 CFR § 122.44(i)(1)(iv) (monitoring requirements) and/or as cross referenced at 40 CFR § 136.1(c) (applicability) indicate that an EPA-approved method is sufficiently sensitive where:

- The method minimum level⁴ (ML) is at or below the level of the effluent limitation established in the permit for the measured pollutant or pollutant parameter; or
- In the case of permit applications, the ML is above the applicable water quality criterion, but the amount of the pollutant or pollutant parameter in a facility's discharge is high enough that the method detects and quantifies the level of the pollutant or parameter in the discharge; or
- The method has the lowest ML of the analytical methods approved under 40 CFR Part 136 or required under 40 CFR chapter I, subchapter N or O for the measured pollutant or pollutant parameter.

2.4.2 Reporting Requirements

The Draft Permit requires the Permittee to report monitoring results obtained during each calendar month to EPA and the State electronically using NetDMR. The Permittee must submit a Discharge Monitoring Report (DMR) for each calendar month no later than the 15th day of the month following the completed reporting period.

³ Fed. Reg. 49,001 (Aug 19, 2014).

⁴ The term "minimum level" refers to either the sample concentration equivalent to the lowest calibration point in a method or a multiple of the method detection limit (MDL). Minimum levels may be obtained in several ways: They may be published in a method; they may be sample concentrations equivalent to the lowest acceptable calibration point used by a laboratory; or they may be calculated by multiplying the MDL in a method, or the MDL determined by a lab, by a factor. EPA is considering the following terms related to analytical method sensitivity to be synonymous: "quantitation limit," "reporting limit," "level of quantitation," and "minimum level." See Fed. Reg. 49,001 (Aug. 19, 2014).

NetDMR is a national web-based tool enabling regulated CWA permittees to submit DMRs electronically via a secure internet application to EPA through the Environmental Information Exchange Network. NetDMR has eliminated the need for participants to mail in paper forms to EPA under 40 CFR §§ 122.41 and 403.12. NetDMR is accessible through EPA's Central Data Exchange at <https://cdx.epa.gov/>. Further information about NetDMR can be found on EPA's NetDMR support portal webpage.⁵

With the use of NetDMR, the Permittee is no longer required to submit hard copies of DMRs and reports to EPA and the State unless otherwise specified in the Final Permit. In most cases, reports required under the permit shall be submitted to EPA as an electronic attachment through NetDMR. Certain exceptions are provided in the permit, such as for providing written notifications required under the Part II Standard Conditions.

2.5 Standard Conditions

The Standard Conditions, included as Part II of the Draft Permit, are based on applicable regulations found in the EPA's NPDES permitting regulations. *See* 40 CFR Part 122.41 *See also, generally*, 40 CFR Part 122.

2.6 Anti-backsliding

The CWA's anti-backsliding requirements prohibit a permit from being renewed, reissued or modified to include with less stringent limitations or conditions than those contained in a previous permit except in compliance with one of the specified exceptions to those requirements. *See* CWA §§ 402(o) and 303(d)(4) and 40 CFR § 122.44(l). Anti-backsliding provisions apply to effluent limits based on technology, water quality and/or state certification requirements.

All proposed limitations in the Draft Permit are at least as stringent as limitations included in the 2016 Permit unless specific conditions exist to justify relaxation in accordance with CWA § 402(o) or § 303(d)(4). Discussion of any less stringent limitations and corresponding exceptions to anti-backsliding provisions is provided in the sections that follow.

3.0 Description of Facility and Discharge

3.1 Location and Type of Facility

The location of the treatment plant and the outfall 001 to Salem Sound are shown in Figure 5. The longitude and latitude of the outfall is 42° 32' 14.9" N, 70° 50' 09.3" W.

⁵ <https://netdmr.zendesk.com/hc/en-us/articles/209616266-EPA-Region-1-NetDMR-Information>

The South Essex Sewage District Wastewater Treatment Facility (WWTF) is a secondary wastewater treatment facility that is engaged in the collection and treatment of municipal wastewater. Currently, the Facility serves approximately 188,444 residents in the municipalities of Beverly, Danvers, Marblehead, Peabody, and Salem, Massachusetts. Small flows are also received from Wenham, and state institutions.

The Facility has a design flow of 29.71 MGD, the annual average daily flow reported in the 2021 application was 24.94 MGD for 2021 and the average for the last 5 years has been 26.5 MGD. The system is a separate system with no combined sewers. Wastewater is comprised of mostly domestic sewage with some commercial sewage and some septage.

The Permittee is required to conduct a pretreatment program and currently serves 20 significant industrial users (SIU) contributing wastewater to the WWTF. Pollutants introduced into POTWs by a non-domestic source shall not pass through the POTW or interfere with the operation or performance of the treatment works. The industrial users are:

Table 1 – Significant Industrial Users

COMPANY	CATEGORY
Walbar Peabody LLC (Permit #40026)	Metal Finishing
Walbar Peabody LLC (Permit #41045)	Metal Finishing
Excelitas Technologies Corp.	Metal Finishing
Thermal Circuits, Inc.	Metal Finishing
TDF Metal Finishing Co., Inc.	Metal Finishing
Delta Electronics Mfg. Corp.	Metal Finishing
Communications & Power Industries, LLC, Beverly Microwave Division	Metal Finishing
Travel Leather Co., Inc.	Retan-Wet Finish-Splits
Crystal Systems, LLC	Electrical and Electronic Components
Danvers Water Treatment Plant	NOT APPLICABLE - Significant by virtue of flow and load magnitude.
Salem Harbor Power Development, LP	Steam Electric Power Generating
IXYS Integrated Circuits Division, LLC	Electrical and Electronic Components
City of Peabody Sanitary Landfill	NOT APPLICABLE - Significant by virtue of flow and load magnitude.
Salem and Beverly Water Supply Board	NOT APPLICABLE - Significant by virtue of flow and load magnitude.
Peabody Monofill Associates, Inc.	NOT APPLICABLE - Significant by virtue of flow and load magnitude.
City of Peabody, Walsh WTP	NOT APPLICABLE - Significant by virtue of flow and load magnitude.
City of Peabody, Winona WTP	NOT APPLICABLE - Significant by virtue of flow and load magnitude.

Fresh Advantage Foods, Inc./Demakes Enterprises, Inc.	Meat and Poultry Products
Tropical Products, Inc.	Soap and Detergent Manufacturing
DiLuigi Foods	Meat and Poultry Products

A quantitative description of the discharge in terms of effluent parameters, based on monitoring data submitted by the Permittee from September 2019 through August 2024 is provided in Appendix A of this Fact Sheet.

Additionally, EPA is adding seven co-permittees to the Draft Permit. The municipalities of Beverly, Danvers, Marblehead, Peabody, and Salem Massachusetts own and operate sanitary wastewater collection systems that discharge flows to the SESD WWTF for treatment. These municipalities are co-permittees for certain activities pertaining to proper operation and maintenance of their respective collection systems (*See Part I.C. and I.D of the Draft Permit*). Adding them to the Draft Permit ensures that they comply with requirements to operate and maintain the collection systems so as to avoid discharges of sewage from the collection systems. These co-permittees did not apply for permit coverage; with letters sent December 9, 2024, EPA waived application requirements for the five co-permittees. The legal basis for including municipal satellite collection systems as co-permittees is described in *In re Charles River Pollution Control District*, 16 E.A.D. 623 (EAB 2015)⁶.

3.1.1 Treatment Process Description

The South Essex Sewerage District (WWTF) is an activated sludge treatment plant. Wastewater is pumped to the facility through offsite pumping stations. Screenings are removed or reduced in size prior to being sent to the plant. Influent, including septage, is then sent through mechanically cleaned bar screens and then split into four aerated grit tanks. Flows are then split into seven primary settling tanks and then flow into the four trains of high purity oxygen (HPO) reactors. The HPO reactors use biological organisms in the wastewater and combine it with activated sludge to create mixed liquor. Flows then enter the seven secondary clarifiers. The secondary clarifiers are stacked, and flows are split between the upper and lower banks. The effluent then flows to the two chlorine contact tanks for disinfection with sodium hypochlorite. The effluent is dechlorinated with sodium bisulfate as it flows out of the chlorine contact tanks. Effluent is then pumped to the outfall diffuser located offshore in Salem Sound. A flow diagram of the Treatment Facility is shown in Figure 6.

The biosolids management at the treatment plant takes waste activated secondary sludge and thickens it with gravity belt thickeners and blends it with primary and secondary solids. Solids are stored prior to processing with belt filter presses for further dewatering. Dewatered

⁶ The decision is available at:

[https://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/Published%20and%20Unpublished%20Decisions/F89699D1A0710BCF85257DE200717A93/\\$File/Charles%20River%20Decision%20Vol%2016.pdf](https://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/Published%20and%20Unpublished%20Decisions/F89699D1A0710BCF85257DE200717A93/$File/Charles%20River%20Decision%20Vol%2016.pdf)

biosolids are trucked to for incineration or disposal in a municipal solid waste landfill. The annual mass of sludge shipped for incineration was 1293.07 dry metric tons. The annual mass of sludge shipped for disposal in a municipal solid waste landfill was 921.87 dry metric tons.

3.1.2 Collection System Description

The South Essex Sewerage District WWTF is served by a separate sewer system. A separate sanitary sewer conveys domestic, industrial and commercial sewage, but not stormwater. It is part of a “two pipe system” consisting of separate sanitary sewers and storm sewers. The two systems have no interconnections; the sanitary sewer leads to the wastewater treatment plant and the storm sewers discharge to a local water body.

SESD owns and operates approximately 29 miles of gravity interceptors, pump stations, force mains and pressure mains within its geographical service area. The individual member communities each own and operate their respective collector sewer systems, which discharge to SESD’s interceptors.⁷ In 2017, a Collection System Assessment Plan⁸ was prepared for the portion of the collection system that SESD owns and operates. The approach was a pipeline inspection plan as approved by MassDEP with the addition of high-level analysis of infiltration and inflow from the individual member communities.

As a result of the assessment, SESD set tiers of priorities for inspecting their infrastructure.

Table 2: SESD Tier 1 Inspection Priorities

						Tier 1 Projects			
						5 Year Period			
Inspection Project Name	Recommended Inspection Technology	Pipe Segments	Average Normalized Risk	GIS Length (FT)	Estimated Cost per LF	Total Inspection Cost (2017 Cost)	Contingency (30%)	Engineering (25%)	Inflation (2.5% /Year)
Beverly Tunnel	ELECTROMAGNETIC INSPECTION	4	825	4,881	\$35	\$170,831	\$51,249	\$42,708	\$26,479
Beverly Water Street Interceptor	MSI SONAR INSPECTION	12	599	1,876	\$10	\$18,764	\$5,629	\$4,691	\$2,908
Beverly/Danvers Force Main - Water Crossing	REMOTE FIELD EDDY CURRENT	1	712	2,853	\$60	\$171,162	\$51,349	\$42,791	\$26,530
Danvers Subaqueous Crossing	REMOTE FIELD EDDY CURRENT	4	669	3,525	\$60	\$211,483	\$63,445	\$52,871	\$32,780
Bass River Siphon	REMOTE FIELD EDDY CURRENT	9	551	4,770	\$60	\$286,200	\$85,860	\$71,550	\$44,361
Danvers 30 Inch Force Main High Point Inspections	TEST PITS	6	460	NA	\$24,000	\$144,000	\$43,200	\$36,000	\$22,320
Total						\$1,709,161			

⁷ SESD, March 2024, *Report: South Essex Sewerage District, Collection System Operation and Maintenance Plan, Annual Implementation Summary Report for Calendar Year 2023*. p.1.

⁸ SESD, December 2017, *Draft report: Collection System Assessment Plan*.

Table 3: SESD Tier 2 Inspection Plan Priorities

						Tier 2 Projects			
						5 Year Period			
Inspection Project Name	Recommended Inspection Technology	Number of Pipe Segments	Average Normalized Risk	GIS Length (FT)	Estimated Cost per LF	Total Inspection Cost (2017 Cost)	Contingency (30%)	Engineering (25%)	Inflation (2.5% /Year)
Peabody/Salem 84-inch Gravity Interceptor	MSI SONAR INSPECTION	27	638	7,991	\$10	\$79,913	\$23,974	\$19,978	\$1,998
Danvers 30 inch FM (Doty Avenue)	ELECTROMAGNETIC INSPECTION	12	460	8,051	\$35	\$281,785	\$84,536	\$70,446	\$10,919
Beverly/Danvers Force Main - Overland	REMOTE FIELD EDDY CURRENT	7	410	3,253	\$60	\$195,202	\$58,561	\$48,801	\$43,920
Total						\$920,033			

Table 4: SESD Tier 3 Inspection Plan Priorities

						Tier 3 Projects			
						5 Year Period			
Inspection Project Name	Recommended Inspection Technology	Number of Pipe Segments	Average Normalized Risk	GIS Length (FT)	Estimated Cost per LF	Total Inspection Cost (2017 Cost)	Contingency (30%)	Engineering (25%)	Inflation (2.5% /Year)
Primarily Gravity Pipes (<72-Inch)	MSI SONAR INSPECTION	257	353	79,058	\$10	\$790,583	\$237,175	\$197,646	\$276,704
Primarily Gravity Pipes (<24-Inch)	CCTV INSPECTION	50	262	6,226	\$6	\$37,354	\$11,206	\$9,338	\$117,664
Total						\$1,677,671			

SESD's latest Collection System Operation and Maintenance Annual Report⁹ documents that the field investigation and work on the asset condition assessment of the Danvers/Beverly Force Mains and Bass River Siphons was completed, an engineering study to assess and reduce I/I for Peabody Phase III has begun, implementation of the Collection System Asset Management Program continues, and scope and grant applications have been prepared for the condition assessment of the 84-inch Peabody/Salem intercepting sewer. SESD continues to work on their priorities as well as other operation and maintenance activities.

Additionally, the SESD assessed flows from the individual member communities of Beverly, Danvers, Marblehead, Peabody and Salem using the revenue flow meters to get a high-level overview of the infiltration and inflow issues.

⁹ SESD, March 2024, *Report: South Essex Sewerage District, Collection System Operation and Maintenance Plan, Annual Implementation Summary Report for Calendar Year 2023*

Table 5: Community Wastewater Flow Summary
*from CDM Smith, 2017, Appendix A, Table 2.*¹⁰

Name	Approximate Sewered Population	Approximate Miles of Local Sewers*	Average Daily Flow (ADF; mgd)	ADF (gpd/sewer mile)
Beverly	41,186	150	4.73	31,533
Danvers	27,849	120	3.74	31,166
Marblehead	20,517	88	1.81	20,568
Peabody	52,504	165	7.98	48,363
Salem	42,869	105	4.59	43,714

*Value based on GIS Data provided by Each Member Community

Using EPA's Sanitary Sewer Overflow Analysis and Planning (SSOAP) Toolbox, SESD's consultant completed rainfall dependent infiltration and inflow (RDII) analysis for each of the member communities.

Infiltration rates were estimated for each area from seasonal low ground water period in Fall 2016 and an estimation of minimum infiltration was made by looking at nighttime infiltration rates. GWI is the dry weather base groundwater infiltration and San represents the sanitary flow.

Table 6: Dry Weather Flow Analysis¹¹

Name	GWI (mgd)	San (mgd)	San (gpcd)	GWI (gal/mile)
Beverly	1.62	2.3	56	10,800
Danvers	1.67	1.48	53	13,900
Marblehead	0.35	0.95	46	4,000
Peabody	2.87	4.2	80	17,400
Salem	0.85	3.1	72	8,100

Total rain dependent infiltration and inflow were estimated for the wet weather periods by season.

¹⁰ SESD, December 2017, *Draft report: Collection System Assessment Plan*, Appendix A, Table 2.

¹¹ *Ibid*, Appendix A, Table 5.

Table 7: Rain Dependent Infiltration and Inflow (RDII) by Season¹²

December to March				
Name	Short-Term R1	Medium-Term R2	Long-Term R3	Total RDII
Beverly	0.40%	1.20%	8.00%	9.6%
Danvers	0.30%	0.30%	5.00%	5.6%
Marblehead	1.00%	1.50%	8.00%	10.5%
Peabody	0.10%	1.00%	5.00%	6.1%
Salem	1.40%	11.00%	2.00%	14.4%
April				
Name	Short-Term R1	Medium-Term R2	Long-Term R3	Total RDII
Beverly	1.10%	0.20%	4.00%	5.3%
Danvers	0.10%	0.20%	1.80%	2.1%
Marblehead	0.40%	0.80%	5.00%	6.2%
Peabody	0.15%	0.30%	4.50%	5.0%
Salem	1.00%	1.50%	0.60%	3.1%
May to June				
Name	Short-Term R1	Medium-Term R2	Long-Term R3	Total RDII
Beverly	0.05%	0.15%	0.30%	0.5%
Danvers	1.10%	0.10%	0.30%	1.5%
Marblehead	0.40%	0.80%	5.00%	6.2%
Peabody	0.10%	0.30%	2.50%	2.9%
Salem	1.00%	1.50%	0.60%	3.1%

Table 8: Rain Dependent Infiltration and Inflow (RDII) by Season, continued¹¹

July to September				
Name	Short-Term R1	Medium-Term R2	Long-Term R3	Total
Beverly	0.20%	1.00%	0.60%	1.8%
Danvers	0.17%	0.10%	0.10%	0.4%
Marblehead	0.30%	0.50%	1.50%	2.3%
Peabody	0.15%	0.15%	0.60%	0.9%
Salem	0.80%	1.50%	1.00%	3.3%
October to November				
Name	Short-Term R1	Medium-Term R2	Long-Term R3	Total
Beverly	0.10%	0.70%	1.30%	2.1%
Danvers	0.20%	0.40%	0.40%	1.0%
Marblehead	0.50%	0.30%	1.60%	2.4%
Peabody	0.30%	0.20%	1.00%	1.5%
Salem	0.80%	2.50%	5.00%	8.3%

Based on historic I/I studies, CDM Smith developed a prioritization scale of Total RDII percentages for separated sanitary sewer communities. Using that scale, the analysis found

¹² *Ibid*, Appendix A, Table 6.

moderate levels (10-20%) of rain dependent infiltration and inflow in the Marblehead and Salem owned collection systems. Low levels (1-10%) were found in Beverly, Danvers and Peabody owned collection systems.

As discussed in Section 5.1.1 below, the WWTF has had several exceedances of the rolling annual average flow limit during the permit term. These capacity issues are likely also related to violations of the mass-based CBOD and TSS limits. Updated estimates of system-wide rain dependent infiltration and inflow were provided in SESD's Collection System Operation and Maintenance Plan, Annual Implementation Summary Report for Calendar Year 2023 and can be found in the table below.

Table 9: Rainfall Dependent Infiltration and Inflow (RDII) within the SESD Collection System from Collection System Operating and Maintenance Plan – Annual Implementation Summary Report – CY 2023, p. 8.

Month	CY 2023 Flow (mgd)	CY 2017 District Wide RDII Percentage	CY 2023 Total RDII (WWTP Monthly Flow* RDII Percentile)	CY 2023 Estimated GWI & Sanitary Base Flow without RDII
Jan-23	35.96	8.71%	3.13	32.83
Feb-23	26.32	8.71%	2.29	24.03
Mar-23	36.35	8.71%	3.17	33.18
Apr-23	25.39	4.28%	1.09	24.30
May-23	30.51	2.45%	0.75	29.76
Jun-23	23.70	2.45%	0.58	23.12
Jul-23	27.33	1.58%	0.43	26.90
Aug-23	27.63	1.58%	0.44	27.19
Sep-23	27.49	1.58%	0.44	27.05
Oct-23	22.49	4.45%	1.00	21.49
Nov-23	21.39	4.45%	0.95	20.44
Dec-23	33.14	8.71%	2.89	30.25
Average	28.14		1.43	26.71
1. Calculations Based on CDM Smith Collection Systems Assessment Plan - Technical Memorandum No. 1, November 2017. Tables 5 Dry Weather Flow Calculation, Table 6 Summary of RDK(RDII) Values by Season & Table A6- South Essex Sewerage District Flows & Loads Report 2023. 2.) Community Flows Percentages of Whole for 2017 and 2023 are similar.				

In addition to the flow, CBOD and TSS limit exceedances at the WWTF discussed above, over 80 Sanitary Sewer Overflow (SSO) notifications have been reported to MassDEP over the last five years by SESD and the Co-permittees of Beverly, Danvers, Marblehead, Peabody, and Salem. Many of the notifications document small backups to individual properties, most often caused by sewer system blockages of grease and other debris. Larger overflows to receiving waters were reported by SESD or the Town of Marblehead during high flow conditions. These overflows range from thousands of gallons to millions of gallons of untreated wastewater.

The Town of Marblehead previously held an NPDES Permit MA0100374 for the Sargent Road Pump Station. On June 15, 2020, EPA notified the Town of Marblehead that EPA and 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.”¹³

The Town of Marblehead is currently under an Administrative Order¹⁴ with EPA Region 1 effective June 15, 2020 related to the Town’s discharges connected to the Sargent Road Pump Station. Under the Order, the Town of Marblehead submitted a Sargent Road Pump Station Outfall Discharge Mitigation Plan which included procedures regarding the operation of the Sargent Road Pump Station during wet weather, a high flow management plan consistent with SESD’s High Flow Policy and a plan, including a schedule for continuously identifying and

¹³ [Marblehead Water and Sewer Commission - Sargent Road Pump Station; Termination; MA0100374 \(epa.gov\)](#)

¹⁴ United States Environmental Protection Agency, Region 1. June 15, 2020. In the Matter of the Town of Marblehead, Massachusetts. Administrative Docket No. CWA-AO-R01-FY20-39.

removing inflow and infiltration (I/I) in the Town's Collection System, with the ultimate goal of eliminating all discharged from the Sargent Road Pump Station outfall.

Operation of the Sargent Road Pump Station is a function of the capacity (8.1 MGD) allocated to Marblehead at the SESD WWTF. The SESD Policy for Allocation of Hydraulic Capacity During High Flow Events¹⁵ divides WWTF capacity by community into "target discharge rates" as presented below.

**SESD Policy For Allocation Of Treatment Plant
Hydraulic Capacity During High Flow Events**

Approved by the Board 10-30-19

<u>Location</u>	<u>Target Discharge Rates At Plant Max Capacity</u>
Danvers PS (7)	16.4 MGD
Beverly / Danvers PS (6,7)	37.1 MGD
Marblehead Total Flow (5)	8.1 MGD
Salem Neck PS	0.9 MGD
<u>Peabody / Salem PS (6,7)</u>	<u>52.7 MGD</u>
Total Flow	98.8 MGD



If there is a reasonable risk of reaching maximum WWTF capacity, the SESD notifies the member communities. Due to design and operational characteristics of the Marblehead collection system, SESD has developed the following notification plan for Marblehead.

- 1st Call - when Marblehead flow is 5.5 MGD.
- 2nd Call – when Marblehead flow is 6.5 MGD, inform if flow rate is rising, steady or declining. Provide an assessment of the flow situation at the WWTF and an assessment if the WWTF ability to accept more flow might impact Marblehead.
- 3rd Call – when WWTF flow is 80 MGD and rising. Marblehead is informed that their maximum capacity (8.1 MGD) will be strictly observed.

The Town of Marblehead developed a "High Flow Management Plan" which is implemented when the first call (*i.e.*, 5.5 MGD notification) is received from SESD. Activation of the Sargent Road Outfall can only be approved by the superintendent and only to avoid adverse public health impacts.

In 2021, Marblehead submitted the "Sargent Road Pump Station Outfall, Discharge Mitigation Plan"¹⁶ as a requirement of the Administrative Order. The goal of the plan, which reflects the requirements of the Administrative Order, was to summarize the protocols for wet weather and high flow operations at the Sargent Road Pump Station and outline a schedule for continuous identification and removal of infiltration and inflow from the collection system. The ultimate

¹⁵ SESD, Approved by the Board October 30, 2019, *SESD Policy for Allocation of Hydraulic Capacity During High Flow Events*.

¹⁶ Haley Ward, Inc. for Marblehead Board of Water & Sewer Commissioners. July 15, 2021. *Sargent Road Pump Station Outfall, Discharge Mitigation Plan*.

objective is to decrease wet weather peak flows in the collection system and thereby eliminate the need to activate the outfall due to wet weather. As a recent example, accomplishments in 2021 are summarized below. EPA notes that similar activities have continued in more recent years.

Table 10: Summary of Activities accomplished by Marblehead in 2021 related to implementation of their Collection System Operation and Maintenance Plan and reported in Annual Reports.

Accomplishments
Summary of Inspection, Maintenance, and Corrective Actions 1. Sewer Lines Cleaned 26,043 ft 2. Root Treatment 11,916 ft 3. Grease Control 2,800 ft 4. Lines Televised - Sewer 1,026 ft 5. Wet Wells Cleaned and Inspected 60 6. Service Repaired - Permits 20 7. New Services - Permits 16 8. Manholes Inspected 223 9. Manholes Repaired 50 10. Dig Safe Mark-outs - 1827 11. Pumping Stations Maintained 28 12. Pump Station upgrades • Design of complete upgrade of Green Street Pump Station – completed, replacement pump. • Design of Clifton Pump Station storage building and onsite generator – completed • All Pump Station alarms – tested, reviewed and upgraded where necessary • VFDs ordered for Clifton Station and Shorewood Station 13. Pump Station Evaluation – continued, being adapted into Capital Improvement Plan. 14. Sewer System Evaluation Study (SSES) • Investigations started sub areas 15-1, 15-4. • RESUMP website launched 15. Vehicle/Major Equipment Maintained 16. Emergency Power – 14 portable and stationary generators received minor and major maintenance; training in operation. 17. Private inflow inspection • 588 property inspections • 11 illegal sump pump discharges to sanitary sewer discovered, 8 connections removed

4.0 Description of Receiving Water and Dilution

4.1 Receiving Water

The South Essex Sewerage District WWTF discharges through Outfall 001 into Salem Sound within Segment MA93-56. This segment is 2.55 square miles and encompasses the “[s]outhern portion of Salem Sound, waters landward of and within imaginary lines from Fort Sewall, Marblehead to the Marblehead Lighthouse on Marblehead Neck, Marblehead to the northwest point of Bakers Island, Salem to Naugus Head, Marblehead (formerly part of 2010 segment: Salem Sound MA93-25).”¹⁷

Salem Sound is classified as a Class SB Shellfishing in the Massachusetts WQSs, 314 Code of Massachusetts Regulations (“CMR”) 4.06(6)(b). The MA WQS at 314 CMR 4.05(3)(b) state that Class SB waters are designated as a 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, habitat for fish, other aquatic life and wildlife may include, but is not limited to, seagrass. Where designated for shellfishing in 314 CMR 4.06(6)(b), these waters shall be suitable for shellfish harvesting with depuration (Restricted and Conditionally Restricted Shellfish Areas). These waters shall have consistently good aesthetic value.

Salem Sound, Segment MA93-56 is listed in the *Final Massachusetts Integrated List of Waters for the Clean Water Act 2022 Reporting Cycle* (“303(d) List”) as a Category 5 “Waters Requiring a TMDL.”¹⁸ The pollutants requiring a TMDL are estuarine bioassessments (loss of eelgrass) and fecal coliform. These pollutants indicate impairment of aquatic life and primary contact recreation. The status of each designated use is presented in Table 11 below.

Table 11 – Summary of Designated Uses and Listing Status

Designated Use	Status
Aquatic Life	Impaired ¹⁹
Aesthetics	Support
Primary Contact Recreation	Impaired
Secondary Contact Recreation	Support
Fish Consumption	Not Assessed

¹⁷ MassDEP. 2023. *Final Massachusetts Integrated List of Waters for the Clean Water Act 2022 Reporting Cycle*, Table 5, p 196. [Final Massachusetts Integrated List of Waters for the Clean Water Act 2022 Reporting Cycle \(epa.gov\)](https://epa.gov)

¹⁸ MassDEP. 2023. *Final Massachusetts Integrated List of Waters for the Clean Water Act 2022 Reporting Cycle*, [Final Massachusetts Integrated List of Waters for the Clean Water Act 2022 Reporting Cycle \(epa.gov\)](https://epa.gov)

¹⁹ *Ibid.*

According to the *North Shore Coastal Watersheds 2002 Water Quality Assessment Report*²⁰, this water body segment is attaining uses designated for aesthetics, and second contact recreation, while designated use for fish consumption has not been assessed.

4.2 Ambient Data

A summary of the ambient data collected in the receiving water in the vicinity of the outfall that is referenced in this Fact Sheet can be found in Appendix A of this Fact Sheet. In this case, the Permittee did not collect any ambient data during the review period.

4.3 Available Dilution

To ensure that discharges do not cause or contribute to violations of WQSs under all expected conditions, WQBELs are derived assuming critical conditions for the receiving water.²¹

Massachusetts water quality regulations state that the MassDEP “will establish extreme hydrologic conditions at which aquatic life criteria must be applied on a case-by-case basis.” 314 CMR 4.03(3)(c).

The SESD WWTF discharge is located approximately 2.3 miles offshore at a depth of 42 feet below the surface. The end of the outfall is a 54-inch diameter, 660 feet long, multiport diffuser with 66, 5-inch ports at 10 feet on center.

Certain water quality-based effluent limits in the 2016 Permit were established with the use of a mixing zone. Mixing zones are regulated at 314 CMR 4.03(2) and are defined as “a limited area or volume of a waterbody as a mixing zone for the initial dilution of the discharge.” The MA WQS allow waters within a mixing zone to fail to meet specific water quality criteria provided specific conditions are met:

- Mixing zones shall be limited to an area or volume as small as feasible. There shall be no lethality to organisms passing through the mixing zone as determined by the Department. The location, design and operation of the discharge shall minimize impacts on aquatic life and other existing and designated uses within and beyond the mixing zone.
- Mixing zones shall not interfere with the migration or free movement of fish and other aquatic life. There shall be safe and adequate passage for swimming and drifting organisms with no deleterious effects on their populations.

²⁰ North Shore Coastal Watersheds 2002 Water Quality Assessment Report. MassDEP Division of Watershed Management, Worcester, Massachusetts; March, 2007, Report Number 93-AC-2, <https://www.mass.gov/doc/north-coastal-watershed-2002-water-quality-assessment-report-0/download>

²¹ EPA Permit Writer’s Manual, Section 6.2.4

- Mixing zones shall not create nuisance conditions, accumulate pollutants in the sediments or biota in toxic amounts or otherwise interfere with the current or designated uses of the surface waters.

314 CMR 4.03(2)

In 2001, Massachusetts Coastal Zone Management (MA CZM) contracted for the development of a model of the fate and transport of wastewater effluent from the SESD outfall.²² Salem Sound is located in northwestern Massachusetts Bay, between Marblehead and Cape Ann with a total area of approximately 14.6 square miles. Mean depth of the Sound is about 32 feet with the deepest areas of about 149 feet at the head of the Salem Sound Channel, between Baker's Island and Great Misery Island. Water in the Sound is relatively well mixed due to tides. Stratification occurs towards the offshore. Back in October 1985, the thermocline was located at 65 feet below the surface.

CORMIX was used by the MA CZM contractor to simulate the plume characteristics and determine the dilution in the near field.²³ The model was applied for four stages of the tidal cycle: high slack water, maximum ebb, low slack water and maximum flood. EPA's Technical Support Document for Water Quality-based Toxics Control (TSD)²⁴ advises that critical design conditions for coastal bays include comparison of the period of maximum stratification with the period of minimum stratification in order to select the worst case.

In 2016, EPA ran the CORMIX2 model using the flow rates of 29.7 mgd, which is the average daily design flow, and 73.81 mgd, which is the maximum daily design flow, and the diffuser, effluent and ambient characteristics defined in the MA CZM Report. EPA ran its model at four tidal stages (high slack water, maximum ebb, low slack water and maximum flood) The low slack water analysis produced the lowest dilution, with centerline dilutions of 24.2 at the long-term average design flow of 29.7 mgd and 14.3 at maximum daily design flow of 73.81 mgd. EPA has converted the centerline dilutions to flux average dilutions by multiplying the centerline values by 1.3, which is an appropriate correction ratio for CORMIX2 results.²⁵

EPA used both chronic and acute dilution factors for evaluating reasonable potential and calculating effluent limits in the 2016 Permit. EPA is using the same dilution factors in this re-issuance: the chronic dilution is 31.5 and the acute dilution is 18.6.

Further, EPA notes that the dilution factor is based on modeling done nearly 10 years ago and using even older characteristic data. To ensure this discharge continues to be regulated in a

²² Kim, Hyun-Sook and Swanson, J. Craig, Applied Science Associates, for Christian Krahforst, Massachusetts Coastal Zone Management, December 2001. *Fate and Transport Modeling of Contaminants in Salem Sound*. Report to the Marine Monitoring and Research Technical Series, MMRTS-01-01.

²³ *Ibid*, p. 13.

²⁴ <https://www3.epa.gov/npdes/pubs/owm0264.pdf>

²⁵ Jirka, Gerhard H., Doneker, Robert. L., and Hinton, Steven W., 1996, User's Manual for CORMIX: A Hydrodynamic Mixing Zone Model and Decision Support System for Pollutant Discharges into Surface Waters, Office of Science and Technology, US EPA, Washington, DC, p. 55.

manner that protects water quality standards, the Draft Permit requires the Permittee to conduct a new dilution model or dye study to determine a defensible dilution factor in the fifth year of this permit term. The Permittee should coordinate with EPA and MassDEP in advance of conducting the model or study to confirm an appropriate methodology for this model or dye study. The results of the model or dye study should be submitted to EPA and MassDEP by the expiration date of the Permit. EPA intends to validate and use the results of these new models or dye studies in the next permit reissuance.

