



April 22, 2024

Massachusetts Department of Environmental Protection
100 Cambridge Street, Suite 900
Boston, MA 02114
Attn: Cathy Coniaris
Via: massdep.publiccommentnpdes@mass.gov

Re: CSO Variances

Dear DEP,

The Massachusetts Water Resource Authority Advisory Board (the Advisory Board) appreciates the opportunity to comment on the *Tentative Determinations to Adopt Variances for Combined Sewer Overflow Discharges to the Lower Charles River/Charles Basin and to the Alewife Brook/Upper Mystic River Basin*, from August 30, 2024, to August 29, 2029 (collectively the “Variances”) put forth by the Massachusetts Department of Environmental Protection (MassDEP). The Advisory Board is generally supportive of the tentative determinations to extend the current variances.

The Advisory Board is statutorily required to represent the interests of the Massachusetts Water Resource Authority (MWRA) ratepayers. It bears noting that these ratepayers have spent close to \$1 billion on implementing the Long-Term Control Plan (LTCP). As a result of this spending, MWRA and its community partners have exceeded the LTCP’s total volume goal of 404 MG, achieving a total treated and untreated CSO volume of 396 MG in 2021. With 10 additional MWRA projects either recently completed or in construction, a further 53 MG reduction in the total CSO volume entering receiving waters is predicted. In the near future this will leave only six CSOs not meeting LTCP goals.

In the U.S. District Court’s May 11, 2023 decision to grant a three-extension of the Schedule Seven milestones relating to the Boston Harbor Case (U.S. v. M.D.C. et al, No.85-0489 MA) these problem CSO’s are characterized as “incurable.” The Honorable Judge Stearns writes in this decision that he “recognize(s), as MWRA posits, that there may come a point of diminishing return at which spending an additional \$100 for a \$1 incremental benefit would make no sense from a public policy view.” This conforms with the Advisory Board’s guiding principle to seek solutions that are environmentally sound and rate-payer equitable.

Our comments are as follows.

A.) Level of Required CSO Control During Variance.

MWRA’s CSO work currently continues under a three-year extension of Schedule 7. A supplement to the 2021 December Final Performance Assessment report will be submitted to the court by December 2024. We request that incorporation of CSO activation frequency and volumes from the Second Stipulation as amended into the Variances be postponed until after the court’s final ruling.





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F.) Updated CSO Control Planning.

The Advisory Board requests that the deadline within provision 5 be modified to be no earlier than July 31, 2026 so as to coincide with the revised deadline for an Updated CSO Control Plan contained within the Court's 2023 decision to extend Schedule Seven. Performing such a study would be extremely expensive and may ultimately be unnecessary, as the determination for reclassification will rely on the results of the recommended plan.

Thank you for your consideration of our comments,

Sincerely,

A handwritten signature in black ink, appearing to read 'Matthew A. Romero'.

Matthew A. Romero
Executive Director, MWRA Advisory Board



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