



Charles River Watershed Association

By Fax and Mail

March 13, 2006

Duane LeVangie
Department of Environmental Protection
One Winter Street
Boston, MA 02108

Re: Draft WMA Permit, Town of Medway

Dear Mr. LeVangie:

Charles River Watershed Association (CRWA) has reviewed the draft Water Management Act (WMA) permit amendment for the Town of Medway, dated March 1, 2006. CRWA appreciates the opportunity to comment on this amendment in advance of it being issued.

Public comment and clear communication can help reduce the conflicts that have arisen with respect to the Department's implementation of the WMA. To this end, we think it would be useful for the Department, Medway and CRWA to meet to discuss the proposed amendment at the parties' earliest convenience. Because Department WMA staff and CRWA's counsel are tied up in administrative hearings March 21-23 and 27-30, we propose scheduling a meeting the morning of March 31st, or March 24 in the afternoon. CRWA's office in Weston may be the most convenient place for all parties to meet.

We have a number of concerns about the amendment. First and foremost, the changes substantially weaken many of the provisions in Medway's existing permit, issued in 2004. For example, while the Town's 2005 Annual Statistical Report (ASR) is not due until March 24, reportedly, Medway is currently meeting the performance standards for unaccounted for water and residential per capita use in its permit. Notwithstanding this, the Department now proposes to rewrite the permit to delay required compliance with these standards until 2008.

Instead of inserting provisions that allow for backsliding on these standards through permit expiration,¹ the Department should hold Medway up as a shining example of what can be

¹ If the Town fails to meet the performance standards in 2008, it is required to formulate compliance plans for achieving compliance with the standards in 2009, as set forth in Appendices A and B. Medway's permit expires on March 1, 2009.

achieved by a dedicated water department. The requirements in Medway's current permit that the Water Department meet the UAW and RGPCD standards in calendar year 2005 should remain.

Similarly, it is our understanding that Medway complied with the streamflow-triggered outdoor watering restrictions in 2005, with default odd-even day restrictions in place and April-September hand-held irrigation when streamflow fell below 0.50 cfs at the Medway gage. Since Medway was able to comply with this, there is no need now to give it until 2007 to choose (Option 1 or 2), implement, and enforce the restrictions.² If in fact, Medway was to elect Option 1 this summer, it would allow sprinkler use two days a week outside the hours of 9 AM and 5 PM, absent a "drought watch." From a management perspective, continuing last year's flow-triggered restrictions,³ or electing the two-day a week option this summer would seem preferable to increased irrigation use this summer, and then having to ratchet residents' use back in 2007. CRWA believes that communities will not find the new restrictions that onerous once they get used to them; this provision hinders that. Special Condition 7 should be changed to require implementation and enforcement of Option 1 or 2 this summer. It should also be noted that nothing in the January 17, 2006 WMA Permitting Policy Guidance provides for a delayed effective date on summer limits on withdrawals.

In our April 16, 2004, letter to the Department on Medway's draft permit, CRWA commented that the cap was set too high and that summertime water conservation should be greater. The Department, which did not change the seasonal cap in the permit, now has removed it completely. While the Department may feel that other conservation measures will result in summertime water savings, it has no data with respect to the efficacy of Option 1, the two times a week sprinkler option. When coupled with the relaxed schedule for meeting the performance standards of 2008, there is every likelihood, that streamflow improvement in the Charles, particularly in the summertime, is at least three years away.

The offset provision has also been completely rewritten. In the current permit, Medway was required to submit "an offset feasibility study and implementation plan and schedule within one year of the date of this permit." To date, Medway has not submitted the feasibility study.⁴

² The Department acknowledged Medway's Water Use Restriction bylaw in its current permit and stated that "Medway is expected to fully implement its Water Use Restriction Bylaw as a condition of this permit."

³ We Continue to believe

Streamflow triggers are the single most important fail safe for protecting rivers and streams when flows are low. Importantly, they also provide a critical link for the public between the need for conservation measures, particularly an effective reduction in lawn watering, and streamflow and habitat protection. Conservation is far more successful when the public understands the rationale for taking action and the streamflow trigger provides this. The second [now Option1], May-September option should be scrapped. It will not preserve the water resource itself, or achieve a balance between competing uses as required by the WMA and its regulations[.]

Letter from CRWA and Conservation Law Foundation to Robert Gollege, September 29, 2005, on revisions to the WMA Policy Guidance.

⁴ It is our understanding that the Department told Medway that it did not have to do the feasibility study in 2005.