Additionally, the Permittee shall operate the outfall according to best management practices. The outfall shall be maintained to ensure proper operation. Proper operation means that the outfall pipe and diffuser be intact, operating as designed, and have unobstructed flow. Maintenance may include dredging in the vicinity of the outfall, removal of solids/debris in the outfall, and repair/replacement. To determine if maintenance will be required, the Permittee shall inspect and videotape the operation of the outfall either remotely or using a qualified diver or marine contractor. At a minimum, the inspections and videotaping shall be performed once every five years with the first inspection occurring within twelve (12) months of the effective date of the permit. EPA and MassDEP shall be contacted at least seven days prior to a dive inspection. Copies of reports summarizing the results of each outfall inspection shall be submitted to EPA and MassDEP within 60 days of each inspection. Where it is determined that maintenance will be necessary, the Permittee shall provide the proposed schedule for the maintenance.

5.0 Proposed Effluent Limitations and Conditions

The proposed effluent limitations and conditions derived under the CWA and State WQSs are described below. These proposed effluent limitations and conditions, the basis of which are discussed throughout this Fact Sheet, may be found in Part I of the Draft Permit.

5.1 Effluent Limitations and Monitoring Requirements

In addition to the State and Federal regulations described in Section 2, data submitted by the permittee in its permit application, in monthly discharge monitoring reports (DMRs) and in WET test reports from September 2019 through August 2024 (the “review period”) were used to identify the pollutants of concern and to evaluate the discharge during the effluent limitations development process (See **Appendix A**). The reasonable potential analysis is included in Appendix B and results are discussed in the sections below.

5.1.1 Effluent Flow

The effluent flow limit in the 2016 Permit is 29.7 MGD, as a rolling annual average flow, based on the Facility’s design flow. The DMR data during the review period shows a maximum rolling annual average flow of 31.5 MGD. As shown in Appendix A, there have been 10 exceedances of the flow limit during the review period. See Section 3.1.2 for a further discussion of these violations.

The Draft Permit continues the 29.7 MGD flow limit from the 2016 Permit. The Draft Permit requires that flow be measured continuously and that the rolling annual average flow, as well as the average monthly and maximum daily flow for each month be reported. The rolling annual average flow is calculated as the average of the flow for the reporting month and 11 previous months.

5.1.2 Carbonaceous Biochemical Oxygen Demand (CBOD₅)

5.1.2.1 CBOD₅ Concentration Limits

The CBOD₅ limits in the 2016 Permit were based on the secondary treatment standards in 40 CFR § 133.102; the average monthly limit is 25 mg/L and the average weekly limit is 40 mg/L. The DMR data during the review period shows that there has been 1 violation of CBOD₅ weekly average concentration limit.

The Draft Permit proposes the same CBOD₅ concentration limits as in the 2016 Permit as no new WLAs have been established and there have been no changes to the secondary treatment standards. The monitoring frequency remains once per week.

5.1.2.2 CBOD₅ Mass Limits

The mass-based CBOD₅ limits of 6,194 lb/day (average monthly) and 9,911 lb/day (average weekly) were based on EPA's secondary treatment standards and the design flow of the Facility. The DMR data from the review period shows that there have been 3 exceedances of both the CBOD₅ monthly average and weekly average mass limits. See Section 3.1.2 for a further discussion of these violations.

Calculations of maximum allowable loads for average monthly and average weekly CBOD₅ are based on the following equation:

$$L = C_d * Q_d * 8.34$$

Where:

L = Maximum allowable load in lb/day

C_d = Maximum allowable effluent concentration for reporting period in mg/L
(reporting periods are average monthly and average weekly)

Q_d = Annual average design flow of Facility, in MGD

8.345 = Factor to convert effluent concentration in mg/L and design flow in MGD to lb/day

Average Monthly: 25 mg/L * 29.7 MGD * 8.345 = 6,196 lb/day

Average Weekly: 40 mg/L * 29.7 MGD * 8.345 = 9,914 lb/day

Given that these limits are slightly less stringent lower than the mass-based CBOD₅ limits in the 2016 Permit, the existing limits are carried forward based on anti-backsliding regulations discussed in Section 2.6 above.

5.1.3 Total Suspended Solids (TSS)

5.1.3.1 TSS Concentration Limits

The TSS limits in the 2016 Permit were based on the secondary treatment standards in 40 CFR § 133.102; the average monthly limit is 30 mg/L and the average weekly limit is 45 mg/L. The DMR data during the review period shows that there have been 3 violations of CBOD₅ monthly average concentration limit and 5 violations of the weekly average concentration limit.

The Draft Permit proposes the same TSS concentration limits as in the 2016 Permit as no new WLAs have been established and there have been no changes to the secondary treatment standards. The monitoring frequency remains once per week.

5.1.3.2 TSS Mass Limits

The mass-based TSS limits of 7,433 lb/day (average monthly) and 11,150 lb/day (average weekly) were based on EPA's secondary treatment standards and the design flow of the Facility. The DMR data from the review period shows that there have been 7 exceedances of TSS monthly average mass limit and 11 exceedances of the weekly average mass limit. See Section 3.1.2 for a further discussion of these violations.

Calculations of maximum allowable loads for average monthly and average weekly TSS are based on the following equation:

$$L = C_d * Q_d * 8.34$$

Where:

L = Maximum allowable load in lb/day

C_d = Maximum allowable effluent concentration for reporting period in mg/L
(reporting periods are average monthly and average weekly)

Q_d = Annual average design flow of Facility, in MGD

8.345 = Factor to convert effluent concentration in mg/L and design flow in MGD to lb/day

Average Monthly: 30 mg/L * 29.7 MGD * 8.345 = 7,435 lb/day

Average Weekly: 45 mg/L * 29.7 MGD * 8.345 = 11,153 lb/day

Given that these limits are slightly less stringent lower than the mass-based TSS limits in the 2016 Permit, the existing limits are carried forward based on anti-backsliding regulations discussed in Section 2.6 above.

5.1.4 Eighty-Five Percent (85%) CBOD₅ and TSS Removal Requirement

In accordance with the provisions of 40 CFR § 133.102(a)(4) and (b)(3), the 2016 Permit requires that the 30-day average percent removal for CBOD₅ and TSS be not less than 85%. The DMR data during the review period shows that the median CBOD₅ and TSS removal percentages are 94% and 93%, respectively. There were no exceedances of the 85% removal requirement for BOD₅ or TSS during that period.

The requirement to achieve 85% CBOD₅ and TSS removal has been carried forward into the Draft Permit.

5.1.5 pH

Consistent with the requirements of Massachusetts WQS at 314 CMR 4.05(4)(b)(3), the Permit requires that the pH of the effluent is not less than 6.5 or greater than 8.5 standard units at any time. The monitoring frequency is once per day. The DMR data during the review period show that there have been no exceedances of the pH limitations.

The pH requirements in the 2016 Permit are carried forward into the Draft Permit as there has been no change in the WQSs with regards to pH. The limitations are based on CWA 301(b)(1)(C) and 40 CFR § 122.44(d).

5.1.6 Bacteria

The 2016 Permit includes effluent limitations for bacteria using *fecal coliform* bacteria as the indicator bacteria to protect shellfishing uses in the receiving water. In accordance with MA WQS at 314 CMR 4.05(4)(b)4.a, a monthly geometric mean of 88 colony forming units (cfu) and a maximum daily limit of 260 cfu/100 ml were established. The DMR data during the review period shows that there have been no violations of the monthly geometric mean fecal coliform limitation and six exceedances of the maximum daily limit.

The 2016 Permit also includes effluent limits for bacteria using *Enterococci* bacteria as the indicator bacteria to protect recreational uses. MA WQS at 314 CMR 4.05(4)(b) 4.b., require a monthly geometric mean of 35 cfu/100 ml and a maximum daily limit of 276 cfu/100 ml. The DMR data during the review period shows that there have been no violations of the monthly geometric mean fecal coliform limitation and 10 exceedances of the maximum daily limit.

The Draft Permit proposes maintaining the effluent limits for bacteria from the 2016 Permit. EPA has revised the units to reflect those in the MA WQS. The *fecal coliform* limits are a monthly geometric mean limit of 88 organisms/100 ml and a maximum daily limit of 260 organisms/100 ml. The *Enterococci* limits are a monthly geometric mean of 35 colonies/100 ml and a maximum daily limit of 276 colonies/100 ml. The sampling frequency for *fecal coliform* bacteria is twice per day and for *Enterococci* is twice per day. These limits and sampling frequency are the same as in the 2016 Permit.

5.1.7 Total Residual Chlorine

The Permittee uses chlorine disinfection. The 2016 Permit includes effluent limitations for total residual chlorine (TRC) of 0.24 mg/L (maximum daily). The DMR data during the review period show that there have been seven exceedances of the TRC limitation.

The TRC permit limits are based on the instream chlorine criteria defined in *National Recommended Water Quality Criteria: 2002*, EPA 822R-02-047 (November 2002), as adopted by the MassDEP into the state water quality standards at 314 CMR 4.05(5)(e). These marine instream criteria for chlorine are 7.5 µg/L (chronic) and 13 µg/L (acute). Because the upstream chlorine is assumed to be zero in this case, the water quality-based chlorine limits are calculated as the criteria times the dilution factor, as follows:

Chronic criteria * dilution factor = Chronic limit
 $7.5 \mu\text{g/L} * 31.5 = 236 \mu\text{g/L} = 0.24 \text{ mg/L}$ (average monthly)

Acute criteria * dilution factor = Acute limit
 $13 \mu\text{g/L} * 18.6 = 242 \mu\text{g/L} = 0.24 \text{ mg/L}$ (maximum daily)

Given that these limits are the same, only the daily maximum is necessary in the permit (which will also ensure the monthly average is below this level). This limit is the same as the 2016 Permit and is carried forward in the Draft Permit.

5.1.8 Ammonia

The 2016 Permit does not include ammonia limits, but the Permittee was required to monitor and report effluent ammonia concentrations on a monthly basis.

Given that there is not ambient ammonia data available in Salem Sound, EPA assumes a background concentration of 0 mg/L.

The ammonia criteria based upon Massachusetts WQS at 314 CMR 4.06 Table 29a. The marine water quality criteria are dependent on pH, temperature and salinity.

In determining whether the discharge has the reasonable potential to cause or contribute to excursions above the instream water quality criteria for ammonia, EPA used the mass balance equation presented in Appendix B for both warm and cold weather conditions to project the ammonia concentration downstream of the discharge. If there is reasonable potential, this mass balance equation is also used to determine the limit that is required in the permit.

To determine the applicable ammonia criteria, EPA assumes a warm weather (April through October) temperature of 25° C and a cold weather (November through March) temperature of 5° C. Given that the Permittee did not collect any ambient pH or salinity data, EPA assumes an

ambient pH of 7.0 S.U. and a salinity of 30 ppt. Additionally, EPA has assumed that salmonids could be present in the receiving waters.

Based on the information and assumptions described above, Appendix B presents the applicable ammonia criteria, the details of the mass balance equation, the reasonable potential determination, and, if necessary, the limits required in the Draft Permit. As shown, there is no reasonable potential to cause or contribute to an excursion of WQS, so the Draft Permit does not propose ammonia limits.

Effluent and ambient monitoring for ammonia will be required in the quarterly WET tests.

5.1.9 Nutrients

Nutrients are compounds containing nitrogen and phosphorus. Although nitrogen and phosphorus are essential for plant growth, high concentrations of these nutrients can cause eutrophication, a condition in which aquatic plant and algal growth is excessive. Plant and algae respiration and decomposition reduces dissolved oxygen in the water, creating poor habitat for fish and other aquatic animals. Recent studies provide evidence that both phosphorus and nitrogen can play a role in the eutrophication of certain ecosystems. However, typically phosphorus is the limiting nutrient triggering eutrophication in freshwater ecosystems and nitrogen in marine or estuarine ecosystems. Thus, for this receiving water nitrogen is the nutrient of concern evaluated below.

5.1.9.1 Total Nitrogen

As noted in Section 4.1 above, the aquatic life use in Salem Sound is impaired for estuarine bioassessments. This impairment is due to a substantial decline in eelgrass bed mapping which could be impacted by a number of pollutants, including nitrogen. In 2020, a report entitled “Setting the Baseline for Water Quality and Benthic Conditions in Salem Sound 2020” was prepared by Prassede Vella (MassBays National Estuary Partnership) and Todd Callaghan (MA Office of Coastal Zone Management) to augment ongoing assessment of Salem Sound and create a baseline for water quality. With respect to eelgrass loss as one of the main concerns in conducting this study, the 2020 report noted the following:

Salem Sound has several eelgrass beds. Eelgrass (*Zostera marina*) is one of the most valuable estuarine habitats, providing a myriad of ecosystem services as a nursery and feeding grounds to other marine/estuarine species, improving water quality, and contributing to coastal resilience, among others. However, this habitat is threatened by discharges from land and poor water quality (turbidity and eutrophic conditions), docks and piers (shading), and boat traffic and moorings (scouring and damage by propellers). Aerial surveys conducted by the MA Department of Environmental Protection (DEP) (1995-2012) and acoustic mapping conducted by the MA Division of Marine Fisheries (DMF) (2016) showed mixed observations of eelgrass condition across the Sound. Although some beds were found to be healthy and thriving (including one of the largest

in Massachusetts, stretching along the coast from Beverly to Manchester), some areas suffered substantial losses, e.g., Salem Harbor (81% loss 1995 -2012)¹.

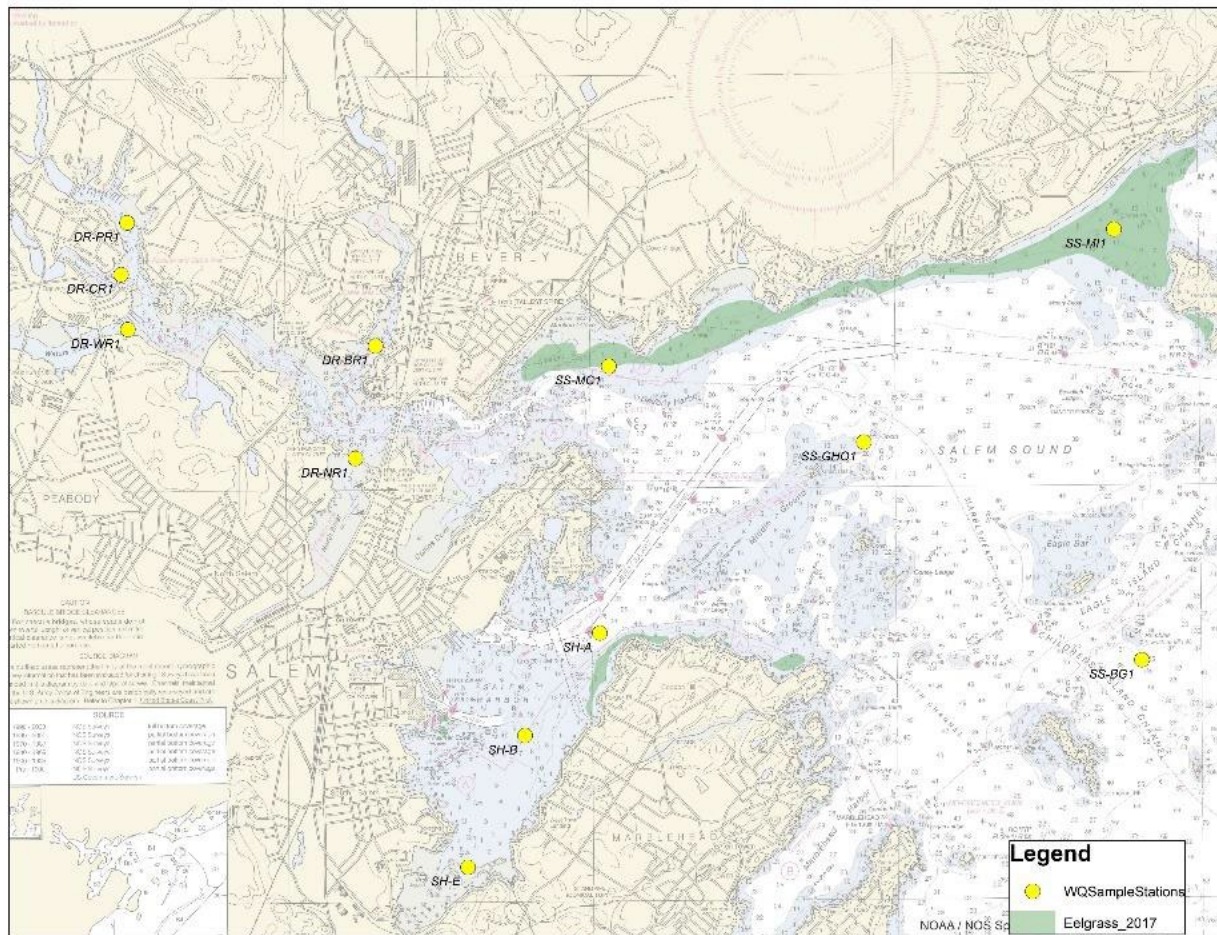
¹ *Zostera marina* habitat quality and survival in southeastern Massachusetts estuaries, Journal of Environmental Management, Volume 131, 2013, Pages 129-137, ISSN 0301-4797, <https://doi.org/10.1016/j.jenvman.2013.09.033>.

Over the years studies have pointed to different causes of degradation of water quality and overall ecosystem health in areas of the Sound. Between 2010-2014 high levels of total suspended solids (TSS) and turbidity caused by phytoplankton were observed. It is also known that total nitrogen (TN) concentrations higher than 0.33-0.55 mg/L are detrimental to eelgrass. Various studies² and programs such as the MA Estuaries Project and the Great Bay Eelgrass Resilience Program (Great Bay NERR) demonstrated that these ranges are detrimental for eelgrass. At the same time TN discharged from one wastewater plant averages 32 mg/L³. This clearly indicated a need for information on baseline water quality conditions across Salem Sound. Knowledge of changing conditions would inform management and regulatory decisions that could prevent further water quality deterioration and habitat loss.

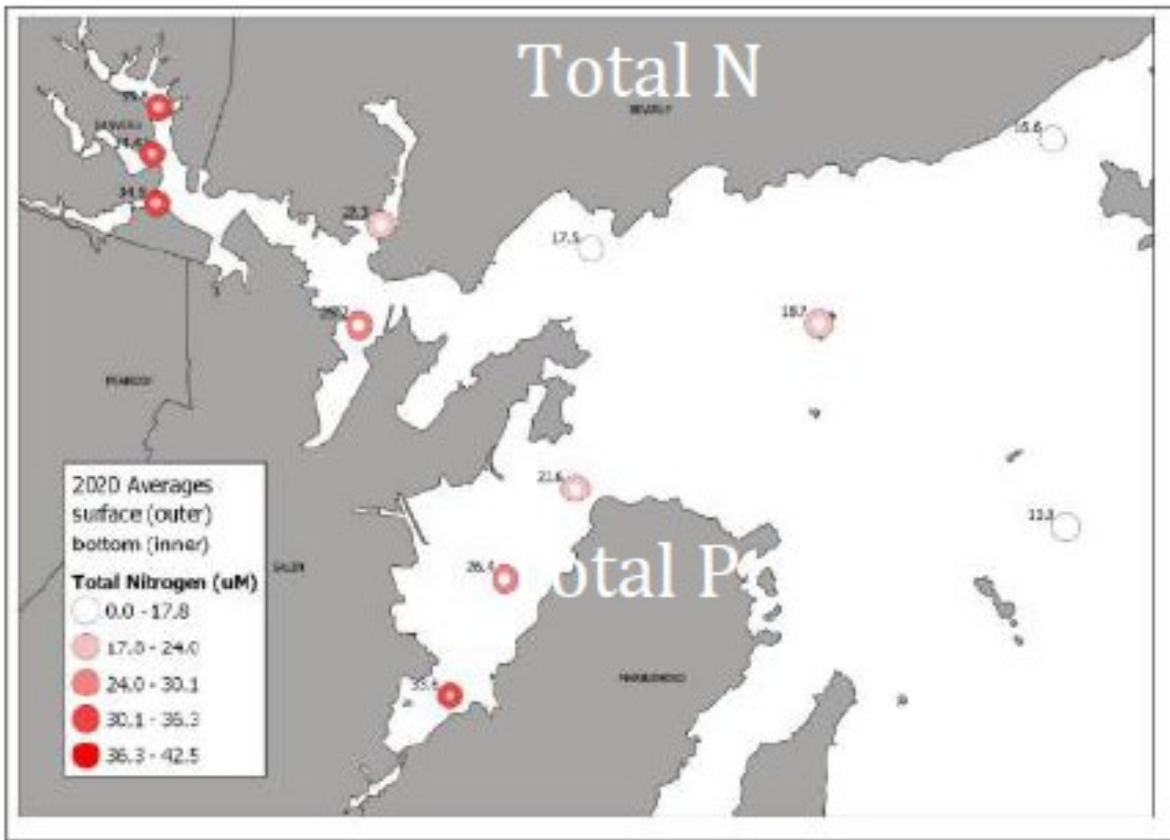
² SESD NPDES permit #MA0100501

EPA notes that footnote 2 above was a typographical error and should be footnote 3, highlighting that the SESD discharge averaged 32 mg/L TN. EPA reviewed the most recent TN concentrations in the DMR data during the review period and notes that this level has dropped to an average of 25 mg/L in recent years. The average during the growing season of April to October was 25.8 mg/L, with a range of 12 to 43 mg/L.

To assess the impact of nitrogen from SESD and other sources, the study chose 12 sampling stations for discrete water quality sampling. These 12 sites included several locations in Salem Sound (station "SS-GH01" is over the SESD outfall) as well as several locations in the Danvers River to capture what is coming out of the tributaries. The 12 stations as well as the 2017 eelgrass mapping survey are shown in the figure below.

Figure 1: Sampling locations *from* Vella and Callaghan, 2020.

The 2020 report presented the average total nitrogen (TN) concentration at each sampling stations throughout Salem Sound, as shown below.

Figure 2: Total nitrogen *from Vella and Callaghan, 2020.*

As shown above, station SS-GH01 (located above the SESD outfall near the center of Salem Sound) indicates an average TN concentration of 15.7 μM (which converts to 0.22 mg/L). The highest TN level among the next four closest stations which may also be impacted by the SESD discharge (*i.e.*, SS-MG1, SS-MI1, SS-BG1 in Salem Sound and SH-A at the border of Salem Harbor and Salem Sound) is station SH-A with a concentration of 21.6 μM (which converts to 0.30 mg/L). EPA highlights that these levels are below the range of 0.33 to 0.55 mg/L which the report indicates may be detrimental to eelgrass. The only stations with TN levels in this range are much farther inland and not clearly impacted by the SESD discharge.

Based on these findings, the report presents the following conclusions and next steps:

- Overall, nutrient parameters in the Danvers River and Salem Harbor are different from the greater Sound.
- There is some indication of nutrient-induced effects, but the Sound is not as polluted as some other areas in Massachusetts.
- The SESD outfall seems to be doing a good job at dispersing the effluent, although more data are needed to provide a clearer picture.
- The infauna are tied to different sediment types, which may be associated with wave action/exposure. There is some potential indication of pollution (dominance of tolerant

species), but it is not clear whether this may be solely related to the outfalls, as these pollution tolerant species were also observed in nearshore areas.

- There are many fluctuating factors in Salem Sound. Incorporating a system of continuous monitoring for parameters such as temperature, salinity, DO, and pH in the water column (ideally surface and bottom) would generate data across tidal and weather induced fluctuations. These measurements would be in addition to discrete nutrient monitoring.

Therefore, EPA has incorporated the findings of this report into the Draft Permit in two ways.

First, EPA finds that there is not enough technical support to justify the establishment an effluent limitation for total nitrogen. Although the Sound shows some signs of nutrient-induced effects, it is not clear that the SESD discharge is causing or contributing to those effects given the dispersion of the effluent and the low levels of nitrogen found in the Sound and even in the immediate vicinity of the outfall. Therefore, the Draft Permit continues the effluent monitoring for total nitrogen (*i.e.*, nitrate + nitrite and total Kjeldhal nitrogen) but does not establish an effluent limitation.

Second, EPA agrees that additional ambient monitoring is necessary to obtain a clearer picture of the impact of the discharge in Salem Sound and any cumulative impacts beyond the Sound. Therefore, an ambient monitoring plan has been included in the Draft Permit, as discussed in more detail in Section 5.6 below.

5.1.10 Metals

5.1.10.1 Applicable Metals Criteria

State water quality criteria for cadmium, copper, lead, nickel and zinc are established in terms of dissolved metals. However, many inorganic components of domestic wastewater, including metals, are in particulate form, and differences in the chemical composition between the effluent and the receiving water affects the partitioning of metals between the particulate and dissolved fractions as the effluent mixes with the receiving water, often resulting in a transition from the particulate to dissolved form (*The Metals Translator: Guidance for Calculating a Total Recoverable Permit Limit from a Dissolved Criterion* (USEPA 1996 [EPA-823-B96-007])). Consequently, quantifying only the dissolved fraction of metals in the effluent prior to discharge may not accurately reflect the biologically-available portion of metals in the receiving water. Regulations at 40 CFR § 122.45(c) require, with limited exceptions, that effluent limits for metals in NPDES permits be expressed as total recoverable metals.

5.1.10.2 Reasonable Potential Analysis and Limit Derivation

To determine whether the effluent has the reasonable potential to cause or contribute to an exceedance above the in-stream water quality criteria for each metal, EPA uses the mass balance equation presented in Appendix B to project the concentration downstream of the discharge and, if applicable, to determine the limit required in the permit.

Based on the information described above, the results of this analysis for each metal are presented in Appendix B.

As shown, there is no reasonable potential to cause or contribute to an excursion of WQS for cadmium, copper, lead, nickel, or zinc, so the Draft Permit does not propose any new limits for these metals.

Effluent and ambient monitoring for each of these metals will be required in the quarterly WET tests.

5.1.11 Whole Effluent Toxicity

CWA §§ 402(a)(2) and 308(a) provide EPA and States with the authority to require toxicity testing. Section 308 specifically describes biological monitoring methods as techniques that may be used to carry out objectives of the CWA. Whole effluent toxicity (WET) testing is conducted to ensure that the additivity, antagonism, synergism and persistence of the pollutants in the discharge do not cause toxicity, even when the pollutants are present at low concentrations in the effluent. The inclusion of WET requirements in the Draft Permit will assure that the Facility does not discharge combinations of pollutants into the receiving water in amounts that would be toxic to aquatic life or human health.

In addition, under CWA § 301(b)(1)(C), discharges are subject to effluent limitations based on WQSs. Under CWA §§ 301, 303 and 402, EPA and the States may establish toxicity-based limitations to implement the narrative water quality criteria calling for “no toxics in toxic amounts”. *See also* 40 CFR § 122.44(d)(1). The Massachusetts WQSs at 314 CMR 4.05(5)(e) state, “All surface waters shall be free from pollutants in concentrations or combinations that are toxic to humans, aquatic life or wildlife.”

National studies conducted by EPA have demonstrated that domestic sources, as well as industrial sources, contribute toxic constituents to POTWs. These constituents include metals, chlorinated solvents, aromatic hydrocarbons and others. Some of these constituents may cause synergistic effects, even if they are present in low concentrations. Because of the source variability and contribution of toxic constituents in domestic and industrial sources, reasonable potential may exist for this discharge to cause or contribute to an exceedance of the “no toxics in toxic amounts” narrative water quality standard.

In accordance with current EPA guidance and State policy²⁶, whole effluent chronic effects are regulated by limiting the highest measured continuous concentration of an effluent that causes no observed chronic effect on a representative standard test organism, known as the chronic

²⁶ *Massachusetts Water Quality Standards Implementation Policy for the Control of Toxic Pollutants in Surface Waters*. February 23, 1990.

No Observed Effect Concentration (C-NOEC). Whole effluent acute effects are regulated by limiting the concentration that is lethal to 50% of the test organisms, known as the LC₅₀. This policy recommends that permits for marine discharges having a dilution factor between 20 and 100 require acute toxicity testing four times per year for two species. Additionally, for discharges with a dilution factor between 20 and 100, the LC₅₀ limit should be greater than or equal to 100%.

The acute WET limit in the 2016 Permit is LC₅₀ greater than or equal to 100%, using the *Arbacia* and the *Menidia beryllina* as the test species. The Facility has consistently met these limits (See Appendix A).

Based on the potential for toxicity from domestic and industrial contributions, the state narrative water quality criterion, the dilution factor of 31.5 (chronic) and 18.6 (acute), and in accordance with EPA national and regional policy and 40 CFR § 122.44(d), the Draft Permit continues the effluent limit from the 2016 Permit including the test organism and the testing frequency. Based on the chronic dilution factor being above 20, chronic (C-NOEC) toxicity testing is not required in the Draft Permit. Toxicity testing must be performed in accordance with the updated EPA Region 1 WET test procedures and protocols specified in Attachment A, *Marine Acute Toxicity Test Procedure and Protocol* (July 2012) of the Draft Permit.

5.1.12 Per- and polyfluoroalkyl substances (PFAS)

As explained at <https://www.epa.gov/pfas>, PFAS are a group of synthetic chemicals that have been in use since the 1940s. PFAS are found in a wide array of consumer and industrial products. PFAS manufacturing and processing facilities, facilities using PFAS in production of other products, airports, and military installations can be contributors of PFAS releases into the air, soil, and water. Due to their widespread use and persistence in the environment, most people in the United States have been exposed to PFAS. Exposure to some PFAS above certain levels may increase risk of adverse health effects.²⁷ EPA is collecting information to evaluate the potential impacts that discharges of PFAS from wastewater treatment plants may have on downstream drinking water, recreational and aquatic life uses.

On October 20, 2020, MassDEP published final regulations establishing a drinking water standard, or a Maximum Contaminant Level (MCL) of 20 parts per trillion (ppt) for the sum of the following six PFAS. See 310 CMR 22.00.

- Perfluorohexanesulfonic acid (PFHxS)
- Perfluoroheptanoic acid (PFHpA)
- Perfluorononanoic acid (PFNA)
- Perfluorooctanesulfonic acid (PFOS)
- Perfluorooctanoic acid (PFOA)

²⁷ EPA, *EPA's Per- and Polyfluoroalkyl Substances (PFAS) Action Plan*, EPA 823R18004, February 2019. Available at: https://www.epa.gov/sites/production/files/2019-02/documents/pfas_action_plan_021319_508compliant_1.pdf

- Perfluorodecanoic acid (PFDA)

Although the Massachusetts water quality standards do not include numeric criteria for PFAS, the Massachusetts narrative criterion for toxic substances at 314 CMR 4.05(5)(e) states:

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

The narrative criterion is further elaborated at 314 CMR 4.05(5)(e)2 which states:

Human Health Risk Levels. Where EPA has not set human health risk levels for a toxic pollutant, the human health-based regulation of the toxic pollutant shall be in accordance with guidance issued by the Department of Environmental Protection's Office of Research and Standards. The Department's goal is to prevent all adverse health effects which may result from the ingestion, inhalation or dermal absorption of toxins attributable to waters during their reasonable use as designated in 314 CMR 4.00.

Since PFAS chemicals are persistent in the environment and may lead to adverse human health and environmental effects, and consistent with recent EPA guidance,²⁸ the Draft Permit requires that the Facility conduct quarterly influent, effluent and sludge sampling for PFAS chemicals and annual sampling of certain industrial users. The quarterly monitoring shall begin the first full calendar quarter beginning six months after the effective date of the permit. The annual monitoring for certain industrial users shall begin the first full calendar year following the effective date of the permit.

The purpose of this monitoring and reporting requirement is to better understand potential discharges of PFAS from this facility and to inform future permitting decisions, including the potential development of water quality-based effluent limits on a facility specific basis. EPA is authorized to require this monitoring and reporting by CWA § 308(a), which states:

“SEC. 308. (a) Whenever required to carry out the objective of this Act, including but not limited to (1) developing or assisting in the development of any effluent limitation, or other limitation, prohibition, or effluent standard, pretreatment standard, or standard of performance under this Act; (2) determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance; (3) any requirement established under this section; or (4) carrying out sections 305, 311, 402, 404 (relating to State permit programs), 405, and 504 of this Act—

²⁸ Radhika Fox, Assistant Administrator, EPA to Water Division Directors, EPA Regions 1-10, December 5, 2022, Subject: “Addressing PFAS Discharges in NPDES Permits and Through the Pretreatment Program and Monitoring Programs.” Available at: https://www.epa.gov/system/files/documents/2022-12/NPDES_PFAS_State%20Memo_December_2022.pdf

- (A) the Administrator shall require the owner or operator of any point source to
- (i) establish and maintain such records, (ii) make such reports, (iii) install, use, and maintain such monitoring equipment or methods (including where appropriate, biological monitoring methods), (iv) sample such effluents (in accordance with such methods, at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (v) provide such other information as he may reasonably require;”.

(See 40 CFR § 122.21(e)(3)(ii) and 40 CFR § 122.44(i)(1)(iv)(B)).

