



# Advocacy & Accountability

Representing Over 3 Million People in Massachusetts Communities Since 1985

April 25, 2022

## By email

Michele Duspiva  
United States Environmental Protection Agency  
ATTN: Municipal Permits Section  
5 Post Office Square – Suite 100  
Mail Code – 06-1  
Boston, Massachusetts 02109-3912

Re: MWRA Advisory Board's Comments on the Draft NPDES Medium WWTF General Permit for Massachusetts MAG590000, the Accompanying Fact Sheet, and on the Draft Authorization to Discharge MAG590033 for the Clinton Wastewater Treatment Plant

Dear Ms. Duspiva:

The MWRA Advisory Board has initially reviewed the Draft National Pollutant Discharge Elimination System (NPDES) Permit no. MAG590000 for medium wastewater treatment facilities in Massachusetts ("the GP") which was noticed on February 8, 2022, the accompanying Fact Sheet, and the Draft Authorization to Discharge MAG590033 for the Clinton Wastewater Treatment Plant ("CWWTP"), and is providing the following comments in accordance with 40 C.F.R. §124.13.

As a preface, the Advisory Board was created in the same legislation that created the Massachusetts Water Resources Authority (MWRA). Our role is to represent the interests of the communities and their ratepayers.

It is important to understand the history behind the MWRA's ownership of CWWTP. Prior to 1987, responsibility of the operation of this plant was with the Commonwealth of Massachusetts through its Metropolitan District Commission Water Division. The State Legislature, in order to meet federal requirements and ensure federal funding, turned over responsibility for the construction and operation of the existing/new plant to the MWRA. MWRA ratepayers pay for all but \$500,000 of the costs associated with the plant. Moreover, Clinton, which contributes \$0 to the wastewater treatment plant, separately manages, maintains, and controls its own water and wastewater systems. This unique relationship and the financial burden it places upon ratepayers makes any changes in operations or management of the CWWTP of particular interest and concern for the Advisory Board on behalf of its member communities and its ratepayers.



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## **Comments on inclusion of co-permittees in the draft NPDES general permit**

The area of greatest concern to the Advisory Board is the inclusion of co-permittee language in the GP, and its application to the CWWTP. The Advisory Board echoes the MWRA's concerns and arguments that EPA's interpretation of the Clean Water Act (CWA) to include municipal satellite sewage collection systems is erroneous and flawed. Basic common sense can see that neither Clinton nor Lancaster directly discharge to the waters of the United States and, therefore, are not point sources. EPA seems to rely upon the insertion of the word "pipes" in the definition of the term "discharge of pollutant(s)" in Section 33 U.S.C. §1362 of the CWA and 40 C.F.R 122.2 to justify inclusion of municipal satellite sewage collection systems in the GP; however, it conveniently ignores the qualification that such pipes and conveyances "do not lead to" a treatment works. This misread of the CWA makes the inclusion of co-permittees a vast overreach of its authority under the CWA. It appears to be a "back door" method of gaining control and access to regulate municipal satellite sewage collection systems. Should EPA desire this, it should go through the appropriate process and channels: legislative action to specifically grant this authority that is vetted and passed through Congress, which allows for a public process, and not through the inclusion of one word in NPDES permits that relies upon a flawed interpretation of existing legislation.

Beyond the legal argument that the MWRA has advanced challenging this inclusion, there are clearly practical concerns with future implementation of any co-permittee language in any NPDES permit, and its impact upon the relationship between MWRA and its member communities.

The MWRA and its member communities have clearly defined roles and responsibilities as it relates to the treatment and transport of wastewater, combined sewer overflows (CSOs), and sanitary sewer overflows (SSOs). Moreover, the communities fund any of the projects or operations that fall under the purview of the MWRA. This financial relationship is the linchpin of the Advisory Board's authority and role in advocating for community interests and holding the MWRA accountable in the conduct and management of its programs and operations. The Advisory Board has long been concerned that EPA's inclusion of co-permittee language in NPDES permits would be the first step in pushing the MWRA into the active management of local systems on its behalf. In effect, this would make MWRA a regulator and enforcer of its communities rather than responsible and accountable to its communities. EPA currently maintains that it has no interest in doing so; however, the language governing responsibilities of each entity is vague and contains enough "gray area" to allow for unintended future consequences by subsequent interpreters of the permit. The language included in the GP does not sufficiently guard against these concerns.

The MWRA Advisory Board strongly opposes the inclusion of any co-permittee language in the GP and believes all such language should be removed from the final permit.



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## **General comments**

The Advisory Board would also like to voice support for all MWRA's additional comments on the GP; however, we would like to add specific comments on two of their items of concern.

## **Comments on Part II.A. Table 1**

### Phosphorus

As we mentioned before, the Advisory Board's role is to represent the interests of our communities and their ratepayers. One general approach we've advocated for consistently over the years is balancing the costs that will be borne by MWRA communities and the benefits that would be achieved.

As noted earlier in our summary of the history and financial relationship between MWRA and the Town of Clinton, MWRA ratepayers fund all but \$500,000 of the costs to operate and maintain the CWWTP. Increased costs to the CWWTP, therefore, impact our sewer communities and ratepayers and should be limited to only those that are absolutely necessary.

As the MWRA describes in its comments, ambient monitoring for phosphorus at the CWWTP is unnecessary because the waters in which the CWWTP discharges is not impaired for phosphorus. As in all things, the benefits should justify the costs, and this provision does not meet these criteria. The Advisory Board recommends removing this language from the permit.

### Total Nitrogen

Similarly, the GP requires monitoring and reporting of nitrate+nitrite, Total Kjeldahl nitrogen, and reporting of total nitrogen concentration and load, for all permittees. The Advisory Board supports MWRA's recommendation that this requirement be eliminated for permittees who are not discharging into waters designated by the Massachusetts Department of Environmental Protection (MassDEP) as impaired due to nitrogen. The MWRA acknowledges in its comments that while this monitoring would not likely be onerous, it is unsupported by the fact that not all receiving waters have water quality problems due to excessive nitrogen loading. Should MassDEP determine that a water body is impaired by excessive nitrogen loading, the development of a Total Maximum Daily Load (TMDL) would be the appropriate next step. The GP should not include extensive monitoring and reporting simply for the sake of monitoring and reporting, but rather clearly justify the reason for this work to be conducted.



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### Comments on Part III.D. Industrial Pretreatment Program

The Advisory Board concurs with the MWRA's comments on the proposed changes to the pretreatment annual report. Once again, there doesn't appear to be any meaningful benefit, and in the MWRA's case there is a distinct disbenefit for changing the reporting period from fiscal year to calendar year and reducing the amount of time to complete the report. This modification would unnecessarily burden the MWRA's Industrial Pretreatment Program and require additional resources and costs to meet these new requirements. We recommend that the GP language be revised to allow permittees to submit the annual report on their existing schedule.

Sincerely,

A handwritten signature in black ink that reads "Lou Taverna".

Lou Taverna

Chairman, MWRA Advisory Board

cc: Ken Moraff, EPA  
David Boyer, MassDEP  
Claire Golden, MassDEP  
Joe Favaloro, MWRA Advisory Board  
MWRA Advisory Board Executive Committee  
Frederick Laskey, MWRA  
Dave Coppes, MWRA  
Carolyn Francisco-Murphy, MWRA  
Betsy Reilley, MWRA  
Michael J. Ward, Clinton Town Administrator  
Kate Hodges, Lancaster Town Administrator