While no longer differentiating between the water loss portion of their withdrawal increase above 0.93 mgd,⁵ and instead, specifying 0.93 mgd as the baseline above which increased withdrawals must be offset, the draft amendment does not require Medway to perform an offset feasibility study until the first time its calendar year withdrawals exceed the baseline **beginning in 2008**. Medway then has about a year for approval and completion of the study. It does not have to implement the study until withdrawals again exceed the baseline.⁶ Thus, Medway will not have to implement offsets until at least 2010, well after this permit expires, even if it exceeded its baseline in 2006, 2007, 2008, 2009, and 2010. We believe this change is unwise and unwarranted given the highly stressed condition of the upper watershed. At a minimum, Medway's offset feasibility study should be required as soon as the town exceeds its baseline (*i.e.*, the following calendar year) and it should be required to implement the study forthwith.

Additional comments are:

Special Condition 7

If Medway selects Option 2, Medway is required to notify its customers "as soon as possible" of the restrictions under this provision. The key point here is the need for effective, immediate communication. The phrase "as soon as possible" does not convey this immediacy, will be difficult for the Department to ascertain, and should be changed. If the Department does not modify this language, then we suggest adding language after it limiting it to a certain number of days: "and in any event no more than three days after."

Special Condition 9 Water Conservation Requirements:

- It should be made explicit that the Town is required to begin to implement the minimum water conservation requirements "forthwith" and that the town must be in compliance with the measures on or before permit expiration, unless earlier compliance is specified in the requirements themselves;
- In Table 5, under System Audits and Leaks, #1 the Department should specify the year in which the first full leak detection survey is required. We suggest that if the town has performed one within the last three years that this requirement run three years from that date;
- In Table 5, #4, leaks of three gallons per minute or more are large leaks and should be repaired as soon as possible. To impress on towns the need for immediate action, this

⁵ Previously commenting on the Department's water loss determination for the town's offset, CRWA wrote, "Medway's wastewater is treated at Charles River Pollution Control District (CRPCD) at the downstream end of the town. Public water supply areas that are also sewered lose the supplied water via wastewater transport to CRPCD. About half of the area supplied with public water is also sewered. Additionally, about one-third of the total wastewater sent to CRPCD results from infiltration/inflow (I/I) resulting in a ratio of total wastewater to water supplied of about 1.5."

⁶ Under draft Special Condition 8, the Town must only continue to implement the results of the feasibility study "as long as withdrawals exceed Baseline." While it may be the Department's intent after the second exceedance of the baseline to have implementation go forward with no interruption, this is not clear under the proposed permit language. As written, a town could get under its baseline again and arguably would not have to continue to implement the offset measures. Since many types of offsets are not "on again off again" measures, this is completely impractical, prevents effective long-term capital planning, and creates a yo-yo effect in which offsets never are completed. Accordingly, this phrase should be stricken.

provisions should be changed to “Leaks of three gallons per minute or more shall be repaired as soon as possible, and in any event within three months of detection;

- In Table 5, Industrial and Commercial Water Conservation: this is a good addition; however, the language inserted by the Administrative Magistrate in the Town of Wenham’s WMA permit is stronger and should be included here with the bracketed change:

The Town shall implement a program to reduce water use by [at least]⁷ its ten largest industrial and commercial customers. The program shall require a water audit or some other comparable review of water use . . . and a timetable for achieving water use reduction goals identified by the audit.

The Town should also be required to report on the effectiveness of the program within two years. As currently written, this provision is not clear whether the Town only has to conduct an outreach program and work with its largest customers on ways to reduce use by March 1, 2009, or to actually reduce use “to the extent practical” by this date.

Appendix A and B:

In the first sentence of Appendix A, we suggest changing “fails to document compliance . . . in its 2008 ASR” to “fails to achieve” since this is not intended to be a documentation issue. We also believe that the compliance plan (also applicable to the plan for reducing UAW) should be developed and submitted with the 2008 ASR if Medway fails to meet the performance standards in 2008.⁸

Appendix C

In Appendix C, part II, the permit refers to “hourly” real-time Massachusetts streamflow data from the USGS streamflow website. The text should be modified since most USGS real-time data are every 15 minutes, **not** hourly. The permit also uses the recent daily mean streamflow for implementing the streamflow trigger. Frequently, the previous day’s daily average data are not available and the daily averages might be 3-7 days old. The permit should be modified to require the use of the daily average from the 15-minute values if the recent daily average is not available for the previous day.

Lastly, the cover letter and the permit should make it clear that the Department fully expects to impose those permit conditions (which go beyond March, 2009) in the new permit that is issued in 2009.

In sum, Medway’s 2004 permit was an important step toward beginning to achieve a balance among competing water uses in the Charles and to protecting the basin’s water resources. This rewrite of Medway’s permit goes in the wrong direction and is unwarranted, particularly since Medway is meeting the standards and complying with the streamflow triggers. Neither Medway nor CRWA appealed the 2004 permit and it does not make sense to change it now, except to add the new withdrawal point and to make some changes to the offset provision. We look forward to discussing this amendment further with you.

⁷ “Largest users” leaves it completely to the discretion of the town to determine this.

⁸ However, as discussed above, the provision in Medway’s current permit to meet the standards beginning in 2005 should remain.

Very truly yours,

Margaret Van Deusen
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