In the absence of a final 40 CFR § 136 method for measuring PFAS in wastewater and sludge, the Draft Permit requires the use the multi-lab validated Method 1633²⁹. Monitoring should include each of the 40 PFAS parameters detectable by Method 1633 (see Draft Permit Attachment B for list of PFAS parameters) and the monitoring frequency is quarterly. Reporting of all 40 PFAS analytes is necessary to address the emerging understanding and remaining uncertainties regarding sources and types of analytes of PFAS in wastewater and their impacts. While MassDEP has currently adopted MCLs for only 6 of these analytes as described above, it is possible that MCLs, water quality criteria and/or effluent limitation guidelines could be adopted for many of the other 34 analytes measured by Method 1633 during the life of the permit. Therefore, EPA considers it prudent to require reporting for all 40 analytes that are measured using Method 1633 to ensure EPA has sufficient data to address each of these PFAS analytes in the future. This level of monitoring is recommended in EPA’s *October 2021 PFAS Strategic Roadmap*³⁰ and in an EPA memo dated December 5, 2022, called *Addressing PFAS Discharges in NPDES Permits and Through the Pretreatment Program and Monitoring Programs*.³¹

All PFAS results must be reported on DMRs (see 40 CFR § 122.41)(l)(4)(i)). This approach is consistent with 40 CFR § 122.44(i)(1)(iv)(B) which states that in the case of pollutants or pollutant parameters for which there are no approved methods under 40 CFR Part 136 or methods are not otherwise required under 40 CFR chapter I, subchapter N or O, monitoring shall be conducted according to a test procedure specified in the permit for such pollutants or pollutant parameters.

Additionally, EPA has recently published Method 1621³² to screen for organofluorines in wastewater. Organofluorines (molecules with a carbon-fluorine bond) are rarely naturally occurring and the most common source of organofluorines are PFAS and non-PFAS fluorinated compounds such as pesticides and pharmaceuticals. The Permittee shall monitor Adsorbable Organic Fluorine using Method 1621 once per quarter concurrently with PFAS monitoring to

²⁹ <https://www.epa.gov/cwa-methods/cwa-analytical-methods-and-polyfluorinated-alkyl-substances-pfas#method-1633>

³⁰ https://www.epa.gov/system/files/documents/2021-10/pfas-roadmap_final-508.pdf

³¹ https://www.epa.gov/system/files/documents/2022-12/NPDES_PFAS_State%20Memo_December_2022.pdf

³² <https://www.epa.gov/cwa-methods/cwa-analytical-methods-and-polyfluorinated-alkyl-substances-pfas#method-1621>

screen for a broader range of these types of emerging contaminants. This requirement also takes effect the first full calendar quarter following six months after the effective date of the permit.

All monitoring results may be used by EPA in the next permit reissuance to ensure the discharge continues to protect designated uses.

5.2 Industrial Pretreatment Program

The Permittee is required to administer a pretreatment program under 40 CFR Part 403. *See also* CWA § 307; 40 CFR § 122.44(j). The Permittee's pretreatment program received EPA approval on September 26, 1985 and, as a result, appropriate pretreatment program requirements were incorporated into the previous permit, which were consistent with that approval and federal pretreatment regulations in effect when the permit was issued.

The Federal Pretreatment Regulations in 40 CFR part 403 were amended in October 1988, in July 1990, and again in October 2005. Those amendments established new requirements for implementation of pretreatment programs. Upon reissuance of this NPDES permit, the permittee is obligated to modify its pretreatment program to be consistent with current Federal Regulations. The activities that the permittee must address include, but are not limited to, the following: 1) develop and enforce EPA-approved specific effluent limits (technically-based local limits); 2) revise the local sewer-use ordinance or regulation, as appropriate, to be consistent with Federal Regulations; 3) develop an enforcement response plan; 4) implement a slug control evaluation program; 5) track significant noncompliance for industrial users; and 6) establish a definition of and track significant industrial users.

These requirements are necessary to ensure continued compliance with the POTW's NPDES permit and its sludge use or disposal practices.

In addition to the requirements described above, the Draft Permit requires the Permittee to submit to EPA in writing, within 180 days of the permit's effective date, a description of proposed changes to permittee's pretreatment program deemed necessary to assure conformity with current federal pretreatment regulations. These requirements are included in the Draft Permit to ensure that the pretreatment program is consistent and up-to-date with all pretreatment requirements in effect. Lastly, the Permittee must continue to submit, annually by **March 15**, a pretreatment report detailing the activities of the program for the twelve-month period ending 60 days prior to the due date.

5.3 Sludge Conditions

Section 405(d) of the Clean Water Act requires that EPA develop technical standards regarding the use and disposal of sewage sludge. On February 19, 1993, EPA promulgated technical standards. These standards are required to be implemented through permits. The conditions in the permit satisfy this requirement.

5.4 Infiltration/Inflow (I/I)

Infiltration is groundwater that enters the collection system through physical defects such as cracked pipes, or deteriorated joints. Inflow is extraneous flow entering the collection system through point sources such as roof leaders, yard and area drains, sump pumps, manhole covers, tide gates, and cross connections from storm water systems. Significant I/I in a collection system may displace sanitary flow, reducing the capacity and the efficiency of the treatment works and may cause bypasses to secondary treatment. It greatly increases the potential for sanitary sewer overflows (SSOs) in separate systems, and combined sewer overflows (CSOs) in combined systems.

The Draft Permit includes a requirement for the permittee to control infiltration and inflow (I/I) within the sewer collections system it owns and operates. The permittee shall develop an I/I removal program commensurate with the severity of I/I in the collection system. This program may be scaled down in sections of the collection system that have minimal I/I.

5.5 Operation and Maintenance

5.5.1 Adaptation Planning for the Wastewater Treatment System (WWTS) and/or Sewer System

The Draft Permit, in Part I.C.1. requires the Permittee and Co-permittee(s) to develop an Adaptation Plan to address major storm and flood events as part of their operation and maintenance planning for the part of the WWTS and/or sewer systems that they each own and operate. These requirements are new. EPA has determined that these additional requirements are necessary to ensure the proper operation and maintenance of the WWTS and/or sewer system and has included a schedule in the Draft Permit for completing these requirements.

See Appendix C for a further rationale regarding this Adaptation Plan.

5.5.2 Operation and Maintenance of the Sewer System

The standard permit conditions for 'Proper Operation and Maintenance', found at 40 CFR § 122.41(e), require the proper operation and maintenance of permitted wastewater systems and related facilities to achieve permit conditions. The requirements at 40 CFR § 122.41(d) impose a 'duty to mitigate' upon the permittee, which requires that "all reasonable steps be taken to minimize or prevent any discharge violation of the permit that has a reasonable likelihood of adversity affecting human health or the environment. EPA and MassDEP maintain that an I/I removal program is an integral component of ensuring permit compliance with the requirements of the permit under the provisions at 40 CFR § 122.41(d) and (e).

General requirements for proper operation and maintenance, and mitigation have been included in Part II of the permit. Specific permit conditions have also been included in Part I.C.

and I.D. of the Draft Permit. These requirements include mapping of the wastewater collection system, preparing and implementing a collection system operation and maintenance plan, reporting of unauthorized discharges including SSOs, maintaining an adequate maintenance staff, performing preventative maintenance, controlling inflow and infiltration to separate sewer collection systems (combined systems are not subject to I/I requirements) to the extent necessary to prevent SSOs and I/I related effluent violations at the Wastewater Treatment Facility and maintaining alternate power where necessary. These requirements are included to minimize the occurrence of permit violations that have a reasonable likelihood of adversely affecting human health or the environment.

Some of the requirements in the Draft Permit are not included in the 2016 Permit. EPA has determined that this additional requirement is necessary to ensure the proper operation and maintenance of the collection system and has included schedules for completing these requirements in the Draft Permit.

Because Beverly, Danvers, Marblehead, Peabody, and Salem own and operate a collection system that discharges to the Facility, they have been included as co-permittee for the specific permit requirements discussed in the paragraph above. The historical background and legal framework underlying this co-permittee approach is set forth in Appendix D to this Fact Sheet, *EPA Region 1 NPDES Permitting Approach for Publicly Owned Treatment Works that Include Municipal Satellite Sewage Collection Systems*.

5.6 Ambient Monitoring Plan

Ambient Monitoring in Massachusetts Bay

Long-term ambient data³³ collected by Massachusetts Water Resources Authority (MWRA) from 1992 to present, and additional evidence have documented biological changes in Massachusetts Bay³⁴ and the broader Gulf of Maine.³⁵ These changes suggest that Massachusetts Bay is experiencing a shift in biological³⁶ and oceanographic regimes. The new biological regime is characterized by increased frequency and intensity of nuisance and harmful algal blooms (HABs), shifts in the seasonal and spatial distribution of harmful algae, and

³³ MWRA Environmental Quality Technical Data Reports <https://www.mwra.com/harbor/enquad/trlist.html>

³⁴ https://cfpub.epa.gov/si/si_public_record_Report.cfm?dirEntryId=355407&Lab=CEMM

³⁵ Anderson et al, 2012

³⁶ Biological regime shifts have been defined as pronounced and abrupt changes in ecosystems that persist for a substantial period, extend across a large spatial scale or extent, and involve multiple characteristics of the biological system. Such shifts have been described in a variety of biological systems, including ocean ecosystems (Biggs, R., S. R. Carpenter, and W. A. Brock. 2009. Turning back from the brink: detecting an impending regime shift in time to avert it. *Proc Natl Acad Sci U S A* 106:826-31.). Consistent with the concept of biological regime, a regime shift implies that the changed system no longer tends to return to the original state, but instead varies around a different state, with dynamics mediated by a new and changed set of internal ecological relationships. Where external drivers, such as temperature, have changed, the new regime occurs within the context of those changes. Ongoing monitoring of the biological community can be expected to document new patterns of variability associated with the new biological regime.

emerging trophic and water quality impacts related to HABs. This regime shift increases the scientific uncertainty regarding the role of WWTF discharges in supporting nuisance algal blooms and HABs throughout Massachusetts Bay.



Figure 3: Map of MWRA outfall ambient water column monitoring stations from Ambient Monitoring Plan for the Massachusetts Water Resources Authority Effluent Outfall, Revision 2.1, <https://www.mwra.com/harbor/enquad/pdf/2021-08.pdf>.

As discussed in Part 5.1.9.1 of this Fact Sheet, several studies of Salem Sound were completed between 2002 and 2020. Each of these studies touched on the issue of nutrients and the potential influence on phytoplankton growth in the Sound. Turbidity and the subsequent lack of light transmission into the water column is suspected as the likely cause of the decline in eelgrass beds in Salem Sound³⁷ and the impairment of the aquatic life use. A study of turbidity and the potential sources in Salem Harbor found that phytoplankton are the dominating force

³⁷ Carr, Jillian and Ford, Kathryn. June 29, 2017. *Historic eelgrass trends in Salem Sound, Massachusetts, Final Report*. Massachusetts Division of Marine Fisheries submitted to Massachusetts Bays National Estuary Program.

for suspended particulates in the water column.³⁸ Additionally, there are some data³⁹ suggesting that phosphorus could be influencing chlorophyll; however, this dataset is limited, and more data is necessary.

Ecological Setting of Massachusetts Bay and Salem Sound

Massachusetts Bay is a partially enclosed embayment that flows into the Gulf of Maine to the east. It is a coastal water as it lies between the mean highwater mark of the coastal baseline and the shelf break, as defined in EPA's Nutrient Criteria-Estuarine and Coastal Waters.⁴⁰ The Bay is approximately 62 miles long and 31 miles wide and has an average water depth of 115 feet.⁴¹ The physical, chemical, and biological properties of Massachusetts Bay vary due to seasonal cycling. Stellwagen Bank is an underwater plateau that borders the Bay to the east and is only 65 feet below the water surface therefore partially enclosing the Bay.⁴²

There are currently 11 wastewater treatment facilities, including SESD, that have permitted discharges of treated effluent into the coastal areas of Massachusetts Bay and adjoining Cape Cod Bay (the Bay system). These facilities total 509 MGD of permitted discharge (as a rolling annual average) with one large discharger (MWRA Deer Island WWTP currently permitted at 436 MGD) and the remaining 10 smaller facilities with permitted discharges range from less than 1 to nearly 30 MGD. Collectively, the smaller facilities account for approximately 14% of the volume of wastewater permitted for direct discharge into the Bay system. The multiple permitted wastewater discharges to the Merrimack River also contribute a significant loading of nutrients at the northern end of the Bay system, and non-point source discharges contribute significant loading along the southern boundary of the Bay system. SESD has a permitted discharge volume of 29.7 MGD which is 5.8% of the permitted discharges to Massachusetts Bay.

In general, the nutrient loading in the Massachusetts Bay follows the same seasonal patterns as the stratification cycle with surface level nutrients increasing in the spring due to nutrient-laden, freshwater inputs and again in the fall as nutrient levels increase as stratification ends and nutrients become remixed throughout the water column. These increases in nutrients contribute to phytoplankton blooms that primarily occur in early spring and again in the fall. During April through October, when the Bay is stratified, nutrient levels in surface waters are diminished as phytoplankton deplete available nutrients and dissolved oxygen.⁴³ In the fall, mixing events (such as increasing winds and northeasterly storms) end the stratification and the water column is replenished with nutrients previously trapped below the pycnocline which can

³⁸ Hubney, J. Bradford, Kenney, Melanie, Warren, Barbara and Louis, Jeremy. January 2017. Multi-faceted monitoring of estuarine turbidity and particulate matter provenance: Case study from Salem Harbor, USA. *Science of the Total Environment*, Vo; 574, pages 629-641.

³⁹ Vella, Prassede and Callaghan, Todd, 2020. *Setting the Baseline for Water Quality and Benthic Conditions in Salem Sound 2020*. Massachusetts Bays National Estuary Partnership and Massachusetts Coastal Zone Management.

⁴⁰ <https://www.epa.gov/sites/default/files/2018-10/documents/nutrient-criteria-manual-estuarine-coastal.pdf>

⁴¹ <https://doi.org/10.3133/ofr9615>

⁴² *Ibid.*

⁴³ <https://archives.lib.state.ma.us/bitstream/handle/2452/49977/ocm36241802.pdf?sequence=1&isAllowed=y>

then trigger fall blooms. Zooplankton blooms tend to follow within several weeks of a phytoplankton bloom.

Salem Sound is a coastal embayment located north of Boston in northwestern Massachusetts Bay. Salem Sound is approximately 14.1 square miles. It is relatively shallow (~30 feet) and well-flushed with ~70% of the total water volume is exchanged each tidal cycle.⁴⁴ Several rivers and brooks discharge to Salem Sound but the overall contribution of freshwater is small. The shallow average depth and the minimal input of freshwater limits the development of stratification and the Sound remains relatively mixed year-round. In addition to the SESD WWTF discharge of 29.7 MGD, the Sound also receives 0.67 MGD of treated effluent from the Manchester-by-the-Sea WWTF, NPDES Number MAG580043.⁴⁵



Figure 2. Site Locus

Figure 4: Location of Salem Sound in Massachusetts Bay from Carr and Ford, 2017.

Due to the impairment of the aquatic life use in Salem Sound and concerns that nutrients could cause excessive algal blooms leading to high turbidity, the Draft Permit requires ambient monitoring of the Salem Sound portion of Massachusetts Bay.

⁴⁴ Chase, Bradley; Plouff, Jefferey H.; and Castonguay, Wayne M. October 2002. *The Marine Resources of Salem Sound, 1997*. Massachusetts Division of Marine Fisheries, Technical Report TR-6. https://salemsound.org/wp-content/uploads/2023/03/salem_sound_report_tr6.pdf

⁴⁵ [Manchester by the Sea Authorization MAG580043 \(epa.gov\)](https://www.epa.gov/npdes/Manchester-by-the-Sea-Authorization-MAG580043)

Ambient sampling shall be conducted at a farfield site outside the immediate influence of the SESD discharge. EPA has selected station SSBG1 from the 2020 study⁴⁶ of Salem Sound. The station is located at latitude 42.51919° N, longitude 70.8065° W. Consistent with other ambient sampling in Massachusetts Bay, sampling is required to be conducted nine times per year, beginning in February and finishing in November. Sampling frequency is based on target weeks chosen to represent key periods in the growing season. The monitoring parameters have been selected to provide the information about Massachusetts Bay and Salem Sound, and to address the impairment in Salem Sound. See Part I.G.1. of the Draft Permit for the detailed requirements of this ambient monitoring plan.

5.7 Standard Conditions

The standard conditions of the permit are based on 40 CFR §122, Subparts A, C, and D and 40 CFR § 124, Subparts A, D, E, and F and are consistent with management requirements common to other permits.

5.8 Potential Alternative Permit Conditions

Part I.A.2 of the 2016 Permit includes narrative water quality-based requirements to protect designated uses in accordance with state water quality standards. In the development of this 2025 permit, the Region considered a variety of alternative permit conditions and monitoring requirements in lieu of narrative requirements, as described in greater detail below. To ensure compliance with these applicable state narrative water quality standards, the State has indicated that it will include the narrative requirements in its draft water quality certification. Specifically, the State has notified EPA that it will propose the following narrative water quality-based requirements as state certification conditions in accordance with § 401(a) of the CWA and 40 CFR § 124.53:

- The discharge shall be free from pollutants in concentrations or combinations that settle to form objectionable deposits; float as debris, scum or other matter to form nuisances; produce objectionable odor, color, taste or turbidity; or produce undesirable or nuisance species of aquatic life.
- The discharge shall be free from pollutants in concentrations or combinations that adversely affect the physical or chemical nature of the bottom, interfere with the propagation of fish or shellfish, or adversely affect populations of non-mobile or sessile benthic organisms.
- The discharge shall be free from floating, suspended and settleable solids in concentrations and combinations that would impair any use assigned to the receiving

⁴⁶ Valle and Callaghan, 2020.

water, that would cause aesthetically objectionable conditions, or that would impair the benthic biota or degrade the chemical composition of the bottom.

- The discharge shall be free from color and turbidity in concentrations or combinations that are aesthetically objectionable or would impair any use assigned to the receiving water.
- The discharge shall be free from oil, grease and petrochemicals that produce a visible film on the surface of the receiving water, impart an oily taste to the edible portions of aquatic life, coat the banks or bottom of the water course, or are deleterious or become toxic to aquatic life.
- The discharge shall be free from taste and odor in such concentrations or combinations that are aesthetically objectionable, that would impair any use assigned to the receiving water, or that would cause tainting or undesirable flavors in the edible portions of aquatic life.
- The discharge shall be free from pollutants in concentrations or combinations that are toxic to humans, aquatic life or wildlife.

Based on the State's intent to include these requirements in the state certification, EPA does not find it necessary to include the alternative permit conditions and monitoring requirements in the Draft Permit. However, if some or all of these narrative conditions are not included in the final state certification, EPA will include the applicable alternative permit conditions and monitoring requirements in the Final Permit. Therefore, EPA has described these alternative permit conditions and monitoring requirements in detail below and is soliciting public comments on the inclusion of these if the state certification does not include the applicable narrative conditions.

The alternative permit conditions and monitoring requirements described below relate to reasonable potential analyses, WET testing, annual chemical monitoring, visual inspections of the receiving water, and benthic surveys. Each of these are related to compliance with specific narrative state water quality standards. It should also be noted that if any of these alternative requirements and monitoring requirements were to be included in this permit reissuance, EPA may remove or reduce these in the future and/or implement an alternative permitting approach if EPA finds that these are no longer necessary to protect designated uses in accordance with state water quality standards.

To be clear, each of the items described in this section below are not included in the Draft Permit and EPA intends to include them in the Final Permit only if the corresponding narrative condition is not included in the State's final certification of this permit and pursuant to any changes based on public comments.

Reasonable Potential Analyses

Given that EPA guidance⁴⁷ directs that reasonable potential analyses should be based on critical conditions, EPA uses the pollutant concentrations based on all available information provided to EPA during the development of the permit. As discussed in more detail in the pollutant-specific sections above, this information includes data from the Permittee's most recent application, DMR data during the review period, and any other available information included in the administrative record.

If the permitting authority, in this case EPA, determines that the discharge of a pollutant will cause, has the reasonable potential to cause, or contribute to an excursion above WQSs, the permit must contain WQBELs for that pollutant. See 40 CFR § 122.44(d)(1)(i).

If the permitting authority determines that the discharge of a pollutant will not cause, have the reasonable potential to cause, or contribute to an excursion above WQSs, the permit does not need to contain WQBELs for that pollutant. However, the permitting authority must ensure that the discharge of that pollutant does not increase during the permit term to the point that would violate water quality standards. Therefore, Part I.B.1 (Unauthorized Discharges) of the permit may include the following provision to ensure that EPA's reasonable potential analyses (for all pollutants) remain protective throughout the life of the permit, and which would also clearly articulate the scope of the protections afforded to the Permittee pursuant to CWA section 402(k):

“For any pollutant without an effluent limitation in this permit, any pollutant loading greater than the proposed discharge (the “proposed discharge” is based on the chemical-specific data and the facility's design flow as described in the permit application, or any other information provided to EPA during the permitting process) is not authorized by this permit.”

EPA notes that such increases may be allowable, but the Permittee must first submit a request to EPA to authorize such an increase. This request will allow EPA to conduct an updated reasonable potential analysis to reassess whether a WQBEL is needed for the newly proposed discharge. Permit modification or reissuance may be required before the proposed discharge would be authorized.

Toxicity

Under CWA §§ 301, 303 and 402, EPA and the States may establish toxicity-based limitations to implement the narrative water quality criteria calling for “no toxics in toxic amounts”. See also 40 CFR § 122.44(d)(1). The Massachusetts WQSs at 314 CMR 4.05(5)(e) state, “All surface waters shall be free from pollutants in concentrations or combinations that are toxic to

⁴⁷ See 2010 NPDES Permit Writer's Manual, chapter 6 available at: https://www.epa.gov/sites/default/files/2015-09/documents/pwm_chapt_06.pdf

humans, aquatic life or wildlife.” To ensure the receiving water is free from pollutants in concentrations or combinations that are toxic to humans, aquatic life or wildlife, throughout the permit term, EPA may incorporate additional Whole Effluent Toxicity (WET) requirements described below.

Under the following circumstances, the Permittee would be required to conduct at least two accelerated re-tests at 14-day intervals which must be started within 14 days and 28 days of receiving the following results:

- If any WET test results are in violation of any WET limit and the test acceptability criteria were met (only re-test for the species that failed); or
- If the Permittee identifies or is provided notice of a sudden and significant death of large numbers of fish and/or shellfish in the vicinity of the discharge (test for all species identified in permit).

If the receiving water was used as the dilution water and is suspected to be toxic (*e.g.*, based on results from the initial test), the Permittee would be required to conduct the accelerated WET tests using laboratory water as the dilution water with a similar pH and hardness as the receiving water. If the WET tests using laboratory water do not violate any WET limits, the Permittee would return to a normal monitoring frequency but may request continued use of laboratory water as the dilution water based on these results. If either accelerated WET test violates any WET limits (and the test acceptability criteria were met), the discharge would be considered to have persistent toxicity and the Permittee would be required to immediately initiate a Toxicity Identification Evaluation and Toxicity Reduction Evaluation (TIE/TRE) as described below to resolve any toxic impacts on the receiving water.

The specific proposed TIE/TRE requirements are presented below and were developed based on guidance available in EPA’s *2024 NPDES WET Permit Writers’ Manual*⁴⁸. EPA notes that the results of the TIE/TRE might also lead to additional, future NPDES permit controls, such as additional WET permit limits, chemical-specific permit limits, or a compliance requirement to reduce or eliminate toxicity.

- (1) If the WET re-test described above results in a violation of the WET limits, the Permittee must immediately initiate a TIE/TRE designed to identify and reduce toxicity in the discharge. Notice of TIE/TRE study implementation is to be submitted to EPA (via email: R1NPDESReporting@epa.gov) and the State within 10 days of receiving notification of WET re-test failure.
- (2) A TIE/TRE schedule and action plan must be submitted to EPA and the State as an electronic attachment to the DMR within 60 days of receipt of WET re-test failure.

⁴⁸ Available at: <https://www.epa.gov/system/files/documents/2024-06/npdes-wet-permit-writers-manual.pdf>

The TIE/TRE schedule (from the initiation date to the termination date) should be as short as possible, and no longer than 24 months as follows: The “TIE/TRE initiation date” is the date of the receipt of results for the toxicity test that confirms persistent toxicity and the “TIE/TRE termination date” is the date corrective actions to resolve toxicity are identified and a schedule for completing these corrective actions is proposed.

The objective of the action plan is to identify the source(s) of toxicity by analyzing toxicity testing samples for any toxicant identified as being a potential source of toxicity and ascertaining whether the same level of toxicity occurs when any suspected toxicant level varies. This information might lead to finding one or more toxicants or confirming or eliminating suspected toxicants and possibly their source(s).

- (3) Quarterly “TIE/TRE Progress Reports” shall be submitted to EPA and the State as an electronic attachment to the DMR at the end of each quarter after the TIE/TRE initiation date. The progress report must list all activities and findings related to resolving toxicity, including all WET and chemical test data. The data summaries of the TIE/TRE must also be provided in a tabulated format with explanations of the procedures used and the recorded findings from the study.
- (4) A “Final TIE/TRE Report” shall be submitted to EPA and the State within 45 days of the TIE/TRE termination date (as an electronic attachment to the DMR) and should summarize the TIE/TRE activities and findings, propose the corrective action(s) to be taken, and propose a schedule to complete any identified corrective action(s).
- (5) After submission of the “Final TIE/TRE Report,” the Permittee shall continue to submit quarterly “Toxicity Reduction Progress Reports” (as an electronic attachment to the DMR) documenting progress on the corrective actions being taken to reduce toxicity in accordance with the proposed schedule.
- (6) Upon completion of all corrective actions identified in the “Final TIE/TRE Report,” the Permittee shall submit a “Toxicity Reduction Completion Report” (as an electronic attachment to the DMR) summarizing the corrective actions taken based on the TIE/TRE and shall include all information necessary to demonstrate that the discharge is no longer toxic and consistently complies with all WET limits.

Annual Chemical Monitoring

Massachusetts Water Quality Standards at 314 CMR 4.05(5)(e) states, “All surface waters shall be free from pollutants in concentrations or combinations that are toxic to humans, aquatic life or wildlife.”

Given that there are other sources of toxic effects (including to human health) that may not be captured by WET testing, EPA would include additional chemical monitoring in the permit. To ensure that the Permittee and EPA are aware of any changes in the chemical characteristics of the discharge that might merit a review of the water quality-based effluent limits, as authorized by Section 402(a)(2) of the CWA and 40 CFR § 122.48, the permit would require additional monitoring requirements for a broad range of contaminants. Specifically, the permit would include requirements for annual monitoring of both the effluent and the receiving water immediately upstream of the discharge (taken on the same day during the third calendar quarter to capture relatively low flow conditions) for all the pollutants in Appendix E of the Fact Sheet (which is based on the current NPDES Application Form 2A Tables B and C). All effluent and ambient results would be required to be reported in NetDMR for the quarterly DMR report due by October 15 of each year.

These data would provide assurance that the pollutant loading from the WWTF outfall characterized in the most recent permit application, and the ambient conditions upon which the analyses in this permit reissuance were based, have not changed to a degree that would merit new or more stringent water quality-based effluent limits (WQBELs) during the permit term based on numeric or narrative WQS effective at that time.

In addition, the broad range of pollutants in this monitoring requirement includes many common toxic pollutants. This monitoring would ensure that the sublethal effects of pollutants that are present in the effluent can be considered by the Permittee and by EPA in future permitting decisions or, as necessary to support a TIE/TRE.

Visual Inspection of the Receiving Water

Massachusetts Surface Water Quality Standards include several narrative requirements related to aesthetics, solids and oil & grease, as follows:

(314 CMR 4.05(5)(a)) **Aesthetics**. All surface waters shall be free from pollutants in concentrations or combinations that settle to form objectionable deposits; float as debris, scum or other matter to form nuisances; produce objectionable odor, color, taste or turbidity; or produce undesirable or nuisance species of aquatic life.

(314 CMR 4.05(3)(a)5.; (3)(b)5.; (3)(c)5.; (4)(a)5.; (4)(b)5.; and (4)(c)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.

(314 CMR 4.05(3)(b)7. and (4)(b)7.) **Oil and Grease**. These waters shall be free from oil, grease and petrochemicals that produce a visible film on the surface of the water, impart an oily taste to the water or an oily or other undesirable taste to the edible portions of

aquatic life, coat the banks or bottom of the water course, or are deleterious or become toxic to aquatic life.

To ensure compliance with these narrative water quality standards, Table A.1 of the permit would include a reporting requirement for “Aesthetics,” and a footnote which more specifically requires the following monitoring requirements:

Once per month, the Permittee shall conduct a visual inspection of the receiving water in the vicinity of the outfall and report any changes that may be caused by the discharge as follows:

- 1) any observable change in odor,
- 2) any visible change in color,
- 3) any visible change in turbidity,
- 4) the presence or absence of any visible floating materials, scum or foam,
- 5) the presence or absence of any visible settleable solids, or
- 6) the presence or absence of any visible film or sheen on the surface of the water or coating the banks of the water course.

Although there is no objective means to measure the impact of the discharge on the taste of the receiving water, the Permittee shall report to EPA and MassDEP any complaints it receives from the public regarding taste and/or odor and document what remedial actions, if any, it took to address such complaints.

The results do not need to be submitted each month. Rather, a summary of the 12 monthly visual inspections as well as any complaints received from the public regarding the taste of the receiving water shall be submitted as an electronic attachment to the December DMR, which is due each January 15th for the previous calendar year.

If an oily sheen is observed on the surface of the water in the vicinity of the outfall during the monthly visual inspection, the Permittee shall follow the procedures described above related to accelerated WET testing and potentially (if the accelerated tests demonstrate toxicity) conduct a TIE/TRE.

The Massachusetts “aesthetics” narrative water quality standard also seeks to protect against any discharge that, “produce[s] undesirable or nuisance species of aquatic life.” Because the production of undesirable or nuisance species of aquatic life is most commonly caused by the discharge of excess nutrients, this portion of the standard is addressed in this Draft Permit through compliance with the requirements described in the Total Nitrogen Section 5.1.9.1 of this Fact Sheet.

The “solids” narrative water quality standard also requires that waters shall be “free from floating, suspended and settleable solids...that would impair the benthic biota or degrade the chemical composition of the bottom.” A Benthic Survey requirement, as discussed below,

would address this portion of the standard particularly with respect to settleable solids. In addition, total suspended solids (TSS) requirements in the Draft Permit are proposed based on secondary treatment standards as described in Section 5.1.3 of this Fact Sheet.

The “oil & grease” narrative water quality standard also prohibits the receiving water from being deleterious or toxic to aquatic life. This portion of the standard is addressed in the Toxicity section of the Fact Sheet above.

Benthic Survey

Massachusetts Surface Water Quality Standards address bottom pollutants at 314 CMR 4.05(5)(b), which requires that “[a]ll surface waters shall be free from pollutants in concentrations or combinations or from alterations that adversely affect the physical or chemical nature of the bottom, interfere with the propagation of fish or shellfish, or adversely affect populations of non-mobile or sessile benthic organisms.”

To ensure compliance with these standards, the permit would require that the Permittee conduct a benthic survey to assess impacts from the discharge to aquatic life in the benthic environment. The permit would include a requirement of one such survey this permit term during the third calendar quarter (*i.e.*, July through September) that begins at least 12 months from the effective date of the permit. The third calendar quarter represents the season of relatively low flow when the discharge has less dilution and is, therefore, more likely to impact the benthic population. The initial 12 months of the permit term allows the Permittee sufficient time to plan for this survey after permit issuance while ensuring results are available relatively soon in case further action is needed to protect the benthic population. The results of the benthic survey will assist EPA in the development of any future permit conditions needed to ensure compliance with 314 CMR 4.05(5)(b).

The specific proposed requirements would include:

Benthic grab samples shall be taken at three locations sited along each of two transects (one immediately upstream/upgradient of the discharge at a location considered to be unimpacted by the discharge, and one downstream/downgradient of the discharge immediately outside of the estimated zone of initial dilution). Along each transect, duplicate samples shall be taken in the thalweg along with sites near each shoreline, for a total of six samples along each transect and 12 samples total. Organisms shall be sorted and identified to the lowest possible taxonomic level. Counts shall be standardized to densities per square meter of bottom. To characterize the bottom, grain size samples shall be collected at each grab site.

Taxonomy must be performed by a professional freshwater macroinvertebrate taxonomist who, at a minimum, holds and maintains for the duration of the contract a certification from the Society of Freshwater Science for eastern genera in group 1 (Crustacea and Arthropods other than EPT and Chironomidae), group 2

(Ephemeroptera, Plecoptera, and Trichoptera nymphs and larvae only) and group 3 (Chironomidae larvae only).

A report summarizing the results and comparing the upstream and downstream benthic populations shall be submitted by the following January 15 as an electronic attachment to the DMR.

6.0 Federal Permitting Requirements

6.1 Endangered Species Act

Section 7(a) of the Endangered Species Act of 1973, as amended (ESA), grants authority to and imposes requirements on Federal agencies regarding species of fish, wildlife, or plants that have been federally listed as endangered or threatened (listed species) and regarding habitat of such species that has been designated as critical (critical habitat).

Section 7(a)(2) of the ESA requires every federal agency, in consultation with and with the assistance of the Secretary of Interior and the Secretary of Commerce, to ensure that any action it authorizes, funds or carries out, in the United States or upon the high seas, is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat. The United States Fish and Wildlife Service (USFWS) administers Section 7 consultations for federally protected bird, terrestrial and freshwater species, while the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NOAA Fisheries) administers Section 7 consultations for listed species of marine organisms (including marine mammals and reptiles), as well as for anadromous fish species.

The federal action being considered in this case is EPA's proposed reissuance of an NPDES permit for the Facility's discharge of pollutants. The Draft Permit is intended to replace the 2016 Permit in authorizing discharges from the Facility. As the federal agency charged with authorizing the Facility's pollutant discharges, EPA assesses potential impacts to federally listed species and critical habitat and initiates consultation to the extent required, under Section 7(a)(2) of the ESA.

EPA has reviewed the federal endangered or threatened species of fish, wildlife, and plants in the expected action area of the outfalls to determine if EPA's proposed NPDES permit could potentially impact any such listed species.

6.1.1 Terrestrial and Avian Species (US Fish and Wildlife Service)

Regarding protected species under the jurisdiction of USFWS, three species may be present in the action area of the Facility's discharge,⁴⁹ the endangered northern long-eared bat (*Myotis*

⁴⁹ See <https://ecos.fws.gov/ipac/>

septentrionalis), the proposed endangered tricolored bat (*Perimyotis subflavus*) and the endangered shore bird, the roseate tern (*Sterna dougallii dougallii*).

According to the USFWS, the northern long-eared bat is found in “winter – mines and caves, summer – wide variety of forested habitats.” The tricolored bat is generally found in the same habitat. These species are not considered aquatic. However, because the Facility’s projected action area overlaps with the general statewide range of the two bat species, EPA submitted an evaluation on potential effects of the project to the Information for Planning and Consultation (IPaC) system provided by the USFWS. The USFWS system confirmed by letter that, based on the specific project information submitted, the project would have “no effect” on the northern long-eared bat or the tricolored bat.⁵⁰

Regarding the endangered roseate tern, the USFWS reports that in Massachusetts, this shore bird generally nests on sandy, gravelly, or rocky islands and, less commonly, in small numbers at the ends of long barrier beaches. Compared to the common tern, it selects nest sites with denser vegetation, such as seaside goldenrod and beach pea, which is also used for cover by chicks. Large boulders are used for cover at other locations in the northeast. It feeds in highly specialized situations over shallow sandbars, shoals, inlets or schools of predatory fish. Because the Facility’s projected action area overlaps with the general coastal range of the shore bird species, EPA submitted an evaluation on potential effects of the project to the IPaC system provided by the USFWS. The USFWS system confirmed by letter that, based on the specific project information submitted, the project would have “no effect” on the roseate tern.⁵¹

This concluded EPA’s consultation responsibilities for this NPDES permitting action under ESA section 7(a)(2) with respect to the northern long-eared bat, the tricolored bat and the roseate tern. No ESA section 7 consultation is required with USFWS for these species.

6.1.2 Marine and Anadromous Species (National Marine Fisheries Service/NOAA Fisheries)

Regarding protected species under the jurisdiction of NOAA Fisheries, several anadromous and marine species and life stages are present in Massachusetts waters. The Facility discharges into Salem Sound, approximately 2.3 miles off the coast in 42 feet of water. The outfall and action area overlap with coastal waters where several protected marine species are found. The NOAA Fisheries ESA Section 7 Mapper Species List⁵² documented the following protected species in the SESD WWTF action area: Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*; adult and subadult life stages, migrating and foraging year-round), shortnose sturgeon (*Acipenser brevirostrum*; adult life stage, migrating and foraging, April 1 through November 30), the green sea turtle (*Chelonia mydas*), Kemp’s ridley sea turtle (*Lepidochelys kempii*), leatherback sea turtle (*Dermochelys coriacea*) and loggerhead sea turtle (*Caretta caretta*; adult and juvenile life

⁵⁰ USFWS IPaC Bat Determination Letter, Project Code: 2025-0023740, November 25, 2024.

⁵¹ USFWS IPaC Roseate Tern Determination Letter, Project Code: 2025-0023740, November 25, 2024.

⁵² NOAA Fisheries ESA Mapper at: <https://www.fisheries.noaa.gov/resource/map/greater-atlantic-region-esa-section-7-mapper>

stages, migrating and foraging, June 1 through November 30) and the North Atlantic right whales (*Eubalaena glacialis*) and fin whales (*Balaenoptera physalus*; adult and juvenile life stages foraging year-round).

Because these species may be affected by the discharges authorized by the proposed permit, EPA has thoroughly evaluated the potential impacts of the permit action on these anadromous species. Based on that evaluation, EPA's preliminary determination is that this action may affect, but is not likely to adversely affect, the protect species that are expected in the vicinity of the action area of the discharge. Therefore, EPA has judged that a formal consultation pursuant to section 7 of the ESA is not required. EPA is seeking concurrence from NOAA Fisheries regarding this determination through the information in the Draft Permit, this Fact Sheet and an ESA section 7 informal consultation document which has been submitted to NOAA Fisheries Protected Resources Division during the Draft Permit's public comment period.

As part of the overall ESA coordination, EPA routinely notifies USFWS and NOAA Fisheries when an NPDES Draft Permit and supporting Fact Sheet have been placed on public notice, along with a link to all relevant documents.

Re-initiation of ESA section 7 consultation is required and shall be requested by EPA or by USFWS/NOAA Fisheries where discretionary federal involvement or control over the action has been retained or is authorized by law and if: 1) new information reveals that the action may affect listed species or critical habitat in a manner or to an extent not previously considered in the analysis; 2) the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the previous analysis; 3) a new species is listed or critical habitat designated that may be affected by the identified action; or 4) there is any incidental taking of a listed species that is not covered by an incidental take statement.

6.2 Essential Fish Habitat

Under the 1996 Amendments (PL 104-267) to the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. §§ 1801, et seq., EPA is required to consult with NOAA Fisheries if proposed actions that EPA funds, permits, or undertakes, "may adversely impact any essential fish habitat." See 16 U.S.C. § 1855(b).

The Amendments broadly define "essential fish habitat" (EFH) as: "waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity". See 16 U.S.C. § 1802(10). "Adverse impact" means any impact that reduces the quality and/or quantity of EFH. 50 CFR § 600.910(a). Adverse effects may include direct (e.g., contamination or physical disruption), indirect (e.g., loss of prey, reduction in species' fecundity), site specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions.

Essential fish habitat is only designated for species for which federal fisheries management plans exist (16 U.S.C. § 1855(b)(1)(A)). EFH designations for New England were approved by the

U.S. Department of Commerce on March 3, 1999. A New England Fishery Management Council's Omnibus Essential Fish Habitat Amendment in 2017 updated the descriptions. The information is included on the NOAA Fisheries website at:

<https://www.fisheries.noaa.gov/topic/habitat-conservation>. In some cases, a narrative identifies rivers and other waterways that should be considered EFH due to present or historic use by federally managed species.

The Federal action being considered in this case is EPA's proposed NPDES permit for the Facility, which discharges through Outfall 001 to Salem Sound (Segment MA 93-56) as discussed in Section 3.0 of this document. A review of the relevant essential fish habitat information provided by NOAA Fisheries, including the NOAA Fisheries EFH Mapper,⁵³ indicates that the outfall exists within designated EFH for the 25 federally managed species listed and one Habitat Area of Particular Concern (HAPC) listed below (Table 12).

Table 12. EFH Designated Species and Habitat Area of Particular Concern that overlap with the SEDS WWTF Discharge Area.

Species/Management Unit	Lifestage(s) Found at Location
American Plaice	Adult, Eggs, Juvenile, Larvae
Atlantic Butterfish	Adult, Eggs, Juvenile, Larvae
Atlantic Cod	Adult, Eggs, Juvenile, Larvae
Atlantic Herring	Adult, Juvenile, Larvae
Atlantic Mackerel	Adult, Eggs, Juvenile, Larvae
Atlantic Sea Scallop	ALL
Atlantic Surfclam	Adult, Juvenile
Atlantic Wolffish	ALL
Bluefin Tuna	Adult
Bluefish	Adult, Juvenile
Little Skate	Adult, Juvenile
Longfin Inshore Squid	Adult, Juvenile
Northern Shortfin Squid	Adult
Ocean Pout	Adult, Eggs, Juvenile
Pollock	Adult, Eggs, Juvenile, Larvae
Red Hake	Adult, Eggs/Larvae/Juvenile
Silver Hake	Adult, Eggs/Larvae
Spiny Dogfish	Adult Female/Male, Sub-Adult Female

⁵³ <https://www.habitat.noaa.gov/apps/efhmapper/>

Species/Management Unit	Lifestage(s) Found at Location
Thorny Skate	Juvenile
White Hake	Adult, Eggs, Juvenile, Larvae
White Shark	Juvenile/Adult
Windowpane Flounder	Adult, Eggs, Juvenile, Larvae
Winter Flounder	Eggs, Juvenile, Larvae/Adult
Winter Skate	Adult, Juvenile
Yellowtail Flounder	Adult, Eggs, Juvenile, Larvae
Habitat Area of Particular Concern	
Inshore 20m Juvenile Cod	

Therefore, consultation with NOAA Fisheries under the Magnuson-Stevens Fishery Conservation and Management Act is required. EPA has determined that actions regulated by the Draft Permit may adversely affect EFH. The Draft Permit has been conditioned in the following way to minimize any impacts that reduce the quality and/or quantity of EFH for the designated EFH species:

- This Draft Permit action does not constitute a new source of pollutants because it is the reissuance of an existing NPDES permit;
- The Facility withdraws no water from Salem Sound, so there will be no impact that reduces the quality and/or quantity of EFH from impingement and entrainment of organisms;
- Discharge effluent limitations have been proposed for flow, carbonaceous biochemical oxygen demand (CBOD5), pH, total suspended solids, bacteria and total residual chlorine, in order to meet technology-based or state water quality standards;
- The Draft Permit proposes continued whole effluent toxicity (WET) testing once a quarter (four times a year) to ensure that the discharge does not cause toxicity problems; Acute toxicity tests will be conducted to evaluate the lethality of the discharge;
- The effluent limitations and conditions in the Draft Permit were developed to be protective of all aquatic life; and
- The proposed Draft Permit requirements minimize any reduction in quality and/or quantity of EFH, either directly or indirectly.

EPA has determined that the conditions and limitations contained in the Draft Permit adequately protect all aquatic life, as well as the essential fish habitat for the 25 designated EFH species and Habitat Area of Particular Concern in Salem Sound listed in Table 12. Further mitigation is not warranted. Should adverse impacts to EFH be detected as a result of this permit action, or if new information is received that changes the basis for EPA's conclusions, NOAA Fisheries Habitat and Ecosystem Services Division will be contacted and an EFH consultation will be re-initiated.

At the beginning of the public comment period, EPA notified NOAA Fisheries Habitat and Ecosystem Services Division that the Draft Permit and this Fact Sheet were available for review and provided a link to the EPA NPDES Permit website to allow direct access to the documents.

In addition to this Fact Sheet and the Draft Permit, information to support EPA's finding was included in a letter under separate cover that will be sent to the NOAA Fisheries Habitat and Ecosystem Services Division during the public comment period.

6.3 Coastal Zone Management (CZM) Consistency Review

The Coastal Zone Management Act (CZMA), 16 U.S.C. 1451 et seq., and its implementing regulations (15 CFR Part 930) require a determination that any federally licensed or permitted activity affecting the coastal zone with an approved Coastal Zone Management Program (CZMP) is consistent with the enforceable policies of the CZMP. EPA is prohibited from issuing a NPDES permit for any activity affecting any land or water use or natural resource of the coastal zone until the applicant certifies that the proposed activity complies with the State Coastal Zone Management program, and the State or its designated agency concurs with the certification, or the Secretary of Commerce overrides the State's nonconcurrence. See 40 CFR § 122.49(d).

The discharge is within the defined CZM boundaries. During the public notice period, EPA will request that the Permittee submit a letter to the Massachusetts Coastal Zone Management Program stating their intention to abide by the CZM water quality and habitat policies. EPA expects that CZM will find the discharge consistent with its policies.

7.0 Public Comments, Hearing Requests and Permit Appeals

All persons, including applicants, who believe any condition of the Draft Permit is inappropriate must raise all issues and submit all available arguments and all supporting material for their arguments in full by the close of the public comment period, to the permit writer, Michele Barden at the following email address: barden.michele@epa.gov.

Prior to the close of the public comment period, any person may submit a written request to EPA for a public hearing to consider the Draft Permit. Such requests shall state the nature of the issues proposed to be raised in the hearing. A public hearing may be held if the criteria stated in 40 CFR § 124.12 are satisfied. In reaching a final decision on the Draft Permit, EPA will respond

to all significant comments in a Response to Comments document attached to the Final Permit and make these responses available to the public on EPA's website.

Following the close of the comment period, and after any public hearings, if such hearings are held, EPA will issue a Final Permit decision, forward a copy of the final decision to the applicant, and provide a copy or notice of availability of the final decision to each person who submitted written comments or requested notice. Within 30 days after EPA serves notice of the issuance of the Final Permit decision, an appeal of the federal NPDES permit may be commenced by filing a petition for review of the permit with the Clerk of EPA's Environmental Appeals Board in accordance with the procedures at 40 CFR § 124.19.

If for any reason, comments on the Draft Permit and/or a request for a public hearing cannot be emailed to the permit writer specified above, please contact them at telephone number: (617) 918-1539.

8.0 Administrative Record

The administrative record on which this Draft Permit is based may be accessed by contacting Michele Barden at 617-918-1539 or via email to barden.michele@epa.gov.

Date

Ken Moraff, Director
Water Division
U.S. Environmental Protection Agency

Figure 5: Location Map

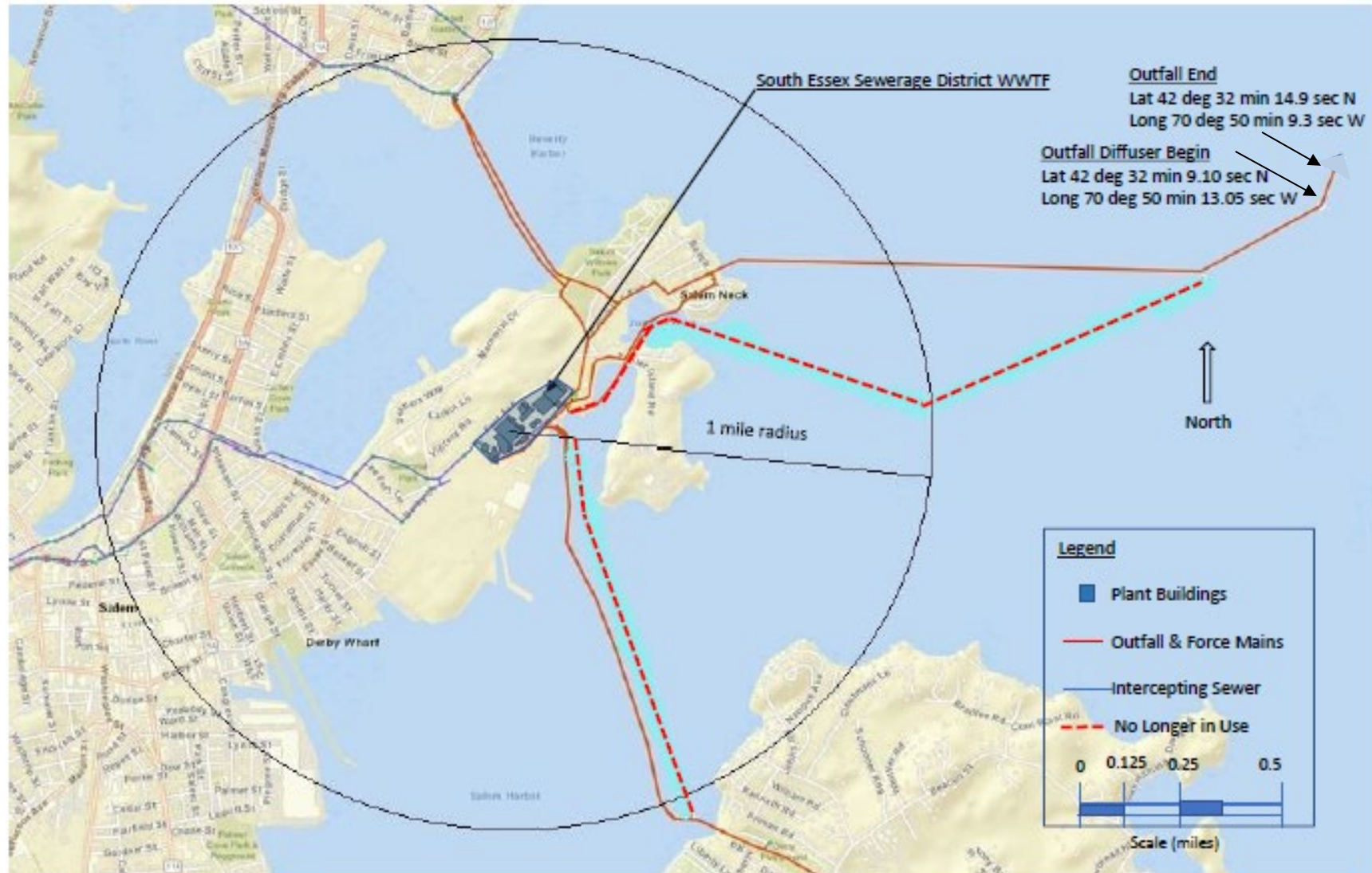
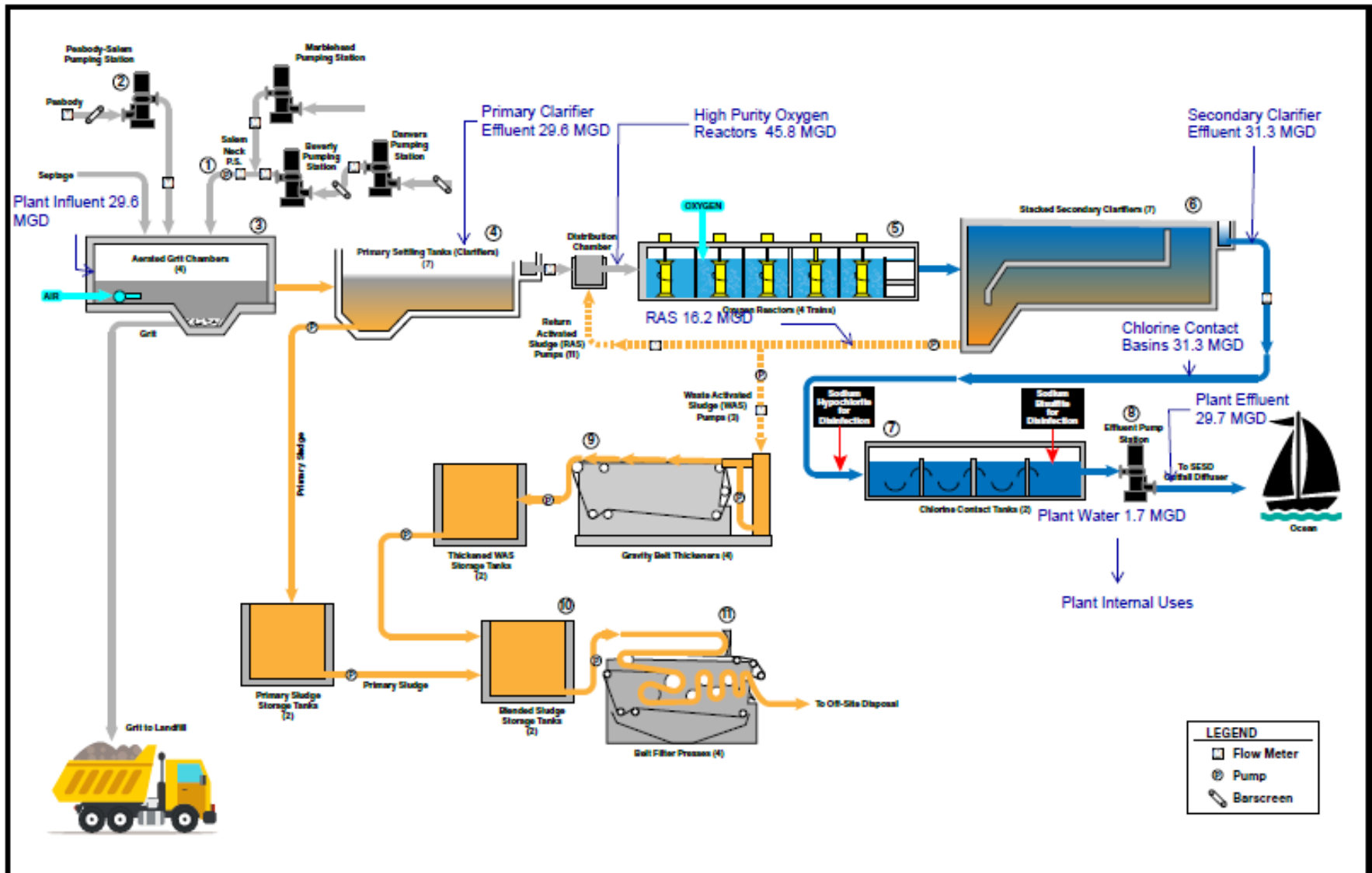


Figure 6: Process Flow Schematic



Outfall 001

Parameter	Flow	Flow	Flow	CBOD5	CBOD5	CBOD5	CBOD5	CBOD5
	Annual Rolling Ave	Monthly Ave	Daily Max	Monthly Ave	Monthly Ave	Weekly Ave	Weekly Ave	Daily Max
Units	MGD	MGD	MGD	lb/d	mg/L	lb/d	mg/L	lb/d
Effluent Limit	29.7	Report	Report	6194	25	9911	40	Report
Minimum	22.9	16.99	17.9	1089	6	1380	8	1807
Maximum	31.5	41.29	79.31	8019	23	18889	41	45753
Median	26.5	26.51	34.94	2123.5	11	2704.5	13	5603.5
No. of Violations	10	N/A	N/A	3	0	3	1	N/A
9/30/2019	28.2	18.82	23.29	1307	8	1738	10	2719
10/31/2019	28	21.19	33.18	2133	12	2102	12	6918
11/30/2019	26.1	24.81	40.39	3216	14	3216	27	14342
12/31/2019	26.6	37.32	65.05	3822	12	2462	14	9765
1/31/2020	26.6	28.79	46.6	2242	9	2351	11	4275
2/29/2020	26.4	26.66	32.33	2477	11	2655	12	3738
3/31/2020	26	26.22	34.68	1963	9	2073	10	3305
4/30/2020	26.3	35.91	52.64	1968	6	2754	8	5392
5/31/2020	26.1	27.27	41.55	1633	7	2174	9	2772
6/30/2020	25.8	19.57	21.94	1383	8	1728	10	2512
7/31/2020	25.5	18.8	21.89	1662	11	1943	12	2897
8/31/2020	25.2	17.04	17.9	1089	8	1380	10	2016
9/30/2020	25	16.99	20.42	1279	9	1556	11	2184
10/31/2020	24.9	19.92	30.29	1808	11	1946	14	3620
11/30/2020	24.8	23.25	32.96	2544	13	4190	19	10319
12/31/2020	24.5	33.56	58.65	4541	14	4541	20	32283
1/31/2021	24.4	27.5	35.2	2415	10	4124	13	4105
2/28/2021	24.5	28.23	36.01	2665	11	4119	17	8409
3/31/2021	24.5	26.04	35.82	1894	9	1894	10	3004
4/30/2021	24.1	30.38	51.23	3325	12	3958	10	15489
5/31/2021	24.5	32.16	45.45	2578	10	5883	17	5815
6/30/2021	24.9	25.44	34.94	1745	8	2387	9	2914
7/31/2021	26.8	40.97	76.59	5991	14	11950	25	31299
8/31/2021	28.02	31.61	49.01	3452	12	7734	23	12962
9/30/2021	29.5	35.39	79.31	4103	13	7210	15	27781
10/31/2021	30.7	33.89	74.41	3736	12	7486	21	20097
11/30/2021	31.4	32.14	58.04	2939	11	4147	17	7844

Outfall 001

Parameter	Flow	Flow	Flow	CBOD5	CBOD5	CBOD5	CBOD5	CBOD5
	Annual Rolling Ave	Monthly Ave	Daily Max	Monthly Ave	Monthly Ave	Weekly Ave	Weekly Ave	Daily Max
Units	MGD	MGD	MGD	lb/d	mg/L	lb/d	mg/L	lb/d
Effluent Limit	29.7	Report	Report	6194	25	9911	40	Report
12/31/2021	30.8	25.89	31.23	2586	12	3700	19	8401
1/31/2022	30.7	26.27	34.71	2960	13	4001	17	4928
2/28/2022	31.1	33.24	44.94	3557	12	5684	19	12368
3/31/2022	31.5	30.23	34.77	2740	11	3671	14	4509
4/30/2022	31.2	26.74	33.98	1599	7	2214	9	3568
5/31/2022	30.4	22.92	29.86	1763	9	2552	13	7727
6/30/2022	29.9	20.18	25.38	2022	12	2296	14	3884
7/31/2022	28	18.05	19.65	2650	18	4245	26	6249
8/31/2022	26.8	17.67	27.3	1739	12	2070	13	4571
9/30/2022	25.3	17.18	19.59	1398	10	1746	12	2069
10/31/2022	24	18.25	24.57	1702	11	2546	16	2756
11/30/2022	22.9	18.94	24.03	1449	9	1400	9	3151
12/31/2022	23	26.48	42.65	2044	9	2879	11	6655
1/31/2023	23.76	35.97	70.12	3370	9	9029	20	21053
2/28/2023	23.2	26.54	34.94	1431	7	2190	8	1807
3/31/2023	23.7	36.36	68.47	4406	13	9820	21	22271
4/30/2023	23.6	25.39	44.99	1873	9	2138	11	6003
5/31/2023	24.2	30.52	55.21	1925	7	4010	10	8749
6/30/2023	24.5	23.7	26.49	1516	8	1712	9	2567
7/31/2023	25.3	27.33	34.76	2222	10	2653	12	6958
8/31/2023	26.2	27.63	39.59	2947	12	3634	15	8585
9/30/2023	27	27.49	37.68	2391	10	3339	12	9428
10/31/2023	27.4	22.49	26.74	1795	10	1966	11	3122
11/30/2023	27.6	21.37	31.91	2114	11	2790	14	6919
12/31/2023	28.1	33.14	54.86	7077	23	11450	32	45753
1/31/2024	28.6	41.29	74.69	8019	21	18889	41	39867
2/29/2024	28.6	27.04	37.68	1648	7	4469	13	3771
3/31/2024	28.9	39.55	69.4	6886	21	8539	30	22533
4/30/2024	30.1	39.82	77.99	4604	13	7637	15	28619
5/31/2024	29.5	23.21	28.79	1530	8	1621	10	2078
6/30/2024	29.2	20.36	23.76	1339	8	1834	11	3231
7/31/2024	28.4	17.66	19.78	1842	12	2292	16	2937

Outfall 001

Parameter	Flow	Flow	Flow	CBOD5	CBOD5	CBOD5	CBOD5	CBOD5
	Annual Rolling Ave	Monthly Ave	Daily Max	Monthly Ave	Monthly Ave	Weekly Ave	Weekly Ave	Daily Max
Units	MGD	MGD	MGD	lb/d	mg/L	lb/d	mg/L	lb/d
Effluent Limit	29.7	Report	Report	6194	25	9911	40	Report
8/31/2024	27.6	17.33	19.49	1166	8	1389	10	2332

Outfall 001

Parameter	CBOD5	CBOD5	TSS	TSS	TSS	TSS	TSS	TSS
	Daily Max	Monthly Ave Min	Monthly Ave	Monthly Ave	Weekly Ave	Weekly Ave	Daily Max	Daily Max
Units	mg/L	%	lb/d	mg/L	lb/d	mg/L	lb/d	mg/L
Effluent Limit	Report	85	7433	30	11150	45	Report	Report
Minimum	9	77.4	1172	5	1779	7	2040	7
Maximum	100	96.9	12350	38	25330	59	80484	163
Median	20	93.65	3236	16	4587	22.5	8000.5	36.5
No. of Violations	N/A	4	7	3	11	5	N/A	N/A
9/30/2019	14	96	2171	14	2654	18	5439	28
10/31/2019	25	94	3815	21	3836	22	11069	40
11/30/2019	52	91	5276	23	12975	47	26753	97
12/31/2019	19	89	6645	20	10358	27	20616	38
1/31/2020	12	93.3	2702	11	2639	13	6607	20
2/29/2020	16	92	2545	12	2852	13	4226	19
3/31/2020	13	94	1684	8	2093	10	3760	13
4/30/2020	13	93.6	2049	7	2724	8	7051	17
5/31/2020	12	94.9	1288	6	2290	7	2426	8
6/30/2020	15	95.1	1997	12	2163	14	3320	19
7/31/2020	18	94.1	3388	22	3778	24	8370	52
8/31/2020	14	96.4	1808	13	2586	19	5125	38
9/30/2020	16	95.9	1789	13	2422	17	3582	26
10/31/2020	16	94.2	2819	17	3398	21	5657	28
11/30/2020	49	92.8	3438	17	6303	29	15875	66
12/31/2020	66	88.5	6917	21	11086	28	47936	98
1/31/2021	14	92.8	2788	12	7232	23	5278	18
2/28/2021	28	91.9	3252	14	5573	23	13214	44
3/31/2021	15	94.1	1946	9	2064	10	2741	13
4/30/2021	39	90.9	4844	17	6057	22	25815	65
5/31/2021	16	92	2941	11	9246	26	8723	24
6/30/2021	12	94.2	3307	16	3938	17	5004	24
7/31/2021	49	83.2	10739	26	19061	37	80484	126
8/31/2021	34	88.6	8000	27	18992	55	38122	100
9/30/2021	42	89.2	7737	24	12602	28	48947	74
10/31/2021	66	88.3	7407	24	15404	45	45674	150
11/30/2021	33	90.8	6317	24	10369	44	26859	113

Outfall 001

Parameter	CBOD5	CBOD5	TSS	TSS	TSS	TSS	TSS	TSS
	Daily Max	Monthly Ave Min	Monthly Ave	Monthly Ave	Weekly Ave	Weekly Ave	Daily Max	Daily Max
Units	mg/L	%	lb/d	mg/L	lb/d	mg/L	lb/d	mg/L
Effluent Limit	Report	85	7433	30	11150	45	Report	Report
12/31/2021	41	92.3	4085	19	4856	25	15369	75
1/31/2022	21	91.3	4123	19	5243	23	7275	31
2/28/2022	33	89.3	4774	17	8416	23	14242	38
3/31/2022	16	91.5	3928	15	6006	20	7631	28
4/30/2022	16	96.9	1443	6	2717	12	2676	12
5/31/2022	42	94.6	2122	11	3900	27	15822	86
6/30/2022	22	94	2575	15	2948	19	4591	26
7/31/2022	42	92	3442	23	4688	32	7588	51
8/31/2022	31	94.8	3220	22	4879	27	9344	62
9/30/2022	14	96	2336	16	2802	20	3547	25
10/31/2022	18	95	2940	19	4171	27	5476	32
11/30/2022	21	96	1853	12	2596	17	3864	25
12/31/2022	20	94.1	2594	11	4486	21	12312	37
1/31/2023	36	89.9	4797	13	14533	32	37427	64
2/28/2023	9	95.6	1172	5	3409	11	2040	7
3/31/2023	39	88	6036	16	14985	32	29075	57
4/30/2023	18	94.1	1951	9	2193	11	6379	18
5/31/2023	19	93.9	2359	8	5948	15	13814	30
6/30/2023	12	94.8	1884	9	2205	10	3977	18
7/31/2023	24	92.7	4555	19	5721	23	14407	52
8/31/2023	26	90.2	5949	25	7060	28	16509	50
9/30/2023	30	93	4741	20	8003	29	15084	48
10/31/2023	14	94.5	3500	19	4142	21	5946	31
11/30/2023	31	93.7	3450	18	4478	22	11844	58
12/31/2023	100	77.9	11767	38	18147	52	74578	163
1/31/2024	64	77.4	11713	32	25330	59	41069	83
2/29/2024	12	95.2	1879	8	6302	19	5657	18
3/31/2024	57	80.4	12350	37	16885	59	43421	126
4/30/2024	44	85.2	7871	21	15125	28	61141	94
5/31/2024	11	94.8	1636	9	1779	10	2590	15
6/30/2024	19	95.5	1315	8	1960	11	4081	24
7/31/2024	20	94.4	3078	21	3802	26	5287	36

Outfall 001

Parameter	CBOD5	CBOD5	TSS	TSS	TSS	TSS	TSS	TSS
	Daily Max	Monthly Ave Min	Monthly Ave	Monthly Ave	Weekly Ave	Weekly Ave	Daily Max	Daily Max
Units	mg/L	%	lb/d	mg/L	lb/d	mg/L	lb/d	mg/L
Effluent Limit	Report	85	7433	30	11150	45	Report	Report
8/31/2024	17	96.2	2330	16	2882	19	4348	30

Outfall 001

Parameter	TSS	pH	pH	Enterococci	Enterococci	Fecal Coliform	Fecal Coliform
	Monthly Ave Min	Minimum	Maximum	Monthly Geometric Mean	Daily Max	Monthly Geometric Mean	Daily Max
Units	%	SU	SU	#/100mL	#/100mL	CFU/100mL	CFU/100mL
Effluent Limit	85	6.5	8.5	35	276	88	260
Minimum	69.4	6.5	6.8	4	11	10	10
Maximum	97.2	6.7	7	31	2011	62	3074
Median	92.9	6.6	6.9	9.5	95	14	66
No. of Violations	7	0	0	0	10	0	6
9/30/2019	95	6.6	6.8	14	2011	13	75
10/31/2019	92	6.6	6.8	9	34	15	68
11/30/2019	88	6.6	6.8	12	69	15	58
12/31/2019	87	6.6	6.8	25	778	20	95
1/31/2020	93.7	6.7	6.8	14	240	16	153
2/29/2020	94	6.6	6.8	24	140	16	91
3/31/2020	96	6.7	6.8	10	92	11	22
4/30/2020	95.2	6.7	6.9	6	57	11	23
5/31/2020	97.2	6.7	6.9	6	40	10	13
6/30/2020	95.3	6.6	6.8	6	26	13	33
7/31/2020	91.9	6.6	6.8	6	86	13	57
8/31/2020	95.6	6.6	6.8	6	20	12	25
9/30/2020	96	6.6	7	5	11	11	24
10/31/2020	93.6	6.6	6.8	5	31	11	59
11/30/2020	92.6	6.6	6.8	13	430	14	113
12/31/2020	85.4	6.6	6.8	25	222	30	174
1/31/2021	93.5	6.7	6.8	11	808	15	92
2/28/2021	92.6	6.6	6.8	18	420	17	177
3/31/2021	95.6	6.6	6.8	20	140	15	35
4/30/2021	90.4	6.6	6.8	19	96	17	75
5/31/2021	93.3	6.6	6.9	11	176	15	175
6/30/2021	93	6.6	6.8	31	400	26	76
7/31/2021	80.6	6.6	6.9	24	257	62	3074
8/31/2021	83.6	6.6	6.8	30	1110	52	551
9/30/2021	84.1	6.5	6.9	25	1110	62	638
10/31/2021	85.2	6.6	6.8	NODI: P	NODI: P	47	205
11/30/2021	85.6	6.6	6.9	8	51	18	67

Outfall 001

Parameter	TSS	pH	pH	Enterococci	Enterococci	Fecal Coliform	Fecal Coliform
	Monthly Ave Min	Minimum	Maximum	Monthly Geometric Mean	Daily Max	Monthly Geometric Mean	Daily Max
Units	%	SU	SU	#/100mL	#/100mL	CFU/100mL	CFU/100mL
Effluent Limit	85	6.5	8.5	35	276	88	260
12/31/2021	90.2	6.6	6.9	14	208	14	59
1/31/2022	90.1	6.6	6.9	11	73	11	32
2/28/2022	87.7	6.5	6.9	9	166	12	57
3/31/2022	91	6.6	6.9	8	56	11	26
4/30/2022	95.3	6.6	7	7	47	11	23
5/31/2022	95.5	6.5	7	8	106	12	40
6/30/2022	94.4	6.7	6.9	19	157	19	69
7/31/2022	92.7	6.5	7	14	100	58	1135
8/31/2022	93	6.6	6.9	7	57	21	65
9/30/2022	94.7	6.6	6.9	5	16	11	18
10/31/2022	92.8	6.6	6.8	6	40	11	19
11/30/2022	95.8	6.6	6.9	7	94	16	111
12/31/2022	93.8	6.5	6.8	11	58	15	72
1/31/2023	89.6	6.7	6.9	8	104	12	79
2/28/2023	97.1	6.5	6.9	5	104	10	10
3/31/2023	87.6	6.6	6.9	9	74	12	37
4/30/2023	95.2	6.7	6.9	7	46	10	12
5/31/2023	94.8	6.5	6.8	6	82	12	26
6/30/2023	95.1	6.6	6.9	10	62	12	22
7/31/2023	90.2	6.6	6.9	9	47	16	70
8/31/2023	85.1	6.6	6.9	17	120	41	156
9/30/2023	88.4	6.6	6.9	18	116	28	127
10/31/2023	92	6.6	6.9	14	220	13	283
11/30/2023	91.6	6.6	6.8	8	197	12	36
12/31/2023	84.5	6.6	6.8	14	183	19	260
1/31/2024	69.4	6.6	6.9	13	400	16	323
2/29/2024	95	6.6	6.9	4	11	10	13
3/31/2024	71.9	6.6	6.8	8	56	13	260
4/30/2024	81.6	6.6	7	11	156	11	16
5/31/2024	95.7	6.6	6.8	7	36	10	16
6/30/2024	96.8	6.6	6.8	4	16	11	28
7/31/2024	93.3	6.6	6.9	6	18	20	121

Outfall 001

Parameter	TSS	pH	pH	Enterococci	Enterococci	Fecal Coliform	Fecal Coliform
	Monthly Ave Min	Minimum	Maximum	Monthly Geometric Mean	Daily Max	Monthly Geometric Mean	Daily Max
Units	%	SU	SU	#/100mL	#/100mL	CFU/100mL	CFU/100mL
Effluent Limit	85	6.5	8.5	35	276	88	260
8/31/2024	94.7	6.6	6.9	14	1000	14	39

Outfall 001

Parameter	TRC	Ammonia	Nitrite + Nitrate	TKN
	Daily Max	Daily Max	Daily Max	Daily Max
Units	mg/L	mg/L	mg/L	mg/L
Effluent Limit	0.24	Report	Report	Report
Minimum	0.011	8.38	0	11
Maximum	2.2	40.4	2.3	42.4
Median	0.07	18.8	0.57	22.35
No. of Violations	7	N/A	N/A	N/A
9/30/2019	0.04	23.2	0.42	22.4
10/31/2019	0.04	29.5	1.16	30.8
11/30/2019	2.2	19.9	1.02	21.5
12/31/2019	0.59	10.1	1.47	14
1/31/2020	0.04	13.9	1.25	15.8
2/29/2020	0.11	16.8	1.44	21
3/31/2020	0.04	18.3	0.74	23.4
4/30/2020	0.2	15.3	1.46	16.1
5/31/2020	0.04	15.1	1.62	16.6
6/30/2020	0.21	25.5	< .3	27.6
7/31/2020	0.09	34.3	0.48	30.7
8/31/2020	0.05	29.2	1.29	33.2
9/30/2020	0.04	40.4	0.84	42.4
10/31/2020	0.11	32.9	< .5	40.6
11/30/2020	0.34	17.2	0.47	26.8
12/31/2020	0.79	13.9	0.36	16.9
1/31/2021	0.04	13.9	1.7	19.3
2/28/2021	0.12	13.8	1.27	17.2
3/31/2021	0.14	15.4	1.28	19
4/30/2021	0.14	21	0.31	25.1
5/31/2021	0.05	14.7	1.52	17.6
6/30/2021	0.05	18.9	1.16	23.9
7/31/2021	0.92	11.7	0.46	14.4
8/31/2021	0.76	16.4	1.29	19.2
9/30/2021	0.04	14.9	2.3	19.8
10/31/2021	0.21	16.2	0.55	20.7
11/30/2021	0.18	8.38	1.6	11

Outfall 001

Parameter	TRC	Ammonia	Nitrite + Nitrate	TKN
	Daily Max	Daily Max	Daily Max	Daily Max
Units	mg/L	mg/L	mg/L	mg/L
Effluent Limit	0.24	Report	Report	Report
12/31/2021	0.14	21.1	0.75	31.8
1/31/2022	0.16	21.9	0.75	25
2/28/2022	0.12	26.8	1	29.5
3/31/2022	0.05	16.7	0.92	20.3
4/30/2022	0.04	21.6	0.88	24.8
5/31/2022	0.03	21.3	0.28	24.4
6/30/2022	0.04	27.4		27.4
7/31/2022	0.05	25.3	< .5	33
8/31/2022	0.06	28.9	< .5	37.5
9/30/2022	0.05	29.3	0.57	34.7
10/31/2022	0.1	29.7	0.63	35.9
11/30/2022	0.1	32.1	1.47	40.7
12/31/2022	0.05	22.9	1.66	27
1/31/2023	0.04	16.6	1.01	22.3
2/28/2023	0.08	11.3	1.35	14.3
3/31/2023	0.011	13.9	0.54	17.4
4/30/2023	0.11	16.5	0.57	20.9
5/31/2023	0.11	11.1	0.43	14.1
6/30/2023	0.03	20.9	< .5	26.2
7/31/2023	0.06	21.5	0.56	25
8/31/2023	0.12	16.5	0.53	20.7
9/30/2023	0.07	22.6	< .5	26
10/31/2023	0.06	18.7	< .5	22.2
11/30/2023	0.07	23.2	< .5	28.1
12/31/2023	0.23	19.7	0.48	23.9
1/31/2024	0.3	13.4	0.51	20.1
2/29/2024	0.03	13.1	< .5	16.6
3/31/2024	0.12	14.7	< .5	21.1
4/30/2024	0.04	8.41	0.47	11.1
5/31/2024	0.05	16.6	< .5	20.3
6/30/2024	0.03	19.7	< .5	22.1
7/31/2024	0.07	25.7	< .5	30.9

Outfall 001

Parameter	TRC	Ammonia	Nitrite + Nitrate	TKN
	Daily Max	Daily Max	Daily Max	Daily Max
Units	mg/L	mg/L	mg/L	mg/L
Effluent Limit	0.24	Report	Report	Report
8/31/2024	0.05	25.8	< .5	26.3

WET Effluent

Parameter	LC50 Acute Menidia	LC50 Static 48Hr Acute Mysid. Bahia	Noael Statre 7Day Chronic Arbacia	Noael Statre 7Day Chronic Menidia	Ammonia	Cadmium	Copper	Lead
	Daily Min	Daily Min	Daily Min	Daily Min	Daily Max	Daily Max	Daily Max	Daily Max
Units	%	%	% effect	% effect	mg/L	mg/L	mg/L	mg/L
Effluent Limit	100	100	Report	Report	Report	Report	Report	Report
Minimum	100	100	25	25	6.76	0	0	0
Maximum	100	100	100	100	28.4	0.0002	0.01	0.0008
Median	100	100	100	100	16.4	Non-Detect	0.0065	Non-Detect
No. of Violations	0	0	N/A	N/A	N/A	N/A	N/A	N/A
2/29/2020	100	100	100	100	18.6	< .0003	0.0072	0.0003
4/30/2020	100	100	100	100	7.89	< .0003	0.005	0.0004
6/30/2020	100	100	25	25	28.4	< .0003	0.0081	0.0003
8/31/2020	100	100	100	100	25.8	< .0005	0.0049	< .0005
2/28/2021	100	100	100	100	14.4	< .05	< .01	< .01
4/30/2021	100	100	100	100	13	< .0001	0.01	0.0004
6/30/2021	100	100	100	100	11	< .001	0.0064	< .001
8/31/2021	100	100	100	100	14	< .0001	0.0044	0.00037
2/28/2022	100	100	100	50	14	< .0001	0.009	0.0007
4/30/2022	100	100	100	50	19.6	< .0001	0.0088	< .0005
6/30/2022	100	100	100	50	18.9	< .0001	0.0066	0.0007
8/31/2022	100	100	100	50	26.4	< .0001	0.0084	0.0008
2/28/2023	100	100	100	100	13.2	< .0001	0.006	< .0003
4/30/2023	100	100	100	100	15.8	< .0001	0.0054	< .0003
6/30/2023	100	100	100	100	21.7	0.0002	0.0072	< .001
8/31/2023	100	100	100	50	17.6	< .0001	0.0055	< .0003
2/29/2024	100	100	50	100	13.1	< .0001	0.0044	< .0003
4/30/2024	100	100	100	100	6.76	< .0001	0.0079	< .0003
6/30/2024	100	100	100	50	17	0.0002	0.0039	< .001
8/31/2024	100	100	100	50	24.1	< .0001	0.0087	< .001

WET Effluent

Parameter	Nickel	Zinc	Hardness
	Daily Max	Daily Max	Daily Max
Units	mg/L	mg/L	mg/L
Effluent Limit	Report	Report	Report
Minimum	0	0	151
Maximum	0.003	0.035	1010
Median	0.00205	0.0205	532.5
No. of Violations	N/A	N/A	N/A
2/29/2020	0.0028	0.035	680
4/30/2020	0.0019	0.025	440
6/30/2020	0.0021	0.017	460
8/31/2020	0.0027	0.015	910
2/28/2021	< .025	< .05	348
4/30/2021	0.002	0.027	590
6/30/2021	< .0063	0.034	550
8/31/2021	0.0021	0.015	600
2/28/2022	0.0002	0.026	274
4/30/2022	0.002	0.024	676
6/30/2022	0.002	0.014	813
8/31/2022	0.002	0.012	1010
2/28/2023	0.003	0.025	465
4/30/2023	0.003	0.022	544
6/30/2023	0.003	0.014	623
8/31/2023	0.003	0.012	521
2/29/2024	0.003	0.028	189
4/30/2024	0.003	0.024	151
6/30/2024	0.001	0.019	285
8/31/2024	0.002	0.014	317

A reasonable potential analysis is completed using a single set of critical conditions for flow and pollutant concentration that will ensure the protection of water quality standards. To determine the critical condition of the effluent, EPA projects an upper bound of the effluent concentration based on the observed monitoring data and a selected probability basis. EPA generally applies the quantitative approach found in Appendix E of the *Technical Support Document for Water Quality-based Toxics Control* (TSD)¹ to determine the upper bound of the effluent data. This methodology accounts for effluent variability based on the size of the dataset and the occurrence of non-detects (*i.e.*, sample results in which a parameter is not detected above laboratory detection limits). For datasets of 10 or more samples, EPA uses the upper bound effluent concentration at the 95th percentile of the dataset. For datasets of less than 10 samples, EPA uses the maximum value of the dataset.

For marine discharges, EPA uses the dilution factor, the calculated upper bound of the effluent data and a concentration representative of the parameter in the receiving water outside of the zone of influence of the discharge to project the downstream concentration after complete mixing using the following simple mass-balance equation:-

$$C_s(DF - 1) + C_e = C_d(DF)$$

Where:

C_s = upstream concentration²

C_e = effluent concentration³

C_d = downstream concentration

DF = dilution factor (See Dilution Factor section of Fact Sheet)

Solving for the downstream concentration results in:

$$C_d = \frac{C_s(DF - 1) + C_e}{DF}$$

When both the downstream concentration (C_d) and the effluent concentration (C_e) exceed the applicable criterion, there is reasonable potential for the discharge to cause, or contribute to an excursion above the water quality standard. *See* 40 C.F.R. § 122.44(d). When EPA determines that a discharge causes, has the reasonable potential to cause, or contribute to such an excursion, the permit must

¹ Available at: <https://www3.epa.gov/npdes/pubs/owm0264.pdf>

² Median concentration for the receiving water outside of the zone of influence of the facility's discharge taken from all available information over the most recent 5-year period, including WET testing data.

³ The 95th percentile (for $n \geq 10$) or maximum (for $n < 10$) concentrations from all available effluent data over the most recent 5-year period, including DMR data and/or WET testing data.

contain WQBELs for the parameter. *See* 40 C.F.R. § 122.44(d)(1)(iii). Limits are calculated by using the criterion as the downstream concentration (C_d) and rearranging the mass balance equation to solve for the effluent concentration (C_e). Refer to the pollutant-specific section of the Fact Sheet for a discussion of these calculations, any assumptions that must be made and other relevant permit requirements.

For any pollutant(s) with an existing WQBEL, EPA notes that the analysis described in 40 CFR § 122.44(d)(1)(i) has already been conducted in a previous permitting action demonstrating that there is reasonable potential to cause or contribute to an excursion of WQS. Given that the permit already contains a WQBEL based on the prior analysis and the pollutant(s) continue to be discharged from the facility, EPA has determined that there is still reasonable potential for the discharge of this pollutant(s) to cause or contribute to an excursion of WQS. Therefore, the WQBEL will be carried forward unless it is determined that a more stringent WQBEL is necessary to continue to protect WQS or that a less stringent WQBEL is allowable based on anti-backsliding regulations at CWA §§ 402(o) and 303(d)(4) and 40 CFR § 122.44(l). For these pollutant(s), if any, the mass balance calculation is not used to determine whether there is reasonable potential to cause or contribute to an excursion of WQS, but rather is used to determine whether the existing limit needs to be more stringent in order to continue to protect WQS.

From a technical standpoint, when a pollutant is already being controlled as a result of a previously established WQBEL, EPA has determined that it is not appropriate to use new effluent data to reevaluate the need for the existing limit because the reasonable potential to cause or contribute to an excursion of WQS for the uncontrolled discharge was already established in a previous permit. If EPA were to conduct such an evaluation and find no reasonable potential for the controlled discharge to cause or contribute to an excursion of WQS, that finding could be interpreted to suggest that the effluent limit should be removed. However, the new permit without the effluent limit would imply that existing controls are unnecessary, that controls could be removed and then the pollutant concentration could rise to a level where there is, once again, reasonable potential for the discharge to cause or contribute to an excursion of WQS. This could result in an illogical cycle of applying and removing pollutant controls with each permit reissuance. EPA's technical approach on this issue is in keeping with the Act generally and the NPDES regulations specifically, which reflect a precautionary approach to controlling pollutant discharges.

The table below presents the reasonable potential calculations and, if applicable, the calculation of the limits required in the permit. Refer to the pollutant-specific section of the Fact Sheet for a detailed discussion of these calculations, any assumptions that were made and the resulting permit requirements.

Appendix B – Reasonable Potential and Limits Calculations

NPDES Permit No. MA0100501

Pollutant	Conc. Units	DF	C _s ¹	C _e ²		C _d		Criteria * 0.9		Reasonable Potential ³		Limits	
			mg/L	Acute (mg/L)	Chronic (mg/L)	Acute (mg/L)	Chronic (mg/L)	Acute (mg/L)	Chronic (mg/L)	Acute	Chronic	Acute (mg/L)	Chronic (mg/L)
Cadmium	µg/L	18.6	0	0.2	0.2	0.0	0.0	33.2	7.9	N	N	N/A	N/A
Copper	µg/L	18.6	0	10.2	10.2	0.5	0.5	5.8	3.7	N	N	N/A	N/A
Lead	µg/L	18.6	0	0.7	0.7	0.0	0.0	220.8	8.5	N	N	N/A	N/A
Nickel	µg/L	18.6	0	5.6	5.6	0.3	0.3	74.7	8.3	N	N	N/A	N/A
Zinc	µg/L	18.6	0	35.0	35.0	1.9	1.9	95.1	85.6	N	N	N/A	N/A
Ammonia (Warm)	mg/L	18.6	0	36.5	36.5	2.0	2.0	48.0	7.2	N	N	N/A	N/A
Ammonia (Cold)	mg/L	18.6	0	27.1	27.1	1.5	1.5	208.0	31.0	N	N	N/A	N/A

¹Median concentration for the receiving water upstream of the zone of influence of the facility's discharge taken from the WET testing data during the review period (see Appendix A). In this case, no ambient data were available.

²Values represent the 95th percentile (for n ≥ 10) or maximum (for n < 10) concentrations from the DMR data and/or WET testing data during the review period (see Appendix A). If the pollutant already has a limit (for either acute or chronic conditions), the value represents the existing limit.

³The “Reasonable Potential” column is marked “Y” if both C_e & C_d are above the respective criterion or if there is an existing WQBEL in the current permit.

APPENDIX C

I. Rationale on the Appropriateness of, and the Authority for, the Inclusion of the Wastewater Treatment System and Sewer System Adaptation Plan Requirements

The adaptation planning requirements proposed in the Draft Permit are new requirements that build on existing operation and maintenance practices. EPA provides this appendix to further explain the basis for and importance of these provisions.

In Section A below, EPA discusses the necessity for requiring the development of Adaptation Plans at wastewater treatment systems (“WWTS”) and sewer systems¹ and provides some examples of how major storm and flood events can impact facility operations. In Section B below, EPA discusses the various components and proper scope of an Adaptation Plan. In Section C below, EPA sets forth the legal basis for its decision to require wastewater treatment systems and sewer systems to develop an Adaptation Plan.

A. Necessity for Wastewater Treatment System and Sewer System Adaptation Planning

Wastewater treatment systems and sewer systems are crucial in helping protect human health and the environment and providing critical services to the communities that they serve. Many wastewater treatment facilities and associated sewer system pump stations are located at low elevations (to maximize flow via gravity) within riverine or coastal floodplains and are at risk of increased flooding and other impacts from major storm events. As noted in a 2016 report by the New England Interstate Water Pollution Control Commission² wastewater systems are already facing severe effects due to major storm and flood events and need to better adapt to this new reality:

In the Northeast and throughout the world, extreme storm events are growing in frequency and force. Hurricanes and blizzards threaten the operation of wastewater infrastructure and in some cases the infrastructure itself. Consequently, wastewater facilities should be made more resilient through preparedness planning and physical upgrades.

¹ The Clean Water Act authorizes EPA, as permit issuer, to issue permits for “publicly owned treatment works” (POTWs). CWA § 402. POTWs comprise wastewater treatment systems and sewer systems. 40 C.F.R. §§ 122.2, 403.3(q); *In re Charles River Pollution Control District*, 16 EAD 623, 635 (EAB 2015) (“POTW treatment plants, like the satellite sewage collection systems that convey wastewater to the plants, are components of a POTW.”) To more precisely and accurately describe the permit requirements, the Permit and this Response to Comments refer to “wastewater treatment system(s)” and “sewer system(s)” or, in some instances, both.

“Wastewater Treatment System” or “WWTS” means any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It does not include sewers, pipes and other conveyances to the wastewater treatment facility.

² “Preparing for Extreme Weather at Wastewater Utilities: Strategies and Tips, New England Interstate Water Pollution Control Commission” (September 2016) pg. 2, https://www.neiwpcc.org/neiwpcc_docs/9-20-2016%20NEIWPCC%20Extreme%20Weather%20Guide%20for%20web.pdf

In the Northeast in the last five years Hurricanes Irene (2011) and Sandy (2012), and winter blizzards such as the February 2013 northeaster, produced widespread economic harm. Sandy caused nearly 11 billion gallons of sewage to be released into coastal waters, rivers, and other bodies of water as power outages and storm surge overwhelmed wastewater-treatment plants. 94% of these releases were a result of flooding and storm surge as waters overwhelmed sewage-treatment plants.

As a result, addressing the ongoing challenges and the increasing risks faced by wastewater infrastructure systems nationwide - reduction or failure of system services resulting in discharges of untreated or partially treated sewage, flooding, physical damage to assets, impacts to personnel, to name just some of the possible outcomes - are a priority for EPA and a host of federal and state agencies, as well as regional and local governmental bodies. Addressing these challenges is also a priority for many wastewater treatment managers across the country. As noted in a 2019 study,³ which surveyed wastewater treatment systems in Connecticut, 78% of wastewater managers had made adaptive changes that ranged from low-cost temporary adaptive changes to a few who described major changes that addressed redesign or the rebuilding of WWTPs; of those who had made changes, half “did so to improve resiliency to withstand the worst storm experienced by the wastewater system to date.”⁴

Flooding and other major storm events can lead to a variety of, and more frequent, WWTS and sewer system failures. One recent analysis suggests that one-third of 5,500 wastewater treatment plants analyzed from around the country would be at risk of flooding in the event of a major storm.⁵ System failures, such as backups of untreated wastewater into the collection system and potentially into buildings and connections, bypasses of pollution treatment, and/or discharges of raw sewage into the environment are some of the potential impacts that may become more frequent.⁶

In New England, as well as elsewhere throughout the country,⁷ storms and flooding have caused damage to, and in some cases total failure of, wastewater treatment systems and sewer

³ “Kirchhoff, C.J. and P.L. Watson. 2019. “Are Wastewater Systems Adapting to Climate Change?” *Journal of the American Water Resources Association*, 1-12. pg.1. <https://doi.org/10.1111/1752-1688.12748>. (Citations omitted in quote).

⁴ *Id.* at pgs. 5, 8.

⁵ “Rising Flood Risks Threaten Many Water and Sewage Treatment Plants Across the U.S.” (August 10, 2023), <https://apnews.com/article/climate-change-flood-risks-infrastructure-vermont-7bd953f513035468ee74f8f7c619bb8e>

⁶ See EPA’s *Resilient Strategies Guide* (noting that “[u]tilities are increasingly recognizing that future extreme weather events, energy prices and ecological conditions may not be predictable based on historical observations. These shifts may require utilities to change how they operate and manage their resources.”) <https://www.epa.gov/crwu/resilient-strategies-guide-water-utilities#/resources/646>. See also, National Association of Clean Water Agencies (“NACWA”), “NACWA Principles on Climate Adaptation and Resiliency” (noting that “[f]or many clean water agencies, changing weather patterns have become a management reality and responsibility.”) https://www.nacwa.org/docs/default-source/conferences-events/2018-ulc/nacwa-statement-of-principles-on-climate_.pdf?sfvrsn=2

⁷ National Association of Clean Water Agencies (“NACWA”) Fact Sheet: “10 Extreme Rain and Flood Events in the US – All in 2022” (listing the “top 10 flood events of 2022” and their effects on water infrastructure from across the

systems. Implementing adaptive measures so that a wastewater treatment plant's wastewater infrastructure may withstand increasingly frequent heavy precipitation and major storm and flood events is, therefore, a critical step in a system's maintenance. Additionally, EPA notes that sometimes, mitigation measures based on adaptation/mitigation plans that were at one point sufficient and that were based on historic, local major storm and flood predictions, may now be insufficient given actual experience with major storms and flooding, the emergence of new data that was not previously available, and more recent projections. And while EPA also acknowledges that it may not always be possible to anticipate all future events (i.e., speed or direction of the wind, temperature fluctuations, the uprooting of trees, etc.) that can exacerbate, or alleviate, the outcomes of major storm and flood events, as illustrated in the examples below, it is important to ensure that existing adaptation plans reflect, as best as possible, all relevant data.

Many New England WWTs have been negatively impacted by major storm and flood events in recent years. In one notable example from Rhode Island in 2010, historically high flood waters (known as "the Great Flood of 2010") severely impacted several wastewater treatment facilities, including the Warwick Rhode Island Wastewater Treatment Facility.⁸ After repetitive flood damages to the WWTs, the City of Warwick had constructed a protective berm, or levee, in the mid-1980s to protect the WWTs from future damages. The levee, originally designed for the 100-year flood at that time, plus three feet of freeboard, was breached by repeated heavy rain events in March 2010. The flooding caused catastrophic impacts to the WWTs which led to the "unthinkable" - the decision to evacuate the plant as the Pawtuxet River crested at 20.79 feet.⁹ The impact to the treatment plant was extreme:

While the flood waters caused no structural damages to the facility's tanks or buildings, anything electrical and everything that was not metal or concrete was ruined. It was at least two days before the river had subsided to the point where staff could begin to access the facility.¹⁰

With a tremendous amount of work and rebuilding, the facility was dewatered, and primary and then secondary treatment were restored. The facility was unable to achieve full compliance with its permit limits for a period of about 80 days.¹¹ Due to this flooding, the facility updated their flood protection plans based on local storm and flooding data and implemented

country, including the devastating impacts that include loss of life, estimated damages in the range of millions to billions of dollars, and extreme impacts to system services.)

⁸ Holbrook, Nicolas Q., The Flood Crews of 2010: A History of Rhode Island's 2010 Floods as Told By The State's Wastewater Collection and Treatment Operators, Rhode Island DEM, Office of Water Resources (2017) <https://dem.ri.gov/sites/g/files/xkgbur861/files/programs/benviron/water/pdfs/floodcrews2010.pdf>

⁹ Id. at 13.

¹⁰ Id.

¹¹ Burke, Janine L., Executive Director, Warwick Sewer Authority, "The Great Flood of 2010: A Municipal Response," pg. 237 Journal NEWEA (September 2012) <https://www.warwicksewerauthority.com/pdfs/floodmitigation/NEWWA%20Journal%20Article%20on%20WSA%20Flood%20Response.pdf>

improvements for the WWTS, including raising the levee to protect the WWTS from inundation caused by a 500-year flood event.¹²



Figure 1: The flooded Warwick wastewater facility on Wednesday, March 31, 2010. (State of Rhode Island)

More recently, in July 2023, Vermont experienced a major storm and flooding event characterized by the National Weather Service as “catastrophic flash flooding and river flooding” with upwards of three to nine inches of rain falling in 48 hours, an amount that in some places of Vermont, amounted to the “greatest calendar day rainfall “since records began in 1948.”¹³ According to local reporting, operations at 33 wastewater treatment systems were disrupted, and several facilities, like those in the towns of Ludlow and Johnson, were rendered inoperable and will need significant reconstruction.¹⁴ As one news outlet reported about the conditions in Ludlow:

[t]he facility that keeps the village’s drinking water safe was built at elevation and survived. But its sewage plant fared less well. Flooding tore through it, uprooting chunks of road, damaging buildings and sweeping sewage from treatment tanks into the river.

¹² Preliminary Design Report, Wastewater Treatment Facility Flood Protection and Mitigation Design, Warwick, Rhode Island (Prepared by AECOM for Warwick Sewer Authority, July 12, 2012) <https://www.warwicksewerauthority.com/pdfs/floodmitigation/Warwick%20Flood%20Mitigation%20PDR%207-24-12%20with%20Appendices.pdf>; [Warwick Wastewater Treatment Facility – Climate Vulnerability Summary https://dem.ri.gov/sites/g/files/xkgbur861/files/programs/benviron/water/pdfs/cvswarwick.pdf](https://dem.ri.gov/sites/g/files/xkgbur861/files/programs/benviron/water/pdfs/cvswarwick.pdf)

¹³ Banacos, Peter, “The Great Vermont Flood of 10-11 July 2023: Preliminary Meteorological Summary” National Oceanic and Atmospheric Administration, National Weather Service, pg. 2 (August 5, 2023) <https://www.weather.gov/btv/The-Great-Vermont-Flood-of-10-11-July-2023-Preliminary-Meteorological-Summary> (noting that damage “rivalled and in some areas exceeded – Tropical Storm Irene in 2011”)

¹⁴ Robinson, Shaun, “Total Destruction:’ Flooding Knocks Out Johnson’s Wastewater Plant, Disrupts Operations Elsewhere” (July 18, 2023); <https://vtdigger.org/2023/07/18/total-destruction-flooding-knocks-out-johnsons-wastewater-plant-disrupts-operations-elsewhere/> (“Across Vermont, 33 wastewater treatment facilities were impacted by the flooding ...according to Michelle Kolb, a supervisor in the state Department of Environmental Conservation’s wastewater program.”)

Even [over three weeks after the storm event] the plant can only handle half its normal load.¹⁵



Figure 2: Ludlow Wastewater Treatment Plant (photo August 2, 2023, taken after July storm event)¹⁶

The wastewater treatment plant in Johnson, Vermont was similarly devastated with the Assistant Plant Manager reporting to a local news outlet, “Total destruction. The only thing we have left is the shell of a building.”¹⁷

According to officials from Vermont DEC, both the Ludlow and Johnson WWTs had some flood protections in place prior to this event: Ludlow built a new influent pump station designed to withstand a 500-year flood event in 2020-21.¹⁸ While its plant was rendered inoperable immediately after the early July flood, it came back on-line in late July. For the Johnson Wastewater Treatment Plant, this was the 6th flooding event at the plant since it was built in 1995. In the assessment that occurred by state and federal officials after the most recent flood, long-term recommendations ranged from more minor fixes (i.e., replacing the gravity line with a pump station and force main) to undertaking an assessment that would compare the cost of

¹⁵ Naishadham, Suman, Peterson, Brittany, Fassett, Carnille, “Rising Flood Risks Threaten Many Water and Sewage Treatment Plants Across the US,” Vermont Public, <https://www.vermontpublic.org/local-news/2023-08-10/ludlow-vermont-rising-flood-risks-threaten-many-water-and-sewage-treatment-plants-across-the-us>

¹⁶ <https://apnews.com/article/climate-change-flood-risks-infrastructure-vermont-7bd953f513035468ee74f8f7c619bb8e>] (picture captions: Joe Gaudiana, the Ludlow, VT. Chief Water and Sewer Operator, left, surveys damage with Elijah Lemieux, of the Vermont Rural Water Association, at the wastewater treatment plant following July flooding, Wednesday, Aug. 2, 2023, in Ludlow. (AP Photo/Charles Krpa))

¹⁷ Robinson, Shaun, “Total Destruction: “Flooding Knocks Out Johnson’s Wastewater Plant, Disrupts Operations Elsewhere” (July 18, 2023); <https://vtdigger.org/2023/07/18/total-destruction-flooding-knocks-out-johnsons-wastewater-plant-disrupts-operations-elsewhere/>

¹⁸ Telephone conversation with Vermont Department of Conservation officials, Heather Collins and Michelle Kolb (September 25, 2023).

moving the facility against the already-significant cost of just repair and construction, estimated to be at least \$2 million.¹⁹ As the officials emphasized, short of relocating, or finding significant additional resources, for some of Vermont’s impacted facilities, there are no easy fixes and future adaptations might mean preparing “to-go bags,” and installing “redundant pipes,” submersible pumps, waterproof electrical boxes or, in some cases, possibly building a second story on an existing plant.

Even more recently, in September 2023 the City of Leominster in central Massachusetts experienced a flash flooding event.²⁰ Previously, the city had identified a riverbank section of the North Nashua River, near the WWTS, that had eroded and was continuing to be eroded and was heading towards a buried sewer main. As detailed in the summary of work report,²¹ “[l]eft unabated, the stream would likely carve a new path into the sewer line, potentially causing a break.” To mitigate this potential problem, the city completed a riverbank stabilization project under FEMA’s Hazard Mitigation Grant Program to protect the main sewer line that was identified as vulnerable to flooding and failure. That line was unimpacted by the recent flash flooding in September and the stabilization work is still intact while other infrastructure in the area suffered significant flood damages. In addition to illustrating the potential impacts of a recent flooding event on a WWTF, this example - of identifying a risk to increased flooding and consequent mitigation measure - exemplifies the process that EPA envisions for the Adaptation Plan.

EPA acknowledges and appreciates that many WWTSs and sewer systems are currently designed with some flood protections to combat the increasing frequency of major storm and flood events and the resulting impacts to wastewater treatment systems and sewer systems. To address the current and future risks associated with these more frequent and intense storms occurring in the region, EPA finds that the development of an Adaptation Plan is necessary in order to ensure the proper operation and maintenance of WWTSs and sewer systems.

B. Requirement to Develop an Adaptation Plan

To support the Permittee’s²² development of an Adaptation Plan, EPA Region 1 has developed a companion document: *Recommended Procedures and Resources for the Development of Adaptation Plans* (“Recommended Procedures”)²³ to assist owners and operators of wastewater treatment systems and/or sewer systems to develop adaptation plans that meet the requirements included in Region 1 NPDES permits. The document provides recommendations and procedures for the use of a free EPA tool developed specifically for water utilities. Permittees may use the recommended tool and the associated procedures, or

¹⁹ Johnson Village Wastewater Post July 2023 Flood Treatment Plant Assessment Lamoille County, Vermont, NPDES Permit Number Vermont 0100901 (August 9, 2023)

²⁰ Derrick Bryson Taylor and Johnny Diaz, “Massachusetts Cities Declare Emergency After ‘Catastrophic’ Flash Flooding” <https://www.nytimes.com/2023/09/12/us/leominster-massachusetts-flash-flooding.html>

²¹ City of Leominster, North Nashua River Riverbank Stabilization Project: Summary of Work (prepared by GZA GeoEnvironmental, Inc.) (February 2023)

²² For brevity, this document refers to “Permittee” throughout; however, this reference also includes all “Co-Permittee(s)” subject to the applicable permit requirements.

²³ Available at: <https://www.epa.gov/npdes-permits/npdes-water-permit-program-new-england>

they may use other approaches providing comparable analyses, as discussed in more detail below, to satisfy permit requirements.

In the permit, the three components of the Adaptation Plan include the following (additional detail, including definitions of certain terms, is included in the permit):

- Component #1: Requires the Permittee to develop and sign, within 24 months of the effective date of the permit, an identification of critical assets and related operations within the WWTs and/or sewer system which they own and/or operate that are most vulnerable to major storm and flood events under baseline and future conditions and to assess the ability of each to function properly in the event of major storm and flood events in terms of effluent flow, sewer flow, and discharges of pollutants;
- Component #2: Requires the Permittee to develop and sign, within 36 months of the effective date of the permit, an assessment of adaptive measures, and/or, if appropriate, the combination of adaptive measures that minimize the impact of future conditions on the critical assets and related operations of the WWTs and/or sewer system(s); and
- Component #3: Requires the Permittee to submit a summary of the work completed in Components #1 and #2 with a proposed schedule for implementation and maintenance of adaptive measures within 48 months of the effective date of the permit.

The rationale for specific revisions and definitions is provided in more detail below.

- The permit requires the Permittee to develop an implementation schedule rather than specify a particular schedule for implementation. EPA notes that the permit also requires that the Permittee report annually on “any progress made toward implementation of adaptive measures.” This leaves the Permittee free to evaluate other considerations when determining when and how to implement adaptive measures. EPA encourages Permittees to move forward with implementation actions that address the vulnerabilities identified as part of its Adaptation Plan in as timely a manner as possible and to prioritize addressing the most impactful vulnerabilities.²⁴
- Permittees who wish to comply with this permit requirement through prior assessments must explain how its prior assessments specifically meet the requirements of the

²⁴ EPA notes that there are many aspects involved in addressing adaptation planning and associated implementation measures, including regional considerations and that region-wide planning is appropriate. Permittees are encouraged to engage in regional planning and EPA understands this may impact proposed schedules for implementation measures. EPA expects, however, that for most Permittees there will be many implementation measures that do not require regional planning or collaboration. To the extent this is not the case, the Permittee may document its analysis supporting such a conclusion and base its implementation schedule accordingly.

permit. The permit allows such assessments that were undertaken in the last 5 years to be used, as long as they meet certain conditions specified in the permit.

- EPA uses certain minimum standards (e.g., use of FEMA Flood Standards) and other terminology that is defined in and consistent with the federal flood standards, to ensure eligibility for federal funding as well as SRF funding.²⁵ The permit requires that the Permittee evaluate asset vulnerability using “baseline conditions” and “future conditions.” The permit defines baseline conditions as the 100-year flood based on historical records and future conditions as projected flood elevations using one of two approaches consistent with the federal flood standards.

This clearly defines what minimum conditions must be used to assess vulnerability under the Adaptation Plan, and EPA has provided tools and data references a Permittee may use to evaluate these conditions and meet the permit requirements. The flood elevations specified account for many of the storm and flood conditions; however, EPA notes that these data may not account for all potential instances of extreme precipitation. Currently, data sets or mapping tools that model changes to flood elevations in response to varying storm sizes are not readily available or simple to use. Therefore, EPA is not requiring facilities to identify or use such data in their analysis. However, EPA notes that there may be site-specific data available for use in a given municipality, and EPA encourages facilities to consider impacts from site-specific events for planning purposes if possible. One or more of the resources provided in the Recommended Procedures document, referenced above, may also account for impacts of extreme precipitation to an extent that is useful to facilities.

- The permit requires evaluating the vulnerability of assets once during the permit term (during the development of the Adaptation Plan). Additional revisions of the Adaptation Plan during the permit term would only be required during the permit term if there has been a significant change to the infrastructure of the system to update the description of the assets removed or updated, to incorporate any new assets into the documentation, and describe any effects these changes have on the asset and/or system vulnerability.
- In light of security concerns posed by the public release of information regarding vulnerabilities to wastewater infrastructure, Permittees are not required to submit Component 1 and 2 and instead must keep that documentation on file and available for inspection or review by EPA upon request. In all other submittals (Component 3 and future annual reports), the Permittee shall provide information only at a level of generality that indicates the overall nature of the vulnerability but omitting specific information regarding such vulnerability that could pose a security risk.

²⁵ “Re-Instatement of Federal Flood Risk Management Standard for State Revolving Fund Programs,” Thompkins, Anita Maria and Stein, Raffael to Water Division Directors (April, 2022) <https://www.epa.gov/dwsrf/federal-flood-risk-management-standard-srf-programs>

- Regarding timing, EPA considers that the permit allows adequate time to initiate the necessary funding and procurement processes (which EPA understands must line-up with local requirements which can take place over many months or even years) in order to develop the plans (either in-house or through professional engineering services) without significantly impacting other ongoing municipal projects.
- Regarding annual reporting, the first report is due on March 31 following the completion of Component 1 of the Adaptation Plan. As described above, flood and major storm events are a significant threat to water quality. An annual reporting requirement is therefore appropriate to facilitate Adaptation Planning and, ideally, the implementation of an Adaptation Plan occurring as promptly and as efficiently as possible.
- Regarding the cost of developing the Adaptation Plan, there are costs and other resources that Permittees must allocate to comply with all permit requirements. EPA considers proper operation and maintenance of the WWTS as well as the collection system to include addressing major storm and flood events that would impair operation of the system. EPA acknowledges that the Permittee will incur costs and other potential resource expenditures to develop a plan related to these events but considers these expenditures to be necessary in order to prevent impacts during such events (e.g., bypass, upset or failure of the WWTS, overflow, or increased inflow and infiltration in the sewer system, and discharges of pollutants that exceed effluent limits), which would adversely affect human health or the environment.

However, EPA appreciates the regulated community's concerns regarding costs as described below.

1. In order to minimize costs and provide additional clarity to Permittees, EPA has developed a companion document, *Recommended Procedures and Resources for the Development of Adaptation Plans for Wastewater Treatment Systems and/or Sewer Systems*, ("Recommended Procedures"), which a Permittee could elect to use to guide it through development of the Adaptation Plan. The document instructs Permittees on the use of EPA's CREAT tool, which is free to use by Permittees and will help Permittees navigate through much of the analysis needed to develop an Adaptation Plan. It is EPA's intention that a Permittee could use these tools to develop an Adaptation Plan in an effort to reduce costs and possibly to eliminate or reduce the need to hire external contractors.
2. As mentioned above, the permit that allows credit for prior work to eliminate potentially costly duplication of efforts.

3. It is EPA's intention to provide Permittees with technical assistance for the development of the Adaptation Plan. EPA has many on-line training tools,²⁶ some of which have been utilized by New England WWTSS²⁷ and EPA offered a New England-based virtual workshop training series for WWTSS operators and others on the use of the CREAT tool. The training took place in March 2024 and was recorded to maximize its utility for those who may want to access the information at a later date.²⁸ EPA also plans to offer ongoing technical assistance on the use of the CREAT tool. In recommending Permittees use this tool and by providing procedures for using it, EPA hopes to both enable Permittees to develop robust Adaptation Plans themselves, but also to reduce the costs, including the costs associated with outside contractors.
 4. Additionally, EPA notes that there may be federal, state or local funding sources available to assist entities with adaptation planning.²⁹
- With regards to the cost of implementing adaptation measures, the selection and deadlines for implementing specific adaptation measures are not included as requirements in the permit since those will only be known after the completion of the Adaptation Plan. EPA expects that the Permittee will begin implementation of those measures in the coming years. However, since the Permittee will be setting the prioritizations and scheduling for implementing the measures based on their own risks and vulnerabilities to major storm and flood events, they may incorporate affordability and funding availability into their considerations.

EPA notes, that in developing the Adaptation Plan, the Permittee may, as part of the process, be comparing the potential economic costs of the baseline condition, or “no action alternative,” with those of possible adaptation measures, under current and predicted risks of major storm and flood events. This option is available in the use of the adaptation planning approach as outlined in the companion document to this permit entitled *Recommended Procedures and Resources for the Development of Adaptation Plans for Wastewater Treatment Systems and/or Sewer Systems*.³⁰ Depending on site-specific circumstances, the Permittee may find that the cost of not implementing adaptation measures is greater than the cost of implementing them.

²⁶ <https://www.epa.gov/crwu/training-and-engagement-center>; see also, the Resources Section in the *Recommended Procedures* for additional resources that Permittees might find useful.

²⁷ See https://toolkit.climate.gov/sites/default/files/Manchester-by-the-Sea_March_2016.pdf;]; see also, the Resources Section of the *Recommended Procedures* document for more New England case studies and other useful resources.

²⁸ The training recordings will soon be available on EPA's website at: <https://www.epa.gov/npdes-permits/npdes-water-permit-program-new-england>.

²⁹ See EPA's website for *Federal Funding for Water and Wastewater Utilities in National Disasters (Fed FUNDS)*. <https://www.epa.gov/fedfunds>. Potential resources may also be available through the State.

³⁰ Available at: <https://www.epa.gov/npdes-permits/npdes-water-permit-program-new-england>

C. Legal Authority

The Adaptation Plan permit conditions are necessary to further the overarching goal of the CWA³¹ “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters” and derive from the same authorities as all other standard operation and maintenance requirements. CWA § 101(a), 40 C.F.R. §§ 122.41(d), (e), (n). The Adaptation Plan requirements are an iterative update to EPA’s standard O&M permit provisions and intend to address serious and increasingly prevalent threats to Permittees’ compliance with permit effluent limitations. As illustrated by the recent examples detailed in Section A, major storm and flood events can gravely impact discharges from WWTSS and thus water quality. That is, plant and/or sewer system failure due to storms, increased precipitation/floods, storm surge, and sea level rise can and do lead to bypasses, upsets, and violations of some or all of the permit limits, including water quality-based limits and limits based on secondary treatment standards. The Adaptation Plan is designed to reduce and/or eliminate noncompliant discharges that result from impacts of major storm or flood events through advanced planning and adaptation measures and is authorized by both EPA regulations and the CWA.

EPA recognizes that larger scale planning may be necessary to address some issues and that requiring the same would be beyond the scope of this NPDES permit. This NPDES permit does not intend to address all issues caused by major storm and flood events. To the contrary, the Adaptation Plan O&M requirements intend to address one specific issue that EPA has witnessed in New England, as described in Section A: the operability of the WWTSS and/or sewer system during and after major storm and flood events. This issue is appropriate for an NPDES permit because it is central to the Permittee’s compliance with the Permit’s effluent limitations and other Permit conditions, and thus central to EPA’s obligation to issue permits that assure compliance with Water Quality Standards and other applicable laws. For the reasons described in this Section, EPA is well within its CWA-based authority to impose the Adaptation Plan requirements.

EPA’s O&M regulations authorize EPA to impose the Adaptation Plan requirement. 40 C.F.R. § 122.41(e) (“Proper operation and maintenance. The Permittee shall at all times 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 this permit.”) Proper operation and maintenance of the permitted facilities and systems inherently includes adaptation planning. As illustrated in the examples in Section A, if a WWTSS is unable to operate properly as designed due to impacts from a major storm or flood event, the discharge of pollutants in violation of both its permit and applicable water quality standards is highly likely to occur and with increasing frequency. In other words, the Permittee

³¹ Congress has recently expressly affirmed that natural hazard adaptation measures for POTWs appropriately fall within the scope of the CWA: Congress added section 223 to the CWA via the Infrastructure Investment and Jobs Act, creating a grant program to support, *inter alia*, “the modification or relocation of an existing publicly owned treatment works, conveyance, or discharge system component that is at risk of being significantly impaired or damaged by a natural hazard[].” Pub. L. 117-58, 135 Stat. 1162 (codified at 33 U.S.C. § 1302a(c)(4))(2021).

cannot satisfy its obligation to operate properly “at all times” if it cannot do so during and after major storms or flooding events. The new Adaptation Plan requirements are an iterative extension of the previous permit’s requirements that “The permittee will maintain an ongoing preventative maintenance program to prevent overflows and bypasses caused by malfunctions or failures of the sewer system infrastructure.” Major storm and flood events represent an increasing cause of WWTS malfunctions and failures and thus EPA added the Adaptation Plan requirements to the O&M requirements to more specifically address this issue.

EPA is well within its CWA-based authority to include these permit conditions which are necessary to reduce the frequency or likelihood of bypass or upset and otherwise achieve compliance with the permit’s effluent limits, and thus also assure compliance with water quality standards and other CWA requirements. CWA § 402(a)(2) (“[EPA] shall prescribe conditions for [NPDES] permits to assure compliance with the [applicable CWA] requirements...as he deems appropriate.”); CWA §§ 301(b)(1)(C), 401(a)(1)-(2); *see also* 40 C.F.R. § 122.4(d) (“No permit may be issued... When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected States”); *See also* 40 C.F.R. § 122.44(d)(1). The provisions are reasonable measures rooted in the permitting requirements to properly operate and maintain all facilities and the duty to take all reasonable steps to minimize or prevent any discharge in violation of the permit. 40 C.F.R. § 122.41(d), (e).

The Agency relied on the same CWA-based authority when it promulgated the O&M regulations:

Many commenters expressed doubt whether EPA is legally authorized to require proper operation and maintenance of facilities. This requirement is clearly authorized for NPDES permittees by section 402(a)(2) of CWA which requires the Administrator to prescribe permit conditions which will assure compliance with the requirements of CWA section 402(a)(1).

45 Fed. Reg. 33290, 33303-04 (May 19, 1980). In 1980 and now, the proper operation and maintenance of a facility – including the Adaptation Plan requirements – effectuates the permit limits on all addressed pollutants and protects all applicable water quality standards, as they assure that such limits will be met, even in times of major storms or during flood events. CWA § 402(a)(2). It is well-established that EPA may include specific permit conditions that ensure the preconditions or assumptions underlying EPA’s pollutant effluent flow calculations remain constant, thus ensuring the permit, as a whole, assures compliance with WQS and other applicable CWA requirements. *See In re: City of Lowell*, 2020 WL 3629979 at *35, 18 E.A.D. 115, 156 (EAB 2020) (affirming effluent flow limit as a proper exercise of the Agency’s 40 C.F.R. § 122.41(e) authority in part on the basis that the permit’s pollutant effluent limits were calculated based on a presumed maximum wastewater effluent discharge from the facility, and thus “If flow limits exceed the assumed maximum flow, ... then the Region may have erroneously concluded that a pollutant did not have a reasonable potential to cause or contribute to an exceedance of water quality standards or that the permit’s pollutant effluent limits assure compliance with Massachusetts’ water quality standards.”) Likewise, the Adaptive

Plan O&M requirements ensure the basic, necessary preconditions (i.e., the plant's operability) to compliance with the permit's effluent limits and other requirements of the CWA. Given the importance of WWTS and sewer system operability to compliance with this NPDES permit, it is not unreasonable for EPA to impose the Adaptation Plan O&M requirements. *C.f. In re Avon Custom Mixing Services, Inc.*, 17 E.A.D. 700, 709 (EAB 2002) ("Given the importance of monitoring to the integrity of NPDES permits, and the broad authority the CWA confers on the Region to impose monitoring requirements in NPDES permits, it does not strike us as unreasonable that the Region has decided to include new monitoring requirements in the reissued permit.")

The EAB has affirmed the Agency's authority to require the preparation and submission of a plan as part of the Operation & Maintenance requirements of an NPDES permit. *In Re City of Moscow, Idaho*, 10 E.A.D. 135, 169-172 (EAB 2001) (affirming O&M permit provision that required development and submission of a quality assurance project plan, "[t]he primary purpose of [which] shall be to assist in planning for the collection and analysis of samples in support of the permit..."³² under the O&M regulations, stating "it seems plain that the CWA and its implementing regulations authorize the Region to include permit requirements like the QAPP here in conjunction with the ultimate goal of assuring compliance with the CWA."). Like the O&M planning requirement in *Moscow*, the primary purpose of the Adaptation Plan in this permit is to assist in planning for compliance with the permit – in this instance, by ensuring the facility remains operable even during flooding or other major storm events – and the ultimate goal of the requirement is to assure compliance with the CWA.

40 C.F.R. § 122.41(d) also authorizes EPA to impose the Adaptation Plan requirement. ("Duty to mitigate. The Permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.") It is a reasonable step for EPA to require a Permittee to create an Adaptation Plan to minimize facility disruptions during major storm and flood events. For example, if a Permittee identifies that an asset critical to its WWTS is extremely vulnerable to a major storm and that loss of the asset would result in the inoperability of the WWTS and thus discharges in violation of permit limits, then mitigating those risks reasonably minimizes or prevents harmful discharges in violation of the permit.

EPA also has broad authority for data and information collection, reporting, and "such other requirements as [the delegated permit authority] deems appropriate" to carry out the objectives of the Act." CWA § 402(a)(2). *See also In re Moscow*, 10 E.A.D. at 171. Components 1 and 2 of the Adaptation Plan require the Permittee to collect and report to EPA data and information that are appropriate to carry out the objectives of the CWA. This information and data will allow the Permittee to identify assets which are vulnerable to flooding and adaptive measures appropriate to address those vulnerabilities. As described elsewhere in this Appendix, facility vulnerabilities threaten compliance with permit requirements and thus CWA objectives.

³² NPDES Permit issued to City of Moscow, Idaho, Part I.E (March 12, 1999) (available at: <https://www2.deq.idaho.gov/admin/LEIA/api/document/download/15509>)

Conversely, information about appropriate adaptive measures will facilitate compliance with both.

EPA notes that although the CWA limits the terms of NPDES permits to five years, CWA § 402(b)(1)(B), such a limitation does not logically constrain the permitting authority from requiring the Permittee to consider future conditions beyond the five-year term. EPA expects Permittees to fully comply with the Adaptation Plan provision within the five-year term of the permit, meaning it does not impose any obligations on the Permittee beyond the five-year permit term. One directly relevant example for WWTSS are Combined Sewer Overflow Long-Term Control Plans (LTCPs). The CSO Policy, 59 Fed. Reg. 18688 (April 19, 1994), which Congress expressly incorporated directly into the CWA at § 402(q), requires the development of LTCPs to ultimately come into compliance with the Act, recognizing that such schedules will (and have) in many instances span multiple permit terms. That Congress directly amended the CWA to require compliance with the CSO Policy, including its long-term permitting approaches, demonstrates that the Act does not constrain permitting authorities from considering timeframes outside of the five-year permit term. Another example of permissible permit timeframes that extend beyond the five-year permit term are compliance schedules, which may go beyond the expiration date of the permit if consistent with applicable state law. *See In Re Moscow*, 10 E.A.D. at 153 (“...a Region’s authority to provide for compliance schedules in EPA-issued permits is limited to those circumstances in which the State’s water quality standards or its implementing regulations ‘can be fairly construed as authorizing a schedule of compliance.’”) (citations omitted). The WWTSS Adaptation Plan reasonably also requires *consideration* of long-term horizons as the planning and actions needed to address increasing major storms and flood events will be in many instances long-term as well.

Further, EPA does not consider the expected life or design life the appropriate recurrence interval to evaluate future risks. Namely, while a particular facility can be designed initially for an expected period of operation and the design storm at a given point in time, material changes often occur over time to operate and maintain a facility, thus extending its design life, and with the impacts of increased severity and frequency of major storm and flood events, the original design storm may no longer represent likely discharge conditions. EPA asserts that a forward-looking evaluation of the risks to a facility relative to its current operational state is important to selection and implementation of the control measures necessary to minimize discharges that result from impacts of major storm and flood events.

EPA acknowledges that there are many possible approaches and that there are other programs that require resiliency planning. However, because adaptation planning is a critical step in complying with the permit’s effluent limitations, EPA has determined that it is appropriate to include the Adaptation Plan requirements in the permit itself even if similar requirements also derive from other obligations. Major storm and flood events are of urgent concern, and EPA does not believe it would be sufficient to rely entirely on non-Permit obligations to address these threats to the proper operation and maintenance of WWTSS and/or sewer systems, especially because not all Permittees may otherwise be obligated to engage in adaptation planning, or may not be required to do so at this time. EPA has determined that planning for major storm and flood events must be done by all facilities now to avoid negative impacts. In

recognition of the fact that Permittees may complete similar assessments to satisfy other obligations, the permit allows the Permittee to use qualifying assessments done for other programs or obligations to satisfy some or all of the components of the Adaptation Plan requirements. EPA considers its approach to be appropriate and reasonable to ensure consistent operation and maintenance of permitted facilities. Therefore, EPA will require Adaptation Plans be developed under NPDES permits for all wastewater treatment plants in Massachusetts and New Hampshire.

Appendix D

EPA REGION 1 NPDES PERMITTING APPROACH FOR PUBLICLY OWNED TREATMENT WORKS THAT INCLUDE MUNICIPAL SATELLITE SEWAGE COLLECTION SYSTEMS

This regional interpretative statement provides notice to the public of EPA Region 1's interpretation of the Clean Water Act ("CWA" or "Act") and implementing regulations, and advises the public of relevant policy considerations, regarding the applicability of the National Pollutant Discharge Elimination System ("NPDES") program to publicly owned treatment works ("POTWs") that include municipal satellite sewage collection systems ("regionally integrated POTWs"). When issuing NPDES permits to these types of sanitary sewer systems, it is EPA Region 1's practice to include and regulate the owners/operators of the municipal satellite collection systems through a co-permitting structure. This interpretative statement is intended to explain, generally, the basis for this practice. EPA Region 1's decision in any particular case will be made by applying the law and regulations on the basis of specific facts when permits are issued.

EPA has set out a national policy goal for the nation's sanitary sewer systems to adhere to strict design and operational standards:

"Proper [operation and maintenance] of the nation's sewers is integral to ensuring that wastewater is collected, transported, and treated at POTWs; and to reducing the volume and frequency of ...[sanitary sewer overflow] discharges. Municipal owners and operators of sewer systems and wastewater treatment facilities need to manage their assets effectively and implement new controls, where necessary, as this infrastructure continues to age. Innovative responses from all levels of government and consumers are needed to close the gap."¹¹

Because ownership/operation of a regionally integrated POTW is divided among multiple parties, the owner/operator of the treatment plant many times lacks the means to implement comprehensive, system-wide operation and maintenance ("O&M") procedures. Failure to properly implement O&M measures in a POTW can cause, among other things, excessive extraneous flow (*i.e.*, inflow and infiltration) to enter, strain and occasionally overload treatment system capacity. This failure not only impedes EPA's national policy goal concerning preservation of the nation's wastewater infrastructure assets, but also frustrates achievement of the water quality- and technology-based requirements of CWA § 301 to the extent it results in sanitary sewer overflows and degraded treatment plant performance, with adverse impacts on human health and the environment.

In light of these policy objectives and legal requirements, it is EPA Region 1's permitting practice to subject all portions of the POTW to NPDES requirements in order to ensure that the treatment system as a whole is properly operated and maintained and that human health and

¹ See *Report to Congress: Impacts and Control of CSOs and SSOs* (EPA 833-R-04-001) (2004), at p. 10-2. See also "1989 National CSO Control Strategy," 54 Fed. Reg. 37371 (September 8, 1989).

water quality impacts resulting from excessive extraneous flow are minimized. The approach of addressing O&M concerns in a regionally integrated treatment works by adding municipal satellite collection systems as co-permittees is consistent with the definition of “publicly owned treatment works,” which by definition includes sewage collection systems. Under this approach, the POTW in its entirety is subject to NPDES regulation as a point source discharger under the Act. This entails imposition of permitting requirements applicable to the POTW treatment plant along with a more limited set of conditions applicable to the connected municipal satellite collection systems.

The factual and legal basis for the Region’s position is set forth in greater detail in *Attachment A*.

Attachment A

ANALYSIS SUPPORTING EPA REGION 1 NPDES PERMITTING APPROACH FOR PUBLICLY OWNED TREATMENT WORKS THAT INCLUDE MUNICIPAL SATELLITE SEWAGE COLLECTION SYSTEMS

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|------------------|--|
| <i>Exhibit A</i> | List of regional centralized POTW treatment plants and municipal satellite collection systems subject to the co-permittee policy |
| <i>Exhibit B</i> | Analysis of extraneous flow trends for representative systems |
| <i>Exhibit C</i> | Form of Regional Administrator's waiver of permit application requirements for municipal satellite collection systems |

Introduction

On May 28, 2010, the U.S. EPA Environmental Appeals Board ("Board") issued a decision remanding to the Region certain NPDES permit provisions that included and regulated satellite collection systems as co-permittees. *See In re Upper Blackstone Water Pollution Abatement District*, NPDES Appeal Nos. 08-11 to 08-18 & 09-06, 14 E.A.D. __ (*Order Denying Review in Part and Remanding in Part*, EAB, May 28, 2010).² While the Board "did not pass judgment" on the Region's position that its NPDES jurisdiction encompassed the entire POTW and not only the treatment plant, it held that "where the Region has abandoned its historical practice of limiting the permit only to the legal entity owning and operating the wastewater treatment plant, the Region had not sufficiently articulated in the record of this proceeding the statutory, regulatory, and factual bases for expanding the scope of NPDES authority beyond the treatment plant owner/operator to separately owned/operated collection systems that do not discharge directly to waters of the United States, but instead that discharge to the treatment plant." *Id.*, *slip op.* at 2, 18. In the event the Region decided to include and regulate municipal satellite collection systems as co-permittees in a future permit, the Board posed several questions for the Region to address in the analysis supporting its decision:

- (1) Is the scope of NPDES authority limited to owners/operators of the treatment plant, or does the authority extend to owners/operators of the municipal satellite collection systems that comprise the wider POTW?
- (2) If the latter, how far up the collection system does NPDES jurisdiction reach, *i.e.*, where does the "collection system" end and the "user" begin?
- (3) Do municipal satellite collection systems "discharge [] a pollutant" within the meaning of the statute and regulations?

² The decision is available on the Board's website via the following link:
http://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/30b93f139d3788908525706c005185b4/34e841c87f346d94852577360068976f!OpenDocument.

(4) Are municipal satellite collection systems “indirect dischargers” and thus excluded from NPDES permitting requirements?

(5) Is the Region’s rationale for regulating municipal satellite collection systems as co-permittees consistent with the references to “municipality” in the regulatory definition of POTW, and the definition’s statement that “[t]he term also means the municipality...which has jurisdiction over the Indirect Discharges to and the discharges from such a treatment works”?

(6) Is the Region’s rationale consistent with the permit application and signatory requirements under NPDES regulations?

See *Blackstone*, *slip op.* at 18, 20, n. 17.

This regional interpretative statement is, in part, a response to the Board’s decision. It details the legal and policy bases for regulating as co-permittees publicly owned treatment works (“POTWs”) that include municipal satellite collection systems. Region 1’s analysis is divided into five sections. First, the Region provides context for the co-permitting approach by briefly describing the health and environmental impacts associated with poorly maintained sanitary sewer systems. Second, the Region outlines its evolving permitting practice regarding regionally integrated POTWs, particularly its attempts to ensure that such entity’s municipal satellite collection systems are properly maintained and operated. Third, the Region explains the legal authority to include municipal satellite collection systems as co-permittees when permitting regionally integrated POTWs. In this section, the Region answers the questions posed by the Board in the order presented above. Fourth, the Region sets forth the basis for the specific conditions to which the municipal satellite collection systems are subject as co-permittees. Finally, the Region discusses other considerations informing its decision to employ a co-permittee structure when permitting regionally integrated POTWs.

I. Background

A sanitary sewer system (SSS) is a wastewater collection system owned by a state or municipality that is designed to collect and convey only sanitary wastewater (domestic sewage from homes as well as industrial and commercial wastewater).³ The purpose of these systems is to transport wastewater uninterrupted from its source to a treatment facility. Developed areas that are served by sanitary sewers often also have a separate storm sewer system (*e.g.*, storm drains) that collects and conveys runoff, street wash waters and drainage and discharges them directly to a receiving water (*i.e.*, without treatment at a POTW). While sanitary sewers are not designed to collect large amounts of runoff from precipitation events or provide widespread drainage, they typically are built with some allowance for higher flows that occur

³ A combined sewer, on the other hand, is a type of sewer system that collects and conveys sanitary sewage and stormwater runoff in a single-pipe system to a POTW treatment plant. See *generally* Report to Congress: Impacts and Control of CSOs and SSOs (EPA 833-R-04-001) (2004), from which EPA Region 1 has drawn this background material.

during periods of high groundwater and storm events. They are thus able to handle minor and controllable amounts of extraneous flow (*i.e.*, inflow and infiltration, or I/I) that enter the system. Inflow generally refers to water other than wastewater—typically precipitation like rain or snowmelt—that enters a sewer system through a direct connection to the sewer. Infiltration generally refers to other water that enters a sewer system from the ground, for example through defects in the sewer.

Municipal sanitary sewer collection systems can consist of a widespread network of pipes and associated components (*e.g.*, pump stations). These systems provide wastewater collection service to the community in which they are located. In some situations, the municipality that owns the collector sewers may not provide treatment of wastewater, but only conveys its wastewater to a collection system that is owned and operated by a different municipal entity (such as a regional sewer district). This is known as a satellite community. A “satellite” community is a sewage collection system owner/operator that does not have ownership of the treatment facility and a specific or identified point of discharge but rather the responsibility to collect and convey the community’s wastewater to a POTW treatment plant for treatment. *See* 75 Fed. Reg. 30395, 30400 (June 1, 2010).

Municipal sanitary sewer collection systems play a critical role in protecting human health and the environment. Proper operation and maintenance of sanitary sewer collection systems is integral to ensuring that wastewater is collected, transported, and treated at POTW treatment plants. Through effective operation and maintenance, collection system operators can maintain the capacity of the collection system; reduce the occurrence of temporary problem situations such as blockages; protect the structural integrity and capacity of the system; anticipate potential problems and take preventive measures; and indirectly improve treatment plant performance by minimizing deterioration due to I/I-related hydraulic overloading.

Despite their critical role in the nation’s infrastructure, many collection systems exhibit poor performance and are subjected to flows that exceed system capacity. Untreated or partially treated overflows from a sanitary sewer system are termed “sanitary sewer overflows” (SSOs). SSOs include releases from sanitary sewers that reach waters of the United States as well as those that back up into buildings and flow out of manholes into city streets.

There are many underlying reasons for the poor performance of collection systems. Much of the nation’s sanitary sewer infrastructure is old, and aging infrastructure has deteriorated with time. Communities also sometimes fail to provide capacity to accommodate increased sewage delivery and treatment demand from increasing populations. Furthermore, institutional arrangements relating to the operation of sewers can pose barriers to coordinated action, because many municipal sanitary sewer collection systems are not entirely owned or operated by a single municipal entity.

The performance and efficiency of municipal collection systems influence the performance of sewage treatment plants. When the structural integrity of a sanitary sewer collection system deteriorates, large quantities of infiltration (including rainfall-induced infiltration) and inflow can enter the collection system, causing it to overflow. These extraneous flows are among the

most serious and widespread operational challenges confronting treatment works.⁴

Infiltration can be long-term seepage of water into a sewer system from the water table. In some systems, however, the flow characteristics of infiltration can resemble those of inflow, *i.e.*, there is a rapid increase in flow during and immediately after a rainfall event, due, for example, to rapidly rising groundwater. This phenomenon is sometimes referred to as rainfall-induced infiltration.

Sanitary sewer systems can also overflow during periods of normal dry weather flows. Many sewer system failures are attributable to natural aging processes or poor operation and maintenance. Examples include years of wear and tear on system equipment such as pumps, lift stations, check valves, and other moveable parts that can lead to mechanical or electrical failure; freeze/thaw cycles, groundwater flow, and subsurface seismic activity that can result in pipe movement, warping, brittleness, misalignment, and breakage; and deterioration of pipes and joints due to root intrusion or other blockages.

Inflow and infiltration impacts are often regional in nature. Satellite collection systems in the communities farthest from the POTW treatment plant can cause sanitary sewer overflows (“SSOs”) in communities between them and the treatment plant by using up capacity in the interceptors. This can cause SSOs in the interceptors themselves or in the municipal sanitary sewers that lead to them. The implication of this is that corrective solutions often must also be regional in scope to be effective.

The health and environmental risks attributed to SSOs vary depending on a number of factors including location and season (potential for public exposure), frequency, volume, the amount and type of pollutants present in the discharge, and the uses, conditions, and characteristics of the receiving waters. The most immediate health risks associated with SSOs to waters and other areas with a potential for human contact are associated with exposure to bacteria, viruses, and other pathogens.

Human health impacts occur when people become ill due to contact with water or ingestion of water or shellfish that have been contaminated by SSO discharges. In addition, sanitary sewer systems can back up into buildings, including private residences. These discharges provide a direct pathway for human contact with untreated wastewater. Exposure to land-based SSOs typically occurs through the skin via direct contact. The resulting diseases are often similar to those associated with exposure through drinking water and swimming (*e.g.*, gastroenteritis), but may also include illness caused by inhaling microbial pathogens. In addition to pathogens, raw sewage may contain metals, synthetic chemicals, nutrients, pesticides, and oils, which also can be detrimental to the health of humans and wildlife.

⁴ In a 1989 Water Pollution Control Federation survey, 1,003 POTWs identified facility performance problems. Infiltration and inflow was the most frequently cited problem, with 85 percent of the facilities reporting I/I as a problem. I/I was cited as a major problem by 41 percent of the facilities (32 percent as a periodic problem).

II. EPA Region 1 Past Practice of Permitting POTWs that Include Municipal Satellite Collection Systems

EPA Region 1's practice in permitting regionally integrated POTWs has developed in tandem with its increasing focus on addressing I/I in sewer collection systems, in response to the concerns outlined above. Up to the early 1990s, POTW permits issued by Region 1 generally did not include specific requirements for collection systems. When I/I and the related issue of SSOs became a focus of concern both nationally and within the region in the mid-1990s, Region 1 began adding general requirements to POTW permits that required the permittees to "eliminate excessive infiltration and inflow" and provide an annual "summary report" of activities to reduce I/I. As the Region gathered more information and gained more experience in assessing these reports and activities, it began to include more detailed requirements and reporting provisions in these permits.

MassDEP also engaged in a parallel effort to address I/I, culminating in 2001 with the issuance of MassDEP Policy No. BRP01-1, "Interim Infiltration and Inflow Policy." Among other provisions, this policy established a set of standard NPDES permit conditions for POTWs that included development of an I/I control plan (including funding sources, identification and prioritization of problem areas, and public education programs) and detailed annual reporting requirements (including mapping, reporting of expenditures and I/I flow calculations). Since September 2001, these requirements have been the basis for the standard operation and maintenance conditions related to I/I.

Regional treatment plants presented special issues as I/I requirements became more specific, as it is generally the member communities, rather than the regional sewer district, that own the collection systems that are the primary source of I/I. Before the focus on I/I, POTW permits did not contain specific requirements related to the collection system component of POTWs. Therefore, when issuing NPDES permits to authorize discharges from regionally integrated treatment POTWs, EPA Region 1 had generally only included the legal entity owning and/or operating the regionally centralized wastewater treatment plant. As the permit conditions were focused on the treatment plant itself, this was sufficient to ensure that EPA had authority to enforce the permit requirements.

In implementing the I/I conditions, Region 1 initially sought to maintain the same structure, placing the responsibility on the regional sewer district to require I/I activities by the contributing systems and to collect the necessary information from those systems for submittal to EPA. MassDEP's 2001 Interim I/I Policy reflected this approach, containing a condition for regional systems:

((FOR REGIONAL FACILITIES ONLY)) The permittee shall require, through appropriate agreements, that all member communities develop and implement infiltration and inflow control plans sufficient to ensure that high flows do not cause or contribute to a violation of the permittees effluent limitations, or cause overflows from the permittees collection system.

As existing NPDES permittees, the POTW treatment plants were an obvious locus of regulation. The Region assumed the plants would be in a position to leverage preexisting legal and/or contractual relationships with the satellite collection systems they serve to perform a coordinating function, and that utilizing this existing structure would be more efficient than establishing a new system of direct reporting to EPA by the collection system owners. The Region also believed that the owner/operator of the POTW treatment plant would have an incentive to reduce flow from contributing satellite systems because doing so would improve treatment plant performance and reduce operation costs. While relying on this cooperative approach, however, EPA Region 1 also asserted that it had the authority to require that POTW collection systems be included as NPDES permittees and that it would do so if it proved necessary. Indeed, in 2001 Region 1 acceded to Massachusetts Water Resources Authority's ("MWRA") request that the contributing systems to the MWRA Clinton wastewater treatment plant ("WWTP") be included as co-permittees, based on evidence provided by MWRA that its specific relationship with those communities would not permit it to run an effective I/I reduction program for these collection systems. EPA Region 1 also put satellite collection systems on notice that they would be directly regulated through legally enforceable permit requirements if I/I reductions were not pursued or achieved.

In time, the Region realized that its failure to assert direct jurisdiction over municipal satellite dischargers was becoming untenable in the face of mounting evidence that cooperative (or in some cases non-existent) efforts on the part of the POTW treatment plant and associated satellites were failing to comprehensively address the problem of extraneous flow entering the POTW. The ability and/or willingness of regional sewer districts to attain meaningful I/I efforts in their member communities varied widely. The indirect structure of the requirements also tended to make it difficult for EPA to enforce the implementation of meaningful I/I reduction programs.

It became evident to EPA Region 1 that a POTW's ability to comply with CWA requirements depended on successful operation and maintenance of not only the treatment plant but also the collection system. For example, the absence of effective I/I reduction and operation/maintenance programs was impeding the Region's ability to prevent or mitigate the human health and water quality impacts associated with SSOs. Additionally, these excess flows stressed POTW treatment plants from a hydraulic capacity and performance standpoint, adversely impacting effluent quality. *See Exhibit B* (Analysis of extraneous flow trends for representative systems). Addressing these issues in regional systems was essential, as these include most of the largest systems in terms of flow, population served and area covered, and serve the largest population centers.

The Region's practice of imposing NPDES permit conditions on the municipal collection systems in addition to the treatment plant owner/operator represents a necessary and logical progression in its continuing effort to effectively address the serious problem of I/I in sewer collection systems.⁵ In light of its past permitting experience and the need to effectively address

⁵ Although EPA Region 1 has in the past issued NPDES permits only to the legal entities owning and operating the wastewater

the problem of extraneous flow on a system-wide basis, Region 1 decided that it was necessary to refashion permits issued to regionally integrated POTWs to encompass all owners/operators of the treatment works (*i.e.*, the regional centralized POTW treatment plant and the municipal satellite collection systems).⁶ Specifically, Region 1 determined that the satellite systems should be subject as co-permittees to a limited set of O&M-related conditions on permits issued for discharges from regionally integrated treatment works. These conditions pertain only to the portions of the POTW collection system that the satellites own. This ensures maintenance and pollution control programs are implemented with respect to all portions of the POTW. Accordingly, since 2005, Region 1 has generally included municipal satellite collection systems as co-permittees for limited purposes, in addition to the owner/operator of the treatment plant as the main permittee subject to the full array of NPDES requirements, including secondary treatment and water-quality based effluent limitations. The Region has identified 36 permits issued by the Region to POTWs in New Hampshire and Massachusetts that include municipal satellite collection systems as co-permittees. *See Exhibit A*. The 36 permits include a total of 81 satellite collection systems as co-permittees.

III. Legal Authority

The Region's prior and now superseded practice of limiting the permit only to the legal entity owning and/or operating the wastewater treatment plant had never been announced as a regional policy or interpretation. Similarly, the Region's practice of imposing NPDES permit conditions on the municipal collection systems in addition to the treatment plant owner/operator has also never been expressly announced as a uniform, region-wide policy or interpretation. Upon consideration of the Board's decision, described above, EPA Region 1 has decided to supply a clearer, more detailed explanation regarding its use of a co-permittee structure when issuing NPDES permits to regionally integrated POTWs. In this section, the Region addresses the questions posed by the Board in the *Upper Blackstone* decision referenced above.

(1) Is the scope of NPDES authority limited to owners/operators of the treatment plant, or does the authority extend to owners/operators of the municipal satellite collection systems that comprise the wider POTW?

The scope of NPDES authority extends beyond the owners/operators of the treatment plant to include to owners/operators of portions of the wider POTW, for the reasons discussed below.

The CWA prohibits the "discharge of any pollutant by any person" from any point source to

treatment plant (*i.e.*, only a portion of the "treatment works"), the Region's reframing of permits to include municipal satellite collection systems does not represent a break or reversal from its historical legal position. EPA Region 1 has never taken the legal position that the satellite collection systems are beyond the reach of the CWA and the NPDES permitting program. Rather, the Region as a matter of discretion had merely never determined it necessary to exercise its statutory authority to directly reach these facilities in order to carry out its NPDES permitting obligations under the Act.

⁶ EPA has "considerable flexibility in framing the permit to achieve a desired reduction in pollutant discharges." *Natural Resources Defense Council, Inc. v. Costle*, 568 F.2d 1369, 1380 (D.C.Cir.1977). ("[T]his ambitious statute is not hospitable to the concept that the appropriate response to a difficult pollution problem is not to try at all.").

waters of the United States, except, *inter alia*, in compliance with an NPDES permit issued by EPA or an authorized state pursuant to Section 402 of the CWA. CWA § 301, 402(a)(1); 40 C.F.R. § 122.1(b). Where there is a discharge of pollutants, NPDES regulations require the “operator” of the discharging “facility or activity” to obtain a permit in circumstances where the operator is different from the owner. *Id.* § 122.21(b). “Owner or operator” is defined as “the owner or operator of any ‘facility or activity’ subject to regulation under the NPDES program,” and a “facility or activity” is “any NPDES ‘point source’ or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES program.” *Id.* § 122.2.

“Publicly owned treatment works” are facilities subject to the NPDES program. Statutorily, POTWs as a class must meet performance-based requirements based on available wastewater treatment technology. *See* CWA § 402(a)(1) (“[t]he Administrator may...issue a permit for the discharge of any pollutant....upon condition that such discharge will meet (A) all applicable requirements under [section 301]...”); § 301(b)(1)(B) (“In order to carry out the objective of this chapter there shall be achieved...for publicly owned treatment works in existence on July 1, 1977...effluent limitations based upon secondary treatment[.]”); *see also* 40 C.F.R. pt 133. In addition to secondary treatment requirements, POTWs are also subject to water quality-based effluent limits if necessary to achieve applicable state water quality standards. *See* CWA § 301(b)(1)(C). *See also* 40 C.F.R. § 122.44(a)(1) (“...each NPDES permit shall include...[t]echnology-based effluent limitations based on: effluent limitations and standards published under section 301 of the Act”) and (d)(1) (same for water quality standards and state requirements). NPDES regulations similarly identify the “POTW” as the entity subject to regulation. *See* 40 C.F.R. § 122.21(a), (requiring “new and existing POTWs” to submit information required in 122.21(j),” which in turn requires “all POTWs,” among others, to provide permit application information).

A municipal satellite collection system is part of a POTW under applicable law. The CWA and its implementing regulations broadly define “POTW” to include not only wastewater treatment plants but also the sewer systems and associated equipment that collect wastewater and convey it to the plants. Under NPDES regulations at 40 C.F.R. §§ 122.2 and 403.3(q), the term “Publicly Owned Treatment Works” or “POTW” means “a treatment works as defined by section 212 of the Act, which is owned by a State or municipality (as defined by section 502(4) of the Act).” Under section 212 of the Act,

“(2)(A) The term ‘treatment works’ means any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature to implement section 1281 of this title, or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, *sewage collection systems* [emphasis added], pumping, power, and other equipment, and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process (including land used for the storage of treated

wastewater in land treatment systems prior to land application) or is used for ultimate disposal of residues resulting from such treatment.

(B) In addition to the definition contained in subparagraph (A) of this paragraph, ‘treatment works’ means any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water runoff, or industrial waste, including waste in combined storm water and *sanitary sewer systems* [emphasis added]. Any application for construction grants which includes wholly or in part such methods or systems shall, in accordance with guidelines published by the Administrator pursuant to subparagraph (C) of this paragraph, contain adequate data and analysis demonstrating such proposal to be, over the life of such works, the most cost efficient alternative to comply with sections 1311 or 1312 of this title, or the requirements of section 1281 of this title.”

Under the NPDES program regulations, this definition has been interpreted as follows:

“The term *Publicly Owned Treatment Works* or *POTW* [emphasis in original]...includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plant. The term also means the municipality as defined in section 502(4) of the Act, which has jurisdiction over the Indirect Discharges to and the discharges from such a treatment works.”

See 40 C.F.R. § 122.2, cross-referencing 403.3(q).

The statutory and regulatory definitions plainly encompass both the POTW treatment plant and municipal satellite collection systems. Municipal satellite collection systems are part of a POTW by definition (*i.e.*, they are “sewage collection systems” under section 212(A) and “sanitary sewer systems” under section 212(B)). They are also conveyances that send wastewater to a POTW treatment plant for treatment under 40 C.F.R. 403.3(q)). The preamble to the rule that created the regulatory definition of POTW supports the reading that the treatment plant comprises only a portion of the POTW. See 44 Fed. Reg. 62260, 62261 (Oct. 29, 1979).⁷

Consistent with EPA Region 1’s interpretation, courts have similarly taken a broad reading of the terms treatment works and POTW.⁸

⁷ “A new provision...defining the term ‘POTW Treatment Plant’ has been added to avoid an ambiguity that now exists whenever a reference is made to a POTW (publicly owned treatment works). ...[T]he existing regulation defines a POTW to include both the treatment plant and the sewer pipes and other conveyances leading to it. As a result, it is unclear whether a particular reference is to the pipes, the treatment plant, or both. The term “POTW treatment plant” will be used to designate that portion of the municipal system which is actually designed to provide treatment to the wastes received by the municipal system.”

⁸ See, *e.g.*, *United States v. Borowski*, 977 F.2d 27, 30 n.5 (1st Cir. 1992) (“We read this language [POTW definition] to refer to such sewers, pipes and other conveyances that are publicly owned. Here, for example, the City of Burlington’s sewer is

(2) *If the latter, how far up the collection system does NPDES jurisdiction reach, i.e., where does the “collection system” end and the “user” begin?*

NPDES jurisdiction extends beyond the treatment plant to the outer boundary of the municipally-owned sewage collection systems, which are defined as sewers whose purpose is to be a common carrier of wastewater for others to a POTW treatment plant for treatment, as explained below.

As discussed in response to Question 1 above, the term “treatment works” is defined to include “sewage collection systems.” CWA § 212. In order to define the extent of the sewage collection system for purposes of co-permittee regulation—*i.e.*, to identify the boundary between the portions of the collection system that are subject to NPDES requirements and those that are not—Region 1 is relying on EPA’s regulatory interpretation of the term “sewage collection system.” In relevant part, EPA regulations define “sewage collection system” at 40 C.F.R. § 35.905 as:

“each, and all, of the common lateral sewers, within a publicly owned treatment system, which are primarily installed to receive waste waters directly from facilities which convey waste water from individual structures or from private property and which include service connection “Y” fittings designed for connection with those facilities. The facilities which convey waste water from individual structures, from private property to the public lateral sewer, or its equivalent, are specifically excluded from the definition....”

Put otherwise, a municipal satellite collection system is subject to NPDES jurisdiction under the Region’s approach insofar as its purpose is to be a common carrier of wastewater for others to a POTW treatment plant for treatment. The use of this primary purpose test (*i.e.*, common sewer installed as a recipient and carrier waste water from others) allows Region 1 to draw a principled, predictable and readily ascertainable boundary between the POTW’s collection system and user. This test would exclude, for example, branch drainpipes that collect and transport wastewater from fixtures in a commercial building or public school to the common lateral sewer. This type of infrastructure would not be considered part of the collection system, because it is not designed to be a common recipient and carrier of wastewaters from other users. Rather, it is designed to transport its users’ wastewater to such a common collection system at a point further down the sanitary sewer system.

EPA’s reliance on the definition of “sewage collection system” from outside the NPDES

included in the definition because it conveys waste water to the Massachusetts Water Resource Authority’s treatment works.”); *Shanty Town Assoc. v. Env’tl. Prot. Agency*, 843 F.2d 782, 785 (4th Cir. 1988) (“As defined in the statute, a ‘treatment work’ need not be a building or facility, but can be any device, system, or other method for treating, recycling, reclaiming, preventing, or reducing liquid municipal sewage and industrial waste, including storm water runoff.”) (citation omitted); *Comm. for Consideration Jones Fall Sewage System v. Train*, 375 F. Supp. 1148, 1150-51 (D. Md. 1974) (holding that NPDES wastewater discharge permit coverage for a wastewater treatment plant also encompasses the associated sanitary sewer system and pump stations under § 1292 definition of “treatment work”).

regulations for interpretative guidance is reasonable as the construction grants regulations at 40

C.F.R. Part 35, subpart E pertain to grants for POTWs, the entity that is the subject of this NPDES policy. Additionally, the term “sewage collection systems” expressly appears in the definition of treatment works under section 212 of the Act as noted above. Finally, this approach is also consistent with EPA’s interpretation in other contexts, such as the SSO listening session notice, published in the Federal Register on June 1, 2010, which describes wastewater collection systems as those that “collect domestic sewage and other wastewater from homes and other buildings and convey it to wastewater sewage treatment plants for proper treatment and disposal.” See “Municipal Sanitary Sewer Collection Systems, Municipal Satellite Collection Systems, Sanitary Sewer Overflows, and Peak Wet Weather Discharges From Publicly Owned Treatment Works Treatment Plants Serving Separate Sanitary Sewer Collection Systems,” 75 Fed. Reg. 30395.⁹

(3) Do municipal satellite collection systems “discharge [] a pollutant” within the meaning of the statute and regulations?

Yes, because they are a part of the POTW, municipal satellite collection systems discharge pollutants to waters of the United States through one or more outfalls (point sources).

The “discharge of a pollutant,” triggers the need for a facility to obtain an NPDES permit. A POTW “discharges [] pollutant[s]” if it adds pollutants from a point source to waters of the U.S. (See 40 C.F.R. § 122.2, section (a) of the definition of “discharge of a pollutant.”) As explained above, municipal satellite collection systems are part of the POTW. The entire POTW is the entity that discharges pollutants to waters of the U.S. through point source outfalls typically located at the treatment plant but also occasionally through other outfalls within the overall system. The fact that a collection system may be located in the upstream portions of the POTW and not necessarily near the ultimate discharge point at the treatment plant is not material to the question of whether it “discharges” a pollutant and consequently may be subject to conditions of an NPDES permit issued for discharges from the POTW.¹⁰

“Discharge of a pollutant” at 40 C.F.R. § 122.2 is also defined to include “... discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person *which do not lead to a treatment works.*”(emphasis added). Some municipal collection systems have argued that this sentence means that only municipal discharges that do not lead to a “treatment plant” fall within the scope of “discharge of a pollutant.” They further argue that because discharges through satellite collection systems do lead to a treatment plant, such systems do not “discharge [] pollutant[s]” and therefore are not subject to the NPDES permit

⁹ That EPA has in the past looked for guidance from Part 35 when construing the NPDES permitting program, for instance, in the context of storm water permitting, provides further support to the Region that its practice in this regard is sound. See, e.g., “National Pollutant Discharge Elimination System Permit Application Regulations for Storm Water Discharges,” 55 Fed. Reg. 47990, 47955 (looking to the definition of “storm sewer” at 40 C.F.R. § 35.2005(b)(47) when defining “storm water” under the NPDES program).

¹⁰ This position differs from that taken by the Region in the *Upper Blackstone* litigation. There, the Region argued that the treatment plant was the sole discharging entity for regulatory purposes. The Region has revised this view upon further consideration of the statute, regulations and case law and determined that the POTW as a whole is the discharging entity.

requirements. This argument is flawed in that it incorrectly equates “treatment works,” the term used in the definition above, with “treatment plant.” To interpret “treatment works” as it appears in the regulatory definition of “discharge of a pollutant” as consisting of only the POTW treatment plant would be inconsistent with the definition of “treatment works” at 40 C.F.R. § 403.3(q), which expressly includes the collection system. *See also* § 403.3(r) (defining “POTW Treatment Plant” as “*that portion* [emphasis added] of the POTW which is designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial waste”).

(4) Are municipal satellite collection systems “indirect dischargers” and thus excluded from NPDES permitting requirements?

No, municipal satellite collection systems are part of the POTW, not “indirect dischargers” to the POTW.

Section 307(b) of the Act requires EPA to establish regulatory pretreatment requirements to prevent the “introduction of pollutants into treatment works” that interfere, pass through or are otherwise incompatible with such works. Section 307 is implemented through the General Pretreatment Regulations for Existing and New Sources of Pollution (40 C.F.R. Part 403) and categorical pretreatment standards (40 C.F.R. Parts 405-471). Section 403.3(i) defines “indirect discharger” as “any non-domestic” source that introduces pollutants into a POTW and is regulated under pretreatment standards pursuant to CWA § 307(b)-(d). The source of an indirect discharge is termed an “industrial user.” *Id.* at § 403.3(j). Under regulations governing the NPDES permitting program, the term “indirect discharger” is defined as “a non-domestic discharger introducing ‘pollutants’ to a ‘publicly owned treatment works.’” 40 C.F.R. § 122.2. Indirect dischargers are excluded from NPDES permit requirements by the indirect discharger rule at 40 C.F.R. § 122.3(c), which provides, “The following discharges do not require an NPDES permit: . . . The introduction of sewage, industrial wastes or other pollutants into publicly owned treatment works by indirect dischargers.”

Municipal satellite collection satellite systems are not indirect dischargers as that term is defined under part 122 or 403 regulations. Unlike indirect dischargers, municipal satellite collection systems are not “introducing pollutants” to POTWs under 40 C.F.R. § 122.2; they are, instead, part of the POTW by definition. Similarly, they are not a non-domestic *source* that introduces pollutants into a POTW within the meaning of § 403.3(j), but as part of the POTW collect and convey municipal sewage from industrial, commercial and domestic users of the POTW.

The Region’s determination that municipal satellite collection systems are not indirect dischargers is, additionally, consistent with the regulatory history of the term indirect discharger.

The 1979 revision of the part 122 regulations defined “indirect discharger” as “a non-municipal, non-domestic discharger introducing pollutants to a publicly owned treatment works, which introduction does not constitute a ‘discharge of pollutants’...” See National Pollutant Discharge Elimination System, 44 Fed. Reg. 32854, 32901 (June 7, 1979). The term “non-municipal” was removed in the Consolidated Permit Regulations, 45 Fed. Reg. 33290, 33421 (May 19, 1980) (defining “indirect discharger” as “a nondomestic discharger...”). Although the change was not explained in detail, the substantive intent behind this provision remained the same. EPA characterized the revision as “minor wording changes.” 45 Fed. Reg. at 33346 (Table VII: “Relationship of June 7[, 1979] Part 122 to Today’s Regulations”). The central point again is that under any past or present regulatory incarnation, municipal satellite collection systems, as POTWs, are not within the definition of “indirect discharger,” which is limited to dischargers that introduce pollutants to POTWs.

The position that municipal satellite collection systems are part of, rather than discharge to, the POTW also is consistent with EPA guidance. EPA’s 1994 Multijurisdictional Pretreatment Programs Guidance Manual, (EPA 833-B94-005) (June 1994), at p. 19, asserts that EPA has the authority to require municipal satellite collection systems to develop pretreatment programs by virtue of their being part of the POTW.

(5) How is the Region’s rationale consistent with the references to “municipality” in the regulatory definition of POTW found at 40 C.F.R. § 403.3(q), and the definition’s statement that “[t]he term also means the municipality....which has jurisdiction over the Indirect Discharges to and the discharges from such a treatment works?”

There is no inconsistency between the Region’s view that municipally-owned satellite collection systems are part of a POTW, and the references to municipality in 40 C.F.R. § 403.3(q), including the final sentence of the regulatory definition of POTW in the pretreatment regulations.

The Region’s co-permitting rationale is consistent with the first part of the pretreatment program’s regulatory definition of POTW, because the Region is only asserting NPDES jurisdiction over satellite collection systems that are owned by a “State or municipality (as defined by section 502(4) of the Act).” The term “municipality” as defined in CWA § 502(4) “means a city, town, borough, county, parish, district, association, or other public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes...” Thus, in order to qualify under this definition, a wastewater collection system need only be “owned by a State or municipality.” There is no requirement that the constituent components of a regionally integrated POTW, *i.e.*, the collection system and regional centralized POTW treatment plant, be owned by the same State or municipal entity.

Furthermore, there is no inconsistency between the Region’s view that a satellite collection system is part of a POTW, and the final sentence of the regulatory definition of POTW in the pretreatment regulations. As noted above, the sentence provides that “POTW” may “also” mean a municipality which has jurisdiction over indirect discharges to and discharges from the treatment works. This is not a limitation because of the use of the word “also” (contrast this

with the “only if” language in the preceding sentence of the regulatory definition).

(6) How does the Region’s rationale comport with the permit application and signatory requirements under NPDES regulations?

EPA’s authority to require municipal satellite collection systems to separately comply with the permit application requirements, or to provide waivers from these requirements where appropriate, is consistent with NPDES regulations, which provide that all POTWs must submit permit application information set forth in 40 C.F.R. § 122.21(j) unless otherwise directed, and municipal satellite collection systems are part of the POTW.

EPA has the authority to require municipal satellite collection systems to submit permit applications. These entities are operators of parts of the POTW. NPDES regulations characterize the operator “of the POTW” (which by definition includes the sewage collection system) as opposed to the operator “of the POTW treatment plant” as an appropriate applicant. *Id.* § 122.21(a), (requiring applicants for “new and existing POTWs” to submit information required in 122.21(j),” which in turn requires “all POTWs,” among others, to provide permit application information). This reading of the regulation is in keeping with the statutory text, which subjects the POTW writ large to the secondary treatment and water quality-based requirements. See CWA § 301(b)(1)(B), (C). In fact, the NPDES permit application for POTWs solicits information concerning portions of the POTW beyond the treatment plant itself, including the collection system used by the treatment works. See 40 C.F.R. 122.21(j)(1).

Notwithstanding that EPA could require applications for all the municipal satellite collection systems, requiring such applications may result in duplicative or immaterial information. The Regional Administrator (“RA”) may waive any requirement of this paragraph if he or she has access to substantially identical information. 40 C.F.R. § 122.21(j). See *generally*, 64 Fed. Reg. 42440 (August 4, 1999). The RA may also waive any application requirement that is not of material concern for a specific permit. Region 1 believes that it will typically receive information sufficient for NPDES permitting purposes from the POTW treatment plant operator’s application.

In most cases, EPA Region 1 believes that having a single permit application from the POTW treatment plant operator will be more efficient in carrying out the regulation’s intent than multiple applications from the satellite systems. (The treatment plant operator would of course be required to coordinate as necessary with the constituent components of the POTW to ensure that the information provided to EPA is accurate and complete). EPA Region 1 therefore intends to issue waivers to exempt municipal satellite collection systems from permit application and signatory requirements in accordance with 40 C.F.R. § 122.21(j). To the extent the Region requires additional information, it intends to use its information collection authority under CWA § 308.

IV. Basis for the Specific Conditions to which the Municipal Satellite Collection Systems are Subject as Co-permittees

The legal authority for extending NPDES conditions to all portions of the municipally-owned treatment works to ensure proper operation and maintenance and to reduce the quantity of extraneous flow into the POTW is Section 402(a) of the CWA. This section of the Act authorizes EPA to issue a permit for the “discharge of pollutants” and to prescribe permit conditions as necessary to carry out the provisions of the CWA, including Section 301 of the Act. Among other things, Section 301 requires POTWs to meet performance-based requirements based on secondary treatment technology, as well as any more stringent requirements of State law or regulation, including water quality standards. See CWA § 301(b)(1)(B),(C).

The co-permittee requirements are required to assure continued achievement of secondary treatment requirements and water quality standards in accordance with sections 301 and 402 of the Act and to prevent unauthorized discharges of sewage from collection systems. With respect to secondary treatment, the inclusion of the satellite systems as co-permittees is necessary because high levels of I/I dilute the strength of influent wastewater and increase the hydraulic load on treatment plants, which can reduce treatment efficiency (*e.g.*, result in violations of technology-based percent removal limitations for BOD and TSS due to less concentrated influent, or violation of other technology effluent limitations due to reduction in treatment efficiency), lead to bypassing a portion of the treatment process, or in extreme situations make biological treatment facilities inoperable (*e.g.*, wash out the biological organisms that treat the waste).

As to water quality standards, the addition of the satellite systems as co-permittees is necessary to ensure collection system operation and maintenance, which will reduce extraneous flow entering the system and free up available capacity. This will facilitate compliance with water quality-based effluent limitations—made more difficult by reductions in treatment efficiency and also reduce water quality standard violations that result from the occurrence of SSOs. See *Exhibits B* (Municipal satellite collection systems with SSOs) and *C* (Analysis of extraneous flow trends for representative systems). SSOs that reach waters of the U.S. are discharges in violation of section 301(a) of the CWA to the extent not authorized by an NPDES permit.

Subjecting portions of an NPDES-regulated entity upstream of the ultimate discharge point is consistent with EPA’s interpretation of the CWA in other contexts. For example, it is well established that EPA has the ability to apply discharge limitations and monitoring requirements to internal process discharges, rather than to outfalls, on the grounds that compliance with permit limitations “may well involve controls applied at points other than the ultimate point of discharge.” See *Decision of the General Counsel No. 27 (In re Inland Steel Company)*, August 4, 1975 (“Limitations upon internal process discharges are proper, if such discharges would ultimately be discharged into waters of the United States, and if such limitations are necessary to carry out the principal regulatory provisions of the Act.”). In the case of regionally integrated POTWs, placing conditions on satellite collection systems—though located farther up the

system than the point of discharge—is a logical implication of the regulations and serves to effectuate the statute.

Without imposing conditions on the satellite communities, standard permit conditions applicable to all NPDES permits by regulation cannot be given full effect. To illustrate, there is no dispute that the operator of the POTW treatment plant and outfall is discharging pollutants within the meaning the CWA and, accordingly, is subject to the NPDES permit program. NPDES permitting regulations require standard conditions that “apply to all NPDES permits,” pursuant to 40 C.F.R. § 122.41, including a duty to mitigate and 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.” *Id.* at § 122.41(d), (e). EPA regulations also require additional conditions applicable to specified categories of NPDES permit, including “Publicly owned treatment works.” *See id.* at § 122.42(b). A municipal satellite collection system, as demonstrated above, falls within the regulatory definition of a POTW. In light of EPA’s authority to require appropriate operation and maintenance of collection systems necessary to achieve compliance with an NPDES permit, and because the operator of the POTW treatment plant may not own or operate a significant portion of the wider treatment works (*i.e.*, the collection systems that send flow to the POTW treatment plant), it is appropriate, and in some cases necessary, to extend pertinent, mandated standard conditions to all portions of the POTW, which is subject to regulation in its entirety.

The alternative of allowing state and local jurisdictional boundaries to place significant portions of the POTW beyond the reach of the NPDES permitting program would not only be inconsistent with the broad statutory and regulatory definition of the term POTW but would impede Region 1 from carrying out the objectives of the CWA. It would also, illogically, preclude the Region from imposing on POTWs standard conditions EPA has by regulation mandated for those entities.

Other Considerations Informing EPA Region 1’s Decision to Use a Co-permittee Permitting Structure for Regionally Integrated POTWs

In addition to consulting the relevant statutes, regulations, and preambles, Region 1 also considered other EPA guidance in coming to its determination to employ a co-permittee structure for regionally integrated POTWs. EPA’s 1994 Multijurisdictional Pretreatment Programs Guidance Manual, p. 19, asserts that EPA has the authority to include municipal satellite collection systems as co-permittees by virtue of their being part of the POTW:

If the contributing jurisdiction owns or operates the collection system within its boundaries, then it is a co-owner or operator of the POTW. As such, it can be included on the POTW’s NPDES permit and be required to develop a pretreatment program. Contributing jurisdictions should be made co-permittees where circumstances or experience indicate that it is necessary to ensure adequate pretreatment program implementation.

The same logic that led EPA to conclude it had authority to require municipal satellite collection systems to develop a pretreatment program pursuant to an NPDES permit supports EPA Region 1's decision to impose permit conditions on such facilities to undertake proper O & M and to reduce inflow and infiltration.

EPA Region 1 also took notice of federal listening session materials on the June 2010 proposed SSO rule and associated model permits and fact sheet. The position articulated by EPA in these model documents—specifically the application of standard NPDES conditions to municipal satellite collection systems—generally conform to Region 1's co-permitting approach.

Finally, in addition to federal requirements, EPA Region 1 considered the co-permittee approach in light of state regulations and policy pertaining to wastewater treatment works. The Region found its approach to be consistent with such requirements. Under Massachusetts law, "Any person operating treatment works shall maintain the facilities in a manner that will ensure proper operation of the facilities or any part thereof," where "treatment works" is defined as "any and all devices, processes and properties, real or personal, used in the collection, pumping, transmission, storage, treatment, disposal, recycling, reclamation or reuse of waterborne pollutants, but not including any works receiving a hazardous waste from off the site of the works for the purpose of treatment, storage or disposal, or industrial wastewater holding tanks regulated under 314 CMR 18.00" See 314 CMR 12.00 ("Operation and Maintenance and Pretreatment Standards for Wastewater Treatment Works and Indirect Dischargers"). MassDEP has also prioritized this area, issuing detailed operation and maintenance guidelines entitled "Optimizing Operation, Maintenance and Rehabilitation of Sanitary Sewer Collection Systems."

Exhibit A

Permit Number	Permittee	Co-permittees	Issue Date with Co-permittees
MA0100404	Massachusetts Water Resources Authority – Clinton	Town of Clinton Lancaster Sewer District	September 27, 2000
MA0101010	City of Brockton	Town of Abington Town of Whitman	May 11, 2005
MA0100412	Westborough Wastewater Treatment Plant	Town of Westborough Town of Shrewsbury Town of Hopkinton	May 20, 2005
MA0100480	City of Marlborough	Town of Northborough	May 26, 2005
MA0100447	Greater Lawrence Sanitary District	City of Lawrence, Town of Andover, Town of North Andover, Town of Methuen, Town of Salem, NH	August 11, 2005
MA0100633	Lowell Regional Wastewater Utilities	Town of Chelmsford, Town of Dracut Town of Tewksbury Town of Tyngsborough	September 1, 2005
MA0100064	Pepperell Wastewater Treatment Plant	Town of Groton	December 22, 2005
MA0100439	Town of Webster Sewer Department	Town of Dudley	March 24, 2006
MA0100455	Town of South Hadley, Board of Selectmen	Town of Granby, Town of Chicopee	June 12, 2006
MA0100617	City of Leominster (NPDES Permit No. MA0100617)	Town of Lunenburg Town of Lancaster	September 28, 2006
MA0100510	Hoosac Water Quality District	Town of Williamstown Town of North Adams Town of Clarksburg	September 28, 2006
MA0101036	Board of Public Works, North Attleborough	Town of Plainville	January 4, 2007
NH0100544	Town of Sunapee	New London Sewer Commission	February 21, 2007
MA0100552	Lynn Water and Sewer Commission (NPDES Permit No. MA0100552)	Town of Nahant Town of Swampscott Town of Saugus	March 3, 2007

Permit Number	Permittee	Co-permittees	Issue Date with Co-permittees
NH0100331	City of Concord	Boscawen Board of Selectmen	June 29, 2007
NH0100790	City of Keene (NPDES Permit No. NH0100790)	Town of Marlborough, NH Swanzey Sewer Commission	August 24, 2007
NH0100625	Town of Hampton	Rye Sewer Commission	August 28, 2007
NH0100161	Town of Merrimack, NH	Town of Bedford	September 25, 2007
MA0101621	City of Haverhill	Town of Groveland	December 5, 2007
MA0101681	City of Pittsfield, Department of Public Works	Town of Dalton Town of Lenox Town of Hinsdale Town of Lanesborough Town of Richmond	August 22, 2008
NH0100447	City of Manchester	Town of Goffstown Town of Bedford Town of Londonderry	September 25, 2008
MA0100781	City of New Bedford	Town of Acushnet Town of Dartmouth	September 28, 2008
MA0101818	City of Northhampton	Town of Williamsburg	September 30, 2008
NH0100960	Winnepesaukee River Basin Program Wastewater Treatment Plant	Town of Belmont Town of Center Harbor City of Franklin Town of Gilford City of Laconia Town of Meredith Town of Northfield Town of Tilton	June 19, 2009
MA0101800	City of Westfield	Town of Southwick	September 30, 2009
MA0101231	Hull Permanent Sewer Commission	Cohasset Sewer Commission Hingham Sewer Commission	September 1, 2009
MA0100994	Gardner Department of Public Works	Town of Ashburnham	September 30, 2009
MA0102598	Charles River Pollution Control District	Town of Franklin Town of Medway Town of Millis Town of Bellingham	July 23, 2014

Permit Number	Permittee	Co-permittees	Issue Date with Co-permittees
MA0101702	MFN Region Wastewater District	Town of Mansfield Town of Norton Town of Foxboro	September 11, 2014
MA0100897	Taunton Wastewater Treatment Plant	Town of Raynham Town of Dighton	April 10, 2015
NH0100366	City of Lebanon, NH	Town of Enfield	September 30, 2015
NH0100099	Town of Hanover, NH	City of Lebanon	November 18, 2015
MA0100501	South Essex Sewerage District	City of Beverly, Town of Danvers Town of Marblehead City of Peabody City of Salem	May 5, 2016
NH0100471	Town of Milford, NH	Town of Wilton Sewer Commission	August 31, 2020
MA0101613	Springfield Regional Wastewater Treatment Facility	Town of Agawam Town of East Longmeadow Town of Longmeadow Town of Ludlow Town of West Springfield Town of Wilbraham	September 30, 2020
NH0101390	Town of Allenstown, NH	Town of Pembroke Sewer Commission	November 29, 2021
NH0100901	Town of Concord - Concord Hall Street Wastewater Treatment Facility	Town of Bow	July 1, 2022
MAG590000	2022 Medium Wastewater Treatment Facilities General Permit	(as authorized)	September 28, 2022

Exhibit B

I/I Flow Analysis for Sample Regional Publicly Owned Treatment Works

I. Representative POTWS

The **South Essex Sewer District (SESD)** is a regional POTW with a treatment plant in Salem, Massachusetts. The SESD serves a total population of 174,931 in six communities: Beverly, Danvers, Marblehead, Middleton, Peabody and Salem. The **Charles River Pollution Control District (CRPCD)** is a regional POTW with a treatment plant in Medway, Massachusetts. The CRPCD serves a total population of approximately 28,000 in four communities: Bellingham, Franklin, Medway and Millis. Both of these facilities have been operating since 2001 under permits that place requirements on the treatment plant to implement I/I reduction programs with the satellite collection systems, in contrast to Region 1's current practice of including the satellite collection systems as co-permittees.

II. Comparison of flows to standards for nonexcessive infiltration and I/I

Flow data from the facilities' discharge monitoring reports (DMRs) are shown in comparison to the EPA standard for nonexcessive infiltration/inflow (I/I) of 275 gpcd wet weather flow and the EPA standard for nonexcessive infiltration of 120 gallons per capita per day (gpcd) dry weather flow; the standards are multiplied by population served for comparison with total flow from the facility. See *I/I Analysis and Project Certification*, EPA Ecol. Pub. 97-03 (1985); 40 CFR 35.2005(b)(28) and (29).

Figures 1 and 2 show the Daily Maximum Flows (the highest flow recorded in a particular month) for the CRPCD and SESD, respectively, along with monthly precipitation data from nearby weather stations. Both facilities experience wet weather flows far exceeding the standard for nonexcessive I/I, particularly in wet months, indicating that these facilities are receiving high levels of inflow and wet weather infiltration.

Figure 1. CRPCD Daily Maximum Flow Compared to Nonexcessive I/I Standard

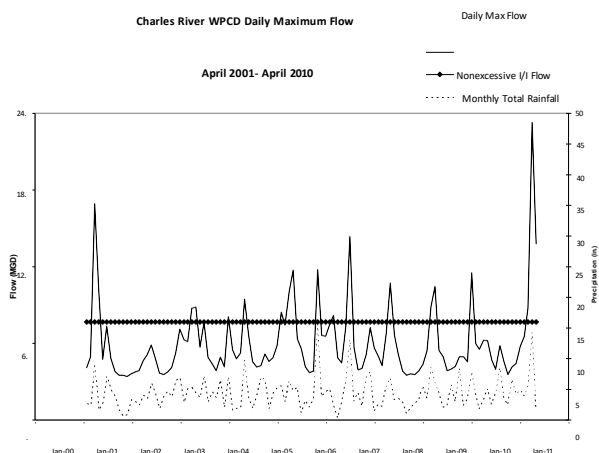
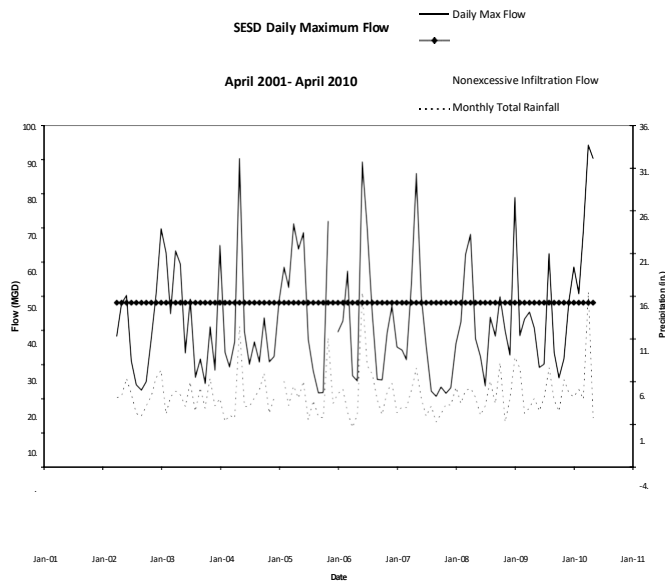


Figure 2. SESD Daily Maximum Flow Compared to Nonexcessive I/I Standard



Figures 3 and 4 shows the Average Monthly Flows for the CRPCD and SESD, which exceed the nonexcessive infiltration standard for all but the driest months. This indicates that these systems experience high levels of groundwater infiltration into the system even during dry weather.

Figure 3. CRPCD Monthly Average Flow Compared to Nonexcessive Infiltration Standard

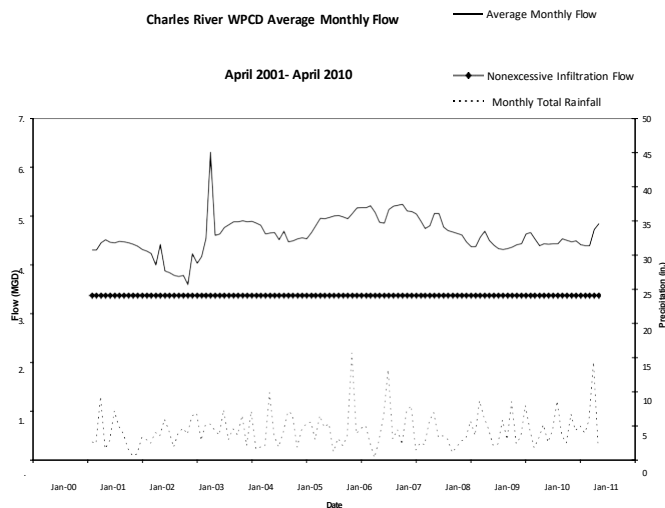
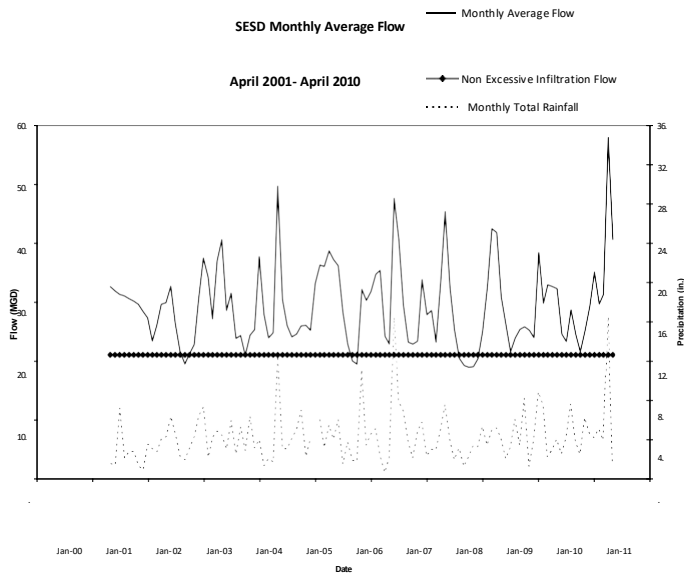


Figure 4. SESD Monthly Average Flow Compared to Nonexcessive Infiltration Standard



II. Flow Trends

Figures 5 and 6 show the trend in Maximum Daily Flows over the period during which these regional facilities have been responsible for implementing cooperative I/I reduction programs with the satellite collection systems. The Maximum Daily Flow reflects the highest wet weather flow for each month. The trend over this time period has been of increasing Maximum Daily Flow, indicating that I/I has not been reduced in either system despite the permit requirements.

Figure 5. CRPCD Daily Maximum Flow Trend

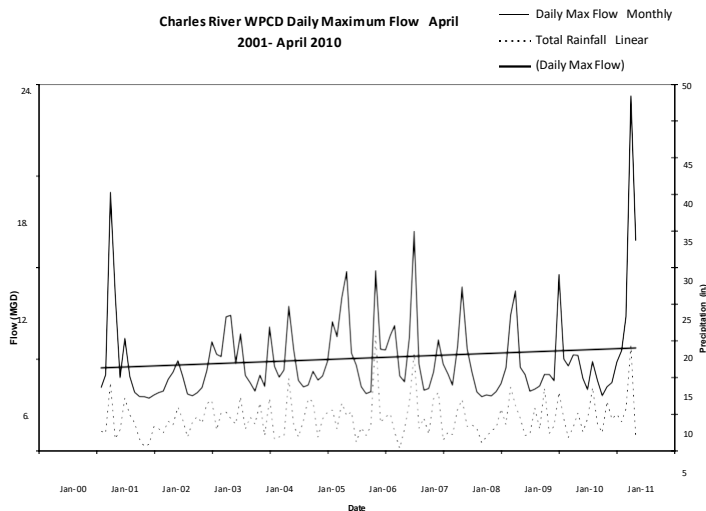
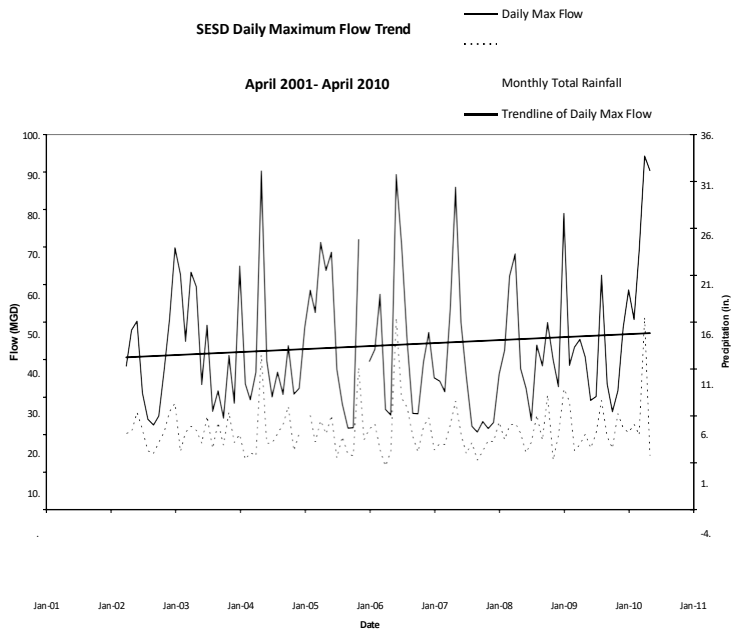


Figure 6. SESD Daily Maximum Flow Trend



III. Violations Associated with Wet Weather Flows

Both the CRPCD and SESD have experienced permit violations that appear to be related to I/I, based on their occurrence during wet weather months when excessive I/I standards are exceeded. Figure 7 shows violations of CRPCD's effluent limits for CBOD (concentration) and TSS (concentration and percent removal). Twelve of the sixteen violations occurred during months when daily maximum flows exceeded the EPA standard.

Figure 7. CRPCD CBOD and TSS Effluent Limit Violations

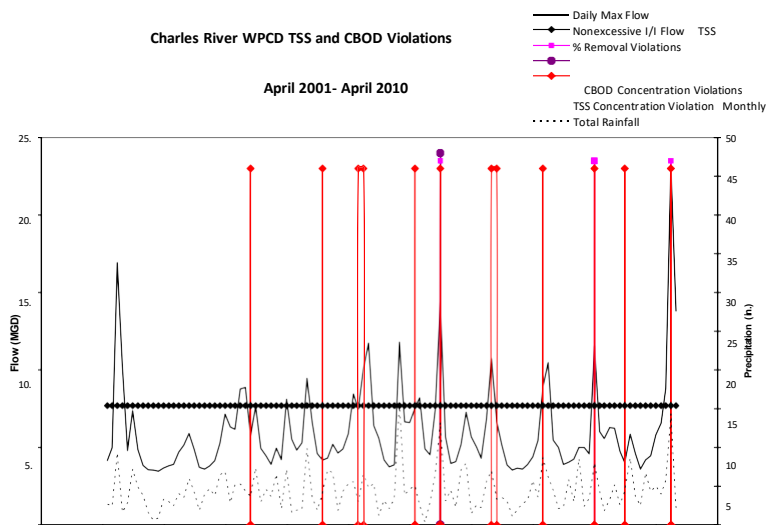
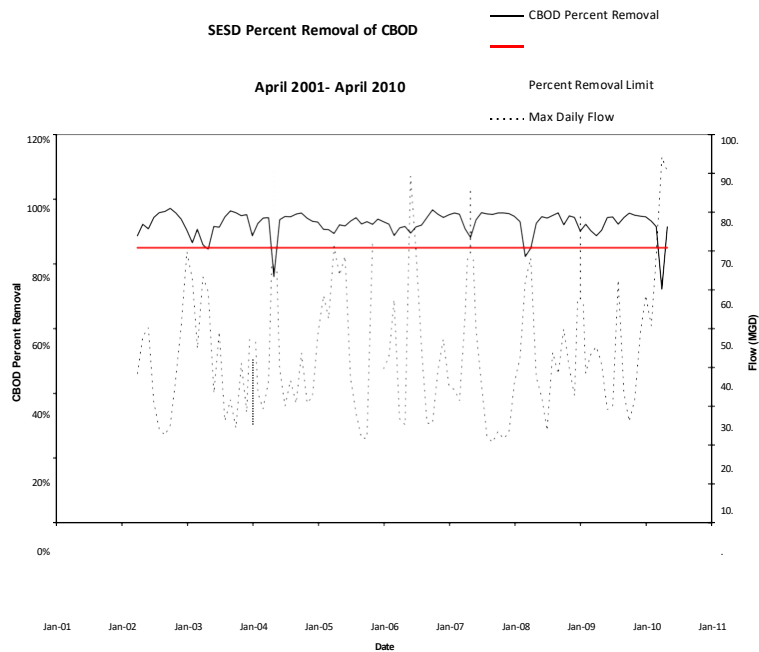


Figure 8 shows SESD’s results for removal of CBOD, in percentage, as compared to maximum daily flow. SESD had three permit violations where CBOD removal fell below 85%, all during months with high Maximum Daily Flows.

Figure 8. SESD CBOD Percent Removal



In addition, both of these regional POTWs have experienced SSOs within the municipal satellite collection systems. In the SESD system, Beverly, Danvers, Marblehead and Peabody have reported SSOs between 2006 and 2008, based on data provided by MassDEP. In the CRPCD system, both Franklin and Bellingham have reported SSOs between 2006 and 2009.

Exhibit C

Form of Regional Administrator's waiver of permit application requirements for municipal satellite collection systems



REGION 1

BOSTON, MA 02109

Re: Waiver of Permit Application and Signatory Requirements for [Municipal Satellite Sewage Collection System]

Dear _____:

Under NPDES regulations, all POTWs must submit permit application information set forth in 40 C.F.R. § 122.21(j) unless otherwise directed. Where the Region has “access to substantially identical information,” the Regional Administrator may waive permit application requirements for new and existing POTWs. *Id.* Pursuant to my authority under this regulation, I am waiving NPDES permit application and signatory requirements applicable to the above-named municipal satellite collection systems.

Although EPA has the authority to require municipal satellite collection systems to submit individual permit applications, in this case I find that requiring a single permit application executed by the regional POTW treatment plant owner/operator will deliver “substantially identical information,” and will be more efficient, than requiring separate applications from each municipal satellite collection system owner/operator. Municipal satellite collection system owners/operators are expected to consult and coordinate with the regional POTW treatment plant operators to ensure that any information provided to EPA about their respective entities is accurate and complete. In the event that EPA requires additional information, it may use its information collection authority under CWA § 308. 33 U.S.C. § 1318.

This notice reflects my determination based on the specific facts and circumstances in this case. It is not intended to bind the agency in future determinations where a separate permit for municipal satellites would not be duplicative or immaterial.

If you have any questions or would like to discuss this decision, please contact [EPA Permit Contact] at <mailto:permit.writer@epa.gov> or 617-918-XXXX.

Sincerely,

Regional Administrator

APPENDIX E: LIST FOR POLLUTANT SCANS

	NPDES Permit Number	Facility Name	Outfall Number
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EFFLUENT PARAMETERS FOR POTWS

Pollutant	Maximum Daily Discharge		Average Daily Discharge			Analytical Method ¹	ML or MDL (include units)
	Value	Units	Value	Units	Number of Samples		
Ammonia (as N)							☐ ML ☐ MDL
Chlorine (total residual, TRC) ²							☐ ML ☐ MDL
Dissolved oxygen							☐ ML ☐ MDL
Nitrate/nitrite							☐ ML ☐ MDL
Kjeldahl nitrogen							☐ ML ☐ MDL
Oil and grease							☐ ML ☐ MDL
Phosphorus							☐ ML ☐ MDL
Total dissolved solids							☐ ML ☐ MDL

¹ Sampling shall be conducted according to sufficiently sensitive test procedures (i.e., methods) approved under 40 CFR 136 for the analysis of pollutants or pollutant parameters or required under 40 CFR Chapter I, Subchapter N or O. See 40 CFR 122.21(e)(3).

² Facilities that do not use chlorine for disinfection, do not use chlorine elsewhere in the treatment process, and have no reasonable potential to discharge chlorine in their effluent are not required to report data for chlorine.

	NPDES Permit Number	Facility Name	Outfall Number
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EFFLUENT PARAMETERS FOR POTWS

Pollutant	Maximum Daily Discharge		Average Daily Discharge			Analytical Method ¹	ML or MDL (include units)
	Value	Units	Value	Units	Number of Samples		
Metals, Cyanide, and Total Phenols							
Hardness (as CaCO ₃)							☐ ML ☐ MDL
Antimony, total recoverable							☐ ML ☐ MDL
Arsenic, total recoverable							☐ ML ☐ MDL
Beryllium, total recoverable							☐ ML ☐ MDL
Cadmium, total recoverable							☐ ML ☐ MDL
Chromium, total recoverable							☐ ML ☐ MDL
Copper, total recoverable							☐ ML ☐ MDL
Lead, total recoverable							☐ ML ☐ MDL
Mercury, total recoverable							☐ ML ☐ MDL
Nickel, total recoverable							☐ ML ☐ MDL
Selenium, total recoverable							☐ ML ☐ MDL
Silver, total recoverable							☐ ML ☐ MDL
Thallium, total recoverable							☐ ML ☐ MDL
Zinc, total recoverable							☐ ML ☐ MDL
Cyanide							☐ ML ☐ MDL
Total phenolic compounds							☐ ML ☐ MDL
Volatile Organic Compounds							
Acrolein							☐ ML ☐ MDL
Acrylonitrile							☐ ML ☐ MDL
Benzene							☐ ML ☐ MDL
Bromoform							☐ ML ☐ MDL

	NPDES Permit Number	Facility Name	Outfall Number
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EFFLUENT PARAMETERS FOR POTWS

Pollutant	Maximum Daily Discharge		Average Daily Discharge			Analytical Method ¹	ML or MDL (include units)
	Value	Units	Value	Units	Number of Samples		
Carbon tetrachloride							☐ ML ☐ MDL
Chlorobenzene							☐ ML ☐ MDL
Chlorodibromomethane							☐ ML ☐ MDL
Chloroethane							☐ ML ☐ MDL
2-chloroethylvinyl ether							☐ ML ☐ MDL
Chloroform							☐ ML ☐ MDL
Dichlorobromomethane							☐ ML ☐ MDL
1,1-dichloroethane							☐ ML ☐ MDL
1,2-dichloroethane							☐ ML ☐ MDL
trans-1,2-dichloroethylene							☐ ML ☐ MDL
1,1-dichloroethylene							☐ ML ☐ MDL
1,2-dichloropropane							☐ ML ☐ MDL
1,3-dichloropropylene							☐ ML ☐ MDL
Ethylbenzene							☐ ML ☐ MDL
Methyl bromide							☐ ML ☐ MDL
Methyl chloride							☐ ML ☐ MDL
Methylene chloride							☐ ML ☐ MDL
1,1,2,2-tetrachloroethane							☐ ML ☐ MDL
Tetrachloroethylene							☐ ML ☐ MDL
Toluene							☐ ML ☐ MDL
1,1,1-trichloroethane							☐ ML ☐ MDL
1,1,2-trichloroethane							☐ ML ☐ MDL

	NPDES Permit Number	Facility Name	Outfall Number
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EFFLUENT PARAMETERS FOR POTWS

Pollutant	Maximum Daily Discharge		Average Daily Discharge			Analytical Method ¹	ML or MDL (include units)
	Value	Units	Value	Units	Number of Samples		
Trichloroethylene							☐ ML ☐ MDL
Vinyl chloride							☐ ML ☐ MDL
Acid-Extractable Compounds							
p-chloro-m-cresol							☐ ML ☐ MDL
2-chlorophenol							☐ ML ☐ MDL
2,4-dichlorophenol							☐ ML ☐ MDL
2,4-dimethylphenol							☐ ML ☐ MDL
4,6-dinitro-o-cresol							☐ ML ☐ MDL
2,4-dinitrophenol							☐ ML ☐ MDL
2-nitrophenol							☐ ML ☐ MDL
4-nitrophenol							☐ ML ☐ MDL
Pentachlorophenol							☐ ML ☐ MDL
Phenol							☐ ML ☐ MDL
2,4,6-trichlorophenol							☐ ML ☐ MDL
Base-Neutral Compounds							
Acenaphthene							☐ ML ☐ MDL
Acenaphthylene							☐ ML ☐ MDL
Anthracene							☐ ML ☐ MDL
Benzidine							☐ ML ☐ MDL
Benzo(a)anthracene							☐ ML ☐ MDL
Benzo(a)pyrene							☐ ML ☐ MDL
3,4-benzofluoranthene							☐ ML ☐ MDL

	NPDES Permit Number	Facility Name	Outfall Number
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EFFLUENT PARAMETERS FOR POTWS

Pollutant	Maximum Daily Discharge		Average Daily Discharge			Analytical Method ¹	ML or MDL (include units)
	Value	Units	Value	Units	Number of Samples		
Benzo(ghi)perylene							☐ ML ☐ MDL
Benzo(k)fluoranthene							☐ ML ☐ MDL
Bis (2-chloroethoxy) methane							☐ ML ☐ MDL
Bis (2-chloroethyl) ether							☐ ML ☐ MDL
Bis (2-chloroisopropyl) ether							☐ ML ☐ MDL
Bis (2-ethylhexyl) phthalate							☐ ML ☐ MDL
4-bromophenyl phenyl ether							☐ ML ☐ MDL
Butyl benzyl phthalate							☐ ML ☐ MDL
2-chloronaphthalene							☐ ML ☐ MDL
4-chlorophenyl phenyl ether							☐ ML ☐ MDL
Chrysene							☐ ML ☐ MDL
di-n-butyl phthalate							☐ ML ☐ MDL
di-n-octyl phthalate							☐ ML ☐ MDL
Dibenzo(a,h)anthracene							☐ ML ☐ MDL
1,2-dichlorobenzene							☐ ML ☐ MDL
1,3-dichlorobenzene							☐ ML ☐ MDL
1,4-dichlorobenzene							☐ ML ☐ MDL
3,3-dichlorobenzidine							☐ ML ☐ MDL
Diethyl phthalate							☐ ML ☐ MDL
Dimethyl phthalate							☐ ML ☐ MDL
2,4-dinitrotoluene							☐ ML ☐ MDL
2,6-dinitrotoluene							☐ ML ☐ MDL

	NPDES Permit Number	Facility Name	Outfall Number
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EFFLUENT PARAMETERS FOR POTWS

Pollutant	Maximum Daily Discharge		Average Daily Discharge			Analytical Method ¹	ML or MDL (include units)
	Value	Units	Value	Units	Number of Samples		
1,2-diphenylhydrazine							☐ ML ☐ MDL
Fluoranthene							☐ ML ☐ MDL
Fluorene							☐ ML ☐ MDL
Hexachlorobenzene							☐ ML ☐ MDL
Hexachlorobutadiene							☐ ML ☐ MDL
Hexachlorocyclo-pentadiene							☐ ML ☐ MDL
Hexachloroethane							☐ ML ☐ MDL
Indeno(1,2,3-cd)pyrene							☐ ML ☐ MDL
Isophorone							☐ ML ☐ MDL
Naphthalene							☐ ML ☐ MDL
Nitrobenzene							☐ ML ☐ MDL
N-nitrosodi-n-propylamine							☐ ML ☐ MDL
N-nitrosodimethylamine							☐ ML ☐ MDL
N-nitrosodiphenylamine							☐ ML ☐ MDL
Phenanthrene							☐ ML ☐ MDL
Pyrene							☐ ML ☐ MDL
1,2,4-trichlorobenzene							☐ ML ☐ MDL

¹ Sampling shall be conducted according to sufficiently sensitive test procedures (i.e., methods) approved under 40 CFR 136 for the analysis of pollutants or pollutant parameters or required under 40 CFR Chapter I, Subchapter N or O. See 40 CFR 122.21(e)(3).

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY – REGION 1 (EPA)
WATER DIVISION
5 POST OFFICE SQUARE
BOSTON, MASSACHUSETTS 02109

EPA PUBLIC NOTICE OF A DRAFT NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
PERMIT TO DISCHARGE INTO WATERS OF THE UNITED STATES UNDER SECTION 402 OF THE CLEAN WATER
ACT (CWA), AS AMENDED.

PUBLIC NOTICE PERIOD: January 23, 2025 to February 24, 2025

PERMIT NUMBER: MA0100501

NAME AND MAILING ADDRESS OF APPLICANT:

South Essex Sewerage District
P.O. Box 989
Salem, MA 01970

NAMES AND MAILING ADDRESSES OF CO-PERMITTEES:

City of Beverly
c/o City Engineer
Beverly City Hall
191 Cabot Street
Beverly, MA 01915

Town of Danvers
c/o Town Engineer
Public Works Eng. Div.
1 Burroughs Street
Danvers, MA 01923

Town of Marblehead
c/o Superintendent
Water/Sewer Department
P.O. Box 1108
Marblehead, MA 01945

City of Peabody
c/o Mayor
24 Lowell Street
Peabody, MA 01960

City of Salem
c/o City Engineer
120 Washington Street, 4th Fl
Salem, MA 01970

NAME AND ADDRESS OF THE FACILITY WHERE DISCHARGE OCCURS:

South Essex Wastewater Treatment Facility
50 Fort Avenue
Salem, MA 01970

RECEIVING WATER AND CLASSIFICATION:

Salem Sound (Class SB)

PREPARATION OF THE DRAFT PERMIT:

EPA is issuing for public notice and comment the Draft NPDES Permit for the South Essex WWTF, which discharges treated domestic and industrial wastewater. Dewatered biosolids are trucked to for incineration or disposal in a municipal solid waste landfill. The effluent limits and permit conditions have been drafted pursuant to, and assure compliance with, the CWA, including EPA-approved State Surface

Water Quality Standards at 314 CMR 4.00. MassDEP cooperated with EPA in the development of the Draft NPDES Permit. MassDEP retains independent authority under State law to publish for public notice their CWA § 401 certification and a separate state Surface Water Discharge Permit for the discharge, not the subject of this notice, under the Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 26-53.

INFORMATION ABOUT THE DRAFT PERMIT:

The Draft Permit and explanatory Fact Sheet may be obtained at no cost at <https://www.epa.gov/npdes-permits/massachusetts-draft-individual-npdes-permits> or by contacting:

Michele Barden
Telephone: (617) 918-1539
Email: barden.michele@epa.gov

Any electronically available documents that are part of the administrative record can be requested from the EPA contact above.

PUBLIC COMMENT AND REQUESTS FOR PUBLIC HEARINGS:

All persons, including applicants, who believe any condition of this Draft Permit is inappropriate must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by February 24, 2025, which is the close of the public comment period. Comments should be submitted to the EPA contact at the email listed above. If you prefer to submit comments by mail, please call or email the EPA contact above to make arrangements for that. Upon the close of the public comment period, EPA will make all comments available to MassDEP. All commenters who want MassDEP to consider their comments in the state decision-making processes (*i.e.*, the separate state permit and the CWA § 401 certification) must submit such comments to MassDEP during the state comment period for the state Draft Permit and CWA § 401 certification. For information on submitting such comments to MassDEP, please follow the instructions found in the state public notice at: <https://www.mass.gov/service-details/massdep-public-hearings-comment-opportunities>.

Any person, prior to the close of the EPA public comment period, may submit a request in writing to EPA for a public hearing on the Draft Permit under 40 CFR § 124.10. Such requests shall state the nature of the issues proposed to be raised in the hearing. A public hearing may be held if the Regional Administrator finds that response to this notice indicates significant public interest.

In reaching a final decision on this Draft Permit, the Regional Administrator will respond to all significant comments and make the responses available to the public.

FINAL PERMIT DECISION:

Following the close of the comment period, and after a public hearing, if such hearing is held, the Regional Administrator will issue a final permit decision and notify the applicant and each person who has submitted written comments or requested notice.

KEN MORAFF, DIRECTOR
WATER DIVISION
U.S. EPA – REGION 1